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 and Surrogate's Courts, an
Acting Judge of the Family Court and an Acting
Justice of the Supreme Court, Sullivan County.

POST-HEARING MEMORANDUM TO THE REFEREE AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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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 Referee adopt Commission Counsel's proposed findings of fact and conclusions of law and determine that the Honorable Michael F. McGuire ("Respondent") has committed judicial misconduct.

Respondent committed judicial 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.

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 alleges that on or about December 18, 2013, while presiding over *R* [redacted] *v O* [redacted] Respondent improperly held the plaintiff in summary contempt and sentenced him to 30 days in jail without providing appropriate warnings, affording him the opportunity to be heard and without preparing a written order (FWC ¶5).[1]

Charge II alleges that on or about August 28, 2013, while presiding in County Court over *People v G* [redacted] *s*, Respondent improperly held the defendant in summary contempt and sentenced her to 30 days in jail without providing appropriate warnings, affording her the opportunity to be heard and without preparing a written order (FWC ¶12).

Charge III alleges that on or about October 3, 2012, while presiding over *Z* [redacted] *v F* [redacted] Respondent improperly held a litigant in summary contempt and directed that she be handcuffed and removed from the courtroom for approximately one hour without providing appropriate warnings, affording her the opportunity to be heard and without preparing a written order (FWC ¶22).

[1] "FWC" refers to the Formal Written Complaint, and "Ans" refers to Respondent's Answer to the Complaint.

Charge IV alleges that on or about June 14, 2013, while presiding over *L* [redacted] *v C* [redacted] *and B* [redacted], Respondent improperly held a litigant in summary contempt and directed that she be handcuffed and removed from the courtroom for approximately one hour without providing appropriate warnings, affording her an opportunity to be heard and without preparing a written order (FWC ¶31).

Charge V alleges that on or about January 17, 2014, while presiding over *G* [redacted] *v C* [redacted], Respondent improperly held a litigant in summary contempt and directed that she be handcuffed and removed from the courtroom for approximately 15 minutes without providing appropriate warnings, affording her an opportunity to be heard and without preparing a written order (FWC ¶40).

Charge VI alleges that on or about December 2, 2014, while presiding over *F* [redacted] *v K* [redacted] *and K* [redacted], Respondent improperly held a litigant's wife in summary contempt and directed that she be handcuffed and removed from the courtroom for approximately one hour without providing appropriate warnings, 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[redacted] v H[redacted]* 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 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. <u>Respondent's Answer</u>

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 on December 18, 2013, he presided over *R* [redacted] *v O* [redacted], that Mr. R [redacted] said he knew Respondent's son and asked for Respondent's recusal, and that he held Mr. R [redacted] in contempt (FWC ¶¶6-8; Ans ¶¶7-9).

Respondent denied most of the allegations in Charge II but admitted that on August 28, 2013, he presided over *P* [redacted] *v G* [redacted] (FWC ¶13; Ans ¶15). Respondent admitted he made the statements charged in the FWC 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 he found her in contempt (FWC ¶20; Ans ¶20).

As to Charge III, Respondent denied most of the allegations but admitted that on October 3, 2012, he presided over *Z* [redacted] *v F* [redacted] (FWC ¶22; Ans ¶23). Respondent admitted that he made the statements charged in the FWC (FWC ¶25, 28; Ans ¶¶26, 29).

As to Charge IV, Respondent denied most of the allegations but admitted that on June 14, 2013, he presided over *L* [redacted] *v C* [redacted] *and B* [redacted] (FWC ¶31; Ans ¶33). Respondent admitted that he made the statements charged in the FWC (FWC ¶¶ 33, 34, 37; Ans ¶¶ 35, 36, 39).

Respondent denied most of the allegations relating to Charge V, but admitted that on January 17, 2014, he presided over *G* [redacted] *v C* [redacted] (FWC ¶40; Ans ¶43). Respondent also admitted that he made the statements charged in the FWC (FWC ¶¶42, 43; Ans ¶¶45, 46).

As to Charge VI Respondent denied most of the allegations but admitted that on December 2, 2014, he presided over *F* *v K* *and K* (FWC ¶49; Ans ¶53). Respondent also admitted 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 on November 7, 2014, he presided over *D* *v E* *and* *F* and on August 21, 2014, he presided over *V* *v G* (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* *v H* (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, had an office on , New York, maintained a telephone and answering machine for business purposes and used his private law office letterhead for business correspondence (FWC ¶85; Ans ¶86). Respondent also admitted 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).

With respect 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 Respondent 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).

As to Charge X, Respondent also admitted that prior to becoming a judge he represented his wife in connection with a parking ticket and 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 the Moore's 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).

Respondent denied most of the allegations relating to Charge XI. Respondent admitted that:

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

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

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

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

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

As to Charge XI, respondent also admitted that:

- He presided over *Massey v Sullivan County Board of Elections* (FWC ¶131[A]; Ans ¶125).

- *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 Respondent's chambers (FWC ¶131[B]-[G]; Ans ¶126-130).

- *Matter of M[redacted] P[redacted]* and *M[redacted] 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).

- He presided over *Dean v Boyes* and had represented 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 admits that he used the email "judgemcguire@[redacted]" and that he used the 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.

Facts

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] and Ms. O[redacted] are, respectively, the father and mother of the child at issue, who was approximately one and a half years old at the time (Exs I-1). 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] 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-- 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. R[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).

At the start of the colloquy Respondent was sitting in his chair at the bench (Tr 359). During the exchange, Respondent raised 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" Respondent 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. R[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). Respondent at no time attempted 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[redacted] had threatened him and his son (Tr 1736-37, 1777). The lieutenant spoke to Respondent who stated that Mr. R[redacted] stated that he knows Respondent's son which made Respondent feel threatened (Tr 1737, 1780). The lieutenant believed that the Respondent told him that Mr. R[redacted] knew Respondent's son from school (Tr 1784-85). 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).

Charge II: On August 28, 2013, while presiding in County Court over *People v N G*, Respondent was discourteous toward Ms. G and improperly committed her to jail after finding her in summary contempt.

On August 28, 2013, Respondent presided in County Court over *People 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). If she failed the program, however, she agreed to be sentenced to a state prison term of one and one-third years (Tr 905-06, 953; Exs II-1, II-2). Ms. G 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 was represented by attorney Jared K. Hart (Tr 905; Ex II-2).

During the sentencing proceeding, after advising Ms. G that she had not succeeded in the drug program and would be sentenced to prison, Respondent remarked on Ms. G's parenting ability (Tr 909, 910, 911; Ex I-2). 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).

During this exchange 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. And I understand the addiction and the disease that is addiction. I do understand it, and I do have compassion. But I have no tolerance for people who have no interest in taking the more difficult route to success. I just have no tolerance for that. You know, it's been said that opportunities look a lot like hard work. And at every opportunity that's been presented to you, you have chosen the easier way out. I'll go sit in state prison, hang out, meet some people, enjoy myself, won't be there for my children for another four years, another couple of years anyway with parole, then I'll come out and I won't have to worry about being answerable to anyone.

(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 seemed to be "baiting" Ms. G[redacted] and seemed aggravated about her lifestyle choices (Tr 980, 1015). At this point Ms. G[redacted] started to become agitated "not in an aggressive way but in a disagreeing type of way" (Tr 914). Mr. Hart knew that her children were a "soft spot" for Ms. G[redacted] so he whispered to her that she should not react or say anything (Tr 914-15, 962, 963).

Respondent continued his comments 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).

During this exchange Ms. G[redacted] was at times addressing Respondent and at other times addressing Mr. Hart (Tr 919-21). Respondent raised his voice and Ms. G[redacted] became very agitated and was crying (Tr 918-19). According to Mr. Hart, Ms. G[redacted] just wanted to be sentenced and leave the courtroom (Tr 921). Ms. G[redacted] realized that she could not complete Drug Court so she wanted to be sentenced "so she could at least get home sooner to the kids" (Tr 963).

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

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

On October 3, 2012, Respondent presided in Family Court over *R Z v T F*, a child custody and visitation matter (Exs III-1, III-4a, IV-5a). Mr. Z and Ms. F 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, "Rob 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).

In sworn testimony during the Commission's investigation, Respondent conceded that he "could've acted better" but maintained he acted appropriately under the circumstances (Ex III-4f).

Charge IV: On June 14, 2013, while presiding in Family Court over *T* *L* *v G* *C* *and H* *B*, Respondent was discourteous toward Ms. L, 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* *L* *v G* *C* *and H* *B*, a child custody and visitation matter (Tr 495; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a). Ms. L and Mr. C 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 was represented by attorney K. C. Garn (Tr 494-95; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a). Ms. L 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, 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: 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: She has extra classes. She (unintelligible)

JUDGE MCGUIRE: Does she have a tutor?

MS. L: 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[?][2]

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).

[2] 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:*

> Ms. L[redacted], I have the authority summarily to put you in the Sullivan County Jail for 30 days, based on judicial contempt. I'm not going to do that, but I'm going to say this to you: that it's never a concern of mine what the economic status of anybody in this courtroom is. I don't care if you are the wealthiest person in the world or are down on your luck. The court, not me as a person, the court deserves and will always be respected by everybody that's in the court because this is fundamental to our way of life in this country. 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 had been held in custody, the particular circumstances of the offense or the specific punishment imposed (Exs IV-1, IV-5e).

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

On January 17, 2014, Respondent presided in Family Court over *L G v C C*, a child visitation and custody matter (Exs V-1, V-4a). Mr. G and Ms. C 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 was represented by attorney John Ferrara and Ms. C 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's parenting time and whether the child had an appropriate place to sleep if Ms. C 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 but in Mr. G'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). Mr. Garn left the courtroom right after Ms. C[redacted] and spoke to the chief clerk about having the case recalled after Mr. Garn had an opportunity to speak to Ms. C[redacted] (Tr 505-06). Mr. Garn then went to the conference room where Ms. C[redacted] was being held in a locked room (Tr 506-07, 1058). Mr. Garn spoke to Ms. C[redacted] who was still handcuffed, was crying and "extremely upset," about what they could do to get her out of custody (Tr 507-09). 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).

While Mr. Garn was with Ms. C[redacted] in the conference room the following colloquy occurred between Respondent and Mr. G[redacted]o's attorney, John Ferrara:

> MR. FERRARA: You going to -- have him in here alone and maybe you can sort out how long she has to stay for?
>
> JUDGE MCGUIRE: Yeah, we'll let her cool -- calm down a bit.

(Tr 1054, 1055; Exs V-2, V-2a, p 10).

Mr. Ferrara initiated the conversation about how long Respondent planned to keep Ms. C[redacted] in custody because he "did not think she should have been handcuffed" as "she did [not do] anything that horrible that required that action" (Tr 1056).

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).

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

On December 2, 2014, Respondent presided in Family Court over *A*[redacted] *F*[redacted]z v *J*[redacted] *C*[redacted] *K*[redacted] *and M*[redacted] *K*[redacted], a child custody and visitation matter (Tr 484, 487, 1103, 1129-30; Exs VI-1, VI-2). A[redacted] F[redacted] and N[redacted] K[redacted] 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[redacted] K[redacted] is the child's maternal grandfather (Tr 1058, 1104; Exs VI-2, VI-2a). R[redacted] K[redacted], the child's maternal grandmother, and M[redacted] F[redacted] and K[redacted] F[redacted], the child's paternal aunts, were also present before Respondent (Tr 1058, 1104; Exs. VI-2, VI-2a, VI-3, VI-3a). Mr. F[redacted] was represented by attorney John Ferrara and N[redacted] K[redacted] 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] 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]n 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).

Testimony of Sergeant Guillermo Olivieri Regarding Charges I through VI

Whenever Respondent ordered a litigant be taken into custody the court officer assigned to Respondent's part would radio Sergeant Guillermo Olivieri, who would go to the courtroom to assist (Tr 142-43). In Respondent's courtroom, the court officer and/or Sergeant Olivieri would handcuff the litigant behind the back (Tr 143-44). Sergeant Olivieri and a court officer would then escort the litigant in handcuffs through the public waiting area where people waited for their cases to be called or were filing papers (Tr

146-47, 152; Exs PH-12, PH-13, PH-14, PH-15). The litigant was taken to a "holding room" (Tr 144; Exs PH-7, PH-9). The "operations office" which doubles as the sergeant's office has a glass window that faces the holding room (Tr 145; Exs PH-7, PH-8). The court officer would then return to Respondent's courtroom while either the sergeant or another court officer would sit in the operations office and observe the person in custody through the glass window (Tr 152-53). The door of the holding room was locked, and the individual was handcuffed behind the back the entire time s/he was in the room (Tr 152-53).

When Respondent determined that the case should be recalled the handcuffed litigant would be accompanied by court officers back through the public waiting area into Respondent's courtroom (Tr 158-60, 226).

Sergeant Olivieri never received any paperwork from Respondent documenting his order that a litigant be placed into custody (Tr 150)

Respondent's Testimony Regarding Charges I through VI

Respondent testified that during his first four years on the bench when he was faced with litigants who he believed were unruly in the courtroom he would order that they be removed and taken into custody (Tr 2435-37). Respondent believed that litigants "gained greater insight and appreciation of the authority of the court" after they were taken into custody and handcuffed (Tr 2440-41).

Respondent explained that he believed at the time that Section 750 of Judiciary Law permitted him to place litigants in custody if they disrespected him, and that he could summarily remove litigants from the courtroom, have them handcuffed and hold

them in custody without due process (Tr 2500). According to Respondent, due process only attached if the court held the litigant in contempt (Tr 2499). Respondent said that it was never his intention to hold litigants in custody for two hours but "sometimes the calendar got so complex that we didn't get a chance to get them back for that" (Tr 2499)

Respondent stated that in the past five to six years he has found better ways to deal with litigants (Tr 2496). Respondent testified that in July 2018, he attended the Judicial Summer Institute where he became familiar with the "12 step contempt program" which must be followed in order to hold someone in summary contempt (Tr 2295-96). Respondent would now use the 12-step contempt program if he felt it was necessary to address insulant behavior by a litigant (Tr 2297).

Respondent testified that he never read any Commission determinations regarding the use of summary contempt during the time he was ordering that people be taken into custody (Tr 2518-21) because he "was too busy reading appellate case law to stay current in my four areas" (Tr 2522).[3]

Respondent also admitted that he did not review any legal cases about the use of summary contempt during his first four years on the bench and, specifically, that he did not review the Third Department case *Pronti v Allen*, 13 AD3d 1034 (3d Dept 2004) (Tr 2522-23). Respondent never asked his law clerk to do research or reach out to other judges regarding the use of summary contempt (Tr 2524-25) and he never reached out to

[3] Specifically, Respondent stated that he had not reviewed the Commission determination in *Matter of Feeder* (Tr 2521-22).

the Advisory Committee on Judicial Ethics regarding the use of summary contempt (Tr 2519, 2525).

Respondent conceded that in each case where he ordered that someone be taken into custody he failed to warn the litigant or defendant what behavior he found offensive before holding them in contempt, did not give them an opportunity to correct the behavior Respondent found offensive or a chance to apologize, did not find them an attorney if they were not represented 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). He acknowledged that he failed to comply with Judiciary Law §755, which states that a judge file an order "stating the facts which constitute the offense" (Tr 2515-16).

A. *R[redacted] R[redacted] v I[redacted] [redacted] O[redacted]* (Charge I)

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

B. *People v M[redacted] G[redacted]* (Charge II)

Respondent testified that during the proceeding Ms. G[redacted] was becoming agitated and there was "quite a bit of body language that suggested" to Respondent that

Ms. G [redacted] "was not happy that the court was concerned that she was choosing to go to prison rather than to treatment" (Tr 2310, 2460).

Respondent testified that he believed Ms. G [redacted]' life choices were "pathetic" (Tr 2459-60) and he admitted that he continued to talk to Ms. G [redacted] after she became upset (Tr 2461).

Respondent explained that on occasion he incarcerates defendants to encourage them decide to enter treatment rather than be incarcerated (Tr 2311). He maintained that defendants "often reflect and come back a week or two later and hopefully are willing to try treatment" (Tr 2311).

Respondent stated that based on the information he had at that time he believed he acted appropriately at that time (Tr 2464).

C. *R [redacted] Z [redacted] v T [redacted] [redacted] F [redacted]* (Charge III)

Respondent testified that 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).

After ordering her taken into custody Ms. F [redacted] was handcuffed in front of Respondent (Tr 2475). Respondent acknowledged that it was not respectful for him to ask Ms. F [redacted] how the handcuffs felt when she was returned to the courtroom (Tr 2476-77).

Respondent testified that at the time he thought he acted appropriately but conceded that "from today's perspective" it was not appropriate to place Ms. F [redacted] in custody (Tr 2479-81).

