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

MICHAEL F. MCGUIRE,

a Judge of the County, Family, Surrogate's Court,
Sullivan County.

MEMORANDUM BY COUNSEL TO THE COMMISSION IN SUPPORT OF RECOMMENDATION TO CONFIRM THE REFEREE'S REPORT AND TO ISSUE A DETERMINATION THAT RESPONDENT BE REMOVED FROM OFFICE

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Dated: December 12, 2019

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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 the Commission confirm Referee Mark S. Arisohn's proposed findings of fact and conclusions of law, and render a determination that Honorable Michael F. McGuire ("Respondent") has committed judicial misconduct and should be removed from office for his extensive and egregious conduct, which was compounded by his lack of candor at the hearing.

As the Referee found, Respondent committed misconduct when he:

- improperly held six litigants in summary contempt and sentenced two of those litigants to 30 days in jail without providing appropriate warnings, affording the litigants an opportunity to be heard and without preparing a written order;
- threatened other litigants with contempt of court without a basis in law and otherwise failed to treat the litigants in a patient, dignified and courteous manner;
- yelled at, demeaned and failed to be patient, dignified and courteous to court staff;
- engaged in the unauthorized practice of law while a full-time judge;
- presided over cases in which his impartiality might reasonably be questioned;
- interviewed applicants for pistol permits outside the courthouse, after regular court hours, at times in inappropriate settings, and improperly promoted the interests of the National Rifle Association;
- directed his confidential court secretary to work at these off-hour and off-premises pistol permit interview sessions; and
- identified himself as a judge in his personal email account and used that email account on matters unrelated to his judicial duties.

As the Referee also found, on five occasions during the hearing Respondent "testified falsely" or gave testimony that "lacked candor."

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law § 44(4), the Commission authorized a Formal Written Complaint ("Complaint") dated August 27, 2018, containing thirteen charges. Charge I of the Complaint alleges that Respondent improperly held the plaintiff in *R* [redacted] *v O* [redacted], in summary contempt and sentenced him to 30 days in jail without providing appropriate warnings or affording him the opportunity to be heard and without preparing a written order (FWC ¶5). [1]

Charge II alleges that Respondent improperly held the defendant in *P* [redacted] *v G* [redacted] in summary contempt and sentenced her to 30 days in jail without providing appropriate warnings or affording her the opportunity to be heard and without preparing a written order (FWC ¶12).

Charge III alleges that Respondent improperly held a litigant in *Z* [redacted] *v F* [redacted] in summary contempt and directed that she be handcuffed and removed from the courtroom for approximately one hour without providing appropriate warnings or affording her the opportunity to be heard and without preparing a written order (FWC ¶22).

Charge IV alleges that Respondent improperly held a litigant in *L* [redacted] *v C* [redacted] *and B* [redacted] in summary contempt and directed that she be handcuffed and

[1] "FWC" refers to the Formal Written Complaint; "Ans" refers to Respondent's Answer to the Complaint; "Rep" refers to the Referee's Report; "Tr" refers to the transcript of the hearing; and "Ex" refers to exhibits introduced at the hearing.

removed from the courtroom for approximately one hour without providing appropriate warnings or affording her an opportunity to be heard and without preparing a written order (FWC ¶31).

Charge V alleges that Respondent improperly held a litigant in *G* [redacted] *v C* [redacted] in summary contempt and directed that she be handcuffed and removed from the courtroom for approximately 15 minutes without providing appropriate warnings or affording her an opportunity to be heard and without preparing a written order (FWC ¶40).

Charge VI alleges that Respondent improperly held a litigant's wife in *F* [redacted] *v K* [redacted] *and K* [redacted], in summary contempt and directed that she be handcuffed and removed from the courtroom for approximately one hour without providing appropriate warnings or affording her an opportunity to be heard and without preparing a written order (FWC ¶49).

Charge VII alleges that from in or about 2013 through in or about 2014, while presiding over three Family Court cases, Respondent threatened litigants with contempt of court without basis or authority in law and otherwise failed to treat the litigants in a patient, dignified and courteous manner (FWC ¶58).

Charge VIII alleges that from in or about 2011 through in or about 2015, Respondent repeatedly and inappropriately yelled at, demeaned and otherwise failed to be patient, dignified and courteous toward court staff, including his confidential secretary, his court clerk and court officers (FWC ¶70).

Charge IX alleges that on or about March 10, 2014, while presiding over *M* *v H*, Respondent failed to be patient, dignified and courteous toward the parties (FWC ¶78).

Charge X alleges that from on or about January 1, 2011, through in or about December 2015, Respondent repeatedly engaged in the unauthorized practice of law notwithstanding that he was a full-time judge (FWC ¶84).

Charge XI alleges that from on or about January 2011 through in or about 2014, Respondent presided over cases in which his impartiality might reasonably be questioned (FWC ¶129).

Charge XII alleges that from in or about 2013 through in or about 2014, Respondent interviewed applicants for pistol permits outside the courthouse, after regular court hours, at times in inappropriate settings, and in so doing at times improperly promoted the interests of the National Rifle Association (FWC ¶139).

Charge XIII alleges that from on or about January 1, 2011, to in or about 2015, Respondent identified himself as a judge in his personal email account and used that email account on matters unrelated to his judicial duties (FWC ¶145).

B. Respondent's Answer

Respondent filed an Answer dated October 11, 2018, in which he denied almost all the allegations. As to Charge I, Respondent denied most of the allegations but admitted that he presided over *R* *v O*, that Mr. R r asked for Respondent's recusal, and that he held Mr. R in contempt (FWC ¶¶6-8; Ans ¶¶7-9).

Respondent denied most of the allegations in Charge II but admitted that he presided over *P* [redacted] *v G* [redacted] (FWC ¶13; Ans ¶15), that he made the statements charged in the Complaint and that he made a "summary finding of contempt against Ms. G [redacted]" (FWC ¶¶14-16, 18; Ans ¶¶16, 18). Respondent admitted that Ms. G [redacted] was incarcerated from August 28, 2013, to September 24, 2013, but denied that that she was held because of the contempt (FWC ¶20; Ans ¶20).

As to Charge III, Respondent denied most of the allegations but admitted that he presided over *Z* [redacted] *v F* [redacted] (FWC ¶22; Ans ¶23) and that he made the statements charged in the Complaint (FWC ¶25, 28; Ans ¶¶26, 29).

As to Charge IV, Respondent denied most of the allegations but admitted that he presided over *L* [redacted] *v C* [redacted] *and B* [redacted] (FWC ¶31; Ans ¶33) and that he made the statements charged in the Complaint (FWC ¶¶ 33, 34, 37; Ans ¶¶ 35, 36, 39).

Respondent denied most of the allegations relating to Charge V but admitted that he presided over *G* [redacted] *v* [redacted] (FWC ¶40; Ans ¶43) and that he made the statements charged in the Complaint (FWC ¶¶42, 43; Ans ¶¶45, 46).

As to Charge VI Respondent denied most of the allegations but admitted that he presided over *F* [redacted] *v K* [redacted] *and K* [redacted] (FWC ¶49; Ans ¶53) and that he made the statements charged in the FWC (FWC ¶¶51, 54; Ans ¶¶55, 58).

As to Charge VII, Respondent denied most of the allegations but admitted that he presided over *D* [redacted] *v E* [redacted] *and F* [redacted] on November 7, 2014 and *V* [redacted] *v G* [redacted] on August 21, 2014 (FWC ¶¶58, 63, 65; Ans ¶¶63, 65, 67).

Respondent denied most of the allegations relating to Charge VIII but admitted that on February 25, 2013, he requested to speak to a supervisor in chambers (FWC ¶74; Ans ¶75).

Respondent denied most of the allegations relating to Charge IX but admitted that on March 10, 2014, he presided over *M[redacted] v H[redacted]* (FWC ¶79; Ans ¶81).

As to Charge X, Respondent denied most of the allegations but admitted, *inter alia,* that prior to assuming judicial office he practiced law (FWC ¶85; Ans ¶86), and that after closing his law practice he maintained the law office's telephone number and had an answering machine message advising callers that they had reached "a telephone number associated with the former law office" (FWC ¶86; Ans ¶87).

Also as to Charge X, Respondent further admitted, *inter alia*, that his son was arrested in Oneonta, New York for Unlawful Possession of Marihuana, that he sent a number of letters to the Oneonta City Court on the letterhead of his former law office in which he identified himself as counsel for his son, that he sent one letter by facsimile containing a facsimile stamp reading "MCGUIRE LAW," that he conferenced his son's case with the Otsego County Assistant District Attorney and Oneonta City Court Judge Richard W. McVinney in the Oneonta City courthouse, that he sent two letters to Judge McVinney containing motions and reply motions and that Judge McVinney issued a decision where he identified Respondent as the attorney of record (FWC ¶¶87-101; Ans ¶¶88-91).

Finally, as to Charge X, Respondent also admitted that prior to becoming a judge he represented his wife in connection with a parking ticket and that he represented

George Matisko in connection with a personal injury matter (FWC ¶¶102, 104; Ans ¶¶92, 94). Respondent admitted that he brought documents to the home of Phillip and Eileen Moore regarding their purchase of a home, that he authorized emails from his email account to the law firm representing the foreclosure company and that some of the emails contained his personal telephone number (FWC ¶¶112-15; Ans ¶¶100, 101). Respondent admitted that he represented Ricky Pagan prior to becoming a judge and that while a judge he mailed legal documents to the seller of some property Mr. Pagan was purchasing (FWC ¶¶116-19; Ans ¶¶102-105).

Although Respondent denied most of the allegations relating to Charge XI, he made numerous admissions.

- Respondent admitted that Zachary Kelson, Esq., telephoned the Otsego County District Attorney's office on behalf of Respondent's son on one occasion, but he denied that Kelson assisted him in his son's defense in any other way (FWC ¶130[A]; Ans ¶116).

- Respondent admitted that Mr. Kelson represented Jerry Fernandez in *County of Sullivan v Estate of Fernandez*, but he denied having "played any role or engaged in any substantive strategic discussions with Mr. Kelson" (FWC ¶130[C]; Ans ¶118).

- Respondent admitted that Mr. Kelson represented Mr. Fernandez on other matters, but he said any communications he received from Kelson regarding these matters were "strictly gratuitous" (FWC ¶130[D]; Ans ¶119).

- Respondent admitted that he or people acting on his behalf "made inquiry of Mr. Kelson regarding an attorney" to represent Lindsay Amoroso (FWC ¶130[E]; Ans ¶120).

- Respondent admitted he had lunch with Mr. Kelson (FWC ¶130[G]; Ans ¶122) and attended the Bar Mitzvah of Kelson's son (FWC ¶130[H]; Ans ¶124).

- Respondent admitted to presiding over *Massey v Sullivan County Board of Elections* (FWC ¶131[A]; Ans ¶125).

- Respondent admitted that *FIA Card Services v Fishbain,* the *Miller v Town of Liberty Assessor* cases, *Two Sullivan Street Trust v Town of Liberty Assessor* and *Sam's Towing v Town of Liberty Assessor* were assigned to his chambers (FWC ¶131[B]-[G]; Ans ¶¶126-130).

- Respondent admitted that *Matter of M[redacted] P[redacted]* and *Matter of E[redacted] C[redacted]* were assigned to his part and Mr. Kelson was assigned to represent the child in those cases (FWC ¶131[G], [H]; Ans ¶¶131, 132).

- Respondent admitted presiding over *Dean v Boyes* and representing Mary Lou Boyes in the transfer of her interest in that same parcel of property (FWC ¶132; Ans ¶134).

Respondent denied most of the allegations relating to Charge XII but admitted that he arranged to conduct interviews of applicants for gun permits outside the courthouse at the Monticello Elks Lodge and Villa Roma Resort after regular court hours (FWC ¶¶139, 141, 143; Ans ¶¶142, 144, 145).

As to Charge XIII, Respondent admitted that he used the email "judgemcguire@[redacted]" and that he used that email to communicate with parties involved in the purchase of property by Eileen and Phillip Moore (FWC ¶145; Ans ¶149).

C. The Hearing

On November 15, 2018, the Commission designated Mark S. Arisohn, Esq., as Referee to hear and report proposed findings of fact and conclusions of law. A hearing was held in New York City on May 6-9, May 13-17 and May 20-22, 2019. Commission Counsel called 18 witnesses and introduced 380 exhibits. Respondent testified on his own behalf, called eight witnesses and introduced three exhibits.

D. The Referee's Report

On November 5, 2019, the Referee issued a report sustaining all of the allegations set forth in Charges I through XIII and concluding that Respondent violated the Rules Governing Judicial Conduct ("Rules") cited in the Formal Written Complaint (Rep 71).[2] The Referee additionally found that Respondent testified falsely at the hearing (Rep 71).

As to Charges I through VII

With respect to Charges I through VII, the Referee found that during 2012, 2013 and 2014, Respondent committed judicial misconduct when on six occasions he "improperly and without cause" ordered litigants to be taken into custody in handcuffs, and when he threatened to take litigants into custody on three other occasions (Rep 2-25, 64-65). The Referee further found that "these incidents were generally accompanied by [Respondent's] abrupt angry outbursts some of which can only be described as explosive" (Rep 2). The Referee noted Respondent's testimony that at that time he believed his actions were permitted by the Judiciary Law, as well as his concession that he never read any Commission determinations or legal authority concerning the use of judicial contempt (Rep 3).

The Referee further found that on each of these occasion, Respondent failed to follow mandatory contempt procedures, in that he ordered litigants taken into custody without appropriate warnings or providing them with an opportunity to be heard or to

[2] The Referee did sustain the specifications in Charge VIII of the Formal Written Complaint alleging that Respondent failed to be patient, dignified and courteous toward court clerk Andrea Rogers and Lieutenant Kevin McCabe (FWC ¶¶ 72, 76) (Rep 66).

purge the contempt, and did not prepare a commitment order memorializing the particular circumstances of the offense or the punishment imposed as required by law (Rep 3, 5, 9, 11, 13-14, 17, 20). Additionally, on four of those occasions (Charges I, III, IV, VI), Respondent failed to find unrepresented litigants an attorney (Rep 3, 5, 11, 14, 20).

1. Charge I

The Referee found that Respondent committed misconduct when he sentenced [redacted] R[redacted] to 30 days in jail for contempt after he asked Respondent to recuse himself from his case because he knew Respondent's son (Rep 2, 4, 5, 64-65). During the exchange with Mr. R[redacted], Respondent "stood up, lunged forward, was agitated, red-faced and pointed and yelled at Mr. R[redacted]" (Rep 5). The Referee noted that the audio recording of the court proceeding demonstrated Respondent's "explosive and irrational anger toward R[redacted]" that Mr. R[redacted]'s remark about Respondent's son "was not threatening" (Rep 5). The Referee concluded that Respondent's accusation that R[redacted] threatened his son was "unfounded and irrational" (Rep 5).

The Referee further found that Respondent failed to give Mr. R[redacted] an appropriate warning or an opportunity to be heard or to purge the contempt, did not prepare a commitment order memorializing the particular circumstances of the offense or the punishment imposed as required by law, and failed to find Mr. R[redacted] an attorney (Rep 5).

2. Charge II

The Referee found that Respondent committed misconduct when he was discourteous to N[redacted] G[redacted] and then improperly held her in contempt and

sentenced her to 30 days in jail (Rep 64-65). During the proceeding, Respondent "commented disparagingly and extensively about G[redacted]'s parenting ability" (Rep 6), questioned Ms. G[redacted] "about why she believed she was a good mother" (Rep 7) and "continued harshly berating G[redacted]'s parenting and life choices" (Rep 8). When Ms. G[redacted] asked the judge to "stop criticizing her and get on with sentencing," Respondent sentenced her to 30 days in jail for judicial contempt (Rep 8). Respondent failed to issue an appropriate warning, did not provide Ms. G[redacted] with an opportunity to be heard or to purge the contempt, and did not prepare a commitment order (Rep 9).

3. Charge III

The Referee determined that Respondent engaged in misconduct when he held T[redacted] F[redacted] in contempt and had her taken into custody (Rep 10, 64-65). While the Referee acknowledged that Ms. F[redacted] had "disrupted the proceedings" by stating that she would not send her child for visitation with the father if she did not want to go (Rep 11), he found that even after Ms. F[redacted] "said she was sorry twice," Respondent directed that she be taken into custody (Rep 11). The Referee further found that Respondent failed to issue an appropriate warning or provide Ms. F[redacted] with an opportunity to be heard or to purge the contempt, and that he did not prepare a commitment order or find Ms. F[redacted] an attorney (Rep 11). The Referee also noted that upon Ms. F[redacted]'s return to the courtroom after being handcuffed and detained for nearly two hours, Respondent asked her "how's handcuffs feeling?" (Rep 11).

4. Charge IV

The Referee sustained Charge IV, finding that Respondent improperly held T[redacted] L[redacted] in contempt and had her taken into custody after she told him that she did not remember if she spoke to someone about getting a ride to her child's school conference (Rep 13, 14, 64-65). While the Referee described Ms. L[redacted]'s tone as "disrespectful," he found that Respondent failed to warn Ms. L[redacted] that her behavior was contemptuous or give her an opportunity to be heard before directing that she be taken into custody (Rep 13-14). Respondent did not prepare a commitment order or find Ms. L[redacted] an attorney (Rep 13-14).

The Referee found that Ms. L[redacted] was handcuffed and detained outside of the courtroom for over an hour, during which time she required medical assistance for chest pains and shortness of breath (Rep 14). When Ms. L[redacted] returned to the courtroom, Respondent "lectured her about respecting the court" (Rep 14).

5. Charge V

The Referee found that Respondent engaged in misconduct when he summarily held C[redacted] C[redacted] in contempt because she "continually" spoke over Respondent as he questioned her about whether she was paying child support and the cost of a portable crib (Rep 16-17, 64-65). The Referee noted that Respondent "raised his voice and used an angry tone" when directing that Ms. C[redacted] be taken into custody, and that Ms. C[redacted] was handcuffed in a locked conference room for around 15 to 20 minutes (Rep 17). Upon her return to the courtroom, Respondent "lectured" Ms. C[redacted] (who

was pregnant) that she was going to have another child "at a time where you don't have a home, don't have any money, don't have a job, but that's your decision" (Rep 17, 64-65).

6. Charge VI

The Referee upheld Charge VI, finding that it was improper for Respondent to have R[redacted] K[redacted], a litigant's wife, handcuffed and taken into custody after she stated that she would sue the county and Respondent if "anything happened" to her grandson while in his father's custody (Rep 19-20, 64-65). The Referee found that Respondent addressed the parties "in an angry, raised voice" and "spoke with great hostility" when he directed court officers to remove Mrs. K[redacted] from the courtroom (Rep 20). Respondent failed to issue an appropriate warning or provide an opportunity to be heard or to purge the contempt and did not prepare a commitment order or find Mrs. K[redacted] an attorney (Rep 20).

As to Charge VII

The Referee found that Respondent committed misconduct when, on three occasions, he "improperly and without cause" threatened to take litigants and a spectator into custody (Rep 2, 64-65). The Referee specifically found that Respondent "got 'angry' and was 'yelling' and 'screaming'" at S[redacted] Ro[redacted] the respondent in a custody matter, for speaking to her granddaughter. Respondent told Ms. Ro[redacted] that she "was 'going to jail' and mentioned 'putting her in handcuffs'" (Rep 21, 22). The Referee noted that Respondent continued to yell at Ms. Ro[redacted] even after she had difficulty breathing and was "in 'great distress'" (Rep 22).

Similarly, the Referee found that Respondent "yelled" at T[redacted]E[redacted], "Ms. E[redacted], you are about three seconds from getting yourself put in handcuffs and taken out of here." The Referee determined that "[n]othing in the transcript" showed that Ms. E[redacted] "had done anything to disrupt the proceedings or otherwise engaged in any inappropriate conduct" and that Respondent did not indicate "what behavior he found objectionable" (Rep 23).

The Referee also found that Respondent made several comments about litigant A[redacted] G[redacted] that were unsupported by any evidence, and he credited the Appellate Division's finding that Respondent had "treated the mother [Ms. G[redacted] with apparent disdain, such that [the Court] cannot be assured that further proceedings will be conducted in an impartial manner" (Rep 25). For instance, the Referee found that despite "the absence of any evidence that Ms. G[redacted] had a boyfriend," Respondent remarked, "I mean, you're sure her boyfriend isn't here to testify?" (Rep 24). Respondent also commented "without any evidentiary basis" that Ms. G[redacted] went to California "because she wanted out of this marriage. Clearly, … she's out there and she gets involved in another relationship, and clearly, that's her interest" (Rep 24). The Referee further found that Respondent threatened Ms. G[redacted]' mother, who was sitting in the back of the courtroom, "I'm going to throw you out and put you in handcuffs in about 30 seconds, all right? So you can either walk out or get thrown out if I have to look at another outrageous expression from you. Clear? Because if I have to tell you again, I'm going to ask the officer to put you in handcuffs, and then you'll – you'll experience Sullivan County Jail" (Rep 25).

As to Charge VIII

As to Charge VIII, the Referee concluded that that Respondent violated the Rules Governing Judicial Conduct when he failed to be patient, dignified and courteous toward various members of his court staff (Rep 66).[3]

The Referee found that Respondent's conduct toward Wendy Weiner on January 14, 2015 was "unjustified and inexcusable" (Rep 27). On that date, Respondent became "very upset and agitated" about a problem with his computer, threw a computer jump drive towards Ms. Weiner (Rep 26) and took some court files and "threw them across the desk onto the floor" (Rep 26). The Referee credited Ms. Weiner's testimony that she was "shaking," "scared," "very upset" and "couldn't even think straight" (Rep 26), as well as the testimony of Court Officer Downs and Sergeant Olivieri, who saw Ms. Weiner after the incident and observed that she was visibly upset (Rep 26-27). The Referee noted that Respondent subsequently apologized to Ms. Weiner because he had been told that "his actions might have offended" her, and when she started to reply he "raised his arm with his palm facing Ms. Weiner and said, 'that is all, you are dismissed" (Rep 27).

Similarly, the Referee credited Court Officer Miguel Diaz's testimony that on June 29, 2012, Respondent "angrily shouted" at him to keep an individual out of the courtroom, finding that Respondent "erupted with explosive anger" (Rep 29). The

[3] As indicated above on p.9, n 2, the Referee did not conclude that Respondent's conduct toward Andrea Rogers and Lieutenant Kevin McCabe amounted to misconduct (Rep 66). The Referee did credit Ms. Rogers' testimony that Respondent "frequently" spoke to her in a loud and condescending manner" and that "it was a regular part [Respondent's] practice" to extend his arm toward her with his palm facing out to gesture her to stop talking (Rep 27-28) and Lieutenant Kevin McCabe's testimony that Respondent spoke to him in a "raised" voice (Rep 31).

Referee also found that on February 25, 2013, Respondent approached Sergeant Olivieri in a "very aggressive manner, red in the face and pointing in [his] direction" and yelled at him that he wanted another court officer (Rep 31).

Finally, the Referee credited the testimony of Court Officer Downs that in 2014, as she stood outside of Respondent's chambers, Respondent got up from his desk, walked across the office "and without saying anything grabbed the door and slammed it 'with as much force as he could'" (Rep 31).

As to Charge IX

In sustaining Charge IX, the Referee determined that Respondent failed to be patient, dignified and courteous to litigants in *M[redacted] v H[redacted]* when he told the parties to use "good judgment" before introducing their child to someone they were dating and that their child would face difficulties if they dated a "drug addict," "slut" or "child abuser" (Rep 33, 66). The Referee noted that there was "no evidence or allegation" to support Respondent's statements (Rep 33), and that Respondent admitted that his comments were "inappropriate and undignified" (Rep 33).

As to Charge X

The Referee sustained Charge X, concluding that Respondent committed judicial misconduct by practicing law as a full-time judge and lending the prestige of judicial office to advance the interests of others (Rep 67-68). The Referee found that from 2011 through 2015, while he was a judge, Respondent continued to use the same letterhead, fax machine and telephone number that had used while practicing law (Rep 34).

Respondent sent letters on the letterhead of his former law office to both the chief clerk and the judge of the Oneonta City Court regarding his son's criminal case, filed a Notice of Appearance and an Affirmation of Actual Engagement in the case, identified himself on these documents as "MICHAEL F. MCGUIRE, ESQ." and sent them on a facsimile with his former law firm's stamp (Rep 35-36). Respondent also personally appeared in court and conferenced his son's case with a prosecutor and the Oneonta City Court judge, sent letters to the judge on his law office's letterhead in which he referred to himself as an attorney, and filed a motion and a reply affirmation which he signed "Michael F. McGuire, Esq." (Rep 36-37).

The Referee also found that Respondent acted as an attorney on behalf of his wife, sending a letter to the Wawarsing Town Court Justice in which he identified himself as a County Court judge and asked the court to "accept the previously submitted plea" (Rep 37-38).

Similarly, the Referee determined that Respondent engaged in the unauthorized practice of law on behalf of George Matisko, Eileen and Philip Moore, Ricky Pagan and Christopher Lockwood (Rep 67). As to the Matisko matter, the Referee rejected Respondent's claim that he was "totally unaware of any of the events" regarding the matter and that Wendy Weiner acted on her own "masquerading as [Respondent] without his knowledge" (Rep 40). The Referee called Respondent's claim "not credible" and "not supported by the evidence" (Rep 40). The Referee determined, *inter alia,* that Respondent sent a letter on behalf of Mr. Matisko on his former law office's letterhead, received correspondence as Mr. Matisko's attorney, directed Ms. Weiner to negotiate a

settlement and prepare a release for Mr. Matisko during court hours, received a check at his residence from the insurance company made out to Mr. Matisko and himself, as Mr. Matisko's attorney, and endorsed the check (Rep 38-40).

The Referee found that Respondent, not his brother Ken McGuire, represented the Moores in their real estate transaction (Rep 43-44). The Referee specifically found that the emails signed by Ken or Ken McGuire "were all written and sent by [Respondent]" and that Respondent "used his brother's name on the emails to hide the fact that he was involved as an attorney in the Moore real estate transaction while he was a judge" (Rep 43). The Referee pointed to evidence that Respondent's personal cell phone number and email address appeared in the emails signed by Ken McGuire, as well as "documentary evidence" showing that he, not Ken McGuire, planned a vacation on the same dates that "Ken" told the paralegal that he was unavailable to close because he would be on vacation (Rep 43-44).

The Referee noted that the Moores never spoke to Ken McGuire (Rep 44). Respondent brought the contract of sale to the Moores' home, explained the document, indicated where it needed to be signed, stayed as the contract was signed and left the house with the signed contract (Rep 41-42). The real estate broker in the transaction also never talked to Ken McGuire and never received an email from an email address belonging to Ken McGuire (Rep 44).

The Referee found that Respondent's failure to call Ken McGuire as a witness warranted a negative inference and concluded that "Ken McGuire did not perform legal

work for the Moores and that he did not send the emails from 'judgemcguire@[redacted]' that were signed 'Ken' or 'Ken McGuire'" (Rep 44).

With respect to Ricky Pagan, the Referee rejected Respondent's claim that he "had no involvement in the transaction" after 2010 (Rep 45). The Referee determined that the hearing evidence disproved his claim and established that, while a full-time judge, Respondent spoke to Mr. Pagan about completing a real estate transaction, sent a check and documents to the seller, and had the deed transferring the property filed with the County Clerk (Rep 45).

Finally, the Referee concluded that Respondent practiced law on behalf of Christopher Lockwood while a full-time judge (Rep 67), finding that although Respondent represented that his brother was handling the ticket (Rep 46), the Liberty Town Court Clerk never received Ken McGuire's contact information and never spoke to him, and that Ken McGuire never appeared in court (Rep 47). Rather, the court clerk spoke with Respondent, and a letter signed by Respondent's brother on the letterhead of Respondent's former law office was sent to the prosecutor, enclosing a completed Application to Amend Traffic Infraction (Rep 46). In addition, Respondent told Ms. Weiner to fill in missing information on the application, and when she could not, he completed the form (46-47). With Respondent's knowledge, Ms. Weiner sent a letter signed with Respondent's computer-generated signature, along with the properly completed application, to the Liberty Town Court (Rep 46-47).

As to Charge XI

With respect to Charge XI, the Referee found Respondent committed misconduct when he presided over cases involving "good friend" attorney Zachary Kelson without disclosing "the extensive personal relationship he had with Kelson" or disqualifying himself from cases in which appeared (Rep 47, 48, 68). Respondent and Mr. Kelson had an "extensive" relationship – they had known each other since 2001, Respondent attended Mr. Kelson's son's Bar Mitzvah and gave a gift, and Mr. Kelson contributed money to Respondent's judicial campaign (Rep 47-48).

