



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Milton Town Court Justice Censured for Inappropriate Assertion of Judicial Office

The New York State Commission on Judicial Conduct has determined that Carlos M. Calderon III, a Justice of the Milton Town Court, Saratoga County, should be censured.

In a determination dated March 26, 2010, the Commission found that Judge Calderon should be disciplined for asserting his judicial status in asking prison officials to confiscate materials from an inmate. The materials were related to the judge's personal injury lawsuit against the inmate arising out of injuries the judge had suffered earlier when he was a state trooper.

As found by the Commission, Judge Calderon contacted officials at the Sing Sing Correctional Facility and asked that documents in the inmate's possession containing the judge's home address be confiscated, which included a victim impact statement whose contents were a defense to the judge's pending lawsuit. In making the request, the judge repeatedly referred to his judicial office.

These "gratuitous" references to his judicial status "can only be seen as an effort to

influence the disposition of his personal requests” and showed “extremely poor judgment and insensitively to his ethical obligations,” the Commission said in its determination.

The Commission found that the judge’s misconduct was compounded by his “evasive and implausible” testimony at the Commission’s hearing.

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

The Commission Proceedings

Judge Calderon was served with a Formal Written Complaint dated October 8, 2008, containing one charge, and filed an answer dated November 7, 2008. The Commission designated Michael Whiteman, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on April 10 and May 11, 2009, in Albany. The referee filed a report on October 16, 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 judge be admonished. Oral argument was waived.

The Commission Determination

Seven members concurred in the Commission’s determination: Judge Thomas A. Klönick (the Commission Chair), Stephen R. Coffey, Esq. (the Vice Chair), Joseph W. Belluck, Esq., Richard D. Emery, Esq., Elizabeth B. Hubbard, Nina M. Moore and Judge Terry Jane Ruderman. Mr. Emery filed a concurring opinion in which Judge Ruderman joined. Two members, Paul B. Harding, Esq. and Judge Jill Konviser, dissented as to the sanction and voted that Judge Calderon be admonished. One member, Judge Karen K. Peters, was 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.

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 Calderon 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 283 judges in New York State. The Commission has issued a determination of removal as to 160 judges and has admonished 238 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 to the Commission for further proceedings.

Counsel

In the proceedings before the Commission, Judge Calderon was represented by Thomas J. O'Hern, Esq., Gerstenzang, O'Hern, Hickey, Sills & Gerstenzang, 210 Great Oaks Boulevard, Albany, New York, 12203, (518) 456-6456.

The Commission was represented by Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and Staff Attorney Charles F. Farther, 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

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
Hon. Rolando T. Acosta	Chief Judge Jonathan Lippman	March 31, 2014
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
Nina M. Moore	Governor David A. Paterson	March 31, 2013
Hon. Terry Jane Ruderman	Former Chief Judge Judith S. Kaye	March 31, 2012
Vacant	Assembly Speaker Sheldon Silver	March 31, 2014
Vacant	Governor David A. Paterson	March 31, 2014