REPORT OF THE NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT REGARDING LICENSE PLATES THAT IDENTIFY A PRIVATELY-OWNED AUTOMOBILE AS REGISTERED TO A JUDGE

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New York State Commission on Judicial Conduct
61 Broadway ♦ Suite 1200
New York, New York 10006
(646) 386-4800
cjc@cjc.ny.gov ♦ www.cjc.ny.gov

NEW YORK STATE
COMMISSION ON
JUDICIAL CONDUCT

HON. THOMAS A. KLONICK, *CHAIR*

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HON. DAVID A. WEINSTEIN

Commission Members

JEAN M. SAVANYU

Clerk of the Commission

ROBERT H. TEMBECKJIAN

Administrator and Counsel

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I. INTRODUCTION

This report is issued by the New York State Commission on Judicial Conduct pursuant to its statutory authority to issue reports with administrative and legislative recommendations. Judiciary Law § 42(4). It is intended to generate a serious discussion of the public policy implications of affixing license plates on privately-owned vehicles that identify those vehicles as registered to a judge. For example, what goals are advanced by the issuance of judicial license plates? Are there potential negative consequences that outweigh whatever good such plates may promote?

The Commission does not consider that a judge's use of judicial license plates *per se* violates promulgated ethics rules or creates an appearance of impropriety, though opinions on this differ. Judges throughout the state have, in good faith for different reasons, come to different decisions about displaying judicial license plates on their automobiles. Indeed, of the four judge members of the Commission, two have judicial license plates, and two do not.

With the hope that every judge would weigh the issues carefully when considering whether to opt for judicial license plates, the Commission issues this report.

II. ORIGINS OF THIS REPORT

In May 2012, the Commission rendered a Determination to remove from office Diane L. Schilling, a Justice of the East Greenbush Town Court, Rensselaer County.[1]

[1] The Determination is appended and is also available on the Commission's website on the following page: http://www.cjc.ny.gov/Determinations/S/Schilling.Diane.L.2012.05.08.DET.pdf

The *Schilling* case involved two instances in which law enforcement officers issued speeding tickets to the drivers of cars bearing "SMA" license plates. SMA is the acronym for the State Magistrates Association, an organization whose membership is comprised of present and former justices of town and village courts.

In the first instance, the ticket was issued by a State Trooper to Judge Schilling herself. In the second, the ticket was issued by a relatively new East Greenbush police officer to the wife of another town justice who was driving her husband's car. In neither case did the driver identify herself as a judge or the spouse of a judge or otherwise try to curry favor with the ticket-issuing officer. Indeed, the two officers apparently issued the tickets without realizing that the stopped cars belonged to judges.

In both instances, upon returning to their police stations, the issuing officers were advised by their more experienced colleagues of the significance of the SMA plates.[2] In the first case, the Trooper then visited Judge Schilling and retrieved the ticket, which effectively disappeared from the law enforcement and court systems. In the second case, Judge Schilling set in motion a process by which every copy of the ticket (including those routinely retained by the court and the police) disappeared, except for the one issued to the motorist. The motorist, on advice of her husband (a judge), returned her copy to the court with a not guilty plea and declined to participate in the attempt to fix the ticket.

[2] The template of the SMA license plate was recently redesigned to include the SMA's logo, which includes the New York State seal and the word "Magistrates." Had those plates been redesigned prior to *Schilling*, the two officers would likely have been alerted at the time of the stops that the cars in question were registered to judges.

On the facts as set forth in the *Schilling* record and Determination, it is not unreasonable to conclude that, had the officers been aware that the cars they had stopped belonged to judges, these two speeding tickets would not have been issued. Indeed, over the years, in the course of investigating other complaints of ticket-fixing, the Commission has been advised by law enforcement officers in various parts of the state that at times they have declined to issue tickets to motorists whom they stopped for speeding, once they realized by virtue of the license plates that the drivers were judges, even where the motorist made no reference to his or her judgeship. Numerous officers have told the Commission that they themselves raised the subject, asking if the stopped motorist or his/her spouse was a judge. While such comments were made much more often in the 1980s when the Commission was investigating and disclosing what turned out to be a widespread practice of ticket-fixing, as recently as last year two police officers advised the Commission that they refrained from issuing certain tickets when they realized the car belonged to a judge.

It is not necessarily unethical for a police officer to give a motorist a warning rather than issue a ticket for a traffic stop. However, the potential appearance that a lawful display of judicial license plates may contribute to a judge getting an unwarranted "break" prompted a footnote to the *Schilling* Determination stating that the Commission would comment publicly on the policy implications of using judicial license plates.

III. METHODOLOGY

Information was collected regarding special (so-called "vanity") license plates made available by the Department of Motor Vehicles (DMV), and judicial license plates

in particular. Information was also gathered about the practices in other states, for context.

The Commission sent letters to court and law enforcement officials, and to judicial, bar and civic associations – over 200 in all – inviting comment on the public policy implications of judicial license plates. The letter is appended. Nine organizations responded.

The Commission invited public comment with a posting on the home page of its website. Nine individuals responded.

At least nine newspaper articles or editorials have been written on the subject since the *Schilling* Determination.

Pertinent Opinions of the Advisory Committee on Judicial Ethics were considered.

The Commission's letter inviting comment specifically focused on public policy considerations, as follows:

> The Commission would particularly appreciate any perspectives you may have on the public policy interests served by judicial license plates. For example, what is the purpose of judicial license plates? If identifying vehicles for courthouse parking is a purpose, (A) what provision is made for those judges who choose not to employ judicial license plates, or for court employees, who are not eligible for judicial plates, and (B) might alternatives, such as issuing courthouse parking placards or registering plate numbers with court security personnel, be more appropriate? Are there potential security risks associated with having judicial license plates, particularly when the judge is away from the courthouse? Does the possibility of being accorded favorable treatment, such as when stopped by police for apparent moving violations, outweigh whatever benefits there may be to having judicial license plates?

IV. ISSUANCE OF SPECIAL LICENSE PLATES

Section 404(2) of the Vehicle and Traffic Law (VTL) authorizes the Commissioner of Motor Vehicles to issue special license plates to "public officers, physicians, visiting nurses, accredited representatives of the press or other groups." Various subsections of VTL 404 authorize special plates for volunteer firefighters, severely disabled persons, former prisoners of war (POW), members of the organized militia and reserves, and others. VTL Section 404(1) requires qualified applicants to pay an additional annual fee for the privilege of having such special plates.

As public officers, judges and justices of the state unified court system may avail themselves of special license plates. Such plates typically spell out the name of the court and/or use abbreviations such as JSC for Justice of the Supreme Court or JCC for Judge of the County Court, followed by a number.

According to statute, the purchase of specialty plates – *i.e.* those that identify a profession, promote a New York sports team, recognize a former POW, etc. – costs the registrant up to $31.25 more than a regularly-issued standard license plate.

The Number of Judicial Plates in Circulation in New York

There are approximately 3,500 judges and justices of the state unified court system, generally divided into two categories.

- Approximately 1,200 are judges of city courts and higher. They are commonly referred to as "state-paid" judges because their salaries are determined by a process set forth in state law. There are numerous professional associations of state-paid judges and justices, such as the Association of Supreme Court Justices of the State of New York, the Supreme Court Justices Association of the City of New York, the County

Judges Association of the State of New York, the Court of Claims Judges Association and the New York State Association of City Court Judges.

- Approximately 2,300 are part-time justices of town and/or village courts. They are commonly referred to as magistrates, and their professional association is the State Magistrates Association (SMA). Their salaries are set by their local town or village governing boards.

According to the DMV, as of July 2012, judicial license plates had been issued to 424 state-paid judges[3] and to 1832 members of the SMA. DMV also reports that nine judges of federal courts located within New York State have judicial license plates on their personal cars.

According to DMV, state-paid judges (all those sitting in city courts or higher) must relinquish their judicial plates upon leaving office because they are no longer "public officials." Thus, the 424 judicial plates issued to state-paid judges all belong to incumbents, and DMV reports that the Office of Court Administration (OCA) is "very diligent" in advising whenever a judge leaves office for any reason.

In contrast, the SMA website states and DMV confirms that SMA members in good standing may obtain an SMA license plate, "even after retiring from the bench."[4]

At $31.25 per so-called "vanity" plate, the total annual revenue to the state from the sale of judicial license plates is just over $70,000.

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[3] Figure includes eight Judges of the New York City Housing Court, a category of judicial officer not within the Commission's jurisdiction.

[4] Membership in the SMA is voluntary and requires payment of dues. The SMA estimates that approximately 90% of the sitting town and village justices are members, as are about 1,000 former town and village justices. Before issuing an SMA plate, DMV verifies with the SMA that the car owner is a member of the Association. As to all other judicial plates, eligibility is not determined by membership in a judicial association but by presently holding judicial office, which DMV confirms with OCA.

Practices in Other States

In addition to New York, 11 other states and the District of Columbia authorize judicial license plates on the personal vehicles of some or all sitting judges.

V. THE BROADER QUESTIONS

The use of judicial license plates raises broad questions of public policy.

- What is the purpose of identifying one's car as belonging to a judge?
- Does advertising one's judicial status on a license plate confer a benefit not available to citizens with regular license plates or other special plates?
- Does the possibility of being accorded favorable treatment, such as when stopped by police for apparent moving violations or when parking illegally, outweigh whatever benefits there may be to having judicial license plates?
- Do the promulgated ethical mandates incumbent on all judges, appropriately unique to the judiciary and more stringent than those imposed on any other public servants, require a more searching inquiry as to the purpose of judicial plates before opting to install them?
- If identifying vehicles for courthouse parking is a reason for having judicial plates, (A) what provision is made for those judges who choose not to employ judicial license plates, or for court employees, who are not eligible for judicial plates, and (B) might alternatives, such as issuing courthouse parking placards or registering plate numbers with court security personnel, be more appropriate?
- Are there potential security risks associated with having judicial license plates, particularly when the judge is away from the courthouse?

