



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

March 19, 2021

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Town Justice in Cayuga County Resigns While Under Investigation for Threats, Harassment and Vulgarity Toward Two Women, and Other Misconduct

Mark A. DiVietro, a Justice of the Owasco Town Court, Cayuga County, resigned while under investigation by the New York State Commission on Judicial Conduct for harassment of two women and for engaging in unauthorized *ex parte* communications with the defendant and others in an unrelated matter. Judge DiVietro, who left office on March 15, 2021, agreed never to seek or accept judicial office at any time in the future. The Commission accepted a stipulation to that effect signed by the judge and the Commission's Administrator and closed its investigation.¹

In July 2020, the Commission apprised Judge DiVietro that it was investigating allegations that in the fall of 2018, he repeatedly sent text messages to his then-girlfriend that contained threats about a former girlfriend. It was alleged that many of the text messages were vulgar, crude, demeaning and/or featured extreme gender-based slurs and profanity.

¹ The Stipulation was signed on March 11, 2021. The Commission accepted it and issued an order closing the matter on March 18, 2021.

The Commission also apprised Judge DiVietro that the Commission was investigating allegations that after arraigning a defendant on two felony charges and one misdemeanor charge in April 2019, he repeatedly engaged in authorized *ex parte* communications about the case with the defendant and multiple other individuals and, during one of the defendant's appearances in court, allegedly gave the defendant personal advice about how to avoid having his firearms confiscated by law enforcement authorities.

Judge DiVietro waived the statutory provision of confidentiality applicable to Commission proceedings, to the limited extent that the stipulation and Commission's order accepting it and closing the case would be public.

Judge DiVietro, who is not an attorney, had been a Justice of the Owasco Town Court, Cayuga County, since 2011. His current term would have expired on December 31, 2022.

The stipulation and the Commission's order closing the case can be found on the Commission's website: www.cjc.ny.gov.

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

"There is no place in our courts for a judge who engages in threatening, harassing and sexually demeaning behavior toward anyone. The allegations against Judge DiVietro were serious, and after the Commission investigated, he chose to resign from the bench permanently rather than face a formal removal proceeding."

Statistics Relating to Prior Commission Decisions

The Commission has accepted 101 such stipulations since the procedure was instituted in 2003.

Since 1978, the Commission has issued 276 determinations of admonition against judges in New York State, 337 determinations of censure and 175 determinations of removal.

The Court of Appeals has reviewed 101 Commission determinations. The Court accepted the Commission's sanctions in 85 cases (76 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 DiVietro represented himself.

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 M. Kathleen Martin. Senior Investigator Vanessa Mangan was assigned to the case.

Background Information on Judge DiVietro

| | |
|-----------------------|-------------------|
| First Took Office: | 2011 |
| Current Term Expires: | December 31, 2022 |

Members of the Commission

The Commission members serve four-year terms. A list of members is appended.

The Public File

The stipulation and order are attached. They are also available for inspection during regular business hours at the Commission's three offices:

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| <p>61 Broadway Suite 1200 New York, New York 10006</p> | <p>Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223</p> | <p>400 Andrews Street Suite 700 Rochester, New York 14604</p> |
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MEMBERS OF THE STATE COMMISSION ON JUDICIAL CONDUCT

| Member | Appointing Authority | Term End |
|--------------------------------|---|-----------------|
| Joseph W. Belluck, Esq., Chair | Governor Andrew M. Cuomo | March 31, 2024 |
| Taa Grays, Esq., Vice Chair | Senate President Pro Tem Andrea Stewart-Cousins | March 31, 2023 |
| Hon. Fernando M. Camacho | Chief Judge Janet DiFiore | March 31, 2024 |
| Jodie Corngold | Governor Andrew M. Cuomo | March 31, 2023 |
| Hon. John A. Falk | Chief Judge Janet DiFiore | March 31, 2021 |
| Paul B. Harding, Esq. | Former Assembly Minority Leader Brian M. Kolb | March 31, 2021 |
| Hon. Angela M. Mazzarelli | Chief Judge Janet DiFiore | March 31, 2022 |
| Hon. Robert J. Miller | Governor Andrew M. Cuomo | March 31, 2022 |
| Marvin Ray Raskin, Esq. | Assembly Speaker Carl E. Heastie | March 31, 2022 |
| Ronald J. Rosenberg, Esq. | Former Senate Minority Leader John J. Flanagan | March 31, 2024 |
| Akosua Garcia Yeboah | Governor Andrew M. Cuomo | March 31, 2021 |