

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

X

Referee's Report

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

MICHAEL PLASS

a Justice of the Hyde Park Town Court,
Dutchess County

X

Before: Steven E. North, Esq., Referee

Appearances: NYS Commission on Judicial Conduct

By: Eric M. Arnone, Esq., Senior Attorney

Alan Friedberg, Esq., Special Counsel

Respondent, Michael Plass

By: Steven G. Leventhal, Esq

Leventhal, Mullaney, and Blinkoff, LLP

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PRELIMINARY STATEMENT

The New York State Commission on Judicial Conduct (“Commission”) issued a Formal Written Complaint (“Complaint”) dated July 15, 2024 which was served upon Hon. Michael H. Plass, a Justice of the Hyde Park Town Court, Dutchess County, NY. The essence of the Complaint was the inclusion of allegedly improper language in a campaign mailer (“Mailer”, annexed hereto as Appendix I) that was produced and distributed by Respondent to 3000 addressees in the Hyde Park community in connection with his 2023 campaign for election for one of the two Town Justices for the Town of Hyde Park. The Complaint contains one Charge alleging:

5. During his 2023 campaign for judicial office, Respondent designed, approved and/or distributed campaign literature that *inter alia* “pledge [d] to (A) “Keep drug dealers off of our streets and out of our hotels,” (B) “Incarcerate offenders and protect victims of domestic violence,” and (C) “Asure repeat offenders are sentenced to the full extent of the law.” In so doing, Respondent conveyed at least the appearance that he would be biased in favor of law enforcement rather than decide each matter on its own merits.

The Complaint alleges (Para. 13.) that the aforesaid conduct violated *Rules Governing Judicial Conduct* (22 NYCRR) (“Rules”) §100.1, §100.2 (A), §100.5 (A) (4) (a), §100.5 (A) (4) (d) (i) and §100.5 (A) (4) (d) (ii).

Respondent submitted an Answer dated July 29, 2024 in which he admitted the Charge and pled Mitigation as an Affirmative Defense.

In or about December 2023, Respondent submitted an inquiry to the New York State Advisory Committee on Judicial Ethics (“ACJE”) pursuant to Judiciary Law §212 (2) (l) seeking an opinion regarding the propriety of the Mailer. In an opinion dated December 14, 2023 (Appendix II) and mailed to Respondent on January 8, 2024 the ACJE stated:

We conclude the inquiring judge is disqualified during his/her entire judicial term from: (1) all criminal cases; (2) cases in any

court involving allegations of domestic violence; (3) all Vehicle and Traffic Law matters; and (4) cases in any court involving purported drug dealers. Disqualification on this ground is not subject to remittal.

The ACJE also found, among other things, that the language in the Mailer “created a distinct impression that Respondent would, if elected, aid law enforcement rather than apply the law neutrally and impartially” and that Respondent’s impartiality “might reasonably be questioned” in certain specific cases.

Respondent has not raised any issue regarding the substance of the ACJE’s opinion. With one exception, discussed later, Respondent has refrained from engaging in the matters proscribed by the ACJE.

HISTORY OF THE PROCEEDINGS

By order dated January 10, 2025 Steven E North, Esq. was designated Referee to hear and report to the Commission with respect to this matter.

Following several housekeeping conferences and communications and the completion of discovery, the matter proceeded to a hearing.

A hearing was held on March 24 and March 25, 2025 at the offices of the Commission. After opening statements by both counsel, and the stipulated admission into evidence of various documents, the Commission called one witness to testify, Hyde Park Town Justice Jean McArthur. The Commission then rested. Respondent called three witnesses: Sara Jensen, currently dispatcher for the Hyde Park Police Department and former clerk to Justice McArthur; Pamela Lucia, currently clerk to Justice Plass and formerly clerk to former Town Justice, Joseph Petito; and Justice Michael Plass, Respondent. Pleadings were amended (over Respondent’s objection) to conform the pleadings to the proof namely: paragraph 12. of the Complaint and consequently paragraph 6. of the Answer were amended to cover the period from January 1, 2024 through December 31, 2024 (rather than through June 2024) and that Respondent presided over approximately 171 cases (rather than 59 cases) and co-Justice

Jean McArthur, presided over 2091 cases (rather than 1097 cases) during that enlarged time frame. Respondent then rested. The parties delivered closing arguments. Post hearing briefs and reply briefs have been submitted by both counsel.

THE ISSUE BEFORE THE COMMISSION

Respondent has admitted to the single Charge and related Rules violations set forth in the Complaint. In his Answer, Respondent has raised an affirmative defense of Mitigation. Hence, the issue presented, and the focus of the hearing, is to assess the existence of mitigating factors, if any.

THE GOVERNING RULE

The applicable Rule to be applied in assessing mitigation is found in the Preamble of the Rules which provides:

Part 100. Judicial Conduct

Preamble (Abstracted)

Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

SUMMARY OF THE COMMISSION'S POSITION

The Commission maintains that Respondent's conduct warrants discipline for cause in that his admitted violation of the Rules by having produced and distributed 3000 of the subject campaign Mailers violated judicial ethical standards by containing language that included proscribed "pledges", evidenced a bias in favor of law enforcement rather than deciding each matter on its merits, reflected a bias against certain criminal defendants and in favor of particular victims, failed to uphold the integrity and independence of the

judiciary, failed to avoid the appearance of impropriety, made commitments inconsistent with the impartial performance of the adjudicative duties of the office and failed to refrain from inappropriate political activity.

The Commission maintains that the acts committed by Respondent were an egregious transgression of judicial ethics which has had a significant adverse impact upon the court, the judicial system and the public perception of the judiciary.

The Commission maintains that because of the restrictions placed upon Respondent by the ACJE there is an enormous caseload imbalance between Respondent and his co-Justice, Hon. Jean McArthur. In 2024, the first calendar year following Respondent's election, Justice McArthur presided over 2091 cases versus 171 cases handled by Respondent. This disparity, according to the Commission, has caused and causes an unfair and significant burden upon Justice McArthur.

The Commission further maintains that due to Respondent's transgressions, Justice McArthur is the only Hyde Park Town Justice who is eligible to handle the court's on-call responsibility, which requires her to be physically within reach of the courthouse 24 hours a day, seven days a week, 365 days a year. The on-call responsibility had previously been divided between the Town's two sitting Justices. The Commission maintains that an extraordinary and unfair burden has been placed upon Justice McArthur as the result of Justice Plass' transgressions.

