

STATE OF NEW YORK  
COMMISSION ON JUDICIAL CONDUCT

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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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**REPLY BRIEF IN SUPPORT OF  
RESPONDENT ERIN P. GALL, J.S.C**

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**ARGUMENT**

**POINT I**

**IT IS UNDISPUTED THE RESPONDENT HAD A TRAUMA REACTION WHICH WAS A SEQUALAE OF HER DIAGNOSIS OF [REDACTED]**

It is undisputed based on the stipulated record that the Respondent had a trauma reaction on 7/02/22, secondary to the [REDACTED] (“[REDACTED]”) that was a result of her having been [REDACTED] in college. (Ex. B1, B4) That is the diagnosis of Dr. Lesswing and Dr. Joseph. Dr. Lesswing administered the [REDACTED] test, a widely used 20 item measure of symptoms from the DSM-5-TR. Respondent’s test result was diagnostic for [REDACTED] on 6/20/23 and was a basis for Dr. Lesswing diagnosing that Respondent was experiencing [REDACTED]. He opined she had a trauma reaction on 7/2/22, which was initiated by watching her son being struck numerous times, knocked to the ground kicked in the head and body and fighting in the ditch outside of the Pearce residence. Dr. Lesswing cites the Respondents DSM-5-TR symptoms in his report (Ex. B 4, pg. 6):

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

In relating the trauma of her [REDACTED] to the events of 7/2/22, Dr. Lesswing stated:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

The DSM-5-TR gives a clear description of the relationship between the Respondent's [REDACTED] and the July 2, 2022, fight clarifying that years can elapse between traumatic events:

[REDACTED]

[REDACTED] recurrences such as Respondent experienced can be delayed and intensified in response to reminders of the original trauma. As Dr. Lesswing noted at pages 6 and 7 of his report, the Respondent's witnessing of the assaults on her son and husband triggered the recurrence of her original trauma response. (Ex B-4) She sustained a reactivation of diagnostic reactions as defined in Part E of DSM-5 criteria for [REDACTED], in that she experienced by virtue of the events of July 2, 2022, "Marked alterations in arousal and reactivity associated with the traumatic event(s)," causing her trauma (P. 302). DSM-5-TR *supra*.

Respondent's behavior on the night in question was completely out of character. It reflected an acute emotional dysregulation and anger in the form of her "fight" or "flight" responses to the intruders after "freezing" while witnessing physical violence to her family members. This was automatic and reflexive on her part. She testified at her deposition that her initial response to the violence was:

- That she froze, was silent and in shock as she saw her son slapped and knocked to the ground near the ditch, being hit and kicked. (Ex. 9 p. 38-39, ASF 20-22)

- “I literally stood there in shock. It felt like time had stopped. I can’t describe it any other way. I did not even - I did not even try to help or stop anything. I literally was frozen. I can’t describe it any other way.” (Ex. 9, pg. 38)
- She was in shock and silent as she observed her son on the ground receiving a “stomping on his head” and being kicked in the head. (Ex. 9, pg. 39)

Her freezing and not fighting back is precisely the same internal personal criticism she harbored regarding her self-perceived lack of resistance to being [REDACTED] (Ex. B1; B4, pg. 4-5) With that long term festering self-criticism provoked by her lack of response to her prior [REDACTED] on 7/2/22 she “engaged in frantic, unreflected and emotionally dysregulated efforts to take charge of the situation at the party” according to Dr. Lesswing (Ex. B-4, pg. 7) The facts support this opinion.

After the fight when the police arrived:

- The individuals (Carter, Valladares, Havo and Dooley) she believed were the aggressors who attacked her son remained on the property for nearly 1-1/2 hours after the police arrived. (ASF, ¶ 32, 65, 72).
- Respondent identified Havo, Dooley as attacking and fighting with her son, Carter and Valladares were in a physical altercation with her husband, yet they remained present and milling on the premises during that time. (ASF ¶ 23, 32, 65, 72) Respondent identified Dooley and Havo by photographs at her deposition as the two persons who initially attacked her son (ASF ¶ 22,23,24). (The Respondent stipulated that her identification of these two individuals in and of itself was not sufficient to support a finding that Havo and Dooley did start the fight or fought with her family but that is what she believed. (ASF ¶ 24 A and B) Neither Havo nor Dooley was deposed by commission counsel because Mr. Carter and Mr. Valladares when deposed declined to provide proper identification of those individuals. As we argue later in this brief, the Commission may draw the inference that they initiated the assault on Respondent’s son and/or fought with her family based on the failure to identify and produce Havo and Dooley).
- Respondent was afraid and frustrated by the police not clearing the property and in a trauma reaction which was manifested by Respondent launching invective and profanity, threats, bragging, invoking her office nine times all while knowing she was being recorded on the police officer’s bodycams. (Ex. B1, B4).

