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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DETERMINATION

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Brian C. Doyle, Esq.
Honorable John A. Falk
Honorable Robert J. Miller
Nina M. Moore, Ph.D.
Marvin Ray Raskin, Esq.
Graham B. Seiter, Esq.[1]
Honorable Anil C. Singh
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of Counsel) for the Commission

Robert F. Julian, P.C. (Robert F. Julian) for respondent

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[1] Mr. Seiter, who was a member of the Commission at the time of the vote in this matter, is no longer a member of the Commission.

Respondent, Erin P. Gall, a Justice of the Supreme Court, Fifth Judicial District, Oneida County, was served with a Formal Written Complaint ("Complaint") dated May 23, 2023 containing one charge. The Complaint alleged, *inter alia*, that on July 2, 2022, after fights broke out at a graduation party respondent attended, she engaged in a loud, public, prolonged and profanity-laced confrontation with responding police officers and others at the scene during which she repeatedly invoked her judicial office, made comments that cast doubt on her ability to be impartial as a judge by, *inter alia*, stating Black teenagers at the scene "don't look like they're that smart", stating to police officers that if the Black teenagers returned to look for a missing car key, ". . . when they trespass you can shoot them on the property. I'll shoot them on the property" and telling a police officer that she was "always on your side" when the officer expressed concern about a possible civil rights suit in her court if the Black teenagers were arrested at respondent's urging. The Complaint further alleged that respondent detracted from the dignity of her judicial office when, *inter alia*, she stated that her teenage son had "kicked the shit out of" someone and made disparaging comments to police officers about being on call to handle Extreme Risk Protection Orders ("ERPOs"). Respondent filed an Answer dated July 18, 2023.

On March 1, 2024, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts ("Agreed Statement") pursuant to

Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts and misconduct and requesting briefing and oral argument on the issue of sanction. On March 14, 2024, the Commission accepted the Agreed Statement and set a briefing schedule and scheduled oral argument on the issue of sanction.

The parties submitted briefs to the Commission regarding the issue of sanction. Commission counsel recommended the sanction of removal; respondent's counsel argued that a sanction no greater than censure be imposed. The Commission heard oral argument on June 13, 2024 and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent was admitted to the practice of law in New York in 1997. She has been a Justice of the Supreme Court, Fifth Judicial District, Oneida County, since January 1, 2012. Respondent's term expires on December 31, 2025.

The Initiatory Complaint and Investigation

2. On September 22, 2022, the Commission directed the filing of an Administrator's Complaint, pursuant to Judiciary Law §44(2), authorizing an investigation of respondent, based upon the Commission's receipt of an anonymous complaint, alleging, *inter alia*, that on or about July 1, 2022,[2]

[2] The events at issue occurred in the late evening hours of July 1, 2022, past midnight and into the early morning hours of July 2, 2022. To avoid confusion, hereafter they will be referred to as having occurred on July 2, 2022, unless otherwise noted.

respondent invoked her judicial office and intervened with police officers who were called to the scene of a party at which, *inter alia,* her husband and son were involved in a fight with minors. The anonymous complaint also indicated that a video of the fight was circulating on social media and that respondent was recorded on an officer's body camera. The Administrator's Complaint was signed and dated on September 28, 2022.

3. By letter dated October 28, 2022, respondent was apprised of the Administrator's Complaint and directed to appear and give testimony on November 15, 2022. She was also provided body camera ("bodycam") and dashboard camera ("dashcam") footage recorded by the New Hartford Police Department and Oneida County Sheriff's Department in the early morning hours of July 2, 2022.[3]

4. On November 15, 2022, respondent appeared with her attorney, Mr. Julian, at the Commission's Albany office and testified.

5. On December 22, 2022, respondent co-signed and submitted through her attorney a letter to the Commission, supplementing and clarifying parts of her testimony.

6. At the conclusion of its investigation, which in addition to

[3] The bodycam and dashcam videos were annexed as Exhibits 3 through 8 to the Agreed Statement of Facts.

respondent's testimony included, *inter alia,* sworn interviews of numerous witnesses and examination of the aforementioned videos, the Commission authorized formal disciplinary charges against respondent with regard to the events of July 2, 2022.

The Formal Written Complaint and Answer

7. Respondent was served with a Formal Written Complaint dated May 23, 2023.

8. Respondent filed a Verified Answer to the Formal Written Complaint dated July 18, 2023. The Answer admitted, *inter alia*, that respondent committed misconduct, proposed that a sanction less than removal be imposed, and set forth three affirmative defenses:

a. She acted as a wife and a mother who had seen her husband and son attacked;

b. On the bench she is fair, honest, respectful and conscientious toward all litigants and lawyers; and

c. Her conduct on July 2, 2022, was the result of extreme emotional distress triggered by [redacted] associated with an assault that occurred in 1990.

As to Charge I of the Formal Written Complaint

9. On July 1, 2022, Stephen and Gina Pearce held a high school graduation party for their teenage son, Jackson Pearce, at their residence in the Town of New Hartford, Oneida County.

10. Respondent, her husband William Gall III, and their three teenage children, including her then 18-year-old son, William Gall IV, were among the approximately 60 invited guests who attended the party by written invitation of Stephen and Gina Pearce.

11. In addition to the guests invited by Stephen and Gina Pearce, their son Jackson separately invited a number of others. Jackson Pearce, the graduating honoree, invited additional friends by Snapchat which included a private message shared only with those he invited. Stephen and Gina Pearce did not limit the number of friends Jackson could invite, nor were they aware of the number and identities of those he invited.

12. The Pearces hired a bartender to serve alcoholic beverages to guests at the party from about 6:30 PM to 10:00 pm. The Pearces also provided a keg of beer from which guests could serve themselves, and which remained accessible to guests after 10:00 pm, when the bartender left for the evening. At a hearing before a Referee in this matter, respondent would testify that she did not consume any alcohol at the party, did not take any prescription medications or illicit drugs before or during the party, and was sober during the entirety of the party and throughout the events of July 2, 2022.

13. The Pearces set up a tent on their front lawn for the benefit of the party attendees.

14. Throughout the evening, dozens of individuals, including teenagers, arrived at the party. At some point, the crowd of attendees extended outside the tent and spread across the lawn and into and/or around the road adjoining the Pearces' property.

15. Sometime after 11:30 pm on July 1, 2022, a large number of individuals – many of whom respondent and her family understood had not been invited by any of the Pearces – arrived at the party in various cars and parked along the street. Thereafter, arguments ensued between invited and uninvited individuals. Respondent saw an unknown individual, whom she believed was uninvited, overturn a tray of food under the tent, and she heard people talking loudly, some with vulgarity. At that time, respondent could feel the tension building. There was an attempt to clear the area because it was dark, raining and arguments and confrontations were escalating. At that time, William Gall III, Michael Martyniuk (a parent and invited guest) and William Gall IV, began to shepherd individuals away from the tent area and to the street. Individuals began leaving the tent area and dispersing toward the street.

