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

RANDY A. HALL,

a Justice of the Dickinson Town Court,
Broome County.

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

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TABLE OF CONTENTS

PAGE

Table of Authorities

Cases

Commission Determinations

Statutes

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 Randy A. Hall ("Respondent") be removed from judicial office. The Commission has already determined that Respondent committed judicial misconduct, having granted Counsel's motion for summary determination on July 20, 2023.

INTRODUCTION

Just three months after Respondent became a Dickinson Town Justice in January 2022, concerns about his conduct led to an Administrative Order directing that all matters pending before him be reassigned to another judge, that no additional matters be assigned to him, and that he be confined to chambers until further order. In that short span of time, Respondent committed a profusion of misconduct that included sexually harassing his co-judge and clerk, telling sexually explicit jokes from the bench, mocking mandatory sexual harassment awareness and training, making comments in criminal cases indicating that he had prejudged the guilt of defendants before him, posting puerile and inappropriate material to his public Facebook page which in some cases explicitly referenced his judicial office, and repeatedly invoking his judicial office during a dispute at a gas station. For the totality of that misconduct, Respondent should be removed from the bench.

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law Section 44(4), the Commission authorized a Formal Written Compliant ("Complaint"), dated March 15, 2023, containing four charges, alleging that Respondent: (1) repeatedly asserted his judicial office with police during a dispute with another customer at a gas station; (2) engaged in a pattern of sexually inappropriate, harassing and unwelcome behavior toward his co-judge and court staff, and made inquiries in court about finding employment as a police officer; (3) made comments in court conveying the impression that he had prejudged the guilt of criminal defendants appearing before him; and (4) posted sexual and otherwise inappropriate content to his public Facebook page.

B. Respondent's Failure to Answer

Respondent was served with the Complaint on March 18, 2023, but did not file an Answer.

C. Motion for Summary Determination

By motion dated March 15, 2023, Commission Counsel moved for summary determination, in that the allegations in the Complaint were deemed admitted by Respondent's failure to Answer and constituted judicial misconduct. Respondent did not respond to the motion.

D. The Commission's Decision and Order

By decision and order dated July 20, 2023, the Commission granted the motion for summary determination in all respects, finding that the factual allegations of Charges I through IV of the Complaint, and Respondent's misconduct, were established. The Commission found the following facts.

Charge I: On or about March 3, 2022, during a dispute with another customer at one of the gas pumps at a service station in Binghamton, New York, Respondent repeatedly asserted his judicial office with the police, first when he called 911 to request their presence at the scene, and later when he sought to have the other party to the dispute charged with harassment.

On or about March 3, 2022, at approximately 12:40 PM, Respondent got into a dispute with John Dubrava over access to a particular gas pump at a gas station in Binghamton, New York. At approximately 12:43 PM, Respondent called 911 to report that he was being threatened in connection with a dispute over a gas pump. He requested that an officer be sent "right away" to his location, which was a service station on Upper Front Street in Binghamton (Complaint ¶ 6).

When asked by the 911 operator to clarify his location, Respondent stated, "Yeah, this is Judge Hall. It's right by Sonic" (Complaint ¶ 7). When asked by the 911 operator to provide his name, Respondent answered, "I'm Judge Hall. Randy Hall" (Complaint ¶ 8).

Within minutes, members of the Broome County Sheriff's Office responded to the location and remained on the scene for approximately 15 minutes, during which time Respondent gratuitously identified himself as a judge three additional times as follows:

A. "I'm Judge Hall . . ." (as he extended his arm to shake hands with the deputy);

B. "My name is Randy Hall . . . I'm the judge . . . from Dickinson . . . Town of Dickinson";

C. "Officer . . . I'm a . . . I'm a judge . . . okay, I'm not lying . . . I'm just saying I am not lying to you. I'm telling you that this guy threatened my life."

(Complaint ¶ 9A, B and C).

Respondent told the officers he wanted Mr. Dubrava charged with harassment, but the officers did not do so and let both Respondent and Mr. Dubrava leave the scene (Complaint ¶ 10).

Charge II: From in or about January 2022, when Respondent became a Dickinson Town Justice, to on or about March 30, 2022, when his Deputy Chief Administrative Judge ordered that cases pending before him be reassigned and that he be confined to judicial chambers, Respondent (A) engaged in a pattern of sexually inappropriate, harassing, and unwelcome behavior toward his co-judge and court staff, and (B) made inquiries while in court and on the record about finding employment in the police department.

