

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

JOHN R. PECK,

a Justice of the Gorham Town Court,
Ontario County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Paul B. Harding, Esq.
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel)
for the Commission

Honorable John R. Peck, *pro se*

Respondent, John R. Peck, a Justice of the Gorham Town Court, Ontario County,
was served with a Formal Written Complaint dated January 14, 2021, containing one
charge. Respondent submitted a letter dated January 21, 2021 in lieu of an Answer. The

Formal Written Complaint alleged that from July 21, 2020 through October 16, 2020, respondent publicly displayed on his Facebook page: (A) two photographs of himself wearing an Ontario County Sheriff's uniform, and (B) a post with his personal comments expressing his appreciation for law enforcement officers and describing his appearance at a "Back the Blue" event, which was held to show support for law enforcement. The post and photos garnered hundreds of "likes" and comments from other Facebook users. It was also alleged that respondent engaged in this conduct notwithstanding having been cautioned by the Commission in April 2019 for an inappropriate Facebook post regarding a candidate then running for a law enforcement position.

On February 22, 2021, the Administrator and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On March 11, 2021, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Gorham Town Court, Ontario County, since 2018. His current term expires on December 31, 2021. Respondent is not an attorney.
2. On July 19, 2020, respondent attended a "Back the Blue" event in Ontario County, at which a procession of motorists drove their vehicles in a show of support for law enforcement. For approximately 30 minutes, respondent displayed a sign

approximately two feet by three feet (2' x 3') in dimension on which he had painted the words "Thank You" in blue lettering.

3. Facebook is an internet social networking website and platform that *inter alia* allows users to post and share content on their own Facebook pages as well as on the Facebook pages of other users and on Facebook groups. Facebook users are responsible for managing the privacy settings associated with their accounts. At the option of the account holder, the content of one's Facebook page – including photographs and textual posts – may be viewable online by the general public or restricted to one's Facebook "Friends." Other Facebook users who are able to view a given post or photograph may comment on the photograph, share it with other Facebook users, and/or "like" it by posting an icon to it, such as a heart, a thumbs-up, or a smiley face.

4. On July 21, 2020, respondent's Facebook page, which he made viewable to the public, displayed a "cover photo" depicting himself in his Ontario County Sheriff's uniform while standing with three other individuals, one of whom (his daughter) was wearing a similar uniform.¹ The photograph was taken at his daughter's police academy graduation in August 2018, which post-dated respondent's December 2017 retirement from the Ontario County Sheriff's Office. A copy of respondent's Facebook page bearing this photograph is appended as Exhibit A to the Agreed Statement of Facts.

5. Beginning on July 21, 2020, respondent's public Facebook page contained a post he wrote about his appearance at the "Back the Blue" event. In the post,

¹ Respondent initially uploaded this photograph to his Facebook account on or about November 9, 2018.

respondent showed his appreciation for members of what he called the “noblest of professions” by writing:

Today, my daughter ... and I stood at the side of the road and watched in appreciation as hundreds of motorcycles and other vehicles passed by ... It was the Back the Blue ride in support of law enforcement ...

I always tell her that she and her brothers and sisters in blue are still appreciated in OUR community. Today’s event, and the overwhelming number of participants is a true example of that appreciation. We both had tears streaming down our cheeks as folks waved and honked, acknowledging our sign thanking them for their support.

It is a tough time for law enforcement. To those of my friends who served or continue to, always remember that you have chosen the noblest of professions and you ARE making a difference ...

Appended to this post was a photograph depicting respondent and his daughter wearing Ontario County Sheriff’s Office uniforms. This photograph was taken at his daughter’s police academy graduation in August 2018, which post-dated respondent’s December 2017 retirement from the Ontario County Sheriff’s Office. A copy of this Facebook post and photograph is contained on page one of Exhibit B to the Agreed Statement of Facts.

6. By July 21, 2020, respondent’s “cover photo” had garnered approximately 277 Facebook “likes,” two “shares,” and 37 comments from other Facebook users. His public post containing the text and the second photograph referenced in paragraph 5 above had garnered approximately 940 Facebook “likes,” 355 “shares,” and 219 comments from other Facebook users. Among the comments was one that identified him as “Judge!” A copy of this comment is contained on page four of Exhibit B to the Agreed Statement of Facts.

