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

WALTER V. TRIPP,

a Justice of the Mount Morris Town and
Village Courts, Livingston County.

DETERMINATION

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
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 (John J. Postel and David M. Duguay,
Of Counsel) for the Commission

Honorable Walter V. Tripp, *pro se*

The respondent, Walter V. Tripp, a Justice of the Mount Morris Town and Village Courts, Livingston County, was served with a Formal Written Complaint dated

August 3, 2009, containing two charges. The Formal Written Complaint alleged that respondent: (i) coerced or attempted to coerce a defendant in a traffic case into pleading guilty and retaliated against him for making a complaint to the Commission and (ii) threatened a defendant's father with criminal charges for alleged discourtesy to the court clerk, the judge's spouse. Respondent filed an answer dated September 24, 2009.

On April 2, 2010, the Administrator of the Commission 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 15, 2010, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Mount Morris Village Court, Livingston County, since April 1, 1999, and a Justice of the Mount Morris Town Court since January 1, 2000. His terms expire on March 31, 2011 and December 31, 2011, respectively. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint:

2. On May 6, 2008, Michael Rivera was issued two traffic tickets for Passing a Stop Sign. The tickets were returnable in the Mount Morris Town Court before respondent on May 12, 2008, but were adjourned until June 23, 2008.

3. On June 23, 2008, Mr. Rivera arrived at the courthouse after

respondent completed his docket and respondent directed him to his chambers to be arraigned. Mr. Rivera explained that he was late because of car trouble.

4. Respondent was familiar with Mr. Rivera from having presided over approximately 15 court appearances during the preceding 10-year period. Respondent did not recall Mr. Rivera missing any court appearances during that time.

5. At arraignment, Mr. Rivera reaffirmed the pleas of not guilty that he had previously entered by mail. Respondent told Mr. Rivera that if he pleaded not guilty he would have to post $500 bail and that if he could not make bail he would be committed to jail until his trial the following month.

6. When Mr. Rivera replied that he could not afford to post $500 bail and asked to speak to an attorney, respondent told Mr. Rivera that he was not eligible for assigned counsel because he was charged with traffic infractions, and reiterated that he could plead guilty or plead not guilty and go to jail if he could not post bail.

7. Mr. Rivera thereafter attempted to withdraw his not guilty pleas and plead guilty to the charges by signing "Section A" on each ticket. In a section provided for a statement of explanation on each ticket, Mr. Rivera wrote "I plead guilty for fear of going to jail" and "I plead guilty over fear of going to jail."

8. Upon seeing the written pleas, respondent did not accept Mr. Rivera's guilty pleas and instead released him without bail, telling Mr. Rivera that he would have a trial and to "bring money" to the trial.

9. Respondent was loud and visibly angry during his discussion with

Mr. Rivera.

10. The District Attorney offered no plea bargain or other reduction of the charge in this case.

11. At a bench trial on July 28, 2008, respondent found Mr. Rivera guilty of both charges of Passing a Stop Sign and ordered him to pay $410, the maximum allowable fines and surcharge. The amount of the fine was consistent with respondent's general practice in such cases. Respondent ordered Mr. Rivera to pay the fine and surcharge by August 6, 2008, approximately half the period of time that he customarily provided to others for paying such fines.

12. On August 5, 2008, Mr. Rivera asked respondent for an extension of time to pay his fines. At the time, respondent was aware that Mr. Rivera had made a complaint against him to the Commission about his conduct in Mr. Rivera's case.

13. Although it was respondent's practice to grant requests for extensions of time to pay fines, he denied Mr. Rivera's request and stated in words or substance, "Let me get this straight. You turned me in to the state and you want me to do you a favor? What do you think I ought to do?"

14. Respondent then warned Mr. Rivera that if he did not timely pay the fines he would issue a bench warrant for his arrest.

As to Charge II of the Formal Written Complaint:

15. The clerk of the Mount Morris Town Court is Bonnie Tripp, who is respondent's wife.

16. On July 29, 2008, Sean McCollister, age 19, pleaded guilty by mail to two traffic infractions: No Seat Belt and Unregistered Motor Vehicle. The same day, respondent sent Mr. McCollister a fine notice imposing fines and surcharges totaling $255 and notifying him that payment in full was due by August 13, 2008.

17. On August 11, 2008, Sean McCollister's father, Michael McCollister, called the Mount Morris Town Court and asked court clerk Bonnie Tripp for a two-week extension to pay his son's fine. Mr. McCollister told Ms. Tripp that other courts granted 30 days to pay a traffic fine.

18. Following the phone call, Ms. Tripp left the following written message for respondent:

> "Father of Sean McCollister was rude said he didn't believe a word I was telling him. Registration should be a fix-it slip. Only gave a week to pay fine. Only Mt. Morris would do that."

19. Ms. Tripp orally told respondent that Mr. McCollister had called her a liar.

20. Prior to Sean McCollister's court appearance, Ms. Tripp wrote "NO BREAKS" and "Very Rude" next to Sean McCollister's name on respondent's court calendar.