16. Meanwhile, on the evening of July 1, 2022, William Carter, Jahshiem Valladares, and two other young men known as "Dooley" and "Havo"[4] – all four

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[4] Mr. Carter and Mr. Valladares declined to provide Commission Counsel with the full or formal names of Havo and Dooley, or their contact information. Commission Counsel was unable to independently ascertain their identities or contact them.

of them Black – were socializing in Utica and discussing what to do that night when Havo learned about a party in New Hartford via a live video feed from an unknown, unidentified friend in attendance.[5] At 11:44 pm, that friend texted the address "[. . .] rd" to one of Mr. Carter's group. The Pearces' actual address is [. . .] Road. A few minutes later, Mr. Carter – who, at the time, had a learner's permit but not a driver's license – drove Mr. Valladares and their two other friends to the party, using his mother's red SUV. The drive took approximately 20 minutes. No one from Mr. Carter's group was invited by any of the Pearces. At a hearing, Mr. Valladares would testify that he smoked marijuana approximately an hour before the young men left for the party.[4] Mr. Carter would testify that he did not smoke marijuana.

17. Mr. Carter's group arrived at the Pearces' address after midnight. Mr. Carter parked the SUV on the shoulder of the road, across the street from the Pearces' driveway and not on the Pearces' property. At a disciplinary hearing before a Referee in this matter, Mr. Carter and Mr. Valladares would testify that, upon their arrival, they observed a large number of individuals, including teenagers and adults, congregating on the street, near the end of the Pearces' driveway.

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[5] Mr. Carter and Mr. Valladares declined to provide Commission Counsel with the name of the friend. It is unknown whether the friend had been invited to the party by Jackson Pearce or his parents. The friend was not Jackson Pearce or anyone from the Pearce family.

[4] Respondent did not know of any marijuana use until after the conclusion of the Commission's investigation in this matter.

18. At a disciplinary hearing before a Referee in this matter, Mr. Carter would testify that, shortly after getting out of the SUV, he heard raised voices and arguing outside the Pearces' residence. Although Mr. Carter did not see anyone physically fighting at that time, he quickly decided that he and his friends should leave. A cell phone video of the chaotic scene recorded by Mr. Carter at 12:19 am on July 2, 2022, was annexed as Exhibit 15 to the Agreed Statement.

19. Shortly after Mr. Carter stopped recording, a fight and/or multiple fights broke out among a large group of individuals, some of whom had not been invited to the party.

20. At some point, as William Gall IV was continuing to help clear the area, he was attacked by individuals whom respondent and her family members had never seen before and whom they believed were uninvited. William Gall IV fought with those individuals, and William Gall III interceded and attempted to disengage people from that fight and other fights that ensued.

21. At a disciplinary hearing before a Referee in this matter, respondent would testify as follows: her then 18-year-old son was approximately five feet from her when she saw him get slapped on the right side of his head; she saw her son nervously laugh and attempt to retreat when, within seconds, several unknown individuals violently attacked him; chaos ensued as the unknown individuals jumped on her son and brought him to the ground and then began to kick, stomp

and punch him on and about his head, face and body. William Gall IV sustained injuries to his ribs and face but did not require medical attention. Photographs of William Gall IV's injuries were included as Exhibit 10 to the Agreed Statement.

22. At a disciplinary hearing before a Referee in this matter, respondent would testify that, while watching the attack occur from about five feet away, she "froze" and did not physically intervene when she saw William Gall IV being attacked and fall to the ground. She would further testify that she stood there in shock without doing anything.

23. During the Commission's investigation, respondent identified photographs of Havo and Dooley as two of the individuals she saw fighting with her son. She identified a photograph of Dooley as the individual who slapped her son. At a disciplinary hearing before a Referee in this matter, respondent would testify consistently with these identifications.

24. With respect to Havo and Dooley's purported fighting with respondent's son:

A. At a hearing, respondent would testify that she believed on July 2, 2022, that Havo and Dooley initiated and/or participated in the assault on her son; and

B. In view of the totality of the circumstances regarding the incident, including the darkness of night, dim lighting, rainy conditions, and large number of persons involved in the melee – many of whom were unknown to respondent at the time – the parties agree that the evidence is insufficient to support any

> finding as to whether Havo and Dooley fought with or assaulted respondent's son.

25. At a disciplinary hearing before a Referee in this matter, Mr. Carter and Mr. Valladares would testify that they attempted to avoid the fighting and leave the scene by returning to their SUV, after re-locating Havo and Dooley, from whom they had separated for a period. They would further testify that, as Mr. Carter was attempting to unlock the SUV, he and Mr. Valladares were grabbed from behind by other unidentified individuals and swept into a fight.

26. At around the same time, respondent's husband and two other adult males were attempting to separate several unknown individuals who were fighting. In the confusion, respondent's husband, Mr. Carter and Mr. Valladares became involved – though not necessarily with one another – in a physical altercation in or near a ditch along the road, during which respondent's husband had the back of his shirt ripped and suffered injuries to his ears, while Mr. Carter sustained a small facial abrasion. A photograph of Mr. Carter's injury was annexed as Exhibit 16 to the Agreed Statement. Meanwhile, Mr. Valladares suffered a laceration under one of his eyes, which bled and later required stitches. A photograph of Mr. Valladares's injury was annexed as Exhibit 17 to the Agreed Statement. Photographs of respondent's husband's injury were annexed as Exhibit 18 to the Agreed Statement.

27. Respondent witnessed her husband and two other adult party guests, Mr. Martyniuk and Dennis Philipkoski, attempt to separate the individuals who were fighting, but she did not physically intervene herself.

28. A cell phone video of a portion of the fighting was annexed as Exhibit 19 to the Agreed Statement. It is unclear from the video who was involved in this fighting or when it was taken.

29. A diagram of the Pearce property showing the approximate locations of the tent, ditch and spot where respondent would testify she saw her son get slapped was annexed as Exhibit 20 to the Agreed Statement.

30. When the fighting stopped, respondent did not believe that her husband or son were injured to the extent that they needed medical attention, which she explicitly told a responding police officer few minutes later. Neither respondent's son nor her husband sought or received any medical treatment for their injuries.

31. When the fighting stopped, Mr. Carter realized he no longer had the key to his mother's SUV. He and his three friends began searching the area for the missing key.

32. At approximately 12:22 am on July 2, 2022, New Hartford Police Department Officers Robert Cornish and Eric Cappelli arrived at the Pearce

residence in response to multiple reports of a large party with numerous fights.[5] Very soon thereafter, police personnel from the following four law enforcement agencies also arrived at the scene: the Oneida County Sheriff's Department, the Kirkland Police Department, the Whitestown Police Department and the New York Mills Police Department. Because the Pearce residence was located in the Town of New Hartford, the New Hartford Police Department assumed jurisdiction over the matter, and the other law enforcement personnel provided support.

33. Upon arriving, New Hartford Police Officers Cornish and Cappelli broke up numerous fights and directed the partygoers to leave the area immediately. It appeared to them and other police personnel at the scene that many of the teenagers had been drinking alcohol and/or were intoxicated. Police personnel also observed numerous alcoholic beverage containers littering the ground on or around the Pearces' property, as well as along the road. Police personnel issued no tickets in relation to underage drinking.

34. Officers and deputies at the scene wore operational body cameras. Respondent was aware of the bodycams.

35. Shortly after the officers arrived, respondent approached Officer Cappelli and volunteered, "I'm Erin Gall, I'm a Supreme Court judge." She told

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[5] At a disciplinary hearing before a Referee in this matter, respondent would testify as to her understanding that an invited party guest had called 911.

him that the Pearces' graduation party had gotten out of control. The relevant portion of the bodycam video was annexed as Exhibit 4a to the Agreed Statement.

