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

ROBERT J. PUTORTI, JR.,

a Justice of the Whitehall Town Court and,
Whitehall Village Court, Washington County.

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

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in support of the recommendation that, based upon the agreed findings of fact and conclusions of law, the Commission render a determination that the Honorable Robert J. Putorti, Jr. ("Respondent") should be removed from office.

It is undisputed that in late 2015, Respondent brandished a loaded handgun in his courthouse at an unarmed defendant who happened to be Black. Far from expressing concern or contrition for that unjustified display of deadly force, Respondent celebrated the incident in a published interview, and later – while recounting the tale for other judges on various occasions – repeatedly referred to the defendant as a "large" or "big" "Black man," when in fact the defendant was unimposing and his race should have been immaterial.

Standing alone, Respondent's unjustifiable brandishing of a loaded firearm to an unarmed, unthreatening defendant was egregious and warrants his removal. Respondent seriously exacerbated that misconduct by (1) repeatedly boasting about the incident, (2) dismayingly introducing race to the matter by repetitively proclaiming he had pulled a gun on a "large" or "big" "[B]lack man," and (3) embellishing or changing the story with each retelling. Such braying, racist remarks irreparably damage the integrity of the judiciary and undermine public confidence in Respondent's ability to preside as an unbiased arbiter.

In addition, at a time when Respondent knew he was under investigation for the firearms incident, he committed further misconduct by engaging in improper fundraising activities on behalf of himself and the Whitehall Elks Lodge.

Accordingly, Respondent is not fit to retain judicial office and should be removed.

PROCEDURAL HISTORY

A. The Formal Written Complaints

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint, dated June 11, 2020, containing one charge, and a Second Formal Written Complaint, dated January 20, 2021, containing a second charge. Charge I alleged that Respondent (A) unjustifiably brandished a loaded semi-automatic handgun at Brandon Wood, an unarmed defendant who was at the Whitehall Village Court for the call of a case; (B) gave an interview to a Hofstra University journalism student in which he described his practice of carrying a concealed firearm while presiding on the bench, stated that he had brandished his handgun in court at a defendant, meaning Wood, and described purported other encounters he had while carrying a firearm; and (C) told other judges in attendance at a magistrates association meeting that he had once brandished his handgun in the courthouse at a "large [B]lack man," meaning Wood (FWC ¶¶6-8).[1]

[1] References to "FWC" are to the Formal Written Complaint. References to "FWC2" are to the Second Formal Written Complaint. References to "Ans" are to the Respondent's Answer to the Formal Written Complaint. References to "Ans2" are to Respondent's Answer to the Second Formal Written Complaint. References to "ASF" are to the Agreed Statement of Facts. References to "Ex" are to exhibits to the Agreed Statement of Facts.

Charge II alleged that Respondent personally participated in the solicitation of funds or other fund-raising activities for his own personal benefit and for the benefit of the Whitehall Elks Lodge ("Lodge"), and lent the prestige of his judicial office to those same activities, by sharing and promoting on his personal Facebook page: (A) a post by his sister advertising a fundraiser for Respondent and his family and (B) various posts by the Lodge advertising fundraisers for the Lodge (FWC2 ¶5).

B. Respondent's Answers

Respondent filed a Verified Answer to the Formal Written Complaint, dated August 14, 2020. He denied nearly all of the substantive factual allegations of Charge I (Ans ¶2). Respondent admitted that he was counseled by his supervising judge and signed a counseling memorandum regarding his display of a firearm to Wood (Ans ¶5).

Respondent filed a Verified Answer to the Second Formal Written Complaint, dated March 8, 2021. With respect to Charge II, Respondent admitted that, on his personal Facebook page, he wrote, "I am very humbled by this, I hope to see as many people as I can. Thank you" above a post by his sister that included an invitation to a "SPAGHETTI DINNER – BASKET PARTY BENEFIT FOR ROBERT PUTORTI JR." (Ans2 ¶6). Respondent also admitted that the "spaghetti dinner" event was attended by over 500 people and raised a net amount of $9,400, which was applied to Respondent's medical expenses (Ans2 ¶7). Respondent denied essentially all of the other substantive factual allegations.

