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

DETERMINATION

MARK J. GRISANTI,

a Judge of the Court of Claims and an
Acting Justice of the Supreme Court,
Erie County.

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THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Brian C. Doyle, Esq.[1]
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore, Ph.D.
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

Connors, LLP (Terrence M. Connors and Vincent E. Doyle, III) for respondent

[1] Mr. Doyle joined the Commission on November 20, 2023 and did not participate in this matter.

Respondent, Mark J. Grisanti, a Judge of the Court of Claims and an Acting Justice of the Supreme Court, Erie County, was served with a Formal Written Complaint ("Complaint") dated August 30, 2021, containing three charges. Charge I alleged, *inter alia*, that on June 22, 2020, respondent engaged in a public, profanity-laced and physical confrontation with two of his neighbors, after which he engaged in a physical confrontation with a Buffalo police officer; made threats and profane comments to police personnel and invoked his family ties to members of the Buffalo Police Department ("BPD") and his relationship with the Mayor of Buffalo. Charge II alleged that from in or about January 2018 through in or about December 2020, respondent was assigned to and took judicial action in eight cases involving attorney Matthew A. Lazroe, notwithstanding and without disclosing that he had an ongoing financial relationship with Mr. Lazroe while five of the matters were pending, and that his financial relationship with Mr. Lazroe had ended within seven months of three of the matters. Charge III alleged that in or about 2016, respondent filed a Financial Disclosure Statement ("FDS") with the Ethics Commission for the New York State Unified Court System in which he inaccurately reported the income he received from the sale of his law practice in 2015. Charge III also alleged that between 2015 and 2019, respondent failed to make timely and accurate reports of his extra-judicial income to the clerks of the Court of Claims and Erie County Supreme Court. Respondent filed an Answer

dated November 17, 2021.

By Order dated January 7, 2022, the Commission designated William T. Easton, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on June 13-15, 21, 27, 28, 2022 and July 6, 7 and 11, 2022 in Buffalo. The referee filed a report dated May 24, 2023 which largely sustained the three charges in the Complaint.

The parties submitted briefs to the Commission with respect to the referee's report and the issue of sanction. Commission counsel recommended that the referee's findings and conclusions be confirmed and two additional findings be made. Respondent recommended that the referee's findings and conclusions be confirmed with two exceptions. Commission counsel recommended the sanction of removal; respondent's counsel argued that a sanction no greater than censure be imposed. The Commission heard oral argument on September 7, 2023 and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent has been a Judge of the Court of Claims and an Acting Justice of the Supreme Court since May 2015. His term expired on July 31, 2023 and, as of the date of this determination, he is holding over pursuant to Section 2(4) of the Court of Claims Act, NY CLS Ct C Act §2(4). Respondent was admitted to the practice of law in New York in 1993.

As to Charge I of the Formal Written Complaint

2. On June 22, 2020, respondent and his wife, Maria Grisanti, resided at 21 [redacted] in Buffalo, New York.

3. Joseph and Gina Mele lived across the street at 16 [redacted].

4. By June 2020, the Grisantis and the Meles had been neighbors for approximately 16 years.

5. Several of respondent's neighbors - including Joseph and Jeanne Contino and Linda Chwalinski - reported a long history of conflict on [redacted] between the Meles and their neighbors. One neighbor testified that she "feared for [her] life" every time she went on her front lawn and that "every neighbor" had incidents with the Meles. According to another neighbor, the Meles had "a history of just being extremely, extremely mean and threatening."

6. The Continos, who had lived next to the Meles, testified that they were afraid of the Meles and that they eventually moved away from [redacted] because of the Meles' conduct.

7. Respondent knew of the Meles' propensity for confrontation and provocation. In 2014, after respondent expanded his driveway, the Meles began parking their cars in a manner that respondent believed encroached on his driveway "to provoke and harass" him. According to respondent, when he asked the Meles to stop, they would give him "the finger, or... spit at" him in return.

8. Respondent testified that at times, Mr. Mele would ask respondent, "[d]o you want a shot at the title," and respondent "took it to mean that he wanted to have some sort of an altercation." Respondent knew Mr. Mele to be "an instigator" who "liked to start trouble with all the neighbors."

9. On June 22, 2020, respondent and his wife were actively involved in an incident with Gina Mele, Joseph Mele and Gina Mele's sister, Dr. Theresa Dantonio. On the evening of June 22, 2020, respondent arrived at his home to find two vehicles that did not belong to him parked on opposite sides of his driveway, both of which he believed belonged to the Meles. Respondent was disturbed by the location of the parked vehicles and called 911 to request that the cars be ticketed or towed if not moved prior to the arrival of law enforcement. Lt. Larry Muhammad, one of the first two officers to arrive on the scene, after observing where the Meles' parked their cars that day, concluded that it was likely done to "fuck with the Grisantis."

10. Respondent and his wife thereafter exchanged words with Joseph and Gina Mele across [redacted] regarding the two vehicles parked on either side of the Grisanti driveway.

11. With the Meles on their own property, respondent walked off his property, stepped into the street, and headed toward the Mele driveway, his wife a step or two behind him. Respondent preceded his wife as the pair walked across

[redacted].

12. Mele driveway camera footage showed that a physical confrontation took place between the Grisantis and the Meles on the evening of June 22, 2020.

13. This physical confrontation occurred in daylight hours, in full view of neighbors and the public, several of whom testified at the hearing.

14. During the course of this physical confrontation with the Meles, respondent loudly and repeatedly directed profane language at the Meles, including but not limited to the following phrases: "every fucking Thursday," "fucking asshole," "fucker," "you want to go again, tough fucking guy," "I'll fucking flatten your face again," "get the fuck out of here," "get the fuck out of my driveway," "you fucking asshole," "fuck you," "nobody fucking likes you guys," and "you piece of shit."

15. During the physical confrontation, Mr. Mele ripped respondent's shirt off.

16. Gina Mele, the only eyewitness to the incident Commission counsel called to testify at the hearing before the referee, stated that the injuries allegedly sustained by her and her husband were caused by Ms. Grisanti, and not by respondent.

17. The Meles also repeatedly used profane language during the confrontation. For example, Gina Mele loudly made the following statements to

the Grisantis: “fuck you, Maria,” “you’re a fucking cunt,” “you motherfucker,” “come on, you bitch,” “fucking choke her,” and “you fucking piece of shit, dumb bitch,” and “chickenshit”. She also made chicken sounds as Mr. Mele was challenging respondent to fight, and yelled at a neighbor, Linda Chwalinski, calling her a “Pollock dumb fuck”. During the incident, Joseph Mele loudly stated: “come on, motherfucker,” “come on, you cocksucker,” “take your fucking shot,” “get the fuck out of here,” “fucking motherfucker,” “come on, asshole” and “you piece of shit.”

18. Gina Mele acknowledged that she had been arrested at least four times for shoplifting.

19. Commission counsel decided not to call Joseph Mele or Theresa Dantonio to testify. The referee drew adverse inferences based upon the failure to call those two witnesses at the hearing. An adverse inference permits a fact-finder to infer that if the witnesses had been called, their testimony would not have supported the position of Commission Counsel.

20. At approximately 8:45 pm, BPD Officer Ryan Gehr and his partner, Lt. Larry Muhammad, arrived at 21 [redacted] in response to a call about a fight to find respondent standing in the street. Both officers were wearing body cameras.

21. Prior to arriving on the scene, Officer Gehr made a comment to his partner that he "was mad coming in today." When asked on cross-examination what he was mad about, Officer Gehr responded, "Given the time, probably something female-related …. Something related to a female."

22. Shortly after the arrival of Officer Gehr and Lt. Muhammad, Ms. Grisanti returned to the Mele driveway and verbally re-engaged with Dr. Dantonio, Gina Mele's sister. Officer Gehr stated "we're not doing this" to Ms. Grisanti. Lt. Muhammad thereafter guided Ms. Grisanti and respondent to the Grisanti side of [redacted]. At this time, Officer Gehr was attempting to take a statement from the Meles.

23. Ms. Grisanti, exclaiming profanities, again approached the Mele side of [redacted] while Officer Gehr was speaking with the Meles.

24. In response to Ms. Grisanti's renewed approach, Officer Gehr said "[y]ou're going to step back" to Ms. Grisanti, and Lt. Muhammad again walked her back across [redacted] to the Grisanti driveway.

25. Despite Lt. Muhammad's efforts, Ms. Grisanti persisted in yelling profanities across the street at the Meles. Officer Gehr announced that he would not listen to yelling and asked the Meles to speak with him farther down their driveway. Ms. Grisanti continued yelling profanities across the street at the Meles.

26. Officer Gehr said to Ms. Grisanti, "Ma'am, if you don't stop yelling, this is going to be a problem for you." Ms. Grisanti replied, "I don't care... You're not going to arrest me." Officer Gehr crossed [redacted] to the Grisanti side of the street and replied, "I sure fucking am."

27. The actions of Officer Gehr toward Ms. Grisanti exacerbated the volatile situation. As Officer Gehr approached Maria Grisanti, Lt. Muhammad said, "She's good" three times, implying that Lt. Muhammad had the situation with Ms. Grisanti under control.

28. Officer Gehr reached for Ms. Grisanti's arm, attempting to handcuff her. Ms. Grisanti yelled, "[d]on't fucking arrest me" as she attempted to twist away from Officer Gehr. Officer Gehr continued his attempts to handcuff Ms. Grisanti. Respondent walked up behind Officer Gehr and yelled "hey," three times.

29. Ms. Grisanti continued to resist Officer Gehr, which prompted him to grab her right wrist, turn her body with both his hands, and bring her to the ground on her left side, a takedown procedure in which he had been trained.

30. In June 2020, Maria Grisanti was approximately five-foot-one inch tall and weighed approximately one-hundred and ten pounds.