36. Soon thereafter, Stephen Pearce, who appeared intoxicated, ran toward Mr. Carter's group including Mr. Valladares, Havo and Dooley and screamed obscenities at them as they looked for the lost car key. As other adults physically restrained Mr. Pearce, respondent yelled at Mr. Carter, "What are you looking for? What are you looking for?" Respondent – who was a guest at the party, had no ownership interest in the Pearces' property, and did not live in the neighborhood – screamed at Mr. Carter, Mr. Valladares, Havo and Dooley:

> You got to leave! You're not going to find your keys. You got to call an Uber and get off the property. That's what I'm saying. No. Done. You're done. Done, done, done. Get off the property! And's that's from Judge Gall! I'm a fucking judge! And I'm telling you! Get off the fucking property! No, judge. It's judge. I could give a fuck. . . . I don't want anyone on the property. If I have to clear it out, I will.

The relevant portion of the bodycam videos were annexed as Exhibits 3a and 4b to the Agreed Statement.

37. When Officer Cornish asked respondent if anyone needed medical attention, respondent replied in a more moderate voice, "No, Jesus, no. No, honestly, I'm a Supreme Court judge." The relevant portion of the bodycam video was annexed as Exhibit 3b to the Agreed Statement.

38. Respondent then resumed yelling:

> They're not going to find keys . . . and you know what, this is just a stall tactic. They got to go. They got to go. There's no keys. There's absolutely no keys. You know what you're not going to find your mom's keys. You gotta ask her for a second set, bro!

The relevant portion of the bodycam video was annexed as Exhibit 3b to the Agreed Statement.

39. When Mr. Carter or one of his friends told respondent, "It's not going to work like that," respondent replied:

> Yeah, that's how it's going to work. I'm telling you, that's how it's working. Well, you're going to get in an Uber, buddy, or you're going to get a cop escort home. That's how it's happening. That's what I'm telling you right now. That's how I roll. That's how I roll. That's how Mrs. G rolls. That's how Judge Gall rolls. We're clearing this place out.

The relevant portion of the bodycam video was annexed as Exhibit 3b to the Agreed Statement.

40. When Stephen Pearce subsequently yelled at the officers that Mr. Carter's group should be arrested, respondent added:

> They should be arrested. Exactly. They were trespassing and . . . they should be arrested. Come on. This is not my first rodeo. Are you from New Hartford? Ok, New Hartford Police: they should either be arrested or driven off the property. We shouldn't be looking for their keys. They assaulted people here. We're not pressing charges. We just need them gone. I don't know if I have to call the Chief of Police. This is ridiculous.

The relevant portion of the bodycam videos were annexed as Exhibits 4c and

6a to the Agreed Statement.

41. At a hearing before a Referee in this matter, respondent would testify that, at this time on July 2, 2022, (A) she was frustrated because she wanted the Pearce property cleared of the individuals whom she believed had fought with her son and husband, as well as many other guests at her friends' private graduation party, and (B) she did not want her family and friends to be engaged in another violent encounter.

42. Several minutes later, when respondent resumed screaming that everyone should stop looking for the lost car key, the following exchange occurred between respondent and Officer Cappelli:

Respondent: I'm not looking for keys. Guys, don't look for keys anymore, please. I don't care about this kid's fucking keys.

Ofc. Cappelli: I do. So relax.

Respondent: I don't.

Ofc. Cappelli: It's not even your house. Chill out.

Respondent: It's my jurisdiction though.

Ofc. Cappelli: Okay.

Respondent: Yeah it is! Yeah it is! Yeah it is! Don't laugh!

Ofc. Cappelli: I'm not.

Respondent: What's your name.

Ofc. Cappelli: Cappelli.

Respondent:	Cappelli. Okay. I'll make sure I tell them. I mean seriously you're worried about a trespasser and an assaulter's keys. He committed a crime and you're looking for his keys.
Ofc. Cappelli:	So did all of the adults giving all of these kids booze, so what do you want?
Respondent:	What was that?
Ofc. Cappelli:	So did all of the adults giving all of these kids booze.
Respondent:	I don't know who this kid was. No, we don't even know who this kid is! No adult gave this kid booze. Cappelli.

Respondent then told Officer Cappelli either to tow the vehicle belonging to the driver who lost the key, or to issue a ticket. The relevant portion of the bodycam video was annexed as Exhibit 4d to the Agreed Statement.

43. When respondent said, "Cappelli. Okay. I'll make sure I tell them," she was referring to her intention to call a lieutenant she knew in Officer Cappelli's department to complain about his actions that night.

44. While arguing with Deputy Steven Eilers about whether Mr. Carter's group had committed a trespass offense, respondent stated, "If you're not invited by a homeowner, it's still trespassing. I've done this for a million years. I'm a lawyer. I'm a judge. I know this." The relevant portion of the bodycam video was annexed as Exhibit 5a to the Agreed Statement.

45. Respondent then told Officer Cornish to tow the Carter SUV or to issue Mr. Carter a ticket. Officer Cornish explained to respondent that they could not do either because the vehicle was not illegally parked. Respondent then stated to Officer Cornish, "Well, put him in the back of a cop car and let him wait there." The relevant portion of the bodycam video was annexed as Exhibit 3c to the Agreed Statement.

46. At approximately 12:50 am on July 2, 2022, Mr. Valladares's sister, Mahkay-lah Mezza, arrived at the Pearce residence in response to Mr. Valladares's call for assistance. Upon arrival, Ms. Mezza waited with Mr. Carter's group in or around the SUV for a relative to arrive with a spare key.[6]

47. Shortly before 1:00 am on July 2, 2022, Stephen Pearce screamed obscenities at the officers and deputies to remove Mr. Carter's group from the scene. Standing next to Mr. Pearce, respondent yelled:

> This is ridiculous. . . . C'mon guys. . . . We didn't invite him. There was trespassing, there were assaults, there was everything. They're saying – they were not invited. There's social media. We didn't invite them. He owns the property. The owner of the property. I'm a judge, he's a lawyer. We're telling you. I'm telling you. This is insane.

The relevant portion of the bodycam videos were annexed as Exhibits 4e and 6b to the Agreed Statement.

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[6] Ms. Mezza could not fit Mr. Carter and his three friends into her vehicle, and therefore chose to wait with them until they all could leave at the same time.

48. Stephen Pearce argued with the deputies and officers about whether Mr. Carter could legally park on the shoulder of the road. Mr. Pearce told the deputies to "police the area. Police the fucking area." Respondent added, "Police it, police it. Oh, my god, you're not doing much. They're obstructing a public road. That's not a crime?" The relevant portion of the bodycam videos were annexed as Exhibits 4e and 6b to the Agreed Statement.

49. When respondent mentioned that she heard Mr. Carter's group wanted to press charges, Deputy Norman Lyke stated:

> But how about this? How about we end up in front of your court for a civil rights violation because we violated all their civil rights. That's what I'm getting at. My point is this, with social media--.

50. Respondent interjected and stated to Deputy Lyke:

> Listen, but guess what, the good part is – the good part is I'm always on your side. You know I'd take anyone down for you guys. You know that. You know that. You know I am on your side.

The relevant portion of the bodycam video was annexed as Exhibit 3d to the Agreed Statement.

51. Shortly after 1:00 am on July 2, 2022, as Stephen Pearce continued to scream obscenities at police personnel and/or Mr. Carter's group, respondent approached the officers and deputies and stated:

> Okay, Steve, Steve, I've got it. Look, you know, I know he's upset because, guess what, his whole party was ruined because

> all these people converged.

