# NEW YORK STATE

# COMMISSION ON JUDICIAL CONDUCT

# ANNUAL REPORT

# 2019

# NEW YORK STATE
# COMMISSION ON JUDICIAL CONDUCT

♦ ♦ ♦


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HON. ROBERT J. MILLER (APPOINTED 10-05-18)

MARVIN RAY RASKIN, ESQ. (APPOINTED 04-01-18)

RICHARD A. STOLOFF, ESQ.

HON. DAVID A. WEINSTEIN (SERVED UNTIL 03-31-18)

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March 1, 2019

To Governor Andrew M. Cuomo,
Chief Judge Janet DiFiore, 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, covering the period from January 1 through December 31, 2018.

Respectfully submitted,

Robert H. Tembeckjian, Administrator
On Behalf of the Commission

## TABLE OF CONTENTS


Introduction to the 2019 Annual Report . . . 1

Bar Graph: Complaints, Inquiries & Investigations in the Last Ten Years . . . 1

Action Taken in 2018 . . . 2

Complaints Received . . . 2

Pie Chart: Complaint Sources in 2018 . . . 2

Preliminary Inquiries and Investigations . . . 2

Formal Written Complaints . . . 3

Summary of All 2018 Dispositions . . . 4

Table 1: Town & Village Justices . . . 4
Table 2: City Court Judges . . . 4
Table 3: County Court Judges . . . 5
Table 4: Family Court Judges . . . 5
Table 5: Surrogates . . . 5
Table 6: District Court Judges . . . 6
Table 7: Court of Claims Judges . . . 6
Table 8: Supreme Court Justices . . . 6
Table 9: Court of Appeals Judges and Appellate Division Justices . . . 7
Table 10: Non-Judges and Others Not Within the Commission's Jurisdiction . . . 7

Note on Jurisdiction . . . 7

Formal Proceedings . . . 8

Overview of 2018 Determinations . . . 8
Determinations of Removal . . . 9
Determinations of Censure . . . 10
Determinations of Admonition . . . 11
Other Public Dispositions . . . 12

Matters Closed Upon Resignation . . . 16

Referrals to Other Agencies . . . 16

Letters of Dismissal and Caution . . . 17

Audit and Control . . . 17
Conflicts of Interest . . . 17
Inappropriate Demeanor . . . 17
Improper *Ex Parte* Communications . . . 17
Miscellaneous . . . 17
Political Activity . . . 17
Record-Keeping . . . 18
Violation of Rights . . . 18
Follow Up on Caution Letters . . . 18

Commission Determinations Reviewed by the Court of Appeals . . . 18

*Matter of Terrence C. O'Connor* . . . 18
*Matter of Leticia D. Astacio* . . . 19

Observations and Recommendations . . . 21

Judicial Campaign Ethics Training . . . 21
Financial Disclosure . . . 21
Improper Delegation of Judicial Responsibilities . . . 22
Social Media and the Judiciary . . . 24
Assistance for Town and Village Justices . . . 26

The Commission's Budget . . . 30

Chart: Selected Budget Figures 1978 to Present . . . 30

Conclusion . . . 31

Appendix A: Biographies of Commission Members . . . 32

Appendix B: Biographies of Commission Attorneys . . . 37

Appendix C: Referees Who Served in 2018 . . . 41

Appendix D: The Commission's Powers, Duties and History . . . 42

Appendix E: Rules Governing Judicial Conduct . . . 51

Appendix F: 2018 Determinations Rendered by the Commission . . . 70

*Matter of Leticia D. Astacio* . . . 71
*Matter of Thomas P. Brooks, II* . . . 112
*Matter of Susan R. Castine* . . . 117
*Matter of Rennee N. Crofoot* . . . 122
*Matter of William J. Fisher* . . . 126
*Matter of John W. Hallett* . . . 138
*Matter of Joan M. Kline* . . . 142
*Matter of Kenneth N. Lafave* . . . 147
*Matter of Donald G. Lustyik* . . . 151
*Matter of Erika A. Martin* . . . 156
*Matter of James P. McDermott* . . . 161
*Matter of Shari R. Michels* . . . 171
*Matter of Terrence C. O'Connor* . . . 182
*Matter of David F. Porter* . . . 215
*Matter of Bruce S. Scolton* . . . 223
*Matter of Richard J. Sherwood* . . . 228
*Matter of Deanna Siegel* . . . 233
*Matter of John M. Skinner* . . . 239
*Matter of Leonard G. Tilney, Jr.* . . . 250

Appendix G: Statistical Analysis of Complaints . . . . . 255

Complaints Pending as of December 31, 2017 . . . . . 255
New Complaints Considered by the Commission in 2018 . . . . . 256
All Complaints Considered in 2018: 2,000 New & 173 Pending from 2017 . . . . . 257
All Complaints Considered Since the Commission's Inception in 1975 . . . . . 258

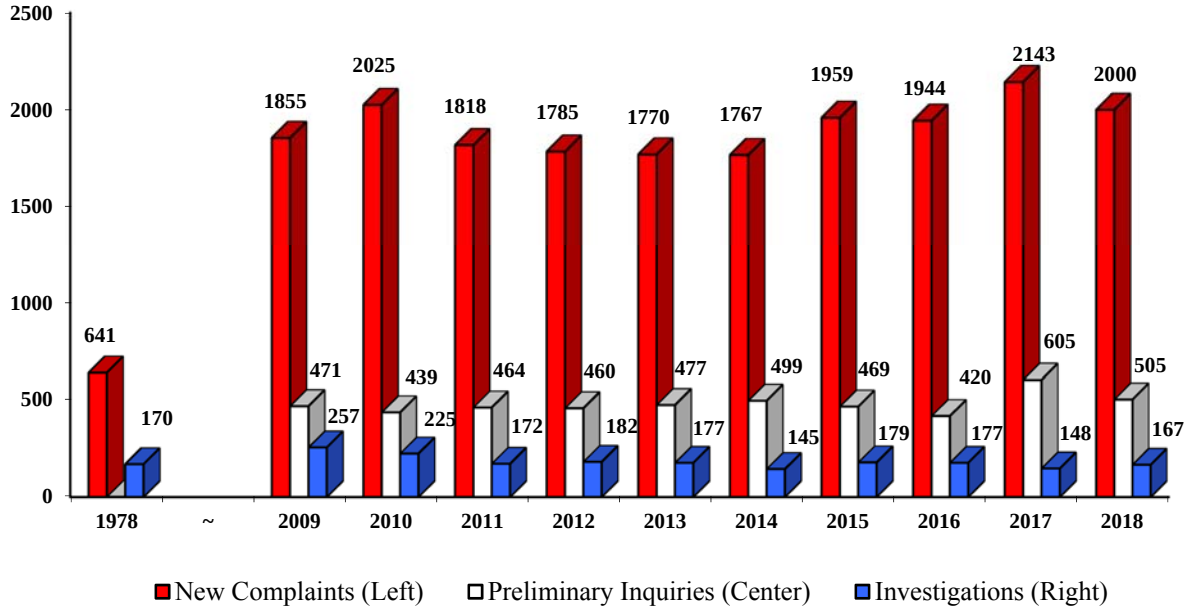
# INTRODUCTION TO THE 2019 ANNUAL REPORT

The New York State Commission on Judicial Conduct is the independent agency designated by the State Constitution to review complaints of misconduct against judges and justices of the State Unified Court System and, where appropriate, render public disciplinary determinations of admonition, censure or removal from office. There are approximately 3,350 judicial positions in the system filled by approximately 3,150 individuals, in that some judges serve in more than court.

The Commission's objective is to enforce high standards of conduct for judges, who must be free to act independently, on the merits and in good faith, but also must be held accountable should they commit misconduct. The text of the Rules Governing Judicial Conduct, promulgated by the Chief Administrator of the Courts on approval of the Court of Appeals, is annexed.

The number of complaints received annually by the Commission in the past 10 years has substantially increased compared to the first three decades of the Commission's existence. Since 2009, the Commission has averaged 1,907 new complaints per year, 481 preliminary inquiries and 183 investigations. Last year, 2,000 new complaints were received, the third-highest total ever. Every complaint was reviewed by investigative and legal staff, and a report was prepared for each complaint. All such complaints and reports were reviewed by the entire Commission, which then voted on which complaints merited opening full scale investigations. As to these new complaints, there were 505 preliminary reviews and inquiries and 167 investigations.

This report covers Commission activity in the year 2018.




**COMPLAINTS, INQUIRIES & INVESTIGATIONS IN THE LAST TEN YEARS**

# ACTION TAKEN IN 2018

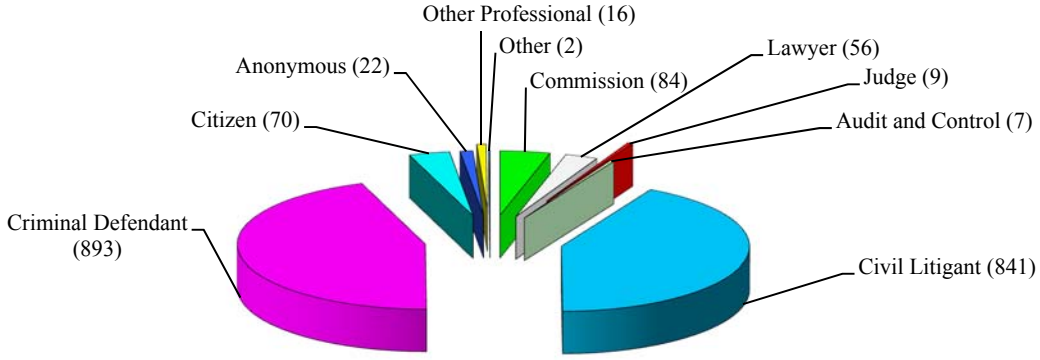
Following are summaries of the Commission's actions in 2018, including accounts of all public determinations, summaries of non-public dispositions, and various numerical breakdowns of complaints, investigations and other dispositions.

## COMPLAINTS RECEIVED

The Commission received 2,000 new complaints in 2018. All complaints are summarized and analyzed by staff and reviewed by the Commission, which votes whether to investigate.

New complaints dismissed upon initial review are those that the Commission deems to be clearly without merit, not alleging misconduct or outside its jurisdiction, including complaints against non-judges, federal judges, administrative law judges, judicial hearing officers, referees and New York City Housing Court judges. Absent any underlying misconduct, such as demonstrated prejudice, conflict of interest or flagrant disregard of fundamental rights, the Commission does not investigate complaints concerning disputed judicial rulings or decisions. The Commission is not an appellate court and cannot intervene in a pending case, or reverse or remand trial court decisions.

A breakdown of the sources of complaints received by the Commission in 2018 appears in the following chart.




**COMPLAINT SOURCES IN 2018**

## PRELIMINARY INQUIRIES AND INVESTIGATIONS

The Commission's Operating Procedures and Rules authorize "preliminary analysis and clarification" and "preliminary fact-finding activities" by staff upon receipt of new complaints, to aid the Commission in determining whether an investigation is warranted. In 2018, staff conducted 505 such preliminary inquiries, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

In 167 matters, the Commission authorized full-fledged investigations. Depending on the nature of the complaint, an investigation may entail interviewing witnesses, subpoenaing witnesses to testify and produce documents, assembling and analyzing various court, financial or other records, making court observations, and writing to or taking testimony from the judge.

During 2018, in addition to the 167 new investigations, there were 155 investigations pending from the previous year. The Commission disposed of the combined total of 322 investigations as follows:

- 63 complaints were dismissed outright.
- 22 complaints involving 20 different judges were dismissed with letters of dismissal and caution.
- 13 complaints involving 11 different judges were closed upon the judge's resignation, seven becoming public by stipulation and four that were not public.
- 16 complaints involving seven different judges were closed upon vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 27 complaints involving 16 different judges resulted in formal charges being authorized.
- 181 investigations were pending as of December 31, 2018.

## FORMAL WRITTEN COMPLAINTS

As of January 1, 2018, there were pending Formal Written Complaints in 18 matters involving ten judges. In 2018, Formal Written Complaints were authorized in 27 additional matters involving 16 judges (as to one of whom a Formal Written Complaint was already pending). Of the combined total of 45 matters involving 25 different judges, the Commission acted as follows:

- 12 matters involving seven different judges resulted in formal discipline (admonition, censure or removal).
- Eight matters involving five different judges were closed upon the judge's resignation from office, all of which became public by stipulation.
- 25 matters involving 13 different judges were pending as of December 31, 2018.

## SUMMARY OF ALL 2018 DISPOSITIONS

The Commission's investigations, hearings and dispositions in the past year involved judges of various courts, as indicated in the following ten tables.

### TABLE 1: TOWN & VILLAGE JUSTICES – 1,832,* ALL PART-TIME

| | *Lawyers* | *Non-Lawyers* | *Total* |
|---|---|---|---|
| Complaints Received | 140 | 161 | 301 |
| Complaints Investigated | 37 | 60 | 97 |
| Judges Cautioned After Investigation | 7 | 6 | 13 |
| Formal Written Complaints Authorized | 3 | 9 | 12 |
| Judges Cautioned After Formal Complaint | 0 | 0 | 0 |
| Judges Publicly Disciplined | 0 | 4 | 4 |
| Judges Vacating Office by Public Stipulation | 5 | 7 | 12 |
| Formal Complaints Dismissed or Closed | 0 | 0 | 0 |

NOTE: Approximately 706 town and village justices are lawyers.

*Refers to the approximate number of such judges in the state unified court system.

### TABLE 2: CITY COURT JUDGES – 347, ALL LAWYERS

| | *Part-Time* | *Full-Time* | *Total* |
|---|---|---|---|
| Complaints Received | 12 | 394 | 406 |
| Complaints Investigated | 1 | 30 | 31 |
| Judges Cautioned After Investigation | 0 | 3 | 3 |
| Formal Written Complaints Authorized | 0 | 1 | 1 |
| Judges Cautioned After Formal Complaint | 0 | 0 | 0 |
| Judges Publicly Disciplined | 0 | 2 | 2 |
| Judges Vacating Office by Public Stipulation | 0 | 0 | 0 |
| Formal Complaints Dismissed or Closed | 0 | 0 | 0 |

NOTE: Approximately 51 City Court Judges serve part-time.

## TABLE 3: COUNTY COURT JUDGES – 94, FULL-TIME, ALL LAWYERS*

| | |
|---|---|
| Complaints Received | 262 |
| Complaints Investigated | 13 |
| Judges Cautioned After Investigation | 1 |
| Formal Written Complaints Authorized | 0 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 0 |
| Judges Vacating Office by Public Stipulation | 0 |
| Formal Complaints Dismissed or Closed | 0 |

*Includes six who also serve as Surrogates, six who also serve as Family Court Judges, and 39 who also serve as both Surrogates and Family Court Judges.

## TABLE 4: FAMILY COURT JUDGES – 127, FULL-TIME, ALL LAWYERS

| | |
|---|---|
| Complaints Received | 241 |
| Complaints Investigated | 9 |
| Judges Cautioned After Investigation | 0 |
| Formal Written Complaints Authorized | 2 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 0 |
| Judges Vacating Office by Public Stipulation | 0 |
| Formal Complaints Dismissed or Closed | 0 |

## TABLE 5: SURROGATES – 19, FULL-TIME, ALL LAWYERS*

| | |
|---|---|
| Complaints Received | 34 |
| Complaints Investigated | 2 |
| Judges Cautioned After Investigation | 0 |
| Formal Written Complaints Authorized | 0 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 0 |
| Judges Vacating Office by Public Stipulation | 0 |
| Formal Complaints Dismissed or Closed | 0 |

*Many Surrogates also serve concurrently as Judges of the County and/or Family Court.

## TABLE 6: DISTRICT COURT JUDGES – 49, FULL-TIME, ALL LAWYERS

| | |
|---|---|
| Complaints Received | 35 |
| Complaints Investigated | 6 |
| Judges Cautioned After Investigation | 0 |
| Formal Written Complaints Authorized | 0 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 0 |
| Judges Vacating Office by Public Stipulation | 0 |
| Formal Complaints Dismissed or Closed | 0 |

## TABLE 7: COURT OF CLAIMS JUDGES – 50, FULL-TIME, ALL LAWYERS

| | |
|---|---|
| Complaints Received | 58 |
| Complaints Investigated | 0 |
| Judges Cautioned After Investigation | 0 |
| Formal Written Complaints Authorized | 0 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 0 |
| Judges Vacating Office by Public Stipulation | 0 |
| Formal Complaints Dismissed or Closed | 0 |

## TABLE 8: SUPREME COURT JUSTICES – 470, FULL-TIME, ALL LAWYERS*

| | |
|---|---|
| Complaints Received | 262 |
| Complaints Investigated | 9 |
| Judges Cautioned After Investigation | 3 |
| Formal Written Complaints Authorized | 1 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 1 |
| Judges Vacating Office by Public Stipulation | 0 |
| Formal Complaints Dismissed or Closed | 0 |

* Includes 12 who serve as Justices of the Appellate Term.

## TABLE 9: COURT OF APPEALS JUDGES – 7, FULL-TIME, ALL LAWYERS; APPELLATE DIVISION JUSTICES – 71, FULL-TIME, ALL LAWYERS

| | |
|---|---|
| Complaints Received | 36 |
| Complaints Investigated | 0 |
| Judges Cautioned After Investigation | 0 |
| Formal Written Complaints Authorized | 0 |
| Judges Cautioned After Formal Complaint | 0 |
| Judges Publicly Disciplined | 0 |
| Judges Vacating Office by Public Stipulation | 0 |
| Formal Complaints Dismissed or Closed | 0 |

## TABLE 10: NON-JUDGES AND OTHERS NOT WITHIN THE COMMISSION'S JURISDICTION*

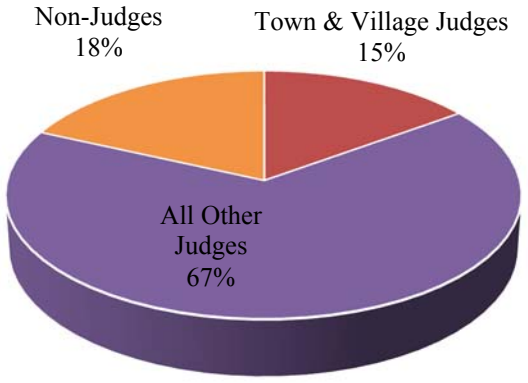
| | |
|---|---|
| Complaints Received | 365 |

* The Commission reviews such complaints to determine whether to refer them to other agencies.

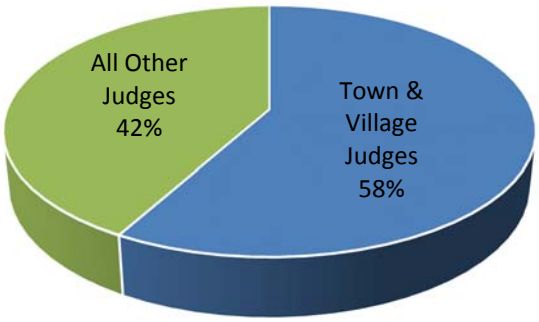
## NOTE ON JURISDICTION

The Commission's jurisdiction is limited to judges and justices of the State Unified Court System. The Commission does not have jurisdiction over non-judges, retired judges, judicial hearing officers, administrative law judges (*i.e.* adjudicating officers in government agencies or public authorities such as the New York City Parking Violations Bureau), housing judges of the New York City Civil Court, or federal judges. Legislation that would have given the Commission jurisdiction over New York City housing judges was vetoed in the 1980s.

## SUMMARY OF TABLES 1-10




**COMPLAINTS RECEIVED BY JUDGE TYPE**




**INVESTIGATIONS AUTHORIZED**
**TOWN & VILLAGE JUDGES v ALL OTHER JUDGES**

# FORMAL PROCEEDINGS

The Commission may not impose a public disciplinary sanction against a judge 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.

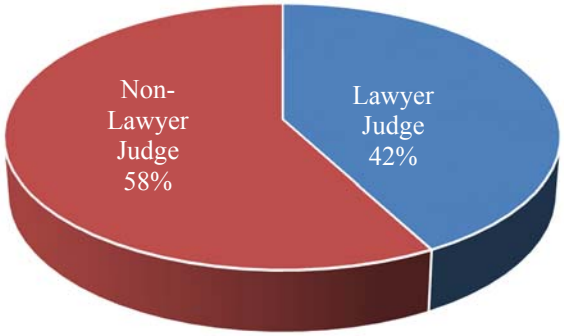
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges, hearings or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement has been rendered.

Following are summaries of those matters that were completed and made public during 2018. The actual texts are appended to this Report in Appendix F.

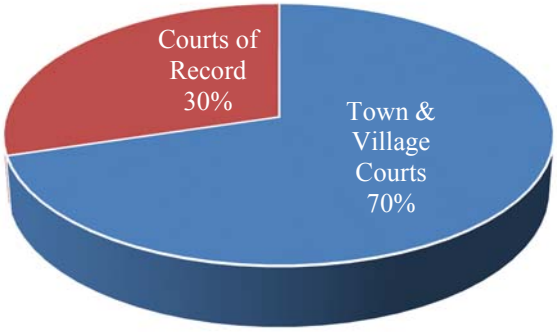
## OVERVIEW OF 2018 DETERMINATIONS

The Commission rendered seven formal disciplinary determinations in 2018: two removals, two censures and three admonitions. In addition, 12 matters were disposed of by stipulation made public by agreement of the parties (seven such stipulations were negotiated during the investigative stage, and five after a Formal Written Complaint had been served). Eleven of the 19 judges were non-lawyer judges and eight were lawyers. Sixteen of the 19 judges were town or village justices and three were judges of higher courts.

To put these numbers and percentages in some context, it should be noted that, of the roughly 3,150 judges in the state unified court system, approximately 60% are part-time town or village justices. About 61% of the town and village justices, *i.e.* 36% of all judges in the court system, are not lawyers. (Town and village justices serve part-time and need not be lawyers. Judges of all other courts must be lawyers.)




**2018 DISPOSITIONS**




**1978-2018 DISPOSITIONS**

## DETERMINATIONS OF REMOVAL

The Commission completed two formal proceedings in 2018 that resulted in a determination of removal. The cases are summarized below and the full text can be found in Appendix F.

### *Matter of Terrence C. O'Connor*

On March 30, 2018, the Commission determined that Terrence C. O'Connor, a Judge of the New York City Civil Court, Queens County, should be removed from office for habitually mistreating attorneys, abusing his judicial power, failing to follow the law and failing to cooperate with the Commission. Among other things, Judge O'Connor failed to provide his purported attorney's name and contact information, refused to take an oath when he appeared at the Commission to testify during the investigation, then failed to appear on a subsequent date after the initial proceeding was adjourned. Moreover, after the Commission formally charged him with misconduct, Judge O'Connor refused to participate in the formal disciplinary hearing. In its determination, the Commission stated: "By failing to provide testimony as requested during the investigation, [Judge O'Connor] impeded the Commission's efforts to obtain a full record of the relevant facts, thereby obstructing the Commission's discharge of its lawful mandate and seriously exacerbating his misconduct." With respect to the underlying misconduct, the Commission found that: (1) in two cases the judge struck critical testimony from the record because a lawyer absent-mindedly said "Okay" after a witness answered a question, and he thereafter dismissed the cases for failing to prove a prima facie case; (2) in three other cases Judge O'Connor made impatient, discourteous, and undignified remarks to lawyers; and (3) in nine cases, Judge O'Connor awarded counsel fees without complying with court-mandated procedures. The Commission concluded: "Viewed in its entirety, [Judge O'Connor's] conduct, seriously exacerbated by his failure to cooperate, demonstrates his unfitness for judicial office and thus warrants the sanction of removal." Judge O'Connor requested review by the Court of Appeals, which accepted the Commission's determination of removal. (*See* page 18 for a summary of the Court of Appeals' decision.)

### *Matter of Leticia D. Astacio*

On April 23, 2018, the Commission determined that Leticia D. Astacio, a Judge of the Rochester City Court, Monroe County, should be removed from office for conduct related to her conviction for DWI in August 2016 and other misconduct. During her arrest, she aggravated the situation by her profane and angry reaction to the investigating trooper and by invoking her judicial office in an attempt to evade the consequences of her arrest. Over the next months, she violated the terms of her conditional sentence on two occasions. In November 2016 she pled guilty to attempting to start and operate her vehicle while testing positive for alcohol on the ignition interlock device in her car, and six months later, after she departed on a lengthy trip to Thailand without notice, failed to provide a court-ordered alcohol test and failed to appear in court as ordered, her conditional sentence for Driving While Intoxicated was revoked and she was sentenced to 60 days in jail and three years' probation. The Commission found that Judge Astacio also engaged in misconduct on the bench by failing to disqualify herself from conducting the arraignment of a former client and by making discourteous, insensitive and undignified comments from the bench while presiding over three cases. The Commission stated: "The totality of [Judge Astacio's] misbehavior as shown in the record before us… demonstrates her unfitness for judicial office and requires the sanction

of removal." Judge Astacio requested review by the Court of Appeals, which accepted the Commission's determination of removal. (*See* page 19 for a summary of the Court of Appeals' decision.)

## DETERMINATIONS OF CENSURE

The Commission completed two formal proceedings in 2018 that resulted in public censure. The cases are summarized below and the full text can be found in Appendix F.

### *Matter of John M. Skinner*

On June 26, 2018, the Commission determined that John M. Skinner, a Justice of the Columbia Town Court, Herkimer County, should be censured for delaying and improperly handling a small claims action and failing to mechanically record any court proceedings for more than eight years. From May 2015 to November 2016, while presiding over a small claims matter, Judge Skinner delayed holding a hearing for 17 months, adjourning the matter at least three times despite the fact neither party ever requested an adjournment. He also failed to decide the defendant's request for a jury trial until after he rendered a decision, making the jury request moot. When the defendant appealed the judge's ruling, Judge Skinner then failed to direct his court clerk to prepare minutes of the proceeding and to file a return with the County Court. Compounding the misconduct, Judge Skinner never mechanically recorded any court proceedings during his tenure as a judge, notwithstanding a statewide Administrative Order requiring the recording of all town and village court proceedings. In its determination the Commission stated that the judge "inexcusably neglected his duties by failing to mechanically record any court proceedings for more than eight years…and by unduly delaying a small claims matter in which he failed to hold a hearing until 17 months after a notice of claim was filed." Judge Skinner, who is not an attorney, did not request review by the Court of Appeals.

### *Matter of James P. McDermott*

On November 13, 2018, the Commission determined that James P. McDermott, a Justice of the Chester Town Court, Warren County, should be censured for failing to account in a timely and complete manner for the receipt of over $15,000 in court funds. By law, all monies received by the court are required to be reported and remitted to appropriate authorities no later than the tenth day of the month following collection. Judge McDermott failed for seven years to address thousands of dollars of unidentified funds in the court's bank account after learning about it from a 2011 audit by the New York State Comptroller. A second audit in June 2017 revealed that the amount of unidentified funds had increased from $10,000 to over $15,000. Judge McDermott did not begin to remit the unidentified funds until November 2017 and did not remit the entire amount until May 2018. The Commission noted that while some of the surplus had accumulated under prior judges and there was no evidence that money was lost or misappropriated, Judge McDermott allowed the unidentified funds to languish for years and to increase by over $5,000 between the issuance of the 2011 and 2017 audit reports, "indicating that [his] own inappropriate and/or ineffective accounting practices were also a contributing factor, even after he was on notice of significant problems that existed with respect to his court's procedures and records." Judge McDermott, who is not an attorney, did not request review by the Court of Appeals.

## DETERMINATIONS OF ADMONITION

The Commission completed three proceedings in 2018 that resulted in public admonition. The cases are summarized as follows and the full texts can be found in Appendix F.

### *Matter of William J. Fisher*

On June 26, 2018, the Commission determined that William J. Fisher, a Justice of the Worcester Town Court, Otsego County, should be admonished for improperly entering a home at the center of a mortgage dispute and later posting pictures and making derogatory comments on Facebook about the homeowner. Judge Fisher's wife was co-executor of an estate that held the mortgage on a house occupied by "S." In 2015, Judge Fisher, without notice or permission, entered the house after "S" allegedly defaulted on the mortgage, took photos to document the physical condition of the premises, then posted the photographs on his wife's Facebook account with the caption "Mom and Alton are turning over in their graves," referring to the deceased relatives who left the estate. Two years later the judge posted photos of the property to his own Facebook account, including four he had taken during his improper entry in 2015. He compounded the misconduct by failing to remove the offensive Facebook post promptly after the Commission questioned him, despite promising to do so. In its determination the Commission said it was "unpersuaded" by his claims that he believed he could lawfully enter the property to inspect it due to his spouse's connection with the property. The Commission was particularly critical of Judge Fisher's 2017 Facebook post, since by that time he "knew that the Commission was investigating his court's handling of cases in which S. was the complaining witness" and, as the judge admitted, the post was "retaliatory in that he was upset that S. had repeatedly and publicly accused him and his co-judge of misconduct." Judge Fisher, who is not an attorney, did not request review by the Court of Appeals.

### *Matter of David F. Porter*

On November 13, 2018, the Commission determined that David F. Porter, a Justice of the Allegany Town Court, Cattaraugus County, should be admonished for failing to disqualify himself from three criminal cases arising from a boundary dispute involving his neighbor's daughter, despite having discussed the matter in his home with the neighbor a few months earlier. In 2015, Judge Porter spoke with a neighbor who came to his home seeking his assistance as a judge with a boundary dispute involving his daughter and her neighbors. Judge Porter (1) said the court could not become involved until charges were brought, (2) told the neighbor to contact law enforcement directly and (3) provided the names of seven officers who lived nearby. In its determination the Commission stated: "The moment that [Judge Porter] welcomed his neighbor into his home and began to discuss the dispute, he should have realized that he was engaging in an ex parte conversation that would require his disqualification if the matter came to his court." However, "instead of immediately stepping down when three cases arising out of the dispute came before him, or even disclosing his earlier discussion with his neighbor, [Judge Porter] issued a criminal summons, conducted the arraignments and made determinations regarding the issuance of an order of protection." Judge Porter, who is not an attorney, did not request review by the Court of Appeals.

### *Matter of Shari R. Michels*

On December 27, 2018, the Commission determined that Shari R. Michels, a Judge of the New York City Civil Court and an Acting Justice of the Supreme Court, 12th Judicial District, Bronx County, should be admonished for repeatedly telling police officers she was a judge in an effort to avoid the consequences of a minor traffic accident in which her car struck a police vehicle. In August 2015, the car Judge Michels was driving struck the rear of a police van at a traffic light near the courthouse in the Bronx. There were no injuries or property damage. Judge Michels immediately identified herself as a judge to the officer driving the van and other officers who arrived at the scene. When the officers indicated that, according to Police Department protocols, a report of the accident had to be completed, Judge Michels repeatedly questioned them about the need to file a report while referring to her judicial status. The incident lasted at least 45 minutes, and a police report was ultimately filed. According to the Commission's decision, the judge "created the appearance that [she] did not want to be treated like an ordinary motorist involved in an accident, but instead expected deference because of her judicial position." Judge Michels did not request review by the Court of Appeals.

## OTHER PUBLIC DISPOSITIONS

The Commission completed twelve other proceedings in 2018 that resulted in public dispositions. The cases are summarized below and the full text can be found in Appendix F. Seven of the matters were concluded during the investigative stage, and five after formal proceedings had been commenced.

### *Matter of Susan R. Castine*

On February 1, 2018, pursuant to a stipulation, the Commission closed its investigation of complaints against Susan R. Castine, a Justice of the Beekmantown Town Court, Clinton County, who resigned from office after being apprised by the Commission that it was investigating complaints alleging that she had abridged or circumvented fundamental rights or procedures in various cases, including, (1) mishandling a town code proceeding by, *inter alia*, permitting unsworn testimony, failing to advise the defendant of the right to apply for assigned counsel, and making statements before the trail that indicated that she had prejudged the defendant as guilty; (2) mishandling matters involving unrepresented, minor defendants; (3) requiring a defendant in a summary proceeding to present her defense before the presentation of the plaintiff's case; (4) engaging in *ex parte* conversations and/or eliciting incriminating statements from parties; (5) reducing and dismissing charges without notice to, or consent of, the prosecution; (6) failing to advise defendants of the right to assigned counsel or to a preliminary hearing; and (7) failing to record court proceedings recorded as required. Judge Castine, who is not an attorney, agreed that she would neither seek nor accept judicial office at any time in the future.

### *Matter of Kenneth N. Lafave*

On April 12, 2018, pursuant to a stipulation, the Commission discontinued a proceeding involving Kenneth N. Lafave, a Justice of the Ellenburg Town Court, Oneida County, who resigned from office after being served with a Formal Written Complaint alleging that while presiding over an eviction case, he failed to be faithful to the law and maintain professional competence in it, made

angry, discourteous and/or biased statements to the litigants and a lawyer, and initiated and considered unauthorized *ex parte* communications. Judge Lafave, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

***Matter of Richard J. Sherwood***

On April 12, 2018, pursuant to a stipulation, the Commission closed its investigation of a complaint against Richard J. Sherwood, a Justice of the Guilderland Town Court, Albany County, who resigned from office after being apprised by the Commission that it was investigating complaints alleging that by felony complaint dated February 23, 2018, the judge was charged with two counts of Grand Larceny in the First Degree, one count of Scheme to Defraud in the Frist Degree, and two counts of Criminal Possession of Stolen Property in the First Degree. Judge Sherwood, who is an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

***Matter of Joan M. Kline***

On June 13, 2018, pursuant to a stipulation, the Commission closed its investigation of a complaint against Joan M. Kline, a Justice of the Guilford Town Court and a Justice of the Oxford Village Court, Chenango County, who resigned from office after the Commission requested that the judge provide court records and audio recordings in connection with a complaint alleging that she was rude to defendants and engaged in an unauthorized *ex parte* conversation with the claimant; the judge provided the paper records of the case but not the audio recording before tendering her resignation.. Judge Kline, who is not an attorney, agreed that she would neither seek nor accept judicial office at any time in the future.

***Matter of Thomas P. Brooks, II***

On June 13, 2018, pursuant to a stipulation, the Commission closed its investigation of a complaint against Thomas P. Brooks, II, a Justice of the Veteran Town Court, Chemung County, who resigned from office after being apprised by the Commission that it was investigating a complaint alleging that he resided in Erin, New York, in violation of the statutory requirement that he reside in the town in which he serves as a justice. Judge Brooks, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

***Matter of Deanna Siegel***

On June 13, 2018, pursuant to a stipulation, the Commission discontinued a proceeding involving Deanna Siegel, a Justice of the Duanesburg Town Court, Schenectady County, who resigned from office after being apprised that the Commission's Administrator would recommend her removal from office. Judge Siegel was served with a Formal Written Complaint dated May 15, 2017, alleging *inter alia* that she (1) repeatedly failed to timely report or remit court funds to the State Comptroller and the Town of Duanesburg as required by multiple statutes and despite numerous reminders to do so, and (2) failed to cooperate with the Commission's investigation of the complaint regarding her alleged failure to report and remit funds, in that she failed to respond to numerous letters from the Commission and failed to appear for testimony. A referee designated by the Commission conducted a hearing and issued a report that sustained both charges. In March

2018, Judge Siegel, who is a lawyer, was advised that the Commission was investigating a new complaint alleging that she had failed since March 2017 to re-register as an attorney or to pay the required biennial registration fee. Although Judge Siegel did not respond to the Commission's inquiry, she since re-registered and paid the required fee. Judge Siegel agreed that she would neither seek nor accept judicial office at any time in the future.

***Matter of Erika A. Martin***

On September 13, 2018, pursuant to a stipulation, the Commission discontinued a proceeding involving Erika A. Martin, a Justice of the Manchester Town Court, Ontario County, who resigned from office after being served with a Formal Written Complaint in July 2018 based on her having pleaded guilty in April 2018 to two felonies and one misdemeanor. The criminal charges arose from her wrongful taking of at least $3,000 in court funds from the Town of Manchester, as well as monies to which she was not entitled from M&T Bank, Citizens Bank and ESL Federal Credit Union. Judge Martin, who is not an attorney, agreed that she would neither seek nor accept judicial office at any time in the future.

***Matter of Leonard G. Tilney, Jr.***

On September 13, 2018, pursuant to a stipulation, the Commission closed its investigation of a complaint against Leonard G. Tilney, Jr., a Justice of the Lockport Town Court, Niagara County, who resigned from office after being apprised by the Commission that it was investigating a complaint alleging that at various times in 2017 he had committed misconduct both on and off the bench, including allegations that he (1) made a culturally insensitive comment to a defendant at sentencing; (2) yelled at his co-judge from the bench in a denigrating manner using vulgarity; and (3) posted racially offensive material in the office area of the courthouse. Judge Tilney, who is an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

***Matter of Rennee N. Crofoot***

On October 25, 2018, pursuant to a stipulation, the Commission closed its investigation of a complaint against Rennee N. Crofoot, a Justice of the Barrington Town Court, Yates County, who resigned from office after being apprised by the Commission that it was investigating a complaint alleging that she interjected herself in a custody proceeding pending before another judge by sending an email in which she criticized one of the parties, identified herself as a judge and lent the prestige of her judicial office to advance a private interest. Judge Crofoot, who is not an attorney, agreed that she would neither seek nor accept judicial office at any time in the future.

***Matter of Donald G. Lustyik***

On October 25, 2018, pursuant to a stipulation, the Commission closed its investigation of a complaint against Donald G. Lustyik, a Justice of the Norfolk Town Court, St. Lawrence County, who resigned from office after being apprised by the Commission that it was investigating a complaint alleging that in a landlord-tenant matter, the judge ordered the eviction of tenants without conducting a hearing or affording them a full opportunity to be heard. Judge Lustyik, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

***Matter of John W. Hallett***

On December 6, 2018, pursuant to a stipulation, the Commission discontinued a proceeding involving John W. Hallett, a Justice of the LeRay Town Court, Jefferson County, who resigned from office after being served with a Formal Written Complaint alleging that he made inappropriate statements to an attorney at the Jefferson County Court Complex, including telling the attorney, who was promoting a film festival at which the actor Viggo Mortensen was the honoree, that the film festival was "about the gayest thing I have ever heard," and, "You and Viggo Mortensen should get a hotel room and suck each other's dicks." Five months later, while conversing with the same attorney, the judge allegedly made a gesture with his hand to his mouth to connote oral sex and thereafter patted the attorney on the cheek and stated, "there, there, little boy." Judge Hallett, who is an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

***Matter of Bruce S. Scolton***

On December 6, 2018, pursuant to a stipulation, the Commission discontinued a proceeding involving Bruce S. Scolton, a Justice of the Harmony Town Court, Chautauqua County, who resigned from office after being served with a Formal Written Complaint alleging he (1) failed to make timely reports and deposits of court funds to the State Comptroller, despite two previous cautionary letters for such derelictions; (2) failed to make proper notifications to the Department of Motor Vehicles as to 2,612 defendants in motor vehicle cases who were convicted, failed to pay a fine or failed to answer the charge; (3) failed for more than three years to monitor his official court email account or respond to emails received by that account; and (4) failed for at least a year to activate or utilize a computer and software provided to him by the Office of Court Administration for the purpose of facilitating the court's financial and case administration. Judge Scolton, who is an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

## MATTERS CLOSED UPON RESIGNATION

In 2018, 16 judges resigned while complaints against them were pending before the Commission, and the matters pertaining to those judges were closed. Five of those judges resigned while under formal charges by the Commission, all five pursuant to public stipulation. Eleven judges resigned while under investigation, seven of those pursuant to public stipulation. By statute, the Commission may continue an inquiry for a period of 120 days following a judge's resignation, but no sanction other than removal from office may be determined 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 other action may be taken if the Commission decides within that 120-day period that removal is not warranted.

