



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Rensselaer County Town Justice Removed for Ticket Fixing

The New York State Commission on Judicial Conduct has determined that Diane L. Schilling, a Justice of the East Greenbush Town Court, Rensselaer County, should be removed for improperly intervening in the disposition of a Speeding ticket issued to the wife of another judge and for accepting special consideration with respect to a Speeding ticket issued to her four years earlier.

Judge Schilling has been a part-time Justice of the East Greenbush Town Court since 2002. In addition, she has worked in various positions for the Office of Court Administration since 2003, and since June 2009 she has served as the Director of the Office of Justice Court Support, which provides training, education and support to local judges.

“As an experienced judge and as an attorney with expertise in providing advice, support and training to local justices, [Judge Schilling] should have recognized and avoided any taint of favoritism,” the Commission said in its determination.

In May 2009, Judge Schilling learned that the wife of part-time Sand Lake Town Justice Paul Toomey had been issued a Speeding ticket. (At the time, Judge

Toomey was Director of the Office of Justice Court Support, where he and Judge Schilling were colleagues.) Although Ms. Toomey would plead “not guilty” and try to handle the matter in the ordinary course, Judge Schilling initiated a series of actions that led not only to the failure to prosecute the case but also to the disappearance of all copies of the *Toomey* ticket from court system and police files. The only remaining copy of the ticket was the one given to Ms. Toomey by the issuing officer.

Judge Schilling also knew from personal experience that a ticket could “disappear” because she let that happen in 2005 to a Speeding ticket she herself received from a trooper who later came to her office and took it back after learning she was a judge.

The Commission and the referee who heard the case found no wrongdoing by Judge Toomey or his wife.

The determination can be found on the Commission’s website: www.cjc.ny.gov.

The Commission Proceedings

Judge Schilling was served with a Formal Written Complaint dated May 3, 2011, containing two charges, and filed an answer dated May 23, 2011.

The Commission designated Paul A. Feigenbaum, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 29 and 31, 2011, in Albany, and the referee filed a report dated January 6, 2012.

The parties submitted briefs with respect to the referee’s report and the issue of sanctions. Counsel to the Commission recommended the sanction of removal, and the judge’s counsel recommended admonition. On March 15, 2012, the Commission heard oral argument.

The Commission Determination

The Commission filed a determination dated May 8, 2012. Judge Thomas A. Klönick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joel Cohen, Esq., Richard D. Emery, Esq., Paul B. Harding, Esq., Nina M. Moore, Judge Karen K. Peters and Richard A. Stoloff, Esq., concurred. Commission member Joseph W. Belluck, Esq. was not present.

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.

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 Schilling does not request review by the Court of Appeals, the Court of Appeals will remove her in accordance with the determination.

If the Commission's 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 165 determinations of removal against judges in New York State. The Commission has issued 298 determinations of censure and 244 determinations of admonition.

The Court of Appeals has reviewed 91 Commission determinations. The Court accepted the Commission's sanctions in 75 cases (66 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: 9 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 Schilling was represented by E. Stewart Jones, Jr., and James C. Knox of the E. Stewart Jones Law Firm PLLC, The Jones Building, 28 Second Street, Troy, New York 12180, (518) 203-1028.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission, Cathleen S. Cenci, Deputy Administrator in Charge

of the Commission's Albany office, and Staff Attorney S. Peter Pedrotty. Senior Investigator Donald R. Payette assisted in the investigation.

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, 2013
Hon. Terry Jane Ruderman, Vice Chair	Chief Judge Jonathan Lippman	March 31, 2016
Hon. Rolando T. Acosta	Chief Judge Jonathan Lippman	March 31, 2014
Joseph W. Belluck, Esq.	Governor Andrew M. Cuomo	March 31, 2016
Joel Cohen, Esq.	Assembly Speaker Sheldon Silver	March 31, 2014
Richard D. Emery, Esq.	Senate Minority Leader John L. Sampson	March 31, 2016
Paul B. Harding, Esq.	Former Assembly Minority Leader James Tedisco	March 31, 2013
Nina M. Moore	Former Governor David A. Paterson	March 31, 2013
Hon. Karen K. Peters	Former Governor David A. Paterson	March 31, 2014
Richard A. Stoloff, Esq.	Senate President Pro Tem Dean Skelos	March 31, 2015
Vacant	Governor	March 31, 2015