

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DETERMINATION

DAVID R. STILSON,

a Justice of the Alma Town Court and an Associate
Justice of the Andover Village Court,
Allegany County.

THE COMMISSION:

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

APPEARANCES:

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

Hon. David R. Stilson, *pro se*

Respondent, David R. Stilson, a Justice of the Alma Town Court and an Associate
Justice of the Andover Village Court, Allegany County, was served with a Formal

Written Complaint (“Complaint”) dated May 10, 2021, containing two charges. Charge I of the Complaint alleged that in 2014 respondent posted and disseminated sexually charged content on social media when he used his Facebook account to publicly promote and/or approvingly comment upon posts and images that were demeaning toward women or otherwise offensive. Charge II of the Complaint alleged that in February 2014, respondent used his Facebook account to publicly engage in fundraising for the National Rifle Association (“NRA”). Respondent did not file an answer.

By motion dated October 7, 2021, the administrator of the Commission moved for summary determination pursuant to Sections 7000.6(b) and (c) of the Commission’s Operating Procedures and Rules. Respondent did not submit a response to the Commission. By decision and order dated October 28, 2021, the Commission granted the administrator’s motion and determined that the factual allegations of the Complaint were sustained, and that respondent’s misconduct was established.

By letter dated October 28, 2021, the Commission set a schedule for briefs and oral argument on the issue of sanction. On November 15, 2021, the administrator of the Commission submitted a memorandum which argued for respondent’s removal. The administrator waived oral argument unless respondent was to appear. Respondent did not make a submission on the issue of sanction, did not respond to the administrator’s sanction memorandum, and did not appear for oral argument. Thereafter the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Alma Town Court, Allegany County,

since 2001. His current term expires on December 31, 2025. He has been an Associate Justice of the Andover Village Court, Allegany County, since 2019. His current term expires on May 31, 2022. Respondent previously served as a Justice of the Willing Town Court, Allegany County, from 2001 to 2013. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

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

3. In or about 2014, respondent established a Facebook account and enabled his page to be viewable by the general public. Respondent's profile included a photograph of respondent's face and listed his name as "Dave Stilson."

4. On or about January 23, 2014, respondent posted to his public Facebook page a photograph of a woman with the caption, "Boobies Are proof that men can focus on two things at once!" A copy of the post is appended as Exhibit A.

5. On or about February 19, 2014, respondent posted to his public Facebook page a photograph listing 10 reasons why "Country Girls are Hotter." The list included: "1) They can work hard 2) Their boobs are real 3) They don't mind gettin dirty 4) They make great mothers 5) They stay faithful 6) They love the outdoors 7) Daisy dukes and boots are sexy 8) They can ride hard 9) Your girl can double as your hunting partner 10)

Sex in the woods is way better.” Respondent commented, “Can[']t argue this one bit. Very True.” A copy of the post is appended as Exhibit B.

6. On or about March 4, 2014, respondent posted to his public Facebook page an image portraying a woman tied to a bed by her wrists and ankles; and the other showing a man fishing. The image was captioned, “SHE ASKED ME TO TIE HER UP AND DO ANYTHING I WANT.” A copy of the post is appended as Exhibit C.

As to Charge II of the Formal Written Complaint

7. On or about February 20, 2014, respondent posted to his public Facebook page that he was “Looking for a few more friends to attend the Friends of the NRA Banquet in Olean on March 15th” at “\$180.00 each person.” A copy of the post is appended as Exhibit D.

8. On or about February 26, 2014, respondent posted to his public Facebook page, “Come [to] the Friends of The NRA Banquet with me and learn more about this,” above a linked PDF download from COPSSUPPORTGUNRIGHTS.COM captioned, “New York Troopers and Sheriffs refusing to enforce SAFE Act.” A copy of the post is appended as Exhibit E.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.4(A)(1), (2) and (3) and 100.4(C)(3)(b)(i) and (iv) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause pursuant to Article VI, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law. Charges I and II of the Complaint are sustained insofar as they are consistent with the above findings and

conclusions and respondent's misconduct is established.

Each judge is obligated to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and must observe high standards of conduct “so that the integrity and independence of the judiciary will be preserved.” (Rules, §§100.1 and 100.2(A)) Each judge must also “conduct all of the judge’s extra-judicial activities so that they do not . . . detract from the dignity of judicial office.” (Rules §100.4(A)(2)) Respondent violated these Rules when he made public Facebook posts which we find to have objectified and denigrated women and included degrading, vulgar and disturbing images of women that are not appropriate for a judge to be posting publicly.