- Explaining her conduct, she stated:

I know, I know. And the only way I can express to you is, if you have children, and if you've ever witnessed something like this – you could possibly hear that your son was in a fight. It doesn't come close to the magnitude of seeing it, seeing your child assaulted. And I stood there and did nothing and couldn't – I was helpless.

So the frustration level had built. And imagine what it felt like an hour and a half in and they're still on the property and they're in the house. You're thinking, there's little to no protection here. That's how I felt. (Ex. 9, pgs. 62-63).

- Respondent when asked what caused the attack on her son and the fighting in the ditch, testified:

Honestly, I believe these kids arrived at the party uninvited, they trespassed, and they were looking for trouble. I really believe that they were out and about, they found a party, and they stirred up trouble and they literally attacked out of no where. (Ex. 9, pg. 41).

The undisputed opinions of Dr. Lesswing, a psychologist who performs fitness for duty evaluations for police departments and has extensive trauma diagnostic experience, and her therapist Dr. Joseph who is a college professor and practicing clinician who also is experienced in the diagnosis and treatment of trauma, are that she had pre-existing [REDACTED] causing a trauma reaction to the violent events of July 2, 2022.

To be clear, this analysis is offered in mitigation and in opposition to Commission counsel's urging Respondent's removal. The facts in mitigation support a lesser sanction. She was responding as a mother who was adversely impacted in her behavior by her prior history of trauma. As she told Dr. Lesswing, "What mother wouldn't have jumped in the ditch" to protect her son. She didn't. "I stood there locked up." In response to her perceived failure to act, she then attempted to "take charge" of the situation (Exh B 4 pg. 7). Ultimately, she was beside herself and responding utterly inappropriately before the cameras as a part of the trauma

reaction. (Ex. B, pg. 4-6).

**POINT II**  
**THE RESPONDENT'S BEHAVIOR AND ACTIONS ARE WELL RECOGNIZED IN**  
**THE LITERATURE AS A TRAUMA REACTION BASED UPON HER PRIOR [REDACTED]**  
**ASSAULT**

Over and above the treatment records of Dr. Joseph and the diagnostic testing and report of Dr. Lesswing in which both concluded that the Respondent had a [REDACTED] [REDACTED] based on her [REDACTED] of 30 years ago which was reactivated causing a trauma reaction and acutely present during the events of July 2, 2022, we reference a well-recognized report submitted to the government of Canada in 2019 and updated January 20, 2023 which is reproduced on the Justice Canada website entitled "*The Impact of Trauma on Adult [REDACTED] Victims*" by Dr. Lori Haskell, C. Psych. and Dr. Melanie Randall, [www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma\\_eng.pdf](http://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf). This report is attached to this brief for the convenience of the Commission. Dr. Haskell is a private practicing clinical psychologist in Toronto, as well as an assistant professor in psychiatry at the University of Toronto and an academic research associate at the Centre for Research on Violence Against Women and Children. She is a leading Canadian authority on these issues who recently received the Order of Canada for her transformational research into the treatment of trauma victims. Dr. Melanie Randall is a Professor of Law at Western University, Canada, who has written and lectured widely on rape, domestic violence and violence toward women. For completeness, this report is published on the Department of Justice Canada website with a disclaimer that the views expressed do not necessarily reflect the views of the Department of Justice Canada. In explaining the effects of rape and Trauma the report cites "*Trauma and Recovery: The Aftermath of Violence - From Domestic Abuse to Political Terror*" by Judith Herman (1992) (Herman, J. L. (1992). *Trauma and Recovery: The Aftermath of*

*Violence: From Domestic Abuse to Political Terror*. New York: Basic Books) at page 12. Ms.

