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.

MEMORANDUM BY COUNSEL TO THE COMMISSION IN SUPPORT OF A RECOMMENDATION THAT THE COMMISSION DETERMINE THAT RESPONDENT COMMITTED JUDICIAL MISCONDUCT AND SHOULD BE REMOVED FROM OFFICE.

ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(212) 386-4800

Of Counsel:
Mark Levine, Esq.
Edward Lindner, Esq.
Carla Freedman, Esq.
Denise Buckley, Esq.
David Stromes, Esq.
Eric M. Arnone, Esq.

Dated: August 20, 2025

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES

COMMISSION DETERMINATIONS

STATUES AND REGULATIONS

RULES GOVERNING JUDICIAL CONDUCT

OTHER AUTHORITIES

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission Counsel") in support of a recommendation that the Commission determine that the Honorable Michael H. Plass ("Respondent") committed judicial misconduct and should be removed from office.

INTRODUCTION

During his 2023 campaign for Hyde Park Town Justice, Respondent – a non-lawyer who had served as a police officer for 19 years – designed and distributed 3,000 campaign mailers to potential voters that read:

"As your Town Justice, I pledge to:

- Keep drug dealers off our streets and out of our hotels
- Incarcerate offenders and protect victims of domestic violence
- Assure repeat offenders are sentenced to the full extent of the law."

The mailer also contained the slogan, "Together we can make a change in the safety of our community," as well as endorsements from local elected officials stating that Respondent would "defend Hyde Park" from the bench, "protect and serve" as a judge, and "ensure victims['] rights are always a priority."

In December 2023, after he won the election but before he was sworn in, Respondent learned that his mailer violated campaign ethics rules. He sought an opinion from the Advisory Committee on Judicial Ethics, which determined in Advisory Opinion ("AO") 23-158 that the pledges and promises in Respondent's

mailer "create[d] a distinct impression that [he] would, if elected, aid law enforcement rather than apply the law neutrally and impartially." As a result, the AO disqualified Respondent, for the entirety of his judicial term and without possibility of remittal, 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." Respondent willfully violated that disqualification order in August 2024, when he unilaterally proceeded to adjudicate 180 mail-in traffic ticket pleas.

Because most of the cases heard in Hyde Park Town Court are criminal and traffic matters, Respondent's misconduct has rendered him unable to handle more than 90% of the cases that come before his court, thereby placing a significant burden on his co-Judge, Hon. Jean McArthur, who is forced to handle all the matters Respondent cannot. Specifically, in 2024, Justice McArthur was assigned all of the court's 2,091 criminal and traffic cases (along with 10 civil cases), while Respondent could be assigned only 171 civil matters. Beyond that, Justice McArthur is responsible for being on call for all emergency after-hours arraignments twenty-four hours a day and seven days a week, which renders her unable to travel more than an hour or so from the courthouse at any time. Respondent nonetheless continues to earn the entirety of his judicial salary while Judge McArthur is not compensated for her additional workload. Despite these

facts, Respondent insisted at the hearing that the current division of labor has not burdened Justice McArthur or the court, and he averred he is not remorseful for her increased workload.

At the hearing, Respondent demonstrated that he has retained his law-enforcement bias, showed a lack of appreciation for his misconduct, and sought to minimize his culpability for the mailer. He also admitted knowingly violating AO 23-158 when he adjudicated the aforementioned 180 traffic matters.

Respondent's unacceptable bias in favor of law enforcement, combined with his mandatory disqualification from the majority of his judicial duties, his minimization of his misconduct and the impact it has had on his court, and his willful violation of the Advisory Opinion, render Respondent unfit for judicial office. He should be removed.

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint ("Complaint"), dated July 15, 2024, containing one charge, alleging that, during his 2023 campaign for judicial office, Respondent designed, approved, and/or distributed campaign literature that *inter alia* "pledge[d]" to (A) "Keep drug dealers off our streets and out of our hotels," (B) "Incarcerate offenders and protect victims of domestic violence," and (C) "Assure repeat

offenders are sentenced to the full extent of the law." In doing so, Respondent conveyed at least the appearance that he would be biased in favor of law enforcement rather than decide each matter on its own merits (Complaint ¶ 5). The Complaint further alleges that the back of the mailer contained endorsements from the Hyde Park Town Supervisor, the Dutchess County Sheriff and a former New York State Senator, all of whom touted Respondent's law enforcement credentials (Complaint ¶ 9). Respondent is alleged to have brought his mailer to a printshop, which produced roughly 3,000 copies and, on Respondent's behalf, mailed them to potential voters (Complaint ¶ 10).

The Complaint additionally alleges that, on or about December 14, 2023, the Advisory Committee on Judicial Ethics issued AO 23-158, ruling that the contents of the mailer disqualified Respondent – for the entirety of his judicial term – from presiding over criminal cases, Vehicle and Traffic Law matters, and any matters involving allegations of domestic violence or drug dealing (Complaint ¶ 11). As a result, Respondent is unable to perform the majority of his judicial duties, thereby placing a considerable burden on the sole other justice of the Hyde Park Town Court (Complaint ¶ 12).

B. Respondent's Answer

Respondent filed an Answer ("Answer") dated July 29, 2024, admitting that, during his campaign for judicial office, he designed, approved, and distributed the

mailer at issue, which conveyed at least the appearance that he would be biased in favor of law enforcement rather than decide each matter on its own merits. Respondent admitted that he designed the mailer without seeking counsel from any lawyer, judge or court official, and without familiarizing himself with the rules that govern the conduct of judicial candidates. Respondent also admitted that, in or about October 2023, he brought his mailer to a printshop, which produced roughly 3,000 copies and, on Respondent's behalf, mailed them to potential voters. Respondent conceded that his campaign mailer 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 Respondent (Answer ¶¶ 3-4).

Respondent further admitted that, on or about December 14, 2023, the Advisory Committee on Judicial Ethics issued AO 23-158, which stated *inter alia* that he was disqualified during his entire judicial term from: (1) all criminal cases; (2) cases in any court involving allegations of domestic violence; (3) all Vehicle and Traffic matters; and (4) cases in any court involving purported drug dealers (Answer ¶ 5).

Finally, Respondent asserted that he "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" (Answer ¶ 13).[1]

C. The Hearing

By letter dated January 10, 2025, the Commission designated Steven E. North as Referee to hear and report proposed findings of fact and conclusions of law. A hearing was held in the Commission's New York City office on March 24 and 25, 2025. Commission Counsel called one witness (Hon. Jean McArthur) and introduced 15 exhibits. Respondent testified on his own behalf, called two witnesses (Sarah Jensen and Pamela Lucia), and introduced 19 exhibits. Unredacted copies of the Complaint and Respondent's Verified Answer were introduced as Referee exhibits. A redacted document labelled "Case load for 2024," offered by Respondent, was admitted as Court's Exhibit A.

D. The Referee's Report

The Referee issued a Report dated July 30, 2025. The Referee largely sustained the factual allegations in the Complaint and concluded that Respondent violated Sections 100.1, 100.2(A), 100.5(A)(4)(a), 100.5(A)(4)(d)(i), and 100.5(A)(4)(d)(ii) of the Rules by creating and distributing 3,000 copies of a campaign mailer in connection with his campaign for judicial office that made

[1] Notwithstanding this assertion in his Verified Answer that he would "continue" to adhere to AO 23-158, Respondent admitted at the hearing that the very next month, he in fact violated the terms of the Advisory Opinion when he "processed" 180 VTL matters (H2 Plass: 134-38).

pledges or promises inconsistent with the impartial performance of his judicial duties, and which conveyed at least the appearance that he would be biased in favor of law enforcement rather than decide each matter on its own merits.

STATEMENT OF FACTS

A. The Campaign Mailer

In October 2023, Respondent – a 19-year veteran of four different police departments and then-candidate for the office of Hyde Park Town Court Justice – created the following two-sided campaign mailer in connection with his judicial candidacy and distributed 3,000 copies to Hyde Park voters in advance of the election (H2 Plass: 5, 81; Comm Ex 1; Rep: 6, 11-12, 20-21).[2]

[2] Citations to "H1" and "H2" refer to the hearing transcripts for the proceedings of March 24 and March 25, 2025, respectively. Citations preceded by "Rep" refer to the Referee's Report.