At all times pertinent to the charges herein, Stacy Thatcher and Bradley Wallace were employed as court clerks in the Dickinson Town Court, and Kathleen Groover was Respondent's co-judge in the Dickinson Town Court.

Respondent and Judge Groover shared the court office that served as chambers (Complaint ¶ 13).

In early January of 2022, when Dickinson Town Court Clerk Stacy Thatcher first met Respondent, he requested her assistance in donning a high school graduation gown that he wished to use as a judicial robe. The gown appeared to be too small or tight for him and could not be zipped past his midsection (Complaint ¶ 14).

Ms. Thatcher obliged. While she crouched down to assist Respondent, she suggested he hold his tie so it would not become caught in the zipper of the robe. In reply, Respondent remarked that his tie was not the only thing he did not want caught in the zipper, which Ms. Thatcher understood to be a reference to the judge's genitalia, and which made her very uncomfortable (Complaint ¶ 15).

In or about late January 2022, Respondent approached Judge Groover in their shared chambers with his arms outstretched and asked her to assist with zipping the graduation gown that he was still using as his judicial robe. The robe zipped in the front, and at the time the zipper's hasp was located near Respondent's groin area. Judge Groover, who was seated at her desk, sternly declined. Respondent laughed and stated, in sum and substance, that Judge Groover was not his mother (Complaint ¶ 16).

In or about January 2022, while Respondent, Ms. Thatcher and Mr. Wallace attended a mandatory sexual harassment awareness and training program, Respondent repeatedly made comments mocking the training, including words to the following effect:

A. "So, I can't tell a joke like this?"

B. "What about this joke?" and

C. "So, I can't say, 'So that's what she said'?"

(Complaint ¶ 17A, B and C).

In or about January 2022, Respondent, while in the courtroom, told a crude and inappropriate joke to Court Clerk Bradley Wallace involving a farmer, marihuana, and sexual intercourse with a pig. When Mr. Wallace did not react to Respondent's joke, he asked if the joke was funny. Mr. Wallace responded that it was not (Complaint ¶ 18).

On or about February 8, 2022, in the courtroom, Respondent offered Ms. Thatcher a cookie, which she declined, [redacted]. Respondent then commented on her personal appearance by stating, "You're a good lookin' girl now. You'll be a knockout" and "(inaudible) I'm going with a pretty girl, she made you look small. She's gonna go do that too, so she says" (Complaint ¶ 19).

On or about February 8, 2022, Respondent, while in the courtroom and on the record, engaged in a conversation with Port Dickinson Police Officer

Domenico Rossi, who was serving as a court officer, about a "chick" Respondent was dating who "started going crazy on (him)." The officer asked Respondent if he dumped her yet. Respondent said, "Oh yeah, fuck yeah." Respondent said the woman "has . . . one of those multiple personalities" and would call and send him messages that led him to think, "I don't understand why you're like that? . . . You fucking called me up, call me every name in the book, threatening me, threatened to have me arrested, threatened my job. I said what the fuck? You know?" Respondent and the officer then spoke about how people have to be careful what they say, as it could be used against them, after which Respondent described for the officer an intimate picture on his phone, saying, "I told you about the tit thing, right? . . . Well, she sent me a…picture of her tit and her fingernail's pinching the nipple. I never asked for it . . . and her head wasn't in it or anything." Respondent then resumed presiding over matters (Complaint ¶ 20).

In or about February or March 2022, while in chambers, Respondent approached Judge Groover, who was seated at her desk. Respondent told Judge Groover that that he liked her face mask, which had a leopard-print pattern. Respondent then asked whether her mask matched her underwear. Judge Groover responded in a stern tone demanding that Respondent step back. Respondent did not apologize or otherwise demonstrate awareness that he had said something inappropriate (Complaint ¶ 21).

In or about mid-March 2022, while in chambers, Respondent asked Ms. Thatcher for assistance finding a flight to Florida so he could attend a family reunion, and she obliged. As Ms. Thatcher leaned over Respondent's desk to access the laptop, he laughed and stated that women do not need men like men need women and added "you know it when you hear the humming," which Ms. Thatcher understood to be a reference to a vibrator, and which made her very uncomfortable (Complaint ¶ 22).

In or about February 2022, Ms. Thatcher became so uncomfortable with Respondent's inappropriate comments that she refused to clerk for him on the bench (Complaint ¶ 23).

