

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.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Michael H. Plass, a Justice of the Hyde Park Town Court, Dutchess County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon Respondent the annexed Formal Written Complaint; and that, in accordance with said statute, Respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its New York office, 61 Broadway, Suite 1200, New York, New York 10006, with his verified Answer to the specific paragraphs of the Complaint.

Dated: July 15, 2024
Albany, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800

To: Steven G. Leventhal, Esq.
Attorney for Respondent
Leventhal, Mullaney & Blinkoff, LLP
15 Remsen Avenue
Roslyn, New York 11576

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

**FORMAL
WRITTEN COMPLAINT**

MICHAEL H. PLASS,

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

1. Article VI, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct (“Commission”), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.

2. The Commission has directed that a Formal Written Complaint be drawn and served upon Michael H. Plass (“Respondent”), a Justice of the Hyde Park Town Court, Dutchess County.

3. The factual allegations set forth in Charge I state acts of judicial misconduct by Respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (“Rules”).

4. Respondent has been a Justice of the Hyde Park Town Court, Dutchess County, since January 1, 2024. His term expires on December 31, 2027. Respondent is not an attorney.

CHARGE I

5. 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 so doing, 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.

Specifications to Charge I

6. During 2023, Respondent (A) resigned his position as part-time police officer with the Hyde Park Police Department and (B) commenced a campaign for election as justice of Hyde Park Town Court. Respondent retained a part-time position with the Rhinebeck Police Department during the course of his campaign.

7. In the course of his campaign, Respondent designed campaign literature in the form of a “mailer” using computer software associated with the online platform, “Canva.” Respondent did so without seeking counsel from any lawyer, judge or court officials, and without familiarizing himself with the rules that govern the conduct of judicial candidates. A copy of the campaign mailer is appended as Exhibit 1.

8. The front of the mailer states at the top, “Michael Plass for Hyde Park Town Justice,” under which it identifies Respondent as a “Hyde Park Police Officer” who has “seen first hand the problems Hyde Park Faces.” Beneath that, the mailer states Respondent’s “pledge” that as a town justice, he would:

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

Beneath Respondent’s picture on the front side, the mailer states, “Together we can make a change in the safety of our community.”

9. The reverse side of the mailer contains endorsements from the Hyde Park Town Supervisor, the Dutchess County Sheriff and a former New York State Senator, all of which note Respondent’s law enforcement credentials.

10. On or about October 2023, Respondent brought his mailer to a printshop, which produced roughly three thousand copies and, on Respondent’s behalf, mailed them to potential voters.

11. On or about December 14, 2023, the Advisory Committee on Judicial Ethics issued Opinion 23-158 to Respondent, advising that, pursuant to Sections 100.3(E)(1)(f)(i) and (ii) of the Rules Governing Judicial Conduct, the contents of the mailer disqualified him for the duration of his judicial term from presiding over all criminal cases, Vehicle and Traffic Law matters, and any matters

involving allegations of domestic violence, and/or which involve purported drug dealers. The Opinion is appended as Exhibit 2.

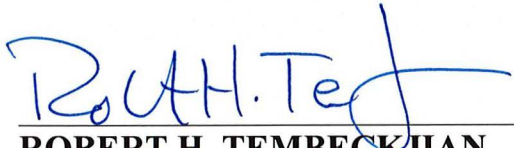
12. Respondent's disqualification from the aforesaid matters has prevented him from performing the majority of his judicial duties since the beginning of his term, thereby placing a considerable burden on the Hyde Park Town Court, which is served only by one other justice. Specifically, since the beginning of his term on January 1, 2024, and through the end of June of 2024, Respondent presided over approximately 59 cases, whereas his co-justice presided over approximately 1,097 cases. Nonetheless, Respondent continues to earn the entirety of his judicial salary, and his co-justice is not compensated for her additional workload due to Respondent's disqualifications.

13. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article VI, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A)

of the Rules; and failed to refrain from inappropriate political activity, in that he failed to maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, in violation of Section 100.5(A)(4)(a) of the Rules, made pledges or promises of conduct that are inconsistent with the impartial performance of the adjudicative duties of the office, in violation of Section 100.5(A)(4)(d)(i) of the Rules, and, with respect to cases, controversies or issues that are likely to come before the court, made commitments that are inconsistent with the impartial performance of the adjudicative duties of the office, in violation of Section of 100.5(A)(4)(d)(ii) of the Rules.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: July 15, 2024
Albany, New York


ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800

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

VERIFICATION

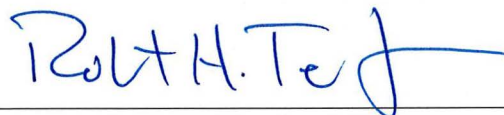
MICHAEL H. PLASS,

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

STATE OF NEW YORK)
 : ss.:
COUNTY OF ALBANY)

ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

1. I am the Administrator of the State Commission on Judicial Conduct.
2. I have read the foregoing Formal Written Complaint and, upon
information and belief, all matters stated therein are true.
3. The basis for said information and belief is the files and records of
the State Commission on Judicial Conduct.



Robert H. Tembeckjian

Sworn to before me this
15th day of July 2024


Notary Public

Marisa Harrison Santos
Notary Public, State of New York
No. 01SA0003835
Qualified in Albany County
Commission Expires March 27, 2007



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**

EVERY VOTE COUNTS!

