

To be Argued by:  
ROBERT F. JULIAN  
(Time Requested: 30 Minutes)

JCR 2024-00007

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**Court of Appeals**  
*of the*  
**State of New York**

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

ERIN P. GALL,

A Justice of the Supreme Court,  
Fifth Judicial District, Oneida County,

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HONORABLE ERIN P. GALL,

*Petitioner,*

– against –

STATE OF NEW YORK COMMISSION ON JUDICIAL CONDUCT,

*Respondent.*

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**REPLY BRIEF FOR PETITIONER**

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**I. THE COMMISSION COUNSEL SHOULD NOT BE ALLOWED TO  
RECAT ITS STIPULATION AND OFFER UNSUPPORTED  
TESTIMONY**

Dr. Lesswing's report and his underlying notes were stipulated into evidence without any appropriate evidentiary expert refutation propounded by the Commission Counsel. Commission Counsel utilized briefs prepared by lawyers citing excerpts from psychological texts and articles to dispute Dr. Lesswing's findings. This means they improperly attacked Dr. Lesswing's report without placing one competent piece of expert testimony before the Commission. The Commission adopted and accepted their arguments. It is improper and respectfully should not be sanctioned by this Court.

There is no sound psychological basis for the arguments raised in Point II of Commission Counsel's Brief. Those arguments should be rejected for the reasons raised in the Respondent's Brief to this Court and the Commission's findings should be rejected.

**II. THE COMMISSION'S CONCURRENCE VIOLATED BASIC  
RULES OF EVIDENCE AND WRONGLY INFLUENCED THE  
MAJORITY**

As noted in Point I of our Brief, members of the Commission should not have introduced the allegation that the Respondent engaged in "Black Vernacular," to the young men she believed attacked her son and husband.

There is no significant attempt in Counsel's Brief to defend this breach of the Rules of Evidence and violation of the Respondent's rights but for a footnote. It is as prejudicial an allegation as could be leveled against the Respondent, much less for two Commission members to find it as fact. In our Brief we noted that the prejudicial impact of this breach has resulted in the Respondent being stigmatized unfairly, and as having engaged in racially prejudiced conduct. She was not charged by the Commission with racist conduct, and if that were the charge we would likely have had a hearing.

The rules of the Commission on Judicial Conduct allow for a unique and potentially flawed form of summary justice. The absolute breach of rules of evidence and jurisprudential conduct by the Commission in its Determination resulted in an unfair characterization of the Respondent's character.

The use of the words "bro" and "how I roll" are commonly used in American lexicon by all races. In the context of the prosecution of this case, I was worried we would be confronted with the inference at oral argument that these words were indices of prejudice without having the opportunity to confront the charge. That is exactly what happened. I did not know how to respond to this inappropriate new charge. Commission Counsel unfairly twisted the oral argument. We confronted an uncharged claim of implicit bias based on the words used without any chance to properly refute the same. Respondent was not confronted or

asked about this language at argument. She was not charged with using “Black Speak” and nor was she offered an opportunity to respond in the pleadings or in the argument. This was an unfair introduction of a theory supporting Respondent’s racist conduct that obviously would inflame the panel. It is no wonder this miscarriage is defended in the 65-page Brief of the Commission’s Counsel with a 21-line footnote.

### **III. THE RESPONDENT TAKES REponsIBILITY FOR HER CONDUCT**

Commission Counsel could not be more wrong in asserting repeatedly she does not accept responsibility for her conduct. Respondent accepts that her conduct was wrong and repeatedly so stated. She acknowledged that she wrongly invoked her office by reference and conduct. She apologized at her deposition for her conduct, and in her Brief to the Commission and before the Commission. She properly asked the Commission to censure her rather than remove her.

This Court recognizes that every Judge, including Respondent, has the right to defend against the charges preferred by the Commission.

### **IV. THERE WERE CRUCIAL MISSING WITNESSES**

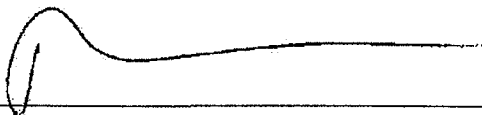
Essential to the Respondent’s case was the testimony of Havo and Dooly, the two unwanted young men who started the fight. Their testimony would have been given context to the violence that they incited. In traditional litigation, they would have been ordered to testify by a deposition. There was obvious advantage to

Commission Counsel's case to not call or fail to call the perpetrators of the violence because their testimony would help give important context to the Respondent's obvious "over the top reaction."

### CONCLUSION

The Respondent prays that this Court reduce the sanction to censure based on the Respondent's conduct which was wrong and inappropriate but not due to racial bias.

Dated: October 22, 2024



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