



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

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## NEWS RELEASE

*April 1, 2013*

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### **Livingston County Village Justice Should Be Admonished For Unlawfully Issuing a Warrant of Eviction**

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The New York State Commission on Judicial Conduct has determined that Joseph Temperato, a Justice of the Avon Village Court, Livingston County, should be admonished for improperly issuing a warrant of eviction and money judgment, despite recently being cautioned for similar conduct.

In January 2012 Judge Temperato issued a Warrant of Eviction and rendered a money judgment against a tenant based on a notice that failed to comply with the statutory requirements. Only one month earlier, Judge Temperato had been cautioned by the Commission for conduct that was inconsistent with the same law.

The judge's disregard of a Letter of Dismissal and Caution was an aggravating factor in the Commission's determination of the appropriate sanction. In its determination the Commission stated that "while an isolated or inadvertent legal error might not ordinarily rise to the level of judicial misconduct," in this case the

judge's error "cannot be overlooked" in view of his receipt of the cautionary letter only a month earlier.

Judge Temperato, who is not an attorney, has served as a Justice of the Avon Village Court since 2006. His current term expires on March 31, 2014.

### **The Commission Proceedings**

Judge Temperato was served with a Formal Written Complaint dated November 28, 2012 containing two charges, and filed an answer dated December 28, 2012.

On February 12, 2012, the Administrator of the Commission, Judge Temperato and Judge Temperato'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 March 14, 2013.

### **The Commission Determination**

The Commission filed a determination dated March 20, 2013, in which ten members concurred: Judge Thomas A. Klonick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joel Cohen, Esq., Jodie Corngold, Richard D. Emery, Esq., Paul B. Harding, Esq., Nina M. Moore, Richard A. Stoloff, Esq., and Judge David A. Weinstein.

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

### **Press Availability**

Commission Administrator Robert H. Tembeckjian will be in New York City on April 1, 2013 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 Temperato received it on March 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 Temperato 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 248 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 Temperato was represented by Reid Whiting, 31 West Main Street, Le Roy, New York 14482, (585) 768-6550.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Senior Attorney M. Kathleen Martin. Investigator Vanessa Mangan 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, 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.	Assembly Minority Leader Brian M. Kolb	March 31, 2017
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