The Referee noted that "most significantly," at the same Mr. Kelson "appeared regularly" before Respondent, Mr. Kelson was assisting Respondent with his son's criminal case and representing Respondent's friends, often without compensation, at Respondent's request (Rep 48). Mr. Kelson assisted Respondent in representing Respondent's son by communicating with Respondent about the case and engaging in negotiations with the District Attorney's office, with Respondent's consent (Rep 48-50). Respondent asked Mr. Kelson to represent J[redacted] F[redacted] and W[redacted] W[redacted], referred Lori Shepish to Mr. Kelson, contacted Mr. Kelson about T[redacted] M[redacted]'s speeding ticket and forwarded documents to Mr. Kelson regarding Lindsay Amoroso's traffic ticket (Rep 50-53).

As to Charge XII

The Referee sustained Charge XII, finding that Respondent lent the prestige of his judicial office to advance the private interests of others when he scheduled pistol permit interviews at a restaurant hosting a Friends of the National Rifle Association dinner and

directed his confidential secretary to inform applicants about the dinner, in violation of Section 100.2(C) of the Rules (Rep 59-60, 68-69). The Referee further found that Respondent violated the Rules when he required his confidential secretary to work on Saturdays, at locations outside the courtside, without compensation (Rep 58-59, 68-69).

As to Charge XIII

The Referee determined that Respondent committed judicial misconduct by using his judicial title in his email address for personal correspondence, in responding to clients, when corresponding with Zachary Kelson regarding his representation of Respondent's son and acquaintances, and when corresponding with the paralegal representing the seller in the sale of the house to the Moores (Rep 60-61, 69-70).

As to Respondent's Lack of Candor

The Referee found Respondent "testified falsely" at the hearing (Rep 71), citing several instances when Respondent "lacked candor" or made "false statements."

- Respondent "lacked candor" when he testified that he did not refer cases to Zachary Kelson or tell individuals to contact Mr. Kelson (Rep 61-62) (Charge XI).

- Respondent "lacked candor" when he testified that his only involvement in the purchase of the Moores' home was telling the Moores to hire an attorney and giving them the name of a home inspector (Rep 62-63) (Charge X).

- Respondent "lacked candor" when he denied that he spoke with the paralegal involved in the Moores real estate transaction (Rep 63) (Charge X).

- Respondent "testified falsely" that he did not send an email to the real estate broker on August 26, 2014 at 3:47 a.m., in which he threatened the broker to cease and desist from making comments to his clients (Rep 63-64) (Charge X).

- Respondent denied at the hearing that he was planning a vacation or on vacation from September 16 through 24, 2014. However, an email from his confidential secretary to court officials stated that he would be on vacation during that exact time period (Rep 64) (Charge X).

THE FACTS

Charges I to VI: Respondent was impatient, discourteous and undignified toward Family Court litigants, and improperly held six litigants in summary contempt without providing appropriate warnings, affording the litigants an opportunity to be heard and without preparing a written order.

Between 2012 to 2014, Respondent improperly held six Family Court litigants in summary contempt, and otherwise treated those litigants in an impatient, undignified and discourteous manner. Respondent sentenced two litigants to 30 days in jail and had four others taken into custody, handcuffed and removed from the courtroom, without giving an appropriate warning or affording the litigant an opportunity to make a statement or apologize.

Respondent admitted that on each occasion that he ordered a litigant be taken into custody and held in contempt, he failed to warn what behavior he found offensive, did not give them an opportunity to correct the behavior or a chance to apologize, did not find unrepresented litigants an attorney and either failed to draft an order or drafted an order that failed to state the facts that constituted the offense (Tr 2514-15, 2333, 2452-53, 2462-63, 2471-72, 2486-88, 2502-03, 2509-10).

Charge I: **On December 18, 2013, while presiding in Family Court over *R[redacted] R[redacted] v I[redacted] O[redacted]*, Respondent was discourteous to Mr. R[redacted] and improperly committed him to jail after finding him in summary contempt.**

On December 18, 2013, Respondent presided in Family Court over *R[redacted] R[redacted] v I[redacted] O[redacted]*, a child custody and visitation matter (Exs I-1, I-1a, I-1b, I-1c, I-3a). Mr. R[redacted], who was incarcerated on a criminal matter, appeared without counsel before Respondent (Tr 355, 450, 461,1235; Exs I-2, I-2a). Ms. O[redacted] was not present (Exs I-1, I-2, I-2a). After Respondent dismissed Mr. R[redacted]'s petition for visitation without prejudice due to improper service, Mr. R[redacted]r said that he knew Respondent's son and asked for his recusal (Tr 356-57, 1153, 1778; Exs I-1, I-1a, I-1c, I-2, I-2a). The following colloquy occurred:

MR. R[redacted]:	I-- know your son, so can you recuse yourself from my case, please, and assign me another judge.
JUDGE MCGUIRE:	Come here. Bring him back here.
MR. R[redacted]:	I just need another judge.
JUDGE MCGUIRE:	Bring him back here. You got 30 days judicial contempt--
MR. RO[redacted]	How is that contempt?
JUDGE MCGUIRE:	--Jacked on top of whatever you got.
MR. R[redacted]:	How is that contempt?
JUDGE MCGUIRE:	Open your mouth again.
COURT OFFICER:	You're disrespecting the judge right now.
JUDGE MCGUIRE:	Thirty Days. You-- Ay, come here a minute. You making a threat against my son?
MR. R[redacted]:	I just asked you to recuse--
JUDGE MCGUIRE:	Are you threatening my son?

MR. R[redacted]: No, I'm not.

JUDGE MCGUIRE: Officer, this gentleman just threatened my son.

MR. R[redacted]: I just asked him to recuse himself (unintelligible). I need a record.

JUDGE MCGUIRE: Try that again. You got 30 days judicial contempt. Try that again.

(Exs I-2, I-2a, pp 7-8).

During the exchange, Respondent stood up from his chair, "exploded," became angry, and yelled at Mr. R[redacted] (Tr 356, 357, 360, 361, 1156, 1232). Respondent appeared agitated, his face became flushed and when he spoke he "lung[ed] forward" (Tr 356, 360, 1154-57). When Respondent stated, "Officer, this gentleman just threatened my son," he was pointing at Mr. R[redacted] (Tr 356-57, 360, 361, 1156-57, Exs I-2, I-2a, p 8). Mr. R[redacted] looked confused while Respondent was yelling at him (Tr 361).

Respondent sentenced Mr. R[redacted] to 30 days incarceration for judicial contempt (Exs I-1, I-1a, I-1b, I-2, I-2a, p 7). During the proceeding Respondent did not warn Mr. [redacted] that his behavior was contemptuous, nor did he give him an opportunity to be heard or an opportunity to purge the contempt before sentencing him to 30 days in jail (Exs I-2, 2a). At no time did Respondent attempt to find an attorney to represent Mr. R[redacted] (Ex I- 3b). Respondent did not prepare a mandate of commitment or any other documentation memorializing the particular circumstances of the offense or the specific punishment imposed (Exs I-1, I-2, I-2a). As a result of Respondent's actions, Mr. R[redacted] was incarcerated (Exs I-1, I-1a, I-1b, I-3c).

After the proceeding had concluded Lieutenant Kevin McCabe was informed that Respondent believed that Mr. R had threatened him and his son (Tr 1736-37, 1777). The lieutenant listened to the audio tape of the court proceeding and then he sent an email to his supervisor who forwarded it to the Judicial Threat Assessment Unit (Tr 1738, 1781). After listening to the audio, the lieutenant concluded that Mr. R had not threatened Respondent but was merely asking Respondent to recuse himself (Tr 1787).

Respondent's Testimony Regarding Charge I

Respondent held Mr. R in contempt and sentenced him to 30 days for "making a judicial threat" (Tr 2304-05, 2452). According to Respondent, he interpreted Mr. R's statement that he knew his son as a threat because Mr. R was an affiliated gang member and "he or his friends could get to [Respondent's] son" (Tr 2303-04, 2449, 2453-54). Respondent admitted that he could have made a judicial threat complaint without holding R in contempt (Tr 2451).

Charge II: On August 28, 2013, while presiding in County Court over v and improperly committed her to jail after finding her in summary contempt.

On August 28, 2013, Respondent presided in County Court over *P v N G* (Exs II-1, II-2, II-4a). Ms. G, who had been charged with Grand Larceny in the Fourth Degree, a felony, and other crimes, agreed to participate in a drug program with the understanding that upon successful completion of the program she would be sentenced to Petit Larceny, a misdemeanor, and a three-year term of probation (Tr 905, 906, 945, 947; Exs

II-1, II-2). Ms. G[redacted] failed to successfully complete the drug program and was scheduled to be sentenced by Respondent on August 28, 2013 (Tr 908, 979; Exs II-1, II-2). Ms. G[redacted] was represented by attorney Jared K. Hart (Tr 905; Ex II-2).

During the sentencing proceeding, the following colloquy occurred:

THE COURT: Think how your children feel, if they even know who you are.

THE DEFENDANT: They absolutely do. I was a good mother to my daughter.

THE COURT: What's that?

THE DEFENDANT: My children know who I am.

THE COURT: Really?

THE DEFENDANT: Absolutely.

THE COURT: Do they know what a mother is?

THE DEFENDANT: Absolutely.

THE COURT: How do they know that, from your mother?

THE DEFENDANT: 'Cause I was a good mom until I relapsed.

THE COURT: When were you clean?

THE DEFENDANT: When I gave birth to my daughter.

THE COURT: The one that was born with marijuana in her system or was that your son?

THE DEFENDANT: That was my son.

THE COURT: So you were not a good mother to your son.

(The defendant shakes head negatively).

(Ex II-2, pp 5-6).

Respondent spoke to Ms. G[redacted] in a "very condescending" manner, was aggressive and critical of "the person [Ms. G[redacted]] was and [ ] the choices she's made" (Tr 909-10, 912, 980). Ms. G[redacted] was shaking her head negatively throughout the colloquy, had teared up and become red in the face (Tr 913-14, 922).

Respondent continued to question Ms. G[redacted] about why she believed she was a good mother and stated *inter alia*:

> You know, this may be one of the saddest cases there are -- not for you, 'cause you've chosen to throw your life away, that's your decision to do. Frankly it would be my desire to sentence you to life without parole because you really have demonstrated you have no desire or intention to ever be a productive member of society, to ever be a parent, to ever be anything that resembles a mother. You merely gave birth to the children but then you -- you have emotionally abandoned them.

(Ex II-2, pp 6-7).

Respondent made further remarks about Ms. G[redacted]'s parenting ability and her "rather extensive criminal history" including telling Ms. G[redacted] that she made a "conscious decision" to "abandon [her] children to be totally self-absorbed in [her] own world" (Ex II-2, p 8).

Respondent continued and the following exchange occurred:

THE COURT:	Frankly, to consider yourself a good mother because you gave birth to half of your children at a time when you were not involved with drugs is pathetic.
THE DEFENDANT:	That's your opinion.
THE COURT:	Well, I don't know who would have any different opinion. I don't know who could have any different opinion. I mean, unless you're a baseball player batting 500 that you gave birth to one of your two children that was not born with drugs in their system and thinking that that is a measure of something good is pathetic.

(Ex II-2, p 9).

Respondent was "very condescending and kind of degrading a little bit" during this exchange (Tr 918).

The following colloquy then occurred.

THE DEFENDANT:	Can we just get this over with? I'm not going to sit here and listen to this man shoot me down. I do this to myself every day and I don't need you --
THE COURT:	Yes, you are.
THE DEFENDANT:	-- to tell me anything but sentence me so I can get out of this fucking courtroom.
MR. HART:	Don't do that.
THE DEFENDANT:	I don't care. He's not going to sit here and tell me nothing. My kids --
THE COURT:	I tell you what I'm going to do. I'm going to sentence you to 30 days for judicial contempt and we'll come back here in about three weeks and we'll continue with sentencing. Okay. 30 days judicial contempt. Take her. Let's get another date for sentencing.

(Tr 982, 1027; Exs II-1a, II-2, pp 9-10).

Respondent rescheduled the sentencing date for the felony conviction to September 24, 2013 (Exs II-1, II-2). In sworn testimony during the Commission's investigation, Respondent "recognize[d] … now" that there was "no place" for his statements during the August 28, 2013 proceeding but he maintained that they were not "inappropriate because at that time – because my motives were appropriate" (Ex II-4b).

Respondent did not warn Ms. G[redacted] that her behavior was contemptuous, and he did not give her or her attorney an opportunity to be heard or an opportunity to purge the contempt before directing that she be taken into custody (Tr 924; Exs II-1, II-2, II-4c). Respondent did not prepare a mandate of commitment or any other documentation memorializing the particular circumstances of the offense or the specific punishment imposed (Exs II-1, II-1a, I1b, II-4d). Ms. G[redacted] was incarcerated from August 28, 2013 to September 24, 2013, on the summary contempt (Exs II-1, II-1a, I1b, II-3).

On September 24, 2013, the next time the case was on in court, Respondent commenced the proceeding by stating:

> All right. We had Miss G[redacted] here on August the 28th, at that time she wasn't pleased with what the Court had to say and made some very inappropriate comments and served the last 30 days on a judicial contempt.

(Ex II-3, p 2).

Ms. G[redacted] was sentenced on that day to one and a third to three years in prison (Tr 962; Exs II-1, II-3, p 5).

Respondent's Testimony Regarding Charge II

Respondent testified that at the time he believed he acted appropriately toward Ms. G[redacted] (Tr 2464). He stated that Ms. G[redacted] became agitated during the proceeding and her "body language" suggested that she "was not happy that the court was concerned that she was choosing to go to prison rather than to treatment" (Tr 2310, 2460). Respondent acknowledged that he occasionally incarcerates defendants to encourage them to enter treatment rather than be incarcerated (Tr 2311).

Charge III: On October 3, 2012, while presiding in Family Court over *R*[redacted] *Z*[redacted] *v T*[redacted] *F*[redacted], Respondent was discourteous toward Ms. F[redacted] and held her in custody after finding her in summary contempt.

On October 3, 2012, Respondent presided in Family Court over *R*[redacted] *Z*[redacted] *v T*[redacted] *F*[redacted], a child custody and visitation matter (Exs III-1, III-4a, IV-5a). Mr. Z[redacted] and Ms. F[redacted] are, respectively, the father and mother of the child at issue, who was approximately five years old at the time (Ex III-1). Neither of the litigants was represented by counsel (Exs III-2, III-2a).

During the proceeding, Respondent changed the visitation schedule and expanded the amount of time that Mr. Z[redacted] would be permitted to visit with the child (Exs III-2, III-2a). Ms. F[redacted] was concerned by Respondent's ruling and the following colloquy occurred:

MS. F[redacted]:	What if my daughter don't want to go with her father?
JUDGE MCGUIRE:	What if your daughter don't want to go to school? What do you do?
MS. F[redacted]:	My daughter loves to go to school every day.
JUDGE MCGUIRE:	What if she didn't want to go to school?
MS. F[redacted]	My daughter ain't going to want to go with him.
JUDGE MCGUIRE:	What if she didn't --
MS. F[redacted]:	My daughter ain't going to want to want it
JUDGE MCGUIRE:	All right. Here's the deal, Ms. F[redacted], if I learn that your daughter is not --
MS. F[redacted]:	He's going to go to the school, or pick her up, and she's going to hear, "R[redacted]Z[redacted] here to"--
JUDGE MCGUIRE:	Take her into custody.
MS. F[redacted]:	-- "Is here to pick up E[redacted] Z[redacted]" --
JUDGE MCGUIRE:	Take her into custody. Take her into custody.
MS. F[redacted]:	Okay. I'm sorry. I'll try--
JUDGE MCGUIRE:	Judicial contempt.
MS. F[redacted]:	I'm sorry. I--
JUDGE MCGUIRE:	Judicial contempt. Take her into custody. You 're disrupting the proceedings repeatedly.
(SOUND OF HANDCUFFS)	
MS. F[redacted]:	Can you pick up my glasses, please?
JUDGE MCGUIRE:	Get her out of here.

(Exs III-2, III-2a, pp 18-20).

Respondent's voice was raised during this exchange (Exs III-2, III-4d).

Respondent did not warn Ms. F[redacted] that her behavior was contemptuous, nor did he give her an opportunity to be heard or an opportunity to purge the contempt

before directing that she be taken into custody (Exs III-2, III-2a, III–4c). At no time did Respondent attempt to find an attorney to represent Ms. F[redacted] (Exs III-2, III-2a, III-4e).

Ms. F[redacted] was placed into handcuffs, removed from the courtroom and detained for nearly two hours in a room outside of the courtroom (Exs III-2, III-2a, III-3, III-3a). When Ms. F[redacted] returned to the courtroom almost two hours later, Respondent and Ms. F[redacted] engaged in the following colloquy:

JUDGE MCGUIRE: All right, Ms. F[redacted] how's handcuffs feeling?

MS. F[redacted] They hurt my wrist. I'm sorry.

JUDGE MCGUIRE: You're not going to come into this courtroom or any other courtroom in this county and behave like this.

MS. F[redacted]: I know. I apologize.

JUDGE MCGUIRE: This is not *The Jerry Springer Show.*

MS. F[redacted]: I know. I'm sorry.

(Exs III-2, III-3, III-3a, p 1).

Respondent did not prepare a mandate of commitment or any other documentation memorializing that Ms. F[redacted] had been held in custody, the particular circumstances of the offense or the specific punishment imposed (Ex III-1).

Respondent's Testimony Regarding Charge III

Respondent testified that at the time he believed that he acted appropriately toward Ms. F[redacted] (Tr 2479-81). He ordered that Ms. F[redacted] be taken into custody because she was being "discourteous and showing general disrespect to the court" (Tr 2318-19, 2469-70). Respondent acknowledged that he asked Ms. F[redacted] "how's the handcuffs feeling" when she was returned to the courtroom in handcuffs after two hours in custody, and that he did not speak her in a respectful way (Tr 2476-77).

Charge IV: On June 14, 2013, while presiding in Family Court over *T[redacted] L[redacted] v G[redacted] C[redacted] and He[redacted] B[redacted]*, Respondent was discourteous toward Ms. L[redacted], held her in summary contempt and directed that she be removed from the courtroom and taken into custody.

On June 14, 2013, Respondent presided in Family Court over *T[redacted] L[redacted] v G[redacted] C[redacted] and H[redacted] B[redacted]*, a child custody and visitation matter (Tr 495; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a). Ms. L[redacted] and Mr. C[redacted] are, respectively, the mother and father of the child at issue, who was approximately 16 years old at the time (Tr 495; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a). Mr. C[redacted] was represented by attorney K. C. Garn (Tr 494-95; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a). Ms. L[redacted] was not represented by counsel (Tr 495; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a). During the proceeding, the child's difficulty with math was discussed and the following colloquy occurred:

JUDGE MCGUIRE: All right. Ms. L[redacted], parenting is not a spectator sport. You don't buy a ticket and watch your child grow up. Your child fails a class, you're responsible for seeing to it that she gets the services she needs to learn that subject. You don't just sit back and say, "It's not my responsibility. I gave birth to her" --

MS. L[redacted]: Well, excuse me --

JUDGE MCGUIRE: -- It's now up to the government to raise her. No, I'm not excusing anything. Your child's failing math, you should be in contact with the guidance counselor and find out what needs to be done. Does she have a tutor?

MS. L[redacted]: She has extra classes. She (unintelligible)

JUDGE MCGUIRE: Does she have a tutor?

MS. L[redacted]: She has an IEP.

JUDGE MCGUIRE: Does she have a tutor?

MS. L[redacted]: She -- no, they have not given her a tutor, and I don't have the money to pay for one. Do you?

JUDGE MCGUIRE: That's not my question.

MS. L[redacted]: No, she doesn't have a tutor. It cost money.

JUDGE MCGUIRE: Have you spoken to the school about a tutor?

MS. L[redacted]: No. We had an IEP meeting recently.

JUDGE MCGUIRE: Did you go to it?

MS. L[redacted]: I was conferenced over the phone. Yes, I did.

JUDGE MCGUIRE: Was there a transportation issue that prevented you from being present at the IEP meeting?

MS. L[redacted]: Yes, there is. I do not have a vehicle.

JUDGE MCGUIRE: Did you speak to Mr. Jones about that[?][4]

MS. L[redacted]: We set up a conference meeting with the school, so I could have the conference phone.

JUDGE MCGUIRE: Mr. Jones did?

MS. L[redacted]: Mr. Jones, myself, the school district.

JUDGE MCGUIRE: Did you speak to Mr. Jones about assisting you with transportation to get you to that meeting?

MS. L[redacted]: I don't believe transportation was available at that time to go to that meeting.

JUDGE MCGUIRE: Did you speak to Mr. --

MS. L[redacted]: I do not remember, sir.

JUDGE MCGUIRE: You know what? Take her into custody.

COURT OFFICER: Stand up, place your hands behind your back, please.

JUDGE MCGUIRE: Second call.

(SOUND OF HANDCUFFS)

JUDGE MCGUIRE: Second call. Get these people out of my courtroom.

(Tr 495-96, 569; Exs IV-2, IV-2a, pp 4-6).

[4] Mr. Jones worked for Department of Family Services (Tr 570).

When Respondent ordered Ms. L[redacted] be taken into custody he "was angry" and "raised his voice" (Tr 496, 497; Exs IV-2, IV-5c). Respondent did not warn Ms. L[redacted] that her behavior was contemptuous, nor did he give her an opportunity to be heard or an opportunity to purge the contempt before directing that she be taken into custody (Tr 497; Exs IV-2, IV-2a, IV-5d). At no time did Respondent attempt to find an attorney to represent Ms. L[redacted] (Tr 498; Exs IV-2, IV-2a, IV-3, IV-3a, IV-5d).

Ms. L[redacted] was placed in handcuffs in front of Respondent, removed from the courtroom and detained for over an hour (Exs IV-2, IV 2a, IV-3, IV-3a, IV-5c). While she was in custody, mobile medical attendants were summoned to assist Ms. L[redacted], who complained of chest pains and shortness of breath (Ex IV-4). After receiving such assistance, she declined to be transferred to a hospital (Ex IV-4).

When Ms. L[redacted] returned to the courtroom over an hour later, Respondent lectured her about respecting the court, stating *inter alia:*

> Men and women spill blood every day for the freedoms that we enjoy in this court. There are countries in this world where people don't have that opportunity and they don't have an opportunity to go before a judge. They just take your children away and you disappear in some countries in the world. These courts are provided to people so that there can be an orderly disposition of issues. And what goes along with enjoying these freedoms is a respect of the court. That's the building -- go ahead -- the judges, the staff, the officers, they will be treated with respect at all times. So, I don't need to be draconian, there's no reason to put you into the Sullivan County Jail for 30 days, but you need to think carefully before you address the court with disrespect.

(Exs IV-3, IV-3a, pp 1-2).

Respondent did not prepare a mandate of commitment or any other documentation memorializing that Ms. L[redacted]h had been held in custody, the particular circumstances of the offense or the specific punishment imposed (Exs IV-1, IV-5e).

Respondent's Testimony Regarding Charge IV

Respondent ordered Ms. L[redacted] taken into custody because he didn't like "her tone" and "didn't like that [she] was not recognizing her role in getting the child math help" (Tr 2486).

Charge V: On January 17, 2014, while presiding in Family Court over *L*[redacted] *G*[redacted] *v*[redacted] *C*[redacted], Respondent was discourteous toward Ms. C[redacted] and directed that Ms. C[redacted] be handcuffed, removed from the courtroom and held in summary contempt.

On January 17, 2014, Respondent presided in Family Court over *L*[redacted] *G*[redacted] *v C*[redacted] *C*[redacted], a child visitation and custody matter (Exs V-1, V-4a). Mr. G[redacted] and Ms. C[redacted] are, respectively, the father and mother of the child at issue, who was approximately six months old at the time (Tr 500, 1051; Exs V-1, V-2, V-2a). Mr. G[redacted] was represented by attorney John Ferrara and Ms. C[redacted] was represented by attorney K. C. Garn (Tr 499, 500, 503, 582, 1050-51, 1086; Exs V-2, V-2a, VI-3, V-3a).

During the proceeding, there was a discussion about Ms. C[redacted]'s parenting time and whether the child had an appropriate place to sleep if Ms. C[redacted] was given overnight visits with the child (Tr 500-02, 1051, 1089, 1091, 1101; Exs V-2, V-2a, V-3, V-3a). The discussion focused on whether a "Pack 'n Play" portable crib, purchased by

Ms. C[redacted] but in Mr. G[redacted]'s possession, would be available (Tr 500, 501, 502, 1052, 1087, 1088; Exs V-2, V-2a). The following colloquy occurred:

JUDGE MCGUIRE: Okay. You're way ahead of the game. All right, so, here's your option, Ms. C[redacted]. You can have a 24-hour period with your daughter, which will require that you buy or obtain a Pack 'n Play --

MS. C[redacted]: That's --

JUDGE MCGUIRE: -- or a crib or someplace appropriate for her to sleep, or you can continue to have day visits.

MS. C[redacted]: -- That's a crock of shit to me, honestly.

JUDGE MCGUIRE: I'll tell you what, take her into custody now.

COURT OFFICER: Miss, stand up, please.

JUDGE MCGUIRE: I told you this was not going well for you.

COURT OFFICER: Miss, Miss, stand up.

MS. C[redacted]: Well, this isn't fair, you know what I'm saying? All -- her stroller, everything is mine, I paid for all that stuff, so why should I have to go out and shovel --

JUDGE MCGUIRE: -- You need to put your hands behind your back.

MS. C[redacted]: Oh my God, this is so crazy right now.

(SOUND OF HANDCUFFS)

COURT OFFICER: I'm going to grab your coat. Follow me.

COURT OFFICER: Part II post -- one -- one second.

MS. C[redacted]: This is bullshit. You know, I'm having another baby --

COURT OFFICER: Go to your right, please.

MS. C[redacted]: -- And I have to sit here and fight for this shit. Like, this is crazy, real fucking crazy.

COURT OFFICER: One second. Slow down, slow down.

(DOOR CLOSES)

(Tr 502-03, 1052-53, 1054, 1087, 1088; Exs V-2, V-2a, pp 8 - 9, V-4b).

While addressing Ms. C[redacted], Respondent raised his voice and used an angry tone (Tr 503-04; Ex V-2).

Respondent did not warn Ms. C[redacted] that her behavior was contemptuous, nor did he give her an opportunity to be heard or an opportunity to purge the contempt before directing that she be taken into custody (Tr 504-05, 1054-55; Exs V-2, V-2a, V-4c).

Ms. C[redacted] was handcuffed behind her back in the courtroom in front of Respondent (Tr 503, 1053-54). About 15 to 20 minutes later, Ms. C[redacted], who was still handcuffed, was escorted by a court officer from the conference room through the public waiting room back to Respondent's courtroom (Tr 509-10, 1058; Exs V-2, V-3).

When Ms. C[redacted] returned to the courtroom Mr. Garn apologized on Ms. C[redacted]s behalf and informed Respondent that Ms. C[redacted] was pregnant (Tr 510-11; Exs V-3, V-3a). Addressing Ms. C[redacted] Respondent stated the following:

> JUDGE MCGUIRE: The court didn't bring the child into the world you did, and now you're going to bring another child into the world. And that's your decision to do that at a time where you don't have a home, don't have any money, don't have a job, but that's your decision --

(Tr, 511; Exs V-3, V-3a, p 4). Ms. C[redacted] was crying as Respondent was addressing her (Tr 512).

Respondent did not prepare a mandate of commitment or any other documentation memorializing that Ms. C[redacted] had been held in custody, the particular circumstances of the offense or the specific punishment imposed (Exs V-I, V-4e).

During the Commission's investigation, Respondent testified that the strategy he used that day was "a proper strategy in light of the circumstances that existed then" (Ex V-4d).

Respondent's Testimony Regarding Charge V

Respondent testified that he ordered Ms. C taken into custody so that she could "cool off," and at the time he believed that he acted appropriately (Tr 2503). Respondent acknowledged that his comment to Ms. C about bringing another child into the world "at a time when you don't have a home, don't have any money, don't have a job" was not respectful (Tr 2505).

Charge VI: On December 2, 2014, while presiding in Family Court over *A* *F* v *J* *K* *and N* *K*, Respondent was discourteous toward the litigants, directed that R K be taken into custody, removed from the courtroom and held in summary contempt and threatened J K with being taken into custody.

On December 2, 2014, Respondent presided in Family Court over *A* *F* v *J* *C* *K* *and N* *K*, a child custody and visitation matter (Tr 484, 487, 1103, 1129-30; Exs VI-1, VI-2). A F and N K are, respectively, the father and mother of the child at issue, who was approximately 13 months old at the time (Tr 485; Exs VI-1, VI-2, VI-2a, VI-3, VI-3a). J K is the child's maternal grandfather (Tr 1058, 1104; Exs VI-2, VI-2a). R K, the child's maternal grandmother, and M F and K F, the child's paternal aunts, were also present before Respondent (Tr 1058, 1104; Exs. VI-2, VI-2a, VI-3, VI-3a). Mr. F was represented by attorney John Ferrara and N K was represented by attorney K. C. Garn (Tr 484-85, 1106; Exs VI-2, VI-2a, VI-3, VI-3a). The child was represented by attorney Isabelle Rawich (Exs VI-2, VI-2a).

