



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

FOR RELEASE October 19, 2010

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Niagara County Town Justice Censured for Driving While Intoxicated

The New York State Commission on Judicial Conduct has determined that Donald P. Martineck, a Justice of the Somerset Town Court, Niagara County, should be censured.

In a determination dated October 12, 2010, the Commission found that Judge Martineck “violated his ethical obligation to respect and comply with the law and endangered public safety” by driving a motor vehicle erratically after consuming 40 or more ounces of wine over seven and a half hours on March 1, 2009. The judge, who is not an attorney, was arrested and pled guilty to Driving While Intoxicated, a misdemeanor, on July 30, 2009. In censuring the judge, the Commission noted that the sanction of suspension was not available.

Before being stopped by a Niagara County Sheriff’s Office patrol deputy, the judge had struck a mile marker post and crossed the center line twice while driving approximately 55 mph.

Judge Martineck was sentenced on October 1, 2009 to a six-month revocation of his driver's license, \$895 in fines and surcharges, and a one-year conditional discharge that required him to attend a drinking driver program and counseling.

In mitigation, the Commission noted that the judge "was cooperative during his arrest and did not identify himself as a judge, assert his judicial status or otherwise attempt to obtain special treatment because of his judicial office." The judge complied with the terms of the conditional discharge, which expired on October 1, 2010.

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

The Commission Proceedings

Judge Martineck was served with a Formal Written Complaint dated April 27, 2010 containing one charge, and filed an answer dated May 13, 2010.

On September 23, 2010, the Administrator of the Commission, Judge Martineck and the judge's attorneys 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 12, 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 Martineck 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 286 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 Martineck was represented by Lawrence G. Stuart, Esq., 770 Main Street, Niagara Falls, New York 14301, (716) 282-0267, and Michael M. Mohun, Esq., 344 Kern Road, Cowlesville, New York 14037, (585) 937-8987.

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