

**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**

Referee's Report

MICHAEL F. McGUIRE,

**A Judge of the County and Surrogate
Courts, an Acting Judge of the Family
Court and an Acting Justice of the Supreme
Court, Sullivan County**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By Order of the New York State Commission on Judicial Conduct (the "Commission") dated November 15, 2018, I was designated as referee to hear and report to the Commission with respect to proceedings that had been commenced against Judge Michael F. McGuire ("Judge McGuire"). Hearings in the matter were held at the Commission's Office in New York City on May 6, 7, 8, 9, 13, 14, 15, 16, 17, 20, 21 and 22, 2019. Counsel to the Commission submitted a Post-Hearing Memorandum and Proposed Findings of Fact and Conclusions of Law on October 2, 2019. Counsel for Judge McGuire submitted Proposed Findings of Fact and Post Hearing Submission on October 2, 2019. On October 16, 2019 Counsel to the Commission submitted a Reply Memorandum and Counsel for Judge McGuire submitted a Post Hearing Submission Reply.

I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Judge McGuire was admitted to practice 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, Sullivan County since January 2013. His current term expires on December 31, 2020 (FWC ¶4; Ans ¶4).¹

2. Judge McGuire served as an Assistant District Attorney in Sullivan County from 2002 until 2004 and was in private practice from 2004 through 2010 with an office in Ferndale, New York (Tr 2183, 2185).

Findings of Fact as to Charges I – VII:

3. In 2012, 2013 and 2014, Judge McGuire improperly and without cause ordered litigants, some of whom were not represented by counsel, to be taken into custody in handcuffs on six occasions (see Findings of Fact as to Charges I – VI) and threatened to do so on three other occasions (see Findings of Fact as to Charge VII). These incidents were generally accompanied by Judge McGuire's abrupt angry outbursts some of which can only be described as explosive.

4. When Judge McGuire ordered a litigant be taken into custody, the litigant would be handcuffed behind the back in the courtroom and escorted through a public waiting area into a locked holding room where the litigant would remain cuffed (Tr 142-

¹ "FWC" refers to The Formal Written Complaint dated August 27, 2018. "Ans" refers to Judge McGuire's Verified Answer dated October 11, 2018. "Ex" refers to exhibits admitted into evidence at the hearing. "Tr." refers to the transcript of the hearing.

-47, 152-53; Exs PH-7, PH-8, PH-9, PH-12, PH-13, PH-14, PH-15). When Judge McGuire determined that the case should be recalled, the handcuffed litigant would be accompanied by court officers back through the public waiting area into the courtroom (Tr 158-60, 226).

5. During the years 2012 through 2014, Judge McGuire 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). He thought at that time that the Judiciary Law permitted him to place litigants in custody if they disrespected him, and that he could summarily remove litigants from the courtroom in handcuffs and hold them in custody without due process (Tr 2498 - 2500). He believed that due process rights only attached if he held the litigant in contempt (Tr 2499). However, Judge McGuire conceded that he never read any Commission determinations regarding the use of summary contempt (Tr 2518-21), did not review any legal authority about the use of summary contempt (Tr 2522-23) and never asked his law clerk to do research or consulted with other judges on the issue (Tr 2524-25).

6. At the hearing, Judge McGuire conceded that when he ordered litigants to be taken into custody, he failed to warn what behavior he found offensive, did not give them an opportunity to correct the behavior or a chance to apologize, did not find them an attorney if they were not represented and failed to draft an order stating the facts that constituted the offense (Tr 2514-15, 2333, 2452-53, 2462-63, 2471-72, 2486-88, 2502-03, 2509-10). At the hearing, Judge McGuire 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).

7. Judge McGuire claims that since 2014 he has taken steps to educate himself and he changed his practices in dealing with difficult litigants in the courtroom (Tr 2497; McGuire Proposed Findings of Fact, at 7). He repeatedly testified that he does not treat litigants now in the same manner as he did and that today he does things differently (Tr 2294-97, 2464-65).

Findings of Fact as to Charge I:

8. On December 18, 2013, Judge McGuire presided in Family Court over R [REDACTED] v. R [REDACTED] C [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] was incarcerated on a criminal matter at the time of his appearance and was not represented by counsel (Tr 355, 450, 461, 1235; Exs I-2, I-2a). Judge McGuire dismissed R [REDACTED]’s petition for visitation without prejudice due to improper service (Ex I-2a at 7). Immediately thereafter R [REDACTED] said, “I know your son, so can you recuse yourself from my case, please, and assign me another judge” (Ex. I-2a at 7; Tr 356, 357, 1153, 1778). In response Judge McGuire told the court officer to bring R [REDACTED] “back here” and ruled: “You got 30 days judicial contempt ... [t]acked on top of whatever you got” (Ex I-2a at 7). When R [REDACTED] questioned “how is that contempt,” the court officer responded, “you’re disrespecting the judge right now,” and Judge McGuire asked R [REDACTED] “You making a threat against my son?” (*id.*). R [REDACTED] denied that he was

threatening the judge's son, but Judge McGuire, addressing the court officer, said:
"Officer, this gentleman has just threatened my son" (*id.*, at 8).

9. During the exchange with R [REDACTED] Judge McGuire stood up, lunged forward, was agitated, red-faced and pointed and yelled at R [REDACTED] (Tr 356, 357, 360, 361, 1156-57). The audio recording of the interaction between Judge McGuire and R [REDACTED] (Ex. I-2) provides evidence not available from the transcript of Judge McGuire's explosive and irrational anger toward R [REDACTED]. It further evidences that R [REDACTED]'s comment about knowing Judge McGuire's son was not threatening. Indeed, after listening to the audio recording after the incident, Lieutenant Kevin McCabe concluded that R [REDACTED] had not threatened Judge McGuire but was merely asking him to recuse himself (Tr 1787). Judge McGuire's accusation that R [REDACTED] threatened his son was unfounded and irrational.

10. Judge McGuire sentenced R [REDACTED] to 30 days incarceration for judicial contempt and entered an order specifying that the 30 days was "to be added on to the term he is currently serving (Exs I-1, I-1a, I-1b, I-2, I-2a at 7). During the proceeding Judge McGuire did not warn 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). Judge McGuire did not find an attorney to represent R [REDACTED] (Ex I- 3b) and 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 Judge McGuire's actions, R [REDACTED] was incarcerated (Exs I-1, I-1a, I-1b, I-3c).

11. Judge McGuire testified at the hearing that he interpreted R [REDACTED]'s comment about knowing his son as a threat and that R [REDACTED], a gang member, "could get to [his] son" (Tr 2303-04, 2449, 2453-54). Now, Judge McGuire admits that he "improperly issued a contempt finding against R [REDACTED]" (McGuire Proposed Findings of Fact, at 3).

Findings of Fact as to Charge II:

12. On August 28, 2013, Judge McGuire 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 to four years (Tr 905-06, 953; Exs II-1, II-2). G [REDACTED]s failed to complete the drug program and appeared before Judge McGuire on August 28, 2013 for sentencing (Tr 908, 979; Exs II-1, II-2).

13. During the sentencing proceeding, Judge McGuire commented disparagingly and extensively about G [REDACTED]'s parenting ability (Tr 909, 910, 911; Ex II-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 at 5-6).

14. According to G [REDACTED]'s attorney, Judge McGuire was "very condescending" to G [REDACTED]s and she teared up and became red in the face (Tr 909-10, 912-14).

15. Judge McGuire questioned G [REDACTED] about why she believed she was a good mother (Ex II-2 at 6-7):

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.

16. Judge McGuire continued harshly berating G [REDACTED]'s parenting and life choices ("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" (Ex II-2 at 9)). Finally, G [REDACTED] expressed her desire to have the judge stop criticizing her and get on with sentencing -- a sentence that was predetermined by the plea bargain and the fact that she had failed to complete the drug program.

17. 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.

DEFENSE COUNSEL: 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 at 9-10).

18. In sworn testimony during the Commission's investigation, Judge McGuire "recognize[d] ... now" that there was "no place" for his statements during the August 28,

2013 proceeding, but he asserted that they were not “inappropriate because at that time – because my motives were appropriate” (Ex II-4b).

19. Judge McGuire did not warn 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). He 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, II-1b, II-4d). G [REDACTED] was incarcerated from August 28, 2013 to September 24, 2013 on the summary contempt (Exs II-1, II-1a, II-1b, II-3). When sentencing finally took place on September 24, 2013, Judge McGuire sentenced G [REDACTED] to one and one-third to four years in prison pursuant to the plea agreement (Tr 962; Ex II-3 at 5).

20. Judge McGuire testified that during the proceeding Ms. G [REDACTED] was becoming agitated and there was “quite a bit of body language that suggested” that she “was not happy that the court was concerned that she was choosing to go to prison rather than to treatment” (Tr 2310, 2460). Judge McGuire stated that based on the information he had at the time he believed he acted appropriately (Tr 2464). Now, Judge McGuire admits that he “improperly held Ms. G [REDACTED] in contempt.” (McGuire Proposed Findings of Fact at 3) but asserts without corroboration that “[s]he did not serve one extra minute because of the contempt. All of her local time merged into her state prison sentence” (Tr 2316).

