

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

MICHAEL H. PLASS, :
-----X

A Justice of the Hyde Park Town Court,
Dutchess County. :
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ORAL ARGUMENT

Commission Office
61 Broadway, Suite 1200
New York, NY 10006

September 18, 2025
10:35 AM

B e f o r e:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair (via video conference)
Honorable Fernando M. Camacho
Stefano Cambareri, Esq. (via video conference)
Brian C. Doyle, Esq.
Honorable John A. Falk
Robin Chappelle Golston (via video conference)
Honorable Robert J. Miller
Nina M. Moore, Ph.D. (via video conference)
Honorable Peter H. Moulton
Marvin Ray Raskin, Esq.
Commission Members

P r e s e n t:

For the Commission

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Eric Arnone, Esq., Senior Attorney

For the Respondent

Steven G. Leventhal, Esq.
Honorable Michael H. Plass

A l s o P r e s e n t:

Celia A. Zahner, Esq., Clerk of the Commission

Denise Buckley, Esq., Senior Litigation Counsel

Jacqueline Ayala, Assistant Administrative Officer
Meghan Gentile, Information Technology Specialist
Richard Keating, Information Technology Director
Michael Maisonet, Senior Clerk

1 MS. ZAHNER: Good morning, Mr.
2 Belluck, and members of the Commission. This
3 is the oral argument in the matter of Michael H.
4 Plass, a Justice of the Hyde Park Town Court.
5 Judge Plass is appearing with his attorney, Mr.
6 Leventhal. Mr. Stromes is appearing for the
7 Commission.

8 MR. BELLUCK: Good morning. In the
9 matter of Michael H. Plass, a Justice of the Hyde
10 Park Town Court. This is the oral argument with
11 respect to whether misconduct has occurred and
12 if so, what an appropriate sanction shall be.
13 Counsel will each have 30 minutes for their
14 argument. Counsel for the Commission may
15 reserve a portion of his time for rebuttal. After
16 the initial presentations the judge may, if he
17 wishes, make a presentation to the Commission
18 not to exceed 10 minutes. Counsel for
19 respondent may reserve time to speak after the
20 judge and prior to the rebuttal. The judge and
21 counsel are subject to questioning by the
22 Commission at any time during their
23 presentation. Counsel are advised that their
24 argument should be confined to the record and
25 any statements outside the record will be

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1 disregarded. You will notice that there are lights
2 on the podium to indicate your time. The green
3 light means you may speak, the yellow light
4 means there are two minutes left, and the red
5 light means you should stop your argument. We
6 would like to remind you to please silence your
7 cell phones and electronic devices. Disable any
8 Wi-Fi connections to prevent any interference
9 with the recording of the proceeding. We have
10 four members, Ms. Grays, Mr. Cambareri, Ms.
11 Golston, and Dr. Moore, who are appearing
12 remotely. They may question you as if they were
13 present here. If there are any technological
14 difficulties, we will pause the argument and any
15 time needed to correct those will not be counted
16 against your presentation. Are you ready to
17 proceed, Mr. Stromes?

18 MR. STROMES: I am.

19 MR. BELLUCK: Okay. Thank you.

20 MR. STROMES: And I'd like to reserve,
21 please, five minutes for rebuttal. May I proceed?

22 MR. BELLUCK: Yes, please.

23 MR. STROMES: Thank you. During his
24 campaign for judicial office, Respondent made
25 sweeping pledges and promises inconsistent with

1 the impartial performance of his judicial duties.
2 Highlighting his law enforcement background,
3 Respondent promised the voters to incarcerate all
4 domestic violence offenders and impose
5 maximum sentences on all repeat offenders,
6 alongside pledges to protect victims of domestic
7 violence and keep drug dealers off the street. As
8 a result of those pledges and promises, the
9 Advisory Committee on Judicial Ethics issued an
10 opinion determining that Respondent should be
11 disqualified from all criminal and VTL matters,
12 along with any matters that involved
13 allegations—

21 JUDGE MILLER: Because essentially it
22 seemed like they removed him from part of the
23 job, and our-- our role is-- that's our role,
24 whether or not people could be judges or not. So,
25 I mean, in all the other cases I tried to find

1 something, I didn't see where we, after
2 somebody violated the campaign-- and utilize
3 campaigns-- where we set any conditions that
4 they couldn't hear any criminal cases, right. I
5 mean, is there any such case?

6 MR. STROMES: It's not-- it's certainly not
7 unusual for the Advisory Committee to make
8 determinations that judges should or must
9 disqualify in certain discreet matters. And if it is
10 unusual—

11 JUDGE MILLER: My question was have
12 we-- in all of our cases, I think there are about 12
13 of them cited in your colleague's brief where we
14 censured or admonished, as part of that did we
15 ever say of these folks, these judges could not
16 hear any criminal cases?

1 that the disqualification advice here was
2 sweeping, that simply reflects the gravity of the
3 pledges and promises that Respondent made
4 during his campaign. The fact that Respondent
5 made concrete promises to treat certain classes of
6 defendants in certain ways was striking. And as
7 the Advisory Committee found, quoting some of
8 its language, the campaign promises appeared to
9 commit Respondent to impose certain kinds of
10 sentences in certain kinds of cases. That is
11 antithetical to the role of a judge and the
12 responsibility to adjudicate each case
13 individualistically on its own merits from an
14 unbiased point of view. And there's really more
15 to this case, because once the Advisory
16 Committee had issued this determination, one
17 would expect that Respondent would have been
18 taking extra care to make sure he was abiding by
19 his ethical responsibilities and avoiding even the
20 appearance of impropriety. And instead, he did
21 the opposite. Just a month after being charged by
22 the Commission in this matter, acknowledging
23 the advisory opinion and promising to continue
24 to abide by it, Respondent violated it by
25 adjudicating 180 VTL matters and imposing

1 sentence on each one. And he did that knowing
2 at the time that he was violating the Advisory
3 Committee opinion.

4 JUDGE MILLER: Counsel, let me ask
5 you—

6 MR. RASKIN: Counsel-- I'm sorry.

7 JUDGE MILLER: With respect to that, my
8 understanding is Judge McArthur, I think that's
9 her name, was declining, refusing, or not acting
10 on all of these cases for an extensive period of
11 time. The record seems to indicate, whether true
12 or not, that she wanted a salary increase. My first
13 question is, has the Commission investigated that
14 allegation, that a judge because she wants a
15 salary increase doesn't handle cases?

16 MR. STROMES: I-- this is—

17 JUDGE MILLER: What have we done
18 about McArthur? Because that seems to me to be
19 violative, if in fact true. Maybe it's not true, but
20 shouldn't we at a minimum have investigated her
21 actions in putting the judge here in a position
22 that none of these cases will get resolved? Or he
23 was put in a difficult position, so shouldn't we
24 find out if in fact that's true? And if it is, that
25 would in some way excuse-- justify, whatever

1 the right word is-- what he did because my
2 understanding is these were all guilty pleas. So,
3 he didn't make adjudications as to the plea. He
4 made an adjudication as to a fine pursuant to
5 some guidebook. So, I don't understand how
6 that's such a serious violation, especially in light
7 of the fact that we're ignoring her alleged
8 violation.

1 these cases, the Commission learned of this
2 whole situation for the first time at the hearing
3 and it was Respondent's unrebutted but self-
4 serving testimony that Justice McArthur had
5 refused to do these cases. Justice McArthur had
6 already been called, the Commission's case was
7 over. So, there was nothing to do about it at that
8 point. Whether or not—

9 JUDGE MILLER: We didn't have the
10 authority at that point to open an inquiry as to
11 whether it was true or not?

12 MR. STROMES: Well, certainly if that
13 were true, there might be grounds for a
14 complaint against Judge McArthur, which is
15 separate from this matter.