D. *T[redacted] L[redacted] v G[redacted] C[redacted] and H[redacted] B[redacted]* (Charge IV)

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

E. *L[redacted] W[redacted] G[redacted] v C[redacted] C[redacted]* (Charge V)

According to Respondent, one of the reasons he ordered Ms. C[redacted] taken into custody was so she could cool off (Tr 2503). He testified that, at the time, he did not believe it was "incorrect" to do so, but that he "now know[s] that it is inappropriate and was inappropriate" (Tr 2503). Respondent conceded that he was not patient and dignified when he ordered Ms. C[redacted] be taken into custody (Tr 2504).

F. *A[redacted] F[redacted] v J[redacted] K[redacted] and N[redacted] K[redacted]* (Charge VI)

Respondent testified that he ordered Mrs. K[redacted] taken into custody because he believed her statement that she would sue the County and Respondent if anything happened to her grandson was a threat (Tr 2340, 2506-08). Respondent admitted that he yelled "get her out of here" in a loud voice (Tr 2509).

According to Respondent, after Mrs. K[redacted] returned to court 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: 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.

In three Family Court cases, Respondent failed to treat litigants in a patient, dignified and courteous manner by, *inter alia*, threatening to hold them in contempt of court without legal basis.

A. *M[redacted] P[redacted] v S[redacted] R[redacted] 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. R[redacted]/P[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. *W[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 would first move with the children and that Mr. V would later follow (Tr 602-03, 606-07; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a). Before Mr. V joined them in California there was a breakdown in the relationship, which led Mr. V 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 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 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' 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). [4]

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).

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]s 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

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

According to Respondent, he "let [Ms. Ro[redacted]] know that she could be taken into custody" if she continued to say things to the child (Tr 2350, 2525-26, 2350). Respondent stated that when he spoke to Ms. Ro[redacted] his "inflection was authoritative" and his "voice was projecting to her" (Tr 2526).

[4] 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).

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

Respondent testified that while a witness was testifying Ms. E[redacted] kept turning around in her seat and talking to Mr. F[redacted] (Tr 2354). Respondent found it "distracting" and "disruptive to the proceedings" (Tr 2354-55). Respondent admitted that he 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).

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

Respondent testified that he believed that his comments during the *W[redacted] v G[redacted]* proceeding were fair and an accurate statement of the facts (2534-36). Respondent said that he agreed with the Appellate Division, Third Department that he 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, court clerk Andrea Rogers, and court officers Miguel A. Diaz, Brenda Downs, Sergeant Guillermo Olivieri and Lieutenant Kevin C. McCabe.

The testimony of multiple witnesses established that Respondent failed to be patient, dignified and courteous to court staff and court officers.

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). Respondent could "cut you down with words and make you feel like you are two inches tall" and then he would "thank you for all your good work" (Tr 1461-62). 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 one occasion, while Respondent and Ms. Weiner were working on pistol permits paperwork, Respondent became "upset" and frustrated at Ms. Weiner when she "wasn't getting some of the paperwork right" (Tr 1490). During this interaction Respondent called Ms. Weiner "stupid" (Tr 1490).

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).

Ms. Weiner started "backing away towards the door" (Tr 1446-47). She was "scared" and "shaking" because she did not "know what [Respondent] was capable of" (Tr 1447, 1592). Respondent had a "complete tantrum" and was "yelling and screaming repetitively he needed April or somebody to fix the computer" (Tr 1445-46, 1448). "April" worked for the Sullivan County "IT" department (Tr 1445).

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).

When Ms. Weiner sat down at her desk, she could still hear Respondent yelling that he wanted "April and he wanted her now" (Tr 1449). Ms. Weiner was "shaking," "scared," "very upset" and "couldn't even think straight" (Tr 1449, 1584, 1589, 1592, 1601, 1609, 1611).

Ms. Weiner left chambers and went to the Government Center to see if she could find April (Tr 1449). Ms. Weiner spoke to a sheriff in the Government Center (Tr 1450-51, 1631). The sheriff called the Sullivan County Technology Department and was told that April was not in the office (Tr 1450-51, 1609, 1631).

When Ms. Weiner returned about 10 minutes later Respondent was no longer in chambers and the files that had been on the floor had been picked up and left on the credenza (Tr 1450, 1452-53).

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).

As part of her security sweep Officer Downs entered Respondent's private office (Tr 436). She did not see any court files on the floor of Respondent's private office (Tr 437, 439-40).

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 after attending a doctor's appointment and noticed that Ms. Weiner was "visibly upset" (Tr 1331).

Later that day Ms. Weiner received a call from Beth Diebel, District Executive for the Third Judicial District (Tr 1455, 1614). Ms. Weiner did not speak to Respondent that day about what had occurred that morning (Tr 1456). 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). It was different from how it had been before the incident (Tr 1284, 1458).

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. *Andrea Rogers*

Andrea Rogers has been a court assistant in Sullivan County Family Court for the past 21 years (Tr 1133). Ms. Rogers was assigned as a court assistant in Respondent's part for three years from January 2011 through December 2013 (Tr 1134-35).

Respondent "frequently," "at least a couple of times a week," spoke to Ms. Rogers in a loud, "very condescending" manner (Tr 1139, 1140, 1142, 1145).

At times Ms. Rogers asked Respondent to clarify something so that Ms. Rogers could complete her duties, which included filling out paperwork to be handed to litigants and/or attorneys and making notes in the court computer (Tr 1140-41, 1144, 1185-86, 1216-19, 1221, 1223). Ms. Rogers always waited until there was a "lull" in the proceeding to ask her question (Tr 1214, 1215). When Ms. Rogers asked a question,

Respondent would frequently extend his arm towards Ms. Rogers with his palm facing her "to tell [her] to stop" (Tr 1141, 1144, 1143; Ex VIII-4d). Respondent did this at least once a day and sometimes as often as ten times in one day (Tr 1142, 1218-19). It happened frequently "[e]nough to make [Ms. Rogers] bring it to [her] supervisor's attention" (Tr 1145, 1219).

On one occasion, after Ms. Rogers asked Respondent a question, he turned toward the litigants and attorneys in the courtroom and rolled his eyes (Tr 1143-44).

One day when Ms. Rogers was assigned to work in Respondent's court part she returned from lunch to discover that the court computer had shut down and needed to be rebooted (Tr 1149, 1228). It was 1:30 p.m., the time that court was supposed to commence (Tr 1150). Respondent was also in the courtroom and was "hanging over" Ms. Rogers' desk, and repeatedly asked "very loudly," in a "nasty" tone "Why isn't it on? What is wrong? Why is the computer not up? How long is it going to take? Why is it shut down, did you shut it down?" (Tr 1150-51, 1228-30).

Ms. Rogers relationship with Respondent was so "uncomfortable" that she frequently spoke to her supervisor about the problems she was having with Respondent (Tr 1147-48, 1165, 1219). Eventually Ms. Rogers was transferred to another court part (Tr 1133-34, 1165, 1166).

C. *Court Officer Miguel Diaz and Sergeant Guillermo Olivieri*

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, when [redacted] *v T*[redacted] *M*[redacted] was on the calendar (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). After Officer Diaz received the radio transmission he 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).

Court Officer Diaz was assigned to Respondent's court part on February 25, 2013, when the *H*[redacted] *v E*[redacted][5] was on the calendar (Tr 116, 274, 1671, 1694). Officer Diaz radioed the court officers in the waiting area and asked them to have the individuals

[5] The case is also referred to as *Department of Family Services v E*[redacted] (Tr 1694).

from the *E*[redacted] case report to the courtroom door (Tr 1672-73, 1695). When Officer Diaz started ushering the parties in *E*[redacted] into the courtroom he realized that some individuals were missing, and he radioed the court officers at the security post (Tr 1674-75). When he was informed that the individuals were still going through security, Officer Diaz held the courtroom door open (Tr 1675-76).

Respondent in an angry, loud voice told Officer Diaz to tell Sergeant Olivieri that he wanted to see him in Respondent's chambers (Tr 1161, 1674-76; Exs VIII-3, VIII-3a, VIII-4b). Officer Diaz ushered everyone out of the courtroom and radioed Sergeant Olivieri (Tr 116-17, 118, 293, 1678, 1704). While on the radio with Officer Diaz, Sergeant Olivieri heard Respondent yelling in the background (Tr 117, 275, 293). Officer Diaz sounded "concerned and shaken up" (Tr 293).

At the time, Respondent's confidential secretary, Ms. Weiner, was sitting at her desk and could hear that Respondent was becoming agitated and "carrying on, yelling and screaming" in the courtroom (Tr 1463).

Officer Diaz went to the security post near the magnetometer (Tr 1677, 1703). Officer Diaz was "visibly shaken" and "pale" (Tr 349-50). Officer Diaz asked the court officers at that post if someone could cover Respondent's part because Respondent had yelled at him and he did not want to go back into the courtroom (Tr 349-50, 407). Officer Diaz did not return to Respondent's court part that day because he "was not feeling too good that day because [of] the situation that happened" (Tr 1678, 1720).

After Sergeant Olivieri received the radio transmission from Officer Diaz he headed towards Respondent's 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).

Ms. Rogers had been in Respondent's courtroom and was standing in the doorway that connects Respondent's courtroom and his chambers (Tr 1238). She saw Respondent "started charging" towards Sergeant Olivieri "like he was going to hit him" and that Respondent was "hightailing it down the hall" (Tr 1163, 1238). Respondent was "very aggressive" and was "shouting" (Tr 1163). Ms. Weiner was sitting at her desk in chambers and observed that Respondent came "barreling" out of the door from the courtroom, 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). When speaking to Respondent, Sergeant Olivieri was stuttering because he was so nervous (Tr 127). 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).

Prior to the *E* [redacted] matter, Respondent had spoken to Sergeant Olivieri and Lieutenant McCabe about his concerns regarding the manner in which Officer Diaz handled the calendar and the volume of his radio (Tr 275-76, 280, 304, 1761, 1762). Once or twice the sergeant observed Officer Diaz handle Respondent's morning calendar (Tr 305). Lieutenant McCabe also monitored Officer Diaz' performance in and outside the courtroom (Tr 1762). While in Family Court, Officer Diaz was assigned to Judge Meddaugh and Support Magistrate Linen's court parts and neither complained about Officer Diaz (Tr 1762-63). Ms. Rogers testified that Officer Diaz performance in the courtroom was not any different than other officers (Tr 1236-37).

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 after which he was going to render a decision (Tr 364, 410, 413, 416).

Officer Downs cleared the courtroom and then went to Respondent's chambers (Tr 364-65). Officer Downs and Ms. Rogers were standing by the desk where Ms. Weiner was sitting (Tr 365-68, 411; Ex PH-6). Ms. Rogers and Ms. Weiner were talking, although Officer Downs was not participating in the conversation (Tr 411).

Respondent was in his private office, sitting at his desk with his door open (Tr 366, 411). Respondent seemed to be having trouble finding something on his computer and started to become 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).

E. *Lieutenant Kevin McCabe*

In 2012, shortly after 9:00 a.m., Lieutenant McCabe was informed that Respondent wanted to see him and he went to Respondent's chambers (Tr 1730-32). Respondent was "annoyed" and stated in a "raised" voice that "he wanted his cases brought in precisely at 9 o'clock, not 9:01, not 9:02, 9:00 o'clock" (Tr 1730-32, 1734-35). As he said this Respondent tapped the desk with his right index finger three to four times (Tr 1732-33).

In response the lieutenant told Respondent, "Judge I believe the case was on your door at nine o'clock. We make every effort to get the cases to you promptly on time" (Tr 1734, 1833). Respondent replied in a "raised" voice that "according to his watch, it was 9:01 or 9:02" (Tr 1733-34). The conversation continued along these lines until Lieutenant McCabe stated that he would do his best to get cases in at 9:00 a.m. (Tr 1735).

After the incident the lieutenant spoke to his supervisor (Tr 1735). The lieutenant also reviewed the security cameras which reflected that the case was called at 9:00 a.m. (Tr 1733).

Respondent's Testimony Regarding Charge VIII

A. *Wendy Weiner*

Respondent conceded that on January 14, 2015, when he was unable to access his notes for the court calendar he became "quite anxious" and "frantic" (Tr 2672-73). He denied that he raised his voice, threw a jump drive, or threw or kicked the files (Tr 2363, 2673-74, 2675). Respondent testified that when he took the files to put them in his briefcase some of the documents from the files fell on his shoe (Tr 2675-76, 2677).

Respondent acknowledged that although he was "not patient" that day, his conduct was not directed at Ms. Weiner but rather he "was not patient with [him]self" (Tr 2677). 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).

Respondent testified that after the incident he did not have "a warm friendly relationship" with Ms. Weiner and that the relationship had "deteriorated" (Tr 2364,

2679-80). Respondent denied that he stopped speaking to Ms. Weiner (Tr 2364). He said that he continued to email and text Ms. Weiner and the business of chambers continued (Tr 2364-65).

Respondent denied ever screaming at Ms. Weiner or calling her stupid (Tr 2363, 2679).

B. *Andrea Rogers*

Respondent denied ever speaking to Andrea Rogers in a loud, angry or condescending manner in the presence of litigants (Tr 2366, 2670-71). Respondent was "sure [he] used nonverbal signals" to tell Ms. Rogers to "hold on while [he was] listening to someone else, but it was not done in a condescending or discourteous manner" (Tr 2366, 2671). Respondent did not remember holding his palm out towards Ms. Rogers, more likely it was one finger (Tr 2367, 2671). Respondent denied rolling his eyes after Ms. Rogers asked a question or prohibiting her from asking questions or retrieving information (Tr 2672). Respondent testified that he was not angry when Ms. Rogers' computer needed to be rebooted (Tr 2368). Respondent believed that he treated Ms. Rogers in a patient, dignified and courteous manner (Tr 2672).

C. *Court Officer Miguel Diaz and Sergeant Guillermo Olivieri*

Respondent testified that Officer Diaz' radio was often too loud and disrupted the court (Tr 2369-70, 2657). Respondent was irritated when Officer Diaz did not get cases into the courtroom quickly (Tr 2656-57). Respondent spoke to Officer Diaz in a "stern" tone when Respondent believed Officer Diaz' radio was too loud (Tr 2373, 2657-58). Respondent said that he was not angry at Officer Diaz but rather "frustrated" (Tr 2661).

Respondent admitted that he was not patient with Officer Diaz and Sergeant Olivieri during the events surrounding the *E* matter (Tr 2665). Respondent denied that he was discourteous to Sergeant Olivieri when he met him after the *E* matter (Tr 2665).

D. *Court Officer Brenda Downs*

Respondent testified that he did not "intentionally" close the door in Officer Downs' face (Tr 2377). He acknowledged that he never asked any of the individuals outside his door to be quiet and never said anything to them before closing the door (Tr 2665-66).

E. *Lieutenant Kevin McCabe*

Respondent acknowledged that during a conversation with Lieutenant McCabe about the time cases should be brought into his courtroom, he emphasized a point by tapping his finger two or three times on his desk (Tr 2667-69). Respondent believed that he spoke to the lieutenant in a patient, courteous and dignified manner (Tr 2669).

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

On March 10, 2014, Respondent presided in Family Court over *M* *M* *v R* *H* a child custody and visitation matter (Exs IX-1, IX-2, IX-2a). The parties were before Respondent for court approval of an informal agreement that they had reached regarding custody and visitation as to their child, who was approximately two years old (Exs IX-1, IX-2, IX-2a). Neither party was represented by counsel (Exs IX-1, IX-2, IX-2a).

Respondent questioned the parties under oath 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.

Prior to assuming judicial office in January 2011, Respondent had a private law practice with an office on [redacted] (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 prior to January 2011 in connection with his private law 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).

A. *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 D. Kelson about the arrest and Mr. Kelson offered to contact the Otsego County District Attorney's office to ascertain if it would offer W[redacted] M[redacted] 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 he spoke with the District Attorney's office and informed Respondent that they 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 where he stated that he "represent[ed] Defendant herein, W[redacted] M[redacted]" (Ex X-1a). Respondent listed by name three County Court and three Family Court cases in which he would be engaged on December 5, 2012 (Ex X-1a). He also stated in the cover letter that on December 6, 2012, he would be "commenc[ing] a trial" in *People 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 drafted and 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). Although the letterhead on both December 2nd letters list Respondent's former law office address as his location, both the Notice of Appearance and the Affirmation of Actual Engagement list Respondent's home address as his location. In addition, the Notice of Appearance states that the "undersigned appears as counsel for the defendant named herein and respectfully requests that all motions, notices and other papers be served upon him at the address listed below," *i.e.* Respondent's home address (Tr 2559-61; Exs X-1, X-1a, X-1b).

