STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

MICHAEL H. PLASS,

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

RESPONDENT'S REPLY BRIEF

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PRELIMINARY STATEMENT

This Reply Brief is respectfully submitted by Respondent Michael H. Plass, in reply and opposition to the Memorandum of Commission Counsel recommending the Justice Plass be removed from office, and in support of Respondent's recommendation that, if the Commission determines that a sanction is warranted, the sanction of admonishment should be imposed.

I.
THE RECUSALS BY JUSTICE PLASS ARE PRESUMED PROPER FOR THE PURPOSES OF THIS INVESTIGATION BY THE STATE COMMISSION ON JUDICIAL CONDUCT

The arguments of the Commission's counsel turn Judiciary Law § 212(2)(l) on its head. They treat the opinion of the Advisory Committee on Judicial Ethics as mandatory, and deprive Justice Plass of the safe harbor that it provides.

Advisory Opinion 23-158 did not "disqualify" Justice Plass from presiding in cases involving alleged crimes, domestic violence, traffic violations, and drug dealers. The Advisory Committee has no authority to disqualify a judge, and Opinion 23-158 was just that… advice.

The authority of the Advisory Committee is limited to the issuance of confidential advisory opinions to judges or justices upon their request. Judiciary Law § 212(2)(l) provides, in pertinent part, that the Chief Administrator of the Courts shall:

> Establish a panel which shall issue advisory opinions to judges and justices of the unified court system upon the request of any one judge or justice, concerning one or more issues related to ethical conduct or proper execution of judicial duties or possible conflicts between private interests and official duties.
>
> (i) The panel shall have no executive, administrative or appointive duties except as provided otherwise in this paragraph or in rules and regulations adopted to implement this paragraph….
>
> (ii) The panel shall issue a written advisory opinion to the judge or justice making the request based upon the particular facts and circumstances of the case, which shall be detailed in the request and in any additional material supplied by the judge or justice at the instance of the panel….
>
> (iii) Notwithstanding any other provisions of law, requests for advisory opinions, advisory opinions issued by the panel to an individual judge or justice of the unified court system, and the facts and circumstances upon which they are based, shall be and remain confidential between the panel and the individual judge or justice making the request….

Most importantly, Judiciary Law § 212(2)(l) further provides that:

> (iv) **Actions of any judge or justice of the uniform court system taken in accordance with findings or recommendations contained in an advisory opinion issued by the panel shall be presumed proper for the purposes of any subsequent investigation by the state commission on judicial conduct.**

(Emphasis added). Accordingly, the recusals by Justice Plass made in accordance with Advisory Opinion 23-158 are presumed proper for the purposes of this investigation by the State Commission on Judicial Conduct. All testimonial and documentary evidence of the allocation of judicial duties between Justice Plass and Justice McArthur should be disregarded.

II.
THE PUBLIC-SPIRITED PROCESSING OF THE PLEAS BY MAIL WAS REASONABLE UNDER THE CIRCUMSTANCES

Justice Plass has not been charged with any violation of the Rules of Judicial Conduct arising from his handling of the pleas by mail. In In re Gelfand, 70 N.Y.2d 211, 216 (1987), the Court of Appeals held, in pertinent part, that:

> The Commission's responsibility to safeguard the public's trust in the judiciary by both shielding innocent judges from unjust charges and exposing and disciplining those who have abused their office is not fulfilled where uncharged conduct forms the basis of its published determination. Due process requires that petitioner not be deprived in this proceeding of his interest in continuing as a judge because of the uncharged misdeeds.

(Internal citations omitted). Here, no complaint was made, and no evidence was presented, that Justice Plass demonstrated bias in his processing of the pleas by mail. In short, his processing of the mailed-in guilty pleas was not an abuse of his office. Rather, as Referee North found, it was a "reasonable exercise of judicial discretion" that advanced the public interest without conferring any benefit on Justice Plass. (Mitigating Factors, p. 27, pars. 55, 57).

As Referee North found:

> 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. 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. Violators had already pled guilty. Respondent had no personal dealings with the violators. None appeared before him in court. 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…".

Even where an adjudicator has a disqualifying conflict of interest, he or she must adjudicate a matter in the absence of any alternative. See, e.g., Center for Jud. Accountability, Inc. v. Cuomo, 167 A.D.3d 1406, 1408 (3rd Dept. 2018). In arguing that it was not necessary for Justice Plass to handle the backlog of mailed-in guilty pleas, Commission counsel inconsistently asserts that Justice Plass could have sought the assistance of the Supervising Judge so that the mailed-in guilty pleas could be reassigned to a different judge but, at the same time, accepts Justice McArthur's testimony that the Supervising Judge would not assist her in arranging coverage for her on-call duties when needed.

Counsel for the Commission characterizes the unassailed testimony that Justice McArthur was "outright refusing" to handle the backlog of mailed-in guilty pleas as a "claim". To the contrary, it was uncontroverted evidence. The Commission did not recall Justice McArthur to rebut the testimony, as it could have done. It is reasonable to conclude that Justice McArthur was not recalled because her testimony would not have supported counsel's argument, or because of

the extent to which her credibility had been damaged by her previous hearing testimony.

