

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

**RESPONDENT'S
POST-HEARING MEMO**

MICHAEL H. PLASS,

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

Respondent, Hon. Michael H. Plass, by his attorneys, Leventhal, Mullaney & Blinkoff, LLP, respectfully submits this Post-Hearing Memo to assist the Hearing Officer in making findings of fact and identifying mitigating circumstances.

I. ADMISSION

Respondent admitted that he violated Section 100.584 of the Rules of Judicial Conduct by mailing the campaign flyer admitted in evidence as Commission Ex. 1.

II. EXHIBITS

A. Court Exhibit A

2024 Case Loads

B. Stipulation re Admission of Exhibits in Evidence

C. Commission Exhibits

1. Plass Campaign Mailer
2. NYS Advisory Committee on Judicial Ethics Opinion 23-158
3. Respondent's January 15, 2024 Request for Reconsideration
4. Civil Calendars, January 2024 through July 2024
5. Civil Calendars, August 2024 through November 2024
6. Criminal Calendars, January 2024 through June 2024
7. Criminal Calendars, July 2024 through November 2024
8. Vehicle and Traffic Calendars, January 2024 through October 2024
9. Court Calendars, November 2024 through December 2024
10. Redacted letter of Respondent to Commission, February 19, 2024

11. Redacted testimony of Respondent, March 26, 2024
12. Redacted Verified Answer of Respondent, July 29, 2024
13. Court Calendars with case counts, January 2024 through November 2024
14. Summary of case counts, January 2024 through December 2024
15. Stipulation re Admission of Exhibits in Evidence

D. Respondent Exhibits

- A. Court Sign-in Sheets, February and March 2024
 - A-1. Court Sign-in Sheets, March and April 2024
 - A-2. Court Sign-in Sheets, June and July 2024
 - A-3. Court Sign-in Sheets, August and September 2024
 - A-4. Court Sign-in Sheets, October and November 2024
 - A-5. Court Sign-in Sheets, December 2024
 - A-6. Court Sign-in Sheets, May 2024
 - A-7. Certification by Court Clerk Pamela Lucia
- B. Justice Petito time records, January 2016 through March 2016
 - B-1. Justice Petito Recertification of time record Jan. 2020 through Dec. 2023
 - B-2. Certification by Town Clerk
- C. Justice McArthur time records, January 2016 through March 2016
 - C-1. Justice McArthur time records, February 2016 through April 2016
 - C-2. Certification by Town Clerk
- D. Court Officer time records, August 2024
 - D-1. Court Officer time records, September 2024 through December 2024
 - D-2. Certification of Town Clerk
- E. Town Board Resolution authorizing reappointment of Special Prosecutor

III. TESTIMONY

A. Hon. Jean McArthur

Hon. Jean McArthur has served as Town Justice of the Town of Hyde Park since January 2016.

The criminal jurisdiction of the court includes felony hearings, misdemeanors, and vehicle and traffic violations. The court's civil jurisdiction includes small claims, summary (landlord-tenant) proceedings, dangerous dog cases and zoning violations. The number of criminal cases exceeds the number of civil cases.

Bench time is supplemented by time spent imposing fines following pleas of guilty by mail, and by reviewing and approving the court's financial reports. Justice McArthur is on call "basically 24/7" for custodial bail hearings, arrest warrants and orders of protection. The frequency of such calls varies by season, with more occurring during the summer months.

Justice McArthur presided over all cases in January 2024. For the past 15 or 16 months, Justice McArthur has presided over all criminal cases, dangerous dog cases and zoning violations, and Justice Plass has presided over all other civil cases. Justice McArthur estimated that criminal cases represent approximately 80 percent of the court's caseload.

Justice McArthur claimed that she was unable to take a vacation last year because "a couple of times" judges from other townships were unavailable to preside in her absence.

The court conducts "calendar days" on Tuesdays and Thursdays. Justice McArthur goes to court a few times a week to take care of pleas by mail and declarations of delinquency. During the tenure of former Justice Petito, Justice McArthur presided at one calendar day per week, rather than two. When civil cases appear on the calendar, Justice McArthur shares the court session with Justice Plass.

Justice McArthur testified that "... And then like I said, Judge Plass does the civil stuff. So that does help. The real big issue for me is the on-call and really, you know, causes some issues for me personally sometimes, but it is what it is." Tr. 3/24/25, p. 41, ln. 7-9.

Criminal conferences generally take ten minutes, but can require more time, such as when a defendant is referred to counseling. Similarly, some small claim cases "resolve themselves", and some are very complicated and require a trial. Summary proceedings (i.e., civil evictions) are mostly resolved by stipulation.

