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

WALTER W. JONES,

A Judge of the Canandaigua Town Court
Ontario County.

MEMORANDUM BY COUNSEL TO THE COMMISSION IN SUPPORT OF RECOMMENDATION THAT THE REFEREE'S REPORT BE AFFIRMED AND RESPONDENT BE REMOVED FROM JUDICIAL OFFICE

ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct
400 Andrews Street, Ste 700
Rochester, New York 14604
(585) 784-4141

Of Counsel:

John J. Postel, Esq.
Edward Lindner, Esq.
Denise Buckley, Esq.
David Stromes, Esq.
Cassie Kocher, Esq.

Dated: December 23, 2025

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

FEDERAL CASES

NY STATE CASES

TABLE OF AUTHORITIES

PAGE

OTHER STATE CASES

TABLE OF AUTHORITIES

PAGE

COMMISSION DETERMINATIONS

TABLE OF AUTHORITIES

PAGE

STATE STATUTES

RULES GOVERNING JUDICIAL CONDUCT

OTHER AUTHORITIES

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission Counsel") in support of the recommendation that the Commission adopt the findings of fact and conclusions of law in the Referee's report, and issue a determination that the Honorable Walter Jones ("Respondent") committed judicial misconduct and should be removed from office.

INTRODUCTION

Twice within the course of a week in May 2024, Respondent made public comments appearing to and/or actually revealing racial bias against Black people. In a public parking lot following court proceedings on May 10, 2024, Respondent told a story to a public defender and a court clerk in which he gratuitously used the word "n****r"[1] multiple times. Then, on May 15, 2024, while on the bench following the criminal arraignment of an African American woman who had expressed her belief that Respondent treated her unfairly because she was Black, Respondent commented, "Naturally she played the race card," and opined that she would have attacked the public defender had she not been handcuffed.

[1] Respondent actually used the word "nigger," which throughout this brief will be referenced as "n****r."

Throughout the hearing before the Referee, Respondent steadfastly denied having done anything wrong by using the word "n****r," arguing that his use of the slur was acceptable because he was quoting someone else's use of the word in telling the story. Respondent defended his use of the slur, as opposed to a euphemism, because he felt it added necessary authenticity and, in his word, "color" to the story. Respondent insisted that neither his use of the word "n****r," nor his "race card" and related comments, could have caused even the appearance of racial bias or judicial impartiality.

In his Report, the Referee found totally to the contrary. He judged Respondent's testimony to be incredible on several points, ruled that Respondent had demonstrated racial bias in violation of the Rules Governing Judicial Conduct ("Rules"), and noted that Respondent's testimony demonstrated his utter failure to appreciate and accept responsibility for his misconduct.

Based on settled precedent from the Commission and Court of Appeals, Respondent should be removed from judicial office.

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint ("Complaint"), dated April 3, 2025, containing two charges.

Charge I alleged that, on or about May 10, 2024, Respondent repeatedly used a racial epithet during a conversation with court staff and an Assistant Public Defender in the parking lot of the Ontario County Jail in Canandaigua, New York (Complaint ¶ 5). Specifically, after presiding over the Centralized Arraignment Part arraignments, Respondent left the Ontario County Jail building with his court clerk, Kristen M. Bartolotta, and Assistant Public Defender Cali Anne Valenti, and while in the nearby parking lot, he told them a story about his father in which, on at least three occasions, Respondent referred to a Black man as "N****r Harry" (Complaint ¶ 6).

Charge II alleged that, on or about May 15, 2024, Respondent made unseemly, undignified, and racially insensitive comments about the defendant after presiding over the arraignment of *People v S[redacted] D[redacted]* (Complaint ¶ 8). Specifically, when Ms. D[redacted], a Black woman charged with one count of attempted assault in the second degree, a Class E felony, appeared in court with visible injuries to her face and Respondent denied her attorney's request for release, Ms. D[redacted] became upset and said, among other things: "He the one who jumped on me. Like I said, 'This is a racist county.' I'm, I'm the wrong color to be here"; "It's a racist-ass county"; and "[H]e's holding me because I'm African American" (Complaint ¶¶ 9-10).

After the arraignment was completed and Ms. D[redacted] was removed from the courtroom, Respondent, while still on the bench, said on the record, "Naturally she played the race card." Assistant Public Defender Patrick Conklin and Ms. Bartolotta were present. Respondent said of Ms. D[redacted] to Mr. Conklin, "She was pretty well restrained so she couldn't attack you, but she probably would have if she hadn't been handcuffed." Respondent also asked," "Do they teach you to fight back at the Public Defender's Office?" (Complaint ¶ 11).

B. Respondent's Answer

Respondent filed an Answer ("Answer") dated April 19, 2025. As to Charge I, Respondent denied using a racial epithet, admitted that he spoke the words "N****r Harry," and asserted that he "stated in that conversation that that was the manner in which his father referred to the individual in question, not Judge Jones himself" (Answer ¶¶ 3-4).

As to Charge II, Respondent admitted all the facts set forth in the Complaint, but denied that his comments were unseemly, undignified, and racially insensitive (Answer ¶¶ 2, 4).

C. The Hearing

By Order dated May 14, 2025, the Commission designated David M. Garber, Esq., as Referee to hear and report findings of fact and conclusions of law. The hearing was held in Rochester, New York, on August 21, 2025. Commission

Counsel called three witnesses and introduced nine exhibits into evidence (Comm Exs 1, 3-10). Respondent testified on his own behalf, called no additional witnesses, and introduced no exhibits into evidence.

D. The Referee's Report

In a report dated December 4, 2025, the Referee sustained the factual allegations in the Complaint, made credibility determinations favorable to Commission Counsel's witnesses and unfavorable to Respondent, and concluded that Respondent violated Sections 100.1, 100.2(A), 100.3(B)(4), and 100.4(A)(1) and (2) of the Rules Governing Judicial Conduct ("Rules") by repeatedly using the word "n****r" in front of a court clerk and defense attorney, and by commenting in open court that a Black defendant who objected to high bail had "played the race card" and likely would have attacked her attorney had she not been handcuffed.

THE HEARING EVIDENCE

Respondent – who was born in Kansas and raised there by parents who "had rather unpleasant views about racial minorities" (Jones: 134, 172-73, 186, 191; Rep: 14) – has been a judge of the Canandaigua Town Court, Ontario County, since 1999 (Jones: 133).[2] His judicial duties include periodically presiding over the Centralized Arraignment Part ("CAP"), which is held at the Ontario County

[2] Citations to "Rep" and "Ex" are to the Referee's Report and hearing exhibits, respectively. All other citations are to the transcript of the hearing.