16 JUDGE MILLER: Right.

17 MR. STROMES: And it's not something
18 that I can comment on in terms of-- in terms of
19 an inquiry into her, but in terms of what
20 Respondent did or could have done at that time,
21 Respondent was not faced with a situation where
22 his only option was to violate the advisory
23 opinion and adjudicate 180 cases that he was
24 found too biased to handle. He could have gone
25 to a supervising judge. He could have gone to

1 OCA for advice, explained the situation, asked
2 OCA to have someone who was permitted to
3 handle these cases to do it, but based on this
4 record, he did none of that. He took it upon
5 himself to knowingly violate this advisory
6 opinion and that has consequences and that
7 aggravates the misconduct here.

had ever adjudicated any traffic cases. And he admitted this with the preamble, this is going to sound terrible, and then explained what he had done and explained that he knew he violated the advisory opinion when he did it. The rest about this altruistic motivation was the spin that his counsel put on it in closing arguments, which it's a fine argument, you know, and it's one that-- it's one that you would expect counsel to make the best of the bad situation-- but make no mistake, Respondent knew this was a bad situation and that he had done something that he was not supposed to have done.

14 JUDGE FALK: Adjudicating the fines—
15 that was not charged as misconduct, was it?

16 MR. STROMES: It's not charged
17 misconduct and the Commission is not asking
18 for a finding of misconduct based on—

19 JUDGE FALK: So, is it appropriate for us
20 to consider that then?

1 ones that come up sort of for the first time at the
2 hearing, a judge minimizes his misconduct,
3 which I'll get to also happened in this case, a
4 judge lies to the Commission. These are
5 aggravating factors that's-- that exacerbate the
6 original misconduct. Speak--

7 DR. MOORE: If I could just interject, I'm
8 just sitting here and trying to figure out what
9 would be the ulterior motive for adjudicating the
10 180 cases other than to help reduce the
11 workload? I'm just not seeing another
12 explanation here and I'm not asking you to offer
13 one, but if you do want to comment on that,
14 especially when you consider that the co-judge
15 later complains about the amount of work that
16 she has. So, Respondent has an awareness of the
17 workload and, so-- I'm just hard-pressed to not
18 see that-- that sort of, you know, reasonableness
19 of the argument that doing the 180-- I mean,
20 forget about the citizens-- that it helps with the
21 court's workload.

22 MR. STROMES: Dr. Moore, you're
23 completely correct that I can't come up with an
24 explanation on my own, that's not something I
25 would have knowledge of, what I will say is that

1 even if, let's assume, that the motivation was in
2 good faith, the motivation was altruistic, it's still
3 the act of knowingly violating an Advisory
4 Committee opinion and adjudicating 180 cases
5 that the Advisory Committee has determined you
6 cannot handle impartially, undermines the public
7 confidence in the judiciary and the integrity of
8 the judiciary, especially when Respondent had
9 other options. Respondent could and should have
10 gone to OCA or to a supervising judge to at the
11 very least seek guidance as to what to do in this
12 situation. If he feels like the court is caught
13 between a rock and a hard place because the
14 other judge who can handle these cases is not
15 doing so, the answer is not to violate the
16 Advisory Committee opinion of his own volition
17 and take action, the appropriate remedy is to go
18 to OCA, go to a supervising judge, and seek
19 guidance on what to do.

20 JUDGE MILLER: Counsel, can I ask you--

21 DR. MOORE: --Is it mitigating that he has
22 no experience, that this is a first-time judge? I
23 mean isn't that mitigating as to not
24 understanding the other options?

25 MR. STROMES: I would suggest no, not in

1 this case. At this point, he had been a judge-- this
2 was-- this was August. At this point he had been
3 a judge for eight months and the notion that he
4 would not have known that there were resources
5 he could reach out to, I would submit that's not
6 plausible.

1 assertions that demonstrated that he continues to
2 hold the biases that he exhibited in the mailer,
3 but more troublingly, that he fails to appreciate
4 the role of an impartial judge. As to the
5 minimization, Respondent repeatedly deflected
6 blame and defended the statements that he made
7 in the mailer. Respondent blamed OCA for not
8 having training for new time judges who are
9 running for the first time. Respondent blamed his
10 opponents for teaming up as incumbents and
11 running an aggressive campaign against him.
12 Respondent said that these were careless
13 mistakes, because he didn't know any better,
14 which the referee explicitly discredited.
15 Respondent acknowledged that he could have
16 googled to find out if there were any sort of rule.
17 And in fact, if he had googled, he would have
18 found not only the rule, but he would have found
19 *Matter of Watson*, which I haven't spoken to yet
20 but I will, and makes clear that this type of
21 misconduct is serious. And the referee found that
22 Respondent didn't do that, not because he didn't
23 know he was supposed to, but because he had
24 other priorities and he was, in the referee's
25 words, insensitive to his ethical responsibilities

1 as a candidate.

2 MR. RASKIN: Counsel, the referee also
3 stated that Respondent has indeed learned a
4 lesson from the experience and in fact would be
5 a fair and equitable-- would be fair and equitable
6 in his administration of justice. And how do you
7 relate those two comments, your comment and
8 referee's comment that I just made?

9 MR. STROMES: That conclusion that the--
10 that you just read is directly at odds with
11 Respondent's own testimony at the hearing.
12 Respondent doubled down on his promise to
13 protect victims of domestic violence at the
14 hearing for instance, and went so far as to say
15 that orders of protection for domestic violence
16 victims should be imposed for-- for the asking.
17 Anytime they were asked for he said he could
18 not contemplate a situation where an order of
19 protection would be asked for and not given
20 because after all, in his words, that's what
21 arraignments are for. And those statements are
22 problematic for several reasons. First, they
23 highlight, just like with the pledges and promises
24 initially, Respondent's determination to make
25 judicial decisions, not on the individualistic facts

1 of a given case, but on his bias vis a vis the class
2 of individual that he's adjudicating on. If it's a
3 victim of domestic violence, they get an order of
4 protection. That may be true most of the time,
5 certainly a lot of the time, but it requires a
6 determination of the individual facts of the case.
7 As to the follow up statement, that's what
8 arraignments are for, that's not what
9 arraignments are for. A prosecutor may use an
10 arraignment to request an order of protection,
11 that's an appropriate time to do so, but an
12 arraignment is a constitutional due process right
13 for the defendant to be informed of the charges
14 against him shortly after his arrest. And the fact
15 that Respondent thinks that arraignments are for
16 granting orders of protection, that's inconsistent
17 with his responsibility to adjudicate these cases
18 as a neutral arbiter rather than an arm of law
19 enforcement. So, the referee's conclusion, Mr.
20 Raskin, get back to your question that he would
21 be a fair and even-handed judge going forward,
22 he made clear that he-- that he would not, were
23 he allowed to handle these types of cases.

24 MR. RASKIN: With respect to—

25 JUDGE MOULTON: Is that what

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1 distinguishes this case from *Watson*?

2 MR. STROMES: That does. So, in *Matter*
3 *of Watson* there are many factors—

4 JUDGE MOULTON: —I guess I'll preface
5 my question with it seems to me in *Watson* that
6 there's a lot more behavior by the Respondent in
7 that case. There's a lot more-- the advertisements
8 and newspapers and mailings directed to law
9 enforcement personnel and various other things.
10 It seemed more extensive than what was done
11 here. So, also that seems to undermine your
12 argument about *Watson*. *Watson*, of course,
13 ended in a censure rather than the penalty you're
14 seeking.

15 MR. STROMES: I have many things to say
16 about *Watson*. You are certainly correct, Judge
17 Moulton, that there was-- that there were more
18 campaign slogans if you want to call them, or
19 advertisements in that matter. All of them,
20 however, were really generalized pro law
21 enforcement rhetoric.