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

Paid for by The Friends to Elect Michael Plass



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

1-511

EXHIBIT 1

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".

Dutchess County Sheriff Kirk Imperati

ADVISORY COMMITTEE ON JUDICIAL ETHICS
c/o OFFICE OF COURT ADMINISTRATION
25 BEAVER STREET, 8TH FLOOR
NEW YORK, NEW YORK 10004

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TROY K. WEBBER

CHIEF COUNSEL
LAURA L. SMITH
212-428-2504

STAFF COUNSEL
ROSEMARY GARLAND-SCOTT
ADINA C. GILBERT
LISA E. RUBENSTEIN

TOLL FREE 1-866-795-8343

PERSONAL & CONFIDENTIAL

23-158

January 8, 2024

Hon. Michael H. Plass
Hyde Park Town Court
1 Cardinal Road
Hyde Park, NY 12538

Dear Judge Plass:

The Advisory Committee on Judicial Ethics has considered your inquiry (23-158) and has rendered the enclosed opinion.

Very truly yours,

M. Walsh → L. Wan / LLS

Hon. Margaret Walsh
Justice of the Supreme Court (ret.)
Committee Co-Chair

Hon. Lillian Wan
Associate Justice
Appellate Division, Second Department
Committee Co-Chair

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Enclosure

EXHIBIT 2

ADVISORY COMMITTEE ON JUDICIAL ETHICS
c/o OFFICE OF COURT ADMINISTRATION
25 BEAVER STREET, 8TH FLOOR
NEW YORK, NEW YORK 10004

Opinion 23-158

December 14, 2023

Digest: A judge who assumes judicial office on an apparently unequivocal campaign pledge to incarcerate offenders, exclude drug dealers from the community, ensure maximum sentencing of repeat offenders, and protect victims of domestic violence, thus effectively promising to aid law enforcement rather than apply the law neutrally and impartially in such matters, 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.

Rules: 22 NYCRR 100.2; 100.2(A); 100.3(B)(4); 100.3(B)(7); 100.3(E)(1); 100.3(E)(1)(f); Opinion 19-47; *Matter of Watson*, 100 NY2d 290 (2003).

Opinion:

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. The inquirer now asks if these campaign promises will require disqualification under Section 100.3(E)(1)(f).

A judge must always avoid even the appearance of impropriety (see 22 NYCRR 100.2) and must always act in a manner that promotes public confidence in the judiciary's integrity and impartiality (see 22 NYCRR 100.2[A]). A judge must "perform judicial duties without bias or prejudice against or in favor of any person" (22 NYCRR 100.3[B][4]) and "dispose of all judicial matters promptly, efficiently and fairly" (22 NYCRR 100.3[B][7]). A judge is disqualified in a proceeding in which the judge's impartiality

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“might reasonably be questioned” (22 NYCRR 100.3[E][1]), including in instances where:

(f) 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 or has made a public statement not in the judge’s adjudicative capacity that commits the judge with respect to (i) an issue in the proceeding; or (ii) the parties or controversy in the proceeding.

The present inquiry appears to be a matter of first impression for us. We note initially that members of the public who may appear before the judge, much like those who may have voted for or against the inquirer on election day, have no information about the inquirer’s subjective intent. They can only review and draw inferences from the actual statements made and circulated in the inquirer’s campaign literature. In our view, the inquirer’s campaign promises, seen as a whole, create a distinct impression that he/she would, if elected, aid law enforcement rather than apply the law neutrally and impartially (*cf. Matter of Watson*, 100 NY2d 290, 296 [2003] [judge invited voters to “put a real prosecutor on the bench”]).

In our view, the wording of these campaign promises creates a clear impression that the inquirer was promising to “incarcerate offenders” and to ensure maximum sentencing of “repeat offenders.” Both in criminal cases and Vehicle and Traffic Law matters, there is typically a statutory range of permissible sentences. We have said that adjudication of such matters requires “individualized consideration” taking into account all relevant legal factors (Opinion 19-47). Indeed, we advised that a judge may not have a court clerk enter the proposed fine on a motorist’s mail plea from a fixed schedule of fines developed by the judge, where the underlying fixed schedule “pre-selects specific fines from the statutory range and therefore is likely to create an appearance that the judge has pre-judged certain categories of cases without individualized consideration of relevant legal factors” (*id.*). Here, likewise, the inquirer’s campaign promises appear to commit him/her to impose incarceration and/or maximum sentencing where possible, as if the inquirer has pre-judged such matters, especially with respect to “repeat offenders.” We therefore conclude that the inquirer’s impartiality “might reasonably be questioned” in all criminal cases and in all Vehicle and Traffic Law matters based on the apparent promises he/she made about incarceration and maximum sentencing.

Moreover, the inquirer's campaign promises also appear to single out two classes of people who would be treated differently from others that might appear before the court. That is, the inquirer promised unfavorable treatment for "drug dealers" (creating an impression the judge would work to exclude purported drug dealers from the community) and favorable treatment for "victims of domestic violence" (apparently singling them out for special protection). Given that a judge must "perform judicial duties without bias or prejudice against or in favor of any person" (22 NYCRR 100.3[B][4]), we conclude the judge's impartiality "might reasonably be questioned" on the basis of this promise as well, with respect to cases in any court involving purported drug dealers or allegations of domestic violence.¹

We do not see how the judge can meaningfully disavow express campaign promises. Accordingly, on these facts, remittal of disqualification is not available.

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.

¹ 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?