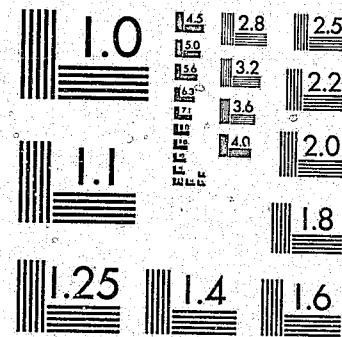


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6/29/83

ANNUAL REPORT

March 1981

New York State
Commission on Judicial Conduct



83110

1981 ANNUAL REPORT
OF THE
NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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DAVID BROMBERG, ESQ.
HONORABLE RICHARD J. CARDAMONE
MRS. DOLORES DEL BELLO
MICHAEL M. KIRSCH, ESQ.
VICTOR A. KOVNER, ESQ.
WILLIAM V. MAGGIPINTO, ESQ.
HONORABLE ISAAC RUBIN
HONORABLE FELICE K. SHEA
CARROLL L. WAINWRIGHT, JR., ESQ.

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CARROLL L. WAINWRIGHT, JR.
CLERK
ROBERT H. TEMBECKJIAN

*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. The report
covers the period from January 1, 1980, through
December 31, 1980.

Respectfully submitted,

*Mrs. Gene Robb, Chairwoman,
On Behalf of the Commission*

March 1, 1981
New York, New York

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INTRODUCTION

The New York State Commission on Judicial Conduct was created to provide a fair disciplinary system to review complaints of judicial misconduct without encroachment on the principle of judicial independence. While the right of a judge to exercise discretion must be safeguarded, the obligation to observe high standards of conduct must also be met.

The Commission offers a forum for citizens with conduct-related complaints and helps to insure compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary. The Commission does not act as an appellate court, make judgments as to the merits of judicial decisions or rulings, or investigate complaints that judges are either too lenient or too severe toward defendants accused or convicted of crimes.

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

In 1974, the Legislature created a temporary commission which began operations in January 1975. The temporary commission was succeeded in September 1976 by a constitutional commission which in turn was succeeded by the present commission on April 1, 1978. (For the purpose of clarity, the Commission which operated from September 1, 1976, through March 31, 1978, will henceforth be referred to as the "former" Commission.)*

*A description of the two prior commissions, their composition and workload, is set forth in Appendix B.

STATE COMMISSION ON JUDICIAL CONDUCT

Authority

The State Commission on Judicial Conduct 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 VI, 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.

The Commission does not act as an appellate court. It does not review judicial decisions or alleged errors of law, does not issue advisory opinions, does not give legal advice and does not represent litigants. When appropriate, it refers complaints to other agencies.

By provision of the State Constitution (Article VI, 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, 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), 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 no review is sought within 30 days of service, 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 circumstances warrant such comment.

Procedures

The Commission convenes at least once a month. At its meetings, the Commission reviews each new complaint of misconduct and makes an initial decision whether to conduct an investigation 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 business.

No investigation may be commenced by staff without prior authorization by the Commission. Similarly, the filing of formal charges must be authorized by the Commission.

After the Commission authorizes an investigation, the complaint is assigned to a staff attorney, who is responsible for conducting the inquiry and supervising the 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 is present. Although an investigative appearance is not an adversary 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 the administrator to serve upon the judge a Formal Written Complaint containing specific charges of misconduct. The Formal Written Complaint institutes the adversary 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 are not resolved by an agreed statement of facts, the Commission appoints a referee to conduct a hearing and report to the Commission. Referees are designated by the Commission from a panel of attorneys and former judges. Following receipt of the referee's report, on 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 judge 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 of an adversarial nature in cases in which Formal Written Complaints have been served and proceedings are pending before it, 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 investigatory or adjudicative proceedings.

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 transmits it to the respondent. Upon completion of the transmittal to the respondent, the Commission's determination and the record of its proceedings become public. (Prior to this point, by operation of the strict confidentiality provisions in Article 2-A of the Judiciary Law, all proceedings and records are private.) The respondent-judge has 30 days to request review of the Commission's determination by the Court of Appeals. The Court may accept or reject the determined sanction, impose a less or more severe sanction, or impose no sanction. If no request for review is made within 30 days, the sanction determined by the Commission becomes effective.

Membership and Staff

The Commission is composed of 11 members serving initial terms from one to four years, after which all appointments are for four years. 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 chairwoman of the Commission is Mrs. Gene Robb of Newtonville. The other members are: Honorable Fritz W. Alexander, II, of New York City, Justice of the Supreme Court, First Judicial District; David Bromberg, Esq., of New Rochelle; Honorable Richard J. Cardamone of Utica, Associate Justice of the Appellate Division, Fourth Judicial Department; Dolores DelBello of Hastings-on-Hudson; Michael M. Kirsch, Esq., of Brooklyn; Victor A. Kovner, Esq., of New York City; William V. Maggipinto, Esq., of Southampton; Honorable Felice K. Shea of New York City, Judge of the Civil Court of the City of New York (and Acting Justice of the Supreme Court, First Judicial District); Honorable Isaac Rubin of Rye, Justice of the Supreme Court, Ninth Judicial District; and Carroll L. Wainwright, Jr., Esq., of New York City. The administrator of the Commission is Gerald Stern, Esq. The clerk of the Commission is Robert H. Tembeckjian.*

*Biographies are appended.

The Commission has 50 full-time staff employees, including 14 attorneys. During the summer of 1980, eight student interns, mostly law students, were hired for a three-month period. A limited number of law students are also employed throughout the year on a part-time basis.

The Commission's principal office is in New York City. Offices are also maintained in Albany and Rochester. During all of 1980 the Commission maintained an office in Buffalo. That office was closed on February 27, 1981, at which time the Rochester office was opened.

COMPLAINTS AND INVESTIGATIONS IN 1980

In 1980, 692 new complaints were received. Of these, 546 were dismissed upon initial review, and 146 investigations were authorized and commenced.* As in previous years, the majority of complaints were submitted by civil litigants and complainants and defendants in criminal cases. Other complaints were received from attorneys, judges, law enforcement officers, civic organizations and concerned citizens not involved in any particular court action. Among the new complaints were 34 initiated by the Commission on its own motion.

The Commission continued 214 investigations and formal proceedings pending as of December 31, 1979.

Some of the new complaints dismissed upon initial review were frivolous or outside the Commission's jurisdiction (such as complaints against attorneys or judges not within the state unified court system). Many were from litigants who complained about a particular ruling or decision made by a judge in the course of a proceeding. Absent any underlying misconduct, such as demonstrated prejudice, intemperance or conflict of interest, the Commission does not investigate such matters, which belong in the appellate courts. Judges must be free to act, in good faith, without fear of being investigated for their rulings or decisions.

*The statistical period in this report is January 1, 1980, through December 31, 1980. Statistical analysis of the matters considered by the temporary, former and present Commissions is appended in chart form.

Of the combined total of 360 investigations and formal proceedings conducted by the Commission in 1980 (214 continued from 1979 and 146 authorized in 1980), the Commission considered and dismissed outright 97 complaints after investigations were completed. Investigation of 57 complaints resulted in a sanction, 39 resulted in a cautionary reminder to the judge, and seven were closed upon resignation of the judge from office.

Eleven investigations were closed upon vacancy of office due to the judge's retirement or failure to win re-election.

One hundred forty-nine investigations or formal proceedings were pending at the end of the year.

ACTION TAKEN IN 1980

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 unless the respondent has been afforded an opportunity for an adversary hearing. These proceedings fall within the confidentiality provisions of the Judiciary Law and are not public.

In 1980, the Commission authorized Formal Written Complaints against 28 judges.

The confidentiality provisions of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibit public disclosure by the Commission with respect to charges served, hearings commenced or any other matter until a case has been concluded and a final determination has been filed with the Chief Judge of the Court of Appeals and forwarded to the respondent-judge. Following are summaries of those matters which were completed during 1980 and made public pursuant to the applicable provisions of the Judiciary Law.

Determinations of Removal

The Commission completed seven disciplinary proceedings in 1980 in which it determined that the judge involved should be removed from office.

Matter of Jerome L. Steinberg

Jerome L. Steinberg was a judge of the Civil Court of the City of New York. He was served with a Formal Written Complaint dated February 1, 1979, alleging that he had improperly involved himself in several loan transactions and other business matters, and that in connection therewith, inter alia, he failed to report certain income to the Internal Revenue Service, conducted financial business in chambers and on numerous occasions used the name of another person to conceal his judicial identity.

A hearing was held before a referee, the Honorable Bertram Harnett. Motion papers were filed with respect to the referee's report to the Commission. Judge Steinberg appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated March 21, 1980, that Judge Steinberg be removed from office. A copy of the determination is appended.

Judge Steinberg requested review of the Commission's determination by the Court of Appeals. On July 1, 1980, the Court unanimously accepted the Commission's determination and removed Judge Steinberg from office.

Matter of Brent Rogers

Brent Rogers is a justice of the Town Court of Brookfield, Madison County. He was served with a Formal Written Complaint dated September 6, 1979, alleging (i) that he had

failed to report and remit to the State Comptroller more than \$1,800 received in his judicial capacity over a 19-month period and (ii) that he failed to cooperate with the Commission's inquiry in that he did not respond to three letters requesting his comments on the matter. Judge Rogers answered the Formal Written Complaint with a letter dated November 4, 1979.

The Commission granted the administrator's motion for summary determination on January 30, 1980, finding respondent's misconduct established. Judge Rogers waived submission of papers and oral argument as to appropriate sanction.

The Commission filed with the Chief Judge its determination dated April 9, 1980, that Judge Rogers be removed from office. A copy of the determination is appended.

Judge Rogers requested review of the Commission's determination by the Court of Appeals. On November 13, 1980, the Court accepted the Commission's finding that respondent's misconduct had been established but modified the sanction from removal to censure.

Matter of Robert M. King

Robert M. King was a justice of the Town Court of Granville, Washington County. He was served with a Formal Written Complaint dated November 29, 1979, alleging that over a 15-month period he (i) failed to make timely deposits in official court accounts of monies received in his judicial

capacity and (ii) failed to report or remit to the State Comptroller \$2,480 in fines received. Judge King did not file an answer to the Formal Written Complaint but submitted a letter stating he had remitted to the Comptroller all funds due and had resigned.

The Commission granted the administrator's motion for summary determination on March 6, 1980, finding respondent's misconduct established. Judge King waived submission of papers and oral argument as to appropriate sanction.

The Commission filed with the Chief Judge its determination dated April 29, 1980, that Judge King should be removed from office. A copy of the determination is appended.

Judge King did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on June 3, 1980.

Matter of Edwin P. Seaton

Edwin P. Seaton was a justice of the Town Court of Chautauqua and the Village Court of Mayville, Chautauqua County. He was served with a Formal Written Complaint dated August 10, 1979, alleging (i) that he presided over two motor vehicle cases in which his son was the defendant and (ii) that over a 10-year period he failed to observe numerous fiduciary and records-keeping responsibilities, including making timely deposits, reports and remittances of monies received in his

official capacity. Respondent filed an answer on September 9, 1979.

The Commission granted the administrator's motion for summary determination on January 30, 1980, finding respondent's misconduct established. Papers were submitted as to appropriate sanction. Judge Seaton waived oral argument.

The Commission filed with the Chief Judge its determination dated May 8, 1980, that Judge Seaton be removed from office. A copy of the determination is appended.

Judge Seaton notified the Court that he accepted the Commission's determination. The Court accordingly ordered his removal from office on June 2, 1980.

Matter of Patricia Cooley

Patricia Cooley is a justice of the Village Court of Alexandria Bay, Jefferson County. She was served with a Formal Written Complaint dated February 13, 1980, alleging that she (i) failed to report and remit in a timely manner to the State Comptroller monies received in her judicial capacity over a 12-month period, (ii) failed to make entries in her docket and cash books over a 9-month period and (iii) failed to respond to inquiries by the Office of Court Administration and the Commission with respect thereto. Judge Cooley did not file an answer.

The Commission granted the administrator's motion for summary determination on April 30, 1980, finding respondent's misconduct established. Judge Cooley waived submission of papers and oral argument as to appropriate sanction.

The Commission filed with the Chief Judge its determination dated September 9, 1980, that Judge Cooley be removed from office. A copy of the determination is appended.

Judge Cooley requested review of the Commission's determination by the Court of Appeals. As of December 31, 1980, the matter was pending in the Court.

Matter of David L. Hollebrandt

David L. Hollebrandt was a justice of the Town Court of Sodus, Wayne County. He was served with a Formal Written Complaint dated February 11, 1980, alleging (i) that there were numerous financial and reporting deficiencies in his court accounts and records and (ii) that he had pled guilty of Official Misconduct, a misdemeanor, as a result of these deficiencies. Judge Hollebrandt filed an answer dated March 11, 1980.

A hearing was held before a referee, the Honorable Morton B. Silberman. Judge Hollebrandt waived submission of papers and oral argument with respect to the referee's report to the Commission.

The Commission filed with the Chief Judge its determination dated November 12, 1980, that Judge Hollebrandt be removed from office. A copy of the determination is appended.

Judge Hollebrandt did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on December 31, 1980.

Matter of Ernest Deyo

Ernest Deyo was a justice of the Town Court of Beekmantown, Clinton County. He was served with a Formal Written Complaint dated March 5, 1980, alleging impropriety by failing to disqualify himself in ten cases in 1978 and 1979, eight of which included his brother as a party to the proceeding. Judge Deyo filed an answer dated March 13, 1980.

A hearing was held before a referee, the Honorable Harold A. Felix. Judge Deyo waived submission of papers and oral argument with respect to the referee's report to the Commission.

The Commission filed with the Chief Judge its determination dated December 18, 1980, that Judge Deyo be removed from office. A copy of the determination is appended.

Judge Deyo did not request review of the Commission's determination, and the Court of Appeals ordered his removal from office on January 26, 1981.

Determinations of Censure

Twenty-seven determinations of censure were rendered by the Commission in 1980. Twenty-one of these were with respect to ticket-fixing cases and are discussed in a separate section on ticket-fixing in this report. The remaining censures are discussed below.

Matter of George C. Sena

George C. Sena is a judge of the Civil Court of the City of New York. He was served with a Formal Written Complaint dated January 23, 1979, alleging that his manner was impatient, undignified, discourteous and inconsiderate toward attorneys and litigants during the course of 30 different proceedings in his court. Judge Sena filed an answer dated May 11, 1979.

Judge Sena, his counsel and the Commission's administrator entered into an agreed statement of facts on October 23, 1979, stipulating to the facts substantially as alleged in the Formal Written Complaint. The Commission approved the agreed statement. Papers were filed with respect to the conclusions of law to be drawn from the stipulated facts and with respect to appropriate sanction. Judge Sena appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated January 18, 1980, that Judge Sena be censured. A copy of the determination is appended.

Judge Sena did not request review of the Commission's determination, which thus became final.

Matter of Howard Miller

Howard Miller is a justice of the Town Court of Cairo, Greene County. He was served with a Formal Written Complaint dated May 24, 1979, alleging (i) that he allowed his personal dislike for a particular plaintiff to interfere with the performance of his duties in that he failed to serve a summons or give notice of a hearing in a case involving that plaintiff and (ii) that he failed to respond to five inquiries from the Office of Court Administration and the Commission with respect thereto. Judge Miller filed an answer dated July 26, 1979.

The Commission granted the administrator's motion for summary determination on October 25, 1979, finding respondent's misconduct established. Papers were submitted as to appropriate sanction. Judge Miller waived oral argument.

The Commission filed with the Chief Judge its determination dated February 11, 1980, that Judge Miller be censured. A copy of the determination is appended.

Judge Miller did not request review of the Commission's determination, which thus became final.

Matter of Lawrence Finley

Lawrence Finley is a part-time judge of the City Court of Oneida, Madison County, and the City Court of Sherrill, Oneida County. He was served with a Formal Written Complaint dated April 30, 1979, alleging (i) that he identified himself as a judge on the stationery he used in the regular conduct of his legal practice, (ii) that he failed to disqualify himself from presiding over a matter in which he had involved himself in the preparation of the defendant's case and (iii) that he acceded to special influence on behalf of defendants in 17 traffic cases. Judge Finley filed an answer dated May 15, 1979.

The Commission granted the administrator's motion for summary determination on October 25, 1979, finding respondent's misconduct established. Papers were submitted as to appropriate sanction. Judge Finley waived oral argument.

The Commission filed with the Chief Judge its determination dated February 11, 1980, that Judge Finley should be censured. A copy of the determination is appended.

Judge Finley did not request review of the Commission's determination, which thus became final.

Matter of Norman H. Shilling

Norman H. Shilling is a judge of the Civil Court of the City of New York. He was served with a Formal Written Complaint

dated June 4, 1979, alleging that he improperly interfered in the course of a proceeding before another judge and that he lent the prestige of his office to advance the interests of a third party, a not-for-profit corporation with which he was associated. Judge Shilling filed an answer dated June 22, 1979.

A hearing was held before a referee, the Honorable James Gibson. (Pursuant to Section 44, subdivision 4, of the Judiciary Law, Judge Shilling waived confidentiality and requested that the hearing be public.) Papers were filed with respect to the referee's report to the Commission. Judge Shilling appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated April 9, 1980, that Judge Shilling be censured. A copy of the determination is appended.

Judge Shilling requested review of the Commission's determination by the Court of Appeals. On November 25, 1980, the Court accepted the Commission's finding that respondent's misconduct had been established but determined that the sanction should be removal from office.

Judge Shilling moved for reconsideration by the Court, which adhered to its original decision for removal. Judge Shilling then applied for a stay of the removal order, which was denied.

Thereafter, Judge Shilling appealed the Court's action to the Supreme Court of the United States and obtained a stay of

the removal order from Associate Justice Thurgood Marshall, pending a decision by the Court whether to accept jurisdiction.

Matter of James Hopeck

James Hopeck is a justice of the Town Court of Half-moon, Saratoga County. He was served with a Formal Written Complaint dated July 3, 1979, alleging that he (i) directed his wife to preside in court over ten traffic cases in his absence one evening, (ii) failed to disqualify himself and encouraged ex parte communication in a case involving a defendant with a familial relationship to his wife and (iii) left the bench and argued with an attorney over the attorney's conduct in court. Judge Hopeck filed an answer dated September 6, 1979.

Judge Hopeck, his counsel and the Commission's administrator entered into an agreed statement of facts on April 7, 1980, stipulating to the facts substantially as alleged in the Formal Written Complaint. The Commission approved the agreed statement. Papers were filed with respect to the conclusions of law to be drawn from the stipulated facts and with respect to appropriate sanction. Judge Hopeck waived oral argument.

The Commission filed with the Chief Judge its determination dated August 15, 1980, that Judge Hopeck be censured. A copy of the determination is appended.

Judge Hopeck did not request review of the Commission's determination, which thus became final.

Matter of Culver K. Barr

Culver K. Barr is a judge of the County Court, Monroe County. He was served with a Formal Written Complaint dated February 19, 1980, alleging various acts of misconduct arising from his arrest on two occasions for, inter alia, driving while intoxicated. The alleged misconduct included abusive language toward the arresting officers, the assertion of influence on the arresting officer, and refusal to take breathalyzer or field sobriety tests. Judge Barr filed an answer dated March 7, 1980.

Judge Barr, his counsel and the Commission's administrator entered into an agreed statement of facts on May 16, 1980, stipulating to the facts substantially as alleged in the Formal Written Complaint. The Commission approved the agreed statement. Papers were filed with respect to the conclusions of law to be drawn from the stipulated facts and with respect to appropriate sanction. Judge Barr appeared with counsel for oral argument.

The Commission filed with the Chief Judge its determination dated October 3, 1980, that Judge Barr be censured. A copy of the determination is appended.

Judge Barr did not request review of the Commission's determination, which thus became final.

Determinations of Admonition

Sixteen determinations of admonition were rendered by the Commission in 1980. Thirteen of these were with respect to

ticket-fixing cases and are discussed in a separate section in this report on ticket-fixing. The remaining admonitions are discussed below.

Matter of Theodore Wordon

Theodore Wordon is a justice of the Town Court of Durham, Greene County. He was served with a Formal Written Complaint dated February 15, 1979, alleging that he sent a letter on court stationery to a debtor on behalf of a creditor, threatening arrest if the purported debt were not satisfied. Judge Wordon filed an answer dated April 5, 1979.

Judge Wordon and the Commission's administrator entered into an agreed statement of facts on November 21, 1979, stipulating to the facts substantially as alleged in the Formal Written Complaint. The Commission approved the agreed statement. Judge Wordon waived submission of papers and oral argument with respect to the conclusions of law to be drawn from the stipulated facts and with respect to appropriate sanction.

The Commission filed with the Chief Judge its determination dated April 1, 1980, that Judge Wordon be admonished. A copy of the determination is appended.

Judge Wordon did not request review of the Commission's determination, which thus became final.

Matter of Howard J. Miller

Howard J. Miller is a justice of the Town Court of Warsaw, Wyoming County. He was served with a Formal Written Complaint dated August 7, 1978, alleging various financial records-keeping improprieties and deficiencies. Judge Miller filed an answer dated August 18, 1978.

A hearing was held before a referee, Michael Whiteman, Esq. Motion papers were filed with respect to the referee's report to the Commission. Judge Miller waived oral argument.

The Commission filed with the Chief Judge its determination dated June 4, 1980, that Judge Miller be admonished. A copy of the determination is appended.

Judge Miller did not request review of the Commission's determination, which thus became final.

Matter of Allan T. Brown

Allan T. Brown is a justice of the Town Court of Half-moon, Saratoga County. He was served with a Formal Written Complaint dated December 20, 1979, alleging that he had performed a marriage ceremony outside his jurisdiction and had failed to take appropriate steps to insure that a valid ceremony was performed. Judge Brown filed an answer dated January 11, 1980.

Judge Brown, his counsel and the Commission's administrator entered into an agreed statement of facts, stipulating in essence to the facts as alleged in the Formal Written Complaint.

The Commission approved the agreed statement. Papers were filed with respect to the conclusions of law to be drawn from the stipulated facts and with respect to appropriate sanction. Judge Brown waived oral argument.

The Commission filed with the Chief Judge its determination dated December 2, 1980, that Judge Brown be admonished. A copy of the determination is appended.

Judge Brown did not request review of the Commission's determination, which thus became final.

Dismissed Formal Written Complaints

In 1980 the Commission disposed of 18 Formal Written Complaints without rendering public discipline.

One matter was dismissed without further action upon the Commission's determination that the allegations of misconduct had not been proved.

Five matters were closed without further action upon the resignation or retirement of the judge involved.

In nine matters the Commission determined that the Formal Written Complaint had been sustained, that the judge involved had committed misconduct but that, under the circumstances, issuance of a confidential letter of dismissal and caution was the appropriate disposition. Typically, in such a case the misconduct proved to be de minimus or a technical violation of a rule.