The answers to most of these questions are nuanced and, as in most matters of public policy and ethics, involve more shades of gray than black and white.

VI. RESPONSES TO THE COMMISSION'S REQUEST FOR COMMENTS

The views submitted in response to the Commission's invitation to comment, or otherwise expressed, are summarized below.

The Advisory Committee on Judicial Ethics

Although the Advisory Committee on Judicial Ethics did not respond directly to the Commission's invitation to comment, approximately one month after the Commission's letter to its Chair, the Advisory Committee issued Opinion 12-141, advising an unidentified judge that the "otherwise lawful display of a license plate duly issued by the New York State Department of Motor Vehicles is not ethically impermissible merely because the license plate indicates that the vehicle registrant is a judge," and citing Opinion 07-213, which advised that it was ethically permissible to display a license plate on a judge's car "that identifies the judge as a member of a judge's association." Both Opinions are appended.

Neither Opinion 12-141 nor Opinion 07-213 discusses the public policy issues raised in the Commission's letter. Advisory Committee Opinions understandably tend to focus narrowly on specific questions presented, particularly since the law confers a presumption of propriety on an individual judge who, on accurately presented facts, adheres to the Advisory Committee's advice. Judiciary Law § 212. Although there have been occasions when the Commission disagreed with an Advisory Opinion, the Commission has never publicly disciplined or even confidentially cautioned a judge who received and acted within the parameters of an Advisory Opinion. Indeed, in fairness, the Commission has never publicly disciplined or confidentially cautioned a judge whose

conduct was squarely within the advice of a published Advisory Opinion issued to someone else.

Needless to say, the Commission has not and will not discipline a judge merely for putting a lawfully obtained judicial license plate on his/her personal vehicle. The Commission's goal is to inspire a more expansive examination of the broader issues implicated by the use of such plates.

Views Expressed by Correspondents

A number of judicial correspondents challenged the Commission's authority to address this issue. Judiciary Law Section 42(4) expressly grants that authority.

A number of judicial associations, bar associations and individuals proposed rationales for having judicial license plates, and a smaller number of judges and other individuals criticized the practice. However, the relatively small number of correspondents overall (nine organizations and nine individuals) does not allow for broad conclusions regarding judicial or public opinion.

Reasons Expressed in Favor of Judicial License Plates. Various correspondents proposed the following rationales in support of judicial license plates.

- To honor the judicial profession or demonstrate one's pride in being a judge.
- To facilitate parking at the courthouse.
- To facilitate identification and parking when the judge is on assignment, such as at an after-hours arraignment, or at a hospital to conduct proceedings pursuant to the Mental Hygiene Law, or at a Board of Elections for hearings on ballot access issues.

- To "humanize" the judiciary and allow "members of the community to see judges as ordinary citizens when shopping, delivering the dry cleaning and eating at local restaurants."
- To equate judges with other public officials and professionals who display their positions on license plates.
- To generate revenue for the state, since such plates cost more to purchase than regular plates.
- To impress upon citizens that judges obey the law, since a judge whose profession is identified by judicial plates is likely to drive more responsibly.

Reasons Expressed for Eschewing Judicial License Plates. Various correspondents proposed the following rationales in opposition to judicial license plates.

- They pose a security risk.
- They help to evade citations for speeding, parking and other violations.

Security

Is it anomalous, as one judge wrote, for the court system to expend so much in resources on courthouse and judicial security, only to have individual "judges advertise their position and occupation" on their automobiles? (This judge noted that in his upstate judicial district, judicial license plates are not required for courthouse parking.) By readily identifying the car owner as a judge, do judicial plates make the judge an easy target for, say, a disgruntled litigant?

One letter from a judicial association said simply that its members "are aware of the security issue associated with the display of such identifying plates" but would leave it to the individual judge to decide as a "personal" matter whether to display a judicial plate.

Three judicial associations suggested that it enhanced safety for a judge to have a judicial plate, especially when conducting after-hours arraignments or proceedings on location, such as at a mental health facility or Board of Elections.

VII. DISCUSSION

Judges are subject to what is likely the most stringent code of ethics among public officials. Based upon the American Bar Association's Model Code of Judicial Conduct, the New York Rules Governing Judicial Conduct ("Rules") are promulgated by the Chief Administrator of the Courts, on approval of the Court of Appeals.

The Rules confer on all judges and justices of the state unified court system an obligation to maintain high standards of conduct so as to promote public confidence in the independence, integrity and impartiality of the judiciary, and to avoid even the appearance of impropriety. Rules §§ 100.1 and 100.2. Judges are specifically prohibited from lending the prestige of judicial office to advance the private interests of the judge or others. Rules § 100.2(C).

Does displaying a judicial license plate confer on a judge a benefit or the appearance of a benefit?

There is no way to gauge or quantify if leniency may be accorded to a judge by a police officer who realizes only after stopping the car that it was driven by or belonged to a judge. Records are not kept of all the motorist stops made by officers throughout the state that did not result in a ticket because the officer chose to give the driver a break. Nor is there a way to determine how many of those stops involved a judge behind the

wheel. At best, we could only discover how many judges who were stopped actually were issued tickets, but that would be both a gargantuan and useless undertaking, inasmuch as the number of such tickets alone would shed no light on the number that could have been but were not issued.

An officer who observes a speeding car on the highway is not able or likely to see or read the license plate until the car is stopped. At that point, upon realizing the car belongs to a judge, is the officer more inclined or implicitly pressured to avoid issuing a ticket than if there were no judicial plate? Would officers tend to be as deferential to judges out of court as they are in court?

In one of the few Commission cases that publicly addresses this issue, *Matter of D'Amanda*, 1990 Annual Report 91 (NYSCJC 1989), a particular judge benefitted three times in three separate traffic stops upon identifying himself to the arresting officer as a judge. After stopping the judge for speeding and being told the motorist was a judge, one Trooper said, "Why didn't you tell me that in the first place?" After locating the judge's name on a roster of local judges, the Trooper allowed him to leave without issuing a ticket. On another occasion, a different Trooper who had stopped the judge for speeding called a fellow Trooper, verified that the motorist was a judge and released him without a ticket, telling him to watch his speed and have a nice day.

There is no question that a judge should be disciplined for raising his/her judicial status to avoid the consequences of a violation such as speeding or driving while

intoxicated. *See*, *e.g.*, *Matter of Quinn*, 54 NY2d 386 (1981); *Matter of Barr*, 1981 Annual Report 139 (NYSCJC 1980); *Matter of D'Amanda*, 1990 Annual Report 91 (NYSCJC 1989); *Matter of Henderson*, 1995 Annual Report 118 (NYSCJC 1994); *Matter of Werner*, 2003 Annual Report 198 (NYSCJC 2002); and *Matter of Maney*, 2011 Annual Report 106 (NYSCJC 2010). However, can it fairly be said that a judge who drives a car with judicial plates implicitly invokes the prestige of judicial office when stopped by an officer for an alleged violation?

The Commission does not suppose that any judge orders a judicial license plate for the purpose of evading speeding, parking or other motor vehicle related tickets. But in contemplating whether to opt for judicial plates, every judge should consider whether the rationales for such plates override the potential dangers or abuses that could flow from displaying them on private vehicles.

For example, if judicial plates are intended to facilitate courthouse parking, would removable dashboard placards suffice as an alternative?

Is there potential for abuse by others, to the extent that a judge's family members or friends would use the car with judicial plates?

Is public respect for the judiciary diminished whenever a car with judicial plates is observed in an illegal parking spot without a ticket or is otherwise engaged in questionable activity? (The Commission has issued numerous confidential cautionary letters over the years to judges whose parking abuses were brought to its attention by pedestrians submitting photos or other evidence of a judge's car parked in a clearly illegal spot, without a ticket. Recently, the Commission heard from an individual who

complained that a government car was improperly used to promote the reelection of a judge; it turned out that the complainant mistakenly believed the judicial license plate signified a county-owned vehicle, when in fact it belonged to a judge who was acting within the Rules by putting his own campaign signs on his own car.)

Does it aggravate the security risk to any judge whose whereabouts are so readily advertised by a car bearing judicial plates, all the more so as they get farther away from the security apparatus of their courthouses?

VIII. CONCLUSIONS AND RECOMMENDATIONS

On considering the issues, applicable rules, precedents and the views expressed by others, the Commission makes the following comments and recommendations.

Displaying a judicial license plate on a personal vehicle does not *per se* create an appearance of impropriety.

Asserting one's judicial status in order to avoid the consequences of a lawful traffic stop subjects the judge to discipline.

A judge should advise family and friends who may use the vehicle not to assert the owner's judicial office if stopped for a traffic violation.

Where judicial plates ostensibly facilitate security or parking at the courthouse, alternatives – such as dashboard parking placards – should be made available for those judges who prefer them. However, abuse of such a placard – such as when a judge is not on official business but displays it to park illegally – may subject the judge to a confidential caution or public discipline.

The Commission believes that all judges who contemplate having judicial license plates should weigh the pros and cons very carefully before opting to display them. To that end, the Commission recommends that the Office of Court Administration and the Judicial Institute put the subject of judicial license plates on the agenda of education and training programs designed both for new and veteran judges.

