STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

- -

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

DETERMINATION

MARIE A. COOK,

a Justice of the Chateaugay Town
Court, Franklin County.

- -

THE COMMISSION:

Lawrence S. Goldman, Esq., 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
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

Hughes & Stewart, PC (by Brian S. Stewart) for the Respondent

The respondent, Marie A. Cook, a justice of the Chateaugay Town Court, Franklin County, was served with a Formal Written Complaint dated February 1, 2005,

containing three charges. Respondent filed an answer dated February 8, 2005.

On April 4, 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 April 21, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Chateaugay Town Court since January 2002. She is employed as a school bus driver. She is not an attorney.

As to Charge I of the Formal Written Complaint:

2. In or about January 2003, Francis Helm was charged with Aggravated Harassment, on the complaint of Katie Chase. The matter was returnable before respondent.

3. Respondent was acquainted with both Francis Helm and Katie Chase, who were, respectively, a former and current student in the school district where respondent was employed as a school bus driver. Respondent is also Mr. Helm's distant cousin but is not related to Mr. Helm within the sixth degree of relationship.

4. On consent of the District Attorney, respondent adjourned the charge against Mr. Helm to May 20, 2003, when the defendant was scheduled to return from

college. Respondent issued an order of protection for the defendant to stay away from Ms. Chase's home, school and school functions.

5. On or about May 19, 2003, a day before the adjourned date, the defendant came to respondent's court, spoke *ex parte* to respondent and submitted to respondent several items of alleged correspondence purportedly germane to the case involving Mr. Helm, Ms. Chase and Fallon Crawford, a friend of Ms. Chase.

6. Thereafter on May 19, 2003, based upon respondent's *ex parte* communication with the defendant and upon respondent's personal observations of Ms. Chase during school trips in which she was a passenger on respondent's school bus, respondent dismissed the charge against the defendant, without notice to or the consent of the District Attorney, as was required by Sections 170.40, 170.45 and 210.45 of the Criminal Procedure Law.

7. On May 19, 2003, without notice to the District Attorney or to Ms. Chase, respondent also issued an amended order of protection, which, *inter alia*, allowed Mr. Helm to play basketball at the gymnasium where Ms. Chase was a student.

8. In or about June 2003, after the District Attorney moved to restore the *Helm* case to the calendar and to disqualify respondent from the case, respondent restored the case to the calendar and recused herself.

As to Charge II of the Formal Written Complaint:

9. In or about March 2003, Eric Lamb was charged with Speeding, returnable before respondent.

10. In or about March 2003, respondent received a telephone call from Clinton Town Justice Daniel LaClair, who requested that respondent grant special consideration to Eric Lamb.

11. On or about March 31, 2003, as a result of her conversation with Judge LaClair, respondent allowed Mr. Lamb to plead guilty to a parking violation in satisfaction of the Speeding charge. Respondent recorded in her docket that the charge had been "reduced in the interest of Justice Danny LaClair."

12. Respondent failed to obtain the consent of the prosecution for the reduction in the *Lamb* case, as was required by Sections 220.10 and 340.20 of the Criminal Procedure Law.

As to Charge III of the Formal Written Complaint:

13. Between January 2002 and April 2004, in the 40 cases identified on Schedule A appended hereto, respondent engaged in unauthorized *ex parte* communications and/or reduced or dismissed the charges without the consent of the prosecution as required by Sections 170.40, 170.45, 170.55(1), 210.45, 220.10 and 340.20 of the Criminal Procedure Law.

Supplemental findings:

14. Respondent was new to the bench during the period at issue in these charges.

15. At the time, she had no regularly scheduled court date for the

appearance of the district attorney in her court. Consequently, many defendants appeared in the absence of a prosecutor, on the return date of tickets issued by the police. When these defendants proffered explanations to respondent, she often accepted such explanations and disposed of the charges, in the belief she could do so because the defendants appeared in court on the date originally chosen by the ticket-issuing police officers.