The relevant portion of the bodycam video was annexed as Exhibit 3e to the Agreed Statement.

52. As Mr. Pearce continued to complain that the police had made no arrests or issued any tickets, respondent interjected and asked if Mr. Carter's group had been charged with anything. After Officer Cornish stated that Mr. Carter's group wanted to press charges for assault and underage drinking, respondent told the officer that he needed to get the names of the people in Mr. Carter's group because "we're pressing charges against them for trespassing." The relevant portion of the bodycam video was annexed as Exhibit 3e to the Agreed Statement.

53. When the police disputed whether Mr. Carter's group had been trespassing, respondent stated:

> It's a private property . . . wait, they were looking – you were looking. My point is he's saying they want to press charges so I'm saying if they're pressing charges we're pressing trespassing. . . . Well, can I say this, if they're pressing charges, we're pressing trespassing charges and assault.

The relevant portion of the bodycam video was annexed as Exhibit 3e to the Agreed Statement.

54. When a deputy advised respondent that a charge of assault required physical injuries or substantial pain, respondent laughed and stated, "Okay, I

know the law. I'm a judge." The relevant portion of the bodycam video was annexed as Exhibit 3e to the Agreed Statement.

55. Respondent disputed a statement by Officer Cornish that Mr. Carter's group got the worst end of the fight, and she had her son William show his face to the officers. After an officer commented that respondent's son "look[ed] like a million bucks," respondent said:

> So, just so you know, it's not one sided. You're saying one side – he definitely . . . hopefully, hopefully I taught my son well. He put a smack down once he got hit . . . he put a smack down.

The relevant portion of the bodycam video was annexed as Exhibit 3f to the Agreed Statement.

56. Respondent repeatedly hit her fist into the palm of her hand and continued:

> Hopefully he did get the worst end of it because I taught my son to kick the shit out of anyone who hits him first.

The relevant portion of the bodycam video was annexed as Exhibit 3f to the Agreed Statement.

57. About a minute later, respondent stated:

> My husband and son got hit first . . . but they finished. Like I taught 'em.

The relevant portion of the bodycam video was annexed as Exhibit 6c to the Agreed Statement.

58. A short while later, when Deputy Eilers, speaking to other police personnel, referred to "not taking anything off [his] belt" because it would create too much paperwork, respondent interjected:

> Do you want to talk way too much paperwork? Guess what we have to do now? We're all on call for ERPOs. . . . Do ERPOs make you guys crazy?[7]

The relevant portion of the bodycam video was annexed as Exhibit 6d to the Agreed Statement.

59. A deputy responded, "No, we're not going to pay attention," to which respondent replied:

> Don't! Don't! Because I get called in the middle of night, too, for those.

The relevant portion of the bodycam video was annexed as Exhibit 6d to the Agreed Statement.

60. Respondent then argued to Deputy Eilers that Mr. Carter's group committed Criminal Trespass and/or Assault. Although Deputy Eilers explained to respondent that the New Hartford Police Department had jurisdiction over the matter, respondent stated that she wanted to press charges and asserted that she

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[7] Pursuant to Section 6340(1) of the CPLR, an Extreme Risk Protection Order ("ERPO") is a "court-issued order of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun." While anyone may file an application for an ERPO, all law enforcement officers are required by Section 6341 of the CPLR to file an application for an ERPO "upon the receipt of credible information that an individual is likely to engage in conduct that would result in serious harm to himself, herself or others." Pursuant to CPLR §6341, such applications are to be filed in the supreme court in the county where the individual against whom the order is sought resides. As a supreme court justice, respondent is required to review applications for ERPOs filed in her court.

could call Sergeant Grant Langheinrich to file charges through the sheriff's department. Sergeant Langheinrich is personal friend of respondent and, at the time, was in charge of security at respondent's courthouse. The relevant portion of the bodycam video was annexed as Exhibit 5b to the Agreed Statement.

61. At approximately 1:27 am on July 2, 2022, as Mr. Carter and his friends sat in the SUV waiting for someone to arrive with a spare key, respondent said to Deputy Eilers:

> Watch, I bet if they push the button, the keys are in the car.

The relevant portion of the bodycam videos were annexed as Exhibits 5c and 6e to the Agreed Statement.

62. Respondent, who a few minutes earlier had told Deputy Eilers that her son William would be attending business school in the fall, said of Mr. Carter and his group:

> They don't look like they're that smart. They're not going to business school, that's for sure.

The relevant portion of the bodycam videos were annexed as Exhibits 5c and 6e to the Agreed Statement.

63. At approximately 1:35 am on July 2, 2022, one of Mr. Carter's relatives arrived at the scene with an extra key for the SUV.

64. As Mr. Valladares and Ms. Mezza were getting into Ms. Mezza's car to leave, Stephen Pearce said, sarcastically, "Thanks for coming out, guys." Ms.

Mezza said, “You’re welcome.” Stephen Pearce then said, “Go fuck yourselves.” Ms. Mezza responded, “Whoa, is that acceptable?” Respondent laughed and yelled, “Yes, it is!” Ms. Mezza said, “I just came to get my brother, though.” Stephen Pearce said, again sarcastically, “Thank you, thanks for coming.” Ms. Mezza replied, “Man, you look like a fucking cokehead.” Respondent remarked, “You look like a cokehead, okay. We might be able to afford the coke, but we don’t do it.” The relevant portion of the bodycam videos were annexed as Exhibits 5d and 6f to the Agreed Statement.

65. At approximately 1:37 am on July 2, 2022, Mr. Carter drove away in the SUV with two of the friends with whom he had arrived, leaving Mr. Valladares with Ms. Mezza at the scene.

66. While Ms. Mezza and Mr. Valladares were sitting in Ms. Mezza’s car with the windows open, trying to establish a GPS route, Officer Cornish approached respondent and Stephen Pearce, who was continuing to yell. Officer Cornish noted that the key to the Carter SUV might turn up in the morning, and respondent interrupted him and said:

> We’re absolutely going to throw it in the toilet . . . You’re welcome. If you think we’re gonna – if you think we’re gonna turn over – we’re not looking for any keys.

The relevant portion of the bodycam video was annexed as Exhibit 3g to the Agreed Statement.

67. Ms. Mezza, overhearing respondent's comments, said that she wanted to file something if respondent was going to keep the key. Respondent yelled at Ms. Mezza:

> I'm not looking for the key, is what I said. I'm not looking for the key. Move along. I'm not – yeah, but we're not looking for any key. We're looking for keys, are you kidding me?

The relevant portion of the bodycam video was annexed as Exhibit 3g to the Agreed Statement.

68. Officer Cornish continued to discuss the key with respondent and said the best outcome would be if someone found the key and turned it in to the police, in which case no one from Mr. Carter's group would need to return to look for it. Respondent loudly responded:

> Well, if they come back looking for it, I'll call you while they're on the property. Because you want to find them on the property. I'll call you when they're on the property. If they did, they'll be arrested, or they'll be shot on the property. Because when they trespass you can shoot them on the property. I'll shoot them on the property.

The relevant portion of the bodycam video was annexed as Exhibit 3g to the Agreed Statement. From the passenger seat of Ms. Mezza's vehicle, Mr. Valladares heard respondent's threat about shooting them and reported it to Deputy Eilers.