Justice McArthur described the effect of the recusal by Justice Plass in criminal, domestic violence and traffic cases as follows:

Q. ... What effect, if any, has Judge Plass' disqualification [sic] had on the operation of the Court?¹

A. Well, in the beginning it was a little tough until we kind of, you know, combined, like I said, the traffic into one court. And you know, eventually, he took over civil and the – that helped. But initially it was tough with me doing everything, you know. So you know, like I said, there's – as far as for anything being missed or – I believe the court is living up to its obligations. I mean, I put in the extra time to do it, and I know he does what he can within his realm of what he's allowed to do. So it works, but it has its moments, especially on-call is really, really my sticking point of – you know.

Q. And Judge what effect, if any, has this had on you personally?

A. Well, like I said, it's difficult for me to get away or, you know, make any real plans to do anything because, you know, if I'm somewhere or to dinner or want to go away, if I get a call and no one responds to cover, you know, its difficult, especially if you're getting a call for an order of protection. Someone needs to respond to that.

...

Q. Judge, are you happy with how the workload is divided at the courthouse at the moment?

A. The main thing I'm unhappy about is the on-call stuff. But no, if you're asking me if it's divided fairly no, obviously, it's not. But like I said, again, I'll go back to the sticking point of being on call and, you know, not being able to participate in some family things occasionally. I just have to say no.

Tr. 3/24/25, p. 50, ln. 17-p, 51, ln. 25.

“About a year ago”, Justice McArthur was advised by the Administrative Judge that when she wishes to take a vacation, she is responsible for finding coverage by a judge of a neighboring jurisdiction. Justice McArthur has not asked the Administrative Judge for assistance in finding coverage when she wishes to attend a family event.

Justice McArthur quantified the increase in her workload as follows:

Q... How would you quantify the increase in your workload?

A. Well, I'd probably say –

Q. By percentage?

¹ The question erroneously characterized Judge Plass as “disqualified”. Rather, he has recused himself based on the advice of the Advisory Committee on Judicial Ethics.

A. – 30 percent more.

Q. Okay. Do you –

A. 25 to 30 percent more.

Q. Yeah. Excluding the on-call because I don't know –

Q. Sure.

A. – that's just an ongoing thing.

Q. Sure. Do you remember being interviewed by... [Mr. Levine] on November 13th of last year?

A. I don't remember dates in specific, but I'm sure I'd spoken to him a few times.

Q. Do you remember speaking to him on the telephone?

A. Yes.

Q. Do you remember telling him that your workload had doubled since Judge Plass took office?

A. I may have said that, but I think in [t]erms of speaking, I mean, like, in total. I have double the criminal calendar. You know, maybe it wasn't clarified in what I said. I have basically double of the -- no matter how you look at it, the traffic, even though it was combined into one. So basically, the only thing I really didn't have was the civil stuff. But as far as that workload, yea, I did have double the work. An I'm on the bench twice a week instead of -- versus once a week.

Tr. 3/24/25, p. 55, ln. 18-p, 56, ln. 17.

Justice McArthur testified that: "I do criminal for my regular calendar on Tuesday morning.... Then I have some minor things on a Tuesday night once a month, the second Tuesday of the month in the morning, and then the other criminal calendar is the fourth Thursday of the month...." Traffic cases are heard on the third Tuesday of each month.

Justice McArthur filed certified reports of her hours for reporting to the New York State Retirement System. The reports filed by Justice McArthur for the month of February 2020 reported the same hours as were reported for the months of January, February and March 2016. Justice McArthur claimed that she stopped reporting her hours when she reached the threshold for pension eligibility. Justice McArthur claimed that she recorded time for almost every day, but did not record all of her time. She testified that:

Q. So is it your testimony that you stopped keeping track of your hours when you reached 32 hours per week?

A. For the most part.

Q. Okay. So let's go –

A. I mean, some weeks, no. You know, I put down extra. And you know, like I said, I've never held a governmental job, so I did not know how this worked. And the personnel person said., "Well you just have to make sure you meet the threshold."

Q. But you've held a government job since 2016. Is that right?

A. Right.

Q. Okay. I'm sorry. Let me just –

A. So basically, I would have continued to use or make sure that I had about the same amount of hours. So you wouldn't really see any difference in the hours if you're going forward, basically.

Tr. 3/24/25, p. 62, ln. 9-22.

Q. So if you stopped recording when you reached a threshold, did you reach that threshold prior to the end of the month? At some point during the month did you reach that threshold?

A. Oh, yeah.

Q. And so typically, when would you reach the threshold? At what point in the month?

A. It's hard to say. It just really depends on what's going on. I mean, I could reach that threshold in the first week considering the on-call.

...

