

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,

REFEREE'S REPORT

a Justice of the Canandaigua Town Court,  
Ontario County-----

APPEARANCES:

Robert H. Tembeckjian, Esq. (Cassie Kocher, Esq. and  
David Stromes, Esq.) For The Commission

Charles D. Steinman, Esq. For Hon. Walter W. Jones

David M. Garber, Referee

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. Introduction**

1. Respondent, Walter W. Jones ("Respondent"), has been a Justice of the Canandaigua Town Court, Ontario County, since 1999. Respondent's current

term expires on December 31, 2027. He is an attorney and was admitted to the practice of law in 1973.

2. On or about April 3, 2025, the New York State Commission on Judicial Conduct (“Commission”) served its Notice of Formal Written Complaint and Formal Written Complaint upon Respondent containing two Charges.

3. Charge I alleged that, on or about May 10, 2024, Respondent violated sections 100.1, 100.2(A) and 100.4(A)(1) and (2) of the Rules Governing Judicial Conduct (“Rules,” 22 NYCRR)<sup>1</sup> when, after presiding over the Centralized Arraignment Part arraignments in the Ontario County Jail building, he walked into the adjacent public parking lot with his court clerk, Kristen M. Bartolotta and Assistant Ontario County Public Defender Cali Anne Valenti, where 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.””<sup>2</sup> Formal Written Complaint ¶¶ 6, 7.

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<sup>1</sup> These provisions of the Rules, in substance, require judges to: uphold the integrity and independence of the judiciary (§100.1); avoid impropriety and the appearance of impropriety and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (§100.2(A)); and conduct their extra-judicial activities in a manner that does not cast reasonable doubt on their capacity to act impartially as a judge and detract from the dignity of their judicial office (§100.4(A)(1) and (2)).

<sup>2</sup> Merriam Webster’s on-line dictionary defines the word “N[\*\*\*\*]r” “as an insulting and contemptuous term for Black people” and characterizes it “[a]s an infamous word in current English, so much so that when people are called upon to discuss it, they more often than not refer to it euphemistically as the ‘N-word’. . . [T]he word ranks as almost certainly the most offensive and inflammatory racial slur in English, a term expressive of hatred and bigotry.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/nigger> (last visited December 2, 2025. Accordingly, while paragraph six of the Formal

4. Charge II involved Respondent's arraignment of S [REDACTED] D [REDACTED], a Black woman, who was charged with attempted assault, a Class E felony, as well as various other misdemeanor and violation charges, and who appeared in court with visible facial injuries. See Formal Written Complaint ¶¶ 9, 10. Charge II alleged that when Respondent denied her attorney's request for pre-trial release, Ms. D [REDACTED] "became upset and said, among other things: '[t]his is a racist county. . .I'm the wrong color to be here. . . It's a racist-ass county. . .[Respondent] is holding me because I'm African American.'" Formal Written Complaint ¶ 10.

5. Charge II further alleged that Respondent violated sections 100.1, 100.2(A) and 100.3(B)(4)<sup>3</sup> of the Rules when, following the arraignment of Ms. D [REDACTED] and after she was removed from the courtroom, Respondent, "while still on the bench, said on the record,

'Naturally she played the race card. . .She was pretty well restrained so she couldn't attack you [referring to Assistant Ontario Public Defender Patrick Conklin], but she probably would have if she hadn't been handcuffed. . .Do they teach you to fight back at the Public Defender's office.'"

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Written Complaint refers to the actual, full racial slur that Respondent used, the Referee does not use it in this Report. Instead, the Referee uses either the euphemistic term "N-word" or the acronym "N\*\*\*\*r" and the Referee refers to Respondent's story as his "N\*\*\*\*r Harry Story" or as his "Story."

<sup>3</sup> Section 100.3(B)(4), in substance, requires judges to perform their judicial duties without racial bias or prejudice, by words or conduct.

Formal Written Complaint ¶¶ 11, 12.

6. On or about April 21, 2025, Respondent served his verified Answer upon the Commission. With respect to Charge I, Respondent denied that he, himself, referred to a Black man as “N\*\*\*\*r Harry,” affirmatively alleged that in telling his Story, his father, not Respondent, had referred to a Black man as “N\*\*\*\*r Harry” and Respondent denied violating the Rules. Respondent’s Answer ¶¶ 3, 4.

7. With respect to Charge II, Respondent admitted saying on the bench the statements attributed to him in paragraph 11 of the Formal Written Complaint and he denied violating the Rules. Respondent’s Answer ¶¶ 2, 4.

8. On or about May 14, 2025, the Commission designated David M. Garber as referee to hear and report to the Commission with respect to this proceeding.

9. On August 21, 2025, the Referee conducted a hearing with respect to this proceeding at the Hall of Justice, Rochester New York.

10. Commission Counsel served their Post-Hearing Memorandum and Proposed Findings of Fact and Conclusions of Law (one paper) on October 22, 2025, and their Letter Reply to Respondent’s Memorandum of Law on November 19, 2025. Respondent served his Memorandum of Law and Proposed

Findings of Fact on October 22, 2025, and his Reply Memorandum to Commission Counsel's Post-Hearing Memorandum on November 19, 2025.

**II. Proposed Findings Of Fact With Respect To  
To Charge I Of The Formal Written Complaint**

11. Ontario County has established a Centralized Arraignment Part ("CAP"), commonly known as CAP Court, for off-hours arraignments by local criminal court judges.

12. Respondent's duties include presiding over CAP arraignments.

When Respondent presides in CAP Court his court clerk, Kristen Bartolotta (a witness in Charges I and II), assists him. Representatives of the Ontario County Public Defender's Office, such as Cari Anne Valenti (a witness in Charge I) and Patrick Conklin (a witness in Charge II) appear before Respondent in CAP Court where they represent indigent defendants.

13. On May 10, 2024, Respondent presided over the evening session of CAP Court which was held at about 5:30 p.m. in the lobby of the Ontario County Jail building. Ms. Bartolotta was present, and she assisted Respondent with his arraignments. Ms. Valenti appeared in CAP Court representing indigent defendants.

14. After Respondent completed his CAP Court arraignments, he, together with Ms. Bartolotta and Ms. Valenti, exited the Jail building and they walked to its adjacent public parking lot where they had parked their cars.

15. As they walked toward Respondent's vehicle parked in the parking lot, Respondent told Ms. Bartolotta and Ms. Valenti that he wanted to show them the flowers that he purchased for his wife for the approaching Mother's Day. Additionally, knowing that Ms. Valenti was an avid reader based upon Respondent's prior conversations with her, Respondent also told them that he wanted to give Ms. Valenti two or three murder mystery books set in the southern part of the United States where Respondent's grandparents had lived and his father grew up.