## REFERRALS TO OTHER AGENCIES

Pursuant to Judiciary Law Section 44(10), the Commission may refer matters to other agencies. In 2018, the Commission referred 31 matters to other agencies. Twenty-five matters were referred to the Office of Court Administration, typically dealing with relatively isolated instances of delay, poor record-keeping or other administrative issues and six matters were referred to an attorney grievance committee.

# LETTERS OF DISMISSAL AND CAUTION

A Letter of Dismissal and Caution contains confidential suggestions and recommendations to a judge upon conclusion of an investigation, in lieu of commencing formal disciplinary proceedings. A Letter of Caution is a similar communication to a judge upon conclusion of a formal disciplinary proceeding with a finding that the judge's misconduct is established, but where the Commission determines that public discipline is not warranted.

Cautionary letters are authorized by the Commission's Rules, 22 NYCRR 7000.1(1) and (m). They serve as an educational tool and, when warranted, allow the Commission to address a judge's conduct without making the matter public.

In 2018, the Commission issued 20 Letters of Dismissal and Caution. Thirteen town or village justices were cautioned, including seven who are lawyers. Seven judges of higher courts – all lawyers, as required by law – were cautioned. The caution letters addressed various types of conduct as indicated below.

**Audit and Control.** One judge was cautioned for failing to deposit court funds in a timely manner as required.

**Conflicts of Interest.** All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned; two judges were cautioned for failing to so disqualify and/or disclose. Another judge was cautioned for serving as a board member of a group that regularly appeared in his court. One part-time lawyer judge was cautioned for appearing before another part-time lawyer judge in his county, which is prohibited.

**Inappropriate Demeanor.** The Rules require every judge to be patient, dignified and courteous to litigants, attorneys and others with whom the judge deals in an official capacity. One judge was cautioned for making public statements about a case pending in his court. Another judge was cautioned for raising his voice and otherwise being impatient. A third judge was cautioned for making disparaging remarks about an attorney.

**Improper *Ex Parte* Communications.** One judge was cautioned for engaging in isolated and relatively minor instances of unauthorized out-of-court communications with a party in a pending case.

**Miscellaneous.** One part-time judge was cautioned for failing to submit his attorney registration statement and fees in a timely manner.

**Political Activity.** The Rules Governing Judicial Conduct prohibit judges from attending political gatherings, endorsing other candidates, making political contributions or otherwise participating in political activities except during a specifically-defined "window period" when they are candidates for elective judicial office. The Rules also require a judge to conduct all extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge. One judge was cautioned for using a misleading campaign advertisement that conveyed

the erroneous appearance he was the incumbent. Another judge campaigned for a judicial and a non-judicial position simultaneously, which is contrary to the Rules.

**Record-Keeping.** One judge was cautioned for failing to mechanically record all court proceedings as required. Pursuant to section 30.1 of the Rules of the Chief Judge and Administrative Order 245-08 of the Chief Administrative Judge, all town and village court proceedings must be recorded.

**Violation of Rights.** The Rules require that a judge respect, comply with, be faithful to and maintain professional competence in the law. Sections 100.2(A), 100.3(B)(1). Five judges were cautioned for relatively isolated incidents of violating or not protecting the rights of parties appearing before them. One judge was cautioned for failing to advise defendants of constitutional rights they were waiving as a consequence of pleading guilty. Another judge was cautioned for failing to release an incarcerated defendant in a timely manner after he had completed the statutorily mandated maximum sentence. A third judge failed to conduct an inquiry into a defendant's eligibility for assigned counsel because he had posted bail. A fourth judge communicated plea offers on behalf of the district attorney to defendants who pled not guilty in vehicle and traffic cases, contrary to Office of Court Administration guidelines.

**Follow Up on Caution Letters.** Should the conduct addressed by a cautionary letter continue or be repeated, the Commission may authorize an investigation of a new complaint, which may lead to formal charges and further disciplinary proceedings. In certain instances, the Commission will authorize a follow-up review of the judge's conduct to assure that promised remedial action was indeed taken. In 1999, the Court of Appeals, in upholding the removal of a judge who *inter alia* used the power and prestige of his office to promote a particular private defensive driver program, noted that the judge had persisted in his conduct notwithstanding a prior caution from the Commission that he desist from such conduct. *Matter of Assini v Commission on Judicial Conduct*, 94 NY2d 26 (1999).

## COMMISSION DETERMINATONS REVIEWED BY THE COURT OF APPEALS

Pursuant to statute, a respondent-judge has 30 days to request review of a Commission determination by the Court of Appeals, or the determination becomes final. In 2018, the Court of Appeals upheld the Commission's determinations of removal in two cases.

***Matter of Terrence C. O'Connor***

On March 30, 2018, the Commission determined that New York City Civil Court Judge Terrence C. O'Connor should be removed from his judicial office for making impatient, discourteous and undignified comments to lawyers and litigants, striking critical testimony in two cases because lawyers absent-mindedly said "Okay" after their witness answered and awarding counsel fees without complying with mandated procedures. The judge's misconduct was "seriously exacerbated" by his failure to cooperate with the Commission's investigation, including failing to appear and give testimony pursuant to Judiciary Law § 44(3) when requested to do so. The Commission rejected Judge O'Connor's argument that the Commission proceedings denied him due process.

On April 25, 2018, Judge O'Connor requested review of the Commission's determination by the Court of Appeals. On October 16, 2018, the Court of Appeals accepted the Commission's determination that Judge O'Connor be removed from office. The Court found that

> petitioner's comments in open court were intemperate and inconsistent with appropriate judicial demeanor. In addition, his sustained pattern of inappropriate behavior evinced a lack of understanding of his role as a judge – most notably by disregarding the law and impinging on the fundamental right to be heard – thus eroding the public's trust and confidence in the integrity of the judiciary. Critically, petitioner's "misconduct was significantly compounded by [his] persistent failure to cooperate with the Commission investigation."
>
> …
>
> If the public trust in the judiciary is to be maintained, as it must, those who don the robe and assume the role of arbiter of what is fair and just must do so with an acute appreciation both of their judicial obligations and of the Commission's constitutional and statutory duties to investigate allegations of misconduct … . In short, willingness to cooperate with the Commission's investigations and proceedings is not only required – it is essential.

*Matter of O'Connor,* 32 NY3d 121, 128-29 (2018) (citation omitted).

***Matter of Leticia D. Astacio***

On April 23, 2018, the Commission determined that Rochester City Court Judge Leticia D. Astacio should be removed from her judicial office for conduct that included, *inter alia*, her conviction for DWI, her profane and angry reaction to the investigating trooper, her assertion of judicial office in an attempt to evade arrest and two violations of the terms of her conditional discharge. The Commission also found Judge Astacio engaged in misconduct while on the bench, including failing to disqualify herself from an arraignment of a former client and making a number of discourteous, insensitive and undignified comments while presiding.

On May 16, 2018, Judge Astacio requested review of the Commission's determination by the Court of Appeals. On October 16, 2018, the Court of Appeals accepted the Commission's determination that Judge Astacio be removed from office. The Court found that

> the circumstances spanning petitioner's collective misconduct qualify as egregious. Specifically, petitioner's judicial role exacerbated her already "very serious crime" of driving while intoxicated … and "undermine[d] [her] effectiveness as a judge" responsible for applying drunk driving laws to others … . Likewise, magnifying the impact of her DWI conviction and attendant behavior, the record reflects that petitioner appeared to invoke her judicial office to pressure the police to cease processing her arrest … .
>
> …
>
> Petitioner's behavior at a former client's arraignment, moreover, conveyed the "appearance of favoritism" which was compounded by her decision to exercise her discretion in his favor … [and] regardless of her intent, petitioner's repeated

> failure to speak in a dignified manner with defendants, sheriff's deputies, and attorneys demonstrated a lack of "respect toward everyone who appears in a court."

The Court was "unpersuaded that petitioner has genuinely accepted personal responsibility" noting that she "continues to point to external factors and justifications as excuses for her behavior." *Matter of Astacio,* 32 NY3d 131, 136 (2018) (citations omitted).

# OBSERVATIONS AND RECOMMENDATIONS

The Commission traditionally devotes a section of its Annual Report to a discussion of topics of special note that have come to its attention in the course of considering complaints. It does so for public education purposes, to advise the judiciary as to potential misconduct that may be avoided, and pursuant to its statutory authority to make administrative and legislative recommendations.

## JUDICIAL CAMPAIGN ETHICS TRAINING

All candidates for election to judicial office, other than those for town or village court justice, are required by the Rules Governing Judicial Conduct to complete an approved education program "no later than 30 days after receiving the nomination for judicial office." 22 NYCRR 100.5(A)(4)(f). The education program, which may be completed in person, by video or internet correspondence course, is administered by the Judicial Campaign Ethics Center (JCEC), a subdivision of the Advisory Committee on Judicial Ethics.

Every year, the Commission is advised of numerous candidates who did not fulfill this obligation on time or at all. While it appears that most candidates meet this responsibility in a timely fashion, some have claimed confusion as to their deadline due a purported ambiguity in the rule's definition of "nomination."

The applicable rule defines the nomination date "for candidates running in a primary election" as the "date upon which the candidate files a designating petition with the Board of Elections." *Id.* However, some candidates who were unopposed in their political party's primary have claimed this definition is confusing, and they have assumed their 30-day clock begins on the date their party officially nominates them, which may be on or after the date on which primaries for other office were held. Others who have sought election to judicial office for which there is a nominating convention or caucus but no primary have also said that the dates on which their parties register their candidacies may differ from a rival party's filing dates.

The solution for resolving any such perceived ambiguity is simple. The candidate or candidate's representative should consult with the JCEC. The JCEC's protocol is to respond promptly to campaign-related inquiries because time is usually of the essence. Moreover, the JCEC web page should be consulted routinely for its valuable links to such documents as the Judicial Campaign Ethics Handbook, recently published Advisory Opinions and guidelines on the appropriate way to dispose of unexpended campaign funds. http://ww2.nycourts.gov/ip/jcec.

## FINANCIAL DISCLOSURE

All judges of courts of record – that is, all courts except town and village courts – and all non-incumbent candidates seeking election to courts of record – are required by law to file annual financial disclosure statements, like those filed by other state officials and state government employees. Section 211(4) of the Judiciary Law and Section 40.2 of the Rules of the Chief Judge require judges to file an annual financial disclosure statement by May 15 of each succeeding year. Section 100.5(A)(4)(g) of the Rules Governing Judicial Conduct require a judicial candidate to file a financial disclosure statement "within 20 days following the date on which the judge or non-judge becomes such a candidate."

The Ethics Commission for the Unified Court System (UCS Ethics) is responsible for administering the distribution, collection, review and maintenance of annual financial disclosure statements. The powers, duties and procedures of the UCS Ethics are set forth in 22 NYCRR Parts 40 and 7400.

Full-time judges are also obliged under the Rules to report extra-judicial compensation annually to the clerk of the courts on which they sit. 22 NYCRR 100.4(H)(2).

When a judge is late in submitting the annual statement and fails to respond to a "notice to cure," UCS Ethics is required to issue a "notice of delinquency" and to notify the Commission, pursuant to Section 40.1(k) of the Rules of the Chief Judge. Where investigation by the Commission reveals a valid excuse, discipline would not be imposed. Where the explanations are not persuasive[1] but the delinquency was a first-time oversight and the judge promptly files upon receipt of the UCS Ethics notice, the Commission may issue a confidential Letter of Dismissal and Caution. However, where there are aggravating circumstances with respect to a judge's financial disclosure statements, such as multiple instances of late filings or filings that contain material inaccuracies, public discipline may result. *See, Matter of McAndrews*, 2014 Annual Report 157; *Matter of Nora S. Anderson*, 2013 Annual Report 75; *Matter of Joseph S. Alessandro*, 13 NY3d 238 (2009); *Matter of Francis M. Alessandro, Id.*; *Matter of John J. Elliott*, 2003 Annual Report 107; *Matter of Robert T. Russell, Jr.,* 2001 Annual Report 121; and *Matter of Bernard Burstein*, 1994 Annual Report 57.

## IMPROPER DELEGATION OF JUDICIAL RESPONSIBILITIES

It is fundamental to the independence, impartiality and integrity of the judiciary for a judge to exercise the powers of office without undue or unauthorized reliance upon non-judges. Over the years, in disciplinary determinations or formal opinions, both the Commission and the Advisory Committee on Judicial Ethics, respectively, have addressed the matter of judges who literally or effectively ceded or inquired about delegating to others certain uniquely judicial functions and duties.

Certain delegations would seem so unequivocally improper, they need no explanation. For example, in *Matter of Greenfeld*, 71 NY2d 389 (1988), the Court of Appeals upheld the Commission's determination to remove a village justice from office for *inter alia* improperly permitting the deputy village attorney to accept guilty pleas and determine the amount of fines in various cases. In *Matter of Rider*, 1988 Annual Report 212, a town justice was censured for permitting the local prosecutor to prepare the judge's decision, without notice to the defense. In *Matter of Hopeck*, 1981 Annual Report 133, a town justice was censured for *inter alia* allowing his wife to preside over a series of traffic cases on an evening when the judge himself was unavailable.

In Opinion 15-127, the Advisory Committee on Judicial Ethics opined that it would be improper for a judge to delegate to a court clerk the tasks of accepting written guilty pleas and imposing and collecting fines and surcharges, without consulting the judge, even when based on specific written guidelines created and approved by the judge in the form of a "fixed schedule" of fines. As it often

[1] It is not an excuse that the judge was busy, misplaced the disclosure form, did not check the mail or was distracted by personal matters, particularly if the judge was otherwise fulfilling the responsibilities of office.

has, the Advisory Committee distinguished between "ministerial" functions that may be delegated, and "judicial" functions that may not be delegated. The Committee reiterated prior advice that "judicial decision-making" is not delegable, and that "the imposition of a fine, even if only for an arguably 'routine' traffic infraction, is a nondelegable judicial duty." Opinion 15-127, which cites pertinent Judicial Conduct cases and commentary from the Commission's annual reports, goes on to emphasize that imposing a fine is a discretionary judicial function that must be made on a case-by-case basis, which would be thwarted by a system in which a court clerk would apply a predetermined fine to each traffic offense where a guilty plea was entered.

While accepting pleas and imposing fines in "routine" traffic matters may seem monotonous or inconsequential, it is nevertheless an adjudicative role that is to be fulfilled only by the judge of the court with jurisdiction. That there may be mitigating or aggravating circumstances in a particular case, such as prior convictions against the motorist, would only underscore the importance in assuring that a judge was reviewing the record and making the decision. In such a situation, the judge may find it appropriate to impose a fine lower or higher than a formulaic guideline from which a clerk or other designee could not veer.

From time to time, the Commission has also become aware of situations – in both civil and criminal parts – in which judges have delegated authority to court attorneys or law clerks who act in a manner that creates the appearance that they are judges. While it is not uncommon or inappropriate for a judge to ask a court attorney to conduct conferences with the lawyers or parties in a case and make recommendations, at times such assignments may constitute and/or appear to constitute improper delegations of judicial authority. Some court attorneys take the bench to conduct conferences, or have made express references to "my ruling," "my cases" or "my decision," or otherwise convey the impression that they are the judges. Some have acted in a manner that encourages lawyers and parties to call them "Your Honor" or "Judge." This can be especially confusing to *pro se* litigants who may not readily appreciate that the "judge" before whom they are conferencing a case may not be a judge at all.

While a court attorney should know better than to foster such an appearance, it is the judge who is ultimately responsible. A judge is obliged not only to safeguard the independence and integrity of the judiciary but also to "require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge…." Section 100.3(C)(2) of the Rules Governing Judicial Conduct.

The Commission has also been apprised of potentially problematic administrative situations in some courts where institutional litigants appear on a regular basis. It would not be unusual, for example, for a judge to organize the court's calendar in such a manner as to facilitate the presence of particular prosecutors or public defenders in criminal cases, or a city's corporation counsel in civil parts where numerous claims against the municipality are docketed. However, it would be entirely inappropriate for the judge or the court staff to cede the scheduling of motions or appearances to such an institutional party, no matter how convenient it might be. The Commission has been advised informally of at least one court that appears to have yielded such authority to attorneys for a particular corporation counsel's office. It would be wise for a judge to consult with the Advisory Committee on Judicial Ethics before allowing such a delegation, which could be viewed as an improper encroachment on the independence and impartiality of the judiciary.

The Commission urges all judges and court attorneys to acquaint themselves with the pertinent Advisory Opinions and disciplinary determinations that address and offer guidelines about delegating duties.

## SOCIAL MEDIA AND THE JUDICIARY

The proliferation of social media poses special concerns for judges and others who are bound by codes of ethics, particularly in an era where so little is truly private, and electronic pages are easily preserved and recirculated. The hasty or improvident post that is quickly withdrawn may endure and be seen far longer and wider than the creator intended or imagined.

Both the Commission and the Advisory Committee on Judicial Ethics have addressed judicial interactions on such internet platforms as Facebook and personal or professional websites, and they have articulated a common standard. Regardless of the forum – whether in person, writing or electronic media – a judge is bound by the Rules Governing Judicial Conduct to observe high standards of conduct and act at all times in a manner that promotes public confidence in judicial independence, integrity and impartiality.

In Formal Opinion 462 (2013), "Judge's Use of Electronic Social Networking Media," the American Bar Association cautioned judges who use electronic social media to "assume that comments posted [on such forums] will not remain within the circle of the judge's connections."

In Opinion 08-176 (2008), the New York Advisory Committee on Judicial Ethics stated that if a judge otherwise complies with the Rules Governing Judicial Conduct, he or she may join or make use of an internet-based social network but should exercise an appropriate degree of discretion in doing so. A judge should also stay abreast of the features of any such network because new developments may have an impact upon his or her judicial responsibilities.

Opinion 11-125 (2011) delineates various categories of relationship – acquaintance, close social relationship, and close personal relationship – and the different tests to apply in determining the appropriate category and whether, based on the nature of the relationship, disclosure and/or recusal is required. It should be required reading for all judges.[2]

In Opinion 13-39 (2013), citing Opinions 08-176 and 11-125, the Advisory Committee specifically addressed whether a judge must recuse from a case involving his or her "Facebook friends." The Committee stated that "the mere status of being a 'Facebook friend,' without more, is an insufficient basis to require recusal," and that there is no appearance of impropriety "based solely on having previously 'friended' certain individuals who are now involved in some manner in a pending action." However, the Committee noted that "interpersonal relationships are varied, fact-dependent, and unique to the individuals involved." Decisions to recuse would therefore be based on the "the nature of [the judges'] specific relationships with particular individuals and their ethical obligations resulting from those relationships." A "mere 'acquaintance[ship]'" would not require recusal. A "close social relationship," however would require a judge to, "at the very least, disclose the relationship either in writing or on the record, even if the judge believes he/she can be fair and

[2] The opinion is available at https://www.nycourts.gov/legacyhtm/ip/judicialethics/opinions/11-125.htm.

impartial." *See* Opinion 11-125. Disqualification is required if a judge has a "close personal relationship" with a Facebook friend. *Id*.

In Opinion 14-05 (2014), the Advisory Committee addressed whether it is permissible to host a court website on a social network, specifically responding to an inquiry about the court establishing a Facebook page. The opinion noted that "many aspects of a social network could prove problematic for a court website," and particularly highlighted the fact that Facebook and other social networks sell and display third-party advertisements without consulting the user. It also noted that such "advertisements are typically dynamic, in that they may change to reflect a particular user's browsing history, and interactive, in that they invite users to navigate away from the visited page and explore other goods and services." This would create at least an appearance that the court was endorsing or directing visitors to commercial products and services, and that would undermine the independence, impartiality and dignity of the judiciary and the courts.

In 2016, the Commission publicly admonished a judge who, *inter alia,* made comments on her Facebook page that were critical of the prosecution in a case against a local town council candidate. *Matter of Whitmarsh*, 2017 Annual Report 266. The judge violated the rule that prohibits public comments about any proceeding pending or impending in any court within the United States or its territories, and in doing so referred to her judicial position, thus violating a separate rule prohibiting the use of the prestige of office to advance a private interest. Sections 100.3(B)(8), 100.2(C) of the Rules Governing Judicial Conduct

In 2018, the Commission publicly admonished a judge who entered a property without permission and took photos that he posted on Facebook with disparaging comments about the occupant, then failed to remove the Facebook posts promptly after assuring the Commission he would do so. *Matter of Fisher*, 2019 Annual Report 126.

A judge must be wary of inviting or engaging in social media dialogue with lawyers, litigants, witnesses or others who may be involved in pending litigation. Particularly where pseudonyms are used, the judge may not know that a person who responds to his/her posting may be involved in a case before the judge or a judicial colleague. At the very least, the appearance of impropriety may be created in such a circumstance, particularly if others who access the social media page are aware that the judge's correspondent is also involved in a matter pending before the judge.

The internet and social media era is still relatively new, and while the number of social-media-related complaints is still relatively small, it is growing. It will only be a matter of time before the Commission is confronted with variations, such as a judge allegedly abusing the prestige of judicial office on a dating website, on food or fashion blogs, or in online consumer reviews of restaurants or retail stores. Every such complaint will be individually evaluated, and as it did in *Whitmarsh* and *Fisher*, the Commission will determine whether the judge's conduct complied with or violated judicial ethics, regardless of the social forum or platform in which it occurred. The Commission strongly encourages judges to remember that social media posts are fraught with potential ethical concerns. Think carefully *before* posting, especially when engaged in a heated discussion, and consider that a moment of reflection and restraint now may avert aggravation and disciplinary consequences later.

## ASSISTANCE FOR TOWN AND VILLAGE JUSTICES

### Enhanced Training for Non-Lawyer Justices

There are approximately 3,150 judges and justices of the New York State Unified Court System. Approximately 1,830 are justices of town and village courts, while around 1,320 serve on higher courts: city, county, family, surrogate, supreme and appellate. Judges of the higher courts serve full-time and are paid by state-appropriated funds administered by the Office of Court Administration and are sometimes referred to collectively as "state-paid" judges. Town and village court justices serve part-time and are paid by their individual local governments, typically at a small fraction of the salaries given to state-paid judges.

Collectively, the town and village courts throughout New York State hear approximately two million cases a year, such as speeding tickets and driving while intoxicated, small claims, landlord-tenant proceedings and misdemeanors. Town and village court justices may also preside at the arraignment of defendants charged with most felonies, set bail and issue or deny orders of protection. Notwithstanding their significant judicial authority, the diffuse and localized structure of the town and village courts means, among other things, that they are locally financed and operated, do not have the same ready access to the resources of the Office of Court Administration that the rest of the court system enjoys, and indeed are not subject to OCA's direct supervision or control. While OCA provides them with significant assistance, as discussed below, the successful operation of these courts depends on the resources available to them locally, which vary widely.

Town and village court justices are the only judges in New York State who do not have to be lawyers admitted to the practice of law. Of the roughly 1,830 presently in office, approximately 700 have gone to law school. The rest, *i.e.* the non-lawyers, are often referred to as "lay justices." This system of local magistrates, which harkens back to the colonial era when lawyers were relatively few and far between, is not unique to New York. Numerous other states, such as Texas, Arizona, Nevada, Colorado, Louisiana, South Carolina and Mississippi, have non-lawyer justices presiding in certain lower courts.

There is no distinction in New York between the lay or law-trained town or village justices as to the types of cases they may hear. Any town or village court justice, regardless of educational background, may preside over the matters typically within the jurisdiction of such courts, such as traffic cases, small claims, eviction proceedings, misdemeanors and violations. A landmark case before the Court of Appeals held that, while a defendant is constitutionally entitled to receive a fundamentally fair trial, a defendant charged in a town court with a crime was not entitled under New York or federal law to have the case heard by a law-trained judge, having asserted no other cause for transferring the case to another judge. *People v Charles F.*, 60 NY2d 474 (1983). *See also*, *People v Skrynski*, 42 NY2d 218 (1977); *North v Russell*, 427 US 328 (1976).

At various times, the Legislature has been asked to consider amending the constitution to require all town and village justices be lawyers, or to replace the town and village court system with a network of regional or district courts made up of fewer judges, all of whom would be law-trained and serve full-time. While such proposals have never been effectuated, in 2006-2007 the Legislature, the Office of Court Administration (OCA) and the State Magistrates Association (SMA) made a significant commitment to enhance the resources available to the town and village

courts and to improve the education and training provided to the justices of those courts. At the same time, the Legislature significantly increased the resources available to the Commission to enforce the judicial ethics rules, recognizing among other things that 70% of the disciplinary decisions rendered by the Commission involve town and village justices, and 80% or more of those involve lay justices.

As part of the regimen devised in 2006-2007, OCA implemented an Action Plan for the Justice Courts,[3] which among other things provided for broader and increased attention to judicial education and a laptop computer with audio recording capability for each court to make an electronic record of all proceedings. OCA and the SMA developed a more extensive annual education and training curriculum, in which representatives of the Commission and the Advisory Committee on Judicial Ethics routinely participate with the goal of preventing violations of the Rules Governing Judicial Conduct. OCA created an Office of Justice Court Support that provides guidance and maintains a call line for town and village justices who seek assistance; it produced and updates an invaluable Justice Court Manual that offers best practices and advice on how to manage the courts;[4] and it makes readily available other significant resources, such as its Guide to Small Claims.[5] OCA is also introducing uniform case and financial reporting software to the computer systems of the town and village courts, to assist in the proper management and remittal of court-collected funds. These and other steps have helped to improve the overall administration of justice in the town and village courts.

The Commission has found overall that town and village justices are capable in the discharge of their duties and conscientious in their adherence to the judicial code of ethics. Yet the Commission has also encountered more disciplinary issues with town and village justices than with judges of the higher courts. Town and village justices account for 70% of the Commission's disciplines, which at various times over the years has been more or less close to their overall percentage of the state's judiciary, which has ranged from 67% to 59%.[6] Over the last decade, while only 20% of the complaints received by the Commission were against town and village justices, 59% of the Commission's investigations and 72% of its public decisions (120 out of 167) involved town and village justices, indicating that ethics complaints against them are more likely to have merit. Of those 120 public decisions rendered against town and village justices, 90 (*i.e.* 75%) were against lay justices.

It has been the Commission's experience that many lay justices comport themselves and discharge their adjudicative responsibilities in such a manner as to seem indistinguishable from their law-trained counterparts. It is also true, however, that lay justices are more likely than law-trained justices to violate promulgated mandates to respect, comply with, be faithful to and be professionally competent in the law, in some instances because they do not appreciate certain nuances or even fundamental legal precepts that their law-trained colleagues are likely to know. For example, the Commission has rendered public decisions as to lay justices who repeatedly failed to advise litigants of such fundamental mandates as the right to counsel and the right to assigned

[3] http://www.nycourts.gov/courts/townandvillage/actionplan.shtml
[4] http://www.nycourts.gov/courts/townandvillage/index.shtml;
[5] http://www.nycourts.gov/courthelp/pdfs/smallclaimshandbook.pdf
[6] At present, the roughly 1,830 town and village justices constitute 59% of the state's judiciary. That is down from 67% three decades ago, when roughly 2,200 town and village justices comprised 67% of the judiciary. At the same time, the number of law-trained town and village justices increased from around 400 in the 1980s to over 700 in 2018.

counsel if indigent; or did not allow the parties a fair opportunity to be heard before rendering decision; or required the defense to present their case first; or ordered an eviction or rendered a default judgment without ascertaining that the missing party had been served with notice of the complaint and the court date; or delayed unreasonably in deciding a motion due to unfamiliarity with the law or procedure at issue.[7]

The Commission is available to work with the Legislature and the courts to improve the overall performance of town and village justices in this regard. We would be pleased to help design and teach more expansive courses in civil procedure, criminal procedure, property (with a concentration on landlord/tenant) and professional ethics, akin to the rigorous classes in these subjects that justices who are attorneys would have taken in law school.

**The Judge's Fiduciary Obligations**

The Commission has commented in numerous Annual Reports, most recently last year, on recurring problems associated with the fiduciary responsibilities unique to town and village court justices.

Throughout the state, in all but the town and village courts, funds collected by the court are handled by professional administrative personnel or other non-judicial staff. In the town and village courts, however, that responsibility rests with the individual justices, who are typically assisted by a court clerk who may only serve part-time. Yet neither judge nor clerk is likely to be trained as an accountant or experienced in auditing or financial best practices.

Fines, fees and bail collected by town or village court justices must by law be deposited promptly into official court bank accounts. All fines, fees and forfeited bail must also be reported and remitted in a timely manner to the State Comptroller and the town or village's chief fiscal officer, respectively. While improper financial management and record keeping most often results from honest mistakes, inattention or insufficient clerical assistance, they sometimes indicate serious misconduct, either by the judge or by the court staff in whom the judge has reposed significant responsibility to track the court's finances.

The Commission has publicly disciplined approximately 80 town and village justices for significant violations of the various rules regarding the handling of court funds. Approximately 140 other judges have been cautioned for relatively minor violations of the applicable standards.

When a judge fails to deposit court funds for long periods of time, or deposits less money than was collected since the previous deposit, suspicions of wrongdoing inevitably arise, as they do by such financial irregularities as lengthy delays in filing reports of receipts with the State Comptroller and in remitting court funds to the town or village's chief fiscal officer, large deficiencies (or surpluses) in the court account, negligence in failing to safeguard such funds, and failing to keep adequate records of court finances.

[7] *See, Matter of Susan R. Castine,* 2019 Annual Report 117; *Matter of John M. Skinner,* 2019 Annual Report 239; *Matter of Michael R. Clark,* 2018 Annual Report 114; *Matter of Gene R. Heintz,* 2016 Annual Report 111; *Matter of Edwin R. Williams,* 2016 Annual Report 230; *Matter of Joseph Temperato,* 2014 Annual Report 217; *Matter of Jerome C. Ellis,* 2008 Annual Report 123.

"Carelessness in handling public moneys is a serious violation of [the judge's] official responsibilities" and a "breach of the public's trust" which may warrant removal from office. *Matter of Petrie,* 54 NY2d 807, 808 (1981); *see also Matter of Rater,* 69 NY2d 208 (1987); *Matter of Vincent,* 70 NY2d 208 (1987). In *Matter of Cooley,* 53 NY2d 64 (1981), the Court of Appeals also noted that a judge's willful failure to make appropriate entries in court records, such as a docket book and cashbook, is a serious violation of the judge's administrative responsibilities, and may be punishable as a misdemeanor. Even where venality is not an issue, the judge's negligence may still require public discipline because, as the Court said in *Matter of Murphy,* 82 NY2d 491, 494 (1993), "the mishandling of public money by a judge is serious misconduct even when not done for personal profit."

In recent years, the Commission has become aware of several jurisdictions in which court clerks were prosecuted and convicted for the theft of court funds. While increased reliance on computers, accounting software, electronic banking and wire transfers has tended to increase the ability to perform audits and reconciliations on the one hand, it has also made it easier for computer-savvy employees to evade oversight by a computer-challenged judge.

The Commission reminds town and village justices that it is *their* responsibility to account for court funds and to certify compliance with applicable financial mandates in reports to the State Comptroller. Where a judge does not perform the financial responsibilities personally, he or she must exercise rigorous oversight of the court staff to whom such responsibilities have been assigned. That means reviewing the work of staff, performing spot checks to correlate the bail or fine assessed in a case with the amount collected, or periodically initiating an independent audit.

Where court staff have been convicted of theft of court funds, the judge may not be publicly disciplined if he or she had made reasonable efforts at oversight but was deceived by a clerk who cleverly hid the evidence of theft. But the judge who exercises little to no oversight may be subject to public discipline for the failure to supervise that helped facilitate the theft.

The Commission urges town and village court justices to take their fiduciary responsibilities seriously and, when they need help, to consult with their local Supervising Judge, the court system's Office of Justice Court Support, the State Comptroller's office and/or the State Magistrates Association. Dedicated training in accounting and finance, both for justices and court or town clerks, would significantly improve the fiduciary record of the courts and enhance public confidence in the operations of the local courts.

The Commission also recommends that the Legislature consider relieving under-staffed and under-resourced town and village justices of the responsibility to collect, deposit and remit all court funds, and perhaps repose such responsibility to a dedicated administrative staff, emulating on a regional basis what the professional staffs in higher courts do in collecting and accounting for bail, fines, fees and other funds.

# THE COMMISSION'S BUDGET

In 2007, for the first time in more than a generation, the Legislature significantly increased the Commission's budget, commensurate with its constitutional mandate and caseload. Since then, the resources allocated to the Commission have remained relatively flat, while the workload has increased. For example, the average number of complaints in the 10 years since 2008 has been 1,907, compared to an average of 1,469 in the 10 preceding years. In 2017, a record 2,143 were received and considered. In 2018, for the third time, the Commission handled as many as 2,000.

However, over the past decade or so, the Commission's budget has been static. Such "flat" funding is actually a decrease, because in order to meet rising expenses (such as rent increases) on the same dollar amount each year, the Commission has had to make significant cuts. The number of full-time staff has been reduced in recent years from 51 to 38. Thus, while incoming complaints have increased by about 25% since 2007, the Commission's staff has decreased by 25%. That reduction in workforce and other economies mean it takes longer than it should to exonerate judges who are innocent of wrongdoing, and longer to discipline those who are guilty.

To keep current and prevent even further cuts and delays in deciding matters, the Commission requested a $359,000 increase for the fiscal year beginning April 1, 2019, while the Executive Budget recommends no increase.

## SELECTED BUDGET FIGURES: 1978 TO PRESENT

| Fiscal Year | Annual Budget[1] | New Complaints[2] | Prelim Inquiries | New Investigations | Pending Year End | Public Dispositions | Full-Time Staff |
|---|---|---|---|---|---|---|---|
| 1978 | 1.6m | 641 | N.A. | 170 | 324 | 24 | 63 |
| 1988 | 2.2m | 1109 | N.A. | 200 | 141 | 14 | 41 |
| 1996 | 1.7m | 1490 | 492 | 192 | 172 | 15 | 20 |
| 2006 | 2.8m | 1500 | 375 | 267 | 275 | 14 | 28 |
| 2007 | 4.8m | 1711 | 413 | 192 | 238 | 27 | 51 |
| 2008 | 5.3m | 1923 | 354 | 262 | 208 | 21 | 49 |
| 2017 | 5.6m | 2143 | 605 | 148 | 173 | 16 | 41 |
| 2018 | 5.7m | 2000 | 505 | 167 | 206 | 19 | 38 |
| 2019 | 6.1m[3] | ~ | ~ | ~ | ~ | ~ | ~ |

[1] Budget figures are rounded off; budget figures are fiscal year (Apr 1 – Mar 31).
[2] Complaint figures are calendar year (Jan 1 – Dec 31).
[3] Proposed by the Commission; the Executive Budget recommends $5.7 million.

# CONCLUSION

Public confidence in the independence, integrity, impartiality and high standards of the judiciary, and in an independent disciplinary system that helps keep judges accountable for their conduct, is essential to the rule of law. The members of the New York State Commission on Judicial Conduct are confident that the Commission's work contributes to those ideals, to a heightened awareness of the appropriate standards of ethics incumbent on all judges, and to the fair and proper administration of justice.

Respectfully submitted,

**JOSEPH W. BELLUCK, ESQ.,** *CHAIR*
**PAUL B. HARDING, ESQ.,** *VICE CHAIR*
**JODIE CORNGOLD**
**HON. JOHN A. FALK**
**TAA GRAYS, ESQ.**
**HON. LESLIE G. LEACH**
**HON. ANGELA M. MAZZARELLI**
**HON. ROBERT J. MILLER**
**MARVIN RAY RASKIN, ESQ.**
**RICHARD A. STOLOFF, ESQ.**
**AKOSUA GARCIA YEBOAH**

# APPENDIX A: BIOGRAPHIES OF COMMISSION MEMBERS

There are 11 members of the Commission on Judicial Conduct. Each serves a renewable four-year term. Four members are appointed by the Governor, three by the Chief Judge, and one each by the Speaker of the Assembly, the Minority Leader of the Assembly, the Temporary President of the Senate (Majority Leader) and the Minority Leader of the Senate.

Of the four members appointed by the Governor, one shall be a judge, one shall be a member of the New York State bar but not a judge, and two shall not be members of the bar, judges or retired judges. Of the three members appointed by the Chief Judge, one shall be a justice of the Appellate Division, one shall be a judge of a court other than the Court of Appeals or Appellate Division, and one shall be a justice of a town or village court. None of the four members appointed by the legislative leaders shall be judges or retired judges.

The Commission elects a Chair and a Vice Chair from among its members for renewable two-year terms, and appoints an Administrator who shall be a member of the New York State bar who is not a judge or retired judge. The Administrator appoints and directs the agency staff. The Commission also has a Clerk who plays no role in the investigation or litigation of complaints but assists the Commission in its consideration of formal charges, preparation of determinations and related matters.

| Member | Appointing Authority | Year First App'ted | Expiration of Present Term |
|---|---|---|---|
| Joseph W. Belluck | Governor Andrew M. Cuomo | 2008 | 3/31/2020 |
| Paul B. Harding | Assembly Minority Leader Brian M. Kolb | 2006 | 3/31/2021 |
| Jodie Corngold | Governor Andrew M. Cuomo | 2013 | 3/31/2019 |
| John A. Falk | Chief Judge Janet DiFiore | 2017 | 3/31/2021 |
| Taa Grays | (Former) Senate Minority Leader Andrea Stewart-Cousins | 2017 | 3/31/2020 |
| Leslie G. Leach | Chief Judge Janet DiFiore | 2016 | 3/31/2020 |
| Angela M. Mazzarelli | Chief Judge Janet DiFiore | 2017 | 3/31/2022 |
| Robert J. Miller | Governor Andrew M. Cuomo | 2018 | 3/31/2022 |
| Marvin Ray Raskin | Assembly Speaker Carl Heastie | 2018 | 3/31/2022 |
| Richard A. Stoloff | (Former) Senate President Pro Tem Dean Skelos | 2011 | 3/31/2019 |
| Akosua Garcia Yeboah | Governor Andrew M. Cuomo | 2016 | 3/31/2021 |

**Joseph W. Belluck, Esq.**, *Chair of the Commission,* graduated magna cum laude from the SUNY-Buffalo School of Law in 1994, where he served as Articles Editor of the Buffalo Law Review and where he is an adjunct lecturer on mass torts. He is a partner in the Manhattan law firm of Belluck & Fox, LLP, which focuses on asbestos and serious injury litigation. Mr. Belluck previously served as counsel to the New York State Attorney General, representing the State of New York in its litigation against the tobacco industry, as a judicial law clerk for Justice Lloyd Doggett of the Texas Supreme Court, as staff attorney for Public Citizen in Washington, D.C., and as Director of Attorney Services for Trial Lawyers Care, an organization dedicated to providing free legal assistance to victims of the September 11, 2001 terrorist attacks. Mr. Belluck has lectured frequently on asbestos, product liability, tort law and tobacco control policy. He is an active member of several bar associations, including the New York State Trial Lawyers Association and was a recipient of the New York State Bar Association's Legal Ethics Award. He is also a member of the SUNY Board of Trustees, the NYS Medicaid Redesign Team, the Advisory Committee of the Rockefeller Institute for Law, and sits on the boards of several not-for-profit organizations.