On or about March 24, 2022, while Mr. Wallace and Ms. Thatcher were in their office, Mr. Wallace asked if she needed assistance with a file. Ms. Thatcher replied that she had already done the work and told Mr. Wallace, "I don't need you." Respondent, who was in chambers and not a party to the conversation, interjected by asking Mr. Wallace if he usually hears a loud humming sound when she says that. Mr. Wallace understood this to be a reference to a vibrator and told Respondent that he could not say things like that. Respondent replied that he knew and was only joking (Complaint ¶ 24).

On or about February 8, 2022, Respondent, while in the courtroom and on the record, engaged in a conversation with Officer Rossi, who was serving as a

court officer, about whether positions were available with the Port Dickinson Police Department. Respondent stated, "I want to work for the police department," and expressed an interest in part-time employment doing court duty, patrol or "anything." The officer explained that such employment would be a conflict of interest with Respondent's judicial position. They then discussed the idea of Respondent's running for Police Commissioner, after which Respondent continued presiding over court matters (Complaint ¶ 25).

Judge Groover, Mr. Wallace and Ms. Thatcher ultimately reported their concerns about Respondent's conduct to the Sixth District Administrative Office of the Unified Court System. By Administrative Order dated March 30, 2022, Deputy Chief Administrative Judge Norman St. George directed that all judicial matters pending before Respondent be reassigned to Judge Groover, that no additional matters be assigned to Respondent, and that he be confined to chambers until further order (Complaint ¶ 26).

Charge III: In or about March 2022, while presiding over cases in court, Respondent made comments that conveyed the impression that he had prejudged the guilt of various criminal defendants.

On or about March 8, 2022, while presiding over *People v Sarah Sivers*, Respondent was advised by the defendant's attorney that Ms. Sivers had been offered a plea to Resisting Arrest with a sentence of a six-month conditional

discharge but needed time to consider the offer. Respondent addressed Ms. Sivers directly and asked, "How many cops did you take down?" (Complaint ¶ 29).

On or about March 10, 2022, Respondent conducted an arraignment on charges related to an arrest for Driving While Intoxicated in *People v Amanda Florance*. Respondent advised the defendant, who was represented by counsel and had entered a plea of not guilty, that she was being released on her own recognizance and would be contacted by the DMV regarding her license. At the conclusion of the proceeding, Respondent stated to the defendant, "It's going to be an expensive lesson" (Complaint ¶ 30).

On or about March 24, 2022, while arraigning a defendant identified only as Mr. Purnell, Respondent directly addressed the defendant, who was represented by counsel, and stated, "Purnell, look at me. Stay the hell out of trouble, will ya?" (Complaint ¶ 31).

Charge IV: In or about January and February 2022, Respondent posted sexual and otherwise inappropriate content to his public Facebook page, some of which referenced his judicial office.

Facebook is an internet social networking website and platform that *inter alia* allows users to post and share content on their own Facebook pages as well as on the Facebook pages of other users and on Facebook groups. 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 and posts may

be viewable online by the public or restricted to one's Facebook "Friends" (Complaint ¶ 34).

At all times relevant to this charge, Respondent maintained a personal Facebook account under the name "Randy Hall," which was viewable by the public (Complaint ¶ 35).

In January 2022, Respondent posted the following to his Facebook page:

A. "It was not a hung jury but they say the judge sure is," with a beaming face emoji. In a response to a comment made in response to that post asking Respondent what he was up to these days, Respondent wrote that he was "just truly trying to provide justice in the town of Dickinson." Another comment asked, "What is it up your robe your honor," to which Respondent replied, "You been peeking." A copy of the post is annexed to the Formal Written Complaint (FWC) as Exhibit A.

B. A joke about a serial killer, a copy of which is annexed to the FWC as Exhibit B.

C. Commenting about the possibility of sneezing and "break[ing] wind just as you reach happy ending!" The post specified that such an experience was on Respondent's "bucket list." A copy of the post is annexed to the FWC as Exhibit C.

(Complaint ¶ 36A, B and C).

ARGUMENT

POINT I

THE TOTALITY OF RESPONDENT'S MISCONDUCT RENDERS HIM UNFIT FOR JUDICIAL OFFICE.