31. While Officer Gehr had Ms. Grisanti on the ground, respondent approached Officer Gehr, placed both of his hands on Gehr's upper body and shoved Officer Gehr.

32. In describing his state of mind at the time that he pushed Officer Gehr, respondent testified,

> There was a protest at least a couple of weeks before this -- this incident in Niagara Square, where the police officers pushed a gentleman, and he fell over and he cracked his head open. That -- when you saw the video, you were kind of in shock because of the force that was used. . . .
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> My concern for Maria is I knew what she just went through. I knew how she was just attacked and choked out. When I saw her being grabbed and thrown down by this officer, when she's five-foot-one, 105 pounds, that, to me, was excessive. That was improper. And I'm telling him to get off my wife, because I didn't know if she was hurt or not.

33. Lt. Muhammad promptly intervened and placed respondent in a bear hug, saying, "keep your hands off a cop." Respondent thereafter told Officer Gehr, "you better get off my fucking wife." Officer Gehr completed handcuffing Ms. Grisanti. Respondent yelled, "you arrest my fucking wife... you're going to be sorry," and stated "my son... and my daughter are... both police officers."

34. When Officer Gehr did not release Ms. Grisanti, respondent continued, "[l]isten... if you don't get the cuffs off of her right now... you're going to have a

problem." Respondent then said to the police officers, "No. Watch... I'm going to need to call my son and daughter and their Lieutenants right now."

35. After Ms. Grisanti was placed in a police vehicle, Officer Gehr, Lt. Muhammad, and Officer Richard Hy, who had since arrived at the scene, heard respondent's side of the story. Respondent began by stating that his daughter works "in B District," and volunteered that his "son's... in C District."[2]

36. As the conversation progressed, respondent asserted that the Meles were looking "to start problems" and then volunteered, "I'm good friends with Byron Brown. He's like, 'It's always something. Mark, just freaking ignore them'".[3]

37. Continuing his conversation with Officer Gehr, Lt. Muhammad, and Officer Hy, respondent eventually told Officer Gehr that Gehr's conduct "was not necessary," and that Officer Gehr needed "to chill out". Respondent then stated that he was "just giving [Gehr] a little constructive criticism."

38. Officer Hy interjected and admonished respondent, "[l]et me give you some constructive criticism. You want to drop another copper's name? You want to scream about you know Gramaglia or the Mayor?" Hy then handcuffed

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[2] "B District" and "C District" are divisions within the BPD.

[3] Byron Brown was the Mayor of Buffalo at the time.

respondent and placed him in the back of a police vehicle. Officer Hy was not at the scene and did not observe respondent push Officer Gehr.

39. Prior to being removed from the scene, respondent stated that he should not have pushed Officer Gehr. He also apologized to Officer Gehr.

40. According to the police officers' testimony and the footage from their body cameras, respondent did not invoke his judicial status during the incident. Despite this, Gina Mele repeatedly claimed that respondent told the police officers, "I'm a judge" in a sworn statement to the police and in letters to the District Attorney, the Governor, the Judicial Conduct Commission and in interviews with the press. Gina Mele was the one who released the home camera videotape to the press.

41. The evidence concerning the June 22 altercation between the Meles and the Grisantis was reviewed by the District Attorney's Office who determined not to file any charges against the Grisantis as a result of the incident.

42. At the time of the June 22, 2020 incident, the pandemic was a stressor for respondent and he was also caring for his ill mother. Respondent's mother passed away on July 13, 2020, less than a month after the incident.

43. Six months prior to the incident, respondent's father-in-law had passed away. His aunt also passed away prior to June 2020.

44. Just prior to June 2020, respondent had suffered the loss of several

friends and other members of his family, some from COVID.

45. Respondent's family dog was ill in June 2020, and, at that time, the Grisantis were taking the dog for dialysis every other day. The dog passed away on June 27, 2020, five days after the incident.

46. After the incident, in July 2020, respondent voluntarily contacted Dan Lukasik, the Judicial Wellness Coordinator for the Office of Court Administration ("OCA"), to seek counseling. Respondent participated in counseling with him until approximately February 2021.

47. Between approximately March 2021 and approximately July 2021, respondent participated in counseling with a licensed clinical social worker affiliated with OCA's Employee Assistance Program in order to better understand his actions on June 22, 2020, to cope with his grief and to prevent a similar situation from happening again.

48. In approximately July 2021, after using all the available sessions with the OCA-affiliated social worker, respondent was referred to another a licensed clinical social worker and he has worked with this counselor on coping skills, anger management, and other issues to help respondent improve his ability to deal with stressors. When respondent appeared before us, he stated that he has continued to participate in counseling with this licensed clinical social worker to ensure that nothing like the June 2020 incident ever happens again.

49. Respondent's supervising judge, Honorable Paula Feroleto, the Administrative Judge for the 8th Judicial District from approximately September 2009 until July 2021, testified that the day after the incident with the Meles, respondent notified her about the incident. She testified that during the time that she supervised respondent, she did not receive any complaints about his judicial temperament.

50. At the hearing before the referee, respondent presented testimony and an affidavit from three attorneys who had appeared before respondent and who stated that respondent had an excellent reputation in the legal community for his judicial temperament.

As to Charge II of the Formal Written Complaint

51. Respondent's term as a Judge of the Court of Claims and as an Acting Justice of the Supreme Court, Erie County, began on May 14, 2015.

52. On or about May 18, 2015, respondent entered into an agreement to sell his law practice to attorneys Peter J. Pecoraro and Matthew A. Lazroe.

53. The agreement provided for the sale of the "goodwill" of respondent's law practice for $50,000, with $15,000 down and monthly payments of $730 beginning on July 1, 2015 and extending until the balance was fully paid.

54. In or about May 2015, Mr. Lazroe paid respondent approximately $10,000 pursuant to the agreement as part of the down payment.

55. Respondent knew that Mr. Lazroe was an attorney and "his practice was real estate and foreclosures and bankruptcy."

56. Upon becoming a judge, respondent placed Mr. Pecoraro on his recusal list, but did not include Mr. Lazroe on the list.

57. Respondent understood that "[t]he purpose of the recusal list is to make sure there is no... appearance of any sort of impartiality" and to keep attorneys and other people with conflicts from appearing before him.

58. Respondent testified that he did not read every document that he signed and has signed appointment orders "before somebody is actually appointed" and without knowing who is going to be appointed.

59. From in or about May 2015 through in or about June 2019, in connection with the agreement for the sale of his law practice, respondent received approximately $27,530 from Mr. Lazroe which included monthly installments during that period. The final installment of $365 was paid in June 2019.

60. Respondent took judicial action in five cases involving Mr. Lazroe while Mr. Lazroe and respondent were engaged in an ongoing financial relationship.[4]

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[4] These matters were: *Bayview Loan Servicing, LLC v Mary Lee Fornes et al.; Buffalo Seminary v Stephanie Satterwhite; Matter of the Application of M[redacted] F[redacted]; Trifera, LLC v Morrison, Unknown Heirs;* and *Federal National Mortgage Association v Anderson et al.*

61. Respondent also took judicial action in three cases involving Mr. Lazroe within seven months of June 2019 when the financial relationship between Mr. Lazroe and respondent ended.[5]

62. In five of these eight matters, respondent signed orders appointing attorney Lazroe as a court evaluator (two matters), a guardian ad litem (two matters) or a referee.[6]

63. In the five cases he presided over prior to Mr. Lazroe's last payment, respondent did not disclose to the parties the 2015 sale of his law practice to Mr. Lazroe or Mr. Lazroe's ongoing payments to him. In addition, respondent did not disclose the 2015 sale or the financial relationship with Mr. Lazroe in any of the three cases he presided over within two years of Mr. Lazroe's final payment to him.

As to Charge III of the Formal Written Complaint

64. Pursuant to the agreement for the sale of his law practice as described in paragraphs 52-53 above, in or about 2015, respondent received approximately $12,190 from Mr. Lazroe and approximately $7,190 from Mr. Pecoraro. In his

[5] These matters were: *Greater Woodlawn Federal Credit Union v Charles Pachucki et al.; Matter of the Application of W[redacted]. L[redacted],* and *Rasheena Jones v Jerry Gradl Motors, Inc.*

[6] The appointments were made in the following matters: *Matter of the Application of M[redacted] F[redacted]; Trifera, LLC v Morrison, Unknown Heirs; Federal National Mortgage Association v Anderson et al; Greater Woodlawn Federal Credit Union v Charles Pachucki et al.;* and *Matter of the Application of W[redacted]. L[redacted].*

verified 2015 Financial Disclosure Statement filed with the Ethics Commission for the New York State Unified Court System, respondent reported the amount of income he received from Mr. Lazroe and Mr. Pecoraro for the sale of his law practice as "under $5,000", which was Category A on the FDS form.

65. On his 2015 FDS, respondent did not include the $15,000 down payment that he received for the sale of his law practice.

66. According to respondent, he "inadvertently clicked the incorrect box when reporting the income he received for the purchase of his private law practice in 2015."

67. Upon being made aware of the missing $15,000, respondent wrote a letter to the Executive Director of the New York State Ethics Commission acknowledging his incorrect FDS.

68. Respondent thereafter corrected his FDS changing his response to Questions 13 and 18 to reflect that the amount of income received for the sale of his law practice was in Category B, "between $5,000 - $20,000", instead of Category A, "under $5,000", as he had originally reported.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(C)(1), 100.3(E)(1), 100.4(A)(1) and (2), 100.4(D)(1)(a) and (c) and 100.4(I) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause pursuant to Article

VI, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law.[7] Charges I through III of the Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

Each judge is obligated to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and must observe "high standards of conduct . . . so that the integrity and independence of the judiciary will be preserved." (Rules, §§100.1 and 100.2(A)) The Rules also prohibit a judge from engaging in extra-judicial activities which "detract from the dignity of judicial office." (Rules §100.4(A)(2)) Respondent admitted that he violated these Rules when he engaged in the public confrontation with his neighbors during which he repeatedly cursed and then pushed a police officer who was trying to place handcuffs on respondent's wife. After his wife was handcuffed, respondent told police officers at the scene that he had relatives who were members of the police force and he referenced his friendship with the Mayor of Buffalo in an apparent attempt to obtain preferential treatment based on those connections.