16. Respondent now recognizes that she may not discuss the merits of a case *ex parte*, and that the prosecution must be accorded an opportunity to be heard before she reduces or dismisses charges against a defendant.

17. Respondent now has a regularly scheduled monthly court date for appearances in her court by the District Attorney's Office. The District Attorney of Franklin County confirms that respondent is now diligent about scheduling trials and notifying his office of matters requiring his participation.

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)(1), 100.3(B)(6) and 100.3(E)(1) of the Rules Governing Judicial Conduct 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 III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent disposed of numerous cases by dismissing or reducing the charges, or granting an adjournment in contemplation of dismissal, without notice to or the consent of the prosecution as required by law. Prior to the dispositions in many cases, respondent also solicited or received unauthorized, *ex parte* information. Respondent's conduct was contrary to statutory requirements (Crim. Proc. Law §§170.40, 170.45, 170.55(1), 210.45, 220.10 and 340.20) and to ethical standards requiring a judge to accord to every person with a legal interest in a proceeding the right to be heard according to law (Rules Governing Judicial Conduct, §100.3[B][6]). *See, e.g., Matter of More*, 1996 Annual Report 99 (Comm. on Judicial Conduct) (judge engaged in *ex parte* communications and dismissed cases without notice to the prosecution); *Matter of VonderHeide*, 72 NY2d 658 (1988) (judge, *inter alia*, routinely made telephone calls outside of court in order to determine the facts in pending matters).

Respondent's misconduct was particularly egregious in the *Helm* case, where, one day prior to the scheduled court date, she dismissed a charge of Aggravated Harassment and issued an amended order of protection, without notice to or the consent of the District Attorney, based upon her inappropriate, *ex parte* discussion with the defendant, her *ex parte* examination of documents the defendant provided, and her own previous observations of the complaining witness. Such a one-sided disposition, with no opportunity for the prosecution or complaining witness to be heard, is totally contrary to basic principles governing the fair and proper administration of justice.

It was also egregious misconduct for respondent to grant a reduction in the

Lamb case based upon an *ex parte* request from another judge seeking special consideration for the defendant. Such conduct constitutes ticket-fixing, which is a form of favoritism that has long been condemned. In *Matter of Byrne*, 47 NY2d (b), (c) (1979), the Court on the Judiciary declared that "a judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court, is guilty of *malum in se* misconduct constituting cause for discipline." *See also, e.g., Matter of Bulger*, 48 NY2d 32 (1979). Respondent underscored the favoritism underlying the disposition by noting on the docket that the charge had been "reduced in the interest of Justice Danny LaClair." By acceding to a request for special consideration, respondent engaged in conduct that subverts the entire system of justice, which is based on the impartiality and independence of the judiciary. In this case, respondent again imposed the disposition without the required consent of the prosecution.

Respondent's handling of these cases suggests a fundamental misunderstanding of important statutory procedures and a misapprehension of the proper role of a judge. A pattern of misconduct contrary to basic statutory procedures may result in removal, especially where the judge's actions deprive individuals of liberty. There was no such deprivation here, where respondent's dispositions were based, in large part, upon a mistaken belief that she could accept defendants' explanations and reduce or dismiss charges in the absence of the prosecution.

In mitigation, respondent was new to the bench during the period at issue and now recognizes the importance of avoiding *ex parte* communications and ensuring

that the prosecution is appropriately accorded an opportunity to be heard. Respondent now has a regularly scheduled monthly court date for appearances by the District Attorney's office, which has confirmed that respondent is now diligent about scheduling trials and notifying his office of matters requiring his participation. Respondent has acknowledged her misconduct and appears to have made sincere efforts to ensure that her procedures are in compliance with statutory requirements.

