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Hart Censured For Improper Acts on Bench

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A Queens judge has been censured for the second time by the state Commission on Judicial Conduct, this time for five improper acts between 2003 and 2005.

By an 8-1 vote, Supreme Court Justice Duane A. Hart ([See Profile](#)) avoided the commission's most severe discipline, removal, which had been recommended by the agency's chief administrator and counsel, Robert H. Tembeckjian.

The commission ruled that Justice Hart's improper conduct included threatening an attorney with contempt, presiding over a case in which he had a relationship with an attorney, denying an attorney's request to make a record, granting a lengthy adjournment for a punitive purpose, and offering to testify on an attorney's behalf in a disciplinary matter if the attorney testified for him before the commission.

The panel dismissed a sixth charge stemming from an incident in which the judge escorted his mother to Queens Family Court and allegedly lashed out at guards who required him to pass through a metal detector.

According to yesterday's decision, *Matter of Hart (2)*, Justice Hart "engaged in conduct demonstrating insensitivity to the high ethical standards of judges" over the course of the 2 1/2 years covered by the charges.

"Every judge is required to be an exemplar of dignity and patience in presiding over disputes," the majority stated. "At all times, a judge must not only be, but appear to be, a neutral, unbiased arbiter . . . Respondent violated these standards by his punitive, intemperate behavior."

The ruling marks the second censure for Justice Hart, who has sat on the Queens Supreme Court bench since 2002. In 2005, the commission censured him for improperly holding a litigant in summary contempt (*Matter of Hart*, [NYLJ](#), November 16, 2005).

The opinion yesterday noted that all of the present charges predated the prior censure.

"Thus, there is no indication that respondent has disregarded a previous disciplinary warning," the commission wrote. "We trust that respondent now recognizes the necessity for scrupulously observing the relevant judicial standards in the future."

Reached for comment yesterday, Justice Hart said he was "concerned" about the opinion, which he said evidenced the resolve of "certain people" to make sure that all grievances against judges result in discipline.

All of the attorneys who testified against him were "liars and thieves," the judge said, yet "the commission found them credible . . . This is the sum and the substance of the case against me." Justice Hart cited specific examples of the attorneys' improprieties, which could not be substantiated by press time.

He also criticized the commission's legal analysis regarding his disputed decisions and said the commission would have ruled differently had the referee, retired Supreme Court Justice Felice K. Shea, believed any of the seven black witnesses.

After hearing Justice Hart's comments, Mr. Tembeckjian responded, "If Judge Hart is dissatisfied with the commission's censure, the appropriate course is to seek Court of Appeals review, not besmirch the honorable men and women who testified against him or unjustifiably read race into the referee's decision."

Justice Hart, who is black, faced six charges of misconduct, most of which stemmed from two proceedings, a medical malpractice case, *Rini v. Blanck*, and a real estate fraud action, *Wilkens v. Dillon*.

On Dec. 5, 2007, Justice Hart attempted in Brooklyn federal court to stay the commission's case due to what he called commission chairman Raoul Felder's "racial bias." The failed effort made the normally confidential charges public. The next day, Justice Hart opened the commission's hearing to reporters, marking only the ninth time in approximately 700 such hearings that the proceedings were open to outsiders (NYLJ, Dec. 7, 2007).

Mr. Felder did not attend the hearing or participate in deliberations, citing "personal reasons" unrelated to Justice Hart's motion precluding him from attending.

At the hearing, the nine commissioners evinced a broad range of reactions to the justice's defense of his conduct. Many appeared indignant; others suggested that the accusations mostly stemmed from wrongheaded attempts to help people in need.

The commission was split again in its decision yesterday. In addition to falling short of unanimity regarding the level of discipline, the nine-member panel was also split as to each individual count.

At least one commissioner voted to dismiss each of the five claims that were sustained; four of the nine members voted for sustaining the one charge that was in fact dismissed.

Commissioner Stephen R. Coffey, who was appointed by Senate majority leader Joseph Bruno and who led the charge against Justice Hart at the hearing, was the sole commissioner to vote for removal.

"The man who appeared before us at oral argument was a far different individual from the one who presented himself at the hearing and investigative appearance," Mr. Coffey, a partner at Albany-based O'Connell and Aronowitz, wrote in his dissent.

"Personally unimpressed and believing that the majority of the charges against respondent were serious and proven, I vote to remove him," Mr. Coffey wrote. "I am also deeply troubled by respondent's testimony at the hearing, which was evasive and inconsistent, and I am unpersuaded that he will modify his conduct in the future."

In a statement released yesterday, Mr. Tembeckjian said, "The Commission and I play different roles in the disciplinary process. We do not always agree. I recommend, the Commission decides and we both move on to other business."

Justice Hart's attorney, Lawton Squires of Hertzfeld & Rubin, could not be reached for comment.

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