Findings of Fact as to Charge III:

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

22. During the proceeding, Judge McGuire adjusted visitation to permit the father to spend more time with the child (Ex III-2a at 13). The mother was concerned by the ruling and the following colloquy occurred:

MS. F [REDACTED]: If my daughter does not want to go with her father, I am not sending her. That's all I have to say.

....

JUDGE MCGUIRE: All right. Here's the deal, Ms. F [REDACTED], if I learn that your daughter is not –

MS. F [REDACTED]: He's going to go to the school, or pick her up, and she's going to hear, “R [REDACTED] Z [REDACTED] here to” —

JUDGE MCGUIRE: Take her into custody.

MS. F [REDACTED]: -- “Is here to pick up E [REDACTED] Z [REDACTED]” —

JUDGE MCGUIRE: Take her into custody. Take her into custody.

MS. F [REDACTED]: Okay. I'm sorry. I'll try –

JUDGE MCGUIRE: Judicial contempt.

MS. F [REDACTED]: I'm sorry. I –

JUDGE MCGUIRE: Judicial contempt. Take her into custody. You're disrupting the proceedings repeatedly.

(SOUND OF HANDCUFFS)

(Exs III-2, III-2a at 19-20).

23. The audio recording and transcript of this proceeding (Exs III-2, III-2a) demonstrate that Ms. F█████ declared that she would not send her daughter for visitation with the father if the daughter did not want to go (Ex III-2a at 14-19). Judge McGuire correctly observed that she was “disrupting the proceedings repeatedly.”

24. Ms. F█████ told Judge McGuire that she was sorry twice. Nonetheless, without warning Ms. F█████ that her behavior was contemptuous, or giving her an opportunity to be heard or an opportunity to purge the contempt, Judge McGuire directed that she be taken into custody (Exs III-2, III-2a, III-4c). At no time did Judge McGuire find an attorney to represent Ms. F█████ (Exs III-2, III-2a, III-4e).

25. Ms. F█████ was placed into handcuffs, removed from the courtroom and detained for nearly two hours (Exs III-2, III-2a, III-3, III-3a). When Ms. F█████ returned to the courtroom, Judge McGuire and Ms. F█████ engaged in the following colloquy:

JUDGE MCGUIRE: All right, Ms. F█████, how's handcuffs feeling?

MS. F█████: 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█████: I know. I apologize.

JUDGE MCGUIRE: This is not The Jerry Springer Show.

MS. F█████: I know. I'm sorry. (Exs III-2, III-3, III-3a at 1).

26. Judge McGuire 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).

27. In sworn testimony during the Commission's investigation, Judge McGuire conceded that he "could've acted better" but maintained he acted appropriately under the circumstances (Ex III-4f). Judge McGuire testified at the hearing that he ordered Ms. F [REDACTED] be taken into custody because she was being "[d]iscourteous and showing general disrespect to the court" (Tr 2318-19, 2469-70). He further testified that at the time he thought he acted appropriately (Tr 2479-81). Now, Judge McGuire admits that "his treatment of Ms. F [REDACTED] was improper" (McGuire Proposed Findings of Fact at 4).

Findings of Fact as to Charge IV:

28. On June 14, 2013, Judge McGuire presided in Family Court over T [REDACTED] L [REDACTED] v. G [REDACTED] C [REDACTED] and H [REDACTED] B [REDACTED], a child custody and visitation matter (Tr 495; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a). Ms. L [REDACTED] and Mr. C [REDACTED] are, respectively, the mother and father of the child at issue, who was approximately 16 years old at the time (Tr 495; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a). Ms. L [REDACTED] was not represented by counsel during the proceeding (Tr 495; Exs IV-1, IV-2, IV-2a, IV-3, IV-3a).

29. During the proceeding Judge McGuire inquired whether the mother had obtained a tutor for the child who was having difficulty with math and why she participated in a school meeting by telephone rather than in person. The following is reflected by the transcript:

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[?]

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 at 6).

30. The audio recording of the proceeding demonstrates that just before being ordered into custody when Ms. L [REDACTED] told the judge: "I do not remember sir," her tone was disrespectful. Nonetheless, Judge McGuire 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 Judge McGuire find an attorney to represent Ms. L [REDACTED] (Tr 498; Exs IV-2, IV-2a, IV-3, IV-3a, IV-5d).

31. Ms. L [REDACTED] was placed in handcuffs, 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).

32. When Ms. L [REDACTED] returned to the courtroom over an hour later, Judge McGuire lectured her about respecting the court stating 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....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 at 1-2).

33. Judge McGuire 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).

34. Judge McGuire testified at the hearing that he ordered Ms. L [REDACTED] taken into custody because he "didn't like her tone" and "didn't like that the mother was not recognizing her role in getting the child math help" (Tr 2486). Now, Judge McGuire

admits that he “failed to provide Ms. L [REDACTED] with a proper warning and improperly directed that she be detained” (McGuire Proposed Findings of Fact at 5).

Findings of Fact as to Charge V:

35. On January 17, 2014, Judge McGuire presided in Family Court over L [REDACTED] W [REDACTED] G [REDACTED] v. C [REDACTED] C [REDACTED], a child visitation and custody matter (Exs V-1, V-4a). Mr. G [REDACTED] and Ms. C [REDACTED] are, respectively, the father and mother of the child at issue, who was approximately six months old at the time (Tr 500, 1051; Exs V-1, V-2, V-2a). Mr. G [REDACTED] and Ms. C [REDACTED] were represented by counsel (Tr 499, 400, 503, 582, 1050-51, 1086; Exs V-2, V-2a, V-3, V-3a).

36. During the proceeding, Judge McGuire questioned whether Ms. C [REDACTED] could provide appropriate sleeping arrangements for the child if she were granted overnight visitation. She had previously purchased a portable crib (a “Pack ‘n Play”) that was then possessed by Mr. G [REDACTED] and became upset when Judge McGuire ordered that a condition for the overnight visitation was that she purchase or obtain another one or the equivalent (Tr 500, 501, 502, 1051-52, 1087-89, 1091, 1101; Exs V-2, V-2a). The following colloquy then 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)

....

MS. C [REDACTED]: This is bullshit. You know, I'm having another baby And I have to sit here and fight for this shit. Like, this is crazy, real fucking crazy.

....

JUDGE MCGUIRE: Yeah, we'll let her cool -- calm down a little bit.

(Exs V-2, V-2a at 8-10).

37. The audio recording of the proceedings reveals that while Judge McGuire was questioning Ms. C [REDACTED] about whether she had been paying child support (she had not) and how much a new Pack 'n Play would cost, Ms. C [REDACTED] was continually speaking over the judge. When ordering that Ms. C [REDACTED] be taken into custody, Judge McGuire raised his voice and used an angry tone (Tr 503, 504; Ex V-2).

38. Judge McGuire 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, 505, 1054, 1055; Exs V-2, V-2a, V-4c).

39. Ms. C [REDACTED] was handcuffed behind her back in the courtroom in front of Judge McGuire (Tr 503, 1053, 1054). Her attorney then went to the locked conference room where Ms. C [REDACTED] who was handcuffed, was being held (Tr 506-07, 1058). Ms. [REDACTED] was crying and "extremely upset" (Tr 507-09). About 15 to 20 minutes later, Ms. C [REDACTED], who was still handcuffed, was escorted back to the courtroom (Tr 509, 510, 1058; Exs V-2a, V-3a).

40. When Ms. C [REDACTED] returned to the courtroom Judge McGuire lectured her as follows:

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 at 4). Ms. C [REDACTED] was crying as Judge McGuire addressed her (Tr 512).

41. Judge McGuire 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).

42. During the Commission's investigation, Judge McGuire testified that the strategy he used in directing that Ms. C [REDACTED] be taken into custody was "a proper

strategy in light of the circumstances that existed then” (Ex V-4d). At the hearing, Judge McGuire testified that he ordered Ms. C [REDACTED] taken into custody so she could cool off and at the time he did not believe it was “incorrect” to do so (Tr 2503). Judge McGuire now admits that he failed to provide Ms. C [REDACTED] “with adequate notice concerning her conduct and improperly directed that she be removed from the court” (McGuire Proposed Findings of Fact at 6).

Findings of Fact as to Charge VI:

43. On December 2, 2014, Judge McGuire presided in Family Court over A [REDACTED] S [REDACTED] C [REDACTED] F [REDACTED] v. J [REDACTED] C [REDACTED] K [REDACTED] and N [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] 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).