C. The Agreed Statement of Facts

By Orders dated October 6, 2020, and March 12, 2021, the Commission designated David M. Garber, Esq., to act as Referee to hear and report to the Commission as to the Formal Written Complaint, respectively. By agreement of the parties and the Referee, the two matters were combined into one proceeding. A hearing before the Referee was scheduled to take place on June 2 and 3, 2021. The hearing was adjourned and, in lieu thereof, the parties entered into an Agreed Statement of Facts dated November 26, 2021, which was accepted by the Commission.

THE STIPULATED EVIDENCE

Respondent has been a Justice of the Whitehall Town Court, Washington County, since January 1, 2014. In June 2014, Respondent was appointed as an Acting Justice of the Whitehall Village Court, Washington County, and was elected as a Justice of that court in April 2018. Respondent's current term as Whitehall Town Justice expires on December 31, 2021, and his term as Whitehall Village Justice expires on April 6, 2025. Respondent is not an attorney (ASF ¶1).[2]

[2] Respondent was re-elected as Whitehall Town Justice to a new term commencing January 1, 2022, and ending December 31, 2025.

Charge I: **Respondent brandished a loaded firearm at an unarmed defendant in the courthouse, gave an interview about that incident and, on three different occasions, gave accounts of the tale in which he emphasized that he had pulled a gun on a "Black" man.**

Since at least 2003, and thus at all times relevant to Charge I, Respondent has been licensed in New York State to carry a concealed firearm (ASF ¶10; Exs 1, 3).[3] At a judicial training course in December 2013, Respondent was advised by an instructor that he could legally carry a concealed firearm at the bench.[4] His practice was to have a concealed and loaded firearm, although with the chamber empty, with him at the bench while he presided. Typically, Respondent attached the handgun to the underside of the bench's desktop via a magnet (ASF ¶11).

A. Respondent unjustifiably brandished a gun at defendant Brandon Wood, who was at the courthouse for the call of a case.

Brandon Wood is a Black man who, at the time of the events herein, was approximately 34 years old, six feet tall (6'0'') and 165 pounds (ASF ¶12).

On March 30, 2015, Wood was charged in the Whitehall Village Court with Attempted Assault in the First Degree, Criminal Mischief in the Third Degree, Menacing in the Second Degree, and Criminal Possession of a Weapon in the Fourth Degree. The allegations specified that Wood had attacked his wife and another man with a knife while

[3] Respondent is also licensed to carry firearms in numerous other states and has a goal of being licensed to carry in every state in the country (ASF ¶10; Exs 1, 3).

[4] Opinion 06-51 of the Advisory Committee on Judicial Ethics provides that "there is no prohibition in the Rules Governing Judicial Conduct barring [a judge] from carrying a firearm while performing . . . duties on the bench," provided that the judge otherwise abides by the Rules Governing Judicial Conduct and "there are no legal or administrative barriers that would preclude such possession."

Wood's wife and the other man sat in a parked vehicle[5] (ASF ¶13; Ex 2). Respondent presided over the charges and, as a result, was aware of the violent nature of the allegations against Mr. Wood (ASF ¶13).

On June 22, 2015, after the attempted-assault and criminal mischief charges against Wood had been merged and dismissed on consent of the prosecution, Wood pled guilty before Respondent to one count each of Menacing in the Second Degree and Criminal Possession of a Weapon in the Fourth Degree, both misdemeanors. Respondent sentenced Wood to a one-year conditional discharge and imposed fines and surcharges totaling $555 (ASF ¶14).

In late 2015, Wood was scheduled to appear before Respondent in the Whitehall Village Court, and he was present in the courthouse before the call of his case. He was not represented by counsel (ASF ¶15).

While Wood was inside the courthouse, Respondent brandished a loaded handgun at him. At the time, Wood was not acting in a manner that threatened Respondent or anyone else with deadly physical force (ASF ¶16). Although Respondent states that he subjectively feared for his safety when he brandished his gun at Wood, he now acknowledges that he had no reasonable basis to believe that Wood was about to use deadly physical force against him or anyone else. Respondent admits, in retrospect, that he was not justified in brandishing his gun at Wood (ASF ¶17).

