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

JO ANNE ASSINI,

a Judge of the Family Court,
Schenectady County.

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THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Alan J. Pope, Esq., Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Thomas A. Klonick
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

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

Thuillez, Ford, Gold, Johnson & Butler (by Donald P. Ford, Jr.)
for the Respondent

The respondent, Jo Anne Assini, a judge of the Family Court, Schenectady County, was served with a Formal Written Complaint dated April 19, 2005, containing five charges.

On September 29, 2005, the administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On November 10, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Schenectady County Family Court since January 2001.

As to Charge I of the Formal Written Complaint:

2. On or about June 17, 2002, in *Grandy v. Birch*, the parties Jennifer Grandy and Donald J. Birch, Sr. appeared without counsel before respondent on a petition concerning visitation as to their daughter. Ms. Grandy was seeking to preclude Mr. Birch's son from being present when Mr. Birch exercised visitation as to their daughter.

3. Notwithstanding the requirements of Section 262 of the Family Court Act, respondent failed to advise them of their right to counsel, the right to an adjournment to confer with counsel and the right to have counsel assigned by the court where the

parties are financially unable to retain counsel of their own.

4. After summarizing the contents of the petition for Mr. Birch, who had not received it, respondent entered a denial on his behalf and engaged the parties in a discussion of Ms. Grandy's petition. When the parties addressed each other, respondent stated, "Shhh. What do you two think you're doing?" Thereafter, Mr. Birch apologized to respondent.

5. Respondent admonished Ms. Grandy, who had had knee surgery and had difficulty sitting in a chair, to "sit up straight."

6. Mr. Birch, who worked as a security guard for a local college, appeared before respondent in his uniform shirt. Mr. Birch had come to court from work and planned to return from court to work.

7. Respondent criticized Mr. Birch for appearing before her dressed in his college security shirt. Respondent told Mr. Birch that he looked like a "slob" and said that he could have brought something "decent" to wear, which is what "normal" people do. She also stated that Mr. Birch could buy a shirt or necktie at the City Mission for fifty cents.

8. When Mr. Birch politely requested a copy of a court document that he believed existed from a previous proceeding, respondent (a) admonished him for acting as if he were in charge of the court, (b) warned that he might be held in contempt, (c) read to him the contempt statute and (d) again admonished him for wearing his college uniform shirt to court.

9. When Ms. Grandy stated that she had consulted with her attorney who advised that she should proceed *pro se,* respondent sarcastically stated, "Oh, okay. All right, I'll look forward to meeting her."

10. When Mr. Birch indicated that he did not believe he could afford counsel, respondent instructed him to first contact five attorneys before she would consider assigning counsel to him. Respondent adjourned the matter.

11. Shortly thereafter, Ms. Grandy discontinued her petition because of respondent's impatience and discourtesy toward her and Mr. Birch.

As to Charge II of the Formal Written Complaint:

12. On or about June 17, 2002, in *Nicole M. Moore v. Richard E. Moore*, the parties appeared before respondent on a petition concerning visitation. The petitioner appeared with counsel, Brian DeLaFleur. The defendant appeared with counsel, James S. Martin.

13. Respondent asked Ms. Moore if she would be willing to agree to the current visitation schedule, and when Ms. Moore said she would not, respondent said in a raised, angry voice, "Okay, then I'm gonna give him more time. Understand?"

14. When respondent noticed that the Moore child was present in the courtroom, accompanied by her grandfather, respondent angrily raised her voice in directing that the child be removed.

15. Just after the child was removed from the court, the attorney for Mr. Moore attempted to speak, but respondent interrupted him and stated, "No. Mr. Martin,

we're done. We're done. I am so sick of this. I am so bored with this. Yes, bored with having – coming in here and then they [the parties] start to talk." Respondent then adjourned the matter.

