



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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Broome County Town Court Justice Should be Removed for Attempting to Fix a Traffic Ticket and Influence Another Judge in a Separate Case

The New York State Commission on Judicial Conduct has determined that J. Marshall Ayres, a Justice of the Conklin Town Court, Broome County, should be removed for lending the prestige of his judicial office to get his daughter's traffic ticket dismissed and for trying to influence a County Court Judge to uphold restitution orders he had issued in a separate, unrelated case.

In 2015, after learning that his adult daughter had been issued a traffic ticket for using a cell phone while driving, Judge Ayres made two back-channel attempts to have the case transferred to a different judge because he believed the assigned judge could not handle the case fairly. When those attempts failed, Judge Ayres, who is not an attorney, attended a pre-trial conference with his daughter and acted as her advocate, attempted to intimidate the prosecutor and invoked his judicial position while arguing that the ticket should be dismissed.

In its determination, the Commission stated that Judge Ayres violated ethical standards when he intervened in his daughter's case and that "viewed in their totality," the judge's actions, "coupled with [his] continuing insistence that his actions were appropriate, 'demonstrate[] an unacceptable degree of insensitivity to

the demands of judicial ethics.” The Commission was not persuaded by the judge’s repeated insistence that he was “acting as a parent” and not as a judge.

The Commission also found that, in a case unrelated to his daughter, Judge Ayres sent eight unauthorized letters – five of which were *ex parte* – to the County Court Judge who was handling the appeal of restitution orders Judge Ayres had issued. The Commission stated that Judge Ayres’ conduct was “highly improper” and that he “abandoned his role as a neutral arbiter and became an advocate, repeatedly telling the court that the appeal lacked ‘merit’ and should be dismissed and advancing factual and legal arguments in support of his claims while making biased, discourteous and undignified statements about the defendant and his attorney.”

In determining that Judge Ayres should be removed from office, the Commission stated that even at the oral argument, Judge Ayres “still lack[ed] an understanding of why his conduct was improper.” The Commission noted that the judge’s “failure to recognize the impropriety of his actions and to modify his behavior when ethical concerns were brought to his attention exacerbates the underlying misconduct.” The Commission concluded that “in our view, [Judge Ayres’] multiple efforts to influence the disposition of his daughter’s ticket, coupled with the additional misconduct and the aggravating factors presented here, demonstrate that he is ‘not fit for judicial office.’”

Judge Ayres has served as a Justice of the Conklin Town Court since 2009. His current term expires on December 31, 2020.

The Commission Proceedings

Judge Ayres was served with a Formal Written Complaint dated March 15, 2016, containing two charges, and filed an answer dated May 2, 2016.

The Commission designated Michael J. Hutter, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 15 and 16, 2016, in Albany. The referee filed a report dated December 2, 2016.

The parties submitted briefs with respect to the referee’s report and the issue of sanctions. The Commission’s Administrator recommended the sanction of removal, and the judge argued that removal was too harsh. On March 9, 2017, the Commission heard oral argument.

The Commission Determination

The Commission¹ filed a determination dated May 4, 2017, in which nine members concurred: Paul B. Harding, Esq. (the Vice Chair), Judge Rolando T. Acosta, Joel Cohen, Esq., Jodie Corngold, Judge Thomas A. Klonick, Judge Leslie G. Leach, Richard A. Stoloff, Esq., Judge David A. Weinstein and Akosua Garcia Yeboah. Mr. Stoloff and Ms. Yeboah filed separate concurring opinions.

Two members, Joseph W. Belluck, Esq. (the Commission Chair) and Richard D. Emery, Esq., were not present.

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

“Judge Ayres’ repeated interference in two matters pending in other courts was clearly improper and fundamentally inimical to the role of a judge. His inability to concede that his behavior was wrong makes it likely the conduct would recur, rendering him unfit to remain on the bench.”

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 Ayres received it on May 10, 2017, 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 Ayres does not request review by the Court of Appeals, the Court of Appeals will remove him in accordance with the determination.

¹ The vote in this matter was taken on March 9, 2017. Mr. Emery resigned from the Commission effective March 15, 2017, and was replaced by Taa Grays, Esq. who was appointed effective March 16, 2017; Judge Klonick’s term as a member of the Commission expired on March 31, 2017. He was replaced by Judge John A. Falk, who was appointed to the Commission on April 3, 2017.

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 170 determinations of removal against judges in New York State. The Commission has issued 319 determinations of censure and 266 determinations of admonition.

The Court of Appeals has reviewed 96 Commission determinations. The Court accepted the Commission's sanctions in 80 cases (71 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 Ayres represented himself.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission; Cathleen S. Cenci, Deputy Administrator in Charge of the Albany office; and Staff Attorney Eteena Tadjioqueu. Investigator Laura Misjak assisted in the investigation.

Background Information on Judge Ayres

First took office:	2009
Current Term Expires:	December 31, 2020

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
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, 2021
Hon. Rolando T. Acosta	Former Chief Judge Jonathan Lippman	March 31, 2018
Joel Cohen, Esq.	Former Assembly Speaker Sheldon Silver	March 31, 2018
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2019
Taa Grays, Esq.	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
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
Akosua Garcia Yeboah	Governor Andrew M. Cuomo	March 31, 2021