In one matter the Commission dismissed the Formal Written Complaint without finding that the judge had committed misconduct but decided that a letter of dismissal and caution was appropriate.

In one matter the Commission directed that the Formal Written Complaint be withdrawn and that the matter be closed with a letter of dismissal and caution.

In one matter the Commission dismissed a Formal Written Complaint in the interests of justice.

Letters of Dismissal and Caution

Pursuant to Commission rule, 22 NYCRR 7000.1(1), a "letter of dismissal and caution" constitutes the Commission's written confidential suggestions and recommendations to a judge.

Where the Commission determines that allegations of misconduct or the misconduct itself do not warrant public discipline, the Commission can privately call a judge's attention to technical or de minimus violations of ethical standards which should be avoided in the future, by issuing a letter of dismissal and caution. The confidential nature of the communication is valuable since it is effective and is the only method by which the Commission may caution a judge as to his conduct without making the matter public.

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

In 1980, 39 letters of dismissal and caution were issued by the Commission, 16 of which were related to ticket-fixing. In sum total, the Commission has issued 126 letters of dismissal and caution since its inception on April 1, 1978. Of these, 14 were issued after formal charges had been sustained and determinations made that the judges had committed misconduct.

Resignations Attributable to Commission Action

Six judges resigned in 1980 while under investigation or under formal charges by the Commission.

Since 1975, 85 judges have resigned while under investigation or charges by the temporary, former or present Commission.

The jurisdiction of the temporary and former Commissions was limited to incumbent judges. An inquiry was therefore terminated if the judge resigned and the matter could not be made public. The present Commission may retain jurisdiction over a judge for 120 days following a resignation. The Commission may proceed within this 120-day period, but no sanction other than removal may be determined by the Commission 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-day period following a resignation that removal is not warranted.

Ticket-Fixing Proceedings

In June 1977, the former Commission issued a report on its investigation of a widespread practice characterized as "ticket-fixing," that is, the assertion of influence to affect decisions in traffic cases, such as a judge making a request of another judge for favorable treatment on behalf of a defendant, or acceding to such a request from judges and others with influence. A typical favor involved one judge acceding to another's request to change a speeding charge to a parking violation, or a driving-while-intoxicated misdemeanor charge to a moving or non-moving violation (such as unsafe tire or faulty muffler) on the basis of favoritism.

The Commission has pursued these matters, many of which resulted in formal disciplinary proceedings being commenced and a number of judges disciplined.

In 1980, 54 ticket-fixing matters were concluded, resulting in the following:

- 3 removals by the Court on the Judiciary for improprieties in addition to ticket-fixing (Matter of Altman, Matter of Gaiman and Matter of LaCarrubba, below);

- 1 suspension for six months without pay by the Court on the Judiciary (Matter of Lombardi, below);
- 21 censures, 20 by the Commission and one by the Court on the Judiciary;
- 13 admonitions by the Commission;
- 16 letters of dismissal and caution by the Commission.

Determinations of Censure. The Commission rendered determinations of censure with respect to the following 20 judges upon completion of formal disciplinary proceedings:

Ronald V. Bailey, a Justice of the Town Court of Chesterfield, Essex County;

George J. Briegle, a Justice of the Town Court of Sand Lake, Rensselaer County;

Harvey W. Chase, a Justice of the Town Court of Cicero, Onondaga County;

James H. Corkland, a Justice of the Town Court of Lake George, Warren County;

Wayde Earl, a Justice of the Village Court of Lake George, Warren County;

Anthony Ellis, a Justice of the Town Court of Altamont, Franklin County;

Henry R. Gabryszak, a Justice of the Town Court of Cheektowaga and the Village Court of Sloan, Erie County;

John G. Gamble, a Justice of the Town Court of Lewiston, Niagara County;

Gordon Gushee, a Justice of the Town Court of Porter, Niagara County;

R. Douglas Hirst, a Justice of the Town Court of Fishkill, Dutchess County;

Thomas W. Keegan, a Judge of the Albany City Police Court, Albany County;

Thomas J. O'Connell, a Justice of the Town Court of Brutus, Cayuga County;

Charles D. Persons, a Justice of the Town Court of Florida, Montgomery County;

Robert Radloff, a Justice of the Town Court of Lake George, Warren County;

Emmett J. Raskopf, a Justice of the Town Court of Cambria, Niagara County;

Jack Schultz, a Justice of the Town Court of DeWitt, Onondaga County;

Steve A. Skramko, a Justice of the Town Court of Warren, Herkimer County;

Thomas R. Snow, a Justice of the Town Court of Schodack, Rensselaer County;

Henry B. Wright, a Justice of the Town Court of Pavilion, Genesee County; and

C.J. Zygmunt, a Justice of the Town Court of Niagara, Niagara County.

None of the judges listed above requested review of the Commission's determination. The determinations thus became final.

Determinations of Admonition. The Commission rendered determinations of admonition with respect to the following 13 judges upon completion of formal disciplinary proceedings:

Mario Albanese, Surrogate, Fulton County;

Michael Cienava, a Justice of the Village Court of New York Mills, Oneida County;

Patrick J. Cunningham, a Judge of the County Court, Onondaga County;

Anthony Errico, a Justice of the Town Court of Gates, Monroe County;

Edward J. Flynn, a Justice of the Town Court of Clarkstown, Rockland County;

Frank L. Giza, a Justice of the Town Court of Wawayanda, Orange County;

Floyd E. Linn, a Justice of the Town Court of Clay, Onondaga County;

Morten B. Morrison, a Justice of the Town Court of Port Jervis, Chautauqua County;

David H. Rivenburgh, a Justice of the Town Court of Ghent, Columbia County;

Angelo Root, a Justice of the Town Court of Bolton, Warren County;

Milton Sardonia, a Justice of the Town Court of Bethel, Sullivan County;

Fred Schrader, a Justice of the Town Court of Canajoharie, Montgomery County; and

Vernon F. Troyer, a Justice of the Town Court of Wheatfield, Niagara County.

None of the judges listed above requested review of the Commission's determination. The determinations thus became final.

Court on the Judiciary Proceedings. Five ticket-fixing matters which were pending in the Court on the Judiciary as of December 31, 1979, were concluded during 1980. The Court

removed three judges, suspended one judge without pay for six months and censured one judge, as follows.

Justice Michael D. Altman, a justice of the Town Court of Fallsburg, Sullivan County, was removed from office by the Court on the Judiciary on March 18, 1980. (49 NY2d [i].) In addition to finding the judge guilty of misconduct with respect to numerous ticket-fixing charges, the Court also found that Judge Altman had (i) used the influence of his judicial office to benefit himself, his wife and several clients of his law practice, (ii) practiced law before the other Fallsburg Town Court justice and permitted his co-justice and his co-justice's law partner to practice before him, in violation of Section 16 of the Judiciary Law and Section 33.5(f) of the Rules Governing Judicial Conduct, (iii) practiced law before other part-time lawyer-justices in the same county, in violation of Section 33.5(f) of the Rules Governing Judicial Conduct and (iv) acted in his judicial capacity and as attorney for both the plaintiff and defendant in the same contested action.

Justice Murry Gaiman, also a justice of the Town Court of Fallsburg, Sullivan County, was also removed from office by the Court on the Judiciary on March 18, 1980. (49 NY2d[m].)

In addition to finding the judge guilty of misconduct with respect to several ticket-fixing charges, the Court also found that Judge Gaiman had (i) failed to disqualify himself from presiding over cases involving clients or former clients of his law practice and (ii) practiced law before the other Fallsburg Town Court justice, in violation of Section 33.5(f) of the Rules Governing Judicial Conduct.

Judge Gioanna LaCarrubba, a judge of the District Court, Suffolk County, was also removed from office by the Court on the Judiciary on March 18, 1980. (49 NY2d [p].) The Court found Judge LaCarrubba guilty of favoritism in cases involving a close friend, her son-in-law and a client of her son-in-law, in that she (i) improperly added the three cases to her calendar although they had been assigned to another judge, (ii) failed to disqualify herself in the cases and (iii) improperly disposed of the cases in her chambers. The Court found the judge's conduct "deceitful."

Justice Sebastian Lombardi, a justice of the Town Court of Lewiston, Niagara County, was suspended for six months without pay by the Court on the Judiciary on March 18, 1980. (49 NY2d [v].) The Court found Judge Lombardi guilty of ticket-fixing in 154 cases, five of which involved the judge's nephew appearing before the judge.

Justice Wayne G. Smith, a justice of the Town Court of Plattekill, Ulster County, was censured by the Court on the Judiciary on March 18, 1980. (49 NY2d [x].) The Court found Judge Smith guilty of 74 instances of ticket-fixing.

Summary of Ticket-Fixing Cases

From the beginning of the Commission's inquiry into ticket-fixing through 1980, actions taken with respect to ticket-fixing account for the following totals:

- 5 removals;
- 3 suspensions;
- 95 censures, one of which was modified to admonition by the Court of Appeals;
- 24 admonitions;
- 149 letters of dismissal and caution;
- 32 cases closed upon resignation of the judge;
- 55 cases closed upon vacancy of office other than by resignation; and
- 53 dismissals without action.

Eighteen ticket-fixing matters remained pending as of December 31, 1980.

SUMMARY OF COMPLAINTS CONSIDERED BY THE
TEMPORARY, FORMER AND PRESENT COMMISSIONS

Since January 1975, when the temporary Commission commenced operations, 4044 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. (Of this total, 183 either did not name a judge or alleged misconduct against someone not within the Commission's jurisdiction.)

Of the 4044 complaints received since 1975, the following dispositions have been made through December 31, 1980:

- 2533 dismissed upon initial review;
- 1511 investigations authorized;
- 656 dismissed without action after investigation;
- 246 dismissed with caution or suggestions and recommendations to the judge;
- 101 closed upon resignation of the judge;
- 87 closed upon vacancy of office by the judge other than by resignation; and
- 272 resulted in disciplinary action.

Of the 272 disciplinary matters above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commissions*:

- 21 judges were removed from office;

*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 which resulted in action and the number of judges disciplined.

- 2 removal determinations are pending appeal, one before the United States Supreme Court and one before the New York State Court of Appeals;

- 3 judges were suspended without pay for six months;

- 2 judges were suspended without pay for four months;

- 109 judges have been censured;

- 34 judges have been admonished publicly; and

- 59 judges have been admonished confidentially by the temporary or former Commissions, which had such authority.

In addition, 85 judges resigned during an investigation, upon the commencement of disciplinary proceedings or in the course of the proceedings themselves.

REVIEW OF COMMISSION DETERMINATIONS
BY THE COURT OF APPEALS

Determinations rendered by the Commission are filed with the Chief Judge of the Court of Appeals and served by the Chief Judge on the respondent-judge, pursuant to statute. The Judiciary Law allows the respondent-judge 30 days to request review of the Commission's determination by the Court of Appeals. If review is waived or not requested within 30 days, the Commission's determination becomes final.

In 1980, the Court of Appeals had before it seven Commission determinations for review, six of which were decided by the end of the year.

Matter of Norman E. Kuehnel

Norman E. Kuehnel was a justice of the Town Court of Hamburg and the Village Court of Blasdell, Erie County. On September 11, 1979, the Commission determined that he should be removed from office for misconduct, because he:

- engaged in an altercation with four youths in a grocery store parking lot in Blasdell;
- struck one of the youths, a 13-year old boy, at the grocery store;
- addressed taunting, derogatory comments and racial epithets toward the youths in the local police station after having them arrested; and
- struck a second of the youths, a 15-year old boy in police custody at the local police station.

Judge Kuehnel requested review of the Commission's determination by the Court of Appeals.

In its opinion dated March 18, 1980, the Court accepted the Commission's determination and removed Judge Kuehnel from office. 49 NY2d 465 (1980). In rejecting the judge's argument that removal is too severe a sanction for misconduct unrelated to his judicial duties, the Court stated that:

a judge may not so facilely divorce behavior off the bench from the judicial function. Standards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved.

The Court also concluded that in the earlier proceedings before the Commission, Judge Kuehnel's testimony displayed "at the very least a gross lack of candor."

Matter of James L. Kane

James L. Kane was a justice of the Supreme Court, Eighth Judicial District (Erie County). On December 12, 1979, the Commission determined that he should be removed from office for misconduct, because while serving as a County Court judge in Erie County, he:

- appointed his son as referee in four mortgage foreclosure matters and ratified and confirmed his son's reports in four such cases;

- appointed his son's law partner as receiver in two mortgage foreclosure matters in which fees in excess of \$50,000 were allowed to the partner and shared by the judge's son; and
- appointed the brother of Erie County Court Judge William G. Heffron (since retired) as referee 33 times in mortgage foreclosure matters, knowing that Judge Heffron was contemporaneously appointing Judge Kane's son as referee 25 times in similar matters.

Judge Kane requested review of the Commission's determination by the Court of Appeals.

In its opinion dated May 29, 1980, the Court accepted the Commission's determination and removed Judge Kane from office. 50 NY2d 360 (1980). The Court found that Judge Kane had "demonstrated his unfitness for judicial office by engaging in rampant nepotism, both open and disguised." In addressing the judge's assertion that he was unaware of certain prohibitions against nepotism, the Court stated that "nepotism has long been condemned in the judiciary, as it should be, and it borders on the incredible for a judge to say in defense of his misconduct that he was unfamiliar with the Canons of Judicial Ethics, particularly as they apply to nepotism."

Matter of Arthur W. Lonschein

Arthur W. Lonschein is a justice of the Supreme Court, Eleventh Judicial District (Queens County). On December 28, 1979, the Commission determined that he should be censured for

misconduct, because he improperly used the prestige of his office on behalf of a personal friend who had applied for a lease and licenses from various New York City government authorities. (The misconduct occurred while Judge Lonschein was serving as a judge of the Civil Court of the City of New York.) Specifically, the Commission found improper influence in the judge's communicating first with a city councilman, then with officials of a New York City licensing authority, on behalf of his friend.

Judge Lonschein requested review of the Commission's determination by the Court of Appeals.

In its opinion dated July 3, 1980, the Court rejected the Commission's finding as to the communication with the city councilman, accepted the finding with respect to the licensing authority, found that Judge Lonschein had committed misconduct and modified the Commission's determination from censure to admonition. 50 NY2d 569 (1980).

Matter of Jerome L. Steinberg

Jerome L. Steinberg was a judge of the Civil Court of the City of New York. As detailed earlier in this report, the Commission determined on March 21, 1980, that he should be removed from office for misconduct, because he improperly involved himself in several loan transactions and other business matters and that, in connection therewith, inter alia, he failed to report certain income to the Internal Revenue Service,

conducted financial business in chambers and on numerous occasions used the name of another person in order to conceal his judicial identity.

Judge Steinberg requested review of the Commission's determination by the Court of Appeals.

In its opinion dated July 1, 1980, the Court accepted the Commission's determination and removed Judge Steinberg from office. 51 NY2d 74 (1980). The Court found the judge's conduct to have been "in utter disregard of the canons of judicial ethics" and included deliberate falsification of his tax returns. The Court concluded that Judge Steinberg had exhibited "an unacceptably careless attitude toward the obligations and privileges of his judicial office and a lack of sensitivity to the dangers inherent in their abuse."

Judge Steinberg's motion for reargument before the Court was denied.

Matter of Brent Rogers

Brent L. Rogers is a justice of the Town Court of Brookfield, Madison County. As detailed earlier in this report, the Commission determined on April 9, 1980, that he should be removed from office for misconduct, because he had failed to report and remit to the State Comptroller more than \$1,800 received in his judicial capacity over a 19-month period and

that he had failed to cooperate with the Commission's inquiry into the matter.

Judge Rogers requested review of the Commission's determination by the Court of Appeals.

In its opinion dated November 13, 1980, the Court accepted the Commission's finding that Judge Rogers had engaged in misconduct but rejected the determination that the judge be removed and instead ordered that he be censured. The Court noted that the Commission did not find a failure to deposit court monies into official bank accounts, and that therefore removal for "slighting his administrative responsibilities" was too harsh.

Matter of Norman H. Shilling

Norman H. Shilling is a judge of the Civil Court of the City of New York. As detailed earlier in this report, the Commission determined on April 9, 1980, that he should be censured for misconduct, in that he improperly interfered in the course of a proceeding before another judge and that he lent the prestige of his office to advance the interests of a third party, a not-for-profit corporation with which he was associated.

Judge Shilling requested review of the Commission's determination by the Court of Appeals.

In its opinion dated November 25, 1980, the Court accepted the Commission's finding that Judge Shilling had

engaged in misconduct, rejected the determined sanction of censure and removed the judge from office. The Court concluded that the assertion of influence by Judge Shilling in a pending proceeding, together with his threatening behavior toward one of the participants, his use of vulgar language and his attempt to cause dismissal of the pending charges, constituted "egregious" misconduct which required removal from office, notwithstanding the character testimony offered on his behalf. The Court stated that a "judge whose conduct off the bench demonstrates a blatant lack not only of judgment but also of judicial temperament, and complete disregard of the appearance of impropriety inherent in his conduct, should be removed from office, notwithstanding that his reputation for honesty, integrity and judicial demeanor in the legal community has been excellent."

Judge Shilling moved for reconsideration by the Court, which adhered to its decision of removal. Thereafter, Judge Shilling appealed the Court's action to the Supreme Court of the United States and obtained a stay of the removal order, pending action by the Supreme Court. As of December 31, 1980, the case was pending before the Supreme Court.

Matter of Patricia Cooley

As detailed earlier in this report, the Commission determined on September 9, 1980, that Alexandria Bay Village Court Justice Patricia Cooley should be removed from office for

failing to observe various financial and records-keeping responsibilities and for failing to respond to inquiries from the Commission and the Office of Court Administration.

Judge Cooley requested review of the Commission's determination by the Court of Appeals. As of December 31, 1980, the matter was pending in the Court.

CHALLENGES TO COMMISSION PROCEDURES

The Commission's staff litigated a number of cases in state and federal courts in 1980, including several presenting important First Amendment issues, a constitutional challenge to the Commission's internal procedures and an attempt to compel the exercise in a particular matter of the Commission's discretionary authority to investigate complaints.

Nicholson and Lambert v. Commission

The Court of Appeals upheld a Commission investigation into alleged judicial election campaign improprieties involving fund raising, financial reporting and post-election appointments to contributors, against a claim that an investigation into such areas creates an unconstitutional "chilling" effect on the exercise of petitioner's First Amendment rights of free expression and association. The Court held that the Commission's inquiry satisfied both federal constitutional and state law requirements.

In addition, the Court sustained the Commission's cross-appeal from the order of the Appellate Division, First Department, and held that it was error for the lower courts to have sealed the court record of the litigation.

In a related proceeding, petitioners sought to have the Commission's administrator held in criminal contempt for allegedly violating the lower court judgment. The Court of Appeals summarily denied the application without a hearing.

Signorelli v. Evans et al.

The United States 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 position before embarking on a campaign for non-judicial office. (In this case, the Surrogate of Suffolk County initiated the action in connection with his announced intention to run for Congress without resigning from his judicial office.)

In denying an injunction sought by the Surrogate under 42 USC §1983, the court rejected the First Amendment challenge as well as the judge's additional assertions that the disputed provisions deprived him of equal protection and created an impermissible additional qualification for Congressional office, in violation of Article I, Section 2, Clause 2, of the United States Constitution.

The United States Court of Appeals for the Second Circuit affirmed the dismissal of the complaint.

Leff et al. v. Commission

The Supreme Court, First Judicial District (New York County) dismissed the Article 78 petition brought by a Supreme Court justice, the Village Voice and several newspaper reporters, in which it was claimed that the First Amendment required that a Commission investigation must be open to the press and public, whenever testimony is taken or evidence received during the course of the investigation.

In a further action brought in the United States District Court for the Southern District of New York, the court denied an application for an injunction seeking a stay of the judge's testimonial appearance before the Commission. The Court of Appeals for the Second Circuit dismissed the appeal from the denial of the injunction.

Matter of Darrigo v. Commission

The Supreme Court, New York County, dismissed the judge's petition which challenged the constitutionality of the Commission's combination of investigative and adjudicatory functions and its procedures for commencing investigations, filing formal charges and holding fact-finding hearings before a referee. The investigation was limited to the specifications of the Administrator's Complaint, which is the instrument filed pursuant to statute when the Commission authorizes an investigation on its own motion.

The Appellate Division, First Department, affirmed the lower court judgment. The Court of Appeals dismissed the judge's appeal as did the United States Supreme Court.

Raysor v. Stern, Raysor v. Commission
And Raysor v. Commission and Trost

In three related cases, the courts rejected the petitioner's efforts to compel the Commission to investigate

particular matters arising out of litigation to which he had been an unsuccessful party. The petitions were dismissed. The petitioner brought his actions after the Commission had dismissed without investigation his complaint against the judge who had presided over his unsuccessful litigation.

Matter of Richter v. Commission

The Supreme Court, Greene County, upheld petitioner's claim that the matters sought to be covered at the judge's investigative appearance went beyond the limits of the Administrator's Complaint. A notice of appeal of the order has been filed.

National Bar Association et al. v. Capital
Cities Broadcasting Corporation et al.

This is an action brought in the United States District Court for the Western District of New York in which Buffalo City Court Judge Barbara Sims and others seek damages and injunctive relief against the Commission, a television station and a newspaper for alleged harassment and violation of constitutional rights relative to an investigation of the judge by the Commission. A motion for a preliminary injunction enjoining the investigation was denied.

SPECIFIC PROBLEMS IDENTIFIED BY THE COMMISSION

In the course of its inquiries into individual complaints, the Commission has identified certain types of misconduct which appear to occur periodically and sometimes frequently. Ticket-fixing, which has been discussed in previous Commission reports, is one example. Other matters of significance are commented upon below.

Nepotism and Favoritism in Appointments

The Code of Judicial Conduct, promulgated by the New York State and American Bar Associations, prohibits "nepotism and favoritism" in making judicial appointments, such as referees, receivers and guardians ad litem. The Rules Governing Judicial Conduct specifically restrict the appointment of relatives, directing that a "judge shall exercise his power of appointment only on the basis of merit, avoiding favoritism. A judge shall not appoint...any person...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." (Section 33.3[b][4]).

In its last three annual reports, the Commission has commented on proceedings with respect to favoritism and nepotism in appointments.

Four inquiries resulted in Formal Written Complaints being authorized by the Commission. Two proceedings were dismissed by the Commission and consequently not made public. The

other two resulted in determinations by the Commission which were reviewed and upheld by the Court of Appeals.

In Matter of Spector v. Commission, 47 NY2d 462 (1979), the Court upheld the Commission's determination that Supreme Court Justice Morris Spector had engaged in misconduct and should be admonished for the appearance of impropriety in his appointing the sons of other judges who were contemporaneously appointing his son in similar matters. (This case was reported on in detail in last year's annual report.)