**Paul B. Harding, Esq.**, *Vice Chair of the Commission*, is a graduate of the State University of New York at Oswego and the Albany Law School at Union University. He is the Managing Partner in the law firm of Martin, Harding & Mazzotti, LLP in Albany, New York. He is on the Board of Directors of the New York State Trial Lawyers Association and the Marketing and Client Services Committee for the American Association for Justice. He is also a member of the New York State Bar Association and the Albany County Bar Association. He is currently on the Steering Committee for the Legal Project, which was established by the Capital District Women's Bar Association to provide a variety of free and low cost legal services to the working poor, victims of domestic violence and other underserved individuals in the Capital District of New York State.

**Jodie Corngold** graduated from Swarthmore College. In her professional life she was responsible for all print and website communications for several nonprofit organizations, including a synagogue and a college preparatory school in Brooklyn. She currently tutors ESL and New York City public school students. Ms. Corngold is a marathon runner and is engaged in a variety of activities associated with her alma mater.

**Honorable John A. Falk** is a graduate of LeMoyne College and the University of Dayton School of Law. He is a partner with the firm Faraci Lange, LLP, in Rochester, where he focuses on personal injury litigation. He previously served as an Assistant District Attorney in Monroe County prosecuting violent felony offenses. He has served as a Justice of the Brighton Town Court since 2008. Justice Falk is a member of the American Board of Trial Advocates, the American Association for Justice, the New York State Trial Lawyers Association, the New York State Bar Association, the Monroe County Bar Association, the Genesee Valley Trial Lawyers Association, the New York State Magistrates Association, and the Monroe County Magistrates Association. He has been a lecturer for the Monroe County Bar Association and the Monroe Community College Police Academy and is active in the greater Rochester community, having served on such boards as the Western New York Chapter of the American Liver Foundation, the Town of Brighton Planning Board and the Parks and Recreation Citizens' Advisory Committee.

**Taa Grays, Esq.**, is a graduate of Harvard University, *cum laude*, and Georgetown University Law Center. She is Vice President & Associate General Counsel for Information Governance at MetLife, Inc., having served in other senior positions at MetLife since 2003. She previously served as an Assistant District Attorney in the Bronx. Ms. Grays is 1st Judicial District Vice President of the New York State Bar Association, serves on the Board of Directors of the Metropolitan Black Bar Association, where she previously served as president, and is on the New York Law Journal Board of Editors. She has received numerous awards and recognition for her leadership in bar and diversity endeavors.

**Honorable Leslie G. Leach** is a graduate of Queens College, CUNY, the University of Massachusetts, with an MS in labor studies, and Columbia Law School. He presently serves as an elected Justice of the Supreme Court, Queens County. Justice Leach was appointed to the NYC Criminal Court first by Mayor David N. Dinkins in 1993 and then by Mayor Michael R. Bloomberg. He was an Acting Justice of the Supreme Court from 1995 to 2003. He was then elected as a Justice of the Supreme Court from 2004 to 2007, and served as the Administrative Judge of the Eleventh Judicial District, Queens County. In 2007, Justice Leach left the bench to serve as Andrew M. Cuomo's Executive Deputy Attorney General of the Division of State Counsel and, from 2011-2012, as Governor Cuomo's Appointments Secretary. Thereafter, he taught as Distinguished Lecturer at Queens College until his return to the bench in 2015. Justice Leach began his legal career at the labor law firm Jackson Lewis, and then served as a law clerk in the Criminal Court, Supreme Court, and with the Hon. Fritz W. Alexander II in the Appellate Division, First Department, and the NYS Court of Appeals. Between 1985 and 1993, he was a staff attorney in the Departmental Disciplinary Committee and court attorney in the First Department. He taught as an adjunct at York College, CUNY for some 30 years. Justice Leach was a Director of the Macon B. Allen Black Bar Association, chaired the Association of the Bar of the City of New York's Special Committee to Encourage Judicial Service, and was a member of that bar's Council on Judicial Administration.

**Honorable Angela M. Mazzarelli** is a graduate of Brandeis University and the Columbia University School of Law, where she was a teaching fellow in property law. In 1985, she was elected to the Civil Court of the City of New York and was assigned to sit in the Criminal Court, where she sat until 1988, when she was designated as an Acting Supreme Court Justice. She has served as an elected Supreme Court Justice since 1992. She presently serves as a Justice of the Appellate Division, First Department, having been appointed in 1994. Prior to her judicial career, Justice Mazzarelli served as a Bronx Legal Services lawyer, as a Law Assistant in the Civil Term of the Supreme Court in Manhattan, and later as a Principal Law Clerk to a state Supreme Court Justice. She also was a partner in the law firm Wresien & Mazzarelli, specializing in civil litigation. Justice Mazzarelli is a member of the New York State Commission on Forensic Science and is the Chair of the Executive Committee of the Board of Trustees of the Practising Law Institute. She serves as a member of the Board of Directors of the National Organization of Italian American Women and was a member and co-vice Chair of the *New York Pattern Jury Instructions* Committee for over ten years.

**Honorable Robert J. Miller** is a graduate of Brooklyn College and the Georgetown University Law Center. In 2007, he was elected to the Supreme Court, Second Judicial District, and in 2010 he was appointed to the Appellate Division, Second Department. Justice Miller currently serves

as the Chair of the Ethics Commission for the Unified Court System, having been appointed by Chief Judge Janet DiFiore. Prior to his judicial career Justice Miller was a partner in several law firms, including Reed Smith and Parker Duryee Rosoff & Haft. Justice Miller is a frequent lecturer at a variety of Continuing Legal Education programs and has long been active in various civic and bar association endeavors.

**Marvin Ray Raskin, Esq.,** is a graduate of New York Law School, where he served as Editor-in-Chief of Equitas. He has maintained a private practice in the Bronx since 1977 and has an office in Yorktown Heights. Mr. Raskin previously served as an Assistant District Attorney in the Bronx from 1972-1977. He has been a member of the Bronx County Bar Association for over 40 years, was elected president in 1994, and since 1996 has been Co-Chair of its Criminal Courts Committee. Mr. Raskin served on the New York City Mayor's Advisory Committee on the Judiciary, 2007-2017, under two mayors. He is presently the Vice-Chair of the Central Screening Committee, Assigned Counsel Plan, for the Appellate Division, First Department. Among his professional awards are the New York County Lawyers Pro Bono Award for free legal services rendered to the Courts and the Public, Lawyers Who Lead by Example award from the New York Law Journal and the President's Award for Distinguished Service by the of Bronx County Bar Association. Mr. Raskin regularly lectures on criminal law and procedure and legal ethics and has been an Adjunct Assistant Professor at the Herbert H. Lehman College of the City University of New York.

**Richard A. Stoloff, Esq.**, graduated from the CUNY College of the City of New York, and Brooklyn Law School. He maintains a law practice, Richard A. Stoloff PLLC, in Monticello, New York. He also served for 19 years as Town Attorney for the Town of Mamakating. Mr. Stoloff is a past President of the Sullivan County Bar Association and has chaired its Grievance Committee since 1994. He is a member of the New York State Bar Association and has served on its House of Delegates. He is also a member of the American Bar Association and the New York State Trial Lawyers Association.

**Akosua Garcia Yeboah** received her B.A. from the State University of New York at New Paltz and her M.S. in Urban Planning and Environmental Studies from Rensselaer Polytechnic Institute. She is the Senior Information Technology Project Manager for the City of Albany, Office of the Mayor. She previously worked for IBM. Since 2011, Ms. Yeboah has served on the Attorney Grievance Committee of the Appellate Division, Third Department. She also served as a member of the Commission on Statewide Attorney Discipline in 2015. Ms. Yeboah served as a member and secretary of the Albany Citizen's Police Review Board from 2010 to 2015. Previously, she served as a member of the Advisory Board of the Center for Women in Government & Civil Society, and Chair of the Advisory Board of the New York State Office of the Advocate for Persons with Disabilities.

## RECENT MEMBERS

**Joel Cohen, Esq.**, served on the Commission from 2010 to 2018. He is a graduate of Brooklyn College and New York University Law School, where he earned a J.D. and an LL.M. He is Of Counsel at Stroock & Stroock & Lavan LLP in Manhattan, which he joined in 1985. Mr. Cohen previously served as a prosecutor for ten years, first with the New York State Special

Prosecutor's Office and then as Assistant Attorney-in-Charge with the US Justice Department's Organized Crime & Racketeering Section in the Eastern District of New York. He is a member of the Federal Bar Council and is an Adjunct Professor of Law teaching Professional Responsibility and a course named “How Judges Decide” at Fordham Law School. He widely lectures on Professional Responsibility. Mr. Cohen is the author of three books dealing with religion -- Moses: A Memoir (Paulist Press 2003), Moses and Jesus: A Conversation (Dorrance Publishing, 2006) and David and Bathsheba: Through Nathan's Eyes (Paulist Press, 2007). He also authored Truth Be Veiled: A Justin Steele Murder Case (Coffeetown Press, 2010), a novel on legal ethics and truth, and "Blindfolds Off: How Judges Decide" (ABA Publishing, 2014). Mr. Cohen has authored over 350 articles and columns for the New York Law Journal, Huffington Post and The Hill.

**Honorable David A. Weinstein** served on the Commission from 2012 to 2018. He is a graduate of Wesleyan University and Harvard Law School, where he was Notes Editor for the Harvard Human Rights Journal. He is a Judge of the Court of Claims, having been appointed by Governor Andrew M. Cuomo in 2011 for a term ending in 2018. Judge Weinstein served previously as Assistant Counsel and First Assistant Counsel to Governors Cuomo, David A. Paterson and Eliot L. Spitzer, as a New York State Assistant Attorney General, as an Associate in the law firm of Debevoise & Plimpton, as Law Clerk to United States District Court Judge Charles S. Haight (SDNY) and as Pro Se Law Clerk to the United States Court of Appeals for the Second Circuit. He also served as an Adjunct Professor of Legal Writing at New York Law School and has written numerous articles for legal and other publications.

# APPENDIX B: BIOGRAPHIES OF COMMISSION ATTORNEYS

**Cathleen S. Cenci**, *Deputy Administrator in Charge of the Commission's Albany office*, is a graduate of Potsdam College (summa cum laude) and the Albany Law School of Union University. In 1979, she completed the Course Superior at the Institute of Touraine in Tours, France. Ms. Cenci joined the Commission staff in 1985. She has been a judge of the Albany Law School moot court competitions and a member of Albany County Big Brothers/Big Sisters.

**Brenda Correa**, *Principal Attorney*, is a graduate of the University of Massachusetts at Amherst and Pace University School of Law in New York (*cum laude*). Prior to joining the Commission staff, she served as an Assistant District Attorney in Manhattan and was in private practice in New York and New Jersey focusing on professional liability and toxic torts respectively.

**Daniel W. Davis**, *Staff Attorney*, is a graduate of New York University (*cum laude*), earned a Masters in Public Administration at NYU and graduated from the Benjamin N. Cardozo School of Law, where he was Articles Editor on the law review and a teaching assistant. Prior to joining the Commission staff, he was Senior Consultant with a business advisory firm.

**Kelvin S. Davis**, *Staff Attorney*, is a graduate of Yale University and the University of Virginia Law School. Prior to joining the Commission staff, he served as an Assistant Staff Judge Advocate in the United States Air Force and as Judicial Law Clerk to New Jersey Superior Court Judge Eugene H. Austin.

**Melissa DiPalo**, *Special Counsel*, is a graduate of the University of Richmond and Brooklyn Law School. She previously served as Administrative Counsel and as a Staff Attorney at the Commission. She has also served as an Assistant District Attorney in the Bronx and as a Court Attorney in Kings County Civil Court.

**David M. Duguay**, *Senior Attorney*, is a graduate of the State University of New York at Buffalo (*summa cum laude*) and the SUNY at Buffalo Law School. Prior to joining the Commission's staff, he was Special Assistant Public Defender and Town Court Supervisor in the Monroe County Public Defender's Office. He served previously as a staff attorney with Legal Services, Inc., of Chambersburg, Pennsylvania.

**Mary C. Farrington**, *Former Administrative Counsel*, is a graduate of Barnard College and Rutgers Law School. She previously served as an Assistant District Attorney in Manhattan, most recently as Supervising Appellate Counsel, until April 2011, when she joined the Commission staff. She has also served as Law Clerk to United States District Court Judge Miriam Goldman Cedarbaum, and as an associate in private practice with the law firm of Fried, Frank, Harris, Shriver & Jacobson in Manhattan.

**Stephanie A. Fix**, *Staff Attorney*, is a graduate of the State University of New York at Brockport and Quinnipiac College School of Law in Connecticut. Prior to joining the Commission staff she was in private practice focusing on civil litigation and professional liability in Manhattan and Rochester. She has served on the Monroe County Bar Association (MCBA) Board of Trustees

and is a member of the MCBA's Professional Performance Committee. She has served on the Bishop Kearney High School Board of Trustees. Ms. Fix received the President's Award for Professionalism from the Monroe County Bar Association in 2004 for her participation with the ABA "Dialogue on Freedom" initiative. She is a member of the New York State Bar Association and Greater Rochester Association of Women Attorneys (GRAWA). Ms. Fix is an adjunct professor at St. John Fisher College.

**Alan W. Friedberg**, *Special Counsel*, is a graduate of Brooklyn College, the Brooklyn Law School and the New York University Law School, where he earned an LL.M. in Criminal Justice. He previously served as Chief Counsel to the Departmental Disciplinary Committee of the Appellate Division, First Department, as Deputy Administrator in Charge of the Commission's New York City Office, as a Senior Attorney at the Commission, as a staff attorney in the Law Office of the New York City Board of Education, as an adjunct professor of business law at Brooklyn College, and as a junior high school teacher in the New York City public school system.

**Mark Levine**, *Deputy Administrator in Charge of the Commission's New York office*, is a graduate of the State University of New York at Buffalo and Brooklyn Law School. He previously served as Principal Law Clerk to Acting Supreme Court Justice Jill Konviser and Supreme Court Justice Phylis Skloot Bamberger, as an Assistant Attorney General in New York, as an Assistant District Attorney in Queens, and as law clerk to United States District Court Judge Jacob Mishler. Mr. Levine also practiced law with the law firms of Patterson, Belknap, Webb & Tyler, and Weil, Gotshal & Manges.

**Edward Lindner**, *Deputy Administrator for Litigation*, is a graduate of the University of Arizona and Cornell Law School, where he was a member of the Board of Editors of the Cornell International Law Journal. Prior to joining the Commission's staff, he was an Assistant Solicitor General in the Division of Appeals & Opinions for the New York State Attorney General. He has been a Board Member and volunteer for various community organizations, including Catholic Charities, The Children's Museum at Saratoga, the Saratoga Springs Public Library and the Saratoga Springs Preservation Foundation.

**M. Kathleen Martin**, *Senior Attorney*, is a graduate of Mount Holyoke College and Cornell Law School (*cum laude*). Prior to joining the Commission's staff, she was an attorney at the Eastman Kodak Company, where among other things she held positions as Legal Counsel to the Health Group, Director of Intellectual Property Transactions and Director of Corporate Management Strategy Deployment. She also served as Vice President and Senior Associate Counsel at Chase Manhattan Bank, and in private practice with the firm of Nixon, Hargrave, Devans & Doyle.

**S. Peter Pedrotty**, *Senior Attorney*, is a graduate of St. Michael's College (*cum laude*) and the Albany Law School of Union University (*magna cum laude*). Prior to joining the Commission staff, he served as an Appellate Court Attorney at the Appellate Division, Third Department, and was engaged in the private practice of law in Saratoga County and with the law firm of Clifford Chance US LLP in Manhattan.

**John J. Postel**, *Deputy Administrator in Charge of the Commission's Rochester office*, is a graduate of the University of Albany and the Albany Law School of Union University. He joined the Commission staff in 1980. Mr. Postel serves on the Board of Directors of the Association of Judicial Disciplinary Counsel. He is a past president of the Governing Council of St. Thomas More R.C. Parish. He is a former officer of the Pittsford-Mendon Ponds Association and a former President of the Stonybrook Association. He served as the advisor to the Sutherland High School Mock Trial Team for eight years. He is the Vice President and a past Treasurer of the Pittsford Golden Lions Football Club, Inc. He is an assistant director and coach for Pittsford Community Lacrosse. He is an active member of the Pittsford Mustangs Soccer Club, Inc.

**Karen Kozac Reiter**, *Chief Administrative Officer*, is a graduate of the University of Pennsylvania and Brooklyn Law School. Prior to re-joining the Commission staff in June 2007, she was an administrator in the nonprofit sector. She previously served as a Staff Attorney at the Commission, as an Assistant District Attorney in New York County, and in private practice as a litigator. She has served as a Vice President of NYSICA, the New York State Internal Controls Association. She has been a Board Member and volunteer for various community organizations including the Larchmont-Mamaroneck Hunger Task Force, the Town of Mamaroneck Selection Committee and Larchmont Temple.

**Jean M. Savanyu**, *Clerk of the Commission*, is a graduate of Smith College and the Fordham University School of Law (*cum laude*). She joined the Commission's staff in 1977 and served as Senior Attorney until being appointed Clerk of the Commission in 2000. Ms. Savanyu has taught in the legal studies program at Hunter College and previously taught legal research and writing at Marymount Manhattan College. Prior to joining the Commission staff, she was a writer and editor.

**Eteena J. Tadjiogueu**, *Staff Attorney*, is a graduate of Boston University and Washington University in St. Louis School of Law, where she served as associate editor of the *Journal of Law & Policy*, and earned a Dean's Service Award for providing seventy-five hours of community service during law school. Prior to joining the Commission, she worked as a communications professional in the non-profit global health sector. She is a member of the Capital District Women's Bar Association.

**Robert H. Tembeckjian**, *Administrator and Counsel*, is a graduate of Syracuse University, the Fordham University School of Law and Harvard University's Kennedy School of Government, where he earned a Masters in Public Administration. He was a Fulbright Scholar to Armenia in 1994, teaching graduate courses and lecturing on constitutional law and ethics at the American University of Armenia and Yerevan State University. Mr. Tembeckjian served on the Advisory Committee to the American Bar Association Commission to Evaluate the Model Code of Judicial Conduct from 2003-07. He is on the Board of Directors of the Association of Judicial Disciplinary Counsel and previously served as a Trustee of the Westwood Mutual Funds and the United Nations International School, and on the Board of Directors of the Civic Education Project. Mr. Tembeckjian has served on various ethics and professional responsibility committees of the New York State and New York City Bar Associations, and he has published

numerous articles in legal periodicals on judicial ethics and discipline. He was a member of the editorial board of the Justice System Journal, a publication of the National Center for State Courts, from 2007-10.

**Pamela Tishman**, *Principal Attorney*, is a graduate of Northwestern University and New York University School of Law. She previously served as Senior Investigative Attorney in the Office of the Inspector General at the Metropolitan Transportation Authority. Ms. Tishman also served as an Assistant District Attorney in New York County, in both the Appeals and Trial Bureaus.

# APPENDIX C: REFEREES WHO SERVED IN 2018

| Referee | City/Town | County |
|---|---|---|
| Mark S. Arisohn, Esq. | New York | New York |
| William I. Aronwald, Esq. | White Plains | New York |
| Robert A. Barrer, Esq. | Syracuse | Onondaga |
| Peter Bienstock, Esq. | New York | New York |
| Hon. John J. Brunetti | Baldwinsville | Onondaga |
| A. Vincent Buzard, Esq. | Pittsford | Monroe |
| Jay C. Carlisle, Esq. | Hudson | Columbia |
| Cristine Cioffi, Esq. | Schenectady | Schenectady |
| Linda J. Clark, Esq. | Albany | Albany |
| Hon. John P. Collins | New York | Bronx |
| William T. Easton, Esq. | Rochester | Monroe |
| Thomas F. Gleason, Esq. | Albany | Albany |
| Ronald Goldstock, Esq. | Larchmont | Westchester |
| Nancy Kramer, Esq. | New York | New York |
| C. Bruce Lawrence, Esq. | Rochester | Monroe |
| Roger Juan Maldonado, Esq. | New York | New York |
| Gregory S. Mills, Esq. | Clifton Park | Saratoga |
| Hugh H. Mo, Esq. | New York | New York |
| Malvina Nathanson, Esq. | New York | New York |
| Edward J. Nowak, Esq. | Penfield | Monroe |
| Jane W. Parver, Esq. | New York | New York |
| John J. Poklemba, Esq. | New York | Kings |
| Margaret Reston, Esq. | Rochester | Monroe |
| Laurie Shanks, Esq. | Albany | Albany |
| Hon. Felice K. Shea | New York | New York |
| James T. Shed, Esq. | New York | New York |
| Robert H. Straus, Esq. | New York | Kings |

# APPENDIX D: THE COMMISSION'S POWERS, DUTIES AND HISTORY

## Creation of the New York State Commission on Judicial Conduct

For decades prior to the creation of the Commission on Judicial Conduct, judges in New York State were subject to professional discipline by a patchwork of courts and procedures. The system, which relied on judges to discipline fellow judges, was ineffective. In the 100 years prior to the creation of the Commission, only 23 judges were disciplined by the patchwork system of *ad hoc* judicial disciplinary bodies. For example, an *ad hoc* Court on the Judiciary was convened only six times prior to 1974. There was no staff or even an office to receive and investigate complaints against judges.

Starting in 1974, the Legislature changed the judicial disciplinary system, creating a temporary commission with a full-time professional staff to investigate and prosecute cases of judicial misconduct. In 1976 and again in 1977, the electorate overwhelmingly endorsed and strengthened the new commission, making it permanent and expanding its powers by amending the State Constitution.

## The Commission's Powers, Duties, Operations and History

The State Commission on Judicial Conduct is the disciplinary agency constitutionally 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. 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 offering a forum for citizens with conduct-related complaints, and by disciplining those judges who transgress ethical constraints, 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.

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 clarity, the Commission, which operated from September 1976 through March 1978, will be referred to as the "former" Commission.)

## 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 by each of 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 Commission's principal office is in New York City. Offices are also maintained in Albany and Rochester.

The following individuals have served on the Commission since its inception. Asterisks denote those members who chaired the Commission.

Hon. Rolando T. Acosta (2010-17)
Hon. Sylvia G. Ash (2016)
Hon. Fritz W. Alexander, II (1979-85)
Hon. Myriam J. Altman (1988-93)
Helaine M. Barnett (1990-96)
Herbert L. Bellamy, Sr. (1990-94)
*Joseph W. Belluck (2008-present)
*Henry T. Berger (1988-2004)
*John J. Bower (1982-90)
Hon. Evelyn L. Braun (1994-95)
David Bromberg (1975-88)
Jeremy Ann Brown (1997-2001)
Hon. Richard J. Cardamone (1978-81)
Hon. Frances A. Ciardullo (2001-05)
Hon. Carmen Beauchamp Ciparick (1985-93)
E. Garrett Cleary (1981-96)
Stephen R. Coffey (1995-2011)
Joel Cohen (2010-18)
Jodie Corngold (2013-present)
Howard Coughlin (1974-76)
Mary Ann Crotty (1994-98)
Dolores DelBello (1976-94)
Colleen C. DiPirro (2004-08)
Richard D. Emery (2004-17)
Hon. Herbert B. Evans (1978-79)
Hon. John A. Falk (2017-present)
*Raoul Lionel Felder (2003-08)
*William Fitzpatrick (1974-75)
*Lawrence S. Goldman (1990-2006)
Taa Grays (2017-present)
Hon. Louis M. Greenblott (1976-78)
Paul B. Harding (2006-present)
Christina Hernandez (1999-2006)
Hon. James D. Hopkins (1974-76)
Elizabeth B. Hubbard (2008-2011)
Marvin E. Jacob (2006-09)

Hon. Daniel W. Joy (1998-2000)
Michael M. Kirsch (1974-82)
*Hon. Thomas A. Klonick (2005-17)
Hon. Jill Konviser (2006-10)
*Victor A. Kovner (1975-90)
William B. Lawless (1974-75)
Hon. Leslie G. Leach (2016-present)
Hon. Daniel F. Luciano (1995-2006)
William V. Maggipinto (1974-81)
Hon. Frederick M. Marshall (1996-2002)
Hon. Angela M. Mazzarelli (2017-present)
Hon. Ann T. Mikoll (1974-78)
Hon. Robert J. Miller (2018-present)
Mary Holt Moore (2002-03)
Nina M. Moore (2009-13)
Hon. Juanita Bing Newton (1994-99)
Hon. William J. Ostrowski (1982-89)
Hon. Karen K. Peters (2000-12)
*Alan J. Pope (1997-2006)
Marvin Ray Raskin (2018-present)
*Lillemor T. Robb (1974-88)
Hon. Isaac Rubin (1979-90)
Hon. Terry Jane Ruderman (1999-2016)
*Hon. Eugene W. Salisbury (1989-2001)
Barry C. Sample (1994-97)
Hon. Felice K. Shea (1978-88)
John J. Sheehy (1983-95)
Hon. Morton B. Silberman (1978)
Richard A. Stoloff (2011-present)
Hon. William C. Thompson (1990-98)
Carroll L. Wainwright, Jr. (1974-83)
Hon. David A. Weinstein (2012-18)
Akosua Garcia Yeboah (2016-present)

**The Commission's Authority**

The Commission 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 6, 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.

By provision of the State Constitution (Article 6, 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, violations of defendants' or litigants' rights, 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 meets several times a year. 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 Administrator assigns the complaint to a staff attorney, who works with 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 a Commission member or referee designated by the Commission 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 will appoint 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 investigation or adjudication.

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-judge. 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 provisions in Article 2-A of the Judiciary Law, all proceedings and records are confidential.) The respondent-judge has 30 days to request full review of the Commission's determination by the Court of Appeals. The Court may accept or reject the Commission's findings of fact or conclusions of law, make new or different findings of fact or conclusions of law, accept or reject the determined sanction, or make a different determination as to sanction. If no request for review is made within 30 days, the sanction determined by the Commission becomes effective.

**Temporary State Commission on Judicial Conduct**

The Temporary State Commission on Judicial Conduct was established in late 1974 and 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 appropriate court. All disciplinary proceedings in the Court on the Judiciary and most 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 former Commission's tenure lasted through March 31, 1978, when it was replaced by the present Commission.

The former Commission was empowered to investigate allegations of misconduct against judges, impose certain disciplinary sanctions and, when appropriate, initiate formal disciplinary proceedings in the Court on the Judiciary, which, by the same constitutional amendment, had been given jurisdiction over all 3,500 judges in the unified court system. The sanctions that could be imposed by the former Commission were private admonition, public censure, suspension without pay for up to six months, and retirement for physical or mental disability. Censure, suspension and retirement actions could not be imposed until the judge had been afforded an opportunity for a full adversary hearing. These Commission sanctions were also subject to a *de novo* hearing in the Court on the Judiciary at the request of the judge.

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

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

During its tenure, the former Commission took action that 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 of 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 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 from 1978 to 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.

**The 1978 Constitutional Amendment**

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 that 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.

**Summary of Complaints Considered since the Commission's Inception**

Since January 1975, when the temporary Commission commenced operations, 58,523 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 49,362 were dismissed upon initial review or after a preliminary review and inquiry, and 9,161 investigations were authorized. Of the 9,161 investigations authorized, the following dispositions have been made through December 31, 2018:

- 1,154 complaints involving 863 judges resulted in disciplinary action (this does not include the 83 public stipulations in which judges agreed to vacate judicial office). (See details below and on the following page.)
- 1,774 complaints resulted in cautionary letters to the judge involved. The actual number of such letters totals 1,634, 91 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct.
- 823 complaints involving 584 judges were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings.
- 608 complaints were closed upon vacancy of office by the judge other than by resignation.
- 4,596 complaints were dismissed without action after investigation.
- 206 complaints are pending.

Of the 1,154 disciplinary matters against 863 judges as noted above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commission. (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 and the number of

judges acted upon.) These figures take into account the 99 decisions by the Court of Appeals, 16 of which modified a Commission determination.

- 170 judges were removed from office;
- 3 judges were suspended without pay for six months (under previous law);
- 2 judges were suspended without pay for four months (under previous law);
- 354 judges were censured publicly;
- 274 judges were admonished publicly;
- 59 judges were admonished confidentially by the temporary or former Commission; and
- 1 matter was dismissed by the Court of Appeals upon the judge's request for review.

**Court of Appeals Reviews**

Since 1978, the Court of Appeals, on request of the respondent-judge, has reviewed 99 determinations filed by the present Commission. Of these 99 matters:

- The Court accepted the Commission's sanctions in 83 cases (74 of which were removals, 6 were censures and 3 were admonitions);
- The Court increased the sanction from censure to removal in 2 cases;
- The Court reduced the sanction in 13 cases:
  - 9 removals were modified to censures;
  - 1 removal was modified to admonition;
  - 2 censures were modified to admonitions; and
  - 1 censure was rejected and the charges were dismissed.
- The Court remitted 1 matter to the Commission for further proceedings.

# APPENDIX E: RULES GOVERNING JUDICIAL CONDUCT

**22 NYCRR § 100 *et seq.***

**Rules of the Chief Administrator of the Courts Governing Judicial Conduct**

**Preamble**

**Section 100.0 Terminology.**

**Section 100.1 A judge shall uphold the integrity and independence of the judiciary.**

**Section 100.2 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.**

**Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.**

**Section 100.4 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.**

**Section 100.5 A judge or candidate for elective judicial office shall refrain from inappropriate political activity.**

**Section 100.6 Application of the rules of judicial conduct.**

## Preamble

The rules governing judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The rules are to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The rules are designed to provide guidance to judges and candidates for elective judicial office and to provide a structure for regulating conduct through disciplinary agencies. They are not designed or intended as a basis for civil liability or criminal prosecution.

The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there

is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The rules are not intended as an exhaustive guide for conduct. Judges and judicial candidates also should be governed in their judicial and personal conduct by general ethical standards. The rules are intended, however, to state basic standards which should govern their conduct and to provide guidance to assist them in establishing and maintaining high standards of judicial and personal conduct.

**Section 100.0 Terminology.**

The following terms used in this Part are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by election. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy, or authorizes solicitation or acceptance of contributions.

(B) "Court personnel" does not include the lawyers in a proceeding before a judge.

(C) The "degree of relationship" is calculated according to the civil law system. That is, where the judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the judge and the party are in different lines of descent, degree is ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, first cousin, child, grandchild, great-grandchild, nephew or niece. The sixth degree of relationship includes second cousins.

(D) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a judge's spouse or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit

union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(5) "De minimis" denotes an insignificant interest that could not raise reasonable questions as to a judge's impartiality.

(E) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(F) "Knowingly", "knowledge", "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(G) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(H) "Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(I) "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(J) "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(K) "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports.

(L) A "part-time judge", including an acting part-time judge, is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment.

(M) "Political organization" denotes a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(N) "Public election" includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

(O) "Require". The rules prescribing that a judge "require" certain conduct of others, like all of the rules in this Part, are rules of reason. The use of the term "require" in that context means a

judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(P) "Rules"; citation. Unless otherwise made clear by the citation in the text, references to individual components of the rules are cited as follows:

"Part"-refers to Part 100.

"Section"-refers to a provision consisting of 100 followed by a decimal (100.1).

"Subdivision"-refers to a provision designated by a capital letter (A).

"Paragraph"-refers to a provision designated by an arabic numeral (1).

"Subparagraph"-refers to a provision designated by a lower-case letter (a).

(Q) "Window Period" denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge's or non-judge's candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, six months after the date of the primary election, convention, caucus or meeting.

(R) "Impartiality" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

(S) An "independent" judiciary is one free of outside influences or control.

(T) "Integrity" denotes probity, fairness, honesty, uprightness and soundness of character. "Integrity" also includes a firm adherence to this Part or its standard of values.

(U) A "pending proceeding" is one that has begun but not yet reached its final disposition.

(V) An "impending proceeding" is one that is reasonably foreseeable but has not yet been commenced.

Historical Note
Sec. filed Feb. 1, 1996 eff. Jan. 1, 1996.
Amended (D) and (D)(5) on Sept. 9, 2004.
Added (R) - (V) on Feb. 14, 2006

**Section 100.1 A judge shall uphold the integrity and independence of the judiciary.**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part 100 are to be construed and applied to further that objective.

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.1, new added by renum. and amd. 33.1, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

**Section 100.2 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.**

(A) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

(D) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of age, race, creed, color, sex, sexual orientation, gender identity, gender expression, religion, national origin, disability or marital status. This provision does not prohibit a judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.2, new added by renum. and amd. 33.2, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.
Amended (D) on Jun. 25, 2018

**Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.**

(A) **Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

(B) **Adjudicative Responsibilities.**

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(2) A judge shall require order and decorum in proceedings before the judge.

(3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, gender identity, gender expression, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, gender identity, gender expression, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding.

(6) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and the judge, insofar as practical and appropriate, makes provision for prompt notification of other parties or their lawyers of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge, with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters.

(e) A judge may initiate or consider any ex parte communications when authorized by law to do so.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(9) A judge shall not:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(12) It is not a violation of this Rule for a judge to make reasonable efforts to facilitate the ability of unrepresented litigants to have their matters fairly heard.

(C) **Administrative Responsibilities.**

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered. A judge shall not appoint or vote for the appointment of any person as a member of the judge's staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such a person. A judge shall refrain from recommending a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such person for appointment or employment to another judge serving in the same court. A judge also shall comply with the requirements of Part 8 of the Rules of the Chief Judge (22 NYCRR Part 8) relating to the Appointment of relatives of judges. Nothing in this paragraph shall prohibit appointment of the spouse, domestic partner, or unrelated household member of the town or village justice, or other relative as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.

(D) **Disciplinary Responsibilities.**

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.

(3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties.

(E) **Disqualification.**

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the judge has a personal bias or prejudice concerning a party or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge knows that (i) the judge served as a lawyer in the matter in controversy, or (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or (iii) the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;

(d) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding;

(ii) is an officer, director or trustee of a party;

(iii) has an interest that could be substantially affected by the proceeding;

(e) The judge knows that the judge or the judge’s spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding. Where the judge knows the relationship to be within the second degree, (i) the judge must disqualify him/herself without the possibility of remittal if such person personally appears in the courtroom during the proceeding or is likely to do so, but (ii) may permit remittal of disqualification provided such person remains permanently absent from the courtroom.

(f) the judge, while a judge or while a candidate for judicial office, has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the judge's adjudicative capacity that commits the judge with respect to

(i) an issue in the proceeding; or

(ii) the parties or controversy in the proceeding.

(g) notwithstanding the provisions of subparagraphs (c) and (d) above, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as fiduciary, the judge's spouse, or a minor child residing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(F) **Remittal of Disqualification.** A judge disqualified by the terms of subdivision (E), except subparagraph (1)(a)(i), subparagraph (1)(b)(i) or (iii), or subparagraph (1)(d)(i) or subparagraph (1)(e)(i) of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Amended (B)(9)-(11) & (E)(f) -(E)(g) Feb. 14, 2006
Amended (B)(9)-(11) & (E)(f) -(E)(g) Feb. 14, 2006
Amended (C)(3) on May 6, 2014
Added (B)(12) effective Mar. 26, 2015
Amended (B)(4) & (B)(5) on Jun. 25, 2018
Amended (E)(1)(e) & (F) on Dec. 12, 2018 effective January 1, 2019

**Section 100.4 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.**

(A) Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra- judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) detract from the dignity of judicial office; or

(3) interfere with the proper performance of judicial duties and are not incompatible with judicial office.

(B) Avocational Activities. A judge may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of this Part.

(C) Governmental, Civic, or Charitable Activities.

(1) A full-time judge shall not appear at a public hearing before an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2)

(a) A full-time judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy in matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(b) A judge shall not accept appointment or employment as a peace officer or police officer as those terms are defined in section 1.20 of the Criminal Procedure Law.

(3) A judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Part.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that ordinarily would come before the judge, or
(ii) if the judge is a full-time judge, will be engaged regularly in adversary proceedings in any court.

(b) A judge as an officer, director, trustee or non-legal advisor, or a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities;

(ii) may not be a speaker or the guest of honor at an organization's fund-raising events, but the judge may attend such events. Nothing in this subparagraph shall prohibit a judge from being a speaker or guest of honor at a court employee organization, bar association or law school function or from accepting at another organization's fund-raising event an unadvertised award ancillary to such event;

(iii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice; and

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, but may be listed as an officer, director or trustee of such an organization. Use of an organization's regular letterhead for fund-raising or membership solicitation does not violate this provision, provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

(D) Financial activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position;

(b) involve the judge with any business, organization or activity that ordinarily will come before the judge; or

(c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge, subject to the requirements of this Part, may hold and manage investments of the judge and members of the judge's family, including real estate.

(3) A full-time judge shall not serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity, except that:

(a) the foregoing restriction shall not be applicable to a judge who assumed judicial office prior to July 1, 1965, and maintained such position or activity continuously since that date; and

(b) a judge, subject to the requirements of this Part, may manage and participate in a business entity engaged solely in investment of the financial resources of the judge or members of the judge's family; and

(c) any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this paragraph during the period of such interim or temporary appointment.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:

(a) a "gift" incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 100.3(E);

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and if its value exceeds $150.00, the judge reports it in the same manner as the judge reports compensation in Section 100.4(H).

(E) Fiduciary Activities.

(1) A full-time judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of the judge's family, or, with the approval of the Chief Administrator of the Courts, a person not a member of the judge's family with whom the judge has maintained a longstanding personal relationship of trust and confidence, and then only if such services will not interfere with the proper performance of judicial duties.

(2) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

(3) Any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from paragraphs (1) and (2) during the period of such interim or temporary appointment.

(F) Service as Arbitrator or Mediator. A full-time judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(G) Practice of Law. A full-time judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to a member of the judge's family.

(H) Compensation, Reimbursement and Reporting.

(1) Compensation and reimbursement. A full-time judge may receive compensation and reimbursement of expenses for the extra- judicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(c) No full-time judge shall solicit or receive compensation for extra- judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society designated to represent indigents in accordance with article 18-B of the County Law.

(2) Public Reports. A full-time judge shall report the date, place and nature of any activity for which the judge received compensation in excess of $150, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.

(I) Financial Disclosure. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this section and in section 100.3(F), or as required by Part 40 of the Rules of the Chief Judge (22 NYCRR Part 40), or as otherwise required by law.

Historical Note
Sec. filed Aug. 1, 1972; amd. filed Nov. 26, 1976; renum. 111.4, new added by renum. and amd. 33.4, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996; amds. filed: Feb. 27, 1996; Feb. 9, 1998 eff. Jan. 23, 1998. Amended (C)(3)(b)(ii).

**Section 100.5 A judge or candidate for elective judicial office shall refrain from inappropriate political activity.**

(A) Incumbent judges and others running for public election to judicial office.

