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.

POST-HEARING MEMORANDUM TO THE REFEREE AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission Counsel") in support of the recommendation that the Referee adopt the appended proposed findings of fact and conclusions of law and determine that the Honorable Walter W. Jones ("Respondent") has committed judicial misconduct.

INTRODUCTION

Twice within the course of a week in May 2024, Respondent made public racist comments indicating bias, or at least the appearance of bias, against Black people. First, 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] two to four times. Then, on May 15, 2024, while still 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, Respondent steadfastly denied that he did anything wrong by using the word "n****r," reasoning that his use of the slur was acceptable because he was merely 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 "color" – his word – 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.

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 farther 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.

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) – has been a judge of the Canandaigua Town Court, Ontario County, since 1999

(Jones: 133). His judicial duties include presiding over the Centralized Arraignment Part ("CAP"), which is held at the Ontario County Jail approximately twice per month. 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).[2]

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 20, 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). 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

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

wife (Valenti: 24-26; Bartolotta: 77, 79; Jones: 149; Ex 1 [video of parking lot]). Knowing that Valenti was an avid reader based on comments she had made previously, Respondent also gave Valenti a couple of 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).

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). In recounting the story, Respondent used the term, "N****r Harry," two to four times, to refer to a Black man named Harry whom Respondent's father had known (Valenti: 31; Bartolotta: 79).[3] 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).

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;

[3] Valenti testified that Respondent had said "N****r Harry" four times, while Bartolotta believed it was two to three times (Valenti: 31; Bartolotta: 79).

Jones: *see* 140-45). 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). After that, the two developed an unlikely friendship (Valenti: 29).

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). 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). 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).[4] Respondent's use of the word, "n****r" made both women uncomfortable (Valenti: 32; Bartolotta: 101).[5]

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 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;

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

[5] 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).

Bartolotta: 80-81; Ex 1). The person sitting in the driver's seat appeared to be holding a cell phone, which made Bartolotta "concerned" that a recording of Respondent's words might be in the making (Bartolotta: 80-81, 85-86, 91).

When the story ended and Valenti was able to walk away, she sent a text message to a group of co-workers that included her boss, 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]). 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]).

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 (Bartolotta: 86).

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). 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 in particular that made light of the tragic events of September 11th (Valenti: 53, 68).

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).

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) 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: 166; *see also* 164). Respondent further compared his use of the slur to speaking it when reading aloud from Huckleberry Finn or Tom Sawyer (Jones: 185-87).

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: 152, 171). 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).[6] 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 "because we're not supposed to [say] that anymore" (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

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

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: 153). 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). Neither Valenti nor Bartolotta asked to hear the story or be taught that lesson (Valenti: 50).

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: 104-05). 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). 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]). 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).[7]

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

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

the altercation for which she was being charged (Conklin: 110). Conklin requested lower bail given D[redacted]'s lack of criminal history, but Respondent imposed the bail the prosecution requested (Conklin: 110). 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]).

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). 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). He also asked Conklin, "Do they teach you to fight back at the Public Defender's Office?" (Ex 5; Ex 6 p 15).[8] 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 front of Respondent, he feared that any kind of complaint could negatively impact his future clients (Conklin: 111).

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

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). 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). 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," but insisted that it did not create the appearance of racial bias (Jones: 154-55, 158, 192-93). 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," and asking Conklin if he was taught to fight back at the public

defender's office (Jones: 158-59). 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).

ARGUMENT

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY REPEATEDLY USING THE WORD "N****R" IN FRONT OF A COURT CLERK AND DEFENSE ATTORNEY, AND BY MAKING RACIALLY INSENSITIVE COMMENTS IN OPEN COURT ABOUT A BLACK DEFENDANT WHO OBJECTED TO HIGH BAIL.

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. *Matter of Putorti*, 40 NY3d 359 (2023); *Matter of Schiff*, 83 NY2d 689 (1994); *Matter of Esworthy*, 77 NY2d 280 (1991); *Matter of Agresta*, 64 NY2d 327 (1985); *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 have 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," "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 Matter of Duckman*, 92 NY2d 141, 153 (1998); *Matter of Sardino*, 58 NY2d 286, 290-91 (1983).