In Matter of Kane v. Commission, 50 NY2d 360 (1980), the Court upheld the Commission's determination that Supreme Court Justice James L. Kane had engaged in misconduct and should be removed from office for actual impropriety and the appearance of impropriety in appointing his own son four times, appointing his son's law partner and engaging with a co-judge in contemporaneous cross-appointments of his son and the co-judge's brother.

In both cases, the Court condemned nepotism and the disguised alternative by which two judges make appointments of each other's relatives to circumvent the prohibition of their awarding appointments directly to their own relatives. "Nepotism is to be condemned," wrote the Court in Spector, "and disguised nepotism imports an additional component of evil because, implicitly conceding that evident nepotism would be unacceptable, the actor seeks to conceal what he is really accomplishing." In

Kane, the Court again characterized the cross-appointment by two judges of each other's relatives as "disguised nepotism" and asserted that the judge's "conduct hardly promotes public confidence in the integrity and impartiality of the Judiciary and cannot be condoned."

Misuse of the appointment power is not limited to any particular part of the state, nor is it always so easy to identify as in the example of a judge awarding appointments to a son or other close relative. Without some procedure which tempers a judge's unfettered discretion with meaningful checks and balances, abuses may occur. The Commission believes that the obligation to avoid favoritism in appointments and the goal of every judge to appoint qualified individuals are not incompatible. Since judges in Commission proceedings have stated that they face a dilemma in making appointments, the Commission urges that central court administration identify specific prohibitions in the appointment process and develop procedures to broaden the method of selecting qualified appointees.

In the First Judicial Department, a system has been established in which appointing judges are rotated. Other reforms reportedly are under consideration. Since the problems are not isolated or unique to one geographical area, proposed solutions should not be fragmentary. A statewide standard should be promulgated and enforced for all judicial departments. While no system can prevent the occasional incident of serious mis-

conduct, public confidence in the administration of justice can only be enhanced by a significant change in the way appointments are awarded.

Favoritism in Adjudicating Cases

In its last two annual reports, the Commission has commented upon several cases in which judges have presided over cases involving members of their family, or otherwise participated improperly in court proceedings involving family members, in violation of specific statutory and rules prohibitions. In 1980, four cases before the Commission and two before the Court on the Judiciary involved such matters either in whole or in part.*

Section 14 of the Judiciary Law prohibits a judge from presiding or taking "any part in the decision of, an action, claim, matter, motion or proceeding...if he is related by consanguinity or affinity to any party to the controversy within the sixth degree."

Section 33.3(c) of the Rules Governing Judicial Conduct requires a judge's disqualification in a proceeding in which the judge's "impartiality might reasonably be questioned," and it lists examples of those relations of consanguinity or affinity which require a judge's recusal.

*See within, Matters of Edwin Seaton, Ernest Deyo, Howard Miller, Lawrence Finley, Gioanna LaCarrubba and Sebastian Lombardi.

Even without such explicit prohibitions, it would seem unnecessary to remind judges that they should not preside over matters in which a relative such as a son or a brother is involved. Public confidence in the integrity and impartiality of the judiciary cannot tolerate the inherent impropriety evinced by such conduct.

In two cases in 1980 involving violations of these prohibitions, the Commission determined to remove the respondent-judges from office. In two other such cases the Court on the Judiciary removed one judge and suspended another for six months without pay. (See supra, Matters of Edwin Seaton, Ernest Deyo, Gioanna LaCarrubba and Sebastian Lombardi.) In addition to other improprieties, these four judges presided and rendered decisions in matters in which their own relatives were parties (respectively a son, a brother, a son-in-law and a nephew.)

In some instances the misconduct will not involve a family member, but there will be some other indication of favoritism exhibited by the judge. For example, in Matter of Lawrence Finley above, a part-time judge who also practices law had involved himself in the preparation of the defendant's case and failed to disqualify himself from presiding over that case.

Misconduct is not always manifested by bias in favor of the litigant. For example, in Matter of Howard Miller above, a judge allowed his personal dislike of a plaintiff to interfere with the proper performance of his duties.

Political Activity

The Election Law, the Rules Governing Judicial Conduct and the Code of Judicial Conduct set forth specific guidelines limiting political activity by judges and candidates for judicial office, to avoid appearances of impropriety and actual conflicts of interest that may later arise. The relevant provisions, which were detailed at length in the Commission's last annual report, are intended to prevent the practice or appearance of administering judicial office with a bias toward those who supported the judge's candidacy or with a prejudice against those who opposed it.

In 1980, there was one court challenge to a provision pertaining to political activity and several matters before the Commission which resulted in dismissals with caution. No public discipline for improper political activity was rendered this year.

The case involved a judge who challenged various state constitutional and rules provisions requiring that a judge resign upon becoming a candidate for non-judicial elective office. (See supra, Signorelli v. Evans et al.) The federal courts upheld the constitutionality of the state provisions.

In disciplinary matters before the Commission, one judge was cautioned with respect to an appearance that he participated in a planning session for non-judicial candidates and for requesting someone to display campaign signs for non-judicial

candidates. Another judge was cautioned for making statements about a judicial candidate at a party caucus in a year in which he was not himself a candidate and thus was prohibited from any political participation (Section 33.7 of the Rules Governing Judicial Conduct). A third judge was cautioned for attending politically sponsored picnics at a time unauthorized by the Rules (Section 33.7). A fourth judge was cautioned for purchasing a ticket for a politically sponsored dinner under circumstances not excepted from prohibition by the Rules (Section 33.7).

The pressures of political activity, and inconsistencies in the various regulations and guidelines pertaining to the election of judges, make some violations of the applicable laws and rules difficult to avoid. The Commission has suggested in its previous annual reports and in meetings with senior officials of the Office of Court Administration that the inconsistencies and ambiguities in the various campaign-related provisions be addressed and corrected. Some rules are currently interpreted differently in various parts of the state, and judges often find themselves uncertain in attempting to abide by them. Those standards that are vague should be reconsidered and redefined.

The overwhelming body of campaign guidelines, of course, is unequivocal, and where transgressions occur, the Commission will continue to act. Although the necessities of

raising funds and assembling campaign organizations sometime make it difficult or inconvenient to adhere to the applicable rules, the overriding public interest in an impartial, honorable judiciary requires strict adherence to those rules.

Improper Financial Management And Record Keeping

In 1980 the Commission rendered five determinations that town or village court justices be removed from office for improprieties arising from their failure, in whole or in part, to observe various financial deposit, reporting and remittance requirements.*

Monies collected by a local court justice from fines, fees, bail and other sources are required by law to be deposited promptly in official court bank accounts, recorded promptly in court record books and reported and remitted promptly to the State Comptroller.

The court is also required to keep other records of its activity, such as docket books and indices of matters before the court.

Improper or neglected accounting of court finances inevitably leads to suspicions of impropriety that the judge may be using court money for his personal use. In a number of cases before the Commission, judges have deposited their personal checks into court accounts to balance the books.

*See within, Matters of Brent Rogers, Robert M. King, Edwin Seaton, Patricia Cooley and David L. Hollebrandt.

Improper or neglected posting of court records makes it difficult to assess the work of the court and even to determine the status of particular matters pending before the court. This becomes apparent with respect to complaints that allege undue delay in the rendering of a decision.

While improper financial management and record keeping most often result from honest mistakes or oversight, they sometimes serve to camouflage serious misconduct.

Of course, where the evidence suggests misconduct, the Commission will pursue the matter as it has done in the past. However, a great deal of time and resource is expended in analyzing a judge's poorly maintained books and records, only to discover that the mistakes were inadvertent or the result of inadequate training. Such cases often result in a caution to the judge.

Many town and village court justices do not have adequate clerical and administrative assistance. This, combined with the part-time nature of these local judgeships and the demands of these judges' other businesses, helps make such financial and record-keeping problems chronic.

Where a town board has available resources, it should make a greater commitment to the administration of the court. In addition, the Office of Court Administration must develop better training programs for local court justices. The training currently provided to local court justices should be augmented

by a team of financial managers who could visit the local judges and set up bookkeeping and record-keeping systems in those courts where problems have been identified. The cost of operating such a modest program would be recovered by the money which would be more promptly transmitted to the state. Court administrators should supplement the training programs by sound management and supervision of these courts.

Debt Collecting

As in previous years, the Commission considered a number of matters in 1980 involving allegations that some judges were using the prestige of judicial office to enforce the payment of debts in private matters not before the courts. Three such complaints resulted in letters of dismissal and caution and one resulted in an admonition. (See supra, Matter of Theodore Wordon.) All four cases involved part-time town or village court justices.

Some part-time local court justices seem to believe it is their function to assist in the collection of allegedly outstanding debts. They have virtually undertaken the responsibilities of a collection agency, for no fee or other discernible benefit, on the apparent premise that they are "settling" cases and avoiding litigation. Though these collection activities are sometimes undertaken on behalf of friends, the judges involved appear to be acting with good intentions.

However well-intended these acts are, they involve a misuse of the court and its prestige.

In the Wordon case, for example, the judge wrote a letter on court stationery on behalf of a creditor, threatening a purported debtor with arrest if the debt were not satisfied. Few citizens would not be intimidated by such a letter from a judge.

A judge is not elected to serve as an ombudsman. The judge's responsibility is to adjudicate legal disputes, not to lend the prestige of judicial office to a purported creditor who approaches the judge privately, or otherwise to advance private interests. This conduct becomes even more serious when threats are made by judges that the procedures of the criminal justice system will be invoked unless the alleged debts are paid.

Misuse of Office To Settle Civil Cases

In at least two recent investigations, the Commission became aware that in unrelated incidents, two local court justices used criminal law procedures in civil cases. In one incident, a judge had a woman arrested and detained for 24 hours for having stopped payment on a check to an antiques dealer in a dispute over the merchandise. In the second incident, a woman who stopped payment on a check for repair of an appliance was arrested, charged with theft of services and advised by the judge that she could either pay the bill or go to jail.

Coupled with incidents of judges who threaten arrest in debt-collecting cases, such instances represent a serious misuse of the powers of office which have significant and often permanent adverse consequences for the victimized.

Errors of law, of course, are not within the Commission's jurisdiction. Yet so fundamental a misunderstanding of the distinct differences between civil and criminal procedures cannot remain unaddressed. The appellate process is often unavailable and prohibitively expensive and time-consuming for someone who is threatened by a judge with arrest and jail in a civil case and who chooses to pay out of fear. In any event, the anguishing effects of arrest cannot be undone, even by a favorable appellate decision.

Where such a fundamental misunderstanding of legal procedures exists, it must be pursued by the Commission as a matter of misconduct. At the same time, the Office of Court Administration should endeavor to educate the local court judiciary, of whom nearly 85% are not attorneys or otherwise trained in law, as to the fundamental premises and powers of our courts and system of justice. There is no excuse for judges at any level of the court system to be unversed in the law they administer.

Failure To Cooperate With The Commission

The Commission concluded a number of matters in 1980 in which judges were disciplined not only for the underlying misconduct but also for their failure to cooperate with the inquiries of the Commission. In Matter of Brent Rogers and Matter of Patricia Cooley above, for example, the Commission found that in addition to neglecting their financial reporting requirements, the two judges failed to reply to several letters sent by the Commission.

Cooperation by a judge with the duly authorized investigations and inquiries of state agencies is not optional. A judge is obliged by the Rules Governing Judicial Conduct to "respect and comply with the law" and to "diligently discharge his administrative responsibilities" (Sections 33.2[a] and 33.3[b][1]).

In previous years the Commission encountered situations in which public court records were withheld from staff investigators and in which certain records were destroyed at a judge's direction, to avoid his incrimination in misconduct. Such action only exacerbates the underlying misconduct, is itself misconduct and has been dealt with severely. (See Matter of Edward F. Jones, 47 NY2d [mmmm], judge removed from office.)

The vast majority of judges involved in Commission investigations over the years have been cooperative. In 1980, the number of judges refusing to cooperate was less than in recent years.

The Need for Better Training and Supervision

In its previous annual reports, and throughout this one, the Commission has identified the need for better training and supervision of the judiciary by the Office of Court Administration.

New York law requires training for all non-lawyer town and village justices, but does not require training for part-time lawyer-judges. The training sessions offered and the supervision provided should be improved. If New York is to make the best use of its system of local courts presided over by non-lawyer judges, their training must be thorough and their supervision by court administrators regular. Fundamental criminal and civil procedures must be taught. Ethical standards must be intensively reviewed. Administrative training, particularly as to financial reporting requirements, must be upgraded.

Professed ignorance of various ethical and administrative standards is not unique to town and village justices, of course, and the Commission recommends that all judges be required to participate in training and orientation programs.

Suspension as an Alternative Sanction

Under current law, the Commission's determinations are limited to one of four sanctions should it find that a judge's misconduct is established: removal, censure, admonition and retirement.

The former Commission had the authority to determine that a judge be suspended without pay for up to six months. That provision was not adopted by the Legislature when it enacted enabling legislation for the present Commission, effective April 1, 1978.

In several recent determinations, the Commission has noted that, had it the authority to do so, it would have determined to suspend the particular judge. (See the appended determinations in Matter of George C. Sena, Matter of James Hopeck and Matter of Culver K. Barr.)

"Suspension", wrote the Commission in the Hopeck case, "would have impressed upon respondent the severity with which we view his conduct while affording him an opportunity to reflect on his conduct before returning to the bench."

Some misconduct is more severe than would be appropriately addressed by a censure yet not so egregious as to warrant removal from office. The Legislature should reconsider the merits of a constitutional amendment providing suspension as an alternative sanction available to the Commission.

CONCLUSION

The State Commission on Judicial Conduct has endeavored in all its proceedings to deal with judicial misconduct while maintaining the independence of the judiciary. In so doing, we have adopted procedures which are fair and workable and which have been upheld by the courts.

The decisions we are called upon to make, though often difficult, are necessary. If public confidence in the judiciary is to be enhanced, misconduct, when it occurs, must be addressed. We continue to take satisfaction in our work and in our contribution to the fair and proper administration of justice.

Respectfully submitted,

Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

Members of the State Commission
on Judicial Conduct

APPENDIX A

BIOGRAPHIES OF COMMISSION MEMBERS

HONORABLE FRITZ W. ALEXANDER, II, is a graduate of Dartmouth College and New York University School of Law. He was appointed a Justice of the Supreme Court for the First Judicial District by Governor Hugh L. Carey in September 1976 and elected to that office in November 1976. He was a Judge of the Civil Court of the City of New York from 1970 to 1976. He previously was senior partner in the law firm of Dyett, Alexander & Dinkins and was Executive Vice President and General Counsel of United Mutual Life Insurance Company. Judge Alexander is a former Adjunct Professor of Cornell Law School, and he currently is a Trustee of the Law Center Foundation of New York University Law School and a Director of the New York Society for the Prevention of Cruelty to Children. He is a member and past President of the Harlem Lawyers Association, a member of the Association of the Bar of the City of New York and the National Bar Association, and he serves as a member of the Executive Committee of the Judicial Council of the National Bar Association. Judge Alexander is a member and founder of 100 Black Men, Inc., and founder and past President of the Dartmouth Black Alumni Association.

DAVID BROMBERG, ESQ., is a graduate of Townsend Harris High School, City College of New York and Yale Law School. He is a member of the firm of Bromberg, Gloger, Lifschultz & Marks. Mr. Bromberg served as counsel to the New York State Committee on Mental Hygiene from 1965 through 1966. He was elected a delegate to the New York State Constitutional Convention of 1967, where he was secretary of the Committee on the Bill of Rights and Suffrage and a member of the Committee on State Finances, Taxation and Expenditures. He serves, by appointment, on the Westchester County Planning Board. He is a member of the Association of the Bar of the City of New York and has served on its Committee on Municipal Affairs. He is a member of the New York State Bar Association and is presently serving on its Committee on the New York State Constitution. He serves on the National Panel of Arbitrators of the American Arbitration Association.

HONORABLE RICHARD J. CARDAMONE is a graduate of Harvard College and the Syracuse University School of Law. He was appointed in January 1963 as a Justice of the Supreme Court for the Fifth Judicial District of New York by the late Governor Nelson A. Rockefeller and was elected to that position in November 1963. In January 1971 he was designated to serve on the Appellate Division, Fourth Department. He was later re-designated to a permanent seat on the Appellate Division by Governor Hugh L. Carey and is presently serving as the Senior Associate Justice. Judge Cardamone has served by appointment of the Chief Judge of the Court of Appeals on a number of specially convened Courts on the Judiciary to hear and determine issues regarding judicial conduct. He is a past President of the New York State Supreme Court Justices Association and presently serves as a member of its Executive Committee.

DOLORES DEL BELLO received a baccalaureate degree from the College of New Rochelle and a masters degree from Seton Hall University. She is presently Public Relations Director for Bloomingdale's/Westchester, host of a live radio interview program in White Plains, and Arts Coordinator for the Westchester County government's Art in Public Places Program. Mrs. DelBello is a member of the League of Women Voters, the Board of Directors and Executive Board of the Westchester Council for the Arts, the Board of Directors for Clearview School, Hadassah, Women in Communications and a member of Alpha Delta Kappa, international honorary society for women educators.

MICHAEL M. KIRSCH, ESQ., a graduate of Washington Square College of New York University and its law school, is a member of the firm of Goodman & Mabel & Kirsch. He is a member of the Trustees Council and a former President of the Brooklyn Bar Association (1971-1972) and was a member of the House of Delegates of the New York State Bar Association (1972-1978). He is a member of the American Bar Association, the American Judicature Society, and the International Association of Jewish Lawyers and Jurists. He is also a member of the Advisory Committees on Court Administration of the First and Second Judicial Departments, and a former member of the Judiciary Relations Committee for the Second and Eleventh Judicial Districts. Mr. Kirsch has been a member of the Commission since its inception.

VICTOR A. KOVNER, ESQ., is a graduate of Yale College and the Columbia Law School. He is a partner in the firm of Lankenau Kovner & Bickford. Mr. Kovner has been a member of the Mayor's Committee on the Judiciary since 1969. He was a member of the Governor's Court Reform Task Force and now serves on the board of directors of the Committee for Modern Courts. Mr. Kovner is a member of the Association of the Bar of the City of New York, and serves as a member of its Special Committee on Communications Law. He is also a member of the advisory board of the Media Law Reporter. He formerly served as President of Planned Parenthood of New York City.

WILLIAM V. MAGGIPINTO, ESQ., is a graduate of Columbia College and Columbia Law School. He is a senior partner with Anderson, Maggipinto, Vaughn & O'Brien in Sag Harbor (N.Y.), and a trustee of Sag Harbor Savings Bank. Mr. Maggipinto is a past President of the Suffolk County Bar Association, and Vice President and a Director of the Legal Aid Society of Suffolk County. He serves on the Committee on Judicial Selection of the New York State Bar Association, and was, for three years, Chairman of the Suffolk County Bar Association Judiciary Committee. He has also served as a Town Attorney for the Town of Southampton, and as a Village Attorney for the Village of Sag Harbor. Mr. Maggipinto has been a member of the Commission since its inception.

MRS. GENE ROBB is a graduate of the University of Nebraska. She is a former President of the Women's Council of the Albany Institute of History and Art and served on its Board. She also served on the Chancellor's Panel of University Purposes under Chancellor Boyer, later serving on the Executive Committee of that Panel. She served on the Temporary Hudson River Valley Commission and later the permanent Hudson River Valley Commission. She serves on the National Advisory Council of the Salvation Army and is a member of the Board of the Salvation Army Executive Committee for the New York State Plan. She is on the Board of the Saratoga Performing Arts Center, the Board of the Albany Medical College and the Board of Trustees of Siena College. Mrs. Robb is a member of the Advisory Committee of the Center for Judicial Conduct Organizations of the American Judicature Society. Mrs. Robb has been a member of the Commission since its inception.

HONORABLE ISAAC RUBIN is a graduate of New York University, the New York University Law School (J.D.) and St. John's Law School (J.S.D.). He is presently a Justice of the Supreme Court, Ninth Judicial District, and Deputy Administrative Judge of the County Courts and superior criminal courts, Ninth Judicial District. Judge Rubin previously served as a County Court Judge in Westchester County, and as a Judge of the City Court of Rye, New York. He is a director and former president of the Westchester County Bar Association. He has also served as a member of the Committee on Character and Fitness of the Second Judicial Department, and as a member of the Nominating Committee and the House of Delegates of the New York State Bar Association.

HONORABLE FELICE K. SHEA is a graduate of Swarthmore College and Columbia Law School. She is a Judge of the Civil Court of the City of New York, presently serving as an Acting Justice of the Supreme Court, New York County. Judge Shea is a Fellow of the American Bar Foundation, a Fellow of the American Academy of Matrimonial Lawyers, a member of the American Bar Association's Special Committee on the Resolution of Minor Disputes and a director of the New York Women's Bar Association. She is also a member of the Association of the Bar of the City of New York and serves on its Special Committee on Consumer Affairs.

CARROLL L. WAINWRIGHT, JR., ESQ., is a graduate of Yale University and the Harvard Law School and is a member of the firm of Milbank, Tweed, Hadley & McCloy. He served as Assistant Counsel to Governor Rockefeller, 1959-1960, and presently is a Trustee of The American Museum of Natural History, The Boys' Club of New York, and The Cooper Union for the Advancement of Science and Art. He is a Trustee of the Church Pension Fund of the Episcopal Church and a member of the Yale University Council. He is a former Treasurer and a former Vice President of the Association of the Bar of the City of New York and is a member of the American Bar Association, the New York State Bar Association and the American College of Probate Counsel. Mr. Wainwright has been a member of the Commission since its inception.

COMMISSION ADMINISTRATOR

GERALD STERN, ESQ., is a graduate of Brooklyn College, the Syracuse University College of Law and the New York University School of Law, where he received 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.

CLERK OF THE COMMISSION

ROBERT H. TEMBECKJIAN is a graduate of Syracuse University and Fordham Law School. He previously served as special assistant to the Deputy Director of the Ohio Department of Economic and Community Development, staff director of the Governor's Cabinet Committee on Public Safety in Ohio and publications director for the Council on Municipal Performance in New York. Mr. Tembeckjian joined the Commission's staff in 1976 and was appointed its clerk when the position was created in 1979.

APPENDIX B

COMMISSION BACKGROUND

Temporary State Commission on Judicial Conduct

The Temporary State Commission on Judicial Conduct 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 Court on the Judiciary or the Appellate Division. All proceedings in the Court on the Judiciary and most proceedings 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 Commission's tenure lasted through March 31, 1978, when it was replaced by the present Commission.

*A full account of the temporary Commission's activity is available in the Final Report of the Temporary State Commission on Judicial Conduct, dated August 31, 1976.

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 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 by judge
- 2 cases closed upon expiration of judge's term
- 1 proceeding closed with instruction by the Court on the Judiciary that the matter be deemed confidential.

*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 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 In 1978 And 1979 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.

