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

MARK J. GRISANTI,

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

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

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in support of a recommendation that the Commission confirm all the Findings of Fact and Conclusions of Law in Referee William T. Easton's Report, adopt additional findings and conclusions, and render a determination that the Honorable Mark J. Grisanti ("Respondent") has committed judicial misconduct and should be removed from office.

INTRODUCTION

On the evening of June 22, 2020, Respondent instigated and repeatedly escalated a protracted verbal and physical altercation with a volatile neighbor over a trivial dispute about a parking spot. Video footage shows Respondent brawling with the neighbor, parading shirtless in the street while screaming profanities, shoving and threatening a police officer, attempting to curry favor with police by gratuitously dropping the names of high-ranking police officials and the Mayor, and providing the police with an inaccurate account of his role in the fight that minimized his own culpability.

The incident began when Respondent called 911 to falsely report that two vehicles belonging to his neighbors – Joe and Gina Mele – were blocking his driveway. Although Respondent knew that his relationship with the Meles was volatile and confrontational, he nonetheless led his wife across the street to the

Meles' property, shouting insults and obscenities at his neighbors all the while. Respondent and Mr. Mele engaged in an explicative-laden exchange before wrestling in the street. During the brawl, Respondent's shirt and undershirt were ripped off, leaving him half-naked for the remainder of the fight.

With Mr. Mele on the ground and another neighbor imploring him to stop, Respondent nevertheless goaded Mr. Mele: "You want to go again, tough fucking guy," and "I'll fucking flatten your face again." Still shirtless, Respondent continued to yell profanities until the police arrived.

Respondent's wife was then arrested at the scene for continually interfering with the officers' attempts to speak with the Meles. While she was being handcuffed, Respondent physically intervened by shoving the officer with both hands. Respondent threatened the officers, shouting that they had better let his wife go and would be sorry if they did not.

Respondent exacerbated his misconduct by volunteering that his children were Buffalo police officers and threatening to call them and their lieutenants. He added that he was "good friends" with the Mayor of Buffalo and falsely asserted that the Deputy Commissioner of the Buffalo Police Department was his cousin.

In unrelated but likewise serious misconduct stemming from the 2015 sale of his law firm, Respondent permitted an attorney who purchased the practice to appear before him in at least eight matters, and awarded him thousands of dollars

in fees while taking monthly payments from him, without addressing the issue of recusal or disclosing the relationship. Respondent also underreported the amount of money he made from the law-firm sale on his 2015 Financial Disclosure Statement, and from 2015 through 2019, he failed entirely to report his earnings from the sale to the clerks of his courts, as required.

Respondent's disgraceful public conduct on the evening of June 22, 2020, and his egregiously presiding over cases and awarding money to a lawyer who was contemporaneously paying him a debt, fatally undermined his integrity as a judge.

Respondent should be removed from judicial office.

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint ("Complaint"), dated August 30, 2021, containing three charges. Charge I alleged that, on or about June 22, 2020, Respondent engaged in a public, profanity-laced physical confrontation with his neighbors and (A) physically confronted a responding police officer, (B) threatened police personnel, (C) invoked family ties to members of the BPD and relationship with the Mayor of Buffalo, and, as a result, (D) was handcuffed, placed in the back of a patrol vehicle and transported to a police station (Complaint ¶ 5).

Charge II alleged that, from in or about January 2018 through in or about December 2020, Respondent took judicial action in eight cases involving an attorney notwithstanding, and without disclosing, that (A) he had an ongoing financial relationship with the attorney while five matters were pending, and (B) that his financial relationship with the attorney had ended within seven months of the other three matters (Complaint ¶ 15).

Charge III alleged that, (A) in or about 2016, Respondent filed a Financial Disclosure Statement ("FDS") with the Ethics Commission for the New York State Unified Court System ("UCS") which he inaccurately reported the income he received from the 2015 sale of his private law practice, and (B) in 2015 until in or about 2019, as a Court of Claims Judge and Acting Supreme Court Justice, he failed to make timely and accurate reports of his extra-judicial income to the clerks of the Court of Claims and Erie County Supreme Court, as required (Complaint ¶ 44).

B. Respondent's Answer

Respondent filed an Answer dated November 17, 2021. As to Charge I, he admitted that he was involved in a confrontation with neighbors, during which he made physical contact with a Buffalo police officer and was transported to a police station in handcuffs. Respondent denied making threats to the police or attempting to invoke familial ties to obtain preferential treatment (Answer ¶ RESPONSE #5).

As to Charge II, Respondent asserted that he was unaware of the need to disclose his financial relationship with the attorney in question during the pendency of the actions. Respondent denied other allegations and inferences of misconduct (Answer ¶ RESPONSE #15).

As to Charge III, Respondent asserted that he "inadvertently clicked the incorrect box" when reporting the income he received from the sale of his law practice, and that he corrected the error for 2015 through 2017. Respondent denied other allegations and inferences of misconduct (Answer ¶ RESPONSE #44).

Respondent asserted three affirmative defenses. First, he alleged that he "exercised physical force to the extent he reasonably believed was necessary to defend himself and his wife pursuant to the laws of the State of New York" (Answer ¶ 52). Second, he alleged that "the provisions of the Judiciary Law, which the complaint alleges that the Respondent violated are void for vagueness, and therefore unconstitutional, under the constitutions of the United States and New York State" (Answer ¶ 53). Third, he alleged that "[f]ailing to conduct this proceeding in person violates [his] right under Judiciary Law § 44[4] to call and cross-examine witnesses and present evidentiary data and material relevant to the complaint, and, therefore, violates Respondent's right to Due Process under the constitutions of the United States and New York State" (Answer ¶ 54).

C. The Hearing

On January 7, 2022, the Commission designated William T. Easton, Esq., as Referee to hear and report findings of fact and conclusions of law. An in-person hearing was held in June and July of 2022. Commission Counsel called four witnesses. Respondent testified on his own behalf and called 14 witnesses.

THE HEARING EVIDENCE

Charge I: After initiating a confrontation that devolved into a loud, public, profanity-laced street brawl, Respondent physically shoved a police officer, made threats to the police, and invoked personal relationships with police personnel and the Mayor of Buffalo.

In June 2020, Respondent – a Judge of the Court of Claims and Acting Justice of the Supreme Court – lived at 21 [redacted] Avenue in Buffalo with his wife, Maria Grisanti (Grisanti: 962; Respondent: 1105, 1138).[1] Joe and Gina Mele lived across the street at 16 [redacted] Avenue (Mele: 39). Although the Grisantis and the Meles had been neighbors for 16 years, they did not get along. Several other neighbors reported a long history of strife on [redacted] Avenue between the Meles

[1] References to "Ex" and "Resp Ex" are to exhibits introduced into evidence at the hearing by the Commission and Respondent, respectively. All other citations, unless noted, are to the hearing transcript. Citations to "Grisanti" are to Maria Grisanti's testimony, and citations to "Respondent" are to Judge Grisanti's testimony.

Exhibits 2, 30 and 41 – video recordings from the Meles' home security devices do not depict the correct date or times; also, the videos at times appear choppy and recorded audio does not align with the video. The time-date inaccuracies and audio-visual discrepancy are due to the replacement of an original system component with a component from a different manufacturer, which occurred prior to June 22, 2020 (Mele: 75-76).

and their neighbors (Jo.Contino: 368, 397; Je.Contino: 431, 433, 446; Chwalinski: 483, 489-91; Grisanti: 966-70, 980; Respondent: 1166-67, 1175-76).

Respondent knew that the Meles had a reputation for confrontation, and he testified that Mr. Mele was "an instigator" who "liked to start trouble" (Respondent: 1347, 1371). According to Respondent, in 2014 the Meles began parking their cars in a manner that Respondent believed encroached on his driveway in order to "provoke and harass" him (Respondent: 1170). When he asked the Meles to stop, they would give him "the finger, or . . . spit at" him (Respondent: 1169). Other times, Mr. Mele would ask Respondent if he "want[ed] a shot at the title," which Respondent understood to "mean that he wanted to have some sort of an altercation" like a fist fight (Respondent: 1171-72, 1345-46).

A. **Respondent called 911 and falsely reported that two vehicles belonging to the Meles were blocking his driveway.**

On the evening of June 22, 2020, Respondent returned home to find a truck and an SUV he believed belonged to the Meles parked on opposite sides of his driveway. While the vehicles were parked within a few feet of either side of the driveway, neither vehicle blocked the driveway's entrance (Exs 41 at 07:00:53 – 07:01:30; 42). Video evidence established that Respondent was able to pull straight into his driveway and park without issue (Ex 41 at 07:00:53 – 07:01:30).