Herman explains trauma as follows:

“Traumatic events overwhelm the ordinary systems of care that give people a sense of control, connection and meaning. Traumatic events are extraordinary, not because they occur rarely, but because they overwhelm the ordinary human adaptations to life ... they confront human beings with the extremities of helplessness and terror and evoke the responses of catastrophe.” (Page 65)

The report states further at page 12 “Traumatic events are not necessarily violent, although they violate a person’s sense of self and security.” (Kammerer, N., & Mazelis, R. (2006). *After the Crisis Initiative: Healing from Trauma after Disasters*. Resource Paper: Trauma and Re-traumatization. Substance Abuse and Mental Health Services Administration (SAMHSA). The report asserts that trauma is subjective; what is traumatic to one person might not be to another. Haskell and Randall report that it is important to understand the defense circuitry and the neuro biology of the brain in a trauma circumstance in order to understand the range of reactions victims might exhibit in said threatening circumstances. It notes that victims frequently say, “I just froze” or “I was just laying there until it ended” or “I didn’t know what to do, I couldn’t feel I could do anything”. The Haskell and Randall report explains that the brain’s defense circuitry takes control when under threat. The authors point out that we react automatically with reflexive reactions which include the well-known fight, flight or freeze responses. The report states that with regard to these reactions “they register at two levels: conscious cognitive levels and conscious physiological levels.” The report explains that when one of our five senses detects a serious threat, the brain’s defense circuitry is activated, and a cascade of stress chemicals are released. Haskell and Randall opine at page 13:

“When a threat to physical survival is imminent, the human brain, unless specifically trained to do otherwise, will switch to subcortical dominance and the defense responses of fight, flight or freeze. The defense circuitry dominates brain functioning once activated.” (Mobbs, D., Marchant, J. L., Hassabis, D., Seymour, B., Tan, G.,

Gray, M., Petrovic, P., Dolan, R. J., & Frith, C. D. (2009). From Threat to Fear: The Neural Organization of Defensive Fear Systems in Humans. *The Journal of Neuroscience: The Official Journal of the Society for Neuroscience*, 29(39): 12236-43) (Pg. 40)

The report further opines:

“The prefrontal cortex is the center of executive functions in the brain. It is involved in managing complex processes like reason, logic, problem solving, planning and memory. Stress hormones flooding the brain can cause a rapid and dramatic loss of prefrontal cognitive abilities, limiting our ability to think, plan and reason in the face of threat.” (Arnsten, A. (2009). Stress Signaling Pathways That Impair Prefrontal Cortex Structure and Function. *Nat Rev Neurosci*. 2009 June; 10(6): 410–422) (Pg. 36)

Haskell and Randall explain at page 14:

“When an individual is under threat and their stress response is activated and people temporarily lose executive functioning. This impairs not only planning and decision making but also affects the brain’s capacity to organize experience into logical sequences. What this means is that when people are in the midst of a serious threat or assault, brain regions are activated to help them survive the experience, increasing intense response such as hyperarousal and altered attentional focus, while decreasing activity of brain structures involved in planning and strategizing. These neurological changes are why pilots, mountain climbers, paramedics and hospital emergency personnel practice emergency procedures over and over again, and they also carefully review checklists of what to do in a crisis. It needs to become automatic for them how to handle a crisis situation.”

The report references victim reactions such as those of Respondent at page 14:

“Most people who have experienced a traumatic, overwhelming event are not knowledgeable about the complex brain and body alterations that they experienced. They may not be able to explain even to themselves their own often confusing and counterintuitive behaviors at the time of the event or immediately afterwards.”

At her deposition Respondent offered an apology after a break prior to further questioning and tried to explain her behavior. The Respondent was and is clearly remorseful but unable to explain her behavior on July 2, 2022, except to say that she was acting as a mom under exigent circumstances:

Ok. I want to apologize for my emotions today. Clearly although I have prepared for today and I'm taking this extremely seriously, what we're here for, I haven't put myself back at the scene of the incident. And so, it brought back a lot of emotions from what I witnessed. I had a lot of anxiety, as did my husband and my son, after the event. But I pretty much tried to bury that. So I apologize for my emotions.

"I also, before we continue, would like to apologize for my conduct at the scene. Clearly, as you can see, the emotions I have now -- I was acting as a mom. I was acting under exigent circumstances. I do not condone my behavior or the fact that I ever stated my position to the police officers. I should've never, ever done that. I'm embarrassed by it. I've never done something like that in the past. If I could go back, wow, I would do so much differently. But I literally had never expected or experienced anything quite like what I experienced.

"When we received the tapes, I was sick to my stomach. I didn't want to watch them. I wanted Mr. Julian to watch them by himself. I was embarrassed by my conduct. I very, very much respect the bench, respect my position. I made an awful mistake. But if you talk to my colleagues, if you talk to attorneys that appear in front of me, I believe I am very fair and very honest and very respectful of my opportunity to be a judge." (Ex. 9, pg. 7)

Respondent's description of her response on July 2, 2022, is entirely consistent with Haskell and Randall's analysis of persons experiencing a traumatic event. (*supra*) The report goes on to state at page 15:

"Understanding these complex yet common psychological and neurologically based responses to traumatic experiences such as [REDACTED] assault helps to explain why some [REDACTED] assault victims don't exhibit "fighting back", "yelling", "escaping" or taking some other kind of expected action for which they are later judged or blamed."