[7] The Complaint also alleged that respondent violated Section 100.4(H)(2) of the Rules. This section was recently removed from the Rules and a finding regarding this section would not change the outcome in this matter. Accordingly, we do not find it necessary to determine whether respondent violated this provision of the Rules.

It is well-settled that judges are held to a higher standard of conduct than the general public. "There is no question that judges are accountable for their conduct 'at all times', including in conversations off the bench. . . Because 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." *Matter of Senzer*, 35 NY3d 216, 220 (2020) (citations omitted) "Standards 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 Kuehnel,* 49 NY2d 465, 469 (1980). Respondent exhibited exceptionally poor judgment on June 22, 2020. He fell far short of the high standards of judicial conduct when, knowing of the Meles' propensity for conflict, he decided to cross the street to confront them instead of waiting for the police to arrive to address the parking issue about which he had called the police. Moreover, while in the street, respondent inappropriately unleashed a tirade of expletives in full view of the public.[8]

[8] The June 22, 2020 confrontation garnered both television and print media attention. While this was outside respondent's control, it reinforces the necessity for all judges to ensure that their off the bench conduct is consistent with the dignity of their judicial office. This determination is based upon the full record of the nine-day hearing before the referee which included, *inter alia*, videos of the incident and the sworn testimony of 19 witnesses, including Gina Mele, Officer Gehr, Lt. Muhammad, respondent, respondent's wife, and neighbors who witnessed the incident. We note that Commission counsel did not call Joseph Mele or Theresa Dantonio, who participated in the June 22, 2020 incident, to testify at the hearing. We draw an adverse inference from this failure, as did the referee. *See*, *Matter of McGuire*, 2021 Ann Rep of NY Commn on Jud Conduct at 131, 187.

Respondent's most troubling behavior was shoving a police officer while the officer was attempting to handcuff respondent's wife. Such conduct is unacceptable for any person but, given the high standards of conduct required of a judge both on and off the bench, is particularly inappropriate for a judge. *Matter of Steinberg,* 51 NY2d 74, 81 (1980) ("a Judge cannot simply cordon off his public role from his private life and assume safely that the former will have no impact upon the latter. . . . Wherever he travels, a Judge carries the mantle of his esteemed office with him. . .." (citation omitted)) By his conduct, respondent acted in a manner unbecoming a judge, brought reproach upon the judiciary and undermined public confidence in the judiciary.

In addition, respondent exacerbated his misconduct that day when he apparently sought to obtain preferential treatment from the police by referencing his relatives who were police officers and well as his friendship with the Mayor of Buffalo. When he sought preferential treatment in this way and under these circumstances, he detracted from the dignity of his judicial office.

Section 100.3(E)(1) of the Rules provides that, "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . .." The Rules also provide that, "[a] judge shall not engage in financial and business dealings that . . . involve the judge in frequent transactions or continuing business relationships with those lawyers" likely to

appear before the judge. (Rules, §100.4(D)(1)(c)) Even in circumstances in which there was no indication of favoritism toward an attorney in a business relationship with a judge, all parties to the proceeding have the right to know of the business relationship. *Matter of Pulver,* 2005 Ann Rep of NY Commn on Jud Conduct at 203, 208. Here, respondent was inattentive to his ethical obligations when he failed to place attorney Lazroe on his recusal list and failed to notify the parties in the eight matters that he either had an ongoing financial relationship with attorney Lazroe or that such financial relationship had recently concluded. Respondent failed to avoid the appearance of impropriety when he appointed attorney Lazroe in various matters and presided over the eight matters involving attorney Lazroe without the required disclosure.

Section 100.4(I) of the Rules requires judges to disclose their income as required by Part 40 of the Rules of the Chief Judge. "Judges must complete their financial disclosure forms with diligence, making every effort to provide complete and accurate information." *Matter of Joseph and Francis Alessandro*, 13 NY3d 238, 249 (2009). Even careless omissions from an FDS can be misconduct warranting discipline. *Id.* While respondent did report to whom he sold his law practice on his 2015 FDS, he failed to report the correct amount for this sale by selecting the incorrect monetary category on the form. As a result, respondent filed an inaccurate 2015 FDS which was improper and violated the Rules.

Although we consider respondent's misconduct on June 22, 2020 to be very serious and he displayed especially poor judgment that day, we do not find that removal from judicial office is warranted for this single incident particularly since it occurred in the context of a long-standing dispute between the entire neighborhood and the Meles, and involved a legitimate concern by respondent for the physical well-being of his wife as she was being taken to the ground by a police officer. *See*, *Matter of Mazzei,* 81 NY2d 568, 572 (1993) ("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 . . .." (citations omitted))

It also appears that Officer Gehr's conduct exacerbated the volatile situation. In taking Ms. Grisanti into custody, Officer Gehr, who acknowledged that he came to work "mad" that evening, ignored Lt. Muhammad's statement, "She's good" which he repeated three times. Those statements implied that Lt. Muhammad had the situation with Ms. Grisanti under control. Instead, Officer Gehr, a trained and experienced police officer, tackled a five-foot-one, one-hundred-and ten pound woman to the ground in front of her husband.[9] Respondent testified that he was concerned for the welfare of his wife as this happened.

[9] Although the dissent strongly relies on a claim that respondent interfered with Officer Gehr's "lawful arrest" of Ms. Grisanti, it is unclear for what crime Officer Gehr arrested Ms. Grisanti. If Officer Gehr is taken at his word, it appears she was arrested for yelling on a public street. Prior to the arrest, and before he concluded his investigation of the altercation with the Meles, Officer Gehr said to Ms. Grisanti,

The dissent relies on certain assertions that are not supported by the record and are contrary to the determinations of the experienced referee who had an opportunity to hear testimony firsthand and assess the credibility of the witnesses.[10] First of all, the dissent contends that respondent repeatedly and intentionally lied to the 911 operator when he called to complain about how the Meles parked their cars. The referee specifically found that respondent did not lie to the 911 operator. The referee stated, "I do not find that the Commission established that these accounts, even if inaccurate, were deliberately false and not merely indicative of respondent's perception of the event." Respondent's perceptions were indeed supported by Lt. Muhammad's observation that it appeared that the Meles' cars were parked in an annoying way which was likely done to "fuck with the Grisantis."

Secondly, the dissent contends that respondent threatened the police officers during the arrest of Ms. Grisanti. The referee found that, while his excessive use

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"Ma'am, if you don't stop yelling, this is going to be a problem for you." Ms. Grisanti replied, "I don't care... You're not going to arrest me." Officer Gehr then crossed [redacted] to the Grisanti side of the street and replied, "I sure fucking am."

[10] Commission counsel argued that the Commission should modify the referee's finding that respondent did not lie to the police and that respondent did not threaten police officers at the scene. The Commission may accept or reject a referee's proposed findings. 22 NYCRR §§7000.6[f][1][iii], 7000.6[1]; *Matter of Marshall*, 8 NY3d 741, 743 (2007). When the evidentiary record supports a referee's proposed findings, the Commission accords deference to the referee because he or she was in the position to evaluate the credibility of witnesses firsthand. Here, the referee's findings were supported by the record and we find no basis to disturb them.

of profanity was improper, respondent did not threaten the police officers with his statements. The referee stated, "Rather, such remarks conveyed Respondent's ardent belief that his wife was improperly detained and further detention would lead to controversy."

The dissent also relies heavily on the veracity and credibility of Ms. Mele, describes her as having a "cowered physical demeanor" on the body-cam video, and argues that the respondent should be removed because he resigned Ms. Mele to a position of "powerlessness" and "disempower[ed]" her through the use of his position. The dissent's reliance is misplaced. This is the same Ms. Mele who is a serial thief, who has "a history of just being extremely, extremely mean and threatening" to her neighbors, who caused one neighbor to "fear[] for [her] life" every time she went on her front lawn, who lied repeatedly under oath and in letters to public officials, and who referred to her neighbor of Polish descent as a "Pollock dumb fuck."

We note that the incident happened during the pandemic at a time of significant personal stress for respondent in that several family members and friends, including his mother, were either very ill at the time or had recently passed away. While respondent should have been cognizant before this incident of the impact of the significant stressors and should have engaged in counseling before the incident occurred, he did voluntarily initiate counseling shortly after the

incident. When he appeared before us, more than three years after the incident, respondent stated that he continues to participate in counseling.

Respondent's behavior during the June 22, 2020 incident appears to have been an aberration. According to respondent's former supervising judge and three attorneys who have appeared before him, there have been no issues with respondent's judicial temperament.

According to respondent, when he pushed the police officer, his judgment was clouded by the involvement of his wife who was brought to the ground by the police officer. As respondent has acknowledged, his interference in this way was improper. We note that the involvement of a close family member has been found to mitigate, but not excuse, an ethical breach. *See*, *Matter of Edwards*, 67 NY2d 153, 155 (1986) (involvement of judge's son); *Matter of Canary*, 2003 Ann Rep of NY Commn on Jud Conduct at 77, 82-83 (involvement of judge's son).

With respect to respondent's failure to disclose or disqualify in matters involving attorney Lazroe, there was no indication that respondent engaged in favoritism toward the attorney, including in respondent's appointments of attorney Lazroe. In addition, in connection with respondent's 2015 FDS, there was no attempt to conceal as respondent did disclose pertinent information regarding to whom his practice was sold, albeit with the incorrect amount listed.

In determining the sanction, we have also taken into consideration respondent's 30-year unblemished record as a lawyer and then as a judge. Respondent has accepted responsibility for his misconduct. 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 censure.

