

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

MICHAEL R. CLARK,

STIPULATION

A Justice of the Hastings Town Court,
Oswego County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Michael R. Clark (“Respondent”), who is represented in these proceedings by Michael A. Santo, of Duffy & Duffy, LLC, as follows:

1. Respondent has been a Justice of the Hastings Town Court, Oswego County, since January 1, 2000. Respondent’s current term expires on December 31, 2015.

Michael R. Clark is not an attorney.

2. Respondent was served with a Formal Written Complaint dated July 2, 2014, containing six charges alleging that:

- From on or about April 27, 2011, to on or about July 13, 2011, Respondent presided over *People v Brett M. Bulson*, *People v Joseph Scafidi* and *People v Christopher J. Terry*, engaged in *ex parte* conversations with the defendants in each case, and then dismissed and/or reduced charges, without notice to or the consent of the prosecution, contrary to Criminal Procedure Law (“CPL”) §§ 170.40, 170.45, 210.45, 220.10(3) and 340.20;
- On or about July 13, 2011, in presiding over the defendant’s arraignment in *People v Timothy B. Fuller*, Respondent failed to afford Mr. Fuller an opportunity to be heard on bail as required by CPL § 510.20(2), and did not

make a bail determination on the basis of the factors and criteria set forth in CPL § 510.30(2)(a);

- On or about July 13, 2011, Respondent arraigned the defendant in *People v Matthew J. Stuper* and increased Mr. Stuper's bail in a rude, discourteous and retaliatory manner. Subsequently, on or about September 21, 2011, Respondent acted without basis in law in issuing Mr. Stuper a one-year order of protection after granting a six-month adjournment in contemplation of dismissal involving a non-family offense;
- On or about September 8, 2010, in *People v Thor E. Lentz*, Respondent imposed conditions upon the defendant's recognizance release that were without basis in law and unrelated to the purpose of bail;
- On or about February 9, 2011, and on or about July 13, 2011, in *People v Adam J. Colbert*, Respondent spoke to Mr. Colbert in a discourteous and demeaning manner about his physical appearance and, on or about July 13, 2011, when imposing sentence, imposed a condition pertaining to Mr. Colbert's physical appearance; and
- On or about November 10, 2010, John Doe, an unrepresented minor, appeared before Respondent for arraignment on a traffic infraction, accompanied by his father. Respondent (1) failed to advise the defendant that he had a right to be represented by counsel, (2) asked the minor defendant potentially incriminatory questions about his conduct, notwithstanding that the defendant had not entered a guilty plea, (3) coerced the defendant to return to his parents' home and directed the defendant to bring his high school report card to court as conditions of being able to negotiate a plea agreement with the District Attorney and (4) threatened to impose a jail sentence if the defendant did not do as Respondent directed.

3. The Formal Written Complaint is appended as Exhibit 1.

4. Respondent filed an Answer dated August 5, 2014, which is appended as

Exhibit 2.

5. Respondent affirms that he will vacate his judicial office on May 31, 2015, in accordance with his resignation letter dated February 3, 2015, a copy of which is annexed as Exhibit 3.

6. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of a judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

7. Respondent affirms that he will neither seek nor accept judicial office at any time in the future.

8. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceedings before the Commission will be revived and the matter will proceed to a hearing before a referee.

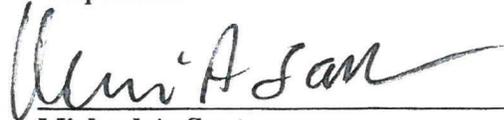
9. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

10. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that this Stipulation and the Commission's Decision and Order regarding this Stipulation will become public on or after May 31, 2015. However, the Administrator is authorized to release this Stipulation to the public in advance of May 31, 2015, should Respondent seek to withdraw from it at any time, or rescind his letter of resignation, or remain in office beyond May 31, 2015, or otherwise abrogate the terms of this Stipulation.

Dated: February 3, 2015


Honorable Michael R. Clark
Respondent

Dated: 2/3/15


Michael A. Santo
Duffy & Duffy, PLLC
Attorney for Respondent

Dated: Feb. 24, 2015

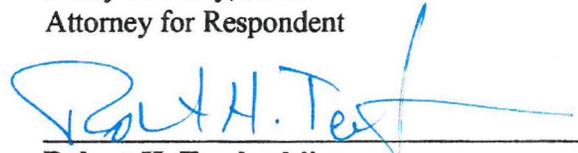

Robert H. Tembeckjian
Administrator and Counsel to the Commission
(David M. Duguay, Of Counsel)

EXHIBIT 1

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

MICHAEL R. CLARK,

a Justice of the Hastings Town Court,
Oswego County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Michael R. Clark, a Justice of the Hastings Town Court, Oswego 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 Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with his verified Answer to the specific paragraphs of the Complaint.

Dated: July 2, 2014
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: Honorable Michael R. Clark
Justice of the Hastings Town Court
1134 U.S. Route 11
Central Square, New York 13036

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

MICHAEL R. CLARK,

a Justice of the Hastings Town Court,
Oswego County.

**FORMAL
WRITTEN COMPLAINT**

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 Michael R. Clark (“Respondent”), a Justice of the Hastings Town Court, Oswego County.
3. The factual allegations set forth in Charges I, II, III, IV, V and VI 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 has been a Justice of the Hastings Town Court, Oswego County, since January 1, 2000. Respondent’s current term expires on December 31, 2015. He is not an attorney.

