

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DAVID R. STILSON,

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

**NOTICE OF MOTION
FOR
SUMMARY DETERMINATION**

PLEASE TAKE NOTICE that upon the annexed affirmation of John J. Postel, dated October 7, 2021, the annexed exhibits, and the Memorandum by Counsel to the Commission, a motion will be filed with the State Commission on Judicial Conduct at 61 Broadway, New York, New York 10006, on the 7th day of October, 2021, seeking an order determining that the Honorable David R. Stilson, engaged in judicial misconduct.

PLEASE TAKE FURTHER NOTICE answering papers, if any, are required to be filed with the Commission and to be served upon the undersigned on or before October 20, 2021.

Dated: October 7, 2021
Rochester, New York

To: Hon. David R. Stilson
Box 238
Allentown, New York 14707



John J. Postel, Esq.
Commission on Judicial Conduct
400 Andrews Street, Suite 700
Rochester, New York 14604
(585) 784-4141

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

**AFFIRMATION IN SUPPORT
OF MOTION FOR
SUMMARY DETERMINATION**

DAVID R. STILSON,

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

JOHN J. POSTEL, an attorney duly admitted to practice in the courts of the State
of New York, affirms under the penalties of perjury:

1. I am a Deputy Administrator for the New York State Commission on
Judicial Conduct ("Commission"). I make this affirmation in support of a motion for
summary determination in the captioned matter.
2. Pursuant to Section 44, subdivision 4, of the Judiciary Law of the State of
New York, the Commission directed that a Formal Written Complaint ("Complaint") be
served upon the Honorable David R. Stilson, a Justice of the Alma Town Court and an
Associate Justice of the Andover Village Court, Allegany County ("Respondent").
3. The Formal Written Complaint, dated May 10, 2021, contains two charges
alleging that Respondent: 1) repeatedly posted and disseminated sexually charged content
on social media in that he used his Facebook account to publicly promote and/or
approvingly comment upon posts and images that were demeaning toward women or
otherwise offensive; and 2) used his Facebook account to publicly engage in fundraising

for the National Rifle Association. A copy of the Notice of Formal Written Complaint and Formal Written Complaint is annexed as Exhibit A.¹

4. On May 12, 2021, the Commission mailed the Notice of Formal Written Complaint and Formal Written Complaint to Respondent via United States Postal Service (“USPS”) certified mail, together with a cover letter. A copy of the cover letter, dated May 12, 2021, is annexed as Exhibit B, and an affidavit of service by mail is annexed as Exhibit C.

5. On or about May 17, 2021, the Notice of Formal Written Complaint and Formal Written Complaint were delivered, as set forth in a USPS proof of delivery document annexed as Exhibit D.

6. The Commission’s May 12, 2021 cover letter included a request that Respondent sign and return a form indicating his home address. Respondent signed and dated the form on June 3, 2021 and mailed the form to the Clerk of the Commission in a Town of Alma envelope on June 4, 2021. A copy of the signed form is annexed as Exhibit E. A copy of the envelope is annexed as Exhibit F.

7. On June 9, 2021, the Commission mailed a new cover letter, along with copies of the May 12, 2021 cover letter and enclosures, to Respondent via USPS certified mail. The June 9, 2021 cover letter notified Respondent that the Commission had received documentation confirming Respondent’s receipt of the Notice of Formal Written

¹ The Formal Written Complaint inadvertently omitted Respondent’s judgeship in the Andover Village Court. The Administrator moves to amend the caption of the Formal Written Complaint to accurately reflect that Respondent is a Justice of the Alma Town Court and an Associate Justice of the Andover Village Court, Allegany County.

Complaint and Formal Written Complaint, advised that his response was overdue, warned that his failure to timely respond to the Complaint would result in a Motion for Summary Determination and indicated that Commission Counsel would recommend public discipline. A copy of the cover letter, dated June 9, 2021, is annexed as Exhibit G.

8. On or about June 14, 2021, the June 9, 2021 letter was delivered, as set forth in a USPS proof of delivery document annexed as Exhibit H.

9. On June 30, 2021, Respondent was personally served with the Notice of Formal Written Complaint and Formal Written Complaint. The affidavit of service is annexed as Exhibit I.

