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

LOUIS J. OHLIG,

a Judge of the County Court, Suffolk County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Alan W. Friedberg, Of Counsel) for the Commission

Lazer, Aptheker, Feldman, Rosella & Yedid, P.C. (By Leon D. Lazer)
for Respondent

The respondent, Louis J. Ohlig, a judge of the County Court, Suffolk County, was served with a Formal Written Complaint dated April 18, 2001, containing one charge.

On June 8, 2001, the Administrator of the Commission, respondent and respondent's counsel 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, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On June 18, 2001, the Commission approved the agreed statement and made the following determination.

1. Respondent served as a judge of the District Court, Suffolk County, from December 7, 1976, to December 31, 1996, and has served as a judge of the County Court, Suffolk County, since January 1, 1997.

2. In the fall of 1989, respondent called Robert L. Folks, Esq., and asked if Mr. Folks, a former colleague of respondent in the District Attorney's office, would meet with the family of two persons who had been murdered to determine if Mr. Folks would be interested in representing the family. During that telephone conversation, respondent told Mr. Folks that he was calling at the request of respondent's wife, Barbara Ohlig, Esq. Mr. Folks told respondent that he would meet with the family.

3. Shortly thereafter, at a meeting arranged by Barbara Ohlig, Mr. Folks met with members of the family and Ms. Ohlig at her office and agreed to represent the family. At the time, the family members had been clients of Ms. Ohlig for

approximately six years and, when respondent was a practicing attorney, had been clients of respondent.

4. In late 1989, Mr. Folks initiated litigation against New York State on behalf of the family, which, in June 2000, after protracted proceedings and a trial, resulted in New York State making a payment of approximately $9,000,000 to the family to settle the lawsuit (hereinafter "the lawsuit").

5. On December 21, 1990, Barbara Ohlig forwarded her written retainer agreement to Mr. Folks, providing, *inter alia*, that she would receive one-third of the legal fees received by Mr. Folks's law firm in the lawsuit. The forwarding letter asked that Mr. Folks sign the retainer agreement and return it to Ms. Ohlig, but he did not do so.

6. On April 4, 1991, after various prior requests, Barbara Ohlig wrote to Mr. Folks requesting that he send her a written retainer agreement indicating that she would receive one-third of any legal fees received by Mr. Folks in connection with the lawsuit. Mr. Folks did not send a written retainer agreement to Ms. Ohlig.

7. In December 1991, respondent and Barbara Ohlig met Mr. Folks at a holiday party of the Suffolk County legislature. During a brief conversation, respondent told Mr. Folks that he was disappointed that Mr. Folks had not signed the retainer agreement.

8. In December 1992, respondent and Barbara Ohlig met Mr. Folks at a bar association function. In respondent's presence, Ms. Ohlig asked Mr. Folks why he had not signed the retainer agreement, and Mr. Folks responded that his clients did not want Ms. Ohlig to share in the fee.

9. In 1993, respondent, who was then a candidate for judicial office, and Barbara Ohlig met Mr. Folks at a political function. Respondent asked Mr. Folks to sign the retainer agreement and asked Mr. Folks why Mr. Folks was not honoring the agreement with Ms. Ohlig.

10. In late 1996, respondent called Mr. Folks and asked him to come to respondent's chambers, and Mr. Folks agreed to do so. Shortly thereafter, when Mr. Folks came to respondent's chambers, they discussed the lawsuit and Ms. Ohlig's fee. Respondent asked Mr. Folks why he had not signed the retainer agreement. When Mr. Folks stated that the matter might result in a fee of $3,000,000, respondent asked Mr. Folks to abide by the retainer agreement. Mr. Folks responded negatively and told respondent that attorneys other than Ms. Ohlig had assisted Mr. Folks in the matter, that the clients maintain that Ms. Ohlig did not provide legal services and that the clients did not want Ms. Ohlig to share in the fee.

11. On March 20, 1997, Mr. Folks filed a statement with the Office of Court Administration declaring that the clients were originally referred by Barbara Ohlig, Esq.

12. In 1997, respondent attempted to call Mr. Folks on several occasions to tell Mr. Folks that respondent was disappointed that Mr. Folks had not signed the retainer agreement. Respondent left several messages for Mr. Folks, who did not return the calls.

