



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

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## NEWS RELEASE

*June 28, 2013*

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**Appellate Division Justice in Rochester (Fourth Department)  
Should be Admonished for Writing an Unsolicited Letter to the  
State Parole Board on Behalf of an Inmate Applying for Parole**

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The New York State Commission on Judicial Conduct has determined that Nancy E. Smith, a Justice of the Appellate Division, Fourth Department, should be admonished for sending an unsolicited letter on behalf of an inmate who was applying for parole.

In January 2011, Judge Smith wrote a letter on her judicial stationery to the New York State Division of Parole, expressing support for an inmate who had been convicted of vehicular manslaughter for driving a boat into another boat, resulting in the death of two people. The judge became aware of the inmate's situation through a relative who is a friend of the inmate's mother. Judge Smith had never met the inmate but had corresponded with him by letter. The inmate's request for parole was denied.

In its determination the Commission stated that the judge's actions were "inconsistent with well-established ethical standards prohibiting a judge from lending the prestige of judicial office to advance private interests."

In her letter, Judge Smith referred to the inmate as her "friend" and described him as "a good person." The judge also noted that she was "confident" of his exemplary behavior if released. The Commission stated that describing the inmate as a "friend" was "deceptive and disguises the limited nature of the relationship; by not disclosing those facts and circumstances (including her relative's connection to [the inmate's] mother), the entire letter is misleading."

The Commission stated that it was "difficult to believe that as a judge for 18 years [Judge Smith] would not have known that sending such a letter was improper." The Commission wrote that while Judge Smith's "judgment may have been clouded by a 'sincere, albeit misguided desire' to help someone who she believed merited support, that does not excuse the favoritism demonstrated by her letter, which undermines public confidence in the impartial administration of justice and in the integrity of the judiciary as a whole."

Judge Smith has been a Justice of the Supreme Court, Monroe County, since 1997, and has served as a Justice of the Appellate Division, Fourth Department, since 2004. She previously served as a Justice of the Appellate Division, Second Department, from 1999-2004, and a Judge of the Monroe County Court from 1993 to 1997. Her current term expires on December 31, 2025.

### **The Commission Proceedings**

Judge Smith was served with a Formal Written Complaint dated March 12, 2013 containing one charge.

On May 9, 2013, the Administrator of the Commission, Judge Smith and Judge Smith'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 June 6, 2013.

### **The Commission Determination**

The Commission filed a determination dated June 19, 2013, in which eight members concurred: Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joel Cohen, Esq., Jodie Corngold, Richard D. Emery, Esq., Paul B. Harding, Esq., Richard A. Stoloff, Esq., and Judge David A. Weinstein.

The Commission Chair, Judge Thomas A. Klonick, did not participate in the matter.

One member, Joseph W. Belluck, Esq., was not present.

**Statement by Commission Administrator**

Commission Administrator Robert H. Tembeckjian made the following statement.

“This marks the first time the Commission has publicly disciplined an Appellate Division Justice, whose high rank should have made her especially sensitive to setting an example and obeying the ethics rules.”

**Press Availability**

Mr. Tembeckjian is available throughout the day by telephone: (518) 758-9842.

**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 Smith received it on June 25, 2013, 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 Smith does not request review by the Court of Appeals, the Commission will admonish her 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 249 determinations of admonition against judges in New York State. The Commission has issued 167 determinations of removal and 304 determinations of censure.

The Court of Appeals has reviewed 93 Commission determinations. The Court accepted the Commission's sanctions in 77 cases (68 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 Smith was represented by David Rothenberg, Esq., of Geiger and Rothenberg, LLP, 800 Times Square Building, 45 Exchange Street, Rochester, New York 14614, (585) 232-1946.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission, and John J. Postel, Deputy Administrator in Charge of the Rochester office. Investigator Vanessa Mangan assisted in the investigation.

### **Background Information on Judge Smith**

First took office	
(Appellate Division, Fourth Department):	2004
Current Term Expires:	12/31/2025
Year Admitted to the	
New York State Bar:	1982
Judicial Salary:	\$168,600
Prior Judicial Office:	1997 – Present: Justice of the Supreme Court, Monroe County 1999–2004: Justice of the Appellate Division, Second Department 1993–1997: Judge of the Monroe County Court

**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, 2017
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
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2015
Richard D. Emery, Esq.	Former Senate Minority Leader John L. Sampson	March 31, 2016
Paul B. Harding, Esq.	Former Assembly Minority Leader James Tedisco	March 31, 2017
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, 2017