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

JEFFREY L. MENARD,

a Justice of the Mooers Town Court,
Clinton County.

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THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.[1]
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Nina M. Moore
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Jill S. Polk and Cheryl L. Randall,
Of Counsel) for the Commission

Stephen A. Johnston for the Respondent

[1] Mr. Cohen was appointed to the Commission on July 15, 2010. The vote in this matter was taken on June 3, 2010.

The respondent, Jeffrey L. Menard, a Justice of the Mooers Town Court, Clinton County, was served with a Formal Written Complaint dated June 18, 2009, containing five charges. The Formal Written Complaint alleged that respondent: (i) failed to disqualify himself in cases involving his nephews (Charge I), his employers' sons (Charge II) and his co-justice (Charge III); (ii) notarized his mother's petition in an eviction proceeding filed in his court (Charge IV); and (iii) failed to assign counsel to eligible defendants charged with violations (Charge V). Respondent filed a verified Answer dated July 24, 2009.

By Order dated September 3, 2009, the Commission designated Matthew J. Kelly, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on October 28, 2009, in Lake George, on October 29, 2009, in Plattsburgh, and on November 12, 2009, in Albany. The referee filed a report, which was received on March 16, 2010.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Commission counsel recommended the sanction of removal, and respondent's counsel recommended admonition. Respondent's counsel waived oral argument. On June 3, 2010, the Commission heard oral argument by Commission counsel and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Mooers Town Court, Clinton County, since January 1997. He is not an attorney.

As to Charge I of the Formal Written Complaint:

2. In three cases involving traffic tickets issued to his nephews, as set forth below, respondent did not disqualify himself or transfer the cases to another judge.

3. Alex Menard, the son of respondent's brother, was issued a ticket for Unsafe Start on March 27, 2005, returnable in the Mooers Town Court. Respondent, as a member of the local Fire Department, went to the scene of the accident and spoke to his nephew. Later, Alex Menard spoke to respondent to get advice about the ticket.

4. At the time, respondent was the only judge in the Mooers Town Court since his co-judge had recently resigned and the new co-judge did not assume the bench until January 2006.

5. Alex Menard mailed in a plea of guilty to the charge on or about March 31, 2005.

6. In the Mooers Town Court, it was the practice for respondent's court clerk, Nettie Rabideau, to open the mail and to impose fines for mailed-in guilty pleas to certain traffic offenses pursuant to a schedule created by respondent. Thereafter, respondent would deposit the fine monies into the court account and would sign the monthly reports to the State Comptroller, certifying the dispositions.

7. Pursuant to this practice, the court clerk received Mr. Menard's guilty plea and imposed a $95 fine and a $55 surcharge, which Mr. Menard paid.

8. On August 3, 2005, Alex Menard received a ticket for No Front Plate Attached, returnable in the Mooers Town Court.

9. Mr. Menard called respondent to ask if the charge was a "drop ticket," which could be dismissed if the violation were corrected. Respondent told his nephew that it was not such a ticket.

10. Mr. Menard went to the court office when court was not in session and entered a plea of guilty in writing. The court clerk received the plea and imposed a $25 fine and a $55 surcharge, which Mr. Menard paid.

11. That night, Ms. Rabideau told respondent that his nephew had come in and pled guilty, and she asked respondent what to do with the matter. Respondent told the clerk that it was all right to keep the case and to deposit the fine in the court account.

12. At the Commission hearing, respondent testified that he knew it was improper to handle his relatives' cases but that he did not disqualify himself from his nephew's case because it would have entailed writing to the County Court judge and he "figured a Front Plate wasn't worth all the hassle"; he testified that he "probably should have done it" but "got lazy."

13. On December 15, 2007, Jamie Menard, the son of respondent's brother, was issued a Speeding ticket for driving 86 mph in a 55 mph zone, returnable in the Mooers Town Court.

14. Jamie Menard contacted respondent and asked for advice regarding the matter. Respondent told Mr. Menard that there was nothing respondent could do and that judges "can't reduce any tickets anymore" and "got to go by the book." Mr. Menard hired an attorney in the matter.

15. The District Attorney's office and Mr. Menard agreed to a reduction to a reduced Speeding charge and submitted the plea agreement to the court, in which Mr. Menard pled guilty to a reduced charge. Respondent's court clerk received the papers, accepted the plea and imposed a $95 fine and a $55 surcharge, which Mr. Menard paid. The clerk issued a fine receipt bearing respondent's name.