22 JUDGE MOULTON: They were found to
23 be pledges by the Court of Appeals.

24 MR. STROMES: They were, they were,
25 and by any measure they were implicit pledges.

1 Whereas here the pledges were concrete. It was
2 not, I have experience in the war on crime, we're
3 going to put a real prosecutor on the bench, we're
4 going to clean up the streets. Now those those
5 were-- those were what was going on in *Watson*.
6 Here, Respondent was clear that he would
7 sentence domestic violence offenders to jail,
8 period, full stop, and he would impose maximum
9 sentences on repeat offenders, period, full stop.
10 That is a different category of explicit promise
11 that locked him in, as the Advisory Committee
12 found, to imposing certain types of sentences in
13 certain cases, irrespective of the facts, without
14 giving the facts a full and impartial review. Now
15 beyond that, *Watson* made very clear that even
16 though it imposed a censure, that was not to say
17 that removal might not be appropriate in another
18 case with different facts. And here there are a
19 number of aggravating factors present that were
20 not present in *Watson*. First of all, as we've
21 discussed already, the violation of the Advisory
22 Committee opinion, *Watson*-- *Watson* pointed
23 out in imposing the censure that the judge's
24 behavior had been unblemished since the
25 campaign misconduct, and given the knowing

1 and admitted violation of the Advisory Opinion,
2 the opposite is true here. And in *Watson*, there
3 was none of the minimization that I spoke to in
4 this case. There was none of the hearing
5 testimony that continued to undermine his ability
6 to perform impartially as there was in this case.
7 There was no minimization of the impact of his
8 misconduct on the court as there was in this case.
9 And all of those factors are the kinds of
10 aggravating factors that in *Matter of Ayres* and
11 other cases the Court of Appeals has made clear
12 are serious aggravating factors that can easily
13 turn a censure into a removal or militate in favor
14 of a removal, depending on the other facts of the
15 case.

16 JUDGE CAMACHO: So, let me-- let me
17 ask-- let me ask this. In terms of, and again, I
18 think a big part of this has to do with the
19 consequences and I'm not minimizing them.
20 They're serious. Judge, co-judge, has to be on
21 call 24 hours a day, seven days a week all year
22 long without splitting it up. Putting that aside, do
23 you believe the actual conduct here, the mailing,
24 does that constitute truly egregious conduct?
25 Putting aside the consequences?

1 MR. STROMES: It does. It does, Your
2 Honor. It again, it locks-- it locks the Respondent
3 into-- into having promised to decide certain
4 cases in a certain way irrespective of the facts.
5 There is-- I can think of little that more
6 undermines public confidence in the judiciary
7 than a judge who has-- who has locked himself
8 into deciding certain cases a certain way without
9 each-- giving each case a fair shake.

10 JUDGE CAMACHO: Is it your position,
11 then, that we should not consider the
12 consequences, we should simply focus on the
13 conduct, the mailing, the one mailing, and
14 determine that that is in fact truly egregious?

1 McArthur as Your Honor mentioned, Judge
2 Camacho, she does in fact have to be on call
3 24/7, 365 days a year, she has to handle 90% of
4 the cases or so filed in her court because
5 Respondent cannot. And the reason I bring this
6 up is to show additional minimization that
7 Respondent minimized the effect and burden on
8 her. He was asked at the hearing whether he felt
9 sorry, was remorseful that she had to take on this
10 additional burden, and Respondent's testimony
11 was that despite all of this they were doing
12 roughly equal work. If she's working more, she's
13 only working maybe 5% more. It did not, in fact,
14 impose additional burden on her, and he does not
15 feel sorry for it. So that fact shows that he fails to
16 appreciate the-- not only the gravity of his
17 misconduct, but the consequences of his
18 misconduct as well. And the people of the town
19 who elected him deserve a judge who has better
20 judgment than that, who knows better than that,
21 and who can handle and do the job that he was
22 elected to perform.

1 other commercials that showed a slamming of a
2 cell door, there was written communication, I
3 think there were more than one TV commercials.
4 How do you differentiate that here from the one-
5 time mailer with Judge Plass?

6 MR. STROMES: *Polito*-- the campaign
7 messaging in *Polito* was what was more in line
8 with *Watson* than it was here, where you have
9 the explicit pledges that I discussed, but even
10 then *Polito* predated *Watson*. So, *Watson* is
11 really the controlling case, and *Polito* had none
12 of the aggravating factors that we've discussed--
13 that we've discussed this morning, the violation
14 of the Advisory Committee opinion, the repeated
15 deflection of blame, the minimization of the
16 misconduct, the excuses that were discredited,
17 none of that was present in *Polito*. And all of that
18 makes the misconduct worse.

19 JUDGE FALK: In your mind, which
20 violation is worth-- worse? The *Polito* violation
21 or the Judge Plass violation?

22 MR. STROMES: I'd say this violation-- this
23 violation is worse because of the concrete
24 promise Respondent made to again, incarcerate
25 all domestic violence offenders and sentence all

1 repeat offenders to maximum sentences. That
2 shows an unwillingness to judge each case on its
3 own merits. An unwillingness that he echoed and
4 reinforced during his hearing testimony, which is
5 so antithetical to the role of a judge.

6 JUDGE MILLER: Counsel, can I ask you
7 with respect to the McArthur issue, those are
8 criminal cases. How many of them are basically
9 just plea bargains?

10 MR. STROMES: Are you talking about the
11 180 cases or?

12 JUDGE MILLER: No, no, no, I'm not
13 talking about—

14 MR. STROMES: My apologies.

15 JUDGE MILLER: No, it's-- not at all. One
16 of the arguments is she handles like four or five
17 times the number of cases that he handles. I
18 mean, how many of the cases she handles are
19 basically simple pleas?

20 MR. STROMES: I don't know that we have
21 an exact breakdown. She gave-- she gave
22 extensive testimony about the work she does on
23 criminal cases, traffic cases, domestic violence
24 cases and she was honest about this, that some of
25 them were simple pleas, many of them were for

1 appearances. Some of them-- some of them, if
2 the vast minority, went to trial—

3 JUDGE MILLER: From her testimony
4 other than this issue of being on call, she doesn't
5 particularly appear to be upset by it and doesn't
6 particularly feel that it's unfair and I assume that
7 civil cases are more likely to result in hearings
8 and a lot more time because the-- so that's why I
9 was asking about the-- this-- I don't know if the
10 disparity in numbers really reflects anything.

11 MR. STROMES: And a credit to her that
12 she-- that she's sort of been willing and able to
13 roll with it, and as the referee found, and as
14 Judge McArthur testified, it's really the
15 arraignment-- the arraignment responsibility
16 that's been the heaviest burden. In the referee's
17 words, that has kept her tethered to the
18 courthouse 24/7. She can't travel more than an
19 hour or so away really at any time for any
20 reason. And that has been the largest burden on
21 her. This is a responsibility she formerly split
22 evenly with her co-judge that now she has to do
23 in its entirety because Respondent is unfit to
24 handle criminal arrangements.

25 JUDGE MILLER: Counsel, with respect to

1 that, I thought there was just testimony that only
2 on two occasions did she seek assistance of other
3 judges. One said yes and her clerk did it and one
4 said no. So, if in fact-- in fact I was on 24/7 I
5 would be asking some of my colleagues next
6 door, can you cover for me for this week? So, it
7 didn't seem like-- it sounds like a burden, but in
8 actuality, only two requests?