Jail. CAP arraignments are staffed by a court clerk such as Kristen Bartolotta, as well as representatives from the public defender's office, such as Cali Anne Valenti and Patrick Conklin (Valenti: 21-23, 52; Bartolotta: 72-74; Conklin: 105; *see* Jones: 178; Rep: 5).[3]

A. Respondent used a racial slur during a conversation with a court attorney and a defense attorney in a public parking lot.

Respondent repeatedly used a racial slur while recounting a story about his father to Court Clerk Kristen Bartolotta and Assistant Public Defender Cali Anne Valenti.

Commission Counsel's Evidence

At approximately 5:30 p.m. on May 10, 2024, Respondent presided over evening CAP arraignments at the Ontario County Jail, where Kristen Bartolotta was working as a court clerk and Cali Anne Valenti appeared for the Ontario County Public Defender's Office (Valenti: 23; Bartolotta: 76-77; Rep: 5). When arraignments ended shortly after 6:00 p.m., Respondent, Valenti, and Bartolotta left the jail building together and walked into the public parking lot, where Respondent led the women to his car to show them a gift he had bought for his wife (Valenti: 24-26; Bartolotta: 77, 79; Jones: 149; Ex 1 [video of parking lot]; Rep: 6). Knowing that Valenti was an avid reader based on comments she had

[3] Representatives from the local district attorney's office appear via telephone (Valenti: 23).

made previously, Respondent also gave Valenti several books from his car – murder mysteries that were set in the southern part of the United States. Though Valenti did not ask for the books and taking them made her uncomfortable given Respondent's status as a judge, she accepted them (Valenti: 26-27, 54; Bartolotta: 77; Jones: 150; Rep: 6).

After giving Valenti the books, Respondent told the women a story about his father and grandfather, which – like the books – took place in the south (Valenti: 28; Bartolotta: 77-78; Rep: 7). In recounting the story, Respondent used the term, "N****r Harry," multiple times, to refer to a Black man named Harry whom Respondent's father had known (Valenti: 31; Bartolotta: 79; Rep: 9, 16).[4] Neither Valenti nor Bartolotta asked Respondent to tell the story, and the story was not relevant to anything that had happened during CAP proceedings that evening (Valenti: 50; Rep: 9).

The gist of the story was that, when Respondent's father was 14 or 15 years old, he worked his grandfather's cotton fields alongside a number of Black workers his grandfather employed; however, if Respondent's father worked more slowly than the Black workers, Respondent's grandfather would beat him (Valenti: 29; *see*

[4] Valenti testified that Respondent had said "N****r Harry" four times, while Bartolotta believed it was two to three times (Valenti: 31; Bartolotta: 79). The Referee determined that Respondent's claim that he used the slur only once in telling his story was not credible and that Ms. Valenti and Ms. Bartolotta testified credibly on this point (Rep: 9, 16).

Jones: 140-45; Rep: 7). One of the Black workers – whom Respondent referred to as "N****r Harry" – realized what was happening and urged the other Black workers to keep pace behind Respondent's father (Valenti: 29, 31, 54; *see* Bartolotta: 95; Rep: 7). After that, the two developed an unlikely friendship (Valenti: 29; Rep: 8).

Respondent continued that, years later, when he himself was a child and was driving in the south with his then-grown-up father, they passed Harry walking on the side of the road (Valenti: 29; *see* Jones 140-45; Rep: 8). Respondent recounted that his father had "yelled out," "N****r Harry, N****r Harry," with Respondent repeating the word twice more in the telling (Valenti: 29; Rep: 8-9). Although the volume of Respondent's voice had been "reasonable" when the story started, by this point, he was "acting out the story with his words," and "yelled" the words "N****r Harry" those last two times (Valenti: 32; Rep: 10-11).[5] Respondent's use of the word, "n****r" made both women uncomfortable (Valenti: 32; Bartolotta: 101; Rep: 9-10).[6]

While Respondent was telling this story and repeatedly saying "n****r" out loud, "other people [were] walking around" the parking lot, and there was an

[5] Bartolotta thought that Respondent's volume remained "normal" (Bartolotta: 81, 99).

[6] Despite her discomfort and desire to get "out of th[e] conversation," Valenti did not walk away or ask the judge to stop saying "n****r" because she has a "delicate" professional relationship with him and, for the sake of her clients, did not want to do anything that might "upset him" or damage that relationship (Valenti: 67; Rep: 11).

occupied car with the driver's window halfway down a few parking spaces away from where Respondent and the women were standing (Valenti: 32-34, 55-56, 66; Bartolotta: 80-81; Ex 1; Rep: 10). The woman sitting in the driver's seat appeared to be holding a cell phone, which made Bartolotta "concerned" that she might be recording Respondent (Bartolotta: 80-81, 85-86, 91; Rep: 10).

When the story ended and Valenti was able to walk away, she sent a group text message to her boss and a number of co-workers, which read, "Oh my gosh Jones was just telling me and Kristen a very long story in the jail parking lot about his childhood that included the repeated use of the n word LOUDLY. Kristen and I wanted to crawl into a whole [sic] and never come out" (Valenti: 42; Ex 3 [text message, emphasis in original]; Rep: 11-12). A short while later, Valenti sent a second text message, this time to her boss alone, which reported:

> Jones was telling us what books he likes to read, which then led to him telling us a story about how his dad and grandpa had black people cutting cotton during the Jim Crowe [sic] era. That lead [sic] to a story about how his dad made friends with a black man who worked in the cotton fields. Because he was quoting things his dad would say. Kristen and I were humiliated. There were a handful of people in the parking lot coming and going, and Jones was way too loud. . . . We kept trying to walk away, and he would just get louder and more animated. He thought it was a sweet story of how his dad befriended a black man in a time when no one else would. Which I mean isn't inherently a bad story to tell unless you tell it the way he did . . . then it's completely inappropriate.

(Valenti: 45; Ex 4 [text message]; Rep: 12).

A few days later, Bartolotta reported Respondent's use of the word, "n****r," to the Town Supervisor, because she felt "concerned" about what had happened and continued to fear that the woman in the car that had been parked nearby had heard and recorded Respondent's use of the slur with her cell phone (Bartolotta: 86; Rep: 13).

At the hearing, Bartolotta asserted that she had never heard Respondent use the word, "n****r," other than in the parking lot on May 10, 2024 (Bartolotta: 95; Rep: 13). Valenti agreed, but when asked if she had ever witnessed Respondent discriminate against anyone on the basis of race, she noted that he had made jokes and general comments about race in court, including one that made light of the tragic events of September 11th (Valenti: 53, 67-68; Rep: 13).