It is well-settled that judges are held to a higher standard of conduct than the general public. *Matter of Kuehnel*, 49 N.Y. 2d 465, 469 (1980) (“[s]tandards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach.”); *Matter of Lonschein*, 50 N.Y.2d 569, 572 (1980) (“[m]embers of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.” (citation omitted)); *Matter of Mazzei*, 81 N.Y.2d 568, 572 (1993) (“[j]udges . . . are held to higher standards of conduct than the public at large . . . and thus what might be acceptable behavior when measured against societal norms could constitute ‘truly egregious’ conduct in the present context.” (citation omitted)). Here,

respondent failed to meet the high standards of conduct for judges and detracted from the dignity of his judicial office when he posted multiple public Facebook posts that were degrading toward women.

In addition, Section 100.4(C)(3)(b)(i) of the Rules mandates that judges “shall not personally participate in the solicitation of funds or other fund-raising activities” for nonprofit organizations. In *Matter of McNulty*, 2008 NYSCJC Annual Report 177, 179, the Commission wrote, “[t]he rules are clear; the Advisory Committee on Judicial Ethics has warned judges for decades not to engage in fund-raising activities; and the Commission has addressed the subject in its annual reports.” In violation of the Rules, respondent made public Facebook posts soliciting funds for the NRA when he encouraged the purchase of \$180 tickets to a “Friends of the NRA” banquet.

Judges are also prohibited from engaging in extra-judicial activities which “cast reasonable doubt on the judge’s capacity to act impartially as a judge.” (Rules §100.4(A)(1)); *Matter of Fisher*, 2019 NYSCJC Annual Report 126, 135 (“[e]very judge must understand that a judge's right to speak publicly is limited because of the important responsibilities a judge has in dispensing justice, maintaining impartiality and acting at all times in a manner that promotes public confidence in the judge's integrity.”); *Matter of Barringer*, 2006 NYSCJC Annual Report 97, 100 (“[t]he ethical standards require a judge to avoid extra-judicial conduct that casts doubt on the judge’s impartiality. . . . Upon assuming the bench, a judge surrenders certain rights and must refrain from certain conduct that may be permissible for others.”); *Matter of Peck*, March 19, 2021 NYSCJC Dec. at 6-7 (“respondent’s public Facebook post in which he aligned himself with and

expressed his strong support for law enforcement personnel, casts doubt on respondent's ability to act impartially when he presided over matters which involved law enforcement personnel.")¹ Respondent's public Facebook posts soliciting funds for the NRA and issuing a public invitation to join him in learning more about law enforcement officers refusing to enforce a New York State law, cast doubt on respondent's impartiality and violated his ethical obligations. Such conduct is inimical to an impartial judiciary and undermines public confidence that respondent will enforce laws he is required to uphold.

In addition to violating several ethical rules when he made the public Facebook posts, respondent's failure to participate in the Commission's proceedings after the Complaint was issued exacerbated his underlying misconduct. Respondent failed to file an answer to the Complaint as Section 7000.6(b) of the Commission's Operating Procedures and Rules required, failed to make a submission to the Commission regarding the motion for summary determination, failed to make a submission regarding sanction after summary determination was granted, failed to respond to the administrator's memorandum which argued that respondent should be removed and did not appear for oral argument before the Commission on the issue of sanction. Accountability for members of the judiciary is critical and all judges must be attentive to their responsibility to participate in Commission proceedings. In *Matter of O'Connor*, 32 N.Y.3d 121, 129 (2018), the Court of Appeals described Commission proceedings as follows:

If the public trust in the judiciary is to be maintained, as it must, those who don the robe and assume the role of arbiter of what is fair and just must do so with an acute appreciation

¹ Available at <https://cjc.ny.gov/Determinations/P/Peck.John.R.2021.03.19.DET.PDF>

both of their judicial obligations and of the Commission's constitutional and statutory duties to investigate allegations of misconduct (*see* NY Const, art VI, § 22; Judiciary Law art 2-A). In short, willingness to cooperate with the Commission's investigations and proceedings is not only required—it is essential.

Here, respondent's decision to not participate in the Commission's proceedings after the Complaint was issued exhibited a disdain for the Commission's important role and undermined public confidence in the judiciary.

