

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ANDREW P. FLEMING

**AGREED
STATEMENT OF FACTS**

A Justice of the Hamburg Village Court,
Erie County.

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and Honorable Andrew P. Fleming ("Respondent"), who is represented in this proceeding by Michael M. Mohun, Esq., that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent was admitted to the practice of law in New York in 1986. He has been a Justice of the Hamburg Village Court, Erie County, since 2006. Respondent's current term expires on April 7, 2014.

2. Respondent was served with a Formal Written Complaint dated June 5, 2013, a copy of which is appended as Exhibit 1. He filed an Answer dated June 26, 2013, a copy of which is appended as Exhibit 2.

As to Charge I

3. From in or about March 2010 through in or about September 2010, Respondent acted as attorney for a rape victim and her family, notwithstanding that Respondent had presided over prior proceedings in the underlying criminal case.

4. On June 9, 2009, Respondent issued an arrest warrant for Clarence M. Justice on charges of rape in the third degree (Penal Law §130.25[2]) and endangering the welfare of a child (Penal Law §260.10[1]). On June 11, 2009, Respondent arraigned Mr. Justice, recalled the arrest warrant, issued an order of protection on behalf of the victim, who was then 15 years old, and set bail for Mr. Justice in the amount of \$2,500 cash or \$10,000 bond. Respondent adjourned the case to August 5, 2009.

5. On July 22, 2009, Mr. Justice's employer requested the records of his criminal case from the court. Respondent approved sending the public records, with the victim's name redacted, to the employer.

6. On August 5, 2009, Mr. Justice's attorney failed to appear in court, and Respondent adjourned the case to August 12, 2009.

7. Subsequently, Mr. Justice waived a preliminary hearing, and the case was held for the grand jury. On or about August 14, 2009, the Hamburg Village Court was divested of jurisdiction over Mr. Justice's case.

8. Respondent has been acquainted with the family of Mr. Justice's victim since approximately the late 1990s. Both families were members of the Willow Bend Club, where their children participated on swim teams.

9. In approximately March of 2010, the victim's father telephoned Respondent for information about various legal aspects of Clarence Justice's criminal case, which was pending in Erie County Supreme Court. Respondent provided the father with information about the criminal justice system and legal procedures in Mr. Justice's case.

10. Between approximately March 2010 and late July 2010, Respondent engaged in several additional telephone calls with the victim's father and again provided information about the legal proceedings in Mr. Justice's case. The victim's father told Respondent that members of Mr. Justice's family and other supporters were harassing the 15-year-old victim.

11. In or about July 2010, while Mr. Justice was on trial in Supreme Court, Erie County, Respondent spoke with Lauren A. Gauthier, the prosecuting Assistant District Attorney, about allegedly harassing conduct at the courthouse by Mr. Justice's family members and supporters towards the victim.

12. On July 16, 2010, Mr. Justice was convicted of four class E felonies: two counts of rape in the third degree (Penal Law §130.25) and two counts of criminal sexual act in the third degree (Penal Law §130.40). On September 29, 2010, Mr. Justice was sentenced to four years in prison for each count.

13. After the conclusion of the *Justice* trial but prior to Mr. Justice's appearance for sentencing, Respondent telephoned and spoke with the judge presiding over the case about the alleged conduct of the Justice family and their supporters during the trial.

14. In or about late July 2010, Respondent met with the victim and her family at his law office. Respondent discussed with them legal action that could be initiated in

response to the allegedly harassing conduct of members of the Justice family and their supporters.

15. On or about July 27, 2010, Respondent sent a letter on his law office stationery to the home of a Justice family member and a friend of the family member who taught at the victim's school. Respondent stated in part:

We have been retained by the [victim's] family to pursue a civil suit against Clarence Justice and to block any further harassment of [the victim] by either you, your families or your friends. We will be preparing the suit papers against Mr. Justice in the near future. This letter is sent though to note our representation and to demand that you ***Cease and Desist*** from any further harassment of our clients [emphasis in original].

Respondent sent the letter notwithstanding that he was prohibited from representing the victim in a civil suit against Mr. Justice by Rule 100.6(B)(2).

16. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules; and failed to conduct his extra-

judicial activities as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they do not interfere with the proper performance of judicial duties and are not incompatible with judicial office, in violation of Section 100.4(A)(3) of the Rules.

Additional Factors

17. Neither Respondent nor anyone in his firm ever requested or accepted any fee or compensation for any services concerning the matter identified in this Statement.

18. Respondent has been cooperative with the Commission throughout its inquiry.

19. In his seven years on the bench, Respondent has not been previously disciplined for judicial misconduct. He regrets his failure to abide by the Rules in this instance and pledges to conduct himself in accordance with the Rules for the remainder of his term as a judge.

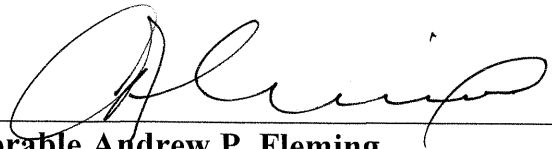
IT IS FURTHER STIPULATED AND AGREED that Respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Admonition based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive

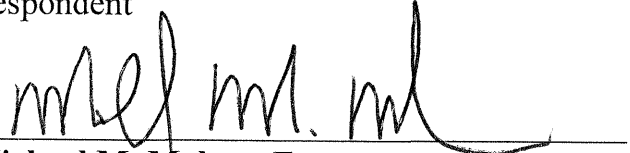
further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Admonition without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated: July 22, 2013



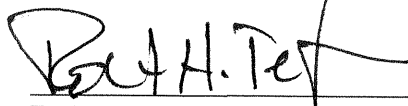
Honorable Andrew P. Fleming
Respondent

Dated: July 22, 2013



Michael M. Mohun, Esq.
Law Office of Michael M. Mohun

Dated: July 29, 2013



Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
(David M. Duguay, Of Counsel)

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

EXHIBIT 1

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

ANDREW P. FLEMING

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

a Justice of the Hamburg Village Court,
Erie County.

NOTICE is hereby given to Respondent, Andrew P. Fleming, a Justice of the Hamburg Village Court, Erie County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon Respondent the annexed Formal Written Complaint; and that, in accordance with said statute, Respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with his verified Answer to the specific paragraphs of the Complaint.

Dated: June 5, 2013
New York, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
New York, New York 10006
(646) 386-4800

To: Michael M. Mohun, Esq.
Attorney for Respondent
344 Kern Road
Cowlesville, New York 14037-9734

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

**FORMAL
WRITTEN COMPLAINT**

ANDREW P. FLEMING,

a Justice of the Hamburg Village Court,
Erie County.

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct (“Commission”), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.
2. The Commission has directed that a Formal Written Complaint be drawn and served upon Andrew P. Fleming (“Respondent”), a Justice of the Hamburg Village Court, Erie County.
3. The factual allegations set forth in Charge I state acts of judicial misconduct by Respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (“Rules”).
4. Respondent was admitted to the practice of law in New York in 1986. He has been a Justice of the Hamburg Village Court, Erie County, since 2006. Respondent’s current term expires on April 7, 2014.

CHARGE I

5. From in or about March 2010 through in or about September 2010, Respondent acted as attorney for an alleged rape victim and her family, notwithstanding that Respondent had presided over prior proceedings in the underlying criminal case.

Specifications to Charge I

6. On or about June 9, 2009, Respondent issued an arrest warrant for Clarence M. Justice on charges of rape in the third degree (Penal Law §130.25[2]) and endangering the welfare of a child (Penal Law §260.10[1]). On or about June 11, 2009, Respondent arraigned Mr. Justice, recalled the arrest warrant, issued an order of protection on behalf of the alleged victim, who was then 15 years old, and set bail for Mr. Justice in the amount of \$2,500 cash or \$10,000 bond. Respondent adjourned the case to August 5, 2009.

7. On or about July 22, 2009, Mr. Justice's employer requested the records of his criminal case from the court. Respondent approved sending the public records, with the victim's name redacted, to the employer.