As to Charge II of the Formal Written Complaint:

16. Since 1993 respondent has worked full time at Dragoon's Farm Equipment ("Dragoon's"), a business owned by Gary and Wayne Dragoon and their father. Gary Dragoon is respondent's supervisor. Dragoon's and the town court are situated across the street from each other.

17. Daniel Dragoon and Robbie Dragoon are the sons of the owners of Dragoon's and have worked there with respondent. Daniel Dragoon still works there and speaks to respondent every day.

18. As set forth below, respondent did not disqualify himself in two traffic cases in which Daniel Dragoon was the defendant and one case in which Robbie Dragoon was the defendant, and respondent did not disclose to the prosecution that the defendants were his co-workers and his employers' sons.

19. On February 28, 2005, Daniel Dragoon received a ticket for Speeding 40 mph in a 30 mph zone, returnable in the Mooers Town Court on March 24, 2005.

20. On the return date, Daniel Dragoon went to the court at lunch time and spoke to respondent about the Speeding ticket. Respondent said that the ticket "was

taken care of," or words to that effect. Later, before the start of court, respondent gave his court clerk the yellow copy of Mr. Dragoon's ticket and told her to dismiss it. The ticket was dismissed in the interests of justice on that date. The court records do not reflect the reasons for the dismissal as required by law.

21. Trooper Gilmore, the issuing officer, testified in the Commission proceeding that he does not recall whether he consented to the dismissal but does not believe that he did so.

22. Respondent testified that he does not remember the disposition of the ticket and does not know why he dismissed it. During the investigation, he testified that he believed that Trooper Gilmore was present in court on the return date and consented to the dismissal. At the hearing, after listening to the testimony of the trooper that he was not present and does not believe he consented to the dismissal, respondent testified that he believed that an assistant district attorney consented to dismissal of the ticket because otherwise he would not have dismissed it.

23. On September 16, 2007, Daniel Dragoon was issued a ticket for Speeding 73 mph in a 55 mph zone, returnable in the Mooers Town Court.

24. Mr. Dragoon applied to the District Attorney's office for a reduction of the charge. The District Attorney's office offered a reduction to Failure To Obey a Traffic Control Device, based in part upon the fact that Mr. Dragoon had no prior Speeding convictions. By mail, Mr. Dragoon sent the court a form accepting the proffered plea.

25. On January 2, 2008, the court accepted Daniel Dragoon's plea and imposed a fine of $95 and a surcharge of $55, which Mr. Dragoon paid.

26. On October 1, 2005, Robbie Dragoon was issued two tickets, for Uninspected Vehicle and Failure To Produce License, returnable in the Mooers Town Court.

27. On October 13, 2005, the Failure To Produce License charge was dismissed since the defendant had a valid driver's license.

28. On October 20, 2005, Mr. Dragoon pled guilty to the Uninspected Vehicle charge, either by mail or at the court. The plea was processed by the court clerk, and Mr. Dragoon was fined $25 with a $55 surcharge.

As to Charge III of the Formal Written Complaint:

29. From July 2006 until October 2007, in four small claims cases in which his co-justice was the claimant, respondent did not disqualify himself or disclose to the opposing party that the claimant was his co-justice.

30. Cynthia Sample, respondent's co-justice from January 2006 until March 31, 2009, was the owner of Cindy's Country Store in Mooers Forks.

31. On July 17, 2006, respondent's court clerk mailed Jason Billings a notice to appear in *Cindy's Country Store Sample v. Jason Billings*, alleging that he owed the claimant $57.20.

32. On August 31, 2006, a hearing was held before respondent. Kristin Nephew, the niece of Judge Sample's partner and an employee of Cindy's Country Store,

appeared on behalf of the store. Ms. Nephew testified and submitted the bill into evidence, and Mr. Billings admitted that he owed the amount claimed. Respondent issued a verbal decision that Mr. Billings owed the amount claimed and noted that Mr. Billings agreed to pay the money by the next week.

33. On July 19, 2006, respondent's court clerk mailed Jason Williams a notice to appear in *Cindy's Country Store Sample v. Jason Williams*, alleging that he owed the claimant $327.61.

34. On August 29, 2006, Mr. Williams paid the amount owed.

35. On October 9, 2007, respondent's court clerk mailed Robert Rabideau a notice to appear in *Cindy L. Sample v. Robert Rabideau*, alleging that he owed the claimant $62.62.