Dissenting Statement by

Richard D. Emery

DISSENTING STATEMENT BY RICHARD D. EMERY

I dissent from the Commission's milquetoast "Report" on Judicial License Plates. I write separately to face squarely a recurring fundamental concern that the *Schilling* case raised (*Matter of Schilling*, 2013 Annual Report 286), that we identified in a footnote in that case and promised to address[1], and that we are now ducking by issuing a diluted "Report" that is an exercise in evasion.

We have repeatedly disciplined judges for requesting, or even appearing to request, special treatment based on their judicial status.[2] We have done so based upon the Rules Governing Judicial Conduct: judges are specifically prohibited from "lend[ing] the prestige of judicial office to advance the private interests of the judge or others" (Rules, § 100.2[C]). At the same time, by authorizing the issuance of special license plates to "public officers" and others (VTL § 404[2]), the Legislature has implicitly permitted judges, as public officers, to have license plates that publicly announce their judicial status. Although other officials and groups have been afforded this privilege, our

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[1] The footnote in the *Schilling* determination states: "The Commission has repeatedly evaluated cases of judges attempting to use their judicial office to influence the disposition of traffic violations. This case represents a stark example of this problem and raises a systemic issue of how judicial license plates distort the normal process of enforcing traffic laws and the delicate position faced by law enforcement officers when they stop a vehicle with judicial plates. The Commission has decided that a public report is required to address the issue of whether or not the Rules Governing Judicial Conduct may be violated by the use of judicial license plates in the context of judges, in effect, using their judicial office to avoid the consequences of being stopped for offenses under the Vehicle and Traffic Law" (*Matter of Schilling* [fn. 3]).

[2] *E.g.*, *Matter of D'Amanda* (judge identified himself as a town justice on three occasions to avoid receiving traffic tickets; in one instance, the trooper responded, "Why didn't you tell me that in the first place?" and allowed the judge to leave without issuing a ticket) (censure); *Matter of Werner* (when asked for his license and registration, judge gave the officer his judicial ID, which was an improper assertion of his judicial status) (admonition); *Matter of Pennington* (asserting his judicial office in a confrontation with a park official when stopped and charged with infractions) (censure); *see also* cases cited in footnotes 3 through 7, *infra*.

concern is with judges. They are held to the highest standards of personal conduct and a unique code of ethics. They must maintain their independence and avoid the appearance of impropriety. Thus, though judges are unequivocally prohibited from using their judicial status to obtain special treatment for themselves, their families or friends, they are legislatively authorized to flaunt their judicial status on their personal vehicles wherever they go.

This schizophrenic message inevitably leads to bizarre scenarios involving special treatment being afforded and accepted by judges. We have investigated cases of judges who have received favored treatment, such as being driven home instead of being arrested, after they were either stopped for drunk driving or found intoxicated in their cars (*e.g., Matter of Quinn*, 54 NY2d 386 [1981]). Their plates clearly identified them as judges. Indeed, as part of the *Schilling* case last year, we found misconduct that supported the judge's removal from office because she acceded to a trooper's request that she return a ticket he had issued before he was aware of her judicial status.

Every judge knows that referring to judicial status to advance the judge's private interests is strictly prohibited.[3] Nor may judges use their office to help family, friends or business associates.[4] Judges may not display a judicial ID in connection with private

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[3] *E.g.*, *Matter of Calderon* (identifying himself as a judge while asking prison officials to confiscate materials related to the judge's lawsuit against an inmate); *Matter of LaBombard* (identifying himself as a judge, for his personal advantage, after a traffic accident); *Matter of Dumar* (in a dispute with a dealership over repairs to a snowmobile, asserted his judicial office by leaving his judicial business card, identifying himself as a judge and saying that he knew how "the system" worked).

[4] *See Matter of LaBombard* (contacting the judge handling his relative's case, stating that the defendant was a "good kid" and disparaging others involved in the alleged offense); *Matter of Hurley* (calling the police station on behalf of a friend and identifying himself as a judge); *Matter of Clark* (accompanying

matters[5] or use their official stationery to advance personal interests or advocate in connection with private matters.[6] Judges cannot even appear in court with family or friends if their status may influence the proceedings.[7] This is a well-worn line of authority that makes it impossible to ignore its application to the effects on police officers and the public of displaying judicial plates when a judge or a judge's family member is stopped for a traffic violation.

The difference between my views and the majority is that I see no difference between a judge getting leniency from a police officer because of the judicial plates on

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his friend when she retrieved her property after a dispute and when she filed her claims at the sheriff's station); *Matter of Pastrick* (in a conversation about court business involving the store, told a store employee that his daughter was looking for a job); *Matter of Horowitz* (intervening on behalf of friends in two matters pending before other judges in her court); *Matter of DeJoseph* (contacting a judge on behalf of a friend whose son had been arrested and was being held in jail); *Matter of Straite* (using his judicial position to influence police to investigate a complaint made by the judge's son).

[5] *E.g.*, *Matter of Magill* (after disqualifying himself in a case in which his wife was the complaining witness, judge asserted his judicial prestige by delivering the file to the transferee court and leaving his judicial ID); *Matter of Huttner* (in a conversation about pending litigation involving the judge's co-op and a restaurant, judge gave the restaurant manager a PBA card with the word "Judge," which "could reasonably be viewed as an unspoken reminder of his judicial status and its attendant perquisites"); *Matter of Ohlig* (interceding in a fee dispute involving his wife, judge left his judicial ID card at the office of the opposing attorney, summoned the attorney to his chambers to discuss the matter and accompanied his wife to a meeting with the attorney, thereby "us[ing] the trappings of his judicial office as part of his efforts to pressure the attorney").

[6] *See Matter of Nesbitt* (judge was admonished for writing a letter on judicial stationery to a school official challenging an administrative determination concerning the judge's son, since "such a letter…inevitably invokes the prestige of the judiciary"); *see also*, *Matter of Sharlow* (sending a letter on judicial stationery to the judge handling his son's case); *Matter of Engle* (writing to a sentencing judge on behalf of a defendant whom the judge knew personally and asking for leniency); *Matter of Freeman* (writing to a judge on behalf of an individual who was seeking to have his pistol permit reinstated); *Matter of McKeon* (writing on judicial stationery to a party with cases in the judge's court on behalf of a woman seeking a job).

[7] *Matter of Thwaits* (improper for a judge to sit near her relatives in court during a felony hearing for her relative, since "[h]er presence, in a small courtroom with other family members who were present to show support for the defendant, could reasonably convey the appearance of lending her judicial prestige to support the defendant and his family").

the judge's vehicle (and the inescapable public cynicism that accompanies learning of such an event), and a judge showing a judicial ID or otherwise voluntarily identifying himself as a judge when stopped by a police officer. We would sanction and have sanctioned the latter conduct. Therefore, to me, driving or parking a car with judicial plates violates the rules governing judicial conduct because either the purpose or effect of displaying judicial plates appears to "lend the prestige of judicial office" for the personal benefit of the judge.

Even assuming, as I do, that many judges display plates as a matter of pride, rather than to influence police and evade being charged with driving or parking violations, intent is simply not the issue. The unquestioned precedent and the Rules make clear that it is a judge's duty *to avoid* any circumstance in which his or her status or office may influence another to advance the judge's private interests. If we are serious about these rules – and judges are publicly disciplined and may even be removed from office based on these rules in order to protect the public — then there is no basis to exempt judicial plates. Merely posing the questions, as the Commission does in its "Report," or simply pointing to the legislative authorization of judicial plates without any analysis of the Rules' enhanced ethical obligations for judges, as the Advisory Committee on Judicial Ethics does in its recent published opinion,[8] is simply an evasion of the obvious and the respective obligation of each of these official bodies.

[8] Advisory Opinion 12-141 states in full: "This responds to your inquiry asking whether it is ethically permissible for a judge to display on the judge's vehicle a license plate that is issued by the New York State Department of Motor Vehicles and that indicates the vehicle registrant is a judge. A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100.2), and must always act to promote the public's confidence in the judiciary's integrity and impartiality (*see* 22 NYCRR 100.2[A]). Therefore,

By opining that it is not unethical to drive a car with judicial license plates that are lawfully issued by the State, the Advisory Committee simply avoids the ethics issue. The real question is whether judicial plates represent at least a *de facto* violation of the Rules prohibiting a judge from "lend[ing] the prestige of judicial office to advance...private interests." Absent a reasoned and persuasive position for its conclusion, the Advisory Committee did nothing more than appease those judges who, in an effort to keep their plates, want the Committee to bind the hands of the Commission. (See below for discussion of the effect of Advisory Committee opinions on Commission action.)

In my view, the failure of our Report to confront the issue head on and the Advisory Committee's opinion betray a pragmatic queasiness with the possibility of withdrawing an established, longstanding perk for the judiciary. I too feel sympathetic to an overworked, underpaid corps of dedicated judges for whom I have the highest regard. I wish we paid them more and gave them the respect and status they deserve. But judges are not above the law and they do not deserve a break when they break it. My bias, and that of my fellow commissioners and the Advisory Committee, is no basis to distort established norms. Most importantly, public confidence will further erode if we exempt our judges from equal application of the law – no matter how minor.