10. To date, Respondent has not filed an Answer to the Complaint.

11. Upon information and belief, Respondent's current term as Alma Town Court justice expires on December 31, 2021 and Respondent's current term as Andover Village Court associate judge expires on May 31, 2022.

12. Pursuant to Section 7000.6(b) of the Commission's Operating Procedures and Rules, when a judge under investigation fails to file an Answer to a Complaint, all of the allegations in the Complaint are deemed admitted. Thus, based on Respondent's failure to file an Answer, there is no genuine issue as to any material fact, and summary determination is appropriate, pursuant to Section 7000.6(c) of the Commission's Operating Procedures and Rules.

13. As set forth more fully in the accompanying Memorandum by Commission Counsel, Respondent's misconduct as set forth in the Complaint is hereby established.

Accordingly, Commission Counsel respectfully requests that the Commission grant summary determination as to Charges I and II of the Complaint.

14. Commission Counsel further requests that the Commission set a prompt schedule for briefing and argument as to sanction.²

WHEREFORE, it is respectfully submitted that no issues of material fact exist as to the Complaint, that a summary determination should be entered finding that Respondent has engaged in judicial misconduct, and that a date should be set for the memoranda to be filed and oral argument to be held on the issue of sanction.

Dated: October 07, 2021
Rochester, New York



JOHN J. POSTEL
Deputy Administrator
State Commission on Judicial Conduct
400 Andrews Street, Suite 700
Rochester, New York 14604
(585) 784-4141

² In the event that Respondent's terms expire before this proceeding concludes, Commission Counsel will recommend that the investigation into the matters alleged in the Complaint be closed and would recommend that it be re-opened in the event that Respondent holds judicial office again.

EXHIBIT A

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DAVID R. STILSON,

a Justice of the Alma Town Court,
Allegany County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, David R. Stilson, a Justice of the Alma Town Court, Allegany County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon Respondent the annexed Formal Written Complaint; and that, in accordance with said statute, Respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with his verified Answer to the specific paragraphs of the Complaint.

Dated: May 10, 2021
New York, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800

To: Hon. David R. Stilson
Alma Town Court
P.O. Box 67
Allentown, New York 14707-67

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

**FORMAL
WRITTEN COMPLAINT**

DAVID R. STILSON,

a Justice of the Alma Town Court,
Allegany County.

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct (“Commission”), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.
2. The Commission has directed that a Formal Written Complaint be drawn and served upon David R. Stilson (“Respondent”), a Justice of the Alma Town Court, Allegany County.
3. The factual allegations set forth in Charges I and II state acts of judicial misconduct by Respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (“Rules”).
4. Respondent has been a Justice of the Alma Town Court, Allegany County, since 2001. His current term expires on December 31, 2021. He has been an Associate Justice of the Andover Village Court, Allegany County, since 2019. His current term expires on May 31, 2021. Respondent previously served as a Justice of the Willing Town Court, Allegany County, from 2001 to 2013. Respondent is not an attorney.

CHARGE I

5. In or about 2014, Respondent repeatedly posted and disseminated sexually charged content on social media in that he used his Facebook account to publicly promote and/or approvingly comment upon posts and images that were demeaning toward women or otherwise offensive.

Specifications to Charge I

6. 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."

7. 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."

8. On or about January 23, 2014, Respondent posted to his public Facebook page a photograph of the upper torso of a woman wearing a revealing black bra without a shirt, which was captioned, "Boobies Are proof that men can focus on two things at once!" A copy of the post is appended as Exhibit 1.

9. 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: "Their boobs are real"; "They can ride hard"; and "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 2.

10. On or about March 4, 2014, Respondent posted to his public Facebook page an image portraying two photographs in tandem: one depicting a woman tethered to a bed by her wrists and ankles while clad only in undergarments; 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 3.

11. On or about March 10, 2014, Respondent posted to his public Facebook page a photograph of three dachshunds in hooded jackets, which was captioned, “ALWAYS COVER YOUR WIENER.” A copy of the post is appended as Exhibit 4.

12. On or about October 14, 2014, Respondent posted to his public Facebook page an image of a shower head overlaid with the words, “when I get naked in the bathroom, the shower gets turned on ;).” Respondent commented, “more true than some may think.” A copy of the post is appended as Exhibit 5.

13. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section

100.2(A) of the Rules; and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so they do not detract from the dignity of judicial office and are not incompatible with judicial office, in violation of Sections 100.4(A)(2) and (3) of the Rules.