CHARGE I

5. From on or about April 27, 2011, to on or about July 13, 2011, Respondent presided over *People v Brett M. Bulson*, *People v Joseph Scafidi* and *People v Christopher J. Terry*, engaged in *ex parte* conversations with the defendants in each case, and then dismissed and/or reduced charges, without notice to or the consent of the prosecution, contrary to Criminal Procedure Law (“CPL”) §§ 170.40, 170.45, 210.45, 220.10(3) and 340.20.

Specifications to Charge I

People v Brett M. Bulson

6. On or about April 27, 2011, Respondent presided over *People v Brett M. Bulson*, in which Mr. Bulson was charged with operating a motor vehicle with a suspended or revoked registration, in violation of Vehicle & Traffic Law (“VTL”) § 512, an unclassified misdemeanor, and speeding, in violation of VTL § 1180 (d), a traffic infraction.

7. The Oswego County District Attorney’s Office had offered to reduce the VTL § 512 charge to a charge of operating an unregistered vehicle, in violation of VTL § 401 (1) (a), and the speeding charge to a charge of parking on the pavement, in violation of VTL § 1201 (a).

8. On or about April 27, 2011, Respondent initially accepted Mr. Bulson’s plea of guilty to violating VTL § 401 (1) (a) and sentenced him to a conditional discharge with an \$85 surcharge. Respondent also accepted Mr. Bulson’s plea of guilty to the parking violation and imposed no fine or surcharge for that offense.

9. Later in the proceeding, Respondent learned that Mr. Bulson had served in Iraq for the United States military. Respondent then *sua sponte*, and without notice to or the consent of the District Attorney's Office, stated:

I don't like the resolution of this. So, I'm going to dismiss the 401[1] [a] in the interest of justice, and the other one's a parking ticket, and you don't owe us nothing on it anyway. Okay?

People v Joseph Scafidi

10. On or about June 1, 2011, Respondent presided over *People v Joseph Scafidi*.

11. Mr. Scafidi had been charged with petit larceny (Penal Law § 155.25), a class A misdemeanor, and two counts of criminal possession of a forged instrument in the third degree (Penal Law § 170.20), a class B misdemeanor. Mr. Scafidi had also been charged with aggravated unlicensed operation of a motor vehicle in the third degree (VTL § 511 [1] [a]), an unclassified misdemeanor, and making an improper or unsafe turn (VTL § 1163 [a]), a traffic violation.

12. In accordance with a written plea recommendation by the Oswego County District Attorney's Office, Respondent accepted Mr. Scafidi's plea of guilty to a reduced charge of disorderly conduct (Penal Law § 240.20), in satisfaction of the petit larceny charge, and dismissed the forgery charges. Respondent imposed a conditional discharge after Mr. Scafidi's attorney, Charles E. Pettit, informed him that Mr. Scafidi had already paid restitution in the case and performed 45 hours of community service at a local cemetery.

13. After imposing the conditional discharge, Respondent, in the absence of the prosecution, asked Mr. Scafidi if he had “straightened out” his outstanding traffic matters in other jurisdictions. Mr. Scafidi responded that he had resolved charges in two jurisdictions, and had an outstanding fine of \$575 and a \$70 suspension penalty in a third jurisdiction. Mr. Scafidi presented no proof of his representations.

14. Notwithstanding that the District Attorney’s Office had made no plea offer regarding the VTL charges, and without notice to or the consent of the prosecution, Respondent reduced the aggravated unlicensed operation of a motor vehicle charge to an unlicensed driving charge and dismissed the improper or unsafe turn charge.

15. Respondent accepted Mr. Scafidi’s plea of guilty to the unlicensed driving charge, imposed a conditional discharge and an \$85 surcharge.

16. At the conclusion of Mr. Scafidi’s appearance, Respondent commented, “Oh, by the way, thanks for helping with the cemetery Appreciate that.”

People v Christopher J. Terry

17. On or about July 13, 2011, Respondent arraigned Christopher J. Terry for failing to obey a traffic control device (VTL § 1110 [a]), a traffic infraction.

18. Respondent advised Mr. Terry of his right to counsel and his “right to petition the district attorney’s office and talk to them and ask for a reduction” Respondent asked Mr. Terry if he wished to communicate with a prosecutor in person or by mail and explained to Mr. Terry that the charged “two-point violation” might be reduced to a “parking ticket.”

19. Respondent asked Mr. Terry where he worked, and Mr. Terry replied, "I am finishing my internship at Calvary Baptist Church in Brewerton."

20. After discussing Mr. Terry's volunteer work, place of residence, and driving history, Respondent stated, "Okay, I'm going to dismiss this case in the interest of justice, *sua sponte*. You understand?" The charge was dismissed.

21. 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 faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, failed to accord every person who has a legal interest in a proceeding the right to be heard according to law, in violation of Section 100.3(B)(6) of the Rules, and engaged in unauthorized *ex parte* communications, in violation of Section 100.3(B)(6) of the Rules.

CHARGE II

22. On or about July 13, 2011, in presiding over the defendant's arraignment in *People v Timothy B. Fuller*, Respondent failed to afford Mr. Fuller an opportunity to be

heard on bail as required by CPL § 510.20(2), and did not make a bail determination on the basis of the factors and criteria set forth in CPL § 510.30(2)(a).

Specifications to Charge II

23. On or about July 13, 2011, Respondent arraigned Timothy B. Fuller, who had appeared in response to an appearance ticket, on the charges of menacing in the third degree (Penal Law § 120.15), a misdemeanor, and harassment in the second degree (Penal Law § 240.26[1]), a violation.