9 MR. STROMES: So, in-- what she said—

10 JUDGE MILLER: That was her testimony,
11 right?

12 MR. STROMES: Her testimony was after
13 two requests, she got disheartened and stopped
14 trying because not only were there those two
15 requests, but she spoke to OCA and she said, I'm
16 having this problem, I'm responsible for all the
17 arraignments in the small town, by the way, there
18 is no-- there is no judge next door like there
19 would be in a larger city. And OCA basically
20 told her, look, we can't help you. It's on you to
21 find someone who's willing to cover. And she
22 felt—

23 JUDGE MILLER: That's like a typical
24 OCA response.

25 MR. STROMES: —and, typical or not, she

1 felt like she had no recourse at that point—

2 JUDGE MILLER: Fair enough.

3 MR. STROMES: —and simply stopped
4 trying.

5 DR. MOORE: And yet, yeah. And yet, if
6 I'm understanding this correctly counselor, she
7 logged fewer hours this year as compared to last
8 year. Is-- am I right about that?

9 MR. STROMES: Not quite, Dr. Moore.
10 First of all, the referee made a finding that the
11 time sheets that were submitted by Respondent
12 were not indicative of actual hours worked in the
13 court, but the disparity there was that the
14 comparison was 2016 when Justice McArthur
15 was a new judge, versus 2024, and she testified
16 that she reported basically all of her hours in
17 2016 until someone from the pension system told
18 her that she didn't have to do that, all she had to
19 certify was 35 a week because that was what was
20 required. So, at that point she changed her habits
21 and she just started writing 35. So, the referee--
22 this all before the referee. The referee found that
23 the pension sheets are not actually indicative of
24 hours worked.

25 DR. MOORE: Thank you.

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1 MR. STROMES: I see my time is up.
2 I'll reserve my remaining time for rebuttal.
3 Commission counsel asks that Respondent be
4 removed.

5 MR. BELLUCK: Please proceed.

1 time judicial candidate. He engaged in no
2 intentional misconduct. He was unaware of the
3 campaign-- that his campaign flyer violated the
4 rules. Referee North found that to be the case. It
5 was a single campaign violation, never repeated,
6 no pattern of misconduct, no dishonesty, no
7 misconduct on the bench and it was self-
8 reported, first by calling the Commission when a
9 newspaper reported that he was accused of
10 misconduct and secondly, by requesting an
11 advisory opinion. When he learned at the Taking
12 the Bench program that this rule existed, he
13 asked the speaker what he should do, described
14 his flyer to the lecturer from OCA, and was
15 advised to seek an opinion from the Advisory
16 Committee. He did everything possible to make
17 it right. And the advice that the committee
18 provided him is a safe harbor, statutory safe
19 harbor pursuant to Judiciary Law section 212,
20 which states at subsection 2L4, actions of any
21 judge or justice of the uniform court system
22 taken in accordance with findings or
23 recommendations contained in an advisory
24 opinion issued by the panel shall be presumed
25 proper for the purposes of any subsequent

1 investigation by the State Commission on
2 Judicial Conduct. Thus—

3 JUDGE MOULTON: But then he went-- he
4 went ahead and violated the opinion of the
5 Advisory Committee.

6 MR. LEVENTHAL: In that one instance,
7 yes, but the thrust of the Commission's--
8 Commission counsel's argument is not-- does not
9 rest on that one occasion, although they claim it
10 to be an aggravating factor, it rests upon their
11 distorted view of the allocation of work in the
12 court, and of course on the original campaign
13 flyer. But the allocation of cases in the court is a
14 result of the opinion of the committee, which by
15 the way, I personally think was an overreach by
16 the Advisory Committee for the reasons that
17 have been-- have already been suggested. For
18 example, with respect to those pleas by mail, the
19 flyer makes no reference to vehicle and traffic
20 cases. The flyer says keep drug dealers-- by the
21 way, we own, we own the inappropriateness of
22 these pledges. We do not seek to run away from
23 them. Justice Plass has consistently accepted
24 responsibility for them throughout this process.
25 But it says keep drug dealers off our streets and

1 out of our hotels. Incarcerate offenders and
2 protect victims of domestic violence. Assure
3 repeat offenders are sentenced to the full extent
4 of the law. No mention of vehicle and traffic
5 cases, criminal cases, yes.

6 JUDGE MOULTON: He also said together
7 we can make a change in the safety of our
8 community.

9 MR. LEVENTHAL: Right.

10 JUDGE MOULTON: Doesn't that just, with
11 those other statements, just reflect a pro
12 prosecution bias that is inappropriate?

13 MR. LEVENTHAL: Yes. We do not
14 dispute that the statements made in the flyer
15 were inappropriate.

16 JUDGE MOULTON: So, doesn't that mean
17 that the opinion from the Advisory Committee
18 was not overreaching, rather it took him out of
19 any criminal matter which was necessary
20 because of his campaign statements.

21 MR. LEVENTHAL: There are very few
22 vehicle and traffic cases that are criminal—

23 JUDGE MOULTON: That's true.

24 MR. LEVENTHAL: —That are criminal in
25 nature, very few. Drunk driving—

JUDGE MOULTON: (Unintelligible).

2 MR. LEVENTHAL: —Aggravated
3 unlicensed operator. So, the only material
4 consequence to the court or to the fellow justice,
5 as has already been said is the-- is the on-call
6 responsibilities that was Judge-- Justice
7 McArthur's main concern. That is-- has been
8 significantly reduced by bail reform. Coverage is
9 available from neighboring jurisdictions. As has
10 already been mentioned, there were only two
11 occasions in the past months when Justice
12 McArthur sought assistance, got it on one time,
13 had her clerk make the call, didn't follow up.

14 JUDGE FALK: You got to-- you got to
15 agree that a judge does not want to reach out to
16 another judge in another jurisdiction to do an on-
17 call arraignment at some horrible hour in the
18 evening. That's just something you don't want to
19 ask for. So, you got to admit that the reason
20 there's probably only two occurrences or times
21 that happened was because this other judge
22 probably didn't feel comfortable reaching out to
23 other judges.

24 MR. LEVENTHAL: Well, no, it doesn't--
25 I'm sorry, Judge, it doesn't exactly work that

1 way. It's not that you get a call in the middle of
2 the night and call a fellow judge, could you
3 please cover it? It's you say, I want to go on
4 vacation—

5 JUDGE FALK: Fair enough. I understand.

6 MR. LEVENTHAL: —Two weeks from
7 now, right—

8 JUDGE FALK: So, I want to go on
9 vacation two weeks from now, so therefore, your
10 schedule is being impacted. What I'm saying is
11 typically other judges don't like to reach out to
12 other judges in other jurisdictions to cover for
13 you.

14 MR. LEVENTHAL: Well, Judge, I have to
15 say that I believe that what goes around comes
16 around, and judges do like to do that because
17 there's good-- they know that there will be an
18 occasion when they need coverage. And in fact,
19 Justice McArthur herself testified to having
20 recently covered for another judge in another
21 jurisdiction. So, it's clear that this is a practice
22 among collegial judges. So, Referee North found
23 the division of responsibilities workable and not
24 excessively unbalanced. The number of cases
25 handled by each judge, he said, is illusory and

1 does not represent the actual workload of each
2 judge. And Justice McArthur's estimate of her
3 workload was unreliable and overestimated. And
4 this ridiculous testimony about her reports to the
5 New York State pension system that she stopped
6 reporting her hours when she reached a
7 threshold, she did report fewer hours when she
8 was working with Justice Plass than she did with
9 the prior judge and the claim was made that that
10 only reflected the hours of her first year as a
11 brand new judge. That is not the case because
12 periodically the judges have to file updates to the
13 hours that they report, and she-- and Justice
14 McArthur adopted those same hours throughout
15 those early years and only during Justice Plass's
16 inc incumbency did her time drop off.