The Commission maintains that Respondent's post Complaint conduct in imposing fines on 180 write-in guilty pleas on vehicle and traffic violations, which was uncovered during the Commission's cross-examination of Respondent, is a violation of the ACJE's opinion and reflects an aggravating factor with respect to Respondent's conduct.¹

¹ As per the Commission's letter-reply to Respondent's post-hearing memorandum (Commission's footnote 2), the Commission is not seeking a finding of fact that such conduct constitutes additional misconduct but rather that the conduct is an aggravating factor with respect to the appropriate sanction and militates against a finding of mitigation.

Finally, the Commission maintains that Respondent has not been forthright nor displayed appropriate remorse for his conduct which militates against Respondent's defense of mitigation.

SUMMARY OF RESPONDENT'S POSITION

The essence of Respondent's position is that Respondent's transgressions did not impose a particular burden on Justice McArthur. Respondent maintains that the acknowledged imbalanced "caseload" is illusory and should be distinguished from the "workload" distribution between the two co-Justices which is essentially equal, fair and workable. Because of the restrictions placed upon Respondent by the ACJE, and to attempt to even out the work responsibilities between the two Justices, Respondent maintains that he handles all the civil matters such as small claims cases, ordinance and zoning violations, landlord-tenant (summary proceedings) disputes, animal violations, court administration matters and other court related responsibilities thereby balancing the workload.

Respondent maintains that the additional on-call responsibility, which rests exclusively upon Justice McArthur, is not particularly onerous and can be shared with neighboring town Justices.

Although Respondent admitted that "ignorance is no excuse", he urges in mitigation that his breaches were due to his unawareness of the judicial campaign rules and was not a "knowing violation" but rather an ignorant mistake. Respondent maintains that the Mailer, which he admittedly produced and distributed, was modeled after campaign literature of non-judicial candidates for public office who were not constrained by the same ethical limitations as judicial candidates and that he did not appreciate the distinction at the time. Respondent asserts that all New York State judicial candidates, except town and village Justices, are required to attend a pre-campaign program where they are instructed on campaign ethics. Respondent maintains that had he been required to participate in that program he would have

attended, learned about the campaign ethics and would have complied therewith².

Regarding the 180 vehicle and traffic tickets that had already been pled guilty but were awaiting a fine, Respondent maintains that it was necessary to enter final dispositions in those matters to alleviate a long backlog of pleas by mail that Justice McArthur refused to process in protest for a salary raise. Respondent maintains that complaints were being made by people needing final dispositions on their job applications. Respondent maintains that the matter should be disregarded since it is not the subject of any charges, that it occurred after the Complaint was served, and that the Opinion of the ACJE which precluded him from handling those matters is only advisory.

Respondent maintains that he has promptly admitted to the charges, self-reported the matter to the Commission, acknowledged his wrongdoing and has evidenced the appropriate contrition for his misconduct.

BACKGROUND

At all times in issue the Town of Hyde Park, New York has two elected part-time Town Justices who each serve four-year terms. The Town Court has jurisdiction over such matters as felony hearings, misdemeanor cases, vehicle and traffic violations, orders of protection, small claims matters, landlord and tenant summary proceedings, zoning and ordinance violations, and animal violations³.

In October 2023, Respondent commenced his campaign for office. Respondent had never previously run for or served as a judge or ran for public office. In connection with his campaign, Respondent produced 3000 campaign mailers (Appendix I) and had them mailed to the Hyde Park community, a town of approximately 21,000 people. The Specifications to the Commission's single

² If circumstances permit, it would be worthwhile if all judicial candidates, including those running for town and village Justices, were required to take this program.

³ Judicial notice is taken of the official website of Hyde Park, NY which is found at www.hydeparknewyork.usa ("Website"). This site describes, among other things, the governance of the Town, including the Justice Court.

Charge and the numerous related violations of the Rules are set forth in the Complaint and enumerated in the Preliminary Statement herein.

In November 2023 Respondent was elected as one of the two Town Justices. Incumbent Justice Jean McArthur was reelected for her third four-year term. Incumbent Justice Joseph Petito, also running for a third four-year term, was defeated. Respondent garnered the most votes of all.

In December 2023 Respondent attended a judicial indoctrination meeting entitled “Taking the Bench” which was sponsored by the Office of Court Administration. At that meeting Respondent was advised that the publication of the Mailer had violated judicial campaign ethics. He promptly submitted a request to the ACJE seeking an opinion regarding the matter pursuant to Judiciary Law 212 (2). The ACJE rendered an advisory opinion dated Dec.14,2023 which “disqualified” Respondent from presiding over criminal cases, cases involving domestic violence, vehicle and traffic matters and cases involving purported drug dealers. The ACJE also made certain findings regarding the impropriety of the messages conveyed in the Mailer (Appendix II).

In a letter dated January 15, 2024 Respondent sought reconsideration of the ACJE’s opinion, but the opinion was not changed.

Respondent was sworn in and took office as Town Justice on January 1, 2024. He has remained in that position continuously to the present. After preliminary administrative matters were attended to in January 2024, Respondent took the bench in February 2024. In accordance with the recommendation of the ACJE, Respondent has refrained from handling criminal cases, matters involving drug dealers, vehicle and traffic infractions (with one exception which is discussed later) and domestic violence matters. All those cases had traditionally been divided between the two Town Justices but are now being handled solely by Justice McArthur⁴.

In turn, Respondent has undertaken the management of essentially all the civil cases which include small claims matters, zoning and ordinance violations,

⁴ The Website has continuously reflected and presently indicates that Justice Plass handles criminal and traffic cases.

summary proceedings, animal violations and property matters. In addition, Respondent has undertaken essentially all the court's administration responsibilities which includes, among other things, handling payroll, arranging vacation scheduling, dealing with human resource issues, preparing the budget, ordering supplies, attending to the sign-in sheets of people appearing in court, and dealing with other administrative matters.

Every day, on a 24-hour, seven day a week, 365 day a year basis, one of the two Hyde Park Town Justices are required to be on-call and physically available within two hours from the courthouse to handle off-hour matters such as felony arrangements, orders of protection, bail matters, orders to show cause, search warrants and other related matters. When former Town Justice Joseph Petito was co-Justice with Justice McArthur they divided this responsibility equally. Now, Justice McArthur alone handles the on-call responsibility because the ACJE "disqualified" Justice Plass from handling those matters.

SUMMARY OF THE TESTIMONY

A. For the Commission

1. Justice Jean McArthur

Justice Jean McArthur testified that she has been sitting as a Town Justice for the Town of Hyde Park since 2016. She is a graduate of Dutchess Community College and Marist College. She is not a lawyer. Aside from her responsibility as Town Justice, Justice McArthur also works in her husband's oil business handling the books, the management and the company's paperwork. Up until recently, she owned and operated a liquor package store in Hyde Park.

Justice McArthur testified that after some preliminary difficulties, she had essentially developed a working and compatible relationship with Respondent ("it works now but it has its moments"). She testified that her workload is roughly 25 to 30% more now than it had been before Justice Plass assumed the bench because of the uneven distribution of work responsibilities between her and Respondent. She testified that she now works an estimated 50 hours per week on Town judicial matters compared to 35 to 38 hours per week before

Justice Plass assumed the bench. Justice McArthur is the sole judge handling all the criminal, vehicle and traffic, and domestic violence cases which account for 80 % of the Town Court cases. In 2024 Justice McArthur handled 2091 cases compared to Justice Plass who handled 171 cases.

Because of the limitations placed upon Justice Plass' availability to handle criminal and related matters, Justice McArthur is the sole Town Justice handling the on-call responsibility which requires her to be physically available within two hours from the courthouse 24 hours a day, including holidays and weekend to handle such things as orders of protection, bail applications, search warrants, criminal arraignments and to render advice to law enforcement personnel. During the eight years that Justice McArthur worked with Justice Petito, they shared this responsibility equally.

Justice McArthur testified that her on-call responsibility presents a substantial and unfair burden upon her which interferes with her personal life, hampers her vacation opportunities, and imposes upon her family affairs and personal freedom. She testified that her on-call responsibility requires her to be at the courthouse 2-5 times per week.

On cross-examination, Justice McArthur was confronted with the timesheets that she filed with the New York State and Local Pension Retirement System in connection with her pension fund work time verification. The workhours that she claimed on the timesheet when she was working with Respondent were compared with the timesheets she filed when she was working with his predecessor, Justice Petito. These records reflected that Justice McArthur reported less work time while working with Justice Plass than she did when she was working with Justice Petito. Her explanation was that the timesheets did not reflect the actual time that she worked but rather the threshold number of hours necessary to comply with New York State pension regulations. She did not know what that threshold number was. The cross-examination attempted to establish that the hours that Justice McArthur claimed that she spent working on matters for the court, both on and off the bench, were exaggerated.

B. For the Respondent

1. Sarah Jensen

Sara Jensen testified that she is currently employed by the Town of Hyde Park Police Department as a dispatcher. She had previously been employed by the Town of Hyde Park Justice Court and worked as Justice McArthur's clerk from the commencement of her employment in 2019 until she left the job in November 2024 at which time she commenced employment with the Town's Police Department. She had previously worked for the town of Fishkill Justice Court for 11 years.

Ms. Jensen acknowledged that for approximately 4 to 6 months prior to the termination of her employment with the Hyde Park Justice Court there was a "downfall" in her relationship with Justice McArthur and a "toxic work environment" developed following a disagreement with Justice McArthur concerning work time documentation.

The essence of Ms. Jensen's testimony was that Justice McArthur's workload was substantially less than that testified to by Justice McArthur and, in essence, an exaggeration.

Ms. Jensen also testified that as dispatcher for the Police Department she is in the same building as the Justice Court and can observe the surveillance cameras recording activities in the parking lot and around the building. She testified that during her work hours with the Police Department, which are from 9 AM to 7 PM, she had only observed Justice McArthur approaching the building on off-hours on one occasion between November 2024 and the hearing in March 2025.

Ms. Jensen testified that she had an opportunity to observe and briefly work with Justice Plass. She described Justice Plass as being hard-working, professional, fair, courteous and that he did not exhibit any evidence of bias or prejudice. She described his relationship with the court personnel as "great", that he undertook duties that were not required of him such as helping out the clerks and that he was kind and generous.

2. Pamela Lucia

Ms. Lucia currently serves as clerk to Justice Plass. She has been employed by the Hyde Park Town Justice Court from April 2022 to the present. Ms. Lucia had previously been assigned to Justice Petito, who she worked with until the end of his term in December 2023.

The essence of her testimony was that Justice Petito, who maintained a full-time law practice at that time, did not spend much time working in the Town Court other than the Thursday evening court session when he spent one to three hours per week on the bench, the implication being that Justice Plass puts in more hours than his predecessor ever did. She admitted that she was not privy to Justice Petito's actual work hours other than his courtroom activities.

Ms. Lucia, to a limited extent, undermined the amount of work that Justice McArthur performed.

Ms. Lucia described Justice Plass as a hard-working and a conscientious judge. She testified that he is the fifth judge she has worked with over 10 years and that Justice Plass "goes above and beyond". She testified that she never observed Justice Plass make a rash decision, that he researches matters, works very hard, is "very fair" and does not evidence any bias.

3. Justice Michael Plass

Justice Michael Plass, Respondent, is a lifelong resident of Hyde Park. He is a graduate of the local high school and has no further formal education. He is the sole owner/operator of a limousine business that has been handed down by his family. Respondent has also been employed by the Town of Hyde Park and other local towns as a part-time police officer from 2004 until 2022.

Respondent admitted to the Charge and to having violated the Rules Governing judicial campaign ethics and judicial conduct as set forth in the Complaint. Respondent testified that he created the Mailer himself which he designed after reviewing a collage of political campaign material of others who were running for non-judicial office and having mailed 3000 of the Mailers to the Hyde Park community. He maintains that he never appreciated that there are

different campaign rules for judges compared to nonjudicial candidates. He testified that he first became aware of his possible violation of the ethical rules when, on the day following the distribution of the Mailer, he found himself on the front page of the local newspaper, the *Mid Hudson News*⁵. Respondent immediately contacted the Commission to find out whether there were any charges filed against him. Upon learning that there were none at the time, he was of the belief that the claimed ethical violation was a political maneuver by his adversaries. Nevertheless, he promptly designed and distributed a new mailer, at a substantial personal cost, which did not contain any “pledges”. He did nothing further at the time to investigate whether, in fact, he had committed any ethical violations.

In November 2023 Justice Plass won the election for Town Justice having garnered the most votes of the three candidates. Justice Petito was not reelected.

In December 2023 Respondent attended a judicial indoctrination course for newly elected judges called “Taking the Bench” sponsored by the Office of Court Administration. He was advised, at the time, that making “pledges” as he did was a violation of judicial campaign ethics. Consequently, he promptly communicated with the ACJE seeking an advisory opinion regarding the matter.

After the ACJE issued its advisory opinion, Respondent unsuccessfully sought reconsideration of the opinion which was never modified.

Upon the commencement of Respondent’s four-year term in January 2024 he underwent one month of orientation and as of February 2024 assumed the bench. He has continued to serve up through the present time. With one exception, he has fully complied with the restrictions set forth in the ACJE’s advisory opinion.

Respondent maintained that because of the limitations imposed upon his judicial activities, and to balance the workload between Justice McArthur and him, he handles essentially all the civil cases and performs all the

⁵ Judicial notice is taken of the Oct.29,2023 edition of the *Mid Hudson News* newspaper which contained a front-page article regarding Justice Plass’ alleged violation of judicial campaign ethics.

administrative duties of the court as well as assisting the clerks during the civilian sign-in process, bank runs, and other clerical matters.

Respondent acknowledged that the judicial “caseload” was extremely unbalanced with the bulk of the cases being handled by Justice McArthur, but he maintained that, aside from the on-call responsibility, the “workload” is just “slightly more” on Justice McArthur. Respondent evaluated the workload differential as a five percent difference with Justice McArthur carrying the extra, but slight, burden.

A great deal of Respondent’s testimony, and the testimony at the hearing, was focused upon the relative workloads of Justice McArthur and of Respondent. Through a FOIL request, Respondent obtained prior timesheets that were submitted by Justice McArthur to the New York State and Local System and those submitted by former Justice Petito. Respondent presented evidence that Justice McArthur’s reported work time was less during the time that she worked with Justice Plass than when she worked with Justice Petito. Respondent maintained that there are no threshold reporting requirements.

Respondent also presented evidence as to the unreliability of the time sheets of Justice McArthur in that they reflected an exaggeration of the time spent on judicial matters. The timesheets of the court officers and the court sign-in-sheets were presented to demonstrate the limited number of hours that Justice McArthur actually spent on the bench holding court sessions.

On cross-examination Respondent acknowledged that on one occasion he spent 3 hours at home imposing fines on 180 vehicle and traffic tickets that had already been adjudicated guilty by write-in pleas⁶. He did not adjudicate the guilt. None of the violators appeared before him. With the guidance of the standard “Magill’s book”⁷ he imposed fines within the range allowed by law. His testimony was that he did this because there was a backlog of dispositions over a period of five months from April through August 2004 because Justice

⁶ It was noted that on Justice McArthur’s timesheets she claimed that it took her two hours to handle 25 of such matters. (See, Jensen 132.)

⁷ *New York Magill’s Vehicle & Traffic Law Manual for Local Courts.*

McArthur was repeatedly seeking a salary raise and, in protest, “was outright refusing” to finalize the disposition of those matters. Complaints were made by the public regarding the delay which was creating a problem. He maintained that final dispositions were necessary for people applying to the military or other jobs where their applications required dispositions and he was the only other person who could handle these cases.

Upon cross-examination, Respondent admitted the inappropriateness of the language used in the Mailer but gave a strained explanation of his intended meaning to try to somehow explain away the inappropriate language that he used. He admitted that the language in the Mailer reflected a bias in favor of law enforcement, reflected inappropriate impressions and violated the Rules alleged in the Complaint.

DISCUSSION

A. Introduction

Justice Plass admits to the single Charge set forth in the Complaint (paragraph 5.) which alleges that by having “pledged” certain campaign promises and using certain language therein he violated Rules section 100.1, 100.2 (A), 100.5 (A) (4) (a); 100.5 (A) (4) (d) (i); and 100.5 (A) (4) (d) (ii).

In view of Respondent’s admission to the Charge and to the Rules violations, this report is limited to findings of fact and conclusions of law regarding the defense of Mitigation that is raised in Respondent’s Answer.

Mitigating factors are set forth in the Preamble to the Rules, 100. namely: (1) the Seriousness of the Transgression; (2) the Pattern of Improper Activity; (3) the Effect of the Improper Activity upon Others; (4) the Effect of the Improper Activity on the Judicial System; and implicitly (5) Mitigating Circumstances.

B. The Significance of the Violations

(1) The Seriousness of the Transgression

The improper and admitted law enforcement bias reflected in the Mailer that pandered to voters of that persuasion gave Respondent an unfair advantage

over the other judicial candidates and tarnished the integrity of the election and the judiciary. *Matter of Hafner*, 2001 Ann Rep of NY Commn on Jud Conduct; *Matter of Polito*, 1999 Ann Rep of NY Commn On Jud Conduct.

The bias reflected in the Mailer is so skewed that it is inimical to a favorable and appropriate public perception of the judiciary. See, *Matter of Polito, supra*.

According to the restrictions placed upon Respondent by the ACJE, Respondent is unable to fulfill the duties of the position to which he was elected (See Website regarding the role of the Town Justices).

The transgressions have had a significant impact upon others, particularly Justice McArthur, the judicial system and the public as described in (4) below.

This is serious.

(2) The Pattern of Improper Activity

There is no evidence that the production and distribution of the errant Mailer was other than an isolated event that was promptly recognized, immediately self-reported, and attempted to be mollified. There was no pattern of improper activity.

(3) The Effect of the Improper Activity upon Others

Respondent acknowledged that Justice McArthur carries the heavier workload, although he characterizes this differential as slight. Justice McArthur's prime concern is the on-call responsibility "the big real issue for me is the on-call" noting "The main thing that I'm unhappy about is the on-call stuff". The on-call responsibility has a significant adverse effect upon the activity of Justice McArthur.

Respondent maintains that the on-call responsibility does not require many off-hour appearances. The undisputed fact, however, is that Justice McArthur is tethered to her home and surroundings all the time. She has the sole responsibility for the Town to be on-call and within reach all the time. Justice Plass has recognized in the past that this places "a strain" upon Justice McArthur. Although she can call upon a neighboring Justice to cover for her from time to time, this is not a reliable nor favorable alternative.

From a “workload perspective” the division of responsibility seems workable and not excessively unbalanced, although the on-call responsibility imposes a significant hardship upon Justice McArthur as the result of Justice Plass’ ethical violations which led to the ACJE’s restrictions upon his judicial activities.

(4) The Effect of the Improper Activity Upon the Judicial System

The electorate, by its vote, commissioned and expected Respondent to handle criminal, traffic, domestic relations and drug matters among other things which, according to the ACJE, he cannot do⁸. These cases represent 80% of the court’s docket.

Public perception is at issue. Since the matter has received front page attention in the local newspaper, the issue has some heightened significance regarding the public perception and awareness of judicial ethics, the judicial system and the way judicial ethics violations are managed. See, *Matter of Hafner, supra*.

The integrity of the judicial system has been adversely impacted by Respondent’s improper conduct.