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

Mr. Belluck, Judge Falk, Ms. Moore and Ms. Yeboah dissent as to sanction and vote that removal is appropriate. Mr. Belluck files a dissenting opinion. Ms. Moore files a dissenting opinion which Ms. Yeboah joins.

Mr. Doyle did not participate.

CERTIFICATION

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

Dated: April 22, 2024

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

MARK J. GRISANTI,

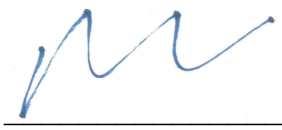
a Judge of the Court of Claims and an
Acting Justice of the Supreme Court,
Erie County.

– –

DISSENTING OPINION BY MR. BELLUCK

I dissent because I find the misconduct of the respondent sufficient to warrant removal. The evidence as well as the judge's temperament during oral argument make clear both that the judge acted in a manner inconsistent with holding judicial office and that there is a significant risk he will repeat this or similar behaviors in the future.

April 22, 2024



Joseph W. Belluck, Esq., Chair
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

– –

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DISSENTING OPINION
BY PROFESSOR NINA
M. MOORE, PH.D.,
WHICH MS. YEBOAH
JOINS

– –

The official rules of judicial conduct are not the only reason that the 3,350 judges of the New York State Unified Court System conduct themselves in a manner befitting the office. They sacrifice certain personal and social freedoms also to help maintain the dignity of judicial office, public confidence in the judiciary, and the integrity of decisions rendered by their court. Judge Mark J. Grisanti does not belong in this class of respectable public servants. He has failed to abide by the Rules Governing Judicial Conduct ("Rules"), dishonored the robe, and undermined public confidence in the Court of Claims and Supreme Court where he has served since 2015 and, thanks to today's majority decision, where he will continue to serve.

The unavoidable impact of behavior off-the-bench on the reputation of the

judiciary as a whole was long ago established by the Court of Appeals in *Matter of Kuehnel*, 49 NY2d 465, 469 (1980) where it was held,

> a Judge may not so facilely divorce behavior off the Bench from the judicial function. Standards 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. 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. . .

Respondent has abdicated the requisite ethical and professional standing for judging the credibility of citizens, attorneys, police officers and others who turn to New York courts for sound judgement and resolution. Judge Grisanti shoved and threatened a police officer, interfered with a lawful arrest process, lied to a 911 operator, instigated a physical confrontation with a neighbor, launched into a profanity- laced tirade in full public view, and invoked his connections to the city's mayor and police department— all because he was upset about a car being parked close to his driveway. The judge's admission to all three charges brought against him says less about his contrition and more about the overwhelming evidence presented in this case. The referee found that the three charges were established. In addition to financial documents, there is video footage from a home security camera, police bodycam, and evidence of widespread publicity, including YouTube videos.

The case for removal of Judge Grisanti is easily rested on the severe nature of his transgressions and the plain words of the Rules. Respondent has violated nine of those rules, namely: Section 100.1; Section 100.2(A); Section 100.3(C)(1); Section 100.3(E)(1); Section 100.4(A)(1) and (2); Section 100.4(D)(1)(a) and (c); and Section 100.4(I).

I. Compliance with the Law

The average citizen that commits multiple offenses against a police officer would be sitting in a jail cell awaiting trial, instead of sitting on the bench of a courtroom overseeing trials.[1] On June 22, 2020 Respondent shoved Officer Ryan Gehr of the Buffalo, NY Police Department, placing both of his hands on the officer's upper body to do so.[2] When he shoved Officer Gehr and yelled profanities, Judge Grisanti was interfering with the officer's attempt to handcuff Respondent's extremely belligerent wife who moments before inflicted a bite wound on the forearm of her neighbor (Joseph Mele), repeatedly and defiantly ignored multiple police directives to step back, then pulled away and physically resisted the officer's attempts to handcuff her. Officer Gehr had ample cause to initiate a lawful arrest process.[3] Later at the station house Respondent admitted as much when he informed Detective Moretti that he "apologized to … you know, kind of stopping the officer from doing what he had to do …"

Respondent also lied to a 911 operator, falsely claiming—three times—that

two (and then one) of his neighbor's cars blocked his driveway and that he "almost hit 'em" as he entered his driveway. CJC.Ex1 and CJC.Ex1a The home security video footage in the record, specifically at minute 07:00:56-07:01-:04, shows the exact opposite: a wholly unobstructed driveway that he was able to enter without special maneuvering. CJC.Ex41 The majority makes an illogical leap in its proffer of Lieutenant Larry Muhammad's musings about why the Meles parked in a legal parking spot as proof that Judge Grisanti may have mistakenly believed that he had driven into a driveway that was obstructed, even though it was not. Nevertheless, facts matter more than musings.

The police body camera footage in the record establishes that Respondent repeatedly lied to officers on the scene about where he was when the confrontation started. Over and over, he reported that he was in his home, whereas the home security video evidence in the record shows that he was not. CJC.Ex2 The home video at 07:14:28-07:14:54 shows that Judge Grisanti led his wife across the street to the Meles' driveway before the fight began, his wife a few feet behind him. See CJC.Ex42 below. The police body cam footage shows that Respondent afterward lied to Detective Costantino when he stated: "I was in the house … And then when I came out, the, these girls, like, they had Maria in a chokehold … So, I came over …" He repeated the lie to Det. Costantino, claiming, "And when I come out, back out of the house, she's engaged with the two … So, I ran over there to break it up."

CJC.Ex12 Judge Grisanti reported the same lie to Officer Ryan Gehr as well, saying "She goes across the street. I come out, the two girls and Joe are, like, in their face. So, I come walking across the street." He doubled down on the lie, adding: "The girl's got her frigging hand on my wife's throat, and that's when I walked over there. And that's when it all started." CJC.Ex11

The majority offers a total of zero specifics to support its remark that this dissent "relies on certain assertions that are not supported by the record." All the same, the facts in the video and audio exhibits in the evidentiary record of this case are undisputed, because they are indisputable. When there is such clear audio and video, there can be no credible 'alternative facts' or reliance on Respondent's 'own truth' about where he was when the fight started and whether his driveway was indeed blocked. Even in the absence of video and audio recordings Judge Grisanti is not entitled to his own "perception," especially since he admitted at the referee hearing on July 11, 2022 that he gave Detective Constantino information about the altercation that was "not correct," as carefully briefed by Commission counsel. Commn Brief at pp. 24-25, Tr. 1349-1350, 1389 And if one were to accept the implausible claim that Respondent did not know whether he was inside his home when he started the street fight, such a claim should serve as conclusive proof that he lacks the mental aptitude to know whether litigants in his court are acting inside the bounds of law or outside.

The only common sensical construction of Respondent's verbal warnings is that they constituted direct threats to Officer Gehr. Any other construction strains credulity and ignores the plain meaning of words. After being physically restrained by the second officer on the scene (Lt. Muhammad) Judge Grisanti yelled to Officer Gehr: "you better get off my fucking wife," "you arrest my fucking wife . . . you're going to be sorry," "[l]isten . . . if you don't get the cuffs off her right now . . . you're going to have a problem." Lt. Muhammad immediately understood these words as threats, and told Respondent "We're not doing that; we're not threatening that." At the hearing the lieutenant testified: "I'm not easily threatened. So they were — they're empty threats to me personally …"[4]

By committing these appalling acts against duly sworn officers of the Buffalo Police Department, Respondent violated Section 100.2(A) of the Rules which provides: "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities" and that "A judge shall respect and comply with the law . . ."

Contrary to assertions by the majority, the Commission is obligated to distinguish fact from fiction even if a referee opts to do otherwise on the basis of procedural constraints. This is especially so when the facts are in plain view in video footage and loud and clear in audio recordings. Putting on blinders is not an option for a governmental body charged with overseeing judicial misconduct. Prior

determinations rendered by this commission, Court of Appeals precedents, the Judiciary Law, the Commission Policy Manual, and the record before us all corroborate that the majority is mistaken in the suggestion that the Commission must essentially relinquish its duty and authority to "render the findings of fact and conclusions of law on which its determinations are based,"[5] and rubber stamp the determinations of a referee.[6] The aforementioned legal authorities require "due deference," not acquiescence—no matter the truth.

II. Public Confidence and Dignity of Judicial Office: *Modus Operandi*

The most jolting evidence in this case is a witness statement that suggests Judge Grisanti regularly and wantonly throws his weight around for self-serving purposes. I find it difficult to not take notice of Ms. Gina Mele's countenance in the bodycam footage when she reported to Officer Gehr the following,

> Right away, this is, this is what they do. They throw around that, that the daughter's a cop, the son-in-law's a cop, this and that . . . then it always gets turned against us . . . somehow or some way, because they pull all their weight . . . I'm sure they made a phone call . . .

Her cowered physical demeanor in that moment strikes me as one of resignation to a position of powerlessness, brought on by a judge's penchant for leveraging familial and professional connections to disempower those with whom he has personal disagreements. The majority is dismissive of Gina Mele's account through its reliance on a victim-blaming strategy that stretches from nearly 30

years ago up until June 22, 2020 when Judge Grisanti walked across the street to her home and instigated a street fight that culminated in physical injuries. Notably, none of the majority's selective review of Gina Mele's life story documents violent acts on her part. This notwithstanding, facts are stubborn things that stand independent of one's character.

The majority is correct in its implicit acknowledgement that this dissent does not ground the veracity of Gina Mele's claim regarding Judge Grisanti's penchant for throwing his weight around on her character or mistakes from her youth, but rather the fact that Respondent engaged in the very same behavior in the audio and video evidence reviewed by members of this commission.[7] In the 911 call he asserted that he has "daughters, and sons, and son-in-law that are police, that are the fire department." Among other things, he afterwards stated to officers on the scene "I'm good friends with Byron Brown," the mayor of Buffalo, NY.