As to Charge III of the Formal Written Complaint:

16. On or about September 22, 2003, in *Niccole Barros v. Paul M. Barros and Mary Jane Brown*, the incarcerated petitioner appeared *pro se* before respondent, seeking visitation with her nine children during the period of her confinement in the Schenectady County Jail.

17. Notwithstanding the requirements of Section 262 of the Family Court Act, respondent failed to advise Ms. Barros of her right to counsel, the right to an adjournment to confer with counsel and the right to have counsel assigned by the court if she were financially unable to retain counsel.

18. Ms. Barros' husband, who had custody of the children, twice stated that he would not oppose the children's visitation with their mother, but that he was concerned that visitation in jail would be detrimental to the mental stability of the children. Respondent granted Ms. Barros bi-monthly visitation, with the law guardian's approval, and asked Ms. Barros if the schedule was satisfactory. Ms. Barros replied that she had no choice but to accept the agreement. Respondent informed her that she did have a choice and allowed her to ask for what she wanted. Ms. Barros stated that her husband had not cared about the children's mental stability when the children had, on several occasions, been taken into New York state prisons to visit their paternal uncles.

Respondent replied, "Okay, Ms. Barros. We're not going to have any visitation then."

19. After Ms. Barros became disorderly, respondent stated that at her next appearance, Ms. Barros would be held in contempt and that counsel would be assigned. Respondent adjourned the proceeding to October 8, 2003.

20. On October 8, 2003, respondent did not consider the matter of Ms. Barros' petition for visitation with the nine children. Respondent did consider Ms. Barros' request for joint custody of and visitation with her tenth child.

21. On October 8, 2003, Ms. Barros, who was still incarcerated, appeared before respondent, seeking joint custody of her tenth child. Ms. Barros was represented by assigned counsel, James S. Martin. Ms. Barros' tenth child was in the custody of a relative, Vicky Vice, who was also present.

22. Ms. Vice told the court she would have no problem bringing the child to jail to visit with the petitioner. Mr. Martin suggested that respondent prepare an order for the jail because the jail might not permit a child to visit the incarcerated mother without a court order. When Ms. Barros stated that Ms. Vice had no problem bringing the baby to the jail on the weekend, respondent stated to her, "You do this again, you are going to add on to your sentence."

23. After respondent had determined that the petitioner could have visitation with her child, respondent sought to end the proceeding. Ms. Barros stated, "That's not what I was askin'. I was coming in for joint custody." Respondent stated, "I'm not hearing this case." Respondent then concluded the proceeding without issuing

an order of visitation.

As to Charge IV of the Formal Written Complaint:

24. On or about November 5, 2001, the parties in *Edward H. Spain, IV v. Brandee Spain* appeared before respondent on cross petitions for custody. There was also a pending divorce proceeding in another court. When respondent asked the parties if they were represented by counsel, Mr. Spain stated that he had spoken to an attorney but had expected an uncontested divorce. Respondent put the matter down for trial in order to give the parties enough time to file for divorce and stated that she would not hear the petitions but would transfer the matter to Albany County where the divorce proceeding would be held. Respondent told the parties that they should return to court on January 4, 2002, with their attorneys, or if they did not retain counsel, they should request that she assign counsel.

25. On January 4, 2002, when the parties appeared, respondent noted that Mr. Spain was present without counsel and demanded to know why. Mr. Spain informed respondent that he had discussed the matter with his attorney and they had decided that it was not necessary to have his attorney represent him in the custody matter, so he wanted to proceed to trial *pro se*. Respondent inquired in a harsh tone if Mr. Spain knew how to put documents into evidence or how to cross-examine witnesses. Respondent advised Mr. Spain that she would hold him to the same standards that she would hold all attorneys to in a trial and directed Mr. Spain to make an immediate effort to find an attorney during a short recess. When court reconvened, Mr. Spain indicated that he had been unable to

speak with any attorneys. Respondent lectured Mr. Spain that he had used up the court's valuable time and adjourned the matter.