Twenty-seven of these 32 proceedings were concluded in 1978 and 1979, with the following results, reported in greater detail in the Commission's previous annual reports:

- 1 judge was removed from office;
- 2 judges were suspended without pay for four months;
- 20 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 remaining five cases were pending as of December 31, 1979.

State Commission on Judicial Conduct

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. Courts on the Judiciary were abolished, except for those created prior to April 1, 1978. 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.

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

JEROME L. STEINBERG,

a Judge of the Civil Court of the City
of New York, Kings County.

APPENDIX C

Determinations
Rendered in 1980

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, Jerome L. Steinberg, a judge of the Civil Court of the City of New York, was served with a Formal Written Complaint dated February 1, 1979, setting forth seven charges of misconduct. Respondent filed an answer dated March 11, 1979.

By notice of motion dated May 10, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's Rules (22 NYCRR 7000.6[c]). Respondent opposed the motion in papers served on June 19, 1979, and cross moved for the Commission (i) to appoint a referee to hear and report findings of fact and conclusions of law or, in the alternative, (ii) to dismiss the Formal Written Complaint or determine that respondent be "privately admonished." The administrator opposed respondent's cross motions in an affirmation dated June 19, 1979.

On June 26, 1979, the Commission denied the motion as well as the cross motion and ordered that the matter be referred to a referee to hear and report with respect to findings of fact. On the same date, the Commission appointed the Honorable Bertram Harnett as referee to hear and report. The

hearing was held on July 23, 24 and 26, 1979, and Judge Harnett submitted his report to the Commission on September 12, 1979.

By notice of motion dated October 10, 1979, the administrator moved to confirm the referee's report and to render a determination. Respondent cross moved on December 4, 1979, to dismiss the Formal Written Complaint.

The Commission heard oral argument with respect to the issues herein on December 12, 1979. The Commission considered the record of this proceeding, in executive session, and upon that record makes the determination herein.

Preliminarily, the Commission finds that respondent assumed office as a judge of the Civil Court of the City of New York in January 1970, that respondent was admitted to the bar of the State of New York in 1955, practiced law in this state and held a number of public positions prior to becoming a judge.

With respect to Charge I of the Formal Written Complaint, the Commission makes the following findings of fact.

1. While in private practice, respondent had arranged and serviced loans for Toshi Miyazaki and businesses controlled by Mr. Miyazaki. Mr. Miyazaki is a travel agent whose clientele are primarily people from Japan and those of Japanese descent. (Throughout these findings, Mr. Miyazaki and his various companies are referred to as "Miyazaki.")

2. As young men, respondent and Miyazaki had been fellow Olympic class wrestling competitors. They have been friends for 30 years.

3. Respondent was friendly with Jerome Silverman, a CPA who was Miyazaki's accountant. Before coming to the bench, respondent had arranged loans with which Silverman was familiar.

4. Silverman approached respondent in June 1970 and asked respondent to assist Miyazaki in refinancing some loans.

5. In response to Silverman's request, respondent spoke to Melvin Ditkovich on Miyazaki's behalf. Prior to coming to the bench, respondent had arranged loans between Miyazaki and Ditkovich. Respondent and Ditkovich were neighbors and were friends since about 1954.

6. Respondent caused Ditkovich to make a \$90,000 loan to Miyazaki with an interest rate of 24 per cent per annum.

7. At respondent's request, Vincent Pizzuto, respondent's law secretary, prepared security, collateral, and guarantee agreements and other documents relating to a transaction in which Ditkovich and Jack Volk lent \$90,000 to two Miyazaki corporations. These sums were to be repaid at an annual interest rate of 24 per cent.

8. Mr. Pizzuto acted as attorney for Ditkovich and Volk in closing the loan transaction.

9. The closing took place on or about June 5, 1970, in respondent's chambers or in a room adjoining his chambers, in respondent's presence. The documents pertaining to the loan were there signed and witnessed.

10. At the closing, approximately \$90,000, including checks payable to the order of respondent, "as attorney," and endorsed by respondent, or with his authority, were transferred between the loan parties. In this context, it is found, "attorney" denominated the status of "attorney-in-fact."

11. At the closing, respondent's law secretary, Pizzuto, received principal and interest payments delivered by Miyazaki and turned them over to respondent.

12. Respondent from time to time, while he was a judge of the Civil Court, collected principal and interest payments on the loan at Miyazaki's place of business and in chambers and delivered them to Ditkovich at the latter's home.

13. From time to time Pizzuto, while still respondent's law secretary and at respondent's request, also went to Miyazaki's place of business to receive principal and interest payments which he delivered to respondent in the courthouse.

14. Respondent maintained the written records relied upon by the parties to the loan.

15. As compensation for his participation in the transaction, respondent received one-eighth of the 24 per cent annual interest paid. This sum was expressed as "3%."

16. Prior to the signing of the loan agreement in June 1970, respondent was aware that there were statutory provisions fixing the maximum rate of interest for certain loans at 25 percent.

17. Following the discussions with Silverman and Miyazaki, initiated by Silverman, the interest on the loan was subsequently increased to 27 per cent per year.

18. After the interest rate was increased to 27 per cent, respondent continued to participate in the transaction by receiving and delivering loan and interest payments and by maintaining the written records pertaining to the loan.

19. Respondent continued to receive payments, now one-ninth the interest (still "3%") as compensation for his participation in the transaction.

20. The compensation to respondent was known to Miyazaki and was in fact considered by Miyazaki as his payment to respondent for his initial role in originating the loans and for his activities in servicing them.

21. During 1970, respondent earned income from his participation in the loan transaction which he failed to report in 1971 on his 1970 federal, state, and city income tax returns.

22. During 1971, respondent earned income from his participation in the loan transaction which he failed to report in 1972 on his 1971 federal, state, and city income tax returns.

23. During 1972, respondent earned income from his participation in the loan transaction which he failed to report in 1973 on his 1972 federal, state, and city income tax returns.

24. It is found that respondent's failure to report income from the loan transactions on his 1970, 1971, and 1972 federal, state, and city income tax returns was intentional.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25 and 34 of the Canons of Judicial Ethics. Charge I, subdivisions (a) through (j) and subdivisions (l) through (p) are sustained and respondent's misconduct is established. As to subdivision (k) of Charge I, insofar as it is found that a gross charge of 27 per cent was paid by the borrower, Miyazaki, that portion of the subdivision so alleging is sustained. It cannot be determined upon this record, however, whether the loan transactions recited were, in fact, legally usurious as defined under the Penal Law. Requisite elements of intent and collateral circumstances were not developed. That portion of subdivision (k) of Charge I alleging that the interest on the loan exceeded the maximum permissible legal rate of 25 per cent per year is not sustained and it therefore is dismissed.

Also dismissed are those portions of Charge I alleging that the loan transaction constituted the practice of law by respondent (Formal Written Complaint, par. 6, reference to Canon 31 and the Constitution).

With respect to Charge II, the Commission finds that the charge is not sustained and therefore is dismissed.

With respect to Charge III, the Commission makes the following findings of fact.

25. In 1971, and in response to Miyazaki's request for additional financial assistance, respondent communicated with Daniel Bukantz, a dentist who had treated respondent, and arranged for Dr. Bukantz to lend \$5,000 to Miyazaki, which was to be repaid at an annual interest rate of 27 per cent.

26. Before arranging this loan transaction, respondent had knowledge of legal provisions fixing the permissible rates of interest.

27. Respondent received principal and interest payments, usually in cash, at Miyazaki's place of business and at chambers. Respondent thereafter wrote personal checks payable to the order of Dr. Bukantz which represented principal and interest payments to Dr. Bukantz by Miyazaki.

28. Respondent kept the written records relied upon by the parties to the loan.

29. Respondent received 9 per cent (i.e. one-third) of the interest sum per annum as payment for his participation in the transaction.

30. During 1971, respondent earned income from his participation in the loan transaction which he failed to report in 1972 on his 1971 federal, state and city income tax returns.

31. During 1972, respondent earned income from his participation in the loan transaction which he failed to report in 1973 on his 1972 federal, state and city income tax returns.

32. In 1972, on his 1971 federal, state and city income tax returns, respondent listed as personal medical or dental expenses the principal and interest payments paid by Miyazaki to respondent, usually in cash, and forwarded by respondent by his personal checks to Dr. Bukantz.

33. In 1973, respondent listed on his 1972 federal, state and city income tax returns as medical or dental expenses principal and interest payments made by Miyazaki which respondent had forwarded to Dr. Bukantz.

34. Respondent's failure to report income from the loan transaction on his 1971 and 1972 federal, state and city income tax returns, and respondent's treatment of principal and interest payments as dental expenses on his 1971 and 1972 federal, state and city income tax returns were intentional.

35. Respondent's participation in the loan transaction constituted the business practice of arranging for loans and servicing the payments.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25 and 34 of the Canons of Judicial Ethics. Charge III, subdivisions (b) through (i), is sustained and respondent's misconduct is established, except as to that portion of the charge alleging that respondent's acts constituted the practice of law (Formal Written Complaint, par. 10, reference to Canon 31 and the Constitution), which is dismissed. Subdivision (a) of Charge III is sustained, insofar as it is alleged that a gross charge of 27 per cent was paid by the borrower, Miyazaki. It cannot be determined from the record, however, whether the loan transaction recited was, in fact, legally usurious as defined under the Penal Law. Requisite elements of intent and collateral circumstances were not developed. Therefore, that portion of subdivision (a) of Charge III alleging that the interest on the loan exceeded the maximum permissible legal rate of 25 per cent per year is not sustained and it therefore is dismissed.

With respect to Charge IV, the Commission makes the following findings of fact.

36. In the spring of 1973, Jerome Silberman, a good friend of respondent's, asked respondent on behalf of Silverman's client, Merrick Harbor Drugs, Inc., for help with a loan.

37. Respondent communicated with his neighbor, David Gilman, and arranged for Mr. Gilman and his wife, Lynn Gilman, to lend \$10,000 to Merrick Harbor which was to be repaid at an annual interest rate of 24 per cent.

38. On or about April 1, 1973, respondent personally drafted and typed the Merrick Harbor loan documents, which included two corporate powers of attorney and a stock power.

39. Respondent personally guaranteed this Gilman loan.

40. Respondent delivered the \$10,000 principal in cash to Merrick Harbor at its place of business.

41. While delivering the \$10,000 to Merrick Harbor, with the intent of concealing his identity as a judge and without the prior authorization of his law secretary, respondent represented himself as "V. Pizzuto".

42. Respondent received principal and interest payments on the loan from Merrick Harbor at its place of business on a monthly basis, retained 1 per cent per month of the 2 per cent interest paid for himself, and delivered the remaining portion to the Gilmans.

43. When receiving principal and interest payments on the loan from Merrick Harbor, respondent, with the intent of concealing his identity and without the prior authorization of his law secretary, Vincent Pizzuto, represented himself as "Vincent Pizzuto" or "V. Pizzuto" and signed receipts as "V. Pizzuto" or "Vincent Pizzuto".

44. In 1973, respondent earned approximately \$600 from his participation in this loan transaction. He failed to report this amount on his federal, state and city income tax returns for 1973.

45. Respondent's failure to report this income on his 1973 income tax returns was intentional.

46. The Merrick Harbor transaction was a loan transaction entered into for profit in which respondent was an active and managing participant.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25 and 34 of the Canons of Judicial Ethics, Canons 1, 2 and 6C of the Code of Judicial Conduct, and Sections 33.1, 33.2(a), 33.2(c), 33.5(c)(1) and 33.5(c)(2) of the Rules Governing Judicial Conduct. Charge IV of the Formal Written Complaint is sustained and respondent's misconduct is established, except as to those portions of the charge alleging that respondent engaged in the practice of law (Formal Written Complaint, par. 12, reference to Canon 31 of the Canons, Canon 5F of the Code, and the Constitution), and involving failure to report to the clerk of his court certain compensation and income (Formal Written Complaint, par. 12, reference to Section 33.6[c] of the Rules), which is dismissed.

With respect to Charge V, the Commission makes the following findings of fact.

47. In response to a request in 1973 from Silverman on behalf of his accounting client Logitek, respondent communicated with Ditzkowich and Gilman for the purpose of arranging financial assistance for Logitek.

48. At respondent's request, Gilman agreed to lend \$15,000 to Logitek.

49. At respondent's request, Ditkovich agreed to lend \$65,000 to Logitek.

50. At respondent's request, his law secretary, Vincent Pizzuto, prepared loan, security, guarantee and collateral documents pertaining to the transaction.

51. In the loan papers, the lender was shown as Sandra Steinberg "as agent for undisclosed principals." Sandra Steinberg is respondent's wife.

52. On or about January 5, 1974, in respondent's presence, documents pertaining to the loan were signed and witnessed and approximately \$80,000 was transferred to Logitek, who was to repay the loan at an interest rate of 20 per cent.

53. In response to a further request by Silverman, respondent communicated with Ditkovich for the purpose of arranging an additional loan to Logitek.

54. At respondent's request, Ditkovich agreed to lend an additional \$20,000 to Logitek.

55. Either Logitek would deliver principal and interest payments to respondent's home or to respondent, or respondent and his wife would drive to Suffolk County to pick up the payments.

56. Respondent and his wife received a portion of the interest paid to both Gilman and Ditkovich as payment for their participation in the transaction.

57. By his participation in the loan interest, respondent engaged in a business transaction for profit.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4, 24, 25, and 34 of the Canons of Judicial Ethics, Canons 1, 2 and 6C of the Code of Judicial Conduct, and Sections 33.1, 33.2(a), 33.2(c), 33.5(c)(1) and 33.5(c)(2) of the Rules Governing Judicial Conduct. Charge V of the Formal Written Complaint is sustained, and respondent's misconduct is established, except as to those portions of the charge alleging that respondent engaged in the practice of law (Formal Written Complaint, par. 14, reference to Canon 31 of the Canons, Canon 5F of the Code, and the Constitution), and involving failure to report to the clerk of his court certain compensation and income (Formal Written Complaint, par. 14, reference to Section 33.6[c] of the Rules), which are dismissed.

With respect to Charge VI, the Commission finds the charge is not sustained and therefore is dismissed.

With respect to Charge VII, the Commission makes the following findings of fact.

58. In 1971, respondent received a \$5,545.50 forwarding fee from Nishman & DeMarco, from his terminated legal practice, which fee he failed to report in 1972 on his 1971 federal, state and city income tax returns.

59. On at least two other occasions, forwarding fees came to respondent from referrals apparently predating his ascending the bench, which were reported on his income tax.

60. Respondent's failure to report the \$5,545.50 fee in his 1971 tax returns was intentional.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 4 and 34 of the Canons of Judicial Ethics. Charge VII is sustained, and respondent's misconduct is established.

The obligation to avoid both impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. The canons and rules of ethical behavior cited above state that obligation. They propound the requirement of propriety by judges in conduct both on and off the bench. They also express standards as to the avoidance of business and other activities, which do in fact or may appear to conflict with the judge's exercise of judicial responsibilities.

Canon 4 of the Canons, for example, states that a judge's "official conduct should be free from impropriety and the appearance of impropriety," that "he should avoid infractions of law," and that his personal behavior on the bench and "also in his every-day life, should be beyond reproach."

Canon 24 of the Canons states that a judge should neither accept inconsistent duties nor incur pecuniary or other obligations "which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official duties."

Canon 25 of the Canons states that a judge should avoid the appearance of lending the prestige of his office to persuade others to contribute to private business ventures, and that a judge therefore should not enter into such private business or pursue a course of conduct that would create such an appearance or could reasonably be expected to bring his personal interests in conflict with his official duties.

Canon 34 of the Canons states that a judge should not administer his office "for the purpose of advancing his personal ambitions...."

The corresponding sections of the Rules Governing Judicial Conduct and the Code of Judicial Conduct also express these standards and in some instances are more explicit. For example, Section 33.6(c)(2) of the Rules, states that "[n]o judge...of...the Civil Court of the City of New York...shall be a managing or active participant in any form of business enterprise organized for profit...."

By participating in the various loan transactions recited above, respondent violated the applicable canons and rules which prohibit judges from direct and active participation in business activity.

By conducting such private business in his chambers and by enlisting the participation of his law secretary in private business matters which respondent knew would enure to his own financial benefit, respondent violated the applicable canons and rules which caution a judge against using the prestige of his office in the pursuit of private business ventures, and which caution a judge against administering his office "for the purpose of advancing his personal ambitions."

By concealing his own identity at numerous business meetings and using his law secretary's name instead of his own, respondent violated the applicable canons and rules that require a judge to conduct himself in a manner beyond reproach and in a way that avoids impropriety and the appearance of impropriety. While a definition of "beyond reproach" concededly will vary with differing circumstances, it is clear to us that by masquerading as his law secretary, respondent acted improperly and brought discredit to the integrity of the judiciary.

By intentionally failing to report his business income, and by misstating certain transactions as personal dental or medical deductions, respondent violated the canons and rules that require a judge to respect and comply with the law at all times. The Commission finds patently implausible respondent's assertion before the referee that he "simply forgot" to report his income. These business dealings were extensive and time consuming, the amounts of money involved were great, the nature of the business dealings were complicated and the concealment of his identity and calling himself "Pizzuto" was too significant for this Commission to believe that somehow, in several years at income tax time, respondent "simply forgot."

The Commission notes that it sustains four charges in which it was alleged that respondent failed to report income on his tax returns, and finds that all of the omissions were intentional. The referee had recommended a finding of intentional omission as to three charges and unintentional omission as to the fourth (Charge VII). Charge VII involves a \$5,545.50 forwarding fee received by respondent in 1971 from his terminated legal practice. The record shows (i) that respondent bought a used Cadillac with the money, (ii) that the forwarding fee was a substantial part of his income in 1971, and (iii) when asked why he did not report it for tax purposes, respondent replied that he "obviously" forgot the check when reporting his income and that "[i]t wasn't there to remind me" (Tr. 464-66).*

We do not believe it credible that respondent could forget so substantial a fee. The check itself may not have been "there to remind" him, as respondent asserts, but the Cadillac surely was reminder enough that respondent had recently received a large amount of reportable income. We also find it significant that respondent made similar omissions of income as alleged with respect to Charges I, III and IV.

The referee regarded as a "persuasive factor" in this case "[r]espondent's manifest driving force to make more money[,]... his preoccupation with making supplementary money, and his constant characterization of his activity as business income..." (Rep. 26).** Not only was respondent's devotion to these business activities time consuming, some of his private business was conducted in chambers and, at respondent's request, involved his law secretary in services that respondent well knew would enure to his own profit.

Respondent emerges as one whose pursuit of private business and profit compromised the administration of his office and the obligation to report income from such activities on his tax returns according to law. Furthermore, as evidence that perhaps he himself was aware of the impropriety of a judge acting in this fashion, but nevertheless motivated by the "driving force to make more money," respondent on numerous occasions concealed his identity.

Such conduct establishes respondent's lack of moral fitness to serve as a judicial officer.

A judge is obliged to conduct himself "at all times" in a manner that promotes public confidence in the integrity of the judiciary (Section 33.2[a] of the Rules). The applicable ethical standards do not apply only to

*"Tr." refers to the transcript of the hearing before the referee.

**"Rep." refers to the report of the referee to the Commission.

those periods a judge is on the bench. Public confidence in the judiciary, and the entire legal system as well, may be affected adversely as much by what a judge does off the bench as what he does on it. By his conduct herein, respondent has shown he is neither willing nor able to discharge this obligation which is indispensable to the promotion of public confidence in our courts and the integrity and impartiality of the administration of justice.

The Commission concludes that cause exists for disciplining respondent according to Article VI, Section 22, of the Constitution and Article 2-A of the Judiciary Law. The Commission also concludes that respondent has evinced an utter disregard for the sanctity of the trust reposed in him as a judicial officer.

Although the misconduct found herein was for conduct engaged in while respondent was off the bench, such circumstance is not a bar to removing respondent from office, considering the serious and substantial breach of the applicable canons and rules. Article VI, Section 22, of the Constitution. See also: Matter of Sobeck, N.Y.L.J., Aug. 8, 1979, p. 8, col. 5 (Comm. on Jud. Conduct, July 2, 1979); Matter of Kuehnle, NYLJ, Sept. 26, 1979, p. 12, col. 5 (Com. on Jud. Conduct, Sept. 6, 1979); Matter of Friedman, 12 NY2d(a) (d) (Ct. on the Judiciary 1963); Matter of Pfingst, 33 NY2d(a) (ii) (Ct. on the Judiciary 1973); and Matter of Sarisohn, 26 AD2d 388 (2d Dept. 1966).

By reason of the foregoing, the Commission determines that respondent should be removed from office.

All concur.

Dated: March 21, 1980
New York, New York

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

BRENT ROGERS,

a Justice of the Town Court of
Brookfield, Madison County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Brent Rogers, a justice of the Town Court of Brookfield, Madison County, was served with a Formal Written Complaint dated September 6, 1979, alleging (i) that he had failed to report and remit to the State Comptroller monies received in his judicial capacity from January 1978 to September 6, 1979, and (ii) that he had failed to cooperate with an investigation conducted by this Commission with respect thereto. Respondent filed an unverified answer in the form of a letter dated November 4, 1979. Thereafter, respondent was requested by the Commission's senior attorney to verify his answer pursuant to Section 44, subdivision 4, of the Judiciary Law. To date respondent has not done so.

By notice of motion dated January 2, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6 of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. By determination and order dated January 30, 1980, the Commission granted the motion, finding respondent's misconduct established and setting a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived both oral argument and a memorandum.

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On February 24, 1980, in executive session, the Commission considered the record of this proceeding, and upon that record makes the following findings of fact.

1. From January 5, 1978, through August 1, 1979, respondent received at least \$1,896 in fines from his disposition of at least 70 tickets written by the Madison County Sheriff's Department.

2. From June 1978 to September 6, 1979, respondent failed to report or remit to the State Comptroller any monies he received in his judicial capacity, including the \$1,896 heretofore noted, thereby violating Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law and Section 1803 of the Vehicle and Traffic Law.

3. From June 11, 1979, to September 6, 1979, respondent failed to cooperate with a duly authorized investigation by this Commission with respect to his failure to report and remit monies to the State Comptroller, in that he failed to respond to written inquiries issued pursuant to Section 42, subdivision 3, of the Judiciary Law on June 11, 1979, June 20, 1979, and June 28, 1979.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Section 2021 of the Uniform Justice Court Act requires all justices to report and remit to the State Comptroller all collected fines "on or before the tenth day of the month next succeeding their collection." Failure to do so constitutes serious misconduct, justifying removal of the judge from office. See Bartlett v. Flynn, 50 AD 2d 401 (4th Dept. 1976), app dism 39 NY2d 946 (1976).