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a judge must not lend the prestige of judicial office to advance the judge's private interests (*see* 22 NYCRR 100.2[C]). The Committee previously has advised that there is no ethical prohibition against a judge displaying a license plate on the judge's car that identifies the judge as a member of a judge's association (*see* Opinion 07-213). Similarly, the Committee now concludes that the otherwise lawful display of a license plate duly issued by the New York State Department of Motor Vehicles is not rendered ethically impermissible merely because the license plate indicates that the vehicle registrant is a judge. I have enclosed a copy Opinion 07-213 for your convenience."

The effect of having a judicial plate, sometimes combined with an official "Police" placard on the dashboard, can be seen around Manhattan by casual observers; illegally-parked vehicles displaying these accoutrements are rarely if ever ticketed. In numerous instances, complaints about such conduct have resulted in judges being cautioned for "asserting the prestige of judicial office by improperly using an official parking permit" (*see*, *e.g*., 2011 Annual Report 13). This is just one more example of how the use of such plates enables a judge to avoid the inconvenience of being subject to enforcement of the law that applies to others, creating a special class of drivers who have immunity from being ticketed for parking infractions or the prospect of being towed. Illegal parking is not misconduct, but avoiding a parking ticket by asserting the prestige of judicial office is misconduct.

Perhaps the *Schilling* case makes the case more clearly than I can. A rookie police officer, oblivious to the significance of an "SMA" license plate, cited a judge's wife for speeding. When he returned to the station, his veteran colleagues laughed at him and teased him for issuing a ticket to a vehicle registered to a judge. What a rube. The rest is history and Schilling was removed for fixing the ticket of her judicial colleague's wife. At the time of these events, Schilling was in charge of the Office of Court Administration's program that provides training and education to judges, including ethics training. So it is not hard to understand how deeply ingrained the sense of entitlement to special treatment and immunity from annoying traffic tickets is among some judges. For me, the plight of the rookie officer, and others like him, drives this dissent. Had he only known what "SMA" signified (State Magistrates Association) and had time to learn that

knowing "the ropes" means judges just don't get speeding tickets, he would have avoided humiliation by not issuing the ticket in the first place. He learned his lesson. He will never again fairly enforce the law.

Regrettably, Judge Schilling, like too many judges and police officers we have seen, apparently believes it is perfectly proper not to hold judges, or even their spouses, accountable for traffic and other minor violations. This is not a surprising revelation; it is open and notorious throughout the state. Judicial plates facilitate this favoritism. We, the Advisory Committee and the Office of Court Administration are complicit in this tacit immunity by allowing, and refusing to criticize, judicial plates. Legislative authorization gives no *ethical* cover for their permanent display.

Wouldn't an official placard on the dashboard suffice in any and all situations (such as courthouse parking) that would properly call for identification of a judge's vehicle? If the placard were displayed in situations when it was not necessary, when it could appear as an attempt obtain a private advantage, the Commission would clearly have authority to act. Or imagine if judicial plates were not authorized, but judges could buy special license plate holders that declaimed their judicial office. Wouldn't this be condemned as a brazen attempt to assert their judicial status in their private lives, the equivalent of producing judicial identification when stopped by an officer? What is the difference between a purchased license plate holder and a purchased judicial plate? Certainly, any claim that displaying such a license plate holder was simply based on pride and was not "lending the prestige of judicial office" would be rejected. How can the

current regime of judicial plates be viewed any differently? These are the questions the Commission's Report should answer, not just ask.

Plainly, as the Commission's Report telegraphs, this situation will persist; judges will not be disciplined for displaying special plates even if the plates influence officers not to give them tickets and even if the judge knows that, solely because of the plates displayed, this is the likely result of a traffic stop. I write so that court administrators who have the power to implement meaningful reforms will do so and so that judges, such as Judge David Weinstein (see below), even absent sanctions from the Commission and misdirection from the Advisory Committee, will take it upon themselves to act within the established precedent of the Rules.

It is imperative that police officers not feel pressured or tempted to compromise their office and that public confidence in the fair and equal application of the law is maintained. It is regrettable, to put it mildly, that the Commission in failing to fulfill the promise it made in *Schilling*, and the Advisory Committee, in its tautological opinion, have abdicated responsibility to correct this breach of judicial ethics.

With respect to Judge Weinstein's thoughtful comments in response to my dissent, his personal decision, in my view, speaks louder than the rest of his comments. See final section of his comments. Notwithstanding his choice not to use judicial license plates, in response to my dissent he essentially states that it is not an ethical violation to display judicial identification in a situation that is likely to result in favoritism for the private interests of a judge. That is what the Advisory Committee has said, without any reasoning to support that conclusion. Like the Advisory Committee, Judge Weinstein

also fails to provide any specific analysis of the ethical implications of having such plates, but, instead, bases his view on what he characterizes as a lack of precedent, the legislative imprimatur for judicial plates, the Advisory Committee's conclusion and what he apparently does not believe is an actual problem for police officers and the public. He would avoid the controversy posed by *Schilling*, claiming that it has not been sufficiently documented that any such problem exists. I do not agree, and my dissent describes instances and fairly obvious situations where the ethical dilemma for a judge, and especially police officers, frequently occurs.

Moreover, Judge Weinstein does not confront (except quite admirably for his own conduct) the higher ethical standards with respect to using the prestige of office for private gain that apply to judges as opposed to other public officials. And he does not explain any basis for the display of judicial plates that could not legitimately be satisfied by a removable identification placard. Contrary to his characterization of my views, I am very clear that I believe that only some judges intend to influence the police by displaying judicial plates. Others surely do it for more benign reasons. But, as I have stated, the problem is not intent; it is effect.

As the Court of Appeals has said in describing other behavior, this is "a classic instance in which 'an appearance of such impropriety is no less to be condemned than is the impropriety itself'" (*Matter of Schiff*, 83 NY2d 689, 693 [1994], citing *Matter of Spector*, 47 NY2d 462, 466 [1979]). A judge who drives a car with judicial plates, despite the lack of any intent to seek favored treatment from the police, still contributes to the problem and may present difficult choices to the police who enforce moving and

parking violations. The use of judicial plates is an attempt by judges to identify themselves as judges to all who may see those plates, including law enforcement officers. That is wrong, at a minimum because of its appearance, regardless of the judge's lack of intent to use special influence or get special benefits from his or her official position.

As to Judge Weinstein's deference to the Advisory Committee, the law provides that the actions of a particular judge taken in accordance with the Committee's advice are presumed proper for purposes of a subsequent Commission investigation (Jud Law § 212[2][l][iv]). Presumptions can be overcome by other factors. We are certainly not bound by the Committee's general ethical pronouncements, nor should we hesitate to criticize a particular opinion which we believe is plainly wrong.

Similarly, legislative enactments covering what public officers may do cannot dictate our decisions where the court system, which has authority to promulgate rules, has enacted ethical rules that impose more stringent standards on conduct by judges. The point is that notwithstanding that certain rights are provided by law, some of these rights may not be exercised by judges because judges are bound by a special set of ethics standards. As the constitutionally authorized body to interpret the ethical rules in proceedings against judges, the Commission has the authority to determine that it is a violation of the Rules to use a license plate that identifies the owner of a car as a judge, and I believe we should do so for the reasons I have stated. The Court of Appeals has final authority to decide whether our interpretations of the Rules are correct.

The Rules and our precedents dictate our decisions, and I do not see any reasoning in Judge Weinstein's comments that, in the face of the applicable rules and our

precedents, justifies the use of plates that identify the car owners as judges. Certainly any fair reading of our prior cases, including *Quinn* (where the record reflects the use of judicial plates as it does in other cases cited), shows that a judge who displays the trappings of office in private matters violates the Rules.

Contrary to Judge Weinstein's characterizations of my dissent as contradictory, I think it is quite clear that I recognize that I have been outvoted and that judges will not be disciplined for displaying special plates. Though I think the Commission's Report should reach the issue of whether it is unethical to display such plates and thereby give judges fair warning, we do not have a consensus for that result. Therefore, because judges may feel immunized by our Report and the Advisory Commission's opinion, my dissent merely urges each judge to analyze the issue, as Judge Weinstein has, for him or herself.

Whether my language is harsh has nothing to do with the merits of the ethical question posed. I have chosen my words carefully; they are animated by my heartfelt disappointment because the Commission I hold dear has reneged on its commitment, and its duty, to confront a thorny ethical question and provide a meaningful, reasoned response.

Concurring Statement by

David A. Weinstein

CONCURRING STATEMENT BY DAVID A. WEINSTEIN

In his dissent from the Commission's report on judicial license plates (the "Report"), my colleague Richard Emery acknowledges that the display of such plates is authorized by law (Dissent at 1 ["the Legislature has implicitly permitted judges . . . to have license plates publicly announce their judicial status"]), has been found permissible by opinion of the Advisory Committee on Judicial Ethics (the "Advisory Committee") (*id.* at 4-5), and is for many judges not a means for taking advantage of their position, but a manifestation of their pride in holding their office (*id.* at 4). He nonetheless would have the Commission cast aside all law and authority to the contrary, as well as decades of practice, and declare the use of such plates a *per se* ethical violation of the Rules of Judicial Conduct (the "Rules").

Were the Commission to follow my dissenting colleague's advice, hundreds of judges, who obtained their plates via the lawfully authorized procedures of the Department of Motor Vehicles, would be at risk of potential disciplinary proceedings. For reasons set forth below, I believe that for the Commission to take such an approach would be extraordinarily unwise, and wholly inconsistent with its proper role. In my opinion, the Report as written constitutes an appropriate response to the Commission's determination in *Matter of Schilling*, 2013 Annual Report 286 [NYSCJC 2012] that such a report should be issued.[1] I write separately to explain why I hold this view.