21. On August 13, 2008, Mr. McCollister appeared with Sean McCollister before respondent. When Mr. McCollister asked for additional time to pay Sean's fine, respondent denied the request. When Mr. McCollister offered respondent his son's license, respondent testily replied:

> "I'm going to tell you something right now. The law doesn't say you take his license for that, but I can put you in jail for 30 days for contempt of court. You call and harass the clerk the way you did, you, your attitude and all, you're real close to that. You understand that?"

22. Mr. McCollister asked to pay Sean's fine the following week, when he would receive his paycheck, and said that he would send a money order on August 22, 2008.

23. Respondent gave Mr. McCollister until August 20, 2008, to pay the full amount of the fine. Respondent warned Mr. McCollister that he would issue a warrant for Sean McCollister's arrest if the full fine was not paid within seven days. He also warned Mr. McCollister, "[T]he next time you call and harass the clerk like that, we're going to do harassment charges."

24. Mr. McCollister apologized and said he had not intended to be disrespectful to the clerk, and respondent accepted the apology.

Mitigating Factors:

25. As to Charge I, respondent recognizes that his conduct toward Mr. Rivera was coercive and retaliatory, and he commits himself to avoid even the appearance of such misconduct in the future.

26. As to Charge II, respondent recognizes that it was improper for him, based upon a hearsay belief that Mr. McCollister had acted rudely toward his court clerk, to raise the specter of a harassment charge and to deny Mr. McCollister's request for an extension of time to pay his son's fine. Respondent also recognizes that, since his court

clerk is also his wife, he must be especially careful to avoid even the appearance that he is exercising his judicial authority in particular cases based on that relationship.

27. Respondent was cooperative with the Commission throughout its inquiry and freely expressed his contrition regarding both charges.

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(B), 100.3(B)(3) and 100.3(B)(4) 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 and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

In two routine traffic cases, respondent allowed his hostile emotions to influence his judicial conduct and judgment and threatened individuals with incarceration out of apparent bias and personal pique.

In one case, involving a defendant whom he knew from prior court appearances in other matters, respondent coerced a guilty plea by threatening to set bail and warning the defendant that if he insisted on pleading not guilty, he could be committed to jail for a month until the trial. Intimidated by respondent's threats, the defendant changed his plea to guilty, writing on the tickets, "I plead guilty for fear of going to jail." Reversing course, respondent then refused to accept the plea and released

the defendant without bail, but, showing bias and prejudgment, he warned the defendant to "bring money" when he appeared for trial.

By threatening to impose bail for routine traffic charges against a defendant who, to respondent's knowledge, had never missed a court appearance, respondent appeared to act out of personal animus, rather than based on appropriate consideration of the factors required to be considered in setting bail (CPL §510.30[2][a]). *See*, *Matter of Muskopf*, 2000 Annual Report 133; *Matter of Kelsen*, 1998 Annual Report 145 (Comm on Judicial Conduct). That personal animus was again evident when, after convicting the defendant after a bench trial and imposing the maximum fine permitted by law, he gave the defendant half the time he customarily gave for paying the fine. Later, after learning that the defendant had complained about his conduct to the Commission, respondent again departed from his usual practice by denying the defendant's request for an extension, stating sarcastically, "You turned me in to the state and you want me to do you a favor?" He also threatened to issue a bench warrant if the fine was not paid on time. Retaliating against an individual who has complained about a judge's conduct is especially improper and threatens the integrity of the judicial disciplinary system. *Matter of Tavormina*, 1990 Annual Report 164 (Comm on Judicial Conduct).

Respondent also acted improperly in a second case a week later, threatening a defendant and his father out of pique because of a perceived affront to the court. Advised by his wife, the court clerk, that the defendant's father had been "very rude" when he called the court to request an extension for paying a fine, respondent reacted

testily when the defendant and his father appeared in court. After threatening the father with 30 days in jail for "harassing" the clerk, respondent warned that he would issue a warrant for the defendant's arrest if the fine was not paid on time and reiterated that "we're going to do harassment charges" if the father "harassed" the clerk again. Respondent's threats were an intemperate response to the clerk's complaint of rudeness. *See*, *Matter of Wiater*, 2007 Annual Report 155 (Comm on Judicial Conduct) (judge angrily threatened a defendant with jail after being told that the defendant had left an offensive message on the court's answering machine). Even if provoked by a perceived lack of respect for the court, respondent's behavior was injudicious.

While it is permissible for a judge's spouse to serve as court clerk (*see* Rules, §100.3[C][3]), a judge must not permit the relationship to influence the judge's obligation to be fair, impartial and courteous towards litigants and others with whom the judge deals in an official capacity (Rules, §100.3[B][3]).

In mitigation, we note that respondent has been cooperative in the Commission proceedings, expressed contrition regarding both incidents and commits himself to avoiding such misconduct in the future.

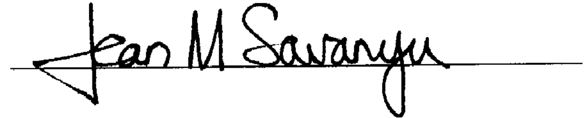
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

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

CERTIFICATION

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

Dated: April 20, 2010



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct