

When judges are judged

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A town judge who handled drunken-driving cases while drunk. A city judge who sentenced a 17-year-old defendant without a trial or guilty plea. A county judge who improperly approved his own gun permit only to accidentally discharge a handgun in his private chambers.

In each case, the offending judge was brought before the New York State Commission on Judicial Conduct — an independent agency tasked with investigating and penalizing misbehaving judges. And, in each case, the judges kept their jobs.

A review by the New York World found the commission often does not remove judges even when they've violated the constitutionally guaranteed right to due process or manipulated the outcome of cases. In addition, much of the commission's work is conducted in secret. New York is one of only 15 states that conduct judicial disciplinary hearings in private. And in many cases, the name of the sanctioned judge and the nature of the misconduct are never made public.

The commission's administrator counters that since its formation in 1978 the panel has one of the most active judicial disciplinary systems in the nation, including removing 168 judges from office and obtaining agreements from an additional 51 judges who left office under agreements which prohibit them from returning to the bench. Robert H. Tembeckjian, the commission's administrator and counsel, said New York's disciplinary rate for judges "as a percentage is greater than any two states combined."

Still, data obtained through a Freedom of Information Law request revealed that from 2004 to 2013, the most common punishment issued by the commission were confidential "private letters of caution." The confidential letters accounted for more than 60 percent of the 548 cases where the commission sanctioned a judge in that period.

Little is known of the hundreds of private letters of caution. But among the more than 200 cases of publicly disclosed discipline in the last decade, some of the more common types of misconduct include judges failing to recuse themselves from cases where they had a personal stake, or abusing their positions to avoid traffic tickets.

The majority of publicly disclosed sanctions involved censuring or admonishing the wayward judge, though neither punishment results in any financial penalty or change in the offending judge's responsibilities or status.

There are 3,300 judges in New York, and in the last decade the commission has removed just 26 of them from the bench for misconduct.

Tembeckjian attributes the rarity of removals to the commission's success as a deterrent.

"The vast majority of judges are behaving in an ethically appropriate way," he said.

He said the commission's use of confidential warnings cover isolated incidents, such as when court clerks mishandle money without the knowledge of judges who are responsible for fund oversight.

"We have private caution so there's an opportunity to correct minor infractions without the time, expenses, and unnecessary public citation of the judge," Tembeckjian said.

However, Tembeckjian acknowledged his own long-standing frustration with the private nature of the hearings.

He said the commission has "advocated consistently, unfailingly, since 1978" to open proceedings.

In 35 states, proceedings are public once charges are filed or judges have formally responded to allegations.

“It’s been the majority of states for a very long time,” Cynthia Gray, director of the Center for Judicial Ethics, said.

In New York, case documents are made public only after decisions are rendered and then only for cases not involving a private letter of caution.

Legislation that would open the hearings has been proposed by Sen. John Sampson, a Brooklyn Democrat, but failed to gain traction in 2009, 2011 and 2013. Calls to Sampson’s office for comment went unreturned.

Stephen Gillers, a New York University Law School professor, pointed out efforts to open up disciplinary proceedings have faced heavy resistance from both judges and attorneys, whose disciplinary proceedings are also confidential.

“Lawyers don’t want it and judges don’t want it,” Gillers said.

Justice Ed Van Der Water, a current member and former president of the New York State Magistrates Association, said the commission’s current closed-door proceedings are “consistent” with how discipline is handled in other professions across the state.

“All personnel actions are shielded as a matter of law from the public,” Van Der Water said of public employees such as teachers.

He added that judges face increased public scrutiny due to the nature of their jobs, making complaints common.

“There’s no push by us to have things changed other than what the commission is doing now,” he said generally of how the commission operates.

That includes the reliance on private sanctions.

