NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

1995 ANNUAL REPORT

And Special Supplement:

A 20-Year History of the Commission

157343

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

* * *

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To the Governor, the Chief Judge of the Court of Appeals and the Legislature of the State of New York:

Pursuant to Section 42, paragraph 4, of the Judiciary Law of the State of New York, the New York State Commission on Judicial Conduct respectfully submits this Annual Report of its activities, covering the period from January 1, 1994, through December 31, 1994.

This year marks the 20th anniversary of the Commission's operations. In this Report, we also highlight some of the milestones in those 20 years of service to the people of this State.

Respectfully submitted,

Henry T. Berger, Chair
On Behalf of the Commission

March 1, 1995
New York, New York

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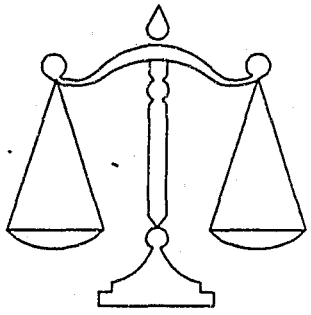


Introduction: Twenty Years of Service

The New York State Commission on Judicial Conduct is 20 years old. The Commission is the disciplinary agency designated by the State Constitution to review complaints of misconduct against judges of the State Unified Court System, which includes approximately 3,300 judges and justices. The Commission's objective is to enforce high standards of conduct for judges. While judges must be free to act independently and in good faith, they must also be held accountable for their misconduct by an independent disciplinary system.

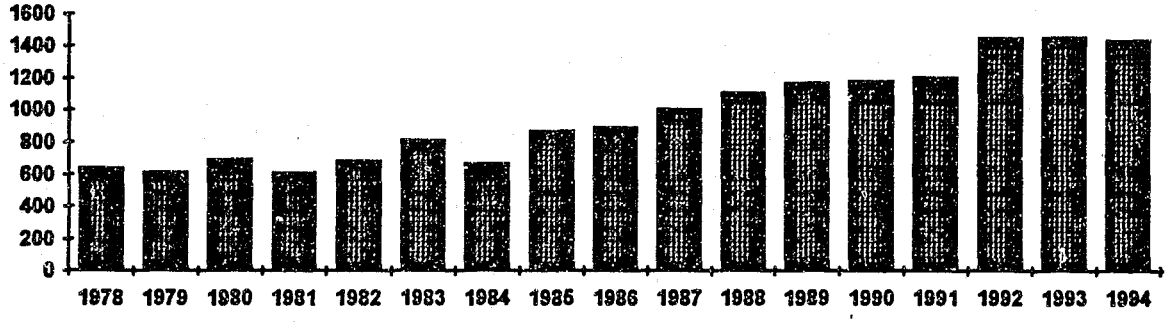
The ethics standards that the Commission enforces are found primarily in the Rules on Judicial Conduct, which is annexed, and the Code of Judicial Conduct. The Rules are promulgated by the Chief Administrator of the Courts with the approval of the Court of Appeals, pursuant to the State Constitution. The Code was adopted in 1972 by the New York State Bar Association.

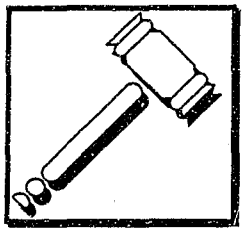
The number of complaints received has steadily increased over the last 10 years. In 1994, the number of incoming complaints was more than double the number received in 1984, as reflected in the chart below.

Remarkably, in that same period, both the Commission's staff and annual budget have actually decreased to a significant degree, creating some serious operational problems, as discussed more fully in the Budget section of this Report.

A 20-year history of the Commission, beginning with the creation of a temporary State Commission on Judicial Conduct which began operations in 1975, is included as a Special Supplement. This Report also covers the Commission's activities during calendar year 1994, and it highlights some of the milestones in our 20 years of service.

Complaints Received Since 1978





Action Taken in 1994

Following are summaries of the Commission's actions in 1994, including accounts of all public determinations, summaries of non-public decisions, and various numerical breakdowns of complaints, investigations and other dispositions.

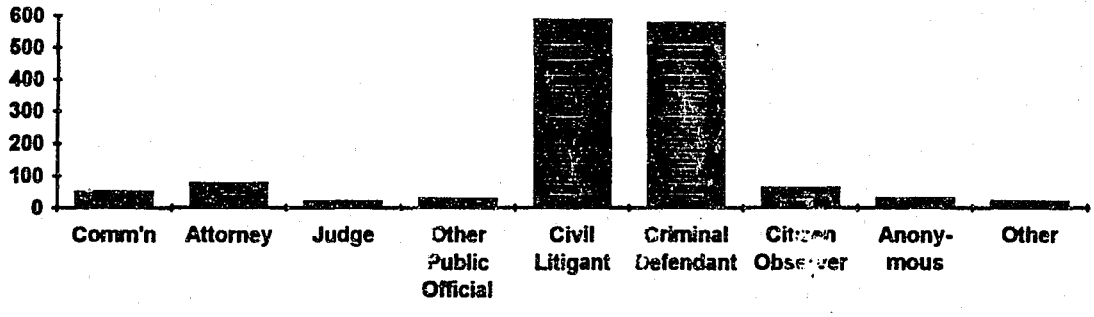
Complaints Received

In 1994, 1438 new complaints were received, marking the third consecutive year in which the number of complaints exceeded 1400. Of these, 1230 (85.5%) were dismissed by the Commission upon initial review, and 208 investigations were authorized and commenced. In addition, 154 investigations and proceedings on formal charges were pending from the prior year.

In 1994, as in previous years, the majority of complaints were received from civil litigants and defendants in criminal cases. Others were received from attorneys, law enforcement officers, civic organizations and concerned citizens not involved in any particular court action. Among the new complaints were 49 initiated by the Commission on its own motion. A breakdown of the source of complaints received in 1994 appears in the following chart.

Many of the new complaints dismissed by the Commission upon initial review were clearly without merit or outside the Commission's jurisdiction, including complaints against judges not within the state unified court system, such as federal judges, administrative law judges and New York City Housing Court judges. Absent any underlying misconduct, such as demonstrated prejudice, conflict of interest or flagrant disregard of fundamental rights, the Commission does not investigate complaints concerning judicial decisions. The Commission is not an appellate court and cannot reverse or remand trial court decisions.

Sources of Complaints Received in 1994



Investigations

On January 1, 1994, 110 investigations were pending from the previous year. During 1994, the Commission commenced 208 new investigations. Of the combined total of 318 investigations, the Commission made the following dispositions:

- 98 complaints were dismissed outright.
- 33 complaints involving 32 different judges were dismissed with letters of dismissal and caution.
- 7 complaints involving 6 different judges were closed upon the judges' resignation.
- 6 complaints involving 6 different judges were closed upon vacancy of office due to reasons other than resignation, such as the judge's retirement or failure to win re-election.
- 21 complaints involving 19 different judges resulted in formal charges being authorized.
- 153 investigations were pending as of December 31, 1994.

Formal Written Complaints

On January 1, 1994, Formal Written Complaints from the previous year were pending in 44 matters, involving 30 different judges. During 1994, Formal Written Complaints were authorized in 21 additional matters, involving 19 different judges. Of the combined total of 65 matters, the Commission made the following dispositions:

- 21 matters involving 15 different judges resulted in formal discipline (admonition, censure or removal from office).
- 5 matters involving 5 different judges were dismissed with a letter of dismissal and caution.
- 14 matters involving 6 different judges were closed upon the judge's resignation.
- 1 matter involving 1 judge was closed upon vacancy of office due to reasons other than resignation, such as the judge's retirement or failure to win re-election.
- 24 matters involving 18 different judges were pending as of December 31, 1994.

Summary of All 1994 Dispositions

The Commission's dispositions involved judges at various levels of the state unified court system, as indicated in the ten tables on this and the following pages.

TABLE 1: TOWN & VILLAGE JUSTICES – 2150,* ALL PART-TIME

	Lawyers	*Non-Lawyers*	*Total*
Complaints Received	110	295	405
Complaints Investigated	35	106	141
Judges Cautioned After Investigation	4	22	26
Formal Written Complaints Authorized	1	10	11
Judges Cautioned After Formal Complaint	1	1	2
Judges Publicly Disciplined	2	10	12
Formal Complaints Dismissed or Closed	1	5	6

*Refers to the approximate number of such judges in the state unified court system. Approximately 400 of this total are lawyers.

TABLE 2: CITY COURT JUDGES – 378, ALL LAWYERS*

	Part-Time	*Full-Time*	*Total*
Complaints Received	53	124	177
Complaints Investigated	11	7	18
Judges Cautioned After Investigation	0	0	0
Formal Written Complaints Authorized	2	1	3
Judges Cautioned After Formal Complaint	1	1	2
Judges Publicly Disciplined	1	0	1
Formal Complaints Dismissed or Closed	0	0	0

* Approximately 92 of this total serve part-time.

TABLE 3: COUNTY COURT JUDGES -- 77 FULL-TIME, ALL LAWYERS*

Complaints Received	142
Complaints Investigated	13
Judges Cautioned After Investigation	2
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Formal Complaints Dismissed or Closed	0

* Includes 6 who serve concurrently as County and Family Court Judges.

TABLE 4: FAMILY COURT JUDGES -- 118, FULL-TIME, ALL LAWYERS

Complaints Received	147
Complaints Investigated	9
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

TABLE 5: DISTRICT COURT JUDGES -- 48, FULL-TIME, ALL LAWYERS

Complaints Received	19
Complaints Investigated	0
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

TABLE 6: COURT OF CLAIMS JUDGES -- 51, FULL-TIME, ALL LAWYERS*

Complaints Received	7
Complaints Investigated	0
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

*Complaints against Court of Claims judges who serve as Acting Justices of the Supreme Court were recorded on Table 8 if the alleged misconduct occurred in Supreme Court.

TABLE 7: SURROGATES – 74, FULL-TIME, ALL LAWYERS*

Complaints Received	30
Complaints Investigated	3
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

*Includes 10 who serve concurrently as Surrogates and Family Court judges, and 30 who serve concurrently as Surrogate, Family and County Court judges.

TABLE 8: SUPREME COURT JUSTICES -- 341, FULL-TIME, ALL LAWYERS

Complaints Received	317
Complaints Investigated	24
Judges Cautioned After Investigation	4
Formal Written Complaints Authorized	2
Judges Cautioned After Formal Complaint	1
Judges Publicly Disciplined	1
Formal Complaints Dismissed or Closed	1

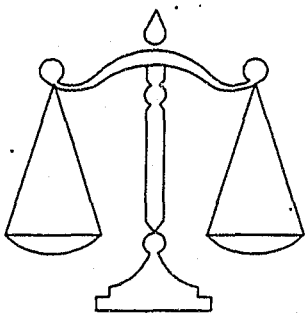
TABLE 9: COURT OF APPEALS JUDGES & APPELLATE DIVISION JUSTICES -- 59, FULL-TIME, ALL LAWYERS

Complaints Received	41
Complaints Investigated	0
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Formal Complaints Dismissed or Closed	0

TABLE 10: NON-JUDGES*

Complaints Received:	153

*The Commission does not have jurisdiction over non-judges, administrative law judges, housing judges of the New York City Civil Court, or federal judges.



Formal Proceedings

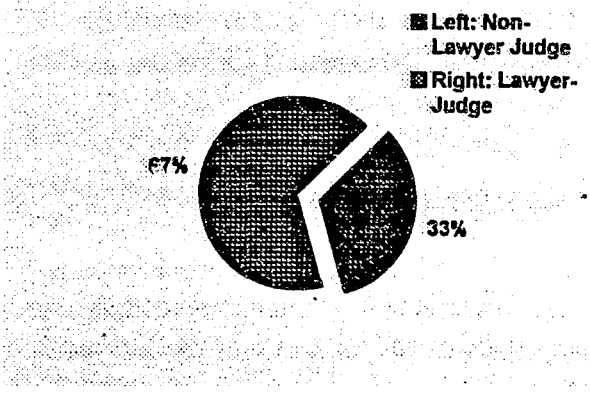
No disciplinary sanction may be imposed by the Commission unless a Formal Written Complaint, containing detailed charges of misconduct, has been served upon the respondent-judge and the respondent has been afforded an opportunity for a formal hearing.

The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges served, hearings commenced or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement has been rendered pursuant to law.

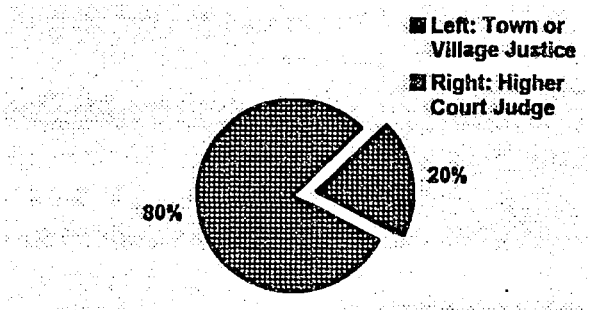
Following are summaries of those matters which were completed and made public during 1994. The texts of the determinations are appended to this Report, in alphabetical order.

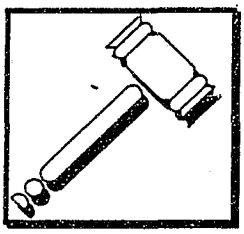
Overview of 1994 Determinations

The Commission rendered 15 formal disciplinary determinations in 1994: one removal, nine censures and five admonitions. Ten of the respondents disciplined were non-lawyer judges, and five were lawyer-judges. Twelve of the respondents were part-time town or village justices, and three were judges of higher courts.



To put these numbers and percentages in some context, it should be noted that, of the 3,300 judges in the state unified court system, approximately 65% are part-time town or village justices. Approximately 80% of the town and village justices, and about 55% of all judges in the court system, are not lawyers. (While town and village justices may or may not be lawyers, judges of all higher courts must be lawyers.) Of course, no set of dispositions in a given year will exactly mirror those percentages. However, over the years, the total of public determinations, when categorized by type of court and judge, has roughly approximated the makeup of the judiciary as a whole: about 72% have involved town and village justices, and about 28% have involved judges of higher courts.





Determination of Removal

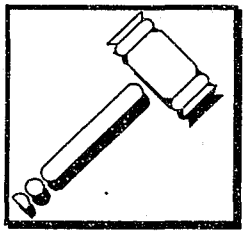
The Commission completed one disciplinary proceeding in 1994 which resulted in a determination of removal. The case is summarized below.

Matter of Richard H. Tiffany

The Commission determined that Richard H. Tiffany, a non-lawyer justice of the Croghan Town Court, Lewis County, should be removed from office for grossly neglecting his administrative duties over eight years, mishandling pubic monies over a one-year period, and failing to cooperate with the Commission during its investigation.

In its determination of January 26, 1994, the Commission found that Judge Tiffany failed over a one-year period to deposit court funds and remit them to the State Comptroller in the timely manner required by law, failed over a period of eight years to notify the Department of Motor Vehicles of the disposition of 272 traffic cases and failed both to respond to Commission inquiries and to appear for testimony on the matter as required by law.

Judge Tiffany did not request review by the Court of Appeals.



Determinations of Censure

The Commission completed nine disciplinary proceedings in 1994 which resulted in determinations of censure. The cases are summarized below.

Matter of Raymond R. Barlaam

The Commission determined that Raymond R. Barlaam, a lawyer-justice of the Ossining Village Court, Westchester County, should be censured for giving misleading testimony to an attorney grievance committee investigating his performance as the lawyer for a decedent's estate.

In its determination of July 27, 1994, the Commission found that Judge Barlaam had been censured by the grievance committee for giving misleading testimony concerning his statements to the executor of the estate. The determination noted that the judge acknowledged his misconduct and cooperated with the Commission's inquiry.

Judge Barlaam did not request review by the Court of Appeals.

Matter of Patrick J. Cunningham

The Commission determined that Patrick J. Cunningham, a judge of the County Court, Onondaga County, should be censured for making a derogatory statement which created the appearance of bias.

In its determination of March 18, 1994, the Commission found that, in praising a jury's guilty verdict in a case involving a defendant of Dominican heritage, the judge made comments creating the impression that he is biased against defendants of such heritage, that Dominican defendants were guilty in other pending drug cases, and that they are a burden on the criminal justice system.

Judge Cunningham did not request review by the Court of Appeals.

Matter of Jack A. Ellis

The Commission determined that Jack A. Ellis, a non-lawyer justice of the Barton Town Court, Tioga County, should be censured for recommending that attorneys use his relatives and others as process servers in civil cases in his own court.

In its determination of December 1, 1994, the Commission found that the judge, *inter alia*, misused the prestige of office by recommending his family members as process servers, noting that the service of process is often an issue in a civil case and the judge's impartiality would be or appear to be compromised in deciding such issues.

Judge Ellis did not request review by the Court of Appeals.

Matter of Harold Giffin

The Commission determined that Harold Giffin, a non-lawyer justice of the Clare Town Court, St. Lawrence County, should be censured for failing to deposit and remit court funds in a timely manner and for failing to cooperate with the Commission investigation.

In its determination of March 18, 1994, the Commission found that the judge failed for a six-month period to deposit court funds and remit them promptly to the State Comptroller, as required by law, and that he failed to respond to several Commission inquiries on the subject.

Judge Giffin did not seek review by the Court of Appeals, and he resigned from office shortly after the conclusion of the Commission's proceedings.

Matter of Stephen Poli

The Commission determined that Stephen Poli, a non-lawyer justice of the Camillus Town Court, Onondaga County, should be censured for arraigning his own son on a criminal charge.

In its determination of October 7, 1994, the Commission found that the judge went to the local police station upon learning from a friend that his son had been arrested for assault, and thereafter spoke privately with his son, conducted an arraignment and released the defendant on his own recognizance, despite being told by the police that a different judge would be called to handle the matter.

Judge Poli did not request review by the Court of Appeals.

Matter of Barry D. Sack

The Commission determined that Barry D. Sack, a judge of the Hudson City Court, Columbia County, should be censured for his improper involvement in two matters in which he was representing one of the parties as an attorney.

In its determination of September 29, 1994, the Commission found that the judge approached the complaining witness in a matter on which Judge Sack was representing the defendant, summoned the witness to the court where he presided as a judge, gave her a copy of a complaint the defendant had filed against her, and conveyed to her a proposed settlement of the matter. The Commission found that, by such conduct, Judge Sack confused his roles as lawyer and judge. The Commission also found that Judge Sack appeared before another lawyer-judge in the same county in a case which had originated in Judge Sack's court, in violation of the Judiciary Law.

Judge Sack did not request review by the Court of Appeals.

Matter of Barry Salman

The Commission found that Barry Salman, a justice of the Supreme Court, Bronx County, should be censured for engaging in improper political activity.

In its determination of January 26, 1994, the Commission found that the judge used funds of his campaign committee to purchase a video camcorder and a cellular car telephone for his personal use. The Commission also found that the judge's campaign committee, with his knowledge and approval, made improper contributions to political organizations and improperly purchased eight tickets to a political dinner.

Judge Salman did not request review by the Court of Appeals.

Matter of Charles E. Smith

The Commission found that Charles E. Smith, a non-lawyer justice of the Shandaken Town Court, Ulster County, should be censured for engaging in an angry and unseemly confrontation at a local street fair, and for improper behavior in a criminal case.

In its determination of June 16, 1994, the Commission found that the judge, who is chief of the local fire department, confronted the organizer of the street fair and criticized him for blocking the streets. When the individual turned to leave, the judge grabbed him by the shoulders and forcibly turned him around.

The Commission also found that Judge Smith conveyed the appearance of bias and violated the rights of a defendant in a criminal case. The judge convicted the defendant at arraignment without a formal guilty plea or trial and ignored important statutory requirements.

Judge Smith did not request review by the Court of Appeals.

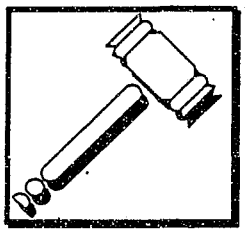
Matter of Stanley Yusko

The Commission found that Stanley Yusko, a non-lawyer justice of the Coxsackie Village Court, Greene County, should be censured for failing to comply with the law in several cases and for attempting to coerce a defendant to cooperate with the police.

In its determination of January 27, 1994, the Commission found that the judge, contrary to law, incarcerated without bail defendants who were charged with misdemeanors, violations or traffic infractions; some defendants were held in jail awaiting trial for periods longer than allowed by law.

The Commission also found that Judge Yusko compromised his independence and impartiality by attempting to coerce a defendant into providing information concerning vandalism at the judge's home, and by incarcerating the defendant in lieu of bail for 64 days awaiting trial, although the law mandates release after 30 days.

Judge Yusko did not request review by the Court of Appeals.



Determinations of Admonition

The Commission completed five disciplinary proceedings in 1994 which resulted in determinations of public admonition. The cases are summarized below.

Matter of Richard W. Burton

The Commission found that Richard W. Burton, a non-lawyer justice of the Schroeppel Town Court, Oswego County, should be admonished for failing to deposit and remit court funds promptly as required by law.

In its determination of December 1, 1994, the Commission found that even after his court had been audited and the judge had been advised that court funds were not being deposited within 72 hours of receipt, as required by law, the pattern of late deposits continued for over a year. Noting that the court clerk was responsible for depositing court funds, the Commission found that the judge had failed to supervise his court staff properly to ensure prompt deposits.

Judge Burton did not request review by the Court of Appeals.

Matter of George D. Decker

The Commission found that George D. Decker, a non-lawyer justice of the Concord Town Court, Erie County, should be admonished for engaging in improper political activity.

In its determination of January 27, 1994, the Commission found that the judge approved and signed a letter to voters which was critical of certain public officials, urged his own election and supported a candidate for county executive; the letter was sent to the county executive's campaign committee. The judge also published newspaper advertisements which contained undignified remarks about his political opponent.

Judge Decker did not request review by the Court of Appeals.

Matter of John D. Henderson, Jr.

The Commission found that John D. Henderson, Jr., a non-lawyer justice of the Barre Town Court, Orleans County, should be admonished for driving a car while he was intoxicated.

In its determination of March 18, 1994, the Commission found that the judge lost control of his car while driving in an intoxicated condition. When questioned by a police officer, the judge gave his name and judicial office and asked, "Isn't there anything we can do?" The judge later pleaded guilty to Driving While Intoxicated and was given a conditional discharge and fined $500.

Judge Henderson did not request review by the Court of Appeals.

Matter of Everett J. Miller

The Commission found that Everett J. Miller, a non-lawyer justice of the Cherry Valley Village Court, Otsego County, should be admonished for failing to follow statutory requirements in two criminal cases.

In its determination of October 7, 1994, the Commission found that the judge (1) refused to accept cash bail from defendants on two occasions, on which he remanded the defendants to jail in lieu of bail, and (2) determined restitution in a case based on *ex parte* information, and denied the defendant a right to be heard on the issue.

The Commission also found that the judge improperly served as a member of the fire department police, a position incompatible with judicial office.

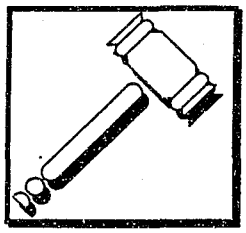
Judge Miller did not request review by the Court of Appeals.

Matter of Kenneth S. Rones

The Commission found that Kenneth S. Rones, a lawyer-justice of the Clarkstown Town Court, Rockland County, should be admonished for confronting motorists on the roadways who he believed had violated various traffic laws.

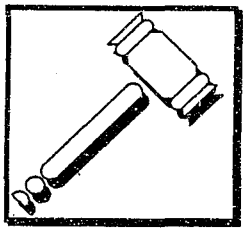
In its determination of September 30, 1994, the Commission found that on eight occasions over a period of two years, the judge acted like a law enforcement agent by confronting motorists. In three instances, he demanded that drivers produce their licenses; on two of these occasions, he took the licenses and required the drivers to retrieve them from his court; on another, he took a plea and imposed a fine on a charge he had initiated.

Judge Rones did not request review by the Court of Appeals.



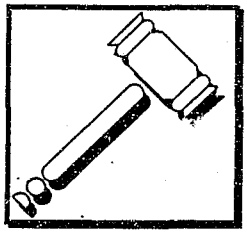
Dismissed or Closed Formal Written Complaints

The Commission disposed of 12 Formal Written Complaints in 1994 without rendering public discipline. In six of these cases, the judges resigned from judicial office before the matter could be completed. In a seventh case, the judge's term of office expired. Five others were disposed of with letters of dismissal and caution, upon findings by the Commission that judicial misconduct was established but that public discipline was unwarranted. (Letters of Dismissal and Caution are discussed on the following pages.)



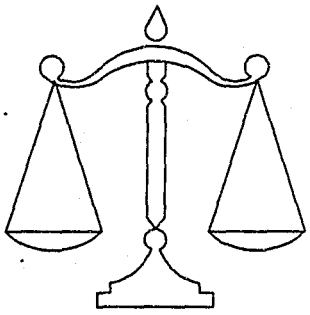
Matters Closed Upon Resignation

Twelve judges resigned in 1994 which under investigation or formal charges by the Commisison. The matters pertaining to these judges were closed. By statute, the Commission may retain jurisdiction over a judge for 120 days following resignation. The Commission may proceed within this 120-day period, but no sanction other than removal from office may be determined within such period. When rendered final by the Court of Appeals, the "removal" automatically bars the judge from holding judicial office in the future. Thus, no action may be taken if the Commission decides within that 120-period that removal is not warranted.



Referrals To Other Agencies

Pursuant to Judiciary Law Section 44(10), the Commission, when appropriate, refers matters to other agencies. In 1994, the Commission referred 37 matters to the Office of Court Administration, typically dealing with complaints of delay or other administrative issues. Two matters were referred to attorney disciplinary committees, and one matter was referred to a District Attorney.

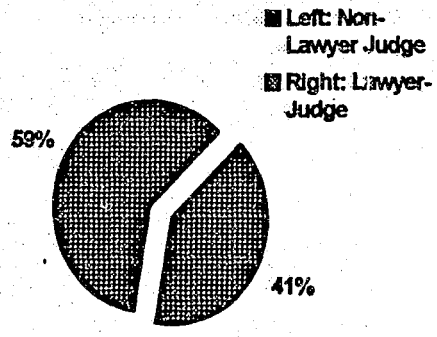


Letters of Dismissal and Caution

A *Letter of Dismissal and Caution* constitutes the Commission's written confidential suggestions and recommendations to a judge. It is authorized by Commission rule, 22 NYCRR 7000.1(l).

Where the Commission determines that a judge's misconduct does not warrant pubic discipline, it will issue a letter of dismissal and caution, privately calling the judge's attention to ethical violations which should be avoided in the future. Such a communication has value not only as an educational tool but also because it is the only method by which the Commission may caution a judge as to his or her conduct without making the matter public.

In 1994, the Commission issued 37 letters of dismissal and caution. Thirty-two were issued upon conclusion of an investigation, and five were issued upon completion of a Formal Written Complaint. Twenty-eight town or village justices, six of whom are lawyers, were cautioned; one part-time and one full-time city court judges were cautioned; and seven other full-time judges were cautioned -- two County Court judges and five Supreme Court justices.



The caution letters addressed various types of conduct. For example, eight part-time town or village justices were cautioned for failing to make timely deposits or keep appropriate records of court finances.

Three part-time town or village justices were cautioned for failing to follow certain fundamental procedures. For example, one judge permitted a plaintiff in a small claims case to amend the complaint without notice to the defendant. Another imposed sentence in a criminal case without waiting for a timely pre-sentence report.

Five judges were cautioned for having engaged in unauthorized political activity, such as making public comments about political races other than their own, promoting candidacies other than their own or attending political events at a time they were not themselves candidates.

Four judges were cautioned for asserting or appearing to assert the influence of judicial office in furtherance of a private interest, or for similar demeanor. For example, one judge wrote a letter on judicial stationery on behalf of a relative's private claim. Another judge wrote a letter on judicial stationery concerning his private dispute with a bank.

Four judges were cautioned for conducting unauthorized *ex parte* communications. For example, one judge gave advice to one party in a dispute over which he was presiding.

Another gave advice to one party in a case which had just concluded, on an issue that was likely to arise in another case involving the same parties in the judge's court.

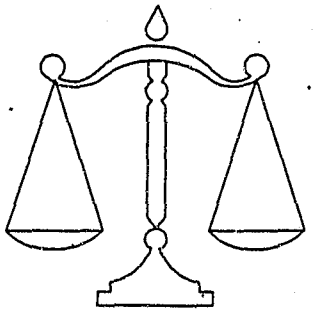
Two judges were cautioned for failing to disqualify themselves in cases involving litigants who were their professional colleagues or close relatives of their colleagues.

Two judges were cautioned for engaging in unauthorized fund-raising activities on behalf of charitable organizations. While the Rules on Judicial Conduct permit a judge to participate in civic and charitable activities that do not reflect adversely upon impartiality or the performance of judicial duties, they specifically prohibit a judge from fund-raising activities such as soliciting funds, permitting the use of the judge's name in the solicitation of funds, and serving as a speaker or guest of honor at a fund-raising event. (The Rules specifically recognize one exception: a judge may speak or be guest of honor at a law school or bar association event.)

Two judges were cautioned for failing to exercise appropriate supervision of court staff.

Three judges were cautioned for making improper comments to jurors after verdicts were rendered, in violation of the Rules on Judicial Conduct and ABA Standards, which limit a judge to thanking jurors for their service. For example, one judge harshly criticized a jury for rendering a particular verdict. Another judge discussed with a jury certain negative information about a defendant which had not been raised in court.

Should the conduct addressed by a letter of dismissal and caution continue or be repeated, the Commission may authorize an investigation on a new complaint which may lead to a Formal Written Complaint and further disciplinary proceedings.



Commission Determinations Reviewed by the Court of Appeals

Pursuant to statute, Commission determinations are filed with the Chief Judge of the Court of Appeals, who then serves the respondent-judge. The respondent-judge has 30 days to request review of the Commission's determination by the Court of Appeals, or the determination becomes final. In 1994, the Court decided the two matters summarized below.

Matter of David Schiff

The Commission determined on September 15, 1993, that David Schiff, a justice of the Liberty Village Court, Sullivan County, should be removed from office for making an improper remark with racial connotations, indicating that he would decide a case based on personal animosity, and failing to report court funds to the state comptroller. Judge Schiff requested review by the Court of Appeals.

The Court unanimously accepted the Commission's determination on June 9, 1994, and ordered the judge's removal. *Matter of Schiff*, 83 NY2d 689 (1994). The Court rejected the judge's claims that the Commission had failed to prove the allegations of the formal written complaint.

In one case, Judge Schiff was found to have remarked, during a break in court proceedings, that he remembered when it was safe for young women to walk the streets "before the blacks and Puerto Ricans moved here." The Court agreed with the Commission that such a remark, "even if isolated, 'casts doubt on [the judge's] ability to fairly judge all cases before him'" and violated the ethical rules related to his duty to uphold the integrity and impartiality of the judiciary and to avoid even the appearance of impropriety (*Id.* at 693).

In another matter, the Court found that Judge Schiff, in deciding a case before him, created the impression that he used his judicial office to retaliate against a judge who had ruled against Judge Schiff's interests. The Court noted that whether Judge Schiff actually decided the case before him on the merits "is largely irrelevant to the charge, because the harm inured when he indicated he would use his judicial powers to satisfy a personal vendetta, a classic case in which 'the appearance of such impropriety is no less to be avoided than is the impropriety itself'" (*Id.* at 693).

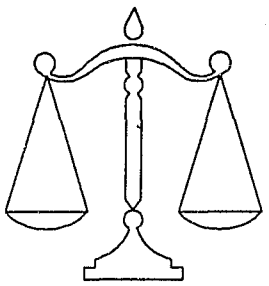
In its decision, the Court rejected the judge's arguments that the Commission's findings included uncharged misconduct, that Commission staff conducted a biased investigation by failing to contact certain potentially exculpatory witnesses, and that the judge had failed to receive effective representation by counsel. The Court concluded that in view of the "cumulative, serious judicial misconduct" that was established, the judge's removal from office was appropriate (*Id.* at 695).

Matter of David B. Heburn

The Commission determined on December 16, 1993, that David B. Heburn, a justice of the Remsen Town and Village Courts, Oneida County, should be removed from office for falsely subscribing designating petitions during his campaign for judicial office. Judge Heburn requested review by the Court of Appeals.