Q. I'm sorry. So here's your calendar. It happens to be the month of April 2024.

A. Okay.

Q. Is there any day during this month in which you did not record time?

A. Probably almost every day. And the on-call isn't recorded on there.

Q. When you say almost every day, you're saying that you recorded time almost every day. Is that right?

A. I recorded time almost every day, but not necessarily all the time that I did put in the court.

Q. Well, on – let's say, on April 1st, how did you know when you would reach the threshold?

A. Well, I didn't I mean, I – as each day I, you know, would record stuff.

Q. So on January –

A. So I mean I would have no way of knowing a month ahead. But actually, I would know that I already reached the threshold only because I've been doing the on-call 24/7, so –

Q. An you recorded time every day during the month of April?

A. Right.

Q. Right? So you record all of your time, didn't you?

A. Not all of my time, but the time to be sure that I met the threshold other than on-call. But no, there were times that I may have done some arraignments that are not recorded on there. There might have [been] signing of bond[s], search warrants. No, I don't have every little specific thing on there.

Q. Right. So it wasn't that you reached a threshold, it was that some of your time you just didn't record. Is that right?

A. Yeah.

Tr. 3/24/25, p. 64, ln. 2- p. 65, ln. 15.

In February 2024, Justice McArthur reported more than 32 hours per week. Rather, she reported a total of 148.5 hours for the month. In March 2024, Justice McArthur reported 160 hours for the month. In the same month of March 2016, former Justice Petito reported that he worked 33.4 hours. Justice McArthur reported working the same number of hours in the first quarter of 2024 when Justice Plass was in office, as she did in the first quarter of 2016 when Justice Petito was in office.

Justice McArthur reported that in February 2024, she spent two hours reviewing the monthly report to the Comptroller's Office prepared by the court clerk, and she "sometimes" spends that much time doing so.

Most criminal case, and the overwhelming majority of traffic cases are disposed of by plea. Justice McArthur has not presided at a jury trial in the past four years. She has tried only one or two jury trials since taking the bench in 2016. She last presided over a bench trial approximately two years ago, before Justice Plass took the bench. Justice McArthur has not written a published opinion.

The court does not maintain records of after hour arraignments other than the arrest paperwork. The number of after hour arraignments has decreased due to the advent of bail reform.

Until February 2025, Justice McArthur also worked approximately 15 hours per week at McArthur's Liquors, mostly in the mornings and on weekends; and worked at PayLess Oil for 5 to ten hours per week during summer months, and up to 15 hours in other months. When busy at both businesses, the time could amount to 30 hours per month.

Justice McArthur observed Justice Plass presiding over summary proceedings, and found that he did so very well, and very thoroughly. Justice McArthur observed Justice Plass to treat the public very well. Justice McArthur observed Justice Plass to display no bias or prejudice.

Justice McArthur estimated that she currently spends an average of 50 hours per week on her official duties, and that she previously spent approximately 35 to 38 hours.

Justice McArthur confirmed that the Commission exhibit which indicates the number and types of cases pending in the court during 2024 does not indicate how many cases involved personal appearances by the defendant, how long the cases took to process, how many defendants pled guilty at their first appearance, or how many cases involved motion practice. It also does not indicate how many were criminal cases, and how many were traffic cases. She also confirmed that traffic cases take significantly less time than criminal cases.

Justice McArthur stated that the number of on-call appearances varies. Some weeks have none; other weeks have had between two and five on-call appearances, but "it has cut down substantially due to the new [bail reform] laws. So there are, you know, more appearance tickets issued." Bail reform was enacted several years ago; before Justice Plass commenced his judicial service.

Justice McArthur covered an on-call appearance for the court in the City of Poughkeepsie and in Pleasant Valley. Justice McArthur is sometimes able to obtain coverage from judges of neighboring jurisdictions, as she did from the judge of either Red Hook or Rhinebeck. One judge stated that she would provide coverage for Justice McArthur – "... if they call me and... and if I'm around, I'll take it." Justice McArthur attends meetings of the Dutchess County Magistrates Association, but no one had volunteered to provide coverage.

B. Sarah Jensen

Ms. Jensen is employed by the Town of Hyde Park Police Department as a dispatcher. She works Monday through Friday, 11:00 p.m. to 7:00 a.m., and overtime shifts on the weekends. The Police Department is located in the same building as the court. If someone enters the court after hours, they would be visible to Ms. Jensen on security cameras.

Ms. Jensen served as clerk to Justice McArthur from 2019 until November 2024. Among her duties was preparation of court calendars and the court's monthly report to the State Comptroller. It typically took 10 to 15 minutes to prepare the report, and another 10 to 15 minutes for Justice McArthur to review. Ms. Jensen never witnesses Justice McArthur to take as long as two hours for review of a monthly report.