On December 8, 2012, Respondent drafted and sent a letter to 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). Respondent was not available on the date listed in the letter because he was presiding over matters in Family and/or County courts (Tr 2563).

On February 26, 2013, Respondent conferenced his son's case with Otsego County Assistant District Attorney 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). The letter stated that Respondent was enclosing a Reply Affirmation and requested that the trial judge accept the papers even though they had not been timely filed (Ex X-1e). Respondent drafted and signed the letter and 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 first two paragraphs of 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 Reply Affirmation, which is six pages in length, 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]e,* 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).

B. *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).

C. *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). Ms. Weiner told Respondent about the conversation with the adjuster and 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).

Ms. Weiner made the corrections to the release suggested by the adjuster and 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 present when Mr. Matisko came to chambers (Tr 1477).

Ms. Weiner signed and sent a letter to the adjuster with the signed release, using the letterhead with Respondent's PO Box number (Tr 1476, 1479-80; Ex X-10). Ms. Weiner used the PO Box address because it was used "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 and used Respondent's PO Box address in the letterhead (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]

D. *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 Naponoch house from Mr. Dolfinger's friend (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 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 knew Respondent through their son-in-law who worked at the college (Tr 678-79, 695, 700-01, 703). 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 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 because it was a foreclosure (Tr 687, 702). Heather asked Respondent if his brother, Ken McGuire, who was also an attorney, could

[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).

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 to the email and Ms. Schultz wrote "kindly copy and have your client sign four (4) copies of the contract and return" them with a check or money order (Ex X-19).

After the email, Respondent went to the Moores' home with the contract for the purchase of the property (Tr 681-883, 688, 696-97; Ex X-42b). Eileen and Phillip Moore sat with Respondent at the Moore's table and Respondent gave them an envelope containing 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" and attached to one 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 cc'd to "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. but it stated, "If you have any questions, concerns or comments please feel free to contact me at [redacted] or through email" (Ex X-23). The telephone number in the email belonged to Respondent's cell phone (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 since the email said Judge McGuire but was signed Ken McGuire (Tr 1378, 1391-92).

Mr. Dolfinger answered the email at 10:18 p.m., and at 3:47 a.m. Mr. Dolfinger received another email from "Mr MICHAEL MCGUIRE <judgemcguire@[redacted]" (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).

After receiving the 3:47 a.m. email, 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 to him 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 belonged to Respondent's cell phone (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).

On October 27, 2014, the deed transferring title from PennyMac to Phillip and Eileen Moore was recorded in the Ulster County Clerk's Office. The Moores did not move into the house until April 2015 (Tr 676-77; Ex X-16).

On January 7, 2015, Ms. Weiner sent an email to Respondent regarding a call she received from Eileen Moore and asking that Respondent return the call (Ex X-37). The email states that Ms. Moore is "concern[ed] on a bill where penalties are accruing as a check has never been received" (Ex X-37).

The Moores never spoke to or met with 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 received an email with an email address identified as one belonging to Ken McGuire nor did he ever speak to Ken McGuire (Tr 1389-90, 1405).

The only two emails addresses that were used during the exchanges 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).

E. *Ricky Pagan*

In 2010, Ricky Pagan discovered that the property behind his home was going into foreclosure (Tr 465-66, 473; Ex X-42q). Mr. Pagan spoke to Barbara Clarke, the owner of the property, and they agreed on a purchase price of $8,000 (Tr 465, 473, 474, 2387). Mr. Pagan paid the back taxes of $5,000 without a written agreement, after which he contacted Respondent (Tr 465, 467-68, 473, 2387-88). Respondent was concerned that when Mr. Pagan paid the additional $3,000, Ms. Clarke might refuse to give Mr. Pagan the deed (Tr 474-75).

Respondent, who was not a judge at the time, agreed to represent Mr. Pagan without compensation (Tr 465-67, 2391). Respondent drafted and filed a mortgage so that Mr. Pagan could recoup his $5,000 payment if Ms. Clarke 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, 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 either in person or on the phone about "how to go about finishing the deal" now that Mr. Pagan 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).

F. *Christopher Lockwood*

Prior to becoming a judge, Respondent represented Christopher Lockwood in connection with a June 6, 2010, 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 the *Lockwood* matter (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 the *Lockwood* matter (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, 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).

[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).

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). After he was elected, 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). Respondent never reached out to the Advisory Committee on Judicial Ethics regarding closing his office (Tr 2554-55).

According to Corinne McGuire, after Respondent was elected he asked his brother Ken McGuire, who was also a practicing attorney, 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). Ken McGuire had a telephone number associated with his law firm and a cell phone number but he did not maintain an email address (Tr 2084, 2113-14, 2139, 2151-52). According to Corinne McGuire, 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).

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

Respondent admitted sending letters to the Chief Clerk and Judge McVinney of the City of Oneonta 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 was presiding over all the cases listed on the affidavits of actual engagement (Tr 2560, 2562, 2563). Respondent 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).

Respondent admitted that he "absolutely" knew in 2013 that he was prohibited from representing his son, but did so anyway (Tr 2568, 2569).

B. *George Matisko*

Respondent maintained that he did not discuss the George Matisko matter with Ms. Weiner, that he never directed her to negotiate a settlement or draft a release and that he did not review any documents Ms. Weiner drafted in the matter (Tr 2384, 2574-76).

Respondent stated that he never discussed the Matisko matter with his sister, Mary Ann Schares, and never reviewed the letter she sent in January 2011 (Tr 2572-73).

Respondent said that he did not remember receiving mail from Progressive at his former law firm after taking the bench (Tr 2573, 2574). Respondent acknowledged that he never did anything to stop Progressive from sending him communications about the Matisko matter after he became a judge (Tr 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). Respondent claimed that he could not determine if it was his original signature or his signature stamp on the back of the check (Tr 2578).

C. *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' house (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).

D. *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). After paying the back taxes, Mr.

Pagan believed that within a month or two he would have the rest of the money to complete the purchase (Tr 2388-89). Respondent maintained that when he did not hear from Mr. Pagan, he put the already-drafted deed in a file (Tr 2153, 2389).

In 2013 Mr. Pagan told Respondent that he wanted to finish the deal (Tr 2087, 2606). Corinne McGuire retrieved the documents from the file inserted the date on the deed, put the check and documents in an envelope 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 but Corinne McGuire testified that she did not participate in recording the documents (Tr 2089, 2611).

E. *Christopher Lockwood*

Respondent received a message in chambers that the Liberty Town Court clerk Connie Van Keuren had called and Respondent returned the call (Tr 2611). Respondent acknowledged he did not have his brother return the call (Tr 2611). Respondent maintained that he did not recall asking Ms. Weiner to fill out the Application to Amend and did not recall that he reviewed the document (Tr 2612). Respondent claimed that he never approved the August 5, 2011 letter before it was sent to Ms. Van Keuren (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.

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 D. Kelson**

Zachary D. Kelson is an attorney with a law office in Monticello, New York (Tr 619). He practices law in Sullivan County (Tr 620). 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 he gave Mr. Kelson's son a $100 check for his Bar Mitzvah (Tr 625-627, 2626; Ex XI-28).

[8] The first paragraph under Charge XI of the FWC gives the dates as "January 2011 through in or about 2014" but the specifications state that the conduct occurred from January 2011 through 2016. Furthermore, the evidence elicited during the hearing established that the conduct continued through 2016. The Commission requests that the first paragraph be deemed amended to conform to the specifications and the proof elicited at the hearing that the conduct continued through 2016. *See Dittmar Explosives v Ottaviano*, 20 NY2d 498 (1967).

Mr. Kelson also made a monetary contribution to Respondent's judicial campaign in 2010 (Tr 628).

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 on his behalf (Tr 2558).

Thereafter, 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 Tina McTighe*

From in or about July 2012 through in or about October 2012, Mr. Kelson represented Tina McTighe, 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. McTighe (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 in *People v McTighe* and wrote in the email, "PLEASE have Tina 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 documents in the *McTighe* matter (Tr 2628-29).

On October 12, 2012, Mr. Kelson emailed Respondent and stated that he was going to "run" Ms. McTighe'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. McTighe 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. McTighe'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 documents regarding the case, including the summons, to Mr. Kelson (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).

Later that day, Mr. Kelson advised Respondent that he spoke to the debt collection law firm and that they "will 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).

On May 26, 2015, Mr. Kelson forwarded Respondent a letter from plaintiff's counsel, which stated that Mr. Fernandez had failed to comply with the terms of the settlement agreement (Tr 735-36; Ex XI-17). Two days later, on May 28, 2015, Respondent emailed Mr. Kelson regarding Mr. Fernandez's case, stating:

> Zach did you get my e-mail a few days back regarding the Complain[t] filed against Jerry, by Warren Greher seeking about $1,000 from an eye doctor. I need to see if you can contact Warren for him and just set up a payment plan, he wants to make good but he has huge debt from when he was diagnosed with MRSA last year at WMC, he had an initial stop at ORMC, and I guess that is where this doctor treated him for a day. It is scheduled in the Village of Goshen Court on the 29th so I want to get to Warren before that so that Jerry does not need to go to court. Mike"

(Tr 739, 740; Ex XI-19).

Several months later, on December 16, 2015, Mr. Kelson again wrote to Respondent regarding the *Eye Physicians of Orange County* matter (Ex XI-18). He asked Respondent if he had spoken to Mr. Fernandez and requested that Respondent advise him as to whether Mr. Fernandez was "bringing the payments current" (Tr 737; Ex XI-18).

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 differed from the one that Mr. Kelson had prepared (Tr 742, 743). Ultimately, Respondent's waiver form was signed by Ms. Amoroso and filed with the court (Tr 743; Ex XI-20a).

On August 9, 2011, Mr. Kelson emailed Respondent and advised that the prosecutor in Plattekill was friendly and that there should not be a problem receiving 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 because the court was "backed up" (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 Willie Williams*

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

On May 15, 2013, Mr. Williams pleaded guilty to VTL § 1201-a, parking on pavement, in connection with each of the tickets (Ex XI-26). On May 21, 2013, Mr. Kelson forwarded Respondent an email exchange in which he told Mr. Williams the outcome of the case and Mr. Williams 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).

B. **Attorney Zachary D. Kelson Appeared Before Respondent in Numerous Cases**

Attorney Zachary D. 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*

On 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

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

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).

On May 4, 2016, Mr. Kelson forwarded Respondent an email he sent to Colleen Cunningham, the attorney for the Department of Family Services, 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

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

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 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).

C. ***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

A. *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). Prior to 2016, Respondent never asked Family Court Chief Clerk Christina Benson or Supreme Court Chief Clerk Sara Katzman to refrain from assigning him cases in which Mr. Kelson appeared (Tr 2654).

Respondent testified that starting on May 1, 2019, he began to disqualify himself from cases involving Mr. Kelson (Tr 2655-56). He admitted that prior to May 1, 2019, he never disqualified himself from any cases due to Mr. Kelson's involvement (Tr 2656).

Respondent acknowledged that he never told Mr. Kelson to stop contacting him regarding cases in which he represented a friend of Respondent (Tr 2632, 2635).

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 admitted receiving a copy of the letter that Mr. Kelson sent to Judge Thomas Cione in *Eye Physicians of Orange County, PC v Fernandez*, in which Mr. Kelson requested an adjournment because he was appearing before Respondent on a Family Court matter (Tr 2637; Ex XI-15). Respondent stated that at the time he did not think there was a conflict of interest that required him to notify the parties or to disqualify

himself from the case (Tr 2637). 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). Respondent also never instructed his law clerk to disclose his relationship with Mr. Kelson in any conferences that she had with litigants (Tr 2654).

B. *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 testified that he did not disqualify himself because he had disclosed that he had represented Ms. Boyes and the ownership of the land was not at issue in the partition action "so there was never going to be any information that would have played any role in anything we did" (Tr 2399, 2617, 2618, 2619, 2622).

Respondent said that Ms. Conneely told him that Boyes & Torrens were doing touch-up work relating to an old contract, but she never told Respondent 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.

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 conceded he never told Ms. Weiner not to help with the interviews (Tr 2683).

Prior to the start of the interviews Ms. Weiner would pick up the pistol permit files from the courthouse (Tr 2682, 2687, 2688). After the interviews were conducted

either Ms. Weiner or Respondent would take the files back to the courthouse (Tr 2682-83, 2688).

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@v[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 COMMITTED TWO LITIGANTS TO JAIL FOR 30 DAYS AND IMPROPERLY HANDCUFFED FOUR OTHERS AFTER FINDING THEM IN SUMMARY CONTEMPT WITHOUT PROVIDING THEM WITH APPROPRIATE WARNINGS OR AFFORDING THEM THE OPPORTUNITY TO BE HEARD. IN ADDITION, RESPONDENT FAILED TO BE PATIENT, DIGNIFIED AND COURTEOUS TOWARD COURT STAFF AND LITIGANTS (Charges I-VI)

Respondent abused his contempt power and committed judicial misconduct when he improperly sentenced R[redacted] R[redacted], the plaintiff in a child custody and visitation matter, and N[redacted] G[redacted], a criminal defendant, to 30 days in jail for contempt without providing either of them the requisite warning or opportunity to make a statement or to purge the contempt.

Respondent similarly abused his contempt power when he directed that T[redacted] M[redacted] F[redacted] T[redacted] L[redacted], C[redacted]e C[redacted] and N[redacted] K[redacted], all parties in child custody and visitation matters, be handcuffed and detained for contempt, without providing them the requisite warning or opportunity to make a statement or to purge the contempt.

"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).

Respondent also violated the Rules by dealing with the litigants in an undignified manner. "A judge shall 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 Governing Judicial Conduct ("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,

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

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).

A. *R[redacted] R[redacted] v I[redacted] O[redacted]* (Charge I)

When Mr. R[redacted], an unrepresented litigant, asked Respondent to recuse himself from the case, Respondent said, "Bring him back here. You got 30 days judicial contempt" (Exs I-2, I-2a). When Mr. R[redacted] asked, "How is that contempt?" Respondent said, "Open your mouth again" (Exs I-2, I-2a).

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). Indeed, when Mr. R[redacted] stated that he had simply asked Respondent to recuse, Respondent accused him of threatening his son, which Mr. R[redacted] denied (Exs I-2, I-2a). Later, after listening to the audio of the proceeding, Lieutenant McCabe concluded that Mr. R[redacted] had not threatened Respondent (Tr 1787).

Respondent did not prepare a mandate of commitment memorializing the particular circumstances of the offense or the specific punishment imposed (Tr 2453; Exs I-1, I-2, I-2a).

During the exchange, Respondent raised himself from his chair, became angry and "exploded," yelling at Mr. R[redacted] (Tr 356, 357, 360, 361, 1156, 1232-33). Respondent appeared agitated, his face became flushed, and when he spoke he "lung[ed] forward" (Tr 356, 360, 1154, 1155, 1156, 1157). When he 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). Mr. R[redacted] looked confused while Respondent was yelling at him (Tr 361).

B. *People v G[redacted]* (Charge II)

At the sentencing proceeding in *People v G[redacted]*, Respondent questioned whether Ms. G[redacted]'s children even knew who she was (Ex II-2). When she said they did, Respondent asked, "Do they know what a mother is?" (Ex II-2). When Respondent continued commenting about Ms. G[redacted]' parenting and criminal history, she said, "I don't need you--… to tell me anything but sentence me so I can get out of this fucking courtroom." Respondent stated, "I'm going to sentence you to 30 days for judicial contempt and we'll come back in about three weeks and we'll continue sentencing" (Ex II-2). Ms. G[redacted] was remanded, sentencing was adjourned, and the proceeding ended (Exs II-1, II-1a, II-1b, II-2).

Respondent gave Ms. G[redacted] no warning that he would hold her in contempt, afforded her no opportunity to apologize or withdraw her statement and did not state the facts that constituted the contempt in his order (Tr 924, 2462, 2463; Exs II-1, II-2, II-4c). During the exchange with Ms. G[redacted], Respondent spoke to her in a degrading and "very condescending" manner and was critical of "the person she is and … the choices she's made." Respondent also spoke to Ms. G[redacted] in a raised voice and aggressive

tone (Tr 909, 910, 912, 918, 919, 980). Ms. G was shaking her head negatively throughout the colloquy, had teared up, become red in the face and was visibly agitated (Tr 913, 914, 918, 919, 922).