[5] Previously, on March 11, 2015, Wood was charged in the Whitehall Village Court with Unlicensed Operator, a traffic infraction.

B. Respondent gave an interview about pulling his gun on a defendant in his courtroom, carrying a concealed firearm while on the bench and other incidents outside of court during which he had carried a gun.

In fall 2015, Respondent's cousin, Reba Putorti, was a journalism student at Hofstra University. That semester, Putorti and her classmates in a magazine production class wrote articles about firearms and firearm laws for an online magazine. Respondent agreed to be interviewed by Putorti for an article about his possession of numerous firearms and firearms licenses (ASF ¶18). Respondent wrongly believed the article would be published only within Hofstra University (ASF ¶19).

During the interview, Respondent:

- described his general practice of carrying a concealed firearm while presiding on the bench (ASF ¶20[A]; Ex 3);
- recounted a time when "someone" came running up to him at the bench, and he responded by brandishing his gun and saying, "'woah, woah, woah, slow down'" (ASF ¶20[A]; Ex 3).[6]
- described an out-of-court incident in which he brandished his handgun at an unidentified man while helping his now-deceased grandfather recover a stolen car (ASF ¶20[B]; Ex 3).
- described an instance in April 2015 in which police officers in Virginia observed him carrying a firearm in a convenience store at 3:00 AM but did not take action against him (ASF ¶20[C]; Ex 3).

The resulting article, entitled "Carrying in the courtroom," was published online in the *Long Island Report* on December 8, 2015, and remained viewable online through at least November 26, 2021 (ASF ¶21; Ex 3). The article, which Respondent admits is

[6] Respondent later claimed that Assistant District Attorney Devin Anderson and Police Officer Joel Archambault were present in the courtroom at the time. However, if called to testify, neither would have corroborated the version of events Respondent recounted in the interview (ASF ¶20[A]).

accurate, quoted him as stating, "I carry a gun now because I'm a judge; I send people to jail and you never know how someone will respond to the calls I make. I carry all the time, especially today, because you never know when someone is going to pull out a gun and start shooting people; if I have a gun at home, that's not doing anybody any good; if it's on my hip, I can respond immediately" (ASF ¶22; Ex 3).

C. Respondent showed the article to his co-judge and appeared to boast about having pulled a gun on a "big Black man."

In early 2016, Respondent showed the article to his former co-judge, Julie Eagan, and others around the courthouse. Respondent contemporaneously told Judge Eagan about having pulled a gun on an "agitated" "big Black man" when the man, whom Respondent did not identify by name, approached him too quickly at the bench. From Respondent's manner and tone, Judge Eagan understood that Respondent was bragging about his actions and was expressing pride about being featured in the article. At a meeting of the Washington County Magistrates Association in 2016, Judge Eagan overheard Respondent telling other judges in attendance about the article and the purported incident with the gun in the courtroom (ASF ¶23).

D. At a 2018 magistrates meeting, Respondent told other judges in attendance about how he once brandished his handgun in the courthouse at a "large [B]lack man."

On October 23, 2018, while discussing courthouse security at a meeting of the Washington County Magistrates Association, Respondent told other judges in attendance, including his supervising judge, Glens Falls City Court Judge Gary Hobbs, that he had once brandished his handgun in the courthouse at a "large [B]lack man" after the man, a

defendant, had passed the "stop line" and came within a couple feet of Respondent at the bench (Ex 4). Respondent told his fellow judges that the defendant, whom he did not identify by name, said he just wanted to talk to Respondent, and that the police officer who was standing at the bench at the time joked with Respondent about how quickly he had been able to pull the gun (Ex 4).[7] Respondent did not mention anything about the defendant's criminal record (ASF ¶24).[8]

The parties stipulated that, at a hearing before the Referee in the disciplinary matter herein, Respondent would have testified that when he recounted this incident during the 2018 magistrates meeting, he was merely seeking advice from his supervising judge about what to do in the future under similar circumstances. Respondent would have further testified that he referred to the defendant's race as a means of describing him to the other judges (ASF ¶25).

