

NEW YORK STATE

**COMMISSION ON JUDICIAL
CONDUCT**



**ANNUAL REPORT
2024**

**NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT**



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NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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March 1, 2024

To Governor Kathy Hochul,
Chief Judge Rowan D. Wilson, 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, 2023.

Respectfully submitted,

Robert H. Tembeckjian, Administrator
On Behalf of the Commission

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FOREWORD

The Commission on Judicial Conduct was as busy in 2023 as it ever has been:

- 2,982 new complaints – a record number – were received and processed during the year, including more than 2,000 submitted electronically through the interactive complaint portal on the Commission’s website.
- 778 preliminary inquiries or full-scale investigations were authorized.
- 17 public dispositions were rendered: 4 removals from office, 9 permanent resignation stipulations, 2 censures and 2 admonitions.
- 65 confidential cautionary letters were issued to judges.

In addition, the Commission was engaged in several important matters that were litigated in Supreme Court. It successfully defended a removal determination that was challenged in the Court of Appeals by the disciplined judge. *Matter of Putorti*. And it supported legislation passed by the State Senate and now pending before the State Assembly that, among other things, would make its formal disciplinary proceedings more transparent and extend its time to complete cases against judges who leave office while under investigation.

All of the foregoing and more are discussed in greater detail in this report.

The Commission continues to appreciate the cooperation extended by all who interact with the agency.

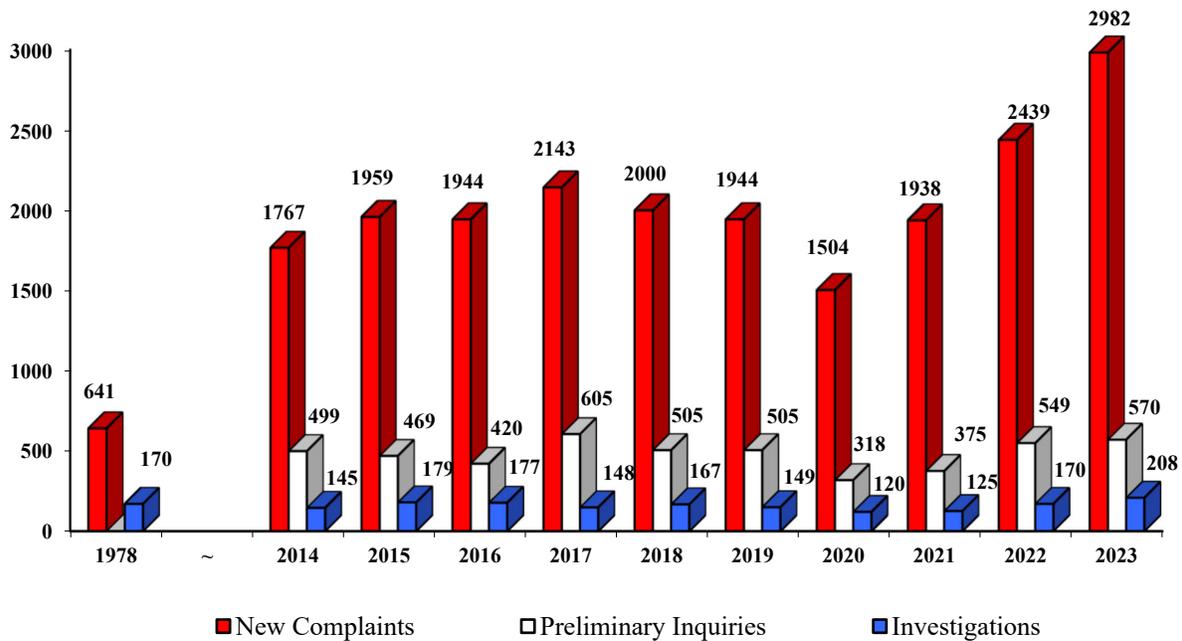
INTRODUCTION TO THE 2024 ANNUAL REPORT

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 2014, the Commission has averaged roughly 2,060 new complaints per year, 482 preliminary inquiries and 159 investigations. Last year, 2,982 new complaints were received – the most ever. 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 570 preliminary reviews and inquiries and 208 investigations – the most since 2010 and a 30% increase over our 10-year average.

This report covers Commission activity in the year 2023.



COMPLAINTS, INQUIRIES & INVESTIGATIONS IN THE LAST TEN YEARS

ACTION TAKEN IN 2023

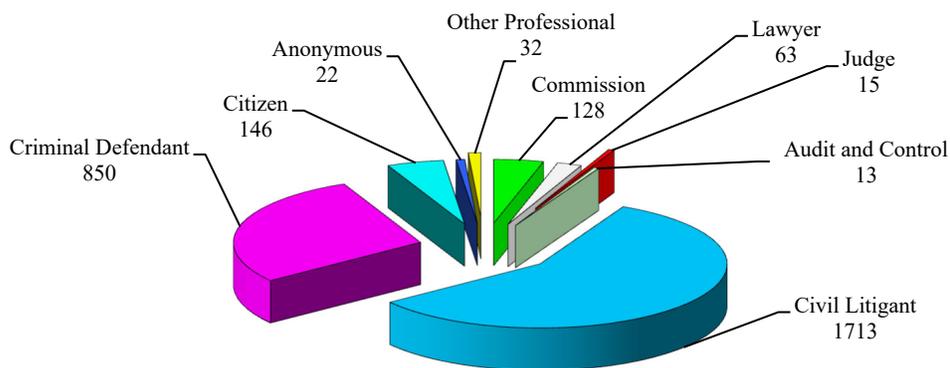
Following are summaries of the Commission’s actions in 2023, including accounts of all public determinations, summaries of non-public dispositions, and various numerical breakdowns of complaints, investigations and other dispositions.

COMPLAINTS RECEIVED

The Commission received 2,982 new complaints in 2023. 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 2023 appears in the following chart.



COMPLAINT SOURCES IN 2023

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 2023, staff conducted 570 such preliminary inquiries, requiring such steps as interviewing the attorneys involved, analyzing court files and reviewing trial transcripts.

In 208 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 2023, in addition to the 208 new investigations, there were 165 investigations pending from the previous year. The Commission disposed of the combined total of 373 investigations as follows:

- 68 complaints were dismissed outright.
- 68 complaints involving 64 different judges were dismissed with letters of dismissal and caution.
- 19 complaints involving 11 different judges were closed upon the judge's resignation, five becoming public by stipulation and six that were not public.
- Eight complaints involving nine different judges were closed upon vacancy of office due to reasons other than resignation, such as the expiration of the judge's term.
- 25 complaints involving 14 different judges resulted in formal charges being authorized.
- 185 investigations were pending as of December 31, 2023.

FORMAL WRITTEN COMPLAINTS

As of January 1, 2023, there were pending Formal Written Complaints in 22 matters involving 10 judges. In 2023, Formal Written Complaints were authorized in 25 additional matters involving 14 judges. Of the combined total of 47 matters involving 24 different judges, the Commission acted as follows:

- 11 matters involving eight different judges resulted in formal discipline (admonition, censure or removal).
- 13 matters involving four different judges were closed upon the judge's resignation from office, all four becoming public by stipulation.
- Four 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.
- 19 matters involving 10 different judges were pending as of December 31, 2023.

SUMMARY OF ALL 2023 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 – 2,090* ALL PART-TIME

	<i>Lawyers</i>	<i>Non-Lawyers</i>	<i>Total</i>
Complaints Received	134	179	313
Complaints Investigated	52	33	85
Judges Cautioned After Investigation	11	4	15
Formal Written Complaints Authorized	6	1	7
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	5	2	7
Judges Vacating Office by Public Stipulation	3	3	6
Formal Complaints Dismissed or Closed	0	0	0

NOTE: Approximately 880 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 – 380, ALL LAWYERS

	<i>Part-Time</i>	<i>Full-Time</i>	<i>Total</i>
Complaints Received	23	347	377
Complaints Investigated	1	45	46
Judges Cautioned After Investigation	0	19	19
Formal Written Complaints Authorized	0	3	3
Judges Cautioned After Formal Complaint	0	0	0
Judges Publicly Disciplined	0	1	1
Judges Vacating Office by Public Stipulation	0	0	0
Formal Complaints Dismissed or Closed	0	0	0

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

TABLE 3: COUNTY COURT JUDGES – 140, FULL-TIME, ALL LAWYERS*

Complaints Received	323
Complaints Investigated	22
Judges Cautioned After Investigation	4
Formal Written Complaints Authorized	2
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	1
Formal Complaints Dismissed or Closed	0

*Includes 16 who also serve as Surrogates, seven who also serve as Family Court Judges, and 39 who also serve as both Surrogates and Family Court Judges.

TABLE 4: FAMILY COURT JUDGES – 151, FULL-TIME, ALL LAWYERS

Complaints Received	373
Complaints Investigated	11
Judges Cautioned After Investigation	3
Formal Written Complaints Authorized	0
Judges Cautioned After Formal Complaint	0
Judges Publicly Disciplined	0
Judges Vacating Office by Public Stipulation	1
Formal Complaints Dismissed or Closed	0

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

Complaints Received	35
Complaints Investigated	1
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	1
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 – 52, FULL-TIME, ALL LAWYERS

Complaints Received	36
Complaints Investigated	8
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 – 66, FULL-TIME, ALL LAWYERS

Complaints Received	85
Complaints Investigated	4
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 – 504, FULL-TIME, ALL LAWYERS*

Complaints Received	572
Complaints Investigated	29
Judges Cautioned After Investigation	22
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	2

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

**TABLE 9: COURT OF APPEALS JUDGES – 7, FULL-TIME, ALL LAWYERS;
APPELLATE DIVISION JUSTICES – 80, FULL-TIME, ALL LAWYERS**

Complaints Received	108
Complaints Investigated	2
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 10: NON-JUDGES AND OTHERS NOT WITHIN THE COMMISSION’S
JURISDICTION***

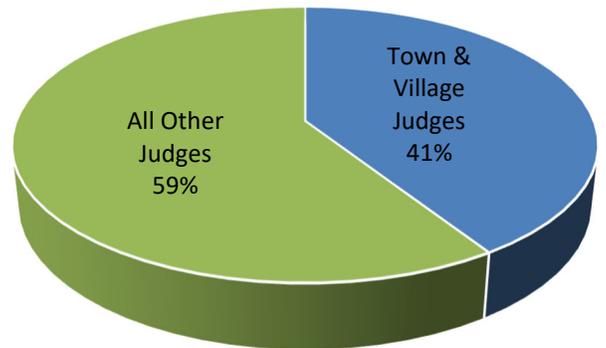
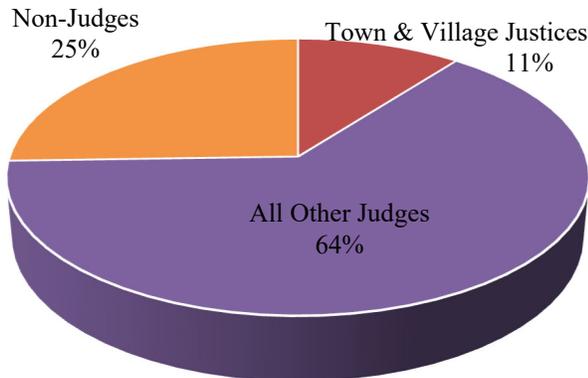
Complaints Received	760
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* The Commission reviews such complaints to determine whether to refer them to other agencies.

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.

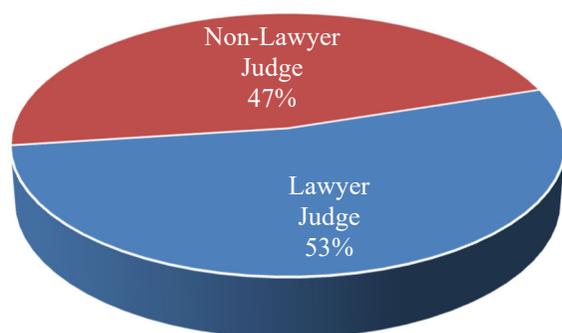
The confidentiality provision of the Judiciary Law (Article 2-A, Sections 44 and 45) prohibits public disclosure by the Commission of the charges, hearings or related matters, absent a waiver by the judge, until the case has been concluded and a determination of admonition, censure, removal or retirement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

Following are summaries of those matters that were completed and made public during 2023. The actual texts are appended to this Report in Appendix F.

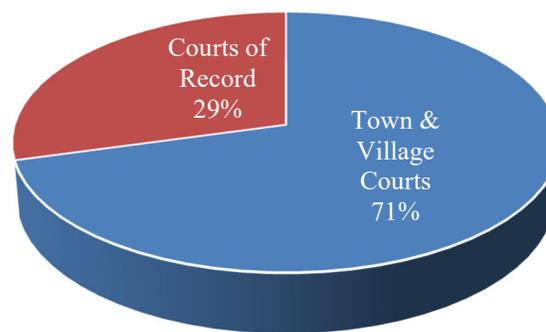
OVERVIEW OF 2023 DETERMINATIONS

The Commission rendered eight formal disciplinary determinations in 2023: four removals, two censures and two admonitions. In addition, nine matters were disposed of by stipulation made public by agreement of the parties (five such stipulations were negotiated during the investigative stage, and four after a Formal Written Complaint had been served). Eight of the judges were non-lawyer judges and nine were lawyers. Thirteen of the 17 judges were town or village justices, and four 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.)



2023 DISPOSITIONS



1978-2023 DISPOSITIONS

DETERMINATIONS OF REMOVAL

The Commission completed four formal proceedings in 2023 that resulted in a determination of removal. The cases are summarized below and the full text can be found in Appendix F.

Matter of Jeremy L. Persons

On February 23, 2023, the Commission determined that Jeremy L. Persons, a Justice of the Guilford Town Court, Chenango County, should be removed from office for making inappropriate sexual comments in court and in chambers, and for engaging in numerous other acts of misconduct. The Commission found that Judge Persons: (1) Made sexually charged comments to and about attorneys appearing in his court; (2) Displayed the following bumper stickers on his car which he typically parked near the non-public entrance to the court, where it was visible to police officers and/or defendants in custody: (a) A bumper sticker that read, “Boobies Make Me Smile.” and (b) a graphic of “Judge Dredd,” referring to the fictional character known as “judge, jury and executioner.”; (3) Failed to respond and appear on traffic tickets resulting in two suspensions of his driver’s license and also failed to renew his car insurance which also resulted in the suspension of his driver’s license; (4) In eventually responding to his traffic tickets, gave the court clerk his @nycourts.gov email address, which resulted in the court clerk making a notation on his file that he was “a judge at Guilford, NY.”; (5) Carried his handgun in a hip-holster which was easily visible when he was not wearing his judicial robe, notwithstanding that his pistol permit required the pistol to be concealed and on one occasion the judge placed his handgun on the bench when a public defender was appearing before him; (6) Failed to file required monthly reports with the State Comptroller in a timely manner, which resulted in his salary being stopped; (7) Failed to cooperate with a subsequent Office of Court Administration audit of his court records, which resulted in an order that all his pending cases be assigned to another judge and no new cases be assigned to him.; and (8) Failed to cooperate during the Commission’s investigation and proceedings. In determining to remove Judge Persons, the Commission stated: “[Judge Persons] violated the Rules when he behaved in an undignified manner by making inappropriate comments to and about attorneys appearing before him; engaged in a pattern of failing to comply with the law; invoked his judicial office in connection with a personal matter and failed to cooperate with OCA and the Town of Guilford in the investigation of his judicial conduct. His underlying misconduct was significantly exacerbated when he chose to ignore the Commission’s proceedings.” Judge Persons, who is not an attorney, did not request review by the Court of Appeals.

Matter of Randy A. Hall

On October 17, 2023, the Commission determined that Randy A. Hall, a Justice of the Dickinson Town Court, Broome County, should be removed from office for sexually harassing his co-judge and court staff, asserting his judicial office with police officers during a dispute, conveying the impression that he had prejudged the guilt of criminal defendants and posting sexual and otherwise inappropriate content to his public Facebook page. The Commission found that Judge Hall:

(1) Made crude, sexually charged and otherwise inappropriate comments to and about his co-judge and court clerks, including references to sexual intercourse with a pig, his female co-judge’s undergarments, the humming sound of a vibrator, and an intimate picture of a woman on his

cellphone; (2) Made mocking references to mandatory sexual harassment awareness and training programs; (3) Repeatedly identified himself as a judge during a petty dispute at gas station; (4) Conveyed to various defendants the appearance that he had prejudged their guilt; and (5) Joked on his public Facebook page about a serial killer, about a jury that was not hung but a judge who “sure” was, and about someone “peeking” up his judicial robe. In its removal determination the Commission found that Judge Hall “violated the Rules when he made inappropriate sexually charged comments to his co-judge and court staff; while on the record, he publicly inquired about employment with the police department which suggested bias in favor of law enforcement; he invoked his judicial office in connection with a personal matter and made comments which gave at least the impression that he had prejudged the guilt of three criminal defendants appearing before him. He also detracted from the dignity of judicial office when he made sexual comments on his public Facebook page, some of which referenced his judicial position.” Judge Hall, who is not an attorney, did not request review by the Court of the Appeals.

Matter of William H. Futrell

On December 12, 2023, the Commission determined that William H. Futrell, a Justice of the Montezuma Town Court, Cayuga County, should be removed from office for posting Nazi imagery on his Facebook page and publicly displaying “Likes” of Facebook pages that denigrated and objectified women. Among other things: (1) Judge Futrell’s Facebook profile picture was an image of a human skull that appeared identical to the Nazi SS/Totenkopf forces insignia, with the letters “FF” (for “Futrell Firearms”) appearing in the style of the Nazi “SS” abbreviation. He also posted a meme of Facebook co-founder Mark Zuckerberg in Nazi military garb; and (2) Judge Futrell’s Facebook “Likes” page included such pages as “Dirty Biker Trash” and “Porngirls” that “consisted of numerous photographs of scantily-clad women in sexually provocative poses.” In its removal determination the Commission found that “...when [Judge Futrell] posted Nazi imagery on Facebook, including in his Facebook profile, [Judge Futrell] engaged in truly egregious and troubling conduct that warrants removal. He also detracted from the dignity of judicial office when he promoted posts that demeaned women. Moreover, his decision to ignore the Commission’s proceedings aggravated his underlying misconduct.” Judge Futrell, who is not an attorney, did not request review by the Court of the Appeals.

Matter of Edward Timothy Mercer

On December 27, 2023, the Commission determined that Edward Timothy Mercer, a part-time Justice of the Athens Town Court (Greene County) who also owns a private contracting company, should be removed from office for awarding a no-bid \$3,300 contract to his own company for courthouse improvements, and falsifying his invoice by not revealing that the equipment he bought cost \$760 less than he listed. Although the judge then signed a voucher authorizing payment to his own company, the money was not paid when his misconduct was discovered. In determining to remove Judge Mercer, the Commission stated in part that Judge Mercer engaged in “self-dealing to further his own business interests in connection with the [Justice Court Assistance Program] grant.” The Commission also stated that: “... even after [Judge Mercer] was made aware of the ethical issues surrounding his actions, he did not take any remedial steps to mitigate his wrongdoing” and “by continuing to insist on payment even after being made aware of the ethical issues, [the judge] compounded his misconduct and demonstrated a lack of understanding of the

inappropriateness of his actions.” Judge Mercer, who is not an attorney, did not request review by the Court of the Appeals.

DETERMINATIONS OF CENSURE

The Commission completed two formal proceedings in 2023 that resulted in public censure. The cases are summarized below and the full text can be found in Appendix F.

Matter of Richard F. Olcott

On May 16, 2023, the Commission determined that Richard F. Olcott, a Justice of the Elizabethtown Town Court (Essex County) should be censured for involving himself in the disposition of a traffic ticket issued to his son. In January 2022, Judge Olcott’s adult son received a traffic ticket for operating an Unregistered Motor Vehicle. Two days after receiving the ticket, the judge’s son registered the vehicle. About a week later, during the judge’s regularly scheduled court date, the judge asked an Assistant District Attorney (ADA) about resolving the ticket. During Judge Olcott’s conversation with the ADA, he did not disclose that it was his son’s ticket. The ADA agreed to dismiss the ticket as the judge told him that the vehicle was now properly registered. Compounding his misconduct, the judge also failed to mechanically record any vehicle and traffic proceedings despite being required to do so. In censuring Judge Olcott, the Commission considered his belief that since his son had promptly registered the vehicle, the disposition of the matter was ministerial and consistent with how similar tickets were disposed when motorists promptly registered their vehicles and that he now recognizes that he should not have handled his son’s ticket under any circumstances. Judge Olcott, who is not an attorney, did not request review by the Court of Appeals.

Matter of Jennifer R. Nunnery

On August 9, 2023, the Commission determined that Jennifer R. Nunnery, a Justice of the Darien Town Court (Genesee County) should be censured for engaging in offensive and otherwise inappropriate behavior on Facebook and for improperly endorsing two candidates running for elective office. At some point after becoming a judge in January 2020, Judge Nunnery posted the following to her publicly visible Facebook page: (1) “Driving down the mean streets of Batavia after tanning and thought I recognized the ass of one of my favorite marines walking through the Tops parking lot lol 😏 It’s been too long! Good to see ya, ya f***ing boot! 😊👍” (2) “F*** No the first incoming call from a client on my first day of vacation just came in at 8:56am. Seriously people I have enough work shit to catch up on during my time off, I’m not answering the phones!!!” (3) “...You know what’s more therapeutic than shopping? Cross examining someone and being absolutely F***ING AWESOME at ripping them apart on the stand like the baddest bitch there is!!!! #ladyboss #bossbitch BAHAHAAAA!...” (emphasis in original), and (4) In response to a re-shared, seven-year-old Facebook post, the judge commented: (a) “Omg everyone was so f***ing hungover lol;” and (b) “I remember drawing a dick on his face when he passed out on the plane lol.” In 2021, Judge Nunnery committed additional misconduct in that she “liked” Facebook pages for a candidate running for Buffalo City Court and a candidate running for a local school board position, creating at least the appearance that she had endorsed those candidates. In its censure determination, the Commission considered that Judge Nunnery acknowledged her impropriety, was a relatively new judge at the time, and promptly removed the

troublesome posts when her supervising judge raised the issues with her. Judge Nunnery, who is an attorney, did not request review by the Court of Appeals.

DETERMINATIONS OF ADMONITION

The Commission completed two formal proceedings in 2023 that resulted in public admonition. The cases are summarized as follows and the full texts can be found in Appendix F.

Matter of Jill R. Epstein

On August 14, 2023, the Commission determined that Jill R. Epstein, a Judge of the New York City Civil Court (Kings County) should be admonished for asserting her judicial office during a confrontation over a double-parked car. In April 2022, while driving to work, Judge Epstein became stuck behind a double-parked car outside of a school. She entered the school, identified herself as a judge to the school safety officer, said she had to get to work at the courthouse and asked about the vehicle. When the teacher whose car had been double-parked came outside to move the car, Judge Epstein became angry, called her a “stupid bitch,” said she too had a parking placard but could not use it double-park, and added she had a courthouse to run. The Commission determination stated that Judge Epstein “improperly asserted her judicial status when speaking with the school safety officer and created the appearance that she expected special treatment and deference due to her judicial position.” It also noted that she sent a written apology to the teacher and was subject to administrative action by her supervisors. Judge Epstein did not request review by the Court of Appeals.

