

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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

**HOWARD GERBER,**

a Justice of the Clarkstown Town Court,  
Rockland County.  
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**AGREED  
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct  
("Commission"):

**IT IS HEREBY STIPULATED AND AGREED** by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Honorable Howard Gerber ("Respondent"), who is represented in this proceeding by Deborah A. Scalise, Esq., of Scalise & Hamilton P.C., 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 1983. He has been a Justice of the Clarkstown Town Court, Rockland County, since 2007. Respondent's current term expires December 31, 2023.

2. Respondent was served with a Formal Written Complaint dated January 30, 2020. He enters into this Agreed Statement of Facts in lieu of filing an Answer.

**As to Charge I**

3. On three occasions, from August 2017 through November 2017,

Respondent made inappropriate comments to and about lawyers and others with whom he dealt in his official capacity.

**As to the Specifications to Charge I**

*As to the Rockland County Departments of Probation and Health*

4. From November 8, 2017, to January 3, 2018, Respondent presided over *People v M.R.*, in which the defendant was charged with a Violation of Probation (“VOP”) relating to his conviction for a misdemeanor sexual offense. The VOP was filed on behalf of the Rockland County Department of Probation on a petition by Probation Officer Page Ehrhardt (“Officer Ehrhardt”).

5. On November 8, 2017, Respondent presided over a conference in the *M.R.* case. The conference was held in a jury deliberation room at the Clarkstown Town Court. Respondent, Officer Ehrhardt, defense attorney Michael Collado, and Assistant District Attorney (“ADA”) Joanna McKeegan were present.

6. During the conference, in the presence of the aforementioned participants, Respondent looked, pointed, and/or nodded at Officer Ehrhardt and said that he had problems with “your department” because the underlying facts of the case were reminiscent of *People v C.P.*, a VOP matter over which Respondent had presided eight years earlier.

7. Referring to Supervising Probation Officer Jennifer Williams (“Officer Williams”) and *People v C.P.*, Respondent said that Officer Williams was a “liar” who had “perjured herself” while appearing before him in that matter. Respondent further

said that he had come “this close to putting [Officer Williams] in jail” because he believed that she had failed to inform him that C.P. had reported to the Department of Probation on the same day she filed an application that sought C.P.’s arrest and alleged that C.P.’s whereabouts were unknown to her at that time.

8. Also referring to the *C.P.* matter, and to James Foley, a Sex Offender Treatment Specialist with the Rockland County Department of Health who had testified before Respondent in that matter, Respondent gestured with his fingers to connote quotation marks when referring to Mr. Foley as the “sex offender treatment specialist” who had testified in the prior matter. Respondent then said that Mr. Foley had received his training “through the mail,” referencing the fact that Mr. Foley had completed certain courses online, notwithstanding that Mr. Foley has a master’s degree in social work and certifications in the treatment of juvenile and adult sex abusers.

9. Although Officer Williams supervised Officer Ehrhardt at the Department of Probation, and although Officer Ehrhardt worked closely with Mr. Foley, Respondent failed to disqualify himself from the *M.R.* case, notwithstanding the negative views he expressed regarding Officer Williams, Mr. Foley, and the Department of Probation.

10. The *M.R.* case was settled on January 3, 2018, by agreement of the parties under new terms that they independently worked out without any input from Respondent.

*As to an Assistant District Attorney and a Motor Vehicle Case Defendant*

11. ADA Joanna McKeegan was assigned by her office to appear in Respondent’s courtroom from April 2016 to December 2017, during which time she

regularly appeared four days a month to prosecute misdemeanors and other criminal matters which were unrelated to Vehicle and Traffic Law ("VTL") matters involving vehicle registration.

12. From May 2017 to September 2017, Respondent presided over *People v M.G.*, in which a ticket had been issued to a parked car, pursuant to VTL 401-1a, for lacking proper registration. At various times in connection with this matter, M.G., her son E.G, and her daughter L.G. appeared in court without counsel. At one appearance, after M.G. and/or one of her children made admissions against their interest, Respondent suggested that they retain counsel. Subsequently, ADA McKeegan informed Respondent that her office was interested in investigating and prosecuting the matter.

