

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

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**PRELIMINARY STATEMENT/PERSONAL BACKGROUND**

As a result of the events of July 2, 2022, and over the course of this entire proceeding, Judge Gall has proven her candor along with her forthright recognition of her own errors in judgment and willingness to seek help and correct them. She has acknowledged that her conduct on July 2, 2022, was inappropriate and has offered her whole-hearted, genuine apology for her lapse in judgment and offensive behavior. As noted in the transcript of Judge Gall's deposition dated November 15, 2022, Judge Gall has been remorseful, apologetic, and accepting of responsibility. She acknowledged from the very beginning that she was embarrassed by her conduct and humiliated at the way in which she reacted to the unforeseen events that had occurred. It is the opinion of her psychologists that her conduct was secondary to a trauma reaction which we offer not as an excuse but as an explanation.

On the evening in question, Judge Gall and members of her family were invited to and attended a graduation party for a close friend, Jackson Pearce, at his home on Tibbitts Road in the Town of New Hartford (a chronology of the events preceding the assault is laid out in Judge Gall's deposition, Exhibit 9, dated November 15, 2022, at pp. 14-16). During the late evening

hours of July 1, 2022, and into the early morning hours of July 2, 2022, Judge Gall witnessed a brutal, unexpected, violent, unprovoked assault by certain uninvited individuals upon her son and several of his friends which eventually led to an altercation involving her husband and two other adult males who attempted to break up the fighting. Judge Gall observed her son being beaten about his head and body by several of the unknown individuals and later her husband being punched and struck in the head and body as he attempted to break up the fighting. Judge Gall was undoubtedly in a highly stressful and unexpected environment on that evening in which unknown individuals who it is acknowledged were not invited to the graduation party but arrived unannounced and remained present for nearly two hours.

Mitigating factors are present and must be strongly weighed by the Commission in making its final determination. As set forth in the stipulated facts, Judge Gall's deposition, and in the reports of her treating psychologist with experience in [REDACTED] and her examining psychologist with extensive background in [REDACTED] and diagnosing and vetting police officers and their appropriateness for duty, the Judge responded to the violence that occurred in a way that was, while inappropriate, incited and highly motivated by her past history of having been a victim of violence. (B-1; B-4). It was a trauma reaction. (B-1, pp. 7-8). Judge Gall testified and told her therapists that she felt inadequate, powerless, helpless, lost and frozen as she watched her son and husband involved in the fight and did not come to their aid. She has indicated that she has never personally witnessed a physical altercation and has never seen her son or husband involved in a fight before.

The police were contacted and arrived as the male adults were attempting to stop the fighting. At that time, Judge Gall knew that her friend, the property owner attorney Stephen Pearce, was under the influence of alcohol at the party at his own house. The individuals who

she believes started the fight remained present on the property for over an hour and half even after the police arrived; while going through a process in which post-fight matters were still highly charged, the individuals proceeded to look for their keys that were allegedly lost during the fighting. Judge Gall during that timeframe expressed her frustration wildly to the police and others and inappropriately addressed all concerned at certain times including the individuals with whom she believed had attacked her son and husband and who were trespassing and not invited to the party. Judge Gall does not deny that she clearly invoked her judicial office multiple times. She clearly engaged in profanity. She clearly spoke aggressively to the police. She clearly spoke aggressively to the uninvited individuals. At no time did Judge Gall engage in any acts of violence. She did not act in a way that demonstrated prejudice or any form of racial animus. Her trauma reactive response was direct, angry and inappropriate; her actions were the result of a misplaced effort to take charge as a mother and protect her family and friends. Both psychologists directly opine her conduct was secondary to prior [REDACTED] which kindled her trauma reaction on July 2, 2022.

Judge Gall has no other circumstance or history even remotely like this in terms of her public life. She is a much proclaimed and lauded judge who has actively worked to advance the cause of [REDACTED] victims, working with individuals, groups and police over the course of many years. Nothing in her prior history or background as a student, lawyer, law clerk or Judge reflects the conduct she engaged in on this violent and extraordinary night.

Judge Gall's work history establishes that she has chosen a path in public service. Following her graduation from law school in 1996, Judge Gall worked for a small private practice in Buffalo for a few years—a firm that she worked at throughout law school. She then relocated to Utica, New York where she worked for the Oneida County Public Defender-Civil

Division, litigating matters in family court while representing indigent persons. Shortly thereafter she was hired as the confidential law clerk to Hon. Barry Donalty, County Court Judge, a position that she held for 13 years. Throughout her career as an attorney, she remained active in her community, highly involved with her children's education and sporting activities as a volunteer, and recognized for her contributions to the law.