1. Matter of Muller

Commission counsel cites Matter of Muller, 2026 Ann. Rep. of NY Commn. on Jud. Conduct (publication forthcoming),[1] to support the argument that disposition of the mailed-in guilty pleas should be regarded as an aggravating factor. However, Matter of Muller is distinguishable and instructive.

a. Conduct of Justice Muller

In Muller, a Supreme Court Justice was censured for (i) presiding over a case (the "Minkler matter") involving a defendant whose law firm held a campaign fundraiser for the respondent, and at which one of the partners was a member of the respondent's re-election committee, (ii) presiding over numerous cases involving attorneys from four law firms that were involved in fundraising for his campaign, and (iii) presiding over three cases in which his campaign committee Finance Chair and Finance Co-Chair appeared as attorneys. The respondent denied a recusal motion in the Minkler matter, despite having received an opinion from the Advisory Committee on Judicial Ethics advising that respondent was disqualified, subject to remittal, from presiding over matters involving defense

[1] Available at ttps://cjc.ny.gov/Determinations/M/Muller.Robert.J.2025.03.28.DET.pdf.

counsel and his law firm, including partners and associates, during the course of his judicial campaign. The respondent did not disclose his receipt of the advisory opinion until after his re-election, at which time he denied the recusal motion. The Commission on Judicial Conduct noted that the respondent's failure to disclose his receipt of the advisory opinion until after his re-election compounded his misconduct, quoting the Third Department's decision reversing the order denying the recusal motion, Minkler v. D'Ella, Inc., 223 AD3d 980, 982 (3rd Dept. 2024) ("As judges need to avoid even the appearance of impropriety, Justice Muller should have disclosed the JCEC letter upon receipt and recused from the matter as soon as possible").

b. *Conduct of Justice Plass Compared*

The misconduct of Justice Muller was motivated by his self-interested relationship with campaign fundraisers. Unlike Justice Muller, Justice Plass had no personal relationship with any defendant whose mailed-in guilty pleas he processed, and no personal interest in any of the matters. Unlike the respondent in Muller, he did not act surreptitiously. As Referee North noted:

> 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 vehicle and traffic tickets by imposing the fines on the outstanding tickets with the assistance of Magill'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.

Justice Plass processed the mailed-in guilty pleas because Justice McArthur, in protest over not receiving a raise her salary, refused to do so, and the accumulated backlog of mailed-in guilty pleas was preventing members of the public from gaining employment and entering the military.

Justice Plass did not adjudicate the guilt of any defendant, and no defendant appeared before him. No claim was made of bias in his handling of the matters, all of which involved the imposition of fines for traffic violations within the sentencing range published in *Magill's Vehicle & Traffic Manual for Local Courts*.

It should be noted that Justice Muller, whose misconduct was repeated, knowing, and surreptitious, was *censured*. The improper campaign statements made by Justice Plass were never repeated, were made without knowledge of the prohibition against pledges or promises, and were open and transparent. The processing by Justice Plass of the mailed-in guilty pleas occurred on one afternoon only. If the Commission determines that a sanction is warranted here, it should impose a sanction less severe than the censure imposed on Justice Muller – it should impose the less severe sanction of admonishment.

This investigation is, and should be, about a single campaign ethics violation only. It is not about the protected recusals that Justice Plass made in accordance

with Advisory Opinion 23-158, nor is it about the uncharged processing of pleas by mail in August 2024.

III.

REMOVAL WOULD BE DISPROPORTIONATE TO THE FACTS AND INCONSISTENT WITH PRIOR DETERMINATIONS

Even among serious acts of misconduct, there are degrees of seriousness. A review of the published judicial decisions and determinations of the Commission indicate that no judge has been removed for a single campaign violation, and that removal is not warranted here. The judicial decisions and Commission determinations that follow are organized by sanction (removal, censure and admonition) and, within those categories, in reverse chronological order.

A. Judicial Decisions Resulting in Removal:

1. Matter of Ayres

In Matter of Ayres, 30 NY3d 59 (2017), a Town Justice was removed for repeatedly initiating *ex parte* conversations in an attempt to influence a favorable disposition of his daughter's traffic ticket.

a. Conduct of Justice Ayres

The Ayres court found that:

> … it was improper and a violation of petitioner's ethical duty for him to use his judicial position to interfere in the disposition of his daughter's traffic ticket. It was further improper for petitioner to tell the prosecutor that in his opinion and that of his colleagues the matter should be dismissed. By these actions petitioner did more than act as would any concerned parent, as he now maintains. Instead, he used his status to gain access to court personnel

> under circumstances not available to the general public, and, in his effort to persuade the prosecutor to drop the matter, gave his unsolicited judicial opinion. Furthermore, petitioner's imperious and discourteous manner towards the prosecutor on the case undermined the integrity of the judiciary. Even during the course of the Commission's proceedings petitioner exhibited no insight into the impropriety of his conduct. For example, he used paternalistic and infantalizing terms, referring to the prosecutor as "girl" and "kid," colloquialisms that were disrespectful and inappropriate.