44. The child had been living for the past year with the maternal grandparents and the father had visitation privileges two days a week with Mr. K [REDACTED], the grandfather, delivering the child to the father (Tr 458, 486, 556, 1059; Exs VI-1, VI-2, VI-2a). As the proceedings came to a conclusion, the grandfather asked if there was any way that he did not have to deliver the child, “or am I forced?” (Tr 486, 487, 488, 489, 559, 560, 561, 562, 564, 565, 566, 1060, 1104-05, 1106, 1107, 1109; Exs VI-2, V-2a at

18-21). In response, Judge McGuire ordered the child turned over to the father immediately 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 at 19-20). Judge McGuire addressed the parties in an angry, raised voice (Tr 488, 489; Exs VI-2, VI-4c).

45. Judge McGuire addressed the parties in an angry, raised voice, and as demonstrated by the audio recording, when he directed the court officers to “get her out of here,” he spoke with great hostility (Tr 488, 489; Exs VI-2, VI-4c).

46. Judge McGuire did not warn Ms. 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). Judge McGuire did not provide an attorney for Ms. K [REDACTED] prior to ordering that she be placed in custody (Tr 490, 1061; Exs VI-2, VI-2a, VI-4e). Ms. K [REDACTED] was placed in handcuffs in the courtroom in front of Judge McGuire, removed from the courtroom and detained for over an hour (Tr 488, 491, 492; Exs VI-2, VI-2a, VI-3, VI-3a).

47. During the Commission’s investigation, Judge McGuire testified that Ms. K [REDACTED] “was disrespectful to the court” and that he took her statement about suing him “as a statement of a threat ... to the authority of the Court....” He believed that “under the circumstances” present that day ordering Ms. K [REDACTED] to be taken into custody “was an appropriate act that [he] took at that point” (Ex VI-4b). At the hearing, Judge McGuire testified that he ordered Ms. K [REDACTED] taken into custody because he believed her statement that she would sue the County and him was a threat (Tr 2340, 2506-08). Now

Judge McGuire admits that he “improperly directed the removal of Ms. K [REDACTED] from the court” (McGuire Proposed Findings of Fact at 6).

48. When Ms. K [REDACTED] was brought back into the courtroom over an hour later, she told Judge McGuire that she wanted to have an attorney represent her in connection with his order that she be taken into custody. Judge McGuire acknowledged to her that “this is a judicial contempt proceeding. It’s a summary proceeding. If I say that you disrupted the proceedings, I can put you in jail for 30 days and that’s it.... [W]hen 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.... 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?” (Ex VI-3a at 1-2).

49. When Mr. K [REDACTED] pleaded with Judge McGuire not to put his wife in jail for 30 days (“Please don’t do that, sir. I’m sorry.”), Judge McGuire responded: “You want me to put you in for 30 days?” (Ex VI-3a at 1). During the Commission’s investigation, Judge McGuire testified that he threatened to incarcerate Mr. K [REDACTED] for 30 days because he interrupted him (Ex VI-4f).

50. Judge McGuire did not prepare a mandate of commitment or any other documentation memorializing that Ms. K [REDACTED] had been held in custody, the particular circumstances of the offense or the specific punishment imposed (Ex VI-1).

Findings of Fact as to Charge VII:

(a) M [REDACTED]. P [REDACTED] v [REDACTED] R [REDACTED] and S [REDACTED] R [REDACTED]

51. On January 28, 2013, Judge McGuire presided in Family Court over M [REDACTED]

■ P ■ v. S ■ R ■ and S ■ R ■ a child custody and visitation matter (Tr 513; Exs VII-1, VII-1a, VII-4, VII-4a). Mr. P ■ is the father of the child (Exs VII-1, VII-1a, VII-4, VII-4a). Ms. R ■, now known as S ■ P ■, is the child's mother (Exs VII-1, VII-1a, VII-4, VII-4a). Ms. R ■ 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).

52. Judge McGuire set a trial date, issued a temporary order granting Mr. P ■ visitation every other weekend, and adjourned the proceeding (Tr 516, 590, 591, 1067, 1117; Exs VII-1, VII-1a, VII-4, VII-4a).

53. After the case was concluded and while the parties and child were still in the courtroom, Ms. R ■ said something to her granddaughter, whereupon Judge McGuire got "angry" and was "yelling" and "screaming" at Ms. R ■ (Tr 517, 591, 1068-69; Exs VII-2, VII-2a at 2). Judge McGuire told the grandmother that she was "going to jail" and mentioned "putting her in handcuffs" (Tr 517, 1684-85, 1714-15).

54. Ms. R ■ started to have difficulty breathing and was in "great distress" (Tr 362-363, 517, 519, 1068, 1685, 1708, 1714-15). Judge McGuire continued to yell at her (Tr 517, 519). Court staff called for an ambulance and Ms. R ■ was treated at the courthouse (Tr 362, 518, 1068, 1070; Ex VII-3).

55. At the hearing, Judge McGuire conceded that when he spoke to Ms. R ■ his "inflection was authoritative" and his "voice was projecting to her" (Tr 2526). Now,

Judge McGuire admits that his warning to Ms. Ro█ “was improper and was discourteous” (McGuire Proposed Findings of Fact at 8).

(b) D█ v T█ E█ and A█ F█

56. On November 7, 2014, Judge McGuire 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).

57. While a witness was testifying, Judge McGuire yelled, “Ms. E█, you are about three seconds from getting yourself put in handcuffs and taken out of here” (Tr 520-22, 600; Exs VII-5, VII5a at 18). Nothing in transcript of this proceeding indicates that Ms. E█ had done anything to disrupt the proceedings or otherwise engaged in any inappropriate conduct. The audio recording reflects that moments before Judge McGuire admonished Ms. E█ there is background discussion occurring, most likely in response to the witness’s confusion about where the children had been staying. In any event, this momentary discussion did not disrupt the proceedings. Judge McGuire did not indicate what behavior he found to be objectionable.

58. At the hearing, Judge McGuire testified that while a witness was testifying Ms. E█ kept turning around in her seat and talking and that he found it “distracting” and “disruptive to the proceedings” (Tr 2354-55). Now, Judge McGuire admits that he “failed to make an appropriate record of the actions of the litigants and failed to adequately explain in a courteous manner the actions which he found improper” (McGuire Proposed Findings of Fact at 9).

(c) C [REDACTED] V [REDACTED] v A [REDACTED] G [REDACTED]

59. On August 21, 2014, Judge McGuire presided in Family Court over C [REDACTED] R. 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, 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 [REDACTED] would first move with the children and that Mr. V [REDACTED] would later follow (Tr 602-03, 606, 607; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a). Before Mr. V [REDACTED] joined them in California there was a breakdown in the relationship, which led Mr. V [REDACTED] to file a custody petition which was before Judge McGuire (Tr 522, 603, 607; Exs VII-6, VII-6a, VII-7, VII-7a, VII-8, VII-8a).

60. During the proceeding in which Ms. G [REDACTED] testified the following occurred:

a. Notwithstanding the absence of any evidence that Ms. G [REDACTED] had a boyfriend, Judge McGuire said, "I mean, you're sure her boyfriend isn't here to testify?" (Tr 527; Exs VII-6, VII-6a at 28).

b. Commenting on the home of the relative with whom Ms. G [REDACTED] and the children were residing in California, Judge McGuire 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 VII7, VII-7a at 7).

c. Without any evidentiary basis, Judge McGuire 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 at 8).

d. Immediately thereafter, in a loud voice Judge McGuire 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 at 8).

61. As subsequently found by the Appellate Division in *V■■■■ v G■■■■*, 130 AD3d 1215 (3d Dept 2015):

- a. After hearing only from Ms. G■■■■ on direct testimony, and on a record that was "patently insufficient" to support such action, Judge McGuire granted full custody to Mr. V■■■■ and made no provision for Ms. G■■■■ to have contact with the children (Ex VII-9 at 1).
- b. Judge McGuire "treated the mother [Ms. G■■■■] 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 at 2).

62. Now, Judge McGuire admits that "[h]e was discourteous and acted with disdain toward" Ms. G■■■■'s mother (McGuire Proposed Findings of Fact, at 10).

Findings of Fact as to Charge VIII²:

(a) Wendy Weiner

63. Wendy Weiner was Judge McGuire's confidential secretary from January

² Judge McGuire cites in mitigation the testimony from seven court employees who testified about their good interactions with him (McGuire Proposed Findings of Fact at 26-29). This testimony does not negate the testimony from the Commission's witnesses who detailed their problematic interactions with Judge McGuire.

2011 until March 2015 and is currently the Deputy Chief Clerk of the Sullivan County Surrogate's Court (Tr 1440, 1441, 1565).

64. On January 14, 2015, around 7:50 a.m., Judge McGuire came out of his office in chambers and told Ms. Weiner that "we have a problem" (Tr 1442, 1576). Ms. Weiner followed Judge McGuire into his office and brought paper files of the cases that were on his calendar that day (Tr 1442, 1443, 1444, 1447, 1582). Judge McGuire was "very upset and agitated," "red-faced," complained that there was a problem with the computer and shouted that he needed access to his notes and needed someone to fix the problem (Tr 1442-45, 1447, 1582; Ex VIII-4f, VIII-4g). When Ms. Weiner explained that no one was in the IT Department at that time of the morning, Judge McGuire became even more agitated (Tr 1445-47). Judge McGuire took the computer jump drive which he had in his hand and threw it across the desk towards Ms. Weiner (Tr 1445-46).