17 MR. RASKIN: Counselor, would it be fair
18 to say that the referee concluded that only as it
19 regards the time expended by each judge, both
20 Judge Plass and Judge McArthur's testimony was
21 unreliable?

22 MR. LEVENTHAL: Yes, yes. He
23 discounted the testimony, both of them in that
24 respect—

25 MR. RASKIN: In that respect only.

15 DR. MOORE: Okay so if I could jump in
16 here, and I understand that you want to analyze
17 the impact on Judge McArthur, but I have to tell
18 you, my bigger concern is the impact on public
19 confidence and on the appearance of bias. And I
20 understand the distinction here from *Watson* is
21 that *Watson* was, you know, just about general
22 street crimes, but you know, if I could get you to
23 speak to this, that based on the flyer, which you
24 know, I understand Respondent is admitting is
25 what's inappropriate, but based on that, the claim

1 or the promise to deal with all domestic violence
2 defendants, right, because they're still defendants
3 and those who are accused, can these people
4 expect, I mean, what's the grounds for them
5 expecting unbiased treatment coming in to
6 Respondent's courtroom?

7 MR. LEVENTHAL: Well, Dr. Moore,
8 you're forcing me to go to the end of my
9 presentation, but I will gladly do it.

10 DR. MOORE: (Unintelligible).

11 MR. LEVENTHAL: That's okay. One of
12 the qualities that I admire most in a person is the
13 capacity for growth. Justice Plath-- Plass has had
14 a steep learning curve as Referee North
15 acknowledged. The conclusion of the Court of
16 Appeals in *Watson* applies with equal force to
17 this case that we are here discussing today. The
18 Court of Appeals said petitioner expressed
19 remorse and acknowledged exercising extremely
20 poor judgement in the exercise of his campaign,
21 which he attributed in part to his inexperience as
22 a candidate. Although his transgressions are
23 serious, his continued performance in judicial
24 office does not presently threaten the proper
25 administration of justice, nor has he

1 irredeemably damaged public confidence in his
2 own impartiality or that of the state judiciary as a
3 whole. That's the Court of Appeals. The
4 advisory opinion in this case, Judge Plass's,
5 advisory opinion disqualify-- I keep-- that
6 misnomer has been used throughout. They didn't
7 disqualify him. They opined that he is
8 disqualified during his term. They used that word
9 term. They did not recommend his
10 disqualification permanently. They impliedly
11 recognized that after the passage of time and
12 with a record of fairness and impartiality on the
13 bunch-- bench, Justice Plass may prove well
14 qualified to preside in all cases. As Referee
15 North concluded, it appears that from having
16 observed Respondents' testimony and the
17 testimony of the witnesses, the respondent has
18 indeed learned a lesson from his experience and
19 in fact would be a fair and equitable in the
20 administration of justice. We certainly hope that
21 Justice Plass will have that opportunity and I
22 think a review of the prior decisions supports--
23 supports that-- that hope and prayer.

JUDGE CAMACHO: Counsel, since you talked about growth, can you-- you brought up

1 growth. How do you explain the following
2 question and answer that your client gave? Can
3 you contemplate a case where someone or a
4 party requests an order of protection, and it's not
5 granted? Answer, no. Question, you don't
6 imagine that? Answer, I've never seen that.
7 Okay, how does that-- how does-- how is that
8 consistent with growth?

9 MR. LEVENTHAL: Well, first of all, we
10 are all works in progress. The idea that Justice
11 Plass has gone through a learning curve and is
12 capable of growth doesn't mean he's completed
13 that process. And-- and frankly, I have never
14 seen a request for an order of protection denied
15 either. The-- I'd just like to quickly--

16 JUDGE MILLER: Counsel, can I ask you,
17 counsel, in terms of this Advisory Committee,
18 you were kind of giving the impression that,
19 assuming your client isn't removed, that he may
20 at a certain point in time request modification of
21 the opinion based upon his actions on the bench
22 for a year or two. Is that what you're
23 contemplating?

24 MR. LEVENTHAL: Whether it's for a year
25 or two or whether it's after the completion of his

1 term or what-- at what point in time that would
2 be a reasonable thing for Justice Plass to do, I
3 can't answer that specific question, but I think it
4 is a reasonable thing for him to be contemplating
5 now that after he establishes a history of service
6 on the bench, a track record, these unfortunate
7 and ill-considered and improper campaign-- the
8 campaign flyer that he produced will be-- will
9 recede in memory and that the more prominent
10 recollection will be his conduct on the bench,
11 and that addresses the public perception. And on
12 the subject of public perception counsel, I think,
13 erroneously said that it is-- has been
14 demonstrated that Justice Plass cannot be fair
15 and impartial. No, the flyer creates the
16 impression that he cannot be fair and impartial.
17 His conduct on the bench will prove whether he
18 can or cannot.

19 JUDGE MILLER: Counsel just to clarify—

20 DR. MOORE: (Unintelligible)—

21 JUDGE MILLER: Did he issue another
22 flyer after this?

23 DR. MOORE: (Unintelligible)—

24 JUDGE MILLER: I'm sorry, just this one
25 question. Did he issue another flyer after the

egregious flyer?

2 MR. LEVENTHAL: He issued a-- he
3 issued a second flyer after a newspaper report
4 indicated that he had been accused of engaging
5 in misconduct with his first flyer, and the
6 second-- in the second flyer, he omitted all of the
7 offensive material. So, this is a case in which the
8 misconduct was not repeated. There's no pattern
9 of misconduct. Dr. Moore, was that you who
10 spoke a moment ago?

11 DR. MOORE: Yes, yes, if I could just-- in
12 thinking about your analysis of future growth
13 that perhaps I'm going to grow, what do you say
14 to the response that the damage is done when it
15 comes to public perception? That you can't
16 unring that bell with a new flyer with, you know,
17 other cases that may-- and I'm not even sure if
18 there are going to be enough cases to discount
19 the potential impact on public perception-- what
20 do you say to that, that the folks who were
21 specified in the original flyer may never feel that
22 they're going to get a fair shot in Respondent's
23 court? What do you say to that?

24 MR. LEVENTHAL: Well, all I can say is
25 that the perception-- the public perception of the

1 judge should reasonably be a balancing of-- of
2 the judge's statements, the judge's conduct, and if
3 there is a history on the bench, a track record that
4 can go far to ameliorate, mitigate, and even
5 rehabilitate the improper statements that were
6 made at the earliest stages before he was a judge
7 and before he had any experience on the bench at
8 all.

9 DR. MOORE: Thank you.

10 MR. LEVENTHAL: So, I am very
11 conscious of the fact that my time may soon
12 elapse. I have not yet gone through any of the--
13 the precedents, but I want to talk about the
14 *Muller* case for a moment. The *Muller* case is a
15 case that the Commission's counsel cite to
16 support their contention that handling those
17 pleas, mailed in guilty pleas, was an aggravating
18 factor that Justice Plass failed to comply with the
19 advice of the Advisory Committee. In *Muller*,
20 the judge was censured, not removed. He was
21 censured for presiding over numerous cases
22 involving fundraisers for his campaign. He
23 concealed, he concealed until after his election
24 an advisory opinion that he received from the
25 committee, which said you should recuse

1 yourself during-- from handling matters for
2 campaign fundraisers during-- until after your
3 campaign is completed. He concealed that and
4 denied a recusal motion. The Commission noted
5 that his failure to disclose the advisory opinion
6 until after the election compounded his
7 misconduct. Justice Plass had no personal
8 relationship with any defendant who mailed in
9 their guilty pleas that he processed, no personal
10 interest in any of the matters. He did not act
11 surreptitiously. As has been pointed out, there
12 was no appearance before him, no contact with
13 the defendant. He repeatedly expressed remorse
14 throughout the hearing. Referee North said
15 throughout his testimony, Justice Plass expressed
16 his apologies, sorrow, deep regret, negligence,
17 carelessness, and acknowledged the
18 inappropriateness of the language in the mailer
19 and his failure to take steps and ascertain the
20 campaign rules. He has learned his lesson from
21 the experience that the most important role to
22 listen is to listen to both sides. That's Referee
23 North quoting Justice Plass. At the hearing,
24 Referee North said he appeared to be intelligent,
25 personable, articulate, and credible, and just--

