

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

JEREMY L. PERSONS,

a Justice of the Guilford Town Court,
Chenango County.

**MEMORANDUM BY COUNSEL TO THE
COMMISSION IN SUPPORT OF RECOMMENDATION
THAT RESPONDENT BE REMOVED FROM OFFICE**

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct (“Commission”) in support of Counsel’s recommendation that the Honorable Jeremy L. Persons (“Respondent”) be removed from office for judicial misconduct as found by the Commission on December 15, 2022, in granting Counsel’s uncontested motion for summary determination dated November 4, 2022.

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint (“Complaint”), dated July 13, 2022, containing seven charges, alleging that Respondent: (1) made inappropriate and sexually charged comments to attorneys appearing before him, and drove multiple vehicles bearing inappropriate graphics/bumper stickers; (2) failed to report or remit court funds to the Office of the State Comptroller in a timely manner; (3) failed to answer two traffic tickets and renew his vehicle insurance, resulting in the suspension of his driver’s license; (4) volunteered his judicial email address while speaking with a court clerk regarding traffic tickets issued to him; (5) failed to cooperate with the Office of Court Administration (“OCA”) and Guilford Town officials and obstructed their efforts to audit the town court records; (6) failed to cooperate with the Commission’s investigation; and (7) openly carried a pistol inside his courthouse and on court

premises, notwithstanding that his license only permitted him to carry a concealed handgun.

B. Respondent's Failure to Answer

Respondent was personally served with the Complaint on July 22, 2022. He did not file an Answer to the Complaint.

C. Motion for Summary Determination

By motion papers dated November 4, 2022, Counsel moved for summary determination and a finding that the allegations in the Complaint – which were deemed admitted by Respondent's failure to Answer – constituted judicial misconduct.

D. Respondent's Failure to Respond

Respondent did not file a response to Commission Counsel's motion with the Clerk of the Commission.

E. The Commission's Decision and Order

By decision and order dated December 15, 2022, the Commission granted Counsel's motion for summary determination in all respects. The Commission found that the factual allegations of Charges I through VII of the Formal Written Complaint and Respondent's misconduct were established.

Charge I: From in or about October 2020 to in or about October 2021, Respondent made sexually charged comments to and about attorneys appearing in his court and drove vehicles bearing puerile and otherwise inappropriate graphics and/or bumper stickers.

The Commission granted summary determination as to Charge I upon the following facts.

1. In or about October 2020, while on the bench at the conclusion of the proceedings before him, Respondent commented to Public Defender Zachary Wentworth, in sum and substance, that he looked forward to Assistant Public Defender Stephanie Hanrahan's return from her vacation and said, "She's better looking than [you]." Complaint ¶ 6; Affirmation of Zachary Wentworth ("Wentworth Aff.") ¶ 2.

2. On or about August 26, 2021, while Ms. Hanrahan and Assistant District Attorney Christopher Curley were in a conference with Respondent in his chambers, Ms. Hanrahan told Respondent that she would be attending the Sheriff's office golf tournament the following day, to which Respondent said, "I'd like to watch you golf." When Ms. Hanrahan noted that Respondent did not want to watch her since she was not good at golf, Respondent replied, "That's not why I want to watch you." Complaint ¶ 7; Affirmation of Stephanie Hanrahan ("Hanrahan Aff.") ¶¶ 2, 3.

3. On or about August 26, 2021, while in the courtroom with Mr. Curley and Ms. Hanrahan, Respondent began discussing his marital relationship and told the

attorneys that he had a three-way relationship with his ex-wife and another woman, but the two women cut him out of the relationship. Referring to his ex-wife, Respondent then commented, “She likes the hole better than the pole.” Complaint ¶ 8; Hanrahan Aff. ¶ 4.

4. On or about October 6, 2021, Respondent displayed on an automobile he owned and/or operated a bumper sticker that read, “Boobies Make Me Smile.” Complaint ¶ 9 (B); Wentworth Aff. ¶ 3.

5. From in or about July 2021 to in or about October 2021, Respondent displayed on his automobile a graphic of “Judge Dredd,” referring to a fictional character known in popular culture as “judge, jury and executioner.” Complaint ¶ 9 (A); Wentworth Aff. ¶ 4.