16. When the threesome reached Respondent's vehicle, he opened the trunk to show them the wooden Mother's Day flowers that he acquired for his wife and where he gave Ms. Valenti his mystery books. Ms. Valenti, who had not asked for the books Respondent gave her, was uncomfortable accepting them because she desired to maintain a professional distance between herself as an Assistant Public Defender and Respondent as Justice of the Canandaigua Town Court where she appeared on behalf of her clients.

17. Respondent, Ms. Bartolotta and Ms. Valenti then walked from the trunk of Respondent's vehicle to its front end where Respondent narrated his "N\*\*\*\*r Harry Story," as follows:

18. During the Depression, Respondent's grandfather (his father's father) owned cotton fields in Savoy, Texas. Respondent's grandfather hired Black workers to weed his fields. Respondent's father, as a 14–15-year-old boy, weeded the fields with them. When Respondent's father worked too slowly to keep up with the Black workers, Respondent's grandfather punished Respondent's father by whipping him.

19. One of the Black workers, named "Harry," whom Respondent referred to as "N\*\*\*\*r Harry" in narrating his Story, understood the predicament of Respondent's father. Harry instructed his co-workers to slow their pace of work so Respondent's father would work ahead of, not behind, them, thus saving Respondent's father from the whippings of Respondent's grandfather. Respondent's father was very grateful to Harry.

20. Subsequently, Respondent's father witnessed Harry stealing a chicken from Respondent's grandfather's chicken house. Respondent's father believed that reporting Harry's theft to the local police would result in a prison sentence for Harry given the then-prevailing prejudice against Blacks in Texas.

So, Respondent's father said nothing to his father (Respondent's grandfather) or to the police. Respondent's father protected Harry just as Harry had protected Respondent's father from his father's (Respondent's grandfather) whippings in the cotton fields.

21. As a result of their shared experience protecting each other, Respondent's father and Harry "formed a friendship to the maximum extent that it was possible for a [W]hite kid and a [B]lack kid in those days [in Texas] to form a bond of friendship." Tr. at 143.<sup>4</sup>

22. Many years later, sometime in 1957, Respondent and his now-adult father, who were then living in Wichita, Kansas where Respondent was born, visited Savoy. As Respondent's father was driving the family car, with Respondent in the front passenger seat, his father saw a Black man walking on the side of the road. As Respondent described the moment in telling his Story, Respondent's father said to Respondent, "That's N\*\*\*\*r Harry, that's N\*\*\*\*r Harry."

23. Respondent's father stopped his car, directed Respondent to move to the back seat, picked up Harry, who recognized Respondent's father as "Mr.

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<sup>4</sup> "Tr." followed by a number refers to pages of the transcript of the August 22, 2025 Hearing in this proceeding. "Ex." followed by a number refers to Commission Counsel's exhibits. Respondent did not introduce any exhibits into evidence.

Bill” from their adolescent days, invited Harry to get into the front passenger seat and he drove Harry to the Black section of Savoy where Harry was headed.

24. Neither Ms. Valenti nor Ms. Bartolotta asked Respondent to tell his Story, and his Story was not relevant to any CAP Court proceeding the evening of May 10. Respondent, himself, chose to tell his “N\*\*\*\*r Story” to them.

25. Ms. Valenti credibly testified that Respondent, in narrating his Story, which lasted approximately eight minutes (*see* Commission Ex. 1 at 18:14:01-18:22:41), referred to Harry as “N\*\*\*\*r Harry” four times, twice in introducing his Story and twice when Respondent recounted his father recognizing Harry walking along the road near Savoy.

26. As Ms. Valenti listened to Respondent’s Story with his repetitive references to “N\*\*\*\*r Harry” she became very uneasy. She thought to herself, “How do I get out of this conversation? And how quickly can I text my boss about this to see what to do.” Tr. at 32. Ms. Valenti was “shocked” (Tr. at 87) and “very surprised” (Tr. 23) by Respondent’s multiple references to “N\*\*\*\*r Harry” because, as she testified, the N-word is “not something that you really hear any more, particularly in public settings. Tr. at 32.

27. Ms. Bartolotta, who worked for Respondent and testified that he referred to Harry as “N\*\*\*\*r Harry” “two to three times” (Tr. at 79), was likewise

“concerned” (Tr. at 87) and “taken aback” (Tr. at 101) by Respondent’s use of the N-word.

28. While Respondent told his Story, people were walking between the parking lot where they had parked their cars and the Jail building. Ms. Valenti and Ms. Bartolotta were particularly worried that a woman, who was seated in the driver’s seat of a car parked “one to two” parking spaces away from Respondent’s vehicle (Tr. at 80; *see* Commission Ex. 1 at 18:12:16-18:23:17), had overheard Respondent using the N-word in telling his Story.

29. The woman’s car was parked parallel to Respondent’s vehicle. Her driver-side door, with its window half-way down, was directly across from Respondent’s front passenger-side door. She was positioned to overhear Respondent tell his Story. Ms. Bartolotta and Ms. Valenti were concerned that the woman, who appeared to be texting or scrolling on her cell phone, may have recorded Respondent as he told his Story.

30. Ms. Valenti characterized the volume of Respondent’s voice as “reasonable” (Tr. at 31) when he commenced telling his Story. She, however, credibly testified that Respondent’s volume increased near the end of his Story as Respondent “really act[ed] out the story with his words,” (Tr. at 32) twice

“yell[ing] out” (Tr. at 32) “N\*\*\*\*r Harry” as Respondent’s father had when he saw Harry walking along the road near Savoy.

31. Although Ms. Bartolotta, like Respondent, recalled that Respondent told his Story in a “normal” (Tr. at 81, 154) volume, Respondent’s volume was loud enough to cause her to worry that the woman in the car parked one to two parking spaces away may have overheard and recorded Respondent’s use of the N-word.

32. There is no record evidence that anyone other than Ms. Valenti and Ms. Bartolotta heard Respondent tell his Story.

33. Ms. Valenti did not interrupt Respondent’s narration of his Story to request him to refrain from using the N-word. Nor did she excuse herself mid-Story. According to Ms. Valenti, she had “a very delicate professional relationship with [Respondent]” (Tr. at 67) and she feared upsetting him to the detriment of her clients.

34. After Respondent finished telling his Story, Ms. Bartolotta and Ms. Valenti walked together to their cars which were parked a short distance away from Respondent’s vehicle. Ms. Valenti said to Ms. Bartolotta, “I think I need to go to my boss and just let her know [about Respondent telling his Story], so she can decide if anything needs to be done.” Tr. at 41.

35. Upon entering her car, Ms. Valenti immediately sent a group text message to all attorneys in the Ontario County Public Defender's Office (including her boss, Ontario County Public Defender Leanne Lapp), as follows: "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." Commission Ex. 3 (capitalization in original).

36. An hour later, Ms. Valenti texted Leanne Lapp about Respondent's Story, as follows:

Jones was telling us what books he likes to read, which then lead [sic] to him telling us a story about how his dad and grandpa had [B]lack people cutting cotton during the Jim Crowe [sic] era. That lead [sic] to a story about how his dad made friends with a [B]lack man who worked in the cotton fields. . .[H]e 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 [B]lack 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.