EVERY VOTE COUNTS!

Together we can make a change in the safety of our community

Paid for by The Friends to Elect Michael Plass

Trust Honesty Integrity

Michael Plass

for Hyde Park Town Justice

As a Hyde Park Police Officer, I have seen first hand the problems Hyde Park Faces.

As your Town Justice, I pledge to:

* Keep drug dealers off our streets and out of our hotels.
* Incarcerate offenders and protect victims of domestic violence
* Assure repeat offenders are sentenced to the full extent of the law

PRSRT STD
U.S. POSTAGE
PAID
NEWBURGH, NY
PERMIT #44

1-511

[redacted]
Hyde Park NY 12538-1615

Michael Plass for Hyde Park Town Justice

"Michael Plass has protected Hyde Park for 10 years as a Police Officer. Now we will send Mike to the bench to defend Hyde Park."

Hyde Park Town Supervisor Al Torreggiani

"As a member of law enforcement, Mike has protected our community with dedication and honor. As our Town Justice, I know he will continue to do just that - protect and serve. Mike will bring that same commitment to the bench to ensure victims rights are always a priority. As a Hyde Park resident, I am honored to support Mike for our Town Justice".

Sue Serino

"I've known Mike for many years as a friend, a law enforcement officer and a member of the Hyde Park community. There is no one better to elect as a fair and impartial judge".

Duchess County Sheriff Kirk Imperati

Notably, despite the prohibition barring judicial candidates from making "pledges or promises" (*see* Section 100.5[A][4][d][i]; H2 Plass: 5-6, 8, 91, 112-13), Respondent pledged to "[k]eep drug dealers off" the streets and out of hotels, "[i]ncarcerate offenders and protect victims of domestic violence," and sentence repeat offenders "to the full extent of the law" (Comm Ex 1). Respondent took no steps to familiarize himself with the Rules Governing Judicial Conduct or the campaign ethics handbook before creating this mailer, nor did he look at sample mailers for other judicial candidates (H2 Plass: 5-6, 80, 82-83; Rep: 23).

Aside from those specific "pledges," Respondent's mailer also touted his experience as "a Hyde Park Police Officer" and stated on the front side, "Together we can make a change in the safety of our community" (Comm Ex 1). On the back, Respondent advertised three endorsements stating, *inter alia*, that Respondent would: "defend Hyde Park" from the bench; "protect and serve" as a judge; and "ensure victims [sic] rights are always a priority" (Comm Ex 1).[3]

Shortly after the mailer went out, a local newspaper published an article proclaiming that Respondent's advertisement had violated campaign ethics rules (H2 Plass: 6-7, 145-46; Rep: 12, 22). Respondent called the Commission's office to verify that there were no complaints against him, and he thereafter reprinted and

[3] Commission Counsel is not seeking a finding that these endorsements violated the Rules Governing Judicial Conduct.

redistributed his mailer with the "pledges" language omitted (H2 Plass: 6-7, 145-46; Rep: 12, 22). Respondent assumed that the article was the result of "tactics" by his opponents to get him out of the race (H2 Plass: 6-7).

B. The Advisory Opinion

Following his election in November 2024, Respondent attended a "taking the bench course" presented by Laura Smith, Chief Counsel to the Advisory Committee on Judicial Ethics ("ACJE") (H2 Plass: 119; Rep: 12, 22). Upon learning during the lecture that the Rules Governing Judicial Conduct ("Rules") prohibited judicial candidates from making pledges or promises, Respondent approached Ms. Smith during a break, admitted that he had done exactly that during his campaign, and sought guidance regarding what to do (H2 Plass: 9-10, 119-20; Rep: 12). Ms. Smith advised Respondent to email a copy of the mailer to the ACJE, which he did on December 14, 2023 (H2 Plass: 10-11, 120, 122; Rep: 22).

By letter dated January 8, 2024, the ACJE sent Respondent AO 23-158 in response to his submission (Comm Ex 2). The AO stated, in part:

> During a recent judicial campaign, the inquirer promised, if elected, to: (1) keep drug dealers off our streets and out of our hotels; (2) incarcerate offenders and protect victims of domestic violence; and (3) assure repeat offenders are sentenced to the full extent of the law. These statements were made in the inquirer's written campaign literature without qualifiers or caveats, and were expressly identified as pledges or promises. Further, they were made in the context of the candidate's law enforcement and/or prosecutorial background.

(*id.*).

Noting that a judge must disqualify himself in a proceeding in which his impartiality "might reasonably be questioned," including instances where "the judge, while a judge or while a candidate for judicial office, has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office," AO 23-158 determined that Respondent must be "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" (*id.*; *see* Rep: 7, 22). The opinion added that Respondent's disqualification "is not subject to remittal" (*id.*; Rep: 22).

In reaching that conclusion, AO 23-158 reasoned that Respondent's "campaign promises, seen as a whole, create a distinct impression that [he] would, if elected, aid law enforcement rather than apply the law neutrally and impartially" (*id.*). Specifically, "the wording of these campaign promises create[d] a clear impression that [Respondent] was promising to 'incarcerate offenders' and to ensure maximum sentencing of 'repeat offenders,'" rather than give each matter the "individualized consideration" required by law, "taking into account all relevant legal factors" (*id.*). Indeed, AO 23-158 continued, Respondent's "campaign promises appear[ed] to commit him/her to impose incarceration and/or

maximum sentencing where possible, as if [he] has pre-judged such matters, especially with respect to 'repeat offenders,'" and "to single out two classes of people who would be treated differently from others that might appear before the court": drug dealers (for "unfavorable treatment") and victims of domestic violence (for "special protection") (*id.*).

On January 15, 2024, Respondent asked the ACJE to reconsider AO 23-158 (H2 Plass: 124, 131; Comm Ex 3; Rep: 7, 23). *Inter alia*, he cited the "severe opposition" his candidacy had received in the form of "reports of defamation, false threats of arrest for purported harassment, and finally an actual fight which occurred at one of our committee meetings where members then attempted to have me arrested" (Comm Ex 3). While conceding that the "mistake" in creating the flyer was his "own fault," he felt that "being left on [his] own" while "two incumbent judges . . . team[ed] up and actively ran against [him]" "contributed" to the mistake (*id*.). Respondent questioned and implicitly blamed the electoral and judicial education processes, lamenting that he was "facing a form of punishment for [his] mistakes that were made prior to being educated on the proper way(s) to campaign for the job" (*id.*). He also seemed to think there was "a completely different set of rules restricting" him (*id.*). The ACJE denied Respondent's request for reconsideration (Rep: 7, 12).

C. Impact on the Hyde Park Town Court

Respondent's disqualification from all criminal and Vehicle and Traffic Law ("VTL") matters created immediate strain on the Hyde Park Town Court, as Justice McArthur had to take on all the cases Respondent was prohibited from handling (H1 McArthur: 25; H2 Plass: 47). As a result, for the entirety of 2024, Justice McArthur was assigned all 2,091 criminal and VTL cases filed in the Hyde Park Town Court plus the 10 civil matters filed in January 2024, while Respondent had to handle only the 171 civil matters filed between February and December (Comm Ex 14; H1 McArthur: 25; H2 Plass: 47; *see* Rep: 7-8, 23).