J[redacted] and R[redacted] K[redacted] were not represented by counsel (Tr 1058, 1061-62; Exs VI-2, VI-2a, VI-3, VI-3a).

The child had been living for the past year with the maternal grandparents, and Mr. F[redacted] had been granted visitation privileges two days a week, on which occasions the child was to be delivered to his home by Mr. K[redacted] and returned by Mr. F[redacted]'s aunts (Tr 458, 486, 556, 1059; Exs VI-1, VI-2, VI-2a). During the proceeding, there was discussion regarding recent occasions when Mr. K[redacted]n had not delivered the child to Mr. F[redacted] because the child was ill, or because there was a disagreement as to the visitation date (Tr 486, 556, 558, 1060, 1106; Exs VI-2, VI-2a). After Respondent set a trial date for January 15, 2015, the following colloquy occurred:

MR. K[redacted]: Your Honor, may I ask a question?

JUDGE MCGUIRE: Sure.

MR. K[redacted]: Is there any way, like, as far as me delivering the baby, is there any way that I cannot do that or am I forced?

JUDGE MCGUIRE: Yeah, I'm going to take care of that right now.

MR. K[redacted]: Thank you, sir.

JUDGE MCGUIRE: Okay --

MR. K[redacted]: -- Because it's --

JUDGE MCGUIRE: -- I want the child turned over to the father today. The father will have temporary custody of the child pending trial.

MRS. K[redacted]: Are you kidding me?

MR. K[redacted]: How could -- what about all these documents about him abusing – abuse, beating her up?

UNKNOWN FEMALE: No, that's because of you --

MR. K[redacted]: -- And everything else?

UNKNOWN FEMALE: That's because of you.

MR. K[redacted]: How's it because of me? He -- I have documents from Sullivan County, sir, that he left the dog in the bathroom, that he beat her up and everything. How are you going to turn the baby over?

JUDGE MCGUIRE: See you January 15th. Turn the child over to the father right now.

MR. K[redacted]: How are you going to turn the baby over to him right now, sir? Look at the paperwork.

JUDGE MCGUIRE: Turn the child over to the father right now.

MR. K[redacted]: Oh, my God.

MRS. K[redacted]: If anything happens to my son -- my grandson, Your Honor, I will sue the county, and I will sue you.

MR. K[redacted]: That's for sure.

JUDGE MCGUIRE: Take her into custody. You want to threaten the judge? Take her into custody.

MRS. K[redacted]: I'm just -- I'm not threatening you.

JUDGE MCGUIRE: Take her into custody. You want to threaten the judge? Take her into custody.

MR. K[redacted]: Sir, is there anything you can do with this, about the -- the threats that he did to her?

MRS. K[redacted]: Take a look, the abuse, what he did. He kicked her --

JUDGE MCGUIRE: Get her out of here.

MRS. K[redacted]: -- He kicked --

JUDGE MCGUIRE: Get her out of here.

MR. K[redacted]: Ma'am, Ma'am?

MRS. K[redacted]: Pray God, pray God, my grandson's life.

(SOUND OF HANDCUFFS)

MR. K[redacted] Ma'am?

MRS. K[redacted]: You're not God, Your Honor.

MR. K[redacted]: Ma'am, is there anything you can do with her?

MRS. K[redacted]: You -- you know the law, you're not God.

MR. K[redacted]: Sir, please, sir. Come on, sir.

JUDGE MCGUIRE: Goodbye.

MR. K[redacted]: For real, sir, he has documents of abusing my daughter while she was pregnant. I have them right here, sir. Sir, please don't do that, sir. Please don't.

JUDGE MCGUIRE: Next case.

MR. K[redacted] Put him somewhere else if you have to.

JUDGE MCGUIRE: Get him out.

MR. K[redacted] Please, sir.

COURT OFFICER: Parties step out.

MR. K[redacted]: Sir. Wow, wow.

(Tr 486-89, 559-62, 564-66, 1060, 1104-07, 1109; Exs VI-2, VI-2a, pp 18 - 21).

Respondent addressed the parties in an angry, raised voice (Tr 488-89; Exs VI-2, VI-4c).

Respondent did not warn Mrs. K[redacted] that her behavior was contemptuous, nor did he give her an opportunity to be heard or an opportunity to purge the contempt before directing that she be taken into custody (Tr 489-90, 1062; Exs VI-2, VI-2a, VI-4d). Respondent did not provide an attorney for Mrs. K[redacted] prior to ordering that she be placed in custody (Tr 490, 1061; Exs VI-2, VI-2a, VI-4e). Mrs. K[redacted] was placed in handcuffs in the courtroom in front of Respondent, removed from the courtroom and detained for over an hour (Tr 488, 491-92; Exs VI-2, VI-2a, VI-3, VI-3a).

During the Commission's investigation, Respondent testified that "under the circumstances" present that day it "was an appropriate act that [he] took at that point" (Ex VI-4b)

When Mrs. K[redacted] returned to the courtroom she seemed upset, indicated that she had contacted an attorney, and both she and Mr. K[redacted] apologized repeatedly to Respondent (Tr 493; Exs VI-3, VI-3a). The following colloquy then occurred:

JUDGE MCGUIRE: -- this is a judicial contempt proceeding. It's called a summary proceeding. If I say you disrupted the proceedings, I can put you in jail for 30 days and that's it.

MR. K[redacted]: Please don't do that, sir. I'm sorry.

JUDGE MCGUIRE: You want me to put you in for 30 days?

MR. K[redacted]: No. I'm sorry.

COURT OFFICER: Don't, don't, don't talk. No outbursts.

MRS. K[redacted]: I'm sorry, Your Honor. That baby is my life.

JUDGE MCGUIRE: Yeah, but he's not your child.

MRS. K[redacted]: I understand.

JUDGE MCGUIRE: Belongs to the father and the mother.

MRS. K[redacted] I understand.

JUDGE MCGUIRE: That's whose baby it is.

MRS. K[redacted] I -- I apologize.

JUDGE MCGUIRE: All right.

MRS. K[redacted]: It's like -- like a piece of me was took away from me --

JUDGE MCGUIRE: All right --

MRS. K[redacted]: I'm sorry.

JUDGE MCGUIRE: -- Well, no one's taking anybody away from anybody, but the child has a right to a relationship with the mother and the father. And when I believe that people are trying to stand between the relationship that the child is entitled to with the mother and the father, it upsets me.

MRS. K[redacted]: But --

JUDGE MCGUIRE: -- All right? So, what I'm going to do, Ms. K[redacted], is I'm going to release you this time. I'm not going to pursue judicial contempt against you, I'm not going to put you in jail, all right?

MRS. K[redacted] Thank you.

(Tr 493, 1063; Exs VI-3, VI-3a, pp 1- 3).

During the Commission's investigation, Respondent testified that he threatened to incarcerate Mr. K[redacted] for 30 days because he interrupted Respondent (Ex VI-4f).

Respondent thereafter terminated the visitation rights of Mr. and Mrs. K[redacted] advised them that they could file a petition for visitation and adjourned the proceeding (Exs VI-3, VI-3a).

Respondent did not prepare a mandate of commitment or any other documentation memorializing that Mrs. K[redacted] had been held in custody, the particular circumstances of the offense or the specific punishment imposed (ExVI-1).

Respondent's Testimony Regarding Charge VI

Respondent ordered Mrs. K[redacted] taken into custody because he perceived her statement that she would sue him and the County if anything happened to her grandson as a threat (Tr 2340, 2506-08). Respondent admitted that he yelled "get her out of here" in a loud voice (Tr 2509). Respondent also acknowledged that he threatened to hold Mr. K[redacted] in contempt because he was "disrupting the proceedings" by "talking over the court" (Tr 2511-12).

Charge VII: Respondent threatened three Family Court litigants with contempt of court without basis or authority in law and otherwise failed to treat the litigants in a patient, dignified and courteous manner.

While presiding over three Family Court cases during 2013 and 2014, Respondent threatened to hold litigants in contempt of court without a legal basis and otherwise treated them in an inpatient, undignified and discourteous manner.

A. M[redacted] P[redacted] v S[redacted] R[redacted]s and S[redacted] Ro[redacted]

On January 28, 2013, Respondent presided in Family Court over *M[redacted] P[redacted] v S[redacted] R[redacted] and S[redacted] Ro[redacted]* a child custody and visitation matter (Tr 513; Exs VII-1, VII-1a, VII-4, VII-4a). Mr. P[redacted] is the father of the child (Exs VII-1, VII-1a, VII-4,

VII-4a). Ms. R[redacted], now known as S[redacted]P[redacted], is the child's mother (Exs VII-1, VII-1a, VII-4, VII-4a). Ms. Ro[redacted] is the child's maternal grandmother (Exs VII-1, VII-1a, VII-4, VII-4a).

Mr. P[redacted] was represented by John Ferrara, Ms. Re[redacted] was represented by Marcia Heller, Ms. Ro[redacted] was represented by K. C. Garn, and the child, who was approximately eleven years old at the time, was present in court and was represented by Alexandra Bourne (Tr 512-13, 583-84, 1063-65, 1067; Exs VII-1, VII-1a, VII-4, VII-4a).

Respondent set the matter down for trial on March 5, 2013, issued a temporary order granting Mr. P[redacted] visitation every other weekend, and adjourned the proceeding (Tr 516, 590-91, 1067, 1117; Exs VII-1, VII-1a, VII-4, VII-4a).

After the case was concluded and while the parties and child were still in the courtroom, Ms. Ro[redacted] said something to her granddaughter, whereupon Respondent got "angry" and was "yelling" and "screaming" at Ms. Ro[redacted] (Tr 517, 591, 1068-69; Exs VII-4, VII-4a). Respondent told the grandmother, in sum or substance, that she was "going to jail" and mentioned "putting her in handcuffs" (Tr 517, 1684-85, 1714-15).

Ms. Ro[redacted] started to have difficulty breathing and was in "great distress" (Tr 362-363, 517, 519, 1068, 1685, 1708, 1714-15). Respondent nevertheless continued to yell at her (Tr 517, 519). Court staff called for an ambulance who treated Ms. Ro[redacted] at the courthouse (Tr 362, 518, 1068, 1070; Ex VII-3).

B. Department of Family Services v E[redacted] and F[redacted]

On November 7, 2014, Respondent presided in Family Court over *D[redacted] v T[redacted] E[redacted] and A[redacted] F[redacted]*, a child custody and visitation matter (Tr 520, 593-94, 520; Exs VII-5, VII-5a).

While Ms. E[redacted] was testifying, Respondent yelled, "Ms. E[redacted], you are about three seconds from getting yourself put in handcuffs and taken out of here," notwithstanding that Ms. E[redacted] was not disrupting the proceeding and/or otherwise engaging in any inappropriate conduct (Tr 520-22, 600; Exs VII-5, VII-5a). Respondent did not indicate what alleged behavior of Ms. E[redacted]'s he found to be objectionable (Tr 521; Exs VII-5, VII-5a).

C. *V[redacted] v G[redacted]*

On August 21, 2014, Respondent presided in Family Court over *C[redacted] V[redacted] v A[redacted] G[redacted]* a child custody and visitation matter (Tr 522; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a). Mr. V[redacted] and Ms. G[redacted] are the parents of the two children at issue (Tr 522-23; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a). In 2013, the parties agreed to move to California with the understanding that Ms. G[redacted] would first move with the children and that Mr. V[redacted] would later follow (Tr 602-03, 606-07; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a). Before Mr. V[redacted] joined them in California there was a breakdown in the relationship, which led Mr. V[redacted] to file a custody petition in New York (Tr 603, 607; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a). The matter was heard in the Sullivan County Family Court before Respondent (Tr 522; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a).

During the proceeding on or about August 21, 2014, Respondent made the following statements:

- Notwithstanding the absence of any evidence that Ms. G[redacted] had a boyfriend, Respondent said, "I mean, you're sure her boyfriend isn't here to testify?" (Tr 527; Exs VII-6, VII-6a, p 28).
- Commenting on the home of the relative with whom Ms. G[redacted] and the children were residing in California, Respondent said: "Because all of a sudden, while there was a plan for them to go out and stay with the aunt and get settled and then get their own place, all of a sudden, the aunt's house shrunk once the mother got there. It was a six-bedroom home, now it's a two-bedroom home, and there's no room for the father. No mangers in the area, there's no room at the inn, the Dad's not allowed to come" (Exs VII-7, VII-7a, p 7).
- Without any evidentiary basis, Respondent said: "Clearly, the mother went out there [California] because she wanted out of this marriage. Clearly, she want--she's out there and she gets involved in another relationship, and clearly, that's her interest" (Tr 529-30, 532; Exs VII-7, VII-7a, p 8).
- Immediately thereafter, in a loud voice Respondent said to Ms. G[redacted]' mother who was sitting in the back of the courtroom: "I'm going to throw you out and put you in handcuffs in about 30 seconds, all right? So you can either walk out or get thrown out if I have to look at another outrageous expression from you. Clear? Because if I have to tell you again, I'm just going to ask the officer to put you in handcuffs, and then you'll – you'll experience the Sullivan County Jail" (Tr 531; Exs VII-7, VII-7a, p 8). [5]

Respondent neither indicated what the mother had done to provoke him nor allowed her to explain or apologize (Exs VII-7, VII-7a, VII-10b). According to Respondent, he threatened to hold Ms. G[redacted]' mother in contempt because "she was being disruptive in the court by her expressions" (Ex VII-10b).

[5] The FWC states that Respondent's comments were directed towards Ms. G[redacted] but at the hearing the witness testified that Respondent threatened to place Ms. G[redacted]' mother, not Ms. G[redacted] in handcuffs (Tr 531). The Commission moves to conform the FWC to the hearing evidence. *See Dittmar Explosives v Ottaviano*, 20 NY2d 498 (1967).

As subsequently found by the Appellate Division in *V[redacted] v G[redacted]*, 130 AD3d 1215 (3d Dept 2015):

- After hearing only from Ms. G[redacted] on direct testimony, and on a record that was "patently insufficient" to support such action, Respondent granted full custody to Mr. V[redacted] and made no provision for Ms. G[redacted] to have contact with the children (Ex VII-9, p 1).
- Respondent "treated the mother [Ms. G[redacted]] with apparent disdain, such that [the Court] cannot be assured that further proceedings will be conducted in an impartial manner." Therefore, the court "direct[ed] that future proceedings between these parties be presided over by a different judge" (Tr 533; Ex VII-9, p 2).

Respondent's Testimony Regarding Charge VII

As to S[redacted] Ro[redacted], Respondent denied that he "threatened" Ms. Ro[redacted] and claimed that he only "warned" her that she would be held in contempt if she continued to speak to her grandchild (Tr 2525-26, 2350).

Respondent admitted that never warned Ms. E[redacted] before he threatened to have her handcuffed and removed from the courtroom but instead he gave her "nonverbal" cues, like shaking his head or making eye contact (Tr 2354-55, 2528, 2529).

With respect to Ms. G[redacted], Respondent testified that he believed that his comments to Ms. G[redacted] were fair and an accurate statement of the facts (2534-36). He later stated that "on reflection" he agreed with the finding of the Appellate Division that he had treated Ms. G[redacted] with disdain (Tr 2544-45).

Charge VIII: **From 2011 through 2015, Respondent repeatedly and inappropriately yelled at, demeaned and/or otherwise failed to be patient, dignified and courteous toward court staff, including his confidential secretary Wendy Weiner and court officers Miguel A. Diaz, Brenda Downs, and Sergeant Guillermo Olivieri.**

At various times from 2011 through 2015 Respondent spoke to his confidential secretary Wendy Weiner, Court Officer Miguel A. Diaz, Court Officer Brenda Downs and Lieutenant Guillermo Olivieri in a rude, discourteous and demeaning manner.

A. Wendy Weiner

Wendy Weiner was Respondent's confidential secretary from January 2011 until March 2015 and currently is the Deputy Chief Clerk of the Sullivan County Surrogate's Court (Tr 1440-41, 1565). Respondent was "passive aggressive" in his dealings with Ms. Weiner (Tr 1461). If Respondent was not happy with Ms. Weiner, his voice got "much louder" and he was "very curt and rude and [used] a very scolding tone" (Tr 1462). Respondent frequently yelled at Ms. Weiner (Tr 1165).

On January 14, 2015 at around 7:50 a.m., Respondent emerged from his private office in chambers and told Ms. Weiner that "we have a problem" (Tr 1442, 1576). Ms. Weiner followed Respondent into his office and brought paper files of the cases on the calendar that day (Tr 1442-44, 1447, 1582). Ms. Weiner thought Respondent could look through the paper files if he could not access his computer (Tr 1447-48).

Respondent was "very upset and agitated" and complained that there was a problem with the computer (Tr 1443-45). Respondent was "red-faced" and "shouting about the computers, that he needed access to something" and "shouting that he needed somebody … to fix the problem" (Tr 1444-45; Exs VIII-4f, VIII-4g). When Ms. Weiner

explained that no one was in the IT Department at that time of the morning, Respondent "started getting crazy" (Tr 1445). Respondent saw "red" and "lost it," he was shouting and his "hands were going" (Tr 1446-47). Respondent took the computer jump drive which he had in his hand and threw it across the desk towards Ms. Weiner (Tr 1445-46).

Respondent took the files that Ms. Weiner had brought in and threw them across the desk and onto the floor (Tr 1448). Respondent then came around the desk in a "tantrum of rage" and kicked the files and paperwork all over his private office (Tr 1448-49). As Ms. Weiner started to back out of the office Respondent stared to pick up the files (Tr 1449).

Ms. Weiner was "shaking," "scared," "very upset" and "couldn't even think straight" (Tr 1449, 1584, 1589, 1592, 1601, 1609, 1611).

A little while later Court Officer Brenda Downs entered chambers as part of her security sweep (Tr 373-74, 1605, 1607). Officer Downs saw Ms. Weiner sitting at her desk staring into space, crying (Tr 374-75). Officer Downs had a conversation with Ms. Weiner and noted that she was "visibly upset," "shaking," "crying" and "wide eyed" (Tr 375, 435).

Upon leaving Respondent's chambers, Officer Downs spoke to Sergeant Olivieri about her conversation with Ms. Weiner (Tr 376). Sergeant Olivieri went to Respondent's chambers and spoke with Ms. Weiner, who was "visibly shaken up," teary eyed and seemed scared and very nervous (Tr 163, 1453-54). After speaking to Ms. Weiner, Sergeant Olivieri wrote a report about the incident (Tr 164). Thereafter, Mary

Grace Conneely, Respondent's law secretary, arrived at work and noticed that Ms. Weiner was "visibly upset" (Tr 1331).

A couple of weeks later Respondent asked to speak with Ms. Weiner and Ms. Conneely in his private office (Tr 1332, 1456-57). At the meeting, Respondent sat at his desk, looked down, and said "I've been informed some of my actions might have offended you. For that I'm sorry" (Tr 1457). When Ms. Weiner started to reply, Respondent outstretched his arm and with his palm facing Ms. Weiner and Ms. Conneely and said, "That is all, you are dismissed" (Tr 1457).

After the incident with Respondent on January 14, 2015, Respondent never spoke to Ms. Weiner (Tr 1457-58, 1571). All communications were through email (Tr 1458). The relationship between the two had "chilled," was "very formal" and was a "bit tense" (Tr 1282, 1284, 1318).

In March 2015, Ms. Weiner received a call from the District Executive's office (Tr 1459). Ms. Weiner was told that the Office of the Inspector General had determined "that there was harassment" and as a result, she was transferred to work in the Sullivan County law library (Tr 986-88, 1460-61).

B. Court Officer Miguel Diaz

Court Officer Miguel Diaz had been a court officer for 15 years (Tr 1669-70, 1686-87, 1691). He was a court officer in Sullivan County Family Court for five years and was rotated into Respondent's part for four-week intervals (Tr 1670-71, 1686-87).

Respondent did not treat Officer Diaz "well" (Tr 1159). He "just yelled" at Officer Diaz "frequently" (Tr 1236). On one occasion when he was alone in the

courtroom with Respondent, Respondent told Officer Diaz in a "loud and angry tone" that he was "too slow" and "needed to speed up the process" (Tr 1683).

Officer Diaz was assigned to Respondent's court part on June 29, 2012 (Tr 1679). After most of the parties had entered the courtroom, Officer Diaz received a radio transmission from the court officers in the waiting area that somebody else was heading to the courtroom (Tr 1679-80). Officer Diaz opened the door to the courtroom in anticipation of the individual arriving (Tr 1680-81).

Officer Diaz tried to tell Respondent that Lieutenant McCabe was coming to the courtroom to see what Officer Diaz needed but Respondent responded, "Keep 'em out. Keep 'em out. Close the door" (Tr 1679; Exs VIII-2, VIII-2a). When Officer Diaz attempted to tell the lieutenant what was happening, Respondent yelled, "They're—they're staying out. Close the door. Jesus" and "Get off the radio" (Tr 1679; Exs VIII-2, VIII-2a). On the audio recording of the proceeding, Respondent can be heard yelling these comments in a loud and angry voice (Ex VIII-2).

C. Sergeant Guillermo Olivieri

On February 25, 2013, Sergeant Olivieri received a radio transmission from Officer Diaz advising that Respondent wanted to see him in chambers (Tr 119-20, 293, 305; Exs PH-5, PH-18, PH-19). As Sergeant Olivieri approached, he saw the door to the courtroom swing open and Respondent – still in his robes – came towards him in a "very aggressive manner, red in the face and pointing in [his] direction" (Tr 123-24, 125, 1464-67).

Respondent's court assistant, Andrea Rogers, had been in Respondent's courtroom and she saw that Respondent "started charging" towards Sergeant Olivieri "like he was going to hit him" (Tr 1163). Respondent was "very aggressive" and was "shouting" (Tr 1163). From her desk in chambers, Ms. Weiner observed Respondent come "barreling" out of the door from the courtroom and into chambers "full throttle" (Tr 1464-67).

Respondent was yelling "I want another officer now, now, I want another officer now" and that he "need[ed] to move the calendar" (Tr 123, 125-26, 130-31, 314, 1163). Respondent was "very, very agitated, upset" (Tr 124). Sergeant Olivieri was "taken back," "in shock," and "scared" (Tr 124, 128).

Respondent and the sergeant were two to three feet apart (Tr 312-13). When Respondent advanced in an aggressive manner, Sergeant Olivieri instinctually got into a "bladed stance" because he was unsure what was going to happen (Tr 128, 313). While in training at the Academy, the sergeant learned that when you are "having an encounter with" someone you should angle your body, so your left shoulder is facing the individual and the right side of your body where you keep your firearm is furthest away (Tr 128-30).

In an effort to calm Respondent down, Sergeant Olivieri told Respondent that he would assign a different court officer to Respondent's part that day (Tr 127, 314, 1164, 1241-42). The sergeant told Respondent that he should not talk to him "in that tone" and walked away (Tr 127, 130, 314). The sergeant reported the incident to Lieutenant McCabe and his supervisor at the District Office (Tr 131-32, 191-92, 1760-61).

After the incident Sergeant Olivieri was "a mess," he was embarrassed, scared, nervous and shaken up (Tr 132). Respondent never apologized to the sergeant and they

never discussed what had happened (Tr 132-33, 192, 331). Ms. Rogers described the incident as "scary" (Tr 1164).

D. Court Officer Brenda Downs

In or about 2014, Court Officer Brenda Downs was assigned to Respondent's court part (Tr 364, 422). At the conclusion of a proceeding, Respondent called for a 15-minute recess (Tr 364, 410, 413, 416). Officer Downs cleared the courtroom and went to Respondent's chambers (Tr 364-65).

Respondent was in his private office with his door open (Tr 366, 411). Respondent was having trouble finding something on his computer and became agitated, frantically searching on the computer and twirling his chair (Tr 367, 412, 415).

Respondent got up from his desk, abruptly walked across the office, looked Officer Downs in the eye and without saying anything grabbed the door and slammed it "with as much force as he could" (Tr 368-69). Officer Downs was only four or five inches away from the door (Tr 369). Officer Downs left chambers and went to the security post where she reported the incident to Sergeant Olivieri (Tr 138-39, 329, 369). Respondent never apologized or discussed the incident with Officer Downs (Tr 370).

Respondent's Testimony Regarding Charge VIII

As to the incident with Wendy Weiner on January 14, 2015, Respondent acknowledged that he became "quite anxious" and "frantic" when he was unable to access his notes for the court calendar (Tr 2672-73). He denied that he raised his voice, threw a jump drive, or threw or kicked court files (Tr 2363, 2673-74, 2675). Respondent continued that "there was nothing discourteous or undignified" about his behavior

because there were "very few comments that were even directed at Ms. Weiner that day" (Tr 2679).

With respect to Officer Diaz, Respondent testified that he became "irritated" when Officer Diaz did not get cases into the courtroom quickly (Tr 2656-57). Respondent stated that on June 29, 2019, he directed Officer Diaz to "close the door" but did not get angry (Tr 2658-59).

Respondent denied that he was "screaming and yelling" when he approached Sergeant Olivieri (Tr 2662-63) but admitted that he was not patient during this encounter (Tr 2665).

With respect to Court Officer Downs, Respondent testified that he did not "intentionally" close the door in her face (Tr 2377).

Charge IX: On March 10, 2014, while presiding in Family Court over *M*[redacted] *M*[redacted] *v R*[redacted] *H*[redacted] Respondent failed to be patient, dignified and courteous toward the parties.

On March 10, 2014, Respondent presided in Family Court over *M*[redacted] *M*[redacted] *v R*[redacted] *H*[redacted] a child custody and visitation matter (Exs IX-1, IX-2, IX-2a). The parties were before Respondent for court approval of a custody and visitation agreement (Exs IX-1, IX-2, IX-2a). Neither party was represented by counsel (Exs IX-1, IX-2, IX-2a).

Respondent questioned the parties regarding the custody and visitation agreement and said, *inter alia,* that the litigants were "being civil to one another" and that the parties should use "good judgment" before introducing their daughter to someone that they were dating (Exs IX-1, IX-2, IX-2a, p. 11).

Respondent then said it would be problematic were either of the parties to date or introduce their child to a "drug addict," a "slut" or a "child abuser," notwithstanding the absence of any facts or allegations that either party had a history of dating such individuals, had introduced their child to such individuals, or was dating anyone at all (Exs IX-1, IX-2, IX-2a, p 11).

Respondent's Testimony Regarding Charge IX

Respondent stated that there had been no discussion during the court appearance that either party was dating anyone at the time and that his comments had nothing to do with the specific case (Tr 2547-48). Respondent explained that his comments were part of his standard colloquy to parents (Tr 2381). Respondent admitted that his comments were inappropriate and undignified (Tr 2548-50).

Charge X: From January 1, 2011 through 2015, Respondent repeatedly engaged in the unauthorized practice of law notwithstanding that, as a full-time judge, he was prohibited from doing so.

Notwithstanding his status as a full-time judge, Respondent engaged in the impermissible practice of law in connection with six different matters, including criminal cases against his son and his wife, the purchase of a foreclosure property and a personal injury matter, a real estate transaction and criminal case from his former private law practice that remained pending after he took the bench.

A. The Transition from Private Practice to the County Court Bench

Prior to assuming judicial office in January 2011, Respondent had a private law practice with an office on [redacted], New York (Tr 2049, 2104, 2185; Ex X-41b). Respondent maintained a telephone and answering machine for law office

business purposes, employed a fax machine using the heading "McGuire Law," and routinely used his private law office letterhead for business correspondence (Tr 2550; Exs X1-C, X-4, X-40, X-40b).

From on or about January 1, 2011 through in or about 2015, Respondent utilized the same letterhead, facsimile machine and telephone number that he had used in private practice (Tr 2057, 2106, 2111-12, 2127-30, 2168-69, 2290-91, 2554; Exs X-1, X-1a, X-1b, X-1c, X-1d, X-3, X-3a, X-6, X-40, X-40d, X-41h, X-41i, X-47l). The answering machine announcement associated with the phone number stated in sum and substance:

> You've reached the office of Michael McGuire, there's no one available to take your call right now, but leave your name, number and a message when you hear the tone, someone will get back to you as soon as possible.

(Tr 977-78, 1258-59, 2106, 2289, 2106-07, 2551-52; Exs X-41d, X-41f, X-41h). Respondent's voice was on the recording (Tr 2551).

After closing the office, Respondent had all his mail forwarded to [redacted] (Tr 2551; Ex X-41c).

B. *People v W[redacted] M[redacted]*

On or about September 20, 2012, Respondent's son W[redacted] M[redacted], was arrested in Oneonta, New York (Otsego County), for Unlawful Possession of Marihuana (Tr 2558; Exs X-1, X-47a).

