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

CHARLES PENNINGTON,

a Justice of the Alexandria Bay Village Court,
Jefferson County.

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THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission

Capone Law Firm (by Andrew N. Capone) for Respondent

The respondent, Charles Pennington, a justice of the Alexandria Bay Village Court, Jefferson County, was served with a Formal Written Complaint dated

August 9, 2002, containing two charges. Respondent filed an answer dated August 29, 2002.

On July 29, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into a Superseding Agreed Statement of Facts, agreeing that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On September 18, 2003, the Commission approved the Superseding Agreed Statement of Facts and made the following determination.

1. Respondent has been a justice of the Alexandria Bay Village Court, Jefferson County since 1982. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint:

2. On or about December 1, 1994, respondent's son was charged with a criminal offense in the Village of Alexandria Bay. Respondent disqualified himself and the arraignment was conducted by the acting village justice.

3. Following his son's arraignment, respondent contacted and met with the Jefferson County District Attorney to review the pending charge. Respondent's wife and son were present. Respondent told the District Attorney that he was meeting with him in his capacity as the defendant's father and that he was not there to ask for any favors or to use his position. Respondent was aware that the District Attorney knew him

as the Alexandria Bay Village Justice.

4. Respondent's purpose in meeting with the District Attorney was to object to the manner in which the police were investigating the case and the way in which respondent believed his son had been treated by the police. The District Attorney assured respondent that he would review the case.

5. Respondent recognizes that by meeting privately with the prosecutor, who knew him to be a judge, to discuss his son's case, respondent created the appearance that he was lending the prestige of his office to advance his son's private interest. He also now recognizes that while many fathers facing similar circumstances would choose to meet with the District Attorney, a judge has a far greater chance both of obtaining such a meeting and getting the District Attorney's heightened attention.

6. The charge against respondent's son was subsequently dismissed in local court for lack of prosecution, which suggests that respondent's advocacy was successful.

As to Charge II of the Formal Written Complaint:

7. On July 31, 2000, respondent was stopped by the New York State Park Police in Keeywadin State Park, in the Town of Alexandria, as he drove a truck towing a boat and trailer through the park entrance. The police had stopped respondent for allegedly entering the park without paying a fee.

8. Respondent exited his vehicle and spoke with a New York State Park Police Sergeant about the matter. When questioned about his actions by the Police

Sergeant, respondent objected to being stopped, told the Police Sergeant that he had permission from the Police Sergeant's boss to use the boat ramp whenever he needed and stated, "I see that the two sides communicate really well with each other, and that you should find out what the fuck you are doing because you are harassing me right now." The Police Sergeant asked respondent if he had verbal permission, and respondent, who was agitated, yelled at the Sergeant, "Yes, I told you that already, this is fucking bullshit, I'm going to call my legislator, I'm the fucking judge here in this village."

9. The Park Police Sergeant issued tickets to respondent, charging him with various violations of the New York State Park regulations.

10. On March 21, 2001, respondent was convicted in the Antwerp Town Court, to which the case had been transferred, of two counts of Commercial Activity Without A Permit (9 NYCRR §372.7[b]) and Failing To Pay A Fee Upon Entrance Into A State Park (9 NYCRR §375.1[g]). Respondent paid $140 in fines for both offenses.

11. Respondent recognizes that if he were an average citizen using that language, he would have risked further action by the police.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.2(C) and 100.4(A)(2) of the Rules Governing Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

By contacting the district attorney in connection with his son's case and meeting with the district attorney to discuss the investigation and the treatment of respondent's son by the police, respondent intervened in a pending proceeding and lent the prestige of his judicial status to advance his son's private interests. Such conduct is prohibited by well-established ethical standards, even in the absence of a specific request for special consideration (Rules Governing Judicial Conduct §100.2[C]); *see, e.g., Matter of Edwards*, 67 NY2d 153 (1986). 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, 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. Thus, any communication from a judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office. [Citations omitted.]
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> *Matter of Lonschein,* 50 NY2d 569, 571-72 (1980)

Although respondent told the District Attorney that he was not seeking any special treatment for his son because of his judicial position, respondent has acknowledged that the mere fact of his judicial status increased the likelihood that he could not only obtain such a meeting, but get the District Attorney's "heightened attention" to his concerns about his son's treatment. Notwithstanding his concerns as a parent, respondent, who is not an attorney, could not properly assert his son's legal

interests or act as his son's legal advocate, a role which should properly be delegated to an attorney. Respondent's "'paternal instincts' do not justify a departure from the standards expected of the judiciary" (*Matter of Edwards*, *supra*, 67 NY2d at 155).

It was also improper for respondent to assert his judicial office in connection with an incident at a state park, after being stopped by police and questioned about his actions. By identifying himself as a judge while objecting to the conduct of the park police, he gratuitously interjected his judicial status into the incident, which was inappropriate. *See Matter of D'Amanda*, 1990 Ann Rep 91 (Commn on Jud Conduct, April 2, 1989); *Matter of Werner*, 2003 Ann Rep 198 (Commn on Jud Conduct, Oct 1, 2002). As the Commission has stated:

> Judges must be particularly careful to avoid any conduct that may create an appearance of seeking special consideration simply because of their judicial status. 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.
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> *Matter of Werner, supra,* 2003 Ann Rep at 199

Here, respondent not only explicitly asserted his judicial office, but did so during a highly charged confrontation after leaving his vehicle, yelling at the police sergeant, using profane language and threatening to call his legislator, all in an apparent effort to avoid paying a park fee. As respondent now recognizes, this unseemly display of invective and intimidation was inappropriate.

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

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

Judge Ciardullo dissents and votes to reject the Agreed Statement of Facts on the basis that the 1994 incident set forth in Charge I is stale and warrants, at most, a letter of dismissal and caution, but concurs that the appropriate disposition with respect to Charge II is censure.

Judge Luciano and Ms. Moore were not present.

CERTIFICATION

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

Dated: November 3, 2003

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