

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

DONALD G. LUSTYIK,

A Justice of the Norfolk Town Court,
St. Lawrence County.

**AGREED
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Esq., Administrator and Counsel to the Commission, and Honorable Donald G. Lustyik ("Respondent"), who is represented in this proceeding by Eric J. Gustafson, Esq., of Pease and Gustafson, LLP, that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent is not an attorney. He has been a Justice of the Norfolk Town Court, St. Lawrence County, since January 1, 1986. Respondent's current term expires December 31, 2013. Respondent is currently running unopposed for election to another term.

2. Respondent was served with a Formal Written Complaint dated July 1, 2013, a copy of which is appended as Exhibit 1. He filed an Answer dated July 22, 2013, a copy of which is appended as Exhibit 2.

As to Charge I

3. At all times pertinent to this matter, [Jane Doe] was the stepdaughter and adopted daughter of [John Doe] .

4. On February 17, 2011, during a criminal investigation in which [John Doe]'s son, [] , was ultimately charged with murder, [Jane Doe] gave a sworn statement to state police, saying *inter alia* that she had been sexually abused by [John Doe] . There is no evidence that Respondent was aware of Ms. [Doe]'s statement to state police.

5. In the spring of 2011, [John Doe] was engaged in a Family Court proceeding for custody of his granddaughter, whose father is [Mr. X] . There is no evidence that Respondent was aware that Mr. [Doe] was engaged in such proceeding.

6. On or before April 19, 2011, [John Doe] asked Respondent to witness a statement, and Respondent agreed to do so.

7. On April 19, 2011, Respondent met [John Doe] and [Jane Doe] on the main floor of the Norfolk Town Hall, where the courtroom and Respondent's chambers were located. Respondent had not previously met or otherwise been acquainted with Ms. [Doe] .

8. In a room at the town hall in the presence of Respondent and Mr. [Doe] , [Jane Doe] signed a two-sentence statement that (A) indicated her intention not to "sign any statements saying that my Step-Father [John Doe] had touched me. or

molested me at any point in my life" and (B) noted her assertion that [Mr. X] had "mistaken" her words.

9. [Jane Doe] wrote the statement at the behest of Mr. [Doe] .

10. Respondent signed the statement, "Wit: Hon Donald G Lustyik," directly below [Jane Doe] 's name. Although Respondent had not previously met or otherwise been acquainted with Ms. [Doe] , he did not ask her for any form of identification to establish her identity. Respondent made no inquiry into the meaning or purpose of the statement, whether it would be used in any judicial proceeding or police investigation, or the fact that it referred to molestation, a possible crime. Respondent did not inquire of Ms. [Doe] whether she was making the statement willingly.

11. At the time she wrote and Respondent witnessed the statement, ^[Jane Doe] was involved in a Family Court proceeding for custody of her own child. There is no evidence that Respondent was aware that Ms. [Doe] was engaged in such proceeding. Ms. [Doe] 's proceeding was unrelated to the custody matter in which Mr. [Doe] was engaged.

12. Although Mr. [Doe] 's sister, who is also his secretary, made certain financial payments to Ms. [Doe] after Ms. [Doe] executed and Respondent witnessed her statement, there is no evidence that Respondent was aware of the financial arrangements between the [Doe] s.

13. After the statement was signed, Respondent gave the original to Mr. [Doe] .

14. There was no proceeding or matter pending before Respondent's court that was related to the statement signed by Ms. [Doe] and witnessed by Respondent.

15. While Respondent, Mr. [Doe] and Ms. [Doe] were at the town hall, Respondent asked Mr. [Doe] what he intended to do about numerous tickets that were long pending in his court and said he could not hold onto them much longer. At the time, there were five tickets for Vehicle and Traffic Law violations and one for an Environmental Conservation Law violation pending against Mr. [Doe] in Respondent's court. Subsequently, the six tickets were disposed of with either a guilty plea or reduction or dismissal or civil compromise on consent of the prosecution. Fines and surcharges were assessed and paid.

Additional Factors

16. Respondent recognizes in hindsight that he lent the prestige of his judicial office for the private benefit of another when he used the facility in which his courtroom and chambers are located to do a favor for an acquaintance. Respondent also recognizes in hindsight that he implicitly invoked his judicial office by identifying himself in writing as "Hon." when witnessing Ms. [Doe]'s statement, that a third party might be more inclined to credit such statement because it was witnessed by a judge, and that such statement might be used in connection with proceedings in other courts, given that both Mr. [Doe] and Ms. [Doe] were at that time engaged in separate and unrelated Family Court custody proceedings.

17. Respondent recognizes in hindsight that he should not have witnessed the statement without verifying Ms. [Doe]'s identity or making an inquiry into the reason for the statement and its intended use.