Respondent called 911 to report that "an idiot neighbor across the street" had "two [vehicles] blocking my driveway," and "when I came in, I almost hit 'em" –

an assertion refuted by the video evidence (Exs 1; 1-A, p 1; 41 at 07:00:53 – 07:01:30; Respondent: 1163, 1344). He told the operator, "I want a ticket . . . on it, or I want it towed" (Exs 1;1-A, pp 1-2). He also gratuitously volunteered that his children were in the Buffalo police and fire departments (*id.*).

B. Respondent led his wife across the street and onto the Meles' driveway.

Outside the house, the Grisantis began arguing from across the street with Gina Mele – who was on her porch – and yelled, "move the fucking truck," as Joe Mele joined his wife outside (Mele: 46; Respondent: 1344). Respondent shouted that he had "already called the cops," and Ms. Mele and Ms. Grisanti exchanged vulgarities. Respondent threatened to park his own cars so that they encroached on the Meles' driveway in the future (Ex 2-A, pp 1-3).

With the Meles still standing on their porch, Respondent walked off his property, stepped into the street, and headed toward the Meles' driveway, with his wife a step or two behind him (Exs 2 at 07:14:28 – 07:14:33; 42). At the hearing, Respondent acknowledged that Commission Exhibit 42 clearly shows him preceding his wife as they walked across the street (Respondent: 1352-53).[2]

[2] That exhibit also shows the location of the Meles' truck, which clearly was not blocking the Grisantis' driveway.

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C. <u>Respondent escalated a verbal argument with Joe Mele and engaged in a physical confrontation that devolved into a street brawl.</u>

As the video from the Meles' camera shows, Mr. Mele stepped off his porch as the Grisantis approached and met them at the edge of his driveway (Ex 2 at 07:14:34 – 07:14:35). Mr. Mele said, "Come on, you cocksucker," and Respondent replied, "Come on . . . come on . . . come on" (Ex 2-A, p 3). Mr. Mele responded, "Let's see . . . what you've got, tough guy," and "Take your fucking shot." Respondent answered, "What do you got," and Mr. Mele told Respondent to "Get the fuck out of here" (Ex 2-A, pp 3-4). Instead of walking

away, Respondent called Mr. Mele a "Fucking asshole." Mr. Mele replied, "Come on, motherfucker . . . I'll fucking . . . knock you out" (Ex 2-A, p 4).

Around this time, Ms. Grisanti stepped between Respondent and Mr. Mele, and Ms. Mele and Theresa Dantonio – Ms. Mele's sister – joined the fray (Grisanti: 998; Respondent: 1193-96). The three women began wrestling, and Ms. Grisanti ended up in a chokehold. When Mr. Mele entered that scrum, Ms. Grisanti bit his arm (Exs 2 at 07:14:39 – 07:14:54; 2-A, p 4; 6; 13-A, pp 24-25; Grisanti: 999-1000; Respondent: 1196-97).

Respondent, no longer separated from Joe Mele, said, "Come on . . . you think we're done" (Ex 2-A, p 5). As the Meles' camera continued to record the scene, Respondent and Mr. Mele grabbed one another and grappled in the street. Respondent pushed Mr. Mele, and as the men continued to wrestle, Mr. Mele pulled off Respondent's shirt, leaving Respondent standing in the street in a white tank-top undershirt (Ex 2 at 07:14:55 – 07:15:20). Respondent stopped fighting long enough to retrieve his shirt from the ground, then grabbed Mr. Mele again. After the two grappled for five or six seconds, Mr. Mele fell near the edge of Respondent's driveway (Ex 2 at 07:15:21 – 07:15:37). Respondent called him a "[f]ucker" as he laid on the ground (Ex 2-A, p 6).

At around the same time, Linda Chwalinski – who lived at 15 [redacted] Avenue– came outside and told her husband to "Call 911" (Ex 2-A, p 5;

Chwalinski: 456, 458-59, 505). Charlie Adamo – who lived down the block at 37 [redacted] Avenue – came up to Respondent pleading, "Mark, come on. Come on, please . . . [t]he cops are going to be here" (Exs 2-A, p 7; Respondent: 1203). Respondent continued taunting Mr. Mele anyway, saying "You want to go again, tough fucking guy . . . I'll fucking flatten your face again" (Ex 2-A, p 9).

Ignoring Respondent's taunt, Joe Mele got up and walked his wife back to his own driveway (Exs 2 at 07:16:09 – 07:17:00; 7; 8; Respondent: 1202). After a few moments, however, the Grisantis and Meles re-entered the street and began brawling again (Ex 2 at 07:17:10 – 07:17:16). When the grappling ended a few moments later, Respondent was left bare-chested, his tank top ripped and hanging from his waist (Ex 2 at 07:17:27). The Meles and Grisantis continued shouting expletives from their respective driveways, with Respondent calling Mr. Mele a "fucking asshole," twice saying "Fuck you," and yelling, "Nobody . . . fucking likes you guys . . . you piece of shit" (Ex 2-A, pp 13, 15-16).

D. <u>Respondent pushed and threatened a police officer, and then repeatedly asserted personal relationships with police personnel and the Mayor of Buffalo.</u>

At approximately 8:45 p.m., Buffalo Police Department ("BPD") Officers Ryan Gehr and Larry Muhammad arrived at 21 [redacted] Avenue to find Respondent

standing shirtless in the street (Gehr: 162-63, 186; Muhammad: 249).[3] After screaming at the officers that the Meles were “a bunch of fucking assholes,” Ms. Grisanti walked directly to the Mele driveway and began yelling into Ms. Dantonio’s face (Exs 11 at 00:00:25 – 00:00:27; 11-A, p 1). Gehr told Ms. Grisanti to stop, and Muhammad guided her and Respondent across the street so that he could speak with them on their property while Gehr spoke with the Meles (Exs 11 at 00:00:28 – 00:00:42; 11-A, p 2). During this conversation, Officer Gehr confirmed that neither of the Meles’ vehicles were blocking Respondent’s driveway (Exs 11 at 00:01:12 – 00:01:16; 11-A, p 4).[4]

While Officer Muhammad was escorting the Grisantis across the street, Ms. Grisanti repeatedly walked back toward the Meles and yelled profanities at them and Officer Gehr, which eventually led Gehr to admonish her, “Ma’am, if you don’t stop yelling, this is going to be a problem for you.” Ms. Grisanti replied, “I don’t care . . . You’re not going to arrest me,” to which Officer Gehr responded, “I sure fucking am” (Exs 11 at 00:00:49 – 00:01:44; 11-A, pp 2-3 6; 12 at 00:00:23 – 00:01:08; 12-A, pp 1, 3).

At that point, Officer Gehr went across the street and reached for Ms. Grisanti’s arm to handcuff her. Ms. Grisanti yelled, “[d]on’t fucking arrest me,” as

[3] Both officers were wearing body cameras, footage from which is cited as Exs 11 and 12.

[4] Neither vehicle was ticketed (Mele: 45; Gehr: 171).

she flailed her arms and twisted her body away from Gehr. Gehr replied, "We are not doing this right now," and continued to try to place her in handcuffs (Exs 11 at 00:01:43 – 00:01:52; 11-A, p 6; 12 at 00:01:09 – 00:01:16; 12-A, p 4; Gehr: 167, 203, 229-32; Grisanti: 1016). At that point, Respondent walked up behind Gehr and yelled at him as Ms. Grisanti continued to resist. Ultimately, Gehr determined it necessary to perform a lawful takedown procedure, which brought Ms. Grisanti to the ground unharmed (Exs 11 at 00:01:48 – 00:01:53; 11-A, p 6; 12 at 00:01:10 – 00:01:16; 12-A, p 4; Gehr: 167; Muhammad: 280-81).[5]

While Officer Gehr was handcuffing Ms. Grisanti, Respondent walked up to Gehr, placed both of his hands on Gehr's upper body, and shoved Gehr backward (Exs 11 at 00:01:52 – 00:01:54; 12 at 00:01:14 – 00:01:17; 43). The following still image captured from Muhammad's body camera shows that shove.

[5] After landing on the ground, Ms. Grisanti immediately said, "No. It's okay," and did not complain of any pain or injury (Exs 11 at 00:01:52 - 00:01:53; 11-A, p 6). Neither Respondent nor his wife filed a complaint or lawsuit based on Gehr's actions (Grisanti: 1099; Respondent: 1219, 1409-10).

