



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

April 1, 2014

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**St. Lawrence County Town Court Justice Should
Be Admonished for Lending the Prestige of Judicial Office to
Advance the Private Interests of Two Local Residents**

The New York State Commission on Judicial Conduct has determined that Donald G. Lustyik, a Justice of the Norfolk Town Court, St. Lawrence County, should be admonished for lending the prestige of his judicial office to advance the private interest of a town resident by witnessing a statement connected to a dispute.

Judge Lustyik agreed to the admonition.

In 2011 Judge Lustyik, at the request of an acquaintance, whom the Commission's decision describes as "John Doe," witnessed and signed a written statement by Mr. Doe's step-daughter indicating that she would not make any further accusatory statements about her stepfather, whom she had previously accused of molestation. Prior to witnessing the statement, Judge Lustyik had previously never met the woman, and he made no inquiry into the meaning or purpose of the statement, or the fact that it referred to a possible crime. The judge witnessed the statement at

the town hall, where his court is located, and signed it as “Hon. Donald G. Lustyik.”

In its determination the Commission stated that witnessing such a statement put Judge Lustyik “in the middle of a serious situation” and “allowed his judicial status to be used to advance private interests as a favor to an acquaintance in a matter where, as he should have recognized, the potential for serious impropriety and significant legal consequences was considerable.”

Judge Lustyik has served as a Justice of the Norfolk Town Court since 1986. His current term expires on December 31, 2017.

The Commission Proceedings

Judge Lustyik was served with a Formal Written Complaint dated July 1, 2013, containing one charge, and filed an answer dated July 22, 2013.

On October 17, 2013, the Administrator of the Commission, Judge Lustyik and Judge Lustyik’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 October 31, 2013.

The Commission Determination

The Commission filed a determination dated March 25, 2014, in which nine members concurred: 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., Jodie Corngold, Paul B. Harding, Esq., Richard A. Stoloff, Esq., and Judge David A. Weinstein. Judge Weinstein filed a concurring opinion in which Judge Acosta and Mr. Cohen joined.

One member, Richard D. Emery, filed a dissenting opinion, voting to reject the Agreed Statement of Facts on the basis that the facts as presented were insufficient for the Commission to make a determination.

There is currently one vacancy on the 11-member Commission.

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

“While there is no evidence that he played a role in the relationship between the signers of this unsettling statement, or that he was involved in any wrongdoing by others, Judge Lustyik has appropriately acknowledged that it was wrong for him to casually witness this statement and to involve his office even tangentially in this matter.”

Press Availability

Mr. Tembeckjian will be in New York City on Tuesday, April 1, 2014, 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 Lustyik received it on March 28, 2014, 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 Lustyik 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 253 determinations of admonition against judges in New York State. The Commission has issued 309 determinations of censure and 168 determinations of removal.

The Court of Appeals has reviewed 94 Commission determinations. The Court accepted the Commission's sanctions in 78 cases (69 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 Lustyik was represented by Eric J. Gustafson, Esq., of Pease & Gustafson, 40 Main Street, Massena, New York 13662, (315) 769-3898.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Senior Attorney Thea Hoeth. Senior Investigator Donald Payette (Ret.) assisted in the investigation.

Background Information on Judge Lustyik

First took office:	1986
Current Term Expires:	December 31, 2017
Salary:	\$9,650 (Source: <i>Watertown Daily Times</i>)
Prior Judicial Office:	None

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:

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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, 2017
Hon. Terry Jane Ruderman, Vice Chair	Chief Judge Jonathan Lippman	March 31, 2016
Hon. Rolando T. Acosta	Chief Judge Jonathan Lippman	March 31, 2018
Joseph W. Belluck, Esq.	Governor Andrew M. Cuomo	March 31, 2016
Joel Cohen, Esq.	Assembly Speaker Sheldon Silver	March 31, 2018
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, 2018
Vacant	Governor	March 31, 2017