CHARGE II

14. In or about February 2014, Respondent used his Facebook account to publicly engage in fundraising for the National Rifle Association (“NRA”).

Specifications to Charge II

15. 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 6.

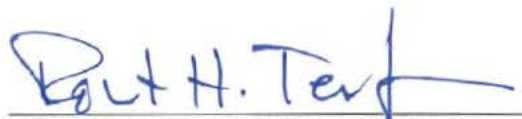
16. On or about February 26, 2014, Respondent posted to his public Facebook page, “Come [to] the Friends of the NRA Banquet with me and learn more about this,” above a linked PDF download from COPSSUPPORTGUNRIGHTS.COM captioned, “New York Troopers and Sheriffs refusing to enforce SAFE Act.” A copy of the post is appended as Exhibit 7.

17. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the

integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules, lent the prestige of judicial office to advance his own private interest and the private interest of others, in violation of Section 100.2(C) of the Rules; and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so they do not cast reasonable doubt on the judge's capacity to act impartially as a judge, in violation of Section 100.4(A)(1) of the Rules, and engaged in prohibited fund-raising activity on behalf of an organization, in violation of Sections 100.4(C)(3)(b)(i) and (iv) of the Rules.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: May 10, 2021
New York, New York


ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800



Dave Stilson shared a photo.

January 23, 2014 ·

EXHIBIT 1

Boobies

Are proof that men can focus
on two things at once!

Flaunt Girls

January 23, 2014 ·

Like Page

2

Share



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 ·

Like Page

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

Like & Share & Laugh

1

Share



Dave Stilson shared a [photo](#).

March 4, 2014 ·

EXHIBIT 3

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



Dave Stilson shared a photo.

March 10, 2014 ·



EXHIBIT 4

RadioNOW 100.9 is with [Amanda Risinger](#) and 36 others.

March 4, 2014 ·

Like Page

Better safe than sorry



Dave Stilson shared a photo.

October 14, 2014 ·

more true than some may think

EXHIBIT 5



KHOP @ 95.1fm is with Albert Jones and 12 others.

August 28, 2014 ·

Yeah it does!

Like Page

EXHIBIT 6

**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

**Dave Stilson**

February 26, 2014 ·

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

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

EXHIBIT 7

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

VERIFICATION

DAVID R. STILSON,

a Justice of the Alma Town Court,
Allegany County.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

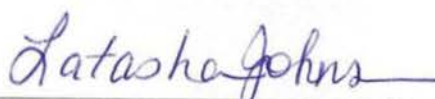
ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

1. I am the Administrator of the State Commission on Judicial Conduct.
2. I have read the foregoing Formal Written Complaint and, upon information and belief, all matters stated therein are true.
3. The basis for said information and belief is the files and records of the State Commission on Judicial Conduct.



Robert H. Tembeckjian

Sworn to before me this
10th day of May 2021



Notary Public

LATASHA Y. JOHNSON
Notary Public, State of New York
No. 01JO6235579
Qualified in New York County
Commission Expires February 14, 2023

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DAVID R. STILSON,

a Justice of the Alma Town Court,
Allegany County.

MANDATORY: Judge's Home Address

In the event that a determination of the Commission on Judicial Conduct is made in the above matter requiring transmittal to the Chief Judge and service upon the judge in accordance with Judiciary Law § 44, subd. 7, the Court of Appeals has asked the Commission to provide the judge's home address.

Judge's Home Address

OPTIONAL: Request and Authorization to Notify Judge's Attorney of Determination

In the event that a determination of the Commission on Judicial Conduct is made in the above matter requiring transmittal to the Chief Judge and service upon me in accordance with Judiciary Law § 44, subd. 7, the undersigned judge or justice:

(1) requests and authorizes the Chief Judge to cause a copy of my notification letter from her and a copy of the determination to be sent to my attorney(s) by mail:

Attorney's Name, Address, Telephone

(2) requests and authorizes the Clerk of the Commission to transmit this request to the Chief Judge together with the other required papers.

This request and authorization shall remain in force unless and until a revocation in writing by the undersigned judge or justice is received by the Commission.

