

NEW YORK STATE

**COMMISSION ON JUDICIAL
CONDUCT**



**ANNUAL REPORT
2023**

NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT



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NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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March 1, 2023

To Governor Kathy Hochul,
Acting Chief Judge Anthony Cannataro, and
The Legislature of the State of New York:

Pursuant to Section 42, paragraph 4, of the Judiciary Law of the State of New York, the New York State Commission on Judicial Conduct respectfully submits this Annual Report of its activities, covering the period from January 1 through December 31, 2022.

Respectfully submitted,

Robert H. Tembeckjian, Administrator
On Behalf of the Commission

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FOREWORD

For a third consecutive year, the coronavirus pandemic posed challenges for the Commission on Judicial Conduct in 2022, as it did for all of government. As Covid-19 infection rates ebbed and flowed, the Commission continued its hybrid model in which staff rotated into the office part-time and worked from home part-time.

While much agency business returned to “normal” in that many investigative interviews, Commission meetings and disciplinary hearings were in person in-person, many efficiencies discovered during the remote work period were continued, including witness depositions via remote video platforms, disseminating documents over email and utilization of a digitized fax machines.

As a result of these and other adjustments to business-as-usual, the Commission was able to keep abreast of its constitutional responsibilities and processed a record number of complaints in 2022. For example:

- 2,439 new complaints were received and processed during the year, including more than 1,500 submitted electronically through the interactive complaint portal on the Commission’s website.
- 719 preliminary inquiries or full-scale investigations were authorized.
- 25 public dispositions were rendered: 3 removals from office, 12 permanent resignation stipulations, 7 censures and 3 admonitions.
- 27 confidential cautionary letters were issued to judges.

The Commission continues to appreciate the cooperation extended by all who interact with the agency in these unique and challenging times.

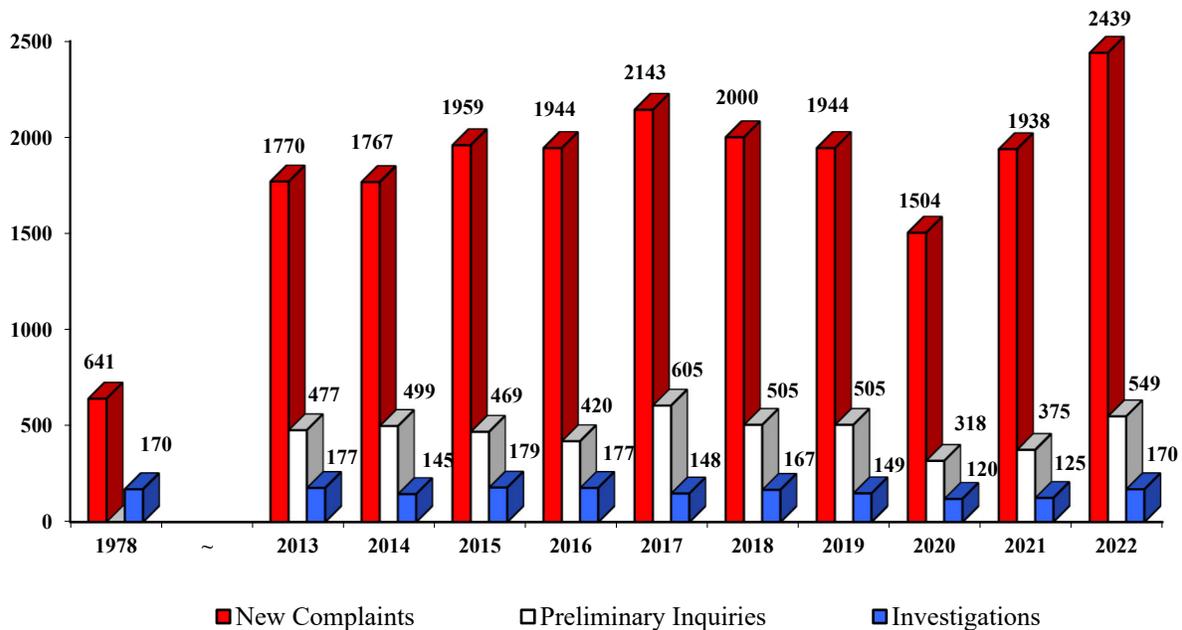
INTRODUCTION TO THE 2023 ANNUAL REPORT

The New York State Commission on Judicial Conduct is the independent agency designated by the State Constitution to review complaints of misconduct against judges and justices of the State Unified Court System and, where appropriate, render public disciplinary determinations of admonition, censure or removal from office. There are approximately 3,500 judicial positions in the system filled by approximately 3,350 individuals, in that some judges serve in more than one court.

The Commission’s objective is to enforce high standards of conduct for judges, who must be free to act independently, on the merits and in good faith, but also must be held accountable should they commit misconduct. The text of the Rules Governing Judicial Conduct, promulgated by the Chief Administrator of the Courts on approval of the Court of Appeals, is annexed.

The number of complaints received annually by the Commission in the past 10 years has substantially increased compared to the first three decades of the Commission’s existence. Since 2013, the Commission has averaged 1,941 new complaints per year, 472 preliminary inquiries and 156 investigations. Last year, 2,439 new complaints were received. Every complaint was reviewed by investigative and legal staff, and a report was prepared for each complaint. All such complaints and reports were reviewed by the entire Commission, which then voted on which complaints merited opening full scale investigations. As to these new complaints, there were 549 preliminary reviews and inquiries and 170 investigations.

This report covers Commission activity in the year 2022.



COMPLAINTS, INQUIRIES & INVESTIGATIONS IN THE LAST TEN YEARS

ACTION TAKEN IN 2022

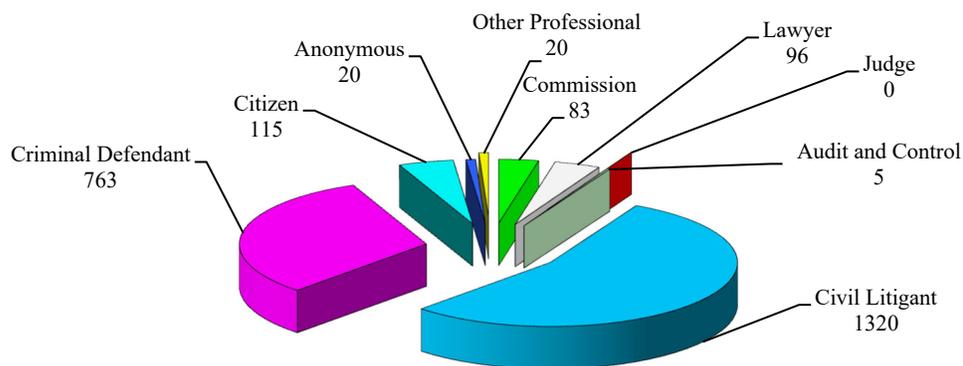
Following are summaries of the Commission’s actions in 2022, including accounts of all public determinations, summaries of non-public dispositions, and various numerical breakdowns of complaints, investigations and other dispositions.

COMPLAINTS RECEIVED

The Commission received 2,439 new complaints in 2022. All complaints are summarized and analyzed by staff and reviewed by the Commission, which votes whether to investigate.

New complaints dismissed upon initial review are those that the Commission deems to be clearly without merit, not alleging misconduct or outside its jurisdiction, including complaints against non-judges, federal judges, administrative law judges, judicial hearing officers, referees and New York City Housing Court judges. Absent any underlying misconduct, such as demonstrated prejudice, conflict of interest or flagrant disregard of fundamental rights, the Commission does not investigate complaints concerning disputed judicial rulings or decisions. The Commission is not an appellate court and cannot intervene in a pending case or reverse or remand trial court decisions.

A breakdown of the sources of complaints received by the Commission in 2022 appears in the following chart.



COMPLAINT SOURCES IN 2022

PRELIMINARY INQUIRIES AND INVESTIGATIONS

The Commission’s Operating Procedures and Rules authorize “preliminary analysis and clarification” and “preliminary fact-finding activities” by staff upon receipt of new complaints, to aid the Commission in determining whether an investigation is warranted. In 2022, staff conducted 549 such preliminary inquiries, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

In 170 matters, the Commission authorized full-fledged investigations. Depending on the nature of the complaint, an investigation may entail interviewing witnesses, subpoenaing witnesses to

testify and produce documents, assembling and analyzing various court, financial or other records, making court observations, and writing to or taking testimony from the judge.

During 2022, in addition to the 170 new investigations, there were 174 investigations pending from the previous year. The Commission disposed of the combined total of 344 investigations as follows:

- 76 complaints were dismissed outright.
- 32 complaints involving 26 different judges were dismissed with letters of dismissal and caution.
- 22 complaints involving 14 different judges were closed upon the judge's resignation, 10 becoming public by stipulation and 4 that were not public.
- 11 complaints involving eight different judges were closed upon vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 38 complaints involving 19 different judges resulted in formal charges being authorized.
- 165 investigations were pending as of December 31, 2022.

FORMAL WRITTEN COMPLAINTS

As of January 1, 2022, there were pending Formal Written Complaints in 17 matters involving 11 judges. In 2022, Formal Written Complaints were authorized in 38 additional matters involving 19 judges. Of the combined total of 55 matters involving 30 different judges, the Commission acted as follows:

- Twenty matters involving 13 different judges resulted in formal discipline (admonition, censure or removal).
- Seven matters involving four different judges were closed upon the judge's resignation from office, two becoming public by stipulation and two that were not public.
- In three matters involving one judge, the Formal Written Complaint was withdrawn. A letter of dismissal and caution was issued with respect to two of the matters and the third matter was dismissed.
- Three matters involving two judges were closed upon the vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 22 matters involving 10 different judges were pending as of December 31, 2022.

SUMMARY OF ALL 2022 DISPOSITIONS

The Commission's investigations, hearings and dispositions in the past year involved judges of various courts, as indicated in the following ten tables.

TABLE 1: TOWN & VILLAGE JUSTICES – 2,110* ALL PART-TIME

	<i>Lawyers</i>	<i>Non-Lawyers</i>	<i>Total</i>
Complaints Received	139	171	310
Complaints Investigated	27	53	80
Judges Cautioned After Investigation	8	2	10
Formal Written Complaints Authorized	6	7	13
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	2	7	9
Judges Vacating Office by Public Stipulation	2	8	10
Formal Complaints Dismissed or Closed	2	0	2

NOTE: Approximately 860 town and village justices are lawyers.

*Refers to the approximate number of such judges in the state unified court system.

TABLE 2: CITY COURT JUDGES – 410, ALL LAWYERS

	<i>Part-Time</i>	<i>Full-Time</i>	<i>Total</i>
Complaints Received	33	324	357
Complaints Investigated	5	45	50
Judges Cautioned After Investigation	1	3	4
Formal Written Complaints Authorized	1	0	1
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	1	0	1
Judges Vacating Office by Public Stipulation	0	0	0
Formal Complaints Dismissed or Closed	0	1	1

NOTE: Approximately 51 City Court Judges serve part-time.

TABLE 3: COUNTY COURT JUDGES – 128, FULL-TIME, ALL LAWYERS*

Complaints Received	283
Complaints Investigated	12
Judges Cautioned After Investigation	4
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

*Includes 14 who also serve as Surrogates, six who also serve as Family Court Judges, and 39 who also serve as both Surrogates and Family Court Judges.

TABLE 4: FAMILY COURT JUDGES – 143, FULL-TIME, ALL LAWYERS

Complaints Received	338
Complaints Investigated	5
Judges Cautioned After Investigation	2
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 5: SURROGATES – 25, FULL-TIME, ALL LAWYERS*

Complaints Received	35
Complaints Investigated	4
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

*Many Surrogates also serve concurrently as Judges of the County and/or Family Court.

TABLE 6: DISTRICT COURT JUDGES – 55, FULL-TIME, ALL LAWYERS

Complaints Received	22
Complaints Investigated	0
Judges Cautioned After Investigation	1
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 7: COURT OF CLAIMS JUDGES – 58, FULL-TIME, ALL LAWYERS

Complaints Received	80
Complaints Investigated	2
Judges Cautioned After Investigation	0
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	0

TABLE 8: SUPREME COURT JUSTICES – 470, FULL-TIME, ALL LAWYERS*

Complaints Received	379
Complaints Investigated	15
Judges Cautioned After Investigation	5
Formal Written Complaints Authorized	1
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	1
Judges Vacating Office by Public Stipulation	2
Formal Complaints Dismissed or Closed	0

* Includes 13 who serve as Justices of the Appellate Term.

**TABLE 9: COURT OF APPEALS JUDGES – 7, FULL-TIME, ALL LAWYERS;
APPELLATE DIVISION JUSTICES – 100, FULL-TIME, ALL LAWYERS**

Complaints Received	135
Complaints Investigated	2
Judges Cautioned After Investigation	1
Formal Written Complaints Authorized	2
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	0
Formal Complaints Dismissed or Closed	1

**TABLE 10: NON-JUDGES AND OTHERS NOT WITHIN THE COMMISSION’S
JURISDICTION***

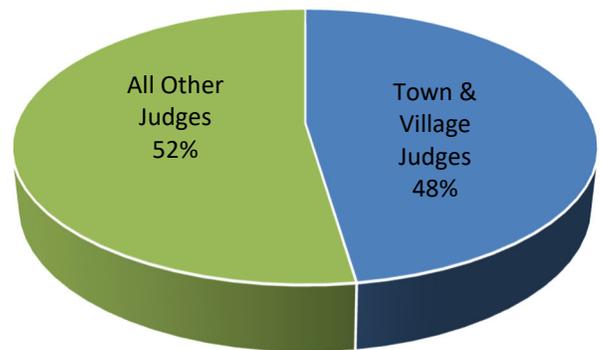
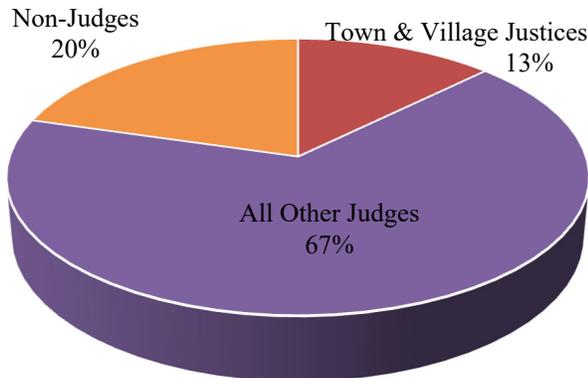
Complaints Received	500
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* The Commission reviews such complaints to determine whether to refer them to other agencies.

NOTE ON JURISDICTION

The Commission’s jurisdiction is limited to judges and justices of the State Unified Court System. The Commission does not have jurisdiction over non-judges, retired judges, judicial hearing officers, administrative law judges (*i.e.* adjudicating officers in government agencies or public authorities such as the New York City Parking Violations Bureau), housing judges of the New York City Civil Court, or federal judges. Legislation that would have given the Commission jurisdiction over New York City housing judges was vetoed in the 1980s.

SUMMARY OF TABLES 1-10



COMPLAINTS RECEIVED BY JUDGE TYPE

**INVESTIGATIONS AUTHORIZED
TOWN & VILLAGE JUDGES v ALL OTHER JUDGES**

FORMAL PROCEEDINGS

The Commission may not impose a public disciplinary sanction against a judge unless a Formal Written Complaint, containing detailed charges of misconduct, has been served upon the respondent-judge and the respondent has been afforded an opportunity for a formal hearing.

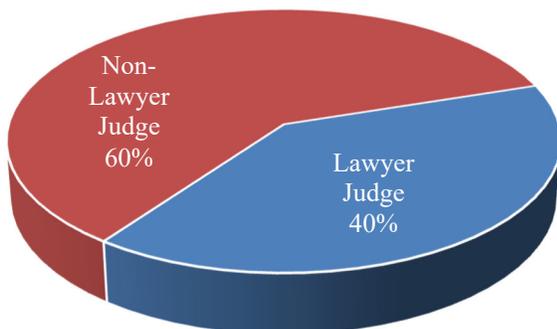
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges, hearings or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement has been rendered.

Following are summaries of those matters that were completed and made public during 2022. The actual texts are appended to this Report in Appendix F.

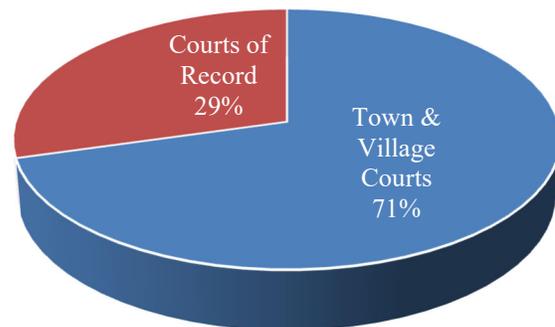
OVERVIEW OF 2022 DETERMINATIONS

The Commission rendered 13 formal disciplinary determinations in 2022: three removals, seven censures and three admonitions. In addition, 12 matters were disposed of by stipulation made public by agreement of the parties (10 such stipulations were negotiated during the investigative stage, and two after a Formal Written Complaint had been served). Fifteen of the judges were non-lawyer judges and 10 were lawyers. Nineteen of the 25 judges were town or village justices, and six were judges of higher courts.

To put these numbers and percentages in some context, it should be noted that, of the roughly 3,500 judges in the state unified court system, approximately 60% are part-time town or village justices. About 60% of the town and village justices, *i.e.* 35% of all judges in the court system, are not lawyers. (Town and village justices serve part-time and need not be lawyers. Judges of all other courts must be lawyers.)



2022 DISPOSITIONS



1978-2022 DISPOSITIONS

DETERMINATIONS OF REMOVAL

The Commission completed three formal proceedings in 2022 that resulted in a determination of removal. The cases are summarized below and the full text can be found in Appendix F.

Matter of David R. Stilson

On January 7, 2022, the Commission determined that David R. Stilson, a Justice of the Alma Town Court, and an Associate Justice of the Andover Village Court, Allegany County, should be removed from office for posting sexist and otherwise sexually charged content on Facebook and engaging in fundraising for the National Rifle Association (NRA). In 2014 the judge did the following on his Facebook account: (1) He posted an image of a woman with the caption, “Boobies Are proof that men can focus on two things at once!” (2) He posted an image listing 10 reasons why “Country Girls are Hotter.” The list included a variety of reasons such as, “Their boobs are real” and “Sex in the woods is way better.” The judge then commented to the post, “Can[']t argue this one bit. Very True.” (3) He posted a meme with an image of a woman tied to a bed by her wrists and ankles and another of a man fishing, with the caption, “SHE ASKED ME TO TIE HER UP AND DO ANYTHING I WANT.” (4) He posted that he was “Looking for a few more friends to attend the Friends of the NRA Banquet in Olean on March 15th” at “\$180.00 each person.” (5) He shared an article from “COPSSUPPORTGUNRIGHTS.COM” entitled “New York Troopers and Sheriffs refusing to Enforce SAFE Act – Cops Support Gun Rights,” with the caption “Come [to] the Friends of The NRA Banquet with me and learn more about this.” The Commission stated that Judge Stilson failed to “promote public confidence in the judiciary” when he made several posts that “objectified and denigrated women and included degrading, vulgar and disturbing images of women that are not appropriate for a judge to be posting publicly.” Judge Stilson, who is not an attorney, did not request review by the Court of Appeals.

Matter of Carlos Gonzalez

On April 13, 2022, the Commission determined that Carlos Gonzalez, a Justice of the Elmsford Village Court, Westchester County, should be removed from office as a result of his misconduct as an attorney, for which he had been suspended from the practice of law for 24 months. In April 2021, the Appellate Division, Second Department, suspended Mr. Gonzalez from the practice of law for a period of six months based upon a finding of professional misconduct by the United States District Court for the District of Connecticut, Western Connecticut. Mr. Gonzalez failed to notify the Appellate Division of the Connecticut discipline in a timely manner, in violation of statute. In December 2021, the Appellate Division again suspended him for engaging in professional misconduct, also finding that he did not accurately describe his disciplinary history to the Attorney Grievance Committee. In determining to remove Judge Gonzalez from the bench, the Commission found that he “engaged in a pattern of professional misconduct which involved six separate client matters,” and that his “professional misconduct and his lack of candor demonstrated that he is unfit for judicial office.” Judge Gonzalez did not request review by the Court of Appeals.

Matter of Robert J. Putorti

On September 9, 2022, the Commission determined that Robert J. Putorti, a Justice of the Whitehall Town Court and the Whitehall Village Court, Washington County, should be removed from office for unjustifiably pointing a handgun at a defendant, then bragging about it and characterizing the incident in racial terms. The judge also participated in prohibited fundraising activities for his local Elks Lodge. In late 2015 or early 2016, while presiding over a criminal matter, Judge Putorti brandished a semi-automatic handgun at a defendant who did not pose an imminent threat to the judge or anyone else. Subsequently, on several occasions, he described the incident to other judges, variously describing the defendant as a “big Black man,” a “large Black man” about 6 feet 9 inches tall and “built like a football player.” (In fact, the defendant was approximately 6 feet tall and weighed 165 pounds.) Although Judge Putorti said he brandished his gun because the defendant approached the bench “too quickly,” and that the police officer who was standing at the bench at the time joked about how quickly he drew his gun, the judge acknowledged that neither the officer nor the Assistant District Attorney who was present corroborated his story. Judge Putorti, who was later required to discuss the incident with his supervising judge, signed a counseling memorandum, agreeing never to display, use or threaten to use a firearm in court except in response to “deadly physical force.” The Commission found that Judge Putorti “also showed his lack of attention to his ethical obligations when he engaged in improper fundraising” by using his personal Facebook account to promote fundraisers for the Whitehall Elks Lodge on at least seven occasions. Judge Putorti, who is not an attorney, requested review by the Court of Appeals, and the matter is pending.

DETERMINATIONS OF CENSURE

The Commission completed seven formal proceedings in 2022 that resulted in public censure. The cases are summarized below and the full text can be found in Appendix F.

Matter of Linda S. Jamieson

On February 11, 2022, the Commission determined that Linda S. Jamieson, a Justice of the Supreme Court, Ninth Judicial District, Westchester County, should be censured for intentionally omitting any information about a \$50,000 cash loan on 13 years of financial disclosure statements. In August 2005, Judge Jamieson lent \$50,000 to Nicholas Natrella, a family friend, but did not report the loan as required until October 2019, after the Commission started its inquiry. (At that point, only about \$11,000 in principal and interest had been repaid.) In 2014, both directly and through intermediaries, Judge Jamieson attempted to get a confession of judgment from Mr. Natrella by calling him and his attorney, and when she learned Mr. Natrella was filing for bankruptcy, she used the prestige of her judicial office to try to get Mr. Natrella’s lawyer to omit the loan from the bankruptcy filing. The lawyer declined to do so despite feeling pressured by the judge, and thereafter she moved to disqualify Judge Jamieson from an unrelated case of hers over which the judge was presiding. The Commission stated: “The public has an interest in the timely and accurate disclosure of a judge’s financial information on the annual financial disclosure form.” The Commission stated that “over the course of 13 years, [Judge Jamieson] repeatedly filed inaccurate financial disclosure forms in violation of her ethical obligations.” The Commission found it “troubling,” that the judge testified that she did not accurately complete her FDFs because

she did not take them “that seriously.” In censuring Judge Jamieson, the Commission noted that the judge had no prior disciplinary history as a judge or an attorney. Judge Jamieson did not request review by the Court of Appeals.

Matter of Scott Okolowicz

On February 17, 2022, the Commission determined Scott Okolowicz, a Justice of the Riga Town Court, Monroe County, should be censured for inaccurately certifying he had not worked on four days he actually performed judicial duties and then accepting \$318.75 in unemployment compensation to which he was not entitled. In 2015, Judge Okolowicz applied for, and was approved to, receive unemployment insurance from the New York State Department of Labor (DOL). He thereafter provided weekly certifications to DOL, as required, reporting each day he worked during the week. For four dates in 2016, he inaccurately certified that he did not work at all, when he had in fact presided over arraignments outside of his regular court hours. Despite clear boldface instructions in the Unemployment Insurance Claimant’s Handbook, which he admitted he did not read, Judge Okolowicz incorrectly believed he did not have to report his judicial work because it had not occurred on regularly scheduled court days. Judge Okolowicz repaid the monies as well as a \$100 civil fine. He had properly reported the money on his income tax returns. In censuring Judge Okolowicz, the Commission noted his contrition. Judge Okolowicz, who is not an attorney, did not request review by the Court of Appeals.

Matter of Raymond J. Kennedy

On August 24, 2022, the Commission determined that Raymond J. Kennedy, a Justice of the Durham Town Court, Greene County, should be censured for invoking his judicial office on behalf of his wife when she was sued in a small claims matter, and cross-examining the plaintiff even though he is not an attorney and was not a party to the proceeding. In December 2018, Judge Kennedy’s wife entered into a pre-lease agreement with potential tenants for a residence she and the judge jointly owned. The matter went to court in a dispute over \$3,000, where Judge Kennedy appeared on his wife’s behalf and gratuitously made references to “[his] court,” such as, “Your Honor, I’ll state that to the court that it’s no secret I’m a judge in another locality...” In censuring Judge Kennedy, the Commission noted that the judge’s actions “created the appearance that he expected special treatment and deference because of his status as a judge.” Judge Kennedy did not request review by the Court of Appeals.

Matter of Kathleen L. Robichaud

On August 24, 2022, the Commission determined that Kathleen L. Robichaud, a part-time Judge of the Rensselaer City Court (Rensselaer County) who also practices law, should be censured for improperly asserting her judicial office while representing a client. In connection with her law practice, Judge Robichaud used an email address that specifically referred to her being a judge: “judgeklr@...” In 2019, she used that email address on numerous legal documents in seven different courts while representing a client on a variety of traffic tickets and on a child support and custody matter. In addition, on a Consent to Change Attorney form that required notarization, she crossed out the words “Notary Public” and wrote “City Court Judge” beneath her signature, erroneously believing she could witness and sign the form as a judge in lieu of being a notary public, despite the fact that she was neither an independent third party nor disinterested in the

transaction. In 2007, Judge Robichaud was admonished for delay in rendering decisions in 22 matters and failing to report the delays to court administrators as required. In censuring Judge Robichaud, the Commission considered her prior discipline an aggravating factor, noting that: “Given her prior admonition by the Commission, [Judge Robichaud] should have been attentive to her obligation to comply with the Rules.” Judge Robichaud did not request review by the Court of Appeals.

Matter of Gary P. Arndt

On September 28, 2022, the Commission determined that Gary P. Arndt, a Justice of the Franklin Town Court, Delaware County, should be censured for various misconduct in numerous cases, such as engaging in prohibited communications with only one party, and for failing to follow fundamental legal procedures. From 2018 to 2019: (1) In four traffic infraction matters, Judge Arndt solicited and/or received ex parte information from the defendants in the absence of a prosecutor; (2) In two small claims matters, Judge Arndt spoke with either the plaintiff or defendant after the other party had left the courtroom. In one case, he told the plaintiff how he planned to rule, and in the other he dismissed the matter without notifying the parties or issuing a decision that could be appealed; (3) Judge Arndt failed to advise a defendant of his right to counsel; (4) Judge Arndt reduced a speeding charge without the required notice to and consent of the prosecutor; and, (5) In three small claims matters, Judge Arndt failed to administer the required oath or affirmation to the witnesses. In censuring Judge Arndt, the Commission noted that he “has been a judge since 2010 and should be fully familiar with his ethical obligations including the requirements to avoid ex parte communications and to abide by the law.” The Commission also noted that Judge Arndt acknowledged that his conduct was improper and that he completed several continuing judicial education courses which were part of the negotiated resolution of the misconduct charges against him. Judge Arndt, who is not an attorney, did not request review by the Court of Appeals.

Matter of Terry B. Elia

On September 28, 2022, the Commission determined that Terry B. Elia, a Justice of the Lloyd Town Court, Ulster County, should be censured for making inappropriate LinkedIn posts and for serving as a “peer support member” of the Ulster County Sheriff’s Office’s Critical Incident Stress Management Team. For nearly a year between 2020-21, Judge Elia listed several groups related to law enforcement as “interests” on his public LinkedIn page, and he “liked” at least 12 posts, comments or articles supporting law enforcement. For around 10 years, Judge Elia worked with the Ulster County Sheriff’s office, providing counseling to first responders. He also “liked” six partisan political posts or comments. The Commission found that “By aligning himself with law enforcement personnel both through his public LinkedIn activity and through his association with the Ulster County Sheriff’s Office, [Judge Elia], a judge in Ulster County, undermined public confidence in the judiciary and cast doubt on his ability to act impartially when he presided over matters which involved law enforcement personnel.” The Commission noted that Judge Elia acknowledged that his conduct was improper and warranted public discipline. Judge Elia, who is not an attorney, did not request review by the Court of Appeals.

Matter of Alois W. Kraker

On October 6, 2022, the Commission determined that Alois W. Kraker, a Justice of the Greenville Town Court, Greene County, should be censured for various misconduct in small claims cases, such as failing to disqualify himself where he had a business relationship with a party, engaging in prohibited communications about pending cases, making rude remarks about litigants, and for failing to report monetary receipts to the State Comptroller as required by law. Judge Kraker agreed to the censure and took several judicial training and education courses as part of the disposition of the charges against him. For eight months in 2020-21, Judge Kraker failed to report the receipt of court monies to the State Comptroller, which resulted in his salary being stopped. In 2018, Judge Kraker: (1) failed in two small claims cases to disclose his business relationship with one of the parties, and he failed to administer the required oath or affirmation to the litigants; (2) made rude and undignified statements about the defendant in a small claims case; and, (3) had a substantive conversation about the preceding small claims case with a litigant in the next case. In censuring Judge Kraker, the Commission noted that he “acknowledged that his conduct was improper and warrants public discipline and that he has completed pertinent continuing judicial education courses.” Judge Kraker, who is not an attorney, did not request review by the Court of Appeals.

DETERMINATIONS OF ADMONITION

The Commission completed three formal proceedings in 2022 that resulted in public admonition. The cases are summarized as follows and the full texts can be found in Appendix F.

Matter of Jill S. Polk

On January 24, 2022, the Commission determined that Jill S. Polk, a Judge of the Family Court and an Acting Justice of the Supreme Court, Schenectady County, should be admonished (1) for asking and permitting her confidential secretary to perform myriad non-work-related personal tasks, many of them from the courthouse during regular business hours, and (2) for allowing her young daughter on many occasions to walk through the courthouse unsupervised and distract court officers at security checkpoints. From autumn 2015 through May 2016, Judge Polk’s confidential secretary – an employee of the court system – provided regular assistance in the planning of the Bat Mitzvah for the judge’s daughter. From autumn 2015 through early 2017, Judge Polk’s secretary also handled many other personal tasks for the judge, such as scheduling personal appointments for the judge and the daughter, researching vacation rental options, determining vehicle service options, finding a locksmith for a job at the judge’s house, and obtaining price quotes from a landscaper. From 2015 through early 2017, Judge Polk’s then 12- or 13-year-old daughter was at the courthouse, during normal business hours, at least once a week, totaling 50 to 100 times. She frequently spent time at the magnetometer checkpoint, speaking to the court officers. Despite being told by a security captain that this presented a security issue, Judge Polk did not stop the child from being a “regular presence” at the security checkpoint, which the Commission said was “inappropriate and a further instance of [Judge Polk] using the prestige of her office for her personal benefit.” In admonishing Judge Polk, the Commission noted that the judge had no prior disciplinary history and was a new judge at the time of the misconduct. Judge Polk did not request review by the Court of Appeals.

Matter of Tatiana Coffinger

On February 23, 2022, the Commission determined that Tatiana Coffinger, a Judge of the County, Family and Surrogate’s Courts, Hamilton County, should be admonished for (1) inappropriately soliciting contributions on behalf of the Hamilton County Republican Committee and (2) distributing misleading campaign literature. During her 2019 campaign for judge of the Hamilton County, Family and Surrogate’s Courts, Judge Coffinger (1) violated the prohibition on political fundraising by advertising tickets up to \$35 apiece for a local Republican picnic and (2) distributed a misleading sample ballot that falsely identified one of her Republican primary opponents as a Democrat shortly before the election. In admonishing Judge Coffinger, the Commission noted that she acknowledged her misconduct. Judge Coffinger did not request review by the Court of Appeals.

Matter of John M. Aronian

On November 7, 2022, the Commission determined that John M. Aronian, a Justice of the North Salem Town Court, Westchester County, should be admonished for repeatedly identifying himself as a judge in support of a neighboring couple who were applying for pistol permits. In May 2020, Judge Aronian completed two Character Reference Letters on behalf of his court clerk and her husband, who were his neighbors and were applying for unrestricted pistol licenses. Although he is a practicing attorney as well as a part-time justice, he identified his occupation as “Judge” on each letter. After his court clerk’s application was denied by the Westchester County Court, Judge Aronian personally called the court to inquire about the appeals process. He then wrote a letter to the judge handling the matter, on court stationery identifying himself as a town justice. The appeal was denied. In admonishing Judge Aronian, the Commission noted that when the judge “invoked his judicial status and used his judicial stationery to write to the County Court judge to advocate for reconsideration of the denial...[Judge Aronian] created the improper appearance that he expected special treatment and deference because of his status as a judge.” Judge Aronian, who is an attorney, did not request review by the Court of Appeals.

OTHER PUBLIC DISPOSITIONS

The Commission completed 12 other proceedings in 2022 that resulted in public dispositions. The cases are summarized below and the full text can be found in Appendix F. Ten of the matters were concluded during the investigative stage, and two after formal proceedings had been commenced.

Matter of Nancy M. Sunukjian

On February 3, 2022, pursuant to a stipulation, the Commission closed its investigation of a complaint against Nancy M. Sunukjian, a Justice of the Waterford Town Court, Saratoga County who resigned from office while under investigation for allegedly, in her capacity as Director of the court system’s Office of Justice Court Support (OJCS), (1) arranging to hire the then-fiancée (now spouse) of a relative and (2) retaliating against another court system employee who opposed the hire. Judge Sunukjian, who is an attorney, agreed that she would neither seek nor accept judicial office at any time in the future.

Matter of George K. Wittlinger

On February 3, 2022, pursuant to a stipulation, the Commission closed its investigation of a complaint against George K. Wittlinger, a Justice of the Ancram Town Court, Columbia County, who resigned from office while under investigation for allegedly encouraging a minor to have sex with his teenage son, offering her gifts and money in exchange for sexual favors, and providing her with alcoholic beverages. Judge Wittlinger, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Sylvia Ash

On March 17, 2022, pursuant to a stipulation, the Commission closed its investigation of Sylvia G. Ash, a Justice of the Supreme Court, Kings County, who had been found guilty in federal court of felonies relating to her service on the Board of the Municipal Credit Union. Judge Ash was convicted in federal court on one count each of conspiracy to obstruct justice, obstruction of justice, and making false statements to a federal agent. In agreeing to resign the judge affirmed that she would neither seek nor accept judicial office at any time in the future.

Matter of Mark A. Schindler

On March 17, 2022, pursuant to a stipulation, the Commission closed its investigation of a complaint against Mark A. Schindler, a Justice of the Persia Town Court, Cattaraugus County. The Commission apprised Judge Schindler in August 2020 that it was investigating a complaint alleging that (1) he failed to make mandatory reports and remittances to the State Comptroller in a timely manner; (2) imposed fines and surcharges outside the legal limits set in statute; and (3) at the arraignment of a defendant who identifies as Native American, he made snide comments about the defendant's annuity from the Seneca Nation. In May 2021, the Comptroller issued a notice to stop payment of Judge Schindler's salary because he failed to make mandatory monthly certifications of cases disposed and timely remittances of court funds collected. In agreeing to resign, Judge Schindler, who is not an attorney, affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of Robert W. Engle

On May 5, 2022, pursuant to a stipulation, the Commission closed its investigation of a complaint against Robert W. Engle, a Justice of the Madison Town Court, Madison County, who resigned from office after being apprised by the Commission that it was investigating complaints alleging that that (1) he failed to make mandatory reports and remittances of official funds to the State Comptroller in a timely manner; (2) failed to record all proceedings as required by law; and (3) failed to administer his court effectively. Judge Engle, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Robert M. Berliner

On June 16, 2022, pursuant to a stipulation, the Commission discontinued a proceeding involving Robert M. Berliner, a Justice of the Supreme Court, Rockland County, who resigned from office after being served with a Formal Written Complaint alleging that in September 2015 and

November 2017, he engaged in prohibited political activity on behalf of two candidates for judicial office by accompanying and/or introducing them to three gatherings of community and political leaders in Orange and Rockland Counties. Judge Berliner agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Kimberly A. Inman

On June 16, 2022, pursuant to a stipulation, the Commission closed its investigation of a complaint against Kimberly A. Inman, a Justice of the West Monroe Town Court, Oswego County, who resigned from office after being apprised by the Commission that it was investigating a complaint concerning her failure to report to the State Comptroller, as required by law, monies she received for the West Monroe Town Court in connection with her duties as Town Justice. The subject matter of the Commission's investigation is related to a criminal matter in which Judge Inman was charged in March 2021 with Grand Larceny in the Fourth Degree, a class E felony, in violation of New York State Penal Law Section 155.30(1). Judge Inman, who is not an attorney, agreed that she would neither seek nor accept judicial office at any time in the future.

Matter of Jessica A. Matthews

On August 11, 2022, pursuant to a stipulation, the Commission closed its investigation of a complaint against Jessica A. Matthews, a Justice of the Clare Town Court, St. Lawrence County, who resigned from office while under investigation for failing to file reports or remit funds to the State Comptroller, as required by law. Judge Matthews who was apprised by the Commission in June 2021 that she was under investigation, failed to respond to three Commission inquiries into the matter. Judge Matthews, who is not an attorney, agreed that she would neither seek nor accept judicial office at any time in the future.

Matter of Claudia Andreassen

On September 22, 2022, pursuant to a stipulation, the Commission closed its investigation of complaints against Claudia Andreassen, a Justice of the Saugerties Town Court, Ulster County. At various times over the past two years, Judge Andreassen was apprised by the Commission that it was investigating a total of six complaints against her, among other things alleging as follows: (1) Her relationship with the Saugerties Police Department was at times adversarial; (2) She was discourteous toward and made disrespectful comments about court staff and courtroom spectators; (3) She attempted to effectuate certain staffing decisions without involving her co-judge or the town board; (4) She violated various prohibitions on campaign activity by judges; and, (5) She failed to maintain professional competence in the law. In agreeing to resign, Judge Andreassen, who is not an attorney, affirmed that she would neither seek nor accept judicial office at any time in the future.

Matter of Richard L. Gumo

On September 22, 2022, pursuant to a stipulation, the Commission discontinued a proceeding involving Richard L. Gumo, a Justice of the Delhi Town Court, Delaware County, who resigned from office after being served with a Formal Written Complaint alleging that (A) he refused to appoint the Delaware County Public Defender's Office to represent indigent criminal defendants in his court because of his animosity toward the Public Defender and his concern that that the

office would criticize him, and (B) he falsely claimed that the Public Defender had accused him and his court clerk of “forging” their signatures on court documents. Judge Gumo denied all of the allegations. Judge Gumo agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Philip G. Franklin

On December 15, 2022, pursuant to a stipulation, the Commission closed its investigation of a complaint against Philip G. Franklin, a Justice of the Locke Town Court, Cayuga County, who resigned from office after the Commission apprised him that it was investigating a complaint alleging that he failed to account properly for court funds. Judge Franklin was apprised by the Commission in August 2022 that it was investigating complaints that he failed to make mandatory reports and remittances of court funds in a timely manner, leading the State Comptroller to direct that his judicial salary be stopped. Judge Franklin, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Dawn M. Keppler

On December 15, 2022, pursuant to a stipulation, the Commission closed its investigation of a complaint against Dawn M. Keppler, a Justice of the Shelby Town Court, an Associate Justice of the Ridgeway Town Court, and an Associate Justice of the Yates Town Court, Orleans County, who resigned while under investigation for making inappropriate posts on Facebook. Judge Keppler was apprised by the Commission in April 2022 that it was investigating a complaint that she improperly promoted prejudicial and inflammatory content on Facebook, and that she inappropriately lent the prestige of her judicial office to advance the private interests of others. Judge Keppler, who is not an attorney, agreed that she would neither seek nor accept judicial office at any time in the future.

OTHER DISMISSED OR CLOSED FORMAL WRITTEN COMPLAINTS

The Commission disposed of four Formal Written Complaints in 2022 without rendering public disposition. Two complaints were closed due to the judges’ resignations. Two complaints were closed upon the vacancy of the judges’ office due to reasons other than resignation, such as the expiration of the judges’ terms.

MATTERS CLOSED UPON RESIGNATION

In 2022, 18 judges resigned while complaints against them were pending before the Commission, and the matters pertaining to those judges were closed. Four of those judges resigned while under formal charges by the Commission, two of which were pursuant to public stipulation. Fourteen judges resigned while under investigation, ten of those pursuant to public stipulation. By statute, the Commission may continue an inquiry for a period of 120 days following a judge’s resignation, but no sanction other than removal from office may be determined within such period. When rendered final by the Court of Appeals, the “removal” automatically bars the judge from holding judicial office in the future. Thus, no other action may be taken if the Commission decides within that 120-day period that removal is not warranted.

REFERRALS TO OTHER AGENCIES

Pursuant to Judiciary Law Section 44(10), the Commission may refer matters to other agencies. In 2022, the Commission referred 20 matters to other agencies. Eighteen matters were referred to the Office of Court Administration, typically dealing with relatively isolated instances of delay, poor record-keeping or other administrative issues. One matter was referred to an attorney grievance committee and another matter was referred to the Office of the State Comptroller.

LETTERS OF DISMISSAL AND CAUTION

A Letter of Dismissal and Caution contains confidential suggestions and recommendations to a judge upon conclusion of an investigation, in lieu of commencing formal disciplinary proceedings. A Letter of Caution is a similar communication to a judge upon conclusion of a formal disciplinary proceeding with a finding that the judge's misconduct is established, but where the Commission determines that public discipline is not warranted.

Cautionary letters are authorized by the Commission's Rules, 22 NYCRR 7000.1(1) and (m). They serve as an educational tool and, when warranted, allow the Commission to address a judge's conduct without making the matter public.

In 2022, the Commission issued 27 Letters of Dismissal and Caution. Ten town or village justices were cautioned, including eight who are lawyers. Seventeen judges of higher courts – all lawyers, as required by law – were cautioned. The caution letters addressed various types of conduct as indicated below.

Assertion of Influence. One judge was cautioned for lending the prestige of judicial office to advance his private interests by improperly utilizing a parking placard.

Audit and Control. Two judges were cautioned for failing to adequately supervise their court clerks which resulted in court funds being mishandled and for failing to keep adequate records. Two other judges were cautioned for failing to administer and account for court funds in a timely and competent manner.

Conflicts of Interest. All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned. One judge cautioned for improperly presiding over a case involving an attorney with whom the judge had a close personal relationship. Another judge improperly presided over a case involving his campaign manager. Two part-time judges who practice law, were cautioned for either appearing before another part-time lawyer judge in his county or allowing another part-time lawyer judge in his county to appear before him, both of which are prohibited.

Finances. Five judges were cautioned for failing to file a financial disclosure statement in a timely manner with the Ethics Commission for the Unified Court System. Section 211(4) of the Judiciary Law and Section 40.2 of the Rules of the Chief Judge require judges to file an annual financial disclosure statement by May 15th of each succeeding year. Another judge was cautioned for filing inaccurate and incomplete financial disclosure forms.

Inappropriate Demeanor. The Rules require every judge to be patient, dignified and courteous to litigants, attorneys and others with whom the judge deals in an official capacity. Four judges were cautioned for raising their voices or otherwise being impatient in court or with their staff.

Political Activity. Four judges were cautioned for engaging in improper political activity. Two judges were cautioned for improperly promoting a judicial candidate outside of their window periods. Another judge was cautioned for using a misleading campaign sign that conveyed the appearance that she was the incumbent. The Rules prohibit judges from making contributions to

political organizations or candidates. A fourth judge was cautioned for making a contribution to a congressional candidate.

Violation of Rights. The Rules require that a judge respect, comply with, be faithful to and professionally competent in the law. Sections 100.2(A), 100.3(B)(1). Four judges were cautioned for relatively isolated incidents of violating or not protecting the rights of parties appearing before them. Two judges were cautioned for requiring defendants to post “bail” in certain scofflaw suspension cases where a guilty plea was not entered. Another judge was cautioned for irrationally and arbitrarily increasing an incarcerated individual’s bail. A fourth judge was cautioned for failing to allow a defense attorney to make a record of his objections.

Follow Up on Caution Letters. Should the conduct addressed by a cautionary letter continue or be repeated, the Commission may authorize an investigation of a new complaint, which may lead to formal charges and further disciplinary proceedings. In certain instances, the Commission will authorize a follow-up review of the judge’s conduct to assure that promised remedial action was indeed taken. In 1999, the Court of Appeals, in upholding the removal of a judge who *inter alia* used the power and prestige of his office to promote a particular private defensive driver program, noted that the judge had persisted in his conduct notwithstanding a prior caution from the Commission that he desist from such conduct. *Matter of Assini v Commission on Judicial Conduct*, 94 NY2d 26 (1999).

OBSERVATIONS AND RECOMMENDATIONS

The Commission traditionally devotes a section of its Annual Report to a discussion of topics of special note that have come to its attention in the course of considering complaints. It does so for public education purposes, to advise the judiciary as to potential misconduct that may be avoided, and pursuant to its statutory authority to make administrative and legislative recommendations.

SOCIAL MEDIA AND THE JUDICIARY

The Commission commented extensively in its 2022 Annual Report on the potential perils for judges who participate in social media. Given the continuing influx of complaints in this area, and that three more Commission decisions were issued in 2022 involving inappropriate social media activity – one removal and two resignations¹ – repeating our discussion of the topic seems appropriate.

The proliferation of social media poses special concerns for judges and others who are bound by codes of ethics, particularly in an era where so little is truly private, and electronic pages are easily “captured” by third parties, preserved and recirculated. The hasty or improvident post that is quickly withdrawn may endure and be seen far longer and wider than the creator intended or imagined.

Both the Commission and the Advisory Committee on Judicial Ethics have addressed judicial interactions on such internet platforms as Facebook and personal or professional websites, and they have articulated a common standard. Regardless of the forum – whether in person, writing or electronic media – a judge is bound by the Rules Governing Judicial Conduct to observe high standards of conduct and act at all times in a manner that promotes public confidence in judicial independence, integrity and impartiality.