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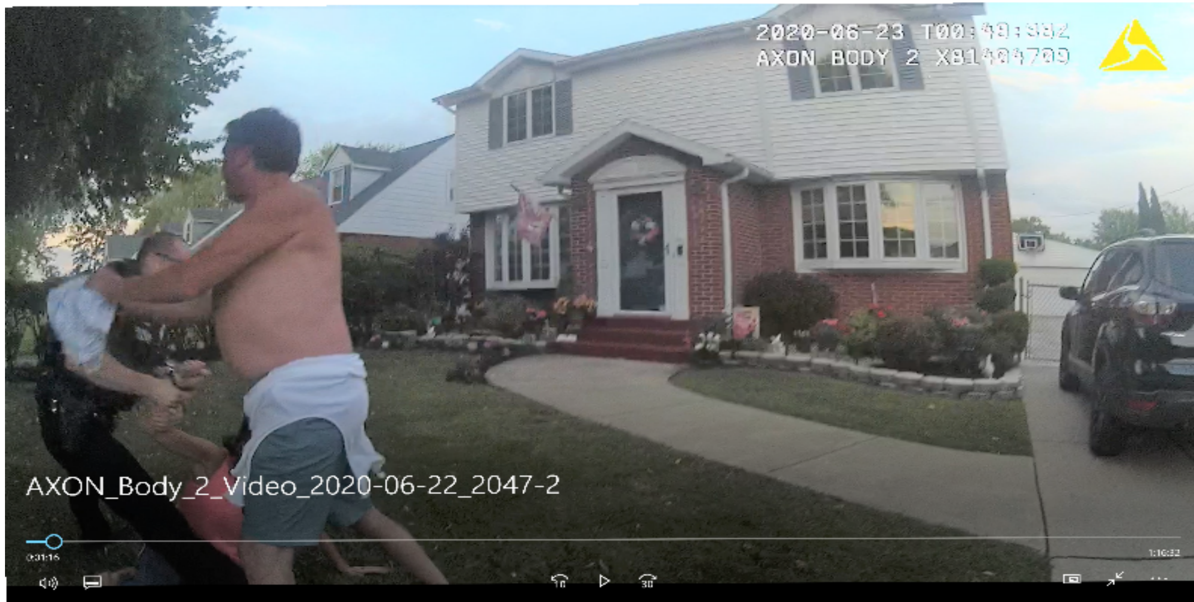

Officer Muhammad immediately admonished Respondent, “no, no, no, no,” placed Respondent in a bear hug, and told him, “Keep your hands off a cop” (Exs 11 at 00:01:53; 11-A, p 6; 12 at 00:01:15 – 00:01:20; 12-A, p 4). Undeterred, Respondent told Officer Gehr, “You better get off my fucking wife” and repeatedly called him “dude” as Muhammad maintained his grip on Respondent and said, “Do not fight a police officer” (Exs 11 at 00:01:53 – 00:01:59; 11-A, p 7; 12 at 00:01:14 – 00:01:26; 12-A, pp 4-5; Muhammad: 253-55). When Gehr finally managed to handcuff Ms. Grisanti, Respondent yelled, “[y]ou arrest my fucking wife . . . you’re going to be sorry,” then volunteered, “My son . . . and my daughter are . . . both police officers.” Respondent continued, “Oh my God, are you fucking

kidding me, dude?" (Exs 11 at 00:02:10 – 00:02:16; 11-A, pp 7-8; 12 at 00:01:35 – 00:01:45; 12-A, p 5). He went on, "Listen . . . If you don't get the cuffs off her right now . . . you're going to have a problem." Recognizing the verbal threat for what it was, Muhammad responded, "We're not doing that; we're not threatening that" (Exs 12 at 00:02:00 – 00:02:16; 12-A, pp 6-7; 44).

Officer Muhammad told Respondent that the police were not going to let Respondent's "demand[s]" dictate their actions and asked Respondent to "let us just work this through" (Exs 12 at 00:02:16 – 00:02:23; 12-A, p 7). Respondent again volunteered his familial connections with the BPD, stating, "No. Watch . . . I'm going to need to call my son and my daughter and their Lieutenants right now" (Exs 12 at 00:02:24 – 00:02:28; 12-A, p 7).

E. Respondent reasserted his ties to BPD officers and the Mayor of Buffalo and provided an account of events refuted by the video and audio footage.

Once Ms. Grisanti was in the police car, the officers asked Respondent for his side of the story. Respondent began by volunteering that his son and daughter were BPD officers and falsely stated, "Gramaglia's my cousin," referring to the BPD Deputy Police Commissioner Joseph Gramaglia (Exs 11 at 00:06:23 – 00:06:43; 11-A, p 18; 12 at 00:05:48 – 00:06:07; 12-A, pp 14-15).[6] Respondent

[6] Joseph Gramaglia – the BPD Deputy Police Commissioner on June 22, 2020 – is not related to Respondent (Respondent: 1225, 1405).

then repeatedly told the officers a demonstrably untrue version of the altercation – an account refuted by video evidence – in which he alleged that his wife walked across the street and was attacked by the Meles while he was still inside his house, and that he subsequently went across the street to help her (Exs 11 at 00:07:33 – 00:07:45; 00:08:52 – 00:09:04; 00:10:01 – 00:10:08; 11-A, pp 20-21, 23).

According to Respondent, when he crossed the street Joe Mele taunted him, saying, "You want to go, tough guy?" and he replied, "No, Joe," and sought only to "bring[ ] Maria back" (Exs 11 at 00:07:46 – 00:07:51; 11-A, p 20). Respondent said that Mr. Mele "whack[ed]" him and "pushe[d]" him backward, which prompted Respondent to tell him to "calm down" (Exs 11 at 00:07:51 – 00:08:00; 11-A, p 20). None of those words can be heard on the audio recording of the altercation (*see* Exs 2; 2-A). Respondent again volunteered, "I'm good friends with [Buffalo Mayor] Byron Brown. He's like, 'It's always something. Mark, just freaking ignore them'" (Exs 11 at 00:09:22 – 00:09:30;11-A, p 22).

F. Respondent offered "an apology" for pushing Officer Gehr.

After finishing his account, Respondent said to Officer Gehr, "Do me a favor . . . Get her out of the car and I'll bring her inside." He added, "I didn't mean to tackle you, but, I mean, you kind of threw my wife down on the ground pretty hard and I don't appreciate that" (Exs 11 at 00:10:26 – 00:10:32; 11-A, pp 23-24). When Gehr tried to respond, Respondent interrupted him to remind him that

Respondent's daughter and son-in-law were police officers, then added "I know what you guys are going through right now" (Exs 11 at 00:10:39 – 00:10:49; 11-A, p 24). Gehr attempted to explain his actions, but Respondent – his voice now raised – told Gehr that his conduct "was not necessary," said "you need to chill out," and insisted that Gehr take "a little constructive criticism, dude" (Exs 11 at 00:10:50– 00:11:02; 11-A, pp 24-25).[7]

At that juncture, Officer Richard Hy interjected and said, "Let me give you some constructive criticism. You want to drop another copper's name? You want to scream about you know Gramaglia or the Mayor?" (Exs 11 at 00:11:02 – 00:11:07; 11-A, p 25). Hy handcuffed Respondent and continued:

> You want to . . . say, 'I know all these coppers . . .' You want to make us look dirty, is that what you want to do . . . [Y]ou touched a cop . . . You're saying everybody's fucking name and dropping everybody's name with a badge, and you're expecting special treatment. How does that look to everybody in this . . . environment . . .

(Exs 11 at 00:11:13 – 00:11:41; 11-A, pp 25-27; 12 at 00:10:52 – 00:11:19; 12-A, pp 21-22) (emphasis added). Respondent was placed in the back of a cruiser in handcuffs (Exs 12 at 00:11:33 – 00:11:41).

[7] Respondent later told Detectives Mark Costantino and William Moretti that he had apologized to Officer Gehr for pushing him. *See* pp 19-20, *infra*. Apparently, this is the "apology" he meant.

G. <u>During a phone call from the back of a police car, Respondent spoke with a relative who was a BPD Detective and again provided an account of events refuted by the video and audio evidence.</u>

Shortly thereafter, Lieutenant Karen Turello and Detective William Moretti arrived to assist in the investigation (Gehr: 173). At one point, Turello gave Respondent her personal cell phone so that he – still seated in the back of a police car – could speak with BPD Detective Mark Costantino, to whom Respondent was related. Officer Muhammad had never before seen this kind of courtesy extended to an arrestee (Muhammad: 257-58; Respondent: 1448).

During his call with Detective Costantino, Respondent claimed that he was inside his house when the Meles attacked his wife and he came outside to find her "in a freaking chokehold", so he ran over "to break it up" (Exs 12 at 00:43:10 – 00:43:36; 12-B, p 4). Later, at the stationhouse, Respondent told Detective William Moretti that, before the physical altercation broke out, Ms. Grisanti "started walking . . . across the street" without him as he was trying to get the dog into his yard, prompting him to go after her (Exs 13; 13-A, pp 9, 20). Those statements to the police are wholly unsupported by the audio and video evidence (Exs 2 at 07:14:28 – 07:14:33; 2-A; 42).