Ms. Jensen testified that, after bail reform, there were “minimal” after hour arraignments. In her eleven months as court clerk, ending in November 2024, there were less than ten after hour arraignments.

When Justice McArthur wishes to have coverage by a judge from another jurisdiction, she asked Ms. Jensen to send a request by email. Approximately two requests for coverage were made in 2024. The first request resulted in coverage by the judge from Rhinebeck or Red Hook. On the other occasions when a request for coverage was made on behalf of Justice McArthur, Ms. Jensen placed a phone call to Judge Triebwasser. The judge was not available to cover for Justice McArthur.

Ms. Jensen testified that traffic pleas take five minutes, and that the vast majority of traffic cases are disposed of by plea. Criminal pleas take between five and ten minutes. The court has not had a trial for “a very long time”, and not while Justice Plass has served. Ninety nine percent of criminal cases are disposed of by plea. When Ms. Jensen left in November 2024, motions were pending in approximately two or three cases. On average, one motion, if any, was filed per month. Ms. Jensen could not remember a single decision written by Justice McArthur in 2024.

Arraignments typically take 15 to thirty minutes, but it can occasionally take up to an hour for assigned counsel to confer with his or her client. Pleas by mail take “a couple of minutes” to process. Justice McArthur’s claim that she took two hours to process 25 pleas by mail seemed “a bit high” to Ms. Jensen.

Other than her attendance at twice weekly court sessions, Justice McArthur would drop in the office two or three times a week to sign paperwork or for the setting of fines of fines in pleas by mail. Her time spent at the courthouse ranged from a few minutes to sign paperwork, to an hour or two at the most.

After bail reform, in-person arraignments declined drastically. Instead, the court would authorize appearance tickets by phone in most cases.

Justice McArthur presided over scheduled Tuesday evening court sessions, and some Thursday evening sessions. After Ms. Jensen transferred to the Police Department, she observed Justice McArthur arrive at the courthouse after hours on only one occasion, in February 2025. The reason for the after-hours visit was a request by the Sheriff’s Department for a search warrant. Before Ms. Jensen’s transfer to the Police Department, during the first eleven months of 2024, Justice McArthur was asked once to sign approximately five search warrants, one at the courthouse after hours, one or two at a location outside the courthouse, and the rest during regular hours at the courthouse.

On the March 19, 2024 scheduled court session, 15 defendants appeared. On April 9, 2024, 25 defendants appeared in court and, in addition, a number of prisoners were produced. The court session took three hours, at most. On April 16, 2024, 16 defendants appeared.

Search warrant requests typically take about ten minutes. Requests for orders of protection were generally made either at arraignment, or in a scheduled court session.

In addition to presiding in civil cases, Justice Plass, as a department head, would handle administrative and human resource matters such as payroll. He came to court multiple times per week to assist the staff with the management of sign-in sheets, and performed tasks for the court that were beyond the scope of his duties. Justice Plass treated the public professionally, with fairness and courtesy. Ms. Jensen did not observe him to demonstrate any bias or prejudice.

In the year 2019, Justice Petito worked close to 20 hours per week.

Ms. Jensen left the court in November 2024 after she was asked to alter her timesheet so that the hours on a “given day” would qualify as “flex” (i.e., if hours worked exceed a weekly limit they are transferred to the following week), rather than reflect her actual hours worked. The request was made by the Human Resources department, and communicated to Ms. Jensen by Justice McArthur. Ms. Jensen found the experience “toxic”, but never brought her feelings to the attention of Justice McArthur. Her relationship with Justice McArthur remained civil, and the Judge was “very supportive” of her new employment opportunity.

C. Pamela Lucia

Ms. Lucia has been employed by the court since April 2022. She is currently employed as clerk for Justice Plass. She has held that position for three years. Before her assignment as clerk for Justice Plass, she served as clerk for Justice Petito. Justice Petito came to court for scheduled sessions only. He would arrive at approximately 4:30, and remain until the court session was concluded from one to three hours later. He worked for three to four hours per week performing his judicial duties.

Justice Plass spends 10 to 12 hours per week in court on days when Ms. Lucia is present.

Ms. Lucia entered in the court’s computer system the information left by Justice McArthur following after hour arraignments. The number of after hour arraignments was low in 2024. This year, Ms. Lucia could recall only one after hour arraignment. Ms. Lucia previously sat with Justice McArthur while she presided. It typically took Justice McArthur five to ten minutes to preside over criminal pleas. Traffic pleas would typically take five minutes. Arraignments took from 10 to 15 minutes. Pleas by mail were typically handled by Justice McArthur in two or three minutes per plea. Justice McArthur has issued two or three written decisions this year. There was one after hours arraignment within the last two weeks.