In the case at bar, the Respondent engaged in inappropriate and profane verbal conduct after the trauma of witnessing her son and husband being attacked.

Haskell and Randall further discuss dissociation which is the process of the brain protecting itself from overwhelming stimulus by splitting some aspect of the experience away from consciousness. The report states:

“Dissociation can be automatic for people who were traumatized earlier in life. Victims describe their experience as feeling like being on autopilot. Others report trance states, feeling in a fog or in a dream, and they don’t feel their bodies.”

In the case at bar, the Respondent was in a state of shock, her counterintuitive and inappropriate reactions and comments occurred even while knowing she was being recorded on body cam, and that she was in a state of fear. She had, as Dr. Lesswing opined, a dissociative reaction resulting in her inappropriate conduct on July 2, 2022. Her conduct should not be condoned. Removal is a harsh and disproportionate response to a one-time inappropriate course of conduct over several hours in the wake of a violent and unexpected event which rekindled her [REDACTED]. A significant mitigating factor that must be weighed in the case at bar is her history of trauma, her diagnosis of [REDACTED] and her trauma reaction secondary to that history. A lesser sanction we respectfully argue is the proportionate response.

**POINT III**  
**THE FAILURE TO IDENTIFY AND DEPOSE DOOLEY AND HAVO, AND THE**  
**PERSON WHO ADVISED CARTER AND VALLADARES OF THE EXISTENCE OF**  
**THE PARTY ENTITLES THE RESPONDENT TO A MISSING WITNESS CHARGE**  
**AND A NEGATIVE INFERENCE**

The Commission cannot fully capture the violent events of July 2, 2022, without the testimony of Havo and Dooley. They provoked the fight and Respondent was directing much of her anger primarily to each of them. (Ex. 9, pg. 59). Respondent asks the Commission to draw negative inferences based on Commission counsel’s failure to depose Havo and Dooley and identify their proper names and identity and determine their role in the assault on Respondent’s child (ASF Pg. 6, footnote 2). The first negative inference requested is that if Havo and Dooley testified they would admit they incited the violence by striking Respondent’s son within five feet of her as she testified in her deposition, knocking him to the ground and punching and kicking him. (Ex. 9, R 38; ASF ¶ 21-24). The second negative inference which we request the

Commission to draw is based on Commission Counsel's failure to learn the identity of the individual who advised Mr. Carter, Mr. Valladares, Havo and Dooley of the existence of the Pearce party (ASF pg. 6, footnote 3). Consequently, the negative inference to be drawn from that failure is that Mr. Carter, Mr. Valladares, Havo and Dooley were not invited and went to the premises inappropriately and looking for trouble.

Pursuant to the Commission rules, only Commission counsel had the opportunity to depose witnesses. (Commission on Judicial Conduct Operating Rules 7000.3d) Under the Commission Rules the Respondent's counsel is not provided notice of the deposition and is not present. If a Respondent seeks to obtain information from a witness, it can only be achieved by interview and not the ordinary civil process of subpoena and deposition. We could not interview Havo and Dooley, we do not know who they are or anything about them. They are essential witnesses, central to the violence that provoked the Respondent's trauma reaction. They were the key individuals the Respondent was addressing in the one- and one-half hours they remained on the Pearce property after violently attacking and fighting with her son and husband. The refusal of Mr. Carter and Mr. Valladares to respond to questions under oath identifying Havo and Dooley undercuts their credibility, particularly as to their version regarding how the violence started. We ask the Commission to draw the inference from that refusal that Respondent's version of role of Havo and Dooley is true.

Because of the unique discovery rules of the Commission on Judicial Conduct in which the Commission counsel solely is permitted to conduct depositions, the Respondent is not allowed to attend or to even have notice of the same, and essentially is entitled to no discovery, the non-cooperation of Mr. Carter and Mr. Valladares offers unique issues. As stipulated, Mr. Carter and Mr. Valladares, when deposed declined to provide any identification including the full names or contact information for Havo and Dooley. They also declined to provide the name

of the individual who gave them notice of the existence of the party albeit at the wrong address, [REDACTED] Tibbitts Road, as compared to the [REDACTED] Tibbitts Road address at which the party was actually occurring.