In Formal Opinion 462 (2013), “Judge’s Use of Electronic Social Networking Media,” the American Bar Association cautioned judges who use electronic social media to “assume that comments posted [on such forums] will not remain within the circle of the judge’s connections.”

In Opinion [08-176](#) (2008), the New York Advisory Committee on Judicial Ethics stated that if a judge otherwise complies with the Rules Governing Judicial Conduct, he or she may join or make use of an internet-based social network but should exercise an appropriate degree of discretion in doing so. A judge should also stay abreast of changes to the features of any such network because new developments may have an impact upon the judge’s ethical obligations under the Rules.

[Opinion 11-125](#) (2011) delineates various categories of relationship – acquaintance, close social relationship, and close personal relationship – and the different tests to apply in determining the appropriate category and whether, based on the nature of the relationship, disclosure and/or recusal is required. It should be required reading for all judges.

¹ *Matters of [Elia](#), [Keppler](#), and [Stilson](#).*

In Opinion [13-39](#) (2013), citing Opinions [08-176](#) and [11-125](#), the Advisory Committee specifically addressed whether a judge must recuse from a case involving his or her “Facebook friends.” The Committee stated that “the mere status of being a ‘Facebook friend,’ without more, is an insufficient basis to require recusal,” and that there is no appearance of impropriety “based solely on having previously ‘friended’ certain individuals who are now involved in some manner in a pending action.” However, the Committee noted that “interpersonal relationships are varied, fact-dependent, and unique to the individuals involved.” Decisions to recuse would therefore be based on the “the nature of [the judges’] specific relationships with particular individuals and their ethical obligations resulting from those relationships.” A “mere ‘acquaintance[ship]’” would not require recusal. A “close social relationship,” however would require a judge to, “at the very least, disclose the relationship either in writing or on the record, even if the judge believes he/she can be fair and impartial.” See Opinion 11-125. Disqualification is required if a judge has a “close personal relationship” with a Facebook friend. *Id.*

In Opinion [14-05](#) (2014), the Advisory Committee addressed whether it is permissible to host a court website on a social network, specifically responding to an inquiry about the court establishing a Facebook page. The opinion noted that “many aspects of a social network could prove problematic for a court website,” and particularly highlighted the fact that Facebook and other social networks sell and display third-party advertisements without consulting the user. It also noted that such “advertisements are typically dynamic, in that they may change to reflect a particular user’s browsing history, and interactive, in that they invite users to navigate away from the visited page and explore other goods and services.” This would create at least an appearance that the court was endorsing or directing visitors to commercial products and services, and that would undermine the independence, impartiality and dignity of the judiciary and the courts.

Opinion [20-58](#) warns part-time judges who also practice law against publishing their decisions and opinions on a social media website, which would inevitably invite public comment and at least appear to be intertwining the judges’ law practices with their judicial roles.

Opinion [21-31](#) warns against even inadvertently promoting a civic, charitable or other organization’s fundraising activities in a social media campaign run by the organization.

In 2016, the Commission publicly admonished a judge who, *inter alia*, made comments on her Facebook page that were critical of the prosecution in a case against a local town council candidate. [*Matter of Whitmarsh*](#). The judge violated the rule that prohibits public comments about any proceeding pending or impending in any court within the United States or its territories, and in doing so referred to her judicial position, thus violating a separate rule prohibiting the use of the prestige of office to advance a private interest. Sections 100.3(B)(8), 100.2(C) of the Rules Governing Judicial Conduct

In 2018, the Commission publicly admonished a judge who entered a property without permission and took photos that he posted on Facebook with disparaging comments about the occupant, then failed to remove the Facebook posts promptly after assuring the Commission he would do so. [*Matter of Fisher*](#).

In 2020, the Commission censured one judge for *inter alia* commenting on a pending lawsuit via social media, and admonished another judge for promoting the campaign of a candidate for non-judicial office and for promoting controversial political causes. [Matter of Panepinto](#); [Matter of Schmidt](#).

In 2021, the Commission accepted the stipulated resignation of a judge who posted anti-LGBTQ messages on social media. [Matter of Knutsen](#). It also publicly admonished a judge whose social media account posted photos and statements that aligned the judge with law enforcement, thereby undermining the appearance of impartiality. [Matter of Peck](#).

A judge must be wary of inviting or engaging in social media dialogue with lawyers, litigants, witnesses or others who may be involved in pending litigation. Particularly where pseudonyms are used, the judge may not know that a person who responds to his/her posting may be involved in a case before the judge or a judicial colleague. At the very least, the appearance of impropriety may be created in such a circumstance, particularly if others who access the social media page are aware that the judge's correspondent is also involved in a matter pending before the judge.

As social media proliferates throughout society, the number of social-media-related complaints submitted to the Commission is growing. Every such complaint will be individually evaluated, and as it did in [Whitmarsh](#) and [Fisher](#), the Commission will determine whether the judge's conduct complied with or violated judicial ethics, regardless of the social forum or platform in which it occurred. It is not a defense to claim that the judge was merely reposting or commenting on someone else's problematic message.

The Commission strongly encourages judges to remember that social media posts are fraught with potential ethical concerns. Think carefully *before* posting, especially when engaged in a heated discussion, and consider that a moment of reflection and restraint now may avert aggravation and disciplinary consequences later.

COURTROOM DECORUM

Judges are obliged by the Rules to be patient, dignified and courteous toward all with whom they deal in their official capacity, to maintain decorum in court proceedings, and even to act in their extracurricular activities in a manner than does not detract from the dignity of judicial office.²

The Covid pandemic put unusual and unexpected strains on judges, court personal, litigants and attorneys, but the obligation to abide by the Rules Governing Judicial Conduct was not suspended, even as the court system adapted its operations by expanding its communications capabilities to conduct certain proceedings and official business electronically.

As the devastating impact of the pandemic's early months receded, and the pace of court calendars picked up again, the Commission began receiving complaints about judges and lawyers who were dressed inappropriately casual for court proceedings, particularly those occurring virtually (*i.e.* by electronic video). Complaints also came in alleging that some judges overreacted when confronted by what they regarded as an attorney's inappropriate attire. In one such situation, a judge took it

² Rules 100.3(B)(2), 100.3(B)(3) and 100.4(A)(2).

out on the client by dismissing a lawsuit – rather than, say, calling a recess – because the plaintiff’s attorney appeared without a necktie for a proceeding conducted via video.

The Commission takes this opportunity to remind judges and lawyers to respect the solemnity of court proceedings in their attire as well as their manner. Judges also are reminded that, in maintaining the decorum of the actual or virtual court, they should try to match their response to the nature of the provocation and not punish a client for disrespect demonstrated by the lawyer.

JUDICIAL CAMPAIGN ETHICS TRAINING

Except for a defined “Window Period” when they are actually running for judicial office, or when exercising a fundamental democratic right such as voting in an election, judges may not engage in political activity. 22 NYCRR 100.0(Q). When in their Window Period, candidates for judicial office, including incumbent judges, are subject to certain guidelines that do not apply to candidates for legislative or executive office. Section 100.5 of the Rules Governing Judicial Conduct sets forth both the permissible and prohibited activities of judicial candidates.

The Commission publicly admonished a judge in 2022 for violating the political activity rules, and two others resigned and agreed never to seek or accept judicial office in the future.³ In *Matter of Coffinger*, for example, a judge was admonished for soliciting contributions for a political organization’s fundraising event and making misrepresentations about one of her opponents.

One valuable and easily accessible resource for judicial candidates is the [Judicial Campaign Ethics Center](#) (JCEC), which operates in conjunction with the [Advisory Committee on Judicial Ethics](#). Among other things, the Center responds to candidate inquiries, publishes useful guidelines, and administers a course on judicial campaign ethics, which may be completed in person, by video or via the internet. All candidates for election to judicial office, other than those for town or village court justice, are required by the Rules Governing Judicial Conduct to complete the JCEC program or an accredited alternative “no later than 30 days after receiving the nomination for judicial office.” 22 NYCRR 100.5(A)(4)(f).

Every year, the Commission is advised of numerous candidates who fail to take the course on time or at all. This is an easily avoidable transgression. Yet some candidates seem willing to risk future discipline for ignoring this and other political rules in order to enhance their chances of getting elected. Such conduct undermines public confidence in the judiciary, which should be separated from politics as much as possible, and which the Rules endeavor to achieve by limiting their partisan activity to when they are actually running for judicial office.

A judicial candidate or candidate’s representative should consult with the JCEC, whose protocol is to respond promptly to campaign-related inquiries because time is usually of the essence. Moreover, the JCEC web page should be consulted routinely for its valuable links to such documents as the Judicial Campaign Ethics Handbook, recently published Advisory Opinions and guidelines on the appropriate way to dispose of unexpended campaign funds.

³ See, *Matters of Coffinger, Andreassen, and Berliner*.

A TOWN OR VILLAGE JUSTICE'S FIDUCIARY OBLIGATIONS

On numerous occasions, the Commission has commented upon the special responsibilities incumbent upon town and village court justices regarding the reporting of and accounting for fines, fees and other court-collected funds. We do so again here, in light of the fact that there were six public decisions in 2022 involving failures to meet those obligations.⁴

Throughout the state, in all but the town and village courts, funds collected by the court are handled by professional administrative personnel or other non-judicial staff. In the town and village courts, however, that responsibility rests with the individual justices.

Money collected by town or village court justices from fines, fees, bail and other sources must by law be deposited promptly into official court bank accounts, recorded promptly in court record books, and reported and remitted promptly to the State Comptroller. While improper financial management and record keeping most often result from honest mistakes, inadvertent oversight or insufficient clerical assistance, they sometimes indicate serious misconduct, either by the judge or by the court staff in whom the judge has reposed significant responsibility to track the court's finances.

The Commission has publicly disciplined approximately 125 town and village justices for significant violations of the various rules regarding the handling of court funds. Approximately 250 other judges have been cautioned for relatively minor violations of the applicable standards.

When a judge fails to deposit court funds for long periods of time, or deposits less money than he or she had collected since the previous deposit, the suspicion inevitably arises that the money is being used by the judge for personal purposes. Serious misconduct may be also be indicated by such financial irregularities as lengthy delays in remitting court funds to the State Comptroller, large deficiencies (or surpluses) in the court account, negligence in failing to safeguard such funds, and failing to keep adequate records of court finances.

"Carelessness in handling public moneys is a serious violation of [the judge's] official responsibilities" and a "breach of the public's trust" which may warrant removal from office. *Matter of Petrie*, 54 NY2d 807 808 (1981); *see also Matter of Rater*, 69 NY2d208 (1987); *Matter of Vincent*, 70 NY2d 208 (1987). In *Matter of Cooley*, 53 NY2d 64 (1981), the Court of Appeals also noted that the willful failure to make appropriate entries in court records, such as a docket book and cashbook, is a serious violation of the judge's administrative responsibilities, and may be punishable as a misdemeanor.

Even where venality is not an issue, negligence sometimes is. The Commission has disciplined town or village justices who kept court funds at home, in such inappropriate places as a shoebox or a freezer. In *Matter of Murphy*, 82 NY2d 491 (1993), a removal case, the judge claimed that he placed court funds in the trunk of his car, forgot about the money, then sold the car; the Court of Appeals stated that whether such conduct resulted from carelessness or calculation, "the

⁴ *Matters of Engle, Franklin, Inman, Kraker, Matthews, and Schindler.*

mishandling of public money by a judge is serious misconduct even when not done for personal profit." *Id.* at 494.

In recent years, the Commission has become aware of several jurisdictions in which court clerks were prosecuted and convicted for the theft of court funds. While increased reliance on computers, accounting software, electronic banking and wire transfers has tended to increase the ability to perform audits and reconciliations on the one hand, it has also made it easier for computer-savvy employees to evade oversight by a computer-challenged judge.

The Commission reminds town and village justices that it is *their* responsibility to account for court funds and to certify compliance with applicable financial mandates in reports to the State Comptroller. Where a judge does not perform the financial responsibilities personally, he or she must exercise rigorous oversight of the court staff to whom such responsibilities have been assigned. That means reviewing the work of staff, performing spot checks to correlate the bail or fine assessed in a particular case with the amount actually collected, or periodically initiating an independent audit.

Where court staff have been convicted of theft of court funds, the local judges may not be publicly disciplined if they had made reasonable efforts at oversight but were deceived by an employee who cleverly hid the evidence of theft. But where the pertinent judges exercised little to no effort at oversight, they may be subject to public discipline for the failure to supervise that led to theft, notwithstanding their own innocence as to the theft itself.

The Commission urges town and village court justices to take their fiduciary responsibilities seriously and, when they need help, to consult with their local Supervising Judge, the court system's City, Town and Village Court Resource Center, and/or the State Magistrates Association.

MISUSE OF PARKING PLACARDS

Every year, the Commission receives and investigates complaints alleging that individual judges are inappropriately displaying official looking placards on the dashboards of their cars for personal purposes. Although such placards are intended for use only when on official business, it typically comes to our attention that some judges are using them to evade parking costs or restrictions near their homes, while shopping or dining out, or on other occasions clearly not associated with official court business.

In May 2019, then-Chief Administrative Judge Lawrence K. Marks issued a statewide memorandum to all judges of the unified court system, noting that the use of such placards had again become "an issue of public concern." While noting that misuse of parking placards is rare, Judge Marks was compelled to remind the judiciary that the "Rules and Limitations of Use" dictate that parking placards "may not be used for parking at home or when [the judge] is not performing official duties."

Judges should also remember that such placards are intended only for parking and should not be displayed when driving, to avoid the implied assertion of judicial office when on personal business or stopped for a suspected motor vehicle infraction.⁵

Notwithstanding Judge Marks's 2019 reminder to the judiciary, the Commission continues to receive periodic complaints of placard misuse. In this era of ubiquitous electronic devices, an alert citizen may quickly and easily take a cellphone photo of a car – parked, say, in a residential neighborhood, with a judicial placard displayed on the dashboard, on a weekend – and send it to the Commission with a complaint that the parking place and time were not likely related to official court business. It is not an excuse that a judge may be working from home on a particular day and in a manner of speaking be on official business when the car was parked in a no-parking zone with the placard on display.

Placard misuse is an easily avoided self-inflicted ethics injury. Even if the Commission were to dispose of the complaint with a confidential cautionary letter, the aggravation and disciplinary blemish to the individual judge, not to mention harm to the reputation of the judiciary, are hardly worth the money saved by displaying the placard rather than paying for parking.

Once again, the Commission reminds and urges judges to limit their use of parking placards for the intended purpose.

⁵ The Rules Governing Judicial Conduct require that a judge must uphold the integrity of the judiciary and prohibit a judge from lending prestige of judicial office to advance his or her own private interests. Sections 100.1 and 100.2 (C) of the Rules Governing Judicial Conduct.

THE COMMISSION'S BUDGET

Although the Commission performs a purely Judicial Branch function and is not an Executive agency reporting to the Governor, it was determined in 1978 that the Commission's annual funding request would be submitted to the Legislature by the Governor in the Executive Budget. This is intended to avoid the obvious conflict that would arise were the Commission's budget to be controlled by the very Judicial Branch whose officers it may investigate and discipline.

Where the Executive and the Commission have not agreed on the proposed annual budget and the Executive has unilaterally recommended a figure, the Commission has successfully appealed to the Legislature for additional funding. Last year, for the first time in over a decade the Executive Budget recommended what the Commission requested: \$7,189,000. This year the Governor again recommended the Commission's requested budget of \$8,128,000. The increase will allow the Commission to hire additional staff and implement much-needed case-management and records-keeping software.

The Commission rendered 25 public decisions in 2022, the highest number since 2009. Last year, the Commission also processed a record-high number of complaints, 2,439, a 26% increase over the 10-year -average, and a 14% increase over the previous high of 2,143 complaints in 2017. The Commission appreciates the Governor's and Legislature's support of its mission.

SELECTED BUDGET FIGURES: 1978 TO PRESENT

Fiscal Year	Annual Budget ¹	New Complaints ²	Prelim Inquiries	New Investigations	Pending Year End	Public Dispositions	Full-Time Staff
1978	1.6m	641	N.A.	170	324	24	63
1988	2.2m	1109	N.A.	200	141	14	41
1996	1.7m	1490	492	192	172	15	20
2006	2.8m	1500	375	267	275	14	28
2007	4.8m	1711	413	192	238	27	51
2008	5.2m	1923	354	262	208	21	49
2017	5.6m	2143	605	148	173	16	41
2018	5.7m	2000	505	167	206	19	38
2019	6.0m	1944	505	149	231	13	42
2020	6.0m	1504	318	120	177	24	39
2021	6.4m	1938	375	125	191	17	43
2022	7.2m	2439	549	170	187	25	46
2023	8.1m ³	~	~	~	~	~	45

¹ Budget figures are rounded off; budget figures are fiscal year (Apr 1 – Mar 31).

² Complaint figures are calendar year (Jan 1 – Dec 31).

³ Proposed

CONCLUSION

Public confidence in the independence, integrity, impartiality and high standards of the judiciary, and in an independent disciplinary system that helps keep judges accountable for their conduct, is essential to the rule of law. The members of the New York State Commission on Judicial Conduct are confident that the Commission's work contributes to those ideals, to a heightened awareness of the appropriate standards of ethics incumbent on all judges, and to the fair and proper administration of justice.

Respectfully submitted,

JOSEPH W. BELLUCK, ESQ., *CHAIR*

TAA GRAYS, ESQ., *VICE CHAIR*

HON. FERNANDO M. CAMACHO

JODIE CORNGOLD

HON. JOHN A. FALK

HON. ROBERT J. MILLER

MARVIN RAY RASKIN, ESQ.

RONALD J. ROSENBERG, ESQ.

GRAHAM B. SEITER, ESQ.

AKOSUA GARCIA YEBOAH

APPENDIX A: BIOGRAPHIES OF COMMISSION MEMBERS

There are 11 members of the Commission on Judicial Conduct. Each serves a renewable four-year term. Four members are appointed by the Governor, three by the Chief Judge, and one each by the Speaker of the Assembly, the Minority Leader of the Assembly, the Temporary President of the Senate (Majority Leader) and the Minority Leader of the Senate.

Of the four members appointed by the Governor, one shall be a judge, one shall be a member of the New York State bar but not a judge, and two shall not be members of the bar, judges or retired judges. Of the three members appointed by the Chief Judge, one shall be a justice of the Appellate Division, one shall be a judge of a court other than the Court of Appeals or Appellate Division, and one shall be a justice of a town or village court. None of the four members appointed by the legislative leaders shall be judges or retired judges.

The Commission elects a Chair and a Vice Chair from among its members for renewable two-year terms, and appoints an Administrator who shall be a member of the New York State bar who is not a judge or retired judge. The Administrator appoints and directs the agency staff. The Commission also has a Clerk who plays no role in the investigation or litigation of complaints but assists the Commission in its consideration of formal charges, preparation of determinations and related matters.

Member	Appointing Authority	Year First App'ted	Expiration of Present Term
Joseph W. Belluck	(Former) Governor Andrew M. Cuomo	2008	3/31/2024
Taa Grays	Senate President Pro Tem Andrea Stewart-Cousins	2017	3/31/2023
Fernando M. Camacho	(Former) Chief Judge Janet DiFiore	2021	3/31/2024
Jodie Corngold	(Former) Governor Andrew M. Cuomo	2013	3/31/2023
John A. Falk	(Former) Chief Judge Janet DiFiore	2017	3/31/2025
Angela M. Mazzarelli	(Former) Chief Judge Janet DiFiore	2017	12/31/2022
Robert J. Miller	Governor Kathy Hochul	2018	3/31/2026
Marvin Ray Raskin	Assembly Speaker Carl Heastie	2018	3/31/2026
Ronald J. Rosenberg	(Former) Senate Minority Leader John J. Flanagan	2020	3/31/2024
Graham B. Seiter	Assembly Minority Leader William A. Barclay	2021	3/31/2025
Akosua Garcia Yeboah	(Former) Governor Andrew M. Cuomo	2016	3/31/2025

Joseph W. Belluck, Esq., *Chair of the Commission*, graduated magna cum laude from the SUNY-Buffalo School of Law in 1994, where he served as Articles Editor of the Buffalo Law Review and where he is an adjunct lecturer on mass torts. He is a partner in the Manhattan law firm of Belluck & Fox, LLP, which focuses on asbestos and serious injury litigation. Mr. Belluck previously served as counsel to the New York State Attorney General, representing the State of New York in its litigation against the tobacco industry, as a judicial law clerk for Justice Lloyd Doggett of the Texas Supreme Court, as staff attorney for Public Citizen in Washington, D.C., and as Director of Attorney Services for Trial Lawyers Care, an organization dedicated to providing free legal assistance to victims of the September 11, 2001 terrorist attacks. Mr. Belluck has lectured frequently on asbestos, product liability, tort law and tobacco control policy. He is an active member of several bar associations, including the New York State Trial Lawyers Association and was a recipient of the New York State Bar Association's Legal Ethics Award. He is also a member of the SUNY Board of Trustees, Chair of the New York State Cannabis Advisory Board, and sits on the board of several not-for-profit organizations.

Taa Grays, Esq., *Vice Chair of the Commission*, is a graduate of Harvard University, cum laude, and Georgetown University Law Center. She is Vice President & Associate General Counsel for Information Governance at MetLife, Inc., having served in other senior positions at MetLife since 2003. Prior to MetLife, she previously served as an Assistant District Attorney in the Bronx from 1997 - 2003. Ms. Grays is the Secretary of the New York State Bar Association, is on the New York Law Journal Board of Editors and has served as President of the Metropolitan Black Bar Association, the Network of Bar Leaders and the Association of Black Women. She has received numerous awards and recognition for her leadership in bar and diversity endeavors.

Honorable Fernando M. Camacho is a graduate of Columbia College and Fordham University School of Law. He previously served as judge of the New York City Criminal Court from 1997 to 2008 and as Administrative Judge for Criminal Matters, 11th Judicial District from 2008 to 2012. Justice Camacho was appointed to the Court of Claims in 2009 and has served as an Acting Justice of the Supreme Court, Suffolk County, since 2013. Justice Camacho began his career in the Manhattan District Attorney's Office, where he served from 1985 until 1995 when he left to work in private practice.

Jodie Corngold Jodie Corngold graduated from Swarthmore College. In her professional life she was responsible for all print and electronic communications for several nonprofit organizations, including a synagogue and a college preparatory school in Brooklyn. She is a board member of two nonprofit literary organizations as well as the Kinderhook Memorial Library in Kinderhook, New York. Ms. Corngold is a marathon runner.

Honorable John A. Falk is a graduate of LeMoyne College and the University of Dayton School of Law. He is a partner with the firm Faraci Lange, LLP, in Rochester, where he focuses on serious injury litigation. He previously served as an Assistant District Attorney in Monroe County. He has served as a Justice of the Brighton Town Court since 2008. Justice Falk is a member of the American Board of Trial Advocates as well as other legal associations. He has served as a lecturer for the Monroe County Bar Association and Monroe Community College.

Honorable Angela M. Mazzarelli is a graduate of Brandeis University and the Columbia University School of Law, where she was a teaching fellow in property law. In 1985, she was elected to the Civil Court of the City of New York and was assigned to sit in the Criminal Court,

where she sat until 1988, when she was designated as an Acting Supreme Court Justice. She has served as an elected Supreme Court Justice since 1992. She presently serves as a Justice of the Appellate Division, First Department, having been appointed in 1994. Prior to her judicial career, Justice Mazzairelli served as a Bronx Legal Services lawyer, as a Law Assistant in the Civil Term of the Supreme Court in Manhattan, and later as a Principal Law Clerk to a state Supreme Court Justice. She also was a partner in the law firm Wresien & Mazzairelli, specializing in civil litigation. Justice Mazzairelli is a member of the New York State Commission on Forensic Science and is the former Chair of the Executive Committee of the Board of Trustees of the Practising Law Institute. She serves as a member of the Board of Directors of the National Organization of Italian American Women and was a member and co-vice Chair of the New York Pattern Jury Instructions Committee for over ten years.

Honorable Robert J. Miller is a graduate of Brooklyn College and the Georgetown University Law Center. In 2007, he was elected to the Supreme Court, Second Judicial District, and in 2010 he was appointed to the Appellate Division, Second Department. Prior to his judicial career Justice Miller was a partner in several law firms, including Reed Smith and Parker Duryee Rosoff & Haft. Justice Miller is a frequent lecturer at a variety of Continuing Legal Education programs and has long been active in various civic and bar associations endeavors. Justice Miller is the Chair of the New York State Ethics Commission and is a member of the New York State-Federal Judicial Council.

Marvin Ray Raskin, Esq., is a graduate of New York Law School, where he served as Editor-in-Chief of the law school publication *Equitas*. He has maintained a private practice in the Bronx since 1977 and has an office in Yorktown Heights. Mr. Raskin previously served as an assistant district attorney in the Bronx. He has been a member of the Bronx County Bar Association for over 40 years, was elected president in 1994, and since 1996 has been Chair of its Criminal Courts Committee. Mr. Raskin served on the New York City Mayor's Advisory Committee on the Judiciary, 2007-2017, under Mayors Bloomberg and DiBlasio. He is presently the Vice-Chair of the Central Screening Committee, Assigned Counsel Plan, for the Appellate Division, First Department. Among his professional awards are the New York County Lawyers Pro Bono Award for free legal services rendered to the Courts and the Public, The New York Law Journal award for Attorney's Who Lead by Example, and the President's Award for Extraordinary Service by the Bronx County Bar Association. Mr. Raskin regularly lectures on criminal law and procedure and legal ethics in the metropolitan area and has been an Adjunct Assistant Professor at the Herbert H. Lehman College of the City University of New York.

Ronald J. Rosenberg, Esq., is a graduate of Hofstra University and St. John's University School of Law. He is a senior partner with the Garden City firm of Rosenberg Calica & Birney LLP. His practice includes commercial, business, real estate, land use and municipal litigations and transactions and business entity formation and litigation. Mr. Rosenberg began his career as an associate with a Manhattan law firm and later started his own firm, the Law Offices of Ronald J. Rosenberg. He previously served as Chair of the Banking Committee and as a member of the Judiciary Committee of the Nassau County Bar Association. He has been a member of the Florida Bar since 1979. He has also been appointed by various Supreme Court Justices to serve as a Special Referee, Referee, and Receiver. Mr. Rosenberg is a featured columnist in the Long Island Business News and has appeared on television as a legal commentator on various news shows including "Good Day, New York."

Graham B. Seiter, Esq., is a graduate of Saint Lawrence University and Syracuse University College of Law. Mr. Seiter is an attorney in private practice with an office in Oswego County. His law practice includes family law, criminal defense, real estate, estate planning and business formation. He has also served as the Town Attorney to the Town of Richland, New York, since 2019. Mr. Seiter began his career with the law firm Caraccioli & Associates, PLLC. He is currently the president of the Oswego County Bar Association.

Akosua Garcia Yeboah received her B.A. from the State University of New York at New Paltz and holds a Master of Science degree in Urban Planning and Environmental Studies from Rensselaer Polytechnic Institute. She is a former Senior Information Technology Project Manager for the City of Albany. She previously worked for the IBM Corporation as a Systems Engineer and I.T. Consultant. In 2022, Albany Mayor Kathy Sheehan appointed Ms. Yeboah to the City of Albany's Civil Service Commission. Ms. Yeboah is a former member of the Attorney Grievance Committee of the Appellate Division, Third Department. She also served as a member of the Commission on Statewide Attorney Discipline. Ms. Yeboah served two terms on the Albany Citizen's Police Review Board as a Board member and as Secretary of the Board. She was also a member of the Advisory Board of the Center for Women in Government & Civil Society, and Chair of the Advisory Board of the New York State Office of the Advocate for Persons with Disabilities.

APPENDIX B: BIOGRAPHIES OF COMMISSION ATTORNEYS

Eric Arnone, *Senior Attorney*, is a graduate of New York University (magna cum laude) and Brooklyn Law School. Prior to joining the Commission Staff, he served for ten years as an Assistant District Attorney in Manhattan where he was assigned to the Trial Division, Homicide Investigations Unit and the Violent Criminal Enterprises Unit. After leaving the Manhattan D.A., he entered private practice with a focus on criminal defense and both state and federal civil litigation.

Denise Buckley, *Senior Litigation Counsel*, earned her J.D. at NYU School of Law and B.A. (magna cum laude, in cursu honorum) at Fordham University. Denise has over twenty years of experience in the field of litigation in three different countries. After working in New York City for six years as an insurance defense lawyer, she travelled to Scotland, U.K., where she earned an LL.M. at the University of Edinburgh and worked as a Professional Support Lawyer for Biggart Baillie Solicitors in their Edinburgh and Glasgow offices. She worked for the Chief State Solicitor's Office in Dublin, Ireland as a State Solicitor for eight years representing the Irish government in judicial review proceedings across a broad range of legal issues. Before assuming her current role with the CJC, she worked as an Assistant Attorney General with the Albany Litigation Bureau of the New York State Office of the Attorney General for six years where she represented the State of New York, its officers, and agencies in actions and proceedings across many substantive areas of the law. Denise also has served as an Adjunct Lecturer at Albany Law School of Union College and a volunteer at Capital City Rescue Mission.

Cathleen S. Cenci, *Deputy Administrator in Charge of the Commission's Albany office*, is a graduate of Potsdam College (summa cum laude) and the Albany Law School of Union University. In 1979, she completed the Course Superior at the Institute of Touraine in Tours, France. Ms. Cenci joined the Commission staff in 1985. She has been a judge of the Albany Law School moot court competitions and a member of Albany County Big Brothers/Big Sisters.

Brenda Correa, *Principal Attorney*, is a graduate of the University of Massachusetts at Amherst and Elisabeth Haub School of Law at Pace University (cum laude). Prior to joining the Commission staff, she served as an Assistant District Attorney in the New York County District Attorney's Office under Robert M. Morgenthau. She also worked as an associate for Wilentz Goldman & Spitzer, PA, in the area of toxic torts and Kaufman Borgeest & Ryan, LLP, in the area of legal malpractice defense and as Professional Responsibility Counsel for Foley & Lardner, LLP.

Kelvin S. Davis, *Staff Attorney*, is a graduate of Yale University and the University of Virginia Law School. Prior to joining the Commission staff, he served as an Assistant Staff Judge Advocate in the United States Air Force and as Judicial Law Clerk to New Jersey Superior Court Judge Eugene H. Austin.

Melissa DiPalo, *Senior Attorney*, is a graduate of the University of Richmond and Brooklyn Law School. She previously served as Administrative Counsel and as a Staff Attorney at the

Commission. She has also served as an Assistant District Attorney in the Bronx and as a Court Attorney in Kings County Civil Court.

David M. Duguay, *Senior Attorney*, is a graduate of the State University of New York at Buffalo (summa cum laude) and the SUNY at Buffalo Law School. Prior to joining the Commission's staff, he was Special Assistant Public Defender and Town Court Supervisor in the Monroe County Public Defender's Office. He served previously as a staff attorney with Legal Services, Inc., of Chambersburg, Pennsylvania.

Stephanie A. Fix, *Staff Attorney*, is a graduate of the State University of New York at Brockport and Quinnipiac College School of Law in Connecticut. Prior to joining the Commission staff she was in private practice focusing on civil litigation and professional liability in Manhattan and Rochester. She has served on the Monroe County Bar Association (MCBA) Board of Trustees and is a member of the MCBA's Professional Performance Committee. She has served on the Bishop Kearney High School Board of Trustees. Ms. Fix received the President's Award for Professionalism from the Monroe County Bar Association in 2004 for her participation with the ABA "Dialogue on Freedom" initiative. She is a member of the New York State Bar Association and Greater Rochester Association of Women Attorneys (GRAWA). Ms. Fix is an adjunct professor at St. John Fisher College.

Alan W. Friedberg, *Special Counsel*, is a graduate of Brooklyn College, the Brooklyn Law School and the New York University Law School, where he earned an LL.M. in Criminal Justice. He previously served as Chief Counsel to the Departmental Disciplinary Committee of the Appellate Division, First Department, as Deputy Administrator in Charge of the Commission's New York City Office, as a Senior Attorney at the Commission, as a staff attorney in the Law Office of the New York City Board of Education, as an adjunct professor of business law at Brooklyn College, and as a junior high school teacher in the New York City public school system.

Stella Gilliland, *Staff Attorney*, is a graduate of Lewis and Clark College and Fordham University School of Law. She previously served as Deputy State Public Defender with the Colorado Public Defender in Alamosa, Colorado.

Shruti Joshi, *Staff Attorney*, completed her Bachelor of Arts and Bachelor of Law degree from Symbiosis Law School in India and Masters in Intellectual Property Law from George Washington University Law School in Washington, D.C. Prior to joining the Commission staff, she worked at the Legal Aid Society of Northeastern New York in Albany where she represented low-income clients in foreclosure and housing cases. Shruti practiced in India as an in-house counsel for PepsiCo, Inc. before moving to the United States of America. She is dual-qualified, with license to practice in New York and India.

Adam B. Kahan, *Staff Attorney*, is a graduate of Duke University (summa cum laude) and University of Virginia School of Law, where he served as Articles Editor for the Virginia Journal of International Law. Prior to joining the Commission Staff, he was in private practice focusing on capital markets and private fund formation at Simpson Thacher & Bartlett in Manhattan.

Kathleen E. Klein, *Senior Attorney*, is a graduate of State University of New York College at Fredonia (cum laude) and Pace University School of Law where she was a Merit Scholarship recipient. Prior to joining the Commission Staff, she served as a Senior Assistant District Attorney with the Ulster County District Attorney's Office. She worked in private practice as a litigator, but began her career negotiating contracts for fractional aircraft ownership for CitationShares Sales, Inc. in Greenwich, Connecticut.

Mark Levine, *Deputy Administrator in Charge of the Commission's New York office*, is a graduate of the State University of New York at Buffalo and Brooklyn Law School. He previously served as Principal Law Clerk to Acting Supreme Court Justice Jill Konviser and Supreme Court Justice Phylis Skloot Bamberger, as an Assistant Attorney General in New York, as an Assistant District Attorney in Queens, and as law clerk to United States District Court Judge Jacob Mishler. Mr. Levine also practiced law with the law firms of Patterson, Belknap, Webb & Tyler, and Weil, Gotshal & Manges.

Edward Lindner, *Deputy Administrator for Litigation*, is a graduate of the University of Arizona and Cornell Law School, where he was a member of the Board of Editors of the Cornell International Law Journal. Prior to joining the Commission's staff, he was an Assistant Solicitor General in the Division of Appeals & Opinions for the New York State Attorney General. He has been a Board Member and volunteer for various community organizations, including Catholic Charities, The Children's Museum at Saratoga, the Saratoga Springs Public Library and the Saratoga Springs Preservation Foundation.

Jennifer L. Lowry, *Principal Attorney*, is a graduate of Barnard College (magna cum laude) and Fordham Law School, where she received the Archibald R. Murray Public Service Award and served as the Managing Editor of the Environmental Law Journal. Prior to joining the Commission, she served as Principal Law Clerk to Acting Supreme Court Justice Jill Konviser. She previously served as an Assistant District Attorney in New York County, assigned to the Trial Division, Sex Crimes and Domestic Violence Units, and the Appeals Bureau, and as an Assistant District Attorney in Westchester County, assigned to the Special Prosecutions and Local Courts and Grand Jury Divisions.

Vickie Ma, *Senior Attorney*, is a graduate of the University of Wisconsin at Madison and Albany Law School, where she was Associate Editor of the Law Review. Prior to joining the Commission staff, she served as an Assistant District Attorney in Kings County. She previously worked for the Commission from 2000 to 2006, when she left for a legal consultant position in private industry.

M. Kathleen Martin, *Senior Attorney*, is a graduate of Mount Holyoke College and Cornell Law School (cum laude). Prior to joining the Commission's staff, she was an attorney at the Eastman Kodak Company, where among other things she held positions as Legal Counsel to the Health Group, Director of Intellectual Property Transactions and Director of Corporate Management Strategy Deployment. She also served as Vice President and Senior Associate Counsel at Chase Manhattan Bank, and in private practice with the firm of Nixon, Hargrave, Devans & Doyle.

S. Peter Pedrotty, *Senior Attorney*, is a graduate of St. Michael's College (cum laude) and the Albany Law School of Union University (magna cum laude). Prior to joining the Commission staff, he served as an Appellate Court Attorney at the Appellate Division, Third Department, and was engaged in the private practice of law in Saratoga County and with the law firm of Clifford Chance US LLP in Manhattan.

John J. Postel, *Deputy Administrator in Charge of the Commission's Rochester office*, is a graduate of the University of Albany and the Albany Law School of Union University. He joined the Commission staff in 1980. Mr. Postel serves on the Board of Directors of the Association of Judicial Disciplinary Counsel. He is a past president of the Governing Council of St. Thomas More R.C. Parish. He is a former officer of the Pittsford-Mendon Ponds Association and a former President of the Stonybrook Association. He served as the advisor to the Sutherland High School Mock Trial Team for eight years. He is the Vice President and a past Treasurer of the Pittsford Golden Lions Football Club, Inc. He is an assistant director and coach for Pittsford Community Lacrosse. He is an active member of the Pittsford Mustangs Soccer Club, Inc.

David Stromes, *Litigation Counsel*, is a graduate of Brandeis University and Brooklyn Law School. Prior to joining the Commission's staff, he served for nearly 12 years as an Assistant District Attorney in the Appeals Division of the New York County District Attorney's Office. He also has taught Appellate Advocacy as an adjunct professor at Brooklyn Law School.

Robert H. Tembeckjian, *Administrator and Counsel*, is a graduate of Syracuse University, the Fordham University School of Law and Harvard University's Kennedy School of Government, where he earned a Masters in Public Administration. He was a Fulbright Scholar to Armenia in 1994, teaching graduate courses and lecturing on constitutional law and ethics at the American University of Armenia and Yerevan State University. He also advised the Armenian Parliament on its drafting of a new constitution. Mr. Tembeckjian served on the Advisory Committee to the American Bar Association Commission to Evaluate the Model Code of Judicial Conduct from 2003-07. He is on the Board of Directors of the Association of Judicial Disciplinary Counsel and previously served as a Trustee of the Westwood Mutual Funds and the United Nations International School, and on the Board of Directors of the Civic Education Project. Mr. Tembeckjian has served on various ethics and professional responsibility committees of the New York State and New York City Bar Associations, and he has published numerous articles in legal periodicals on judicial ethics and discipline. He was a member of the editorial board of the Justice System Journal, a publication of the National Center for State Courts, from 2007-10.

Celia A. Zahner, *Clerk of the Commission*, is a graduate of Colgate University and Harvard Law School. She previously served as Special Counsel to the Independent Investigations Officer and the Chief Investigator appointed pursuant to the Consent Order in *United States v International Brotherhood of Teamsters*. Ms. Zahner also served as a Staff Attorney in the Law Enforcement Bureau of the New York City Commission on Human Rights and as a Staff Attorney in the Criminal Defense Division of the Legal Aid Society.

APPENDIX C: REFEREES WHO SERVED IN 2022

Referee	City/Town	County
Mark S. Arisohn, Esq.	Tuckahoe	Westchester
Howard Benjamin, Esq.	New York	New York
Hon. John J. Brunetti	Syracuse	Onondaga
Linda J. Clark, Esq.	Albany	Albany
William T. Easton, Esq.	Rochester	Monroe
David M. Garber, Esq.	Syracuse	Onondaga
Thomas F. Gleason, Esq.	Albany	Albany
Ronald Goldstock, Esq.	Larchmont	Westchester
Michael J. Hutter, Esq.	Albany	Albany
C. Bruce Lawrence, Esq.	Rochester	Monroe
Gregory S. Mills, Esq.	Clifton Park	Saratoga
Hugh H. Mo, Esq.	New York	New York
Margaret M. Reston, Esq.	Rochester	Monroe
Michael Whiteman, Esq.	Albany	Albany

APPENDIX D: THE COMMISSION'S POWERS, DUTIES AND HISTORY

Creation of the New York State Commission on Judicial Conduct

For decades prior to the creation of the Commission on Judicial Conduct, judges in New York State were subject to professional discipline by a patchwork of courts and procedures. The system, which relied on judges to discipline fellow judges, was ineffective. In the 100 years prior to the creation of the Commission, only 23 judges were disciplined by the patchwork system of *ad hoc* judicial disciplinary bodies. For example, an *ad hoc* Court on the Judiciary was convened only six times prior to 1974. There was no staff or even an office to receive and investigate complaints against judges.

Starting in 1974, the Legislature changed the judicial disciplinary system, creating a temporary commission with a full-time professional staff to investigate and prosecute cases of judicial misconduct. In 1976 and again in 1977, the electorate overwhelmingly endorsed and strengthened the new commission, making it permanent and expanding its powers by amending the State Constitution.

The Commission's Powers, Duties, Operations and History

The State Commission on Judicial Conduct is the disciplinary agency constitutionally designated to review complaints of judicial misconduct in New York State. The Commission's objective is to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently. The Commission does not act as an appellate court. It does not review judicial decisions or alleged errors of law, nor does it issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies

By offering a forum for citizens with conduct-related complaints, and by disciplining those judges who transgress ethical constraints, the Commission seeks to insure compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary.

All 50 states and the District of Columbia have adopted a commission system to meet these goals.

In New York, a temporary commission created by the Legislature in 1974 began operations in January 1975. It was made permanent in September 1976 by a constitutional amendment. A second constitutional amendment, effective on April 1, 1978, created the present Commission with expanded membership and jurisdiction. (For clarity, the Commission, which operated from September 1976 through March 1978, will be referred to as the "former" Commission.)

Membership and Staff

The Commission is composed of 11 members serving four-year terms. Four members are appointed by the Governor, three by the Chief Judge of the Court of Appeals, and one by each of the four leaders of the Legislature. The Constitution requires that four members be judges, at least one be an attorney, and at least two be lay persons. The Commission elects one of its members to be chairperson and

appoints an Administrator and a Clerk. The Administrator is responsible for hiring staff and supervising staff activities subject to the Commission's direction and policies. The Commission's principal office is in New York City. Offices are also maintained in Albany and Rochester.

The following individuals have served on the Commission since its inception. Asterisks denote those members who chaired the Commission.

Hon. Rolando T. Acosta (2010-17)
Hon. Sylvia G. Ash (2016)
Hon. Fritz W. Alexander, II (1979-85)
Hon. Myriam J. Altman (1988-93)
Helaine M. Barnett (1990-96)
Herbert L. Bellamy, Sr. (1990-94)
*Joseph W. Belluck (2008-present)
*Henry T. Berger (1988-2004)
*John J. Bower (1982-90)
Hon. Evelyn L. Braun (1994-95)
David Bromberg (1975-88)
Jeremy Ann Brown (1997-2001)
Hon. Fernando M. Camacho (2021-present)
Hon. Richard J. Cardamone (1978-81)
Hon. Frances A. Ciardullo (2001-05)
Hon. Carmen Beauchamp Ciparick (1985-93)
E. Garrett Cleary (1981-96)
Stephen R. Coffey (1995-2011)
Joel Cohen (2010-18)
Jodie Corngold (2013-present)
Howard Coughlin (1974-76)
Mary Ann Crotty (1994-98)
Dolores DelBello (1976-94)
Colleen C. DiPirro (2004-08)
Richard D. Emery (2004-17)
Hon. Herbert B. Evans (1978-79)
Hon. John A. Falk (2017-present)
*Raoul Lionel Felder (2003-08)
*William Fitzpatrick (1974-75)
*Lawrence S. Goldman (1990-2006)
Taa Grays (2017-present)
Hon. Louis M. Greenblott (1976-78)
Paul B. Harding (2006-2021)
Christina Hernandez (1999-2006)
Hon. James D. Hopkins (1974-76)
Elizabeth B. Hubbard (2008-2011)
Marvin E. Jacob (2006-09)
Hon. Daniel W. Joy (1998-2000)

Michael M. Kirsch (1974-82)
*Hon. Thomas A. Klonick (2005-17)
Hon. Jill Konviser (2006-10)
*Victor A. Kovner (1975-90)
William B. Lawless (1974-75)
Hon. Leslie G. Leach (2016-20)
Hon. Daniel F. Luciano (1995-2006)
William V. Maggipinto (1974-81)
Hon. Frederick M. Marshall (1996-2002)
Hon. Angela M. Mazzarelli (2017-22)
Hon. Ann T. Mikoll (1974-78)
Hon. Robert J. Miller (2018-present)
Mary Holt Moore (2002-03)
Nina M. Moore (2009-13)
Hon. Juanita Bing Newton (1994-99)
Hon. William J. Ostrowski (1982-89)
Hon. Karen K. Peters (2000-12)
*Alan J. Pope (1997-2006)
Marvin Ray Raskin (2018-present)
*Lillemor T. Robb (1974-88)
Ronald J. Rosenberg (2020-present)
Hon. Isaac Rubin (1979-90)
Hon. Terry Jane Ruderman (1999-2016)
*Hon. Eugene W. Salisbury (1989-2001)
Barry C. Sample (1994-97)
Graham B. Seiter (2021-present)
Hon. Felice K. Shea (1978-88)
John J. Sheehy (1983-95)
Hon. Morton B. Silberman (1978)
Richard A. Stoloff (2011-19)
Hon. William C. Thompson (1990-98)
Carroll L. Wainwright, Jr. (1974-83)
Hon. David A. Weinstein (2012-18)
Akosua Garcia Yeboah (2016-present)

The Commission's Authority

The Commission has the authority to receive and review written complaints of misconduct against judges, initiate complaints on its own motion, conduct investigations, file Formal Written Complaints and conduct formal hearings thereon, subpoena witnesses and documents, and make appropriate determinations as to dismissing complaints or disciplining judges within the state unified court system. This authority is derived from Article 6, Section 22, of the Constitution of the State of New York, and Article 2-A of the Judiciary Law of the State of New York.

By provision of the State Constitution (Article 6, Section 22), the Commission:

shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system...and may determine that a judge or justice be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge or justice be retired for mental or physical disability preventing the proper performance of his judicial duties.

The types of complaints that may be investigated by the Commission include improper demeanor, conflicts of interest, violations of defendants' or litigants' rights, intoxication, bias, prejudice, favoritism, gross neglect, corruption, certain prohibited political activity and other misconduct on or off the bench.

Standards of conduct are set forth primarily in the Rules Governing Judicial Conduct (originally promulgated by the Administrative Board of the Judicial Conference and subsequently adopted by the Chief Administrator of the Courts with the approval of the Court of Appeals) and the Code of Judicial Conduct (adopted by the New York State Bar Association).