The criminal caseload for which Justice McArthur remains solely responsible consists of every aspect of each criminal case from start to finish, including arraignments, preliminary hearings, pretrial motions and hearings, trials, sentencings, issuance of domestic violence orders of protection, and Sex Offender Registration Act proceedings (H1 McArthur: 26-28). As for VTL matters, Justice McArthur handles all of the court's mail-in pleas – which involves reviewing records and assessing fines outside of court – as well as the in-person calendar for defendants who decline to plead guilty via mail (H1 McArthur: 31-32, 34). All told, Justice McArthur now works approximately 50 hours per week on her judicial

duties, as opposed to the 35-38 hours she worked when Respondent's predecessor was able to take an even share of the case load (H1 McArthur: 105-06; Rep 8-9).[4]

In addition to those assigned cases based on court filings, Justice McArthur is "on call" for every after-hours arraignment in the Hyde Park Town Court, 24 hours a day and seven days per week (McArthur: H35-36; Rep 9). In the past, Justice McArthur split this responsibility evenly with her co-judge, but Respondent's conduct has made that impossible (H1 McArthur: 36). As a result, she is unable to "plan vacations or trips," or even attend "family functions" that involve "travel more than an hour or two from the courthouse" (H1 McArthur: 39; Rep 9). Justice McArthur has received no extra compensation for her increased workload, and Respondent continues to earn his full judicial salary of $44,000 plus benefits (H1 McArthur: 51; H2 Plass: 144).

D. Respondent's Willful Violation of the Advisory Opinion

During cross-examination, Respondent revealed for the first time that in August 2024, he took it upon himself to adjudicate 180 mail-in VTL pleas that he claimed Justice McArthur refused to handle (H2 Plass: 134-35; Rep: 13-14, 26). Notwithstanding that only one month earlier Respondent averred in his Verified Answer that he "fully intended" to abide by AO 23-158 (Answer ¶ 13), Respondent "processed" 180 VTL tickets, determined the fine, imposed the related

[4] The Referee found that these time estimates were "unreliable and overestimated" (Rep: 25).

surcharge, signed his name, and then returned the tickets to the court clerks (H2 Plass: 136-37). Respondent acknowledged that this conduct constituted a violation of AO 23-158 but defended it as necessary due to Justice McArthur's purported refusal to process this batch of tickets (H2 Plass: 135, 138).[5]

E. Respondent's Hearing Testimony

Respondent admitted that he 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 by creating and circulating his campaign mailer (H2 Plass: 111-13; Rep: 14). He acknowledged that he was "[r]idiculously ignorant" of the rule forbidding pledges or promises by judicial candidates (H2 Plass: 8, 113; Rep: 21, 23). Respondent agreed that "ignorance is no defense for the law," but simultaneously emphasized that he "never in a million years would have thought one group of people has got a whole special set of rules from everybody else" (H2 Plass: 113; Rep: 12, 21). He reflected that, while he has to bear the blame of his "mistake," at the time he made the flyer, he was "working two jobs, . . . running a campaign . . . [and] trying to have a family life" (H2 Plass: 77). And, as he wrote in his reconsideration letter to ACJE (*see* Comm Ex 3), Respondent harped on the lack of "education for a Judge

[5] The Referee noted that Respondent's testimony was "unassailed" on this point and found that Respondent's violation of the Advisory Opinion was defensible (Rep: 26-27). Commission Counsel disputes this finding. *See* Point III, *infra*.

prior to being elected," lamenting, "[t]here's only some rule that you can Google if you know to Google it" (H2 Plass: 97; Rep: 23).

As to the specifics of his pledges, Respondent acknowledged that the language indicating he would "keep drug dealers off our streets" "could convey the message that [he] would lock up drug dealers," but asserted that it would not be "reasonable" for a reader to assume that meaning because he could have meant a rehabilitation program or transition center instead – alternatives to incarceration that the mailer did not mention (H2 Plass: 87-89). When Commission Counsel pointed that out and noted that the very next sentence discussed incarceration, Respondent asserted that "each sentence was made to be read by itself," rather than in context (H2 Plass: 88-89). Ultimately, Respondent conceded that this pledge conveyed bias toward drug offenders and was inconsistent with his obligation to remain impartial (H2 Plass: 93).

Respondent likewise conceded the impropriety of his second pledge – to incarcerate domestic violence offenders and protect victims of domestic violence (H2 Plass: 94-95). However, after admitting that he "didn't give [the language] that much thought," Respondent attempted to justify his choice of words, stating "I wrote them because I'm a 19-year police officer, because I know what the things are that are happening in town, . . . I know what's going on in my community, and I want to help" (H2 Plass: 97). Pressing the question of impartiality in domestic

violence case, Commission Counsel asked, "do you acknowledge that everybody who appears before you deserves a fair hearing?" Instead of saying "Yes," Respondent answered, "Everyone has the voice" (H2 Plass: H98). He then added that he could not "contemplate" a case in which an order of protection would be requested but not granted, because he has "never seen that" and such orders "have to" be given (H2 Plass: 109).

As for his pledge "to assure repeat offenders are sentenced to the full extent of the law," Respondent conceded that he gave the appearance of a promise to sentence repeat offenders to maximum prison terms (H2 Plass: 99). Respondent explained that by saying "full extent," he "was trying to convey a range, you know, a range of the full extent, like what's allowed within the law" (H2 Plass: 99). He insisted, "that's the most important thing, is what you intended" (H2 Plass: 100). Still, Respondent conceded that a person reading his mailer would have no way of assessing his intent, and that it was "not appropriate" for him to have conveyed the impression that he would sentence all repeat offenders to maximum prison terms (H2 Plass: 100-01).

Regarding the mailer's assertion that Respondent would "make a change in the safety of our community," Respondent opined that "Judges protect people. That's – you know, that's part of their job is to give a[n] order of protection. . . . The safety of the community was just because that's what I think Judges do; they

help people" (H2 Plass: 83). Respondent denied that this language could convey the appearance that he would "change safety" by incarcerating people, but allowed that, "through the help of [his] lawyer," a reader might interpret it that way (H2 Plass: 83-84).

Respondent spent considerable time on the stand attempting to impugn Justice McArthur's testimony that his inability to handle any criminal or VTL cases placed inequitable strain on her. After averring that he "tr[ies] [to] make up for everything" by taking on additional tasks such as managing payroll, human resource issues, the court budget, bank deposits, and clerk vacation schedules (H2 Plass: 12-13; Rep: 12-13), Respondent conceded that Justice McArthur "is doing more," but claimed it was only "a small percentage more" (H2 Plass: 12-13; 130; Rep: 13). In fact, despite the uncontroverted evidence that Justice McArthur was assigned 2,101 cases in 2024 to Respondent's 171 (Comm Ex 14; H1 McArthur: 25; H2 Plass: 47), Respondent insisted, "[i]f we do the math on all the numbers you have, you'll see in the case load she's working five percent more than me" (H2 Plass: 130).[6]

To press that point, Respondent made Freedom of Information Law ("FOIL") requests for Justice McArthur's New York State and Local Retirement System ("NYSLRS") pension time certifications for 2016 and 2024 (H2 Plass: 68-

[6] The Referee found that this estimate on Respondent's part "is not a reliable metric" (Rep: 25).

71; Resp Ex C; Rep: 13). According to Respondent, the certifications showed that Justice McArthur claimed to have worked an average of 176 hours per month in 2016, but no more than 160 hours per month in 2024, meaning – according to Respondent – she worked less in 2024 than she did in 2016 (H2 Plass: 68-71; Resp Ex C). Then, in contradiction of Justice McArthur's explanation that she "put down extra" hours beyond what she was required to report when she was a new judge in 2016 until a "personnel person" at NYSLRS explained to her that she only had to report hours up to a "threshold" of 32 hours per week (H1 McArthur: 61-62, 76-77, 103; Rep 9), Respondent testified, "There is no threshold required. That's not a thing" (H2 Plass: 65). Notably, he conceded that he is not a NYSLRS member and – unlike Justice McArthur – never spoke to a NYSLRS representative (H2 Plass: 142-43).[7]

Beyond that, Respondent explicitly accused Justice McArthur of lying about her hours spent on court work, both to NYSLRS and before the Commission. Her pension certifications, Respondent testified, "implicated" Justice McArthur "in something she probably should not be doing" (H2 Plass: 143) and – following a comparison of her certifications to those filed by his predecessor, as well as court officer timesheets – alleged, "She's the only one person out of 12 years that has

[7] The Referee concluded that the NYSLRS timesheets "do not accurately reflect the number of hours [Justice McArthur] spends on judicial duties and is not a reliable indicium of her work time" (Rep: 24).