E. Respondent told his supervising judge that he had pulled his gun on a "large [B]lack man."

On October 25, 2018, after another judge expressed concern to Supervising Judge Hobbs about Respondent's comments at the Magistrates Association meeting, Judge Hobbs had a telephone conversation with Respondent about the gun incident (ASF ¶26; Ex 4).[9] Judge Hobbs made notes of his conversation with Respondent, and Respondent

[7] Respondent identified the officer as Joel Archambault, who – were he called to testify – would state that he has no recollection of any such incident or comments (ASF ¶24).

[8] Judge Hobbs' contemporaneous notes about Respondent's comments were annexed to the Agreed Statement of Facts as Exhibit 4.

[9] Judge Hobbs' contemporaneous notes of his conversation with Respondent were included in Exhibit 4.

agreed that the notes accurately reflect what Respondent said. Respondent also agreed that, as noted below, some of what he told Judge Hobbs was different from what he had told his fellow Magistrates (ASF ¶27).

At Judge Hobbs' request, Respondent repeated his account of the incident over the phone (ASF ¶28; Ex 4):

- Respondent advised Judge Hobbs of his practice of carrying a concealed weapon at the bench and stated that a "bullet is not in the chamber, but it takes [him] a split second to load";

- Respondent told Judge Hobbs that the described incident had occurred about three years prior;

- Respondent asserted that the defendant – whom he did not identify by name and whose "case ha[d] been long since resolved" – was a "large [B]lack man," about 6'9" tall and "built like a football player."[10] Respondent said nothing about the defendant's criminal history;

- Respondent said that the incident had occurred when he called the defendant's case and the defendant ran quickly to the bench, past a line where defendants are supposed to stand, and within two feet of Respondent;

- Respondent stated that a police officer was standing at the bench "for [Respondent's] security." However, Respondent said, the officer allowed the defendant to pass the line and go directly to the bench;

- Respondent said that he "pulled his hand gun and pointed it at the defendant,"[11] "told him to stop, asked him where he was going and told the defendant to move back behind the line," to which the defendant replied that "he just wanted to talk to" Respondent. Respondent "said that he would talk to the defendant once he moved back behind the line," after which "[t]he defendant . . . moved back and [Respondent] put his gun back under the bench."

[10] As noted above, Wood is 6'0" tall and weighs approximately 165 pounds.
[11] This is contrary to Respondent's telling the Commission that he made a "fanning motion" with the gun but did not point it at the defendant or anyone else (ASF ¶28[F], n9).

Judge Hobbs advised Respondent that he may not display his gun to a defendant unless he reasonably believes it is necessary to defend himself or someone else from the use or imminent use of deadly physical force by the defendant. Judge Hobbs added that the fact that a defendant may present as "large" or make Respondent feel uncomfortable or nervous is insufficient basis for Respondent to display his gun (ASF ¶29; Ex 4).

On March 2, 2019, Respondent signed a counseling memorandum, provided to him by Judge Hobbs, in which Respondent agreed never to display, use or threaten to use a firearm in court unless he or someone else was facing "deadly physical force." (ASF ¶30; Ex 5).

Respondent averred, and the Administrator has no information to the contrary, that he has not carried his gun into the courtroom while presiding over cases since October 2018, when Judge Hobbs counseled him as described above (ASF ¶32).

Respondent acknowledged that, even if his purpose in recounting the Wood incident with fellow judges was to discuss courthouse security with them and his intent in referring to the defendant's race was merely to describe him to the other judges, the defendant's race was immaterial to any such discussion, and his identification of Wood by race may have created the appearance of racial bias (ASF ¶33).

Charge II: Respondent personally participated in the solicitation of funds or other fund-raising activities for his own personal benefit and the benefit of the Whitehall Elks Lodge.

Respondent maintains a Facebook account under the name "Robert Putorti Jr." and he has over 1,300 Facebook "friends." Although Respondent's account does not mention his position as a judge, a number of his Facebook friends were aware he was a

New York State judge, including: Whitehall Police Officer Bryan Greco; Washington County District Attorney Tony Jordan; Whitehall Police Officer Chris Kyne; Whitehall Police Sergeant Richard LaChapelle; Washington County Public Defender Michael Mercure; Washington County Assistant Public Defender Amanda Ross; and Whitehall Police Investigator Frank Hunt (ASF ¶¶39-40). Respondent set his Facebook account settings so that his Facebook page is viewable by the public (ASF ¶38).

