



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN  
ADMINISTRATOR & COUNSEL

61 BROADWAY, SUITE 1200  
NEW YORK, NEW YORK 10006

MARISA E. HARRISON  
RECORDS ACCESS OFFICER

646-386-4800 646-458-0037  
TELEPHONE FACSIMILE  
www.cjc.ny.gov

## NEWS RELEASE

*September 1, 2015*

***Contacts:***

***Robert H. Tembeckjian, Administrator***  
*(646) 386-4800*  
***Marisa E. Harrison, Records Access Officer***  
*(646) 386-4791*

### **Erie County Village Court Justice Should Be Admonished for Making Improper Political Contributions**

---

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 engaging in prohibited political activity.

Judge Fleming agreed to the admonition.

From 2006 to 2013 Judge Fleming directly and/or indirectly through his law firm made 71 ticket purchases totaling \$11,960.55, and two ticket purchases through his spouse totaling \$400, to politically sponsored dinners or functions, outside the judge's "window period"<sup>1</sup> of permissible political activity. The judge's law firm also made 27 prohibited contributions totaling \$12,533.48 to political organizations and candidates.

---

<sup>1</sup> The Rules Governing Judicial Conduct permit a publicly announced candidate for elected judicial office to purchase two tickets to a politically sponsored dinner or other political function only during his or her "window period," defined as a period of nine months before the selection of candidates to six months after the primary, convention, caucus or general election.

The Commission noted that the Rules, Advisory Opinions and its own decisions over the years have long made it clear that judges may not directly or indirectly make political contributions, with certain narrow exceptions applicable to a limited time when they are running for office.

One Commission member dissented. Richard D. Emery argued that the rule prohibiting political contributions by judges was inconsistent with the First Amendment.

The Commission addressed Mr. Emery's dissent, noting that the Court of Appeals has upheld the constitutionality of the contributions rule.

Judge Fleming has served as a Justice of the Hamburg Village Court since 2006. His current term expires on April 2, 2018.

### **The Commission Proceedings**

Judge Fleming was served with a Formal Written Complaint dated September 25, 2014, containing one charge, and filed an Answer dated October 18, 2014.

On May 8, 2015, 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 June 18, 2015.

### **The Commission Determination**

The Commission filed a determination dated August 20, 2015, in which seven members concurred: Judge Thomas A. Klonick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joel Cohen, Esq., Jodie Corngold, Richard A. Stoloff, Esq., and Judge David A. Weinstein.

One member, Richard D. Emery, Esq., filed a dissenting opinion, voting to reject the Agreed Statement of Facts.

Two members, Joseph W. Belluck, Esq., and Paul B. Harding, Esq., did not participate.

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

**Prior Discipline**

Judge Fleming was admonished by the Commission in 2013 for acting as an attorney for a crime victim and the victim's family notwithstanding that he had presided over prior proceedings in the underlying criminal case.

**Press Availability**

Mr. Tembeckjian is available throughout the day by telephone: (646) 386-4800.

**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 August 26, 2015, 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 258 determinations of admonition against judges in New York State. The Commission has issued 313 determinations of censure and 168 determinations of removal.

The Court of Appeals has reviewed 95 Commission determinations. The Court accepted the Commission's sanctions in 79 cases (70 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 Fleming was represented by Daniel M. Killelea, Esq., 121 Prospect Street, Suite 1, Attica, New York 14011, (585) 937-8987.

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. Senior Investigator Rebecca Roberts assisted in the investigation.

### **Background Information on Judge Fleming**

First took office:	2006
Year Admitted to NYS Bar:	1986
Current Term Expires:	April 2, 2018
Salary:	\$15,510 (Source: 2015-16 Village of Hamburg Budget)
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:

<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>
--	--	---

**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, 2018
Joseph W. Belluck, Esq.	Governor Andrew M. Cuomo	March 31, 2016
Joel Cohen, Esq.	Former Assembly Speaker Sheldon Silver	March 31, 2018
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2019
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.	Former Senate President Pro Tem Dean Skelos	March 31, 2019
Hon. David A. Weinstein	Governor Andrew M. Cuomo	March 31, 2018
Vacant	Governor	March 31, 2017