For over ten years, Judge Gall devoted much of her expertise and attention to advocating and assisting victims of [REDACTED] assault. Following law school, she sought to advance the cause of [REDACTED] victims among numerous community activities and appearances, educating law enforcement agencies by teaching sensitivity training and engaging with fellow victims. (Exhibit B, Lesswing page 4)

In 2011, Judge Gall was elected and took the bench in January of 2012. In 2018, Administrative Judge James Murphy appointed Judge Gall to the asbestos/talc toxic tort docket in the Fifth District in addition to her current duties. In December of 2019, Judge Gall was approached by other judges and administrators within the Third Department to take over the asbestos docket in the Third Department. Within a few short months, Judge Gall also acquired the asbestos docket in the Seventh District, raising the number of counties over which she presided to 42, spanning 5 judicial districts. She has successfully managed this intense assignment as a regional judge for 4 ½ years to date. Judge Gall works directly with staff throughout 42 counties, is actively involved in settlement of all cases and tries those necessary requiring extensive travel throughout New York State. Judge Gall takes pride in her hard work and success in managing and trying the asbestos docket. (Exhibit 9, pp. 4-6).

## STATEMENT OF FACTS

Respondent's son William Gall's best friend Jackson Pearce was having a party on July 1, 2022, celebrating his graduation from New Hartford High School. Respondent's husband and Jackson's father Steve Pearce grew up together and Respondent herself had a 22-year friendship with Steve Pearce and his wife, Gina. Jackson Pearce and William Gall, IV have a lifelong friendship stemming back to pre-school (Exhibit 9, pp. 11). Approximately 50 invitations were mailed out by formal invitation to this private party. Jackson Pearce invited another 50-60 by other means, all people known to him. It has been clearly established that Havo, Dooley, Mr. Carter and Mr. Valladares did not receive a formal invitation nor did they receive an invitation from Jackson Pearce (see Agreed Statement of Facts, pg. 10). Havo, Dooley, Mr. Carter and Mr. Valladares learned of the party from Snapchat from a source they declined to identify. (Agreed Statement of Facts, pg. 10). Without invitation and with wrong address they traveled across Utica to New Hartford to find the party. They were among the approximately 15 individuals who were unknown and uninvited who arrived at the party after 11:30 p.m. (Exhibit 9, pp. 42-43).

The party was held at the Pearce's private residence, located on a main road off of Route 12 in the Town of New Hartford, New York (Exhibit 9, pp. 13). There had been "so many graduation parties up to this point" Respondent testified that she was familiar with the parents and children who attended the party as a part of the New Hartford High School graduating class. Her son, William, and Jackson have a large group of friends and it was nearly the same group of attendees (friends and their families) who attended the majority of the graduation parties. At around 10:30 p.m., the party seemed quiet; a lot of parents had left. (Exhibit 9, pp. 16). Respondent took her younger children home at approximately 11:00 p.m. and returned to the

party to retrieve her son, William, and husband, Bill. When she returned, Matt Hart, who was one of the graduating students, approached her and told her that several carloads of unknown uninvited individuals had arrived at the party (Exhibit 9, pg. 18). He appeared nervous and concerned. Other students reacted in the same manner.

Sometime around 11:30-11:45 p.m., Respondent saw an unknown individual overturn a tray of food under the tent (Exhibit 9, pp. 19). At or around this time, Respondent heard banter and swearing while under the tent. (Exhibit 9, pp. 19) Sometime after midnight there was an attempt to clear the area because there was hostile communication between the uninvited individuals and the New Hartford High School young people. A fight broke out. The Respondent without difficulty identified Havo and Dooley as instigating the assault upon her son within ten feet of her presence. (Exhibit 9, pp. 46-49; Paragraph 23 of the Stipulation) The Respondent described observing her son being slapped by Dooley, being knocked to the ground and kicked and punched by four interlopers including Havo, Dooley and Carter. (Exhibit 9, pp. 39). She identified Havo, Dooley and Carter as engaging in a fight further with her husband as he was attempting to clear the area. When deposed on November 15, 2022 at the Commission office in Albany without any prompting the Respondent identified Havo and Dooley as well as Mr. Carter as individuals who brutally attacked her son. Mr. Carter and Mr. Valladares declined to give the Commission investigators the full and formal names of Havo and Dooley. Judge Gall was shown photographs in a photo array which is attached as Exhibit 2 to Exhibit 9 and unequivocally picked out Havo and Dooley. (pp. 46-49, see paragraph 23 of the Stipulation). Mr. Carter's and Mr. Valladares' photographs were not in the photo array. The Respondent identified Mr. Carter, however, from the body camera footage that was shown to her during the deposition.

Attached as Exhibit 20 is an aerial photo of the Pearce front lawn. The photo shows the location of the tent where food was served, parking and the location of the lawn where Respondent's son was initially slapped and ditch where the fight ensued.

There is no dispute that Havo, Dooley, Mr. Carter and Mr. Valladares were not invited to this party and were present as interlopers. It is acknowledged in the Stipulation at paragraph 17.

What ensued therefore could only be described as mayhem incited by the several cars of unknown, uninvited persons to Respondent's observation. Respondent's friend Steven Pearce was inebriated. It was his house, it was a party for his son, and we suppose if someone is going to be inebriated, that is the place to do it. However, he was responding inappropriately to the violent situation that unfolded. Respondent who did not consume alcohol observed her son being punched and kicked in the head as he lay on the ground and her husband engaged in a brawl to attempt to extricate his son and clear the area of combatants.