1 and Referee North concluded that he has
2 demonstrated a reasonable degree of remorse and
3 found it to be a mitigating factor. He described
4 the conduct of Justice Plass on the bench as
5 exemplary. And even among serious misconduct,
6 even among serious misconduct, there are
7 degrees of seriousness. No judge, no judge has
8 been removed for a single campaign violation in
9 this state, at least in so far as my research was
10 able to determine. All removals involved
11 misconduct on the bench or misconduct in
12 relation to a particular matter. The Court of
13 Appeals standard for removal is not misconduct.
14 It's not serious misconduct. It's truly-- it's not
15 even egregious misconduct. It's truly egregious
16 misconduct. That's how the Court of Appeals
17 states the standard in the *Ayres* case. *Ayres* was
18 an ex-parte attempt to influence the disposition
19 of the judge's daughter's case. That was a
20 removal. *Simon*, also a removal case, involved
21 the misuse of a sanction, bullying, and
22 intimidating behavior on the on the bench. *Conti*,
23 a removal case, ticket fixing and dishonesty.
24 *Kuehnel*, violent, vulgar, and racist misconduct,
25 detained, assaulted, threatened and insulted

1 youths that he suspected of criminal mischief.
2 That case resulted in removal. *Astacio*,
3 incarcerate-- this judge, Judge Astacio, was
4 incarcerated for violating a conditional discharge
5 following a DWI conviction. Presided over a
6 case involving a former client, made
7 discourteous, insensitive, undignified comments
8 before counsel and litigates in court-- litigates--
9 litigants in court and did not accept
10 responsibility for her misconduct. That was a
11 removal case. Let's distinguish *Watson*, which
12 was a censure. In *Watson*, the court reduced the
13 sanction to censure. Judge Watson promised to
14 work with and assist police in deterring crime.
15 Clear, clear prosecution bias. It was not an
16 isolated statement. It was repeated throughout
17 the campaign in two newspapers, two campaign
18 advertisements, a letter to law enforcement
19 personnel, a campaign letter, and Judge Watson
20 blamed his incumbent opponents for an increase
21 in crime. Justice Plass did nothing of the sort.
22 *VanWoeart* was also a censure case. Improper
23 statements and campaign advertisements,
24 leaflets, and Facebook posts attacking the
25 incumbent opponent. Previously censured for a

1 delay in transferring tickets issued to herself and
2 her son, improper messages to the transferee
3 court, failing to make proper records of the
4 tickets. That was a censure.

5 MR. BELLUCK: Mr. Leventhal, I just
6 wanted to remind you if the judge is going to
7 address us and you wanted to reserve any time to
8 speak after the judge, you have about eight
9 minutes of time remaining, so, I didn't know if
10 the judge is going to address us and if he is, you
11 wanted to reserve any time, but I just wanted to
12 make sure you were aware of that.

13 MR. LEVENTHAL: I appreciate that. I'm
14 going to try to pack another eight minutes into
15 three minutes.

16 MR. BELLUCK: Okay.

17 MR. LEVENTHAL: And so-- will the red
18 light go on in three minutes if-- if that-- can that
19 be done?

20 MR. BELLUCK: I'll let you know.

21 MR. LEVENTHAL: Thank you very much.
22 So now I just want to quickly look at some cases
23 that resulted in admonishment. Judge Chan
24 personally solicited campaign contributions,
25 misrepresented in campaign literature that she

1 had been endorsed by The New York Times,
2 demonstrated pro-tenant bias in campaign
3 literature, acknowledged her misconduct, and
4 took immediate remedial action upon being
5 made aware of the campaign violent—violation,
6 as Judge Plass did, admonishment. *Hafner*,
7 printed advertisement stating you-- are you tired
8 of seeing career criminals get a slap on the wrist?
9 So am I. Judge Hafner approved campaign
10 literature attacking opponent's record and stating
11 soft judges make hard criminals. Admonishment.
12 Judge Polito, which has already been discussed,
13 graphic and sensational anti-crime television
14 advertisements. One ad notice-- noted his
15 endorsement by local sheriff stating pull the
16 lever for Bill Polito and crack down on crime.
17 Another ad stated Bill Polito will stick his foot in
18 the revolving door of justice. Bill Polito won't
19 experiment with alternative sentences or send
20 convicted child molesters home for the weekend.
21 Criminals belong in jail, not on the street. He
22 also ran a print ad with a legend crackdown on
23 crime and promising that he would not
24 experiment with alternative sentences.
25 Admonishment. *Maslin*, newspaper interview

1 discussing cases in which he was reversed,
2 stating that he still believed he was correct.
3 Newspaper interview stating that he believed that
4 a defendant in a criminal case pending before
5 him was a danger to the community and that the
6 bail he set was probably not high enough to keep
7 him in jail. Campaign advertisements
8 proclaiming that he had refused to allow
9 specifically identified defendants out on low bail,
10 touting a conviction rate of 88% in cases
11 charging alcohol related offenses, stating that he
12 had a special place called jail for thieves,
13 burglars, stick up artists, spouse beaters, and
14 repeat drunk drivers. Admonished. I-- I'm
15 grateful for the chair's reminder. I would like to
16 ask that you hear from Justice Plass at this time.
17 Thank you.

18 JUSTICE PLASS: Thank you. I've debated
19 with myself for some time now whether or not I
20 should speak today, mostly out of fear, my own
21 fear that whatever I may say just won't come out
22 right. I'm a hard-working guy. I'm an honest guy.
23 I'm an honest guy that can admit his own
24 mistakes. However hard working and honest you
25 may be, the mistake, it was just the beginning.

1 Recognizing the mistake, learning from the
2 mistake, and then applying the learned
3 knowledge is what makes me better for the
4 future. This has been a learning experience for
5 me. I can't say I'm sorry enough that my words
6 that I wrote gave this impression that I wouldn't
7 listen, that I wouldn't be fair. But the fact is, I am
8 a good listener, and I am fair and impartial. I
9 love this job. I'm a good judge aspiring to be a
10 great judge. I'm hoping that you guys can see
11 that today and continue to let me do my job.
12 Thank you.

13 MS. GRAYS: Justice Plass?

14 JUSTICE PLASS: Yes, ma'am?

15 MS. GRAYS: I have-- I'm sorry, I have a
16 question. For the second flyer, can you-- or
17 mailer-- can you describe what content remained
18 on the mailer after you received-- saw the notice
19 in the newspaper about it not being-- allegedly
20 not being appropriate?

21 JUSTICE PLASS: Yeah, there was-- there
22 was actually a Facebook post too that was posted
23 that referenced the pledge and the promise being
24 a complete violation of judicial conduct rules.
25 So, I forwarded a call down to the conduct

Commission right away. Mr. Levine, I believe, was the gentleman I spoke to. And I said, am I in trouble? Did I do something wrong? I mean, could you take a look? And it took a day or two. But he looked and said no, there are no, there are no complaints against you. And I said, okay, but my campaign had been so tumultuous, I just thought it was best just if maybe-- maybe it is true, maybe it's not a ploy. It would be best to just get rid of them. So, I omitted all of the pledges and promises. I took them all out. The rest of the flyer was consistently the same. The endorsements from the other people, the statement that, you know, together we can make a change. That was that was still on the flyer.