If the Commission determines that disciplinary action is warranted, it may render a determination to impose one of four sanctions, subject to review by the Court of Appeals upon timely request by the respondent-judge. If review is not requested within 30 days of service of the determination upon the judge, the determination becomes final. The Commission may render determinations to:

- admonish a judge publicly;
- censure a judge publicly;
- remove a judge from office;
- retire a judge for disability.

In accordance with its rules, the Commission may also issue a confidential letter of dismissal and caution to a judge, despite a dismissal of the complaint, when it is determined that the circumstances so warrant. In some cases the Commission has issued such a letter after charges of misconduct have been sustained.

Procedures

The Commission meets several times a year. At its meetings, the Commission reviews each new complaint of misconduct and makes an initial decision whether to investigate or dismiss the complaint. It also reviews staff reports on ongoing matters, makes final determinations on completed proceedings, considers motions and entertains oral arguments pertaining to cases in which judges have been served with formal charges, and conducts other Commission business.

No investigation may be commenced by staff without authorization by the Commission. The filing of formal charges also must be authorized by the Commission.

After the Commission authorizes an investigation, the Administrator assigns the complaint to a staff attorney, who works with investigative staff. If appropriate, witnesses are interviewed and court records are examined. The judge may be asked to respond in writing to the allegations. In some instances, the Commission requires the appearance of the judge to testify during the course of the investigation. The judge's testimony is under oath, and a Commission member or referee designated by the Commission must be present. Although such an "investigative appearance" is not a formal hearing, the judge is entitled to be represented by counsel. The judge may also submit evidentiary data and materials for the Commission's consideration.

If the Commission finds after an investigation that the circumstances so warrant, it will direct its Administrator to serve upon the judge a Formal Written Complaint containing specific charges of misconduct. The Formal Written Complaint institutes the formal disciplinary proceeding. After receiving the judge's answer, the Commission may, if it determines there are no disputed issues of fact, grant a motion for summary determination. It may also accept an agreed statement of facts submitted by the Administrator and the respondent-judge. Where there are factual disputes that make summary determination inappropriate or that are not resolved by an agreed statement of facts, the Commission will appoint a referee to conduct a formal hearing and report proposed findings of fact and conclusions of law. Referees are designated by the Commission from a panel of attorneys and former judges. Following the Commission's receipt of the referee's report, on a motion to confirm or disaffirm the report, both the administrator and the respondent may submit legal memoranda and present oral argument on issues of misconduct and sanction. The respondent-judge (in addition to his or her counsel) may appear and be heard at oral argument.

In deciding motions, considering proposed agreed statements of fact and making determinations with respect to misconduct and sanction, and in considering other matters pertaining to cases in which Formal Written Complaints have been served, the Commission deliberates in executive session, without the presence or assistance of its Administrator or regular staff. The Clerk of the Commission assists the Commission in executive session, but does not participate in either an investigative or adversarial capacity in any cases pending before the Commission.

The Commission may dismiss a complaint at any stage during the investigation or adjudication.

When the Commission determines that a judge should be admonished, censured, removed or retired, its written determination is forwarded to the Chief Judge of the Court of Appeals, who in turn serves it upon the respondent-judge. Upon completion of service, the Commission's determination and the record of its proceedings become public. (Prior to this point, by operation of the strict provisions in Article 2-A of the Judiciary Law, all proceedings and records are confidential.) The respondent-judge has 30 days to request full review of the Commission's determination by the Court of Appeals. The Court may accept or reject the Commission's findings of fact or conclusions of law, make new or different findings of fact or conclusions of law, accept or reject the determined sanction, or make a different determination as to sanction. If no request for review is made within 30 days, the sanction determined by the Commission becomes effective.

Temporary State Commission on Judicial Conduct

The Temporary State Commission on Judicial Conduct was established in late 1974 and commenced operations in January 1975. The temporary Commission had the authority to investigate allegations of misconduct against judges in the state unified court system, make confidential suggestions and recommendations in the nature of admonitions to judges when appropriate and, in more serious cases, recommend that formal disciplinary proceedings be commenced in the appropriate court. All disciplinary proceedings in the Court on the Judiciary and most in the Appellate Division were public.

The temporary Commission was composed of two judges, five lawyers and two lay persons. It functioned through August 31, 1976, when it was succeeded by a permanent commission created by amendment to the State Constitution.

The temporary Commission received 724 complaints, dismissed 441 upon initial review and commenced 283 investigations during its tenure. It admonished 19 judges and initiated formal disciplinary proceedings against eight judges, in either the Appellate Division or the Court on the Judiciary. One of these judges was removed from office and one was censured. The remaining six matters were pending when the temporary Commission was superseded by its successor Commission. Five judges resigned while under investigation.

Former State Commission on Judicial Conduct

The temporary Commission was succeeded on September 1, 1976, by the State Commission on Judicial Conduct, established by a constitutional amendment overwhelmingly approved by the New York State electorate and supplemented by legislative enactment (Article 2-A of the Judiciary Law). The former Commission's tenure lasted through March 31, 1978, when it was replaced by the present Commission.

The former Commission was empowered to investigate allegations of misconduct against judges, impose certain disciplinary sanctions and, when appropriate, initiate formal disciplinary proceedings in the Court on the Judiciary, which, by the same constitutional amendment, had been given jurisdiction over all 3,500 judges in the unified court system. The sanctions that could be imposed by the former Commission were private admonition, public censure, suspension without pay for up to six months, and retirement for physical or mental disability. Censure, suspension and retirement actions could not be imposed until the judge had been afforded an opportunity for a full adversary hearing. These Commission sanctions were also subject to a *de novo* hearing in the Court on the Judiciary at the request of the judge.

The former Commission, like the temporary Commission, was composed of two judges, five lawyers and two lay persons, and its jurisdiction extended to judges within the state unified court system. The former Commission was authorized to continue all matters left pending by the temporary Commission.

The former Commission considered 1,418 complaints, dismissed 629 upon initial review, authorized 789 investigations and continued 162 investigations left pending by the temporary Commission.

During its tenure, the former Commission took action that resulted in the following:

- 15 judges were publicly censured;
- 40 judges were privately admonished;
- 17 judges were issued confidential letters of suggestion and recommendation.

The former Commission also initiated formal disciplinary proceedings in the Court on the Judiciary against 45 judges and continued six proceedings left pending by the temporary Commission. Those proceedings resulted in the following:

- 1 removal;
- 2 suspensions;
- 3 censures;
- 10 cases closed upon resignation of the judge;
- 2 cases closed upon expiration of the judge's term;
- 1 proceeding closed without discipline and with instruction by the Court on the Judiciary that the matter be deemed confidential.

The remaining 32 proceedings were pending when the former Commission expired. They were continued by the present Commission.

In addition to the ten judges who resigned after proceedings had been commenced in the Court on the Judiciary, 28 other judges resigned while under investigation by the former Commission.

Continuation from 1978 to 1980 of Formal Proceedings Commenced by the Temporary and Former Commissions

Thirty-two formal disciplinary proceedings which had been initiated in the Court on the Judiciary by either the temporary or former Commission were pending when the former Commission was superseded on April 1, 1978, and were continued without interruption by the present Commission.

The last five of these 32 proceedings were concluded in 1980, with the following results, reported in greater detail in the Commission's previous annual reports:

- 4 judges were removed from office;
- 1 judge was suspended without pay for six months;
- 2 judges were suspended without pay for four months;
- 21 judges were censured;
- 1 judge was directed to reform his conduct consistent with the Court's opinion;
- 1 judge was barred from holding future judicial office after he resigned; and
- 2 judges died before the matters were concluded.

The 1978 Constitutional Amendment

The present Commission was created by amendment to the State Constitution, effective April 1, 1978. The amendment created an 11-member Commission (superseding the nine-member former Commission), broadened the scope of the Commission's authority and streamlined the procedure for disciplining judges within the state unified court system. The Court on the Judiciary was abolished, pending completion of those cases that had already been commenced before it. All formal disciplinary hearings under the new amendment are conducted by the Commission.

Subsequently, the State Legislature amended Article 2-A of the Judiciary Law, the Commission's governing statute, to implement the new provisions of the constitutional amendment.

Summary of Complaints Considered since the Commission's Inception

Since January 1975, when the temporary Commission commenced operations, 66,348 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 56,623 were dismissed upon initial review or after a preliminary review and inquiry, and 9,725 investigations were authorized. Of the 9,725 investigations authorized, the following dispositions have been made through December 31, 2022:

- 1,215 complaints involving 903 judges resulted in disciplinary action (this does not include the 122 public stipulations in which judges agreed to vacate judicial office). (See details below and on the following page.)
- 1,897 complaints resulted in cautionary letters to the judge involved. The actual number of such letters totals 1,741, 93 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct.
- 953 complaints involving 657 judges were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings.
- 650 complaints were closed upon vacancy of office by the judge other than by resignation.
- 4,823 complaints were dismissed without action after investigation.
- 187 complaints are pending.

Of the 1,215 disciplinary matters against 903 judges as noted above, the following actions have been recorded since 1975 in matters initiated by the temporary, former or present Commission. (It should be noted that several complaints against a single judge may be disposed of in a single action. This accounts for the apparent discrepancy between the number of complaints and the number of judges

acted upon.) These figures take into account the 101 decisions by the Court of Appeals, 16 of which modified a Commission determination.

- 176 judges were removed from office;
- 3 judges were suspended without pay for six months (under previous law);
- 2 judges were suspended without pay for four months (under previous law);
- 377 judges were censured publicly;
- 285 judges were admonished publicly;
- 59 judges were admonished confidentially by the temporary or former Commission; and
- 1 matter was dismissed by the Court of Appeals upon the judge's request for review.

Court of Appeals Reviews

Since 1978, the Court of Appeals, on request of the respondent-judge, has reviewed 101 determinations filed by the present Commission. Of these 101 matters:

- The Court accepted the Commission's sanctions in 85 cases (76 of which were removals, 6 were censures and 3 were admonitions);
- The Court increased the sanction from censure to removal in 2 cases;
- The Court reduced the sanction in 13 cases:
 - 9 removals were modified to censures;
 - 1 removal was modified to admonition;
 - 2 censures were modified to admonitions; and
 - 1 censure was rejected and the charges were dismissed.
- The Court remitted 1 matter to the Commission for further proceedings.

APPENDIX E: RULES GOVERNING JUDICIAL CONDUCT

22 NYCRR § 100 *et seq.*

Rules of the Chief Administrator of the Courts Governing Judicial Conduct

Preamble

Section 100.0 Terminology.

Section 100.1 A judge shall uphold the integrity and independence of the judiciary.

Section 100.2 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.

Section 100.4 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Section 100.5 A judge or candidate for elective judicial office shall refrain from inappropriate political activity.

Section 100.6 Application of the rules of judicial conduct.

Preamble

The rules governing judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The rules are to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The rules are designed to provide guidance to judges and candidates for elective judicial office and to provide a structure for regulating conduct through disciplinary agencies. They are not designed or intended as a basis for civil liability or criminal prosecution.

The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. 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.

The rules are not intended as an exhaustive guide for conduct. Judges and judicial candidates also should be governed in their judicial and personal conduct by general ethical standards. The rules are intended, however, to state basic standards which should govern their conduct and to provide guidance to assist them in establishing and maintaining high standards of judicial and personal conduct.

Section 100.0 Terminology.

The following terms used in this Part are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by election. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy, or authorizes solicitation or acceptance of contributions.

(B) "Court personnel" does not include the lawyers in a proceeding before a judge.

(C) The "degree of relationship" is calculated according to the civil law system. That is, where the judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the judge and the party are in different lines of descent, degree is ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, first cousin, child, grandchild, great-grandchild, nephew or niece. The sixth degree of relationship includes second cousins.

(D) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a judge's spouse or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

(5) "De minimis" denotes an insignificant interest that could not raise reasonable questions as to a judge's impartiality.

(E) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(F) "Knowingly", "knowledge", "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(G) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(H) "Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(I) "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(J) "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(K) "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports.

(L) A "part-time judge", including an acting part-time judge, is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment.

(M) "Political organization" denotes a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(N) "Public election" includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

(O) "Require". The rules prescribing that a judge "require" certain conduct of others, like all of the rules in this Part, are rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(P) "Rules"; citation. Unless otherwise made clear by the citation in the text, references to individual components of the rules are cited as follows:

"Part"-refers to Part 100.

"Section"-refers to a provision consisting of 100 followed by a decimal (100.1).

"Subdivision"-refers to a provision designated by a capital letter (A).

"Paragraph"-refers to a provision designated by an arabic numeral (1).

"Subparagraph"-refers to a provision designated by a lower-case letter (a).

(Q) "Window Period" denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge's or non-judge's candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, six months after the date of the primary election, convention, caucus or meeting.

(R) "Impartiality" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

(S) An "independent" judiciary is one free of outside influences or control.

(T) "Integrity" denotes probity, fairness, honesty, uprightness and soundness of character. "Integrity" also includes a firm adherence to this Part or its standard of values.

(U) A "pending proceeding" is one that has begun but not yet reached its final disposition.

(V) An "impending proceeding" is one that is reasonably foreseeable but has not yet been commenced.

Historical Note

Sec. filed Feb. 1, 1996 eff. Jan. 1, 1996.

Amended (D) and (D)(5) on [Sept. 9, 2004](#).

Added (R) - (V) on [Feb. 14, 2006](#)

Section 100.1 A judge shall uphold the integrity and independence of the judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part 100 are to be construed and applied to further that objective.

Historical Note

Sec. filed Aug. 1, 1972; renum. 111.1, new added by renum. and amd. 33.1, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Section 100.2 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

(A) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

(D) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of age, race, creed, color, sex, sexual orientation, gender identity, gender expression, religion, national origin, disability or marital status. This provision does not prohibit a judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

Historical Note

Sec. filed Aug. 1, 1972; renum. 111.2, new added by renum. and amd. 33.2, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Amended (D) on [Jun. 25, 2018](#)

Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.

(A) **Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

(B) Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(2) A judge shall require order and decorum in proceedings before the judge.

(3) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, gender identity, gender expression, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, gender identity, gender expression, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding.

(6) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and the judge, insofar as practical and appropriate, makes provision for prompt notification of other parties or their lawyers of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge, with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters.

(e) A judge may initiate or consider any ex parte communications when authorized by law to do so.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(9) A judge shall not:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(12) It is not a violation of this Rule for a judge to make reasonable efforts to facilitate the ability of unrepresented litigants to have their matters fairly heard.

(C) Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered. A judge shall not appoint or vote for the appointment of any person as a member of the judge's staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such a person. A judge shall refrain from recommending a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such person for appointment or employment to another judge serving in the same court. A judge also shall comply with the requirements of Part 8 of the Rules of the Chief Judge (22 NYCRR Part 8) relating to the Appointment of relatives of judges. Nothing in this paragraph shall prohibit appointment of the spouse, domestic partner, or unrelated household member of the town or village justice, or other relative as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.

(D) Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action.

(3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties.

(E) Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the judge has a personal bias or prejudice concerning a party or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge knows that (i) the judge served as a lawyer in the matter in controversy, or (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or (iii) the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;

(d) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding;

(ii) is an officer, director or trustee of a party;

(iii) has an interest that could be substantially affected by the proceeding;

(e) The judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding. Where the judge knows the relationship to be within the second degree, (i) the judge must disqualify him/herself without the possibility of remittal if such person personally appears in the courtroom during the proceeding or is likely to do so, but (ii) may permit remittal of disqualification provided such person remains permanently absent from the courtroom.

(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.

(g) notwithstanding the provisions of subparagraphs (c) and (d) above, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as fiduciary, the judge's spouse, or a minor child residing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(F) Remittal of Disqualification. A judge disqualified by the terms of subdivision (E), except subparagraph (1)(a)(i), subparagraph (1)(b)(i) or (iii), or subparagraph (1)(d)(i) or subparagraph (1)(e)(i) of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and

not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Amended (B)(9)-(11) & (E)(f) -(E)(g) [Feb. 14, 2006](#)

Amended (B)(9)-(11) & (E)(f) -(E)(g) [Feb. 14, 2006](#)

Amended (C)(3) on [May 6, 2014](#)

Added (B)(12) effective [Mar. 26, 2015](#)

Amended (B)(4) & (B)(5) on [Jun. 25, 2018](#)

Amended (E)(1)(e) & (F) on [Dec. 12, 2018](#) effective January 1, 2019

Amended (D)(2) on [May 7, 2019](#), effective May 6, 2019

Section 100.4 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations

(A) **Extra-Judicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) detract from the dignity of judicial office; or
- (3) interfere with the proper performance of judicial duties and are not incompatible with judicial office.

(B) **Avocational Activities.** A judge may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of this Part.

(C) Governmental, Civic, or Charitable Activities.

(1) A full-time judge shall not appear at a public hearing before an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2)(a) A full-time judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy in matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(b) A judge shall not accept appointment or employment as a peace officer or police officer as those terms are defined in section 1.20 of the Criminal Procedure Law.

(3) A judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic

organization not conducted for profit, subject to the following limitations and the other requirements of this Part.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that ordinarily would come before the judge, or

(ii) if the judge is a full-time judge, will be engaged regularly in adversary proceedings in any court.

(b) A judge as an officer, director, trustee or non-legal advisor, or a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities;

(ii) may not be a speaker or the guest of honor at an organization's fund-raising events, but the judge may attend such events. Nothing in this subparagraph shall prohibit a judge from being a speaker or guest of honor at a court employee organization, bar association or law school function or from accepting at another organization's fund-raising event an unadvertised award ancillary to such event;

(iii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice; and

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, but may be listed as an officer, director or trustee of such an organization. Use of an organization's regular letterhead for fund-raising or membership solicitation does not violate this provision, provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

(D) Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position;

(b) involve the judge with any business, organization or activity that ordinarily will come before the judge; or

(c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge, subject to the requirements of this Part, may hold and manage investments of the judge and members of the judge's family, including real estate.

(3) A full-time judge shall not serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity, except that:

- (a) the foregoing restriction shall not be applicable to a judge who assumed judicial office prior to July 1, 1965, and maintained such position or activity continuously since that date; and
 - (b) a judge, subject to the requirements of this Part, may manage and participate in a business entity engaged solely in investment of the financial resources of the judge or members of the judge's family; and
 - (c) any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this paragraph during the period of such interim or temporary appointment.
- (4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.
- (5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:
- (a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;
 - (b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;
 - (c) ordinary social hospitality;
 - (d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;
 - (e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 100.3(E);
 - (f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
 - (g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
 - (h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and if its value exceeds \$150.00, the judge reports it in the same manner as the judge reports compensation in Section 100.4(H).

(E) Fiduciary Activities.

(1) A full-time judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of the judge's family, or, with the approval of the Chief Administrator of the Courts, a person not a member of the judge's family with whom the judge has maintained a longstanding personal relationship of trust and confidence, and then only if such services will not interfere with the proper performance of judicial duties.

(2) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

(3) Any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from paragraphs (1) and (2) during the period of such interim or temporary appointment.

(F) Service as Arbitrator or Mediator. A full-time judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(G) Practice of Law. A full-time judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to a member of the judge's family.

(H) Compensation, Reimbursement and Reporting.

(1) *Compensation and Reimbursement.* A full-time judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(c) No full-time judge shall solicit or receive compensation for extra-judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) a school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society designated to represent indigents in accordance with article 18-B of the County Law.

(2) *Public Reports.* A full-time judge shall report the date, place and nature of any activity for which the judge received compensation in excess of \$150, and the name of the payor and the

amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.

(I) **Financial Disclosure.** Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this section and in section 100.3(F), or as required by Part 40 of the Rules of the Chief Judge (22 NYCRR Part 40), or as otherwise required by law.

Historical Note

Sec. filed Aug. 1, 1972; amd. filed Nov. 26, 1976; renum. 111.4, new added by renum. and amd. 33.4, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996; amds. filed: Feb. 27, 1996; Feb. 9, 1998 eff. Jan. 23, 1998. Amended (C)(3)(b)(ii).

Section 100.5 A judge or candidate for elective judicial office shall refrain from inappropriate political activity.

(A) Incumbent Judges and Others Running for Public Election to Judicial Office.

(1) Neither a sitting judge nor a candidate for public election to judicial office shall directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to improve the law, the legal system or the administration of justice. Prohibited political activity shall include:

- (a) acting as a leader or holding an office in a political organization;
- (b) except as provided in Section 100.5(A)(3), being a member of a political organization other than enrollment and membership in a political party;
- (c) engaging in any partisan political activity, provided that nothing in this section shall prohibit a judge or candidate from participating in his or her own campaign for elective judicial office or shall restrict a non-judge holder of public office in the exercise of the functions of that office;
- (d) participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization;
- (e) publicly endorsing or publicly opposing (other than by running against) another candidate for public office;
- (f) making speeches on behalf of a political organization or another candidate;
- (g) attending political gatherings;
- (h) soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate; or
- (i) purchasing tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose.

(2) A judge or non-judge who is a candidate for public election to judicial office may participate in his or her own campaign for judicial office as provided in this section and may contribute to

his or her own campaign as permitted under the Election Law. During the Window Period as defined in subdivision (Q) of section 100.0 of this Part, a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may:

(i) attend and speak to gatherings on his or her own behalf, provided that the candidate does not personally solicit contributions;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy, and distribute pamphlets and other promotional campaign literature supporting his or her candidacy;

(iii) appear at gatherings, and in newspaper, television and other media advertisements with the candidates who make up the slate of which the judge or candidate is a part;

(iv) permit the candidate's name to be listed on election materials along with the names of other candidates for elective public office;

(v) purchase two tickets to, and attend, politically sponsored dinners and other functions, provided that the cost of the ticket to such dinner or other function shall not exceed the proportionate cost of the dinner or function. The cost of the ticket shall be deemed to constitute the proportionate cost of the dinner or function if the cost of the ticket is \$250 or less. A candidate may not pay more than \$250 for a ticket unless he or she obtains a statement from the sponsor of the dinner or function that the amount paid represents the proportionate cost of the dinner or function.

(3) A non-judge who is a candidate for public election to judicial office may also be a member of a political organization and continue to pay ordinary assessments and ordinary contributions to such organization.

(4) A judge or a non-judge who is a candidate for public election to judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under this Part;

(c) except to the extent permitted by Section 100.5(A)(5), shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Part;

(d) shall not:

(i) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(ii) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;

(iii) knowingly make any false statement or misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent; but

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate subparagraphs 100.5(A)(4)(a) and (d).

(f) shall complete a campaign ethics education program developed or approved by the Chief Administrator or his or her designee within 30 days after the candidate makes a public announcement of candidacy, files a designating petition with the Board of Elections, receives a nomination for judicial office, or authorizes solicitation or acceptance of contributions, whichever is earliest. Written proof of compliance must be filed with the Judicial Campaign Ethics Center within 14 days of completing the training, unless the candidate is granted a waiver of this requirement for good cause shown. This provision shall apply to all candidates for elective judicial office in the Unified Court System except for town and village justices.

(g) shall file with the Ethics Commission for the Unified Court System a financial disclosure statement containing the information and in the form set forth in the Annual Statement of Financial Disclosure adopted by the Chief Judge of the State of New York. Such statement shall be filed within 20 days following the date on which the judge or non-judge becomes such a candidate; provided, however, that the Ethics Commission for the Unified Court System may grant an additional period of time within which to file such statement in accordance with rules promulgated pursuant to section 40.1(i)(3) of the Rules of the Chief Judge of the State of New York (22 NYCRR). Notwithstanding the foregoing, compliance with this subparagraph shall not be necessary where a judge or non-judge already is or was required to file a financial disclosure statement for the preceding calendar year pursuant to Part 40 of the Rules of the Chief Judge. This requirement shall not apply to candidates for election to town and village courts.

(5) A judge or candidate for public election to judicial office shall not personally solicit or accept campaign contributions, but may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions and support from the public, including lawyers, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees may solicit and accept such contributions and support only during the Window Period. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(6) A judge or a non-judge who is a candidate for public election to judicial office may not permit the use of campaign contributions or personal funds to pay for campaign-related goods or services for which fair value was not received.

(B) Judge as Candidate for Nonjudicial Office. A judge shall resign from judicial office upon becoming a candidate for elective nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to

or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(C) **Judge's Staff.** A judge shall prohibit members of the judge's staff who are the judge's personal appointees from engaging in the following political activity:

(1) holding an elective office in a political organization, except as a delegate to a judicial nominating convention or a member of a county committee other than the executive committee of a county committee;

(2) contributing, directly or indirectly, money or other valuable consideration in amounts exceeding \$500 in the aggregate during any calendar year to all political campaigns for political office, and other partisan political activity including, but not limited to, the purchasing of tickets to political functions, except that this \$500 limitation shall not apply to an appointee's contributions to his or her own campaign. Where an appointee is a candidate for judicial office, reference also shall be made to appropriate sections of the Election Law;

(3) personally soliciting funds in connection with a partisan political purpose, or personally selling tickets to or promoting a fund-raising activity of a political candidate, political party, or partisan political club; or

(4) political conduct prohibited by section 50.5 of the Rules of the Chief Judge (22 NYCRR 50.5).

Historical Note

Sec. filed Aug. 1, 1972; renum. 111.5, new added by renum. and amd. 33.5, filed Feb. 2, 1982; amds. filed: Dec. 21, 1983; May 8, 1985; March 2, 1989; April 11, 1989; Oct. 30, 1989; Oct. 31, 1990; repealed, new filed; amd. filed March 25, 1996 eff. March 21, 1996. Amended (A)(2)(v).

Amended 100.5 (A)(2)(v), (A)(4)(a), (A)(4)(d)(i)-(ii), (A)(4)(f), (A)(6), (A)(7) on [Feb. 14, 2006](#)

Added 100.5 (A)(4)(g) on [Sept. 1, 2006](#)

Amended 100.5 (A)(4)(g) on [Sept. 1, 2006](#)

Amended 100.5 (A)(4)(f) on [Oct. 24, 2007](#)

Deleted 100.5(A)(7) on [May 7, 2019](#), effective May 6, 2019

Amended 100.5 (A)(4)(f) on [January 13, 2020](#), effective January 31, 2020

Section 100.6 Application of the rules of judicial conduct.

(A) **General Application.** All judges in the unified court system and all other persons to whom by their terms these rules apply, e.g., candidates for elective judicial office, shall comply with these rules of judicial conduct, except as provided below. All other persons, including judicial hearing officers, who perform judicial functions within the judicial system shall comply with such rules in the performance of their judicial functions and otherwise shall so far as practical and appropriate use such rules as guides to their conduct.

(B) **Part-Time Judge.** A part-time judge:

(1) is not required to comply with sections 100.4(C)(1), 100.4(C)(2)(a), 100.4(C)(3)(a)(ii), 100.4(E)(1), 100.4(F), 100.4(G), and 100.4(H);

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

(3) shall not permit his or her partners or associates to practice law in the court in which he or she is a judge, and shall not permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law, but may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law;

(4) may accept private employment or public employment in a federal, state or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties.

(5) Nothing in this rule shall further limit the practice of law by the partners or associates of a part-time judge in any court to which such part-time judge is temporarily assigned to serve pursuant to section 106(2) of the Uniform Justice Court Act or Section 107 of the Uniform City Court Act in front of another judge serving in that court before whom the partners or associates are permitted to appear absent such temporary assignment.

(C) Administrative Law Judges. The provisions of this Part are not applicable to administrative law judges unless adopted by the rules of the employing agency.

(D) Time for Compliance. A person to whom these rules become applicable shall comply immediately with all provisions of this Part, except that, with respect to sections 100.4(D)(3) and 100.4(E), such person may make application to the Chief Administrator for additional time to comply, in no event to exceed one year, which the Chief Administrator may grant for good cause shown.

(E) Relationship to Code of Judicial Conduct. To the extent that any provision of the Code of Judicial Conduct as adopted by the New York State Bar Association is inconsistent with any of these rules, these rules shall prevail.

Historical Note

Sec. filed Aug. 1, 1972; repealed, new added by renum. 100.7, filed Nov. 26, 1976; renum.

111.6, new added by renum. and amd. 33.6, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Amended 100.6(E) [Feb. 14, 2006](#)

Added 100.6(B)5 on [Mar. 24, 2010](#)

**APPENDIX F:
DECISIONS RENDERED BY THE
COMMISSION IN 2022**

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

CLAUDIA ANDREASSEN,

a Justice of the Saugerties Town Court,
Ulster County.

**DECISION
AND
ORDER**

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Kathleen E. Klein, Of
Counsel) for the Commission

Scalise & Hamilton, P.C. (by Deborah A. Scalise) for Judge Andreassen

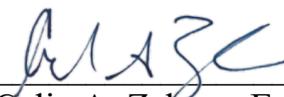
The matter having come before the Commission on September 22,

2022; and the Commission having before it the Stipulation dated September 2, 2022; and Judge Andreassen having tendered her resignation dated September 2, 2022 effective September 30, 2022; and having affirmed that after vacating her judicial office, she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: September 22, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

CLAUDIA ANDREASSEN,

STIPULATION

a Justice of the Saugerties Town Court,
Ulster County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Claudia Andreassen and her attorney, Deborah A. Scalise, Esq., of Scalise & Hamilton, P.C.

1. Judge Andreassen has been a Justice of the Saugerties Town Court, Ulster County, since May 11, 2012. Her current term expires on December 31, 2024. Judge Andreassen is not an attorney.

2. Judge Andreassen was apprised by the Commission on February 5, 2020, April 2, 2021, December 10, 2021, and May 3, 2022, that it was investigating a total of six complaints against her, including:

A. Her relationship with the Saugerties Police Department was at times adversarial;

- B. She violated various prohibitions on campaign activity by judges;
- C. She was discourteous toward and made disrespectful comments about court staff and courtroom spectators;
- D. She attempted to effectuate certain staffing decisions without involving her co-judge or the town board; and
- E. She failed to maintain professional competence in the law.

3. As of the date of this Stipulation, the Commission's investigations into the foregoing allegations were ongoing, and the Commission had not yet rendered substantive determinations with respect to the complaints.

4. Judge Andreassen has tendered her resignation by letter dated September 2, 2022, a copy of which is annexed as Exhibit 1. Judge Andreassen affirms that she will vacate judicial office on or before September 30, 2022.

5. Judge Andreassen notes that she has been a public servant for more than 36 years, first as a probation officer, more recently as a judge, and that she is eligible for retirement.

6. Judge Andreassen has fully cooperated with the Commission's investigation of these matters.

7. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines,

render and file a determination that the judge should be removed from office.

Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office “shall be ineligible to hold other judicial office.”

8. Judge Andreassen affirms that, upon vacating her judicial office, she will neither seek nor accept judicial office at any time in the future.

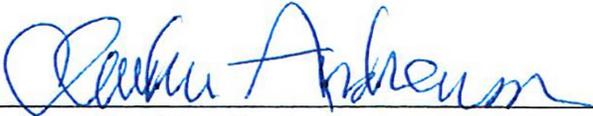
9. Judge Andreassen understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission’s investigation of the complaints could be revived, she could be served with a Formal Written Complaint on authorization of the Commission, and the matter could proceed to a hearing before a referee.

10. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

11. Judge Andreassen waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission’s Decision and Order regarding this Stipulation will become public.

Dated:

9/1/22 .

**Honorable Claudia Andreassen**

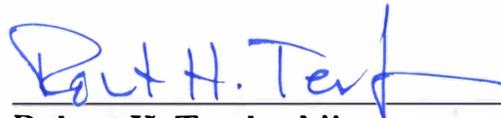
Dated:

9/2/22

**Deborah A. Scalise, Esq.****Scalise & Hamilton, P.C.**

Attorney for Hon. Claudia Andreassen

Dated: September 2, 2022

**Robert H. Tembeckjian**

Administrator & Counsel to the Commission

(Cathleen S. Cenci and Kathleen E. Klein, Of
Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

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

GARY P. ARNDT,

DETERMINATION

a Justice of the Franklin Town Court,
Delaware County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of
Counsel) for the Commission

Andrew Puritz Law Office (by Andrew Puritz) for respondent

Respondent, Gary P. Arndt, a Justice of the Franklin Town Court, Delaware County, was served with a Formal Written Complaint (“Complaint”) dated February 1, 2022 containing four charges. Charge I of the Complaint alleged from August 2018 to July 2019, in connection with his handling of three small claims cases, respondent failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, failed to respect and comply with the law, failed to be faithful to the law and maintain professional competence in it, failed to dispose of judicial matters promptly, efficiently, and fairly, failed to require order and decorum in proceedings, publicly commented on a pending matter, and engaged in and considered improper *ex parte* communications. Charge II alleged that on August 9, 2018, at a sentencing proceeding in *People v. Avery Meehan*, respondent changed the terms of the plea agreement based upon an *ex parte* conversation with the defendant’s attorney and without notice to or the consent of the prosecution. Charge III alleged that between August 9, 2018 and April 11, 2019, in four traffic infraction cases, respondent engaged in unauthorized *ex parte* communications with the defendants and/or reduced or dismissed the charges without notice to or the consent of the prosecution, as required by Sections 170.30, 170.45, 210.45, 220.10(3) and 340.20(1) of the Criminal Procedure Law (“CPL”). Charge IV alleged that on July 25, 2019, in presiding over *People v. Sebastian Swift*, respondent created the

appearance that he had pre-judged the defendant's guilt, failed to advise the defendant of his rights and failed to take any action to accord the defendant an opportunity to exercise those rights. Respondent filed an Answer dated March 20, 2022.

On July 13, 2022, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts ("Agreed Statement") pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that, if certain requirements were met, respondent be censured and waiving further submissions and oral argument.

On August 11, 2022, the Commission accepted the Agreed Statement. On September 7, 2022, respondent provided documentation that he had complied with the requirements of Paragraphs 54(A) and (B) of the Agreed Statement. Accordingly, the Commission made the following determination:

1. Respondent has been a Justice of the Franklin Town Court, Delaware County, since January 1, 2010. Respondent's current term expires on December 31, 2025. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

Charles Hartley v. Rex Safford and Charles Safford

2. On August 9, 2018, respondent presided over *Charles Hartley v. Rex*

Safford and Charles Safford, a small claims case in which the plaintiff sought \$375 from the defendants for failure to complete a painting job. A transcript of the proceeding is annexed as Exhibit A to the Agreed Statement.

3. Respondent failed to administer an oath or affirmation to the *pro se* litigants, as required by Section 214.10(j) of the Uniform Civil Rules for the Justice Courts (22 NYCRR 214.10[j]).

4. Respondent began the proceeding by reading aloud the summary of the cause of action attached to the plaintiff's small claims filing and, without requiring the plaintiff to present any evidence, asked defendant Rex Safford, "So what'd you do with the money?"¹

5. Respondent permitted the plaintiff and his wife to repeatedly interrupt Rex Safford as he attempted to explain that he had started the work but was unable to complete it because his father and business partner, defendant Charles Safford, had been hospitalized due to a stroke, and because the plaintiff locked the defendant's ladders in the plaintiff's garage and demanded a refund without letting the defendant finish the job or access his ladders.

6. Respondent admonished the defendant for interrupting the plaintiff and, at one point, told the defendant, "Just will you stop getting mouthy with me?"

¹ The transcript simply identifies "Mr. Safford" without providing his first name. Based on the testimony provided during the proceeding, it appears that the "Mr. Safford" who spoke during the proceeding was Rex Safford.

7. The plaintiff admitted that he kept the defendant's ladders "someplace where [the defendant could not] get to them" and told the defendant that he would have to countersue him to get the ladders back. Respondent then attempted to resolve the case by persuading the defendant to pay to the plaintiff \$350 for the return of his ladders. After the defendant declined, respondent told him, "I'm going to reserve my decision. If you want to continue the case, very well. But as of now, I'm going to make a decision against you – do you understand that – for the 350 dollars. Actually, 375, at this point. And I want you to get your ladders back. When you pay him the money, you'll get your ladders back, okay? Other than that, you don't have your ladders."

8. After the defendant left the courtroom, the plaintiff's wife asked respondent, "So what happens now?" Respondent replied, "I'm going to think this out and do a judgment against him, more than likely . . . And then you put a lien on his house, but I'm not sure about your ladders. You might have to give him his ladder back."

9. Respondent allowed the plaintiff and his wife to continue speaking about the substance of the claim until Robert Gouldin, an attorney present for an unrelated case, intervened and advised the plaintiff that respondent was not permitted to give him legal advice or listen to him after the proceeding had ended.²

² In the transcript, Mr. Gouldin is identified as "UNIDENTIFIED ATTORNEY."

10. After the plaintiff and his wife left the courtroom, Mr. Gouldin told respondent that he was “making the wrong decision.” Mr. Gouldin advised respondent that the defendant performed work for which he was entitled to be compensated, and that the plaintiff refused to let him finish the rest of the job and took his ladders. In response to the comments made by Mr. Gouldin, respondent said he had “some more thinking” to do but that the defendant “was getting real snotty” and had “disappeared” on the plaintiff. At the conclusion of another set of proceedings, respondent discussed the *Hartley* case with the court clerk and told the clerk that he dealt with the defendant as he did because the defendant “was being a real dirtbag.”

11. Between August 9 and August 23, 2018, respondent separately telephoned and spoke with the parties. Consistent with the advice respondent received from Mr. Gouldin during the foregoing *ex parte* communications, respondent instructed the plaintiff to return the defendant’s ladders to him, and the plaintiff agreed. Respondent told the defendant about his instruction to the plaintiff. The plaintiff subsequently called the court and left a message stating that he had returned the ladders.

12. On August 23, 2018, respondent issued a judgment dismissing the claim. A copy of the Notice of Small Claims Judgment is annexed as Exhibit B to the Agreed Statement.

Ralph Franzese v. Amanda and Jesse Scott

13. On February 14, 2019, respondent presided over *Ralph Franzese v. Amanda and Jesse Scott*, a small claims case in which the plaintiff sought \$3,000 for damages to a furnace allegedly caused by the defendants' removal of the furnace's fuel line cap. A transcript of the proceeding is annexed as Exhibit C to the Agreed Statement.

14. During that proceeding, respondent failed to administer an oath or affirmation to the *pro se* litigants, as required by Section 214.10(j) of the Uniform Civil Rules for the Justice Courts (22 NYCRR 214.10[j]).

15. Respondent began the proceeding by reading the cause of action on the plaintiff's small claims filing and asking the plaintiff if it was "correct" and "That's what happened[.]" Respondent then asked the defendants, "What's the story?" After directing the parties to speak one at a time, respondent permitted the parties to argue back and forth and speak out of order throughout the rest of the proceeding. At the end of the proceeding, respondent adjourned the hearing to April 11, 2019, to give both parties an opportunity to call witnesses.

16. On April 11, 2019, respondent presided over the adjourned hearing in *Franzese v. Scott*. A transcript of the proceeding is annexed as Exhibit D to the Agreed Statement.

17. The plaintiff did not call a witness in support of his claim. The

defendants called a witness, Dave Allen. After the parties spoke, an unidentified woman and respondent spoke in an apparent colloquy, then Mr. Allen started to speak, at which time respondent interjected and administered an oath to “everybody” at the same time. The unidentified woman and the plaintiff were the only individuals who responded to the oath. Amid intermittent testimony from Mr. Allen, respondent permitted the parties and the unidentified woman to argue back and forth and speak out of order throughout the rest of the proceeding.

18. Near the end of the proceeding, respondent asked the defendants if they would pay half of the damages sought by the plaintiff. When one of the defendants replied, “I don’t care. You’re the judge,” respondent said, “Well, I’m trying to be fair, okay? . . . It’s pretty hard to make a decision on who . . . who did what”

19. Respondent allowed the parties to interrupt him as he was speaking and said nothing when the defendant used profanity.

20. In response to the defendant stating, “Whatever you do – whatever – I don’t care,” respondent said, “Oh, I hate these civil cases.” Respondent stated that he would reserve judgment and ended the proceeding.

21. On April 24, 2019, respondent issued a judgment in favor of the defendants, dismissing the small claim.

Susan Gregory v. David Stanton, Jr.

22. On June 13, 2019, respondent presided over the small claims hearing of *Susan Gregory v. David Stanton, Jr.* A transcript of the proceeding is annexed as Exhibit E to the Agreed Statement.

23. The plaintiff sought over \$1,264 from the defendant as the remaining balance on payments for the purchase of a tractor.

24. Respondent failed to administer an oath or affirmation to the *pro se* litigants, as required by Section 214.10(j) of the Uniform Civil Rules for the Justice Courts (22 NYCRR 214.10[j]).

25. The plaintiff presented her case and offered paperwork to the court in support of her claim. Respondent did not accept any of the plaintiff's paperwork into evidence.

26. After providing the defendant an opportunity to respond, respondent permitted the litigants to argue back and forth until he stated, "You're really asking the Court an awful lot to try to figure out on this, okay? It's extremely confusing and there's two words against – the two of you against each other." Respondent then told the plaintiff to "[g]et a lawyer and maybe you can put it all together with a lawyer and have a lawyer explain it to me." Respondent added, "You're trying to get me to figure out this whole mess and it's really a mess . . . This is not something I can do fairly and understand . . . I'm not that qualified to take care of it, to be honest with you." Without rendering a decision, respondent told the

plaintiff to come back to the court to “start another proceeding” after consulting with an attorney, “because really, it’s way over my head.” Respondent did not adjourn the proceeding to a new date or give the plaintiff a deadline to return to the court.

27. After the plaintiff left the courtroom, respondent told the defendant that the plaintiff had “bombarded [him] with a bunch of stuff,” which was “impossible” for him “to try to decipher,” and that he “can’t understand a word [the plaintiff’s] saying.” Outside the plaintiff’s presence, respondent told the defendant that he was not going to make a decision, and that he was “going to adjourn the case, probably do a dismissal.”

28. During this *ex parte* communication with the defendant, respondent advised the defendant that if the plaintiff returned to court, she would have to “open up the case again,” at which time the court would send the defendant a notice to appear in court and that, if the plaintiff “has a lawyer and she has the proper paperwork and I can understand it, I’ll go from there.”

29. The defendant continued to speak to respondent about the substance of the small claim until the court clerk told the defendant that respondent had to “stop hearing,” which prompted respondent to state, “Yeah, I can’t really hear much more.” At that point, the defendant left the courtroom.

30. On July 11, 2019, respondent dismissed the small claim without

notifying the parties or issuing a decision from which the plaintiff could appeal. Copies of the Small Claim History Report and case file folder, both noting the dismissal, are annexed as Exhibit F to the Agreed Statement.

As to Charge II of the Formal Written Complaint

31. On August 9, 2018, in connection with *People v. Avery Meehan*, Delaware County Assistant District Attorney (ADA) Richard K. Caister, Jr., faxed to respondent's court a signed Memorandum of Plea Bargain, Release on Conditional Discharge form, and Community Service Program Court Order. Copies of those documents are annexed as Exhibits G, H, and I to the Agreed Statement, respectively. Under the terms of the Memorandum of Plea Bargain, the defendant agreed to plead guilty to Driving While Ability Impaired by Drugs, in violation of Vehicle and Traffic Law (VTL) Section 1192(4), and Aggravated Unlicensed Operation, in violation of VTL Section 511(1)(a), in satisfaction of all outstanding charges and in exchange for a sentence of a one-year conditional discharge, 25 hours of community service, an unspecified fine and requirements that the defendant attend a victim impact panel, undergo an impaired driver program and participate in an alcohol and drug evaluation and treatment program.

32. On August 9, 2018, ADA Caister emailed the court clerk, advising

her that he had sent the court the documents related to the plea and had been assured by the defendant's attorney, Robert Gouldin, that his appearance for the sentencing scheduled that night was unnecessary. ADA Caister added, "However, I wanted to ensure that [the] Court fully understands the plea agreement. The plea agreement as offered was that Mr. Meehan plead guilty to VTL §1192(4) DWAI Drugs and VTL §511(1)(a) with conditional discharges, and a condition of 25 hours of community service in full satisfaction of all remaining charges. If there are any issues or you have any questions, please don't hesitate to contact me on my cell phone." ADA Caister included his cell phone number in the email. A copy of the email is annexed as Exhibit J to the Agreed Statement.

33. Later that day, the defendant and Mr. Gouldin appeared before respondent. ADA Caister was not present. After a brief discussion about ADA Caister's absence, Mr. Gouldin raised the topic of the condition of the 25-hours of community service in the Memorandum of Plea Bargain and requested that respondent not sentence the defendant to that condition. Without notice to or the consent of any member of the prosecution, respondent granted Mr. Gouldin's request that the defendant not be sentenced to community service. Respondent sentenced the defendant to a one-year conditional discharge, the minimum fine

amounts (totaling \$1,193 including surcharges) and the other conditions outlined in the Memorandum of Plea Bargain.

As to Charge III of the Formal Written Complaint

People v. F.

34. On August 9, 2018, while presiding over *People v. F.*, in which the defendant was charged with Failure to Keep Right in violation of VTL Section 1120(a), respondent solicited and received unauthorized *ex parte* information from the defendant about the circumstances underlying the charge against him, in the absence of the prosecution and without the defendant having entered a guilty plea. A transcript of the proceeding is included in Exhibit A to the Agreed Statement.

People v. Song Jee Juong

35. On August 9, 2018, while presiding over *People v. Song Jee Juong*, in which the defendant was charged with Speed Not Reasonable and Prudent in violation of VTL Section 1180(a), respondent solicited and received unauthorized *ex parte* information from the defendant about the circumstances underlying the charge against him, in the absence of any member of the prosecution and without the defendant having entered a guilty plea. A transcript of the proceeding is included in Exhibit A to the Agreed Statement.

People v. Randall Cowles

36. On February 14, 2019, while presiding over *People v. Randall*

Cowles, in which the defendant was charged with Speeding for driving 71 mph in a 55-mph zone, in violation of VTL Section 1180-a, respondent received unauthorized *ex parte* information from the defendant, after the defendant entered a not-guilty plea and in the absence of any member of the prosecution. A copy of the transcript is annexed as Exhibit K to the Agreed Statement. Respondent then granted a reduction in the Speeding charge to driving 63 mph, without notice to and the consent of the prosecution, as required by CPL Sections 220.10(3) and 340.20(1).

People v. M. B.