Dated:

Signature of Judge or Justice

Acknowledgment:

Signature of Attorney for Judge or Justice

SEND TO: Clerk of the Commission
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006



EXHIBIT B

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

400 ANDREWS STREET, SUITE 700
ROCHESTER, NEW YORK 14604

585-784-4141 518-299-1757
TELEPHONE FACSIMILE
www.cjc.ny.gov

JOHN J. POSTEL
DEPUTY ADMINISTRATOR
M. KATHLEEN MARTIN
DAVID M. DUGUAY
SENIOR ATTORNEYS
STEPHANIE A. FIX
STAFF ATTORNEY

CONFIDENTIAL

May 12, 2021

Honorable David R. Stilson
Alma Town Court
P.O. Box 67
Allentown, New York 14707-67

Re: File No. 2019/R-0024

Dear Judge Stilson:

The State Commission on Judicial Conduct has directed that a Formal Written Complaint be served upon you, pursuant to Section 44, subdivision 4, of the Judiciary Law. Enclosed are the Notice of Formal Written Complaint and the Formal Written Complaint in this matter. For your reference, the Rules Governing Judicial Conduct and the Commission's Operating Procedures and Rules are available on the Commission's website.¹

Kindly complete the enclosed form advising the Commission of your home address and return the form by mail to the Clerk of the Commission. This information is requested pursuant to a practice of the Court of Appeals. The information is confidential and will be transmitted by the Clerk of the Commission to the Court of Appeals in the event there is a public disciplinary determination. The remainder of the form contains an optional "Request and Authorization." Please note that the Request and Authorization must be completed in order for your attorney to be notified by the Court of Appeals of any public determination filed with the Court by the Commission.

¹ <http://www.cjc.ny.gov/Legal.Authorities/legal.authorities.htm>

Honorable David R. Stilson

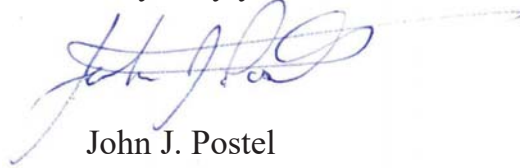
May 12, 2021

Page 2

Papers are being served upon you via certified mail addressed to your court. At your earliest convenience please acknowledge receipt of these papers.

If you have any questions concerning this matter, please contact me or David Duguay, Senior Attorney.

Very truly yours,



John J. Postel

Deputy Administrator

Enclosures

CERTIFIED MAIL #9402 8092 0212 1040 2977 78

RETURN RECEIPT REQUESTED

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)

: ss.

COUNTY OF MONROE)

KATHRYN TRAPANI, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and works at 400 Andrews Street, Suite 700, Rochester, New York 14604.

On May 12, 2021, deponent served the within Notice and Formal Written Complaint upon Honorable David R. Stilson, Respondent in this action, at Alma Town Court, P.O. Box 67, Allentown, New York 14707-0067, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, certified mail, return receipt requested, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



Kathryn Trapani

Sworn to before me this

12 day of May, 2021.


Notary Public

TERRY L. MILLER
Notary Public, State of New York
No. 01MI6183152
Qualified in Monroe County
Commission Expires March 10, 2024



EXHIBIT D

May 17, 2021

Dear Kathryn Trapani:

The following is in response to your request for proof of delivery on your item with the tracking number:
9402 8092 0212 1040 2977 78.

Item Details

Status:	Delivered
Status Date / Time:	May 17, 2021, 1:25 pm
Location:	ALLENTOWN, NY 14707
Postal Product:	Priority Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic Up to \$100 insurance included
Recipient Name:	Honorable David R Stilson

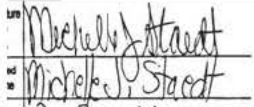
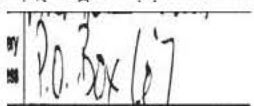
Shipment Details

Weight:	2lb, 0.0oz
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Destination Delivery Address

Street Address:	PO BOX 67
City, State ZIP Code:	ALLENTOWN, NY 14707-0067

Recipient Signature

Signature of Recipient:	
Address of Recipient:	

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

EXHIBIT E

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

DAVID R. STILSON,

a Justice of the Alma Town Court,
Allegany County.

MANDATORY: Judge's Home Address

In the event that a determination of the Commission on Judicial Conduct is made in the above matter requiring transmittal to the Chief Judge and service upon the judge in accordance with Judiciary Law § 44, subd. 7, the Court of Appeals has asked the Commission to provide the judge's home address.