During his brief time on the bench, Respondent amply demonstrated his lack of fitness as a judge by: (1) engaging in a pattern of sexually inappropriate, harassing, and unwelcome behavior toward his co-judge and court staff; (2) repeatedly asserting his judicial office with police following a dispute at a gas pump; (3) while in court and on the record, stating a desire to seek employment with the local police department, and commenting on cases in a manner that conveyed the impression he had prejudged the guilt of criminal defendants; and (4) posting sexual and otherwise inappropriate content to his public Facebook page. For the totality of that misconduct, he should be removed from office.

To be sure, "the sanction of removal is reserved for those instances where the conduct is 'truly egregious' and not merely an exercise of poor judgment." *Matter of Collazo*, 91 NY2d 251, 255 (1998) (internal citations admitted). At the same time, however, "the 'truly egregious' standard is measured with due regard to the fact that Judges must be held to a higher standard of conduct than the public at large," and where a judge commits multiple acts of misconduct, the sanction to be imposed must contemplate the totality of the misconduct, "in the aggregate" (*Matter of Miller*, 35 NY3d 484, 491 [2020]; *Matter of O'Connor*, 32 NY3d 121,

128-29 [2018]), plus any aggravating factors such as failure to accept responsibility for the misconduct (*Matter of Ayres*, 30 NY3d 59, 62 [2017]). Here, Respondent's multiple categories of inexcusable misconduct, coupled with his refusal to answer the charges against him, more than justify the sanction of removal.

A. Respondent's inappropriate, sexually charged comments to his co-judge and court staff alone warrant his removal.

On more than one occasion, Respondent subjected his co-judge and court staff to inappropriate and unwanted sexual comments and requests, thereby creating a hostile work environment and bringing disrepute to the judiciary. Specifically, Respondent:

- asked a clerk to assist with zipping his robe past his midsection while implying that he did not want his genitalia caught in the zipper;
- with outstretched arms, requested that his co-judge assist with zipping his robe and, when she declined, laughed and commented that she was not his mother;
- repeatedly made comments to his clerks mocking the court's mandatory sexual harassment and awareness training program;
- told a crude joke to his clerk, while in the courtroom, involving a farmer, marihuana and sexual intercourse with a pig;
- commented on his clerk's personal appearance by stating, "You're a good lookin' girl now. You'll be a knockout" and "(inaudible) I'm going with a pretty girl, she made you look small . . . .";

- discussed details of a relationship with an ex-girlfriend with a court office on the record, and described for the officer an intimate picture on his phone about "the tit thing" and "her fingernail's pinching the nipple . . . .";

- told his co-judge he liked her face mask, which had a leopard-print pattern, and asked her whether her mask matched her underwear;

- told his clerks, while laughing, that women do not need men like men need women and added "you know it when you hear the humming" – a thinly veiled reference to a vibrator.

Respondent should have known that sexually explicit comments and inuendo are inappropriate, especially in a professional setting, even before being warned by his co-judge and his clerk. Indeed, the Court of Appeals and the Commission and have repeatedly imposed stern sanctions for such transgressions. *See e.g. Matter of Miller*, 35 NY3d 484, 490 (2020) (judge *inter alia* made sexually inappropriate comments to a clerk even though the "proven instances of injudicious behavior were not 'numerous'"); *Matter of Shaw*, 96 NY2d 7, 9-10 (2001) (judge *inter alia* made numerous remarks "of a sexual nature" to his secretary); *Matter of Duckman*, 92 NY2d 141, 152 (1998) (judge *inter alia* told attorney "she was 'too sexy' to wear flat shoes and had 'nice legs'"); *Matter of Abramson*, 2011 Ann Rep of NY Commn on Jud Conduct at 80 (judge *inter alia* made comments about a litigant's T-shirt that were "ribald and replete with sexual innuendo"); *Matter of Dye*, 1999 Ann Rep of NY Commn on Jud Conduct at 93-94 (judge *inter alia* told his

secretary "he enjoyed talking to her because she was physically attractive," that "she had attractive legs," and that "her clothes inspired his sexual feelings").

Here, Respondent permeated his court and chambers with his sexually charged and undignified harassment, so much so that one clerk refused to work in the courtroom on days when Respondent was on the bench. His behavior was "egregious and inexcusable," *Abramson*, 2011 Ann Rep at 80, and warrants his removal.

B. Respondent's repeated assertion of his judicial position to advance his own private interests during a public dispute and subsequent encounter with police warrants a stern sanction.

