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.

REPLY MEMORANDUM BY COUNSEL TO THE COMMISSION

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Dated: September 3, 2025

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission Counsel") in reply to the memorandum of Judge Michael H. Plass ("Respondent"), dated August 20, 2025. For the reasons stated in Commission Counsel's main brief and below, the Commission should issue a determination finding that Respondent violated Sections 100.1, 100.2, 100.2(A), 100.5(A)(4)(a), 100.5(A)(4)(d)(i), and 100.5(A)(4)(d)(ii) of the Rules Governing Judicial Conduct ("Rules") and recommending that he be removed from judicial office.[1]

ARGUMENT

POINT I

RESPONDENT'S MYRIAD ATTEMPTS TO MINIMIZE HIS ETHICAL TRANSGRESSIONS AGGRAVATE HIS MISCONDUCT.

Respondent's brief identifies a host of factors that he claims mitigate his misconduct (*see* Resp Mem: 8-18).[2] Notwithstanding that many of those factors

[1] Though Respondent admitted at the hearing that he violated all of those Sections of the Rules (H2 Plass: 111-13; Rep: 14) and the Referee agreed (Rep: 14, 30-31), Respondent now contends that his misconduct did not in fact violate Sections 100.1 and 100.2(A) (Resp Mem: 7). Commission Counsel relies on its main brief (Comm Mem: 32) to refute that newfound contention.

[2] Citations to "Comm Mem" and "Resp Mem" are to the briefs filed by Commission Counsel and Respondent on August 20, 2025, respectively. All other citations are as described in Commission Counsel's main brief (*see* Comm Mem: 7 n2).

were already considered and rejected by the Referee, these renewed attempts to claim mitigation emphasize Respondent's continued lack of appreciation for the seriousness of his misconduct. As discussed in Commission Counsel's main brief (*see* Comm Mem: 33-39), this constitutes a substantial aggravating factor favoring the sanction of removal. *Matter of Ayres*, 30 NY3d 59, 65 (2017).

Respondent's continued reliance on his "ignorance of the law" (Resp Mem: 9) is troubling. To begin, his astonishing reference to the Rules as a "trap for the unwary" (Resp Mem: 9) speaks volumes. Respondent insists that the Rules should have been "made available" to him during his candidacy and claims that, because they were not, their enforcement against him does not "promot[e] judicial integrity and public confidence in the justice system" (Resp Mem: 9). However, as the Referee rightly noted, "the Rules were readily available" to Respondent had he been "[ ]willing to undertake the relatively simple steps to ascertain them" (Rep: 16-17, 23). Indeed, as Respondent himself acknowledged, "a click on Google would [have] reveal[ed] the proscription against pledges" (Rep: 16-17), and Respondent was "unaware" of that proscription (Resp Mem: 1, 9) only because he "made no effort whatsoever to ascertain the rules governing judicial campaign[s]" (Rep: 16-17). Respondent's continued refusal to accept responsibility for his own failure to familiarize himself with the Rules aggravates his misconduct. *See Ayres*,

30 NY3d at 65; *Matter of Simon*, 28 NY3d 35, 39 (2016); *Matter of Conti*, 70 NY2d 416, 419 (1987).

Nor can Respondent legitimately claim that his misconduct was "isolated" to his inappropriate campaign mailer (Resp Mem: 13). As Respondent revealed for the first time during his cross-examination, he knowingly violated AO 23-158 by adjudicating 180 VTL cases, despite the Advisory Committee's unequivocal determination that he could not handle such cases in an unbiased manner (H2 Plass: 134-35; Rep: 13-14, 26; Comm Mem: 39-43).

Moreover, as discussed in Commission Counsel's main brief (Comm Mem: 33-36), Respondent's hearing testimony demonstrated that he still does not understand what it means for a judge to be impartial. His testimony that orders of protection should be given as a matter of course at arraignments, merely for the asking, is completely incompatible with a judge's duty to listen to both sides and to assess each case individually on its own merits. This "unacceptable degree of insensitivity to the demands of judicial ethics" further aggravates Respondent's misconduct. *Conti*, 70 NY2d at 419.

Respondent's reliance on his expressions of remorse (Resp Mem: 10-12) is also unavailing. Although Respondent at times was apologetic for the campaign mailer, his claims of remorse were undercut by his continued defense of the mailer's content and – notwithstanding AO 23-158 – his refusal to concede that a

reasonable person would find that it suggested bias (*see* H2 Plass: 87, 90-91, 95, 98). Significantly too, Respondent pointedly refused to express remorse for the strain his misconduct placed on his co-judge, Jean A. McArthur. Indeed, despite the Referee's recognition that Respondent's misconduct has placed an "onerous" and "unfair work burden" upon Justice McArthur, who now "has the sole responsibility for the Town to be on-call and within reach all the time" (Rep: 15, 25, 29), when Respondent was asked whether he was "remorseful" for that burden, he unequivocally answered that he is not (H2 Plass: 132-33).