6. Respondent usually parked his vehicle near the non-public entrance to the court, where it was visible to police officers and/or defendants in custody, entering or leaving the court. Complaint ¶ 9 (C).

Charge II: For the months of December 2020 and March 2021, Respondent failed to report or remit court funds in a timely manner to the Office of the State Comptroller (“Comptroller”), as required by Section 1803 of the Vehicle and Traffic Law, Sections 2020 and 2021 of the Uniform Justice Court Act, Section 27, subdivision 1, of the Town Law, and Section 99-a of the State Finance Law.

The Commission granted summary determination as to Charge II upon the following facts.

7. On or about February 26, 2021, the Office of State Comptroller (“the Comptroller”) issued a written notice to Respondent that his December 2020 monthly report had not been filed by the 10th day of the following month, as required and was not on file with the Comptroller. Complaint ¶ 12. A copy of the notice is appended as Exhibit A to the Complaint.

8. On or about April 13, 2021, the Comptroller issued a second written notice to Respondent that his December 2020 monthly report had not been filed by the 10th day of the following month, as required, and was not on file with the Comptroller. Complaint ¶ 13. A copy of the second notice is appended as Exhibit B to the Complaint.

9. On or about June 1, 2021, the Comptroller sent an email to Respondent, again noting the delinquent December 2020 monthly report and notifying him of his failure to file his March 2021 monthly report in a timely manner. Complaint ¶ 14. A copy of the June 1, 2021, email is appended as Exhibit C to the Complaint.

10. Respondent’s failure to file his monthly reports for December 2020 and March 2021 in a timely manner resulted in his judicial salary being stopped on or about May 20, 2021. Complaint ¶ 15. A copy of the stop-salary notice is appended as Exhibit D to the Complaint.

11. Respondent failed to file his monthly reports for December 2020 and March 2021 with the Comptroller until on or about July 8, 2021, and July 20, 2021, respectively. Complaint ¶ 16.

Charge III: From in or about 2018 to the date of the Formal Written Complaint, Respondent (A) failed to answer two traffic tickets issued to him in the Village of Johnson City, resulting in the suspension of his driver's license in or about February 2018 and again in or about April 2021, and (B) failed to renew the insurance on his motor vehicle, resulting in the suspension of his driver's license in or about January 2021.

The Commission granted summary determination as to Charge III upon the following facts.

12. On or about October 28, 2017, Respondent was charged with two traffic violations for driving a motor vehicle that was uninspected and was without adequate lights. The citations were returnable in the Johnson City Village Court on November 15, 2017. Complaint ¶ 19. A copy of the court file is appended as Exhibit E to the Complaint.

13. Respondent failed to answer the tickets. As a result, his driver's license was suspended on or about February 22, 2018. The suspension was lifted on or about November 25, 2019, after Respondent pled not guilty and paid a fee to lift the suspension. Complaint ¶ 20.

14. Thereafter, Respondent failed to appear on the two tickets in the Johnson City Village Court. As a result, on or about April 30, 2021, his license was suspended again. Complaint ¶ 21.

15. On or about January 1, 2021, Respondent received an unrelated license suspension for lapsed insurance on his motor vehicle. Complaint ¶ 22.

16. On or about September 9, 2021, after being notified by the Commission that it was investigating a complaint concerning his license suspensions, Respondent pled guilty to both traffic tickets in the Johnson City Village Court. On or about November 15, 2021, Respondent paid a total fine of \$335 and a fee of \$140 to lift the second suspension. Complaint ¶ 23.

17. Respondent's license remained suspended for lapsed insurance as of the date of the Complaint. A copy of Respondent's driver's abstract is appended as Exhibit F to the Complaint. Complaint ¶ 24.

Charge IV: In or about September 2021, Respondent used his official judicial email account and address on a matter unrelated to his judicial office, to communicate with the Johnson City Village Court on a personal matter, after that court *inter alia* ordered the suspension of his driver's license.

The Commission granted summary determination as to Charge IV upon the following facts.