Respondent told attorney Zachary Kelson about the arrest and Mr. Kelson offered to contact the District Attorney's office about an Adjournment in Contemplation of Dismissal ("ACD") (Tr 632-633, 2558-59; Exs XI-1, X-47c, X-47e). Mr. Kelson thereafter advised Respondent, via email, that the District Attorney's office would not

offer an ACD to Respondent's son (Tr 634-40, 644-45, 652-53, 2558-59; Exs XI-1, X1-2, XI-3). Respondent and Mr. Kelson emailed back and forth about the legal issues in the case (Tr 641-42, 645; Exs XI-1, XI-2, XI-3)

On or about December 2, 2012, Respondent sent two letters on behalf of his son, on the letterhead of his former law office, to Chief Clerk Catherine Tisenchek of the Oneonta City Court (Tr 2559-61; Exs X-1, X-1a, X-1b, X-47e, X-47g). In the first December 2nd letter, Respondent enclosed his Notice of Appearance stating that he "appears as counsel for the defendant" (Ex X-1a). He also requested:

> [p]roduction of a proper accusatory instrument setting forth facts, of an evidentiary character to establish each of the elements of the charged offense and the defendant's commission thereof,

and the production of a lab report generated in connection with his son's arrest, "setting forth the nature of quality of the substance alleged to have been possessed by Mr. M[redacted]" (Ex X-1a).

Respondent also enclosed an Affirmation of Actual Engagement stating that he "represent[ed] Defendant herein, W[redacted] M[redacted]" (Ex X-1a). Respondent listed three County Court and three Family Court cases in which he would be engaged on December 5, 2012 (Ex X-1a). He also stated that on December 6, 2012, he would be "commenc[ing] a trial" in *P*[redacted] *v B*[redacted] *H*[redacted] (Ex X-1a). Respondent was presiding as a judge over all the matters he listed in this letter (Tr 2560; Ex X-47h).

In the second December 2nd letter, Respondent discussed additional dates on

which he would not be available to appear in court on behalf of his son including every Monday (Ex X-1b). Respondent was not available to appear on behalf of his son on Mondays because he presided in Family Court on Mondays (Tr 2562).

Respondent signed both letters and identified himself on the signature line of both letters, the Notice of Appearance and the Affirmation of Actual Engagement, as "MICHAEL F. McGUIRE, ESQ" (Tr 2559-62; Exs X-1a, X-1b, X-47g, X-47j). The letters were sent by facsimile and contained a facsimile stamp reading "MCGUIRE LAW" (Tr 2559-60, 2561; Exs X-1a, X-1b). Both the Notice of Appearance and the Affirmation of Actual Engagement list Respondent's home address as his location.

On December 8, 2012, Respondent sent a letter to the Chief Clerk Tisenchek, on the letterhead of his former law office, regarding the dates on which he would be available to appear in court on behalf of his son (Tr 2562; Exs X-1c, X-47l). The letter was sent by facsimile and contained a facsimile stamp reading "MCGUIRE LAW" (Exs X-1c, X-47l). Respondent identified himself on the signature line of the letter as "MICHAEL F. McGUIRE, ESQ." (Exs X-1c, X-47l).

On February 26, 2013, Respondent conferenced his son's case with Otsego County ADA Michael F. Getman and Oneonta City Court Judge Richard W. McVinney, in the Oneonta City Courthouse (Tr 2395, 2563-64; Exs X-2, X-2a, X-47q).

On April 8, 2013, Respondent, sent a letter to Judge McVinney, on the letterhead of his former law office, regarding his son's case. The text of the letter stated as follows:

> Enclosed herewith please find a Notice and Omnibus Motion in regard to the above captioned matter. By separate cover, a copy of these papers have been simultaneously provided to the Assistant

> District Attorney handling the matter, Mr. Getman. Thank you, in advance, for your attention to this matter, if you have any questions, concerns or comments please feel free to contact me.

Respondent drafted and signed the motion and identified himself on the signature line as "Michael F. McGuire, Esq." (Tr 2564, Exs X-1d, X-47o).

Respondent identified himself in the first paragraph and on the signature line of the Notice of Motion as Michael F. McGuire, Esq., attorney for W[redacted] M[redacted] (Tr 2564; Ex X-1d). In the submission, Respondent moved *inter alia* that the matter be dismissed for various reasons and that a hearing be held to determine the admissibility of statements that the defendant made to the police (Ex X-1d).

In the first two paragraphs in the Affirmation in Support, Respondent stated that he is an "attorney duly authorized to practice law in the State of New York" and that he represented the defendant (Ex X-1d). On the signature line, Respondent identified himself as "MICHAEL F. McGUIRE, ESQ" (Tr 2564; Ex X-1d). The affirmation, which is 26 pages long, set forth detailed legal arguments in support of Respondent's application on behalf of his son (Ex X-1d).

On August 4, 2013, Respondent sent a letter on behalf of his son to Judge McVinney (Ex X-1e). The letterhead identified Respondent as "MICHAEL F. McGUIRE Attorney and Counselor at Law" and listed his home address (Ex X-1e). Respondent is identified on the signature line of the cover letter and the Reply Affirmation as "Michael F. McGuire, Esq." (Tr 2567; Ex X-1e).

In the Reply Affirmation, Respondent stated that he was an "attorney duly authorized to practice law in the State of New York" and that he represented the

defendant (Ex X-1e). The six-page Reply Affirmation set forth detailed legal arguments in response to the opposition papers filed by the District Attorney's office (Ex X-1e).

On August 6, 2013, Judge McVinney issued a written Decision and Order in *People v W[redacted] M[redacted]*, listing Respondent as the attorney of record for the defendant (Ex X-1f). Judge McVinney dismissed the charges against Mr. M[redacted] in the interest of justice pursuant to Criminal Procedure Law § 170.40 (Tr 2568; Ex X-1f).

C. *People v Corinne McGuire*

On May 17, 2010, Respondent's wife, Corinne G. McGuire, received a speeding ticket in Wawarsing, New York (Tr 2131, 2382, 2569; Ex-X-3). Respondent, who was not a judge at the time, represented his wife (Tr 2131, 2382, 2569; Ex X-3).

On or about July 25, 2011, Respondent sent a letter on behalf of his wife, on the letterhead of his former law office, to Wawarsing Town Court Justice Charles J. Dechon (Tr 2131, 2132, 2383, 2569; Exs X-3a, X-45b). Respondent's letter stated *inter alia* that he was now a County Court Judge and was "not permitted to represent this or any other client," but nevertheless was asking the court to "accept the previously submitted plea" that Respondent had discussed with the prosecutor (Tr 2569, 2571; Ex X-3a). After Respondent sent the letter the ticket was dismissed (Tr 2132, 2383; Ex X-3a).

D. George Matisko

Prior to becoming a full-time judge, Respondent provided legal representation to George Matisko in a personal injury matter (Exs X-4, X-5, X-44b).

On January 20, 2011, Mary Ann Schares, who is Respondent's sister and who worked in Respondent's former law office, spoke with a representative for the

Progressive Casualty Insurance Company ("Progressive") regarding Mr. Matisko (Tr 2189-91; Exs X-14, X-44d). The claim representative told Ms. Schares that on November 23, 2010, Respondent said that he would forward Mr. Matisko's medical authorization but Progressive had not yet received it (Ex X-14). Ms. Schares told the claim representative that "right around that time att[orney] was elected County judge & things were crazy" (Ex X-14). Ms. Schares told the claim representative that she would "elevate [his] request" to Respondent (Ex X-14).

Thereafter, Ms. Schares sent a letter to Progressive on the letterhead of Respondent's former law office stating, "As per our telephone conversation today, please find enclosed the signed HIPPA form you requested" (Ex X-6). Ms. Schares signed Respondent's name to the letter (Ex X-6).

Between January and October 2011, Progressive sent three letters to Respondent at the address of his former law practice (Exs X-7, X-8, X-9). In the letters Respondent was addressed as Mr. Matisko's attorney (Exs X-7, X-8, X-9).

Respondent's confidential secretary, Ms. Weiner, had worked at a personal injury law firm prior to working for Respondent (Tr 1470). Respondent told Ms. Weiner that he did not have a background in personal injury matters and directed her to call Progressive and negotiate a settlement for Mr. Matisko (Tr 1468-70). On or about October 31, 2011, Ms. Weiner called the adjuster at Progressive during business hours and after some negotiation, Progressive offered to settle the matter for $1,000 (Tr 1469-71, 1643, 1645; Ex X-14). Respondent told her to accept the offer (Tr 1470, 1471).

When Ms. Weiner told Progressive that Mr. Matisko would accept the offer, Progressive asked her to draft a release of settlement (Tr 1471). Respondent told Ms. Weiner to draft the release (Tr 1471-72).

Ms. Weiner drafted a release during business hours using a form she got from her former law office and sent it to Progressive (Tr 1471-73, 1640). On November 30, 2011, Ms. Weiner sent the draft release by email during business hours to the Progressive adjuster, who suggested a few changes (Tr 1473, 1474; Ex X-15). Ms. Weiner left a copy of the email exchange, the release and a post-it, which stated that Mr. Matisko would be visiting chambers the next day, on Respondent's desk (Tr 1475; Ex X-15).

Mr. Matisko came to chambers and signed the release during business hours on December 23, 2011 (Tr 1476-78; Ex X-10). Ms. Weiner notarized the document (Tr 1477; Ex X-10). Respondent was also present (Tr 1477).

Ms. Weiner signed and sent a letter to the adjuster with the signed release, using the "Michael F. McGuire, Esq." letterhead with Respondent's PO Box number (Tr 1476, 1479-80; Ex X-10). Ms. Weiner used that address "for most of the stuff that was personal coming through our office as opposed to official court business" (Tr 1479).

In January 2012, Respondent told Ms. Weiner that neither he nor Mr. Matisko had received the check from Progressive and asked her if she could have Progressive issue a new check (Tr 1480, 1651). On January 25, 2011, Ms. Weiner called Progressive, and thereafter, drafted a letter during business hours requesting a new check (Tr 1481; Ex X-11). Ms. Weiner electronically signed Respondent's name to the letter, which was on the

"Michael F. McGuire, Esq." letterhead with Respondent's PO Box address (Tr 1480, 1648). Respondent was aware that Ms. Weiner was sending the letter (Tr 1481, 1648).

On January 26, 2012, Progressive issued a $1,000 check made out to "GEORGE MATISKO ADULT MALE & MICHAEL MCGUIRE, ESQS., AS ATTORNEY" (Exs X-12, X-13a). The check was sent to [redacted], the address Respondent used after he closed his office (Ex X-13a). The back of the check was endorsed by Respondent and Mr. Matisko (Tr 1650; Exs X-12, X-44h).[6]

E. Eileen and Phillip Moore

In 2014, Edward Jeffrey Dolfinger, the listing broker for the foreclosure company PennyMac Mortgage Investment Trust Holdings, LLC ("PennyMac"), told a friend about a home he was trying to sell in Napanoch, New York (Tr 1370-71). Eileen and Phillip Moore had decided to sell their house in Ulster County (Tr 677, 685-86, 700) and the Moore's daughter, Heather, heard about the Napanoch house (Tr 1371, 1405-06). Heather called Mr. Dolfinger, who told her that foreclosure sales were tricky and recommended that the Moores use an attorney (Tr 677, 1406).

The Moores knew Respondent through their son-in-law (Tr 678-79, 695, 700-01, 703). The Moores spoke to Respondent after a basketball game at Sullivan County Community College, where Respondent had announced the game (Tr 679-80, 686-87, 695, 700). The Moores told Respondent that they wanted to proceed with the purchase without an attorney (Tr 686). Respondent told them that they needed to have the home

[6] Ms. Weiner testified that she had never seen the check before and did not use Respondent's signature stamp to endorse the back of the check (Tr 1482, 1649). Ms. Weiner further testified that the endorsement looked like Respondent's "scribble" and was too small to be from a stamp (Tr 1650).

inspected, get a survey and have a title company do a search of the property (Tr 686-87, 701-02; Exs X-42a, X-42i). Respondent also suggested that the Moores have an attorney look at the contract (Tr 687, 702). Heather asked Respondent if his brother, Ken McGuire, who was also an attorney, could assist in the matter. Respondent, Heather and the Moores agreed to Ken McGuire's participation (Tr 688, 702-03).

On July 28, 2014, Mary Ann Schultz, a paralegal with the law firm representing PennyMac in the sale of the house, sent an email to Respondent's wife at the email address "obieinky@[redacted]" (Tr 1372, 1398, 1525, 2103; Exs X-19, X-42e). The email was addressed "Good Morning Mr. McGuire" (Ex X-19). The "original proposed Contract of Sale" was attached and Ms. Schultz wrote "kindly copy and have your client sign four (4) copies of the contract and return" them with a check (Ex X-19).

After the email, Respondent went to the Moores' home with the contract of purchase (Tr 681-883, 688, 696-97; Ex X-42b). Eileen and Phillip Moore sat with Respondent at a table and Respondent gave them the contract (Tr 682, 689, 697, 704-05). Respondent explained the document to the Moores and showed them where to sign (Tr 683-84, 690, 697-98, 705). The Moores signed the contract on the last page in Respondent's presence (Tr 683-84, 698, 704; Ex X-18). Respondent took the paperwork with him when he left (Tr 684, 698).

On August 12, 2014, Ms. Schultz sent two emails to Respondent's wife's email, "obieinky@[redacted]" (Exs X-20, X-21). The emails were addressed to "Mr. McGuire;" attached to one email was the "the fully executed contract" and attached to the other was the closing extension (Exs X-20, X-21).

On the afternoon of August 25, 2014, Ms. Schultz sent an email to Mr. Dolfinger and copied "obieinky@[redacted]," inquiring if the "obieinky@[redacted]" email was the correct email for the buyer (Tr 1375, 1376; Ex X-22). That evening Ms. Schultz received an email from "Mr MICHAEL MCGUIRE <judgemcguire@[redacted]>" (Ex X-23). The email was signed Ken McGuire, Esq. and stated, "If you have any questions, concerns or comments please feel free to contact me at [redacted] or through email" (Ex X-23). That telephone number is Respondent's cell phone number (Tr 2146, 2586, 2587; Exs X-42f, X-42h).

On August 25, 2014, at 8:55 p.m., an email regarding a home inspection was sent to Mr. Dolfinger from "Mr MICHAEL MCGUIRE <judgemcguire@[redacted]>" and signed Ken McGuire (Ex X-26). Mr. Dolfinger had never received an email from this email address before; all other correspondence had been with "obieinky@[redacted]" (Tr 1377). When he received the email, Mr. Dolfinger was not sure who he was dealing with because the email said Judge McGuire but was signed Ken McGuire (Tr 1378, 1391-92).

Mr. Dolfinger answered the email, and at 3:47 a.m., he received another email from "Mr MICHAEL MCGUIRE <judgemcguire@[redacted]t>" (Ex X-26). This email did not have any signature at the end (Ex X-26). The email stated:

> It is quite simple, get the house ready for an inspection and stay out of the legal end of this transaction that will be accomplished by the attorneys, I am directing that you cease and desist from making any of your crude comments to my clients, if they persist I will have not [sic] option but to take action against you

(Ex X-26).

Mr. Dolfinger emailed Ms. Schultz because he "didn't know if [he] was doing anything wrong" and he "didn't know if [he] was dealing with Ken McGuire the lawyer or a judge and what the difference was and what it meant to [him]" (Tr 1382-83).

At 8:19 a.m. on August 26, 2014, Ms. Schultz sent an email to Mr. Dolfinger saying that "Mr. McGuire and I just spoke" (Tr 1386-87; Ex X-26). At 8:48 a.m. Ms. Schultz received an email from "judgemcguire@[redacted]" which was signed "Ken" (Ex X-29). The email stated:

> To clear up the confusion I am handling this matter but Mike is my brother, also an attorney but not practicing full time right now, and so you may from time to time speak with him as well. Sorry for the confusion.

(Ex X-29).

In a separate email chain on August 26, 2014, Ms. Schultz received a lengthy email at 5:16 a.m. from "Mr MICHAEL MCGUIRE <judgemcguire[redacted]>" (Ex X-24). The email was signed Ken McGuire (Ex X-24). The email stated:

> . . . since I am often unable to check email during the business day it is most efficient that you contact me by phone or text message ([redacted] if there is a pressing matter that requires my attention during the day . . .

Later in the same email it stated:

> Thank you in advance for your attention to this matter if you have any questions, concerns or comments please feel free to contact me by phone ([redacted] voice or text) or email either of the two emails which you have. (Ex X-24).

The number provided in the email was Respondent's cell phone number (Tr 2589; Exs X-42l, X-42m).

The person sending the August 26, September 3, and September 9, 2014, emails from "judgemcguire@[redacted]" informed Ms. Schultz that he would be on vacation from September 16 through September 24, 2014 (Exs X-28, X-29). On August 5, 2014, Respondent's confidential secretary sent an email to Sullivan County and Supreme Courts Chief Clerk Sara Katzman informing her that Respondent would be on vacation from September 16 through September 23, 2014 (Tr 989; Ex X-36).

On September 17, 2014, Ms. Schultz received an email signed "Ken" from "judgemcguire@[redacted]" that stated that he is "down in Florida but do maintain an office here so I can keep up to date on progress..." (Ex X-30). On September 19, 2014, Ms. Schultz received another email signed "Ken" from "judgemcguire@[redacted]" regarding the closing date (Ex X-34).

The Moores never spoke to Ken McGuire regarding the purchase of the house (Tr 681, 684-85, 696). They never paid Respondent or Ken McGuire (Tr 703).
Mr. Dolfinger never spoke to Ken McGuire and never received an email from an email address belonging to Ken McGuire (Tr 1389-90, 1405). The only two email addresses he dealt with were "obieinky@[redacted]" and "judgemcguire@[redacted]" (Tr 1389). Respondent knew that his email address was being used in communications regarding the sale of the property (Exs X-42K, X-42n, X-42o).

F. Ricky Pagan

In 2010, before Respondent became a judge, he represented Ricky Pagan in a purchase of a property in foreclosure (Tr 465-67, 473, 2391; Ex-42q). Before he contacted Respondent, Mr. Pagan agreed to purchase the property from Barbara Clarke

for $8,000 and had paid $5,000 in back taxes on the property without a written agreement (Tr 465, 467-68, 473-74, 2387-88). Respondent drafted and filed a mortgage so that Mr. Pagan could recoup his $5,000 payment if the property owner did not transfer the property when he paid the rest of the purchase price (Tr 466-68, 2388, 2604; Ex X-38).

In about 2012, while a full-time judge, Respondent received a message from Ms. Clarke and Respondent returned the call (Tr 2605; X-42r). Ms. Clarke told Respondent that she received another foreclosure notice, so Respondent contacted Mr. Pagan and told him to go to the Treasurer's office (Ex X-42r).

In 2013, Mr. Pagan spoke to Respondent about "how to go about finishing the deal" as he had the rest of the purchase price (Tr 468-69, 472, 2606-07; Ex X-42r). Mr. Pagan brought Respondent a check and Respondent mailed the documents to Ms. Clarke and asked her to send them back to Respondent (Exs X-42r, X-43c). Respondent probably sent a cover letter with the documents which had instructions about signing the documents and returning them to Respondent (Tr 2608; Exs X-43c, X-43d).

On November 14, 2013, the deed transferring the property to Mr. Pagan was filed with the Sullivan County Clerk's office (Ex X-39). The County Clerk's Recording Page states that the deed was received from "MCGUIRE" and the last page of the deed directs that it should be returned to Michael F. McGuire at the PO Box where Respondent was receiving his business mail (Exs X-39, X-43c).

G. Christopher Lockwood

Prior to becoming a judge, Respondent represented Christopher Lockwood in connection with a speeding ticket issued in Liberty, New York (Tr 1794-96, 2392, 2611;

Exs X-40, X-40a, X-40b). On January 4, 2011, the Town of Liberty Court sent a letter to Respondent, who was now a full-time judge, at the address of his former law office, informing him of the "Appearance/Pre-Trial Conference" date with respect to *Lockwood* (Tr 1796-97, 1817, 1832; Exs X-40, X-40c).

When the parties did not appear on the return date, Liberty Town Court Clerk Connie Van Keuren called Respondent's chambers and left a message for Respondent to call her about *Lockwood* (Tr 1792, 1798-1800, 1826, 2611). Respondent returned Ms. Van Keuren's call and informed her that his brother, Ken McGuire would be handling the ticket (Tr 1800, 1828, 1830, 2611).

On February 1, 2011, a letter signed by Kenneth J. McGuire on behalf of Mr. Lockwood was sent on the letterhead of Respondent's former law office to prosecutor Kenneth C. Klein. The letter included the completed Application to Amend Traffic Infraction (Application)[7] and Mr. Lockwood's driving record abstract (Exs X-40d, X-46b). During this time Respondent was aware that letters were being sent out using the same letterhead he used while in private practice (Ex X-46d).

At some point during business hours, Respondent showed Ms. Weiner the traffic ticket and Application and told Ms. Weiner to fill in the missing information (Tr 1485,

[7] An Application is used to accommodate those who are unable to appear in court but still want to negotiate a disposition of their ticket (Tr 1802). Section I of the Application is filled out by the defendant or the defendant's attorney and is mailed to the court (Tr 1804). When the Application is received the prosecutor reviews the document and fills out Section II with an offer, and it is mailed back to the defendant or the defendant's attorney (Tr 1804-05). The defendant or the defendant's attorney fills out Section III if the defendant accepts the offer or Section IV if they wish to go to trial (Tr 1805).

1487, 1657-58). Ms. Weiner told Respondent that she did not know how to fill out the Application and that she needed his guidance (Tr 1486-87, 1657).

On August 5, 2011, after Respondent completed the Application, Ms. Weiner drafted and sent a letter to the Liberty Justice Court which included a "properly executed" Application (Tr 1485-87, 1657; Ex X-40e). The letter was signed using Respondent's computer-generated signature and the letterhead had Respondent's PO Box (Tr 1656, 1657; Ex X-40e). Respondent was aware that Ms. Weiner sent the letter and application to the Town of Liberty Justice Court (Tr 1487).

On September 12, 2011, Ms. Van Keuren sent a letter to Respondent and Mr. Lockwood informing them that the "court accepted your guilty plea for the charge(s)" (Ex X-40f). The letter was sent to Respondent at his former law firm address (Tr 1831; Ex X-40f). Ms. Van Keuren never received Ken McGuire's contact information, never spoke to him and Ken McGuire never appeared in court on the matter (Tr 1809).

Respondent and Corinne McGuire's Testimony Regarding Charge X

After Respondent was elected to judicial office, he closed his law firm office and had all mail directed to [redacted] (Tr 2053, 2104-05, 2551). Respondent kept the same voicemail – which was recorded in Respondent's voice – until about 2016 (Tr 2106-07, 2290, 2552-53). Respondent continued to use his former law firm letterhead to send correspondence and the same facsimile machine that had the "McGuire Law" imprint (Tr 2128-29, 2168-69, 2554).

Corinne McGuire testified that after he became a judge, Respondent asked his brother Ken McGuire to represent a number of long-standing clients (Tr 2081-82, 2120-

21, 2281). Ken McGuire had a practice in Troy, New York (Tr 2083, 2113). According to Mrs. McGuire, Ken McGuire had a law firm telephone number and a cell phone number, but he did not maintain an email address (Tr 2084, 2113-14, 2139, 2151-52). She testified that Ken McGuire used the computer at Respondent's house (Tr 2174).

Although Respondent knew that a full-time judge's name could not be associated with a law firm, he continued to use the law firm's stationery, facsimile machine and the voicemail he used when he was in private practice (Tr 2613-14). Respondent admitted that from today's perspective he "absolutely did" violate the Rules by continuing to use his law firm's letterhead, facsimile machine and law firm address (Tr 2614).

1. *People v W[redacted] M[redacted]*

Respondent admitted that he "absolutely" knew in 2013 that he was prohibited from representing his son, but did so anyway (Tr 2568, 2569). He acknowledged sending letters to the Chief Clerk and Judge McVinney of the Oneonta City Court on his former law firm's stationary, filing a Notice of Appearance and Affidavits of Actual Engagement (Tr 2259-63, 2567; Exs X-1a, X-1b, X-1c, X-1e). Respondent testified that he was presiding over all the cases listed on the affidavits of actual engagement (Tr 2560, 2562, 2563). Respondent also acknowledged that he drafted, signed and filed a 26-page omnibus motion seeking, *inter alia*, dismissal of the charge against his son (Tr 2564; Ex 1-d). Respondent further admitted that on February 26, 2013, he appeared in the Oneonta City Court and represented his son at a conference with Judge McVinney and a representative from the District Attorney's office (Tr 2395, 2563-64; Ex X-2a).

2. George Matisko

Respondent denied that he discussed the George Matisko matter with Ms. Weiner, that he directed her to negotiate a settlement or draft a release and that reviewed any documents Ms. Weiner drafted in the matter (Tr 2384, 2574-76).

Respondent said that he did not remember receiving mail from Progressive at his former law firm after taking the bench but acknowledged that he never did anything to stop Progressive from sending him communications after he became a judge (Tr 2573, 2574). Respondent admitted that the Progressive settlement check was made payable to Mr. Matisko and to him, as attorney, but he maintained that he did not remember receiving the check (Tr 2577-78). He claimed that he could not determine if it was his original signature or his signature stamp on the back of the check (Tr 2578).

3. Eileen and Phillip Moore

Respondent admitted that he spoke to the Moores about buying a house "once or twice" and spoke to the Moore's daughter more often than the Moores (Tr 2580-81).

Both Respondent and his wife acknowledged that his wife's email address was provided to the seller as the contact on the deal (Tr 2135, 2583), that the contract of sale was sent to Corinne McGuire and that Respondent's wife printed out the contract and gave it to Respondent (Tr 2137, 2139, 2583). Both Respondent and his wife maintained that she gave the contract to Respondent to give to his brother (Tr 2091, 2583).

Respondent conceded that he brought the contract of sale to the Moores' home and he told the Moores to sign the documents (Tr 2583-85). Respondent maintained that he

did not explain the documents to the Moores (Tr 2584) and that he did not take the documents with him when he left the Moores' home (Tr 2585).

Respondent acknowledged that he knew at the time that his email address was being used to communicate about the sale (Tr 2592-93). He claimed that when he received emails regarding the property he forwarded the emails to his wife without reading them (Tr 2592, 2593). He conceded that he never did anything to stop his email address from being used in connection with the sale (Tr 2593-94).

Respondent acknowledged that the August 25, 2014 email at 8:09 p.m. and the August 26, 2014 email from "Mr MICHAEL MCGUIRE <judgemcguire@[redacted]>" listed his phone number (Tr 2586-89; Exs X-23, X-24). Respondent admitted that at that time the seller did not have a phone number for his brother or his wife (Tr 2587). He agreed that the email stated that the seller could use email to contact the buyer and that the only email addresses the seller was given belonged to Respondent and his wife (Tr 2588-89).

Respondent denied speaking to Ms. Schultz on August 26, 2014, even though the only phone number Ms. Schultz had was Respondent's cell phone (Tr 2587, 2598, 2600; Ex X-26).

Respondent denied that he was on vacation from September 16 through 24, 2014 (Tr 2600-01). He admitted receiving an email on January 7, 2015, from his confidential secretary that the Moores had called but did not remember if he called the Moores back or spoke to their daughter or son-in-law (Tr 2603, Ex X-37).

4. Ricky Pagan

Respondent handled the purchase of the property abutting Mr. Pagan's house prior to becoming a judge (Tr 2086, 2152, 2386-88, 2604). In 2013, Mr. Pagan told Respondent that he wanted to finish the deal (Tr 2087, 2606). Corinne McGuire retrieved documents from the file inserted the date on the deed, and sent it to the owner (Tr 2087, 2088, 2153-54, 2606, 2608, 2390-91). Respondent testified that either he or his wife filed the documents with the County Clerk; Corinne McGuire testified that she did not participate in recording the documents (Tr 2089, 2611).

5. Christopher Lockwood

Respondent acknowledged that he returned the phone call from Liberty Town Court Clerk Connie Van Keuren (Tr 2611). Respondent said he did not recall asking Ms. Weiner to fill out the Application to Amend or reviewing the document (Tr 2612).

Charge XI: On or about January 2011 through in or about December 2016, Respondent presided over cases in which his impartiality might reasonably be questioned. [8]

On multiple occasions between 2011 and 2016, Respondent presided over cases in which Zachary Kelson, Esq. appeared as an attorney, notwithstanding that Mr. Kelson was Respondent's friend, had assisted Respondent in the defense of Respondent's son in a criminal matter, and had represented friends of Respondent and his wife at Respondent's request.

[8] The Referee granted the Commission's request to amend the first paragraph of Charge XI of the FWC to read from "from on or about January 2011 through in or about 2016" (Rep 47 n. 4; FWC ¶129).

In 2013 and 2014, Respondent presided over a real property matter, notwithstanding that he had previously represented one of the parties with respect to the same parcel of land, and notwithstanding that one of the parties was doing construction work on the home of Respondent's law clerk at the time the case was pending.