Failure to cooperate with a Commission investigation is also serious misconduct. In Matter of Robert W. Jordan, NYLJ Aug. 7, 1979, p. 5, col. 1, the Court on the Judiciary suspended a judge for four months without pay for failing to appear before the Commission in the course of a duly authorized investigation. The Court stated as follows:

[R]espondent's refusals to cooperate were clearly improper. Although the respondent is not an attorney, as a judicial officer he is charged with knowledge of his responsibilities, which include cooperating with statutorily authorized Commission investigations. Id.

Respondent's failure to cooperate was not limited to the Commission. The record of this proceeding shows that, prior to the Commission's inquiry, the State Department of Audit and Control and the director of administration for the Third Judicial Department had attempted to elicit from respondent an explanation of his failure to report and remit monies according to law. Respondent failed to respond to those inquiries.

By failing to report and remit monies for as many as 15 months, by failing to respond to appropriate inquiries from three state agencies, and by failing to respond to a simple request that his answer in this proceeding be verified, respondent has evinced repeatedly his inability or unwillingness to discharge the responsibilities of judicial office. As such he has violated those provisions of the Rules Governing Judicial Conduct which require diligent attention to administrative duties (Section 33.3[b](1)) and conduct promoting public confidence in the judiciary (Sections 33.1 and 33.2[a]).

The Commission notes from the record (i) that respondent filed in October 1979 the overdue reports from June 1978 through August 1979 and (ii) that his reports for September through November 1979, were filed on December 28, 1979, up to two and a half months later than required by law.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

All concur.

Dated: April 9, 1980
Albany, New York

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

ROBERT M. KING,

a Justice of the Town Court of
Granville, Washington County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Carroll L. Wainwright, Jr.

The respondent, Robert M. King, a justice of the Town Court of Granville, Washington County, was served with a Formal Written Complaint dated November 29, 1979, alleging that respondent, over a 15-month period, had (i) failed to make timely deposits in official court accounts of monies received in his judicial capacity and (ii) failed to report or remit to the State Comptroller \$2,480 in fines received in his judicial capacity. Respondent did not file an answer but submitted to the Commission a letter dated January 23, 1980, stating he had remitted to the State all funds due and had resigned his judicial office.

By notice dated February 6, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion by order dated March 6, 1980, found respondent's misconduct established and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum and waived oral argument. Respondent neither submitted a memorandum nor appeared for oral argument.

On April 23, 1980, in executive session, the Commission considered the record of this proceeding and makes the following findings of fact.

1. From July 1978 to September 1979, respondent made two deposits in his official court bank account of fines received totalling \$414.60, although he had actually received fines totalling \$2,480 in that period, as set forth below.

Month and Year	Fine Money Received	Bank Deposit Relating to Fines
(a) July 1978	\$ 90	\$ 0
(b) August 1978	490	0
(c) September 1978	125	374.60
(d) October 1978	340	40.00
(e) November 1978	55	0
(f) December 1978	145	0
(g) January 1979	50	0
(h) February 1979	30	0
(i) March 1979	25	0
(j) April 1979	355	0
(k) May 1979	35	0
(l) June 1979	80	0
(m) July 1979	170	0
(n) August 1979	40	0
(o) September 1979	450	0
	<u>\$2,480</u>	<u>\$414.60</u>

Respondent's failure to deposit these monies violated Section 30.7 of the Uniform Justice Court Rules, which requires deposit of all such funds within 72 hours of receipt.

2. From July 1978 to September 1979, respondent failed to report or remit to the State Comptroller any part of said \$2,480, in violation of Sections 2020 and 2021(1) of the Uniform Justice Court Act, Section 27 of the Town Law and Section 1803 of the Vehicle and Traffic Law.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

By failing to deposit official receipts in official court accounts, and by failing for 15 months to report and remit \$2,480 to the State Comptroller as required by law and court rules, respondent failed to discharge diligently his administrative responsibilities and to honor his obligations as provided by law.

For months at a time respondent kept court-related funds in his briefcase or at his home, evincing an inexcusable disregard for the public money entrusted to him as well as for those rules which required the prompt deposit of those funds in an official account.

Respondent's misconduct is not excused by his having remitted to the State all funds due after this proceeding was commenced. Public confidence in the integrity of the judiciary, undermined by such serious misconduct by respondent, cannot be reclaimed merely by balancing his accounts in the face of a disciplinary proceeding.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

All concur.

Dated: April 29, 1980
Albany, New York

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

EDWIN P. SEATON,

a Justice of the Town Court of
Chautauqua, Chautauqua County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Carroll L. Wainwright, Jr.

The respondent, Edwin P. Seaton, a justice of the Town Court of Chautauqua, Chautauqua County, from 1962 to the present, and formerly a justice of the Village Court of Mayville, Chautauqua County, from April 6, 1964, to December 20, 1977, was served with a Formal Written Complaint dated August 10, 1979, alleging (i) that he presided over two motor vehicle cases in 1974 in which his son was the defendant and (ii) that from July 1969 through June 1979 he has failed to observe numerous fiduciary and record keeping obligations and statutory requirements. Respondent's answer was received and filed on September 9, 1979.

By notice dated December 19, 1979, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6 [c]). Respondent submitted a letter in response to the motion.

By order dated January 30, 1980, the Commission granted the administrator's motion, found respondent's misconduct established and set a date for oral argument with respect to an appropriate sanction. The administrator submitted a memorandum and respondent submitted correspondence in lieu of oral argument.

The Commission considered the record of this proceeding in executive session on March 20, 1980, and now upon that record makes the following findings of fact.

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1. On January 5, 1974, respondent presided over and disposed of two charges involving the improper use of a snowmobile in People v. Daniel P. Seaton, notwithstanding that the defendant is respondent's son, in violation of Section 14 of the Judiciary Law. Respondent dismissed one charge and imposed a \$5 fine on the other.

2. On September 28, 1974, respondent presided over and disposed of a charge of driving with a modified muffler in People v. Daniel P. Seaton, notwithstanding that the defendant is respondent's son, in violation of Section 14 of the Judiciary Law. Respondent imposed an unconditional discharge.

3. From August 1, 1969, to February 1, 1978, respondent, as town court justice of Chautauqua, failed to maintain properly his official court records in that he did not enter numerous cases in his docket books and did not take measures to ensure that court records would not be lost.

4. From September 1, 1974, to December 20, 1977, respondent, as village court justice of Mayville, failed to maintain properly his official court records in that he did not enter numerous cases in his docket books and did not maintain proper safeguards to ensure that court records would not be lost.

5. From July 1969 to November 1977, on 74 occasions as set forth in Schedule A appended hereto, respondent failed to report and remit to the State Comptroller monies he had received in his capacity as town court justice of Chautauqua in the first ten days of the month following collection, in violation of Section 2021(1) of the Uniform Justice Court Act.

6. From April 1972 to November 1977, on 42 occasions as set forth in Schedule B appended hereto, respondent failed to report and remit to the State Comptroller monies he had received in his capacity as village court justice of Mayville in the first ten days of the month following collection, in violation of Section 2021(1) of the Uniform Justice Court Act and Section 4-410 of the Village Law.

7. From September 12, 1972, to November 2, 1978, respondent failed to deposit in his official court bank account within 72 hours of receipt all monies received in his capacity as town court justice of Chautauqua and village court justice of Mayville, in violation of Section 30.7(a) of the Uniform Justice Court Rules.

8. From June 25, 1976, to February 1, 1978, respondent failed to correct the record keeping deficiencies and failed to perform the fiduciary duties noted in paragraphs 3 through 7 herein, despite being advised by the State Department of Audit and Control, and this Commission, of the deficiencies and breaches of fiduciary duties heretofore noted, in violation of Section 31 of the Town Law and Sections 107, 2019 and 2019-a of the Uniform Justice Court Act.

9. From September 12, 1972, to November 2, 1978, respondent failed to issue consecutively-numbered receipts for all monies received in his capacity as town court justice of Chautauqua and village court justice of Mayville, in violation of Section 99-b of the General Municipal Law.

10. From May 1, 1971, through October 31, 1978, respondent failed to docket an undetermined number of traffic cases and in certain of these cases (i) took no action to effect a final disposition, or (ii) sent notices of license suspensions to the Department of Motor Vehicles but took no other action to effect final dispositions and made no record that such notices had been sent or (iii) effected final dispositions and collected fines but made no record of the dispositions, in violation of Sections 107, 2019 and 2019-a of the Uniform Justice Court Act.

11. As of January 1, 1979, respondent had (i) failed to report the disposition of the cases below to the State Comptroller and the Department of Motor Vehicles, (ii) failed to remit to the State Comptroller the monies received therefrom, and (iii) failed to enter these cases in his official dockets, in violation of Sections 107, 2019, 2020 and 2021(1) of the Uniform Justice Court Act, Section 514(1)(a) of the Vehicle and Traffic Law, Section 4-410(1) of the Village Law and Section 91.12 of the Regulations of the Commissioner of Motor Vehicles.

In the Town Court of Chautauqua:

People v. Ivan Hannold, June 20, 1972;
People v. Danny L. Kelly, June 23, 1973;
People v. Debra Hanson, February 15, 1975;
People v. Gerald Near, October 4, 1975;
People v. R.E. Jordan, October 7, 1975; and
People v. Daniel J. Kelly, March 13, 1976.

In the Village Court of Mayville:

People v. Danny L. Kelly, October 30, 1973;
People v. Michael Moss, September 6, 1975;
People v. David Batchelar, October 7, 1975;
People v. John Fergus, October 7, 1975;
People v. Rolland Pierce, October 7, 1975;
People v. McCleary, October 11, 1975; and
People v. Edna Brown, October 25, 1975.

12. Respondent commingled with his personal funds and converted to his own use \$105 properly belonging to his town court cash and assets account, in violation of Section 2020 of the Uniform Justice Court Act, thus producing a deficiency of liabilities over assets in said account of \$105 as of November 2, 1978.

13. Respondent commingled with his personal funds and converted to his personal use \$528 that properly belonged in his village court cash and assets account, in violation of Section 2020 of the Uniform Justice Court Act and Section 4-410(1)(a) of the Village Law, thus producing a deficiency of liabilities over assets in said account of \$528 as of November 2, 1978.

14. As of June 14, 1979, notwithstanding that respondent resigned as village court justice of Mayville on December 20, 1977, and notwithstanding the abolition of the village court by the Village Board of Mayville on April 1, 1978, respondent (i) failed to deliver the records of the village court to the clerk of the village (ii) retained control over the records and (iii) retained control over the village court bank account, in violation of Section 2019-a of the Uniform Justice Court Act.

15. On June 13, 1977, respondent received \$150 in cash from the town clerk of Chautauqua to be remitted as partial restitution to Victor Sawkins, the complaining witness in People v. Weary. Respondent failed to deposit the \$150 in his official court account within 72 hours of receipt, in violation of Section 2020 of the Uniform Justice Court Act and Section 30.7(a) of the Uniform Justice Court Rules, and he did not remit the money to Mr. Sawkins until December 13, 1978.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(b)(1) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct, Canons 1, 2A, 3B(1) and 3C(1)(d)(i) of the Code of Judicial Conduct and Canons 6 and 8 of the Canons of Judicial Ethics. Charges I through XII of the Formal Written Complaint are sustained, and respondent's misconduct is established.

It is improper for a judge to render a decision in any judicial proceeding on the basis of a personal, and in this case a familial, relationship with one of the parties. By presiding over two cases in which his son was the defendant, respondent violated those provisions of the Judiciary Law and the Rules Governing Judicial Conduct which prohibit a judge from presiding over a case if he is related within the sixth degree of consanguinity to one of the parties (Jud. L. §14; Rules §33.3(c)(1)(iv)(a).) Even in the absence of specific statutory and ethical prohibitions, a judge should know that presiding over cases involving a relative is improper and diminishes public confidence in the integrity and impartiality of the judiciary.

Section 33.3(b)(1) of the Rules requires a judge to "diligently discharge his administrative responsibilities, [and] maintain professional competence in judicial administration...." The record herein demonstrates that for nearly ten years respondent has been unable or unwilling to comply with the most elementary administrative responsibilities required of a judge: docketing cases, disposing of cases in a timely manner, depositing court receipts in official accounts, reporting and remitting all receipts promptly to the State Comptroller, issuing receipts to litigants, maintaining a proper record of monies received and disbursed, and maintaining a balance between court assets and liabilities. Despite notice as early as 1976, by the Commission and the State Department of Audit and Control, that his court records and accounts were deficient to a serious degree, respondent did not take steps to reform his administrative procedures or improve the state of his court records. Indeed, respondent's failure to meet his administrative obligations resulted in the conversion to his own use of \$633 in court funds and a delay of 18 months in remitting \$150 due as partial restitution to the complaining witness in a criminal case.

In Bartlett v. Flynn, 50 AD2d 401, 404, the Appellate Division stated:

Although...[respondent] did not misuse public monies for his own profit, the careless manner in which he handled funds entrusted to his care and the disdain he demonstrated, not only for statutory record keeping but also for deposit and remittance requirements constituted a breach of trust and violation of Canon 3B [of the Code of Judicial Conduct] requiring his removal from office.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

All concur, except that Mrs. Robb, Judge Rubin and Mr. Wainwright dissent only with respect to sanction and vote that the appropriate sanction is censure.

Dated: May 8, 1980
Albany, New York

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

PATRICIA COOLEY,

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

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Stephen F. Downs, Of Counsel)
for the Commission

Patricia Cooley, Respondent Pro Se

The respondent, Patricia Cooley, a justice of the Village Court of Alexandria Bay, Jefferson County, was served with a Formal Written Complaint dated February 13, 1980, alleging (i) that she failed to report and remit to the State Comptroller in a timely manner monies received in her judicial capacity from January 1979 to January 1980, (ii) that she failed to make entries in her docket or cash books from April 1979 to December 1979 and (iii) that she failed to respond to inquiries by the Office of Court Administration and by this Commission with respect thereto. Respondent did not file an answer.

By motion dated April 30, 1980, the administrator of the Commission moved for summary determination, pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not respond to the motion. By determination and order dated June 23, 1980, the Commission granted the motion, found respondent's misconduct established and set a date for oral argument on the

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issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. By telephone respondent waived both oral argument and a memorandum.

The Commission considered the record of this proceeding in executive session on July 24, 1980, and upon that record makes the following findings of fact.

1. From January 1979 to January 1980, respondent failed to report or remit to the State Comptroller monies she received in her judicial capacity within the time required by law, in that she:

- (a) reported and remitted in April 1979 monies she collected in January and February 1979;
- (b) reported and remitted in June 1979 monies she had collected in March and April 1979;
- (c) reported and remitted in January 1980 monies collected from June through December 1979.

2. From April 1979 to December 1979, respondent failed to make complete entries in her docket or cash books although she disposed of at least 300 motor vehicle cases in that period.

3. Respondent failed to answer two letters from the director of administration, Fourth Judicial Department, dated June 27, 1979, and November 16, 1979, inquiring into her failure to report and remit monies to the State Comptroller.

4. Respondent failed to cooperate with a duly authorized investigation by this Commission with respect to her failure to make docket and cash book entries and her failure to report and remit monies in a timely manner to the State Comptroller, in that (i) she failed to respond to three written inquiries dated October 9, 1979, October 24, 1979, and November 1, 1979, sent by the Commission's senior attorney pursuant to Section 42, subdivision 3, of the Judiciary Law, and (ii) she failed on two occasions to appear to testify before a member of the Commission on December 18, 1979, and January 8, 1980, although she had been duly requested to appear pursuant to Section 44, subdivision 3, of the Judiciary Law in letters dated November 26, 1979, and December 26, 1979.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 4-410 of the Village Law, Sections 107, 2019, 2019-a, 2020 and 2021 of the Uniform Justice Court Act, Section 30.9 of the Uniform Justice Court Rules, Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charges I through III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The applicable reporting laws and rules cited above require a town or village court justice (i) to maintain proper docket books of matters on the court's calendar, (ii) to maintain a cashbook and (iii) to report and remit to the State Comptroller all collected monies on or before the tenth day of the month following collection. Failure to do so constitutes misconduct and may result in removal of the judge from office. See Bartlett v. Flynn, 50 AD2d 401 (4th Dept. 1976), app. diss. 39 NY2d 946 (1976).

In the instant case, by consistently filing late reports and by not maintaining a cashbook, respondent has evinced a tardiness and carelessness inconsistent with her position of trust and responsibility as a judicial officer.

Respondent's record keeping deficiencies are exacerbated by her failure to cooperate with an inquiry by the Office of Court Administration and a duly authorized investigation by this Commission. Failure to cooperate with a Commission investigation is serious misconduct. In Matter of Robert W. Jordan, NYLJ Aug. 7, 1979, p. 5, col. 1, the Court on the Judiciary suspended a judge for four months without pay for failing to appear before the Commission in the course of a duly authorized investigation. The Court stated as follows:

[R]espondent's refusals to cooperate were clearly improper. Although the respondent is not an attorney, as a judicial officer he is charged with knowledge of his responsibilities, which include cooperating with statutorily authorized Commission investigations. Id.

By failing to keep appropriate court records, by failing to file timely reports and remittances to the State Comptroller, and by failing to respond to appropriate inquiries from two state agencies, respondent has exhibited an inability or unwillingness to discharge the obligations of judicial office in a responsible manner. She thus has violated those provisions of the Rules Governing Judicial Conduct which require diligent attention to administrative duties (Section 33.3[b][1]) and conduct promoting public confidence in the judiciary (Sections 33.1 and 33.2[a]).

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

All concur.

Dated: September 9, 1980
Albany, New York

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

DAVID L. HOLLEBRANDT,

A Justice of the Town Court of Sodus,
Wayne County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

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

Thomas P. Gilmore, Jr., for Respondent

The respondent, David L. Hollebrandt, a justice of the Town Court of Sodus, Wayne County, since 1972, was served with a Formal Written Complaint dated February 11, 1980, (i) alleging numerous financial and reporting deficiencies in his court accounts and records and (ii) alleging that he had pled guilty to Official Misconduct, a misdemeanor, as a result of these deficiencies. Respondent filed an answer dated March 11, 1980, denying all the charges.

By order dated March 21, 1980, the Commission designated the Honorable Morton B. Silberman as referee to hear and report proposed findings of fact and conclusions of law. The hearing was held on May 20 and 21, 1980. The referee filed his report to the Commission on July 15, 1980.

By motion dated August 19, 1980, the administrator of the Commission moved to confirm the report of the referee and for a determination that respondent be removed from office. Respondent did not oppose the motion and waived oral argument before the Commission.

The Commission considered the record of this proceeding on September 17, 1980, and upon that record makes the determination herein.

Charges III, IV and X of the Formal Written Complaint are dismissed. As to the remaining charges, the Commission makes the findings of fact and conclusions of law below.

With respect to Charge I, the Commission makes the following findings of fact.

1. As of July 19, 1976, respondent's court account liabilities exceeded his cash on hand and monies in his official bank account by a total of \$635.55. On September 17, 1976, to make up the deficiency, respondent paid \$635.55 into his official bank account.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 2020 of the Uniform Justice Court Act, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint, as amended at the hearing, is sustained and respondent's misconduct is established.

With respect to Charge II, the Commission makes the following findings of fact.

2. The State Department of Audit and Control audited respondent's records and dockets for the period of July 19, 1976, through October 4, 1979. As of October 4, 1979, respondent's court account liabilities exceeded his cash on hand and monies in his official bank account by the sum of \$8,872.18. This sum included \$3,137.78 which had also been listed as liabilities as of July 19, 1976.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 2020 of the Uniform Justice Court Act, Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge II of the Formal Written Complaint, as amended at the hearing, is sustained and respondent's misconduct is established.

With respect to Charge V, the Commission makes the following findings of fact.

3. From July 19, 1976, through October 4, 1979, respondent failed to deposit monies received in his official capacity into his official bank account within 72 hours of receipt, frequently making such deposits on a monthly basis.

4. An audit by the Department of Audit and Control of respondent's accounts and records up to July 19, 1976, had also cited respondent's failure to deposit official monies within 72 hours of receipt.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 30.7 of the Uniform Justice Court Rules, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge V of the Formal Written Complaint is sustained, and respondent's misconduct is established.

With respect to Charge VI, the Commission makes the following findings of fact.

5. From January 1976 to September 1979, except for a brief period in 1976, respondent failed to maintain a cashbook chronologically itemizing all monies received and disbursed in his official capacity. During this period respondent was aware of the directives of the Office of Court Administration and of the Uniform Justice Court Rules requiring a town justice to maintain a cashbook.

6. An audit by the Department of Audit and Control of respondent's accounts and records up to July 19, 1976, had also cited respondent's failure to maintain a cashbook as required by the Rules of the Administrative Board of the Judicial Conference.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 107 and 2019 of the Uniform Justice Court Act, Section 30.9 of the Uniform Justice Court Rules, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge VI of the Formal Written Complaint is sustained, and respondent's misconduct is established.

With respect to Charge VII, the Commission makes the following findings of fact.

7. From January 1, 1976, to October 4, 1979, respondent failed to issue consecutively-numbered receipt forms for all monies received by him as a town justice.

8. Respondent, who serves part-time as town court justice, owns and operates a retail variety store with 12 part-time employees in the Village of Sodus. Between January 1, 1976, and October 4, 1979, various employees of respondent's retail store collected monies due to respondent as town justice. These employees issued unofficial receipts from common receipt form books, pursuant to authority granted by respondent. Respondent thereafter prepared official receipt forms for such monies and made corresponding entries in his official receipt book, but he did not issue the receipts to the persons who had paid such monies and in fact discarded the official receipt forms after having prepared them.

9. In some instances respondent did not issue receipts for monies received.

10. An audit by the Department of Audit and Control of respondent's dockets and records for the period from January 1, 1976, through July 19, 1979, cited respondent's failure to issue receipts to acknowledge collection of monies in various cases.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 99-b of the General Municipal Law, Section 33.3(b)(1) of the Rules Governing Judicial Conduct and Canon 3B(1) of the Code of Judicial Conduct. Charge VII of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge VIII, the Commission makes the following findings of fact.

11. On May 2, 1977, in the case of People v. Carol Brown, respondent failed to record accurately the fine collected, in that he entered on his docket that a fine of \$80.00 was not paid, although it in fact had been paid and received by respondent. The \$80.00 was neither reported nor remitted by respondent to the Department of Audit and Control.

12. On September 13, 1978, in the case of People v. Ensley T. Brooks, respondent failed to record accurately the fine collected, in that he indicated on his docket that a fine of \$25.00 was not paid, although it in fact had been paid. The \$25.00 was neither reported nor remitted by respondent to the Department of Audit and Control.

13. On September 13, 1978, in the case of People v. Sidney A. Miller, respondent failed to record accurately the fine collected, in that he entered on his docket a disposition of conditional discharge although in fact a fine of \$30.00 had been paid by the defendant and received by respondent. The \$30.00 was neither reported nor remitted to the Department of Audit and Control.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 107 and 2019 of the Uniform Justice Court Act, Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge VIII of the Formal Written Complaint as it pertains to the Brown, Brooks and Miller cases, is sustained and respondent's misconduct is established. That part of Charge VIII which pertains to the case of People v. Leon Smith is not sustained and therefore is dismissed.