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

Mr. Goldman, Mr. Coffey, Mr. Felder, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

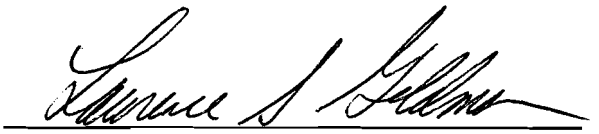
Mr. Emery and Judge Klonick dissent and vote to reject the Agreed Statement of Facts on the basis that the disposition is too lenient and that respondent should be removed. Mr. Emery files a dissenting opinion which Judge Klonick joins insofar as it concludes that respondent's conduct warrants removal.

Ms. DiPirro and Ms. Hernandez were not present.

CERTIFICATION

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

Dated: August 31, 2005



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

Schedule A

Docket Number	Name of Case	Date of Charge	Charge	Disposition	Date of Disposition	Specifications to Charge III
None	Scott Cowan	1/8/02	ECL 11-0931 sub 4a, Discharging A Firearm Resulting In Load Passing Over A Highway (Misdemeanor)	Dismissed	3/11/02	Following defendant's not-guilty plea, respondent solicited and considered *ex parte* letters from various witnesses who supported the defendant. Respondent dismissed the charge without consent of the prosecution.
22	Sarah L. Prue	2/16/02	Violation Of Probation (Misdemeanor)	ACD	3/25/02	Respondent granted an ACD without consent of the prosecution.
15	Tommie J. Johnston	6/8/02	Speeding (75/55)	Reduced to 1201A, Stopping/Standing On Pavement ($25/0)	9/23/02	Respondent reduced the charge without consent of the prosecution.
67	Heather M. Cook	6/8/02	Passing In A No Passing Zone	ACD	6/24/02	Respondent discussed circumstances of the charge with the defendant and her parents at arraignment. Respondent ACD'd the charge without consent of the prosecution.
04	Corey A. Spinner	6/23/02	Speeding (71/55)	Reduced to 1201A, Stopping/Standing On Pavement ($75/0)	9/9/02	Respondent reduced the charge without consent of the prosecution.

Docket Number	Name of Case	Date of Charge	Charge	Disposition	Date of Disposition	Specifications to Charge III
292	Rosie Pena	7/27/02	Conspiracy, 4th (Felony)	Reduced to Conspiracy, 6th (Misdemeanor), with consent of DA, and given an ACD. (DA recommended a Conditional Discharge.)	9/9/02	Respondent reduced the charge and granted an ACD without consent of the prosecution.
38	Karry L. Stansel	8/12/02	Failed To Reduce Speed	Reduced to 1201A, Stopping/Standing On Pavement ($135/0)	10/28/02	Respondent reduced the charge without consent of the prosecution.
None	Vincent v. Johnston	9/16/02	Small Claim	Award in favor of claimant	10/7/02	Following the hearing, respondent engaged in several *ex parte* telephone conversations with both the claimant and defendant relative to defendant's alleged failure to pay the judgment.
28	Alfred J. Provancher	10/3/02	Speeding (46/30)	Reduced to 1201A, Stopping/Standing On Pavement ($100/0)	10/8/02	Respondent reduced the charge without consent of the prosecution.
34	Alan S. Fishman	10/14/02	Failure To Keep Right	Reduced to 1201A, Stopping/Standing On Pavement ($50/0)	10/24/02	Respondent reduced the charge without consent of the prosecution.
86	Monique M. McDonald	10/12/02	Possession/Forged License	ACD	11/4/02	Respondent granted an ACD without consent of the prosecution.

