



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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New York City Acting Supreme Court Justice Should Be Admonished for Threatening a Prosecutor

The New York State Commission on Judicial Conduct has determined that Michael A. Gary, a Judge of the New York City Criminal Court, and an Acting Justice of the Supreme Court, Second Judicial District, Kings County, should be admonished for improperly threatening a prosecutor with sanctions and contempt.

Judge Gary agreed to the admonition.

In 2014, Judge Gary, while presiding over a rape trial, threatened to declare a mistrial with prejudice, hold the prosecutor in contempt of court and impose financial sanctions on the District Attorney's office – all without basis in law – if the defendant in the case were to be arrested for threatening a witness who had just testified against him. The defendant, who was free on bail, had allegedly approached the witness as she was leaving the courthouse during the lunch break and told her, "You're dead." Judge Gary made his remarks after the prosecutor told him about the alleged threat and that the witness had been taken to a police station to make a complaint against the defendant.

In its determination the Commission found that Judge Gary “threatened to use his judicial power to punish an assistant district attorney and her office though he lacked any lawful basis to do so.” Despite Judge Gary’s explanation that he was “motivated by concern to avoid a mistrial so that the young victim would not have to testify again, and that he was also concerned that an immediate arrest and incarceration would impede the defendant’s ability to assist in preparing his defense,” the Commission found that the judge’s “baseless threats of contempt and sanctions against an attorney cannot be justified.”

Judge Gary has served as a Judge of the New York City Criminal Court since 1987 and as an Acting Justice of the Supreme Court since 1994. His current term expires on December 31, 2020.

The Commission Proceedings

Judge Gary was served with a Formal Written Complaint dated February 29, 2016, containing one charge, and filed an Answer dated March 22, 2016.

On July 27, 2016, the Administrator of the Commission, Judge Gary and Judge Gary’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 August 11, 2016.

The Commission Determination

The Commission filed a determination dated October 3, 2016, in which nine members concurred: Joseph W. Belluck, Esq. (the Commission Chair), Paul B. Harding, Esq. (the Vice Chair), Judge Rolando Acosta, Joel Cohen, Esq., Jodie Corngold, Richard D. Emery, Esq., Judge Thomas A. Klonick, Richard A. Stoloff, Esq., and Judge David A. Weinstein.

One member, Judge Leslie G. Leach, did not participate.

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

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

“The police and prosecutors were appropriately doing their jobs by following up on an apparent threat to a witness by the defendant in a rape trial. Judge Gary now recognizes that his heavy-handed attempt to thwart them was wrong. Indeed, his vow to dismiss the rape charge “with prejudice” – meaning no retrial – would have compromised the integrity of the trial process he says he was trying to protect.”

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 Gary received it on October 6, 2016, 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 Gary 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 264 determinations of admonition against judges in New York State. The Commission has issued 169 determinations of removal and 316 determinations of censure.

The Court of Appeals has reviewed 96 Commission determinations. The Court accepted the Commission's sanctions in 80 cases (71 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 Gary was represented by Harvey L. Greenberg, of Greenberg & Wilner, LLP, 232 Madison Avenue, Suite 909, New York, New York 10016, (800) 722-5250.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission; Mark H. Levine, Deputy Administrator in Charge of the New York City office; and Staff Attorney Erica K. Sparkler. Investigator Christina Partida assisted in the investigation.

Background Information on Judge Gary

First took office:	1987
Year Admitted to NYS Bar:	1975
Current Term Expires:	December 31, 2020

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
Joseph W. Belluck, Esq., Chair	Governor Andrew M. Cuomo	March 31, 2020
Paul B. Harding, Esq., Vice Chair	Assembly Minority Leader Brian M. Kolb	March 31, 2017
Hon. Rolando T. Acosta	Former Chief Judge Jonathan Lippman	March 31, 2018
Joel Cohen, Esq.	Former Assembly Speaker Sheldon Silver	March 31, 2018
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2019
Richard D. Emery, Esq.	Senate Minority Leader Andrea Stewart-Cousins	March 31, 2020
Hon. Thomas A. Klonick	Former Chief Judge Jonathan Lippman	March 31, 2017
Hon. Leslie G. Leach	Chief Judge Janet DiFiore	March 31, 2020
Richard A. Stoloff, Esq.	Former 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