37. On April 11, 2019, while presiding over *People v. M. B.*, in which the defendant was charged with Unregistered Motor Vehicle in violation of VTL Section 410(1)(a), respondent solicited and received unauthorized *ex parte* information from the defendant about the circumstances underlying the charge against him, without the defendant having entered a guilty plea thereto and in the absence of any member of the prosecution. A transcript of the proceeding is annexed as Exhibit L to the Agreed Statement. A copy of the Simplified Information/Certificate Concerning Violation of Law Relating to Vehicles is annexed as Exhibit M to the Agreed Statement. That same day, respondent dismissed the charge, based upon the defendant's *ex parte* submission of proof of

registration, without notice to and the consent of the prosecution, as required by CPL Sections 170.30, 170.45 and 210.45.

As to Charge IV of the Formal Written Complaint

38. On July 25, 2019, respondent presided over the arraignment of Sebastian Swift, who was charged with Unlawful Disposal of Solid Waste, in violation of Section 360.9(b)(3) of the New York Codes, Rules and Regulations (6 NYCRR §360.9[b][3]), and Disposal of Substances Injurious to Fish and Wildlife in a Stream, in violation of Environmental Conservation Law Section 11-0503(1). A transcript of the proceeding is annexed as Exhibit N to the Agreed Statement.

39. Before asking the defendant – who appeared without an attorney – how he pled to the charges, respondent asked the defendant, “So you have been dumping some waste off the side of the road, in streams and so on?” The defendant replied, “Just once. Yes, sir.”

40. Respondent stated, “I’m going to read you the rights. Well, in this case, I don’t think it’s necessary.” Respondent then asked the defendant how he pled to the charges, without informing him of his rights to the aid of counsel at the arraignment and at every subsequent stage of the action, to an adjournment for the purpose of obtaining counsel, and to have counsel assigned by the court if he was financially unable to obtain an attorney, and without according the defendant an

opportunity to exercise such rights and taking any affirmative action as is necessary to effectuate them, in violation of CPL Sections 170.10(3) and (4)(a).

41. After the defendant entered guilty pleas to both charges, respondent dismissed the Unlawful Disposal of Solid Waste charge and sentenced the defendant to a \$25 fine and \$75 surcharge on the Disposal of Substances Injurious to Fish and Wildlife in a Stream charge.

Additional Factors

42. Respondent has been cooperative, contrite and remorseful with the Commission throughout this inquiry. He has never been disciplined previously.

43. It does not appear that respondent acted out of malice or with intent to violate the rights of litigants in the cases herein. Rather, respondent's conduct appears to have resulted from his unfamiliarity with the law and procedures applicable to the cases herein.

44. Notwithstanding that he is a lay justice, respondent acknowledges his obligation to maintain professional competence in the law he administers, and otherwise be faithful to the ethical rules binding on all judges of the Unified Court System, lawyer and non-lawyer alike.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), (2), (6), (7) and (8) of the Rules Governing Judicial Conduct ("Rules") and should be

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

Charges I, II, III and IV of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

Every judge is obligated to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and must “avoid impropriety and the appearance of impropriety.” (Rules, §100.2(A)) The Rules specifically prohibit a judge from initiating, permitting or considering *ex parte* communications about a pending matter and from making any public comment about a pending proceeding. (Rules, §§100.3(B)(6) and (8)) Respondent repeatedly acted in a manner that was inconsistent with these ethical obligations when he engaged in prohibited *ex parte* communications in seven different matters and made public comments about a matter pending before him. In the *Hartley* matter, after the defendant left the courtroom, respondent gave *ex parte* advice to the plaintiff and stated how he planned to rule. Furthermore, in the absence of the parties to the *Hartley* matter, respondent engaged in an *ex parte* conversation about the matter with an attorney in the courtroom for another matter and publicly commented on the matter including stating that the defendant “was getting real snotty.” In the *Gregory* matter, after the plaintiff left the courtroom, respondent

engaged in *ex parte* communications with the defendant and later dismissed the matter without notifying the parties or issuing a decision from which an appeal could be taken. In addition, in four traffic infraction matters, respondent engaged in improper *ex parte* communications with unrepresented defendants.

In additional violations of his ethical responsibilities, respondent failed to “be faithful to the law and maintain professional competence in it” and to “accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law.” (Rules §§100.3(B)(1) and (6)) Respondent failed to comply with the Criminal Procedure Law by taking actions without affording the prosecution the required notice and opportunity to be heard. For example, in the *Cowles* matter, respondent granted a reduction in the Speeding charge without notice to and consent of the prosecution as CPL §§220.10(3) and 340.20(1) required. In addition, in three small claims matters, respondent failed to administer an oath or affirmation to the witnesses as Section 214.10(j) of the Uniform Civil Rules for the Justice Courts required.

Significantly, during the arraignment in the *Swift* matter, respondent failed to advise the defendant of the right to counsel as CPL §§170.10(3) and (4)(a) required. Accordingly, respondent failed to perform one of the critical roles of a judge during arraignment. *Matter of Kline*, 2018 NYSCJC Annual Report 161, 183 (“[i]nforming defendants of the right to counsel is one of a judge’s most important

responsibilities at an arraignment, and the failure to do so cannot be excused even in isolated instances and even if the ultimate outcome of the case might be viewed as favorable.”) Compounding his misconduct in the *Swift* matter, respondent also appeared to pre-judge the defendant’s guilt.

Respondent has been a judge since 2010 and should be fully familiar with his ethical obligations including the requirements to avoid *ex parte* communications and to abide by the law. “It is a judge’s responsibility to maintain professional competence in the law, and a judge – lawyer or non-lawyer – has an obligation to learn and obey ethical rules. . . . Even if not intentional, a series of legal errors indicates inattention to proper procedure and neglect of judicial duty.” *Matter of Pemrick*, 2000 NYSCJC Annual Report 141, 143. The record established that respondent has been inattentive to required procedures and has neglected his important obligation to comply with the Rules.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has no prior disciplinary history, has acknowledged that his conduct was improper and warrants public discipline and has completed several continuing judicial education courses. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

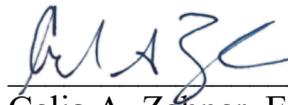
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: September 28, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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

JOHN M. ARONIAN,

DETERMINATION

a Justice of the North Salem Town Court,
Westchester County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Eric Arnone, Of
Counsel) for the Commission

DerOhannesian & DerOhannesian (by Paul DerOhannesian, II) for
respondent

Respondent, John M. Aronian, a Justice of the North Salem Town Court, Westchester County, was served with a Formal Written Complaint (“Complaint”) dated July 13, 2022 containing one charge. The Complaint alleged that from May 2020 to October 2020, respondent voluntarily prepared and submitted character reference letters, which invoked his judicial title, in support of pistol license applications filed in County Court, Westchester County, by Susan Koch and Daniel Koch and wrote a letter on his judicial stationery to County Court Judge Susan Cacace, requesting that she reconsider her denial of Susan Koch’s pistol license application.

On September 26, 2022, the Administrator, respondent’s counsel and respondent entered into an Agreed Statement of Facts (“Agreed Statement”) pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On October 27, 2022, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the North Salem Town Court, Westchester County, since January 2016. His current term expires on December 31, 2023. He was admitted to the practice of law in New York in 2004.

2. Susan Koch has been respondent's neighbor since 2003. Ms. Koch has served as a court clerk in the North Salem Town Court since 2015.

3. Daniel Koch is Susan Koch's husband and has been respondent's neighbor since 2001.

4. On May 4, 2020, Susan Koch asked respondent to serve as a character reference in support of unrestricted pistol license applications for herself and Daniel Koch. Respondent agreed, and Susan Koch provided respondent with two blank "Character Reference Letter" forms from the Pistol License Unit of the Westchester County Police.

5. On May 4, 2020, respondent completed and signed Character Reference Letter forms on behalf of Susan Koch and Daniel Koch. In each letter, respondent identified his occupation as "JUDGE."¹

A. In the reference letter for Susan Koch, respondent described her, *inter alia*, as a "neighbor, friend, and co-worker," and stated that she "currently serves as my appointed Court Clerk."

B. In the reference letter for Daniel Koch, respondent described Mr. Koch, *inter alia*, as a "wonderful and trusted friend and neighbor."

6. Sometime after May 4, 2020, respondent gave both completed Character Reference Letter forms to Susan Koch, who submitted them to the Westchester County Department of Public Safety. The pistol permit applications

¹ The documents referenced herein are appended to the Formal Written Complaint.

of both Susan and Daniel Koch were referred for decision to County Court, Westchester County, pursuant to Penal Law Section 265.00(10).

7. By Decision and Order dated September 2, 2020, County Court Judge Susan Cacace denied Susan Koch's application for an unrestricted New York State pistol/revolver "full carry" license. In her decision, Judge Cacace found, *inter alia*, that Susan Koch "failed to substantiate [her] claim by providing any information revealing any of the dates, frequency and details of these encounters, as might have been demonstrated through the submission of police reports and/or corroborating witness statements" and "failed to adequately substantiate her claim that her safety concerns associated with her employment as a Court Clerk may only be adequately met by her Full Carry use of a handgun without restriction."

8. Shortly thereafter, Susan Koch told respondent her pistol license application had been denied and showed him a copy of Judge Cacace's Decision and Order. Ms. Koch told respondent she planned to submit a request for reconsideration of the denial, and she asked respondent to write a letter to Judge Cacace in support of that application.

9. Respondent personally placed a telephone call to the Westchester County Courthouse to inquire about the process for an applicant to appeal the denial of a pistol permit application and spoke with a court clerk. Respondent

learned that a letter of reconsideration could be submitted to the judge who denied the initial application.

10. Thereafter, respondent wrote a letter on behalf of Susan Koch to Judge Cacace, dated October 2, 2020, on North Salem Town Court stationery, which identified him as one of the “JUSTICES” and Ms. Koch as “COURT CLERK.” In the letter, respondent, *inter alia*, stated, “I am a [sic] currently a sitting Town Justice in the Town of North Salem, New York,” and he noted that Ms. Koch had served as the court’s “head Court Clerk for the past four years.” He also proffered reasons why, in his estimation, Ms. Koch’s employment as a court clerk in the North Salem Town Court warranted the issuance of a full carry pistol license, and he argued in favor of her application being granted. Respondent concluded the letter by inviting Judge Cacace to contact him directly if she needed additional information. Respondent signed the letter, “Hon. John M Aronian” and provided his cellphone number.

11. Respondent gave the letter to Susan Koch, who submitted it to Judge Cacace with her own letter requesting reconsideration of the decision denying her application. Judge Cacace thereafter referred respondent’s conduct to the Commission.

12. At no time did Judge Cacace, the Westchester County Police Pistol License Unit, or any other official or agency ask or authorize respondent to submit character references on behalf of Susan and/or Daniel Koch.

Additional Factors

13. Respondent has taken full responsibility for his actions and has been forthright, cooperative and contrite with the Commission throughout this inquiry. Although respondent says he wrote the October 2nd letter on judicial stationery because it recited Ms. Koch's duties and responsibilities as Court Clerk and noted employment-related concerns for her personal safety, he now acknowledges it was wrong for him to do so and regrets failing to abide by the rules. Respondent avers that he believed he was in the best position to address the personal security concerns of his court clerk and her husband and acknowledges that this is not permitted by the Rules. Respondent pledges never to do so again, and to be more mindful of his ethical obligations both on and off the bench.

14. Respondent has no prior judicial disciplinary history.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B) and 100.2(C) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the

Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions and respondent's misconduct is established.

Respondent acted in a manner that was inconsistent with his obligations to maintain high standards of conduct and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

(Rules, §§100.1, 100.2(A)) The Rules specifically provide that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . . .” (Rules, §100.2(C)) Respondent violated his ethical obligations when he completed the two Character Reference Letter forms, in which he identified himself as a judge. He again violated the Rules when, using his judicial stationery, he wrote a letter to the County Court judge arguing for reconsideration of the denial of Susan Koch's pistol license application.

Respondent's conduct violated the ethical rules requiring judges to observe high standards of conduct both on and off the bench and prohibiting judges from lending the prestige of judicial office to advance their private interests or those of another. As the Court of Appeals held in *Matter of Lonschein*, 50 N.Y.2d 569, 571-572 (1980), “no Judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others.”

It is well-established that writing a letter using judicial stationery to advance the private interests of another person violates the Rules. “Regardless of a judge's

intent, communications of this type convey the appearance of using the prestige of judicial office to advance private interests. . . .” *Matter of Ramirez*, 2018 NYSCJC Annual Report 232, 241; *Matter of Smith*, 2014 NYSCJC Annual Report 208; *Matter of Sharlow*, 2006 NYSCJC Annual Report 232.² When he invoked his judicial status and used his judicial stationery to write to the County Court judge to advocate reconsideration of the denial of Susan Koch’s application, respondent created the improper appearance that he expected special treatment and deference because of his status as a judge.

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent has acknowledged that his conduct was improper and warrants public discipline. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

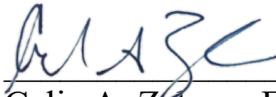
Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

² The Advisory Committee on Judicial Ethics has opined that a judge “should not serve as a character reference for a friend who is applying for a pistol permit.” *Adv. Op.* 10-17.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission
on Judicial Conduct.

Dated: November 7, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

SYLVIA G. ASH,

a Justice of the Supreme Court,
Kings County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzaelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian for the Commission

Morrison and Foerster (by Carrie H. Cohen) for Respondent

The matter having come before the Commission on March 17, 2022;
and the Commission having before it the Stipulation dated March 16, 2022; and

Judge Ash having given notice that she was vacating her judicial office on March 15, 2022; and having affirmed that upon vacating her judicial office, she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: March 17, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

SYLVIA G. ASH,

STIPULATION

a Justice of the Supreme Court,
Kings County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Sylvia G. Ash and her attorney, Carrie H. Cohen of Morrison & Foerster.

1. Sylvia G. Ash has been a Justice of the Supreme Court, Kings County, since January 1, 2011, having previously served as a Judge of the New York City Civil Court from 2006 through 2010. Her current term expires on December 31, 2024.
2. Judge Ash was charged with various federal offenses on October 4, 2019, in *United States v Sylvia Ash* in the Southern District of New York.
3. A Commission investigation of Judge Ash, as to matters also at issue in the federal proceeding against her, was held in abeyance pending resolution of the federal charges.

4. On December 13, 2021, Judge Ash was convicted after trial by jury in the United States District Court for the Southern District of New York on one count each of conspiracy to obstruct justice, obstruction of justice, and making false statements to a federal agent. Sentencing has been scheduled for April 20, 2022.

5. Judge Ash has given notice that she will vacate her judicial office on March 15, 2022.

6. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office. Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office "shall be ineligible to hold other judicial office."

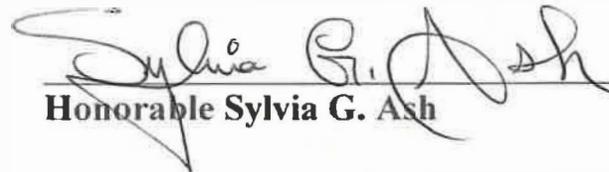
7. Judge Ash affirms that, upon vacating judicial office on March 15, 2022, she will neither seek nor accept judicial office at any time in the future.

8. Judge Ash understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the present proceedings before the Commission would be revived, she would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

9. Upon execution by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

10. Judge Ash waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 03-15-2022


Honorable Sylvia G. Ash

Dated: March 16, 2022


Carrie H. Cohen, Esq.
Morrison & Foerster
Attorney for **Judge Ash**

Dated: March 16, 2022


Robert H. Tembeckjian
Administrator & Counsel to the Commission

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

ROBERT M. BERLINER,

a Justice of the Supreme Court, 9th Judicial
District, Rockland County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Vickie Ma, Of Counsel) for
the Commission

Scalise and Hamilton, P.C. (by Deborah A. Scalise) for Judge Berliner

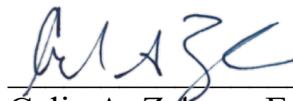
The matter having come before the Commission on June 16, 2022; and the
Commission having before it the Stipulation dated June 8, 2022; and Judge

Berliner having tendered his resignation dated June 7, 2022 effective September 30, 2022; and having affirmed that after vacating his judicial office, he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: June 16, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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

ROBERT M. BERLINER,

STIPULATION

a Justice Supreme Court, 9th Judicial
District, Rockland County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Robert M. Berliner (“Respondent”), who is represented in these proceedings by Deborah A. Scalise, as follows:

1. Respondent served as the Rockland County Surrogate from 2006 to 2007 and has been a Justice of the Supreme Court, 9th Judicial District, Rockland County, since 2008. He was re-elected in November 2021.

2. Pursuant to Article VI, Section 25(b), of the Constitution, a justice of the Supreme Court must retire on the last day of December in the year in which he or she reaches the age of 70 but may be certificated to serve up to three additional two-year terms. A judge who has been certificated may not serve beyond the last day of December of the year in which he or she reaches the age of 76.

3. Respondent turned 70 this year and would be eligible for certification to serve three additional two-year terms beginning January 1, 2023. If so certificated, Respondent would be required to retire from the bench on or before December 31, 2028.

4. After a lengthy investigation, with which Respondent cooperated, the Commission authorized and Respondent was served with a Formal Written Complaint dated April 25, 2022, containing two charges, which alleged, *inter alia*, that in September 2015 and November 2017, he engaged in prohibited political activity on behalf of two candidates for judicial office by accompanying and/or introducing them to three gatherings of community and political leaders in Orange and Rockland Counties for the purpose of promoting their candidacies. The Commission has not rendered a determination as to the Complaint.

5. Respondent enters into this Stipulation in lieu of filing an Answer to the Formal Written Complaint.

6. Respondent has tendered his resignation, dated June 7, 2022, and effective September 30, 2022, a copy of which is annexed as Exhibit 1.

Respondent affirms that he will vacate judicial office on September 30, 2022.

7. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines,

render and file a determination that the judge should be removed from office.

Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office “shall be ineligible to hold other judicial office.”

8. Respondent affirms that, once having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

9. Respondent understands that, should he abrogate the terms of this Stipulation or hold any judicial position at any time, the present proceedings before the Commission will be revived and the matter will proceed to a hearing before a referee.

10. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

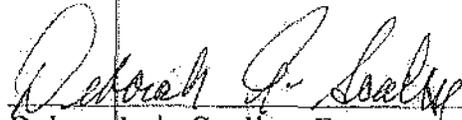
11. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission’s Decision and Order regarding this Stipulation will become public.

Dated: 6/8/22



Honorable Robert M. Berliner
Respondent

Dated: 6/8/22



Deborah A. Scalise, Esq.
Scalise & Hamilton, P.C.
Attorney for Respondent

Dated: June 8, 2022



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(Mark Levine and Vickie Ma, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT 1: RESPONDENT'S LETTER OF RESIGNATION

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

DETERMINATION

TATIANA COFFINGER,

a Judge of the County, Family and
Surrogate's Courts, Hamilton County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Kathleen E. Klein, Of
Counsel) for the Commission

Dreyer Boyajian, LLP (by William J. Dreyer) for respondent

Respondent, Tatiana Coffinger, a Judge of the County, Family and
Surrogate's Courts, Hamilton County, was served with a Formal Written Complaint

("Complaint") dated December 7, 2021 containing two charges. Charge I of the Complaint alleged that in June 2019, during her campaign for election as judge of the County, Family and Surrogate's Courts in Hamilton County, respondent personally solicited contributions on behalf of a political organization on four separate occasions by posting on social media an invitation to a fundraising event on behalf of the Hamilton County Republican Committee. Charge II of the Complaint alleged that in June 2019, during her election campaign, respondent approved the content and distribution of campaign literature falsely depicting that one of her opponents in the Republican primary would appear on a ballot line labeled, "Democrat."

On January 25, 2022, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts ("Agreed Statement") pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On February 3, 2022, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Judge of the County, Family and Surrogate's Courts, Hamilton County, since 2020. Respondent's current term expires on December 31, 2030. Previously, she served as a Justice of the Indian Lake Town Court, Hamilton County, from July through December of 2018. She was admitted to the practice of law in New York in 2001.

As to Charge I of the Formal Written Complaint

2. Facebook is an internet social networking website and platform that *inter alia* allows users to post and share content on their own Facebook page as well as on the Facebook pages of other users and on Facebook groups. Facebook users are responsible for managing the privacy settings associated with their accounts. At the option of the account holder, the content of one's Facebook page and posts may be viewable online by the public or restricted to one's Facebook "Friends."

3. At all times relevant to this charge, respondent was a candidate for election as judge of the County, Family and Surrogate's Courts in Hamilton County.

4. At all times relevant to this charge, respondent maintained a campaign-related Facebook account under the name, "Tatiana Coffinger for Hamilton County Court Judge," which was viewable by the public.

5. On June 3, June 9, June 17 and June 21, 2019, respondent posted to her campaign's Facebook page an invitation to the Hamilton County Republican picnic. It read, "You are Invited 2019 Republican Picnic and Meet the Candidates Day!" The invitation offered food, drinks, "Music, Bingo, Door prizes and more!" Ticket prices ranged from \$12 to \$35. The invitation also read, "Tickets – See any Republican Committee Member." Screenshots of this invitation are appended as Exhibit A to the Agreed Statement.

6. At all times relevant to this charge, all four of respondent's posts advertising the event were viewable by the public.

7. At all times relevant to this charge, respondent was scheduled to speak at

the “2019 Hamilton County Republican Picnic and Meet the Candidates Day.” She did, in fact, ultimately speak at the event.

8. The event advertised by respondent took place on June 22, 2019. It was a fundraiser that generated a profit of nearly \$1,800 for the Hamilton County Republican Committee.

9. At all times relevant to this charge, the Hamilton County Republican Committee constituted a political organization.

As to Charge II of the Formal Written Complaint

10. In 2019, respondent ran in the Republican Party primary for the party’s nomination to the office of judge of the County, Family and Surrogate’s Courts in Hamilton County. Her two opponents in the primary were Marsha King Purdue and James W. Hyde, IV. The Republican primary took place on June 25, 2019. There was no Democratic primary.

11. In 2019, there were approximately 2,659 registered Republican voters in Hamilton County, and approximately 954 registered Democrats.

12. At all times relevant to this charge, Ms. Purdue was a registered Republican, respondent knew Ms. Purdue to be a Republican, and respondent knew that Ms. Purdue was running against her in the Republican primary. Respondent also knew that Ms. Purdue had been the elected Hamilton County District Attorney since 2012, and respondent believed Ms. Purdue had widespread name recognition among Republican voters in the county.

13. In June 2019, prior to the primary, respondent approved the content and

distribution of campaign literature to be mailed to registered Republicans (“mailer”), depicting a sample primary ballot for the upcoming Hamilton County Republican primary. A copy of the mailer is appended as Exhibit B to the Agreed Statement.

14. In the mailer, respondent depicted an “Unofficial Sample Ballot” that identified Ms. Purdue on a line labeled “Democrat,” which respondent knew would not have appeared on the actual Republican primary ballot. A copy of the official Sample Ballot from the Board of Elections is appended as Exhibit C to the Agreed Statement.

15. Respondent and/or her campaign distributed the misleading mailer (Exhibit B to the Agreed Statement) approximately one week before the primary election to an estimated 1,600 to 1,800 households of registered Republican voters in Hamilton County.

16. Respondent won the primary election with a total of 748 votes, defeating Ms. Purdue, who received 351 votes, and Mr. Hyde, who received 200 votes. Respondent thereafter won the general election in November 2019 with a total of 1,446 votes, defeating Ms. Purdue, who received 1,020 votes on the Democratic line. Ms. Purdue was nominated by the Democratic Party for the general election without a primary and with no opponents, notwithstanding that she was a registered Republican.

Additional Factors

17. Respondent has been cooperative throughout this inquiry.

18. With respect to the Hamilton County Republican Picnic and Meet the Candidates Day, respondent avers that while she believed the event to be a social occasion held to thank committee members and introduce the candidates, she acknowledges in retrospect that she should have made inquiries and been aware that it

was a fundraiser which would have precluded her from posting the invitation or otherwise advertising the event.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.5(A)(1)(d), 100.5(A)(1)(h), 100.5(A)(2)(i), 100.5(A)(4)(a), (b) and (c), and 100.5(A)(4)(d)(iii) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent’s misconduct is established.

While judges and judicial candidates are permitted to participate in their own campaigns for judicial office, the ethical Rules strictly prohibit direct and indirect engagement in other political activity. (Rules, §100.5(A)(1)) The Court of Appeals has held, “[o]nce elected to the bench, a judge’s role is significantly different from others who take part in the political process and, for this reason, conduct that would be appropriate in other types of campaigns is inappropriate in judicial elections.” *In re Raab*, 100 N.Y.2d 305, 316 (2003). “Judicial candidates are held to higher standards of conduct than candidates for non-judicial office, and the campaign activities of judicial candidates are significantly circumscribed in order to maintain public confidence in the integrity and impartiality of the judicial system.” *Matter of Chan*, 2010 NYSCJC Annual Report 124, 127. Respondent acknowledged that by posting the invitation to the picnic on her campaign’s public Facebook page, she violated the Rules and improperly solicited

contributions for a political organization's fundraising event.

In addition, the Rules specifically prohibit judicial candidates from knowingly making false statements and misrepresentations about their opponents. (Rules §100.5(A)(4)(d)(iii)) The Commission has held,

This requirement not only helps ensure that judicial campaigns comport with fundamental standards of honesty and fairness, but enables voters to choose judges based upon information that is fairly and accurately presented. . . .

Distortions and misrepresentations have no place in campaigns for judicial office. Judicial candidates for judicial office are expected to be, and must be, above such tactics.

Matter of Kulkin, 2007 NYSCJC Annual Report 115, 117. Here, respondent acknowledged that in literature her campaign distributed during the primary campaign, she misrepresented that one of her opponents would appear on the Republican primary ballot on a line labeled "Democrat." At the time she caused this mailer to be disseminated, respondent knew that her opponent was a registered Republican and was running against her in the Republican primary. Such misleading conduct was inappropriate for a judicial candidate and respondent violated her ethical obligations.

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent has acknowledged that her conduct warrants public discipline. We trust that respondent has learned from this experience and in the future will act in strict accordance with her obligation to abide by all the Rules Governing Judicial Conduct.

By reason of the foregoing, the Commission determines that the appropriate

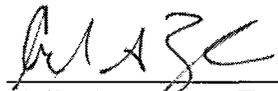
disposition is admonition.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge
Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on
Judicial Conduct.

Dated: February 23, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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

TERRY B. ELIA,

a Justice of the Lloyd Town Court,
Ulster County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of
Counsel) for the Commission

Scalise & Hamilton. P.C. (Deborah A. Scalise) for Respondent

Respondent, Terry B. Elia, a Justice of the Lloyd Town Court, Ulster County, was served with a Formal Written Complaint (“Complaint”) dated April 4, 2022 containing two charges. Charge I of the Complaint alleged that from September 2020 through July 2021, on his LinkedIn profile which identified him as a judge, respondent liked, shared and/or commented on publicly-visible LinkedIn posts that cast doubt on his ability to be impartial in matters involving law enforcement; related to partisan politics; commented on matters of public controversy; constituted public comment about a pending or impending proceeding in another court within the United States; and appeared to lend the prestige of his judicial office to advance a private fundraising appeal. Charge II of the Complaint alleged that from 2012 until April 2022, when he received the Complaint in this matter, respondent cast doubt on his ability to act impartially in matters involving law enforcement by serving as a “peer support member” of the Ulster County Sheriff’s Office’s Critical Incident Stress Management (“CISM”) Team.

On September 6, 2022, the Administrator, respondent’s counsel and respondent entered into an Agreed Statement of Facts (“Agreed Statement”) pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On September 22, 2022, the Commission accepted the Agreed Statement

and made the following determination:

1. Respondent has been a Justice of the Lloyd Town Court, Ulster County, since January 1, 1998. Respondent's current term expires on December 31, 2025.

Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. LinkedIn is an internet professional and social networking website and platform that *inter alia* allows members to post, share, like and comment on content on their own LinkedIn profiles as well as on the LinkedIn profiles of other members and LinkedIn groups. Generally, LinkedIn profiles are fully visible to all LinkedIn members who have signed into their LinkedIn accounts online.

However, LinkedIn members may, at their option, control what appears on their LinkedIn profiles and/or restrict the visibility of their posts and other activity on LinkedIn to certain individuals or groups.

3. At all times relevant to Charge I, respondent maintained a LinkedIn profile under the name "Terry Elia." Respondent's LinkedIn profile and his activity thereon was visible to all other LinkedIn users who had signed into their accounts online.

4. The "Experience" information on respondent's LinkedIn profile listed one of his occupations as "Town Justice Town of Lloyd Justice Court, Highland,

NY Mar 1998 – Present • 23 yrs 5 mos.” A copy of respondent’s “Experience” information is annexed as Exhibit A to the Agreed Statement.

5. The “Accomplishments” information on respondent’s LinkedIn profile listed five organizations, including:

- A. “Ulster County Sheriff’s CISM [Critical Incident Stress Management] Team Jun 2012 – Present • Member”;
- B. “New York State Magistrates Association Mar 1998 – Present • Member”; and
- C. “Ulster County Magistrates Association Mar 1998 – Present.”

A copy of respondent’s “Accomplishments” information is annexed as Exhibit B to the Agreed Statement.

6. The “Interests” information on respondent’s LinkedIn profile included the following LinkedIn groups:

- A. “Blue Lives Matter”;
- B. “The Law Enforcement Network”; and
- C. “Police1 Network.”

A copy of respondent’s “Interests” information is annexed as Exhibit C to the Agreed Statement.

7. In September 2020, in connection with a LinkedIn post by “Blue Lives Matter,” which shared an article from The Police Tribune entitled “BREAKING:

Shots Fired At Louisville Riots, Officer Down,” copies of which are annexed as Exhibit D to the Agreed Statement, respondent:

- A. “Liked” a comment on the post by “Steven Dekelbaum,” that, *inter alia*, criticized protesters after a grand jury returned a decision to indict only one of three police officers involved in a police shooting;
- B. “Liked” a comment on the post by “Herb Weil” stating, “Give the police better non-lethal weapons that will end these riots quick..i.e..WATER CANNONS AND SIMILAR DEVICES..Less injuries all the way around..”; and
- C. Published a comment on the post that read, “Time to bring the unrest to an end.”

8. In November 2020, respondent “liked” a LinkedIn post by “Blue Lives Matter,” which shared an article from “policetribune.com” entitled “Suspect Killed In Gunfight On Video Was Wanted For Child Abuse, Person Of Interest In Murder.” Copies of the post and article are annexed as Exhibit E to the Agreed Statement.

9. In January 2021, respondent “liked” a LinkedIn post by “Valerie Johnson,” which shared a post by “Christine Yeargin” stating, “Biden’s been in office 2 days and Democrat cities across the country are reducing Covid restrictions and opening indoor dining. YOU LITERALLY CAN’T MAKE THIS STUFF UP! They ruined American businesses, livelihoods and lives for an election. This should repulse you.” A copy of the post is annexed as Exhibit F to the Agreed Statement.

10. In January 2021, respondent “liked” a LinkedIn post by “Irish Angel Inc” – an organization that provides a support network for law enforcement, emergency medical services, firefighters and the military – which shared a link to an article on “www.lawenforcementtoday.com” entitled, “Seattle council member who wants to defund the police demands investigation into ‘threats’ she never reported.” Copies of the post and article are annexed as Exhibit G to the Agreed Statement.

11. In January 2021, respondent “liked” a comment by “Dave Pierce” on a LinkedIn post by “Blue Lives Matter” that shared an article from “policetribune.com” entitled “University Police Chief Bans All Thin Blue Line Imagery After Pressure From Angry Students.” In the comment, Dave Pierce wrote, *inter alia*, that the police chief “needs [to] grow a pair and tell the snowflakes to be respectful of his/her men and women in uniform...,” and that the students referenced in the article should “Suck it cupcake!” and go be an “exchange student” in a socialist or communist country. Copies of the post and article are annexed as Exhibit H to the Agreed Statement.

12. In January 2021, respondent “liked” a LinkedIn post by “Valerie Johnson,” that contained a meme depicting Nancy Pelosi and Chuck Schumer and stated, “A POLITICIAN WHO ADDS ANYTHING TO A STIMULUS BILL NOT DIRECTLY RELATED TO THE PANDEMIC IS NO BETTER THAN

SOMEONE WHO LOOTS DURING A NATURAL DISASTER.” A copy of the post is annexed as Exhibit I to the Agreed Statement.

13. In January 2021, respondent “liked” a LinkedIn post by Kevin McCarthy, Republican Leader of the House of Representatives, announcing that Claudia Tenney had been declared the winner of the recent election in New York’s 22nd Congressional District. A copy of the post is annexed as Exhibit J to the Agreed Statement.

14. In February 2021, respondent “liked” a LinkedIn post by “Alex V.” that contained a meme stating, “Unafraid to Back the Blue My Life Matters.” A copy of the post is annexed as Exhibit K to the Agreed Statement.

15. In February 2021, respondent shared on his LinkedIn profile a LinkedIn post by “Chelsea Davenport, NDJS” that contained a meme stating, “UNTIL YOU LEAVE YOUR FAMILY AT HOME EVERY DAY TO PROTECT EVERYONE ELSE’S, DON’T TRASH TALK POLICE OR SOLDIERS TO ME.” A copy of the post is annexed as Exhibit L to the Agreed Statement.

16. In April 2021, respondent “liked” a LinkedIn post by “Linda W.” contrasting the policies of President Joseph Biden and former President Donald Trump and stating, among other things, that President Biden was in favor of

“Killing babies.” A copy of the post is annexed as Exhibit M to the Agreed Statement.

17. In May 2021, respondent “liked” a LinkedIn post by “Frank P. Faluotico, Jr.” that included a meme stating, “If I see a sign saying you wont (sic) serve police or military, you wont (sic) be serving me either [angry face emoji] Who’s with me?” A copy of the post is annexed as Exhibit N to the Agreed Statement.

18. In May 2021, respondent “liked” a LinkedIn post by “Frank Dias” that, *inter alia*, criticized the Biden administration’s “wacky spending.” A copy of the post is annexed as Exhibit O to the Agreed Statement.

19. In May 2021, respondent “liked” a post by “Duncan ‘I’” stating, *inter alia*, “I cannot imagine my life without the safety of our Police Officers. We’ve GOT to be LOUD.. and back the BLUE.” A copy of the post is annexed as Exhibit P to the Agreed Statement.

20. In May 2021, respondent “liked” a LinkedIn post by “First Responder Benefit Association” (“FRBA”) that described a purported positive encounter between a man and a police officer during a traffic stop and promoted a link to donate to the FRBA and join the organization as an “Ally.” Copies of the post and webpage accessed through the link are annexed as Exhibit Q to the Agreed Statement.

21. In May 2021, respondent “liked” a LinkedIn post by “Buck Rogers IPC LL.D D.Crim” that depicted a photograph of a woman yelling in a police officer’s face with an accompanying comment about respecting police officers. A copy of the post is annexed as Exhibit R to the Agreed Statement.

22. In June 2021, respondent published a comment on a LinkedIn post by “Blue Lives Matter” that contained a link to an article on “policetribune.com” entitled, “Officer Dies While Trying To Save Drowning Boys,” by writing, “Gods Speed [sic] Officer [pray emoji] us. Why isn’t this on every news channel? Support Law Enforcement Every Day. I couldn’t imagine life without them.” Copies of the post and article are annexed as Exhibit S to the Agreed Statement.

23. In June or early July 2021, respondent “liked” a LinkedIn post by “Blue Lives Matter” that contained a link to an article on “policetribune.com” entitled, “Gunman Captured On Black Nationalist Group’s Property, Arrested With Cuffs Of Cop He Shot.” A copy of the post is annexed as Exhibit T to the Agreed Statement.

24. In July 2021, respondent shared a LinkedIn post by Germaine Drummond that depicted a photograph of a Civil War soldier with the comment, “BECAUSE BLACK LIVES MATTERED. Approximately 620,000 white soldiers died in the civil war in order to obtain freedom for the black slaves. The average age of the soldiers was 25 years. This does not include the Medics, both

men and women. In retaliation AGAINST slavery the Republican party was born. Many of our black brothers died also fighting to free the nation of slavery, approximately 180,000. PLEASE STOP TELLING ME TO REPENT. The blood of our fathers is reparation enough.” A copy of the post is annexed as Exhibit U to the Agreed Statement.

25. In November 2021, respondent promptly removed the LinkedIn posts after receiving a letter from the Commission inquiring into the matters herein.

As to Charge II of the Formal Written Complaint

26. From 2012 until April 2022, when he received the Formal Written Complaint in this matter, respondent cast doubt on his ability to act impartially as a judge in matters involving law enforcement, in that he served as a “peer support member” of the Ulster County Sheriff Office’s Critical Incident Stress Management Team.

27. Respondent ceased providing any services as a peer support member upon receipt of the Formal Written Complaint.

Additional Factors

28. Respondent has been cooperative and contrite with the Commission throughout this inquiry. In addition to promptly removing all the LinkedIn posts after receiving the Commission’s letter inquiring into the matters herein, respondent expressed remorse for his actions in his response to the Commission’s

inquiry letter.

29. Respondent avers that during the time he liked, shared and/or commented upon the LinkedIn posts, he was inexperienced with LinkedIn's privacy settings. He further avers that he did not, at the time, realize or consider how others could perceive his activities as casting doubt on his ability to be impartial as a judge. He now recognizes the appearance of impropriety created by his actions and regrets having ever participated in it.

30. Respondent understands he must be circumspect in his use of social media, such that his social media activities do not cast doubt on his ability to be impartial, pertain to partisan politics, comment upon pending or impending proceedings or appear to lend the prestige of judicial office to advance his own or others' private interests.

31. Respondent has no prior judicial disciplinary history in his more than 24 years on the bench.

32. Respondent has resigned as a peer support member of the Ulster County Sheriff's Office's CISM Team. Respondent avers that he started participating in critical incident stress management work at his own expense in 1992 and that he engaged in peer support work in Westchester County prior to becoming affiliated with the Ulster County Sheriff's Department. He further avers that, regardless of his CISM team affiliation, he never identified himself as a judge

while providing peer support work; rather, he only identified himself as a firefighter, former U.S. Army medic and military policeman.

33. As a volunteer peer support member, respondent counseled first responders, including police officers, firefighters, medical personnel, who have suffered traumatic incidents. Respondent avers that he provided services only intermittently and primarily counseled firefighters and medical personnel with the hope of saving lives.

34. Respondent avers that no one he counseled appeared before him in his court. The Administrator has no evidence to the contrary.

35. The Administrator recognizes that, as a peer support member, respondent provided a helpful and valuable service to first responders. Nevertheless, in combination with his pro-law-enforcement LinkedIn posts, and his duty as a judge to be and appear independent and impartial, respondent's position with the sheriff-run program represented another public alignment with law enforcement that cast doubt on his independence and impartiality.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(8), 100.4(A)(1) and (2), 100.4(C)(3)(b)(iv) and 100.5(A)(1)(c) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44,

subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

Respondent acted in a manner that was inconsistent with his obligations to maintain high standards of conduct and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Rules, §§100.1, 100.2(A)) Judges are prohibited from engaging in extra-judicial activities which “cast reasonable doubt on the judge’s capacity to act impartially as a judge” or “detract from the dignity of judicial office.” (Rules §100.4(A)(1) and (2); *Matter of Peck*, 2022 NYSCJC Annual Report 136 (judge’s public Facebook post expressing his strong support for law enforcement personnel cast doubt upon the judge’s impartiality); *Matter of Fisher*, 2019 NYSCJC Annual Report 126, 135 (“[e]very judge must understand that a judge's right to speak publicly is limited because of the important responsibilities a judge has in dispensing justice, maintaining impartiality and acting at all times in a manner that promotes public confidence in the judge's integrity.”)). Respondent’s public LinkedIn activity, in which he was identified as a judge, cast doubt on his impartiality and violated his ethical obligations.

Based upon their role in the justice system, judges must be particularly circumspect in their use of social media as well as attentive to their obligation to be

impartial and to appear to be impartial. It is well-settled that judges are held to a higher standard of conduct than the general public. *Matter of Kuehnel*, 49 N.Y. 2d 465, 469 (1980) (“[s]tandards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach.”); *Matter of Lonschein*, 50 N.Y.2d 569, 572 (1980) (“[m]embers of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.” (citation omitted)) By aligning himself with law enforcement personnel both through his public LinkedIn activity and through his association with the Ulster County Sheriff’s Office, respondent, a judge in Ulster County, undermined public confidence in the judiciary and cast doubt on his ability to act impartially when he presided over matters which involved law enforcement personnel.¹

Respondent’s public LinkedIn activity also violated his ethical obligations in other ways. For example, respondent lent the prestige of his judicial office to

¹ While respondent’s volunteer work with the Ulster County Sheriff’s Office’s CISM Team provided a public service to first responders, “[e]ven otherwise laudable conduct must be avoided if it . . . impairs public confidence in judicial impartiality and independence.” *Matter of Barringer*, 2006 NYSCJC Annual Report 97, 100-101. The Agreed Statement sets forth a process that respondent will follow if he wishes to provide critical incident stress management services through a program that is not affiliated with any law enforcement agency.

fundraising or membership solicitation for an organization in violation of Section 100.4(C)(3)(b)(iv) of the Rules. When he publicly “liked” LinkedIn posts by and about political figures, respondent, while identified as a judge, also improperly engaged in partisan political activity in violation of Section 100.5(A)(1)(c) of the Rules.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has no prior disciplinary history in his 24 years on the bench, took corrective action upon receiving the Commission’s inquiry letter and acknowledged that his conduct was improper and warrants public discipline. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

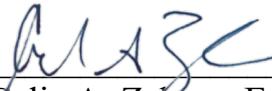
Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

Mr. Belluck did not participate.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: September 28, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

ROBERT W. ENGLE,

a Justice of the Madison Town Court,
Madison County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian for the Commission

Hon. Robert W. Engle, *pro se*

The matter having come before the Commission on May 5, 2022; and
the Commission having before it the Stipulation dated April 22, 2022; and Judge

Engle having given notice that he was vacating his judicial office effective April 30, 2022; and having affirmed that upon vacating his judicial office, he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: May 5, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

ROBERT W. ENGLE,

STIPULATION

a Justice of the Madison Town Court,
Madison County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Robert W. Engle.

1. Robert W. Engle has been a Justice of the Madison Town Court, Madison County, since January 1, 1990. His current term expires on December 31, 2025. Judge Engle is not an attorney.
2. The Commission apprised Judge Engle that it was investigating complaints alleging, *inter alia*, that he: (1) failed to make mandatory reports and remittances to the State Comptroller in a timely manner, (2) failed to record all proceedings, as required by law, and (3) failed to administer his court effectively.
3. Judge Engle tendered his resignation dated March 16, 2022, a copy of which is annexed as Exhibit A. Judge Engle affirms that he will vacate judicial office as of April 30, 2022.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.¹

Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office "shall be ineligible to hold other judicial office."

5. Judge Engle affirms that, upon vacating judicial office on April 30, 2022, he will neither seek nor accept judicial office at any time in the future.

6. Judge Engle understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, he would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Engle waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being

¹ Pursuant to Section 47, the 120 days commences from the date the resignation is received by the Chief Administrator of the Courts.

signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated:

APRIL 15, 2022 

Honorable Robert W. Engle

Dated: April 22, 2022



Robert H. Tembeckjian

Administrator & Counsel to the Commission
(John J. Postel and M. Kathleen Martin, Of
Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT A: JUDGE'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

PHILIP G. FRANKLIN,

a Justice of the Locke Town Court,
Cayuga County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and M. Kathleen Martin, Of
Counsel) for the Commission

Honorable Philip G. Franklin, *pro se*

The matter having come before the Commission on December 15,

2022; and the Commission having before it the Stipulation dated November 21, 2022; and Judge Franklin having tendered his resignation dated November 4, 2022 effective December 1, 2022; and having affirmed that after vacating his judicial office, he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Rosenberg did not participate.

Dated: December 15, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

PHILIP G. FRANKLIN,

STIPULATION

a Justice of the Locke Town Court,
Cayuga County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Philip G. Franklin.

1. Philip G. Franklin has been a Justice of the Locke Town Court, Cayuga County, since January 1, 1991. His current term expires on December 31, 2025.

Judge Franklin is not an attorney.

2. In August 2022, the Commission apprised Judge Franklin that it was investigating complaints alleging that he failed to make mandatory reports and remittances to the State Comptroller in a timely manner, which resulted in the State Comptroller directing the Supervisor of the Town of Locke to stop payment of Judge Franklin’s judicial salary.

3. Judge Franklin has tendered his resignation by letter dated November 4th, 2022, a copy of which is annexed as Exhibit A. Judge Franklin affirms that he will vacate judicial office as of December 1, 2022.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office. Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office "shall be ineligible to hold other judicial office."

5. Judge Franklin affirms that, upon vacating judicial office on December 1, 2022, he will neither seek nor accept judicial office at any time in the future.

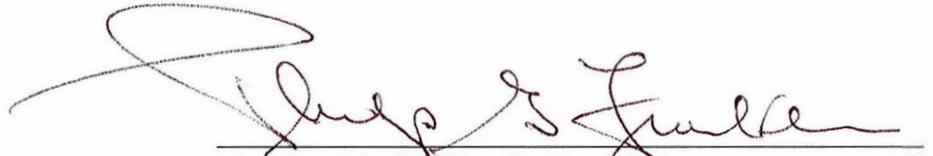
6. Judge Franklin understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, he would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Franklin waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated:

Nov. 14th 2022



Honorable Philip G. Franklin

Dated: November 21, 2022



Robert H. Tembeckjian

Administrator & Counsel to the Commission
(**John J. Postel and M. Kathleen Martin, Of
Counsel**)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT A: JUDGE'S LETTER OF RESIGNATION

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

DETERMINATION

CARLOS GONZALEZ,

a Justice of the Elmsford Village Court,
Westchester County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller¹
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Melissa DiPalo, Of Counsel)
for the Commission

Honorable Carlos Gonzalez, *pro se*

¹ The vote in this matter was taken on March 17, 2022. Judge Miller's term as a member of the Commission expired on March 31, 2022.

Respondent, Carlos Gonzalez, a Justice of the Elmsford Village Court, Westchester County, was served with a Formal Written Complaint (“Complaint”) dated December 14, 2021, containing one charge. The Complaint alleged that respondent failed to conduct his extra-judicial activities so that they did not detract from the dignity of judicial office when he engaged in professional misconduct in his capacity as an attorney as evidenced by two orders by the Appellate Division, Second Department which suspended him from the practice of law in New York for a total of 24 months.