Matter of Benjamin L.F. Leavitt

On September 21, 2023, the Commission determined that Benjamin L.F. Leavitt, a Justice of the Ossining Town Court, Westchester County, should be admonished for trying to influence another judge to be lenient with his mail carrier, who had received parking tickets unrelated to her job. In September 2021, after being approached by his mail carrier, who was due in court in connection with various parking violations, Judge Leavitt sent the following text message to his co-judge: “My mail carrier is on for a parking ticket. I told her I would talk with you. If you could take her postal service into account when deciding whether or not to go lower on the fine than [the village prosecutor] is recommending that would be great.” The mail carrier appeared before the co-judge the next day and entered into a plea agreement with the village prosecutor. The fines imposed reflected the negotiated agreement. (The co-judge was not influenced by Judge Leavitt.) The Commission determination stated that Judge Leavitt “violated his ethical obligations when he contacted his co-judge in an attempt to use his influence to assist his mail carrier...” In determining to admonish Judge Leavitt the Commission considered the judge’s unblemished career as a lawyer and a judge, and that he “promptly accepted responsibility for his misconduct.” Judge Leavitt, who is an attorney, did not request review by the Court of Appeals.

OTHER PUBLIC DISPOSITIONS

The Commission completed nine other proceedings in 2023 that resulted in public dispositions. The cases are summarized below and the full text can be found in Appendix F. Five of the matters were concluded during the investigative stage, and four after formal proceedings had been commenced.

Matter of David J. Coursen

On January 26, 2023, pursuant to a stipulation, the Commission closed its investigation of a complaint against David J. Coursen, a Justice of the Lake Placid Village Court, Essex County, who resigned from office while the Commission was investigating a complaint that he was biased in favor of the defendant in a code enforcement case, with whom he engaged in unauthorized *ex parte* communications, and biased against the local code enforcement officer, whom the judge berated in court. Judge Coursen appeared at the Commission for testimony on January 24, 2023, and in the course of the proceeding said he wished to resign from judicial office immediately rather than continue testifying. The judge's testimony was suspended, and he resigned from office the same day. Judge Coursen, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of William L. DeProspro

On January 26, 2023, pursuant to a stipulation, the Commission discontinued a proceeding involving William L. DeProspro, a Judge of the Orange County Court, who was charged in July 2022 with a Formal Written Complaint, alleging that he was disrespectful, disparaging, sarcastic and otherwise discourteous to petitioners while presiding over five separate Family Court matters. Among other things, the judge: (1) Asked a petitioner, "What kind of kook are you?"; belittled her concern about missing school in order to be in court; said "everything that you told me was bullshit"; and told the petitioner to "get your ass out of bed and get here at 9:00 in the morning" or her petition would be dismissed and she could "ask the director [of your school] to protect you." (2) Said to another petitioner: "So listen, why should I give you an order of protection...if you keep going back to this guy? ...You went looking for him. You got into the car, okay, and you obviously want to be with him because you keep going back to him."; and (3) Said to a third petitioner: "So, three weeks before you found out that he had another honey on the side, were you afraid of him? ...Oh, you were? Well, then what were you with him for then?". In agreeing to resign, Judge DeProspro affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of Harriet L. Thompson

On January 26, 2023, pursuant to a stipulation, the Commission discontinued a proceeding involving Harriet L. Thompson, a Judge of the Surrogate's Court, Kings County, who was charged in May 2022 with a Formal Written Complaint, alleging that she made inappropriate comments to and about employees and judges of the Unified Court System; displayed bias against various individuals and ethnicities; failed to administer Surrogate Court matters in a timely manner, leading to substantial delays; and, as a candidate for Surrogate in 2018, failed to complete mandatory campaign ethics education in a timely manner. A formal hearing was scheduled to

commence on January 17, 2023, before a referee. After Judge Thompson produced a letter from her physician on November 30, 2022, claiming she was “not medically fit to stand trial at this time” and that further medical procedures were likely, the Commission authorized a Second Formal Written Complaint against her, dated December 16, 2022, alleging that she was medically unfit to remain in office. In lieu of filing an Answer to the Second Complaint, Judge Thompson agreed to leave office permanently due to her medical situation. She also agreed to discontinue any lawsuits she had commenced against the Commission. Judge Thompson affirmed that she would neither seek nor accept judicial office at any time in the future.

Matter of David A. Rikard

On April 20, 2023, pursuant to a stipulation, the Commission discontinued a proceeding involving David A. Rikard, a Justice of the Prattsville Town Court, Greene County. Judge Rikard refused to cooperate with the Commission during its investigation of three complaints against him. He refused to provide documents the Commission requested, and he refused to appear for testimony when summoned by the Commission. Judge Rikard resigned from office on January 6, 2023. The Commission’s inquiry nevertheless continued, and on January 26, 2023, he was served with formal disciplinary charges for the failure to cooperate. Judge Rikard, who is an attorney, admitted the facts and agreed to never seek or accept judicial office in the future.,

Matter of Scott B. Ugell

On June 1, 2023, pursuant to a stipulation, the Commission closed its investigation of Scott B. Ugell, a Justice of the Clarkstown Town Court, Rockland County. In March 2023, the Commission apprised Judge Ugell it was investigating a complaint that he presided over a landlord/tenant case without disclosing that an attorney in the case had personally represented him in an unrelated matter, and for not affording the opposing party an opportunity to be heard. In April 2023, the Commission advised Judge Ugell it was investigating a second complaint, alleging that he became a candidate for Clarkstown Town Supervisor without resigning from his position as Clarkstown Town Justice. In May 2023, the Commission advised Judge Ugell it was investigating a third complaint, alleging that he testified falsely in a lawsuit claiming he was ineligible to run for town supervisor. In agreeing to resign the judge, who is an attorney, affirmed that he would neither seek nor accept judicial office at any time in the future.

Matter of Corrie A. Damulis

On July 20, 2023, pursuant to a stipulation, the Commission closed its investigation of a complaint against Corrie A. Damulis, a Justice of the Burlington Town Court, Otsego County. In June 2023, the Commission apprised Judge Damulis that it was investigating two complaints, alleging that (1) she mishandled court funds in her previous position as Justice of the Richfield Springs Village Court and as a Justice of the Burlington Town Court, and (2) she failed to file reports or remit funds to the State Comptroller as required by law, resulting in her salary being stopped. Judge Damulis was scheduled to give testimony regarding this matter at the Commission on June 27, 2023. Instead, the judge tendered her resignation. In agreeing to resign, Judge Damulis, who is an attorney, affirmed that she would neither seek nor accept judicial office at any time in the future.

Matter of June Shepardson

On October 12, 2023, pursuant to a stipulation, the Commission closed its investigation of a complaint against June Shepardson, a Justice of the Moravia Town and Village Courts, Cayuga County, who resigned from office while under investigation by the Commission for allegedly taking more than \$6,000 in court funds. In agreeing to resign, Judge Shepardson, who is not an attorney, affirmed that she would neither seek nor accept judicial office at any time in the future.

Matter of John P. Orzel

On December 7, 2023, pursuant to a stipulation, the Commission discontinued a proceeding involving John P. Orzel, a Justice of the Triangle Town Court, Broome County, who resigned from office after being served with a Formal Written Complaint alleging that in September 2023 he: (1) Initiated a public argument in the courtroom with a female clerk from the Broome County Department of Motor Vehicles (DMV) who was operating a DMV mobile office in the courtroom; (2) Made inappropriate, unwanted physical contact with the clerk by repeatedly poking her on her left shoulder with his finger; and (3) Made snide and/or otherwise discourteous remarks to her before complaining about her to her supervisors. Judge Orzel, who is not an attorney, agreed that he would neither seek nor accept judicial office at any time in the future.

Matter of Clark V. Richardson

On December 7, 2023, pursuant to a stipulation, the Commission closed its investigation of a complaint against Clark V. Richardson, a Judge of the New York City Family Court, New York County, who resigned from office after being apprised by the Commission that it was investigating a complaint related to his prolonged absence from the performance of his judicial duties. Judge Richardson then acknowledged that his physical health is such that he is now, and for the foreseeable future will be, unable to perform his judicial duties. In agreeing to leave office, Judge Richardson, agreed that he would neither seek nor accept judicial office at any time in the future.

**COMMISSION DETERMINATION
REVIEWED BY THE COURT OF APPEALS**

Matter of Putorti

On September 9, 2022, the Commission determined that Whitehall Town and Village Court Justice Robert J. Putorti (Washington County) – a part-time non-lawyer judge – should be removed from his judicial office for brandishing a loaded handgun in court at a Black defendant, and then repeatedly boasting about the incident in terms that suggested racial bias. In telling and re-telling the story to others, Respondent grossly exaggerated the size and physique of the defendant, referring to him as a “big Black man” who was 6’9” and “built like a football player,” even though the defendant stood approximately 6’0” tall and weighed 165 pounds. The Commission determined that Respondent should be removed from office, opining that “[b]y brandishing his loaded gun at a litigant, repeatedly mentioning the race of that litigant and bragging about the gun incident, respondent engaged in a pattern of behavior unbecoming a judge and undermined public confidence in the judiciary.”

Respondent also impermissibly used his public Facebook page to promote fundraising events for his local Elks Lodge, in violation of an ethical rule prohibiting judges from personally participating in fundraising activities. The Commission found that Respondent’s “repetitive” fundraising posts, made “after he knew that he was under investigation for . . . the gun incident,” showed that he further “violated his ethical responsibilities during a time when he should have been particularly attentive to those responsibilities.”

On October 11, 2022, Judge Putorti requested review of the Commission’s determination by the Court of Appeals. On October 19, 2023, the Court accepted the Commission’s determination that Judge Putorti should be removed from office. The Court held that, “[w]hile presiding over his courtroom, petitioner brandished a loaded firearm at a litigant who presented no threat to anyone. Rather than show remorse, he described his conduct in a press interview and boasted about it to his colleagues, while repeatedly, and gratuitously, referring to the litigant’s race.” The Court rejected Judge Putorti’s claim that he did not act with racial bias, finding that “By repeatedly referring to the litigant in the manner that he did, petitioner exploited a classic and common racist trope that Black men are inherently threatening or dangerous, exhibiting bias or, at least, implicit bias.”

Turning to the charge of engaging in improper fundraising, the Court held that “Petitioner’s unfitness for office is further demonstrated by his improper use of social media to solicit donations.” The Court explained that “[a]lthough the improper fundraising would not by itself warrant removal, its timing and the circumstances under which it occurred—while petitioner was under investigation on Charge I—evinced an unwillingness or inability to abide by the Rules of Judicial Conduct.”

Finally, the Court also held that the Commission’s investigation into the Facebook misconduct was “procedurally proper,” finding that “[t]he Commission may on its own motion initiate an investigation of a judge (see Judiciary Law § 44 [2]; 22 NYCRR 7000.2) and, if in the course of an investigation the Commission’s staff becomes aware of unrelated acts that may constitute misconduct, the Commission may then authorize an investigation of that conduct in a separate complaint (see New York State Commission on Judicial Conduct Policy Manual § 2.6 [A], at 7 [May 2022]).” That is what happened here: when “[t]he Commission’s staff appropriately searched petitioner’s public social media account” while investigating the firearm incident, they discovered the improper fundraising posts and properly charged that misconduct in a separate complaint authorized by the Commission itself.

OTHER DISMISSED OR CLOSED FORMAL WRITTEN COMPLAINTS

The Commission disposed of two Formal Written Complaints in 2023 without rendering public disposition. Both complaints were closed due to the expiration of the judges’ terms.

MATTERS CLOSED UPON RESIGNATION

In 2023, 15 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, all pursuant to public stipulation. Eleven judges resigned while under investigation, five 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 2023, the Commission referred 28 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. Eight matters were referred to an attorney grievance committee, one matter was referred to the Office of the State Comptroller, and another matter was referred to the New York State Attorney General’s office.

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 2023, the Commission issued 65 Letters of Dismissal and Caution. Fifteen town or village justices were cautioned, including four who are lawyers. Forty-nine 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. Two judges were cautioned for engaging in prohibited charitable fundraising.

Audit and Control. Two judges were cautioned for failing to file monthly reports and remittances with the State Comptroller in a timely 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 was cautioned for improperly signing an *ex parte* order of protection after recusing from the matter. Another judge failed to disclose to a defendant his relationship with the plaintiff.

Finances. Four 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.

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. Five judges were cautioned during the year for various displays of discourtesy that did not warrant public discipline or were not part of a pattern of misconduct.

Political Activity. Forty-three judges were cautioned for engaging in improper political activity. The Rules prohibit judges from making contributions to political organizations or candidates, including out-of-state candidates, outside of their specifically defined "window period" when they are candidates for elective judicial office. Thirty-four judges were cautioned for making such contributions outside their "window periods," typically in small amounts to candidates running for President or other federal office, in the mistaken belief that the prohibition on political contributions applied only to candidates for state or local office. Nine judges were cautioned for failing to complete mandatory campaign ethics training in a timely manner.

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, such as abbreviating the colloquy while taking a plea to a Vehicle & Traffic Law matter.

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).

LITIGATION INVOLVING THE COMMISSION

Mora v Koch

On December 16, 2022, Hon. Frank Mora – a judge of the Poughkeepsie City Court – brought a defamation suit in Dutchess County Supreme Court seeking \$375,000 in damages against a complainant to the Commission who had filed a confidential judicial misconduct complaint against him. Judge Mora alleged that Stacey Koch, the office manager of a local ophthalmology office, defamed him by filing what he claimed was a “materially false” and “libelous” complaint with the Commission pertaining to his failure to comply with the office’s face mask policy and other conduct during an office visit.

Judge Mora acknowledged in his verified complaint that he had visited the office and declined to comply with the office’s face mask policy after being asked to do so, but he denied other allegations made in Ms. Koch’s complaint. Judge Mora filed a copy of the Commission complaint with his lawsuit, publicly disclosing it notwithstanding that it was the subject of an ongoing Commission investigation and had been confidential up to that point.

Ms. Koch was represented *pro bono* by Victor A. Kovner and Rafael Holszyc-Pimental of Davis Wright Tremaine LLP, who filed a pre-Answer motion to dismiss the suit on the grounds of absolute privilege and New York’s Civil Rights statutes dealing with strategic lawsuits against public participation (a/k/a the “anti-SLAPP” statutes).

The Commission filed a motion to intervene in the suit due to its unique and substantial interest in protecting the integrity of its inquiries from attempts to inhibit witnesses from coming forward or cooperating. The Commission likewise moved to dismiss the suit based on absolute privilege.

On March 27, 2023, the motions proceeded to oral argument before the Honorable Maria G. Rosa. Judge Rosa granted the Commission’s motion to intervene as unopposed and reserved decision of the remaining motions.

By Decision and Order dated April 4, 2023, Judge Rosa granted the motions to dismiss, concluding that the suit was barred by the principle of absolute privilege. Judge Rosa reasoned that the Court of Appeals’ decision in *Wiener v Weintraub*, 22 NY2d 330 (1968), which held that complaints of attorney misconduct to the Grievance Committee are entitled to absolute immunity, applied as well to complaints of judicial misconduct to the Commission. Judge Rosa concluded that “absolute privilege . . . [is] critical to the Commission’s investigation and to maintaining public confidence in the integrity of the judiciary” and necessary to address “a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility.”

Finally, Judge Rosa found that New York’s anti-SLAPP statutes, which are codified at Civil Rights Law §§ 70-a and 76-a, required a mandatory award of costs and attorney’s fees. In lieu of a hearing to determine the appropriate amount of costs and attorney’s fees, Judge Mora and Ms. Koch entered into a settlement agreement by which Judge Mora agreed to pay \$20,000, issue a private letter of apology, cease all contact with Ms. Koch and the ophthalmology office, and waive all appellate claims as to Judge Rosa’s decision and order. On June 23, 2023, Judge Rosa issued a final judgment dismissing Judge Mora’s complaint with prejudice.

Matter of New York State Commission on Judicial Conduct v. Peirez and Smith.

In the course of a confidential Commission investigation into complaints that a judge of the Unified Court System had, *inter alia*, engaged in inappropriate e-mail correspondence, two attorneys refused to comply with a Commission subpoena that required them to testify and produce relevant e-mail correspondence with the judge.

By Order to Show Cause dated October 24, 2022, the Commission brought a petition in Supreme Court, Albany County, for an order pursuant to CPLR 2308 compelling the two attorneys to produce the requested e-mails and provide sworn testimony. The attorneys opposed the application and brought a cross-motion to quash the Commission's subpoenas, claiming that the Commission must reveal the subject matter of its investigation to establish relevance before compliance with the subpoenas could be compelled.

Oral argument was held before Acting Albany County Supreme Court Justice Gerald W. Connolly on November 15, 2022.

By Decision/Order/Judgment dated January 3, 2023, the Court granted the Commission's petition and ordered the attorneys to produce the requested e-mails and appear for testimony. After conducting an *in camera* review of confidential documents obtained in the Commission's investigation, Judge Connolly concluded that the Commission had met its "low burden of showing that the information sought is reasonably related to a proper subject of inquiry." The Court denied the attorneys' cross-motion in all respects, upholding the Commission's authority to issue the subpoenas and rejecting the claim that the Commission must reveal to the attorneys the subject matter of its confidential investigation.

The Court initially sealed the matter pending further submissions and directed the parties to address whether or not the file should be permanently sealed. By Letter Decision and Order dated April 13, 2023, Judge Connolly lifted the seal, except as to documents submitted to the Court for *in camera* review, and directed that all references to the e-mail address of the judge being investigated should be redacted in order to protect the judge's identity.

Matter of Harriet Thompson v. NYS Commission on Judicial Conduct

The Commission issued a Formal Written Complaint dated May 23, 2022, containing four charges of misconduct against Judge Harriet Thompson, a Judge of the Surrogate's Court, Kings County for: (1) making inappropriate comments to and about employees and judges of the Unified Court System; (2) displaying bias against various individuals and ethnicities; (3) failing to administer Surrogate Court matters in a timely manner resulting in substantial delays; and (4) failing to complete mandatory campaign ethics education in a timely manner.

From August 23, 2022, to January 7, 2023, Judge Thompson denied the allegations, sought dismissal of several of the charges, sought postponement of the hearing, and sought production of medical and personnel records of one of the witnesses in the Commission's proceeding. In addition, on November 30, 2022, Judge Thompson produced a letter from her physician stating, *inter alia*, that she was "not medically fit to stand trial at this time" due to certain medical procedures, a medication regimen prescribed as a result of those procedures, and the likelihood that further medical procedures would be necessary.

On November 30, 2022, Judge Thompson filed a special proceeding pursuant to CPLR Article 78 against the Commission in New York County Supreme Court under index number 160164/2022. The proceeding was sealed, preventing the public from accessing court filings in the case.

On December 16, 2022, Respondent was served with a Second Formal Written Complaint authorized by the Commission, alleging that she was medically unfit to remain in office. In lieu of submitting an Answer to the Second Formal Written Complaint, Judge Thompson signed a stipulation in which she admitted that she was prevented from performing the duties of judicial office because of a medical disability. Judge Thompson agreed to retire from judicial office effective March 1, 2023, and further agreed to neither seek nor accept judicial office at any time in the future. In addition, Judge Thompson agreed to withdraw and/or discontinue all lawsuits and/or proceedings she may have initiated against the Commission.

On January 12, 2023, Judge Thompson filed a stipulation of discontinuance in connection with her Article 78 proceeding against the Commission.

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.

PROPOSED LEGISLATION AFFECTING THE COMMISSION¹

The State Assembly has on its agenda a major bill, already passed in the Senate by a vote of 61 to 1, that would enhance the Commission's ability to hold judges accountable for any misconduct they may commit.² The legislation reflects what the Commission itself has advocated and addressed in numerous annual reports since 1978.

Created by the State Constitution in 1978, the Commission is responsible for investigating complaints of unethical behavior against the 3,400 judges of the state Unified Court System and, where appropriate, disciplining them with determinations of public admonition, public censure, or removal from office.³ The Commission may also retire a judge for mental or physical disability,⁴ or confidentially caution a judge.⁵

The pending legislation – introduced in the Senate by Brad Hoylman-Sigal, co-sponsored by Mike Gianaris and Sean Ryan, and proposed in the Assembly by Charles Lavine⁶ – has three components, affecting (1) how the Commission is budgeted, (2) when its proceedings would become public, and (3) when it may discipline judges who leave office before proceedings against them are concluded. The three components are discussed below.

DIRECT BUDGET SUBMISSION TO LEGISLATURE

The proposed legislation would confirm the Commission's independence by enabling it to submit its annual budget request directly to the Legislature, with comment by the Governor.

The Commission is unique among government agencies in that it regularly interacts with leaders of the executive, legislative and judicial branches of government, but is not supervised or controlled by any one of them. Its 11 members are appointed by six different appointing authorities, none of whom appoints a majority, the chair or the chief executive officer.⁷ The Commission members elect their own chair for a two-year term and appoint an administrator to

¹ The discussion in this section is adapted from an article by Commission Chair Joseph W. Belluck and Administrator Robert H. Tembeckjian, published in the New York Law Journal on December 19, 2023.

² Bill numbers S4398 in the Senate, A4908 in the Assembly.

³ Const Art VI, §22(a).

⁴ *Id.*

⁵ 22 NYCRR 7000.1(n), (o).

⁶ Hoylman-Sigal chairs the Senate Judiciary Committee, Gianaris is the Deputy Majority Leader, and Ryan chairs the Committee on Commerce, Economic Development, and Small Business. Lavine chairs the Assembly Judiciary Committee.

⁷ The Governor appoints four members, the Chief Judge appoints three, and one each is appointed by the Assembly Speaker, the Assembly Minority Leader, the Senate President Pro Tem and the Senate Minority Leader. Const Art VI, §22(b)(1).

lead the agency's day-to-day operations.⁸ Four of the 11 Commissioners are judges, five are lawyers and two are non-lawyers.

While the Commission performs a purely judicial-branch function, *i.e.*, investigating and disciplining judges, an obvious conflict would exist were its budget controlled by the very judiciary whose conduct it reviews. Thus, in 1978, it was agreed the Commission's annual budget request would be submitted to the Legislature by the Governor, leaving the judicial branch out of the process.

Then-Governor Hugh L. Carey was very supportive of the Commission, recognized its importance in one of his State of the State messages, and worked with its leadership to submit mutually agreed-upon budget recommendations. Not all subsequent Governors followed his example. Some simply allowed their Budget Division to choose a figure, usually less than commensurate with the Commission's mandate and caseload. One Governor proposed a cut in the Commission's budget shortly after it dismissed one aspect of his own complaint against a judge. Such actions resulted in direct appeals from the Commission to the Legislature, which often added funds to the figure proposed by the Governor.

This bill would institutionalize the Commission's direct and transparent interactions with the Legislature on budgetary matters, with the Governor commenting on but not amending the agency's budget request. This would mirror the way the annual judicial branch budget is handled, respecting the separation-of-powers principle and recognizing that the Commission is created in the Judiciary articles of the Constitution and statute, and that is not an executive branch agency reporting to the Governor.

CONFIDENTIALITY OF COMMISSION PROCEEDINGS

The proposed legislation would increase the transparency of Commission proceedings at a critical point by making its proceedings public in the relatively rare case where formal disciplinary charges are initiated. This is the norm throughout the United States.