18. On or about October 28, 2017, Respondent was charged with two traffic violations for driving a motor vehicle that was uninspected and was without adequate

lights. The citations were returnable in the Johnson City Village Court on November 15, 2017. Respondent failed to answer the tickets, and his driver's license was suspended on February 22, 2018, as a result. The suspension was lifted after Respondent pled not guilty and paid a fee to lift the suspension on or about November 25, 2019. However, Respondent again failed to appear on the two tickets, and his license was suspended again on or about April 30, 2021. Complaint ¶ 27.

19. On or about September 9, 2021, Respondent telephoned the Johnson City Village Court and spoke to April Chapman, a court clerk. During the call, Respondent gave Ms. Chapman his judicial email address, "[REDACTED]@nycourts.gov," as a means by which the court could communicate with him and send him the credit card form for payment of the suspension lift fee. Complaint ¶ 29.

20. After seeing the "nycourts" email address, Ms. Chapman looked up Respondent and made a note in the court file regarding her phone call that included the comment, "hes [sic] a judge at Guilford, NY." Exhibit E to the Complaint, p.9. Complaint ¶ 29.

Charge V: From in or about August 2021, through the date of the Formal Written Complaint, Respondent failed to cooperate with the OCA and officials of the Town of Guilford in that he obstructed their efforts to obtain, examine, review and/or audit court records concerning his alleged failure to fulfill his official financial obligations and otherwise perform his judicial duties properly.

The Commission granted summary determination as to Charge V upon the following facts.

21. Supreme Court Justice Norman St. George serves as Deputy Chief Administrative Judge of the Unified Court System for the Courts Outside New York City. Supreme Court Justice Eugene D. Faughnan serves as Administrative Judge for the Sixth Judicial District, which is based in Binghamton and includes Chenango County. Cortland City Court Judge Elizabeth Burns serves as Supervising Judge for the Town and Village Courts in certain counties of the Sixth Judicial District, including Chenango County. Joshua S. Shapiro serves as Special Counsel to the Administrative Judge for the Town and Village Courts in the Sixth Judicial District. Guilford Town Justice Karen Osborn is Respondent's co-judge. George Seneck is the Guildford Town Supervisor. Complaint ¶ 32.

22. In or about May 2021, after Respondent's salary had been stopped for his failure to file monthly reports with the Office of the State Comptroller in a timely manner for December 2020 and March 2021, Guilford Town Justice Karen Osborn and Guilford Town Supervisor George Seneck communicated with OCA officials and

expressed their concerns regarding Respondent's handling of his judicial duties, including *inter alia*, the following:

- A. Respondent's failure to process and/or deposit fine payments or pleas in a timely manner according to law;
- B. Respondent's failure to report or remit funds to the Comptroller in a timely manner according to law;
- C. Respondent's improper suspensions of drivers' licenses;
- D. Respondent's failure to lift license suspensions after requisite suspension fees had been paid to lift such suspensions; and
- E. Respondent's failure to address complaints from litigants who experienced difficulty reaching him or his office on court-related business. Complaint ¶ 33.

23. On or about August 4, 2021, Supervising Judge Burns and Special Counsel Shapiro met with Respondent, Judge Osborn, and Supervisor Seneck to address and resolve concerns regarding Respondent's judicial and administrative duties. Respondent agreed to take remedial steps necessary to address each of the concerns, including a missing deposit of court funds. Complaint ¶ 34.

24. On or about September 21, 2021, Respondent was asked to meet with Supervising Judge Burns and Mr. Shapiro at the Sixth Judicial District Administrative Office in Binghamton. Although Respondent had confirmed that he would attend this

meeting, which was scheduled for 10:00 AM, he did not appear for the meeting, nor did he respond to several messages left on his cell phone and home phone by Mr. Shapiro that day. Complaint ¶ 35.

25. On or about September 22, 2021, Respondent wrote an email to Mr. Shapiro asserting that he did not attend the meeting because his car broke down, that he had no cell phone service at the location where his car broke down, and that when he reached an area where he did have cell phone service, he did not have the phone number for the district office. Complaint ¶ 36.