When Detective Costantino confronted Respondent about pushing a police officer, Respondent admitted that "[he] shouldn't have pushed the police officer" (Exs 12 at 00:45:01 – 00:45:18; 12-B, p 6). Yet, during his interview with

Detective Moretti, Respondent provided a description that minimized the seriousness of the push, claiming that he merely "put [his] arm out, like on [Gehr's] shoulder, like holding him back" after seeing Gehr "grab[ ] [Ms. Grisanti]" and "trip her, to, like . . . put cuffs on her" (Exs 13; 13-A, p 14).

Respondent made a point of telling Detectives Costantino and Moretti that he had "apologized" to Officer Gehr. During his phone conversation with Costantino, Respondent claimed that he had "apologized to [Gehr] . . . right after" (Exs 12 at 00:40:13 – 00:40:38; 12-B, pp 1-2). Respondent then lied, "I never mentioned Byron Brown's name" (Exs 12 at 00:40:47 – 00:40:49; 12-B, p 2). And at the station house later that evening, Respondent told Detective Moretti that he "apologized to . . . you know, kind of stopping the officer from doing what he had to do," but added in apparent justification, "you know, I saw him trying to sweep the legs of her, and she's had problems with her neck and back" (Exs 13; 13-A, p 31). Moretti noted that Respondent's actions "can be viewed as obstruction." Respondent replied, "Yup . . . I get it. That's why I apologized to him and let him do what he had to do" (Exs 13; 13-A, pp 31-32).

H. <u>Respondent's Hearing Testimony as to Charge I</u>

After becoming a judge in 2015, Respondent attended judicial trainings at the Judicial Institute. On June 22, 2020, he knew that the Rules Governing Judicial Conduct ("Rules") applied to him off the bench as well as on (Respondent: 1373).

i. Prior to June 22, 2020, Respondent knew the Meles to be provocative and physically threatening.

Respondent moved to 21 [redacted] Avenue in 2004. He testified that he and his wife got along with the Meles until 2014, when Ms. Grisanti allegedly witnessed Ms. Mele threatening another neighbor and learned that Mr. Mele had threatened that neighbor's daughter (Respondent: 1105, 1170, 1174, 1180). That same year, after Respondent expanded his driveway, the Meles began parking their vehicles in a manner Respondent believed encroached on his driveway in order to "provoke and harass" him (Respondent: 1170). Respondent understood that such parking was legal, but was disturbed by their lack of consideration (Respondent: 1330). He repeatedly had asked the Meles not to park in that fashion and testified that in return, they gave him "the finger," spat at him, or threatened to fight him (Respondent: 1169, 1171-72, 1345-46).

ii. On June 22, 2020, Respondent was upset with how the Meles parked their vehicles, so he called 911 and then crossed the street and engaged in a verbal and physical altercation.

On June 22, 2020, Respondent and his wife returned home from dinner and shopping to find a truck parked "a couple of feet from the curb" and "on top of the apron" of Respondent's driveway (Respondent: 1159-63). That made Respondent "frustrated," as he felt it was parked that way "to provoke [him]" (Respondent: 1434). Respondent testified that he had to "maneuver" to get into his driveway and was not able to pull in straight (Respondent: 1163, 1338, 1344). According to

Respondent, he knew as a judge that it was important to be truthful and accurate when making a report to the police and he "tried to be as accurate as possible." He nonetheless reported to the 911 operator that a truck and an SUV were "blocking [his] driveway" (Respondent: 1334-35).

Respondent testified that the Meles started shouting before Respondent crossed the street (Respondent: 1189). Respondent walked across the street while "screaming" for them to "move the vehicle" and "tr[ied] to have a conversation" with Mr. Mele to "get this resolved" (Respondent: 1190-91). When Mr. Mele challenged Respondent to a fight, Respondent did not consider walking away, but instead "call[ed] his bluff," because "if this guy wants to fight, I'm going to call him on it" (Respondent: 1358, 1360, 1191-93). Mr. Mele said, "Take your fucking shot," but Respondent did not retreat to his property because "nothing was happening" (Respondent: 1363-64). When Mr. Mele pushed Respondent and threatened to knock him out, Respondent called Mr. Mele a "fucking asshole" (Respondent: 1195).

Respondent knew then that a fight "was a possibility," but he did not extricate himself from the situation because he wanted to "see if [Mr. Mele] was going to do it again" (Respondent: 1358-59; 1364). Even after wrestling with Mr. Mele in the street and then disengaging to pick up his shirt, Respondent still did

not walk away – knowing full well that the police were coming – because he "thought they were going to stop" (Respondent: 1368).

At one point, during a pause, a neighbor asked Respondent to stop. Instead of stopping, Respondent told Mr. Mele, "You want to go again, tough fucking guy," because he thought Mr. Mele was "being mouthy" (Respondent: 1203-04). The physical altercation resumed and, after Mr. Mele fell, Respondent told him, "I'll fucking flatten your face again," then twice repeated, "I just did," referring to the fall Mr. Mele had sustained. Respondent testified that he did not consider those words to be threats and thought that Mr. Mele understood that Respondent was "just going to back up, and [Mr. Mele was] going to fall on [his] face again" (Respondent: 1204, 1370-71). Respondent acknowledged that he wrestled with Mr. Mele multiple times during the altercation (Respondent: 1365).

Respondent repeatedly told the Meles to "[g]o inside" and called Mr. Mele a "piece of shit." Respondent said, "I don't talk like that . . . I got down to his level. And if he's swearing at me, I was going to swear back at him" (Respondent: 1209). Similarly, Respondent acknowledged that he called Mr. Mele a "[f]ucker" and "fucking asshole" because Mr. Mele had called him similar names, and Respondent "stooped down to his level" (Respondent: 1371). During all of this, Respondent "wasn't thinking about what [he] did for a living" (Respondent: 1362).

iii. <u>Respondent admitted pushing an officer and mentioning his personal relationships with BPD personnel and the Mayor of Buffalo.</u>

Respondent acknowledged that as Officer Gehr attempted to handcuff Ms. Grisanti, Respondent yelled at him and pushed him (Respondent: 1381, 1385, 1390). Respondent told Gehr to get off his wife "because [he] wanted to see if she was okay," even though he neither went to the police car to check on her afterward nor asked any officers to do so (Respondent: 1216, 1402, 1444). Respondent believed that Gehr had acted improperly, but he did not file any kind of complaint or lawsuit (Respondent: 1216, 1409-10). Respondent did not consider his pushing Gehr as an attempt to interfere with police authority because the push "was not something that prevented him from putting cuffs on Maria" (Respondent: 1390).

In telling Officer Gehr, "You better get off my fucking wife," Respondent did not consider the word "better" as "having any meaning" (Respondent: 1392). When Respondent told Gehr that he would be "sorry" if he arrested Ms. Grisanti, he meant that when Gehr "talk[ed] to the neighbors," he would "realize that [he was] incorrect" (Respondent: 1393). In telling Gehr that he was "going to have a problem" if he did not immediately remove the handcuffs from Ms. Grisanti, Respondent purportedly meant that Gehr had not "talked to anybody in the neighborhood, and that once he [did], . . . he's going to feel the same way"

(Respondent: 1393). In Respondent's mind, his tone in addressing Gehr was in the nature of "a loud . . . request," not a "demand" (Ex 44; Respondent: 1397).

Respondent acknowledged that the police never asked him if he had relatives in the BPD or fire department but claimed that he broached those topics as a means of letting them know, "I understand what you guys go through" or was simply "making conversation" (Respondent: 1225, 1403, 1405). Respondent agreed that no one asked if he was friends with Buffalo Mayor Byron Brown, but again he claimed to have been "just having conversation" in saying that "even Byron Brown knows what goes on around here" (Respondent: 1223, 1406). Respondent explained that he brought up the mayor's name to "let[ ] them know that we're just not making stuff up" (Respondent: 1223).

Respondent telephoned his daughter after his wife was handcuffed "to ask her if she could talk to her lieutenant" (Respondent: 1404). Respondent knew Joseph Gramaglia, the Deputy Commissioner of the BPD, because "Joe . . . was [his] daughter's lieutenant" (Respondent: 1224). Respondent acknowledged that, despite what he said to the officers at the scene, Gramaglia was not his cousin (Respondent: 1225, 1405).

iv. <u>Respondent admitted that he repeatedly provided BPD personnel with incorrect information about the altercation.</u>

Respondent admitted that he gave Detective Costantino information about the altercation that was "not correct" when he spoke with Costantino on Lieutenant

Turello's cellphone (Respondent: 1349). Specifically, Respondent was untruthful in his assertion that he came out of his house after Ms. Mele and Ms. Dantonio had his wife in a chokehold, and when he told Costantino that he "ran over there to break it up" (Respondent: 1348-49). Indeed, the video evidence showed unequivocally that Respondent led his wife across the street at the beginning of the confrontation (Exs 2 at 07:14:28 – 07:14:32; 42).