Commission Ex. 4 (third ellipsis in original).

37. Ms. Valenti's text messages, in which she used the descriptive words "LOUDLY" (Commission Ex. 3), "way too loud" and "would just get louder" (Commission Ex. 4), confirms her characterization of the volume of Respondent's voice as he told his Story when she testified before the Referee. Ms. Valenti's account is credible.

38. A few days later, Ms. Bartolotta informed Canandaigua Town Supervisor Jared Simpson that Respondent had used the N-word in telling his Story. It still bothered her, and Ms. Bartolotta remained concerned that the woman in the car parked near Respondent's vehicle had heard and recorded Respondent on her cell phone.

39. Ms. Bartolotta testified that, except when Respondent narrated his Story, she had never heard him use the term "N\*\*\*\*r" or any other derogatory racial epithet. In her opinion, Respondent treated the people who appeared before him, "both defendants and counsel[] with dignity and respect. Tr. at 95.

40. Ms. Valenti stated that, except when Respondent narrated his Story, she had never heard him use the N-word or any other derogatory racial epithet, although, according to Ms. Valenti, Respondent had made "jokes and general comments" about race in court. Tr. at 53.

41. Respondent was raised by racist parents who “were born and raised in north Texas.” Tr. at 134. According to Respondent, they had “rather unpleasant views about racial minorities.” Tr. at 134. Respondent’s father, in particular, who used the N-word “from time to time,” believed that Blacks and other minorities should “just stay in their place,” not “mix[] with us” and “[w]e don’t want to be around them.” Tr. at 134-38.

42. Respondent described his father as a “racist.” Tr. at 147. In contrast to his father, Respondent does not consider himself to be a racist. He explained that his own views on race relations “evolv[ed]” as he grew from “a kid” into adulthood, with “a slow but steady epiphany. . .[t]hat this whole nonsense of Jim Crow” – which Respondent experienced “in operation” when he traveled south to Texas to visit his grandparents and his cousin in North Carolina – “was terribly, terribly, terribly wrong” and that “ [t]his whole business about treating each other differently [was] appalling.” Tr. at 135-40.

43. Respondent testified that he told his “N\*\*\*\*r Harry” Story to Ms. Bartolotta and Ms. Valenti to teach them “the lesson that. . .that with tolerance, dignity, and respect, we could overcome the differences. . .among us and become something else. Something better.” Tr. at 148. According to Respondent, his Story illustrated the “bond of friendship. . .tolerance, respect and dignity. . .between

[his father and Harry], even though their circumstances were improbable. . .that we all ought to recognize and to adopt in our own lives.” Tr. at 172.

44. Respondent characterized the N-word, variously, as “derogatory,” “insulting,” “horribly inappropriate,” “not dignified at all,” “bad” (Tr. at 146-48) and “insensitive.” Tr. at 191.<sup>5</sup>

45. Respondent repeatedly denied that he, himself, used the N-word in telling his Story. He stated that “I was quoting my father” (Tr. at 164), “that’s not my word. That’s a quotation of what my father said.” Tr. at 168. And during the Hearing before the Referee, Respondent only would answer questions about his use of the N-word with the qualifier that he was parroting his father. Respondent believed it was acceptable to use the term “N\*\*\*\*r” in telling his Story because he was simply quoting his father.

46. Respondent compared his use of the N-word in telling his Story to his reading aloud “Huckleberry Finn” or “Tom Sawyer” where Mark Twain freely used the full racial epithet “N\*\*\*\*r.”

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<sup>5</sup> Respondent, however, seemingly contradicted his own characterization of the N-word when he appeared to normalize or minimize its use by testifying that the N-word was a “descriptive term” akin to calling someone “shorty. . .It may be a nickname that is somewhat pejorative, but is not bad.” Tr. at 174.

47. Respondent felt required to refer to Harry as “N\*\*\*\*r Harry” in telling his story for “authenticity” (Tr. at 165) and “[c]ontext and color” (Tr. at 171), without which his Story’s message of racial tolerance would not be understood by Ms. Valenti and Ms. Bartolotta. According to Respondent, his use of the N-word was “part of the context of the story. And. . .to use a substitute word, [like] ‘Euphemism Harry,’ ‘N-word Harry’. . .would have been out of keeping with the story as it happened.” Tr. at 152. For Respondent, “context is everything.” Tr. at 185.

48. Respondent’s claim that he used the N-word only once in telling his Story is not credible in view of Ms. Valenti’s testimony that Respondent used it four times and her contemporaneous text message to her Public Defender colleagues that Respondent used it “repeated[ly]” (Commission Ex. 3), as well as the testimony of Respondent’s court clerk, Ms. Bartolotta, that Respondent used the N-word two to three times.

49. Moreover, Respondent’s testimony, that he would have told his Story in the same way had a Black person been present is not credible. It is 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.

50. Similarly not credible is Respondent's assertion that he prefaced his narration of his Story to Ms. Bartolotta and Ms. Valenti by warning them that it would involve "vernacular [language] that they used then. . .in Texas at the time" (Tr. at 176) – although Respondent admitted he did not tell them the "vernacular" words he intended to use – and that they still agreed to hear his Story. The shock and discomfort Ms. Valenti and Ms. Bartolotta experienced as they listened to Respondent's use of the N-word – which Ms. Valenti immediately reported to her Public Defender colleagues and the head of the Ontario County Public Defender's Office, and which Ms. Bartolotta reported to the Canandaigua Town Supervisor – belies Respondent's claim.

51. The Referee rejects Respondent's claim that, without referring to Harry as "N\*\*\*\*r Harry," Ms. Bartolotta and Ms. Valenti would not have understood his Story's "lesson." Tr. at 148. Ms. Valenti's group text message – in which she wrote that "[Respondent's Story] is not inherently a bad story unless you tell it the way [Respondent] did. . .then it's completely inappropriate" (Commission Ex. 4) – clearly indicates that she would have understood the Story's message of the possibility for racial harmony without Respondent's use of the N-word.

### III. Proposed Findings Of Fact With Respect To Charge II Of The Formal Written Complaint

52. On May 15, 2024, at 7:41 a.m., Respondent presided over the CAP Court arraignment of S■■■■ D■■■■, a Black woman, in *People v. D■■■■*. Court Clerk Bartolotta assisted Respondent at Ms. D■■■■'s arraignment. Assistant Public Defender Patrick Conklin represented Ms. D■■■■ at her arraignment. Assistant Ontario County District Attorney ("ADA") Jenna Markwitz appeared by telephone.

53. Ms. D■■■■ was charged with one felony, four misdemeanors and three violations, as follows: (1) Attempted assault in the second degree, a Class E felony (Penal Law §110-120.05, subd. 2); (2) Criminal mischief in the fourth degree, a Class A misdemeanor (Penal Law §145.00, subd. 1); (3) Obstructing governmental administration in the second degree, a Class A misdemeanor (Penal Law §195.05); (4) Resisting arrest, a Class A misdemeanor (Penal Law §205.30); (5) Criminal tampering in the third degree, a Class B misdemeanor (Penal Law §145.14); and (6) three counts of Harassment in the second degree, a Violation (Penal Law §240.26, subd. 1).