69. At that point, Kirkland Police Department Officer Joseph McCormick challenged respondent for her comment about shooting the Black teenagers. Calling her "lady" or "ma'am," Officer McCormick told respondent:

> This isn't Texas. You can't shoot somebody for simply going on your property. . . . Do you hear what you're saying? You're all White**,** privileged people with high-power jobs.

70. Respondent replied:

> Don't call me "Lady." "Judge." It's "Judge." … You guys didn't really do much.

The relevant portion of the bodycam video was annexed as Exhibit 5e to the Agreed Statement.

71. Speaking to her husband after Officer McCormick left the scene, respondent said, "He called me 'lady.' Yeah, he's really a sharp guy." The relevant portion of the bodycam video was annexed as Exhibit 6g to the Agreed Statement.

72. Sometime after approximately 1:40 am on July 2, 2022, all police personnel left the scene.

73. On July 14, 2022, at the Oneida County Courthouse, respondent had conversations with Sergeant Langheinrich, Deputy Edmund Wiatr and Deputy Michael Baker, during which she expressed, *inter alia*, her dissatisfaction with how the officers from New Hartford Police Department handled the situation at the Pearces' party on July 2, 2022.

Additional Factors

74. Respondent makes the following acknowledgements about her conduct in the aftermath of the graduation party:

A. By repeatedly invoking her judicial office to police officers during the events of July 2, 2022, respondent created at least the appearance that she was seeking preferential treatment based on her status as a judge, and thus lent the prestige of her office to advance her own and her friends' private interests.

B. By repeatedly invoking her judicial office to Mr. Carter and his friends, respondent created at least the appearance that she was speaking with judicial authority when ordering them to leave the Pearces' neighborhood, and thus lent the prestige of her office to advance her own and her friends' private interests.

C. Her threat to call an officer's superior created at least the appearance that she was leveraging her judicial position to pressure the officers on the scene to do as she wished.

D. 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 Black men if they returned to search for the missing car key, created at least the appearance of racial bias.

E. Her expressions of satisfaction that her son had "kick[ed] the shit out of" and "put the smack down on" another partygoer, and her declaration that she would shoot the young Black men if they returned to search for the missing car key, were unbecoming of and incompatible with the role of a judge.

F. Her statements to police personnel that she was "always on [their] side" and would "take anyone down" for the police, along with her disparaging statements concerning ERPOs, created at least the appearance of bias in favor of law enforcement.

75. At a hearing before a Referee in this matter, respondent would testify as follows:

A. As a mother and wife, respondent was emotionally distraught, and she reacted viscerally rather than rationally upon witnessing her son and husband fighting and being hurt. She regrets having acted in that manner.

B. Respondent became increasingly frustrated with the police officers for what she believed at the time was (1) their inadequate response to her pleas for assistance, (2) their failure to remove from the scene those individuals she regarded as party crashers, and (3) their lack of deference in speaking to her. She now acknowledges that the officers handled the situation appropriately and that her conduct made their jobs more difficult. She regrets her behavior toward the officers.

C. Respondent regrets how she acted toward Mr. Carter's group, as well as Ms. Mezza and other friends and/or family members who came out early in the morning to help resolve the situation by picking up Mr. Carter's group from the Pearce residence and/or delivering an extra car key for Mr. Carter's vehicle.

76. At a hearing before a Referee in this matter, respondent would further testify that (A) her overreaction to the events of July 2, 2022, was related to a traumatic event she suffered on April 29, 1990, when she was the victim of an assault as an 18-year-old freshman attending Boston College, and (B) witnessing assaults on her son and husband on July 2, 2022, triggered memories of the 1990 assault and caused her severe emotional distress and feelings of [redacted]

[redacted].

77. At a hearing before a Referee in this matter, respondent would call Norman J. Lesswing, Ph.D., and Joanne Joseph, Ph.D., as witnesses in support of her defense that her conduct on July 2, 2022, was triggered, in part, by a trauma-based reaction to her having been assaulted in 1990. Schedule B to the Agreed Statement included the Lesswing and Joseph report and notes.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C) and 100.4(A)(1), (2) and (3) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause pursuant to Article VI, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law. Charge I of the Complaint is sustained insofar as it is consistent with the above findings and conclusions and respondent's misconduct is established.

Each judge is obligated to observe high standards of conduct and must "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." (Rules, §§100.1 and 100.2(A)) The Rules also require that "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . ." and require that judges must "conduct all of the judge's extra-judicial activities so that they do not . . . detract from the dignity of judicial office . . .." (Rules §§100.2(C) and 100.4(A)(2)) Respondent admitted that on July 2, 2022 she violated these Rules by, *inter alia*, lending the

prestige of her judicial office to advance her own and her friends' private interests, creating at least the appearance of racial bias, creating at least the appearance of bias in favor of law enforcement and engaging in conduct unbecoming a judge including by stating that she would shoot the Black teenagers if they returned to look for the missing car key.

It is well-settled that judges are held to a higher standard of conduct than the general public. "There is no question that judges are accountable for their conduct 'at all times', including in conversations off the bench. . . Because judges carry the esteemed office with them wherever they go, they must always consider how members of the public . . . will perceive their actions and statements." *Matter of Senzer*, 35 NY3d 216, 220 (2020) (citations omitted) "Standards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach." *Matter of Kuehnel,* 49 NY2d 465, 469 (1980). "Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved." *Matter of Lonschein*, 50 NY2d 569, 572 (1980) (citation omitted).

Respondent repeatedly violated the ethical rule prohibiting judges from lending the prestige of their judicial office to advance their own private interests or the interests of others. (Rule, §100.2(C)); *See*, *Matter of Astacio*, 2019 Ann Rep of NY Commn on Jud Conduct at 71, 99 ("... gratuitous references to her judicial position while attempting to avoid the consequences of her arrest were an implicit request for special treatment, conveying the appearance that she was calling attention to her status as a judge in order to bolster her plea to the police."), *accepted*, 32 NY3d 131 (2018); *Matter of Werner*, 2003 Ann Rep of NY Commn on Jud Conduct at 198, 199 (". . . respondent gratuitously interjected his judicial status into the incident, which was inappropriate. ... Respondent's conduct was improper even in the absence of an explicit request for special consideration." (citations omitted)). Over approximately an hour and twenty minutes on July 2, 2022, respondent invoked her judicial office more than a dozen times seeking to obtain preferential treatment and to influence the actions of the police and the conduct of the teenagers.

Initially, upon the arrival of the police, respondent introduced herself and gratuitously stated to the police, "I'm a Supreme Court Judge." She later invoked her judicial office in an attempt to have the four Black teenagers arrested for assault, laughed at a deputy when he mentioned the elements required for an assault charge and told the deputy, "Okay, I know the law. I'm a judge." In

attempting to convince law enforcement officers that the teenagers had trespassed, respondent told them, ". . . I've done this for a million years. I'm a lawyer. I'm a judge. I know this" and "I'm a judge, he's a lawyer. We're telling you. I'm telling you." Respondent improperly referenced her judicial position numerous times in statements to law enforcement personnel and repeatedly tried to have the police arrest the Black teenagers.[6]

Respondent also invoked her judicial office when speaking to the teenagers which created at least the appearance that she was attempting to use her judicial status to influence their conduct as well. For example, she yelled at the four teenagers:

> . . . Get off the property! And's that's from Judge Gall! I'm a fucking judge! And I'm telling you! Get off the fucking property! No, judge. It's judge. I could give a fuck. . . . I don't want anyone on the property. If I have to clear it out, I will.