reported working that much. Not her Co-Judge, not her Clerks, not her Prosecutor, not the Court Officers, not me" (H2 Plass: 130). Respondent conceded that he had a contentious relationship with Justice McArthur stemming from the campaign itself, when he ran against Justice McArthur and his own predecessor – a campaign that involved "arguments," "name-calling," "reports of defamation, false threats of arrest for purported harassment, and finally an actual fight which occurred at one of our committee meetings" (H2 Plass: 5, 7, 125; *see* Comm Ex 3).[8]

Respondent also introduced court sign-in sheets from assorted days Justice McArthur presided, as well as court officer time sheets, to attempt to demonstrate a disparity between the number of cases she handled versus the number of criminal and VTL defendants who actually appeared before her (Resp Ex A [sign-in sheets]; Resp Ex D [court office time sheets]; H2 Plass: 34-35, 37-38; Rep: 13). However, Respondent conceded that "the Court officers are only present when the Judge is on the bench" (H2 Plass: 50), and Justice McArthur made clear that much of the work she does is outside the courtroom (*see* H1 McArthur: 48-51). Even when a

[8] Respondent also called two witnesses to testify as to Justice McArthur's time spent working in court: Sarah Jensen, Justice McArthur's former clerk who left the court after a falling out with Justice McArthur due to a "toxic" work environment; and Pamela Lucia, Respondent's current clerk (H1 Jensen: 125, 174-76; H1 Lucia: 179-81). Ms. Jensen testified to the amounts of time she estimated certain tasks took, including arraignments and mail pleas, but conceded that she did not watch Justice McArthur do all of her work (H1 Jensen: 135-35, 160-61; Rep: 10). Ms. Lucia gave similar testimony (H1 Lucia: 183-87; Rep: 10). The Referee concluded that, "[d]ue to her impaired relationship with Justice McArthur, Sarah Jensen's testimony regarding Justice McArthur's work efforts and off-hours frequency of appearances at the courthouse is discounted and unreliable" (Rep: 24).

defendant in a criminal or VTL matter does not show up for court (and thus does not appear on a sign-in sheet), the case is still called on the record, dealt with as a "no-show," and considered for a warrant if applicable (H1 McArthur: 44-45).[9]

Respondent conceded that Justice McArthur was solely responsible for emergency arraignments, which require her to be on call 24 hours a day, seven days a week (H2 Plass: 133; Rep: 7). By virtue of his misconduct, Respondent is never on call (H2 Plass: 138; Rep: 7). Thus, while Justice McArthur is unable to take vacations, Respondent enjoyed a 10-day trip to Greece in October 2024 (H2 Plass: 139-39). Although Respondent initially was "remorseful" for the burden on Justice McArthur created by his inability to handle the bulk of the court's cases, he expressly testified that he no longer is (H2 Plass: 132-33).

THE REFEREE'S REPORT

Apart from recounting the facts described above, the Referee's Report made a number of factual findings and legal conclusions.

A. Respondent's mailer exhibited unmistakable bias in favor of law enforcement.

The Referee determined that Respondent's mailer "demonstrated a significant and improper judicial bias" (Rep: 14-15). Indeed, far from the "'honest', 'careless', 'mistake' [Respondent] described," the Referee found it

[9] The Referee concluded that "[t]he actual time spent sitting on the bench is relatively short and a small part of the judicial duties" (Rep: 24).

"very clear that the Mailer evinces Respondent's strong 'law enforcement perspective' which is incompatible with judicial impartiality" (Rep: 14-15, 17). The Referee concluded, "[t]he bias reflected in the Mailer is so skewed that it is inimical to a favorable and appropriate public perception of the judiciary" and "evidenced an inherent bias against certain defendants" (Rep: 15, 28). All told, "[t]he Mailer created a distinct impression that Respondent, if elected, would aid law enforcement rather than apply the law neutrally and impartially," which "is abhorrent to judicial integrity" (Rep: 28).

Beyond that, the Referee continued, "[t[he improper and admitted law enforcement bias reflected in the Mailer . . . pandered to voters of that persuasion" and thus "gave Respondent an unfair advantage over the other judicial candidates" (Rep: 17-18). This "tarnished the integrity of the election and the judiciary" because Respondent "won the election for Town Justice using unfair and unethical campaign tactics" (Rep: 17-18, 28) (citing *Matter of Hafner*, 2001 Ann Rep of NY Commn on Jud Conduct at 113; *Matter of Polito*, 1999 Ann Rep of NY Commn on Jud Conduct at 129).

Finally, the Referee determined that, "[e]ven as of the time of the hearing, Respondent still failed to appreciate the proscription against 'pledges'" (Rep: 17 n10). In particular, Respondent "is of the understanding that the mere use of the word 'pledges' in the campaign literature is forbidden as distinguished from

pledges 'that are inconsistent with the impartial performance' of the office" (*id.*, quoting Rule 100.5[A][4][d][ii]).

B. Respondent's misconduct has left him unable to fulfill the responsibilities of the position to which he was elected.

The Referee recognized that "[t]he electorate, by its vote, commissioned and expected Respondent to handle criminal, traffic, domestic relations and drug matters," which "represent 80% of the court's docket"; however, because of his misconduct, Respondent "cannot" handle any of that work (Rep: 16).[10] Thus, "[a]ccording to the restrictions placed upon Respondent by the ACJE, Respondent is unable to fulfill the duties of the position to which he was elected" (Rep: 15, 28, 30).

C. Respondent's misconduct damaged the public perception and integrity of the judicial system.

The Referee determined that "Respondent's Mailer created an adverse public perception of the judiciary reflecting an unfair and biased application of the law" (Rep: 29). This, the Referee reasoned, "is the antithesis of an open-mindedness and proper judicial perspective and impairs the public trust in the judicial system" (*id.*). In fact, the Referee found, "the issue has some heightened significance regarding the public perception and awareness of judicial ethics . . . and the way

[10] In 2024, Respondent was unable to handle over 90% of the court's docket, insofar as the court handled 2,091 criminal and VTL matters versus 181 civil matters (Comm Ex 14).

judicial ethics violations are managed," seeing as "the matter has received front page attention in the local newspaper" (Rep: 16). Accordingly, "[t]he integrity of the judicial system has been adversely impacted by Respondent's improper conduct" (*id.*).

D. Respondent's misconduct has imposed an "onerous" and "unfair" burden upon his co-judge.

The Referee determined that, because of Respondent's "ethical violations," Justice McArthur "has the sole responsibility for the Town to be on-call and within reach all the time," meaning she must be physically available 24 hours, seven days a week, 365 days a year without being able to divide that responsibility with Respondent" (Rep: 15, 25). That responsibility, the Referee emphasized, leaves her "tethered to her home and surroundings all the time" (Rep: 15-16). And, in rejecting Respondent's claim that the "the on-call responsibility does not [actually] require many off-hour appearances," the Referee found that the "burden" to be "within reach all the time" remains in place regardless of how many times Justice McArthur is actually called into court (Rep: 15, 29).

Thus, the Referee concluded, the on-call responsibility "imposes a significant hardship upon Justice McArthur," leaving her "adversely impacted" by Respondent's misconduct (Rep: 16). Further, despite Respondent's contrary contention, "[i]t is not reasonable to expect Justice McArthur to regularly contact neighboring judges to volunteer to help her meet her on-call responsibility.

Although she can and does do that from time to time it would be an unfair burden upon her and upon the other judges to take up this slack" (Rep: 26).

Moreover, while "Respondent acknowledged that Justice McArthur carries the heavier workload" but "characterize[d] th[e] differential as slight," the Referee – though noting that "[f]rom a 'workload perspective' the division of responsibility seems workable and not excessively unbalanced" – held that "[t]he actual extent of the court related workload discrepancy is of limited significance since the on-call responsibility imposes a significant burden upon Justice McArthur" (Rep: 15-16, 25-26, 29-30). At bottom, Justice McArthur's sole responsibility for off-hours arraignments "is onerous and places an unfair work burden upon her, . . . affect[ing] her vacation, impos[ing] a personal hardship, [and] interfer[ing] with family activities and with formulating personal plans" (Rep: 25-26).

