



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

February 10, 2020

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Town Court Justice in Herkimer County Should Be Censured for Drinking and Driving

The New York State Commission on Judicial Conduct has determined that Michael A. Petucci, a Justice of the Herkimer Town Court, Herkimer County, should be censured for the consequences of excessive drinking and driving, for which he was charged with Driving While Intoxicated (DWI) and pled guilty to Driving While Ability Impaired (DWAI).

Judge Petucci agreed to the censure.

In December 2018, after consuming at least five alcoholic drinks, Judge Petucci crashed his vehicle into the side of an abandoned building. He was belligerent to first responders at the scene, at one point asking a paramedic to arrest the responding officer. He refused to take field sobriety tests and a chemical test of his blood alcohol level.

In addition, although Judge Petucci was licensed to carry a handgun, the Commission said he “exercised extremely poor judgment” by carrying a loaded weapon and another full magazine of ammunition while impaired by alcohol.

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The Office of Court Administration had suspended Judge Petucci from exercising the powers of his judicial office while the alcohol-related charges and the Commission's disciplinary proceeding against him were pending.

The Commission said Judge Petucci "should have known that by driving his vehicle after consuming a large amount of alcohol in a relatively short period of time he created a significant risk to himself and others."

The Commission also said that in drinking-and-driving cases it considers "the need and willingness of the judge to seek treatment," noting here that after an evaluation by a credentialed alcohol and substance abuse counselor who determined that no treatment was recommended, Judge Petucci voluntarily participated in counseling.

Judge Petucci, who is not an attorney, has served as a Justice of the Herkimer Town Court since 2008, having previously served as a Justice of the Herkimer Village Court from 2010 to 2015, and as an Acting Justice of the Ilion Village Court from 2008 to 2012. His current term expires on December 31, 2023.

Judge Petucci recently completed a one-year term as President of the New York State Magistrates Association, whose members include present and former town and village court justices from around the state.

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

"Judge Petucci made a grave mistake by drinking to excess and driving. He was lucky not to harm himself or others when he crashed into a building. He compounded his wrongdoing by carrying a loaded gun while his faculties were so impaired. To his credit he is conscientiously engaged in counseling to abstain from alcohol."

The Commission Proceedings

Judge Petucci was served with a Formal Written Complaint dated June 11, 2019, containing one charge and filed an Answer dated June 20, 2019.

On July 16, 2019, the Administrator of the Commission, Judge Petucci and his attorney entered into 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 October 17, 2019.

*February 10, 2020***The Commission Determination**

The Commission filed a determination dated January 30, 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 Akosua Garcia Yeboah.

One member, Marvin Ray Raskin, Esq., was not present. There is currently one vacancy on the 11-member Commission.

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 Petucci received it on February 3, 2020, 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 Petucci 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 331 determinations of censure against judges in New York State. The Commission has issued 173 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

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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 Petucci was represented by Peter Gerstenzang of Gerstenzang, Sills, Cohn & Gerstenzang, 210 Great Oaks Boulevard, Albany, New York (518) 456-6456.

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 assisted in the investigation.

Background Information on Judge Petucci

First took office:	2008
Current Term Expires:	December 31, 2023

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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*February 10, 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.	Former Senate Minority Leader Andrea Stewart-Cousins	March 31, 2020
Hon. John A. Falk	Chief Judge Janet DiFiore	March 31, 2021
Hon. Leslie G. Leach	Chief Judge Janet DiFiore	March 31, 2020
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
Akosua Garcia Yeboah	Governor Andrew M. Cuomo	March 31, 2021
Vacant	Senate President Pro Tem Andrea Stewart-Cousins	March 31, 2023