7. Respondent engaged in the Facebook activity set forth herein notwithstanding that on April 24, 2019, the Commission had issued him a Letter of Dismissal and Caution for posting to Facebook in November of 2018 an improper public political comment in which he was critical of a candidate in an election for county sheriff. In the cautionary letter, the Commission specifically referred respondent's attention to the section of its 2019 Annual Report reminding judges that, irrespective of the forum, a judge's comments must comport with the Rules Governing Judicial Conduct ("Rules").² A copy of the Commission's letter is Exhibit C to the Agreed Statement of Facts.

Additional Factors

8. Respondent now recognizes that individuals viewing his Facebook posts, and seeing him in a law enforcement uniform, would reasonably question his ability to conduct himself in a fair and impartial manner while presiding over cases involving law enforcement.

9. Respondent takes full responsibility for his actions and has been cooperative and contrite with the Commission throughout its inquiry. He regrets his failure to abide by the Rules in this matter. He pledges to conduct himself in accordance with the Rules for the remainder of his tenure as a judge.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(A)(1) of the Rules and should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a) of the

² <http://cjc.ny.gov/Publications/AnnualReports/nysjc.2019Annualreport.pdf>.

Constitution and Section 44, subdivision 1 of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions and respondent's misconduct is established.

Each judge is obligated to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and must observe high standards of conduct “so that the integrity and independence of the judiciary will be preserved.” (Rules, §§100.1 and 100.2(A)) Section 100.4(A)(1) of the Rules requires that each judge must conduct all of his or her “extra-judicial activities so that they do not . . . cast reasonable doubt on the judge's capacity to act impartially as a judge.” *Matter of Fisher*, 2019 NYSCJC Annual Report 126, 135 (“[e]very judge must understand that a judge's right to speak publicly is limited because of the important responsibilities a judge has in dispensing justice, maintaining impartiality and acting at all times in a manner that promotes public confidence in the judge's integrity.”); *Matter of Barringer*, 2006 NYSCJC Annual Report 97, 100 (“[t]he ethical standards require a judge to avoid extra-judicial conduct that casts doubt on the judge's impartiality. . . Respondent's public advocacy against a local road closure by the New York City Department of Environmental Protection (DEP) violated these standards by demonstrating that he no longer had the ability to be and appear to be impartial in matters involving the DEP.”).

When respondent, a Town Justice in Ontario County, posted on his public Facebook page pictures of himself in the uniform of the Ontario County Sheriff's Office, he failed to comply with the Rules. In addition, respondent's public Facebook post in which he aligned himself with and expressed his strong support for law enforcement

personnel, casts doubt on respondent's ability to act impartially when he presided over matters which involved law enforcement personnel. Respondent acknowledged that individuals who viewed his public Facebook posts would reasonably question his impartiality when he presided over cases involving law enforcement.

In April 2019, respondent received a Letter of Dismissal and Caution from the Commission regarding a public posting he made on Facebook about a candidate for Ontario County Sheriff. In the Commission's letter, respondent was specifically advised to review the section of the Commission's "2019 Annual Report reminding judges that, irrespective of the forum, a judge's public comments must comport with the Rules. . . ." Given his prior Letter of Dismissal and Caution from the Commission, respondent should have been circumspect and particularly attentive to his obligations under the Rules when he made Facebook posts. *Matter of Ayres*, 30 N.Y.3d 59, 64 (2017) ("the failure to heed a prior warning [is a] significant aggravating factor[] . . ."); *Matter of George*, 22 N.Y.3d 323, 331 (2013).

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent has admitted that his conduct warrants public discipline and that he has pledged to carefully comply with the Rules. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

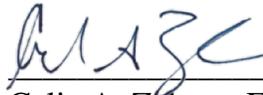
Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Mr. Harding,

Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on
Judicial Conduct.

Dated: March 19, 2021



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct