



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

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## NEWS RELEASE

*September 6, 2016*

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### **Oswego County Court Judge Should Be Admonished for Making Improper Statements on the Bench**

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The New York State Commission on Judicial Conduct has determined that Walter W. Hafner, Jr., a Judge of the Oswego County Court, should be admonished for making comments on three occasions that were discourteous and inappropriate.

Judge Hafner agreed to the admonition, which is the second time he has been publicly disciplined by the Commission.<sup>1</sup>

In a 2010 rape case, the Commission found, Judge Hafner made “insensitive” comments about the alleged victim during a discussion of a possible plea. The judge stated that her trial testimony indicated she was “apparently not upset about the whole incident,” and when the District Attorney (DA) pointed out that by law 14-year-olds could not consent to sexual relations with adults, the judge replied that the “statute didn’t save her.” In its determination, the Commission stated that

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<sup>1</sup> The prior admonition was for engaging in prohibited political activity and is available at <http://cjc.ny.gov/Determinations/H/hafner.htm>.

*September 6, 2016**Page 2*

while judges had some latitude to make “blunt statements” during plea discussions, Judge Hafner’s comments in this instance were improper and “could be perceived as a harsh, judgmental statement about a young woman who was the alleged victim of a serious crime.”

In 2013, Judge Hafner “overreacted” in response to the DA’s request to advance a trial date in place of an older case on the judge’s calendar. In a lengthy exchange, the judge “yelled” and made loud, derogatory statements criticizing the DA for delays in indicting defendants while the DA defended his office’s record. The Commission stated: “While a judge can properly question a prosecutor about perceived inordinate delays, this duty, like all of a judge’s responsibilities, must be exercised in a courteous, dignified manner.”

One month later, Judge Hafner made inappropriate comments about purported “improprieties” in the prosecution of two related cases, one involving a relative of the DA’s. Judge Hafner’s criticism of the special prosecutor’s handling of the case, the Commission found, was “especially improper since (i) that case was not before him, (ii) he seemed to have little information about the matter, and (iii) some of his information was inaccurate.” These comments, the Commission stated, particularly warranted public discipline.

The Commission noted that Judge Hafner admitted that his comments were improper and has pledged to abide by the ethical rules.

Judge Hafner has served as a Judge of the Oswego County Court since 1999. His current term expires on December 31, 2018.

### **The Commission Proceedings**

Judge Hafner was served with a Formal Written Complaint dated November 18, 2013, containing one charge, and filed an Answer dated January 3, 2014. The judge was served with a Second Formal Written Complaint dated May 27, 2015, containing two charges, and filed an Answer dated June 18, 2015.

On May 25, 2016, the Administrator of the Commission, Judge Hafner and Judge Hafner’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 June 2, 2016.

**The Commission Determination**

The Commission filed a determination dated August 29, 2016, in which all ten members concurred: Joseph W. Belluck, Esq. (the Commission Chair), Paul B. Harding, Esq. (the Vice Chair), Judge Rolando Acosta, Judge Sylvia Ash, Joel Cohen, Esq., Jodie Corngold, Richard D. Emery, Esq., Judge Thomas A. Klonick, Richard A. Stoloff, Esq., and Judge David A. Weinstein.

**Previous Discipline of Judge Hafner**

Judge Hafner was publicly admonished by the Commission in 2000 for engaging in prohibited political activity. Information on the prior discipline is available at: <http://cjc.ny.gov/Determinations/H/hafner.htm>.

**Statement by Commission Administrator**

Commission Administrator Robert H. Tembeckjian made the following statement.

“A judge is obliged to treat all who come before the courts with dignity and respect, in order to maintain public confidence in the administration of justice.

“Even if a judge decides a case fairly, it won’t seem that way to the participants or the public if the judge is rude or crude.

“By denigrating the 14-year-old victim of a sex crime, and by rashly casting aspersions on the District Attorney’s office, Judge Hafner violated the rules and undermined public faith in the courts, which he now acknowledges by accepting the Commission’s rebuke.”

**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. Over the Labor Day weekend, Judge Hafner’s attorney acknowledged having released it to the press. While the Commission ordinarily releases its determinations on receiving notification by the Court of Appeals that service was complete, in view of the release by the judge’s attorney, the Commission is now making the matter 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 Hafner does not request review by the Court of Appeals, the Commission will admonish him 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 262 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 95 Commission determinations. The Court accepted the Commission's sanctions in 79 cases (70 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. One request for review is pending.

### **Counsel**

In the proceedings before the Commission, Judge Hafner was represented by Gerald Stern, Esq., 14 Oxford Road, White Plains, New York 10605, (914) 428-4247.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission; John J. Postel, Deputy Administrator in Charge of the Rochester office; and Senior Attorney David M. Duguay. Investigator Betsy Sampson assisted in the investigation.

### **Background Information on Judge Hafner**

First took office:	1999
Year Admitted to NYS Bar:	1978
Current Term Expires:	December 31, 2018
Salary:	\$183,350

**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**

<b>Member</b>	<b>Appointing Authority</b>	<b>Term End</b>
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
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
Vacant	Governor	March 31, 2017
Vacant	Chief Judge	March 31, 2020