She observed fighting among numerous individuals on the lawn and in the ditch. The male adults present attempted to break the fighting up. (Exhibits 18, 19, 21, 23). They were clearly outnumbered and attempted to separate the individuals and hold off the fighting until the police arrived. The Respondent witnessed a few feet away her son at the bottom of several individuals who were striking him and kicking him about the head and body. (Exhibit 9, pp. 25-39; 46-48). She testified it was traumatizing and scary to see her son being beaten and on the ground receiving blows to the head. (Exhibit 9, pp. 19-20). She witnessed her husband, who was attempting to extricate her son from the pile, being struck, punched and kicked (shirt torn off) and attempting to protect himself as he tried to intervene and break up the fighting. Respondent did not intervene in any way in the fighting but stood frozen as she observed the dangerous and violent attack. In the aftermath, the Respondent's son and husband were battered

and bruised and their clothing had been ripped. (Exhibits 10 and 17). The Respondent saw the individuals who attacked her son standing around afterwards and they weren't leaving the property (Exhibit 9, pp.25), and were present at the property looking for keys that had been lost during the fight. (Exhibit 9, pp. 25-26). The Respondent described as silent and in shock during the fight as her son was on the ground receiving a "stomping on his head" and being kicked in the head. She did not know if the aggressors had weapons. (Exhibit 9, pp. 39). She testified that Mr. Carter's group including Havo and Dooley remained on the Pearce premises for an hour and a half looking for Keys. (Exhibit 9, pp. 57). The Respondent testified that she was very upset and very scared during the hour and a half with the presence of the aggressors on the property. (Exhibit 9, pp. 57). She testified that she referenced her judicial position and made very inappropriate comments in this state. (Exhibit 9, pp. 58-62).

Once the police arrived, they did not cause the combatants to be separated or leave the premises. That precipitated the clearly hysterical and out of proportion reaction of Respondent and Mr. Pearce. Respondent engaged in what we know to be a hyperbolic and hysterical reaction to the event and the police response to the event launched by a trauma reaction diagnosed by the psychologists secondary to her [REDACTED]. What would cause this otherwise dignified and successful jurist who was placed with the responsibility of some of the most difficult and high-profile cases to react in such a vulgar and inappropriate manner? The Respondent testified she was in fear that there would be further fighting and felt a feeling of powerlessness and the need to bring the situation under control. She was experiencing a revisiting of her own [REDACTED] assault and a feeling of inability to respond and lack of control in terms of her witnessing her son's and husband's battle which ensued in her proximity but for which she did nothing, just like her reaction as she was [REDACTED] 34 years before when she "froze."

(Exhibit B). She compensated with an extreme over-reaction that was irrational and trauma-based. The Respondent testified, "...I really was acting as a mom who had just witnessed something awful and I wasn't acting appropriately and I wasn't thinking the right way" even though she realized she was likely being recorded. (Exhibit 9, pp. 56). She admits she invoked her 911 multiple times, that she was disrespectful to the police and Mr. Carter's group, that she made the utterly inappropriate comment about anyone coming back onto the property would be shot, had an inappropriate conversation about ERPOS and was profane.

The Respondent was the victim of a [REDACTED] in college on April 29, 1990. During that [REDACTED] she recalls she did not fight back, yell or resist. Because of the [REDACTED] she obtained immediate psychological counseling and treatment from Dr. Joanne Joseph when she returned home in May of 1990. After seeing Dr. Joseph she was released from care. (Exhibit B). She returned to college in the Fall of 1990 for her sophomore year and graduated timely in May of 1993. In August of 1993, Judge Gall attended law school, graduated in 1996 and successfully commenced the practice of law. (Exhibit 9, pg. 6). It was during her early years of practicing that she thought it was important that she speak in a public manner about her personal experience with [REDACTED] for the purpose of reaching out and empowering other victims and educating police and the public with regard to this brutal crime. She proceeded to marry, have children, pursue a career in the court system honorably and with distinction as a law clerk. As previously detailed, Judge Gall engaged in 12 years of distinguished service dealing with all forms of cases in several counties including matrimonial with the attendant domestic disputes, personal injury and various types and forms of psychiatric cases. She was ultimately given the distinction of serving as the dedicated regional asbestos judge for 42 counties known to be complex cases.

After the brutal and highly emotional events of July 2, 2022, the Respondent re-engaged with her original therapist Dr. Joseph and sought treatment and counseling. (Exhibit B). She was also evaluated by Dr. Norman Lesswing, a psychologist with experience in [REDACTED] [REDACTED] who has historically in his practice cleared potential police officers for service and incumbent police officers for fitness for duty after stressful events, and engaged in a large number of trauma-based evaluations. (Exhibit F, B-1 and B-5). Reviewing the body camera footage of the event further incited her [REDACTED] and helped her to recognize her ongoing trauma reaction causing her to seek out Dr. Joseph and be evaluated by Dr. Lesswing. (Exhibit B-1, Lesswing, pg. 5). Judge Gall continues treatment to date with Dr. Joseph.

