



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Schenectady County Town Justice Admonished For Misconduct Related to His Practice of Law

The New York State Commission on Judicial Conduct has determined that Brian D. Mercy, a Justice of the Glenville Town Court and Acting Justice of the Scotia Village Court, Schenectady County, should be admonished for practicing law in Schenectady County before other part-time judges who also sit and practice law in that county. Judge Mercy and the Commission's Administrator jointly recommended the admonition.

Section 100.6(B)(2) of the Rules Governing Judicial Conduct prohibits part-time judges who practice law from doing so before other part-time judges who sit and practice law in the same county. Judge Mercy, a part-time justice in Schenectady County who is permitted to practice law, represented clients in seven matters in the Niskayuna Town Court (also in Schenectady County), before other part-time judges who practice law.

Although Judge Mercy did not physically appear in the Niskayuna court, the Commission concluded that his conduct – which included plea negotiations, letters and telephone calls – “violated the letter and spirit” of the Rules.

After Niskayuna Town Justice Stephen F. Swinton pointed out the relevant Rule, Judge Mercy never again practiced in that court. Judge Mercy has acknowledged his misconduct and “pledges to adhere to the ethical rules in the future.”

Judge Mercy has been a Justice of the Glenville Town Court since January 2011 and an Acting Justice of the Scotia Village Court since 2007.

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

The Commission Proceedings

Judge Mercy was served with a Formal Written Complaint dated March 12, 2012, containing one charge, and filed an answer dated March 26, 2012.

On June 7, 2012, the Administrator of the Commission, Judge Mercy and his 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 March 15, 2012.

The Commission Determination

The Commission filed a determination dated June 22, 2012. Judge Thomas A. Klonick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joseph W. Belluck, Esq., Joel Cohen, Esq., Richard D. Emery, Esq., Paul B. Harding, Esq., Nina M. Moore and Richard A. Stoloff, Esq., concurred. Commission member Judge Karen K. Peters did not participate.

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.

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Pursuant to Judiciary Law Section 44, subdivision 7, if Judge Mercy 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 245 determinations of admonition against judges in New York State. The Commission has issued 165 determinations of removal and 299 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: 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 Mercy was represented by Robert P. Roche, 36 South Pearl Street, Albany, New York 12207, (518) 436-9370.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Staff Attorney S. Peter Pedrotty. Commission Investigator Ryan T. Fitzpatrick 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

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
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