The Court unanimously accepted the Commission's determination on June 30, 1994, and ordered the judge's removal. *Matter of Heburn*, 84 NY2d 168 (1994). The Court rejected the judge's argument that the Commission had failed to prove that the signature on the subscribing witness line on his designating petition was, in fact, his.

The Court concluded that the judge's "deliberately deceptive conduct is 'antithetical to the role of a judge who is sworn to uphold the law and seek the truth,'" and demonstrated the judge's lack of fitness for judicial office (*Id.* at 171).



The Commission's Budget

Since 1978, when the present commission system for disciplining judges was implemented under the State Constitution, the Commission has managed its finances with extraordinary care. In periods of relative plenty, we nevertheless kept our budget small; in times of financial crisis, we made difficult sacrifices. Our average annual increase since 1978 was less than one percent.

Since 1990, the Commission has been under virtually unrelenting budgetary pressure; our funding was reduced by more than 21%. The 1995-96 Executive Budget calls for an additional cut of nearly 11%. Our funding level is now set at $1,584,100 -- which is less than what we had in 1978. In the same time frame, the number of complaints received and reviewed in a year has more than doubled (to over 1,400 per year), and the number of investigations authorized and conducted in a year has increased more than 22%. The number of judges under the Commission's jurisdiction is approximately 3,300. Managing such an increased workload in so large a system, with steadily dwindling resources, has been formidable and not without sacrifices to the efficiency of our work.

A No-Growth Budget

The Commission's total budget for 1978-79 was $1,644,000, or $60,000 more than our budget for 1995-96. In some years, our budget was increased in small increments, primarily to reflect obligations applicable to all state agencies, such as contractually-mandated cost-of-living raises and annual rent increases. *Six times since 1979, we voluntarily requested budgets no greater or even less than the previous year's amount.* We were apprised by the Division of the Budget that we were the only agency to do so, at a time in the 1980s when such sacrifices were not mandated by fiscal emergencies. Moreover, an exhaustive audit in 1989 by the State Comptroller found that the Commission's finances were in order, that our budget practices were all consistent with state policies and rules, and that no changes in our fiscal practices were recommended.

The extraordinary task of maintaining a virtually no-growth budget over 16 years has left no "fat" to be trimmed from our operation. The financial cuts that state agencies have endured in recent years continue to hit hard, and among agencies such as the Commission which have demonstrated austerity in pre-crisis times, the current cuts have a disproportionately greater impact. Steep cuts in both personnel and non-personal services were necessary to accomplish past cutbacks. The severe budgetary constraints now being imposed seriously threaten our ability to discharge our constitutionally-mandated responsibilities. Over the last ten years, we cut our staff by 50%, dramatically reduced our office space and rent, and otherwise reduced expenditures. Several years ago, for example, we installed electronic recording equipment instead of relying on stenographers to transcribe testimony. Two years before legislation imposed it on all commissions, our Commission members agreed to serve without the compensation to which they were entitled under law.

Unfortunately, more reductions will be necessary from an already lean budget. Our

statewide staff of 27 will be reduced even further. Some investigations have already been limited in scope because we do not have adequate financial means to permit staff travel for witness interviews, review of court records, observation of court proceedings and the like, particularly where overnight lodging is required. In some instances, limited finances have even affected the Commission's decisions to investigate complaints, institute formal disciplinary charges or proceed to lengthy hearings.

These measures adversely affect the constitutional mission of the Commission itself. They also illustrate a regrettable lesson in public service -- that the reward for fiscal prudence in good times is harsh punishment in lean times. Had we bloated our budget in the years when funds were more readily available -- indeed, had we merely kept even with the rate of inflation -- we could easily have absorbed the cuts we are now being asked to implement, without threatening our ability to discharge our constitutional mandate. Instead, we have in effect received no credit for doing what government agencies should do all the time: saving the taxpayers money by living within a reasonable budget, even when excess funds were available.

The Commission's Unique Role

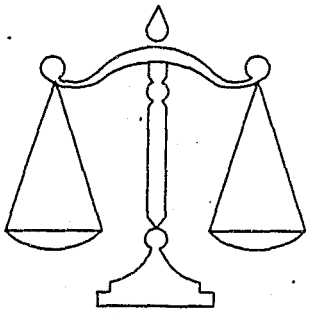
Under the New York State Constitution, the Commission is the only agency of state government with the authority to investigate judges for ethical misconduct. Its disciplinary role is unique. The Commission system has served New York well since its inception 20 years ago. More than 400 judges have been publicly disciplined for judicial misconduct, more than 700 have been confidentially cautioned, and 222 have resigned while under investigation or charges.

It is probably fair to say that the judiciary has become more sensitive to its ethical obligations, and that public confidence in the judiciary has consequently improved.

One of the critical features of the Commission system is its structural independence. The 11 Commission members are appointed to staggered four-year terms by various designating authorities -- the Governor, the Chief Judge and the Legislature's leaders -- none of whom controls a majority. The Commission, by law, elects its own chairperson and, by law, appoints an attorney as Administrator. The Administrator, by law, appoints a deputy and other counsel, and support staff. The eight attorneys on staff have been with the Commission for an average of 16 years, providing a professional continuity free of political interference.

Financially inhibiting the Commission's ability to discharge its constitutional responsibilities has important consequences beyond the practical impact of any particular cutback. It is tantamount to thwarting the will of the electorate, which was expressed when the voters overwhelmingly adopted the constitutional amendment which created the Commission.

Any agency of government should strive to live within reasonable budgetary means, however plentiful or scarce resources may be in a given fiscal year. Clearly, the Commission has demonstrated its ability to do precisely that, over the course of its entire existence. We have done more with less, for years. Now, however, our fiscal limits have been reached, putting in jeopardy our agency's already modest operations. Any further reductions would threaten the very constitutional structure for disciplining judges in New York State.



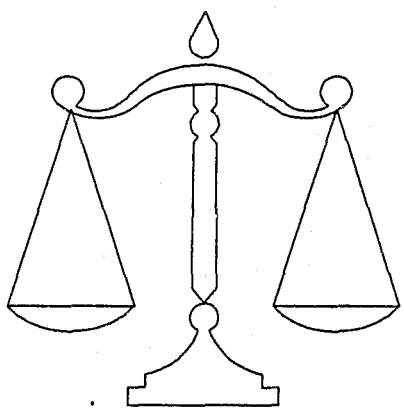
Conclusion

Public confidence in the high standards, integrity and impartiality of the judiciary, and in an independent disciplinary system which keeps judges accountable for their conduct, is essential to the rule of law. The members of the New York State Commission on Judicial Conduct are proud of the Commission's contributions not only to that ideal, but also to a heightened awareness of the appropriate ethics standards incumbent on all judges, and to the fair and proper administration of justice.

Respectfully submitted,

Henry T. Berger, Chair
Helaine M. Barnett
Evelyn L. Braun
E. Garrett Cleary
Mary Ann Crotty
Lawrence S. Goldman
Juanita Bing Newton
Eugene W. Salisbury
Barry C. Sample
John J. Sheehy
William C. Thompson

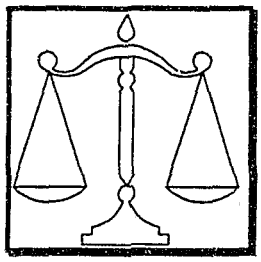
SPECIAL TOPICS AND RECOMMENDATIONS



1995 Annual Report
New York State
Commission on Judicial Conduct

SPECIAL TOPICS
AND RECOMMENDATIONS

In the course of its inquiries and other duties, the Commission has identified certain issues and patterns of conduct that require discussion outside the context of a specific disciplinary proceeding. We do this for public education purposes, to advise the judiciary so that potential misconduct may be avoided, and pursuant to our authority to make administrative and legislative recommendations.



Judges Serving as Election Commissioners

The Commission has reported on this topic twice before, in its 1989 and 1991 annual reports. Little has appeared to change during the intervening years in the troublesome practice of permitting judges to serve as local election commissioners.

Section 100.5(h) of the Rules on Judicial Conduct permits part-time judges to accept private or public sector employment, "provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties."

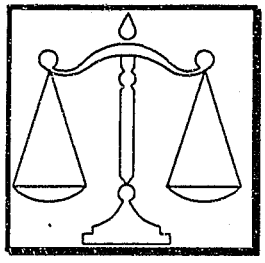
Section 3-200 of the Election Law specifically permits a town justice or a city judge to serve as a county election commissioner. While authorizing service by town justices, the statute is silent as to the virtually synonymous village justices. Also, the statute does not distinguish between part-time and full-time city court judges.

Pursuant to the same provision of law, election commissioners in each county are appointed in equal numbers by the two major political parties.

Given the various statutory and ethical prohibitions on judges engaging in political activity, including a prohibition on a judge belonging to a political club (Section 100.7 of the Rules), it seems inappropriate to permit a judge to serve as an election commissioner by virtue of appointment by a political party. Such a political appointment may convey the appearance that the judge is beholden to the party that facilitated the appointment. Such perceptions are only underscored in many counties by such factors as the well-paying nature of the position, the tendency to identify commissioners by their political affiliation, and the practice in some parts of the state to bifurcate the election commission staff between Democratic employees reporting to the "Democratic commissioners" and Republican employees reporting to the "Republican commissioners."

Moreover, the very concept of dividing commissionerships between the two parties may convey an appearance that the purpose of the appointment is not so much to protect the public interest as to look after the political parties' own partisan concerns. Whether or not the Legislature intends that to be the case, it compromises the integrity of the judiciary to put a judge in such a position. The potentially partisan nature of a county election commissionership would be incompatible with the judge's fundamental obligation to be and appear independent and impartial.

The Commission recommended in 1989 and 1991 that the Legislature amend the Election Law to eliminate the authority for judges to serve as election commissioners. We renew that recommendation.



The Right to a Public Trial

In previous Annual Reports, most recently in 1991, the Commission has commented extensively on a defendant's or civil litigant's right to a public trial, and the obligation to provide adequate court facilities to insure that proceedings can be conducted in an appropriate and impartial setting.

Despite such commentaries, and several confidential cautions to individual judges, some judges continue to conduct arraignments or other proceedings in private or otherwise inappropriate settings.

With certain specific exceptions, such as cases involving "youthful offenders" or some Family Court matters, state law requires that all court proceedings be public (Section 4 of the Judiciary Law). Court decisions have further addressed the issue, specifically holding that a judge may not hold court in a police barracks or schoolhouse.[1] Unfortunately, these standards are not uniformly observed throughout the state. In 1994, for example, the Commission received complaints about one judge who conducted arraignments in a police station, notwithstanding the availability and close proximity of the local courthouse, and about another judge who conducted individual criminal proceedings privately in his office, while other defendants awaited their turn in a hallway. In the past, the Commission has warned judges about such improprieties as conducting arraignments in police cars. And as far back as 1983, the Commission publicly admonished a judge for

[1] *People v. Schoonmaker*, 65 Misc2d 393, 317 NYS2d 696 (Co Ct Greene Co 1971); *People v. Rose*, 82 Misc2d 429, 368 NYS2d 387 (Co Ct Rockland Co 1975).

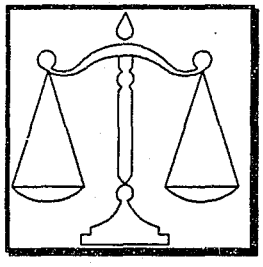
effectively making his courtroom private by deliberately and wrongfully excluding a newspaper reporter. (See *Matter of Burr* in our 1984 Annual Report.)

Absent a controlling exception, all criminal and civil proceedings should be conducted in public settings which do not detract from the impartiality, independence and dignity of the court.

Over the last several years, the Office of Court Administration has made special efforts to improve the facilities available to full-time judges around the state. But OCA's role is limited, since it is the local municipality, not the state government, which is responsible for providing appropriate space.

Some municipalities do not provide court facilities for their town and village justices, thereby requiring them to use other settings such as their homes or places of business. Over the years, the Commission has learned of judges who felt compelled under such circumstances to conduct court business in the back of a hardware store or dry cleaning shop. Such practices impair not only the participant's right to a public trial but also the public's right to access, as well as effective oversight of court business by court administrators. Of course, even if in theory such sessions are open to the public, few people are likely to know about or attend proceedings in a judge's house or place of business.

In view of these realities, special emphasis should be given in training and education programs for town and village justices on the subject of proper, public settings for arraignments and other court proceedings.



Conditioning Dismissal of Charges on the Defendant's Agreement Not to Sue for Damages

In two previous Annual Reports (1975 and 1986), the Commission criticized the improper practice of conditioning the dismissal of criminal charges on the defendant's agreement not to sue the police or municipality or other agency of government for damages in connection with the arrest and prosecution.

In a hypothetical situation, a defendant arrested and charged with a criminal offense, such as trespass, may assert a defense, such as a right to be on the property. In the course of pre-trial conferences or plea discussions, the prosecutor or judge may conclude that the case against the defendant is weak, or even that there was no probable cause on which to have arrested and proceeded against the defendant. A key witness may have recanted, for example, or the defense may have been bolstered by previously unknown information, or

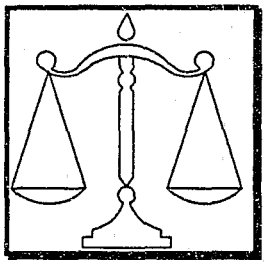
the prosecutors may for other legitimate reasons choose not to proceed with the case. Instead of dismissing the criminal charge outright, however, the judge might first attempt to dissuade the defendant from pursuing a civil claim for false arrest against the arresting officer or municipality. The judge might even refuse to dismiss the criminal charge unless the defendant agrees in writing to waive any civil suit against the police or municipality.

Over the years, the Commission has become aware of numerous cases in which judges have routinely engaged in such behavior. Some judges even have a standard printed release form for such dispositions. One such form, which was sent to the Commission with a complaint last year, reads as follows:

> I _____ do hereby release the Town of _____ as well as the County of _____ and all its officers, agents, employees and/or subcontractors, including the respective Police Department together with the above complainant, from any and all liability resulting from my apprehension, arrest and/or confinement, that may have been imposed upon me as a result of such charges, that have been dismissed or withdrawn.

Such coercion puts the defendant in an unfair posture and reflects poorly on the legal system and especially on the judiciary. No one should be compelled to forego a legitimate civil claim in order to avert criminal prosecution, particularly where the prosecution to all appearances should not on its own merits be pursued. Judges who employ such coercive techniques undermine public confidence in the integrity, impartiality and independence of the judiciary and the administration of justice. They are also acting contrary to public policy as affirmed by the US Supreme Court, which has permitted recovery in civil litigation for certain improper conduct by a municipality and its agents. *Briggs v. Malley*, 475 US 335 (1986).

The right to commence an action for false arrest or other wrongful conduct should be respected by judges, prosecutors and all others associated with the criminal justice system. The Commission will continue to take appropriate action against those judges who attempt to coerce defendants into waiving such rights.



Unauthorized *Ex Parte* Communications

Section 100.3(a)(4) of the Rules on Judicial Conduct prohibits a judge from initiating or considering *ex parte* communications in a pending or impending matter, "except as authorized by law." Over the years, the Commission has publicly disciplined numerous judges

for violating this standard, either for having substantive discussions off the record with one of the parties or participants in a case before them, or for intervening *ex parte* in a case pending before another judge. In some instances, the *ex parte* nature of the communication is incidental to the underlying misconduct. For example, in *Matter of Kiley*, 74 NY2d 364 (1989), a District Court judge spoke privately to prosecutors in two different cases, seeking leniency for defendants as a personal favor. In other instances, the *ex parte* communications may result from the judge's failure to appreciate the proper role of a judge in our legal system.

Ex Parte Communications With Prosecutors and Police

Sometimes due to crowded or otherwise less-than-satisfactory court facilities, some judges find themselves compromised by unintentional proximity to one side or another. For example, one complaint considered by the Commission this year concerned a town court with very limited space in which the judge, the local prosecutor and the police shared the judge's robing room for pre-trial and mid-trial conferences. In such a setting, even if the judge were scrupulously to avoid discussing the merits, the appearance of impropriety would be inevitable. Sometimes, of course, the misconduct involves more than appearances. In one case, *Matter of Cooksey*, 1988 Annual Report 151, a town justice went so far as to deny defense counsel entry to the office where an unauthorized *ex parte* conversation between the judge and a prosecutor was taking place.

In other cases, the Commission has learned about full-time and part-time judges who meet regularly with local prosecutors before court convenes, to discuss pending criminal cases. In *Matter of Sardino*, 58 NY2d 286 (1983), an assistant district attorney testified that he and a full-time city court judge regularly held morning meetings to review and make judgments as to the merits of cases on the day's calendar. In *Matter of McGee*, 59 NY2d 870 (1983), a town justice acknowledged holding *ex parte* conversations concerning pending cases with the arresting officers. In *Matter of Greenfeld*, 71 NY2d 389 (1988), a village justice engaged in unauthorized *ex parte* communications and delegated to the local prosecutor various judicial duties, such as accepting pleas and determining the amount of fines.

Such *ex parte* practices, in which judges privately discuss the merits of cases with the prosecutor or other law enforcement personnel, are clearly improper and undermine a fundamental judicial obligation to hear both sides in a dispute fairly in order to render judgment impartially. At the very least, such a distortion of the judicial process gives rise to an appearance of impropriety. At worst, such communications offer one side a means of influencing the judge with information that the other side does not know is before the judge and therefore cannot rebut.

Ex Parte Disposition of Criminal Charges

The converse of the problem of the judge who communicates improperly with or relies improperly upon the prosecutor is the judge who reduces or dismisses charges without notice to the District Attorney's office.

Various provisions of the Criminal Procedure Law set forth the procedure for dismissing charges with notice to the prosecutor as to an indictment, an information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint (*CPL Sections 170.45, 170.55 and 210.45*). Section 100.2 of the Rules on Judicial Conduct requires a judge to "respect and comply with the law."

From time to time, in the course of investigating particular complaints, the Commission becomes aware of cases disposed of by a judge without proper notice to the District Attorney. The judge may independently reduce a charge from DWI to DWAI, for example, or dismiss the case altogether, without proper notice to or consent by the DA. Even where the DA would have had no objection to the particular disposition, the failure to give notice is improper and inevitably appears as if the judge is doing a favor for the defense.

Ex Parte Meetings in Civil Cases, Without Consent

Unauthorized *ex parte* communications, of course, are not limited to criminal cases. The Commission receives several complaints each year involving judges who engage in such a practice in civil cases. Numerous letters of dismissal and caution have been issued in such matters. For example, one judge visited the location of a property dispute, unannounced, and discussed the merits of the case with one of the parties, who happened to be at the site when the judge arrived; the judge later told the Commission that he had only wanted to see the disputed property for himself. Another judge interviewed the parties separately in a pending case and failed to hold a hearing in which each side could hear and cross examine the other. A third judge privately interviewed a potential witness and consequently refused to entertain the plaintiff's small claim action. A fourth judge summoned a litigant to court and questioned him outside the presence of his attorney. A fifth judge received and examined material from the plaintiff in a small claims case, without sharing it with the defendant.

Complaints such as these which result in cautions typically arise not out of venality but from the judge's ignorance of procedural and ethical rules. Where the *ex parte* communications are motivated by something more serious than an honest mistake or failure to appreciate the rules, the Commission's responses are correspondingly more severe. For example, in *Matter of Levine*, a New York City Civil Court judge was removed from of-

fice for granting an important adjournment on the basis of a request from a former political leader, thereby conveying the "impression in an *ex parte* communication that his rulings would not be based on merit but on his allegiance and loyalty to the former political leader." 74 NY2d 294, 297 (1989).

Whether or not there is something ulterior in the judge's motivation -- such as persuading the plaintiff to withdraw charges as a favor to the defendant, to whom the judge has a personal connection -- private discussion with one side, without the knowledge or consent of the other side, is improper. Even in the course of settlement discussions between plaintiff and defendant -- where the judge's intervention is well-intentioned and even necessary to advance the negotiations -- the *ex parte* communications must be on notice and with the permission of the parties.

Ex Parte Communications with Law Guardians

Law guardians who are appointed by the court to represent the children in family disputes are often seen as having a special role because they represent an innocent party whose best interest is the very focus of the underlying litigation before the court. Notwithstanding this special role, the law guardian is also a lawyer who is bound by the same rules as other lawyers in the litigation and who is not entitled to private communications with the court to which the other parties are not privy.

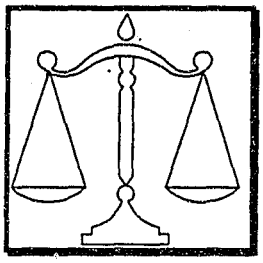
Over the years, the Commission has encountered numerous instances in which judges have routinely held private conversations with law guardians in much the same way as they might discuss the case with their law secretaries, typically in a well-meaning attempt to determine the best interest of the child. In one case, for example, the judge called a law guardian for *ex parte* advice on an Order To Show Cause which had just been filed by one of the parents in connection with visitation rights; the law guardian *inter alia* raised concerns on a collateral issue, in reliance upon which the judge severely restricted the parent's visitation rights. The parent was neither aware of the law guardian's private communication to the judge nor given an opportunity to be heard on the matters discussed.

Such clearly improper communications between judge and law guardian raise serious due process issues. A law guardian is not analogous to a member of the judge's staff, such as the judge's law secretary. *Ex parte* communications must be on consent of the parties or otherwise sanctioned by law, such as when the court holds an *in camera* interview with the child.

Understanding the role of the law guardian is especially important because, in the course of representing the child, the law guardian will be privy to much unsubstantiated gossip and hearsay from the rival parties which should not reach the judge without an opportu-

nity for the adverse party to rebut it. Some judges, in seeking to determine the best interests of the child, may seek to learn through the law guardian the very gossip and hearsay that would be inadmissible in court. In *Brice v. Mitchell*, 184 AD2d 1008 (4th Dept 1992), the trial judge was reversed for relying on hearsay information provided by the law guardian.

The New York State Law Guardian Representation Standards specifically state that the "law guardian should not engage in any *ex parte* communication with the court." The New York State Bar Association's Committee on Children and the Law has performed a valuable public service by publishing the Standards in booklet form. This important publication should be available to and reviewed not only by prospective law guardians but by all those judges whose responsibilities include family law cases.



Failure to Assign Counsel to the Indigent

In 1989 and again in 1992, the Commission devoted significant sections of its Annual Reports discussing disparate practices throughout the state with respect to assigning counsel to indigent defendants. In 1994, the New York State Public Defenders Association published an outstanding major study on the practice in each of New York's 62 counties *vis a vis* assigned counsel.

Notwithstanding such commentaries, and the increased attention devoted to the subject in annual judicial training and education programs run by the Office of Court Administration, problems in the area persist. Last year, for example, the Commission considered a complaint against a city court judge who neither advised certain defendants of their right to counsel nor took steps to effectuate such rights. (The case, *Matter of Austria*, was decided in early 1995 and will be reported at greater length in next year's annual report.)

If the defendant is financially unable to retain counsel, counsel must be assigned by the court on request.[2] Indeed, a judge has certain affirmative obligations to effectuate this right, as discussed below.

In New York State's larger cities, assigned representation of indigent defendants is usually available as early as the arraignment stage. It would therefore be unusual for a defendant to spend a significant amount of time in jail without having been afforded counsel. In smaller communities around the state, however, indigent defendants may spend

[2] CPL Sections 170.10, 180.10; County Law Section 722; *People v. Witenski*, 15 NY2d 392 (1965); *Scott v. Illinois*, 440 US 367 (1979).

long periods of time in jail without representation and sometimes without having been advised properly by the court of their right to assigned counsel.

Except in traffic infraction cases, New York State law requires that all defendants, including those charged with violations, be advised of their right to assigned counsel.[3] CPL Section 170.10(4) requires a judge not only to advise the defendant at arraignment of the right to free representation if eligible but also to "take such affirmative action as is necessary to effectuate the defendant's right to assigned counsel." Moreover, County Law Section 722 requires that each county have an approved plan to provide legal services to those who cannot afford an attorney and that the judge assign counsel in accordance with the county plan.

Thus, there is a dual responsibility for providing counsel for the indigent. The judge must effectuate the defendant's rights, and there must be a county plan under which the judge can act. Some counties are not providing counsel effectively although the law and their plans require it, and local judges request it. In other instances, the judges themselves do not assign counsel, sometimes out of ignorance of their obligation to do so. Several judges have advised the Commission, for example, that they do not assign counsel for indigent defendants charged with non-traffic violations, even if incarceration is authorized by law and in fact results, because their counties do not make counsel available in such cases. One judge advised the Commission last year that he was not aware that the law required assigned counsel for indigent defendants charged with city code violations punishable by jail terms; he apparently believed that the assigned counsel obligation was connected only to violations of state, not local, laws. Another city court judge once advised the Commission that, although he had served as an assigned counsel before becoming a judge, he was unaware of the parameters of the obligation and was not properly enforcing the requirement.

The Court of Appeals has held that a pattern of denying constitutional rights, including the right to counsel, is serious misconduct which can warrant removal from office. *Matter of Sardino*, 58 NY2d 286 (1983); *Matter of Reeves*, 63 NY2d 105 (1984). A judge may not delegate to others the ultimate responsibility of deciding whether a defendant is entitled to assigned counsel. While a judge may rely on the recommendations of the public defender's office or other county plan administrator as to eligibility, the judge may not avoid the statutory responsibility of effectuating the right to counsel. Claiming ignorance of the obligation or the unavailability of counsel within the county plan is not a valid defense.

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[3] Section 722-a of the County Law; Section 170.10(3)(c) of the CPL, and Practice Commentary by Joseph W. Bellacosa; *People v. Ross*, 67 NY2d 321 (1986); *People v. Van Florcke*, 467 NYS2d 298 (App Term 9th & 10th Jud Dist, 1983); *Davis v. Shepard*, 399 NYS2d 836 (Sup Ct Steuben Co 1977).

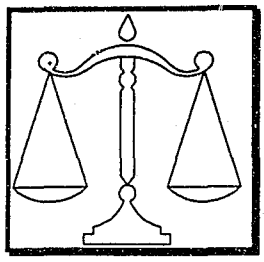
Of course, many public defender offices throughout the state are burdened with very heavy caseloads and diminishing government funds. In some cases, it can take weeks to process and respond to requests for assistance. By that time, the unrepresented defendant may already have served as much or more time in jail as the law would allow upon conviction.

Complicating the issue are the disparate means throughout the state of making eligibility decisions and effectuating assigned representation. Some judges themselves make detailed inquiries of the defendants as to their financial ability to afford counsel. Others direct the defendants to consult with the assigned counsel representative for an interview and report to the court on eligibility. Still others leave the defendants to their own devices. The Commission has learned of some judges who simply hand the defendants a form which instructs them to communicate on their own with the local public defender. Others make no inquiry as to eligibility and otherwise take no steps to effectuate counsel for the indigent.

The State Public Defenders Association report notes that, while most counties have developed income guidelines to assist in determining eligibility, in many instances those guidelines are out of date. Numerous counties rely on standards based on 1980 Legal Aid Society guidelines, and some counties have not updated their guidelines for periods as long as 17 years (Public Defenders Report, pp 8-9). Moreover, financial eligibility is supposed to be based on liquid assets, and properties such as a home or a car needed to sustain employment are exempt; yet nearly every county's eligibility questionnaire requests information on home and car ownership (Public Defenders Report, p 10). In addition, many jurisdictions improperly base eligibility decisions on the defendant's ability to post bail, and some counties count bail money as an asset, even though the defendant had to give up that money in order to be released on bail (Public Defenders Report, p 11)!

Another common problem concerns the parental assets of minor defendants. Numerous jurisdictions base their eligibility decisions on such assets, despite statutory and constitutional prohibitions to the contrary (Public Defenders Report, pp 11-12).

The varying practices across the state with respect to assigned counsel require more serious attention of the type paid by the New York State Public Defenders Association in its 1994 report. Efforts should be made by government, bar associations and other relevant civic groups to ensure a system of assigned counsel which is uniformly more effective and responsive to constitutional and statutory mandates.



Training and Education for Part-Time Judges

Pursuant to constitutional and statutory authority, all part-time town and village justices must satisfactorily complete training and education programs as a condition of serving on the bench.[4] Under the auspices of the Chief Administrator of the Courts, the Office of Court Administration offers basic and advanced education programs for both lawyer and non-lawyer town and village justices. (Non-lawyer justices must complete both courses; lawyer justices must complete only the advanced course. All town and village justices must attend the first available course after their ascension to the bench.) Failure to successfully complete the program disqualifies a judge from discharging the duties of judicial office; without certification, a town or village justice may not hear and decide cases.

The Commission, whose subject matter jurisdiction includes a judge's qualifications and fitness, has taken action on complaints alleging that particular judges have failed to meet the training and education certification requirements. In *Matter of Lobdell*, 59 NY2d 338 (1983), a non-lawyer town justice was removed from office for failing to complete the certification program and for nevertheless presiding over dozens of cases. In 1994, the Commission acted on a complaint that a village justice failed to complete the required training programs but, notwithstanding his lack of certification, nevertheless presided over hundreds of cases. (The case, *Matter of Stanley Yusko*, was decided in early 1995 and will be reported at greater length in next year's annual report. The Commission determined to remove the judge from office. An unrelated 1994 censure of Judge Yusko is reported in this annual report.)

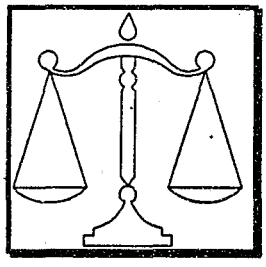
The Commission has also become aware of individual judges who would benefit from a judicial training course, even though they may not under law be required to attend and complete one. Some part-time city court judges may not be well-versed in areas of the law which they may find themselves addressing. A lawyer whose primary practice is matrimonial, for example, may be at a loss without appropriate training on how to deal as a part-time judge with arraignments and other criminal law proceedings. Some part-time city judges have attempted to explain inappropriate behavior (such as failing properly to advise indigent defendants of the right to assigned counsel) by claiming ignorance of the requirement. In 1994, the Commission acted on a complaint that a part-time city court judge, *inter alia*, failed at arraignments to advise numerous defendants of their rights, elicited potentially incriminating statements from them, made remarks that presumed guilt, and improperly used bail in prostitution cases to deter future conduct and to punish defendants for failing to heed public warnings about prostitution. (The case, *Matter of*

[4] Article 6, Section 20(c) of the State Constitution; Section 105 of the Uniform Justice Court Act; Section 31 of the Town Law; Section 17.2 of the Rules of the Chief Judge (22 NYCRR 17.2).

Anthony G. Austria, was decided in early 1995 and will be reported at greater length in next year's annual report. The Commission determined to publicly censure the judge. Among other things, the judge agreed to attend both basic and advanced training programs offered by the Office of Court Administration.) The Commission also publicly censured another part-time city court judge last year, *Matter of Barry Sack* (reported in this Annual Report), for confusing his roles as a practicing attorney and a part-time judge by, *inter alia*, summoning a complaining witness to his court and conveying a settlement offer from the defendant, whom he represented.

The *Austria* and *Sack* cases illustrate the anomaly in requiring judicial training for part-time lawyer-judges of town and village courts, but exempting part-time city court judges from such requirements. In many respects, town and village justices play judicial roles similar to part-time city court judges; all have small claims jurisdiction, for example, as well as limited criminal jurisdiction. It is difficult in any event to rationalize why a part-time town or village lawyer-justice would require advanced judicial training but a part-time city court lawyer-judge, who may have far less experience in certain aspects of the law, would not. To the defendant whose rights are not effectuated, it would make little difference that the offending judge was a city court judge who did not have to attend a training program, rather than a town or village justice who should have. The complexities of the law and the great diversity in areas of law practice concentration make it unlikely that even a law-educated part-time city court judge is going to be proficient in all the areas likely to arise.

The Commission recommends to the Legislature and the Office of Court Administration that the training and education requirements applicable to town and village justices should be extended to include all part-time city court judges as well.



Participation in Non-Political Events Sponsored by Political Organizations

The Rules on Judicial Conduct prohibit a judge from participating in political events or activities, except for certain limited circumstances. For example, Section 100.7 of the Rules prohibits a judge from holding any office in a political party or organization, or contributing to any political party or campaign, or taking part in any political campaign, except his or her own campaign for elective judicial office.