(1) Neither a sitting judge nor a candidate for public election to judicial office shall directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to improve the law, the legal system or the administration of justice. Prohibited political activity shall include:

(a) acting as a leader or holding an office in a political organization;

(b) except as provided in Section 100.5(A)(3), being a member of a political organization other than enrollment and membership in a political party;

(c) engaging in any partisan political activity, provided that nothing in this section shall prohibit a judge or candidate from participating in his or her own campaign for elective judicial office or shall restrict a non- judge holder of public office in the exercise of the functions of that office;

(d) participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization;

(e) publicly endorsing or publicly opposing (other than by running against) another candidate for public office;

(f) making speeches on behalf of a political organization or another candidate;

(g) attending political gatherings;

(h) soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate; or

(i) purchasing tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose.

(2) A judge or non-judge who is a candidate for public election to judicial office may participate in his or her own campaign for judicial office as provided in this section and may contribute to his or her own campaign as permitted under the Election Law. During the Window Period as defined in Subdivision (Q) of section 100.0 of this Part, a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may:

(i) attend and speak to gatherings on his or her own behalf, provided that the candidate does not personally solicit contributions;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy, and distribute pamphlets and other promotional campaign literature supporting his or her candidacy;

(iii) appear at gatherings, and in newspaper, television and other media advertisements with the candidates who make up the slate of which the judge or candidate is a part;

(iv) permit the candidate's name to be listed on election materials along with the names of other candidates for elective public office;

(v) purchase two tickets to, and attend, politically sponsored dinners and other functions, provided that the cost of the ticket to such dinner or other function shall not exceed the proportionate cost of the dinner or function. The cost of the ticket shall be deemed to constitute the proportionate cost of the dinner or function if the cost of the ticket is $250 or less. A candidate may not pay more than $250 for a ticket unless he or she obtains a statement from the

sponsor of the dinner or function that the amount paid represents the proportionate cost of the dinner or function.

(3) A non-judge who is a candidate for public election to judicial office may also be a member of a political organization and continue to pay ordinary assessments and ordinary contributions to such organization.

(4) A judge or a non-judge who is a candidate for public election to judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under this Part;

(c) except to the extent permitted by Section 100.5(A)(5), shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Part;

(d) shall not:

(i) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;
(ii) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;
(iii) knowingly make any false statement or misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent; but

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate subparagraphs 100.5(A)(4)(a) and (d).

(f) shall complete an education program, either in person or by videotape or by internet correspondence course, developed or approved by the Chief Administrator or his or her designee any time after the candidate makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions for a known judicial vacancy, but no later than 30 days after receiving the nomination for judicial office. The date of nomination for candidates running in a primary election shall be the date upon which the candidate files a designating petition with the Board of Elections. This provision shall apply to all candidates for elective judicial office in the Unified Court System except for town and village justices.

(g) shall file with the Ethics Commission for the Unified Court System a financial disclosure statement containing the information and in the form, set forth in the Annual Statement of Financial Disclosure adopted by the Chief Judge of the State of New York. Such statement shall be filed within 20 days following the date on which the judge or non-judge becomes such a candidate; provided, however, that the Ethics Commission for the Unified Court System may grant an additional period of time within which to file such statement in accordance with rules promulgated pursuant to section 40.1(t)(3) of the Rules of the Chief Judge of the State of New York (22 NYCRR). Notwithstanding the foregoing compliance with this subparagraph shall not be necessary where a judge or non-judge already is or was required to file a financial disclosure statement for the preceding calendar year pursuant to Part 40 of the Rules of the Chief Judge. This requirement does not apply to candidates for election to town and village courts.

(5) A judge or candidate for public election to judicial office shall not personally solicit or accept campaign contributions, but may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions and support from the public, including lawyers, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees may solicit and accept such contributions and support only during the window period. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(6) A judge or a non-judge who is a candidate for public election to judicial office may not permit the use of campaign contributions or personal funds to pay for campaign-related goods or services for which fair value was not received.

(7) Independent Judicial Election Qualifications Commissions, created pursuant to Part 150 of the Rules of the Chief Administrator of the Courts, shall evaluate candidates for elected judicial office, other than justice of a town or village court.

(B) Judge as candidate for nonjudicial office. A judge shall resign from judicial office upon becoming a candidate for elective nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(C) Judge's staff. A judge shall prohibit members of the judge's staff who are the judge's personal appointees from engaging in the following political activity:

(1) holding an elective office in a political organization, except as a delegate to a judicial nominating convention or a member of a county committee other than the executive committee of a county committee;

(2) contributing, directly or indirectly, money or other valuable consideration in amounts exceeding $500 in the aggregate during any calendar year to all political campaigns for political

office, and other partisan political activity including, but not limited to, the purchasing of tickets to political functions, except that this $500 limitation shall not apply to an appointee's contributions to his or her own campaign. Where an appointee is a candidate for judicial office, reference also shall be made to appropriate sections of the Election Law;

(3) personally soliciting funds in connection with a partisan political purpose, or personally selling tickets to or promoting a fund-raising activity of a political candidate, political party, or partisan political club; or

(4) political conduct prohibited by section 50.5 of the Rules of the Chief Judge (22 NYCRR 50.5).

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.5, new added by renum. and amd. 33.5, filed Feb. 2, 1982; amds. filed: Dec. 21, 1983; May 8, 1985; March 2, 1989; April 11, 1989; Oct. 30, 1989; Oct. 31, 1990; repealed, new filed; amd. filed March 25, 1996 eff. March 21, 1996. Amended (A)(2)(v).

Amended 100.5 (A)(2)(v), (A)(4)(a), (A)(4)(d)(i)-(ii), (A)(4)(f), (A)(6), (A)(7) Feb. 14, 2006; 100.5(A)(4)(g) Sept. 1, 2006.
Added 100.5 (A)(4)(g) on Sept. 1, 2006
Amended 100.5 (A)(4)(g) on Sept. 1, 2006
Amended 100.5 (A)(4)(f) on Oct. 24, 2007 [previous version]

**Section 100.6 Application of the rules of judicial conduct.**

(A) General application. All judges in the unified court system and all other persons to whom by their terms these rules apply, e.g., candidates for elective judicial office, shall comply with these rules of judicial conduct, except as provided below. All other persons, including judicial hearing officers, who perform judicial functions within the judicial system shall comply with such rules in the performance of their judicial functions and otherwise shall so far as practical and appropriate use such rules as guides to their conduct.

(B) Part-time judge. A part-time judge:

(1) is not required to comply with section 100.4(C)(1), 100.4(C)(2)(a), 100.4(C)(3)(a)(ii), 100.4(E)(1), 100.4(F), 100.4(G), and 100.4(H);

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

(3) shall not permit his or her partners or associates to practice law in the court in which he or she is a judge, and shall not permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law, but may permit

the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law;

(4) may accept private employment or public employment in a Federal, State or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties.

(5) Nothing in this rule shall further limit the practice of law by the partners or associates of a part-time judge in any court to which such part-time judge is temporarily assigned to serve pursuant to section 106(2) of the Uniform Justice Court Act or Section 107 of the Uniform City Court Act in front of another judge serving in that court before whom the partners or associates are permitted to appear absent such temporary assignment.

(C) Administrative law judges. The provisions of this Part are not applicable to administrative law judges unless adopted by the rules of the employing agency.

(D) Time for compliance. A person to whom these rules become applicable shall comply immediately with all provisions of this Part, except that, with respect to section 100.4(D)(3) and 100.4(E), such person may make application to the Chief Administrator for additional time to comply, in no event to exceed one year, which the Chief Administrator may grant for good cause shown.

(E) Relationship to Code of Judicial Conduct. To the extent that any provision of the Code of Judicial Conduct as adopted by the New York State Bar Association is inconsistent with any of these rules, these rules shall prevail.

Historical Note
Sec. filed Aug. 1, 1972; repealed, new added by renum. 100.7, filed Nov. 26, 1976; renum. 111.6, new added by renum. and amd. 33.6, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Amended 100.6(E) Feb. 14, 2006
Added 100.6(B)(5) March 24, 2010

# APPENDIX F:

# DECISIONS RENDERED BY THE COMMISSION IN 2018

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

LETICIA D. ASTACIO,

a Judge of the Rochester City Court,
Monroe County.

# DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel) for the Commission

Robert F. Julian, Esq., for the respondent

The respondent, Leticia D. Astacio, a Judge of the Rochester City Court, Monroe County, was served with a Formal Written Complaint dated May 30, 2017, containing five charges. The Formal Written Complaint alleged that respondent operated

an automobile under the influence of alcohol, resulting in her conviction for Driving While Intoxicated ("DWI") (Charge I), asserted her judicial office in connection with her arrest (Charge II), violated the terms of her conditional discharge in connection with her conviction by providing a breath sample for her ignition interlock device that registered a blood alcohol content ("BAC") of .078% when she attempted to start her vehicle (Charge III), failed to disqualify herself in her former client's case (Charge IV) and made discourteous, insensitive and undignified comments in four cases (Charge V). Respondent filed an amended verified Answer dated September 11, 2017.

Respondent was served with a Second Formal Written Complaint dated August 3, 2017, which was amended by letter dated September 18, 2017, alleging that respondent violated the terms of her conditional discharge on or about May 30, 2017 (Charge VI). Respondent filed a verified Answer dated September 11, 2017.

By Order dated August 15, 2017, the Commission designated Mark S. Arisohn, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 17 to 19, 2017, in Syracuse, New York. The referee filed a report dated March 5, 2018, which sustained the charges except as to a portion of Charge II.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended confirmation of the referee's report and the sanction of removal. Respondent's briefs conceded that she engaged in some misconduct and argued that removal was too harsh. On April 12, 2018, the Commission heard oral argument and thereafter considered the record of the proceeding

and made the following findings of fact.

1. Respondent has been a Judge of the Rochester City Court, Monroe County, since January 1, 2015. Her current term expires on December 31, 2024. Respondent was admitted to practice law in New York State in 2007.

2. Prior to her election to the City Court, respondent was employed by the Monroe County Legal Assistance Center and the Monroe County District Attorney's Office, where, among other responsibilities, she handled felony DWI cases; she was also in private practice where she had represented defendants charged with DWI.

As to Charge I of the Formal Written Complaint:

3. On Saturday, February 13, 2016, at approximately 7:54 AM, New York State Trooper Christopher Kowalski, who had been employed by the New York State Police for approximately 13 years and who was trained in DWI detection and enforcement, was traveling westbound on Interstate 490, west of downtown Rochester, when he observed a vehicle on the right shoulder of the road. Trooper Kowalski pulled over behind the vehicle.

4. There had been a light snow that morning and the road was slightly snow-covered and wet, with approximately a half-inch of snow on the shoulder. It was the coldest day of the year with the 7:54 AM temperature recorded at -2.9° F.

5. Respondent was seated in the driver's seat and was the sole occupant of the car. The car was running with the keys in the ignition; the back lights and daytime running lights were on; and, according to Trooper Kowalski, both front windows were

down when he approached. Respondent testified that she rolled her driver's window down either as the trooper approached her car or once he was at the window. Respondent was wearing sneakers, pants and a hoodie; her clothes appeared "pretty disheveled" to Kowalski.

6. Trooper Kowalski observed that both tires on the driver's side of the vehicle were flat, and the front tire was about to fall off of the rim. There was heavy front-end damage to the driver's side of the vehicle.

7. Trooper Kowalski asked respondent if she was okay and if she had been in an accident. According to Kowalski, respondent replied that she was "fine," stated that she "only thought she had a flat tire and that she didn't strike anything at that time," and also said, "I don't recall hitting anything." Respondent testified that she had left home and was on her way to the YMCA gym when "I don't know if I hit…a chunk of ice, or some debris in the roadway … or if my tire blew out. Either way, I lost control of my car, and I realized that I had a flat, or that my car wasn't working properly …. I pulled over to the shoulder."

8. Trooper Kowalski asked respondent to get out of the vehicle and to look at the damage. He did not recall any reaction that respondent had after looking at the vehicle.

9. The trooper asked for her license and registration and respondent told him that she "didn't have anything on her." He then asked her to come back to his vehicle because "it was so cold out" to "get everything squared away, get her name, get her address, figure … everything out." Respondent complied.

10. Respondent sat in the back seat of the patrol car, approximately one to two feet behind Trooper Kowalski, who sat in the driver's seat. The trooper observed that respondent was chewing gum and he smelled the odor of an alcoholic beverage. He asked her to remove the gum from her mouth and she did.

11. Trooper Kowalski still perceived a strong smell of an alcoholic beverage when respondent began to talk. He also observed that her eyes were bloodshot, watery and glassy, that her face was flushed and that her speech was slurred.

12. Trooper Kowalski asked respondent if she had consumed any alcohol and she replied that she did not drink at 7:00 AM; he asked again whether she had been drinking, and she replied, "I've drank in my lifetime."

13. In response to the trooper's questions about where she was coming from and where she was headed, respondent stated that she was coming from home and was going to the City Court to do arraignments at 9:30.

14. Rochester City Court was to the east from where respondent's car was located and in the opposite direction of respondent's westbound-facing vehicle. When Trooper Kowalski asked what direction she was headed, respondent stated that she was "not good with direction, east, west, north, south." Respondent testified at the hearing that her intention that morning upon leaving home was to go to the Gates YMCA for an 8:00 AM workout class before heading to City Court, where she was scheduled to handle arraignments at 9:30 AM, and that by the time of her initial exchanges with Trooper Kowalski, she had abandoned her plan to go to the YMCA before court. When respondent pulled her car over to the shoulder of the road, she was pointed in the

direction of the YMCA.

15. At approximately 8:15 AM, when Trooper Kowalski asked respondent what time it was, she responded, "7:15."

16. In Trooper Kowalski's car, when the trooper again inquired about whether respondent had consumed alcohol that morning or the night before, respondent told the trooper that she "didn't feel comfortable" in the car and "didn't want to be in the car," and she said, "I don't know what else you might do to me. For all I know, you could shoot me."

17. Trooper Kowalski had not displayed or unholstered his weapon or made any threat. Respondent testified that Kowalski never made an overt threat of force to her, yelled or used vulgarity or profanity in speaking with her. The trooper was uncomfortable about respondent's comment and got out of the car. He called dispatch to get another unit to come to the scene so he could have a witness as to what was starting to unfold, and then re-entered the patrol car and told respondent not to make any other statements of that nature.

18. Trooper Kowalski asked respondent if she would submit to any standardized field sobriety tests. She declined, stating that she could not do them because she had a brain injury during her pregnancy that had an impact on her ability to take such tests. The medical records introduced by respondent confirm that she had a structural defect in the part of the brain that controls balance and had surgery that resolved the balance issue to a limited extent. Respondent agreed to take an alphabet test and a counting test administered by Trooper Kowalski, which she passed.

19. Based on his observations and professional expertise, Trooper Kowalski formed an opinion that respondent was intoxicated, and he arrested her at 8:43 AM.

20. When she was placed under arrest, respondent told Trooper Kowalski that he did not have "sufficient probable cause to arrest" her and did not "have enough for a conviction"; she also said, "With all due respect, I don't know you, so you don't do DWIs, and you don't know what you're doing, but you're making a very big mistake … I'd rather you call someone who does know what they're doing." At the hearing, respondent testified that she "went over the factors" with the trooper and "was just explaining to him why this wasn't sufficient for a DWI."

21. At around the time of the arrest, Trooper Kowalski asked respondent to take a preliminary breath test ("PBT") to detect the presence of alcohol. Respondent declined the test and told Kowalski that she wanted to have a lawyer present.

22. Respondent testified that earlier, sometime after she had pulled over onto the shoulder of the road, she called an acquaintance, Christian Catalano, an attorney, and asked him to help her change her flat tire, after which she fell asleep. She was waiting for him in her car when Trooper Kowalski pulled over behind her vehicle.

23. Trooper Casey Dolan, a 21-year veteran of the State Police, responded shortly after 9:00 AM to Kowalski's call for back-up and arrived at the scene with a PBT device. When Trooper Dolan pulled his patrol vehicle behind Trooper Kowalski's vehicle, there was another vehicle parked in front of respondent's vehicle that had not been present when Trooper Dolan had passed the location a short time earlier.

That was the vehicle of Mr. Catalano, who had recently arrived on the scene. Trooper Dolan passed the PBT device to Trooper Kowalski through the window. Trooper Dolan heard respondent speaking in a raised, irritated voice, and she seemed upset.

24. Trooper Dolan told respondent, referring to the PBT, "This trooper has an obligation to ask you to submit to that. You were involved in a motor vehicle accident." Respondent replied, "No, he doesn't. He can just go mind his own fucking business."

25. Trooper Kowalski spoke with Mr. Catalano, who respondent stated would act as her attorney, about having her submit to a PBT. Trooper Kowalski discussed the possibility of "unarresting" respondent with Catalano and allowed him to speak privately with respondent to discuss whether she would take the PBT. Kowalski admitted at the hearing that despite what he told Catalano, he had no intention of "unarresting" respondent.

26. Respondent testified that after discussing the PBT with Mr. Catalano, she provided a breath sample three times. The third test registered positive for the presence of alcohol on her breath at ".19," according to Kowalski. Kowalski explained at the hearing that the first two tests showed a "zero" reading because respondent did not blow into the instrument for a sufficient amount of time, but he kept no records to corroborate that fact. Nor did Kowalski show the claimed positive result of the third test to anyone; it was his practice and procedure that he was not required to do so.

27. At approximately 9:23 AM, Trooper Kowalski transported

respondent to the New York State Police barracks. He did not question respondent during the trip. Respondent was upset, irate, belligerent, loud and swearing during the drive. She stated: "I can't believe you're doing this to me. You're fucking ruining my life"; "You don't have to do this. This isn't part of your job"; and "Why are you fucking doing this to me?" Respondent testified that she regrets the words she said in anger and that later, while at the station, she told Trooper Kowalski, "I'm really sorry about the way that I behaved, about the things that I said to you. You have to understand the impact this is going to have on my life, irrespective of the outcome. And I'm sorry. I was really, really upset, and I really couldn't believe this was happening, but … I shouldn't have spoken to you that way and I apologize."

28. Respondent remained irate, angry and upset and was unruly and swearing loudly while at the barracks. Lieutenant Jon Lupo, the designated Acting Zone Commander on duty, heard respondent yelling at Trooper Kowalski and noted that she sounded upset and that her speech was "slurred." Lupo sent an email to his boss at 10:04 AM stating about respondent, "Her attorney is present, and so far she's cooperative."

29. Lieutenant Lupo, a 30-year veteran of the New York State Police who had been trained as a Drug Recognition Expert and had administered and supervised the Standardized Field Sobriety Testing Program between 1997 and 2001, introduced himself to respondent as Trooper Kowalski's supervisor. Respondent insisted that she not be put through the arrest process. According to Lupo, she appeared to be on an "emotional roller coaster." She vacillated between being very upset, then being more composed, and then being upset again. Lupo characterized her behavior as "pleading in a

way." Respondent used the word "fuck" on a couple of occasions in Lupo's presence. Lupo observed that respondent was handcuffed to the bench reserved for arrestees.

30. Lieutenant Lupo, standing no more than three or four feet from respondent, observed that her eyes appeared glassy and very bloodshot, and he detected the stale smell of an alcoholic beverage that he recognized from his experience. In Lieutenant Lupo's opinion, respondent was impaired by alcohol.

31. At the barracks, Trooper Kowalski read Miranda and DWI warnings to respondent and asked her at approximately 10:43 AM if she would submit to a chemical test for alcohol. Respondent refused the test at that time and again at approximately 11:12 AM. Thereafter, Kowalski completed a report of the refusal to submit to a chemical test.

32. Trooper Kowalski then issued Uniform Traffic Tickets to respondent for Driving While Intoxicated (Vehicle and Traffic Law §1192[3]), a misdemeanor, and for the traffic infractions of Stopping/Standing/Parking on Highway and Unsafe Tire.

33. On August 15, 2016, Canandaigua City Court Judge Stephen D. Aronson, sitting as an Acting Judge of Rochester City Court, presided over a non-jury trial on the simplified traffic informations filed pursuant to the tickets issued to respondent. At the trial, Troopers Kowalski and Dolan testified for the prosecution, and Mr. Catalano testified for the defense. On August 22, 2016, Judge Aronson found respondent guilty of the misdemeanor of Driving While Intoxicated (Vehicle and Traffic Law §1192[3]) and sentenced her to a one-year conditional discharge. Both traffic infractions were dismissed.

34. On October 4, 2017, on appeal, Acting Monroe County Court Judge William F. Kocher affirmed the judgment convicting respondent of Driving While Intoxicated.

35. Respondent had a full and fair opportunity in the Rochester City Court criminal action and on its subsequent appeal to County Court to litigate the issue of whether she was driving while intoxicated on February 13, 2016.

36. With respect to her consumption of alcohol, respondent acknowledged that she drank wine the night before her arrest. She testified during the Commission's investigation that she did not consume alcohol after 10:00 PM on February 12, 2016, but conceded at the hearing that in connection with an alcohol evaluation a few weeks after her arrest, one of her counselors reported that respondent had stated that "she did drink alcohol the night before, consuming 2-3 glasses of wine" and that she "started [drinking] at about 1030/11 pm and unsure when she finished." Respondent testified that the report is inaccurate as to what she told the counselor about when she started drinking that night. She also acknowledged telling another one of her counselors, in November 2016, that she drank three glasses of wine the night before her arrest. She further acknowledged that on the morning of her arrest, while at the side of the road with Trooper Kowalski and Catalano, she told Catalano that she had not consumed alcohol the night before.

37. On March 24, 2016, respondent underwent a comprehensive chemical dependency evaluation performed by Elizabeth Rybczak, a Credentialed Alcoholism and Substance Abuse Counselor ("CASAC"). Ms. Rybczak determined that

respondent "is not being recommended for any treatment at this time as patient does not meet criteria for a substance use disorder."

38. In the absence of any argument or evidence that respondent did not have a full and fair opportunity to contest the charge of Driving While Intoxicated at her criminal trial that resulted in a judgment of conviction under a "beyond a reasonable doubt" standard of proof, the doctrine of collateral estoppel forecloses respondent from contesting the fact that she was driving while intoxicated on February 13, 2016. Moreover, the persuasive evidence establishes that respondent was found in her car on the side of the road, was unable to explain why her car had two flat tires and part of her front bumper missing, and had an odor of an alcoholic beverage, bloodshot, watery and glassy eyes and slurred speech. This evidence independently supports the finding by a preponderance of evidence that on February 13, 2016, respondent operated an automobile while intoxicated.

39. The record does not support a finding of any police misconduct and certainly nothing that can be found to justify respondent's combativeness and evasiveness preceding and following her arrest on February 13, 2016.

As to Charge II of the Formal Written Complaint:

40. After respondent got into Trooper Kowalski's car on February 13, 2016, he asked her where she was headed. In response to the inquiry, respondent stated, "I'm going to City Court to do the arraignments at 9:30 this morning." Her comment was an accurate response to the trooper's question. Respondent was scheduled to preside at

arraignments at 9:30 AM that day in the Rochester City Court, and although she initially had planned to go to an exercise class at the YMCA before going to court, by the time she was questioned by Kowalski she had abandoned her plan to go to the gym since it was too late for the class. Although Trooper Kowalski understood from respondent's comment that she was a City Court judge, it was not established by a preponderance of the evidence that her response to the trooper was an attempt to assert her judicial office to advance her private interests in connection with her arrest.

41. At the police barracks, respondent told Lieutenant Lupo that she had court responsibilities that morning, that she had arraignments scheduled and that nobody at the court was aware that she was not going to be showing up. Lieutenant Lupo's notes from that morning reflect some of the statements respondent uttered: "Please don't do this"; "I have to go to work"; "I have arraignments"; and "I have court right now." (His notes also indicate "crying," "begging," "pleading.") Lieutenant Lupo understood respondent's remarks to mean that she did not want to be arrested or to proceed with the arrest process.

42. Respondent's request to telephone the court to advise the court that she would not be there at 9:30 AM was honored.

43. Respondent's statements to Lieutenant Lupo when she asked him to "[p]lease don't do this" because "I have arraignments" and "I have court right now" were an attempt to advance her private interests in connection with her arrest for Driving While Intoxicated.

As to Charge III of the Formal Written Complaint:

44. On August 22, 2016, in connection with her sentencing to a one-year conditional discharge for her conviction for Driving While Intoxicated, respondent was provided with a copy of her "Conditions of Conditional Discharge," a three-page form which she signed and dated. The form clearly stated, in bold type near the top of the first page, the requirement that she "Abstain from Alcoholic Beverages and All Products That Contain Alcohol" during the one-year period of discharge.

45. As a condition of her sentence, respondent was required to install an ignition interlock device ("IID") on her vehicle. The form that respondent signed stated that a device indication of "a failed test or re-test where the BAC was .05% or higher" would constitute a violation of the IID conditional discharge.

46. On or about September 30, 2016, the Monroe County Office of Probation notified Judge Aronson and the District Attorney that there was reasonable cause to believe that respondent had violated the terms of her conditional discharge by failing an IID start-up test on September 12, 2016, at 7:32 AM, with a BAC of .067%. On October 11, 2016, Judge Aronson signed a Declaration of Delinquency and arraigned respondent on the alleged violation. With the consent of the parties, the matter was adjourned to November 16, 2016, to allow respondent to engage in appropriate alcohol treatment.

47. On or about October 31, 2016, the Monroe County Office of Probation notified Judge Aronson and the District Attorney that there was reasonable cause to believe that on October 3, 2016, respondent had violated the terms of her

conditional discharge by attempting to start and operate her vehicle while testing positive for alcohol (.078% BAC). The October 3, 2016 violation had not yet been reported when respondent appeared in court on October 11, 2016. On November 3, 2016, Judge Aronson signed a second Declaration of Delinquency that alleged respondent had violated her conditional discharge by failing an IID start-up test on October 3, 2016, at 9:37 AM, with a BAC of .078%.

48. On November 3, 2016, respondent attended a substance abuse intake at Strong Recovery. Her assessment included a breathalyzer and a supervised urine toxicology screen, both of which were negative. In a report dated November 15, 2016, Karen Hospers, CASAC, gave a diagnostic impression of "alcohol use disorder, mild" and recommended that respondent attend a ten-week relapse prevention group. Respondent successfully completed the recommended program.

49. On November 16, 2016, respondent appeared before Judge Aronson and pled guilty to violating her conditional discharge by attempting to start and operate her vehicle on October 3, 2016, while testing positive for alcohol with a .078% BAC, and thereafter failing to perform an IID start-up re-test. Respondent's guilty plea satisfied all outstanding delinquency charges.

50. Judge Aronson amended the conditional discharge by extending the IID requirement for an additional period of six months and requiring that respondent comply with any treatment recommendations made by her therapist.

51. Respondent acknowledged signing and dating each of the three pages of the conditional discharge form at her sentencing for her DWI conviction and

taking a copy home with her.

52. When she pled guilty to violating her conditional discharge, respondent told the court that she did not review the documents she had received and signed at her sentencing and "didn't understand" that abstention from alcohol was a condition of her sentence. She apologized to the court and reiterated, "I didn't understand. I do understand now," and told the court that "[t]here won't be" any future violations.

53. Respondent testified at the hearing that she consumed alcohol "more than once" between her DWI conviction on August 22, 2016, and sometime in October 2016, and she reiterated that she did not read the document stating the terms of her conditional discharge. She testified that it was her "understanding" that she "was sentenced to the minimums" and she stated, "I know what the minimums are by heart, I didn't need to review the terms." At the oral argument before the Commission on April 12, 2018, she stated that even if she had read the document, "I don't think that would have necessarily changed my behavior."

54. Respondent testified that, prior to providing an IID breath sample on October 3, 2016, she "was drunk," having consumed four glasses of wine and three shots of tequila, and asked her aunt to drive because she knew that she should not have been driving, but that respondent "did the blow" that resulted in her conviction.

As to Charge IV of the Formal Written Complaint:

55. On January 21, 2015, respondent was presiding in the Rochester

City Court when defendant James Thomas was brought into the courtroom to be arraigned on a Petit Larceny charge. Respondent failed to disqualify herself from presiding over the arraignment notwithstanding that her impartiality might reasonably be questioned because of her prior attorney-client relationship with the defendant.

56. Respondent had represented Mr. Thomas as his defense attorney approximately three years earlier on a felony charge. Respondent represented Mr. Thomas for approximately one year and during that period had visited him approximately two dozen times at the county jail. Mr. Thomas was on parole supervision in connection with the felony when he appeared before respondent on January 21, 2015.

57. When Mr. Thomas was brought by Sheriff's Department personnel into respondent's courtroom, he smiled and waved at respondent, who was on the bench. Respondent laughed and disclosed to counsel that Mr. Thomas was a former client and added, "And I like him"; she then said, "Well, I mean, I can … arraign him … but I'm going to transfer it."

58. Respondent asked her court clerk, "Can it not go to Johnson, please?" Respondent was referring to Rochester City Court Judge Teresa Johnson. She then commented from the bench about Mr. Thomas, stating:

- "[W]hen ... you said the name I'm like, 'Aw, come on'";
- "He freaking just got out. I represented him ... He just, just got out";
- "Aww, I'm so sad about this."

59. After a short break, respondent's court clerk told her, "I was told that you can arraign him" and the case would then be transferred to a judge other than Judge

Johnson. Respondent read Mr. Thomas the charge and assigned counsel, who entered a plea of not guilty on his behalf. Respondent told Mr. Thomas that it was not appropriate for her to preside over his case, and when Mr. Thomas asked why, she replied, "I would love to preside over your case, but I don't ... want any conflicts."

60. Respondent set a "courtesy" bail at $50, as requested by his attorney. In setting bail, respondent stated that since the defendant was being held, "it really doesn't matter," but that since he was being held on bail concurrent to the parole hold, he would be "getting time on these charges."

61. Mr. Thomas told respondent that the public defender "was good, but you were the best." When the next case was called, respondent commented, "I totally love him. I'm so sad that he's in jail right now."

62. At the hearing, respondent acknowledged feeling "sympathetic" towards Mr. Thomas, and she understood that presiding over his case would create the appearance of impropriety based upon the nature of their relationship and his conduct in her court. She also testified that typically Mr. Thomas' case would have been transferred to Judge Johnson but that she did not want the case to go to her because Judge Johnson was not very "nice to anyone" and that if she got the case, Mr. Thomas would get harsher treatment and a less favorable result. Respondent acknowledged that requesting that Thomas' case not go to Judge Johnson was inappropriate. She also testified that when she handled this case, during her first month as a judge, she "was still pretty new and … didn't know the procedure for transferring cases."

63. Respondent understood that setting bail on Mr. Thomas was an act

of judicial discretion and that Mr. Thomas derived a benefit by getting credit for jail time on his Petit Larceny charge as a result of her conduct.

As to Charge V of the Formal Written Complaint:

A. *People v. T. L.*

64. On January 27, 2015, respondent was scheduled to arraign T. L., who was in custody on a charge of Criminal Trespass in the Third Degree, a misdemeanor.

65. Prior to calling Ms. L.'s case, respondent learned from her clerk that Ms. L. was allegedly biting and spitting on people and may have been cursing, kicking and punching Sheriff's Department deputies and using racial slurs while being transported to the court. While awaiting the case, respondent spoke from the bench with a sheriff's deputy about Ms. L., stating, "I heard she's going crazy," and she commented further to the deputy, "Well, tase her"; "Shoot her?"; "What do you do, billy-club people?"; "Well, punch her in the face and bring her out here. You can't take a 16-year-old?"; "What do you want me to do, leave her? I don't like her attitude"; "She needs a whoopin'"; and "Is she crazy or is she bad?" Ms. L.'s arraignment was postponed.

66. At the hearing, respondent testified that when she made the comments in this case, during her first month as a judge, she was having "a joking conversation" with a deputy between arraignments and she thought the comments were off the record. She acknowledged that, "in retrospect," her comments were inappropriate.

B. *People v. X. V.*

67. The allegations as to *People v. X. V.* are not sustained and therefore are dismissed.

C. *People v. D. Y.*

68. On January 15, 2015, respondent arraigned D.Y., who was in custody after being charged with Disorderly Conduct, a violation, for intentionally blocking traffic by walking in the middle of the road.

69. After reading the charge against him and advising counsel that Mr. Y. had other charges pending in Rochester City Court and was scheduled for a mental health examination, respondent told Mr. Y. that she would sentence him to time served if he pled guilty to the charge. Mr. Y.'s attorney, after conferring with the defendant, advised respondent that he would plead guilty.

70. Prior to accepting Mr. Y.'s plea, respondent told the defendant to "stay out of the street. It's super annoying. I hate when people walk in front of my car. If there was [sic] no rules, I would totally run them over because it's disrespectful."

71. At the hearing, respondent acknowledged that she should not have said she would run people over.

D. *People v. D. W.*

72. On August 15, 2015, respondent arraigned D. W., who was charged with the misdemeanor of Sexual Misconduct. Respondent read the charge to Mr. W., explained that she was issuing an order of protection in favor of the alleged victim, and advised Mr. W. that he was to have no contact with the alleged victim. Respondent had previously signed an arrest warrant for Mr. W. in the matter and knew that he and the

alleged victim were classmates, so she clarified that Mr. W. could not interact with the alleged victim at school.

73. Mr. W.'s attorney, who opposed an order of protection, referred to the alleged victim's three-week delay in signing a statement against Mr. W. and stated, "It appears to me to be a case of buyer's remorse." Respondent laughed at the "buyer's remorse" comment and told the Assistant District Attorney, "That was funny. You didn't think that was funny."

74. A minute or two later, following Mr. W.'s arraignment, respondent continued commenting about the "buyer's remorse" remark, stating:

- "Oh, man. I don't mean to be so inappropriate. I thought that was freakin' hilarious. She ... said that she didn't sign it 'til three weeks later; it was a case of 'buyer's remorse'";
- "Yeah, I thought it was funny. She [referring to the prosecutor] didn't think it was funny ... She was offended. I thought it was hilarious."

75. Respondent understood from her professional experience in the Domestic Violence Bureau of the District Attorney's Office that sexual assault victims are typically hesitant to go forward out of embarrassment, shame or fear of becoming further victimized.

76. Respondent testified that the *W.* case was at "the end of the docket, and people weren't there," but that if the purported victim or her family were present she "would have been mortified at them having the impression that I ... took the situation lightly or that I ... didn't care about what was alleged to have happened to her."

As to Charge VI of the Second Formal Written Complaint:

77. On August 22, 2016, after being convicted of Driving While Intoxicated and sentenced to a one-year-conditional discharge, respondent signed and received a copy of her "Conditions of Conditional Discharge" that required her, *inter alia,* to "submit to any recognized tests that are available to determine the use of alcohol or drugs" and to install and maintain a functioning ignition interlock device in her vehicle.

78. On May 1, 2017, respondent booked a one-way ticket to Thailand and she departed the following day. Respondent testified that she intended to stay in Thailand for several months until sometime in August 2017.

79. On or about May 10, 2017, Assistant District Attorney V. Christopher Eaggleston forwarded to Judge Aronson a notification from the Monroe County Office of Probation that the IID in respondent's vehicle had registered a failed start-up test on April 29, 2017, with a .061% BAC that was provided by an individual who could not be seen on the camera.

80. Judge Aronson sent a letter dated May 15, 2017, to ADA Eaggleston and respondent's attorney stating that he would not issue a Declaration of Delinquency concerning the failed start-up test on April 29, 2017, but that he "intend[ed] to enforce the provision of the conditional discharge requiring the defendant to submit to tests for alcohol use" and that respondent was "require[d] ... to submit to an Etg [sic] lab analysis of her urine sample." Judge Aronson directed in his letter that the test be done "**immediately**" (emphasis in original) and that respondent's attorney provide the lab

report to the court. In accordance with Judge Aronson's requirement, Rochester City Court Clerk Jody Carmel prepared a document for the Monroe County Office of Probation on May 15, 2017, confirming the ordered EtG test.

81. On May 23, 2017, at the direction of Judge Aronson, Ms. Carmel drafted a notice of Judge Aronson's May 15, 2017 order that respondent "must" immediately submit to an EtG lab analysis of her urine to be provided to the court and that "If defendant has not submitted to the ordered E[t]G test, her presence with her attorney is required in Rochester City Court on Tuesday, May 30 at 12:00 p.m." On May 24, 2017, Ms. Carmel mailed the notice to respondent, her attorney and the ADA.

82. Respondent did not appear in court on May 30, 2017. On that date, her attorney told the court that respondent was in Thailand, having arrived there on May 3rd intending to return in August, and he read into the record an email that he had sent to her on May 26, 2017, which stated in part: "Over the last several weeks I notified you by telephone that Judge Aronson has ordered you to submit to an immediate EtG test to determine whether or not you are consuming alcohol. ... I also sent you text messages to that effect. Today I received a letter from the Rochester City Court requesting that I appear with the results of the EtG test on Wednesday, May 30th, or in the alternative that being such results are not available, that you appear personally."

83. Judge Aronson signed a Declaration of Delinquency on May 30, 2017, finding reasonable cause to believe that respondent had violated the terms of her conditional discharge by failing to comply with his directives to submit to an EtG test or to appear in court on May 30, 2017. On the same date he issued a bench warrant for

respondent's arrest for her failure to appear in court as directed.

84. Respondent returned to Rochester on June 4, 2017. The next morning, after meeting with her administrative judge, she was taken into custody by Monroe County Sheriff's personnel pursuant to the bench warrant and was brought before Judge Aronson, who ordered her committed to jail pending a hearing.

85. During the proceedings on June 5, 2017, Judge Aronson told respondent that her attitude appeared "contemptuous," citing her "seemingly total indifference to the responsibilities under [her] conditional discharge" with respect to the IID on her vehicle, which was the basis for the court-ordered urine test, and her "apparent exile from the jurisdiction of the Court without advance notice to a place halfway around the world knowing that your CD requires random alcohol testing." He asked her, "How could you possibly not have considered what would happen if I ordered you to take a random alcohol screen if you were halfway around the world not just for a two-week vacation, but for three months?" Judge Aronson also stated, "I don't know when you got back into the country or to this city, but you did not turn yourself in when you returned."

86. Respondent declined an offer to plead guilty to violating the terms of the conditional discharge and requested a hearing, which was held on June 8, 2017. Respondent testified at that hearing that she had been unable to comply with the court-ordered urine test or to appear in court on May 30 on short notice. She told the court that she learned of the court-ordered EtG test on May 27 from her attorney's email and since she was unable to book a return flight from Thailand immediately, she told her attorney to ask for an adjournment of the court date; she ultimately departed on June 3 and

returned on June 4, intending to turn herself in the next day. She also testified that she was unable to communicate with her attorney by telephone after May 7th after switching her service provider to a less expensive option and could only communicate by email. Judge Aronson found that she violated the conditional discharge by failing to submit to an EtG test or to appear in court by May 30th as ordered and remanded her pending sentencing.

87. On July 6, 2017, Judge Aronson revoked the sentence of conditional discharge previously imposed upon respondent for her conviction for Driving While Intoxicated and sentenced her to a 60-day term of incarceration and a three-year term of probation, which included the condition that respondent wear a SCRAM alcohol-monitoring device for six months.

88. Judge Aronson's finding that respondent violated her conditional discharge was affirmed on appeal by the Monroe County Court on December 8, 2017.

89. When respondent booked her trip to Thailand and left on May 2, 2017, she understood that she was subject to being required to submit to alcohol testing as a condition of her conditional discharge.

90. Prior to leaving the country, respondent did not notify her administrative judge or her attorney that she planned to be in Southeast Asia for approximately three months.

91. Although there is no provision in the conditional discharge prohibiting travel out of the United States, respondent was required to notify the probation office "prior to any change in address." Respondent failed to notify the

Monroe County Office of Probation of her planned extended absence.

