

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

HOWARD GERBER,

a Justice of the Clarkstown Town Court,
Rockland County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Howard Gerber, a Justice of the Clarkstown Town Court, Rockland 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 New York office, 61 Broadway, Suite 1200, New York, New York 10006, with his verified Answer to the specific paragraphs of the Complaint.

Dated: January 30, 2020
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

To: Deborah A. Scalise, Esq.
Attorney for Respondent
Scalise & Hamilton PC
670 White Plains Road, Suite 325
Scarsdale, New York 10583

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**

HOWARD GERBER,

a Justice of the Clarkstown Town Court,
Rockland 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 Howard Gerber (“Respondent”), a Justice of the Clarkstown Town Court, Rockland 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 1983. He has been a Justice of the Clarkstown Town Court, Rockland County, since 2007. Respondent’s current term expires on December 31, 2023.

CHARGE I

5. From in or about August 2017 through in or about November 2017, Respondent made intemperate, discourteous and otherwise inappropriate comments to and about lawyers and others with whom he dealt in his official capacity.

Specifications to Charge I

As to the Rockland County Departments of Probation and Health

6. On or about November 8, 2017, to on or about January 3, 2018, Respondent presided over *People v M.R.*, in which the defendant was charged with a Violation of Probation, brought by the Rockland County Department of Probation on a petition by Probation Officer Page Ehrhardt.

7. On or about November 8, 2017, Respondent presided over a conference in the *M.R.* case 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.

8. During the conference, in the presence of the aforementioned participants, Respondent looked, pointed and/or nodded at Officer Ehrhardt and said numerous times that he had problems with “your department.”

9. Referring to Supervising Probation Officer Jennifer Williams and an unrelated Violation of Probation matter that had been brought approximately nine years earlier against a sex offender, Respondent *sua sponte* said Officer Williams was a “liar” who had “perjured herself” while appearing before him in that matter, and that he had come “this close to putting her in jail.”

10. Referring to the same unrelated Violation of Probation matter that had been brought approximately nine years earlier, and to James Foley, a Sex Offender Treatment Specialist with the Rockland County Department of Health who had testified before Respondent in that prior 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 *sua sponte* said Mr. Foley had received his training “through the mail,” notwithstanding that Mr. Foley has a master’s degree in social work and certifications in the treatment of juvenile and adult sex abusers.

11. 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.

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

12. ADA Joanna McKeegan was assigned by her office to appear in Respondent’s courtroom from approximately April 2016 to approximately December 2017, during which time she regularly appeared four days a month to prosecute misdemeanors and Vehicle and Traffic Law (VTL) matters.

13. From in or about May 2017 to in or about 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.

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

15. Respondent thereafter commented in words or substance to ADA McKeegan: "Ms. McKeegan, if you wear yoga pants to court, it's okay with me." When ADA McKeegan did not respond, 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

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

17. In or about the late 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.

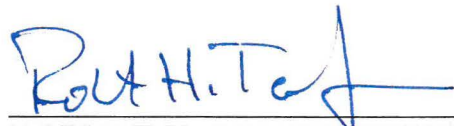
18. At the end of the court session, when ADA McKeegan, Mr. Boyle, and Respondent were the only people left and Respondent was walking out of the courtroom, he asked if ADA McKeegan and Mr. Boyle "want[ed] a room" and offered in words or substance to "turn off the lights" for ADA McKeegan and Mr. Boyle, intending it to convey a sexual connotation.

19. 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; and 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.

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: January 30, 2020
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,
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VERIFICATION

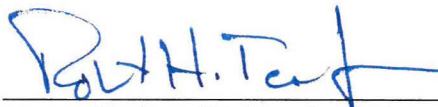
HOWARD GERBER,

a Justice of the Clarkstown Town Court,
Rockland County.

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

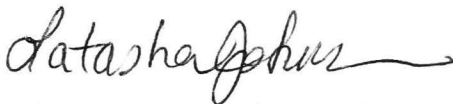
ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

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
30th day of January 2020



Notary Public

LATASHA Y. JOHNSON
Notary Public, State of New York
No.01JO6235579
Qualified in New York County
Commission Expires February 14, 2023

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MANDATORY: Judge's Home Address

In the event that a determination of the Commission on Judicial Conduct is made in the above matter requiring transmittal to the Chief Judge and service upon the judge in accordance with Judiciary Law § 44, subd. 7, the Court of Appeals has asked the Commission to provide the judge's home address.

Judge's Home Address

OPTIONAL: Request and Authorization to Notify Judge's Attorney of Determination

In the event that a determination of the Commission on Judicial Conduct is made in the above matter requiring transmittal to the Chief Judge and service upon me in accordance with Judiciary Law § 44, subd. 7, the undersigned judge or justice:

(1) requests and authorizes the Chief Judge to cause a copy of my notification letter from her and a copy of the determination to be sent to my attorney(s) by mail:

Attorney's Name, Address, Telephone

(2) requests and authorizes the Clerk of the Commission to transmit this request to the Chief Judge together with the other required papers.

This request and authorization shall remain in force unless and until a revocation in writing by the undersigned judge or justice is received by the Commission.

Dated:

Signature of Judge or Justice

Acknowledgment:

Signature of Attorney for Judge or Justice

SEND TO: Clerk of the Commission
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006