In directing the teenagers to leave, she stated,

> . . . Well, you're going to get in an Uber, buddy, or you're going to get a cop escort home. That's how it's happening. That's what I'm telling you right now. That's how I roll. That's how I roll. That's how Mrs. G rolls. That's how Judge Gall rolls. We're clearing this place out.

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[6] In additional evidence that respondent was seeking preferential treatment based on her judicial status, respondent stipulated that she became frustrated with the police officers for what she perceived to be a lack of deference in speaking to her.

By yelling at the teenagers that she was a judge while directing them what to do, respondent improperly asserted her judicial status and undermined public confidence in the judiciary. She also made the chaotic situation more difficult for law enforcement personnel.

After notifying police personnel that she was a judge, respondent also attempted to use her judicial position to influence their actions by indicating that she would call their superiors if they did not follow her instructions. In one instance, respondent stated:

> . . . they should be arrested. Come on. This is not my first rodeo. Are you from New Hartford? OK, New Hartford Police: they should either be arrested or driven off the property. . . . We just need them gone. I don't know if I have to call the Chief of Police. This is ridiculous.

In another example, when New Hartford Police Officer Eric Cappelli told respondent that, "It's not even your house. Chill out", respondent replied, "It's my jurisdiction though." After a further exchange with Officer Cappelli, respondent asked the officer for his name and when he provided it, she replied,

> Cappelli. Okay. I'll make sure I tell them. I mean seriously you're worried about a trespasser and an assaulter's keys. He committed a crime and you're looking for his keys.

Respondent acknowledged that when she made that statement to the officer, she was referring to her intention to call a lieutenant she knew in the New Hartford

Police Department to complain about the officer's conduct.[7]

In additional serious misconduct, respondent acknowledged that some of her comments created at least the appearance of racial bias. Respondent's inappropriate comments in this regard included that, shortly after telling a deputy that her son would be attending business school, respondent stated that the Black teenagers "don't look like they're that smart. They're not going to business school, that's for sure." In addition, when an officer told respondent that if someone found the missing car key and turned it into the police, there would be no need for Mr. Carter or anyone with him to return to look for the key, respondent stated, ". . . If they did, they'll be arrested, or they'll be shot on the property. Because when they trespass you can shoot them on the property. I'll shoot them on the property." One of the Black teenagers heard respondent's statement about shooting them and reported it to a deputy. In response to respondent's statements, another officer, recognizing the racial aspect of respondent's comments, chastised her by stating, ". . . You can't shoot somebody for simply going on your property. . . . Do you hear what you're saying? You're all White, privileged people with high-power jobs."

In a recent matter in which a judge created the appearance of racial bias by "repeatedly, and gratuitously, referring to the litigant's race", the Court of Appeals

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[7] As described below, approximately two weeks later, while in the Oneida County Courthouse, respondent complained to members of the Oneida County Sheriff's office about how officers from the New Hartford Police Department had handled the situation on July 2, 2022.

found removal was warranted stating, “[w]e stress that the ‘appearance of such impropriety is no less to be condemned than is the impropriety itself’ . . ..” *Matter of Putorti,* 40 NY3d 359, 366, 368 (2023); *See*, *Matter of Pennington*, 2006 Ann Rep of NY Commn on Jud Conduct at 224, 226 (“[r]egardless of whether respondent’s remarks were knowingly racist or simply ill-considered, the use of such language by a judicial officer serves to undermine public confidence in the integrity and impartiality of the judiciary.”) Respondent’s improper comments were made to law enforcement personnel and at least one of the Black teenagers heard them. When respondent created at least the appearance that she harbored racial bias, she severely undermined public confidence in her integrity and impartiality.

Moreover, respondent also made comments that created the appearance that she was biased in favor of law enforcement. After a deputy stated to respondent, “How about we end up in front of your court for a civil rights violation because we violated all their civil rights,” respondent interrupted him and stated:

> Listen, but guess what, the good part is – the good part is I’m always on your side. You know I’d take anyone down for you guys. You know that. You know that. You know I am on your side.

In addition to publicly proclaiming her improper partiality toward law enforcement, respondent’s statements were additional evidence of the appearance of racial bias. Furthermore, when speaking to law enforcement personnel,

respondent made disparaging comments regarding Extreme Risk Protection Orders that she was required to review as a supreme court justice.

By announcing that she was "always" on the side of law enforcement and implying that law enforcement personnel should ignore ERPOs, respondent created at least the appearance of bias in favor of law enforcement and further undermined confidence in her integrity and impartiality. *See*, *Matter of Peck,* 2022 Ann Rep of NY Commn on Jud Conduct at 136, 141-142 ("respondent's public Facebook post in which he aligned himself with and expressed his strong support for law enforcement personnel, casts doubt on respondent's ability to act impartially when he presided over matters which involved law enforcement personnel.") Moreover, when she disparaged the responsibilities of judges and law enforcement personnel with respect to Extreme Risk Protection Orders, respondent improperly belittled an important public safety tool and appeared to be attempting to ingratiate herself with the law enforcement personnel at the scene.

Furthermore, respondent's profanity-laced statements on a public street detracted from the dignity of her judicial office. Her improper comments included, *inter alia*, stating: "I'm a fucking judge", "I don't care about this kid's fucking keys" and, regarding her son fighting, stating, "He put a smack down once he got hit . . . he put a smack down." *See, Matter of Grisanti*, 2025 Ann Rep of NY

Commn on Jud Conduct at __ ("... while in the street, respondent inappropriately unleashed a tirade of expletives in full view of the public.")[8]

While we are very sympathetic to the impact of respondent's past trauma and have reviewed the evidence she submitted regarding the [redacted] [redacted] diagnosis, we find that her significant misconduct is not excused by this evidence.[9] During the incident, while repeatedly asserting her judicial office for more than an hour, respondent gave orders, directed the police to arrest the Black teenagers and made statements which created the appearance of racial bias and bias in favor of law enforcement. Such conduct cannot be explained by the psychological evidence in this matter.

The Court of Appeals has held,

> . . . in rare cases "no amount of [mitigation] will override inexcusable conduct" . . . sufficient to restore the public's trust in the judge's ability to faithfully execute his or her duties. . … "[A] cornerstone of our democracy" is the integrity of our judiciary . . ., and judges must be mindful that their actions "reflect, whether designedly or not, upon the prestige of the judiciary". . ..

Matter of Restaino, 10 NY3d 577, 590 (2008) (citations omitted). Here, even if respondent's reported psychological condition and the involvement of her husband

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8 Available at: https://cjc.ny.gov/Determinations/G/Grisanti.Mark.J.2024.04.22.DET.pdf

9 We note that after the July 2022 incident, respondent sought counseling only after she was served with the Complaint in this matter in May 2023. Her first visit to Dr. Lesswing was on June 20, 2023 and she did not meet with Dr. Joseph after the incident until June 29, 2023.

and son in the incident played a role in her actions on July 2, 2022, she irreparably damaged her integrity by repeatedly invoking her judicial office and forfeited her ability to be and to appear to be impartial, particularly as it relates to race and law enforcement personnel. Given the range of her misconduct, members of the public can have no confidence in her ability to preside in a fair and unbiased manner.