65. Judge McGuire took the files that Ms. Weiner had brought in and threw them across the desk and onto the floor (Tr 1448). As Ms. Weiner started to back out of the office Judge McGuire began to pick up the files (Tr 1449). Ms. Weiner testified that she was "shaking," "scared," "very upset" and "couldn't even think straight" (Tr 1449, 1584, 1589, 1592, 1601, 1609, 1611).

66. When Court Officer Brenda Downs entered chambers as part of her security sweep, she observed Ms. Weiner at her desk staring into space and crying (Tr 373-75, 1605, 1607). According to Downs, Weiner was "visibly upset," "shaking," "crying," and "wide-eyed" (Tr 375, 435). Sergeant Olivieri spoke with Ms. Weiner that

morning and corroborated that she was “visibly shaken up,” teary eyed and seemed scared and very nervous (Tr 163, 1453-540).

67. A couple of weeks later, Judge McGuire called Ms. Weiner into his office 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, Judge McGuire raised his arm with his palm facing Ms. Weiner and said, “that is all, you are dismissed” (Tr 1457). Thereafter, Judge McGuire never again spoke to Ms. Weiner. All communications were by email and the relationship between the two was very different from what it had been before the incident (Tr 1284, 1457-58, 1571). In March 2015 Ms. Weiner was transferred to work in the Sullivan County law library (Tr 986-66, 1460-61).

68. Judge McGuire’s apparent loss of his electronic database containing all his work product, notes, decisions, pleadings, attorney appearances and dates covering the entire period he had served on the bench was traumatic (Tr 1101, 1891-92, 1933-34, 1970, 1972, 2021-23, 2364, 2673-74, 2678). His inability to access his database just before his court calendar was of great concern to him as he had less than an hour to recreate nearly twelve hours of preparation (Tr 2672-74, 2678). Nonetheless, Judge McGuire’s conduct toward Ms. Weiner was unjustified and inexcusable.

(b) Andrea Rogers

69. Ms. Rogers was assigned as a court assistant in Judge McGuire’s part in Family Court from January 2011 through December 2013 (Tr 1134-35).

70. Ms. Rogers claims that Judge McGuire frequently spoke to her in a loud and condescending manner (Tr 1139, 1140, 1142, 1145). Ms. Rogers further complained

that it was a regular part of Judge McGuire's practice while on the bench to gesture to her to stop talking when she was trying to get information that she needed to do her work by extending his arm towards her with his palm facing her (Tr 1141-45).

71. On one occasion when the court computer had shut down and needed to be rebooted, Ms. Rogers asserts that Judge McGuire repeatedly asked her in a loud and nasty tone, "why is it shut down, did you shut it down?" (Tr 1150-51, 1228-30).

72. Eventually, Ms. Rogers was transferred to another court part (Tr 1133-34, 1165, 1166). Christina Benson, the Sullivan County Family Court Chief Clerk (Tr 1838), testified that she made the decision to reassign Ms. Rogers because she assessed that there was a "personality conflict" between Ms. Rogers and Judge McGuire (Tr 1871). When Ms. Benson told Ms. Rogers that she was going to be transferred to another court part, Ms. Rogers "became upset and started crying and [said that she] didn't want to move out of the courtroom..." (1873).

(c) Court Officer Miguel Diaz

73. 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 Judge McGuire's part for four-week intervals (1670-71, 1686-87).

74. Officer Diaz was assigned to Judge McGuire's court part on June 29, 2012, when *D* [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 lieutenant 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).

75. Judge McGuire angrily shouted at Officer Diaz: “Keep ‘em out. Keep ‘em out. Close the door” (1679; Exs VIII-2, VIII-2a at 2). When Officer Diaz attempted to tell the lieutenant what was happening, Judge McGuire yelled, “They’re—they’re staying out. Close the door. Jesus” and “Get off the radio” (Tr 1679; Exs VIII-2, VIII-2a at 2). The audio recording of the proceeding establishes that Judge McGuire erupted with explosive anger (Ex VIII-2).

76. Court Officer Diaz was assigned to Judge McGuire’s court part on February 25, 2013, when the *H* [REDACTED] v *E* [REDACTED] (also referred to as *D* [REDACTED] of [REDACTED] v. *E* [REDACTED]) 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).

77. Judge McGuire was concerned that the Family Court calendar proceed efficiently and to that end he demanded that the parties and attorneys for the next case to be called be ready to enter the courtroom as soon as the previous case finished. Officer Diaz, as the part court officer, was responsible for that task. When all the parties for the

E█ case were not ready to come into the courtroom, Judge McGuire, in a somewhat loud and angry tone, said: “Miguel, please get cases lined up on the door” (Ex VIII-3, VIII-3a at 2). He then directed Diaz to tell Sergeant Olivieri to meet him in his chambers (*id.*).

78. Officer Diaz went to Sergeant Olivieri who was stationed at the security post near the magnetometer (Tr 1677, 1703). Olivieri observed that Diaz was “visibly shaken” and “pale” (Tr 349-50). Diaz asked if someone could cover Judge McGuire’s part because Judge McGuire 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 Judge McGuire’s court part that day; he “was not feeling too good that day because [of] the situation that happened” (Tr 1678, 1720).

79. Although the audio recording of the incident (Ex VIII-3) establishes that Judge McGuire raised his voice to some extent when he told Diaz to “please get cases lined up on the door,” on balance, the evidence supports that Diaz overreacted to the incident. Indeed, Officer Diaz has regularly worked with Judge McGuire since this incident and has had “a normal, cordial relationship” with him and has no concerns about working with him (Tr 1720-25).

(d) Sergeant Guillermo Olivieri

80. On February 25, 2013 Sergeant Olivieri was stationed at the security post near the magnetometer when Officer Diaz told him that Judge McGuire wanted to see him in chambers (Tr 1704). As Sergeant Olivieri approached chambers, he saw the door to the courtroom swing open and Judge McGuire – 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). Several witnesses confirmed that Judge McGuire stormed towards Olivieri with hostility (Tr 1163, 1238, 2464-67).

81. Olivieri claims that when Judge McGuire approached yelling “I want another officer now, now, I want another officer now” and that he “need[ed] to move the calendar” (Tr 123-31), Olivieri got into a “bladed stance” because he was unsure what was going to happen (Tr 128, 312-13). Olivieri explained that while in training he 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). The sergeant told Judge McGuire that he should not talk to him “in that tone” and walked away (Tr 127, 130, 314). Olivieri did not perceive a physical threat (Tr 316). Olivieri reported the incident to his lieutenant and his supervisor at the District Office (Tr 131-32, 191-92, 1760-61).

(e) Court Officer Brenda Downs

82. In or about 2014, Court Officer Brenda Downs was assigned to Judge McGuire’s court part (Tr 364, 422). At the conclusion of a proceeding Judge McGuire called a recess and went into chambers to render a decision (Tr 364, 410, 413, 416). Officer Downs, Court Assistant Andrea Rogers and Wendy Weiner were outside of Judge McGuire’s chambers engaged in conversation (Tr 365-68, 411; Ex PH-6). Judge McGuire was in his office with the door open (Tr 366, 411). Judge McGuire got up from his desk, walked across his office, 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).

83. Judge McGuire claims that he was not informed and was not aware that Officer Downs found his act of slamming his door in her face offensive and he never apologized or discussed the incident with Officer Downs (Tr 370, 2375-77).

(f) Lieutenant Kevin McCabe

84. In 2012, shortly after 9:00 a.m., Lieutenant McCabe was informed that Judge McGuire wanted to see him, and he went to chambers (Tr 1730-32). Judge McGuire appeared “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 he tapped the desk with his right index finger three to four times (Tr 1732, 1733). In response the lieutenant said “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). Judge McGuire 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). McCabe testified that “[t]he overwhelming – overall characterization of our relationship is professional and pleasant” (Tr 1741).

Findings of Fact as to Charge IX:

85. On March 10, 2014, Judge McGuire presided in Family Court over M [REDACTED] v R [REDACTED] H [REDACTED] a child custody and visitation matter (Exs IX-1, IX-2, IX-2a). The parties were before Judge McGuire 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).

86. Judge McGuire 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 at 11). Judge McGuire then said that if the parties' daughter "has to endure anyone that Mr. H [redacted] dates is a drug addict, a slut, whatever, or anyone that Ms. M [redacted] dates is a drug addict, a slut, a child abuser, whatever, then she is going to have a very difficult time of this" (Ex IX-2, IX-2a at 11). There was no evidence or allegation that either party had a history of dating such individuals, had introduced their child to such individuals, or was dating anyone at all.