24. After Respondent read the charges, advised Mr. Fuller of his right to counsel, and ascertained that Mr. Fuller was unemployed and qualified for appointed counsel, Respondent stated, "Well, you're being taken into custody. We'll make your bail \$1,500 cash."

25. Respondent inquired if there was an attorney in the courtroom that wished to represent Mr. Fuller, and Mara J. Holst accepted the assignment. The following exchange then occurred:

RESPONDENT: You're going to probably make a motion for ROR or pre-trial, or something of that sort.

MS. HOLST: Yes, judge.

RESPONDENT: Okay, motion denied

RESPONDENT: Let's stay with the 1,500 cash, 3,000 bond.

26. 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 faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, and failed to accord every person who has a legal interest in a proceeding the right to be heard according to law, in violation of Section 100.3(B)(6) of the Rules.

CHARGE III

27. On or about July 13, 2011, Respondent arraigned the defendant in *People v Matthew J. Stuper* and increased Mr. Stuper's bail in a rude, discourteous and retaliatory manner. Subsequently, on or about September 21, 2011, Respondent acted without basis in law in issuing Mr. Stuper a one-year order of protection after granting a six-month adjournment in contemplation of dismissal involving a non-family offense.

Specifications to Charge III

28. On or about July 13, 2011, Respondent arraigned Matthew J. Stuper, who had appeared in compliance with a criminal summons, on the charge of harassment in the second degree (Penal Law § 240.26), a violation. Justin L. Cote, a co-defendant, had also been charged with harassment.

29. Respondent appointed attorney Charles E. Pettit, who represented Mr. Stuper on a different case, to represent Mr. Stuper on the harassment charge for arraignment only. Respondent recited Mr. Stuper's pending charges and inquired whether he was in the pre-trial release program, an alternative to incarceration program under the auspices of the Oswego County Probation Department. Mr. Stuper confirmed that he was in the program and that the individual monitoring his release was aware of the harassment charge. The following exchange occurred:

RESPONDENT: Okay, your bail is set at \$3,500 cash.

MR. STUPER: I'll post it now.

RESPONDENT: Get it out.

MR. STUPER: I want to post Mr. Cote's bail as well.

RESPONDENT: Well, maybe I'm not going to take it from you, sir. How much you got in there?

MR. STUPER: Well, Mr. Pettit told me to bring a little more than necessary.

RESPONDENT: Mr. Pettit? \$3,500, by the way, will, no, I can't do that.

MR. STUPER: I don't have much more than that.

RESPONDENT: No. Well, it doesn't really matter how much you have. What matters is that you're in more trouble while you have charges pending

30. Mr. Stuper told Respondent that his fiancé had a fractured tibia and needed his help at home caring for four children.

31. Respondent fixed bail at \$5,000, and stated, "Start counting. Because you need \$5,000 cash"

32. Mr. Stuper secured additional funds from his fiancé's mother and posted the \$5,000 bail and Mr. Cote's \$500 bail.

33. On or about September 21, 2011, Respondent granted Mr. Stuper an adjournment in contemplation of dismissal in resolution of the harassment charge. Respondent issued an order of protection for a non-family offense, as authorized by CPL §§ 170.55(3) and 530.13. The order of protection was to remain in force for a year, notwithstanding that CPL § 170.55(2) limited the time period to six months.

34. 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 faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, and failed to be patient, dignified and courteous to a litigant with whom he dealt in an official capacity, in violation of Section 100.3(B)(3) of the Rules.

CHARGE IV

35. On or about September 8, 2010, in *People v Thor E. Lentz*, Respondent imposed conditions upon the defendant's recognizance release that were without basis in law and unrelated to the purpose of bail.

Specifications to Charge IV

36. On or about September 8, 2010, Respondent arraigned Thor E. Lentz on the charges of criminal mischief in the fourth degree (Penal Law § 145.00), a misdemeanor, and harassment in the second degree (Penal Law § 240.26) and unlawful possession of marijuana (Penal Law § 221.05), both violations. There was no co-defendant charged with Mr. Lentz.

37. Respondent appointed Mr. Pettit to represent Mr. Lentz and instructed Mr. Lentz in his interaction with Mr. Pettit, including, "... you're going to have to make an appointment with his office, and you're going to have to go there You have to make each and every appointment with him and if I'm going to release you in your own custody today, you're going to report to your attorney when he says to, you're going to do what he says, how he says. Understand?"

38. Although there was no indication in the court record that any of Mr. Lentz's friends were involved in or present during the crimes at issue, Respondent directed Mr. Lentz not to associate with his friends, stating, "Any of the people that you usually hang around with, you're not going to hang with them anymore."

39. Although there was no indication in the court record that the allegations against Mr. Lentz included that he had been drinking at the time of the offense, after

learning that Mr. Lentz was 21 years of age, Respondent directed Mr. Lentz not to consume alcohol, stating, "There will not be any drinking of alcohol until this case is closed"

40. Respondent directed Mr. Lentz to perform community service, stating, "Start a little community service or something, maybe. Is that going to hurt you?" Respondent added, "[Y]ou need to start some community service, get yourself a few hours going, 20, 25 hours and you're going to start doing some community service, right?"

41. Respondent addressed Mr. Lentz regarding his religious beliefs, stating, "Do you go to church? Well, maybe you need to start. So, you can, you know, check out the churches."

42. On or about November 3, 2010, at or about 10:55 a.m., Mr. Pettit faxed a letter to Respondent, requesting to be relieved as counsel and noting that Mr. Lentz had not appeared for two scheduled appointments with him.

