



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

December 28, 2015

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Allegany County Town Court Justice Should Be Admonished for Improperly Discussing Cases with Defendants Whose Lawyers Were Absent

The New York State Commission on Judicial Conduct has determined that David M. Trickler, a Justice of the Birdsall, Burns and Grove Town Courts, Allegany County, should be admonished for engaging in prohibited out-of-court conversations.

Judge Trickler agreed to the admonition.

In 2013 Judge Trickler, presiding in Birdsall Town Court, arraigned two defendants charged with Environmental Conservation Law (ECL) violations. With no prosecutor or defense attorney present, the judge improperly engaged the defendants in conversation about the substance of the case, allowing them to make potentially incriminating statements.

In its determination the Commission found that the judge's prohibited *ex parte* communications could "influence, or appear to influence, the judge who will be the trier of fact at a bench trial, and thus compromise the judge's impartiality."

*December 28, 2015**Page 2*

The Commission noted that: “questioning defendants at arraignment about the underlying events, as [Judge Trickler] did here, places the defendant in jeopardy of making incriminating admissions or other statements that might prejudice the defendant’s position at trial.”

Compounding the misconduct, Judge Trickler failed to set a court date for about ten months, delaying the case. The judge only did so after one of the landowners where the alleged trespass occurred twice asked about the status of the case.

Judge Trickler, who is not an attorney, has been a judge since 1980 and served as a Justice of the Birdsall Town Court since 2002. His current term expires on December 31, 2017.

The Commission Proceedings

Judge Trickler was served with a Formal Written Complaint dated October 27, 2015, containing one charge, and filed and entered into an Agreed Statement of Facts in lieu of filing an Answer.

On November 30, 2015, the Administrator of the Commission, Judge Trickler and Judge Trickler’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 December 10, 2015.

The Commission Determination

The Commission filed a determination dated December 17, 2015, in which nine members concurred: Judge Thomas A. Klonick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), 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 Rolando T. Acosta, was not present.

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

Prior Discipline

Judge Trickler was previously twice admonished by the Commission: in 2009 for neglecting various administrative responsibilities and in 2010 for failing to

immediately disqualify himself in a case despite knowing the parties and having personal knowledge of the case.

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

“A judge is obliged to be and appear fair and impartial, and to safeguard the integrity of court proceedings. By engaging defendants in conversation about their alleged crimes, without their lawyers present, Judge Trickler failed in this case to meet that fundamental obligation.”

Press Availability

Mr. Tembeckjian is available throughout the day by telephone: (646) 386-4791.

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 Trickler received it on December 21, 2015, 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 Trickler 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 259 determinations of admonition against judges in New York State. The Commission has issued 314 determinations of censure and 168 determinations of removal.

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.

Counsel

In the proceedings before the Commission, Judge Trickler was represented by Brian C. Schu, Esq., 226 Main Street, Hornell, New York 14843, (607) 324-5711.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission; John J. Postel, Deputy Administrator in Charge of the Rochester office; and Senior Attorney David M. Duguay. Senior Investigator Rebecca Roberts assisted in the investigation.

Background Information on Judge Trickler

First took office:

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| Birdsall Town Court: | 2002 |
| Burns Town Court: | 1980 |
| Grove Town Court: | 1994 |

Term Expirations:

| | |
|----------------------|-------------------|
| Birdsall Town Court: | December 31, 2017 |
| Burns Town Court: | December 31, 2017 |
| Grove Town Court: | December 31, 2019 |

Salary: Source: Seethroughny.net

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| Birdsall Town Court: | \$1,500 |
| Burns Town Court: | \$5,000 |
| Grove Town Court: | \$3,100 |

Members of the Commission

The Commission members serve four-year terms. A list of members is appended.

*December 28, 2015**Page 5***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, 2019 |
| 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, 2019 |
| Hon. David A. Weinstein | Governor Andrew M. Cuomo | March 31, 2018 |
| Vacant | Governor | March 31, 2017 |