Respondent has been a member of the Whitehall Elks Lodge ("Lodge") since 1992. Respondent has held various leadership positions in the Lodge since April 2017. On April 1, 2020, Respondent was elected by the Lodge's members to the position of Exalted Ruler, the highest-level position within the Lodge (ASF ¶35). It is generally known among the members of the Lodge that Respondent is a judge (ASF ¶36). Police Investigator Hunt is also a member of the Lodge (ASF ¶42).

A. Respondent promoted a fundraiser benefitting himself and his family on his Public Facebook page.

On October 24, 2019, Respondent was "tagged"[12] in a Facebook post by his sister, Kristy Putorti, which included an invitation to an event entitled "SPAGHETTI DINNER – BASKET PARTY BENEFIT FOR ROBERT PUTORTI JR.," scheduled for November 9, 2019, at the Whitehall Elks Lodge (ASF ¶43; Ex 7). The invitation listed the cost to attend the benefit as $10, announced there would also be raffles for baskets and "large items," and reported injuries and medical expenses suffered by Respondent due to a motorcycle accident on August 31, 2019. The invitation concluded, "We Need Your

[12] A printout from the Facebook Help Center about "tagging" was annexed to the ASF as Exhibit 11.

Help!! We are accepting donations and items to raffle off: baskets, gift cards, or large items. Proceeds to go to Bobby and his family. We can't do this without your assistance and attendance! Please Share!! Thank You Very Much for Your Support!!" (Ex 7). The post did not identify Respondent as a judge, nor did it mention his position or affiliation with the Whitehall Court. The post identified Respondent as "Whitehall Elks Leading Knight and community friend to all . . ." (ASF ¶43).

Because Ms. Putorti "tagged" Respondent in her Spaghetti Dinner post, the post appeared on Respondent's Facebook page, and thus was viewable to any member of the public who viewed Respondent's page (ASF ¶44). Instead of deleting the post from his Facebook page or removing the tag, Respondent wrote above the post, "I am very humbled by this, I hope to see as many people as I can. Thank you." At the time of this posting, Respondent was aware that the Commission was investigating his display of a gun in his courthouse (ASF ¶55).

The Spaghetti Dinner benefit was attended by over 500 people and raised approximately $9,400, which Respondent received and/or which organizers of the event applied to Respondent's medical expenses (ASF ¶45). Police Investigator Hunt attended the fundraiser but could not recall how he learned about the event. Hunt did not pay a fee to enter the fundraiser or donate any items, but he did purchase raffle tickets (ASF ¶42).

B. Respondent shared to his public Facebook page seven posts advertising fundraisers benefitting the Whitehall Elks Lodge.

On seven occasions in between July 20, 2020, and October 5, 2020, Respondent shared to his public Facebook page posts by the Lodge advertising various fundraising

events (ASF ¶¶46-52; Exs 13-19). On each post, Respondent wrote comments promoting the fundraisers, including: "Come support our lodge everyone, we're trying to keep the doors open, because of the COVID-19, we need all your help to bring in some revenue. We help support the communities around us with various fundraisers, but now we need yours!! Thank you!" (Ex 13) and "Come out and support our lodge, help us so we can give back to the people in the communities around us!" (Ex 14).

Respondent's intent in sharing and promoting each of the Lodge's Facebook was to raise funds for the Lodge (ASF ¶53; Exs 15-16). All of these posts were viewable by the public and remained viewable as of January 20, 2021, the date of the Second Formal Written Complaint, notwithstanding that Respondent was notified by letter dated November 12, 2020, that the Commission was investigating a complaint alleging that he had engaged in the conduct charged herein (ASF ¶53). Respondent changed his Facebook security setting to "private" prior to submitting his Verified Answer to the Second Formal Written Complaint (ASF ¶53).

At the time Respondent shared and promoted the Lodge's posts, Respondent was aware that the Commission was investigating a claim that he brandished a gun at a man in his courtroom (ASF ¶55).