E. Neither Respondent's ignorance of the Rules Governing Judicial Conduct, nor his claim of having self-reported his misconduct, are mitigating.

The Referee considered Respondent's contention that his lack of familiarity with the Rules Governing Judicial Conduct was mitigating but roundly rejected it. The Referee held that "[Respondent's] 'ignorance' must be viewed in the context of the ease of ascertaining judicial campaign responsibilities and his responsibility to know the appropriate guidelines" (Rep: 16-17). On that score, the Referee noted, "Respondent testified that he made no effort whatsoever to ascertain the

rules governing judicial campaign," despite his acknowledgment that "a click on Google would reveal the proscription against pledges and would also reveal the text of The Handbook of Judicial Campaign Ethics" (*id.*). In fact, the Referee found, "Respondent was computer savvy enough to find an app that enabled him to produce the Mailer on his desktop computer," which demonstrated that "the Rules were readily available" to him had he chosen to look for them, and "not 'obscure,'" as Respondent claimed (Rep: 16-17). In short, the Referee found it "not at all persuasive that Respondent was unaware of the judicial campaign constraints since it [would have taken] only a minimal effort to have uncovered them and he simply failed to make the effort to do so" (Rep: 17).

Expanding on that point, the Referee repeatedly stressed that "Respondent's failure to familiarize himself with these rules" stemmed from his "'lack of the willing to do more' and because he . . . was not going to do something unless it was specifically required of him" (Rep: 17). Put differently, the Referee found, "Respondent's unacceptable failure to familiarize himself with and to know the rules regarding judicial campaign ethics is because Respondent failed and was unwilling to undertake the relatively simple steps to ascertain them because of other personal priorities," and his "unwillingness to expend the effort to discover them" (Rep: 23, 27). Thus, "Respondent's ignorance of the governing rules regarding judicial campaign literature is a result of Respondent's failure to

undertake the responsibilities of the position and is not an excusable 'careless mistake,'" as he contended (Rep: 27).

In sum, the Referee concluded, "Respondent failed to exercise reasonable and necessary steps to ascertain his ethical responsibilities in seeking office as a Town Justice" (Rep: 28). Accordingly, his professed ignorance of the Rules is "unpersuasive as a mitigating factor" (Rep: 17).

The Referee also determined that "[t]he fact that Respondent 'self-reported' his violation holds no sway since the transgression was open and notorious, indeed, on the front page of the local newspaper" (Rep: 18). Thus, Respondent's "self-reporting" is "not a mitigating factor" (*id.*).

F. Respondent's remorse and service on the bench.

The Referee found that Respondent "evidenced a reasonable sense of remorse and contrition for his conduct," by acknowledging that he "was sorry" for his misconduct and "deeply regretted it," and that this sentiment was mitigating (Rep: 18). However, the Report did not address Respondent's express assertion during his testimony that, while he was initially "remorseful" for the burden on Justice McArthur created by his inability to handle the bulk of the court's cases, he no longer is (H2 Plass: 132-33).

The Referee also found that Respondent's "activity on the bench" was mitigating, insofar as he has been an "exemplary" judge who "worked hard," was

"well-liked" by court staff, "treated the public and court personnel 'very well,'" and "has demonstrated that he would make an excellent judge" (Rep: 18-19, 27). The Referee added that Respondent has "learn[ed] about 'impartiality'" and, according to his clerk, has not "display[ed] any bias or prejudice" on the bench (Rep: 18-19, 26). However, the Report made no mention of those portions of Respondent's hearing testimony indicating a present bias in favor of the law enforcement and misunderstanding of his role as a judge, including assertions that "Judges protect people. . . . that's part of their job is to give a[n] order of protection" (H2 Plass: 83), and that he could not contemplate a scenario where a party requests an order of protection and the request is not granted, because "that's why we go for arraignments" and "they have to give them" (H2 Plass: 108-09).

G. The 180 mail-in pleas Respondent adjudicated in violation of the Advisory Opinion.

The Referee found that, despite AO 23-158, Respondent "spen[t] three hours at home on one occasion . . . adjudicating the fines on [180] vehicle and traffic tickets" (Rep: 13, 26, 27). The Referee noted Respondent's own "unassailed testimony" that "these tickets had accumulated for five months from April to August 2024 because Justice McArthur was 'outright refusing' to handle them" (Rep: 26). The Referee characterized Respondent's involvement with these tickets as "finalizing the disposition on those tickets by assessing the fines on the guilty pleas," noting that the "[v]iolators had already pled guilty[,] Respondent had no

personal dealings with the violators, [and] [n]one appeared before him in court" (Rep: 26).

Despite the fact that Respondent unambiguously and admittedly violated AO 23-158 by handling those guilty pleas and assessing the attendant fines, the Referee opined that this factor was mitigating rather than aggravating because Respondent "put the needs of the community above his own self-interest, and undertook to rectify community complaints regarding a significant backlog in the disposition of the vehicle and traffic tickets . . . obviously knowing that he would probably be called to task for his conduct" (Rep: 27). The Referee further excused this plain breach by averring that "[t]he Opinion of the ACJE was advisory," and [t]he judicial discretion employed by Respondent under the circumstances was reasonable and at a personal sacrifice" (*id.*). The Referee also found that Respondent "was the only other Hyde Park Town Justice who could perform that duty" (*id.*), without addressing Commission Counsel's suggestion that, rather than willfully violating the Advisory Opinion of his own accord, Respondent could and should have brought the matter to a supervising judge.

Finally, the Referee rightly held in another portion of the Report that, "[i]f Justice Plass were allowed to handle the proscribed cases [in violation of AO 23-158], there would be a built-in defense by any defendant claiming excessive bail, harsh sentencing or biased treatment" (Rep: 28). The Referee did not consider that

this same defense would apply to the defendants Respondent fined in connection with the 180 VTL tickets he unilaterally adjudicated, seeing as Respondent exercised discretion in setting the fine amount for each ticket (H2 Plass: 148).

H. The Referee concluded that Respondent violated all of the charged Rules Governing Judicial Conduct.

Finally, the Referee held that in committing the above-described "serious" misconduct, Respondent violated Sections 100.1, 100.2(A), 100.5(A)(4)(a), 100.5(A)(4)(d)(i), and 100.5(A)(4)(d)(ii) of the Rules (Rep: 14, 30).

ARGUMENT

POINT I

THE REFEREE CORRECTLY FOUND, AND RESPONDENT ADMITTED, THAT RESPONDENT VIOLATED THE RULES BY MAKING CAMPAIGN PLEDGES AND PROMISES THAT DEMONSTRATED CLEAR BIAS IN FAVOR OF LAW ENFORCEMENT AND AGAINST CRIMINAL DEFENDANTS.

Respondent created and circulated 3,000 copies of a campaign mailer that was wholly inappropriate for a judicial campaign. Demonstrating his law-enforcement bias and fundamental misunderstanding of a judge's role, Respondent "pledge[d]" to "Keep drug dealers off our streets and out of our hotels," as well as "Incarcerate offenders and protect victims of domestic violence," and "Assure repeat offenders are sentenced to the full extent of the law" (H2 Plass: 111-12; Comm Ex 1). Based on that uncontroverted evidence, Respondent admitted at the

hearing that his creation and widespread distribution of the mailer 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 (H2 Plass: 111-13; Rep: 14).

The Referee agreed, finding it "very clear that the Mailer evinces Respondent's strong 'law enforcement perspective'" and a "bias . . . so skewed that it is inimical to a favorable and appropriate public perception of the judiciary" (Rep: 14-15, 28). The Referee concluded that the bias evinced by the mailer "is the antithesis of an open-mindedness and proper judicial perspective and impairs the public trust in the judicial system" (Rep: 29). The Commission should affirm those findings and determine that Respondent has committed judicial misconduct in violation of the charged Rules.

