STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

GERARD E. MANEY,

a Judge of the Family Court and an
Acting Justice of the Supreme Court,
Albany County.

DETERMINATION

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (Charles F. Farcher, Of Counsel) for the Commission

Corrigan, McCoy & Bush, PLLC (by Joseph M. McCoy) for the Respondent

The respondent, Gerard E. Maney, a Judge of the Family Court and an

Acting Justice of the Supreme Court, Albany County, was served with a Formal Written Complaint dated October 29, 2009, containing two charges. The Formal Written Complaint alleged that in June 2009 respondent operated a vehicle while under the influence of alcohol, resulting in his conviction for Driving While Ability Impaired, and that he asserted his judicial office in connection with his arrest. Respondent filed a verified answer dated December 7, 2009.

By Order dated March 2, 2010, the Commission designated H. Wayne Judge, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 5, 2010, in Albany. The referee filed a report dated September 15, 2010.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Both parties recommended the sanction of censure. On November 4, 2010, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Judge of the Family Court and an Acting Justice of the Supreme Court, Albany County, since 1991. He has served as the Supervising Judge of the Family Courts for the Third Judicial District since 2002 and has presided over Family Treatment Court since 2002 and Juvenile Drug Court since 2006.

As to Charges I and II of the Formal Written Complaint:

2. On June 18, 2009, after consuming alcoholic beverages at a private

club in Albany County, respondent drove his car while under the influence of alcohol. Respondent's car bears a license plate containing the initials "FCJ," which signifies Family Court Judge.

3. At approximately 8:30 PM, respondent's vehicle approached the Green Island Bridge, where local police were operating a sobriety checkpoint. Respondent made an illegal U-turn in an attempt to avoid the checkpoint.

4. Green Island Police Officer Stacy Vogel pursued respondent in a marked police vehicle, with its lights and siren turned on, for approximately half a mile before respondent pulled over his vehicle and came to a stop.

5. Officer Vogel approached respondent's vehicle and asked for his driver's license and registration. Respondent provided those documents and identified himself as a Family Court judge. Officer Vogel did not know that the license plate on respondent's vehicle signified that it was registered to a judge; nor did she recognize respondent or know him to be a judge.

6. Officer Vogel detected the odor of alcohol and asked respondent to step out of his vehicle. Officer Vogel administered two field sobriety tests to respondent, which he failed.

7. Officer Vogel asked respondent to take a sobriety test on an alcohol pre-screening device (PSD). Respondent refused to take the PSD test.

8. When Officer Vogel stepped away from respondent's vehicle to call for a back-up, respondent used mouthwash in an attempt to mask the odor of alcohol on

his breath.

9. Shortly thereafter, Green Island Police Officer Jeffrey McCutchen arrived on the scene. Officer McCutchen detected the scent of mouthwash. Respondent told Officer Vogel that he had used mouthwash.

10. Respondent asked Officer McCutchen, who knew respondent to be a judge, "if there was anything we could do to resolve the matter" and if the officer could extend him "professional courtesy." Officer McCutchen replied that the matter was "out of [his] hands" because an investigator from the District Attorney's office was on the scene.

11. Officer McCutchen asked respondent to take a sobriety test on the PSD, and respondent complied. His blood alcohol content registered .15% on the device.

12. The threshold for driving while intoxicated is .08%. The elevated reading on the PSD reflected, in part, the alcohol-based mouthwash respondent had used as well as the alcoholic beverages he had consumed.

13. Respondent again asked Officer McCutchen for "professional courtesy."

14. Respondent was arrested at 9:02 PM, handcuffed and transported to the Green Island Police station. In the police car, respondent again referred to himself as a judge.

15. At the station, Officer Vogel advised respondent of his rights and read him a DWI warning. Respondent refused to sign an acknowledgment that he had been

given the DWI warning.

16. Over the next hour, Officer Vogel repeatedly asked respondent to take a breathalyzer test, and he declined to do so. During that time, respondent searched extensively through a telephone book and made approximately eight telephone calls. He also repeatedly asked for "courtesy" and "consideration," requested that his arrest not be publicized and made numerous references to his judicial status, including that he had been a judge for 18 years, presides over drug court and puts people in jail, and was running for Supreme Court.

17. Respondent made several telephone calls in an attempt to reach an attorney. He also attempted to reach Albany County District Attorney David Soares, who respondent knew would be the prosecuting authority for the charges against him. Respondent told the officers that he was calling Mr. Soares for the purpose of trying to minimize publicity of his arrest. Respondent did not speak to Mr. Soares that night or thereafter about his arrest.

18. As a result of respondent's conduct as described in paragraphs 16 and 17, the administration of the breathalyzer test was delayed for approximately an hour.

19. At approximately 10:00 PM, after speaking to an attorney, respondent took a breathalyzer test. The test showed a blood alcohol content of .07%.

20. Respondent was charged with Driving While Intoxicated ("DWI"), a violation of Section 1192(3) of the Vehicle and Traffic Law; Driving While Ability Impaired ("DWAI"), a violation of Section 1192(1) of the Vehicle and Traffic Law;

Failure to Yield Right of Way to an Emergency Vehicle, a violation of Section 1144(a) of the Vehicle and Traffic Law; and Illegal U-Turn, a violation of Section 1160(e) of the Vehicle and Traffic Law.

21. On August 4, 2009, respondent pled guilty in the Green Island Town Court to DWAI in full satisfaction of all charges. He was sentenced to a $300 fine, a $260 surcharge, a 90-day license suspension and attendance at a Victim Impact Panel and a Drinking Drivers Program.

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(C), 100.4(A)(2) and 100.4(A)(3) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

Respondent violated his ethical obligation to respect and comply with the law and endangered public safety by operating a motor vehicle while under the influence of alcohol, resulting in his conviction for Driving While Ability Impaired. *See*, *Matter of Martineck*, 2011 Annual Report ___; *Matter of Pajak*, 2005 Annual Report 195 (Comm on Judicial Conduct). By engaging in such conduct, respondent undermined his effectiveness as a judge and brought the judiciary as a whole into disrepute. Moreover, as

shown by this record, respondent's misconduct is exacerbated significantly by numerous aggravating circumstances, including his repeated references to his judicial status during his arrest, his requests to the arresting officers for "professional courtesy" and "consideration," and his calculated attempts to avoid the full consequences of his wrongdoing.

In determining an appropriate disposition for alcohol-related driving offenses, the Commission in prior cases has considered mitigating and/or aggravating circumstances, including the level of intoxication, whether the judge's conduct caused an accident or injury, whether the conduct was an isolated instance or part of a pattern, the conduct of the judge during arrest, and the need and willingness of the judge to seek treatment. *See, Matter of Martineck, supra* (DWI conviction, based on a blood alcohol content of .18%, after the judge drove erratically and hit a mile marker post [censure]); *Matter of Burke,* 2010 Annual Report 110 (DWAI conviction after causing a minor accident [censure, in part for additional misconduct]); *Matter of Mills*, 2006 Annual Report 218 (though acquitted of DWI, judge admitted operating a motor vehicle after consuming alcoholic beverages, "vehemently" protested her arrest and made offensive statements to the arresting officers [censure]); *Matter of Pajak, supra* (DWI conviction after a property damage accident [admonition]); *Matter of Stelling*, 2003 Annual Report 165 (DWI conviction following a previous conviction for DWAI [censure]); *Matter of Burns*, 1999 Annual Report 83 (DWAI conviction [admonition]); *Matter of Henderson*, 1995 Annual Report 118 (DWAI conviction; judge referred to his judicial office during

the arrest and asked, "Isn't there anything we can do?" [admonition]); *Matter of Siebert*, 1994 Annual Report 103 (DWAI conviction after causing a three-car accident [admonition]); *Matter of Innes*, 1985 Annual Report 152 (DWAI conviction; judge's car struck a patrol car while backing up [admonition]); *Matter of Barr*, 1981 Annual Report 139 (two alcohol-related convictions; judge asserted his judicial office and was abusive and uncooperative during his arrests, but had made "a sincere effort to rehabilitate himself" [censure]); *Matter of Quinn*, 54 NY2d 386, 395 (1981) (two alcohol-related convictions and other non-charged incidents; judge was uncooperative and abusive to officers during his arrest and repeatedly referred to his judicial position [removal reduced to censure despite the judge's "manifest unfitness for judicial office," in view of the judge's retirement]). In the wake of increased recognition of the dangers of Driving While Intoxicated and the toll it exacts on society, alcohol-related driving offenses must be regarded with particular severity.

This case presents a series of aggravating factors that are especially disturbing. Respondent made an illegal U-turn to avoid a sobriety checkpoint, indicating that he recognized that he was impaired by alcohol. Pursued by police, he drove for a half a mile before stopping his vehicle. After a police officer smelled alcohol on his breath, respondent quickly rinsed his mouth with mouthwash to mask the odor (an action which also skewed the results of an alcohol pre-screening test). He initially refused to take a pre-screening sobriety test, though he complied with the request when a second officer arrived on the scene. At the police station, he delayed taking a breathalyzer test for an

hour while leafing through a telephone book, making numerous phone calls, and rebuffing repeated requests that he take the test promptly; as the referee found, it was clear that respondent's behavior was calculated to delay administration of the test. He attempted to contact the District Attorney, who would be prosecuting the charges against him, in an apparent effort to minimize publicity of his arrest. Most troubling of all, both before and after his arrest, he repeatedly invoked his judicial office while making requests for what he called "professional courtesy" and "consideration." Although he never asked specifically that no charges be filed or that the charges be dropped or reduced, those requests, coupled with his gratuitous references to his judicial office, left no doubt that he was asking for favorable treatment simply because of his judicial status.[1]

Public confidence in the fair and proper administration of justice requires that judges, who are sworn to uphold the law, neither request nor receive special treatment when the laws are applied to them personally. It was unnecessary and improper for respondent to identify himself as a judge at the scene of his arrest and refer to his judicial office repeatedly thereafter, while asking for "courtesy" and "consideration." Such conduct is contrary to well-established ethical standards prohibiting a judge from using the prestige of judicial office to advance private interests (Rules, §100.2[C]) and is inappropriate even in the absence of an explicit request for special consideration.

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[1] Most of the factual allegations of the Formal Written Complaint were undisputed. Respondent did not testify at the hearing, permitting a negative inference to be drawn as to certain facts, such as the amount of alcohol he consumed and his intent in asking for "courtesy" and "consideration" (*see*, *Matter of Reedy*, 64 NY2d 299, 302 [1985]).

See, Matter of Edwards, 67 NY2d 153, 155 (1986).

In considering an appropriate sanction, we must weigh these factors against this isolated episode of misbehavior, respondent's 19 years as a judge, his acknowledgment of misconduct and his recognition that a severe sanction is appropriate.

Were the sanction of suspension from judicial office without pay available to us, we would impose it in this case to reflect the seriousness of respondent's misconduct in view of the aggravating factors described herein.[2] Absent that alternative, we have concluded that respondent should be censured. Such a result not only underscores the seriousness of such misconduct, but also serves as a reminder to respondent and to the public that judges at all times are held to the highest standards of conduct, even off the bench (Rules, §100.2[A]).

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

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

Mr. Belluck, Mr. Emery and Ms. Hubbard dissent as to the sanction and vote that respondent be removed from office. Mr. Belluck files a dissenting opinion, in which Mr. Emery joins.

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[2] In our 2010 annual report, as we have done previously, we have urged the Legislature to consider a constitutional amendment providing suspension from office without pay as an alternative sanction available to the Commission.

Mr. Cohen files a concurring opinion, in which Mr. Coffey and Mr. Harding join.

CERTIFICATION

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

Dated: December 20, 2010

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

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CONCURRING OPINION BY MR. COHEN, IN WHICH MR. COFFEY AND MR. HARDING JOIN

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While I agree with the majority that Judge Maney's conduct is clearly worthy of the Commission's proposed sanction of censure – in many respects more for his post-arrest conduct than for the impaired driving that led to it – I write separately to address briefly a point raised by staff and addressed in a footnote in the determination. Specifically, staff argued that a "negative inference" should be drawn against the judge because he did not testify or offer testimony in his own defense.

Although it is accurate that, at the August 5, 2010 hearing in this matter, there was no defense testimony or evidence, except as offered through cross-examining staff witnesses, it is also true that Judge Maney *did* testify when asked by staff to give an investigative deposition. Ten pages of his investigative admissions were used by staff at the hearing to prove its case in chief, suggesting that he testified fully and with candor. In short, he *cooperated* with staff – even if he chose not to testify at the hearing or to

offer in evidence any portions of his investigative testimony to put the admissions in context.

We are informed by staff during oral argument that it is relatively uncommon for a respondent not to testify at a hearing about his or her conduct. One might easily draw the "inference" that such testimony would only further worsen the situation for a respondent in an incriminating way, as is likely the case here.[1] Nonetheless, a decision not to testify can also be viewed as an indication of remorse by the respondent, or a tacit acceptance of responsibility for his or her wrongdoing. Indeed, for example, at sentencing in criminal cases, trial judges sometimes comment favorably on the manner in which a defense has restrained itself so as not to further exacerbate the wrongdoing. Of course, a judge might also decline to testify if staff had not met its burden of proof.

Although the Court of Appeals has approved the Commission's use of an inference drawn from a judge's failure to testify (*see Matter of Reedy,* 64 NY2d 299, 302 [1985]), one should not be too hasty to assume that a respondent's demand for a hearing coupled with his or her decision to not testify is a negative factor in every case. It is certainly true that in this case one can look at the written word of the testimony before the referee given by staff's witnesses and the tape containing respondent's post-arrest conduct, including his own incriminating words *in haec verba*, and draw adverse inferences from that evidence. However, the "inference" to be drawn from a judge's

[1] Although staff cites no authority for it and we find none, it is noteworthy that staff does not ask the Commission to employ the negative inference in deciding the punishment, only in deciding guilt – and, of course, respondent agrees.

decision not to testify is of a far different variety, and should be viewed far less reflexively against a respondent – including this one. I note that the referee, in sustaining the charge, expressly declined to use the negative inference in view of the judge's candor in his pleadings and investigative testimony (Rep. 7). In light of the evidence presented in this case, the Commission did not need to resort to use of this inference in determining guilt.

Dated: December 20, 2010

Joel Cohen, Esq., Member
New York State
Commission on Judicial Conduct

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DISSENTING OPINION
BY MR. BELLUCK, IN
WHICH MR. EMERY
JOINS

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I respectfully dissent as to the sanction in this case because I believe the established facts of Judge Maney's behavior – a drunk driving[1] conviction exacerbated by blatant, repeated attempts to evade responsibility for his unlawful conduct, to obstruct the administration of justice and to obtain favorable treatment because of his judicial status – constitute egregious misconduct for which censure is too lenient. I believe this record of misbehavior establishes that the respondent is not fit to continue to serve as a judge and should be removed from office.

The record before us reveals the following facts. After consuming alcoholic beverages, the judge drove his vehicle and, spotting a sobriety checkpoint, he attempted to evade the roadblock by making an illegal U-turn. He then drove for half a

[1] I use this term to include all of the offenses under Vehicle and Traffic Law §1192 pertaining to operating a vehicle while impaired by the consumption of alcohol, including Driving While Ability Impaired ("DWAI"), the charge to which Judge Maney pled guilty (VTL §1192[1]).

mile while pursued by police. That conduct is telling since it indicates that the judge recognized that legally he should not have been driving, and he certainly knew that, by continuing to drive in that condition, he presented a heightened risk of injury to others. This bears repeating: not only was the judge driving drunk, but he attempted to evade the police and continued to drive drunk, endangering the lives of others (motorists, passengers, pedestrians and law enforcement personnel) after recognizing that legally he should not be driving.

This was only one of numerous efforts undertaken by the judge that evening to avoid the legal consequences of his behavior. Over the next few hours, he continued those efforts: by refusing to submit to an alcohol pre-screening device, by rinsing his mouth with mouthwash (which he conveniently happened to have in his car), and, most shockingly, by repeatedly referring to his judicial office, by repeatedly requesting "professional courtesy" and "consideration" from the arresting officers, and by attempting to contact the District Attorney when he was in custody. Each of these separate acts was a calculated effort to evade responsibility for his misconduct and to ensure that the law, which every judge is sworn to uphold, would not be applied to him personally. While each of these aggravating factors, standing alone, would notably compound the underlying misconduct, taken together they constitute a record of irresponsibility that cannot be condoned and irreparably damage his credibility and moral authority as a judge.

