



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Cayuga County Town Justice Censured for Improper Involvement in Settlement Negotiations

The New York State Commission on Judicial Conduct has determined that Brian M. Dugan, a Justice of the Scipio Town Court, Cayuga County, should be censured.

In a determination dated October 6, 2010, the Commission found that Judge Dugan failed to disqualify himself in an alleged criminal matter involving his business tenant and a long-time acquaintance, and encouraged and helped negotiate a financial settlement between the parties.

“[Judge Dugan’s] actions compromised his impartiality and overstepped the boundaries of his judicial authority,” the Commission said in its determination.

Judge Dugan, who is not an attorney, owned and rented out property in Scipio Center where his tenant operated a restaurant. In December 2008, Judge Dugan received a request for an arrest warrant for an employee accused of stealing from

the restaurant. The employee and the judge were socially acquainted. After meeting with an Onondaga County sheriff deputy and the tenant and viewing a surveillance video, the judge commented that he did not think there was sufficient evidence that a crime had occurred and suggested a financial settlement.

The judge was involved in negotiating a stipulation, which he signed as a witness. As part of the settlement, the employee paid \$300 to the judge's tenant, whose rent was in arrears.

"With nearly two decades of experience as a judge, [Judge Dugan] should have realized that such activity is inconsistent with his judicial role and that he should have avoided any involvement in the matter," the Commission said.

In mitigation, the Commission noted that the judge had acknowledged his misconduct and was cooperative throughout the proceedings.

The determination can be found on the Commission's website:
www.scjc.state.ny.us.

The Commission Proceedings

Judge Dugan was served with a Formal Written Complaint dated February 11, 2010, containing one charge, and filed an answer dated April 26, 2010.

On September 16, 2010, the Administrator of the Commission, Judge Dugan 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 September 29, 2010.

The Commission Determination

The Commission filed a determination dated October 6, 2010.

Judge Thomas A. Klonick (the Commission Chair), Stephen R. Coffey, Esq. (the Vice Chair), Judge Rolando T. Acosta, Joel Cohen, Esq., Richard D. Emery, Esq., Elizabeth B. Hubbard, Nina M. Moore, Judge Karen K. Peters, and Judge Terry Jane Ruderman concurred.

Joseph W. Belluck, Esq., and Paul B. Harding, Esq., 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.

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 Dugan 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 288 judges in New York State. The Commission has issued a determination of removal as to 160 judges and has admonished 240 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, six were censures and three 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 Dugan was represented by Joseph S. Nacca, Esq., Bond, Schoeneck & King, PLLC, 350 Linden Oaks, Suite 310, Rochester, New York 14625, (585) 362-4713.

The Commission was represented by Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and Senior Attorney David M. Duguay, Esq. Investigator Betsy Sampson 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, Suite 1200 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
Hon. Rolando T. Acosta	Chief Judge Jonathan Lippman	March 31, 2014
Joseph W. Belluck, Esq.	Governor David A. Paterson	March 31, 2012
Joel Cohen, Esq.	Assembly Speaker Sheldon Silver	March 31, 2014
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. Karen K. Peters	Governor David A. Paterson	March 31, 2014
Hon. Terry Jane Ruderman	Former Chief Judge Judith S. Kaye	March 31, 2012