The court noted that:

> As to the proper disposition for judicial misconduct, removal is an extreme sanction and should be imposed only in the event of truly egregious circumstances, and should not be ordered for conduct that amounts simply to poor judgment, or even extremely poor judgment. Whether a judge's behavior crosses the line of what constitutes "truly egregious" conduct is a fact-specific inquiry because judicial misconduct cases are, by their very nature, sui generis. A guiding principle in our assessment is that the 'truly egregious standard is measured with due regard to the higher standard of conduct to which judges are held. When a judge intervenes in another judge's courtroom, it compromises the court system as a whole. Thus, as a general rule, intervention in a proceeding in another court should result in removal. The inability to recognize the seriousness of one's misconduct and the failure to heed a prior warning are significant aggravating factors, and can be grounds for removal as well.

(Internal quotations and citations omitted).

b. *Conduct of Justice Plass compared*

In contrast to the conduct of Justice Ayres, the conduct of Justice Plass on the bench has been exemplary, as Referee North found:

> 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".
>
> …
>
> 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.

(Discussion 5, Mitigating Circumstances (e) Activity on the Bench, p. 18-19).

2. <u>Matter of Simon</u>

In <u>Matter of Simon</u>, 28 NY3d 35 (2016), a Justice of Town and Village Courts was removed for "truly egregious" pattern of misconduct that militated against his assertion that the misbehavior complained of would not be repeated if he was allowed to remain on the bench.

a. *Conduct of Justice Simon*

> The record reflected that, among other things, petitioner used a sanction—a tool meant to "shield" from frivolous conduct—as a "sword" to punish a legal services organization for a perceived slight in an inexcusable and patently improper way. The record was also replete with instances in which petitioner used his office and standing as a platform from which to bully and to intimidate, and he repeatedly threatened to hold various officials and employees of the Village in contempt without cause or process. Significantly, petitioner's hectoring extended beyond the courthouse inasmuch as he willfully injected himself into the political process involving the election of an office other than his own. Petitioner's misconduct apparently was tempered only by the intervention of the Commission, and he appeared unrepentant and evasive at the hearing held on the matter, testifying falsely on at least two occasions in an attempt to minimize his misconduct.

b. *Conduct of Justice Plass compared*

By contrast, Justice Plass engaged in no misconduct on the bench. Rather than use his office to bully and intimidate, the conduct in office of Justice Plass has been "exemplary".

> 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.

(Conclusions of Law, p. 30, par. 6). Unlike Justice Simon, he was truthful and repentant in his testimony before the Commission.

3. Matter of Conti

In Matter of Conti, 70 N.Y.2d 416 (1987), a Town Justice was removed for fixing tickets, altering a ticket and for dishonesty in his testimony before the Commission.

a. *Conduct of Justice Conti*

> The justice was charged with misconduct in connection with the disposition of 2 speeding tickets and with having improperly dismissed, or adjourned in contemplation of dismissal, some 31 cases without having given notice to the prosecutor. The commission determined that the justice should be removed from judicial office. The court held that that the justice's conduct demonstrated a level of dishonesty and lack of judgment that was unacceptable for a member of New York's judiciary, and it accepted the determined sanction of removal. The court rejected the justice's contention that the ticket-fixing charges were not convincingly established by the evidence. As the credible evidence showed, he not only "fixed" speeding tickets on two separate occasions, but he also compounded his offense by his dishonesty in altering one of the tickets and then telling a patently false story when called upon to explain his conduct to the commission. He demonstrated an unacceptable degree of insensitivity to the demands of judicial ethics when he asserted his view that he could properly adjudicate his personal attorney's traffic violation case because a dismissal of the charges was anticipated.

The Conti court reasoned that:

> We have previously held that ticket-fixing is such a serious impropriety that even a single isolated incident can serve as a basis for removal, although there is no per se rule requiring removal in every case. Here, as the credible evidence shows, petitioner not only "fixed" speeding tickets on two separate occasions, but he also compounded his offense by his dishonesty in altering one of the tickets and then telling a patently false story when called upon to explain his conduct to the Commission. As yet a further aggravating circumstance, petitioner demonstrated an unacceptable degree of insensitivity to the demands of judicial ethics when he asserted his view that he could properly adjudicate his personal attorney's traffic violation case because a dismissal of the charges was anticipated. Indeed, even if it were true that the speeding ticket issued to petitioner's attorney had to be dismissed because of a problem with the radar, petitioner's decision to handle the matter himself evidenced a serious lack of judgment, since it led

> to both an appearance of impropriety and the potential for a conflict of interest.

