



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Suffolk County Town Justice Should Be Censured For Several Acts of Misconduct

The New York State Commission on Judicial Conduct has determined that Edward D. Burke, Sr., a Justice of the Southampton Town Court, Suffolk County, should be censured for four acts of misconduct, including: (1) riding in a police car with a defendant after arraigning him on a charge of Driving While Intoxicated, recommending that the defendant hire an attorney who was the judge's business partner and then presiding over his case; (2) using his judicial title to promote his law firm; (3) imposing fines that exceeded the maximum authorized by law; and (4) making improper political contributions.

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

The Commission found that Judge Burke's handling of a defendant's application for a hardship driver's license, after the police car incident, was "inconsistent with numerous fundamental principles." In its determination the Commission stated:

Viewed objectively, the totality of his conduct – chatting with a defendant about his case during a ride in a police car, recommending that the defendant retain a lawyer with whom the judge had a business relationship, and granting the relief requested by the defendant even after [Judge Burke] had indicated he could not handle the case - breached the appropriate boundaries between a judge and a litigant and thereby created “a very public appearance of impropriety,” which adversely affects public confidence in the judiciary as a whole.

From 2008 to January 2011 Judge Burke, in over 200 traffic cases involving plea agreements, imposed fines in excess of the maximum amount authorized by law, despite being advised by the court clerk that the fines were excessive. The Commission stated: “Even if [Judge Burke] was not required to accept the clerk’s advice at face value, her comments put him on notice of an important issue and should have prompted him to make sure he was acting in compliance with the law.”

The Commission also faulted the judge for improper political contributions made by his law firm and business, totaling approximately \$7,500, and for using the prestige of judicial office to advance his private interests by including “laudatory descriptions of his ability and reputation as a judge” on his law firm’s website.

Judge Burke has served as a Justice of the Southampton Town Court since 2008. His current term expires on December 31, 2015. He previously served in that position from 1994 until July 2000. From 2000 to 2007, he served as both a Judge of the Court of Claims and an Acting Justice of the Supreme Court.

The Commission Proceedings

Judge Burke was served with a Formal Written Complaint dated January 22, 2013, containing four charges, and filed an answer dated February 27, 2013.

The Commission designated Peter Bienstock, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 18 and 19, 2013, in New York City, and the referee filed a report dated December 3, 2013.

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 argued that no sanction greater than censure was warranted. On March 6, 2014, the Commission heard oral argument.

The Commission Determination

The Commission filed a determination dated April 21, 2014, in which nine members concurred: Judge Thomas A. Klonick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joel Cohen, Esq., Jodie Corngold, Richard D. Emery, Esq., Paul B. Harding, Esq., Richard A. Stoloff, Esq., and Judge David A. Weinstein.

One member, Joseph W. Belluck, Esq., 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 Commission and its Administrator play different roles in the formal disciplinary process. I prosecute the case and recommend a result, but the Commission makes the decision. Sometimes we agree and sometimes we do not. Obviously, in this case we did not. I recommended removal, but the Commission voted to censure the judge. Now, as always, acting in good faith, we each respect the other’s views, I accept the Commission’s decision, and we move on to other matters.”

Press Availability

Mr. Tembeckjian will be in New York City on Wednesday, May 28, 2014, and is available throughout the day by telephone: (646) 386-4800.

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. The Commission was subsequently notified by the Court of Appeals that service was complete.¹ 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.

¹ The Commission was notified by the Court of Appeals on the afternoon of May 27, 2014, that the Court had just received a letter from Judge Burke and his attorney Paul Shechtman dated May 20, 2014, acknowledging receipt of the determination on May 7, 2014.

Pursuant to Judiciary Law Section 44, subdivision 7, if Judge Burke 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 310 determinations of censure against judges in New York State. The Commission has issued 168 determinations of removal and 253 determinations of admonition.

The Court of Appeals has reviewed 94 Commission determinations. The Court accepted the Commission's sanctions in 78 cases (69 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 Burke was represented by attorney Paul Shechtman of Zuckerman Spaeder LLP, 1185 Avenue of the Americas, 31st Floor, New York, New York 10036, (646) 746-8657.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission, Principal Attorney Pamela Tishman, and Mark Levine, Deputy Administrator in Charge of the New York City office. Senior Investigator Ethan Beckett assisted in the investigation.

Background Information on Judge Burke

Judicial Service:	Southampton Town Court, 1994-2000; Court of Claims/Acting Supreme, 2000-2007; Southampton Town Court, 2008-present.
Current Term Expires:	12/31/2015
Year Admitted to the NY State Bar:	1970
Judicial Salary:	\$67,100 (Source: Town of Southampton 2014 Budget)

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