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" and constitutes serious misconduct warranting discipline. *Matter of Lonschein*, 50 NY 2d 569, 572-73 (1980). In the years since, the Commission has repeatedly disciplined judges who invoked their judicial office during a personal dispute. *See e.g.*, *Matter of Dixon*, 2017 Ann Rep of NY Commn on Jud Conduct at 100 (telephoning a fellow judge about a personal lawsuit); *Matter of Sullivan*, 2016 Ann Rep of NY Commn on Jud Conduct at 209, 213 (seeking leniency from the police for judge's son, "even in the absence of . . . an overt assertion of judicial status and authority"); *Matter of Calderon*, 2011 Ann Rep of NY Commn on Jud Conduct at 86 (referencing judicial title to prison

officials to further judge's personal interests); *Matter of Dumar*, 2005 Ann Rep of NY Commn on Jud Conduct at 151 (asserting office during a dispute with a snowmobile dealer).

Here, Respondent explicitly and repeatedly invoked his judicial title with 911 personnel and police officers regarding a public dispute over a gas pump in a manner that undoubtedly was designed to curry favor and pressure the officers to act in his interest. From the very start, when the 911 operator asked for the location of the dispute, Respondent volunteered his title before answering the question, and again when the operator asked him to repeat his name. When the police subsequently arrived, Respondent introduced himself as "Judge Hall," then went out of his way to specify, "I'm the judge . . . from Dickenson . . . Town of Dickenson." Given the utter irrelevance of Respondent's judgeship to his gas pump dispute, it is clear that he asserted the prestige of his title for special treatment.

Respondent referenced his judicial office a third time in trying to persuade the officers he was telling the truth and should be believed simply because he was a judge. Specifically, he told the officers, "Officer . . . I'm a . . . I'm a judge . . . okay, I'm not lying . . . I'm just saying I am not lying to you." Respondent's demonstrated "willingness to misuse his judicial office for personal advantage – a

quality that is antithetical to the judicial role" – warrants a serious public sanction. *Matter of LaBombard*, 11 NY3d 294, 299 (2008).

C. Respondent should be sanctioned for making comments in court while on the record that created the appearance that he had prejudged the guilt of criminal defendants, thereby seriously undermining public confidence and trust in the judiciary.

As the Commission has observed, "before a defendant's guilt or innocence has been adjudicated, a judge must be, and appear to be, impartial and avoid making any statements that convey the appearance of bias or prejudgment," *Matter of Prince,* 2014 Ann Rep of NY Commn on Jud Conduct at 184, 190.

Here, in Respondent's brief time on the bench before being confined to chambers, he made comments in court while on the record that were unprofessional and suggested that he had prejudged the guilt of criminal defendants. Specifically, Respondent:

- asked a criminal defendant, who had been charged with resisting arrest but had not pled guilty, "How many cops did you take down?";
- chastised a criminal defendant who had been arraigned on a Driving While Intoxicated charge, "It's going to be an expensive lesson"; and
- directed a criminal defendant at arraignment to, "Stay the hell out of trouble[.]"

Those gratuitous comments suggested Respondent's premature belief regarding the guilt of criminal defendants, and thus violated his "obligation to be an exemplar of neutrality . . . in court proceedings." *Matter of Prince*, *supra* at 189.

Respondent committed additional misconduct when, while in the courtroom and on the record, he engaged in a conversation with Officer Rossi about whether positions were available with the Port Dickinson Police Department. Respondent stated, "I want to work for the police department," and expressed an interest in part-time employment doing court duty, patrol or "anything." The officer rightly explained that such employment would be a conflict of interest with Respondent's judicial position. By inquiring about potential employment with the police department in open court, 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, 142.

In sum, Respondent failed to conduct himself in such a way that "the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property." *Matter of Duckman*, 92 NY2d 141, 153 (1998) (quoting *Matter of Sardino*, 58 NY2d 286, 290-91 (1983); *see also Matter of Watson*, 100 NY2d 290, 302 (2003) (observing that "litigants and the bar are entitled to be free of the . . . burden of wondering whether the judge to whom their case is assigned will adjudicate it without bias or prejudice and with a mind that is open enough to allow

reasonable consideration of the legal and factual issues presented"). A severe public sanction is appropriate.

D. Respondent should be sternly sanctioned for making public Facebook posts containing sexual and otherwise inappropriate content.

