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.

POST-HEARING MEMORANDUM TO THE REFEREE AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES AND COMMISSION DETERMINATIONS **PAGE**

STATUTES

OPINIONS OF THE ADVISORY COMMITTEE ON JUDCIIAL ETHICS

PRELIMINARY STATEMENT

This memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in support of the recommendation that Referee Steven E. North adopt Commission Counsel's proposed findings of fact and conclusions of law and determine that the Honorable Michael H. Plass ("Respondent") has committed judicial misconduct.

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 stated:

"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 and 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 decided 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 adjudicate all of 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 emergency after-hours arraignments twenty-four hours a day and seven days a week, as Respondent's misconduct has left him unable to discharge his fair share of that duty as well. At the same time, Respondent continues to earn the entirety of his judicial salary while Judge

McArthur is not compensated for her additional workload. Respondent is able to take vacations at will while Justice McArthur is unable to travel more than an hour or two from the courthouse. 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.

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, on 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

[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 did violate the terms of the Advisory Opinion when he "processed" 180 VTL matters (H2 Plass: 134-38).

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 Formal Written 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.

THE HEARING EVIDENCE

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).[2]

[2] Citations to H1 and H2 refer to the hearing transcripts for the March 24, 2025, and March 25, 2025, proceedings respectively.

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

Most notably, despite the prohibition on judicial candidates 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 hotels in the jurisdiction, "[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).

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 paper published an article proclaiming that Respondent's advertisement had violated campaign ethics rules (H2 Plass: 6-7, 145-46). Respondent called the Commission's office to verify that there were no complaints against him, and he thereafter reprinted and redistributed

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

his mailer with the "pledges" language omitted (H2 Plass: 6-7, 145-46). 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). 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). Ms. Smith advised Respondent to email a copy of the mailer to ACJE, which he did on December 14, 2023 (H2 Plass: 10-11, 120, 122).

By letter dated January 8, 2024, the ACJE sent Respondent AO 23-158 in response to his submission (Comm Ex 2), stating 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.*). The Opinion added that the disqualification "is not subject to remittal" (*id.*).

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). *Inter alia,* he cited the "severe opposition" his candidacy 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.[4]

[4] While Respondent's reconsideration request was stipulated into evidence (Ex. 3), the outcome was inadvertently omitted. It is requested that the Referee take judicial notice of the uncontested fact that the ACJE orally advised Respondent that his reconsideration request was denied.

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 of 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 remaining 171 civil matters filed between February and December (Comm Ex 14; H1 McArthur: 25; H2 Plass: 47).

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, 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).

In addition to those assigned cases based on court filings, Justice McArthur has been and continues to be "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). 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). 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 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). Although in his Answer (¶ 13) only one month earlier he had sworn to abide by AO 23-158, which explicitly prohibited his handling VTL cases, Respondent "processed" 180 VTL tickets, determined the fine, imposed the related surcharge, signed his name, and then returned the tickets to the court clerks (H2 Plass: 136-37). Respondent plainly acknowledged this violated the terms of AO 23-158 – a breach he reasoned was

necessitated by the very backlog his own misconduct had created (H2 Plass: 135, 138).

E. Respondent's Hearing Testimony

Respondent admitted violating 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: 111-12). He acknowledged that he was "[r]idiculously ignorant" of the rule forbidding pledges or promises by judicial candidates (H2 Plass: 8, 113). 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). 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 prior to being elected," lamenting, "[t]here's only some rule that you can Google if you know to Google it" (H2 Plass: 97).

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 rehab 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, "though 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), Respondent conceded that Justice McArthur "is doing more," but claimed it was only "a small percentage more" (H2 Plass: 12-13; 130). 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).

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 both 2016 and 2024 (H2 Plass: 68-71; Resp Ex C). 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), 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).

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 reported working that much. Not her Co-Judge, not her Clerks, not her Prosecutor, not the Court Officers, not me" (H2 Plass: 130).[5] Of course, Respondent also described a contentious relationship between himself and Justice McArthur stemming from the campaign itself, when he ran against Justice McArthur and his

[5] 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). Ms. Lucia gave similar testimony (H1 Lucia: 183-87).

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).

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). 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). And, even when a 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).

At the same time, Respondent was forced to concede 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). By virtue of his misconduct, Respondent is never on call (H2 Plass: 138). 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).

ARGUMENT

POINT I

RESPONDENT ADMITTED VIOLATING MYRIAD SECTIONS OF THE RULES BY MAKING CAMPAIGN PLEDGES AND PROMISES INCONSISTENT WITH THE IMPARTIAL ADMINISTRATION OF JUSTICE, AND THEREFORE BEING DISQUALIFIED FROM HANDLING OVER NINETY PERCENT OF THE CASES FILED IN HIS COURT IN 2024.