(5) Mitigating Circumstances

(a) Ignorance of the law- Not a Mitigating Factor. When Justice Plass produced and distributed the Mailer, he was unaware that he was violating judicial campaign ethics. In *Matter of Chan*, 2010 Ann Rep of NY Commn on Jud Conduct at 128 the Commission held that “Every candidate for judicial office has the obligation to be familiar with the relevant ethical standards and to ensure that his or her campaign literature and practices are consistent with these standards”.

If one were to give credit to Respondent’s conduct as an act of pure ignorance, one must question why Respondent was not more diligent in having investigated his campaign responsibilities before the publication of the Mailer. His “ignorance” must be viewed in the context of the ease of ascertaining judicial campaign responsibilities and his responsibility to know the

⁸ See, Website. As previously noted, Justice Plass is currently listed on the website is handling traffic and criminal matters.

appropriate guidelines. Respondent testified that he made no effort whatsoever to ascertain the rules governing judicial campaign.

As Respondent recognized, a click on Google would reveal the proscription against pledges and would also reveal the text of *The Handbook of Judicial Campaign Ethics*⁹. Respondent was computer savvy enough to find an app that enabled him to produce the Mailer on his desktop computer. Although Respondent may have been ignorant of the ethical constraints regarding judicial campaigning, the Rules were readily available and not "obscure" as Respondent has suggested. He described his failure to familiarize himself with these rules as "my lack of the willing to do more" and because he had a lot of things going on in his life at the time, he was not going to do something unless it was specifically required of him (attend the pre-judicial campaign practices program) and his failure to do his own research. Hence, it is not at all persuasive that Respondent was unaware of the judicial campaign constraints since it takes only a minimal effort to have uncovered them and he simply failed to make the effort to do so. In Respondent's own words, "I should have done more".

Respondent has urged that if he had been required to attend the precampaign program on judicial campaign practices, which is required of all people seeking judicial office except town and village Justices, he would have attended and readily complied with the relevant constraints. This argument is unpersuasive as a mitigating factor.

Respondent failed to appreciate at the time that he prepared the Mailer that aside from the inappropriate "pledges"¹⁰, the language that he used demonstrated a significant and improper judicial bias. It was more than an "honest", "careless", "mistake" as he described. It is very clear that the Mailer evinces Respondent's strong "law enforcement perspective" which is

⁹ Judicial notice is taken of the fact that a basic search on Google for "judicial campaign" reveals explicit references to judicial campaign ethics requirements and relevant source material.

¹⁰ Even as of the time of the hearing, Respondent still failed to appreciate the proscription against "pledges". He is of the understanding that the mere use of the word "pledges" in the campaign literature is forbidden as distinguished from pledges "that are inconsistent with the impartial performance" of the office (Rule 104.5 (A) (4) (d) (ii); Plass 8, 91).

incompatible with judicial impartiality. He failed to appreciate at the time that serving in a judicial position is incompatible with showing favoritism toward or against a particular class of litigants.

Respondent's limited formal education and ignorance of the governing campaign ethical requirements is unpersuasive as a mitigating factor since the rules were readily available and indeed should have been reviewed by him before commencing his campaign.

(b) Self-Reporting – Not a Mitigating Factor. The fact that Respondent “self-reported” his violation holds no sway since the transgression was open and notorious, indeed, on the front page of the local newspaper.

(c) The Vehicle and Traffic Tickets – Yes, A Mitigating Factor. Justice Plass, while recognizing that his conduct was under scrutiny by the Commission and that he was violating an advisory opinion of the ACJE, put the needs of the community over his own self-interest, and undertook to address community complaints regarding a significant backlog in the disposition of the vehicle and traffic tickets by imposing fines on the mail-in vehicle and traffic tickets with the assistance of McGill’s reference book. He had nothing to personally gain by doing this. No harm was done. He alleviated a community problem. His interest seems solely to advance the interests of the court, which is worthy of favorable consideration.

(d) Remorse – Yes, A Mitigating Factor. Respondent evinced a reasonable sense of remorse and contrition for his conduct. He acknowledged that he “was sorry” and that he “deeply regretted” his conduct, that he was “truly sorry for making this mistake”, that the language that he used was inappropriate and reflected an inappropriate bias that he sees the language that he used “in a different light now, that he has “learned a lesson”, that he is learning about “impartiality”, “appearances” and the integrity of the judicial system.

(e) Activity on the Bench – Yes, A Mitigating Factor. During the time that Respondent has been serving on the bench he has performed in an exemplary fashion. Justice McArthur described Respondent, while on the bench, as performing “very well”, that he treated the public and the court personnel “very

well” and that he was “very thorough”. Clerk Sarah Jensen testified that she found Respondent to be a “kind and generous person”, that he “worked hard”, that he came in to fulfill duties that weren’t even required of him”. She described him on the bench as being professional, fair, courteous without demonstrating any bias or prejudice. He treated court personnel “great”.

Clerk Pamela Lucia testified that she has been Judge Plass’ clerk since January 1, 2024. She described him as “spending a lot of time researching” to make sure that he was “doing everything correctly” and “never made a rash decision”. She testified that she has been a clerk for 10 years and that Respondent was the fifth judge that she has worked for . She indicated that Respondent “will go above and beyond” in his duties and is available anytime that he is needed. When he is sitting on the bench Respondent’s demeanor is “fair” and “extremely courteous to the public” and that she has not observed him to “display any bias or prejudice”.

The Commission’s argument that Respondent has a fundamental misunderstanding of the criminal process (Commission’s Post Hearing Brief, page 24) is not persuasive. First-term non-lawyer Justices cannot be expected to have the legal acumen of seasoned judges. See the dissent by Judge Kaye in *People v. Charles F*, 60 N. Y. 2d 474 regarding the limitations posed by lay judges.

Although Justice Plass obviously recognizes that his conduct on the bench at this time is under the microscope and he is presumably on his best behavior, it appears that from having observed Respondent’s testimony and the testimony of the witnesses, Respondent has indeed learned a lesson from this experience and in fact would be fair and equitable in his administration of Justice.

FINDINGS OF FACTS

A. General

1. Respondent is a native of Hyde Park, New York. He graduated from the local high school in 1985. He has no further formal education. He became a part-time police officer in 2004 and resigned from the Hyde Park Police Department in 2022 contemplating running for town Justice shortly thereafter. Contemporaneously, and to the present, he owns and operates a local family limousine business (Plass 1, 2, 3, 10, 11, 116 – 117).
2. Justice McArthur is a graduate of Dutchess Community College and Marist College. She has a background in finance and law. She did not attend law school and is not a lawyer. She served as Town Justice for the Town of Hyde Park from 2016 to the present. Throughout the time that she has been on the bench Justice McArthur also has worked for her husband's local oil company attending to the books, paperwork and "everything on the management". She also owned and operated a package liquor store throughout her judicial tenure which she recently sold (McArthur 19, 20, 52, 91 – 99).
3. At all times in issue the Town of Hyde Park, New York has two elected part-time Town Justices who served four-year terms. The Town Court has jurisdiction over such matters as felony hearings, misdemeanor cases, vehicle and traffic violations, orders of protection, small claims matters, landlord and tenant summary proceedings, zoning and ordinance violations, and animal violations (McArthur 19, 20, 21, 22; Plass 14; see, Website).
4. In or about February 2023 Respondent considered becoming a candidate for election to the position of Town Justice of the Town of Hyde Park, New York (Plass 3).
5. Respondent had never previously served as a judge or ran for public office (Plass 3).
6. There was a small time-window to campaign. Respondent sent the Mailer out in October 2023 (Plass 4, 8).

7. In November 2023 Respondent was elected as one of the two part-time Town Justice of the Town of Hyde Park, Dutchess County, New York for a term of four years commencing January 1, 2024. Justice McArthur was also elected, and incumbent Justice Petito was defeated. Justice Plass garnered the most votes (Plass 5).
8. From January 1, 2024 to the present time Respondent has been sitting as a Town Justice for the Town of Hyde Park (McArthur 23, 25).
9. The electorate voted for Respondent to handle all cases before the court including criminal, vehicle and traffic, and domestic relations matters (see Plass 102; Website).
10. In November 2023 Jean McArthur was elected for a third term as one of the two Town Justice of the Town of Hyde Park, Dutchess County, New York for a term of four years (McArthur 18, 19).
11. A Town Justice for Hyde Park must be on-call and within a two hour distance from the courthouse on a 24-hour seven day a week basis to deal with such matters as felony hearings, bail applications, search warrants, orders of protection, orders to show cause and to render advice to local police departments, among other things (McArthur 35, 38, Website).

B. The Mailer

12. In October 2023, Respondent used a web-based program on his laptop computer to prepare 3000 copies of the Mailer (Appendix I herein) which he then distributed to the Hyde Park community in furtherance of his campaign to be elected as one of the two part-time Town Justice of the Town of Hyde Park for a term of four years commencing January 1, 2024 (Plass 4 – 8, 80) .
13. Respondent designed and prepared the Mailer on his computer by himself using an app called Canva (Plass 80).
14. The endorsements contained on the back of the Mailer were solicited by Respondent and were composed by the people making the endorsements. Respondent read and typed the endorsements onto the program (Plass 101, 102).
15. At the time of the distribution of the Mailer, Respondent was unaware that the language that he used violated any judicial ethical rules (Plass 6, 8,

109, 110, 113). The language on the back of the Mailer is not specifically included in the Charge in the Complaint.

16. The day following the distribution of the Mailer, Respondent became aware of an article on the front page of the local newspaper, the *Mid Hudson News*, dated October 29, 2023 which indicated that Respondent had breached judicial campaign ethics and was so advised by others (Plass 6, 145, 146).
17. Upon reading of the alleged breach, Respondent contacted the Commission and was advised that no complaint had been filed against him. Based upon that advice, Respondent felt reassured at that time that the article was a ploy by a political adversary (Plass 6, 7).
18. Respondent produced and distributed a new mailer, at a considerable expense to himself, that did not contain any “pledges”. Neither the new mailer nor the *Mid Hudson News* newspaper article were produced at the hearing or offered in evidence (Plass 7).
19. The Mailer was intended to induce people to vote for Respondent (Plass 96).
20. Shortly after being elected, Respondent attended a program entitled “Taking the Bench” sponsored by the Office of Court Administration at which time he was advised, among other things, that it was a violation of campaign ethics for judicial candidates to make pledges as he had done (Plass 9, 119-122).
21. In December 2023 Respondent communicated with the ACJE seeking an opinion regarding the content of the Mailer (Plass 9, 10, 122).
22. The ACJE reviewed the Mailer and rendered an opinion, upon the request of Respondent, dated December 14, 2024 which was mailed to Respondent with a letter addressed to him dated January 8, 2024 (Appendix II).
23. The opinion of the ACJE stated, *inter alia*, that the Committee found that Respondent was disqualified during his term of office from handling all criminal cases, cases involving domestic violence, all Vehicle and Traffic Law matters and cases involving purported drug dealers. Disqualification on this ground is not subject to remittal. (See Appendix II, full text of the opinion.)

24. Respondent wrote a letter asking the ACJE to reconsider its position (Plass 123).
25. In compliance with the opinion of the ACJE, Respondent has refrained from handling all criminal cases, cases involving allegations of domestic violence, Vehicle and Traffic matters [with one exception], and cases involving purported drug dealers (Plass 133, 134).
26. At the time that Respondent prepared the Mailer he had not made any efforts to ascertain the rules or guidelines governing judicial campaign ethics or judicial conduct, “had no idea of really any of the rules of judicial campaign”, was unaware of the existence of the judicial campaign ethics handbook, was unaware of judicial campaign ethical rules due to his “lack of the willing to do more”, was of the position that if he doesn’t have to do something he is not going to do it, and that he was flying by the seat of his pants (Plass 6, 8 103, 113, 115; Commission exhibit 11, page 20).
27. Respondent knew that judicial campaign information was available on Google (Plass 97) and has since learned that “you got to do your own research” (Plass 73), that the mailer was a product of his “lack of the willing to do more” (Plass 113). The Rules are not “obscure” as Respondent maintains (Plass 113, 115).
28. Respondent’s unacceptable failure to familiarize himself with and to know the rules regarding judicial campaign ethics is because Respondent failed and was unwilling to undertake the relatively simple steps to ascertain them because of other personal priorities (Plass 73, 113, 115).

C. The Workload

29. In 2024 Justice McArthur handled 2091 cases, and Justice Plass handled 171 cases (Commission Exhibit 14 in evidence).
30. The largest volume of criminal cases are domestic violence matters (McArthur 28).
31. Eighty percent of the Hyde Park town Court cases are criminal or vehicle and traffic matters (McArthur 34).