THE STIPULATED CONCLUSIONS OF LAW

With respect to Charge I, Respondent admitted that he failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in

violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; failed to perform the duties of judicial office impartially and diligently, in that he failed to be patient, dignified and courteous to a litigant, in violation of Section 100.3(B)(3) of the Rules, and failed to perform judicial duties without bias or prejudice against or in favor of any person and without manifesting in words or conduct bias or prejudice based upon race, in violation of Section 100.3(B)(4) of the Rules; and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they do not cast reasonable doubt on his capacity to act impartially as a judge and detract from the dignity of judicial office, in violation of Sections 100.4(A)(1) and (2) of the Rules (ASF ¶31).

With respect to Charge II, Respondent admitted that he failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules, and lent the prestige of judicial office to advance the private interests of himself and others, in violation of Section 100.2(C) of the Rules; and failed to conduct his extra-judicial activities so as to minimize the risk of

conflict with judicial obligations, in that he personally participated in the solicitation of funds or other fund-raising activities, in violation of Section 100.4(C)(3)(b)(i) of the Rules (ASF ¶56).

ARGUMENT

POINT I

RESPONDENT DEMONSTRATED HIS LACK OF FITNESS FOR JUDICIAL OFFICE BY BRANDISHING A LOADED FIREARM AT AN UNARMED DEFENDANT IN HIS COURTHOUSE, BOASTING ABOUT THE INCIDENT THEREAFTER, AND REPEATEDLY REFERRING TO THE DEFENDANT AS A "BLACK MAN" WHILE RECOUNTING HIS TALE OF THE EVENT.

By itself, Respondent's unjustified brandishing of a loaded firearm at an unarmed and unthreatening defendant in his courthouse was so egregious, dangerous, and damaging to the integrity of the judiciary that it compels his removal. Respondent exacerbated his misconduct by boasting about the incident in an interview for an online publication and in conversations with other judges. On three separate occasions when he recounted his tale, Respondent volunteered that he had pulled his gun on a "Black man," thus gratuitously injecting the defendant's race into the story. Taken together, Respondent's conduct so compromised public confidence in his ability to preside as a fair and impartial arbiter that he should be removed from the bench.

A. A judge who unjustifiably brandishes a loaded handgun at a defendant should be removed from office.

Every judge must observe high standards of conduct and act all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. *See* Rules 100.1, 100.2(A). Every judge likewise is required to be a paradigm of dignity and

decorum and preside over cases in a lawful, orderly manner. *See Matter of Carter*, 2007 Ann Rep 79, 82 (September 25, 2006); Rules 100.3(B)(3). Thus, "[a]ny conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function." *Matter of Kuehnel* 49 NY2d 465, 469 (1980).

In particular, it is "fundamentally inimical to the role of a judge" to engage in a physical confrontation. *Matter of Allman*, 2006 Ann Rep 83, 85 (Commn on Jud Conduct, Mar 23, 2005). For that reason, in *Matter of Carter*, the Commission censured the judge for, in part, leaving the bench and "appear[ing] on the verge of initiating a physical confrontation" with a defendant. 2007 Ann Rep at 82. In *Matter of Allman*, the judge was censured for coming off the bench and confronting an attorney in open court by grabbing his arms. 2006 Ann Rep at 85-86.

Respondent's conduct here, which far outstrips the minor physical altercations in *Carter* and *Allman*, is unprecedented in the Commission's history. Respondent admitted that he "pulled his hand gun and pointed it at [a] defendant," Brandon Wood, who was present in the courthouse for the call of a case, notwithstanding that Wood was not acting in a manner demonstrating deadly force and Respondent admits having had no reasonable basis to believe he was about to use imminent deadly force against him or anyone else (ASF ¶¶11, 15-17, 28[F], 31; Ex 4). Though Respondent claimed the gun chamber was empty, he admits the weapon was loaded (ASF ¶11), which made the situation even more dangerous. If a judge merits a censure for "appear[ing] on the verge of initiating a physical confrontation" with a defendant (*Carter*, 2007 Ann Rep at 82) or "grabbing" an

attorney's arms in open court (2006 Ann Rep at 85-86) – without a weapon or even an implication of deadly force – then removal is the only appropriate sanction for a judge who waves a loaded gun toward an unarmed and unthreatening defendant.

Even crediting the most extreme of Respondent's changing versions of the incident, Wood did nothing more than move "quickly" toward the bench and pass a line on the floor to come within two feet of Respondent, after Respondent himself called his case and expected Wood's approach (Ex 4).[13] In no version of Respondent's tale was Wood armed or acting violently – let alone in a manner indicative of an intent to use deadly physical force against Respondent or anyone else in the room (ASF ¶¶16-17). And, by Respondent's own account, a police officer who "had been standing at the bench for the judge's security" could have intervened if it had truly been necessary (Ex 4). Yet the officer has no recollection of Wood rushing up or what otherwise would have been a most memorable event (ASF ¶24).

The unjustifiable display of a loaded firearm to an unarmed person by "even . . . a member of the public" is, "at a bare minimum, a flagrant breach of accepted norms. [But] [w]hen performed by a Judge, a person required to observe 'high standards of conduct so that the integrity of the judiciary may be preserved', such conduct is inexcusable." *Matter of Kuehnel*, 49 NY2d at 469 (internal citations omitted). It is even

[13] Respondent gave this version to Judge Hobbs when he was called on to account for the alarming story he had told at the magistrates meeting several days prior. Notably, while recounting the story at that earlier meeting, Respondent omitted that the defendant ran "quickly" toward him, saying merely that the Black man "came through the crowd and came directly up to the judge within a couple feet of [him]" (Ex 4). In other words, Respondent seemingly decided to embellish his story when his supervising judge questioned his conduct.

worse when it occurs in the courthouse, a place that should personify safety, fairness and justice for all. That dangerous and egregious misconduct compels Respondent's removal from office.

B. Respondent seriously exacerbated his misconduct by boasting about the incident and gratuitously referencing the defendant's race.

Respondent exacerbated his already-egregious misconduct by his subsequent boasts about it. He gave an interview for an online publication that glorified the incident and made clear he was proud of it. And – on three separate occasions – he gratuitously referred to Wood's race when speaking about the matter, which created at the least a strong appearance that Respondent harbors racial bias.

As soon as Respondent realized that Wood posed no threat, he should have regretted having pulled his gun on an unarmed man and been embarrassed about that conduct. Instead, Respondent appeared to revel in it. In the interview for "Carrying in the Courtroom," Respondent recounted the Wood incident alongside an out-of-court act of apparent vigilantism where he brandished a gun at a man while helping his grandfather recover a stolen car, as well as a third instance in which police officers in Virginia observed him carrying his firearm into a convenience store at 3:00 AM (ASF ¶20[B], [C]; Ex 3). Yet, when the article was published, far from expressing concern for how his comments would affect the public's confidence in the integrity of the judiciary, Respondent proudly showed it to his former co-judge and others around the courthouse, and thereafter boasted about his conduct to assorted judges at a Washington County Magistrates Association meeting in 2016 (ASF ¶23). In recounting the story of the Wood

incident at another county magistrates meeting two years later, Respondent touted how a police officer – who was purportedly present at the bench – had marveled at how quickly Respondent had drawn his gun.[14]

Separately, and even more disconcertingly, Respondent – on three separate occasions – gratuitously referenced Wood's race when recounting the incident: (1) He bragged to his co-judge that he had pulled a gun on an "agitated" "big Black man" (ASF ¶23); (2) He emphasized to roomful of his fellow justices from Washington County that the defendant at whom he had brandished his gun was a "large [B]lack man" (ASF ¶24; Ex 4); and (3) He again referred to the defendant as a "large [B]lack man" when attempting to justify his actions to his supervising judge (ASF ¶24; Ex 4).

Respondent's gratuitous comments about Wood's skin color were racist. Wood's skin color was not relevant to Respondent's story, even in the context of discussing courthouse security with other judges (ASF ¶25). Indeed, Wood's race did not make him any more or less dangerous to Respondent or anyone else in the courthouse, and it strains credulity to believe that, had Wood been white, Respondent would have emphasized that a "large white man" had run toward the bench. Only one reasonable conclusion can be drawn from Respondent's gratuitous mention of Wood's Black skin: that detail – in Respondent's mind – made the event scarier, or Wood more dangerous. That conclusion is reinforced by the fact that Respondent pressed this detail upon Judge Hobbs when

[14] The officer identified by Respondent as present, Joel Archambault, has no recollection of any such incident or comments.

called upon to justify his conduct. Plainly, had Respondent not felt that Wood's race made him appear to be more dangerous, he would not have bothered to mention it as a factor in his defense.