92. On May 7, 2017, respondent called her attorney in response to his email advising her of a "bad blow" on her ignition interlock device and informed him that she did not plan to return home until August. She testified that there had been a "positive blow" into the IID on her vehicle earlier in April, resulting in a lockout and shutdown that required servicing, that she understood prior to her departure that that matter had been cleared up, and that when she spoke to her attorney on May 7th she thought he was referring to the incident in early April.

93. Respondent testified that after learning on May 27, 2017, at approximately 3:30 AM (4:30 PM Eastern Standard Time on May 26, 2017, in Rochester) that she had to appear in court in four days or get an EtG test in Thailand, she told her attorney that she believed it was "all moot anyway" because of a "jurisdictional defect" with respect to the supervision of her IID and asked him to request an adjournment.

94. After learning on May 30, 2017, that Judge Aronson had issued a bench warrant for her arrest, respondent began investigating return flights from Thailand. She departed on June 3, a week after learning of her scheduled court appearance.

95. On or about May 30, 2017, respondent violated the terms of the conditional discharge imposed in connection with her conviction for Driving While Intoxicated.

Additional Findings

96. On November 16, 2016, respondent was evaluated by Dr. George

Anstadt, through a referral from the Office of Court Administration. Dr. Anstadt reported that respondent's DWI "episode was motivated by a constellation of adverse events occurring simultaneously, causing her to resort to too much alcohol," and he advised that respondent was able to perform her judicial duties at that time.

97. Respondent began seeing a clinical psychologist, Vincent Ragonese, in October 2016. In a letter dated October 9, 2017, Dr. Ragonese reported that respondent admitted consuming alcohol prior to pleading guilty to violating the terms of her conditional discharge, and he wrote that he "believe[d] that was an instance of self-medicating due to difficulty adjusting to her situation and not to alcoholism." Dr. Ragonese reported that "[i]n the time that I have been working with Ms. Astacio I have not seen any evidence that suggests she has a substance abuse problem."

98. At the hearing, respondent introduced a report of a lab analysis of a hair sample that concluded she had "most likely" not used alcohol from the end of May through August 2017.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(3), 100.3(E)(l)(a)(i) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through V of the Formal Written Complaint and Charge VI of the Second Formal Written Complaint are sustained insofar as they are consistent with the above

findings and conclusions, and respondent's misconduct is established.

The totality of respondent's misbehavior as shown in the record before us – her operation of a vehicle while under the influence of alcohol, resulting in her conviction for Driving While Intoxicated; her assertion of her judicial position in attempting to avoid the consequences of her arrest; her repeated, willful violations of the terms of her conditional discharge; and her improper conduct on the bench – demonstrates her unfitness for judicial office and requires the sanction of removal.

Respondent's Misconduct

As the Court of Appeals has stated, Driving While Intoxicated is "'a very serious crime' … that has long posed a 'menace' to highway safety … and has caused many tragic consequences" (*People v Washington*, 23 NY3d 228, 231 [2014] [internal citations omitted]). According to the National Highway Traffic Safety Administration, every day almost 29 people die in alcohol-related vehicle crashes in the United States; in New York State there were 283 deaths in traffic accidents due to drunk driving in 2016, and nationwide, there were 10,497 such fatalities, accounting for 28% of all traffic deaths that year.[1] While respondent's behavior in operating her vehicle in an intoxicated condition fortunately did not result in injury, it endangered public safety and resulted in significant damage to her vehicle as a result of an incident she could not clearly recall or explain. Her conduct also violated the law that she is called upon to administer in her own court, thereby undermining her effectiveness as a judge and bringing the judiciary as

[1] https://www.nhtsa.gov/risky-driving/drunk-driving#2491.

a whole into disrepute.

Although respondent, who had refused to submit to a chemical test for alcohol during her arrest, has denied that she was intoxicated at the time, she had a full and fair opportunity to litigate the issue in the criminal matter, where her conviction for Driving While Intoxicated established her guilt of that offense beyond a reasonable doubt. By itself, her conviction, which was affirmed on appeal, provides a basis for discipline. *See* cases cited herein, *infra* at p 36.

Exacerbating this serious misconduct – which, troublingly, occurred as respondent was on her way to court to perform judicial duties – respondent attempted to lend the prestige of her judicial position to advance her private interests by telling a supervisor at the police barracks, as her arrest was being processed, that she "has court right now" and "has arraignments" while asking, "Please don't do this." Precisely what respondent was hoping Lieutenant Lupo might do for her at that stage is uncertain, but Lupo, who already knew that respondent was a judge because of her earlier references to her judicial status, testified that he understood that she was "ma[king] that statement in connection with not wanting to be arrested, not wanting to proceed with the arrest process." These gratuitous references to her judicial position while attempting to avoid the consequences of her arrest were an implicit request for special treatment, conveying the appearance that she was calling attention to her status as a judge in order to bolster her plea to the police. By itself, such behavior can warrant public discipline even when a judge has been found not guilty of the underlying offense charged. *See Matter of Werner*, 2003 NYSCJC Annual Report 198. As we stated in *Werner*: "Public confidence

in the fair and proper administration of justice requires that judges, who are sworn to uphold the law, neither request nor receive special treatment when the laws are applied to them personally" (*Id*).

Respondent's argument that in referring to her judicial duties while pleading with the supervisor she was only seeking to telephone her court to advise her clerk that she could not handle arraignments that morning is inconsistent with her actual words to Lupo ("Please don't do this"), which he noted contemporaneously. (His notes also indicate "crying," "begging," "pleading," "I have to go to work," "I have court right now.") Since it was clear that, as Lupo understood, she was "pleading" because she did not want to be arrested, any reference to her judicial position in that context could be perceived as conveying the message that because she is a judge, she should be exempt from the ordinary standards of law enforcement that apply to others. As we have previously indicated, such a message is repugnant and inconsistent with ethical standards prohibiting a judge from using the prestige of judicial office to advance private interests (*see*, *e.g.*, *Matter of Maney*, 2011 NYSCJC Annual Report 106; Rules, §100.2[C]). Gratuitously referring to the judge's judicial position in circumstances conveying the appearance of seeking special consideration is also inconsistent with Rule 100.2(A), which requires a judge to avoid even the appearance of impropriety.

Giving respondent the benefit of a doubt, we accept the referee's conclusion that respondent's earlier statement to Trooper Kowalski at the scene of her arrest that she was "going to City Court to do the arraignments at 9:30" was not an improper assertion of her judicial position since it was an accurate response to the

trooper's question. Nevertheless, her comment provided a significant context for her subsequent statements to him about why there was no basis for arresting her.[2] Having identified herself as a judge, she attempted to dissuade the trooper from arresting her by lecturing him about the law, advising him repeatedly that he lacked "probable cause" and "enough for a conviction" and warning that he was "making a very big mistake." Explaining these statements, respondent testified at the hearing, "I went over the factors … I was just explaining to him why this wasn't sufficient for a DWI." By making such statements after referring to her judicial status, she was not simply defending herself, but was giving her "unsolicited judicial opinion" about the merits of the arrest in an effort to persuade the trooper to drop the matter. *See Matter of Ayres*, 30 NY3d 59, 64-65 (2017) (town justice who was not a lawyer referenced his judicial status while acting as his daughter's advocate in a traffic case, thereby using his judicial position for personal gain).

Following her conviction for Driving While Intoxicated, respondent was sentenced to a one-year conditional discharge, the terms of which required that she "Abstain from Alcoholic Beverages and All Products That Contain Alcohol," that she install an ignition interlock device ("IID") on her vehicle and comply with the device's requirements, and that she submit to testing for alcohol or drugs. Notwithstanding those obligations, respondent has acknowledged that within days of her sentencing she began

[2] Respondent's argument that the trooper did not know she was a judge until they were at the police barracks is belied by her testimony that when she told him she could not perform the standard field sobriety tests because she had a brain injury, he mocked her by asking, "How can you have a brain injury if you're a judge?"

drinking alcohol and was soon "drinking heavily" to cope with stress, and, within six weeks of her sentencing, she willfully attempted to engage in the same reckless, unlawful behavior that had resulted in her original conviction. On two separate occasions she was captured in photographs blowing into the IID in her vehicle, which recorded significant levels of blood alcohol content. A few weeks later, in satisfaction of her outstanding alleged violations, she pled guilty to attempting to start and operate her vehicle on one of those occasions with a .078% BAC.

In pleading guilty to that violation, respondent asserted that she had not read the conditional discharge papers and therefore was unaware that alcohol consumption was prohibited, notwithstanding that the requirement was listed in bold type near the top of the first page of the form, that she had read and signed the form on the date of her sentencing and was provided with a copy of it, and that she was generally familiar with the form since she had used in her own court. In view of these factors, her claim seems unpersuasive, although, if true, her lack of vigilance in ensuring that she understood the requirements of her conditional discharge would show an unacceptable indifference to the court-imposed directives she was legally bound to follow.[3] Moreover, that explanation provides no excuse for her patently unlawful behavior, only weeks after her sentencing for DWI, in attempting to start and operate her vehicle despite knowing that she was impaired by alcohol. As respondent has acknowledged, when she attempted to start her vehicle on that occasion she "was drunk" and knew that she should not be

[3] Also troubling is respondent's statement at the oral argument before the Commission that "even if I had [read the papers], I don't think that would have necessarily changed my behavior."

driving, having consumed four glasses of wine and three shots of tequila. Respondent's only explanation for that inexcusable behavior is that it occurred when she had been "partying" with a relative and that she did not intend to "disrespect" or violate the law.

At her sentencing for violating her conditional discharge, respondent apologized to the court, accepted responsibility for her conduct and told the court that she now understood the terms of her sentence and that "I can tell you that from today on, there won't be any violations" of her conditional discharge; she stated, "I can assure you that it won't happen again. I didn't understand. I do understand now."

Nevertheless, six months later, just two days after her IID recorded another "positive blow" by someone who could not be seen on the device's camera[4], respondent booked a one-way ticket to Thailand and departed the following day, intending, she testified, to remain for three months (a period that would coincide with the final three months of her conditional discharge). Prior to her departure, she did not inform either her administrative judge, her attorney or the probation office of her planned absence, nor did she ensure that during that time she would be available for communication regarding her compliance with court-mandated conditions. When the court, upon learning of the latest "positive blow" two weeks later, directed that she "immediately" provide a urine sample for testing or else appear in court on May 30, 2017, respondent did not obtain the required testing or appear in court as directed. In fact, although she claims she learned of the court's ultimatum three days before the return date, she did not return home for

[4] The circumstances of the "positive blow" on April 29 were not fully developed in the record, and respondent has denied that she aware of that incident when she booked her trip.

another week, and when she finally returned, she failed to surrender herself on the outstanding warrant that had been issued for her failure to appear. At the subsequent court hearing, respondent denied that she intentionally violated her conditional discharge, noted that she had never previously been asked to submit to alcohol testing pursuant to its terms, and stated that she had been unable to comply with the court's directives to obtain a urine test or to appear in court on May 30th on short notice. Finding respondent guilty of violating the terms of her sentence, the court re-sentenced her to 60 days in jail, three years of probation and the requirement that she wear a SCRAM ankle monitor for six months.

These repeated, willful violations of the terms of her conditional discharge during a period when she was subject to the court's authority as a result of her conviction demonstrate a persistent, flagrant disregard for her obligation to comply with court-ordered conditions and directions and for her ethical responsibilities as a judge.

The record also establishes that on several occasions respondent engaged in misconduct in connection with her performance of judicial duties. In *People v Thomas*, she arraigned a former client although her impartiality could reasonably be questioned not only because of the prior attorney-client relationship but because of her evident bias, which required her recusal (Rules, §100.3[E][1][a]). Even if respondent mistakenly believed that conducting the arraignment was permissible as long as she subsequently transferred the case, her handling of the proceeding, including her repeated expressions of fondness for her former client and her misuse of her judicial position to benefit him, created an unmistakable appearance of favoritism. Her undisguised attempt to benefit the

defendant by asking her clerk not to transfer the case to a particular judge whom respondent viewed as harsh was particularly improper. The defendant, who was being held on a parole violation arising out of the matter in which respondent had represented him, also benefited from her decision to set a $50 "courtesy" bail, which would give him credit for jail time on the current charge. When a conflict with a party requires disqualification, a judge must recuse at the outset of the case and must not handle an arraignment since arraignments are a significant stage in the criminal proceeding requiring the exercise of discretion (*Matter of LaBombard*, 11 NY3d 294, 298-99 [2008]; and *see* Adv Ops 09-223, 14-166).

In three other cases respondent made discourteous, undignified or otherwise inappropriate comments while presiding over criminal matters in her courtroom. Her response to a defense attorney's comment mocking an alleged victim's claim of sexual abuse was insensitive and conveyed the appearance that respondent regarded the criminal charge as an appropriate subject for humor. Respondent's testimony that she was caught off-guard by the attorney's words, laughed involuntarily and then tried "to smooth it over" is belied by the transcript of the proceeding, which indicates that after laughing and commenting that the attorney's remark "was funny," she exacerbated the impropriety by returning to the subject a minute or two later, repeating the insensitive remark, chiding the prosecutor for failing to find the comment amusing and commenting that she herself found it "freakin' hilarious." It should be noted that while the other instances of respondent's on the bench misbehavior in this record occurred during her first month as a judge, this incident occurred eight months into her tenure. In another case, after learning

that a young female defendant may have spit on and attacked deputies on the way to court, respondent made a series of inappropriate comments to a deputy, suggesting (jokingly, she claimed) that he "tase" the defendant or "punch her in the face" because she "needs a whoopin'." To a defendant charged with Disorderly Conduct for standing in the street blocking traffic, respondent stated, "I hate when people walk in front of my car. If there was [sic] no rules, I would totally run them over because it's disrespectful." Such comments are inconsistent with a judge's obligation "to be the exemplar of dignity and decorum in the courtroom" (*Matter of Caplicki*, 2008 NYSCJC Annual Report 103; Rules, §100.3[B][3]).

The Appropriate Sanction

In determining an appropriate disposition for alcohol-related driving offenses, the Commission in prior cases has considered mitigating and/or aggravating circumstances, including the level of intoxication, whether the judge's conduct caused an accident or injury, whether the conduct was an isolated instance or part of a pattern, the conduct of the judge during arrest (including whether the judge was cooperative or asserted his or her judicial position), and the judge's acceptance of responsibility for the offense and willingness to seek appropriate treatment. With one exception – *Matter of Quinn*, 54 NY2d 386 (1981) – the Commission has admonished or censured judges for such behavior.[5] In *Quinn*, a case nearly four decades ago that involved particularly

[5] *See*, *Matter of Landicino*, 2016 NYSCJC Annual Report 129 (DWI conviction; judge repeatedly asserted his judicial status during arrest [censure]); *Matter of Newman*, 2014 NYSCJC Annual Report 164 (judge convicted of Driving While Ability Impaired ["DWAI"] after rear-ending a car

egregious circumstances (judge was convicted of DWI after a prior conviction for DWAI, repeatedly asserted his judicial position and was uncooperative and abusive to law enforcement personnel), the Commission rendered a determination of removal, and while the Court of Appeals reduced that sanction to censure in view of judge's retirement and poor health, the Court underscored that the judge, who had admitted that he was suffering from the disease of alcoholism, "has demonstrated by his conduct that he is unfit to continue as a Judge" (*Id* at 392). More recently, the Commission has emphasized in several cases involving such offenses that in the wake of increasing recognition of the dangers of driving while impaired by alcohol and of the toll it exacts on society, such behavior will be regarded "with particular severity" (*e.g.*, *Matter of Maney*, *supra*; *Matter of Martineck, supra*; *Matter of Burke*, *supra*) and has stated that the Commission "will

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stopped at a traffic light; was uncooperative during his arrest and made suicidal comments [censure]); *Matter of Apple*, 2013 NYSCJC Annual Report 95 (DWI conviction, based on a BAC of .21% [censure]); *Matter of Maney*, 2011 NYSCJC Annual Report 106 (DWAI conviction; judge made an illegal U-turn to avoid a checkpoint, repeatedly identified himself as a judge and asked for "professional courtesy" [censure]); *Matter of Martineck*, 2011 NYSCJC Annual Report 116 (DWI conviction, based on a BAC of .18%, after driving erratically and hitting a mile marker [censure]); *Matter of Burke,* 2010 NYSCJC Annual Report 110 (DWAI conviction after causing a minor accident [censure, in part for additional misconduct]); *Matter of Mills*, 2006 NYSCJC Annual Report 218 (though acquitted of DWI, judge admitted operating a motor vehicle after consuming alcoholic beverages, "vehemently" protesting her arrest and making offensive statements to the arresting officers [censure]); *Matter of Pajak*, 2005 NYSCJC Annual Report 195 (DWI conviction after a property damage accident [admonition]); *Matter of Stelling*, 2003 NYSCJC Annual Report 165 (DWI conviction following a prior conviction for DWAI before he was a judge [censure]); *Matter of Burns*, 1999 NYSCJC Annual Report 83 (DWAI conviction [admonition]); *Matter of Henderson*, 1995 NYSCJC Annual Report 118 (DWAI conviction; judge referred to his judicial office during the arrest and asked, "Isn't there anything we can do?" [admonition]); *Matter of Siebert*, 1994 NYSCJC Annual Report 103 (DWAI conviction after causing a three-car accident [admonition]); *Matter of Innes*, 1985 NYSCJC Annual Report 152 (DWAI conviction; judge's car struck a patrol car while backing up [admonition]); *Matter of Barr*, 1981 NYSCJC Annual Report 139 (two alcohol-related convictions; judge asserted his judicial office and was abusive and uncooperative during his arrests, but had made "a sincere effort to rehabilitate himself" [censure]).

not hesitate to impose the sanction of removal in the future in an appropriate matter" for such behavior (*Matter of Newman*, *supra*).

In the instant case, respondent's conduct in connection with her conviction for DWI, standing alone, would warrant a severe sanction in view of the aggravating circumstances presented. The crash of her vehicle that caused significant damage, her hostile, profane response to the police investigation, her assertion of her judicial position during her arrest to advance her private interests and the fact that the conduct occurred as she was on her way to court to perform judicial duties are compelling factors that exacerbate her unlawful conduct in that incident. Thereafter, in the nine months that followed her sentencing for that offense, while she was still under the court's jurisdiction pursuant to her conditional discharge, respondent compounded her misconduct to an unacceptable degree by willfully engaging in behavior that resulted in two successive determinations that she violated the terms of her conditional sentence, not only endangering public safety again by attempting to operate her vehicle in an intoxicated condition but demonstrating a profound lack of respect for the very laws she is sworn to administer.

Significantly, respondent has made no argument that her conduct throughout these events was mitigated by the disease of alcoholism, asserting that she does not believe she is alcoholic and citing the evaluations of multiple professionals who concluded she is not suffering from alcohol dependency or has, at most, a "mild" alcohol disorder. *Compare*, *e.g.*, *Matter of Landicino*, *supra*, and *Matter of Quinn*, *supra*. Rather, as the record demonstrates, throughout this entire period and the ensuing

disciplinary proceeding, respondent has continued to insist that she was not intoxicated at the time of her arrest and has attributed most of her behavior not to her own poor choices and poor judgment, but to various external factors and the stresses of coping with her unfair treatment by the court system and court administration and with the excessive attention of news media. Although she expressed some remorse at the oral argument, stating that "in retrospect" she "would do a lot of things differently," she repeatedly showed little or no recognition of her personal responsibility for the consequences of her actions, arguing, for example, that the trooper had no basis for arresting her, that her inappropriate behavior during her arrest was provoked by the trooper's disrespectful conduct,[6] that the judge who handled her criminal case treated her too harshly and that she was so aggrieved by her unjust conviction for DWI that she never read the document listing the terms of her conditional discharge prior to violating it. Similarly, in arguing that she did not intentionally violate her conditional discharge because it was impossible to obtain a court-ordered alcohol test or to appear in court on short notice since she was in Thailand, respondent never acknowledged that those circumstances were entirely the result of her own poor decisions. Respondent's failure to recognize and avoid impropriety and to accept responsibility for her misconduct "strongly suggests that, if [s]he is allowed to continue on the bench, we may expect more of the same" (*Matter of Bauer*, 3 NY3d 158, 165 [2004]).

[6] Although respondent has expressed regret for her combative, uncooperative conduct during her arrest and her hostile, profane statements to the trooper, she has continued to argue that her behavior is mitigated by the improper treatment she received from law enforcement personnel.

As the Court of Appeals has stated, the purpose of disciplinary proceedings is not punishment, but "protection of the public interest" and "the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents" (*Matter of Seiffert*, 65 NY2d 278, 281 [1985]; *Matter of Reeves*, 63 NY2d 105, 111 [1984], quoting *Matter of Waltemade*, 37 NY2d [a], [lll] [Ct on Jud 1975]). We conclude, based on the totality of the circumstances established in the record before us[7], that respondent's behavior shows "complete insensitivity to the special ethical obligations of judges" (*Matter of Steinberg*, 51 NY2d 74, 84 [1980]), including the duty to maintain high standards of conduct at all times, both on and off the bench (Rules, §§100.1, 100.2[A]). As her conduct, viewed objectively, has irretrievably damaged public confidence in her ability to serve as a judge and has demonstrated her "manifest unfitness for judicial office" (*Matter of Quinn*, *supra,* 54 NY2d at 392, 395), it therefore requires the sanction of removal.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Mr. Raskin, Mr. Stoloff and Ms. Yeboah concur.

[7] At the hearing before the referee and during the argument before the Commission, respondent repeatedly referred to extensive media attention she has received since her arrest. In issuing this determination, we emphasize that our decision is based solely on the evidence adduced at the hearing and the arguments presented as reflected in our findings herein.

## CERTIFICATION

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

Dated: April 23, 2018

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

THOMAS P. BROOKS, II,

a Justice of the Veteran Town Court,
Chemung County.

**DECISION AND ORDER**

– – – – – – – – – – – – – – – – – – – – – – –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and M. Kathleen Martin, Of Counsel) for the Commission

The Denton Law Office, PLLC (by Christopher Denton) for Judge Brooks

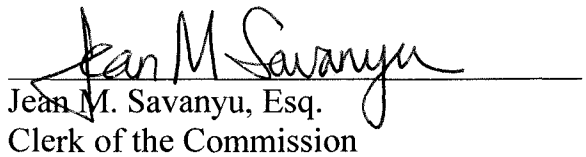
The matter having come before the Commission on June 13, 2018; and the Commission having before it the Stipulation dated April 17, 2018; and Judge Brooks having tendered his resignation by letter dated April 4, 2018, and having affirmed that he

will vacate judicial office as of June 6, 2018, and that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: June 13, 2018



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

**THOMAS P. BROOKS, II** **STIPULATION**

A Justice of the Veteran Court,
Chemung County.

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THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Thomas P. Brooks, II and his attorney, Christopher Denton, of The Denton Law Office, PLLC.

1. Thomas P. Brooks, II has been a Justice of the Veteran Town Court, Chemung County, since 1997. His current term expires on December 31, 2019. He is not an attorney.

2. Judge Brooks was apprised by the Commission in February 2018 that it was investigating a complaint that he resides in his mother's former house in Erin, New York, in violation of the requirement that he maintain a residence in the Town of Veteran, the town in which he presides, as required by Section 23 of the Town Law.

3. Judge Brooks has tendered his resignation by letter dated April 4, 2018, a copy of which is annexed as Exhibit 1. Judge Brooks affirms that he will vacate judicial office as of June 6, 2018.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.[1]

5. Judge Brooks affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

6. Judge Brooks understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, he would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Brooks waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

[1] Pursuant to Section 47, the 120 days commences from the date the resignation is received by the Chief Administrator of the Courts.

Dated: 4-16-18

**Honorable Thomas P. Brooks, II**

Dated: 16 APRIL 2018

**Christopher Denton, Esq.**
The Denton Law Office, PLLC
Attorney for Hon. Thomas P. Brooks, II

Dated: April 17, 2018

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(**John J. Postel and M. Kathleen Martin,**
Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

SUSAN R. CASTINE,

a Justice of the Beekmantown Town Court,
Clinton County.

**DECISION AND ORDER**

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THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena J. Tadjiogueu, Of Counsel) for the Commission

Frank G. Zappala for the Judge

The matter having come before the Commission on February 1, 2018; and the Commission having before it the Stipulation dated January 17, 2018; and Judge

Castine having tendered her resignation as Justice of the Beekmantown Town Court by letter dated December 12, 2017, and having affirmed that she will vacate judicial office effective December 31, 2017, and that having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future; and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: February 5, 2018

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

**SUSAN R. CASTINE,**

A Justice of the Beekmantown Town Court,
Clinton County.

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**STIPULATION**

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Susan R. Castine and her attorney, Frank G. Zappala, Esq.

1. Susan R. Castine has been a Justice of the Beekmantown Town Court, Clinton County, since 2006. Her current term expires on December 31, 2018. She is not an attorney.

2. Judge Castine was apprised by the Commission in March 2017 that it was investigating a complaint that she mishandled a town code proceeding by, *inter alia,* permitting unsworn testimony, failing to advise the defendant of the right to apply for assigned counsel, and making statements on the record that indicated that she had prejudged the defendant as guilty before a trial had been held.

3. Judge Castine was apprised by the Commission in November 2017 that it was investigating a second complaint that she: (1) mishandled matters involving unrepresented, minor defendants; (2) required a defendant in a summary proceeding to present her defense before the presentation of the plaintiff's case; (3) engaged in *ex parte*

conversations and/or elicited incriminating statements from parties; (4) reduced and dismissed charges without notice to, or consent of, the prosecution; (5) failed to advise defendants of the right to assigned counsel or to a preliminary hearing; and (6) failed to have court proceedings audio-recorded in full as required.

4. Judge Castine tendered her resignation as Justice of the Beekmantown Town Court by letter dated December 12, 2017, a copy of which is annexed as Exhibit 1. Judge Castine affirms that she will vacate judicial office effective December 31, 2017.

5. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

6. Judge Castine affirms that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future.

7. Judge Castine understands that, should she abrogate the terms of this Stipulation, hold any judicial position at any time in the future, rescind her letter of resignation, or remain in office beyond December 31, 2017, the Commission's investigation of the Complaint will be revived.

8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

9. Judge Castine waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being

signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 1/5/18

Susan R. Castine

**Honorable Susan R. Castine**

Dated: 1/5/18

**Frank G. Zappala, Esq.**
Attorney for Hon. Susan R. Castine

Dated: 1/17/2018

Robert H. Tembeckjian

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(**Cathleen S. Cenci** and **Eteena J. Tadjiogueu**, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

RENNEE N. CROFOOT,

a Justice of the Barrington Town Court, Yates County.

**DECISION AND ORDER**

– – – – – – – – – – – – – – – – – – – – – – – –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and M. Kathleen Martin, Of Counsel) for the Commission

Honorable Rennee N. Crofoot, *pro se*

The matter having come before the Commission on October 25, 2018; and the Commission having before it the Stipulation dated October 12, 2018; and Judge Crofoot having tendered her resignation by letter dated October 1, 2018, having affirmed

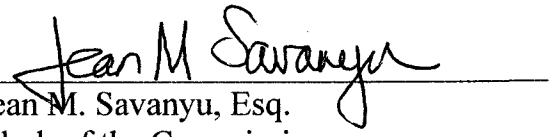
that she vacated judicial office as of October 3, 2018, and that she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Stoloff was not present.

Dated: October 26, 2018



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

**RENNEE N. CROFOOT,**

A Justice of the Barrington Town Court,
Yates County.

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**STIPULATION**

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable Rennee N. Crofoot.

1. Rennee N. Crofoot has been a Justice of the Barrington Town Court, since 2014. Her current term expires on December 31, 2021. She is not an attorney.

2. Judge Crofoot was apprised by the Commission in September 2018 that it was investigating a complaint that she improperly interjected herself in a pending custody proceeding by criticizing one of the parties in an email to the court, identifying herself as a judge and lending the prestige of judicial office to advance a private interest.

3. Judge Crofoot has tendered her resignation by letter dated October 1, 2018, a copy of which is annexed as Exhibit 1. Judge Crofoot affirms that she vacated judicial office as of October 3, 2018.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.

5. Judge Crofoot affirms that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future.

6. Judge Crofoot understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, she would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Crofoot waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 10-11-2018

Honorable **Rennee N. Crofoot**

Dated: 10/12/2018

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(**John J. Postel and M. Kathleen Martin**, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

WILLIAM J. FISHER,

a Justice of the Worcester Town Court,
Otsego County.

# DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of Counsel) for the Commission

Michael L. Breen for the respondent

The respondent, William J. Fisher, a Justice of the Worcester Town Court, Otsego County, was served with a Formal Written Complaint dated February 23, 2018, containing one charge. The Formal Written Complaint alleged that respondent

improperly entered a property without the owner's permission, took photographs of the property which he posted on Facebook along with disparaging comments about the owner, and failed to promptly remove the offensive Facebook post despite assuring the Commission that he would do so.

On March 20, 2018, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On June 13, 2018, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Worcester Town Court, Otsego County, since July 1991. His current term expires on December 31, 2018. He is not an attorney.

2. From January 2015 to February 2018, as set forth below, respondent failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, failed to avoid the appearance of impropriety and failed to conduct all of his extra-judicial activities so that they do not detract from the dignity of judicial office, in that:

A. In January 2015 respondent, without notice or permission, entered the home of a woman who had defaulted on a mortgage held by an estate of which

respondent's wife was co-executrix. Respondent took photographs to document what he considered to be the poor physical condition of the premises, and he posted the photographs on his wife's Facebook account with the comment "Mom and Alton are turning over in their graves," referring to the deceased relatives who left the estate;

B. On April 6, 2017, respondent publicly posted four of the photographs of the premises on his own Facebook account, as well as six photographs of the residence's interior taken prior to its sale. Along with the "before" and "after" photographs, respondent commented on contrasting the condition of the home before and after the sale, and he stated that the buyer had been in arrears in her mortgage payments. Respondent made the posting in retaliation for the woman's public accusations that respondent and his co-judge had committed judicial misconduct; and

C. Respondent did not remove the four "after" photographs from his Facebook account until November 13, 2017, following an inquiry by the Commission. As of February 2, 2018, respondent had not removed from his Facebook account either the "before" photographs or the comments about the condition of the house or the buyer's mortgage arrearage.

3. Respondent is married to Joanne Fisher. In 2008, following the death of Ms. Fisher's stepfather, Alton Adams, Ms. Fisher became a co-executrix of his estate ("Estate"). The primary asset of the Estate was a house located at [redacted] ("Property").

4. Respondent was not an executor or beneficiary of the Estate and had no legal right to act on its behalf.

5. In March 2012 the Estate sold the Property to S. The note and mortgage identified the Estate as the mortgagee and provided that S. was to make monthly payments to the Estate until March 16, 2015, at which time she was required to make a "balloon" payment of the outstanding balance. Under the note and mortgage, the Estate's legal remedies, upon a default by the buyer, were to commence summary eviction and/or foreclosure proceedings. The note and mortgage included no provision granting the Estate a right to enter and inspect the Property.

6. On January 10, 2015, S. was in arrears in her mortgage payments and was not living on the Property. After consulting the Estate's attorney but without providing notice to S. or obtaining her permission to enter, respondent entered the Property, which was in a state of disorder, and took photographs of the premises. The Estate had not commenced legal proceedings against S.

7. Facebook is an internet social networking website that *inter alia* allows users to post and share content on their own Facebook accounts as well as on the Facebook accounts of other users. Facebook users are responsible for managing the privacy settings associated with their accounts. At the option of the account holder, the content of one's Facebook account may be viewable online by the public or restricted to one's Facebook "Friends."

8. In January 2015 respondent's wife maintained a Facebook account under the name "Joanne Fisher."

9. On January 18, 2015, respondent posted seven of the photographs he had taken of the Property on Ms. Fisher's Facebook account, including at least two

photographs showing the Property's interior. The photographs were posted with a comment stating "Mom and Alton are turning over in their graves," a reference to respondent's deceased mother-in-law and stepfather-in-law.

10. Other Facebook users wrote comments on Ms. Fisher's Facebook account expressing, *inter alia*, their disgust and sadness concerning the state of the Property without identifying S. by name. Respondent's son, who is also named William Fisher, indicated in two comments that the owner of the house had children and "had many visits . . . And many phone calls for action[.]" Another Facebook user opined that the residents of the Property were "either on drugs or have mental illness."

11. Although S. was not "Friends" with Ms. Fisher on Facebook, she was able to view the content of the January 18, 2015 post on Ms. Fisher's Facebook account, including the comments left by other Facebook users. In November 2016, S. took screenshots of portions of the Facebook post on her mobile phone.

12. In August 2015 S. completed payment of the outstanding balance due to the Estate, discharging the mortgage, and subsequently completed renovations to the Property.

13. From December 2015 to February 2017, S.'s then-domestic partner, G., was a defendant in three proceedings in Worcester Town Court, in which S. was the complaining witness.

14. By letter dated March 15, 2017, addressed to the Worcester Town Court Clerk, the Commission requested copies of court records and audio recordings of proceedings related to G. The Commission's letter made no reference to S.

15. Between March 17, 2017, and March 21, 2017, G. was charged with various offenses in Worcester Town Court. S. was the complaining witness. Respondent's co-judge, Brian P. Keenan, presided over the charges and sentenced G. to a conditional discharge in November 2017.

16. By letter dated March 27, 2017, respondent personally replied to the Commission's request for records by submitting copies of the G. court records. Respondent also gratuitously included numerous pages containing apparent Facebook posts by S. from her Facebook account, urging others to contact the Commission about respondent and his co-judge.

17. Respondent sent the Commission the posts from S.'s Facebook account because he believed S. had made a complaint against him with the Commission and he wanted the Commission to understand "what [he] was dealing with."

18. In April 2017 respondent maintained a Facebook account under the name "William Fisher."

19. On April 6, 2017, respondent posted ten photographs onto his Facebook account, with the comment: "house before sale(holding paper) [sic] next photos behind 4 months of not making payments and not paying and ballon [sic] payment of ($25000.00) power off, behind $6200.00 in taxes starting to foreclose.good [sic] thing mommy and daddy come [sic] through. (if selling do a back groung [sic] check.)" (The "mommy and daddy come through" reference is to financial aid respondent believed S. had received from her parents to discharge the mortgage.)

20. Six of the ten photographs posted by respondent were date-stamped

February 15, 2011, purportedly showing the interior of the Property prior to its sale to S. The other four photographs, date-stamped January 10, 2015, were among the ones respondent had taken of the Property's interior, without authorization, as indicated in paragraph 6 herein.

21. The content of respondent's April 6, 2017 Facebook post was viewable by the public, and other Facebook users wrote comments to the post.

22. Respondent posted the content onto his Facebook account and intended it to be viewable by the public because he was "upset" at S. for repeatedly and publicly accusing him and Judge Keenan of committing judicial misconduct and for publicly encouraging others to file complaints against them with the Commission.

23. In testimony before the Commission on July 10, 2017, respondent pledged to remove the April 6, 2017 Facebook post "this afternoon." By letter dated November 10, 2017, the Commission asked respondent why, as of November 7, 2017, he had not removed the post. On November 13, 2017, respondent removed from the post the four photographs that he had taken of the Property's interior, without authorization, on January 10, 2015. Respondent failed to remove the remainder of the post, including his comment (as quoted in paragraph 19 herein), the February 2011 photographs and comments by other Facebook users, which remained publicly viewable at least until February 2, 2018.

Additional Factors

24. Respondent avers that he believed, as the spouse of an executrix, he could lawfully enter S.'s Property to inspect it, and that it appeared to have been

abandoned and uninhabited. Respondent now realizes he should not have entered the Property without permission of the owner.

25. Respondent did not remove the Facebook post of April 6, 2017, until February 28, 2018. Respondent has no excuse for not having removed it promptly, as he had promised to do when he appeared for testimony at the Commission on July 10, 2017.

26. Respondent promises to be more circumspect in the use of social media in the future, to ensure that none of his postings convey the appearance of impropriety, conflict or interfere with his judicial duties or detract from the dignity and impartiality of the judiciary.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Both on and off the bench, judges are held to standards of conduct "much higher than for those of society as a whole" (*Matter of Kuehnel,* 49 NY2d 465, 469 [1980]; Rules, §100.2). Even personal conduct by a judge unrelated to judicial office may be subject to discipline. *See, e.g., Matter of Fiechter,* 2003 NYSCJC Annual Report 110 (judge sent copies of letter denigrating another judge to numerous other judges and state officials); *Matter of Pautz*, 2005 NYSCJC Annual Report 199 (judge engaged in a

series of annoying acts toward a woman with whom he had had a personal relationship); *Matter of Honorof*, 2008 NYSCJC Annual Report 133 (judge failed to make payments owed under a confession of judgment). As respondent has stipulated, his actions in connection with a property that had been sold by the estate of his wife's stepfather detracted from the dignity of judicial office and constitute a departure from the exacting standards of personal conduct required of judges (Rules, §§100.2[A], 100.4[A][2]).

Respondent has acknowledged that at a time when the property's owner was in default on the mortgage held by the estate, of which his wife was co-executrix, he entered the property without the owner's permission, took photographs of the house's interior and posted them on Facebook with a comment about the property's deteriorated physical condition. Even if, as he claims, the property appeared to have been "abandoned and uninhabited," respondent had no legal right to enter, "inspect" and photograph the premises simply because of his wife's connection to the estate, which, in the event of a default, had legal remedies spelled out in the contract of sale. As a judge for over 20 years who presumably has handled numerous Trespass cases, respondent should have recognized that entering a private property without the owner's permission may constitute a violation under the Penal Law (§140.05). We are unpersuaded by his dubious claim that he mistakenly believed he could lawfully enter the property to inspect it because of a spousal connection. We note, however, that it has been stipulated that he acted after consulting the estate's attorney, and while that is inconclusive, acting in good faith after attempting to get legal advice about the matter would be mitigating.

More problematic is respondent's Facebook post two years later, when he

again posted the photos he had taken during his unauthorized inspection of the property, along with derogatory comments about the owner (S.) and her past arrears on the mortgage, which had since been discharged. By that point, respondent knew that the Commission was investigating his court's handling of cases in which S. was the complaining witness, which were pending before respondent's co-judge, and he knew that S. had publicly encouraged others with complaints about him and his co-judge to contact the Commission. Indeed, respondent has admitted that this Facebook post was retaliatory in that he posted the content because he was upset that S. had repeatedly and publicly accused him and his co-judge of misconduct and encouraged others to file complaints against them. Even if he was provoked by what he perceived as S.'s improper behavior, it was respondent's obligation as a judge to observe high standards of conduct and to act with restraint and dignity instead of escalating the unseemly public accusations and debate over a private matter that played out on Facebook. Every judge must understand that a judge's right to speak publicly is limited because of the important responsibilities a judge has in dispensing justice, maintaining impartiality and acting at all times in a manner that promotes public confidence in the judge's integrity. Although neither of the posts at issue referred to respondent's judicial position or mentioned S. by name, many in his small community would likely know that he is a judge and would recognize the property and individuals involved.

As the Commission and the Advisory Committee on Judicial Ethics have stated, judges who use online social networks must exercise "an appropriate level of prudence, discretion and decorum" so as to ensure that their conduct in such forums is

consistent with their ethical responsibilities (*Matter of Whitmarsh*, 2017 NYSCJC Annual Report 266; NY Jud. Advisory Op. 08-176).