C. *R Z v T F* (Charge III)

In *Z v F*, Respondent increased Mr. Z's visitation with his daughter (Exs III-2, III-2a). Ms. F, who was unrepresented, interrupted Respondent as he was answering her question and Respondent immediately said, "Take her into custody. Take her into custody" (Exs III-2, III-2a). He did not state on the record why he was having her taken into custody (Exs III-2, III-2a). Respondent testified that he ordered her to be taken into custody because she was "discourteous" and "show[ed] general disrespect to the court" (Tr 2318-19, 2469-70). Ms. F apologized twice, but Respondent stated, "Judicial contempt. Take her into custody. You're disrupting the proceedings repeatedly." (Ex III-2a, p. 19-20). Ms. F was handcuffed and detained for nearly two hours. When Ms. F was returned to the courtroom Respondent asked her "how's handcuffs feeling?" (Exs III-3, III-3a). Upon her return Respondent "found that [Ms. F] understood the authority of the court" (Tr 2477).

Respondent did not attempt to get Ms. F representation, never warned her that her conduct could be deemed contempt and did not prepare a mandate of commitment (Tr 2472, 2473, 2487-88; Exs III-1, III-2, III-2a, III-4c, III-4e). Moreover, although on her own initiative she apologized twice, purging the contempt, Respondent ignored her (Exs III-2, III-2a). Finally, he deprived her of her liberty without due process.

D. *T[redacted] L[redacted] v G[redacted] C[redacted] and H[redacted] B[redacted]* (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). When Ms. L[redacted] indicated that she participated in a school conference by telephone, Respondent became annoyed that Ms. L[redacted] had not found a way to attend the conference in person. When Ms. L[redacted] said she could not recall if she spoke to "Mr. Jones" about getting a ride, Respondent stated, "You know what? Take her into custody" (Tr 495-96, 569; Exs IV-2, IV-2a). Respondent ordered that Ms. L[redacted] be taken into custody because he did not like her tone and "didn't like that the mother was not recognizing her role in getting the child math help" (Tr 2486; Ex VI-5b).

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). Respondent then had her brought back into the courtroom, told her he could send her to jail for 30 days for contempt, lectured her on respecting the court, and released her (Exs IV-3, IV-3a).

Respondent did not attempt to get Ms. L[redacted] an attorney, 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). He detained her without any due process. When he ordered her into custody, he spoke to her in an angry, raised voice (Tr 496, 497; Exs IV-2, IV-5c). Respondent so acted because Ms. L[redacted] was "agitated," "combative" and "debating" with Respondent about "things that [Respondent] felt should've been done" (Ex IV-5b).

E. [redacted] *G[redacted]o v C[redacted]e C[redacted]* (Charge V)

In granting Ms. C[redacted]a a 24-hour visit with her six-month-old child, Respondent told her that she would have to buy or obtain a portable crib (Exs IV V-2, V-2a). Since Ms. C[redacted] had already purchased a portable crib that ended up in the father's possession, she became annoyed and stated, "That's a crock of shit to me, honestly." Respondent answered, "Tell you what, take her into custody now" (Tr 502, 503, 1052, 1053, 1054, 1087, 1088; Exs V-2, V-2a, V-4b). He did not warn her that her conduct was contemptuous (Exs V-2, V-2a). 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). Respondent never prepared a mandate of commitment (Tr 2502-03; Ex V-1). When Mr. G[redacted]s attorney asked how long Ms. C[redacted] had to remain in custody, Respondent said, "Yeah we'll let her cool – calm down a little bit" (Tr 2503; Exs V-2, V-2a). While addressing Ms. C[redacted], Respondent raised his voice and used an angry tone (Tr 503, 504; Ex V-2).

When Ms. C[redacted]'s attorney visited Ms. C[redacted] in the holding area, he had to have a court officer unlock the door where Ms. C[redacted] was being kept (Tr 506, 507, 1058). Ms. C[redacted]'s attorney found her handcuffed, crying and "extremely upset" (Tr 507, 508, 509).

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). 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). Ms. C was crying as Respondent was addressing her (Tr 512).

F. *A F v J K and N K* (Charge VI)

During an emotional proceeding, Respondent awarded temporary custody of a 13-month-old child, who had been in the custody of his maternal grandparents, to his father. The grandparents reminded the court about abuse allegations, and Respondent directed that the child be turned over to the father (Tr 486, 487, 488, 489, 559, 560, 561, 562, 564, 565, 566, 1060, 1104-05, 1106, 1107, 1109; Exs VI-2, V-2a). When Mrs. K, the child's grandmother, threatened to sue the County and Respondent if anything happened to her grandson, Respondent directed that she be taken into custody (Tr 486, 487, 488, 489, 559, 560, 561, 562, 564, 565, 566, 1060, 1104-05, 1106, 1107, 1109; Exs VI-2, V-2a). Respondent believed Mrs. K had threatened him and that his decision to order Mrs. K be taken into custody was justified (Tr 2340, 2506-08). He did not warn Mrs. K 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). When Mrs. K tried to explain, Respondent yelled, "Get her out of here" (Tr 2509; Exs VI-2, VI-2a). Mrs. K was handcuffed and detained for over an hour (Tr 488, 491, 492; Exs VI-2, VI-2a, VI-3, VI-3a).

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 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 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). Respondent testified that he threatened Mr. K[redacted] because he was "disrupting the proceedings" by "talking over the court" (Tr 2511-12). Later in the proceeding Respondent told the parties that he was going to release Mrs. K[redacted] (Exs VI-3, VI-3a).

In each of these instances, Respondent abused his contempt power and committed misconduct. *See Matter of Hart*, 7 NY3d 1; *Matter of Popeo*, 2016 Ann Rep 160; *Matter of Feeder*, 2013 Ann Rep 124.

POINT II

RESPONDENT'S REPEATED AND BASELESS THREATS TO ARREST LITIGANTS FOR SUMMARY CONTEMPT WAS CLEAR MISCONDUCT (Charge VII)

The hearing evidence established that Respondent threatened to arrest litigants for summary contempt in three different Family Court cases and failed to treat the litigants in a patient, dignified and courteous manner. By doing so, Respondent committed judicial misconduct.

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 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).

As the evidence showed, on January 28, 2013, the parties in *M[redacted]. P[redacted] v S[redacted] R[redacted] and S[redacted] Ro[redacted]*, appeared before Respondent, who set a trial date and issued a temporary order awarding visitation to the father (Tr 516, 590, 591, 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 angrily yelled at Ms. Ro[redacted] (Tr 517, 591, 1968, 1069; Exs VII-4, VII-4a). Respondent either told the grandmother that he was going to incarcerate her or threatened to incarcerate her and mentioned putting her in handcuffs, causing Ms. Ro[redacted] to have difficulty breathing and be in "great distress" (Tr 362-63, 517, 519, 1068, 1684, 1685, 1708, 1714-15). Respondent nevertheless continued to yell at her (Tr 517, 519). Court staff called for an ambulance, whose crew treated Ms. Ro[redacted] at the courthouse (Tr 362, 518, 1068, 1070; Ex VII-3).

Similarly, in *D[redacted] v T[redacted] E[redacted] and A[redacted] F[redacted]*, while a witness was testifying, Respondent yelled at Ms. E[redacted], "[Y]ou 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 520-21, 522, 600; Exs VII-5, VII-5a). Respondent did not

indicate what alleged behavior of hers he found to be objectionable (Tr 521, 2354-55, 2528, 2529; Exs VII-5, VII-5a).

In *V* *v G*, Ms. G 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). Before Mr. V was able to join them in California, there was a breakdown in the relationship, which led Mr. V 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).

During the proceeding, notwithstanding the absence of any evidence, Respondent stated that Ms. G moved to California with the intention of separating from the husband and that the mother had a new boyfriend in California (Tr 527, 529-30, 532; Exs VII-6, VII-6a).

Immediately after making these comments, Respondent said in a loud voice to Ms. G' 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). 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).

Respondent's threat to arrest the litigant's mother was only one of several intemperate remarks he made during the proceeding. Indeed, when the Appellate

Division reversed Respondent's order awarding full custody to the father and providing no visitation to the mother, the Court noted that Respondent "treated the mother with apparent disdain" and directed that further proceedings be conducted before another judge (Tr 533; Ex VII-9).

Respondent's threats were all baseless and inappropriate. None of them had anything to do with restoring order in the courtroom. Nor were any of these circumstances "exceptional and necessitous." *See Matter of Singer*, 2010 Ann Rep 228, 231 (Commn on Jud Conduct, July 1, 2009) *quoting* 22 NYCRR 604.2(a)(1).

POINT III

RESPONDENT FAILED TO BE PATIENT, DIGNIFIED AND COURTEOUS TOWARD COURT STAFF AND LITIGANTS (Charges VIII-IX)

"A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity" (Rules Governing Judicial Conduct Section 100.3(B)(3)). "[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).

Respondent repeatedly violated this Rule in his dealings with court staff and when he addressed the parties in *M[redacted]. M[redacted] v R[redacted]. H[redacted]* in an undignified manner.

A. <u>Respondent Was Repeatedly Rude and Discourteous to Court Staff (Charge VIII)</u>

1. *<u>Wendy Weiner</u>*

As Wendy Weiner testified, over a four-year period while she was working as his secretary, Respondent spoke to her in a loud, "very curt," "rude" and condescending manner (Tr 1165, 1462). On one occasion he called her "stupid" (Tr 1490).

On January 14, 2015, while Respondent and Ms. Weiner were in Respondent's private office before business hours, Respondent became "very upset and agitated," was red in the face and yelled that he needed access to something on his computer (Tr 1443, 1444, 1445; 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," "totally s[aw] red and lost it," was shouting and his "hands were going" (Tr 1445, 1446, 1447). Respondent then took the computer jump drive which he had in his hand and threw it across the desk towards Ms. Weiner (Tr 1445-46).

Ms. Weiner started to back away towards the door – she was "scared" and "shaking" and did not "know what [Respondent] was capable of" (Tr 1446, 1447, 1592). Respondent then had a "complete tantrum" (Tr 1448). He yelled and screamed and

repetitively stated that he needed help from the technology department. Respondent took court files that Ms. Weiner had brought into his office earlier and threw them across the desk and onto the floor (Tr 1448). Respondent came around the desk in a "tantrum of rage" and kicked the files and paperwork all over his private office (Tr 1448, 1449). Ms. Weiner returned to her desk and was shaking, scared, upset and could not think straight (Tr 1449, 1584, 1589, 1592, 1601, 1609, 1611).

A couple of weeks later Respondent called Ms. Weiner and his law clerk into his office and stated that he had been "informed" that some of his actions might have been offensive (Tr 1332, 1456-57). When Ms. Weiner went to say something, he outstretched his arm and faced his palm toward Ms. Weiner and stated, "That is all you are dismissed" (Tr 1457). Thereafter Respondent stopped speaking to Ms. Weiner and communicated with her only through email (Tr 1457, 1458, 1571). The relationship between the two had "deteriorated," "chilled" and was "very formal" and a "bit tense" (Tr 1282, 1284, 1318, 2364, 2679-80). It was different from how it had been before the incident (Tr 1284, 1458).

In March 2015, Ms. Weiner learned that the Inspector General had found that Respondent harassed her and she was transferred to another position in the court system (Tr 986, 987, 1460, 1461).

2. *Andrea Rogers*

Over a three-year period, Respondent spoke to his court clerk Ms. Rogers in a loud, "very condescending" manner a couple of times each week (Tr 1139, 1140, 1142, 1145). Ms. Rogers frequently asked Respondent to clarify something about a case and

Respondent, in front of attorneys and litigants, would extend his arm towards Ms. Rogers with his palm facing her in a motion indicating she should stop talking (Tr 1140-41, 1143-44, 1185-86, 1216-19, 1221, 1223; Ex VIII-4d). This happened at least once a day; on some days Respondent did this up to ten times (Tr 1142, 1218,1219).

On one occasion after Ms. Rogers asked Respondent a question, Respondent turned toward the litigants and attorneys in the courtroom and rolled his eyes (Tr 1143, 1144).

One day when Ms. Rogers was assigned to work in Respondent's courtroom, she returned from lunch to discover that the court computer had shut down and needed to be rebooted (Tr 1149, 1228). Respondent was "hanging over" Ms. Rogers' desk and repeatedly asked "very loudly" and in a "nasty" tone, "Why isn't it on? What is wrong? Why is the computer not up? How long is it going to take? Why is it shut down, did you shut it down?" (Tr 1150-51, 1228, 1229, 1230).

Ms. Rogers relationship with Respondent was so "uncomfortable" that Ms. Rogers frequently spoke to her supervisor (Tr 1147, 1148, 1165, 1219). Eventually Ms. Rogers was transferred to another court part (Tr 1133, 1134, 1165, 1166).

3. *Court Officers*

Respondent also mistreated court officers. He yelled at Court Officer Miguel Diaz "all the time" when he was assigned to Respondent's courtroom (Tr 1158-59, 1236). On one occasion when they were alone, Respondent told Officer Diaz in a "loud and angry tone" that he was too slow and needed to speed up the process of bringing people into the courtroom (Tr 1683). On another occasion, Respondent became angry with Officer Diaz

when all the parties in *D* [redacted] *v T* [redacted] did not arrive in his courtroom in a timely fashion (Tr 1679, 1680, 1681, 1682; Exs VIII-2, VIII-2a).

On February 25, 2013, while ushering the parties in *H* [redacted] *v E* [redacted] into the courtroom, Officer Diaz realized that some individuals were missing, so he radioed the court officers assigned to security (Tr 1674, 1675). Respondent became upset and in an angry, loud voice told Officer Diaz to tell Sergeant Olivieri that he wanted to see him in chambers (Tr 1674-75, 1161; Exs VIII-3, VIII-3a, VIII-4b). When Officer Diaz radioed Sergeant Olivieri, the sergeant heard Respondent yelling in the background (Tr 117, 275, 293). After the interaction with Respondent, Officer Diaz was "visibly shaken" and "pale" and asked to be replaced because he "was not feeling too good that day because [of] the situation that happened" (Tr 349-50, 407, 1678, 1720).

While heading toward Respondent's chambers, Sergeant Olivieri saw the door to the courtroom swing open. Respondent started to approach him in a fast paced, aggressive manner (Tr 123, 124, 125, 1464, 1465, 1467). Andrea Rogers saw Respondent "charg[e]" towards Sergeant Olivieri like he was going to hit him (Tr 1163, 1238). Ms. Weiner, who was sitting at her desk in chambers, saw Respondent "barrel[ ]" out of the courtroom door "full throttle" (Tr 1464, 1465, 1467).

Respondent was red in the face, pointed his finger at the sergeant 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). Sergeant Olivieri was

"taken back," "in shock," "scared" and instinctually got into a "bladed stance" because he was unsure what was going to happen (Tr 123, 124, 125, 128, 313).[12]

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, 1242). The sergeant stated that Respondent should not talk to him "in that tone" and walked away (Tr 127, 130, 314). After the incident Sergeant Olivieri was "a mess," embarrassed, scared, nervous and shaken up (Tr 132).

In about 2014, at the conclusion of a proceeding, Respondent called for a 15-minute recess after which he was going to render a decision (Tr 364, 410, 413, 416). Officer Downs, who was assigned to Respondent's part that day, cleared the courtroom and went to Respondent's chambers (Tr 364, 365, 422).

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). Respondent, who was in his office with the door open, 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 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).

In 2012, shortly after 9:00 a.m. one day, Lieutenant McCabe was informed that Respondent wanted to see him in chambers (Tr 1730, 1731, 1732). Respondent was

[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).

"annoyed" and stated in a raised voice that "he wanted his cases brought in precisely at 9 o'clock, not 9:01, not 9:02, 9:00 o'clock" (Tr 1730, 1731, 1732, 1734, 1735). As he said this, Respondent tapped the desk with his right index finger three to four times (Tr 1732, 1733).

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

The parties in *M[redacted] v H[redacted]*, a child custody and visitation matter, were not represented by counsel (Exs IX-1, IX-2, IX-2a). When they appeared before Respondent, he told them to use "good judgment" before introducing their daughter to someone they were dating (Exs IX-1, IX-2, IX-2a). He added that it would be a problem if they introduced their child to a "drug addict," "slut," or "child abuser," although there was no indication that either party had a history suggesting such a possibility (Tr 2547, 2548; Exs IX-1, IX-2, IX-2a).

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). Such conduct is strictly prohibited. *See* Rules Governing Judicial Conduct Section 100.4(G); *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* 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). During that time period, he maintained the same telephone number he had used for his private law 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).

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). *See* Adv Op 15-128.

As set forth in more detail below, 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 (Otsego County), for Unlawful Possession of Marihuana (Tr 2558; Exs X-1, X-47a). Respondent told attorney Zachary D. Kelson about the arrest and Mr. Kelson offered to contact the Otsego County District Attorney's office to see if it would offer an Adjournment in Contemplation of Dismissal ("ACD") (Tr 632-633, 2558, 2559; Exs XI-1, X-47c, X-47e). 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). 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). 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). 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).