These actions and, more generally, Judge Grisanti's *modus operandi* contravene the second portion of Section 100.2(A) which stipulates "A judge shall . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Respondent conducted himself in a manner that exhibited zero respect for the dignity of the judicial office that he holds. His conduct reveals a temperament

unsuited for a public-facing profession. The referee found that on June 22, 2020 and "in daylight hours, in full view of neighbors and the public," Judge Grisanti instigated a physical confrontation once he walked to his neighbor's driveway and proceeded to "loudly and repeatedly direct profane language at the Meles, including but not limited to the following phrases: "Every fucking Thursday," "fucking asshole," "fucker," "you want to go again, tough fucking guy," "I'll fucking flatten your face again," "get the fuck out of here," "get the fuck out of my driveway," "you fucking asshole," "fuck you," "nobody fucking likes you guys," and "you piece of shit." Amid the brawl, Respondent ended up "a shirtless Supreme Court Judge standing on the street," as aptly described (without objection) at the hearing and as depicted in police body camera footage. CJC.Ex44

As a sitting judge admitted to practice law in New York in 1993, Respondent was well aware of more civil remedies for redressing the years-long parking dispute with his neighbors. Respondent might have told his wife to stop biting the neighbor, or to comply with Officer Gehr's orders to stay on their side of the street, or to stop resisting a lawful police arrest process. Instead he chose a physical confrontation and verbal tirade against his neighbors and Officer Gehr. Commission Deputy Administrator John J. Postel framed this choice precisely at oral arguments,

Our society requires its citizens, and especially its judges, to resolve disputes

> through words not violence. The record before you portrays a judge who chose to employ repeated physical aggression as his means of resolution. For this and his other misconduct, removal is the appropriate sanction.

The fact that Respondent's disgraceful behavior is forever memorialized on social and traditional media platforms is not dispositive in the instant case, but it is unavoidably impactful on public perception of the judiciary precisely because it is widely publicized.[8] Judge Grisanti's YouTube debut will serve as a textbook example to other professionals of how to not conduct oneself in the age of omnipresent video recording devices. Worse, whenever one of YouTube's 2.7 billion users watch raw footage of a street brawl jumpstarted by a judge of the New York State Court of Claims, they will likely wonder why he remains empowered to adjudicate disagreements between litigants who appear before him, after he abandoned self-restraint in a disagreement over something as petty as car parking.

They will observe that Respondent demonstrated no regard for Section 100.4(A)(2) of the Rules which states that "A judge shall conduct all of the judge's extra-judicial activities so that they do not . . . detract from the dignity of judicial office."

III. Professional Competence and Perception of Impartiality

The events of June 22, 2020 are part of a larger, extended pattern of Respondent flouting protocols, one that stretches back to the beginning of his tenure as a judge. It is undisputed that from approximately January 2018 through

December 2020 Respondent violated Section 100.3(E)(1) and Section 100.4(D)(1)(c) when he took judicial action in eight matters without disclosing, as required, his ongoing or recently ended financial relationship with attorney Matthew Lazroe. Inexplicably, despite knowing the purpose of a recusal list, Respondent failed to include attorney Lazroe on his recusal list although he did include on the list the other attorney who had purchased Respondent's law practice. Judge Grisanti claimed that he was unaware of his obligation to disclose his financial relationship with attorney Lazroe to the parties in the matters in which attorney Lazroe appeared. Ignorance of ethical obligations is no excuse. *Matter of Vonderheide,* 72 NY2d 658, 660 (1988) ("ignorance and lack of competence do not excuse violations of ethical standards. As a Judge, petitioner had an obligation to learn about and obey the Rules Governing Judicial Conduct . . .").

In five of the eight matters, Respondent signed orders appointing attorney Lazroe to various positions. Consistent with a larger pattern of not taking responsibility for his conduct, Respondent testified at the hearing before the referee that he sometimes signed appointment orders without knowing who would be appointed and he did not read every document he signed. Such carelessness is violative of Section 100.3(C)(1) which orders judges to maintain professional competence in judicial administration.

In additional misconduct in or about 2016, Respondent violated Section

100.4(I) of the Rules when he reported the income from the sale of his law practice as "under $5,000" on his 2015 Financial Disclosure Statement (FDS). He did not disclose on his 2015 FDS that he had received a $15,000 down payment that year for the sale of his practice. In another example of Respondent attempting to avoid responsibility for his actions, at the hearing before the referee, Respondent claimed that he received the down payment before he became a judge and he thought that it did not need to be reported. However, the record showed that Respondent's term of office began on May 14, 2015. On or about May 18, 2015, Respondent entered into the agreement to sell his law practice. Moreover, Respondent did not correct his 2015 FDS until after a Commission inquiry regarding his filing. After receiving an inquiry from the Commission, Respondent wrote a letter to the New York State Ethics Commission acknowledging his incorrect FDS and he corrected the FDS in June 2021. As the Court of Appeals held in *Matter of Miller,* 35 NY3d 484, 491 (2020), "the timing of petitioner's amendment of his tax returns and FDF – after he had received actual notice that he was being investigated for failure to report income related to his former legal practice . . . goes beyond mere carelessness and points to a pattern of disregard for his ethical obligations."

To suggest, as the majority does, that Respondent has an unblemished record is to ignore both the referee and the majority's own findings of fact that extend back to within the first year of his judgeship.

IV. Honor and Integrity of the Judiciary

Respondent's actions on June 22, 2020 amount to a pattern of manipulative behavior that contravenes Section 100.1 of the Rules, which stipulates that an "honorable judiciary is indispensable to justice in our society" and that "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." Additionally, it specifies that ""Integrity" denotes probity, fairness, honesty, uprightness and soundness of character."

Taken together, Judge Grisanti's troubling pattern of behavior calls into question the fundamental nature of his moral and ethical character. His presence on the bench casts a shadow on the integrity of the judiciary. The facts in this case suggest that he is willing to say anything in the moment to get his way, no matter how demonstrably untrue, harmful to others, or insidious.

The fact that Respondent freely mentioned the positions held by his daughter, son-in-law, and other relatives in the police department, but carefully avoided invocation of his own judicial office underlines a willingness to muddy the careers of others while protecting his own. This includes Deputy Commissioner of Police Gramaglia, with whom Responded invented a familial cousin relationship,

despite later admitting that he doesn't even have a social relationship with Gramaglia.

In the space of an hour Respondent disparaged Mayor Byron Brown of Buffalo, NY in one breath, then bragged about his friendship with the mayor in another. In the 911 call that he placed on June 22, 2020 he stated: "Whatever it's worth, the mayor's not doing things right with you guys." In an about-face moments later, he sought to capitalize on Mayor Brown's name when he stated to officers on the scene: "I'm good friends with Byron Brown." At the time that Respondent remarked about the mayor's faux pas concerning Buffalo police, hearing testimony reveals that both he and his wife were aware that Buffalo, NY and other cities across the country were besieged by at-times violent George Floyd protests as well as one of its own police controversies that captured national headlines, one in which police officers were accused of fracturing the skull of an elderly protester when they pushed him to the ground during a George Floyd demonstration. (Tr. 1215, 1394, 1445) Knowing the tumult surrounding the Buffalo police in connection with the George Floyd protests,[9] Respondent poked an open wound in order to gain the upper hand in a parking dispute.

A particularly problematic element of Respondent's defense to shoving Officer Gehr is his resort to a colorblind George Floyd tale.[10] At the hearing, Judge Grisanti imputed equivalency between Officer Gehr's handling of Maria Grisanti's

belligerent defiance of multiple police directives in a volatile situation on the one hand, and, on the other, the police killing of an unarmed black man via a nine-minute knee on his neck and gun to his head, while handcuffed face-down in the street due to a $20 counterfeit bill. Respondent had followed news accounts of the George Floyd killing and the nation's response.[11] Yet, he would have this commission believe that his main takeaway was that George Floyd and his wife Maria Grisanti were in equal peril. (Tr. 1388, 1394, 1445). To believe Respondent's George Floyd tale, one would have to ignore the elephant in the room—the most common of common knowledge in the "constant" news coverage of Floyd's killing: that it was part of a pattern of police killings of unarmed black men.

This 'apples to oranges' fallacy distorts Officer Gehr's commendable efforts to deescalate Ms. Grisanti's explosive behavior through multiple verbal warnings before 'doing what he had to do,' in the words of Judge Grisanti. Worse, it trivializes the systemic problem of unarmed black men killed by police. Inasmuch as Judge Grisanti's own testimony indicates that he followed years of news coverage concerning police killings, a logical inference is that he knew that Maria Grisanti was never in danger of being George Floyd, but did not care when invoking Floyd's death for his own selfish purposes.

V. Capacity to Act Impartially

Respondent's claim of contrition is a fig leaf devised to cover up the fact that he has irreparably undermined public trust in his capacity to act impartially as a judge. His "I'm sorry" proffer is contradicted by the stunning obstinacy Respondent displayed from Day One, right up until and including his appearance before this Commission at oral argument on September 7, 2023. Unable or unwilling to earnestly adjudge and accept responsibility for his own behavior, the Respondent has not and cannot live up to the dictates of Section 100.4(A)(1) of the Rules which requires that: "A judge shall conduct all of the judge's extra-judicial activities so that they do not . . . cast reasonable doubt on the judge's capacity to act impartially as a judge."

We need look no further than Respondent's own words to establish that he blames and implicates other people and other things for choices and actions for which he alone is responsible.