18. Respondent has been cooperative with the Commission.

19. 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; and 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 lent the prestige of judicial office to advance the private interests of another, and permitted another to convey the impression that he was in a special position to influence the judge, in violation of Section 100.2(C) of the Rules.

IT IS FURTHER STIPULATED AND AGREED that Respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Admonition based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the

Commission shall thereupon impose a public Admonition without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

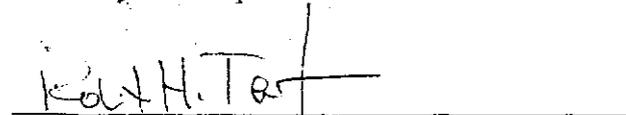
Dated: 10/16/13


Honorable Donald G. Lustyk
Respondent

Dated: 10-16-13


Eric J. Gustafson, Esq.
Attorney for Respondent

Dated: Oct. 17, 2013


Robert H. Tembeckjian, Esq.
Administrator & Counsel to the Commission
(Thea Hoeth, Of Counsel)

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

DONALD G. LUSTYIK,

a Justice of the Norfolk Town Court,
St. Lawrence County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Donald G. Lustyik, a Justice of the Norfolk Town Court, St. Lawrence 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 Albany office, Corning Tower, Suite 2301, Albany, New York 12223, with his verified Answer to the specific paragraphs of the Complaint.

Dated: July 1, 2013
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: Eric Gustafson, Esq.
Attorney for Respondent
40 Main Street
Massena, New York 13662

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

**FORMAL
WRITTEN COMPLAINT**

DONALD G. LUSTYIK,

a Justice of the Norfolk Town Court,
St. Lawrence County.

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 Donald G. Lustyik ("Respondent"), a Justice of the Norfolk Town Court, St. Lawrence County.

3. The factual allegations set forth in Charge I 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 Norfolk Town Court, St. Lawrence County since January 1, 1986. His current term expires on December 31, 2013. Respondent is not an attorney.

CHARGE I

5. On or about April 19, 2011, Respondent lent the prestige of his judicial office to advance the private interests of [John Doe] when, at Mr. [Doe] 's request, Respondent witnessed and signed a written statement by [Jane Doe] using his judicial title. In the statement, Ms. [Doe] agreed not to make any further incriminating statements about [John Doe], whom she had accused of molestation in a prior sworn statement given to police. There was no proceeding or matter pending before Respondent's court which was related to the statement.

Specifications to Charge I

6. At all times pertinent to this matter, [Jane Doe] was the stepdaughter and adopted daughter of [John Doe].

7. On or about February 17, 2011, during a criminal investigation in which [John Doe]'s son, [] , was ultimately charged with murder, [Jane Doe] gave a sworn statement to state police, saying *inter alia* that she had been sexually abused by [John Doe].

8. In or about the spring of 2011, [John Doe] was engaged in a family court proceeding for custody of his granddaughter, whose father is [Mr. X] .

9. On or before April 19, 2011, [John Doe] asked Respondent to witness a statement, and Respondent agreed to do so. On or about April 19, 2011, Respondent met [John Doe], [Jane Doe] and her then-boyfriend, [Mr. Y] ,¹ on the

¹ Ms. [Doe] married [Mr. Y] in September 2011 and now uses the name [Jane Y] .

main floor of the Norfolk Town Hall, where the courtroom and Respondent's chambers were located. Respondent led the three downstairs to a small room in the basement of the building.

10. In the basement room, in the presence of Respondent, Mr. [Doe] and Mr. [Y], [Jane Doe] wrote and signed a two-sentence statement that included her promise not to "sign any statements saying that my Step-Father [John Doe] had touched me, or molested me at any point in my life." The statement also made reference to [Mr. X]. A copy of the statement is attached as Exhibit 1.

11. [Jane Doe] wrote the statement at the behest of Mr. [Doe].

12. Respondent signed the statement, "Wit: Hon Donald G Lustyik," directly below [Jane Doe]'s name.

13. At the time she wrote the statement, [Jane Doe] was involved in a family court custody proceeding and needed funds to retain an attorney. On April 19, 2011, after the statement had been signed, Ms. [Doe] received a cashier's check in the amount of \$5,500.00 from Mr. [Doe]'s sister, who was also his secretary. [Jane Doe] gave the cashier's check to her attorney that same day. On or about May 9, 2011, [Jane Doe] received an additional certified check in the amount of \$3,000.00 from Mr. [Doe]'s sister, which she turned over to her attorney on May 9th.