Moreover, respondent's arguments regarding a psychological explanation for her conduct as well as her claim that her conduct was attributable to the shock of observing her son and husband in altercations, were undercut by her actions approximately two weeks after the July 2, 2022 incident. On July 14, 2022, after she had time to reflect on her conduct, she decided to speak in the Oneida County Courthouse about the incident with three members of the Oneida County Sheriff's Office, including a personal friend who was in charge of security at the courthouse at the time. In these conversations, respondent again complained, as she had during the incident, about how members of the New Hartford Police Department handled the situation at the graduation party. By having these conversations in the courthouse two weeks later, respondent appears to have failed to recognize her misconduct during the earlier incident and to have ignored the impact of her judicial status on her complaints to law enforcement personnel. *See*, *Matter of Lonschein*, *supra*, 50 NY2d at 573 ("petitioner . . . should have realized that his

requests would be accorded greater weight by an administrative official that they would have been had petitioner not been a Judge.”).

Impropriety permeated respondent’s conduct on July 2, 2022. Instead of leaving the chaotic situation, for over an hour, respondent repeatedly engaged in conduct that violated the Rules. Her wide array of misconduct severely undermined public confidence in the judiciary and in her ability to serve as a fair and impartial judge. The Court of Appeals has held, “[w]e cannot view petitioner’s actions and the appropriate sanction through a limited prism but must instead consider the full spectrum of her behavior and its impact on public perception of the judiciary . . ..” *Matter of Astacio*, 32 NY3d 131, 137 (2018) (citations omitted) Given the extent and range of respondent’s misconduct, particularly her repeated invocation of her judicial office to the police and to the teenagers, her remarks that created the appearance of racial bias and bias in favor of law enforcement and her decision to complain about how the police handled the matter approximately two weeks after the incident while in the Oneida County Courthouse, we find that respondent engaged in “truly egregious” misconduct. *See*, *Matter of Mazzei,* 81 NY2d 568, 571-572 (1993) (“A society that empowers Judges to decide the fate of human beings and the disposition of property has the right to insist upon the highest level of judicial honesty and integrity.”). Respondent committed multiple violations of several Rules, acted in a manner

unbecoming a judge, brought reproach upon the judiciary and irreparably damaged her ability to serve as a judge.

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

Ms. Grays, Mr. Doyle, Judge Camacho, Judge Falk, Judge Miller, Professor Moore, Mr. Raskin, Mr. Seiter and Judge Singh concur.

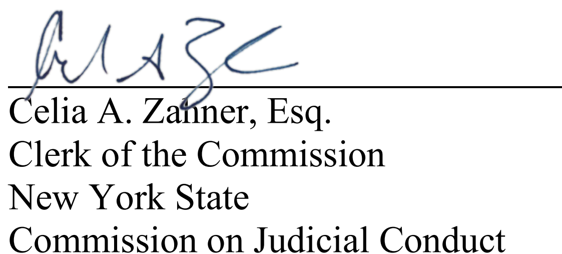
Professor Moore files a concurring opinion which Judge Camacho joins.

Mr. Belluck did not participate and Ms. Yeboah abstained.

CERTIFICATION

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

Dated: July 17, 2024



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
_ _

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

ERIN P. GALL,

A Justice of the Supreme Court,
Fifth Judicial District, Oneida County.
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CONCURRING OPINION BY PROFESSOR NINA M. MOORE WHICH JUDGE CAMACHO JOINS

I fully concur with the Commission's decision to remove Judge Erin Gall and the reasons set forth. I write separately to underscore the issues and facts that I find especially consequential.

I. Maintaining Public Trust

Public trust in the judiciary is paramount. The Rules Governing Judicial Conduct ("Rules") accord great significance to the public's faith in the court system by way of explicit language that centers public confidence, judicial integrity and appearances. (Rules §§100.1, 100.2, 100.2(A), 100.3(E)(1)(g), 100.4(D)(5)(e), 100.4(H)(1) and 100.5(A)(4)(a)) Determinations of this Commission likewise acknowledge the pivotal importance of public perception. So do rulings by the Court of Appeals. In *Matter of Mazzei*, 81 NY2d 568 (1993) the Court held,

> Judges personify the justice system upon which the public relies to resolve all manner of controversy, civil and criminal. A society that empowers Judges to decide the fate of human beings and the disposition of property has the right to insist upon the highest level of judicial honesty and integrity. A Judge's conduct that departs from this high standard erodes the public confidence in our justice system so vital to its effective functioning.

Id. at 571-572. (*See also, Matter of Esworthy*, 77 NY2d 280, 282-283 (1991); *Matter of Cohen*, 74 NY2d 272, 278 (1989); *Matter of Fabrizio*, 65 NY2d 275, 277 (1985); *Matter of Sardino*, 58 NY2d 286, 290-291 (1983); *Matter of Steinberg*, 51 NY2d 74, 81(1980); and, *Matter of Lonschein*, 50 NY2d 569, 572 (1980)).

The facts in this case establish the negative exposure wrought by respondent's egregious misconduct in connection with a public street melee that was live streamed on social media and that multiple police officers from five law enforcement agencies responded to, all tied to a high school graduation party attended by dozens of individuals. The damage is done. The strongest consequences must follow, to maintain public confidence in the judiciary.

II. Public Interest versus Personal Problems

The judiciary exists to serve the public interest in justice. This foundational precept is not superseded by the emotional and psychological problems of individual judges. It applies with added force when a judge's personal issues directly undermine public trust in the temperament, mental soundness, and fairness of those who wear the robe. It is borne out in prior Commission determinations,

including where a judge was not removed due to personal alcohol or drug-related problems that impacted off-the-bench behavior. The outcome in these cases was rested partly on a well-grounded sense of causality as well as assurances regarding rehabilitation. (*See e.g.*, *Matter of Jacobsen*, 2022 Ann Rep of NY Commn on Jud Conduct at 98; *Matter of Miranda*, 2021 Ann Rep of NY Commn on Jud Conduct at 224; *Matter of Newman*, 2014 Ann Rep of NY Commn on Jud Conduct at 164; and, *Matter of Knott*, 2000 Ann Rep of NY Commn on Jud Conduct at 117). Of special note is the following conclusion in *Matter of Landicino*: "Were it not for the abundant evidence that respondent has taken significant steps to rehabilitate himself, and seems to be succeeding, we would vote to remove him for his egregious conduct." *Matter of Landicino*, 2016 Ann Rep of NY Commn on Jud Conduct at 129, 142.

In the instant case there are strong hints of strategizing around the psychological evidence that is now offered by respondent as part of her third affirmative defense. The respondent did not pursue a forensic psychological evaluation until June 20, 2023, shortly after she was notified of formal charges authorized by this Commission in a letter dated May 23, 2023, but almost a year after the admitted misconduct of July 2, 2022. The record shows that it was respondent's attorney that contacted one of the psychologists to perform the evaluation, not the respondent. (ASF Ex. B-1 at 2) This same psychological

evaluation, proffered as proof of mitigation, was secured before respondent commenced therapy sessions on June 29, 2023. Additionally significant is evidence that establishes that, at the outset of interactions with one of the witnesses called to support her trauma defense, respondent specifically asked the witness to concentrate on [redacted]. (ASF Ex. B-4 at 6) It bears mentioning too that Judge Gall concedes her conduct on July 2, 2022 was triggered only *in part* by her reaction to a 1990 assault. (ASF at 28, ¶78) Trauma does not explain it all.