By motion dated January 14, 2022, the administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission’s Operating Procedures and Rules. On January 25, 2022, respondent submitted written opposition to the motion along with an untimely and undated Answer in which he acknowledged the facts underlying his suspension from the practice of law. By decision and order dated February 3, 2022, the Commission granted the administrator’s motion and determined that the factual allegations of the Complaint were sustained and that respondent’s misconduct was established.

By letter dated February 3, 2022, the Commission set a schedule for briefs and oral argument on the issue of sanction. On February 18, 2022, the administrator of the Commission submitted a memorandum which argued for respondent’s removal. Respondent did not make a submission on the issue of

sanction and did not respond to the administrator's sanction memorandum. On March 17, 2022, the Commission heard oral argument via videoconference by Commission counsel and respondent on the issue of sanction and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent was admitted to the practice of law in New York in 2005. He has been a Justice of the Elmsford Village Court, Westchester County, since April 5, 2021. Respondent's term expires on March 16, 2025.
2. By opinion and order dated April 14, 2021, the Appellate Division, Second Department, suspended respondent from the practice of law in New York for six months, effective May 14, 2021, based upon a finding of professional misconduct underlying a public reprimand imposed by an order of the United States District Court for the District of Connecticut, Western Connecticut ("District Court"), dated May 4, 2017.² A copy of the Appellate Division's opinion and order is appended as Exhibit A to the Complaint. Copies of the District Court's order, the Stipulated Disposition and the Motion for Approval of Proposed Stipulated Disposition are appended as Exhibit A-1 to the Complaint.
3. By opinion and order dated December 8, 2021, the Appellate Division, Second Department, suspended respondent from the practice of law for 18 months,

² The Appellate Division found, *inter alia*, in aggravation, that respondent failed to timely notify the Court of the Connecticut discipline in violation of 22 NYCRR 1240.13(d).

effective November 14, 2021, for engaging in professional misconduct and a lack of candor before the Grievance Committee for the Ninth Judicial District. This discipline was imposed on consent and was based upon respondent's acknowledged misconduct in connection with five matters. The Court also found that respondent lacked candor when he failed to accurately describe his disciplinary history to the Grievance Committee. The Appellate Division ordered that respondent's 18-month suspension run consecutive to the 6-month suspension previously imposed by order dated April 14, 2021. A copy of the Appellate Division's opinion and order is appended as Exhibit B to the Complaint.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause pursuant to Article VI, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law. Charge I of the Complaint is sustained and respondent's misconduct is established.

Each judge is obligated to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and must observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved." (Rules, §§100.1 and 100.2(A)) Each judge must also "conduct all of the judge's extra-judicial activities so that they do not . . . detract from the

dignity of judicial office.” (Rules §100.4(A)(2)) Judges have been disciplined based on prior attorney disciplinary proceedings. *Matter of Embser*, 90 N.Y.2d 711, 715 (1997) (summary determination based upon findings of prior attorney disciplinary proceeding); *Matter of Tamsen*, 100 N.Y.2d 19, 21 (2003) (summary determination based on prior attorney disbarment proceeding appropriate when respondent was given the opportunity to be heard on issues of law and sanction). Relying upon the findings set forth in the April 14, 2021 and December 8, 2021 orders of the Appellate Division, Second Department which suspended him from the practice of law, we find that respondent failed to comply with the Rules when he engaged in professional misconduct as an attorney and lacked candor before the Grievance Committee.³

It is well-settled that judges are held to a higher standard of conduct than the general public. *Matter of Kuehnel*, 49 N.Y. 2d 465, 469 (1980) (“[s]tandards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach.”); *Matter of Lonschein*, 50 N.Y.2d 569, 572 (1980) (“[m]embers of the judiciary should be acutely aware that any action they take, whether on or off the

³ In his Answer, respondent acknowledged the facts underlying his suspension from the practice of law.

bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.” (citation omitted)). In addition, judges have been disciplined for engaging in serious misconduct as an attorney. *Matter of Tamsen, supra*, 100 N.Y.2d at 22; *Matter of Embser, supra*, 90 N.Y. 2d at 712; *Matter of Boulanger*, 61 N.Y. 2d 89, 92 (1984). By his conduct, respondent brought reproach upon the judiciary and undermined public confidence in the court system.

Given the seriousness of respondent’s professional misconduct as evidenced by his two suspensions from the practice of law, as well as the Court’s finding that he lacked candor in his dealings with the Grievance Committee, we believe that respondent should be removed from the bench to protect the integrity of the courts. We are mindful that “removal, the ultimate sanction, should not be imposed for misconduct that amounts simply to poor judgment or even extremely poor judgment, but should be reserved for truly egregious circumstances.” *Matter of Mazzei*, 81 N.Y.2d 568, 572 (1993) (citations omitted). Here, respondent engaged in a pattern of professional misconduct which involved six separate client matters. Moreover, the Appellate Division, Second Department specifically found that he lacked candor. Under these circumstances, removal is required.

We reject respondent’s contention that he should not be removed because there is no requirement that he must be an attorney in order to serve in his judicial

position. Respondent was suspended from the practice of law and is precluded from appearing in court as an attorney during his suspension. Allowing him to remain on the bench would significantly undermine public confidence in the dignity and integrity of the judiciary.⁴

The Court of Appeals has held that, “[t]he purpose of judicial disciplinary proceedings is to impose sanctions where needed to protect the bench from unfit incumbents.” *Matter of Senzer*, 35 N.Y.3d 216, 219 (2020) (citations omitted) Respondent’s professional misconduct and his lack of candor demonstrated that he is unfit for judicial office.

By reason of the foregoing, the Commission determines that the appropriate disposition is removal.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

⁴ We also reject respondent’s argument that he should not be disciplined because his misconduct took place before he became a judge. Judges have been disciplined for misconduct prior to taking the bench. *Matter of Tamsen*, 2003 NYSCJC Annual Report 167, 170, *aff’d*, 100 N.Y.2d 19 (2003) (“[r]espondent’s removal is warranted even though his misconduct predates his ascension to the bench. . .”); *Matter of DiStefano*, 2005 NYSCJC Annual Report 145, 148.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission
on Judicial Conduct.

Dated: April 13, 2022



Celia A. Zanner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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

RICHARD L. GUMO,

a Justice of the Delhi Town Court,
Delaware County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of
Counsel) for the Commission

Honorable Richard L. Gumo, *pro se*

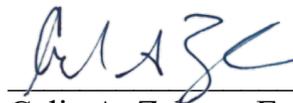
The matter having come before the Commission on September 22, 2022; and
the Commission having before it the Stipulation dated September 15, 2022; and
respondent having been served with a Formal Written Complaint dated May 24, 2022;

and respondent having filed an Answer dated June 10, 2022; and the Commission by order dated July 29, 2022, having designated Hon. John J. Brunetti, as referee to hear and report proposed findings of fact and conclusions of law; and respondent having been served with an Amended Formal Written Complaint dated August 29, 2022; and respondent having filed an Answer to the Amended Complaint dated September 12, 2022; and Judge Gumo having tendered his resignation dated September 12, 2022 effective September 30, 2022; and having affirmed that after vacating his judicial office, he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: September 22, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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

RICHARD L. GUMO,

STIPULATION

a Justice of the Delhi Town Court,
Delaware County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Richard L. Gumo (“Respondent”) as follows:

1. Respondent was admitted to the practice of law in New York in 1967. He has been a Justice of the Delhi Town Court, Delaware County, since January 1, 2008. Respondent’s current term expires on December 31, 2025. He also served as an Acting Justice of the Walton Village Court, Delaware County, from 2009 to 2015.
2. Respondent was served with a Formal Written Complaint dated May 24, 2022, and an Amended Formal Written Complaint dated August 29, 2022, containing two charges. The charges alleged that (A) Respondent refused to appoint the Delaware County Public Defender’s Office to represent indigent criminal defendants in his court because of his animosity toward the Delaware

County Public Defender, and his concern that the Public Defender's Office would criticize him, and (B) in a recusal letter to a judge of the County Court, Respondent falsely claimed that the Public Defender had accused him and his court clerk of "forging" their signatures on court documents.

3. Respondent submitted an Answer to the Formal Written Complaint, dated June 10, 2022, and an Answer to the Amended Formal Written Complaint, dated September 12, 2022, in which he denied all the allegations.

4. Respondent specifically denies any animosity toward the Public Defender.

5. A hearing was scheduled to be held before a Referee appointed by the Commission on September 20, 2022.

6. Respondent tendered his letter of resignation from judicial office, effective September 30, 2022. The letter is annexed as Exhibit A. Respondent affirms that he will vacate judicial office on that date.

7. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office. Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office "shall be ineligible to hold other judicial office."

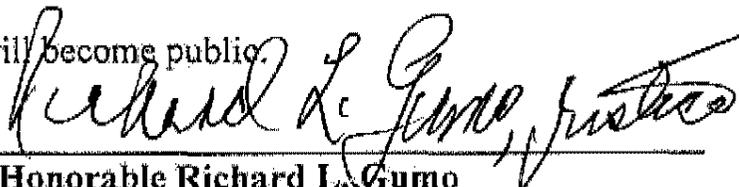
8. Respondent affirms that, upon vacating his judicial office, he will neither seek nor accept judicial office at any time in the future.

9. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time after September 30, 2022, the present proceedings before the Commission will be revived and the matter will proceed to a hearing before a referee.

10. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

11. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 9/15/22


 Honorable Richard L. Gumo
 Respondent

Dated: September 15, 2022


 Robert H. Tembeckjian
 Administrator & Counsel to the Commission
 (Cathleen S. Cenci and S. Peter Pedrotty, Of
 Counsel)

THE FOLLOWING EXHIBIT IS
 AVAILABLE AT WWW.CJC.NY.GOV:
 EXHIBIT A: RESPONDENT'S LETTER OF
 RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

KIMBERLY A. INMAN,

a Justice of the West Monroe Town Court,
Oswego County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of
Counsel) for the Commission

Nave Law Firm (by Dennis J. Nave, Jr.) for Judge Inman

The matter having come before the Commission on June 16, 2022;

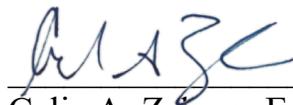
and the Commission having before it the Stipulation dated May 27, 2022; and Judge Inman having tendered her resignation dated May 16, 2022 effective May 20, 2022; and having affirmed that after vacating her judicial office, she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Seiter did not participate.

Dated: June 16, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

KIMBERLY A. INMAN,

STIPULATION

a Justice of the West Monroe Town Court,
Oswego County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct ("Commission"), and the Honorable Kimberly A. Inman and her attorney, Dennis J. Nave, Jr., of Nave Law Firm.

1. Kimberly A. Inman has been a Justice of the West Monroe Town Court, Oswego County, since June 12, 2002. Her current term expires on December 31, 2022. Judge Inman is not an attorney.

2. Judge Inman was apprised by the Commission in June 2021 that it was investigating a complaint concerning her failure to report to the State Comptroller, in accordance with Section 27 of New York State Town Law, moneys she received for the West Monroe Town Court in connection with her duties as Town Justice.

3. The subject matter of the Commission's investigation is related to a criminal matter in which Judge Inman was charged in March 2021, in the Town of West Monroe, Oswego County, with Grand Larceny in the Fourth Degree, a class E felony, in violation of New York State Penal Law Section 155.30(1).

4. Judge Inman has tendered her resignation by letter dated May 16, 2022, a copy of which is annexed as Exhibit A. Judge Inman affirms that she vacated judicial office as of May 20, 2022.

5. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office. Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office "shall be ineligible to hold other judicial office."

6. Judge Inman affirms that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future.

7. Judge Inman understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, she would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

9. Judge Inman waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

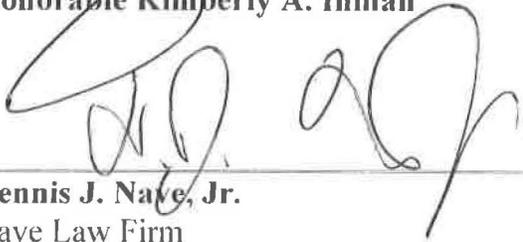
Dated:



Honorable Kimberly A. Inman

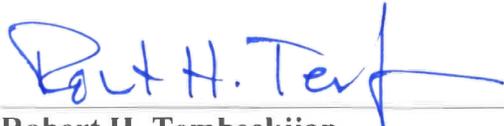
Dated:

5/9/22



Dennis J. Nave, Jr.
Nave Law Firm
Attorney for Hon. Kimberly A. Inman

Dated: May 27, 2022



Robert H. Tembeckjian
Administrator and Counsel to the Commission
(John J. Postel and David M. Duguay, Of
Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT A: JUDGE'S LETTER OF RESIGNATION

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

DETERMINATION

LINDA S. JAMIESON,

a Justice of the Supreme Court,
9th Judicial District, Westchester County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine, Melissa DiPalo and David Stromes, Of
Counsel) for the Commission

Richard M. Maltz, PLLC (by Richard M. Maltz, Esq.) for Respondent

Respondent, Linda S. Jamieson, a Justice of the Supreme Court, 9th Judicial
District, Westchester County, was served with a Formal Written Complaint

(“Complaint”) dated July 22, 2019 containing two charges. Charge I of the Complaint alleged that from 2006 through 2016, respondent filed inaccurate Financial Disclosure Forms (“FDF”) with the Ethics Commission for the Unified Court System by failing to disclose a debt owed to her based on a loan she made in August 2005 to Nicholas Natrella (“Natrella”). Charge II alleged that in September 2014, respondent lent the prestige of her judicial office and permitted her extra judicial activities to detract from the dignity of her office when she called Anne Penachio (“Penachio”), an attorney representing Mr. Natrella in bankruptcy proceedings, and suggested that Ms. Penachio’s client sign a confession of judgment or exclude the debt he owed respondent from his bankruptcy filing. Respondent filed an answer dated September 12, 2019.

By Order dated October 15, 2020, the Commission designated Hugh H. Mo, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 20 and 21 and March 5, 2021 via videoconference. The referee filed a report dated September 16, 2021 in which he sustained both charges of the Complaint.

The parties submitted briefs to the Commission with respect to the referee’s report and the issue of sanction. Commission counsel recommended that the referee’s findings and conclusions be confirmed. Respondent recommended that the referee’s findings be confirmed in part and disaffirmed in part. Commission counsel recommended the sanction of removal; respondent’s counsel argued that a sanction no greater than a private letter of caution be imposed. The Commission heard oral argument on December 9, 2021 and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent has been a Justice of the Supreme Court, 9th Judicial District, Westchester County, since January 1, 2003 and was re-elected to that position in 2016. Her current term expires on December 31, 2030.

2. Respondent was admitted to the practice of law in New York in 1980. She was appointed a Judge of the Westchester County Family Court in 1996, ran for election to that position and lost in the November 1996 election. In 1998, respondent was elected a Judge of the Westchester County Family Court and served in that capacity until 2002.

As to Charge I of the Formal Written Complaint

3. In August 2005, respondent loaned \$50,000 in cash to Nicholas Natrella.

4. Mr. Natrella, who needed funds to start a business servicing heating and cooling systems, did not provide a written business plan. Prior to making the loan to Mr. Natrella, respondent discussed the loan with her significant other, Joseph Rende (“Rende”), who had worked with Mr. Natrella.

5. Respondent did not request or receive collateral from Mr. Natrella for the \$50,000 loan.

6. Mr. Natrella had not requested cash and was surprised that the loan was in cash. Respondent testified that she kept cash in a safe at her home and planned to use cash to buy herself a gold watch.

7. Mr. Natrella and his wife, Maureen Natrella, signed a promissory note dated August 11, 2005 which acknowledged their indebtedness to respondent in the amount of \$50,000, payable on demand, with an annual interest rate of 6%. Mr. Natrella was not given a copy of the promissory note.

8. Mr. Natrella testified that he paid respondent a total of approximately \$11,000 in interest and principal on the loan in the couple years after he received the loan. Respondent testified that shortly after the loan was made, Mr. Natrella gave her \$10,000. Although some repayment was made, Mr. Natrella did not repay the balance of the loan.

9. Under Part 40 of the Rules of the Chief Judge, 22 NYCRR Part 40, every judge is required to file a statement of financial disclosure each year, for the preceding calendar year, with the Ethics Commission for the Unified Court System.

10. Question 18 of the FDFs to be filed in 2006 through 2019 required that respondent do the following:

List below all notes and accounts receivable, other than from goods or services sold, held by the reporting individual at the close of the taxable year last occurring prior to the date of filing and other debts owed to such individual at the close of the taxable year last occurring prior to the date of filing, in EXCESS of \$1,000, including the name of the debtor, type of obligation, date due and the nature of the collateral securing payment of each, if any, excluding securities reported in item 16 herein above. Debts, notes and accounts receivable owed to the individual by a relative shall not be reported.

11. Respondent failed to disclose the debt Mr. Natrella owed to her on the FDFs that she filed with the Ethics Commission for the Unified Court System in 2006 to 2019.

12. On June 15, 2015, respondent amended her 2012 and 2013 FDFs to include retirement accounts and investments. Respondent's amendments to her 2012 and 2013 FDFs did not include the debt Mr. Natrella owed to her.

13. On her 2017 income tax return, respondent claimed a deduction for the debt that Mr. Natrella owed to her.

14. On October 22, 2019, respondent amended the FDFs she had filed for the calendar years 2005 to 2019 to include a "Promissory Note, On Demand" that she held against Mr. Natrella and his wife in the category amount of "\$20,000 to under \$60,000."

15. Respondent testified before the referee that she did not include the debt owed to her by Mr. Natrella on her FDFs because she considered him like family. She acknowledged that Mr. Natrella did not meet the definition of family set forth in the FDF instructions.

16. Respondent also testified that the omission of the debt on her FDFs for many years was a careless mistake which continued because she used the prior year filing to complete the current year filing.

17. When she appeared before us, respondent stated, "[a]nd it was stupid because I really never took those forms that seriously. Now I do."

As to Charge II of the Formal Written Complaint

18. During the summer of 2014, respondent attempted to contact Mr. Natrella directly concerning the debt but he did not return her calls. She also asked Mr. Rende to ask Mr. Natrella to call her.

19. Mr. Rende testified that respondent was frustrated because Mr. Natrella was not paying her back. Mr. Rende called Mr. Natrella and asked him to sign a confession of judgment for the debt. Mr. Natrella responded that he had not received the promissory note and asked for a copy of it. He never received a copy.

20. In late July or early August 2014, respondent told her friend, attorney Philip Shelly, about the debt Mr. Natrella owed to her. Mr. Shelly offered to call Mr. Natrella. Respondent asked Mr. Shelly to ask Mr. Natrella to sign a confession of judgment with respect to the loan.

21. Mr. Shelly called Mr. Natrella and left a message to call him regarding a matter with Linda Jamieson. After receiving the message, Mr. Natrella contacted Anne Penachio, who was his attorney in connection with a planned bankruptcy filing.

22. Ms. Penachio called Mr. Shelly and Mr. Shelly asked Ms. Penachio to have Mr. Natrella sign a confession of judgment for the loan. Mr. Shelly also suggested that the debt did not need to be reported on Mr. Natrella's bankruptcy petition. Ms. Penachio told Mr. Shelly that all liabilities were required to be reported on bankruptcy petitions.

23. After speaking with her client, Ms. Penachio told Mr. Shelly that Mr. Natrella would not sign a confession of judgment.

24. Respondent subsequently learned from Mr. Shelly that he had spoken to Ms. Penachio, that Mr. Natrella was planning to file for bankruptcy and that Ms. Penachio would be representing Mr. Natrella in the planned bankruptcy filing.

25. In September 2014, respondent telephoned Ms. Penachio. Respondent and Ms. Penachio had known each other professionally for approximately 20 years. Respondent was aware that Ms. Penachio knew of her judicial position.

26. In 2013, respondent had decided two motions in *Neilson v. 6D Farms Corp.* in which Ms. Penachio represented a defendant. Respondent's 2013 *Neilson* decisions

were on appeal to the Appellate Division, Second Department. At the time respondent called Ms. Penachio, Ms. Penachio did not have any matters pending before respondent and neither Ms. Penachio nor respondent expected that the *Neilson* matter would come before respondent again.

27. Prior to her September 2014 call, respondent had never telephoned Ms. Penachio before. At the beginning of the conversation, respondent asked Ms. Penachio about the death of a mutual friend.

28. During the conversation, respondent's loan to Mr. Natrella was discussed. Respondent told Ms. Penachio that she wanted a confession a judgment from Mr. Natrella. Respondent also suggested to Ms. Penachio that the loan did not have to be listed on Mr. Natrella's bankruptcy filing. Ms. Penachio replied that the law required all creditors to be listed.

29. Based on respondent's call, Ms. Penachio felt pressured to obtain a confession of judgment from her client because respondent vehemently stated during the call that she wanted her money and a confession of judgment and respondent was a "public official."

30. On December 3, 2014, the Appellate Division, Second Department affirmed respondent's orders in the *Neilson* matter.

31. The parties in *Neilson* subsequently asked respondent to appoint a referee to oversee the production of documents. On January 9, 2015, respondent issued an order appointing a referee.

32. On January 20, 2015, Mr. Natrella filed a Chapter 13 bankruptcy petition

which listed respondent as an unsecured creditor.

33. On January 21, 2015, Ms. Penachio filed a motion seeking respondent's recusal from the *Neilson* matter. In her affirmation in support of the motion, Ms. Penachio described respondent's call to her during which respondent's loan to Mr. Natrella was discussed.

34. On May 12, 2015, while disputing the allegations in the motion, respondent granted Ms. Penachio's recusal motion.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.4(A)(2) and 100.4(I) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

All judges are required to act in a manner to preserve the integrity of the judiciary and to avoid the appearance of impropriety. (Rules §§100.1 and 100.2(A)) Section 100.4(I) of the Rules requires judges to disclose their debts as required by Part 40 of the Rules of the Chief Judge. "Judges must complete their financial disclosure forms with diligence, making every effort to provide complete and accurate information." *Matter of Joseph and Francis Alessandro*, 13 N.Y.3d 238, 249 (2009).¹

¹ Even careless omissions from FDFs can be misconduct warranting discipline. *Matter of Joseph and Francis Alessandro*, *supra*, 13 N.Y.3d at 249.

We find that respondent intentionally failed to report the debt Mr. Natrella owed to her on the FDFs she filed for 13 years.² Respondent has been a judge for more than 23 years and should be fully aware of her ethical obligation to file complete and accurate financial disclosure forms. Respondent is also an experienced attorney. The FDF instructions clearly indicated that debts over \$1,000 owed by a non-relative must be reported on the mandatory financial disclosure forms.³

Moreover, contrary to respondent's claim that the failure to report the debt was a careless mistake, over the years since making the \$50,000 loan to Mr. Natrella, respondent had several reminders of the debt. Nevertheless, she continued to fail to report the debt on her FDFs as required. Initially, the payment Mr. Natrella made to her on the loan should have alerted respondent to the necessity of reporting the debt. In 2014, respondent was fully aware of the debt since she made direct efforts to try to obtain a confession of judgment. That year she also enlisted the help of both Mr. Rende and Mr. Shelly to try to obtain a confession of judgment. Furthermore, in May 2015, respondent granted Ms. Penachio's recusal motion which referenced the loan. Yet, respondent did not report the debt on the FDF she filed in 2015. Shortly after granting the recusal motion, respondent amended her 2012 and 2013 FDFs in June 2015 to include retirement accounts and investments. She did not include in those amendments the debt Mr. Natrella owed to her. Furthermore, on her 2017 income tax return respondent claimed a

² We make no finding that the loan itself was improper.

³ The instructions further made clear that Mr. Natrella did not meet the definition of a relative.

deduction based on the debt but she did not amend her prior FDFs to report the debt. Failing to report the debt despite these several reminders was additional evidence that respondent's failure to disclose the large debt on her mandatory disclosure forms was intentional.

Respondent only amended her FDFs to include the debt in October 2019, three months after receiving the Commission's Formal Written Complaint filed against her. Such amendments did not excuse her misconduct in failing to file accurate FDFs for 13 years. *See, Matter of Miller*, 35 N.Y.3d 484, 491 (2020) (respondent's failure to file local financial disclosure forms and his failure to amend his FDF "until he was under investigation, impedes the purpose of these disclosure forms . . .").

The public has an interest in the timely and accurate disclosure of a judge's financial information on the annual financial disclosure form. The Court of Appeals has held that the information on a judge's financial disclosure form "is available to the public and, among other things, enables lawyers and litigants to determine whether to request a judge's recusal." *Matter of Alessandro, supra*, 13 N.Y.3d at 249. In *Matter of Russell, Jr.*, 2001 NYSCJC Annual Report 121, 122, the Commission stated, "the Legislature and the Chief Judge have determined that financial disclosure by judges serves an important public function" and repeatedly filing untimely FDFs with the Ethics Commission constituted misconduct. Here, over the course of 13 years, respondent repeatedly filed inaccurate financial disclosure forms in violation of her ethical obligations. By this conduct, respondent shielded the debt from public view for 13 years.

It is troubling that an experienced judge and lawyer would not have recognized the

importance of complete and accurate disclosures on her mandatory disclosure forms. When she appeared before us, respondent commented that in the past she had not taken the FDFs “that seriously.” Respondent has been an attorney for more than 40 years and a judge for more than 23 years. She should have been well aware of the importance of reporting accurate information on the FDFs she was required to file.

In additional misconduct, when respondent called Ms. Penachio, respondent lent the prestige of her judicial office to her effort to obtain a confession of judgment or have the debt omitted from Mr. Natrella’s bankruptcy filing. Section 100.2(C) of the Rules provides, “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge . . .” In circumstances where the judge’s judicial status was known, judges have been disciplined for violating this ethical rule even when they did not specifically invoke their office. *Matter of Lonschein*, 50 N.Y.2d 569, 572-573 (1980); *Matter of Clark*, 2007 NYSCJC Annual Report 93, 96. As the Court of Appeals held in *Matter of Lonschein, supra*, 50 N.Y.2d at 572, “[j]udges must assiduously avoid those contacts which might create even the appearance of impropriety.”

When she made the call to Ms. Penachio, respondent knew that Ms. Penachio was representing Mr. Natrella and knew that Ms. Penachio was aware that respondent was a judge. Respondent was also aware that Mr. Shelly had already spoken with Ms. Penachio about the debt. Significantly, this was the first time respondent had ever telephoned Ms. Penachio.⁴ During her conversation with Ms. Penachio, respondent requested a

⁴ We find that respondent was less than forthright in her testimony regarding her call to Ms. Penachio. It was not credible that shortly after unsuccessful attempts by Mr. Rende and Mr. Shelly to

confession of judgment and suggested that Mr. Natrella not disclose the debt in his bankruptcy filing. These were the same requests that Mr. Shelly had recently made to Ms. Penachio. Respondent's requests in her conversation with Ms. Penachio also followed respondent's significant other's request to Mr. Natrella for a confession of judgment. By repeating these requests directly to Mr. Natrella's attorney, respondent improperly used the prestige of her judicial office in an effort to obtain a different outcome compared to the same requests regarding the debt that had already been made on her behalf. Based on respondent's telephone call to her, Ms. Penachio felt pressured by respondent and compelled to request respondent's recusal in the *Neilson* matter.⁵

We note that respondent has no prior disciplinary history as a judge or as an attorney. We trust that respondent has learned from this experience and will fully comply with all the Rules Governing Judicial Conduct in the future.

By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Ms. Grays, Judge Camacho, Judge Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, and Mr. Seiter concur.

Mr. Belluck, Ms. Corngold, Judge Falk, and Ms. Yeboah dissent as to sanction and vote that removal is the appropriate sanction.

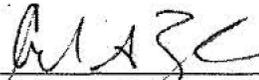
obtain a confession of judgment from Mr. Natrella, as respondent had asked them to do, respondent's first ever call to Mr. Natrella's attorney was wholly unrelated to the loan.

⁵ We note that Ms. Penachio, who was not the complainant in this matter, testified before the referee consistently with the affirmation that she had submitted in 2015 in support of the recusal motion.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on
Judicial Conduct.

Dated: February 11, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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

RAYMOND J. KENNEDY,

a Justice of the Durham Town Court,
Greene County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Kathleen E. Klein, Of
Counsel) for the Commission

Honorable Raymond J. Kennedy, *pro se*

Respondent, Raymond J. Kennedy, a Justice of the Durham Town Court, Greene County, was served with a Formal Written Complaint (“Complaint”) dated March 15, 2022 containing one charge. Charge I of the Complaint alleged that on April 17, 2019, in connection with *Romelus v. Kennedy*, a small claims matter in the Catskill Village Court in which respondent’s wife was the named defendant, respondent lent the prestige of his judicial office to advance his and his wife’s private financial interests, in that he appeared in court and, although he is not a lawyer, acted as his wife’s advocate and asserted his judicial office during the proceeding. Respondent filed an Answer dated April 14, 2022.

On July 13, 2022, the Administrator and respondent entered into an Agreed Statement of Facts (“Agreed Statement”) pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On August 11, 2022, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Durham Town Court, Greene County, since January 1, 2008. His current term expires on January 1, 2024. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. At all times relevant to this charge, respondent and Debi Kennedy were husband and wife.

3. At all times relevant to this charge, respondent and his wife were joint owners of residential real property located at 23 Oak Drive in Hopewell Junction, New York, for which they shared income and expenses.

4. On December 4, 2018, Jacynta and Normil Romelus entered into a pre-lease agreement with Mrs. Kennedy in connection with the rental of a home on the aforementioned property. A copy of the agreement is annexed as Exhibit A to the Agreed Statement.

5. In December 2018, Mrs. Romelus gave Mrs. Kennedy two checks totaling \$3,000, which Mrs. Romelus believed constituted payment of a \$1,500 security deposit and \$1,500 as the first month's rent for the home. Copies of the checks are annexed as Exhibit B to the Agreed Statement. Mrs. Kennedy maintained that the \$3,000 constituted a non-refundable deposit required to proceed with the lease agreement and that it could not be used for payment of a security deposit or rent.

6. On December 16, 2018, Mrs. Kennedy demanded an additional \$1,500 for the first month's rent, which Mr. and Mrs. Romelus refused to pay. Respondent and Mrs. Kennedy then refused to allow the Romeluses to sign a lease

or move into the premises, and Mrs. Kennedy refused to return the \$3,000 sum to the Romeluses, claiming that the amount was non-refundable pursuant to the terms of the pre-lease agreement.

7. In January 2019, Mrs. Romelus filed a small claim in Durham Town Court against Mrs. Kennedy, to whom the checks were made payable and who had signed the pre-lease agreement, seeking to recover the amount paid toward the rental.

8. On January 7, 2019, respondent and his co-judge recused themselves and the matter was transferred to the Catskill Village Court.

9. On April 17, 2019, Mrs. Romelus and Mrs. Kennedy appeared in Catskill Village Court for trial before Justice William P. Wootton. Although respondent was not a party to the proceeding and is not an attorney, he appeared with his wife, spoke in her defense and cross-examined Mrs. Romelus. A transcript of the proceeding is annexed as Exhibit C to the Agreed Statement.

10. After respondent's cross-examination of Mrs. Romelus, he continued to advocate for his wife by presenting her case and offering what he described as his own "testimony" about his wife's interactions with the Romeluses, notwithstanding that he was neither present for nor a witness to all of those interactions. In describing the decision not to rent the property to the Romeluses,

respondent claimed it was also his decision, stating, “At this point, we refused to deal with them and terminated the agreement with them.”

11. During the proceeding, respondent gratuitously asserted his judicial office by stating, “Your Honor, I’ll state that to the court that it’s no secret I’m a judge in another locality, and prior to that, I was a state trooper for 30 years.” Respondent further asserted his judicial status and cast irrelevant aspersions on Mr. Romelus, by stating that “he showed up at my court, and he threatened [*sic*] my court clerk . . .” who “called for assistance from my other judge . . .” Respondent thereafter made two references to “my court” during his narrative.

12. On May 22, 2019, Judge Wootton issued a Decision and Judgment against Mrs. Kennedy in the amount of \$3,000. The determination included a finding that the pre-lease agreement was “not legal.” A copy of the Decision and Judgment is annexed as Exhibit D to the Agreed Statement.

13. No appeal was taken of the Decision and Judgment, and, as of the date of the Formal Written Complaint, the judgment amount remained unpaid to the Romeluses.

Additional Factors

14. Respondent acknowledges that it was improper for him to have advocated for his wife at the small claims hearing as if he were an attorney, and to have gratuitously disparaged Mr. Romelus. He further acknowledges that even if

all those present at the hearing were aware of his judicial status, it was improper for him to have asserted his judicial office, particularly since he did so repeatedly and in furtherance of his and his wife's financial gain.

15. Respondent and his wife paid the \$3,000 judgment on June 13, 2022, proof of which respondent provided and is annexed as Exhibit E to the Agreed Statement. Mrs. Romelus has confirmed receipt of the judgment.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C) and 100.4(A)(1), (2) and (3) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions and respondent's misconduct is established.

Respondent acted in a manner that was inconsistent with his obligations to maintain high standards of conduct and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." (Rules, §§100.1, 100.2(A)) The Rules specifically provide that "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . . ." (Rules, §100.2(C)) When respondent appeared at the small claims

proceeding in which his wife was the defendant to advocate for his wife as if he were an attorney and referred to his judicial status during the proceeding, respondent violated the Rules.

Respondent's conduct violated the ethical rules requiring judges to observe high standards of conduct both on and off the bench and prohibiting judges from lending the prestige of judicial office to advance their private interests or those of another. A judge's off-the-bench conduct must comport with high ethical standards to ensure the public's respect for the judiciary as a whole since "[w]herever he travels, a Judge carries the mantle of his esteemed office with him." *Matter of Steinberg*, 51 N.Y.2d 74, 81 (1980) In *Matter of Lonschein*, 50 N.Y.2d 569 (1980), the Court of Appeals stated,

no Judge should ever . . . lend the prestige of his office to advance the private interests of others. . . Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.

Id. at 571-572 (citations omitted). When he invoked his judicial status and acted as if he were an attorney in the small claims proceeding involving his wife, respondent created the appearance that he expected special treatment and deference because of his status as a judge.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has acknowledged that his conduct was improper and warrants public discipline. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

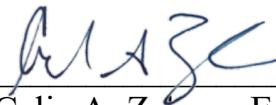
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: August 24, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

DAWN M. KEPPLER,

a Justice of the Shelby Town Court,
an Associate Justice of the Ridgeway Town Court,
and an Associate Justice of the Yates Town Court,
Orleans County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and M. Kathleen Martin, Of
Counsel) for the Commission

Gilmour & Killelea, LLP (by Daniel M. Killelea) for Judge Keppler

The matter having come before the Commission on December 15, 2022;

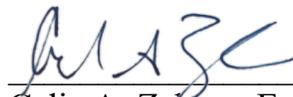
and the Commission having before it the Stipulation dated December 2, 2022; and Judge Keppler having tendered her resignations dated November 21, 2022 effective December 2, 2022 from her positions as Justice of the Shelby Town Court, Associate Justice of the Ridgeway Town Court and Associate Justice of the Yates Town Court; and having affirmed that after vacating her judicial offices, she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Mr. Rosenberg did not participate.

Dated: December 15, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

DAWN M. KEPPLER,

STIPULATION

a Justice of the Shelby Town Court,
an Associate Justice of the Ridgeway Town Court,
and an Associate Justice of Yates Town Court,
Orleans County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Dawn M. Keppler and her attorney, Daniel M. Killelea, Esq. of The Law Office of Gilmour & Killelea.

1. Dawn M. Keppler has been a Justice of the Shelby Town Court, Orleans County, since January 1, 1999. She has been an Associate Justice of the Ridgeway Town Court, Orleans County, since January 1, 2004, and an Associate Justice of the Yates Town Court, Orleans County, since January 1, 2011. Her current terms as Justice of the Shelby Town Court, Associate Justice of the Ridgeway Town Court, and Associate Justice of the Yates Town Court, all expire on December 31, 2023. Judge Keppler is not an attorney.

2. In April 2022, the Commission apprised Judge Keppler that it was investigating a complaint that she improperly promoted prejudicial and inflammatory content on Facebook, and that she inappropriately lent the prestige of her judicial office to advance the private interests of others.

3. In three letters each dated November 21, 2022, Judge Keppler has tendered her resignations from the positions of Shelby Town Justice, Ridgeway Associate Justice and Yates Associate Justice. Those letters are appended as Exhibits A, B, and C, respectively. Judge Keppler affirms that she will vacate all three judicial offices by December 2, 2022.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office. Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office "shall be ineligible to hold other judicial office."

5. Judge Keppler affirms that, having vacated her judicial offices on December 2, 2022, she will neither seek nor accept judicial office at any time in the future.

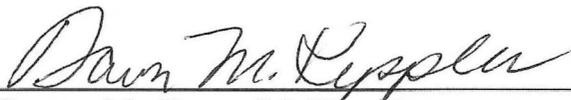
6. Judge Keppler understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, she would be

served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

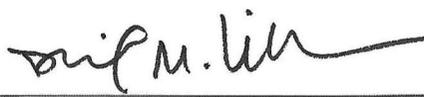
8. Judge Keppler waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 11/30/22



Honorable Dawn M. Keppler

Dated: 11 - 30 - 2022



Daniel M. Killelea
Gilmour & Killelea, LLP
Attorney for Judge Keppler

Dated: December 2, 2022



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(John J. Postel and M. Kathleen Martin, Of
Counsel)

THE FOLLOWING EXHIBITS ARE AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBITS A, B, & C: JUDGE'S LETTERS OF RESIGNATION

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

ALOIS W. KRAKER,

a Justice of the Greenville Town Court,
Greene County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of
Counsel) for the Commission

Maynard, O'Connor, Smith & Catalinotto, LLP (by Kelly M. Monroe)
for Respondent

Respondent, Alois W. Kraker, a Justice of the Greenville Town Court,

Greene County, was served with a Formal Written Complaint (“Complaint”) dated March 15, 2022 containing three charges. Charge I of the Complaint alleged that from June 27, 2018 to July 25, 2018, in connection with his handling of *Muriel Gardner v. Brian Cannon*, respondent: failed to disclose that the plaintiff was a customer of respondent’s auto business or to disqualify himself; failed to administer an oath or affirmation to the *pro se* litigants and witnesses, as required by law; made a series of rude and undignified comments to the defendant, which conveyed an impression of bias against him; failed to properly supervise his court clerk by allowing her to interject repeatedly into the proceeding; failed to admonish a spectator who interjected into the proceeding with his own opinion; and engaged in an *ex parte* conversation about the substance of the case with the plaintiff’s witness and a spectator, during which respondent denigrated the defendant. Charge II alleged that on December 19, 2018, while presiding over *Linda Novello v. Greenville Saw Service, Inc.*, respondent: failed to disclose that the owner of the defendant business was a Greenville Town Council member and a business associate of his; failed to disqualify himself; and failed to administer an oath or affirmation to the *pro se* litigants and witnesses, as required by law. Charge III alleged that from August 2020 through March 2021, respondent failed to discharge his administrative responsibilities diligently, in that he failed to report the receipt of court monies to the State Comptroller in a timely manner, as required

by Section 27(1) of the Town Law. Respondent filed an Answer dated May 11, 2022.

On September 7, 2022, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts ("Agreed Statement") pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On September 22, 2022, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Greenville Town Court, Greene County, since January 1, 2017. His current term expires on December 31, 2024. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. On June 27, 2018, respondent presided over *Muriel Gardner v. Brian Cannon*, a small claims case in which the plaintiff sought \$500 for the defendant's alleged failure to complete plumbing work at her home. A transcript of the proceeding is annexed as Exhibit A to the Agreed Statement. The parties appeared without counsel.

3. Respondent failed to disclose that the plaintiff was a customer of his business, Lou's Automotive, LLC, or to disqualify himself from the proceeding.

4. Respondent failed to administer an oath or affirmation to the *pro se* litigants, as required by Section 214.10(j) of the Uniform Civil Rules for the Justice Courts (22 NYCRR 214.10[j]). He instead began the proceeding by giving both parties an opportunity to be heard.

5. The plaintiff stated, *inter alia*, that after she called the defendant to repair her shower faucet, he gave her a “proposal” of \$965 for the repair. The plaintiff issued him a deposit check for \$700, and when the defendant returned the next morning to do the repair, the plaintiff questioned why he was charging her so much. He left without doing any work and returned only \$200 of the \$700 she paid him.

6. The defendant explained, *inter alia*, that after fixing an emergency leak for the plaintiff, they reached an agreement to upgrade the plaintiff’s corroded shower body for \$965. When the defendant returned the next morning, the plaintiff angrily repudiated the agreement and demanded her money back. The defendant returned \$200 to the plaintiff and retained \$500 as his fee because he had expended a total of eight hours, at a rate of \$60 per hour, for the plaintiff, including drive time and time spent purchasing and returning materials.

7. The plaintiff responded that another plumber fixed the faucet a few days later for \$125, and she denied that the defendant had spent eight hours working at her house. The plaintiff loudly called the defendant a “liar” and a

“bona fide liar,” which prompted the court clerk to say, “Okay, there’s no name calling in court. Let’s keep it clean.” Respondent said, “Mm-hmm” but did not otherwise say anything to his court clerk.

8. At one point, respondent said he believed them both and asked, “Can we split the difference here?” The defendant declined. Respondent repeatedly said he was in business, too, and referred to his own experiences doing repairs. Respondent stated he wanted to adjourn the matter to hear from the plumber who repaired the faucet and get his opinion of the condition of the plaintiff’s plumbing. The defendant questioned the relevancy of such testimony. Respondent stated that if the other plumber claims to have done a “patch job,” then respondent will rule in favor of the defendant, but if it’s the “opposite, it’s going to be in [the plaintiff’s] favor.” Respondent adjourned the case to July 25, 2018.

9. On July 25, 2018, respondent presided over the adjourned hearing in *Gardner v. Cannon*.

10. Respondent again failed to administer an oath or affirmation to the litigants and witness, as required by Section 214.10(j) of the Uniform Civil Rules for the Justice Courts (22 NYCRR 214.10[j]).

11. Respondent began the proceeding by stating that his court clerk had calculated that the defendant had expended 3 hours and 45 minutes in connection

with the plaintiff's job and that the defendant had put a hole in the plaintiff's wall, both of which the defendant disputed.

12. Respondent then made a series of rude and undignified statements to the defendant, sometimes in a loud, raised voice, including:

- A. "I think you're abusing this . . . woman."
- B. "You could've just changed the fricken part here."
- C. "You didn't do anything . . . Where the hell did you go in eight hours?" noting that he himself could do plumbing work in his own bathroom and drive to Lowe's in less than eight hours.
- D. "I don't care . . . I really don't care," in response to the defendant asking to show respondent his timeline again.

13. Respondent then had the plaintiff's witness, Arthur Bernard from A.B. Plumbing & Heating, approach the bench.¹ Without administering an oath or affirmation, respondent questioned Mr. Bernard about the condition of the plaintiff's plumbing and then allowed the defendant to question him.

14. Jason Watts, a spectator who was present in the courtroom for another small claims case, interjected to voice his own opinion about the changing of a valve stem. Instead of admonishing Mr. Watts for interjecting, respondent told him to state his name.

¹ Mr. Bernard is incorrectly identified in Exhibit A to the Agreed Statement as "Arthur Beasley" or "Mr. Beasley."

15. Respondent repeated that his court clerk had calculated that the defendant had only done 3 hours and 45 minutes of work in connection with the plaintiff's job. When the defendant asserted that the court clerk was mistaken, respondent demanded, "Give me the proof of it right now . . . Right now. Right now . . . Let's go."

16. After the defendant asked respondent not to pressure and intimidate him, the court clerk interjected, admonished the defendant, and told him several times to "step outside," leading the defendant to question who was in charge of the proceeding. Respondent stated that he was the judge but did not admonish the court clerk.

17. As respondent continued to argue with the defendant about the amount of time he had expended for the plaintiff, the court clerk interjected and questioned the defendant at length about his timeline, which respondent permitted. Based on this line of questioning, the court clerk re-calculated the defendant's claimed time and respondent announced that she had calculated a time of 7 hours and 50 minutes.

18. After stating that he was going to reserve his decision, respondent accused the defendant of having attempted to take advantage of the plaintiff, stating:

- A. “There’s an elderly lady and I think . . . you kind of jumped the gun and tried to get her to do this immediately, okay? And more or less, I call that taking advantage.”;
- B. “I think it’s unfair business practices.”;
- C. “You made her sign a proposal that night.” and
- D. “Most people fix it for \$125 . . . You didn’t do anything but travel back and forth getting parts . . . With a \$125,000 truck I don’t make that [\$60 an hour] towing.”

19. Finally, a Greene County Sheriff’s Department sergeant interceded and suggested that respondent end the proceeding because both sides had presented their cases and it was “starting to get heated.” The proceeding ended.

20. After the defendant left the courtroom, respondent allowed the plaintiff to tell him that Mr. Bernard – her witness – was an “honest man. Very honest man.”

21. After the plaintiff left the courtroom, respondent called the small claims matter of *Watts Oil v. Michael Allen*. Jason Watts, who was representing Watts Oil and had interjected into the *Gardner v. Cannon* proceeding, approached the bench. Mr. Allen apparently did not appear. After respondent stated that he was awarding Mr. Watts a default judgment, respondent permitted and engaged Mr. Watts and Mr. Bernard, who was still present, in an *ex parte* conversation about the substance of *Gardner v. Cannon* and the defendant’s business practices. Respondent agreed with Mr. Watts when Mr. Watts used profanity to describe the

parts the defendant purchased. Respondent stated that Cannon “jumped the gun” and told Mr. Bernard that he “did the right thing . . . I know he did . . . That’s how I—That’s how I operate and Mrs. Gardner would swear to me on that, so . . . That’s unfair business. That’s totally unfair business practice.”

22. On October 26, 2018, respondent issued a judgment awarding the plaintiff in *Gardner v. Cannon* \$250. A copy of the Notice of Small Claims Judgment is annexed as Exhibit B to the Agreed Statement.

As to Charge II of the Formal Written Complaint

23. On December 19, 2018, respondent presided over *Linda Novello v. Greenville Saw Service, Inc.*, a small claims case in which the plaintiff sought \$3,000 from the defendant for failure to properly service a rototiller and a tractor. A transcript of the proceeding is annexed as Exhibit C to the Agreed Statement.

24. Plaintiff Linda Novello appeared at the proceeding with her husband. John Bensen, owner of Greenville Saw Service, Inc., and his wife appeared on behalf of the defendant. Neither party was represented by counsel.

