



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Saranac Lake Village Court Justice Censured for (1) Linking a Plea to Raising Local Revenue and (2) Engaging in Improper Political Activity

The New York State Commission on Judicial Conduct has determined that Paul J. Herrmann, a Justice of the Saranac Lake Village Court, Franklin County, should be censured.

In a determination dated December 15, 2009, the Commission found that Judge Herrmann refused to accept a plea agreement because he wanted a disposition that would bring revenue to the Village, and that he engaged in improper political activity.

Judge Herrmann refused to accept the proposed plea agreement under which a defendant would plead guilty to Driving While Ability Impaired (DWAI) and would be sentenced to a conditional discharge because, under applicable law, none of the fines imposed for a DWAI conviction are paid to the Village. The judge said in court that to avoid rising taxes, "someone has to generate money for the Village to support the expensive police department." He ignored protests from both the defense attorney and prosecutor, who said that the Court should not be a revenue-

gathering arm of the Village. The defendant refused to plead guilty to the additional charges proposed by the judge and was sentenced to 15 days in jail. While this sentence was on appeal, Judge Herrmann improperly commented on the case in interviews with local media outlets.

Judge Herrmann also “engaged in prohibited political activity” by nominating a candidate for Village Trustee at a local political party caucus. Such conduct “squarely places the judge’s judicial prestige behind the candidacy of another,” the Commission said in its determination.

The determination can be found on the Commission’s web site:
www.scjc.state.ny.us.

The Commission Proceedings

Judge Herrmann was served with a Formal Written Complaint dated September 15, 2008, containing two charges, and filed an answer dated October 3, 2008.

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 in Albany on May 18 and 20, 2009, and the referee filed a report dated September 15, 2009.

The parties submitted briefs with respect to the referee’s report and the issue of sanctions. Commission counsel recommended that the judge be censured, and the judge’s attorney recommended that the charges be dismissed. The Commission heard oral argument on November 5, 2009.

The Commission Determination

The Commission filed a determination dated December 15, 2009.

Judge Thomas A. Klonick (the Commission Chair), Stephen R. Coffey, Esq. (the Vice Chair), Joseph W. Belluck, Esq., Richard D. Emery, Esq., Paul B. Harding, Esq., Elizabeth B. Hubbard, Judge Jill Konviser, Nina M. Moore, Judge Karen K. Peters, and Judge Terry Jane Ruderman concurred except that Messrs. Coffey, Belluck and Emery voted to dismiss the charge that Judge Herrmann engaged in improper political activity. Mr. Emery filed a dissenting opinion, in which Mr. Belluck joined.

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.

A judge may either accept the Commission's determination or, within 30 days of receipt, 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 Herrmann does not request review by the Court of Appeals, the Court of Appeals 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 282 judges in New York State, 199 of who were part-time judges. The Commission has issued a determination of removal as to 160 judges and has admonished 236 judges.

The Court of Appeals has reviewed 91 Commission determinations. The Court accepted the Commission's sanctions in 75 cases (66 of which were removals, 6 were censures and 3 were admonitions). Of the remaining 16 cases, two sanctions were increased from censure to removal, and 13 were reduced: 9 removal determinations were modified to censure, one removal was modified to admonition, two censures were modified to admonition, and one censure was rejected and the charges dismissed. The Court remitted one matter back to the Commission for further proceedings.

Counsel

In the proceedings before the Commission, Judge Herrmann was represented by Scott W. Bush, Esq., Corrigan, McCoy & Bush, 220 Columbia Turnpike, Rensselaer, New York 12144, (518) 436-9370.

The Commission was represented by Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, Senior Attorney Thea Hoeth, Esq., and Staff

Attorney Charles F. Farcher, Esq. Senior Investigator Donald R. Payette assisted in the investigation.

Members of the Commission

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

The Public File

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
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MEMBERS OF THE STATE COMMISSION ON JUDICIAL CONDUCT

Member	Appointing Authority	Term End
Hon. Thomas A. Klonick, Chair	Chief Judge Jonathan Lippman	March 31, 2013
Stephen R. Coffey, Esq., Vice Chair	Former Senate President Pro Tem Joseph L. Bruno	March 31, 2011
Joseph W. Belluck, Esq.	Governor David A. Paterson	March 31, 2012
Richard D. Emery, Esq.	Former Senate Minority Leader Malcolm A. Smith	March 31, 2012
Paul B. Harding, Esq.	Former Assembly Minority Leader James Tedisco	March 31, 2013
Elizabeth B. Hubbard	Governor David A. Paterson	March 31, 2011
Hon. Jill Konviser	Former Governor George E. Pataki	March 31, 2010
Nina M. Moore	Governor David A. Paterson	March 31, 2013
Hon. Karen K. Peters	Former Chief Judge Judith S. Kaye	March 31, 2010
Hon. Terry Jane Ruderman	Former Chief Judge Judith S. Kaye	March 31, 2012
Vacant	Assembly Speaker Sheldon Silver	March 31, 2010