STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

     TERRY B. ELIA,

a Justice of the Lloyd Town Court,
Ulster County.


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**DETERMINATION**


THE COMMISSION:

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

APPEARANCES:

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

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

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

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

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

and made the following determination:

1.    Respondent has been a Justice of the Lloyd Town Court, Ulster County, since January 1, 1998. Respondent's current term expires on December 31, 2025. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2.    LinkedIn is an internet professional and social networking website and platform that *inter alia* allows members to post, share, like and comment on content on their own LinkedIn profiles as well as on the LinkedIn profiles of other members and LinkedIn groups. Generally, LinkedIn profiles are fully visible to all LinkedIn members who have signed into their LinkedIn accounts online. However, LinkedIn members may, at their option, control what appears on their LinkedIn profiles and/or restrict the visibility of their posts and other activity on LinkedIn to certain individuals or groups.

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

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

NY Mar 1998 – Present • 23 yrs 5 mos."   A copy of respondent's "Experience"

information is annexed as Exhibit A to the Agreed Statement.

5.    The "Accomplishments" information on respondent's LinkedIn profile

listed five organizations, including:

A.    "Ulster County Sheriff's CISM [Critical Incident Stress Management] Team Jun 2012 – Present • Member";

B.    "New York State Magistrates Association Mar 1998 – Present • Member"; and

C.    "Ulster County Magistrates Association Mar 1998 – Present."

A copy of respondent's "Accomplishments" information is annexed as Exhibit B to

the Agreed Statement.

6.    The "Interests" information on respondent's LinkedIn profile included

the following LinkedIn groups:

A.    "Blue Lives Matter";

B.    "The Law Enforcement Network"; and

C.    "Police1 Network."

A copy of respondent's "Interests" information is annexed as Exhibit C to the

Agreed Statement.

7.    In September 2020, in connection with a LinkedIn post by "Blue Lives

Matter," which shared an article from The Police Tribune entitled "BREAKING:

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

- A. "Liked" a comment on the post by "Steven Dekelbaum," that, *inter alia*, criticized protesters after a grand jury returned a decision to indict only one of three police officers involved in a police shooting;

- B. "Liked" a comment on the post by "Herb Weil" stating, "Give the police better non-lethal weapons that will end these riots quick..i.e..WATER CANNONS AND SIMILAR DEVICES..Less injuries all the way around.."; and

- C. Published a comment on the post that read, "Time to bring the unrest to an end."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21.     In May 2021, respondent "liked" a LinkedIn post by "Buck Rogers

IPC LL.D D.Crim" that depicted a photograph of a woman yelling in a police

officer's face with an accompanying comment about respecting police officers.  A

copy of the post is annexed as Exhibit R to the Agreed Statement.

22.     In June 2021, respondent published a comment on a LinkedIn post by

"Blue Lives Matter" that contained a link to an article on "policetribune.com"

entitled, "Officer Dies While Trying To Save Drowning Boys," by writing, "Gods

Speed [sic] Officer [pray emoji] us.  Why isn't this on every news channel?

Support Law Enforcement Every Day.  I couldn't imagine life without them."

Copies of the post and article are annexed as Exhibit S to the Agreed Statement.

23.     In June or early July 2021, respondent "liked" a LinkedIn post by

"Blue Lives Matter" that contained a link to an article on "policetribune.com"

entitled, "Gunman Captured On Black Nationalist Group's Property, Arrested With

Cuffs Of Cop He Shot."  A copy of the post is annexed as Exhibit T to the Agreed

Statement.

24.     In July 2021, respondent shared a LinkedIn post by Germaine

Drummond that depicted a photograph of a Civil War soldier with the comment,

"BECAUSE BLACK LIVES MATTERED.  Approximately 620,000 white

soldiers died in the civil war in order to obtain freedom for the black slaves.  The

average age of the soldiers was 25 years.  This does not include the Medics, both

men and women.  In retaliation AGAINST slavery the Republican party was born.

Many of our black brothers died also fighting to free the nation of slavery,

approximately 180,000.  PLEASE STOP TELLING ME TO REPENT.  The blood

of our fathers is reparation enough."  A copy of the post is annexed as Exhibit U to

the Agreed Statement.

25.    In November 2021, respondent promptly removed the LinkedIn posts

after receiving a letter from the Commission inquiring into the matters herein.

As to Charge II of the Formal Written Complaint

26.    From 2012 until April 2022, when he received the Formal Written

Complaint in this matter, respondent cast doubt on his ability to act impartially as a

judge in matters involving law enforcement, in that he served as a "peer support

member" of the Ulster County Sheriff Office's Critical Incident Stress

Management Team.

27.    Respondent ceased providing any services as a peer support member

upon receipt of the Formal Written Complaint.

Additional Factors

28.    Respondent has been cooperative and contrite with the Commission

throughout this inquiry.  In addition to promptly removing all the LinkedIn posts

after receiving the Commission's letter inquiring into the matters herein,

respondent expressed remorse for his actions in his response to the Commission's

inquiry letter.

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

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

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

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

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

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

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

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

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

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

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

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

impartial and to appear to be impartial. It is well-settled that judges are held to a

higher standard of conduct than the general public. *Matter of Kuehnel*, 49 N.Y. 2d

465, 469 (1980) ("[s]tandards of conduct on a plane much higher than for those of

society as a whole, must be observed by judicial officers so that the integrity and

independence of the judiciary will be preserved. A Judge must conduct his

everyday affairs in a manner beyond reproach."); *Matter of Lonschein*, 50 N.Y.2d

569, 572 (1980) ("[m]embers of the judiciary should be acutely aware that any

action they take, whether on or off the bench, must be measured against exacting

standards of scrutiny to the end that public perception of the integrity of the

judiciary will be preserved." (citation omitted)) By aligning himself with law

enforcement personnel both through his public LinkedIn activity and through his

association with the Ulster County Sheriff's Office, respondent, a judge in Ulster

County, undermined public confidence in the judiciary and cast doubt on his ability

to act impartially when he presided over matters which involved law enforcement

personnel.[1]

      Respondent's public LinkedIn activity also violated his ethical obligations in

other ways. For example, respondent lent the prestige of his judicial office to

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

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

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

By reason of the foregoing, the Commission determines that the appropriate disposition is censure.
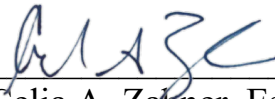
Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

Mr. Belluck did not participate.

## CERTIFICATION

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

Dated:  September 28, 2022

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