



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Cattaraugus County Judge Censured for Improper Disqualifications and Other Misconduct in Connection with the Issue of Judicial Salaries

The New York State Commission on Judicial Conduct has determined that Larry M. Himelein, a Judge of the County Court, Family Court and Surrogate's Court, Cattaraugus County, should be censured.

In a determination dated December 17, 2009, the Commission found that Judge Himelein disqualified himself in 11 cases involving state legislators or their law firms not because it was required by the ethical rules but as a "tactic" and a "weapon" to further the judiciary's interest in achieving legislative approval for a pay raise. Judge Himelein acknowledged that his intent was to put economic pressure on the legislators' law firms in order to get the Legislature to enact a pay raise for the judiciary.

Judge Himelein's actions were aggravated by the fact that he sent out numerous mass e-mail messages to other judges strongly encouraging them to join him in mass disqualification as a tactic in the pay-raise dispute and denigrating judges

who refused to do so. He also made inappropriate public comments about legislators and, in particular, a party to the pay-raise litigation, Assembly Speaker Sheldon Silver, whom he called a “slug.”

Judge Himelein (and his attorney) entered into a stipulation with the Commission’s Administrator in which he admitted having engaged in misconduct and agreed to be publicly disciplined.

The determination can be found on the Commission’s website:

www.scjc.state.ny.us.

Statement by the Commission’s Administrator

The Commission’s Administrator, Robert H. Tembeckjian, made the following statement:

“The state’s judiciary has been without a pay raise for more than ten years. The Commission itself has publicly declared that such raises are well-deserved and long overdue. Honest advocacy for judicial raises is entirely appropriate. It is unacceptable, however, to bring the controversy into an individual courtroom and penalize individual legislators and their clients as a ‘tactic’ or ‘weapon’ in the pay-raise dispute.”

The Commission Proceedings

Judge Himelein was served with a Formal Written Complaint dated March 3, 2009, containing one charge and filed an answer dated April 23, 2009.

The Commission designated former Court of Appeals Judge Richard D. Simons as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on July 22, 2009.

On December 4, 2009, prior to the issuance of a report by the referee, the Administrator of the Commission, Judge Himelein and the judge’s attorney entered into an Agreed Statement of Facts, stipulating as to the facts and sanction and waiving further submissions and oral argument.

The Commission accepted the Agreed Statement on December 9, 2009.

The Commission Determination

The Commission filed a determination dated December 17, 2009, in which nine members concurred: Judge Thomas A. Klonick (the Commission Chair), Stephen R. Coffey, Esq. (the Vice Chair), 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.

Commission member Joseph W. Belluck, Esq., did not participate. There is one vacancy on the Commission.

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 Himelein 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 279 judges in New York State, 83 of whom were full-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 Himelein was represented by Terrence M. Connors, Esq., Connors & Vilaro, LLP, 1000 Liberty Building, 424 Main Street, Buffalo, New York, 14202, (716) 852-5533.

The Commission was represented by Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, John J. Postel, Esq., and David M. Duguay, Esq., respectively Deputy Administrator and Senior Attorney in the Commission's Rochester Office. Senior Investigator Rebecca Roberts 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

MEMBERS OF THE STATE COMMISSION ON JUDICIAL CONDUCT

| Member | Appointing Authority | Term End |
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| 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 |