



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

February 23, 2015

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Utica City Court Judge Should Be Censured for Twice Abusing the Contempt Power and Making Injudicious Comments

The New York State Commission on Judicial Conduct has determined that Gerald J. Popeo, a Judge of the Utica City Court, Oneida County, should be censured (1) for summarily holding two defendants in contempt of court and depriving them of their liberty without due process and (2) for making injudicious comments to attorneys.

The Commission's Administrator had recommended that Judge Popeo be removed from office.

Judge Popeo imposed five consecutive 30-day jail sentences on one defendant who was disrespectful and disruptive during a sentencing hearing. While the Commission noted that it was "clear from the record that the defendant was disruptive" the judge acknowledged that he "did not give the appropriate warnings before each of the acts that triggered a contempt citation." The Commission stated

that “It is a judge’s duty to act in a patient, neutral, judicious manner and to properly apply the law regardless of the provocation.”

In another case, the judge “not only failed to follow the mandatory contempt procedures, but abused his authority by holding the defendant in summary contempt and imposing a 30-day jail sentence for ‘smirking’ after the proceeding had ended.” The Commission stated that the judge “overreacted to a perceived show of disrespect.”

On several occasions Judge Popeo also made “injudicious, disparaging comments to and about attorneys.” The Commission stated that while Judge Popeo “holds defendants and lawyers to exacting standards of courtroom behavior and is quick to lecture them for perceived displays of disrespect, [the judge’s] own behavior fell short of the required standards.” The judge twice referred to a prosecutor as “a cigar store Indian” for not speaking during a plea discussion. In another case, involving a proposed plea that included the forfeiture of funds, the judge made “flippant” comments speculating that the district attorney “want[ed] to buy a new couch for his office,” or a “want[ed] a new laptop or whatever.” The Commission stated that these remarks “were not only discourteous but impugned the lawyers’ integrity and undermine their role in the eyes of defendants and the public.”

The Commission dismissed an allegation that Judge Popeo had used a racial epithet in an off the record courtroom conversation with a lawyer. In dismissing the charge, the Commission noted the “conflicting testimony” and the difficulty of proving and rebutting a charge concerning a comment allegedly made off the record six years earlier.

In determining the appropriate sanction the Commission noted that Judge Popeo took “ameliorative steps to reduce the harsh consequences of his contempt citations,” and that the judge has been “contrite recognizing that he had made errors in language and temperament.”

Judge Popeo has served as a Judge of the Utica City Court since 2001. His current term expires on December 31, 2020.

The Commission Proceedings

Judge Popeo was served with a Formal Written Complaint dated May 30, 2013, and an Amended Formal Written Complaint dated July 29, 2013, containing three charges, and filed an answer dated August 23, 2013. The judge filed a motion on June 19, 2013, and an amended motion dated June 25, 2013, to dismiss certain

specifications of the Formal Written Complaint for lack of specificity. The Commission denied the judge's motion by order dated September 20, 2013.

The Commission designated Bruno Colapietro, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on February 24-26, April 29 and 30, and May 29, 2014, in Albany, New York, and the referee filed a report dated September 30, 2014.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Counsel to the Commission recommended the judge be removed from office, and the judge's counsel argued that Judge Popeo should be privately cautioned. On December 11, 2014, the Commission heard oral argument.

The Commission Determination

The Commission filed a determination dated February 12, 2015, in which nine members concurred: Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joseph W. Belluck, Esq., Joel Cohen, Esq., Jodie Corngold, Richard D. Emery, Esq., Paul B. Harding, Esq., Richard A. Stoloff, Esq., and Judge David A. Weinstein.

One member, Judge Thomas A. Klonick (the Commission Chair), dissented as to the sanction and voted for removal. Judge Klonick also dissented as to the dismissal of the allegation concerning the racial epithet and voted to sustain the charge.

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

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

“It is serious misconduct for a judge to ignore the fundamental due process of law that he is obliged to apply, particularly when it results in someone going to jail. And it undermines respect for the court system when a judge unjustifiably belittles attorneys with snide remarks. We certainly expect Judge Popeo to conduct himself accordingly going forward.”

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 Popeo

received it on February 18, 2015, and the Commission was 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 Popeo does not request review by the Court of Appeals, the Commission will censure 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 312 determinations of censure against judges in New York State. The Commission has issued 168 determinations of removal and 255 determinations of admonition.

The Court of Appeals has reviewed 95 Commission determinations. The Court accepted the Commission's sanctions in 79 cases (70 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 Popeo was represented by attorney Robert F. Julian, Esq., 2037 Genesee Street, Utica, New York 13501, (315) 797-5610.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission, former Senior Attorney Jill S. Polk, Senior Attorney Thea Hoeth and Staff Attorney S. Peter Pedrotty. Senior Investigator Ryan Fitzpatrick assisted in the investigation.

Background Information on Judge Popeo

First took office:	2001
Current Term Expires:	12/31/2020
Year Admitted to the New York State Bar:	1979
Judicial Salary:	\$145,000
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:

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.	Assembly Minority Leader Brian M. Kolb	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