Respondent's Testimony

Respondent does not consider himself to be racist. To the contrary, though he was raised by racist parents, his own views "evolved" as he grew into adulthood and, having experienced "Jim Crow in operation," he came to believe that "[t]his whole business about treating each other differently is appalling" (Jones: 135-40; Rep: 14).

At the same time, Respondent unyieldingly defended his use of the word "n****r" – which he believed he said only once, in a "normal conversational tone" – (Jones: 151, 154; Rep: 16) in telling the story. He testified at least 15 times that

he felt speaking the word was acceptable because he was quoting his father (Jones: 151-52, 163-64, 166, 169-72, 175). In fact, he refused to even answer whether he had said "n****r" without that qualification: "I can't answer the question in any other way than giving the qualified answer that I have given. Because that's not my word. That's a quotation of what my father said" (Jones: 168; *see also* 164; Rep: 15). Respondent further compared his use of the slur to speaking it when reading aloud from Huckleberry Finn or Tom Sawyer (Jones: 185-87; Rep: 15).

Respondent even went so far as to insist that, had he referred to Harry as "N-word Harry" or with some other "euphemism" instead of speaking the full phrase "N****r Harry," "[t]he whole story kind of breaks down" and "nobody would have understood what [he] was talking about" (Jones: 151-52, 171; Rep: 16-17). He defended his use of the slur as adding critical "authenticity" and "color" to the story, and thus averred that he would have used the word "n****r" even had a Black person been present in the parking lot (Jones: 165, 171, 175-76; Rep: 16).[7] Respondent was forced to admit, however, that he successfully repeated the story while testifying during the hearing without saying "n****r," and that he omitted the slur during his testimony "because we're not supposed to [say] that anymore" (Jones: 171).

[7] After using the word "color" in this context, Respondent hurriedly added, "And that's not intended as a pun" (Jones: 171).

Despite contrary testimony by Valenti and Bartolotta, Respondent maintained that neither woman seemed upset or alarmed when he said "n****r" or during any other part of the story (Jones: 150, 152). Rather, "[t]hey both acted as if they were fascinated by the tale [Respondent] was telling them," and he prepared them in advance for his use of the slur by disclaiming, "I'm going to tell you this story, but I got to use the vernacular that they used in Texas at the time," to which they assented (Jones: 151, 153; Rep: 17). Respondent told them the story because he wanted to teach "the lesson . . . that with tolerance, dignity, and respect, we could overcome the differences between us, among us, and become something else. Something better" (Jones: 148; Rep: 14). Neither Valenti nor Bartolotta asked to hear the story or be taught that lesson (Valenti: 50; Rep: 9).

Despite his testimony that he now regrets having used the word "n****r" (Jones: 153), Respondent insisted that speaking the slur as he did, in front of a court employee and a public defender, could not have impacted their opinion of his impartiality (Jones: 185). Likewise, he maintained that his use of the word in that context could not diminish public confidence in the impartiality of the judiciary (Jones: 190). Still, were Respondent to repeat this story in the future, he would not say "n****r" in full "[b]ecause it causes so much upset and consternation and discomfort" (Jones: 176).

B. Respondent made racially insensitive remarks in court following the arraignment of a Black defendant.

Respondent made additional racially insensitive remarks on the bench, following the arraignment of criminal defendant S D, an African American woman.

Commission Counsel's Evidence

On May 15, 2024, Respondent was presiding over morning CAP arraignments at the Ontario County Jail; Kristen Bartolotta was the court clerk, and Patrick Conklin was the assigned public defender (Bartolotta: 87; Conklin: 104-06; Rep: 18). That morning, Conklin represented S D for her arraignment on charges of attempted second-degree assault and assorted lesser crimes (Bartolotta: 88; Conklin: 105-08; Rep: 18). When Conklin met D that morning, she had a "significant injury to her eye," which was "completely swollen shut" with "softball-sized swelling" (Conklin: 109; *see* Bartolotta: 90; Ex 8 [photo]; Rep: 19). Conklin noticed that the officers had brought out a "spit hood" for D and learned that she had been "agitated" with the officers (Conklin: 108-09).[8]

When the arraignment began, the prosecutor requested $3,000 cash bail, $6,000 bond, or $12,000 partially secured bond (Conklin: 109-10; Rep: 20). Hearing this, D became extremely upset because she believed that she had

[8] A "spit hood" is used to prevent a defendant from spitting on counsel or the officers.

been the victim in the altercation for which she was being charged and asked Respondent to consider her serious injuries, along with the fact that she could not afford to miss work while awaiting her next court date (Conklin: 110; Rep: 21). Conklin pointed out D[redacted]'s lack of criminal history as well in seeking lower bail, but Respondent imposed the bail the prosecution requested (Conklin: 110; Rep: 20). D[redacted] asserted on the record that she was being charged and burdened with high bail "because she was African-American and . . . Ontario County is a racist county." She continued, "I'm the wrong color to be here" and – referring to Respondent – said, "he's holding me because I'm African American" (Conkin: 110, 122-23; Ex 5 [recording]; Ex 6 pp 8-13 [transcript of recording]; Rep: 21).

After D[redacted] left the courtroom, Respondent commented, "Naturally she played the race card" (Conklin: 111, 115, 124; Jones: 154, 158; Ex 5; Ex 6 p 14; Rep: 21). Addressing Conklin, Respondent added, "She was pretty well restrained so she couldn't attack you, but she probably would have if she hadn't been handcuffed" (Ex 5; Ex 6 p 14; Rep: 21). He also asked Conklin, "Do they teach you to fight back at the Public Defender's Office?" (Ex 5; Ex 6 p 15; Rep: 21-22).[9] Conklin replied in jest, "Judge, I'm so likeable nobody's even attempted . . . Nobody's even attempted to hit me yet" (Ex 5; Ex 6 p 15). Conklin did not comment on the judge's statements because, knowing that he regularly appears in

[9] Though these statements were recorded (Ex 5), Bartolotta did not hear them (Bartolotta: 90-91).

front of Respondent, he feared that any kind of complaint could negatively impact his future clients (Conklin: 111; Rep: 22).

Respondent's Testimony

When Respondent said, "Naturally she played the race card," he meant that D[redacted] "believed that she was being treated badly because of the color of her skin" and "thought she was a victim" (Jones: 192; Rep: 22). He used the qualifier, "naturally," because "she was obviously [B]lack, and she's played the race card," just as Respondent had "assumed that she was going to" (Jones: 158; Rep: 22). Respondent further explained that he thought D[redacted] may have been "hoping for some sort of advantage by making the accusation that she was being victimized" (Jones: 195-96). In fact, Respondent testified, "It flashed through my mind that I would really like to have been able to talk with her . . . and recite to her examples of [B]lack people who had achieved marvelous things and urge her not to let herself be considered to be a victim." (Jones: 156). He added, "I might have wanted to talk to her about Rosa Parks" (Jones: 162-63).