(Citations omitted).

b. *Conduct of Justice Plass compared*

Certainly, the statements that Justice Plass made in his campaign flyer, while improper, did not rise to the level of seriousness of ticket-fixing. Further, Justice Plass self-reported, has consistently admitted his violation of the rule against pledges or promises, and Referee North properly found that Justice Plass "evinced a reasonable sense of remorse and contrition for his conduct". (Mitigating Factors, p. 27, par. 58). Justice Plass repeatedly expressed remorse in his testimony at the hearing:

> A. I've learned the error of my ways and how a Judge is supposed to act. If I had this to do over again, Mr. Arnone, I would never write that.
>
> Q. Why wouldn't you write it?
>
> A. Because it's not allowed. You've showed that you're not capable – you wait, that's – I misspoke – It could give the appearance that I'm not capable of being fair to Judge you.

(Tr. 3/25/25, p. 98, ln. 6 – 12).

> A. First and foremost, I must take the time to express how upset I am with myself and how truly sorry I am for making this mistake. As we all know, ignorance is no defense.

(Tr. 3/25/25, p. 125, ln. 9-1).

At the preliminary hearing conducted on April 3, 2024, Justice Plass stated that:

A. Could I have done it better? Yes. Did I make a mistake? 100 percent. I never thought that someone would think by these things that I am a horrible person and am biased against every person that's on here. That was not my intention. However, I do realize that, you know, there are some people that probably would question and look at it. And one person is probably too many, according the rules of the Judicial system. I do get it. I understand. I mean, I can't take them back.

(Tr. 3/25/25, p. 62, ln. 18-25).

Q. And you recognize the pledge was inconsistent with your Judicial obligation, even as a candidate, of impartiality?

A. Yeah. Again, that's one of those – that's one of those things that was a little confusing to me. But yes. I do understand what the rules are now. And clearly, it's a mistake that – like I said, I turned myself in for this card. I clearly knew that after listening to – I think her name was Laura something – I clearly knew that I had made an error in judgment and a mistake. I mean, I used the word "pledge". That's the dumbest thing to write out of the whole card. Right? So that's clear it's a bad mistake. And I'm sorry.

4. <u>Kuehnel v. State Comm'n on Jud. Conduct</u>

In <u>Kuehnel v. State Comm'n on Jud. Conduct</u>, 49 NY2d 465 (1980), a

Village Justice was removed for truly egregious misconduct.

a. <u>*Conduct of Justice Kuehel*</u>

As petitioner was leaving a tavern on the evening of May 5, 1978, detained four youths whom he suspected of breaking glass in an adjacent parking lot. When the questioning did not proceed to his satisfaction, petitioner ordered the juveniles into a nearby grocery store for the purpose of calling the police. As he ushered the youths into the store, petitioner struck one of them, age 13, in the back of the head causing the latter to fall forward with such force that his head struck a bulletin board or doorframe. Although petitioner denied the blow, the credible evidence indicates otherwise.

Summoned to the grocery by petitioner, a police officer escorted the youths to the village police station. Prior to transporting them, the patrolman

searched the parking lot but could find no evidence of broken glass. Nor was any glass discovered by an employee of the store who had examined the lot previously.

At the station house, petitioner's conduct was even less restrained. Upon entering the station, petitioner proceeded to upbraid the youths in a most injudicious manner. His language was vulgar and derogatory, his manner taunting and hostile. He uttered particularly demeaning comments concerning an identifiable ethnic group and stated that if he ever saw one of the youths before his court, he would send her to jail. While leaving, petitioner, presumably irritated by the attitude of the four youths, was prompted to vent his displeasure by intentionally, and without any justifiable provocation, striking one of them, age 16, in the face, causing his nose to bleed. Following this assault, petitioner left the police station without apology.

Some two or three weeks later, petitioner met with this boy and his father to discuss the incident. Petitioner explained that the assault had been unintentional, apologized to the youth and offered to allow the boy to strike him. Upon declination of the offer, petitioner proposed the execution of a general release. Ultimately, petitioner paid the youth $ 100 in return for which he and his father executed a release purportedly relieving petitioner, both individually and in his capacity as Village Justice, from any liability arising out of the incident at the police station.

b. *Conduct of Justice Plass compared*

Clearly, the violent, vulgar and racist misconduct of Justice Kuehnel, and his direct threat to send the youths to jail if any of them ever appeared in his court, was on an order significantly more severe than the conduct of Justice Plass, a non-lawyer and first time judicial candidate who, on a single occasion, improperly but ignorantly mimicked the campaign flyers of other candidates for public office.