Justice Plass “has handled his civil matters, his summary proceedings, his small claims. He’s had some very interesting cases that in my ten years of being a Clerk had never come across.” Justice Plass spends a lot of time researching and speaking with people at the [Town and Village] Resource Center [of the Unified Court System] to make sure that he does everything correctly. He has never made a rash decision. Justice Plass also handles zoning and ordinance

matters. Justice Plass works very hard. He “goes above and beyond”. He comes in on Tuesdays, Thursdays and anytime we need him. He does the bank runs for the court. Justice Plass reviews and approves the time sheets of all three clerks. He approves purchase orders for the court, and acts as a liaison between the court staff and Town Hall.

On the bench, Justice Plass is fair, and extremely courteous to the public. He treats the court personnel very well. He has never displayed any prejudice or bias.

D. Hon. Michael H. Plass

Justice Plass is a 1985 high school graduate. While still in school, he worked as an electrical technician apprentice, and as a factory worker. He also worked in his family-owned limousine company.

In 2004, Justice Plass entered the police academy and completed a one-year program. He earned 13 college credits in law, and was trained in defensive tactics, use of firearms, operation of a patrol car, and other skills. The police academy program did not include training in judicial ethics.

In 2023, Justice Plass decided to seek election as a town justice. Having no experience in electoral politics, Justice Plass modeled his campaign after others that he observed. He created a palm card with biographical information. The palm card did not contain any pledges or promises. Justice Plass campaigned door to door.

Justice Plass created a campaign flyer using a web-based computer program. He modeled the flyer on those that he received from candidates for other elective office, such as county executive and legislator. Justice Plass was unaware of the Rules of Judicial Conduct, generally, and unaware of the rule prohibiting pledges or promises, specifically. The flyer was mailed to 3,000 addresses, representing one seventh of the town population.

Justice Plass faced two electoral opponents in a race for two seats on the town bench. His opponents were the two incumbents, Justice McArthur, and former Justice Petito. The two candidates receiving the highest number of votes were Justice Plass and Justice McArthur.

Justice Plass learned of the rule prohibiting pledges and promises when a local newspaper reported that he had committed a judicial campaign ethics violation. Justice Plass immediately called the staff of the Commission on Judicial Conduct, and spoke to the Deputy Administrator of the Commission’s New York office, Mark Levine. He described the contents of the newspaper article and, in a second phone call with Mr. Levine, was advised that he was not the subject of any charges of misconduct.

Justice Plass never repeated the pledges or promises made in the single campaign flyer, and never made any other pledges or promises. Immediately after speaking with Mr. Levine, Justice Plass mailed another flyer to the same recipients, this time omitting the pledges and promises.

After his election to office, Justice Plass attended the required “Taking the Bench” Certification Course for Newly Elected or Appointed Town and Village Judges, presented by the New York State Judicial Institute. A program speaker, Chief Counsel, NYS Advisory Committee on Judicial Ethics Laura Smith, mentioned the rule prohibiting pledges and promises. Justice Plass approached Ms. Smith during a break in the program, informed her that he thought he had made pledges and promises during his campaign, and asked what he should do. Ms. Smith recommended that Justice Plass send a photo of the campaign flyer to her, for consideration by the Advisory Committee on Judicial Ethics.

Also after his election, Justice Plass received a call from Arielle Bryant, Special Counsel for Town and Village Matters, 9th Judicial District. Ms. Bryant advised Justice Plass to send a letter confirming that he has resigned as a police officer one year prior to seeking election as town justice. He was advised to recuse himself in matters in which he had direct knowledge of the circumstances of an arrest. He also sent a copy of the campaign flyer to Ms. Bryant, and asked her what he should do.

The position of Town Justice for the Town of Hyde Park is a part time position. Justice Plass and Justice McArthur are department heads, and are responsible for administrative duties in addition to their judicial duties. Administrative duties include financial reporting, approving the payroll, preparing the budget, purchasing furniture, approving staff vacation schedules, and interfacing with the Human Resource Department when personnel issues arise. Justice Plass handles all of the administrative duties for the court. He frequently makes the bank deposits and covers for court clerks when they are on vacation.

The judicial duties handled by Justice Plass include zoning and ordinance cases, and summary eviction proceedings, some of which go to trial. He also handles small claims cases, which are tried and decided by written decision. The trial of a small claims case can take two hours.

When a clerk is out sick, Justice Plass will sometimes sit behind the bench to help with copying, or in the lobby to assist defendants with the sign-in sheets and direct them and other members of the public to the courtroom.

In January 2024, Justice Plass was awaiting a response from the Advisory Committee on Judicial Ethics, and did not preside. Justice McArthur presided over 77 cases in January 2024.