25. At the time of the proceeding, Mr. Bensen was a Greenville Town Council member. As a Town Council member, Mr. Bensen participated in the approval of respondent’s court’s budget and the setting of respondent’s judicial salary.

26. Respondent and Mr. Bensen are also business associates who have known each other for decades. Mr. Bensen is a customer of respondent's business, Lou's Automotive, LLC, and respondent is a customer of Mr. Bensen's business, Greenville Saw Service, Inc.

27. Respondent failed to disqualify himself, failed to disclose that Mr. Bensen was a Town Council member who participated in the approval of the court's budget and the setting of respondent's salary, and failed to disclose that he and Mr. Benson had a business relationship.

28. Respondent failed to administer an oath or affirmation to the *pro se* litigants, as required by Section 214.10(j) of the Uniform Civil Rules for the Justice Courts (22 NYCRR 214.10[j]).

29. After giving both parties an opportunity to be heard, respondent stated that he was going to reserve decision.

30. On January 16, 2019, respondent issued a decision in the defendant's favor, dismissing the claim. A copy of the decision is annexed as Exhibit D to the Agreed Statement.

As to Charge III of the Formal Written Complaint

31. From August 2020 through March 2021, respondent failed to report the receipt of court monies to the State Comptroller within ten days of the month following collection, as required by Section 27(1) of the Town Law.

32. As a result, by letter dated May 20, 2021, the State Comptroller ordered that payment of respondent's judicial salary be stopped. A copy of the letter is annexed as Exhibit E to the Agreed Statement.

33. Although respondent relied on his court clerk to prepare and submit his monthly reports, he took insufficient or no action to ensure that reports were submitted as required by law until after the State Comptroller ordered that payment of his salary be stopped for late reporting.

34. By letter dated June 30, 2021, the State Comptroller notified the Greenville Town Supervisor that respondent was current with his reporting requirements and that payment of his salary should be resumed. A copy of this letter is annexed as Exhibit F to the Agreed Statement.

Additional Factors

35. Respondent has been cooperative and contrite with the Commission throughout this inquiry.

36. Respondent understands that he must follow the disqualification and remittal process outlined in Opinion 21-22(A) of the Advisory Committee on Judicial Ethics whenever his impartiality might reasonably be questioned, including, but not limited to, cases in which a current or past customer of Lou's Automotive, LLC, or any other entity in which respondent has a financial interest, appears before him. A copy of Opinion 21-22(A) is annexed as Exhibit G to the

Agreed Statement.

37. Respondent acknowledges that he allowed the proceedings in *Gardner v. Cannon* to get out of hand and understands he must maintain order and decorum in all court proceedings.

38. Respondent appreciates that his rude and accusatory remarks to and about Mr. Cannon undermined public confidence in his fairness and impartiality. Respondent also recognizes that, after hearing from both parties and stating he would reserve decision, he should have ended the proceeding promptly instead of engaging Mr. Cannon in a prolonged argument.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), (2), (3) and (4), 100.3(B)(6), 100.3(B)(8), 100.3(C)(1) and (2), 100.3(E)(1) and 100.3(F) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I, II and III of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent’s misconduct is established.

Respondent acted in a manner that was inconsistent with his obligation to “act at all times in a manner that promotes public confidence in the integrity and

impartiality of the judiciary” and to “avoid impropriety and the appearance of impropriety.” (Rules, §100.2(A)) Section 100.3(E)(1) of the Rules specifically provides: “[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned” It is well-settled that a judge must disclose or disqualify if he or she has a business relationship with a party in a matter pending before the judge. *Matter of Valentino*, 2004 NYSCJC Annual Report 157 (defendant did snow removal and odd jobs for judge); *Matter of Grems*, 2000 NYSCJC Annual Report 113 (plaintiff automobile repair business did work for judge); *Matter of Barker*, 1999 NYSCJC Annual Report 77 (plaintiff had done grading work on the judge’s property); *Matter of Fabrizio*, 65 N.Y.2d 275 (1985) (defendant was judge’s dentist).

Respondent violated his ethical obligations when he failed to disqualify himself or inform the parties that the plaintiff in the *Gardner* matter and the owner of the defendant in the *Novello* matter were customers of respondent’s business. In addition, in the *Novello* matter, respondent also failed to disclose that the owner of the defendant company, who appeared before respondent on behalf of the company, participated in setting respondent’s judicial salary and that respondent was a customer of the defendant company. When he failed to disqualify or disclose these relationships, respondent violated the Rules and undermined confidence in the integrity and impartiality of the judiciary.

Moreover, in the *Gardner* matter, respondent's rude comments toward the defendant and comments accusing the defendant of taking advantage of the plaintiff or engaging in unfair business practices created at least the appearance that he was biased against the defendant in violation of Section 100.3(B)(4) of the Rules. In making these comments, respondent also failed to "be patient, dignified and courteous" to a litigant in violation of Section 100.3(B)(3) of the Rules. *Matter of Knopf*, 2021 NYSCJC Annual Report 118 (judge referred to defendant as a "deadbeat" who did not pay his rent); *Matter of Pebler*, 2021 NYSCJC Annual Report 263 (judge referred to defendant's actions as "asinine"); *Matter of Frati*, 1996 NYSCJC Annual Report 83 (judge suggested that plaintiff was a "negligent" farmer and that his claim was not in the "spirit" of the community's "codes of honor.") Respondent acknowledged that when he made the accusatory and rude comments to and about the defendant in the *Gardner* matter, he undermined public confidence in his fairness and impartiality.

Moreover, the Rules specifically prohibit a judge from engaging in *ex parte* communications about a pending matter and from making any public comment about a pending case. (Rules, §§100.3(B)(6) and (8)) In violation of the prohibition against *ex parte* communications, respondent allowed the plaintiff in the *Gardner* matter to comment to him about the character of her witness outside the presence of the defendant. Respondent engaged in further *ex parte*

communications and publicly commented on a pending matter which he spoke with the plaintiff's witness and an individual in court for another case about the substance of the *Gardner* matter.

Respondent also violated additional ethical requirements when he presided over the *Gardner* and *Novello* matters. For example, respondent violated Section 100.3(B)(1) of the Rules, which requires all judges to "be faithful to the law and maintain professional competence in it," when he failed to administer an oath or affirmation to the *pro se* litigants and witnesses in those matters. Furthermore, respondent violated Section 100.3(B)(2) of the Rules when he allowed his court clerk to interject and question the defendant in the *Gardner* matter. Respondent acknowledged that he failed to maintain order and decorum in that proceeding.

In addition, respondent failed to diligently discharge his administrative responsibilities in violation of the Rules when he failed to timely submit reports to the State Comptroller as required. Such failure "constitutes misconduct, even if there is no evidence that monies were missing or used for inappropriate purposes." *Matter of Ridgeway*, 2010 NYSCJC Annual Report 205, 209.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has acknowledged that his conduct was improper and warrants public discipline and that he has completed pertinent continuing judicial education courses. We trust that respondent has learned from

this experience and in the future will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

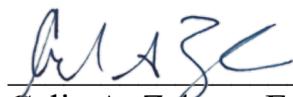
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: October 6, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

JESSICA A. MATTHEWS,

a Justice of the Clare Town Court,
St. Lawrence County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Shruti Joshi, Of Counsel)
for the Commission

Honorable Jessica A. Matthews, *pro se*

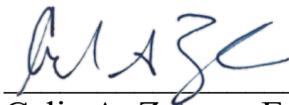
The matter having come before the Commission on August 11, 2022;

and the Commission having before it the Stipulation dated July 13, 2022; and Judge Matthews having tendered her resignation dated May 24, 2022 effective June 1, 2022; and having affirmed that after vacating her judicial office, she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: August 11, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

JESSICA A. MATTHEWS,

STIPULATION

a Justice of the Clare Town Court,
St. Lawrence County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Jessica A. Matthews.

1. Jessica A. Matthews (also known as Jessica Barr) has been a Justice of the Clare Town Court, St. Lawrence County, since 2017. Her current term expires on December 31, 2023. Judge Matthews is not an attorney.

2. By letter dated June 23, 2021, the Commission (A) apprised Judge Matthews that it was investigating a complaint that she failed to file reports or remit funds to the Office of the State Comptroller (“OSC”) in the time required by law for the months of November and December 2019, resulting in her judicial salary being stopped on May 20, 2020, and (B) requested her response to the complaint. Judge Matthews did not respond to the June letter, nor did she respond

to follow-up letters from the Commission dated August 12, 2021, and September 13, 2021.

3. On April 22, 2022, Judge Matthews testified before the Commission concerning the OSC complaint and her failure to respond to the Commission's inquiries.

4. Judge Matthews has tendered her resignation by letter dated May 24, 2022, a copy of which is annexed as Exhibit 1. Judge Matthews affirms that she vacated judicial office as of June 1, 2022.

5. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.

Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office "shall be ineligible to hold other judicial office."

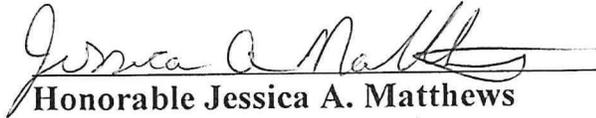
6. Judge Matthews affirms that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future.

7. Judge Matthews understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, she would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

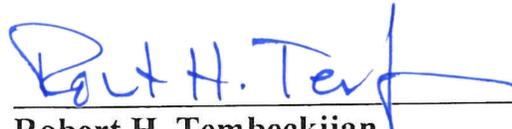
8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

9. Judge Matthews waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

Dated:


Honorable Jessica A. Matthews

Dated: July 13, 2022


Robert H. Tembeckjian
Administrator & Counsel to the Commission
(Cathleen S. Cenci and Shruti Joshi, Of
Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

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

SCOTT OKOLOWICZ,

a Justice of the Riga Town Court,
Monroe County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzairelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel)
for the Commission

Bond, Schoeneck & King PLLC (by Michael R. Wolford) for Respondent

Respondent, Scott Okolowicz, a Justice of the Riga Town Court, Monroe County,
was served with a Formal Written Complaint (“Complaint”) dated July 21, 2021
containing one charge. The Complaint alleged that on four occasions between January

2016 and June 2016, respondent inaccurately certified to the New York State Department of Labor (“DOL”) that he had not worked on days that he had presided as a Town Justice, and, as a result, accepted unemployment insurance benefits to which he was not entitled. Respondent filed a verified answer dated September 13, 2021.

On January 14, 2022, the Administrator, respondent’s counsel, and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On February 3, 2022, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Riga Town Court, Monroe County, since January 2012. His current term expires December 31, 2023. Respondent is not an attorney.

2. On December 14, 2015, respondent applied online to receive unemployment insurance (“UI”) benefits from the DOL. In his application, respondent requested that a copy of the UI claimant handbook be mailed to him at an address that he provided. Notwithstanding his position as a Riga Town Justice, respondent was eligible as an elected official to receive UI benefits pursuant to New York State Labor Law §565(2)(a).

3. The DOL online site for UI benefits sets forth “**9 Things You Must Do When Filing For Unemployment Insurance**” (emphasis in original). The seventh item on the list read:

Read your Claimant Handbook. It tells you about your rights and responsibilities while collecting UI. It also lists additional benefits and services you may be able to get. You can find the handbook on our website (emphasis in original).

4. On the “CONFIRMATION PAGE” of his online application, respondent was advised “You must follow the instructions below.” The fourth step of the instructions read:

Read your Information Handbook (emphasis in original)

You will receive an Unemployment Insurance Information for Claimants handbook in the mail. You should read the handbook carefully and follow all instructions contained in it. This handbook is also available on-line at <http://www.labor.ny.gov/formsdocs/ui/TC318.3e.pdf>.

IT IS YOUR RESPONSIBILITY TO READ ALL OF THE INFORMATION PROVIDED IN THE HANDBOOK. YOU WILL BE HELD RESPONSIBLE FOR THE INFORMATION CONTAINED IN THIS BOOKLET (emphasis in original).

5. The December 2015 UI Claimant Handbook had a section in the table of contents entitled, “What if I am an elected official?” On the referenced page in the claimant handbook, it stated:

If you perform work, services or activities as an elected official, you are considered to be working the day you perform these duties. It does not matter what the work is, the amount of time you spent working each day, or whether or not you earned any money or any other payment. **All work, even an hour or less, performed in connection with your elected office must be declared as work when you claim**

weekly benefits (emphasis in original).

6. Respondent's application for UI benefits was approved in December 2015. Thereafter, he was required to provide weekly certifications to the DOL, reporting each day that he worked in a particular week.

7. Respondent presided over arraignments as a Town Court Justice on the following dates in 2016: January 14th, February 5th, May 12th, and June 19th. However, he did not certify to the DOL that he had worked as a Town Court Justice on those dates.

8. On each of these four days that respondent failed to certify that he had worked, the arraignments took place outside his regular court hours. Respondent received no additional compensation for any of these arraignments beyond his annual judicial salary of \$19,000.

9. As a result of his inaccurate certifications as to his days of work, respondent accepted \$318.75 in UI monies to which he was not entitled.

10. As a consequence of respondent's inaccurate certifications, he was required to reimburse monies he had received but to which he was not entitled, and to pay a civil fine. Respondent was also precluded from receiving UI benefits for a limited period.

11. In November 2019, respondent reimbursed the DOL \$318.75 and paid a \$100 civil fine.

Additional Factors

12. Respondent acknowledges that he failed to exercise appropriate diligence in obtaining unemployment benefits and violated his obligation to uphold the high

standards of conduct required of members of the judiciary.

13. Respondent avers that he did not review the UI handbook prior to or at the time of his inaccurate certifications. During his testimony in the course of the Commission investigation, after being shown a copy of his application, respondent acknowledged that, at the time he applied for benefits, he had requested a copy of the handbook to be mailed to him, he was aware of how to access the handbook online, and that it was his responsibility to read the handbook.

14. Respondent avers, and the Administrator has no evidence to the contrary, that he mistakenly believed that he was required to report all scheduled court dates, but that he was not required to report non-scheduled arraignments as full days of work.

15. Respondent properly reported his receipt of unemployment compensation in 2016 on his federal and state tax returns.

16. Respondent represents that he accepts full responsibility for his actions, and he has been cooperative and contrite with the Commission throughout its inquiry. He represents that he regrets his failure to abide by the Rules in this matter. He pledges to conduct himself in accordance with the Rules for the remainder of his tenure as a judge.

17. The Administrator notes that he would have recommended suspension from office were that sanction available to the Commission under the Constitution.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause pursuant to Article VI, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1

of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions and respondent's misconduct is established.

Each judge is obligated to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and must observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved." (Rules, §§100.1 and 100.2(A)) Each judge is required to conduct their extra-judicial activities in a manner that does not "detract from the dignity of judicial office." (Rules §100.4(A)(2)) "Judges personify the justice system upon which the public relies to resolve all manner of controversy, civil and criminal. A society that empowers Judges to decide the fate of human beings and the disposition of property has the right to insist upon the highest level of judicial honesty and integrity." *In re Mazzei*, 81 N.Y.2d 568, 571-572 (1993).

Respondent failed to comply with these standards when he submitted inaccurate weekly certifications to the DOL which omitted four dates on which he presided over arraignments. These inaccurate certifications caused respondent to receive unemployment benefits to which he was not entitled. By this conduct, respondent violated his ethical obligations and brought reproach upon the judiciary.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has admitted that his conduct warrants public discipline and that he has pledged to carefully comply with the Rules. We trust that respondent has learned from this experience and in the future will act in strict accordance with his

obligation to abide by all the Rules Governing Judicial Conduct.

By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

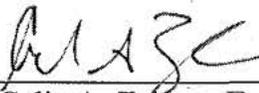
Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

Judge Falk did not participate.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: February 17, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State

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

DETERMINATION

JILL S. POLK,

a Judge of the Family Court and an Acting
Justice of the Supreme Court,
Schenectady County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine, Of Counsel) for the Commission

O'Connell and Aronowitz (by Stephen R. Coffey and Cristina D.
Commisso) for respondent

Respondent, Jill S. Polk, a Judge of the Family Court and an Acting Justice of the

Supreme Court, Schenectady County, was served with a Formal Written Complaint (“Complaint”) dated September 11, 2019 containing one charge. The Complaint alleged that from approximately 2015 to 2017, respondent lent the prestige of judicial office to advance her private interests and failed to conduct her extra-judicial activities so as to minimize the risk of conflict with her judicial obligations by 1) asking and/or permitting her confidential secretary, Chana Ritter (“Ritter”) to perform non-work related personal tasks for the judge and her family and 2) allowing her young daughter to walk through the courthouse unsupervised and to sit with court officers at a security checkpoint which interfered with the court officers’ duties and was a security risk. Respondent filed an answer dated October 23, 2019.

By Order dated December 20, 2019, the Commission designated Michael J. Hutter, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 9, 10, 12 and 13, 2020 via videoconference. The referee filed a report dated June 17, 2021 in which he sustained Charge I of the Complaint.

The parties submitted briefs to the Commission with respect to the referee’s report and the issue of sanction. Commission counsel recommended that the referee’s findings and conclusions be confirmed. Respondent recommended that the referee’s findings and conclusions be disaffirmed. Commission counsel recommended the sanction of removal; respondent’s counsel argued that, if the Complaint was not dismissed, a sanction no greater than admonition be imposed. The Commission heard oral argument on October

28, 2021 and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent has been a Judge of the Family Court, Schenectady County since January 2015 and an Acting Justice of the Supreme Court since 2017. Her current term expires on December 31, 2024. Respondent was admitted to the practice of law in New York in 1988.

2. Prior to being elected as a Judge of the Family Court, respondent worked as a senior staff attorney in the Commission's Albany office from January 31, 2008 through December 31, 2014.

3. During respondent's employment with the Commission, two pertinent Commission determinations, *Matter of Ruhlmann* and *Matter of Brigantti-Hughes*, were issued in February 2009 and December 2013 respectively. Both determinations held that a judge cannot routinely use court staff for personal purposes.

4. After her election as a Family Court Judge, respondent attended a program in January 2015 presented by the New York State Judicial Institute for newly elected judges. At this program, the *Matter of Brigantti-Hughes* and *Matter of Ruhlmann* determinations were covered.

5. Upon being sworn in as Family Court Judge in January 2015, respondent was assigned chambers in the Schenectady County Office Building which had court facilities on two floors. She hired Nancy Stroud ("Stroud") to work as her court attorney and Ms. Ritter as her secretary. Respondent had been friends with Ms. Stroud for about twenty years. Ms. Ritter was hired after she interviewed with respondent and Ms. Stroud.

Ms. Ritter had been previously employed as a receptionist at the Jewish Federation and had taught Ms. Stroud's nieces at Hebrew School.

6. The workday in respondent's chambers included an hour-long break for lunch each day during which respondent, Ms. Ritter and Ms. Stroud usually ate lunch together. The lunch break would begin whenever respondent got off the bench, which was sometime between 12:00 pm and 1:00 pm, and would end an hour later.¹

7. Respondent has a daughter who was twelve in 2015 when respondent became a Family Court Judge. Respondent planned to have a Bat Mitzvah for her daughter in the spring of 2016.

8. Planning for the Bat Mitzvah started in the fall of 2015. At that time, respondent was living with her partner and they were involved together in the planning. However, the relationship deteriorated and the partner moved out. Respondent asked her sister for assistance with the Bat Mitzvah planning, but her sister, who lived in Buffalo, was unable to provide sufficient help.

9. When her sister was unable to assist to the extent necessary, respondent intended to hire a party planner to help with the Bat Mitzvah.

10. Respondent's daughter's upcoming Bat Mitzvah came up in conversation during lunch in chambers among respondent, Ms. Ritter and Ms. Stroud in the fall of 2015. Ms. Ritter expressed a special interest in respondent's daughter's Bat Mitzvah and told respondent she could help with the planning.

¹ In this determination, non-lunch hours are defined as between 9:00 am and 12:00 pm and 2:00 pm and 5:00 pm.

11. At some point after Ms. Ritter offered to assist with planning the Bat Mitzvah, respondent accepted her secretary's offer.

12. From the fall of 2015 to May 2016 when the Bat Mitzvah took place, Ms. Ritter provided assistance on a regular basis in the planning of respondent's daughter's Bat Mitzvah. Using her New York State Unified Court System email address, Ms. Ritter sent numerous Bat Mitzvah related emails to various Bat Mitzvah vendors and to respondent.² Many of Ms. Ritter's emails to vendors identified Ms. Ritter at the end of the email as "Secretary to Honorable Jill S. Polk" and included the address of the Schenectady County Family Court. Ms. Ritter sent most of the Bat Mitzvah related emails during non-lunch hours on weekdays. In addition, respondent and some of the Bat Mitzvah vendors sent Ms. Ritter emails regarding the Bat Mitzvah, most of which were sent only to Ms. Ritter.

13. From January 2015 through the early part of 2017, respondent also permitted Ms. Ritter to perform various other personal tasks for respondent. There were several emails in Ms. Ritter's court system email account that showed her involvement in personal tasks for respondent that were unrelated to the Bat Mitzvah.³

14. When respondent was asked whether there was any limitation on the

² The emails Ms. Ritter sent involved various aspects of respondent's daughter's Bat Mitzvah including discussing menu options with caterers; discussing venue set up issues; gathering information and ideas for centerpieces; creating and updating a spreadsheet for guest RSVPs; and contacting a hotel regarding room reservation rates for guests and a hotel booking issue.

³ Ms. Ritter sent emails to obtain price quotes from a landscaper for respondent's home; obtain options for vacation rentals; determine service options for respondent's car; make appointments for respondent with doctors, a dentist and a hair salon; and make appointments for respondent's daughter.

personal work Ms. Ritter could do for her, respondent testified, “We’re friends and we’re family and so that’s our relationship. And so we have a relationship that is outside of our professional relationship.”

15. Beginning in 2015 and through part of 2017, respondent’s daughter was regularly at the courthouse during work hours. She was in the courthouse two or three times a week, and at least once a week for an approximate total of fifty to one hundred times during this period.

16. Court officers regularly saw respondent’s daughter at the magnetometer station at the Family Court security checkpoint where potential weapons were confiscated. The court officers manning the magnetometer checkpoint were also responsible for monitoring the security of the adjacent waiting area where Family Court litigants waited for their cases to be called. The court officers’ responsibilities included preventing or de-escalating confrontations between Family Court litigants.

17. Respondent’s daughter frequently approached the court officers on duty at the magnetometer station and spoke with them about her life and interests. On some days, respondent’s daughter came to the magnetometer station multiple times. On occasion, she went up to the magnetometer’s X-ray screen and asked the court officers about the objects being scanned.

18. Respondent’s daughter’s presence at the magnetometer station created a complication for the court officers which was the concern that respondent’s child would be injured if there was an altercation among litigants in that area. At times, respondent’s daughter’s presence at the magnetometer impeded the security work of the court officers.

19. The court officers did not bring their concerns about respondent's daughter being in the magnetometer area directly to respondent's attention because they felt uncomfortable doing so. The court officers did raise the issue with their superiors, including Court Officer Captain Wayne Luce.

20. Captain Luce, who had responsibilities at multiple courthouses in three counties, spoke to respondent about the matter as he believed only the court officers should be at the security station, foreseeing security issues with respect to the litigants in the waiting area. Respondent told Captain Luce that she understood his concern and would speak with her daughter about the issue.

21. While respondent's daughter stopped being present at the security checkpoint with the court officers after Captain Luce spoke with respondent, that stoppage lasted for a week or two. After that, respondent's child's presence at the security checkpoint continued.

22. When her daughter was at the courthouse during work hours, respondent wanted her to remain in her chambers. She could not, however, recall if she so instructed her daughter.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B), 100.2(C), 100.3(C)(2) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and

conclusions and respondent's misconduct is established.

All judges are required to act in a manner to preserve the integrity of the judiciary and to avoid the appearance of impropriety. (Rules §§100.1 and 100.2(A)) Section 100.2(C) of the Rules provides, “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . . .” Judges are also required to ensure that their staff observe the same standards of conduct that apply to the judge. (Rules 100.3(C)(2)) In violation of the Rules, respondent allowed her secretary to help plan respondent's daughter's Bat Mitzvah and perform other personal tasks for respondent and permitted her daughter to frequent the security checkpoint at Schenectady Family Court which interfered with the duties of the court officers.⁴

⁴ We reject respondent's claim that the Complaint should be dismissed in the interest of justice because the hearing was held nearly six years after some of the conduct at issue, the memory of some witnesses had allegedly faded and some unnamed witnesses had become unavailable. These vague assertions do not amount to the substantial actual prejudice which a respondent must establish to demonstrate dismissal is warranted. *See, Diaz Chemical Corp v. NYS Division of Human Rights*, 91 N.Y.2d 932, 933 (1998) (“the party protesting the delay must show substantial actual prejudice.”); *Matter of Anonymous v. NYS Department of Health*, 85 A.D.3d 468 (1st Dept. 2011) (“[c]onclusory allegations that the passage of time has dulled witnesses' memories do not demonstrate actual prejudice.”).

We also reject respondent's claim that the procedures for the hearing before the referee were unfair and her claim that statements by unnamed witnesses were not provided to her as the Commission's Operating Procedures and Rules required. Respondent waived these arguments when she failed to make a motion to the referee or object to the Commission prior to the hearing. According to Commission Counsel, pursuant to Section 7000.6(h)(1) of the Commission's Operating Procedures and Rules, all required pre-hearing discovery was provided to respondent. In any event, the Commission's Operating Procedures and Rules provide that, “[t]he failure of the commission to furnish timely any documents, statements and/or exculpatory evidentiary data and material provided for herein shall not affect the validity of any proceedings before the commission, provided that such failure is not substantially prejudicial to the judge.” 22 NYCRR §7000.6(h)(1). Respondent did not identify any witness whose statement was allegedly not produced let alone establish that there was substantial prejudice to her.

The frequency and content of Ms. Ritter's emails that related to respondent's daughter's Bat Mitzvah, as well as additional evidence in the record, established that Ms. Ritter was involved in the planning of respondent's daughter's Bat Mitzvah. Many of the emails she sent to vendors identified Ms. Ritter as "Secretary to Honorable Jill S. Polk" with the address for the court. These emails from Ms. Ritter's "@nycourts.gov" email address lent the prestige of judicial office for respondent's personal benefit and gave at least the appearance that court resources were being used for respondent's personal purposes. All judges must be mindful that court resources are to be used for court purposes and that any appearance that they are not undermines public confidence in the judiciary.

Commission precedent prohibits a judge from allowing court employees to repeatedly perform personal work for the judge. *Matter of Ruhlmann*, 2010 NYSCJC Annual Report 213; *Matter of Brigantti-Hughes*, 2014 NYSCJC Annual Report 78. Respondent should have been aware of this precedent as she was employed at the Commission for several years during which time both the *Ruhlmann* and *Brigantti* determinations were issued and both cases were covered in her judicial training. Here, Ms. Ritter's personal work for respondent was "not limited to situations where there were exigent or compelling reasons." *Matter of Ruhlmann*, 2010 NYSCJC Annual Report at 219.

That respondent and Ms. Ritter developed a friendship after Ms. Ritter was hired in January 2015, did not excuse respondent's use of a court employee to regularly perform the judge's personal tasks. Ms. Ritter's involvement in the planning of

respondent's daughter's Bat Mitzvah was not "professional courtesies or occasional acts of personal assistance that might ordinarily be provided in emergency situations by subordinates to supervisors, or vice versa." *Matter of Brigantti*, 2014 NYSCJC Annual Report at 87.

We note that there was no indication that Ms. Ritter was coerced into performing the personal tasks for respondent or that she was unable to perform her court-related duties. In that regard, this matter is distinguishable from *Ruhlmann* in which the judge was censured for personal work her secretary performed for the judge. In *Ruhlmann*, the judge told her secretary to give priority to the personal tasks for the judge over the secretary's court work even after the secretary complained to the judge several times that the personal tasks were interfering with her ability to perform her work for the court. *Matter of Ruhlmann*, 2010 NYSCJC Annual Report at 219. Moreover, in *Ruhlmann*, the judge also engaged in additional misconduct when she directed her secretary to review a confidential court database to obtain information for respondent's husband based upon an *ex parte* request by the husband. *Id.* at 217.⁵

It was also improper for respondent's daughter to regularly be present at the Family Court security checkpoint with the court officers who were responsible for

⁵ This matter is also distinguishable from *Brigantti* where, in addition to having her staff perform personal work for her, the judge invited her staff to attend prayer sessions in her chambers under circumstances that went beyond guidance on the issue from the Office of Court Administration and also invited her court staff to attend church related events after work hours. The Commission found "... such requests are inherently coercive when made by a judge to her appointees and other court employees." *Brigantti*, 2014 NYSCJC Annual Report at 90.

courthouse safety.⁶ As three court officers testified, respondent's child's presence was a distraction and a complication to the performance of their duties. The magnetometer area was not an appropriate place for respondent's daughter who was 12 and 13 at the time, particularly since the Family Court security checkpoint was a location where court officers were responsible for confiscating potential weapons and preventing or responding to disputes between Family Court litigants in the nearby waiting area.

We note that this was not a situation where respondent's child came to respondent's chambers in the event of an emergency or other unforeseen situation. Here, there were no extenuating circumstances and respondent's daughter was frequently present at a security checkpoint in the courthouse which impacted the work of the court officers assigned to the checkpoint. The regular presence of respondent's child at the security checkpoint was inappropriate and a further instance of respondent using the prestige of her office for her personal benefit.

The evidence established that respondent used the prestige of her office to further her personal interests and her conduct gave at least the appearance of impropriety which undermined confidence in the integrity of the judiciary. As the Court of Appeals held in

⁶ We reject respondent's claims that the evidence did not support the referee's finding that respondent's daughter was at the magnetometer area at least once a week and approximately fifty to one hundred times during the relevant time period and his finding that respondent's daughter continued to be present at the security checkpoint even after a court officer captain, who had responsibilities at several courthouses, informed respondent that her daughter should not be at the checkpoint. On these points, the referee, who heard the testimony and observed the witnesses, credited the testimony of court officers assigned to the Schenectady Family Court. While the Commission may accept or reject a referee's findings, when the record supports a referee's findings, we accord deference to the findings since the referee heard all the testimony. *See, Matter of Mulroy*, 94 N.Y.2d 652, 656 (2000). We see no basis to set aside the referee's findings in this regard.

Matter of Lonschein, 50 N.Y.2d 569, 572 (1980), “[m]embers of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.”

While respondent violated the Rules, we have taken into consideration that she has no prior disciplinary history with the Commission and was a new judge at the time of her misconduct. We trust that respondent has learned from this experience and in the future will act in strict accordance with her obligation to abide by all the Rules Governing Judicial Conduct.

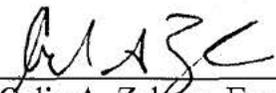
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: January 24, 2022



Celia A. Zalmer, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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

ROBERT J. PUTORTI,

a Justice of the Whitehall Town Court and the
Whitehall Village Court, Washington County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzaelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of Counsel)
for the Commission

Cerio Law Offices (by Michael D. Root) for Respondent.

Respondent, Robert J. Putorti, a Justice of the Whitehall Town Court and the
Whitehall Village Court, Washington County, was served with a Formal Written
Complaint (“Complaint”) dated June 11, 2020, containing one charge. Charge I of the

Complaint alleged that in late 2015 or early 2016, inside the Whitehall Village Court, respondent brandished a loaded semi-automatic handgun at Brandon Wood (“Wood”), a defendant whose criminal case respondent was scheduled to hear that day. The Complaint further alleged that in late 2015, respondent gave an informal interview to his cousin, a journalism student, in which he described his practice of carrying a concealed firearm while presiding on the bench and stated that he had brandished his handgun in court at a defendant; that at an October 2018 meeting of the Washington County Magistrates Association, respondent, while seeking advice, told other judges that he had once brandished his handgun in the courthouse at a person he described as a “large Black man” and in February 2019, respondent was counseled by his supervising judge about brandishing his gun in court. Respondent filed a Verified Answer dated August 14, 2020.

Respondent was served with a Second Formal Written Complaint dated January 20, 2021 containing one charge. Charge II in the Second Formal Written Complaint alleged that from October 2019 to October 2020, respondent personally participated in the solicitation of funds or other fund-raising activities for his own personal benefit and for the benefit of the Whitehall Elks Lodge (“Lodge”), and lent the prestige of his judicial office to those activities, by sharing and/or promoting fundraising posts on his personal Facebook page. Respondent filed a second Verified Answer dated March 8, 2021.

By orders dated October 6, 2020 and March 12, 2021, the Commission designated David M. Garber, Esq. as referee to hear and report proposed findings of fact and conclusions of law. On November 26, 2021, the Administrator, respondent’s attorney and respondent entered into an Agreed Statement of Facts (“Agreed Statement”) pursuant

to Section 44(5), of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts and requesting that briefing and oral argument be scheduled on the issue of sanction. On December 9, 2021, the Commission accepted the Agreed Statement and scheduled briefing and oral argument on sanction for February 3, 2022.

By letter dated January 4, 2022 from respondent's counsel, the Commission was advised that the parties waived oral argument. The parties submitted briefs to the Commission with respect to sanction. Commission counsel recommended the sanction of removal and respondent's counsel argued that a sanction no greater than censure be imposed. On February 3, 2022, the Commission considered the record of the proceedings and made the following findings of fact.

1. Respondent has been a Justice of the Whitehall Town Court, Washington County, since January 1, 2014. In June 2014, respondent was appointed as an Acting Justice of the Whitehall Village Court, Washington County, and was elected as a Justice of that court in April 2018. Respondent's current term as Whitehall Town Justice expires on December 31, 2025 and his term as Whitehall Village Justice expires on April 6, 2025. Respondent is not an attorney.

As to Charge I of the Formal Written Complaints

2. The Whitehall Village Court and Whitehall Town Court share a courtroom in the Whitehall Municipal Center, located at 57 Skenesborough Drive, Whitehall, New York, in Washington County. The Whitehall Village Police Department is also located in

the Whitehall Municipal Center. There is an entrance to the police station from the courtroom, several feet from respondent's bench.

3. At the time of the events described herein, although neither the Whitehall Village Court nor the Whitehall Town Court had any court officers, bailiffs or other security personnel, according to respondent, a police officer was present for the events described herein.

4. Since at least 2003, and thus at all times relevant herein, respondent has been licensed in New York State to carry a concealed firearm. Copies of respondent's licenses to carry firearms in New York State and other states are annexed as Exhibit 1 to the Agreed Statement.

5. At a judicial training course in December 2013, respondent was advised by one of the instructors that he could legally carry a concealed firearm at the bench.¹ His practice had been to have a concealed and loaded firearm, although with the chamber empty, with him at the bench while presiding over court proceedings.² Typically, while presiding, respondent attached the handgun via a magnet to the underside of the bench's desktop. It is not clear from the record if respondent was authorized to keep his gun under his bench with a magnet as opposed to concealing it on his person.

Background of Criminal Proceedings Against Brandon Wood

¹ Opinion 06-51 of the Advisory Committee on Judicial Ethics provides that "there is no prohibition in the Rules Governing Judicial Conduct barring [a judge] from carrying a firearm while performing . . . duties on the bench," provided that the judge otherwise abides by the Rules Governing Judicial Conduct and "there are no legal or administrative barriers that would preclude such possession."

² Respondent avers that it was his practice to keep the chamber empty, and the Administrator has no evidence to the contrary.

6. Brandon Wood is a Black man who, at the time of the events herein, was approximately 34 years old, was approximately six feet tall (6'0") and weighed approximately 165 pounds.

7. On March 30, 2015, Mr. Wood was charged in the Whitehall Village Court with Attempted Assault in the First Degree, a felony; Criminal Mischief in the Third Degree, a felony; two counts of Menacing in the Second Degree, a misdemeanor; and Criminal Possession of a Weapon in the Fourth Degree, a misdemeanor. The allegations specified that Mr. Wood had attacked his wife and another man with a knife while Mr. Wood's wife and the other man sat in a parked vehicle.³ The accusatory instruments and supporting deposition relating to those charges are annexed as Exhibit 2 to the Agreed Statement. Respondent presided over the charges and, as a result, was aware of the violent nature of the allegations against Mr. Wood.

8. On June 22, 2015, after the felony charges against Mr. Wood had been merged and dismissed on consent of the prosecution, Mr. Wood pled guilty, with the assistance of counsel and in satisfaction of all charges, to one count each of Menacing in the Second Degree and Criminal Possession of a Weapon in the Fourth Degree, both misdemeanors. Respondent sentenced Mr. Wood to a one-year conditional discharge and imposed fines and surcharges totaling \$555. Respondent avers, and court records do not dispute, that Mr. Wood failed to pay the fine and surcharge and was placed in jail. Mr. Wood's wife told respondent that she and Mr. Wood could not afford the fine but could pay the

³ Previously, on March 11, 2015, Mr. Wood was charged in the Whitehall Village Court with Unlicensed Operator, a traffic infraction.

surcharge. Respondent went to the courthouse/jail on his lunch hour from his other employment and reduced Mr. Wood's fine to community service and released Mr. Wood from jail.

9. In late 2015, Mr. Wood was scheduled to appear before respondent in the Whitehall Village Court, and he was present in the courthouse before the call of his case. He was not represented by counsel.

10. While Mr. Wood was on court premises, respondent brandished a gun at him, notwithstanding that respondent now agrees that Mr. Wood was not acting in a manner demonstrating deadly force. There were no other witnesses to this event.

11. Although respondent states that he subjectively feared for his safety when he brandished his gun at Mr. Wood, he now acknowledges that he had no reasonable basis to believe that Mr. Wood was about to use imminent deadly force against him or anyone else. In retrospect, respondent admits that he was not justified in brandishing his gun at Mr. Wood.

Respondent's Interview about the Courthouse Gun Incident

12. In fall 2015, respondent's cousin, Reba Putorti, was a journalism student at Hofstra University. Throughout the fall 2015 semester, Ms. Putorti and her classmates in a magazine production class wrote articles about firearms and firearm laws for an online magazine. As part of this assignment, Ms. Putorti asked respondent if he would agree to be interviewed for an article about his possession of numerous firearms and firearms licenses. Respondent agreed.

13. When he agreed to the interview, respondent believed the ensuing article

would be published only within Hofstra University, as part of Ms. Putorti's class.

14. During his interview with the journalism student:

- A. Respondent described his practice of carrying a concealed firearm while presiding on the bench, and he stated that he once brandished his handgun at "someone" who came running up to him at the bench and to whom he said, "woah, woah, woah, slow down."⁴
- B. Respondent described an out-of-court incident in which he brandished his handgun at an unidentified man while helping his now-deceased grandfather recover a stolen car.⁵
- C. Respondent described a third instance in April 2015 in which police officers in Virginia observed him carrying a firearm in a convenience store at 3:00 AM but did not take action against him. Respondent avers that he was licensed to carry in Virginia and believes the only error on his part was that the handgun *may* have been visible on his waist to the officers in the convenience store.

15. The resulting article, entitled "Carrying in the courtroom," was published online in the *Long Island Report* on December 8, 2015 and remained viewable online as of the date of the Agreed Statement. A copy of the article is annexed as Exhibit 3 to the Agreed Statement.

16. The article, which respondent admits quotes him accurately, quoted

⁴ If called to the stand, neither Assistant District Attorney Devin Anderson nor Police Officer Joel Archambault would corroborate the version of events respondent gave to the journalism student, notwithstanding respondent's claim that they were both present at the time.

⁵ If called to the stand, respondent would testify as follows: "In 2003 or 2004, respondent's elderly grandfather had a car stolen from his used car lot. When police notified the grandfather that they had located the vehicle, respondent went with his grandfather to retrieve it. Upon arriving at the stolen car, a man came out of the woods with a chainsaw and advanced toward respondent's grandfather. Respondent pulled out his gun and told the man, "This isn't worth you getting shot over a vehicle that you stole." The man retreated, and respondent and his grandfather retrieved the stolen car." The Commission's Administrator can neither verify nor dispute the veracity of this account.

respondent as stating, “I carry a gun now because I’m a judge; I send people to jail and you never know how someone will respond to the calls I make. I carry all the time, especially today, because you never know when someone is going to pull out a gun and start shooting people; if I have a gun at home, that’s not doing anybody any good; if it’s on my hip, I can respond immediately.”

17. In early 2016, respondent showed the article to his former co-judge, Julie Eagan, and others around the courthouse. Respondent contemporaneously told Judge Eagan about having pulled a gun on an “agitated” “big Black man” when the man, whom respondent did not identify by name, approached him too quickly at the bench.⁶ From respondent’s manner and tone, Judge Eagan was under the impression that respondent was bragging about his actions and that he was expressing pride about being featured in the article. At a meeting of the Washington County Magistrates Association in 2016, Judge Eagan overheard respondent telling other judges in attendance about the article and the purported incident with the gun in the courtroom.

Respondent’s Comments about the Gun Incident at a 2018 Meeting of Judges

18. On October 23, 2018, at a meeting of the Washington County Magistrates Association, while seeking advice as to security in the court, respondent told other judges in attendance, including his supervising judge, Glens Falls City Court Judge Gary Hobbs, that he had once brandished his handgun in the courthouse at a “large [B]lack man,” whom he did not identify by name, after the man, a defendant, had passed the “stop line”

⁶ There are no witnesses to this event as respondent described it to former Judge Eagan.

and came within a couple feet of respondent at the bench, while a police officer was also at the bench. Respondent told his fellow judges that the defendant said he just wanted to talk to respondent, and that the police officer joked with respondent about how quickly he had been able to pull the gun.⁷ Respondent did not mention anything about the defendant's criminal record or violent propensity. Judge Hobbs' contemporaneous notes about respondent's comments at the meeting are annexed as Exhibit 4 to the Agreed Statement.

19. At a hearing before the referee in the disciplinary matter herein, respondent would testify that during the 2018 magistrates meeting, he recounted the courtroom incident to a small group of other judges during a discussion about courtroom security and that he was merely seeking advice from his supervising judge about what to do in the future under similar circumstances. Respondent would further testify that he referred to the defendant's race merely to describe him to the other judges.

The Supervising Judge's Counseling of Respondent over the Gun Incident

20. On October 25, 2018, after another judge expressed concern to Supervising Judge Hobbs about respondent's comments at the Magistrates Association meeting, Judge Hobbs had a telephone conversation with respondent about the gun incident.

21. Judge Hobbs' contemporaneous notes of his conversation with respondent are included in Exhibit 4 to the Agreed Statement. Respondent agrees that Judge Hobbs' notes accurately reflect what respondent told him in that conversation. Respondent also

⁷ Officer Archambault has no recollection of any such incident or comments.

agrees that, as noted below, some of what he told Judge Hobbs was different from what he had told his fellow Magistrates.

22. At Judge Hobbs' request, respondent repeated his account of the incident, which he said had occurred about three years prior.

- A. Respondent advised Judge Hobbs of his practice of carrying a concealed weapon at the bench and stated that a "bullet is not in the chamber, but it takes [him] a split second to load."
- B. Respondent told Judge Hobbs that the defendant – whom he did not identify by name and whose "case ha[d] been long since resolved" – was a "large [B]lack man," about 6'9" tall and "built like a football player."⁸
- C. Respondent said nothing to Judge Hobbs about the defendant's criminal history or violent propensity.
- D. Respondent said that the incident had occurred when he called the defendant's case and the defendant ran quickly to the bench, past a line where defendants are supposed to stand, and within two feet of respondent.
- E. Respondent told Judge Hobbs a police officer was standing at the bench "for [respondent's] security." However, respondent said, the officer allowed the defendant to pass the line and go directly to the bench.
- F. Respondent told Judge Hobbs that he "pulled his hand gun and pointed it at the defendant,"⁹ "told him to stop, asked him where he was going and told the defendant to move back behind the line," to which the defendant replied that "he just wanted to talk to" respondent. Respondent "said that he would talk to the defendant once he moved back behind the line," after which "[t]he defendant . . . moved back and [respondent] put his gun back under the bench."

23. Judge Hobbs advised respondent that he may not display his gun to a

⁸ As noted above, Mr. Wood is 6'0" tall and weighs approximately 165 pounds.

⁹ This is contrary to respondent's telling the Commission that he made a "fanning motion" with the gun but did not point it at Mr. Wood or anyone else.

defendant unless he reasonably believes it is necessary to defend himself or someone else from the use or imminent use of deadly physical force by the defendant. Judge Hobbs added that the fact that a defendant may present as “large” or make respondent feel uncomfortable or nervous is insufficient basis for respondent to display his gun.

24. On March 2, 2019, respondent signed a counseling memorandum, provided to him by Judge Hobbs, in which respondent agreed never to display, use or threaten to use a firearm in court unless he or someone else was facing “deadly physical force.” A copy of the counseling memorandum is annexed as Exhibit 5 to the Agreed Statement.

Additional Factors as to Charge I

25. Respondent avers, and the Administrator has no information to the contrary, that he has not carried his gun into the courtroom while presiding over cases since October 2018, when Judge Hobbs counseled him as described above.

26. Respondent acknowledges that, even if his purpose in recounting the *Wood* incident with fellow judges was to discuss courthouse security with them and his intent in referring to the defendant’s race was merely to describe him to the other judges, the defendant’s race was immaterial to any such discussion, and his identification of Mr. Wood by race may have created the appearance of racial bias.

As to Charge II of the Formal Written Complaints

27. Respondent has been a member of the Whitehall Elks Lodge since 1992. Respondent has held various leadership positions in the Lodge since April 2017. On April 1, 2020, respondent was elected by the Lodge’s members to the position of Exalted Ruler, the highest-level position within the Lodge.

28. It is generally known among the members of the Lodge that respondent is a judge.

29. Facebook is an internet social networking website and platform that *inter alia* allows users to post and share content on their own Facebook pages as well as on the Facebook pages of other users and on Facebook groups. Facebook users are responsible for managing the privacy settings associated with their accounts. At the option of the account holder, the content of one's Facebook page may be viewable online by the public or restricted to one's Facebook "Friends."

30. At all times relevant to Charge II, respondent maintained a Facebook account under the name "Robert Putorti Jr." Respondent's account does not mention his position as a judge or his affiliation with Whitehall Court anywhere. Respondent's occupation is listed as "Machinery Equipment Operator of Town of Whitehall." Respondent made his Facebook page viewable by the public.

31. From October 2019 to November 2020, respondent had over 1,300 Facebook "Friends," some of whom were aware he was a judge.

32. Respondent was Facebook "Friends" with, *inter alia*, the following individuals:

- A. Whitehall Police Officer Bryan Greco;
- B. Washington County District Attorney Tony Jordan;
- C. Whitehall Police Officer Chris Kyne;
- D. Whitehall Police Sergeant Richard LaChapelle;
- E. Washington County Public Defender Michael Mercure; and
- F. Washington County Assistant Public Defender Amanda Ross.

