



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Delaware County Town Justice Should Be Admonished for Failing to Disqualify Himself from Case and Improperly Intervening in Appeal

The New York State Commission on Judicial Conduct has determined that Richard L. Gumo, a Justice of the Delhi Town Court and an Acting Justice of the Walton Village Court, Delaware County, should be admonished for failing to disclose that a key witness in a case was the daughter of the court clerk, permitting the court clerk to perform clerical duties in connection with the case and to be in the courtroom during the trial, and sending an inappropriate letter to the County Court Judge hearing the appeal.

The Commission concluded that Judge Gumo engaged in “impermissible advocacy” by advising the County Court Judge of facts outside the record and making legal arguments when the defendant appealed. By sending a letter that was “ethically and procedurally improper,” the judge “abandoned his role as a neutral arbiter and became an advocate.” The Commission stated that the judge sent the letter “in a fit of pique” because the County Court Judge had criticized his decision

not to disqualify himself and had granted the defendant's application for a stay. Judge Gumo's decision in the case was later upheld on appeal.

The Commission also found that while it was not necessary for the judge to disqualify himself, Judge Gumo "should have disclosed the court clerk's relationship to a potential witness in order to give the parties the opportunity to be heard on the issue before proceeding." Such disclosure, the Commission stated, was necessary "in order to dispel any appearance of impropriety and reaffirm the integrity and impartiality of the judiciary." The Commission also stated that the court clerk's presence in the courtroom and the fact that she performed clerical duties in the case, "compounded the appearance of impropriety."

Judge Gumo has served as a Justice of the Delhi Town Court since 2007 and has served as an Acting Justice of the Walton Village Court since 2009. His current term on the Delhi Town Court expires on December 31, 2017, and his term on the Walton Village Court expires on April 5, 2015.

The Commission Proceedings

Judge Gumo was served with a Formal Written Complaint dated August 28, 2013, containing one charge, and filed an answer dated September 9, 2013. Charges were authorized after the judge had rejected a confidential letter of dismissal and caution dated June 17, 2013, and demanded a full hearing.

The Commission designated David M. Garber, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on February 12, 2014, in Albany, and the referee filed a report dated June 23, 2014, and a supplemental report dated June 30, 2014.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Counsel to the Commission recommended the sanction of admonition, and the judge recommended dismissal. On September 18, 2014, the Commission heard oral argument.

The Commission Determination

The Commission filed a determination dated December 30, 2014. Judge Thomas A. Klonick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joseph W. Belluck, Esq., Joel Cohen, Esq., Jodie Corngold, Richard D. Emery, Esq., Paul B. Harding, Esq., Richard A. Stoloff, Esq., and Judge David A. Weinstein concurred as to the sanction

Four members (Mr. Belluck, Mr. Cohen, Mr. Stoloff and Judge Weinstein) partially dissented and would not have found misconduct as to the judge's failure to insulate the court clerk from the case and to exclude her from the courtroom during the trial.

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

Press Availability

Mr. Tembeckjian 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 Gumo received it on January 5, 2015, 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 Gumo 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 255 determinations of admonition against judges in New York State. The Commission has issued 311 determinations of censure and 168 determinations of removal.

The Court of Appeals has reviewed 95 Commission determinations. The Court accepted the Commission's sanctions in 79 cases (70 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 Gumo represented himself.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission; Edward Lindner, Deputy Administrator for Litigation; and Senior Attorney Thea Hoeth. Investigator Laura Misjak assisted in the investigation.

Background Information on Judge Gumo

First took office (Town of Delhi):	2007
Current term expires:	12/31/2017
First took office (Village of Walton):	2009
Current term expires:	4/5/2015
Year Admitted to the New York State Bar:	1967

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