Both Dr. Lesswing and Dr. Joseph, upon evaluation of the Respondent, have concluded that Judge Gall had a reactivation on July 2, 2022, of [REDACTED] stemming from her prior [REDACTED]. The trauma was a significant contributing factor to her disproportionate and inappropriate reaction to this traumatic event. It was, in their opinions, clearly a trauma reaction. (Exhibit B-1, B-4). Specifically, and crucially, Respondent's feeling of powerlessness and her failure to intervene physically to protect her son as she saw him being pummeled and beaten beneath several unknown violent individuals and watching her husband attempt to save her son and stop the fighting prompted and precipitated her excessive reaction once the police arrived. (Exhibit 9, pp. 19-20; B-1, B-4). It was further exacerbated by her belief that law enforcement was not attempting to clear the property of the assailants. It is in that context that she invoked her office multiple times, that she engaged in extensive profanity, that she was argumentative and critical with the police. Consequently, she was aggressive and disrespectful to the individuals she believed assaulted her family and an uninvolved relative. None of these facts or

observations are offered to excuse her conduct. It is a fact that in the Statement of Agreed Facts the Respondent acknowledged that her conduct was inappropriate. We believe there are three factual conclusions that the Commission should draw from the affirmative defenses in this case that mitigate:

1. That her conduct on July 2, 2022, was an aberration and not an indication of Respondent's conduct on the bench or in her personal life, and
2. That Respondent has sought the appropriate therapy and is deemed by both psychologists consulted to be fully able to continue her duties without any compromise to her abilities. In the context of her [REDACTED] and trauma reaction on July 2, 2022, this one event does not disqualify her from continuing on the bench. (B-1, B-4)
3. Whatever the appearance, the facts bear out that Respondent was not expressive of or motivated by racial bias. She was motivated by her stress, fear, and desire to protect her family resulting in an inappropriate trauma reaction. (B-11, pp. 7; B-4). She was screened for [REDACTED] by the [REDACTED] and found by Dr. Lesswing to be suffering from [REDACTED] (B-1, pp. 5).

Indeed, she has continued as the asbestos judge.

## ARGUMENT

### POINT I

#### A. **THE PROOF DOES NOT MEET THE EXISTING STANDARDS FOR REMOVAL**

The Court of Appeals “[has] repeatedly noted that removal is the ultimate sanction and should be imposed only in the event of truly egregious circumstances. Indeed, removal is not

warranted for conduct that amounts simply to poor judgment or even extremely poor judgment.” *Matter of Kiley*, 74 N.Y. 2d 364, 369-70 (N.Y. 1989) (internal citations omitted). The Court tends to find that removal is the proper remedy where a judge’s “continuance in office would pose a threat to the proper administration of justice,” *Mtr. of Tyler*, 75 NY 2d 525 (N.Y. 1990), and where the accused “so distorted his role as a judge as to render him unfit to remain in judicial office.” *Mtr. of Duckman*, 92 N.Y.2d 141, 153 (N.Y. 1998). Such conduct has included income tax evasion (*Mtr. of Steinberg*, 51 NY 2d 74 (N.Y. 1980)), assault (*Mtr. of Kuehnel*, 49 NY 2d 465 (N.Y. 1980)), and sending repeated abusive and threatening communications to an attorney and lying about them to the Commission (*Mtr. of Mogil*, 673 NE 2d 896 (N.Y. 1996)).

The use of a racial slur in a single instance has been found to rise only to censure, even when harshly directed at an individual. In *Mtr. of Agresta*, 64 N.Y.2d 327 (1985), the sanction was censure when a judge undisputedly addressed an African-American defendant in open court by saying, “I know there is another n [REDACTED] in the woodpile.” *Id.*, at 329. In other instances, the Court has found that inappropriate comments alone are not a sufficient basis for removal. For instance, when a judge passed a note to a court attorney commenting on the physical attributes of a female law intern and suggested to the intern that she remove some of her apparel in his presence, the Court found that this conduct was “demeaning, [and] entirely inappropriate,” but not itself sufficient for removal. *Mtr. of Collazo*, 691 NE 2d 1021, 253 (N.Y. 1998).

This Commission has not removed Judges who have engaged in much more serious transgressions that have occurred in Court and not in an out-of-Court social setting such as this case. In *Matter of Carter*, 2007, Annual Report 979, this body censured Judge Carter who came off the bench and attempted to assault a plaintiff. A few months later Judge Carter suggested a police officer “thump the s--- out of a Defendant”. In *Matter of Teresi*, , 2002 Annual Report

125, the Court censured Judge Teresi who sentenced a pro se litigant to six months in jail for refusing to sign a corrective deed without properly finding the litigant in contempt without the right to purge the contempt and even though the litigant was not in default. Judge Teresi was also found to be injudicious, impatient and discourteous in two other cases. In *Matter of Mills*, 2005 Annual Report 185, Judge Mills had sentenced a pro se litigant for contempt of court summarily and incorrectly because the litigant interrupted and made inappropriate objections. The pro se litigant was not properly warned by the Judge of the risk of contempt nor accorded a hearing. Thereafter, in another matter Judge Mills sentenced to jail without a trial an individual because he was observed by the Judge as arguing with his wife in the Courthouse parking lot. They were not physically fighting or making any physical gestures, neither party was afraid of the other nor felt threatened at the time. Judge Mills was in the parking lot and observed the argument. The individuals entered the courthouse and the courtroom to observe their son who was involved in a proceeding before Judge Mills. Asking the son if his father was present, Judge Mills then requested the father to approach the bench and ordered that he be arrested for disorderly conduct, had the father handcuffed in the courtroom and placed in jail. Later that day the father was then arraigned by another Judge and was released on his own recognizance after spending three hours in a jail cell. Judge Mills received a censure for the above conduct.