Respondent acknowledged that his "played the race card" comment was "a mistake" and a "dumb thing to say," but insisted that it did not create the appearance of racial bias (Jones: 154-55, 158, 192-93; Rep: 22). He did not believe that he treated D[redacted] differently because she was African American (Jones: 155, 157).

Respondent also admitted saying about D[redacted], "She was pretty well restrained, so she couldn't attack you, but she probably would have if she hadn't been handcuffed," as well as asking Conklin if he was taught to fight back at the public defender's office (Jones: 159-60). Respondent testified that he was unaware of a common trope that Black women are angry, and he denied that these statements could have created the appearance of racial bias (Jones: 160-61).

Although Respondent was aware that D[redacted] "had sustained an injury of some sort," he was unaware of its nature and severity – despite being seated in the courtroom just several feet away from her – because "she was turned in such a way that [he] did not have a good, clear view" of it (Jones: 156; Rep: 19).

THE REFEREE'S REPORT

In addition to making findings of fact consistent with those set forth above, the Referee made a number of credibility determinations. The Referee found that Respondent in fact said "n****r" multiple times, as Valenti "credibly" testified, and found Respondent's testimony that he used the slur only once "not credible" (Rep: 9, 16). The Referee determined that Respondent's testimony that he would have told his story the same way had a Black person been present was "not credible," as that assertion was "inconsistent with his various very negative characterizations of the N-word, as well as with his testimony that even his racist father did not use the N-word in Harry's presence because it is an insulting,

racially derogatory term" (Rep: 16). Moreover, Respondent's testimony that he prefaced his story with a warning that he would be using offensive vernacular language was "not credible," as evidenced by the "shock and discomfort Ms. Valenti and Ms. Bartolotta experienced as they listened to Respondent's use of the N-word" (Rep: 17). As to the S[redacted] D[redacted] matter, Respondent's testimony that he was unaware of the severity and nature of D[redacted]'s injury was "not credible" given the nature of the injury and Respondent's proximity to D[redacted] in the courtroom (Rep: 19).

The Referee concluded as a matter of law that Commission Counsel established Respondent's misconduct as to both charges in the Complaint, and that "Respondent violated sections 100.1, 100.2(A), 100.3(B)(4) and 100.4(A)(1) and (2) of the Rules" (Rep: 23).

Conclusions of Law as to Charge I

Regarding the first charge, the Referee noted that "the Commission and the Court of Appeals have long condemned and been intolerant of a judge's use of the N-word, which is a 'hateful' term that has 'no place in a judge's lexicon' . . . and is a 'deeply offensive . . . unambiguously racial epithet'" (Rep: 27, quoting *Matter of Mulroy*, 2000 Ann Rep of NY Commn on Jud Conduct 125, 128, *sanction accepted*, 94 NY2d 652 [2000] and *Ayissi-Etoh v Fannie Mae,* 712 F3d 572, 577 [DC Cir 2013], respectively). The Referee stressed that the fact that Respondent

used this term "in an off-the-bench parking lot conversation" was "irrelevant," given the Court of Appeals' holding that "judges carry the esteemed office with them wherever they go" because "misconduct, no matter where it occurs, subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge" (Rep: 35, quoting *Matter of Senzer*, 35 NY3d 216, 220 [2020] [citation and quotation marks omitted]). Indeed, the Referee noted, in *Senzer*, the Commission found that the judge "unquestionably" would have committed misconduct if, in a private conversation while acting as an attorney, he had used the word, "n****r" (Rep: 29, citing *Matter of Senzer*, 2020 Ann Rep of NY Commn on Jud Conduct at 147, in conjunction with Commission Counsel's brief).

Noting Respondent's contention that his use of the word "n****r" did not constitute misconduct because of the "context" in which he said it, the Referee observed the "seminal case" on point to be *Matter of Agresta*, 1985 Ann Rep of NY Commn on Jud Conduct at 109, *sanction accepted*, 64 NY2d 327 (1985), in which the Commission held that a judge's use of the word, "n****r" is "indefensible" "in any context" (Rep: 24-25, 30, 32). The Referee found that precedent to be binding in this matter (Rep: 26).

Even were that not so, the Referee held, Respondent's "context" defense was unpersuasive for several reasons. First, Respondent's use of the slur "was unnecessary" because – despite Respondent's contrary claim at the hearing – he

could have "told his [s]tory with its message of racial harmony and tolerance without using the N-word," as Valenti "made clear in her text message" to her supervisor (Rep: 17, 30). Next, Respondent "used the N-word multiple times when telling his [s]tory," which "compounded his impropriety" (Rep: 31, citing *Matter of Fabrizio*, 1985 Ann Rep of NY Commn on Jud Conduct at 127, 131-33, *sanction accepted*, 65 NY2d 275 [1985]). And, the Referee determined, "the reactions of Ms. Valenti and Ms. Bartolotta to Respondent's use of the N-word further undermine[d] his contextual justification for using it," as Valenti found it "completely inappropriate" and Bartolotta was "taken aback," leading both women to report Respondent's offensive conduct to their superiors (Rep: 31-32).

Having concluded that Respondent's repeated use of the word "n****r" constitutes plain misconduct, the Referee found two aggravating factors: that Respondent sought to avoid responsibility for his misconduct, and that he failed to appreciate his wrongdoing in any event. As to the former, the Referee found that Respondent sought "to shield himself from his impropriety," by "repeatedly den[ying] that he, himself, used the N-word," and claiming instead, "'that's not my word[,] [t]hat's a quotation of what my father said'" (Rep: 33, *quoting* Jones: 168). The Referee determined that "Respondent's refusal to budge from his position is troubling and reflects his incapacity to take ownership of the racial slur he used" (Rep: 33). In any event, the Referee pointed out, "[v]arious courts have rejected

defenses like Respondent's 'not my words defense.'" (Rep: 33-34, *citing Moyer v Jos A Bank Clothiers, Inc.*, 601 Fed Appx 247, 249 [5th Cir 2015]; *Jincks v Ala Jud Inquiry Comm'n*, 375 So 3d 755, 762-63 [Ala 2022]).