The Commission receives and processes around 2,500 complaints per year. The majority express dissatisfaction with the judge's rulings in a case and are dismissed on a confidential basis. The pending bill would not change that.

Complaints that allege ethical misconduct are investigated, but the majority are later dismissed as unsubstantiated, or the judge is cautioned confidentially for a minor infraction. The pending bill would not change that, either.

When an investigation reveals serious misconduct, however, the Commission will authorize formal disciplinary charges. In 38 of the 50 states, proceedings become public at this point. But not in New York.

Analogizing the process to criminal law, judicial misconduct inquiries (like grand jury investigations) are confidential everywhere, while formal charges and trials are public in 38 states.

⁸ Jud L §§41(2), (7).

New York is in the small minority of states where all judicial disciplinary proceedings – even the formal charges and trial – are conducted behind closed doors. The pending legislation would align New York with the majority. The rationale is that judges are public officials, and when a commission comprised of judges, lawyers and non-lawyers finds reasonable cause to institute formal charges, the public has a right to know.

The Commission itself has been advocating for this change since 1978. It is a fundamental premise of the American system of justice that the rights of citizens are protected by conducting trials in the open. Not only does the public have a right to know when formal charges have been filed by an enforcement authority against a public official, but the enforcing entity is more likely to exercise its power wisely if it is subject to public scrutiny. While a judge as to whom charges are eventually dismissed may feel his or her reputation was damaged by the proceedings having been public, the historical presumption in favor of openness is so well established that criminal trials – where not only reputations but liberty are at stake – have rightfully been public since the adoption of the Constitution.

It must be noted that, even if the pending bill became law, most Commission matters would remain confidential from start to finish. Roughly 135 of the 20,000 complaints reviewed over the past decade – less than 1% – resulted in formal charges, and only around five of those were disposed of with confidential cautions. Moreover, the Court of Appeals has upheld on review all ten of the Commission decisions that were appealed in the past ten years.

Reflecting on the statistics, former Commissioner Joel Cohen observed in a Law Journal column: “The Commission simply isn’t trigger-happy; if it files a charge, an extremely high percentage of those respondents are publicly disciplined, and if appealed, those decisions are likely upheld. Given these sheer numbers, is there really a valid reason to keep *all formal complaints* confidential once filed?”⁹ (Emphasis in original.)

The answer comes down to a public policy choice: transparency when a responsible agency files formal charges against judges, versus secrecy on the miniscule chance that a few cases might result in confidential cautions rather than public reprimands. Since its creation in 1978, the Commission has believed that the presumption should be openness. The Senate has now emphatically agreed.

There are also practical considerations. The disciplinary process – evaluating a complaint, conducting a comprehensive investigation, holding a formal evidentiary hearing, producing post-hearing briefs, issuing the hearing officer’s report, presenting another round of briefs and oral argument, and rendering a final determination subject to review by the Court of Appeals – is lengthy, in significant part because the Commission painstakingly endeavors to render a determination that is fair and comports with due process. In other words, under current law, the Commission goes through a process akin to a Grand Jury investigation, formal charge, trial, verdict and first appeal – all while bound by confidentiality from acknowledging or otherwise explaining to an inquisitive public why it is taking so long. Opening the charges, hearing and oral argument portions of a Commission matter would promote a better understanding of the entire disciplinary

⁹ *Transparency and Judicial Misconduct*, NYLJ, 2/17/2023.

process and the basis for a Commission determination, thus leading to increased confidence in the Commission, its determinations and ultimately the judiciary itself.

Ironically, at one time, disciplinary proceedings against judges *were* made public when a judge was formally charged with misconduct in New York. From 1974 to 1978, two temporary commissions on judicial conduct predated the current Commission. When they authorized formal disciplinary charges, those matters became public, and the adjudications took place in public, either before the Appellate Division or an *ad hoc* Court on the Judiciary whose judges were designated on a case by case basis by the Chief Judge of the Court of Appeals. Since *all* formal proceedings in those courts were public, there was no debate about judicial disciplinary proceedings also being public.

When the Constitution was amended in 1978 to create the present Commission, the adjudicatory responsibility was phased out from those two courts and transferred to the Commission. At that point, all judicial disciplinary proceedings in New York became confidential, at the insistence of the court system's leadership at the time, over the objection of the Commission, various civic organizations and newspaper editorial boards. Subsequent requests to amend the law and make the Commission's adjudicatory proceedings public, by former Chief Judges Judith Kaye and Jonathan Lippman among others, did not succeed.

The current legislation, approved by the Senate and now pending in the Assembly, presents the best opportunity in decades to bring New York in line with the vast majority of states in which formal judicial disciplinary charges are made public.

POST-RESIGNATION DISCIPLINES

The proposed legislation would close a loophole by allowing the Commission to conclude a proceeding even if the judge leaves office early. Executive and legislative branch officials may be held to account for their ethical lapses in office, even after they leave.¹⁰ It should be no different for judges.

By statute, the Commission may continue an inquiry for only 120 days following a judge's resignation, but no sanction other than removal from office may be imposed. The theory behind this limitation: since a removed judge is automatically barred from future judicial office,¹¹ there is a consequence to "removing" a resigned judge. But it is not unusual for a judge to resign and for the Commission to need more than 120 days to complete the lengthy disciplinary process. Indeed, more than 650 judges have done exactly that since 1978, and the Commission has been prevented by law from disclosing who they were and what they did, even if they had been served with formal charges.

Apart from the logistical hurdles in completing complex due process proceedings in 120 days, there are significant public policy questions at play. Should a judge who has committed serious but not removable misconduct be allowed to leave office without penalty? Should a judge who

¹⁰ Exec L §§94(9)(f), 94(10)(k), and Leg L Art 5, §80(8), allow for the disciplining of executive and legislative officials for up to two years after they leave office.

¹¹ Const Art VI, §22(h).

has engaged in removable conduct get a pass because of an arbitrary 120-day limitation? The pending bill in the Legislature answers “no,” for good reason.

Since Commission proceedings are confidential, the public typically would have no inkling that a judge who “voluntarily” left office in fact departed under an ethical cloud. When that happens, the Commission is not even able to explain to the aggrieved complainant that the judge chose to leave office rather than face public criticism, even where there were press reports that the Commission had been investigating.¹² Yet were the departed judge to run for office again, the electorate would be unaware of this important history, and of the fact that the Commission would revive its proceeding were the judge to win and return to office. This has happened more than once.¹³

The pending bill balances the need to hold judges accountable even if they leave office early, against the unfair prospect of endless proceedings, by giving the Commission 120 days from the judge’s departure to decide whether to authorize formal disciplinary charges. If so, the matter would proceed to conclusion and could result in removal, public reprimand or stipulated resignation.

CONCLUSION

Budgetary integrity, responsible transparency, and improved accountability are hallmarks of the proposed legislation affecting New York’s judicial disciplinary system. The Commission continues to advocate and work with the Legislature and the Governor toward enactment of this law.

PROHIBITED POLITICAL ACTIVITY

There are approximately 3,400 judges and justices of the New York State Unified Court System. With limited exceptions – most notably the Court of Appeals, which is New York State’s highest court – judges and justices are elected to specific terms of office.

Public confidence in the independence, integrity and impartiality of the judiciary requires keeping politics out of the courthouse and from influencing judicial decisions. Yet as the US Supreme Court has held, where judgeships are filled by election, it is necessary and permissible for judicial candidates to engage in some campaign activity while running for office because communication between candidates and electorate is fundamental to the democratic process. *Republican Party of Minnesota v White*, 536 U.S. 765 (2002).

¹² From the Commission’s [website](#): “As it is, maintaining confidentiality is often beyond the Commission’s control. For example, in any formal disciplinary proceeding, subpoenas are issued, and witnesses are interviewed and prepared to testify, by both the Commission staff and the respondent-judge. It is not unusual for word to spread around the courthouse, particularly as the hearing date approaches. Respondent-judges themselves often consult with judicial colleagues, staff and others, revealing the details of the charges against them and seeking advice. As more ‘insiders’ learn of the proceedings, the chances for ‘leaks’ to the press increase, often resulting in published misinformation and suspicious accusations as to the source of the ‘leaks.’ In such situations, both confidentiality and confidence in the integrity of the disciplinary system suffer.”

¹³ *Matter of Bailey*, 67 NY2d 61 (1986); *Matter of Young*, 2012 Ann Rep, Comm Jud Conduct 206 (2011).

The Rules Governing Judicial Conduct aim to strike a reasonable balance between these competing interests, *i.e.* allowing for and confining certain judicial campaign activity away from the courthouse. There is, for example, a defined “Window Period” of permissible political activity, based on when election to the judicial term is scheduled.¹⁴ In this Window Period, judicial candidates – whether incumbent judges or non-incumbent challengers – may engage in certain campaign activity, such as purchasing two tickets to political events sponsored by political parties or other partisan organizations, which they may attend in order to promote their own candidacies. Except for the Window Period in which 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.¹⁵

Even 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.¹⁶ 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 running 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.”¹⁷

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 the course of their election campaigns. 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

¹⁴ 22 NYCRR 100.0(Q)

¹⁵ 22 NYCRR 100.5(A)(1)

¹⁶ See, *Matters of Coffinger, Andreassen, and Berliner*.

¹⁷ 22 NYCRR 100.5(A)(4)(f).

documents as the Judicial Campaign Ethics Handbook, recently published Advisory Opinions, and guidelines on the appropriate way to dispose of unexpended campaign funds.

In 2023, the Commission was made aware of several dozen judges throughout the state who appeared to have made prohibited contributions over the past few years, mostly to candidates of the major political parties who were running for election to national or federal office, such as President, the US Senate or the House of Representatives. Most of the contributions were for modest amounts, typically under \$100, and sometimes as low as \$5 or \$10.

Many of the judges did not seem to appreciate that the prohibition on partisan politics is not limited to state or local offices in New York but applies to all campaigns, anywhere. Many of the prohibited contributions appear to have been made on the spur of the moment, with little deliberation, in response to solicitations that came to the judges by email to their personal accounts, to their mobile phones as text messages, or to their computer internet browsers as “pop up” ads.

Because such contributions violate the Rules, the Commission was required to initiate inquiries into each of these cases. Where there was a valid explanation – for example, the purported “contribution” was in fact for the permissible purchase of two tickets to a political event during the judges’ applicable Window Period – the complaint was dismissed. Where there was no valid explanation or excuse, the Commission typically issued a confidential letter of dismissal and caution to the judge. A judge who repeats the violation risks public discipline in the future.

The Commission also referred the subject matter to Chief Administrative Judge Joseph Zayas, who in August 2023 issued a statewide [memorandum](#), reminding all judges and justices of the Unified Court System about the rules and limitations on campaign contributions. Among other things, he specifically noted that the “restrictions apply broadly to all elections, including national elections, as well as state and local elections outside New York State.”

Like so much of the misconduct the Commission encounters, making a prohibited political contribution is a self-inflicted mistake, easily avoidable by pausing when solicited, reviewing the Rules, consulting the Commission’s website, or researching the vast volume of advisory opinions.

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. However, it was never intended for the Executive to unilaterally dictate or control the Commission’s budget.

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 second time in over a decade the Executive Budget recommended what the Commission requested: \$8,128,000. This year, without consultation or explanation, the Executive Budget recommended almost \$600,000 less than the \$8,900,000 the Commission requested. The requested increase was carefully derived, taking into account the Commission’s burgeoning caseload, which reached an all-time high for the second year in a row in 2023, when it processed 2,982 new complaints, a 30% increase over the 10-year - average, and a 22% increase over the previous high of 2,439 complaints in 2022. The Commission also rendered 17 public decisions, 13 of which were removals or stipulated permanent resignations.

The Commission’s requested funding increase is necessary to cover mandated salary increases, rent increases, a case management system, IT upgrades and license renewals. It would also allow for augmenting staff from 49 to 56 full-time employees (FTEs), which would still be considerably less than the 63 FTEs employed by the Commission in 1978.

The Commission will again appeal to the Legislature to restore the \$600,000 omitted from the Executive Budget. Such funding is necessary for the Commission to fulfill its important mandate.

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
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	2982	570	208	204	17	49
2024	8.9m ³	~	~	~	~	~	56

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
BRIAN C. DOYLE, ESQ.
HON. JOHN A. FALK
HON. ROBERT J. MILLER
NINA M. MOORE, PH.D.
MARVIN RAY RASKIN, ESQ.
GRAHAM B. SEITER, ESQ.
HON. ANIL C. SINGH
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	3/31/2027
Fernando M. Camacho	(Former) Chief Judge Janet DiFiore	2021	3/31/2024
Brian C. Doyle	Senate Minority Leader Robert G. Ort	2023	3/31/2024
John A. Falk	(Former) Chief Judge Janet DiFiore	2017	3/31/2025
Robert J. Miller	Governor Kathy Hochul	2018	3/31/2026
Nina M. Moore	Governor Kathy Hochul	2023	3/31/2027
Marvin Ray Raskin	Assembly Speaker Carl Heastie	2018	3/31/2026
Graham B. Seiter	Assembly Minority Leader William A. Barclay	2021	3/31/2025
Anil C. Singh	Chief Judge Rowan Wilson	2023	3/31/2026
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.

Brian C. Doyle, Esq., Co-Managing Shareholder of the Long Island office of law firm Greenberg Traurig, is a graduate of the University of North Carolina at Chapel Hill and the Wake Forest School of Law. He began his career as an Assistant District Attorney in Suffolk County before entering private practice. Mr. Doyle represents clients in real estate transactions, land use applications and litigated matters related to municipal determinations, construction, business and broker disputes, easements and adverse possession claims. Mr. Doyle previously chaired the Suffolk County Bar Association's East End Committee and was a member of its Judicial Screening Committee. He also previously served on the Board of Directors of the East Hampton Business Alliance and as the treasurer of the East End Regional Intervention Court. In 2011, Mr. Doyle received the Suffolk County Bar Association's Special Award of Recognition.

Honorable John A. Falk is a graduate of LeMoyne College and the University of Dayton School of Law. He has served as a Justice of the Brighton Town Court since 2008. He is the Managing Partner of Faraci Lange, LLP, in Rochester, where he focuses on serious injury litigation. Before joining Faraci Lange, he served as an Assistant District Attorney for Monroe County. Justice Falk is a member of the American Board of Trial Advocates.

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.

Nina M. Moore, Ph.D., graduated magna cum laude and Phi Beta Kappa from Knox College and earned her M.A. and Ph.D. in political science at the University of Chicago. She is a professor of Political Science and former department chair at Colgate University, and the director of the Forum on Race and Public Policy. Dr. Moore previously taught at DePaul University, Loyola University of Chicago, and the University of Minnesota. The author of three books, *Governing Race: Policy Process and the Politics of Race*, *The Political Roots of Racial Tracking in American Criminal Justice*, and *Toeing the Line: The Supreme Court and the Politics of Affirmative Action* (forthcoming), her research and teaching interests center on race and institutions. She is named in Princeton Review's Best 300 Professors in the U.S. volume and has served in numerous faculty leadership posts at Colgate, by appointment and peer election. Beyond Colgate she has worked as a consultant on a mayoral and presidential campaign and is the recipient of several outside grants. Dr. Moore previously served as a member of the Judicial Conduct Commission from 2009-2013 and as a New York State Senate appointee to the state Advisory Council on Underage Alcohol Consumption and Substance Abuse. She is on the editorial board of the *Ralph Bunche Journal of Public Affairs* and a member of the American Political Science Association, the Midwest Political Science Association, and the National Conference of Black Political Scientists. Dr. Moore is an active member of the Syracuse, NY community where she has served on not-for-profit boards, is a regular panelist on the PBS television series *Ivory Tower*, and is an active member of her church congregation.

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.

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.

Honorable Anil C. Singh is a graduate of Lawrence University and the Antioch School of Law in Washington, D.C. In 2013, he was elected to the Supreme Court and in 2017 he was appointed to the Appellate Division, First Department. He served as a Judge of the New York City Civil Court from 2003 to 2013. Prior to his judicial career Justice Singh worked as a principal court attorney to the Hon. Alice Schlesinger. Before joining the Commission, Justice Singh had served on the Advisory Committee on Judicial Ethics.

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. 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.

RECENT MEMBERS

Jodie Corngold served on the Commission from 2013 to 2023. Ms. Corngold graduated from Swarthmore College. In her professional life she was responsible for all print and website 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 and sits on several committees of the Brooklyn Public Library. Ms. Corngold is a marathon runner and is engaged in a variety of activities associated with her alma mater.

Ronald J. Rosenberg, Esq., a member of the Commission since 2020, passed away on November 8, 2023. Mr. Rosenberg was a graduate of Hofstra University and St. John's University School of Law. He was a senior partner with the Garden City firm of Rosenberg Calica & Birney LLP. His practice included 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 was a member of the Florida Bar, was appointed by various New York State Supreme Court Justices to serve as a Special Referee, Referee, and Receiver, was a featured columnist in the Long Island Business News, and appeared as a legal commentator on various television news shows, such as "Good Day, New York."

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, *Principal 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.

Cassie M. Kocher, *Senior Attorney*, is a graduate of Cornell University and the University of Louisville Brandeis School of Law. Prior to joining the Commission staff, she was an Assistant United States Attorney for the Western District of New York assigned to the Narcotics and Violent Crime Section. She also previously worked as an Assistant District Attorney in Monroe County where she was assigned to the Special Investigation Bureau and prosecuted felony drug and gun cases.

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. Mr. Levine is currently the President of the Association of Judicial Disciplinary Counsel.

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, *Principal 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. In 2022, Mr. Tembeckjian was appointed by California Governor Gavin Newsom to the Committee to Review Operations and Structure of the [California] Commission on Judicial Performance.

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 2023

Referee	City/Town	County
Mark S. Arisohn, Esq.	Tuckahoe	Westchester
Howard Benjamin, Esq.	New York	New York
Peter Bienstock, Esq.	New York	New York
Helene E. Blank, Esq.	Brooklyn	Kings
Linda J. Clark, Esq.	Albany	Albany
Meghan E. Dean, Esq.	Syracuse	Onondaga
Daniel A. Drake, Esq.	Pittsford	Monroe
William T. Easton, Esq.	Rochester	Monroe
David M. Garber, Esq.	Syracuse	Onondaga
Thomas F. Gleason, Esq.	Albany	Albany
Ronald Goldstock, Esq.	Larchmont	Westchester
Gregory J. Huether, Esq.	Pittsford	Monroe
Souren Israelyan, Esq.	New York	New York
C. Bruce Lawrence, Esq.	Rochester	Monroe
Margaret M. Reston, Esq.	Rochester	Monroe
Joshua Silber, Esq.	New York	New York
Hon. Robert E. Torres	Bronx	Bronx
Oliver Young, Esq.	Buffalo	Erie

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 (2013-2023)
Howard Coughlin (1974-76)
Mary Ann Crotty (1994-98)
Dolores DelBello (1976-94)
Brian C. Doyle (2023-present)
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; 2023-present)
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 (2020-2023)
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)
Hon. Anil C. Singh (2023-present)
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, 69,330 complaints of judicial misconduct have been considered by the temporary, former and present Commissions. Of these, 59,397 were dismissed upon initial review or after a preliminary review and inquiry, and 9,933 investigations were authorized. Of the 9,933 investigations authorized, the following dispositions have been made through December 31, 2023:

- 1,226 complaints involving 911 judges resulted in disciplinary action (this does not include the 131 public stipulations in which judges agreed to vacate judicial office). (See details below and on the following page.)
- 1,965 complaints resulted in cautionary letters to the judge involved. The actual number of such letters totals 1,806, 93 of which were issued after formal charges had been sustained and determinations made that the judge had engaged in misconduct.
- 985 complaints involving 671 judges were closed upon resignation of the judge during investigation or in the course of disciplinary proceedings.
- 662 complaints were closed upon vacancy of office by the judge other than by resignation.
- 4,891 complaints were dismissed without action after investigation.
- 204 complaints are pending.

Of the 1,226 disciplinary matters against 911 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.

- 180 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);
- 379 judges were censured publicly;
- 287 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 102 determinations filed by the present Commission. Of these 102 matters:

- The Court accepted the Commission's sanctions in 86 cases (77 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.

(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.

(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).

Amended (D)(5)(h) and (H)(2) on [Dec. 30, 2022](#)

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 2023**

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

DAVID J. COURSEN,

a Justice of the Lake Placid Village Court,
Essex 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 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 David J. Coursen, *pro se*

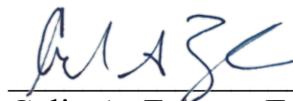
The matter having come before the Commission on January 26, 2023;

and the Commission having before it the Stipulation dated January 25, 2023; and Judge Coursen having tendered his resignation dated January 24, 2023 effective immediately; 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: January 26, 2023



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

DAVID J. COURSEN,

STIPULATION

a Justice of the Lake Placid Village Court,
Essex County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable David J. Coursen.

1. David A. Coursen has been a Judge of the Lake Placid Village Court, Essex County, since 2019. His current term expires on April 7, 2025. Judge Coursen is not an attorney.
2. Judge Coursen was apprised by the Commission in January 2023 that it was investigating a complaint that he was biased in favor of the defendant in a code enforcement case, with whom he engaged in *ex parte* communications, and against the code enforcement officer, whom the judge berated in court.
3. Judge Coursen appeared for testimony before the Commission on January 24, 2023, and stated on the record that he wished to resign his judicial office rather than continue with the proceedings before the Commission.

4. Judge Coursen has tendered his resignation by letter dated January 24, 2023, a copy of which is annexed as Exhibit 1. Judge Coursen affirms that he will vacate judicial office as of January 25, 2023.

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.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."

6. Judge Coursen affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

7. Judge Coursen understands that, should he 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, 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.

8. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation

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

that the matter be concluded, by the terms of this Stipulation, without further proceedings.

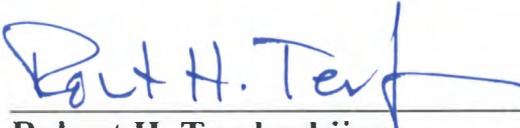
9. Judge Coursen waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 1-24-23



Honorable David A. Coursen

Dated: January 25, 2023



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

CORRIE A. DAMULIS,

a Justice of the Burlington Town Court,
Ostego County.

**DECISION
AND
ORDER**

THE COMMISSION:

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

APPEARANCES:

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

Harpremjeet Kaur, Esq. for Judge Damulis

The matter having come before the Commission on July 20, 2023; and

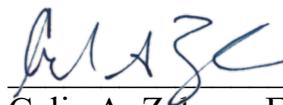
the Commission having before it the Stipulation dated June 27, 2023; and Judge Damulis having tendered her resignation dated June 26, 2023 effective June 30, 2023; and having affirmed that after vacating her judicial office, she will neither seek nor accept judicial office at any time in the future, 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.

Ms. Grays and Mr. Rosenberg were not present.

Dated: July 20, 2023



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

CORRIE A. DAMULIS,

STIPULATION

a Justice of the Burlington Town Court,
Otsego 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 Corrie A. Damulis and her attorney, Harpremjeeet Kaur, Esq.

1. Judge Damulis was admitted to the practice of law in New York in 2016. She has been a Justice of the Burlington Town Court, Otsego County, since January 1, 2020. Her term expires on December 31, 2023. She previously served as a Justice of the Richfield Springs Village Court, Otsego County, from October 2016 to March 30, 2022.