33. During the time relevant to Charge II, each of the six individuals named in paragraph 32 was aware that respondent was a New York State judge. None of those individuals attended the fundraiser for respondent and his family addressed in paragraphs 35 through 37 herein. Some of these individuals saw a Facebook post advertising the fundraiser for respondent but felt no pressure to attend due to respondent's position as a judge. Others did not see a Facebook post advertising the fundraiser or know about the event.

34. Respondent was also Facebook "Friends" with Whitehall Police Investigator Frank Hunt. Investigator Hunt is a member of the Lodge and was aware that respondent was a New York State judge. In his position with the Whitehall Police, Mr. Hunt investigates cases that may be prosecuted in respondent's court. Mr. Hunt would testify that he attended the fundraiser for respondent addressed in paragraphs 35 through 37 herein but could not recall how he learned about the event or whether he saw any Facebook posts about it. Mr. Hunt did not pay a fee to enter the fundraiser or donate any items to the event. He did, however, purchase raffle tickets.

35. On October 24, 2019, respondent was "tagged"¹⁰ in a Facebook post by his sister, Kristy Putorti, which included an invitation to an event entitled "SPAGHETTI DINNER – BASKET PARTY BENEFIT FOR ROBERT PUTORTI JR.," scheduled for November 9, 2019, at the Whitehall Elks Lodge. The invitation listed the cost to attend the benefit as \$10, announced there would also be raffles for baskets and "large items,"

¹⁰ A printout from the Facebook Help Center about "tagging" is annexed as Exhibit 6 to the Agreed Statement.

and reported injuries and medical expenses suffered by respondent due to a motorcycle accident on August 31, 2019. The invitation concluded, “We Need Your Help!! We are accepting donations and items to raffle off: baskets, gift cards, or large items. Proceeds to go to Bobby and his family. We can’t do this without your assistance and attendance! Please Share!! Thank You Very Much for Your Support!!” Copies of screenshots of this post are annexed as Exhibit 7 to the Agreed Statement. The post did not identify respondent as a judge, nor did it mention his position or affiliation with the Whitehall Court in any way. The post identified respondent as “Whitehall Elks Leading Knight and community friend to all...”

36. Because Ms. Putorti “tagged” respondent in her Spaghetti Dinner post, the post appeared on respondent’s Facebook page, and thus was viewable to any member of the public who viewed respondent’s page. Instead of deleting the post from his Facebook page or removing the tag, respondent wrote above the post, “I am very humbled by this, I hope to see as many people as I can. Thank you.”

37. The November 9, 2019, Spaghetti Dinner benefit was attended by over 500 people and raised a net amount of approximately \$9,400, which respondent received and/or which organizers of the event applied to respondent’s medical expenses.

38. On July 20, 2020, respondent shared to his Facebook page a post by the Lodge advertising a “QUEEN OF HEARTS” drawing scheduled for July 25, 2020, and wrote, “Come support our lodge everyone, we’re trying to keep the doors open, because of the COVID-19, we need all your help to bring in some revenue. We help support the communities around us with various fundraisers, but now we need yours!! Thank you!”

A copy of a screenshot of this post is annexed as Exhibit 8 to the Agreed Statement. The event was for members of the Lodge only. It raised a net amount of approximately \$40.

39. On August 8, 2020, respondent shared to his Facebook page a post by the Lodge advertising an “Elks BBQ” event scheduled for August 8, 2020, and wrote, “Come out and support our lodge, help us so we can give back to the people in the communities around us!” Copies of screenshots of this post are annexed as Exhibit 9 to the Agreed Statement. The event was a fundraiser for the Lodge and was open to the public. It was attended by approximately 213 people and raised a net amount of approximately \$1,460.

40. On September 9, 2020, respondent shared to his Facebook page a post by the Lodge advertising a “Thirsty Thursday” event scheduled for September 10, 2020, and wrote, “Come out for some good food and help support the lodge!” A copy of the screenshot of this post is annexed as Exhibit 10 to the Agreed Statement. The event was for members of the Lodge only. It raised a net amount of approximately \$97.

41. On September 11, 2020, respondent shared to his Facebook page a post by the Lodge advertising a “chicken BBQ” event scheduled for September 12, 2020, and wrote, “I hope everyone can attend our last chicken bbq for the season....” Copies of screenshots of this post are annexed as Exhibit 11 to the Agreed Statement. The event was a fundraiser for the Lodge and was open to the public. It was attended by approximately 239 people and raised a net amount of approximately \$1,978.

42. On September 16, 2020, respondent shared to his Facebook page a post by the Lodge advertising a “THIRSTY THURSDAY” event scheduled for September 17, 2020, and wrote, “Something a little different tomorrow, come down and join us for dinner,

help support our lodge! We're doing much better, let's keep it going!!" Copies of screenshots of this post are annexed as Exhibit 12 to the Agreed Statement. The event was for members of the Lodge only. It raised a net amount of approximately \$152.

43. On September 22, 2020, respondent shared to his Facebook page a post by the Lodge advertising a "Thirsty Thursday" event scheduled for September 24, 2020, and wrote, "It's my slow smoked pulled pork, hope you all can enjoy!" A copy of a screenshot of this post is annexed as Exhibit 13 to the Agreed Statement. The event was for members of the Lodge only. It raised a net amount of approximately \$242.

44. On October 5, 2020, respondent shared to his Facebook page a post by the Lodge advertising a "Thirsty Thursday" event scheduled for October 8, 2020, and wrote, "Come join us Thursday, I'm making Hot and Sweet Sausage for everyone to enjoy! Please remember your masks and that all Covid-19 rules apply! Thanks for your support!" A copy of a screenshot of this post is annexed as Exhibit 14 to the Agreed Statement. The event was for members of the Lodge only. It raised a net amount of approximately \$186.

45. Respondent's intent in sharing and promoting each of the Lodge's Facebook posts advertising its events identified in paragraphs 38 through 44 was to raise funds for the Lodge. All of these posts were viewable by the public and remained viewable as of January 20, 2021, the date of the Second Formal Written Complaint, notwithstanding that respondent was notified by letter dated November 12, 2020, that the Commission was investigating a complaint alleging that he had engaged in the conduct charged herein.

Respondent changed his Facebook security setting to “private” prior to submitting his Verified Answer to the Second Formal Written Complaint.

46. An inquiry letter sent to respondent during the Commission’s investigation of the allegations underlying this Charge and his written response thereto are annexed to the Agreed Statement as Exhibit 15 and Exhibit 16, respectively.

47. At the time of the events in Charge II, respondent was aware that the Commission was investigating the matters addressed in Charge I.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(3), 100.3(B)(4), 100.4(A)(1) and (2) and 100.4(C)(3)(b)(i) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause pursuant to Article VI, Section 22, subdivision (a) of the Constitution and Section 44(1) of the Judiciary Law. Charges I and II of the Formal Written Complaints are sustained insofar as they are consistent with the above findings and conclusions and respondent’s misconduct is established.

Each judge is obligated to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and must observe high standards of conduct “so that the integrity and independence of the judiciary will be preserved.” (Rules, §§100.1 and 100.2(A)) The Rules require each judge to “be patient, dignified and courteous to litigants” and to “perform judicial duties without bias or prejudice against or in favor of any person” and without manifesting in words or conduct bias based upon race. (Rules, §§ 100.3(B)(3) and (4)) Respondent engaged in highly inappropriate conduct when he brandished his loaded gun in the courtroom at a litigant.

Respondent acknowledged that his repeated mention of Mr. Wood's race when recounting the gun incident may have created the appearance of racial bias. In addition, respondent compounded his misconduct and exhibited a serious lack of judgment when he boasted about brandishing his gun in the courtroom.

While on the bench, respondent brandished his gun at Mr. Wood even though Mr. Wood did not pose an imminent threat to respondent or to anyone else.¹¹ There was no justification for respondent's conduct. A courtroom is no place for a judge to brandish or point a gun at a litigant.¹² Litigants appear in court for the safe and orderly resolution of matters impacting their lives. Judges who preside over such matters must be dispassionate arbiters in their courtrooms. "Self-control is an essential element of judicial temperament." *Matter of Allman*, 2006 NYSCJC Annual Report 83, 86.

Brandishing his loaded gun in his courtroom at a litigant who was appearing before him was an extreme breach of judicial decorum which respondent then exacerbated by his subsequent conduct.

We are troubled by respondent's repeated description of Mr. Wood's race. In 2016, respondent told his former co-judge that he had brandished his gun at a "big Black

¹¹ Respondent told judges at the 2018 Magistrates Association meeting and his supervising judge that a police officer was present at the time of the incident. According to the Agreed Statement, the police officer respondent identified as being present would not corroborate respondent's version of events as told to respondent's cousin and it was stipulated that there were no witnesses to respondent brandishing his gun. With respect to respondent's statement at the 2018 Magistrates Association meeting that the police officer present at the time of the gun incident joked with respondent about how quickly respondent had been able to pull his gun, it was stipulated that, "Officer Archambault has no recollection of any such incident or comments."

¹² Respondent told his supervising judge that he "pointed" his gun at the defendant.

man.” He told his fellow judges at the October 2018 Washington County Magistrates Association meeting that he had brandished his gun at a “large Black man” and repeated that description to his supervising judge.¹³ Moreover, respondent acknowledged that by identifying Mr. Wood by race, respondent may have created the appearance of racial bias. Such appearance, particularly in the context of respondent’s extremely inappropriate action toward Mr. Wood, is wholly unacceptable for a member of the judiciary.

Significantly, respondent did not appear to have insight into the gravity of his misconduct. Rather than being remorseful about brandishing his gun without justification while on the bench, respondent appears to have been proud of his actions. On more than one occasion, he recounted the incident to his fellow judges. He also agreed to be interviewed by his cousin who published an article in which respondent described brandishing his gun in the courtroom. Respondent’s former co-judge, with whom respondent discussed the incident and the article, believed that respondent was bragging about the gun incident. In addition, another judge at the October 2018 Washington County Magistrates Association meeting was sufficiently concerned about respondent’s statements concerning the gun incident to contact respondent’s supervising judge about the matter. Respondent appears to have been unable to recognize the serious impropriety of brandishing his gun while on the bench. By brandishing his loaded gun at a litigant, repeatedly mentioning the race of that litigant and bragging about the gun incident,

¹³ In the Agreed Statement, respondent stipulated that Mr. Wood was approximately 6’0” and weighed approximately 165 pounds. However, when he was questioned about the gun incident, respondent told his supervising judge that Mr. Wood was approximately 6’9” and “built like a football player.”

respondent engaged in a pattern of behavior unbecoming a judge and undermined public confidence in the judiciary.¹⁴

Contrary to the dissent, the gun incident in the courtroom was not a “single isolated” incident. In addition to acknowledging that he improperly brandished his gun in the courtroom, when speaking with his cousin, respondent described another gun incident when he brandished his gun while he was attempting to recover a car reportedly stolen from his grandfather’s car lot.

Contrary to our dissenting colleague’s opinion, there was evidence of respondent’s racial bias. Respondent repeatedly referred to Mr. Wood’s race when it was not relevant. Respondent exaggerated Mr. Wood’s physical stature when talking with his supervising judge. Significantly, the dissent ignores respondent’s admission that he may have created the appearance of racial bias when he identified Mr. Wood by race.

The dissent argues that respondent was not racially biased because respondent went to the courthouse/jail on his lunch hour to reduce Mr. Wood’s fine to community service and release him from jail. There is nothing in the record to indicate the date upon which this occurred or respondent’s motive for these actions. Moreover, there is nothing in the record to indicate that the prosecution was given the opportunity to be heard or notified of respondent’s action or told of the apparent *ex parte* conversation respondent

¹⁴ The dissent contends that public confidence in the judiciary could not have been undermined. Among other things, this claim ignores that respondent recounted the gun incident to his cousin who then published an article which described the courtroom gun incident. The article remained viewable to the public online from the date of publication in December 2015 to at least the date of the Agreed Statement in November 2021.

had with Mr. Wood's wife prior to going to the courthouse/jail. This may be additional evidence of misconduct by respondent. Nonetheless, as the record is unclear and the reasoning for respondent changing the sentence is not in the record, this event was not a factor in our opinion.

Respondent also improperly participated in fundraising for the Lodge. While judges are permitted to be officers of a "charitable, cultural, fraternal or civic organization not conducted for profit", judges "shall not personally participate in the solicitation of funds or other fund-raising activities" for such organizations. (Rules §100.4(C)(3)(b)(i)) In *Matter of McNulty*, 2008 NYSCJC Annual Report 177, 179, the Commission wrote, "[t]he rules are clear; the Advisory Committee on Judicial Ethics has warned judges for decades not to engage in fund-raising activities; and the Commission has addressed the subject in its annual reports." In violation of his ethical obligations, respondent improperly shared fundraising posts for the Lodge on his Facebook page on at least seven occasions. Respondent's Facebook posts were repetitive and not an isolated incident. In addition, respondent shared the improper posts after he knew that he was under investigation for violating his ethical responsibilities in connection with the courtroom gun incident. Accordingly, respondent violated his ethical responsibilities during a time when he should have been particularly attentive to those responsibilities.

Pursuant to Section 44(5) of the Judiciary Law, Section 7000.6(d) of the Commission's Operating Procedures and Rules ("Commission's Rules"), Section 3.9 of the Commission's Policy Manual and the explicit language in the stipulated Agreed Statement, this determination is based upon the record as set forth in the Agreed

Statement.¹⁵ Contrary to the Judiciary Law, the Commission's Rules, the Policy Manual and the Agreed Statement, the dissent relies upon material outside the record including an Advisory Opinion by the Advisory Committee on Judicial Ethics ("Advisory Committee") which was obtained by respondent's supervising judge regarding how the supervising judge should respond to respondent's statements about the courtroom gun incident.¹⁶ The dissent relies upon the Advisory Opinion to make factual findings.¹⁷ In addition to the Advisory Opinion not being part of the record, there is no evidence before the Commission regarding what information respondent's supervising judge submitted to the Advisory Committee which issues opinions based upon the information provided to it. Moreover, the Advisory Opinion addressed the responsibilities of respondent's supervising judge, not respondent's conduct. The Commission is responsible for investigating judicial misconduct and taking appropriate action.

We are compelled to respond to the dissent's arguments regarding the investigations the Commission properly authorized into respondent's conduct in

¹⁵ The November 26, 2021 Agreed Statement to which the parties stipulated included the following statement, "the Commission shall make its determination upon the following facts, which shall constitute the *entire* record in lieu of a hearing." (emphasis added) In December 2021, the Commission accepted this Agreed Statement after having rejected a prior Agreed Statement the parties had submitted. In addition to stipulating to the facts in the Agreed Statement and stipulating that he violated the Rules, respondent waived oral argument before the Commission.

¹⁶ The dissent also includes information from the Elks organization's website which is outside the record.

¹⁷ For example, in the dissent's view, the Advisory Opinion established that respondent's supervising judge, his district administrative judge and the Advisory Committee ". . . all were satisfied that the incident did not raise questions about the respondent's fitness to continue on the bench . . ." The dissent does not include the Advisory Opinion's statement that, if the information provided to it by the supervising judge was accurate, the judge under his supervision had committed a "substantial violation" of the Rules Governing Judicial Conduct.

connection with the gun incident and subsequently into respondent's fundraising Facebook posts. The Commission properly voted to authorize both investigations as provided in Section 44(2) of the Judiciary Law, Section 7000.2 of the Commission's Rules and Section 2.1(E) of the Commission's Policy Manual.¹⁸ Furthermore, it was more than appropriate for the Commission's staff to review respondent's public social media posts to determine whether he had made any additional public comments about the gun incident in the courtroom.¹⁹

It is well-settled that judges are held to higher standards of conduct than the general public. *Matter of Kuehnel*, 49 N.Y. 2d 465, 469 (1980) (“[s]tandards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach.”); *Matter of Lonschein*, 50 N.Y.2d 569, 572 (1980) (“[m]embers of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.” (citation omitted)). Respondent has failed to meet the high standards of conduct required of members of the judiciary.

We are mindful that “removal, the ultimate sanction, should not be imposed for

¹⁸ The Commission's Policy Manual was updated in May 2022 and Section 2.1(F) is the relevant section in the current manual.

¹⁹ Section 2.6(A) of the Commission's Policy Manual provides: “Investigations shall be limited to conduct reasonably related to the complaint. If, in the course of an investigation, Commission staff is made aware of clearly unrelated acts that may constitute judicial misconduct, such information should be reported to the Commission, which may authorize investigation of that conduct in a separate complaint.”

misconduct that amounts simply to poor judgment or even extremely poor judgment, but should be reserved for truly egregious circumstances.” *Matter of Mazzei*, 81 N.Y.2d 568, 572 (1993) (citations omitted) Here, without any justification and while on the bench, respondent engaged in the disturbing and dangerous act of brandishing his loaded weapon at a litigant in his courtroom. In recounting the incident, respondent then repeatedly referenced the litigant’s race and boasted about brandishing his gun in the courtroom. Respondent has demonstrated that he lacks the appropriate judicial temperament. His actions irreparably undermined confidence in his ability to continue as a judge. Respondent also showed his lack of attention to his ethical obligations when he engaged in improper fundraising. Given the seriousness of his conduct and the totality of the evidence, we find respondent’s misconduct to be egregious.

The dissent argues that removal is too severe because, in his view, respondent was unaware that his conduct was improper. Judges are required to know their ethical responsibilities and it is well-settled that ignorance is not a defense. *Matter of VonderHeide*, 72 N.Y.2d 658, 660 (1988) (“[w]e also reject the contention that the charges should not be sustained in view of petitioner's status as a nonlawyer and his lack of training. Ignorance and lack of competence do not excuse violations of ethical standards.”)²⁰

²⁰ Moreover, the cases the dissent cites do not support a sanction more lenient than removal in this matter. For example, one of the cases the dissent cites, *Matter of Sgueglia*, 2013 NYSCJC Annual Report 304, involved, *inter alia*, the accidental discharge of the judge’s gun in his chambers and the judge was censured. Here, respondent’s actions in the gun incident were intentional, occurred while respondent was on the bench and involved a litigant.

The Court of Appeals has held that, “[t]he purpose of judicial disciplinary proceedings is to impose sanctions where needed to protect the bench from unfit incumbents.” *Matter of Senzer*, 35 N.Y.3d 216, 219 (2020) (citations omitted) Through his egregious misconduct, respondent has demonstrated that he is unfit for judicial office.

By reason of the foregoing, the Commission determines that the appropriate disposition is removal.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Seiter and Ms. Yeboah concur.

Mr. Rosenberg dissents and files a separate opinion.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: September 9, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

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

ROBERT J. PUTORTI,

a Justice of the Whitehall Town Court and
Whitehall Village Court, Washington County.

DISSENTING
OPINION BY MR.
ROSENBERG

I respectfully dissent. The sanction of removal is unjust, unwarranted, and overly harsh for respondent's conduct. Based on the Agreed Statement of Facts (ASF), the appropriate sanction for both charges should be admonition, or at the very worst, censure. The single isolated courtroom incident at issue in Charge I that occurred in 2015, when the respondent briefly displayed a gun to a criminal defendant (who was previously sentenced by respondent in connection with a violent knife assault on two people) who rushed the bench and crossed over the "stop line" in the courtroom, constituted at worst, poor judgment. The majority's determination to remove respondent is inappropriately harsh and punitive. Indeed, the New York State Court of Appeals has held that an isolated incident which was the result of poor judgment or even extremely poor judgment is not grounds for removal. *Matter of Cunningham*, 57 N.Y.2d 270 (1982); *Matter of Ayres*, 30 N.Y.3d 59 (2017).

I begin by pointing out that this disciplinary proceeding is not the result of any complaint filed against the respondent. Mr. Wood, the criminal defendant that appeared before respondent in 2015, did not file a complaint. Judge Hobbs, the respondent's

supervising judge who was fully familiar with the matter and determined that no sanction or further action was appropriate, did not file a complaint or refer the matter to the Commission. The Advisory Commission on Judicial Ethics, which issued an opinion relating to this very matter, did not conclude that respondent's conduct warranted any discipline or referral to the Commission. Ironically, the reason this matter came to the Commission's attention was because the respondent *himself* sought advice from Supervising Judge Hobbs in 2018 during a Magistrates Association meeting regarding courtroom security and relayed the incident involving Mr. Wood to a small group of judges. That triggered Judge Hobbs to request and receive Ethics Opinion 18-165 on January 31, 2019 (the "Ethics Opinion")¹ which informed Judge Hobbs that if he was satisfied the matter was an isolated incident, and if he was satisfied that the respondent was counseled and had agreed that such conduct would not occur again, no further action needed to be taken. That is precisely what Judge Hobbs determined. Thus, Supervising Judge Hobbs, his district administrative judge, as well as the Advisory Committee on Judicial Ethics all were satisfied that the incident was an isolated single event that would not reoccur, all were satisfied that the incident did not raise questions about the respondent's fitness to continue on the bench and did not require any further investigation or sanction. Nevertheless, the Commission *sua sponte* commenced its own investigation, reached the opposite conclusion, and has erroneously determined to punitively remove respondent from the bench.

¹ Knowing that the Ethics Opinion demonstrates how wrong it is to remove respondent, the Majority erroneously contends I should not be permitted to take judicial notice of Ethics Opinion 18-165 even though it concerns *the same respondent and the same exact incident involved in this proceeding* because, in their erroneous opinion, it is purportedly "outside the record." At the same time, they hypocritically cite to Opinion 06-51 of the Advisory Committee on Judicial Ethics in the first footnote (OPN 4) of the Majority Opinion. In other words, they can cite to ethics opinions, but I cannot, even though Ethics Opinion 18-165 that I cite involves *the very same respondent and very same facts as are at issue herein*. In any event, as a matter of law, just as it is permissible to cite legal authority and court decisions, it is appropriate to take judicial notice of an Ethics Opinion, particularly one which involves *the same respondent and facts that are at issue in this proceeding*.

“The purpose of judicial disciplinary proceedings is ‘not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents.’ *Matter of Duckman*, 92 N.Y.2d 141, 152 (1998). Here, the Majority appears to be single-mindedly resolved on imposing the harshest sanction of removal upon the respondent because they have predetermined that the white, gun-carrying male respondent (who unnecessarily but accurately described the defendant that appeared before him as Black) displayed the gun based on racial bias, even though the undisputed evidence in the record contradicts that unfounded conclusion. The best the Majority can muster to support their predetermined opinion is the fact that respondent, *years after the incident*, accurately described Mr. Wood to fellow Judges at a 2018 judicial conference as a “Black man,” and/or a “large Black man,” and days later described Mr. Wood to his Supervising Judge as being “built like a football player.” Simply because some people may interpret such accurate and benign descriptions as giving the *appearance* of racial bias, is no basis to remove the respondent from the bench. It is simply wrong to punitively remove respondent merely because respondent accurately described Mr. Wood as being Black, particularly where, as here, the record contains overwhelming *undisputed* evidence which demonstrates that respondent was neither racist nor motivated by racial bias.²

To the contrary, proof that respondent is not racist or motivated by racial bias is conclusively established by the undisputed fact that *before* the isolated gun incident occurred in late 2015, and *after* respondent had sentenced Mr. Wood on two other criminal charges stemming from violent knife attacks to a \$555 fine/surcharge and 1 year conditional discharge in June 2015, the respondent thereafter, at the urgent request of Mr.

² Merely describing a person by their race is not racist; describing a person as being “large” is not racist; and describing a person as being “built like a football player” is not insulting much less racist.

Wood's wife, went "on his lunch hour from his other employment," and without any legal, moral, or ethical obligation to do so, re-sentenced Mr. Wood to community service in order to effectuate Mr. Wood's immediate release from jail, upon learning from Mr. Wood's wife that Mr. Wood was being jailed for being unable to pay the \$555 fine and surcharges that respondent originally imposed. (ASF §14). This is overwhelming proof that the respondent is not a racist. The Majority Opinion inexplicably *ignores this dispositive fact in the record*, stating "there is nothing in the record to indicate respondent's motive for these actions" and goes as far as to speculate that respondent may have actually done something improper by effectuating Mr. Woods' release from jail even though there is nothing in the record to support that speculation. (OPN, p. 21). The Majority then erroneously finds that "as the record is unclear and the reasoning for respondent changing the sentence is not in the record, **this event was not a factor in our opinion.**" (OPN, p. 21) (emphasis added).

In other words, this dispositive evidence *in the record* establishing that respondent is not racist and was not motivated by racial bias—evidenced by the undisputed fact that he went to the courthouse to release Mr. Wood from jail without any legal or moral duty to do so—was improperly *ignored* by the Majority. Moreover, and contrary to their findings, the ASF states quite clearly what the respondent's motive was—to get Mr. Woods released from jail:

"8. On June 22, 2015. . . Mr. Wood pled guilty. . . Respondent sentenced Mr. Wood to a one-year conditional discharge and imposed fines and surcharges totaling \$555. Respondent avers, and court records do not dispute, that Mr. Wood failed to pay the fine and surcharge and was placed in jail. Mr. Wood's wife told respondent that she and Mr. Wood could not afford the fine but could pay the surcharge. Respondent went to the courthouse/jail on his lunch hour from his other employment and reduced Mr. Wood's fine to community service and released Mr. Wood from jail." (ASF, §14)

The ASF plainly describes what respondent did, and why he did it, which was to get Mr. Wood released from jail when he was unable to pay the fine. The Majority improperly refuses to even *consider* this dispositive evidence in the record (which evidence destroys any suggestion that respondent was motivated by racial bias when he displayed the gun).

In addition, and contrary to the Majority Opinion's conclusion, respondent was immediately remorseful and recognized the impropriety of his conduct after being counseled by Supervising Judge Hobbs in October 2018 that his conduct was improper. After being so advised, respondent: 1) signed a counseling memorandum that Judge Hobbs provided him "in which respondent agreed never to display, use, or threaten to use a firearm in court unless he or someone else was facing 'deadly physical force.'" (ASF Ex. 5; ASF §30); and 2) respondent never again carried his gun into the courtroom after October 2018 despite the fact he had a right to do so. (ASF §32).

As to the respondent's Facebook activities at issue in Charge II, although some of the conduct was not proper, it does not warrant removal either, particularly since respondent has no prior disciplinary history.

DISCUSSION

Respondent has been Justice of the Whitehall Town Court, Washington County since January 1, 2014 and was recently re-elected for a term ending on December 31, 2025. He is also a Justice of the Whitehall Village Court, Washington County, since June 1, 2014 and his current term ends on April 6, 2025.

Respondent is a licensed gun owner in multiple states.³ During his initial December 2013 judicial training course, Respondent was advised “he could legally carry a concealed firearm at the bench.”⁴ (ASF §11).

AS TO CHARGE I

On March 30, 2015, a criminal defendant by the name of Brandon Wood appeared before respondent with his counsel in connection with several serious violent felony and misdemeanor charges which accused Mr. Wood of committing violent felonious assaults on his wife and a man named Roger, “with intent to cause serious physical injury. . . to Roger . . . by attempting to stab Roger in the throat with a knife . . .” (ASF § 13, Ex. 2) It further alleged that Mr. Wood “did intentionally place or attempt to place another person being that of Kayla M. in fear for her life by displaying a knife and attempted to slash Kayla M. with that knife.” (ASF §13, Ex. 2)⁵

“On June 22, 2015...on consent of the prosecution,...Mr. Wood pled guilty [to reduced charges and was] sentenced by respondent to a one-year conditional discharge and imposed fines and surcharges totaling \$555.” (ASF §14) “Mr. Wood failed to pay the fine and surcharge and was placed in jail.” (ASF §14)

Mr. Wood’s wife (a victim of the violent incident which was the basis of the offenses Mr. Wood pled guilty to) thereafter “told Respondent that she and Mr. Wood could not afford the fine but could pay the surcharge.” (ASF §14) Upon hearing this, and without

³ At all relevant times, respondent has been licensed in New York, Florida, New Hampshire, Virginia, Utah, and Connecticut. (ASF, Exhibit 1).

⁴ Opinion 06-51 of the Advisory Committee on Judicial Ethics provides “there is no prohibition in the Rules Governing Judicial Conduct barring [a judge] from carrying a firearm while performing... duties on the bench.”

⁵ One of the victims (Roger) described Mr. Wood as “tall like 6-4.” (ASF, Ex. 2)

having any legal, ethical, or moral obligation to do so, “Respondent went to the courthouse/jail on his lunch hour from his other employment and reduced Mr. Wood’s fine to community service and released Mr. Wood from jail.” (ASF §14)

“In late 2015, Mr. Wood was [again] scheduled to appear before Respondent” on new and different charges. (ASF § 15) During that appearance, Mr. Wood “ran quickly to the bench, past a line where defendants are supposed to stand, and within two feet of respondent.” (ASF § 28D) As Mr. Wood approached the bench quickly, “[r]espondent. . . feared for his safety” and briefly “brandished his gun at Mr. Wood.” (ASF §17)

Following the incident, Mr. Wood “moved back and respondent put his gun back under the bench.” (ASF § 28(F)) “There were no other witnesses to this event” (ASF §16) and thus, no one else at any time saw the respondent briefly display his gun to Mr. Wood.

“At the time of the events described herein, neither the Whitehall Village Court nor the Whitehall Town Court had any court officers, bailiffs, or other security personnel, apart from the occasional presence of a police officer.” (ASF §9)

Following this one isolated courtroom incident, respondent was interviewed by his cousin, a journalism student at Hofstra University, who was writing an article “about his possession of numerous firearms and firearm licenses.” (ASF §18) During the interview “he stated that he once brandished his handgun at ‘someone’⁶ who came running up to him at the bench and to whom he said, ‘woah, woah, woah, slow down.’” (ASF §20A)

Three years after the incident, on October 23, 2018 respondent attended the 2018 Magistrates Association meeting. During that meeting, he “recounted the courtroom incident to a small group of other judges [including his Supervising Judge, Judge Hobbs]. .

⁶ Respondent did not refer to the fact that the “someone” was Black.

.during a discussion about courtroom security” to ask, “advice from his supervising judge about what to do in the future under similar circumstances.” (ASF §25)

Following that meeting, Supervising Judge Hobbs called the respondent on October 25, 2018 to discuss the incident and counseled him as to why displaying the gun was inappropriate and improper. (ASF §26, Exhibit 4) The respondent immediately realized the serious nature of his lapse in judgment, fully cooperated with all of Judge Hobbs’ advice, accepted counseling, and signed a memorandum acknowledging Judge Hobbs’ advice and agreeing to comply with all the applicable rules. Notably, Judge Hobbs did not direct the respondent to cease bringing his gun into the courtroom (since the respondent was permitted to do so). Rather, Judge Hobbs’ ultimate directive was that “the judge’s firearm should remain concealed at all times while in the courtroom” and that he was to “never to display, use or threaten to use a firearm in court unless he or someone else was facing ‘deadly physical force.’” (ASF Ex. 5; ASF §30) Nevertheless, without being told to do so, the respondent voluntarily ceased bringing his gun to the courtroom, evidencing how seriously he took the matter. (ASF §32).

The Supervising Judge’s memorandum did not take issue with the respondent’s description of Mr. Wood as a “Black man” who was “built like a football player,” nor construe that description as evidence of racial bias, and only counseled the respondent about the use of a gun in the courtroom. (ASF, Exhibit 4) Moreover, and notably, neither Mr. Wood nor Supervising Judge Hobbs ever filed a complaint against respondent with the Commission.

The respondent’s single lapse in judgment does not justify the drastic sanction of removal from the bench. “Removal is excessive where the misconduct amounts solely to poor judgment, even extremely poor judgment.” *Matter of Skinner*, 91 N.Y.2d 142,144 (1997).

(00428505-1)

The Court of Appeals has recognized that “[r]emoval is an extreme sanction and *should be imposed only in the event of truly egregious circumstances* . . . removal should not be ordered for conduct that amounts simply to poor judgment, or even extremely poor judgment.” *Matter of Cunningham*, 57 N.Y.2d 270, 275 (1982) (emphasis added). In *Cunningham*, the Court of Appeals reversed the Commission’s determination to remove a judge from the bench, instead imposing the sanction of censure. *See also Matter of Kelso*, 61 N.Y.2d 82, 88, 459 N.E.2d 1276, 1279 (1984) (rejecting Commission’s sanction of removal and instead imposing censure, holding “petitioner’s conduct marred the integrity of the Bench, but it does not rise to a level where it must be concluded that petitioner can no longer serve effectively or that his continued services will be contrary to the best interests of the judiciary.”).

Here, the Majority has not and is unable to articulate what “truly egregious circumstances” exist that warrant removal. An isolated incident from 2015 when the respondent was unaware that he could not display or “use or threaten to use a firearm in court unless he or someone else was facing ‘deadly physical force,’” an interview given to respondent’s cousin about gun ownership, and statements made three years later in 2018 during a discussion about security in the courthouse, coupled with respondent’s *immediate* compliance and agreement with *all* the advice and directives of his Supervising Judge does not constitute “egregious” let alone “truly egregious” circumstances requiring removal. Indeed, the incident (which no-one else witnessed) would have never culminated in these proceedings but for the fact that the respondent sought advice from his Supervising Judge in 2018 regarding safety in the courtroom.

To be clear, there was no ethical rule, statute, advisory opinion, or court decision issued prior to the 2015 isolated courtroom incident (or after), which addressed when it is

(00428505-1)

appropriate for a Judge to display his firearm in court. Ignoring this material fact, the Majority Opinion erroneously determines that removal is appropriate for this one isolated courtroom incident, despite the fact that was no rule or opinion which set forth when displaying a firearm is impermissible in a situation where a known alleged violent defendant rushes towards the Judge past the “stop line” demarking the closest parties may get before the bench. The Majority’s reliance on *Matter of VonderHeide*, 72 N.Y. 2d 658, 660 (1988)—which held “[i]gnorance and lack of competence does not excuse violations of ethical standards”—is simply inapplicable. In *VonderHeide*, a Town Justice was found to have “routinely sought out and interviewed witnesses outside of court and made judgments based on their unsworn ex parte communications; that he berated a teen-age boy whom he believed to be carrying an open container outside a restaurant and used intemperate language and threatened harsh treatment if the youth appeared in his court; that on one occasion he arraigned, accepted a guilty plea from, and sentenced a person appearing before him as a complaining witness in an unrelated matter although no accusatory instrument was filed and the person was never informed of the charges; that he failed to disqualify himself from hearing two criminal cases even though he was a witness to the events underlying the charges; and that as a condition to his agreement to accept a guilty plea from a teen-ager, petitioner, apparently acting in some self-appointed prosecutorial role, insisted that the teen-ager sign a statement implicating a third person in an alleged crime petitioner had heard about through private conversations.” *Id.* at 659-60.

The multiple transgressions of well-established judicial ethics rules, statutes, and case law standards in *VonderHeide* were blatantly obvious and repeatedly violated by this intemperate Town Justice justifying his removal. *VonderHeide* provides no support for removal of Respondent for the isolated courtroom incident at issue in this case.

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Nor is there any evidence of racial bias or prejudice; to the contrary, the undisputed evidence shows the respondent was not racially biased and that he went out of his way, on his own personal time, to release the same “Black man” he is accused of being biased against, from jail. If respondent was racially motivated, he would not have taken that action but would have left Mr. Wood in jail until Mr. Wood was able to pay the \$555 fine.

The Commission has had at least three occasions to consider complaints involving firearms. In *Matter of Sgueglia*, 2013 NYSCJC Annual Report 304 (August 10, 2012), a judge who routinely brought his licensed firearm to the Courthouse and kept it in a drawer in chambers accidentally discharged the gun in chambers. Thankfully, no one was hurt. Following the incident, the judge stopped bringing his firearm to the courthouse. The Commission determined to impose censure and not removal. Notably, the Commission found the judge’s decision to no longer bring his firearm to the courthouse as a mitigating factor.

In *Matter of Ciganek*, 2002 NYSCJC Annual Report 85, a justice intentionally and dangerously fired his handgun to scare away a wild turkey from a busy intersection with multiple people in the immediate area. The Commission found that the judge’s actions violated the judicial rules, “were contrary to law, and showed a lack of good judgment and a notable disregard for the safety of bystanders and motorists. Firing a gun under such circumstances created a dangerous situation.” The discipline imposed was admonition.⁷

In *Matter of Moskos* 2017 NYSCJC Annual Report 177 (October 3, 2016) the respondent willfully attempted to surreptitiously bring a concealed firearm into Otsego County-owned buildings despite his knowledge of a local law prohibiting possession of a

⁷ Significantly, the Majority fails to explain how the intentional shooting of a gun in public, creating a “dangerous situation” in *Ciganek* only warranted admonition, but the respondent’s brief display of a gun warrants removal.

firearm in a county-owned building by anyone other than law enforcement. The respondent's three willful attempts to violate that law spanned two years and yet the discipline imposed was admonition.

Respondent's conduct here, at best, was arguably on the same level as the conduct in *Matter of Sgueglia*, except that here, no gun was ever discharged. Similarly, a gun was actually discharged in *Ciganek*. Respondent's one isolated act was not committed in violation of any law (or established ethical rule), unlike the three attempted willful violations of law over 2 years in *Moskos*.

Moreover, there are mitigating factors which the Majority Opinion inexplicably failed to take into consideration. First, it is undisputed that respondent has not brought a gun into the courthouse since October 25, 2018, even though it is lawful for him to do so and that he did so voluntarily even though his own Supervising Judge did not make that a requirement. Second, respondent has had no prior disciplinary history since taking the bench in 2014 nor since the incidents alleged in this proceeding. Third, respondent has been fully cooperative with the Commission throughout its inquiry. Fourth, the respondent unhesitatingly signed the counseling Memorandum agreeing to abide by all the applicable judicial rules and to conduct himself accordingly. Fifth, the respondent continues to be a respected member of his community and was re-elected as both Town and Village Justice after the incident. Sixth, the respondent admitted, in retrospect and upon reflection, that his conduct in displaying the gun was improper.

There is one other important fact and that is Opinion 18-165 of the Advisory Committee of Judicial Ethics dated January 31, 2019, which I properly take judicial notice

of.⁸ As previously mentioned, Supervising Judge Hobbs requested that Ethics Opinion to ask whether he was obligated, under the Rules Governing Judicial Conduct, to report the gun incident to the Commission. The Advisory Committee concluded there was no need to report the incident to the Commission unless Supervising Judge Hobbs himself thought it should be reported:

“we believe the supervising judge ‘is in the best position to assess [the respondent’s] motivations and receptiveness to guidance about his/her ethical responsibilities going forward.’ We note that the supervising judge is apparently satisfied that it was a one-time, isolated incident provoked by [the respondent’s] concerns about his/her personal safety. Moreover, the supervising judge has, in consultation with the district administrative judge, counseled [the respondent] orally and in writing to impress upon him/her most emphatically that this conduct must never be repeated. As described, these steps appear to be reasonable and appropriate. Thus, if the supervising judge is satisfied that these steps have adequately addressed the situation, he/she need not take any further action.”

Thus, Supervising Judge Hobbs, his district administrative judge, as well as the Advisory Committee on Judicial Ethics all were satisfied that the incident was an isolated single event that would not reoccur, all were satisfied that the incident did not raise questions about the respondent’s fitness to continue on the bench and did not require any further investigation or sanction.⁹

⁸ “Judicial notice may be taken by a court at any stage of the litigation, even on appeal.” Caffrey v. N. Arrow Abstract & Settlement Servs., Inc., 160 A.D.3d 121, 127 (2d Dep’t 2018).

⁹ The Majority points out that the Ethics Opinion observed that if the information provided to it by the supervising judge was accurate, then the respondent had committed “a substantial violation of the Rules Governing Judicial Conduct.” This portion of the Ethics Opinion is simply addressing the fact that the rules require that if a judge receives information indicating that another judge has committed a “substantial violation” of the Rules, the supervising judge is required to take “appropriate action.” The supervising judge did so by seeking the Ethics Opinion, which concluded that there was no further basis for discipline and that the steps taken by the supervising judge were “reasonable and appropriate.”

The Majority Opinion is also based on several flawed findings which are not supported by the record. First, it inaccurately concludes that respondent did not show any remorse, which they find was a “significant” factor in favor of removal:

“Significantly, respondent did not appear to have insight into the gravity of his misconduct. Rather than being remorseful about brandishing his gun without justification while on the bench, respondent appears to have been proud of his actions. On more than one occasion, he recounted the incident to his fellow judges. He also agreed to be interviewed by his cousin . . . Respondent appears to have been unable to recognize the serious impropriety of brandishing his gun while on the bench.” (OPN, p. 19,20).

One cannot be remorseful and contrite before one is told and first understands that one’s conduct was not appropriate. Here, no one, including the Majority, has suggested that respondent displayed his gun to Mr. Wood *knowing at the time it was wrong to do so*. To the contrary, respondent clearly believed at the time (because he was advised it was lawful for him to carry a concealed weapon in the courtroom, consistent with Ethics Opinion 06-51) that his conduct did not violate the Rules Governing Judicial Conduct.¹⁰ His 2016 statement to his co-judge, and his 2018 statement to the other judges were also made at a time when he was not yet aware that his conduct would be determined by Judge Hobbs to be improper. However, the *moment* he was so advised by Judge Hobbs on October 25, 2018, he *immediately* expressed remorse, agreed to comply with all the instructions Judge Hobbs gave him, unhesitatingly agreed to, and signed Judge Hobbs’ counseling memorandum, and

¹⁰ The Majority states that “Judges are required to know their ethical responsibilities and it is well-settled that ignorance is not a defense,” citing to *Matter of VonderHeide*, 72 N.Y.2d 658 (1988). Notably, the respondent in *VonderHeide* had been accused with 5 charges of misconduct, including engaging in *ex parte* communications; the Commission voted 7-4 in favor of removal, with 4 members voting for censure. In upholding removal, the Court of Appeals noted that the respondent’s conduct was not merely a lapse in judgment, but “a pattern of injudicious behavior and inappropriate actions.” Here, respondent is guilty of a lapse of judgment, not a pattern of injudicious behavior.

even voluntarily stopped carrying his gun to the courtroom without being required or asked to do so.

The Majority also ignores the actual chronology of events to try to support their erroneous findings. Instead of accurately assessing the respondent's remorsefulness after October 25, 2018 when the respondent was first advised by Judge Hobbs that his conduct was inappropriate, the Majority improperly refers to events *before* October 25, 2018 to support their erroneous findings, even though that was a point in time when the respondent was not aware that his conduct was inappropriate. The Majority's flawed analysis thus illogically punishes the respondent for not being remorseful at a point in time when the respondent was unaware he had done anything wrong. The Majority's finding that respondent was not remorseful could only be true and supported by the record if the respondent continued to recount the incident *after October 25, 2018* when he first was advised of the impropriety of his conduct. There is no evidence in the record that respondent ever recounted the incident after October 25, 2018. To the contrary, the only evidence in the record shows that immediately after being advised by Judge Hobbs, he understood his conduct was wrong and even voluntarily ceased bringing his gun to the courtroom even though he was not required to do so.

Thus, and contrary to the Majority Opinion, respondent *was* remorseful, *had insight* into the gravity of his misconduct and *did recognize* the "serious impropriety of brandishing his gun while on the bench" upon being counseled by Supervising Judge Hobbs in October 2018.

Next, the Majority inaccurately finds that respondent compounded his misconduct by allegedly "bragging about the gun incident" which constituted a "pattern of behavior unbecoming a judge and undermined public confidence in the judiciary." This finding also

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has no basis in the record. The Majority points to the fact that the respondent agreed to be interviewed by his cousin for an article about guns for her journalism class and answered her questions about his experiences with guns.¹¹ He did not ask to be interviewed nor is there anything in the article itself which remotely indicates he was “boasting” or “bragging” about any of his experiences with guns and with regard to the courtroom incident, respondent did not refer to Mr. Wood by name or describe him as a Black man. Moreover, he was interviewed at a time when he had no awareness that what he did was improper.

The Majority also points to the fact that in early 2016, respondent told his former co-Judge Julie Eagan about the incident and that she was “under the impression that Respondent was bragging about his actions.” (ASF §23) The fact that she subjectively thought “respondent was bragging” is not evidence of respondent’s wrongdoing, particularly as it occurred *before respondent understood* that his courtroom action was improper.

Finally, the Majority points to the fact that 3 years after the incident, the respondent “recounted the courtroom incident to a small group of other judges” at the 2018 Magistrates Association meeting “during a discussion about courtroom security” and that he was merely seeking advice from his supervising judge about what to do in the future under similar circumstances.” (ASF §25) There is absolutely nothing in the record which supports the Majority’s conclusion that respondent was “bragging” or “boasting.” To the contrary, the record shows the respondent was seeking “advice from his supervising judge about what to do in the future under similar circumstances.” (ASF §25) The notes of Supervising Judge

¹¹ The Majority’s extended discussion of this article is unwarranted as it has nothing to do with Charge I. The fact that respondent is a gunowner and has had occasion to lawfully carry a gun in his personal life is irrelevant, as is the 2003/2004 incident they refer to which occurred 10 years before he ascended to the bench in which he displayed a gun to defend his late grandfather from a man who had a chainsaw and was advancing in a threatening manner towards his grandfather.

Hobbs (ASF, Exhibit 4) do not characterize the respondent's retelling of the incident as "boasting" or "bragging." Those are words chosen by the Commission, not Judge Hobbs.

The fact that respondent recounted the incident on two occasions is not conduct "unbecoming a judge" nor could it "undermine[] public confidence in the judiciary" because respondent only discussed the incident with a small group of his judicial colleagues in the context of a discussion about courtroom security.

As to the Majority's unsupported finding that respondent "*may have created the appearance* of racial bias," the fact is respondent did not utter any pejorative or derogatory slur in referring to Mr. Wood, but merely accurately described him as a "Black man" or a "big Black man" to his judicial colleagues. Nevertheless, the Majority claims these statements are evidence of racism (OPN, p.20). No support for such a contention is provided and there is none in the record.

In sharp contrast to the facts in this proceeding, cases where judges have been censured or removed for racist comments involved indisputable racial slurs of the highest order. In Matter of Agresta, 64 N.Y.2d 327, 329 (1985), the judge referred to a defendant before him as a "n****r in the woodpile." The Court of Appeals held:

"Racial epithets, indefensible when uttered by a private citizen, are especially offensive when spoken by a judge. Whether or not he meant it as a racial slur, [petitioner's] use of the term 'n****r' in any context is indefensible. That he used the term in open court with black defendants before him and in obvious reference to a particular black person makes his conduct especially egregious." *Id.* at 330.