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). Respondent subsequently filed an omnibus motion and a reply Affirmation on behalf of his son, listing himself as counsel (Tr 2564, 2567; Exs X-1d, X-1e, X-47o). On August 6, 2013, the judge issued a written decision and order, dismissing the charge in the interest of justice (Tr 2568; Ex X-1f), and listing Respondent as the attorney of record for the defendant (Ex X-1f).

Respondent admitted that at the time he knew a judge was prohibited from representing anyone, including a family member, but that he represented his son anyway (Tr 2568, 2569).

Respondent also 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). 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). Yet, Respondent proceeded to ask the judge to accept the plea he had negotiated with the prosecutor (Tr 2569, 2571; Ex X-3a). After Respondent sent the letter, the ticket was dismissed (Tr 2132, 2383; Ex X-3a).

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. His hubris in no way mitigates his misconduct. 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's legal representation of his son was even more egregious. When it became apparent that Mr. Kelson could not negotiate an ACD, Respondent became his son's attorney – filing a Notice of Appearance, corresponding with the court, making a personal appearance at a settlement conference before the trial judge and then drafting and filing a successful omnibus motion that resulted in a dismissal of the charge.

While the Rules permit a judge to give "legal advice" to a family member, there is no exception in Rule 100.4(G) that permits a judge to represent a family member in another court. By doing so on behalf of his son and his wife, Respondent committed misconduct.

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 for the help of his court-employed confidential secretary in the representation. Respondent violated the Rules when he "improperly continued performing … legal services for clients." *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. Among other things, Respondent took the following actions on behalf of his client.

- Sent a letter on the letterhead of his former law office to the claims representative and enclosed a HIPAA form (Ex X-6);
- Received correspondence from the insurance company as Mr. Matisko's attorney (Exs X-7, X-8, X-9);
- 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);
- 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);

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

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). 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).

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). 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 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). 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).

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). 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). Although Respondent's brother was supposedly handling the matter, Respondent returned the clerk's phone call (Tr 1800-01, 1826, 1828, 1830, 2611).

A letter signed by Respondent's brother on the letterhead of Respondent's former law office was sent to the prosecutor, enclosing Mr. Lockwood's application and driving record abstract (Ex X-46d).

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 for Mr. Lockwood, but when she stated she did not know how, Respondent filled out the form himself (Tr 1485, 1486-87, 1657, 1658). 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). The town court sent Respondent a letter at the address of his former law office accepting Mr. Lockwood's plea (Ex X-40f). 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).

C. In 2014, Respondent Represented Eileen and Phillip Moore

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, Respondent took the following actions:

- Told the Moore's 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);

- After Respondent's wife received an email from the seller with the contract of sale attached, 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 (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);

- Sent two separate emails from his personal account to the paralegal at the law firm representing the foreclosure company, providing his personal cell number and inviting 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);

- Sent an email from his personal account to the real estate broker 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);

- Spoke with the paralegal 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);

- Sent four emails from his personal email account informing the paralegal that he would be on vacation on the same dates 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); 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).

Although Respondent claimed that his brother had conducted all the work concerning the purchase of the home, the only email addresses used were Respondent's or his wife's, and the only phone number provided belonged to Respondent's cell phone. 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). The real estate broker also never received an email from any email address associated with Ken McGuire (Tr 1389-90, 1405).

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 acted in violation of 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. <u>Cases Involving Attorney Zachary D. Kelson</u>

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). 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). 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).

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).

In addition, at Respondent's request, Mr. Kelson represented numerous friends and/or acquaintances of Respondent or his family. In connection with these cases, Respondent and Mr. Kelson remained in regular email contact. Respondent and Mr.

Kelson frequently discussed case strategy and Respondent interacted with litigants at Mr. Kelson's request (Tr 663-64, 666-73, 707-10, 714-15, 716-17, 719, 720-24, 725-26, 728-30, 733-37, 739-40, 740-751, 755-56, 759, 763-64, 2397, 2628-29, 2632-36; Exs XI-6, XI-7, XI-8, XI-10, XI-11, XI-12, XI-13, XI-14, XI-14a, XI-15, XI-16, XI-17, XI-18, XI-19, XI-20a, XI-21, XI-22, XI-23, XI-24, XI-26, XI-27).

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. 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. Prior to that time, Respondent never disqualified himself from any case involving Mr. Kelson and never disclosed the nature of his relationship with Mr. Kelson.

Respondent committed misconduct by presiding over cases in which Mr. Kelson appeared, notwithstanding their close professional and social relationship. His conduct was particularly egregious in light of Mr. Kelson's substantial assistance to Respondent in the criminal case pending against his son. *See 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).

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 Huttner*, 2006 Ann Rep 193, 194-95 (Commn on Jud Conduct, July 5, 2005); *Matter of Lebedeff*, 2006 Ann Rep 214, 216 (Commn on Jud Conduct, March 18, 2005).

Respondent committed misconduct by failing to disqualify himself from cases involving Mr. Kelson and by neglecting to disclose the nature of his relationship with Mr. Kelson to the parties in the cases.

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). 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).

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). 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).

Respondent compounded his 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). 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). At no time did Respondent instruct Ms. Conneely not to participate in the *Dean v Boyes* matter (Tr 1271, 2625).

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). Respondent did not send the motion to a floating clerk; instead, Ms. Conneely drafted the decision (Tr 1286-87, 1352, 2626). On October 23, 2014, Respondent denied the motion in its entirety (Tr 1281; Ex XI-44).

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. 32 NY3d at 134. The same is true here. Respondent's impartiality regarding Mr. Boyes's interest in the property could reasonably be questioned by virtue of Respondent's legal representation of Mr. Boyes's 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). 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). On the day of the Saturday interviews, Ms. Weiner was required 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). 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). After the interviews were completed, Ms. Weiner transported all the files back to chambers (Tr 1512-13).

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). Respondent thought "people might enjoy coming to the dinner and supporting the dinner, since they were getting pistol permits" (Tr 1517).

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).

Respondent required Ms. Weiner to help on the day that the interviews at the Villa Roma were being conducted (Tr 1519). Ms. Weiner picked up the permit files from chambers, transported them to the Villa Roma and then transported the files back to chambers after the event (Tr 1521, 1522-23).

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 compensation or compensatory time for the hours she worked at the Elks Lodge or the Villa Roma (Tr 1513, 1523, 1534). 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).

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). Respondent violated this Rule by using his judicial title in his email address.

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). 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). Respondent was well aware that using his judicial office in his email address was improper (Ex XIII-2c).

Respondent also 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 regarding matters in which Mr. Kelson's represented Respondent's friends and acquaintances (Tr 630, 636, 639-40, 644-45; Exs X-47c, XI-1, XI-2, XI-3, XI-4).

Respondent also used the "judgemcguire" email when he represented the Moores in the purchase of their house. Respondent sent numerous emails to the law firm representing the seller and the real estate broker involved in the sale (Exs X-23, X-24, X-26, X-28, X-30, X-34).

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 TESTIFIED FALSELY DURING THE HEARING

Respondent testified falsely about the number of cases he referred to his friend Zachary Kelson, Esq. and his involvement in the purchase of a home by Eileen and Phillip Moore. The Referee should find that Respondent's testimony lacked candor.

A. Respondent's Testimony Regarding Attorney Zachary D. Kelson Lacked Candor

Respondent's testimony about whether he referred cases to attorney Zachary Kelson lacked candor. When asked if he referred cases to Mr. Kelson, Respondent stated, "I don't believe I referred cases to him" and that he "did not tell anybody to

contact" Mr. Kelson (Tr 2627). Respondent stated that he sent Mr. Kelson information on only one case where he had already been retained (Tr 2626-27).

But as Respondent certainly knows, this was simply not true. The hearing evidence established that Respondent:

- Asked Mr. Kelson to represent his friend Jerry Fernandez in two cases – *County of Sullivan v Estate of Lydia Fernandez* and *Eye Physicians of Orange County v Gerardo Fernandez* (Tr. 707-08, 723-24, 2632);

- Asked Mr. Kelson to represent Willie Williams on two traffic tickets (Tr 755-56);

- Referred Lori Shepish to Mr. Kelson on a real estate matter (Tr 763, 764, 2631; Ex XI-27);

- Contacted Mr. Kelson about a speeding ticket that was received by Tina McTighe (Tr 661, Ex XI-5); and

- Forwarded Mr. Kelson copies of Lindsay Amoroso's traffic ticket and a waiver that Respondent had drafted after discussing her case with him (Tr 741-43, 2633; Exs XI-20, XI-21, XI-48f).

B. <u>Respondent's Testimony Regarding the Moore Real Estate Matter Lacked Candor</u>

Respondent testified falsely when he claimed that his only involvement in the purchase of the Moores' home was a brief conversation prior to the sale where he told the Moores to hire an attorney and gave them the name of a home inspector (Tr 2384 -85, 2578, 2582).

Contrary to Respondent's testimony, the evidence established that:

- Fifteen emails were sent to the seller's attorney and/or the real estate broker from Respondent's email address, "judgemcguire@[redacted]" (Tr 2586, 2588; Exs X-23, X-24, X-26, X-28, X-29, X-30, X-34);

- In two of the emails from "judgemcguire@[redacted]" Respondent's cell phone number was provided as the only contact number if any questions should arise (Tr 2587-88; Exs X-23, X-24); and

- Eileen and Phillip Moore testified that when Respondent visited them at their home he brought them the Contract of Sale, explained its terms and instructed them where to sign the document (Tr 683, 684, 688, 690, 697, 698, 704; Ex X-18).

Respondent's lack of candor was also demonstrated when he was questioned about speaking with Mary Ann Schultz, a paralegal with the firm representing the seller. The evidence showed that the real estate broker had an email exchange with Ms. Schultz on August 26, 2014, after which Ms. Shultz emailed the broker at 8:19 a.m., "Mr. McGuire and I just spoke" (Tr 1382-83, 1386, 1387; Ex X-26). A mere half hour later at 8:48 a.m., an email was sent from "judgemcguire@[redacted]" to Ms. Schultz stating:

> 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).

Although Respondent denied that he spoke to Ms. Schultz, the testimony showed that Respondent's cell phone number was the only number that was provided to her (Tr 2598-99).

When questioned about an August 26, 2014, 3:47 a.m. email from "judgemcguire@[redacted]" that was sent to the real estate broker, Respondent claimed that he did not send the email (Tr 2595-97; Ex X-26, p. 3). In his prior testimony during the Commission's investigation, however, Respondent admitted that he authored that email (Exs X-26, X-42p).

Finally, two of the emails sent from "judgemcguire@[redacted]" noted that "Ken McGuire" would be on vacation from September 16 through 24, 2014 (ExsX-28, X-29). Respondent denied taking a vacation during that time but an email from his confidential secretary to the Sullivan County Supreme and County clerk stated that Respondent would be on vacation during that exact time period (Tr 989, 2601; Exs X-28, X-29, X-36).

The Court of Appeals has found that "deception 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 (2009); *Matter of Myers*, 67 NY2d 550 (1986). In fact, "a judge who lies under oath in defiance of the law cannot be entrusted to administer oaths and sit in judgment on others whose credibility he must assess" *Matter of Mossman*, 1992 Ann Rep 59 (Commn on Jud Conduct, September 24, 1991); *Matter of Fabrizio*, 1985 Ann Rep 127 (Commn on Jud Conduct, December 26, 1984). Indeed, how can the public put faith in a judge who himself lies during a judicial proceeding.

POINT IX

THE REFEREE SHOULD DRAW AN UNFAVORABLE INFERENCE AGAINST RESPONDENT FOR HIS FAILURE TO CALL KENNETH MCGUIRE AS A WITNESS

The Referee should draw an "unfavorable inference" against Respondent for his failure to call his brother, Kenneth McGuire, as a witness. *See People v Savinon*, 100 NY2d 192, 196 (2003).[13] An "unfavorable inference" may be drawn "based on a party's failure to call a witness who would normally be expected to support that party's version

[13] At the close of Respondent's case, the Referee requested that the parties address the issue of whether he was permitted to draw an unfavorable inference from Mr. McGuire's failure to testify, and whether he should do so (Tr 4704).

of events." *Id at* 196. The rationale behind this inference is "that a failure to call a seemingly friendly witness suggests some weakness in the party's case." *People v Hall*, 18 NY3d 122, 131 (2011).

An unfavorable inference from a party's failure to call a witness is warranted when three requirements are met:

> [1] the uncalled witness is knowledgeable about a material issue pending in the case;
>
> [2] the witness is expected to provide noncumulative testimony favorable to the party who has not called him; and
>
> [3] the witness is available to such party.

People v Gonzalez, 68 NY2d 424, 427 (1986); *see also Devito v Feliciano*, 22 NY3d 159 (2013).

Here, all three requirements are met. First, Kenneth McGuire is knowledgeable about a material issue upon which evidence is already in the case. At issue is whether Respondent or Mr. McGuire performed legal work on behalf of Eileen and Phillip Moore in connection with their purchase of a foreclosure home. The Moores testified 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). By contrast, Respondent presented evidence that Mr. McGuire handled the contract (Tr 2091-92, 2583) and denied explaining the contract to the Moores and leaving with the contract (Tr 2583-85). There is also the issue of the emails: multiple emails sent from "judgemcguire@[redacted]" to the seller's agents that are signed either "Ken McGuire" or "Ken" (Tr 2588-89; Exs X-23-24, X-26, X-28-30, X-34). One email signed by "Ken"

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). Certainly, Mr. McGuire would be in the position to know what, if any, work he performed for the Moores and whether he prepared and sent the emails from Respondent’s email address.

Equally certain is that Mr. McGuire would be expected to testify favorably to Respondent and adversely to the Commission’s case. Mr. McGuire is Respondent’s older brother and is “perforce deemed” to be under the control of a party. *See People v Rodriguez*, 38 NY2d 95, 98 n. 1 (1975) (“A spouse or a relative is perforce deemed to be under the defendant’s control”); *see also People v Macana*, 84 NY2d 173 (1994). Moreover, Mr. McGuire stayed at Respondent’s home (Tr 2174-75) and assisted Respondent by agreeing to take files on a “*pro bono* basis” after Respondent’s appointment to the bench (Tr 2282). These facts establish that Mr. McGuire, by virtue of his relationship with Respondent, would naturally be expected to testify in Respondent’s favor. *See Gonzalez*, 68 NY2d at 431.

Mr. McGuire’s testimony would not have been cumulative of testimony or other evidence favoring Respondent. Here, there remains the question of whether Respondent or Mr. McGuire drafted the emails to the sellers. The emails are signed by “Ken” or “Kenneth McGuire” but there is no evidence in the record that Mr. McGuire drafted those emails, let alone that he sent the emails using Respondent’s personal email account. Mr. McGuire is the only witness that could testify to his involvement. Moreover, the Moores testified that they never spoke to or met with Ken McGuire regarding the purchase of the

house (Tr 681, 684-85, 696). Against that backdrop, Mr. McGuire's testimony would have readily answered the question of whether he provided legal services to the Moores and what work, if any, he provided.

There is no question that Mr. McGuire was available to Respondent. In response to the Referee's inquiry about Mr. McGuire's availability, Respondent's counsel did not argue that Mr. McGuire was unavailable to Respondent. Instead, he argued that Mr. McGuire was "equally available" to Respondent and the Commission (Tr 2704). The Court of Appeals has explained that a witness that is "theoretically available to both sides" but is favorable to one party and hostile to the other "is in a pragmatic sense unavailable to the opposing party regardless of physical availability." *Gonzalez*, 68 NY2d at 429, 431 (citations omitted); *see also People v Hall*, 18 NY3d 122, 131 (2011); *People v Keen*, 94 NY2d 533 (2000). As noted above, Mr. McGuire would naturally have been expected to testify in support of Respondent because of their relationship. For this reason, Mr. McGuire was available to Respondent and an unfavorable inference should be drawn from Respondent's failure to call him as a witness.

Accordingly, the Referee should infer from Respondent's failure to call Mr. McGuire that his testimony would not have supported or corroborated the proof offered by Respondent that Respondent did not perform legal work for the Moores. *See People v Paylor*, 70 NY2d 146, 149 (1987).

CONCLUSION

Counsel to the Commission respectfully requests that the Referee adopt the proposed findings of fact and conclusions of law enumerated in Appendix A to this Memorandum and find that Charges I-XIII of the Formal Written Complaint are sustained.