2. In June 2023, the Commission apprised Judge Damulis that it was investigating two complaints, which alleged (A) that she mishandled court funds in her previous position as a Justice of the Richfield Springs Village Court and as a Justice of the Burlington Town Court; and (B) that she failed to file reports or

remit funds to the Office of the State Comptroller in the time required by law, for the months of January, February and March 2023, and that her salary was stopped on May 16, 2023, as a result. Judge Damulis was scheduled to appear and give testimony before the Commission on June 27, 2023.

3. Judge Damulis has tendered her resignation by letter dated June 26, 2023, a copy of which is annexed as Exhibit 1. Judge Damulis affirms that she will vacate judicial office as of June 30, 2023.

4. Pursuant to Section 47 of the Judiciary Law, the Commission may continue with proceedings against a judge who has resigned 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.”

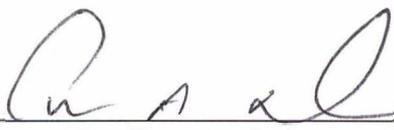
5. Judge Damulis affirms that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future.

6. Judge Damulis 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.

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.

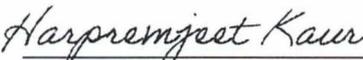
8. Judge Damulis waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (A) this Stipulation will become public upon being signed by the signatories below, and (B) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 6/26/23



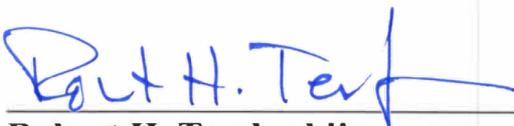
Honorable Corrie A. Damulis

Dated: 6/26/23



Harpremjot Kaur, Esq.
Attorney for **Judge Damulis**

Dated: June 27, 2023



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 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

WILLIAM L. DEPROPSO,

a Judge of the County Court,
Orange 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 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 Adam Kahan, Of Counsel) for the Commission

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

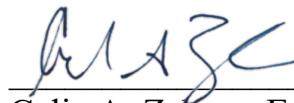
The matter having come before the Commission on January 26, 2023; and
the Commission having before it the Stipulation dated January 13, 2023; and
respondent having been served with the Formal Written Complaint dated July 26,

2022; and respondent having tendered his resignation dated January 11, 2023 effective March 31, 2023; 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: January 26, 2023



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

WILLIAM L. DEPROPSO,

STIPULATION

a Judge of the County Court,
Orange County.

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

1. Respondent has been a Judge of the County Court, Orange County, since January 1, 2018. His current term expires on December 31, 2027.
2. Respondent was served with a Formal Written Complaint dated July 26, 2022, containing five charges of misconduct. The charges alleged that in the course of presiding over five emergency applications brought in Family Court matters by unrepresented petitioners who were seeking temporary orders of protection and other relief, Respondent was disrespectful, disparaging, sarcastic and otherwise discourteous toward them, in both words and tone of voice. In four

of those matters the petitioners were women, and in the fifth the petitioner was a man. The events in question occurred in October 2019, May 2019, July 2018, and June 2018. The charges contained quotations from audio recordings and transcriptions in which, among other things:

- A. Respondent asked a petitioner, “What kind of a kook are you?”; belittled her concern about missing school in order to be in court; said “everything that you told me was bullshit”; and told the petitioner to “get your ass out of bed and get here at 9:00 in the morning” or her petition would be dismissed and she could “ask the director [of your school] to protect you.”
- B. Respondent said to another petitioner: “So listen, why should I give you an order of protection . . . if you keep going back to this guy? . . . You went looking for him. You got into the car, okay, and you obviously want to be with him because you keep going back to him.”
- C. Respondent said to a third petitioner; “So, three weeks before you found out that he had another honey on the side, were you afraid of him? . . . Oh, you were? Well, then what were you with him for then?”

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

4. Respondent has tendered his resignation as a judge, effective at the close of business on March 31, 2023. A copy of his resignation letter is appended as Exhibit I. Respondent affirms that he will vacate judicial office as of March 31, 2023.

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."

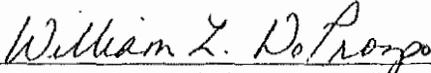
6. Respondent affirms that, upon vacating his judicial office, he will neither seek nor accept judicial office at any time in the future.

7. Respondent understands that, should he abrogate the terms of this Stipulation and 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.

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. 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.

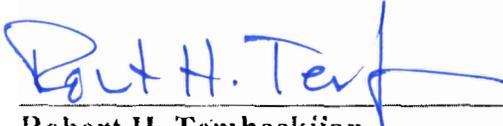
Dated: 1/11/2023


Honorable William L. DeProspo
Respondent

Dated: 1/13/23


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

Dated: January 13, 2023


Robert H. Tembeckjian
Administrator & Counsel to the Commission
(Mark Levine, Melissa DiPalo, and Adam
Kahan, 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

JILL R. EPSTEIN,

DETERMINATION

a Judge of the New York City Civil Court,
Kings County.

THE COMMISSION:

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

APPEARANCES:

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

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

Respondent, Jill R. Epstein, a Judge of the New York City Civil Court,

Kings County, was served with a Formal Written Complaint (“Complaint”) dated June 7, 2023 containing one charge. The Complaint alleged that on April 1, 2022, respondent asserted her judicial status to a school safety officer while attempting to arrange for a double-parked car to be moved. When the owner of the car came out of the school to move it, respondent became angry, cursed at her, and again referred to her judicial status.

On July 13, 2023, 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 July 20, 2023, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 1984. She has been a Judge of the New York City Civil Court, Kings County, since 2019. Respondent’s term expires on December 31, 2028.

2. On April 1, 2022, at the beginning of the school day, around 8:30 AM, respondent was driving to work on Pacific Street, a one-lane, one-way street near a public elementary school. She was unable to drive down the street because she was stopped behind a school bus that was blocked by a double-parked car.

After several minutes, during which the school bus did not move, respondent got out of her car and walked up to the bus driver to ask why he was holding up traffic. The bus driver told her that he could not move past the double-parked car in front of him. At this point, there was a line of cars waiting behind respondent's car that blocked her from backing up to leave the street. Respondent returned to her car and waited several more minutes, during which no one came to move the double-parked car. Respondent then got out of her car and walked into the school.

3. Inside the school, respondent introduced herself as a judge to the school safety officer and handed her a business card. The business card identified respondent by name and as a supervising judge of the Civil Court, Kings County. Respondent told the officer that she had to get to work at the courthouse.

4. Respondent also showed the safety officer photos she had taken with her cell phone of the license plate of the double-parked car, along with a placard displayed on the car's dashboard. Respondent believed the placard contained inconsistent information and therefore asked the safety officer whether the placard was real, as well as if an announcement could be made about the car. She then left the school and waited outside.

5. The double-parked car was owned by a teacher who had been inside the school. When the teacher came outside to move the car, respondent became angry and called her a "stupid bitch." Respondent further stated, in substance, that

she also had a placard but could not use it to double park, and that she had a courthouse to run.

Additional Factors

6. Respondent has been cooperative and contrite throughout the Commission's inquiry.

7. Respondent regrets her misconduct and acknowledges that, notwithstanding her frustration and anger over a minor traffic incident, her vulgarity and references to her judicial status undermined public confidence in the integrity of the judiciary and violated the Rules.

8. As a result of this incident, respondent was also subject to administrative action by her supervisors. In addition, she sent a written apology to the teacher.

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) and (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.

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 require that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge. . .” and provide that judges must “conduct all of the judge’s extra-judicial activities so that they do not . . . detract from the dignity of judicial office . . .” (Rules §§100.2(C) and 100.4(A)(2)) Respondent violated these Rules when she unnecessarily provided her business card to the school safety officer, told the safety officer that she needed to get to work at the courthouse, cursed at the teacher and told the teacher that she had a courthouse to run.

Respondent's behavior violated the ethical rules prohibiting judges from lending the prestige of judicial office to advance private interests and requiring judges to observe high standards of conduct both on and off the bench. (Rules, §§ 100.1, 100.2(A), 100.2(C) and 100.4(A)(2)) “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.” *Matter of Lonschein*, 50 NY2d 569, 572 (1980) (citation omitted); *Matter of Werner*, 2003 Ann Rep of NY Commn on Jud Conduct at 198, 199 (“[b]y producing a card identifying him as a

judge and handing it to the police officer who had stopped respondent's car, respondent gratuitously interjected his judicial status into the incident, which was inappropriate. ... Respondent's conduct was improper even in the absence of an explicit request for special consideration." (citations omitted)). Here, respondent improperly asserted her judicial status when speaking with the school safety officer and created the appearance that she expected special treatment and deference due to her judicial position. In addition, respondent referenced her judicial status during the same interaction in which she called the teacher a "stupid bitch." Respondent's actions were unbecoming a judge and undermined public confidence in the integrity of the judiciary.

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent has acknowledged that her conduct was improper and warrants public discipline, that she sent a written apology to the teacher and that she was subject to administrative action by her supervisors. 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, Judge Camacho, Judge Falk, Judge Miller, Mr. Raskin, Mr.

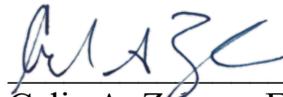
Seiter, Judge Singh and Ms. Yeboah concur.

Ms. Grays and Mr. Rosenberg were not present.

CERTIFICATION

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

Dated: August 14, 2023



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

WILLIAM H. FUTRELL,

DETERMINATION

a Justice of the Montezuma Town Court,
 Cayuga County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
 Taa Grays, Esq., Vice Chair
 Honorable Fernando M. Camacho
 Brian C. Doyle, Esq.
 Honorable John A. Falk
 Honorable Robert J. Miller
 Nina M. Moore
 Marvin Ray Raskin, Esq.
 Graham B. Seiter, Esq.
 Honorable Anil C. Singh
 Akosua Garcia Yeboah

APPEARANCES:

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

Hon. William H. Futrell, *pro se*

Respondent, William H. Futrell, a Justice of the Montezuma Town Court,

Cayuga County, was served with a Formal Written Complaint (“Complaint”) dated May 15, 2023 containing two charges. Charge I of the Complaint alleged that in or about April 2022, respondent posted Nazi imagery to his Facebook page. Charge II alleged that in or about 2022, respondent’s “Facebook page displayed “Likes” of other Facebook pages that depicted images of scantily clad and/or partially naked women, many of whom were in sexually suggestive poses, and that included content that demeaned or sexually objectified women.” Respondent did not file an Answer.

By motion dated September 20, 2023, 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 12, 2023, 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 12, 2023, the Commission set a schedule for briefs and oral argument on the issue of sanction. On November 2, 2023, the Administrator 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 is not an attorney. He has been a Justice of the Montezuma Town Court, Cayuga County, since 2020. His current term was set to expire on December 31, 2023. On February 28, 2023, respondent sent an email to the Town of Montezuma Supervisor in which he resigned his judicial office effective that same day.¹

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, and to “like” content posted by other users. 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, textual posts, and “Likes” – may be viewable online by the general public or restricted to one’s Facebook “Friends.”

¹ It does not appear that respondent submitted a resignation to the Chief Administrator of the Courts, the method for resignation for justices of the unified court system specified in Public Officers Law, Section 31(1)(d), NY CLS Pub O §31(1)(d).

3. In or around April 2022, respondent maintained a Facebook account with approximately 500 Facebook “Friends.” Respondent’s profile listed his name as Bill Futrell.

4. In or around April 2022, respondent posted on his Facebook page an image of a human skull that appeared identical to the Nazi SS/Totenkopf forces insignia utilized during World War II. The letters “*FF*” (“Futrell Firearms”) were emblazoned above the eye sockets of the skull in a style simulating the appearance of the “*SS*” abbreviation of the Nazi Schutzstaffel. Respondent made this image his profile picture. The profile also falsely indicates that respondent “Works at NYS Unified Court System.”

5. In or around July 2022, respondent posted on his Facebook page a meme of Facebook Co-Founder and CEO Mark Zuckerberg dressed in Nazi military garb, including a Totenkopf medal and Schutzstaffel insignia. The meme appeared on respondent’s Facebook page in two forms: on its own and framed with the words, “EXPOSING FRIENDS TO EXTREMIST CONTENT.”

As to Charge II of the Formal Written Complaint

6. In or about 2022, respondent’s Facebook “Likes” page displayed a “Like” for a Facebook page entitled “Only Men Lovers.” That Facebook page consisted of numerous photographs of scantily clad women in sexually provocative and explicit poses.

7. In or about 2022, respondent’s Facebook “Likes” page displayed a “Like” for a Facebook page entitled “Psychopathic +21.” That Facebook page consisted of numerous photographs of scantily clad and/or partially naked women in sexually provocative poses.

8. In or about 2022, respondent’s Facebook “Likes” page displayed a “Like” for a Facebook page entitled “Dirty Biker Trash.” That Facebook page consisted of numerous photographs of scantily clad women in sexually provocative poses.

9. In or about 2022, respondent’s Facebook “Likes” page displayed a “Like” for a Facebook page entitled “Porngirls.” That Facebook page consisted of numerous photographs of scantily clad women in sexually provocative poses.

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 New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained and respondent’s misconduct is established.

The Rules require judges 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 also prohibit judges from engaging in extra-judicial activities which “detract from the dignity of judicial office.” (Rules §100.4(A)(2)) Respondent clearly violated these Rules when he posted Nazi imagery on his Facebook page and publicly displayed “Likes” of Facebook pages that denigrated and objectified women.

“Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function” *Matter of Kuehnel*, 49 NY2d 465, 469 (1980) (citation omitted); *Matter of Senzer*, 35 NY3d 216, 220 (2020) (“[b]ecause judges carry the esteemed office with them wherever they go, they must always consider how members of the public . . . will perceive their actions and statements” (citation omitted)); *Matter of Lonschein*, 50 NY2d 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’s posts of Nazi imagery are shocking and unconscionable. He made multiple posts using Nazi imagery including using such imagery in his public Facebook profile. The public cannot have any confidence in the integrity, judgment and impartiality of a judge who posts Nazi imagery on social media. By

his conduct, respondent brought reproach upon the judiciary and severely undermined public confidence in the judiciary.

Respondent also engaged in additional misconduct when he promoted content on his public Facebook page that demeaned and objectified women.

Matter of Stilson, 2023 Ann Rep of NY Commn on Jud Conduct at 290

(respondent made posts which “objectified and denigrated women” on his public Facebook page); *Matter of Persons*, 2024 Ann Rep of NY Commn on Jud Conduct at __ (respondent made sexually charged comments to and about attorneys and displayed a “Boobies Make Me Smile” bumper sticker on the car he parked at the courthouse).²

Furthermore, respondent’s failure to participate in the Commission’s proceedings after the Complaint was served is an aggravating factor which exacerbated his underlying misconduct. He failed to file an Answer to the Complaint as Section 7000.6(b) of the Commission’s Operating Procedures and Rules required, failed to respond to the Administrator’s 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 he should be removed and did not appear for oral argument before the Commission on the issue of sanction. All judges must be attentive to

² Available at: <https://cjc.ny.gov/Determinations/P/Persons.Jeremy.html>

their responsibility to participate in Commission proceedings. *See, Matter of O'Connor*, 32 NY3d 121, 129 (2018) (“... willingness to cooperate with the Commission's investigations and proceedings is not only required -- it is essential.”) Respondent’s failure to respond to the Complaint and participate in the proceedings demonstrated his disdain for the Commission’s important function.

We are mindful that “. . . the extreme sanction of removal is warranted only in the event of ‘truly egregious circumstances’ that extend beyond the limits of ‘even extremely poor judgment’ . . .” *Matter of Putorti*, __ NY3d __, 2023 NY Slip Op 05304 at *3 (Oct. 19, 2023) (citations omitted). Here, when he posted Nazi imagery on Facebook, including in his Facebook profile, respondent engaged in truly egregious and troubling conduct that warrants removal. He also detracted from the dignity of judicial office when he promoted posts that demeaned women. Moreover, his decision to ignore the Commission’s proceedings aggravated his underlying misconduct.³

The Court of Appeals has held that, “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 Reeves*, 63 NY2d 105, 111

³ This finding is consistent with New York attorney grievance proceedings in which nonresponsive attorneys are routinely disbarred. *Matter of Carlos*, 192 AD3d 170 (1st Dept. 2021); *Matter of Lovett*, 194 AD3d 39 (2nd Dept. 2021); *Matter of McCoy-Jacien*, 181 AD3d 1089 (3rd Dept. 2020); *Matter of Shaw*, 180 AD3d 1 (4th Dept. 2019).

(1984) (citation omitted) Respondent's usefulness as a judge is irretrievably damaged and he is unfit for judicial office.

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

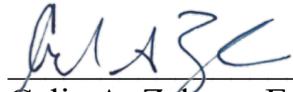
Mr. Belluck, Judge Camacho, Mr. Doyle, Judge Falk, Judge Miller, Ms. Moore, Mr. Raskin, Mr. Seiter, Judge Singh and Ms. Yeboah concur.

Ms. Grays was not present.

CERTIFICATION

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

Dated: December 12, 2023



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

DETERMINATION

RANDY A. HALL,

a Justice of the Dickinson Town Court,
Broome County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

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

Hon. Randy A. Hall, *pro se*

Respondent, Randy A. Hall, a Justice of the Dickinson Town Court,

Broome County, was served with a Formal Written Complaint (“Complaint”) dated March 15, 2023, containing four charges. Charge I alleged that on or about March 3, 2022, during a dispute with another customer at a service station, respondent repeatedly asserted his judicial office with the police including when he called 911 to request their presence. Charge II alleged that from in or about January 2022, when respondent became a Dickinson Town Justice, to on or about March 30, 2022, when all cases pending before him were reassigned, respondent engaged in a pattern of sexually inappropriate, harassing, and unwelcome behavior toward his co-judge and court staff, and made inquiries while in court and on the record about finding employment in the police department. Charge III alleged that in March 2022, while presiding over cases in court, respondent made comments that conveyed the impression that he had prejudged the guilt of three criminal defendants. Charge IV alleged that in or about January 2022, respondent posted sexual and otherwise inappropriate content to his public Facebook page, some of which referenced his judicial office. Respondent did not file an Answer.

By motion dated June 1, 2023, 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 July 20, 2023, 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 July 20, 2023, the Commission set a schedule for briefs and oral argument on the issue of sanction. On August 10, 2023, the Administrator 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 Dickinson Town Court, Broome County, since January 2022. His term expires on December 31, 2025. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. On or about March 3, 2022, at approximately 12:40 pm, respondent got into a dispute with John Dubrava over access to a particular gas pump at a gas station in Binghamton, New York. At approximately 12:43 pm, respondent called 911 to report that he was being threatened in connection with a dispute over a gas

pump. He requested that an officer be sent “right away” to his location, which was a service station on Upper Front Street in Binghamton.

3. When asked by the 911 operator to clarify his location, respondent stated, “Yeah, this is Judge Hall. It’s right by Sonic.”

4. When asked by the 911 operator to provide his name, respondent answered, “I’m Judge Hall. Randy Hall.”

5. Within minutes, members of the Broome County Sheriff’s Office responded to the location and remained on the scene for approximately 15 minutes, during which time respondent gratuitously identified himself as a judge three additional times as follows:

- A. “I’m Judge Hall . . .” (as he extended his arm to shake hands with the deputy);
- B. “My name is Randy Hall . . . I’m the judge . . . from Dickinson . . . Town of Dickinson”;
- C. “Officer . . . I’m a . . . I’m a judge . . . okay, I’m not lying . . . I’m just saying I am not lying to you. I’m telling you that this guy threatened my life.”

6. Respondent told the officers he wanted Mr. Dubrava charged with harassment, but the officers did not do so and let both respondent and Mr. Dubrava leave the scene.

As to Charge II of the Formal Written Complaint

7. At all times pertinent to the charges herein, Stacy Thatcher and Bradley Wallace were employed as court clerks in the Dickinson Town Court, and

Kathleen Groover was respondent's co-judge in the Dickinson Town Court.

Respondent and Judge Groover shared the court office that served as chambers.

8. In early January of 2022, when Dickinson Town Court Clerk Stacy Thatcher first met respondent, he requested her assistance in donning a high school graduation gown that he wished to use as a judicial robe. The gown appeared to be too small or tight for him and could not be zipped past his midsection.

9. Ms. Thatcher obliged. While she crouched down to assist respondent, she suggested he hold his tie so it would not become caught in the zipper of the robe. In reply, respondent remarked that his tie was not the only thing he did not want caught in the zipper, which Ms. Thatcher understood to be a reference to the judge's genitalia, and which made her very uncomfortable.

10. In or about late January 2022, respondent approached Judge Groover in their shared chambers with his arms outstretched and asked her to assist with zipping the graduation gown that he was still using as his judicial robe. The robe zipped in the front, and at the time the zipper's hasp was located near respondent's groin area. Judge Groover, who was seated at her desk, sternly declined.

Respondent laughed and stated, in sum and substance, that Judge Groover was not his mother.

11. In or about January 2022, while respondent, Ms. Thatcher and Mr. Wallace attended a mandatory sexual harassment awareness and training program,

respondent repeatedly made comments mocking the training, including words to the following effect:

- A. “So, I can’t tell a joke like this?”
- B. “What about this joke?” and
- C. “So, I can’t say, ‘So that’s what she said’?”

12. In or about January 2022, respondent, while in the courtroom, told a crude and inappropriate joke to Court Clerk Bradley Wallace involving a farmer, marihuana, and sexual intercourse with a pig. When Mr. Wallace did not react to respondent’s joke, he asked if the joke was funny. Mr. Wallace responded that it was not.

13. On or about February 8, 2022, in the courtroom, respondent offered Ms. Thatcher a cookie, which she declined, explaining she was a candidate for bariatric surgery. Respondent then commented on her personal appearance by stating, “You’re a good lookin’ girl now. You’ll be a knockout” and “(inaudible) I’m going with a pretty girl, she made you look small. She’s gonna go do that too, so she says.”

14. On or about February 8, 2022, respondent, while in the courtroom and on the record, engaged in a conversation with Port Dickinson Police Officer Domenico Rossi, who was serving as a court officer, about a “chick” respondent was dating who “started going crazy on (him).” The officer asked respondent if he dumped her yet. Respondent said, “Oh yeah, fuck yeah.” Respondent said the

woman “has...one of those multiple personalities” and would call and send him messages that led him to think, “I don’t understand why you’re like that?...You fucking called me up, call me every name in the book, threatening me, threatened to have me arrested, threatened my job. I said what the fuck? You know?”

Respondent and the officer then spoke about how people have to be careful what they say, as it could be used against them, after which respondent described for the officer an intimate picture on his phone, saying, “I told you about the tit thing, right?...Well, she sent me a...picture of her tit and her fingernail’s pinching the nipple. I never asked for it . . . and her head wasn’t in it or anything.” Respondent then resumed presiding over matters.

15. In or about February or March 2022, while in chambers, respondent approached Judge Groover, who was seated at her desk. Respondent told Judge Groover that that he liked her face mask, which had a leopard-print pattern.

Respondent then asked whether her mask matched her underwear. Judge Groover responded in a stern tone demanding that respondent step back. Respondent did not apologize or otherwise demonstrate awareness that he had said something inappropriate.

