

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

VAN H. WHITE,

a Judge of the Rochester City Court,
Monroe County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Brian C. Doyle, Esq.
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore, Ph.D.
Marvin Ray Raskin, Esq.
Graham B. Seiter, Esq.
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

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

Hon. Van H. White, *pro se*

Respondent, Van H. White, a Judge of the Rochester City Court, Monroe

County, was served with a Formal Written Complaint (“Complaint”) dated November 6, 2023 containing three charges. Charge I of the Complaint alleged that on July 23, 2022, just prior to the arraignment of Kelvin J. Vickers, Jr. on criminal charges in connection with his alleged shooting of two Rochester Police Department officers, respondent asked everyone present in the courtroom, including more than a hundred uniformed members of the Rochester Police Department, to join him in a moment of silence for victims of violence. Charge II alleged that on September 29, 2022, respondent participated in a public demonstration against violence near the site where a child had been wounded by stray gunfire the day before, and made televised comments sympathetic to victims of violence, notwithstanding that two individuals had been arrested in connection with the alleged crime, one of whom already had been arraigned in Rochester City Court. Charge III alleged that from July 2022 through May 2023, on his personal website and personal Facebook page, both of which identified him as a Rochester City Court Judge, respondent posted a video that he created entitled, “Deadly Encounters,” which provided legal advice to individuals involved in traffic stops. In the video, which was recorded and posted when he was an attorney in private practice, but which remained posted for approximately 10 months after he took the bench, respondent *inter alia* referred to the police as a “pack of wolves.” Respondent filed an Answer dated November 27, 2023.

On March 26, 2024, the Administrator and respondent entered into an Agreed Statement of Facts (“Agreed Statement”) pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On May 2, 2024, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 1990. He has been a Judge of the Rochester City Court, Monroe County, since July 14, 2022. Respondent’s term expires December 31, 2032.

As to Charge I of the Formal Written Complaint

2. On July 23, 2022, respondent, who was serving by appointment as a Rochester City Court Judge, was a candidate for election to that office in the election scheduled for November 2022.

3. On July 23, 2022, in *People v Kelvin J. Vickers, Jr.*, respondent arraigned the defendant, who was charged with Murder in the Second Degree, Attempted Murder in the Second Degree, two counts of Criminal Possession of a Weapon in the Second Degree, and Assault in the Second Degree, in connection with the shooting of two Rochester Police Department officers.

4. Prior to the arraignment, over defense counsel's objection, respondent granted media requests to videotape and photograph the proceeding for public distribution and viewing.

5. Just before Mr. Vickers was brought into the courtroom, which was filled with more than 100 uniformed members of the Rochester Police Department, respondent made the following comments from the bench:

Good morning. Actually, it is a difficult morning . . . In the five days that I have been on the bench, this is probably the third occasion where I have felt [it] necessary to ask everyone to join me in a moment of silence . . .

I've seen too many mothers and fathers, sons and daughters here grieving . . . So I ask you all to take [a] moment to think of those left to deal with the tragedy of this type of loss.

Those comments were subsequently published by the media.

As to Charge II of the Formal Written Complaint

6. On September 28, 2022, two defendants were arrested shortly after gunshots were fired in the area of North Clinton Avenue in the Northeast Quadrant of Rochester, New York. A three-year-old boy was struck by a stray bullet.

7. On September 29, 2022, in connection with the shooting, one of two defendants was arraigned in Rochester City Court before a judge other than respondent, on felony assault and weapons charges, as well as on a misdemeanor charge of endangering the welfare of a child.

8. On September 29, 2022, in the evening, after having presided in Rochester City Court during the day, respondent participated in a public rally at a location near the site of the shooting, organized by individuals demonstrating opposition to violence. The demonstration was covered by local media.

9. Respondent spoke to media representatives at the demonstration, both on and off camera, and was identified by name and title in video, online and print news coverage of the event. Among other things, respondent was publicly reported as having said during the demonstration that “the names of the victims have changed, but this problem has not.”

As to Charge III of the Formal Written Complaint

10. Years before becoming a judge, respondent created a personal website with the following web address: <https://www.thelegalbrief.com>.

11. Facebook is an internet social networking website and platform that, *inter alia*, allows users to create and curate their own Facebook pages, on which they can share personal and personalized content. 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.” Years before becoming a judge, respondent created and has maintained a personal Facebook account in the name of “Van Henri White.”

12. Prior to becoming a judge, respondent wrote, produced and narrated a series of legal videos that he called, “The Legal Brief with Van White,” which was accessible to members of the public through his personal website and his personal Facebook page. Respondent’s website described the videos as being designed to inform urban residents of their legal rights.

13. One episode of respondent’s “Legal Brief” was a video of approximately four minutes in length entitled, “Deadly Encounters,” which *inter alia* provided information and commentary about various legal cases, the law, and police weapons. The video *inter alia* advised individuals on how to interact with the police if stopped in their vehicles by law enforcement. “Deadly Encounters,” in which respondent depicted and identified “PR-24s” (*i.e.* a standard-issue police baton) as “the modern-day equivalent of a billy club,” also contained video of aggressive, hostile and violent police behavior, including video of Los Angeles police officers beating Rodney King in 1991 and a photograph of Mr. King’s badly beaten face. In the video, respondent stated, *inter alia*, “you are always going to be on the losing end if it’s a battle between you and a pack of wolves with PR-24s.”

14. From July 2022, when he first became a judge, to May 2023, respondent identified himself as a Rochester City Court Judge on his Facebook page, to which he also posted various photographs of himself in his judicial robe, as well as information related to his judicial appointment and election.

