



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

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## NEWS RELEASE

*October 8, 2013*

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### **Erie County Village Justice Should Be Admonished for Misconduct Related to His Practice of Law**

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The New York State Commission on Judicial Conduct has determined that Andrew P. Fleming, a Justice of the Hamburg Village Court, Erie County, should be admonished for acting as an attorney for a rape victim and her family notwithstanding that he had presided over prior proceedings in the underlying criminal case.

In 2009 Judge Fleming arraigned a defendant accused of a felony rape charge. After the judge's court was divested of jurisdiction, the victim's father, with whom the judge was acquainted, asked the judge for information on various legal aspects of the criminal case which was pending in Erie County Supreme Court. Judge Fleming provided information about the justice system and legal procedures.

Throughout the duration of the criminal case, which resulted in the defendant's conviction, the judge had several additional conversations with the victim's family and spoke to the Assistant District Attorney prosecuting the case. Prior to sentencing, Judge Fleming contacted the judge presiding over the criminal case and spoke to him about the alleged harassment of the victim by the defendant's

family and supporters. The judge also sent a letter on his law firm stationery to a friend and a family member of the defendant, noting that he had been retained as counsel for the victim and her family to commence a civil suit and demanded that they “cease and desist” from any further harassment.

In its determination the Commission stated: “A part-time judge who practices law must maintain a strict separation between the exercise of judicial duties and the judge’s private practice of law.” The Commission wrote that having arraigned the defendant and issued an order of protection on behalf of the victim, Judge Fleming “should have recognized that it was improper for him to represent the victim in any related matters.”

The Commission concluded that “Even if [Judge Fleming] was motivated by a sincere desire to help the young victim of a crime whose family he knew, the ethical rules precluded him from acting as her advocate.” The Commission stated: “Every lawyer-judge has a responsibility to scrupulously adhere to the applicable restrictions on the practice of law in order to avoid conduct that may create an appearance of impropriety and impugn the integrity and independence of the judiciary.”

Judge Fleming, has served as a Justice of the Hamburg Village Court since 2006. His current term expires on April 7, 2014.

### **The Commission Proceedings**

Judge Fleming was served with a Formal Written Complaint dated June 5, 2013, containing one charge, and filed an answer dated June 26, 2013.

On July 29, 2013, the Administrator of the Commission, Judge Fleming and Judge Fleming’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 September 19, 2013.

### **The Commission Determination**

The Commission filed a determination dated September 30, 2013, in which ten members concurred: Judge Thomas A. Klonick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joseph W. Belluck, Esq., Joel Cohen, Esq., Jodie Corngold, Richard D. Emery, Esq., Paul B. Harding, Esq., Richard A. Stoloff, Esq., and Judge David A. Weinstein.

There is currently one vacancy on the 11-member Commission.

### **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 Fleming received it on October 4, 2013, 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 Fleming 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 251 determinations of admonition against judges in New York State. The Commission has issued 307 determinations of censure and 167 determinations of removal.

The Court of Appeals has reviewed 93 Commission determinations. The Court accepted the Commission's sanctions in 77 cases (68 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 Fleming was represented by Michael M. Mohun, Esq., of Mohun & Killelea, 344 Kern Road, Cowlesville, New York 14037, (585) 937-8987.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Senior Attorney David M. Duguay. Senior Investigator Rebecca Roberts assisted in the investigation.

**Background Information on Judge Fleming**

First took office:	2006
Current Term Expires:	April 7, 2014
Year Admitted to the New York State Bar:	1986
Judicial Salary:	\$15,206 (Source: Village of Hamburg 2013-2014 Budget)
Prior Judicial Office:	None
Other Employment:	Partner with the law firm of Chiacchia & Fleming, LLP

**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>
Hon. Thomas A. Klonick, Chair	Chief Judge Jonathan Lippman	March 31, 2017
Hon. Terry Jane Ruderman, Vice Chair	Chief Judge Jonathan Lippman	March 31, 2016
Hon. Rolando T. Acosta	Chief Judge Jonathan Lippman	March 31, 2014
Joseph W. Belluck, Esq.	Governor Andrew M. Cuomo	March 31, 2016
Joel Cohen, Esq.	Assembly Speaker Sheldon Silver	March 31, 2014
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2015
Richard D. Emery, Esq.	Former Senate Minority Leader John L. Sampson	March 31, 2016
Paul B. Harding, Esq.	Former Assembly Minority Leader James Tedisco	March 31, 2017
Richard A. Stoloff, Esq.	Senate President Pro Tem Dean Skelos	March 31, 2015
Hon. David A. Weinstein	Governor Andrew M. Cuomo	March 31, 2014
Vacant	Governor	March 31, 2017