16. In or about mid-March 2022, while in chambers, respondent asked Ms. Thatcher for assistance finding a flight to Florida so he could attend a family reunion, and she obliged. As Ms. Thatcher leaned over respondent’s desk to

access the laptop, he laughed and stated that women do not need men like men need women and added “you know it when you hear the humming,” which Ms. Thatcher understood to be a reference to a vibrator, and which made her very uncomfortable.

17. In or about February 2022, Ms. Thatcher became so uncomfortable with respondent’s inappropriate comments that she refused to clerk for him on the bench.

18. On or about March 24, 2022, while Mr. Wallace and Ms. Thatcher were in their office, Mr. Wallace asked if she needed assistance with a file. Ms. Thatcher replied that she had already done the work and told Mr. Wallace, “I don’t need you.” Respondent, who was in chambers and not a party to the conversation, interjected by asking Mr. Wallace if he usually hears a loud humming sound when she says that. Mr. Wallace understood this to be a reference to a vibrator and told respondent that he could not say things like that. Respondent replied that he knew and was only joking.

19. On or about February 8, 2022, respondent, while in the courtroom and on the record, engaged in a conversation with Officer Rossi, who was serving as a court officer, about whether positions were available with the Port Dickinson Police Department. Respondent stated, “I want to work for the police department,” and expressed an interest in part-time employment doing court duty, patrol or

“anything.” The officer explained that such employment would be a conflict of interest with respondent’s judicial position. They then discussed the idea of respondent’s running for Police Commissioner, after which respondent continued presiding over court matters.

20. Judge Groover, Mr. Wallace and Ms. Thatcher ultimately reported their concerns about respondent’s conduct to the Sixth District Administrative Office of the Unified Court System. By Administrative Order dated March 30, 2022, Deputy Chief Administrative Judge Norman St. George directed that all judicial matters pending before respondent be reassigned to Judge Groover, that no additional matters be assigned to respondent, and that he be confined to chambers until further order.

As to Charge III of the Formal Written Complaint

21. On or about March 8, 2022, while presiding over *People v Sarah Siverson*, respondent was advised by the defendant’s attorney that Ms. Siverson had been offered a plea to Resisting Arrest with a sentence of a six-month conditional discharge but needed time to consider the offer. Respondent addressed Ms. Siverson directly and asked, “How many cops did you take down?”

22. On or about March 10, 2022, respondent conducted an arraignment on charges related to an arrest for Driving While Intoxicated in *People v Amanda Florance*. Respondent advised the defendant, who was represented by counsel and

had entered a plea of not guilty, that she was being released on her own recognizance and would be contacted by the DMV regarding her license. At the conclusion of the proceeding, respondent stated to the defendant, “It’s going to be an expensive lesson.”

23. On or about March 24, 2022, while arraigning a defendant identified only as Mr. Purnell, respondent directly addressed the defendant, who was represented by counsel, and stated, “Purnell, look at me. Stay the hell out of trouble, will ya?”

As to Charge IV of the Formal Written Complaint

24. 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 and posts may be viewable online by the public or restricted to one’s Facebook “Friends.”

25. At all times relevant to this charge, respondent maintained a personal Facebook account under the name “Randy Hall,” which was viewable by the public.

26. In January 2022, respondent posted the following to his Facebook page:
- A. “It was not a hung jury but they say the judge sure is,” with a beaming face emoji. In a response to a comment made in response to that post asking respondent what he was up to these days, respondent wrote that he was “just truly trying to provide justice in the town of Dickinson.” Another comment asked, “What is it up your robe your honor,” to which Respondent replied, “You been peeking.”
 - B. A joke about a serial killer.
 - C. Commenting about the possibility of sneezing and “break[ing] wind just as you reach happy ending!” The post specified that such an experience was on respondent’s “bucket list.”

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)(2), (3) and (4), 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 Constitution and Section 44, subdivision 1 of the Judiciary Law. Charges I through IV of the Complaint are 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)) Section 100.3(B)(3) of the Rules requires a judge to be “dignified and courteous” to those “with whom

the judge deals in an official capacity.” Respondent violated the Rules when he engaged in a pattern of making inappropriate sexually charged comments to his co-judge and court staff in addition to making such statements in the courtroom. For example, respondent inquired as to whether his co-judge’s underwear matched her face mask; asked his co-judge to help him to zip the gown he was using as his judicial robe when the zipper’s hasp was near his groin area; and, while in the courtroom and on the record, described to a police officer an intimate picture sent to him on his phone. Moreover, he repeatedly made statements mocking the sexual harassment awareness training he attended with two court clerks demonstrating his apparent disregard for his ethical obligations and his role as a judge.

It is well-settled that judges are held to a higher standard of conduct than the general public. *Matter of Kuehnel*, 49 NY2d 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 Mazzei*, 81 NY2d 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 . . .” (citation omitted)).

Respondent's sexually charged comments repeatedly made in chambers and in the courtroom were demeaning, undignified and improper. *See, Matter of Doolittle*, 1986 Ann Rep of NY Commn on Jud Conduct at 87, 88 (“[t]he cajoling of women about their appearance or their temperament has come to signify differential treatment on the basis of sex.”); *Matter of Gerber*, 2021 Ann Rep of NY Commn on Jud Conduct at 103, 110 (it was “demeaning and inappropriate” for respondent to ask an ADA and her friend if they “want[ed] a room” and if he should “turn off the lights” for them when they were leaving an empty courtroom). Furthermore, by continually making his inappropriate comments, respondent caused one court clerk to be unwilling to clerk for him on the bench.

Respondent also violated the ethical rules when he repeatedly identified himself as a judge in statements he made to law enforcement personnel in an apparent effort to advance his personal interests. *Matter of Lonschein*, 50 NY2d 569, 572 (1980) (“ . . . Judges must assiduously avoid those contacts which might create even the appearance of impropriety.”); *Matter of Abbott*, 2020 Ann Rep of NY Commn on Jud Conduct at 66, 70-71 (“identifying himself as a judge while asking for assistance . . . constituted an implicit request for special treatment, which is inconsistent with the high ethical standards required of every judge.”) When he invoked his judicial status with law enforcement personnel in connection with his dispute over a gas pump, respondent violated Section 100.2(C) of the

Rules and created the appearance that he expected special treatment and deference because of his position as a judge.

Section 100.3(B)(4) of the Rules requires a judge to “perform judicial duties without bias or prejudice against or in favor of any person.” *Matter of Prince*, 2014 Ann Rep of NY Commn on Jud Conduct at 184, 190 (“... before a defendant’s guilt or innocence has been adjudicated, a judge must be, and appear to be, impartial and avoid making any statements that convey the appearance of bias or prejudgment.”) While presiding over their cases, respondent violated this provision when he made statements on the record which suggested that he had prejudged the guilt of three criminal defendants. For example, he asked a defendant charged with resisting arrest, “How many cops did you take down?”

Furthermore, when respondent sought employment with the police department while on the bench and on the record, he improperly gave the appearance of bias in favor of law enforcement. *Matter of Peck*, 2022 Ann Rep of NY Commn on Jud Conduct at 136, 141-42 (“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.”)

Respondent also violated the provision of the Rules which prohibits judges from engaging in extra-judicial activities which “detract from the dignity of

judicial office.” (Rules §100.4(A)(2)) “The ethical standards require a judge to avoid extra-judicial conduct that . . . detracts from the dignity of judicial office. . . . Upon assuming the bench, a judge surrenders certain rights and must refrain from certain conduct that may be permissible for others.” *Matter of Barringer*, 2006 Ann Rep of NY Commn on Jud Conduct at 97, 100 (citation omitted); *Matter of Fisher*, 2019 Ann Rep of NY Commn on Jud Conduct at 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 violated his ethical obligations when he made improper and undignified public posts and comments on Facebook, some of which referenced his judicial position. His inappropriate public social media posts undermined public confidence in the integrity of the judiciary.

In addition, respondent’s failure to participate in the Commission’s proceedings after the Complaint was served is an aggravating factor which exacerbated his underlying misconduct. He failed to file an Answer to the Complaint as Section 7000.6(b) of the Commission’s Operating Procedures and Rules required, failed to respond to the Administrator’s 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 he 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 crucial and all judges must be attentive to their responsibility to participate in Commission proceedings. *See, Matter of O'Connor*, 32 NY3d 121, 129 (2018) (“... willingness to cooperate with the Commission's investigations and proceedings is not only required -- it is essential.”) Here, respondent’s failure to respond to the Complaint and participate in the proceedings demonstrated his disdain for the Commission’s important function and undermined public confidence in the judiciary.

In *Matter of Miller*, 35 NY3d 484, 490 (2020), the Court held that in determining the appropriate sanction, “[a] judge’s behavior must be considered ‘in the aggregate’ . . .” (citation omitted) Given the totality of respondent’s misconduct which demonstrated his neglect of his ethical responsibilities as well as his unwillingness to participate in Commission proceedings, 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 NY2d at 572 (citations omitted). Here, respondent violated the Rules when he made inappropriate sexually charged comments to his co-judge and

court staff; while on the record, he publicly inquired about employment with the police department which suggested bias in favor of law enforcement; he invoked his judicial office in connection with a personal matter and made comments which gave at least the impression that he had prejudged the guilt of three criminal defendants appearing before him. He also detracted from the dignity of judicial office when he made sexual comments on his public Facebook page, some of which referenced his judicial position. Moreover, his decision to ignore the Commission's proceedings aggravated his underlying misconduct.¹

The Court of Appeals has held that, “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 Reeves*, 63 NY2d 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, Judge Falk, Judge Miller, Ms. Moore, Mr. Raskin, Mr. Seiter, Judge Singh and Ms. Yeboah concur.

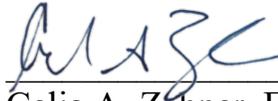
Mr. Rosenberg did not participate.

¹ This finding is consistent with New York attorney grievance proceedings in which nonresponsive attorneys are routinely disbarred. *Matter of Carlos*, 192 AD3d 170 (1st Dept. 2021); *Matter of Lovett*, 194 AD3d 39 (2nd Dept. 2021); *Matter of McCoy-Jacien*, 181 AD3d 1089 (3rd Dept. 2020); *Matter of Shaw*, 180 AD3d 1 (4th Dept. 2019).

CERTIFICATION

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

Dated: October 17, 2023



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

BENJAMIN L.F. LEAVITT,

DETERMINATION

a Justice of the Ossining Town Court,
Westchester County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore¹
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

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

Honorable Benjamin L.F. Leavitt, *pro se*

¹ Ms. Moore joined the Commission on September 6, 2023 and did not participate in this matter.

Respondent, Benjamin L.F. Leavitt, a Justice of the Ossining Town Court, Westchester County, was served with a Formal Written Complaint (“Complaint”) dated October 4, 2022 containing one charge. The Complaint alleged that on or about September 8, 2021, respondent sought special consideration from his co-judge, Jeffrey W. Gasbarro, in connection with the disposition of one or more parking tickets issued to Amanda Billips, his mail carrier for the United States Postal Service (“USPS”). Respondent filed an Answer dated November 28, 2022.

By motion dated January 30, 2023, the Administrator of the Commission moved for summary determination pursuant to Section 7000.6(c) of the Commission’s Operating Procedures and Rules. Respondent filed a response dated March 3, 2023 in which he did not oppose the motion. By letter dated March 9, 2023, the Administrator filed a reply. By decision and order dated April 20, 2023, 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 April 20, 2023, the Commission set a schedule for briefs and oral argument on the issue of sanction. On May 26, 2023, the Administrator submitted a memorandum which argued that respondent should be censured and respondent made a submission arguing that a private letter of caution or admonition was appropriate. Both the Administrator and respondent filed replies

on June 23, 2023. On July 20, 2023, the Administrator and respondent appeared before the Commission for oral argument on the issue of sanction. Thereafter, the Commission considered the record of the proceeding and made the following findings of fact:

1. Respondent has been a Justice of the Ossining Town Court, Westchester County, since 2020. Respondent's current term expires on December 31, 2023.

He was admitted to the practice of law in New York in 2004.

2. Respondent is acquainted with Amanda Billips in her capacity as a mail carrier for the USPS. At all times relevant to the matter herein, Ms. Billips' duties included delivering mail in Ossining, New York, on a route that included respondent's home.

3. From in or about 2019 to 2021, Ms. Billips was charged with one or more parking violations under the Vehicle and Traffic Law. She was scheduled to appear in Ossining Town Court in connection with the tickets on September 9, 2021.

4. Prior to the return date, Ms. Billips, who knew respondent was a judge, asked him for help with her parking tickets. Respondent replied that he would let the court know that she would be coming.

5. On or about September 8, 2021, respondent sent a text message to his co-judge, Jeffrey W. Gasbarro, asking whether the court's calendar for the next day would include parking tickets. Judge Gasbarro replied affirmatively.

6. Respondent then sent Judge Gasbarro the following text message: "My mail carrier is on for a parking ticket. I told her I would talk with you. If you could take her postal service into account when deciding whether or not to go lower on the fine than Sonya is recommending that would be great." (By "Sonya," respondent meant Deputy Corporation Counsel Sonia Tanksley, who serves as the Ossining Village Prosecutor.)

7. Judge Gasbarro presided over Ms. Billips's parking matters the following day and accepted a written plea agreement that Ms. Billips and Ms. Tanksley negotiated without his involvement. Judge Gasbarro imposed the fines reflected in the negotiated agreement.

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 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 and respondent's misconduct is established.

Respondent acted in a manner that was inconsistent with his obligation 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 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 contacted his co-judge in an attempt to use his influence to assist his mail carrier in connection with a parking violation matter pending before his co-judge.

The ethical rules require judges to observe high standards of conduct both on and off the bench and prohibit judges from lending the prestige of judicial office to advance the interests of another. *Matter of Lonschein*, 50 NY2d 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. . . . Judges must assiduously avoid those contacts which might create even the appearance of impropriety.”); *Matter of Smith*, 2014 Ann Rep of NY Commn on Jud Conduct at 208, 211-212 (“Respondent’s unsolicited letter to the Division of Parole on behalf of the son of a family acquaintance was inconsistent with well-established ethical standards prohibiting a judge from lending the prestige of judicial office to advance private interests . . .”) Here, when respondent contacted his co-judge regarding his mail carrier’s parking violation matter pending before his co-judge,

respondent violated the Rules and brought reproach upon the judiciary. Moreover, respondent placed his co-judge, who was a new judge at the time, in a difficult position.²

In determining the appropriate sanction, we note that respondent engaged in a singular attempt to use his influence to benefit another person. There is no indication that respondent acted for his personal benefit or gained in any way from contacting his co-judge about his mail carrier's parking matter. Rather, he appears to have been motivated by a genuine, though inappropriate, wish to help his mail carrier. Respondent promptly accepted responsibility for his misconduct. He also expressed regret that he put his co-judge in a difficult situation and indicated that he has apologized to his co-judge. We have also taken into consideration respondent's unblemished career as a lawyer and as a judge. When respondent appeared before us, he was contrite and pledged to be mindful of his ethical obligations and the high standards of judicial conduct.

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

Mr. Belluck, Judge Camacho, Judge Falk, Judge Miller, Judge Singh and Ms. Yeboah concur.

² To his credit, respondent's co-judge contacted the Advisory Committee on Judicial Ethics and reported respondent's conduct to the Commission.

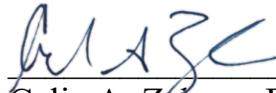
Mr. Raskin and Mr. Seiter dissent as to sanction and vote that a private letter of caution is the appropriate disposition.

Ms. Grays, Ms. Moore and Mr. Rosenberg did not participate.

CERTIFICATION

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

Dated: September 21, 2023



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

DETERMINATION

E. TIMOTHY MERCER,

a Justice of the Athens Town Court,
Greene County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Brian C. Doyle, Esq.
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore
Marvin Ray Raskin, Esq.
Graham B. Seiter, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

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

Honorable E. Timothy Mercer, *pro se*

Respondent, E. Timothy Mercer, a Justice of the Athens Town Court,

Greene County, was served with a Formal Written Complaint (“Complaint”) dated October 13, 2022, containing one charge. The Complaint alleged, *inter alia*, that from approximately September 2020 to February 2022, in connection with the Town of Athens 2020-21 application to the Justice Court Assistance Program of the Unified Court System (“JCAP”) and the receipt of JCAP funds, respondent surreptitiously directed that a security camera system be added to the application; awarded the camera-installation contract to his own company, Mercer Associates, contrary to law; charged the Town, in his capacity as owner of Mercer Associates, \$3,329.99 for the purchase and installation of the security camera system, which included a \$1,000 installation fee and an undisclosed markup fee of \$760; signed a Town of Athens voucher in his capacity as Town Justice, authorizing payment of an invoice to his own company; invoked his judicial office in an attempt to persuade the Town to pay the invoice from Mercer Associates after being notified that payment was being withheld and continued to insist that the Town pay the invoice and charged an added interest fee for nonpayment. Respondent filed an Answer dated December 7, 2022.

By Order dated February 24, 2023, the Commission designated David M. Garber, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 16 and 17, 2023 at the Commission’s offices

in Albany. The referee filed a report dated October 4, 2023 which largely sustained the charge in the Complaint.

The parties submitted briefs to the Commission with respect to the referee's report and the issue of sanction. Commission counsel argued that the referee's findings and conclusions be confirmed and recommended the sanction of removal. Respondent acknowledged that he engaged in misconduct and asked that the Commission "show leniency." The Commission heard oral argument on December 7, 2023 and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent has been a Justice of the Athens Town Court, Greene County, since January 1, 2020. His term expires on December 31, 2023.

Respondent is not an attorney.

2. Justices of the Athens Town Court serve part-time. In addition to his judicial position, respondent is and, at all times pertinent to the findings herein, was also the proprietor of Mercer Associates, a private contracting company.

3. The Justice Court Assistance Program of the Unified Court System provides annual grants to towns and villages for court improvements, including security enhancements, renovations, and furnishings.

4. In or about September 2020, respondent, his co-judge Athens Town Justice Constance Pazin, and Senior Court Clerk Marcia Puorro discussed

submitting a 2020-21 JCAP grant application. They agreed to include in the application a request for funds to purchase two air conditioners, window blinds, a paper shredder, and a desk chair, and a request for reimbursements related to COVID-19 expenses.

5. By letter dated September 21, 2020, Ms. Puorro asked the Athens Town Board to adopt a resolution authorizing the Athens Town Court to apply for a JCAP grant to purchase “2 Air Conditioners, new Window Blinds, a new Shredder, a Desk Chair and Reimbursements from COVID Expenses.” Ms. Puorro copied respondent and Judge Pazin on the letter.¹

6. On October 5, 2020, the Athens Town Board adopted a resolution authorizing the Athens Town Court to apply for a JCAP grant to purchase “2 new Air Conditioners; new Window Blinds; a new Shredder, a Desk Chair and Reimbursement from COVID expenses.” The Athens Town Clerk sent a letter dated October 6, 2020 memorializing the adoption of the resolution.

7. Ms. Puorro gave a copy of the Town Clerk’s October 6 letter to respondent who did not indicate to her that any item was missing from the resolution.

¹ Respondent did not indicate to Ms. Puorro that anything was missing from her September 21, 2020 letter to the Town Board.

8. Prior to Ms. Puorro submitting the grant application to the Office of Justice Court Support (“OJCS”), respondent directed her to add a security camera system into the court’s 2020-21 JCAP application, notwithstanding that the court had not sought authorization from the Athens Town Board to include that item in its application and the Town Board had not authorized the court to do so.

9. When Ms. Puorro expressed concern to respondent that Judge Pazin was unaware of his addition of a security camera system in the grant application and that the Town Board had not authorized it, respondent told her not to worry about it.

10. On or about October 7, 2020, Ms. Puorro submitted the court’s 2020-21 JCAP application to OJCS. The application included, at respondent’s direction, a request for \$3,329.99 for “Video Surveillance, alarm systems, etc.”

11. Respondent did not notify Judge Pazin, Athens Town Supervisor Robert Butler or the Town Board about the addition of the security camera system to the 2020-21 JCAP application.

12. On or about October 7, 2020, Ms. Puorro sent a fax to OJCS containing the JCAP signature page, a copy of the Town Board resolution, and supporting documents. One of the supporting documents was a printout of a listing from the website cctvsecuritypros.com for a model “CSP-4POEMX8-S” security camera system. Respondent handwrote on the document: “\$2,329.99.”

Underneath that handwritten figure appeared another handwritten notation made by Ms. Puorro: “+1,000 – Installation.”

13. On November 18, 2020, OJCS senior court analyst Erika Hanks emailed respondent, Judge Pazin and Ms. Puorro requesting an itemized breakdown of the security camera system’s cost from a vendor, not the “handwritten” estimate included in the application.

14. On November 25, 2020, Kathleen Roberts, an OJCS assistant court analyst, sent an email to Ms. Puorro asking for “a new estimate that includes a breakdown of labor and itemized cost of materials . . .” This email was copied to respondent and Judge Pazin.

15. When Judge Pazin received Ms. Roberts’ email, she learned for the first time that respondent had added a security camera system to the grant application. She later learned that respondent purchased and installed the camera system.

16. After receiving the email from Ms. Roberts, Ms. Puorro asked respondent for an estimate. On December 1, 2020, respondent’s wife emailed an estimate to Ms. Puorro. The estimate was dated September 2, 2020. The first time Ms. Puorro saw this estimate was on December 1, 2020 when respondent’s wife emailed it to her.

17. On or about December 1, 2020, Ms. Puorro emailed to Ms. Roberts the estimate from Mercer Associates dated September 2, 2020 that respondent's wife provided. The estimate listed the cost to purchase and install a "CSP-4POEMX8-S" security camera system as \$3,329.99, with an itemization of \$2,329.99 for the cost of the system plus a \$1,000 installation fee.

18. On or about January 22, 2021, Ms. Puorro was notified that the Athens Town Court had been awarded a 2020-21 JCAP grant in the amount of \$3,089.99 for the purchase of "Video Surveillance, alarm systems, etc."²

19. The January 22, 2021 award letter and enclosed reconciliation report indicated that if the amount spent purchasing the approved items was less than the amount awarded, the leftover funds could not be used to offset the cost of another grant item and the recipient was instructed to contact the OJCS for further direction. The reconciliation report also stated that all goods and services purchased with JCAP funds "shall be obtained in accordance with acceptable procurement practices established by the governing municipality including, but not limited to, competitive bidding and procurement policies and procedures."

20. There were no bids for the camera installation from any companies. Respondent arranged for his own company, Mercer Associates, to purchase and install the camera system notwithstanding that it constituted a conflict of interest,

² The Athens Town Court's request for grant funds to purchase other items was not approved.

and without publicly disclosing his interest in Mercer Associates, in writing to the Town of Athens, in violation of Section 803 of the General Municipal Law and Sections 19-3 (C) and (G) of the Town of Athens Code of Ethics.³

21. On or about June 3, 2021, respondent purchased a model “CSP-4POEMIC8” security camera system for \$1,569.99, which was \$760 less than the cost of the camera system identified in the court’s 2020-21 JCAP application, its supporting documentation and the Mercer Associates estimate.

22. In July 2021, respondent completed the installation of the security camera system at the Athens Town Court.

³ Section 803 of the General Municipal Law provides:

Any municipal officer or employee who has . . . an interest in . . . any actual or proposed contract, purchase agreement, lease agreement or other agreement, including oral agreements, with the municipality of which he or she is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to his or her immediate supervisor and to the governing body thereof as soon as he or she has knowledge of such actual or prospective interest.