**B. THE COMMISSION HAS ISSUED ADMONITION OR CENSURE WHERE A JUDGE TRANSGRESSED WHILE ACTING OUT OF COURT AS A HUSBAND, PARENT OR IN RESPONSE TO A SOCIAL STRESS WITH A SIGNIFICANT OTHER**

In the *Matter of Panepinto*, 2021 Annual Report 239 the Commission accepted a stipulation and permitted the sanction of censure against a Supreme Court Justice who in explaining her conduct stated that she was acting as a parent seeking to protect the quality of her child's education at a time in which she engaged in "numerous violations of the rules during the

relevant three-month period...” (*supra* pp. 248). In this case the Judge Panepinto helped to organize a citizen’s group in support of the Buffalo Teacher’s Federation against the Buffalo Board of Education. Over the three-month period, she made repeated public comments about issues and individuals involved in the litigation, in person, by e-mail and on social media platforms in which she was identified as a Judge. She also assisted in providing legal information and advice to the parents of the students, thereby causing a stipulation that she had improperly practiced law. She had signed advocacy letters. She spoke with members of the Buffalo School Board about the pending litigation that arose from the dispute and was pending before a Judge in her own courthouse. When the case was to be formally considered by a fellow Supreme Court Justice, she knowingly organized and joined the Buffalo Teacher’s Federation in the courthouse and appeared outside the courtroom prior to a case conference. She executed an affidavit that was filed in the litigation in Erie County Supreme Court.

While Respondent understands that Judge Panepinto did not invoke her judicial office as many times as Respondent nor did she conduct herself in the hyperbolic and inflammatory way that Respondent engaged in, there was no direct threat to Judge Panepinto’s child’s well-being, neither her child nor husband were involved in fist fights in front of her, and the events that Judge Panepinto participated in were over a three month period of time as opposed to the Respondent’s several hours. Judge Panepinto’s participation in the three months of events involved a great deal of time to contemplate her actions whereas the Respondent was responding in real time to a violent event unanticipated in the overall context of her prior history of having been traumatically assaulted. There was no evidence that Judge Panepinto was responding based on a trauma reaction secondary to [REDACTED]. It is not the Respondent’s position that the Commission decided Judge Panepinto’s case incorrectly, it is rather

Respondent's assertion that there is sufficient similarity to the cases with Respondent having a number of other mitigating factors that would suggest to the Commission that the sought remedy of censure in the case at bar is appropriate and removal is disproportionate.

In the *Matter of Roepe*, 2002 Annual Report 153, the Judge in question held a knife within four to eight inches of his supine wife's throat and threatened to run her through with it if she ever removed that knife from his private possession again. The Commission noting that there had been no prior instances of domestic violence, that the wife did not pursue a criminal matter, that the matter was resolved in Family Court, and that the Respondent had consumed alcohol on that evening but there was no indication in the record that alcohol in any way impeded his performance as a Judge. Judge Roepe was issued a censure.

In the *Matter of Fisher*, 2019 Annual Report 126, the Commission issued an admonition to a town justice who acting on behalf of his wife who was a fiduciary of an estate improperly entered a private home, took photographs of the home, intervened in the litigation about the home, posted on Facebook photographs that he had taken with regard to the home even after he was under investigation by the Commission on Judicial Conduct.

In the *Matter of Miller*, 1997 Annual Report 108 (Commission on Judicial Conduct), Judge Miller engaged in a personal investigation about personal matters utilizing her judicial access to sealed records and then sent approximately 60 anonymous and harassing, annoying and offensive mailings to various newspapers, businesses, and individuals including her former paramour and the woman that he married as well as their relatives, friends and neighbors. Those mailings contained characterizations of her former paramour and his wife which were malicious, vituperative and derisive and included the contents of confidential divorce papers and from proceedings in New York and South Africa.

In granting censure to Justice Miller, the Commission noted that “Respondent’s conduct was motivated by anguish over her breakup with Judge Hickman, her former paramour”. The Commission concluded that censure was appropriate because “Although serious and extensive, Respondent’s malicious harassment of the Hickman’s does not constitute conduct that destroys her effectiveness on the bench. This is so, in part, because it was personal in nature and did not involve misuse of her administrative powers or her influence as a Judge.”

In the *Matter of Cipolla*, 2003 Annual Report 84, the Commission issued a censure wherein the respondent’s conduct which included inappropriate treatment of a female with whom he had a relationship, and writing an inappropriate letter to the DEA inquiring about her background, the respondent Judge intervened in her traffic ticket pending before another Judge. The Commission stated: “While respondent’s misconduct is serious, we have concluded that it does not irretrievably damage his effectiveness on the bench. This is so in part because respondent’s conduct was largely personal in nature and occurred over a brief period during his first year on the bench.” The Commission issued an order of censure.