As for his failure to appreciate his misconduct, Respondent asserted – though not credibly – that he "would have told his [s]tory using the term "N****r" had a Black person been present" (Rep: 34). That assertion, the Referee concluded, along with Respondent's insistence that "n****r" was his father's word, "demonstrate[] his inability to appreciate that the N-word is a 'hateful' and 'deeply offensive racial epithet'" and highlight his "failure to understand his impropriety [in using] the N-word . . . even in retrospect during the Hearing before the Referee" – factors that the Court of Appeals has found to be "'[o]f significant concern'" (Rep: 34, quoting *Mulroy*, 2000 Ann Rep at 128, *Ayissi-Etoh*, 712 F3d at 577, and *Matter of Duckman*, 92 NY2d at 154). In the same vein, the Referee added, "Respondent's analogizing his use of the N-word in telling his [s]tory to a hypothetical public literary reading of the classics, 'The Adventures of Tom Sawyer,' published 149 years ago . . . and 'The Adventures of Huckleberry Finn,' published 140 years ago . . . demonstrates his retrograde attitude about the toxicity of the racially derogatory term, "N****r", in 2024-2025" (Rep: 32). Accordingly, the Referee concluded, "Respondent's insensitivity to the use of the N-word

'cast[s] doubt' on [his] impartiality when Black litigants appear before him" (Rep: 33, quoting *Mulroy,* 94 NY2d at 656).

Conclusions of Law as to Charge II

As to the second charge, the Referee first recounted that "the phrase 'playing the race card' refers to false or exaggerated claims of [racial] bias . . . to be played for selfish advantage" and "has a derogatory meaning since 'it presumes that racial minorities are so devious as to consistently make claims they know to be false . . . .'" (Rep: 36-37, citations omitted). The Referee further observed that the phrase "'disparages Blacks because it evokes the racial stereotype that Blacks cannot be trusted, are untruthful and are liars'" and "'implies[ ] that people often invoke race as a cynical ploy to curry favor, or sympathy, and to cast aspersions on the character of others'" (Rep: 36-37, citations omitted).

Thus, the Referee concluded that by making the "race card" comment about S[redacted] D[redacted], "Respondent invoked a racial stereotype – that Blacks are dishonest, untrustworthy and liars" – and "exploited a common and classic racial trope . . . exhibiting [his] bias, or, at least, [his] implicit bias." (Rep: 41-42, quoting *Matter of Putorti*, 40 NY3d 359, 366-67 [2023]).[10] In determining that this comment

[10] The Referee determined that even if Respondent was "unfamiliar" with that stereotype, his comment constituted misconduct nonetheless, as "'[r]egardless of whether [R]espondent's remarks were knowingly racist or simply ill considered . . . [they] serve[d] to undermine public confidence in the integrity and impartiality of the judiciary' and of Respondent himself" (Rep: 43, quoting *Matter of Pennington*, 2006 Ann Rep of NY Commn on Jud Conduct at 224, 226).

constituted plain misconduct, the Referee equated it to other "racial trope[s]" that the Commission and Court of Appeals have "condemn[ed]" (Rep: 37-41, citing *Matter of Putorti*, 2023 Ann Rep of NY Commn on Jud Cond at 230, *sanction accepted,* 40 NY3d at 359; *Matter of Gall*, 2025 Ann Rep of NY Commn on Jud Cond at 104; *Matter of Duckman*, 1998 Ann Rep of NY Commn on Jud Cond at 83, *sanction accepted* 92 NY2d at 152; and *Matter of Schiff*, 1994 Ann Rep of NY Commn on Jud Cond at 97, *sanction accepted* 83 NY2d 689 [1994]). Indeed, the Referee noted, Respondent himself admitted that this comment "create[ed] an impression . . . that I was biased in some way," and emphasized that the Court of Appeals has "stress[ed] that the appearance of [racial bias] . . . is no less to be condemned than is the impropriety itself" (Rep: 42, quoting *Putorti*, 40 NY3d at 366).

The Referee also concluded that Respondent "inappropriately ridiculed Ms. D[redacted] with his 'race card' and pugilistic remarks" at a time when he should have "appreciate[d] the stressors underlying Ms. D[redacted]'s outburst: her pain, her serious eye and forehead injuries, her loss of work income if she remained incarcerated and that she lacked medication for her [redacted]" (Rep: 44). These comments "were insensitive to Ms. D[redacted] with her pain, obvious eye and forehead injuries and her lack of medication," such that he "failed to treat Ms. D[redacted] with the respect that every litigant deserves from a judge" (Rep: 23).

Finally, the Referee determined that Respondent "invoked another racial stereotype" when he commented that D[redacted] probably would have attacked the public defender had she not been handcuffed (Rep: 42-43). Specifically, that "pugilistic description of Ms. D[redacted] evoked the racially disparaging stereotype of the 'angry Black woman' – the Black woman who asserts herself or is verbally aggressive and then is perceived as angry," which exhibited further "bias, or at least, implicit bias" (Rep: 42-43, citing *Putorti,* 40 NY3d at 366-67, other citations omitted). This stereotype, the Referee noted, is "similar to the racist 'Black men are inherently threatening or dangerous' stereotype condemned by the Court of Appeals in *Putorti*" (Rep: 42).

ARGUMENT

POINT I

THE REFEREE CORRECTLY FOUND THAT RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY REPEATEDLY USING THE WORD "N****R" IN FRONT OF A COURT CLERK AND DEFENSE ATTORNEY, AND BY INVOKING HARMFUL RACIAL STEREOTYPES IN OPEN COURT ABOUT A BLACK CRIMINAL DEFENDANT.

As the Court of Appeals has made clear, a judge violates the Rules Governing Judicial Conduct ("Rules") by exhibiting racial bias, on or off the bench. *Putorti*, 40 NY3d 359; *Schiff*, 83 NY2d 689; *Matter of Esworthy*, 77 NY2d 280 (1991); *Agresta*, 64 NY2d at 327; *Matter of Cerbone*, 61 NY2d 93 (1984); *see* Rules 100.1, 100.2(A), 100.3(B)(4), and 100.4(A)(1)-(2). Indeed, indications of racial bias "cast[ ] doubt on [a judge's] ability to fairly judge all cases before him" (*Schiff*, 83 NY2d at 693, quotation marks omitted) and "necessarily ha[ve] the effect of leaving litigants with the impression that our judicial system is unfair and unjust." *Esworthy*, 77 NY2d at 282-83. Moreover, the Court has "stress[ed]" that because judges have a "continuing obligation to avoid even the appearance of impropriety," as "the appearance of racial bias . . . is no less to be condemned than is the impropriety itself." *Putorti*, 40 NY3d at 366 (internal quotations marks and citations omitted); *see also Duckman*, 92 NY2d at 153 (1998); *Matter of Sardino*, 58 NY2d 286, 290-91 (1983).

In his Report, the Referee echoed these principles in unequivocally determining that Respondent committed judicial misconduct by repeatedly using the word "n****r" in front of a court clerk and defense attorney, and making comments in open court about a Black defendant that were racially insensitive and invoked harmful stereotypes.