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" (*Matter of Mulroy*, 2000 Ann Rep of NY Commn on Jud Conduct at 125, 128), whether "[in or] out of court." *Matter of Agresta*, 64 NY2d 327, 330 (1985) (citing *Cerbone*, 61 NY2d at 93). In fact, even where a judge does not "mean[ ] it as a racial slur, [the] use of the term "n****r" is "indefensible" in "any context." *Matter of Agresta*, 1985 Ann Rep of NY Commn on Jud Conduct at 109, 111, *sanction accepted* 64 NY2d 327; *see Matter of Pennington*, 2006 Ann Rep of NY Commn on Jud Conduct at 224, 226. At bottom, "[n]o citizen should be required to appear before a judge who publicly uses terms such as 'n****rs.'" *Matter of Cerbone*, 1984 Ann Rep of NY Commn on Jud Conduct at 76, 78, *sanction accepted* 61 NY2d 93.

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 (Jones: 151, 154; *see* Valenti: 31; Bartolotta: 79), violated the above-cited precedents. It

makes no difference how many times he used the epithet,[9] nor that it was out of court; in "any context," it was "indefensible" and violated the Rules. *Agresta*, 64 NY2d at 330; *Agresta*, 1985 Ann Rep of NY Commn on Jud Conduct at 111; *see Mulroy*, 2000 Ann Rep of NY Commn on Jud Conduct at 128.

In disputing that his use of "n****r" constituted misconduct, Respondent contends that "context is everything" (Jones: 185), and because he was "quoting [his] father" while telling a story, his use of the slur was acceptable (Jones: 151-52, 163-64, 166, 169-72, 175). He further analogizes his story to Huckleberry Finn or Tom Sawyer 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).

Settled precedent squarely refutes this claim as well. As the Commission made clear over 40 years ago, 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 of NY Commn on Jud Conduct at 111 (emphasis added).[10] 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

[9] Two or more times according to Valenti and Bartolotta (Valenti 31, Barolotta 79). Respondent's contention that he used the word only once is not credible (Jones 151). *See* Part C, *infra*.

[10] In an email dated August 22, 2025, the Referee invited the parties to address the applicability of *Matter of Agresta*. Given the quotations reproduced above, it's applicability could not be clearer: it is fatal to Respondent's misguided defense that his use of the slur was excusable because of the "context" in which he said it (*see* Jones: 152, 171, 183, 185-87).

to undermine public confidence in the integrity and impartiality of the judiciary." *Pennington*, 2006 Ann Rep of NY Commn on Jud Conduct at 226. In any event, Respondent is not Mark Twain, his family anecdote is not a renowned literary classic, and the parking lot of the Ontario County Jail is not a venue where people gather to hear readings from famous 19th Century literary works written in the vernacular of the time.

Nor is the impropriety of Respondent's use of the slur diminished 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 desired 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. Indeed, though Respondent protested that "[t]he whole story kind of breaks down" without the word "n****r" and "nobody would have understood what [he] was talking about" (Jones: 152, 171), it is fair to say everyone in the hearing room got the point.

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 uncomfortable (Valenti: 32, 56-57; Bartolotta: 86, 101), with Valenti making clear that she found it "completely inappropriate" (Ex 4). 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).

To all who heard him, Respondent revealed – and his continued defense of his use of the epithet underscores – his view that the word "n****r" is acceptable to use. 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 of NY Commn on Jud Conduct at 226; *see Matter of*

Aldrich, 1983 Ann Rep of NY Commn on Jud Conduct at 75, 78, *removal 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," 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 of NY Commn on Jud Conduct 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 of NY Commn on Jud Conduct at 226) – "diminish[ ] the esteem of the court and the dignity of judicial office." *Aldrich*, 1983 Ann Rep of NY Commn on Jud Conduct 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. Critically, Respondent acknowledged that he used the word, "naturally" to qualify his comment "because she was [B]lack," and he therefore "assumed that she was going to" do so (Jones:

158). That presumption exhibits clear bias, as it demonstrates that Respondent makes assumptions about the defendants before him based on their skin color.