Compounding respondent's misconduct, he inexplicably failed to remove the offensive Facebook post promptly after the Commission questioned him about the matter, despite promising under oath to do so. Although he assured the Commission during his investigative testimony in July 2017 that he would remove the post "this afternoon," he did not remove the four photos taken during his unauthorized inspection of the property until four months later – shortly after the Commission had contacted him again to ask why the post had not been removed – and did not remove the remainder of the post until February 2018. In the meantime, his comments denigrating the property's owner remained on Facebook, and we can assume that more public members would have the opportunity to read them and comment. That was a further injustice to the owner of the property. Respondent concedes that he has "no excuse" for his lengthy delay in removing the post promptly after pledging to do so, and his failure to respond promptly to the Commission's concerns shows a lack of sensitivity to his ethical responsibilities as a judge.

In accepting the jointly recommended sanction publicly admonishing respondent for his behavior, we note that respondent has acknowledged the impropriety of his conduct and has pledged to be more circumspect in the use of social media in the future.

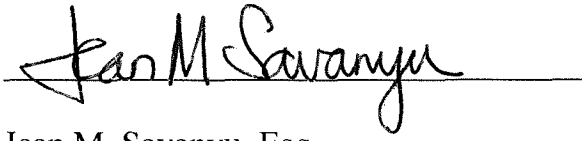
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Mr. Raskin, Mr. Stoloff and Ms. Yeboah concur.

CERTIFICATION

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

Dated: June 26, 2018



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

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 W. HALLETT,

a Justice of the LeRay Town Court,
Jefferson County.

**DECISION AND ORDER**

– – – – – – – – – – – – – – – – – – – –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and M. Kathleen Martin, Of Counsel) for the Commission

Honorable John W. Hallett, *pro se*

The matter having come before the Commission on December 6, 2018; and the Commission having before it the Stipulation dated November 26, 2018; and

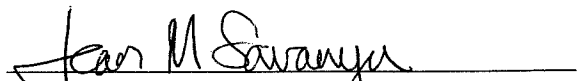
respondent having been served with a Formal Written Complaint dated August 16, 2018, having tendered his resignation as LeRay Town Justice by letter dated November 15, 2018, effective December 31, 2018, having affirmed that upon vacating his judicial office, he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Ms. Yeboah was not present.

Dated: December 6, 2018



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

**JOHN W. HALLETT,**

**STIPULATION**

A Justice of the LeRay Court,
Jefferson County.

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IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable John W. Hallett ("Respondent"), as follows:

1. Respondent was admitted to the practice of law in New York in 1989. He has been a Justice of the LeRay Town Court, Jefferson County, since August 2003. His current term expires December 31, 2019.

2. Respondent was served with a Formal Written Complaint dated August 16, 2018, containing one charge, alleging that between January and June 2017, he made homophobic and/or otherwise inappropriate remarks and gestures to attorney Terence M. Brennen at the Jefferson County Court Complex in Watertown, New York.

3. The Formal Written Complaint is appended as Exhibit 1.

4. Respondent enters into this Stipulation in lieu of filing an Answer to the Formal Written Complaint.

5. Respondent tendered his resignation as LeRay Town Justice by letter dated November 15, 2018, addressed to the LeRay Town Clerk and copied to the Office of the

Administrative Judge, Fifth Judicial District. Respondent's resignation will become effective December 31, 2018. A copy of the resignation letter is appended as Exhibit 2.

6. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.

7. Respondent affirms that, upon vacating his judicial office, he will neither seek nor accept judicial office at any time in the future.

8. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceeding before the Commission will be revived and the matter will proceed to a hearing before a referee.

9. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

10. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 11-14-18

Honorable **John W. Hallett**
Respondent

Dated: Nov. 26, 2018

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(**John J. Postel and M. Kathleen Martin**, Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: FORMAL WRITTEN COMPLAINT
EXHIBIT 2: RESPONDENT'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

JOAN M. KLINE,

a Justice of the Guilford Town Court and
a Justice of the Oxford Village Court,
Chenango County.

**DECISION AND ORDER**

– – – – – – – – – – – – – – – – – – – – – – – –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of Counsel) for the Commission

Scott Clippinger for Judge Kline

The matter having come before the Commission on June 13, 2018; and the Commission having before it the Stipulation dated June 6, 2018; and Judge Kline having

tendered her resignations to both the Oxford Village Board and the Guilford Town Board by letters dated February 22, 2018 and February 23, 2018, respectively, and having affirmed that she vacated both judicial offices as of March 31, 2018, and that, having vacated her judicial offices, she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: June 13, 2018

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

**JOAN M. KLINE,**

A Justice of the Guilford Town Court and
a Justice of the Oxford Village Court, Chenango
County.

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**STIPULATION**

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Joan M. Kline and her attorney, Scott Clippinger, Esq.

1. Joan M. Kline has been a Justice of the Guilford Town Court, Chenango County, since 2008. Her current term expires on December 31, 2021. Judge Kline has also been an Acting Justice of the Oxford Village Court, Chenango County, since March 2013. On May 17, 2017, she was temporarily assigned as a Justice of the Oxford Village Court by Sixth Judicial District Administrative Judge M. Rita Connerton, for a term to expire on April 10, 2018. She is not an attorney.

2. In January 2018, the Commission requested that Judge Kline provide Guilford Town Court records, including audio recordings, of the proceedings in *Timothy Warneck v Michael DeNinis and Vicky Kemmerer.* The records were requested in connection with a complaint alleging that Judge Kline was rude to the defendants and engaged in an

improper *ex parte* conversation with the claimant. In response, Judge Kline provided paper records of the case but did not produce the audio recording.

3. Judge Kline has tendered her resignations to both the Oxford Village Board and the Guilford Town Board by letters dated February 22, 2018 and February 23, 2018, respectively, copies of which are annexed as Exhibit 1 and Exhibit 2. Judge Kline affirms that she will vacate both judicial offices as of March 31, 2018.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings, and if it so determines, render and file with the Court of Appeals a determination that the judge should be removed from office.

5. Judge Kline affirms that, upon vacating her judicial offices, she will neither seek nor accept judicial office at any time in the future.

6. Judge Kline understands that, should she abrogate the terms of this Stipulation, remain in office after March 31, 2018 and/or hold any judicial position at any time in the future, the Commission's investigation of the complaint will be revived.

7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Kline waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 6/4/18

Hon. Joan M. Kline

**Honorable Joan M. Kline**

Dated: 5/22/2018

**Scott Clippinger, Esq.**
Attorney for **Hon. Joan M. Kline**

Dated: June 6, 2018

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(**Cathleen S. Cenci** and **S. Peter Pedrotty**, Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBITS 1 & 2: JUDGE'S LETTERS OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

KENNETH N. LAFAVE,

a Justice of the Ellensburg Town Court,
Clinton County.

**DECISION AND ORDER**

– – – – – – – – – – – – – – – – – – – – – –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena J. Tadjiogueu, Of Counsel) for the Commission

William T. Meconi for the Respondent

The matter having come before the Commission on April 12, 2018; and the Commission having before it the Stipulation dated April 3, 2018; and respondent having tendered his resignation dated March 1, 2018, and having affirmed that he vacated

judicial office as of March 20, 2018, when his resignation was accepted by the Ellensburg Town Board, and that he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: April 12, 2018

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

**KENNETH N. LAFAVE,**

a Justice of the Ellenburg Town Court,
Clinton County.

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**STIPULATION**

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Kenneth N. Lafave ("Respondent"), who is represented in these proceedings by William T. Meconi, Esq., as follows:

1. Respondent has been a Justice of the Ellenburg Town Court, Clinton County, since January 2013. His current term expires on December 31, 2020. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated February 16, 2018, containing one charge. The Formal Written Complaint is appended as Exhibit A.

3. Respondent enters into this Stipulation in lieu of filing an Answer to the Formal Written Complaint.

4. Respondent tendered his resignation, dated March 1, 2018, a copy of which is appended as Exhibit B. Respondent affirms that he vacated judicial office as of March 20, 2018, when his resignation was accepted by the Ellenburg Town Board.

5. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.[1]

6. Respondent affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

7. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceedings before the Commission will be revived and the matter will proceed to a hearing before a referee.

8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

9. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

Dated:

**Honorable Kenneth N. Lafave**
Respondent

Dated:

**William T. Meconi, Esq.**
Attorney for Respondent

Dated: April 3, 2018

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(**Cathleen S. Cenci** and **Eteena J. Tadjiogueu**, Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT A: FORMAL WRITTEN COMPLAINT
EXHIBIT B: RESPONDENT'S LETTER OF RESIGNATION

[1] Pursuant to Section 47, the 120 days commence from the date the resignation is received by the Chief Administrator of the Courts.

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

DONALD G. LUSTYIK,

a Justice of the Norfolk Town Court,
St. Lawrence County.

**DECISION AND ORDER**

- - - - - - - - - - - - - - - - - - - - - - - -

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of Counsel) for the Commission

Pease and Gustafson LLP (by Eric J. Gustafson) for Judge Lustyik

The matter having come before the Commission on October 25, 2018; and the Commission having before it the Stipulation dated October 9, 2018; and Judge

Lustyik having tendered his resignation by letter dated September 30, 2018, having affirmed that he will vacate his judicial office on or before October 31, 2018 and that he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Stoloff was not present.

Dated: October 26, 2018

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

**DONALD G. LUSTYIK,**

A Justice of the Norfolk Town Court,
St. Lawrence County.

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**STIPULATION**

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Donald G. Lustyik and his attorney, Eric J. Gustafson, of Pease and Gustafson LLP.

1. Judge Lustyik has been a Justice of the Norfolk Town Court, St. Lawrence County, since 1986. His current term expires on December 31, 2021. Judge Lustyik is not an attorney.

2. Judge Lustyik was apprised by the Commission in August 2018 that it was investigating a complaint that in *American Property Rentals v Allan and Heather Addison*, a landlord-tenant matter, he ordered the eviction of the tenants without conducting a hearing or affording them a full opportunity to be heard. Judge Lustyik was scheduled to appear and give testimony in the Commission's investigation on September 27, 2018.

3. Judge Lustyik has tendered his resignation by letter dated September 30, 2018, a copy of which is annexed as Exhibit 1. Judge Lustyik affirms that he will vacate his judicial office on or before October 31, 2018.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.

5. Judge Lustyik affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

6. Judge Lustyik understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived.

7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Lustyik waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 10-4-18

Honorable **Donald G. Lustyik**

Dated: 10-4-18

**Eric J. Gustafson, Esq.**
Pease and Gustafson LLP
Attorney for **Judge Lustyik**

Dated: october 9, 2018

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(**Cathleen S. Cenci** and **S. Peter Pedrotty**, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

ERIKA A. MARTIN,

a Justice of the Manchester Town Court,
Ontario County.

**DECISION AND ORDER**

– – – – – – – – – – – – – – – – – – – – – – – –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and M. Kathleen Martin, Of Counsel) for the Commission

Robert F. Julian for the respondent

The matter having come before the Commission on September 13, 2018; and the Commission having before it the Stipulation dated August 14, 2018; and respondent having been served with a Formal Written Complaint dated July 9, 2018, and

having tendered her resignation dated August 1, 2018, and having affirmed that she vacated judicial office as of April 30, 2018, and that having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter before the Commission is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: September 17, 2018

Jean M Savanyu

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

**ERIKA A. MARTIN,**

A Justice of the Manchester Town Court,
Ontario County.

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**STIPULATION**

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Erika A. Martin ("Respondent"), who is represented in these proceedings by Robert F. Julian., Esq., as follows:

1. Respondent has been a Justice of the Manchester Town Court, Ontario County, since January 2016. Her term of office would expire on December 31, 2019. Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated July 9, 2018, containing one charge, pertaining to her having been charged with various offenses by a Grand Jury sitting in Ontario County. The Formal Written Complaint is appended as Exhibit A.

3. Respondent enters into this Stipulation in lieu of filing an Answer to the Formal Written Complaint.

4. Respondent tendered her resignation, dated August 1, 2018, a copy of which is annexed as Exhibit B. Respondent affirms that she vacated judicial office as of April 30, 2018.

5. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.[1]

6. Respondent affirms that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future.

7. Respondent understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceedings before the Commission will be revived and the matter will proceed to a hearing before a referee.

8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

9. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

[1] Pursuant to Section 47, the 120 days commence from the date the resignation is received by the Chief Administrator of the Courts.

Dated: 8/9/2018

Erika A. Martin

Honorable Erika A. Martin
Respondent

Dated: 8/8/18

Robert F. Julian, Esq.
Attorney for Respondent

Dated: 8/14/2018

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(John J. Postel and M. Kathleen Martin,
Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT A: FORMAL WRITTEN COMPLAINT
EXHIBIT B: RESPONDENDT'S LETTER OF RESIGNATION

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 P. MCDERMOTT,

a Justice of the Chester Town Court,
Warren County.

# DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena J. Tadjiogueu, Of Counsel) for the Commission

John M. Silvestri for respondent

The respondent, James P. McDermott, a Justice of the Chester Town Court, Warren County, was served with a Formal Written Complaint dated June 18, 2018,

containing one charge. The Formal Written Complaint alleged that respondent failed to account for the receipt of over $15,000 in court funds or promptly remit such funds to the Office of the State Comptroller ("Comptroller") as required and accumulated a surplus of funds in his court bank account which he could not identify. Respondent filed a Verified Answer dated July 16, 2018.

On October 19, 2018, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On December 6, 2018, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Chester Town Court, Warren County, since January 1998. His current term expires on December 31, 2021. Respondent is the sole justice of the Chester Town Court. He is not an attorney.

2. The Chester Town Court has had the same court clerk since in or about 1988. At various times during respondent's judgeship, there have also been additional, part-time clerks.

3. As set forth below, respondent failed to account for the receipt of over $15,000 in court funds or to promptly remit these funds to the person or agency entitled to same, as required by Section 27 of the Town Law, Section 99-a of the State

Finance Law, Section 1803 of the Vehicle and Traffic Law, and Sections 2020 and 2021 of the Uniform Justice Court Act. As of January 2011, respondent had over $10,000 in his court bank account and could not identify the source of the majority of those funds. Notwithstanding a January 2011 audit report published by the Comptroller, recommending that respondent remit the accumulated funds and alter the court's accounting procedures, respondent failed to remit the funds in a timely manner. As of December 2016, respondent had accumulated an additional surplus of over $5,000, the sources of which he could not identify and which he did not timely remit.

4. On February 4, 1998, one month after respondent assumed the bench, approximately $15,487.36 in court funds, which had accumulated during the tenure of prior judges, was deposited into respondent's court bank account at Glens Falls National Bank and Trust Company.

5. In January 2011 the Comptroller published a report summarizing the findings of an audit of the Chester Town Court's financial records for the period of January 1, 2007, to December 31, 2009. Its findings included the following:

A. The 2011 audit report indicated that the court's accounting procedures were inadequate, with the result that, *inter alia,* the court bank account had an unidentified balance of $10,165 as of December 31, 2009. The auditors found that internal controls were not appropriately designed or operating effectively and that, consequently, one out of every 22 cash receipt entries had errors, including eight receipts that were issued out of sequence and numerous differences between the amounts recorded as received and the amounts that were actually deposited. In addition, the dollar amounts

reflected in three of the six monthly reports reviewed did not correspond with the accounting records, and the court clerk did not prepare monthly accountabilities or maintain complete records of bails on deposit.

B. The 2011 audit report further found that respondent did not ensure that the records kept by the court clerks were accurate or corresponded with the supporting documentation. There were inaccuracies and errors throughout the accounting records, including deposits that did not agree with the receipts. The audit report noted that inconsistencies in the court records made it "virtually impossible" to confirm with certainty whether the court was collecting the fines, fees and surcharges that defendants were required to pay, or whether all funds collected were properly recorded and paid over to the Comptroller.

C. In the report, the Comptroller provided seven recommendations, including that respondent determine the source of the unidentified surplus and, if the money in the account could not be identified, report and remit the unidentified balance to the Comptroller as unidentified money. The report did not recommend a time frame to implement the Comptroller's recommendations.

6. A subsequent audit by the Comptroller for the period of January 1, 2015, to December 28, 2016, again indicated that respondent's accounting procedures were inadequate, with the result that, *inter alia,* the court bank account had an average unidentified balance of $15,700 during the audit period. The Comptroller again recommended that respondent identify the source of the unidentified money and remit any unidentified funds to the Justice Court Fund. The report did not recommend a time

frame to implement the Comptroller's recommendations.

7. Respondent did not report or remit the unidentified funds in the court's bank account between the publication of the first audit report in January 2011 through the publication of the second audit report in June 2017.

8. Respondent did not begin to remit the unidentified funds until November 2017, when he reported and remitted $5,000 in unidentified funds to the Comptroller.

9. In March 2018 respondent reported and remitted an additional $5,000 in unidentified funds to the Comptroller.

10. In April 2018, after the Commission first communicated with respondent about the matters herein, the Town of Chester retained a forensic accounting firm to determine, *inter alia,* the source of the unidentified surplus funds. The accounting firm informed respondent that it would be cost prohibitive to identify the source of the surplus funds that had not yet been remitted to the Comptroller.

11. In May 2018, after receiving the accounting firm's report, respondent reported and remitted an additional $5,513.12 in unidentified funds to the Comptroller.

Additional Factors

12. The February 4, 1998 deposit into respondent's court account of funds accumulated by prior judges contained unidentified funds that appear to account for a portion of the surplus identified by the Comptroller in its two audit reports. Respondent acknowledges, however, that the surplus amount increased by approximately $5,000

between the publication of the 2011 and 2017 audit reports, indicating that inappropriate and/or ineffective accounting practices during his tenure also contributed to the surplus of unidentified funds in the court's bank account.

13. Respondent avers that after the Comptroller conducted both audits, he attempted to identify the source(s) of the surplus funds and requested that the Town of Chester provide accounting assistance. That assistance was not provided until April 2018.

14. Respondent acknowledges that he is responsible for accounting for all money collected by the court and deposited into his bank account and for remitting funds as required by the tenth day of the month following collection, that he must supervise the clerk's activities with regard to the receipt, documentation and deposit of court funds, and that he must reconcile his bank account monthly. Respondent pledges to timely seek assistance from the Justice Court Fund and/or Judicial Resource Center with any accounting concerns and questions. He avers that he has undertaken steps to improve accounting procedures, such as obtaining accounting software and separating the court bank account into designated fine and bail accounts.

15. The Comptroller did not find evidence that court funds were lost or misappropriated. However, respondent recognizes that failing to properly account for large sums of money could result in at least the appearance that court funds were being mismanaged or misappropriated, undermining public confidence in the integrity of the court. Therefore, respondent avers that he is committed to avoid any repetition of the deficient financial practices addressed herein.

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), 100.3(B)(1) and 100.3(C)(1) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

The handling of official funds is one of a judge's most important responsibilities, and "a town justice is personally responsible for moneys received by the justice court" (1983 Ops St Comp 83-174). This responsibility requires strict adherence to mandated procedures in order to avoid even the appearance that court funds have been mishandled or misappropriated. Among other requirements, all funds received by a town or village justice are required to be reported and remitted to the appropriate authorities by the tenth day of the month following collection (Uniform Justice Ct Act §§2020 and 2021[1]; Town Law §27; Vehicle and Traffic Law §1803; State Finance Law §99-a).

Respondent acknowledged that after a 2011 audit report by the State Comptroller's Office found an unidentified surplus of more than $10,000 in the court bank account and recommended that he either identify the source of the funds or remit the unidentified balance to the Comptroller, he did not begin to remit the surplus funds until November 2017, a few months after a second audit report found that the amount of the unidentified surplus had ballooned to over $15,000. Not until May 2018 – more than seven years after the initial audit – was the entire amount of the surplus remitted.

Although there is no evidence that any monies were lost or misappropriated, this lengthy delay in reporting and transmitting the funds to the appropriate authorities was improper and deprived state and local governments of thousands of dollars to which they were entitled. *See, Matter of Schiff*, 83 NY2d 689 (1994) (village justice failed to report the dispositions of over 600 cases in a timely manner over a four-year period, resulting in an unidentified surplus of $22,000 in the court account, and failed to take prompt action to remit the surplus funds and remedy his record-keeping practices despite repeated reminders); *Matter of Trickler*, 2010 NYSCJC Annual Report 235; *Matter of Goebel*, 1990 NYSCJC Annual Report 101.

While it is stipulated that a portion of the surplus included funds that had accumulated during the tenure of prior judges that were deposited into the court account shortly after respondent took office in 1998, that does not excuse his laxity in permitting those monies to languish in the account for years. Respondent avers that after both audits, he "attempted to identify the source(s) of the surplus funds and requested that the Town of Chester provide accounting assistance," which was not provided until April 2018. The next month, after a forensic accounting firm retained by the town advised him that it would be "cost prohibitive" to identify the source of the remaining surplus funds, he remitted the balance of the surplus.

Notwithstanding the large unidentified surplus that respondent inherited, it is noteworthy that the amount of the surplus increased by over $5,000 between the issuance of the 2011 and 2017 audit reports, indicating that his own inappropriate and/or ineffective accounting practices were also a contributing factor, even after he was on

notice of the significant problems that existed with respect to his court's procedures and records. Both audits cited numerous discrepancies and deficiencies in the court's records and accounting procedures, noting that such errors made it difficult to determine with certainty whether funds were properly collected and reported. Regardless of whether the record-keeping and procedural errors were attributable to court staff, respondent, as the sole judge of the court, bears responsibility for ensuring that the court's financial activities are properly documented and reported. Judges are required not only to diligently discharge their own administrative duties, but to ensure that the court's staff observe "the standards of fidelity and diligence that apply to the judge" (Rules, §§100.3[C][1] and 100.3[C][2]).

Although the unreported monies at issue were on deposit in the court bank account, any failure to properly account for large sums of money in a timely manner may result in at least the appearance that court funds were being mismanaged or misappropriated, which undermines public confidence in the integrity of the court.

In accepting the jointly recommended sanction of censure, we note that respondent avers that he is committed to avoid any repetition of the deficient financial practices addressed herein, has taken steps to improve the court's accounting procedures, and will in the future seek timely assistance with any accounting concerns and questions that may arise.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge

Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin and Mr. Stoloff concur.

Ms. Yeboah was not present.

CERTIFICATION

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

Dated: December 12, 2018

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

SHARI R. MICHELS,

a Judge of the New York City Civil Court
and an Acting Justice of the Supreme Court,
12th Judicial District, Bronx County.

– – – – – – – – – – – – – – – – – – – – – – – –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Brenda Correa and Mark Levine, Of Counsel)
for the Commission

Godosky & Gentile, P.C. (by David M. Godosky) for respondent

Respondent, Shari R. Michels, a Judge of the New York City Civil Court and an Acting Justice of the Supreme Court, 12th Judicial District, Bronx County, was

served with a Formal Written Complaint dated March 8, 2017, containing one charge. The Formal Written Complaint alleged that in August 2015 after respondent's vehicle struck a police van, respondent asserted her judicial office to advance her private interests, pressured police officers not to complete an accident report and threatened a police officer who completed the report. Respondent filed a Verified Answer dated April 17, 2017.

By order dated August 7, 2017, the Commission designated Malvina Nathanson, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 17, 18 and 19, 2018, in New York City. The referee filed a report dated June 27, 2018.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Both sides recommended that the referee's findings and conclusions be confirmed in part and disaffirmed in part. Commission counsel recommended the sanction of removal, and respondent's counsel argued that respondent's actions do not constitute misconduct but that if misconduct is found, a confidential caution is appropriate. The Commission heard oral argument on October 25, 2018, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Judge of the New York City Civil Court since 2007. Her current term expires on December 31, 2026. Respondent has been an Acting Justice of the Supreme Court, 12th Judicial District, Bronx County, since 2015.

2. At about 4:15 PM on August 6, 2015, a car driven by respondent

stopped behind a marked police van that was stopped at a traffic light on East 161st Street near Gerard Avenue in Bronx County, a short distance from the courthouse where respondent worked. The van contained four police officers from the 48th Precinct in the Bronx who were on their way to an assignment at Yankee Stadium. When the traffic light changed, respondent's car moved forward and made contact with the police van. There were no injuries and no property damage.

3. The officers got out of the van, and respondent got out of her vehicle. During the ensuing events, as set forth below, respondent voluntarily identified herself as a judge to the police several times, presented her judicial identification card, and made several other references to her judicial status. She also repeatedly questioned the necessity for an accident report, and the delay in preparing the report, in an attempt to curtail the investigation and be allowed to leave. She continued to do so even after being informed that a report was required since the accident involved a police vehicle.

4. The driver of the van, Officer Andres Zambrano, was the first police officer to speak with respondent. When he approached her, respondent immediately told him that she was a judge, that there was no damage to the vehicles and that the vehicles were blocking traffic so, "let's just keep it moving." Zambrano obtained her driver's license, registration and insurance information. He told respondent that whenever a police vehicle is in an accident, the police are required to call a supervisor and make a report.

5. Zambrano called his supervisor, Sergeant Nathan Yakubov, who

arrived a short time later. After Zambrano informed him that respondent was a judge, Sergeant Yakubov spoke with respondent, who was upset at having to wait for an accident report. He explained that a report was necessary because a police vehicle was involved.

6. Since the sergeant had to leave for the Yankee Stadium assignment, he directed Zambrano to call a supervisor from the 44th Precinct, where the accident had occurred. Several minutes later Sergeant Owais Khanzada arrived, and an officer informed him that the driver of the second vehicle was a judge. Sergeant Yakubov told Khanzada that he would have to make the report.

7. Respondent approached Sergeant Khanzada and identified herself as the driver. In response to his request, she provided her license, registration and insurance card. Although he had not asked where she was employed, she also identified herself as a judge who worked in the Supreme Court, Civil Term, and she gave him her judicial identification card.

8. Respondent, who had suggested earlier that the police van and her car should move since they were blocking traffic, told Sergeant Khanzada that the vehicles should be moved. At some point both vehicles were moved (with respondent driving her own car) around the corner onto Gerard Avenue.

9. After Sergeant Khanzada interviewed the officers and respondent about the details of the incident, respondent asked him if he was doing an accident report, and he replied that he was. Respondent told him that he did not have to make a report

and should "just let it slide," or words to that effect, since there were no injuries or damage to the vehicles. While there is some dispute as to the precise words she used, respondent clearly conveyed to Khanzada, the officer responsible for preparing the report, that she did not think a report was necessary. Khanzada told her that he was required to make a report because a police vehicle was involved in an accident.

10. Respondent has acknowledged that she also made a reference to her courtroom while speaking to Sergeant Khanzada.[1]

11. While Sergeant Khanzada was preparing the report, respondent spoke with his driver, Officer Louis Guglielmo. Respondent appeared frustrated and indicated to Guglielmo that she did not understand why an accident report was needed and why it was taking so long; she mentioned that it had been a long day and she had to be in court the next morning. Guglielmo explained that the police had to comply with the required procedures. He also told respondent that she could get a copy of the report at the precinct, and she replied, "If you want me to have the report, you can bring it to me. I work in the courthouse two blocks that way."

12. Sergeant Khanzada completed an accident report.

13. During the incident, which lasted 45 minutes to an hour, respondent remained at the scene and complied with the police officers' requests.

14. Respondent reported the accident to her insurance carrier. No

[1] The referee stated that it was unnecessary to resolve the differing accounts of what was said since respondent conceded that she "made yet another reference to her role as a judge" (Report, p 7).

insurance claims were filed as a result of the incident.

15. At the hearing before the referee, respondent testified that during the incident she identified herself as a judge in the context of wanting "to alleviate any concerns that the police officers had," including that she was "not going to flee" if allowed to move her car and or make false claims against the police. She expressed regret for identifying herself as a judge and acknowledged that doing so "changes the complexion of the interaction," was interpreted as invoking the prestige of judicial office and "could be perceived as even threatening." She also testified that she regrets making any reference to working at the courthouse and "absolutely regret[s]" her "rude" comment to Officer Guglielmo about bringing a copy of the report to her at the courthouse; she testified that she did not need the report but felt frustrated and annoyed at that point because she had to wait so long for a report to be completed.

16. Respondent also testified that during the incident it was not initially clear to her why an accident report was necessary or that it was required by police protocol, but that she eventually understood that the police had no discretion in the matter. She denied that she attempted to "convince" or "persuade" the police not to make a report; she testified that she only inquired in order to understand why a report was necessary and that it was not her intent "to direct anyone in any way"; she now understands that the police "were just doing their job."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.4(A)(1) and

100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established.

Throughout a nearly hour-long incident that began after a minor accident in which respondent's car made contact with a police van at a traffic light, respondent showed insensitivity to her ethical obligations as a judge. From the first moments after the accident, when she identified herself as a judge to the van's driver, through successive conversations with other officers who arrived at the scene, respondent repeatedly invoked her judicial status while questioning the officers' actions and conveying in no uncertain terms how she wanted the matter to be handled. To the driver of the van and the sergeant responsible for investigating the matter, she identified herself as a judge or a Supreme Court judge, although neither had asked where she was employed, and she also gave the sergeant her judicial identification card. To that sergeant and another officer, she also made gratuitous references to her courtroom and the nearby courthouse where she worked. Identifying herself as a judge or making any reference to her judicial status was entirely unnecessary and inappropriate in that situation and created the appearance that respondent did not want to be treated like an ordinary motorist involved in an accident, but instead expected deference because of her judicial position. Such behavior is inconsistent with well-established ethical standards prohibiting judges from lending the

prestige of office to advance private interests and requiring judges to act "at all times" in a manner that promotes public confidence in the integrity of the judiciary and to avoid even the appearance of impropriety (Rules, §100.2[A], [C]).[2]

As the referee found, respondent's references to her judicial position were coupled with persistent questioning about why it was necessary for the police to prepare an accident report in connection with the incident. Even after the van's driver informed her at the outset that such a report was required because a police vehicle was involved, she persisted in questioning the need for a report in discussions with other officers, each of whom told her the same thing. Respondent should have recognized at the accident scene that, as she acknowledged at the hearing, identifying herself as a judge in such circumstances "changes the complexion of the interaction" and, therefore, that it would be perceived as adding her judicial clout to all of her statements, including her directive to the van's driver ("let's just keep it moving"), her requests to move the vehicles to

[2] *See, e.g.*, *Matter of LaBombard*, 11 NY3d 294, 296, 299 (2008) (judge's behavior in "repeatedly and gratuitously" referring to his judicial status after a motor vehicle accident and implying that because of his judicial status the other motorist must have been at fault "suggest[s] a willingness to misuse his judicial office for personal advantage – a quality that is antithetical to the judicial role"); *Matter of Landicino*, 2016 NYSCJC Annual Report 129 (judge's repeated invocation of his judicial position during his arrest for Driving While Intoxicated "creat[ed] the appearance that he was using the prestige of judicial office in an attempt to minimize the consequences of his unlawful behavior" and conveyed an "implicit message…that because he is a high-ranking judge, he should be exempt from the ordinary standards of law enforcement that apply to others"); *Matter of Werner*, 2003 NYSCJC Annual Report 198 (by showing his judicial identification during a traffic stop in response to a request for his driver's license and registration, judge "gratuitously interjected his judicial status into the incident, which was inappropriate…even in the absence of an explicit request for special consideration"); *Matter of D'Amanda*, 1990 NYSCJC Annual Report 91 (judge invoked his judicial status on three occasions to avoid getting traffic tickets; "[t]he mere mention of his judicial office in order to obtain treatment not generally afforded to others violates the canons of judicial ethics").

another area, and her questions and observations about the necessity for a report. Notwithstanding her insistence that she never attempted to persuade the police not to do a report, respondent's statements to Sergeant Khanzada (the officer responsible for preparing the report) in which she referred to her judicial role while conveying that she believed a report was unnecessary can only be understood as pressure to forego the report, using her status as a judge. This is particularly so since (i) at least two other officers had already explained to her that police protocol required a report and (ii) having already identified herself as a judge to the sergeant and given him her judicial identification, she ratcheted up the pressure by making a gratuitous reference to her courtroom after he told her he would do a report. Invoking her judicial status to pressure the police to depart from their required procedures for her personal benefit was a particularly improper assertion of influence. Based on our review of the entire record, we find no reason to overturn the referee's factual findings regarding the substance of respondent's statements to the officers and her intent in making them, as reflected in our findings herein.

"Public confidence in the fair and proper administration of justice requires that judges, who are sworn to uphold the law, neither request nor receive special treatment when the laws are applied to them personally" (*Matter of Werner*, *supra*). In the circumstances here – a police investigation of an accident in which a judge was involved – the public would expect the judge not only to comply with the officers' requests but to give deference to the officers' judgment without repeatedly questioning

and expressing dissatisfaction with their procedures. As the Court of Appeals has stated:

> "Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved…. There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary."

*Matter of Lonschein*, 50 NY2d 569, 572 (1980); *see also Matter of Kuehnel*, 49 NY2d 465, 469 (1980) ("[T]hroughout this entire incident [the judge], 'although off the bench remained cloaked figuratively, with his black robe of office devolving upon him standards of conduct more stringent than those acceptable for others'").

In determining the appropriate sanction for respondent's violation of the above-cited ethical standards, we reject respondent's argument that public discipline is unwarranted because the "private interest" she was seeking to further during the incident was relatively minor. Although the police report itself may have been inconsequential to respondent except for the resulting delay, her desire to be allowed to leave the accident scene more quickly was clearly important enough to her to warrant invoking her judicial status repeatedly at each stage of her interactions with the police, in violation of Rule 100.2(C). In view of such behavior and the totality of the circumstances as set forth above, we conclude that a public admonition is required. In imposing this sanction, we remind every judge of the obligation to abide by this important ethical mandate.[3]

[3] While we are mindful that respondent was previously admonished for misconduct during her 2006 campaign for judicial office (*Matter of Michels*, 2012 NYSCJC Annual Report 130), the conduct established in the matter before us, by itself, provides ample basis for public discipline.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin and Ms. Yeboah concur.

Mr. Stoloff was not present.

CERTIFICATION

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

Dated: December 27, 2018

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

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

TERRENCE C. O'CONNOR,

a Judge of the Civil Court of the City
of New York, Queens County.

# DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Edward Lindner, Mark Levine, Brenda Correa and Daniel W. Davis, Of Counsel) for the Commission

Honorable Terrence C. O'Connor, *pro se*

The respondent, Terrence C. O'Connor, a Judge of the Civil Court of the City of New York, Queens County, was served with a Formal Written Complaint dated May 30, 2017, containing four charges. The Formal Written Complaint alleged that

respondent failed to cooperate with the Commission's investigation (Charge I); was discourteous to lawyers in two cases who responded "okay" to their witnesses' answers, struck the witnesses' testimony and dismissed the cases (Charge II); was discourteous to lawyers in three other cases (Charge III); and sua sponte awarded "fees" to counsel in nine civil actions without affording an opportunity to be heard (Charge IV). Respondent filed an Answer dated June 19, 2017.

By Order dated June 18, 2017, the Commission designated Peter Bienstock, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on September 11 and 12, 2017, in New York City. Respondent did not appear at the hearing or on two subsequent dates scheduled by the referee. The referee filed a report dated December 14, 2017.

Counsel to the Commission filed a brief recommending confirmation of the referee's report and the sanction of removal. Respondent filed a letter dated January 9, 2018, opposing the recommendations. On February 1, 2018, the Commission heard oral argument, at which respondent did not appear, and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Judge of the Civil Court of the City of New York, Queens County, since 2009. His current term expires on December 31, 2018.

As to Charge I of the Formal Written Complaint:

2. By letter dated September 9, 2016, the Commission advised respondent that it was investigating three complaints concerning his conduct, provided

him with copies of the complaints and requested his written response to the allegations. Respondent replied by letter dated September 22, 2016. By letter dated December 13, 2016, the Commission requested respondent's appearance at the Commission's office on January 4, 2017, to testify in connection with the complaints. The Commission's letter was accompanied by copies of the complaints and related documents.

3. By letter to the Commission dated December 20, 2016, respondent responded: "I have been unable to confer with my attorney due to his undergoing a medical procedure that I am told will last at least six more weeks. Thus I will be unable to appear as you requested until he is back at work and able to confer with me. When he returns I will ask him to contact you."

4. By letter dated December 23, 2016, sent by overnight delivery, the Commission advised respondent that his scheduled January 4th appearance was postponed and requested that he provide his attorney's name and telephone number by December 28, 2016. The letter was delivered to respondent's court address on December 27, 2016. In response, in correspondence dated January 10, 2017, sent by first-class mail, respondent identified his attorney as Joseph V. DiBlasi and provided the attorney's contact information.[1] This correspondence, which was addressed to "Laura Soto / 646 386 4810 / State of New York / 61 Broadway / NY. NY. 10006," was not delivered but was returned to sender by the post office marked "NOT DELIVERABLE AS ADDRESSED." Ms. Soto

[1] Mr. DiBlasi had represented respondent several years earlier in a Commission matter (*Matter of O'Connor*, 2014 NYSCJC Annual Report 174). He had no contact with the Commission in connection with the instant matter.

is an assistant administrative officer in the Commission's legal department.

5. Having received no response to its December 23rd letter, the Commission sent respondent two additional letters, dated January 6, 2017, and January 11, 2017, again requesting that he identify his attorney. On January 30, 2017, the Commission personally served respondent with a letter stating that he had not responded to the Commission's requests for information about his attorney and requesting his appearance for testimony at the Commission's office on February 15, 2017.

6. By letter postmarked January 31, 2017, respondent advised the Commission that he had "responded to your letters on the same day I received them," that "the bulk of [the Commission's] correspondence was sent when the Court was closed for the Holidays" and that he "was out with a back injury the first week of January." (Respondent's absence from work in early January was confirmed by his supervising judge at the Commission hearing.) Respondent's letter further stated that his attorney had died on January 15, 2017, and that once an executor was appointed and it was decided who would be taking over the attorney's cases he would inform the Commission who would be representing him. On February 1, 2017, respondent forwarded to the Commission his original January 10th correspondence which bore a postal sticker indicating that it had been returned, and enclosed a note stating: "This was returned, despite being addressed exactly as on the envelope it came in."[2]

7. By letter dated February 7, 2017, the Commission advised

[2] This is an apparent reference to the return address on the UPS envelope for Commission correspondence, which includes a telephone number of a Commission employee.

respondent that his investigative testimony was postponed to March 7, 2017, and that the inquiry would not be held in abeyance pending the appointment of an executor in his late attorney's estate, the settlement of his estate or the disposition of his law practice.

8. On March 7, 2017, respondent appeared without counsel at the Commission's office before a Commission referee, Malvina Nathanson, Esq. Prior to being asked to take an oath, respondent stated that he was "not prepared to proceed" because he did not "have access to any of the records" of "any investigation" that his late attorney had conducted since no executor had been appointed for the attorney's estate. He stated that he had requested such records from the attorney's family and was told that someone from the law firm of Sullivan & Cromwell would be in charge of his files, but he admitted he had not attempted to ascertain the name of the individual handling the matter.

9. After a short recess, the referee attempted to administer an oath to respondent, but he refused in the absence of counsel to take the oath or to affirm the truthfulness of his earlier statements.