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). The Advisory Committee on Judicial Ethics determined that, given these "pledges," Respondent's "impartiality might reasonably be questioned," and he was required to disqualify himself from all criminal and VTL matters, as well as

all cases involving allegations domestic violence or drug dealing, for the entirety of his judicial term.

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. Accordingly, Respondent's misconduct is undisputed, and a finding reflective of those admissions is warranted.

Section 100.5(A)(4)(a) of the Rules requires all judicial candidates to "maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary," and Sections 100.5(A)(4)(d)(i) and 100.5(A)(4)(d)(ii) expressly prohibit any candidate for judicial office from "mak[ing] pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office" and "mak[ing] commitments that are inconsistent with the impartial performance of the adjudicative duties of the office," as to "cases, controversies or issues that are likely to come before the court."

Respondent conceded, and there is no question, that before becoming a judge, he made explicit "pledge[s]" (Comm Ex 1) to treat certain classes of criminal defendants likely to come before him as a judge differently from others, and to prioritize the rights of certain crime victims in a manner that at least created

the impression that he would not perform his judicial duties with the impartially required by the Rules (H2 Plass: 111-12). *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).

Nor is there any question that Respondent violated Sections 100.1, 100.2 and 100.2(A) of the Rules, which respectively require judges: to "participate in establishing, maintaining and enforcing high standards of conduct, and [to] personally observe those standards so that the integrity and independence of the judiciary will be preserved"; to "avoid impropriety and the appearance of impropriety in all of the judge's activities"; and to "respect and comply with the law and . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (H2 Plass: 111-12).[6]

First, Respondent unquestionably violated these Rules after he took the bench by presiding over and adjudicating 180 VTL mail-in pleas, despite explicitly being disqualified by AO 23-158 from presiding over VTL matters. Indeed, as discussed in greater detail below (*see* Point II, *infra*), by ignoring the

[6] Referee North specifically asked the parties to brief the question of whether the charges related to Sections 100.1, 100.2, and 100.2(A) should be dismissed given that the charged misconduct occurred while Respondent was a non-judge candidate for judicial office (H2: 152-53).

disqualification order, Respondent undermined the integrity of, and public confidence in, the judiciary.

In addition, 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 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); *see generally Matter of Hedges*, 20 NY3d 677 (2013) (finding violation of Sections 100.1 and 100.2 for personal conduct that occurred 13 years before the respondent became a judge). That is unsurprising, given the congruity in language between Sections 100.1 and 100.2(A) on the one hand, and Section 100.5(A)(4) on the other. Because all of those Rules promote the importance of maintaining the "dignity," "integrity," "independence" and "impartiality" of the judiciary, the Commission rightly has not viewed them as mutually exclusive and has repeatedly disciplined judicial candidates for singular acts (like making pledges in a campaign mailer) that violate all three Sections.

Respondent's hearing testimony evinced his lack of appreciation for the importance of maintaining public confidence in judicial integrity and impartiality. Although he conceded having committed judicial misconduct and apologized for the mailer's evident bias in favor of law enforcement (H2 Plass: 8, 111-13), Respondent continued to make statements under oath that raised real doubts about whether he could ever be truly impartial. For instance, 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). In fact, Respondent even went so far as to acknowledge that he could not contemplate a scenario where a party requests an order of protection and the request is not granted, stating, "that's why we go for arraignments" and "they 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 has testified falsely or may not qualify for an order of protection under the particular facts of a case. Respondent's statement, "that's why we go for arraignments," is particularly troubling, as it demonstrates his fundamental misunderstanding of a core part of our criminal process: While a prosecutor may use an arraignment to request an

order of protection for a victim, a judge presides over an arraignment to apprise a defendant of the charges against him and to satisfy constitutional and statutory notice requirements that protect an accused's right to due process of law. Respondent has shown that while he is passionate about the former, he is indifferent to or ignorant of the latter.

Matter of Watson, 100 NY2d at 290, provides a compelling counterexample. As here, the judge in *Watson* committed campaign misconduct by *inter alia* stating in ads that he would "work with" law enforcement, and "singl[ing] out for biased treatment a particular class of defendants – those charged with drug offenses . . . ." *Id.* at 299. However, while the Court of Appeals found it mitigating as to sanction – not as to the finding of misconduct – that Watson "expressed remorse and acknowledged before the Commission that he exercised extremely poor judgment in the conduct of his campaign" (*id.* at 303), here Respondent alternated between acknowledging mere carelessness (H2 Plass: 95, 102-03, 115) and attempting to defend the stances he took in his inappropriate ads. 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) – revealing greater concern over the personal consequences of his misconduct than the misconduct itself.