26. The parties later discontinued their action because of respondent's impatience and discourtesy in court.

As to Charge V of the Formal Written Complaint:

27. The charge is not sustained and is therefore dismissed.

Additional findings of fact:

28. When respondent assumed the bench in 2001, she was the only Family Court judge in Schenectady County. The court had been a two-judge court for many years. Respondent inherited a large caseload, and many cases were already delayed beyond the court system's standards and goals. Respondent discovered upon assuming the bench that in excess of 400 Department of Social Services orders had not been completed, many years old, leaving children in jeopardy. Respondent cleared up this backlog single-handedly. The stress of this backlog contributed to respondent's lack of patience and improper demeanor.

29. Respondent has changed a number of her procedures, including the manner in which she advises litigants of their rights to counsel. Respondent now informs all statutorily eligible litigants of their rights to counsel, to an adjournment and to assigned counsel at the outset of each proceeding, and provides the necessary forms so that counsel is assigned by the court where appropriate.

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)(3) and 100.3(B)(6) 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. Charge V is not sustained and is therefore dismissed.

Every judge has an obligation to respect and comply with the law and to act in a manner that inspires public confidence in the fair-mindedness and impartiality of the judiciary. *Matter of Esworthy*, 77 NY2d 280 (1991); Rules, §100.2(A). In Family Court, "where matters of the utmost sensitivity are often litigated by those who are unrepresented and unaware of their rights" (*Id.* at 283), such a duty is self-evident and compelling. In several cases respondent violated these ethical standards by neglecting to inform litigants of their statutory rights and by addressing them in an intemperate, demeaning manner.

Section 262 of the Family Court Act provides that "[w]hen [a litigant] first appears in court, the judge shall advise such person before proceeding that he has the right to be represented by counsel of his own choosing, of his right to have an adjournment to confer with counsel, and of his right to have counsel assigned by the court

in any case where he is financially unable to obtain the same." In the cases cited herein, where issues of custody and visitation were being determined, respondent ignored this important duty to insure that the litigants' rights were adequately protected. Her omissions, and her directive to one litigant that he contact five attorneys before she would consider assigning counsel, did not comport with the court's obligation under the statute. As the Commission and the Court of Appeals have repeatedly held, a pattern of failing to advise litigants of the right to counsel and assigned counsel is serious misconduct. *Matter of Bauer*, 3 NY3d 158 (2004); *Matter of Reeves*, 63 NY2d 105 (1984); *Matter of Sardino*, 58 NY2d 286 (1983).

The record also establishes that respondent violated her duty to be "patient, dignified and courteous" to litigants in her court (Rules, §100.3[B][3]). The transcripts depict a series of rude, demeaning remarks by respondent to litigants in custody and visitation proceedings who came to Family Court seeking a fair hearing before an impartial jurist. In one case respondent told the litigants that she was "so bored" and "so sick" of the case and spoke to the litigants angrily and impatiently when they could not agree on a visitation schedule. In another case she criticized a litigant who was wearing his college security shirt, telling him that he looked like a "slob," that "normal people" would have worn something "decent" and that he could buy a shirt or tie at the City Mission for fifty cents. It appears that respondent was particularly harsh towards unrepresented litigants, addressing them in an intimidating, sarcastic manner. Indeed, in two cases (Charges I and IV) the parties actually discontinued their proceedings because

of respondent's impatience and discourtesy, apparently despairing of receiving a fair and just hearing in respondent's court.

While court congestion and the stress of dealing with a large backlog she inherited may have adversely affected respondent's judicial performance, these factors do not excuse her demeaning comments to litigants and her disregard of important statutory procedures. *See, Matter of Reeves, supra.*

In mitigation, we note that respondent has expressed remorse for her actions and that she now appropriately advises all statutorily eligible litigants of the right to counsel and assigned counsel.

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

Mr. Goldman, Mr. Pope, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Klonick, Judge Peters and Judge Ruderman concur.

Mr. Coffey and Judge Luciano were not present.

CERTIFICATION

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

Dated: November 18, 2005

Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct