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**STATEMENT BY THE MEMBERS OF THE
NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT**

April 13, 2007 – 2:30 PM

The members of the New York State Commission on Judicial Conduct hereby express a loss of confidence in the judgment and leadership of the Chair of the Commission, Raoul Felder. Except for Mr. Felder himself, who did not participate, the decision is unanimous.

As the agency of government charged with the serious and sensitive task of reviewing allegations of misconduct against judges throughout New York State, and ultimately determining whether to remove a judge from office, the Commission must at all times be and appear to be an example of probity and discretion, as well as independence, integrity and impartiality – the very qualities we require of our judiciary. It is especially important for the Chair, as one of two individuals authorized to represent the Commission publicly and officially, to embody and promote these qualities.¹

¹ The other is the Commission's Administrator and Counsel.

We expect all members of the Commission, and especially the Chair, to forgo certain rights and privileges in order to avoid impropriety and the appearance of impropriety and to maintain the trust and confidence of the public and the judiciary. The Chair is not free, for example to express publicly, even in his private capacity, opinions that might reasonably cast doubt on the Chair's or Commission's ability to be and appear fair and impartial, or opinions that undermine the integrity and dignity of the office of Chair.

Commission members have a simple choice: accept certain limitations on speech and actions as a condition of service, or decline the position. Mr. Felder himself has publicly stated that his role as Commission Chair required him to act with "sobriety" and to "be more dignified."²

The Commission's loss of confidence in Mr. Felder's judgment is rooted in a book he recently co-authored.³ Much of the material in this book, and the work as a whole, undermine the appearance of impartiality, and the dignity and probity that is required of the Commission and its Chair. Although the book purports to be a work of humor, much of it is crude, biased, vulgar and otherwise demeaning. For example, we note the following.

² "Re-Order in the Court: Raging Duke of Divorce now judging N.Y.'s jurists," Oct. 29, 2006, New York Daily News.

³ The title of the book is "Schmucks!" The subtitle of the book is, "Our Favorite Fakes, Frauds, Lowlifes, Liars, the Armed and Dangerous and Good Guys Gone Bad." It is co-authored by Mr. Felder and Jackie Mason.

- The book repeatedly invokes racial, ethnic and religious invective. Such statements are inconsistent with the Commission's role in enforcing the judicial obligations to refrain from words or conduct that manifest bias based on race, religion or national origin, and to require court employees and lawyers to refrain from such conduct.⁴
- The book asserts that "anytime you hear the word 'allegedly,' you can bet it's true."⁵ Such a viewpoint is untenable from a Commission member whose role is to evaluate allegations of judicial misconduct and identify those that have merit.
- The book claims that "nothing in our country is more insidious than affirmative action."⁶ Such a sentiment raises a reasonable perception that the speaker could not pass fair judgment on anyone he perceived to have benefited from affirmative action.

The point here is not to inhibit anyone's right to publish under the First Amendment but to assure the bench, bar and public that the Commission's decisions are fair and impartial, and that they are not driven by anyone's biases. This book by the Commission's Chair seriously undermines that perception.

We are exploring our options in terms of removing him as Chair.

⁴ Section 100.3(B)(4-5) of the Rules Governing Judicial Conduct.

⁵ Schmucks! p. 77.

⁶ Schmucks! p. 181.