[1] *Schilling* was issued prior to my appointment to the Commission, and this concurrence is not intended to express any view on the wisdom of the Commission's determination to issue a report in the first instance. Since the Commission has committed to do so, however, I think the Report as drafted is an appropriate way to address the issue.

I greatly respect the strong position expressed by my colleague in his dissent, and I have no doubt that it is driven by his sincere beliefs regarding the Commission's responsibilities, and the correct construction of the Rules. But I think he has missed entirely the legitimate objections which may be raised to his point of view.

For starters, the dissent asserts that there is some contradiction between the sanctions imposed by the Commission on judges who "refer[] to [their] judicial status to advance the judge's private interest," and the Commission's refusal to decry the practice of judicial plates (Dissent at 2). But there is no such contradiction. The dissent would have us establish a blanket condemnation on self-identification of judges through specialized license plates *even when there is no evidence at all* that such identification is part of an effort to advance the judge's interest. That is, my colleague would look to what he believes would be the effect of a judge's use of judicial plates, even when there is no evidence that the judge intended such an impact (*see* Dissent at 9). Yet in every other instance he cites where a judge was sanctioned, the wrongful conduct entailed an effort by a judge to assert his judicial office for the specific purpose of gaining a benefit or escaping a penalty (*see* cases cited in Dissent n. 3-7). Thus, the dissent's position would not remedy what it characterizes as a "schizophrenic message" between the ethical rules for license plates and those applicable in other contexts (Dissent at 2); rather it would *create* a different and more exacting rule in the license plate context (in which self-identification would be treated as an ethical violation *per se*) than in any other setting.

The dissent justifies this distinction by extrapolating the existence of a significant and pervasive ticket-fixing problem from a record that just does not support it. In the 35 years the Commission has operated, there have indeed been a number of instances presented to the Commission (and resulting in sanctions) where judges sought to use their status to curry favor with traffic or highway police, to avoid ticketing or other adverse consequence. But *Schilling* is the *only* such case that evinced any wrongdoing – by the judge or law enforcement – tied to a judicial license plate. While the dissent contends that "[w]e have investigated cases of judges who have received favored treatment [where t]heir plates clearly identified them as judges" (Dissent at 2), there is simply no decision except *Schilling* that gives any intimation that such favorable treatment was a result of the judge's plates. The only other case the dissent cites for this proposition is *Matter of Quinn*, 54 NY2d 386 (1981), but the opinions of both the Commission and the Court of Appeals in *Quinn* do not refer to judicial plates, and make clear that in each instance of misconduct, the respondent personally "asserted the prestige of his office" or otherwise self-identified in an effort to avoid punishment[2] (*id.* at 389; *Matter of Quinn*, 1982 Annual Report 65, 70-71 [NYSCJC 1981] [describing judge's self-identification]).

[2] *Matter of Maney*, 2011 Annual Report 106 (NYSCJC 2010), concerned a judge driving a car with judicial plates, who was arrested for driving while intoxicated. There was no evidence in that case, however, that such plates had any bearing on the conduct of law enforcement. To the contrary, the arresting officer rebuffed the judge's efforts to seek favorable treatment by asserting his judicial office, which conduct resulted in the judge's censure.

This is not to say that the events in *Schilling* do not raise serious concerns about an institutionalized practice in certain localities by which law enforcement officers decline to hold judges to the same standards as other drivers. Such concerns find support in one earlier decision as well: *Matter of D'Amanda* (*see* 1990 Annual Report 91 [NYSCJC 1989] [police officer declined to write ticket when respondent identified himself as judge]). I do not agree, however, that two cases in a period spanning over three decades demonstrate the existence of a pervasive practice.[3] Indeed, in two other cases cited by the dissent, law enforcement personnel did the opposite of what my colleague contends to be the standard course of turning a blind eye to a judge's misconduct, and instead imposed the requisite consequence notwithstanding the judge's efforts to improperly raise his judicial office (*see Matter of Werner,* 2003 Annual Report 198 [NYSCJC 2002] [respondent charged with speeding and driving while intoxicated, after showing police officer judicial identification]; *Matter of Pennington*, 2004 Annual Report 143 [NYSCJC 2003] [park police sergeant wrote respondent tickets charging violations, despite respondent's protestations that he was a judge]; *see also Matter of Maney*, *supra* note 3). Nor is it apparent to me that barring the use of judicial plates (which were not even at issue in *D'Amanda*) would solve the problem of law enforcement favoritism towards judges, to the degree it exists.

[3] The dissent also cites language in the 2011 Annual Report regarding judges who were cautioned for seeking to use their office to avoid parking restrictions (Dissent at 6). I have no disagreement with my colleague that such conduct is improper, but it is not what is at issue here. The instances cited in the annual report did not involve differential treatment by police based on the use of judicial plates, or the expectation that a judge would be afforded such – they concerned the misuse of "official parking permit[s]" (2011 Annual Report 13).

In short, the sparse and conflicted record regarding this practice just does not support the sweeping conclusions reached by the dissent. While the Commission must remain vigilant against the kind of institutionalized favoritism described in *Schilling*, that does not mean it should make broad assertions of wholesale corruption in the ranks of law enforcement and the judiciary without any evidentiary basis for doing so. Much less should we seek to declare sanctionable a long-standing and widespread practice on the basis of a record that consists (so far as I can divine from the dissent) of two cases before the Commission that evidenced police unwillingness to impose sanctions on judges, several other cases that showed just the opposite, and a set of loudly stated but unverified assumptions.

But the dissent's view has, to my mind, and far more serious flaw. Adoption by the Commission of my colleague's stance would require it to both reject the position of the Advisory Committee on Judicial Ethics (the "Advisory Committee"), and ignore the clear intent of the Legislature. To do so would not simply be wrongheaded in this instance; it would have significant and negative implications for the whole structure for judicial ethics oversight.

For one thing, taking the tack urged on the Commission by the dissent would seriously undermine the important balance of roles between the Commission and the Advisory Committee. The former sanctions judges who have engaged in misconduct, among other responsibilities (*see* Jud Law § 42), while the latter gives judges guidance in addressing ethical dilemmas, upon which they can rely without fear of sanction, since

conduct in accordance with an opinion of the Advisory Committee is presumed to be proper (*see* Jud Law § 212[2][l][iv]). Adhering to that presumption is essential to ensuring that judges can receive clear ethical direction, even in those instances where the Commission, as is inevitable, would reach a different conclusion from that of the Advisory Committee.

The dissent argues that we should cast aside this structure, and sanction judges who act in accordance with an advisory opinion, so long as *that particular judge* did not seek the advisory opinion,[4] or under other unspecified circumstances where the statutory presumption would be overcome (*see* Dissent at 5). Were that the case, a judge could no longer comport his or herself in accordance with the ethical standards applicable to the office by carefully following both the opinions of both the Advisory Committee and the Commission. Rather, every judge would be compelled to seek his or her own personal advisory opinion in every instance where an ethical concern arose, and otherwise guess at which advisory opinions may, or may not, be adhered to by the Commission. And we would face the odd spectacle of the Commission investigating some judges for the precise conduct for which others are immune, solely on the basis of who personally sought the Advisory Committee's guidance.

[4] I do not agree with the dissent's reading of the governing statute, which does not appear to limit the presumption to the particular judge receiving the opinion (*see* Jud. Law § 212[2][l][iv] [emphasis added] ["Actions of *any judge* or justice of the uniform court system taken in accordance with findings or recommendations contained in *an* advisory opinion issued by the panel shall be presumed proper for the purposes of any subsequent investigation by the state commission on judicial conduct"]). But even if the dissent's construction were technically correct, his proposed course would still be ill-conceived, for the reasons set forth above.

In addition, the dissent's preferred position would require that the Commission take a contrary position from that of the Legislature, which has explicitly authorized the issuance of special license plates to public officials (*see* VTL § 404[2]). The Legislature enacted that provision, and has kept it in place, with full awareness that judges are among those who take advantage of this option. Yet it has not taken any steps whatsoever to exclude them from the law's ambit.

My dissenting colleague makes two arguments as to why we should not be bound by such legislative authorization. First, he states that the mere fact that the legislature authorized a practice does not mean we should find it ethical (Dissent at 10-11). And it is true that conduct legally permissible in general (such as engaging in political speech), is not always ethical for judges (*see* 22 NYCRR 100.5 [barring judges from endorsing candidates for office]). But I am aware of no precedent for what the dissent urges here: that the Commission declare it improper *per se* for judges to engage in a practice which the Legislature has specifically authorized *in regard to judges*.

To address this obvious conflict between his position and duly enacted law, the dissent also suggests that we just ignore the latter, since the Legislature has no authority to address matters of judicial ethics (*see* Dissent at 10). That seems to me a dubious proposition, but I do not think it necessary to wade into the constitutional questions that this view raises. Rather, the same concerns regarding the need for the judiciary to have a clear understanding of the rules it is expected to follow, set forth above in regard to the Advisory Committee, apply to the Legislature as well. If the dissent's view were

adopted, judges could look neither to existing advisory opinions, nor even to the statute books, to determine what conduct might subject them to sanction. How precisely, in such a world, judges *could* determine which legally authorized conduct would be at odds with the generally worded ethical standards set forth in the Rules, is a question the dissent leaves unanswered.

Put simply, it is crucial that ethical standards be not only stringent, but understandable, fair and uniformly applied. These criteria are undermined whenever the persons under our jurisdiction cannot determine what is permissible, and what is not. Yet the upshot of the dissent's vision is that judges would have to muddle through a thicket of countervailing pronouncements and overlapping spheres of authority. I do not believe such a structure would strengthen the ethical conduct of the State's judges. I believe it would create chaos.