It is undisputed that prior to his arrest, the judge requested special consideration, which one of the police officers interpreted as a request not to be charged

with any offense. It is also undisputed that Judge Maney initially refused to take an alcohol pre-screening test, then agreed to the test after rinsing his mouth with mouthwash. The fact that he used the mouthwash after he had already taken – and failed – the field sobriety tests and had been asked to take a pre-screening alcohol test strongly suggests that his purpose in using the mouthwash was to taint the results of the alcohol test.

At the police station, the judge refused to sign an acknowledgment that he had been given the DWI warning by the police. As a videotape of the booking process at the station shows, the judge repeatedly asked for special consideration and courtesy and referred to his judicial office. Underscoring his judicial status, he told the officers that he was running for Supreme Court and that he was trying to contact the District Attorney. Even as he was being asked at the police station to take the breathalyzer test, he repeatedly asked for "courtesy." There is no other plausible interpretation of the videotape than that the judge was seeking special treatment because of his judicial office and was attempting to delay administration of the test for more than two hours – the time period within which the test would be valid.

In sum, Judge Maney attempted to avoid a police checkpoint, to taint the field alcohol test and to delay the breathalyzer test at the station, and he repeatedly asserted the prestige of his judicial office and asked for special consideration.

The majority agrees that this conduct warrants more than a censure, stating plainly that if the Commission had the option of suspending Judge Maney without pay, they would vote to do so. At present, this Commission has four disciplinary options: a

private letter of caution, admonition, censure and removal. I fail to understand how conduct that plainly requires a sanction more severe than censure – as the Commission unanimously agrees – results in a censure and not removal simply because we do not have the power to suspend. Since censure is plainly insufficient, the only available discipline is removal.

I am mindful of the cases cited by the majority indicating that no judge in New York has previously been removed for an alcohol-related driving offense.[2] As I have previously stated (*Matter of Burke*, 2010 Annual Report 110 [Comm on Judicial Conduct]), I believe that the past disciplinary decisions for drunk driving have been unduly lenient given the seriousness of such behavior and our increasing awareness of the enormous toll it exacts on society. I need not reiterate the statistics from my dissent in *Burke* as to the terrible consequences of such behavior. And I do agree that an alcohol-related driving offense should not result in automatic removal – the facts of each case must be considered. But here, the facts more than warrant removal.

Notably, the Court of Appeals has underscored that for many types of misconduct the severity of the sanction imposed "depends upon the presence or absence of mitigating and aggravating circumstances" (*e.g.*, *Matter of Rater*, 69 NY2d 208, 209 [1987] ["in the absence of any mitigating factors, [such conduct] might very well lead to removal ... On the other hand, if a judge can demonstrate that mitigating circumstances

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[2] Significantly, however, in reducing the sanction from removal to censure in *Matter of Quinn*, 54 NY2d 386, 392 (1981), a case involving a judge with two alcohol-related driving convictions, the Court of Appeals agreed that the petitioner was "unfit to continue as a judge" but reduced the sanction in view of the judge's retirement from the bench.

accounted for such failings, such a severe sanction may be unwarranted"]).[3] In censuring Judge Burke, the Commission applied such an analysis, relying on the absence of any significant exacerbating factors and noting in mitigation that the judge was cooperative with the arresting officers and did not assert her judicial office or in any way seek special treatment during her arrest. Applying such an analysis in this case, which presents egregious aggravating circumstances and the absence of any mitigation, there is compelling support for the sanction of removal.

As noted above, Judge Maney repeatedly asserted his judicial office in an effort to receive special treatment and impede the administration of justice. Standing alone, such behavior constitutes significant misconduct. Numerous judges have been disciplined for asserting their judicial prestige with law enforcement officials or other judges to obtain special treatment for themselves, their friends and relatives.[4] One judge was admonished simply for handing a police officer a photo ID, identifying him as a

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[3] *See also*, *Matter of Kiley*, 74 NY2d 364, 370 (1989) ("there likewise are no aggravating factors and thus a sufficient basis for removal is lacking"); *Matter of Edwards*, 67 NY2d 153, 155 (1986) ("as a general rule, intervention in a proceeding in another court should result in removal," but this does not "preclud[e] consideration of mitigating factors"); *Matter of Murphy*, 82 NY2d 491, 495 (1993) ("These are aggravating circumstances warranting removal"); *Matter of Dixon*, 47 NY2d 523, 525 (1979) ("In so deciding we consider various mitigating factors").

