



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN  
ADMINISTRATOR & COUNSEL

61 BROADWAY, SUITE 1200  
NEW YORK, NEW YORK 10006

MARISA E. HARRISON  
RECORDS ACCESS OFFICER

646-386-4800 646-458-0037  
TELEPHONE FACSIMILE  
[www.cjc.ny.gov](http://www.cjc.ny.gov)

## NEWS RELEASE

*December 27, 2012*

<b>Contacts:</b>	<p><b><i>Robert H. Tembeckjian, Administrator</i></b> <i>(646) 386-4800</i></p> <p><b><i>Marisa E. Harrison, Records Access Officer</i></b> <i>(646) 386-4791</i></p>
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### **Buffalo City Court Judge Should Be Admonished for Engaging in Inappropriate and Vulgar Exchanges with a Defendant**

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The New York State Commission on Judicial Conduct has determined that James A. McLeod, a Judge of the Buffalo City Court, should be admonished for speaking to a defendant in a crude and offensive manner and undermining the decorum of the courtroom.

In February 2011 Judge McLeod presided over two cases involving a 17-year-old defendant, who addressed the judge using foul language, laced with racial slurs. Judge McLeod proceeded to engage in a series of vulgar and inappropriate exchanges with the defendant. Without allocuting the defendant or having him enter a plea of guilty, the judge convicted the teen in both cases. As the exchanges escalated the judge vacated the plea and agreed to disqualify himself in the matters, while continuing to use improper language to the defendant.

In its determination the Commission stated: “Even in the face of provocative, disrespectful comments by a litigant, a judge is required to be an exemplar of decorum and dignity in the courtroom, and not allow the proceedings to devolve

into an undignified exchange of taunts, insults and obscenities.” The Commission found that Judge McLeod compounded his misconduct “by responding in kind to the defendant’s use of profane language.” Furthermore, the Commission said the judge while, “engrossed in this intemperate colloquy... ignored fundamental due process by convicting the defendant without a plea or allocution.”

In mitigation the Commission noted that the judge’s improper remarks were limited to a single occasion and that Judge McLeod stipulated that he will avoid such behavior in the future.

Judge McLeod has served as a judge of the Buffalo City Court since 1999. His term in office expires on December 31, 2018.

### **The Commission Proceedings**

Judge McLeod was served with a Formal Written Complaint dated September 14, 2012 containing one charge, and filed an answer dated October 10, 2012.

On November 27, 2012, the Administrator of the Commission, Judge McLeod and Judge McLeod’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 December 6, 2012.

### **The Commission Determination**

The Commission filed a determination dated December 11, 2012, which was unanimous. Judge Klonick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joel Cohen, Esq., Richard D. Emery, Esq., Paul B. Harding, Esq., Nina M. Moore, Richard A. Stoloff, Esq., and Judge David A. Weinstein concurred.

Joseph W. Belluck, Esq. did not participate. There is one vacancy on the 11-member Commission.

### **Press Availability**

Mr. Tembeckjian will be in New York City on December 27, 2012, and is available throughout the day by telephone: (646) 386-4800.

**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 McLeod received it on or around December 18, 2012, and the Commission was subsequently notified by the Court of Appeals that service was complete. Consequently, the matter 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 McLeod does not request review by the Court of Appeals, the Commission will admonish 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.

**Statistics Relating to Prior Determinations**

Since 1978, the Commission has issued 247 determinations of admonition against judges in New York State. The Commission has issued 166 determinations of removal and 304 determinations of censure.

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 McLeod was represented by Michael Mohun, Esq., Law Offices of Mohun and Killelea, 344 Kern Road, Cowlesville, New York 14037, (585) 937-8987.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission and Senior Attorney David M. Duguay. Senior Investigator Rebecca Roberts 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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### **MEMBERS OF THE STATE COMMISSION ON JUDICIAL CONDUCT**

<b>Member</b>	<b>Appointing Authority</b>	<b>Term End</b>
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