43. On or about November 3, 2010, Respondent issued a bench warrant for Mr. Lentz. The bench warrant contained Respondent's handwritten notation, "Failed to meet conditions of ROR."

44. 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 faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules.

CHARGE V

45. On or about February 9, 2011, and on or about July 13, 2011, in *People v Adam J. Colbert*, Respondent spoke to Mr. Colbert in a discourteous and demeaning manner about his physical appearance and, on or about July 13, 2011, when imposing sentence, imposed a condition pertaining to Mr. Colbert's physical appearance.

Specifications to Charge V

46. On or about February 9, 2011, Respondent presided over a status conference in *People v Adam J. Colbert*, in which Mr. Colbert had been charged with two counts of driving while intoxicated (VTL §§ 1192[2] and [3]), unclassified misdemeanors, inadequate lights (VTL § 375[2][a][1]), a traffic infraction, and unlawful possession of marihuana (Penal Law § 221.05), a violation.

47. Respondent commented on Mr. Colbert's nose piercing, stating, "What's that thing in your nose, Adam?" and "When I was a kid we used to do that to all the bulls on the farm."

48. Respondent later commented about Mr. Colbert's ear gauges, stating, "What is going on with your ear lobes?"

49. On or about July 13, 2011, Respondent began Mr. Colbert's status appearance by commenting about his ear gauges, stating, "I have a question for Mr. Colbert Aren't those bigger than the last time I saw you?" Respondent also asked, "Well, why would you do that? You afraid I'm not seeing you up here or something?"

50. Respondent later commented,

I'm just concerned about his ears. Court will reflect into the record that Mr. Colbert just appeared, and I believe last time he had pierced ears with holes in them that were approximately dime size, and today he appears, and I'm not sure, but they're somewhere between quarter and half dollar, and that's what we're discussing.

51. Mr. Colbert pleaded guilty to one count of driving while intoxicated (VTL § 1192[3]), in satisfaction of all the charges against him. Respondent imposed a sentence of conditional discharge, 40 hours of community service, and a \$1,000 fine.

52. In imposing sentence, Respondent stated:

Additional[ly], there will be no more, geez, how do we say this, how about we just put it this way, you don't increase the size of your earlobes for the next twelve months. Because if I do have to look at you again, I don't want to look at that.

Man, you got to find a new hobby. I'm letting you know I don't know why you do that, hey, you know what maybe that's cool, maybe that's what you like, I don't know

We'll get you a 55-gallon drum, man.

53. 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 faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, and failed to be patient, dignified and courteous to a litigant with whom the judge dealt in an official capacity, in violation of Section 100.3(B)(3) of the Rules.

CHARGE VI

54. On or about November 10, 2010, John Doe ; an unrepresented minor, appeared before Respondent for arraignment on a traffic infraction, accompanied by his father. Respondent (1) failed to advise the defendant that he had a right to be represented by counsel, (2) asked the minor defendant potentially incriminatory questions about his conduct, notwithstanding that the defendant had not entered a guilty plea, (3) coerced the defendant to return to his parents' home and directed the defendant to bring his report card to court as conditions of being able to negotiate a plea agreement with the District Attorney and (4) threatened to impose a jail sentence if the defendant did not do as Respondent directed.

Specifications to Charge VI

55. On or about November 10, 2010, 17-year-old John Doe appeared with his father and without counsel to be arraigned for imprudent speed (VTL § 1180[a]), a traffic infraction.

56. At Respondent's request, Mr. Doe handed up to the court an accident information exchange form. Without advising Mr. Doe that he had the right to be represented by an attorney and without asking Mr. Doe to enter a plea, Respondent then asked Mr. Doe a series of questions about the traffic matter, including:

So, you had a motor vehicle accident?

Was it your fault?

Was anybody hurt?

Who got hurt?

How injured were they?

Was someone else with you at the time? Who? And how old is that gentlemen?

Whose vehicle were you driving?

57. Respondent asked Mr. Doe why he did not live with his parents and asked Mr. Doe's father if he wanted his son to "move home." After Mr. Doe's father responded in the affirmative, Respondent asked Mr. Doe multiple times why he was not

living at home. Respondent stated: "You can go [to jail] for up to ten days just on this charge. That's about a week and a half You don't think you want to go there?"

58. After advising Mr. Doe that he was subject to incarceration, Respondent engaged in the following exchange with Mr. Doe :

RESPONDENT: Oh, but that jogged you pretty well, didn't it?
You don't want to go to jail?

MR DOE .: No.

RESPONDENT: Me either. So, how soon can you move back home?

MR. DOE .: As quick as possible.

RESPONDENT: Pardon me?

MR. DOE .: As quick as possible.

RESPONDENT: There you go. How long is that going to take?

59. After Mr. Doe again confirmed that he would move home, Respondent stated, "I'll tell you what, I'll make you a deal, how's that? You want my help? Or do you want to continue down the course you are heading right now?"

60. Respondent directed that Mr. Doe never come to court again without his report card so that Respondent could confirm that Mr. Doe was passing his classes, and stated, "Then, if you're doing what I think you ought to be doing, I'll line up a meeting between you and the district attorney"

61. After Respondent told Mr. Doe that he could "try and negotiate your way through this," Respondent stated:

But, I'm the ultimate authority that decides what happens to this. Now, if you earn your way through this by going back home to live, like you should be anyways, and forgetting all about your goombas, and you get good grades in school, and you don't get in more trouble, you never know, maybe I'll dismiss it.

[D]o you want part of the deal, or not? Do we have a contract between us?