8. Defense counsel failed to appear on August 5, and Respondent adjourned the case to August 12, 2009.

9. Subsequently, defendant waived a preliminary hearing, and the case was held for the grand jury. On or about August 14, 2009, the Hamburg Village Court was divested of jurisdiction over Mr. Justice's case.

10. Respondent has been acquainted with the family of Mr. Justice's victim since approximately the late 1990s. Both families were members of the Willow Bend Club, where their children participated on swim teams.

11. In approximately March of 2010, the victim's father telephoned Respondent for information about various legal aspects of Clarence Justice's criminal case, which was pending in Erie County Supreme Court. Respondent provided the father with information about the criminal justice system and legal procedures in Mr. Justice's case.

12. Between approximately March 2010 and late July 2010, Respondent engaged in several additional telephone calls with the victim's father and again provided information about the legal proceedings in Mr. Justice's case. The victim's father told Respondent that members of Mr. Justice's family and other supporters were harassing the 15-year-old victim.

13. In or about July 2010, while Mr. Justice was on trial in Supreme Court, Erie County, Respondent spoke with Lauren A. Gauthier, the prosecuting Assistant District Attorney, who called Respondent and reported allegedly harassing conduct at the courthouse by Mr. Justice's family members and supporters towards the victim.

14. On July 16, 2010, Mr. Justice was convicted of four "E" felonies: two counts of rape in the third degree (Penal Law §130.25) and two counts of criminal sexual act in the third degree (Penal Law §130.40). On September 29, 2010, Mr. Justice was sentenced to four years in prison for each count. In October 2012, two of the convictions were overturned on the ground that the prosecution had failed to introduce evidence that the defendant was more than twenty-one years old.

15. After the conclusion of the *Justice* trial but prior to Mr. Justice's appearance for sentencing, Respondent telephoned and spoke with the judge presiding over the matter and brought up the alleged conduct of the Justice family and their supporters during the trial.

16. In or about late July 2010, Respondent met with the victim and her family at his law office. Respondent discussed with them legal action that could be initiated in response to the allegedly harassing conduct of members of the Justice family and their supporters.

17. On or about July 27, 2010, Respondent sent a letter on his law office stationery to the home of a Justice family member and a friend of the family member who taught at the victim's school. Respondent stated in part:

We have been retained by the [victim's] family to pursue a civil suit against Clarence Justice and to block any further harassment of [the victim] by either you, your families or your friends. We will be preparing the suit papers against Mr. Justice in the near future. This letter is sent though to note our representation and to demand that you ***Cease and Desist*** from any further harassment of our clients [emphasis in original].

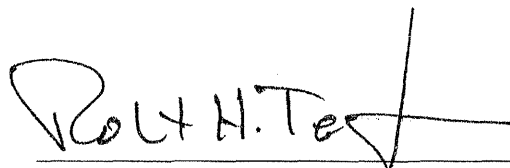
Respondent sent the letter notwithstanding that he was prohibited from representing the victim in a civil suit against Mr. Justice by Rule 100.6(B)(2).

18. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section

100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules; and failed to conduct his extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they do not interfere with the proper performance of judicial duties and are not incompatible with judicial office, in violation of Section 100.4(A)(3) of the Rules.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: June 5, 2013
New York, New York



ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
Suite 1200
New York, New York 10006
(646) 386-4800

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

VERIFICATION

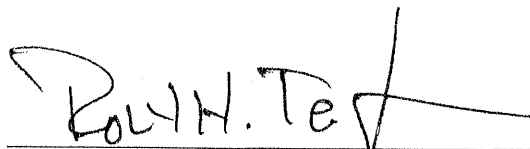
ANDREW P. FLEMING,

a Justice of the Hamburg Village Court,
Erie County.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

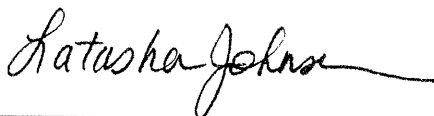
ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

1. I am the Administrator of the State Commission on Judicial Conduct.
2. I have read the foregoing Formal Written Complaint and, upon information and belief, all matters stated therein are true.
3. The basis for said information and belief is the files and records of the State Commission on Judicial Conduct.