Respondent also conceded, and the Referee determined, that his campaign mailer contained explicit "pledge[s]" to treat certain classes of criminal defendants likely to come before him differently from others, and to prioritize the rights of certain crime victims in a manner that created the impression that he would not perform his judicial duties impartially (H2 Plass: 111-12; Rep: 14-15, 28). *See Matter of Watson*, 2003 Ann Rep of NY Commn on Judicial Conduct at 190, *sanction modified* 100 NY2d 290 (2003) (campaign literature indicated desire to undertake a "war on crime" and "clean up the streets"); *Matter of Polito*, 1999 Ann

Rep of NY Commn on Jud Conduct at 129 (campaign literature *inter alia* disparaged non-jail sentences).

It does not matter that Respondent's misconduct took place before he became a judge. As the Referee acknowledged (Rep: 30-31), the Commission has repeatedly held judges accountable for violations of Sections 100.1 and 100.2 for misconduct committed before the judge took the bench, including campaign misconduct by non-judge candidates. *See e.g.*, *Matter of VanWoeart*, 2021 Ann Rep of NY Commn on Jud Conduct at 329 (implied pledges in campaign literature by non-judge candidate); *Matter of Chan*, 2010 Ann Rep of NY Commn on Jud Conduct at 124 (same); *Matter of Watson*, 2003 Ann Rep of NY Commn on Judicial Conduct at 190, *sanction modified* 100 NY2d 290 (2003) (same); *Matter of Hafner*, 2001 Ann Rep of NY Commn on Jud Conduct at 113 (same); *Matter of Polito*, 1999 Ann Rep of NY Commn on Jud Conduct at 129 (same).

For the reasons stated, the Referee's 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 should be affirmed.

POINT II

CONSISTENT WITH THE REFEREE'S FINDINGS, RESPONDENT'S MISCONDUCT IS AGGRAVATED BY (A) HIS HEARING TESTIMONY, WHICH EVINCED CONTINUED BIAS, (B) HIS DISQUALIFICATION FROM THE VAST MAJORITY OF HIS COURT'S CASES AND THE "ONEROUS" BURDEN HE THUS CREATED FOR HIS CO-JUDGE, AND (C) HIS ATTEMTPS TO MINIMIZE HIS MISCONDUCT AND CULPABILITY.

Respondent committed serious misconduct when he designed and distributed 3,000 copies of a campaign mailer that created the unmistakable appearance that he is biased in favor of law enforcement. That misconduct has substantially damaged public confidence in the integrity and impartiality of the judiciary.

Respondent's misconduct is aggravated by his hearing testimony in which he demonstrated continued bias toward law enforcement and sought to "minimize the import of his actions" on his co-judge and his court. *Matter of Ayres*, 30 NY3d 59, 64-65 (2017). His misconduct is further aggravated by his inability, following the issuance of AO 23-158 by the AJCE, to perform the vast majority of the judicial functions he was elected to perform.

A. Respondent's hearing testimony demonstrated that he continues to hold the biases he exhibited in his campaign mailer.

As the Referee found, Respondent's ethical violations during his judicial campaign "tarnished the integrity of the election" (Rep: 14-15). Indeed, because "[t]he improper and admitted law enforcement bias reflected in the Mailer . . .

pandered to voters of that persuasion," Respondent's misconduct gave him "an unfair advantage over the other judicial candidates," such that he "won the election for Town Justice using unfair and unethical campaign tactics" (Rep: 14-15, 28) (citing *Matter of Hafner*, 2001 Ann Rep of NY Commn on Jud Conduct at 113; *Matter of Polito*, 1999 Ann Rep of NY Commn on Jud Conduct at 129). Accordingly, any claim by Respondent that he deserves to retain his judicial office must contend with the reality that he did not win that office fairly and, indeed, may not have won it at all but for his ethical transgressions.

Respondent's election nonetheless resulted in a judge who had demonstrated "significant" bias "incompatible with judicial impartiality" (Rep: 14-15). In fact, the Referee concluded, "[t]he bias reflected in the Mailer is so skewed" that it is "abhorrent to judicial integrity" (Rep: 15, 28). Such a flagrant bias is unacceptable in a member of the judiciary, as it "subjects the judiciary as a whole to disrespect and impairs the usefulness of [Respondent] to carry out his . . . constitutionally mandated function." *Kuehnel v. State Comm'n on Jud. Conduct*, 49 NY2d 465, 469 (1980).

Respondent's hearing testimony evinced his continued bias in favor of law enforcement and lack of appreciation for the impartiality required of a judge. In explaining his view of a judge's role, Respondent asserted, "Judges protect people. That's – you know, that's part of their job is to give a[n] order of protection. . . .

The safety of the community was just because that's what I think Judges do; they help people" (H2 Plass: 83). Rather than recognize that an impartial jurist must evaluate each application for an order of protection individually on its own merits, Respondent testified that he could not contemplate denying a party's request for a protective order, stating, "that's why we go for arraignments" and that judges "have to give them" (H2 Plass: 108-09).

This skewed view of a judge's role is patently one-sided, in that it neither considers that those accused of crimes are also entitled to protection under the law, nor allows for the possibility that an alleged crime victim could have testified falsely or may not qualify for an order of protection under the particular facts of a given case. Respondent's statement, "that's why we go for arraignments," is especially problematic, as it demonstrates his fundamental misunderstanding of a core part of our criminal process. While a prosecutor request an order of protection for a victim during an arraignment, a judge presides over an arraignment in order to apprise a defendant of the charges against him and satisfy constitutional and statutory notice requirements that protect an accused's right to due process of law. Respondent's failure to appreciate these bedrock legal principles is deeply troubling. The fact that he made these statements, under oath, during a hearing in which the sole issue was a campaign flyer showing pro-prosecution bias makes

clear that he is incapable of being an impartial judge. Respondent's continuing bias in favor of law enforcement aggravates his misconduct.[11]

B. Respondent is disqualified from handling the vast majority of the cases filed in his court, which has left him unable to perform most of the judicial duties for which he was elected. His inability to perform those duties, and his refusal to recognize the outsized burden his misconduct has placed on his co-judge, are aggravating factors.

As a result of Respondent's demonstrated pro-law enforcement and anti-defendant bias, AO 23-158 disqualified him from all criminal and VTL matters, as well as all cases involving allegations of domestic violence or drug dealing, for the entirety of his judicial term. In 2024, that meant Respondent was unable to preside over more than 90% of the cases filed in his court: of the 2,272 total cases filed, Respondent was permitted to handle a mere 181, and in fact handled only 171 (Comm Ex 14; H1 McArthur: 25; H2 Plass: 47). As the Referee recognized, because "[t]he electorate, by its vote, commissioned and expected Respondent to handle criminal, traffic, domestic relations and drug matters," Respondent's misconduct has rendered him "unable to fulfill the duties of the position to which he was elected" (Rep: 15, 28, 30). The fact that Respondent's misconduct has left him unable to do his job aggravates the misconduct. *See Matter of DiBlasi,* 2002

[11] Despite this testimony, the Referee opined that Respondent "would be fair and equitable in his administration of [j]ustice" going forward, and seemingly excused Respondent's continuing pro-prosecution bias on the ground that "[f]irst-term non-lawyer Justices cannot be expected to have the legal acumen of seasoned judges" (Rep: 19). These findings are flatly inconsistent with Respondent's testimony.

Ann Rep of NY Commn on Jud Conduct at 87, 91 (finding misconduct where a judge's unapproved absences had "considerable" "impact on the operations of his court").

As the Referee found, Respondent's misconduct also has placed an "unfair" and "onerous" burden on Respondent's co-judge, Justice McArthur (Rep: 25-26). On top of the disparity in assigned cases, Justice McArthur has had to be "on call" for emergency after-hours arraignments 24 hours a day and seven days a week – a duty she formerly shared evenly with Respondent's predecessor. This has left Respondent free to take vacations as he wishes, such as the 10-day trip to Greece he took in October 2024, while Justice McArthur must forego even local family gatherings that are more than an hour or two away from the courthouse (H1 McArthur: 36, 39; H2 Plass: 138-39). As the Referee explained, this inequity is onerous and places an unfair work burden upon [Justice McArthur], . . . affect[ing] her vacation, impos[ing] a personal hardship, [and] interfer[ing] with family activities and with formulating personal plans" (Rep: 25-26).