A. Respondent's use of the word, "n****r" constitutes judicial misconduct.

The word "n****r" is "a hateful racial epithet" that should have "no place in a judge's lexicon." *Mulroy*, 2000 Ann Rep at 125, 128. "No citizen should be required to appear before a judge who publicly uses terms such as 'n****rs.'" *Matter of Cerbone*, 1984 Ann Rep at 76, 78, *sanction accepted* 61 NY2d at 93. Put simply, the epithet is "indefensible" in "any context," whether "[in or] out of court," and its use constitutes plain misconduct. *Matter of Agresta*, 1985 Ann Rep at 111, *sanction accepted* 64 NY2d at 330; *see Cerbone*, 61 NY2d at 93); *Matter of Pennington*, 2006 Ann Rep of NY Commn on Jud Conduct at 224, 226.

As the Referee correctly determined, Respondent's admitted use of the word "n****r" when telling his story about "N****r Harry" in the public jailhouse parking lot on May 10, 2024, violated the above-cited precedents (Rep: 23, 27-29). That remains true despite this incident having occurred outside the courtroom, the Referee noted (Rep: 35), as "judges carry the esteemed office with them wherever they go" since "misconduct, no matter where it occurs, subjects the judiciary as a

whole to disrespect and impairs the usefulness of the individual Judge." *Senzer*, 35 NY3d at 220.

The Referee efficiently dispatched the meager defense Respondent raised at the hearing: that he was merely "quoting [his] father" while telling a story, which rendered his use of the slur acceptable (Jones: 151-52, 163-64, 166, 169-72, 175). As the Referee recognized (Rep: 24-27), the Commission made clear over 40 years ago that a judge's use of the word "n****r" is "indefensible" "in any context," including where the judge does not "mean[ ] it as a racial slur." *Agresta*, 1985 Ann Rep at 111 (emphasis added). That is because, "[r]egardless of whether respondent's remarks were knowingly racist or simply ill-considered, the use of such language by a judicial officer serves to undermine public confidence in the integrity and impartiality of the judiciary." *Pennington*, 2006 Ann Rep at 226.

Nor, the Referee correctly held (Rep: 17, 30), is the impropriety of Respondent's use of the slur mitigated by his desire to teach a "lesson" to Valenti and Bartolotta, or his belief that the word "n****r" was a necessary component of his story (Jones: 148, 152, 165, 171, 175-76). This story – which Respondent took upon himself to tell, without being asked – was unrelated to his judicial duties or anything that had happened in the just-ended court session (Valenti: 50). In short, the telling of the story itself was entirely gratuitous.

Still, had Respondent wished to teach this extracurricular "lesson" to Valenti and Bartolotta, he could have done so without the racist slur, just as he did when he recounted the story on the witness stand before the Referee. As the Referee noted, Valenti made the same comment in the text message she sent to her supervisor in the immediate aftermath of the story – she, too, would have easily understood the story without the vile epithet (Rep: 17). All told, Respondent's use of the slur did not add "authenticity" (Jones: 165). It merely evinced racial vulgarity and insensitivity unbecoming of a judge.

At the very least, Respondent's use of the word "n****r" created "the appearance of racial bias," which "is no less to be condemned than is the impropriety itself." *Putorti*, 40 NY3d at 366 (internal quotations marks and citations omitted); *see also Duckman*, 92 NY2d at 153; *Sardino*, 58 NY2d at 290-91. Though Respondent denied a racist intent in speaking the slur, Bartolotta and Valenti were not privy to the inner workings of his mind, and indeed, the word made both feel deeply uncomfortable (Valenti: 32, 56-57; Bartolotta: 86, 101). Moreover, other people in the parking lot – perhaps those going in and out of the jail or the person sitting in the nearby car with the window down (Valenti: 32-34, 55-56, 66; Bartolotta: 80-81; Ex 1) – may have heard Respondent's slur as well, particularly toward the end when he "yelled" "N****r Harry, N****r Harry," and was "acting out the story with his words" (Valenti: 32; Rep: 10-11).

To all who heard him, Respondent revealed his view that the word "n****r" is acceptable to use in modern society. Such a view could only undermine public confidence in Respondent's ability to preside impartially, and in the integrity and impartiality of the judiciary. *Pennington*, 2006 Ann Rep at 226; *see Matter of Aldrich*, 1983 Ann Rep of NY Commn on Jud Conduct at 75, 78, *sanction accepted* 58 NY2d 279 (1983) (The use of racist remarks and racial slurs by a judge "diminishe[s] the esteem of the court and the dignity of judicial office").

B. Respondent's comments that a Black defendant had "naturally" "played the race card" after being saddled with high bail, and presumably would have become violent had she not been restrained, constitute judicial misconduct.

A judge commits plain misconduct by "us[ing] racist language while performing his judicial duties. Standing alone, this is serious misconduct." *Matter of Fabrizio*, 1985 Ann Rep at 127, 133. Such language includes not only overt racial slurs (*see* Part A, *supra*), but the perpetuation of "classic and common racist trope[s]" as well. *Putorti*, 40 NY3d at 366. Such remarks – whether "knowingly racist or simply ill-considered" (*Pennington*, 2006 Ann Rep at 226) – "diminish[ ] the esteem of the court and the dignity of judicial office." *Aldrich*, 1983 Ann Rep at 78.

Here, as Respondent admitted (Jones: 154, 158), he commented, "Naturally she played the race card," after D[redacted] expressed her belief that she had been charged with attempted assault and saddled with high bail despite having been

beaten up herself, because she was African American. As the Referee noted, that phrase "refers to 'false or exaggerated claims of [racial] bias . . . to be played for selfish advantage'" and "disparages Blacks" in particular "because it evokes the racial stereotype that Blacks . . . are untruthful" and "often invoke race as a cynical ploy to curry favor, or sympathy, and to cast aspersions on the character of others" (Rep: 36-37, quotation marks and citations omitted).