Respondent also admitted that, when Officer Gehr asked him to tell his side of the story, Respondent told him that he "walked over there" – meaning to the Meles' driveway – because his wife already had been attacked (Respondent: 1350). Again, the video demonstrates that Respondent led his wife to the Meles' driveway before the fight began (Ex 2 at 07:14:33 – 07:14:54). Likewise, Respondent admitted that his statement to Detective Costantino that he pushed Gehr because the "two girls were on Maria, [and] he was dragging Maria across the street" was, in his words, "not accurate" (Respondent: 1389).[8]

Charge II: Respondent presided over eight cases involving attorney Matthew Lazroe, notwithstanding – and without disclosing to the parties – that he had a financial relationship with Mr. Lazroe.

On May 18, 2015, Respondent signed an agreement to sell his private law practice for $50,000 to attorneys Peter Pecoraro and Matthew Lazroe (Ex 14;

[8] Respondent also called three therapists who treated him following the June 2020 incident to testify to their observations of his mental state, as well as three judges and three attorneys to testify to Respondent's reputation concerning his work ethic and judicial temperament.

Lazroe: 292-94). Pursuant to the agreement, Mr. Lazroe paid Respondent a down payment of $10,000 in May of 2015 and paid the remaining balance in monthly installments of $365 through June of 2019 (Ex 15; Lazroe: 293-95). Mr. Pecoraro paid Respondent a down payment of $5,000 in May of 2015 and made monthly payments of $365 until he passed away in 2018 (Respondent: 1234-35, 1310).

A. While Mr. Lazroe was sending Respondent monthly payments in connection with the law firm purchase, Respondent presided over five cases in which Mr. Lazroe represented one of the parties and made no disclosures about their financial relationship.

Bayview Loan Servicing, LLC v Mary Lee Fornes et al.

After a Request for Judicial Intervention ("RJI") in *Bayview Loan Servicing, LLC v Mary Lee Fornes et al*. was filed in December 2017, Mr. Lazroe came to represent the defendant in that mortgage foreclosure matter (Ex 16, pp 4-5; Lazroe: 296). His status as the defendant's attorney was documented by, *inter alia*, his printed name and signature on four conference status forms in January, March, April and August of 2018 (Ex 16, pp 9-12). Respondent signed an order to discontinue the foreclosure action against Mr. Lazroe's client on December 5, 2018 (Ex 16, pp 13-14; Lazroe: 328). Respondent did not disclose his financial relationship with Mr. Lazroe to any of the parties or counsel (Lazroe: 296).

Buffalo Seminary v Stephanie Satterwhite

In a commercial case initiated by Mr. Pecoraro, *Buffalo Seminary v Stephanie Satterwhite*, Mr. Lazroe was added as attorney for the plaintiff in

September 2017 (Ex 29, p 19; Lazroe: 297). The following month, Mr. Lazroe executed an affidavit in support of a default judgment, and he filed an RJI in December 2017 (Ex 29, pp 1-3, 6-7; Lazroe: 298). In June 2018, Respondent signed an order upon Mr. Lazroe's affidavit, awarding his client judgment for nearly $14,000 plus interest. A statement for judgment for over $18,000, inclusive of interest costs and fees, was filed with the County Clerk in November 2018 (Ex 29, pp 39-40). Respondent did not disclose his financial relationship with Mr. Lazroe to any of the parties or counsel (Lazroe: 298).

Matter of Application of M█████ F████

In February 2018, Respondent signed an order in *Matter of Application of M█████ F████*, appointing Mr. Lazroe as court evaluator (Ex 17, pp 8-9). In April 2018, after evaluating the case, Mr. Lazroe appeared before Respondent to present his findings (Ex 17, p 51; Lazroe: 305). In June 2018, Respondent signed an order directing that Mr. Lazroe be paid more than $2,000 for his services (Ex 17, pp 44-45; Lazroe: 300). Respondent did not disclose his financial relationship with Mr. Lazroe to any of the parties or counsel (Lazroe: 300).

Trifera, LLC v Morrison, Unknown Heirs

In October 2018, Respondent signed an order in *Trifera, LLC v Morrison, Unknown Heirs*, designating Mr. Lazroe guardian *ad litem* and military attorney on behalf of potential parties with property interests in the matter (Ex 18, pp 9, 12).

Respondent's order required the plaintiff to pay Mr. Lazroe $250 for his services (Ex 18, pp 9-10; Lazroe: 301). Respondent did not disclose his financial relationship with Mr. Lazroe to any of the parties or counsel (Lazroe: 301).

Federal National Mortgage Association v Anderson, et al.

In May 2019, Respondent signed an order in *Federal National Mortgage Association v Anderson, et al.*, designating Mr. Lazroe guardian *ad litem* and military attorney on behalf of potential parties with property interests (Ex 19, pp 4, 7). The order required the plaintiff to pay Mr. Lazroe $250 for his services (Ex 19, p 5). Respondent signed another order in February 2020 providing that Mr. Lazroe be paid another $350 (Ex 19, p 16). Respondent did not disclose his financial relationship with Mr. Lazroe to any of the parties or counsel (Lazroe: 301).

B. Respondent presided over three cases in which Mr. Lazroe represented one of the parties in the months following Mr. Lazroe's final payment, and made no disclosure.

Greater Woodlawn Federal Credit Union v Charles Pachuki et al.

In August 2019, Respondent signed an order in *Greater Woodlawn Federal Credit Union v Charles Pachuki et al.*, appointing Mr. Lazroe as referee (Ex 20, pp 12-14). The order provided that Mr. Lazroe be paid a statutory fee of $50 and, in the discretion of the court, an additional $100 fee for the filing of his report (Ex 20, pp 12-13; Lazroe: 302). Respondent did not disclose his financial relationship with Mr. Lazroe to any of the parties or counsel (Lazroe: 302).

Matter of the Application of W█ █. L█

In November 2019, Respondent signed an order in *Matter of the Application of W█ █. L█*, appointing Mr. Lazroe as court evaluator and to investigate petition claims (Ex 21, pp 9, 11; Lazroe: 303). Mr. Lazroe made two appearances before Respondent (Lazroe: 306). In April 2020, Respondent signed an order requiring that Mr. Lazroe be paid over $5,000 for his services, and another in December 2020 providing that Mr. Lazroe be paid an additional $192.50 (Ex 21, pp 31, 33, 70-71; Lazroe: 304). Respondent did not disclose his financial relationship with Mr. Lazroe to any of the parties or counsel (Lazroe: 304).

Rasheena Jones v Jerry Gradl Motors, Inc.

In January 2020, Respondent signed an order in *Rasheena Jones v Jerry Gradl Motors, Inc.*, in which Mr. Lazroe represented the plaintiff (Ex 22, p 21). Six case conferences were reported as held between March and October of 2020 (*id.*). Mr. Lazroe "recall[ed] having a couple conferences" with Respondent in this matter (Lazroe: 348). Respondent did not disclose his financial relationship with Mr. Lazroe to any of the parties or counsel (Lazroe: 305).

C. Respondent's Hearing Testimony as to Charge II

Respondent knew Peter Pecoraro for approximately 45 years and shared office space with him before becoming a judge (Respondent: 1233). Respondent met Matthew Lazroe through Mr. Pecoraro (Respondent: 1233). Respondent knew

that Mr. Lazroe was an attorney and understood that "his practice was real estate and foreclosures and bankruptcy" (Respondent: 1303).

Shortly before becoming a judge, Respondent sold his law practice to Mr. Pecoraro and Mr. Lazroe for $50,000. Mr. Pecoraro and Mr. Lazroe paid Respondent $15,000 when the sale agreement was signed. The balance was to be paid in monthly installments of $730, split evenly between the two purchasers, with each paying Respondent $365 through June of 2019 (Respondent: 1234).

Upon becoming a judge, Respondent put Mr. Pecoraro on his recusal list, but not Mr. Lazroe (Respondent 1238-39). Respondent understood that "[t]he purpose of a recusal list is to make sure there is no . . . appearance of any sort of impartiality" and to keep attorneys and other people with conflicts from appearing before him (Respondent: 1312). Recusal "was brought up in the judge's school," and Respondent had a discussion with his Administrative Judge or the District Executive "on who needs to be on that recusal list" (Respondent: 1310).