62. Respondent told Mr. Doe he would adjourn the case for 60 days and then summarized the terms they had discussed:

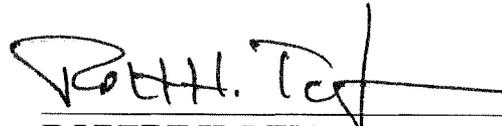
To achieve a C-level in school, report cards, and the promise. Promises will let you negotiate with the ADA, and then I'll do what I think is right, up to and including the possibility of 15 days of incarceration.

63. 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 perform his judicial duties without bias or prejudice against a person, in violation of Section 100.3(B)(4) of the Rules, failed to refrain from initiating, permitting and considering *ex parte* communications, in violation of Section 100.3(B)(6)

of the Rules, and failed to dispose of a judicial matter promptly, efficiently, and fairly, in violation of Section 100.3(B)(7) 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: July 2, 2014
New York, New York

A handwritten signature in black ink, appearing to read "R.H. Tembeckjian", written over a horizontal line.

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,
of the Judiciary Law in Relation to

VERIFICATION

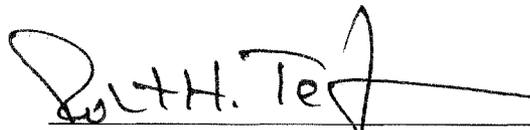
MICHAEL R. CLARK,

a Justice of the Hastings Town Court,
Oswego 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
2nd day of July 2014



Notary Public

MARY C. FARRINGTON
Notary Public, State of New York
No. 02FA6241341
Qualified in Kings County
Commission Expires May 16, 2015

RECEIVED

AUG 8 2014

NYS COMMISSION ON
JUDICIAL CONDUCT - ROC

Michael R Clark
Town Justice
Hastings Town Court

Hastings Town Court
PO Box 5
Central Square , NY 13036

315-676-4317
315-668-8439 fax

August 5, 2014

John J. Postel
Deputy Administrator
Commission on Judicial Conduct
400 Andrews Street, Suite 700
Rochester, New York 14604

Re: Written Response to Formal Written Complaint Dated July 3, 2014

Charge 1

People v Brett M. Bulson (April 27, 2011)

It is this Courts sense that by the District Attorney tendering a written disposition relevant to the Bulson case that they had in fact been given their Right to be Heard and that the Court could then take action in the manner it did.

People v Joseph Scafidi (June 1, 2011)

This Court can not recall if Mr. Scafidi produced written documentation regarding his outstanding fines and suspension fees in other jurisdictions. However, it seems probable that he did supply such documentation because he knew the particulars of the fine and suspension amounts in detail. As to item 14, This Court can not recall if the District Attorney was listening to the Courts comments and remained silent as to the Courts Transactions. As to item 16, It is the Courts sense that it responded to a letter provided to the Court regarding Mr. Scafidi's Community Service wherein the Court politely informed Mr. Scaffidi that the Court appreciated the fact that Mr. Scaffidi had performed the hours of Community Service.

People v Christopher J. Terry (July 13, 2011)

This Court can not confirm or deny that the District Attorney was present during the review of this case and the Courts transactions however, the probability of the District Attorney being present is within the usual practice of the Courts transactions. Ex Parte Communications in all of the above listed cases could only be presumed by the Commissions Investigators taking into context the one dimensional view presented by an audible recording. In point of fact it is the practice of this Court that the District Attorney be present for any such communications.

This Court does however, identify what may be Administrative weaknesses where it may not have included in the record a statement concerning those present and invited the District Attorney to speak on the record. This possible weakness on behalf of the Court is predicated by the non training and use of the recording system supplied by the Office of Court Administration. At no time during such training did anyone provide criteria for the actual use of the recordings and how to substantially set forth foundation on the recordings. This Court should point out that Town Courts are not Courts of Record. This one dimensional view of a Courts Proceedings are at best incomplete and misleading without the review and certification of the Judge taking into context the Courts memory and other paperwork. The Commissions Investigator has chosen to review an uncertified tape recording that occurred three to four years ago, and to then expect the Court to have full memory of it. Unfortunately, this Court does not have that recall. It should be pointed out that this Court has concluded in excess of 29,000 vehicle and traffic cases, and over 3,000 Criminal cases, as well as 1,000s of Miscellaneous cases in its 14 years of tenure.

It is recommended that this matter be reviewed by the Training Section of the Office of Court Administration so as to better prepare Judges for the future.

Charge 2

People v Timothy B. Fuller (July 13, 2011)

Mr. Fuller by way of Counsel was afforded his right to motions regarding his bail and bond. Please see a letter from Mara Holst-Wegerski of the Wegerski Law Firm regarding same.

This Court does, however, take note of the issue regarding the proceeding and will in the future prompt Counsel to make a more substantial argument for bail and bond. It is apparent that Ms. Holst on behalf of her Client interpreted the Courts statement to be all inclusive of any motions to be made. This could be because of the familiarity of the Attorney with the Court. This Court is certain that if Ms. Holst wished to make any further statements concerning her Client that it would have in fact occurred. The Court will in the future allow the Attorney to make the Motion in stead of the Court predicating the Motion with its own Statement regarding same.