Likewise, the Commission determined that admonition was appropriate in the *Matter of Pautz*, 2005 Annual Report, 199, in which the respondent effectively harassed a former female relationship by hang-up calls, correspondence, following her to a work-out, stalking her at her place of work, and had a charge of harassment in the second degree filed against him which was adjourned in contemplation of dismissal.

## **POINT II**

### **RACE**

The Commission did not charge the Respondent with racial bias. The Commission counsel introduced that allegation in a category entitled Additional Factors in paragraph 75.D. of

the Stipulation. Respondent stipulated that her statements that Mr. Carter and his friends did not look “that smart” and were “not going to business school That’s for sure” and her statement that she would shoot the young men if they returned to search for the missing car key, created at least the appearance of racial bias. In so acknowledging, the Respondent did not concede that there was in fact actual or implicit racial bias and believed that she could reasonably refute that the appearance was based on trauma reaction and her affirmative defenses which are based on her, and not racial bias. It is certainly true that impressions of people can be made on the basis of appearance and demeanor apart from skin color. Respondent agrees that wherever possible a Judge should engage in conduct that does not create the appearance of racial bias. In this case, supportive that there was no bias being exercised, is the fact that indeed no racial descriptors were utilized during the confrontation. Moreover, the facts support that there was indeed no such bias directly or implicitly to wit:

1. The young men in question were uninvited to the party and unknown to the individuals present including the Respondent. This was a home invasion composed of several cars full of uninvited young people that occurred very late in the evening, an event that would prompt concern regardless of the race of the unknown and uninvited individuals.
2. That there was a confrontation and language that was threatening and incendiary was utilized. Respondent believed Mr. Carter’s and Mr. Valladares’ group to be the provocateurs. It is conceded in the Stipulation that they were not invited to the party and had the wrong address obtained from an undisclosed source.
3. That the Respondent observed an individual she identified as a member of Mr. Carter’s group and who is acknowledged to be a member of Mr. Carter’s group,

Dooley, slapped her son and then engaged in a fight with him kicking him while he was on the ground about the head and body. The Respondent observed Mr. Carter and Havo engaging in the same conduct assaulting and fighting with the Respondent's son.

4. The four members of the Carter/Valladares group engaged in fighting with her husband.
5. There was a delay in the departure of the group from the premises caused by the loss of keys which further accentuated and exacerbated the Respondent's fear and frustration. However, at no time were any racial epithets used. Respondent's insulting language could have been directed toward any interloper regardless of race.

Unlike the *Matter of Putorti v. New York State Commission on Judicial Conduct*, (40 NY3d 359 [2023]) the Respondent at no time utilized descriptive terms such as black or any other racially delineating language. Candor requires that in the context of the event, i.e., her statements to the black young men could not be denied on their face as creating an appearance of bias if one ignores the overall factual context. (Exhibit 9, pp. 19-20). Respondent was addressing uninvited interlopers who she believed assaulted her son and husband. However, that appearance is not the basis of a demonstrated implicit or actual bias by virtue of her history and by virtue of the circumstances in that she was a mother responding to an assault upon her child and husband. The Respondent recognized that in this proceeding she would be required to refute the presence of implicit bias and so consequently acknowledged that an appearance, albeit refutable, was created. The Respondent cites and respectfully directs the Commission to the article by Mikah K. Thompson, *Bias on Trial: Toward an Open Discussion of Racial Stereotypes*

*in the Courtroom*, (2018 Mich. St. L. Rev. 1243, 1249-1250) cited by the Court of Appeals in *Putorti*. It is noteworthy that in the *Matter of Putorti*, the Court of Appeals found as follows:

“Although petitioner claims that he ‘subjectively feared for his safety’, he admits that he had ‘no reasonable basis’ to believe that the litigant ‘was about to use imminent deadly force’, and that he was ‘not justified’ in brandishing the firearm.” (*Id.*, pp. 1249-1250).

This is not the circumstance in the case at bar - the Respondent’s family was in a unprovoked fight with strangers. The Respondent feared for her safety and that of her family. She had a personal life history of having endured the most ghastly form of prior trauma and the assault on her family provoked a trauma reaction.

As best determined the Putorti incident occurred in 2015 and Putorti recounted the incident for an article published in a Long Island news source in 2016. He showed the article to another Judge describing his actions as pulling his firearm “on an agitated” “big black man” when the man approached the bench too quickly. He told a 2016 Washington County Magistrate’s Association meeting of this article and event and another association in 2018 that the incident had occurred describing again the gentleman as a large black man. All of these statements were exaggerated.

In the case at bar, it is stipulated that there was violence, fighting and that the Respondent’s son and husband were significantly involved. The conflict that broke out was provoked and was primarily engaged in with a number of uninvited individuals. It is significant that the Respondent identified two individuals, Dooley and Havo, as involved in the fighting out of a photo array of over 20 photographs. (Exhibit 2 of Exhibit of Ex. 9) In this context, did Respondent’s comments demonstrate implicit bias?

