



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT
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NEWS RELEASE

FOR RELEASE November 6, 2008

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The New York State Commission on Judicial Conduct has held that Robert G. Dunlop, a Justice of the Chazy Town Court, Clinton County, should be censured.

In a determination dated October 28, 2008, the Commission said Judge Dunlop, who is not an attorney, should be disciplined for accepting a guilty plea from a defendant whom he sentenced to serve 90 days in jail when the defendant was not represented by an attorney and was incapable of understanding the proceedings.

A second charge involving similar conduct in another case was dismissed. The Commission's Administrator Robert H. Tembeckjian had recommended that both charges be sustained and that Judge Dunlop be removed from office. Three Commission members agreed with the removal recommendation, as noted below.

The Marsh Case

Two years before the event in question, the defendant, Jordan Marsh, had been involved in an accident that left him somewhat cognitively impaired. In the case at issue, he was arrested by State troopers on August 15, 2005 and charged with disorderly conduct and resisting arrest. The police told Judge Dunlop that Mr. Marsh had been discovered at 4:20 AM lying in the middle of the road and intoxicated and that he had a marijuana pipe in his backpack.

Mr. Marsh was arraigned at 6:45 AM on the same day of his arrest. The Commission decision notes that "where circumstances should have immediately

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raised serious questions as to the defendant's competence to proceed, [Judge Dunlop] simply ignored the warning signs that the defendant was intoxicated and incapable of understanding and asserting his rights."

The Commission said the judge "failed to make any significant inquiry into whether the defendant was capable of entering a plea or appreciated the 'dangers and disadvantages' of waiving the fundamental right to the assistance of counsel."

The determination can be found on the Commission's web site:

www.scjc.state.ny.us.

The Commission Proceedings

Judge Dunlop was served with a Formal Written Complaint containing two charges dated January 25, 2007, and filed an answer dated March 20, 2007.

The Commission designated David M. Garber, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 22 and January 23, 2008, and Mr. Garber filed a report on March 20, 2008.

On May 20, 2008, Judge Dunlop and the attorneys for the Commission submitted briefs with respect to the referee's report and the issue of sanctions. The Commission heard oral argument by Commission counsel on September 18, 2008. Judge Dunlop's attorney had waived oral argument and did not appear.

The Commission Determination

The Commission filed a determination dated October 28, 2008 dismissing one charge. Nine of the Commission members concurred, except that two members -- Commission Chair Judge Thomas A. Klonick and Elizabeth B. Hubbard -- dissented as to the dismissal of a second charge, and three members -- Joseph W. Belluck, Esq., Richard E. Emery, Esq. and Paul B. Harding, Esq. -- dissented as to the sanction and voted that the judge be removed. Mr. Emery filed a dissenting opinion in which Mr. Emery and Mr. Harding concurred.

Two members, Colleen C. DiPirro and Judge Jill Konviser, were not present.

Court of Appeals Review

The Commission transmitted its determination to the Chief Judge of the Court of Appeals, pursuant to Judiciary Law Section 44, subdivision 7.

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A judge may either accept the Commission's determination or, within 30 days from the date he received the determination, make a written request to the Chief Judge for a review of the determination by the Court of Appeals.

Pursuant to Judiciary Law Section 44, subdivision 7, if Judge Dunlop does not request review by the Court of Appeals, the Commission will censure him in accordance with the determination.

If the Commission's determination is reviewed by the Court of Appeals, the Court may accept the determined sanction, impose a different sanction including admonition, censure or removal, or impose no sanction.

Statistics Relating to Prior Determinations

Since 1978, the Commission has censured 270 judges in New York State, 192 of them town or village justices. (More than two-thirds of the judiciary in New York State are part-time). The Commission has issued a determination of removal as to 158 judges and has admonished 224 judges.

The Court of Appeals has reviewed 88 Commission determinations. The Court accepted the Commission's sanctions in 74 cases. Of the remaining 14 cases, two were increased from censure to removal, and twelve were reduced: nine removal determinations were modified to censure, two censure determinations were modified to admonition, and one censure was rejected and the charges dismissed.

Counsel

In the proceedings before the Commission, Judge Dunlop was represented by Stephen A. Johnston, 11 Oak Street, Plattsburgh, NY 12901 (518) 561-9550. Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, Cathleen S. Cenci, Esq., Deputy Administrator for the Commission's Albany office, and Cheryl L. Randall, Esq., a senior attorney, served as counsel to the Commission. Senior Investigator David Herr assisted in the investigation.

Members of the Commission

The Commission members serve four-year terms. A list of members is appended.

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The determination is attached. The record of the proceedings upon which the determination is based is available for inspection by appointment during regular business hours at the Commission's three offices:

61 Broadway
New York, New York 10006

Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

400 Andrews Street
Rochester, New York 14604

MEMBERS OF THE STATE COMMISSION ON JUDICIAL CONDUCT

Member	Appointing Authority	Term End
Hon. Thomas A. Klonick, Chair	Chief Judge Judith S. Kaye	March 31, 2009
Stephen R. Coffey, Esq., Vice Chair	Former Senate Majority Leader Joseph L. Bruno	March 31, 2011
Joseph W. Belluck, Esq.	Governor David A. Paterson	March 31, 2012
VACANT	Governor David A. Paterson	March 31, 2009
Richard D. Emery, Esq.	Senate Minority Leader Malcolm A. Smith	March 31, 2012
Paul B. Harding, Esq.	Assembly Minority Leader James Tedisco	March 31, 2009
Elizabeth B. Hubbard	Governor David A. Paterson	March 31, 2011
Marvin E. Jacob, Esq.	Assembly Speaker Sheldon Silver	March 31, 2010
Hon. Jill Konviser	Former Governor George E. Pataki	March 31, 2010
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Hon. Terry Jane Ruderman	Chief Judge Judith S. Kaye	March 31, 2012