87. At the hearing, Judge McGuire explained that his comments had nothing to do with the specific case but were part of his standard colloquy to parents (Tr 2381, 2547-48). He admitted that his comments were inappropriate and undignified (Tr 2548-50). He also testified that he has taken steps to improve since March 2014 (Tr 2381, 2550).

Findings of Fact as to Charge X:

88. Prior to assuming judicial office in January 2011, Judge McGuire had a private law practice with an office on S [redacted] A [redacted] in F [redacted], New York (Tr 2049, 2104, 2185; Ex X-41b). He 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).

89. From 2011 through 2015 Judge McGuire, from time to time, while a judge, utilized the same letterhead, facsimile machine and telephone number that he had used while practicing law prior to January 2011 (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-471). 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). Judge McGuire's voice was on the recording (Tr 2551).

90. After closing his law office Judge McGuire had all his mail forwarded to [REDACTED] (Tr 2551; Ex X-41c).

(a) *People v. W [REDACTED] M [REDACTED]*

91. On or about September 20, 2012, Judge McGuire'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).

92. Judge McGuire told his friend, Sullivan County attorney Zachary D. Kelson, about the arrest and 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).

Kelson spoke with the District Attorney's office and informed Judge McGuire by email an ACD would not be offered (Tr 634-40, 644-45, 652-53, 2558-59; Exs XI-1, XI-2, XI-3). Kelson and Judge McGuire exchanged emails about the legal issues in the case (Tr 641-42, 645; Exs XI-1, XI-2, XI-3).

93. On December 2, 2012, Judge McGuire sent two letters on behalf of his son, on the letterhead of his former law office, to the Chief Clerk 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, Judge McGuire enclosed his Notice of Appearance stating that he “appears as counsel for the defendant” and requested “[p]roduction of a proper accusatory instrument ... and a lab report (Ex X-1a). With that same letter, Judge McGuire also enclosed an Affirmation of Actual Engagement for December 5, 2012 (the date scheduled for an appearance in his son’s case) in which he identified 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). The “engagements” Judge McGuire referenced in his letter and Affirmation were matters he presided over as a judge (Tr 2560; Ex X-47h).

94. In his second December 2, 2012 letter, Judge McGuire requested that in setting an adjourn date the clerk avoid Mondays as his “responsibilities require [him to] be in Sullivan County on those days” (Ex X-1b). Judge McGuire presided in Family Court on Mondays (Tr 2562).

95. Judge McGuire identified himself on both December 2 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 lists Judge McGuire’s former law office address, both the Notice of Appearance and the Affirmation of Actual Engagement list his home address (Tr 2559-61; Exs X-1, X-1a, X-1b).

96. On December 8, 2012, Judge McGuire sent another letter to the Chief Clerk on his law office letterhead regarding the dates on which he would be available to appear (Tr 2562; Exs X-1c, X-47l).

97. On February 26, 2013, Judge McGuire appeared in court as “Attorney Michael McGuire” and conferenced his son's case with the Otsego County prosecutor and the Oneonta City Court Judge in the Oneonta City Courthouse (Tr 2395, 2563-64; Exs X-2, X-2a, X-47q).

98. On April 8, 2013, Judge McGuire, sent a letter to the City Court Judge on his law office letterhead enclosing a Notice and Omnibus Motion seeking various relief which he signed as “Michael F. McGuire, Esq.” (Tr 2564, Exs X-1d, X-47o). He identified himself in the Notice of Motion as “Michael F. McGuire, Esq., attorney for W█████ M█████” (Tr 2564; Ex X-1d). The Affirmation in Support, 26 pages of detailed legal arguments, identifies Judge McGuire as an “attorney duly authorized to practice law in the State of New York” (Ex X-1d).

99. On August 4, 2013, Judge McGuire sent a letter on his law office letterhead to the City Court Judge enclosing a Reply Affirmation (Ex 1-e). All these documents

refer to Judge McGuire as “MICHAEL F. McGUIRE Attorney and Counselor at Law” or “Michael F. McGuire, Esq.” (Tr 2567; Ex X-1e).

100. On August 6, 2013, the City Court Judge issued a written Decision and Order in *People v W [REDACTED] M [REDACTED]* listing Judge McGuire as the attorney of record for the defendant and dismissing the charges against W [REDACTED] in the interest of justice (Tr 2568; Ex X-1f).

101. At the hearing, Judge McGuire admitted that he “absolutely” knew in 2013 that he was prohibited from representing his son but did so anyway (Tr 2568-69). Now, Judge McGuire admits that he “improperly appeared in the City of Oneonta Court ... on behalf of his son” and that “his position as a full time Judge in the State of New York prevents him from providing representation to any family member” (McGuire Proposed Findings of Fact, at 40).

(b) *People v. Corinne McGuire*

102. On May 17, 2010, Judge McGuire's wife, Corinne G. McGuire, received a speeding ticket in Wawarsing, New York (Tr 2131, 2382, 2569; Ex-X-3). Judge McGuire, who was not a judge at the time, represented his wife in connection with this matter (Tr 2131, 2382, 2569; Ex X-3). On July 25, 2011, Judge McGuire, then a judge, sent a letter on his law office letterhead on behalf of his wife, to the Wawarsing Town Court Justice (Tr 2131, 2132, 2383, 2569; Exs X-3a, X-45b). His 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” he had discussed with the prosecutor (Tr 2569, 2571; Ex X-3a). After Judge McGuire sent the letter the ticket was dismissed (Tr 2132, 2383; Ex X-3a).

103. Now, Judge McGuire admits that he “improperly communicated with the Court in August 2011” and that “it was improper to utilize the stationary [sic] from [his] former law practice to correspond with the Court” (McGuire Proposed Findings of Fact at 40-41).

(c) George Matisko

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

105. On January 20, 2011, Mary Ann Schares, who is Judge McGuire’s sister and worked in Judge McGuire’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 requested Mr. Matisko’s medical authorization form and Ms. Schares told the representative she would elevate his request to Judge McGuire (Ex. X-14). Thereafter, Ms. Schares sent a letter to Progressive on Judge McGuire’s law office letterhead enclosing the signed HIPPA form and over the typed “Michael F. McGuire, Esq., signed “Michael F. McGuire” (Ex X-6).

106. Between January and October 2011 Progressive sent three letters to Judge McGuire at the address of his former law practice referencing Judge McGuire as Matisko’s attorney (Exs X-7, X-8, X-9).

107. Judge McGuire's confidential secretary, Wendy Weiner, had previously worked at a personal injury law firm (Tr 1470). Judge McGuire directed her to call Progressive and negotiate a settlement for Mr. Matisko (Tr 1468-70). On 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 Judge McGuire about the conversation with the adjuster and he told her to accept the offer and draft a release (Tr 1470, 1471).

108. Ms. Weiner drafted a release, sent it to Progressive and, after making some changes, left a note on Judge McGuire's desk informing him that Matisko would be visiting chambers the next day (Tr 1471-74, 1640; Ex X-15).

109. 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). Judge McGuire was present when Mr. Matisko came to chambers (Tr 1477).

110. On "Michael F. McGuire, Esq." letterhead with Judge McGuire's PO Box number, Ms. Weiner prepared and signed a letter forwarding the release to the adjuster (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).

111. In January 2012, Judge McGuire told Ms. Weiner that neither he nor 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, 2012, Ms. Weiner

prepared a letter on “Michael F. McGuire, Esq.” letterhead with the PO Box address requesting a replacement (Tr 1481; Ex X-11). She electronically signed the letter “Michael F. McGuire” over the typed line “Michael F. McGuire, Esq.” (Tr 1480, 1648; Ex X-11). Judge McGuire was aware that Ms. Weiner was sending the letter) Tr 1481, 1648).

112. 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 Judge McGuire used after he closed his office (Ex X-13a). The back of the check was endorsed by Judge McGuire and Mr. Matisko (Tr 1650; Exs X-12, X-44h).

113. Judge McGuire asserts that he was totally unaware of any of the events set forth above regarding the Matisko matter and that Wendy Weiner acted on her own throughout “masquerading as Judge McGuire without his knowledge” (McGuire Proposed Findings of Fact at 43). The assertion is not credible and is not supported by the evidence.

(d) Ellen and Phillip Moore

114. In 2014, Ellen and Phillip Moore were selling their Ulster County house and their daughter, Heather, was interested in a foreclosure property in Naponoch as a replacement house for her parents (Tr 677, 685-85, 700, 1370-71). Edward Jeffrey Dolfinger, the listing broker for the foreclosure company, PennyMac Mortgage

Investment Trust Holdings, LLC, (“PennyMac”), told Heather that foreclosure sales were tricky and recommended that the Moores use an attorney (Tr 677, 1406).

115. The Moores knew Judge McGuire and spoke to him after a basketball game at Sullivan County Community College, where he had announced the game (Tr 678-80, 686-87, 695, 700-01, 703). The Moores told Judge McGuire that they wanted to proceed with the purchase without an attorney (Tr 686). Judge McGuire 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). He also suggested that the Moores have an attorney look at the contract because it was a foreclosure (Tr 687, 702). Heather asked Judge McGuire if his brother, Ken McGuire, who was also an attorney, could assist in the matter. Judge McGuire, Heather and the Moores agreed to Ken McGuire’s participation (Tr 688, 702-03).