For all of these reasons, I must respectfully but strongly take issue with the position advocated by the dissent. I do wish to conclude, however, by noting two areas where we appear to be in agreement.

First, as the Report makes clear, and I know the entire Commission strongly believes, when a judge uses the judicial office to gain favorable treatment, whether in the form of ticket-fixing or otherwise – it will warrant sanction by the Commission. The opinion of the Commission in *Schilling*, determining removal for the misuse of a judicial license plate to avoid a traffic sanction, should serve as a strong warning against the kind of practice that understandably raises the dissent's concern.

Second, I personally believe that a balancing of the policy concerns outlined in the Report (including issues of public perception reflected in the dissent itself, as well as the potential for improper law enforcement favoritism neither invited nor desired by judges), weigh against judicial plates, and that the better practice is not to use them. I say this as a personal view – one upon which reasonable people can differ, and which I believe is in no way compelled by law or the Rules. I know that the vast majority of those judges who disagree do so in good faith, and not out of a desire to seek improper advantage.

In sum, I think the limited nature of the Report issued today is fully justified by the legislative authorization for the practice of official license plates; the position taken by the Advisory Committee; the absence of any apparent authority for imposing ethical sanction for the mere act of a judge's self-identification without any concomitant wrongful purpose; and the slim evidentiary record that would support a different rule. Given those constraints, I think the most appropriate way for the Commission to comply with its commitment to report on this issue is to do what it has: highlight the issue, and seek to prompt greater reflection thereon. It is my hope that the Commission's Report, and the additional opinions that accompany it, will succeed in sparking further discussion on, and consideration of, the important substantive questions it raises.

Appendix A

Matter of Diane L. Schilling

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DIANE L. SCHILLING,

a Justice of the East Greenbush Town
Court, Rensselaer County.

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DETERMINATION

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Nina M. Moore
Honorable Karen K. Peters
Richard A. Stoloff, Esq.

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of Counsel) for the Commission

E. Stewart Jones Law Firm PLLC (by E. Stewart Jones, Jr., and James C. Knox) for the Respondent

The respondent, Diane L. Schilling, a Justice of the East Greenbush Town Court, Rensselaer County, was served with a Formal Written Complaint dated May 3,

2011, containing two charges. The Formal Written Complaint alleged that respondent: (i) improperly intervened in the disposition of a Speeding ticket issued to the wife of another judge and (ii) four years earlier, accepted special consideration with respect to a Speeding ticket issued to her. Respondent filed a verified answer dated May 23, 2011.

By Order dated June 1, 2011, the Commission designated Paul A. Feigenbaum, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 29 and 31, 2011, in Albany, and the referee filed a report dated January 6, 2012.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Counsel to the Commission recommended the sanction of removal, and respondent's counsel recommended admonition. On March 15, 2012, the Commission heard oral argument and thereafter considered the record of the proceeding. The vote in this matter was taken on March 15, 2012, and the Commission made the following findings of fact.

1. Respondent has been a Justice of the East Greenbush Town Court, Rensselaer County, since 2002.

2. Respondent is an attorney. Prior to becoming a judge, respondent was the East Greenbush Town Attorney. In that capacity, she prosecuted traffic violations in the East Greenbush Town Court.

3. Since 2003, respondent has been employed in various positions with the Office of Court Administration ("OCA"). She initially served as counsel in the

Training and Education Unit of the City, Town and Village Resource Center, which provides training and education to local judges. After a restructuring, the Resource Center became the Office of Justice Court Support, and respondent was appointed special counsel to the Deputy Chief Administrative Judge for the courts outside of New York City. In late June 2009 she became Director of the Office of Justice Court Support.

As to Charge I of the Formal Written Complaint:

4. At 5:40 AM on Saturday, May 30, 2009, East Greenbush Police Officer Brandon Boel issued a Speeding ticket to Lisa C. Toomey. Ms. Toomey is the wife of Sand Lake Town Justice Paul Toomey, who was then Director of the Office of Justice Court Support. Ms. Toomey was driving Judge Toomey's car, which had a license plate that included the letters "SMA," the acronym for the State Magistrates Association. The ticket was returnable in the East Greenbush Town Court on June 11, 2009, a date on which respondent's co-judge, Kevin Engel, was scheduled to preside.

5. Respondent knew Judge Toomey from their work together, from the fact that they were judges in adjoining towns and from social interactions. Judge Toomey had recommended that respondent be hired by OCA and was initially her supervisor. Their relationship was cordial and friendly.

6. In issuing the ticket, Officer Boel followed normal procedures, including notifying the police dispatcher of the stop, at which time he also conveyed the license plate number.

7. After the ticket was issued, Ms. Toomey immediately called Judge

Toomey, who told her that she should plead not guilty and let the process follow the ordinary course.

8. Officer Boel returned to the East Greenbush police station when his shift ended at 7:00 AM. The police station is located in the same building as the East Greenbush Town Court. Because Officer Boel had radioed the license plate number to the dispatcher, some officers at the station knew of the ticket issued to Ms. Toomey and were discussing the fact that the ticket had been issued to a car with a judge's license plate. Officer Boel, a relatively new officer at the time, had not known what "SMA" signified.

9. The traffic ticket is a five-page document in which writing on the first page is imprinted on the underlying pages. Following normal procedures, Officer Boel placed two copies of the ticket in a bin at the police station for the Town Court, gave one copy to the dispatcher for entry into the police department's computer, and put his officer's copy in a drawer; the fifth copy had been given to Ms. Toomey.

10. Officer Boel left the police station shortly after 7:00 AM. He testified that he did not see respondent that morning.

11. Respondent testified that she arrived at the police station at approximately 8:00 AM that same day, stopping briefly there on her way to court to do some paperwork. She testified further that when she arrived at the police station, Officer Boel was being teased by some officers, whom she could not identify at the hearing, for having issued a ticket to a car with an "SMA" license plate. She testified further that

Officer Boel approached her, asked her if she knew Judge Toomey, said that he had "made a mistake" and asked her to relay a message to Toomey that he (Officer Boel) would take care of the ticket with his sergeant. As did the referee who presided at the hearing, we find this testimony not credible.

12. At 8:17 AM, respondent sent an email message to Judge Toomey. The subject line of the message read: "I know," and the message continued: "No sgt due in until tomorrow then it should be corrected." Judge Toomey received respondent's email message but did not respond to it.

13. At the hearing before the referee, respondent acknowledged that it was wrong to send the May 30 email to Judge Toomey. She testified that she sent the message as a "favor" to Judge Toomey and his wife because Judge Toomey was a colleague and judge and she "wanted to stay in his good graces."

14. After receiving a copy of the Toomey ticket, the police dispatcher entered the ticket information into the police department's computer system. Thereafter, pursuant to his normal practice, the dispatcher placed this copy of the ticket in a bin for the monthly mailing to Traffic Safety Law Enforcement and Disposition ("TSLED"), the agency that tracks tickets from their issuance to police until their final disposition.

15. Senior Court Clerk Joanne Millens received the court copies of the Toomey ticket. While she does not specifically recall what she did with the ticket, her normal practice is to sort the tickets received from the police department and to give to Judge Engel's clerk the tickets with return dates on the nights Judge Engel was scheduled

to preside, and give to respondent's clerk the tickets with return dates on respondent's scheduled court nights. Judge Engel's clerk, Eileen Donahue, testified that she never received the court copies of the Toomey ticket.

16. Judge Toomey testified that on May 31, 2009, he received on his court-issued BlackBerry a text message from respondent that stated: "Need driver copy to void," and that he did not respond to the message. Respondent denies sending this text message to Judge Toomey. The referee did not make a specific finding as to whether respondent sent the text message to Judge Toomey since, in his findings and conclusions, he relied heavily on respondent's admissions of misconduct. Accordingly, we make no further findings with respect to this allegation.

17. Officer Boel testified that a day or two after he issued the Toomey ticket, Police Sergeant Michael Condo asked him for the officer's copy of the ticket and that he (Boel) gave this copy to Sergeant Condo. The whereabouts of this ticket is unknown. Sergeant Condo was not called as a witness at the hearing.

18. On two occasions in early June 2009, respondent and Judge Toomey discussed his wife's ticket. Respondent asked Judge Toomey for his wife's copy of the ticket and said that she needed that copy of the ticket so it could be destroyed. At the hearing, respondent admitted having incidental, private conversations with Judge Toomey about the ticket on at least two occasions in June. While her hearing testimony about the substance of those conversations was vague, respondent acknowledged that she asked when the ticket was returnable, and she acknowledged that her conversations with

Judge Toomey about the pending ticket were improper. Respondent denied that she asked for the ticket or discussed "destroying" the ticket.

19. On June 24, 2009, Judge Toomey learned that respondent was about to replace him as Director of the Office of Justice Court Support. Respondent testified that for about two or three weeks prior to that date, she had had discussions with OCA officials about the position. After June 24th, there was no further social relationship between respondent and Judge Toomey, who was assigned to another position with OCA.

20. On June 26, 2009, Lisa Toomey mailed her Speeding ticket to the East Greenbush court with a plea of not guilty. Since Judge Engel's clerk had not received the court copy of the ticket from the police, she placed Ms. Toomey's ticket in the "orphan" file of tickets that were not in the system.