As the Referee rightly found, in making these comments, Respondent committed misconduct by "invok[ing] a racial stereotype . . . and "'exploit[ing] a common and classic racial trope,'" which "'exhibit[ed] [his] bias, or, at least, [his] implicit bias,'" against Black people (Rep: 41-42, quoting *Putorti*, 40 NY3d at 366-67). Indeed, especially considering his use of the word "naturally" to qualify his comment to mean that he "assumed that she was going to" invoke her race (Jones: 158), Respondent demonstrated that he makes assumptions about the defendants before him based on their skin color. As the Referee appropriately noted, this invocation of a racial stereotype is akin to other matters in which the Commission and Court of Appeals have found misconduct where the subject judge propagated similar "racial trope[s]" (Rep: 37-41). *See eg, Putorti*, 40 NY3d at 359 (Black men are inherently dangerous); *Schiff*, 83 NY2d at 689 (Blacks and Puerto Ricans were responsible for increasing crime rates); *Gall*, 2025 Ann Rep of at 104 (Black people have limited intellectual capacity and are not as smart as whites);

Duckman, 1998 Ann Rep at 85, *sanctioned accepted* 92 NY2d at 152 (Black people run on "CP time," meaning they are frequently late because they have to travel "from the projects")

Separately, the Referee held, Respondent committed additional misconduct by volunteering his belief that D[redacted] "probably" would have "attack[ed]" her defense attorney "if she hadn't been handcuffed" (Ex 5; Ex 6 p 14), which invoked another "racially disparaging stereotype" – that of "the angry Black woman" (Rep: 42-43). This "pugilistic description of Ms. D[redacted]," to borrow the Referee's words (Rep: 42), conveyed Respondent's presumption that she would have resorted to violence if given the opportunity because she was Black. This dangerous presupposition implicates precisely the kind of "classic and common racist trope" the Court of Appeals recently condemned in *Putorti*. *See* 40 NY3d at 366. Indeed, although Respondent self-servingly denied ever hearing of this trope (Jones: 160-61), the notion that Black women are angry and/or violent is well recognized nationwide as "a harmful and well-rooted racial stereotype." *McIver v Bridgestone Americas, Inc*, 42 F4th 398, 413 (4th Cir. 2022) (Motz, J, concurring); *see Tartt v Unified School District No 475*, __ F4th__, 2025 WL 1779732 at *3 n7 (10th Cir 2025); *Branscumb v Horizon Bank*, __ F4th __, 2025 WL 48106 at *5 (6th Cir 2025); *Buckley v Secretary of Army*, 97 F4th 784, 788-89 (11th Cir 2024); *Shannon v Cherry Creek School District*, 2023 WL 6232403 at *3 (10th Cir 2023); *Banks v*

General Motors, LLC, 81 F4th 242, 272 (2d Cir 2023); *Jackson v Illinois Dept of Commerce and Economic Opportunity*, 2022 WL 3009598 at *6 (7th Cir 2022); *see generally* Daphna Motr et al., *Race and Reactions to Women's Expressions of Anger at Work: Examining the Effects of the "Angry Black Woman" Stereotype*, 107 J. APPLIED PSYCH. 142, 148 (2022).[11]

POINT II

RESPONDENT'S REPEATED DEMONSTRATION OF RACIAL BIAS, COMBINED WITH HIS REFUSAL TO ACCEPT RESPONSIBILITY FOR HIS MISCONDUCT AND INABILITY TO APPRECIATE THE GRAVITY OF HIS WRONGDOING, REQUIRE HIS REMOVAL FROM OFFICE.

Respondent's demonstrated racial bias renders him unfit for judicial office. Respondent repeatedly used the word "n****r" while speaking to a court clerk and a public defender, and he made racist and stereotypical remarks from the bench about a Black criminal defendant. Respondent aggravated his misconduct by failing to accept responsibility for it, minimizing it during his hearing testimony, and demonstrating his inability or unwillingness to appreciate the gravity of his wrongdoing. He should be removed from the bench.

[11] Available at https://www.apa.org/pubs/journals/releases/apl-apl0000884.pdf (last visited Dec. 18, 2025).

A. Respondent's use of the word "n****r" alone warrants his removal from office, and the fact that he used the slur multiple times aggravates his misconduct.

As the Commission held over 40 years ago, "[n]o citizen should be required to appear before a judge" who uses the term "n****r," even off the bench. *Cerbone,* 1984 Ann Rep at 78, *sanction accepted* 61 NY2d at 93. Indeed, the use of that "hateful racial epithet" (*Mulroy*, 2000 Ann Rep at 128, *sanction accepted* 94 NY2d at 652) is a "flagrant breach of accepted norms" even when spoken by a member of the public; but "[w]hen [used] by a Judge, a person required to observe high standards of conduct so that the integrity . . . of the judiciary may be preserved, . . . such conduct is inexcusable." *Matter of Kuehnel*, 49 NY2d at 469 (quotation marks and citations omitted). Respondent's use of that slur, by itself, "casts doubt on [his] ability to fairly judge all cases before him" (*see Schiff*, 83 NY2d at 692-93) and "indicates an unacceptable bias and insensitivity that . . . warrants the severest possible sanction" – removal from office. *See Mulroy*, 2000 Ann Rep at 128.

Respondent repeated that epithet multiple times, expressly discrediting Respondent's self-serving testimony that he had used the slur only once (Rep: 9, 16). That repetition of such a "deeply offensive racial epithet" (Rep: 34, quoting *Ayissi-Etoh,* 712 F3d at 577) – indeed, "perhaps the most offensive and inflammatory racial slur in English" (*Swinton v Potomac Corp*, 270 F3d 794, 817

[9th Cir 2001], quoting *Merriam–Webster's Collegiate Dictionary* 784 [10th ed 1993]) – only aggravates the misconduct. Removal is required on this basis alone.

B. Respondent's perpetuation of harmful racial stereotypes, in open court from the bench, likewise compels his removal from office.

The Commission and Court of Appeals have repeatedly removed judges for perpetuating racist tropes and stereotypes, which are patently inconsistent with a judge's responsibilities to perform his judicial duties without bias or prejudice. *See eg*, *Putorti*, 40 NY3d at 359; *Duckman*, 92 NY2d at 141; *Schiff*, 83 NY2d at 689; *Gall*, 2025 Ann Rep of at 104. Indeed, statements involving racial stereotypes strongly indicate removal, as they "cast[ ] doubt on [the judge's] ability to fairly judge all cases before him." *Schiff*, 83 NY2d at 693.

That is the case here. In announcing his presumption that Ms. D[redacted] would "play the race card" – *ie* seek unjust benefit based on her skin color – simply "because she was [B]lack" (Jones: 158; Rep 22), and insinuating that she would have become violent had she not been restrained in furtherance of a hateful racial trope, Respondent demonstrated a racial bias that fatally undermines 'the public's trust in [his] ability to discharge the responsibilities of judicial office in a fair and just manner." *Putorti*, 40 NY3d at 367-68 (citing *Matter of Restaino*, 10 NY3d 577, 590 [2008] [internal quotations marks omitted]).