In citing the Mikah K. Thompson law review article, *supra*, the Court of Appeals offers in footnote 30 of that article a law review article authored by Lu-in Wang, *Race as Proxy*:

*Situational Racism and Self-Fulfilling Stereotypes*, 53 DePaul L. Rev. 1013, 1071-72 (2004). In the Wang article a clear explanation is offered for conduct such as confronted Respondent:

“Sometimes the parties lack the cognitive or behavioral resources to do more than resort to stereotype - confirming patterns of behavior and interpretation by default. The perceiver may be under too much stress or too busy to do much more than rely on cognitive and behavioral shortcuts. People who are aroused or under greater cognitive load may rely more heavily on expectations or stereotypes. Time pressures also limit the ability and the motivation of both parties to avoid stereotypes confirmation.”

The Wang article references an article by Steven L. Neuberg, *Expectancy - Confirmation Processes in Stereotype-Tinged Social Encounters: The Moderating Role of Social Goals*; Mark P. Zanna and James M. Olson, *The Ontario Symposium*, pg. 103, 105-106.

The social research cited above demonstrates that individuals under stress or with little time will resort to cognitive and behavioral shortcuts and old, socially conditioned and implicit stereotypes that they might avoid in other situations. If there is the appearance of implicit bias in the statements by the Respondent, the same must be viewed in the context of the stressful event she confronted on July 2, 2022. In the case at bar, the Respondent was confronted with a violent episode that rekindled her [REDACTED] and which caused her to respond by trauma reaction in a way that is contrary to her otherwise exemplary in Court and out of Court conduct. Her confrontational and taunting response, although directed toward young black men, would likely have been the same if they were any other race. There is no reason to believe otherwise. In her mind they were the aggressors, she had failed to protect her son and husband, and, in her trauma reaction, was asserting her ability to control and protect. At worst, she was resorting to stereotypes out of fear and stress although this in no way can be definitively concluded. In any event, such implicit bias is contrary to her life's work of according equal treatment and respect to all. Her conduct was not anywhere proximate to overt expressions of

racism in *Matter of Agresta*, 64 NY 2d 327,329, 1985 at Page 329, where the Judge was removed.

**POINT III**  
**THE RESPONDENT'S HISTORY OF TRAUMA CAUSED HER INAPPROPRIATE REACTION IN THE EXPERT OPINION OF TWO PSYCHOLOGISTS**

**A. DR. JOANNE JOSEPH'S TREATMENT OF RESPONDENT PLACES RESPONDENT'S CONDUCT IN CONTEXT**

Erin Gall, then Erin Pelnik, was [REDACTED] in 1990 on the campus of Boston College. A large individual overpowered her and [REDACTED] her. She did not fight back or resist the [REDACTED]. She froze at that moment. She has constantly lamented her passivity and failure to fight back against the [REDACTED]. Subsequent to that event upon returning home from Boston College she sought mental health counseling with Joanne M. Joseph, PhD, who followed her therapeutically. Dr. Joseph's records no longer exist but she confirms that therapeutic relationship in her report which is attached as a part of her June 29, 2023, record which was part of **Exhibit B-4**. Dr. Joseph states in her record that she recalls the Erin Pelnik case but unfortunately her records are no longer available. Dr. Joseph noted that the Respondent "recovered from that traumatic experience" and consistent with the evidence and support of post-traumatic growth, Judge Gall used her experience to assist other assault victims and educate the public on issues related to [REDACTED] assault. Dr. Joseph noted that she was substantially free of [REDACTED] symptoms until the event of July 2, 2022. Judge Gall reported to Dr. Joseph on June 29, 2023, that she was having recurrent [REDACTED] symptoms:

6. Flashbacks to the early trauma and recent traumatic experiences and most of those flashbacks are remembrance of "freezing and being out of control".

7. Persistent negative beliefs about her own ability to manage this threatening situation. Judge Gall feels she should have been able to react in a rational manner and help her husband and son when the son escaped this assault situation. She also felt she should have been able to control her reaction toward the police in a better fashion.
8. She is experiencing sleep disturbances and pre-occupation.
9. Hypervigilance.
10. An inability to experience pleasure.
11. A loss of appetite which includes pre-occupation with thoughts of helplessness and negative self-thoughts and those thoughts include “I froze, I couldn’t defend myself, I couldn’t defend my son and my husband, I’m weak and ineffectual in crises.”

These symptoms were persistent for over a year. (Exhibit B-4 6/29/23 note)

At the initial appointment, Dr. Joseph formed the clinical formulation of [REDACTED]

[REDACTED]. Dr. Joseph noted that Respondent was able to directly connect features of the two traumatic situations as documented in her life very well in the note of June 29, 2023.