This distorted one dimensional view as depicted by the Courts recording taken into context reminds the Court that it needs to slow down. As a reminder to the Commissions Investigator the Court would like to point out that when it calls its Criminal Calendar it may be covering 20-50 Criminal Cases in one afternoon, while working in Vehicle and Traffic cases as well. During the Courts session the room is filled with 10-15 Attorneys, a District Attorney who is back and forth in the Court Room, Numerous Inmate Transports, without the aid of Bailiffs, and with a Court Staff of one Clerk that is paid 3 hrs of work time per day which usually runs into 8-12 hrs on Criminal Calendar Days. We are grossly understaffed and under protected. These issues were directed to the Town Supervisor who refused to take action in order to remedy same.

Though this Court may have Administratively failed to set forth on the recording its foundation for bail does not mean it was not taking into context those issues surrounding CPL 510.30(2)(a). This Court was familiar with Mr. Fuller from his past interactions with the Court some of which would have bearing on CPL 510.30(2)(a), and would be brought out in oral testimony

Charge 3

People v Matthew J Stuper (July 13, 2011)

I enclose for your convenience a disposition drafted by ADA Allison O'Neill dated 09/21/11. It is this Courts understanding that as per the disposition the Defendant was sentenced according to the disposition which was reviewed with Mr. Stuper, Attorney Holst, and the ADA O'Neill. All parties agreed to the Disposition as well as the Court. After a lengthy review of Mr. Stuper's numerous files the Court has concluded the following: No ACD was granted per the disposition. The ACD was not part of the sentencing. That the Defendant P/G to PL 240.20, Disorderly Conduct whereby the order of protection should have been issued for and agreed amount of time of one year. The Court seems to have written the ACD on the Order of Protection in error. All other portions of the Order of Protection appear correct and this defect though unfortunate would not have effected the intent and meaning of the order. This possible Administrative failure will be closely monitored in the future. In retrospect this Order of Protection, its meaning and duration was discussed with the Defendant, I am not sure if it was placed on the Court's recordings.

As to Bail.

A letter to Mr. Stuper's Attorney, Ms. Holst, dated 09/20/11 sets forth the Courts response to any bail questions.

During Mr. Stuper's appearance where bail was set, this Court took into context CPL 510.30.

1. The principals character, reputation, and habits could be best explained by his Criminal History Report in conjunction with A Pre-Sentencing Report that was available to the Court at the time of the Bail decision. I may not be able to divulge some of this information to you because of confidentiality, however it could be covered in oral testimony should Mr. Stuper decide he would like to testify.

2. Mr. Stuper's financial resources appeared to have depth - Mr. Stuper pulled in excess of \$5,000.00 from his pocket when the Court conveyed how much bail was and in fact paid his co defendant's bail.
3. Mr. Stuper has an extensive Criminal Record.
4. The weight of the evidence against Mr. Stuper seemed extensive enough for him to except a plea to some of the charges, that I later vacated at the request of his Attorney, so that Mr. Stuper with his new charges could attempt to gain a disposition encompassing all of his open cases. Though this plea of guilty was vacated it did not mean that Mr. Stuper was innocent.

As to the Courts actions of rude, discourteous, and retaliatory behavior:

Mr. Stuper's bail was set in accordance to CPL 510.30. During the arraignment phase of Mr. Stuper's 3rd pending Criminal File, this Court vacated his plea of guilty to a criminal charge thereby allowing Mr. Stuper the ability to consolidate his cases and possibly receive a consolidated disposition, possibly to Mr. Stuper's benefit. Though the Court mentioned \$3,500.00 Bail, it was in the process of reviewing all of Mr. Stuper's open files and when the Court's mind was refreshed of the charges decided that in order to procure Mr. Stuper's presence at his future Court appearances it would be necessary for Mr. Stuper to produce the \$5,000.00 set. Mr. Stuper produced the bail and went home.

As to the dialogue between Mr. Stuper, his Attorney, and ADA O'Neill, at no time did the Court disrespect, retaliate, or become discourteous to Mr. Stuper, and by the Court's actions conveyed the opposite. During the sentencing though Mr. Stuper agreed to accept up to 16 days of incarceration, the Court sentenced Mr. Stuper to 2 days of incarceration. With minimum fines and mandatory sur-charges.

Charge 4

People v Thor E. Lentz (Sept. 8, 2010)

This Court engaged in dialogue with Mr. Lentz in order to assist him in expediting his case through the Court System in a fair and impartial way. It appeared to the Court that Mr. Lentz had a minimum understanding of what he should do to help himself and a limited learning capacity. This conversation was in the presence of Mr. Lentz's assigned Attorney, whom made no objection to my dialogue. The Court was simply attempting to help Mr. Lentz understand the situation. The Court was not attempting to convey to Mr. Lentz that he should go to church, rather that a church is a place that offers the ability to do community service should he decide to partake in it.

Unfortunately for the Court, it is now of the opinion that it blurred the lines between Social Worker, Attorney, and Judge in this situation. Though the Court conducted itself in a very caring manner it should not be engaging in such causes. Though the Oswego County District Attorney or this Defendant has not taken exception to this Court's method of operation in this instance, this Court will not take part in such conversations in the future.

Charge 5

People v Adam J. Colbert (Dec. 15, 2010)

See attached letter from Mr. Colbert's Attorney, Richard Jarvis.

Any and all comments made were meant to be more of a fatherly advice thereby assisting with a positive outcome for Mr. Colbert's future. Mr. Colbert nor his Attorney received the Court's message as interpreted by the Commissions Investigator. The Court should point out that Mr. Colbert nor his Attorney Mr. Jarvis made a complaint regarding the Courts interaction.

Charge 6

People v John Doe (Nov. 10, 2010)

It was the Court's intention to convey to Mr. Doe a 17 year old Defendant, the importance of a High School Education and to effect that purpose informed Mr. Doe of those things that might enable that process. The Court was well intentioned. Mr. Doe did not make a complaint to the Court, his Attorney, or the Commission.