With respect to Charge IX, the Commission makes the following findings of fact.

14. As of October 4, 1979, respondent had not reported to the State Comptroller the dispositions of 69 cases, dating back to November 1976, which he was required to so report. Twenty-four of those cases involved fines totalling \$1,105.00 collected by respondent but neither reported nor remitted to the State Comptroller.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 27 of the Town Law, Section 2021 of the Uniform Justice Court Act, Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge IX of the Formal Written Complaint is sustained and respondent's misconduct is established as to 69 of the 88 cases listed in the charge. The charge is not sustained and therefore is dismissed as to the following 19 cases: People v. C.E. McMullen, People v. Edward Lawrenz, People v. Frederick Potter, People v. Randall Derks and People v. Kathy Britt, three cases entitled People v. Harold Farren, two cases entitled People v. James Corlombe, four cases entitled People v. Charles Rogers, two cases entitled People v. Scott Vanderwell and three cases entitled People v. Steven Huff.

With respect to Charge XI, the Commission makes the following findings of fact.

15. Respondent presided over the civil case of James Stow v. William McKinney in 1976 and rendered judgment in favor of the plaintiff in the amount of \$330.77. From February 8, 1976, to March 29, 1976, respondent received from the defendant installment payments totalling \$110.00. In April 1977 respondent received an additional payment of \$10.00 from the defendant. Respondent did not remit the \$120.00 to the plaintiff until April 1979.

16. Respondent's failure to remit the \$120.00 to the plaintiff was due to his faulty record keeping and his having forgotten that he had indeed collected it.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge XI of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge XII, the Commission makes the following findings of fact.

17. On July 19, 1976, the Department of Audit and Control apprised respondent of the results of its audit of his court accounts and records. Respondent was advised (i) that he had a deficiency of \$630.55, (ii) that in certain instances he had not deposited court monies within 72 hours of receipt, (iii) that in certain instances he had failed to issue proper receipts to acknowledge collection of monies, (iv) that he failed to maintain a required cashbook and (v) that he failed to make monthly reconciliations of his cash on hand with his official liabilities.

18. The Department of Audit and Control conducted a second audit of respondent's court accounts and records, for the period from July 19, 1976, to October 4, 1979. The second audit revealed the same deficiencies as were noted in the audit for the period up to July 19, 1976, as well as additional deficiencies.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge XII of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge XIII, the Commission makes the following findings of fact.

19. On August 31, 1977, in the case of People v. Albert J. Bennett, on July 19, 1978, in the case of People v. James L. Harris, and on October 25, 1978, in the case of People v. Dennis A. Brown, respondent accepted pleas of guilty to Vehicle and Traffic Law offenses, imposed monetary fines but did not certify the convictions to the Department of Motor Vehicles.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 514, subdivision 1(a) of the Vehicle and Traffic Law, Section 91.12 of the Regulations of the Commissioner of the Department of Motor Vehicles, Sections 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct and Canons 1, 2A and 3B(1) of the Code of Judicial Conduct. Charge XIII of the Formal Written Complaint is sustained and respondent's misconduct is established as to three of the five cases listed in the charge. The charge is not sustained and therefore is dismissed as to the following two cases: People v. Richard D. Bolton and People v. James C. Hartranft.

With respect to Charge XIV, the Commission makes the following findings of fact.

20. On February 14, 1980, in the Town Court of Macedon, respondent pleaded guilty to Official Misconduct, a misdemeanor under Section 195.00 of the Penal Law, in a proceeding predicated on his official court account deficiencies.

21. Respondent was sentenced to probation for three years. One of the terms of his probation was that he make restitution for all his official court account deficiencies as determined by the Department of Audit and Control.

22. By check dated February 14, 1980, respondent deposited \$6,100 into his official court account, and by check dated February 20, 1980, respondent deposited \$2,000 into his official court account.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 195.00 of the Penal Law of the State of New York, Sections 33.1 and 33.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. Charge XIV of the Formal Written Complaint is sustained and respondent's misconduct is established.

For more than three years, respondent failed (i) to reconcile substantial court account deficits, resulting in a deficiency which at one point exceeded \$8,000.00 in public funds, (ii) to deposit official funds in the manner prescribed by law and (iii) to maintain a cashbook. He improperly authorized the employees of his retail business to collect court monies and issue informal receipts therefor, and he failed to issue proper official receipts thereafter. Respondent failed on numerous occasions for nearly three years to record accurately monies collected in his official capacity and to report properly to the State Comptroller the dispositions of traffic cases.

By his misconduct herein, respondent has demonstrated a gross neglect of the responsibilities of judicial office. By failing to correct his financial and record keeping deficiencies after reports by the Department of Audit and Control and directives from the Office of Court Administration, respondent has exhibited an unwillingness or inability to discharge the administrative and fiduciary obligations of his office. As such, he has engaged in conduct destructive of public confidence in the integrity of his court and prejudicial to the administration of justice. Respondent's conviction on a charge of Official Misconduct has further served to bring the judiciary into disrepute.

That respondent has made restitution for the substantial deficiencies does not mitigate his misconduct. The administration of justice is compromised at the moment public funds entrusted to a judge are handled in a careless and irresponsible manner. When such carelessness involves substantial amounts of money and continues for more than three years, despite reports and directives from official state agencies, the damage to public confidence in that judge and his court is irreparable, even if restitution is made.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

This determination is made pursuant to Section 47 of the Judiciary Law, notwithstanding respondent's resignation from the bench on September 19, 1980.

All concur.

Dated: November 12, 1980
Albany, New York

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

ERNEST DEYO,

a Justice of the Town Court of
Beekmantown, Clinton County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Jack J. Pivar, Of Counsel)
for the Commission

Holcombe & Dame (Kenneth H. Holcombe, Of
Counsel) for Respondent

The respondent, Ernest Deyo, a justice of the Town Court of Beekmantown, Clinton County, was served with a Formal Written Complaint dated March 5, 1980, alleging impropriety in his conduct in presiding over ten cases in 1978 and 1979, eight of which included his brother, Rufus Deyo, as a party. Respondent filed an answer dated March 13, 1980.

By order dated April 21, 1980, the Commission designated the Honorable Harold A. Felix as referee to hear and report proposed findings of fact and conclusions of law. The hearing was conducted on May 28, 1980, and the report of the referee was filed on July 24, 1980.

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By motion dated August 29, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination that respondent be removed from office. Respondent did not oppose the motion. Oral argument was waived.

The Commission considered the record of this proceeding on October 30, 1980, and makes the following findings of fact.

1. On March 15, 1978, Rufus Deyo filed a claim for \$339.80 against Russell Baker in respondent's court. On March 18, 1978, respondent presided over the case, notwithstanding his relationship to the plaintiff. During the course of the proceeding, the following occurred.

(a) Respondent advised Mr. Baker of his relationship to the plaintiff but refused Mr. Baker's request that he disqualify himself.

(b) Respondent advised Mr. Baker that it was not necessary for the plaintiff to be present.

(c) No witnesses were heard and no evidence was received in support of the plaintiff's claim.

(d) Mr. Baker stated the claim already had been paid but that the work he had contracted plaintiff to do was unsatisfactory.

(e) Respondent ordered that the claim be paid, and he told Mr. Baker that if it were not paid Mr. Baker would "have to be picked up."

(f) On February 12, 1979, respondent entered judgment against Mr. Baker when the latter failed to satisfy the claim.

2. In March 1978 Rufus Deyo filed a claim for \$162.25 against James Bell in respondent's court. Respondent presided over the case, notwithstanding his relationship to the plaintiff. During the course of the proceeding, the following occurred.

(a) Between March 16, 1978, and February 12, 1979, Mr. Bell telephoned respondent and asked that he disqualify himself from the proceeding because of his relationship to the plaintiff. Respondent refused Mr. Bell's request and stated that Mr. Bell had to appear in court before a decision would be made.

(b) Mr. Bell did not appear in court and had no other communication with respondent.

(c) On February 12, 1979, respondent entered judgment in favor of the plaintiff in the amount of \$196.25.

3. On December 13, 1978, Rufus Deyo filed a claim for \$272.16 against Tom Lange in respondent's court. Respondent presided over the case, notwithstanding his relationship with the plaintiff. During the course of the proceeding, the following occurred.

(a) On December 27, 1978, the defendant appeared in court, did not deny the indebtedness and satisfied the claim. The plaintiff was not present.

(b) Respondent did not offer to disqualify himself, nor did he offer the defendant an opportunity to request his disqualification.

4. On March 10, 1978, Rufus Deyo filed a claim for \$75 against Roy Provost in respondent's court. On March 18, 1978, Mr. Provost appeared before respondent and satisfied the claim. The plaintiff did not appear. At no time did respondent ask for objections to his presiding in the case, notwithstanding his relationship to the plaintiff.

5. On August 30, 1978, Rufus Deyo filed a claim for \$150 against David Supernault in respondent's court. Thereafter Mr. Supernault appeared before respondent and agreed to satisfy the claim in weekly installments of \$10. Respondent entered judgment to that effect. The plaintiff was not present. At no time did respondent ask for objections to his presiding in the case, notwithstanding his relationship to the plaintiff.

6. In March 1978 Rufus Deyo filed a claim for \$94.14 against Allan Sanger in respondent's court. The claim was settled before respondent by the defendant's wife, out of court. Neither the plaintiff nor the defendant appeared before respondent. At no time did respondent ask for objections to his entertaining the claim, notwithstanding his relationship with the plaintiff.

7. On March 15, 1978, Rufus Deyo filed a claim for \$58 against Thomas Kelly in respondent's court. Thereafter the claim was settled between the parties. Respondent entered judgment as per the settlement. At no time did respondent ask for objections to his acting in the case, notwithstanding his relationship with the plaintiff.

8. On September 12, 1979, Rufus Deyo filed a claim for \$670.44 against Roland Lapier in respondent's court. On September 27, 1979, Mr. Lapier appeared before respondent. The plaintiff arrived thereafter, whereupon Mr. Lapier paid the claim. At no time did respondent ask for objections to his acting in the case, notwithstanding his relationship with the plaintiff.

9. In November 1978 Thomas Peryea filed claims in respondent's court for arrears in rent against Ray Rakes and Gilbert Thomas. During the course of the proceeding, the following occurred.

(a) Mr. Rakes and Mr. Thomas appeared in court before respondent on November 15, 22 and 29, 1978, and disputed the claims. Mr. Peryea was not present on any of these occasions, having been told by respondent that his presence was not necessary.

(b) No witnesses were sworn, and no testimonial or other evidence was taken at any of these occasions.

(c) On February 15, 1979, respondent entered judgments against Mr. Rakes and Mr. Gilbert without having given them prior notice.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 14 of the Judiciary Law, Sections 33.1, 33.2, 33.3(a) and 33.3(c)(1)(iv) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 3C(1)(d) of the Code of Judicial Conduct. Charges I through VI of the Formal Written Complaint are sustained and respondent's misconduct is established.

By presiding over eight cases in which his brother was the plaintiff, by refusing requests that he disqualify himself and by finding in his brother's favor in each case, even where the validity of the claim was contested and apparently without any evidence or proof of the validity of the claim, respondent has engaged in serious misconduct. His actions are in clear violation of the absolute prohibition against presiding over matters involving a relative within the sixth degree of consanguinity or affinity (Judiciary Law, Section 14). Respondent has used his judicial office for the private benefit of his brother.

Respondent's lack of fitness for office, as exemplified by his action in his brother's cases, is further demonstrated by the egregiously inappropriate manner in which he conducted himself with respect to the Peryea claims. Respondent prejudged the matters, acted as attorney for the plaintiff whom he excused, ignored the defendants' objections to his conduct and entered judgments against them without a trial or notice.

Public confidence in the integrity of the judiciary is essential to the administration of justice. Judicial office is not a personal vehicle to be used to advance familial or other private interests. It is a fundamental public trust to be discharged diligently and fairly. By his conduct herein, respondent has violated that trust. He has used the prestige of his office to benefit private interests and he has irreparably diminished public confidence in the integrity and impartiality of his court. He has thereby severely prejudged the administration of justice and established that he lacks the moral judgment and fitness requisite to service on the bench.

By reason of the foregoing, the Commission determines that the appropriate sanction is removal from office.

This determination is rendered pursuant to Section 47 of the Judiciary Law, notwithstanding respondent's resignation from the bench on September 30, 1980.

All concur.

Dated: December 18, 1980
Albany, New York

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

GEORGE C. SENA,

a Justice of the Civil Court of the
City of New York, New York County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
Honorable Richard J. Cardamone
Dolores DeBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, George C. Sena, a justice of the Civil Court of the City of New York, was served with a Formal Written Complaint dated January 23, 1979, alleging in 29 charges that respondent's manner was impatient, undignified, discourteous and inconsiderate toward attorneys and litigants during the course of 30 different proceedings in his court. Respondent filed an answer dated May 11, 1979.

The administrator of the Commission and respondent entered into an agreed statement of facts on October 23, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement on October 25, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator and respondent submitted memoranda prior to oral argument.

The Commission heard oral argument on November 13, 1979, thereafter considered the record of this proceeding, and upon that record makes the findings and conclusions herein.

With respect to Charges I through XXII and Charges XXIV through XXIX of the Formal Written Complaint, the Commission makes the findings of fact set forth in the annexed appendix.

Upon those facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(a)(1), 33.3(a)(3) and 33.3(a)(4) of the Rules Governing Judicial Conduct, Canons 1, 2A, 3A(1), 3A(2), and 3A(3) of the Code of Judicial Conduct, and Sections 604.1(e)(1), 604.1(e)(2), 604.1(e)(3), 604.1(e)(4) and 604.1(e)(5) of the Rules of the Appellate Division, First Judicial Department. Charges I through XXII and Charges XXIV through XXIX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Charge XXIII is not sustained and is dismissed.

The facts set forth in the appendix constitute an extremely serious record of judicial misconduct. The obligation of a judge to conduct himself in a dignified, courteous manner is essential to the effective administration of justice. The very purpose of the judicial process is thwarted by intemperate, judicious and discourteous conduct, such as that repeatedly shown by respondent.

The record of this proceeding is replete with instances of rude and arbitrary behavior by respondent. On numerous occasions he (i) raised his voice in addressing litigants and attorneys, (ii) questioned the competence, honesty and good faith of attorneys, (iii) commented unfavorably on the motivations of those before him and the merits of their claims, (iv) without provocation announced that a litigant or attorney either was "in contempt" of court or would be held "in contempt", (v) directed individuals to "shut up" as they attempted to address the court, (vi) directed the physical removal or restraint of litigants, without apparent justification, as they attempted to address the court, and in one instance required an attorney to stand in a corner of the courtroom for several minutes, and (vii) inappropriately ascribed racial prejudice to those before him.

Respondent's misconduct was not an isolated instance of discourtesy that might be excused as a lapse in judicial temperament. It occurred over the 26-month period between July 1975 and November 1977, while respondent was sitting in the housing part of Civil Court or otherwise adjudicating landlord-tenant matters.

It is improper for a judge to evince discourtesy and rudeness, even if occasionally provoked by a difficult litigant or lawyer. It should be noted that many of the attorneys whom respondent chastised in the matters before him are experienced litigators, and it would have been more appropriate for him to have exhibited more patience with the young and inexperienced

attorneys who appeared before him. Moreover, Part 604 of the Rules of the Appellate Division, First Department, entitled "Special Rules Concerning Court Decorum", sets forth rules by which a judge must be guided in response to provocative conduct.

The judge should be the exemplar of dignity and impartiality. He shall suppress his personal predilections, control his temper, and emotions, and otherwise avoid conduct on his part which tends to demean the proceedings or to undermine his authority in the courtroom. When it becomes necessary during trial for him to comment upon the conduct of witnesses, spectators, counsel, or others, or upon the testimony, he shall do so in a firm and polite manner, limiting his comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining from unnecessary disparagement of persons or issues. [Section 604.1(e)(5), Rules of the Appellate Division, First Judicial Department.]

In Matter of Waltemade, the Court on the Judiciary noted that "[r]espondent's excoriation of lawyers and witnesses alike was frequently accompanied by angry threats of 'sanctions' and sometimes of contempt proceedings in particular...[though] not one of these violent denunciations was ever followed by a contempt citation or any other disciplinary action." Matter of Waltemade, 37 NY2d (nn), (iii) (Ct. on the Judiciary 1975).

In Matter of Mertens, the Appellate Division stated that "[s]elf-evidently, breaches of judicial temperament are of the utmost gravity," and went on as follows:

As a matter of humanity and democratic government, the seriousness of a Judge, in his position of power and authority, being rude and abusive to persons under his authority--litigants, witnesses, lawyers--needs no elaboration.

It impairs the public's image of the dignity and impartiality of courts, which is essential to their fulfilling the court's role in society.

* * *

One of the most important functions of a court is to give litigants confidence that they have had a chance to tell their story to an impartial, open-minded tribunal willing to listen to them.

And lawyers must feel free to advance their client's cause--within the usual ethical limitations--without abuse, or threats. Parties must not be driven to settle cases out of such fear. [Matter of Mertens, 56 AD2d 456, 470 (1st Dept. 1977).]

It is deplorable that respondent's misconduct violated specific standards of judicial behavior. Moreover, the fact that this behavior continued long after the censures in Waltemade and Mertens, supra, indicates a disregard of judicial directives regarding courtroom demeanor. Such conduct undermines public confidence in the judiciary.

With respect to sanction, removal under the circumstances would be too severe and the Constitution does not provide for a more appropriate sanction, such as a suspension from office. Suspension would have impressed upon respondent the severity with which we view his conduct while affording him an opportunity to reflect on his conduct before returning to the bench. Absent such option, the Commission has concluded that a severe censure should be imposed.

All concur.

Dated: January 18, 1980
Albany, New York

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

HOWARD MILLER,

a Justice of the Town Court of Cairo,
Greene County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, a justice of the Town Court of Cairo, Greene County, was served with a Formal Written Complaint dated May 24, 1979, setting forth one charge of misconduct. Respondent filed an amended answer dated July 26, 1979.

By notice dated October 1, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent did not oppose the motion. The Commission granted the motion on October 25, 1979, found respondent's misconduct established with respect to the charge in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator and respondent submitted memoranda in lieu of oral argument.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. From October 6, 1977, to May 16, 1978, respondent failed to serve a summons or give notice of a hearing in the Small Claims Court case of Singer v. Antonucci, because of his personal feelings of irritation with the plaintiff, Robert Singer.

2. Respondent did not reply to two letters dated April 12, 1978, and May 3, 1978, from the Office of Court Administration, and three letters dated December 13, 1978, January 9, 1978, and January 22, 1978, from this Commission, inquiring into his delay in proceeding with the Singer case.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(5) and 33.3(b)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2, 3A(5) and 3B(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

By failing to serve a summons or give notice of a hearing in the Singer case for more than seven months, respondent (i) contravened Section 4500.2(c) of the Uniform Justice Court Rules for Small Claims Procedures, which requires that the date for a hearing be not less than 15 nor more than 30 days from the date the action is commenced, and (ii) thereby violated Section 33.3(a)(5) of the Rules Governing Judicial Conduct, which requires a judge to dispose promptly the business of the court.

In allowing his personal dislike for the plaintiff in the Singer case to interfere with the proper discharge of his judicial responsibilities, respondent violated the applicable sections of the Rules, in that he allowed a personal relationship to influence his judicial conduct and judgment (Section 33.2[b]). Neither justice nor public confidence in the integrity of the judiciary is served when a judge delays commencement of a proceeding because of his personal irritation with one of the parties.

Respondent's failure to reply to two inquiries from the Office of Court Administration and three from this Commission in the course of a duly authorized investigation compounds the initial misconduct. Failure to cooperate with a Commission investigation has been held to be serious misconduct. Matter of Jordan, N.Y.L.J., Aug. 7, 1979, p. 5, col. 1 (Ct. on the Judiciary, 1979; judge suspended without pay for four months).

By reason of the foregoing, the Commission determines that the appropriate sanction is censure. Mr. Kirsch dissents only with respect to sanction and votes that the appropriate sanction is admonition.

Dated: February 11, 1980
Albany, New York

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

LAWRENCE FINLEY,

a Judge of the Oneida City Court,
Madison County, and Sherrill City
Court, Oneida County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

Respondent, Lawrence Finley, a judge of the City Court of Oneida in Madison County and the City Court of Sherrill in Oneida County, was served with a Formal Written Complaint dated April 30, 1979, setting forth 20 charges of misconduct. Respondent filed an answer dated May 15, 1979.

By notice dated October 9, 1979, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission's rules (22 NYCRR 7000.6[c]). Respondent submitted an affidavit in response to the motion for summary determination. The Commission granted the motion on October 25, 1979, found respondent's misconduct established with respect to all 20 charges in the Formal Written Complaint, and set a date for oral argument on the issue of an appropriate sanction. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and submitted a letter from his attorney on the issue of sanction.

The Commission considered the record in this proceeding on December 13, 1979, and upon that record makes the following findings of fact.

1. As to Charge I, on December 23, 1976, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in People v. Jerry Saunders, as a result of a written communication he received from Acting Justice William F. Gleason of the Village Court of Clinton, seeking special consideration on behalf of the defendant, Judge Gleason's cousin.

2. As to Charge II, on April 1, 1975, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. Bernard Bacon as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

3. As to Charge III, on August 12, 1976, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in People v. Brian Barr as a result of a written communication he received from Justice Joseph Cristiano of the Village Court of Middleville, seeking special consideration on behalf of the defendant.

4. As to Charge IV, on February 26, 1974, respondent imposed an unconditional discharge in People v. Jay Cowan, as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

5. As to Charge V, on August 5, 1975, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. James A. Crawford as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, a judge in Madison County who is permitted to practice law, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

6. As to Charge VI, on May 22, 1975, respondent reduced a charge of failure to yield right of way to "unnecessary noise-muffler" in People v. John Delekta as a result of a communication he received from Trooper Mike Donagan seeking special consideration on behalf of the defendant.

7. As to Charge VII, on February 23, 1977, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. Arthur C. Keller as a result of a written communication he received from Justice Malcolm W. Knapp of the Town Court of Lafayette, seeking special consideration on behalf of the defendant.

8. As to Charge VIII, on July 12, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler in People v. Jerome Miller as a result of a written communication he received from Justice Donald F. Havens of the Town Court of Brookfield, seeking special consideration on behalf of the defendant.

9. As to Charge IX, on August 8, 1976, respondent reduced a charge of speeding to failure to obey a traffic signal in People v. Raymond Brown as a result of a written communication he received from Justice Thomas F. Malecki of the Village Court of Vernon, seeking special consideration on behalf of the defendant.