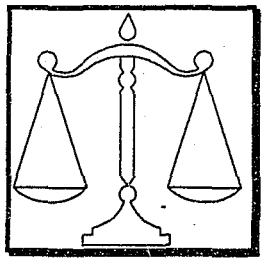
In 1994, the Commission publicly disciplined a Supreme Court justice for various campaign-related violations, including a prohibited contribution to a local political organization. In *Matter of Salman* (reported in this Annual Report), the Commission found, *inter*

alia, that the judge's campaign committee (with the judge's knowledge and approval) bought eight tickets to the annual dinner of the Bronx County Democratic Committee, which constituted a prohibited contribution.[5]

The Rules also specifically prohibit a judge from permitting his or her name from being used in connection with any activity of a political club, party or organization, and from participating in non-political events sponsored by a political organization, except within the permissible period when the judge is a candidate for judicial office.

The Commission has learned of various instances in which judges have attended events sponsored by political organizations for non-political purposes, such as a forum on a law-related topic or a discussion of court procedures or current court issues. Some judges appear unaware of the stricture against such participation and have sought reimbursement from the court system for travel and other expenses associated with their attendance. (Of course, given the impropriety in a judge's attending such an event, it would be inappropriate for court administrators to underwrite the judge's participation with reimbursement.)

Even where the non-political event serves a laudatory purpose, a judge must decline to participate if a political organization is a sponsor. Judges should be aware that the rule is strictly interpreted, and that the prohibition applies even if the sponsoring group is not a traditional political party organization. In a recent opinion (#92-95), the Advisory Committee on Judicial Ethics ruled that a judge could not attend a picnic sponsored by a major local employer, because the event was under the aegis of the company's political activities committee.



Annual Financial Audits of Town and Village Court Accounts

Over the years, the Commission has publicly disciplined or privately cautioned a number of judges for improprieties associated with the management of court funds. The Commission routinely receives reports of individual town and village court audits conducted by the State Comptroller's Office, and investigations are commenced when those audits indicate such irregularities as unreasonable delays in depositing court receipts into official bank accounts, unreasonable delay in remitting such funds to the state, discrepancies between court records and corresponding bank accounts, or account imbalances. Public discipline

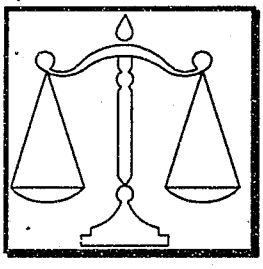
[5] The Advisory Committee on Judicial Ethics has issued an opinion (#92-97) limiting a candidate-judge to purchasing two tickets to such an event. Of course, a judge who is not a candidate may not purchase any such tickets.

would be warranted not only for intentional misconduct but also for serious neglect of fiduciary obligations. The Court of Appeals has upheld Commission determinations where a judge demonstrated, "at best, relative indifference" to his fiduciary obligations, *Matter of Murphy*, 82 NY2d 491 (1993); where a judge failed to make appropriate entries in her docket book and cash book, *Matter of Cooley*, 53 NY2d 64 (1981); and where a judge failed to make timely deposits in the court account and timely reports and remittances to the State Comptroller, *Matter of Rater*, 69 NY2d 208 (1987).

As a result of these and other similar decisions, and vigorous education efforts by the Office of Court Administration, the State Comptroller and the State Magistrates Association, town and village justices as a whole are more aware of and sensitive to the various statutory financial remitting and reporting requirements. One area in which ignorance remains, however, concerns the municipality's obligation to audit court funds.

Section 2019-a of the Uniform Justice Court Act requires a town board to annually audit the books and records of the town court. An annual town audit would, of course, complement the less frequent audits of the State Comptroller and would help determine whether the court's accounts were being properly maintained. More significantly, they would help identify compliance problems at a stage early enough to correct those which were technically or inadvertently deficient, as well as permit prompt action in more serious cases.

A significantly large number of State Comptroller audits report that the town board has not conducted the annual court audit required by the Uniform Justice Court Act, either because the board was unaware of the law or because the court was uncooperative. The Commission therefore takes this opportunity to remind all concerned parties of the statutory mandate for annual audits and the obligation of town and village justices to cooperate in such audits.



Transfer of Cases After Disqualification of the Judge

If a judge is disqualified from presiding over a particular case, say because he or she is related to, works with or is otherwise close to one of the parties, the matter must obviously be heard by another judge. In full-time courts with numerous judges, such a disqualification would not normally create a problem. The judge's disqualification would be reported to an administrative judge, who would undertake to assign the case to someone else.

In town, village and small city courts, where the total number of available judges is very limited -- town courts, for example, typically have only two part-time justices -- disqualification may well mean that a case must be transferred to another court altogether. The Commission has discovered that, on occasion, the technical act of transferring a case from one small court to another is not necessarily simple or even sure to be effectuated.

The Commission recommends that the Legislature review the appropriate sections of the CPL and the CPLR to correct a potential flaw in the case-transfer provisions.

Under CPL Section 170.15 and CPLR Section 325(g), transferring a case from a town, village or city court, requires a motion to the County Court by one of the parties -- either the District Attorney on behalf of the people or the defendant in a criminal case, or one of the litigants in a civil case. Yet circumstances in certain cases might make such a motion and transfer unlikely.

For example, in some counties, the District Attorney's office does not appear in court to handle routine traffic cases such as speeding violations. The "prosecution" is left to the police officer who issued the ticket, even though the officer is really a witness and not a party to the proceeding. If both judges in such a case were disqualified, there would be no ADA assigned to make a transfer motion; nor would it be in the defendant's interest to do so, since keeping the case in "disqualification limbo" would delay, perhaps permanently, the trial and possible conviction.

Different courts handle this problem in different ways. Some judges explain to the parties the appropriate steps to be taken to effectuate a transfer, but some judges do not. Some judges take it upon themselves to write to the County Court to request a transfer, even though the judge is not a party to the proceeding and such a procedure is not specifically authorized in law. In other courts, the clerk or judge will prepare a transfer petition for the District Attorney or litigants to sign. In some courts, there is no procedure at all and the cases are not likely to be transferred, notwithstanding the disqualification of the judge.

The irony in this last example is that, in cases where the judge steps aside to avoid impropriety or the appearance of impropriety -- for example, because the judge is related to the traffic defendant -- the defendant benefits anyway, thereby negating the effect of the judge's attempt to avoid misconduct! If the judge steps down and the case is not transferred and disposed of, the practical result would be no different than if the judge had dismissed the ticket as a favor to the defendant. Indeed, the Commission is aware of a number of instances where charges against a judge's close friends or relatives were eventually dismissed because, for whatever reason, the cases did not get transferred after the judges disqualified themselves. Sometimes, the disqualification and failure to transfer

might be motivated by favoritism toward a particular party; the judge, with a disqualification, effectively accomplishes the favored result while appearing to act ethically.

The Commission recommends that the Legislature review and amend the transfer provisions of both the CPL and CPLR, permitting or requiring the disqualifying judge to effect a transfer upon disqualification, if the parties themselves do not do so within a certain time period.

SPECIAL SUPPLEMENT

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

A 20-YEAR HISTORY

1995 Annual Report

Creation of the New York State Commission on Judicial Conduct

For decades prior to the creation of the Commission on Judicial Conduct, judges in New York State were subject to professional discipline by a patchwork of courts and procedures. The system, which relied on judges to discipline fellow judges, was ineffective. In the 100 years prior to the creation of the Commission, only 23 judges were disciplined by the patchwork system of *ad hoc* judicial disciplinary bodies. For example, an *ad hoc* Court on the Judiciary was convened only six times prior to 1974. There was no staff or even an office to receive and investigate complaints against judges.

Starting in 1974, the Legislature changed the judicial disciplinary system, creating a temporary commission with a full-time professional staff to investigate and prosecute cases of judicial misconduct. In 1976 and again in 1977, the electorate overwhelmingly endorsed and strengthened the new commission, making it permanent and expanding its powers by amending the State Constitution.

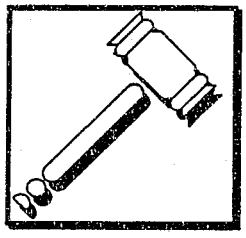
The Commission's Powers, Duties, Operations and History

The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The Commission's objective is to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently. The Commission does not act as an appellate court. It does not review judicial decisions or alleged errors of law, nor does it issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies

By offering a forum for citizens with conduct-related complaints, and by disciplining those judges who transgress ethical constraints, the Commission seeks to insure compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary.

All 50 states and the District of Columbia have adopted a commission system to meet these goals.

In New York, a temporary commission created by the Legislature in 1974 began operations in January 1975. It was made permanent in September 1976 by a constitutional amendment. A second constitutional amendment, effective on April 1, 1978, created the present Commission with expanded membership and jurisdiction. (For clarity, the Commission which operated from September 1976 through March 1978 will be referred to as the "former" Commission.)



Membership and Staff

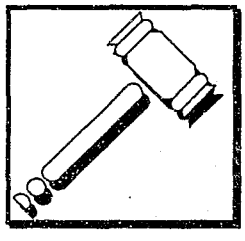
The Commission is composed of 11 members serving four-year terms. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals, and one each by the four leaders of the Legislature. The Constitution requires that four members be judges, at least one be an attorney, and at least two be lay persons. The Commission elects one of its members to be chairperson and appoints an Administrator and a Clerk. The Administrator is responsible for hiring staff and supervising staff activities subject to the Commission's direction and policies.

The following individuals have served on the Commission since its inception. Asterisks denote those members who chaired the Commission.

Hon. Fritz W. Alexander, II (1979-85)
Hon. Myriam J. Altman (1988-93)
Helaine M. Barnett (1990-present)
Herbert L. Bellamy, Sr. (1990-94)
*Henry T. Berger (1988-present)
*John J. Bower (1982-90)
Hon. Evelyn L. Braun (1994-present)
David Bromberg (1975-88)
Hon. Richard J. Cardamone (1978-81)
Hon. Carmen Beauchamp Ciparick (1985-93)
E. Garrett Cleary (1981-present)
Howard Coughlin (1974-76)
Mary Ann Crotty (1994-present)
Dolores DelBello (1976-94)
Hon. Herbert B. Evans (1978-79)
*William Fitzpatrick (1974-75)
Lawrence S. Goldman (1990-present)

Hon. Louis M. Greenblott (1976-78)
Hon. James D. Hopkins (1974-76)
Michael M. Kirsch (1974-82)
*Victor A. Kovner (1975-90)
William B. Lawless (1974-75)
William V. Maggipinto (1974-81)
Hon. Ann T. Mikoll (1974-78)
Hon. Juanita Bing Newton (1994-present)
Hon. William J. Ostrowski (1982-89)
*Lillemor T. Robb (1974-88)
Hon. Isaac Rubin (1979-90)
Hon. Eugene W. Salisbury (1989-present)
Barry C. Sample (1994-present)
Hon. Felice K. Shea (1978-88)
John J. Sheehy (1983-present)
Hon. Morton B. Silberman (1978)
Hon. William C. Thompson (1990-present)
Carroll L. Wainwright, Jr. (1974-83)

The Commission's principal office is in New York City. Offices are also maintained in Albany and Rochester.



The Commission's Authority

The Commission has the authority to receive and review written complaints of misconduct against judges, initiate complaints on its own motion, conduct investigations, file Formal Written Complaints and conduct formal hearings thereon, subpoena witnesses and documents, and make appropriate determinations as to dismissing complaints or disciplining judges within the state unified court system. This authority is derived from Article 6, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law of the State of New York.

By provision of the State Constitution (Article 6, Section 22), the Commission:

> shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system...and may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice,

or that a judge or justice be retired for mental or physical disability preventing the proper performance of his judicial duties.

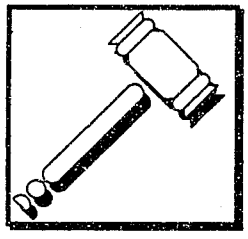
The types of complaints that may be investigated by the Commission include improper demeanor, conflicts of interest, violations of defendants' or litigants' rights, intoxication, bias, prejudice, favoritism, gross neglect, corruption, certain prohibited political activity and other misconduct on or off the bench.

Standards of conduct are set forth primarily in the Rules Governing Judicial Conduct (originally promulgated by the Administrative Board of the Judicial Conference and subsequently adopted by the Chief Administrator of the Courts with the approval of the Court of Appeals) and the Code of Judicial Conduct (adopted by the New York State Bar Association).

If the Commission determines that disciplinary action is warranted, it may render a determination to impose one of four sanctions, subject to review by the Court of Appeals upon timely request by the respondent-judge. If review is not requested within 30 days of service of the determination upon the judge, the determination becomes final. The Commission may render determinations to:

- admonish a judge publicly;
- censure a judge publicly;
- remove a judge from office;
- retire a judge for disability.

In accordance with its rules, the Commission may also issue a confidential letter of dismissal and caution to a judge, despite a dismissal of the complaint, when it is determined that the circumstances so warrant. In some cases the Commission has issued such a letter after charges of misconduct have been sustained.



Procedures

The Commission meets several times a year. At its meetings, the Commission reviews each new complaint of misconduct and makes an initial decision whether to investigate or dismiss the complaint. It also reviews staff reports on ongoing matters, makes final determinations on completed proceedings, considers motions and entertains oral arguments pertaining to cases in which judges have been served with formal charges, and conducts other Commission business.

No investigation may be commenced by staff without authorization by the Commission. The filing of formal charges also must be authorized by the Commission.

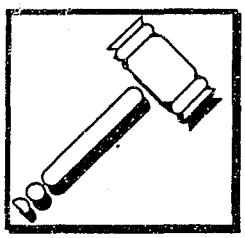
After the Commission authorizes an investigation, the Administrator assigns the complaint to a staff attorney, who works with investigative staff. If appropriate, witnesses are interviewed and court records are examined. The judge may be asked to respond in writing to the allegations. In some instances, the Commission requires the appearance of the judge to testify during the course of the investigation. The judge's testimony is under oath, and at least one Commission member must be present. Although such an "investigative appearance" is not a formal hearing, the judge is entitled to be represented by counsel. The judge may also submit evidentiary data and materials for the Commission's consideration.

If the Commission finds after an investigation that the circumstances so warrant, it will direct its Administrator to serve upon the judge a Formal Written Complaint containing specific charges of misconduct. The Formal Written Complaint institutes the formal disciplinary proceeding. After receiving the judge's answer, the Commission may, if it determines there are no disputed issues of fact, grant a motion for summary determination. It may also accept an agreed statement of facts submitted by the Administrator and the respondent-judge. Where there are factual disputes that make summary determination inappropriate or that are not resolved by an agreed statement of facts, the Commission will appoint a referee to conduct a formal hearing and report proposed findings of fact and conclusions of law. Referees are designated by the Commission from a panel of attorneys and former judges. Following the Commission's receipt of the referee's report, or a motion to confirm or disaffirm the report, both the administrator and the respondent may submit legal memoranda and present oral argument on issues of misconduct and sanction. The respondent-judge (in addition to his or her counsel) may appear and be heard at oral argument.

In deciding motions, considering proposed agreed statements of fact and making determinations with respect to misconduct and sanction, and in considering other matters pertaining to cases in which Formal Written Complaints have been served, the Commission deliberates in executive session, without the presence or assistance of its Administrator or regular staff. The Clerk of the Commission assists the Commission in executive session, but does not participate in either an investigative or adversarial capacity in any cases pending before the Commission. The Commission may dismiss a complaint at any stage during the investigation or adjudication.

When the Commission determines that a judge should be admonished, censured, removed or retired, its written determination is forwarded to the Chief Judge of the Court of Appeals, who in turn serves it upon the respondent-judge. Upon completion of service, the Commission's determination and the record of its proceedings become public. (Prior to this point, by opera-

tion of the strict provisions in Article 2-A of the Judiciary Law, all proceedings and records are confidential.) The respondent-judge has 30 days to request full review of the Commission's determination by the Court of Appeals. The Court may accept or reject the Commission's findings of fact or conclusions of law, make new or different findings of fact or conclusions of law, accept or reject the determined sanction, or make a different determination as to sanction. If no request for review is made within 30 days, the sanction determined by the Commission becomes effective.



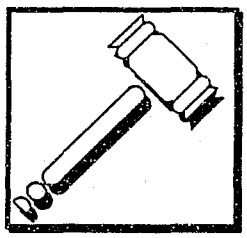
Temporary State Commission on Judicial Conduct

The Temporary State Commission on Judicial Conduct was established in late 1974 and commenced operations in January 1975. The temporary Commission had the authority to investigate allegations of misconduct against judges in the state unified court system, make confidential suggestions and recommendations in the nature of admonitions to judges when appropriate and, in more serious cases, recommend that formal disciplinary proceedings be commenced in the appropriate court. All disciplinary proceedings in the Court on the Judiciary and most in the Appellate Division were public.

The temporary Commission was composed of two judges, five lawyers and two lay persons. It functioned through August 31, 1976, when it was succeeded by a permanent commission created by amendment to the State Constitution.

The temporary Commission received 724 complaints, dismissed 441 upon initial review and commenced 283 investigations during its tenure. It admonished 19 judges and initiated formal disciplinary proceedings against eight judges, in either the Appellate Division or the Court on the Judiciary. One of these judges was removed from office and one was censured. The remaining six matters were pending when the temporary Commission was superseded by its successor Commission.

Five judges resigned while under investigation.



Former State Commission on Judicial Conduct

The temporary Commission was succeeded on September 1, 1976, by the State Commission on Judicial Conduct, established by a constitutional amendment overwhelmingly approved by the New York State electorate and supplemented by legislative enactment (Article 2-A of the Judiciary Law). The former Commission's tenure lasted through March 31, 1978, when it was replaced by the present Commission.

The former Commission was empowered to investigate allegations of misconduct against judges, impose certain disciplinary sanctions and, when appropriate, initiate formal disciplinary proceedings in the Court on the Judiciary, which, by the same constitutional amendment, had been given jurisdiction over all 3,500 judges in the unified court system. The sanctions that could be imposed by the former Commission were private admonition, public censure, suspension without pay for up to six months, and retirement for physical or mental disability. Censure, suspension and retirement actions could not be imposed until the judge had been afforded an opportunity for a full adversary hearing. These Commission sanctions were also subject to a *de novo* hearing in the Court on the Judiciary at the request of the judge.

The former Commission, like the temporary Commission, was composed of two judges, five lawyers and two lay persons, and its jurisdiction extended to judges within the state unified court system. The former Commission was authorized to continue all matters left pending by the temporary Commission.

The former Commission considered 1,418 complaints, dismissed 629 upon initial review, authorized 789 investigations and continued 162 investigations left pending by the temporary Commission.

During its tenure, the former Commission took action which resulted in the following:

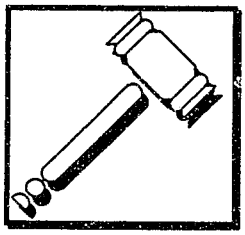
- 15 judges were publicly censured;
- 40 judges were privately admonished;
- 17 judges were issued confidential letters of suggestion and recommendation.

The former Commission also initiated formal disciplinary proceedings in the Court on the Judiciary against 45 judges and continued six proceedings left pending by the temporary Commission. Those proceedings resulted in the following:

- 1 removal;
- 2 suspensions;
- 3 censures;
- 10 cases closed upon resignation of the judge;
- 2 cases closed upon expiration of the judge's term;
- 1 proceeding closed without discipline and with instruction by the Court on the Judiciary that the matter be deemed confidential.

The remaining 32 proceedings were pending when the former Commission expired. They were continued by the present Commission.

In addition to the ten judges who resigned after proceedings had been commenced in the Court on the Judiciary, 28 other judges resigned while under investigation by the former Commission.

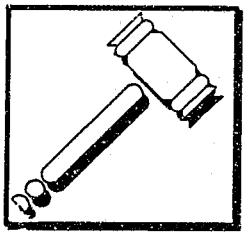


Continuation from 1978 to 1980 of Formal Proceedings Commenced by the Temporary and Former Commissions

Thirty-two formal disciplinary proceedings which had been initiated in the Court on the Judiciary by either the temporary or former Commission were pending when the former Commission was superseded on April 1, 1978, and were continued without interruption by the present Commission.

The last five of these 32 proceedings were concluded in 1980, with the following results, reported in greater detail in the Commission's previous annual reports:

- 4 judges were removed from office;
- 1 judge was suspended without pay for six months;
- 2 judges were suspended without pay for four months;
- 21 judges were censured;
- 1 judge was directed to reform his conduct consistent with the Court's opinion;
- 1 judge was barred from holding future judicial office after he resigned; and
- 2 judges died before the matters were concluded.



The 1978 Constitutional Amendment

The present Commission was created by amendment to the State Constitution, effective April 1, 1978. The amendment created an 11-member Commission (superseding the nine-member former Commission), broadened the scope of the Commission's authority and streamlined the procedure for disciplining judges within the state unified court system. The Court on the Judiciary was abolished, pending completion of those cases which had already been commenced before

it. All formal disciplinary hearings under the new amendment are conducted by the Commission.

Subsequently, the State Legislature amended Article 2-A of the Judiciary Law, the Commission's governing statute, to implement the new provisions of the constitutional amendment.

Summary of Complaints Considered Since the Commission's Inception

Since January 1975, when the temporary Commission commenced operations, 18,589 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 14,350 (77%) were dismissed upon initial review and 4239 investigations were authorized. Of the 4239 investigations authorized, the following dispositions have been made through December 31, 1994:

- 2031 were dismissed without action after investigation;
- 809 were dismissed with letters of caution or suggestions and recommendations to the judge; the actual number of such letters totals 747, 49 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct;
- 316 were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings; the actual number of such resignations was 222;
- 299 were closed upon vacancy of office by the judge other than by resignation;
- 607 resulted in disciplinary action; and
- 177 are pending.

Of the 607 disciplinary matters noted above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commission. (It should be noted that several complaints against a single judge may be disposed of in a single action. This accounts for the apparent discrepancy between the number of complaints and the number of judges acted upon.)

- 110 judges were removed from office;
- 3 judges were suspended without pay for six months (under previous law);
- 2 judges were suspended without pay for four months (under previous law);
- 189 judges were censured publicly;
- 122 judges were admonished publicly; and
- 59 judges were admonished confidentially by the temporary or former Commission.

Review of Commission Determinations By the New York State Court of Appeals

Under Judiciary Law Section 44(7), a Commission determination that a judge be admonished, censured, removed or retired, may be reviewed by the Court of Appeals upon request of the disciplined judge. The Court may accept or reject the Commission's findings of fact, conclusions of law and determined sanction, make new findings, impose any sanction permitted by law, or dismiss the case without sanction.

Since 1978, the Court has reviewed 56 Commission determinations, 46 of which were for removal, eight for censure and two for admonition. The Court accepted the sanction determined by the Commission in 44 cases, 39 of which were removals. In two cases (*Matter of Shilling* and *Matter of Sims*), the Court increased the sanction from censure to removal. In nine cases, the Court imposed a more lenient sanction, reducing seven removals to censure, and two censures to admonition. In one case (*Matter of Greenfield*), the Court found that the judge's actions -- lengthy delays of up to nine years in rendering decisions -- did not constitute misconduct in the absence of evidence that the judge defied administrative directives or otherwise subverted the

system, such as by concealing or persistently refusing to file records indicating delays. The Court dismissed the charges against the judge.

Listed below, in chronological order, are the 56 cases in which the Court reviewed Commission determinations.

Matter of Spector, 47 NY2d 462, 392 NE2d 552, 418 NYS2d 565 (1979) (determination of admonition was accepted). Supreme Court justice appointed the sons of two other justices during periods when those judges were appointing Judge Spector's son.

Matter of Dixon, 47 NY2d 523, 393 NE2d 441, 419 NYS2d 445 (1979) (determination of censure was reduced to admonition). Town justice requested special consideration from other judges on behalf of two defendants in traffic cases.

Matter of Bulger, 48 NY2d 32, 396 NE2d 192, 421 NYS2d 45 (1979) (determination of censure was accepted). Town justice requested or granted special consideration in nine cases involving defendants who were charged with violations of the Vehicle and Traffic Law.

Matter of Dier, 48 NY2d 874, 400 NE2d 299, 424 NYS2d 358 (1979) (determination of censure was accepted). County Court judge requested special consideration from other judges on behalf of two defendants in traffic cases.

Matter of Kuehnel, 49 NY2d 465, 403 NE2d 167, 426 NYS2d 461 (1980) (determination of removal was accepted). Town justice was involved in an off-the-bench confrontation with four youths marked by displays of physical violence, verbal abuse and racist comments.

Matter of Kane, 50 NY2d 360, 406 NE2d 797, 428 NYS2d 941 (1980) (determination of removal was accepted). Supreme Court justice appointed his son as a referee, ratified and confirmed reports of his son as referee, appointed his son's law partner to receiverships, and appointed the brother of a County Court judge who appointed the Supreme Court justice's son.

Matter of Lonschein, 50 NY2d 569, 408 NE2d 901, 430 NYS2d 571 (1980) (determination of censure was reduced to admonition). Supreme Court justice asked a deputy counsel at the Taxi and Limousine Commission about the status of a friend's license application and said, "See what you can do for this fellow." A second charge alleging an improper assertion of influence was dismissed.

Matter of Steinberg, 51 NY2d 74, 409 NE2d 1378, 431 NYS2d 704 (1980) (determination of removal was accepted). New York City Civil Court judge arranged and participated in several private high interest loan transactions, receiving a percentage of the interest; attempted to conceal his identity from the borrower in one of the transactions; and misrepresented his income and deductions on his tax returns.

Matter of Rogers, 51 NY2d 224, 414 NE2d 382, 433 NYS2d 1001 (1980) (determination of removal was reduced to censure). Town justice failed to report and remit monies to the State Comptroller within the time required, and failed to respond to Commission inquiries.

Matter of Shilling, 51 NY2d 397, 415 NE2d 900, 434 NYS2d 909 (1980) (determination of censure was rejected; judge was removed). New York City Civil Court judge asserted influence on behalf of a corporation which sought a permit to operate an animal shelter, asked for preferential treatment for the corporation, made threats in intemperate tones to use political influence, and spoke to the presiding judge about the case.

Matter of Cooley, 53 NY2d 64, 422 NE2d 814, 440 NYS2d 169 (1981) (determination of removal was accepted). Village justice failed to report and remit monies to the State, failed to make entries in her docket books and cashbooks, and failed to cooperate with the Commission's investigation.

Matter of Petrie, 54 NY2d 807, 427 NE2d 945, 443 NYS2d 648 (1981) (determination of removal was accepted). Town justice failed to make timely deposits into his court account, resulting in an average deficit of $5000; checks were not deposited for as long as eight months; $2500 was reportedly stolen. The Court upheld the Commission's summary determination procedure, after the judge had failed to answer the charges.

Matter of Quinn, 54 NY2d 386, 430 NE2d 879, 446 NYS2d 3 (1981) (determination of removal was reduced to censure). Supreme Court justice was convicted of driving while impaired; several years later, he was convicted of driving under the influence of alcohol, and was belligerent and uncooperative when arrested. The Court found that he was unfit to continue on the bench, but concluded that censure was appropriate in view of his resignation and ill health.

Matter of Harris, 56 NY2d 365, 437 NE2d 1125, 452 NYS2d 368 (1982) (determination of removal was accepted). City Court judge and his law partners practiced law in

the judge's court; the judge also allowed his co-judges and their law partners to appear before him.

Matter of Scacchetti, 56 NY2d 980, 439 NE2d 345, 453 NYS2d 629, (1982) (determination of removal was accepted). City Court judge presided over matters in which the defendant was a close friend from whom he contemporaneously accepted a loan; he also presided over a case while contemporaneously arranging to solicit and accept a camera from the defendant's employer. The Court noted that it had jurisdiction even though the judge's term of office had expired.

Matter of Cunningham, 57 NY2d 270, 442 NE2d 434, 456 NYS2d 36 (1982) (determination of removal was reduced to censure). County Court judge wrote two letters advising a lower court judge that his decisions would not be reversed on appeals over which the County Court judge might preside. The Court noted that the letters were not meant to be publicly disseminated and that the judge did not actually abrogate his duty to decide matters before him solely on the merits.

Matter of Aldrich, 58 NY2d 279, 447 NE2d 1276, 460 NYS2d 915 (1983) (determination of removal was accepted). County Court judge presided over two sessions of court while he was intoxicated and, in such condition, held a knife to a security guard and made racist, sexist and vulgar remarks.

Matter of Sardino, 58 NY2d 286, 448 NE2d 83, 461 NYS2d 229 (1983) (determination of removal was accepted). City Court judge denied defendants various statutory rights, abused his judicial power with respect to setting bail, and engaged in intemperate displays of pro-prosecutorial bias in 62 cases over a two-year period.

Matter of Lobdell, 59 NY2d 338, 451 NE2d 742, 464 NYS2d 999 (1983) (determination of removal was accepted). Town justice presided over cases even though he had failed to successfully complete the training courses required for certification.

Matter of McGee, 59 NY2d 870, 452 NE2d 1258, 465 NYS2d 930 (1983) (determination of removal was accepted). Town justice routinely failed to advise defendants of their constitutional and statutory rights, coerced guilty pleas, and showed a pro-prosecution bias.

Matter of Kelso, 61 NY2d 82, 459 NE2d 1276, 471 NYS2d 839 (1984) (determination of removal was reduced to censure). Town justice, an attorney, agreed to commence a civil action which he knew was barred by law, misrepresented that he

had commenced the action, and offered the client $10,000 if he would not file a grievance; the judge had been suspended from the practice of law for a year.

Matter of Boulanger, 61 NY2d 89, 460 NE2d 216, 472 NYS2d 75(1984) (determination of removal was accepted). Town justice, an attorney, improperly transferred to himself certain assets of an elderly client; falsely reported to a bank that the client had died; failed to file a gift tax return until the IRS began an investigation; and filed a false financial affidavit in a divorce proceeding to conceal assets from his former wife.

Matter of Cerbone, 61 NY2d 93, 460 NE2d 217, 472 NYS2d 76 (1984) (determination of removal was accepted). Town justice had a heated, physical confrontation with patrons in a bar during which he used racial epithets and abusive and profane language, threatened patrons and announced what he would do if they appeared in his court.

Matter of Sims, 61 NY2d 349, 462 NE2d 370, 474 NYS2d 270 (1984) (determination of censure was rejected; judge was removed). City Court judge signed an arrest warrant for a person involved in an auto accident with the judge's son (a charge which was sustained by the Court although not sustained by the Commission). The judge also signed an order releasing from custody a defendant, a former client, who was later represented by the judge's husband; she also signed releases for nine defendants in criminal cases where she knew or should have known that the defendants were represented by her husband.

Matter of Reeves, 63 NY2d 105, 469 NE2d 1321, 480 NYS2d 463 (1984) (determination of removal was accepted). Family Court judge directed his court clerk to file false reports with the Office of Court Administration; failed to properly advise litigants of their rights and ignored other statutory safeguards of litigants' rights; refused to allow an attorney to appear in his court; and refused to work for two days because of an alleged shortage of staff.

Matter of Reedy, 64 NY2d 299, 475 NE2d 1262, 486 NYS2d 722 (1985) (determination of removal was accepted). Town justice "fixed" the speeding tickets of his son and his son's friend, which were returnable before him. Noting the judge's failure to testify or to present any evidence to refute the charges, the Court found that the judge's misconduct was established by the circumstantial evidence.

Matter of Agresta, 64 NY2d 327, 476 NE2d 285, 486 NYS2d 886 (1985 determination of censure was accepted). Supreme Court justice told a black defendant, "I know

there is another nigger in the woodpile. I want that person out." The remark, at sentencing, referred to the defendant's uncle, whom police were seeking to implicate in the crime.

Matter of Fabrizio, 65 NY2d 275, 480 NE2d 733, 491 NYS2d 144 (1985) (determination of removal was accepted). Town justice sought special consideration for two defendants in other courts, used racial slurs, altered transcripts, advised his court reporter to change stenographic notes that had been subpoenaed by the Commission, and attempted to impede the Commission's investigation by falsifying evidence and intimidating witnesses. The Court rejected the judge's assertion that more lenient standards should apply since the judge is not an attorney.

