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Vacco's Office's Delay Culminates in Default *'Substandard, Unprofessional' Conduct Cited*

BY DEBORAH PINES

THE OFFICE OF State Attorney General Dennis Vacco, which drew fire in its early days for missed court dates and staffing miscues, has been chastised for similar failings in two recent Manhattan federal court rulings, including one this month entering a \$150,000 default judgment against the state.

The latest ruling, from Southern District Magistrate Judge Theodore H. Katz, criticized one newly hired Assistant Attorney General, Thomas H. Hanna Jr., for "repeatedly and cavalierly" missing filing deadlines and violating court orders, in *McClain v. Lord*, 95 Civ. 4918.

"Rather than requesting timely extensions, he has left it to the court to seek him out for explanations of his violations," Judge Katz wrote at one point. "Indeed, he has repeatedly ignored inquiries from the court regarding his failures. The court has granted counsel repeated extensions of time, only to have him violate each new extension."

Noting Mr. Hanna's latest failure to submit a pretrial order by March 7, Judge Katz recommended in a March 20 report that a \$150,000 default judgment be entered against the state.

The judgment constitutes the amount sought by Denise McClain, 33, of Brooklyn, in a pro se prisoner's civil rights action. Ms. McClain claimed a corrections officer assault-

Excerpt From The Decision

"The court is cognizant that the consequences of the entry of a default will have an impact on the public fisc . . . Nevertheless, in the long run, the public, New York State employees and this court are more seriously disserved, at greater expense, by tolerating substandard and unprofessional conduct . . ."

Judge Theodore H. Katz,
in recommendation
accepted by
Judge Peter K. Leisure



Judge Katz



Judge Leisure

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Ex "C"

Delay Results in Default Entry

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ed her on Sept. 25, 1994 and knocked out two of her teeth in the recreation yard at Bedford Hills Correctional Facility.

"The court is cognizant that the consequences of the entry of a default will have an impact on the public fisc, and for that reason I do not make my recommendation lightly," Judge Katz wrote. "Nevertheless, in the long run the public, New York State employees and this court are more seriously disserved, at greater expense, by tolerating substandard and unprofessional conduct by attorneys in the Office of the Attorney General than by the state's payment of a judgment in a case such as this."

Judge Katz's recommendation was accepted on April 10 by Southern District Judge Peter K. Leisure. In a two-page order, Judge Leisure noted, "Not surprisingly, the Attorney General's Office has failed to file timely objections to the report, has failed to request an extension of time for the filing of objections, and has failed to contact chambers regarding this inexcusable neglect."

Mr. Hanna, who was hired by the office on July 6, 1995, could not be reached for comment yesterday. Christopher McKenna, a spokesman for Mr. Vacco, said Mr. Hanna will be leaving the office soon and called his conduct "disturbing and absolutely unacceptable to this office."

Mr. McKenna said Mr. Hanna's supervisors were unaware of his missteps until after the default was entered and are now moving to have it set aside. Mr. McKenna also said other attorneys criticized in recent rulings have been fired or counseled

while at least one other critical ruling has been amended by the judge that wrote it.

When Mr. Vacco, the first Republican Attorney General in 16 years, made widespread staffing changes after taking office in November 1994, complaints cropped up of missed court dates, inexperienced counsel and other snafus (*NYLJ*, Oct. 5, 1995).

At the time, Mr. McKenna conceded some problems, but attributed them to the significant staffing changes and miscommunications from fired attorneys. He said then that cases were on track.

Judge Katz's report and recommendation in the *McClain* case, however, cited two other decisions in the past year and earlier decisions taking the Attorney General's office to task for missed filing deadlines and other failings.

Those rulings, Judge Katz wrote, "citing shockingly unprofessional conduct by the staff of the Attorney General's Office, similar to the conduct that has occurred in this case, have become all too commonplace."

The most recent rulings were:

- A March 6 decision from Southern District Magistrate Judge Henry Pitman faulting the office for repeated delays in complying with discovery orders in another prisoner case, *Bilups v. West*, 95 Civ. 1146. Although Judge Pitman initially imposed a \$1,000 sanction, on April 11 he vacated the penalty as unduly harsh.

- An April 19, 1996 ruling from Southern District Magistrate Judge Michael H. Dollinger faulting the office for a "series of seemingly unending failures" to comply with pretrial orders, *Trammell v. Greiner*, 95 Civ. 383.