



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Commission Issues Report on Investigation of Complaints Against Presiding Justice Luis A. Gonzalez of the Appellate Division, First Department, and Recommends Statewide Reforms in Appellate Division Hiring Practices

The New York State Commission on Judicial Conduct has issued a Report dated March 30, 2012, on its investigation of three complaints containing four allegations against Presiding Justice Luis A. Gonzalez of the Appellate Division, First Department. Judge Gonzalez waived confidentiality under Section 45 of the Judiciary Law, permitting release of the Report and the complaints that led to it.

Three of the allegations against Judge Gonzalez were not established and were dismissed. The fourth allegation was also dismissed, but with (A) detailed comments concerning hiring practices at the Appellate Division First Department, both before and during Judge Gonzalez's tenure and (B) specific recommendations to make hiring practices at all four Appellate Divisions more uniform, transparent and free from even the appearance of nepotism and favoritism.

The complaints against Judge Gonzalez alleged the following.

1. It was alleged that Judge Gonzalez falsely attested on mortgage documents that his Brooklyn home would be his primary residence, and that he improperly benefited from a “STAR” tax credit on his Brooklyn home, when his primary residence was an apartment in the Bronx. This allegation implicitly raised an issue as to whether Judge Gonzalez met the residency requirement for serving as Presiding Justice. ***This allegation was not established.***
2. It was alleged that Judge Gonzalez improperly permitted the private practice of law by his executive assistant, Susan Hernandez. ***This allegation was not established.***
3. It was alleged that Judge Gonzalez arranged or permitted a “no-show” job at the Appellate Division for Maria Baez, a former New York City Council member. ***This allegation was not established.***
4. It was alleged that Judge Gonzalez engaged in nepotism and/or favoritism with regard to the hiring of his ex-wife as a court employee, and the hiring of others such as his secretary’s brother, his executive assistant’s nephew and his driver’s son. ***The Commission found that the hiring practices at the Appellate Division, First Department, both before and during Judge Gonzalez's tenure, raise serious questions. This allegation was dismissed with detailed public comment and specific recommendations to make the hiring practices of all four Appellate Divisions more uniform, transparent and free from even the appearance of nepotism and favoritism.***

Hiring Practices at the Appellate Division, First Department

The investigation of hiring practices focused primarily on the manner in which 25 administrative (non-lawyer) jobs were filled at the Appellate Division, First Department, in 2010, after a statewide retirement incentive program led to a significant reduction in the court’s staff. The Report analyzes the court’s hiring practices under Judge Gonzalez and, in noting certain practices before and during his tenure, describes a system for filling administrative positions in which job openings were generally not advertised outside the court, and jobs were filled from among those who had connections to judges or court employees. The Report states in part:

It seems clear that, with some exceptions, hiring for non-lawyer positions at the Appellate Division, First Department, has been a closed process for

decades. A system in which the vast majority of administrative jobs are “posted” only in internal, non-public rooms of the courthouse, is inherently exclusive, in that it requires an acquaintance, friend, relative or some other connection to the court, in order to know about and apply for an open position. Such a practice undermines the judicial obligation to make appointments based on merit, avoiding favoritism and nepotism. It excludes from consideration a vast pool of qualified individuals who have no present connection to the court. It diminishes public confidence in the fairness and impartiality of the courts, even if every person hired for every job was in fact qualified for it.

The Report is careful to point out that not every Presiding Justice of the Appellate Division, First Department, in the past 30 years subscribed to this closed method of filling vacancies.

Recommendations

The Commission’s Report recommends that the Chief Judge, the Administrative Board of the Courts and the Chief Administrative Judge collectively examine the hiring practices of the Appellate Divisions, capitalize on existing strengths, devise uniform and more comprehensive guidelines for judges and court employees in order to promote merit and avoid even the appearance of nepotism and favoritism, and adopt more uniform hiring and employment protocols that would include, for example:

- the public advertising of all job openings – on the OCA website, other employment websites and other appropriate forums – with specific and limited criteria for appropriate exceptions to such a rule;
- the vetting of applicants for each vacancy by panels of senior Appellate Division staff and, where appropriate, judges;
- the recusal of any employee from the hiring process when a relative (or relative’s spouse) within four degrees of relationship to the employee or employee’s spouse is applying for a position; and
- the assignment of personnel in such a manner as to insure that supervisors and their subordinates are not within four degrees of relationship to each other or each other’s spouses.

The Commission concludes its Report by stating that “such a system-wide reform of the hiring process would ultimately enhance public confidence in the courts and advance such laudable goals as a qualified, diverse and transparently selected workforce.”

The Report can be found on the Commission’s website, www.cjc.ny.gov.

Two Commission members did not participate in this matter: Justice Rolando T. Acosta and Richard D. Emery, Esq.

The Commission’s Mandate

The New York State Constitution and the Judiciary Law authorize the Commission to investigate and take appropriate action with regard to complaints of misconduct against judges and justices of the state unified court system. The Commission is empowered, among other things, to issue reports with respect to its proceedings, make administrative recommendations to the Chief Judge and refer matters to administrative judges. The Commission also has authority to initiate formal disciplinary proceedings and determine that a judge be admonished, censured or removed from office.

Counsel

In the proceedings before the Commission, Judge Gonzalez was represented by Ben B. Rubinowitz of Gair, Gair, Conason, Steigman, Mackauf, Bloom & Rubinowitz, 80 Pine Street, New York, New York 10005, (212) 943-1090 and Paul Shechtman of Zuckerman Spaeder LLP, 1185 Avenue of the Americas, 31st Floor, New York, New York 10036, (646) 746-8657.

Robert H. Tembeckjian, Administrator and Counsel to the Commission, praised “the hard work and dedication” of the attorneys and investigators who worked with him on this matter, including Mark Levine, Deputy Administrator in Charge of the New York City Office, Principal Attorney Pamela Tishman and investigators Ethan Beckett, Frank DeBiase and Joanna Kliger.

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