Dated: October 2, 2019
New York, New York

Respectfully submitted,

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

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APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent was admitted to the practice of law in New York in 2002. He has been a Judge of the County and Surrogate's Courts, and an Acting Judge of the Family Court, Sullivan County, since 2011, and an Acting Justice of the Supreme Court since January 2013. Respondent's term expires on December 31, 2020.

PROPOSED FINDINGS OF FACTS AS TO CHARGE I

2. On December 18, 2013, Respondent presided in Family Court over *R* *R* *v Ij* *O*, a child custody and visitation matter (Exs I-1, I-1a, I-1b, I-1c, I-3a). Mr. R and Ms. O are, respectively, the father and mother of the child at issue, who was approximately one and a half-years-old at the time (Exs I-1). Mr. R, who was incarcerated on a criminal matter, appeared without counsel before Respondent (Tr 355, 450, 461,1235; Exs I-2, I-2a). Ms. O was not present (Exs I-1, I-2, I-2a). After Respondent dismissed Mr. R' s petition for visitation without prejudice due to improper service, Mr. R said that he knew Respondent's son and asked for his recusal (Tr 356, 357, 1153, 1778; Exs I-1, I-1a, I-1c, I-2, I-2a). In response Respondent asked Mr. R if he was threatening Respondent's son and sentenced Mr. R to 30 days judicial contempt (Exs I-2, I-2a, pp 7- 8).

3. During the exchange with Mr. R, Respondent raised from his chair, "exploded," became angry and yelled at Mr. R (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, 1155, 1156, 1157). When Respondent stated “Officer, this gentleman just threatened my son” he was pointing at Mr. R (Tr 356-57, 360, 361, 1156-57; Exs I-2, I-2a, p 8). Respondent looked confused while Respondent was yelling at him (Tr 361).

4. Respondent sentenced Mr. R 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. R 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). Respondent at no time attempted to find an attorney to represent Mr. R (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 was incarcerated (Exs I-1, I-1a, I-1b, I-3c).

5. 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).

PROPOSED FINDINGS OF FACTS AS TO CHARGE II

6. On August 28, 2013, Respondent presided in County Court over *People v M[redacted] G[redacted]* (Exs II-1, II-2, II-4a). Ms. G[redacted], 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). If she failed the program, however, she agreed to be sentenced to a state prison term of one and one-third years (Tr 905-06, 953; 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]s was represented by attorney Jared K. Hart (Tr 905; Ex II-2).

7. During the sentencing proceeding, after advising Ms. G[redacted] that she had not succeeded in the drug program and would be sentenced to prison, Respondent remarked on Ms. G[redacted]'s parenting ability (Tr 909, 910, 911; Ex I-2). 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).

8. During this exchange 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, 910, 912, 980). Ms. G[redacted] was shaking her head negatively throughout the colloquy, had teared up and become red in the face (Tr 913, 914, 922).

9. 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).

10. Respondent then told Ms. G that "at every opportunity" she had "chosen the easier way out. I'll go sit in state prison, hang out, meet some people, enjoy myself, won't be there for my children for another four years" (Ex, II-2, p 7).

11. Respondent made further remarks about Ms. G 's parenting ability and her "rather extensive criminal history" including telling Ms. G 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 seemed to be "baiting" Ms. G and seemed aggravated about her lifestyle choices (Tr 980, 1015). At this point Ms. G started to become agitated "not in an aggressive way but in a disagreeing type of way" (Tr 914). Mr. Hart knew that her children were a "soft spot" for Ms. G so he whispered to her that she should not react or say anything (Tr 914-15, 962, 963).

12. Respondent continued his comments 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).

13. 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; Ex II-1a, II-2, pp 9-10).

14. During this exchange Ms. G[redacted] was at times addressing Respondent and at other times addressing Mr. Hart (Tr 919, 920, 921). Respondent raised his voice and Ms. G[redacted] became very agitated and was crying (Tr 918, 919). According to Mr. Hart, Ms. G[redacted]s just wanted to be sentenced and leave the courtroom (Tr 921). Ms. G[redacted] realized that she could not complete Drug Court so she wanted to be sentenced "so she could at least get home sooner to the kids." (Tr 963).

15. 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).

16. 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).

17. 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).

PROPOSED FINDINGS OF FACTS AS TO CHARGE III

18. On October 3, 2012, Respondent presided in Family Court over *R* *Z* *v T* *F*, a child custody and visitation matter (Exs III-1, III-4a, IV-5a). Mr. Z and Ms. F 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).

19. During the proceeding, Respondent changed the visitation schedule and expanded the amount of time that Mr. Z would be permitted to visit with the child (Exs III-2, III-2a). Ms. F was concerned by Respondent's ruling and told the Respondent that her daughter would not want to go with Mr. Z. The following colloquy then occurred:

> JUDGE MCGUIRE: All right. Here's the deal, Ms. F, if I learn that your daughter is not --
>
> MS. F: He's going to go to the school, or pick her up, and she's going to hear, "R Z here to"--
>
> JUDGE MCGUIRE: Take her into custody.
>
> MS. F: -- "Is here to pick up E Z" --
>
> JUDGE MCGUIRE: Take her into custody. Take her into custody.
>
> MS. F: Okay. I'm sorry. I'll try --
>
> JUDGE MCGUIRE: Judicial contempt.
>
> MS. F: I'm sorry. I --
>
> JUDGE MCGUIRE: Judicial contempt. Take her into custody. You 're disrupting the proceedings repeatedly.
>
> (SOUND OF HANDCUFFS)

(Exs III-2, III-2a, pp 19-20). Respondent's voice was raised during this exchange (Exs III-2, III-4d).

20. 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).

21. 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).

22. 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).

23. In sworn testimony during the Commission's investigation, Respondent conceded that he "could've acted better" but maintained he acted appropriately under the circumstances (Ex III-4f).

PROPOSED FINDINGS OF FACTS AS TO CHARGE IV

24. On June 14, 2013, Respondent presided in Family Court over *T* *L* *v G* *C* *and H* *B*, a child custody and visitation matter (Tr 495; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a). Ms. L and Mr. C 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). Ms. L was not represented by counsel during the proceeding (Tr 495; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a). During the proceeding there was a lengthy back and forth between Respondent and Ms. L regarding the child's difficulty with math and Ms. L 's attendance at a meeting at the school.

> JUDGE MCGUIRE: Was there a transportation issue that prevented you from being present at the IEP meeting?
>
> MS. L: Yes, there is. I do not have a vehicle.
>
> JUDGE MCGUIRE: Did you speak to Mr. Jones about that[?][1]
>
> MS. L: We set up a conference meeting with the school, so I could have the conference phone.
>
> JUDGE MCGUIRE: Mr. Jones did?

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

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, p 6).

25. 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).

26. 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).

27. When Ms. L[redacted] returned to the courtroom over an hour later, Respondent lectured her about respecting the court. Respondent stated that:

> 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.

and then told Ms. L[redacted] that she "need[ed] to think carefully before [she] address[ed] the court with disrespect" (Exs IV-3, Iv-3a, pp 1-2).

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

PROPOSED FINDINGS OF FACTS AS TO CHARGE V

29. On January 17, 2014, Respondent presided in Family Court over *L[redacted] W[redacted] G[redacted] o 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 J[redacted]

F[redacted] and Ms. C[redacted] was represented by attorney K.C. Garn (Tr 499, 400, 503, 582, 1050-51, 1086; Exs V-2, V-2a, V-3, V-3a).

30. 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, 501, 502, 1051, 1089, 1091, 1101; Exs V-2, 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 501, 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)

(Tr 502, 503, 1052, 1053, 1054, 1087, 1088; Exs V-2, V-2a, p 8 - 9, V-4b). While addressing Ms. C[redacted], Respondent raised his voice and used an angry tone (Tr 503, 504; Ex V-2).

31. Respondent did not warn Ms. [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, 505, 1054, 1055; Exs V-2, V-2a, V-4c).

32. Ms. C[redacted] was handcuffed behind her back in the courtroom in front of Respondent (Tr 503, 1053, 1054). Mr. Garn left the courtroom right after Ms. C[redacted] and spoke to the chief clerk about having the case recalled after Mr. Garn had an opportunity to speak to Ms. C[redacted] (Tr 505, 506). Mr. Garn then went to the conference room where Ms. C[redacted] who was handcuffed, was being held in a locked room (Tr 506-07, 1058). Ms. C[redacted] was crying and "extremely upset" (Tr 507-09). 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, 510, 1058; Exs V-2, V-3).

33. While Mr. Garn was with Ms. C[redacted] in the conference room the following colloquy occurred between Respondent and Mr. G[redacted]'s attorney, John Ferrara:

> Mr. Ferrara: You going to -- have him in here alone and maybe you can sort out how long she has to stay for?
>
> JUDGE MCGUIRE: Yeah, we'll let her cool -- calm down a bit.

(Tr 1054, 1055; Exs V-2, V-2a, p 10). Mr. Ferrara initiated the conversation about how long Respondent planned to keep Ms. C[redacted] in custody because he "did not think she should have been handcuffed" as "she did [not do] anything that horrible that required that action" (Tr 1056).

34. 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, 511; 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).

35. 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).

36. 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).

PROPOSED FINDINGS OF FACTS AS TO CHARGE VI

37. On December 2, 2014, Respondent presided in Family Court over *A* [redacted] *Fl* [redacted] v *J* [redacted] *K* [redacted] *and N* [redacted] *K* [redacted] a child custody and visitation matter (Tr 484, 487, 1103, 1129-30; Exs VI-1, VI-217). A [redacted] F [redacted] and N [redacted] K [redacted] 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 [redacted] and R [redacted] K [redacted] are the child's maternal grandparents and were not represented during the proceeding (Tr 1058, 1061-62, 1104; Exs VI-2, VI-2a, VI-3, VI-3a).

38. 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] 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 grandfather asked to be relieved from delivering the child to the father (Tr 486, 487, 488, 489, 559, 560, 561, 562, 564, 565, 566, 1060, 1104-05, 1106, 1107, 1109; Exs VI-2, V-2a, pp 18 - 21). Respondent then ordered the child turned over to the father and the following colloquy occurred:

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)

(Tr 486, 487, 488, 489, 559, 560, 561, 562, 564, 565, 566, 1060, 1104-05, 1106, 1107, 1109; Exs VI-2, VI-2a, pp 19 - 20). Respondent addressed the parties in an angry, raised voice (Tr 488, 489; Exs VI-2, VI-4c).

39. 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, 490, 1062; Exs VI-2, VI-2a, VI-4d). Respondent did not provide an attorney for Mrs. K prior to ordering that she be placed in custody (Tr 490, 1061; Exs VI-2, VI-2a, VI-4e). Mrs. K was placed in handcuffs in the courtroom in front of Respondent, removed from the courtroom and detained for over an hour (Tr 488, 491, 492; Exs VI-2, VI-2a, VI-3, VI-3a).

40. 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)

41. When Mrs. K returned to the courtroom she seemed upset, indicated that she had contacted an attorney, and both she and Mr. K apologized repeatedly to Respondent (Tr 493; Exs VI-3, VI-3a). After Respondent told the parties that it was a "judicial contempt proceeding" and if he said that Ms. K had "disrupted the proceedings" he could put her in jail for 30 days the following colloquy occurred:

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

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

MR. K: No. I'm sorry.

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

42. Respondent continued that when he "believe[s] that people are trying to stand between the relationship that the child is entitled to with the mother and the father, it upsets [him]" (Exs VI-3, VI-3a, p. 2). Respondent then told Ms. K

that he was “going to release [her] this time” and was “not going to pursue judicial contempt against [her], I'm not going to put you in jail, all right?” (Exs VI-3, VI-3a, p 2).

43. 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).

44. 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).

45. 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 (Ex VI-1).

ADDITIONAL PROPOSED FINDINGS OF FACTS RELATING TO CHARGES I-VI

46. Whenever Respondent ordered a litigant be taken into custody the court officer assigned to Respondent’s part would radio Sergeant Guillermo Olivieri, who would go to the courtroom to assist (Tr 142-43). In Respondent’s courtroom, the court officer and/or Sergeant Olivieri would handcuff the litigant behind the back (Tr 143-44). Sergeant Olivieri and a court officer would then escort the litigant in handcuffs through the public waiting area where people waited for their cases to be called or were filing papers (Tr 146-47, 152; Exs PH-12, PH-13, PH-

14, PH-15). The litigant was taken to a "holding room" (Tr 144; Exs PH-7, PH-9). The "operations office" which doubles as the sergeant's office has a glass window that faces the holding room (Tr 145; Exs PH-7, PH-8). The court officer would then return to Respondent's courtroom while either the sergeant or another court officer would sit in the operations office and observe the person in custody through the glass window (Tr 152-53). The door of the holding room was locked, and the individual was handcuffed behind the back the entire time s/he was in the room (Tr 152-53).

47. When Respondent determined that the case should be recalled the handcuffed litigant would be accompanied by court officers back through the public waiting area into Respondent's courtroom (Tr 158-60, 226).

48. Sergeant Olivieri never received any paperwork from Respondent documenting his order that a litigant be placed into custody (Tr 150)

PROPOSED CONCLUSIONS OF LAW AS TO CHARGES I-VI

49. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

50. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

51. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules.

52. Respondent failed to be patient, dignified and courteous to litigants, in violation of Section 100.3(B)(3) of the Rules.

53. Respondent failed to accord every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard, in violation of Section 100.3(B)(6) of the Rules.

PROPOSED FINDINGS OF FACT AS TO CHARGE VII

54. 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). The child, who was approximately eleven years old at the time, was present in court and was represented by counsel (Tr 513, 583-84, 1065; Exs VII-1, VII-1a, VII-4, VII-4a).

55. 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, 591, 1067, 1117; Exs VII-1, VII-1a, VII-4, VII-4a).

56. 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 (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).

57. Ms. Ro 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 at the courthouse (Tr 362, 518, 1068, 1070; Ex VII-3).

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

59. While Ms. E was testifying, Respondent yelled, "Ms. E, you are about three seconds from getting yourself put in handcuffs and taken out of here," notwithstanding that Ms. E 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's he found to be objectionable (Tr 521; VII-5, VII-5a).

60. On August 21, 2014, Respondent presided in Family Court over *C. V v A. G*, a child custody and visitation matter (Tr 522; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a). Mr. V and Ms. G are the parents of the two children at issue (Tr 522, 523; 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 would first move with the children and that Mr. V would later follow (Tr 602-03, 606, 607; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a). Before Mr. V joined them in California there was a breakdown in the relationship, which led Mr. V 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).

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

a. Notwithstanding the absence of any evidence that Ms. G 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).

b. Commenting on the home of the relative with whom Ms. G 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).

c. 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).

d. Immediately thereafter, in a loud voice Respondent said to Ms. G' 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, p 8).

62. 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).

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

a. 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).

b. 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).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE VII

64. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

65. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

66. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(l) of the Rules.

67. Respondent failed to be patient, dignified and courteous to a litigant, in violation of Section 100.3(B)(3) of the Rules.

68. Respondent failed to accord every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard, in violation of Section 100.3(B)(6) of the Rules.

PROPOSED FINDINGS OF FACT AS TO CHARGE VIII

Wendy Weiner

69. 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, 1441, 1565). Respondent was "passive aggressive" in his dealings with Ms. Weiner (Tr 1461). Respondent could "cut you down with words and make you feel like you are two inches tall" and then he would "thank you for all your good work" (Tr 1461-62). 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).

70. On one occasion, while Respondent and Ms. Weiner were working on pistol permits paperwork, Respondent became "upset" and frustrated at Ms.

Weiner when she "wasn't getting some of the paperwork right" (Tr 1490). During this interaction Respondent called Ms. Weiner "stupid" (Tr 1490).

71. On January 14, 2015, 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, 1443, 1444, 1447, 1582). Respondent was "very upset and agitated" and complained that there was a problem with the computer (Tr 1443-45). Respondent was "red-faced," and he was "shouting about the computers, that he needed access to something" and "shouting that he needed somebody … to fix the problem" (Tr 1444, 1445; Ex 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 "totally s[aw] red and lost it," he was shouting and his "hands were going" (Tr 1446, 1447). Respondent took the computer jump drive which he had in his hand and threw it across the desk towards Ms. Weiner (Tr 1445-46).

72. Ms. Weiner started "backing away towards the door" (Tr 1446-47). She was "scared" and "shaking" because she did not "know what [Respondent] was capable of" (Tr 1447, 1592). Respondent had a "complete tantrum" and was "yelling and screaming repetitively he needed April or somebody to fix the computer" (Tr 1448; 1445-46). "April" worked for the Sullivan County "IT" department (Tr 1445).

73. 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).

74. When Ms. Weiner sat down at her desk, she could still hear Respondent yelling that he wanted "April and he wanted her now" (Tr 1449). Ms. Weiner was "shaking," "scared," "very upset" and "couldn't even think straight" (Tr 1449, 1584, 1589, 1592, 1601, 1609, 1611).

75. Ms. Weiner left chambers and went to the Government Center to see if she could find April (Tr 1449). When Ms. Weiner returned about 10 minutes later Respondent was no longer in chambers and the files that had been on the floor had been picked up and left on the credenza (Tr 1450, 1452-53).

76. 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).

77. 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 after attending a doctor's appointment and noticed that Ms. Weiner was "visibly upset" (Tr 1331).

78. Later that day Ms. Weiner received a call from Beth Diebel, District Executive for the Third Judicial District (Tr 1455, 1614). Ms. Weiner did not speak to Respondent that day about what had occurred that morning (Tr 1456). A couple of weeks later Respondent asked to speak with Ms. Weiner and Ms. Conneely in his private office (Tr 1456-57, 1332). 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).

79. 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). It was different from how it had been before the incident (Tr 1284, 1458).

80. 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).

Andrea Rogers

81. Ms. Rogers was assigned as a court assistant in Respondent's part for three years from January 2011 through December 2013 (Tr 1134-35).

82. Respondent "frequently," "at least a couple of times a week," spoke to Ms. Rogers in a loud, "very condescending" manner (Tr 1139, 1140, 1142, 1145).

83. At times Ms. Rogers asked Respondent to clarify something so that Ms. Rogers could complete her duties, which included filling out paperwork to be handed to litigants and/or attorneys and making notes in the court computer (Tr 1140-41, 1144, 1185-86, 1216-19, 1221, 1223). Ms. Rogers always waited until there was a "lull" in the proceeding to ask her question (Tr 1214, 1215). When Ms. Rogers asked a question, Respondent would frequently extend his arm towards Ms. Rogers with his palm facing her "to tell [her] to stop" (Tr 1141, 1144, 1143; Ex VIII-4d). Respondent did this at least once a day and sometimes as often as ten times in one day (Tr 1142, 1218-19). It happened frequently "[e]nough to make [Ms. Rogers] bring it to [her] supervisor's attention" (Tr 1145, 1219).

84. On one occasion, after Ms. Rogers asked Respondent a question, Respondent turned toward the litigants and attorneys in the courtroom and rolled his eyes (Tr 1143, 1144).

85. One day when Ms. Rogers was assigned to work in Respondent's court part she returned from lunch to discover that the court computer had shut down and needed to be rebooted (Tr 1149, 1228). It was 1:30 p.m. the time that court was supposed to commence (Tr 1150). Respondent who was also in the courtroom

was "hanging over" Ms. Rogers' desk and repeatedly asked "very loudly," in a "nasty" tone "Why isn't it on? What is wrong? Why is the computer not up? How long is it going to take? Why is it shut down, did you shut it down?" (Tr 1150-51, 1228, 1229, 1230).

86. Ms. Rogers relationship with Respondent was so "uncomfortable" that she frequently spoke to her supervisor about the problems she was having with Respondent (Tr 1147, 1148, 1165, 1219). Eventually Ms. Rogers was transferred to another court part (Tr 1133, 1134, 1165, 1166).

Court Officer Miguel Diaz and Sergeant Olivieri

87. 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 (1670-71, 1686-87).

88. 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).

89. Officer Diaz was assigned to Respondent's court part on June 29, 2012, when *D* [redacted] *v T* [redacted] *N* [redacted] was on the calendar (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). After Officer Diaz received the radio

transmission he opened the door to the courtroom in anticipation of the individual arriving (Tr 1680, 1681).

90. 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" (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).

91. Court Officer Diaz was assigned to Respondent's court part on February 25, 2013, when the *H* [redacted] *v E* [redacted][2] was on the calendar (Tr 116, 274, 1671, 1694). Officer Diaz radioed the court officers in the waiting area and asked them to have the individuals from the *E* [redacted] case report to the courtroom door (Tr 1672-73, 1695). When Officer Diaz started ushering the parties in *E* [redacted] into the courtroom he realized that some individuals were missing and he radioed the court officers at the security post (Tr 1674-75). When he was informed that the individuals were still going through security, Officer Diaz held the courtroom door open (Tr 1675-76).

[2] The case is also referred to as *Department of Family Services v E* [redacted] (Tr 1694).

92. Respondent in an angry, loud voice told Officer Diaz to tell Sergeant Olivieri that he wanted to see him in Respondent's chambers (Tr 1161, 1674-76; Exs VIII-3, VIII-3a, VIII-4b). Officer Diaz ushered everyone out of the courtroom and radioed the sergeant (Tr 116-17, 118, 293, 1678, 1704). While on the radio with Officer Diaz the sergeant heard Respondent yelling in the background (Tr 117, 275, 293). Diaz sounded "concerned and shaken up" (Tr 293).

93. At the time, Respondent's confidential secretary Wendy Weiner was sitting at her desk and could hear that Respondent was becoming agitated and "carrying on, yelling and screaming" in the courtroom (Tr 1463).

94. Officer Diaz went to the security post near the magnetometer (Tr 1677, 1703). Diaz was "visibly shaken" and "pale" (Tr 349-50). Diaz asked the Court Officers at that post if someone could cover Respondent's part because Respondent had yelled at him and he did not want to go back into the courtroom (Tr 349-50, 407). Officer Diaz did not return to Respondent's court part that day because he "was not feeling too good that day because [of] the situation that happened" (Tr 1678, 1720).

95. After Sergeant Olivieri received the radio transmission from Officer Diaz he headed towards Respondent's 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).

96. Andrea Rogers who had been in Respondent's courtroom was standing in the doorway that connects Respondent's courtroom and his chambers (Tr 1238). Ms. Rogers testified that Respondent "started charging" towards Sergeant Olivieri "like he was going to hit him" and that Respondent was "hightailing it down the hall" (Tr 1163, 1238). Respondent was "very aggressive" and was "shouting" (Tr 1163). Ms. Weiner was sitting at her desk in chambers and observed that Respondent came "barreling" out of the door from the courtroom, into chambers "full throttle" (Tr 1464-67).

97. 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).

98. Respondent and the sergeant were two to three feet apart (Tr 312-13). When Respondent advanced in an aggressive manner, the sergeant 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).

99. 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). When speaking to Respondent the sergeant was stuttering because he was so nervous (Tr 127). The sergeant reported the incident to Lieutenant McCabe and his supervisor at the District Office (Tr 131-32, 191-92, 1760-61).

100. 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).

101. Prior to the *E* [redacted] matter Respondent had spoken to the sergeant and Lieutenant McCabe about his concerns regarding the manner in which Officer Diaz handled the calendar and the volume of his radio (Tr 275-76, 280, 304, 1761, 1762). Once or twice the sergeant observed Officer Diaz handle Respondent's morning calendar (Tr 305). The lieutenant also monitored Officer Diaz' performance in and outside the courtroom (Tr 1762). While in Family Court Officer Diaz was assigned to Judge Meddaugh and Support Magistrate Linen's court parts and neither complained about Officer Diaz (Tr 1762-63). Andrea Rogers testified that Officer Diaz performance in the courtroom was not any different than other officers (Tr 1236-37).

Court Officer Brenda Downs

102. 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 after which he was going to render a decision (Tr 364, 410, 413, 416). Officer Downs cleared the courtroom and then went to Respondent's chambers (Tr 364-65). Officer Downs and Court Assistant Andrea Rogers were standing by the desk where Wendy Weiner was sitting (Tr 365, 366, 367, 368, 411; Ex PH-6). Ms. Rogers and Ms. Weiner were talking, although Officer Downs was not participating in the conversation (Tr 411).

103. Respondent was in his private office, sitting at his desk with his door open (Tr 366, 411). Respondent seemed to be having trouble finding something on his computer and started to become agitated, frantically searching on the computer and twirling his chair (Tr 367, 412, 415).

104. 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).

Lieutenant Kevin McCabe

105. In 2012, shortly after 9:00 a.m., Lieutenant McCabe was informed that Respondent wanted to see him and he went to Respondent's chambers (Tr 1730-

32). Respondent was “annoyed” and stated in a “raised" voice that “he wanted his cases brought in precisely at 9 o’clock, not 9:01, not 9:02, 9:00 o’clock” (Tr 1730-32, 1734-35). As he said this Respondent tapped the desk with his right index finger three to four times (Tr 1732, 1733).

106. In response the lieutenant told Respondent “Judge I believe the case was on your door at nine o’clock. We make every effort to get the cases to you promptly on time” (Tr 1734, 1833). Respondent replied in a “raised” voice that “according to his watch, it was 9:01 or 9:02” (Tr 1733-34). The conversation continued along these lines until the lieutenant stated that he would do his best to get cases in at 9:00 a.m. (Tr 1735).

107. After the incident the lieutenant spoke to his supervisor (Tr 1735). The lieutenant also reviewed the security cameras which reflected that the case was called at 9:00 a.m. (Tr 1733).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE VIII

108. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

109. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

110. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to be patient, dignified and courteous to court staff, in violation of Section 100.3(B)(3) of the Rules.

PROPOSED FINDINGS OF FACT AS TO CHARGE IX

111. On March 10, 2014, Respondent presided in Family Court over *M* *M* *v R* *H*, a child custody and visitation matter (Exs IX-1, IX-2, IX-2a). The parties were before Respondent for court approval of an informal agreement that they had reached regarding custody and visitation as to their child, who was approximately two years old (Exs IX-1, IX-2, IX-2a). Neither party was represented by counsel (Exs IX-1, IX-2, IX-2a).

112. Respondent questioned the parties under oath 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).

113. 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).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE IX

114. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and

independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

115. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules

116. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to be patient, dignified and courteous to litigants, in violation of Section 100.3(B)(3) of the Rules.

PROPOSED FINDINGS OF FACT AS TO CHARGE X

117. Prior to assuming judicial office in January 2011, Respondent had a private law practice with an office on [redacted] (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,).

118. 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 prior to January 2011 in connection with his private law practice (Tr 2057, 2106, 2111-12, 2127-28, 2129-30, 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).

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

People v W[redacted] M[redacted]

120. 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).

121. Respondent told attorney Zachary D. Kelson about the arrest and Mr. Kelson offered to contact the Otsego County District Attorney's office to ascertain if it would offer W[redacted] M[redacted] 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 he spoke with the District Attorney's office and informed Respondent that they 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)

122. 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).

123. Respondent also enclosed an Affirmation of Actual Engagement where he stated that he "represent[ed] Defendant herein, W[redacted] M[redacted]" (Ex X-1a). Respondent listed by name three County Court and three Family Court cases in which he would be engaged on December 5, 2012 (Ex X-1a). He also stated in the cover letter that on December 6, 2012, he would be "commenc[ing] a trial" in *People 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).

124. 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).

125. Respondent drafted and 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). Although the letterhead on both December 2nd letters list Respondent's former law office address as his location, both the Notice of Appearance and the Affirmation of Actual Engagement list Respondent's home address as his location. In addition, the Notice of Appearance states that the "undersigned appears as counsel for the defendant named herein and respectfully requests that all motions, notices and other papers be served upon him at the address listed below," *i.e.* Respondent's home address (Tr 2559-61; Exs X-1, X-1a, X-1b).

126. On December 8, 2012, Respondent drafted and sent a letter to 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). Respondent was not available on the date listed in the letter because he was presiding over matters in Family and/or County courts (Tr 2563).

127. On February 26, 2013, Respondent conferenced his son's case with Otsego

County Assistant District Attorney 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).

128. 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).

129. 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 M (Tr 2564; Ex X-1d). In the submission, Respondent moves *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).

130. In the first two paragraphs in the Affirmation in Support Respondent states that he is an "attorney duly authorized to practice law in the State of New York" and that he represents 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, sets forth detailed legal arguments in support of Respondent's application on behalf of his son (Ex X-1d).

131. On August 4, 2013, Respondent sent a letter on behalf of his son to Judge McVinney (Ex 1-e). The letterhead identified Respondent as "MICHAEL F. McGUIRE Attorney and Counselor at Law" and lists his home address as his location (Ex X-1e). The letter states that Respondent was enclosing a Reply Affirmation and it requests that the judge accept the papers even though they had not been timely filed (Ex X-1e). Respondent drafted and signed the letter and is identified on the signature line of the cover letter and the Reply Affirmation as "Michael F. McGuire, Esq." (Tr 2567; Ex X-1e).

132. In the first two paragraphs of the Reply Affirmation Respondent states 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 Reply Affirmation, which is six pages in length, sets forth detailed legal arguments in response to the opposition papers filed by the District Attorney's office (Ex X-1e).

133. On August 6, 2013, Judge McVinney issued a written Decision and Order in *People v W[redacted] [redacted]M[redacted]e*, 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).

134. Respondent admitted that he "absolutely" knew in 2013 that he was prohibited from representing his son, but did so anyway (Tr 2568, 2569).

People v Corinne McGuire

135. 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 in connection with this matter (Tr 2131, 2382, 2569; Ex X-3).

136. 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).

George Matisko

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

138. 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).

139. 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).

140. 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).

141. Respondent's confidential secretary, Wendy 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). Ms. Weiner told Respondent about the conversation with the adjuster and Respondent told her to accept the offer (Tr 1470, 1471).

142. 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).

143. 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).

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

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

146. 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 and used Respondent's PO Box address in the letterhead (Tr 1480, 1648). Respondent was aware that Ms. Weiner was sending the letter (Tr 1481, 1648).

147. 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).[3]

Eileen and Phillip Moore

148. 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 Naponoch house from Mr. Dolfinger's friend (Tr 1371, 1405-06). Heather called Mr.

[3] 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).

Dolfinger, who told her that foreclosure sales were tricky and recommended that the Moores use an attorney (Tr 677, 1406).

149. 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 knew Respondent through their son-in-law who worked at the college (Tr 678-79, 695, 700-01, 703). 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 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 because it was a foreclosure (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).

150. 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 to the email and Ms. Schultz wrote "kindly copy and have your client sign four (4) copies of the contract and return" them with a check or money order (Ex X-19).

151. After the email, Respondent went to the Moores' home with the contract for the purchase of the property (Tr 681-883, 688, 696-97; Ex X-42b). Eileen and Phillip Moore sat with Respondent at the Moore's table and Respondent gave them an envelope containing 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).

152. 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" and attached to one was the "the fully executed contract" and attached to the other was the closing extension (Exs X-20, X-21).

153. On the afternoon of August 25, 2014, Ms. Schultz sent an email to Mr. Dolfinger and cc'd to "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. but it stated, "If you have any questions, concerns or comments please feel free to contact me at [redacted] or through email" (Ex X-23). The telephone number in the email belonged to Respondent's cell phone (Tr 2146, 2586, 2587; Exs X-42f, X-42h).

154. 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@v[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 since the email said Judge McGuire but it was signed Ken McGuire (Tr 1378, 1391, 1392).

155. Mr. Dolfinger answered the email at 10:18 p.m. and at 3:47 a.m. Mr. Dolfinger received another email from "Mr MICHAEL MCGUIRE <judgemcguire@[redacted]>" (Ex X-26). This email did not have any signature at the end (Ex X-26). The email states:

> 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).

156. After receiving the 3:47 a.m. email, 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).

157. At 8:19 a.m. on August 26, 2014, Ms. Schultz sent an email to Mr. Dolfinger saying to him 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 states:

> 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).

158. 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 states:

> . . . 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 states:

> 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 belongs to Respondent's cell phone (Tr 2589; Exs X-42l, X-42m).

159. The person sending the August 26, September 3, and September 9, 2014, emails from "judgemcguire@[redacted]" informed Ms. Schultz that he will be on

vacation from September 16 through September 24, 2014 (Exs X-28, X-29). All the emails are signed either Ken McGuire or Ken (Exs X-28, 29).

160. 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).

161. 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).

162. On October 27, 2014, the deed transferring title from PennyMac to Phillip and Eileen Moore was recorded in the Ulster County Clerk's Office; the Moores did not move into the house until April 2015 (Tr 676-77; Ex X-16).

163. On January 7, 2015, Wendy Weiner sent an email to Respondent regarding a call she received from Eileen Moore and asking that Respondent return the call (Ex X-37). The email states that Ms. Moore is "concern[ed] on a bill where penalties are accruing as a check has never been received" (Ex X-37).

164. The Moores never spoke to or met with Ken McGuire regarding the purchase of the house (Tr 681, 684-85, 696). The Moores never paid Respondent or Ken McGuire (Tr 703).

