



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

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St. Lawrence County Town Court Justice Should Be Admonished for Making a Facebook Post About a Pending Proceeding

The New York State Commission on Judicial Conduct has determined that Lisa J. Whitmarsh, a Justice of the Morristown Town Court, St. Lawrence County, should be admonished for making public comments on Facebook concerning a pending proceeding.

Judge Whitmarsh agreed to the admonition.

In 2016, Judge Whitmarsh, made a post on her Facebook page criticizing the investigation and prosecution of David VanArnam, who had been charged in another town court with falsely swearing that he had personally witnessed signatures on nominating petitions in support of his candidacy for the Morristown Town Council. The judge also clicked the “like” button next to some comments to her post.

In its determination the Commission stated that Judge Whitmarsh’s Facebook comments “addressed the defendant’s culpability...and criticized the prosecution

in intemperate language, suggesting that it arose from a ‘personal vendetta’ and that the investigation was the product of ‘CORRUPTION’ caused by ‘personal friends calling in personal favors,’ and that Mr. VanArnam had ‘[a]bsolutely’ no criminal intent.” As a result of her posts, the judge eventually recused herself from all matters involving the District Attorney.

The Commission stated that the judge’s comments and her “likes” of other posts “conveyed not only [the judge’s] personal view that the prosecution was unjust, but the appearance that she was impugning the integrity of the prosecution and endorsing others’ criticisms of the District Attorney’s office and the District Attorney personally.”

Judge Whitmarsh, who is not an attorney, has served as a Justice of the Morristown Town Court since 2014. Her current term expires on December 31, 2017.

The Commission Proceedings

Judge Whitmarsh was served with a Formal Written Complaint dated October 28, 2016, containing one charge, and filed an Answer dated November 16, 2016.

On December 2, 2016, the Administrator of the Commission, Judge Whitmarsh and Judge Whitmarsh’s attorney entered into an Agreed Statement of Facts, stipulating as to the facts and sanction and waiving further submissions and oral argument.

The Commission accepted the Agreed Statement on December 7, 2016.

The Commission Determination

The Commission filed a determination dated December 28, 2016, 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.

One member, Akosua Garcia Yeboah, did not participate.

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

"The proliferation of social media poses special concerns for judges and others who are bound by promulgated codes of ethics, particularly in an era where so little is truly private. On or off the bench, in person or by electronic communication, a judge must observe high standards of conduct and act at all times in a manner that promotes public confidence in the judiciary."

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 Whitmarsh received it on January 5, 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 Whitmarsh 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 266 determinations of admonition against judges in New York State. The Commission has issued 169 determinations of removal and 316 determinations of censure.

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 Whitmarsh was represented by Michael F. Young of the Young Law Office, PLLC, 7659 N. State Street, PO Box 312, Lowville, New York 13367, (315) 376-7543.

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 S. Peter Pedrotty. Senior Investigator Ryan Fitzpatrick assisted in the investigation.

Background Information on Judge Whitmarsh

First took office: 2014
Current Term Expires: December 31, 2017

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, 2017
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
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
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, 2017