Worse still, Respondent volunteered 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). This presumption of anger and violence, coming on the heels of his "race card" comment, creates at least the appearance that Respondent assumed D[redacted] 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 found to constitute misconduct in *Matter of Putorti*. 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 Motro 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]

C. Respondent's hearing testimony demonstrated that he has failed to recognize or appreciate his ethical wrongdoing.

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 minimization of 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"). 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, Respondent simply refused to take responsibility for the fact that he said, "n****r," repeatedly insisting, "that's not my word," and trying to excuse his use of the slur because it was "a quotation of what [his] father said" (Jones: 166). 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, flatly refused to give a simple

[11] Available at https://www.apa.org/pubs/journals/releases/apl-apl0000884.pdf (last visited Oct. 21, 2025).

answer, stating, "I can't answer the question in any other way than giving the qualified answer that I have given" (Jones: 166). That unsuccessful attempt to distance himself from the misconduct, and avoid full responsibility, constitutes an aggravating factor under *Ayres* and *Astacio.*

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. Instead, he doubled down on his insistence that he had to say the word 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 actual word, "n****r" with the term, "n-word" (Jones: 152, 171). It's self-evident that neither of those things is true. Worse still, Respondent asserted that he would have said the full slur even had he been telling the story to a Black person (Jones: 175-76). That startling admission highlights the incredible degree of Respondent's racial insensitivity and underscores his astounding failure to appreciate his wrongdoing.

Respondent further attempted to minimize his misconduct (*Ayres*, 30 NY3d at 64) in claiming – contrary to evidence and logic – that he said the word "n****r" only once, "to introduce the story" (Jones: 151, 154). This testimony simply is not credible. Even as Respondent told the story at the hearing – and Valenti recounted it had been told in the parking lot – Respondent said that his

father had exclaimed, "N****r Harry, N****r Harry" in the car (Valenti: 29), or told him "That's N-word Harry" (Jones: 143), upon seeing Harry on the side of the road. Thus, even accepting Respondent's testimony, he must have said "n****r" at least twice: once "to introduce the story" (Jones: 151), and again when recounting his experience in the car (Jones: 143). However, Valenti's testimony that Respondent said "N*****r Harry" four times (Valenti: 31) makes far more sense: once to introduce the story, once when introducing Harry as a worker in the cotton field, and twice more when loudly exclaiming, "N****r Harry, N****r Harry" (Valenti: 29). Indeed, even Bartolotta – who works for Respondent and testified in far less detail than Valenti – remembered hearing Respondent use the slur two or three times (Bartolotta: 79). In light of all that, Respondent's insistence that he said "n****r" only once should be rejected.

Additionally, though Respondent conceded that he would not say "n****r" in full should he repeat his story in the future, his reasoning evinces his lack of appreciation of the nature and gravity of his misconduct. Respondent was explicit on this point: he would avoid the slur in the future because the full word "causes so much upset and consternation and discomfort" (Jones: 176). In other words, Respondent would refrain from using the slur to avoid making others uncomfortable, not because it is a racist term that is demeaning and offensive to an extreme.

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). In holding to that contention, Respondent is either being patently untruthful or burying his head in the proverbial sand. Any claim that a judge does not create the appearance of racial bias using the word "n****r" "in any context" (*Agresta*, 1985 Ann Rep of NY Commn on Jud Conduct at 111), or by espousing "harmful and well-rooted racial stereotype[s]" from the bench (*McIver*, 42 F4th at 413), is indefensible. *Pennington*, 2006 Ann Rep of NY Commn on Jud Conduct 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").

Commission counsel respectfully requests that factual findings in connection with these aggravating factors be included in the Referee's Report.

CONCLUSION

Commission Counsel respectfully requests that the Referee adopt the proposed findings of fact and conclusions of law enumerated in Appendix A to this Memorandum and find that Charge I and II of the Complaint are sustained.