One of Respondent's responsibilities as a judge was to appoint attorneys as court evaluators, guardians, and attorneys for children (Respondent: 1243-44). From the time he took the bench in 2015, Respondent signed "probably 150 to 300" Part 36 attorney appointment orders (Respondent: 1245). Respondent signed the orders appointing Mr. Lazroe as indicated above (Respondent: 1244).

Respondent delegated to his Law Clerk, Doug Curella, Jr., the duty of making assignments in Part 36 cases and "told him that that is his responsibility" (Respondent: 1244-45). However, although Mr. Curella had the authority to put attorney names on appointment forms, he did not have the power to sign orders appointing attorneys (Respondent: 1316). Respondent understood that whomever Mr. Curella might choose for a given appointment, Respondent was responsible for the appointment (Respondent: 1317).

Respondent had conversations with Mr. Curella about which attorneys to appoint, and he "saw the list" of prospective attorneys for appointment "probably in 2015, '16" (Respondent: 1314-15). Respondent has signed appointment orders "before somebody is actually appointed" and without knowing who is going to be appointed (Respondent: 1316). Respondent does not read every document that he signs (Respondent: 1318).[9]

As to the eight cases identified by the Commission, Mr. Lazroe appeared before Respondent in some of the proceedings, and "[t]he ones that he didn't, I didn't have any knowledge that he was in front of me or that he was actually on the case" (Respondent: 1423). Respondent did not disclose the 2015 sale of his law

[9] Mr. Curella, who served as Respondent's Confidential Law Clerk from May 2015 through December 2021, was not aware that Mr. Lazroe had purchased Respondent's law practice until he read about it in an article covering the Mele incident (Curella: 546-47, 554). Respondent never gave him any instruction about Mr. Lazroe vis-à-vis attorney assignments (Curella: 556).

practice to Mr. Lazroe, or Mr. Lazroe's payments to him, in any of the five cases he presided over prior to Mr. Lazroe's last payment, or any of the three cases he presided over within two years of Mr. Lazroe's final payment (Respondent: 1235, 1240).[10] Respondent made no disclosures because he "didn't know that under the Judicial Rules" that he "was required to disclose a contractual obligation . . . with monthly payments" (Answer ¶ RESPONSE #15; Respondent: 1237, 1239).

Although Respondent had taken various classes on ethics and recusals at the Judicial Institute and understood that he had to recuse himself from cases in which participating individuals had given money to his 2010 senate campaign, he "was not aware that that type of contractual arrangement of $300 plus a month was something that needed to be reported" (Respondent: 1239-40, 1322). Respondent became aware that he was required to disclose his financial relationship with Mr. Lazroe when he "researched it, and . . . obtained an opinion on it" (Respondent: 1239). In January 2021, Respondent spoke with Laura Smith, Esq., Chief Counsel for the New York State Advisory Committee on Judicial Ethics, and Judge Walsh from the Advisory Committee, about his financial relationship with Mr. Lazroe. Ms. Smith and Judge Walsh told Respondent that he was required to recuse himself from cases involving Mr. Lazroe for two years beyond June 2019 (Ex 20,

[10] Mr. Pecoraro stopped paying Respondent in the beginning of 2018 after being diagnosed with brain cancer, and he passed away later that year (Respondent: 1235). Mr. Lazroe fulfilled the terms of the agreement making monthly payments through June 2019 (Respondent: 1235).

pp 19-20; Respondent: 1241-42). Respondent later transferred *Greater Woodlawn Federal Credit Union v Charles Pachuki et al.*, in which he had appointed Mr. Lazroe as a referee, to a non-conflicted judge (Ex 20, p 20; Respondent: 1242-43).

Charge III: Respondent filed a Financial Disclosure Statement in which he inaccurately reported the income he received from the sale of his law practice, and he failed for five years to report his extra-judicial income to the clerks of his courts, as required by law.

In May 2015, Respondent sold his law practice pursuant to an agreement he negotiated with attorneys Peter Pecoraro and Matthew Lazroe. The terms specified that "the payment for this Agreement is a total sum of $50,000.00," which was "to be made with a payment of $15,000.00 down and monthly payments beginning July 1, 2015, at a rate of $730.00 per month until said balance is paid in full" (Ex 14, p 2). In accordance with the agreement, Mr. Pecoraro and Mr. Lazroe paid Respondent $15,000 in May 2015; Mr. Lazroe paid $10,000, and Mr. Pecoraro paid $5,000 (Exs 14, 15; Respondent: 1234).

A. <u>Respondent did not accurately disclose the $15,000 down payment he received on his 2015 Financial Disclosure Statement.</u>

In 2016, Respondent filed a verified annual Financial Disclosure Statement ("FDS") for the 2015 calendar year with the Ethics Commission for the New York State Unified Court System ("UCS") (Ex 23; Respondent: 1250). In his FDS, Respondent provided information about the terms of the agreement for the sale of his law practice in his responses to three different questions: 12(a), 12(b) and 13.

Question 12(a) stated in part, "Describe the terms of, and the parties to, any contract." Respondent wrote that he sold his firm for "$730.00 a month for 4 years." Respondent reported neither the $10,000 down payment from Mr. Lazroe nor the $5,000 down payment from Mr. Pecoraro (Ex 23).

Question 12(b) stated in part, "Describe the parties to and the terms of any agreement . . . in EXCESS of $1,000." Respondent wrote, "I sold my law practice to 2 attorneys . . . Terms are $730 a month for 4 years. It will end [J]une of 2019." Respondent reported neither the $10,000 down payment from Mr. Lazroe nor the $5,000 down payment from Mr. Pecoraro (Ex 23).

Question 13 stated in part, "List below the nature and amount of any income in EXCESS of $1,000 from EACH SOURCE . . . Nature of income includes, but is not limited to, all income . . . from . . . contractual arrangements." Respondent listed two entries for his law office. In his first, Respondent wrote:

> SOURCE: "law office Closed May 2015";
>
> NATURE: "clients";
>
> CATEGORY OF AMOUNT: "C: $20,000 to under $60,000."

(Ex 23). In his second, Respondent wrote:

> SOURCE: "peter pecoraro esq and matthew lazaroe esq";
>
> NATURE: "sale of law office Started May 2015 730.00 a month for 4 years";

CATEGORY OF AMOUNT: “A: under $5,000”

(Ex 23).

Respondent’s 2015 FDS also included information about the sale of his law firm in question 18, which required him to list information about “notes and accounts receivable” (Ex 23). Respondent listed Peter Pecoraro, Esq, and Mathew Lazroe, Esq. as debtors, described the obligation information as “Sale of law firm . . . in May 2015 $730 a month payable on the 1st for 4 years,” and entered under category of amount, “A: under $5,000” (Ex 23).

B. <u>Respondent failed to report income from the sale of his law office to the clerks of his courts for the first five years of his judicial service.</u>

Between 2015 and 2019, Respondent received the following payments from Mr. Lazroe and Mr. Pecoraro in connection with the sale of his law firm: a total of $19,380 in 2015; $8,760 in 2016; $8,760 in 2017; $4,380 in 2018; and $2,190 in 2019 (Answer ¶ RESPONSE #45; Respondent: 1234-35).

On May 20, 2021, Administrative Judge Paula Feroleto sent an email to all judges in the 8th Judicial District, including Respondent (Resp Ex Q). The email provided the text of 22 NYCRR 100.4(H)(2) pertaining to each judge’s obligation to report compensation (*id.*). The email recounted that the District Executive “sends a reminder to file this report around every year.” The email also listed

types of compensation or income that had to be reported, including "income due from practice that has been wrapped up but money still owed" (*id.*).

From in or about May 2015 through June 2019, Respondent filed no reports of the income he received from the sale of his law practice with the office of the Clerk of the Court of Claims or with the office of the Clerk of the Erie County Supreme Court (Respondent: 1263, 1304).

C. Respondent's Hearing Testimony as to Charge III

Respondent was familiar with the FDS form, as he filled out the same form from 2010 through 2014, when he served as a state senator (Respondent: 1249, 1295). When he became a judge, Respondent received an email reminder to complete his first FDS (Respondent: 1295). He knew that he was required to fill out the form accurately, and that the form covered all matters during the calendar year 2015, both before and after he became judge (Respondent: 1296).