In making those hateful comments Respondent at best created at least "the appearance of racial bias," which is "no less to be condemned than is the

impropriety itself." *Putorti*, 40 NY3d at 366 (internal quotations marks and citations omitted); *see also Duckman*, 92 NY2d at 153; *Sardino*, 58 NY2d at 290-91. Were Respondent to remain a judge, "Black litigants who appear before him" would "doubt . . . his impartiality" (Rep: 33 quotation marks and brackets omitted), which would force them to unacceptably "carry the additional burden of wondering whether their matters will be adjudicated by a judge . . . with a proclivity toward racial stereotyping," but simply be forced "to cross their fingers and hope for the best." *Gall*, 2025 Ann Rep at 151-53 (Moore, concurring).

C. Respondent aggravated his misconduct by failing to appreciate his ethical wrongdoing, and by overtly attempting to minimize and avoid responsibility for his transgressions.

The Court of Appeals has held that a judge's failure to accept responsibility for his actions, failure to appreciate that he acted inappropriately, or attempts to minimize the import of his actions, are factors that may aggravate the judge's misconduct. *Matter of Astacio*, 32 NY3d 131, 136 (2018) (failure to "genuinely accept[ ] personal responsibility" for misconduct); *Matter of Ayres*, 30 NY3d 59, 66 (2017) ("fail[ure] to appreciate that he acted inappropriately" and "continues to minimize the import of his actions"). As the Referee found, the hearing record is rife with examples of Respondent's failure to accept responsibility for his misconduct and recognize the import of his actions.

Most notably, as the Referee determined, Respondent flatly refused to take responsibility for the fact that he said, "n****r" by "repeatedly den[ying] that he, himself, used the N-word," and claiming instead, "'that's not my word[,] [t]hat's a quotation of what my father said'" (Rep: 33, *quoting* Jones: 168). Indeed, Respondent repeated that excuse at least 15 times (Jones: 151-52, 163-64, 166, 169-72, 175), and when pressed on whether he was the one who actually spoke the word in the parking lot, he flatly refused to give a simple answer, stating, "I can't answer the question in any other way than giving the qualified answer that I have given" (Jones: 168). In the Referee's words, that "refusal to budge from his position is troubling and reflects his incapacity to take ownership of the racial slur he used" (Rep: 33), which the Court of Appeals has found to be an aggravating factor. *See Astacio*, 32 NY3d at 136; *Ayres*, 30 NY3d at 66.

Along the same lines, Respondent "fail[ed] to appreciate that he acted inappropriately" (*Ayres*, 30 NY3d at 66) in using the slur at all, regardless of who he was quoting or why he said it. To that end, Respondent's defense of his use of "n****r" by analogizing his family anecdote to Huckleberry Finn and Tom Sawyer in order to insinuate that he was justified in "quoting [his] father" just as if he had been quoting aloud from one of those works (Jones: 185-87), betrayed what the Referee aptly described as Respondent's "retrograde attitude about the toxicity of the racially derogatory term, "N****r", in 2024-2025" (Rep: 32). Similarly, the

fact that Respondent asserted – falsely, the Referee found – that he would have said the full slur even had he been telling the story to a Black person (Jones: 175-76) "demonstrates [Respondent's] inability to appreciate that the N-word is a 'hateful,' and 'deeply offensive racial epithet,'" highlights his "failure to understand his impropriety [in using] the N-word . . . even in retrospect during the Hearing before the Referee," and thus underscores his astounding failure to appreciate his wrongdoing (Rep: 16, 34, internal citations omitted). And, though Respondent doubled down on his insistence that he had to say "n****r" because he deemed it necessary to tell the story, and Bartolotta and Valenti "would [not] have understood what [he] was talking about" had he replaced the slur with the term, "N-word" (Jones: 152, 171), the Referee correctly found that neither of those things is true (Rep: 9, 16-17). All told, Respondent's unsuccessful attempts to excuse his misconduct, and avoid full responsibility, constitutes an aggravating factor under *Ayres* and *Astacio*.

Respondent further attempted to minimize his misconduct (*Ayres*, 30 NY3d at 65 in claiming – contrary to evidence – that he said the word "n****r" only once, "to introduce the story" (Jones: 151, 154), after warning Valenti and Bartolotta hat he would be using offensive vernacular language. This testimony simply is not credible, as the Referee explicitly found (Rep: 16-17, 31). Rather, Respondent used the slur multiple times, as Valenti credibly testified (Rep: 9, 16),

and that repeated use of the epithet "compounded his impropriety" (Rep: 31, *citing* *Fabrizio*, 1985 Ann Rep at 131-33). He also plainly did not warn Valenti and Bartolotta as he said he did, as evidenced by the "shock and discomfort Ms. Valenti and Ms. Bartolotta experienced as they listened to Respondent's use of the N-word" (Rep: 17). This falsehood – which appears transparently designed to minimize Respondent's wrongdoing – also aggravates his misconduct.

Finally, though Respondent admitted to using the word "n****r" in the public parking lot, and making the "race card" and related comments following the D[redacted] arraignment, he further attempted to avoid responsibility for his actions by maintaining that on neither occasion did his comments create the appearance of racial bias (Jones: 154-55, 158, 160-61, 192-93), nor that his use of the slur in front of a court employee and a public defender could have impacted their opinion of his impartiality (Jones: 185). It is indefensible to claim that a judge does not create the appearance of racial bias using the word "n****r" "in any context" (*Agresta*, 1985 Ann Rep at 111), or by espousing "harmful and well-rooted racial stereotype[s]" from the bench (*McIver*, 42 F4th at 413). *Pennington*, 2006 Ann Rep at 226 ("[r]egardless of whether respondent's remarks were knowingly racist or simply ill-considered, the use of such language by a judicial officer serves to undermine public confidence in the integrity and impartiality of the judiciary").

In sum, these aggravating factors warrant removal to "safeguard the Bench" from Respondent, who has more than demonstrated himself to be an "unfit incumbent[ ]." *Restaino*, 10 NY3d at 589 (quoting *Duckman*, 92 NY2d at 152).

* * *

Commission counsel respectfully requests that the Commission adopt the factual findings and conclusions of law in the Referee's Report and issue a determination recommending that Respondent be removed from judicial office.

CONCLUSION

Commission Counsel respectfully requests that the Commission adopt the Referee's findings of fact and conclusions of law, find that Charges I and II of the Complaint are sustained, and issue a determination that Respondent be removed from judicial office.

Dated: December 23, 2025
Rochester, New York

Respectfully submitted,

ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct

By: _____

David Stromes
Senior Litigation Counsel
400 Andrews Street, Ste 700
Rochester, NY 14604

Of Counsel:

John J. Postel, Esq.
Edward Lindner, Esq.
Denise Buckley, Esq.
David Stromes, Esq.
Cassie Kocher, Esq.