



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

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## NEWS RELEASE

*March 21, 2017*

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### **Oswego County Town Court Justice Should be Censured**

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The New York State Commission on Judicial Conduct has determined that Michael R. Clark, a Justice of the Hastings Town Court, Oswego County, should be censured for engaging in a variety of misconduct in 2010 and 2011.

Censure is a strong public reprimand.

Judge Clark:

- dismissed or reduced charges without notice to or the consent of the prosecution;
- failed to provide a defendant with the opportunity to be heard regarding bail and increased bail in an improper manner;
- imposed conditions of release on a defendant that were without basis in law;
- made improper comments about a defendant's physical appearance, denigrating him for wearing a nose ring and ear lobe gauges;

- and at an arraignment, failed to advise a defendant of the right to counsel, asked incriminatory questions and imposed improper conditions for permitting the defendant to negotiate a plea.

Among other things, the Commission's determination stated it "appeared to be arbitrary and punitive" for Judge Clark to increase a defendant's bail from \$3,500 to \$5,000, with no explanation after the defendant indicated that he would post the initial amount, "suggesting that [Judge Clark] increased the amount simply because the defendant could post it."

The Commission's Administrator recommended that Judge Clark be removed from office for failing to safeguard fundamental rights and procedures. The Commission disagreed and determined to censure the judge, noting that the judge's comments and directions to defendants, "while improper, were well-intentioned, that he believed he was acting in the interests of justice and that his errors of law were isolated and unintentional."

Judge Clark, who is not an attorney, has served as a Justice of the Hastings Town Court since 2000. His current term expires on December 31, 2019.

### **The Commission Proceedings**

Judge Clark was served with a Formal Written Complaint dated July 2, 2014, containing six charges, and filed an answer dated August 5, 2014.

The Commission designated William T. Easton, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on September 17 and 18, 2015, in Syracuse.<sup>1</sup> The referee filed a report dated August 23, 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's counsel recommended a sanction no greater than censure. On December 8, 2016, the Commission heard oral argument.

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<sup>1</sup>The parties entered into a stipulation dated February 24, 2015, closing the matter in view of the judge's resignation from judicial office. After the judge withdrew his resignation, a hearing was scheduled before Mr. Easton.

### **The Commission Determination**

The Commission filed a determination dated March 13, 2017, in which ten members concurred: Joseph W. Belluck, Esq. (the Commission Chair), Paul B. Harding, Esq. (the Vice Chair), Judge Rolando Acosta, Joel Cohen, Esq., Jodie Corngold, Richard D. Emery, Esq., Judge Thomas A. Klonick, Judge Leslie G. Leach, Richard A. Stoloff, Esq., and Judge David A. Weinstein.

Mr. Emery filed a concurring opinion.

Ms. Yeboah did not participate.

### **Statement by Commission Administrator**

Commission Administrator Robert H. Tembeckjian made the following statement.

“To promote public confidence in the integrity of our legal system, a judge is obliged not only to protect the fundamental rights of litigants but also to treat everyone with dignity and probity. Judge Clark repeatedly failed to do so and will rightfully be disciplined. While the Commission and I disagreed on the severity of the sanction to be imposed, there is no doubt that Judge Clark engaged in serious misconduct for which public discipline is warranted. The Commission’s determination to censure him sends a message that such misbehavior will be redressed.”

### **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 Clark received it on March 17, 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 Clark 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 317 determinations of censure against judges in New York State. The Commission has issued 169 determinations of removal 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 Clark was represented by Michael A. Santo, P.C., 3047 Lee Place, Bellmore, New York 11710, (516) 551-5503.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission; John J. Postel, Deputy Administrator in Charge of the Rochester office; and Senior Attorney David M. Duguay. Senior Investigator Rebecca Roberts assisted in the investigation.

### **Background Information on Judge Clark**

First took office:	2000
Current Term Expires:	December 31, 2019

### **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, 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 R. Grays <sup>2</sup>	Senate Minority Leader Andrea Stewart-Cousins	March 31, 2020
Hon. Thomas A. Klonick	Former Chief Judge Jonathan Lippman	March 31, 2017
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

<sup>2</sup> When the determination in this matter was rendered on March 13, 2017, Richard D. Emery was a member of the Commission. He has since been succeeded by Taa R. Grays.