Matter of Seiffert, 65 NY2d 278, 480 NE2d 734, 491 NYS2d 145 (1985) (determination of removal was accepted). District Court judge intervened in three cases to seek special consideration for defendants with whom he had personal relationships; in two cases, he pressured the prosecutors to agree to reductions. The Court upheld the "preponderance of the evidence" standard of proof, adopted by Commission rule.

Matter of Wait, 67 NY2d 15, 490 NE2d 502, 499 NYS2d 635 (1986) (determination of removal was accepted). Town justice presided over six cases involving his relatives.

Matter of Bailey, 67 NY2d 61, 490 NE2d 818, 499 NYS2d 899 (1986) (determination of removal was accepted). Town justice engaged in a scheme to obtain hunting licenses, including falsely certifying license applications, for which he was convicted of a misdemeanor. The Court held that removal was appropriate although the conduct had occurred while he held a different judicial office, and even though the judge had resigned.

Matter of Edwards, 67 NY2d 153, 492 NE2d 124, 501 NYS2d 16 (1986) (determination of removal was reduced to censure). Town justice had *ex parte* communications with the judge who was presiding over his son's traffic case; he identified himself as a judge and inquired about procedures. The Court held that such conduct was improper even in the absence of a specific request for favorable treatment; however, the Court noted in mitigation that the judge had an unblemished record, he was contrite, and his judgment was clouded by his son's involvement.

Matter of Myers, 67 NY2d 550, 496 NE2d 207, 505 NYS2d 48 (1986) (determination of removal was accepted). Town justice prepared a criminal summons to bring into court a party to a dispute in which he and members of his family had a personal interest. He also attempted to obstruct the Commission's investigation by intimidating a witness and by producing a suspicious note in which he purported to transfer the case. In sustaining the charges, the Court noted the judge's failure to testify in the matter.

Matter of Rater, 69 NY2d 208, 505 NE2d 914, 513 NYS2d 348 (1987) (determination of removal was accepted). Town justice failed to make timely deposits into the court account and timely reports and remittances to the State Comptroller, despite having been censured for similar conduct.

Matter of Maney, 70 NY2d 27, 510 NE2d 312, 517 NYS2d 443 (1987) (determination of removal was accepted). Town justice engaged in inappropriate political activity, becoming actively involved in local political party maneuvering (including an attempt to oust the party chairman) immediately after being elected. The Court rejected the judge's argument that such activities were necessitated by the political realities that face elected judges.

Matter of Vincent, 70 NY2d 208, 512 NE2d 532, 518 NYS2d 949 (1987) (determination of removal was accepted). Town justice failed to make timely deposits and remittals of court monies to the State Comptroller; he also arbitrarily dismissed and imposed unconditional discharges in cases in order to reduce his backlog.

Matter of Gelfand, 70 NY2d 211, 512 NE2d 533, 518 NYS2d 950 (1987) (determination of removal was accepted). Surrogate misused his judicial position by, *inter alia*, making personnel decisions and threatening court officials and others in order to prolong a sexual relationship with his law assistant and, later, to exact vengeance when she refused to continue the affair. The judge also gave testimony which lacked candor.

Matter of Conti, 70 NY2d 416, 516 NE2d 1207, 522 NYS2d 93 (1987) (determination of removal was accepted). Town justice "fixed" two traffic tickets, altered one of the tickets, and told a "patently false" story to the Commission. He also created an appearance of impropriety by dismissing a traffic charge against his personal attorney.

Matter of Greenfeld, 71 NY2d 389, 521 NE2d 768, 526 NYS2d 810 (1988) (determination of removal was accepted). Village justice improperly delegated his judicial duties by permitting the deputy village attorney to accept guilty pleas, set

fines and enter the dispositions in court records. The judge also gave false information to his administrative judge when questioned about the practice.

Matter of Lenney, 71 NY2d 456, 522 NE2d 38, 527 NYS2d 193 (1988) (determination of removal was accepted). Village justice failed to dispose of a case for six years; failed to make timely reports and remittances to the State Comptroller, despite a prior caution; and failed to respond to Commission inquiries. The Court did not address a charge pertaining to the judge's inaction in 41 criminal cases, but stated that such matters apparently involved "internal court administration and substantive law that may well exceed the Commission's ambit of responsibility."

Matter of Harris, 72 NY2d 335, 529 NE2d 416, 533 NYS2d 48 (1988) (determination of admonition was accepted). County Court judge participated in a "Jail Bail for Heart" event to raise money for the American Heart Association.

Matter of VonderHeide, 72 NY2d 658, 532 NE2d 1252, 536 NYS2d 24 (1988) (determination of removal was accepted). Town justice interviewed witnesses outside of court and made judgments based on *ex parte* communications, berated and threatened a youth outside of court, coerced a statement from a youthful defendant implicating another individual, accepted a guilty plea from a complaining witness although there was no accusatory instrument, and failed to disqualify himself in two cases although he was a witness to the events.

Matter of Intemann, 73 NY2d 580, 540 NE2d 236, 542 NYS2d 160 (1989) (determination of removal was accepted). Surrogate, Family Court and County Court judge practiced law, participated in business activity, and failed to disqualify himself in matters involving an attorney who was his close friend, business associate and personal attorney.

Matter of Cohen, 74 NY2d 272, 543 NE2d 711, 545 NYS2d 68 (1989) (determination of removal was accepted). Supreme Court justice ordered court funds to be deposited into a credit union where the judge was receiving favorable treatment on personal loans.

Matter of Levine, 74 NY2d 294, 545 NE2d 1205, 546 NYS2d 817 (1989) (determination of removal was accepted). New York City Civil Court judge told a former political leader, in a restaurant meeting, that he would adjourn a case at the leader's request, thereby conveying the appearance that the individual was in a position to influence him. The judge also lied to the FBI when questioned about the matter.

Matter of Kiley, 74 NY2d 364, 546 NE2d 916, 547 NYS2d 623 (1989) (determination of removal was reduced to censure). District Court judge initiated *ex parte* communications with the prosecutors and a judge in two criminal proceedings, seeking lenient treatment on behalf of the defendants. The Court noted that the judge was not motivated by personal gain and that his conduct lacked venality. The Court dismissed a charge that the judge gave testimony that was lacking in candor.

Matter of Tyler, 75 NY2d 525, 553 NE2d 1316, 554 NYS2d 806 (1990) (determination of removal was accepted). Town justice issued an arrest warrant pertaining to a bad check that had been given to her husband and committed the defendant to jail; struck a youth in court with a telephone directory; and used court stationery in a private dispute with a creditor.

Matter of Greenfield, 76 NY2d 293, 557 NE2d 1177, 558 NYS2d 881 (1990) (determination of censure was rejected; charges were dismissed). Supreme Court justice delayed in disposing of nine matters; the longest delay was over nine years. The Court held that such delays did not constitute misconduct warranting action by the Commission, but could and should be resolved administratively.

Matter of Esworthy, 77 NY2d 280, 568 NE2d 1195, 567 NYS2d 390 (1991) (determination of removal was accepted). Family Court judge engaged in a pattern of improper conduct over a four-year period, including addressing parties and attorneys in an intemperate manner, using racially charged language, failing to advise litigants of their rights, improperly eliciting admissions, and sending an individual to jail based upon an *ex parte* letter.

Matter of Benjamin, 77 NY2d 296, 568 NE2d 1204, 567 NYS2d 399 (1991) (determination of removal was accepted). Town justice sexually and physically abused a woman in a parking lot. The Court rejected the judge's argument that his rights were substantially prejudiced because the Commission had failed to provide to him a note, which was arguably exculpatory; the note was produced by a witness at the hearing.

Matter of LaBelle, 79 NY2d 350, 591 NE2d 1156, 582 NYS2d 970 (1992) (determination of removal was reduced to censure). City Court judge failed to set bail in 24 non-felony cases, contrary to statute. The Court noted that the judge's actions were primarily motivated by compassion and that he readily changed those practices found to be improper.

Matter of Moynihan, 80 NY2d 322, 604 NE2d 136, 590 NYS2d 74 (1992) (determination of removal was accepted). Surrogate continued to act as a fiduciary and performed legal services after becoming a judge; maintained a financial relationship with a law firm practicing in his court; failed to file reports of extra-judicial activities; and altered records in an effort to impede the Commission's investigation.

Matter of Mazzei, 81 NY2d 568, 618 NE2d 123, 601 NYS2d 90 (1993) (determination of removal was accepted). County Court judge signed his deceased mother's name to a credit card application, then used the card to obtain a cash advance at a casino. The judge also made misrepresentations to bank personnel who were investigating the matter. While sustaining the charges, the Court held that the Commission had improperly charged the judge with violating the lawyer's Code of Professional Responsibility.

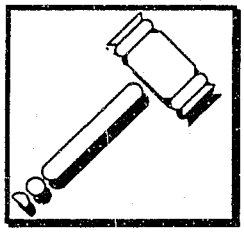
Matter of Murphy, 82 NY2d 491, 626 NE2d 48, 605 NYS2d 232 (1993) (determination of removal was accepted). Town justice failed to deposit court funds, which he claimed he had placed in the trunk of his car which was sold; he also failed to disqualify himself in cases involving an individual from whom he had borrowed money.

Matter of Schiff, 83 NY2d 689, 635 NE2d 286, 613 NYS2d 117 (1994) (determination of removal was accepted). Village justice stated during a break in court proceedings that he remembered when it was safe to walk the streets "before the blacks and Puerto Ricans moved here"; appeared to decide a case in retaliation against another judge who had ruled against his interests; and failed to maintain adequate records.

Matter of Heburn, 84 NY2d 168, 639 NE2d 11, 615 NYS2d 654 (1994) (determination of removal was accepted). Town justice falsely subscribed his own designating petitions as a witness, although they had not been signed in his presence, in violation of the Election Law.

Legal Challenges to Commission Procedures

Numerous challenges to the Commission's jurisdiction and procedures have been filed over the years in both state and federal courts, raising such issues as the constitutionality of the Commission's authority and procedures, the permissible scope of Commission investigations and charges, the validity of various promulgated ethics standards, the confidentiality of Commission proceedings, pre-hearing "discovery" and other important matters. In the vast majority of legal challenges, the Commission's jurisdiction, procedures and authority have been upheld. The following sections summarize some of the more significant legal issues which have been litigated and decided over the years.

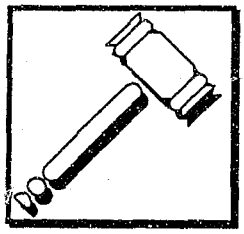


Ticket-Fixing Litigation

In the 1970's, the Commission uncovered a widespread ticket-fixing scandal in which judges and justices (primarily in part-time town and village courts) requested and granted favorable treatment for defendants in traffic cases, at the behest of other judges, colleagues or friends. Numerous judges under inquiry, raising various jurisdictional and due process claims, unsuccessfully attempted to restrain further proceedings by the Commission in its ticket-fixing investigations. In *Anonymous Town Justice v. Commission*, 96 Misc2d 541 (Sup Ct Erie Co 1978) and *Cunningham v. Stern*, 93 Misc2d 516 (Sup Ct Erie and Niagara Co 1978), the Supreme Court held that Article 78 proceedings requesting review of Commission actions did not lie, since Commission actions and determinations are non-final administrative activities which are properly reviewed in the Court of Appeals. In *Polansky v. Commission*, No. 11641-77 (Sup Ct Albany Co, Dec 30, 1977), the court held that town justices come within the unified court system and upheld the Commission's jurisdiction. In *O'Connor v. Commission*, No. 2671/78 (Sup Ct Albany Co, Mar 21, 1978), the court rejected a judge's claim that, *inter alia*, the Commission impermissibly combined investigative and adjudicative functions in a single agency.

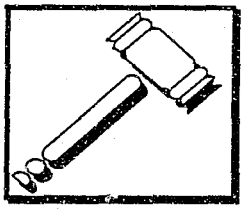
In addition, numerous judges whose ticket-fixing cases were pending in the Court on the Judiciary challenged the Commission's authority on various grounds, including that the judges' actions fell within the ambit of judicial discretion, that the Commission had

engaged in selective prosecution, and that the Commission had exceeded its authority by establishing new standards of conduct. All such arguments were rejected by the courts. In *Matter of Byrne*, the Court on the Judiciary held that ticket-fixing was "malum in se misconduct," was "wrong, and always has been wrong" (47 NY2d [b],[c] [Ct on the Judiciary 1978).



Scope of Investigations

Several court proceedings involved challenges by judges to the Commission's authority to conduct comprehensive investigations. *E.g.*, *In re Darrigo*, NYLJ, June 7, 1979, at 10, col 3 (Sup Ct NY Co, May 24, 1979), *aff'd*, 74 AD2d 801 (1st Dept 1980) (judge sought an order prohibiting the Commission from investigating any matters other than a single case specified in an Administrator's complaint); *In re Richter*, 106 Misc2d 22 (Sup Ct Albany Co 1980), *rev'd*, 85 AD2d 790 (3d Dept 1981), *lv to app denied*, 56 NY2d 508 (1982) (judge sought to limit the Commission's investigation to matters specified in the Administrator's complaint). While judges argued that the Commission's authority to investigate was limited to the specific allegations of a complaint, the Commission repeatedly asserted its authority to conduct comprehensive investigations into the *subject matter* of a complaint. The Commission's broad investigative authority was upheld by the Court of Appeals in *Nicholson v. Commission*, 50 NY2d 597 (1980), in which a judge under investigation and her campaign manager sought to vacate an Administrator's complaint; the action was combined with proceedings by the Commission to compel compliance with subpoenas served on five of the judge's campaign workers. In *Nicholson*, the Court held that to sustain the subpoenas, the Commission "need only make a preliminary showing that the information sought is reasonably related to a proper subject of inquiry" (50 NY2d at 611). Four years later, in *Matter of Doe*, 61 NY2d 56, 61 (1984), a case which involved a motion to compel compliance with a Commission subpoena, the Court held that the Commission may properly investigate matters which bear a "reasonable relation to the *subject matter* under investigation (emphasis added)."



Scope of Authority

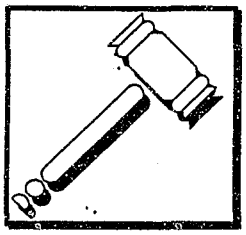
Several litigated matters concerned various aspects of the Commission's authority and jurisdiction.

In *Doe v. Commission*, 137 Misc2d 268 (Sup Ct Monroe Co 1987), the Supreme Court, granting the Commission's cross-motion to dismiss an Article 78 petition, held that the

Commission had jurisdiction to investigate and proceed against a judge for conduct which preceded the judge's tenure in office.

In *Hanft v. Commission*, No. 8255/86 (Sup Ct NY Co, July 2, 1986), the Supreme Court held that the Commission had properly refused to exercise jurisdiction over a complaint against a Housing Court Judge on the basis that such judges are not judges of the unified court system as set forth in the State Constitution.

In *Matter of Mazzei*, 81 NY2d 568 (1993), the Court of Appeals, on review of a Commission determination, held that the Commission had exceeded its jurisdiction in charging the judge with violating a provision of the Code of Professional Responsibility, which governs the conduct of attorneys, because of the potential prejudice in subsequent attorney disciplinary proceedings.



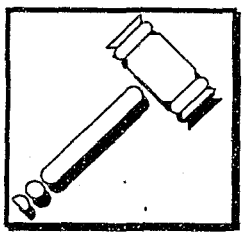
Challenges to Rules and Procedures

In numerous instances, judges facing sanctions by the Commission challenged various rules and procedures. In *Matter of Shilling*, 51 NY2d 397, *mot for reconsideration granted, original decision aff'd*, 52 NY2d 758 (1980), *app dismissed*, 101 S Ct 2301 (1981), the Court of Appeals upheld the constitutionality of Article 6, Section 22 of the New York State Constitution, which permits the Court to impose a more severe sanction than that determined by the Commission on a judge who seeks review of a Commission determination; the United States Supreme Court dismissed the judge's appeal. In *Matter of Petrie*, 54 NY2d 807 (1981), the Court, in removing the judge, upheld the Commission's summary procedures after the judge had failed to answer the charges or raise any issue of fact.

In *Matter of Friess v. Commission*, 91 AD2d 554 (1st Dept 1982), the Appellate Division rejected the judge's argument that the Commission's procedures violated his due process rights in numerous respects, including his claim that he was entitled to severance of the two charges against him, to be heard separately by two referees. In *Friess*, the judge had also challenged the "preponderance of the evidence" standard of proof, which was imposed by Commission rule. That issue was decided definitively in *Matter of Seiffert*, 65 NY2d 278 (1985), where the Court of Appeals, on review of a Commission determination, upheld the "preponderance of the evidence" as the standard of proof in Commission proceedings.

In *Signorelli v. Evans*, No. CV 80-0992 (June 13, 1980), the US District Court for the Eastern District of New York upheld the constitutionality of provisions of the New York State Constitution, the Rules Governing Judicial Conduct and the Code of Judicial Conduct, that require a judge to resign his or her judicial position prior to seeking non-judicial office; the US Court of Appeals for the Second Circuit affirmed the dismissal of the complaint on December 23, 1980.

The issue of "discovery" (i.e., the records and statements provided to a respondent-judge prior to a hearing) has been raised in several litigated matters. In *Matter of Vaccaro*, NYLJ, Aug 4, 1976 (Ct on the Judiciary, July 28, 1976), a Supreme Court Justice, facing disciplinary proceedings before a Court on the Judiciary, made a broad discovery motion requesting, *inter alia*, oral depositions of witnesses, relevant documents and records in the Commission's possession, and internal memoranda. The Court denied the judge's motion, except with respect to materials which Commission counsel had agreed to provide: documents which would be offered at the hearing and witnesses' prior testimony. In *Matter of Byrne*, 47 NY2d (b), (d) (Ct on the Judiciary 1978), the Court denied a judge's request for disclosure of the Commission's "internal reports," stating that such material was "not discoverable." In *Matter of Owen*, unreported (Ct on the Judiciary, Sept 18, 1979), the Court denied a judge's motion to quash a Commission subpoena requiring him to produce various records and documents from his court files; the Court rejected the judge's contentions that such materials were his personal papers, and that the materials were protected by his Fifth Amendment right to privacy and his Fifth Amendment privilege against self-incrimination.



Confidentiality

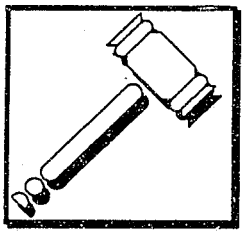
Several litigated matters concerned the confidentiality of Commission proceedings. In an important decision upholding the confidentiality of the Commission's files, the Court of Appeals, in *Stern v. Morgenthau*, 62 NY2d 331 (1984), granted the Commission's motion to quash a grand jury subpoena seeking files of dismissed complaints in connection with its investigation of a judge. The Court held that under the confidentiality provisions of the Judiciary Law, such records could not to be disclosed to the grand jury.

In *Matter of Subpoenas*, No. 17929/86 (Sup Ct NY Co, Aug 7, 1986), the Commission, citing the confidentiality provisions of the Judiciary Law, successfully challenged the application of two witnesses, subpoenaed to testify in a Commission investigation, for a transcript of their testimony.

In *Leff v. Commission*, unreported (Sup Ct NY Co, Oct 8, 1980), *mot for stay denied*, 78 AD2d 620 (1980), the Supreme Court, citing the confidentiality provisions of the Judiciary Law, denied a judge's request that any investigative proceedings against him should be open to the public.

With respect to the confidentiality of court challenges to Commission actions, the Court of Appeals, in *Nicholson v. Commission*, 50 NY2d 597 (1980), rejected the judge's argument that the court records of such a proceeding should be sealed.

In *Matter of Harris*, unreported order (Feb 11, 1988), in which a judge sought review of a Commission determination in the Court of Appeals, the judge moved to seal the record insofar as it pertained to a charge of misconduct which the Commission had dismissed. Accepting the Commission's argument that pursuant to Judiciary Law, Section 44(7) the entire record of the Commission proceedings was public, the Court denied the motion to seal.



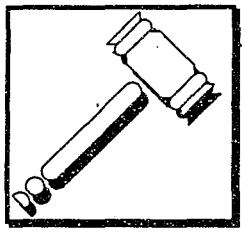
Challenges by Complainants

In several instances, complainants commenced court challenges to the Commission's discretion to consider complaints and to determine whether to investigate or whether to sanction a judge. In each instance, the Commission's exercise of discretion was affirmed. *E.g.*, *Raysor v. Stern*, 68 AD2d 786 (4th Dept 1979), *lv to app denied*, 48 NY2d 605 (1979), *cert denied*, 446 US 942 (1980), *reh denied*, 102 S Ct 2950 (1982); *Muka v. Temporary State Comm on Jud Conduct*, No. 16206/75 (Sup Ct NY Co, Oct 9, 1975); *Schiller v. Commission*, No. CV 94-4861 (Dist Ct EDNY, Mar 23, 1995).

Recommendations Made to the Legislature and the Court System

The Commission has made dozens of recommendations to the Legislature and the court system over the years, identifying various issues as to which the Commission perceived a need for changes in the law or court-promulgated rules, or for clarification of existing rules. These issues were identified on the basis of the repetitive nature of some of the complaints the Commission was investigating.

Many of the Commission's recommendations have been effectuated. Inevitably, some have not. In the following sections, some of the recommendations made over the Commission's 20-year history are briefly identified.



Recommendations Adopted in Whole or in Part

Both the Legislature and the Office of Court Administration have acted favorably on a number of important recommendations made by the Commission, as follows.

Ethics Training for Judges. The Commission recommended that the training programs run by the Office of Court Administration for newly-elected judges, as well as its continuing education programs for incumbent judges, include substantial attention to the judiciary's ethical obligations and the judicial disciplinary system. Such training is now offered in virtually every OCA training and education program, with representatives of the Commission and the Advisory Committee on Judicial Ethics making formal presentations and otherwise participating in the process.

Expanded Methods of Dispute Resolution. The Commission recommended that the court system devise ways in which the overburdening caseload might be reduced, particularly in civil cases of lesser magnitude. Today, former judges serve as judicial hearing officers to assist the courts in settling cases for which such dispositions seem appropriate and likely, and there has been an increasing reliance on private dispute resolution organizations which aim to resolve civil conflicts before the parties resort to the courts.

Advisory Opinions. The Commission, which does not issue advisory opinions, recommended that the court system provide such a service to judges. In 1987, the Advisory Committee on Judicial Ethics was created, providing written advisory opinions to judges on written request. The Committee publishes its opinions in redacted form at least once a year.

Political Activity. Over the years, the Commission has made numerous recommendations with respect to the various rules on political activity by judges and court employees, several of which have been acted upon. Prior to 1986, some of the applicable rules were unclear, and the Commission recommended clarification so that they could be more easily understood and enforced.

Permanent Commission. When the State Constitution was amended in 1978 to expand the Commission's authority, the Commission participated in the drafting of legislation and in developing procedures which fairly and effectively implemented the constitutional mandate, and which have withstood close scrutiny in the years since.

Fiduciary Appointments. The Commission recommended a change in the procedures whereby judges, with unfettered discretion, awarded lucrative fiduciary appointments (such as receiverships or guardianships), and thereafter approved generous fees, to particular attorneys. Now, among other things, the court system requires individuals who wish to be considered for such appointments to apply to the Chief Administrator of the Courts for a place on a list of approved fiduciaries; if a judge appoints someone who is better qualified than those on the list, the reasons and the appointee's qualifications must be put on the record; any fee exceeding $2,500 must be justified in writing by the judge; and no fiduciary can receive more than one appointment per 12-month-period where the fee is expected to be greater than $5,000.

Financial Disclosure. The Commission recommended as early as 1975 that judges and other ranking representatives of the court system be required to file annual financial disclosure reports. Such forms are now filed with the Ethics Commission for the Unified Court System.

Abolition of Certain City-Justice Courts. The Commission recommended the abolition of such courts as the City-Justice Court of Yonkers, which was jurisdictionally duplicative of the local city court and which paid its judges based upon the amount of fines and other fees they collected from defendants. The court was abolished.

Improved Personnel Records. The Commission recommended that court personnel records be improved and more easily retrievable by investigative agencies which have legitimate access to them. The Office of Court Administration over the years has implemented an impressive computerized records system which encompasses not only personnel records but case-tracking, fiduciary appointments and other important areas.

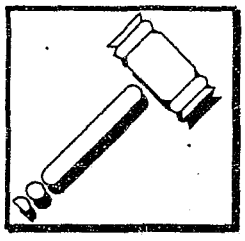
Clarification of Charitable Fund-Raising Rules. The Commission recommended clarification of certain aspects of the rule prohibiting judges from raising funds for charitable organizations. The rule, which *inter alia* prohibits a judge from being a speaker or honoree at a

charitable organization's fund-raising event, was amended to permit such activity at a bar association or law school event.

Improved Training for Part-Time Town and Village Justices. The Commission has recommended several additions which have been incorporated in the training offered to town and village justices. For example, training is now mandatory for all town and village justices, including those with law degrees. Training now includes emphasis on such issues as (1) the public nature of arraignments and other court proceedings, (2) the obligation of the judge to prepare minutes for cases on appeal, (3) the obligation of the judge not only to advise defendants of certain fundamental rights but also to take affirmative steps to effectuate those rights, such as the right to counsel, the right to assigned counsel for the indigent, and bail in applicable cases, and (4) appropriate versus inappropriate reductions of speeding and other motor vehicle charges.

Judges Serving as Fiduciaries. The Commission recommended clarification of the rule pertaining to a judge serving as fiduciary to a friend or relative. Section 100.5(d) of the Rules on Judicial Conduct permits a judge to serve as a fiduciary for a member of his or her family, with "family" defined as a "spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship." As to serving as a fiduciary for a non-family member, such service is limited to those with whom the judge "has maintained a longstanding personal relationship of trust and confidence, and then, only if such service will not interfere with the proper performance of judicial duties;" moreover, the judge must first obtain approval from the Chief Administrator of the Courts to serve in such non-family situations.

Prohibiting Business Activity by Full-Time City Court Judges. The Commission recommended the closing of an apparent loophole in Section 100.5 of the Rules on Judicial Conduct, which prohibited most full-time judges from actively engaging in business activity but omitted certain city courts from the list of courts to which the rule applied. The rule was amended to prohibit such activity by any full-time judge, regardless of court.



Recommendations Not Yet Adopted

The Legislature and the court system have not yet considered several important recommendations made by the Commission, as follows.

Public Hearings. The Commission has recommended that its formal disciplinary charges and hearings be public. At present, disciplinary proceedings are made

public only upon a waiver of confidentiality by the judge, or after the Commission has rendered a determination that a judge be admonished, censured, removed or retired. Such a change would require legislation. The Commission recommends that confidentiality continue to apply to investigations.

Suspension as a Discipline. The Commission has recommended that, in addition to rendering determinations of admonition, censure, removal and retirement, its authority be expanded to permit the sanction of suspension. Prior to 1978, the Commission in fact had the authority to suspend a judge for misconduct for up to six months.

Post-Resignation Jurisdiction. The Commission has recommended that its authority to file a removal determination up to 120 days after a judge's resignation be expanded, given the statutory and due process impediments to finishing all but already nearly-ended proceedings within 120 days. The Commission recommended that it be permitted to conclude an investigation and file charges within six months of resignation, to conclude formal disciplinary proceedings in whatever time is required, and that post-resignation determinations not be limited to removal.

Judges Serving as Election Commissioners. Part-time judges may serve as election commissioners pursuant to law. The Commission has recommended that the Election Law be amended to prohibit judges from serving as election commissioners, which impedes the judge's obligations of independence, impartiality and non-partisanship. Election commissionerships are filled on the recommendation of political parties and appear to place the judge in the position of defending his or her party's interests. (See the more detailed discussion of this subject in the Special Topics section of this Annual Report.)

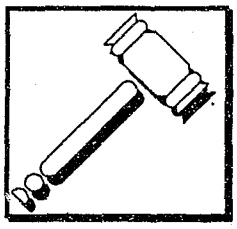
Recording All Proceedings in Town and Village Courts. The Commission has recommended that all proceedings in town and village courts be recorded. The absence of recordings or transcriptions often creates problems in criminal cases -- defendants may be incarcerated without a reliable record of the proceedings, or their rights may not be properly explicated -- and in civil cases which are appealed. An inexpensive tape recorder would serve to maintain records of court proceedings.

Uniform Guidelines for Assigned Counsel. The Commission has recommended that the vastly disparate practices in New York State's 62 counties with respect to assigned counsel to the indigent be made uniform and updated to reflect the economic realities of the 1990s. (See the more detailed discussion of this subject in the Special Topics section of this Annual Report.)

The Development of a Body of Disciplinary Law

In 20 years of investigating and adjudicating cases, the Commission has contributed significantly to the development of a body of judicial disciplinary law in New York, in several important areas. In some respects, the Commission has broken new ground by sanctioning judges for certain behavior that was not disciplined in the past, such as gender-biased remarks or conduct. In other respects, the Commission has identified certain types of misconduct which appear to occur on more than an isolated basis, by judges at various levels of the court system.

The following subsections discuss some of the categories in which the Commission has had significant experience over the years, and in which judicial and public awareness has been heightened as a consequence.



Violation of Rights

In numerous cases, the Commission has disciplined judges for having deprived defendants and litigants of certain fundamental rights. In several such cases, the Court of Appeals has held that a pattern of denying parties their fundamental rights constitutes misconduct for which discipline is warranted.

In *Matter of LaBelle*, 79 NY2d 350 (1992), the Court censured a city court judge for, *inter alia*, committing defendants to jail without bail in non-felony cases, notwithstanding that the judge knew that the law required that bail be set. The Court held that the judge had a statutory duty to order recognizance or bail in such cases, even if the defendant failed to request it, and that the judge's statutory duty was not excused by his belief that a homeless defendant would be better off in jail.

In *Matter of Esworthy*, 77 NY2d 280 (1991), the Court removed a Family Court judge from office for, *inter alia*, failing to inform litigants of their constitutional and statutory rights, including their right to counsel, coercing incriminating statements from them, threatening incarceration or other consequences which he was without authority to do, and in one instance sentencing a defendant to jail solely on the basis of an *ex parte* letter.

In *Matter of Sardino*, 58 NY2d 286(1983), a city court judge was removed from office for, *inter alia*, failing to advise defendants of various rights, including the right to counsel, the right to assigned counsel if indigent, the right to a pre-trial hearing in felony cases and the right to trial by jury. The judge also routinely failed to give defendants copies of the accusatory instruments and used bail coercively to obtain guilty pleas. The same year, a town justice was removed from office for finding defendants guilty without a trial or guilty plea, failing to advise defendants of their rights, and sometimes discouraging defendants from seeking legal advice. *Matter of McGee*, 59 NY2d 870 (1983).

In *Matter of Reeves*, 63 NY2d 105 (1984), a Family Court judge was removed from office for, *inter alia*, routinely failing to advise litigants of various rights over a two-year period, including the right to counsel, the right to remain silent, the right to an adjournment to confer with counsel, and the right to a blood grouping test in paternity cases, all as required by law.

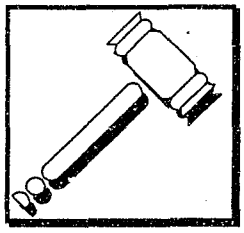
Numerous judges have argued that such violations of rights do not constitute judicial misconduct but are appealable errors of law which are not subject to discipline. The Court of Appeals specifically rejected that argument in *Reeves*:

> Petitioner contends that the failure to notify [parties] of their rights and purported violations of statutory procedure are "mistakes and errors of law" which can be corrected on appeal and which fall short of judicial misconduct. A repeated pattern of failing to advise litigants of their constitutional and statutory rights, however, is serious misconduct....
>
> 63 NY2d at 109

The Commission has held that even a single instance of violating a defendant's rights may constitute misconduct warranting discipline, especially when the conduct results in the defendant's incarceration. In *Matter of Maxon*, 1986 Annual Report 143, a town justice was admonished for convicting a defendant of speeding, without trial, even though the defendant had pleaded not guilty; in rejecting the defendant's plea, the judge expressed his view that drivers tended to speed on the road where the defendant had been issued a summons. In *Matter of Mullen*, 1987 Annual Report 129, a Family Court judge was admonished for issuing an arrest warrant in a support proceeding based solely on a rumor that the respondent was about to leave the jurisdiction; after a town justice arraigned the respondent and set bail at $500, Judge Mullen issued a second warrant because he felt the bail was too low. In *Matter of Slavin*, 1990 Annual Report 158, an acting Supreme Court justice was admonished for revoking bail and jailing a defendant when the defendant's lawyer failed to appear. The Commission concluded that the judge knew or should have known that such conduct was improper, and that his conduct constituted an abuse of judicial power.