As the Court of Appeals stated over 40 years ago, judges must observe "[s]tandards of conduct on a plane much higher than for those of society as a whole . . . so that the integrity and independence of the judiciary will be preserved," emphasizing that "[a]ny 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). Conduct that "might be acceptable behavior when measured against societal norms could constitute 'truly egregious' conduct in the present context" when committed by a member of judiciary. *Matter of Mazzei*, 81 NY2d 568, 572 (1993) (internal citations omitted).

In recent years, the Commission has applied those standards to social media, publicly sanctioning judges for posting inappropriate content on their public Facebook accounts. *See Matter of Stilson,* 2023 Ann Rep of NY Commn on Jud Conduct at 290, 292-94 (removing judge for, *inter alia*, posting Facebook comments and memes that were puerile and sexually degrading toward women,

notwithstanding that he did not reference his judgeship); *cf Matter of Peck*, 2022 Ann Rep of NY Commn on Jud Conduct at 136, 141-142 (admonishing judge for posting to Facebook photographs of himself at a pro-police event, notwithstanding that he did not reference his judgeship); *Matter of Fisher*, 2019 Ann Rep of NY Commn on Jud Conduct at 126, 135 (admonishing judge for, *inter alia*, posting to Facebook photographs he had improperly obtained, along with derogatory comments, notwithstanding that he did not reference his judgeship).

Respondent committed similar misconduct here, by using his public Facebook account to post puerile and sexually suggestive jokes and comments. However, unlike in the cited cases, Respondent referenced his judicial office in some of his offending Facebook posts, which makes his conduct more egregious. Indeed, he posted the following:

- "It was not a hung jury but they say the judge sure is," with a beaming face emoji. In a response to a comment made in response to that post asking respondent what he was up to these days, Respondent wrote that he was "just truly trying to provide justice in the town of Dickinson." Another comment asked, "What is up your robe your honor," to which Respondent replied, "You been peeking."

- A joke about a serial killer.

- A comment about the possibility of sneezing and "break[ing] wind just as you reach a happy ending!" The post specified that such an experience was on Respondent's "bucket list."

These lewd and puerile posts would have been antithetical to Respondent's status as a judge and contrary to his duty to maintain high standards of conduct off

the bench even without reference to his judicial office. *See Stilson*, 2023 Ann Rep at 290; *Peck*, 2022 Ann Rep at 136; *Fisher*, 2019 Ann Rep at 135). But he compounded that misconduct by joking that someone had been "peeking" under his robe and making thinly veiled comments about his genitalia by quipping that the "judge" was "hung," insofar as those invocations of his office overtly dragged the judiciary with him into the proverbial mud. Given the damage those comments surely inflicted upon the public's confidence in the integrity of the judiciary, Respondent should receive a serious sanction.

E. Respondent aggravated his misconduct by ignoring the Commission.

On top of the array of ethical misconduct described above, Respondent willfully failed to answer the charges against him or respond to Commission Counsel's motion for summary determination. His failure to respond or to submit 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 Lockwood,* 2007 Ann Rep of NY Commn on Jud Conduct at 123, 126, quoting *Matter of Nixon,* 53 AD2d 178, 180 (1st Dept 1976). This indifference aggravates his misconduct.

F. For the totality of his misconduct, Respondent should be removed from office.

In the span of just three months as a judge, Respondent repeatedly demonstrated conduct wholly unbecoming of his office: he sexually harassed his

co-judge and clerk; he made sexually explicit and otherwise inappropriate remarks from the bench, on the record; he repeatedly invoked his judicial office to law enforcement personnel, following a public dispute at a gas station; he made comments from the bench suggestive of having prejudged various criminal cases; and he posted puerile and lewd content to his public Facebook page, some of which referenced his judicial office. That behavior reveals an individual who lacks the self-control, discretion and decorum required of a judge, and who fails to appreciate the ethical constraints he is required to honor. The sexual harassment outlined in Charge I alone warrants Respondent's removal from office. When his misconduct is considered in the aggregate (*see Miller*, 35 NY3d at 491; *O'Connor*, 32 NY3d at 128-29), no other sanction is appropriate.

* * *

In sum, Respondent's complete lack of insight and sensitivity to the ethical standards of his office, coupled with his failure to answer the charges against him, renders him unfit for judicial office and warrants the sanction of removal.

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: August 10, 2023
Albany, New York

Respectfully submitted,

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