



HON. THOMAS E. MERCURE (RET.)

Associate Justice, Appellate Division, 3rd Department

Hon. Thomas E. Mercure served on the bench for 33 years and has the distinction of being the longest serving appellate court justice in the 118-year history of the 3rd Department. He has broad judicial and appellate experience in a wide variety of complex subject matters. Judge Mercure's years of serving as a jurist and settling cases makes him well-suited to be a fair and impartial arbitrator and mediator for NAM.

In 1988, Judge Mercure was appointed by Governor Mario Cuomo as an Associate Justice of the Appellate Division, 3rd Department, and subsequently reappointed three times by Governors George Pataki and David Paterson. He served as an Associate Justice of the Appellate Division for over 25 years, heard more than 21,000 appeals and wrote more than 3,000 signed opinions. Among his many accolades, Justice Mercure sat on the New York State Court of Appeals, by designation, twice in 1994 and 2011 for two cases, including one related to the World Trade Center bombing in 1993. (In the Matter of World Trade Center Bombing Litigation v. The Port Authority of New York and New Jersey).

The Commission on Judicial Nominations deemed him "well qualified" for a seat on the high court three times in 2006 and 2007, twice for Associate Judge and once for Chief Judge of the State of New York. He was also elected a New York State Supreme Court Justice for the Fourth Judicial District in 1982 and re-elected in 1995 and 2009.

Judge Mercure has vast knowledge and experience in complex commercial litigation, property disputes, boundary line issues and adverse possession on the judicial level as well as cases involving negligence, medical malpractice, and products liability and torts.

In addition to providing arbitration and mediation services at NAM, Judge Mercure is Of Counsel to the firm of Carter Conboy where he will be engaged in appellate advocacy, ethics and complex civil and commercial litigation. He is active in professional and community affairs and has lectured on appellate practice and ethics.

AREAS OF EXPERIENCE

- Appellate Practice
- Banking & Finance
- Business/Commercial/Corporate
- Construction
- Education Law
- Employment Rights/Labor
- Environmental Law Planning
- Government Contracts
- Insurance
- Legal Ethics/Professional Liabilities

- Matrimonial
- Medical Malpractice
- Negligence
- Partnership law
- Personal Injury
- Premises Liability
- Property/Land Law/Leasing
- Torts & Product Liability
- Trade Secrets
- Trusts & Estates
- Worker's Compensation

REPRESENTATIVE MATTERS

MAJOR OPINIONS

- *Yonaty v. Mincolla, 97 AD3d 141* (2012). The days when falsely labeling someone as a lesbian, gay or bisexual is per se defamatory are gone. Decision overturned Third Department precedent and rejected precedents from the other three departments.
- *State v. Daniel OO, 88 AD3d 212*, (2011). The state can hold civil commitment hearings for dangerous sex offenders who are not competent to stand trial in a criminal court.
- *Maron v. Silver, 58 AD3d 102* (2008). Aggrieved judges lack grounds to bring a suit for higher compensation despite the “deplorable” inaction by the Legislature in neglecting to increase judicial pay for a decade.
- *People v. Wilhelm, 34 AD3d 40* (2006). Reversed the conviction of a mentally disturbed woman who drowned her child, finding that the defendant's right to counsel was violated because she was interviewed by, and made admissions to, social workers acting as agents of the law enforcement authorities.
- *People v. Parker, 29 AD3d 1161* (2006). Dissented when the court upheld the depraved-mind murder conviction of a defendant who fired a shot across a street in the direction of several people.
- *Catholic Charities of Diocese of Albany v. Serio, 28 AD3d 115* (2006). Upheld, over a challenge by religious groups, a state law requiring employers that offer their employees prescription benefits to include contraceptives.
- *Dalton v. Pataki, 11 AD3d 62* (2004). Video lottery terminals are essentially hybrids of the traditional lottery, and therefore not unconstitutional, but the state cannot divert the proceeds earmarked for education, to the horse racing industry.
- *Saratoga County Chamber of Commerce v. Pataki, 293 AD2d 20* (2002). The governor cannot bind the state into tribal gaming compacts absent legislative approval.
- *Doe v. Community Health Plan – Kaiser, 268 AD2d 183* (2000). Dissented when the court seemingly created a new cause of action and held that a HMO can be sued by a patient whose medical records were improperly released by a clerk.
- *Majewski v. Broadalbin-Perth Central School District, 231 AD2d 102* (1997). The sharp curtailment of employer liability for workplace injuries resulting from a Workers' Compensation reform measure is not retroactive, preserving thousands of third-party negligence claims.
- *Matter of Schulz v. New York State Executive, 233 AD2d 43* (1997). Expanded a groundbreaking 1993 Court of Appeals ruling and granted New York voters broad standing to sue the state over constitutional requirements for contracting long-term debt.

- *Grumet v. Cuomo, 225 AD2d 4, (1996)*. State lawmakers breached the separation of church and state by creating a special public school district for the Hasidic community of Kiryas Joel in violation of the establishment clause
- *Matter of Straniere v. Silver, 218 AD2d 80 (1996)*. The speech and debate clause of the state Constitution bars judicial review of a decision by the Assembly speaker requiring a home rule message from New York City before Staten Island could secede from the city.

JUDICIAL EXPERIENCE

- Associate Justice, Appellate Division, Third Department (1988–2013)
- Acting Presiding Justice, Appellate Division, Third Department (2011-2012)
- Administrative Judge, Third Judicial District (2013-2014)
- New York State Supreme Court Justice, Fourth Judicial District (1982-2014)
- Washington County Judge (1981)

PROFESSIONAL BACKGROUND

- Of Counsel to Carter Conboy (2014 – Present)
- Washington County District Attorney (1977-1980)
- Washington County Assistant District Attorney (1973-1976)
- Private Practice of Law, Fort Edward, NY (1969-1980)

PROFESSIONAL LICENSES

- New York State Bar (1969)
- United States District Court for the Northern District of New York (1969)
- Supreme Court of the United States of America (1974)

MEMBERSHIPS AND PROFESSIONAL ACTIVITIES

- President of the Washington County Bar Association (2012 & 2013)
- Member of New York State Federal-State Judicial Council (2003 – 2014)
- Member of Advisory Committee on Judicial Ethics (2003 – Present)
- Commission on Judicial Nomination (2006 & 2007)
- Chair of the Ethics Commission for the Unified Court System (1996 – 2003)
- Member of the Committee on Pattern Jury Instructions (1991 – 2006)
- Member of the Ethics Commission for the Unified Court System (1989 – 2006)
- Supreme Court Justices Association (1982 – Present)
- Washington County Bar Association (1969 – Present)

EDUCATION

- Georgetown University Law Center, J.D. (1968)
- Saint Michael's College, B.A. (1965)