No known attempt was made through judicial intervention to compel Mr. Carter and Mr. Valladares to provide the above information. Pursuant to 7000.3d, of the operating rules, the Administrator may . . . “subpoena witnesses, examine them under oath, or require the production of any books, records, documents or other evidence that may be deemed relevant or material to investigation.” The lack of cooperation by Mr. Carter and Mr. Valladares speaks volumes about their credibility and the role of Havo and Dooley.

In the brief of Commission counsel, Carter, Valladares, Dooley and Havo are characterized as victims of the Respondent’s verbal abuse with emphasis upon their race. Race forms the basis of a series of speculative conclusions including but not limited to the Commission counsel arguing through speculation regarding their reaction to hearing the Respondent’s comments directed toward them. That is pure speculation. There is no question Respondent’s comments were wrong. Several statements could be perceived as having the appearance of racial overtones, but context is important. There is nothing in the Stipulation that reports the feelings of Carter and Valladares. It is also likely having incited the violence, Havo and Dooleys reaction was not that this was a racist rant but rather the response of an angry mother who witnessed these individuals fighting with her husband and child. That is in fact the Respondent’s explanation. We are not minimizing Respondent’s comments, but they were made under stress minutes after a violent fight and not in a vacuum. Mr. Valladares who admitted that he was involved in the fighting did report he heard Respondent’s comment about shooting the trespassers if they came back (ASF ¶ 69, ¶ 26) Her comments were in fact directed toward the individuals who assaulted her son including Mr. Valladares, Havo and Dooley, and who she

perceived as the violent aggressors. (ASF ¶ 51, 62, 64,64). It was inappropriate trauma reactive discourse. In that context the impressions and feelings of Havo and Dooley as well as Mr. Valladares are directly related to their conduct as aggressors.

Our purpose is not to excuse Respondent's verbal conduct which we acknowledge was deplorable. Rather, we stress that the two missing witnesses, Dooley and Havo, were, based on Respondent's perception, at the very center of the violence which broke out causing Respondent's trauma reaction and the consequent, over-the-top, obnoxious, aggressive verbiage. Respondent was directly addressing the attackers of her family-- Havo, Dooley, Carter and Valladares -- in her trauma reaction to the violence upon her family son and husband. The Commission should conclude that Havo and Dooley were correctly believed by Respondent to be the instigators of the violence and by inference based on the Valladares/Carter declination to identify them and also Commission Counsel's failure require answers and to produce the duo for depositions as to their identity. (ASF ¶ 22-24a). Consequently, the Respondent was directing her bilious words primarily at the persons she witnessed attacking her son who happened to be black, not because they were black. On or about November 15, 2022, when the Respondent was deposed, she identified Havo and Dooley from a photo array as the individuals who struck her son thereby initiating the fighting (Ex. 9 Ex. 2). It is noteworthy that in the stipulated facts that there is no specific accounting for the actions of Havo and Dooley by Mr. Carter and Mr. Valladares, the only factual assertion that they were involved in the fight who alone described their involvement in detail by the Respondent. (ASF 20-24a)

Commission counsel under appreciates the relevant violent events that occurred on the evening in question. It is unfair that the Commission Counsel did not take all appropriate steps to ascertain the whereabouts of Havo and Dooley and obtain their testimony as to the inciting of the violence. Mr. Carter and Mr. Valladares would like the Commission to believe that their

group had virtually no role in inciting the violence and were dragged into it. Commission Counsel accepted this explanation without requiring corroboration, particularly from Havo and Dooley. That is a significant factual dispute. Dooley and Havo to Respondent's observation, started the fight by attacking her son. (ASF par. 21-24a). It is undisputed that Mr. Carter, Mr. Valladares, William Gall III and William Gall IV all sustained injuries in the fighting. The non-cooperation of Mr. Carter and Mr. Valladares undercuts their credibility, particularly given their representation that they were blameless in the inciting of the violence. We ask that the Commission conclude that Carter/Valladares' version of how the violence started is not credible and that the Respondent's observation are credible that Dooley and Havo started the fighting.