5. Matter of Astacio

In Matter of Astacio, 32 N.Y.3d 131 (2018), a City Judge was removed for criminal misconduct in her personal activities, judicial misconduct in the discharge of her official duties, and a failure to take responsibility for her actions.

a. Conduct of Justice Astacio

> Petitioner's misconduct in her personal activities stemmed from her conviction for a misdemeanor offense of driving while intoxicated, for which she was sentenced to a one-year conditional discharge. She was discourteous, sought preferred treatment from the arresting officers, and violated the terms of her conditional discharge by ignoring orders of the court and leaving the country for an extended vacation without notice to the court or her lawyer. After a hearing on her second violation of her conditional discharge, petitioner's conditional discharge was revoked, and she was re-sentenced to 60 days' incarceration and three years' probation.
>
> Petitioner also violated the Rules Governing Judicial Conduct in the course of exercising her judicial duties when she failed to disqualify herself from presiding over the arraignment of a former client and attempted to exercise her discretion to have his case transferred in a manner which she thought might benefit him. On other occasions, petitioner made discourteous, insensitive, and undignified comments before counsel and litigants in court.

The Court concluded that Judge Astacio had not genuinely accepted personal responsibility for her misconduct, and that, absent removal, more of the same would ensue.

b. Conduct of Justice Plass compared

By contrast here, Justice Plass did not engage in criminal misconduct, did not improperly intervene in a matter on behalf of a litigant with whom he had a

personal or professional relationship and, unlike Justice Astacio, he "evinced a reasonable sense of remorse and contrition for his conduct", as Referee North properly found. (Discussion, p. 18, par. (d)). Unlike Judge Astacio, Justice Plass has demonstrated by his exemplary performance on the bench, and his consistent expressions of remorse, that his misconduct is unlikely to be repeated, and "has demonstrated that he would make an excellent judge." (Mitigating Factors, p. 27, par. 58).

Judicial Decision Resulting in Censure

1. Matter of Watson

In Matter of Watson, 100 NY2d 290 (2003), the Court rejected a determination by the Commission that a City Court Judge should be removed from judicial office, and reduced the sanction to a censure.

a. Conduct of Judge Watson

Judge Watson made improper statements published in two newspapers, two campaign advertisements, a letter to law enforcement personnel, and a campaign letter. The improper statements characterized Judge Watson as a "tough judge who would be tough on crime" and misleadingly blamed his incumbent opponents for an increase in crime.

> Statements made by petitioner, while a candidate for a City Court judgeship, in which he promised to "work with" and "assist" police and other law enforcement personnel in deterring crime … not only expressed a bias in favor of the police and against those accused of crimes, but also amounted to

> a pledge to engage in conduct antithetical to the judicial role because judges do not "assist" other branches of government. In addition, petitioner singled out for biased treatment defendants charged with drug offenses who reside outside of the city. His statements were not isolated or spontaneous remarks but were repeated throughout his campaign, both in campaign materials he generated and in his written statements to the media, and effectively constituted a promise to aid law enforcement rather than apply the law neutrally and impartially.

Nevertheless, the Watson court concluded that:

> The appropriate sanction for petitioner City Court Judge, who made campaign statements promising to "work with" and "assist" police and other law enforcement personnel in deterring crime… is censure. Petitioner expressed remorse and acknowledged exercising extremely poor judgment in the exercise of his campaign, which he attributed in part to his inexperience as a candidate. Although his transgressions are serious, his continued performance in judicial office does not presently threaten the proper administration of justice, nor has he irredeemably damaged public confidence in his own impartiality or that of the state judiciary as a whole.

b. *Conduct of Justice Plass compared*

Unlike Judge Watson who repeatedly made improper campaign statements, Justice Plass distributed a single campaign flyer containing improper statements. The improper statements were immediately removed from a second printing of the flyer and never repeated. Justice Plass did not unfairly characterize the conduct of his incumbent electoral opponents.

However, like Justice Watson, he expressed remorse and acknowledged exercising poor judgment in making the statements based on his ignorance and inexperience. Like Justice Watson, his continued performance in judicial office does not threaten the proper administration of justice, nor is there any evidence, or

reason to believe that he irredeemably damaged public confidence in his own impartiality or that of the state judiciary as a whole.

C. Commission Determinations Resulting in Censure:

(See also, Matter of Muller, discussed *supra*.)

1. Matter of VanWoeart

In Matter of VanWoeart, 2021 Ann. Rep. of NY Commn. on Jud. Conduct at 329, a Town Justice was censured for improper statements in campaign advertisements, leaflets and Facebook posts.

a. Conduct of Justice VanWoeart

Justice VanWoeart ran a campaign advertisement comparing the amount of revenue from court proceedings that she generated to the amount generated by her incumbent electoral opponent. Surrounding a pie chart was a statement that the town "can't afford another 4 years of [Justice VanWoeart's incumbent electoral opponent]. Justice VanWoeart also produced and distributed a campaign brochure and leaflets making similar statements, and clicked a "Like" button on a post to her campaign Facebook page stating "Michelle VanWoeart you won??? YESSSSSSSS congratulations!!!!!! Time to take out the trash!! #amen #outwiththetrash #sorrynotsorry." The use of the word "trash" was a reference to her defeated incumbent electoral opponent. Justice VanWoeart replied "Thank you" to a comment to her post stating ""Great job, Princetown!! BUT, Dirt Bag Norm will

try to find some obscure line to keep going ….. don't let your guard down on this SH*T HE*D." Justice VanWoeart published a post stating that the flyers of the defeated incumbent were "packed full of lies" and clicked the "Like" button on a comment stating "I'd like to shove the flyers up [the incumbent's] butt!" Justice VanWoeart also clicked the "Like" button on a post containing a "gif" image of a man throwing a bag of trash down a driveway and into a trash can, with the statement, "I knew you had this! Congratulations!! The trash has been taken out!"

