



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

April 24, 2020

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Albany County Court Judge Should Be Censured for Deciding a Motion Based on a Prohibited Out-of-Court Call to a Deputy Sheriff

The New York State Commission on Judicial Conduct has determined that William A. Carter, a Judge of the Albany County Court, should be censured for engaging in an *ex parte* communication and failing to report cases pending longer than 60 days on his required quarterly reports of pending cases.

Judge Carter agreed to the censure.

In January 2018, Judge Carter presided over a murder trial in which the defense counsel moved to preclude certain evidence pertaining to the defendant's phone conversations from jail. Without telling the District Attorney or defense counsel, Judge Carter called and spoke to a deputy sheriff at the county jail about how inmates are notified that their phone calls are being monitored. He then relied on that conversation in deciding the defense motion, again without informing either side of his *ex parte* conversation with the deputy sheriff.

Also, from April 2017 to September 2019, Judge Carter failed to report on his quarterly reports that he had several cases pending decision longer than 60 days, as required. The judge amended his reports in September 2019 as a result of the Commission's inquiry.

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Prior Discipline

Judge Carter was publicly censured by the Commission in 2006 for, among other things, coming off the bench and physically confronting a defendant appearing in his courtroom. (<http://cjc.ny.gov/Determinations/C/carter.htm>.)

Judge Carter was also privately cautioned by the Commission twice: in 2004 for failing to disqualify himself in arraignments of unrepresented defendants, notwithstanding that the complaining witness and alleged victim was his co-judge, and again in 2012 for appearing as a guest of honor at a fundraising event for a civic organization.

While the Commission considered the judge's disciplinary history as an aggravating factor, and stated that it is "well-settled" that judges are prohibited from engaging in *ex parte* communications about a pending matter, it noted that the *ex parte* communication was limited to a single general conversation and that the judge has acknowledged that his conduct warrants public discipline.

Judge Carter has been a Judge of the Albany County Court since 2017, having previously served as a Judge of the Albany City Court from 2002 to 2016. His current term expires on December 31, 2026.

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

"A judge may not make or rely on unauthorized, private fact-finding calls in rendering decisions. Nor may a judge keep such calls secret from the parties, who are entitled to know, make a record of and challenge whatever the judge was privately told. With all his experience on the bench, Judge Carter should have recognized and avoided such obvious misconduct."

The Commission Proceedings

Judge Carter was served with a Formal Written Complaint dated December 17, 2019, containing two charges and filed an Answer dated January 17, 2020.

On March 2, 2020, the Administrator of the Commission, Judge Carter and Judge Carter's attorney entered an Agreed Statement of Facts, stipulating to the facts and sanction and waiving further submissions and oral argument.

The Commission accepted the Agreed Statement on March 12, 2020.

*April 24, 2020***The Commission Determination**

The Commission filed a determination dated March 31, 2020, in which nine members concurred: Joseph W. Belluck, Esq. (the Commission Chair), Paul B. Harding, Esq. (the Vice Chair), Jodie Corngold, Judge John A. Falk, Taa Grays, Esq., Judge Leslie G. Leach, Judge Angela M. Mazzarelli, Judge Robert J. Miller, and Marvin Ray Raskin, Esq.

One member, Akosua Garcia Yeboah did not participate.

Court of Appeals Review

On March 31, 2020, the Commission transmitted its determination to the Chief Judge of the Court of Appeals, pursuant to Judiciary Law Section 44, subdivision 7, and the Commission received notification yesterday afternoon that Judge Carter had received it. 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 Carter 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 332 determinations of censure against judges in New York State. The Commission has issued 175 determinations of removal and 272 determinations of admonition.

The Court of Appeals has reviewed 99 Commission determinations. The Court accepted the Commission's sanctions in 83 cases (74 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. Two requests for review are pending.

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Counsel

In the proceedings before the Commission, Judge Carter was represented by Stephen F. Downs, Esq., 26 Dinmore Road, Selkirk, New York 12158, (518) 767-0102.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission and Cathleen S. Cenci, Deputy Administrator in Charge of the Albany office. Senior Investigator Ryan Fitzpatrick was assigned to the case.

Background Information on Judge Carter

First Took Office (City Court):	2002
Current Term Expires:	December 31, 2026

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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*April 24, 2020***MEMBERS OF THE STATE COMMISSION ON JUDICIAL CONDUCT**

Member	Appointing Authority	Term End
Joseph W. Belluck, Esq., Chair	Governor Andrew M. Cuomo	March 31, 2020
Paul B. Harding, Esq., Vice Chair	Former Assembly Minority Leader Brian M. Kolb	March 31, 2021
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2023
Taa Grays, Esq.	Senate President Pro Tem Andrea Stewart-Cousins	March 31, 2023
Hon. John A. Falk	Chief Judge Janet DiFiore	March 31, 2021
Hon. Leslie G. Leach	Chief Judge Janet DiFiore	March 31, 2024
Hon. Angela M. Mazzarelli	Chief Judge Janet DiFiore	March 31, 2022
Hon. Robert J. Miller	Governor Andrew M. Cuomo	March 31, 2022
Marvin Ray Raskin, Esq.	Assembly Speaker Carl E. Heastie	March 31, 2022
Ronald J. Rosenberg, Esq. ¹	Senate Minority Leader John J. Flanagan	March 31, 2024
Akosua Garcia Yeboah	Governor Andrew M. Cuomo	March 31, 2021

¹ Ronald J. Rosenberg's term began on April 1, 2020, a day after the determination in this case was filed.