He blames the neighbors for what transpired. At the referee hearing on June 15 and June 21 in 2022 he called four [redacted] neighbors to testify about the history of the Meles' conduct in the neighborhood, as if the Meles forced Respondent to walk over to their driveway. Respondent's counsel described the Meles as "the scourge of [redacted]." The majority likewise attacks the Meles' character. However, among the Commission Hearing Exhibits is an order of protection that Gina Mele obtained for her own protection against one of

Respondent's character witnesses (Linda Chwalinski). CJCEx32 Among Respondent Hearing Exhibits is a protection order for Ms. Chwalinski against Ms. Mele. Hence, a more balanced construction of the long-simmering feud among [redacted] neighbors is that it was a hot mess. It was the kind of mess that Respondent should have known to not walk into on June 22, 2020, and one that he had at least six years to learn ways to navigate around. The length and depth of the [redacted] acrimony should not be counted in Respondent's favor or as mitigation. As the referee found, the nature and extent of the provocation Respondent may have faced did not diminish his obligation to conduct himself in a dignified manner. "In fact, the provocation may even increase this obligation." Rep. at 9.

Contrary to a full-throated and sincere apology, Respondent blames Officer Gehr for causing him to push Officer Gehr. Shortly after the push he stated: "I didn't mean to tackle you, but, I mean, you kind of threw my wife down on the ground pretty hard and I don't appreciate that." In his conversation with Officers Gehr and Lt. Muhammad and Officer Hy, he chided Officer Gehr, telling him that his action "was not necessary" and that he needed "to chill out." At oral argument on September 7, 2023 when asked to explain why he shoved Officer Gehr, Respondent offered: "I did that because I said to myself he has no idea what she just went through. He has no idea what, that she was almost choked out into

unconsciousness by a sister-in-law of the Meles, who actually knows jujitsu … That's why I pushed the officer."

COVID is also partly blamed for Respondent's choices. He described the unfortunate loss of two aunts, his mother's illness, together with the death of the family pet, the latter characterized by his counsel at the referee hearing on June 13, 2022 as a "significant matter." Judge Grisanti's stress and anxiety was on par with that of many New Yorkers who also suffered devastating losses during COVID, but nevertheless managed to not instigate a street brawl and shove the responding police officer. Meanwhile, at the time of the incident on June 22, 2020 Respondent's neighbor, Joseph Mele, had [redacted]. Just prior to the brawl, Mr. Mele's wife (Gina Mele) had returned from the hospital visiting her father who was in the Intensive Care Unit. Nonetheless, both Mr. and Ms. Mele interacted with the police officers on the scene in a respectful and cooperative fashion.

Judge Grisanti blames his daughter and the questioning officer for his false claim of kinship with the Deputy Police Commissioner. At the hearing on July 7, 2022 Respondent's jumbled testimony on this point was as follows,

> So he's asking me questions at the same time my daughter's talking to me. And my daughter asked, "Do you want me to call Gramaglia?" And I was saying -- what he -- because I told them about my kids, because I have other family members. I have a cousin who's a detective. And I was about

> to tell him, you know, "My cousin, who's a detective." He mentioned Gramaglia. And I kind of comingled and convoluted the conversation, and basically said my cousin. Joe Gramaglia's not my cousin. I don't know him socially. It came out like that basically because I have somebody -- I have my daughter talking in my ear, and I have, you know, an officer asking me questions as to who everybody was.

He blames the video too. At oral argument Respondent insisted that "the video and the audio they don't match … In my opinion, they were trying to erase the audio. But the video and audio don't match. And the dates don't match and the time doesn't match." When pointedly asked by my colleague Mr. Rosenberg whether he was accusing the police of altering the video, he replied: "No. I'm accusing, before the police were able to get it from the Meles, the Meles were upstairs and it was on the officer's camera, they were trying to do something with the video and the officer said stop touching it. I will go and I will retrieve it. It took him a day to get it."

The sum and substance of Judge Grisanti's main takeaway from the incident is that an amalgamate of parked cars, his driveway apron, and, once again, his neighbors are to blame. At oral argument on September 7, 2023, when asked the overarching "why would you do something like that?" question by my colleague Judge Singh, abandoning his "no excuses" mantra, Respondent dove into how the neighbor's truck was parked "two to three feet from the curb," how it "isn't a one-time incident," but something that had been "happening every Monday through Thursday for the last six years, every single day," and so on. When Judge Singh

next pointed out that "it's a legal spot," Respondent's direct reply to this was,

> – Here's, and I appreciate that judge, here's what they do, okay. And I don't know if it was clear, if you read it. If you're coming out of my driveway, I have a flaring driveway, I call it the apron. I don't know if anybody calls it that. I call it the apron, it flares out. Ms. Mele will come up and she will pull up to that apron and let's say the left side … And I've testified that I've said to her and her husband numerous times, why do you have to do that when you have eight feet behind you have and eight feet in front of you? Why do you have to pull up right to the tip?

Over and over, when he appeared in person before this Commission on September 7, 2023 and was asked several different ways to explain his actions, each time he redirected attention to someone else's actions while at the same time proclaiming his "I'm sorry." Respondent's reflective remarks suggest that he still feels that he was pushed, not that he walked over to his neighbor's driveway of his own volition, to wit,

> It was, for lack of a better term, so uncharacteristic of how I act and behave that the only thing that I can tell you all is that taking into consideration everything that the Meles did in the past, what was going on in my life with regards to family members who were ill and dying and everybody deals with that every single day, it was, it was the old adage of, that was like the straw that broke the camel's back, where everything came to a head. And when I looked at that and I saw that on the video, I said to myself I can't believe it.

Even accepting Respondent's fig leaf of contrition, the Court of Appeals held in *Restaino* and *Bauer* that in rare circumstances, no amount of mitigation can overcome a judge's improper conduct. In *Matter of Bauer,* 3 NY3d 158 (2004)[12] the Court held, "Petitioner's apparent lack of contrition is telling. In some instances

contrition may be insincere, and in others no amount of it will override inexcusable conduct. Here, while petitioner's conduct was far from uniformly foul, his utter failure to recognize and admit wrongdoing strongly suggests that, if he is allowed to continue on the bench, we may expect more of the same." *Id.* at 165. In finding removal appropriate in *Matter of Restaino,* 10 NY3d 577 (2008),[13] the Court wrote,

> we have previously stated that in rare cases "no amount of [mitigation] will override inexcusable conduct" (*Bauer, 3 NY3d at 165*) sufficient to restore the public's trust in the judge's ability to faithfully execute his or her duties (*see Blackburne, 7 NY3d at 220, 221*). "[A] cornerstone of our democracy" is the integrity of our judiciary . . ., and judges must be mindful that their actions "reflect, whether designedly or not, upon the prestige of the judiciary" . . .

Id. at 590 (citations omitted).

VI. Unprecedented Final Disposition

The majority's decision to permit Judge Grisanti to remain on the bench sets a new precedent and a new low for judicial conduct. The Rules require that this Commission weigh the "seriousness of the transgression" in determining the proper punishment. The totality of circumstances in this case distinguishes it from prior determinations rendered by this Commission and from rulings by the Court of Appeals. In particular, the egregious nature of Respondent's transgressions exceeds that of *Matter of Canary*, another case where the judge pushed a police officer and the Commission did not remove.

In *Matter of Canary*, 2003 Ann Rep of NY Commn on Jud Conduct at 77,

the Respondent did not physically interfere in a lawful arrest process. The judge in that case pushed the police officer after his son was already subdued, handcuffed, and on the ground. Judge Canary did not arrive on the scene until "five to ten minutes later." (*Matter of Canary*, *Id.* at 79). In the instant case, Respondent shoved a police officer during the course of an arrest process, an arrest that was necessitated by disorderly, out-of- control behavior. As the referee found "While Officer Gehr was handcuffing Ms. Grisanti, Respondent approached Officer Gehr, placed both of his hands on Gehr's upper body, and shoved Officer Gehr." Judge Canary did not use physical aggression to obstruct an arrest process. When informed that his son was "going to be arrested," the Respondent in *Canary* said: "You can't do that." *Id*. at 79 It bears underscoring that he "said" it. He did not use bodily force to try to obstruct an arrest process.

There was no ongoing threat to public safety and order in *Canary*, as in the instant matter in which police intervention was critical to preventing further harm. Judge Grisanti's wife had just bitten a neighbor on the forearm, repeatedly ignored police directives to remain on her side of the street, and shouted to the officer "You're not going to arrest me," then physically resisted as the officer sought to contain her out-of-control behavior. The egregiousness of Respondent's physical aggression against a police officer is thusly compounded by the fact that, in that moment, police action was crucial to maintaining law and order.

The nature and degree of emotional provocation in these two cases are worlds apart. Here, Respondent used both hands to push a police officer, notwithstanding the fact that his wife was out of control and sustained no bruises as the officer used a lawful procedure to wrestle her onto Respondent's front lawn and in full view of other officers and onlookers. The *Canary* infraction occurred after Judge Canary arrived on the scene and observed his son on the ground, lying in front of a truck on the shoulder of Route 29, with visible injuries, whereupon he improperly pushed the officer and remarked: "What the hell happened here? There isn't a mark on you." *Id.* at 79. Notably, the son was subdued by the police officer in *Canary* after he "ran away" from the officer. Contrarily, Judge Grisanti observed first-hand that his wife was the aggressor and witnessed her advance toward the other side of the street in defiance of the officer's verbal order. As opposed to being injured, police bodycam footage captures Respondent's wife afterward bragging in a disturbing display of privilege: "I bit that motherfucker!" (Ex. 12 at 0:46) When questioned about his wife biting the neighbor in the scuffle jumpstarted by him and his wife, Judge Grisanti remarked: "She had no choice, really, but to bite him. And I'm glad she did." (Tr. at 1210-1211)

Relatedly, *Canary* involved a judge's son who was later escorted by ambulance to the hospital for treatment of the injuries sustained when he was taken to the ground by police officers. In the instant case Respondent's wife is the one

who inflicted injury, namely a severe bite wound on the forearm of a neighbor (Mr. Mele) as he tried to separate the judge's wife from his own wife. (See Exhibit CJC.Ex6 and CJC.Ex9 below–Photographs of the severe human bite wound on Mr. Mele's forearm)

Respondent's immediate and subsequent reactions are also incomparable to that in *Canary*. When told at the scene by law enforcement to "stop," "Respondent walked away" in the *Canary* incident. Here, Respondent declared to the police officers that, "[y]ou arrest my fucking wife, you're going to be sorry." He had to be physically restrained. As the referee concluded: Lieutenant Muhammad had to "intervene[] and place[ ] Respondent in a bear hug" after which he admonished Respondent, "keep your hands off a cop.'" Rather than aid Mr. Mele as he sought to separate the two fighting women, Respondent preserved his energies to impede law enforcement. It was fully two years after-the-fact at the referee hearing on July 7, 2022 that Respondent's reaction to his wife having bit the forearm of the neighbor was to say, "And I'm glad she did." In *Canary* the judge's misconduct stemmed from his perception that police officers "were always picking on his kid." *Id.* at 79. Contrarily, Judge Grisanti bragged about his relationship with police officers. As opposed to beliefs about police bias against his wife, Respondent testified at the referee hearing on July 7, 2022 that his wife "wasn't being under arrest" and "was in the car just to calm down." Respondent acted out of a sense of

entitlement to special treatment because of his connections to the Buffalo Police Department.