[4] *E.g.*, *Matter of Pennington*, 2004 Annual Report 139 (judge asserted his judicial office in a vulgar tirade towards a park official when stopped and charged with infractions) (censure); *Matter of Williams*, 2003 Annual Report 200 (judge misused his judicial prestige in asking another judge to vacate an order of protection issued against his friend) (censure); *Matter of Stevens*, 1999 Annual Report 153 (judge interfered in police investigation of a dispute involving his son and demanded that his son's antagonist be arrested) (admonition); *Matter of D'Amanda*, 1990 Annual Report 91 (judge used the authority of his office to avoid receiving three traffic tickets) (censure); *Matter of LoRusso*, 1988 Annual Report 195 (judge intervened with police on behalf of the son of a former court employee) (censure); *Matter of Montaneli*, 1983 Annual Report 145 (judge sought special consideration from the prosecutor and the presiding judge on behalf of a friend who was charged with a crime) (censure).

town justice, during a traffic stop (*Matter of Werner*, 2003 Annual Report 198). By itself, Judge Maney's wielding of influence on his own behalf – not once, but repeatedly, in a crass effort to avoid responsibility for his unlawful behavior – was inexcusable and requires, in my view, the most severe sanction available.

Coupled with the aggravating factors noted above, I believe there are other compelling reasons here to support the sanction of removal. By 2010, our society as a whole has become more sensitive to the problems associated with driving under the influence of alcohol. It is a far more serious offense than it was 20 years ago because we are all better educated as to the corrosive, far-reaching effects of such irresponsible behavior on the public's safety and welfare. A judge in 2009 had the benefit of this educational process. In addition, as a judge for nearly 20 years, Judge Maney also had an opportunity to learn from the experiences of other judges who were publicly disciplined for alcohol-related driving offenses and to learn that, even without injuring anyone, such behavior requires a severe sanction.

In this regard, it should also be noted that Judge Maney had presided for seven years over a Treatment Court and also presided over a Drug Court, where he was regularly exposed to the destructive consequences of alcohol. With years of experience in Treatment Courts, where personal accountability and responsibility are of paramount importance, the judge would have regularly reminded defendants of the importance of such attributes. Certainly this judge had the benefit of a level of education and expertise on these subjects that was simply not available 20 years ago.

Unfortunately, the lesson Judge Maney apparently took from all of this

education was to avoid checkpoints, to keep mouthwash in his car, and, when caught, to identify himself as a judge at the earliest opportunity and thereafter make frequent references to his judicial status, to repeatedly ask the police for "professional courtesy" and "consideration," and to delay taking a breathalyzer test as long as possible. Those were the wrong lessons, and his attempts to avoid getting caught and held accountable cannot be condoned.

It must be underscored that Judge Maney's conduct reflects not an isolated lapse of judgment, but a series of calculated transgressions that fly in the face of his two decades of ethics training as a judge. In this respect, his conduct was far more reprehensible than that of Judge Burke and other judges who drove while under the influence of alcohol. It is mind-boggling to me that in this case, where the facts are exponentially more serious than in *Burke* and the aggravating circumstances cry out for a harsher sanction, the Commission concludes that the same sanction – public censure – is appropriate. Such a result is plainly disproportionate.

For all these reasons, I am unpersuaded by the majority's view that censure is appropriate here because of the sanctions imposed in prior cases 20 or 30 years ago. Nor can I agree that removal should not be imposed because this was an isolated instance of misbehavior. As the Court of Appeals has held, even a single act of misconduct that is "completely incompatible" with the proper role of a judge may require the sanction of removal (*Matter of Blackburne*, 7 NY3d 213, 221 [2006]; *Matter of Gibbons*, 98 NY2d 448 [2002]).

Accordingly, I vote to remove Judge Maney from office.

Dated: December 20, 2010

Joseph W. Belluck, Esq., Member
New York State
Commission on Judicial Conduct