36. Shortly thereafter, the defendant's father told respondent that his son was in the hospital. Respondent said that he would "take care of it."

37. Respondent subsequently dismissed the claim for failure to prosecute.

38. On October 9, 2007, respondent's court clerk mailed Debbie Rabideau a notice to appear in *Cindy L. Sample v. Debbie Rabideau.*

39. Respondent failed to maintain complete case histories in the four cases noted above, including a record of disposition, as required by 22 NYCRR §214.11.

As to Charge IV of the Formal Written Complaint:

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

As to Charge V of the Formal Written Complaint:

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

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)(4), 100.3(B)(6), 100.3(C)(1), 100.3(C)(2), 100.3(E)(1) and 100.3(E)(1)(d)(i) 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 III of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established. Charges IV and V are not sustained and therefore are dismissed.

By failing to disqualify himself in several cases in which his nephews, his employers' sons and his co-justice were parties, respondent created an appearance of partiality and violated well-established ethical standards. His failure to recuse in each of these circumstances, or even to disclose his relationship to the parties, cast doubt on the impartiality of his decisions and undermined public confidence in the integrity and independence of the judiciary as a whole. While such conduct is strictly prohibited, we are persuaded that under the totality of the circumstances presented, the sanction of removal is not required.

A judge must recuse in any matter in which a relative within the sixth

degree of relationship is a party (Rules, §100.3[E][1][d][i]). As the Court of Appeals has stated:

> The handling by a judge of a case to which a family member is a party creates an appearance of impropriety as well as a very obvious potential for abuse, and threatens to undermine the public's confidence in the impartiality of the judiciary. Any involvement by a judge in such cases or any similar suggestion of favoritism to family members has been and will continue to be viewed by this court as serious misconduct.

Matter of Wait, 67 NY2d 15, 18 (1986); *see also, Matter of LaBombard*, 11 NY3d 294 (2008). The failure to recuse in such matters is improper, notwithstanding that in the three cases here, involving traffic tickets issued to respondent's nephews, the defendants did not personally appear before respondent, their guilty pleas were processed by the court clerk, and there is no indication of favoritism in the dispositions accorded.

The record shows that it was the practice for respondent's court clerk to open the mail and to impose fines for mailed-in guilty pleas to certain traffic offenses pursuant to a schedule created by respondent. Pursuant to this practice, the clerk processed the pleas of respondent's nephews, including, in one instance, a plea to a reduced charge, which the defendant had negotiated with the District Attorney's office without any involvement by respondent. While such a delegation of authority (especially as to accepting a plea agreement) may be questionable,[2] the routine handling of the pleas by the court clerk indicates that respondent's relatives were treated no differently than

[2] As stated in the written plea offer by the District Attorney, which the defendant accepted by signing and sending it to the court, "the Court has the option to reject this offer" (Comm. Ex. 8).

other defendants facing similar charges. Nevertheless, it is the judge, not the clerk, who is responsible for every disposition and whose name appears on court records and reports of the case. A judge cannot avoid responsibility for handling a relative's case by delegating such authority to court staff. When respondent learned that his relatives' tickets were returnable in his court (and the record indicates that he knew about the ticket in each of these cases prior to the return date), he should have ensured that the case was either assigned to his co-justice or, during the period when he was the sole judge presiding in the court, transferred to another jurisdiction. Respondent testified that he knew it was improper to handle his relatives' cases but that he did not transfer one such case, when the court clerk brought it to his attention after she had accepted the plea, because the matter (involving a plea to No Front Plate) "wasn't worth the hassle" and he "got lazy." This lapse was inexcusable, as he now concedes.

It was also improper for respondent to dispose of several traffic tickets issued to his co-workers, who were also the sons of his employers, without disclosing his relationship to the defendants. In view of the relationship, respondent's impartiality "might reasonably be questioned," and thus his disqualification was required, subject to remittal (Rules, §100.3[E][1]). Respondent's dismissal of a Speeding charge against Daniel Dragoon is especially troubling. Although the issuing officer did not appear on the return date and respondent dismissed another case that night for that reason, respondent's comments to Mr. Dragoon earlier that day strongly suggest that he had already determined to dismiss the ticket prior to court. Moreover, the record indicates