NY CLS Gen Mun §803(1). Sections 19-3 (C) and (G) of the Town of Athens Code of Ethics provide:

(C) Representation before one’s own agency. The officer or employee shall not receive or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he or she is an officer, member or employee or of any municipal agency over which he or she has jurisdiction or to which he or she has the power to appoint any member, officer or employee.

* * *

(G) Private employment. The officer or employee shall not engage in, solicit, negotiate for or promise to accept private employment or render service for private interests when such employment or service creates a conflict with or impairs the proper discharge of his or her official duties.

23. When Ms. Puorro observed respondent installing the security camera system, she told him that she did not think he should be performing that work through his company, Mercer Associates, because “it didn’t look good” and “that we should use someone not associated” with the Court. Respondent replied that he was going to do it.

24. Respondent did not disclose to Court or Town officials that he substituted the lower cost security camera system for the higher priced system that had been included in his estimate.

25. On or about July 6, 2021, respondent submitted to Ms. Puorro for payment his invoice for the purchase and installation of a security camera system. The invoice totaled \$3,329.99 -- \$2,329.99 for the security camera system and \$1,000 for installation. Respondent purchased and installed the less expensive (\$1,569.99) security camera system but charged the Town for the cost of the more expensive (\$2,329.99) system.

26. Respondent knew at the time he submitted the invoice that it was inaccurate.

27. On July 6, 2021, in his capacity as Town Justice, respondent approved a Town of Athens voucher in the amount of \$3,329.99 to be paid to Mercer Associates for the purchase and installation of a security camera system, by signing his name in the box on the form labeled “Department Approval.” Although the

camera system respondent purchased cost \$1,569.99, the voucher and attached invoice both falsely listed the cost of the camera system as \$2,329.99.⁴

28. Instead of contacting OJCS for further direction or reducing the cost of the security camera system by \$760, respondent knowingly charged the Town \$2,329.99 for the system. Respondent intended to retain the additional \$760, notwithstanding that Section 138.2 of the Rules of the Chief Administrative Judge and Section 849-h (2) of the Judiciary Law prohibit the use of JCAP funds to compensate justices.⁵

29. Between approximately July 6 and July 15, 2021, the Bookkeeper to the Athens Town Supervisor reviewed the voucher, noticed that it was seeking payment to respondent's company and reported the apparent conflict of interest to Athens Town Supervisor Robert Butler. As a result, Mr. Butler stopped payment of the voucher and referred the matter to the Town attorney.

30. On July 15, 2021, after being notified that the Town was refusing payment of the voucher, respondent sent an email from [REDACTED]@nycourts.gov, his official court system email account, to Mr. Butler, with copies to the Town

⁴ Because the court's JCAP grant award did not cover the entire amount respondent had requested in the voucher, in the box on the form labeled "Fund Appropriation," \$3,089.99 was requested from the court's JCAP grant and \$240 was requested from the court's annual security budget.

⁵ Section 849-h (2) of the Judiciary Law and Section 138.2 of the Rules of the Chief Administrative Judge provide that JCAP funds "shall not be used to compensate justices and nonjudicial court staff. . ."

Bookkeeper, Judge Pazin, Ms. Puorro, and his personal email address

([REDACTED]@mercercplg.com). Respondent's email was in support of his request for payment to his company. The email's signature block identified respondent as "Town Justice."

31. By email dated July 15, 2021, Mr. Butler advised respondent that the Town was holding any payment to Mercer Associates and reviewing whether it had been a violation for respondent to use his own company.

32. On July 21, 2021, respondent sent an email to Supervising Judge David Dellehunt, noting that the Town of Athens was "looking into an ethical issue with me" for having "performed billable labor that was in our approved JCAP application for Mercer Associates, my Company." Respondent also wrote that, while he did not feel he had violated any Town ethics policies, "just the look of impropriety is enough . . ."

33. In early August 2021, respondent went to the Town Bookkeeper's office, asked for payment of the voucher and said he would charge interest if the Town continued to refuse payment.

34. On August 18, 2021, respondent submitted another invoice to the Town of Athens, noting an "Overdue Balance" of \$3,329.99 and adding a "finance charge" of \$66.59.

35. When asked during his investigative appearance why he continued to seek payment and added a finance charge after he was aware of the appearance of impropriety, respondent testified, “I was still maintaining the interests of Mercer Associates.”

36. By approximately November 18, 2021, respondent was aware that the Commission was conducting an investigation.

37. On or about December 30, 2021, respondent submitted an invoice from Mercer Associates to the Town of Athens which showed a \$0 balance due and indicated that the camera system had been removed.

38. The Town of Athens returned the JCAP grant funds to OJCS. As a result of the failure to spend the funds awarded for 2020-21, the court was disqualified from requesting a JCAP grant for 2021-22.⁶

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(A), 100.3(B)(1), 100.3(C)(1), 100.4(A)(1), (2) and (3) and 100.4(D)(1)(a) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause pursuant to Article 6, 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

⁶ Paragraphs 7(G) and 31 of the Complaint were not sustained and are dismissed.

respondent's misconduct is established.

Each judge is obligated to “respect and comply with the law” and 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 also prohibit judges from participating in business dealings that “may reasonably be perceived to exploit the judge's judicial position” and require that “[t]he judicial duties of a judge take precedence over all the judge's other activities.” (Rules, §§100.3(A) and 100.4(D)(1)(a)) Respondent violated these Rules when he used his judicial position to advance his personal business interests by directing that the security camera system be included in the JCAP grant application even though the Town Board had not approved the system for inclusion in the application. Respondent then improperly caused his company, Mercer Associates, to purchase and install the camera system at the Town Court without disclosure to the Town Board and without any bidding. Furthermore, in his role as Town Justice, respondent signed a voucher submitted to the Town for payment to Mercer Associates knowing that the invoice attached to the voucher falsely included the cost of a higher priced camera system than the system he had installed. By this conduct, respondent caused his personal business interests to improperly take precedence over his judicial duties.

“The handling of official funds is one of a judge's most important responsibilities. . . . This responsibility requires strict adherence to mandated procedures in order to avoid even the appearance that court funds have been mishandled or misappropriated.” *Matter of McDermott*, 2019 Ann Rep NY Comm Jud Conduct at 161, 167. “[C]arelessness in handling public moneys is a serious violation of [a Judge’s] official responsibilities’ . . . Such breaches of public trust have frequently led to removal” *Matter of Murphy*, 82 NY2d 491, 494 (1993) (citations omitted). By engaging in self-dealing to further his own business interests in connection with the JCAP grant, respondent violated his ethical obligations and undermined confidence in the integrity of the judiciary.

Respondent also engaged in a pattern of failing to be forthright with Court and Town officials. The evidence supported the referee’s finding that “[r]espondent was deliberately deceptive.” Respondent failed to disclose to his co-judge and the Town Board that he added the security camera system to the JCAP grant application. After the grant was approved, without any bidding or other process, respondent decided that his company would purchase and install the system without disclosing that to Town officials in violation of Section 803(1) of the General Municipal Law. Exacerbating his misconduct, after he purchased and installed the less expensive system, respondent failed to reduce the price he charged the Town. Instead, through his company, respondent falsely billed the

Town for the cost of the higher priced system. Then, without regard to the conflict or any disclosure to the Town, as Town Justice, he approved the voucher for payment to Mercer Associates with the attached invoice from his company that included the inflated cost.

In additional misconduct, respondent improperly used his official court email account to send an email, which identified him as a judge, to Town officials seeking payment to his company, Mercer Associates. In this way, respondent used his judicial office to try to obtain payment to his personal business.

We find it particularly troubling that even after respondent was made aware of the ethical issues surrounding his actions, he did not take any remedial steps to mitigate his wrongdoing. When the Court Clerk observed respondent installing the cameras and indicated to him that appeared to be inappropriate given his judicial role, respondent did not contact OJCS or Town officials or seek an ethics opinion from the Advisory Committee on Judicial Ethics. Rather, he completed the installation.

Similarly, even after the Town Supervisor advised respondent that payment to Mercer Associates was being held due to the conflict and respondent acknowledged the possible appearance of impropriety in an email to his supervising judge, respondent continued to try to obtain payment of the Mercer Associates' invoice, which included the false higher price for the camera system.

Placing his business interests first, respondent told the Town Bookkeeper that he would add a finance charge if his invoice was not paid. Following that conversation, respondent submitted another invoice to the Town which continued to include the higher price and also included a finance charge for a past due balance. It was only after respondent became aware of the Commission's investigation into his conduct that he removed the cameras and issued a zero balance invoice to the Town. By continuing to insist on payment even after being made aware of the ethical issues, respondent compounded his misconduct and demonstrated a lack of understanding of the inappropriateness of his actions.

Moreover, by continuing to argue that the Court Clerk failed to submit his estimate for the camera system to the Town Board for approval, respondent does not appear to have accepted responsibility for his conduct. Notably, at the time the Court's request for Town approval was submitted without the camera system, respondent did not indicate that anything was missing from the request. Nor did he state that any item was missing from the Town Clerk's subsequent letter which identified the approved items and did not include the camera system. By blaming others, respondent ignored his responsibility for engaging in self-dealing and prioritizing his personal business interests over his judicial duties.

“[T]he purpose of judicial disciplinary proceedings is ‘not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit

incumbents’.” *Matter of Reeves*, 63 NY2d 105, 111 (1984) (citation omitted) We are mindful that “the extreme sanction of removal is warranted only in the event of ‘truly egregious circumstances’ that extend beyond the limits of ‘even extremely poor judgment’” *Matter of Putorti*, __ NY3d __, 2023 NY Slip Op 05304 at *3 (Oct. 19, 2023) (citation omitted). Given the totality of evidence, including respondent’s deceptive conduct and his continued efforts to seek payment to his company even after he was aware of the improprieties, respondent is unfit for judicial office.

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

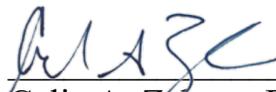
Mr. Belluck, Ms. Grays, Judge Camacho, Mr. Doyle, Judge Falk, Ms. Moore, Mr. Raskin, Mr. Seiter, Judge Singh and Ms. Yeboah concur.

Judge Miller did not participate.

CERTIFICATION

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

Dated: December 27, 2023



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

JENNIFER R. NUNNERY,

a Justice of the Darien Town Court,
Genesee County.

DETERMINATION

THE COMMISSION:

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

APPEARANCES:

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

Personius Melber LLP (by Rodney O. Personius) for respondent

Respondent, Jennifer R. Nunnery, a Justice of the Darien Town Court,

Genesee County, was served with a Formal Written Complaint (“Complaint”) dated June 24, 2022 containing two charges. Charge I of the Complaint alleged from December 2020 through April 2021, in comments and posts on her Facebook account, respondent used profane, demeaning and otherwise inappropriate language, and revealed having engaged in offensive and otherwise inappropriate behavior, both on matters related and unrelated to her role in the legal system. Charge II alleged that from July 2021 through October 2021, through her Facebook account, respondent improperly endorsed two candidates running for elective office: a candidate for elective judicial office and a candidate for election to an area school board. Respondent filed an Answer dated July 26, 2022.

On July 18, 2023, 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 July 20, 2023, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 2015. She has been a Justice of the Darien Town Court, Genesee County, since January 2020. Respondent’s term expires December 31, 2023.

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, and to “like” content posted by other users. 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, textual posts, and “likes” – may be viewable online by the general public or restricted to one’s Facebook “Friends.” If the account holder’s privacy settings allow, “friends” may thereafter share the account holder’s posts with other permitted Facebook users, ad infinitum.

3. In November 2007, respondent created a Facebook account. From December 2020 through April 2021, respondent’s Facebook account profile included a photograph of respondent’s face and listed her name as “Jennifer Nunnery.”

4. On an unknown date after respondent became a judge, she posted to her Facebook page the following:

“Driving down the mean streets of Batavia after tanning and thought I recognized the ass of one of my favorite marines walking through the Tops parking lot lol 😏 It’s been too long! Good to see ya, ya fucking boot! 🍑👊”

5. In December 2020, respondent posted to her Facebook page the following:

“Fuck No the first incoming call from a client on my first day of vacation just came in at 8:56am. Seriously people I have enough work shit to catch up on during my time off, I’m not answering the phones!!!”

6. In March 2021, respondent posted to her Facebook page the following:

“...You know what’s more therapeutic than shopping? Cross examining someone and being absolutely FUCKING AWESOME at ripping them apart on the stand like the baddest bitch there is!!!! #ladyboss #bossbitch BAHAAAAHA!...” (emphasis in original).

This post garnered 57 reactions and 31 comments from Facebook users before respondent removed it in April 2021, after her supervising judge spoke to her about it.

7. In March 2021, respondent posted the following comments on a re-shared Facebook page post, originally posted seven years earlier:

- A. “Omg everyone was so fucking hungover lol;” and
- B. “I remember drawing a dick on his face when he passed out on the plane lol.”

As to Charge II of the Formal Written Complaint

8. In 2021, Respondent’s Facebook account profile included a

photograph of respondent's face and listed her name as "Jennifer Rae"¹ and/or "Jennifer Nunnery."

9. In July 2021, respondent "liked" a Facebook page for a candidate running for elective judicial office for Buffalo City Court. As a result, a photograph of the candidate appeared on respondent's Facebook "Likes" section above the wording, "Carrie Phillips for Buffalo City Court Judge."

10. In July 2021, respondent "liked" a Facebook page for a candidate running for an Alexander Central School District Board of Education position. As a result, a campaign advertisement for the candidate appeared on respondent's Facebook "Likes" pages above the wording, "Lindsay Bessey for Alexander School Board."

Additional Factors

11. Respondent has been contrite and cooperative with the Commission throughout this inquiry.

12. Respondent avers that she was unaware between December 2020 and April 2021 that there were separate privacy settings associated with each Facebook post. In April 2021, Supervising Judge Mark A. Montour advised respondent of the issues associated with the posted Facebook content referenced herein as to Charge I. Respondent immediately removed that content from her Facebook page.

¹ Respondent's middle name is "Rae."

Respondent further asserts, and the Administrator has no basis to contest, that since April 2021, she has been checking the privacy settings as to each of her individual Facebook posts, so as to remain in compliance with the Rules.

13. Respondent avers, and the Administrator has no basis to contest, that at the time she “liked” one of the Facebook pages in question, it was contained within a friend’s post, she did not recognize that it involved a judicial candidacy, and she was unaware that her Facebook “likes” were visible to the public, particularly since this particular “like” assertedly did not appear on her own Facebook “wall.” Upon being informed of the ethical issues raised when a judge “likes” candidates running for office, respondent immediately removed the content from her Facebook page.

14. Respondent now appreciates that the integrity of the judiciary is undermined when a judge publicly posts puerile and explicit content such as she did to Facebook and other social media. Respondent also now appreciates that her publicly “liking” the social media posts or pages of political candidates at least appeared to convey that she was endorsing such candidates, which the Rules prohibit.

15. Respondent commits to be especially mindful of her ethical obligations in any future use of social media.

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 (3) and 100.5(A)(1)(c) and (e) 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.

The Rules require judges 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 also prohibit judges from engaging in extra-judicial activities which “detract from the dignity of judicial office.” (Rules §100.4(A)(2)) Respondent violated these Rules when she made inappropriate and undignified public posts and comments on Facebook, some of which referenced her role as an attorney in the legal system. For example, in a public Facebook post, respondent wrote: “. . . You know what’s more therapeutic than shopping? Cross examining someone and being absolutely FUCKING AWESOME at ripping them apart on the stand like the baddest bitch there is!!!! . . .”

It is well-settled that judges are held to a higher standard of conduct than the general public. “The ethical standards require a judge to avoid extra-judicial conduct that casts doubt on the judge’s impartiality. . . or detracts from the dignity of judicial office. . . . Upon assuming the bench, a judge surrenders certain rights and must refrain from certain conduct that may be permissible for others.” *Matter of Barringer*, 2006 Ann Rep of NY Commn on Jud Conduct at 97, 100 (citation omitted); *Matter of Lonschein*, 50 NY2d 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 Fisher*, 2019 Ann Rep of NY Commn on Jud Conduct at 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 improper social media posts and comments undermined public confidence in the integrity of the judiciary.

In addition, the Rules require 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)) Judges are also required to refrain from “engaging in any partisan political activity” (other than in connection with his or her own campaign) and

from “publicly endorsing or publicly opposing (other than by running against) another candidate for public office.” Sections 100.5(A)(1)(c) and (e) of the Rules; *Matter of Rumenapp*, 2017 Ann Rep of NY Commn on Jud Conduct at 192, 197; *Matter of King, Sr.*, 2008 Ann Rep of NY Commn on Jud Conduct at 145, 147. Here, respondent “liked” Facebook pages for a candidate for elective judicial office and for a candidate in a school board election. As a result, campaign material for those candidates appeared on respondent’s Facebook “likes” section. By this conduct, respondent engaged in prohibited political activity and lent the prestige of her judicial office for the benefit of others.

Given their role in legal system, judges must be careful to ensure that any social media activity they choose to engage in does not run afoul of the Rules and breach their ethical obligations. In the past, including in its 2019, 2022 and 2023 Annual Reports, the Commission has cautioned that judges must be particularly circumspect in their use of social media.² The 2023 Annual Report stated, “[t]he Commission strongly encourages judges to remember that social media posts are fraught with potential ethical concerns.” 2023 Ann Rep of NY Commn on Jud Conduct at 23. In *Matter of Whitmarsh*, 2017 Ann Rep of NY Commn on Jud Conduct at 266, 274-275, the Commission wrote,

We also take this opportunity to remind judges that the

² 2019 Ann Rep of NY Commn on Jud Conduct at 24-25; 2022 Ann Rep of NY Commn on Jud Conduct at 18-20; 2023 Ann Rep of NY Commn on Jud Conduct at 21-23.

Rules Governing Judicial Conduct apply in cyberspace as well as to more traditional forms of communications and that in using technology, every judge must consider how such activity may impact the judge's ethical responsibilities. . . .

The Advisory Committee on Judicial Ethics has cautioned judges about the public nature and potential perils of social networks and has advised that judges who use such forums must exercise "an appropriate level of prudence, discretion and decorum" so as to ensure that their conduct is consistent with their ethical responsibilities (Adv Op 08-176).

Respondent's public social media posts and comments violated the Rules in several ways. She made inappropriate comments regarding her role as an attorney as well as other undignified public remarks.³ Respondent also engaged in prohibited political activity. Her conduct brought reproach upon the judiciary.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has acknowledged that her conduct was improper and warrants public discipline, that she was a relatively new judge at the time of the misconduct, that she promptly removed the content upon being informed of the issues surrounding her posts and comments and that she has committed to being circumspect in her use of social media. We trust that respondent has learned from this experience and in the future will act in strict

³ For example, respondent made public posts stating: "I remember drawing a dick on his face when he passed out on the plane lol." and ". . . thought I recognized the ass of one of my favorite marines . . . Good to see ya, ya fucking boot! . . ."

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, Judge Camacho, Judge Falk, Judge Miller, Mr. Raskin, Mr. Seiter, Judge Singh and Ms. Yeboah concur.

Ms. Grays and Mr. Rosenberg were not present.

CERTIFICATION

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

Dated: August 9, 2023



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 F. OLCOTT,

DETERMINATION

a Justice of the Elizabethtown Town Court,
Essex County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Honorable John A. Falk
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

Russell, McCormick & Russell (Andrew J. Russell) for Respondent

Respondent, Richard F. Olcott, a Justice of the Elizabethtown Town Court,

Essex County, was served with a Formal Written Complaint (“Complaint”) dated January 9, 2023 containing two charges. Charge I of the Complaint alleged that in January 2022, respondent dismissed a traffic ticket issued to his son notwithstanding that the matter was assigned to respondent’s co-judge and that he was prohibited by Section 14 of the Judiciary Law from taking any part in proceedings in which his son was a party. Charge II of the Complaint alleged that from January 1, 2020, when he assumed judicial office, through March 2022, respondent did not mechanically record all Vehicle and Traffic proceedings, notwithstanding the requirements of Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08. Respondent filed an Answer dated February 2, 2023.

On April 10, 2023, 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 April 20, 2023, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Elizabethtown Town Court, Essex County since January 1, 2020. Respondent's term expires December 31, 2023. He is not an attorney.

As to Charge I of the Formal Written Complaint

2. At all times relevant to the matters herein, Peter Deming served as respondent's co-judge in the Elizabethtown Town Court.

3. Section 14 of the Judiciary Law states in part as follows:

A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree. The degree shall be ascertained by ascending from the judge to the common ancestor, descending to the party, counting a degree for each person in both lines, including the judge and party, and excluding the common ancestor.

4. [REDACTED] is respondent's adult son and is within the first degree of relationship to him, as measured pursuant to Section 14 of the Judiciary Law.

5. On January 10, 2022, respondent's son received a traffic ticket for operating an Unregistered Motor Vehicle. The ticket was returnable on February 10, 2022, in the Elizabethtown Town Court.

6. Respondent's son's ticket was returnable on February 10, 2022, before respondent's co-judge, Peter Deming, who was scheduled to preside that day. Respondent's next scheduled court date was January 20, 2022.

7. On January 12, 2022, *i.e.* two days after receiving the ticket, respondent's son registered his vehicle with the New York State Department of Motor Vehicles.

8. Between January 10, 2022, and January 20, 2022, respondent and his son communicated about [REDACTED]'s ticket and how to handle it. Respondent's son gave his Uniform Traffic Ticket to respondent.

9. On January 20, 2022, *i.e.* respondent's next scheduled court date, respondent asked Essex County First Assistant District Attorney Michael Langey about resolving respondent's son's ticket. Respondent's son was not present. Respondent did not disclose his relationship with [REDACTED] to Mr. Langey, who was unaware that the two were related. Respondent told Mr. Langey that [REDACTED] had registered his vehicle. Although respondent did not document this claim, Mr. Langey relied upon his representation, which was accurate, that the vehicle had since been properly registered.

10. On January 20, 2022, Mr. Langey filled out a Memorandum of Plea Agreement, in which he wrote that respondent's son's traffic ticket was dismissed "in furtherance of justice CPL 170.40" on the grounds of "Registration

now valid.” Mr. Langey and respondent signed the Memorandum of Plea Agreement, and respondent dismissed his son’s ticket. At the time of the dismissal, respondent’s son had not signed the Memorandum of Plea Agreement. After the fact, respondent called his son, told him that his ticket had been dismissed, and asked him to come to the court to sign the Memorandum. Respondent’s son did so.

11. Respondent failed to mechanically record the [REDACTED] proceeding, as required by Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08.

As to Charge II of the Formal Written Complaint

12. From January 1, 2020, when he assumed judicial office, through March 2022, respondent did not mechanically record any Vehicle and Traffic proceedings, notwithstanding the requirements of Section 30.1 of the Rules of the Chief Judge (22 NYCRR §30.1) and Administrative Order 245/08, which went into effect on June 16, 2008, and provides that every town and village justice must mechanically record all proceedings in the court.

Additional Factors

13. Respondent has been contrite and cooperative with the Commission throughout this inquiry.

14. Respondent believed at the time that because his son had acted promptly to register his vehicle after being ticketed, disposition of the matter was ministerial and consistent with the way similar tickets were disposed when motorists promptly registered their vehicles. However, he now recognizes that he should not have handled his son's traffic ticket under any circumstances, notwithstanding the prosecutor's consent to its dismissal, because it created an appearance of favoritism and undermined public confidence in the integrity and independence of the judiciary as a whole. Respondent also recognizes that it was wrong for him not to advise ADA Langey that the recipient of the ticket was his son.