In February 2024, Justice McArthur presided over 77 cases. In that same month, Court Officer Cook worked 14.25 hours, Court Officer Robinson worked 14 hours, and Court Officer Ashward worked 26 hours. Court officers are only present when a judge is on the bench. Two officers are typically stationed at the metal detector, and one is stationed at the bench.

Justice McArthur has one Tuesday morning session, and all other court sessions are held on Tuesday and Thursdays at 5:00 p.m. In April 2024, Justice McArthur’s calendar was

consolidated to three days per month. Justice Plass takes the other five days, and is usually present on Tuesdays and Thursdays.

Bail reform was enacted before Justice Plass took the bench. With the advent of bail reform, desk appearance tickets are authorized by phone, unless a defendant is arrested for a “bailable” offense or if there is a need for an order of protection.

In reports submitted by Justice McArthur for state pension credits, she certified that she worked 148.5 hours for the first quarter of each year of her term. Based on the time records submitted by the court officers, the combined bench time of Justices McArthur and Plass for the month of February 2024 was 14 hours. The other hours reported by Justice McArthur were for duties other than presiding at court sessions. Justice Plass presided over ten cases in February 2024.

It was stipulated that, were Justice Plass to testify with regard to the other months listed on Court Exhibit A, his testimony would follow the same pattern as his testimony regarding the month of February 2024. (Tr. 3/25/25, p. 62, ln. 1-5).

In reports submitted by Justice Petito for state pension credits, he certified that she worked 46.9 hours for the month of January 2016; 36 hours for the month of February 2016; 33.4 hours for the month of March 2016; and 4.6 hours for the first week of April 2016. In total, Justice Petito certified that he worked 120.9 hours in the first three months and one week of 2016. Justice Petito certified that the hours worked in the years 2020 through 2023, were the same as those reported for first quarter of 2016.

The only pension “threshold” is the number of hours required for vesting. It is not a limit on credit hours earned. The hours reported to the pension system are reported for the purpose of determining pension credits and, ultimately, for determining the amount of your pension. The more hours that are reported, the more pension credits are earned, and the higher the pension received. The hours reported for the first three months of each year are averaged, and then applied to the entire respective term of office for purposes of calculating pension credits.

Justice Plass receives a New York State pension based on his service as a police officer. He did not choose to participate in the pension system in connection with his judicial service.

In reports submitted by Justice McArthur for state pension credits, she certified that she worked 173 hours for the month of January 2016; 176 hours for the month of February 2016; and 180 hours for the month of March 2016. In total, Justice McArthur certified that she worked 529 hours in the first three months of 2016. Justice McArthur certified that the hours worked in the years 2020 through 2023, were the same as those reported for first quarter of 2016.

In reports submitted by Justice McArthur for state pension credits, she certified that she worked 148.5 hours for the month of February 2024 (fewer hours than she reported for the years before Justice Plass was elected); 160 hours for the month of March 2024 (fewer hours than she

reported the years before Justice Plass was elected); and 154 hours for the month of April 2024 (fewer hours than she reported for the years before Justice Plass was elected). In total, Justice McArthur certified that she worked 529 hours in the first three months of 2016.

Town and village judges, alone among all judges, are not required to take a course in judicial campaign ethics upon declaring their candidacy for judicial office.

Justice Plass acknowledge that he alone was to blame for his unwitting violation, and testified that he has learned through this experience. He had no knowledge of the Rules of Professional Conduct at the time of his campaign. He has since learned that the Rules of Judicial Conduct are for the important purpose of fostering both the reality and the appearance of integrity, fairness and impartiality in the administration of justice. He has learned that the statements made in his campaign flyer could be interpreted as a pledge to increase public safety by incarcerating people.

Justice Plass did not intend to convey that drug dealers would necessarily be incarcerated, but he acknowledged that the flyer could be interpreted that way, and as singling persons convicted of drug offenses for biased treatment. He now understands that, contrary to his intention, the pledge to protect victims of domestic violence create an impression of bias, and that the promise “assure that repeat offenders are sentenced to the full extent of the law” could be interpreted as a pledge to sentence them to the maximum sentence. He has also learned that the onus falls upon the judge himself or herself to be familiar with the Rules of Judicial Conduct. He wants to be the best judge possible. Justice Plass testified that the statements made in the campaign flyer do not reflect his position today.

Justice Plass acknowledged that his campaign flyer was not consistent with Section 100.2, subsection A²; Section 100.5, subsection A(4)(a); Section 100.5, subsection A(4)(d)(i); and Section 100.5, subsection A(4)(d)(ii). He deeply regrets the impression created by his campaign flyer.