III. Police Officers Explain to the Judge

The remarkably temperate decision-making of responding police officers is commendable. Five different law enforcement agencies were marshalled to deal with numerous street fights. Throughout, the responding officers judiciously managed the improper demands of a White female judge for removal on the one hand and, on the other, four Black male teenagers' insistence on staying put to find a car key—despite the precarious situation at hand.

The point of note is that police officers had to explain to a judge the multiple reasons why they could not lawfully submit to her pleas to handcuff, detain, arrest and/or remove the teenagers. The officers warned Judge Gall that it would be unlawful for her to shoot someone simply due to trespassing, as she threatened. ("I'll shoot them on the property." ASF at 23, ¶¶68-69) It was the officers that

advised the judge that she could not follow through on her plan to throw the key in the toilet if it turned up, as she stated. ("We're absolutely going to throw it in the toilet." ASF at 22-23, ¶¶66-68) Deputy Norman Lyke cautioned respondent that a judicious approach was necessary partly because the officers could end up in her court for violating the teenagers' civil rights. (ASF at 17, ¶49)

In a volatile moment that could have led to far more harmful outcomes than occurred on July 2, 2022, it was police officers that displayed the kind of measured and reassuring judgement that the Rules of Judicial Conduct demand of New York state judges. Respondent now admits that the evidence is insufficient to support her initial claim that her son was assaulted by two of the young Black men. What if the responding police officers did not have the wherewithal to do the right thing over the strenuous objections of a state supreme court judge? The totality of circumstances in this case point up the strong probability that we would have before us a very different case: one with four Black teens unlawfully victimized by the criminal justice system, due to mistaken identity by a White female judge, based on the argument that it was because she was assaulted when she was a college freshman. No matter how extremely unfortunate and regrettable respondent's 1990 assault, the long reach and unpredictability[1] of its effects cannot be enabled to wrongly jeopardize the freedom and safety of others.

[1] See Section IV below.

IV. Many Questions Remain

Many, many questions remain as to the precise mechanisms by which respondent's victimization of 1990 accounts for her choices 34 years later, what triggers the trauma effects, and why the effects show up in such peculiar forms. It is difficult to reconcile respondent's after-the-fact claims about her aversion to violence due to the 1990 incident with her boasting on July 2, 2022 of having taught her son to "put a smack down" and "to kick the shit out of anyone who hits him first." This, as she repeatedly hit her fist into the palm of her hand. (ASF at 19, ¶¶55-56). That her 1990 assault experience precipitated disturbing threats of violence *after* she was surrounded in the safety of multiple officers armed with guns and badges is equally confounding.

It remains unclear as well why respondent purportedly "froze" in shock as she observed her son being attacked and fall to the ground (ASF at 8, ¶22), yet moments later was clear-headed enough to present reasoned arguments as to: why the teenagers should be arrested for trespassing; that the police officers should obtain the teenagers' names to cross-compare with the list of invitees and press charges; the probability that their claim of a lost key was a farce; her command of what is and is not permissible under the law, and more. Judge Gall motioned the property owner and attorney Stephen Pearce to essentially stand down, as he screamed obscenities at police personnel and/or Mr. Carter's group. She remarked:

"Okay, Steve, Steve, I've got it." (ASF at 18, ¶51) The proof of her follow-through is the voluminous police body camera footage that features an assertive, sharp, fast-talking ring leader that skillfully countered the reasonings of one officer after another for more than an hour.

None of the psychological evidence presented in this case accounts for the odd pattern of the timing of her ( ) impacts. Nor does it explicate the predictors of when they appear, disappear, then reappear and disappear again. According to that evidence respondent "returned to "being Judge Gall" the next day ..." after the July 2, 2022 incident. (ASF Ex. B-1 at 6) But, in another turnabout 12 days later on July 14, 2022 she conveyed to Sergeant Grant Langheinrich, Deputy Edmund Wiatr and Deputy Michael Baker her dissatisfaction with how police officers had handled the incident. At some point and for an unknown period of time thereafter she again returned to her normal self and was mortified by her statements, as when she appeared before this Commission on June 13, 2024. The psychological evidence reveals that, at another point during the years between 1990 and June 29, 2023, respondent indicated that she had recovered from that traumatic experience of 1990. (ASF Ex. B-4 at 5) And less than two months later, by August 21, 2023, the flashbacks are said to have disappeared. (ASF Ex. B-4 at 10) Indeed, throughout her 12-year judicial career Judge Gall maintained an unblemished record, right up until body cam footage

captured her bragging about the lessons she gave for the "smack down" on July 2, 2022, lessons that she presumably gave at some point before the actual smack down on July 2, 2022.

V. Black Litigant Trust in the Judiciary

Black litigants, attorneys, court staff and others who enter a New York state courtroom are entitled to equal justice. They should not have to carry the additional burden of wondering whether their matters will be adjudicated by a judge of sound and sober mind, or a traumatized judge with a proclivity toward racial stereotyping and racially tainted directives. Inexplicably, respondent's 1990 trauma took the form of racialized behavior on July 2, 2022. Her derisive deployment of Black English (aka "African American vernacular," "Ebonics," and "blaccent") is jolting.[2] She averred: "You know what you're not going to find your mom's keys. You gotta ask her for a second set, bro! … That's what I'm telling you right now. That's how I roll. That's how I roll. That's how Mrs. G rolls. That's how Judge Gall rolls. We're clearing this place out." (ASF at 13-14, ¶¶38-39).

Judge Gall's mocking blaccent is in addition to the other racialized behaviors noted in the majority opinion, including her assessment of the four Black male teenagers as less than Business School material and the hint that they could

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2 For reference see: John McWhorter, *Talking Back, Talking Black: Truths about America's Lingua Franca* (New York, NY: Bellevue Literary Press, 2017) and Geneva Smitherman, *Black Talk: Words and Phrases from the Hood to the Amen Corner* (San Francisco, CA: HarperOne, 2000)

not afford cocaine—reflexive assessments that she made with no personal knowledge whatsoever of the four Black teens. The defense argument that the teens' behavior was distinctive and merited such harsh judgement is belied by the fact that Judge Gall's own husband and son had, in her words, just given someone a "smack down," and at her friend's party where police officers observed many teens had been drinking or were intoxicated. Critically, respondent's words on the night of the incident did not pertain to behavior. They expressly targeted physical features. She stated: "They don't look like they're that smart." (ASF at 21, ¶62)

Respondent admits that her statements about the four Black teenagers created the appearance of racial bias. In *Matter of Putorti*, 40 NY3d 359 (2023), where petitioner admitted he "may have created the appearance of racial bias" in statements that he made, the Court of Appeals held,

> judges have a "continuing obligation to avoid even the appearance of impropriety" . . . and, here, petitioner acknowledged that his conduct "may have created the appearance of racial bias." We stress that the "appearance of such impropriety is no less to be condemned than is the impropriety itself" . . .

Id. at 366.

Even so, Judge Gall offers scholarly articles to explain away her racialized behavior based on a research finding that, in sum and substance, people resort to racial stereotyping when they get angry. None of the scholarship that is proffered pinpoints the origins of the brand of racial animus that is confined to moments of

anger. To date, no credible systematic research attributes reflexive racism against Black people to the kind of long ago criminal victimization that respondent offers as a defense. If there were a therapeutic cure for racialized behavior, the world would likely be a better place. But, until such a cure is available, Judge Erin Gall should not sit on the bench with Black litigants left to cross their fingers and hope for the best.

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Nina M. Moore, Ph.D.
New York State
Commission on Judicial Conduct