(Exhibit B-4) At the next visit on June 30, 2023, there was an introduction to cognitive reformulation. They discussed her irrational concern about the two traumatic experiences and her freezing. This was a 2.5-hour session. (Exhibit B-4) At the next session on August 4<sup>th</sup> she had resolved some of the feelings of some of the [REDACTED] symptoms from the nearly 34 year ago assault. Dr. Joseph stated “The situation that she is holding herself responsible for certainly was a highly traumatizing situation. She witnessed her son being attacked and felt like she froze and couldn’t do anything to help him.” (Exhibit B-4) Dr. Joseph noted on August 21, 2023, that her symptoms had improved, flashbacks had disappeared. Dr. Joseph stated from a clinical perspective: “Judge Gall has worked very hard these last few sessions on getting control over her

[REDACTED] symptoms. Interestingly, these symptoms did not interfere with her ability to do her job. In fact, the diversion of the job and the demands of the job, helped divert her away from the persistent thoughts.” (Exhibit B-4) Dr. Joseph also said in evaluating Respondent: “That her reactions in both situations, are not atypical for what a number of people would experience, given the same set of conditions.”

**B. DR. NORMAN LESSWING OPINED THAT THE RESPONDENT HAD A TRAUMA REACTION SECONDARY TO [REDACTED]**

Dr. Norman Lesswing, as his attached curriculum vitae reflects, has broad based experience evaluating patients who have experienced trauma including performing fitness for duty evaluations for the Syracuse Police Department and a number of Town Police Departments. He evaluated and tested the Respondent for [REDACTED].

Dr. Lesswing stated in his conclusions that:

[REDACTED]

Dr. Lesswing also stated:

[REDACTED]

[REDACTED]

Dr. Lesswing's report is not based on subjectivity, as he states at page 6 of his report, Respondent was screened for [REDACTED] on the [REDACTED].

[REDACTED]

We believe it essential to recite fully the following key portions of Dr. Lesswing's report below:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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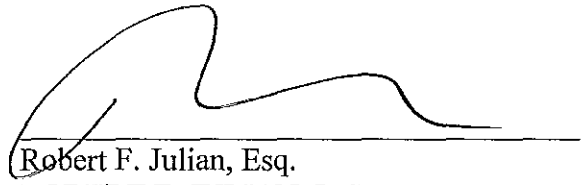
The purpose of providing the analysis by Dr. Joseph and the extensive reciting of Dr. Lesswing's report is not to excuse Respondent's conduct but to explain it. As the Commission has said a number of times, the extra judicial conduct of a Judge is relevant to and can be determinant of a Judge's fitness for office. In evaluating the conduct of a Judge, the Commission must make a determination as to whether or not that conduct is such that it impedes or erodes the Judge's ability to continue. She has continued to function with success as a Judge for nearly two years since this event. Her conduct through the explanatory lens of her trauma reaction does not interfere with or impede her continuing to serve. We contend the proof demonstrates that removal is not the appropriate discipline based on her [REDACTED] and her trauma reaction to the violent and extraordinary events of July 2, 2022.

**CONCLUSION**

In the case at bar, the Respondent has been forthcoming with regard to her failures on July 2, 2022. She has sought therapeutic intervention. She has obtained psychological analysis of her conduct and behavior not only to explain but also to give Commission counsel and ultimately the Commission relevant information and succor that she can continue in her role as Judge. Indeed, since July 2, 2022, she has continued to preside in the asbestos part for 44 counties, a tremendously demanding high-end role which involves litigants from all races and all walks of life. Frequently, these are cases which must be resolved during the mesothelioma patients/litigants life span. It involves litigation with some of the best and sophisticated lawyers in the New York Bar. She has performed in this high intensity role without blemish and has

been reappointed to that position notwithstanding the full disclosure of this pending proceeding. We offer that not to in any way remove from this body its obvious discretionary powers and obligations but rather to give a further sense that the events of July 2, 2022, were aberrational and occurred in the context of the Respondent's traumatic history. Therefore, it is our hope that the Commission will understand that while it is the duty of Commission counsel to prosecute with a confirmation bias, it is likewise the obligation of Respondent to defend truthfully, with integrity, but also in a manner that is explanatory of the conduct and refuting that bias. It is in that context that we offer the opinions of both Dr. Joseph who saw the Respondent after she was [REDACTED] in college in a therapeutic setting and then after the July 2, 2022, event through today and Dr. Lesswing, an examiner with a broad history of analyzing individuals who have experienced post-traumatic events, that the actions of the Respondent were aberrational on July 2, 2022, a trauma reaction which reignited her [REDACTED] and that she fully understands and recognizes the inappropriateness of her conduct. If Justice Gall is to be given what has been referred to by a prior member of the Commission, the career death sentence of removal from the bench, in light of her traumatic history and her [REDACTED] and given her otherwise unblemished record, will this Commission, when surely confronted with another Judge who perhaps as a military veteran or previously a police officer or the next victim of [REDACTED] assault or [REDACTED] be also removed notwithstanding the aberrational conduct motivated by traumatic history? Viewing this body's jurisprudence and its unique and compassionate understanding of the many psychological issues the confront human beings who are Judges, including alcohol, drugs, and other life stressors to name a few, we have faith and belief that the Commission will accept the information that we have provided it, give Justice Gall the appropriate sanction, but not remove her.

Dated: May 6, 2024

A handwritten signature in black ink, appearing to read 'Robert F. Julian', is written over a horizontal line.

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