All told, "Respondent's gratuitous comments about a defendant's race were manifestly inappropriate. . . . Regardless of whether [R]espondent'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." *Matter of Pennington*, 2006 Ann Rep 224, 226 (Commn on Jud Conduct, September 7, 2005). This is true even if Respondent harbors no actual bias against Black people, as "[t]he perception of impartiality is as important as actual impartiality . . . of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property." *Matter of Duckman*, 92 NY2d 141, 153 (1998) (emphasis added, quoting *Matter of Sardino*, 58 NY2d 286, 290-91 (1983); *see also Matter of Watson*, 100 NY2d 290, 302 (2003); *Eg, Matter of Schiff*, 83 NY2d 689, 692 (1994) (removing judge who said that "he recalled a time when it was safe for young women to walk the streets 'before the blacks and Puerto Ricans moved here'"); *Matter of Jensen*, 1998 Ann Rep 141, 142 (Commn on Jud Conduct, May 29, 1997) (censuring judge who stated, "Oh, it's been a rough day – all those blacks in here" after presiding over preliminary proceedings involving three Black defendants).

* * *

"Judicial misconduct cases are, by their very nature, sui generis." *Matter of Blackburne*, 7 NY3d 219, 219-20 (2006). Indeed, Commission Counsel knows of no

other instance in which a judge of the State of New York brandished a loaded firearm at a defendant in his courthouse. Although removal is not normally imposed for conduct that amounts to poor judgment or even extremely poor judgment, a single act that exceeds all measure of acceptable judicial misconduct warrants removal. *See id.* at 221. Such is the case with Respondent's "dangerous actions" here. *See id.* That is doubly true upon consideration of the fact that Respondent celebrated his misconduct and made recurring racist remarks about it, which "cast doubt on [his] ability to fairly judge all cases before him." *Schiff*, 83 NY2d at 693. In short, Respondent has irreparably damaged public confidence in his ability to act with the integrity required of a judge, and his actions and remarks – both individually and connectively – have fatally compromised his ability to preside as an impartial arbiter. He should be removed from the bench.

POINT II

RESPONDENT COMMITTED MISCONDUCT BY USING HIS PUBLIC FACEBOOK ACCOUNT TO ENGAGE IN IMPROPER FUNDRAISING WHILE KNOWING HE WAS BEING INVESTIGATED FOR THE GUN INCIDENT.

By itself, Respondent's admittedly improper engagement in fundraising activities benefitting himself and the Whitehall Elks Lodge would warrant public discipline. *See Matter of Harris*, 72 NY2d 335, 337 (1988) (judge admonished for participating in mock "Jail Bail for Heart" proceedings to benefit the American Heart Association); *Matter of Post*, 2011 Ann Rep 141 (Commn on Jud Conduct, October 12, 2010) (judge admonished, in part, for personally participating on two occasions in fund-raising activities on behalf of her son's sports teams). However, the fact that Respondent

engaged in such misconduct when he knew he was under investigation by the Commission for unrelated but very serious allegations indicates an insensitivity to his ethical obligations. Thus, this misconduct constitutes yet another aggravating factor that, when considered "in the aggregate" alongside Respondent's misconduct described in Point I, compels his removal from office. *Matter of Miller*, 35 NY3d 484, 490 (2020); *see Matter of O'Connor*, 32 NY3d 121, 128-29 (2018).

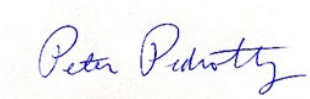
CONCLUSION

Counsel to the Commission respectfully requests that the Commission, based upon the agreed findings of fact and conclusions of law, render a determination that Respondent should be removed from office.

Dated: January 18, 2022
Albany, New York

Respectfully submitted,

ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct

By: 

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