It is appropriate at this time to inform the Judicial Conduct Commission of the following:

That I have never been charged by the Commission on Judicial Conduct prior to this Formal Complaint.

That the Hastings Town Court has the busiest Court in Oswego County with more traffic and criminal cases than any other Courts in Oswego County.

That I have presided over 29,000 traffic cases, 3,000 criminal cases and over 1,000 other miscellaneous cases during my 14-year tenure as Justice.

In the course of my 14-year tenure I have seen changes come into my life that have had a profound effect on me as a person.

I have had the unfortunate experience of seeing seven people come before me that are now deceased. Three of these were Defendants, 1 of which was a 15-yr old boy. Some of the deaths were by murder, others by suicide, and, yes, I may have began to expect more of myself than what was just and proper. It has at times seemed as though I was caught in an atmosphere where I needed to do more than I was capable of accomplishing as a Judge in a Local Criminal Court. It was partially for these reasons that I took on the interim role as social worker and blended that role with father, grandparent, social worker, educator, and judge. I have a deep concern for our community and those that reside here.

Our High School has a 46% failure rate and as an educator it's frightening. There was a time that when I looked into the audience of the Courtroom what I was thinking about was, "Well what's next? Who won't be with us next week?"

Compounded with the tragedies in my own personal life I can tell you that it has taken some time to heal my wounds. Some of these are beyond my control and I am aware that they will not get resolved in my lifetime. It is for these reasons that for a period of time I evolved into a cause that may not have been a part of what the Judiciary is about, according to the Commissions Investigation. I can tell you, however, that I no longer feel the intense pain of feeling that I somehow played a part in these Defendants demise. As the world has kept turning I too have moved on. The reality factor is that it took time for me to adjust and think it through and I know that I am better for it.

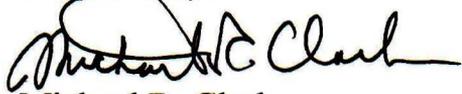
During my past 14 years as a Judge I have conducted in excess of 1,400 after hour arraignments. I have presided over 95% of the Criminal Case work in the Hastings Court. Recently with my wife's illness of cancer, and a change in the Town Supervisor I have insisted that Judge Myers, co Judge, take on a reasonable case load which enables me to bring a more relaxed atmosphere to my court.

Compounding my problems was a Town Supervisor that was conducting unlawful video recordings in the Court Room during court. The new Town Supervisor has assured me that no more unlawful video recordings will be conducted in the Court while it is in session. These are but a few of the issues I faced each day.

In conclusion, It is my sense that several years ago, four years, I may have had Administrative failures and that I was going in the wrong direction when I blended the other parts and duties of my life with that of a Judge, and I truly regret that. My strength and what may be now known as my weakness is that I care about the people. I now know that I must separate good intentions from what the Judicial Conduct Commission expects of me.

Page 9 - Judge Clark - Town of Hastings
Written Response to Formal Complaint Dated July 3, 2014

Respectfully:

A handwritten signature in black ink, appearing to read "Michael R. Clark". The signature is written in a cursive style with a large, prominent initial "M".

Michael R. Clark
Town of Hastings Town Justice

RICHARD H. JARVIS
Attorney and Counselor at Law

ONE LINCOLN CENTER
SUITE 330
SYRACUSE, NEW YORK 13202
(315) 426-1525
FAX: (315) 426-8585

THE RICHARDS BUILDING
74 STATE STREET
PHOENIX, NEW YORK 13135
(315) 695-3032

ALSO ADMITTED IN GEORGIA

LEGAL ASSISTANT
SHARI WHATLEY

July 21, 2014

Hon. Michael R. Clark
Town Justice, Town of Hastings
1134 U.S. Route 11
Central Square, New York 13036

RE: People vs. Adam Colbert

Dear Judge Clark:

I am writing to the Court with regard to a recent conversation we had pertaining to my former client, Adam Colbert. As the Court is aware, Mr. Colbert was charged with a second offense of Driving While Intoxicated approximately four years ago and appeared before Your Honor. Both offenses were in the Town of Hastings. The second prior to the resolution of the first.

With regard to Mr. Colbert, and as I indicated to Your Honor, I had the opportunity to run into Mr. Colbert's mother at a high school volleyball game this past winter. She had indicated to me that Adam was doing very well. I do not remember the exact details of the conversation, but I know she was appreciative of the resolution in the Town of Hastings and the efforts put forth by both myself and the Court with respect to assisting Mr. Colbert's through his lengthy but successful alcohol and drug treatment.

It has come to my attention that comments and discussions had with myself and Mr. Colbert while at the bench regarding Mr. Colbert's physical appearance may have caused embarrassment or concern to my client. It is my recollection that Mr. Colbert stood a lean 6 foot 6 inches, was relatively clean cut, had relatively short hair but did display a variety of piercings, including very large earrings in his earlobes. These were not normal earrings that attached through small piercings but rather large holes in his earlobes displaying large, circular earrings.