26. Despite his agreement on or about August 4, 2021, to take remedial steps regarding his judicial and administrative duties, Respondent failed to do so, notwithstanding assistance offered by Judge Burns and Mr. Shapiro. As a result, Mr. Shapiro, in consultation with Administrative Judge Faughnan, ordered an internal audit of the Guilford Town Court. Complaint ¶ 37.

27. An initial audit meeting was held on October 7, 2021, via video. At the meeting, Respondent was told which documents he needed to produce to the auditors. Although Respondent promised to scan and email the requested documents, he never did so. Complaint ¶ 38.

28. On or about October 15, 2021, Deputy Chief Administrative Judge Norman St. George issued an administrative order, AO/298/2021, directing Respondent to relinquish his judicial duties. All pending matters before Respondent

were to be assigned to another judge, and no additional matters were to be assigned to Respondent. Complaint ¶ 39. A copy of the order is appended as Exhibit G to the Complaint.

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

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

Complaint ¶ 40.

A copy of the audit report is appended as Exhibit H to the Complaint.

Charge VI: From in or about July 2021 to in or about April 2022, Respondent failed to cooperate with the Commission's investigation of the complaints against him that resulted in the authorization of this Formal Written Complaint, in that he: (A) failed to respond to three letters from the Commission requesting his response to complaints concerning his failure to report and remit to the Comptroller and his driver's license suspensions; (B) failed to produce court records and other related documents requested by the Commission; and (C) failed to appear for testimony concerning four complaints against him.

The Commission granted summary determination as to Charge VI upon the following facts.

30. By letter dated June 23, 2021, the Commission notified Respondent that it was investigating a complaint from the Comptroller alleging that he had failed to file reports or remit funds to the Comptroller in the time required by law for the months of December 2020 and March 2021, resulting in his judicial salary being stopped on or about May 20, 2020. The letter requested Respondent's written response to the allegations by July 21, 2021. Complaint ¶ 44. A copy of the letter is appended as Exhibit I to the Complaint.

31. Respondent submitted an undated letter, received by the Commission on or about August 5, 2021, attributing the delay in filing his monthly reports for December 2020 and March 2021 to medical issues that led to his hospitalization. Respondent asked for additional time to respond to the remaining questions about his

court activity and to provide related courts records, but he did not offer a timeframe for the additional response. Complaint ¶ 45. A copy of Respondent’s undated letter is appended as Exhibit J to the Complaint.

32. By letter dated August 26, 2021, the Commission sent Respondent a follow-up letter concerning the complaint by the Comptroller and an additional complaint alleging that Respondent’s driver’s license was suspended due to lapsed insurance, and that he had failed to answer two traffic tickets in the Village of Johnson City. Complaint ¶ 46. A copy of the letter is appended as Exhibit K to the Complaint.

33. Respondent failed to respond to the Commission’s letter of August 26, 2021.

34. By letter dated September 30, 2021, the Commission sent Respondent a copy of its letter dated August 26, 2021, and requested his response by October 12, 2021. The letter of September 30 informed Respondent that his “failure to respond may be found by the Commission to be a failure to cooperate with the investigation” (emphasis in original). Complaint ¶ 47. A copy of the letter dated September 30, 2021, is appended as Exhibit L to the Complaint.

35. Respondent never submitted an additional response to the Commission’s letter dated June 23, 2021, nor did he submit any response to the Commission letters dated August 26, 2021, and September 30, 2021. Complaint ¶ 48.

36. By letter dated March 11, 2022, the Commission notified Respondent to appear for testimony via video on April 4, 2022, concerning the four complaints and his failure to respond to the Commission's inquiries. The letter also asked Respondent to produce certain documents by March 24, 2021, and to confirm his appearance by March 28, 2021. Complaint ¶ 49. A copy of the letter is appended as Exhibit M to the Complaint.

37. Respondent neither confirmed his appearance for testimony nor provided any documents to the Commission.

38. Respondent communicated with the Commission on April 4, 2022, approximately five minutes before his testimony was to begin, to ask for a video link in order to participate in the proceeding. During the phone call, Respondent offered no explanation for why he failed to produce the records or confirm his appearance in advance, as the Commission had directed. Complaint ¶ 50.