32. For eight years prior to Justice Plass' election, Justice McArthur was Justice for the town of Hyde Park with Justice Plass's predecessor, Justice Joseph Petito (McArthur 23).
33. During the eight-year period that Justice McArthur worked with Justice Petito the two Justices divided the caseload and shared the on-call coverage fairly equally between them (McArthur 23, 24, 36).
34. Since Justice Plass took the bench Justice McArthur has been handling all the criminal cases, the vehicle and traffic matters, domestic violence and drug matters and Justice Plass has been handling all the civil cases (McArthur 26).
35. The number of cases handled by each judge is illusory and does not represent the actual workload of each judge. (McArthur 55, 105, 106; Plass 12, 13, 15, 130).
36. The largest volume of criminal cases are ones involving domestic violence (McArthur 28).
37. The actual time spent sitting on the bench is relatively short and a small part of the judicial duties (McArthur 34).
38. Due to her impaired relationship with Justice McArthur, Sarah Jensen's testimony regarding Justice McArthur's work efforts and off-hours frequency of appearances at the courthouse is discounted and unreliable.
39. The New York State and Local Retirement System timesheets prepared by Justice McArthur do not accurately reflect the number of hours that she spends on judicial duties and is not a reliable indicium of her work time.
40. Throughout the time that Justice McArthur has been serving as a Town Justice she has been employed by her husband's oil company doing "everything on the management" side other than the year end taxes. At the same time, up until recently, she owned and operated a local packaging liquor store (McArthur 52).
41. Some of the work of the court system that is undertaken by Respondent is clerical work to attempt to balance the relative work input between the Justices (Lucia 191, 192; Jensen 148, 149).
42. Justice Plass essentially handles all the civil matters, zoning issues, landlord-tenant matters, Small Claims Court and court administrative

duties and Justice McArthur handles the criminal and vehicle and traffic matters (McArthur 26; Plass 12).

43. The majority of Justice Plass's cases are eviction proceedings which often go to trial (Plass 16, 17, 18, 19).
44. Aside from the on-call responsibility of Justice McArthur, there exists at least a slight workload imbalance reflecting a greater amount of time spent by Justice McArthur than by Justice Plass in the performance of their respective judicial duties due to Justice Plass' compliance with the ACJE's opinion that precludes him from handling certain cases. (McArthur 105, 106; Plass 130, 131, 132).
45. Justice McArthur's estimate that aside from her on-call responsibility, her workload has increased 25 to 30% and the work hours have increased from 35 to 38 hours to 50 hours per week because of the limitations placed upon Justice Plass is unreliable and overestimated.
46. Justice Plass' estimate of a five percent workload differential between Justice McArthur and him is not a reliable metric.
47. Other than the onerous on-call responsibility, the relative workload between Justice McArthur and Justice Plass is not grossly unbalanced and is workable (McArthur 41, 50, 51; Plass 12, 13, 14, 15, 131). The traffic calendar was merged from two into one which helps. As per Justice McArthur, "Judge Plass does the civil stuff which helps...The big real issue for me is the on-call (McArthur 41, 50). "I put in the extra time to do it, and I know he [Justice Plass] does what he can within his realm of what he's allowed to do. So, it works, but it has its moments, especially the on-call is really, really my sticking point...the main thing that I'm unhappy about is the on-call stuff" (McArthur 51).
48. Justice McArthur is significantly and adversely impacted by having to be on-call and physically available 24 hours, seven days a week, 365 days a year without being able to divide that responsibility with Respondent (McArthur 35, 41).
49. The on-call responsibility of Justice McArthur is onerous and places an unfair work burden upon her. It affects her vacation, imposes a personal

hardship, interferes with family activities and with formulating personal plans (McArthur 36, 51).

50. It is not reasonable to expect Justice McArthur to regularly contact neighboring judges to volunteer to help her meet her on-call responsibility. Although she can and does do that from time to time it would be an unfair burden upon her and upon the other judges to take up this slack (McArthur 39, 114).

D. The Vehicle and Traffic Tickets

51. There had been a backlog of 180 vehicle and traffic tickets that had been pled guilty and were awaiting the imposition of a fine. The unassailed testimony is that these tickets had accumulated for five months from April to August 2024 because Justice McArthur was “outright refusing” to handle them in protest over repeated requests for a salary raise, claiming that she was “doing all the work”. The unresolved tickets were creating a problem because complaints were made by people who needed final dispositions to complete job applications for military service and otherwise (Plass 135).

52. Justice Plass, on one occasion, spent three hours at home finalizing the disposition on those tickets by assessing the fines on the guilty pleas by mail tickets using Magill’s book as a guide because Justice McArthur refused to do so (Plass 135 – 137). Violators had already pled guilty. Respondent had no personal dealings with the violators. None appeared before him in court (Plass 148).

53. It is unreasonable to accept, as the Commission urges without any testimonial support, that the backlog in disposing the tickets was because Justice McArthur “simply had not gotten to them, being overworked and overburdened...”. (Commission’s Post Hearing Memoranda, pg. 29).

E. Mitigating Factors

54. Aside from admitting the error of his ways, Respondent evidenced that he is “now learning what impartiality and the appearance” of impartiality means and how “to protect the integrity of the judicial system falls on the judge” and the importance of listening to both sides (Plass 74, 111).

55. Justice Plass, while recognizing that his conduct was under scrutiny, put the needs of the community above his own self-interest, and undertook to rectify community complaints regarding a significant backlog in the disposition of the vehicle and traffic tickets by imposing the fines on the outstanding tickets with the assistance of McGill's book. He had nothing to gain personally and undertook this task to relieve an unacceptable backlog and appease community complaints obviously knowing that he would probably be called to task for his conduct.

56. Throughout his testimony, Justice Plass expressed his apologies, sorrow, deep regret, negligence, carelessness and acknowledged the inappropriateness of the language in the Mailer and his failure to take the steps to ascertain the campaign rules (Plass 73, 94, 95, 113, 115, 125, 142).

57. The conduct of Justice Plass in spending three hours at home on one occasion in adjudicating the fines on the vehicle and traffic tickets is understandable. A problem was developing. Justice Plass was the only other Hyde Park Town Justice who could perform that duty. The Opinion of the ACJE was advisory. The judicial discretion employed by Respondent under the circumstances was reasonable and at a personal sacrifice.

58. Throughout his tenure, Respondent has served with integrity and fairness and demonstrated a hard-working ethic. He is well-liked, respected by the court personnel and integrates very well with the public. He has learned his lesson from this experience "that the most important role is to listen to both sides" and has demonstrated that he would make an excellent judge. At the hearing he appeared to be intelligent, personable, articulate, and credible.

F. Additional Findings of Facts

59. Respondent's failure to be familiar with the rules governing judicial campaign ethics which were readily accessible was due to his unwillingness to expend the effort to discover them and his preference to attend to personal matters (Plass 113, 115).

60. Respondent's ignorance of the governing rules regarding judicial campaign literature is a result of Respondent's failure to undertake the responsibilities of the position and is not an excusable "careless mistake".