While completing his FDS for 2015, Respondent provided information about the sale of his law practice in answering questions 12(a) and (b), which asked about the "terms" of any contracts and agreements. His answer to both questions identified that he sold his law practice for "$730 a month for 4 years." He did not indicate in either answer that, as a term of the sales agreement, he had received a down payment of $15,000. Respondent acknowledged that "in 12(b), it should have been in there that there was a down payment of $15,000" (Respondent: 1252-

53). Respondent did not disclose the down payment in his responses to questions 12(a) or (b) because, "in [his] mind," the form was "going forward," and he was "not a Judge" when he received the down payment (Respondent: 1254).[11]

In answering question 13 of his 2015 FDS, which asked for income for the "taxable year last occurring prior to the date of filing," Respondent identified two "self" sources of income in excess of $1,000 – one for his law office "clients," and one for the "sale of law office Started May 2015" (Ex 23; Respondent: 1255). Respondent put "clients" because he "didn't know what to put there, so I just put clients" (Respondent: 1255).

Respondent also provided information about his law firm sale in answering question 18 on his 2015 FDS. He listed Mr. Pecoraro and Mr. Lazroe as debtors and identified the obligation as "Sale of law firm . . . in May of 2015 $730 a month payable on the 1st for 4 years." For the amount category, Respondent indicated "under $5,000" (Ex 23).

After receiving an inquiry from the Commission, Respondent looked at his answer to question 13 in his 2015 FDS and realized he had made "an error" that "need[ed] to be corrected" (Respondent: 1259). In April of 2021, Respondent sent

[11] This response differed from Respondent's Answer to paragraph 46 of Formal Written Complaint. There, Respondent "denie[d] knowledge and information sufficient to form a belief" and did not provide any information or explanation regarding whether or how he disclosed the $15,000.00 down payment in his 2015 FDS (Answer ¶ RESPONSE #46).

a responsive letter to Commission stating, "For the years 2015 through 2017, I should have marked Category B for the 'Category of Amount' on questions 13 and 18 regarding the income from Mr. Pecoraro and Mr. Lazroe," and he admitted, "I erred by checking the wrong box regarding the category amount on questions 13 and 18" (Respondent: 1293-94).

In early 2021, Respondent spoke with the Executive Director of the New York State Ethics Commission, after which he sent a letter making "corrections on the 2020 filings" (Respondent: 1255, 1260). In that June 2021 letter, Respondent explained his "error in listing, or hitting the wrong 'Category of Amount' box on [his] Financial Disclosure form for the years 2015, 2016 and 2017, as it pertains to Question #13 and Question #18." Respondent wrote that the proper category amount should be B ($5,000 - $20,000) rather than A (under $5,000) (Resp Ex S). Respondent also explained that he erred in answering question 12 on his 2015-2017 FDS forms, and that "with proper addition," the $730 monthly payments also should have been listed under Category B. In concluding his letter, Respondent apologized for "clicking the wrong box" (Resp Ex S; Respondent: 1262).

As to his responsibility to file with the clerks of his courts under 22 NYCRR 100.4(H)(2), Respondent "did not receive a reminder to file a report in prior years" but could not explain why Judge Feroleto would have remarked in her May 20, 2021, email that judges receive reminders every year, if that were untrue

(Respondent: 1307-08). Respondent claimed that he “wasn’t familiar with that Rule” regarding reporting his compensation, and that from 2015 through 2019 never reported the income he received from the sale of his law practice to the office of the Clerk of the Court of Claims or to the office of the Clerk of the Erie County Supreme Court (Respondent: 1263, 1303-04).

Respondent understands that the Rules apply to him but does not believe that 22 NYCRR 100.4(H)(2) applies to him (Respondent: 1308). Respondent “did the research in 2021” for the first time and “looked at opinions,” after which he determined, “in my estimation, it didn’t apply to me” (Respondent: 1264, 1308-09). Specifically, Respondent claimed, “[a]n Opinion from 2014, and . . . another opinion from 2022” said “basically” that income “from a law practice is not something that . . . is required to file with the Clerk of the Courts” (Respondent: 1265). However, Respondent did not specify any opinions or otherwise cite authority for that proposition. Respondent “figured because [he was] filing the Financial Disclosure Statements, that that -- it’s public record, that that’s sufficient” (Respondent: 1266).

THE REFEREE’S REPORT

On May 24, 2023, the Referee issued a 25-page report sustaining all three charges in the Complaint.

A. <u>The Referee's Findings as to Charge I</u>

As to Charge I, the Referee determined that Respondent's conduct violated Sections 100.1, 100.2(A), 100.4(A)(1), and 100.4(A)(2) of the Rules, and noted that "[m]uch of the factual basis and the legal conclusion of this finding is not disputed" (Ref Rep: 8).[12] Specifically, the Referee found, Respondent violated those Rules "by (1) his excessive use of profanity during his public interaction with the Meles and members of BPD; (2) his initiation of physical contact with a BPD officer; and (3) his invocation of familial connections with members of the BPD and Mayor Byron Brown" (*id.*). The Referee found, *inter alia*, that:

- Respondent "knew of the Meles' reputed propensity for confrontation" and thought Mr. Mele was "'an instigator' who 'liked to start trouble'" (Ref Rep: 12);

- The Mele vehicles that prompted the altercation were "parked on opposite sides of [Respondent's] driveway" (Ref Rep: 13);

- While the Meles were "on their own property, Respondent walked off of his property, stepped into the street, and headed toward the Mele driveway, his wife a step or two behind" (Ref Rep: 13);

- Thereafter, Respondent participated in a "physical confrontation with the Meles," which "occurred in daylight hours, in full view of neighbors and the public," and during which Respondent "loudly and repeatedly directed profane language at the Meles, including" phrases such as "'fucking asshole,' 'fucker,' 'you want to go again, tough fucking guy,' 'I'll fucking flatten your face again,' 'get the fuck out of here,' 'get the fuck out of my driveway,' 'you fucking

[12] Citations to "Ref Rep" are to the Referee's Report.

asshole,' 'fuck you,' 'nobody fucking likes you guys,' and 'you piece of shit'" (Ref Rep: 13);

- Respondent "approached Officer Gehr, placed both of his hands on Gehr's upper body, and shoved Officer Gehr," after he performed "a lawful takedown procedure" on Ms. Grisanti (Ref Rep: 15);

- Lieutenant Muhammad had to "intervene[ ] and place[ ] Respondent in a bear hug" after which he admonished Respondent, "'keep your hands off a cop'" (Ref Rep: 15);

- While Officer Gehr completed his handcuffing of Ms. Grisanti, Respondent said, "'you better get off my fucking wife,'" and "'you arrest my fucking wife . . . you're going to be sorry,' before offering that his 'son . . . and' his 'daughter are . . . both police officers'" and "continuing '[l]isten . . . if you don't get the cuffs off her right now . . . you're going to have a problem' . . . 'No. Watch . . . I'm going to need to call my son and daughter and their Lieutenants right now'" (Ref Rep: 15);

- Respondent "volunteered, 'I'm good friends with Byron Brown. He's like, "It's always something. Mark, just freaking ignore them' . . . Byron Brown was the Mayor of Buffalo at the time" (Ref Rep: 16); and

- Officer Hy "admonished" Respondent for 'drop[ping] . . . copper[s]' name[s]'" and "'scream[ing] about you know Gramaglia or the Mayor'" (Ref Rep: 16).[13]

The Referee acknowledged that the Meles "provoked" the altercation in certain respects, but determined that "[t]he nature and extent of the provocation . . . does not in any appreciable manner diminish Respondent's obligation, as a judge,

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[13] In addition to these facts, the Referee found certain potential "mitigating" facts, though he explicitly noted that he "do[es] not assess the mitigating effect, if any, that these facts have on the issue of sanction" (Ref Rep: 11). Those facts include, *inter alia*, that a number of Respondent's friends and relatives were ill or had passed away shortly before June 2020, that his dog was ill at that time, and that he voluntarily sought counseling following the altercation (*id.*).

to conduct himself in [a] restrained and dignified manner" (Ref Rep: 9). To the contrary, he continued, "the provocation may even increase this obligation," noting that Respondent "was well aware of the proclivities of the Meles to engage in aggressive behavior when he embarked on a course of conduct that contributed to the tumultuous eruption that ensued" (*id.*, emphasis added).

In an "Opinion" section of his Report, separate from his findings of fact and conclusions of law, the Referee made two assertions that warrant mention. Primarily, the Referee opined that Respondent's remarks such as "[y]ou arrest my fucking wife, you're going to be sorry," and "[y]ou don't get the cuffs off my wife, you're going to have a problem," "did not threaten the police officers, and neither recipient of these remarks testified that he was intimidated or threatened by these comments" (Ref Rep: 10, emphasis added). In fact, in immediate response to these comments, Officer Muhammad told Respondent, "We're not doing that; we're not threatening that" (Ex 12-A, 6, emphasis added). Further, although Muhammad testified that he was not "easily threatened" and that he "couldn't imagine" a threat that would cause him to change his official conduct, he nonetheless described Respondent's comments as a threat, even if "an empty threat to [him] personally" (Muhammad: 271). And when counsel asked Officer Gehr on cross-examination whether he "[felt] any threat" from Respondent, the officer replied, "I mean, there was a bit of escalation towards the end" (Gehr: 220).