The continued incidence of repeated failures to accord civil litigants and criminal defendants their rights is especially troubling in view of numerous Court of Appeals decisions disciplining judges for such practices. Since the *Reeves* decision in 1984, the Commission has publicly disciplined at least 13 judges for engaging, in whole or part, in similar behavior.

Judges should take great care to administer the law properly and avoid abusing their broad discretionary powers, in not only advising defendants of their fundamental rights but taking affirmative steps to effectuate those rights, pursuant to constitutional and statutory mandates. Flagrant violations which demonstrate a willful or reckless disregard of the rights of the parties will continue to subject the judge to discipline by the Commission, pursuant to Court of Appeals precedents.



Racial and Ethnic Comments

It has long been established in New York that racist language and behavior have no rightful place in the courts. In numerous cases, the Commission has also made clear that such conduct by a judge, even off the bench, is unacceptable. There need be no showing that the judge was actually biased, or that the judge's views affected his or her performance on the bench. Such language is *per se* inappropriate, casts doubt on the judge's impartiality, and damages public confidence in the judiciary.

In *Matter of Aldrich*, 58 NY2d 279 (1983), an intoxicated County Court judge, prior to presiding at a psychiatric facility, threatened a security guard (who was white) with a knife and said, "I've killed a lot of niggers with this"; the judge also told two youthful defendants that they could expect to be incarcerated "with the blacks from New York City, and...they will rape the shit out of you." In removing the judge from office, the Court of Appeals stated that the judge's "displays of vulgarity and racism and his threats of violence both on and off the Bench have 'resulted in an irretrievable loss of public confidence in his ability to properly carry out his judicial responsibilities'" (*Id.* at 283).

Judges have been disciplined for similar, threatening allusions to the racial population of prisons, even where epithets were not used. *Matter of Evens*, 1986 Annual Report 103; *Matter of Abbott*, 1990 Annual Report 69; *Matter of Esworthy*, 77 NY2d 280 (1991).

Last year, a village justice was removed from office, in part for remarking that he remembered when it was safe for young women to walk the streets "before the blacks and Puerto Ricans moved here." *Matter of Schiff*, 83 NY2d 689 (1994). The Court of Appeals rejected the judge's defense that he was not actually biased, noting that such a remark,

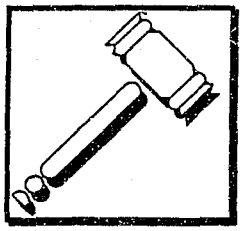
even if isolated, "casts doubt on his ability to fairly judge all cases before him" and violated his duty to avoid even the appearance of impropriety (*Id.* at 693).

The use of even a single racial epithet has been held to warrant the sanction of removal. In *Matter of Bloodgood*, 1982 Annual Report 69, a town justice was removed for writing, "So long kikie" to a defendant, who had stopped payment on a check sent to the court. In *Matter of Agresta*, 64 NY2d 327 (1985), a Supreme Court justice was censured in the last days of his lengthy judicial career for remarking to a black defendant at sentencing, "I know there is another nigger in the woodpile; I want that person out"; the judge was apparently referring to another individual whom the judge believed was culpable. "Racial epithets, indefensible when uttered by a private citizen, are especially offensive when spoken by a judge..." (*Id.* at 330).

See also, with respect to a judge's statements on the bench, *Matter of Fabrizio*, 65 NY2d 275 (1985), where a town justice was removed from office for, *inter alia*, referring to various individuals in court as "nigger" and "spic;" *Matter of Cook*, 1987 Annual Report 75, where a town justice was removed from office for, *inter alia*, saying that "these damn Puerto Ricans get away with everything; I know these Puerto Ricans, and he's not getting away with this," and that he was "sick and tired of you colored people coming out in my town..."; *Matter of Sweetland*, 1989 Annual Report 127, in which a town justice was removed from office for, *inter alia*, asserting that students from a Central American scholarship program should be deported and that "these birds come up here and commit rape..."; *Matter of Ain*, 1993 Annual Report 51, in which a Supreme Court justice was censured for derogating the ancestry of an attorney of Arabic descent; and *Matter of Cunningham*, 1995 Annual Report, in which a County Court judge was censured for stating that defendants of Dominican heritage were a burden on the court system and were guilty of drug-related crimes.

While such comments by a judge during court proceedings are manifestly inappropriate, the Court of Appeals has held that even off the bench a judge has an obligation to avoid using language which casts doubt on the judge's impartiality and fitness for judicial office. The requirement in the Rules on Judicial Conduct that a judge "observe high standards of conduct" and "conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" clearly includes a mandate to avoid such language (Sections 100.1 and 100.2). In *Matter of Kuehnel*, 49 NY2d 465 (1980), a town justice was removed for an incident in a tavern parking lot during which, *inter alia*, he taunted a group of youths using racial epithets. In *Matter of Cerbone*, 61 NY2d 93 (1985), a town justice was removed for engaging in a physical and verbal confrontation in a bar, during which he threatened to "railroad" black patrons and used racial epithets.

These cases leave no doubt that ethnic, racial or religious slurs are antithetical to the role of a judge, and those who engage in such behavior will be strictly disciplined.



Gender Bias and Sexual Harassment

Gender-based derogations of those who appear in the courts are simply unacceptable and, since 1983, have resulted in the public discipline of judges. Denigrating or otherwise insulting conduct that was once considered routine or unremarkable -- particularly by male judges in their behavior toward women employees, litigants, attorneys and others -- is no longer tolerable.

Section 100.3(a)(3) of the Rules on Judicial Conduct requires judges to act with courtesy, patience and dignity toward lawyers, litigants and all others who appear before them in their official capacity. Even before the issue of gender bias in the court system began to receive widespread attention -- particularly in the mid-1980s with the work of the New York Task Force on Women in the Courts -- the Commission considered complaints of condescending or otherwise offensive remarks by judges to or about women in the courts.

Since 1983, when the Commission first disciplined a judge for inappropriate gender-related comments, a considerable public record has developed with respect to this issue. In that landmark case, *Matter of Jordan*, 1984 Annual Report 104, a Supreme Court justice was publicly admonished for "insulting and belittling" a female attorney in a case before him by calling her "little girl." The judge's behavior was found to "diminish the dignity of the court."

In 1985, the Commission publicly admonished a district court judge for repeatedly commenting, *inter alia*, about the physical attributes of women attorneys appearing before him. *Matter of Doolittle*, 1986 Annual Report 187. Two years later, the Commission publicly admonished an acting justice of the Supreme Court for swatting at a female lawyer's hand during a bench conference and then commenting, "I like to hit girls because they are soft." *Matter of Blangiardo*, 1988 Annual Report 129.

The Commission has also acted against judges who have appeared to make light of violence towards women or to belittle the victims. In 1984, a county court judge was publicly censured for commenting publicly that the victim in a pending rape case "ended up enjoying" herself. *Matter of Fromer*, 1985 Annual Report 135. In 1992, the Commission admonished a town justice for questioning, during the arraignment of a man charged with assaulting a woman, whether the alleged assault was "just a Saturday night

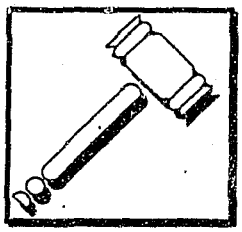
brawl where he smacks her around and she wants him back in the morning"; the judge advised the defendant to "watch your back" because "women can set you up." *Matter of Bender*, 1993 Annual Report 54, in which the Commission noted that "such remarks by a judge have the effect of discouraging complaints by the victims of domestic abuse, who look to the judiciary for protection."

A judge's obligation to treat court employees with respect and sensitivity is no less important than the obligation to be dignified toward lawyers and litigants. Judges hold positions of great power and esteem which may sometimes be abused. In *Matter of Gelfand*, 70 NY2d 211 (1987), a Surrogate was removed from office for threatening to fire and then blacklisting his law assistant after she ended their extra-marital affair. In *Matter of LoRusso*, 1994 Annual Report 73, a Family Court judge was removed for engaging in a course of offensive and harassing conduct toward female court employees, including taking advantage of his position as a judge in a series of sexual encounters with his young secretary; subjecting a court clerk to uninvited sexual touching and crude, suggestive remarks; touching the buttocks of another court clerk; and stating to another court clerk that her attire was the reason that men commit rape. Even though the judge did not have direct responsibility for hiring and firing, "as a judge he was an intimidating figure," and several of the women felt compelled to endure his repugnant behavior in silence.

In *Matter of Mills*, 1985 Annual Report 196, a town justice was removed from office for having sexual intercourse with a female defendant. In *Matter of Molnar*, 1989 Annual Report 115, a town justice was removed from office for offering money to a female defendant in exchange for a sexual act.

The Court of Appeals has held that a judge is subject to removal even for off-the-bench behavior of a sexually harassing nature. In *Matter of Benjamin*, 77 NY2d 296 (1991), a town justice was removed from office for having "sexually and physically abused" an "unwilling victim" on whom he had "physically forced himself." *Id.* at 297, 298.

Since the issuance of the "Report of the New York Task Force on Women in the Courts," reprinted in 15 Fordham Urban Law Journal 8 (1986-87), the court system has acted to implement its recommendations, including seminars for judges on the subject of gender bias. With such efforts in the court system, the continuing evolution of gender-sensitivity in society at large, and a developing body of law on gender-related issues over the years, the entire court system has become more alert to the problems and appearances of impropriety that gender bias can incur.



Political Activity

Most of the 3,300 judicial positions in New York State are filled by election. Only a few courts are served by appointed judges -- the Court of Appeals and the Court of Claims, whose members are nominated by the Governor and confirmed by the Senate; the Appellate Division, whose members are designated by the Governor from among elected Supreme Court justices; and certain local courts, such as the New York City Criminal and Family Courts, whose members are appointed by the Mayor. (The Governor may also fill certain judicial vacancies on a temporary basis, pending a special election to be held soon after the vacancy.)

Although the makeup of the judiciary is determined by and large by the electoral system, public policy in the state has long sought to separate judges from political activity to a significant extent. The theory is that such activity, if unfettered, could seriously compromise the independence and integrity of jurists, whose judicial decisions might be subject to undue political influences. The political activity of judges is therefore regulated by the Election Law and Section 100.7 of the Rules on Judicial Conduct.

A judge may only engage in certain political activity in relation to his or her own campaign for elective judicial office. Moreover, such activity is limited to a period beginning nine months before and six months after the nominating convention or election. (However, a judge who is not nominated or who loses election must immediately suspend political activity.) A judge may not participate directly or indirectly in any other campaign for any other office, and may not contribute directly or indirectly to any political campaign or activity.

Judges may not belong to a political club, organization or party, and they may not permit their names to be used in connection with any political activity by such a club, organization or party. Except during the permissible period in connection with his or her own judicial campaign, a judge may not even participate in a political organization's *nonpolitical* activities, such as community forums on court-related issues.

Over the years, the Commission has made great efforts to increase the sensitivity of the judiciary to the proscriptions in the political activity rules. The subject of improper political activity has been addressed extensively in 12 of the Commission's previous 19 annual reports, and more than 100 complaints alleging improper political activity have resulted in confidential cautions to judges.

In recent years, several public determinations have also been rendered against judges who improperly engaged in political activity. In *Matter of Maney*, 70 NY2d 27 (1987), a town justice was removed from office for becoming involved in partisan political maneuvering, soliciting support for one faction in an intra-party power struggle, attending a party caucus and other-

wise engaging in active partisan politics over a period of years at times when he was not a candidate.

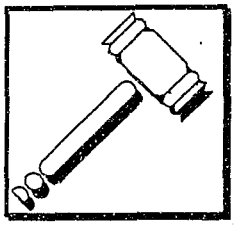
In *Matter of Salman*, 1995 Annual Report, a Supreme Court justice was publicly censured for making improper political contributions during a period when he *was* a candidate. The judge made a lump-sum payment to his local political party, ostensibly for the expenses the party incurred on his campaign's behalf, without obtaining receipts or other records to verify that such expenditures had in fact been made. The judge also bought eight tickets to a political dinner which he *was* permitted to attend; the additional tickets were in excess of the limit of two permitted under an opinion of the Advisory Committee on Judicial Ethics (#92-97) and constituted impermissible contributions under the Rules and the Election Law (Section 17-162). In addition, the judge used campaign funds to purchase a car phone and video equipment for his personal use, contrary to the Rules and Section 14-130 of the Election Law.

In *Matter of Decker*, 1995 Annual Report, a town justice was publicly admonished for endorsing a candidate for county executive and publishing a campaign ad which contained undignified comments about his political opponent.

In *Matter of Rath*, 1990 Annual Report 150, a Supreme Court justice was publicly admonished for attending two political events in support of his wife's candidacy for public office, and for attending two other political events with her. The Rule prohibiting political activity by judges in support of another candidate applies even when the candidate is the judge's spouse.

In *Matter of Gloss*, 1989 Annual Report 81, a town justice was publicly censured for attending partisan political meetings and fund-raisers for non-judicial candidates, distributing tickets to one fund-raiser and engaging in other fund-raising activities on behalf of candidates for county executive and the county legislature.

Notwithstanding the political pressures brought to bear upon judges who must run for re-election, the Commission's record of published warnings, confidential cautions and public determinations are a reminder that violations of the prohibitions on political activity by judges are regarded seriously and may well result in public discipline.



The Assertion of Influence

The Rules on Judicial Conduct prohibit judges from lending the prestige of their office to advance the private interests of others and from otherwise allowing personal relationships to influence their judicial conduct and judgment (Section 100.2). It is a fundamental principle of the American system of justice that judicial office is a high public trust which may not be traded upon for private gain. Nevertheless, numerous judges have been privately cautioned or publicly disciplined over the years for engaging in such behavior and violating that trust.

In *Matter of Levine*, 74 NY2d 294 (1989), a city court judge was removed from office for promising a former political leader that he would adjourn a pending case at the leader's request. Even where an adjournment might otherwise have been granted on the merits, it would be grossly improper to permit a judicial decision to be manipulated by a political figure.

In *Matter of Kiley*, 74 NY2d 364 (1989), a district court judge was publicly censured for having interceded in two criminal cases on behalf of the defendants as a personal favor to the defendants' families or friends.

In *Matter of Ellis*, 1995 Annual Report, a town justice was publicly censured for recommending that attorneys appearing before him hire his relatives and others as process servers.

In *Matter of Freeman*, 1992 Annual Report 42, a part-time town justice was publicly admonished for writing to another judge in support of a customer of his private business, seeking to have the customer's gun permit reinstated.

Any communication by a judge seeking some benefit or advantage on behalf of a friend or a relative or a former client or someone else may constitute an improper request for special consideration. In *Matter of Straite*, 1988 Annual Report 226, a village justice was removed from office, in part because he used his judicial position to influence the police to investigate a complaint made by his own son. In *Matter of LoRusso*, 1988 Annual Report 195, a city court judge was publicly censured for intervening with the police on behalf of the son of a former colleague. In *Matter of Zapf*, 1988 Annual Report 251, a town and village justice was publicly admonished for, *inter alia*, sending debt-collection letters on court stationery on behalf of prospective plaintiffs.

A judge's desire to assist a friend or relative may be understandable, but as the Court of Appeals noted in *Matter of Lonschein*:

> 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....
>
> 50 NY2d 569, 572 (1980)

In *Lonschein*, a Supreme Court justice was admonished for inquiring of a municipal agency about the reasons for the delay in a friend's application for a business license. The Court of Appeals held that even a simple inquiry by a judge may be improper because of the perception that the judge is implicitly (if not explicitly) asserting the influence of judicial office to obtain some benefit.

In *Matter of McGee*, 1985 Annual Report 176, a city court judge was publicly admonished for attempting to benefit his arrested nephew by approaching the trial judge and then appealing to the prosecutor to recommend low bail or release. In *Matter of Figueroa*, 1980 Annual Report 159, a criminal court judge was publicly censured for communicating with the trial judge on behalf of his nephew, who had been charged with a felony.

Judges are required by the Rules to exercise circumspection in both their official and off-the-bench activities so as to avoid even the appearance of asserting the prestige of office for their own or another's benefit. A judge who is approached by a colleague asserting special influence is obliged not only to refuse the request but also to report the misconduct. *See, Matter of Gassman*, 1987 Annual Report 89, in which a town justice was admonished for releasing certain defendants after receiving an improper *ex parte* communication from a Supreme Court justice.

Ticket-Fixing

A particular, widespread form of the improper assertion of influence was uncovered by the Commission, investigated and reported upon in great detail during the late 1970s and early 1980s, when hundreds of judges, mostly but not exclusively from town and village courts, had sought and obtained favors from other judges on behalf of friends and relatives charged with traffic offenses. The practice of "ticket-fixing" had become so routine that many judges regularly kept favor-seeking letters in court files and otherwise kept records of such requests. Even judges who did not know one another personally requested and granted favors for one another, often in colorful language with not even a pretense that the matter be resolved on the merits. For example, one judge wrote to another:

> This [defendant] is my meat man & good meat men are hard to come by these days.

Another judge wrote:

> [The defendant] said she was Speeding, but she is my baby-sitter. See what you can do for her.

A third judge simply noted the following on the written request for a favor received from a colleague:

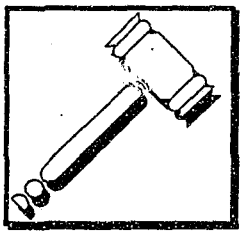
> OK fix-o on this one.

The problem was so pervasive that at least one judge drafted a form letter which he used to reject requests for favoritism received from judges and other people of influence.

In sum, the Commission investigated more than 450 judges on complaints of ticket-fixing. Nearly 150 were publicly disciplined, often for multiple acts of asserting or acceding to the assertion of influence in traffic cases. More than 150 were confidentially cautioned, and approximately 90 resigned, retired or otherwise vacated office before discipline could be imposed. The Court on the Judiciary condemned ticket-fixing as *malum in se* misconduct that was "wrong, and has always been wrong." *Matter of Byrne*, 47 NY2d [b][c] (1978).

In *Matter of Reedy*, 64 NY2d 299 (1985), the Court of Appeals held that even a single incident of ticket-fixing may warrant the judge's removal from office. (In *Reedy*, the judge engaged in a new ticket-fixing episode after previously being censured for it.)

The widespread practice of ticket-fixing appears to have ended as a result of the Commission's activity, although the occasional credible complaint of new ticket-fixing activity is received and investigated.



Mishandling Court Funds

Moneys collected by town or village court justices from fines, fees, bail and other sources are required by law to be deposited promptly into official court bank accounts, recorded promptly in court record books, and reported and remitted promptly to the State Comptroller. While improper financial management and record keeping most often result from honest mistakes, inadvertent oversight or insufficient clerical assistance, they sometimes indicate serious misconduct. (This problem is essentially limited to the part-time town and village courts throughout the state, where the local justice is very often the person who handles the court's money and keeps the accounts. In courts of higher jurisdiction or in large

municipalities, this responsibility is usually discharged by administrative clerks or other non-judicial personnel.)

The Commission has publicly disciplined approximately 50 town and village justices for significant violations of the various rules regarding the handling of court funds; approximately 50 other judges have been cautioned for relatively minor violations of the applicable standards.

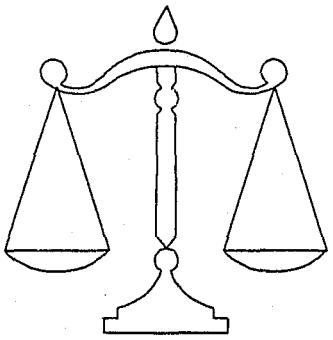
When a judge fails to deposit court funds for long periods of time, or deposits less money than he or she had collected since the previous deposit, the suspicion inevitably arises that the money is being used by the judge for personal purposes. Serious misconduct may be also be indicated by such financial irregularities as lengthy delays in remitting court funds to the State Comptroller, large deficiencies (or surpluses) in the court account, negligence in failing to safeguard such funds, and failing to keep adequate records of court finances.

"Carelessness in handling public moneys is a serious violation of [the judge's] official responsibilities" and a "breach of the public's trust" which may warrant removal from office. *Matter of Petrie*, 54 NY2d 807, 808 (1981); *see also Matter of Rater*, 69 NY2d 208 (1987); *Matter of Vincent*, 70 NY2d 208 (1987). In *Matter of Cooley*, 53 NY2d 64 (1981), the Court of Appeals also noted that a judge's willful failure to make appropriate entries in court records, such as a docket book and cashbook, is a serious violation of a the judge's administrative responsibilities, and may be punishable as a misdemeanor.

Even where venality is not an issue, negligence sometimes is. The Commission has disciplined town or village justices who kept court funds at home, in such inappropriate places as a shoebox or a freezer. In *Matter of Murphy*, 82 NY2d 491 (1993), a removal case, the judge claimed that he placed court funds in the trunk of his car, forgot about the money, then sold the car; the Court of Appeals stated that whether such conduct resulted from carelessness or calculation, "the mishandling of public money by a judge is serious misconduct even when not done for personal profit." *Id.* at 494.

The handling of public moneys entrusted to the court is one of the most important responsibilities of a judge, not only to ensure that such moneys are properly reported and remitted, but to maintain the public's confidence in the integrity of the judiciary. The administrative and record keeping requirements for town and village justices are not difficult, and most judges, even without an accounting or clerical background, are able to perform these duties satisfactorily. The body of disciplinary law in this area, matched with improved training programs over the years by the Office of Court Administration, has contributed to heightened judicial awareness of fiduciary responsibilities.

APPENDIX



Commission Member Biographies
Staff Biographies
Roster of Referees
Text of 1994 Determinations
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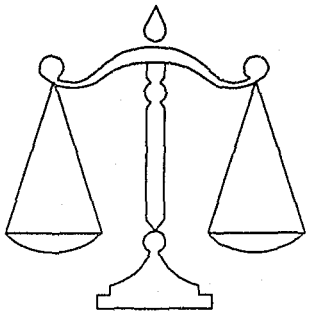


Biographies of Commission Members

HELAINE M. BARNETT, ESQ., is a graduate of Barnard College and New York University School of Law. She is the Attorney-in-Charge of the Civil Division of The Legal Aid Society. She has spent her entire professional career with The Legal Aid Society in both the Criminal and Civil Divisions. She is a member of the American Bar Association Board of Governors representing New York State, a member of the American Law Institute, a past member of the Executive Committee of The Association of the Bar of the City of New York, and a past chair of the ABA Standing Committee on Ethics and Professional Responsibility. She is also a fellow of both the New York Bar Foundation and the American Bar Foundation, a member of the Board of Directors of Homes for the Homeless, Inc., and a member of the Board of Directors of the Charles H. Revson Foundation. She is a past President of the Network of Bar Leaders, a former member of the House of Delegates of the New York State Bar Association, a former Adjunct Professor of Law of the Benjamin N. Cardozo School of Law, and author of several law review articles. She and her husband have two sons.

HENRY T. BERGER, ESQ., is a graduate of Lehigh University and New York University School of Law. He is a partner in the firm of Fisher, Fisher and Berger. He is a member of the House of Delegates of the New York State Bar Association, and a member of the Labor and Employment Law Committee and the Special Committee to Encourage Judicial Service of the Association of the Bar of the City of New York. Mr. Berger served as a member of the New York City Council in 1977.

HONORABLE EVELYN L. BRAUN is a graduate of Queens College of the City University of New York, and St. John's University Law School. She is a Justice of the Supreme Court, Queens County. Judge Braun served previously as a Judge of the New York City Civil Court and as an Acting Judge of the New York City Criminal Court. She is a member of the Supreme Court Gender Bias Committee and secretary of the Queens County Board of Justices. Judge Braun served previously as Principal Law Clerk to Supreme Court Justice Alan LeVine, and a Law Assistant in the Civil Court. She is a member of the National Association of Women Judges, the New York State Association of Women Judges, the Association of the Bar of the City of New York, the Queens County Women's Bar Association and the Columbian Lawyers Association.

MARY ANN CROTTY is a graduate of the State University of New York at Albany, where she earned a Bachelor of Science degree (cum laude) and a Masters in Public Administration. She is Vice President of Parsons Brinkerhoff, Inc., an international engineering consulting

firm. Ms. Crotty served previously in the office of Governor Mario M. Cuomo as Director of Policy Management, as Deputy Director of State Operations and Policy Management, and as Assistant Secretary to the Governor for Transportation. She has also served as Deputy Budget Director and Senior Legislative Budget Analyst for the New York State Assembly Ways and Means Committee, and as a Budget Examiner in the New York State Division of the Budget. Ms. Crotty is a recipient of the Governor Nelson A. Rockefeller Distinguished Alumni Award.

E. GARRETT CLEARY, ESQ., attended St. Bonaventure University and is a graduate of Albany Law School. He was an Assistant District Attorney in Monroe County from 1961 through 1964. In August 1964 he resigned as Second Assistant District Attorney to enter private practice. He is now a partner in the law firm of Harris, Beach & Wilcox in Rochester. In January 1969 he was appointed a Special Assistant Attorney General in charge of a Grand Jury Investigation ordered by the late Governor Nelson A. Rockefeller to investigate financial irregularities in the Town of Arietta, Hamilton County. In 1970 he was designated as the Special Assistant Attorney General in charge of an investigation ordered by Governor Rockefeller into a student/police confrontation that occurred on the campus of Hobart College, Ontario County, and in 1974 he was appointed a Special Prosecutor in Schoharie County for the purpose of prosecuting the County Sheriff. Mr. Cleary is a member of the Monroe County and New York State Bar Associations, and he has served as a member of the governing body of the Monroe County Bar Association, Oak Hill Country Club, St. John Fisher College, Better Business Bureau of Rochester, Automobile Club of Rochester, Hunt Hollow Ski Club, as a trustee to Holy Sepulchre Cemetery and as a member of the Monroe County Bar Foundation and the Monroe County Advisory Committee for the Title Guarantee Company. He is a former Chairman of the Board of Trustees of St. John Fisher College. He and his wife Patricia are the parents of seven children.

LAWRENCE S. GOLDMAN, ESQ. is a graduate of Brandeis University and Harvard Law School. Since 1972, he has been a partner in the criminal law firm of Goldman & Hafetz in New York City. From 1966 through 1971, he served as an assistant district attorney in New York County. He has also been a consultant to the Knapp Commission and the New York City Mayor's Criminal Justice Coordinating Council. Mr. Goldman is currently a director of the National Association of Criminal Defense Lawyers, chairperson of its white-collar committee and former chairperson of its ethics advisory committee, a member of the executive committee of the criminal justice section of the New York State Bar Association and a member of the advisory committee on the Criminal Procedure Law. He is a past president of the New York State Association of Criminal Defense Lawyers, and a past president of the New York Criminal Bar Association. He has lectured at numerous bar association and law school programs on various aspects of criminal law and procedure, trial

tactics, and ethics. He is an honorary trustee of Congregation Rodeph Sholom in New York City. He and his wife Kathi have two children and live in Manhattan.

HONORABLE JUANITA BING NEWTON is a graduate of Northwestern University and the Columbus Law School of The Catholic University of America. She is a Judge of the Court of Claims and an Acting Justice of the Supreme Court. Judge Newton serves as the Administrative Judge, First Judicial District, Supreme Court, Criminal Branch. Previously, she served as Executive Assistant to the Deputy Chief Administrative Judge for the New York City Courts, as Executive Director and General Counsel to the New York State Sentencing Guidelines Committee, as an Assistant District Attorney in Bronx County and as a high school social studies teacher. She is a member of the American Bar Association, The Judicial Friends and the Association of Court of Claims Judges, which she serves as Treasurer. Judge Newton serves on numerous New York State judicial committees and programs, including the Judicial Committee on Women in the Courts, the Judicial Commission on Minorities, the Advisory Committee on Criminal Practice and Procedure, the Anti-Bias Committee and Panel of the Supreme Court (New York County) and the Drug Policy Task Force of the New York County Lawyers Association. Judge Newton and her husband Eddie have a son, Jason, and reside in New Rochelle.

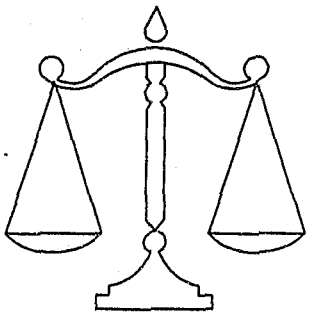
HONORABLE EUGENE W. SALISBURY is a graduate of the University of Buffalo and the University of Buffalo Law School. He is Senior Partner in the law firm of Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria of Buffalo and New York City. He has also been the Village Justice of Blasdell since 1961. Since 1963, Judge Salisbury has served as a lecturer on New York State Civil and Criminal Procedure, Evidence and Substantive Criminal Law for the State Office of Court Administration. He has served as President of the State Magistrates Association and in various other capacities with the Association, as Village Attorney of Blasdell and as an Instructor in Law at SUNY Buffalo. Judge Salisbury has authored published volumes on forms and procedures for various New York courts, and he is Program Director of the Buffalo Area Magistrates Training Course. He serves or has served on various committees of the American Bar Association, the New York State Bar Association and the Erie County Bar Association, as well as the Erie County Trial Lawyers Association and the World Association of Judges. Judge Salisbury served as a U.S. Army Captain during the Korean Conflict and received numerous Army citations for distinguished and valorous service. Judge Salisbury and his wife reside in Hamburg, New York.

BARRY C. SAMPLE is a graduate of the State University of New York at Albany, where he earned Bachelor of Arts (magna cum laude) and Masters degrees, as well as a Masters in Criminal Justice. He is Director of Program Development and Planning for Instructional Systems, Inc. Mr. Sample served previously as Deputy Director of the New York State

Division of the Budget under Governor Mario M. Cuomo. He also served in the New York State Division of Criminal Justice Services as Deputy Director of Criminal Justice, Executive Deputy Commissioner, and Chief of Program Development and Planning. Mr. Sample was also an instructor in the Department of Afro-American Studies at SUNY at Albany, where he also served as Associate Coordinator of the Center on Minorities and Criminal Justice.

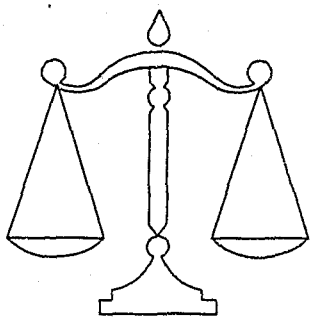
JOHN J. SHEEHY, ESQ. is a graduate of the College of the Holy Cross, where he was a Tilden Scholar, and Boston College Law School. He is a partner in the New York office of Rogers & Wells. Mr. Sheehy was an Assistant District Attorney in New York County from 1963 to 1965, when he was appointed Assistant Counsel to the Governor by Nelson A. Rockefeller. Mr. Sheehy joined Rogers & Wells in February 1969. He is a member of the bars of the United States Supreme Court, the United States Court of Appeals for the Second and Eighth Circuits, the United States District Court for the Southern, Eastern and Northern Districts of New York, the United States Court of International Trade and the United States Court of Military Appeals. He is a member of the American and New York State Bar Associations and Chairman of the Finance and Administration Committee of Epiphany Church in Manhattan. He is also a Commander in the U.S. Naval Reserve, Judge Advocate General Corps. John and Morna Ford Sheehy live in Manhattan and East Hampton, with their three children.