10. Commission counsel requested that the proceeding be adjourned for three weeks and stated that if respondent failed to appear on the adjourned date, counsel would ask the Commission to charge him with failure to cooperate with the investigation. The referee adjourned the proceeding to March 29, 2017, at 10:00 AM.[3]

[3] Respondent was charged with stating after the March 7th proceeding concluded, in the presence of two Commission staff members, "This place is a fucking clown show." Based on the circumstances presented, including the testimony that respondent, who appeared agitated and upset, made the comment as he was entering an elevator leaving the Commission's office, we have not considered

11. On March 8, 2017, the Commission sent respondent, by hand and overnight delivery, copies of the documents and correspondence previously provided to him during the investigation. The Commission's cover letter noted the date and time of respondent's rescheduled appearance and requested that he advise the staff on or before March 22, 2017, whether he would be represented by counsel and, if so, to identify his attorney. The letter also stated that his failure to appear on the adjourned date may be found to be a failure to cooperate with a Commission investigation. In a follow-up letter to respondent dated March 13, 2017, Deputy Administrator Mark Levine reiterated that admonition, summarized what had occurred at respondent's March 7th appearance and advised him that the proceedings would not be delayed pending the naming of his late attorney's executor or respondent's effort to obtain the attorney's files.

12. Respondent failed to appear for his adjourned testimony on March 29, 2017. On that date, the Commission received a letter from respondent addressed to Mr. Levine, sent by first-class mail and postmarked March 27, 2017, stating: "Based on the blatant lies in your most recent letter, it is clear that nothing you are involved with would be remotely fair and thus I decline your invitation to appear on the 29th."

As to Charge II of the Formal Written Complaint:

13. On September 17, 2014, respondent presided in the commercial landlord/tenant part over a non-jury trial for non-payment of rent in *Main Street Shops v AV Queens Nail Spa Salon.* Attorney Daniel Pomerantz, an experienced practitioner who

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this aspect of the charge in making our determination.

had previously appeared before respondent, represented the landlord/petitioner and intended to call Jacob Sedgh, the agent for the property, as his sole witness.

14. As the proceeding began, respondent made sarcastic comments about the witness' late arrival, and Mr. Pomerantz apologized on his client's behalf. Before a court officer administered the oath to Mr. Sedgh, respondent yelled at him to "Stand up. What's the matter with you?"

15. During his direct examination of the witness, Mr. Pomerantz said "okay" after Mr. Sedgh answered a question. Respondent angrily accused Mr. Pomerantz of leading the witness by saying "okay" after the witness' response and directed him not do so; he referred again to the witness' late arrival, told Mr. Pomerantz that telling the witness that his answer was "okay" was "a form of communication with your client" and warned that he would strike the testimony if the attorney did it again. Mr. Pomerantz apologized.

16. A few minutes later, after the witness responded to a question asking him to name the parties listed on the lease, Mr. Pomerantz said, "Okay, thank you," whereupon respondent sua sponte struck the witness' testimony. When Mr. Pomerantz indicated he had no other witnesses, respondent invited opposing counsel to make a motion to dismiss, then granted the motion that was made. Opposing counsel had never objected to Mr. Pomerantz's use of the word "okay" or to his leading of the witness.

17. Respondent issued an order dated October 7, 2014, granting the motion to dismiss since "petitioner has failed to produce competent evidence in support of the petition." Mr. Pomerantz's client was forced to go through the additional time and

expense of starting a new case against the tenant.

18. On March 12, 2015, respondent presided over a non-jury trial in *N&E Holdings, LLC. v Apex Auto Dealers 2, Inc.*, in which attorney Pamela Smith represented the landlord/petitioner. During her direct examination of one of the principals of her client, Ms. Smith said "okay" after her witness' answers and before her next questions. Respondent told Ms. Smith to "stop telling [the witness] his answers are okay," and Ms. Smith apologized.

19. Shortly thereafter, Ms. Smith again said "okay" after some of her witness' answers; respondent again told her to stop, and Ms. Smith apologized again.

20. When Ms. Smith said "okay" again after her witness' answers, respondent interrupted her for a third time and told her to "[s]top telling [the witness] his answers are okay." Ms. Smith apologized again and explained that it was a "reflex." Respondent said it was not a reflex because she did not do it all the time, warned that he would strike the testimony and dismiss the case the next time she did it, and asked, "Do we understand each other?"

21. When Ms. Smith said "okay" after the very next answer, she caught herself and immediately apologized. Nevertheless, respondent sua sponte excused the witness and struck the testimony and the documentary evidence presented; he told Ms. Smith, "[T]he testimony is stricken because you clearly were leading him by telling him periodically that his answers were okay. And that's totally unacceptable." Respondent then asked Ms. Smith if she had any other witnesses.

22. Ms. Smith called another witness and said "okay" after the witness'

response to her first question. Respondent told her, "That's once. Next time –." When Ms. Smith said "okay" a short time later, respondent struck the testimony of her second witness. Opposing counsel had never objected to Ms. Smith's use of "okay" or asserted that she was leading the witnesses. After Ms. Smith said she had no other witnesses, respondent granted opposing counsel's motion to dismiss for lack of evidence. For Ms. Smith's client, who had been under contract to sell the property, the dismissal meant he had to restart the case, and he lost approximately $90,000 as a result.

23. Ms. Smith, an experienced litigator, testified at the Commission hearing that her "traumatizing" appearance before respondent prompted her to write to Supervising Judge Joseph J. Esposito. Judge Esposito testified at the hearing that shortly thereafter, he moved respondent out of the commercial landlord/tenant part.

As to Charge III of the Formal Written Complaint:

24. On January 29, 2013, respondent presided over a non-jury trial in *57th Avenue Associates v The New Lefrak City Laundromat, Inc.* The petitioner/landlord was represented by attorney Anthony R. Mordente, and Glenn Michaelson represented the respondent/tenant.

25. After the landlord rested, Mr. Michaelson made an application to limit the rent due to the amount originally pled because no motion had been made to amend the petition to include current rent. Respondent asked Mr. Michaelson, "[W]hat is this, just to make money to use so that they'll hire you again for when he brings the next case?" and when Mr. Michaelson responded in the affirmative, respondent said that

"seems totally disingenuous." When Mr. Michaelson argued that it was in his client's interest to pay less money, respondent stated that he and Mr. Michaelson "have probably a different idea of how a professional conducts themselves." Mr. Mordente made an application to amend the petition to include the current rent, which respondent granted.

26. When Mr. Michaelson sought to call his client as a witness, respondent, in the mistaken belief that the attorney had rested his case, said the attorney did not "understand how a trial's conducted" and had "no idea what you're doing," but permitted him to proceed. During the witness' testimony, when Mr. Michaelson said he did not understand a question that respondent posed, respondent said in a mean-spirited tone, "Apparently, there's a lot you don't understand."

27. On February 27, 2014, respondent presided over a non-jury trial in *Haberman v Triple W. Inc.* Attorney Bessie Chinboukas represented the petitioner/landlord in a holdover proceeding to determine whether the tenant's selling of lottery tickets was a violation of the lease.

28. During the landlord's case, respondent told Ms. Chinboukas that she was "wasting everybody's time" when she argued that another lease was relevant; when she continued to argue about the lease, he asked condescendingly if she misunderstood that it had been admitted in evidence. When Ms. Chinboukas asked permission to resume her questioning, respondent chided her for "making speeches" but told her to continue, and when she responded, "Thank you, Your Honor," respondent accused her of being sarcastic, stating, "You don't have to sarcastically say thank you every time I make a ruling, okay counsel?" Ms. Chinboukas apologized and said she had not meant it

sarcastically, but respondent replied, "I don't see any other way to take it, counsel … It's obviously clear." On rebuttal, when Ms. Chinboukas stated that she wanted "to call the witness one more time" without specifying which one, then apologized when respondent asked her to be more specific, respondent told her, "Maybe you should do something right for a change instead of just apologizing all the time okay, counsel?"

29. On March 12, 2015, respondent presided over a non-jury trial in *Anna Waldman v United Dental Group*. Boris Lepikh, who had been practicing law for about a year, appeared on behalf of the respondent/tenant.

30. Mr. Lepikh entered the courtroom as the case was being called, and the parties began discussing a motion. Respondent became angry and screamed at Mr. Lepikh for interrupting opposing counsel and for not "hav[ing] the courtesy" to take off his coat in court. Respondent denied Mr. Lepikh's motion, which he called a "delay tactic," and ordered him to trial immediately, denying his request for a brief adjournment so that his employer could come to court. When Mr. Lepikh, who was unprepared to try the case, had his phone in his lap to send a text to his employer, respondent yelled at him to put the phone away and said, "Is there some course in law school now, how to be discourteous and how to be rude? Because if there is, you must have gotten an A in it." He then accused Mr. Lepikh of "smirking and laughing" and said, "I'm glad you think it's funny … No wonder people think lawyers are a disgrace. It's people like you who give them that impression." After a trial in which the petitioner/landlord was the sole witness and Mr. Lepikh presented no evidence, his client lost the case.

As to Charge IV of the Formal Written Complaint:

31. By written order dated May 21, 2015, in *T&J Chiropractic, P.C. v Hertz Co.,* respondent granted the defendant's motion to dismiss and directed that the plaintiff pay $1,500 in "counsel fees" to the defendant's counsel. Neither the defendant nor defendant's counsel had requested that respondent award fees in the matter, and prior to issuing the order, respondent did not inform the parties that he was considering awarding counsel fees or provide an opportunity to be heard on the issue. Respondent's order stated that the plaintiff had failed to comply with an order to provide discovery but did not indicate how the court determined that the amount awarded was appropriate.

32. By written orders dated October 23, 2015, in three related matters entitled *Active Care Medical Supply Corp. v Delos Insurance Co.,* respondent granted the defendant's motion to dismiss, denied the cross-motion for summary judgment and awarded $250 in "fees" to defense counsel in each case. Neither the defendants nor their counsel had requested that respondent award fees in the matters, and prior to issuing the orders, respondent did not inform the parties that he was considering awarding counsel fees or provide an opportunity to be heard on the issue. Respondent's orders stated that the actions were barred by res judicata and collateral estopppel but did not indicate how the court determined that the amount awarded was appropriate.

33. By written orders dated October 23, 2015, in five related matters entitled *Gentlecare Ambulatory Anesthesia Services v Geico Ins. Co.*, respondent denied the plaintiff's motion for summary judgment, granted a cross-motion for summary judgment and awarded $250 in "fees" to defense counsel in each case. Neither the

defendant nor defendant's counsel had requested that respondent award fees in the matters, and prior to issuing the orders, respondent did not inform the parties that he was considering awarding counsel fees or provide an opportunity to be heard on the issue. Respondent's orders stated that the plaintiff had failed to appear for examinations under oath but did not indicate how the court determined that the amount awarded was appropriate.

Additional Findings as to the Hearing Before the Referee

34. On July 21, 2017, Peter Bienstock, the Commission-appointed referee, sent a letter by registered mail to respondent and Commission counsel proposing a pre-trial conference by telephone the following week and a hearing scheduled in August 2017; the letter included the referee's email address and requested that the parties communicate thereafter by email. After Commission counsel responded by an email which was copied to respondent's court email address, respondent, on August 1, 2017, replied by email from his court account, stating that he was "not comfortable" speaking with the Commission staff by telephone based on their prior actions, that he did not wish to communicate "via email which is controlled by the Office of Court Administration" and that any future communication by him would be in writing. Commission counsel replied by email, stating that respondent's request to communicate only in writing by regular mail was "impractical" and could be viewed as "a further manifestation of a failure to cooperate" and suggesting that respondent be directed to provide an alternate email address.

35. On August 2, 2017, by email to Commission counsel and to

respondent at his court email address, the referee scheduled the hearing for September 11 to 15, 2017, and set deadlines of August 14, 2017 for discovery demands and September 1, 2017 for discovery to be provided. The referee's email message stated that there was no reason not to communicate by email and that any alternate email address respondent provided could be used if he did not want to use his court email address. The referee stated further that "[t]here has been, and still is, ample time for [respondent] to retain counsel, if he so chose or now chooses" and that "[t]his issue should not and will not cause delay of the hearing." Respondent did not respond to this email and never provided an alternate email address. The referee and Commission counsel continued to send emails to respondent at his court email address. The record shows no email communications from respondent after August 1, 2017.

36. The credible evidence establishes that respondent received the referee's August 2, 2017 email message and thus, by that date, had actual notice that the hearing was scheduled to begin on September 11, 2017.

37. On August 11, 2017, Commission counsel sent respondent an email with discovery demands; this communication noted the hearing dates as September 11, 12, 13 and 15, 2017. By letter dated August 17, 2017, respondent served Commission counsel with his discovery demands.

38. On August 25, 2017, Commission counsel served respondent with discovery by overnight delivery sent to both his home and court address. Counsel's cover letter, a copy of which was also sent to respondent by email, noted the hearing dates, responded to respondent's discovery demands, listed the potential witnesses, and

enumerated, over seven single-spaced pages, the discovery materials that were contained on an enclosed CD, which included witness statements, dozens of court files and records, audio recordings, correspondence and other documents. The discovery provided fully satisfied the statutory discovery requirements (Jud Law §44[4]; 22 NYCRR §7000.6[h][1]).

39. On August 29, 2017, Commission counsel sent subpoenas to the referee for his signature, copying respondent by first-class mail to his home and court address; the subpoenas specified September 11, 2017, as the hearing date. On September 1, 2017, the referee returned the signed subpoenas to Commission counsel, with a copy to respondent by overnight mail and by email, along with a cover letter referring to the scheduled hearing dates. The referee's letter mistakenly referred to the hearing date as April 11, 2017, an error that was corrected later that day in correspondence sent to respondent by email and by overnight delivery.

40. On September 7, 2017, attorney David Louis Cohen sent an email and fax to the referee stating that respondent had consulted him as to the pending matter "which is scheduled for a hearing before you as Referee commencing on September 11, 2017." Mr. Cohen's communications stated that he was prepared to represent respondent in the matter only if the hearing was adjourned to the week of December 11th or December 18th as he was unavailable before those dates due to a prior trial commitment. Noting that Commission counsel opposed the requested adjournment, Mr. Cohen stated that "in a matter of this importance, the Judge should be given one final opportunity to be represented by counsel," and he attributed the belated request for adjournment to

respondent's "failure to realize the significance of the complaints and the importance of the Commission reaching a prompt and fair adjudication." An earlier email message that day from Mr. Cohen to Commission counsel indicated that respondent had just returned from vacation in France.

41. On September 8, 2017, by email to respondent, Mr. Cohen and Commission counsel, the referee denied the request for adjournment and stated that the hearing would proceed as scheduled on September 11, 12, 13 and 15, 2017.

42. The hearing was held on September 11 and 12, 2017, at the Commission's New York City office. Respondent did not attend the hearing. After the hearing ended the first day, the referee sent an email to respondent advising him that the hearing had commenced and would continue the next day at 9:30 AM.

43. There is no indication of any medical or other impediment to respondent's appearance at the hearing, and there is no basis to conclude that he did not receive the emails sent to his court email address by the referee and Commission counsel, and every reason to conclude that he did receive them.

44. By letter to the referee dated September 11, 2017, which was copied to Commission counsel, respondent asserted that he had not received timely notice of the hearing by personal service or certified mail as required by law, had not received the required discovery in a timely manner, and was prepared to appear "[u]pon proper compliance with the requirements of The Judiciary Law." Respondent's letter was sent by first-class mail and was received after the hearing concluded.

45. By email on September 19, 2017, a copy of which was personally

delivered to respondent the next day, the referee scheduled an evidentiary hearing and argument for October 6, 2017, "to determine the facts underlying [respondent's] request for a new/additional hearing." By letter to the referee dated September 29, 2017, respondent objected to the October 6th proceeding and stated that he had not requested "a new hearing," that he wanted "a fair opportunity to confront my accusers with my attorney present," and that "[i]t is now abundantly clear that you are acting in concert with the Commissions Attorney's [sic] to deprive me of my Constitutional Due Process rights."

46. Since respondent had declined to appear, no proceeding was held on October 6th. In lieu of a personal appearance on that date, Commission counsel submitted an affirmation summarizing the evidence counsel was prepared to introduce regarding the issue of notice and attaching, among other exhibits, an affidavit from an Office of Court Administration employee attesting that the various emails sent to respondent's court email address by the referee and Commission counsel had been received.

47. On or about October 13, 2017, copies of the transcript of the hearing and the exhibits received in evidence were delivered to respondent. By email to respondent and Commission counsel on October 18, 2017, a copy of which was personally delivered to respondent the next day, the referee offered respondent the opportunity to reopen the hearing on November 13, 2017, and continuing each day during that week, so that respondent could call witnesses, testify on his own behalf and present evidence in his defense. The referee's email message requested that respondent confirm in writing by November 3rd whether he would appear at the proceeding. Since respondent did not respond to the referee's communication, the hearing was not reopened.

48. Respondent was provided actual, adequate and reasonable notice of the September 11-12, 2017 Commission hearing, the proceeding scheduled for October 6, 2017 to address the issue of notice, and the opportunity to reopen the hearing on November 13, 2017, and made a conscious and knowing choice not to participate in any of those proceedings. Respondent demonstrated, through his and Mr. Cohen's correspondence with the Commission, that he had actual knowledge of the hearing schedule, and he was not prejudiced in any way by the fact that the initial notice of the hearing date was sent to him via email rather than by personal delivery or by certified mail, return receipt requested.

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

The extensive record before us, based on an evidentiary hearing before a referee in which respondent willfully refused to participate, establishes that respondent violated well-established ethical standards by mistreating attorneys, abusing his judicial power and failing to follow the law in numerous cases and that his misconduct was significantly compounded by his failure to cooperate with the Commission's

investigation of complaints alleging such behavior. Public confidence in the administration of justice in our society requires that judges, who are empowered to pass judgment on legal matters involving the lives, liberty and property of others, be held strictly accountable when their own actions are examined under duly-authorized procedures, and a judge's willful refusal to cooperate in the disciplinary process is a breach of the public trust. Respondent's lack of cooperation with the Commission, along with the additional misconduct established here, constitutes a level of misbehavior that "cannot be viewed as acceptable conduct by one holding judicial office" (*Matter of VonderHeide*, 72 NY2d 658, 660 [1988]; *Matter of Mason*, 100 NY2d 56, 60 [2003] [judge's "misconduct was significantly compounded by (his) persistent failure to cooperate with the Commission investigation and his marked lack of candor"]). Viewed in its entirety, the record before us amply demonstrates respondent's unfitness to serve as a judge.

Pursuant to its constitutional and statutory mandate to review complaints of judicial misconduct, conduct investigations and, where appropriate, render disciplinary determinations, the Commission is authorized to require the testimony of a judge who is the subject of a complaint under investigation (NY Const Art 6 §22[a]; Jud Law §44[3]; 22 NYCRR §7000.3[e]). By failing to provide testimony as requested during the investigation, respondent impeded the Commission's efforts to obtain a full record of the relevant facts, thereby obstructing the Commission's discharge of its lawful mandate and seriously exacerbating his misconduct. *Matter of Lockwood*, 2007 NYSCJC Annual Report 123 (judge's failure to report and remit funds to the State Comptroller in a timely

manner was compounded by her failure to cooperate during the investigation); *Matter of Mason, supra.*

A review of respondent's conduct during the investigation in this case reveals a consistent pattern of efforts to withhold cooperation and to delay or thwart the investigation. For example:

- Faced with the simple task of identifying his attorney to the Commission, he took a web printout of information on his counsel, scrawled "Here is my atty" on it, and addressed his response to an employee at the "State of New York," using a phone number as the first line of the address and omitting the Commission's name, apparently because that is how it appeared as the return address on the envelope that was sent to him; not surprisingly, it was not delivered.
- When his attorney died, respondent sought to delay his testimony before the Commission by tying it to the appointment of an executor for his attorney's estate, although there is no apparent reason why the handling of the attorney's estate should have had any impact on respondent's ability to respond to questions about his conduct, and he admittedly made no effort to retrieve any relevant materials from the law firm handling the estate.
- When the Commission sought to take his testimony on March 7, 2017, he refused to testify on the basis that he had no access to unspecified investigative materials from his attorney's files that he had made no effort to obtain, and refused to affirm the truthfulness of his own statements made minutes earlier, informing the Commission of those circumstances.

- After another adjournment, to a date almost three months after the initial scheduled date for his testimony and two and a half months after the attorney's death, and after Commission counsel had provided respondent with copies of all the materials previously sent to him and warned that he could be charged with failing to cooperate if he did not appear, respondent declined to appear on the adjourned date, explaining by letter that his refusal was based on the "blatant lies" in the staff's letter describing the events at his earlier appearance.

A request to appear for investigative testimony is not an "invitation"; the statutorily-authorized proceeding before a Commission member or referee is a critical part of the Commission's investigative powers (Jud Law §44[3]). A judge's refusal to testify during an investigation when requested to do so "demonstrates an unacceptable lack of respect for the process, created by Constitution and statute, under which the Commission is empowered to investigate the conduct of judges" (*Matter of Lockwood*, *supra*).

To be sure, every judge has the right to the assistance of counsel throughout Commission proceedings. The record indicates that after respondent was granted an adjournment due to his attorney's illness and identified the attorney after some delay,[4] the attorney died a few days later. Although the record does not indicate how long that

[4] It appears that respondent's delayed responses to requests that he identify his attorney can be attributed to a variety of factors, including his absence from the court and his mis-addressed response, which was mailed two weeks after the staff's initial request. In light of the attorney's unavailability during this period, this delay appears to have been relatively inconsequential. Nevertheless, the manner in which respondent handled this issue is emblematic of the way in which he treated the entire investigation.

attorney had been assisting respondent or what work the attorney may have done on his behalf,[5] under the circumstances presented a reasonable adjournment in order for respondent to retain new counsel and prepare for his investigative testimony was appropriate. On the other hand, such an adjournment cannot be indefinite or open-ended. In this case, the totality of the record establishes convincingly that the Commission staff made reasonable efforts to accommodate respondent's expressed desire to be represented by counsel and that his failure to cooperate was willful, pervasive and strategic.

Respondent's argument that he could not fairly be expected to proceed until he was able to obtain unspecified materials from his late attorney's files rests entirely on speculation since respondent could not or would not indicate what work, if any, the attorney had done in the matter or what materials respondent needed. Moreover, his assertion that he was unable to obtain access to the attorney's files until an executor was appointed is absurd. The record indicates that he made no effort at all to seek the records from the estate's law firm. Further, a client presumptively has full access to an attorney's file on a represented matter upon the termination of the attorney-client relationship (*Sage Realty Corp. v Proskauer Rose Goetz & Mendelsohn LLP*, 91 NY2d 30 [1997]). And, after his attorney's death, respondent was provided with copies of all the materials previously sent to him during the investigation (which, he claimed, he no longer had). We also observe that since all the alleged wrongdoing was based on proceedings

[5] We note that the attorney had no contact with the Commission in the instant matter and that respondent's letter to the Commission a few months earlier responding in detail to its request for his response to the allegations does not indicate that he was represented by counsel.

documented by court records and audio recordings, all of which were provided to respondent, there is no apparent other material that would have been helpful to him.

Any one of these actions might be an understandable error. When viewed in toto, we can only conclude that respondent engaged in a pattern of conduct designed to withhold his cooperation and to delay the Commission's investigation.

In conducting its investigation, the Commission must balance two crucial interests: safeguarding the rights of judges to due process and the opportunity to present a defense to charges that can significantly impact their careers, and protecting the public interest in expeditiously investigating and sanctioning judicial misconduct, so as to ensure that the legal system operates in a fair and impartial manner. This difficult balancing act is made impossible when judges flout the Commission's efforts, refuse to cooperate with its investigative proceedings, and engage in tactics clearly intended to hinder proper fact-finding. That is precisely what occurred in this case.

Indeed, respondent's unsupported, unconvincing arguments, if accepted, would have placed the Commission's investigation on hold indefinitely, which would be inconsistent with the fair and proper administration of justice. In that regard, it should also be noted that even six months later, several months after being served with formal charges, respondent still had not retained an attorney, and in fact he did not consult with counsel until the eve of the scheduled formal hearing, at which time he sought a three-month adjournment. This pattern of evasion, avoidance and delay, under cover of asserting the right to counsel, is highly suspect, and it appears that his failure to cooperate and his refusal to accept the Commission's authority was a calculated attempt to delay the

disciplinary proceedings.

As to the underlying allegations, the evidence adduced at the hearing depicts a judge who, in his own court, was belligerent, rude and condescending to attorneys. Quick to chastise lawyers for perceived discourtesy, sarcasm and unprofessional behavior, respondent himself engaged in such conduct, subjecting lawyers to harsh personal criticisms and insults in front of their clients, peers and others in the courtroom. Upbraiding an inexperienced attorney who had his phone in his lap while attempting to contact his employer after unexpectedly being ordered to try a case immediately, respondent yelled at him, "Is there some course in law school now, how to be discourteous and how to be rude? Because if there is, you must have gotten an A in it"; he then accused the startled attorney of "smirking" and said, "I'm glad you think it's funny … No wonder people think lawyers are a disgrace. It's people like you who give them that impression." When another attorney opposed a motion to amend the petition, arguing that it would be in his client's interest to pay less money now even if it meant the possibility of another proceeding later, respondent reprimanded the attorney for being "disingenuous" and unprofessional; later, when the attorney said he did not understand a question, respondent retorted, "Apparently there's a lot you don't understand." He accused another attorney of sarcasm when she said, "Thank you, Your Honor" after a ruling; when the attorney apologized after respondent criticized her for stating that she wanted to recall a witness without specifying which one, respondent commented, "Maybe you should do something right for a change instead of just apologizing all the time."

Every lawyer or litigant who enters a courtroom has a right to be treated

with dignity, respect and fairness. Comments such as those depicted here, which are typical of those throughout the transcripts of the cases before us, are inconsistent with ethical standards requiring judges to treat others with patience, dignity and courtesy while performing judicial duties (Rule 100.3[B][3]). *See, e.g., Matter of Duckman*, 92 NY2d 141, 155 (1998) (demeaning, insulting comments to prosecutors, including asking a lawyer whether he got his education "on the back of an orange juice carton"); *Matter of Rice* (1998 NYSCJC Annual Report 155) (telling an attorney he had "verbal diarrhea"); *Matter of Sena* (1981 NYSCJC Annual Report 117) (intemperate comments about lawyers' upbringing, education and competence).

In two other cases, involving attorneys who said "okay" after their witnesses' answers, not only was respondent discourteous to the attorneys, but his rulings striking the witnesses' testimony and dismissing the petitions for insufficient proof were an abuse of judicial power that penalized the litigants, subjecting them to undue litigation costs and unnecessary delays. Respondent's explanation that using the word "okay" was an attempt to lead the witnesses by signaling approval of their answers is belied by the transcripts, which show that the word was used even after answers providing basic information (*e.g.* the witness' occupation), and it is also noteworthy that opposing counsel never objected that the attorneys were leading. In *Main Street Shops,* where respondent struck the testimony and dismissed the petition when the attorney said "okay" after warning him only once, respondent's comments during the abbreviated proceeding expressing displeasure at the witness' late arrival to court, coupled with another reference to the witness's lateness when he scolded and warned the attorney, strongly suggest that

he was motivated in significant part by annoyance at the attorney and his client. In *N&E Holdings*, where the attorney repeatedly said "okay" after multiple warnings and used the term only seconds after respondent had warned that the testimony would be stricken if she said it again, it is crystal clear that the attorney's use of the word was simply "a reflex," as she explained. Of course, determining whether an attorney is leading a witness or whether to permit such questioning is a matter within the trial court's discretion, and attorneys are expected to abide by a judge's instructions. However, a judge should be able to distinguish between willful disregard of a judicial order and a verbal tic that is of little consequence. In the circumstances here, including that, because the proceedings were bench trials, there was no danger that any line of questioning would prejudice the jury, respondent's intemperate response to the attorneys' reflexive comments was inconsistent with the fair and proper administration of justice. *See Matter of Hart*, 7 NY3d 1 (2006) (judge held attorney in contempt for insisting on making a record of an out-of-court encounter involving the judge); *Matter of Corning*, 95 NY2d 450 (2000) (judge suspended defendant's license out of animosity against his attorney).

It was also established that in nine no-fault insurance cases respondent sua sponte awarded counsel fees upon granting defendants' motions for dismissal or summary judgment without complying with court-mandated procedures governing such awards (22 NYCRR §130-1.1). While a court may award such amounts for "frivolous conduct" upon its own initiative, the court must afford "a reasonable opportunity to be heard" before doing so (22 NYCRR §130-1.1[a], [d]). In the cases at issue the attorneys never had an opportunity to address whether such an award was appropriate and, if so,

the appropriate amount. Moreover, although respondent's orders specified the basis for dismissal, they did not set forth "the reasons why the court found the amount awarded or imposed to be appropriate" as required by court rules (22 NYCRR §130-1.2). Although the requirements of section 130-1.2 need not "be followed in any rigid fashion" and a short-form order may suffice,[6] the requirement of an opportunity to be heard on the issue – as to both the imposition of fee awards and the appropriate amount – is an essential predicate for such an order under court rules.[7] In view of the lack of notice or an opportunity to be heard, the amounts respondent awarded appear entirely arbitrary ($250 in eight cases, $1,500 in one case) and the parties were deprived of due process. Even if the procedural infirmities in these cases can be characterized as legal error, judges are required to "be faithful to the law and maintain professional competence in it" (Rules, 100.3[B][1]), and legal error and judicial misconduct "are not necessarily mutually exclusive" (*Matter of Feinberg*, 5 NY3d 206, 215 [2005], citing *Matter of Reeves*, 63 NY2d 105, 109-10 [1984]).

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[6] *See Benefield v NYCHA*, 260 AD2d 167, 168 (1st Dept 1999); *Saleh v. Hochberg*, 5 AD3d 234 (1st Dept 2004); *Liang v. Wei Ji*, 155 AD3d 1018, 1020 (2d Dept 2017) (the requirements of section 130-1.2 were satisfied since it was "clear from the context of the order that the court found the plaintiff's conduct to be frivolous for the same reasons it gave for directing dismissal of the complaint").

[7] Our finding of wrongdoing as to these fee awards is based on the rules cited herein, which govern the award of "costs" and the imposition of "sanctions" for "frivolous conduct." Such awards are distinct from "costs" awarded to a party in whose favor a judgment is rendered, which are statutory (CPLR Art 81 and 82). The ambiguity presented by the language in respondent's orders makes it difficult to determine what occurred here and might best have been resolved at a hearing, but as respondent has never explained his fee awards and chose not to participate in the hearing, our finding is based on the provisions cited in the Formal Written Complaint (¶72), which respondent has not challenged. The misconduct we find as to these awards is not as significant as the other misconduct presented in this record.

This record of respondent's misbehavior both on the bench and in his failure to cooperate with the Commission investigation, which is amply supported by the testimonial and documentary evidence adduced at the hearing, is plainly inconsistent with a judge's obligation to observe "high standards of conduct" and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Rules, §§100.1, 100.2[A]). While respondent's failure to testify at the hearing or offer any proof to contest the charges permits us to draw a negative inference to support the misconduct findings (*Matter of Reedy,* 64 NY2d 299, 302 [1985]), we find it unnecessary to do so in view of the persuasive evidence before us establishing his misconduct.

As the record indicates, respondent, who is unrepresented, declined to appear at the hearing before the referee; nor, after objecting that he had not been properly notified of the hearing date, did he appear on two subsequent dates scheduled by the referee affording him an opportunity to address the issue of notice and to reopen the hearing. We also note that respondent chose not to appear at the oral argument before the Commission members. It is apparent from the record that respondent made a conscious and knowing choice not to participate in these proceedings, just as he chose not to testify during the Commission's investigation. The conclusion is unavoidable that by declining to appear at these proceedings, respondent demonstrated that notwithstanding his objections that the proceedings lacked fairness for various reasons, he was simply unwilling to testify under oath or be subject to questioning by the Commission members concerning his behavior.

We find no merit to respondent's argument that the hearing was a nullity

since he did not receive timely notice of the hearing date by personal service or by certified mail as required by statute (Jud Law §44[4]). Personal jurisdiction was established when he was served with the Formal Written Complaint commencing the proceeding, and while due process requires timely notice of the hearing date, the form of the notice is not jurisdictional; the due process obligation can be satisfied by providing actual, adequate notice, which was provided here (*see Ross v New York State Dept of Health*, 226 AD2d 863 [3d Dept 1996]). It is abundantly clear that respondent had timely, actual notice of the hearing date since he not only received the initial notice of the hearing, which was sent by email, more than a month before the scheduled hearing but also received numerous subsequent communications, sent by email and by overnight delivery, that referred to the hearing date. (Respondent has never denied receiving these communications.) It is also clear that respondent waived any technical deficiency in the hearing notice by participating in discovery 25 days before the hearing, by seeking an adjournment four days prior to the hearing without objecting to the notice, and by not raising his objection "at any time when corrective action might have been taken" (*Alamia v Medical Center of Brooklyn, Inc.*, 119 AD2d 711, 712 [2d Dept 1986], citing *Barry v Manglass*, 55 NY2d 803, 806 [1981]). He also abandoned his claim that the notice was deficient by failing to appear, when offered the opportunity, at subsequent proceedings to present evidence in support of his claim and to reopen the hearing. *See Plantation House & Garden Prods. v R-Three Investors*, 285 AD2d 539, 540 (2d Dept 2001); *Acovangelo v Brundage*, 271 AD2d 885, 886 (3d Dept 2000).

Respondent's remaining contentions that he was denied due process are

also without merit. The record establishes that he had ample opportunity to retain counsel, and thus the denial of his request for a lengthy adjournment on the eve of the hearing – nine months after his attorney's death – was not unreasonable. The record also establishes that prior to the hearing he was provided with timely discovery that satisfied the statutory requirements (Jud Law §44[4]; 22 NYCRR §7000.6[h][1]).

Finally, we note that respondent has previously been censured (*Matter of O'Connor*, 2014 NYSCJC Annual Report 174) and that his ethical transgressions in the current matter (except for conduct in a 2013 case that preceded his censure) began within a year after he was disciplined. As the Court of Appeals has noted, "[t]he mere existence of a prior censure would be noteworthy regardless of whether it was related to the instant misconduct" and "[w]ithout question, a heightened awareness of and sensitivity to any and all ethical obligations would be expected of any judge after receiving a public censure" (*Matter of Doyle*, 23 NY3d 656, 662 [2014]; *see also Matter of Kuehnel*, 49 NY2d 465, 470 [1980]). Far from showing a "heightened… sensitivity" to his ethical obligations, respondent's conduct in this case shows a contumacious disregard for those responsibilities.

Public confidence in the courts requires a judiciary that is both independent and accountable. Viewed in its entirety, respondent's conduct, seriously exacerbated by his failure to cooperate, demonstrates his unfitness for judicial office and thus warrants the sanction of removal.

By reason of the foregoing, the Commission determines that the appropriate

disposition is removal.

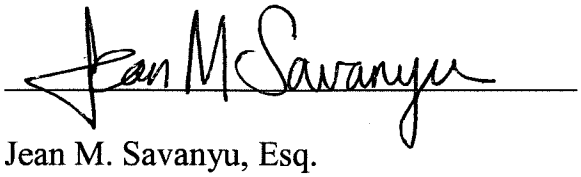
Mr. Belluck, Mr. Harding, Mr. Cohen, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

Mr. Belluck and Mr. Cohen file a joint concurring opinion.

CERTIFICATION

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

Dated: March 30, 2018



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

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

TERRENCE C. O'CONNOR,

a Judge of the Civil Court of the City
of New York, Queens County.

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CONCURRING OPINION
BY MR. BELLUCK AND
MR. COHEN

As the Determination makes extremely clear, respondent's conduct in defying the Commission is hard to abide, but also hard to understand. Why did a long-tenured judge, who clearly knows better, set out on a campaign that is contemptuous of – indeed, to essentially ignore – the statutory authority of the Commission to *require* him to adhere to the rules, regulations and practices of the Commission? Speculation runs rampant, particularly since, as Commission counsel conceded during oral argument, it is quite possible that the Commission staff would not have sought respondent's removal were it not for his resisting the many efforts of the Commission to gain his mandated cooperation in these proceedings.

The Determination goes to great lengths to describe the unquestionable duty of a sitting judge to comply with the authority of the Commission. It is understandable that it has done so – not simply to explain the basis or justification for our severe and unhappy conclusion that respondent should be removed from office, but also

to underscore the importance of a judge's obligation to comply with the rules and protocols of the Commission which, indeed, has Constitutional authority. There should be little doubt that the judges of this State know or should know of their obligation – as respondent should have known – and it is noteworthy that the Commission has rarely been faced with such a willful refusal to cooperate by a respondent-judge. It seems unlikely that respondent, who as a judge demanded strict adherence to what he viewed as proper procedures by individuals appearing before him, would countenance this type of willful disregard for a tribunal in his own court.

We, and no doubt our colleagues as well, greatly wish that respondent had cooperated with the Commission's investigation and the instant proceedings so that we might have decided his case solely on the merits of his underlying conduct. But if the seat on the bench that he has occupied is to have any meaning, he must be treated with the same severity as would any litigant appearing before him who is required to cooperate with the rules, regulations and practices of the court – but refuses to.

We concur.

Dated: March 30, 2018

Joseph W. Belluck, Esq., Chair
New York State
Commission on Judicial Conduct

Joel Cohen, Esq., Member
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DAVID F. PORTER,

a Justice of the Allegany Town Court,
Cattaraugus County.

# DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel) for the Commission

Connors LLP (by Vincent E. Doyle III) for respondent

The respondent, David F. Porter, a Justice of the Allegany Town Court, Cattaraugus County, was served with a Formal Written Complaint dated May 7, 2018,

containing one charge. The Formal Written Complaint alleged that respondent failed to disqualify himself in three matters arising out of a boundary dispute involving his neighbor's daughter, which he had previously discussed ex parte with his neighbor.

On September 24, 2018, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On October 25, 2018, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Allegany Town Court, Cattaraugus County, since January 2006. His current term expires on December 31, 2021. He is not an attorney.

2. From July 23, 2015, through September 24, 2015, as set forth below, respondent failed to disqualify himself or seek remittal in three matters – *People v E. K.*, *People v L. C.* and *People v C. M.* – each of which arose from a boundary dispute involving K. K., notwithstanding that respondent had discussed the matter ex parte with K. K.'s father, E. K., in May 2015.

3. In May 2015 respondent spoke with E. K., a neighbor, who had come to respondent's home seeking his assistance as a judge with a boundary dispute between his daughter, K. K., and her neighbors, L. C. and C. M.

4. E. K. told respondent that attempts to resolve his daughter's escalating boundary dispute through a town code officer had been unsuccessful. Respondent told E. K. that the court could not become involved in the boundary dispute until charges were brought and that law enforcement officers were responsible for filing charges. Respondent told E. K. that he could contact law enforcement directly, provided him the names of seven law enforcement officers, including New York State Trooper David Kendzior, and informed him that all of the officers lived near E. K.'s home.

5. L. C. drafted a three-page letter to K. K. dated May 17, 2015, detailing her complaints on their boundary dispute and describing a Mother's Day visit by a Trooper to L. C.'s home, during which the Trooper allegedly suggested how the boundary dispute might be resolved. L. C. sent a copy of her letter to respondent.