that respondent did not disclose his relationship with the defendant and did not set forth in court records the basis for the dismissal, as required by law (CPL §170.40[2]). Respondent, who testified that he does not recall the disposition, gave inconsistent testimony concerning the matter, though he insisted that he would not have dismissed the charge without the prosecutor's consent. While the totality of the evidence is somewhat inconclusive, at the very least the favorable disposition accorded to the defendant was tainted by respondent's relationship to the defendant and conveyed the appearance that the disposition was based not on the merits, but on favoritism. *See*, *Matter of Lew*, 2009 Annual Report 130 (Comm on Judicial Conduct) (judge circumvented the normal judicial process in dismissing a Speeding ticket issued to the wife of a friend [censure]). The Court of Appeals has stated that even a single incident of ticket-fixing "is misconduct of such gravity as to warrant removal" (*Matter of Reedy v. Comm on Judicial Conduct*, 64 NY2d 299, 302 [1985]), although mitigating factors may warrant a reduced sanction (*Matter of Edwards*, 67 NY2d 153 [1986]).

As to the other cases involving respondent's co-workers, we note that there is no indication of partiality in the dispositions, two of which involved mailed-in guilty pleas and the other one a Failure To Produce License charge that was dismissed upon determining that the defendant had a valid driver's license.

Respondent also failed to disqualify himself in four small claims actions in which his co-justice was the claimant. In such circumstances, disqualification is required, subject to remittal, since the judge's impartiality "might reasonably be questioned"

(Rules, §100.3[E][1]). In one of the matters, respondent presided at a hearing and issued a decision in favor of his co-justice, without disclosing the relationship or offering to disqualify himself. By handling these cases, respondent conveyed the appearance that he was complicit in using the court as a collection agency for his co-justice's business.

In determining an appropriate sanction, we have considered the totality of the circumstances presented here, including the role of the court clerk and the fact that respondent, a non-lawyer, serves in a small community and testified that he believed that he could handle these matters fairly. We also note that respondent has been contrite and cooperative and has an unblemished record in 14 years as a judge. In view of respondent's testimony that he now takes steps to ensure his disqualification in every case that comes before him involving his relatives, his co-workers and his co-justice, we are persuaded that the appearance of partiality will not be repeated.

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

Judge Klonick, Mr. Coffey, Judge Acosta, Mr. Belluck, Mr. Emery, Mr. Harding, Ms. Hubbard, Ms. Moore and Judge Ruderman concur, except as follows.

As to Charge III, Mr. Belluck dissents and votes to dismiss the charge.

As to Charge IV, Judge Klonick and Ms. Moore dissent and vote to sustain the charge.

As to the sanction, Mr. Coffey dissents and votes that respondent be

admonished; Mr. Emery and Ms. Hubbard dissent and vote that respondent be removed from office, and Mr. Emery files a dissenting opinion.

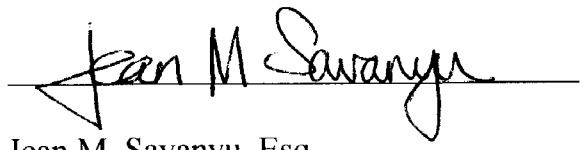
Mr. Cohen did not participate.

Judge Peters was not present.

CERTIFICATION

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

Dated: October 13, 2010



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

JEFFREY L. MENARD,

a Justice of the Mooers Town Court,
Clinton County.

DISSENTING OPINION
BY MR. EMERY

- -

The majority's decision censuring rather than removing Judge Menard is inexplicable. In the face of compelling proof that he "fixed" a Speeding ticket for his employer's son and engaged in a spree of other ethical transgressions (indisputably presiding over cases of his co-judge's business, his nephews and his co-workers who were also his employers' sons), he is allowed to remain on the bench, according to the majority, because he is "a non-lawyer, serves in a small community and testified that he believed that he could handle these matters fairly" (Determination, p. 13). This double standard invoked by the Commission leaves the public at risk and, essentially, tells the rural communities of our state that they deserve only second-class justice. We should not ascribe to this hypocrisy. It is also contrary to clearly established law.

The Court of Appeals specifically guarantees equal justice to the nearly nine million people who live in this State's towns and villages. The fact that most justices in such communities are not lawyers does not mean that a diluted version of

justice is sanctioned. The Court of Appeals has affirmed repeatedly that jurists who sit in our town and village courts are held to the same high standards of ethical behavior as lawyer-judges who serve on the State's urban and appellate courts.

