



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

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## NEWS RELEASE

*May 24, 2016*

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### **Westchester Town Court Justice Should be Admonished for Impermissible Delegation of Judicial Duties**

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The New York State Commission on Judicial Conduct has determined that Janet M. Calano, a Justice of the Eastchester Town Court, Westchester County, should be admonished for improperly delegating her judicial duties.

From May 2011 through May 2012, during Judge Calano's first year in office, the judge impermissibly delegated her judicial duties in Vehicle and Traffic Law (VTL) cases to the Eastchester Deputy Town Attorney. In those VTL cases, the defendants and the Deputy Town Attorney reached agreements involving pleas to reduced charges, the imposition of fines and surcharges, and on occasion, dismissal of charges. Although, the Deputy Town Attorney advised defendants that the dispositions required judicial approval and that a judge would review them, Judge Calano never reviewed or approved the dispositions.

In its determination the Commission stated: "Only judges have the authority and responsibility to accept or reject a negotiated plea; and dismissing and reducing charges, convicting defendants and imposing sentences are quintessential judicial functions requiring the exercise of judicial discretion." The Commission also

noted that “Placing such responsibilities in the hands of the prosecutor, who is not a neutral arbiter but an advocate, is especially problematic.”

Judge Calano testified that she did not realize that the court’s procedures were improper because they were in place when she became a judge and she relied on her co-judge, Domenick Porco<sup>1</sup>, for guidance.

Compounding the misconduct, when the Commission asked the court clerk to submit court calendars and case files from that period, Judge Calano initialed 189 files “in a manner that conveyed the impression that she had contemporaneously reviewed and approved those dispositions, when in fact she had not done so.” The Commission accepted the judge’s testimony that “her intent in initialing the files was not to deceive the Commission,” but to signify that she took responsibility for those cases.

In determining the appropriate sanction the Commission noted that Judge Calano “acknowledged that it was improper to change the records after the Commission requested them.” The Commission also noted that the judge was contrite and cooperative throughout the proceeding.

Judge Calano has served as a Justice of the Eastchester Town Court since 2011. Her current term expires on December 31, 2019.

### **The Commission Proceedings**

Judge Calano was served with a Formal Written Complaint dated April 2, 2014, containing two charges, and filed an answer dated June 28, 2014. The Commission rejected an Agreed Statement of Facts.

The Commission designated Eleanor B. Alter, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on March 24, 2015, in New York City. The referee filed a report dated September 9, 2015.

The parties submitted briefs with respect to the referee’s report and the issue of sanctions. Counsel to the Commission recommended the sanction of censure, and the judge’s counsel recommended the imposition of a sanction no greater than censure. On December 10, 2015, the Commission heard oral argument.

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<sup>1</sup> Judge Porco resigned from judicial office effective September 30, 2014, pursuant to a Stipulation. The stipulation and decision and order closing the matter can be found at <http://cjc.ny.gov/Determinations/P/Porco.htm>

### **The Commission Determination**

The Commission filed a determination dated May 9, 2016, in which six members concurred: Paul B. Harding, Esq. (the Vice Chair), Joel Cohen, Esq., Jodie Corngold, Judge Thomas A. Klonick, Judge Terry Jane Ruderman<sup>2</sup>, and Judge David A. Weinstein.

Two members, Joseph W. Belluck, Esq. (the Commission Chair) and Richard A. Stoloff, Esq., dissented as to sanction and voted for censure. Mr. Stoloff filed a dissenting opinion, which Mr. Belluck joined.

One member, Richard D. Emery, Esq., filed a dissenting opinion and voted to remit the matter for further development of the record.

Judge Rolando T. Acosta was not present. There is currently one vacancy on the 11-member Commission.

### **Statement by Commission Administrator**

Commission Administrator Robert H. Tembeckjian made the following statement.

“No judge may delegate the duty to decide cases. And any judge should know never to amend the original of a document that has been requested by an investigative body, even in naïve good faith or at the suggestion of another judge.

“While there is disagreement over the level of discipline appropriate to the judge’s misconduct in this matter, there is no dispute that a public sanction is warranted. To her credit, Judge Calano agreed and was both cooperative and contrite during this proceeding.”

### **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 Calano received it on May 16, 2016, and the Commission was subsequently notified by the Court of Appeals that service was complete. Consequently, the matter is now public.

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<sup>2</sup> The vote in this matter was taken on December 10, 2015. Judge Ruderman’s term as a member of the Commission expired on March 31, 2016. Judge Ruderman was replaced by Hon. Sylvia G. Ash, who did not participate in this matter.

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 Calano does not request review by the Court of Appeals, the Commission will admonish her 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 261 determinations of admonition against judges in New York State. The Commission has issued 169 determinations of removal and 315 determinations of censure.

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. One request for review is pending.

### **Counsel**

In the proceedings before the Commission, Judge Calano was represented by Deborah A. Scalise, of Scalise Hamilton & Sheridan LLP, 670 White Plains Road, Suite 325, Scarsdale, New York 10583, (914) 725-2801.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission; Mark Levine, Deputy Administrator in Charge of the New York City office; and Staff Attorney Erica K. Sparkler. Investigator Esther Carpenter assisted in the investigation.

**Background Information on Judge Calano**

First took office:	2011
Year Admitted to NYS Bar:	1986
Current Term Expires:	December 31, 2019
Salary:	\$42,545 (Source: Town of Eastchester 2016 Budget)
Prior Judicial Office:	None

**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**

<b>Member</b>	<b>Appointing Authority</b>	<b>Term End</b>
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, 2017
Hon. Rolando T. Acosta	Former Chief Judge Jonathan Lippman	March 31, 2018
Hon. Sylvia G. Ash	Chief Judge Janet DiFiore	March 31, 2020
Joel Cohen, Esq.	Former Assembly Speaker Sheldon Silver	March 31, 2018
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2019
Richard D. Emery, Esq.	Senate Minority Leader Andrea Stewart-Cousins	March 31, 2020
Hon. Thomas A. Klonick	Former Chief Judge Jonathan Lippman	March 31, 2017
Richard A. Stoloff, Esq.	Former Senate President Pro Tem Dean Skelos	March 31, 2019
Hon. David A. Weinstein	Governor Andrew M. Cuomo	March 31, 2018
Vacant	Governor	March 31, 2017