21. On December 23, 2009, having heard nothing from the East Greenbush court about her ticket, Ms. Toomey sent a letter to the court by certified mail to ascertain the status of the ticket. She received a voice mail message in response, asking her to call the court. Ms. Toomey left a return voice mail message with the court asking for a written response to her letter. She then received another telephone message from a court clerk asking her to call to discuss the status of the ticket. Ms. Toomey did not call the court and since that time has had no other communication with the court about the ticket. The ticket was never prosecuted.

22. There is no record of the Toomey ticket in the East Greenbush Town Court except the copy of the ticket that Ms. Toomey sent to the court with her plea of not

guilty. The court copies of the ticket (received from the police department) are missing, and the court's copy of Ms. Toomey's letter of December 23, 2009, is missing. TSLED, the agency which would normally receive the dispatcher's copy of the ticket from the police, has no record of the ticket issued to Ms. Toomey.

23. In 2010, Judge Toomey requested an opinion from the Advisory Committee on Judicial Ethics with respect to whether he had an ethical obligation to report respondent's conduct to the Commission. After receiving an opinion from the Committee that he was obligated to report the matter, Judge Toomey sent a complaint to the Commission.[1]

24. Respondent's attempt to attribute nefarious motives to Judge Toomey, by implying that he engaged in wrongdoing in complaining about respondent's actions in an effort to regain his former position, is unpersuasive and is rejected. In this regard we adopt the reasoning of the referee who conducted the hearing.

As to Charge II of the Formal Written Complaint:

25. On June 23, 2005, respondent was issued a ticket for Speeding by New York State Trooper C. Donovan. Respondent was driving her car, which had an "SMA" license plate.

26. Shortly thereafter, Trooper Donovan discussed the ticket with other

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[1] Section 100.3(D)(1) of the Rules Governing Judicial Conduct states: "A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action."

troopers, who told him that "SMA" stands for State Magistrates Association and that he had given a ticket to a judge before whom the troopers appear in court. Thereupon, Trooper Donovan called respondent on her cell phone, having gotten the number from the police dispatcher, and told respondent that they had met on the side of the road that morning and that he wanted to come to her office. Respondent agreed, and the trooper arrived at her office about an hour later.

27. Trooper Donovan told respondent about his conversation with other troopers and asked that she return the Speeding ticket to him because he intended to void it. Respondent gave him the ticket. Respondent testified that she assumed the trooper was taking the ticket back because he knew that she was a judge.

28. Later that same day, the Speeding ticket issued to respondent was voided by State Police Sergeant Corso, to whom Trooper Donovan reported.

29. Sometime in late 2009 or early 2010, in a conversation with colleagues at the Office of Justice Court Support, respondent recounted that she had been issued a Speeding ticket several years earlier and that after the issuing officer learned what the "SMA" license plate meant, he came to her office and took back the ticket.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.2(C), 100.4(A)(1) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law.

Charges I and II are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

Upon learning that the spouse of a judge had been issued a Speeding ticket returnable before respondent's co-justice, respondent intervened in the matter and engaged in a substantial effort to accord favoritism. This scheme to circumvent the normal judicial process, in which, to a significant extent, respondent has acknowledged participating, resulted in the disappearance of the ticket from the system and, thus, the absence of any prosecution. As depicted in this record, respondent's actions showed a complete disregard for her ethical responsibilities and for the legal process she was sworn to uphold, which "cannot be viewed as acceptable conduct by one holding judicial office." *Matter of VonderHeide*, 72 NY2d 658, 660 (1988).

As respondent acknowledges, within hours after the ticket had been issued to the wife of Sand Lake Town Justice Paul Toomey, respondent went to the East Greenbush police station – at 8:00 AM on a Saturday morning – and, shortly thereafter, sent an email message to Judge Toomey, her friend, colleague and former boss at the agency that provides advice and education to local justices. Respondent's email message (which stated in the subject line: "I know," and then continued: "No sgt due in until tomorrow then it should be corrected") clearly telegraphed respondent's participation in a scheme to extend favoritism in connection with the ticket and, at the very least, bestowed her judicial imprimatur on the conduct. Like the referee, we reject respondent's hearing testimony that in sending this email, she was merely relaying a message from the issuing

officer, who told her that he had "made a mistake" by issuing a ticket to the wife of a judge (Tr. 312). In crediting the testimony of Officer Boel, who denied seeing respondent that morning or asking her to relay a message about the Toomey ticket, the referee noted that Boel processed the ticket in the normal course before leaving the station when his shift ended at 7:00 AM, distributing a copy to the police dispatcher and two copies for transmittal to the East Greenbush Town Court (located in the same building as the police station); such conduct seems plainly inconsistent with an intent or plan by him to "correct" or void the ticket the following day. In either event, whether it was Boel who asked her to say that the matter would be "corrected" or whether that was her own observation, respondent's conduct in sending that message to Toomey was clearly part of a wrongful scheme to accord favorable treatment to a defendant solely because of the defendant's connection to a judge. At the very least, respondent's actions indicated that she was complicit in the favoritism and, as her attorney conceded at the oral argument, conveyed to the participants in the scheme, including police who appeared before her, that she approved it (Oral argument, pp. 37-38, 40).

Respondent has also admitted that on at least two occasions shortly thereafter, she and Judge Toomey discussed the pending Speeding ticket. While her testimony at the hearing about the substance of these conversations was notably vague, respondent admitted asking about the return date of the ticket; though she denied that she asked for the ticket or discussed "destroying" the ticket, she acknowledged that any conversations with Toomey about the ticket, which was pending in the East Greenbush

court, were improper. We believe that the record, in its totality, supports a finding that respondent asked Judge Toomey for his wife's copy of the ticket so it could be destroyed.[2] At a minimum, her actions conveyed the appearance that she was following up on her email message to Judge Toomey about the ticket (which had advised him that "it should be corrected") in furtherance of the scheme to void the ticket and erase it from the system.

Under the circumstances, it is thus apparent that respondent tried to influence the outcome of the Speeding charge against Lisa Toomey. Respondent testified that she had no intention to influence the outcome of the ticket (Tr. 319-20). We refrain from concluding that her misguided view of her intentions constituted lack of candor (*see*, *Matter of Kiley*, 74 NY2d 364, 370-71 [1989]), but we are not persuaded that her testimony was credible as to certain facts in dispute.

The record establishes that ultimately the Toomey ticket was never prosecuted and, for all practical purposes, disappeared entirely from the system. Of the five copies of the ticket, only the defendant's copy of the ticket, which Ms. Toomey sent to the court with a not guilty plea, has been accounted for. The two court copies of the ticket, which were transmitted by the police to the East Greenbush Town Court, could not be located (Judge Engel's clerk testified that she never received them); the police dispatcher's copy, which would normally be sent to TSLED, was apparently never

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[2] We note that in his discussion of the facts, the referee states that respondent "asked Judge Toomey for his wife's copy of the Ticket.... [and] said she needed that copy to destroy the ticket" (Rep. 8).

transmitted since that agency has no record of the issuance of the ticket; and according to Officer Boel, the officer's copy, which he usually retains, was given to a sergeant a day or two later at the sergeant's request (it was not produced at the hearing). As stated by the referee: "Although the mechanics of the destruction of the Ticket are unclear, respondent's role in that process suffers from no such infirmity" (Rep. 9). By sending the May 30 email to Judge Toomey about "correct[ing]" the Speeding ticket, and by discussing the pending ticket with Judge Toomey, respondent was inextricably involved in subverting the normal judicial process, which ultimately led to the disappearance of the ticket.

As a former town attorney and as an experienced judge, there can be no question that respondent was familiar with the process surrounding the issuance and prosecution of traffic tickets. Respondent also knew from personal experience that a ticket could disappear since in 2005 a Speeding ticket issued to her was voided after she acquiesced in favoritism extended to her by the trooper. As recounted by respondent to OCA co-workers in a conversation at her office, the trooper who had issued the ticket contacted her by cell phone upon learning that she was a judge, asked to come to her office, and then asked to take back the ticket so it could be voided. Respondent returned the ticket to the trooper notwithstanding that she assumed that he was withdrawing the ticket because of her judicial status. Like the Toomey ticket, the Speeding ticket issued to respondent was never prosecuted. Notwithstanding that she did not initiate the favoritism that was afforded to her, her cooperation in the impropriety permitted it to occur. The

impropriety was compounded by telling her colleagues, in an agency which advises judges on the law, of her experience in cooperating with an effort to have her own ticket voided after the trooper learned she was a judge. Under the circumstances presented, we agree with the referee's conclusion that the example set by respondent "falls well short of the standard of behavior expected of a judge" (Rep. 16). As the Court of Appeals has noted, judges must be aware "that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved" (*Matter of Lonschein,* 50 NY2d 569, 572 [1980]). "There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary" (*Id.*).[3]

Ticket fixing strikes at the heart of our system of justice, which is based on equal treatment for all.[4] As this Commission stated more than 30 years ago, ticket fixing results in "two systems of justice, one for the average citizen and another for people with.... the right 'connections'" ("*Ticket-Fixing: The Assertion of Influence in Traffic*

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[3] The Commission has repeatedly evaluated cases of judges attempting to use their judicial office to influence the disposition of traffic violations. This case represents a stark example of this problem and raises a systemic issue of how judicial license plates distort the normal process of enforcing traffic laws and the delicate position faced by law enforcement officers when they stop a vehicle with judicial plates. The Commission has decided that a public report is required to address the issue of whether or not the Rules Governing Judicial Conduct may be violated by the use of judicial license plates in the context of judges, in effect, using their judicial office to avoid the consequences of being stopped for offenses under the Vehicle and Traffic Law.