Previously, Justice VanWoeart was censured for failing to expeditiously transfer from her court tickets issued to herself and her sons for violations of a dog-control ordinance, sent improper messages to the animal control officer and the judges of the transferee court, and failed to maintain proper records of the tickets. 2013 Ann. Rep. of NY Commn. on Jud. Conduct at 316.

b. *Conduct of Justice Plass compared*

Unlike in Matter of VanWoeart, Justice Plass distributed a single campaign flyer making improper statements that he never repeated. The statements made by Justice Plass did not unfairly characterize the conduct of his incumbent electoral opponents and did not suggest that his decisions would be made for the purpose of generating revenue. Justice Plass has never previously been disciplined.

2. Matter of Huttner

In Matter of Huttner, 2002 Ann. Rep. of NY Commn. on Jud Conduct at 113, a Supreme Court Justice was censured for his active involvement in litigation in which he had a personal interest.

a. Conduct of Justice Huttner

Justice Huttner actively participated in litigation involving a cooperative corporation's board of directors of which he was a member, despite his knowledge of an Opinion of the Advisory Committee on Judicial Ethics stating that a judge may serve as an officer of a cooperative board of directors, provided such service does not involve the judge in litigation. The judge signed five affidavits containing legal arguments, took no steps to prevent his name and judicial position from being used in the matter, participated in a settlement conference, told restaurant managers employed by the litigation adversary that the case could be settled if the restaurant were represented by a difference law firm, and gave them a PBA card bearing the word "JUDGE". Justice Huttner's improper involvement in the matter caused the presiding judge to recuse herself because her husband had appeared before Justice Huttner.

b. Conduct of Justice Plass compared

In stark contrast to the misconduct of Justice Huttner, here Justice Plass was not accused of any misconduct on the bench, nor intervention in any matter

pending before another judge. Unlike Justice Huttner, whose disregard of the opinion of the Advisory Committee on Judicial Ethics was motivated by his own personal interest as a member of the cooperative board, the actions of Justice Plass in handling the mailed in guilty pleas was motivated by his devotion to public service.

3. Matter of DiBlasi

In Matter of DiBlasi, 2002 Ann. Rep. of NY Commn. on Jud. Conduct at 87, a Supreme Court Justice was censured for misconduct in office.

a. Conduct of Justice DiBlasi

Justice DiBlasi failed to advise the Administrative Judge of his planned absence from court on 31 consecutive half days, failed to disqualify himself from presiding over 10 matters despite having a romantic relationship with an attorney appearing before him, attempted to undermine the attorney's supervisor, attempted to bar the supervisor from appearing in his court, and attempted to have the supervisor transferred to another county.

b. Conduct of Justic Plass compared

The misconduct of Justice DiBlasi on the bench stands in stark contrast to the conduct of Justice Plass, about whom Referee North found that, while serving on the bench, he "has performed in an exemplary fashion." (Discussion 5, Mitigating Circumstances (e) Activity on the Bench, p. 18-19).

4. Matter of Birnbaum

In Matter of Birnbaum, 1998 Ann. Rep. of NY Commn. on Jud. Conduct at 11, a Civil Court Judge was censured for an improper campaign brochure evincing a bias in favor of tenants.

a. Conduct of Judge Birnbaum

Judge Birnbaum's approved a campaign brochure mailed to approximately 8,000 voters, all of whom had been identified as tenants. The brochure stated that voters had a clear choice between himself, a tenant, and his opponent, a landlord. The brochure contained photographs and quotations favorable to him from tenants who had appeared before him in Housing Court, including tenants in a case that was pending before him at the time. The tenants who participated in the brochure did so at Judge Birnbaum's request. He accompanied the photographer to the building where the tenants lived. The brochure gave the impression that Justice Birnbaum would favor tenants over landlords in matters before him. By soliciting and using testimonials from tenants whose cases he had handled, and from a tenant whose case was still pending before him, he compromised his impartiality.

b. Conduct of Justice Plass Compared

Unlike in Matter of Birnbaum, Justice Plass did not demonstrate actual bias toward a particular litigant in a case pending before him. The single, improper

campaign flyer distributed by Justice Plass did not comment on any particular case past or present, nor any particular litigant.