13. In the spring of 1998, respondent went to Mr. Folks's law office and asked to see Mr. Folks. When told by a secretary that Mr. Folks was not in the office, respondent repeatedly asked the secretary where Mr. Folks was. When the secretary did not inform respondent where Mr. Folks was, respondent left.

14. In the summer of 1998, respondent went to Mr. Folks's law office and repeatedly asked to see Mr. Folks. When told by a secretary that Mr. Folks was busy and unable to meet with him, respondent left. Respondent left his judicial business card for Mr. Folks.

15. In late 1998, Barbara Ohlig arranged to meet with Mr. Folks in Mr. Folks's law office to discuss the lawsuit and Ms. Ohlig's fee. Respondent accompanied Ms. Ohlig to the meeting. At the meeting, respondent and Ms. Ohlig again asked Mr. Folks why he had not signed the retainer agreement. Mr. Folks stated that he had to share the fee with other attorneys; that Ms. Ohlig had not done a proportionate amount of the legal work in the matter; that the clients did not want Ms. Ohlig to share in the fee, in part, because she did no legal work in the matter; that referral fees are unethical; and that respondent, and not Ms. Ohlig, had referred the matter to Mr. Folks. Ms. Ohlig insisted

that she had done work on the case and that she was entitled to one-third of the fee. Respondent told Mr. Folks that Ms. Ohlig, and not respondent, had referred the matter to Mr. Folks.

16. In his conversations with Mr. Folks, based on Barbara Ohlig's allegation that Mr. Folks had orally agreed to pay her one-third of the legal fee, respondent attempted to persuade Mr. Folks to agree to pay one-third of any legal fees received by Mr. Folks in connection with the lawsuit to Ms. Ohlig.

17. Ms. Ohlig asserted a claim in the Court of Claims proceeding to fix the fees of the various counsel who had participated, in which she sought recovery of one-third of the $3,097,409.10 fee that had been awarded to the clients' attorneys. Mr. Folks opposed the request, and a hearing was held in the Court of Claims in May 2000. Respondent testified at the hearing. During the hearing, Ms. Ohlig's claim was settled, and she received $75,000 as a fee. Four other law firms' claims were also settled for a total sum in excess of $1,000,000.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2 of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

On numerous occasions over several years, respondent urged an attorney to agree to share what promised to be a substantial legal fee with respondent's spouse, who had previously represented the clients. Respondent telephoned the attorney to discuss the subject, went to the attorney's office and left his judicial business card when he was rebuffed, summoned the attorney to his chambers to discuss the matter, and raised the subject when he encountered the attorney at various events, expressing his "disappoint[ment]" at the attorney's refusal to sign the agreement. Even after the attorney explained his reasons for not signing a retainer agreement which would give one-third of the legal fees in the case to respondent's spouse, respondent continued to press the issue. In 1998, seven years after he first raised the subject with the attorney, respondent accompanied his wife to a meeting at the attorney's office to discuss the issue and continued to question the attorney about his refusal to sign the agreement.

Regardless of the merits of his spouse's claim, respondent should not have interjected himself into the dispute. As a full-time judge, respondent was prohibited from providing legal representation to his spouse, who, as an experienced attorney, was presumably capable of representing her own interests in connection with the disputed fee. Respondent's intervention in the matter and his strenuous advocacy on his spouse's behalf created the appearance that he was using the prestige of his judicial status to advance the private interests of another, in violation of the ethical standards (Section 100.2[C] of the Rules Governing Judicial Conduct). As the Court of Appeals has stated:

> [N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others. Members of the judiciary should be acutely aware that any action they take, 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. [Citations omitted.]

Matter of Lonschein v. State Commn on Jud Conduct, 50 NY2d 569, 571-72 (1980); *see also* Matter of Kaplan, 1997 Ann Rep of NY Commn on Jud Conduct 96. Moreover, by leaving his judicial business card at the attorney's office and by arranging a meeting with the attorney in his chambers, respondent used the trappings of his judicial office as part of his efforts to pressure the attorney. Respondent's actions were inherently coercive and showed insensitivity to the special ethical obligations of judges.

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

Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters and Judge Ruderman concur.

Judge Luciano did not participate.

Judge Marshall and Mr. Pope were not present.

CERTIFICATION

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

Dated: November 19, 2001

Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct