

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

**MARK J. GRISANTI,**

a Judge of the Court of Claims and an  
Acting Justice of the Supreme Court,  
Erie County.

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**RESPONDENT'S MEMORANDUM OF LAW**

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## Introduction

Mark Grisanti's conduct on the bench has always inspired trust and confidence in the judiciary. The lawyers, judicial colleagues, and community members who testified at the hearing spoke of Judge Grisanti's diligence, inherent fairness and unyielding courtesy while carrying out his judicial duties. The widely held perception, supported by official statistics from the administrative office, is that Judge Grisanti is among the hardest working and most effective judges in the Eighth Judicial District. According to the testimony, he enjoys a reputation as a reasonable, straightforward, and well-liked judge. He has had an unblemished record as a judge, and as an attorney and public servant before that. In every way, Judge Grisanti has been a model of what we want judges to be.

On June 22, 2020, Judge Grisanti proved himself to be an ordinary human off the bench. Pushed beyond endurance by what the Referee found was years of "extreme provocation" and "bellicose" conduct by toxic neighbors, Judge Grisanti allowed himself to be pulled into an embarrassing public confrontation. R. 8. The Referee found that the imprudent actions of seven individuals, including two police

officers, led to the escalation of the events of June 22, 2020, into a “chaotic, disruptive and violent incident.” R. 10. While the Referee correctly found that each participant was deserving of blame, only Judge Grisanti was a sitting judge.

The question before the Commission is not whether Judge Grisanti's off the bench actions on June 22, 2020, constitute judicial misconduct. Respondent concedes that they do. Rather the question is the appropriate discipline for his actions. Thus, it is necessary for the Commission to not only weigh the conduct, but just as importantly the evidence of Judge Grisanti's performance of his judicial duties and his fitness to be a judge.

Based on the hearing evidence, Judge Grisanti's conduct on June 22, 2020 was clearly aberrational. Indeed, the undisputed evidence at the hearing is that Judge Grisanti's character and reputation are completely the opposite: he is considered a paragon of judicial temperament by lawyers, judges, neighbors, and others. It is not an excuse to point out, as the Referee found and the evidence fully demonstrated, that Judge Grisanti's actions came at a time of tremendous stressors in his personal life. Nor does it negate the

conduct that Judge Grisanti has voluntarily embarked on an impressive journey of counselling, therapy, and self- improvement to ensure that similar conduct never recurs. But those undisputed facts are relevant in this judicial disciplinary setting. And in light of Judge Grisanti's good character, his remorse for his conduct on June 22, 2020, and the evidence that he continues to demonstrate fitness to serve on the bench, there is no justification to impose the harshest sanction on Judge Grisanti. Based on the evidence submitted, and guided by prior precedent from the Commission and the Court of Appeals, Respondent submits that the maximum appropriate discipline would be either an admonition or public censure.



**I. THE RESPONDENT ACCEPTS THE REFEREE’S FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH TWO MINOR EXCEPTIONS.**

Referee William T. Easton submitted his Proposed Findings of Fact and Conclusions of Law (hereinafter “Report”) after hearing eighteen (18) witnesses over nine (9) days. The transcript of the proceedings was nearly 1,500 pages. The Referee’s Report was fair, measured, and thorough.

Respondent believes this Commission should confirm the Report’s findings of fact and conclusions of law, with two minor exceptions explained herein. But, the crux of this memorandum will address the issue of sanction.

Respondent does not seek to condone or excuse his actions. He understands that his conduct must be rebuked by a sanction from this Commission. However, Respondent urges this Commission to consider the totality of his conduct, rather than gauge his fitness for judicial office based solely upon one emotional and regrettable night. *See, e.g., Matter of Newman*, 2014 NYSCJC Annual Report 164, 170 (2013) (the Commission should consider the totality of the circumstances when determining the appropriate sanction).

**A. As to Charge I, Respondent Objects Only to the Referee’s Findings as to Purported “Preferential Treatment” and a Judge’s Increased Obligation in Light of “Extreme Provocation.”**

With respect to Charge I, Respondent accepts most of the Referee’s findings of fact and conclusions of law. Most notably, the Referee correctly determined that: (1) Judge Grisanti faced “extreme” provocation by the Meles, and that members of the Buffalo Police Department (BPD) “played central roles in the escalation” of the incident; (2) Judge Grisanti did not “threaten” members of the Buffalo Police Department; (3) the expansion of the charges to include “lying” was unwarranted and constituted a violation of Judge Grisanti’s right to notice and that, regardless, the Commission did not establish that Judge Grisanti’s account of events was deliberately false; and, (4) Judge Grisanti being detained and placed in a police car did not constitute a basis for judicial misconduct because it was based on the “independent actions” of Buffalo Police Department Officer Richard Hy. R. 8-10.

The Referee also correctly applied the missing witness doctrine with respect to Joseph Mele and Dr. Theresa Dantonio and invoked an adverse inference based upon Commission Counsel’s decision not to call these witnesses. R. 8-9, n. 1.

Ultimately, the Referee found that Judge Grisanti violated the Rules Governing Judicial Conduct with respect to Charge I for three reasons: “(1) his excessive use of profanity during his public altercation with the Meles and members of BPD; (2) his initiation of physical contact with a BPD officer; and (3) his invocation of familial connections with members of the BPD and Mayor Byron Brown.” R. 8. Respondent accepts that he violated the Rules with respect to reasons (1) and (2), but respectfully disagrees with reason (3) and asks the Commission to vacate this finding.

**1. It was not judicial misconduct for Respondent to mention the names of his daughter, son-in-law, or Mayor Byron Brown.**

There is no legal precedent to support the Referee’s finding that Judge Grisanti violated the Rules by his “invocation of familial connections with members of the BPD and Mayor Byron Brown.” R. 8. While the Referee may have found Judge Grisanti’s statements to be an “unseemly attempt to obtain preferential treatment,” such statements do not constitute judicial misconduct because, as the Referee himself admitted, the purported “preferential treatment was not the result of Respondent’s status as a sitting judge.” R. 10.

As an initial matter, Judge Grisanti never asserted the prestige of his judicial office to gain special treatment during the incident. R. 10. Of course, if he had, he likely would have violated the Rules. *See, e.g., Matter of Michels*, 2019 NYSCJC Annual Report 171, 180 (2018) (judge identified herself as a judge to the police and attempted to stop a report from being filed). But Judge Grisanti did no such thing. As borne out by the witness testimony and multiple videotapes, Judge Grisanti never mentioned that he was a judge at any point during the events. Indeed, the responding police officers did not know that Mark was a judge until they learned so long after the events, from another source. Tr. 208; 270. The Referee acknowledged this fact by finding that Judge Grisanti did not invoke his status as a judge in dealing with the police. R. 10. This fact should be considered in mitigation. *See, e.g., Matter of Newman*, 2014 NYSCJC Annual Report at 170 (“We also note that there is no indication that respondent invoked his judicial office during his arrest in an attempt to secure favorable treatment.”).

