



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

January 6, 2014

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Chautauqua County Town Justice Should be Admonished for Misconduct While Presiding in a Domestic Violence Case

The New York State Commission on Judicial Conduct has determined that David A. Prince, a Justice of the Pomfret Town Court and the Fredonia Village Court, Chautauqua County, should be admonished for failing to protect the rights of a defendant and exhibiting bias during an arraignment.

Judge Prince agreed to the admonition.

In 2012 Judge Prince presided over the arraignment of a defendant on charges arising out of a domestic dispute. During the arraignment the judge failed to advise the defendant of his right to assigned counsel and made statements in which he appeared to have pre-judged the defendant's case. The judge chastised the alleged victim upon learning that she did not wish to pursue the charges against the defendant, spoke to the woman in an "angry and discourteous manner" and threatened to have her children taken from her home.

In its determination the Commission stated that Judge Prince's conduct "violated basic tenets of fairness in the administration of justice and a judge's obligation to be an exemplar of neutrality and courtesy in court proceedings." The Commission further stated: "The right to counsel is a fundamental constitutional and statutory right, and it includes in all criminal cases the right to have an attorney assigned if the defendant is financially unable to retain counsel."

The Commission found that the statements made to the alleged victim, including threatening to remove the children from the home gave the appearance that Judge Prince had prejudged the case. The Commission stated: "At an arraignment, before the defendant's guilt or innocence has been adjudicated, a judge must be, and appear to be, impartial and avoid making any statements that convey the appearance of bias or prejudgement."

The Commission noted that domestic violence is a serious social problem and presents "significant challenges" for the courts and that while a judge should be "sensitive to the complex and difficult issues presented in such cases," a judge is not an "advocate or therapist." The Commission stated that Judge Prince's "inappropriate statements about the complaining witness' desire not to pursue the charges were inconsistent with the dignity, patience and impartiality required of judges." While it was stipulated that Judge Prince "was motivated by concerns for the safety" of the alleged victim and her children, the Commission stated that "it was not [Judge Prince's] responsibility either to align himself with the prosecutor against the defendant or to lecture or threaten the complaining witness in an angry, discourteous manner."

Judge Prince has served as a Justice of the Pomfret Town Court since 1990 and a Justice of the Fredonia Village Court since 1997. His current term as Pomfret Town Justice expires on December 31, 2015 and his current term as Fredonia Village Justice expires on April 1, 2017.

The Commission Proceedings

Judge Prince was served with a Formal Written Complaint dated October 31, 2013, containing two charges, and entered into an Agreed Statement of Facts in lieu of filing an answer.

On December 9, 2013, the Administrator of the Commission, Judge Prince and Judge Prince'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 12, 2013.

The Commission Determination

The Commission filed a determination dated December 18, 2013, 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., dissented and voted to reject the Agreed Statement of Facts on the basis that the proposed disposition was too lenient. There is currently one vacancy on the 11-member Commission.

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

“It is fundamental to the role of a judge to be and appear impartial, and to insure that all parties to a proceeding are afforded their legal rights. Judge Prince has acknowledged his failure to do so in this case and renewed his commitment to these basic judicial obligations. Had this been part of a pattern, the discipline might well have been harsher than an admonition.”

Press Availability

Mr. Tembeckjian will be in New York City on Monday, January 6, 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. Judge Prince received it on December 26, 2013, 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 Prince 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 252 determinations of admonition against judges in New York State. The Commission has issued 307 determinations of censure and 168 determinations of removal.

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 Prince was represented by Barry Nelson Covert of Lipsitz, Green, Scime, Cambria, LLP., 42 Delaware Ave #120, Buffalo, NY 14202, (716) 849-1333.

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 Kathleen Martin. Investigator Betsy Sampson assisted in the investigation.

Background Information on Judge Prince

First took office (Pomfret Town Court):	1990
Current Term Expires (Pomfret Town Court):	December 31, 2015
First took office (Fredonia Village Court):	1997
Current Term Expires (Fredonia Village Court):	April 1, 2017
Other Employment:	Owner - Don's Light Construction

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, 2014
Joseph W. Belluck, Esq.	Governor Andrew M. Cuomo	March 31, 2016
Joel Cohen, Esq.	Assembly Speaker Sheldon Silver	March 31, 2014
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.	Former Assembly Minority Leader James Tedisco	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, 2014
Vacant	Governor	March 31, 2017