15. Respondent avers, and the Administrator has no evidence to the contrary, that from January 1, 2020, through March 2022, it was his general practice to mechanically record criminal and small claims proceedings, and that he mistakenly believed it was not required that he record Vehicle and Traffic Law matters. Respondent avers that, since April 2022, he has endeavored to mechanically record all proceedings, including Vehicle and Traffic matters.

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(B)(1), 100.3(B)(6), 100.3(C)(1) and 100.3(E)(1)(d)(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.

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)) He admittedly allowed a family relationship to influence his judicial actions and improperly presided over a matter involving his son in violation of Sections 100.2(B) and 100.3(E)(1)(d)(i) of the Rules.

Respondent, who is not an attorney, also lent the prestige of his judicial office for the benefit of his son when he spoke with the prosecutor about resolving his son's ticket. Respondent's son's ticket was returnable before respondent's co-judge.

Nevertheless, respondent improperly dismissed the ticket prior to the return date pursuant to the plea agreement the prosecutor prepared after speaking with respondent about his son's matter.

Presiding over a matter involving a relative within the sixth degree of relation to the judge is specifically prohibited under Section 100.3(E)(1)(d)(i) of the Rules and Section 14 of the Judiciary Law. "Few principles are more fundamental to the integrity, fair-mindedness and impartiality of the judiciary than

the requirement that judges not preside over or otherwise intervene in judicial matters involving relatives.” *Matter of LaBombard*, 11 N.Y.3d 294, 297 (2008); *Matter of Wait*, 67 N.Y.2d 15, 18 (1986) (“The handling by a judge of a case to which a family member is a party creates an appearance of impropriety as well as a very obvious potential for abuse, and threatens to undermine the public’s confidence in the impartiality of the judiciary.”); *Matter of Menard*, 2011 NYSCJC Annual Report 126, 131 (judge improperly presided over traffic tickets issued to his nephews even where “there is no indication of favoritism in the dispositions accorded.”) By ignoring the specific prohibitions in the Judiciary Law and the Rules and dismissing his son’s traffic ticket, respondent undermined public confidence in the integrity and impartiality of the judiciary.

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” 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, 573 (1980) (“Judges must assiduously avoid those contacts which might create even the appearance of impropriety.”) When respondent asked the prosecutor about resolving respondent’s son’s traffic ticket, he violated the Rules and brought reproach upon the judiciary, particularly since respondent did not disclose that the matter involved

his son.

Furthermore, respondent admittedly failed to maintain competence in judicial administration when he failed to comply with Section 30.1 of the Rules of the Chief Judge and Administrative Order 245/08 by not mechanically recording Vehicle and Traffic proceedings, including the proceeding regarding his son, from the beginning of his term in office until March 2022. *Matter of Skinner*, 2019 NYSCJC Annual Report 239, 246 (“The absence of a recording in any proceeding is significant since it not only makes it more difficult to determine what transpired at the proceeding but also indicates lack of compliance with an administrative order, which is inconsistent with a judge's ethical responsibilities.”).

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.

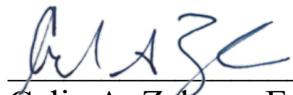
Mr. Belluck, Ms. Grays, Judge Camacho, Judge Falk, Judge Miller, Mr. Raskin, Mr. Rosenberg and Mr. Seiter concur.

Ms. Yeboah was not present.

CERTIFICATION

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

Dated: May 16, 2023



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 P. ORZEL,

a Justice of the Triangle Town Court,
Broome County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Brian C. Doyle, Esq.
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore
Marvin Ray Raskin, Esq.
Graham B. Seiter, Esq.
Hon. Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

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

Hon. John P. Orzel, *pro se*

The matter having come before the Commission on December 7, 2023; and
the Commission having before it the Stipulation dated November 28, 2023; and

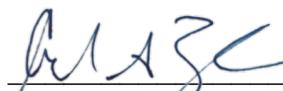
respondent having been served with a Formal Written Complaint dated September 21, 2023; and respondent having tendered his resignation dated November 3, 2023 effective midnight between December 31, 2023 and January 1, 2024; and respondent having affirmed that, once he vacates his judicial office, he 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.

Ms. Grays was not present.

Dated: December 7, 2023



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 P. ORZEL,

STIPULATION

a Justice of the Triangle Town Court,
 Broome 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 John P. Orzel (“Respondent”) as follows:

1. Respondent has been a Justice of the Triangle Town Court, Broome County, since January 1, 2018. His current term expires on December 31, 2025.

Respondent is not an attorney.

2. Respondent was served with a Formal Written Complaint dated September 21, 2023, containing one charge: that he initiated a public argument in the courtroom with a female clerk from the Broome County Department of Motor Vehicles (“DMV”) who was operating a DMV mobile office in the courtroom, made inappropriate, unwanted physical contact with the clerk by repeatedly poking her on her left shoulder with his finger, and made snide and/or otherwise discourteous remarks to her before complaining about her to her supervisors.

3. Respondent was given an adjournment to November 2, 2023, to file an Answer to the Formal Written Complaint. He did not file an Answer. Instead, by letter dated November 3, 2023, Respondent advised the Commission that he would resign from office effective at midnight between December 31, 2023, and January 1, 2024. A copy of the letter is appended as Exhibit A.

4. Respondent states that he had intended to resign for health reasons.

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."

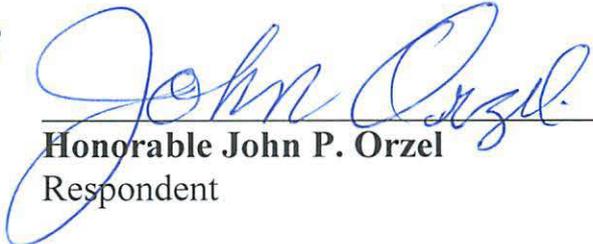
6. Respondent affirms that, once he vacates his judicial office, he will neither seek nor accept judicial office at any time in the future.

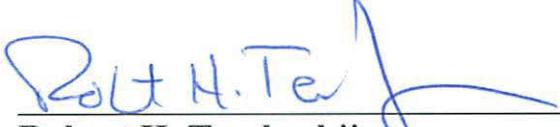
7. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceedings before the Commission will be revived and the matter may proceed to a hearing before a referee, or the Commission may summarily determine that he should be removed from office pursuant to 22 NYCRR 7000.6(c).

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. 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: 11/14/2023 
Honorable John P. Orzel
Respondent

Dated: Nov. 28, 2023 
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 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

JEREMY L. PERSONS,

a Justice of the Guilford Town Court,
Chenango County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
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

Hon. Jeremy L. Persons, *pro se*

Respondent, Jeremy L. Persons, a Justice of the Guilford Town Court,
Chenango County, was served with a Formal Written Complaint (“Complaint”)

dated July 13, 2022, containing seven charges. Charge I alleged that respondent made sexually charged comments to and about attorneys appearing in his court and drove a car with inappropriate graphics and/or bumper stickers. Charge II alleged that for the months of December 2020 and March 2021, respondent failed to report or remit court funds in a timely manner to the Office of the State Comptroller (“Comptroller”), as required. Charge III alleged that from in or about 2018 to the date of the Complaint, respondent failed to answer two traffic tickets issued to him resulting in two suspensions of his driver’s license and failed to renew the insurance on his motor vehicle also resulting in the suspension of his driver’s license. Charge IV alleged that in or about September 2021, respondent used his official judicial email account in connection with a personal matter. Charge V alleged that from in or about August 2021 through the date of the Complaint, respondent failed to cooperate with the Office of Court Administration (“OCA”) and officials of the Town of Guilford. Charge VI alleged that respondent failed to cooperate with the Commission’s investigation by failing to respond to three Commission inquiry letters, failing to produce records the Commission requested and failing to appear for testimony. Charge VII alleged that from in or about December 2020 to in or about October 2021, on various occasions, respondent visibly carried a handgun while inside or just outside the courthouse, in violation of his permit to carry a concealed pistol.

Respondent did not file an answer.

By motion dated November 4, 2022, 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 December 15, 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 December 15, 2022, the Commission set a schedule for briefs and oral argument on the issue of sanction. On January 6, 2023, 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 Guilford Town Court, Chenango County, since January 2020. His term expires on December 31, 2023. He is not an attorney.

As to Charge I of the Formal Written Complaint

2. In or about October 2020, while sitting on the bench at the conclusion of the proceedings before him, respondent commented to Public Defender Zachary Wentworth in sum and substance that he looked forward to Assistant Public Defender Stephanie Hanrahan's return from her vacation and said, "She's better looking than [you]."

3. On or about August 26, 2021, when Ms. Hanrahan and Assistant District Attorney Christopher Curley were in a conference with respondent in respondent's chambers, Ms. Hanrahan told respondent that she would be attending the Sheriff's office golf tournament the following day, to which respondent said, "I'd like to watch you golf." When Ms. Hanrahan noted that respondent did not want to watch her since she was not good at golf, respondent replied, "That's not why I want to watch you."

4. On or about August 26, 2021, while in the courtroom with Mr. Curley and Ms. Hanrahan, respondent began discussing his marital relationship. Respondent told the attorneys that he had had a three-way relationship with his ex-wife and another woman, but the two women cut him out of the relationship. Referring to his ex-wife, respondent then commented, "She likes the hole better than the pole."

5. From in or about July 2021 to in or about October 2021, the

following occurred in connection with respondent's automobile, a Chevrolet passenger car:

- A. Respondent displayed on his automobile a graphic of "Judge Dredd," referring to a fictional character known in popular culture as "judge, jury and executioner."
- B. On or about October 6, 2021, respondent displayed on his automobile a bumper sticker that read, "Boobies Make Me Smile."
- C. Respondent usually parked his vehicle near the non-public entrance to the court, where it was visible to police officers and/or defendants in custody, entering or leaving the court.

As to Charge II of the Formal Written Complaint

6. On or about February 26, 2021, the Comptroller issued to respondent a written notice that his December 2020 monthly report had not been filed by the 10th day of the following month as required and was not on file with the Comptroller.

7. On or about April 13, 2021, the Comptroller issued to respondent a second written notice that his December 2020 monthly report had not been filed by the 10th day of the following month as required and was not on file with the Comptroller.

8. On or about June 1, 2021, the Comptroller sent an email to respondent, again noting the delinquent December 2020 monthly report and notifying him of his failure to file his March 2021 monthly report in a timely

manner.

9. Respondent's failure to file his monthly reports for December 2020 and March 2021 in a timely manner resulted in his judicial salary being stopped on or about May 20, 2021.

10. Respondent failed to file his monthly reports for December 2020 and March 2021 with the Comptroller until on or about July 8, 2021 and July 20, 2021, respectively.

As to Charge III of the Formal Written Complaint

11. On or about October 28, 2017, respondent was charged with two traffic violations for driving a motor vehicle that was uninspected and was without adequate lights. The citations were returnable in the Johnson City Village Court on November 15, 2017.

12. Respondent failed to answer the tickets. As a result, his driver's license was suspended on or about February 22, 2018. The suspension was lifted on or about November 25, 2019, after respondent pled not guilty and paid a fee to lift the suspension.

13. Thereafter, respondent failed to appear on the two tickets in the Johnson City Village Court. As a result, on or about April 30, 2021, his license was suspended again.

14. On or about January 1, 2021, respondent received an unrelated

license suspension for lapsed insurance on his motor vehicle.

15. On or about September 9, 2021, after being notified by the Commission that it was investigating a complaint concerning his license suspensions, respondent pled guilty to both traffic tickets in the Johnson City Village Court. On or about November 15, 2021, respondent paid a total fine of \$335 plus a fee of \$140 to lift the second suspension.

16. Respondent's license remained suspended for lapsed insurance as of the date of the Complaint.

As to Charge IV of the Formal Written Complaint

17. On or about October 28, 2017, respondent was charged with two traffic violations for driving a motor vehicle that was uninspected and was without adequate lights. The citations were returnable in the Johnson City Village Court on November 15, 2017. Respondent failed to answer the tickets, and his driver's license was suspended on February 22, 2018, as a result. The suspension was lifted after respondent pled not guilty and paid a fee to lift the suspension on or about November 25, 2019. However, respondent again failed to appear on the two tickets, and his license was suspended again on or about April 30, 2021.

18. In or around January 2020, after becoming a judge of the New York State Unified Court System ("UCS"), respondent was issued a UCS email

account with the address “██████████@nycourts.gov.”

19. On or about September 9, 2021, respondent telephoned the Johnson City Village Court and spoke to April Chapman, a court clerk. During the call, respondent gave Ms. Chapman the email address “██████████@nycourts.gov” as a means by which the court could communicate with him and send him the credit card form for payment of the suspension lift fee. After seeing the “nycourts” email address, Ms. Chapman looked up respondent and made a note in the court file regarding her phone call that included the comment, “hes [sic] a judge at Guilford, NY.”

As to Charge V of the Formal Written Complaint

20. During the relevant time period, Supreme Court Justice Norman St. George served as Deputy Chief Administrative Judge of the Unified Court System for the Courts Outside New York City and Supreme Court Justice Eugene D. Faughnan served as Administrative Judge for the Sixth Judicial District, which is based in Binghamton and includes Chenango County. Cortland City Court Judge Elizabeth Burns served as Supervising Judge for the Town and Village Courts in certain counties of the Sixth Judicial District, including Chenango County. Joshua S. Shapiro served as Special Counsel to the Administrative Judge for the Town and Village Courts in the Sixth Judicial District. During the relevant period, Guilford Town Justice Karen Osborn was

respondent's co-judge and George Seneck was the Guilford Town Supervisor.

21. In or about May 2021, after respondent's salary had been stopped for his failure to file monthly reports with the Office of the State Comptroller in a timely manner for December 2020 and March 2021, Judge Osborn and Supervisor Seneck communicated with OCA officials and expressed their concerns regarding respondent's handling of his judicial duties, including *inter alia*, the following:

- A. Respondent's failure to process and/or deposit fine payments or pleas in a timely manner according to law;
- B. Respondent's failure to report or remit funds to the Comptroller in a timely manner according to law;
- C. Respondent's improper suspensions of drivers' licenses;
- D. Respondent's failure to lift license suspensions after requisite suspension fees had been paid to lift such suspensions; and
- E. Respondent's failure to address complaints from litigants who experienced difficulty reaching him or his office on court-related business.

22. On or about August 4, 2021, Supervising Judge Burns and Special Counsel Shapiro met with respondent, Judge Osborn, and Supervisor Seneck to address and resolve concerns regarding respondent's judicial and administrative duties. Respondent agreed to take remedial steps necessary to address each of the concerns, including a missing deposit of court funds.

23. On or about September 21, 2021, respondent was asked to meet

with Supervising Judge Burns and Mr. Shapiro at the Sixth Judicial District Administrative Office in Binghamton. Although respondent had confirmed that he would attend this meeting, which was scheduled for 10:00 AM, he did not appear for the meeting, nor did he respond to several messages left on his cell phone and home phone by Mr. Shapiro that day.

24. On or about September 22, 2021, respondent wrote an email to Mr. Shapiro asserting that he did not attend the meeting because his car broke down, that he had no cell phone service at the location where his car broke down, and that when he reached an area where he did have cell phone service, he did not have the phone number for the District office.

25. Despite his agreement on or about August 4, 2021, to take remedial steps regarding his judicial and administrative duties, respondent failed to do so, notwithstanding assistance offered by Judge Burns and Mr. Shapiro. As a result, Mr. Shapiro, in consultation with Administrative Judge Faughnan, ordered an internal audit of the Guilford Town Court.

26. An initial audit meeting was held on October 7, 2021, via video.¹ At the meeting, respondent was told which documents he needed to produce to the auditors. Although respondent promised to scan and email the requested

¹ The meeting originally was scheduled to be held in person, but respondent had to be asked to appear virtually after he told Mr. Shapiro that his wife and son has been exposed to the COVID-19 virus and were symptomatic.

documents, he never did so.

27. On or about October 15, 2021, Deputy Chief Administrative Judge St. George issued an administrative order, AO/298/2021, directing respondent to relinquish his judicial duties, in that all pending matters before him were to be assigned to another judge, and no additional matters were to be assigned to him.

28. Notwithstanding respondent's failure to cooperate with the audit of his court records between October 2021 and May 2022, the audit was completed and found five areas of concern, as follows:

- A. There was a shortage in respondent's combined fine/fee and bail account;
- B. Receipts were not always deposited and disbursed in a timely manner;
- C. Receipt forms were not properly controlled;
- D. Cash handling responsibilities were not separated; and
- E. Cash and checkbook records were deleted from the cashbook.

As to Charge VI of the Formal Written Complaint

29. Section 44, subdivision 3, of the Judiciary Law, and Volume 22, Sections 7000.3(c) and (e) of the New York Codes, Rules and Regulations (22 NYCRR 7000.3[c] and [e]), authorize the Commission to request a written response from a judge who is the subject of a complaint and to require a judge's testimony during an investigation.

30. By letter dated June 23, 2021, the Commission notified respondent that it was investigating a complaint from the Comptroller alleging that he had failed to file reports or remit funds to the Comptroller in the time required by law for the months of December 2020 and March 2021, resulting in his judicial salary being stopped on or about May 20, 2021. The letter requested respondent's written response to the allegations by July 21, 2021.

31. Respondent submitted an undated letter, received by the Commission on August 5, 2021, attributing the delay in filing his monthly reports for December 2020 and March 2021 to medical issues that led to his hospitalization. Respondent asked for additional time to respond to the remaining questions about his court activity and to provide related court records, but he did not offer a timeframe for the additional response.

32. By letter dated August 26, 2021, the Commission sent respondent a follow-up letter concerning both the complaint by the Comptroller and an additional complaint alleging that respondent's driver's license was suspended due to lapsed insurance and that he had failed to answer two traffic tickets in the Village of Johnson City.

33. Respondent failed to respond to the Commission's letter of August 26, 2021. By letter dated September 30, 2021, the Commission sent respondent a copy of its letter dated August 26, 2021 and requested his response by October

12, 2021. The letter of September 30 informed respondent that his “failure to respond may be found by the Commission to be a failure to cooperate with the investigation” (emphasis in original).

34. Respondent never submitted an additional response to the Commission’s letter dated June 23, 2021, nor did he submit any response to the Commission letters dated August 26, 2021 and September 30, 2021.

35. By letter dated March 11, 2022, the Commission notified respondent to appear for testimony via video on April 4, 2022, concerning the four complaints and his failure to respond to the Commission’s inquiries. The letter also asked respondent to produce certain documents by March 24, 2022 and to confirm his appearance by March 28, 2022.

36. Respondent neither confirmed his appearance for testimony nor provided any documents to the Commission. Respondent first communicated with the Commission on April 4, 2022, approximately five minutes before his testimony was to begin, to ask for a video link in order to participate in the proceeding. During the phone call, respondent offered no explanation for why he failed to produce the records or confirm his appearance in advance, as the Commission had directed.

37. After being provided with the video link, respondent appeared, and the proceeding to take his testimony commenced. After a short time, however,

he abruptly disconnected from the proceeding. After a brief recess was called and Commission staff attempted to determine what had occurred, Commission staff established a telephone connection with respondent, who claimed that an internet outage in his area had occurred. The stenographer transcribing the video proceeding continued to transcribe the telephone conversation, during which respondent agreed on the record that his testimony would resume on April 8, 2022, at 10:00 AM, in person at the Commission's Albany office, which he would attend to complete his testimony.

38. The Commission sent respondent a letter dated April 5, 2022, confirming his appearance on April 8 and providing directions to the Commission's Albany office.

39. Respondent failed to appear at the Commission on April 8, 2022 and he failed to communicate with the Commission in any manner. A transcript was prepared on April 8, 2022, noting respondent's failure to appear.

As to Charge VII of the Formal Written Complaint

40. On or about August 24, 2020, respondent applied for a New York State Pistol Permit.

41. On or about December 11, 2020, respondent was issued a permit to carry a concealed pistol. Respondent thereafter obtained two handguns: a semi-automatic Glock and a Uberti revolver.

42. Notwithstanding that respondent's permit requires the pistol to be concealed, his practice while in or just outside the courthouse was to carry a handgun on a hip-holster which was easily visible anytime he was not wearing his judicial robe.

43. On one occasion from in or about July 2021 to in or about October 2021, respondent placed his handgun on the bench when Mr. Wentworth was appearing before him during a session of the court.

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(A), 100.3(B)(1), (2), (3) and (4), 100.3(C)(1) 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. Charges I through VII of the Complaint are 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)) Section 100.3(B)(3) of the Rules requires a judge to be "dignified and courteous" to attorneys who appear before them. Respondent violated these Rules when he made inappropriate

sexually charged comments to and about attorneys appearing before him and displayed a “Boobies Make Me Smile” bumper sticker on the car he parked at the courthouse. Respondent’s comments to and about attorneys appearing before him and the bumper sticker on his car were demeaning, undignified and improper. *See, Matter of Doolittle*, 1986 NYSCJC Annual Report 87, 88 (“[t]he cajoling of women about their appearance or their temperament has come to signify differential treatment on the basis of sex.”); *Matter of Miller*, 35 N.Y.3d 484, 487 (2020) (respondent, *inter alia*, told court clerk that she “look[ed] really hot” in an outfit and should always wear it); *Matter of Gerber*, 2021 NYSCJC Annual Report 103, 110 (it was “demeaning and inappropriate” for respondent to ask an ADA and her friend if they “want[ed] a room” and if he should “turn off the lights” for them when they were leaving an empty courtroom); *Matter of Stilson*, 2023 NYSCJC Annual Report __ (respondent made posts which “objectified and denigrated women” on his public Facebook page).²

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

² Available at: <https://cjc.ny.gov/Determinations/S/Stilson.David.R.2022.01.07.DET.pdf>

will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach.”); *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 . . .” (citation omitted)). In making his comments while in his courtroom or in chambers, respondent failed to meet the high standards of judicial conduct and detracted from the dignity of his judicial office.

Respondent also violated the Rules when he engaged in a pattern of failing to respect and comply with the law including failing to timely report and remit funds to the State Comptroller as required for the months of December 2020 and March 2021 which resulted in his judicial salary being stopped;³ failing to answer two traffic citations which resulted in the suspension of his driver’s license on two separate occasions and failing to renew the insurance on his vehicle which also resulted in the suspension of his driver’s license. In addition, respondent violated the terms of his permit to carry a concealed pistol including by placing his handgun on the bench during a court session. “In its totality, respondent's conduct shows a pervasive disregard for the ethical and administrative responsibilities of [his] judicial office. . .” *Matter of Halstead*, 2012 NYSCJC Annual Report 94, 104.

³ This reporting is required by Section 1803 of the Vehicle and Traffic Law, Sections 2020 and 2021 of the Uniform Justice Court Act, Section 27, subdivision 1, of the Town Law, and Section 99-a of the State Finance Law.

Furthermore, it certainly could be interpreted that respondent asserted his judicial office to advance his private interests when he provided the Johnson City Village Court with his judicial email address as a means to communicate with him regarding his personal matter. Respondent did not file an answer and did not oppose the motion for summary determination which was granted. Accordingly, we find that respondent asserted his judicial office to advance his private interests in violation of Section 100.2(C) of the Rules by giving his judicial email address to the Johnson City Village Court in connection with his private matter.