Moreover, rather than accept responsibility for the impact his misconduct has had on his co-judge, Respondent startlingly insists that the "allocation of on-call duties to Justice McArthur is not a result of the inappropriate statements by Justice Plass made in his campaign flyer" (Resp Mem: 13). Instead, according to Respondent, the Advisory Committee bears the sole blame for Justice McArthur's onerous workload because it determined the statements Respondent made in his own campaign mailer exhibited clear pro-prosecution bias and warranted his recusal from all criminal matters.

Respondent's argument is absurd. Commission Counsel has not argued that Respondent should be disciplined for recusing himself in criminal cases. Rather, Respondent should be disciplined because he made inappropriate campaign pledges that have required his recusal. The Advisory Committee's determination

that Respondent must recuse himself from criminal cases was the direct result of those inappropriate campaign pledges, and it is that misconduct – Respondent's own demonstration of pro-prosecution bias – that precipitated the inequitable "allocation of judicial duties." Respondent's disingenuous attempt to blame the Advisory Committee for the outsized burden Justice McArthur has had to assume is a serious aggravating factor. *See Ayres*, 30 NY3d at 66.[3]

Finally, Respondent's argument that his "conduct on the bench" mitigates his campaign misconduct (Resp Mem: 16) is unavailing. Even taking at face value the Referee's findings that Respondent has been an "exemplary" judge who "worked hard," is "well-liked" by court staff, and has "treated the public and the court personnel 'very well'" (Rep: 18-19, 27), the Commission has made clear that even where there is "some indication in the record that [the Respondent] is an effective judge," its "mandate is to protect the integrity of the courts . . . not to evaluate the effectiveness of a judge." *Matter of Miller*, 2021 Ann Rep of NY Commn on Jud Conduct at 197, 217, *sanction of removal accepted* 35 NY3d 484 (2020).

[3] Because the Advisory Committee's opinion was the direct result of Respondent's own misconduct, the Commission should soundly reject his argument that his actions are "protected by Judiciary Law § 212(2)(l)(iv)" and "all testimonial and documentary evidence of the allocation of judicial duties between Justice Plass and Justice McArthur should be disregarded" (Resp Mem: 6).

Here, for the reasons stated in Commission Counsel's main brief, Respondent has irreversibly undermined the public's trust based on misconduct "inimical to a favorable and appropriate public perception of the judiciary" and "abhorrent to judicial integrity" (Rep: 15, 28), which was then exacerbated by the discussed aggravating factors (*see* Comm Mem: 33-49).

POINT II

CONSISTENT WITH THE COURT OF APPEALS' DECISION IN *MATTER OF WATSON*, RESPONDENT SHOULD BE REMOVED FROM JUDICIAL OFFICE.

In arguing for a sanction short of removal, Respondent cites *Matter of Watson*, 100 NY2d 290 (2003), notes that the sanction imposed in that case was censure, and argues that removal is inappropriate here because the Commission has not since removed a judge for campaign misconduct (Resp Mem: 18-22).

The Court of Appeals undercut this argument in *Watson* itself, holding that "[d]espite the fact that no judge has been removed for campaign misconduct in the past, our decision in this case should not be interpreted to suggest that violation of the campaign rules can never rise to a level warranting removal." *Id.* At 304. And this matter presents the precise scenario the Court of Appeals envisioned. As argued in Commission Counsel's main brief (Comm Mem: 44-49), Respondent's misconduct was more egregious than that in *Watson*: Unlike the judges in *Watson* or any of the cases cited in his brief (*see* Resp Mem: 18-19), Respondent here

made explicit promises to incarcerate and impose maximum sentences on certain classes of defendants.

In addition, this matter presents a host of aggravating circumstances not present in *Watson* or the other matters cited by Respondent (*see id.*). None of those cases have the range of aggravating factors present here, including Respondent's demonstrated continuing bias, his repeated attempts to minimize both the effects of his misconduct and his own culpability, and his willful violation of AO 23-158. And, unlike this case, the misconduct in the cases cited by Respondent did not require the judge to be disqualified from handling the vast majority of cases brought in his court. As a result of Respondent's misconduct, he is unable to perform the judicial duties for which he was elected (Rep: 15, 28, 30), though he continues to earn the entirety of his judicial salary at the expense of the taxpayers.

The totality of those factors render Respondent an "unfit incumbent[ ] (*Watson*, 100 NY2d at 303) whose "usefulness . . . to carry out his . . . constitutionally mandated functions" has been fatally "impair[ed]." *Kuehnel v. State Commn. on Jud. Conduct*, 49 NY2d 465, 469 (1980). He should be removed from judicial office.

CONCLUSION

For the reasons stated, Commission Counsel respectfully requests that the Commission find that Charge I of the Complaint is sustained and issue a determination recommending that Respondent be removed from judicial office.

Dated: September 3, 2025
New York, New York

Respectfully submitted,

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