Notably, the judge in Agresta was censured, *not* removed. See also In re Mulroy, 94 N.Y.2d 652, 656 (2000) (judge removed for racial epithets, including referring to a crime victim as "just some old n****r bitch."); Matter of Cerbone, 61 N.Y.2d 93, 96 (1984) (threats and racial slurs warranted removal). In contrast to these cases where judges were removed

for indisputably using racial slurs and epithets, this respondent merely *accurately* described Mr. Wood as a “Black man.” And yet the Majority essentially gives these benign statements the same weight as the vicious racial slurs in Mulroy and Cerbone.

To the extent there was any doubt that the isolated incident¹² was not racially motivated is the undisputed fact that a few months before the gun incident, after being advised that Mr. Wood was still in jail because he was unable to pay the fines, the ***“Respondent went to the courthouse/jail on his lunch hour from his other employment and reduced Mr. Wood’s fine to community service and released Mr. Wood from jail.”*** (ASF §14) (emphasis added). This voluntary act negates the Majority Opinion’s unsupported inference of racial bias.

To this dispositive fact (which destroys the Majority’s unsupported finding that respondent was racist), the Majority erroneously finds that “there is nothing in the record to indicate respondent’s motive for these actions” and speculates that respondent may have done something improper by effectuating Mr. Woods’ release from jail (OPN, p. 21). The Majority finds that “as the record is unclear and the reasoning for respondent changing the sentence is not in the record, this event was not a factor in our opinion.” (Id.) The Majority’s improper characterization of the record and their refusal to consider this compelling evidence is inexplicable and demonstrates that its true intent is to unfairly punish respondent and remove him from the bench.

¹² The Majority claims the gun incident was not “an isolated incident,” referring to another time that respondent displayed his gun almost *20 years ago before he was a judge* when “a man came out of the woods with a chainsaw and advanced toward respondent’s [elderly] grandfather.” (OPN, ¶14, n. 5). Their reliance on this incident further underscores that the decision to remove respondent is completely wrong and unsupported by the actual facts in the record. The fact that respondent lawfully showed his gun in 2003 or 2004 (which he had every right to do under the laws of New York State), some 11 years before he became a judge, is completely irrelevant and has nothing to do with respondent’s fitness to serve as a judge.

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The Majority then determines, without any proof in the record, in a self-serving and conclusory statement, that respondent “lacks the appropriate judicial temperament” and that his actions “irreparably undermined confidence in his ability to continue as a judge.” There is no evidence in the record to support such conclusions.

In sum, the Majority’s distortion of the respondent’s statements and attempt to characterize them as racist or racial slurs, its refusal to consider the undisputed compelling evidence in respondent’s favor (such as the respondent’s voluntary act of releasing Mr. Wood from jail, and Judge Hobbs’ determination that he was satisfied that the steps taken were sufficient and did not warrant discipline), and its reliance on an irrelevant incident from 2003 when respondent displayed a gun to stop a man with a chainsaw who was menacingly approaching his elderly grandfather that occurred some 11 years before the respondent even became a judge, all demonstrate that Majority Opinion is not only unsupported by the record, but is contradicted by it. Simply put, the Majority Opinion is contrary to the law which provides that removal is appropriate “*only in the event of truly egregious circumstances*” and that “removal should not be ordered for conduct that amounts simply to poor judgment, or even extremely poor judgment.” *Matter of Cunningham*, 57 N.Y.2d at 275 (emphasis added).

The sanction of removal is excessive, unduly harsh, and improperly punitive and is unsupported by the record. A sanction of admonition or, at worst, censure is warranted.

AS TO CHARGE II

The Commission, having *sua sponte* authorized an investigation of respondent based on the isolated courtroom incident of Charge I, its staff then, *sua sponte*, did a thorough forensic investigation into respondent by scouring the Internet and other social media to see if there was any other conduct, they could charge respondent with. Their scouring resulted

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in the Commission authorizing a formal investigation into respondent's personal Facebook page.

The Majority Opinion devotes only one paragraph at the bottom of page 21 to a discussion of Charge II, finding that respondent "improperly participated in fundraising" for the Elks Lodge, and that "[w]hile judges are permitted to be officers of a 'charitable, cultural, fraternal or civic organization not conducted for profit,' judges shall not participate in the solicitation of funds or other fund-raising activities' for such organizations...[i]n violation of his ethical obligations, respondent improperly shared fundraising posts for the Lodge on his Facebook page on at least seven occasions."

Respondent has been a member of the charitable, not for profit, non-partisan, Whitehall Elks Lodge¹³ since 1992 and has held various leadership positions in the Lodge since April 2017. In April 2020, he was elected "to the position of Exalted Ruler, the highest-level position within the Lodge." (ASF §35)

Respondent's "shared fundraising posts for the Lodge on his Facebook page on at least seven occasions" were improper but do not justify the punitive and excessively harsh sanction of removal. "Removal is excessive where the misconduct amounts solely to poor judgment, even extremely poor judgment." *Matter of Skinner*, 91 N.Y.2d at 144; *Matter of Cunningham* 57 N.Y.2d at 275. In *Matter of Peck*, 2022 NYSCJC Annual Report 136 (March 19, 2021), the respondent Town Justice improperly posted two photographs of himself wearing a County Sheriff's uniform. The respondent in *Peck* also posted about his appearance at a "Back the Blue" event supporting law enforcement. Despite the fact that

¹³ I take judicial/administrative notice that the Elks' mission statement on its website states that its mission is "To inculcate the principles of Charity, Justice, Brotherly Love and Fidelity, to recognize a belief in God; to promote the welfare and enhance the happiness of its Members; to quicken the spirit of American patriotism; to cultivate good fellowship...[and] serve the people and communities through benevolent programs."

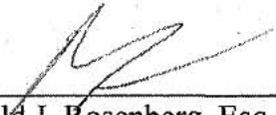
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the *Peck* respondent had previously been cautioned by the Commission for inappropriate Facebook posts, the Commission nevertheless determined that the appropriate sanction was admonition.

Here unlike *Matter of Peck, Whitmarsh*, 2017 NYSCJC Annual Report 266 (December 28, 2016), *Schmidt*, 2021 NYSCJC Annual Report 308 (November 3, 2020) and *Van Woeart*, 2021 NYSCJC Annual Report 329 (March 31, 2020), respondent did not post, share, or “like” anything that was political in nature, relating to a campaign, relating to a pending court matter, disparaging other elected officials, or identifying himself as a judge.

In summary, based on the undisputed facts and applicable legal authority, there is simply no justification to impose the punitively unjust and excessively harsh sanction of removing respondent from the bench. The appropriate discipline for Charges I and II is admonition, or at the very worst, censure, and I therefore respectfully and firmly dissent.

Dated: September 2, 2022



Ronald J. Rosenberg, Esq., Member
New York State Commission on Judicial Conduct

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

KATHLEEN L. ROBICHAUD,

a Judge of the Rensselaer City Court,
Rensselaer County.

DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Kathleen E. Klein, Of
Counsel) for the Commission

Honorable Kathleen L. Robichaud, *pro se*

Respondent, Kathleen L. Robichaud, a Judge of the Rensselaer City Court, Rensselaer County, was served with a Formal Written Complaint (“Complaint”) dated March 15, 2022 containing one charge. The Complaint alleged that from March 2019 to April 2021, in seven different courts in Rensselaer, Albany and Rockland Counties, respondent lent the prestige of her judicial office to advance the private interests of her client J.P. in that respondent used an email address on court filings and legal correspondence that identified her as a judge and, in one instance, attested to Mr. P’s signature on a document she filed with the court on which she crossed out the words “Notary Public” and identified herself as “City Court Judge.” Respondent filed an Answer dated April 22, 2022.

On July 15, 2022, the Administrator and respondent entered into an Agreed Statement of Facts (“Agreed Statement”) pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On August 11, 2022, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Judge of the Rensselaer City Court, Rensselaer County, since January 1, 1996. Respondent’s current term expires December 31, 2025. She was admitted to the practice of law in New York in 1990.

2. At all times relevant to this Complaint, respondent served as a part-time judge and was permitted to engage in the private practice of law.

3. Respondent is not and, at all times relevant to this Complaint, was not a licensed Notary Public.

As to Charge I of the Formal Written Complaint

4. At all times relevant to this charge, respondent used the email address “judgeklr@. . .” as her personal email address.

5. At all times relevant to this charge, J. P. was known personally to respondent as her niece’s boyfriend.

6. In February 2019, respondent agreed to represent J.P. in connection with an effort to clear his driver’s license, which had been suspended due to his failure to respond to traffic tickets in various courts in Albany, Rensselaer and Rockland Counties. Subsequently, respondent also agreed to represent Mr. P in Rensselaer County Family Court in connection with a child support and custody matter.

7. On March 14, 2019, in connection with her representation of Mr. P, respondent filed Notices of Appearance with the Guilderland Town Court, Knox Town Court and Stony Point Town Court. On each of those Notices of Appearance, respondent listed her email address as “judgeklr@. . .” Copies of

these Notices of Appearance are annexed as Exhibits A, B and C, respectively to the Agreed Statement.

8. On March 20, 2019, in connection with her representation of Mr. P, respondent filed a Notice of Appearance with the Bethlehem Town Court. On that Notice of Appearance, respondent listed her email address as “judgeklr@. . .” A copy of this Notice of Appearance is annexed as Exhibit D to the Agreed Statement.

9. On May 15, 2019, in connection with her representation of Mr. P, respondent sent a letter to the Guilderland Town Court, listing her email address as “Judgeklr@. . .” A copy of the letter is annexed as Exhibit E to the Agreed Statement.

10. On June 3, 2019, in connection with her representation of Mr. P, respondent filed Notices of Appearance with the Sand Lake Town Court and the Watervliet City Court. On those Notices of Appearance, respondent listed her email address as “judgeklr@. . .” Copies of these Notices of Appearance are annexed as Exhibits F and G, respectively to the Agreed Statement.

11. On September 13, 2019, in connection with her representation of Mr. P, respondent filed a Consent to Change Attorney in the Sand Lake Town Court. Where the Consent form required the attestation of Mr. P’s signature by a Notary Public, respondent crossed out the words “Notary Public” and wrote the words,

“City Court Judge,” beneath her signature. A copy of the Consent to Change Attorney is annexed as Exhibit H to the Agreed Statement.

12. On September 16, 2019, in connection with her representation of Mr. P, respondent filed a Notice of Appearance with the Rensselaer County Family Court. On that Notice of Appearance, respondent listed her email address as “judgeklr@. . .” A copy of the Notice of Appearance is annexed as Exhibit I to the Agreed Statement.

13. On September 9, 2020, April 15, 2021, and April 16, 2021, respondent communicated with the Support Magistrate hearing Mr. P’s matter and with opposing counsel in the Rensselaer County Family Court via the email account identifying her as “judgeklr@. . .” Copies of this email correspondence are annexed as Exhibit J to the Agreed Statement.

Additional Factors

14. Respondent has been cooperative throughout this inquiry.

15. Respondent maintains that since 2014, she has assisted only three clients (including Mr. P) with legal matters, all on a *pro bono* basis, and the Administrator has no evidence to the contrary. Since the Commission’s inquiry, respondent has ceased engaging in the private practice of law altogether, although she remains a member of the New York State Bar.

16. Respondent avers that she has created a new email address for her personal use, which does not contain any reference to her judicial status.

Respondent has replaced her prior email address with the new one, including on her New York State Attorney Registration listing, and avers that she will no longer use a personal email address that refers to her judicial office.

17. With respect to respondent's attestation of her client's signature on a Consent to Change Attorney, respondent avers that she erroneously believed she could witness and sign such a form as a judge in lieu of being a notary public. She now understands that any reference to her judicial title in the course of representing a private legal client was improper. Respondent also appreciates that someone else should have attested to her client's signature, because as the subject of the Consent document, respondent was neither an independent third party nor disinterested in the transaction.

18. Respondent has familiarized herself with Commission determinations in which judges were found to have improperly notarized documents or referred to their judicial status in email addresses that were used for personal business, including *Matter of Lustyik*, *Matter of Sullivan* and *Matter of McGuire*.

19. In recommending Censure as opposed to Admonition in this case, the Administrator considered the foregoing facts and that respondent should have had

heightened sensitivity to her ethical obligations because she had been admonished previously.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(B) and 100.2(C) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions and respondent’s misconduct is established.

Respondent acted in a manner that was inconsistent with her obligations to maintain high standards of conduct and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Rules, §§100.1, 100.2(A)) The Rules specifically provide that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . . .” (Rules, §100.2(C)) When respondent used her judicial title in her email address that she used on Notices of Appearances and emails she submitted to several courts, she lent the prestige of her judicial office to benefit the private interests of her client. In addition, respondent improperly used her judicial title on a Consent to Change Attorney form she filed with the Sand Lake Town Court in connection with her representation of Mr. P.

As the Court of Appeals held in *Matter of Lonschein*, 50 N.Y.2d 569, 572 (1980), “[m]embers of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.” Judges have been disciplined for using their judicial title in their personal email address used for personal business. *Matter of McGuire*, 2021 NYSCJC Annual Report 131, 193. In addition, judges have been disciplined for using their judicial title when improperly acting as a notary. *Matter of Sullivan*, 2018 NYSCJC Annual Report 247, 256. Here, respondent inappropriately used her judicial title in her personal email address that she used on seven Notices of Appearances she filed on behalf of her client as well as on other legal correspondence. Respondent filed these notices in seven different courts, including in the county in which she serves as a judge. Respondent also used her email address, which identified her as judge, to communicate with the Support Magistrate in Rensselaer County who was handling Mr. P’s matter as well as with opposing counsel in that matter. By using her judicial title in this way, respondent violated the Rules and lent the prestige of her office to benefit her client.

With respect to the sanction to be imposed, respondent’s prior discipline is an aggravating factor. *Matter of Doyle*, 23 N.Y.3d 656, 662 (2014). Given her prior admonition by the Commission, respondent should have been attentive to her

obligation to comply with the Rules. *Id.*

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has acknowledged that her conduct warrants public discipline. We trust that respondent has learned from this experience and in the future will act in strict accordance with her obligation to abide by all the Rules Governing Judicial Conduct.

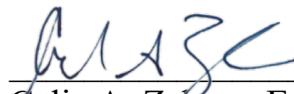
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: August 24, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

MARK A. SCHINDLER,

a Justice of the Persia Town Court,
Cattaraugus County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of
Counsel) for the Commission

Hon. Mark A. Schindler, *pro se*

The matter having come before the Commission on March 17, 2022;

and the Commission having before it the Stipulation dated February 22, 2022; and Judge Schindler having tendered his resignation dated February 18, 2022 effective March 16, 2022; and having affirmed that after vacating his judicial office, he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: March 17, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

MARK A. SCHINDLER,

STIPULATION

a Justice of the Persia Town Court,
Cattaraugus County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Mark A. Schindler.

1. Mark A. Schindler has been a Justice of the Persia Town Court, Cattaraugus County, since January 2013. His current term expires on December 31, 2024. Judge Schindler is not an attorney.
2. Judge Schindler was apprised by the Commission in August 2020 that it was investigating a complaint alleging *inter alia* that (1) he failed to make mandatory reports and remittances to the State Comptroller in a timely manner, (2) imposed fines and surcharges outside the legal limits set in statute, and (3) at the arraignment of a defendant who identifies as Native American, he made snide comments about the defendant’s annuity from the Seneca Nation. In May 2021, the State Comptroller issued a notice to stop payment of Judge Schindler’s salary because he failed to make mandatory monthly certifications of cases disposed and timely remittances of court funds collected.

3. Judge Schindler has tendered his resignation by letter dated February 18, 2022, a copy of which is annexed as Exhibit A. Judge Schindler affirms that he will vacate judicial office as of March 16, 2022.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office. Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office "shall be ineligible to hold other judicial office."

5. Judge Schindler affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

6. Judge Schindler understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, he would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

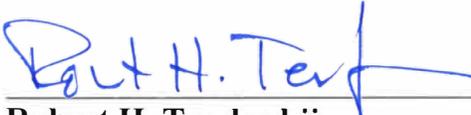
7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Schindler waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated:


Honorab**le Mark A. Schindler**

Dated: February 22, 2022


Robert H. Tembeckjian
Administrator and Counsel to the Commission
(**John J. Postel** and **David M. Duguay**, Of Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT A: JUDGE'S LETTER OF RESIGNATION

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

DETERMINATION

DAVID R. STILSON,

a Justice of the Alma Town Court and an Associate
Justice of the Andover Village Court,
Allegany County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (John J. Postel and David M. Duguay, Of Counsel)
for the Commission

Hon. David R. Stilson, *pro se*

Respondent, David R. Stilson, a Justice of the Alma Town Court and an Associate
Justice of the Andover Village Court, Allegany County, was served with a Formal

Written Complaint (“Complaint”) dated May 10, 2021, containing two charges. Charge I of the Complaint alleged that in 2014 respondent posted and disseminated sexually charged content on social media when he used his Facebook account to publicly promote and/or approvingly comment upon posts and images that were demeaning toward women or otherwise offensive. Charge II of the Complaint alleged that in February 2014, respondent used his Facebook account to publicly engage in fundraising for the National Rifle Association (“NRA”). Respondent did not file an answer.

By motion dated October 7, 2021, the administrator of the Commission moved for summary determination pursuant to Sections 7000.6(b) and (c) of the Commission’s Operating Procedures and Rules. Respondent did not submit a response to the Commission. By decision and order dated October 28, 2021, the Commission granted the administrator’s motion and determined that the factual allegations of the Complaint were sustained, and that respondent’s misconduct was established.

By letter dated October 28, 2021, the Commission set a schedule for briefs and oral argument on the issue of sanction. On November 15, 2021, the administrator of the Commission submitted a memorandum which argued for respondent’s removal. The administrator waived oral argument unless respondent was to appear. Respondent did not make a submission on the issue of sanction, did not respond to the administrator’s sanction memorandum, and did not appear for oral argument. Thereafter the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Alma Town Court, Allegany County,

since 2001. His current term expires on December 31, 2025. He has been an Associate Justice of the Andover Village Court, Allegany County, since 2019. His current term expires on May 31, 2022. Respondent previously served as a Justice of the Willing Town Court, Allegany County, from 2001 to 2013. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. Facebook is an internet social networking website and platform that *inter alia* allows users to post and share content on their own Facebook pages. Facebook users are responsible for managing the privacy settings associated with their accounts. At the option of the account holder, the content of one's Facebook page – including photographs and textual posts – may be viewable online by the general public or restricted to one's Facebook "Friends."

3. In or about 2014, respondent established a Facebook account and enabled his page to be viewable by the general public. Respondent's profile included a photograph of respondent's face and listed his name as "Dave Stilson."

4. On or about January 23, 2014, respondent posted to his public Facebook page a photograph of a woman with the caption, "Boobies Are proof that men can focus on two things at once!" A copy of the post is appended as Exhibit A.

5. On or about February 19, 2014, respondent posted to his public Facebook page a photograph listing 10 reasons why "Country Girls are Hotter." The list included: "1) They can work hard 2) Their boobs are real 3) They don't mind gettin dirty 4) They make great mothers 5) They stay faithful 6) They love the outdoors 7) Daisy dukes and boots are sexy 8) They can ride hard 9) Your girl can double as your hunting partner 10)

Sex in the woods is way better.” Respondent commented, “Can[’]t argue this one bit. Very True.” A copy of the post is appended as Exhibit B.

6. On or about March 4, 2014, respondent posted to his public Facebook page an image portraying a woman tied to a bed by her wrists and ankles; and the other showing a man fishing. The image was captioned, “SHE ASKED ME TO TIE HER UP AND DO ANYTHING I WANT.” A copy of the post is appended as Exhibit C.

As to Charge II of the Formal Written Complaint

7. On or about February 20, 2014, respondent posted to his public Facebook page that he was “Looking for a few more friends to attend the Friends of the NRA Banquet in Olean on March 15th” at “\$180.00 each person.” A copy of the post is appended as Exhibit D.

8. On or about February 26, 2014, respondent posted to his public Facebook page, “Come [to] the Friends of The NRA Banquet with me and learn more about this,” above a linked PDF download from COPSSUPPORTGUNRIGHTS.COM captioned, “New York Troopers and Sheriffs refusing to enforce SAFE Act.” A copy of the post is appended as Exhibit E.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.4(A)(1), (2) and (3) and 100.4(C)(3)(b)(i) and (iv) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause pursuant to Article VI, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law. Charges I and II of the Complaint are sustained insofar as they are consistent with the above findings and

conclusions and respondent's misconduct is established.

Each judge is obligated to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and must observe high standards of conduct “so that the integrity and independence of the judiciary will be preserved.” (Rules, §§100.1 and 100.2(A)) Each judge must also “conduct all of the judge's extra-judicial activities so that they do not . . . detract from the dignity of judicial office.” (Rules §100.4(A)(2)) Respondent violated these Rules when he made public Facebook posts which we find to have objectified and denigrated women and included degrading, vulgar and disturbing images of women that are not appropriate for a judge to be posting publicly.

It is well-settled that judges are held to a higher standard of conduct than the general public. *Matter of Kuehnel*, 49 N.Y. 2d 465, 469 (1980) (“[s]tandards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach.”); *Matter of Lonschein*, 50 N.Y.2d 569, 572 (1980) (“[m]embers of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.” (citation omitted)); *Matter of Mazzei*, 81 N.Y.2d 568, 572 (1993) (“[j]udges . . . are held to higher standards of conduct than the public at large . . . and thus what might be acceptable behavior when measured against societal norms could constitute ‘truly egregious’ conduct in the present context.” (citation omitted)). Here,

respondent failed to meet the high standards of conduct for judges and detracted from the dignity of his judicial office when he posted multiple public Facebook posts that were degrading toward women.

In addition, Section 100.4(C)(3)(b)(i) of the Rules mandates that judges “shall not personally participate in the solicitation of funds or other fund-raising activities” for nonprofit organizations. In *Matter of McNulty*, 2008 NYSCJC Annual Report 177, 179, the Commission wrote, “[t]he rules are clear; the Advisory Committee on Judicial Ethics has warned judges for decades not to engage in fund-raising activities; and the Commission has addressed the subject in its annual reports.” In violation of the Rules, respondent made public Facebook posts soliciting funds for the NRA when he encouraged the purchase of \$180 tickets to a “Friends of the NRA” banquet.

Judges are also prohibited from engaging in extra-judicial activities which “cast reasonable doubt on the judge’s capacity to act impartially as a judge.” (Rules §100.4(A)(1)); *Matter of Fisher*, 2019 NYSCJC Annual Report 126, 135 (“[e]very judge must understand that a judge's right to speak publicly is limited because of the important responsibilities a judge has in dispensing justice, maintaining impartiality and acting at all times in a manner that promotes public confidence in the judge's integrity.”); *Matter of Barringer*, 2006 NYSCJC Annual Report 97, 100 (“[t]he ethical standards require a judge to avoid extra-judicial conduct that casts doubt on the judge’s impartiality. . . . Upon assuming the bench, a judge surrenders certain rights and must refrain from certain conduct that may be permissible for others.”); *Matter of Peck*, March 19, 2021 NYSCJC Dec. at 6-7 (“respondent’s public Facebook post in which he aligned himself with and

expressed his strong support for law enforcement personnel, casts doubt on respondent's ability to act impartially when he presided over matters which involved law enforcement personnel.")¹ Respondent's public Facebook posts soliciting funds for the NRA and issuing a public invitation to join him in learning more about law enforcement officers refusing to enforce a New York State law, cast doubt on respondent's impartiality and violated his ethical obligations. Such conduct is inimical to an impartial judiciary and undermines public confidence that respondent will enforce laws he is required to uphold.

In addition to violating several ethical rules when he made the public Facebook posts, respondent's failure to participate in the Commission's proceedings after the Complaint was issued exacerbated his underlying misconduct. Respondent failed to file an answer to the Complaint as Section 7000.6(b) of the Commission's Operating Procedures and Rules required, failed to make a submission to the Commission regarding the motion for summary determination, failed to make a submission regarding sanction after summary determination was granted, failed to respond to the administrator's memorandum which argued that respondent should be removed and did not appear for oral argument before the Commission on the issue of sanction. Accountability for members of the judiciary is critical and all judges must be attentive to their responsibility to participate in Commission proceedings. In *Matter of O'Connor*, 32 N.Y.3d 121, 129 (2018), the Court of Appeals described Commission proceedings as follows:

If the public trust in the judiciary is to be maintained, as it must, those who don the robe and assume the role of arbiter of what is fair and just must do so with an acute appreciation

¹ Available at <https://cjc.ny.gov/Determinations/P/Peck.John.R.2021.03.19.DET.PDF>

both of their judicial obligations and of the Commission's constitutional and statutory duties to investigate allegations of misconduct (*see* NY Const, art VI, § 22; Judiciary Law art 2-A). In short, willingness to cooperate with the Commission's investigations and proceedings is not only required—it is essential.

Here, respondent's decision to not participate in the Commission's proceedings after the Complaint was issued exhibited a disdain for the Commission's important role and undermined public confidence in the judiciary.

Given the totality of respondent's misconduct and his unwillingness to participate in Commission proceedings after the Complaint was filed against him, we believe that respondent should be removed from the bench to protect the integrity of the courts. We are mindful that "removal, the ultimate sanction, should not be imposed for misconduct that amounts simply to poor judgment or even extremely poor judgment, but should be reserved for truly egregious circumstances." *Matter of Mazzei, supra*, 81 N.Y.2d at 572 (citations omitted). Here, respondent violated the Rules when he behaved in an undignified manner, engaged in improper fundraising, acted in a manner to cast doubt upon his impartiality and undermined public confidence in the impartiality of the judiciary. His misconduct was significantly exacerbated when he chose to ignore the Commission's proceedings.²

The Court of Appeals has held that, "the purpose of judicial disciplinary

² This finding is consistent with New York attorney grievance proceedings in which nonresponsive attorneys are routinely disbarred. *Matter of Carlos*, 192 A.D.3d 170 (1st Dept. 2021); *Matter of Lovett*, 194 A.D.3d 39 (2nd Dept. 2021); *Matter of McCoy-Jacien*, 181 A.D. 3d 1089 (3rd Dept. 2020); *Matter of Shaw*, 180 A.D.3d 1 (4th Dept. 2019).

proceedings is ‘not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents’.” *Matter of Reeves*, 63 N.Y.2d 105, 111 (1984) (citation omitted) Respondent’s actions demonstrated his disregard for his ethical responsibilities and he is unfit for judicial office.

By reason of the foregoing, the Commission determines that the appropriate disposition is removal.

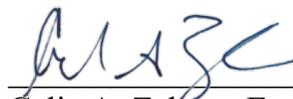
Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Seiter and Ms. Yeboah concur.

Mr. Rosenberg concurs in part and dissents in part and files a separate opinion.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: January 7, 2022



Celia A. Zalmer, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

Exhibit A



Dave Stilson shared a photo.

January 23, 2014 ·



EXHIBIT 1
(From Formal Written Complaint)

Flaunt Girls

January 23, 2014 ·

Like Page

2

Share

Exhibit B



Dave Stilson shared a photo.

February 19, 2014 ·

Cant argue this one bit. Very True

Country Girls Are Hotter Because:

- 1)They can work hard
- 2)Their boobs are real
- 3)They don't mind gettin dirty
- 4)They make great mothers
- 5)They stay faithful
- 6)They love the outdoors
- 7)Daisy dukes and boots are sexy
- 8)They can ride hard
- 9)Your girl can double as your hunting partner
- 10)Sex in the woods is way better

Proud Country Gal

February 19, 2014 ·

Little bit of Wednesday humor for y'all ... see the funny in it ❤️ 😊 Proud Country Girl

Like & Share & Laugh

Like Page

1

Share

Exhibit C



Dave Stilson shared a photo.

March 4, 2014 ·

EXHIBIT 3

(From Formal Written Complaint)

SHE ASKED ME TO TIE HER UP AND DO ANYTHING I WANT



Sexy, Flirty, Drunk, Haters & the Rest
March 4, 2014 ·

Like Page

5

1 Comment

Share



Ken Williams Funny

Exhibit D

EXHIBIT 6

(From Formal Written Complaint)



Dave Stilson

February 20, 2014 ·

Looking for a few more friends to attend the Friends of the NRA Banquet in Olean on March 15th, I want a table of ten. Its \$180.00 each person, includes dinner, pistol case, \$200.00 Bucket tickets, 10 Gun table Tickets, And 7 Gun of the year Tickets. Always a good time, great meal. And one of us 10 is Guaranteed to win a gun.

3

1 Share

Exhibit E

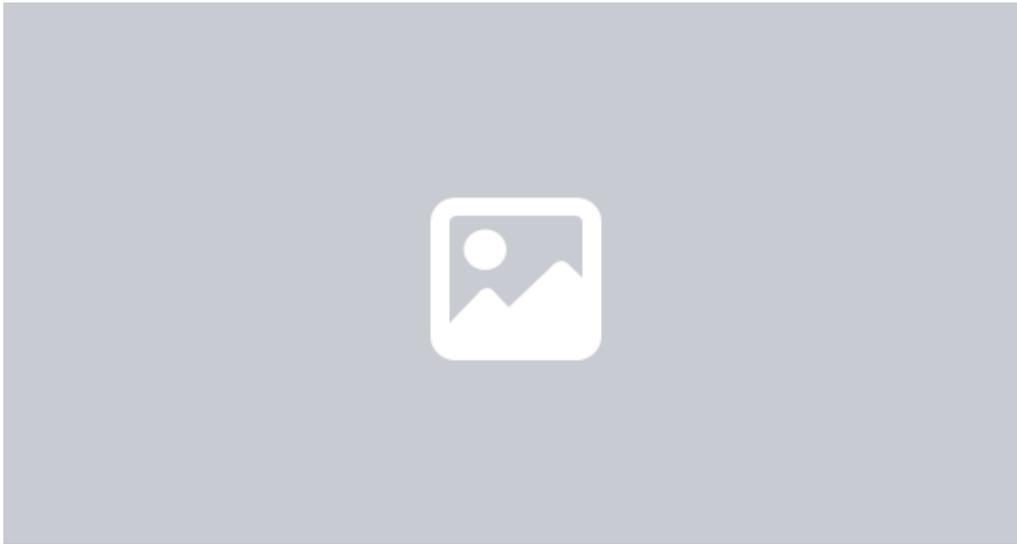


Dave Stilson

February 26, 2014 ·

Come the Friends of The NRA Banquet with me and learn more about this.

EXHIBIT 7
(From Formal Written Complaint)



COPSSUPPORTGUNRIGHTS.COM

**New York Troopers and Sheriffs refusing to enforce SAFE Act -
Cops Support Gun Rights**

2

2 Comments

Share



Paul Szymkowiak Why should they enforce something that's unconstitutional, what should happen is we put all these midnight politicians in jail for what they did

4y



David Zembrzycki Prison with BUBBA sounds better. Then they'll know the meaning of YOU will take it AND learn to LIKE it.....

4y

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

DAVID R. STILSON,

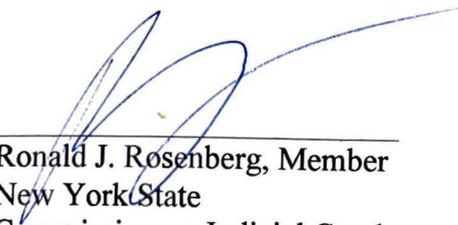
a Justice of the Alma Town Court and an Associate
Justice of the Andover Village Court,
Allegany County.

**OPINION BY MR.
ROSENBERG
CONCURRING IN
PART AND
DISSENTING IN
PART**

I dissent from finding liability on Charge I as I do not believe the postings violate the Rules Governing Judicial Conduct and are not cause for discipline for cause pursuant to Article VI, Section 22, subdivision (a) of the New York State Constitution and Section 44 subdivision 1 of the Judiciary Law.

I concur with the majority on Charge II as it was unethical and improper for the respondent to solicit funds for the NRA and concur with the sanction of removal because the respondent exacerbated his misconduct when he inexplicably chose to ignore these proceedings after the formal complaint was filed, and chose not to even file an answer to it. Such non-participation exhibits a fatal disrespect for the Commission’s jurisdiction and legitimate inquiries.

Dated: January 7, 2022



Ronald J. Rosenberg, Member
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

NANCY M. SUNUKJIAN,

a Justice of the Waterford Town Court,
Saratoga County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of Counsel)
for the Commission

LaMarche Safranko Law PLLC (by George E. LaMarche, III, Esq.) for Judge
Sunukjian

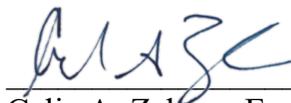
The matter having come before the Commission on February 3, 2022; and
the Commission having before it the Stipulation dated January 26, 2022; and Judge

Sunukjian having tendered her resignation dated January 25, 2022 effective February 15, 2022; and having affirmed that after vacating her judicial office, she will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: February 3, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of a Complaint
Pursuant to Section 44, subdivisions 1 and 2.
of the Judiciary Law in Relation to

NANCY M. SUNUKJIAN,

STIPULATION

a Justice of the Waterford Town Court.
Saratoga County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“Commission”), and the Honorable Nancy M. Sunukjian and her attorney, George E. LaMarche, III, Esq., of LaMarche Safranko Law PLLC.

1. Nancy M. Sunukjian has been a Justice of the Waterford Town Court, Saratoga County, since December 7, 2010. Her current term expires on December 31, 2023.
2. Judge Sunukjian was apprised by the Commission on January 7, 2022, that it was investigating a complaint alleging that, in her capacity as the Director of the Office of Justice Court Support (“OJCS”), she arranged the hiring of the then-fiancée (now spouse) of a relative and retaliated against another OJCS employee for failing to vote with her on an interview panel.¹ There are no allegations that Judge Sunukjian

¹ Judge Sunukjian no longer serves as Director of the Office of Justice Court Support.

committed any wrongdoing in her capacity as a judge. Judge Sunukjian was scheduled to testify before the Commission on January 25, 2022.

3. Judge Sunukjian has tendered her resignation by letter dated January 25, 2022, a copy of which is annexed as Exhibit 1. Judge Sunukjian affirms that she will vacate judicial office as of February 15, 2022.

4. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office. Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office "shall be ineligible to hold other judicial office."

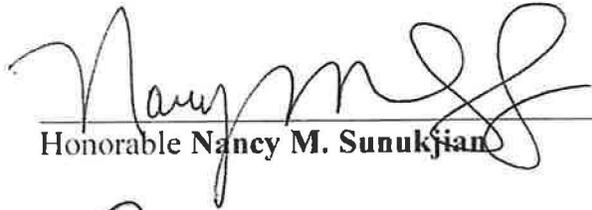
5. Judge Sunukjian affirms that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future.

6. Judge Sunukjian understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived.

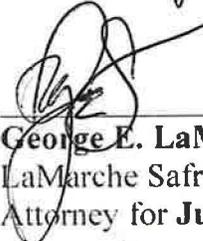
7. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

8. Judge Sunukjian waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

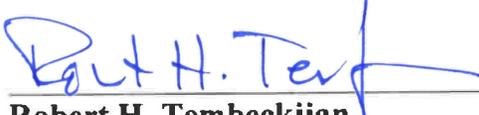
Dated: *January 25, 2022*


Honorable Nancy M. Sunukjian

Dated: *January 25, 2022*


George E. LaMarche, III, Esq.
LaMarche Safranko Law PLLC
Attorney for **Judge Sunukjian**

Dated: January 26, 2022


Robert H. Tembeckjian
Administrator and Counsel to the Commission
(**Cathleen S. Cenci** and **S. Peter Pedrotty**, Of
Counsel)

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

GEORGE K. WITTLINGER,

a Justice of the Ancram Town Court,
Columbia County.

**DECISION
AND
ORDER**

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and Kathleen E. Klein, Of
Counsel) for the Commission

Dreyer Boyajian LLP (by William J. Dreyer, Esq.) for Judge Wittlinger

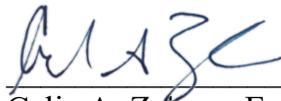
The matter having come before the Commission on February 3, 2022; and
the Commission having before it the Stipulation dated January 24, 2022; and Judge

Wittlinger having vacated his judicial office effective December 31, 2021; and having affirmed that having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future, and having waived confidentiality as provided by Judiciary Law Section 45 to the extent that the Stipulation will become public upon being signed by the signatories and that the Commission's Decision and Order with respect thereto will become public; now, therefore, it is

DETERMINED, on the Commission's own motion, that the Stipulation is accepted and that the pending matter is concluded, by the terms of the Stipulation, subject to being revived according to the terms of the Stipulation; and it is

SO ORDERED.

Dated: February 3, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivision 1 and 2,
of the Judiciary Law in Relation to

STIPULATION

GEORGE K. WITTLINGER,

a Justice of the Ancram Town Court,
Columbia County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable George K. Wittlinger and his attorney, William J. Dreyer, Esq., of Dreyer Boyajian LLP.

1. George K. Wittlinger has been a Justice of the Ancram Town Court, Columbia County, since November 1, 1999. His current term was to expire on December 31, 2023. Judge Wittlinger is not an attorney.

2. Judge Wittlinger was apprised by the Commission by letter dated December 9, 2021, that it was investigating a complaint alleging, *inter alia*, that he encouraged a minor to have sex with his teenage son, offered her gifts and money in exchange for sexual favors, and provided the minor with alcoholic beverages.

3. The subject matter of the Commission's investigation is the same subject matter set forth in a civil complaint filed against him in New York State Supreme Court on or about October 19, 2020, entitled *Anonymous P.T. v. George Wittlinger, et al.* (Index No. E012020016231) which was dismissed by Order of the State Supreme Court on October 12, 2021. Judge Wittlinger denied

the allegations in the civil complaint. The investigation herein is a separate and distinct investigation by the Commission.

4. Judge Wittlinger was scheduled to give testimony concerning those allegations at the Commission on January 12, 2022. Judge Wittlinger has tendered his resignation by letter dated December 17, 2021, a copy of which is annexed as Exhibit 1. Judge Wittlinger affirms that he vacated his judicial office effective December 31, 2021.

5. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.

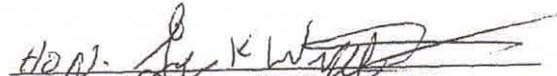
6. Judge Wittlinger affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

7. Judge Wittlinger understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaint would be revived, he could be served with a Formal Written Complaint on authorization of the Commission, and the matter could proceed to a hearing before a referee.

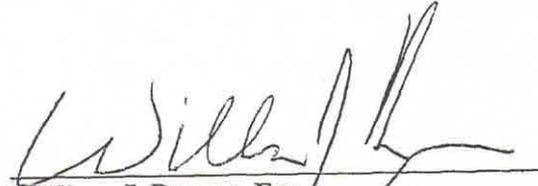
8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

9. Judge Wittlinger waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

Dated:


Honorable George K. Wittlinger

Dated:


William J. Dreyer, Esq.
Dreyer Boyajian LLP
Attorney for Hon. George K. Wittlinger

Dated: January 24, 2022


Robert H. Tembeckjian
Administrator and Counsel to the Commission
Cathleen S. Cenci and Kathleen E. Klein,
Of Counsel

THE FOLLOWING EXHIBIT IS AVAILABLE AT WWW.CJC.NY.GOV:
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

APPENDIX G: STATISTICAL ANALYSIS OF COMPLAINTS

COMPLAINTS PENDING AS OF DECEMBER 31, 2021								
SUBJECT OF COMPLAINT		STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		<i>PENDING</i>	<i>DISMISSED</i>	<i>CAUTION</i>	<i>RESIGNED</i>	<i>CLOSED*</i>	<i>ACTION*</i>	
<i>INCORRECT RULING</i>								
<i>NON-JUDGES</i>								
<i>DEMEANOR</i>		16	21	8	3	1	2	51
<i>DELAYS</i>		2	3	0	0	0	0	5
<i>CONFLICT OF INTEREST</i>		2	2	4	0	0	2	10
<i>BIAS</i>		1	1	0	1	1	1	5
<i>CORRUPTION</i>		2	1	0	1	0	2	6
<i>INTOXICATION</i>		0	0	0	0	0	0	0
<i>DISABILITY/QUALIFICATIONS</i>		0	1	0	0	0	0	1
<i>POLITICAL ACTIVITY</i>		3	3	4	5	0	2	17
<i>FINANCES/RECORDS/TRAINING</i>		7	5	8	4	3	2	29
<i>TICKET-FIXING</i>		1	1	0	0	0	0	2
<i>ASSERTION OF INFLUENCE</i>		3	6	0	2	1	5	17
<i>VIOLATION OF RIGHTS</i>		10	15	4	4	5	2	40
<i>MISCELLANEOUS</i>		2	1	0	3	0	2	8
TOTALS		49	60	28	23	11	20	191

*Matters are “closed” upon vacancy of office for reasons other than resignation. “Action” includes determinations of admonition, censure and removal from office by the Commission.

NEW COMPLAINTS CONSIDERED BY THE COMMISSION IN 2022								
SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		<i>PENDING</i>	<i>DISMISSED</i>	<i>CAUTION</i>	<i>RESIGNED</i>	<i>CLOSED*</i>	<i>ACTION*</i>	
<i>INCORRECT RULING</i>	1,348							1,348
<i>NON-JUDGES</i>	500							500
<i>DEMEANOR</i>	98	18	2	0	1	1	0	120
<i>DELAYS</i>	36	3	0	0	0	0	0	39
<i>CONFLICT OF INTEREST</i>	22	10	1	0	2	0	0	35
<i>BIAS*</i>	55	8	0	0	0	0	0	63
<i>CORRUPTION</i>	99	1	2	0	0	0	0	102
<i>INTOXICATION</i>	0	1	0	0	0	0	0	1
<i>DISABILITY/QUALIFICATIONS</i>	1	1	0	0	1	0	0	3
<i>POLITICAL ACTIVITY</i>	15	28	5	2	0	0	0	50
<i>FINANCES/RECORDS/TRAINING</i>	8	9	0	2	1	0	0	20
<i>TICKET-FIXING</i>	0	4	0	0	0	0	0	4
<i>ASSERTION OF INFLUENCE</i>	3	12	2	1	0	0	0	18
<i>VIOLATION OF RIGHTS</i>	70	38	2	1	1	1	0	113
<i>MISCELLANEOUS</i>	14	5	3	0	0	1	0	23
TOTALS	2,269	138	17	6	6	3	0	2,439

*Matters are “closed” upon vacancy of office for reasons other than resignation. “Action” includes determinations of admonition, censure and removal from office by the Commission.

* Of the 63 bias complaints received in 2022, 44 were classified as bias against an individual, 41 of which were dismissed upon initial review and three of which were opened for investigation. Nineteen were classified as bias based on a broader basis of race, culture, religion, gender or ethnicity, 14 of which were dismissed upon initial review and five of which were opened for investigation. The remaining eight complaints are still being investigated.

ALL COMPLAINTS CONSIDERED IN 2022: 2,439 NEW & 191 PENDING FROM 2021								
SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		<i>PENDING</i>	<i>DISMISSED</i>	<i>CAUTION</i>	<i>RESIGNED</i>	<i>CLOSED*</i>	<i>ACTION*</i>	
<i>INCORRECT RULING</i>	1,348							1,348
<i>NON-JUDGES</i>	500							500
<i>DEMEANOR</i>	98	34	23	8	4	2	2	171
<i>DELAYS</i>	36	5	3	0	0	0	0	44
<i>CONFLICT OF INTEREST</i>	22	12	3	4	2	0	2	45
<i>BIAS</i>	55	9	1	0	1	1	1	68
<i>CORRUPTION</i>	99	3	3	0	1	0	2	108
<i>INTOXICATION</i>	0	1	0	0	0	0	0	1
<i>DISABILITY/QUALIFICATIONS</i>	1	1	1	0	1	0	0	4
<i>POLITICAL ACTIVITY</i>	15	31	8	6	5	0	2	67
<i>FINANCES/RECORDS/TRAINING</i>	8	16	5	10	5	3	2	49
<i>TICKET-FIXING</i>	0	5	1	0	0	0	0	6
<i>ASSERTION OF INFLUENCE</i>	3	15	8	1	2	1	5	35
<i>VIOLATION OF RIGHTS</i>	70	48	17	5	5	6	2	153
<i>MISCELLANEOUS</i>	14	7	4	0	3	1	2	31
TOTALS	2,269	187	77	34	29	14	20	2,630

*Matters are “closed” upon vacancy of office for reasons other than resignation. “Action” includes determinations of admonition, censure and removal from office by the Commission.

ALL COMPLAINTS CONSIDERED SINCE THE COMMISSION'S INCEPTION IN 1975								
SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		<i>PENDING</i>	<i>DISMISSED</i>	<i>CAUTION</i>	<i>RESIGNED</i>	<i>CLOSED*</i>	<i>ACTION*</i>	
<i>INCORRECT RULING</i>	31,150							31,150
<i>NON-JUDGES</i>	9,988							9,988
<i>DEMEANOR</i>	4,456	34	1,417	383	177	144	286	6,897
<i>DELAYS</i>	1,809	5	212	114	42	24	34	2,240
<i>CONFLICT OF INTEREST</i>	954	12	551	199	71	36	150	1,973
<i>BIAS</i>	2,208	9	316	67	39	26	40	2,705
<i>CORRUPTION</i>	1,019	3	158	14	54	24	47	1,319
<i>INTOXICATION</i>	81	1	43	8	19	6	35	193
<i>DISABILITY/QUALIFICATIONS</i>	73	1	37	2	26	18	6	163
<i>POLITICAL ACTIVITY</i>	488	31	366	225	37	39	60	1,246
<i>FINANCES/RECORDS/TRAINING</i>	366	16	404	262	186	108	113	1,455
<i>TICKET-FIXING</i>	28	5	96	161	49	62	171	572
<i>ASSERTION OF INFLUENCE</i>	265	15	235	107	53	24	86	785
<i>VIOLATION OF RIGHTS</i>	2,818	48	704	262	155	88	124	4,199
<i>MISCELLANEOUS</i>	950	7	284	93	45	51	63	1,493
TOTALS	56,623	187	4,823	1,897	953	650	1,215	66,348

* Matters are "closed" upon vacancy of office for reasons other than resignation. "Action" includes determinations of admonition, censure and removal from office by the Commission since its inception in 1978, as well as suspensions and disciplinary proceedings commenced in the courts by the temporary and former commissions on judicial conduct operating from 1975 to 1978.



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