



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

December 28, 2018

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Town Court Justice in Warren County Should be Censured for Financial Irregularities

The New York State Commission on Judicial Conduct has determined that James P. McDermott, a Justice of the Chester Town Court, Warren County, should be censured for failing to account in a timely and complete manner for the receipt of over \$15,000 in court funds.

Judge McDermott agreed to the censure.

By law, all monies received by the court are required to be reported and remitted to appropriate authorities no later than the tenth day of the month following collection. Judge McDermott failed for seven years to address thousands of dollars of unidentified funds in the court's account after learning about it from a 2011 audit by the New York State Comptroller. A second audit in June 2017 revealed that the amount of unidentified funds had increased from \$10,000 to over \$15,000. Judge McDermott did not begin to remit the unidentified funds until November 2017 and did not remit the entire amount until May 2018.

The Commission said there was no evidence that money was lost or misappropriated, and some of the surplus had accumulated under prior judges. Nevertheless, the Commission noted that Judge McDermott took office in 1998

but let the money languish for years and allowed the unidentified funds to increase by over \$5,000 between the issuance of the 2011 and 2017 audit reports, “indicating that [his] own inappropriate and/or ineffective accounting practices were also a contributing factor, even after he was on notice of significant problems that existed with respect to his court’s procedures and records.”

In accepting the jointly recommended sanction, the Commission noted that the judge is committed to improving the court’s accounting procedures.

Judge McDermott, who is not an attorney, has served as a Justice of the Chester Town Court since 1998. His current term expires on December 31, 2021.

The Commission Proceedings

Judge McDermott was served with a Formal Written Complaint dated June 18, 2018, containing one charge.

On October 19, 2018, the Administrator of the Commission, Judge McDermott and Judge McDermott’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 6, 2018.

The Commission Determination

The Commission filed a determination dated November 13, 2018, in which 10 members concurred: Joseph W. Belluck, Esq. (the Commission Chair), Paul B. Harding, Esq. (the Vice Chair), Jodie Corngold, Judge John A. Falk, Taa Grays, Esq., Judge Leslie G. Leach, Judge Angela M. Mazzarelli, Judge Robert J. Miller, Marvin Ray Raskin, Esq., and Richard A. Stoloff, Esq.

One member, Akosua Garcia Yeboah, was not present.

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

“Even where there is no evidence of theft or misappropriation, public confidence in the courts is undermined when official court funds languish, unidentified, rather than be remitted to appropriate state and local fiscal officers. It makes no

difference that the dereliction started under a former judge if, as here, the current judge keeps it up or makes it worse.”

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 McDermott received it on December 17, 2018, 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 McDermott 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 324 determinations of censure against judges in New York State. The Commission has issued 172 determinations of removal and 269 determinations of admonition.

The Court of Appeals has reviewed 99 Commission determinations. The Court accepted the Commission's sanctions in 83 cases (74 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 McDermott was represented by John M. Silvestri, Esq., 9 Broad Street, Glens Falls, NY 12801, (518) 494-3404.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission; Cathleen S. Cenci, Deputy Administrator in Charge of the Albany office; and Staff Attorney Eteena J. Tadjioqueu. Senior Investigator Ryan Fitzpatrick assisted in the investigation.

Background Information on Judge McDermott

First took office: 1998
Current Term Expires: December 31, 2021

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, 2021
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2019
Taa Grays, Esq.	Senate Minority Leader Andrea Stewart-Cousins	March 31, 2020
Hon. John A. Falk	Chief Judge Janet DiFiore	March 31, 2021
Hon. Leslie G. Leach	Chief Judge Janet DiFiore	March 31, 2020
Hon. Angela M. Mazzairelli	Chief Judge Janet DiFiore	March 31, 2022
Hon. Robert J. Miller	Governor Andrew M. Cuomo	March 31, 2022
Marvin Ray Raskin, Esq.	Assembly Speaker Carl E. Heastie	March 31, 2022
Richard A. Stoloff, Esq.	Former Senate President Pro Tem Dean Skelos	March 31, 2019
Akosua Garcia Yeboah	Governor Andrew M. Cuomo	March 31, 2021