54. With Respondent on the bench, and while waiting for Ms. D■■■■ to be brought into CAP Court from the Jail for her arraignment, Mr. Conklin

commented that Ms. D [REDACTED] had sustained a serious eye injury as her eye was swollen shut. Ontario County Deputy Sheriff or Correction Officer Cummings (referred to in the arraignment transcript as “Unidentified Male I” (Tr. at 114-15; Commission Ex. 6 at 2)) stated that Ms. D [REDACTED] had incurred a “broken orbital socket.” Commission Ex. 6 at 2.

55. As Ms. D [REDACTED]’s booking photograph (Commission Ex. 8) discloses, her injuries were obvious: Ms. D [REDACTED]’s right eye was swollen shut and she had a near-softball size swelling on her forehead.

56. Respondent sat in the middle of the table used by judges for CAP Court arraignments. When Ms. D [REDACTED] appeared before Respondent she stood directly in front of, and only a few feet away from him.

57. Ms. Bartolotta, who was seated at the judge’s table about 6-8 feet from Respondent, clearly observed Ms. D [REDACTED]’s eye injury. She described it as “significant” and “bad.” Tr. at 90. And she believed that Ms. D [REDACTED] required medical treatment.

58. Respondent’s testimony – that while he was aware that Ms. D [REDACTED] “had sustained an injury of some sort,” he was unaware of its nature and severity because “she was turned in such a way that [he] did not have a good, clear view” of it (Tr. at 156) – is not credible.

59. At the outset of the arraignment, ADA Markwitz recommended that Respondent fix bail in the amount of \$3,000 cash, \$6,000 bond and \$12,000 partially secured bond.

60. Mr. Conklin opposed ADA Markwitz's bail recommendation. He argued that, because Ms. D■■■■ was a self-employed home aid worker without any prior criminal history, Respondent should grant her pre-trial release with either an in-person or a telephone reporting requirement, which would ensure her appearance in Canandaigua City Court.

61. When Respondent indicated that he intended to accept ADA Markwitz's bail recommendation, Mr. Conklin urged him to fix bail in the lower amount of \$1,000 cash, \$2,000 bond and \$4,000 partially secured bond given her financial straits which rendered her eligible to be represented by the Public Defender's Office.

62. Respondent denied Mr. Conklin's request, and he fixed bail in the amount recommended by ADA Markwitz. Additionally, Respondent scheduled a preliminary hearing for Ms. D■■■■ in Canandaigua City Court two days later, on May 17, when City Court could address Ms. D■■■■ request for pre-trial release or, alternatively, for a reduction in the amount of bail.

63. Ms. D [REDACTED], herself, made a plea for pre-trial release. Ms. D [REDACTED] told Respondent that she was the victim in the incident leading to her arrest and to the charges against her. She urged Respondent to consider that her swollen-shut eye required her to return to the hospital for medical treatment. Ms. D [REDACTED] also informed Respondent that she lacked medication for her [REDACTED] and that she could not afford to miss work while waiting 48 hours for Canandaigua City Court to review her bail situation.

64. When her plea to Respondent was unavailing, a very upset and battered Ms. D [REDACTED] exclaimed that she was charged and burdened with high bail, because she was Black, as follows:

This is a racist county. . .I'm the wrong color to be here. . . Like I said, I'm in the wrong county. . .It's a racist-ass county. . .And. . . he's [Respondent] holding me because I'm African American. . .He's [Respondent] going by what the People say, because I'm African American. I'm the wrong race. . .I know this is a racist-ass county.

Commission Ex. 6 at 8, 12-13.

65. After Ms. D [REDACTED] was removed from CAP Court, Respondent stated on the record, "Naturally she [Ms. D [REDACTED]] played the race card." Commission Ex.6 at 14. Addressing Assistant Public Defender Conklin, Respondent continued, "You did the best you could, Pat. . . She was pretty well restrained so she couldn't attack you, but she would have if she hadn't been handcuffed. . .Do

they teach you to fight back at the Public Defender's Office?" Commission Ex. 6 at 14-15.

66. Mr. Conklin did not object to Respondent's comments. Mr. Conklin understood that he would appear before Respondent again with different clients and he did not want to prejudice them and their cases.

67. Respondent admitted that his remark, "Naturally she [Ms. D ■■■]. . . played the race card" was a "[wise]crack," a "[d]umb thing to say. Stupid thing to do. I shouldn't have done it. A mistake (Tr. at 154-155). . .I should not have said it because it now creates an impression. . . that I was biased in some way that is not true." Tr. at 161. Later in the Hearing before the Referee, Respondent contradicted and walked back his testimony that his "race card" remark created the "impression" that he was prejudiced by stating, "I don't think it created the appearance of racial bias." Tr. at 192-93.

68. Respondent also admitted that he used the word "Naturally" because Ms. D ■■■ "was obviously [B]lack, and she[] played the race card." Tr. at 158. Based upon Ms. D ■■■'s race, Respondent "assumed" (Tr. at 158) that she would play the race card.

69. Respondent further stated that his "[d]o they teach you to fight back" remark was "silly" and "lighthearted." Tr. at 194.

70. Although Ms. D [REDACTED] had been removed from CAP Court when Respondent uttered his “race card” and other remarks, the Referee finds that they were insensitive to Ms. D [REDACTED] with her pain, obvious eye and forehead injuries and her lack of medication for her [REDACTED]. Respondent failed to treat Ms. D [REDACTED] with the respect that every litigant deserves from a judge. Instead, Respondent callously mocked her in pugilistic terms when he stated, “[Ms. D [REDACTED]] was pretty well restrained so she couldn’t attack [Mr. Conklin], but she probably would have if she hadn’t been handcuffed.” Commission Ex. 6 at 14.

### **Proposed Conclusions of Law**

Upon the foregoing Proposed Findings of Fact, the Referee concludes as a matter of law that Commission Counsel proved by a preponderance of the evidence that Respondent violated sections 100.1, 100.2(A), 100.3(B)(4) and 100.4(A)(1) and (2) of the Rules. *See Commission Operating Rules*, §7000.6(i)(1) (“The attorney for the commission has the burden of proving, by a preponderance of the evidence, the facts justifying a finding of misconduct.”).

Accordingly, Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above Proposed Findings of

Fact and the Proposed Conclusions of Law below, and Respondent's misconduct is established.

**I. Proposed Conclusions Of Law With Respect To Count I Of The Formal Written Complaint**

The question presented in Charge 1 of the Formal Written Complaint is straightforward: Did Respondent violate the Rules when he used the term "N\*\*\*\*r" in telling his Story to Ms. Bartolotta and Ms. Valenti in the Ontario County Jail building public parking lot after presiding over his CAP Court arraignments? The Referee's analysis begins with a brief survey of the decisions of the Commission and the Court of Appeals which have considered, and condemned, a judge's use of the N-word.