Respondent's misconduct has had serious practical consequences for his court. He has rendered himself unable to preside over more than 90% of the cases filed in his court, which has placed a disproportionate amount of work – and considerable strain – on his co-judge, Justice McArthur. Of the 2,272 total cases filed in Hyde Park Town Court in 2024, Justice McArthur had to take on all 2,091 criminal and VTL cases plus the 10 civil matters filed in January, which left a mere 171 cases for Respondent (Comm Ex 14; H1 McArthur: 25; H2 Plass: 47). On top of that disparity, Justice McArthur had to remain 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 meant that Respondent is free to take vacations as he wishes, such as the 10-day trip to Greece he took in October 2024, while Justice McArthur has to 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).

Yet, when asked whether he feels remorse over the added burden his misconduct placed on Justice McArthur, Respondent bluntly said he does not (H2 Plass: 132). He further averred, "If you ask me now, after a year and three months of working there and distributing the duties equitably, in my opinion, it's not a

strain on Judge McArthur," and he insisted – in brazen defiance of reality – "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 on Respondent's part for the gravity of his misconduct and impugn the credibility of his hearing testimony more broadly. As a plainly interested witness, Respondent's suggestions that Justice McArthur lied about her hours on her pension certifications and worked less than she claimed based on court officer timesheets already strained credulity. But by making these brash assertions to boot, Respondent has shown that he is willing to ignore the reality of his misconduct and its ramifications.

POINT II

RESPONDENT AGGRAVATED HIS MISCONDUCT BY WILLFULLY VIOLATING THE PORTION OF THE ADVISORY OPINION DISQUALIFYING HIM FROM VEHICLE AND TRAFFIC LAW MATTERS.

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 within the statutory range, imposing a surcharge, and signing the ultimate order. At the time, Respondent knew that he was disqualified from handing any VTL cases based on an ACJE Opinion determining that he could not adjudicate such matters fairly and impartially. In fact, just one month prior, when

he filed his July 2024 Verified Answer to the Formal Written Complaint, Respondent swore that he was in compliance with the Opinion and intended to remain so. This 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 Respondent's misconduct and severely undermines public trust in the judiciary.

By making statements in his campaign mailer indicating a pro-law-enforcement bias and promising disparate treatment for various categories of victims and offenders, Respondent violated the Rules that required him to uphold the integrity and impartiality of the judiciary, and that forbid judicial candidates from making pledges and promises (*see* Sections 100.1, 100.2, 100.2[A], 100.5[A][4][a]). To redress Respondent's erosion of the public's trust in his integrity and impartiality on the bench, ACJE – reasonably and unsurprisingly – disqualified him from presiding over cases related to the pledges and promises he made in his mailer, including all criminal and VTL matters, for the entirety of his judicial term without the possibility of remittal. *See* AO 23-158.

That sweeping disqualification, and the ACJE's attendant finding that Respondent "create[d] a distinct impression that [he] would, if elected, aid law enforcement rather than apply the law neutrally and impartially" (AO 23-158), should have chastened Respondent. 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 (*see* Sections 100.1, 100.2[A]), both because he purposefully disregarded the remedial ethical advice he had requested and been provided following his violation of the Rules in the first place, 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 second breach of the public's trust is especially egregious.

In his testimony, Respondent claimed that he unilaterally took and disposed of these 180 mail-in VTL pleas because Justice McArthur just "refused to do" them, and they "needed to be done" (H2 Plass: 134-36). As an initial matter, Respondent's self-interested and uncorroborated testimony that his co-judge maliciously "[o]utright refus[ed]" to handle these cases (*id.*) 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. 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 thanks to Respondent's conduct, which led to his disqualification from all criminal and VTL matters (*see* Comm Ex 14). In any event, had Respondent wished to dispose of pending VTL matters out

of an altruistic desire to clear a backlog, he could and should have brought the matter to his administrative judge. 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.

CONCLUSION

Counsel to the Commission respectfully requests that the Referee adopt the proposed findings of fact and conclusions of law enumerated in Appendix A to this Memorandum and find that Charge I of the Formal Written Complaint be sustained.

Dated: June 20, 2025
New York, New York

Respectfully submitted,

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APPENDIX A

PROPOSED FINDINGS OF FACT

1. 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 a 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).

2. In the mailer, Respondent pledged to "[k]eep drug dealers off" the streets and hotels in the jurisdiction, "[i]ncarcerate offenders and protect victims of domestic violence," and sentence repeat offenders "to the full extent of the law" (Comm Ex 1).

3. 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).

4. 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).

5. Shortly after the mailer went out, a local paper published an article proclaiming that Respondent's advertisement had violated campaign ethics rules

(H2 Plass: 6-7, 145-46). Respondent called the Commission's office to verify that there were no complaints against him, and he thereafter reprinted and redistributed his mailer with the "pledges" language omitted (H2 Plass: 6-7, 145-46). Respondent assumed that the article was the result of "tactics" by his opponents to get him out of the race (H2 Plass: 6-7).