HONORABLE WILLIAM C. THOMPSON is a graduate of Brooklyn College and Brooklyn Law School. He was elected to the New York State Senate in 1965, and served until 1968. He was Chairman of the Joint Legislative Committee on Child Care Needs, and over 25 bills sponsored by him were signed into law. He served on the New York City Council from 1969 to 1973. He was elected a Justice of the Supreme Court in 1974 and was designated as an Associate Justice of the Appellate Term, 2nd and 11th Districts (Kings, Richmond and Queens counties) in November 1976. In December 1980 he was appointed Assistant Administrative Judge in charge of Supreme Court for Brooklyn and Staten Island. On December 8, 1980, he was designated by Governor Carey as Associate Justice of the Appellate Division, Second Department. Justice Thompson is one of the founders with the late Robert F. Kennedy of the Bedford Stuyvesant Restoration Corporation, one of the original Directors of the Bedford Stuyvesant Youth-In-Action, and a former Regional Director of the N.A.A.C.P. He is a Director of the Bedford Stuyvesant Restoration Corporation; Daytop Village, Inc.; Brookwood Child Care; Vice-President, Brooklyn Law School Alumni Association; Past President of the New York State Senate Club; and a member of the American Bar Association, Brooklyn Bar Association and the Metropolitan Black Bar Association. He is Co-Chairman of Blacks and Jews in Conversation, Inc., and Treasurer of Judges and Lawyers Breast Cancer Alert.



Clerk of the Commission

ALBERT B. LAWRENCE, holds a B.S. in journalism from Empire State College, an M.A. in criminal justice from Rockefeller College and a J.D. from Antioch University. He joined the Commission's staff in 1980 and has been Clerk of the Commission since 1983. He also teaches legal studies and journalism at Empire State College, State University of New York. A former newspaper reporter, Mr. Lawrence was awarded the New York State Bar Association Certificate of Merit "for constructive journalistic contributions to the administration of justice." He was honored as a distinguished alumnus of Empire State College in 1995.



Commission Attorneys

GERALD STERN, Administrator, is a graduate of Brooklyn College, the Syracuse University College of Law and the New York University School of Law, where he earned an LL.M. in Criminal Justice. Mr. Stern has been Administrator of the Commission since its inception. He previously served as Director of Administration of the Courts, First Judicial Department, Assistant Corporation Counsel for New York City, Staff Attorney on the President's Commission on Law Enforcement and the Administration of Justice, Legal Director of a legal service unit in Syracuse, and Assistant District Attorney in New York County.

ROBERT H. TEMBECKJIAN, Deputy Administrator, is a graduate of Syracuse University, the Fordham University School of Law, and Harvard University's John F. Kennedy School of Government, where he earned a Masters in Public Administration. He previously served as Clerk of the Commission, as publications director for the Council on Municipal Performance, staff director of the Ohio Governor's Cabinet Committee on Public Safety and special assistant to the Deputy Director of the Ohio Department of Economic and Community Development. Mr. Tembeckjian has served on the Committee on Professional and Judicial Ethics and the Committee on Professional Discipline of the Association of the Bar of the City of New York. He was a Fulbright Scholar in Armenia for the spring 1994 semester, teaching courses on constitutional law, public management and ethics at the American University of Armenia.

STEPHEN F. DOWNS, Chief Attorney (Albany), is a graduate of Amherst College and Cornell Law School. He served in India as a member of the Peace Corps from 1964 to 1966.

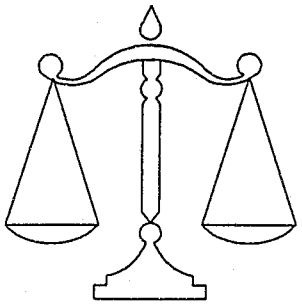
He was in private practice in New York City from 1969 to 1975, and he joined the Commission's staff in 1975 as a staff attorney. He has been Chief Attorney in charge of the Commission's Albany office since 1978.

JOHN J. POSTEL, Chief Attorney (Rochester), is a graduate of the University of Albany and the Albany Law School of Union University. He joined the Commission's staff in 1980 as an assistant staff attorney in Albany. He has been Chief Attorney in charge of the Commission's Rochester office since 1984. Mr. Postel is a past president of the Governing Council of St. Thomas More R.C. Parish. He is a former officer of the Pittsford-Mendon Ponds Association and a former President of the Stonybrook Association. He is the advisor to the Sutherland High School Mock Trial Team.

JEAN M. SAVANYU, Senior Attorney, is a graduate of Smith College and the Fordham University School of Law (cum laude). She joined the Commission's staff in 1977 and has been a senior attorney since 1986. Prior to joining the Commission, she worked as an editor and writer. Ms. Savanyu teaches in the paralegal program at Marymount Manhattan College and is a member of its advisory board.

ALAN W. FRIEDBERG, Senior Attorney, is a graduate of Brooklyn College, the Brooklyn Law School and the New York University Law School, where he earned an LL.M in Criminal Justice. He previously served as a staff attorney in the Law Office of the New York City Board of Education, as an adjunct assistant professor of business law at Brooklyn College, and as a junior high school teacher in the New York City public school system.

CATHLEEN S. CENCI, Staff Attorney, graduated summa cum laude from Potsdam College in 1980. In 1979, she completed the *course superior* at the Institute of Touraine, Tours, France. Ms. Cenci received her JD from Albany Law School in 1984 and joined the Commission as an assistant staff attorney in 1985. Ms. Cenci is a judge of the Albany Law School moot court competitions and a member of Albany County Big Brothers/Big Sisters.



Referees Who Have Presided Over Commission Hearings, 1978 To Present

The following lawyers and former judges have presided over Commission hearings since 1978, when the referee system was established by statute. Asterisks denote those referees who served during 1994.

NAME	CITY	COUNTY
Hon. Morris Aarons	New York	New York
Saul H. Alderman	Syracuse	Onondaga
Grace Marie Ange	Buffalo	Erie
Lawrence R. Bailey, Sr.	New York	New York
Hon. Carman Ball	West Seneca	Erie
Hon. Richard L. Baltimore, Jr.	New York	New York
William C. Banks	Syracuse	Onondaga
Ira M. Belfer	New York	New York
Martin H. Belsky	Albany	Albany
Hon. Francis Bergan	Albany	Albany
*Patrick J. Berrigan	Niagara Falls	Niagara
Sheila L. Birnbaum	New York	New York
William R. Brennan	Buffalo	Erie
Michael G. Breslin	Albany	Albany
Edward Brodsky	New York	New York
Eugene V. Buczkowski	Buffalo	Erie
J. Kenneth Campbell	Mineola	Nassau
Michael A. Cardozo	New York	New York
Bruno Colapietro	Binghamton	Broome
Daniel G. Collins	New York	New York
Alexander C. Cordes	Buffalo	Erie
Edward C. Cosgrove	Buffalo	Erie
John P. Cox	Buffalo	Erie
Frank N. Cuomo	Amherst	Erie
W. David Curtiss	Ithaca	Tompkins
Hon. Richard M. Daily	Ilion	Herkimer
Mary C. Daly	New York	New York
Hon. John J. Darcy	Rochester	Monroe
Hon. Nanette Dembitz	New York	New York
Hon. Jesse M. Eisen	Yonkers	Westchester
Robert L. Ellis	New York	New York

Maureen J.M. Ely	Albany	Albany
Hon. Catherine T. England	Centereach	Suffolk
Haliburton Fales, II	New York	New York
*Vincent D. Farrell	Mineola	Nassau
Paul A. Feigenbaum	Albany	Albany
Hon. Harold A. Felix	New York	New York
William Fitzpatrick	Syracuse	Onondaga
*Hon. C. Benn Forsyth	Rochester	Monroe
Walter Gellhorn	New York	New York
Eugene C. Gerhart	Binghamton	Broome
Hon. James Gibson	Hudson Falls	Warren
Thomas F. Gleason	Albany	Albany
Hon. Harry D. Goldman	Rochester	Monroe
Hon. Martin M. Goldman	Plattsburgh	Clinton
Bernard H. Goldstein	New York	New York
Paul C. Gouldin	Binghamton	Broome
Hon. Bertram Harnett	New York	New York
Gerald Harris	New York	New York
Hon. H. Hawthorne Harris	New Rochelle	Westchester
Hon. Joseph Hawkins	Poughkeepsie	Dutchess
Robert E. Helm	Albany	Albany
Hon. J. Clarence Herlihy	Glens Falls	Warren
Albert Hessberg	Albany	Albany
Gilbert A. Holmes	New York	New York
Herbert W. Holtz	Buffalo	Erie
Hon. James D. Hopkins	Armonk	Westchester
Jacob D. Hyman	Buffalo	Erie
Hon. Matthew Jasen	Buffalo	Erie
*H. Wayne Judge	Glens Falls	Warren
Barbara L. Kaiser	White Plains	Westchester
Marjorie E. Karowe	Troy	Rensselaer
Robert M. Kaufman	New York	New York
Michael M. Kirsch	Brooklyn	Kings
Seymour N. Klein	New York	New York
Hon. Francis C. LaVigne	Massena	St. Lawrence
Hon. Simon J. Liebowitz	New York	New York
John F. Luchsinger	Syracuse	Onondaga
Robert MacCrate	New York	New York
William V. Maggipinto	Southampton	Suffolk
Hon. Charles T. Major	Syracuse	Onondaga
Hon. Arthur Markewich	New York	New York
Hon. John S. Marsh	Niagara Falls	Niagara
Hon. Frank S. McCullough, Sr.	Harrison	Westchester
Carroll J. Mealey	Albany	Albany
Hon. Bernard S. Meyer	New York	New York

William Morris	Rochester	Monroe
Peter J. Murrett, Jr.	Buffalo	Erie
Eugene E. Napierski	Albany	Albany
Hon. Joseph A. Nevins	Olean	Cattaraugus
Hon. James A. O'Connor	Waterford	Saratoga
Francis J. Offerman, Jr.	Buffalo	Erie
John T. O'Friel	Central Valley	Orange
Hon. James O'Shea	Rome	Oneida
Hon. Louis Otten	New York	New York
Richard D. Parsons	New York	New York
Nancy D. Peck	Rochester	Monroe
Stanley Plesent	New York	New York
*Hon. Leon B. Polsky	New York	New York
Margrethe R. Powers	Albany	Albany
Peter Preiser	Albany	Albany
Hon. Raymond Reisler	New York	New York
Roger W. Robinson	New York	New York
Nicholas Scoppetta	New York	New York
Laurie Shanks	Albany	Albany
Milton Sherman	New York	New York
Shirley Adelson Siegel	New York	New York
Hon. Morton B. Silberman	White Plains	Westchester
Hon. Caroline K. Simon	New York	New York
Henry J. Smith	White Plains	Westchester
Edward S. Spector	Buffalo	Erie
Hon. Dean C. Stathacos	Buffalo	Erie
Solon J. Stone	Snyder	Erie
Hon. Donald J. Sullivan	White Plains	Westchester
Joseph J. Tabacco, Jr.	New York	New York
Gray Thoron	Ithaca	Tompkins
Francis L. Valente, Jr.	New York	New York
Samuel B. Vavonese	Syracuse	Onondaga
Nancy F. Wechsler	New York	New York
Peter N. Wells	Syracuse	Onondaga
Michael Whiteman	Albany	Albany
David S. Williams	Albany	Albany
George M. Zimmermann	Buffalo	Erie

RULES GOVERNING JUDICIAL CONDUCT

Section 100.1 Upholding the independence of the Judiciary. An independent and honorable Judiciary is indispensable to justice in our society. Every judge shall participate in establishing, maintaining, and enforcing, and shall himself or herself observe, high standards of conduct so that the integrity and independence of the Judiciary may be preserved. The provisions of this Part shall be construed and applied to further that objective.

100.2 Avoiding impropriety and the appearance of impropriety. (a) A judge shall respect and comply with the law and shall conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.

(b) No judge shall allow his or her family, social, or other relationships to influence his judicial conduct or judgment.

(c) No judge shall lend the prestige of his or her office to advance the private interests of others; nor shall any judge convey or permit others to convey the impression that they are in a special position to influence him or her. No judge shall testify voluntarily as a character witness.

100.3 Impartial and diligent performance of judicial duties. The judicial duties of a judge take precedence over all his other activities. Judicial duties include all the duties of a judicial office prescribed by law. In the performance of these duties, the following standards apply:

(a) Adjudicative responsibilities. (1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in proceedings before him or her.

(3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom he or she deals in an official capacity, and shall require similar conduct of lawyers, and of his or her staff, court officials, and others subject to his or her direction and control.

(4) A judge shall accord to every person who is legally interested in a matter, or his or her lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending matter. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a matter before him or her if notice by the judge is given to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(5) A judge shall dispose promptly of the business of the court.

(6) A judge shall abstain from public comment about a pending or impending matter in any court, and shall require similar abstention on the part of court personnel subject to his or her direction and control. This subdivision does not prohibit judges from making public statements in the course of their official duties or from explaining for public information in procedures of the court.

(b) Administrative responsibilities. (1) A judge shall diligently discharge his or her administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge shall require his or her staff and court officials subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge shall take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment only on the basis of merit, avoiding favoritism. A judge shall not appoint or vote for the appointment of any person as a member of his or her staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the sixth degree of relationship of either the judge or the judge's spouse. A judge shall also refrain from recommending a relative for appointment or employment to another judge serving in the same court. A judge shall not approve compensation of appointees beyond the fair value of services rendered. Nothing in this section shall prohibit appointment of the spouse of a town or village justice, or other member of such justice's household, as clerk of the town or village court in which such justice sits, provided that such justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.

(5) A judge shall prohibit members of his or her staff who are the judge's personal appointees from engaging in the following political activity:

(i) holding an elective office in a political party, or a club or organization related to a political party, except for delegate to a judicial nominating convention or member of a county committee other than the executive committee of a county committee;

(ii) contributing, directly or indirectly, money or other valuable consideration in amounts exceeding $300 in the aggregate during any calendar year commencing on January 1, 1976, to any political campaign for any political office or to any partisan political activity including, but not limited to, the purchasing of tickets to a political function, except that this limitation shall not apply to an appointee's contributions to his or her own campaign. Where an appointee is a candidate for judicial office, reference should be made to appropriate sections of the Election Law;

(iii) personally soliciting funds in connection with a partisan political purpose, or personally selling tickets to or promoting a fundraising activity of a political candidate, political party, or partisan political club; or

(iv) political conduct prohibited by section 25.39 of the Rules of the Chief Judge.

(c) Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, including, but not limited to circumstances where:

(i) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) the judge served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(iii) the judge knows that he or she, individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(iv) the judge or the judge's spouse, or a person within the sixth degree of relationship to either of them, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director, or trustee of a party;

(b) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(c) is to the judge's knowledge likely to be a material witness in the proceeding;

(v) the judge or the judge's spouse, or a person within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

(2) A judge shall inform himself or herself about his or her personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the judge's household.

(3) For the purposes of this section:

(i) the degree of relationship is calculated according to the civil law system;

(ii) *fiduciary* includes such relationships as executor, administrator, trustee and guardian;

(iii) *financial interest* means ownership of a legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that:

(a) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(b) an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization;

(c) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome could substantially affect the value of the securities.

(d) Remittal of disqualification. A judge disqualified by the terms of subparagraph (c)(1)(iii), (iv) or (v) of this section, instead of withdrawing from the proceeding, may disclose on the record the basis of the disqualification. If, based on such disclosure, the parties (who have appeared and not defaulted), by their

attorneys, independently of the judge's participation, all agree that the judge's relationship is immaterial or that his or her financial interest is insubstantial, the judge no longer is disqualified, and may participate in the proceeding. The agreement shall be in writing, or shall be made orally in open court upon the record.

100.4 Activities to improve the law, the legal system, and the administration of justice. A judge, subject to the proper performance of his or her judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cause doubt on the capacity to decide impartially any issue that may come before him or her:

(a) A judge may speak, write, lecture, teach and participate in other activities concerning the law, the legal system, and the administration of justice.

(b) A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

(c) A judge may serve as a member, officer or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. He or she may assist such an organization in raising funds and may participate in their management and investment, but shall not personally participate in public fundraising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

100.5 Extra-judicial activities. (a) Avocational activities. A judge may write, lecture, teach and speak on nonlegal subjects, and engage in the arts, sports and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties.

(b) Civic and charitable activities. A judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or nonlegal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or her or will be regularly engaged in adversary proceedings in any court.

(2) No judge shall solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or permit the use of the prestige of the office for that purpose, but may be listed as an officer, director or trustee of such an organization; provided, however, that no such listing shall be used in connection with any solicitation of funds. No judge shall be a speaker or the guest of honor at an organization's fund raising events, but he or she may attend such events. Nothing in this Part shall be deemed to prohibit a judge from being a speaker or guest of honor at a bar association or law school function.

(3) A judge shall not give investment advice to such an organization, but he or she may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(c) Financial activities. (1) A judge shall refrain from financial and business dealings that tend to reflect adversely on impartiality, interfere with the proper performance of judicial duties, exploit judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves.

(2) No full-time judge shall be a managing or active participant in any form of business enterprise organized for profit, nor shall he or she serve as an officer, director, trustee, partner, advisory board member or employee of any corporation, company, partnership or other association organized for profit or engaged in any form of banking or insurance;

(i) provided, however, that this rule shall not be applicable to those judges who assumed judicial office prior to July 1, 1965 and maintained such nonjudicial interests prior to that date; and it is

(ii) further provided, that any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this rule during the period of such interim or temporary appointment; and it is

(iii) further provided, that nothing in this section shall prohibit a judge from investing as a limited partner in a limited partnership, as contemplated by article 8 of the Partnership Law, provided that such judge does not take any part in the control of the business of the limited partnership and otherwise complies with this Part.

(3) Neither a judge nor a member or his or her family residing in his or her household shall accept a gift, bequest or loan from anyone, except as follows:

(i) a judge may accept a gift incident to a public testimonial to him or her; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his or her spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(ii) a judge or a member of his or her family residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(iii) a judge or member of his or her family residing in his or her household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and, if its value exceeds $100, the judge reports it in the same manner as he or she reports compensation in section 100.6 of this Part.

(4) For the purposes of this section, *member of his or her family residing in his or her household* means any relative of a judge l y blood or marriage, or a person treated by a judge as a member of his or her family, who resides in his or her household.

(5) A judge is not required to disclose his or her income, debts or investments, except as may be required by Part 40 of the Rules of the Chief Judge or by statute and as provided in this section and sections 100.3 and 100.6 of this Part.

(6) Information acquired by a judge in his or her judicial capacity shall not be used or disclosed by him or her in financial dealings or for any other purpose not related to his or her judicial duties.

(d) Fiduciary activities. No judge, except a judge who is permitted to practice law, shall serve as the executor, administrator, trustee, guardian or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of his or her family, or with the approval of the Chief Administrator of the Courts, a person not a member of the family with whom the judge has maintained a longstanding personal relationship of trust and confidence, and then, only if such service will not interfere with the proper performance of judicial duties. *Members of his or her family* include a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(1) A judge shall not serve as a fiduciary if it is likely that as a fiduciary he or she will be engaged in proceedings that would ordinarily come before him or her, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to the judge in his or her personal capacity.

(e) Arbitration. No judge, other than a part-time judge, shall act as an arbitrator or mediator. A part-time judge acting as an arbitrator or mediator shall do so with particular regard to sections 100.1, 100.2 and 100.3 of this Part.

(f) Practice of law. A judge who is permitted to practice law shall, nevertheless, not practice law in the court in which he or she is a judge, whether elected or appointed, nor shall a judge practice law in any other court in the county in which his or her court is located which is presided over by a judge who is permitted to practice law. He shall not participate in a judicial capacity in any matter in which he or she has represented any party or any witness in connection with that matter, and he or she shall not become engaged as an attorney in any court, in any matter in which he or she has participated in a judicial capacity. No judge who is permitted to practice law shall permit his or her partners or associates to practice law in the court in which he or she is a judge. No judge who is permitted to practice law shall permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law. A judge may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law.

(g) Extra-judicial appointments. No judge shall accept an appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities.

(h) Employment of part-time judges. A part-time judge may accept private employment or public employment in a Federal, State or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties. No judge shall accept employment as a peace officer as that term is defined in section 1.20 of the Criminal Procedure Law.

100.6 Compensation received for extra-judicial activities. A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety subject to the following restrictions:

(a) Compensation must not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement must be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his or her spouse. Any payment in excess of such an amount is compensation.

(c) A judge must report the date, place and nature of any activity for which he or she received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. Such report must be made annually and must be filed as a public document in the office of the clerk of the court on which he or she serves or other office designated by rule of court. This subdivision shall not apply to any judge who is permitted to practice law.

(d) Except as provided in section 100.5(h) of this Part, no judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of:

(1) New York State, its political subdivisions or any officer or agency thereof;

(2) a school, college or university that is financially supported, in whole or in part, by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or

(3) any private legal aid bureau or society designed to represent indigents in accordance with article 18-B of the County Law.

100.7 Political activity of judges prohibited. No judge during a term of office shall hold any office in a political party or organization or contribute to any political party or political campaign or take part in any political campaign except his or her own campaign for elective judicial office. Political activity prohibited by this section includes:

(a) The purchase, directly or indirectly, of tickets to politically sponsored dinners or other affairs, or attendance at such dinners or other affairs, including dinners or affairs sponsored by a political organization for a nonpolitical purpose, except as follows:

(1) This limitation shall not apply during a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating a candidate for elective judicial office for which the judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported his or her candidacy, and ending, if the judge is a candidate in the general election for that office, six months after the general election. If the judge is not a candidate in the general election, this period shall end on the date of the primary election, convention, caucus or meeting.

(2) During the period defined in paragraph (1) of this subdivision:

(i) A judge may attend a fundraising dinner or affair on behalf of the judge's own candidacy, but may not personally solicit contributions at such dinner or affair.

(ii) Notwithstanding subdivision (b) of this section, a judge may purchase a ticket to a politically sponsored dinner or other affair even where the regular cost of a ticket to such dinner or affair exceeds the proportionate cost of the dinner or affair.

(iii) Notwithstanding subdivisions (c) and (d) of this section, a judge may attend a politically sponsored dinner or affair in support of a slate of candidates, and may appear on podiums or in photographs on political literature with the candidates who make up that slate, provided that the judge is part of the slate of candidates.

(b) Contributions, directly or indirectly, to any political campaign for any office or for any political activity. Where the judge is a candidate for judicial office, reference should be made to the Election Law.

(c) Participation, either directly or indirectly, in any political campaign for any office, except his or her own campaign for elective judicial office.

(d) Being a member of or serving as an officer or functionary of any political club or organization or being an officer of any political party or permitting his or her name to be used in connection with any activity of such political party, club or organization.

(e) Any other activity of a partisan political nature.

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

RAYMOND R. BARLAAM,

a Justice of the Ossining Village Court, Westchester County.

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission

Barnes and Barnes (By Thomas G. Barnes) for Respondent

The respondent, Raymond R. Barlaam, a justice of the Ossining Village Court, Westchester County, was served with a Formal Written Complaint dated January 7, 1994, alleging that he failed to cooperate with a disciplinary committee investigating his conduct as a lawyer. Respondent did not answer the Formal Written Complaint.

On February 28, 1994, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the agreed upon facts. The Commission approved the agreed statement by letter dated March 14, 1994.

Both parties submitted papers as to sanction. Oral argument was waived.

On June 9, 1994, the Commission considered the record of the proceeding and made the following determination.

1. Respondent has been a part-time justice of the Ossining Village Court since May 1983. He also practices law and has been admitted in New York since October 1975.

2. In 1987, respondent was retained as an attorney to handle the Estate of Mildred C. Vidmar. Ms. Vidmar died on August 24, 1987, leaving an estate of approximately $14,000 in U.S. Savings Bonds and a checking account of approximately $4,000.

3. As of March 1991, respondent had failed to have the will admitted to probate or otherwise finalize the estate.

4. On March 20, 1991, respondent testified in the course of an investigation by the Grievance Committee for the 9th Judicial District concerning his failure to conclude the Vidmar estate. Respondent testified that, in February or March 1989, he had advised the executor of the estate that the will had not been probated. In fact, respondent had advised the executor that the will had been admitted to probate.

5. On August 2, 1993, respondent was censured by the Appellate Division, Second Department, for misconduct as an attorney in relation to the Vidmar estate.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1 and 100.2, and Canons 1 and 2 of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By giving misleading testimony concerning his statement to the executor of the Vidmar estate, respondent failed to cooperate with the attorney grievance committee. As a lawyer and a judge, respondent is required to cooperate with investigating authorities. (See, Code of Professional Responsibility, DR1-103; Rules Governing Judicial Conduct, 22 NYCRR 100.3[b][3]; Matter of Katz, 1985 Ann Report of NY Commn on Jud Conduct, at 157, 165). His failure to do so before a committee investigating his conduct as a lawyer reflects upon his ability to perform as a judge who is "sworn to uphold the law and seek the truth." (Matter of Myers v State Commission on Judicial Conduct, 67 NY2d 550, 554; see also, Matter of Kelso v State Commission on Judicial Conduct, 61 NY2d 82, 87; Matter of Wray, 1992 Ann Report of NY Commn on Jud Conduct, at 77).

We have considered in mitigation that respondent has acknowledged his misconduct and has been forthright and cooperative in this proceeding. (See, Matter of Rath, 1990 Ann Report of NY Commn on Jud Conduct, at 150, 152). Furthermore, he has been disciplined as an attorney, and "there is no reason to fear that the public will perceive that [respondent] is going unpunished or that the matter is being suppressed," if he is not removed. (Kelso, supra, at 87-88).

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

Mr. Berger, Ms. Barnett, Mr. Cleary, Mr. Goldman, Judge Newton, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Dated: July 27, 1994

State of New York
ommission on Judicial Conduct

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

Determination

RICHARD W. BURTON,

a Justice of the Schroeppel Town Court, Oswego County.

APPEARANCES:

Gerald Stern for the Commission

James K. Eby for Respondent

The respondent, Richard W. Burton, a justice of the Schroeppel Town Court, Oswego County, was served with a Formal Written Complaint dated February 22, 1994, alleging that he failed to deposit and remit court funds promptly as required by law. Respondent did not answer the Formal Written Complaint.

On August 17, 1994, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the Formal Written Complaint and the agreed upon facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On September 23, 1994, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Schroeppel Town Court since August 1984.

2. Respondent has attended all training sessions required by the Office of Court Administration. Since taking office, he has been aware that court funds must be deposited in the official court account within 72 hours of receipt and that court funds must be remitted to the state comptroller by the tenth day of the month following collection.

3. Between February 1990 and March 1991, as denominated in Schedule A*appended hereto, respondent failed to deposit court funds in his official account within 72 hours of receipt, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a). By the end of this period, respondent's court account was deficient by $31,305.11.

* Schedules A, B and C have not been reproduced for this report.

4. Between February 1990 and November 1992, Norma Brooks, then the court clerk, was responsible for marshaling receipts, preparing deposit tickets and depositing court funds.

5. In April 1991, the state Department of Audit and Control audited respondent's court. The audit report revealed undeposited receipts during the period December 21, 1990, to April 18, 1991, advised respondent that court funds should be deposited within 72 hours of receipt and indicated that court staff had repeatedly failed to meet this requirement.

6. Between June 1991 and November 1992, as denominated in Schedule B appended hereto, respondent failed to deposit court funds in his official account within 72 hours of receipt as required by law. By the end of this period, respondent's court account was deficient by $7,462.58.

7. Between April 1991 and November 1992, respondent failed to properly supervise his court staff or take necessary steps to ensure that his staff deposited court funds as required by law.

As to Charge II of the Formal Written Complaint:

8. Between January 1990 and April 1991, as denominated in Schedule C appended hereto, respondent failed to remit court funds to the state comptroller by the tenth day of the month following collection, as required by UJCA 2020 and 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8).

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.3, 100.3(b)(1) and 100.3(b)(2), and Canons 1, 2A, 3, 3B(1) and 3B(2) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

By failing to deposit court funds in the bank and remit them to the state comptroller in a timely manner, respondent did not comply with the law and mishandled public monies. (See, Matter of Hall, 1992 Ann Report of NY Commn on Jud Conduct, at 46, 47; Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64).

Although the responsibility to deposit funds in respondent's court account was vested in a court clerk, it was respondent's duty to supervise the prompt depositing of money in his name. "A judge shall require his or her court staff and court officials subject to his or her direction and control to observe the standards of fidelity and diligence that apply to the judge." (Rules Governing Judicial Conduct, 22 NYCRR 100.5[b][2]; see, Matter of Reedy, 1982 Ann Report of NY Commn on Jud Conduct, at 135, 136). Even after the serious breaches of respondent's court staff were pointed out to him in an audit, respondent failed for more than a year to take steps to ensure that court money was properly deposited. (Compare, Matter of Lenney v State Commission on Judicial Conduct, 71 NY2d 456).

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

All concur.

Dated: December 1, 1994

tate of New York
ommission on Judicial Conduct

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n the Matter of the Proceeding Pursuant to Section 44, ubdivision 4, of the Judiciary Law in Relation to

Determination

PATRICK J. CUNNINGHAM,

Judge of the County Court, Onondaga County.

APPEARANCES:

Gerald Stern for the Commission

Langan Grossman Kinney Dwyer & Reitz, P.C. (By Richard D. Grossman) for Respondent

The respondent, Patrick J. Cunningham, a judge of the County Court, Onondaga County, was served with a Formal Written Complaint dated March 15, 1993, alleging that he made a derogatory statement which created the appearance of bias. Respondent did not answer the Formal Written Complaint.

On December 29, 1993, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On March 10, 1994, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Onondaga County Court since January 1976.

2. On August 1, 1989, respondent presided over People v Nelson Adamez, in which the defendant was charged with Criminal Possession of a Controlled Substance, Second Degree; Criminal Possession of a Controlled Substance, Third Degree; and, Criminal Possession of a Weapon, Fourth Degree.

3. After the jury rendered a guilty verdict, respondent told the jury:

> Ladies and gentlemen, I'm very happy that you reached that disposition because the Dominican people are just killing us in the courts. They got to try their cases. We got to provide them interpreters, provide them attorneys

and there are 54 pending felony cases against them up here. Obviously the drugs are brought up out of New York City and they are brought into here and selling them in here, and they are just killing us, so I am delighted. They are almost insulated as far as prosecution, and you just happened to get lucky to do it, and I appreciate very much the verdict in this case and you're discharged with the thanks of the court. That was a large scale operation.

4. Respondent acknowledges that his comments created the impression that he is biased against defendants of Dominican heritage and could reasonably be interpreted as meaning that Dominican defendants are guilty of drug crimes and are an unnecessary burden on the criminal justice system. He also acknowledges that he improperly praised the jury's verdict.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a) and 100.3(a)(1), and Canons 1, 2A and 3A(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

In his praise of the Adamez jury, respondent generalized the defendant's guilt to all Dominican defendants, conveying the impression that he was biased against all Dominicans who might come before him. By making such remarks in open court, he also failed to maintain the impartiality of the judiciary and impeded the proper administration of justice by encouraging potential jurors to adopt such a prejudice.

A judge may thank jurors for their service but should neither praise nor criticize their verdict. (ABA STANDARDS, The Function of the Trial Judge, §5.13).

A judge must be impartial and maintain the appearance of impartiality at all times so that "the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property." (Matter of Sardino v State Commission on Judicial Conduct, 58 NY2d 286, 290-91). Such remarks as respondent's are undesirable, inappropriate and inexcusable. (Matter of Ain, 1993 Ann Report of NY Commn on Jud Conduct, at 51, 53; Matter of Sweetland, 1989 Ann Report of NY Commn on Jud Conduct, at 127, 130).

Respondent has twice before been sanctioned for unethical conduct as a judge. (Matter of Cunningham v State Commission on Judicial Conduct, 57 NY2d 270; Matter of Cunningham, 2 Commission Determinations 116). We have also taken into account that he has been cooperative in this proceeding and has conceded that his conduct was wrong. (See, Matter of Rath, 1990 Ann Report of NY Commn on Jud Conduct, at 150, 152).

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

Mr. Berger, Ms. Barnett, Mr. Bellamy, Mr. Cleary, Mrs. Del Bello, Judge Newton, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Mr. Goldman was not present.

Dated: March 18, 1994

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

GEORGE D. DECKER,

a Justice of the Concord Town Court, Erie County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission

Albrecht, Maguire, Heffern & Gregg, P.C. (By John M. Curran) for Respondent

The respondent, George D. Decker, a justice of the Concord Town Court, Erie County, was served with a Formal Written Complaint dated October 8, 1992, alleging that he engaged in improper political activity. Respondent filed an answer dated December 2, 1992.

On September 29, 1993, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement by letter dated October 22, 1993. Oral argument was waived.

On December 9, 1993, the Commission considered the record of the proceeding and made the following determination.