Docket Number	Name of Case	Date of Charge	Charge	Disposition	Date of Disposition	Specifications to Charge III
80	Matthew A. Brockway	10/20/02	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($75/0)	1/27/03	Respondent reduced the charge without consent of the prosecution.
85	Jordan G. Ribis	11/5/02	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($50/0)	2/10/03	Respondent reduced the charge without consent of the prosecution.
64	Donald L. Hill	12/11/02	Failed To Keep Right	Reduced to 1201A, Stopping/Standing On Pavement ($25/0)	12/30/02	Respondent reduced the charge without consent of the prosecution.
89	Walter C. Boadway	1/14/03	Failed to Yield Right Of Way	Dismissed (Interest of Justice)	2/10/03	Respondent dismissed the charge without consent of the prosecution.
95	Helen Boyea	2/11/03	Uninspected Motor Vehicle	Dismissed (Interest of Justice)	3/3/03	Respondent dismissed the charge without consent of the prosecution.
97	Roland Cote	2/15/03	Littering	Dismissed	2/15/03	Respondent and her former co-justice (now deceased) discussed circumstances of the case with the defendant. Respondent dismissed the charge without consent of the prosecution.
98	Kryn Patnode	2/26/03	Failed To Reduce Speed	Dismissed	2/26/03	Respondent dismissed the charge without consent of the prosecution.

Docket Number	Name of Case	Date of Charge	Charge	Disposition	Date of Disposition	Specifications to Charge III
156	Phillip J. Soulia	4/17/03	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($100/0)	5/23/03	Respondent reduced the charge without consent of the prosecution.
165	Guy Falcon	4/27/03	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($100/0)	6/13/03	Respondent reduced the charge without consent of the prosecution.
None	John C. Dezan	5/12/03	Assault, 3rd Degree	ACD	9/29/04	Respondent engaged in an *ex parte* discussion with the town supervisor relative to the case; respondent discussed the charge with the defendant and his father at the arraignment.
166	Frederick Heron	5/23/03	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($50/0)	6/13/03	Respondent reduced the charge without consent of the prosecution.
63	Irene Perry	6/19/03	ECL 211.2, Air Pollution (Misdemeanor)	ACD	6/30/03	Respondent granted an ACD without consent of the prosecution.
185	Erin Dubray	7/7/03	Following Too Closely	Reduced to 1201A, Stopping/Standing On Pavement ($50/0)	7/21/03	Respondent reduced the charge without consent of the prosecution.
187	Starla Joynes	7/18/03	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($50/0)	7/28/03	Respondent reduced the charge without consent of the prosecution.

Docket Number	Name of Case	Date of Charge	Charge	Disposition	Date of Disposition	Specifications to Charge III
206	Mark Diperno	7/19/03	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($100/0)	8/18/03	Respondent reduced the charge without consent of the prosecution.
261	John Stone	8/6/03	Transportation Law 211 (Over 10-Hour Rule--hours of service--Misdemeanor)	Reduced to 1201A, Stopping/Standing On Pavement ($100)	11/30/03	Respondent reduced the charge without the consent of the prosecution.
217	Crystal Martin	8/10/03	Unlicensed Operator	Dismissed	8/25/03	Respondent discussed circumstances of the charge with the defendant at arraignment. Respondent dismissed the charge without consent of the prosecution.
243	Patrick McCool	10/13/03	Speeding	Reduced to 1110A ($15/35)	10/27/03	Respondent reduced the charge without consent of the prosecution.
None	Jason Schrader	10/14/03	Sexual Misconduct	ACD	11/17/03	Following defendant's not-guilty plea at arraignment, respondent discussed the circumstances of the charge with defendant.
312	Harold Thompson	10/20/03	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($100/0)	1/12/04	The defendant informed respondent that he has a CDL (commercial driver's license) and asked for a reduction to a no-point violation. Respondent reduced the charge without consent of the prosecution.