A. Respondent's Relationship with Attorney Zachary Kelson

Zachary D. Kelson is an attorney who practices law in Sullivan County (Tr 619-20). Mr. Kelson has known Respondent since he worked in the Sullivan County District Attorney's Office, which was between 2001 and 2004 (Tr 623, 2182, 2183, 2185). Respondent testified during the hearing that Mr. Kelson is a "good friend" (Tr 2627). Respondent and Mr. Kelson have had lunch together, Respondent attended a Bar Mitzvah party in honor of Mr. Kelson's son and gave his son a $100 check for his Bar Mitzvah (Tr 625-627, 2626; Ex XI-28). Mr. Kelson also made a monetary contribution to Respondent's judicial campaign in 2010 (Tr 628).

B. Mr. Kelson Assisted in Representing Respondent's Son and He Represented a Number of Respondent's Friends at Respondent's request.

In addition to his social relationship with Respondent, Mr. Kelson worked closely with Respondent on Respondent's defense of his son's marihuana charge and represented a number of Respondent's friends and family members, often *pro bono*, at Respondent's request.

1. *People v W M*

On or about September 20, 2012, Respondent's son W M was arrested in Oneonta, New York (Otsego County), for Unlawful Possession of Marihuana (Tr 2558; Exs X-1, X-47a).

When Respondent told Mr. Kelson about the arrest, Mr. Kelson offered to contact the Otsego County District Attorney's office to seek an Adjournment in Contemplation of Dismissal ("ACD") (Tr 632-633, 2558, 2559, 2628; Exs XI-1, X-47c, X-47e). Respondent agreed to allow Mr. Kelson to contact the DA's office (Tr 2558).

Mr. Kelson spoke with Assistant District Attorney ("ADA") Michael Getman (Tr 635). Mr. Kelson told ADA Getman that he was not representing W M, but that W M's "father is a judge and felt uncomfortable communicating directly with . . . the district attorney's office . . . and could you send me the papers so that I can give them to Judge McGuire" (Tr 634).

After speaking with the ADA, Mr. Kelson sent Respondent an email advising that the District Attorney's office would not offer his son an ACD (Tr 634, 635, 638, 639-40, 644-45, 652, 653, 2558-59, 2566; Exs XI-1, X1-2, XI-3). Thereafter, Respondent and Mr. Kelson emailed back and forth about the legal issues in the case (Tr 641-42, 645; Exs XI-1, XI-2, XI-3).

On November 20, 2012, Mr. Kelson sent ADA Getman an email, which he blind copied to Respondent, requesting that the case be dismissed in the interests of justice:

> Dear Mr. Getman:
>
> You may recall that you and I spoke several months ago concerning this matter. You indicated that you were going to speak to the SUNY Police

> Officer concerning the circumstances resulting in the Defendant's arrest. As I indicated to you previously, the Defendant's father cross-examined his son up and down concerning the incident. Apparently, this Defendant had nothing to do with the use or possession of marijuana and was merely standing outside near the actual user. While clearly Mr. M[redacted] was at the wrong place at the wrong time, I ask for your consideration by dismissing this charge in the interests of justice, rather than offering an ACD. Could you please let me know what you want to do by return email?
>
> Thank you,
>
> Respectfully yours,
>
> ZACHARY D. KELSON
> Attorney & Counsellor at Law

(Ex XI-2).

Respondent replied to Mr. Kelson, "Thank you let me know if you hear anything back . . . recall that they cannot maintain th[e]se charges as there is no presumption of possession even in a car or house much less in an open parking lot. They really have no case but lets [sic] see what they want to do" (Tr 641; Ex XI-2).

On November 21, 2012 at 4:25 p.m., Respondent sent an email to Mr. Kelson in which he asked, *inter alia*, whether there "was anything with the guy in Oneonta," which was a reference to ADA Getman (Tr 637; Ex X1-1). On November 22, 2012 at 10:49 a.m., Mr. Kelson answered, "Nothing from Oneonta. I will try again on [M]onday morning. Send your son to court as planned" (Tr 638; Ex X1-1). Respondent replied on November 23, 2012 at 9:54 a.m., writing "I will do that thank you. We will be back in town on Sunday afternoon. I will make sure he is in court on Tuesday. Mike" (Ex X1-1).

On the afternoon of November 27, 2012, ADA Getman emailed Mr. Kelson to ask if he knew the identity of the officer involved in the case (Tr 643-44; Ex XI-2). Mr.

Kelson forwarded this email to Respondent (Tr 644). Respondent provided Mr. Kelson with the appearance ticket (Tr 648), who then emailed it to ADA Getman (Ex XI-2).

On November 27, 2012 at 10:06 p.m., Respondent sent an email to Mr. Kelson and updated him on what transpired when his son appeared in court (Tr 644-45; Ex XI-2). He wrote, *inter alia,* that his son "got a bit of a chewing out today from the court" and that the court was "looking for either an Appearance or a Notice of Appearance by next Wednesday morning" (Ex X1-2). Respondent again discussed his views of the legal issues in the case and then wrote to Mr. Kelson, "Thank you for everything, let me know how you want to deal with this next week issue, we need to have one of us file a Notice of Appearance, I can do it and then put in an Affirmation of Actual Engagement" (Ex X1-2). Mr. Kelson did not file a Notice of Appearance in the matter (Tr 646).

Mr. Kelson did, however, continue to negotiate a potential plea deal and regularly shared the status of his communications with Respondent. On November 30, 2012 at 1:32 p.m., ADA Getman wrote to Mr. Kelson that the offer in the case was "still" a plea to Disorderly Conduct (Tr 650-651; Ex XI-3). Between November 30 and December 2, 2012, Mr. Kelson engaged in an email exchange with ADA Getman in which he unsuccessfully attempted to resolve the case by way of an ACD (Tr 650-51; Ex XI-3).

After Mr. Kelson advised Respondent that his plea negotiations had failed, Respondent emailed Kelson on December 3, 2012 at 3:53 a.m., thanked him for helping with his son's case and told him, *inter alia*, that he filed a Notice of Appearance and would make an application in person to obtain an ACD for his son (Tr 653-54; Ex XI-3). Mr. Kelson replied later that morning, thanked Respondent for his "kind words" and

stated, *inter alia*, "I just feel as if I failed you because I couldn't get the case resolved without involving you or your brother" (Ex XI-3). Later that day, Respondent answered, "[D]on't worry you did not fail me at all, we will handle it you are great and a wonderful friend. Missed you at Brother Bruno's today" (Tr 655-656; Ex XI-3). Brother Bruno's is a restaurant where Mr. Kelson and Respondent have had lunch together (Tr 656).

On February 26, 2013, Mr. Kelson emailed Respondent asking "how did it go" with respect to Respondent's court appearance in his son's case (Tr 657; Ex XI-4). In a reply email, Respondent updated Mr. Kelson about the status of the case and noted that he intended to file several motions seeking an ACD or a dismissal (Ex XI-4).

2. *People v T[redacted] M[redacted]*

From in or about July 2012 through in or about October 2012, Mr. Kelson represented T[redacted]M[redacted] a friend of Respondent's wife, in connection with a speeding ticket (Tr 660-673; Exs XI-5, XI-6, XI-7, XI-8). Respondent "either emailed [Kelson] or told" him that Ms. McTighe had received a speeding ticket (Tr 661). Mr. Kelson did not receive a fee for representing Ms. M[redacted] (Tr 759).

On October 11, 2012, Mr. Kelson sent an email to Respondent's wife, Corinne, which was copied to Respondent. Mr. Kelson attached a waiver of the right to be present and wrote in the email, "PLEASE have T[redacted] sign this and get it to my office ASAP. Thanks. Zach" (Tr 663-64, 2634; Ex XI-6). Respondent replied, "Thank you, I will get that done for you within the next couple of days. Mike" (Tr 670, 2634; Ex XI-7). Respondent acknowledged that Mr. Kelson sent him *M*[redacted] documents (Tr 2628-29).

On October 12, 2012, Mr. Kelson emailed Respondent and stated that he was going to "run" Ms. M[redacted]'s driver's license on his New York State DMV account in order to ascertain her driving record (Tr 666, 667, Ex XI-7). On October 13, 2012, at 5:27 a.m., Mr. Kelson emailed Respondent to advise that Ms. M[redacted] had two points on her license. He also wrote "[y]our wife dropped off the waiver yesterday" (T. 668, Ex XI-7). Mr. Kelson shared this information with Respondent because he "was just letting him know I was going to be taking care of the things that need to be taken care of when one represents a defendant" (Tr 668).

Four minutes after receiving Mr. Kelson's October 13, 2012 email regarding the points on Ms. M[redacted]'s license, Respondent replied, "Great are we going to be able to get a 1201-a out of this one" (Tr 669-70; Ex XI-7). A 1201-a is a "no points parking violation, with a fine, generally" (Tr 670).

The case against Ms. McTighe was resolved with a plea of guilty to Vehicle and Traffic Law Section 1201-a and a $150 fine (Ex XI-8). On November 7, 2012, Mr. Kelson emailed Respondent a copy of the court's disposition and asked, "Can you have inky print out the fine notice and have [T]ina take care of paying the fine?" (Tr 671-72, Ex XI-8). Inky is the nickname for Respondent's wife (Tr 672). Respondent replied, "Absolutely, I will take care of that thank you. Mike" (Tr 673; Ex XI-8).

3. *County of Sullivan v Estate of Lydia Fernandez*

Respondent asked Mr. Kelson to represent his friend, Jerry Fernandez, in *County of Sullivan v Estate of Lydia Fernandez,* in which Mr. Fernandez was being sued by the

county for debts incurred by his deceased mother (Tr 707-08). Respondent frequently ate at a restaurant that was either owned or managed by Mr. Fernandez (Tr 714, 715).

Respondent asked Mr. Kelson if he could help Mr. Fernandez and forwarded him documents regarding the case (Tr 707-08, 2632). Mr. Kelson represented Mr. Fernandez throughout the case, which was resolved with a stipulation of settlement (Tr 708).

On April 19, 2012, Mr. Kelson emailed Respondent a copy of the stipulation of settlement in the *Fernandez* matter together with a copy of his letter to Mr. Fernandez, in which he explained the terms of the settlement and advised "[t]here is no charge for my services" (Tr 709-10; Ex XI-10). Respondent sent a reply email to Mr. Kelson in which he wrote, "Thank you very much, I cannot tell you how much I appreciate your friendship, our lunch breaks are great therapy for me. Mike" (Tr 710; Ex XI-10).

On January 21, 2014, Mr. Kelson emailed Respondent and asked him to review a letter indicating that Mr. Fernandez had failed to comply with the settlement agreement and Mr. Kelson's letter to Mr. Fernandez (Tr 713-15; Ex XI-11). Mr. Kelson asked Respondent to "get in touch with Jerry and see what's going on" (Ex X1-11).

On January 22, 2014, Respondent replied that he would get in contact with Mr. Fernandez and explained that Mr. Fernandez fell behind on his payments because the restaurant was "slow this time of the year" (Tr 714, 2635; Ex XI-11). Respondent asked Mr. Kelson to inform the debt collection law firm that Mr. Fernandez "will get caught up over the next couple months" and he asked Mr. Kelson to "have them [the debt collection law firm] pull back, it is not like it is a huge amount of money" (Ex XI-11). Respondent concluded his email with, "Thanks for staying on top of that for me. Mike" (Ex XI-11).

Mr. Kelson later advised Respondent that the debt collection law firm would "hold off for a week from today and call me before they do anything else" (Ex XI-11). He asked Respondent to "reach out to Jerry and have him contact me" (Tr 2635; Ex XI-11).

On January 23, 2014, Respondent emailed Mr. Kelson and wrote "Not a problem you will have a check for the $350.00 within a week, Jerry is off on Wednesday, I stopped by his place yesterday but he was not in. I will see or speak with him today. Thank you for everything. Mike" (Ex XI-11). Later that day Mr. Kelson emailed Respondent to advise, "Just got $400 from him. Thanks for the push" (Ex XI-11).

On July 2, 2014, Mr. Kelson again sent Respondent another email advising that he checked with the debt collection law firm and that Mr. Fernandez still owed $188 (Tr 716, 717; Ex XI-11). He asked Respondent to remind Mr. Fernandez to make the payment and asked Respondent to "Let me know if you hear from Jerry" (Tr 2635; Ex XI-11). On July 3, 2014, Respondent replied, "Thank you I will see him today and get that taken care of today" (Tr 717; Ex XI-11).

On July 29, 2014, Mr. Kelson emailed Respondent and informed him that Mr. Fernandez had not made his July payment (Tr 717, 2635; Ex XI-12). Respondent replied that he would "take care of it first thing this morning" (Tr 719, 2635; Ex XI-12).

On May 28, 2015, Respondent sent an email to Mr. Kelson regarding the *Estate of Lydia Fernandez* in which he wrote "[w]ill be paid by Friday and be done, not a problem and thank you for following up" (Tr 720-722; Ex XI-13).

4. *Eye Physicians of Orange County, PC v Gerardo Fernandez*

Respondent again asked Mr. Kelson to represent Mr. Fernandez in *Eye Physicians of Orange County, PC v Gerardo Fernandez* (Tr 722-724; Ex XI-14).

On October 27, 2014, Respondent emailed Mr. Kelson a copy of "the summons [he] told [Mr. Kelson] about with respect to Jerry [Fernandez]" (Tr 727; Ex XI-15). Respondent advised Mr. Kelson that Mr. Fernandez wanted to "get a payment plan and pay this debt to the doctor. If the deal is not that great he will consider bankruptcy as that is what he has to do because of the massive debt he has to Westchester Medical Center even after they forgave part of the obligation" (Ex XI-15). Respondent concluded, "I will be off the bench by 3:30 if you need to talk to me. Thank you for anything you can do with Warren" (Ex XI-15). Warren Greher represented the plaintiff (Ex XI-15).

On October 28, 2014, Mr. Kelson sent a letter to Goshen Town Justice Thomas Cione enclosing a Special Notice of Appearance and requesting an adjournment (Ex XI-14a). Mr. Kelson wrote:

> I will be actually engaged before the Hon. Michael F. McGuire, Sullivan County Family Court Judge, in the Sullivan County Family Court this afternoon in a proceeding entitled "In the Matter of Sullivan County DFS vs. 'C.'" and will be unable to appear on this matter before Your Honor and respectfully request that the matter be adjourned.

(Tr 725-26; Ex XI-14a).

That same day Mr. Kelson emailed Respondent and attached a copy of the letter to Judge Cione (Tr 728-30; Ex XI-15).

On October 30, 2014, Mr. Kelson emailed Respondent and advised that he had settled the case (Tr 733; Ex XI-15). Mr. Kelson asked Respondent to "please let Jerry

know it's settled. He should get a check ready for $100 payable to [W]arren [G]reher as atty. He can forward it to me. Any questions, please call" (Tr 2635; Ex XI-15).

Respondent replied later that day and wrote "Perfect that is great he will be happy. Let me know when you want to go to dinner at his restaurant I will set it up" (Tr 734; Ex XI-16). Mr. Kelson answered, "Only if you inky and the kids join us" (Ex XI-16). Inky is Respondent's wife, and when Mr. Kelson used the word "kids" he was referring to Respondent's children and Mr. Kelson's own child (Tr 734).

The next day Respondent replied, "Will do lets [sic] set a day, I have the first check from Jerry so lets [sic] try to hook up early next week and I can give it to you, or if you are coming over this way let me know and I will have it here for you. Mike" (Tr 734; Ex XI-16). Respondent extended the dinner invitation in order to thank Mr. Kelson for his work in the Jerry Fernandez matters (Tr 734, 2636). Respondent conceded that it was improper for him to have set up this dinner at the same time that Mr. Kelson was appearing before him (Tr 2636).

5. *People v Lindsay Amoroso*

On July 26, 2011, Lindsay Amoroso received a speeding ticket in the Town of Plattekill, Ulster County (Ex XI-20). Sometime shortly thereafter Mr. Kelson and Respondent were having lunch at a pizzeria and Respondent asked Mr. Kelson if he knew anybody who handled traffic tickets in the Town of Plattekill (Tr 741). Respondent told Mr. Kelson that Ms. Amoroso was a close friend of Respondent's son and that she had saved his son's life by helping to rescue him from a fire (Tr 741).

Mr. Kelson told Respondent that he would handle the case and Respondent got him a copy of the speeding ticket (Tr 741-42, 2397). Respondent told Mr. Kelson that he could do whatever he wanted to do with respect to a fee (Tr 741). Mr. Kelson ultimately decided not to charge Ms. Amoroso for his legal services (Tr 759).

On August 8, 2011, Mr. Kelson emailed Respondent a copy of a waiver form for Ms. Amoroso's signature (Tr 744, 2633; Ex XI-21). Respondent, however, prepared his own waiver form, which was signed by Ms. Amoroso and filed with the court (Tr 74-43; Ex XI-20a).

On August 9, 2011, Mr. Kelson emailed Respondent and advised that the prosecutor in Plattekill was friendly and that there should be a VTL § 1201 disposition (Tr 746; Ex XI-21). Respondent replied, "Great that will be terrific, it would be great if we could get that with a recommendation for a low fine" (Tr 746; Ex XI-21).

On November 30, 2011, Mr. Kelson emailed Respondent to report that the matter had not yet been scheduled (Tr 749; Ex XI-22). On the same date Respondent replied, "OK Great just let me know if you need anything" (Tr 749; Ex XI-22).

On April 2, 2012, Mr. Kelson emailed Respondent a copy of his letter to Ms. Amoroso informing her that a pretrial conference had been scheduled and that she did not need to appear (Tr 749-750; Ex XI-23). Respondent replied, "Zach, that looks great. Thank you" (Tr 750, Ex XI-23). Respondent acknowledged that he reviewed the document and gave Mr. Kelson his opinion (Tr 2634).

On June 18, 2012, Mr. Kelson emailed Respondent and advised that Ms. Amoroso's speeding ticket had been reduced to a parking violation under VTL § 1201-a

(Tr 751; Ex XI-24). The next day, Respondent replied, "Great thank you very much. Mike" (Ex XI-24).

6. *People v W[redacted] W[redacted]*

In 2013, Respondent asked Mr. Kelson to represent W[redacted] W[redacted] with respect to two speeding tickets (Tr 755; Ex XI-26). Respondent told Mr. Kelson that he was acquainted with Mr. W[redacted] from the time that Respondent was employed by Sullivan County Community College (Tr 755-56). Mr. Kelson did not charge Mr. W[redacted] a fee for his legal services (Tr 759).

On May 15, 2013, Mr. W[redacted] pleaded guilty to VTL § 1201-a in connection with each of the tickets (Ex XI-26). On May 21, 2013, Mr. Kelson forwarded Respondent an email exchange in which Mr. W[redacted] thanked him for his services (Ex XI-26). On May 23, 2013, Respondent replied, "That is nice to see he really is a nice young man, thank you again. Mike" (Ex XI-26).

7. *Lori Shepish*

In 2015, Mr. Kelson represented Lori Shepish in connection with a real estate closing. Ms. Shepish told Mr. Kelson that Respondent had given her his name (Tr 763). Mr. Kelson received a fee of $750 plus disbursements from Ms. Shepish for his legal services (Ex XI-27).

On March 12, 2015, Mr. Kelson blind copied Respondent on an email he sent to Ms. Shepish in which he, *inter alia,* told her the fee for his legal fees and asked her to provide him with certain information related to the closing (Tr 763; Ex XI-27). On May

28, 2015, Mr. Kelson sent an email to Respondent thanking him for referring Ms. Shepish (Tr 764, 2631; Ex XI-27).

C. Attorney Zachary Kelson Appeared Before Respondent in Numerous Cases.

Kelson testified generally that in 2012 and 2013, he appeared in Family Court as a Law Guardian before Respondent (Tr 659). From in or about January 2011 through in or about December 2016, Respondent presided over the following cases in which appeared Mr. Kelson before him:

1. *Rochelle Massey v Sullivan County Board of Elections*

In or about January 2014, Respondent presided over *Massey v Sullivan County Board of Elections*. Mr. Kelson represented defendant William Orestano (Ex XI-29a). On January 24, 2014, Mr. Kelson filed Objections in Point of Law and a Verified Answer in connection with the case (Tr 765-66; Ex XI-29a). On that same date, Mr. Kelson appeared before Respondent in court in the *Massey* case and made comments on the record (Tr 767-68, 2638; Ex XI-29b). Respondent did not make a record of his relationship with Mr. Kelson, did not disclose any of the communications he had with Mr. Kelson regarding matters that Respondent had referred to him and did not disqualify himself from the case (Tr 771-773, 894, 2639).

2. *FIA Cards Services v Sandra Fishbain*

From on or about April 22, 2014 to on or about August 1, 2016, Respondent presided over *FIA Cards Services v Sandra Fishbain* (Tr 774; Ex XI-30). Mr. Kelson represented the defendant in the case (Tr 774). On October 20, 2014, Respondent wrote a

letter to opposing counsel, which was copied to Mr. Kelson, in which Respondent granted, without opposition, the plaintiff's motion to amend the complaint (Tr 776, 777; Ex XI-30c). The case was ultimately resolved in August 2016, when Respondent granted the plaintiff's summary judgment motion (Ex XI-30f). Respondent did not disclose to the parties in the *Fishbain* matter the nature of his relationship with Mr. Kelson and did not disqualify himself from the matter (Tr 779, 893, 2641).

3. *Jeffrey H. Miller v Town of Liberty Assessor*

On or about July 31, 2013 to on or about September 9, 2013, Respondent presided in Supreme Court over *Jeffrey H. Miller v Town of Liberty Assessor* (Tr 780; Exs XI-31, XI-31a, XI-31b). Mr. Kelson represented the petitioner (Tr 779; Ex XI-31).

On September 9, 2013, Respondent signed a Tax Assessment Review Proceeding Preliminary Conference Stipulation and Order that was also signed by Mr. Kelson and opposing counsel (Tr 780, 782; Exs XI-31a, XI-31b). That same day Mr. Kelson appeared for a conference before Respondent's law clerk (Tr 781). Respondent did not direct his law clerk to make any disclosure with respect to his relationship with Mr. Kelson (Tr 782-83, 2654). Respondent never personally made such a disclosure during the pendency of the case and did not disqualify himself (Tr 782, 894, 2643).

Respondent presided in Supreme Court over a second *Miller v Town of Liberty Assessor* matter from on or about July 30, 2014 through 2016 (Tr 783-85; Ex XI-32). Mr. Kelson represented the petitioner in the matter (Tr 783).

Mr. Kelson filed and signed a Notice of Petition and Petition in connection with the case on July 28, 2014 (Tr 783; Ex XI-32b). On July 30, 2014, Mr. Kelson signed a

Request for Judicial Intervention, which noted that the case was assigned to Respondent (Ex XI-32a). Mr. Kelson appeared for a conference in the case before Respondent's Law Clerk, Mary Grace Conneely (Tr 781). Respondent did not direct his law clerk to make any disclosure with respect to his relationship with Mr. Kelson (Tr 785, 2643-44, 2654). Respondent never personally made such a disclosure during the pendency of the case and did not disqualify himself (Tr 785, 2643-44, 2654).

4. *Two Sullivan Street Trust v Town of Liberty Assessor*

On or about July 31, 2013 through on or about September 9, 2013, Respondent presided in Supreme Court over *Two Sullivan Street Trust v Town of Liberty Assessor* (Tr 786; Ex 33-b). Mr. Kelson represented the plaintiff in the matter (Tr 786; Ex XI-34). On September 9, 2013, Respondent signed a Tax Assessment Review Proceeding Preliminary Conference Stipulation and Order that was also signed by Mr. Kelson and opposing counsel (Tr 787; Ex XI-33b). That same day, Mr. Kelson appeared for a conference in the case before Respondent's law clerk, Mary Grace Conneely (Tr 786-87; Ex XI-33b). Respondent did not direct Ms. Conneely to disclose his relationship with Mr. Kelson and Respondent never personally made such a disclosure (Tr 788, 2645). Respondent did not disqualify himself from the case (Tr 894, 2645).

5. *Sam's Towing & Recovery, Inc. v Town of Liberty Assessor*

On or about July 31, 2013 through on or about September 9, 2013, Respondent presided in Supreme Court over *Sam's Towing & Recovery, Inc. v Town of Liberty Assessor* (Tr 788). Mr. Kelson represented the plaintiff in the matter (Tr 788). On September 9, 2013, Respondent signed a Tax Assessment Review Proceeding

Preliminary Conference Stipulation and Order that was also signed by Mr. Kelson and opposing counsel (Tr 789; Ex XI-34b). That same day, Mr. Kelson appeared for a conference in the matter with Ms. Conneely (Tr 789). Respondent did not direct Ms. Conneely to disclose his relationship with Mr. Kelson and Respondent never personally made such a disclosure (Tr 790, 2646, 2654). Respondent did not disqualify himself from the case (Tr 894, 2646).

6. *Matter of P*[redacted]

From about December 2013 to about May 2016, Respondent presided in Family Court over *Matter of P*[redacted] (Tr 790, 2647; Exs XI-35, XI-35a-i, XI-36).[9] On December 12, 2013, Respondent signed orders appointing Mr. Kelson as attorney for the child and directing temporary removal of the child (Tr 791 792, 2647; Exs XI-35a, 35b). On August 11, 2014, after a hearing in which Mr. Kelson represented the child, Respondent issued a written order in which he directed that the child be placed in the temporary custody of the Sullivan County Social Services department (Ex XI-35c). On October 8, 2014, Respondent signed a Permanency Hearing Order which noted, *inter alia*, that Mr. Kelson appeared as attorney for the child (Ex XI-35e).

Over the next 14 months, Respondent signed four additional Permanency Hearing Orders, each of which noted that Mr. Kelson had appeared as attorney for the child (Exs XI-35f, XI-35g, XI-35h, XI-35i).

[9] The case is also referred to as *D*[redacted] *v F*[redacted] (Ex XI-35).

On May 4, 2016, Mr. Kelson forwarded Respondent an email he sent to Colleen Cunningham, the attorney for the [redacted], to complain that no one told him that the hearing scheduled to be heard before Respondent on May 5, 2016, was actually conducted on May 4th before a different judge (Ex XI-36). In the forwarding email Mr. Kelson wrote, "I guess we arent [sic] doing a permanency hearing tomorrow[.] Zach" (Ex XI-36). On May 5, 2016, Respondent replied, "That is incredible as the matter was still on my calendar on Tuesday and I spent over an hour preparing for the Permanency Hearing. Simply incredible. I will address this as well on my end" (Ex XI-36). Ms. Cunningham was not copied on Respondent's email (Tr 795; Ex XI-36).

At no time did Respondent disclose his relationship with Mr. Kelson (Tr 795, 2650-51) and Respondent did not disqualify himself from the matter (Tr 894, 2650-51)

7. *Matter of C[redacted]*

From on or about June 2011 through October 2015, Respondent presided in Family Court over *Matter of C[redacted]*.[10] On April 15, 2013, Respondent signed an order appointing Mr. Kelson to serve as Law Guardian (Tr 795; Ex XI-37A). On April 23, 2013, Respondent signed an order, on which Mr. Kelson was copied, directing temporary removal of the child (Ex XI-37B). On August 15, 2013, Respondent signed an Order to Show Cause on which Mr. Kelson was copied. On April 24, 2013, Respondent "so-ordered" a subpoena that was prepared and signed by Mr. Kelson (Ex XI-37-g). On

[10] The case is also referred to as [redacted] *v C*[redacted] (Ex XI-37).

November 19, 2013, Respondent signed an Order in which he noted that Mr. Kelson appeared at a dispositional hearing as attorney for the child (Ex XI-37e).

On October 28, 2014, Mr. Kelson appeared before Respondent in the C[redacted] matter and addressed Respondent on the record (Tr 799, 800; Ex XI-38a). At the time of the hearing, the C[redacted] matter was still pending before Respondent and Mr. Kelson was still involved in the case (Tr 799).

Respondent did not disclose his relationship with Mr. Kelson (Tr 801, 2654-56) and did not disqualify himself from the case (Tr 894).

D. *Dean v Boyes*

In or about January 2013, Respondent was assigned to preside over *Michael and Joann Dean v Sean and Dawn Boyes* a case involving the partition of property jointly owned by the parties (Tr 1259-60, 1461, 1462, 2615; Ex XI-54a).

In 2007, while Respondent was in private practice, he represented Mary Lou Boyes in the transfer of the same property at issue in the pending litigation (Tr 2400, 2615-16, 2620; Exs XI-39, XI-54b, XI-54c, XI-54d).

Shortly after the case was assigned to Respondent, the attorney for the Deans wrote two letters to the chief clerk advising that Respondent had previously represented one of the parties and "would probably recuse himself" (Tr 2617; Exs XI-40a, XI-54a).

Thereafter on February 13, 2013, Respondent presided over the case and stated:

> There was an application, a letter that was sent by Mr. Shawn asking the Court to consider recusing themselves on this matter because there had been a prior relationship with Mr. Boyes. I searched the records of my firm and learned that I had been involved in a real estate transaction representing Mr. Boyes' mother, not Mr. Boyes. It was a unique real estate transaction in that they came to the office,

> and it was a conveyance of her to her and him. They came to the office, they said what they wanted to do, and came back a couple hours later, a deed was prepared, a TP and an RP were prepared, and that was the extent of the relationship that went on. There were no discussions beyond that, and I don't see where that causes the Court to be disqualified at all.

