



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

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## NEWS RELEASE

*July 2, 2020*

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### **Town Court Justice in Rockland County Should Be Admonished for Making Inappropriate Comments**

The New York State Commission on Judicial Conduct has determined that Howard Gerber, a Justice of the Clarkstown Town Court, Rockland County, should be admonished for making inappropriate comments and failing to disqualify from a matter in which his impartiality could reasonably be questioned.

Judge Gerber agreed to the admonition.

On three occasions between August 2017 and November 2017, Judge Gerber engaged in the following misconduct:

1. He presided over a matter involving the Rockland County Department of Probation despite making disparaging comments about the department, a sex offender treatment specialist and a supervisor.
2. He remarked during a case conference that a defendant's child was "dressing for attention" by which he meant "for men to look at her;" that the child had worn yoga pants to court; and, referring to the female Assistant District Attorney (ADA), stated "I don't care what anybody wears...if you wear yoga pants to court, it's okay with me." When the ADA did not respond, the judge then said: "Oh, I should not have said that. Are there cameras in here?"

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3. He asked if that same ADA and a friend “want[ed] a room” and offered to “turn off the lights,” in an attempt to make an off-color joke.

In accepting the jointly recommended sanction of admonition, the Commission noted that the judge had an “unblemished record” and that he had “acknowledged that his conduct warrants public discipline.”

Judge Gerber, who is an attorney, has served as a Justice of the Clarkstown Town Court since 2007. His current term expires on December 31, 2023.

### **Statement by Commission Administrator**

Commission Administrator Robert H. Tembeckjian made the following statement.

“Humor has its place, sometimes even in court, but there is no call for a judge to engage in sexual innuendo or make judgmental or juvenile remarks about the way women look or dress. Nor is it appropriate for a judge to preside over a matter in which he has gratuitously disparaged an essential participant.”

### **The Commission Proceedings**

Judge Gerber was served with a Formal Written Complaint dated January 30, 2020, containing one charge.

On April 21, 2020, the Administrator of the Commission, Judge Gerber and his attorney entered into an Agreed Statement of Facts, stipulating to the facts and sanction and waiving further submissions and oral argument.

The Commission accepted the Agreed Statement on April 30, 2020.

### **The Commission Determination**

The Commission filed a determination dated June 17, 2020, in which all eleven members concurred: Joseph W. Belluck, Esq. (the Commission Chair), Taa Grays, Esq. (the Vice Chair), Jodie Corngold, Judge John A. Falk, Paul B. Harding, Esq., Judge Leslie G. Leach, Judge Angela M. Mazzarelli, Judge Robert J. Miller, Marvin Ray Raskin, Esq., Ronald J. Rosenberg, Esq., and Akosua Garcia Yeboah.

### **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. Judge Gerber

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received it on June 29, 2020, and the Commission was subsequently notified by the Court of Appeals that service was complete. Consequently, the matter is now 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 Gerber 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 274 determinations of admonition against judges in New York State. The Commission has issued 175 determinations of removal and 334 determinations of censure.

The Court of Appeals has reviewed 100 Commission determinations. The Court accepted the Commission's sanctions in 84 cases (75 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 Gerber was represented by Deborah A. Scalise, of Scalise & Hamilton, PC., 670 White Plains Road, Suite 325, Scarsdale, New York 10583, (914) 725-2801.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission; Mark Levine, Deputy Administrator in Charge of the New York City office; and, Staff Attorney Daniel W. Davis. Investigator Drew Zagami was assigned to the case.

*July 2, 2020***Background Information on Judge Gerber**

First took office: 2007  
 Current Term Expires: December 31, 2023  
 Year Admitted to NYS Bar: 1983

**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, 2024
Taa Grays, Esq., Vice Chair	Senate President Pro Tem Andrea Stewart-Cousins	March 31, 2023
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2023
Hon. John A. Falk	Chief Judge Janet DiFiore	March 31, 2021
Paul B. Harding, Esq.	Former Assembly Minority Leader Brian M. Kolb	March 31, 2021
Hon. Leslie G. Leach	Chief Judge Janet DiFiore	March 31, 2024
Hon. Angela M. Mazzarelli	Chief Judge Janet DiFiore	March 31, 2022
Hon. Robert J. Miller	Governor Andrew M. Cuomo	March 31, 2022
Marvin Ray Raskin, Esq.	Assembly Speaker Carl E. Heastie	March 31, 2022
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Akosua Garcia Yeboah	Governor Andrew M. Cuomo	March 31, 2021