116. 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 obieinky@ [REDACTED], an email address used by Judge McGuire’s wife (Tr 1372, 1398, 1525, 2103; Exs X-19, X-42e). The email was addressed “Good Morning Mr. McGuire” and the “original proposed Contract of Sale” was attached to the email (Ex X-19). 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).

117. Thereafter, Judge McGuire 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 Judge McGuire at the Moore’s table and he explained the contract to the

Moore and showed them where to sign it (Tr 682-84, 689-90, 697-98, 704-05). The Moores signed the contract in Judge McGuire's presence and he took the papers with him when he left (Tr 683-84, 698, 704; Ex X-18).

118. On August 12, 2014, Ms. Schultz sent two emails to Judge McGuire'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).

119. On August 25, 2014, 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). Another email of the same date also from the same email address and signed "Ken McGuire" also refers to the same contact telephone number (Ex. X-24). The telephone number referenced in these emails is Judge McGuire's cell phone number (Tr 2146, 2586, 2587; Exs X-42f, X-42h).

120. 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). 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).

121. On August 25 and 26, 2014 there were several emails between “judgemcguire@[REDACTED]” signed “Ken or “Ken McGuire” and Dolfinger (Exs X-26, X-27).

122. There was further confusion on the part of Ms. Schultz about whether she was dealing with Ken or Mike. On August 26, 2014, Ms. Schultz received an email from “judgemcguire@[REDACTED]” signed by “Ken” 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).

123. On September 3, 2014 Ms. Schultz received an email from “judgemcguire@[REDACTED]” regarding scheduling the closing. The email is signed “Ken McGuire” and the writer states “I am on vacation from September 16–24” (Ex X-28). Another email about the closing from “judgemcguire@[REDACTED]” on September 9, 2014 and signed “Ken” notes “I will not be available between September 15 and 24” (Ex. X-29). In additional emails on September 17, 2014 from “judgemcguire@[REDACTED]” signed “Ken,” the writer notes “I am down in Florida” (Ex X-30).

124. The evidence establishes that the emails relating to the Moore real estate transaction signed by “Ken” or “Ken McGuire” were all written and sent by Judge McGuire and that Judge McGuire used his brother’s name on the emails to hide the fact that he was involved as an attorney in the Moore real estate transaction while he was a judge. Aside from the “judgemcguire@[REDACTED]” email address and the several

references to Judge McGuire's personal cell phone number in the emails signed "Ken," documentary evidence shows that it was Judge McGuire (not Ken) who was planning a vacation between September 16-24, 2014 (Ex X-36), although at the hearing Judge McGuire denied that he was on vacation during that period (Tr 2600-01). Additionally, the Moores never spoke to or met with Ken McGuire regarding the purchase of the house (Tr 681, 684-85, 696). Similarly, 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). Moreover, if, as Judge McGuire continued to maintain at the hearing and now, that it was his brother Ken using the "judgemcguire@[REDACTED]" email address who was communicating about the Moores' real estate transaction (Tr 2385-86, 2595-98; McGuire Proposed Findings of Fact at 44-45), he should have called Ken McGuire at the hearing to corroborate that fact. Ken McGuire surely had knowledge of a material issue, was available to Judge McGuire, as his brother would be expected to give favorable testimony to Judge McGuire, and such testimony would have been non-cumulative.³ Accordingly, an inference that Ken McGuire did not perform legal work for the Moores and that he did not send the emails from "judgemcguire@[REDACTED]" that were signed "Ken" or "Ken McGuire" is appropriate.

³ A negative inference is premised on the "notion that the nonproduction of evidence that would naturally have been produced by an honest and therefore fearless claimant permits the inference that its tenor is unfavorable to the party's cause." *People v. Savinon*, 100 N.Y.2d 192, 196 (2003). A negative inference may be drawn against a party when (1) the uncalled witness has knowledge about a material issue; (2) the witness is available to the non-calling party to testify; (3) the witness is under the "control" of the non-calling party, such that the witness would be expected to give testimony favorable to that party; and (4) the witness is expected to give noncumulative testimony. *See id.* at 197; *People v. Gonzalez*, 68 N.Y.2d 424, 427 (1986).

(e) Ricky Pagan

125. In 2010, before becoming a judge, Judge McGuire represented Ricky Pagan in connection with his purchase of property in foreclosure. (Tr 465-67, 2391). Pagan had paid \$5,000 in back taxes on the property but had no agreement with the property owner. Judge McGuire drafted and filed a mortgage so that Pagan had an avenue to recoup his \$5,000 payment if Pagan proceeded with purchasing the property (Tr 466-68, 2388, 2604; Ex X-38).

126. In 2013, Pagan spoke to Judge McGuire about “how to go about finishing the deal” (Tr 468-69, 472, 2606-07; Ex X-42r). Pagan brought Judge McGuire a check for the balance of the purchase price and Judge McGuire sent it to the seller along with relevant documents (Tr 2608-09; Ex X-43c).

127. On November 14, 2013, the deed transferring the property to 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 Judge McGuire was receiving his business mail (Exs X-39, X-43c).

128. Now, Judge McGuire asserts that he “had no involvement in the transaction subsequent to ... 2010” (Judge McGuire’s Proposed Findings of Fact, at 47). The hearing record belies that assertion.

(f) Christopher Lockwood

129. Prior to becoming a judge, Judge McGuire 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).

130. On January 4, 2011, the Town of Liberty Court sent a letter to Judge McGuire, 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, the Liberty Town Court Clerk called Judge McGuire's chambers and left a message for him to call her about the *Lockwood* matter (Tr 1792, 1798-1800, 1826, 2611). Judge McGuire returned the call and informed her that his brother, Ken McGuire would be handling the ticket (Tr 1800, 1828, 1830, 2611).

131. On February 1, 2011, a letter on Judge McGuire's law office letterhead and signed "Kenneth J. McGuire, Esq." was sent to the Liberty prosecutor enclosing a completed Application to Amend Traffic Infraction (Application) and Mr. Lockwood's driving record abstract (Exs X-40d, X-46b). During this time Judge McGuire was aware that letters were being sent out using the same letterhead he used while in private practice (Ex X-46d).

132. At some point during business hours, Judge McGuire 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 him 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 Judge McGuire 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 Judge McGuire’s computer-generated signature and the letterhead had his PO Box (Tr 1656, 1657; Ex X-40e). Judge McGuire was aware that Ms. Weiner sent the letter and application to the Town of Liberty Justice Court (Tr 1487).

133. On September 12, 2011, the Liberty court sent a letter to Judge McGuire and informing them that the “court accepted your guilty plea for the charge(s)” (Ex X-40f). The letter was sent to Judge McGuire at his former law firm address (Tr 1831; Ex X-40f). The Liberty Court Clerk never received Ken McGuire’s contact information, she never spoke to Ken McGuire and he never appeared in court on the matter (Tr 1809).

Findings of Fact as to Charge XI⁴:

A. Zachary Kelson

134. Judge McGuire has a close personal relationship with Sullivan County attorney Zachary Kelson. They have known each other since 2001 (Tr 623, 2182, 2183, 2185). Judge McGuire acknowledged at the hearing that Kelson is a “good friend” (Tr 2627). They have had lunch together and Judge McGuire attended Kelson’s son’s Bar Mitzvah and gave a gift (Tr 625-627, 2626; Ex XI-28). Kelson also made a monetary

⁴ The first paragraph Charge XI in the Formal Written Complaint gives the dates as “January 2011 through in or about 2014” but the specifications state that the conduct occurred from January 2011 through 2016. The evidence at the hearing established that the conduct in this charge continued through 2016. The Commission requests that the first paragraph be deemed amended to conform to the specifications and the proof at the hearing (Commission Post Hearing Memorandum, at 76, fn. 8). Judge McGuire does not oppose this request and there is no apparent prejudice to Judge McGuire. The Commission’s request to amend should be granted.

contribution to Judge McGuire's judicial campaign in 2010 (Tr 628). But most significantly, during the time that Judge McGuire was a judge, Kelson assisted Judge McGuire in connection with his son's arrest for possession of marijuana and represented numerous friends of Judge McGuire and his wife at Judge McGuire's request, often for no fee. And during this period, Kelson appeared regularly before Judge McGuire representing litigants in both Family and Supreme Court. Judge McGuire never disclosed the extensive personal relationship he had with Kelson nor did he disqualify himself from matters in which Kelson appeared before him.