13. On August 14, 2017, ADA McKeegan appeared for a conference in the matter with Respondent and defense attorney Scott Feiden. During a conversation among those present regarding L.G.'s attire at past appearances, Respondent said in words or substance that L.G. was "dressing for attention," by which he meant "for men to look at her."

14. During the same conference, someone commented that L.G. had worn "yoga pants" to court.<sup>1</sup> Respondent thereafter commented in words or substance to ADA McKeegan: "I don't care what anybody wears, Ms. McKeegan, if you wear yoga pants to court, it's okay with me." When ADA McKeegan did not respond,

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<sup>1</sup> While there are differing recollections as to who said L.G. had been wearing yoga pants, it is agreed by the parties that regardless of who said it, Respondent's rejoinder regarding Ms. McKeegan was inappropriate.

Respondent said in words or substance, "Oh, I should not have said that. Are there cameras in here?"

*As to an Assistant District Attorney and Her Friend*

15. Peter Boyle is a friend of ADA Joanna McKeegan.

16. In the summer of 2017, at a time when he was visiting from London, England, Mr. Boyle came to observe ADA McKeegan work on cases in Respondent's courtroom. She introduced him to Respondent, and the two men spoke briefly.

17. At the end of the court session, when ADA McKeegan, Mr. Boyle, and Respondent were the only people left and Respondent was walking out of the courtroom, he asked if ADA McKeegan and Mr. Boyle "want[ed] a room." Respondent then offered in words or substance to "turn off the lights" for ADA McKeegan and Mr. Boyle, intending to make an off-color joke.

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 patient, dignified and courteous to litigants, jurors,

witnesses, lawyers and others with whom he deals in an official capacity, in violation of Section 100.3(B)(3) of the Rules; and failed to disqualify himself in a proceeding in which his impartiality might reasonably be questioned, in violation of Section 100.3(E)(1) of the Rules.

**Additional Factors**

19. Respondent has been cooperative, candid, and contrite throughout the Commission's inquiry and has had an otherwise unblemished career as a judge.

20. Respondent appreciates that he is obliged to discharge his judicial duties in a fair and impartial manner and that disparaging remarks such as he made about Officer Williams, Mr. Foley, and the Department of Probation during *People v M.R.* undermine public confidence in his fairness and impartiality. Respondent now recognizes that he should have disqualified himself from *People v M.R.* after making the remarks.

21. Respondent acknowledges that his comments regarding the attire of a VTL litigant were inappropriate. He regrets his remarks and pledges to refrain from making similar comments in the future.

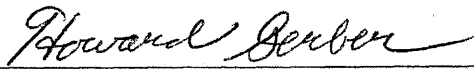
22. Respondent regrets his remarks to ADA McKeegan and Mr. Boyle. He recognizes that the remarks, which he intended to be humorous, were inappropriate and injudicious.

**IT IS FURTHER STIPULATED AND AGREED** that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the

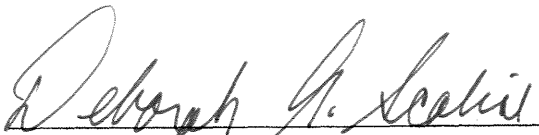
appropriate sanction is a public Admonition based upon the judicial misconduct set forth above.

**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.

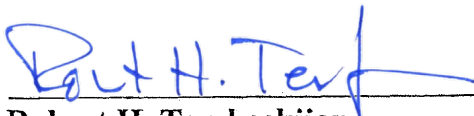
Dated: 4/21/2020

  
**Honorable Howard Gerber**  
Respondent

Dated: 4/21/2020

  
**Deborah A. Scalise**  
Scalise & Hamilton PC

Dated: April 21, 2020

  
**Robert H. Tembeckjian**  
Administrator & Counsel to the Commission  
(Mark Levine and Daniel W. Davis, Of Counsel)