The Court has stated: "[The ethical rules] exist to maintain respect toward everyone who appears in a court and to encourage respect for the operation of the judicial process at all levels of the system" (*Matter of Roberts*, 91 NY2d 93, 97 [1997]). In removing a town justice for a series of blatant ethical violations, the Court specifically rejected the argument that the judge's lay status should be considered as mitigating:

> Contrary to petitioner's assertion, the fact that he is a nonlawyer is not a factor in mitigation. The Code of Judicial Conduct applies to "[anyone], whether or not a lawyer, who is an officer of a judicial system performing judicial functions" (Compliance With Code of Judicial Conduct, McKinney's Cons Laws of NY, Book 29, Appendix, p 539) and the Rules Governing Judicial Conduct should be similarly construed to further the objective of maintaining the "independent and honorable judiciary" which is "indispensible to justice in our society" (22 NYCRR 100.1).

Matter of Fabrizio, 65 NY2d 275, 277 (1985). *See also*, *Matter of VonderHeide*, 72 NY2d 658, 660 (1988) ("We also reject the contention that the charges should not be sustained in view of petitioner's status as a nonlawyer and his lack of training. Ignorance and lack of competence do not excuse violations of ethical standards. As a Judge, petitioner had an obligation to learn about and obey the Rules Governing Judicial Conduct").

It is unimaginable that a Supreme Court Justice in Buffalo, Syracuse, Albany or Brooklyn could get away with an avalanche of ethical transgressions similar to

those presented in this case. Any less than rigorous enforcement of judicial conduct and ethics throughout the State is anathema to a fair-minded concept of equality. There is no precedent or principle which supports pragmatic application of rural zones of relaxed judicial ethics. Yet that is exactly what we have here.

Treating some judges more leniently simply because they are not lawyers is not only a dramatic and totally unwarranted departure from established law, but a pandering and patronizing insult to these jurists. It creates a second-class status for them and suggests that they are somehow not "up to" understanding the law and ethical principles. The "mitigating" factor of being a non-lawyer judge can now be expected to do much damage in the future.

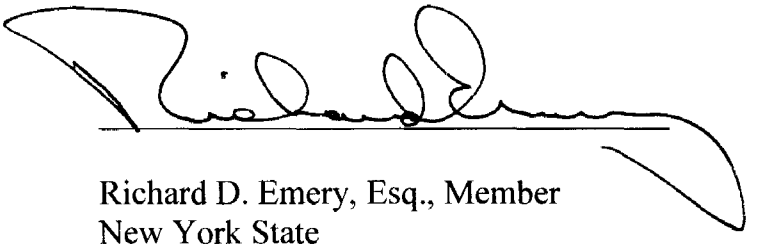
Obviously, no advanced legal training is prerequisite to a judge – even a non-lawyer – recognizing that "[a]ny involvement" in a family member's case is highly improper and must be avoided (*Matter of Wait*, 67 NY2d 15, 18 [1986]). Minimizing the misconduct here because the dispositions in the judge's relatives' cases were, for the most part, processed by the court clerk without a personal appearance before the judge sets a dangerous precedent for future cases. Members of the public have no way of knowing whether a judge has directed the clerk to enter a particular disposition and, understandably, might suspect that the judge's relatives got special treatment. At a minimum, the appearance stinks.

Nor can there be any serious debate that dismissing a Speeding ticket issued to the son of his employer – without a trial, without notice to the prosecutor, and without a record of the reasons for the disposition – constitutes "ticket-fixing," a practice which

the courts of this State and this Commission have long excoriated. While the majority concedes that even a single incident of ticket-fixing "is misconduct of such gravity as to warrant removal" although "mitigating factors may warrant a reduced sanction" (Determination, p. 12), the only apparent "mitigating" factor presented as to the disposition here is the lame claim that the judge could "not remember the disposition" and "does not know why he dismissed" the charge against his employer's son (Determination, par. 22). As I have previously stated, this category of misconduct "strikes at the heart of our justice system, and removal is the only sanction that is commensurate with the corrosive effect of judicial decision-making perverted by a judge's personal interests." *Matter of Lew*, 2009 Annual Report 130 (Emery Dissent); *see also*, *Matter of Cook*, 2006 Annual Report 119 (Emery Dissent).

No matter how much mercy the Commission might wish to dispense, most jurists would immediately resign if caught in such a web of influence peddling and favoritism. Judge Menard is an outlier in the judicial landscape and he should be dealt with as such. He should be removed from the bench; no less is tolerable in this case.

Dated: October 13, 2010



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Commission on Judicial Conduct