Justice Plass has never been accused of misconduct on the bench or in the discharge of his judicial duties. He has completed 12 hours of continuing judicial education and all training requirements in each year of his term, including programs on judicial ethics.

If not for the advice that he received from the Advisory Committee on Judicial Ethics, Justice Plass would not have recused himself in criminal, domestic violence and traffic matters.

Starting in April 2025 and continuing through August, Justice McArthur stopped processing traffic pleas by mail. The court was receiving complaints from people who needed to clear their traffic tickets to obtain employment or to enter the military. To alleviate the problem, Justice Plass spent three hours and processed 180 pleas by mail. He did not adjudicate anybody’s

² The Complaint does not allege a violation of Section 100.2, subsection A.

guilt. None of the defendants appeared before Justice Plass. He sentenced them within the range allowed by law.

Justice Plass testified that if a judge is unavailable for an arraignment, the police officer will call the judge of another jurisdiction to obtain coverage.

IV. RECOMMENDED FINDINGS OF FACT

Justice Plass is a high school graduate and former police officer. He is not a lawyer. In 2023, he was elected to the office of Hyde Park Town Justice.

Unlike other judicial candidates, those running for town and village justice are not required to take a course in judicial campaign ethics upon the announcement of their candidacy. Justice Plass was unaware of the Rules of Professional Conduct generally, and the prohibition against pledges or promises specifically.

In the course of the campaign, Justice Plass prepared a campaign flyer that included the following statement:

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 campaign flyer also included endorsements, one of which encouraged voters to send Justice Plass to the bench to defend Hyde Park, and another of which stated that Justice Plass would bring a commitment to the bench to ensure victims rights are always a priority.

The campaign flyer was mailed to 3,000 addresses in the town, representing one seventh of the population. The pledges made in the campaign flyer were not repeated, nor were any other pledges or promises made by Justice Plass.

Justice Plass learned of the rule prohibiting pledges and promises when a local newspaper reported that he had committed a judicial campaign ethics violation. Justice Plass immediately called the staff of the Commission on Judicial Conduct, and spoke to the Deputy Administrator of the Commission's New York office, Mark Levine. He described the contents of the newspaper article and, in a second phone call with Mr. Levine, was advised that he was not the subject of any charges of misconduct.

After his election to office, Justice Plass attended the required "Taking the Bench" Certification Course for Newly Elected or Appointed Town and Village Judges, presented by the New York State Judicial Institute. A program speaker, Chief Counsel, NYS Advisory Committee on Judicial Ethics Laura Smith, mentioned the rule prohibiting pledges and promises. Justice Plass approached Ms. Smith during a break in the program, informed her that he thought he had made pledges and promises during his campaign, and asked what he should do. Ms. Smith

recommended that Justice Plass send a photo of the campaign flyer to her, for consideration by the Advisory Committee on Judicial Ethics.

Also after his election, Justice Plass received a call from Arielle Bryant, Special Counsel for Town and Village Matters, 9th Judicial District. Ms. Bryant advised Justice Plass to send a letter confirming that he has resigned as a police officer one year prior to seeking election as town justice. He was advised to recuse himself in matters in which he had direct knowledge of the circumstances of an arrest. He also sent a copy of the campaign flyer to Ms. Bryant, and asked her what he should do.

In Opinion 23-158, the NYS Advisory Committee on Judicial Ethics advised Justice Plass that he was disqualified during his judicial term from criminal cases, cases involving allegations of domestic violence, vehicle and traffic matters, and cases involving purported drug dealers. The Committee further opined that the disqualification was not subject to remittal.

During the first month of his judicial term, January 2024, Justice Plass was awaiting a response from the Advisory Committee on Judicial Ethics, and did not preside. Thereafter, Justice McArthur has presided over all criminal, traffic, dangerous dog and zoning cases; and Justice Plass has presided over all summary eviction proceedings, and civil small claim cases; and has handled the administrative duties of the court, including budgeting, purchasing, banking, financial reporting and personnel matters.

The number of criminal cases exceeds the number of civil cases. Justice McArthur testified that her work load has increased by 25 to 30 percent. In reports submitted to the New York State Pension System, Justice McArthur reported that she worked fewer hours during the tenure of Justice Plass than she reported in the years that she worked with Justice Petito.

On direct examination, Justice McArthur testified that she stopped reporting her hours when she reached the “threshold” for pension eligibility. However, on cross examination, Justice McArthur claimed otherwise, admitting that she didn’t stop recording her hours when she reached a threshold, but rather that she just didn’t record some of her time.

Most criminal case, and the overwhelming majority of traffic cases, are disposed of by plea. Justice McArthur has not presided at a jury trial in the past four years. She has tried only one or two jury trials since taking the bench in 2016. She last presided over a bench trial approximately two years ago, before Justice Plass took the bench. Justice McArthur has not written a published opinion.