In this context the Respondent believes that the adverse inferences requested can and should be drawn by the Commission with regard to the missing witnesses, Havo and Dooley, the failure to identify the party who notified the Carter group of the Pearce party, and the blatant refusal of Mr. Carter and Mr. Valladares to answer important questions. The adverse inferences are warranted, based on the Pattern Jury Instruction missing witness charge. (See NY Pattern Jury Instr. 1:75)

Havo and Dooley meet the necessary standards for the missing witness charge in that they are material, they certainly would be noncumulative in nature, and they would provide an important piece to the puzzle. The missing witness charge is proper where the uncalled witness was an eyewitness to the incident at issue. In *People v. Hall*, 18 N.Y.3d 122, (2011), the Court of Appeals held that the missing witness charge was proper where the three uncalled witnesses were eyewitnesses to the robbery in question and, thus, had knowledge material to the trial. Likewise, in *Crowder v. Wells and Wells Equipment, Inc.*, 11 A.D.3d 360, 361 (1<sup>st</sup> Dept 2004), the First Department held that the defendant bus company and bus driver were entitled to the missing witness charge as to the defendant taxi driver where plaintiffs, passengers of the taxicab

had no recollection of the accident and the taxi driver would have been knowledgeable about a material issue since he was “in a position to give testimony with respect to whether or not the [taxi] was under his control prior to the impact with the [defendant’s] bus.” There is no demonstration that either Havo or Dooley were unavailable or beyond the jurisdiction of the Commission. They were made unavailable by Mr. Carter and Mr. Valladares, which severely undercuts their credibility. As to control, control is determined in a very broad sense and includes a witness under the influence of the party as well as under a party’s employment or management. In this circumstance the Commission counsel controls what little discovery there is under the Rules of the Commission and thus also controlled the production of Havo and Dooley.

The Rules of the Commission place the sole right to take depositions in the hands of the Commission’s Counsel. The failure to obtain the deposition testimony of Havo and Dooley by compelling Mr. Carter and Mr. Valladares to disclose their full names and contact information in fairness calls for the application of the adverse inferences of the missing witness charge as noted above. The Commission is directed to *People v. Gonzalez*, 68 N.Y.2d 424 (1986) (Defense counsel entitled the missing witness charge where the prosecution failed to call complainant’s husband as a witness.) The rationale underlying the rule “Derives from the commonsense notion that the nonproduction of evidence that would have naturally been produced by an honest and therefore fearless claimant permits the inference that its tenor is unfavorable to a party’s cause.” (See *People v. Gonzalez*, 68 N.Y.2d 424, 427 (1986)) *People v. Savinon*, 100 N.Y.2d 192, 197 (2003), *Matter of McGuire*, 2021 Ann Rep of NY Comm. on Jud Conduct at 131, 187; *Matter of Grisanti*, Determination at page 19 footnote 8.

Whether or not an adverse or negative inference is drawn, it is well within the Commission’s purview as the trier of fact in this case to view the failure of Mr. Carter and Mr.

Valladares to cooperate and offer information about Havo and Dooley as impeaching their credibility. In addition, their declination to offer the identity of the individual who sent them the information, albeit with the incorrect address, as to the location of the party and party's existence, we would argue should resolve any question or issue as to the status of Mr. Carter, Mr. Valladares, Havo and Dooley at this event. They were not invited, they were present at the Pearce home inappropriately with malign intent, and their presence was a source correctly of concern and consternation in the context of the time of evening and the absence of any explanation as to their entering upon the private property joining a private party without invitation. It is the conduct of Havo and Dooley that incited the violence which provoked the Respondent's trauma reaction thereby causing the inappropriately lash out to the Carter group including Havo and Dooley and the police. Her conduct was not motivated by racial animus but rather by the violent attack upon her family and her anger at herself.

#### **POINT IV KEY FACTS IN MITIGATION**

The failure on the part of Commission counsel to explain the whereabouts and actions and activity of Havo and Dooley in the context of the Respondent's testimony at deposition should cause the Commission to resolve in Respondent's favor the fact that Havo and Dooley were the precipitators of the fight and that they were in that context with Mr. Carter and Mr. Valladares the recipients of the Respondent's trauma reactive verbal volleys on that evening. While not excusing her conduct, it is extraordinarily important to understand that she believed she was addressing the individuals who attacked her son and her husband. (R 9, p. 26) Not only was that her belief, but based on the entire factual setting, it is true. Her conduct and her language were conceding inappropriate but must be viewed in the context of that belief and her prior history of trauma resulting in a trauma reaction to the violence of July 2, 2022.

The Commission counsel refers to the Carter group as teenagers. There is no evidence of their age in the Agreed Statement of Facts and other than photographs, and absolutely no information about the missing Havo and Dooley. The Agreed Statement of Facts without dispute states:

- 1) Mr. Carter, Mr. Valladares, Havo & Dooley were not invited to the private graduation party. (ASF ¶ 16).
- 2) At least Mr. Valladares had been smoking marijuana within several hours of arriving at the party. (ASF ¶ 16).
- 3) Mr. Carter and Mr. Valladares declined to give Commission counsel the name of the person who advised them of the party in the late evening of July 2, 2022. (ASF ¶ 16).
- 4) That unnamed person gave Mr. Carter and friends the wrong address. (ASF ¶ 16).
- 5) Mr. Carter and Mr. Valladares acknowledged they were looking for a party to go to at 11:30 to 11:45 at night. (ASF ¶ 16).
- 6) They arrived after midnight at the Pearce's home. Fighting has not started. (ASF ¶ 18).
- 7) Carter, Valladares, Havo and Dooly were involved in the fighting. (ASF ¶ 23,24a, 26).
- 8) During the fighting Mr. Carter, who drove and did not have a driver's license, lost his car keys. (ASF ¶ 31).
- 9) Thereby requiring the members of the Carter group to remain at the Pearce property for 1-1/2 hours after the police arrived looking for car keys. (ASF ¶ 63).
- 10) Mr. Carter and Mr. Valladares declined to provide the correct names and addresses of Havo and Dooley. With or without the adverse inferences, that significantly diminishes their credibility. (ASF ¶ 16).

11) Her inappropriate conversations with the police were based on her trauma reaction causing her to take charge, insult, cozy up to, and otherwise make every attempt to clear the premises of the attackers. (ASF ¶ 22, 76; Ex. B1, B4).

The foregoing mitigating are factors, coupled with the Respondent having seen the members of the Carter group attack her son and fight with her husband. Her acknowledged inappropriate statements were directed at the individuals who she perceived had violently attacked her family, her ongoing fear and trauma reaction.

#### POINT V

#### THE RESPONDENT'S [REDACTED] AND FAMILY INVOLVEMENT ARE FURTHER MITIGATING FACTORS

It was well known at the time of the initial briefing in this case that the Commission had heard argument and was deliberating in the *Matter of Grisanti*. With the publication of that recent decision and dissent in between our initial briefing, we believe it appropriate to discuss *Grisanti* and other cases in which the Commission has considered the role of a family member with regard to a Judge's misconduct as a mitigating factor.

Commission member Dr. Nina Moore correctly noted in her dissent that all judicial conduct matters are *sui generis*. (*Matter of Grisanti* dissent p. 12 referencing *Matter of Canary* 2003 NYS CJC Ann Rpt 71 (2002)). The case at bar is *sui generis* with unique factors in mitigation for several important reasons. First, the Respondent has a traumatic history of [REDACTED] resulting in [REDACTED] which significantly contributed to her inappropriate conduct on July 2, 2022. Second, the sheer suddenness, violence, danger and intensity of the event on July 2, 2022, which is captured to some extent on the videos is not present in prior Commission cases. (Ex. 19). The video captures the rawness of the milling, fighting and unruliness. Exhibit 19 is a video obtained by one of the parents, Mike Martyniuk, who was attempting to stop the violence and shows fighting in the ditch.

In *Grisanti*, there was many a month's long simmering dispute that became a confrontation in the afternoon between Judge Grisanti and his neighbors and ultimately the police. Judge Grisanti appears to have initiated that day's conflict and ultimately engaged in physical contact with the police as his wife was being restrained. In the matter at bar, 15 people or more arrived at the party at the Pearce's home uninvited at around midnight including Mr. Carter, Mr. Valladares, Havo and Dooley. Fighting broke out. The inception of the fighting is described by Respondent as Dooley striking her son causing others to jump in and immediately attack him bringing him to the ground to be kicked and punched about the head and body by Havo and Dooley. The respondent did not initiate the fighting.

Respondent did not come into physical contact with anyone during the fight. Having observed her son being punched and kicked as well as her husband, she froze and was in a state of shock. She castigated herself on that night, in her deposition and to her therapists for not intervening to protect her family as this was the same thought process she followed when she retrospectively lamented her failure to resist her [REDACTED] 33 years earlier. (Ex. B 1, Ex. B4, pg. 7)

Her trauma reaction came into full manifestation as she froze watching her son and husband fight and as the violence subsided and the police arrived the trauma reaction is well documented on the body 99cameras of the police. Her anger and vitriol ratches up as the individuals she saw as assaulting her child and husband remain on the premises for approximately an hour and half looking for keys. She is self-described as afraid and angry. In retrospect, it is clear that she was angry at and afraid of the perpetrators, frustrated with the police, but most of all outraged at herself, i.e., "what kind of mother wouldn't have jumped into the ditch.". (Ex. B 4, pg. 7) Again, in her mind she had failed to intervene, to fight back, to resist and rescue her family on that evening just as she had failed to rescue herself or resist years ago while being [REDACTED] at Boston College as a freshman. While not rational as noted by Dr. Joseph

and Dr. Lesswing, it is a belief that is a part of the construct of her trauma reaction, [REDACTED], and survivor's guilt.

