



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Hornell City Court Judge Admonished for Presiding over Cases Involving His Law Client

The New York State Commission on Judicial Conduct has determined that David A. Shults, a Judge of the Hornell City Court, Steuben County, should be admonished for presiding over cases involving an attorney who was a client of the judge's law firm.

Judge Shults, who serves part-time, is a partner in the law firm of Shults and Shults. Between 2006 and 2009, the judge's firm brought 16 actions on behalf of attorney Joseph G. Pelych, who is also the Hornell City Attorney. Over the same period, Judge Shults presided over and/or took other action in eight criminal cases and an eviction proceeding in which Mr. Pelych represented a party.

"In view of [Judge Shults'] attorney-client relationship with Mr. Pelych, [the judge's] handling of these matters was unavoidably tinged with an appearance of impropriety," the Commission said in its determination.

In one of the matters, Judge Shults denied an attorney's request that he disqualify himself.

"It is inexplicable why the attorney's request for [Judge Shults'] recusal failed to bring to his attention that he should not be presiding, or even to create a doubt in his mind sufficient to check the...relevant law," the Commission said.

In mitigation, the Commission noted that eight of the matters occurred on the same date, when the judge was substituting for a colleague who was the assigned judge in those cases. There was also no indication that the judge's judicial actions were influenced by his relationship with Mr. Pelych.

The determination can be found on the Commission's website: www.cjc.ny.gov.

The Commission Proceedings

Judge Shults was served with a Formal Written Complaint dated February 16, 2011 containing one charge, and filed an answer on or about March 9, 2011.

On June 7, 2011, the Administrator of the Commission and Judge Shults 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 June 16, 2011.

The Commission Determination

The Commission filed a determination dated July 7, 2011. Judge Thomas A. Klonick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joel Cohen, Esq., Paul B. Harding, Esq., Nina M. Moore, and Richard A. Stoloff, Esq., concurred.

Richard D. Emery, Esq. and Judge Karen K. Peters dissented in a joint opinion and voted to reject the Agreed Statement on the basis that the sanction was too lenient. Commission member Joseph W. Belluck, Esq., 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 from 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 Shults does not request review by the Court of Appeals, the Commission will admonish 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 issued 242 determinations of admonition against judges in New York State. The Commission has issued 162 determinations of removal and 292 determinations of censure.

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 Shults represented himself.

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:

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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
Hon. Terry Jane Ruderman, Vice Chair	Former Chief Judge Judith S. Kaye	March 31, 2012
Hon. Rolando T. Acosta	Chief Judge Jonathan Lippman	March 31, 2014
Joseph W. Belluck, Esq.	Former 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
Nina M. Moore	Former Governor David A. Paterson	March 31, 2013
Hon. Karen K. Peters	Former Governor David A. Paterson	March 31, 2014
Richard A. Stoloff, Esq.	Senate President Pro Tem Dean Skelos	March 31, 2015
Vacant	Governor	March 31, 2015