The seminal case on the subject is *Matter of Agresta*, 1985 Ann Rep of NY Commn on Jud Cond 109, *sanction accepted*, 64 NY2d 327 (1985).

*Agresta* involved a judge who, during the sentencing of a Black defendant, sought to elicit from him information that would implicate another Black man. The judge stated, ". . . I know that there is another [n\*\*\*\*r] in the woodpile, I want that person out, is that clear?" *Id.* 1985 Ann Rep at 110.

The Commission determined that the judge’s use of the N-word violated the Rules and that the judge engaged in misconduct in using it. The Commission reasoned as follows:

Racial epithets, indefensible when uttered by a private citizen, are especially offensive when spoken by a judge. *Whether or not [the judge] meant it as a racial slur, [the judge’s] use of the term ‘[n\*\*\*\*r]’ in any context is indefensible.* . . . Furthermore, [the judge] has persisted in the belief that his remark was not inappropriate and that his ‘metaphor’ was misunderstood. . . *The law of New York is clear that such language by a judge will not be tolerated.*

*Id.* at 111 (citations omitted; italics and underlining added).

In its opinion upholding the Commission’s determination that the *Agresta* judge engaged in misconduct when he used the N-word, the Court of Appeals incorporated much of the Commission’s decision, including the Commission’s definitive principled statement that a “[judge’s] use of the term ‘[n\*\*\*\*r]’ in any context is indefensible” (*Id.* 94 NY2d at 330) – which is particularly relevant to this proceeding. Said the Court of Appeals, “the Commission’s finding is supported by the evidence. . . [W]e have held that it is improper for a judge to make remarks of a racist nature even when the remarks are made out of court.” *Id.* (citations omitted).

On August 22, 2025, the day following the Hearing, the Referee e-mailed the parties inviting them to comment on *Agresta's* applicability, if any, in this proceeding in their post-hearing memorandums of law. Commission Counsel responded that *Agresta's* "applicability could not be clearer: it is fatal to Respondent's misguided defense that his use of the [N-word] was excusable because of the 'context' in which he said it." Commission Counsel's October 22, 2025 Post-Hearing Memorandum at 17 n. 10 (citations to hearing transcript omitted).

Respondent also accepted the Referee's invitation to comment upon the applicability of *Agresta*. He argued that "Commission's ["in any context"] finding, and by its adoption. . . that. . .of the Court of Appeals. . .goes too far. The context in which a word is uttered may be, and in this case is, critical." Respondent's October 22, 2025 Memorandum of Law at 4.

*Agresta*, and its "in any context" principle (1985 Ann Rep at 111; 94 NY2d at 330) are binding upon the Referee and are controlling here since the Referee is required to follow the precedents of the Commission and the Court of Appeals. *See Margerum v. City of Buffalo*, 148 AD3d 1755, 1758 (4<sup>th</sup> Dept. 2017) (rejecting defendant's argument that the Appellate Division should "ignore or disregard" a Court of Appeals decision which defendant believed improperly

expanded the holding of a United States Supreme Court case, because “[i]t is axiomatic that the Appellate Division and the trial courts are courts of precedent and are bound to follow the holding of the Court of Appeals”) (citation, internal quotation marks and internal brackets omitted)); *see also Cross v. United States*, 892 F.3d 288, 303 (7<sup>th</sup> Cir. 2018) (“As a lower court, we are required to follow the [Supreme] Court’s precedents until the [Supreme] Court itself tells us otherwise.”).

Beyond *Agresta*, 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” (*Matter of Mulroy*, 2000 Ann Rep of NY Commn on Jud Cond 125, 128 (citations omitted), *sanction accepted*, 94 NY2d 652 (2000)) and is a “deeply offensive. . . unambiguously racial epithet.” *Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 577 (D.C. Cir. 2013) (citation omitted), *cert. den.* 579 U.S. 929 (2016).<sup>6</sup>

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<sup>6</sup> In his concurring opinion in *Ayissi-Etoh*, 712 F.3d at 580, then-Judge, now Justice Kavanaugh characterized the N-word as an “epithet [that] has been labeled, variously, a term that ‘sums up ... all the bitter years of insult and struggle in America,’ LANGSTON HUGHES, *THE BIG SEA* 269 (2d ed.1993) (1940), ‘*pure anathema to African-Americans*,’ *Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185 (4th Cir.2001), and ‘*probably the most offensive word in English*,’ RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY 894 (2d rev. ed. 2000). . . No other word in the English language so powerfully or instantly calls to mind our country’s long and brutal struggle to overcome racism and discrimination against African-Americans.” (italics added).

In *Matter of Cerbone*, 1984 Ann Rep of NY Commn on Jud Cond 76, *sanction accepted*, 61 NY2d 93 (1984), the Commission determined that a judge violated the Rules when he, in a barroom confrontation with Black men, referred to them as “[n\*\*\*\*rs]” and “[B]lack bastards.” *Cerbone*, 1984 Ann Rep at 77-78. The Commission concluded that the judge’s “conduct . . . effectively terminated public confidence in his ability to fairly and impartially adjudicate matters without bias.” *Id.* at 79.

Again, in *Mulroy*, 2000 Ann Rep 125, *sanction accepted*, 94 NY2d 652, the Commission determined that a judge engaged in misconduct when he described a murder victim as “only some old [n\*\*\*\*r] bitch” in an effort to induce a plea offer from a prosecutor at a charity event. *Id.* 2000 Ann Rep at 128. The Commission reasoned that the N-word is so “hateful” and offensive that no judge should use it, “even off the bench and apart from judicial business.” *Id.* (citations omitted).

The Court of Appeals confirmed the Commission’s finding of misconduct, stating that the judge’s racially charged language was “indefensible” and “cast doubt on the integrity and impartiality of the judiciary and, by itself, put[] into question [the judge’s] fitness to hold judicial office.” *Id.* 94 NY2d at 656 (citation omitted).

Still again, in *Matter of Kuehnel*, 1980 Ann Rep of NY Commn on Jud Cond 125, 127, *sanction* accepted, 49 NY2d 465 (1980), the Commission held that a judge breached the Rules and engaged in misconduct when, among other things, he spoke harshly to a group of youths at a police station, “equating them to ‘[B]lack hoodlums and [n\*\*\*\*rs].’” *Id.* 1980 Ann Rep at 127; *see id.* 49 NY2d at 467 (describing the judge’s outburst as “virulent racism”). *See also Matter of Hull*, \_\_\_ Ann Rep of NY Commn on Jud Cond \_\_\_ (Nov. 19, 2025) (judge violated the Rules and engaged in misconduct when he made racist remarks about individuals of Mexican and Indian heritage).