Docket Number	Name of Case	Date of Charge	Charge	Disposition	Date of Disposition	Specifications to Charge III
256	Rose Ann Trombley	11/5/03	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($50/0)	11/17/03	Respondent and defendant discussed defendant's need for her license because she drives daily to Plattsburgh for work. Respondent reduced the charge without consent of the prosecution.
288	Jeremiah Monette	12/16/03	Stop Sign	Dismissed (Interest of Justice)	12/29/03	Respondent and defendant discussed defendant's financial situation, circumstances of the charge, his new job and the fact that he just got out of jail. Respondent dismissed the charge without consent of the prosecution.
322	Pamela Clough	12/19/03	Unsafe Backing	Reduced to 1201A, Stopping/Standing On Pavement ($65/0)	1/26/04	Defendant informed respondent that she has never had a ticket or accident in 40 years of driving. Respondent reduced the charge without consent of the prosecution.
332	Ahmed Waleed	12/18/03	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($50/0)	1/30/04	Respondent reduced the charge without consent of the prosecution.

Docket Number	Name of Case	Date of Charge	Charge	Disposition	Date of Disposition	Specifications to Charge III
313	William Wood	12/24/03	Unsafe Backing	Reduced to 1201A, Stopping/Standing On Pavement ($10/0)	1/12/04	Defendant informed respondent that there was no damage resulting from an accident, which prompted the charge, and requested a reduction. Respondent reduced the charge without consent of the prosecution.
None	Lavoie v. Lobdell	1/23/04	Small Claim	Award in favor of claimant	2/17/04	Following the small claims hearing and prior to judgment, respondent spoke *ex parte* with various potential witnesses who were not present at the hearing.
378	Michael Forte	2/26/04	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($100/0)	3/12/04	Respondent reduced the charge without consent of the prosecution.
407	Jodi Brooks	3/12/04	No Seat Belt	Dismissed	3/29/04	The defendant informed respondent that she was wearing her seat belt, contrary to the charge. Respondent dismissed the charge without consent of the prosecution.
427	Aaron Avery	4/3/04	Speeding	Reduced to 1201A, Stopping/Standing On Pavement ($100/0)	4/19/04	Respondent reduced the charge without consent of the prosecution.

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

MARIE A. COOK,

a Justice of the Chateaugay Town
Court, Franklin County.

DISSENTING OPINION
BY MR. EMERY, IN
WHICH JUDGE KLONICK
JOINS IN PART

- -

The *Cook* and *LaClair* cases pose the issue of what is the proper sanction for judges who decide cases, not based upon the law and the facts, but for their personal benefit or for the benefit of their friends. I consider this category of judicial misconduct to be the most serious of any that comes before the Commission. The question these cases raise is whether a sanction less than removal is supportable for judges who abuse their power by making decisions that are devoid of legal analysis, contrary to the facts as presented, and designed knowingly and solely to further their own personal interests.

The Court of Appeals has defined the purpose of disciplinary proceedings as "not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents" (*Matter of Reeves*, 63 NY2d 105, 111 [1984], citing *Matter of Waltemade*, 37 NY2d [a], [lll]). In essence, our duties are protective rather than punitive. Our goal is to preserve the integrity and perception of judicial integrity within the justice system for litigants, victims, the state and other participants in the process by

upholding the Rules on Judicial Conduct. In doing so, we must be fair to the judges who are charged and sanctioned. We must realistically evaluate the individual circumstances of each violation. Regularly, judges assert that their misconduct is mitigated by a myriad of factors such as provocation by litigants or lawyers (*Matter of Mills*, 2005 Annual Report 185 [Comm. on Judicial Conduct]; *Matter of Bauer*, 3 NY3d 158 [2004]); personal, medical, family or psychological circumstances (*Matter of Horowitz*, 2006 Annual Report ___ [Comm. on Judicial Conduct]; *Matter of Washington*, 100 NY2d 873 [2003]); good faith mistakes of law (*Matter of Bauer*, *supra*; *Matter of Feinberg*, __ NY3d __, No. 125 [June 29, 2005]); an absence of personal, financial or other economic benefit (*Matter of DiStefano*; 2005 Annual Report 145 [Comm. on Judicial Conduct]; *Matter of Feinberg*, *supra*); and speedy and spontaneous acknowledgment of the violation and sincere apology to those affected (*Matter of Allman,* 2006 Annual Report ___ [Comm. on Judicial Conduct]; *Matter of DiStefano*, *supra*).