(Tr 2400, 2622; Ex XI-45, p 2).

On the same day, Respondent also made a record regarding the relationship between his law clerk Mary Grace Conneely and Sean Boyes (Ex XI-45, p 3). Respondent stated:

> Mr. Boyes, I guess he has a construction company and he has done some work for my law clerk in her home. We, again, don't see that as -- we live in a small community where those things happen. She paid him what he was asking for. There was no issue with us having the case. This is work that was done more than a year ago. Ms. Conneely doesn't recall the exact dates, but I imagine a bid or estimate was given, the work was done. It took longer than she expected, which anyone who has done construction in their homes knows that does happen, and presumptively the construction company was paid what they were asked. There was certainly nothing untoward in that relationship, because we obviously at that time weren't even handling Supreme Court matters. And this matter was filed in 2009, so at that time it was in front of either Judge Ledina or Judge Melkonian, and the work was done in 2011, maybe 2012, and Judge Melkonian had it at that time.

(Tr 2398, 2623, 2624, 2625; Ex XI-45, pp 3-4).

After the February 13, 2013 appearance, Mary Grace Conneely hired Mr. Boyes' construction company, Boyes & Torrens to work on her home (Tr 1262, 1263, 1264, 1342, 1346; Ex XI-46). In July and August 2013, while Respondent was presiding over *Dean v Boyes*, Boyes & Torrens provided two proposals for work on Ms. Conneely's home (Tr 1264, 1265, 1266; Ex XI-46). Between April 29, 2013 and June 24, 2014, while the *Dean v Boyes* case was pending before Respondent, Ms. Conneely and her

husband issued six checks to Boyes & Torrens totaling approximately $50,000 for work on their home (Tr 1264, 1265, 1266-67, 1346, 1359-60, 1361, 1363-64, 1365; Ex XI- 46).

At the time the work was being done on her home, Ms. Conneely disclosed this information to Respondent (Tr 1267, 1268, 1342, 1345, 1346, 1351, 1361, 1364). Ms. Conneely brought samples of the material being used for her kitchen into chambers and displayed it in her office where they "were commenting on how good the tile looked with the stone [she] was picking for [her] countertop" (Tr 1364). Ms. Conneely told Respondent that she believed that it was "something that should be addressed to them" and Respondent told Ms. Conneely that he would disclose the information to the parties (Tr 1268, 1345, 1346, 1351). Respondent later told Ms. Conneely that he had advised the parties that Boyes & Torrens were working on her home during the pendency of the case (Tr 1280, 1345). At no time after February 2013, did Respondent inform the parties that Mr. Boyes continued to work on Ms. Conneely's home (Tr 2625).

During the time that Boyes & Torrens were working on her home Ms. Conneely presided over conferences with the parties (Tr 1269, 1270, 1341, 1362, 2399; Ex XI-40c). Ms. Conneely also accompanied the parties and their attorneys on a site visit of the property that was the subject of the litigation (Tr 1270, 1271, 1354, 1362). At no time did Respondent instruct Ms. Conneely not to participate in *Dean v Boyes* (Tr 1271, 2625).

Respondent and Ms. Conneely talked and decided to ask a floating law clerk to draft the decision so there "would be no hint of impropriety" (Tr 1279). After Respondent issued the decision on April 24, 2014, the Dean's attorney called Ms.

Conneely and stated that he was concerned because he had learned that Boyes & Torrens was working for Ms. Conneely (Tr 1271-72, 1273, 1274, 1347; Ex XI-40b).

Ms. Conneely told the attorney that Respondent "is sitting right here and [Respondent] was aware of the work situation and my relationship – my work relationship with them doing [sic] construction" (Tr 1274, 1347). Ms. Conneely believes she put the call on speakerphone (Tr 1274). During the conversation Respondent "was nodding his head as if to agree with [Ms. Conneely] that he had told the parties that Boyes & Torrens had done work for [Ms. Conneely]" (Tr 1275).

The Deans filed a motion seeking leave to reargue, renew and/or vacate Respondent's April 24, 2014 decision, and to either disqualify Respondent or have him recused from the case based on the appearance of impropriety (Tr 1275, 1276; Exs XI-41, XI-42, XI-43). The disqualification and recusal prong of the motion was based on Ms. Conneely's relationship to Mr. Boyes (Tr 1276, 1343, 2616; Ex XI-43). On October 23, 2014, Respondent issued a decision denying the motion in its entirety (Tr 1281; Ex XI-44). The decision was drafted by Ms. Conneely (Tr 1286-87, 1352, 2626).

Respondent's Testimony Regarding Charge XI

1. Zachary Kelson

Respondent acknowledged that it was "inappropriate" for him to have presided over cases involving Mr. Kelson because he had a conflict of interest (Tr 2654-55). He conceded that he did not disclose his relationship with Mr. Kelson in any of the cases in which Mr. Kelson appeared (Tr 2655-66). Respondent testified that starting on May 1, 2019, he began to disqualify himself from cases involving Mr. Kelson (Tr 2655-56).

Respondent stated that he offered to set up a dinner at Mr. Fernandez' restaurant as a way to thank Mr. Kelson for the work he had done on behalf of Mr. Fernandez (Tr 2636). He admitted that it was not proper for him to set up the dinner at the same time Mr. Kelson was appearing before him in court (Tr 2636).

Respondent conceded that he never made a record of his relationship with Mr. Kelson or disqualified himself in any of the cases in which Mr. Kelson appeared before him (Tr 2638, 2639, 2641, 2643-46, 2650-51, 2654-56).

2. *Dean v Boyes*

Respondent stated that when he made the record about the deed transfer in February 2013, he did not know that the land he helped transfer to Mr. Boyes was the same property that was the subject of the litigation (Tr 2616, 2617, 2618, 2621-22). Respondent admitted that he made no effort to determine whether the property at issue was the same property he worked on in 2007 (Tr 2618, 2623).

Respondent said that Ms. Conneely told him that Boyes & Torrens were doing touch-up work relating to an old contract, but claimed she never told him about a new contract (Tr 2398, 2625). He did not disclose this information to the parties (Tr 2625).

Charge XII: From 2013 through 2014, Respondent, in exercising the duties of a County Court Judge with regard to applications for gun permits, interviewed applicants for such permits outside the courthouse, after regular court hours, at times in inappropriate settings, and in so doing at times improperly promoted the interests of the National Rifle Association. Respondent also improperly directed Wendy Weiner, his confidential court secretary, to work at these off-hour and off-premises interview sessions.

The hearing evidence established that on nine occasions in 2013 and six occasions in 2014, Respondent conducted interviews with applicants for gun permits on various Saturdays at the Monticello Elks Lodge in Monticello, New York (Tr 1508, 1512; Exs XII-1, XII-2). At the start of Respondent's term, pistol permit interviews were conducted in the library in the Family Court complex (Tr 1491). In 2013, Respondent decided to hold them at the Elks Lodge on Saturdays (Tr 1491-94). Respondent provided Ms. Weiner with information about the Elks Lodge and introduced her to Mike Gagliardi, a member of the Elks Lodge who would be the contact person (Tr 1493). Respondent required that Ms. Weiner help with the Saturday interviews (Tr 1508, 1509).

Prior to the Saturday interviews, Ms. Weiner contacted Mr. Gagliardi to reserve the date, reviewed the files and contacted applicants to inform them of the date and time of the interviews (Tr 1494, 1509). She also drafted and prepared approval letters that would be available if Respondent approved the application (Tr 1494, 1509).

On the day of the interviews, Ms. Weiner went to chambers to retrieve the pistol permit files and brought them to the second floor of the Elks Lodge, where she would then set up for the event (Tr 1511, 1513).

Ms. Weiner was present during the whole interview process (Tr 1511). If an individual was approved Ms. Weiner would give the interviewee an approval letter and schedule the approved interviewees for appointments with the Sullivan County pistol permit clerks, where they would receive their pistol permits (Tr 1512). After the interviews, Ms. Weiner transported the files back to chambers (Tr 1512-13).

Ms. Weiner did not receive any financial or time compensation for her Saturday work (Tr 1513). When Ms. Weiner attended the interviews on Saturdays she also worked her regular Monday to Friday schedule (Tr 1514).

On Saturday, September 7, 2013, Respondent held pistol permit interviews at the Villa Roma Resort in Callicoon, New York (Tr 1514-16; Exs XI-1, XI-1a). Respondent told Ms. Weiner that "he had an idea" about conducting the interviews on the same day as the Sullivan County Friends of NRA dinner which was occurring that night (Tr 1516). Respondent indicated that "people might enjoy coming to the dinner and supporting the dinner, since they were getting pistol permits" (Tr 1517). Respondent told Ms. Wiener that "he wanted to hold them out there since he would be out there and that there was hopes that maybe since people were out there getting their pistol license, that maybe they would support the dinner. And there were raffles and games to win guns and that they might be enticed to go to the dinner" (Tr 1516).

Respondent contacted Villa Roma to make the arrangements and Ms. Weiner scheduled the interviews (Tr 1517, 1519-20). Respondent instructed Ms. Weiner that while scheduling the interviews she should inform the applicants that "the reason we were holding [the interviews] out there was because of the [Friends of the NRA] dinner and that they were more than welcome to partake if they were interested" (Tr 1519-20).

Respondent required Ms. Weiner to work on the day the interviews were being conducted at the Villa Roma (Tr 1519). Ms. Weiner picked up the pistol permit files from chambers and transported them to the venue, and after the event Ms. Weiner was responsible for transporting the files back to chambers (Tr 1521-23).

The interviews were held before the dinner in the bar area of the golf club (Tr 1517, 1520-21). While the interviews were being held, patrons of the golf club came into the bar area (Tr 1521). Respondent required Ms. Weiner to attend and pay for the dinner after the interviews were completed (Tr 1523, 1543).

Ms. Weiner did not receive any financial or time compensation for the time she worked at the Villa Roma (Tr 1523, 1534). Ms. Weiner worked her regular Monday to Friday schedule the week before and after the Villa Roma event (Tr 1524).

Respondent's Testimony Regarding Charge XII

Respondent testified that in 2013 and 2014, he conducted interviews on Saturdays at the Elks Lodge in Monticello (Tr 2410, 2681, 2682, 2686-87). Respondent maintained that it was Ms. Weiner's idea to hold the interviews at the Elks Lodge and that she volunteered to help on Saturdays (Tr 2409, 2682, 2683).

Respondent testified that when Ms. Weiner helped with the pistol permit interviews on Saturdays, he did not compensate her other than allowing her to flex her time on Fridays (Tr 2214, 2683, 2684, 2688-89). Respondent stated that at the time he was unaware that he was not allowed to authorize his staff to take flex time (Tr 2683).

Respondent acknowledged that he conducted interviews at Villa Roma the same day as the Friends of the NRA dinner (Tr 2684). According to Respondent, he instructed Ms. Weiner not to mention the dinner when she scheduled the applicants (Tr 2684-85) and he never told Ms. Weiner to buy a ticket for the dinner (Tr 2420).

Although Respondent originally denied that he was told not to conduct pistol permit interviews outside the courthouse before 2018, he later admitted that in 2015,

Judge Thomas A. Breslin "suggested" that he schedule the interviews during the week between 9:00 a.m. and 5:00 p.m. (Tr 2406-07, 2410, 2690-91).

Charge XIII: From January 1, 2011 to 2015, Respondent identified himself as a judge in his personal email account, which is named "judgemcguire@[redacted]," and used such account on matters unrelated to his judicial duties.

After Respondent was elected as a judge his wife changed his email address from "mike-law@[redacted]" to "judgemcguire@[redacted]" (Tr 2061-62, 2108-09, 2289). Respondent's wife informed him about the new email and Respondent used it until 2015 (Tr 2109, 2553-54; Exs XIII-2a, XIII-2b). Respondent never told his wife that the email address was inappropriate (Tr 2109).

On February 22, 2011, Respondent's wife sent the following email to Wendy Weiner, Respondent's confidential law clerk:

> If anyone calls for mikes [sic] personal email or old clients looking for him or old acquaintances, or attorneys, please let them know his new email is: judgemcguire@[redacted] (the mike-law@[redacted] is no longer working)

(Tr 1524, Ex X-41a, XIII-1).

Respondent used the email address for his personal correspondence (Tr 1524-25, 2109, 2110, 2111, 2553; Exs X-42g, XIII-2a, XIII-2b, XIII-2e). Respondent used the "judgemcguire@[redacted]" email address to respond to clients who reached out to him via that email address (Ex XIII-2d). When corresponding with Zachary Kelson, Esq. regarding the criminal matter concerning Respondent's son and Mr. Kelson's representation of Respondent's acquaintances, Respondent used the email address (Tr 630, 635-36, 644; Exs X-47c, XI-1, XI-2, XI-3, XI-4, XI-7, XI-8, XI-10, XI-11, XI-12, XI-13, XI-15, XI-16, XI-19, XI-21, XI-22, XI-23, XI-24, XI-26, XI-27, XI-36).

Respondent also used the email when corresponding with a paralegal representing the seller in the sale of a house to Eileen and Phillip Moore (Exs X-23, X-24, X-26, X-28, X-30, X-34).

Respondent admitted that it was improper for him to use his judicial title in his personal email address (Ex XIII-2c).

Respondent's Testimony Regarding Charge XIII

Respondent admitted that after becoming a judge he used an email address that used his judicial title (Tr 2110-11, 2553, 2613) and that he used the email address until about 2015 (Tr 2553-54).

ARGUMENT

POINT I

RESPONDENT ABUSED THE "ENORMOUS POWER OF SUMMARY CONTEMPT" WHEN HE IMPROPERLY HELD SIX LITIGANTS IN SUMMARY CONEMPT AND COMMITTED TWO OF THOSE LITIGANTS TO JAIL FOR 30 DAYS WITHOUT PROVIDING THEM WITH APPROPRIATE WARNINGS OR AFFORDING THEM THE OPPORTUNITY TO BE HEARD.

On six occasions, Respondent abused his contempt power when he held litigants in contempt and ordered them taken into custody in handcuffs without cause or process. In two of those cases, Respondent ignored mandated procedures and sentenced R[redacted] R[redacted] and Natasha G[redacted] to 30 days in jail for contempt. In four other cases, Respondent directed that T[redacted] F[redacted] T[redacted] L[redacted], C[redacted] C[redacted] and R[redacted] K[redacted] be handcuffed and detained without providing them the requisite warning or

opportunity to make a statement or to purge the contempt. On each of these occasions, acted in an injudicious and discourteous manner toward the litigants.

"The exercise of the enormous power of summary contempt requires strict compliance with mandated safeguards, including giving the accused a warning that the conduct can result in contempt and providing an opportunity to desist from the contumacious conduct and to make a statement before a contempt adjudication." *See Matter of Feeder*, 2013 Ann Rep 124, 141 (Commn on Jud Conduct, January 31, 2012),[11] *citing* Jud Law §§750, 755; *Matter of Popeo*, 2016 Ann Rep 160, 170 (Commn on Jud Conduct, February 12, 2015); *Rodriguez v Feinberg*, 40 NY2d 994 (1976); *Katz v Murtagh*, 28 NY2d 234 (1971); *Pronti v Allen*, 13 AD3d 1034 (3d Dept 2004); *Loeber v Teresi*, 256 AD2d 747 (3d Dept 1998); *Doyle v Aison*, 216 AD2d 634 (3d Dept 1995), *lv den* 87 NY2d 807 (1996).

It is well established that abuse of the summary contempt power and failure to follow the mandated safeguards constitutes misconduct. *See Matter of Hart*, 7 NY3d 1 (2006); *Matter of Popeo*, *supra* ; *Matter of Feeder*, *supra*; *Matter of Van Slyke*, 2007 Ann Rep 151 (Commn on Jud Conduct, December 18, 2006); *Matter of Mills*, 2005 Ann Rep 185 (Commn on Jud Conduct, December 6, 2004); *Matter of Teresi*, 2002 Ann Rep 163 (Commn on Jud Conduct, February 8, 2001); *Matter of Recant*, 2002 Ann Rep 139 (Commn on Jud Conduct, November 19, 2001).

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[11] Commission determinations are available on Commission's website at: http://cjc.ny.gov/Determinations/all_decisions.htm.

A. Respondent Improperly Held R[redacted] R[redacted] in Contempt and Sentenced Him to 30 Days in Jail Without Warnings or an Opportunity to Be Heard (CHARGE I).

When Mr. R[redacted] an unrepresented litigant, asked Respondent to recuse himself from the case because he knew his son, Respondent said, "Bring him back here. You got 30 days judicial contempt" (Exs I-2, I-2a; Rep 4).

Respondent did not explain what he found contemptuous about Mr. R[redacted]'s request, let alone warn Mr. R[redacted] that his conduct would constitute contempt or afford him a chance to apologize or explain (Tr 2452, 2453; Exs I-2, I-2a; Rep 5). When Mr. R[redacted] stated that he had simply asked Respondent to recuse, Respondent accused him of threatening his son (Exs I-2, I-2a; Rep 5). The Referee found that Respondent's "accusation that R[redacted] threatened his son was unfounded and irrational" (Rep 5).

The Referee also found that the audio recording of the proceeding captured Respondent's "explosive and irrational anger" toward Mr. R[redacted], which was not apparent in the transcript (Rep 5). As the Referee correctly concluded, Respondent's actions violated the Rules (Rep 64-65).

B. Respondent Improperly Held N[redacted] G[redacted] in Contempt and Sentenced Her to 30 Days in Jail Without Warnings or an Opportunity to Be Heard (CHARGE II).

Respondent similarly abused his summary contempt power when he sentenced Ms. G[redacted] to 30 days in jail for contempt, without cause and without following the mandated contempt procedures. The Referee found that during the sentencing proceeding, Respondent "commented disparagingly and extensively about Ms. G[redacted]' parenting ability" (Rep 6), questioned her "about why she believed she was a

good mother" (Rep 7), "harshly berat[ed] G[redacted]'s parenting and life choices" (Rep 8), and treated Ms. G[redacted] in a "very condescending" manner (Rep 7).

When Ms. G[redacted] eventually told Respondent, "I don't need you--... to tell me anything but sentence me so I can get out of this fucking courtroom," Respondent sentenced her to 30 days for judicial contempt (Ex II-2; Rep 8).

As with Mr. R[redacted], Respondent never warned Ms. G[redacted] that he would hold her in contempt and never afforded her an opportunity to apologize or withdraw her statement (Tr 924, 2462, 2463; Exs II-1, II-2, II-4c; Rep 9).

C. Respondent Improperly Held T[redacted] F[redacted] in Contempt and Had Her Taken into Custody Without Warnings or an Opportunity to Be Heard (CHARGE III).

Respondent held T[redacted] F[redacted] in contempt after she interrupted him as he was answering her question, stating "Take her into custody. Take her into custody" (Exs III-2, III-2a; Rep 10). Although the Referee agreed with Respondent's observation that Ms. F[redacted] was disruptive, he found that Respondent never warned Ms. F[redacted] that her conduct was contemptuous or gave her an opportunity to be heard before taking her into custody (Tr 2472, 2473, 2487-88; Exs III-1, III-2, III-2a, III-4c, III-4e; Rep 11).

Even if Ms. F[redacted] was being disruptive, Respondent had a duty to follow statutory procedures and to act in a patient, neutral, judicious manner. Ms. F[redacted] was handcuffed and detained for nearly two hours. When Ms. F[redacted] was returned to the courtroom Respondent asked her "how's handcuffs feeling?" (Exs III-3, III-3a).

D. Respondent Improperly Held T[redacted] L[redacted] in Contempt and Had Her Taken into Custody Without Warnings or an Opportunity to Be Heard (CHARGE IV).

During an appearance in this custody matter, Respondent questioned Ms. L[redacted], who was unrepresented, about her daughter's difficulty in math class (Tr 495-96, 569; Exs IV-2, IV-2a; Rep 12). When Ms. L[redacted] said she could not recall if she spoke to someone about getting a ride to a school conference, Respondent stated, "You know what? Take her into custody" (Tr 495-96, 569; Exs IV-2, IV-2a; Rep 13). Respondent ordered that Ms. L[redacted] be taken into custody because he did not like her tone" (Tr 2486; Ex VI-5b; Rep 13).

The Referee found that although Ms. L[redacted]'s tone before being taken into custody was "disrespectful," Respondent did not warn her that he could hold her in contempt, give her an opportunity to make a statement or apologize or prepare a mandate of commitment (Tr 2486, 2487; Exs IV-1, IV-5e; Rep 13-14). In this case, as in the other cases discussed herein, "Respondent's exercise of summary contempt power without complying with due process was a gross abuse of judicial authority." *Matter of Feeder*, 2013 Ann Rep at 142.

Ms. L[redacted] was handcuffed and detained outside of the courtroom for over an hour, during which time she required medical assistance for shortness of breath and chest pain (Exs IV-2, IV-2a, IV3, IV-3a, IV-5c; Rep 14). Respondent eventually had her brought back into the courtroom and warned her that she needed to "think carefully before you address the court with disrespect" (Exs IV-3, IV-3a; Rep 14).

E. Respondent Improperly Held [redacted] C[redacted] in Contempt and Had Her Taken into Custody Without Warnings or an Opportunity to Be Heard (CHARGE V).

Respondent also directed that C[redacted] C[redacted] be taken into custody for contempt after she became upset when Respondent told her that she would have to buy or obtain a portable crib and stated, "That's a crock of shit to me, honestly" (Tr 502, 503, 1052, 1053, 1054, 1087, 1088; Exs V-2, V-2a, V-4b; Rep 15-16). When ordering that Ms. C[redacted] be taken into custody, Respondent raised his voice and used an angry tone (Tr 503, 504; Ex V-2; Rep 16). He did not warn Ms. C[redacted] that her conduct was contemptuous (Exs V-2, V-2a; Rep 17). As Ms. C[redacted] tried to explain, she was handcuffed behind her back and detained, without an opportunity to be heard or to purge the contempt (Tr 503, 504, 505, 1053, 1054, 1055, 2502; Exs V-2, V-2a, V-4c; Rep 17).

When Ms. C[redacted] returned to the courtroom her attorney informed Respondent that Ms. C[redacted] was currently pregnant (Tr 510, 511; Exs V-3, V-3a; Rep 17). Respondent then lectured Ms. C[redacted] and told her that she was going to have another child "at a time where you don't have a home, don't have any money, don't have a job, but that's your decision - -" (Tr 511; Exs V-3, V-3a; Rep 17). Ms. C[redacted] was crying as Respondent was addressing her (Tr 512; Rep 17).

F. Respondent Improperly Held R[redacted] K[redacted] in Summary Contempt and Had her Taken into Custody Without Warnings or an Opportunity to be Heard, and then Threatened to Incarcerate her Husband when he Interrupted to Plead With Respondent Not to Jail his Wife (CHARGE VI).

During an emotional proceeding, Respondent removed a 13-month-old child from the custody of his maternal grandparents and awarded temporary custody of to the father.

When Mr. K[redacted] raised abuse allegations against the child's father, Respondent ordered that the child be turned over to the father immediately (Tr 486, 487, 488, 489, 559, 560, 561, 562, 564, 565, 566, 1060, 1104-05, 1106, 1107, 1109; Exs VI-2, V-2a; Rep 19). Mrs. K[redacted] then told Respondent that if anything happened to her grandson she would "sue the county, and I will sue you." Respondent immediately directed that she be taken into custody and remarked, "You want to threaten the judge?" (Tr 486, 487, 488, 489, 559, 560, 561, 562, 564, 565, 566, 1060, 1104-05, 1106, 1107, 1109; Exs VI-2, V-2a; Rep 19).

The Referee found that Respondent addressed the parties "in an angry, raised voice," and "spoke with great hostility" when he directed court officers to remove Mrs. K[redacted] from the courtroom (Rep 20). Respondent did not warn Mrs. K[redacted] that her conduct was contemptuous, provide her with an attorney, afford her a chance to make a statement, purge the contempt or prepare a mandate of commitment (Tr 489, 490, 1061, 1062, 2509, 2510; Exs VI-2, VI-2a, VI-4d, VI-4e; Rep 20).

Mrs. K[redacted] was handcuffed and detained for over an hour (Tr 488, 491, 492; Exs VI-2, VI-2a, VI-3, VI-3a). When she returned to the courtroom both she and Mr. K[redacted] apologized repeatedly to Respondent (Tr 492; Exs VI-3, VI-3a). As Respondent was explaining to Mrs. K[redacted] that he could put her in jail for 30 days if found that she "disrupted the proceedings," Mr. K[redacted] interrupted and pleaded, "Please don't do that, sir. I'm sorry," to which Respondent threatened to "put [Mr. K[redacted]] in for 30 days" (Tr 493; Exs VI-3, VI-3a, p. 1).

The record reveals a judge that capriciously held litigants in contempt and had them jailed or detained for behavior that he perceived as disrespectful or discourteous, and in some cases, just irresponsible. As this Commission recognized in *Matter of Restaino*, it "is sad and ironic that even as respondent was scolding [others] for their behavior ... respondent's own irresponsible behavior provided a poor example of such attributes." *Matter of Restaino,* 2008 Ann Rep 191, 197 (Commn on Jud Conduct, November 13, 2007).

POINT II

RESPONDENT'S REPEATED AND BASELESS THREATS TO ARREST LITIGANTS FOR SUMMARY CONTEMPT WERE MISCONDUCT (CHARGE VII)

The Referee correctly found that Respondent committed misconduct when, on three occasions, he threatened to take Family Court litigants in custody and put them in handcuffs, and otherwise treated these individuals in a rude and discourteous manner (Rep 2, 64-65).

The Commission has routinely disciplined judges for making baseless threats of contempt or arrest, even when the threats were not carried out. *See Matter of Simon*, 2017 Ann Rep 221, 257-68 (Commn on Jud Conduct, March 29, 2016), *removal accepted* 28 NY3d 35 (2016); *Matter of Hart*, 2009 Ann Rep 97, 101-02 (Commn on Jud Conduct, March 7, 2008); *see also Matter of Wiater,* 2007 Ann Rep 155 (Commn on Jud Conduct, June 29, 2006); *Matter of Mayville*, 1985 Ann Rep 180 (Commn on Jud Conduct, March 15, 1984); *Matter of Waltemade*, 37 NY2d (nn) (Ct on the Judiciary 1975). And the Court of Appeals has made clear that it views such threats to be serious

misconduct. *Matter of Simon*, 28 NY3d 35, 39 (2016); *Matter of Blackburne*, 7 NY3d 213, 221 (2006).

The evidence showed that after the proceeding concluded and the parties were in the courtroom, litigant S[redacted] Ro[redacted] said something to her granddaughter (Tr 517, 591, 1968, 1069; Exs VII-4, VII-4a; Rep 22). Respondent got "angry" and "yell[ed]" and "scream[ed]" at Ms. Ro[redacted] that she was "going to jail" and made a remark about "putting her in handcuffs" (Tr 362-63, 517, 519, 1068-69, 1684, 1685, 1708, 1714-15; Rep 22). Ms. Ro[redacted] began having difficulty breathing, and while she was in "great distress," Respondent continued to yell at her (Tr 517, 519; Rep 22).

In another instance, Respondent interrupted a witness's testimony and threatened litigant T[redacted] E[redacted]. Respondent yelled at Ms. E[redacted], "[Y]ou are about three seconds from getting yourself put in handcuffs and taken out of here" (Tr 520-21, 522, 600; Exs VII-5, VII-5a; Rep 23). The Referee correctly observed that Ms. E[redacted] had not done anything to disrupt the proceeding or otherwise engaged in any inappropriate conduct (Rep 23). Moreover, Respondent never indicated what alleged behavior of hers he found to be objectionable (Tr 521, 2354-55, 2528, 2529; Exs VII-5, VII-5a; Rep 23).

In *V[redacted] v G[redacted]*, Respondent made a series of baseless and demeaning remarks about a litigant, and then threatened to put that litigant's mother in handcuffs for her "expression" in reaction to his remarks. A[redacted] G[redacted] moved to California with the couple's two small children with the intention that the father would follow soon after (Tr 602-03, 606, 607; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a; Rep 24). Before Mr. V[redacted] was able to join them in California, there was a breakdown in the relationship,

which led Mr. V[redacted] to file a custody petition in New York (Tr 522, 603, 607; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a; Rep 24).

During the proceeding, Respondent stated "without any evidentiary basis" that Ms. G[redacted] went to California "because she wanted out of this marriage" (Rep 24). "Notwithstanding the absence of any evidence that Ms. G[redacted] had a boyfriend," Respondent said that Ms. G[redacted] had a new boyfriend in California (Tr 527, 529-30, 532; Exs VII-6, VII-6a; Rep 24).

Immediately after making the remarks, Respondent said in a loud voice to Ms. G[redacted]' mother, who was sitting in the back of the courtroom: "I'm going to throw you out and put you in handcuffs in about 30 seconds, all right? So you can either walk out or get thrown out if I have to look at another outrageous expression from you. Clear? Because if I have to tell you again, I'm just going to ask the officer to put you in handcuffs, and then you'll – you'll experience the Sullivan County Jail" (Tr 532; Exs VII-7, VII-7a; Rep 25). Respondent did not indicate what the mother had done to provoke him or allow her to explain or apologize (Exs VII-7, VII-7a, VII-10b).