Respondent refused to acknowledge the unfair burden his misconduct has placed on his Justice McArthur. When asked whether he feels remorse over the added work his misconduct required her to perform, Respondent bluntly said he does not (H2 Plass: 132). He further averred, "If you ask me now, . . . it's not a strain on Judge McArthur," insisting, "I'm doing as much – so much more. . . .

There's a small percentage more she's working than me" (H2 Plass: 130-32). These assertions both demonstrate a lack of appreciation for the gravity of his misconduct and an active attempt to minimize its ramifications. As the Court of Appeals has repeatedly held, this kind of minimization is a significant aggravating factor as to sanction. *Ayres*, 30 NY3d at 64-65 ("Rather than acknowledge his obligations and the implications of his conduct," the judge failed "to recognize the seriousness" of his misconduct and "continued to minimize the import of his actions"); *see also Matter of Simon*, 28 NY3d 35, 39 (2016) (judge's "attempt to minimize his misconduct . . . render[ed] suspect his guarantees of better behavior").

C. The excuses Respondent gave at the hearing for his ethical transgressions were insincere and designed to minimize his culpability, which additionally aggravates his misconduct.

The Referee recounted Respondent's hearing testimony that his misconduct in creating the mailer stemmed from an "'honest', 'careless', 'mistake'" owing to his lack of familiarity with the Rules (Rep: 14-15; *see* 17, 23, 27-28). However, as the Referee concluded, that is not true. Far from a "careless mistake," Respondent's "ignorance of the governing rules regarding judicial campaign literature [wa]s a result of [his] failure to undertake the responsibilities of the position" (Rep: 27). Respondent "made no effort whatsoever to ascertain the rules governing judicial campaign[s]," despite his acknowledgment that "a click on

Google would [have] reveal[ed] the proscription against pledges" (Rep: 16-17). Respondent's insistence of an "honest" or "careless" "mistake" is yet another example of his determination to minimize his culpability for his unethical behavior, and once again aggravates his misconduct. *Ayres*, 30 NY3d at 65; *Simon*, 28 NY3d at 39.

Moreover, because "the Rules were readily available" to Respondent "had he chosen to look for them" (Rep: 16-17), the fact that he did not is separately troubling, as it demonstrates an "unacceptable degree of insensitivity to the demands of judicial ethics," which further aggravates his misconduct. *Matter of Conti*, 70 NY2d 416, 419 (1987).

POINT III

THE REFEREE WAS WRONG TO CONCLUDE THAT RESPONDENT'S WILLFUL VIOLATION OF THE ADVISORY OPINION DISQUALIFYING HIM FROM ADJUDICATING VTL CASES WAS EXCUSCABLE, LET ALONE MITIGATING. THAT PORTION OF THE REFEREE'S REPORT SHOULD BE DISAFFIRMED IN FAVOR OF A FINDING THAT RESPONDENT'S VIOLATION OF THE ADVISORY OPINION AGGRAVATES HIS MISCONDUCT.

In August 2024, Respondent adjudicated 180 mail-in VTL pleas by accepting each defendant's plea of guilty, determining what he deemed to be an appropriate fine, imposing a surcharge, and signing the ultimate order. At the time, Respondent knew that he was disqualified from handing any VTL cases based on

AO 23-158, which found that he could not adjudicate them fairly and impartially. Notably too, when he filed his Verified Answer to the Complaint just one month prior in July 2024, Respondent swore that he was in compliance with the AO and intended to remain so (Answer ¶ 13).

At the hearing, Respondent claimed that he unilaterally took and disposed of these 180 mail-in VTL pleas because Justice McArthur "refused to do" them, and they "needed to be done" (H2 Plass: 134-36). The Referee accepted that self-serving and uncorroborated testimony, finding that Respondent merely "finaliz[ed] the disposition on those tickets by assessing the fines on the guilty pleas" for defendants who "had already pled guilty" (Rep: 26). The Referee further opined that this act in violation AO 23-158 was mitigating because Respondent "put the needs of the community above his own self-interest, and undertook to rectify community complaints regarding a significant backlog in the disposition of the vehicle and traffic tickets . . . obviously knowing that he would probably be called to task for his conduct" (Rep: 27). The Referee added that Respondent "was the only other Hyde Park Town Justice who could perform that duty," seeing as "Justice McArthur was 'outright refusing' to handle them" (Rep: 26-27).

These findings should be disaffirmed. To begin, even assuming that Justice McArthur in fact refused to adjudicate this particular batch of mail-in VTL pleas,[12] Respondent's unilateral decision to handle them himself was far from necessary or appropriate, let alone mitigating. Had Respondent wished to dispose of the pending VTL matters out of an altruistic desire to clear a backlog, he could and should have brought the matter to his administrative judge so that they could be handled by a neutral arbiter who – unlike Respondent – had not been found biased in VTL matters. By choosing instead to violate AO 23-158, Respondent reaffirmed his demonstrated disregard for his ethical obligation to promote and preserve the integrity and impartiality of the judiciary. *See Matter of Huttner*, 2002 Ann Rep of NY Commn on Jud Conduct at 113, 117 (finding misconduct where the judge "ignored the sound warnings of the Advisory Committee on Judicial Ethics"). The fact that he did so just a month after promising the Commission he would abide by AO-23-158 makes the violation even more flagrant.

[12] Respondent's self-interested and uncorroborated testimony that his co-judge maliciously refused to handle these cases (H2 Plass: 134-35) makes little sense and is consistent with his pattern of attempting to denigrate Justice McArthur over the apparent ill-will created by their contentious campaign (*see* H2 Plass: 5, 7, 125; *see* Comm Ex 3). A more realistic explanation for any backlog of mail-in VTL pleas is that Justice McArthur simply had not gotten to them, being overworked and overburdened by having to singlehandedly cover hundreds of cases per month (*see* Comm Ex 14).

In finding otherwise, the Referee acknowledged that Respondent assessed fines on each of the 180 tickets, which – as Respondent himself explained – involved selecting a fine out of a range prescribed by law (Rep: 26; H2 Plass: 148). However, because AO 23-158 held that Respondent's misconduct "create[d] a distinct impression that [he] would, if elected, aid law enforcement rather than apply the law neutrally and impartially," there existed a real danger that Respondent would be predisposed to assessing fines at the high end of the legal range. Indeed, as the Referee himself recognized at another point in the Report, "[i]f Justice Plass were allowed to handle the proscribed cases [in violation of AO 23-158], there would be a built-in defense by any defendant claiming excessive bail, harsh sentencing or biased treatment" (Rep: 28). That same defense could be claimed by any of the 180 defendants who received more than the minimum permissible fine on the tickets Respondent adjudicated. That is precisely why Respondent was disqualified from <u>all</u> VTL and criminal matters in the first place.

That sweeping disqualification by AO 23-158 should have chastened Respondent and led him to exercise extreme caution. Respondent's decision instead to ignore the disqualification order and preside over 180 VTL cases is inconsistent with his judicial duty to promote public confidence in the integrity and impartiality of the judiciary, both because he purposefully disregarded the remedial ethical advice he requested and was provided following his violation of the Rules,

and because he demonstrated to the public a desire and willingness to preside over matters that a neutral ethics committee had deemed him unfit to adjudicate. In these circumstances, this breach of the public's trust is especially egregious. Respondent's "inattention to his ethical obligations undermined public confidence in the integrity and impartiality of the judiciary." *Matter of Muller*, 2026 Ann Rep of NY Commn on Jud Conduct (publication forthcoming) (finding misconduct where a judge requested an Advisory Opinion and then failed immediately recuse himself as the opinion directed).[13]

In sum, Respondent's knowing and willful decision to adjudicate 180 cases from which he had been disqualified, particularly right after he had been charged by the Commission and promised to abide by the disqualification order, aggravates his misconduct.

[13] This determination is currently available at https://cjc.ny.gov/Determinations/M/Muller.Robert.J.2025.03.28.DET.pdf.