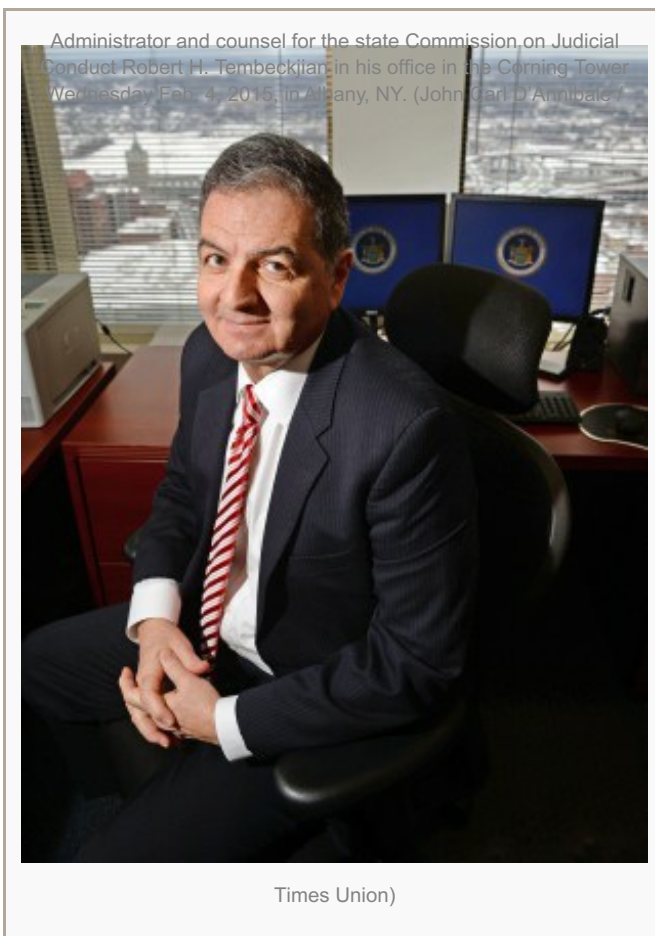
“The public never learns what the judge did, or for that matter what the lawyer did, or what the sanction was,” Gillers said.

That means that voters head to the polls without knowing that a judge seeking re-election may have been sanctioned for misconduct.

The case of James Gilpatric offers a rare glimpse into the kind misconduct that can trigger a private sanction. In 2004, the commission privately sanctioned Gilpatric, who then served as a part-time judge in Kingston, for taking too long to issue decisions in two civil cases.

A year later, Gilpatric made another appearance before the commission, this time for allegedly being intoxicated while serving as an attorney during a Family Court hearing. He was censured, but no mention was made of his earlier private sanction.

The private caution issued to Gilpatric was finally made public in 2008 when the commission admonished Gilpatric for



taking up to two years to issue decisions in dozens of small claims cases. The Court of Appeals later reversed the discipline after Gilpatric appealed. Gilpatric, who was elected as a state Supreme Court justice in Ulster County in 2009, did not respond to a request for comment.

In 2012, Buffalo City Judge James McLeod was admonished by the commission after he sentenced a 17-year-old defendant to 15 days in jail and 75 hours of community service without a trial or plea agreement.

The defendant, whose name is redacted in commission files, faced charges including drug possession and harassment.

During the defendant's Feb. 16, 2011 appearance before McLeod, the two exchanged insults throughout the hearing as McLeod sentenced the teen to 15 days in jail.

The commission admonished McLeod, who remains on the bench in Buffalo.

The commission's administrative staff investigates and presents cases to an 11-member panel that is a constitutionally independent branch of state government, with members appointed by the governor, the state's chief judge and the Legislature.

Sanctioned judges have the option to appeal to the Court of Appeals, but only 15 have done so over the last decade and only two were successful. Last July, the Court of Appeals, in a 5-1 decision, upheld the commission's removal of Albany County Surrogate Cathryn Doyle from the bench. The state's highest court found Doyle, a surrogate's court judge since 2001, should have recused herself from cases she presided over that involved her lawyer, campaign manager and close friend, Thomas Spargo, a former state Supreme Court justice who went to federal prison for bribery.

In the last decade, the panel has declined its administrative staff's disciplinary recommendations in about 10 percent of its cases.

Hudson Falls village Justice Michael Feeder was removed in 2012, but only after three separate commission investigations. The former village justice made headlines in 2004 for when he followed another motorist who failed to yield to a pedestrian and allegedly flashed his vehicle's lights and displayed his judicial badge to get the motorist to pull over.

That same month, Feeder discussed a DWI case with the defendant's mother outside court, violating judicial conduct rules. In another case reviewed by the commission, Feeder was investigated for failing to recuse himself on several cases involving an assistant police chief who is a close friend.

The commission panel called Feeder's misbehavior "serious" and voted to censure him in late 2009 despite the commission staff's recommendation to remove Feeder from the bench.

But just months after the censure, Feeder was investigated for a third time on charges of improperly jailing four defendants, including two who were intoxicated and another who was 16.

The teen was sentenced to 15 days in jail for talking in Feeder's courtroom. Another defendant with severe alcoholism agreed to a 30-day jail term on the same day he drank "24 beers and several shots."

In 2012, the commission unanimously voted to remove Feeder from the bench.

In addition to a lack of transparency, the commission's resources are also an issue.

Tembeckjian is seeking an increase in his budget.

For the fifth year in a row, the executive spending plan proposes no increase in funding for the commission, which

has an annual budget of \$5.4 million. The flat-lined budget has resulted in the commission cutting its authorized staff about 18 percent in the past six years, from 55 to 45 employees, Tembeckjian said.

“That obviously has an effect on the work that we do because we deal with an average of about 1,750 complaints a year,” Tembeckjian said. “That number is not going down but our resources to handle all those complaints is effectively being reduced.”

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