Dated: October 22, 2025
Rochester, New York

Respectfully submitted,

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APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. 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) – was admitted to the practice of law in New York in 1973 and has been a judge of the Canandaigua Town Court, Ontario County, since 1999 (Jones: 133; Complaint ¶ 4).

2. Respondent's judicial duties include presiding over the Centralized Arraignment Part ("CAP"), which is held at the Ontario County Jail approximately twice per month. 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).

PROPOSED FINDINGS OF FACT AS TO CHARGE I

3. At approximately 5:30 p.m. on May 20, 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). 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]).

4. Knowing that Valenti was an avid reader based on comments she had made previously, Respondent also gave Valenti a couple of 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).

5. 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).

6. In recounting the story, Respondent used the term, "N****r Harry," two to four times, to refer to a Black man named Harry whom Respondent's father had known (Valenti: 31; Bartolotta: 79).

7. 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).

8. 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; Jones: *see* 140-45). 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). After that, the two developed an unlikely friendship (Valenti: 29).

9. 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). 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).

10. 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).

11. Respondent's use of the word, "n****r" made both women uncomfortable (Valenti: 32; Bartolotta: 101). 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).

12. 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 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). The person sitting in the driver's seat appeared to be holding a cell phone, which made Bartolotta "concerned" that a recording of Respondent's words might be in the making (Bartolotta: 80-81, 85-86, 91).

13. When the story ended and Valenti was able to walk away, she sent a text message to a group of co-workers that included her boss, 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]).

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]).

14. 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 (Bartolotta: 86).

15. 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). 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 in particular that made light of the tragic events of September 11th (Valenti: 53, 68).

16. 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).

17. 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) 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: 166; *see also* 164). Respondent further compared his use of the slur to speaking it when reading aloud from Huckleberry Finn or Tom Sawyer (Jones: 185-87).

18. 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: 152, 171).

19. 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).

20. 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 "because we're not supposed to [say] that anymore" (Jones: 171).

21. 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: 153).

22. 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). Neither Valenti nor Bartolotta asked to hear the story or be taught that lesson (Valenti: 50).

23. 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).

24. 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).

PROPOSED FINDINGS OF FACT AS TO CHARGE II

25. 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: 104-05).

26. That morning, Conklin represented S[redacted] D[redacted] for her arraignment on charges of attempted second-degree assault and assorted lesser crimes (Bartolotta: 88; Conklin: 105-08).

27. When Conklin met D[redacted] 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]). Conklin noticed that the officers had brought out a "spit hood" for D[redacted] and learned that she had been "agitated" with the officers (Conklin: 108-09).

28. When the arraignment began, the prosecutor requested $3,000 cash bail, $6,000 bond, or $12,000 partially secured bond (Conklin: 109-10). Hearing this, D[redacted] became extremely upset because she believed that she had been the victim in the altercation for which she was being charged (Conklin: 110). Conklin requested lower bail given D[redacted]'s lack of criminal history, but Respondent imposed the bail the prosecution requested (Conklin: 110).

29. 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]).

30. 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).

31. 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). He also asked Conklin, "Do they teach you to fight back at the Public Defender's Office?" (Ex 5; Ex 6 p 15).

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

33. 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).

34. 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).

35. 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).

36. 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).

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

38. 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," and asking Conklin if he was taught to fight back at the public defender's office (Jones: 158-59). 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).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE I

1. 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 Governing Judicial Conduct ("Rules").

2. Respondent 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.

3. Respondent failed to so conduct his extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they do not cast reasonable doubt on his capacity to act impartially as a judge and detract from the dignity of the judicial office, in violation of Sections 100.4(A)(1) and (2) of the Rules.

4. 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.

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE II

1. 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.

2. Respondent 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.

3. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to perform his judicial duties without bias or prejudice against or in favor of any person and without manifesting by words or conduct bias or prejudice based upon race, in violation of Section 100.3(B)(4) of the Rules.

4. 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.