Justice McArthur’s primary concern is that she is responsible for “on-call” appearances for search warrant requests, orders of protection, and arraignments of defendants in custody. she testified that “[t]he real big issue for me is the on-call and really, you know, causes some issues for me personally sometimes, but it is what it is.”

Bail reform was enacted before Justice Plass took the bench. With the advent of bail reform, desk appearance tickets are authorized by phone, unless a defendant is arrested for a “bailable” offense or if there is a need for an order of protection. As a result, the number and frequency of after hour arraignments declined drastically. In the eleven months ended in November 2024, there were less than ten after hour arraignments.

When unavailable due to a planned vacation or family event, Justice McArthur must request coverage from the judge of a neighboring jurisdiction. From time to time, Justice McArthur has covered for judges of other jurisdictions, and judges of other jurisdictions have covered for Justice McArthur. Approximately two requests for coverage were made on behalf of Justice McArthur in 2024. The first request resulted in coverage by the judge of another jurisdiction. On the other occasion when a request for coverage was made on behalf of Justice McArthur, the judge contacted by the clerk was not available.

Starting in April 2025 and continuing through August, Justice McArthur stopped processing traffic pleas by mail. The court was receiving complaints from people who needed to clear their traffic tickets to obtain employment or to enter the military. To alleviate the problem, Justice Plass spent three hours and processed 180 pleas by mail. He did not adjudicate anybody’s guilt. None of the defendants appeared before Justice Plass. He sentenced them within the range allowed by law.

On the bench, Justice Plass is fair, and extremely courteous to the public. He treats the court personnel very well. He has never displayed any prejudice or bias. Justice Plass has never been accused of misconduct on the bench or in the discharge of his judicial duties. He has completed 12 hours of continuing judicial education and all training requirements in each year of his term, including programs on judicial ethics.

Justice Plass acknowledged that his campaign flyer was not consistent with Section 100.2, subsection A³; Section 100.5, subsection A(4)(a); Section 100.5, subsection A(4)(d)(i); and Section 100.5, subsection A(4)(d)(ii). He deeply regrets the impression created by his campaign flyer.

Justice Plass acknowledge that he alone was to blame for his unwitting violation, and testified that he has learned through this experience. He had no knowledge of the Rules of Judicial Conduct at the time of his campaign. He has since learned that the Rules of Judicial Conduct are for the important purpose of fostering both the reality and the appearance of integrity, fairness and impartiality in the administration of justice. He has learned that the statements made in his campaign flyer could be interpreted as a pledge to increase public safety by incarcerating people.

³ The Complaint does not allege a violation of Section 100.2, subsection A.

V. RECOMMENDED CONCLUSIONS OF LAW

The campaign flyer distributed by Justice Plass violated Section 100.2, subsection A⁴; Section 100.5, subsection A(4)(a); Section 100.5, subsection A(4)(d)(i); and Section 100.5, subsection A(4)(d)(ii) of the Rules of Judicial Conduct.

VI. MITIGATING FACTORS

- A. Justice Plass committed a single campaign ethics violation.
- B. The violation occurred prior to the commencement of his judicial service.
- C. Justice Plass was a first-time candidate for judicial office when the violation occurred.
- D. Justice Plass is not a lawyer
- E. Prior to his judicial term, Justice Plass had no training in judicial campaign ethics.

F. Justice Plass self-reported his campaign ethics violation to the Deputy Administrator of the Commission's New York office, Chief Counsel, NYS Advisory Committee on Judicial Ethics, and Special Counsel for Town and Village Matters, 9th Judicial District; and sought advice from the Advisory Committee on Judicial Conduct.

- G. Justice Plass expressed remorse, and regrets his campaign ethics violation.

H. In reports submitted to the New York State Pension System, Justice McArthur reported that she worked fewer hours during the tenure of Justice Plass than she reported in the years that she worked with Justice Petito.

I. No complaint was made by or on behalf of Justice McArthur, and none was made regarding the allocation of work between Justice McArthur and Justice Plass, nor between Justice McArthur and Justice Petito.

- J. Justice McArthur is primarily concerned that she is responsible for on-call coverage.
- K. Bail reform has drastically reduced the number of after hour arraignments.
- L. On -call coverage is available from judges of other jurisdictions upon request.
- M. The court has no backlog of cases.
- N. Justice Plass handles all of the administrative duties of the court.
- O. No complaints have been made of misconduct by Justice Plass while in office.
- P. Justice Plass is not accused of moral turpitude or of knowing disregard of the law.

⁴ The Complaint does not allege a violation of Section 100.2, subsection A.