The Appellate Division reversed Respondent's order awarding full custody to the father and providing no visitation Ms. G[redacted]. The Court noted that Respondent "treated the mother with apparent disdain such that [the Court] cannot be assured that further proceedings will be conducted in an impartial manner" and directed that future proceedings be held before another judge (Tr 533; Ex VII-9; Rep 25).

POINT III

RESPONDENT ACTED IN AN IMPATIENT, DIGNIFIED AND COURTEOUS TOWARD COURT STAFF AND LITIGANTS (CHARGE VIII AND CHARGE IX)

A judge is required to be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity." Section 100.3(B)(3) of the Rules. "[B]reaches of judicial temperament are of the utmost gravity" because they "impair[] the public's image of the dignity and impartiality of courts." *Matter of Mertens*, 56 AD2d 456, 470 (1st Dept 1977); *see also Matter of Cerbone,* 61 NY2d 93, 95 (1984); *Matter of Aldrich*, 58 NY2d 279, 281-82 (1983). The Commission has publicly disciplined judges for using angry, profane and/or rude language, including when those comments are made off the bench. *See Matter of Simon*, 2017 Ann Rep 221 (Commn on Jud Conduct, March 29, 2016) *removal accepted* 28 NY3d 35 (2016); *Matter of Uplinger*, 2007 Ann Rep 145 (Commn on Jud Conduct, March 15, 2006); *Matter of Bradley*, 2003 Ann Rep 73 (Commn on Jud Conduct, October 1, 2002); *Matter of Mahon*, 1997 Ann Rep 104 (Commn on Jud Conduct, August 8, 1996); *Matter of McKevitt*, 1997 Ann Rep 106 (Commn on Jud Conduct, August 8, 1996).

The Referee correctly concluded that Respondent repeatedly violated this Rule in his dealings with court staff and the parties in *M[redacted] M[redacted] v R[redacted]. H[redacted]*

A. Respondent Was Repeatedly Rude and Discourteous to Court Staff (CHARGE VIII).

The Referee properly found that Respondent was repeatedly rude and discourteous to court staff.

1. Wendy Weiner

The Referee described Respondent's conduct toward Wendy Weiner on January 14, 2015 as "unjustified and inexcusable" (Rep 27). On that date, Respondent and Ms. Weiner were in Respondent's private office before business hours. Respondent became "very upset and agitated" and "red-faced" and shouted that there was a problem with his computer (Tr 1443, 1444, 1445; Exs VIII-4f, VIII-4g; Rep 26). When Ms. Weiner explained that no one was in the IT Department at that time of the morning, Respondent became "even more agitated" (Rep 26).

Respondent took a computer jump drive that he had in his hand and threw it across the desk towards Ms. Weiner (Tr 1445-46; Rep 26). In her testimony, Ms. Weiner credibly illustrated how Respondent "totally s[aw] red and lost it," explaining that he was shouting in a loud voice and "his hands were going" (Tr 1445, 1446, 1447). Respondent then took court files that Ms. Weiner had brought into his office and threw them across the desk and onto the floor (Tr 1448; Rep 26).

After the exchange, Ms. Weiner was shaking, scared, upset and could not think straight (Tr 1449, 1584, 1589, 1592, 1601, 1609, 1611; Rep 26). The Referee credited Ms. Weiner's testimony about the incident and the testimony of Court Officer Brenda Downs and Sergeant Guillermo Olivieri, who observed Ms. Weiner after the incident and corroborated that she was upset and crying (Rep 26-27).

A few weeks later, Respondent called Ms. Weiner into his office and offered her a backhanded apology for his conduct. Respondent told her that he had been "informed that some of his actions might have offended her" (Tr 1332, 1456-57; Rep 27). When

Ms. Weiner went to reply, Respondent extended his arm with his palm facing Ms. Weiner and stated, "That is all you are dismissed" (Tr 1457; Rep 27). Thereafter, Respondent stopped speaking to Ms. Weiner and communicated with her only through email (Tr 1457, 1458, 1571; Rep 27).

2. Court Officers

The Referee found that on June 29, 2012, Respondent "erupted with explosive anger" at Officer Diaz (Rep 28-29). On that date, the officer received a radio transmission that somebody was headed to the courtroom and opened the courtroom door in anticipation (Tr 1680, 1681; Rep 28-29). Respondent "angrily shouted" at Officer Diaz to keep the individual out and "[c]lose the door" (Tr 1679; Exs V-III-2, VIII-2a at 2; Rep 29). When the officer attempted to explain, Respondent yelled at Officer Diaz, "They're staying out. Close the door. Jesus" and "Get off the radio" (Tr 1679; Exs V-III-2, VIII-2a at 2; Rep 29).

On February 25, 2013, Officer Diaz told Sergeant Olivieri that Respondent wanted to see him (Rep 30). As the sergeant approached Respondent's chambers, the door swung open and Respondent, who was still in his robes, came toward Sergeant Olivieri in a fast paced, aggressive manner (Tr 123, 124, 125, 1464, 1465, 1467; Rep 30-31). Respondent was "red in the face" and "very agitated." He pointed his finger at Sergeant Olivieri and yelled, "I want another officer now, now, I want another officer now," and said that he "need[ed] to move the calendar" (Tr 123, 125, 126, 130, 131, 314, 1163; Rep 31). Sergeant Olivieri testified, "I was taken back. I was in shock. I was scared to be honest with you. I didn't know what I did to warrant being yelled at and I was taken off

guard" (Tr 124). The sergeant instinctually got into a "bladed stance" because he didn't know what to expect (Tr 128, 313; Rep 31).[12] Sergeant Olivieri told Respondent that he would accommodate his request and that he should not talk to him in "that tone," and then walked away (Tr 127, 130, 314, 1164, 1241, 1242; Rep 31).

Sometime in 2014, Respondent acted in a rude and discourteous manner toward another court officer assigned to his part, Officer Brenda Downs. After Respondent called a recess, Officer Downs cleared the courtroom and Respondent went into his chambers (Tr 364, 365, 410, 422; Rep 31). Officer Downs was "exactly outside [Respondent's] door," right near where Ms. Rogers and Ms. Weiner were talking (Tr 365, 366, 367, 368, 411; Ex PH-6; Rep 31). Respondent, who was in his office with the door open, was working on his computer and started to become agitated (Tr 366, 367, 412). Respondent got up from his desk, abruptly walked across the office, looked Officer Downs in the eye (Tr 368-69) and without saying anything grabbed the door and slammed it "with as much force as he could" (Rep 31). Officer Downs was only four or five inches away from the door (Tr 369).

B. Respondent Addressed the Parties in [redacted] *M*[redacted] *v* [redacted] *H*[redacted] in an Undignified Manner (CHARGE IX).

The parties in *M*[redacted] *v H*[redacted] appeared before Respondent for approval of an informal custody and visitation agreement (Exs IX-1, IX-2, IX-2a; Rep 32-33). During the appearance, Respondent told them to use "good judgment" before introducing their

[12] While in training at the Academy, the sergeant learned that when you are "having an encounter with" someone you should angle your body so that your left shoulder is facing the individual and the right side of your body where you keep your firearm is furthest away (Tr 128, 129, 130; Rep 31).

daughter to someone they were dating (Exs IX-1, IX-2, IX-2a; Rep 33). He added that their child would have a "very difficult time of this" if either of the parties introduced their child to a "drug addict," "slut," or "child abuser" (Tr 2547, 2548; Exs IX-1, IX-2, IX-2a). Respondent made these comments notwithstanding that "[t]here was no evidence or allegation that either party had a history of dating such individuals, had introduced their child to such individuals, or was dating anyone at all" (Rep 33). Respondent admitted that his comments were undignified (Tr 2547-48; Rep 33), which makes his conduct all the more troubling because they were admittedly "part of [Respondent's] standard colloquy to parents" and "had nothing to do with the specific case" (Rep 33).

As the Commission has stated, "A judge is obliged to be the exemplar of dignity and decorum in the courtroom and to treat those who appear in the court with courtesy and respect." *Matter of Caplicki*, 2008 Ann Rep 103, 105 (Commn on Jud Conduct, September 26, 2007). Respondent failed in this obligation when presiding over *M[redacted] v H[redacted]*

POINT IV

RESPONDENT COMMITTED MISCONDUCT BY PRACTICING LAW AS A FULL-TIME JUDGE AND USING HIS COURT STAFF TO COMPLETE HIS PERSONAL BUSINESS (CHARGE X)

Although Respondent was aware that the ethical standards bar a full-time judge from engaging in the private practice of law, he nonetheless performed legal services in six matters after taking the bench (Tr 2613, 2614; Rep 67-68). Such conduct is strictly prohibited under Section 100.4(G) of the Rules and has been condemned by the

Commission. *See Matter of Moynihan*, 80 NY2d 322 (1992); *Matter of Intemann*, 73 NY2d 580 (1989); *Matter of Ramich*, 2003 Ann Rep 154, 158 (Commn on Jud Conduct, December 27, 2002). It is prohibited even if the judge accepts no fee for the legal services or performs legal services for a relative. *See Ramich*, 2003 Ann Rep at 158; Adv Ops 18-120, 92-118.

Although Respondent was aware that as a full time judge his name could no longer be associated with a law firm, Respondent continued to use the answering machine, letterhead and fax machine associated with his former law office through 2015 (Tr 2613-14; Rep 34). During that time period, he maintained the same telephone number he had used in private practice, and the answering machine associated with that number stated in sum and substance, "You've reached the law office of Mike McGuire" (Tr 977, 978, 1258, 1259, 2106, 2107, 2290, 2551, 2552, 2253; Exs X-41d, X-41f, X-41h; Rep 34).

Record evidence established that Respondent repeatedly wrote correspondence using the letterhead of his former law office and used his former office's facsimile machine which identified the sender as "MCGUIRE LAW" (Tr 2057, 2106, 2062, 2111, 2112 2128, 2129, 2130, 2168, 2169, 2290, 2291 2554; Exs X-1, X-1a, X-1b, X-1c, X-1d, X-3, X-3a, X-6, X-40, X-40d, X-41h, X-41i, X-47l; Rep 35, 36).

Respondent also used his confidential secretary during business hours to help in his private practice. The Commission has held that "[t]he public is entitled to expect that judges will conscientiously use resources paid for by the taxpayers only for the purpose of which those resources were intended." *Matter of Ruhlmann,* 2010 Ann Rep 213, 219 (Commn on Jud Conduct, February 9, 2010) (citation omitted). Thus, a judge's "repeated

use of [his or] her court staff for personal, non-governmental purposes without a compelling reason" contravenes the Rules. *Id.*; *see also Matter of Brigantti-Hughes,* 2014 Ann Rep 78 (Commn on Jud Conduct, December 17, 2013).

A. Respondent Acted as an Attorney on Behalf of His Son in a Criminal Case and His Wife in Connection With a Speeding Ticket.

In 2012, Respondent's son was arrested in Oneonta, New York for Unlawful Possession of Marihuana (Tr 2558; Exs X-1, X-47a; Rep 34). Respondent told attorney Zachary Kelson about the arrest and Kelson offered to contact the District Attorney's office about an Adjournment in Contemplation of Dismissal ("ACD") (Tr 632-633, 2558, 2559; Exs XI-1, X-47c, X-47e; Rep 34). When Mr. Kelson told Respondent the DA would not offer an ACD, Respondent wrote three letters on the letterhead of his former law office to the Chief Clerk of the Oneonta City Court, where the case was pending (Tr 634-35, 638-40, 644-45, 652-53, 2558-63, 2567; Exs X-1, X-1a, X-1b, X-1c, X-1e, X-47e, X-47g, X-47l, XI-1, XI-2, XI-3; Rep 35, 36). The letters were sent by facsimile and contained a facsimile stamp reading "MCGUIRE LAW" (Tr 2559-60, 2561; Exs X-1a, X-1b, X-1c, X-471; Rep 35). Respondent requested "a proper accusatory instrument" and the lab report, enclosed a Notice of Appearance and an Affirmation of Actual Engagement, listing himself as counsel, and discussed dates on which he would be available to appear in court (Exs X-1a, X-1b; Rep 35, 36). Respondent was presiding as a judge over all the matters he listed in his letters of actual engagement (Tr 2560, 2562, 2563; Exs X-1a, X-1b, X-47h; Rep 35).

On February 26, 2013, Respondent appeared on behalf of his son at a conference with the Assistant District Attorney and the City Court judge (Tr 2395, 2563, 2564; Exs X-2, X-2a, X-47q; Rep 36). Respondent subsequently filed an omnibus motion and a reply Affirmation on behalf of his son, again listing himself as counsel (Tr 2564, 2567; Exs X-1d, X-1e, X-47o; Rep 36). The judge issued a written decision and order, dismissing the charge in the interest of justice (Tr 2568; Ex X-1f; Rep 37), and listing Respondent as the attorney of record for the defendant (Ex X-1f; Rep 37).

Respondent admitted that at the time "absolutely" knew that as a judge was prohibited from representing anyone, including a family member, but that he represented his son anyway (Tr 2568, 2569; Rep 37). He also admitted after the hearing that he "improperly appeared in the City of Oneonta Court . . .on behalf of his son" and that "his position as a full time Judge in the State of New York prevents him from providing representation to any family member" (Rep 37).

Respondent clearly knew that he was prohibited from practicing law after he took the bench. On July 25, 2011 – just six months after he became a full-time judge – Respondent acted as his wife's attorney in a traffic matter and wrote to the presiding judge using the letterhead of his former law office (Tr 2131-32, 2383, 2569; Exs X-3a, X-45b; Rep 37). In the letter, Respondent disclosed that he was a County Court judge and acknowledged that he was "not permitted to represent this or any other client" (Tr 2569, 2571; Ex X-3a; Rep 37-38). Yet, Respondent proceeded to ask the judge to accept the plea he had negotiated with the prosecutor (Tr 2569, 2571; Ex X-3a; Rep 37-38). After Respondent sent the letter, the ticket was dismissed (Tr 2132, 2383; Ex X-3a; Rep 38).

Respondent clearly acted as his wife's legal counsel. That he admitted he was a judge and was not permitted to represent her in no way undercuts that he proceeded to represent her anyway. Indeed, by introducing his judicial position into the conversation, Respondent compounded the impropriety of practicing law with his assertion of the prestige of judicial office to benefit another. Respondent also admitted after the hearing that he "improperly communicated with the Court in August 2011" on behalf of his wife and further that "it was improper to utilize the stationary [sic] from [his] former law practice to correspond with the Court" (Rep 38).

B. Respondent Continued to Represent Three Clients After He Became a Full-Time Judge.

Prior to becoming a full-time judge in January 2011, Respondent represented George Matisko in a personal injury case, Ricky Pagan in a real estate transaction, and Christopher Lockwood in connection with a speeding ticket. After becoming a full-time judge, Respondent continued his representation of these clients and asked his court-employed confidential secretary to help with the matters. Respondent violated the Rules when he "improperly continued performing ... legal services for clients." *See Matter of Moynihan*, 80 NY2d at 324; *see also* Adv Ops 06-116, 99-76, 89-38 (a full-time judge cannot complete or continue legal work on matters commenced prior to becoming a judge).

1. George Matisko

From January 2011 until February 2012, Respondent continued to act as Mr. Matisko's attorney in a personal injury matter. Among other things, Respondent:

- Sent a letter on the letterhead of his former law office to the claims representative and enclosed a HIPAA form (Ex X-6; Rep 38);

- Received correspondence from the insurance company as Mr. Matisko's attorney (Exs X-7, X-8, X-9; Rep 38);

- Had his confidential secretary, Ms. Weiner, call the insurance company and negotiate a settlement for Mr. Matisko during business hours (Tr 1468, 1469, 1470, 1471, 1643, 1645; Ex X-14; Rep 39);

- Had Ms. Weiner prepare a release during business hours, notarize Mr. Matisko's signature on the release, and send it to the insurance company (Tr 1471, 1472, 1473, 1474, 1476, 1477, 1478, 1479, 1480, 1640; Exs X-10, X-15; Rep 39);

- Had Ms. Weiner draft a letter during business hours regarding the missing settlement check (Tr 1480, 1481, 1648, 1651; Ex X-11; Rep 39-40); and

- Received a check at his residence from the insurance company made out to Mr. Matisko and him, as Mr. Matisko's attorney, and endorsed the check (Exs X-12, X-13a; Rep 40).

The Referee pointedly found Respondent's claim that Ms. Weiner acted on her own "masquerading as [Respondent] without his knowledge," was "not credible" and "not supported by the evidence" (Rep 40).

2. Ricky Pagan

In 2010, Ricky Pagan paid the back taxes on a piece of property about to enter foreclosure which Mr. Pagan did not own but wished to purchase (Tr 465, 466, 473, 474, 2387, 2086, 2152, 2386, 2387, 2388, 2604; Ex X-42q; Rep 45). Thereafter, Respondent drafted a mortgage with the seller so that Mr. Pagan was protected until he could pay the rest of the purchase price (Tr 465-68, 2388, 2391, 2604; Ex X-38; Rep 45).

In about 2012, the seller contacted Respondent and told him she had received another foreclosure notice. Even though he was a full-time judge, Respondent did not tell

Mr. Pagan to find another attorney. Instead, he contacted Mr. Pagan and gave him legal advice – telling him to go to the Treasurer's office and pay the rest of the money for the property (Ex X-42r).

In 2013, Mr. Pagan spoke to Respondent about "how to go about finishing the deal" (Tr 468-69, 472, 2606-07; Ex X-42r; Rep 45). Mr. Pagan brought Respondent a check and Respondent mailed the documents to the seller and asked her to send them back to Respondent (Exs X-42r, X-43c; Rep 45). Respondent conceded that he probably sent a cover letter with instructions about signing the documents and returning them to him (Tr 2608; Exs X-43c, X-43d).

On November 14, 2013, the deed transferring the property to Mr. Pagan was filed with the Sullivan County clerk's office (Ex X-39; Rep 45). The County Clerk's Recording Page states that the deed was received from "MCGUIRE" and the last page of the deed directs that it should be returned to Michael F. McGuire at the PO Box where Respondent was receiving his business mail (Ex Xs-39, X-43c; Rep 45).

The Referee properly rejected Respondent's post-hearing claim that he "had no involvement in the transaction [regarding Mr. Pagan] subsequent to . . . 2010" (Rep 45), finding that the "hearing record belies that assertion" (Rep 45).

3. Christopher Lockwood

Just days after Respondent became a full-time judge, he received a notice scheduling a pretrial conference in Mr. Lockwood's speeding ticket case (Tr 1796, 1797, 1817, 1832; Exs X-1, X-40c; Rep 46). When the parties did not appear on the return date, the Liberty Town Court Clerk called Respondent's chambers and left a message

about the *Lockwood* matter (Tr 1792, 1798, 1800, 1826, 2611; Rep 46). Respondent returned the clerk's phone call (Tr 1800-01, 1826, 1828, 1830, 2611; Rep 46).

A letter purportedly signed by Respondent's brother was sent to the prosecutor on the letterhead of Respondent's former law office, enclosing Mr. Lockwood's application and driving record abstract (Ex X-46d; Rep 46). The Referee found that during this time period Respondent "was aware that letters were being sent out using the same letterhead he used while in private practice" (Rep 46).

Thereafter, the application had to be resubmitted (Tr 1804, 1806). Despite Respondent's representation that his brother was handling the matter, Respondent directed Ms. Weiner to fill out an Application to Amend Traffic Infraction and when she stated she did not know how, Respondent filled out the form himself (Tr 1485, 1486-87, 1657, 1658; Rep 46-47). Once the form was completed Ms. Weiner, with Respondent's knowledge and during her regular business hours, sent the form and a cover letter that she had drafted to the Liberty Court clerk (Tr 1485-87, 1657; Ex X-40e; Rep 47). The town court sent Respondent a letter accepting Mr. Lockwood's plea at the address of his former law office (Ex X-40f; Rep 47). During the course of the *Lockwood* matter, the clerk never received Ken McGuire's contact information, never spoke to him and he never appeared in court (Tr 1809; Rep 47).

C. In 2014, Respondent Represented Eileen and Phillip Moore While a Full-Time Judge and Attempted to Hide His Involvement.

More than three years after becoming a full-time judge, Respondent represented Eileen and Phillip Moore in the purchase of a home in foreclosure. Although Respondent

claimed that his brother, Ken McGuire, was representing the Moores, the Referee found that Respondent:

- Told the Moores that they should have the home inspected, get a survey, have a title company do a search and hire an attorney (Tr 686-87, 701-02, 2384-85, 2578-79; Exs X-42a, X-42i, Rep 41);

- Brought the contract of sale to the Moores' home, explained the contract to them, indicated where it needed to be signed, stayed as the contract was signed and left the house with the signed contract (Tr 681-84, 688-90, 696-97, 698, 704-05, 1372, 1398, 1525, 2103, 2583-85; Exs X-18, X-19, X-42b, X-42e; Rep 41-42);

- Sent two separate emails from his personal email account, "judgemcguire@[redacted]," to the paralegal at the law firm representing the foreclosure company, Mary Ann Schultz, in which he provided his personal cell number and invited calls or emails to his or his wife's personal email account if there were any questions (Tr 2146, 2586-89; Exs X-23, X-24, X-42f, X-42h; Rep 42). Although the emails were signed by Ken McGuire, they were sent from Respondent's email account and the telephone number referenced in the emails was Respondent's cell phone number (Rep. 42).

- Sent an email from his personal account to the real estate broker, Edward Jeffrey Dolfinger, regarding the home inspection and then engaged in an email exchange with the broker that included the legal threat "directing that you cease and desist from making any of your crude comments to my clients, if they persist I will have not [sic] option but to take action against you" (Ex X-26; Rep 43, 63-64), The Referee found that Respondent testified falsely at the hearing when he denied sending this email to the real estate broker (Rep 63-64);

- Spoke with the paralegal, Ms. Schultz and then sent an email signed "Ken" from Respondent's personal email account to the paralegal explaining that "Mike" was "an attorney [ ] not practicing full time right now" and that the paralegal "may from time to time speak with him as well" (Exs X-26, X-29, Rep 63). The Referee found that Respondent lacked candor when he denied speaking with Ms. Schultz regarding the Moores' real estate transaction (Rep 63);

- Sent four emails from his personal email account informing the paralegal that he would be on vacation on the same dates (September 16-24, 2014) that his confidential secretary told the Sullivan County and Supreme Court chief clerk that he would be on vacation (Tr 989; Exs X-28, X-29, X-30, X-36; Rep 43, 64); and

- After the house closed but before the Moores moved in, Respondent returned a call he received in chambers from the Moores regarding "a bill where penalties are accruing" (Tr 2603; Ex X-37).

The evidence shows, and the Referee specifically found, "that the emails relating to the Moore real estate transaction signed by 'Ken' or 'Ken McGuire' were all written and sent by Judge McGuire and that Judge McGuire used his brother's name on the emails to hide the fact that he was involved as an attorney in the Moore real estate transaction while he was a judge" (Rep 43). Indeed, the Referee noted that the emails purportedly signed by Ken contained the judge's personal email address, judgemcguire@[redacted], and made "several references to Judge McGuire's personal cell phone number" (Rep 43-44).

The Referee also found that it was Respondent, and not Ken McGuire, who was planning the vacation between September 16-24 – a vacation that was referenced in emails from Respondent's personal account to Ms. Schultz (Ex X-36; Rep 44). Neither the Moores nor the real estate broker ever spoke to or met with Ken McGuire regarding the purchase of the house (Tr 681, 684-85, 696, 1389-90, 1405; Rep 44). The real estate broker never received an email from any email address associated with Ken McGuire (Tr 1389-90, 1405; Rep 44).

The Referee ruled that Respondent's failure to call his brother as a witness at the hearing warranted a negative inference that Ken McGuire did not perform any legal work for the Moores, finding that

> [I]f as Judge McGuire continued to maintain at the hearing and now, that it was his brother Ken using the "judgemcguire@[redacted]" email address who was communicating about the Moore' real estate transaction . . . he should have called Ken McGuire at the hearing to corroborate that fact. Ken McGuire surely had knowledge of a material issue, was available to Judge McGuire, as his brother would be expected to give favorable testimony to Judge McGuire, and such testimony would have been non-cumulative. Accordingly, an inference that Ken McGuire did not perform legal work for the Moores and that he did not send the emails from judgemcguire@[redacted] that were signed "Ken" or "Ken McGuire" is appropriate.

(Rep. 44, fn omitted).

Furthermore, as discussed more fully in Point VIII, the Referee found that Respondent lacked candor when he testified that "his only involvement in the purchase of the Moore's home was advising them to hire an attorney and providing them the name of a home inspector" (Rep 62).

The prohibition against the practice of law as a full-time judge is straightforward and unequivocal. *See* Section 100.4(G) of the Rules. The evidence shows, and the Referee correctly concluded, that Respondent provided legal services to while he was a full-time judge to his son, wife, George Matisko, Ricky Pagan, Christopher Lockwood and Philip and Eileen Moore, and that this was judicial misconduct.

POINT V

RESPONDENT COMMITTED JUDICIAL MISCONDUCT WHEN HE PRESIDED OVER NUMEROUS CASES IN WHICH HIS IMPARTIALITY COULD REASONABLY BE QUESTIONED (CHARGE XI)

Every judge has "a duty to conduct himself in such a manner as to inspire public confidence in the integrity, fair-mindedness and impartiality of the judiciary." *Matter of Esworthy,* 77 NY2d 280, 282 (1991). *See also Matter of Cohen,* 74 NY2d 272, 278 (1989); *Matter of Astacio*, 2019 Ann Rep (Commn on Jud Conduct, April 23, 2018), *removal accepted* 32 NY3d 131 (2018). Respondent did not live up to that standard, and clearly violated Section 100.3(E)(l)(a)(i) of the Rules, when he presided over numerous cases in which his impartiality was reasonably subject to question.

A. Cases Involving Attorney Zachary D. Kelson

Respondent had a close personal and professional relationship with Zachary D. Kelson, an attorney in Sullivan County who regularly appeared before Respondent (Tr 620, 625-627, 2627; Exs XI-3, XI-10; Rep 47). Respondent acknowledged that he and Mr. Kelson are "good friend[s]" and the evidence showed that they regularly socialized together (Tr 625-628, 741, 2626-27; Exs XI-3; XI-10, XI-28; Rep 47). Indeed, Respondent sent an email to Mr. Kelson in which he referred to him as a "great and wonderful friend" and another in which he wrote to Mr. Kelson, "I can't tell you how much I appreciate your friendship, our lunch breaks are a great therapy for me" (Exs XI-3, XI-10; Rep 50).

The evidence further showed that Mr. Kelson significantly assisted Respondent in representing Respondent's son in a criminal matter. Mr. Kelson frequently strategized about the case with Respondent and, with Respondent's consent, engaged in extensive negotiations with the District Attorney's office in an effort to have the case against Respondent's son dismissed (Tr 632-35, 638, 639-40, 644-46, 648, 650-54, 657, 2558, 2559, 2566 2628; Exs XI-1, XI-2, XI-3, XI-4, X-47c, X-47e; Rep 48-50).

In addition, at Respondent's request, Mr. Kelson represented numerous friends and/or acquaintances of Respondent or his family (Rep 48). The Referee explicitly found that Respondent "lacked candor when he testified that he did not 'believe' that he referred cases to attorney Zachary Kelson and that he 'did not tell anybody to contact' Kelson" (Rep 61). The Referee credited the testimony of Mr. Kelson and other witnesses in finding that Respondent had asked Mr. Kelson to represent these individuals or referred the cases to Mr. Kelson (Rep 62).

Despite his relationship with Mr. Kelson, Respondent presided over at least eight cases, and perhaps many others, in which Mr. Kelson represented one of the parties without disclosing his relationship with Mr. Kelson (Rep 48). Respondent acknowledged at the hearing that it was inappropriate for him to preside over cases involving Mr. Kelson and started disqualifying himself from such cases in May 2019 (Tr 2656).

Respondent committed misconduct by presiding over cases in which Mr. Kelson appeared, notwithstanding their "extensive personal relationship" (Rep 48, 68). Both the Commission and the Court of Appeals have consistently held that a judge cannot preside over matters involving the judge's close friend. *See, e.g., Matter of Intemann*, 73 NY2d

580, 582 (1989); *Matter of Conti*, 70 NY2d 416, 418-19 (1987); *Matter of Robert*, 1997 Ann Rep 127, 129-30 (Commn on Jud Conduct, September 17, 1996), *removal accepted* 89 NY2d 745 (1997); *Matter of Hart,* 2009 Ann Rep 97 (Commn on Jud Conduct, March 7, 2008) (judge sat on a case in which one of the attorneys had represented judge's sister); *Matter of Lebedeff*, 2006 Ann Rep 214 (Commn on Jud Conduct, March 18, 2005) (judge presided over a case in which she had a significant social and professional relationship with one of the attorneys); *Matter of Bivona*, 2004 Ann Rep 73 (Commn on Jud Conduct, December 29, 2003) (judge signed an *ex parte* order for attorney who was representing him).