The judge-police interaction in *Canary* originated from the judge's son being stopped "because the brush had fallen from the truck" that he was driving, "creating a traffic obstruction." *Id.* at 78 In the matter before us it was the judge himself who brought on the judge-police interaction, by way of engaging 911 resources based on lies, walking across the street to confront his neighbors, then shoving the police officer called to the scene. Aware of the potentially damaging impact on public perception, the non-attorney judge in *Canary* sought behind closed doors to keep the incident out of the public's eye. In this instance, Respondent, a lawyer, apparently gave no thought to public imagery as he engaged in a series of disgraceful acts in broad daylight. As the referee found, "With the Meles on their own property, Respondent walked off of his property, stepped into the street, and headed toward the Mele driveway, his wife a step or two behind him."

In *Canary* the son's traffic stop culminated in a formal arrest, prosecution, and guilty plea to Resisting Arrest. Here there was no formal arrest and prosecution of Respondent's wife. And with today's decision, Judge Grisanti will remain empowered to enforce the law. The majority's decision to permit Respondent to continue as a Judge of the Court of Claims and an Acting Justice of

the Supreme Court sends the wrong message at the wrong time. It tells Respondent's neighbors, officers of the Buffalo Police Department, the citizens of New York and YouTube's 2.7 billion users that it is permissible to resort to violence against one's neighbor and to shove a police officer during a lawful arrest process, without worry of losing one's job—let alone the power and prestige of judicial office.

In another case that involved a judge's use of profanity against police officers the Court of Appeals[14] accepted the Commission's determination. In *Matter of Romano*, 1999 Ann Rep of NY Commn on Jud Conduct at 133, a town justice, after hearing that police officers had criticized his bail decision, went to the police station and "in a loud and angry manner" said, "if you have anything to say to me, grow some balls and say it to my face." *Id*. at 134. He called a detective an "asshole" and a "low life scumbag." *Id*. Judge Romano also remarked from the bench in a case in which a husband was accused of hitting his wife in the face with a phone, "What was wrong with this? You need to keep these women in line now and again." *Id.* at 135. As in this case the Respondent in *Romano* engaged in additional misconduct beyond verbal transgressions; he asserted his judicial office for personal gain. However, he did not engage in a brawl that ended with physical injuries, as did Judge Grisanti. See also CJC.Ex8 below. Judge Romano was removed from the bench.

As recently as December 27, 2023 this Commission removed a part-time Justice of the Athens Town Court for infractions that pale in comparison to those in the instant case. It was determined in *Matter of Mercer*, 2024 Ann Rep of NY Commn on Jud Conduct at 127, that the Respondent engaged in self-dealing by awarding a no-bid $3,300 contract to his own company for courthouse improvements and by misrepresenting the cost of the equipment. The judge's company did not receive payment. Removal of Judge Mercer was deemed the appropriate disposition because, to quote the majority opinion,

> "[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.

As compared to *Matter of Mercer* where the judge "caused his personal business interests to improperly take precedence over his judicial duties," the need to "safeguard the Bench from unfit incumbents" is exponentially more apparent here. The aggregated list of financial, physical, verbal and ethical infractions committed by Judge Grisanti constitutes, by definition, 'truly egregious circumstances.'

VII. Judicial Disciplinary Matters are *Sui Generis*: Prevailing Standards

Even though the fact pattern clearly distinguishes the seriousness of the transgressions in the instant case from prior cases—most notably *Canary*, the Court of Appeals has held that judicial disciplinary matters are *sui generis* and must be evaluated on the specific facts and circumstances of each case. In *Matter of Blackburne*, 7 NY3d 213 (2006)[15] the judge argued that she should not be removed for "a single act of bad judgment, unless the misconduct involved venality, breach of trust, moral turpitude or personal gain." *Id*. at 219. However, the Court found,

> In impeding the legitimate operation of law enforcement by helping a wanted robbery suspect to avoid arrest, petitioner placed herself above the law she was sworn to administer, thereby bringing the judiciary into disrepute and undermining public confidence in the integrity and impartiality of her court. Although "removal is not normally to be imposed for poor judgment, even extremely poor judgment" . . . petitioner's dangerous actions exceeded all measure of acceptable judicial conduct. By interposing herself between the defendant and the detective, petitioner abandoned her role as neutral arbiter, and instead became an adversary of the police. This is completely incompatible with the proper role of an impartial judge.

Id. at 221 (citation omitted). The Court further held, ". . . we have never implied that removal is limited to those categories of cases that have formerly come before us. Judicial misconduct cases are, by their very nature, sui generis. That until now no judge has thought to prevent the lawful arrest of a suspected felon cannot shield petitioner from the necessary consequence of her actions." *Id*. at 219-220. It additionally concluded, "In any event, we reject petitioner's argument that she

should not be removed because removal would be unprecedented. Petitioner's *conduct* was unprecedented. We know of no instance in which a judge has facilitated the escape of an accused violent felon." *Id*. at 220 (emphasis in original). The judge in *Blackburne* was removed.

In another removal case, *Matter of Roberts*, 91 NY2d 93 (1997),[16] the Court of Appeals held that, "To be sure, precedents and fact patterns can vary as they bear on the level of discipline to be meted out for judicial misconduct. Ultimately, however, these cases are essentially institutional and collective judgment calls based on assessment of their individual facts, in relation to prevailing standards of judicial behavior and the prospect of future misconduct and continued judicial service . . ." *Id.* at 97.

VIII. Enforcement of the Rules Governing Judicial Conduct

The Preamble of the Rules provides that, "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 evidentiary record in this case is overwhelming. The transgressions in this case are many and unconscionable, the lack of contrition deeply troubling, and

the impact on public perception and confidence severely damaging. The evidence compels Respondent's removal from judicial office. His presence on the bench is a shame on the judicial system. The majority has concluded otherwise, determining instead that Respondent should continue to preside in a court of law—the voluminous body of evidence to the contrary notwithstanding. Six of my esteemed colleagues believe that Judge Mark A. Grisanti is worthy of remaining in office, alongside the 3,350 judges of New York state that serve impeccably, faithfully, and honorably.

I respectfully disagree.

April 22, 2024

Professor Nina M. Moore, Ph.D., Member
New York State Commission on Judicial Conduct

[1]The reality, especially for people of color, is an increased statistical probability of never making it safely to a jail cell after pushing or threatening a police officer. See: Nina M. Moore, *The Political Roots of Racial Tracking in American Criminal Justice* (Cambridge University Press, 2015).

[2] CJC.Ex43 – a still photo of Respondent shoving Officer Gehr during the arrest process.

[3]The majority opinion effectively faults the responding Buffalo police officers for enforcing law and order when confronting: the street brawl instigated by Judge Grisanti, report of bodily injury inflicted by Ms. Grisanti, and her brazen defiance of multiple police directives geared to deescalate, etc. The fact that the majority relies heavily on hearing testimony about Officer Gehr's prior state of mind as a basis for its disparagement of the officers and their actions on the scene is worth noting. The reason Officer Gehr handcuffed Ms. Grisanti is that she repeatedly ignored his and Lieutenant Muhammad's directives and continued her verbal and physical aggressions, as established by bodycam footage at 0:38 through 01:37. The video shows that upon first encountering Ms. Grisanti who came within inches of the neighbor's face, with arms fully extended horizontally, and yelling, Officer Gehr stated "We're, we're not doing this" (0:38) and Lieutenant Muhammad calmly motioned (0:42) Ms. Grisanti to go to her side of the street so that Officer Gehr could interview the neighbors. She again walked across the street and interrupted, at which point Officer Gehr stated: "You're going to step back" (0:50). Lieutenant Muhammad again calmly placed himself between an aggressive Ms. Grisanti and the neighbors and directed her to return to her side of the street (0:51). Interrupted a third time by Ms. Grisanti's yelling, profanity and threats, Officer Gehr next warned (01:37): 'Ma'am … if you don't stop yelling, this is going to be a problem for you.' To this, police directive Number 5, Ms. Grisanti screamed back: "I don't care," "You're not going to arrest me," "No, no, you're not going to …," "Don't fucking arrest me …" See CJC.Ex11 and CJC.Ex11a. As to Lieutenant Muhammad's bear hug, it was used to restrain Judge Grisanti as he physically shoved Officer Gehr.