61. At the time that respondent commenced his campaign, he was aware that judicial campaign rules and guidelines could be found online (Plass 97).
62. Respondent failed to make any effort to ascertain judicial campaign requirements prior to being elected (Plass 6, 109, 110).
63. Respondent failed to exercise reasonable and necessary steps to ascertain his ethical responsibilities in seeking office as a Town Justice.
64. Respondent's Mailer improperly pandered to a select, like-minded voter which gave him an unfair advantage over the other judicial candidates in the election.
65. Respondent won the election for Town Justice using unfair and unethical campaign tactics.
66. The Mailer evidenced an inherent bias against certain defendants which is abhorrent to judicial integrity. (See, Plass 91, 93, 94, 95, 98)
67. The Mailer conveyed a law enforcement perspective which reflects a bias against certain defendants, namely, repeat offenders, drug dealers and persons charged with domestic violence and favoritism toward victims of domestic violence.
68. The Mailer created a distinct impression that Respondent, if elected, would aid law enforcement rather than apply the law neutrally and impartially.
69. Upon reading the newspaper article and learning from others of an alleged ethical breach, Respondent had good reason to believe at that time that he committed a breach of judicial campaign ethics and failed to take appropriate action to verify it.
70. Based upon the opinion of the ACJE, Justice Plass is unable to fulfill the position to which he was elected even if the workload between Respondent and Justice McArthur was essentially equal in all respects. (See Website that describes the responsibilities of the town Justices).
71. The opinion of the ACJE is an advisory one.
72. If Justice Plass were allowed to handle the proscribed cases, there would be a built-in defense by any defendant claiming excessive bail, harsh sentencing or biased treatment.

73. Respondent's Mailer created an adverse public perception of the judiciary reflecting an unfair and biased application of the law which is the antithesis of an open-mindedness and proper judicial perspective and impairs the public trust in the judicial system.
74. The frequency that Justice McArthur has been required to appear at the courthouse off hours to handle on-call matters is of limited significance since she must be available all the time.
75. The actual extent of the court related workload discrepancy is of limited significance since the on-call responsibility imposes a significant burden upon Justice McArthur.
76. The work arrangement currently followed by Respondent and Justice McArthur essentially balances the workloads of the two Justices but for the on-call responsibility of Justice McArthur.
77. There is no evidence that Respondent engaged in inappropriate political activity.

-continued on next page-

CONCLUSIONS OF LAW

1. Respondent is guilty of the alleged Charge in the Complaint by having violated Rule section 100.5 (A) (4) (d) (i) in that Respondent made pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office.
2. By having designed and published the Mailer, 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 thereby violating rule 100.5 (A) (4) (a) in that Respondent failed to maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary.
3. Respondent is guilty of the alleged Charge in the Complaint by having violated Rule section 100.5 (A) (4) (d) (ii) in that Respondent made commitments that are inconsistent with the impartial performance of the adjudicative duties of the office with respect to cases, controversies or issues that are likely to come before the court.
4. Respondent's improper activity is serious and has had a substantial adverse effect upon others, particularly Justice McArthur, and on the judicial system and the public perception of the judiciary.
5. Were it not for the inequity regarding the on-call responsibility of the Justices, the current division of responsibilities between the Justices is workable although Justice Plass would not be able to fulfill the responsibilities of the position to which he was elected.
6. During the time that Respondent has served on the bench he has done so, in a fair, industrious, conscientious and impartial manner without exhibiting any evidence of bias.
7. The Complaint charges violations of Rule 100.1 and 100.2A which relate to proscribed activities of "judges". Justice Plass was not a "judge" at the time of his violations. These Rules make no reference to "judicial candidates", only to "judges". Rules 100.3 and 100.5, which are also being charged here, as distinguished from Rules 100.1 and 100.2A, relate to proscribed activities of "incumbent judges and others running for public

election to judicial office". There is an apparent distinction between those Rules that relate solely to "judges" and those that relate to "judges and judicial candidates". It is the view of this hearing officer that there must and should be a distinction between these two sets of rules and that a sitting judge should not be serving under the threat that an indiscretion in the past, before he/she was ever on the bench, can be the basis for a sanctionable judicial offence for which he/she can be disciplined and removed from office. However, since the Respondent has admitted violation of all the Rules without objection and in view of prior opinions and decisions, reluctantly, the finding herein is that Respondent violated Rule 100.1 and 100.2A. (Cf. *Matter of Hedges*, 20 N. Y. 3d 677 (2013) which is potentially distinguishable because of the extreme moral turpitude involved; *Matter of Chan*, 2010 Ann Rep of NY Commn on Jud Conduct *Matter of Hafner, supra*; *Matter of Polito, supra*.)

8. Respondent's conduct did not demonstrate improper political activity. See, *In re Raab*, 100 N. Y. 2d 305.
9. There exist mitigating factors as set forth herein that are worthy of consideration.

Respectfully submitted,



Steven E. North

Referee

Dated: July 30, 2025

APPENDIX I

The Mailer

Address Side

Reverse Side

Address Side



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

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

1-511

Hyde Park NY 12538-1615

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Reverse Side

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



APPENDIX II

Advisory ACJE on Judicial
Ethics

Letter to Respondent
Opinion 23-158

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

COMMISSION
EXHIBIT

2

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LILLIAN WAN
CO-CHAIRS

COMMITTEE
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1996 - 2007

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JEROME C. GORSKI
CO-VICE CHAIR
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EDWARD P. BORRELLI
SUBCOMMITTEE CHAIR
& SPECIAL COUNSEL
2001-2022

ETHICS FACULTY
DANIEL ANGOLILLO
VICE CHAIR 2019-2021
ROBERT G. BOGLE
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ROBERT M. MANDELBAUM
E. JEANNETTE OGDEN

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

Dear Judge Plass:

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

Very truly yours,

M. Walsh & L. Wan/LLS

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

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

Enclosure

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

(f) the judge, while a judge or while a candidate for judicial office, has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the judge’s adjudicative capacity that commits the judge with respect to (i) an issue in the proceeding; or (ii) the parties or controversy in the proceeding.

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

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

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

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

We conclude the inquiring judge is disqualified during his/her entire judicial term from: (1) all criminal cases; (2) cases in any court involving allegations of domestic violence; (3) all Vehicle and Traffic Law matters; and (4) cases in any court involving purported drug dealers. Disqualification on this ground is not subject to remittal.

¹ The question we ask ourselves here is: Would a reasonable person, after reading the inquirer's campaign promises, believe that those *accused of* domestic violence or *suspected of* selling drugs would receive a fair hearing from the inquirer?