39. After being provided with the video link, Respondent appeared, and the proceeding to take his testimony commenced. After a short time, however, he abruptly disconnected from the proceeding. After a brief recess was called and Commission staff attempted to determine what had occurred, Commission staff established a telephone connection with Respondent, who claimed that an internet outage in his area had occurred. The stenographer transcribing the video proceeding continued to transcribe the telephone conversation, during which Respondent agreed

on the record that his testimony would resume on April 8, 2022, at 10:00 AM, in person at the Commission's Albany office. Complaint ¶ 51. A copy of the transcript of the April 4, 2022, proceeding is appended as Exhibit N to the Complaint.

40. The Commission sent Respondent a letter dated April 5, 2022, confirming his appearance on April 8, and providing directions to the Commission's Albany office. Complaint ¶ 52. A copy of the letter is appended as Exhibit O to the Complaint.

41. Respondent failed to appear at the Commission's Albany office on April 8, 2022, and he failed to communicate with the Commission in any manner. Complaint ¶ 53. A transcript was prepared on April 8, 2022, noting Respondent's failure to appear. A copy of the transcript is appended as Exhibit P to the Complaint.

Charge VII: From in or about December 2020 to in or about October 2021, on various occasions, Respondent visibly carried a handgun while inside or just outside the courthouse, in violation of his permit to carry a concealed pistol.

The Commission granted summary determination as to Charge VII upon the following facts.

42. On or about August 24, 2020, Respondent applied for a New York State Pistol Permit, and on or about December 11, 2020, he was issued a permit to carry a concealed pistol. Respondent thereafter obtained two handguns: a semi-automatic

Glock and a Uberti revolver. Complaint ¶¶ 56-57. A copy of the permit is appended as Exhibit Q to the Complaint.

43. Notwithstanding that Respondent's permit requires the pistol to be concealed, his practice while in or just outside the courthouse was to carry a handgun on a hip-holster, which was easily visible anytime he was not wearing his judicial robe. Complaint ¶ 58; Wentworth Aff. ¶ 5.

44. On one occasion between in or about July 2021 and in or about October 2021, Respondent placed his handgun on the bench when ADA Wentworth was appearing before him during a session of the court. Complaint ¶ 59; Wentworth Aff. ¶ 5.

ARGUMENT

POINT I

RESPONDENT'S MULTIPLE ACTS OF MISCONDUCT WARRANT HIS REMOVAL FROM OFFICE.

By virtue of his breathtaking array of egregious misconduct – failing to report and remit court funds, obstructing OCA's and Guilford town officials' efforts to audit town court records, failing to appear in court in response to a summons and refusing to pay a court-ordered fine, asserting the prestige of his judicial office in his private court matter, failing to maintain insurance on his automobile, displaying a handgun inside the courthouse in violation of his concealed carry permit, making inappropriate and sexually charged comments toward attorneys, displaying sexually demeaning bumper

stickers, and failing to cooperate with the Commission’s investigation – Respondent has clearly demonstrated his unfitness to remain on the bench. He should be removed from office.

A. Respondent’s failure to report or remit court funds as required by law, and his subsequent failure to cooperate with OCA and Town of Guilford Officials in the attendant investigation, constitute misconduct warranting removal.

As the Court of Appeals held in *Matter of Petrie*, 54 NY 2d 807, 808 (1981), “disregard for statutory recordkeeping requirements and carelessness in handling public moneys is a serious violation of [a Judge’s] official responsibilities. Such a breach of the public’s trust warrants removal.” Indeed, “[s]uch breaches of public trust have frequently led to removal.” *Matter of Murphy*, 82 NY 2d 491, 494 (1993) citing *Matter of Vincent*, 70 NY 2d 208, 209 (1987); *Matter of Rater*, 69 NY 2d 208, 209 (1987); *Matter of Petrie*, 54 NY2d 807 (1981); *Matter of Cooley*, 53 NY 2d 64 (1981). These holdings are directly applicable here, where Respondent failed to report and remit public funds in a timely manner as required by law and subsequently failed to cooperate with an OCA investigation into concerns regarding Respondent’s judicial and administrative duties and an internal audit of the Guilford Town Court.