B. *Dean v Boyes*

In or about January 2013, Respondent was assigned to preside over *Michael and Joann Dean v Sean and Dawn Boyes* a real property case (Tr 1259-60, 1461-62, 2615; Ex XI-54a; Rep 55). In 2007, while Respondent was in private practice, he represented Mary Lou Boyes in the transfer of the same property to her son, defendant Sean Boyes (Tr 2400, 2615-16, 2620; Exs XI-39, XI-54b, XI-54c, XI-54d; Rep 55).

At the outset, the plaintiffs sought to have the case transferred to another judge because of Respondent's prior involvement with the property (Tr 2617; Exs XI-40a, XI-54a; Rep 55). Rather than recuse himself, Respondent made a record of his work for Ms. Boyes and additionally disclosed that Mr. Boyes' construction company had previously worked for his law clerk Ms. Conneely (Tr 2398, 2400, 2622, 2624-25; Exs XI-45, p 2-4; Rep 55-56).

Respondent committed misconduct when Ms. Conneely told him that she had hired Mr. Boyes' firm to continue work on her house, and he continued to preside without informing the parties about this new information (Tr 1262-68, 1280, 1342, 1345-46, 1351, 1359-60, 1361, 1363-64, 1365, 2625; Ex XI-46; Rep 56, 57). During the time Mr. Boyes' firm worked on her home, Ms. Conneely presided over conferences and accompanied the parties and their attorneys on a site visit (Tr 1269-71, 1341, 1354, 1362, 2399; Ex XI-40c; Rep 57). At no time did Respondent instruct Ms. Conneely not to participate in the *Dean v Boyes* matter (Tr 1271, 2625; Rep 57).

After the plaintiffs learned of Ms. Conneely's continuing relationship to Mr. Boyes, they filed a motion seeking leave to reargue, renew and/or vacate Respondent's decision in the case and to either disqualify or recuse him based on the appearance of impropriety (Tr 1275-76; 1343; Exs XI-41, XI-42, XI-43; Rep 58). Respondent did not send the motion to a floating clerk; instead, Ms. Conneely drafted the decision (Tr 1286-87, 1352, 2626; Rep 58). On October 23, 2014, Respondent denied the motion in its entirety (Tr 1281; Ex XI-44; Rep 58).

In *Matter of Astacio*, 32 NY3d 131, 134 (2018), the Court of Appeals sustained the Commission's finding that a judge's impartiality could reasonably be questioned in a case where she arraigned a former client. *Id.* at 134. The same is true here. Respondent's impartiality regarding Mr. Boyes' interest in the property could reasonably be questioned by virtue of Respondent's legal representation of Mr. Boyes' mother in the conveyance of that very property to him.

With respect to Respondent's law clerk's ongoing professional relationship with Mr. Boyes, it was incumbent upon Respondent to disclose this fact and either insulate his clerk from the case or disqualify himself. *See Matter of Gumo*, 2015 Ann Rep 98, 109 (Commn on Jud Conduct, December 30, 2014); Adv Ops 93-21, 97-93.

POINT VI

RESPONDENT COMMITTED JUDICIAL MISCONDUCT WHEN HE CONDUCTED PISTOL PERMIT INTERVIEWS OUTSIDE THE COURTHOUSE, AFTER REGULAR COURT HOURS, IMPROPERLY PROMOTED THE INTERESTS OF THE NATIONAL RIFLE ASSOCIATION AND DIRECTED HIS CONFIDENTIAL COURT SECRETARY, TO WORK AT THESE OFF-HOUR AND OFF-PREMISES INTERVIEW SESSIONS (CHARGE XII)

A judge may not "lend the prestige of judicial office to advance the private interests of others." Section 100.2(C) of the Rules. Respondent violated that Rule when he scheduled pistol permit interviews at a restaurant hosting a Friends of the National Rifle Association dinner and directed his confidential secretary to inform applicants about the dinner.

Respondent also violated the Rules when he required his confidential secretary to work on Saturdays, at locations outside the courtside, without compensation. *See* Sections 100.1, 100.2(A), 100.3(C)(1) of the Rules.

Although Respondent could have conducted pistol permit interviews at the court house, he decided on nine occasions in 2013 and six in 2014 to conduct interviews on various Saturdays at the Monticello Elks Lodge (Tr 1492, 1494-95, 1499, 1508, 1512; Ex XII-1, XII-2; Rep 58). It was Respondent's idea to hold interviews on Saturdays at the

Monticello Elks Lodge, and he directed his confidential secretary, Wendy Weiner, to be present during the Saturday interviews (Tr 1492-94, 1508-09; Rep 58-59).

On the day of the Saturday interviews, Respondent required Ms. Weiner to retrieve the files from chambers, transport them to the Elks Lodge, set up for the event and then pass files to Respondent during the interviews (Tr 1508-09, 1511-13; Rep 59). If an individual was approved for a pistol permit, Ms. Weiner gave the interviewee an approval letter she had previously drafted and scheduled an appointment with the Sullivan County clerk, where the interviewee would receive the permit (Tr 1494, 1509, 1512; Rep 59). After the interviews were completed, Ms. Weiner transported all the files back to chambers (Tr 1512-13; Rep 59).

On Saturday, September 7, 2013, Respondent decided to hold pistol permit interviews at the Villa Roma Resort in Callicoon, New York, before the Sullivan County Friends of the NRA dinner (Tr 1514, 1516-17; Exs XI-1, XI-1a; Rep 59). Respondent thought "people might enjoy coming to the dinner and supporting the dinner, since they were getting pistol permits" (Tr 1517; Rep 60).

Respondent instructed Ms. Weiner to schedule the interviews and to inform the applicants that the Friends of the NRA dinner was being held at the Villa Roma that night and that they "were more than welcome to partake if they were interested" (Tr 1519-20; Rep 60).

The interviews were held before the dinner in the bar area of the golf club (Tr 1517, 1520-21; Rep 60). While the interviews were being held patrons of the golf club

came into the bar area (Tr 1521; Rep 60). Respondent required Ms. Weiner to attend and pay for the dinner after the interviews were completed (Tr 1523, 1543; Rep 60).

Ms. Weiner did not receive any financial compensation or compensatory time for the hours she worked at the Elks Lodge or the Villa Roma (Tr 1513, 1523, 1534; Rep 60). Ms. Weiner worked her regular Monday to Friday schedule the weeks before and after the Saturday she worked at the Elks Lodge and the Villa Roma (Tr 1514, 1524; Rep 60).

POINT VII

RESPONDENT USED THE PRESTIGE OF JUDICIAL OFFICE TO ADVANCE HIS PRIVATE INTEREST BY USING HIS PRIVATE EMAIL ADDRESS WHICH CONTAINED HIS JUDICIAL TITLE TO CONDUCT PERSONAL AND PRIVATE BUSINESS (CHARGE XIII)

A judge is prohibited from lending the prestige of judicial office to advance his or her own interests. Rule 100.2(C). The Commission should confirm the Referee's finding that Respondent violated this Rule by using his judicial title in his email address (Rep 60-61, 69-70).

After Respondent was elected to judicial office, he changed his email address to "judgemcguire@[redacted]" and he used that email address until 2015 (Tr 2061-62, 2108-11, 2289, 2553-2554, 2613; Exs XIII-2a, XIII-2b; Rep 60). Respondent used this email address to correspond with clients who reached out to him and in his personal dealings (Tr 1524-25, 2109-11, 2553; Exs X-42g, XIII-2a, XIII-2b, XIII-2d, XIII-2e; Rep 61). Respondent was well aware that using his judicial office in his email address was improper (Ex XIII-2c; Rep 61).

Respondent used the "judgemcguire" email address when he corresponded with individuals regarding outside private cases, including his correspondence with attorney Zachary Kelson about his son's criminal matter and matters in which Mr. Kelson represented Respondent's friends and acquaintances (Tr 630, 636, 639-40, 644-45; Exs X-47c, XI-1, XI-2, XI-3, XI-4; Rep 61).

Respondent also used the "judgemcguire" email when he represented the Moores in the purchase of their house and sent numerous emails to the seller's attorney and real estate broker (Exs X-23, X-24, X-26, X-28, X-30, X-34; Rep 61).

By using an email address that noted his judicial status, Respondent created the appearance that he was invoking his judicial office in connection with his impermissible private legal work.

POINT VIII

RESPONDENT SHOULD BE REMOVED FROM JUDICIAL OFFICE FOR ENGAGING IN A PERVASIVE PATTERN OF EGREGIOUS MISCONDUCT.

Respondent's profound and persistent pattern of disregarding the law and depriving litigants of their liberty, in six cases over three years, is unquestionably egregious misconduct warranting removal. Respondent's gross and repetitive abuse of the summary contempt power did not, however, stand alone. In three other cases, he threatened to arrest and handcuff litigants with no lawful basis. Respondent regularly raised his voice and made demeaning and insulting remarks to these and other litigants, and spoke to his court staff in a loud, rude and disrespectful manner, even throwing a computer jump drive in his court secretary's direction in a fit of rage.

Respondent also committed misconduct when he engaged in the private practice of law as a full-time judge, acting as an attorney on behalf of his son and his wife, among others; using his court secretary to help with his private practice during business hours; and at times posing as his brother to conceal that he himself was involved. In addition, over a period of years, Respondent violated the Rule prohibiting a judge from lending the prestige of his judicial office to advance his own interests when he used an email address that noted his judicial status to conduct his personal and private business.

Respondent called into question his impartiality by presiding over numerous cases involving Zachary Kelson, an attorney with whom he had a significant personal and professional relationship, without disclosing the relationship or disqualifying himself. He again violated the Rules by conducting pistol permit interviews outside the courthouse after regular courts, scheduling one session before a Friends of the NRA dinner to promote the event, all while requiring his court secretary to work at these off-hour and off-premises interview sessions.

Finally, as the Referee found, Respondent "lacked candor" and "testified falsely" at the hearing. Respondent's extensive and serious misconduct and his marked lack of candor warrant his removal from office.

A. Respondent's Pattern of Abusing his Summary Contempt Power Is Serious Misconduct that Warrants a Public Sanction.

Six times in three years, Respondent grossly abused his summary contempt power, repeatedly ignoring the procedures on which a contempt finding may be made. Respondent sentenced two litigants to 30 days jail and detained four others for hours,

without warning them that their conduct would result in detention or providing them with an opportunity to be heard. He did not find attorneys for unrepresented litigants and failed to prepare mandated orders stating the facts justifying the contempt.

Respondent's egregious, repetitive abuse of his summary contempt power evinces a shocking disregard for the law, resulted in the unwarranted deprivation of numerous people's liberty, and reveals that Respondent is a threat to anyone who enters his courtroom. Standing alone, this conduct warrants removal.

The Commission has found that a single gross abuse of the contempt power is at least censurable. *Matter of Hart*, 2006 Ann Rep 171 (Commn on Jud Conduct, October 20, 2005). Where there were multiple abuses of the contempt power, or where the abusive contempt was aggravated by other misconduct, the Commission has rendered removal determinations. *Matter of Simon,* 2017 Ann Rep 221 (Commn on Jud Conduct, March 29, 2016) *removal accepted* 28 NY3d 35 (2016); *Matter of Feeder*, 2013 Ann Rep 124 (Commn on Jud Conduct, January 31, 2012); *Matter of Hamel*, 1991 Ann Rep 61 (Commn on Jud Conduct, March 30, 1990).

Respondent not only grossly misused his judicial contempt power, he also subjected many of these litigants to intemperate behavior and injudicious and disparaging comments. Indeed, the Referee noted in his report that many of the incidents were "accompanied by [Respondent's] abrupt angry outbursts some of which can only be described as explosive" (Rep 2). In one case involving a mother who failed to complete a drug program, the Referee specifically found that Respondent "commented disparagingly and extensively about G[redacted]'s parenting ability" (Rep 6), questioned her "about why

she believed she was a good mother" (Rep 7) and "harshly berat[ed] [her] parenting and life choices" (Rep 8). Judges who have engaged in such rude and demeaning behavior have routinely been publicly disciplined. *See Matter of Pines*, 2009 Ann Rep 154 (Commn on Jud Conduct, June 17, 2008); *Matter of Uplinger*, 2007 Ann Rep 145 (Commn on Jud Conduct, March 15, 2006); *Matter of Assini*, 2006 Ann Rep 91 (Commn on Jud Conduct, November 18, 2005); *Matter of Mahon*, 1997 Ann Rep 104 (Commn on Jud Conduct, August 8, 1996).

B. Respondent's Baseless Threats to Arrest Three Individuals and His Rude and Demeaning Behavior Warrants Sanction.

On three other occasions, Respondent abused his power by threatening to hold three litigants in contempt with no lawful or reasonable basis. Respondent yelled and screamed at one litigant that she was "going to jail" and that he would put her in handcuffs, because she spoke to her granddaughter after the proceeding had ended (Rep 21, 22). Without reason or explanation, Respondent yelled at another litigant, "[Y]ou are about three seconds from getting yourself put in handcuffs and taken out of here" (Rep 23). Respondent threatened to throw a litigant's mother out of the courtroom and put her in handcuffs because of what he perceived as "outrageous expression[s]," and warned that if he had to tell her again she would "experience Sullivan County Jail" (Rep 25).

"The threat of contempt or jail against [these litigants] was excessive and inappropriate, notwithstanding that respondent did not act on his threat." *Matter of Hart*, 2009 Ann Rep 97, 101 (Commn on Jud Conduct, March 7, 2008) (censure).

Aside from threatening these individuals, Respondent also made snide and baseless remarks to other litigants involved in custody matters. Respondent repeatedly remarked that A[redacted] G[redacted] had moved her children to California because of a new boyfriend, notwithstanding the absence of any evidence that she was in a relationship (Rep 24-25). Similarly, he told the litigants in *M[redacted] v H[redacted]* that their child would face difficulties if they dated a "drug addict," "slut" or "child abuser" (Tr 2547, 2549; Exs IX-1, IX-2, IX-2a; Rep 33), despite the absence of any "evidence or allegation" that either party was, or had a history of, dating such individual (Rep 33).

"Every lawyer or litigant who enters a courtroom has a right to be treated with dignity, respect and fairness." *Matter of O'Connor*, 2019 Ann Rep 182, 205-06 (Commn on Jud Conduct, March 30, 2018) *removal accepted* 32 NY3d 121 (2018). Respondent's inappropriate threats, his intemperate demeanor and his injudicious comments to litigants demonstrate an alarming pattern of inappropriate behavior that dictates removal.

C. Respondent's Treatment of His Court Staff, Particularly Wendy Weiner, Is Serious Misconduct Justifying Public Discipline.

Respondent also subjected his court staff to the same demeaning and volatile behavior as litigants. He spoke "erupted with explosive anger" at Court Officer Diaz for holding open the courtroom door in anticipation of parties that were arriving late (Tr 1679-81; Rep 28-29) and slammed his office door in Officer Downs' face (Tr 368-69; Rep 31). During a tantrum about a problem with his computer, Respondent became "upset and agitated" and red-faced, and started shouting at Ms. Weiner (Tr 1443, 1444, 1445; Rep 26). When told that his computer could not be fixed until business hours,

Respondent took a computer jump drive that he held in his hand and threw it across the desk towards Ms. Weiner (Tr 1445-46; Rep 26). Respondent continued his "tantrum of rage," throwing files off his desk onto the floor and kicking the files and paperwork all over his private office (Tr 1448-49; Rep 26).

Respondent also engaged in an angry confrontation with Sergeant Olivieri (Tr 351, 353-54, 371, 519, 530; Rep 3-4). Respondent swung open the courtroom and, wearing his judicial robes, proceeded rapidly toward Sergeant Olivieri in an aggressive manner (Tr 123-25, 1464-65, 1467; Rep 30-31). He was red-faced and agitated and pointed his finger at the sergeant as he yelled "I want another officer now" (Tr 123, 125, 126, 130-31, 314, 1163; Rep 31). Respondent's demeanor "shock[ed]" and "scared" Sergeant Olivieri, so much so that he instinctually took a "bladed stance" typically used by officers during encounters to keep their firearms out of reach (Tr 124, 128, 129, 130, 313; Rep 31).

Significantly, two of the episodes with his court staff were not just limited to verbal abuse. Respondent escalated these encounters into full-blown confrontations, throwing a piece of computer equipment toward Ms. Weiner and physically intimidating Sergeant Olivieri. As this Commission has stated, "[s]elf-control is an essential element of judicial temperament," and "crossing the line from verbal to physical confrontation is not just improper, but fundamentally inimical to the role of a judge." *Matter of Allman*, 2006 Annual Report 83 (Commn on Jud Conduct, March 23, 2005) (censure); *see also Matter of Simon*, 2017 Ann Rep 221, 255 (Commn on Jud Conduct, March 29, 2016), *removal accepted* 28 NY3d 35 (2016).

D. Respondent Committed Additional Serious Misconduct By Practicing Law as a Full-Time Judge.

Despite knowing that the Rules strictly prohibit a full-time judge from practicing law (Tr 2613, 2614; Rep 37), Respondent chose to represent his son in a city court criminal matter, performed legal work for a couple purchasing a home, and continued to represent his wife and other clients from his former private law practice that remained pending after he took the bench, enlisting the assistance of his courthouse secretary.

Two years into his tenure as a full-time judge, Respondent represented his son in a criminal case. Respondent repeatedly identified himself as a practicing attorney in correspondence and papers filed with the court, filed a Notice of Appearance as counsel for his son and an Affidavit of Actual Engagement, corresponded with the court on his private law firm's stationery, conferenced the case with a judge and an assistant district attorney at the courthouse, and filed a motion seeking various relief (Rep 34-47). His actions went far beyond paternal advice to his son or even discussions of legal strategy with his son's lawyer. Respondent was his son's lawyer, actively engaged in court, and that is simply impermissible. *See Matter of Ramich,* 2003 Ann Rep 154 (Commn on Jud Conduct, December 27, 2002) (censure).

Respondent also flouted the prohibition on the practice of law when he sent a letter on his former law firm's letterhead to the Wawarsing Town Court Justice on behalf of his wife. In that letter, Respondent identified himself as a County Court judge and said that he was "not permitted to represent [his wife] or any other client" (Rep 37). Notwithstanding that prohibition, Respondent then asked the court to "accept the

previously submitted plea" he had discussed with the prosecutor (Rep 37-38). Not only did Respondent's request for a legal remedy from the court constitute the practice of law, but his reference to his judicial status before requesting such relief was plainly a misuse of the prestige of his judicial office in an attempt to influence the disposition of his wife's case, in violation of Section 100.2(C) of the Rules. The Commission has consistently disciplined judges requesting, or even appearing to request, special based on their judicial status. *See, e.g., Matter of Calderon*, 2011 Ann Rep 86 (Commn on Jud Conduct, March 26, 2010) (censure).

Respondent also practiced law in four additional matters, negotiating a settlement and preparing a release for Mr. Matisko (Rep 38-39), rendering legal advice and completing the purchase of a property for Mr. Pagan (Rep 45), managing Mr. Lockwood's court appearances and preparing papers to submit to the court (Rep 46-47), and representing the Moores in their real estate matter (Rep 40-44).

Respondent's misconduct was "exacerbated by his use of court personnel and court facilities in connection with these matters." *Matter of Ramich*, 2003 Ann Rep at 159. By requiring his court secretary to work on the Matisko and Lockwood matters during court hours (Rep 39-40, 46-47), Respondent "demonstrated a serious confusion between his judicial role and his former role as a practicing attorney." *Id.*

Significantly, in connection with the Moores' real estate transaction, the Referee determined that Respondent wrote and sent emails relating to that transaction and signed them in his brother's name (Rep 43). The Referee concluded that Respondent "used his brother's name on the emails to hide the fact that he was involved as an attorney in the

Moore real estate transaction while he was a judge" (Rep 43). Respondent's deliberate attempt to conceal conduct that he knew was wrong is "antithetical to the role of a Judge who is sworn to uphold the law and seek the truth," *Matter of Alessandro*, 13 NY3d 238, 248 (2009), and a significant aggravating factor warranting removal.

E. It was Misconduct for Respondent to Preside Over Cases in Which His Impartiality Might Reasonably be Questioned.

It was also improper for respondent to preside over eight cases in which Zachary Kelson, with whom he had an extensive personal and professional relationship, represented a party (Rep 53-55). By Respondent's account, Mr. Kelson was "a good friend" (Tr 2627; Rep 47), so much so that Respondent trusted him to assist with his son's defense of a marijuana charge, asked Mr. Kelson to represent friends and acquaintances, and referred others to Mr. Kelson for legal representation (Rep 48). Mr. Kelson, in turn, represented Respondent's friends, often for no fee, and kept Respondent abreast of the status of each case (Rep 48-50).

Both this Commission and the Court of Appeals have consistently held that a judge's disqualification is required in matters involving the judge's close friend. *See, e.g., Matter of Doyle*, 23 NY3d 656, 661 (2014); *Matter of Assini*, 94 NY2d 26, 28 (1999); *Matter of Intemann,* 73 NY2d 580, 582 (1989); *Matter of Lebedeff,* 2006 Ann Rep 214, 216 (Commn on Jud Conduct, March 18, 2005); *Matter of Hart,* 2009 Ann Rep 97 (Commn on Jud Conduct, March 7, 2008).

Respondent further showed insensitivity to his ethical obligations by failing to disclose, on his own initiative, that in a case over which he was presiding, a defendant's

construction firm had previously worked for his law clerk, and that he himself had represented the defendant's mother in the transfer of the same property at issue in the pending litigation (Rep 55, 56). Respondent only made that disclosure after the plaintiff's attorney sent a letter raising the issue to the chief clerk (Rep 55).

Astonishingly, Respondent continued to preside over the matter despite learning that his law clerk had hired the defendant's law firm, and he never informed the parties about this new information (Rep 56-57). Moreover, he did not even insure that his employee recuse from the matter. Indeed, Respondent's law clerk presided over conferences and accompanied the parties and their attorneys on a site visit while the defendant's firm worked on her house (Rep 57). And when the plaintiff's attorney filed a motion seeking *inter alia* Respondent's disqualification or recusal from the matter based on his law clerk's relationship to the defendant, Respondent denied the motion and had his law clerk draft the decision (Rep 58). Respondent's conduct unquestionably undermined public confidence in the integrity and impartiality of the judiciary. *See Matter of Gumo*, 2015 Ann Rep 98 (Commn of Jud Conduct, December 30, 2014) (judge admonished for *inter alia* failing to disclose that potential witness was law clerk's daughter and failing to insulate law clerk from the case).

F. Respondent Committed Misconduct When he Improperly Promoted the Interests of the NRA by Scheduling Pistol Permit Interviews before an NRA dinner and Directed His Court Secretary to Work Off-Hours and Off-Premise.

In determining sanction, the Commission also should consider that Respondent lent the prestige of his judicial office to advance the interests of a controversial

organization. By deliberately scheduling pistol-permit interviews at a restaurant hosting a Friends of the National Rifle Association dinner, and then directing his court secretary to tell applicants about the dinner (Rep 59-60), Respondent again misused the prestige of office to advance the interests of others, this time the NRA. *See, e.g., Matter of McNulty*, 2008 Ann Rep 177 (Commn on Jud Conduct, March 16, 2007) (judge personally participated in fundraising activities in courthouse on behalf of civic organization). The fact that he required his confidential secretary to work the pistol permit interviews on Saturdays, at locations outside the courtside, without compensation, compounds this misconduct.

G. Respondent Exacerbated his Misconduct by Testifying Falsely During the Hearing.

Both the Court of Appeals and the Commission have consistently considered a judge's failure to testify candidly to be a serious aggravating factor. See *Matter of Mason*, 100 NY2d 56, 60 (2003); *Matter of Collazo*, 91 NY2d 251, 255 (1988); *Matter of Calderon,* 2011 Ann Rep 86, 91 (Commn on Jud Conduct March 26, 2010); *Matter of Feinberg*, 2006 Ann Rep 137, 146 (Commn on Jud Conduct, February 10, 2005) *removal accepted* 5 NY3d 206 (2005). A judge is obliged "to testify truthfully and forthrightly in a Commission proceeding." *Matter of Doyle*, 2008 Ann Rep 111, 116 (Commn on Jud Conduct, February 26, 2007).

Here, the Referee concluded that Respondent testified falsely in five instances at the hearing (Rep 71). Four of these instances stem from the charge that Respondent

practice law by performing legal work for Eileen and Phillip Moore in connection with their purchase of a foreclosure home.

First, the Referee found that Respondent "lacked candor" when he testified that his only involvement with the Moores' real estate transaction was a brief conversation in which he told the Moores to hire an attorney and gave them the name of a home inspector (Tr 2384-85, 2578, 2582; Rep 62). The evidence before the Referee supported his finding, including: the Moores' testimony that Respondent brought the contract to their home, explained it to them, showed them where to sign and left with a signed contract (Tr 681-84, 688-90, 696-98, 704-05; Rep 63); fifteen emails that were sent to parties in the Moores' real estate transaction came from Respondent's personal email address (Tr 2586, 2588; Exs X-23, X-24, X-26, X-28, X-29, X-30, X-34; Rep 62); and that Respondent's personal cell phone number was the only contact number provided in connection with the transaction (Tr 2587-88; Exs X-23, X-24; Rep 63).

The hearing record also provides additional instances in which Respondent's testimony lacked candor. The hearing record shows that the real estate broker sent an email to paralegal Mary Ann Schultz questioning whether he "was dealing with Ken McGuire the lawyer or the judge," to which Ms. Schultz replied, "Mr. McGuire and I just spoke" (Tr 1382-83, 1386, 1387; Ex X-26; Rep 43-44, 63). Respondent denied speaking to Ms. Schultz (Tr 2598-2600), yet the evidence showed that Respondent's cell phone number was the only one provided to Ms. Schultz (Tr 2598-99). More significantly, almost immediately after Ms. Schultz's email stating that she spoke to Mr. McGuire, she received an email from "judgemcguire@[redacted]":

> To clear up the confusion I am handling this matter but Mike is my brother, also an attorney but not practicing full time right now, and so you may from time to time speak with him as well. Sorry for the confusion.

(Ex X-29; Rep 63).

Respondent also denied that sending an email from "judgemcguire@[redacted]" to the real estate broker directing that he "cease and desist" from communicating with his clients and threatening to "take action" (Tr 2595-97; Ex X-26, p. 3; Rep 63-64). Yet while testifying during the Commission's investigation, Respondent admitted that he authored that email (Exs X-26, X-42p; Rep 63-64).

The record also showed two emails sent from "judgemcguire@[redacted]" stating that "Ken McGuire" would be on vacation from September 16 through 24, 2014 (ExsX-28, X-29; Rep 64). Respondent denied taking a vacation during that time (Tr 2601; Rep 64). However, an email from Respondent's confidential secretary to the County and Supreme Court Clerk of Sullivan County stated that Respondent would be on vacation during that exact time period (Tr 989, 2601; Exs X-28, X-29, X-36; Rep 64).

In another matter, Respondent's testified that he didn't believe that he referred cases to Zachary Kelson and that he "did not tell anybody to contact" Mr. Kelson (Tr 2627; Rep 61). The testimony of Mr. Kelson, however, established that Respondent asked him to represent Jerry Fernandez (Tr 707-08, 723-24, 2632; Rep 62) and W[redacted] W[redacted] (Tr 755-56; Rep 62), referred Lori Shepish to him (Tr 763, 764; Rep 62), emailed him about the T[redacted] M[redacted]'s case (Tr 661; Rep 62), and discussed Lindsay Amoroso's traffic ticket with him and then forwarded copies of the ticket and a waiver that Respondent had drafted after discussing her case with him (Tr 741-43; Rep 62).

The totality of Respondent's misbehavior as shown in the record – his egregious abuse of his summary contempt power in six cases and his baseless threats of contempt in three other cases; his discourteous, demeaning and volatile treatment of litigants and court staff; his unauthorized practice of law in six cases; his presiding over at least nine cases in which his impartiality could be questioned; his interviewing applicants for pistol permits outside the courthouse, after regular court hours, at times in inappropriate settings, and improperly promoted the interests of the National Rifle Association; his directing his confidential court secretary to work at these off-hour and off-premises pistol permit interview sessions and to perform non-work related tasks during court hours; and his misuse of the prestige of his judicial office by identifying himself as a judge in correspondence relating to his wife's criminal case and in his personal email address that he used for matters unrelated to his judicial office – demonstrates his unfitness for judicial office and requires the sanction of removal.

CONCLUSION

By reason of the foregoing, it is respectfully submitted that the Commission should confirm the Referee's findings of fact and conclusions of law as set forth above, and render a determination that Respondent has engaged in judicial misconduct and should be removed from office.

Dated: December 12, 2019
New York, New York

Respectfully submitted,

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