6. On July 23, 2015, respondent issued a criminal summons for E. K. directing him to appear and answer charges that he committed Harassment in the Second Degree in violation of Section 240.26 of the Penal Law. Before issuing the summons, respondent reviewed the accusatory instrument alleging that on July 22, 2015, E. K. struck the hand of his daughter's neighbor, C. M., with a hammer, and C. M.'s supporting deposition, in which he requested that the court issue an order of protection against E. K.

7. On July 27, 2015, respondent arraigned L. C. for Harassment in the Second Degree pursuant to Section 240.26(2) of the Penal Law, for allegedly cursing at K. K. on July 22, 2015. Respondent did not disclose his May 2015 communication with E. K. concerning the boundary dispute. Respondent issued a temporary order of protection against L. C. and in favor of K. K., pursuant to a telephone request to the court

that respondent understood to have come from K. K.

8. On August 17, 2015, respondent arraigned C. M. for Criminal Tampering in the Third Degree pursuant to Section 145.14 of the Penal Law, for allegedly removing K. K.'s posted signs on July 22, 2015. The sworn statement filed with the complaint against C. M. was affirmed by E. K. on July 28, 2015. Respondent did not disclose his May 2015 communication with E. K. concerning the boundary dispute. Respondent issued a temporary order of protection against C. M. and in favor of K. K., pursuant to a request from the Cattaraugus County Sheriff Deputy who took E. K.'s statement and filed the complaint. During the arraignment, C. M. again asked for an order of protection against E. K.

9. On August 17, 2015, E.K.'s arraignment in Allegany Town Court was adjourned by the court so that E. K. could attend a Buffalo Bills football practice. Respondent took no action on C. M.'s repeated requests for an order of protection against E.K.

10. On September 14, 2015, respondent arraigned E. K. for allegedly striking C. M. with a hammer on July 22, 2015. Respondent did not issue an order of protection against E. K.

11. On September 24, 2015, respondent disqualified himself from *People v E. K., People v L. C.*, and *People v C. M.* As a basis for his disqualification in each case, respondent wrote that he recused himself "on the grounds that I have a conflict of interest. I have spoken with E. K. about this land dispute situation prior to E. K. being charged with Harassment 2nd."

Additional Factors

12. Respondent has been cooperative with the Commission throughout its inquiry.

13. Respondent now recognizes and appreciates that, where a judge has engaged in substantive communications with an interested party or individual about a matter prior to the initiation of legal action, such that the judge should be disqualified, such disqualification must occur at the outset, not after arraignment. Respondent regrets that he did not disqualify himself at the outset of this matter and commits to adhering to the Rules more stringently should similar situations arise in the future.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1) and 100.3(E)(1) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge's disqualification is required in matters in which the judge's impartiality "might reasonably be questioned" (Rules, §100.3[E][1]), and judges must assiduously avoid even the appearance of impropriety (Rules, §100.2[A]). Since respondent had discussed with his neighbor an escalating boundary dispute involving the neighbor's daughter and her neighbors, a reasonable person might question whether he could be impartial in three cases arising out of the dispute that came before him within

the next few months. *See Matter of Valcich*, 2008 NYSCJC Annual Report 221 (judge failed to disqualify herself despite having a professional and social relationship with the defendant and having discussed the underlying facts ex parte with her); *Matter of Trickler*, 2011 NYSCJC Annual Report 147 (before disqualifying himself, judge arraigned a defendant notwithstanding that he knew the defendant and complaining witness, had observed at least some of the underlying events and had spoken to the complaining witness about the matter). The moment that respondent welcomed his neighbor into his home and began to discuss the dispute, he should have realized that he was engaging in an ex parte conversation that would require his disqualification if the matter came to his court. Yet, instead of immediately stepping down when three cases arising out of the dispute came before him, or even disclosing his earlier discussion with his neighbor, respondent issued a criminal summons, conducted the arraignments and made determinations regarding the issuance of an order of protection. As respondent has acknowledged, his behavior was inconsistent with the above-cited ethical requirements.

When a judge has engaged in such an ex parte discussion or has any other conflict going into a case that requires disqualification, the judge must recuse at the outset of the case and, therefore, may not conduct the arraignment since "[a]n arraignment is not merely administrative, but, rather, is a significant stage in the criminal proceeding" requiring the exercise of discretion (NYS Jud Adv Ops 14-166, 09-223). *See Matter of Astacio* __ NY3d __, No. 94 (2018) (despite knowing that her recusal was required in her former client's case, judge conducted the arraignment before disqualifying herself, set low bail, and asked the clerk not to transfer the case to a particular judge); *see*

*also Matter of LaBombard*, 11 NY3d 294, 298-99 (2008) (judge arraigned his former co-worker's son despite recognizing that his disqualification was required in cases involving the defendant, and his handling of the matter created an appearance of partiality). Here, respondent's handling of the arraignments in each case included a significant exercise of discretion in making determinations as to the issuance of an order of protection. Compounding the appearance of impropriety, he issued such orders against two individuals involved in the dispute with his neighbor's daughter, but did not issue an order of protection against his neighbor, the only defendant alleged to have engaged in a physical attack. Respondent's impartiality in making those decisions can reasonably be questioned in view of his earlier conversation with his neighbor.

It is unclear to what extent that discussion addressed the merits of the dispute, but even if the discussion focused on procedures, as the stipulated facts suggest, the appearance created by a private discussion about the dispute created a significant issue that needed to be addressed. Thus, at the very least, when each of the cases came before him respondent should have disclosed the conversation. Even if he believed he could handle the cases impartially, disclosing the conversation would have afforded the prosecutor and defendants an opportunity to be heard on the issue of his participation in the matters. *See* Rules, §100.3(F)[1]; *Matter of Merkel*, 1989 NYSCJC Annual Report 111

[1]It should be emphasized that remittal of disqualification requires, among other conditions, the consent of the parties and their lawyers "without participation by the judge" (Rules, §100.3[F]). It would be improper for a judge to "seek" remittal by engaging in any conduct that could be viewed as coercive. A litigant should not have to question the assurance of a judge, in such circumstances, that he or she can be impartial in the matter, especially if the judge volunteers to remain on the case.

(though judge's disqualification was not required in a case involving her court clerk, her failure to disclose the relationship was improper). Respondent's belated recusal in the matters, two months after the first case came before him, mitigates but does not cure the impropriety. *Matter of Remchuk*, 2000 NYSCJC Annual Report 149.

In considering the appropriate sanction, we note that respondent has acknowledged his misconduct and now recognizes his ethical obligations in such circumstances and commits to adhering to them stringently should similar situations arise in the future.

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

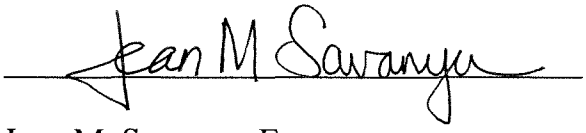
Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin and Ms. Yeboah concur.

Mr. Stoloff was not present.

CERTIFICATION

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

Dated: November 13, 2018



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

BRUCE S. SCOLTON,

a Justice of the Harmony Town Court,
Chautauqua County.

**DECISION AND ORDER**

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THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and M. Kathleen Martin, Of Counsel) for the Commission

Honorable Bruce S. Scolton, *pro se*

The matter having come before the Commission on December 6, 2018; and the Commission having before it the Stipulation dated November 30, 2018; and

respondent having been served with a Formal Written Complaint dated November 19, 2018, having tendered his resignation as Harmony Town Justice by letter dated November 28, 2018, effective December 31, 2018, having affirmed that upon vacating his judicial office, he will neither seek nor accept judicial office at any time in the future; and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Ms. Yeboah was not present.

Dated: December 6, 2018

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

**BRUCE S. SCOLTON,**

A Justice of the Harmony Town Court,
Chautauqua County.

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**STIPULATION**

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable Bruce S. Scolton ("respondent"), as follows:

1. Respondent was admitted to the practice of law in New York in 1977. He has been a Justice of the Harmony Town Court, Chautauqua County, since 1990. Respondent's current term expires on December 31, 2021.

2. Respondent was served with a Formal Written Complaint dated November 19, 2018, containing three charges, alleging that from July 1991 to July 2018, he failed to make timely reports and deposits of court funds to the State Comptroller and the chief fiscal officer of his town; failed to make proper notifications to the Department of Motor Vehicles as to 2,612 defendants in motor vehicle cases who were convicted, or failed to pay a fine or failed to answer the charge; and otherwise failed to fulfill various judicial, administrative and financial responsibilities. The Formal Written Complaint is appended as Exhibit A.

3. Respondent enters into this Stipulation in lieu of filing an Answer to the Formal Written Complaint.

4. Respondent tendered his resignation as Harmony Town Justice by letter dated November 28, 2018, to the Town Supervisor, Town Clerk and the Office of Court Administration. Respondent's resignation will become effective December 31, 2018. A copy of the resignation letter is appended as Exhibit B.

5. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.

6. Respondent affirms that, upon vacating his judicial office, he will neither seek nor accept judicial office at any time in the future.

7. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceedings before the Commission will be revived and the matter will proceed to a hearing before a referee.

8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

9. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 11/26/18

Honorable **Bruce S. Scolton**
Respondent

Dated: 11/30/2018

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(**John J. Postel and M. Kathleen Martin**, Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT A: FORMAL WRITTEN COMPLAINT
EXHIBIT B: RESPONDENT'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

RICHARD J. SHERWOOD,

a Justice of the Guilderland Town Court,
Albany.

**DECISION AND ORDER**

- - - - - - - - - - - - - - - - - - - - - - - -

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci, Of Counsel) for the Commission

Dreyer Boyajian, LLP (by William J. Dreyer) for Judge Sherwood

The matter having come before the Commission on April 12, 2018; and the Commission having before it the Stipulation dated April 3, 2018; and Judge Sherwood having tendered his resignation by letter to the Guilderland Town Supervisor dated March

5, 2018, and having affirmed that he vacated judicial office as of that date and that he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order regarding this Stipulation will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: April 12, 2018

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

**RICHARD J. SHERWOOD,**

a Justice of the Guilderland Town Court,
Albany County.

**STIPULATION**

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Richard J. Sherwood and his attorney, William J. Dreyer, of Dreyer Boyajian, LLP.

1. Richard J. Sherwood was admitted to the practice of law in New York in 1988. He has been a Justice of the Guilderland Town Court, Albany County, since January 2014. His current term expires on December 31, 2021.

2. Judge Sherwood was apprised by the Commission in March 2018 that it was investigating a complaint alleging that by felony complaint dated February 23, 2018, the judge was charged with two counts of Grand Larceny in the First Degree, one count of Scheme to Defraud in the First Degree, and two counts of Criminal Possession of Stolen Property in the First Degree. A copy of the felony complaint is attached as Exhibit 1. The charges were pending as of the date of this Stipulation.

3. Judge Sherwood tendered his resignation by letter to the Guilderland Town Supervisor dated March 5, 2018, a copy of which is annexed as Exhibit 2. Judge Sherwood affirms that he vacated judicial office as of that date. His attorney notified the

Court of Appeals, the Office of Court Administration and the Commission of the resignation.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete proceedings, and if it so determines, render and file a determination that the judge should be removed from office.[1]

5. Judge Sherwood affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

6. Judge Sherwood understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived.

7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Sherwood waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

[1] Pursuant to Section 47, the 120 days commences from the date the resignation is received by the Chief Administrator of the Courts.

Dated: 3/29/18

**Honorable Richard J. Sherwood**

Dated: 3/29/18

**William J. Dreyer, Esq.**
Dreyer Boyajian, LLP
Attorney for **Judge Sherwood**

Dated: April 3, 2018

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(**Cathleen S. Cenci**, Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: FELONY COMPLAINT
EXHIBIT 2: JUDGE'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DEANNA SIEGEL,

a Justice of the Duanesburg Town Court,
Schenectady County.

**DECISION AND ORDER**

– – – – – – – – – – – – – – – – – – – – – – – –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena J. Tadjiogueu, Of Counsel) for the Commission

Honorable Deanna Siegel, *pro se*

The matter having come before the Commission on June 13, 2018; and the Commission having before it the Stipulation dated June 6, 2018; and respondent having been served with a Formal Written Complaint dated May 15, 2017, and having filed an Answer dated June 6, 2017; and a hearing before a referee, Hon. Stewart A. Rosenwasser,

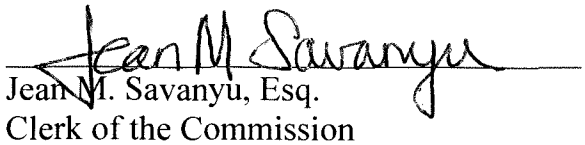
having been held on October 16, 2017, and the referee having filed a Report dated March 12, 2018, and oral argument on the referee's report and the issue of sanctions having been scheduled before the Commission on June 13, 2018; and respondent having been advised, by letter dated March 26, 2018, that the Commission was investigating a new complaint against her, and having tendered her resignation dated June 6, 2018, effective June 29, 2018, and having affirmed that she will vacate judicial office as of that date and that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matters before the Commission are concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Harding did not participate in the matters.

Dated: June 14, 2018



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

**DEANNA SIEGEL,**

A Justice of the Duanesburg Town Court,
Schenectady County.

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**STIPULATION**

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Deanna Siegel ("Respondent"), as follows:

1. Respondent was admitted to the practice of law in New York in 1985. She has been a Justice of the Duanesburg Town Court, Schenectady County, since 2015. Her current term expires December 31, 2020.

2. Respondent was served with a Formal Written Complaint dated May 15, 2017, containing two charges. Charge I alleged that Respondent repeatedly failed to timely report or remit court funds to the State Comptroller and the Town of Duanesburg as required by multiple statutes and despite numerous reminders to do so. Charge II alleged that Respondent failed to cooperate with the Commission's investigation of the Comptroller's complaint, in that she failed to respond to numerous letters from the Commission and failed to appear for testimony regarding her alleged failure to report and remit funds. A copy of the Formal Written Complaint is appended as Exhibit 1.

3. Respondent filed an Answer dated June 6, 2017, in which she admitted the

allegations and proffered a number of explanations for her conduct. A copy of Respondent's Answer is appended as Exhibit 2.

4. By Order dated July 12, 2017, the Commission designated Hon. Stewart A. Rosenwasser as Referee to hear and report in this matter. A hearing was held before the Referee on October 16, 2017. Counsel for the Commission called no witnesses but introduced 45 exhibits into evidence. Respondent testified on her own behalf, called no witnesses and introduced no exhibits into evidence. Four documents were marked as Referee's exhibits.

5. On December 1, 2017, Counsel to the Commission submitted a post-hearing brief and Respondent submitted a post-hearing letter to the Referee. On March 12, 2018, the Referee issued a report sustaining Charges I and II. A copy of the Referee's report is appended as Exhibit 3.

6. The Commission set a schedule for briefs to be filed on or before April 23, 2018, and replies, if any, to be filed no later than May 4, 2018. The Commission scheduled the oral argument on the Referee's report and the issues of misconduct and sanction for June 14, 2018.

7. On April 23, 2018, Commission Counsel filed a brief recommending that the Referee's findings of fact and conclusions of law be adopted by the Commission and that Respondent should be removed from office. A copy of Commission Counsel's brief is appended as Exhibit 4. As of the due dates, Respondent had not filed a brief.

8. The Commission has not yet considered the Referee's report or rendered a Determination.

9. By letter dated March 26, 2018, Judge Siegel was advised that the Commission was investigating a new complaint alleging that, since March 2017, she had failed to re-register as an attorney or to pay the required biennial registration fee notwithstanding that she was a practicing attorney. The Commission requested a response to the March 26th letter by April 11, 2018. On April 17, 2018, the Commission advised Respondent that a response to the March 26th letter had not been received. Respondent paid her biennial registration fee on or about April 16, 2018, but as of the date of this Stipulation, Respondent had not filed a response to the Commission's letter. A copy of the April 17, 2018 letter, which enclosed the March 26, 2018 letter, is appended as Exhibit 5.

10. Respondent tendered her resignation, dated June 6, 2018, a copy of which is appended as Exhibit 6, effective June 29, 2018. Respondent affirms that she will vacate judicial office as of June 29, 2018.

11. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

12. Respondent affirms that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future.

13. Respondent understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time after June 29, 2018, the present

proceedings before the Commission will be revived and the matter will proceed to a Determination by the Commission.

14. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

15. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: June 5, 2018

**Honorable Deanna Siegel**
Respondent

Dated: June 6, 2018

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(**Cathleen S. Cenci** and **Eteena J. Tadjiogueu**, Of Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: FORMAL WRITTEN COMPLAINT
EXHIBIT 2: RESPONDENT'S ANSWER
EXHIBIT 3: REFEREE'S REPORT
EXHIBIT 4: COMMISSION COUNSEL BRIEF
EXHIBIT 5: LETTER TO JUDGE RE: NEW INVESTIGATION
EXHIBIT 6: RESPONDENT'S LETTER OF RESIGNATION

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 M. SKINNER,

a Justice of the Columbia Town Court,
Herkimer County.

# DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Eteena J. Tadjiogueu, Of Counsel) for the Commission

Honorable John M. Skinner, respondent pro se

The respondent, John M. Skinner, a Justice of the Columbia Town Court, Herkimer County, was served with a Formal Written Complaint dated February 14, 2018, containing two charges. The Formal Written Complaint alleged that respondent delayed



TABLE OF CONTENTS

and mishandled a small claims action and failed to mechanically record any court proceedings for more than eight years. Respondent filed an Answer dated April 10, 2018.

On June 6, 2018, the Administrator and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On June 13, 2018, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Columbia Town Court, Herkimer County, since 2009. His current term expires on December 31, 2020. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint:

2. As set forth below, from May 2015 to November 2016, while presiding over *Erek Treen-Goff v Heidi Schimmelpfennig*, a small claims proceeding, respondent failed to be faithful to the law and maintain professional competence in it and failed to dispose of the matter promptly, efficiently and fairly, in that he: (A) unduly delayed holding a hearing and failed to decide the defendant's request for a jury trial until after he rendered judgment; (B) failed to direct his court clerk to prepare minutes of the proceeding and to file a return with the County Court pursuant to Section 1704 of the Uniform Justice Court Act; and (C) failed to mechanically record any appearances in the

matter, in violation of Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08.

3. On April 14, 2015, Erek Treen-Goff filed a notice of small claim in the Columbia Town Court against Heidi Schimmelpfennig. Mr. Treen-Goff sought $3,000 plus $15 court costs for damage caused to his vehicle, which he claimed was sustained when he swerved into a utility pole to avoid hitting Ms. Schimmelpfennig's dog that had run into the road.

4. On April 14, 2015, Janet Elliott, the Town of Columbia court clerk, processed Mr. Treen-Goff's petition and set a hearing date for 6:00 PM on May 19, 2015.

5. On May 12, 2015, Ms. Schimmelpfennig filed an "affidavit of facts" in the Columbia Town Court, demanded a jury trial and paid a jury fee in the amount of $10 and a $50 deposit. The affidavit was not notarized.

6. On May 19, 2015, respondent sent Ms. Schimmelpfennig a letter requesting a notarized written demand for a jury trial and an affidavit of facts, among other items.

7. On June 1, 2015, Ms. Schimmelpfennig re-filed a jury trial demand and "affidavit of facts." Neither the jury trial demand nor the affidavit was notarized.

8. From May 12, 2015, to August 20, 2016, respondent adjourned the hearing date at least three times, notwithstanding that neither Mr. Treen-Goff nor Ms. Schimmelpfennig ever requested an adjournment.

9. Respondent failed to hold a hearing in the case until September 27, 2016. Present in the courtroom on that date were the plaintiff, the defendant, the

plaintiff's grandfather, Fred Treen, and the defendant's friend, Bob Meyer, who was an observer and did not intend to offer any testimony.

10. During the proceeding on September 27, 2016, the parties testified about the accident, and the plaintiff or his grandfather provided a police report and documentary evidence concerning repairs to Mr. Treen-Goff's vehicle.

11. At the conclusion of the proceeding on September 27, 2016, respondent adjourned the matter to provide the plaintiff with time to obtain records from the New York State Electric and Gas Corporation (NYSEG) specifying when the accident occurred and when the utility pole was replaced.

12. On October 11, 2016, the parties again appeared before respondent. Also present in the courtroom were the plaintiff's grandfather, Mr. Treen, and the defendant's son, Evan Schimmelpfennig.

13. During the appearance, Mr. Treen provided respondent with weather reports from the date of the accident, handwritten statements from neighbors who had allegedly witnessed the defendant's dogs in the road, and a document from the utility company regarding repairs to the utility pole.

14. On October 11, 2016, respondent issued a judgment in favor of Mr. Treen-Goff, awarding him $1,000 plus $15 court costs.

15. On October 18, 2016, respondent sent Ms. Schimmelpfennig a copy of the judgment. In a cover letter accompanying the judgment, respondent wrote that Ms. Schimmelpfennig's motion for a jury trial was denied and he returned her $50 deposit and $10 filing fee.

16. On October 31, 2016, Ms. Schimmelpfennig sent a Notice of Appeal to Mr. Treen-Goff and the Columbia Town Court by certified mail, signature required. The caption in the Notice of Appeal stated that the judgment was being appealed to the "Appellate Division of the Supreme Court of the State of New York, Second Judicial Department," although the Columbia Town Court is located in the Third Judicial Department and the proper forum for appeal of a town court decision is County Court.

17. On November 9, 2016, Ms. Schimmelpfennig sent the Columbia Town Court a money order in the amount of $101.50 and a $5 cash filing fee. On November 29, 2016, respondent returned Ms. Schimmelpfennig's money order. He failed to direct his court clerk to prepare minutes of the proceeding and to file a return with the County Court, and he did not otherwise take any action on Ms. Schimmelpfennig's appeal.

18. During the pendency of *Treen-Goff v Schimmelpfennig,* respondent failed to mechanically record any appearances in the case.

As to Charge II of the Formal Written Complaint:

19. From January 1, 2009, when he assumed judicial office, through May 23, 2017, respondent failed to mechanically record any appearances in the Columbia Town Court as required by Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08.

20. Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 provide that every town and village justice must mechanically record all

proceedings in the court. The recording requirement became effective on June 16, 2008.

21. Respondent did not begin recording proceedings until after he was asked by the Commission during its investigation of the matters herein to provide audio recordings of appearances in *Treen-Goff v Schimmelpfennig.*

Additional Factors

22. Respondent acknowledges that he improperly delayed in holding a hearing in *Treen-Goff v Schimmelpfennig*. Prior to presiding over the matter, respondent had never received a small claims jury trial demand and did not know how to process the petition. Respondent avers that in the future he will immediately contact the Judicial Resource Center for assistance if he encounters a judicial issue that he cannot independently resolve.

23. Respondent also acknowledges that he did not mechanically record proceedings in his court prior to May 23, 2017. Respondent asserts that he did not know how to operate the laptop recorder, and until the Commission's inquiry he did not seek assistance in learning how to operate the recorder. Respondent also asserts that, notwithstanding the clear mandate of Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 that all proceedings be mechanically recorded, he believed his handwritten notes of proceedings were sufficient, even though he had not researched the matter and could point to no authority supporting his interpretation. After the Commission attempted to obtain audio recordings of proceedings in *Treen-Goff v Schimmelpfennig,* respondent received training from a local computer technician, which he acknowledges he could have done years before. Since May 2017, respondent has

complied with the mechanical recording requirement and pledges to continue to comply henceforth.

24. Respondent further acknowledges that it was improper to fail to take action on the defendant's appeal. Respondent states that he was awaiting the results of the Commission's investigation before acting on the appeal, but he now appreciates that it was inappropriate and unfair to the litigants to defer his judicial responsibilities in their case for so long, pending resolution of a disciplinary complaint against him. Respondent further states that he had never previously handled an appeal, but he assures the Commission that in the future he will consult with the Judicial Resource Center in a timely manner concerning his judicial obligations with regard to appeal procedures or any other matters that, as here, may confound him.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(7) and 100.3(C)(1) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The record establishes that respondent inexcusably neglected his duties as a judge by failing to mechanically record any court proceedings for more than eight years, contrary to a statewide administrative order, and by unduly delaying a small claims matter in which he failed to hold a hearing until 17 months after a notice of claim was

filed. Respondent has acknowledged his responsibility for these ethical lapses.

Since 2008, town and village justices have been required to mechanically record all court proceedings pursuant to Administrative Order 245/08, issued pursuant to the Rules of the Chief Judge (22 NYCRR §30.1). Despite this clear mandate, which went into effect shortly before he became a judge, respondent failed to record any proceedings in his court from the time he first took office and continuing for more than eight years. Respondent's claim that he "believed that his handwritten notes of proceedings were sufficient" suggests that he had at least some awareness of the recording requirement, and while he has explained that he "did not know how to operate the laptop recorder," which the court system had provided, his failure for more than eight years to seek assistance in learning to do so is plainly inexcusable. Not until after the Commission contacted him to ask for an audio recording of a particular proceeding did he seek training from a local computer technician and begin to comply with this important mandate.

The absence of a recording in any proceeding is significant since it not only makes it more difficult to determine what transpired at the proceeding but also indicates lack of compliance with an administrative order, which is inconsistent with a judge's ethical responsibilities (Rules, §100.3[C][1]). *See*, *e.g.*, *Matter of Ridsdale*, 2012 NYSCJC Annual Report 148; *Matter of Allen*, 2012 NYSCJC Annual Report 64. While the cases that have come to the Commission's attention in this regard have generally involved judges who may have forgotten to turn on the recorder in isolated instances, did not ensure that the court staff had activated it or simply did not realize the equipment was not working, respondent's decision to simply ignore this important requirement by failing

to record any proceedings whatsoever was unprecedented and grossly improper.

Respondent was also responsible for significant delay in a small claims action that was filed in his court. By not holding a hearing until 17 months after the notice of claim was filed, he deprived the parties of the opportunity to have the claim resolved in a timely manner. *See Matter of Scolton*, 2008 NYSCJC Annual Report 209 (delays in scheduling a hearing and issuing decisions in six small claims actions); *Matter of Baldwin*, 2009 NYSCJC Annual Report 74 (significant delays in three small claims matters); *Matter of Trickler*, 2016 NYSCJC Annual Report 222 (ten-month delay in scheduling a trial in a case involving alleged violations of the Environmental Conservation Law).

The ethical standards require every judge to dispose of court matters "promptly, efficiently and fairly" (Rules, §100.3[B][7]). The "informal and simplified" procedures for small claims are intended to provide litigants with an efficient and just resolution to their legal disputes (Uniform Justice Court Act ["UCJA"] §1804). This goal is thwarted when a simple matter that could have been resolved expeditiously is delayed for over a year through no fault of the parties. *See Matter of Gilpatric,* 2011 NYSCJC Annual Report 97. A small claim is not insignificant to the parties involved, and for litigants whose cases may represent their only personal involvement with the courts, an unduly delayed resolution of their dispute would likely convey the impression that the judicial system is inefficient and insensitive to their concerns.

Here, respondent's apparent uncertainty about how to process the defendant's demand for a jury trial obviously does not excuse the excessive delay. While

respondent, who had never previously handled a small claims jury trial request, appears to have recognized that the defendant's unsworn submission did not meet the statutory requisite (*see* UJCA §1806; *Village of Castleton on the Hudson v Pillsworth*, 184 Misc2d 284, 285 [Sand Lake Justice Ct Rensselaer Co 2000]) and asked her to submit a notarized filing, it is unclear why he then inexplicably delayed and repeatedly adjourned the matter for over a year, instead of seeking guidance from the City, Town and Village Courts Resource Center.

After the defendant filed a notice of appeal in the matter, respondent further neglected his judicial responsibilities by failing to direct his court clerk to prepare minutes of the proceeding and to file a return with the County Court. Respondent's claim that he was awaiting the results of the Commission's investigation before acting on the appeal is patently unacceptable since he was required to comply with the statutory directives, and his unfamiliarity with appeal procedures does not excuse his failure to seek appropriate guidance. *See Matter of Ayres*, 30 NY3d 59 (2017) (judge failed to file the court's return in a timely manner despite multiple directives to do so from County Court). Respondent's failure to diligently discharge his judicial duties in the matter was contrary to ethical standards and statutory mandates, with adverse consequences not only to the litigants, but to public confidence in the administration of justice as a whole.

In accepting the jointly recommended sanction of censure, we note that respondent has acknowledged his misconduct and has assured the Commission that he will seek guidance from the Resource Center when needed, and we trust that he will diligently discharge his judicial duties in the future. We also take this opportunity to

remind all judges of the numerous resources provided by the court system that are available to them, including the Resource Center and the Advisory Committee on Judicial Ethics, when questions about procedures or their judicial responsibilities arise.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Mr. Raskin, Mr. Stoloff and Ms. Yeboah concur.

CERTIFICATION

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

Dated: June 26, 2018

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

LEONARD G. TILNEY, JR.,

a Justice of the Lockport Town Court,
Niagara County.

**DECISION AND ORDER**

- - - - - - - - - - - - - - - - - - - - - - - -

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Richard A. Stoloff, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel) for the Commission

Timothy P. Murphy for Judge Tilney

The matter having come before the Commission on September 13, 2018; and the Commission having before it the Stipulation dated September 11, 2018; and

Judge Tilney having tendered his resignation by letter dated August 8, 2018, and having affirmed that he will vacate judicial office effective September 30, 2018, and that after vacating his judicial office he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that (1) the Stipulation will become public upon being signed by the signatories and (2) the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: September 17, 2018

Jean M Savanyu

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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

**LEONARD G. TILNEY, JR.** **STIPULATION**

A Justice of the Lockport Town Court,
Niagara County.

---

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Leonard G. Tilney, Jr., and his attorney, Timothy P. Murphy.

1. Leonard G. Tilney, Jr., has been a Justice of the Lockport Town Court, Niagara County, since 2004. His current term expires on December 31, 2019.

2. On September 17, 2016, Judge Tilney's wife passed away after a long illness.

3. Judge Tilney was apprised by the Commission in August 2018 that it was investigating a complaint against him, alleging that, at various times in 2017, he had committed misconduct both on and off the bench, including allegations that:

   A. he made a culturally insensitive comment to a defendant at sentencing,

   B. he yelled at his co-judge from the bench in a denigrating manner using vulgarity and

   C. he posted racially offensive material in the office area of the courthouse.

4. Judge Tilney has tendered his resignation by letter dated August 8, 2018, a copy of which is annexed as Exhibit 1. Judge Tilney affirms that he will vacate judicial office effective the end of the day on September 30, 2018.

5. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.

6. Judge Tilney affirms that, after having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

7. Judge Tilney understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, he would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

9. Judge Tilney waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: SEPTEMBER 2, 2018

Honorable **Leonard G. Tilney, Jr.**

Dated: SEPTEMBER 2, 2018

**Timothy P. Murphy**
Attorney for Hon. Leonard G. Tilney, Jr.

Dated: September 11, 2018

**Robert H. Tembeckjian**
Administrator and Counsel to the Commission
(John J. Postel and David M. Duguay, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

# APPENDIX G: STATISTICAL ANALYSIS OF COMPLAINTS

## COMPLAINTS PENDING AS OF DECEMBER 31, 2017

| SUBJECT OF COMPLAINT | | STATUS OF INVESTIGATED COMPLAINTS | | | | | | TOTALS |
|---|---|---|---|---|---|---|---|---|
| | | *PENDING* | *DISMISSED* | *CAUTION* | *RESIGNED* | *CLOSED** | *ACTION** | |
| *INCORRECT RULING* | | | | | | | | |
| *NON-JUDGES* | | | | | | | | |
| *DEMEANOR* | | 19 | 10 | 0 | 3 | 2 | 3 | 37 |
| *DELAYS* | | 1 | 2 | 0 | 0 | 0 | 0 | 3 |
| *CONFLICT OF INTEREST* | | 7 | 1 | 1 | 0 | 1 | 0 | 10 |
| *BIAS* | | 3 | 0 | 2 | 1 | 0 | 0 | 6 |
| *CORRUPTION* | | 4 | 1 | 0 | 0 | 1 | 0 | 6 |
| *INTOXICATION* | | 0 | 0 | 0 | 0 | 1 | 1 | 2 |
| *DISABILITY/QUALIFICATIONS* | | 1 | 1 | 0 | 0 | 1 | 0 | 3 |
| *POLITICAL ACTIVITY* | | 11 | 7 | 3 | 0 | 0 | 0 | 21 |
| *FINANCES/RECORDS/TRAINING* | | 3 | 5 | 1 | 4 | 1 | 1 | 15 |
| *TICKET-FIXING* | | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| *ASSERTION OF INFLUENCE* | | 9 | 3 | 0 | 0 | 3 | 2 | 17 |
| *VIOLATION OF RIGHTS* | | 21 | 8 | 7 | 6 | 3 | 5 | 50 |
| *MISCELLANEOUS* | | 1 | 0 | 0 | 0 | 1 | 0 | 2 |
| **TOTALS** | | 81 | 38 | 14 | 14 | 14 | 12 | 173 |

*Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office by the Commission.

## NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 2018

| SUBJECT OF COMPLAINT | DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY | STATUS OF INVESTIGATED COMPLAINTS | | | | | | TOTALS |
|---|---|---|---|---|---|---|---|---|
| | | *PENDING* | *DISMISSED* | *CAUTION* | *RESIGNED* | *CLOSED** | *ACTION** | |
| *INCORRECT RULING* | 1,181 | | | | | | | 1,181 |
| *NON-JUDGES* | 385 | | | | | | | 385 |
| *DEMEANOR* | 88 | 32 | 3 | 3 | 1 | 0 | 0 | 127 |
| *DELAYS* | 30 | 2 | 3 | 0 | 1 | 0 | 0 | 36 |
| *CONFLICT OF INTEREST* | 17 | 11 | 3 | 3 | 0 | 0 | 0 | 34 |
| *BIAS* | 16 | 3 | 2 | 0 | 0 | 0 | 0 | 21 |
| *CORRUPTION* | 36 | 5 | 0 | 0 | 0 | 0 | 0 | 41 |
| *INTOXICATION* | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 3 |
| *DISABILITY/QUALIFICATIONS* | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 2 |
| *POLITICAL ACTIVITY* | 9 | 7 | 1 | 0 | 0 | 0 | 0 | 17 |
| *FINANCES/RECORDS/TRAINING* | 9 | 23 | 9 | 2 | 1 | 0 | 0 | 44 |
| *TICKET-FIXING* | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| *ASSERTION OF INFLUENCE* | 4 | 13 | 0 | 0 | 1 | 1 | 0 | 19 |
| *VIOLATION OF RIGHTS* | 44 | 24 | 2 | 0 | 2 | 1 | 0 | 73 |
| *MISCELLANEOUS* | 12 | 2 | 2 | 0 | 1 | 0 | 0 | 17 |
| **TOTALS** | 1,833 | 125 | 25 | 8 | 7 | 2 | 0 | 2,000 |

*Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office by the Commission.

| ALL COMPLAINTS CONSIDERED IN 2018: 2,000 NEW & 173 PENDING FROM 2017 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| SUBJECT OF COMPLAINT | DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY | STATUS OF INVESTIGATED COMPLAINTS | | | | | | TOTALS |
| | | *PENDING* | *DISMISSED* | *CAUTION* | *RESIGNED* | *CLOSED** | *ACTION** | |
| *INCORRECT RULING* | 1,181 | | | | | | | 1,181 |
| *NON-JUDGES* | 385 | | | | | | | 385 |
| *DEMEANOR* | 88 | 51 | 13 | 3 | 4 | 2 | 3 | 164 |
| *DELAYS* | 30 | 3 | 5 | 0 | 1 | 0 | 0 | 39 |
| *CONFLICT OF INTEREST* | 17 | 18 | 4 | 4 | 0 | 1 | 0 | 44 |
| *BIAS* | 16 | 6 | 2 | 2 | 1 | 0 | 0 | 27 |
| *CORRUPTION* | 36 | 9 | 1 | 0 | 0 | 1 | 0 | 47 |
| *INTOXICATION* | 1 | 2 | 0 | 0 | 0 | 1 | 1 | 5 |
| *DISABILITY/QUALIFICATIONS* | 1 | 2 | 1 | 0 | 0 | 1 | 0 | 5 |
| *POLITICAL ACTIVITY* | 9 | 18 | 8 | 3 | 0 | 0 | 0 | 38 |
| *FINANCES/RECORDS/TRAINING* | 9 | 26 | 14 | 3 | 5 | 1 | 1 | 59 |
| *TICKET-FIXING* | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| *ASSERTION OF INFLUENCE* | 4 | 22 | 3 | 0 | 1 | 4 | 2 | 36 |
| *VIOLATION OF RIGHTS* | 44 | 45 | 10 | 7 | 8 | 4 | 5 | 123 |
| *MISCELLANEOUS* | 12 | 3 | 2 | 0 | 1 | 1 | 0 | 19 |
| **TOTALS** | 1,833 | 206 | 63 | 22 | 21 | 16 | 12 | 2,173 |

*Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office by the Commission.

## ALL COMPLAINTS CONSIDERED SINCE THE COMMISSION'S INCEPTION IN 1975

| SUBJECT OF COMPLAINT | DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY | STATUS OF INVESTIGATED COMPLAINTS | | | | | | TOTALS |
|---|---|---|---|---|---|---|---|---|
| | | *PENDING* | *DISMISSED* | *CAUTION* | *RESIGNED* | *CLOSED** | *ACTION** | |
| *INCORRECT RULING* | 26,690 | 0 | 0 | 0 | 0 | 0 | 0 | 26,690 |
| *NON-JUDGES* | 8,439 | 0 | 0 | 0 | 0 | 0 | 0 | 8,439 |
| *DEMEANOR* | 4,118 | 51 | 1,371 | 362 | 149 | 136 | 270 | 6,457 |
| *DELAYS* | 1,698 | 3 | 208 | 110 | 40 | 23 | 32 | 2,114 |
| *CONFLICT OF INTEREST* | 875 | 18 | 537 | 181 | 60 | 34 | 147 | 1,852 |
| *BIAS* | 2,035 | 6 | 308 | 65 | 36 | 24 | 38 | 2,512 |
| *CORRUPTION* | 722 | 9 | 149 | 14 | 47 | 24 | 43 | 1,008 |
| *INTOXICATION* | 75 | 2 | 43 | 8 | 19 | 6 | 32 | 185 |
| *DISABILITY/QUALIFICATIONS* | 68 | 2 | 36 | 2 | 23 | 16 | 6 | 153 |
| *POLITICAL ACTIVITY* | 452 | 18 | 334 | 205 | 28 | 38 | 55 | 1,130 |
| *FINANCES/RECORDS/TRAINING* | 341 | 26 | 386 | 235 | 168 | 104 | 106 | 1,366 |
| *TICKET-FIXING* | 28 | 1 | 94 | 160 | 47 | 62 | 171 | 563 |
| *ASSERTION OF INFLUENCE* | 259 | 22 | 212 | 98 | 42 | 21 | 76 | 730 |
| *VIOLATION OF RIGHTS* | 2,659 | 45 | 643 | 243 | 127 | 73 | 117 | 3,907 |
| *MISCELLANEOUS* | 903 | 3 | 275 | 91 | 37 | 47 | 61 | 1,417 |
| **TOTALS** | 49,362 | 206 | 4,596 | 1,774 | 823 | 608 | 1,154 | 58,523 |

* Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office by the Commission since its inception in 1978, as well as suspensions and disciplinary proceedings commenced in the courts by the temporary and former commissions on judicial conduct operating from 1975 to 1978.

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