Respondent failed to comply with clear statutory requirements governing the reporting and remitting of court funds, which resulted in his salary being stopped on May 20, 2021. The failure to comply with these statutory mandates constitutes a serious dereliction of a judge’s duties and is improper even if the amounts are small.

See *Matter of Hrycun*, 2002 Ann Rep 109 (Commn on Jud Conduct, November 19, 2001); *Matter of Rater*, 69 NY2d 208 (1987); *Matter of Petrie*, 54 NY2d 807, 808 (1981); *Matter of Cooley*, 53 NY2d 64 (1981). The mishandling of public money by a judge is serious misconduct even when not done for personal profit (*Bartlett v. Flynn*, 50 AD2d 401,404 [4th Dept 1976]).

With respect to financial and administrative transgressions, the Court of Appeals has stated: “The severity of the sanction imposed for this variety of misconduct depends upon the presence or absence of mitigating and aggravating circumstances.” See *Matter of Rater*, 69 NY2d 208, 209 (1987). The Court noted that “in the absence of any mitigating factors, the failure to make timely deposits in the court account and timely reports and remittances to the State might very well lead to removal.” *Id.* There are no such mitigating factors in this case.

Respondent’s failure to cooperate with OCA and Town of Guilford officials is an aggravating factor that clearly warrants his removal. The Commission has previously held that a judge’s “failure to fulfill a variety of required administrative responsibilities and... repeated, continuing failure to respond to inquiries from several state agencies evince an indifference to... the obligations of ... judicial office.” *Matter of Stafford*, 1983 Ann Rep 193, 195 (Commn on Jud Conduct, November 12, 1982). Here, Respondent failed to honor his agreement to take remedial steps regarding his judicial and administrative duties, resulting in an internal audit of the Guilford Town

Court. Respondent then failed to produce documents he had agreed to produce for the audit. Ultimately, the audit revealed a number of concerns, including a shortage in Respondent's combined fine/fee and bail account and the deletion of cash and checkbook records from the cashbook. Deputy Chief Administrative Judge Norman St. George was so concerned about Respondent's conduct that he issued an administrative order directing Respondent to relinquish his judicial duties. Respondent's failure to report and remit public funds and his callous disregard for his duty to cooperate with administrative inquiries constitute "a breach of the public's trust warrant[ing] removal." *Matter of Petrie*, 54 NY 2d 807, 808 (1981).

B. Respondent's failure to answer summonses and to pay lawfully imposed fines and fees in connection with two traffic violations, his failure to insure his vehicle as required by law, and his assertion of the prestige of his judicial office in a related personal matter, constitute further misconduct warranting his removal.

By ignoring the summons of another court, failing to pay fines in connection with two traffic tickets, and failing to maintain vehicle insurance, resulting in the suspension of his driver's license, Respondent departed from the high standard of conduct expected from all members of the bench.

The Commission has publicly disciplined judges for similar behavior. In *Matter of Halstead*, 2011 Ann Rep 94, 104 (Comm'n on Jud Conduct, January 27, 2011), the Commission removed a judge who – like Respondent here – failed to remit and report court funds and also failed to appear in court on a summons, failed to pay

finances and surcharges imposed for two traffic violations, and failed to maintain vehicle liability insurance coverage. With respect to that judge's failure to appear in court, pay fines or maintain insurance, the Commission held that those "transgressions represent a pattern of failing to respect and comply with the law that is unacceptable for a judicial officer. Such conduct diminishes public confidence in the judiciary as a whole and irreparably damages [his] authority as a judge." *Id.*

In *Matter of Post*, 2011 Ann Rep 141, 145 (Comm'n on Jud Conduct, October 12, 2010), the Commission publicly disciplined a judge who *inter alia*, failed to appear in court on a summons and failed to pay a fine imposed by the court. The Commission noted that, "[I]t is unacceptable for an officer of the court to ignore court directives, and by ignoring the proceedings, [he] diminished [his] own authority to demand compliance with [his] directives as a judge." *Id.* at 146.