Box 738, ALLENTOWN, N.Y. 14707

Judge's Home Address

OPTIONAL: Request and Authorization to Notify Judge's Attorney of Determination

In the event that a determination of the Commission on Judicial Conduct is made in the above matter requiring transmittal to the Chief Judge and service upon me in accordance with Judiciary Law § 44, subd. 7, the undersigned judge or justice:

(1) requests and authorizes the Chief Judge to cause a copy of my notification letter from her and a copy of the determination to be sent to my attorney(s) by mail:

Attorney's Name, Address, Telephone

(2) requests and authorizes the Clerk of the Commission to transmit this request to the Chief Judge together with the other required papers.

This request and authorization shall remain in force unless and until a revocation in writing by the undersigned judge or justice is received by the Commission.

Dated: 6-3-21

David R. Stilson
Signature of Judge or Justice

Acknowledgment:

Signature of Attorney for Judge or Justice

SEND TO: Clerk of the Commission
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006

Town of Alma

Box 67
Allentown, NY 14707

BUFFALO NY 140

4 JUN 2021 PM 2 L



EXHIBIT F

CLERK, C.S.C.J.C.

61 BROADWAY, SUITE 1200

NEW YORK, N.Y.

10006

10006-270199





EXHIBIT G

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN
ADMINISTRATOR & COUNSEL

400 ANDREWS STREET, SUITE 700
ROCHESTER, NEW YORK 14604

585-784-4141 518-299-1757
TELEPHONE FACSIMILE
www.cjc.ny.gov

JOHN J. POSTEL
DEPUTY ADMINISTRATOR
M. KATHLEEN MARTIN
DAVID M. DUGUAY
SENIOR ATTORNEYS
STEPHANIE A. FIX
STAFF ATTORNEY

CONFIDENTIAL

June 9, 2021

Honorable David R. Stilson
Alma Town Court
P.O. Box 67
Allentown, New York 14707-67

Re: File No. 2019/R-0024

Dear Judge Stilson:

On May 12, 2021, the State Commission on Judicial Conduct served a Formal Written Complaint upon you, pursuant to Section 44, subdivision 4, of the Judiciary Law. Enclosed is a copy of that letter including the Notice of Formal Written Complaint and the Formal Written Complaint in this matter. Papers were served upon you via certified mail addressed to your court.

Your response was due within 20 days of receipt of the letter. The certified mailing materials show that the documents were received on May 17, and your response was due on June 7, 2021.

Please be advised that your failure to answer the Formal Written Complaint will result in a Motion for Summary Determination being filed against you followed by a recommendation for public discipline.

Honorable David R. Stilson

June 9, 2021

Page 2

Please acknowledge receipt of this letter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John J. Postel", with a long horizontal flourish extending to the right.

John J. Postel
Deputy Administrator

Enclosures

CERTIFIED MAIL #9402809202121044847467
RETURN RECEIPT REQUESTED



EXHIBIT H

June 14, 2021

Dear Kathryn Trapani:

The following is in response to your request for proof of delivery on your item with the tracking number:
9402 8092 0212 1044 8474 67.

Item Details

Status:	Delivered, Individual Picked Up at Post Office
Status Date / Time:	June 14, 2021, 1:14 pm
Location:	ALLENTOWN, NY 14707
Postal Product:	Priority Mail®
Extra Services:	Certified Mail™ Return Receipt Electronic Up to \$100 insurance included
Recipient Name:	Honorable David R Stilson


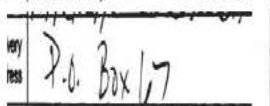
Shipment Details

Weight:	2lb, 0.0oz
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Destination Delivery Address

Street Address:	PO BOX 67
City, State ZIP Code:	ALLENTOWN, NY 14707-0067

Recipient Signature

Signature of Recipient:	
Address of Recipient:	

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

EXHIBIT I

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 : ss.:
COUNTY OF MONROE)

Vanessa Lynn Mangan, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and works at NYSCJC, 400 Andrews Street, Suite 700, Rochester, New York, 14604.

On June 30, 2021, deponent served the within Notice of Formal Written Complaint and Formal Written Complaint upon Hon. David R Stilson, Respondent in this action, at the judge's home address, [REDACTED]
[REDACTED], by delivering to and leaving with Respondent a true copy thereof.