15. From July 2022, when he first became a judge, to May 2023, respondent continued to operate his personal website, on the cover page of which he posted a photograph of himself beside his judicial nameplate and wearing his judicial robe at his Rochester City Court bench.

16. From July 2022, when he first became a judge, to May 2023, the “Deadly Encounters” video, and other videos from respondent’s “Legal Brief” series, remained posted to his personal website (“The Best of the Legal Brief”) and accessible to the public. The website, *inter alia*, included a statement that said:

Now that Van White is a judge, he can no longer practice law or offer legal advice. Therefore, The Legal Briefs contained in this section are from the Legal Briefs archives and are not offered for the purposes of offering legal advice. However, even as a judge, Van will always be there, wherever and whenever he is asked, to inform and inspire our community.

Additional Factors

17. As to Charge I, respondent understands that his conduct, occurring as it did in the context of the shooting of police officers, in the midst of the arraignment of a defendant whose innocence was presumed and whose guilt had not been established, failed to avoid impropriety and the appearance of partiality.

Respondent is now more mindful of, and commits to promote, the judicial obligation to be and appear impartial.

18. As to Charge II, respondent understands that his conduct at a public

demonstration, occurring as it did in reaction to a shooting, and shortly after the arraignment of a defendant whose innocence was presumed and whose guilt had not been established, failed to avoid impropriety and the appearance of partiality. Respondent is now more mindful of, and commits to promote, the judicial obligation to be and appear impartial.

19. As to both Charges I and II, the conduct occurred shortly after respondent became a judge. With experience, he is now more attentive to his ethical obligations under the Rules.

20. As to Charge III, respondent has closed his “legalbrief” website and realizes he should have done so promptly upon assuming judicial office, to avoid even the appearance of bias and that he was dispensing legal advice.

21. Between July 2022 and December 2022, respondent communicated with the Advisory Committee on Judicial Ethics on several occasions, in order to clarify and better understand his ethical responsibilities.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(1), 100.3(B)(4), 100.4(A)(1) and 100.4(G) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I, II and III of the Formal Written

Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

The Rules require judges to maintain high standards of conduct and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Rules, §§100.1, 100.2(A)) Judges are prohibited from engaging in extra-judicial activities which “cast reasonable doubt on the judge’s capacity to act impartially as a judge.” (Rules §100.4(A)(1)) The Rules also require that judges “shall not be swayed by . . . public clamor or fear of criticism” and “shall perform judicial duties without bias or prejudice against or in favor of any person.” (Rules §§100.3(B)(1) and (4)) Respondent violated these Rules by the comments he made in the *Vickers* matter shortly before the defendant’s arraignment at a time when all defendants are presumed innocent. Moreover, respondent again violated the Rules when he was identified as a judge and made public statements sympathetic to victims of violence at a demonstration held in response to a shooting when, in connection with that shooting, one individual had been arraigned that same day in Rochester City Court before another judge.

“Upon assuming the bench, a judge surrenders certain rights and must refrain from certain conduct that may be permissible for others. Even otherwise laudable conduct must be avoided if it . . . impairs public confidence in judicial

impartiality and independence.” *Matter of Barringer*, 2006 Ann Rep of NY Commn on Jud Conduct at 97, 100-101. “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 [and] maintaining impartiality . . .” *Matter of Fisher*, 2019 Ann Rep of NY Commn on Jud Conduct at 126, 135. By his statements and actions, respondent violated the Rules and undermined public confidence in his impartiality.

“The ability to be impartial and to appear impartial is an indispensable requirement for a judge.” *Matter of Frati*, 1996 Ann Rep of NY Commn on Jud Conduct at 83, 84 (citation omitted) (judge “made it appear that he was influenced by community hostility” toward a litigant); *Matter of Elia*, 2023 Ann Rep of NY Commn on Jud Conduct at 120, 133 (“[b]y aligning himself with law enforcement personnel . . . respondent . . . cast doubt on his ability to act impartially when he presided over matters which involved law enforcement personnel.”); *Matter of Peck*, 2022 Ann Rep of NY Commn on Jud Conduct at 136 (judge’s public Facebook post expressing his strong support for law enforcement personnel cast doubt upon the judge’s impartiality). Respondent’s reference to the police as a “pack of wolves” on his public website, which identified him as a judge, cast doubt on his impartiality and was improper. By the totality of his conduct, respondent undermined public confidence in the judiciary and cast doubt on his ability to act

impartially when he presided over matters involving violence or law enforcement personnel.

In addition, as respondent has acknowledged, through his personal website and his Facebook page, both of which identified him as a judge, he improperly provided legal advice in violation of the Rules which prohibit a full-time judge from practicing law. (Rules §100.4(G)) *See, Matter of Nugent Panepinto*, 2021 Ann Rep of NY Commn on Jud Conduct at 239, 248 (judge violated Section 100.4(G) of the Rules when she advised parents at her child's school regarding language to include in letters to meet the legal standard for injunctive relief).

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent has acknowledged that his conduct was improper and warrants public discipline, that his misconduct took place shortly after he became a judge and that he has committed to being more sensitive to his ethical obligations. We trust that respondent has learned from this experience and in the future will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

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

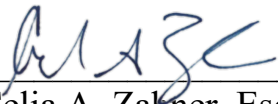
Mr. Belluck, Ms. Grays, Judge Camacho, Mr. Doyle, Judge Miller, Ms. Moore, Mr. Raskin, Mr. Seiter, Judge Singh and Ms. Yeboah concur.

Judge Falk did not participate.

CERTIFICATION

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

Dated: May 13, 2024



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