

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

MICHAEL H. PLASS,

a Justice of the Hyde Park Town Court,
Dutchess County.

**ANSWER TO FORMAL
WRITTEN COMPLAINT**

ORAL ARGUMENT
REQUESTED

MICHAEL H. PLASS, by his attorneys Leventhal, Mullaney & Blinkoff, LLP, for his answer to the Forman Written Complaint, states as follows:

1. Admits the allegations set forth at paragraph "1" of the Formal Written Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth or falsehood of the allegation set forth at paragraph "2" of the Formal Written Complaint.
3. Denies the allegations set forth at paragraphs "3" and "13" of the Formal Written Complaint, except admits that Respondent's campaign flyer (Exhibit 1 to the Formal Written Complaint) could lead a reasonable person to believe that those accused of domestic violence or suspected of selling drugs would not receive a fair hearing from the Respondent, in violation of Section 11.5(A)(4)(d)(i) and (ii) of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct.
4. Admits the allegations set forth at paragraph "4" through "10" of the Formal Written Complaint.
5. Denies the allegations set forth at paragraph "11" of the Formal Written Complaint, except admits that on or about December 14, 2023, the Advisory Committee on Judicial Ethics issued Opinion 23-158 to Respondent stating, among other things, that:

We conclude the inquiring judge is disqualified during his/her entire judicial term from: (1) all criminal cases; (2) cases in any court involving allegations of domestic violence; (3) all Vehicle and Traffic Law matters; and (4) cases in any court involving purported drug dealers. Disqualification on this ground is not subject to remittal.

Respondent respectfully refers the Commission to the Opinion for its contents.

6. Denies the allegations set forth at paragraph "12" of the Formal Written Complaint, except admits that Respondent has presided over approximately 59 civil cases, and devoted substantial time to his judicial duties. Respondent further states that this allegation refers to the internal administration of the court and does not implicate either the reality or the appearance of judicial integrity and impartiality.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE IN MITIGATION

7. Respondent repeats, reiterates and realleges the allegations set forth in the foregoing paragraphs "1" through "6".

8. Respondent's decision to seek election as Hyde Park Town Justice was motivated by a desire to continue his long-term commitment to public service.

9. Respondent did not repeat the any of the pledges that were made in the campaign materials that are the subject of the complaint. The pledges were not repeated in his other campaign materials or in remarks that he made during the campaign.

10. Respondent is not an attorney and had no prior judicial experience.

11. 22 NYCRR 100.5(A)(4)(f) expressly excludes candidates for town and village justices from the requirement that all candidates for elective judicial office complete a court approved campaign ethics education program.

12. Respondent first learned of the applicable Rule of Judicial Conduct when he took the "Taking the Bench" training program following his election. The course materials included a discussion of Section 100.3(E)(1)(f). This led Respondent to review Advisory Opinion Nos. 09-

222, 12-06, 18-02 and 99-168, and to seek an opinion from the Advisory Committee on Judicial Ethics regarding the application of Section 100.3(E)(1)(f) to his campaign materials.

13. The Respondent has, in all respects, adhered to the determination of the Advisory Committee on Judicial Ethics, and has refrained from presiding in all criminal cases, all cases involving allegations of domestic violence, all Vehicle and Traffic Law matters, and all cases involving purported drug dealers. He fully intends to continue to do so.

14. A guide to the application of Part 100 of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct is set forth at § 100 (Preamble). It provides as follows:

The rules governing judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The rules are to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The rules are designed to provide guidance to judges and candidates for elective judicial office and to provide a structure for regulating conduct through disciplinary agencies. They are not designed or intended as a basis for civil liability or criminal prosecution.

The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The rules are not intended as an exhaustive guide for conduct. Judges and judicial candidates also should be governed in their judicial and personal conduct by general ethical standards. The rules are intended, however, to state basic standards which should govern their conduct and to provide guidance to assist them in establishing and maintaining high standards of judicial and personal conduct.

(Emphasis added).

15. In its Opinion 23-158, the Advisory Committee on Judicial Ethics framed the question before it as:

The question we ask ourselves here is: Would a reasonable person, after reading the inquirer's campaign promises, believe that those *accused of* domestic violence or *suspected of* selling drugs would receive a fair hearing from the inquirer?

(Emphasis in original).

16. Applying the sound logic of the Advisory Committee on Judicial Ethics, the reasoned application of the rules contemplated by the Preamble to Part 100 of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct, the question here should be:

Would a reasonable person, after reading the inquirer's campaign promises, believe that persons other than those accused of domestic violence or suspected of selling drugs would receive a fair hearing from the inquirer?

17. The record is devoid of any basis for concluding that a reasonable person would believe that civil litigants in matters other than those identified by the Advisory Committee on Judicial Ethics would not receive a fair hearing from the Respondent.

18. This has been a learning experience for Respondent. He is now acutely aware of the need to inspire public confidence in the judicial system by ensuring not only the reality of impartiality in the administration of justice, but also its appearance. He deeply regrets that his campaign materials did not meet this important standard.

19. Public confidence in a fair and unbiased judiciary would not be undermined by Respondents continued judicial service, presiding in civil matters other than the matters identified by the Advisory Committee on Judicial Ethics.

WHEREFORE, it is respectfully urged that the Commission should take no further action.

Dated: Roslyn, New York
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