165. Mr. Dolfinger never received an email with an email address identified as one belonging to Ken McGuire nor did he ever speak to Ken McGuire (Tr 1389-90, 1405). The only two emails addresses that were used during the exchanges were "obieinky@[redacted]" and "judgemcguire@[redacted]" (Tr 1389). Respondent knew that his email address was being used in the communications with the parties involved in the sale of the property (Exs X-42K, X-42n, X-42o).

Ricky Pagan

166. In 2010, Ricky Pagan discovered that the property behind his home was going into foreclosure (Tr 465-66, 473; Ex X-42q). Mr. Pagan spoke to Barbara Clarke, the owner of the property, and they agreed on a purchase price of $8,000 (Tr 465, 473, 474, 2387). Mr. Pagan paid the back taxes of $5,000 without a written agreement, after which he contacted Respondent (Tr 465, 467-68, 473, 2387-88). Respondent was concerned that when Mr. Pagan paid the additional $3,000, Ms. Clarke might refuse to give Mr. Pagan the deed (Tr 474-75).

167. Respondent, who was not a judge at the time, agreed to represent Mr. Pagan without compensation (Tr 465-67, 2391). Respondent drafted and filed a mortgage so that Mr. Pagan had an avenue to recoup his $5,000 payment if Ms. Clarke did not transfer the property when Mr. Pagan paid the rest of the purchase price (Tr 466-68, 2388, 2604; Ex X-38).

168. In about 2012, Respondent received a message from Ms. Clarke and Respondent returned the call (Tr 2605; X-42r). Ms. Clarke told Respondent that she had received another foreclosure notice, so Respondent contacted Mr. Pagan

and told him to go to the Treasurer's office (Ex X-42r). Respondent did not hear from Mr. Pagan for about a year (Ex X-42r).

169. In 2013, Mr. Pagan spoke to Respondent either in person or on the phone about "how to go about finishing the deal" now that Mr. Pagan 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).

170. 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).

Christopher Lockwood

171. Prior to becoming a judge, Respondent represented Christopher Lockwood in connection with a June 6, 2010, speeding ticket issued in Liberty, New York (Tr 1794-96, 2392, 2611; Exs X-40, X-40a, X-40b).

172. 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 the *Lockwood* matter (Tr 1796-97, 1817, 1832; Exs X-40, X-40c).

173. 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 the *Lockwood* matter (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).

174. 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) 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).

175. 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 on the Application (Tr 1485, 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).

176. 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).

177. 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 which is computer generated 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 (Tr 1809). During the course of the *Lockwood* matter, Ms. Van Keuren never spoke to Ken McGuire and he never appeared in court on the matter (Tr 1809).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE X

178. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

179. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

180. Respondent lent the prestige of judicial office to advance his own private interests and the private interests of others, in violation of Section 100.2(C) of the Rules.

181. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules.

182. Respondent failed to conduct his extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that he engaged in the prohibited practice of law, in violation of Section 100.4(G) of the Rules.

PROPOSED FINDINGS OF FACT AS TO CHARGE XI

183. Zachary D. Kelson is an attorney with a law office in Monticello, New York (Tr 619). He practices law in Sullivan County (Tr 620). 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 he gave Mr. Kelson's 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).

People v W M

184. 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).

185. When Respondent told attorney Zachary 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 District Attorney's Office on his behalf (Tr 2558).

186. Thereafter, Mr. Kelson spoke by telephone with Assistant District Attorney ("ADA") Michael Getman (Tr 635). Mr. Kelson told ADA Getman that he was not representing W[redacted] M[redacted], but that W[redacted] M[redacted]'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).

187. After speaking with the ADA, Mr. Kelson sent 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).

188. On November 20, 2012 at 2:23 p.m., 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).

189. 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).

190. 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).

191. 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).

192. 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 XI-2). Mr. Kelson did not file a Notice of Appearance in the matter (Tr 646).

193. 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).

194. 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).

195. 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).

People v Tina McTighe

196. From in or about July 2012 through in or about October 2012, Mr. Kelson represented Tina McTighe, 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. McTighe (Tr 759).

197. 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 in *People v McTighe* and wrote in the email, "PLEASE have Tina 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 documents in the *McTighe* matter (Tr 2628-29).

198. On October 12, 2012, Mr. Kelson emailed Respondent and stated that he was going to "run" Ms. McTighe'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. McTighe had two points on her license. He also wrote "[y]our wife dropped off the waiver yesterday" (Tr 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).

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

200. 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 671-672, 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).

County of Sullivan v Estate of Lydia Fernandez

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

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

203. 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).

204. On January 21, 2014, Mr. Kelson emailed Respondent and asked him to review a letter from a debt collection firm 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).

205. On January 22, 2014, Respondent replied that he would get in contact with Mr. Fernandez and explained that Mr. Fernandez likely fell behind on his payments because the restaurant was "slow this time of the year" (Tr 714, 2635; Ex XI-11). Respondent also 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).

206. Later that day, Mr. Kelson advised Respondent that he spoke to the debt collection law firm and that they "will 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).

207. 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).

208. 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).

209. 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 the next day that he would "take care of it first thing this morning" (Tr 719, 2635; Ex XI-12).

210. 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).

Eye Physicians of Orange County, PC v Gerardo Fernandez

211. 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).

212. 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 in the case (Ex XI-15).

213. 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).

214. 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-16).

215. 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).

216. 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).

217. On May 26, 2015, Mr. Kelson forwarded Respondent a letter from plaintiff's counsel, which stated that Mr. Fernandez had failed to comply with the terms of the settlement agreement (Tr 735-36; Ex XI-17). Two days later, on May 28, 2015, Respondent emailed Mr. Kelson regarding Mr. Fernandez's case, stating:

> Zach did you get my e-mail a few days back regarding the Complain[t] filed against Jerry, by Warren Greher seeking about $1,000 from an eye doctor. I need to see if you can contact Warren for him and just set up a payment plan, he wants to make good but he has huge debt from when he was diagnosed with MRSA last year at WMC, he had an initial stop at ORMC, and I guess that is where this doctor treated him for a day. It is

> scheduled in the Village of Goshen Court on the 29th so I want to get to Warren before that so that Jerry does not need to go to court. Mike"

(Tr 739, 740; Ex XI-19).

218. Several months later, on December 16, 2015, Mr. Kelson again wrote to Respondent regarding the *Eye Physicians of Orange County* matter (Ex XI-18). He asked Respondent if he had spoken to Mr. Fernandez and requested that Respondent advise him as to whether Mr. Fernandez was "bringing the payments current" (Tr 737; Ex XI-18).

People v Lindsay Amoroso

219. 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).

220. 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).

221. 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 differed from the one that Mr. Kelson had prepared (Tr 742, 743). Ultimately, Respondent's waiver form was signed by Ms. Amoroso and filed with the court (Tr 743; Ex XI-20a).

222. On August 9, 2011, Mr. Kelson emailed Respondent and advised that the prosecutor in Plattekill was friendly and that there should not be a problem receiving 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 X1-21).

223. On November 30, 2011, Mr. Kelson emailed Respondent to report that the matter had not yet been scheduled because the court was "backed up" (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).

224. 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 749-50; 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).

225. 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).

People v Willie Williams

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

227. On May 15, 2013, Mr. Williams pleaded guilty to the charge of parking on pavement, 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 he told Mr. Williams the outcome of the case and Mr. Williams 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).

Lori Shepish

228. 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).

229. 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).

Attorney Zachary D. Kelson appeared before Respondent in numerous cases

230. Mr. 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 attorney Zachary D. Kelson appeared before him.

Rochelle Massey v Sullivan County Board of Elections

231. On or about January 2014, Respondent presided over *Rochelle 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).

FIA Cards Services v Sandra Fishbain

232. 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).

Jeffrey H. Miller v Town of Liberty Assessor

233. On or about July 31, 2013 through 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).

234. 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).

235. 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).

236. 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).

Two Sullivan Street Trust v Town of Liberty Assessor

237. 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).

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

238. 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).

Matter of P[4]

239. On or about December 2013 through on or about May 2016, Respondent presided in Family Court over *Matter of P* (Tr 790, 2647; Exs XI-35, XI-35a-i, XI-36). 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, XI-35b). On August 11, 2014, after a hearing in which Mr. Kelson represented the child, Respondent issued a written

[4] The case is also referred to as *D v P y/P* (Ex XI-35).

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).

240. 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).

241. On May 4, 2016, Mr. Kelson forwarded Respondent an email he sent to Colleen Cunningham, the attorney for the Department of Family Services, 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).

242. 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).

Matter of C[redacted][5]

243. From on or about June 2011 through October 2015, Respondent presided in Family Court over *Matter of C*[redacted]*n*. 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 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).

244. 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).

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

246. At the same time that Mr. Kelson was representing Jerry Fernandez in *Eye Physician of Orange County v Gerardo Fernandez* and *County of Sullivan v Estate of Lydia Fernandez*, Mr. Kelson represented one of the parties in the

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

following Supreme Court matters over which Respondent presided *Massey v Board of Elections*; *FIA Credit Card v Fishbain*; and *Miller v Liberty* (Index No 2014-1792) and appeared in Family Court before Respondent in *D[redacted] v F[redacted]/P[redacted]* and *D[redacted] v C[redacted]* (Exs XI-11, XI-12, XI-13, XI-14a, XI-15, XI-16, XI-17, XI-18, XI-19, XI- 29b, XI-30c, XI-30e, XI-32, XI-32a, XI-32b, XI-35, XI-35a, XI-35b, XI-35c, XI-36, XI-37, XI-37a, XI-37b, XI-37c, XI-37c, XI-37d, XI-37e, XI-37f, XI-37g, XI-38, XI-38a).

247. While Mr. Kelson represented Willie Williams in *People v Willie Williams* and helped Respondent in the matter involving his son, W[redacted] M[redacted]e, Mr. Kelson appeared before Respondent in *Miller v Assessor of the Town of Liberty* (Index No 2013-1906); *Two Sullivan Street Trust v Town of Liberty*; *Sam's Towing v Town of Liberty*; *D[redacted] v Fl[redacted]/P[redacted]* and *D[redacted] v C[redacted]* (Exs XI-1, XI-2, XI-3, XI-4, XI-25, XI-26, XI-31, XI-31a, XI-31b, XI-33, XI-33a, XI-33b, XI-34, XI-34a, XI-34b, XI-35, XI-35a, XI-35b, XI-35c, XI-36, XI-37, XI-37a, XI-37b, XI-37c, XI-37c, XI-37d, XI-37e, XI-37f, XI-37g, XI-38, XI-38a).

Dean v Boyes

248. 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).

249. 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).

250. 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).

251. 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).

252. 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).

253. 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).

254. 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).

255. 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).

256. 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).

257. Ms. Conneely told the attorney that Respondent "is sitting right here and the judge 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).

258. The Deans filed a motion seeking leave to reargue, renew and/or vacate Respondent's April 24, 2014 decision and 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).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE XI

259. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

260. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

261. Respondent failed to perform the duties of judicial office impartially and

diligently, in that he failed to require staff subject to his direction and control to observe the standards of fidelity and diligence that apply to the judge, in violation of Section 100.3(C)(2) of the Rules.

262. Respondent failed to disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, in violation of Section 100.3(E)(l) of the Rules.

PROPOSED FINDINGS OF FACT AS TO CHARGE XII

263. 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 Respondents term, pistol permit interviews were conducted in the library in the Family Court complex (Tr 1491). In 2013, Respondent decided that he did not want to hold interviews during the weekday and decided to hold them at the Elks Lodge on Saturdays (Tr 1492-94). 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).

264. 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).

265. 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).

266. 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 were completed Ms. Weiner would transport all the files back to chambers (Tr 1512-13).

267. 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).

268. 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, (Tr 1517). 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).

269. 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).

270. 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).

271. 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).

272. 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).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE XII

273. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

274. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

275. Respondent lent the prestige of judicial office to advance a private interest, in violation of Section 100.2(C) of the Rules.

276. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to require order and decorum in proceedings before him, in violation of Section 100.3(B)(2) of the Rules.

277. Respondent failed to diligently discharge his administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, in violation of Section 100.3(C)(1) of the Rules.

PROPOSED FINDINGS OF FACT AS TO CHARGE XIII

278. 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).

279. 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, Exs X-41a, XIII-1,).

280. 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).

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

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE XIII

282. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

283. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

284. Respondent lent the prestige of judicial office to advance a private interest, in violation of Section 100.2(C) of the Rules.

285. Respondent failed to so conduct his extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that he failed to conduct all of his extra-judicial activities, so they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

PROPOSED FINDINGS OF FACT AS TO LACK OF CANDOR

278. 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" Mr. Kelson (Tr 2627). The credible evidence established that Respondent:

- Asked Mr. Kelson to represent his friend Jerry Fernandez in two cases – *County of Sullivan v Estate of Lydia Fernandez* and *Eye*

Physicians of Orange County v Gerardo Fernandez (Tr 707-08, 723-24, 2632);

- Asked Mr. Kelson to represent Willie Williams on two traffic tickets (Tr 755-56);

- Referred Lori Shepish to Mr. Kelson on a real estate matter (Tr 763, 764, 2631; Ex XI-27);

- Contacted Mr. Kelson about a speeding ticket that was received by Tina McTighe (Tr 661; Ex XI-5); and

- Forwarded Mr. Kelson copies of Lindsay Amoroso's traffic ticket and a waiver that Respondent had drafted after discussing her case with him (Tr 741-43, 2633; Exs XI-20, XI-21, XI-48f).

286. Respondent's testimony that his only involvement in the purchase of the Moores' home was advising them to hire an attorney and providing them the name of a home inspector also lacked candor (Tr 2384-85, 2582-83). Contrary to Respondent's testimony, the evidence established that:

- Fifteen emails were sent to the seller's attorney and/or the real estate broker from Respondent's email address, "judgemcguire@[redacted]" (Tr 2586, 2588; Exs X-23, X-24, X-26, X-28, X-29, X-30, X-34);

- In two of the emails from "judgemcguire@[redacted]," Respondent's cell phone number was provided as the only contact number if any questions should arise (Tr 2587-88; Exs X-23, X-24); and

- Eileen and Phillip Moore testified that when Respondent visited them at their home he brought them the Contract of Sale, explained its terms and instructed them where to sign the document (Tr 683, 684, 688, 690, 697, 698, 704; Ex X-18).

287. Respondent lacked candor when he denied speaking with Mary Ann Schultz, a paralegal involved in the Moores real estate transaction (Tr 2598-2600). The record showed that the real estate broker sent an email to Ms. Schultz

questioning whether he "was dealing with Ken McGuire the lawyer or a judge" and that Ms. Schultz responded to the broker on August 26, 2014 at 8:19 a.m. stating, "Mr. McGuire and I just spoke" (Tr 1382-83, 1386, 1387; Ex X-26). Not only is it undisputed that Respondent's cell phone number was the only number provided to Ms. Schultz (Tr 2598-99) but the evidence established that a half hour later, at 8:48 a.m., an email was sent from "judgemcguire@[redacted]" to Ms. Schultz stating:

> 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).

288. Respondent falsely testified at the hearing that he did not send an email on August 26, 2014 at 3:47 a.m. to the real estate broker that threatened, "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] other option but to take action against you" (Tr 2595-97; Ex X-26, p. 3). In his prior testimony during the Commission's investigation, however, Respondent admitted that he authored that email (Exs X-26, X-42p).

289. Finally, two of the emails sent from judgemcguire@[redacted] noted that "Ken McGuire" would be on vacation from September 16 through 24, 2014 (ExsX-28, X-29). Respondent denied taking a vacation during that time yet an email from Respondent's confidential secretary to the Sullivan County and

Supreme Courts chief clerk stated that Respondent would be on vacation during that exact time period (Tr 989; Exs X-28, X-29, X-36).

PROPOSED FINDINGS OF LAW AS TO LACK OF CANDOR

290. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

291. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

PROPOSED FINDINGS OF FACT AS TO MISSING WITNESS

292. A negative inference is drawn from Respondent's failure to call Ken McGuire as a witness at the hearing, since he is knowledgeable about a material issue in this proceeding, was available to be called by Respondent and, since he is Respondent's brother, would naturally be expected to provide noncumulative testimony favorable to Respondent.

293. An inference is thereby drawn that Ken McGuire, if called to testify, would not have corroborated or supported Respondent's testimony that (A) Mr. McGuire performed legal work on behalf of Eileen and Phillip Moore in connection with their purchase of a foreclosure home and (B) that Mr. McGuire did not use

Respondent's personal email address "judgemcguire@[redacted]" to send emails relating to the home purchase.

PROPOSED FINDINGS OF FACT AS TO MISSING WITNESS

287. An unfavorable inference should be drawn against Respondent for his failure to call Ken McGuire as a witness. *See People v Savinon*, 100 NY2d 192 (2003).