Given the totality of respondent's misconduct and his unwillingness to participate in Commission proceedings after the Complaint was filed against him, we believe that respondent should be removed from the bench to protect the integrity of the courts. We are mindful that "removal, the ultimate sanction, should not be imposed for misconduct that amounts simply to poor judgment or even extremely poor judgment, but should be reserved for truly egregious circumstances." *Matter of Mazzei, supra*, 81 N.Y.2d at 572 (citations omitted). Here, respondent violated the Rules when he behaved in an undignified manner, engaged in improper fundraising, acted in a manner to cast doubt upon his impartiality and undermined public confidence in the impartiality of the judiciary. His misconduct was significantly exacerbated when he chose to ignore the Commission's proceedings.²

The Court of Appeals has held that, "the purpose of judicial disciplinary

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

proceedings is ‘not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents’.” *Matter of Reeves*, 63 N.Y.2d 105, 111 (1984) (citation omitted) Respondent’s actions demonstrated his disregard for his ethical responsibilities and he is unfit for judicial office.

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


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

Mr. Rosenberg concurs in part and dissents in part and files a separate opinion.

CERTIFICATION

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

Dated: January 7, 2022



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

Exhibit A



Dave Stilson shared a photo.

January 23, 2014 ·



EXHIBIT 1
(From Formal Written Complaint)

Flaunt Girls

January 23, 2014 ·

Like Page

2

Share

Exhibit B



Dave Stilson shared a photo.

February 19, 2014 ·

Cant argue this one bit. Very True

Country Girls Are Hotter Because:

- 1)They can work hard
- 2)Their boobs are real
- 3)They don't mind gettin dirty
- 4)They make great mothers
- 5)They stay faithful
- 6)They love the outdoors
- 7)Daisy dukes and boots are sexy
- 8)They can ride hard
- 9)Your girl can double as your hunting partner
- 10)Sex in the woods is way better

Proud Country Gal

February 19, 2014 ·

Little bit of Wednesday humor for y'all ... see the funny in it ❤️ 😊 Proud Country Girl

Like & Share & Laugh

Like Page

1

Share

Exhibit C



Dave Stilson shared a photo.

March 4, 2014 ·

EXHIBIT 3

(From Formal Written Complaint)

SHE ASKED ME TO TIE HER UP AND DO ANYTHING I WANT



Sexy, Flirty, Drunk, Haters & the Rest
March 4, 2014 ·

Like Page

5

1 Comment

Share



Ken Williams Funny

Exhibit D

EXHIBIT 6

(From Formal Written Complaint)



Dave Stilson

February 20, 2014 ·

Looking for a few more friends to attend the Friends of the NRA Banquet in Olean on March 15th, I want a table of ten. Its \$180.00 each person, includes dinner, pistol case, \$200.00 Bucket tickets, 10 Gun table Tickets, And 7 Gun of the year Tickets. Always a good time, great meal. And one of us 10 is Guaranteed to win a gun.

3

1 Share

Exhibit E



Dave Stilson

February 26, 2014 ·

Come the Friends of The NRA Banquet with me and learn more about this.



EXHIBIT 7
(From Formal Written Complaint)

COPSSUPPORTGUNRIGHTS.COM

**New York Troopers and Sheriffs refusing to enforce SAFE Act -
Cops Support Gun Rights**

2

2 Comments

Share



Paul Szymkowiak Why should they enforce something that's unconstitutional, what should happen is we put all these midnight politicians in jail for what they did

4y



David Zembrzycki Prison with BUBBA sounds better. Then they'll know the meaning of YOU will take it AND learn to LIKE it.....

4y

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OPINION BY MR.
ROSENBERG
CONCURRING IN
PART AND
DISSENTING IN
PART

I dissent from finding liability on Charge I as I do not believe the postings violate the Rules Governing Judicial Conduct and are not cause for discipline for cause pursuant to Article VI, Section 22, subdivision (a) of the New York State Constitution and Section 44 subdivision 1 of the Judiciary Law.

I concur with the majority on Charge II as it was unethical and improper for the respondent to solicit funds for the NRA and concur with the sanction of removal because the respondent exacerbated his misconduct when he inexplicably chose to ignore these proceedings after the formal complaint was filed, and chose not to even file an answer to it. Such non-participation exhibits a fatal disrespect for the Commission's jurisdiction and legitimate inquiries.

Dated: January 7, 2022



Ronald J. Rosenberg, Member
New York State
Commission on Judicial Conduct