Vanessa Lynn Mangan, Sr. Inv.
Vanessa Lynn Mangan, Sr. Inv.

Sworn to before me this
30th day of July, 2021

Terry L. Miller
Notary Public

TERRY L. MILLER
Notary Public, State of New York
No. 01MI6183152
Qualified in Monroe County
Commission Expires March 10, 2024

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

DAVID R. STILSON,

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

**MEMORANDUM BY COUNSEL TO THE COMMISSION
IN SUPPORT OF MOTION FOR SUMMARY DETERMINATION**

ROBERT H. TEMBECKJIAN, ESQ.

Administrator and Counsel
Commission on Judicial Conduct
400 Andrews Street, Suite 700
Rochester, New York 14604
(585) 784-4141

Of Counsel:

John J. Postel, Esq.
Edward Lindner, Esq.
Denise Buckley, Esq.
David P. Stromes, Esq.
David M. Duguay, Esq.

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct (“Commission”) in support of a motion seeking a summary determination, pursuant to Sections 7000.6(b) and (c) of the Commission’s Operating Procedures and Rules, that the Honorable David R. Stilson (“Respondent”), has engaged in misconduct. In the event that the Commission grants this motion, Commission Counsel will submit a separate memorandum on the issue of sanction.

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint (“Complaint”), dated May 10, 2021, containing two charges. Charge I alleged that in or about 2014, Respondent repeatedly posted and disseminated sexually charged content on social media in that 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 alleged that in or about February 2014, Respondent used his Facebook account to publicly engage in fundraising for the National Rifle Association.

Respondent was served with the Complaint via certified mail twice: on May 12, 2021, and June 9, 2021. The mailings were delivered May 17, 2021, and June 14, 2021, respectively. Respondent was also personally served with the Complaint on June 30, 2021. *See* Affirmation of John J. Postel, ¶¶ 4-9.

B. Respondent's Answer

Pursuant to Judiciary Law § 44(4) and Section 7000.6(b) of the Commission's Operating Procedures and Rules, Respondent's verified Answer was due within 20 days of receipt of the Complaint. Respondent has not filed an Answer to the Complaint. Affirmation of John J. Postel, ¶ 10.

C. Facts

The facts of the Complaint are deemed admitted pursuant to Section 7000.6(b) of the Commission's Rules, which provides that "[f]ailure to answer the formal written complaint shall be deemed an admission of its allegations." In short, Respondent (1) posted content to his public Facebook page that was demeaning toward women and otherwise offensive, and (2) used his public Facebook page to fundraise for the National Rifle Association ("NRA") and advocate against New York's SAFE Act legislation.

As to Charge I

1. In or about 2014, Respondent established a Facebook account. He set his account settings such that his page was viewable by the general public. Respondent's profile included a photograph of Respondent's face and listed his name as "Dave Stilson."

2. On or about January 23, 2014, Respondent posted publicly to his Facebook page a photograph of the upper torso of a woman wearing a revealing black bra without a shirt, which was captioned, "Boobies Are proof that men can focus on two things at once!"

3. On or about February 19, 2014, Respondent posted publicly to his Facebook page a photograph listing 10 reasons why “Country Girls are Hotter.” The list included: “Their boobs are real;” “They can ride hard;” and “Sex in the woods is way better.” Respondent commented, “Can[']t argue this one bit. Very true.”

4. On or about March 4, 2014, Respondent posted publicly to his Facebook page an image portraying two photographs in tandem: one depicting a woman tethered to a bed by her wrists and ankles while clad only in undergarments, the other depicting a man fishing. The image was captioned, “SHE ASKED ME TO TIE HER UP AND DO ANYTHING I WANT.”

5. On or about March 10, 2014, Respondent posted publicly to his Facebook page a photograph of three dachshunds in hooded jackets, which was captioned, “ALWAYS COVER YOUR WIENER.”

6. On or about October 14, 2014, Respondent posted publicly to his Facebook page an image of a shower head overlaid with the words, “when I get naked in the bathroom, the shower gets turned on ;).” Respondent commented, “more true than some may think.”

As to Charge II

7. On or about February 20, 2014, Respondent posted publicly to his 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.”

8. On or about February 26, 2014, Respondent posted publicly to his 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.”