Respondent compounded this misconduct by referencing his judicial office to advance his private interests in connection with two related traffic tickets. The Commission has publicly admonished numerous judges for interjecting their judicial status to benefit themselves or others. *See, e.g., Matter of Smith*, 2014 Ann Rep 208 (Comm'n on Jud Conduct, June 19, 2013) (judge wrote unsolicited letter on judicial letterhead to Parole Board on behalf of a family acquaintance); *Matter of Hurley*, 2008 Ann Rep 141 (Comm'n on Jud Conduct, March 16, 2007) (judge asserted his judicial office for the benefit of his girlfriend in two separate legal matters); *Matter of Whelan*,

2002 Ann Rep 171, 173 (Commn on Jud Conduct, December 27, 2001) (judge “implicitly [drew] on the full power of his judicial status” to resolve a business dispute involving the judge’s wife).

Here, Respondent asserted his judicial office in his own traffic case when he called the Johnson City Village Court Clerk April Chapman and volunteered his judicial email address, “[REDACTED]@nycourts.gov,” as a means for the court to communicate with him regarding his traffic violations and to send him the credit card form for payment of the suspension lift fee. This prompted Ms. Chapman to look up Respondent and note in the court file, “hes [sic] a judge at Guilford, NY.” By using his official OCA email address, Respondent “gratuitously interjected his judicial status into the incident, which was inappropriate.” *Matter of Werner*, 2003 Ann Rep 198, 199 (Commn on Jud Conduct, October 1, 2002) (judge responded to a request for his driver’s license during a traffic stop by presenting his OCA photo identification card in addition to his driver’s license).

The Court of Appeals long ago held that “any communication from a Judge to an outside agency on behalf of another may be perceived as one backed by the power and prestige of judicial office.” *Matter of Lonschein*, 50 NY 2d 569, 572 (1980) (emphasis added.) In such cases, “[t]he absence of a specific request for favorable treatment or special consideration is irrelevant.” *Matter of Edwards*, 67 NY 2d 153,

155 (1986). Respondent's conduct here fell well below such standards and detracted from the dignity of judicial office as a whole, warranting public sanction.

C. Respondent's inappropriate and sexually charged comments to attorneys appearing before him and his display of inappropriate bumper stickers on cars he drove to court constitutes misconduct warranting removal.

The Court of Appeals and the Commission have repeatedly sanctioned judges for making offensive, undignified and sexually harassing comments to court staff, or attorneys and litigants who appear before the judge, or otherwise broadcasting such comments in a public venue. *Matter of Shaw*, 96 NY2d 7, 9-10 (2001) (judge, *inter alia*, made inappropriate remarks to his secretary), *Matter of Miller*, 35 NY3d 484 (2020) (judge, *inter alia*, made sexually inappropriate comments to chief clerk); *Matter of Stilson*, 2023 Ann Rep ____ (Comm'n on Jud Conduct, January 7, 2022)¹ (judge, *inter alia*, posted on Facebook comments sexually degrading to women, such as "Boobies Are proof that men can focus on two things at once!"); *Matter of Abramson*, 2011 Ann rep 62 (Comm'n on Jud Conduct, October 26, 2010) (judge made improper comments of a sexual nature about a litigant's T-shirt); *Matter of LoRusso*, 1994 Ann rep 73, 77 (Comm'n on Jud Conduct, June 8, 1993) (judge engaged in course of sexual harassment including "crude and suggestive comments").

¹ Available at <https://cjc.ny.gov/Determinations/S/Stilson.David.R.2022.01.07.DET.pdf>

Here, Respondent made multiple gratuitous and sexually charged comments to attorneys appearing before him and displayed a sexually suggestive bumper sticker on a car he parked at the courthouse. Respondent:

- stated that his ex-wife “likes the hole better than the pole,” referring to a three-way sexual relationship;
- told a female attorney in a suggestive tone that he would “like to watch [her] golf” while noting that was not because she was a good golfer;
- told a male attorney that he looked forward to his female colleague’s return from her vacation because she was “better looking;” and
- displayed a “Boobies Make me Smile” bumper sticker on the car he drove to court and parked in the courthouse parking lot.