16 DR. MOORE: And Justice Plass, if I could
17 follow up on-- on that question, and I'm really
18 asking you to help me understand your thinking
19 at the time. And I'd like to know specifically why
20 did you single out domestic violence, drug
21 dealing, and repeat offenders? Because I'm
22 thinking about all of the other possible crimes
23 that might have been singled out, murder, sexual
24 assault, aggravated assault, arson, all the other
25 stuff that's in the FBI index, so can you help me

1 understand what-- and I get that you walked it
2 back, you recognize the impropriety of what you
3 did, but I'm trying to get a sense of your thinking
4 at the outset as to why these-- are these more
5 problematic in your area than the other kinds of
6 crimes that I mentioned? What was going on
7 there, Judge?

8 JUSTICE PLASS: Thank you, ma'am.

9 Yes—

10 DR. MOORE: —Sorry.

11 JUSTICE PLASS: So, unfortunately, I
12 made that flyer from a collage of all the other
13 flyers that I was receiving in the mail during
14 election time. And some of the things that I
15 thought were pertinent were that these people
16 that are running for office are telling the people
17 that they know what's going on in their
18 community, what they're going to fix, what
19 they'd like to do for the people. So, I thought I
20 should tell them that I'm aware of the three
21 biggest problems in our community, drugs,
22 domestic violence, and repeat offenders. And
23 that that's just the way I-- I perceived it when I
24 went to the mailbox every day, I got another
25 brochure, you know, I'm going to lower taxes

1 and this is how I'm going to do it. And I'm going
2 to stop the garbage pickup at five in the morning
3 and this is how I'm going to do it. So, I really
4 thought it was just a way that the people would
5 see you as someone, well, he gets it. He
6 understands what's going on within our
7 community and that this is a good guy. He's
8 paying-- he's paying attention to those kinds of
9 things. That's-- that's how I perceived it.

10 DR. MOORE: Thank you.

11 JUSTICE PLASS: Thank you.

12 MS. GRAYS: Justice Plass, I have one
13 additional question—

14 JUSTICE PLASS: Yes, ma'am?

15 MS. GRAYS: —and it concerns the
16 workload. You're handling the civil and Judge
17 McArthur, Justice McArthur, is handling the
18 criminal and criminal related. What other
19 activities are you doing in the court as it relates
20 to balancing out the workload?

21 JUSTICE PLASS: Thank you, ma'am.

22 Yeah, if I may-- the-- my-- I've been here for
23 hearings now three times. And in my very first
24 hearing, I met with a Mr. Arnone, and I told him
25 I was very sorry for the extra workload that

1 Judge McArthur had, and because I-- I really, I
2 was only a judge for a month. I had no idea what
3 was going to happen with the office, with the
4 caseloads. I hadn't-- I didn't know, so I was very
5 upset. I was, I was sorry. Fast forward 18 months
6 later, I have done everything to make her job
7 easier. Technically, she works as a judge twice a
8 month. That's her days. V&T we consolidated to
9 one and criminal we consolidated to a second.
10 I'm the one working the five or six days a month
11 on the bench. I also take over all of the
12 administrative duties. I just completed the budget
13 for the courtroom. I do payroll with the girls. I
14 organize-- or the court clerks, I'm sorry. I
15 organize vacation schedules. I organize trials. I
16 will sit and sign people in if one of the court
17 clerks is not able to come, I will come to work
18 and sit down and help sign the people in.
19 Whatever it takes to make the court run smoothly
20 without putting a bigger burden on Judge
21 McArthur, that's what I've tried to do. I do just
22 about everything that the courtroom needs.

23 MS. GRAYS: Thank you.

24 JUSTICE PLASS: Thank you.

25 MR. DOYLE: Judge—

JUSTICE PLASS: Yes?

MR. DOYLE: With respect to the 180 traffic tickets, did you actually sentence the defendants or did Judge McArthur sentence them? Did you just figure out the fines and did she sentence them?

JUSTICE PLASS: No, we have a special prosecutor who puts the-- the adjudicated result in at-- the recommendation they give you, like you'll send your plea in not guilty, the special prosecutor takes a look at whatever information she has available to her and makes an offer to you. If you accept the offer, you sign your name and check on the bottom I'm pleading guilty to this offer, at which time that is when the judge gets them on the desk and then the judge would assess the fine.

MR. DOYLE: So, it wasn't just assessing the fine. You sentence the defendant to that fine?

JUSTICE PLASS: I-- yeah, I just a sense-- I
yes, I signed my name to putting the fine there.
Yes.

JUDGE CAMACHO: So, was the negotiated plea deal between the special prosecutor and the person who received the

1 ticket, or were you just signing-- signing the
2 bottom of the-- of the order?

3 JUSTICE PLASS: Yes, sir. Yes, sir. It was
4 already completed. It was just-- it was becoming
5 taxing on everyone and there were people that
6 wanted to enter the military—

7 JUDGE CAMACHO: And the fine had
8 been negotiated previously?

9 JUSTICE PLASS: No, the fine-- there--
10 well some of them have recommended sentences,
11 on there's a special box that the prosecutor has to
12 put an X in and then put whatever her special
13 sentence is or whatever she would like to see the
14 matter adjudicated in.

15 MR. BELLUCK: Thank you, Judge.

16 JUSTICE PLASS: Thank you, sir. Thank
17 you.

18 MR. BELLUCK: Mr. Leventhal, you have
19 about five minutes remaining if you want to use
20 it.

21 MR. LEVENTHAL: Yeah, I'll use it for 10
22 minutes worth of material. The-- thank you. The--
23 - what I'm about to say, I do not say to excuse
24 the language on the flyer. I do not justify it. We
25 embrace the rules. We know that it was wrong.

1 We admit that it was wrong. However, I
2 remember watching a press conference given by
3 the Secretary of Defense during a military
4 conflict, and what the Secretary of Defense said
5 that I found very interesting was that he doesn't
6 worry about the unknown. He worries about the
7 unknown unknown. And the-- the campaign
8 ethics rules for Justice Plass were an unknown
9 unknown. Much was made of the fact that he
10 knows how to use the internet, that the campaign
11 handbook is on the internet. But if there-- if you
12 have no reason for suspecting that there is a
13 separate set of campaign ethics rules for judicial
14 candidates, than for other candidates, then you
15 have no cause to go look. Now again, I do not
16 offer this as an excuse, just to put it in
17 perspective. All candidates for judicial office in
18 the state of New York are required before
19 commencing their campaigns to take an OCA
20 sponsored course in judicial campaign ethics.
21 Except town and village judges, they are
22 expressly excluded from that requirement. And
23 as—

24 MR. CAMBARERI: Can I ask you a
25 question?

MR. LEVENTHAL: Yes.

2 MR. CAMBARERI: What is the
3 significance in your mind that your client is, well
4 a non-lawyer judge running for the first time as
5 compared to, for example in *Watson*, you've got
6 a practicing lawyer who was an assistant District
7 Attorney who was, you know, sanctioned in the
8 way that that attorney prosecutor was. What is
9 the significance at least in your mind, or at least
10 is there authority, statutory case law authority
11 that would-- that would distinguish between the
12 two?

MR. CAMBARERI: Thank you.

MR. LEVENTHAL: So, it is well known—

DR. MOORE: If I could-- if I could follow up on that, that almost-- I mean I find that kind of defense problematic because it almost seems to suggest that the folks who come through his courtroom are not entitled to the same level justice as one who has more than a high school diploma. I mean, I get that it's probably mitigating but the idea that somehow the expectation should be lowered because of that, I find it problematic.