ARGUMENT

Charge I

RESPONDENT COMMITTED MISCONDUCT BY POSTING IMAGES AND COMMENTS TO HIS PUBLIC FACEBOOK PAGE THAT DEMEANED WOMEN AND WERE OTHERWISE OFFENSIVE.

“As the Court of Appeals stated [over] 40 years ago, a judge’s off-the-bench behavior must comport with high ethical standards to ensure the public’s respect for the judiciary as a whole since ‘[w]herever he travels, a Judge carries the mantle of his esteemed office with him.’” *Matter of Steinberg*, 51 N.Y.2d 74, 81 (1980). Thus,

[A] Judge may not so facilely divorce behavior off the Bench from the judicial function. Standards of conduct on a plane much higher than 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...

Matter of Kuehnel, 49 NY2d 465, 469 (1980) (internal citations omitted); *See Matter of Mazzei*, 81 NY2d 568, 572 (1993) (“judges . . . 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” [internal citations omitted]). *See also Matter of Senzer*, 2020 Ann Rep 137, 145,

(Commn on Jud Conduct October 9, 2019) (removing from office a judge who committed misconduct unbecoming of the judiciary while working as an attorney).

Those standards unequivocally extend to Facebook. Indeed, in *Matter of Fisher*, 2019 Ann Rep 126 (Commn on Jud Conduct June 26, 2018), the Commission disciplined a judge for inappropriate Facebook posts – photographs he had improperly obtained with attendant derogatory comments – notwithstanding that the judge did not identify himself or refer to his judicial position. In its determination, the Commission advised that “Every 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.” *Id.* at 135; *see also Matter of Peck* 2022 Ann Rep __ (Commn on Jud Conduct Mar 19, 2021) (admonishing judge who posted to his public Facebook account photographs of himself wearing a police uniform at a rally to support police officers).¹

Respondent cast aside the high standards of his office when he sexually objectified women in a number of public Facebook posts and comments, including:

- a photograph of a woman’s torso without a shirt and in a revealing bra with the word “Boobies” above her chest and cleavage, and a caption, “. . . proof that men can focus on two things at once!”;

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

- a post that referenced women as “country girls” and stated they were “hotter” because “[t]heir boobs are real” and “they can ride hard”;
- a post stating that “sex in the woods is way better,” to which Respondent commented, “Can[’]t argue this one bit. Very true”;
- a pair of tandem photographs showing a man fishing in one frame, and a woman lying on a bed in a bra and underwear with her wrists and ankles tethered in the other, with the words, “She asked me to tie her up and do anything I want.”

These degrading and damaging posts were antithetical to Respondent’s status as a judge, ran contrary to his duty to maintain high standards of conduct necessary to preserve the integrity and independence of the judiciary (Rule 100.1), and created an appearance of impropriety damaging to public confidence in the integrity and impartiality of the judiciary (Rule 100.2[A]). *Cf. Matter of Doolittle*, 1986 Ann Rep 87, 88 (Comm’n on Jud Conduct June 13, 1985) (“[t]he cajoling of women about their appearance or their temperament has come to signify differential treatment on the basis of sex. . . . [T]he teasing once tolerated [is] now considered demeaning and offensive”); *see also 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 Dye*, 1999 Ann Rep 93 (Comm’n on Jud Conduct February 6, 1998) (judge made improper comments to his secretary concerning her physical appearance and that of other women).

Respondent publicly shared additional Facebook posts that were puerile (a photograph of dachshund dogs with hooded jackets captioned “Always cover your

wiener”) and referenced his sexuality (“When I get naked in the bathroom, the shower gets turned on” and “more true than some may think.”)

Respondent’s posts 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).

Charge II

RESPONDENT COMMITTED MISCONDUCT BY PUBLICLY POSTING SOLICITATIONS TO PURCHASE TICKETS AND ATTEND A NATIONAL RIFLE ASSOCIATION BANQUET.

By using his public Facebook page to solicit friends to attend a National Rifle Association (“NRA”) Banquet and share anti-SAFE Act material, Respondent departed from prohibitive standards specifically set forth in the Rules.