[4] The Court of Appeals has used the term "ticket-fixing" to refer to "misconduct in connection with the disposition of ...Speeding tickets" (*Matter of Conti*, 70 NY2d 416, 417, 418 [1987]; *see also*, *Matter of Bulger*, 48 NY2d 32, 33 [1979] [censuring judge "for showing and seeking favoritism in the disposition of charges involving traffic violations"]).

Cases," Interim Report, June 20, 1977, p. 16). Such favoritism "is wrong, and always has been wrong" (*Matter of Byrne*, 47 NY2d [b] [Ct on the Judiciary 1979]); indeed, it may be contrary to law.[5] After the Commission uncovered a widespread pattern of ticket fixing throughout the state in the late 1970's, more than 140 judges were disciplined for engaging in this misconduct. Subsequent incidents of ticket fixing were regarded with particular severity, since judges now had the benefit of a significant body of case law concerning the impropriety of this behavior. In 1985 the Court of Appeals stated that even a single incident of ticket fixing "is misconduct of such gravity as to warrant removal" (*Matter of Reedy*, 64 NY2d 299, 302 [1985]). In view of these precedents, every judge should be well aware that such conduct is strictly prohibited.

We thus conclude that respondent has engaged in serious misconduct. In reaching this conclusion, we accord due deference to the findings of the referee who conducted the hearing. We note that the referee, after carefully weighing the witnesses' credibility and evaluating the evidence, concluded that respondent's testimony as to her purported discussion with Boel was not credible but determined that respondent's lack of candor at the hearing was not established. Based on our own thorough examination of the entire record, we find no basis to reject the referee's findings and conclusions. (*Compare*, *Matter of Marshall*, 2008 Annual Report 161 [referee's findings were "unclear" and

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[5] Section 207, subdivision 5 of the Vehicle and Traffic Law provides that disposing of a traffic ticket "in any manner other than that prescribed by law" constitutes a misdemeanor. While there is no indication that respondent committed a crime, the statute represents a public policy against any form of ticket fixing or unauthorized disposition of a ticket.

inconsistent on their face], determination accepted, 8 NY3d 741 [2007].)

In weighing the sanction to be imposed, we are guided by the principle that "as a general rule, intervention in a proceeding in another court should result in removal," though mitigating factors may warrant a reduced sanction (*Matter of Edwards*, 67 NY2d 153, 155 [1986] [judge's intervention in his son's case was mitigated by several factors, including that his "judgment was somewhat clouded by his son's involvement" and he "forthrightly admitted" his misconduct]). *See also*, *Matter of Reedy*, *supra*; *Matter of Kiley*, 74 NY2d 364, 370 [1989] [judge's intervention was motivated by sympathy for his friends' "emotional trauma," with no "element of venality, selfish or dishonorable purpose"). We note that with respect to the Toomey ticket, there can be no excuse that respondent's judgment was "clouded," and there was plainly a "dishonorable purpose" in doing a favor for a colleague that would result in erasing all traces of his wife's Speeding ticket from the system. While we have duly considered the mitigation presented in this case, including respondent's public service, her previously unblemished record and her admission of wrongdoing, the nature and gravity of the proven impropriety in this case cannot be overlooked. As the Court of Appeals has stated, in certain cases "'no amount of [mitigation] will override inexcusable conduct' (*Bauer*, 3 NY3d at 165)" (*Matter of Restaino*, 10 NY3d 577, 590 [2008]). Significantly, as an experienced judge and as an attorney with expertise in providing advice, support and training to local justices, respondent should have recognized and avoided any taint of favoritism.

While we are mindful that removal is an extreme sanction and should only

be imposed in the event of truly egregious circumstances (*Matter of Steinberg*, 51 NY2d 74, 83 [1980]), we note that judges "are held to higher standards of conduct than the public at large, and thus what might be acceptable behavior when measured against societal norms could constitute 'truly egregious' conduct" requiring a severe sanction (*Matter of Mazzei*, 81 NY2d 568, 572 [1993] [citations omitted]). We believe that respondent's actions showed a serious lack of judgment and an indifference to the special obligations of judges that are unacceptable for a member of our state's judiciary. *Matter of Conti*, 70 NY2d 416, 419 (1987). Such behavior jeopardizes public confidence in the integrity of the judiciary as a whole, which is indispensable to the administration of justice in our society (*Matter of Levine*, 74 NY2d 294, 297 [1989]), and warrants removal from office.

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

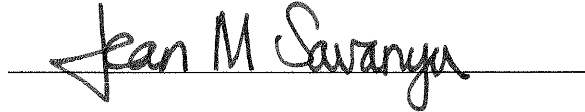
Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Cohen, Mr. Emery, Mr. Harding, Ms. Moore, Judge Peters and Mr. Stoloff concur.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: May 8, 2012



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

Appendix B

Commission Letter of August 13, 2012

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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RICHARD A. STOLOFF
MEMBERS

JEAN M. SAVANYU, CLERK

61 BROADWAY, SUITE 1200
NEW YORK, NEW YORK 10006

646-386-4800 646-458-0037
TELEPHONE FACSIMILE
www.cjc.ny.gov

ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

August 13, 2012

Dear

In a recent determination of removal involving a judge who engaged in ticket-fixing, the Commission expressed its intention to issue a report on the subject of automobile license plates that identify the vehicle as belonging to a judge. A footnote in *Matter of Schilling*, states as follows:

> The Commission has repeatedly evaluated cases of judges attempting to use their judicial office to influence the disposition of traffic violations. This case represents a stark example of this problem and raises a systemic issue of how judicial license plates distort the normal process of enforcing traffic laws and the delicate position faced by law enforcement officers when they stop a vehicle with judicial plates. The Commission has decided that a public report is required to address the issue of whether or not the Rules Governing Judicial Conduct may be violated by the use of judicial license plates in the context of judges, in effect, using their judicial office to avoid the consequences of being stopped for offenses under the Vehicle and Traffic Law.[1]

Among other things, the report will examine and compare practices and policies in New York and other states regarding judicial license plates.

[1] The determination is available on the Commission's website: www.cjc.ny.gov.

The Commission would welcome comments from government and court officials, judicial associations, bar associations and other responsible civic organizations and representatives, who wish to share their perspectives and experiences. Now that *Matter of Schilling* is concluded, the time seems right to solicit such comments.[2]

Should you choose to express views on the subject, please feel free to submit a letter or memorandum to the Commission, to my attention. The Commission would particularly appreciate any perspectives you may have on the public policy interests served by judicial license plates. For example, what is the purpose of judicial license plates? If identifying vehicles for courthouse parking is a purpose, (A) what provision is made for those judges who choose not to employ judicial license plates, or for court employees, who are not eligible for judicial plates, and (B) might alternatives, such as issuing courthouse parking placards or registering plate numbers with court security personnel, be more appropriate? Are there potential security risks associated with having judicial license plates, particularly when the judge is away from the courthouse? Does the possibility of being accorded favorable treatment, such as when stopped by police for apparent moving violations, outweigh whatever benefits there may be to having judicial license plates?

Thank you very much for your time and consideration. I look forward to receiving and sharing with the Commission whatever comments you wish to submit.

Very truly yours,

Robert H. Tembeckjian
Administrator & Counsel

[2] The statutory time frame for review of the *Schilling* determination by the Court of Appeals has expired; a request for review was not made by the judge; therefore, an order removing the judge from office was issued by the Court pursuant to Judiciary Law 44(7).

Appendix C

Advisory Opinions 12-141 and 07-213

Opinion 12-141

September 19, 2012

Dear Justice:

This responds to your inquiry (12-141) asking whether it is ethically permissible for a judge to display on the judge's vehicle a license plate that is issued by the New York State Department of Motor Vehicles and that indicates the vehicle registrant is a judge.

A judge must always avoid even the appearance of impropriety (*see* 22 NYCRR 100.2), and must always act to promote the public's confidence in the judiciary's integrity and impartiality (*see* 22 NYCRR 100.2[A]). Therefore, a judge must not lend the prestige of judicial office to advance the judge's private interests (*see* 22 NYCRR 100.2[C]).

The Committee previously has advised that there is no ethical prohibition against a judge displaying a license plate on the judge's car that identifies the judge as a member of a judge's association (*see* Opinion 07-213). Similarly, the Committee now concludes that otherwise lawful display of a license plate duly issued by the New York State Department of Motor Vehicles is not rendered ethically impermissible merely because the license plate indicates that the vehicle registrant is a judge.

I have enclosed a copy Opinion 07-213 for your convenience.

Very truly yours,

George D. Marlow, Assoc. Justice
Appellate Division, First Dept. (Ret.)
Committee Chair

Enc.

Opinion 07-213

January 31, 2008

Digest: A judge may display both the emblem for a religious organization and a license plate that identifies the judge as a member of a judges' organization on his/her car.

Rules: 22 NYCRR 100.4(C)(3); 100.4(C)(3)(a),(b).

Opinion:

A judge asks whether he/she may display both the emblem for a religious organization and a license plate that identifies him/her as a member of a judges' association on his/her car.

Pursuant to 22 NYCRR 100.4(C)(3), a judge may be a member of a religious organization that is not conducted for profit, subject however, to certain limitations that are not relevant to this inquiry (*see* 22 NYCRR 100.4[C][3][a], [b]). As judges are permitted to be members of religious organizations, it is the Committee's view that there is no impropriety in the inquiring judge displaying an emblem of a religious organization on his/her car.

There is no ethical prohibition against a judge displaying a license plate on his/her car that identifies him/her as a member of a judges' association.