Respondent also violated Section 100.3(C)(1) of the Rules by failing to diligently discharge his administrative duties when he failed to cooperate with OCA and with Town of Guilford officials in their investigation of his alleged failure to fulfill his official financial obligations and to perform his judicial duties. In this regard, respondent failed to take agreed upon remedial actions and also failed to send requested documents to auditors conducting an internal audit of the Guilford Town Court.

Moreover, respondent's failure to cooperate during the Commission's investigation as well as his failure to participate in the Commission's proceedings after the Complaint was issued significantly exacerbated his underlying misconduct. Section 44(3) of the Judiciary Law and the Commission's Operating Procedures and Rules, 22 NYCRR 7000.3(c) and (e), authorize the Commission

during an investigation to request a written response from a judge who is the subject of a complaint and to require a judge's testimony. Respondent failed to respond to three inquiry letters from the Commission and failed to appear for testimony during the Commission's investigation. In addition, he 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 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 article 2-A). In short, willingness to cooperate with the Commission's investigations and proceedings is not only required -- it is essential.

Here, respondent's pattern of ignoring his duty to cooperate with the Commission demonstrated his disdain for the Commission's important role and he undermined public confidence in the judiciary.

In *Matter of Miller, supra*, 35 N.Y.3d at 490, the Court held that in determining the appropriate sanction, “[a] judge’s behavior must be considered ‘in the aggregate’ . . .” (citation omitted). Given the totality of respondent’s misconduct which demonstrated his neglect of his ethical responsibilities as well as his unwillingness to participate in Commission proceedings, 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 by making inappropriate comments to and about attorneys appearing before him; engaged in a pattern of failing to comply with the law; invoked his judicial office in connection with a personal matter and failed to cooperate with OCA and the Town of Guilford in the investigation of his judicial conduct. His underlying misconduct was significantly exacerbated when he chose to ignore the Commission’s proceedings.⁴

⁴ This finding is consistent with New York attorney grievance proceedings in which nonresponsive

The Court of Appeals has held that, “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 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.

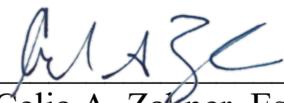
By reason of the foregoing, the Commission determines that the appropriate disposition is removal.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge 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, 2023



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

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).

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

CLARK V. RICHARDSON,

a Judge of the New York City Family Court,
New York County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Brian C. Doyle, Esq.
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore
Marvin Ray Raskin, Esq.
Graham B. Seiter, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Brenda Correa, Of Counsel)
for the Commission

Hon. Clark V. Richardson, *pro se*

The matter having come before the Commission on December 7,

2023; and the Commission having before it the Stipulation dated December 1, 2023; and Judge Richardson having tendered his resignation dated December 1, 2023 effective December 31, 2023; 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: December 7, 2023



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

CLARK V. RICHARDSON,

STIPULATION

a Judge of the New York City Family Court,
New York County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert
H. Tembeckjian, Administrator and Counsel to the Commission on Judicial
Conduct, and the Honorable Clark V. Richardson.

1. Clark V. Richardson was admitted to the practice of law in New York
in 1982. He has been a of Judge the New York City Family Court, New York
County, since March 1, 1995. His current term expires on August 2, 2024.

2. Judge Richarson was apprised by the Commission in November 2023
that it was investigating a complaint related to his prolonged absence from the
performance of his judicial duties.

3. Judge Richardson acknowledges that his physical health is such that he
is now, and for the foreseeable future will be, unable to perform his judicial
duties.

4. Therefore, Judge Richardson has submitted his retirement papers with
the New York State Unified Court System and has submitted his letter of

resignation to the Chief Administrative Judge, effective at the close of business on December 31, 2023. A copy of his letter to the Chief Administrative Judge is appended as Exhibit 1.

5. Judge Richardson affirms that he will vacate judicial office at the close of business on December 31, 2023, and that he will neither seek nor accept judicial office at any time in the future.

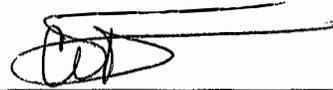
6. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from the date of the judge's resignation to complete proceedings, and if the Commission determines that the judge should be removed from office, file a determination with the Court of Appeals.

7. Judge Richardson 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 formal disciplinary proceedings would ensue.

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.

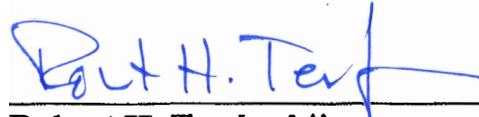
9. Judge Richardson waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: *Nov 30, 2023*



Honorable Clark V. Richardson

Dated: December 1, 2023



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(Mark Levine and Brenda Correa, 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

DAVID A. RIKARD,

a Justice of the Prattsville Town Court,
Greene County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Honorable John A. Falk
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, Shruti Joshi and Kathleen E. Klein, Of Counsel) for the Commission

Corrigan, McCoy & Bush, PLLC (by Joseph M. McCoy) for respondent

The matter having come before the Commission on April 20, 2023; and the Commission having before it the Stipulation dated March 10, 2023; and respondent having been served with a Formal Written Complaint dated January 26, 2023; and

respondent having filed an Answer dated February 16, 2023; and respondent having tendered his resignation dated January 6, 2023 effective immediately; and respondent 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.

Ms. Yeboah was not present.¹

Dated: April 20, 2023



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

¹ Judge Miller did not participate regarding File No. 2021/A-0350.

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 A. RIKARD,

STIPULATION

a Justice of the Prattsville Town Court,
Greene County.

Subject to the approval of the Commission on Judicial Conduct

(“Commission”):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable David A. Rikard (“Respondent”), who is represented in these proceedings by Joseph M. McCoy, of Corrigan, McCoy and Bush, PLLC, as follows:

1. Respondent was admitted to the practice of law in New York in 1989. He was a Justice of the Prattsville Town Court, Greene County, from January 2014 to January 6, 2023. His current term would have expired on December 31, 2025.
2. Respondent was served with a Formal Written Complaint dated January 26, 2023, containing one charge, alleging that he refused to appear before the Commission to testify concerning three complaints of misconduct against him, and

that he refused to provide the Commission with requested records relevant to the Commission's investigation.¹

3. Respondent filed an Answer dated February 16, 2023, in which he admitted the factual allegations of the charge but denied that they constituted misconduct.

4. Respondent tendered his resignation, dated January 6, 2023, a copy of which is annexed as Exhibit 1. Respondent affirms that he vacated judicial office as of January 6, 2023.

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

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

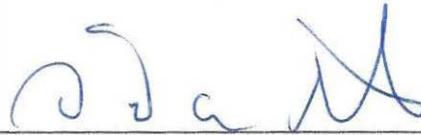
¹ The complaints *inter alia* involved allegations of inappropriate demeanor, unauthorized political activity, and poor financial reporting and accounting practices.

before a referee, or to summary determination based upon the admissions in his Answer, which could result in his removal from office.

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.

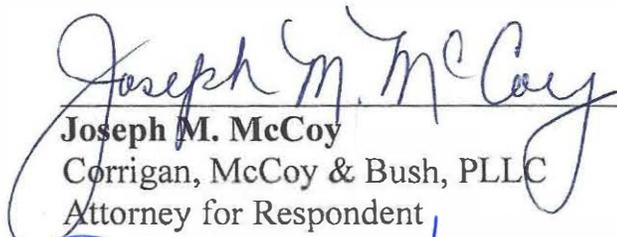
9. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 3/10/23



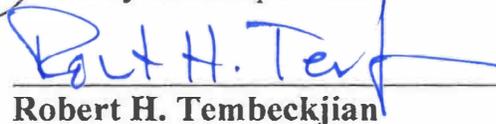
Honorable David A. Rikard
Respondent

Dated: 3-10-23



Joseph M. McCoy
Corrigan, McCoy & Bush, PLLC
Attorney for Respondent

Dated: March 10, 2023



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(**Cathleen S. Cenci, Shruti Joshi and Kathleen E. Klein**, 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 Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

JUNE SHEPARDSON,

a Justice of the Moravia Town and Village Courts,
Cayuga County.

DECISION
AND
ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

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

J. Justin Woods, Esq. for Judge Shepardson

The matter having come before the Commission on October 12, 2023;

and the Commission having before it the Stipulation dated October 10, 2023; and Judge Shepardson having tendered her resignation dated September 1, 2023 effective August 31, 2023; 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.

Ms. Grays and Mr. Rosenberg were not present.

Dated: October 12, 2023



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

JUNE SHEPARDSON,

STIPULATION

a Justice of the Moravia Town and Village Courts,
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 June Shepardson.

1. June Shepardson has been a Justice of the Moravia Town and Village Courts, Cayuga County, since June 19, 2001. Her current town court term expires on December 31, 2025, and her village court term expires on June 30, 2025.

Justice Shepardson is not an attorney.

2. On August 2, 2023, based upon information obtained from a representative of the Unified Court System, the Commission commenced an investigation into an allegation that Judge Shepardson had converted more than \$6,000 in court funds from the Town and Village of Moravia.

3. Judge Shepardson tendered her resignation by letter dated September 1, 2023, a copy of which is annexed as Exhibit 1. Judge Shepardson affirms that she vacated judicial office as of September 1, 2023.

4. Pursuant to Section 47 of the Judiciary Law, the Commission may continue with proceedings against a judge who has resigned 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.”

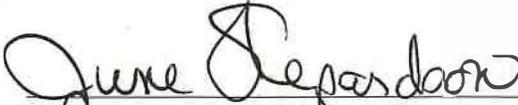
5. Judge Shepardson affirms that, having vacated her judicial office, she will neither seek nor accept judicial office at any time in the future.

6. Judge Shepardson 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 Shepardson 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.

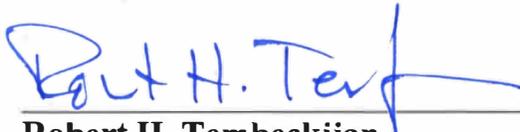
Dated: 10/6/2023


Honorable June Shepardson

Dated: 10/6/23


J. Justin Woods, Esq.
The Law Offices of J. Justin Woods PLLC
Attorney for Hon. June Shepardson

Dated: October 10, 2023


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 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

HARRIET L. THOMPSON,

a Judge of the Surrogate's 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 Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine, Brenda Correa and Jennifer L.
Lowry, Of Counsel) for the Commission

Andrew Fisher, Esq. for respondent

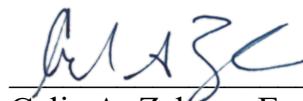
The matter having come before the Commission on January 26, 2023; and the Commission having before it the Stipulation dated January 9, 2023; and respondent having been served with the Formal Written Complaint dated May 23, 2022; and respondent having filed an Answer to the Formal Written Complaint dated July 24,

2022; and respondent having been served with the Second Formal Written Complaint dated December 16, 2022; and the Commission, by orders dated August 5, 2022 and December 20, 2022, having designated Mark S. Arisohn, Esq. as referee to hear and report proposed findings of fact and conclusions of law; and a hearing having been scheduled to commence on January 17, 2023 and respondent having tendered her resignation dated January 6, 2023 effective March 1, 2023; 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: January 26, 2023



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

HARRIET L. THOMPSON,

STIPULATION

a Judge of the Surrogate's Court,
Kings 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 Harriet L. Thompson ("Respondent"), who is represented for the limited purpose of the instant Stipulation by Andrew Fisher, Esq., as follows:

1. Respondent has been a Judge of the Surrogate's Court, Kings County, since January 1, 2019. Her term expires December 31, 2026.
2. Respondent was served with a Formal Written Complaint dated May 23, 2022, containing four charges of misconduct, alleging *inter alia* that she: made inappropriate comments to and about employees and judges of the Unified Court System; displayed bias against various individuals and ethnicities; failed to administer Surrogate Court matters in a timely manner, leading to substantial delays; and, as a candidate for Surrogate in 2018, failed to complete mandatory

campaign ethics education in a timely manner. Respondent denied the allegations of misconduct in an Answer dated July 24, 2022.

3. On August 5, 2022, the Commission designated Mark S. Arisohn, Esq., as Referee to hear and report proposed findings of fact and conclusions of law with respect to the Formal Written Complaint.

4. Pursuant to a preliminary conference held on August 17, 2022, Referee Arisohn ordered a hearing in this matter to commence on January 17, 2023.

5. From August 23, 2022, to date, the Referee or the Commission denied various applications Respondent filed, including motions (A) to dismiss several charges, (B) to postpone the hearing, and (C) to require the production of a particular witness's medical and personnel records.

6. On November 30, 2022, Respondent produced a letter from her physician, stating *inter alia* that due to certain medical procedures, a medication regimen prescribed as a result of those procedures, and the likelihood that further medical procedures would be necessary, Respondent was "not medically fit to stand trial at this time."

7. On December 16, 2022, Respondent was served with a Second Formal Written Complaint authorized by the Commission, alleging that she was medically unfit to remain in office.

8. In lieu of an Answer to the Second Formal Written Complaint, Respondent here admits that she is prevented from performing the duties of

judicial office because of a medical disability, that she will retire from judicial office on March 1, 2023, and she will neither seek nor accept judicial office at any time in the future.

9. A copy of Respondent's resignation notice is appended as Exhibit 1.

10. 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."

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

12. Respondent understands that, should she abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceedings before the Commission will be revived and the matter may proceed to a hearing before a referee, or the Commission may summarily determine that she should be removed from office pursuant to 22 NYCRR 7000.6(c).

13. 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.

14. 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.

15. Respondent agrees to withdraw and/or discontinue all lawsuits and/or proceedings she may have initiated against the Commission in connection with the matters herein.

16. As to the Formal Written Complaint dated May 23, 2022, the parties note that, if the Commission accepts this Stipulation, the matter would close with no finding that the misconduct alleged therein was or was not established.

Dated:

1/7/2023

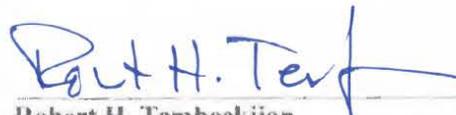

Honorable Harriet L. Thompson
Respondent

Dated:

1/6/2023


Andrew Fisher, Esq.
Attorney for Respondent for the
Limited Purpose of this Stipulation

Dated: January 9, 2023


Robert H. Tembeckjian
Administrator & Counsel to the Commission
(Mark Levine, Brenda Correa, and Jennifer L.
Lowry, 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 Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

SCOTT B. UGELL,

a Justice of the Clarkstown Town Court,
Rockland County.

DECISION
AND
ORDER

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Jennifer L. Lowry, Of
Counsel) for the Commission

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

The matter having come before the Commission on June 1, 2023; and
the Commission having before it the Stipulation dated May 26, 2023; and Judge

Ugell having tendered his resignation dated May 25, 2023 effective June 30, 2023; 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.

Judge Robert J. Miller did not participate.

Dated: June 1, 2023



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

SCOTT B. UGELL,

STIPULATION

a Justice of the Clarkstown Town Court,
Rockland County.

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

1. Judge Ugell was admitted to the practice of law in New York in 1986. He has been a Justice of the Clarkstown Town Court, Rockland County, since 1991. His current term expires on December 31, 2025.

2. Judge Ugell was apprised by the Commission in March 2023 that it was investigating a complaint alleging that, in connection with a landlord/tenant case over which he presided, he *inter alia* failed to disclose that an attorney in the case had personally represented him in an unrelated civil matter, and that he did not afford the opposing party an opportunity to be heard according to law.

3. Judge Ugell was apprised by the Commission in April 2023 that it was investigating a second complaint, alleging that he became a candidate for election to the office of Clarkstown Town Supervisor, without resigning from his position as Clarkstown Town Justice.

4. Judge Ugell was apprised by the Commission in May 2023 that it was investigating a third complaint, based on a decision in *King and Sweet v Ugell and Garvey and the Rockland County Board of Elections* (Sup Ct, Rockland County, April 28, 2023, Marx, J., Index No. 031728/2023), alleging that he was improperly a candidate for election to the office of Clarkstown Town Supervisor (the same position as alleged in paragraph 3. above). The complaint alleged that Judge Ugell testified falsely under oath at a hearing in the matter and thereafter testified falsely under oath in the ensuing litigation.¹

5. The Commission has not rendered any substantive determinations as to the foregoing complaints.

6. Judge Ugell has been in public service for almost 35 years. He tendered his resignation, effective June 30, 2023. His resignation letter is annexed as Exhibit 1. Judge Ugell affirms that he will vacate judicial office on or before June 30, 2023.

¹ On May 11, 2023, the Appellate Division, Second Department, dismissed the proceeding. See *King v Ugell*, 2023 NY Slip Op 0261, attached.

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

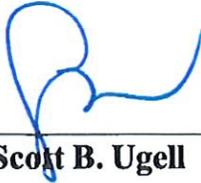
9. Judge Ugell understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaints would be revived, he would be served with a Formal Written Complaint on authorization of the Commission, and the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

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 Ugell 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:

5/26/23



Honorable Scott B. Ugell

Dated:

5/26/23



Deborah A. Scalise, Esq.
Scalise & Hamilton, P.C.
Attorney for Honorable Scott B. Ugell

Dated: May 26, 2023



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(Mark Levine, Jennifer L. Lowry,
Of Counsel)

THE FOLLOWING ITEMS ARE AVAILABLE AT WWW.CJC.NY.GOV:
KING V UGELL, 2023 NY SLIP OP 0261
EXHIBIT 1: JUDGE'S LETTER OF RESIGNATION

APPENDIX G: STATISTICAL ANALYSIS OF COMPLAINTS

COMPLAINTS PENDING AS OF DECEMBER 31, 2022								
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>		11	6	2	8	4	3	34
<i>DELAYS</i>		2	0	1	2	0	0	5
<i>CONFLICT OF INTEREST</i>		4	1	2	3	1	1	12
<i>BIAS</i>		4	0	2	2	1	0	9
<i>CORRUPTION</i>		0	1	1	1	0	0	3
<i>INTOXICATION</i>		0	0	0	0	1	0	1
<i>DISABILITY/QUALIFICATIONS</i>		0	0	0	1	0	0	1
<i>POLITICAL ACTIVITY</i>		9	8	14	0	0	0	31
<i>FINANCES/RECORDS/TRAINING</i>		3	5	0	4	1	3	16
<i>TICKET-FIXING</i>		3	0	0	0	1	1	5
<i>ASSERTION OF INFLUENCE</i>		10	3	1	0	0	1	15
<i>VIOLATION OF RIGHTS</i>		29	13	2	2	0	2	48
<i>MISCELLANEOUS</i>		1	1	1	2	2	0	7
TOTALS		76	38	26	25	11	11	187

*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 2023								
SUBJECT OF COMPLAINT	DISMISSED ON FIRST REVIEW OR PRELIMINARY INQUIRY	STATUS OF INVESTIGATED COMPLAINTS						TOTALS
		PENDING	DISMISSED	CAUTION	RESIGNED	CLOSED*	ACTION*	
<i>INCORRECT RULING</i>	1,581							1,581
<i>NON-JUDGES</i>	760							760
<i>DEMEANOR</i>	114	33	1	1	0	0	0	149
<i>DELAYS</i>	44	3	0	0	0	0	0	47
<i>CONFLICT OF INTEREST</i>	19	4	0	0	0	0	0	23
<i>BIAS*</i>	80	8	1	1	0	0	0	90
<i>CORRUPTION</i>	32	0	0	0	1	0	0	33
<i>INTOXICATION</i>	1	1	0	0	0	0	0	2
<i>DISABILITY/QUALIFICATIONS</i>	1	3	0	0	2	0	0	6
<i>POLITICAL ACTIVITY</i>	14	16	19	35	2	0	0	86
<i>FINANCES/RECORDS/TRAINING</i>	14	17	7	3	1	1	0	43
<i>TICKET-FIXING</i>	0	0	0	0	0	0	0	0
<i>ASSERTION OF INFLUENCE</i>	1	8	0	1	0	0	0	10
<i>VIOLATION OF RIGHTS</i>	96	32	2	0	1	0	0	131
<i>MISCELLANEOUS</i>	17	3	0	1	0	0	0	21
TOTALS	2,774	128	30	42	7	1	0	2,982

*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 90 bias complaints received in 2023, 59 were classified as bias against an individual, 54 of which were dismissed upon initial review and five of which were opened for investigation. Thirty-one were classified as bias based on a broader basis of race, culture, religion, gender or ethnicity, 26 of which were dismissed upon initial review and five of which were opened for investigation. One of the 10 investigations was dismissed after investigation, another resulted in the judge being privately cautioned and the remaining eight complaints are still being investigated.

ALL COMPLAINTS CONSIDERED IN 2023: 2,982 NEW & 187 PENDING FROM 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>	1,581							1,581
<i>NON-JUDGES</i>	760							760
<i>DEMEANOR</i>	114	44	7	3	8	4	3	183
<i>DELAYS</i>	44	5	0	1	2	0	0	52
<i>CONFLICT OF INTEREST</i>	19	8	1	2	3	1	1	35
<i>BIAS</i>	80	12	1	3	2	1	0	99
<i>CORRUPTION</i>	32	0	1	1	2	0	0	36
<i>INTOXICATION</i>	1	1	0	0	0	1	0	3
<i>DISABILITY/QUALIFICATIONS</i>	1	3	0	0	3	0	0	7
<i>POLITICAL ACTIVITY</i>	14	25	27	49	2	0	0	117
<i>FINANCES/RECORDS/TRAINING</i>	14	20	12	3	5	2	3	59
<i>TICKET-FIXING</i>	0	3	0	0	0	1	1	5
<i>ASSERTION OF INFLUENCE</i>	1	18	3	2	0	0	1	25
<i>VIOLATION OF RIGHTS</i>	96	61	15	2	3	0	2	179
<i>MISCELLANEOUS</i>	17	4	1	2	2	2	0	28
TOTALS	2,774	204	68	68	32	12	11	3,169

*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
		PENDING	DISMISSED	CAUTION	RESIGNED	CLOSED*	ACTION*	
<i>INCORRECT RULING</i>	32,740							32,740
<i>NON-JUDGES</i>	10,739							10,739
<i>DEMEANOR</i>	4,570	44	1,424	386	185	148	289	7,046
<i>DELAYS</i>	1,853	5	212	115	44	24	34	2,287
<i>CONFLICT OF INTEREST</i>	973	8	552	201	74	37	151	1,996
<i>BIAS</i>	2,288	12	317	70	41	27	40	2,795
<i>CORRUPTION</i>	1,051	0	159	15	56	24	47	1,352
<i>INTOXICATION</i>	82	1	43	8	19	7	35	195
<i>DISABILITY/QUALIFICATIONS</i>	74	3	37	2	29	18	6	169
<i>POLITICAL ACTIVITY</i>	502	25	393	274	39	39	60	1,332
<i>FINANCES/RECORDS/TRAINING</i>	380	20	416	265	191	110	116	1,498
<i>TICKET-FIXING</i>	28	3	96	161	49	63	172	572
<i>ASSERTION OF INFLUENCE</i>	266	18	238	109	53	24	87	795
<i>VIOLATION OF RIGHTS</i>	2,914	61	719	264	158	88	126	4,330
<i>MISCELLANEOUS</i>	967	4	285	95	47	53	63	1,514
TOTALS	59,397	204	4,891	1,965	985	662	1,226	69,330

* 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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