As the Court of Appeals stated 41 years ago, judges must recognize that “any actions taken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary,” and “must assiduously avoid those contacts which might create even the appearance of impropriety.” *Matter of Lonschein*, 50 NY2d 569, 572 (1980). The Commission thus has long disciplined judges for engaging in fundraising activities when such activities create an appearance of impropriety or abuse the prestige of judicial office, even if the judge does not directly solicit funds and or does so on behalf of a charitable entity. *See, e.g., Matter of Harris*, 1989 Ann Rep 85 (Comm’n on Jud Conduct January 22, 1988); *accepted* 72 NY2d 335 (1988) (judge participated in fundraising activities for the American Heart Association); *Matter of Wolfgang*, 1988 Ann Rep 245 (Comm’n on Jud Conduct November 19, 1987) (*inter alia*, judge served on panel for a

Cystic Fibrosis Foundation fundraising event); *Matter of Turner*, 1988 Ann Rep 235 (Commn on Jud Conduct March 23, 1987) (judge participated in fundraising activities for the American Heart Association). The Commission has also imposed discipline when judges advocate publicly for issues of personal interest to them in a manner that casts doubt upon their ability to be impartial on the bench. *See, e.g., Matter of Barringer*, 2006 Ann Rep 97, 100 (Commn on Jud Conduct October 11, 2005) (judge’s “public advocacy against a local road closure by the New York City Department of Environmental Protection (DEP) violated [ethical] standards by demonstrating that he no longer had the ability to be and appear to be impartial in matters involving the DEP”).

Judged by those oft-applied standards, Respondent committed misconduct here. In a pair of public posts to his Facebook page, which identifies him by name and photograph, Respondent (1) promoted a fundraiser banquet to support the NRA and invited friends to accompany him at \$180 per ticket, and promoted a link from a website titled “COPSSUPPORTINGGUNRIGHTS.COM” captioned, “New York Troopers and Sheriffs refusing to enforce SAFE ACT.” By publicly trumpeting his interest in supporting the NRA and essentially encouraging law enforcement to refuse to enforce New York’s gun laws – despite his judicial status and the fact that he presides over gun-related charges – Respondent violated Rule 100.2(C), which prohibits a judge from lending the prestige of judicial office to advance the private interests of himself or others; Rule 100.4(A)(1), which requires that a judge conduct his extra-judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially as a

judge, and Rule 100.4(C)(3)(b)(iv), which prohibits a judge from engaging in fundraising activities on behalf of an organization. *See Matter of Peck, supra.*

CONCLUSION

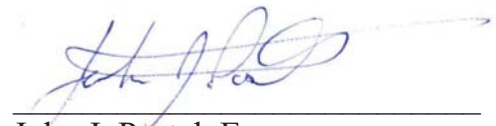
For the foregoing reasons, Commission Counsel respectfully requests that the Commission grant the motion for summary determination, finding that Respondent has committed judicial misconduct, and that a schedule be set for briefs and oral argument before the Commission on the sanction to be imposed upon Respondent pursuant to Section 44, subdivision 4, of the Judiciary Law.

Dated: October 7, 2021
Rochester, New York

Respectfully submitted,

ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct

By:



John J. Postel, Esq.
Deputy Administrator
Commission on Judicial Conduct
400 Andrews Street, Suite 700
Rochester, New York 14604
(585) 784-4141

Of Counsel:

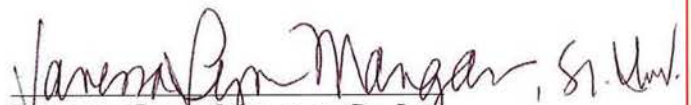
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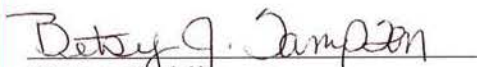
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COUNTY OF MONROE)

Vanessa Lynn Mangan, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and works at NYSCJC, 400 Andrews Street, Suite 700, Rochester, New York, 14604.

On October 7, 2021, deponent served the within Notice of Motion for Summary Determination, Affirmation in Support of Motion for Summary Determination, and Memorandum by Counsel to the Commission in Support of Motion for Summary Determination upon Hon. David R Stilson, Respondent in this action, at the judge's home address, [REDACTED], by delivering to and leaving with Respondent a true copy thereof.


Vanessa Lynn Mangan, Sr. Inv.

Sworn to before me this
12th day of October, 2021


Notary Public

BETSY J. SAMPSON
Notary Public, State of New York
No. 01SA5050670
Qualified in Ontario County
Commission Expires October 16, 2021