Quite honestly, I had somewhat forgotten any comments I or the Court may have had while making many appearances with Mr. Colbert during his extensive period of counseling. I do recall that the Court took a particular interest in Mr. Colbert as he did appear on each occasion with progress reports in the company of his mother. As the Court may recall, Mr. Colbert's parents were divorced and his father had walked away

Hon. Michael R. Clark
Town Justice, Town of Hastings
RE: People vs. Adam Colbert
Page 2

from the situation following the second arrest within such a short time. His mother was deeply concerned and, as I recall, appeared with Mr. Colbert at every Court appearance. I felt at the time the Court's sincere concerns regarding Mr. Colbert, together with any comments made regarding Mr. Colbert's appearance, were made not only to encourage him to take full advantage of his abilities and opportunities, but to also have him recognize that potential employers could have been initially dissuaded by his appearance; specifically those inserts in his earlobes, before looking into his actual qualifications and credentials. I do not recall at any time Mr. Colbert or his mother raising any concerns about any comments the Court made as it was my belief that all comments made by the Court were taken in a positive and supportive fashion. I never recall Your Honor to have said anything to Mr. Colbert that was not done to help and assist him or with a smile or tone that suggested advice rather than criticism.

At the conclusion of Mr. Colbert's many months of counseling, it is my recollection the Court sentenced Mr. Colbert to a conditional discharge based upon his exemplary efforts and success with the counseling program, together with the favorable presentation he made to Your Honor. Highly unusual, but I believe the Court felt deserved. I recall the Court was proud of Mr. Colbert's accomplishments and let him know that. Any comments made, in my recollection, were made as reflected above or, at worse, as good natured ribbing. The Court, after such a significant period of time, had developed a terrific relationship with young Mr. Colbert, particularly in the absence of his father.

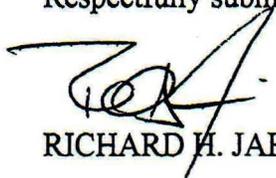
Once again, it is my sincerest belief that any comments the Court made regarding Mr. Colbert's appearance were not conveyed or received as critical but rather suggestive to Mr. Colbert regarding his future. Transcripts or tapes cannot accurately reflect tone or facial expressions. We all appreciated the Court's efforts and concerns during those many months. To date, those efforts, as well as efforts of others, have turned Mr. Colbert's life around.

As Your Honor is aware, over the past 15 years I have had the opportunity to appear in your Court on a number of occasions with a number of different clients, very often DWI clients. The Court has always treated my clients fairly and with respect. Any suggestions or comments made by the Court have always been received in a fashion that would only benefit the defendant either with regard to the outstanding criminal charges or with life in general. I cannot recall any client of mine, under such circumstances, having received any conversation or comments by the Court in any fashion other than being positive and helpful. That was certainly the case with Adam Colbert and his mom.

Hon. Michael R. Clark
Town Justice, Town of Hastings
RE: People vs. Adam Colbert
Page 3

As always, the Court's efforts are appreciated and if I can offer any further comment, please feel free to contact me at any time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'RHJ', is written over the typed name below.

RICHARD H. JARVIS

RHJ:srw

Wegerski Law Firm
ATTORNEYS AND COUNSELORS AT LAW

JOHN P. WEGERSKI, ESQ.

MARA J. WEGERSKI, ESQ. *

*Also admitted in Michigan

JOHN P. WEGERSKI III, ESQ.

PARALEGAL
Angelique W. Kraus

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Telephone (315) 676-3991
Facsimile (315) 676-3971
www.wegerskilawfirm.com

August 4, 2014

Hon. Michael Clark
Hastings Town Court
PO Box 5
1134 Route 11
Central Square, New York 13036

**RE: People v. Matthew Stuper
People v. Timothy B. Fuller**

Dear Judge Clark:

It has come to my attention that claims were made against the Court regarding my above named former assigned clients.

In regard to Mr. Stuper, at the time of my assignment Mr. Stuper had several charges pending against him in the Town of Hastings. I was assigned on the most recent charge and bail was assessed. Mr. Stuper immediately posted bail for not only himself but also a co-defendant. It is my recollection that bail was originally assessed to cover one case and then re-assessed to cover all the charges in the court. Due to the nature and number of charges against Mr. Stuper at that time, I did not believe that the bail was increased in an "rude, discourteous or retaliatory manner" and I do not believe that any of Mr. Stuper's rights were violated as bail was immediately posted and he was able to remain at liberty. It is also my understanding and recollection that while Mr. Stuper was granted an ACD in one case, he did plea to a harassment on another case the same day and that case had the 6 month order of protection was placed on.

In regard to Timothy B. Fuller, after being assigned and reviewing the defendant's criminal history in Court, I accepted the assignment to represent Mr. Fuller and proceeded with my requests for release. Mr. Fuller had a significant criminal history and at the time, I believed that the bail placed on my client was fair. I frequently appear in the Hastings Town Court, as well as the other Justice Courts in the area and I believe that Judge Clark is familiar with the bail motions that are typically made in cases such as these. I do not believe that in this

case my client's rights were violated by my not making a full argument, furthermore I do not believe that if I had made a full argument that it would have changed his bail status.

In the event any further information is needed, please do not hesitate to contact me.

Very truly yours
WEGERSKI LAW FIRM



Mara J. Wegerski, Esq.
Mara@Wegerskilaw.com

Enc.

EXHIBIT 3

Michael R. Clark
Town Justice
Hastings Town Court
PO Box 5
Central Square, New York 13036
315.676.4317

February 3, 2015

TO: Supervising Judge
TO: Town of Hastings Supervisor: Honorable Tony Bush

Re: Letter of Resignation

To whom this may concern:

Please let this letter reflect that effective May 31, 2015 I am tendering my resignation as Town Justice of the Hastings Town Court. It has been a pleasure serving and working with our community for the past 20 years as both Town Justice and Town Councilman.

Sincerely,



Hon. Michael R. Clark
Town of Hastings Town Justice