POINT IV

RESPONDENT'S MISCONDUCT HAS RENDERED HIM UNABLE TO FULFILL THE RESPONSIBILITIES OF THE JUDGESHIP TO WHICH HE WAS ELECTED. HIS HEARING TESTIMONY AND DEFIANCE OF THE ADMINISTRATIVE ORDER DEMONSTRATE AN UNACCEPTABLE INSENSITIVITY TO HIS ETHICAL DUTIES. HE SHOULD BE REMOVED FROM OFFICE.

Standing alone, Respondent's "serious" campaign misconduct is "incompatible with judicial impartiality" and "abhorrent to judicial integrity" (Rep: 14-15, 28, 30). As discussed, that misconduct is aggravated by his inability to perform the judicial duties for which he was elected, his hearing testimony demonstrating his continuing law-enforcement bias and lack of appreciation for the role of an impartial judge, his disregard for his ongoing ethical duties as evidenced by his willful violation of AO 23-158, and his repeated attempts to minimize the impact of his misconduct and his own culpability. Respondent thus has proved himself unfit for judicial office. He should be removed.

Any sanction discussion in this matter must begin with *Matter of Watson*, which presented similar facts. In 1999, Judge Watson – then a Niagara County Assistant District Attorney – ran for judicial office and published campaign materials with pro-law enforcement and anti-defendant messaging. In particular, his ads stated that he would "work with" law enforcement, "put a real prosecutor on the bench," "make it very unattractive for a person to be committing a crime,"

and develop a reputation for "being tough" on crime. *Matter of Watson*, 2003 Ann Rep of NY Commn on Jud Conduct at 190, 190-93.

In assessing that material, the Commission concluded that Judge Watson violated the same Rules charged in this case, in that he "created the appearance that he would not be impartial as a judge, would not judge cases on an individual basis or upon the merits, and would be biased against criminal defendants." *Id.* at 193-94. The Commission determined that removal was appropriate, reasoning *inter alia* that Judge Watson's campaign misconduct was "egregious" and "contributed to his election over two incumbent judges," and that instead of displaying "honest remorse," he "offered excuses that either were disingenuous or bordered on the ludicrous." *Id.* at 194-95.

On review, the Court of Appeals modified the sanction from removal to censure. *Matter of Watson*, 100 NY2d 290 (2003). Noting the familiar refrain that "[t]he purpose of judicial disciplinary proceedings is not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents," the Court reasoned that Judge Watson "expressed remorse and acknowledged before the Commission that he exercised extremely poor judgment in the conduct of his campaign," which he "attributed . . . in part to his inexperience as a candidate, and his failure to enlist aid from people knowledgeable in the conduct of judicial campaigns." *Id.* at 303 (internal citation

and quotations marks omitted). Notably though, in determining that the stated mitigation was sufficient to warrant a censure rather than removal, the Court noted two important factors: (1) "the Commission ma[de] no claim of inappropriate behavior in the performance of [Judge Watson's] judicial duties"; and (2) "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.

Here, myriad factors distinguish the Court of Appeals' analysis in *Watson* and ultimately prove this case to be precisely hat the Court envisioned in noting that this kind misconduct could lead to removal. First, the campaign pledges at issue here are more flagrant than the ones in *Watson*, because while Judge Watson generally held himself out to be "tough" on crime and "a prosecutor on the bench," Respondent made explicit promises of incarceration and maximum sentences for certain classes of defendants, which contraindicated his responsibility to decide each case dispassionately on its own merits. Thus, at the outset, Respondent's conduct was more egregious and accordingly warrants a more severe sanction.

Next, whereas in *Watson* "the Commission ma[de] no claim of inappropriate behavior in the performance of [Judge Watson's] judicial duties," the opposite is true here: Respondent willfully violated AO 23-158 while in office, in that he adjudicated and set sentences on 180 mail-in VTL ticket cases despite his disqualification from "all Vehicle and Traffic Law matters" on the ground that his

"campaign promises, seen as a whole, create a distinct impression that [he] would, if elected, aid law enforcement rather than apply the law neutrally and impartially" (Comm Ex 2). This aggravating factor (*see* Point III, *infra*) constitutes precisely the type of "inappropriate behavior in the performance of [the Respondent judge's] judicial duties" that was not present in *Watson*. 100 NY2d at 304.

Additionally, while the Court of Appeals in *Watson* accepted that the misconduct there was attributable to inexperience and poor judgment, the Referee rejected similar excuses here. As discussed (*see* Point II, *supra*), noting that Respondent was "computer savvy enough to find an app that enabled him to produce the Mailer," the Referee pointed out that "a click on Google would [have] reveal[ed] the proscription against pledges," yet Respondent "made no effort whatsoever to ascertain the rules governing judicial campaign[s]" (Rep: 16-17). In fact, the same Google search would have revealed *Watson* itself, such that Respondent had the benefit and guidance of *Watson* at his disposal but chose not to avail himself of that crucial resource. Thus, unlike in *Watson*, Respondent's transgression did not stem from an "'honest', 'careless', 'mistake'" owing to his lack of familiarity with the Rules, but an unacceptable disinterest in "his responsibility to know the appropriate guidelines," and a "failure to undertake the responsibilities of the position" (Rep: 16-17, 27).

Worse still, at other points his hearing testimony, Respondent shifted from his unpersuasive claims of "carelessness" to a seeming defense of the language he used in the mailer – the antithesis of remorse and acceptance of responsibility. Indeed, Respondent repeatedly equivocated when asked whether a reasonable reading of his flyer would suggest bias in favor of law enforcement, saying things like, "in someone else's opinion, it may be" (H2 Plass: 98) or "well, whatever your definition of reasonable may be" (H2 Plass: 90; *see also* H2 Plass: 87, 91, 95). In the end, Respondent testified, "I don't know what I think of the mailer anymore. I mean, it's really been a – it's really killing me" (H2 Plass: 98). This admission is arresting, in that it revealed Respondent's greater concern over the consequences his misconduct had on him personally than on the integrity of the judiciary. All told, Respondent's shifting and evasive testimony demonstrates his failure to truly accept responsibility for his misconduct, which the Court of Appeals has held to be an aggravating factor that weights in favor of the sanction of removal. *Matter of Astacio*, 32 NY3d 131, 136 (2018) (discussing failure to "genuinely accept personal responsibility" for misconduct as an aggravating factor).

Furthermore, this case features yet additional aggravating factors not present in *Watson*, which compel the sanction of removal. As discussed (*see* Point II*, supra*), Respondent: (1) cannot perform the judicial duties for which he was elected because of his disqualification from the vast majority of the cases his court

hears (Rep: 15); (2) continues to harbor pro-law enforcement biases, as evidenced by his hearing testimony that orders of protection should always be given for the asking and arraignments are held for the purpose of granting such orders (H2 Plass: 83, 108-09); (3) attempted to minimize his culpability for his misconduct (Rep: 16-17); and (4) attempted to minimize the impact of his misconduct on his court, and on Justice McArthur in particular, via testimony that she works only "a small percentage more" than him, and that he is not remorseful that she has had to undertake the "onerous" and "unfair" burden of being on-call for emergency arraignments every hour of every day (H2 Plass: 12-13; 130-33; Rep: 13, 25-26).

In the face of all that, Respondent has demonstrated himself to an "unfit incumbent[ ]" who cannot be permitted to serve on the bench. *Watson*, 100 NY2d at 303. Accordingly, removal is the only appropriate sanction in this matter.

CONCLUSION

Commission Counsel respectfully requests that the Commission adopt the Referee's findings of fact and conclusions of law (except as indicated in Point III, *supra*), find that Charge I of the Complaint is sustained, and issue a determination that Respondent be removed from judicial office.

Dated: August 20, 2025
New York, New York

Respectfully submitted,

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

By: _____
David Stromes
Senior Litigation Counsel
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800

Of Counsel:
Mark Levine, Esq.
Edward Lindner, Esq.
Carla Freedman, Esq.
Denise Buckly, Esq.
Eric M. Arnone, Esq.