10. As to Charge X, on October 21, 1976, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. Charles Teeps as a result of a written communication he received from Justice Thomas F. Malecki of the Village Court of Vernon, seeking special consideration on behalf of the defendant.

11. As to Charge XI, on November 30, 1976, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. Cynthia Thurston as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

12. As to Charge XII, on November 7, 1974, respondent reduced a charge of driving to the left of pavement markings to "unnecessary noise-muffler" in People v. Debra L. Valerio as a result of a written communication he received from Trooper T.S. Santora, seeking special consideration on behalf of the defendant.

13. As to Charge XIII, on May 22, 1975, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. Carl Webster as a result of a written communication he received from Justice Michael Perretta of the Town Court of Lenox, seeking special consideration on behalf of the defendant, notwithstanding that respondent had previously made similar requests to Judge Perretta on behalf of respondent's clients and received fees from his clients in such cases.

14. As to Charge XIV, on February 10, 1977, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in People v. David E. Pianka as a result of a communication he received from Army Carinci, seeking special consideration on behalf of the defendant.

15. As to Charge XV, on March 13, 1975, respondent reduced a charge of speeding to "unnecessary noise-muffler" in People v. John M. Sroka as a result of a written communication he received from Justice Stanley C. Wolanin of the Town Court of New York Mills, seeking special consideration on behalf of the defendant.

16. As to Charge XVI, on September 25, 1973, respondent reduced a charge of speeding to driving with an inadequate muffler and imposed an unconditional discharge in People v. Marion Barrett as a result of a written communication he received from Justice Carlton M. Chase of the Village Court of Chittenango, seeking special consideration on behalf of the defendant.

17. As to Charge XVII, on May 13, 1976, respondent reduced a charge of speeding to disorderly conduct with a motor vehicle in People v. Timothy Samson as a result of a communication he received from Justice Thomas Malecki of the Village Court of Vernon, seeking special consideration on behalf of the defendant.

18. As to Charge XVIII, on June 20, 1974, respondent sent a letter which identified him as a Judge of the Oneida City Court to Justice Federspiel of the Town Court of Pembroke, Genesee County, on behalf of the defendant in People v. Jesse H. Ramage, and received \$50 from the defendant as a legal fee.

19. As to Charge XIX, from 1967 to 1978, respondent, in the regular conduct of his legal practice, used stationery which identified him as a Judge of the Oneida City Court.

20. As to Charge XX, on December 6 and 8, 1977, in connection with People v. Karl Kroth, a case then pending before respondent in which the defendant was charged with driving while intoxicated and driving with more than .10% blood alcohol, respondent spoke by telephone with William Kroth, the defendant's father, and stated in substance:

- (1) that it would be in the defendant's best interest to plead guilty to a reduced charge of driving while ability impaired; and
- (2) that defendant's lawyer, Lewis Hoffman, agreed with this assessment of the case.

On January 11, 1978, respondent granted defendant's motion to dismiss the case of People v. Karl Kroth in the interest of justice, in response to the defendant's claim that respondent, in his two conversations with William Kroth, had indicated prejudgment of the case and had improperly interfered with the defendant's relationship with his attorney.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4) and 33.3(c) of the Rules Governing Judicial Conduct, Canons 1, 2, 3A and 3C of the Code of Judicial Conduct, Canons 4 and 31 of the Canons of Judicial Ethics, and permitted a violation of Section 33.5(f) of the Rules Governing Judicial Conduct and Section 339.5 of the Rules of the Appellate Division, Third Judicial Department. Charges I through XX of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's misconduct in the matters herein falls into three categories: (i) acceding to special influence on behalf of defendants in traffic cases, (ii) identifying himself as a judge on the stationery he used in the regular conduct of his legal practice and (iii) involving himself in the preparation of the defendant's case in a particular matter.

As to the traffic cases, the Commission concludes that it is improper for a judge to seek to persuade another judge, on the basis of personal or other special influence, to alter or dismiss a traffic ticket. A judge who accedes to such a request is guilty of favoritism, as is the judge who made the request. By granting ex parte requests for favorable dispositions for defendants in traffic cases, from judges and others in a special position to influence him, respondent violated the Rules enumerated above, which read in part as follows:

Every judge...shall himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. [Section 33.1]

A judge shall respect and comply with the law and shall conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. [Section 33.2(a)]

No judge shall allow his family, social or other relationships to influence his judicial conduct or judgment. [Section 33.2(b)]

No judge...shall convey or permit others to convey the impression that they are in a special position to influence him.... [Section 33.2(c)]

A judge shall be faithful to the law and maintain professional competence in it.... [Section 33.3(a)(1)]

A judge shall...except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceedings.... [Section 33.3(a)(4)]

Courts in this state and other jurisdictions have found that favoritism is serious judicial misconduct and that ticket-fixing is a form of favoritism.

In Matter of Byrne, 420 NYS2d 70 (Ct. on the Judiciary, 1978), the court declared that a "judicial officer who accords or requests special treatment or favoritism to a defendant in his court or another judge's court is guilty of malum in se misconduct constituting cause for discipline." In that case, ticket-fixing was equated with favoritism, which the court stated was "wrong and has always been wrong." Id., at 71-72.

As to his practice of identifying himself as a judge on the stationery used in his private law practice, respondent's conduct was clearly improper. Canon 31 of the Canons of Judicial Ethics cautions a judge who is permitted to practice law to "be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success." By his conduct, respondent in effect used his judicial office and title in pursuit of entirely private ends. He thereby diminished public confidence in the integrity and independence of the judiciary. Respondent knew or should have known that routinely identifying himself as a judge in his law practice could have an intimidating effect on those with whom he dealt and might otherwise enure to his benefit.

As to his conduct in People v. Kroth, respondent initiated an ex parte communication with the defendant's father, in violation of Section 33.3(a)(4) of the Rules Governing Judicial Conduct. His advising the defendant's father as to how the defendant should plead in this case was improper and interfered with the relationship between defendant and defense counsel. Furthermore, by virtually acting as a lawyer in the proceeding, respondent compromised the impartial role required of a presiding judge and effectively created a climate in which he should have disqualified himself, inasmuch as "his impartiality might reasonably be questioned" (Section 33.3[c] of the Rules).

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

All concur.

Dated: Albany, New York
February 11, 1980

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

NORMAN H. SHILLING,

a Judge of the Civil Court of the City
of New York, Kings County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Norman H. Shilling, a judge of the Civil Court of the City of New York, was served with a Formal Written Complaint dated June 4, 1979, alleging that he improperly interfered in the course of a proceeding before another judge and that he lent the prestige of his office to advance the interests of a third party, a not-for-profit corporation with which he was associated. Respondent filed an answer dated June 22, 1979.

By order dated September 4, 1979, the Commission designated the Honorable James Gibson referee to hear and report with respect to the issues herein. Pursuant to Section 44, subdivision 4, of the Judiciary Law, respondent waived confidentiality in this proceeding and requested that any hearing be public.

By notice of motion dated September 19, 1979, respondent moved to dismiss the Formal Written Complaint for failure to state a cause of action. By order dated October 26, 1979, the Commission denied the motion.

A public hearing was held on October 29, 30, and 31 and November 1, 1979, and the report of the referee was filed on January 23, 1980.

By notice of motion dated February 1, 1980, the administrator of the Commission moved to confirm the referee's report and for a determination of misconduct and sanction. Respondent's opposition papers were filed on February 7, 1980.

The Commission heard oral argument on the issues herein on February 26, 1980. Thereafter, in executive session, the Commission considered the record of this proceeding, and now upon that record makes the following findings of fact.

1. In December, 1977, three summonses were issued against Mr. John Esteves, an employee of Associated Humane Societies of New Jersey (A.H.S.), who manages the A.H.S. facility at 224 Atlantic Avenue, Brooklyn, New York.

2. One summons was issued by the New York City Department of Health, charging operation of the Atlantic Avenue facility without a permit. The other two summonses were issued by agents of the American Society for the Prevention of Cruelty to Animals (A.S.P.C.A.), charging lack of health certificates for dogs shipped from New Jersey to New York, and lack of single cages for dogs over three months old.

3. Between December 1977 and December 1978, respondent contacted Dr. John Kullberg, Executive Director of the A.S.P.C.A., and Eric Plasa, Director, Humane Law Enforcement of the A.S.P.C.A.

4. In his telephone conversation with Dr. Kullberg, respondent identified himself as a judge and requested that Dr. Kullberg intercede and have the A.S.P.C.A. summonses dropped and the charges dismissed. Dr. Kullberg declined, and offered instead to have his agents make an unannounced visit to the A.H.S. facility, but respondent requested a visit with notice.

5. In his telephone conversation with Eric Plasa, respondent also asked for dismissal of the charges against Mr. Esteves.

6. Respondent also contacted Dr. Alan Beck of the New York City Department of Health, Bureau of Animal Affairs, and Dr. Howard Levin, Chief Veterinarian of the City Department of Health.

7. In his telephone conversations with Dr. Beck, respondent identified himself as a judge and questioned why the permit was not being granted to A.H.S. Dr. Beck told respondent that he was doubtful as to the wisdom of having New Jersey animals brought into New York City and vice versa, because of health, social and administrative problems. Respondent dismissed Dr. Beck's arguments, became angry, and yelled and screamed at Dr. Beck to such an extent that Dr. Beck was not able to keep the phone to his ear.

8. In a subsequent telephone call to Dr. Beck, respondent was angry that the permit still had not been issued to A.H.S. Dr. Beck explained that the site was not zoned for a kennel, and respondent yelled, screamed and said that Dr. Beck should "stop f-----g around with the Humane Society."

9. Respondent reminded Dr. Beck at least twice that respondent was a judge and also told Dr. Beck that he had more political clout than Dr. Beck. Dr. Beck perceived the telephone calls to be fraught with "attempted intimidation."

10. In his telephone conversation with Dr. Levin, respondent identified himself as a judge and asked, in a loud voice, to have the permit issued to A.H.S. Respondent questioned the reasons for the summons. He was upset and angry, and accused the Department of abusing its authority. Dr. Levin perceived respondent's tone of voice as "threatening."

11. On July 10, 1978, the case of A.S.P.C.A. and New York City Department of Health v. Esteves came before Judge Eugene Nardelli, sitting at New York City Criminal Court in Manhattan. After the case had been called, and while a settlement discussion was in progress at the bench, Judge Nardelli saw respondent sitting in the rear of the courtroom.

12. During the course of the settlement negotiations, Harry Brown, attorney for A.H.S. and Mr. Esteves, mentioned that respondent sat on the board of A.H.S.

13. After the Esteves matter was adjourned, respondent approached the bench and commented to Judge Nardelli about the case, to the effect that if the A.S.P.C.A. and Department of Health were really interested in animals, they would not be proceeding in such a manner. Judge Nardelli did not respond.

14. Respondent did not consider the impropriety of entering another judge's courtroom during the pendency of a case in which he was interested and talking to the presiding judge about the matter.

15. When the persons involved in the Esteves case left the courtroom, respondent also left. In the corridor, Mr. Brown introduced respondent to Dr. Levin. Respondent spoke to Dr. Levin about the permit and why it was being stopped. Dr. Levin replied that the problem was a zoning one. Respondent stated that zoning was not relevant, and that he had obtained this information from the building department. When Ms. Elinor Molbegott, attorney for the A.S.P.C.A., stated, "We will check into that," respondent said, "Listen, I am a judge of the Civil Court. When I make a statement of fact, it's a fact."

16. At the time of this conversation, respondent was angry and was talking in a loud tone of voice and waving his arms. Ms. Molbegott testified that respondent also made reference to "political friends." Dr. Levin considered respondent's tone to be "authoritative," perhaps "menacing."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2(a), 33.3(c), 33.5(a) and 33.5(c) (1) of the Rules Governing Judicial Conduct and Canons 1, 2, 5A and 5C of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

It was improper for respondent (i) to intercede in the Esteves case by attempting to persuade two officials of the A.S.P.C.A. with law enforcement authority to withdraw the summonses which commenced the proceeding and to have identified himself as a judge while so doing, (ii) to interfere on behalf of the A.H.S. with officials of the New York City Department of Health as to their decision not to issue a permit to A.H.S., to have identified himself as a judge while so doing, and to have addressed the City officials in a hostile, profane and loud manner, (iii) to speak in a loud voice in the courthouse corridor with the attorney for the A.S.P.C.A. and to make reference to political influence, and (iv) to interfere in the court's consideration of the Esteves case by speaking to the presiding judge on behalf of the defendants. Judge Nardelli appropriately did not respond or allow himself to be engaged in conversation with respondent on this matter.

Respondent has exhibited a disturbing disregard of the ethical obligations required of all judges. He has used the prestige of his office to assert special influence on behalf of a third party and brought disrepute to the judiciary by his vulgar and abrasive public manner.

Respondent has shown little or no understanding of the standards of demeanor incumbent upon all judges as expressed in the Rules Governing Judicial Conduct. A judge's obligation to adhere to those standards is not limited to the courtroom. Matter of Kuehnelt v. State Commission on Judicial Conduct, NY2d (Mar. 18, 1980).

The Commission finds the blatant impropriety respondent has evinced to be seriously compounded by his refusal in this record to acknowledge that his actions even appeared improper. Respect for the judiciary has been diminished both by respondent's conduct and the appearance of impropriety thereby engendered.

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

All concur.

Dated: April 9, 1980
Albany, New York

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

JAMES HOPECK,

a Justice of the Town Court of
Halfmoon, Saratoga County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern for the Commission
David L. Riebel for Respondent

The respondent, James Hopeck, a justice of the Town Court of Halfmoon, Saratoga County, was served with a Formal Written Complaint dated July 3, 1979, alleging misconduct in that respondent (i) directed his wife to preside in court over ten traffic cases in his absence one evening, (ii) failed to disqualify himself and encouraged ex parte communication in a case involving a defendant with a familial relationship to his wife and (iii) left the bench and argued with an attorney over the attorney's conduct in court. Respondent filed an answer dated September 6, 1979.

The administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts on April 7, 1980, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the agreed upon facts.

The Commission approved the agreed statement as submitted, determined that no outstanding issue of fact remained and scheduled oral argument to determine (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. Both the administrator and respondent waived oral argument and submitted memoranda on the issues.

The Commission considered the record in this proceeding in executive session on June 18, 1980, and upon that record makes the following findings of fact.

With respect to Charge I:

1. On August 24, 1977, respondent was suddenly taken ill and realized he would be unable to attend the session of his court scheduled for that evening.

2. The court calendar on the evening of August 24, 1977, consisted of ten Uniform Traffic Tickets returnable before respondent that evening: People v. LaFontaine, People v. Egan, People v. Gonyea, People v. Lincham, People v. Berthiaume, People v. Fernet, People v. Rigney, People v. DiNola, People v. DiCenzo and People v. Capra.

3. Upon taking ill, respondent directed his wife, who was also his court clerk, to attend his court that evening and to advise those who would be present that (i) the court would allow two-week adjournments to defendants who so requested or (ii) defendants could plead guilty under procedures for pleading guilty by mail by signing the back of the Uniform Traffic Ticket and paying a fine which respondent's wife would collect.

4. On the margin of the court's copy of each Uniform Traffic Ticket returnable on the evening of August 24, 1977, respondent wrote the amount of the fine which would be imposed in the event of a guilty plea.

5. Respondent also told his wife that if anyone objected to the procedure set forth in paragraph 3 above, the objecting party should be granted an adjournment to discuss the matter with respondent.

6. On the evening of August 24, 1977, respondent's wife appeared in court and made the announcement as directed by respondent. Seven defendants thereupon pled guilty to the original charges filed against them and paid fines in the amount respondent had previously written on the margins of the respective tickets.

7. Three other defendants consulted with the assistant district attorney, who was present, and requested to plea bargain the charges against them. Respondent's wife thereupon telephoned respondent, and respondent and the assistant district attorney discussed the three cases over the telephone and agreed to reductions in each case.

8. No announcement had been made by respondent's wife or anyone else that plea bargaining would be permissible under the circumstances or that the defendants could discuss the merits of their cases over the telephone with the judge.

9. At least six of the ten defendants who were present in court on the evening of August 24, 1977, and who heard the announcement by respondent's wife and observed the reduction of charges and the collection of fines by respondent's wife, believed that respondent's wife was setting fines and reducing charges on her own authority as though she were an acting judge.

10. Respondent acknowledged to the Commission (i) that his actions created an appearance of impropriety in that members of the public in his court on the evening of August 24, 1977, might reasonably have concluded that respondent's wife was acting as a judge in his place and (ii) that the telephone discussion between respondent and the assistant district attorney, as to plea bargaining, was improper.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a) and 33.3(b) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A and 3B of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charges II and III:

11. On November 26, 1977, criminal charges were filed in respondent's court returnable December 7, 1977, against Walter Boleski, charging Mr. Boleski with "Taking A Wild Deer Without Antlers During The Open Season."

12. Mr. Boleski's wife is related to respondent's wife by consanguinity in that Mr. Boleski's wife and respondent's wife are first cousins.

13. Respondent granted adjournments in the Boleski case on December 7, 1977, December 28, 1977, and January 11, 1978, during which time settlement by way of civil compromise was discussed among the defendant, his attorney and representatives of the Environmental Conservation Department. Respondent was aware that settlement discussions were taking place but he did not participate in them.

14. On December 8, 1977, respondent asked his wife to call the defendant's wife, "as a courtesy," to encourage the defendant and the defendant's wife to discuss the case ex parte with respondent if they so wished. Respondent's wife thereafter telephoned and spoke with Mrs. Boleski in accordance with respondent's instructions.

15. On January 18, 1978, the parties informed respondent that they had reached a civil compromise requiring the defendant to pay \$300. Respondent recorded the settlement in his civil docket and dismissed the criminal action against the defendant "in the interest of justice."

16. Respondent acknowledged to the Commission that it was improper (i) not to have disqualified himself immediately from the case and (ii) to have encouraged ex parte communication by the defendant and the defendant's wife.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1), 33.3(a)(4), 33.3(c)(1)(i) and 33.3(c)(1)(iv)(a) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(1), 3C(1)(a) and 3C(1)(d)(i) of the Code of Judicial Conduct. Charges II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

With respect to Charge IV:

17. On the evening of January 11, 1978, while presiding in court, respondent became irritated at a remark made by Donald Carola, an attorney representing a client in a case before respondent. After Mr. Carola left the courtroom, respondent excused himself from the bench, followed Mr. Carola to a parking lot outside the courthouse and said to Mr. Carola, "Look, I am only going to tell you once, I don't need any more of your smart remarks in this court and it better not happen again." Mr. Carola thereupon became very angry and he and respondent argued for approximately five minutes.

18. Respondent acknowledged to the Commission that it was improper to have left the bench during a session of court to engage in an argument with one of the attorneys appearing in a case in that court.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(2) and 33.3(a)(3) of the Rules Governing Judicial Conduct and Canons 1, 2, 3A(2) and 3A(3) of the Code of Judicial Conduct. Charge IV of the Formal Written Complaint is sustained and respondent's misconduct is established.

With respect to Charge I, by directing his wife to conduct business of the court in his absence, in the manner set forth above, respondent created the appearance of improperly having delegated his adjudicatory responsibilities to his wife. By noting in advance of any hearing the amounts of the fines to be collected by his wife in ten traffic cases, respondent appeared to have prejudged the merits of the cases and to have set fines without regard to the rights of the defendants to be heard. By engaging in an ex parte communication with the assistant district attorney as to three of those ten traffic cases, respondent violated that section of the Rules Governing Judicial Conduct which prohibits such communications (Section 33.3 [a][4]).

With respect to Charges II and III, by presiding over a criminal matter in which his wife was related by consanguinity to the defendant's wife, and by encouraging ex parte communication by the defendant, respondent violated those provisions of the Rules Governing Judicial Conduct (i) which require disqualification when a judge or his spouse is related to a defendant or his spouse within the sixth degree of consanguinity or affinity (Section 33.3[c][1][iv][a]), and (ii) which prohibit a judge from initiating or considering ex parte communications concerning a pending proceeding, except as authorized by law (Section 33.3[a][4]).

With respect to Charge IV, by leaving the bench during a session of the court to argue with an attorney outside the courthouse, respondent failed in his obligations to maintain order in proceedings before him and to be patient and dignified toward one with whom he deals in his official capacity (Sections 33.3[a][3] and [4] of the Rules).

In determining the appropriate sanction, the Commission has considered the varied nature of the misconduct and the cumulative effect it will have both on public confidence in the integrity of respondent's court and on respondent's fitness to serve. The Commission has also considered that in 1976 the Appellate Division, Third Department, censured respondent for sentencing a defendant whom "he believed to be involved in a prior incident of a personal nature" involving respondent and for threatening "to deal personally with said defendant if a future incident should occur involving respondent's family." Matter of Hopeck, 54 AD2d 35 (3d Dept 1976).

Had the Constitution provided for suspension from office as a sanction, the Commission would have done so in this case. Suspension would have impressed upon respondent the severity with which we view his conduct while affording him an opportunity to reflect on his conduct before returning to the bench. Absent such option, the Commission determines that respondent should be severely censured.

All concur, except (i) Mr. Kirsch dissents as to Charge I and votes to dismiss the charge and (ii) Judge Alexander, Mr. Bromberg, Mrs. DelBello, Mr. Maggipinto and Judge Shea dissent only with respect to sanction and vote that the appropriate sanction is removal from office.

Dated: August 15, 1980
Albany, New York

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

CULVER K. BARR,

a Judge of the County Court,
Monroe County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch, Esq.
Victor A. Kovner, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

Gerald Stern (Robert Straus, of Counsel)
for the Commission
Alfred P. Kremer for Respondent

The respondent, Culver K. Barr, a judge of the County Court, Monroe County, was served with a Formal Written Complaint dated February 19, 1980, alleging various acts of misconduct arising from his arrest on two occasions for, inter alia, driving while intoxicated. Respondent filed an answer dated March 7, 1980.

The administrator of the Commission, respondent and respondent's attorney entered into an agreed statement of facts on May 16, 1980, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission render its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement and heard oral argument on July 23, 1980, to determine whether the agreed upon facts establish misconduct and, if so, an appropriate sanction. Thereafter in executive session the Commission considered the record of this proceeding and upon that record makes the following findings of fact.

1. On December 10, 1978, while being arrested by the New York State Police in the Town of Palmyra, New York (Wayne County), on charges of Driving While Intoxicated, a misdemeanor, and Failure to Keep Right, a violation of the Vehicle and Traffic Law, respondent:

(a) stated repeatedly to the arresting officers that he was a Monroe County Court Judge and wanted "consideration";

(b) asked Trooper Nelson Baker, one of the arresting officers: "Do you realize who I am?", and stated that respondent's reputation as a judge would be adversely affected by the arrest and if the trooper did not arrest him, respondent would give the trooper "anything";

(c) refused to take a field sobriety test;

(d) repeatedly refused to take a breathalyzer test at the New York State Police substation in Newark, New York;

(e) stated to the troopers at the substation that he does not "get mad," he "just get(s) even"; and

(f) stated to Trooper Slingerland at the substation that a County Court Judge should not be subject to arrest.