But excuses and exceptions cannot be allowed to eviscerate the fundamental rule animating the Commission's work: that judging must be fair, unbiased, untainted, and driven by the law and the facts, and that the personal desires and interests of individual judges can have no role whatsoever in decision-making. How to uphold this rule in the face of competing interests and individual circumstances, and how to determine the appropriate sanction based upon a legally supportable neutral principle, is a constant struggle for the members of the Commission. The *Cook* and *LaClair* cases

present what I believe is an opportunity to clarify how the Commission should make sanction decisions in a critical category of the cases.

In *LaClair*, Judge LaClair concedes that he telephoned Judge Cook and asked her to "help" a friend, Eric Lamb, who had received a Speeding ticket. In *Cook,* it is undisputed that Judge Cook received a phone call from Judge LaClair seeking special consideration for Mr. Lamb and that, as a result of the call, Judge Cook reduced Lamb's Speeding charge to a parking violation. Remarkably, Judge Cook noted on the court docket that the charge had been "reduced in the interest of Justice Danny LaClair."

Both justices also admit to other violations. Judge Cook concedes that *ex parte* she dismissed charges and amended a protective order as well as reduced or dismissed charges in 40 cases. In mitigation, she notes she is not an attorney, is new to the bench, and claims that the court schedule required her to deal *ex parte* with defendants. She also says she has reformed her practices to include the District Attorney.

Judge LaClair admits that he also asked a now-deceased town justice to fix a Speeding ticket for LaClair's wife with the result that the charge was adjourned in contemplation of dismissal. In mitigation, Judge LaClair asserts that he has been cooperative with the Commission and that he spontaneously confessed.

I dissent from the Commission's determination of censure in these cases for one simple reason: removal is the only sanction available to the Commission that is commensurate with the corrosive effect of judicial decisions perverted by a judge's

personal interest. This is a category of misconduct that strikes at the heart of our justice system. Decisions based on the personal interests of the judges, rather than the law and the facts, corrupt the system in two different and equally corrosive respects: they deny justice -- the simple but profound idea that acts contrary to law have consequences, no matter who the wrongdoer may be -- in the individual case at issue; and they infect the public with outrage and a depressing sense of despair when it becomes known that justice is not, in fact, blind in these cases. But, in contrast to judges whose misconduct is personal -- misbehavior off the bench that does not involve distortions of the justice system itself -- judges who pervert decision-making and abuse their power or discretion in their official capacity for their personal gain breed a special form of public cynicism and anger. I find it difficult, if not impossible, to excuse this category of judicial misconduct. And I simply cannot accept the proposition that misconduct of this sort is victimless. In fact, its victims are all of us, and the justice system itself.

With respect specifically to ticket-fixing, this Commission 28 years ago condemned this practice and demonstrated how the system of justice was "subverted" by such conduct (*Ticket Fixing: The Assertion of Influence in Traffic Cases*, Interim Report 1977 at p. 17). In that report the Commission stated: "The fixing of traffic tickets creates an illicit atmosphere within the courts which could easily carry over to other cases" (p. 19). The Commission discovered hundreds of judges who had engaged in ticket-fixing, either by seeking favors of other judges or by granting favors at the request of persons

with influence. The practice was so routine that it was not unusual for Commission investigators to find letters requesting special consideration in the court files, clipped to copies of the tickets or dockets. By releasing its Interim Report and by imposing public discipline in over 140 cases, the Commission placed every judge in the State on notice that ticket-fixing would not be tolerated, and by the early 1980s, ticket-fixing had all but ended in this State.