1. Respondent has been a justice of the Concord Town Court since 1972. He ran for re-election in 1991 and was opposed by William Cranston.

2. Respondent's daughter, Kim, acted as his campaign manager. Ms. Decker worked as superintendent of parks, a position to which she had been appointed by Erie County Executive Dennis Gorski, who was also running for re-election in 1991. Mr. Gorski was opposed by Buffalo Mayor James Griffin.

3. Respondent's daughter prepared and respondent approved and signed a letter to Democratic voters in the Town of Concord in which he referred to Mr. Cranston and Mayor Griffin as "black sheep", criticized Mayor Griffin and urged the election of Mr. Gorski and himself. Ms. Decker mailed the letter from the offices of the Committee to Reelect Dennis Gorski.

4. On October 28 and November 4, 1991, respondent caused to be published four political advertisements in local newspapers which referred to Mr. Cranston as follows:

a) "Why would a crime fighter leave a profession if he were truly respected?";

b) "Why would a crime fighter have a property dispute with his neighbor?";

c) "Why would a crime fighter want to tell a coach how to handle his team?";

d) "A real crime fighter should know that you would not post political signs on public utility poles";

e) "Batman is a crime fighter and so is Superman, and now we have B.C. If you want a judge Re-elect George Decker"; and,

f) "If you were stopped for speeding and you know you were innocent, who do you think an ex-police officer would believe?".

5. The advertisements were respondent's reaction to Mr. Cranston's campaign statements in which he identified himself as a "Respected Crime Fighter" and criticized respondent for spending time in Florida and referred to respondent as "a political hack."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a) and 100.7(c), and Canons 1, 2A, 7A(1)(b) and 7B(1)(a) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Upon taking the bench, a judge relinquishes the First Amendment right to participate as others in the political process. (Matter of Maney, 1987 Ann Report of NY Commn on Jud Conduct, at 109, 112; accepted, 70 NY2d 27). Judges may engage in political activity only on their own behalf for a prescribed period; at no time is a judge permitted to support other candidates. (Matter of Gloss, 1989 Ann Report of NY Commn on Jud Conduct, at 81, 83). Respondent's public support of Mr. Gorski's re-election as county executive and his criticism of Mr. Gorski's opponent were improper.

Even in his or her own campaign, a judge faces constraints. A judicial candidate must "maintain the dignity appropriate to judicial office." (Canon 7B[1][a] of the Code of Judicial Conduct). Even in the face of provocation by an opponent, a judge must adhere to this standard. Respondent's political advertisements, suggesting that his opponent would be biased as a judge and was not respected in his profession and comparing him to comic characters, lacked the dignity required of judicial candidates.

As a judge for 20 years, respondent should have been aware of the limitations on political activity. Even a non-lawyer judge has a responsibility to learn about and obey ethical rules. (Matter of Vonder Heide v State Commission on Judicial Conduct, 72 NY2d 658, 660).

Standing alone, respondent's undignified campaign remarks would not warrant public sanction. However, his public support of another candidate's campaign merits public sanction.

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mrs. Del Bello, Mr. Goldman, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Mr. Cleary was not present.

Dated: January 27, 1994

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

JACK A. ELLIS,

a Justice of the Barton Town Court, Tioga County.

APPEARANCES:

Gerald Stern for the Commission

Turk, Truman, Bishop & Tillapaugh (By Martin H. Tillapaugh) for Respondent

The respondent, Jack A. Ellis, a justice of the Barton Town Court, Tioga County, was served with a Formal Written Complaint dated February 8, 1994, alleging that he recommended six persons, including members of his family, to attorneys to be used as process servers in civil actions in his court. Respondent filed an answer dated February 25, 1994.

On August 4, 1994, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On September 23, 1994, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Barton Town Court during the time herein noted.

2. From November 1988 to February 1994, respondent recommended to attorneys who appeared before him six persons to be used as process servers for civil actions in respondent's court. Respondent recommended May Bensen, Denise Spaulding, Wayne Searles, Gary Reeves, Thomas Coolidge and Constance Currier Ellis.

3. Ms. Spaulding is respondent's daughter and was recommended by him as a process server between December 1990 and February 1994. Between December 1990 and April 1992, she served civil complaints or summonses in 534 cases commenced in respondent's court.

4. Ms. Ellis has been respondent's wife since October 1991 and was recommended by him as a process server from that time until February 1994. From December 1991 through December 1993, she served civil complaints or summonses in 403 cases commenced in respondent's court.

5. Ms. Bensen was married to respondent from November 1988 through June 1990 and was recommended by him as a process server during that period. Between November 1988 and February 1990, Ms. Bensen served civil complaints or summonses in 287 cases commenced in respondent's court. In three cases, respondent accompanied Ms. Bensen when she served the complaint or summons.

6. Between November 1988 and April 1992, Mr. Searles served civil complaints or summonses in 19 cases commenced in respondent's court.

7. Between November 1988 and April 1992, Mr. Reeves served civil complaints or summonses in 17 cases commenced in respondent's court.

8. Ms. Bensen and Ms. Spaulding received full payment for their services from respondent, who had received fees from the plaintiffs or their representatives.

9. Respondent recommended the six individuals only in response to inquiries from local attorneys or their representatives. At no time did he insist, require or direct that civil actions be commenced by the filing of a summons or complaint served by one of the six persons.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.2(b), 100.2(c) and 100.3(a)(1), and Canons 1, 2A, 2B and 3A(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, and respondent's misconduct is established.

Respondent should have rebuffed the requests of attorneys who appear before him for names of prospective process servers. It was especially improper for him to recommend members of his family, including members of his own household, who benefitted financially from the work.

Lawyers who seek such recommendations might believe that they can curry favor from a judge by employing the judge's nominees, especially when they are giving work to members of the judge's family. "No judge shall lend the prestige of his or her office to advance the private interests of others; nor shall any judge convey or permit others to convey the impression that they are in a special position to influence him or her." (Rules Governing Judicial Conduct, 22 NYCRR 100.2[c]).

By making the recommendations, respondent also placed himself in a position in which his impartiality or the prompt administration of justice might be compromised unnecessarily. The service of a summons or complaint sometimes becomes an issue in civil cases, and a process server might be called upon to testify in court. In order to determine whether adequate legal notice of an action was given, respondent might have been required to evaluate the testimony and actions of the process servers that he had recommended, including his wife or daughter. The conflict might have compelled his disqualification, resulting in inconvenience and delay for the parties. This was especially problematic in the three situations in which respondent accompanied the process server and placed himself in a position in which he might have obtained personal knowledge of a matter before him.

While a judge must disqualify himself or herself when impartiality might reasonably be questioned, the judge also has an obligation to avoid situations in which disqualification will become necessary. (See, Matter of Hanofee, 1990 Ann Report of NY Commn on Jud Conduct, at 109, 114).

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

All concur.

Dated: December 1, 1994

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

HAROLD GIFFIN,

a Justice of the Clare Town Court, St. Lawrence County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Honorable Harold Giffin, pro se

The respondent, Harold Giffin, a justice of the Clare Town Court, St. Lawrence County, was served with a Formal Written Complaint dated April 12, 1993, alleging that he failed to deposit and remit court funds in a timely manner and that he failed to cooperate in the Commission investigation. Respondent did not answer the Formal Written Complaint.

By order dated May 21, 1993, the Commission designated William C. Banks, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on September 2, 1993, and the referee filed his report with the Commission on November 3, 1993.

By motion dated December 16, 1993, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be censured. Respondent did not file any papers in response thereto and did not request oral argument.

On January 20, 1994, the Commission considered the record of the proceeding and made the following findings of fact:

As to Charge I of the Formal Written Complaint:

1. Respondent is a judge of the Clare Town Court and was during the time herein noted.

2. Between January and June 1992, as denominated in Schedule A*appended hereto, respondent failed to remit court funds promptly to the state comptroller, as required by UJCA 2020 and 2021(1), Town Law §27(1) and Vehicle and Traffic Law §1803(8).

*Schedules A and B have not been reproduced for this report.

As to Charge II of the Formal Written Complaint:

3. Respondent failed to cooperate in a duly-authorized Commission investigation of his conduct in that he failed to respond to letters sent certified mail by staff counsel on June 29, August 4, August 19 and November 24, 1992, and failed to appear for the purpose of testifying during the investigation on February 16, 1993, as required by Judiciary Law §44(3).

As to Charge III of the Formal Written Complaint:

4. Between February 7, 1992, and July 16, 1992, respondent made no deposits in his official court account, even though he received $574.50 during this period, as denominated in Schedule B appended hereto. Respondent is required to deposit court funds within 72 hours of receipt, pursuant to the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a).

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a) and 100.3(b)(1), and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's failure to deposit court money promptly constitutes misconduct and raises questions about its interim use. (See, Matter of More, 1990 Ann Report of NY Commn on Jud Conduct, at 140, 141). The failure to remit court funds to the state in a timely manner is also misconduct. (Matter of Ranke, 1992 Ann Report of NY Commn on Jud Conduct, at 64).

His failure to cooperate in the Commission's investigation compounds respondent's wrong-doing. (See, Matter of Cooley v State Commission on Judicial Conduct, 53 NY2d 64, 66).

In mitigation, we have considered the unsworn assertions in respondent's letter to the referee after the hearing, indicating that he was without the services of a court clerk during the period in question (see, Matter of Hamel, 1991 Ann Report of NY Commn on Jud Conduct, at 61, 62) and that he suffered from emotional difficulties which prevented him from doing the work himself and from responding to staff counsel (see, Matter of Kelso v State Commission on Judicial Conduct, 61 NY2d 82, 88).

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

Mr. Berger, Ms. Barnett, Mr. Bellamy, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Mr. Sheehy concur, except that Judge Salisbury dissents as to Charge II and votes that the charge be dismissed.

Judge Newton and Judge Thompson were not present.

Dated: March 18, 1994

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

JOHN D. HENDERSON, JR.,*

a Justice of the Barre Town Court, Orleans County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission

Thomas D. Calandra for Respondent

The respondent, John D. Henderson, Jr., a justice of the Barre Town Court, Orleans County, was served with a Formal Written Complaint dated August 12, 1993, alleging that he drove while intoxicated. Respondent did not answer the Formal Written Complaint.

On November 22, 1993, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement by letter dated December 10, 1993.

Both counsel submitted papers as to sanction. Oral argument was waived.

On January 20, 1994, the Commission considered the record of the proceeding and made the following determination.

1. Respondent has been a justice of the Barre Town Court since January 1988.

2. On August 15, 1992, at approximately 9:45 P.M., respondent drove his car while he was intoxicated and lost control of the car on Route 237 in Clarendon.

3. When asked his name by an investigating police officer, respondent gave his name and judicial office.

4. Respondent asked the officer, "Isn't there anything we can do?"

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*The Formal Written Complaint was filed in the name of John "O." Henderson, Jr. It is hereby amended to reflect respondent's correct initial.

5. On March 31, 1993, respondent pleaded guilty to Driving While Intoxicated, was given a nditional discharge and was fined $500.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that spondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1 and 100.2(a), and Canons 1 and of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's sconduct is established.

Respondent violated the law and endangered public welfare when he drove while his ability to so was impaired by alcohol consumption. (See, Matter of Innes, 1985 Ann Report of NY Commn on Jud nduct, at 152, 154). Such conduct warrants public sanction. (Matter of Winkworth, 1993 Ann Report of NY mmn on Jud Conduct, at 106; Matter of Siebert, 1994 Ann Report of NY Commn on Jud Conduct, at 103).

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

Ms. Barnett, Mr. Bellamy, Mr. Cleary, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Mr. eehy concur.

Mr. Berger dissents as to sanction only and votes that respondent be censured.

Judge Newton and Judge Thompson were not present.

ated: March 18, 1994

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

JOHN D. HENDERSON, JR.,

DISSENTING OPINION BY MR. BERGER

a Justice of the Barre Town Court, Orleans County.

Driving while intoxicated can convert an automobile into an instrument of death or serious injury. It is time to recognize that such offenses constitute serious judicial misconduct.

With the high honor and responsibility of judicial office comes an obligation to adhere at all times to high standards of conduct, both on and off the bench, to insure that public confidence in the integrity of the judiciary is maintained.

A judge who drives while under the influence of alcohol not only violates these important ethical standards, but raises doubts about the judge's fitness for office, especially as to his or her presiding over similar or even less serious cases. The public may well wonder about the character, temperament and fitness to serve of a judge who has been convicted of an alcohol-related offense.

In the case at hand, when respondent was asked for his last name by the arresting officer, respondent gave the officer his name and his judicial office, and then asked, "Isn't there anything we can do?" Significantly, the judge has acknowledged that because of his lack of sobriety, he has no reliable, independent recollection of the facts.

Notwithstanding his cooperation in this disciplinary proceeding, in which he admitted the allegations he remembered and did not challenge those he could not remember, his criminal act of driving while intoxicated was exacerbated by identifying himself as a judge to the arresting officer and then asking whether there is "anything we can do." The latter suggests that he was using his judicial office to assert influence in the hope of avoiding prosecution for his criminal offense.

The Commission should deliver a message that any judge who violates the criminal law, including offenses of this kind, engages in conduct that is inconsistent with the role of a judge, and, when the criminal act is compounded by an explicit or implicit attempt to assert influence, public censure is warranted.

An admonition is the least severe form of public discipline and should be imposed for any conviction of an alcohol-related offense. If aggravating factors exist, censure--defined as a condemnation of certain conduct--would be more appropriate than admonition. Because respondent invoked the authority of his judicial office, I vote for censure, which I believe would deliver a more pointed message as to the seriousness of the prohibited conduct.

Dated: March 18, 1994

tate of New York
ommission on Judicial Conduct

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n the Matter of the Proceeding Pursuant to Section 44,
ubdivision 4, of the Judiciary Law in Relation to

Determination

EVERETT J. MILLER,

a Justice of the Cherry Valley Village Court, Otsego County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for
the Commission

Honorable Everett J. Miller, pro se

The respondent, Everett J. Miller, a justice of the Cherry Valley Village Court, Otsego County, was served with a Formal Written Complaint dated February 8, 1993, alleging that he failed to follow the law on three occasions and that he improperly served as a peace officer. Respondent filed an answer dated May 7, 1993.

On March 4, 1994, the administrator of the Commission and respondent entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. By letter dated March 15, 1994, the Commission approved the agreed statement.

Both parties submitted memoranda as to sanction. Oral argument was waived.

On July 21, 1994, the Commission considered the record of the proceeding and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Cherry Valley Village Court since 1988. He is not a lawyer.

2. On December 1, 1990, respondent arraigned Robert Snyder on a misdemeanor charge of Driving While Intoxicated. Respondent set bail at $700. The defendant and his father tendered the bail in cash. Respondent refused to accept it and remanded the defendant to jail in lieu of bail, in violation of CPL 510.40(3).

3. On March 29, 1991, William J. Mulder was arrested on a charge of Inadequate Muffler based on respondent's warrant. Respondent arraigned Mr. Mulder and set bail of $50. When Mr. Mulder tendered the bail in cash, respondent refused to accept it and remanded the defendant to jail in lieu of bail, in violation of CPL 510.40(3).

As to Charge II of the Formal Written Complaint:

4. On March 27, 1991, after soliciting and receiving information from two victims outside the presence of the defendant or his counsel and without holding a hearing, respondent set restitution of approximately $1,800 in People v Robert Snyder.

5. The defendant subsequently retained counsel, who, by letter dated May 8, 1991, requested a restitution hearing. Respondent refused to hold one, in violation of Penal Law §60.27(2) and CPL 400.30.

As to Charge III of the Formal Written Complaint:

6. From September 10, 1991, until March 7, 1993, respondent was a member of the Cherry Valley Fire Department's fire police. He directed traffic at the scenes of fires and accidents. As such, he served as a peace officer, in violation of UJCA 105(c). He was listed by the fire department as a peace officer with the state Division of Criminal Justice Services, although he never received training or took an oath of office as a peace officer.

Upon the foregoing findings of fact, the Commission concludes a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1), 100.3(a)(4) and 100.5(h), and Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent failed to follow the law when he refused to accept the bail tendered by Mr. Snyder and Mr. Mulder. CPL 510.40(3) provides that, once a judge fixes bail and it is posted:

> the court must examine the bail to determine whether it complies with the order. If it does, the court must...approve the bail and must issue a certificate of release, authorizing the principal to be at liberty...(emphasis added).

It makes little practical sense to order a defendant committed to jail, require that he post the bail there and have the money remitted to the court, as respondent argues was his practice. Instead, it appears that respondent was using bail improperly.

It was also wrong for respondent to determine restitution in Snyder based on ex parte information (see, Matter of Mullen, 1987 Ann Report of NY Commn on Jud Conduct, at 129) and to deny the defendant the right to be heard on the issue (see, Matter of Loper, 1985 Ann Report of NY Commn on Jud Conduct, at 172).

In addition, a judge may not serve as a peace officer (UJCA 105[c]; Rules Governing Judicial Conduct, 22 NYCRR 100.5[h]). Such fire police activities as crowd and traffic control are incompatible with judicial office. (Matter of Straite, 1988 Ann Report of NY Commn on Jud Conduct, at 226, 232-33).

While a non-lawyer judge is held to the same standards of conduct as one trained in the law (Matter of Vonder Heide v State Commission on Judicial Conduct, 72 NY2d 658, 660), we have considered, in determining sanction, that the judge is not an attorney. (See, Matter of Meacham, 1994 Ann Report of NY Commn on Jud Conduct, at 87, 91; Matter of Kuehnel et al., 45 NY2d[y], [cc] [Ct on the Judiciary]).

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

Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary, Mr. Goldman, Judge Newton, Judge Salisbury and Mr. Sheehy concur.

Judge Thompson was not present.

Dated: October 7, 1994

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

STEPHEN POLI,

a Justice of the Camillus Town Court, Onondaga County.*

APPEARANCES:

Gerald Stern for the Commission

Primo & Centra (By John V. Centra) for Respondent

The respondent, Stephen Poli, a justice of the Camillus Town Court, Onondaga County, was served with a Formal Written Complaint dated April 27, 1994, alleging that he arraigned his son on a criminal charge. Respondent filed an answer dated May 20, 1994.

On July 5, 1994, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

On July 21, 1994, the Commission accepted the agreed statement and made the following determination.

1. Respondent has been a justice of the Camillus Town Court since July 1993.

2. On September 11, 1993, respondent's 25-year-old son, Scott A. Poli, was arrested on a charge of Assault, Third Degree.

3. Respondent was notified of the arrest by a friend of his son and went to the Town of Camillus police station between 4:30 and 5:00 A.M. on the day of the arrest.

4. Respondent was never asked by the police to arraign his son. Police Officer J. B. Whelan told respondent that he intended to contact another judge to conduct the arraignment.

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*The Formal Written Complaint was filed, bearing the caption "Stephen Poli, an Acting Justice of the Camillus Town Court, Onondaga County." It is hereby amended to reflect respondent's correct title.

5. Respondent told Officer Whelan that he would conduct the arraignment. He then had a private discussion with his son outside the presence of the police, arraigned his son and released him on his own recognizance.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Judiciary Law §14; the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1), 100.3(c)(1)(i) and 100.3(c)(1)(iv), and Canons 1, 2A, 3A(1), 3C(1)(a) and 3C(1)(d) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge is not permitted to take any part in cases involving members of his family within the sixth degree of relationship. (Judiciary Law §14; Rules Governing Judicial Conduct, 22 NYCRR 100.3[c][1][iv]). Handling any aspect of a proceeding of a close relative, including an arraignment, is wrong (Matter of Pulver, 1983 Ann Report of NY Commn on Jud Conduct, at 157, 158), as is arraigning defendants against whom the judge's son is a material witness (Matter of Winegard, 1992 Ann Report of NY Commn on Jud Conduct, at 70, 76; Matter of Straite, 1988 Ann Report of NY Commn on Jud Conduct, at 226, 227-28).

"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 v State Commission on Judicial Conduct, 67 NY2d 15, 18).

Respondent reached out to get the case before him and gave his son the most favorable outcome possible at arraignment: release on his own recognizance. While an independent magistrate might have reached the same result on the merits, reasonable suspicion of favoritism is created when the judge is the defendant's father.

Had respondent disposed of the charge against his son, shown provable favoritism, attempted to conceal his involvement or repeatedly handled his relatives' cases, removal would be the appropriate sanction. (See, Wait, supra; Matter of Deyo, 1981 Ann Report of NY Commn on Jud Conduct, at 113; Matter of Schultz, 1980 Ann Report of NY Commn on Jud Conduct, at 113; Matter of Hayes, 43 AD2d 872 [3d Dept]). We have taken into account that respondent's judgment in this case may have been clouded by his son's involvement. (See, Matter of Edwards v State Commission on Judicial Conduct, 67 NY2d 153, 155; Matter of Figueroa, 1980 Ann Report of NY Commn on Jud Conduct, at 159, 161).

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

Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary, Mr. Goldman, Judge Newton, Judge Salisbury and Mr. Sheehy concur.

Judge Thompson was not present.

Dated: October 7, 1994

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

KENNETH S. RONES,

a Justice of the Clarkstown Town Court, Rockland County.

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission

Honorable Kenneth S. Rones, pro se

The respondent, Kenneth S. Rones, a justice of the Clarkstown Town Court, Rockland County, was served with a Superseding Formal Written Complaint dated March 8, 1994, alleging eight instances in which he confronted motorists on the roadways. Respondent did not answer the Formal Written Complaint.

On April 22, 1994, the administrator of the Commission and respondent entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the agreed upon facts. The Commission approved the agreed statement by letter dated June 10, 1994.

The administrator submitted a memorandum as to sanction. Respondent waived the opportunity to submit papers.

On July 21, 1994, the Commission heard oral argument, at which respondent appeared, and thereafter considered the record of the proceeding and made the following determination.

As to Charge I of the Superseding Formal Written Complaint:

1. Respondent has been a justice of the Clarkstown Town Court since January 1984.

2. On June 3, 1990, while driving on the Palisades Interstate Parkway, respondent was tailgated and passed by a speeding car driven by Randy K. Respondent repeatedly flashed his headlights at the driver and followed his car as he left the parkway. When respondent and Randy K. stopped side by side at a red light, respondent identified himself as a judge and directed the driver to pull over to the side of the road. When Randy K. refused, respondent followed him to a driveway on Cooper Drive in Clarkstown. Respondent partially blocked the driveway with his car. Randy K. backed out of the driveway; his car hit respondent's, and he drove away. Thereafter, both respondent and Randy K. reported the incident to the Clarkstown Police Department.

3. On June 4, 1990, respondent filed Vehicle and Traffic Law charges and a small claims action against Randy K. in respondent's court. The small claims case was settled, and the Vehicle and Traffic Law charges were dismissed by another judge.

As to Charge II of the Superseding Formal Written Complaint:

4. On February 19, 1991, while driving in Clarkstown, respondent followed a speeding car driven by Audra K. on Strawtown Road and flashed his headlights in an effort to signal her to pull over. When she failed to do so, respondent passed in front of her and directed her to stop. She drove away. Thereafter, both respondent and Audra K. reported the incident to the Clarkstown police.

As to Charge III of the Superseding Formal Written Complaint:

5. On March 25, 1991, while driving in Clarkstown on a snowy day, respondent was tailgated on West Clarkstown Road by a vehicle driven by Harvey F. When the two vehicles stopped at a red light, respondent identified himself as a judge and displayed an engraved, raised shield which also identified him as a judge. He directed Harvey F. to pull to the side of the road and criticized his driving. After he had ascertained that Harvey F.'s vehicle was registered to his employer, respondent called the employer by telephone, identified himself as a judge and complained about Harvey F.'s driving.

As to Charge IV of the Superseding Formal Written Complaint:

6. On June 14, 1991, while driving in Clarkstown, respondent was tailgated by a car driven by Tara M., a minor. Tara M.'s car passed respondent, crossing over a double yellow line while they proceeded around a sharp curve. When the vehicles came to a stop sign, respondent approached Tara M., identified himself as a judge, displayed his shield, criticized Tara M.'s driving and told her that he was going to call her parents. On June 15, 1991, Tara M.'s father reported the incident to the Clarkstown Police Department. Thereafter, respondent called the father, identified himself as a judge and complained about Tara M.'s driving.

As to Charge V of the Superseding Formal Written Complaint:

7. On May 26, 1992, while driving, respondent encountered a car being driven erratically on Route 304 by Drew B. Respondent flashed his headlights, attempting to signal the driver to pull over. Respondent followed Drew B. to his home, displayed the shield, identified himself as a judge and complained about Drew B.'s driving. Drew B. called the Clarkstown police.

As to Charge VI of the Superseding Formal Written Complaint:

8. On December 8, 1992, while driving on Route 304 in Clarkstown, respondent saw a car being driven erratically by Dawn F. He signalled her to pull over, displayed his shield, identified himself as a judge, took her license and registration to his car, returned them to her and advised her that he would file charges against her. Dawn F. reported the incident to the Clarkstown police.

9. On December 11, 1992, respondent filed Vehicle and Traffic Law charges against Dawn F. in his court. The matter was transferred to Rockland County Court, where the prosecution withdrew one of the charges against Dawn F. Thereafter, respondent withdrew the remaining charges.

As to Charge VII of the Superseding Formal Written Complaint:

10. In September 1992, while driving on Route 304 in Clarkstown, respondent followed a car driven by Kerry S. Respondent passed in front of the other car, motioned to the driver to pull over, displayed his shield, identified himself as a judge, complained to Kerry S. and a passenger about the speed at which Kerry S. was driving, took Kerry S.'s license and told him to report to respondent's court the following week to get his license and a traffic citation.

11. Kerry S. appeared in court as directed and retrieved his license. No traffic citation was ever issued.

As to Charge VIII of the Superseding Formal Written Complaint:

12. On April 2, 1990, on Main Street in Clarkstown, respondent approached Steven O., whose car was parked in a "No Standing-Fire Zone" with the motor running. Respondent identified himself as a judge, advised Steven O. that he had left his car running and unattended in a fire zone, took his driver's license and told him to retrieve it the following day at respondent's court.

13. On April 3, 1990, Steven O. appeared at court. Respondent told him to see Officer H.A. Baumann, who was assigned to the court for the purpose of prosecuting traffic offenses. Officer Baumann issued Steven O. a ticket for Unattended Motor Vehicle.

14. Respondent then accepted Steven O.'s plea of guilty to the charge, fined him $25 and returned his driver's license.

Supplemental finding:

15. Respondent now acknowledges that his conduct was improper, regrets his actions and has pledged to avoid such conduct in the future.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2 and 100.3(c)(1)(i), and Canons 1, 2 and 3C(1)(a) of the Code of Judicial Conduct. Charges I, II, III, IV, V, VI, VII and VIII of the Superseding Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

A judge in a town court must be an impartial arbiter of traffic cases in which law enforcement personnel are the complaining witnesses and often the prosecuting authority. A judge cannot be considered neutral and detached if he or she acts as a police officer. The law prohibits a judge from being a peace officer of any kind. (UJCA 105[c]; Rules Governing Judicial Conduct, 22 NYCRR 100.5[h]). Traffic and crowd control activities are incompatible with judicial office. (Matter of Straite, 1988 Ann Report of NY Commn on Jud Conduct, at 226, 232-33).

Over a period of more than two years in eight instances, respondent undertook unofficial law enforcement duties. His conduct could only have bewildered motorists and endangered public safety. In one instance, he caused a minor accident when a driver was forced to hit respondent's car in order to escape. In three instances, respondent demanded that drivers produce their licenses; on two of these occasions, he kept the licenses and required the defendants to retrieve them from his court, temporarily denying them their driving privileges without authority and without due process of law.

Especially egregious was respondent's conduct in the Steven O. incident, in which respondent disposed of the charge which he had initiated. A litigant can have no faith that his case will be handled fairly when the chief witness against him is the presiding judge. (See, Matter of Ross, 1990 Ann Report of NY Commn on Jud Conduct, at 153, 156; Matter of Tobey, 1986 Ann Report of NY Commn on Jud Conduct, at 163, 165; see also, Matter of Vonder Heide v State Commission on Judicial Conduct, 72 NY2d 658, 659).

"A Judge must conduct his everyday affairs in a manner beyond reproach. Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function." (Matter of Kuehnel v State Commission on Judicial Conduct, 49 NY2d 465, 469). Off the bench, a judge remains "cloaked figuratively, with his black robe of office...." (Supra).

We accept respondent's contention that he thought that he was acting in the public interest, but he should have realized that the roles of traffic enforcer and judge are incompatible. In mitigation, we note that he now realizes that his conduct was wrong and that he has been cooperative and candid in this proceeding. (See, Matter of Rath, 1990 Ann Report of NY Commn on Jud Conduct, at 150, 152).

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

Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary, Mr. Goldman, Judge Newton, Judge Salisbury and Mr. Sheehy concur.

Judge Thompson was not present.

Dated: September 30, 1994

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

BARRY D. SACK,

a Judge of the Hudson City Court, Columbia County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Allen Chace Miller, Jr., David Seth Michaels and Cade & Saunders, P.C. (Daniel J. Persing, Of Counsel) for Respondent

The respondent, Barry D. Sack, a judge of the Hudson City Court, Columbia County, was served with a Formal Written Complaint dated August 21, 1992, alleging, inter alia, that he was improperly involved in a matter in his court in which he was representing one of the parties as an attorney. Respondent filed an answer dated September 3, 1992.

By order dated September 23, 1992, the Commission designated Martin H. Belsky, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 21 and 22, 1992, and the referee filed his report with the Commission on May 25, 1993.

By motion dated July 14, 1993, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent opposed the motion. The administrator filed a reply to respondent's papers on August 25, 1993.

On September 8, 1993, the Commission adjourned, without date, oral argument on the motion.

On September 13, 1993, respondent was served with a second Formal Written Complaint alleging that he refused without cause to hold a scheduled preliminary hearing and that he appeared before another lawyer-judge in the same county on a case which had originated in respondent's court. Respondent answered that complaint on September 1., 1993.

By order dated October 5, 1993, the Commission designated Laurie Shanks, Esq., as referee in the second proceeding. A hearing was held on November 29 and December 6, 1993, and the referee filed her report with the Commission on April 18, 1994.

By motion dated June 6, 1994, the administrator moved to confirm the referee's report in the second proceeding. Respondent opposed the motion by cross motion dated June 16, 1994. The administrator filed a reply dated June 30, 1994.

On July 21, 1994, the Commission heard oral argument as to both motions. Respondent and his counsel appeared. Thereafter, the Commission considered the records of both proceedings and made the following findings of fact.

As to Charge I of the Formal Written Complaint dated August 21, 1992:

1. The charge is not sustained and is, therefore, dismissed.

As to Charge II of the Formal Written Complaint dated August 21, 1992:

2. Respondent has been a part-time judge of the Hudson City Court since 1989. He also practices law in Hudson.

3. On October 29, 1991, Ellen Nelson filed a complaint in the Claverack Town Court, charging Robert DeVito with Aggravated Harassment, Second Degree. Respondent appeared as counsel for Mr. DeVito on October 30, 1991, in the Claverack Town Court. A temporary Order of Protection was issued in favor of Ms. Nelson and against Mr. DeVito.

4. On October 30, 1991, Mr. DeVito also filed a complaint against Ms. Nelson, alleging Aggravated Harassment, Second Degree. His complaint was filed in respondent's court. When respondent found the complaint among his paperwork, he placed it in a bin of papers reserved for his fellow judge, John Connor, Jr.

5. Respondent then called Ms. Nelson. Ms. Nelson, Mr. DeVito and respondent were members of the same bowling team. Respondent told Ms. Nelson that Mr. DeVito had filed a complaint against her in the Hudson City Court, which Ms. Nelson knew was where respondent sat as a judge. Respondent said that he could arrange it so that she could avoid the embarrassment of arrest if she would come to the court at 9:00 A.M. on November 6, 1991. In a subsequent telephone call, respondent's private secretary, at his direction, advised Ms. Nelson that Mr. DeVito would withdraw the charge if she would drop her allegations against him.

6. Respondent was not assigned to preside in court on November 6, 1991. Nevertheless, he was in chambers when Ms. Nelson arrived at 9:00 A.M. Mr. DeVito also arrived at that time. He gave Ms. Nelson a note, which he had signed, offering to withdraw his charge if she did the same. The note was in nearly identical language to that conveyed to Ms. Nelson by respondent eight days earlier. Ms. Nelson rejected the offer. Mr. DeVito then handed the note to someone inside the court and left.