The Referee concluded that it was improper for Judge Grisanti to seek “preferential treatment” by referencing family members who were police officers, and his acquaintance with Buffalo Mayor Byron Brown.

R. 10. Significantly, the “preferential treatment” Judge Grisanti purportedly sought was not itself illegal or improper. He asked the police to treat his wife more compassionately, including removing her handcuffs or letting her go inside their house. Neither Mark nor Maria Grisanti were charged with a crime in relation to the incident, a decision made entirely by the police without any influence by Judge Grisanti. Tr. 207. Maria Grisanti was simply placed in handcuffs and detained in the back of a police vehicle in front of all her neighbors without apparent legal justification. Under these circumstances, there was nothing illegal or improper in asking the police to take Maria out of the handcuffs or remove her from the locked patrol car.

Furthermore, Judge Grisanti did nothing inherently improper, or violative of any of the Rules Governing Judicial Conduct, in telling the police he had relatives in law enforcement and an acquaintance with the Mayor. To that end, there is no Court of Appeals or Commission precedent which supports the conclusion that it is judicial misconduct for a judge to seek “preferential treatment” in an extra-judicial setting for reasons that have nothing to do with his or her judicial office or

application of the law. The Referee did not cite to any precedent, nor did he particularize which Rule Judge Grisanti supposedly violated.

The precedent from the Court and Commission regarding judges seeking “preferential treatment” for private interests can be broken down into two categories: (1) conduct in which a judge attempted to use his or her position as a sitting judge to help the private interests of themselves or another; (2) conduct in which a judge attempts to advance the private interests of themselves or another without flaunting their judicial status, but the third-party knows that they are a judge. *See, e.g., Matter of Landicino*, 2016 NYSCJC Annual Report 129, 139-40 (2015) (judge asserted prestige of his judicial office when he was stopped for a DWI and repeatedly referred to his judicial status); *c.f. Matter of Martin*, 2003 NYSCJC Annual Report 216, 224 (2002) (judge asserted prestige of his judicial office when he sent two unsolicited letters on judicial stationery to judges in other courts on behalf of the defendants, the sons of long-time friends, who were awaiting sentencing). In both categories, the judge either explicitly or implicitly asserts their judicial influence. Of course, neither category is implicated here.

The fact that there is no case on point also implicates a notice or due process issue. A judge should be deemed to have engaged in misconduct if the conduct is not prohibited by a clear public rule, statute, or authority. In this instance, Judge Grisanti could not have known that mentioning his daughter, son-in-law, or Mayor Brown<sup>1</sup> in this context would be deemed judicial misconduct since it did not involve the assertion of his judicial position.

It is worth noting that both police officers testified that Mark's mentioning of his familial police connections and Mayor Brown did not impact their behavior whatsoever. Tr. 227. Rather, they testified that members of the public they encounter make comments of this nature "repeatedly." Tr. 216-17.

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<sup>1</sup> Respondent does not agree with the Referee that he sought "preferential treatment" when he mentioned Mayor Byron Brown. The record demonstrates that Mayor Brown was aware of the long-standing series of disputes with the Mele family and their neighbors prior to June 22, 2020. Tr. 1223. Mayor Brown first learned about the abhorrent conduct of the Mele family because Judge Grisanti's next door neighbor, Gerald Chwalinski, was the Chief Clerk of the City of Buffalo while Mayor Brown was in office. Tr. 1174; 1223. Gerald Chwalinski and his family experienced numerous issues with the Meles, and Mr. Chwalinski was ultimately granted an order of protection against Joseph Mele. Tr. 484; Exhibit BB. Judge Grisanti mentioned Mayor Brown's name to provide the police officers with context regarding the history of issues in the neighborhood with the Mele family. Tr. 1223; *see* CJC Ex. 11-A, p. 22.

Simply put, there is no legal authority to support the conclusion that Judge Grisanti engaged in judicial misconduct by mentioning the names of his daughter, son-in-law, or Mayor Brown. Therefore, we respectfully request this Commission to vacate the Referee’s finding that Judge Grisanti violated the Rules by his “invocation of familial connections with members of the BPD and Mayor Byron Brown.” R. 8.

**2. Extreme provocation does not increase a judge’s obligation to conduct himself in a restrained and dignified manner.**

The Referee correctly found that the provocation by the Meles was “extreme” and that Officers Gehr and Hy played “central roles in the escalation” of the incident on June 22, 2020. R. 8, 10-11. The Referee also correctly found that the extreme provocation mitigates Judge Grisanti’s conduct. R. 11; *see Matter of Cerbone*, 1984 NYSCJC Annual Report 76, 78 (1983) (judge’s comments were not “in response to a personal attack”).

However, there is no Court nor Commission precedent to support the Referee’s assertion that extreme provocation “may even increase” a judge’s obligation to conduct himself in a restrained and dignified manner. Of course, we are not arguing that the nature and extent of provocation diminishes that obligation, but there is no legal authority



nor logical syllogism to support the assertion that it increases the obligation.

In sum, we agree that Judge Grisanti did not conduct himself in a restrained and dignified manner on June 22, 2020. He therefore violated the Rules. We also agree with the Referee that the provocation he faced was extreme, and that such provocation mitigates his violation of the Rules. R. 11. However, we disagree with the notion that provocation may increase a judge's obligation to conduct himself in a restrained and dignified manner because there is no legal authority nor logical syllogism to support this assertion.

#### **B. Respondent Accepts the Findings and Conclusions as to Charge II.**

With respect to Charge II, Respondent accepts that because he did not provide notice to all parties of his prior financial arrangement with attorney Matthew Lazroe, he is subject to discipline. Judge Grisanti now understands that he should have provided notice based on the prior financial transaction.

Critically, though, the Referee determined that: (1) Respondent did not know of his obligation to provide notice; (2) the cash amounts received by Mr. Lazroe for the few assignments by Judge Grisanti's part

were modest; (3) Mr. Lazroe was an experienced attorney who was qualified and eligible for the assignments; and (4) Respondent “did not exert any favoritism towards Mr. Lazroe.” R. 18 (emphasis added). These separate findings are especially relevant to a determination of sanction and should be considered by this Commission in mitigation. Indeed, lack of venality or favoritism are factors that the Commission and Court have long considered in mitigation. *See Matter of LaBelle*, 91 N.Y.2d 350 (1998).

**C. Respondent Accepts the Findings and Conclusions as to Charge III.**

With respect to Charge III, the Referee correctly found that “Respondent’s failure to accurately report his income in his financial disclosure statements was inadvertent.” R. 22 (emphasis added). Furthermore, the Referee correctly identified that, “[u]pon being made aware of the missing \$15,000 entry, Respondent wrote a letter to the Executive Director of the New York State Ethics Commission acknowledging his incorrect [Financial Disclosure] reporting ‘for the years 2015, 2016, 2017.’” R. 24.

The Referee found that after writing to the Ethics Commission, Judge Grisanti immediately corrected his 2015 Statement of Financial

Disclosure. R. 24. Notably, the Referee did not find that Judge Grisanti violated Section 100.4(H)(2) of the Rules as charged.

Each of these foregoing findings of fact and conclusions of law should weigh in mitigation of the sanction to be determined by this Commission.

## **II. THE REFEREE’S REPORT, WHICH PROPERLY DID NOT ADDRESS SANCTION, DOES NOT INCLUDE SEVERAL FACTS IN MITIGATION ESTABLISHED BY THE EVIDENCE.**

The Referee was tasked with finding facts and recommending conclusions of law. The Referee explicitly was not tasked with recommending a sanction. Thus, the Report did not address several un rebutted facts developed at the hearing which bear directly on sanction, and which weigh heavily in mitigation.

As this Commission is well aware, it is required to consider “all relevant circumstances” when determining sanction. N.Y.C.R.R. subd. A, ch. I, subch. C, part 100, Refs & Annos. Indeed, Commission precedent amply demonstrates the significance of considering mitigating and aggravating factors when determining level of sanction. *See Matter of Newman*, 2014 NYSCJC Annual Report at 170.

**A. Respondent's Character and Background Mitigate His Conduct.**

Judge Grisanti certainly exercised poor judgment on June 22, 2020. But that lapse in judgment pales in comparison to his exemplary record on and off the bench.

Being a judge is the culmination of Mark Grisanti's love for his community and for the law, both learned early in his life. Mark grew up in the Lower West Side of Buffalo. Tr. 1108. Mark's father ran a law practice there. Tr. 1111-12. At the hearing, Mark discussed, with great reverence, the nature of his father's practice. He explained that although his father's practice was not very lucrative, people in the community admired and respected him. Tr. 1112. His father would routinely take in poor clients from the neighborhood because he believed every person deserved equal access to the law. Tr. 1112. It was through his father that Mark learned what it truly means to be fair, compassionate, and hard working.

Motivated by his father's example, Mark pursued his dream. After graduating from high school, Mark attended night-school at Canisius College in Buffalo. Tr. 1111. He attended night-school because he worked construction during the day to pay his way through

college. Tr. 1113. While a student at Canisius, Mark would typically work construction for six hours in the morning, work at his father's office for two hours in the afternoon, then attend classes until the late evening. Tr. 1111. Mark's work ethic has not waned during his tenure as a judge.

After obtaining a Bachelor of Arts in English, with a Minor in Philosophy, from Canisius College, Mark attended and graduated from Thomas Cooley Law School in Michigan. Tr. 1114. After passing the bar exam, Judge Grisanti returned to the Lower West Side and began practicing law in the same office his father occupied when he was a child. Tr. 1115. Like his father, Mark had a general practice which included many pro bono clients, assigned counsel cases, and other low bono cases from members of the community. Tr. 1115-17. Mark practiced law on the Lower West Side for 23 years. Tr. 1117.

With a fervent desire to improve his community, Mark entered public service. In 2010, Mark Grisanti was elected a New York State Senator for the 60th District, which is in the heart of the City of Buffalo. Tr. 1119-20. Mark also continued to practice law while he served as a Senator. Tr. 1120. As a Senator, Mark Grisanti personally

sponsored between 150 and 200 pieces of legislation, 30 of which were signed into law by the governor. Tr. 1121. Some of those pieces of legislation dealt with improving poverty, education, community development, expansion of the SUNY school system, and combatting environmental issues. Tr. 1121.

Mark's sense of fairness and justice was certainly put to the test while serving as a Senator. Although Mark was a registered Democrat, he ran and was elected as the candidate of the Republican party. Tr. 1118. In 2011, one of the largest issues facing New York State concerned legislation to recognize same-sex marriage. Tr. 1125. The Marriage Equality Act was up for vote, which permitted all couples to enter into marriage in New York State and remove previous barriers to same-sex marriage. Mark understood that if he voted in favor of same-sex marriage as a Republican Senator, he would effectively end his political career. Tr. 1125-26. To Mark, that consequence did not matter. He believed that all people deserved the right to marry, and he voted in favor of the Act. Tr. 1125. As it turned out, Mark's was the deciding vote to legalize same-sex marriage in New York State. Tr. 1132.

Shortly thereafter, Mark again voted in favor of a bill that was not endorsed by his party's platform. In 2013, a gun safety law, the SAFE Act, was introduced in response to the mass shooting at Sandy Hook Elementary School and other mass shootings across the country. Tr. 1128. Mark was one of two Republicans who voted in favor of the bill – ultimately the deciding votes. Tr. 1129. After these two votes, Mark was told that he would no longer be endorsed as a Republican. Tr. 1131. His political career ended. Again, Mark did what he believed was the right thing to do, no matter the personal cost. This innate sense of impartiality has continued while serving as a judge.

In 2015, Mark's childhood dream of becoming a judge became reality. After applying for his judicial position, Mark went through a rigorous Judicial Screening Committee to evaluate his fitness to become a judge. Tr. 1136-37. Even without prior judicial experience, the Committee ultimately rated Mark highly qualified to become a Justice of the Court of Claims. Tr. 1137. Shortly after becoming a Court of Claims judge, Mark was named an Acting Supreme Court Justice for the Eighth Judicial District. Tr. 1138.

Judge Grisanti's devotion to his community did not end when he took the bench. Indeed, he is actively involved in numerous charitable causes. Tr. 1147-55. Because of his devotion to law and community, Judge Grisanti received the Liberty Bell Award from the Erie County Bar Association. Tr. 1149. This honor was given to Mark for his outstanding service to the community, to the Erie County Bar Association, and to the profession. This is one of many awards and commendations Mark has received due to his commitment to the law and the community. *See Exhibit E.*

Simply put, Judge Grisanti's story should be one that inspires confidence in the judiciary. He has always been a model of what we want judges to be – except for two hours of his life on June 22, 2020.