And in *Matter of Senzer*, 2020 Ann Rep of NY Commn on Jud Cond 137, *sanction accepted*, 35 NY3d 216 (2020), the Commission noted that a part-time judge with a private law practice “unquestionably” would have engaged in misconduct had the proof established that, in a private recess conversation with his clients, he referred to an African-American Administrative Law Judge as “that f[\*\*\*\*\*]g n[\*\*\*\*\*]r” and/or “that [n\*\*\*\*r].” *Id.* 2020 Ann Rep at 147 in conjunction with Brief for Respondent at 2-3, *Senzer*, 35 NY2d 216 (<https://cjc.ny.gov/Determinations/S/SenzervSCJC-res-SCJC-brf.pdf> (last visited December 2, 2025)).

Notwithstanding the cited cases and *Agresta's* clear "in any context" principle (*Agresta*, 1985 Ann Rep at 111; *id.* 94 NY2d at 330), Respondent, during the Hearing before the Referee, persistently attempted to justify his use of the term "N\*\*\*\*r" with claims of "context." According to Respondent, "[c]ontext is everything." Tr. at 185.

Respondent asserted that his use of the N-word was appropriate given his Story's message of the possibility for racial harmony and tolerance. And in Respondent's view, Ms. Bartolotto and Ms. Valenti would not have understood his Story's meaning without using the N-word and referring to Harry as "N\*\*\*\*r Harry" as his racist father did.

Respondent's claims "are not persuasive" (*Agresta*, 1985 Ann Rep at 111) for at least four reasons:

First, and most critically, *Agresta* is unambiguously clear: a judge's use of the N-word is never context-dependent. *See id*; *see also id.* 94 NY2d at 330.

Second, Respondent's use of the N-word in telling his Story was unnecessary. Ms. Valenti made clear in her text message to Ontario County Public Defender Leanne Lapp that Respondent could have told his Story with its message of racial harmony and tolerance without using the N-word. *See Matter of Duckman*, 92 NY2d 141, 154 (1998) (rejecting judge's contention that he

addressed young prosecutors harshly to educate them as he could have done so without “angry screaming and humiliating invective”); *see also id.* 1998 Ann Rep of NY Commn on Jud Cond 83, 86 (same).

Third, Ms. Bartolotta and Ms. Valenti testified that Respondent used the N-word multiple times when telling his Story – which compounded his impropriety. *See Matter of Fabrizio*, 1985 Ann Rep of NY Commn on Jud Cond 127, 131-33 (judge’s repeated use of the N-word is “[s]tanding alone. . .serious misconduct”), *sanction accepted*, 65 NY2d 275 (1985); *see also Matter of Pennington*, 2006 Ann Rep NY Commn on Jud Cond 224, 225-226 (judge violated the Rules when he “unnecessarily and repeatedly used racial language that was inappropriate” – the terms “colored people” and “[n\*\*\*\*r]” – in overruling an objection to a witness’s racist description of an African American defendant).

Fourth, the reactions of Ms. Valenti and Ms. Bartolotta to Respondent’s use of the N-word further undermine his contextual justification for using it. Ms. Valenti was so “concerned” (Tr. at 32) about Respondent’s use of the N-word, and who may have heard him, that she immediately texted her fellow Assistant Public Defender attorneys and Leanne Lapp, the head of the Ontario County Public Defender’s office. An hour later, Ms. Valenti separately texted Ms. Lapp,

stating that Respondent’s use of the N-word in the context of telling his Story was “completely inappropriate.” Commission Ex. 4.

Ms. Bartolotta, too, was “taken aback” (Tr. at 101) by Respondent’s use of the N-word. And while Ms. Bartolotta believed that Respondent did not use the N-word in a derogatory manner, Respondent’s use of the N-word is “indefensible” (Agesta, 1985 Ann Rep at 111; 94 NY2d at 330), “[r]egardless of whether. . .[it] w[as] knowingly racist or simply ill-considered.” *Pennington*, 2006 Ann Rep at 226 (citations omitted).

And reflecting their distress over Respondent’s use of the N-word, both Ms. Bartolotta and Ms. Valenti feared that a woman sitting in the driver’s seat of her car with the driver-side window half-way rolled down – which was parked only one to two parking spaces away from Respondent’s vehicle as he told his Story – had overheard and recorded Respondent’s use of the N-word.

Further, Respondent’s analogizing his use of the N-word in telling his Story to a hypothetical public literary reading of the classics, “The Adventures of Tom Sawyer,” published 149 years ago in 1876, and “The Adventures of Huckleberry Finn,” published 140 years ago in 1885 – in which Mark Twain freely used the N-word – demonstrates his retrograde attitude about the toxicity of the racially derogatory term, “N\*\*\*\*r”, in 2024-2025. *See supra* at pp. 2 n. 2, 26

and n. 5. As Ms. Valenti testified, the N-word is “not something you really hear any more.” Tr. at 32.

Respondent’s insensitivity to the use of the N-word “cast[s] doubt” on Respondent’s impartiality when Black litigants appear before him. *See Mulroy*, 94 NY2d at 656 (judge’s use of the N-word in describing a crime victim “cast doubt on the integrity and impartiality of the judiciary” and of the judge himself).

Moreover, Respondent sought to avoid responsibility for his use of the N-word and to shield himself from his impropriety: Respondent repeatedly denied that he, himself, used the N-word by claiming “that’s not my word[,] [t]hat’s a quotation of what my father said.” Tr. at 168. Respondent’s refusal to budge from his position is troubling and reflects his incapacity to take ownership of the racial slur he used.

Various courts have rejected defenses like Respondent’s “not my words defense.” In *Jincks v. Ala. Jud. Inquiry Comm’n*, 375 So.3d 755, 762-63 (Ala. 2022), the Alabama Supreme Court dismissed the judge’s illogical claim that he did not use an acronym for a racial slur because “if I share a racial slur with you that I have learned, that’s not using a racial slur.” And in *Agresta*, 94 NY2d at 329, the Court of Appeals rejected the judge’s “defense” that his “n\*\*\*\*r” in the

woodpile” remark was a “harmless ‘metaphor’.” See *Moyer v. Jos. A. Bank Clothiers, Inc.* 2015 U.S. App. LEXIS 1864 \*\*7 (5<sup>th</sup> Cir. 2015) (noting that, although plaintiff denied using the term [n\*\*\*\*r] on the occasion which her employer cited as the basis for terminating her employment, the plaintiff “testified that she may have used the [N-word] on other occasions. . .in the context of quoting her husband, whom she described as ‘a racist’”).

Equally troubling is Respondent’s not credible assertion that he would have told his Story using the term “N\*\*\*\*r” had a Black person been present, which demonstrates his inability to appreciate that the N-word is a “hateful” (*Mulroy*, 2000 Ann Rep at 128) and “deeply offensive racial epithet.” *Ayissi-Etoh*, 712 F.3d at 577.