Dr. Lesswing poses and answers the question fairly setting forth the unique nature of this case:

[REDACTED]

Months after this violent incident when objectively tested by Dr. Lesswing on 6/20/23, she was found to still be suffering from [REDACTED]. As noted in the points above, [REDACTED] is a condition that lingers, reappears and then requires proper treatment which she has received and continues to receive.

It is telling that Commission counsel, very capable and zealous in all matters and particularly this case, upon receipt of Dr. Lesswing's report and Dr. Joseph's notes did not have the Respondent examined by an expert of their choosing or even offer contrary opinions from a mental health professional disputing the conclusion that Respondent's conduct was a trauma reaction secondary to her prior traumatic [REDACTED] and a reactivation of her [REDACTED]. Thus, for the purpose of this record, the Respondent's actions and behaviors on July 2, 2022, were undisputedly a trauma reaction, creating a unique factual component to this case unlike prior cases decided by the Commission and the Court of Appeals regarding judicial conduct.

We are aware of the line of cases regarding mitigation due to the involvement of family/personal matters as a factor in the misconduct:

- Justice Canary, 2002 NYS CJC Annual Report 77 (2002) - the Judge received censure for his angry intervention with police two times regarding his son's arrest.
- Justice Stevens, 1998 NYS CJC Annual Report 153 (1998) - the Judge used profane language and asserted his office in intervening with a police officer. Justice Stevens received an admonition.

- Justice Newman, 2014 NYS CJC Annual Report 164 - was allowed to remain on the bench after a drunken cascade of threats and abuse of police officers. The Commission took succor in his rehabilitation and therapy.
- Justice Petrucci, 2021 NYS CJC Annual Report 272 (2022) - Received a censure for arrest while intoxicated in which he heaped abuse on the police and was carrying a loaded handgun.

This case is in fact *sui generis*. None of the foregoing judges, nor did Judge Grisanti, have the history of the devastating trauma [REDACTED]. None of the foregoing judges nor did Judge Grisanti carry the diagnosis of [REDACTED]. None of the foregoing judges witnessed the violent factual events involving their child and spouse which the Respondent endured on July 2, 2022. We are also aware of the many cases where the Judge has not been removed in part because their conduct was due to their addiction to alcohol.

The Respondent's traumatic history, her diagnosis of [REDACTED] and the involvement of her family as the recipients of a violent assault are significant unique mitigators that militate against removal. That Respondent has continued on the bench handling multi-district asbestos cases without incident as well as her prior record should give the Commission succor that she will not transgress in the future. Her honestly expressed remorse and insight is a further indicator that she will not repeat her conduct.

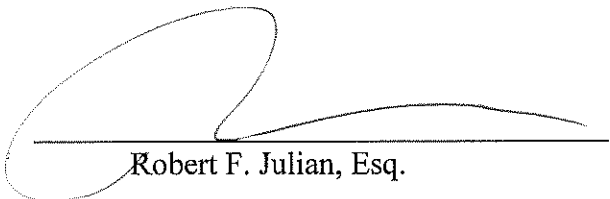
### **CONCLUSION**

Respondent recognizes with clarity the enormity of her misconduct. Her underlying trauma-based diagnosis was a significant contributing factor to her reaction to the violence. But for a conversation at the courthouse some days after the fight, while she was still traumatized, she has engaged in therapy and ongoing remorse regarding her conduct on July 2, 2022. She acknowledges she should be sanctioned; she humbly asserts removal would be harsh and unfair, a career death sentence she does not deserve.

She acknowledges that her one and one-half hours of verbal misconduct toward the police, Carter, Valladares, Havo and Dooley and Ms. Mezza was inappropriate and wrong. In her 12-year unblemished judicial career, nothing like this conduct has occurred in court or out of court. She offers her trauma-based reaction, her response to the assault she observed by the Carter group upon her, not in justification, but in mitigation. She has conducted herself since July 2, 2022, handling the most complicated docket of cases, without complaint and with fairness and efficiency. To end her career and remove her given the mitigating factor of her trauma reaction precipitated by her [REDACTED] would be an unfortunate and short-sighted outcome ignoring the mental health issues raised in this case.

Commission counsel seeks removal of Respondent as a result of her actions on July 2, 2022. We respectfully argue that punishment is grossly inappropriate to the actions of the Respondent in the context of the mitigation factors as set forth above.

Dated: May 17, 2024



Robert F. Julian, Esq.