

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Investigation of Complaints  
Pursuant to Section 44, subdivisions 1 and 2,  
of the Judiciary Law in Relation to

**MARK A. DIVIETRO,**

**STIPULATION**

a Justice of the Owasco Town Court,  
Cayuga County.  
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THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Mark A. DiVietro.

1. Judge DiVietro has been a Justice of the Owasco Town Court, Cayuga County, since January 1, 2011. His current term expires on December 31, 2022. Judge DiVietro is not an attorney.

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

3. Judge DiVietro was also apprised by the Commission in July 2020 that it was investigating allegations that, after arraigning the defendant in *People v Robert L. Brown* on two felony charges and one misdemeanor charge in April 2019, he repeatedly engaged in unauthorized *ex parte* communications about the case with the defendant and multiple

other individuals and, during one of the defendant's appearances in court, allegedly gave the defendant personal advice about how to avoid having his firearms confiscated by law enforcement.

4. Judge DiVietro has tendered his resignation by letter dated March 11, 2021, a copy of which is annexed as Exhibit A. Judge DiVietro affirms that he will vacate his judicial office as of March 15, 2021.

5. Judge DiVietro affirms that, after vacating his judicial office, he will neither seek nor accept judicial office at any time in the future.

6. Judge DiVietro understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, he would be served with a Formal Written Complaint upon authorization of the Commission, and the matter would proceed to a hearing before a referee.

7. 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.

8. Judge DiVietro waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 3/11/21



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Honorable Mark A. DiVietro

Dated: March 11, 2021



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**Robert H. Tembeckjian**

Administrator and Counsel to the Commission  
(**John J. Postel** and **M. Kathleen Martin**,  
Of Counsel)

# EXHIBIT A

March 11, 2021

Ed Wagner  
Town Supervisor  
Town of Owasco Offices  
2 Bristol Avenue  
Auburn, New York 13021

Dear Mr. Wagner:

I am writing to inform you that I am resigning from the position of Town Justice for the Town of Owasco effective March 15, 2021.

It has been a privilege to serve as the Town Justice for the Town of Owasco for the past decade.

Thank you for the opportunity to serve my community.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Divietro', with a stylized flourish at the end.

Mark A. Divietro

cc: (2)  
Hon. Lawrence K. Marks  
Chief Administrative Judge  
New York State Unified Court System  
25 Beaver Street  
New York, New York 10004

Hon. Craig J. Doran  
Administrative Judge  
Seventh Judicial District  
Hall of Justice  
99 Exchange Boulevard  
Rochester, New York 14614