These revealing aspects of Respondent’s testimony, by themselves, demonstrate Respondent’s failure to understand his impropriety at the time he used the N-word in telling his Story and even in retrospect during the Hearing before the Referee. See *Duckman*, 92 NY2d at 154 (“Of significant concern. . .is [the judge’s] refusal, throughout the Commission’s initial investigation and the proceedings before the Referee, to acknowledge the impropriety of his behavior.”).

Finally, that Respondent used the N-word in an off-the-bench parking lot conversation with Ms. Bartolotta and Ms. Valenti is irrelevant. “There is no question that judges are accountable for their conduct at all times, including in conversations off the bench.” *Matter of Senzer*, 5 NY3d at 220 (citation and internal quotation marks omitted). *See id.* (“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.” (citation and internal quotation marks omitted); *see also Matter of Kuehnel*, 1980 Ann Rep at 129 (A judge, “although off the bench[,] remain[s] cloaked figuratively[] with his black robe.”).

In sum, when Respondent used the toxic, derogatory N-word he violated the Rules in that he failed to: uphold the integrity and independence of the judiciary (§100.1); avoid impropriety and the appearance of impropriety and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary (§100.2(A)); and conduct his extra-judicial activities in a manner that does not cast reasonable doubt on his capacity to act impartially as a judge and detract from the dignity of his judicial office. §100.4(A)(1) and (2).

## II. Proposed Conclusions Of Law With Respect To Charge II Of The Formal Written Complaint

When Respondent decided to fix bail for Ms. D [REDACTED], instead of granting her attorney's request for pre-trial release, she blurted out, among other things, "This is a racist county. . .I'm the wrong color to be here. . .He's [Respondent] holding me because I'm African American. . .I'm the wrong race. . . I know this is a racist-ass county." Commission Ex. 6 at 8, 12-13.

After Ms. D [REDACTED] was removed from CAP Court, Respondent stated, on the record, "Naturally she played the race card." Ex. 6 at 14.

The phrase "playing the race card" refers to "false or exaggerated claims of [racial] bias. . .to be played for selfish advantage." Richard Thompson Ford, *The Race Card* (Farrar, Straus and Giroux 2009) ("*The Race Card*") at 8, 36. *See id.* at 7 ("[P]laying the race card. . .[means] us[ing] a claim of racial bias in order to gain something they didn't deserve.").

"Playing the race card" has a derogatory meaning since "it presumes that racial minorities are so devious as to consistently make claims they know to be false. . . ." *Id.* at 21. The "race card" disparages Blacks because it evokes the racial stereotype that Blacks cannot be trusted, are untruthful and are liars. *See* Mikah K. Thompson, *Bias on Trial: Toward an Open Discussion of Racial*

*Stereotypes in the Courtroom*, 2018 Mich. St. L. Rev. 1243, 1261, 1306 (2018) (“*Bias on Trial*”).

In a similar vein, then-New York Times opinion columnist Charles Blow explained that the term “playing the race card” carries negative connotations because it “implies[] that people often invoke race as a cynical ploy to curry favor, or sympathy, and to cast aspersions on the character of others.” Charles Blow, *Stop Playing The ‘Race Card’ Card*, NY Times (March 19, 2015)

<https://www.nytimes.com/2015/03/19/opinion/charles-blow-stop-playing-the-race-card-card.html> (last visited December 2, 2025).

A brief survey of decisions of the Commission and Court of Appeals considering, and condemning, a judge’s use of racial tropes and stereotypes is instructive.

In *Matter of Putorti*, 2023 Ann Rep of NY Commn on Jud Cond 230, *sanction accepted*, 40 NY3d 359 (2023), the Commission determined that the judge violated the Rules, when, on three separate occasions, he told multiple people – his former co-judge, his supervising judge and his fellow judges at a county magistrates association meeting – that he brandished a gun at a litigant who came within a few feet of him as he approached the bench, each time

identifying him by race as a “large Black man” or a “big Black man.” *Id.* 2023 Ann Rep at 237-39, 247-48; *id.* 40 NY3d at 363-64, 366.

The Court of Appeals confirmed the Commission’s finding of misconduct, reasoning that “[b]y repeatedly referring to the litigant in the manner that he did, [the judge] exploited a classic and common racist trope that Black men are inherently threatening or dangerous, [thus] exhibiting bias, or, at least, implicit bias.” *Id.* 40 NY3d at 366-67 (citing *Bias on Trial*, 2018 Mich. St. L. Rev. at 1249-1250).

And the Court of Appeals concluded that the judge’s use of the “inherently threatening or dangerous Black man” racial stereotype violated the Rule’s requirements that judges: “must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” (§100.2(A)) and must perform their judicial duties without racial bias or prejudice, by words or conduct (§100.3(B)(4)). *See id.* 40 NY3d at 367.

In *Matter of Gall*, 2025 Ann Rep of NY Commn on Jud Cond 104, a White judge told a Deputy Sheriff, responding to a fight between the judge’s son and four Black teenagers at a graduation party, that her son would be attending business school in the Fall, in contrast to the Black teenagers who “don’t look

like they're that smart. They're not going to business school, that's for sure." *Id.* at 126, 130 (italics and underlining added).

The Commission determined that the judge engaged in "serious misconduct" (*id.* at 137) and that she violated the Rules by "creat[ing] at least the appearance that she harbored racial bias. . .[which] severely undermined public confidence in her integrity and Impartiality." *Id.* at 138.

In referring to the Black teenagers as she did, the *Gall* judge invoked a derogatory racial stereotype: that Black's limited intellectual capacity is the reason for their low academic achievement. See L. Scott Miller, *The Origins of the Presumption of Black Stupidity*, *The Journal of Blacks in Higher Education*, No. 9 (Autumn, 1995) 78, 80-81; see also *Bias on Trial*, 2018 Mich. St. L. Rev. at 1261, 1306 (noting "the stereotype that African Americans are less intelligent than Whites"); *Gall*, 2025 Ann Rep at 151-52, Moore, Commission Member, concurring (judge engaged in "racial stereotyping" when assessing Black teenagers "as less than Business School material. . .[a] reflexive assessment[] made with no personal knowledge whatsoever of the four Black teenagers").

Again, in *Duckman*, 1998 Ann Rep of NY Commn on Jud Cond 83, the Commission showed its intolerance for a judge's racial stereotyping in finding that the judge engaged in misconduct and violated the Rules when he stated that two

Black defendants were late to court “[b]ecause they’re on CP time. . . [meaning] You know, color people’s time. You know, they have to take the train and come from the projects. . . [which] makes them late.” *Id.* 1998 Ann Rep at 85. In confirming the Commission’s finding of misconduct, the Court of Appeals concluded that judge’s remark, “multiplied throughout the evidence. . . [is] plainly inappropriate behavior for any Judge.” *Id.* 92 NY2d at 152.