Thereafter, incidents of ticket-fixing were treated with particular severity, since judges now had the benefit of a significant body of case law concerning the impropriety of ticket-fixing. In 1985 the Court of Appeals upheld the Commission's determination of removal of a judge who had interceded on two Speeding tickets issued to his son and his son's friend, stating that "ticket-fixing is misconduct of such gravity as to warrant removal, even if this matter were petitioner's only transgression" (the judge had previously been disciplined for similar misconduct) (*Matter of Reedy*, 64 NY2d 299, 302 [1985]). In a later case, the Court reiterated that "as a general rule, intervention in a proceeding in another court should result in removal," although, citing mitigating factors, the Court censured a town justice who had inquired about procedures in connection with his son's case but had not made an overt request for special treatment. *Matter of Edwards*, 67 NY2d 153, 155 (1986). Surely, the message from those cases must be that ticket-fixing will no longer be tolerated in this State and that a judge who engages in such conduct faces removal.

The respondents here had the lesson of recent history. They may be contrite when caught, but no amount of contrition can override such inexcusable conduct. *See, Matter of Bauer*, *supra*, 3 NY3d at 165. Neither the administration of justice nor the people of the state of New York can afford the message that ticket-fixing will result in a mere public censure. Only removal from office will demonstrate the Commission's view of how harmful this conduct is to the administration of justice.

We are fortunate that, despite occasional misconduct of this type, we still have a judicial system that is the envy of the world and trusted and respected by most of those who participate in it and, more importantly, society at large. But cynicism and alienation are lurking dangers that will be the inevitable consequence of any tolerance for judicial misconduct of this sort. Judges who have every opportunity, and a fundamental obligation, to obey the rules should not escape removal when they intentionally pervert justice for their own benefit.

I believe that focusing the Commission's ultimate sanction on those who fall into this narrow category properly fulfills the Court of Appeals' mission for us ('to safeguard the Bench from unfit incumbents"). This is not a punitive role for the Commission. We are entrusted with attempting to preserve the honor and integrity of the judicial function and to thereby engender public trust and respect. If we abdicate this responsibility by allowing judges who use the system for personal gain to remain in office, we will have failed in our own legal obligation to uphold the principles embodied

in the misconduct Rules. Worse, we will fail, in the larger sense, to protect the system of justice.

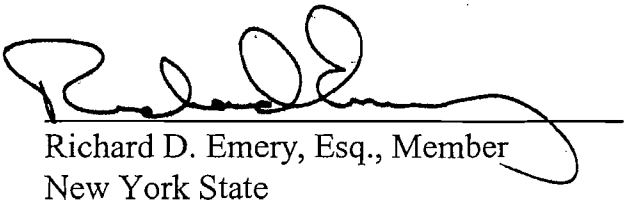
Cook and *LaClair* are poster-cases for application of these principles. Cook knowingly and intentionally distorted her judicial decision to curry favor with her fellow justice. LaClair twice knowingly and intentionally used his position as a judge to have another judge render a decision that LaClair wanted. All of this occurred in flat contravention of the law and of the facts of the cases which these judges have sworn to decide fairly. This is not tolerable -- no matter how apologetic, cooperative or unsophisticated these respondents claim to be. Had either of these judges accepted a bribe -- no matter how small -- from a third party, they would face imprisonment. That they have corrupted the judicial process for the approbation of their friends, without money changing hands, warrants no less than our most severe sanction.

For me, proven misconduct of this sort that invidiously distorts judicial decision-making presumptively warrants removal. Were the sanction of suspension available, I might also consider it in certain compelling cases. However, a sanction of less than removal under the current array of available sanctions, which leaves a judge in office who has knowingly abdicated his/her official decision-making for personal gain, is simply inconsistent with a justice system rooted in procedural and substantive fairness, and with the Commission's duty to protect the system and the public that relies upon it.

Therefore, I respectfully dissent and vote to reject the Agreed Statement in

both cases on the basis that the proposed disposition of censure is insufficient.

Dated: August 31, 2005



Richard D. Emery, Esq., Member
New York State
Commission on Judicial Conduct