14. At the time [Jane Doe] wrote the statement, Respondent did not ask Ms. [Doe], with whom he was not previously acquainted, for any form of identification to establish her identity. Respondent made no inquiry into the meaning or purpose of the statement, whether it would be used in any judicial proceeding or police investigation, or

the fact that it referred to molestation, a possible crime. Respondent did not inquire of Ms. [Doe] whether she was making the statement willingly.

15. While at the town hall, Respondent asked Mr. [Doe] what he intended to do about numerous tickets that were long pending in his court and said he could not hold onto them much longer.

16. On or about April 19, 2011, there were at least six tickets, five for Vehicle and Traffic Law violations and one for an Environmental Conservation Law violation, pending against Mr. [Doe] in Respondent's court.

17. After the statement was signed, Respondent and the other three individuals went upstairs where Respondent made one or more photocopies of the statement, and Ms. [Doe] took possession of the original.

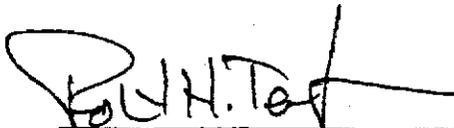
18. There was no proceeding or matter pending before Respondent's court which was related to the statement signed by Ms. [Doe] and witnessed by Respondent.

19. 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; and 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 lent the prestige of judicial office to advance the

private interests of another, and permitted another to convey the impression that he was in a special position to influence the judge, in violation of Section 100.2(C) 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 1, 2013
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

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

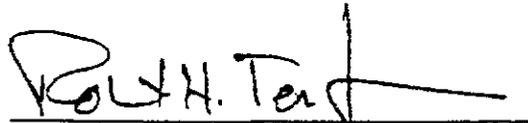
DONALD G. LUSTYIK,

a Justice of the Norfolk Town Court,
St. Lawrence 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
1st day of July 2013


Notary Public

KAREN KOZAC
Notary Public, State of New York
No. 02408171800
Qualified in New York County
Commission Expires November 2, 2015

April, 19, 2011

[Jane Doe]

I am writing & signing this statement to inform any one with any concerns that I will not sign any statements saying that my ~~step~~ father [John Doe] had touched me, or molested me at any point in my life. To whom it may concern [Mr. X] had mistaken, and had taken my words against me for his own personal satisfaction.

[Jane Doe]

[Jane Doe]

Wit: *Harold D. Lustig*



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

VERIFIED ANSWER

DONALD G. LUSTYIK,

A Justice of the Norfolk Town Court,
St. Lawrence County.

Respondent, Donald G. Lustyik, by and through his attorney, Eric J. Gustafson, of counsel,
submits the following as his Answer against the Formal Written Complaint served by the
Commission on Judicial Conduct (the "Commission"):

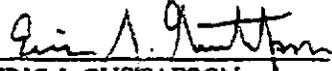
1. Respondent lacks information sufficient to form a belief as the allegations contained in paragraphs 6, 7, 8, 11, and 13 and therefore denies the same.
2. Respondent denies the allegations contained in paragraphs 3, 5, 9, 10, 14, 15, 17, and 19.
3. Respondent admits the allegation contained in paragraph 1, 2, 4, 12, 16, and 18.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

1. The Formal Written Complaints fails to set forth a claim of judicial misconduct in that the conduct specified therein is neither improper nor unethical.

WHEREFORE, Respondent respectfully demands judgment dismissing the Formal Written Complaint as against him in its entirety, together with such other and further relief as the Court deems just and proper.

DATED: July ²⁰¹³ 2, 2013

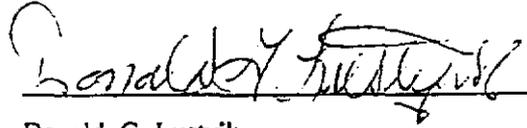

ERIC J. GUSTAFSON
PEASE AND GUSTAFSON, LLP
Attorneys for Respondent
40 Main Street
Massena, NY 13662
Telephone (315) 769-3898

TO: Robert H. Tembeckjian
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, Suite. 1200
New York, New York 10006

VERIFICATION

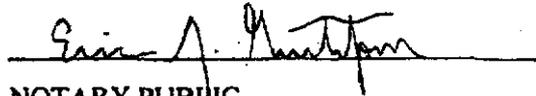
STATE OF NEW YORK)
) SS:
COUNTY OF ST. LAWRENCE)

DONALD G. LUSTYIK, being duly sworn, deposes and says that deponent is the Respondent in the above-entitled action; that deponent has read the foregoing Answer and know the contents thereof; that the contents are true to deponent's own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters deponent believes them to be true.



Donald. G. Lustyik

Subscribed and Sworn to before me on the 20th day
of July, 2013



NOTARY PUBLIC

ERIC J. GUSTAFSON
Notary Public, State of New York
No. 02GL5055583
Qualified in St. Lawrence County
My Commission Expires February 12, 2014