**B. Respondent Has Been an Exemplary Judge.**

The most obvious way to gauge a judge's fitness for office is to consider the judge's performance on the bench. In a word, Judge Grisanti's performance has been exceptional – in both judicial efficiency and temperament. At the hearing, judges who have worked alongside Judge Grisanti and attorneys who have appeared before him testified to this fact.



Hon. Eugene F. Pigott, Jr. (Tr. 724), Hon. Paula L. Feroletto (Tr. 675), Hon. Russell P. Buscaglia (Tr. 879), John V. Elmore, Esq. (Tr. 766), and Nelson E. Schule, Jr., Esq. (Tr. 750) all testified at the hearing. The testimony from these distinguished members of the Western New York legal community painted a picture of Judge Grisanti in stark contrast with the one depicted on June 22, 2020. Their testimony struck the same themes: Judge Grisanti is fair, honest, has the highest degree of judicial temperament, and is one of the hardest working and most effective judges in the area.

1. John V. Elmore, Esq.

For many years, attorney John Elmore served as the Chairperson of the New York State Governor's Judicial Screening Committee for the Fourth Judicial Department. Tr. 777. As a minority attorney, Mr. Elmore testified that he is particularly concerned about the integrity of the judiciary. Tr. 782. Mr. Elmore screened Judge Grisanti with respect to his appointment to the Court of Claims. Tr. 777. Mr. Elmore has also appeared often before Judge Grisanti in his capacity as an acting Supreme Court Justice. Tr. 777; 781-82. At the hearing, Mr.

Elmore described Judge Grisanti as “one of the hardest working,” and “most competent judges” that he has appeared in front of. Tr. 782.

Based on his more than 40 years as a practicing attorney, his involvement in judicial screening committees (both at the state and local level), and his involvement in local legal organizations, John Elmore has become aware of Judge Grisanti’s reputation in the Western New York legal community. Tr. 784-85. Mr. Elmore knows that Judge Grisanti has a reputation for having the “highest” degree of integrity, temperament, and independence. Tr. 785; 788. Mr. Elmore also developed an understanding that Judge Grisanti enjoys a similarly high reputation in terms of the standards of conduct required of a judge. Tr. 788.

Prior to testifying, John Elmore watched the video of the events of June 22, 2020 involving Judge Grisanti. Tr. 789-90. He also reviewed copies of the charges against Judge Grisanti brought by the Commission on Judicial Conduct. Tr. 789-90. After reviewing the foregoing, Mr. Elmore’s opinion about Judge Grisanti did not change. Tr. 789-90. While Mr. Elmore was disappointed with Judge Grisanti’s

behavior, he still believed that Judge Grisanti was certainly fit to be a judge. Tr. 789-90.

John Elmore described Judge Grisanti as a “fine judge” and “a fine human being.” Tr. 789-90. He went on to testify that, as prior Chairperson of the Eight Judicial District Attorney Grievance Committee, he recognized that “people are entitled to mistakes.” Tr. 789-90. Mr. Elmore continues to believe “strongly [that Judge Grisanti] should be on the bench.” Tr. 789-90. Mr. Elmore testified that he has the “highest opinion of [Judge Grisanti].” Tr. 790.

## 2. Hon. Eugene F. Pigott, Jr.

Judge Pigott came to know Judge Grisanti through the course of practicing law in the Western New York legal community. Tr. 735. Judge Pigott served on the New York State Supreme Court and then the Appellate Division, Fourth Department. Tr. 728-29. He was appointed to the position of Presiding Justice of the Fourth Department in 2000. Tr. 729-30. In 2006, Judge Pigott was appointed to the New York Court of Appeals. Tr. 733. For a period of time, Judge Pigott served as Acting Chief Judge of the State of New York. Tr. 733. He

served on the Court of Appeals for ten years, until reaching the age of mandatory retirement. Tr. 733.

As a sitting judge on the Court of Appeals, Judge Pigott heard cases brought by the State Commission on Judicial Conduct. Tr. 734-35. Based on all of his experiences, Judge Pigott became familiar with the criteria in connection with evaluating the fitness of a judge to serve on the bench in the State of New York. Tr. 734.

Judge Pigott testified that Judge Grisanti's integrity is "outstanding" and his judicial independence is "beyond reproach." Tr. 737-39. Judge Pigott noted that Judge Grisanti has handled his cases with "aplomb," "independence," and "integrity." Tr. 739. Based on what he has learned about Mark Grisanti in the community, Judge Pigott described Judge Grisanti as "a pillar" with respect to his fitness to be a judge in the State of New York. Tr. 742.

Judge Pigott was aware of the incident involving Judge Grisanti on June 22, 2020, through reviewing news articles. Tr. 742. Judge Pigott watched the video of the incident prior to his testimony. Tr. 742. Having seen the video of the incident on June 22, 2020, and having known about the incident, Judge Pigott's opinion of Judge Grisanti's

integrity, independence, and high standards of conduct of a judge did not change in any way. Tr. 743. In fact, Judge Pigott postulated that, if he was placed in similar circumstances as Judge Grisanti was on June 22, 2020, he “couldn’t promise that [his] conduct would be much different” than Judge Grisanti’s conduct. Tr. 743. Judge Pigott believes that Judge Grisanti is fit to remain on the bench. Tr. 737.

### 3. Hon. Russell P. Buscaglia

Judge Buscaglia was appointed to the New York Court of Claims by Governor George Pataki in 1999. Tr. 881. He was reappointed by Governor Pataki in 2006 and reappointed again by Governor Andrew Cuomo in 2015. Tr. 881. Judge Buscaglia was designated as an acting Supreme Court Judge for the Eighth Judicial District. Tr. 881. Judge Buscaglia has come into contact with others who know and are familiar with Judge Grisanti and, based on conversations with those people, has learned about his reputation in the Western New York legal community. Tr. 884.

Judge Buscaglia has developed an understanding that Judge Grisanti has the reputation as one of the hardest workers in the courthouse, as having integrity, and has the temperament expected of

any judge in the New York State Court System. Tr. 884-85. With respect to judicial temperament, Judge Buscaglia testified that Judge Grisanti “always displays calmness and straightforwardness.” Tr. 886-87. Judge Buscaglia has also learned that the most important thing in Judge Grisanti’s life is his family. Tr. 883.

Judge Buscaglia gave his testimony after having seen the video involving the events of June 22, 2020, and having read news accounts about the incident. Tr. 887-88. The incident on June 22, 2020 did not change Judge Buscaglia’s opinions of Judge Grisanti. Tr. 887-88.

Judge Buscaglia noted that “everything [he] knows and have heard [about Judge Grisanti] is inconsistent with anything [he] saw” on the video of the incident of June 22, 2020. Tr. 887-88.

#### 4. Hon. Paula L. Feroletto

Justice Feroletto was elected to the New York State Supreme Court in the Eighth Judicial District in 2004. Tr. 686. She currently serves as a Supreme Court Judge in the Eighth Judicial District. Tr. 686. From 2009 through July 2021, Justice Feroletto served as the Administrative Judge for the Eighth Judicial District. Tr. 686-87. Justice Feroletto supervised Judge Grisanti in this capacity. Tr. 688.

Justice Feroletto testified that she always had positive experiences with Judge Grisanti. Tr. 690. She noted that Judge Grisanti never complained and was always willing to take on additional work. Tr. 690. She described her interactions with Judge Grisanti as “pleasant.” Tr. 690.

In her role as Administrative Judge, Justice Feroletto was able to recognize Judge Grisanti’s effectiveness as a judge. According to Justice Feroletto, Judge Grisanti was “very good at case management,” and was “quickly able to dispose of cases.” Tr. 690-91. In fact, Justice Feroletto asked Mark Grisanti to take on certain cases because she knew he would not get “flustered with the extra addition to his trial calendar,” and she knew that he would get them “disposed of instead of adjourning them.” Tr. 692.

As Administrative Judge, Justice Feroletto received Case Disposition Reports. Tr. 694. Case Disposition Reports would show her, among other things: how many cases a particular judge has disposed of, how many cases were assigned to a particular judge, and what percentage of those cases were over standards and goals (which depends on the type of case assigned). Tr. 694. “Percentage over

standards and goals” is a metric used to evaluate judges based on the number of dispositions for their cases. Tr. 695. The benchmark for judges is a “standards and goals” percentage under 10 percent. Tr. 695. Justice Feroletto testified that Judge Grisanti’s “standards and goals” percentage is consistently under 10 percent (Tr. 699), and that he has been consistently “one of the most efficient judges.” (Tr. 703).

As Administrative Judge, Justice Feroletto had the responsibility to deal with complaints that were made about judges by other judges, lawyers, litigants, and court personnel. Tr. 705. Generally speaking, these complaints would sometimes involve a judge’s temperament. Tr. 705. During the time that Justice Feroletto was the Administrative Judge for the Eighth District, she never received any complaints from anyone about Judge Grisanti’s temperament. Tr. 705.

5. Nelson E. Schule, Jr., Esq.

Nelson Schule is currently a Senior Trial Attorney Partner at Kenney Shelton Liptak and Nowak, a law firm based in Buffalo, New York. Tr. 750. He is the former President of the Defense Trial Lawyers of Western New York and also the former President of the Western New York Trial Lawyers Association. Tr. 752. Nelson Schule has become



aware of Judge Grisanti's reputation in the legal community of Western New York. Tr. 754; 756-57.

Nelson Schule explained that Judge Grisanti has the "highest, best reputation in our legal community of all the judges" he appears before. Tr. 757. Nelson Schule described Judge Grisanti's reputation in the Western New York legal community as "very fair," "fair to the attorneys and the people that come in his room," and "prepared beyond preparation." Tr. 761. He went on to explain that Judge Grisanti's reputation for judicial temperament "is at the very highest of our profession in this jurisdiction" and that Judge Grisanti "has the very highest integrity in our jurisdiction." Tr. 761.

When he gave his testimony, Mr. Schule was aware of the incident involving Judge Grisanti on June 22, 2020 and the subsequent investigation by the Commission on Judicial Conduct. Tr. 762. The conversations that formed the basis of Mr. Schule's testimony regarding Judge Grisanti's reputation occurred before and after the incident on June 22, 2020. Tr. 762. Mr. Schule testified that the incident did not change Judge Grisanti's reputation in the Western New York legal community. Tr. 762.

\* \* \* \* \*

The testimony from these esteemed judges and attorneys demonstrate that Judge Grisanti is a person of the highest character who is well respected in his community. It also demonstrates that he exhibits the characteristics of an exemplary judge: fairness, integrity, honesty, independence, and an outstanding work ethic. Above all, it demonstrates that Judge Grisanti is fit for his office.

**C. Respondent Voluntarily Sought Extensive Counseling Following the Incident.**

The Referee correctly included facts in mitigation regarding Judge Grisanti's voluntary treatment with mental health professionals. *See Matter of Petucci*, 2021 NYSCJC Annual Report 272, 280 (2020) (voluntary participation in counseling mitigated the judge's conduct).

Immediately after the incident on June 22, 2020, Judge Grisanti pro-actively contacted attorney Dan Lukasik, the Judicial Wellness Coordinator for the New York State Office of Court Administration, with the goal of understanding his actions on June 22, 2020 and ensuring that similar conduct would not be repeated. Tr. 1267-68. Essentially, the Judicial Wellness Coordinator is someone in the court system that judges can talk to when they are dealing with physical or

mental health issues. Tr. 1267-68. Mark explained the incident to Dan, and explained the grief and personal issues he faced in the month of June 2020. Tr. 1267-68. Mark and Dan spoke once or twice per month beginning in July 2020 and continuing until February 2021. Tr. 1268-69.

Dan Lukasik eventually referred Judge Grisanti to Corporate Counseling Associates (CCA), which is affiliated with the Office of Court Administration. Tr. 1269-70. Judge Grisanti began meeting with a licensed clinical social worker at CCA, Zachary Shaiman. Tr. 1269. Mark worked with Mr. Shaiman on the issues he experienced with grief and loss and to understand his actions on June 22, 2020. Tr. 1270. In addition, Mark wanted to develop tools to ensure that a similar incident would never happen again. Tr. 1270. It is important to note that Mark met with Mr. Shaiman without compunction. Tr. 1270.

Because CCA only allowed for a certain number of sessions between a judge and a counselor, Mr. Shaiman referred Mark to Jakob Smidt, a licensed clinical social worker located in Buffalo. Tr. 1273. Again, Mark sought counseling from Mr. Smidt voluntarily. Tr. 1273. The two began their therapy sessions in July 2021, and continue to

meet twice per month to the present day. Tr. 1275-76. Mr. Smidt testified at the hearing. Tr. 579.

Mr. Smidt testified that Judge Grisanti came to him with a desire to better understand his emotions at the time of the incident on June 22, 2020, and the best way to avoid engaging in those behaviors in the future. Tr. 584-85. He noted that Mark was motivated to learn how to manage his anxiety so that he could be a better person. Tr. 587.

During their first therapy session, Mr. Smidt took a history of Judge Grisanti's problems. Tr. 584-85. Mark explained the events of June 22, 2020 and the surrounding circumstances in his life in and around that time during their first therapy session. Tr. 584-85.