Robert H. Tembeckjian

Sworn to before me this
5th day of June 2013

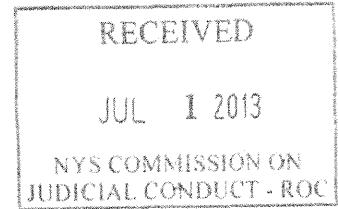


Notary Public

LATASHA Y. JOHNSON
Notary Public, State of New York
No. 01JO6235579
Qualified in New York County
Commission Expires Feb. 14, 2015

EXHIBIT 2

Law Office of
MICHAEL M. MOHUN
344 Kern Road
Cowlesville, New York 14037-9734
Tel: (585) 937-8987
Fax: (585) 937-8988
email: mmohun@aol.com
Website: www.mohunlaw.com
June 28, 2013



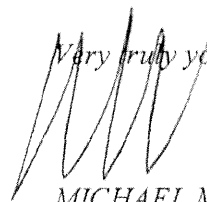
New York State Commission on Judicial Conduct
Att: David Duguay
400 Andrews Street
Rochester, NY 14604

Re: Andrew P. Fleming
Hamburg Village Court
Erie County

Dear Mr. Duguay:

Enclosed herewith please original Answer on the above matter.

Looking forward to hearing from you.

Very truly yours,

MICHAEL M. MOHUN

MMMjm
Enclosure

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

IN THE MATTER OF THE PROCEEDING
PURSUANT TO SECTION 44, SUBDIVISION 4
OF THE JUDICIARY LAW IN RELATION

ANDREW P. FLEMING

ANSWER

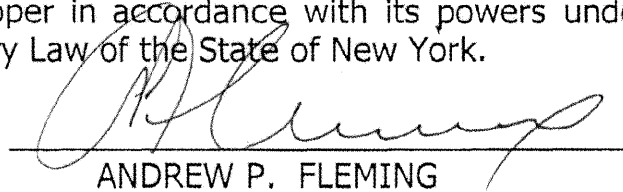
A JUSTICE OF THE HAMBURG VILLAGE COURT
ERIE COUNTY.

Respondent, Andrew P. Fleming, a Justice of the Hamburg Village Court, answers the Formal Written Complaint as follows:

- 1) Lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2.
- 2) Denies the allegations set forth in paragraphs 3 and 18.
- 3) Admits the allegations contained in paragraphs 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, and 17 of the Complaint.
- 4) Admits that part of paragraph 13 regarding respondent's conversation with Lauren A. Gauthier but denies the allegation that the conversation was initiated by Ms. Gauthier.
- 5) Admits that part of paragraph 14 regarding the jury verdict but lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding the subsequent "overturning" of two of Mr. Justice's convictions.

Wherefore, the respondent requests that the State Commission on Judicial Conduct dismiss the Formal Written Complaint and for such other and further relief it deems just and proper in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: June 26, 2013



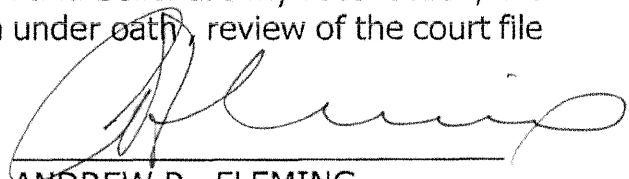
ANDREW P. FLEMING
Justice: Hamburg Village Court

VERIFICATION

STATE OF NEW YORK:
COUNTY OF ERIE:

ANDREW P. FLEMING, being duly sworn, deposes and says:

- 1) I am a Justice of Hamburg Village Court and respondent therein.
- 2) I have read the foregoing Answer and upon information and belief, all matters stated therein are true.
- 3) The basis for said information and belief are my recollection, the transcript of the examination under oath, review of the court file and review of my file.



ANDREW P. FLEMING
Justice: Hamburg Village Court

Sworn to before me this
26th day of June, 2013



NOTARY PUBLIC

KELLY M. WILDER
Notary Public, State of New York
Qualified in Erie County
My Commission Expires September 7, 2014