D. Commission Determinations Resulting in Admonishment:

1. Matter of McGrath

In Matter of McGrath, 2011 Ann. Rep. of NY Commn. on Jud. Conduct at 10, a Supreme Court Justice was admonished for a campaign letter that conveyed bias.

a. Conduct of Justice McGrath

Justice McGrath prepared, signed and distributed campaign letters to addressed to "Fellow Pistol Permit Holders" stating that "As your County Judge for the past 14 years, I have been responsible for all pistol permits in Rensselaer County. **My pistol permit is very important to me as I know yours is to you.** I work closely on a daily basis with the pistol permit clerk… to make sure all permits and amendments are handled in a timely fashion. Since 1994, I have signed more than 20,000 permits and amendments. I also work closely with all of the Rod and Gun clubs…." (Emphasis in original). The letter also stated that "As Supreme Court Justice… **I will still be responsible for all pistol permits in Rensselaer County"** (Emphasis in original), and "I ask for your support and vote on November 4th and look forward to serving the Pistol Permit Holders for another 14 years." The letter was sent to approximately 7,000 recipients provided to Justice

McGrath by the New York State Rifle and Pistol Association. The statement that Justice McGrath, if elected to the Supreme Court, would still be responsible for all pistol permits in Rensselaer County was a misrepresentation, and improperly conveyed that he would favorably consider pistol permit applications.

Previously, Justice McGrath was admonished for making comments about a highly publicized murder case during a television interview on a national television program. 2005 Ann. Rep. of NY Commn. on Jud. Conduct at 13.

b. *Conduct of Justice Plass Compared*

Unlike in Matter of McGrath, Justice Plass made no deceitful misrepresentation in his campaign flyer; his flyer was not mailed to a select group chosen by a special interest group for their susceptibility to the improper appeal for votes; and Justice Plass had never previously been sanctioned by the Commission.

2. Matter of Chan

In Matter of Chan, 2010 Ann. Rep. of NY Commn. on Jud. Conduct at 124, a Civil Court Judge was admonished for improper campaign activities.

a. *Conduct of Judge Chan*

Judge Chan personally solicited campaign contributions, misrepresented in her campaign literature that she had been endorsed by the *New York Times*, and displayed pro-tenant bias in campaign literature stating that, at a lecture she planned to give with a veteran tenant attorney and activist, she would "show you

how to stick up for your rights, beat your landlord, … and win in court!". Judge Chan acknowledged her misconduct and took immediate remedial action upon being made aware of the violation.

b. *Conduct of Justice Plass compared*

Unlike Judge Chan, Justice Plass made no misrepresentations in his campaign flyer.

However, like Judge Chan, he acknowledged his improper statements and took immediate remedial action. Upon learning of a newspaper article criticizing his campaign flyer, Justice Plass contacted the Commission to inquire whether he was the subject of a pending complaint. He immediately printed a new flyer with the improper statements removed. Then, upon learning at the "Taking the Bench" training program that his campaign flyer violated the rule against pledges or promises, he sought and obtained an opinion from the Advisory Committee on Judicial Ethics before taking the bench in February, 2024.

3. Matter of Shanley

In Matter of Shanley, 98 N.Y.2d 310 (2002), a Town Justice was admonished for misrepresenting her education.

a. *Conduct of Justice Shanley*

Justice Shanley circulated campaign literature stating she was a "graduate" of "Judicial Law Course[s]" at Albany Law School, St. Lawrence University and

Columbia/Greene Community College. In reality, she had a high school diploma. The courses referenced in the campaign literature related to the Court Clerks' Continuing Education Program sponsored by the Office of Court Administration. She had taken the courses at the college campuses in conjunction with her job as a court clerk. In addition, Justice Shanley's campaign literature identified her as a "Law and order Candidate." The Commission determined that both actions by Justice Shanley warranted the sanction of admonishment. On appeal, the Court sustained the sanction as to the misrepresentation of her education, but reversed the Commission's determination that the campaign literature identifying Justice Shanley as a "Law and order Candidate" was a representation compromising judicial impartiality or warranted the imposition of a sanction.

b. *Conduct of Justice Plass Compared*

The improper campaign flyer distributed by Justice Plass did not contain any deceitful misrepresentation.

4. Matter of Hafner

In Matter of Hafner, 2001 Ann. Rep. of NY Commn. on Jud. Conduct at 113, a County Court Judge was admonished for improper campaign activity.

a. *Conduct of Judge Hafner*

While a candidate, Judge Hafner ran a print advertisement that stated: "Are you tired of seeing career criminals get a 'slap' on the wrist? So am I…." He also

reviewed and approved campaign literature issued by a political party chairman that attacked his opponent's record in dismissing cases and stated: "Soft judges make hard criminals!"

b. *Conduct of Justice Plass compared*

Although the campaign flyer distributed by Justice Plass made improper statements about drug dealers, domestic violence offenders, and repeat offenders, he neither made nor approved any other improper statements, and did not attack his electoral opponents or their judicial records.