7. Shortly thereafter, respondent came to Ms. Nelson and discussed the DeVito complaint. He gave a copy of the complaint to her.

8. Sometime after 8:30 A.M. on November 6, 1991, in chambers, respondent approached the prosecutor assigned to his court, Marlene Tuczinski. Respondent suggested that the matter could be resolved if both parties withdrew their respective charges. Ms. Tuczinski said that she could not agree since another assistant district attorney was handling the case in the Claverack court. At some point, Ms. Tuczinski found the note signed by Mr. DeVito on her briefcase in the court. She asked respondent about it; he replied that it was for her "information."

9. The complaint came before Judge Connor, who recused himself. It was never transferred to another court, and Ms. Nelson never heard any more about it.

10. On November 12, 1991, respondent discussed the matter in the Claverack court with Assistant District Attorney James J. McGuire. Respondent suggested a mutual withdrawal of charges. Mr. McGuire also responded that he could not agree to withdraw a complaint in another court.

11. On March 25, 1992, Mr. DeVito was charged with violating the temporary Order of Protection issued on October 30, 1991. He was arrested on a charge of Criminal Contempt, Second Degree, and jailed in lieu of $2,500 bail by Justice Robert Q. Moore.

12. Mr. DeVito called respondent, who then called Claverack Town Justice Thomas Gibbons without notice to the District Attorney's Office. Respondent gave Judge Gibbons general information about the charge, told him that he bowled with Mr. DeVito, said that he was a longtime Hudson resident who always appeared as scheduled in court and asked that he be released on his own recognizance.

13. Judge Gibbons ordered Mr. DeVito released. He testified that he would not have done so if he had been told that the allegations involved a violation of an Order of Protection.

As to Charge III of the Formal Written Complaint dated August 21, 1992:

14. The charge is not sustained and is, therefore, dismissed.

As to Charge I of the Formal Written Complaint dated September 13, 1993:

15. The charge is not sustained and is, therefore, dismissed.

As to Charge II of the Formal Written Complaint dated September 13, 1993:

16. On November 12, 1992, Bryan Cole was charged with Aggravated Harassment, Second Degree. The charge was filed in respondent's court. As an attorney, respondent had represented Mr. Cole. When he learned that the Aggravated Harassment charge was to come before him, he disqualified himself.

17. Judge Connor also disqualified himself. He and respondent signed a statement to that effect on December 7, 1992. The case was transferred to the Kinderhook Town Court, Columbia County, and was scheduled to come before Justice Joseph A. Cutro on April 27, 1993. Judge Cutro is a part-time justice who practices law in Kinderhook.

18. On April 27, 1993, Mr. Cole called respondent and asked him to appear with him that evening in the Kinderhook Town Court.

19. Respondent called Judge Cutro and asked that the matter be adjourned. Thereafter, he negotiated a plea to a reduced charge of Harassment. On June 8, 1993, respondent submitted to Judge Cutro a plea in writing to the reduced charge.

20. Respondent knew at the time that he was not permitted to appear as counsel on any matter that had originated in his court. Nonetheless, he took no action to determine whether the charge against Mr. Cole had originated in his court. He testified that he never saw the Information in the matter which clearly identifies it as having been filed in respondent's court, and he claimed that he did not remember disqualifying himself from a criminal case involving Mr. Cole five months earlier.

21. Respondent knew at the time of his representation of Mr. Cole that he was not permitted to appear before another part-time lawyer-judge in the same county. Nonetheless, he took no steps to determine whether Judge Cutro was licensed to practice law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Judiciary Law §16; the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2, 100.2(a), 100.3(a)(1), 100.3(a)(4) and 100.5(f), and Canons 1, 2, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charge II of the Formal Written Complaint dated August 21, 1992, and Charge II of the Formal Written Complaint dated September 13, 1993, are sustained, and respondent's misconduct is established. Charges I and III of the Formal Written Complaint dated August 21, 1992, and Charge I of the Formal Written Complaint dated September 13, 1993, are dismissed.

A judge who is permitted to practice law is required, nevertheless, to distinguish scrupulously between the judicial function and his or her role as advocate. (Matter of Jacon, 1984 Ann Report of NY Commn on Jud Conduct, at 99, 101). A part-time lawyer-judge may not practice law in his or her own court or in any court in the same county presided over by another part-time lawyer-judge. (Rules Governing Judicial Conduct, 22 NYCRR 100.5[f]). A judge may not accept employment as an attorney in any case which originated in the judge's court, whether or not he or she took any action as a judge. (Judiciary Law §16; Matter of Bruhn, 1988 Ann Report of NY Commn on Jud Conduct, at 133, 136; Matter of Feeney, 1988 Ann Report of NY Commn on Jud Conduct, at 159, 161). Respondent disregarded these limitations in the DeVito and Nelson matters and in the Cole case.

As a judge, respondent should have had no involvement in the DeVito and Nelson matters since the charge against Ms. Nelson was pending in his own court, he was representing Mr. DeVito and he had disqualified himself. As a lawyer representing Mr. DeVito in the complaint brought by Ms. Nelson, respondent should not have approached the complaining witness in a criminal matter being prosecuted by the district attorney. Yet respondent summoned Ms. Nelson to the courthouse where, she knew, he presided as a judge, provided her with a criminal complaint bearing the court's caption and conveyed to her through his private secretary, rather than the prosecutor, a proposed settlement of the matter. Rather than carefully distinguishing between his roles as lawyer and judge, respondent confused them. Consequently, a reasonable person might question whether he was using his judicial office to benefit a client of his legal practice.

His ex parte call to Judge Gibbons was also improper. (Rules Governing Judicial Conduct, 22 NYCRR 100.3[a][4]).

In Cole, respondent made no effort to determine whether the case was the one from which he had earlier disqualified himself as a judge or whether Judge Cutro was permitted to practice law. Respondent clearly violated the Judiciary Law by representing a client in a case which had originated in his court and breached the Rules Governing Judicial Conduct by appearing before another judge of the same county who is permitted to practice law. Standing alone, such conduct might not warrant severe sanction. It is exacerbated, however, by the fact that it occurred after charges against respondent concerning the Nelson matter had been served and heard and were pending before this Commission. (See, Matter of Sims v State Commission on Judicial Conduct, 61 NY2d 349, 357).

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

Mr. Berger, Ms. Barnett, Judge Braun, Mr. Cleary, Mr. Goldman, Judge Newton, Judge Salisbury and Mr. Sheehy concur as to sanction.

Mr. Cleary and Mr. Goldman dissent only as to the allegation in Paragraph 8 of Charge II of the Formal Written Complaint dated August 21, 1992, concerning respondent's ex parte telephone call to Judge Gibbons. While they believe that such an ex parte communication was improper, since the referee determined that ex parte telephone calls from an attorney to a judge with respect to bail applications are common in Columbia County, they do not believe that respondent's conduct constituted judicial misconduct.

Judge Thompson was not present.

Dated: September 29, 1994

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

BARRY SALMAN,

a Justice of the Supreme Court, Bronx County.

APPEARANCES:

Gerald Stern (Robert H. Tembeckjian, Of Counsel) for the Commission

Damashek, Godosky & Gentile (By Richard Godosky) for Respondent

The respondent, Barry Salman, a justice of the Supreme Court, 12th Judicial District, was served with a Formal Written Complaint dated August 27, 1993, alleging that he engaged in improper political activity. Respondent filed an answer dated September 28, 1993.

On December 1, 1993, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts and jointly recommending that respondent be censured.

Counsel submitted memoranda as to sanction. Oral argument was waived.

On December 9, 1993, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Supreme Court since May 1990. He was a candidate for Supreme Court in the November 1990 election and formed the Committee to Elect Justice Barry Salman to the Supreme Court. He won the election on November 6, 1990. Respondent was a judge of the Civil Court of the City of New York from 1978 to 1990.

2. On June 28, 1990, with respondent's knowledge and approval, the Committee to Elect Justice Barry Salman to the Supreme Court purchased eight tickets, at a total price of $2,400, to the annual dinner of the Bronx County Democratic Committee.

As to Charge II of the Formal Written Complaint:

3. With his knowledge and approval, respondent's campaign committee made the following contributions to political organizations without receipts or other records demonstrating that the sums constituted reimbursement for actual expenses made on behalf of respondent's campaign:

a) $5,000 to the Bronx Democratic Campaign Committee on October 15, 1990;

b) $1,000 to the Bronx Republican Committee on September 26, 1990;

c) $1,000 to the North Bronx Democratic Club on November 2, 1990; and,

d) $750 to the Democrats for a Better Bronx on August 19, 1990.

4. Paragraph 6(E) of Charge II is not sustained and is, therefore, dismissed.

As to Charge III of the Formal Written Complaint:

5. On November 4, 1990, using funds of the campaign committee, respondent purchased a video camcorder and a cellular car telephone for purposes unrelated to the campaign.

6. The camcorder was used by members of his family to videotape respondent's induction ceremony in December 1990, then was kept by respondent at his home.

7. After the Commission staff inquired about the purchase of the camcorder, respondent transferred it to his attorney's office. He has agreed to donate it to the Unified Court System.

8. The cellular phone was registered in respondent's name at his home address. He paid the monthly bills with personal funds.

9. After the Commission staff inquired about the purchase of the cellular phone and after consulting with the staff of the State Board of Elections, respondent estimated the depreciated value of the phone at $250 and donated that amount from his personal funds to a charity.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2, 100.7, 100.7(a)(2)(ii), 100.7(b), 100.7(c) and 100.7(e), and Canons 1, 2, 7A(1)(c), 7A(2) and 7B(2) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and respondent's misconduct is established.

It was highly improper for respondent to use campaign funds for his personal use. Campaign funds "shall not be converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party position." (Election Law §14-130). The use of the camcorder to tape his swearing-in ceremony does not excuse respondent's misconduct.

Respondent's purchase of eight tickets to a political dinner was improper since a judicial candidate may buy only two such tickets. (Rules Governing Judicial Conduct, 22 NYCRR 100.7[a][2][ii]; 1992 Opns Advisory Comm on Jud Ethics No. 92-97). This constituted improper political contributions, violated ethical rules (Rules Governing Judicial Conduct, 22 NYCRR 100.7 and Canon 7A[1][c] of the Code of Judicial Conduct) and did not comply with the law (Election Law §17-162).

Respondent also permitted his campaign committee to give a total of $7,750 to four political organizations. A judge's committee may reimburse political organizations for the proportionate share of the cost of the judge's election campaign (Opns Advisory Comm on Jud Ethics, supra), but the judge should obtain documented evidence of actual costs before the political organization is reimbursed (1984 Ann Report of NY Commn on Jud Conduct, at 46). Since respondent did not do so, we conclude that his committee's payments constituted improper political contributions.

His argument that he was unaware of the limitations on his political activity does not provide an excuse for respondent's misconduct. A judge has a responsibility to learn about and obey ethical rules (Matter of Vonder Heide v State Commission on Judicial Conduct, 72 NY2d 658, 660), and a judge who is a lawyer should be especially sensitive to ethical requirements (Matter of Bruhn, 1991 Ann Report of NY Commn on Jud Conduct, at 47, 49).

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mrs. Del Bello, Mr. Goldman, Judge Salisbury and Judge Thompson concur.

Mr. Cleary and Mr. Sheehy were not present.

Dated: January 26, 1994

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

CHARLES E. SMITH,

a Justice of the Shandaken Town Court, Ulster County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Arthur E. Teig for Respondent

The respondent, Charles E. Smith, a justice of the Shandaken Town Court, Ulster County, was served with a Formal Written Complaint dated September 30, 1993, alleging that he engaged in an angry and unseemly confrontation off the bench and that he violated the fundamental rights of a defendant in a criminal case. Respondent filed an answer dated October 20, 1993.

On January 18, 1994, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4), stipulating that the Commission make its determination based on the pleadings and the agreed upon facts, jointly recommending that respondent be censured and waiving further submissions and oral argument.

By letter dated March 16, 1994, the Commission rejected the agreed statement without prejudice to its resubmission. On March 30, 1994, the parties submitted an amended agreed statement. On June 9, 1994, the Commission approved the agreed statement as amended and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Shandaken Town Court since 1978. He is also chief of the local fire department.

2. On July 11, 1992, the Village of Pine Hill in the Town of Shandaken held its annual street fair. As fire chief, respondent responded to a call for emergency assistance and drove through the street fair. The call proved to be a false alarm. Respondent became angry when he found that the streets were partially blocked by vendors' tables and barricades. He ordered the removal of the tables and barricades.

3. Respondent engaged in an angry confrontation with the organizer of the street fair. As respondent was criticizing the organizer for blocking the streets, the organizer attempted to walk away. Respondent grabbed him by the shoulders and forcibly turned him around in order to prevent him from leaving.

4. This confrontation was witnessed by numerous people. Twenty-six of them signed statements denouncing respondent's behavior in driving through the fair and confronting the organizer. The confrontation was publicized in a local newspaper.

As to Charge II of the Formal Written Complaint:

5. On July 18, 1991, Richard L. Williams appeared before respondent for arraignment on a charge of Issuing a Bad Check.

6. Respondent violated the defendant's fundamental rights in that he:

a) failed to take steps to effectuate the defendant's right to assigned counsel, in violation of CPL 170.10(4) and (6);

b) convicted the defendant at arraignment without either a formal guilty plea or a trial;

c) sentenced the unrepresented defendant to restitution of $554 and 90 days in jail in lieu of payment of a fine, even though the maximum sentence in lieu of fine or restitution, or both, was one month, pursuant to Penal Law §70.15(2) and CPL 420.10(4)(b);

d) failed to resentence the defendant after he informed respondent that he was unable to pay a fine and restitution, as required by CPL 420.10(5);

e) failed to accord the prosecutor, defense counsel or the defendant an opportunity to make a statement with respect to any matters relevant to sentence, as required by CPL 380.50;

f) failed to adjourn the matter and sentenced the defendant without the benefit of a presentence report or a fingerprint report, contrary to CPL 380.30;

g) failed to inquire, before pronouncing sentence, whether the defendant desired an adjournment, as required by CPL 380.30;

h) failed to advise the defendant that respondent intended to treat the accusatory instrument as the basis for sentencing the defendant on multiple charges, even though it referred to only a single instance and a single fraudulent check, and failed to advise the defendant that any admission that he made concerning the single allegation charged in the accusatory instrument would be regarded as a guilty plea to more than one charge; and,

i) gave the defendant inadequate notice as to the pending charge in the accusatory instrument, convicted the defendant and imposed sentence on unwritten charges, failed to advise the defendant that respondent would treat each check as a separate charge and failed to ask the defendant to plead to each of what respondent was treating as separate charges.

As to Charge III of the Formal Written Complaint:

7. By his conduct in People v Richard L. Williams on July 18, 1991, respondent conveyed the appearance of bias.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.3(a)(1) and 100.3(a)(4), and Canons 1, 2A, 3A(1) and 3A(4) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's angry and unseemly confrontation at a street fair diminished respect for the judiciary. "Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function." (Matter of Kuehnel v State Commission on Judicial Conduct, 49 NY2d 465, 469). Respondent's physical treatment of the fair organizer was improper and undermined his effectiveness on the bench since he engaged in conduct that he is often required to judge. (See, Matter of Wray, 1992 Ann Report of NY Commn on Jud Conduct, at 77, 80).

By his summary treatment of Mr. Williams at arraignment, respondent ignored important procedural requirements, denied the defendant fundamental rights, abused his powers as a judge and abandoned his proper role as a neutral and detached magistrate (see, Matter of Wood, 1991 Ann Report of NY Commn on Jud Conduct, at 82, 86). A pattern of such conduct in numerous cases might well lead to removal. (See, Matter of McGee v State Commission on Judicial Conduct, 59 NY2d 870).

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

All concur.

Dated: June 16, 1994

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

RICHARD H. TIFFANY,

a Justice of the Croghan Town Court, Lewis County.

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission

The respondent, Richard H. Tiffany, a justice of the Croghan Town Court, Lewis County, was served with a Formal Written Complaint dated July 8, 1993, alleging that he failed to deposit and remit court funds in a timely manner and that he failed to cooperate with the Commission. Respondent did not answer the Formal Written Complaint.

By motion dated September 24, 1993, the administrator of the Commission moved for summary determination and a finding that respondent's misconduct be deemed established. Respondent did not file any papers in response thereto. By determination and order dated October 28, 1993, the Commission granted the administrator's motion.

The administrator submitted a memorandum as to sanction. Respondent did not submit any papers or request oral argument.

On December 9, 1993, the Commission considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Croghan Town Court and was during the time herein noted.

2. Between April 1992 and February 1993, as denominated in Schedule A*appended hereto, respondent failed to deposit court funds into his official account within 72 hours of receipt, as required by the Uniform Civil Rules for the Justice Courts, 22 NYCRR 214.9(a). During this 11-month period, respondent made only one deposit, even though he had received court funds each month. By the end of the period, he had received $3,111.74 more than he had deposited.

*Schedules A and B have not been reproduced for this report.

As to Charge II of the Formal Written Complaint:

3. Between April 1992 and May 1993, as denominated in Schedule B appended hereto, spondent failed to remit court funds to the state comptroller by the tenth day of the month following llection, as required by UJCA 2020 and 2021(1), Vehicle and Traffic Law §1803 and Town Law §27(1). As September 15, 1993, respondent had remitted no money at all since the previous March.

As to Charge III of the Formal Written Complaint:

4. Between October 1985 and July 1993, respondent failed to perform the administrative ties of his office in that he:

a) failed to notify the Department of Motor Vehicles of the disposition of 272 traffic tickets, required by Vehicle and Traffic Law §514(1)(a); and,

b) with respect to 170 traffic tickets, failed to notify the Department of Motor Vehicles of the fendants' failure to appear in court or otherwise answer the charges or to pay fines imposed by the court, as quired by Vehicle and Traffic Law §514(3).

As to Charge IV of the Formal Written Complaint:

5. Respondent failed to cooperate in a duly-authorized Commission investigation in that he:

a) failed to respond to letters sent certified mail by staff counsel on September 24 and tober 20, 1992; and,

b) failed to appear for the purpose of giving testimony on May 18, 1993, even though he was tified by letter dated May 5, 1993, that his appearance was required pursuant to Judiciary Law §44(3).

Upon the foregoing findings of fact, the Commission concludes as a matter of law that pondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.3, 100.3(a)(5) and 0.3(b)(1), and Canons 1, 2A, 3, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charges I, II, III and IV the Formal Written Complaint are sustained insofar as they are consistent with the findings herein, and ndent's misconduct is established.

Respondent has neglected nearly every aspect of his administrative responsibilities, showing fference and disdain for the duties of a judge.

His failure to promptly deposit court money constitutes misconduct and raises questions about nterim use. (See, Matter of More, 1990 Ann Report of NY Commn on Jud Conduct, at 140, 141). The re to remit court funds to the state is also misconduct. (Matter of Ranke, 1992 Ann Report of NY mn on Jud Conduct, at 64). Respondent has offered no excuse or mitigating factor which would moderate otherwise severe penalty to be imposed for such ethical breaches. (See, Matter of Rater v State mission on Judicial Conduct, 69 NY2d 208, 209).

Respondent has also failed in 170 cases to use the legal means available to him to compel ndants to answer charges properly lodged in his court or to pay fines that he had imposed. This permits ndants to avoid legal process by ignoring the summonses or the fines levied against them. As a result, ondent promoted disrespect for the law and the judiciary. (See, Matter of Ware, 1991 Ann Report of NY mn on Jud Conduct, at 79, 80-81).

Moreover, by his failure to cooperate in the Commission investigation, respondent has compounded the misconduct and further exhibited flagrant disregard of his obligations as a judge.

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mrs. Del Bello, Mr. Goldman, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Mr. Cleary was not present.

Dated: January 26, 1994

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

STANLEY YUSKO,

a Justice of the Coxsackie Village Court, Greene County.

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Dennis B. Schlenker for Respondent

The respondent, Stanley Yusko, a justice of the Coxsackie Village Court, Greene County, was served with a Formal Written Complaint dated November 24, 1992, alleging, inter alia, that he failed to comply with the law in several cases, attempted to coerce a defendant to cooperate with the police and made improper comments to a defendant. Respondent filed an answer dated December 10, 1992.

By order dated January 8, 1993, the Commission designated Bernard H. Goldstein, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 16, 1993, and the referee filed his report with the Commission on May 28, 1993.

By motion dated October 28, 1993, the administrator of the Commission moved to disaffirm the referee's report, to adopt alternative findings and conclusions and for a determination that respondent be removed from office. Respondent opposed the motion by cross motion dated November 18, 1993. The administrator filed a reply on November 24, 1993.

On December 9, 1993, the Commission heard oral argument, at which respondent appeared by counsel, and thereafter considered the record of the proceeding and made the following findings of fact.

As to Charge I of the Formal Written Complaint:

1. Respondent is a justice of the Coxsackie Village Court and was during the time herein noted.

2. As set forth below, respondent committed defendants charged with misdemeanors, violations or traffic infractions to jail without setting bail in five cases, contrary to CPL 170.10(7) and 530.20(1):

Defendant	Date	Charge(s)
Gordon Brandow, Jr.	8/22/89	Assault, 3d Degree
Gordon Brandow, Jr.	11/3/89	Criminal Mischief, 4th Degree; Criminal Contempt, 2d Degree
Scott Drinkwater	9/5/89	Disorderly Conduct
Manley Moore	11/30/89	Criminal Mischief, 4th Degree; Harassment
Arnold Suarez	10/4/90	Unlicensed Operator; Failure To Comply With Officer; Failure To Obey Stop Sign; Unreasonable Speed; Failure To Keep Right; Unsafe Tire

3. At the time that he ordered the defendants held without bail, respondent was aware that the law required him to set bail or release defendants charged with misdemeanors, violations or traffic infractions.

As to Charge II of the Formal Written Complaint:

4. On October 4, 1990, Arnold A. Suarez appeared before respondent on charges of Unlicensed Operator, Failure To Comply With Officer, Failure To Obey Stop Sign, Unreasonable Speed, Failure To Keep Right and Unsafe Tire.

5. Respondent said to the defendant, "You're going to jail; no bail," and left the room. He did not advise Mr. Suarez of the charges against him and did not advise him of his rights concerning counsel, as required by CPL 170.10(2) and 170.10(4)(a).

6. Respondent committed Mr. Suarez to jail without setting bail, as required by CPL 170.10(7) and 530.20(1).

7. Mr. Suarez returned to court on October 10, 1990. Respondent set bail at $500 and recommitted him to jail until October 24, 1990.

8. On October 24, 1990, Mr. Suarez returned to court with an assistant public defender, who persuaded respondent to release the defendant. Mr. Suarez was released after spending 21 days in jail, even though the maximum period that he could properly be held awaiting trial was five days, pursuant to CPL 30.30(2)(d).

9. Respondent was aware at the time that he was required by law to set bail or release defendants charged with traffic infractions and was aware that a defendant charged with traffic infractions could not properly be held awaiting trial for more than five days.

As to Charge III of the Formal Written Complaint:

10. On October 31, 1990, Arnold Suarez's twin brother, Ronald, was charged with Disorderly Conduct based on an allegation that he had thrown an egg at the truck of the mayor of Coxsackie.

11. Ronald Suarez appeared in court about a week later. He was told outside the courtroom by police officers that respondent would dismiss the charge if Mr. Suarez would give information concerning the vandalism of respondent's home, which had also occurred on Halloween.

12. In court, respondent asked the defendant whether he would tell what had happened to respondent's house. Mr. Suarez said that he did not know. Respondent adjourned the case and said that he would give Mr. Suarez time to decide what to do.

13. In June 1991, Mr. Suarez was charged with a burglary. The Disorderly Conduct charge was still pending. Respondent told Mr. Suarez in the police station that he would drop both charges if Mr. Suarez told him what had happened at respondent's house on Halloween. If not, he would make sure that Mr. Suarez went to prison, respondent said. The burglary charge was later dismissed.

14. In July 1991, Mr. Suarez was again charged with Disorderly Conduct and with Resisting Arrest. The first Disorderly Conduct charge was still pending.

15. Mr. Suarez originally appeared before another judge on the new charges and was held on $100 bail on July 22, 1991. On July 31, 1991, he returned to court before respondent, who increased bail to $1,000 without making any inquiry of the defendant. Mr. Suarez returned to jail.

16. On September 11, 1991, the defendant returned to court without an attorney. He asked to be released, but respondent returned him to jail in lieu of $1,000 bail.

17. On October 2, 1991, Mr. Suarez reappeared before respondent without counsel. Respondent told him that, if he pleaded guilty to Disorderly Conduct and Resisting Arrest, respondent would release him. Mr. Suarez pleaded guilty and was released after spending 72 days in jail, 64 of them pursuant to respondent's orders. The maximum time that he could properly be held awaiting trial was 30 days, pursuant to CPL 30.30(2)(b).

As to Charge IV of the Formal Written Complaint:

18. The charge is not sustained and is, therefore, dismissed.

As to Charge V of the Formal Written Complaint:

19. On June 12, 1991, Kevin J. Brockett appeared before respondent on a charge of Criminal Mischief, 3d Degree. Referring to a previous appearance at which Mr. Brockett had been intoxicated, respondent angrily accused the defendant of directing foul remarks at him. Respondent demanded an apology and said that, if he had not been wearing his robes, he would have thrown Mr. Brockett's "ass" through a wall. Mr. Brockett apologized.

20. Because of respondent's remarks, Mr. Brockett felt compelled to accept a plea bargain and pleaded guilty to a misdemeanor.

21. The allegations of Paragraphs 14, 15, 16(a) and 17 of Charge V are not sustained and are, therefore, dismissed.

As to Charge VI of the Formal Written Complaint:

22. The charge is not sustained and is, therefore, dismissed.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a), 100.3 and 100.3(a)(1), and Canons 1, 2A, 3 and 3A(1) of the Code of Judicial Conduct. Charges I, II and III and subsections (b) and (c) of Paragraph 16 of Charge V are sustained, and respondent's misconduct is established. Charges IV and VI and Paragraphs 14, 15, 16(a) and 17 of Charge V are dismissed.

Respondent has failed to follow the law, exhibited bias and undignified demeanor and abused the powers of his office in order to further his personal interests.

Respondent did not comply with his ethical obligations to follow the law when, in five cases, he sent to jail without setting bail defendants charged with misdemeanors, violations or traffic infractions (see, CPL 170.10[7], 530.20[1]; Matter of LaBelle v State Commission on Judicial Conduct, 79 NY2d 350); when he failed to advise Arnold Suarez of his rights concerning counsel on traffic charges (see, CPL 170.10[4][a]), and when he held defendants in jail awaiting trial for periods longer than those allowed by law (see, CPL 30.30[7], [c] and [d]; Matter of Jutkofsky, 1986 Ann Report of NY Commn on Jud Conduct, at 111).

In the Ronald Suarez case, respondent abandoned his proper role as an independent and impartial judge (see, Matter of Wilkins, 1986 Ann Report of NY Commn on Jud Conduct, at 173, 175) and attempted to coerce the defendant into providing information that respondent suspected he possessed concerning vandalism at respondent's home. In furtherance of this personal cause, respondent kept the defendant in jail in lieu of bail for 64 days awaiting trial, even though the law mandates release after 30 days. Respondent should not have played a role in seeking a "deal" for his own benefit, and it was especially improper to deny the defendant a fundamental right in an attempt to gain his cooperation. (See, Matter of Perry, 53 AD2d 882 [2d Dept]).

Respondent's remarks to Mr. Brockett conveyed the impression of bias and the reasonable impression to the defendant that he must plead guilty.

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

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mr. Goldman, Judge Salisbury and Judge Thompson concur as to sanction.

Judge Salisbury dissents only as to Paragraph 16(a) of Charge V and votes that that allegation be sustained.

Mrs. Del Bello dissents as to Paragraph 16(a) of Charge V and votes that that allegation be sustained, dissents as to Charge VI and votes that the charge be sustained and dissents as to sanction and votes that respondent be removed from office.

Mr. Cleary and Mr. Sheehy were not present.

Dated: January 27, 1994

TABLE OF COMPLAINTS PENDING AS OF DECEMBER 31, 1993

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING								
NON-JUDGES								
DEMEANOR		12	10	7	2	1	2	34
DELAYS			3				1	4
CONFLICT OF INTEREST		2		3	3	1	3	12
BIAS		2					2	4
CORRUPTION		2	1				1	4
INTOXICATION		1					1	2
DISABILITY/QUALIFICATIONS								
POLITICAL ACTIVITY			4	4			3	11
FINANCES/RECORDS/TRAINING		2		6	3	3	3	17
TICKET-FIXING		1	2	1				4
ASSERTION OF INFLUENCE		1	1	3			1	6
VIOLATION OF RIGHTS		7	13	5	6	1	3	35
MISCELLANEOUS		1	17	1	1		1	21
TOTALS		31	51	30	15	6	21	154

*Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office.

TABLE OF NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 1994

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	513							513
NON-JUDGES	153							153
DEMEANOR	140	41	14	2				197
DELAYS	62	4	1					67
CONFLICT OF INTEREST	19	10	8		1			38
BIAS	57	5	2					64
CORRUPTION	28	8	2					38
INTOXICATION	1	2		1				4
DISABILITY/QUALIFICATIONS	2	2	2		1			7
POLITICAL ACTIVITY	9	9	1	1				20
FINANCES/RECORDS/TRAINING	6	14	4	2	2			28
TICKET-FIXING	1				2			3
ASSERTION OF INFLUENCE	5	2	2	1				10
VIOLATION OF RIGHTS	221	45	11	1		1		279
MISCELLANEOUS	13	4						17
TOTALS	1230	146	47	8	6	1		1438

*Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office.

ALL COMPLAINTS CONSIDERED IN 1994: 1438 NEW & 154 PENDING FROM 1993

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	513							513
NON-JUDGES	153							153
DEMEANOR	140	53	24	9	2	1	2	231
DELAYS	62	4	4				1	71
CONFLICT OF INTEREST	19	12	8	3	4	1	3	50
BIAS	57	7	2				2	68
CORRUPTION	28	10	3				1	42
INTOXICATION	1	3		1			1	6
DISABILITY/QUALIFICATIONS	2	2	2		1			7
POLITICAL ACTIVITY	9	9	5	5			3	31
FINANCES/RECORDS/TRAINING	6	16	4	8	5	3	3	45
TICKET-FIXING	1	1	2	1	2			7
ASSERTION OF INFLUENCE	5	3	3	4			1	16
VIOLATION OF RIGHTS	221	52	24	6	6	2	3	314
MISCELLANEOUS	13	5	17	1	1		1	38
TOTALS	1230	177	98	38	21	7	21	1592

*Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office.

ALL COMPLAINTS CONSIDERED SINCE THE COMMISSION'S INCEPTION IN 1975

SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	*DISMISSED*	*DISMISSAL & CAUTION*	*RESIGNED*	*CLOSED**	*ACTION**	
INCORRECT RULING	7167							7167
NON-JUDGES	1832							1832
DEMEANOR	1334	53	673	147	50	52	125	2434
DELAYS	692	4	69	40	7	11	16	839
CONFLICT OF INTEREST	313	12	296	95	39	17	90	862
BIAS	917	7	165	30	17	13	15	1164
CORRUPTION	177	10	62	6	19	10	12	296
INTOXICATION	30	3	27	7	4	3	13	87
DISABILITY/QUALIFICATIONS	35	2	23	2	14	7	6	89
POLITICAL ACTIVITY	147	9	106	101	5	13	14	395
FINANCES/RECORDS/TRAINING	141	16	119	69	80	66	69	560
TICKET-FIXING	20	1	69	153	35	60	158	496
ASSERTION OF INFLUENCE	92	3	82	34	8	5	26	250
VIOLATION OF RIGHTS	845	52	128	54	17	9	9	1114
MISCELLANEOUS	608	5	212	71	21	33	54	1004
TOTALS	14,350	177	2031	809	316	299	607	18,589

*Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admoniton, censure and removal from office by the Commission since its inception in 1978, as well as suspensions and disciplinary proceedings commenced in the courts by the temporary and former commissions on judicial conduct operating from 1975 to 1978.