These comments were antithetical to Respondent’s position as a judge and ran contrary to his duty to maintain high standards of conduct necessary to preserve the integrity and independence of the judiciary (Rule 100.1).

Respondent also displayed a graphic of “Judge Dredd” on his automobile, referring to the fictional character known in popular culture as “judge, jury, and executioner,” further compromising public confidence in the integrity and impartiality of the judiciary.

Respondent should have known that his sexualized comments were grossly inappropriate, especially in a professional setting, and created a hostile and

uncomfortable environment for the attorneys. Respondent's comments plainly violated his ethical obligation to conduct his extra-judicial activities so that they do not detract from the dignity of judicial office and are not incompatible with judicial office. Rules 100.4(A)(2) and (3).

D. Respondent committed further misconduct by visibly carrying a handgun inside and outside court premises in violation of his firearm permit.

Every judge must maintain high standards of conduct, respect and comply with the law, be faithful to the law and maintain professional competence in it, be patient, dignified and courteous to those with whom he deals in an official capacity, and minimize risk of conflict with judicial obligations while conducting extra-judicial activities. Rules 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(2), 100.3(B)(3) and 100.4(A)(2).

Respondent violated those rules here when he not only displayed his handgun in a holster while walking just outside the courthouse, but on at least one occasion, he removed the gun from its holster inside his courtroom during a public court session and placed it on the bench. As the Commission recently held in *Matter of Putorti*, 2023 Ann Rep ___ (Comm'n on Jud Conduct, September 9, 2022), “[a] courtroom is no place for a judge to brandish ... a gun.” Respondent's cavalier and irresponsible display of his firearm in violation of his concealed carry permit was misconduct.

E. Respondent’s failure to cooperate with the Commission’s investigation exacerbated his other acts of misconduct and further warrants removal as the appropriate sanction.

“[I]t is well settled that, when a judge fails to cooperate with an investigation of the Commission – which is vested with the statutory authority to ‘require the appearance of the judge involved before it’ ... – that dereliction can be a significant aggravating factor in determining the appropriate sanction.” *Matter of O’Connor*, 32 NY3d 121, 129 (2018) (citations omitted). *See also Matter of Cooley*, 53 NY2d 64, 66 (1981) (removing judge where failure to comply with filing and recordkeeping requirements was exacerbated by her failure to cooperate with the Commission’s investigation); *Matter of Mason*, 100 NY2d 56, 60 (2003) (the judge’s misconduct “was significantly compounded by [his] persistent failure to cooperate with the Commission investigation and his marked lack of candor”).

The Commission is authorized to “request a written response from the judge who is the subject of the complaint” and to require a judge’s testimony during the investigation (22 NYCRR §7000.3[c], [e]; Jud. Law §44, subd.3). By refusing to answer the Commission’s multiple written inquiries and failing to appear for testimony concerning the complaints under investigation, Respondent delayed and impeded the Commission’s efforts to obtain a full record of the relevant facts and thereby obstructed the Commission’s discharge of its lawful mandate. His failure to cooperate demonstrates an unacceptable lack of respect for the process, created by

Constitution and statute, under which the Commission is empowered to investigate the conduct of judges.

Notably, in this proceeding, Respondent has willfully and pervasively failed to answer the charges or respond to the motion for summary determination.

Respondent's failure to respond throughout the proceeding or to submit any papers on his own behalf may be construed not only as an admission of the allegations but as "an indifference to the attendant consequences." *Matter of Nixon*, 53 AD2d 178, 180 (1976). In its totality, Respondent's conduct shows "contumacious disregard for the responsibilities of [his] judicial office", which warrants removal from office. *Matter of Carney*, 1997 Annual Report 78, 79 (Comm'n on Judicial Conduct, September 19, 1996).

CONCLUSION

For the foregoing reasons, Commission Counsel respectfully requests that the Commission, based upon Respondent's collective established misconduct, issue a determination that Respondent be removed from office.

Dated: January 6, 2023
Albany, New York

Respectfully submitted,

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