(a) Kelson's legal work with a connection to Judge McGuire

1. People v. W███████ M███████e

135. In September 2012 after Judge McGuire's son W███████ was arrested in Oneonta, New York for possessing marijuana (Tr 2558; Exs X-1, X-47a), Judge McGuire told Kelson about it and Kelson offered to contact the prosecutor's office to seek an Adjournment in Contemplation of Dismissal ("ACD") (Tr 632-633, 2558, 2559, 2628; Exs XI-1, X-47c, X-47e). Judge McGuire agreed to allow Kelson to do so (Tr 2558). Thereafter, Kelson spoke by telephone with the Oneonta prosecutor and told him that he was not representing W███████, but that W███████'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 -35). Kelson sent an email to Judge McGuire advising that an ACD would not be offered (Tr 634, 635, 638, 639-40, 644-45, 652, 653, 2558-59, 2566; Exs XI-1, X1-2, XI-3).

Thereafter, Judge McGuire and Kelson emailed back and forth about the legal issues in the case (Tr 641-42, 645; Exs XI-1, XI-2, XI-3).

136. On November 20, 2012 at 2:23 p.m., Kelson sent the prosecutor an email, which he blind copied to Judge McGuire, requesting that the case be dismissed in the interests of justice (Ex XI-2). Judge McGuire replied to 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).

137. Further emails between Kelson and the prosecutor and Kelson and Judge McGuire between November 21, 2012 and December 3, 2012 establish Kelson's continued involvement with the Oneonta prosecutor on W [REDACTED]'s behalf and Judge McGuire offering Kelson his thanks (Tr 637-38, 643-45, 648, 650-51; Exs X1-1, XI-2, XI-3).

138. After Kelson advised Judge McGuire that his efforts for an ACD or a dismissal had failed, Judge McGuire emailed Kelson on December 3, 2012 at 3:53 a.m., thanked him for helping with his son's case (Tr 653-54; Ex XI-3). Kelson replied thanking Judge McGuire 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, Judge McGuire 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 Kelson and Judge McGuire have had lunch together (Tr 656).

2. People v. Tina McTighe

139. From July 2012 through October 2012, Kelson represented Tina McTighe, a friend of Judge McGuire's wife, in connection with a speeding ticket (Tr 660-673; Exs XI-5, XI-6, XI-7, XI-8). Judge McGuire "either emailed [Kelson] or told" him that McTighe had received a speeding ticket (Tr 661). Kelson represented McTighe for no fee (Tr 759).

140. Numerous emails between Kelson and Judge McGuire establish that Kelson regularly kept Judge McGuire up to date on what was happening with his representation of McTighe, including the final disposition and payment of a fine (Tr 663-64, 666-73, 2628-29, 2634; Exs XI-6, XI-7, XI-8).

3. County of Sullivan v. Estate of Lydia Fernandez

141. Judge McGuire asked Kelson to represent his friend, Jerry Fernandez, in *County of Sullivan v Estate of Lydia Fernandez*, a case in which Fernandez was being sued by the county for the debts incurred by his deceased mother (Tr 707-08). Judge McGuire forwarded documents regarding the case, including the summons, to Kelson and Kelson represented Fernandez throughout the case (Tr 707-708, 2632).

142. On April 19, 2012, Kelson emailed Judge McGuire a copy of the stipulation of settlement in the *Fernandez* matter together with a copy of his letter to 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). Judge McGuire replied "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).

143. Thereafter, when Fernandez failed to make payments in compliance with the settlement, Kelson sought and received Judge McGuire's help in communicating with Fernandez and getting him to make the payments (Tr 713-17, 719-22, 2635; Exs XI-11, XI-12, XI-13).

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

144. Judge McGuire again asked Kelson to represent Fernandez in *Eye Physicians of Orange County, PC v Gerardo Fernandez* (Tr 722-724; Ex XI-14). On October 27, 2014, Judge McGuire emailed Kelson a copy of the summons and advised Kelson that Fernandez wanted to "get a payment plan and pay this debt" or he "will consider bankruptcy" (Tr 727; Ex XI-15).

145. On October 28, 2014, Kelson sent a letter to the judge on the Fernandez case requesting an adjournment because "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 D ■ vs. 'C.'" (725-26; Ex XI-14a). Kelson emailed Judge McGuire and attached a copy of the letter to the judge (Tr 728-30; Ex XI-15).

146. Further emails between Kelson and Judge McGuire establish that Kelson alerted Judge McGuire when he had settled the case and asked him to "let Jerry know it's settled," that the two discussed having a celebratory dinner at a restaurant owned by Fernandez so Judge McGuire could thank Kelson for his work on the Fernandez matters, and that when Fernandez defaulted on this settlement Kelson sought and received help

from Judge McGuire (Tr 733-37, 739-40, 2635-36; Exs XI-15, XI-16, XI-17, XI-18, XI-19).

147. Judge McGuire conceded at the hearing that it was improper for him to have set up this dinner while Kelson was appearing before him (Tr 2636).

5. People v. Lindsay Amoroso

148. On July 26, 2011, Lindsay Amoroso received a speeding ticket in the Town of Plattekill, Ulster County (Ex XI-20). While they were having lunch, Judge McGuire asked Kelson if he knew anybody who handled traffic tickets in the Town of Plattekill to represent Amoroso and he told Kelson that Amorosa was a close friend of his son K████ who had saved his son's life by helping to rescue him from a fire (Tr 741).

Kelson told Judge McGuire that he would handle the case and Judge McGuire got him a copy of the speeding ticket (Tr 741-42, 2397). Judge McGuire told Kelson that he could do whatever he wanted to do with respect to a fee and Kelson decided to charge no fee (Tr 741, 759).

149. Numerous emails between Kelson and Judge McGuire establish that Kelson kept Judge McGuire up to date on the progress of the case, that Judge McGuire provided a waiver form for Kelson to use in connection with the case and certain advice concerning the case, that Kelson advised when the case was satisfactorily resolved, and that Judge McGuire thanked him (Tr 742-44, 746, 749-51, 2633-34; Exs XI-20a, XI-21, XI-22, XI-23, XI-24).

6. People v. Willie Williams

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

151. After Kelson favorably resolved the case for Williams he forwarded a copy of his communication with Williams to Judge McGuire and Judge McGuire replied thanking Kelson for his work (Ex XI-26).

7. Lori Shepish

152. In 2015, Kelson represented Lori Shepish, who was referred to him by Judge McGuire, in connection with a real estate closing (Tr 763, 861). Mr. Kelson received a fee of \$750 plus disbursements from Shepish for his legal services (Ex XI-27).

153. On March 12, 2015, Mr. Kelson blind copied Judge McGuire on an email he sent to Shepish about his fee and requesting certain information related to the closing (Tr 763; Ex XI-27). On May 28, 2015, Kelson sent an email to Judge McGuire thanking him for referring Shepish to him (Tr 764, 2631; Ex XI-27).

(b) Kelson's numerous court appearances before Judge McGuire

154. During the same time that Kelson represented the various people connected to Judge McGuire and his wife referred to above, he regularly appeared before Judge McGuire in Family Court where he was law guardian for the child (Tr 659). Judge McGuire did not disclose his relationship with Kelson in any of the cases in which

Kelson appeared and prior to 2016 he did not ask the Family Court Chief Clerk to refrain from assigning him cases in which Kelson appeared (2655-66).

155. Kelson also appeared before Judge McGuire in Supreme Court on various matters during this same time period. Judge McGuire conceded that he never made a record of his relationship with Kelson or disqualified himself in any of the cases in which Kelson appeared before him (Tr 2638, 2639, 2641, 2643-46, 2650-51, 2654-56). Nor did Judge McGuire instruct his law clerk to disclose his relationship with Kelson in any court conference that she conducted in cases where Kelson represented one of the litigants (Tr 2654).

156. The evidence at the hearing establishes (a) Kelson's appearances and legal work before Judge McGuire in the following matters during the same period of time in which Kelson represented litigants referred by or connected to Judge McGuire and (b) the fact that there were no disclosures by Judge McGuire of his relationship with Kelson or any disqualifications or recusals:

a. *Rochelle Massey v. Sullivan County Board of Elections* in Supreme Court (Tr 765-66, 767-68, 771-73, 894, 2638-39; Exs. XI-29, XI-29b);

b. *FIA Cards Services v. Sandra Fishbain* in Supreme Court (Tr 774, 776-77, 779, 893 2641; Exs XI-30, XI-30c, XI-30f);

c. *Jeffrey H. Miller v. Town of Liberty Assessor* in Supreme Court (Tr 779-85, 894, 2643, 2654; Exs XI-31, XI-31a, XI-31b, XI-31, XI-31a XI-32b);

d. *Two Sullivan Street Trust v. Town of Liberty Assessor* in Supreme Court (Tr 786-88, 894, 2645; Exs XI-33, XI-33b);

e. *Sam's Towing & Recovery, Inc. v. Town of Liberty Assessor* in Supreme Court (Tr 788-90, 2646, 2654; Exs XI-34, XI-34b);

f. *Matter of F* [REDACTED] in Family Court (Tr 790-92, 795, 2647, 2650-51; Exs. XI-35, XI-35a-i, XI-36); and

g. *Matter of C* [REDACTED] in Family Court (Tr 795, 799-801, 894, 2654-56; Exs XI-37a, XI-37b, XI-37e, XI-37-g, XI-38a).