MR. LEVENTHAL: No, Dr. Moore, thank you for pointing that out. I did not mean to suggest that there is a lower standard for Justice Plass or judges in his same position, only that having transgressed when this Commission needs to decide what to do about that transgression, I think his knowledge, his experience, his intentions, his lack of an intentional violation, all are fair and relevant factors for the Commission to consider in determining what sanction is appropriate in this case. Not that the litigants in Hyde Park are entitled to anything less from Justice Plass than

1 from any other judge. So—
2

DR. MOORE: Thank you.

3 MR. BELLUCK: Before you rest, can we
4 just clarify what sanction it is that you're
5 recommending?

6 MR. LEVENTHAL: I think examining the
7 prior cases, those with facts most consistent with
8 the facts presented here, resulted in
9 admonishment. If this panel disagrees with that
10 statement, certainly there should be no sanction
11 greater than a censure, but I believe that if a
12 review of the prior precedents, what this
13 Commission and the courts have done in prior
14 cases supports on these facts the sanction of an
15 admonishment.

16 MR. BELLUCK: Thank you very much.

17 MR. LEVENTHAL: Thank you for your
18 patience.

19 MR. BELLUCK: Mr. Stromes, you wish to
20 address us?

21 MR. STROMES: I do, please.

22 MR. BELLUCK: Okay, and if you need a
23 little additional time, that's fine. Please go ahead.

24 MR. STROMES: Thank you, Mr. Belluck.
25 Just a couple of points—

1 MS. GRAYS: I have a question. Mr.
2 Stromes, I'm sorry, I have a question before you
3 begin.

4 MR. STROMES: Please.

5 MS. GRAYS: So, as it relates-- so, after--
6 are there any facts in the record that indicate
7 there's been any additional publicity or any
8 impact on the public knowing that Judge Plass
9 won and would be on the bench? I'm sorry, is
10 my question clear as far as what I'm asking
11 about?

12 MR. STROMES: There are no facts in the
13 record regarding additional publicity other than
14 that newspaper article that had come out
15 headlining that he had violated the campaign
16 rules, and there would be nothing else, right,
17 about the public because he's been disqualified
18 from handling the cases that he demonstrated
19 that sweeping bias on. There would be nothing to
20 sort of suggest that the public was uneasy with
21 appearing before him on criminal matters
22 because he can't preside over those and it has not
23 been disclosed to the public that he violated the
24 advisory opinion when he adjudicated the 180
25 VTL matters.

1 MS. GRAYS: Is the public aware of the
2 advisory opinion?

3 MR. STROMES: The-- I don't know. I don't
4 know if this advisory opinion is public and on--
5 and on their website. It was-- it was requested by
6 Judge Plass and it was sent to him. Whether or
7 not they publicized it, I can-- I can follow up via
8 letter to let you know if that's true.

9 MS. GRAYS: No need, but thank you.

10 MR. STROMES: As to those 180-- 180
11 traffic pleas just-- Judge Camacho, just to make
12 sure the record is crystal clear on this point.
13 Respondent in fact assessed the fine on each one
14 based on a range set forth by the Magills book.
15 He imposed a surcharge and he entered the
16 judgments. That was the hearing testimony and
17 that is uncontested. As to counsel's statement
18 about the unknown unknown, Respondent made
19 clear in his IA, and this-- the IA testimony is part
20 of the record, that he suspected there were rules,
21 he just didn't go and look for him. And at the
22 hearing he made clear that he was busy with the
23 campaign. He was also working several jobs. He
24 had a lot going on. And if it wasn't required for
25 him to do something such as read a campaign

1 handbook or look-- or google the rules, he wasn't
2 going to do it. And while he said that he based
3 his ad on a collage of other materials, he
4 acknowledged that there were no other judges
5 making pledges or promises like this. He was
6 using attorney general ads, other law
7 enforcement ads, but he knew that other judges
8 weren't saying things like this. This was
9 extremely knowable, as the referee found, and it
10 was the insensitivity to the ethical obligation that
11 made it unknown. As to the other mitigating
12 factors counsel mentioned, as Judge Moulton
13 pointed out, Respondent cannot get credit for
14 seeking an advisory opinion when he then went
15 and violated it, and the fact that he was the first
16 time judge and was unaware of the rules we've
17 spoken to this already. He could have been aware
18 of the rules had he chosen to be. Respondent and
19 counsel talked about growth, and certainly with
20 that comes the notion of remorse. It's easy to
21 come to the hearing and even here today and to
22 say, I'm sorry for this misconduct. You're
23 supposed to do that. But the fact that there are
24 these portions of the record that betray that
25 growth, that even at the hearing, he's still

1 showing that he holds the same biases, that even
2 in the reply brief, he calls the rules governing
3 judicial conduct a trap for the unwary. This
4 continues to show that he doesn't get it. And
5 even the referee found in the report that he
6 doesn't get it because what he's sorry for is using
7 the word pledges. But he doesn't quite
8 understand, this is in the referee's report, that the
9 thing you're supposed to be sorry for is making
10 the promises to not impartially adjudicate cases,
11 but to adjudicate based on the bias, based on the
12 class of individuals. The last thing I'd like to say
13 is that counsel said that over time, should
14 Respondent be given the chance to go forward
15 and continue to be a judge, these transgressions
16 will recede in memory. That's troubling, and it's
17 the Commission's responsibility to make sure
18 that these things do not get lost in memory.
19 There is nothing more undermining to public
20 trust and confidence in the judiciary to a judge
21 who expresses unequivocally that he will not
22 decide cases fair and impartially.

23 JUDGE MILLER: Wasn't-- counsel, wasn't
24 his point that they recede in memory, like most
25 campaign promises to the public? Isn't that-- that

1 was the whole thrust of his point.

2 MR. STROMES: And exactly that is
3 problematic.

4 JUDGE MILLER: Is it really?

5 MR. STROMES: It sure is because there—

6 JUDGE MILLER: Okay.

7 MR. STROMES: —Because there are two
8 issues here. One is the appearance of bias, which
9 if they recede in memory, the appearance could
10 fade. But the fact that the actual bias continues to
11 be demonstrated, the fact that the public doesn't
12 remember that he's biased does not make the
13 ongoing bias in any way okay.

14 JUDGE MILLER: Okay.

15 MR. STROMES: For all—

16 MR. RASKIN: Counselor, you feel that his
17 contrition is superficial and insincere and that the
18 referee's conclusion that he would be an
19 equitable and fair judge is an inaccurate
20 conclusion that you wish us to disaffirm?

21 MR. STROMES: I think he has
22 demonstrated that he cannot be an equitable and
23 fair judge in criminal matters. It was more
24 sweeping than that, and matters involving the
25 police even. So, I do ask you to disaffirm that

1 particular aspect. As far as the contrition, I'll read
2 you another quote from the hearing. At one point
3 in the hearing, he said I don't know what to think
4 of the mailer anymore. It's been-- it's really
5 killing me. That's the honest assessment of the
6 mailer. I'm sorry for all the problems that this has
7 caused. And I believe he's sincerely sorry for--
8 for some of the problems it has caused to the
9 court, and he's sorry that he violated the rules.
10 But that's not enough when you have this lack of
11 understanding and ability to correct the action,
12 and the people of the state of New York, the
13 people of the town of Hyde Park, deserve a judge
14 who can be unquestionably fair and impartial in
15 all their cases, and who can do the job that they
16 were elected to do, as Respondent cannot. Thank
17 you.

23 (Whereupon the oral argument was
24 concluded at 11:51 AM.)

CERTIFICATION

I, SIERRA G. WHITNEY, a Program Assistant of the State Commission on Judicial Conduct, do hereby certify that the foregoing is a true and accurate transcript of the audio recording described herein to the best of my knowledge and belief.

Dated: November 17th, 2025

Sierra G. Whitney
Sierra G. Whitney

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