6. 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). 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). Ms. Smith advised Respondent to email a copy of the mailer to ACJE, which he did on December 14, 2023 (H2 Plass: 10-11, 120, 122).

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

8. AO 23-158 recounted, "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" (Comm Ex 2).

9. 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.*). AO 23-158 added that the disqualification "is not subject to remittal" (*id.*).

10. 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.*).

11. 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.*).

12. On January 15, 2024, Respondent asked the ACJE to reconsider AO 23-158 (H2 Plass: 124, 131; Comm Ex 3).

13. Respondent *inter alia* cited the "severe opposition" his candidacy 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.*).

14. The Advisory Committee denied Respondent's request for reconsideration.

15. Respondent's disqualification from all criminal and VTL matters created immediate strain on the Hyde Park Town Court, as Justice McArthur had to take on all of the cases Respondent was prohibited from handling (H1 McArthur: 25; H2 Plass: 47).

16. 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 remaining 171 civil matters filed between February and December (Comm Ex 14; H1 McArthur: 25; H2 Plass: 47).

17. 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, domestic violence orders of protection, and Sex Offender Registration Act proceedings (H1 McArthur: 26-28).

18. 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).

19. 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).

20. In addition to those assigned cases based on court filings, Justice McArthur has been and continues to be "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). In the past, Justice McArthur split this responsibility evenly with her co-judge, but Respondent's conduct has made that impossible (H1 McArthur: 36).

21. As a result, Justice McArthur 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).

22. 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).

23. 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).

24. Although in his Answer (¶ 13) only one month earlier he had sworn to abide by AO 23-158, which explicitly prohibited his handling VTL cases, Respondent "processed" 180 VTL tickets, determined the fine, imposed the related surcharge, signed his name, and then returned the tickets to the court clerks (H2 Plass: 136-37). Respondent acknowledged that when he "processed" these VTL tickets, he violated the terms of AO 23-158 (H2 Plass: 138). He reasoned that this violation of the AO was necessitated by the very backlog his own misconduct had created (H2 Plass: 135, 138).

25. In his hearing testimony, Respondent admitted 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: 111-12).

26. Respondent acknowledged that he was "[r]idiculously ignorant" of the rule forbidding pledges or promises by judicial candidates (H2 Plass: 8, 113). He 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).

27. Respondent asserted that 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). He also cited the lack of "education for a Judge prior to being elected," averring, "[t]here's only some rule that you can Google if you know to Google it" (H2 Plass: 97; *see* Comm Ex 3).

28. 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 rehab 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).

29. Respondent 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).

30. 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).

31. 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, "though the help of [his] lawyer," a reader might interpret it that way (H2 Plass: 83-84).

32. During his testimony, Respondent attempted to impugn Justice McArthur's testimony that his inability to handle any criminal or VTL cases placed inequitable strain on her.

33. 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), Respondent conceded that Justice McArthur "is doing more," but claimed it was only "a small percentage more" (H2 Plass: 12-13; 130). 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).

34. Respondent made FOIL requests for Justice McArthur's New York State and Local Retirement System ("NYSLRS") pension time certifications for both 2016 and 2024 (H2 Plass: 68-71; Resp Ex C).

35. 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).

36. 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), Respondent testified, "There is no threshold required. That's not a thing" (H2 Plass: 65). Respondent conceded that he is not a NYSLRS member and – unlike Justice McArthur – never spoke to a NYSLRS representative (H2 Plass: 142-43).

37. 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 reported working that much. Not her Co-Judge, not her Clerks, not her Prosecutor, not the Court Officers, not me" (H2 Plass: 130).

38. Respondent also described a contentious relationship between himself and 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).

39. Respondent 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).

40. 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).

41. Even when a 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).

42. By virtue of Respondent's misconduct, Justice McArthur is solely responsible for emergency arraignments, which require her to be on call 24 hours a

day, seven days a week, while Respondent is never on call (H2 Plass: 133, 138). Justice McArthur is unable to take vacations, while Respondent enjoyed a 10-day trip to Greece in October 2024 (H2 Plass: 139-39).

43. 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).

PROPOSED CONCLUSIONS OF LAW

1. 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 Governing Judicial Conduct ("Rules").

2. Respondent 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.

3. Respondent 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.

4. Respondent 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.

5. With respect to cases, controversies or issues that are likely to come before the court, Respondent made commitments that are inconsistent with the impartial performance of the adjudicative duties of office, in violation of Section 100.5(A)(4)(d)(ii) of the Rules.

6. Respondent should be disciplined for cause, pursuant to Article VI, Section 22, subdivision (a), of the Constitution of the State of New York and Section 44, subdivision 1, of the Judiciary Law.