157. As of May 1, 2019, Judge McGuire has disqualified himself from all cases in which Kelson appears (Tr 2656).

B. Dean v. Boyes

158. In or about January 2013, Judge McGuire presided in Supreme Court 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 Judge McGuire was in private practice, he represented Sean Boyes's mother, 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).

159. The attorney for the Deans wrote two letters to the chief clerk advising that Judge McGuire had previously represented one of the parties and "would probably recuse himself" (Tr 2617; Exs XI-40a, XI-54a).

160. On February 13, 2013, Judge McGuire presided over the case and stated the following on the record:

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 at 2).

161. On the same day, Judge McGuire also made a record regarding the relationship between his law clerk Mary Grace Conneely and Sean Boyes (Ex XI-45 at 3). Judge McGuire 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 at 3-4).

162. 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 Judge McGuire 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 Judge McGuire, 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).

163. At the time the work was being done on her home, Ms. Conneely disclosed this information to Judge McGuire (Tr 1267, 1268, 1342, 1345, 1346, 1351, 1361, 1364). Ms. Conneely told Judge McGuire that she believed that it was “something that should be addressed to them” and Judge McGuire told Ms. Conneely that he would disclose the information to the parties (Tr 1268, 1345, 1346, 1351). He later told her that he had advised the parties that Boyes & Torrens were working on her home during the pendency of the case (Tr 1280, 1345). However, at no time after February 2013, did Judge McGuire inform the parties that Mr. Boyes’s construction firm continued to work on Ms. Conneely’s home (Tr 2625).

164. 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 Judge McGuire instruct Ms. Conneely not to participate in *Dean v Boyes* (Tr 1271, 2625).

165. Judge McGuire and Ms. Conneely decided to ask a floating law clerk to draft the decision in the case so there “would be no hint of impropriety” (Tr 1279). After Judge McGuire 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 at her house (Tr 1271-72, 1273, 1274, 1347; Ex XI-40b). Ms. Conneely told the attorney that Judge McGuire “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 Judge McGuire “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).

166. The Deans filed a motion seeking leave to reargue, renew and/or vacate the April 24, 2014 decision and either disqualify Judge McGuire 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, Judge McGuire 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).

Findings of Fact as to Charge XII:

167. On nine occasions in 2013 and six occasions in 2014, Judge McGuire 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 Judge McGuire’s term, pistol permit interviews were conducted in the library in the Family Court complex (Tr 1491). In 2013, Judge McGuire decided that he did not want to hold interviews on weekdays and decided to hold them at the Elks Lodge on

Saturdays (Tr 1492-94). Judge McGuire required that Ms. Weiner help with the Saturday interviews (Tr 1508, 1509).

168. Prior to the Saturday interviews, Ms. Weiner contacted the lodge 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 Judge McGuire 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 were completed Ms. Weiner would transport all the files back to chambers (Tr 1512-13).

169. 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).

170. On Saturday, September 7, 2013, Judge McGuire held pistol permit interviews at the Villa Roma Resort in Callicoon, New York (Tr 1514-16; Exs-XI-1, XI-1a). He 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 1516-17). He indicated that “people might enjoy coming to the dinner and supporting the dinner, since they were getting pistol permits” (*id.*).

171. Judge McGuire 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).

172. Judge McGuire 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).

173. The interviews were held before the dinner in the bar area of the resort (Tr 1517, 1520-21). While the interviews were being held patrons of the resort came into the bar area (Tr 1521).

174. 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).

Findings of Fact as to Charge XIII:

175. After Judge McGuire was elected as a judge his wife changed his email address from “mike-law@[REDACTED]” to “judgemcguire@[REDACTED]” (Tr 2061-62, 2108-09, 2289). She informed him about the new email and he used it until 2015 (Tr 2109, 2553-54; Exs XIII-2a, XIII-2b). He never told his wife that the email address was inappropriate (Tr 2109).

176. On February 22, 2011, Judge McGuire's wife sent the following email to Wendy Weiner, Judge McGuire'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).

177. Judge McGuire used the "judgemcguire@[REDACTED]" email address for his personal correspondence (Tr 1524-25, 2109, 2110, 2111, 2553; Exs X-42g, XIII-2a, XIII-2b, XIII-2e), to respond to clients who reached out to him via that email address (Ex XIII-2d), when corresponding with Zachary Kelson regarding W [REDACTED] M [REDACTED] and Kelson's representation of Judge McGuire's acquaintances (Tr 630, 635-36, 644; Exs X47c, XI-1, XI-2, XI-3, XI-4, XI-7, XI-8, XI-10, XI-11, XI-12, XI-13, XI-15, XI16, XI-19, XI-21, XI-22, XI-23, XI-24, XI-26, XI-27, XI-36), and 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).

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

Findings of Fact as to Lack of Candor

179. Judge McGuire lacked candor when he testified that he did not "believe" that he referred cases to attorney Zachary Kelson and that he "did not tell anybody to contact" Kelson (Tr 2627). The credible evidence established that Judge McGuire:

- (a) Asked 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, 72324, 2632);
- (b) Asked Kelson to represent Willie Williams on two traffic tickets
(Tr 755-56);
- (c) Referred Lori Shepish to Kelson on a real estate matter (Tr 763, 764,
2631; Ex XI-27);
- (d) Contacted Kelson about a speeding ticket that was received by Tina
McTighe (Tr 661; Ex XI-5); and
- (e) Forwarded Kelson copies of Lindsay Amoroso’s traffic ticket and a
waiver that he had drafted after discussing her case with him (Tr 741-
43, 2633; Exs XI-20, XI-21, XI-48f).

180. Judge McGuire’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 Judge McGuire’s testimony, the evidence established that:

- (a) Fifteen emails were sent to the seller’s attorney and/or the real estate broker from Judge McGuire’s email address,
“judgemcguire@[REDACTED]” (Tr 2586, 2588; Exs X-23, X-24, X-26, X-28, X-29, X-30, X-34);

- (b) In two of the emails from “judgemcguire@[REDACTED]” Judge McGuire’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
- (c) Eileen and Phillip Moore testified that when Judge McGuire 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).

181. Judge McGuire 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 Judge McGuire’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).

182. Judge McGuire 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, Judge McGuire admitted that he authored that email (Exs X-26, X-42p).

183. 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). Judge McGuire denied taking a vacation during that time yet an email from his confidential secretary to the Sullivan County and Supreme Courts chief clerk stated that Judge McGuire would be on vacation during that exact time period (Tr 989; Exs X-28, X-29, X-36).

CONCLUSIONS OF LAW

Conclusions of Law as to Charge I, II, III, IV, V and VI:

184. Judge McGuire 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.

185. Judge McGuire 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.

186. Judge McGuire 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.

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

188. Judge McGuire 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.

Conclusions of Law as to Charge VII:

189. Judge McGuire 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.

190. Judge McGuire 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.

191. Judge McGuire 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.

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

193. Judge McGuire 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.

Conclusions of Law as to Charge VIII relating to Wendy Weiner, Miguel Diaz (incident of June 29, 2012), Guillermo Olivieri and Brenda Downs:

194. Judge McGuire 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.

195. Judge McGuire 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.

196. Judge McGuire 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.

Conclusions of Law as to Charge IX:

197. Judge McGuire 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.

198. Judge McGuire 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.

199. Judge McGuire 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.

Conclusions of Law as to Charge X:

200. Judge McGuire 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.

201. Judge McGuire 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.

202. Judge McGuire 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.

203. Judge McGuire 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.

204. Judge McGuire 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.

Conclusions of Law as to Charge XI:

205. Judge McGuire 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.

206. Judge McGuire 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.

207. Judge McGuire 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.

208. Judge McGuire failed to disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, in violation of Section 100.3(E)(1) of the Rules.

Conclusions of Law as to Charge XII:

209. Judge McGuire 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.

210. Judge McGuire 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.

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

212. Judge McGuire 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.

213. Judge McGuire 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.

Conclusions of Law as to Charge XIII:

214. Judge McGuire 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.

215. Judge McGuire 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.

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

217. Judge McGuire 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.

Conclusions of Law as to Lack of Candor:

218. Judge McGuire 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.

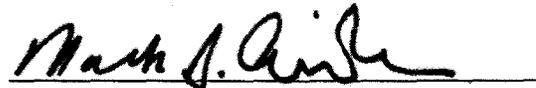
219. Judge McGuire failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

CONCLUSION

The evidence adduced at the hearing establishes by a preponderance of the evidence that Judge McGuire has engaged in conduct amounting to violations of the Rules Governing Judicial Conduct. Charges I, II, III, IV, V, VI, VII, VIII (in part), IX, X, XI, XII, and XIII are sustained. The evidence also establishes that in several instances Judge McGuire testified falsely at the hearing.

Dated: November 5, 2019

Respectfully submitted,



Mark S. Arisohn, Referee