It is unclear what the majority believes the officers should have done differently after five failed attempts to redirect Ms. Grisanti's belligerent behavior, followed by Respondent's physical aggression against one of their own. The majority opinion conveniently skips past the fact that Ms. Grisanti physically fought Officer Gehr as he attempted to handcuff her, as the bodycam footage clearly shows. It was in a moment of lucidity afterward that even Judge Grisanti, in his words, "apologized to … you know, kind of stopping the officer from doing what he had to do …" Accordingly, the Buffalo police officers who responded to Judge Grisanti's street fight should be commended for doing what they had to do. The fact that the *Judicial* Conduct Commission rebukes the police officers who brought law and order to a street fight instigated by a judge is concerning. The public whose interests we are empowered to serve and protect expects this commission to adjudge Respondent and to hold him solely accountable for his failure to abide by the Rules of Judicial Conduct—not to unfairly disparage the police officers left to clean up the aftermath.

[4] *Berenhaus v. Ward*, 70 NY2d 436, 443 (1987) highlighted the constraints of a "lifeless record" as grounds to defer to a referee's findings. In this case, however, commissioners observed a live video recording of Respondent's threatening words.

[5] The Commission rejected a referee finding in *Matter of Marshall,* 8 NY3d 741 (2007). The Court of Appeals affirmed, noting that "Neither the Commission or this Court is bound to accept the Referee's findings." (*Id.* at 743). The Operating Procedures and Rules of the Commission state: "The commission shall decide … a motion to confirm or disaffirm the findings of the referee …"22 NYCRR §§7000.6[f][1][iii]. Section 3.4(B) of the Commission Policy Manual provides that, "A referee's report proposes findings of fact and conclusions of law but is not binding on the Commission," encouraging *due* deference regarding the credibility of witnesses, though not the referee nor the Respondent and certainly not abdication. The manual further provides more definitively: "… the Constitution, Judiciary Law and case law reserve to the Commission the authority and obligation to render the findings of fact and conclusions of law on which its determinations are based." (Commission's Policy Manual, Section 3.4(B)) It is noteworthy too that both Respondent and Commission counsel argued that the Commission should reject one or more of the referee findings.

[6] The majority also neglects to note that the gravamen of the referee's holding on whether a lie is a lie was that he considered it an expansion of the charges initially brought by Commission counsel and, thus, violative of "Respondent's right to notice."

[7] Ms. Mele's despondency is borne out also by the fact that the judge's wife was not arrested on the scene, despite a report to Officer Gehr (captured on bodycam) of a fresh, red, swollen bite wound inflicted on Mr. Mele by the judge's wife, Ms. Grisanti, as detailed above and depicted in CJC.Ex.6 – A photograph of the severe human bite wound.

[8] Evidence of widespread publicity on YouTube and the internet was supplied at the Oral Argument at pp. 81-82, and evidence of television news coverage was supplied at the hearing (Tr 789), along with coverage in multiple newspapers (Tr 1416-1420), in broadcast and print media (Tr 747), and social media (Tr 789).

[9] Maria Grisanti testified that in June 2020 she had concerns for her family members who were involved in police work, because there was a "ton of protesting … they were throwing, like, firebombs …," adding "I was afraid for my – you know, for my children." She remarked that "the police were under a lot of duress and stress." (Tr. at 988-999) Respondent testified about his knowledge that "the George Floyd incident was in the news constantly for months." (Tr. 1445) He added, "I knew that in 2018 and '19, it seemed like one a year of excessive force … it was something that stayed in the media for a long period of time. Just prior to this incident, you had the George Floyd incident that was nationally televised. It was televised where there were literally demonstrations all across, not only this nation, but also in Buffalo. And then those demonstrations resulted in protests." (Tr. 1215-1216) He spoke of what he heard from his kids about "what goes on with – just happened to Mr. Gugino with the excessive force, what happened nationwide with excessive force." (Tr. 1226) He noted ". . . it was just two weeks ago what happened to Mr. Gugino . . .." (Tr. 1394)

[10] The majority omits the full context of Grisanti's hearing testimony, specifically failing to note his multiple mentions of George Floyd. This omission is unfortunate because doing so could be read as endorsement of Respondent's colorblind reconstruction of the incident and, thus, leave the wrong impression of this commission's capacity to understand and appreciate the gravity of

such incidents.

[11] He testified at the hearing that the incident was "nationally televised," was among multiple excessive force incidents that "stayed in the media for a long period of time" (Tr. 1215), that the "George Floyd incident was in the news constantly for months" (Tr. 1445), and that the "video of George Floyd" evoked shock (Tr. 1216).

[12] In *Bauer* a City Court judge was removed for "a pattern of abuse by which petitioner on numerous occasions not only failed to advise defendants of their rights but perverted CPL 170.10 by telling defendants that they must engage their own attorneys -- concealing from them that the statute requires the court to assign counsel when warranted and to see to it that the right to counsel is protected . . ." *Id.* at 162.

[13] In *Restaino* a City Court judge, after a device rang in his courtroom and the owner of the device could not be located, committed 46 defendants into custody. Only one of the 46 had an attorney present. *Id*. at 583. Psychiatrists testified at the hearing before the referee that Respondent suffered from "marital stressors" and that he was experiencing "a somewhat anxious crisis state of mind." *Id*. at 587. Respondent argued to the Court that the sanction of removal was "unwarranted in light of the proffered psychological evidence." *Id.* at 588.

[14] 93 NY2d 161 (1999)

[15] In *Blackburne* a Supreme Court justice was removed for arranging for an accused felon to be escorted out of her treatment courtroom so as to prevent the defendant from being arrested by a waiting detective.

[16] In *Roberts* a village justice was removed for, *inter alia*, summarily ordering an individual to 89 days in jail without affording minimal constitutional and procedural safeguards and making callous comments in domestic violence cases such as "every woman need a good pounding every now and then." *Id.* at 95-96.

COMMISSION
EXHIBIT

6

Joseph Mele

assault by human bite

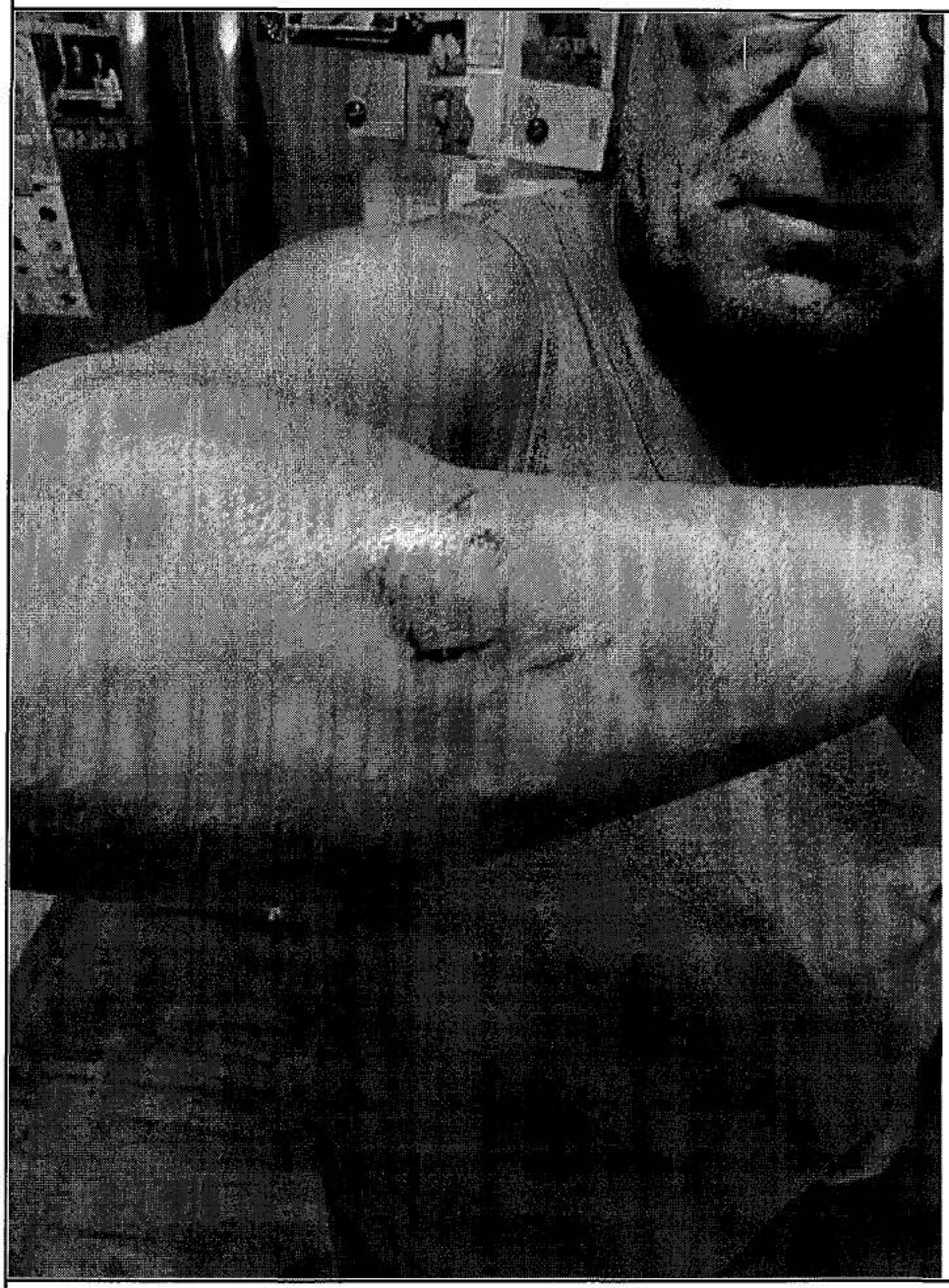
File no 2020/R-0164

COMMISSION EXHIBIT 9

Title: Joseph Mele

Entered by: Date 6/23/2020 6:33:23 PM

Bite mark from Maria Grisanti




COMMISSION
EXHIBIT
8

Joseph Mele

assault by bodily force

inferior orbit fracture

File # 2020/R-0164

COMMISSION
EXHIBIT
42

COMMISSION EXHIBIT

43