



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Bronx County Surrogate Should be Censured for Failing to Take Action Against an Attorney Who Engaged in Gross Misconduct

The New York State Commission on Judicial Conduct has determined that Lee L. Holzman, a Judge of the Surrogate's Court, Bronx County, should be censured for failing to take appropriate action after learning that one of his appointees – Michael Lippman, the counsel to the Bronx public administrator – had taken unauthorized, excessive fees from the estates of people who had died without leaving a will.

Three Commission members dissented and voted that the judge should be removed from office, as the Commission's Administrator had recommended.

Judge Holzman learned in 2006 that Mr. Lippman had improperly taken excessive fees, and fees in advance of doing work on the estates, resulting in negative balances of \$300,000 to \$400,000. As the Commission stated, Judge Holzman knew that Mr. Lippman "had committed acts 'that strongly pointed to larcenous conduct' and had 'overcharged estates, cheated the [Public Administrator's]

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office, lied to him and breached his trust.” Instead of firing Mr. Lippman and reporting him to disciplinary and law enforcement authorities, the judge demoted him and implemented a repayment plan under which Mr. Lippman continued to handle new cases in order to repay the money he owed to older estates. Mr. Lippman was ultimately fired in 2009.

The Commission’s decision states that the judge’s “notably lenient treatment” of Mr. Lippman “conveyed the appearance that [Judge Holzman] was motivated by favoritism arising out of their long professional relationship.” Mr. Lippman had served as counsel to the public administrator since the 1970’s, and they had worked together when Judge Holzman had been the head of the law department for the previous Surrogate. The Commission found that the judge’s conduct in permitting Mr. Lippman to remain in a position of public trust constituted an “abdication of his ethical responsibilities.”

In determining the appropriate sanction the majority stated that Judge Holzman’s misconduct reflected “poor judgment, rather than knowing concealment of criminal behavior or intent to deceive.” The Commission also noted the judge’s impending departure from the bench at the end of the year, upon reaching the mandatory retirement age, and his “lengthy and unblemished tenure as a judge.”

The Commission accepted the referee’s findings sustaining one charge of misconduct and dismissing three other charges. Two Commission members voted to sustain a charge that Judge Holzman failed to comply with the law by awarding fees to Mr. Lippman based on “boilerplate” affirmations that did not contain details of the legal services provided.

Waiver of Confidentiality

Judge Holzman waived confidentiality of the Commission proceedings by letter dated September 12, 2011. Since 1978 only 13 judges have waived confidentiality during the Commission’s proceedings.

The Commission Proceedings

Judge Holzman was served with a Formal Written Complaint dated January 4, 2011 containing four charges, and filed an answer dated January 21, 2011. He waived confidentiality in September 2011, at which point the proceedings and documents in the cases became public.

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The Commission designated Hon. Felice K. Shea as referee to hear and report proposed findings of fact and conclusions of law. The judge filed a motion to dismiss the Formal Written Complaint and to stay further proceedings, which was denied by the Commission. A public hearing was held on September 12, 2011, December 14-16 and 19, 2011, and January 3-6, 9-13 and 17, 2012.¹ After considering extensive post-hearing briefs from both sides, the referee filed a report dated July 18, 2012.

The parties then submitted briefs to the Commission as to sanction. The Commission's Administrator recommended removal from office, and the judge asked for the charges to be dismissed. The Commission heard oral argument on September 19, 2012.

The Commission Determination

The Commission filed a determination dated December 13, 2012 in which seven members concurred in the sanction of censure: Judge Terry Jane Ruderman (the Commission Vice Chair), Judge Rolando T. Acosta, Joseph W. Belluck, Esq., Joel Cohen, Esq., Paul B. Harding, Esq., Judge Karen K. Peters² and Richard A. Stoloff, Esq.

Three Commission members dissented as to the sanction of censure and voted for removal: Judge Thomas A. Klonick (the Commission Chair), Richard D. Emery, Esq., and Nina M. Moore. Judge Klonick and Ms. Moore also dissented as to the dismissal of the charge pertaining to Mr. Lippman's deficient affidavits. Ms. Moore filed a dissenting opinion, in which Judge Klonick concurred. Mr. Emery also filed a dissenting opinion.

¹ The hearing was postponed twice when Judge Holzman unsuccessfully challenged the Commission's authority in Supreme Court (Manhattan) and at the Appellate Division (First Department). Details are available on the Commission's website: www.cjc.ny.gov.

² The vote in this matter was taken on September 19, 2012. Judge Peters resigned from the Commission on October 15, 2012, after becoming Presiding Justice of the Appellate Division, Third Department. She was replaced on the Commission by Court of Claims Judge David A. Weinstein, who did not participate in this matter.

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Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

“The Commission and I play different roles in the formal disciplinary process. I prosecute and make a recommendation, the Commission members render decision, and sometimes we disagree.

“I believed removal from office was the appropriate result based on the judge’s egregious misconduct. A majority of Commission members voted instead to censure. Naturally, I agree with the three who dissented for removal, but now, as always, we move on in good faith to the next case.”

Press Availability

Mr. Tembeckjian is in New York City and is available throughout the day by telephone: (646) 386-4884.

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. Judge Holzman received it on December 18, 2012, and the Commission was subsequently notified by the Court of Appeals that service was complete. Consequently, the determination is now public.

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 Holzman does not request review by the Court of Appeals, the Commission will censure him in accordance with the determination.

If a Commission 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.

*December 18, 2012**Page 5***Statistics Relating to Prior Determinations**

Since 1978, the Commission has issued 303 determinations of censure against judges in New York State. The Commission has issued 166 determinations of removal and 245 determinations of admonition.

The Court of Appeals has reviewed 92 Commission determinations. The Court accepted the Commission's sanctions in 76 cases (67 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: nine 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. One request for review is pending.

Counsel

In the proceedings before the Commission, Judge Holzman was represented by David Godosky of Godosky & Gentile, P.C., 61 Broadway, Suite 2010, New York New York 10006, (646) 233-2725.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission, Mark Levine, the Deputy Administrator in Charge of the New York office, and Senior Attorney Brenda Correa. Investigators Ethan Beckett, and Frank DeBiase 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 Suite 700 Rochester, New York 14604
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*December 18, 2012**Page 6***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	Chief Judge Jonathan Lippman	March 31, 2016
Hon. Rolando T. Acosta	Chief Judge Jonathan Lippman	March 31, 2014
Joseph W. Belluck, Esq.	Governor Andrew M. Cuomo	March 31, 2016
Joel Cohen, Esq.	Assembly Speaker Sheldon Silver	March 31, 2014
Richard D. Emery, Esq.	Senate Minority Leader John L. Sampson	March 31, 2016
Paul B. Harding, Esq.	Former Assembly Minority Leader James Tedisco	March 31, 2013
Nina M. Moore	Former Governor David A. Paterson	March 31, 2013
Richard A. Stoloff, Esq.	Senate President Pro Tem Dean Skelos	March 31, 2015
Hon. David A. Weinstein	Governor Andrew M. Cuomo	March 31, 2014
Vacant	Governor	March 31, 2015