2. (a) On March 19, 1979, respondent was (i) convicted after a jury trial in the Town Court of Palmyra of Driving While Ability Impaired, and (ii) convicted of Failure To Keep Right by Palmyra Town Court Justice Harry White.

(b) On May 7, 1979, respondent was given a conditional discharge on his conviction of Driving While Ability Impaired and fined \$25 on his conviction of Failure To Keep Right.

(c) The conditions of respondent's sentence of conditional discharge were: (i) that he attend an alcohol rehabilitation course approved by the Department of Motor Vehicles and (ii) that he lead a law-abiding life.

(d) From May 29, 1979, to July 29, 1979, respondent's license to operate a motor vehicle was suspended by the Department of Motor Vehicles as a result of his conviction.

3. On August 12, 1979, while being arrested by the Monroe County Sheriff's Department in the Town of Chili, New York (Monroe County), on charges of Driving While Intoxicated, a misdemeanor, and Refusal To Take A Breath Test and Moving From Lane Unsafely, violations of the Vehicle and Traffic Law, respondent:

(a) stated repeatedly to the arresting officers that he was a Monroe County Court Judge and wanted "consideration";

(b) refused to enter the Monroe County Sheriff's mobile processing van to be fingerprinted and otherwise processed in the course of arrest;

(c) repeatedly refused to take a breathalyzer test;

(d) stated: "F--- you" to the arresting deputies after being told that he was going to be handcuffed for failing to cooperate; and

(e) stated to the arresting officers that he hoped he would "have the opportunity to repay this back someday."

4. Respondent's arrest on August 12, 1979, for Driving While Intoxicated occurred while he was still serving the sentence of conditional discharge imposed for his prior conviction on March 19, 1979, of Driving While Ability Impaired; accordingly by his conduct on August 12, 1979, respondent violated the conditions of his sentence of May 7, 1979.

5. On August 20, 1979, respondent was convicted on his plea of guilty to the charges of Driving While Intoxicated and Moving From Lane Unsafely. Thereafter, on October 29, 1979, respondent was sentenced to serve three years probation, was ordered to attend an alcohol rehabilitation program, was fined \$250 and had his license revoked.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent engaged in conduct prejudicial to the administration of justice, attempted to use the prestige of his office to obtain special consideration for himself, conducted himself in a manner which would tend to bring the judiciary into disrepute, failed to observe high standards of conduct, failed to conduct himself in a manner which would promote public confidence in the integrity and impartiality of the judiciary, and detracted from the dignity of his office, in violation of Article VI, Section 22, subdivision a, of the Constitution of the State of New York, Sections 33.1, 33.2(a) and 33.5(a) of the Rules Governing Judicial Conduct and Canons 1, 2A and 5A of the Code of Judicial Conduct. Charges I through V of the Formal Written Complaint are sustained, and respondent's misconduct is established.

In determining the appropriate sanction to be imposed upon a judge found guilty of misconduct, the Commission must balance its responsibility to insure to the public a judiciary beyond reproach and its responsibility to deal humanely and fairly with the individual judge. In some cases, the misconduct is so serious and so clearly reflects a lack of fitness that public confidence in the integrity of the individual judge is irretrievably lost. The public interest can be adequately protected in such cases only by removal of the judge from office.

In other cases, the misconduct, though serious and not in any sense to be condoned, is such that a lesser sanction permits both a vindication of the public interest and an opportunity for the judge to reform his conduct while continuing to serve effectively in judicial office. Under the New York Constitution, the only such lesser sanctions available to the Commission are censure and admonition.

The considerations that justify distinguishing one such type of case from the other are not always capable of precise formulation; rather, each case of misconduct must be carefully examined in all of its components so that a proper balance can be struck between the competing interests.

Here, the misconduct in which respondent engaged is undisputed. He was arrested twice for driving while intoxicated, the second time while under condition of the discharge from the first arrest. He identified himself as a judge and sought to use that to his advantage with the arresting officers. He refused to take the sobriety tests or submit to the processing routinely administered by the police in such cases. He became verbally abusive. Such conduct is reprehensible and brings the judiciary into disrepute. A judge may not flout the laws he is sworn to uphold when they are applied to him personally and expect to sustain the confidence and trust of the people in whose name he administers justice.

The psychological evaluation respondent submitted to the Commission concludes that respondent is an alcoholic. The record of this proceeding reveals a number of poignant circumstances, unnecessary to recite here, which contributed to the development of his condition. It is important to note, however, that respondent's alcoholism, whatever its source, does not excuse his conduct. However sympathetic we may be to the cause, the effect of respondent's illness has been to cast doubt as to his efficacy as a judicial officer and to cast a shadow over an otherwise unblemished record of nearly 13 years on the bench. Respondent appears to have made a sincere effort to rehabilitate himself since his second arrest, and while it is too soon to measure the success of these efforts, he appears to be making progress.

Our determination of an appropriate sanction in this case should consider whether the prospect of respondent's rehabilitation is worth the risk of leaving him on the bench.

One of the risks to be weighed in this consideration is the degree to which the administration of justice would be compromised, if at all, by allowing respondent to retain his office. There is no indication that respondent's alcoholism has ever manifested itself while respondent was on the bench or otherwise executing his office during regular court hours. The evidence before the Commission indicates that respondent is a dedicated judge whose demeanor on the bench is marked by sobriety and diligence.

Nevertheless, in at least one respect, his alcoholism and the consequent misconduct have affected the performance of his duties. By agreement between respondent and the district attorney of Monroe County, concurred in by individual defendants to date, respondent does not and will not preside over contested felony charges of driving while intoxicated (DWI). He continues to perform all his other judicial duties, including those which involve uncontested felony DWI matters, such as presiding over arraignments, accepting pleas and passing sentences.

This limitation upon respondent's availability to hear all cases in his court raises hard questions as to the administration of justice in respondent's court. For example, is the public well served by a judge who cannot hear a particular type of case? Is the burden on the other judges of the county court likely to be increased significantly as a result? Will public confidence be undermined in respondent's ability to pass sentence impartially in undisputed DWI matters, given his own personal experience with the same charge? Will respondent feel obliged or otherwise beholden to the district attorney, in DWI or other cases, as a result of this disqualification agreement? Will his disagreeable

experience with the officers who arrested him color his perspective of police officers whose testimony or affidavits he may later evaluate in uncontested DWI or contested non-DWI matters?

In the limited time since respondent's second arrest, the answers to these questions are not yet conclusive. Whether they will be resolved in respondent's favor, and indeed whether respondent will be successful in his effort to rehabilitate himself from alcoholism, remain to be seen. To resolve them against respondent at this stage would be premature.

Were suspension from office an alternative sanction available to us under the Constitution, we would impose it in this case, to allow a longer period of time within which to measure the success of respondent's rehabilitative efforts. Absent that alternative, and having given full consideration to the risks involved in permitting respondent to retain his judicial office, we conclude that the interests of both the public and this judge as an individual may be adequately served by allowing respondent the opportunity to reclaim public confidence in his performance.

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

All concur, except for Mr. Kovner, who dissents in a separate opinion only with respect to sanction and votes that the appropriate sanction is removal from office.

Mr. Kovner dissents in the following opinion.

The facts set forth in the Commission's determination present a clear case for removal from office. Respondent's criminal conduct in Driving While Ability Impaired and Driving While Intoxicated, standing alone, would warrant censure. When viewed in the context of the two instances of abuse of office, however, the vulgar threats of reprisal to the police officers require removal. Respondent's alcoholism should not relieve him of the consequences of this intolerable behavior. Furthermore, I do not accept the notion that a judge who refuses to take either a field sobriety test or a breathalyzer test could be unaware of the import of his statements.

It should be noted that the Commission has determined, and the Court of Appeals has affirmed, that judges whose conduct off the bench involves serious abuse of office should be removed. In Steinberg v. State Commission on Judicial Conduct, NY2d (1980), a New York City Civil Court Judge was removed, inter alia, for engaging in numerous prohibited business transactions. In Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465 (1980), a town court justice was removed, inter alia, for threats to misuse his judicial office in connection with four youths with whom he had had an altercation.

Moreover, in my view, the questions raised by respondent's current practices regarding DWI matters constitute an unacceptable burden on the administration of justice in respondent's court.

For the foregoing reasons, I respectfully vote that the appropriate sanction should be removal from office.

Dated: October 3, 1980
Albany, New York

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

THEODORE WORDON,

a Justice of the Town Court of Durham,
Greene County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr.

The respondent, Theodore Wordon, a justice of the Town Court of Durham, Greene County, was served with a Formal Written Complaint dated February 15, 1979, alleging misconduct in that he sent a letter on court stationery to a debtor on behalf of a creditor. Respondent submitted an answer dated April 5, 1979.

The administrator of the Commission and respondent entered into an agreed statement of facts on November 21, 1979, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law, and stipulating that the Commission make its determination on the pleadings and the facts as agreed upon. The Commission approved the agreed statement on December 13, 1979, determined that no outstanding issue of fact remained, and scheduled oral argument with respect to determining (i) whether the facts establish misconduct and (ii) an appropriate sanction, if any. The administrator submitted a memorandum in lieu of oral argument. Respondent waived oral argument and did not submit a memorandum.

The Commission considered the record in this proceeding on January 24, 1980, and upon that record makes the following findings of fact.

1. Mr. and Mrs. Thomas McGoldrick are the owners of the Weldon House, a hotel in East Durham, New York.

2. Some time between July 23, 1978, and August 6, 1978, the McGoldricks communicated with respondent concerning a check received by the McGoldricks from Mr. Hugh Hughes, who had been a guest at the Weldon House, as payment for services. A "stop payment" order had been issued on the check because of a dispute over services. The McGoldricks asked respondent to write a letter to Mr. Hughes.

3. On August 6, 1978, respondent sent a letter on his court stationery to Mr. Hughes, stating (i) that Mr. Hughes had stopped payment on a check to the Weldon House, (ii) that Mr. Hughes therefore was subject to a charge of theft of services under New York Penal Law and (iii) that a warrant could be issued for his arrest if the matter was not settled.

4. On August 10, 1978, Mr. Hughes sent a replacement check in the amount of \$317.69, which was received by the Weldon House. The check had been sent by Mr. Hughes prior to his receipt of the letter from respondent.

5. Respondent sent his letter to Mr. Hughes in order to "avoid a court case that could have happened if the problem was reported to the N.Y. state police" (Ex. E appended to the agreed statement of facts).

Upon the foregoing facts, the Commission concludes as a matter of law that respondent violated Sections 33.1, 33.2, 33.3(a)(1) and 33.3(a)(4) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

The obligation to avoid impropriety and the appearance of impropriety is fundamental to the fair and proper administration of justice. In using his judicial office in this case for what in essence was a debt-collecting purpose, and in threatening the purported debtor with arrest, respondent's conduct not only had the appearance of impropriety but was, in fact, clearly improper. As such, it undermined the integrity of the judiciary. The reasonable inference to be drawn from respondent's letter to Mr. Hughes is that a judge of the court in which a purported debtor could be sued was playing an adversarial role on behalf of a party to the dispute and thus appeared to have prejudged the merits of the matter.

The Rules Governing Judicial Conduct state that "[n]o judge shall lend the prestige of his 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" (Section 33.2[c]). Respondent's actions violated this standard.

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

All concur.

Dated: April 1, 1980
Albany, New York

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

HOWARD J. MILLER,

a Justice of the Town Court of
Warsaw, Wyoming County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
David Bromberg
Honorable Richard J. Cardamone
Dolores DelBello
Michael M. Kirsch
Victor A. Kovner
William V. Maggipinto
Honorable Isaac Rubin
Carroll L. Wainwright, Jr.

Respondent, Howard J. Miller, a justice of the Town Court of Warsaw, Wyoming County, was served with a Formal Written Complaint dated August 7, 1978, setting forth four charges alleging various financial record keeping improprieties and deficiencies. Respondent filed an answer dated August 18, 1978.

By order dated December 14, 1978, the Commission designated Michael Whiteman, Esq., referee to hear and report with respect to the issues herein. The hearing was held on May 10, 1979, and the report of the referee dated December 19, 1979, was filed with the Commission.

By notice dated March 12, 1980, the administrator of the Commission moved to confirm the report of the referee and to determine that respondent be censured. By affidavit filed on April 7, 1980, respondent opposed the motion and moved for the Commission to issue a letter of dismissal and caution in lieu of a public sanction. The administrator replied by memorandum dated April 14, 1980. Both the administrator and respondent waived oral argument.

The Commission considered the record of this proceeding on April 23, 1980, and makes the following findings of fact.

1. Charge I: On June 1, 1976, respondent drew a check on his town court account in the sum of \$110.00, payable to Alan D. Hale, an accountant, in payment of a personal debt and not for official court business.

2. Charge II: From July 1, 1974, to July 1, 1978, respondent failed to maintain a chronologically itemized cashbook of all receipts and payments.

3. Charge III: Respondent failed to report to the State Comptroller the dispositions of 10 motor vehicle cases from January 1976 through February 1978, and he failed to remit to the State Comptroller the monies collected therefrom within the time required by law.

4. Charge IV: Respondent failed to deposit in his town court account within 72 hours of receipt monies received in his official capacity in 18 cases from June 1976 to March 1978.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Section 27(1) of the Town Law, Section 1803(8) of the Vehicle and Traffic Law, Section 2021(1) of the Uniform Justice Court Act, Sections 30.7(b) and 30.9 of the Uniform Justice Court Rules, Section 33.1, 33.2(a) and 33.3(b)(1) of the Rules Governing Judicial Conduct, and Canons 1, 2 and 3B(1) of the Code of Judicial Conduct. Charge I, Charge II, subdivisions 1 and 4 through 12 of Charge III and subdivisions 1, 4 through 14 and 19 through 24 of Charge IV are sustained, and respondent's misconduct is established.

Subdivisions 2 and 3 of Charge III and subdivisions 2, 3, 15 through 18 and 25 through 28 of Charge IV are dismissed.

By failing to keep an official cashbook of all receipts and payments, and by failing to report to the State Comptroller the dispositions of 10 motor vehicle cases, and further by failing to make timely deposits and remittances of monies collected in his official capacity, respondent failed to discharge diligently the administrative and financial obligations required of him by the laws and rules cited herein.

The Commission notes in mitigation of the misconduct herein (i) that the use of court funds to pay the personal debt was inadvertent and the deficiency was corrected by respondent upon his discovery of the error and (ii) that the delays in submitting required reports were for relatively short periods of time.

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

All concur, except Mrs. Robb and Judge Rubin, who dissent only as to sanction and vote that the appropriate disposition is a letter of dismissal and caution.

Dated: June 4, 1980
New York, New York

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

ALLAN T. BROWN,

a Justice of the Town Court of
Halfmoon, Saratoga County.

Determination

BEFORE: Mrs. Gene Robb, Chairwoman
Honorable Fritz W. Alexander, II
David Bromberg, Esq.
Dolores DelBello
Michael M. Kirsch, Esq.
William V. Maggipinto, Esq.
Honorable Isaac Rubin
Honorable Felice K. Shea
Carroll L. Wainwright, Jr., Esq.

APPEARANCES:

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

David L. Riebel for Respondent

The respondent, Allan T. Brown, a justice of the Town Court of Halfmoon, Saratoga County, was served with a Formal Written Complaint dated December 20, 1979, alleging that in 1972, he performed a marriage ceremony outside his jurisdiction and failed to take steps to ensure that a valid ceremony was performed. Respondent filed an answer dated January 11, 1980.

The administrator of the Commission, respondent and respondent's attorney entered into an agreed statement of facts on May 9, 1980, pursuant to Section 44, subdivision 5, of the Judiciary Law, waiving the hearing provided for by Section 44, subdivision 4, of the Judiciary Law and stipulating that the Commission make its determination on the pleadings and the agreed upon facts. The Commission approved the agreed statement of facts and received memoranda from both the administrator and respondent as to whether the facts establish misconduct and, if so, an appropriate sanction. Oral argument was waived.

The Commission considered the record of the proceeding on September 17, 1980, and makes the following findings of fact.

1. On June 18, 1972, respondent gave the appearance of performing a marriage in Albany County for James Mitchell and Sheila Coughlin, for which he received a sum of money from Mr. Mitchell. Respondent knew he was acting outside the territorial jurisdiction of his office and that as such he was not authorized to perform a wedding ceremony in Albany County.

2. Prior to performing the mock ceremony, respondent told Mr. Mitchell and Mr. Mitchell's best man, Peter Enzien, that he was not legally authorized to perform the ceremony and that after the mock ceremony the couple would have to come to Saratoga County for a valid ceremony to be performed. Respondent believed that Ms. Coughlin overheard these remarks and so was aware that the ceremony would not be valid. Respondent did not speak to Ms. Coughlin about this matter.

3. Ms. Coughlin did not know that respondent was unauthorized to perform a wedding in Albany County. Ms. Coughlin believed the ceremony on June 18, 1972, was valid.

4. On two occasions after the mock ceremony, while Mr. Enzien was appearing as an attorney on unrelated matters in respondent's court, respondent asked him when the Mitchells were coming to Saratoga County to have their marriage solemnized. Except for these two conversations, respondent failed to take any steps to ensure that a valid marriage ceremony was performed.

5. On June 22, 1976, James Mitchell died without a valid marriage ceremony having been performed.

6. On several occasions after Mr. Mitchell's death, respondent informed Ms. Coughlin that he had not filed a marriage certificate and could not do so because he had not been authorized to perform a valid marriage in Albany County.

7. After the Commission commenced its investigation of the matter, respondent, on advice of counsel, signed a certificate pursuant to Section 2132 of the Unconsolidated Laws, which had the effect of deeming the marriage solemnized nunc pro tunc.

8. Respondent acknowledges that his conduct was improper in that he should not have performed a wedding ceremony which he was unauthorized to perform.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Canons 1, 2, 3, 4, 5, 32 and 34 of the Canons of Judicial Ethics, Sections 33.1, 33.2(a) and 33.3(a)(1) of the Rules Governing Judicial Conduct and Canons 1, 2 and 3A(1) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained and respondent's misconduct is established.

The issue in this case is not that respondent performed a ceremonial marriage per se. It is not uncommon for a judge to solemnize a marriage in private in an appropriate jurisdiction and then later officiate at a ceremonial wedding outside his jurisdiction.

In the instant case, respondent officiated at the ceremonial affair in Albany County, knowing the marriage had not already been solemnized and knowing that his jurisdiction did not extend to that county. Furthermore, respondent accepted payment for his services, but he did not take appropriate steps to ensure that the marriage was properly solemnized according to law.

By his conduct, respondent violated the rules and canons noted above, in that inter alia he failed in his obligations to respect, comply with and be faithful to the law and to maintain professional competence in it (Sections 33.2[a] and 33.3[a][1] of the Rules).

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

All concur.

Dated: December 2, 1980
Albany, New York

TABLE OF CASES PENDING AS OF DECEMBER 31, 1979.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>								
<i>Non-Judges</i>								
<i>Demeanor</i>		13	14	8			7	42
<i>Delays</i>							1	1
<i>Confl./Interest</i>		18	14	3	1	3	6	45
<i>Bias</i>		1	2	1				4
<i>Corruption</i>		1	1					2
<i>Intoxication</i>		1					1	2
<i>Disable/Qualif.</i>		2			1			3
<i>Political Activ.</i>		2	3	2				7
<i>Finances, Records, Training</i>		5	9	4	3	8	8	37
<i>Ticket-Fixing</i>		17		16			33	66
<i>Miscellaneous</i>		2		2			1	5
TOTALS		62	43	36	5	11	57	214

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

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APPENDIX D

TABLE OF NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 1980.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	301							301
<i>Non-Judges</i>	46							46
<i>Deméanor</i>	73	25	27	1				126
<i>Delays</i>	26	1	2	1				30
<i>Confl./Interest</i>	19	20	12					51
<i>Bias</i>	27							27
<i>Corruption</i>	11	5						16
<i>Intoxication</i>	1	4	1					6
<i>Disable/Qualif.</i>	3	1	1					5
<i>Political Activ.</i>	10	6						16
<i>Finances, Records, Training</i>	17	16	8	1	2			44
<i>Ticket-Fixing</i>		1						1
<i>Miscellaneous</i>	12	8	3					23
TOTALS	546	87	54	3	2			692

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

ALL CASES CONSIDERED BY THE COMMISSION IN 1980: 692 NEW COMPLAINTS AND 214 PENDING FROM 1979.

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	301							301
<i>Non-Judges</i>	46							46
<i>Demeanor</i>	73	38	41	9			7	168
<i>Delays</i>	26	1	2	1			1	31
<i>Confl./Interest</i>	19	38	26	3	1	3	6	96
<i>Bias</i>	27	1	2	1				31
<i>Corruption</i>	11	6	1					18
<i>Intoxication</i>	1	5	1				1	8
<i>Disable/Qualif.</i>	3	3	1		1			8
<i>Political Activ.</i>	10	8	3	2				23
<i>Finances, Records, Training</i>	17	21	17	5	5	8	8	81
<i>Ticket-Firing</i>		18		16			33	67
<i>Miscellaneous</i>	12	10	3	2			1	28
TOTALS	546	149	97	39	7	11	57	906

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

ALL CASES CONSIDERED SINCE THE INCEPTION OF THE TEMPORARY COMMISSION (JANUARY 1975).

SUBJECT OF COMPLAINT	DISMISSED UPON INITIAL REVIEW	STATUS OF CASES INVESTIGATED						TOTALS
		PENDING	DISMISSED	DISMISSAL & CAUTION	RESIGNED	CLOSED*	ACTION**	
<i>Incorrect Ruling</i>	1624							1624
<i>Non-Judges</i>	183							183
<i>Demeanor</i>	228	38	258	26	12	5	59	626
<i>Delays</i>	103	1	23	5	3		6	141
<i>Confl./Interest</i>	67	38	161	26	15	5	32	344
<i>Bias</i>	112	1	27	1	3		1	145
<i>Corruption</i>	44	6	26		4	2	3	85
<i>Intoxication</i>	6	5	4				5	20
<i>Disable/Qualif.</i>	16	3	15	1	6	1	4	46
<i>Political Activ.</i>	32	8	24	26	3	2	6	101
<i>Finances, Records, Training</i>	53	21	43	9	20	16	15	177
<i>Ticket-Fixing</i>	15	18	53	149	32	55	138	460
<i>Miscellaneous</i>	50	10	22	3	3	1	3	92
TOTALS	2533	149	656	246	101	87	272	4044

* Investigations closed upon vacancy of office other than by resignation.

** Includes determinations of admonition, censure and removal by the current Commission, as well as suspensions and disciplinary proceedings commenced in the courts by the former and temporary Commissions.

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