



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

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## NEWS RELEASE

*November 27, 2018*

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### **Town Court Justice in Cattaraugus County Should be Admonished for Presiding over 3 Cases Despite Discussing the Matter Out of Court**

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The New York State Commission on Judicial Conduct has determined that David F. Porter, a Justice of the Allegany Town Court, Cattaraugus County, should be admonished for failing to disqualify himself from three criminal cases arising from a boundary dispute involving his neighbor's daughter, despite having discussed the matter in his home with the neighbor a few months earlier.

Judge Porter agreed to the admonition.

In 2015, Judge Porter spoke with a neighbor who came to his home seeking his assistance as a judge with a boundary dispute involving his daughter and her neighbors. Judge Porter (1) said the court could not become involved until charges were brought, (2) told the neighbor to contact law enforcement directly and (3) provided the names of seven officers who lived nearby.

In its determination the Commission stated: "The moment that [Judge Porter] welcomed his neighbor into his home and began to discuss the dispute, he should have realized that he was engaging in an ex parte conversation that would require his disqualification if the matter came to his court."

However, “instead of immediately stepping down when three cases arising out of the dispute came before him, or even disclosing his earlier discussion with his neighbor, [Judge Porter] issued a criminal summons, conducted the arraignments and made determinations regarding the issuance of an order of protection.” The judge later disqualified himself in the cases.

In considering the appropriate sanction, the Commission noted that the judge has “acknowledged his misconduct and now realizes his ethical obligations in such circumstances and commits to adhering to them stringently should similar situations arise in the future.”

Judge Porter, who is not an attorney, has served as a Justice of the Allegany Town Court since 2006. His current term expires on December 31, 2021.

### **The Commission Proceedings**

Judge Porter was served with a Formal Written Complaint dated May 7, 2018, containing one charge.

On September 24, 2018, the Administrator of the Commission, Judge Porter and Judge Porter’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 October 25, 2018.

### **The Commission Determination**

The Commission filed a determination dated November 13, 2018, in which 10 members concurred: Joseph W. Belluck, Esq. (the Commission Chair), Paul B. Harding, Esq. (the Vice Chair), Jodie Corngold, Judge John A. Falk, Taa Grays, Esq., Judge Leslie G. Leach, Judge Angela M. Mazzarelli, Judge Robert J. Miller, Marvin Ray Raskin, Esq., and Akosua Garcia Yeboah.

One member, Richard A. Stoloff, Esq., was not present.

### **Statement by Commission Administrator**

Commission Administrator Robert H. Tembeckjian made the following statement.

“It undermines confidence in the court’s impartiality when a judge presides over a matter despite having prior, private, substantive conversations about it with an

interested party. To his credit, Judge Porter acknowledges his error and pledges to avoid such conduct in the future.”

### **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 Porter received it on November 19, 2018, 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 Porter 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 270 determinations of admonition against judges in New York State. The Commission has issued 172 determinations of removal and 322 determinations of censure.

The Court of Appeals has reviewed 99 Commission determinations. The Court accepted the Commission's sanctions in 83 cases (74 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.

**Counsel**

In the proceedings before the Commission, Judge Porter was represented by Vincent E. Doyle, III, of Connors LLP, 1000 Liberty Building, 424 Main Street, Buffalo, NY 14202, (716) 852-5533.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission; John J. Postel, Deputy Administrator in Charge of the Rochester office; and Senior Attorney David M. Duguay. Investigator Vanessa Mangan assisted in the investigation.

**Background Information on Judge Porter**

First took office: 2006  
Current Term Expires: December 31, 2021

**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

**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, 2020
Paul B. Harding, Esq., Vice Chair	Assembly Minority Leader Brian M. Kolb	March 31, 2021
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2019
Taa Grays, Esq.	Senate Minority Leader Andrea Stewart-Cousins	March 31, 2020
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Hon. Robert J. Miller	Governor Andrew M. Cuomo	March 31, 2022
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Richard A. Stoloff, Esq.	Former Senate President Pro Tem Dean Skelos	March 31, 2019
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