*Matter of Schiff*, 1994 Ann Rep of NY Commn on Jud Cond 97, *sanction accepted*, 83 NY2d 689 (1994) involved a judge who, during a break in the proceedings, stated “he recalled a time when it was safe for young women to walk the streets ‘before the [B]lacks and Puerto Ricans moved here.’” *Id.* 1994 Ann Rep at 98. In implying that Blacks and Puerto Ricans were “responsible for increasing crime rates” (*id.* at 99) the judge engaged in racial/ethnic stereotyping, exhibiting bias which “cast[] doubt on his ability to fairly judge all cases before him.” *Id.* See *Bias on Trial*, 2018 Mich. St. L. Rev. at 1248, 1263 (noting the stereotype associating Blacks with crime).

The Court of Appeals agreed with the Commission. It concluded that the judge, whose remark was isolated but deliberate, “seriously violated the governing rules related to his duty to uphold the integrity and impartiality of the judiciary and to avoid even the appearance of impropriety.” *Id.* 83 NY2d at 693

(citations omitted). See *Matter of Aldrich*, 1983 Ann Rep of NY Commn on Jud Cond 75, 76 (judge engaged in racial stereotyping and violated the Rules when he described juvenile detention facilities as populated with Blacks from New York City who “will rape the shit out of you”), *sanction accepted*, 58 NY2d 279 (1983).

Here, Respondent invoked a racial stereotype – that Blacks are dishonest, untrustworthy and liars (see *Bias on Trial*, 2018 Mich. St. L. Rev. at 1261, 1306) and that they use race to their advantage (see *The Race Card* at 7-8, 36) – when he stated that Ms. D [REDACTED] “Naturally played the race card” (Ex. 6 at 14) “hoping for some sort of advantage.” Tr. at 195-96. And he “cast aspersions on [Ms. D [REDACTED]]’s] character” (Blow, *Stop Playing The ‘Race Card’ Card*, <https://www.nytimes.com/2015/03/19/opinion/charles-blow-stop-playing-the-race-card-card.html>) “by making a reflexive assessment[] with no personal knowledge whatsoever” of Ms. D [REDACTED]. *Gall*, 2025 Ann Rep at 152, Moore, Commission Member, concurring.

In his testimony before the Referee, Respondent admitted that he used the word “Naturally” because Ms. D [REDACTED] “obviously was Black” (Tr. at 158) and thus he “assumed” (Tr. at 158) that she would, and did, play the race card “hoping for some sort of advantage.” Tr. at 195-96. Like the *Putorti* judge, Respondent

“exploited a common and classic racial trope. . .exhibiting [his] bias, or, at least, [his] implicit bias.” *Putorti*, 40 NY3d at 366-67 (citation omitted).

Further, Respondent acknowledged that his “race card” remark was a “[d]umb thing to say. . .[and] a mistake” (Tr. 154-55), and, notably, he admitted that it “create[ed] an impression. . .that I was biased in some way.” Tr. at 161. Critically, the Court of Appeals has “stress[ed] that the appearance of [racial bias]. . .is no less to be condemned than is the impropriety itself.” *Putorti*, 40 NY3d at 366 (internal quotation marks and citations omitted). *See Duckman*, 92 NY2d at 153 (“the perception of impartiality is as important as actual impartiality” (internal quotation marks and citations deleted)).

Moreover, when Respondent stated, again on the record, “She [Ms. D ■■■] was pretty well restrained so she couldn’t attack you [referring to Assistant Public Defender Conklin], but she probably would have if she hadn’t been handcuffed” (Commission Ex 6 at 14), he invoked another racial stereotype similar to the racist “Black men are inherently threatening or dangerous” stereotype condemned by the Court of Appeals in *Putorti*, 40 NY3d at 366-67.

Respondent’s pugilistic description of Ms. D ■■■ 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. *See*

*Mclver v. Bridgestone Americas, Inc.* 42 F.4<sup>th</sup> 398, 413 (4<sup>th</sup> Cir. 2022) (Motz, J. concurring) (“when an African American woman asserts herself, she is often tagged. . .as an ‘angry Black woman,’ a harmful and well-rooted racial stereotype” (citation omitted)); *see also Banks v. GM, LLC*, 81 F.4<sup>th</sup> 242, 272 (2d Cir. 2023) (comments implying that Black female plaintiff’s reaction to discriminatory harassment were disproportionate or irrational implicated the “angry Black woman” racial stereotype, which could create an inference of racial bias and discriminatory motive).

In describing Ms. D [REDACTED] in pugilistic terms and in assuming that Ms. D [REDACTED] would have assaulted Mr. Conklin had she been unrestrained, Respondent dredged up the “angry Black woman” stereotype” (*Banks*, 81 F.4<sup>th</sup> at 272), “exhibiting bias, or at least, implicit bias.” *Putorti*, 40 NY3d at 366-67 (citation omitted).

Respondent claimed that he was unfamiliar with the “harmful and well-rooted stereotype” (*Mclver*, 42 F.4<sup>th</sup> at 413) that Black women are angry. But “[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. *Pennington*, 2006 *Ann Rep* at 226 (citations omitted).

Respondent did not appreciate 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].

Instead, Respondent inappropriately ridiculed Ms. D [REDACTED] with his “race card” and pugilistic remarks. *See Matter of Clark*, 2018 Ann Rep NY Commn on Jud Conduct 114, 129-31 (judge’s comments mocking the appearance of a twenty-one year old defendant struggling with substance abuse issues, who wore nose piercings and ear gauges, “were detrimental to the public’s confidence in this particular judge to perform his judicial duties in an appropriate manner, as well as the judiciary as a whole”); *see also Gall*, 2025 Ann Rep at 151-152, Moore, Commission Member, concurring (judge’s “derisive” and “mocking” use of “Black English (aka African American vernacular. . .created the appearance of racial bias”).

Similarly inappropriate was Respondent’s remark directed to Assistant Public Defender Conklin – “[d]o they teach you to fight back at the Public Defender’s Office?” (Commission Ex. 6 at 15) – which Respondent admitted was “silly” and “lighthearted.” Tr. at 191. That remark was not humorous; it was insensitive to, and mocked Ms. D [REDACTED], Mr. Conklin and the indigent clients whom

the Ontario County Public Defender's Office represent. *See Clark*, 2018 Ann Rep at 129-31.

When Respondent uttered his "race card" and related remarks on the record at the conclusion of Ms. D■■■■'s arraignment he invoked racial stereotypes which breached his "duty to inspire confidence in the integrity, fair-mindedness and impartiality of the judiciary." *Matter of Esworthy*, 77 NY2d 280, 282 (1991) (citation omitted).

In sum, Respondent violated the Rules in that he failed to: uphold the integrity and independence of the judiciary (§100.1); avoid impropriety and the appearance of impropriety and act in a manner that promotes public confidence in the integrity and impartiality of judiciary (§100.2(A)); and perform his judicial duties without racial bias or prejudice, by words or conduct. §100.3(B)(4).

/s/ David M. Garber, Referee

Dated: December 4, 2025  
Syracuse, New York