Mr. Smidt utilized many different types of therapy practices during their sessions, including cognitive behavioral therapy and mindfulness. Tr. 580. Mindfulness was introduced into Mark's therapy sessions to help him manage stressors. Tr. 592. As part of his care and treatment of Mark, Mr. Smidt recommended ways to improve his ability to control emotions. Tr. 581. Mr. Smidt testified that the stressors in Mark's life at the time of the incident were contributing factors in his behavior. Tr. 585. During therapy, Mr. Smidt recommended additional

emotional regulation for Mark to establish a better set of coping tools. Tr. 587-88. Based on his evaluation, Mr. Smidt determined that there was no clinical indication for anger management for Mark. Tr. 595-96.

Mr. Smidt testified that Mark now possesses a better understanding of himself. Tr. 597. Mr. Smidt made a clinical finding that Mark's ability to handle future stressors had improved significantly, and that Mark has learned the value of not having to engage. Tr. 602. Mr. Smidt explained that Mark is now able to work through things in a much healthier way by utilizing the tools talked about in therapy, which Mr. Smidt believes bodes well for Mark's future. Tr. 603. Mr. Smidt noted that Mark was sincere in his efforts to seek therapy. Tr. 579; 599.

To better understand his own actions, Judge Grisanti also voluntarily sought a Comprehensive Behavioral Assessment from two behavioral professionals: Christopher Frigon, L.C.S.W., and Joshua Morra, M.D. Tr. 1283. Mr. Frigon is a licensed clinical social worker (Tr. 800) and Dr. Morra is a psychiatrist (Tr. 891). They are both employed at Horizon Health Services and testified at the hearing. Tr. 801; 892.

Dr. Morra and Mr. Frigon both testified that Judge Grisanti was suffering from “complex grief and loss” on and around June 22, 2020. Tr. 817; 903. Dr. Morra used the word “complex” to indicate that Mark Grisanti was grieving multiple illnesses and losses at the same time, including the illness and loss of his mother, the illness loss of his family dog, and other family members who were seriously ill. Tr. 903. Dr. Morra explained that “complex grief and loss” can cause many negative emotions and significant changes in behavior. Tr. 904. He went on to explain that there was a cumulative effect from Mark’s “complex grief and loss” stressors, and the stressors related to incidents with the Mele family, which caused Mark Grisanti to move outside his “window of tolerance.” Tr. 904. According to Dr. Morra, if conditions become too stressful for a person’s coping mechanisms, it can move someone outside of their “window of tolerance” and impact a person’s behavior. Tr. 904-05. Mr. Frigon explained that grief and loss events complicate a person’s day-to-day experiences and that the increased stressors affect behavioral abilities. Tr. 818; 829.

Dr. Morra expected Mark Grisanti to have a good prognosis because his symptoms resulted from a single episode, and he had a high

level of intelligence and social functioning prior to the onset of his symptoms. Tr. 924-25.

Mr. Frigon made a clinical finding that during the incident on June 22, 2020, Judge Grisanti experienced a triggering event which caused him to protect his wife. Tr. 825. Mr. Frigon testified that it would have been “unreasonable” to expect a person to not act to protect his wife when she was being physically threatened. Tr. 825-26. Mr. Frigon testified that he believed Mark attempted to use conflict management skills during the incident on June 22, 2020, but Mr. Frigon believes that Mark felt compelled to intervene because his wife’s safety being threatened on multiple occasions. Tr. 825. Mr. Frigon made a clinical finding that he did not believe Judge Grisanti intentionally escalated the incident. Tr. 826.

Nevertheless, Mr. Frigon worked with Mark on developing coping and de-escalation skills. Tr. 831-32. Mr. Frigon testified that Mark was “fluent enough” in managing conflict scenarios and he was already employing those conflict management skills. Tr. 833.

Judge Grisanti voluntarily participated in extensive therapy to better understand himself, to develop tools to regulate his emotions,

and to ensure similar conduct would never be repeated. The un rebutted testimony from these medical professionals also demonstrated how the complex grief and loss Mark experienced in June 2020 affected his behavior. *See Matter of Jacobsen*, Comm. Jud. Con., p. 7 (Oct. 8, 2021).

**D. Respondent’s Immediate and Unprompted Contrition is a Mitigating Factor.**

It is well settled that “immediate and unprompted contrition is a significant mitigating factor.” *See, e.g., Matter of Allman*, 2006 NYSCJC Annual Report 83, 86 (2005). The record firmly establishes that Judge Grisanti recognized his wrongdoing immediately and sought to rectify any of his mistakes immediately thereafter.

On the night of the incident, Judge Grisanti offered unprompted apologies to members of law enforcement, including Off. Gehr, Lt. Muhammad, and Det. Moretti, within hours of the incident for his behavior that evening. Tr. 223; 1228; 1449. The following day, he apologized to Lt. Turello of the BPD (Tr. 1228), and also called his Administrative Judge, Justice Feroletto, to make her aware of the incident. Tr. 706. Justice Feroletto testified that Mark “kept saying, ‘I wish I could take this back. I just can't believe this happened[,]’ and that he was “very upset.” Tr. 706-07.



Judge Grisanti's actions in the moments after the emotional incident concluded speak volumes about his character and ability to recognize the wrongfulness of his behavior. This Commission should follow its precedent and consider his immediate and unprompted contrition to be a "significant mitigating factor."

**E. Respondent Has Demonstrated Sincere Remorse and Has Been Contrite and Cooperative with the Commission.**

Throughout the entirety of the Commission's investigation and at the hearing, Judge Grisanti has been candid, forthright, and repentant, which should be considered in mitigation. *See, e.g., Matter of Whitmarsh*, 2017 NYSCJC Annual Report 266, 274 (2016).

The testimony from Mr. Smidt, Mr. Frigon, and Dr. Morra establish that Judge Grisanti understood the wrongfulness of his actions and was deeply embarrassed by any diminution of respect for the judiciary it may have caused. *See Matter of Aldrich*, 58 N.Y.2d 279 (1983); *see also Matter of Newman*, 2014 NYSCJC Annual Report at 169. Indeed, Dr. Morra testified that Judge Grisanti's expressed "feelings of shame and embarrassment," during their conversations and that the expressions of shame and embarrassment were consistent with remorse. Tr. 905. Mr. Smidt testified that Mark was "embarrassed"

and “shameful” for his actions and believed that Mark felt “regret” and “remorse.” Tr. 597; 599. All three mental health professionals testified that Mark was sincere during their therapy sessions. Tr. 597; 914. At the hearing, Mark testified that he is embarrassed by his behavior during the incident, including his profane language. Tr. 1446-47.

Based on well settled Commission precedent, this Commission should consider Judge Grisanti’s sincere remorse, contrition, and cooperation in mitigation.

#### **F. Further Proposed Findings of Fact**

As this Commission is aware, it is empowered to review this matter *de novo* and may supplement facts not included in the Referee’s Report. These facts are typically included as “Additional Factors” in previous Commission determinations. Respondent respectfully submits that the following additional facts or factors should be found by the Commission based on the undisputed record:

- Respondent did not invoke his judicial office – either explicitly or implicitly – to secure favorable treatment in connection with the incident on June 22, 2020.

- A precipitating factor that led to Respondent’s involvement in the incident was the profound grief he experienced around the time of the incident. Respondent fully acknowledges that the emotional pain he felt at the time of the incident does not in any way excuse his conduct on June 22, 2020.
- In the wake of the incident, Respondent – for the first time – sought immediate and extensive treatment to address his grief and anxiety. The treatment he received was neither court ordered nor in response to the Commission’s investigation.
- The incident took place within the context of multiple attacks on Respondent’s wife, and his judgment was clouded by his wife’s involvement.
- Respondent acknowledged his wrongdoing and apologized to members of law enforcement immediately.
- Respondent has had an otherwise unblemished 30-year career as a judge, attorney, and public servant.
- Respondent has not exhibited a pattern of judicial misconduct.

- Respondent has a reputation in the community as an excellent judge with exceptional judicial temperament.
- Respondent has been contrite and cooperative with the Commission throughout the inquiry and has expressed embarrassment and remorse for his behavior and any diminution of respect for the judiciary it may have caused.

### III. PREVIOUS COMMISSION DETERMINATIONS COMPEL A SANCTION OF – AT WORST – A PUBLIC CENSURE.

By his own admission, Judge Grisanti exercised poor judgment on June 22, 2020. R. 1107-08. Although his conduct should not be condoned or excused, Commission precedent demonstrates that censure or admonition have been held to be appropriate sanctions for significantly worse conduct. A comparison between the present case and prior cases illustrates the injustice of imposing a sanction more severe than a public censure.

#### A. Justice Canary

In *Matter of Canary*, the respondent angrily intervened with law enforcement in connection with the arrest of his son on two separate occasions and asserted the prestige of his judicial office in the process.

*Matter of Canary*, 2003 NYSCJC Annual Report 77 (2002). With

respect to the first incident, the respondent's son received a speeding ticket, and, two days later, the respondent called the arresting officer to tell him that he was "not happy" about the tickets and accused the officer of lying about his son's speed. *Id.* at 78. The respondent argued with the officer, invoked his judicial status in a loud voice, and implicitly advocated for the charges to be dismissed. *Id.* at 82.

Approximately a year and a half later, the respondent had a second aggressive confrontation with law enforcement. *Id.* at 79. On that occasion, the respondent's son was arrested for assaulting a police officer. *Id.* Minutes after the arrest, the respondent arrived at the scene and confronted the arresting officers. *Id.* The respondent pushed the arresting officer, shouted profanities at him, told him that he's "got [his] number now," and vowed that the charges would be "thrown out." *Id.* The respondent's son was then taken to the hospital where the respondent screamed to the police sergeant that he "can't" arrest his son. *Id.* Then, after his son was booked at the police station, the respondent "officially requested" that the police department keep the arrest out of the newspapers as a "favor." *Id.* When the police sergeant refused, the respondent left angrily. *Id.* at 79-80.

The Commission found that the respondent exhibited “an unseemly display of aggression and intimidation” towards law enforcement and that the “[r]espondent’s grossly injudicious behavior and blatant assertion of influence were indefensible.” *Id.* at 82. The Commission also admonished the respondent for a “continued [] pattern of intimidation, poor judgment and insensitivity to the high ethical standards required of judges.” *Id.* Notably, the Commission also determined that the “[r]espondent’s misconduct was not an isolated episode of poor judgment . . . .” *Id.*

In addition, the Commission found that the respondent demonstrated bias against a plaintiff in an unrelated civil case. *Id.* The Commission rebuked the respondent for an “unjustified recusal” due to his “personal dislike” of the plaintiff. *Id.* The Commission went on to state that the “[r]espondent’s conduct violated the requirement that every judge must not only be impartial, but act ‘in such a way that the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property.’” *Id.* (internal citations omitted).

Notwithstanding the blatant assertion of judicial influence and pattern of misconduct, the Commission unanimously determined that the appropriate sanction was public censure. *Id.* at 83. The Commission explained that the respondent’s “lack of self-control and insensitivity to the appearances created by his actions [were] troubling” but “his misbehavior [did] not irretrievably damage his effectiveness on the bench.” *Id.* In mitigation, the Commission noted that the respondent’s “parental instincts mitigate[d], but [did] not excuse, the serious lapses depicted in th[e] record.” *Id.* at 82-83.

#### B. Justice Horton

In *Matter of Horton*, the respondent physically assaulted his long-time girlfriend in a public restaurant during a work banquet. *Matter of Horton*, 2013 NYSCJC Annual Report 224 (2012). At the banquet, the respondent and his girlfriend consumed multiple alcoholic drinks. *Id.* at 226. The respondent told his girlfriend to “shut the fuck up,” and an argument between them ensued. *Id.* When the respondent’s girlfriend attempted to walk away, he hooked his arm across her to pull her into a coatroom. *Id.* The respondent then pushed his girlfriend into the wall, causing her to fall to the floor. *Id.* A guest witnessed the assault and

came to her assistance. *Id.* The respondent then got into an altercation with that guest, too, and other banquet guests had to separate them.

*Id.* Eventually, someone at the event called the police and two New York State Troopers arrived at the restaurant. *Id.*

The Commission admonished the respondent for “engaging in an unseemly public altercation with his longtime girlfriend that that culminated in him pushing her and causing her to fall to the ground[.]”

*Id.* at 228. The Commission then went on to say: “For one who holds a position of public trust and who presides over cases involving domestic violence in which he is called upon to pass judgment over the actions of others, such conduct adversely affects respondent’s ability to administer the law effectively and impartially.” *Id.*

Despite a public incident of domestic violence, the Commission unanimously determined that the appropriate sanction was admonition.

*Id.* at 229. In determining its level of sanction, the Commission noted several factors in mitigation: (1) the confrontation took place within the context of the end of a long-term relationship; (2) the respondent had no previous disciplinary record; (3) the respondent had no further confrontations with his girlfriend; (4) the respondent regretted having



engaged in a physical altercation with his girlfriend; and (5) the respondent was contrite and cooperative with the Commission throughout its inquiry. *Id.* at 227, 229.

### C. Justice Roepe

In *Matter of Roepe*, the respondent engaged in a violent and disturbing confrontation with his wife and brandished a deadly weapon. *Matter of Roepe*, 2002 NYSCJC Annual Report 153 (2001). The judge entered his wife's home looking for his carving knife but could not find it. *Id.* When he found his knife, he woke up his wife and confronted her by shouting derogatory names at her, all the while holding the knife in his hand. *Id.* at 153-54. As he stood next to her, he shouted that he would "run her through" if she ever upset him again. *Id.* At times, the knife came within 4 to 8 inches of her throat while she lay supine on the couch. *Id.* at 154. The respondent's actions caused his wife to be in fear of physical injury. *Id.* His wife called the police, and the respondent was arrested and charged with Menacing in the Second Degree. *Id.* The incident was reported in the local newspaper. *Id.*

The respondent testified that he consumed at least two or three glasses of wine and speculated that he could have consumed the whole

bottle. *Id.* During the Commission’s investigation, the respondent admitted his conduct constituted a violation of Penal Law § 120.14[1] (Menacing in the Second Degree). *Id.* at 155. The Commission found that the respondent violated the Rules for engaging in “an angry confrontation in a domestic setting” that “crosse[d] the line into a threat of physical violence underscored by brandishing a deadly weapon.” *Id.* Nevertheless, the Commission determined that the appropriate sanction was censure. *Id.*

In mitigation, the Commission considered the following factors: (1) there was no prior or subsequent history of domestic abuse or violence to his wife; (2) he was cooperative and candid in all aspects of the investigation; (3) he showed remorse for his conduct; (4) he appeared to be a non-violent, peaceful and decent person; and (5) his record was otherwise unblemished in his 29 years as a judge. *Id.* at 154-55.

#### D. Justice Stevens

In *Matter of Stevens*, the respondent had an angry incident with law enforcement where he asserted the prestige of his judicial office. *Matter of Stevens*, 1999 NYSCJC Annual Report 153 (1998). There, the

respondent used profane language and shouted vulgarities at a police officer who was investigating an incident at the respondent's son's home. *Id.* at 153-54. The respondent also twice urged the officer to arrest his son's neighbor, Virgil Holcomb, even though the respondent had no factual basis to support such a directive. *Id.* The police officer knew that the respondent was a judge. *Id.* When the officer refused to make any arrest, the respondent asked "what evidence it would take in order to arrest someone under such circumstances." *Id.* at 154.

The Commission concluded that the respondent "used the prestige of his office to advance his son's interests in a private dispute" and found that "[i]t was especially improper for respondent to implore the police officer to charge Mr. Holcomb with Criminal Mischief without any factual basis for such a charge." *Id.* The Commission determined that the appropriate sanction was admonition. *Id.*

#### E. Justice Newman

In *Matter of Newman*, the respondent operated his automobile while under the influence of alcohol, caused a motor vehicle accident, and was disturbingly uncooperative with police during his arrest.

*Matter of Newman*, 2014 NYSCJC Annual Report at 164.

After failing two sobriety tests and refusing to take a breathalyzer test, the respondent was arrested. *Id.* at 166. While under arrest, the respondent told the arresting officer that “he did not intend to cooperate and stated in sum and substance that he wanted to die, wanted to hurt himself, and wanted the officer to shoot him.” *Id.* Among other things, the respondent attempted to break free from the officer’s grasp, threatened to take an officer’s gun, made suicidal statements, repeatedly slammed his head into the window of the police car, and stated that he was “going to attack one of the officers so that he would shoot the respondent.” *Id.* at 166-67. Eventually, the respondent was placed on a gurney with restraints and was transported to a hospital. *Id.* at 167.

Despite the criminal conduct and disturbing behavior, the Commission determined that the respondent was fit to remain on the bench. *Id.* at 172-73. The Commission made a special note in mitigation “that there [was] no indication that [the] respondent invoked his judicial office during his arrest in an attempt to secure favorable treatment[,]” and that he had undergone counseling for two years since the incident. *Id.* at 172.

## F. Justice Petucci

In *Matter of Petucci*, the respondent crashed his car into a building while driving under the influence of alcohol and was belligerent and uncooperative during his arrest. *Matter of Petucci*, 2021 NYSCJC Annual Report 272 (2020).

After crashing his car into a building, the respondent yelled profanities and was otherwise belligerent to law enforcement and paramedics who arrived at the scene. *Id.* at 274. In fact, when the police sergeant asked the respondent to undergo a field sobriety test or chemical test of his blood alcohol content, the respondent stated: “No, fuck you.” *Id.* at 275. At one point, the respondent asked for the police sergeant to be arrested. *Id.* In addition, the respondent was carrying a loaded handgun and another full magazine of ammunition in his pocket at the time of the accident. *Id.* at 274. He was later convicted of Driving While Ability Impaired. *Id.* at 276.

Due to the serious criminal offense and aggravating factors, the Commission accepted the jointly recommended “severe” sanction of a public censure. *Id.* at 281. In mitigation, the Commission noted, among other factors, the respondent’s voluntary participation in counseling for

alcohol and substance abuse and trusted that the respondent had learned from the experience. *Id.*

\* \* \* \* \*

Without question, Judge Grisanti should be sanctioned for his lapse in judgment. His conduct should neither be condoned nor excused. No one understands this more than Mark. However, Commission precedent forecloses the possibility that his sanction should be more severe than an admonition or a public censure.

#### IV. CONCLUSION

On June 22, 2020, a simmering neighborhood dispute escalated into an embarrassing public confrontation. While all of the participants share responsibility for their imprudence, only Judge Grisanti stands before the Commission to answer. That is because we properly expect much from our judges, both on and off the bench. Judge Grisanti accepts that fact as part of our system of ensuring public trust and confidence in the judiciary. And he accepts responsibility for his conduct, recognizing that he must be disciplined.

In considering the appropriate discipline, the Commission should consider that Judge Grisanti has expressed genuine remorse for his conduct and the pall it cast on the image of the judiciary. He has worked hard to improve himself and strengthen his ability to manage stress and grief in his personal life so that nothing similar will happen in the future. And throughout, Judge Grisanti has continued to conduct himself on the bench in a way that has earned him the highest accolades of the parties and attorneys who appear in front of him, as well as the court administrators who oversee his work.

Based upon the applicable standards and prior precedent, the Commission should admonish or publicly censure Judge Grisanti, but allow him to continue a judicial career that, except for a few minutes on a single day, has been a shining example of what judges should be.

Dated: July 14, 2023  
Buffalo, New York



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