5. Matter of Mullin

In Matter of Mullin, 2001 Ann. Rep. of NY Commn. on Jud. Conduct at 13, a District Court Judge and Acting Supreme Court Justice was admonished for campaign literature that misleadingly implied that he was an incumbent Supreme Court Justice, improper political statements, and improper political contributions.

a. *Conduct of Judge Mullin*

Judge Mullin failed to prevent the widespread distribution of a Catholic newspaper advertisement that identified him as a Supreme Court Justice, and as "The Authentic Right to Life Candidate. The advertisement stated "Life… The Verdict for All God's Children" and "Judge Mullin Needs and Deserves the Support of All Who Cherish Life." Judge Mullin authorized his campaign committee to improperly purchased ten tickets to a Republican Party fundraising

event and to make an improper contribution to the Right to Life Party. During the Commission's investigation, Judge Mullin obtained a refund of the improper political contributions.

b. *Conduct of Justice Plass Compared*

The single improper campaign flyer distributed by Justice Plass did not contain any misrepresentation. Justice Plass committed no other campaign violation.

6. Matter of LaCava

In Matter of LaCava, 2000 Ann. Rep. of NY Commn. on Jud. Conduct at 13, a Supreme Court Justice was admonished for improper campaign statements made in a letter to members of the Right-to-Life Party and in an interview with a newspaper reporter.

a. *Conduct of Justice LaCava*

Justice LaCava drafted and sent a letter to members of the Right-to-Life Party asserting his "commitment to the sanctity of like form the moment of conception," his "strong moral opposition to the scourge of abortion and the termination of the lives of millions of human beings in the womb" and his "outrage by the continuation of the murderous and barbaric partial birth abortion procedure in this state." In an interview with a newspaper reporter, Justice LaCava stated that he thought abortion was "murder". His remarks were published in the newspaper.

b. *Conduct of Justice Plass Compared*

Justice Plass distributed a single campaign flyer making improper statements that he never repeated. Upon learning that the flyer may have violated the rules governing judicial campaigns, Justice Plass immediately printed and distributed a new flyer omitting the statements.

7. Matter of Polito

In Matter of Polito, 1999 Ann. Rep. of NY Commn. on Jud. Conduct at 129, a Supreme Court Justice was admonished for graphic and sensational campaign advertisements.

a. *Conduct of Justice Polito*

Justice Polito ran a television advertisement that stated, "Violent crimes in our streets." And portrayed a masked man with a gun attacking a woman outside her car. "The menace of drugs. Sexual predators terrorize our lives." One ad noted Justice Polito's endorsement by several local sheriffs and concluded, "November 5, pull the lever for Bill Polito, and crack down on crime," as a jail door slammed shut. A second television ad proclaimed: "many violent criminals and sexual predators have already visited our criminal justice system. Bill Polito will stick his foot in the revolving door of justice. Bill Polito won't experiment with alternative sentences or send convicted child molesters home for the weekend… Criminals belong in jail, not on the street." Justice Polito also ran a print ad, bearing the

legend, “Crack Down on Crime,” and promising that he would “not experiment with ‘alternative sentencing.’”

b. *Conduct of Justic Plass compared*

Unlike in Matter of Polito, the improper statements that Justice Plass made in his campaign flyer were not graphic or sensational, and they were never repeated. Upon learning that the flyer may have violated the rules governing judicial campaigns, Justice Plass immediately printed and distributed a new flyer omitting the statements. Upon learning at a “Taking the Bench” training program of the rule against pledges or promises, he immediately sought an opinion from the Advisory Committee on Judicial Ethics, and waited for the opinion before taking the bench in the second month of his term, February 2024.

8. Matter of Maislin

In Matter of Maislin, 1999 Ann. Rep. of NY Commn. on Jud. Conduct at 13, a Town Justice was admonished for two conversations with a newspaper reporter in which he made comments about cases pending before him, and improper campaign advertisements.

a. *Conduct of Justice Maislin*

In the first of two newspaper interviews, Justice Maislin referred to two cases in which his decisions were reversed and remanded. He stated that he continued to believe that his decisions were correct, that disagreed with the

appellate ruling, and stated that "I stand firmly by my ruling." In a second newspaper interview, Justice Maislin stated that he believed that a defendant in a criminal case pending before him was a danger to the community and that the bail that he had set was probably not high enough to keep the defendant in jail. He also ran campaign advertisements that he had "refused to let the Wal-Mart armed robbers, the Berk murderer, the Amherst rapist or the Summer Stalker out on low bail;" stated that he "convicted 88% of those charged with alcohol-related offenses" and depicted drawings of jail cell windows and bars; implied that he would take harsh action against "thieves, burglars, stick-up artists, spouse beaters and repeat drunk drivers" and stated that he "has a special place" for them "called jail"; and used a campaign slogan, "Do The Crime – Do The Time."

b. *Conduct of Justice Plass Compared*

Unlike in the Matter of Maislin, Justice Plass did not demonstrate actual bias toward a particular litigant in any case pending before him. The single, improper campaign flyer distributed by Justice Plass did not encourage disrespect for the authority of an appellate court decision, and did not comment on any pending case or particular litigant.

CONCLUSION

For the foregoing reasons, if the Commission determines that a sanction is warranted, it is respectfully requested that the sanction of admonishment be imposed.

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