Given the obvious import of Respondent's words and Officer Muhammad's immediate reaction, the Referee should have found that Respondent threatened the officers for arresting his wife. The threat is an important element of what the Referee rightly determined was an "improper and unseemly attempt to obtain special treatment by familial and political connections" (Ref Rep: 10).

Second, the Referee declined to find that Respondent lied to the police about *inter alia* where he was when the fight started and his purported familial relation to Deputy Commissioner Gramaglia because such findings would "violate[ ] Respondent's right to notice," given that the Commission did not charge those facts in the Complaint. The Referee further found that the false accounts Respondent gave to the police on those topics, "even if inaccurate," may not have been "deliberately false" and could have been "merely indicative of Respondent's perception of the event" (Ref Rep: 9).

The Referee should have found these facts, too. As to the Referee's latter point, Respondent could not have "inaccurately perceived" that Deputy Commissioner Gramaglia was his cousin, nor that he was in his house when he in fact was at the Mele's driveway – both things he knew were not true when he said them, as he admitted at the hearing (Respondent: 1225, 1348-50, 1389, 1405). And, although Commission Counsel did not charge these false statements as separate misconduct in the Complaint, they are nonetheless relevant to the charged

misconduct: they undercut Respondent's present claim that he took full responsibility for his misconduct, given that he made that claim only after unsuccessfully trying to lie his way out of trouble.

B. The Referee's Findings as to Charge II

As to Charge II, the Referee made findings of fact consistent with the respective facts set forth above, including *inter alia* that: attorneys Lazroe and Pecoraro purchased Respondent's law firm in 2015 for $15,000 down and $35,000 broken into increments of $730 per month; Respondent learned about recusal issues during his judicial training, including who needs to be on his "recusal list"; Respondent did not put Lazroe on his recusal list upon becoming a judge; Respondent took "judicial action in five cases involving Mr. Lazroe while Mr. Lazroe and Respondent were engaged in an ongoing financial relationship, and in three more cases "involving Mr. Lazroe within seven months of the ending of the financial relationship between Mr. Lazroe and Respondent"; and "Respondent did not disclose the 2015 sale of his law practice to Mr. Lazroe or Mr. Lazroe's ongoing payments to him in any of" those eight cases (Ref Rep: 19-20).

In his Opinion section, the Referee found that Respondent was "obligated" to "provide the litigants and attorneys notice of his continuing receipt of payments from Mr. Lazroe" because "[s]uch receipt certainly raised the question of the appearance of impartiality and the parties were entitled to this notice" (Ref Rep:

18). Indeed, the Referee noted, "[t]he parties to the eight cases were at the very least entitled to notice in order to make their decisions regarding recusal," regardless of the amounts of money at issue (*id.*). The Referee concluded that this conduct "reveals a lack of sensitivity to the ethical standards for judges and warrants public discipline" (Ref Rep: 18). For those reasons, the Referee found that Respondent's conduct violated Sections 100.1, 100.2(A), 100.3(E)(1), 100.4(D)(1)(a), and 100.4(D)(1)(c) of the Rules (Ref Rep: 21).

C. <u>The Referee's Findings as to Charge III</u>

As to Charge III, the Referee made findings of fact consistent with the respective facts set forth above, including *inter alia* that: Mr. Lazroe and Mr. Pecoraro purchased Respondent's law firm in 2015 for $15,000 down and $35,000 in increments of $730 per month; in 2015, Respondent received $12,190 from Mr. Lazroe and $7,190 from Mr. Pecoraro, yet listed the total amount received for the sale of his law practice as "under $5,000" on his 2015 FDS; Respondent admitted that he "clicked the incorrect box" when reporting this income on his 2015 FDS; and Respondent made no mention on his 2015 FDS of the $15,000 down payment, and he explained that omission at the hearing by noting that "at the time [he] got the down payment, [he] was not a judge" (Ref Rep: 23-24).

In his Opinion section, the Referee noted that "Respondent testified at the hearing that he did not intentionally fail to disclose the down payment that he

received for the sale of his law practice in 2015," but "pivot[ed]" in his post-hearing submission to an argument that he "did not explicitly mention the down payment because it was received while he was still a lawyer, and not yet a judge" (Ref Rep: 21-22). The referee found this irrelevant because Respondent was not charged with having willfully filed a false FDS, and Respondent conceded – one way or another – that "the FDS in question was inaccurate" (*id.* at 22). That itself, the Referee concluded, constitutes misconduct violative of Sections 100.1, 100.2(A), 100.3(C)(1), and 100.4(I) of the Rules (Ref Rep: 22, 24).[14]

ARGUMENT

POINT I

RESPONDENT BRAWLED WITH A NEIGHBOR IN PUBLIC, ESCALATED THE ALTERCATION WHEN HE COULD HAVE DISENGAGED, THREATENED AND PHYSICALLY SHOVED A POLICE OFFICER WHO RESPONDED TO THE SCENE, AND SOUGHT PREFERENTIAL TREATMENT FROM THE POLICE BASED ON HIS FAMILIAL AND POLITICAL CONNECTIONS.

Respondent's profanity-laced shirtless street brawl with Joe Mele on June 20, 2022, was a public embarrassment laden with egregious violations of the Rules. Respondent created the conflict in the first place by inventing a bogus parking dispute where none existed, and then walked head-long into a confrontation by

[14] The Referee did not include in his Opinion or Conclusions of Law any findings as to whether Respondent failed to report his extra-judicial income to the clerks of the courts upon which he sat for 2015-2019 as required by Section 100.4(H)(2) of the Rules.

crossing the street from his home to confront the Meles on their property. When Mr. Mele predictably challenged Respondent to a fight, Respondent obliged instead of walking away. Then he upped the ante by shouting taunts as Mr. Mele lay on the ground and re-engaging him in physical combat while neighbors pleaded with him to stop. When the police arrived, Respondent lied to them about how the fight started to minimize his own culpability, physically pushed an officer trying to make a lawful arrest, threatened that the officers would "be sorry" if they did not do as he asked, then tried to talk his way out of trouble by touting his friendship with the Mayor of Buffalo and familial tie to a high-ranking BPD official – the latter of which turned out to be another lie.

As the Court of Appeals has held, every judge, even off the bench, must "conduct his everyday affairs in a manner beyond reproach" and observe "standards of conduct on a plane much higher than those of society as a whole . . . so that the integrity and independence of the judiciary will be preserved." *Matter of Kuehnel*, 49 NY2d 445, 469 (1980). Respondent's conduct fell well below those standards.

A. Respondent shouted profanities at the Meles and engaged Joe Mele in a public street brawl.

Judges who engage in threatening verbal conduct outside of the courtroom have long been subject to public discipline, as "ethical codes and precedent set forth with no equivocation that Judges are accountable at 'at all times' for their

conduct – including their conversation – both on and off the Bench." *Matter of Backal*, 87 NY2d 1, 8 (1995) (internal citation omitted); *see, e.g.*, *Matter of Mahon,* 1997 Ann Rep of NY Commn on Jud Conduct at 104, 105 ("Even off the bench, angry and profane language by a judge is inappropriate"); *Matter of McKevitt,* 1997 Ann Rep of NY Commn on Jud Conduct at 106, 107 (misconduct for judge to call sheriff a "fucking asshole" off the record).

Here, Respondent's misconduct went far beyond that precedent. He not only repeatedly used profanity in a verbal altercation with his neighbor, but participated in a public brawl, fighting and wrestling bare-chested in the street for all the world to see. Video footage of the brawl and its aftermath shows Respondent in a violent, physical confrontation with Mr. Mele, wrestling him to the ground, and walking around with this torn shirt hanging down around his waist. The accompanying audio recording features Respondent calling Mr. Mele a "fucking asshole," a "fucker," and a "piece of shit" as well as yelling, "I'll fucking flatten your face" (Exs 2, 2-A; Ref Rep: 13). That conduct plainly "violated Respondent's obligation to conduct himself in a manner that does not detract from the dignity of judicial office" (Ref Rep: 8, quotation marks omitted).

Making matters worse, Respondent demonstrated absurdly poor judgment by initiating and repeatedly escalating the altercation. Respondent called 911 and verbally confronted the Meles because they had parked two vehicles "on opposite

sides of his driveway" (Ref Rep: 13). But as Officer Gehr testified and video evidence shows, neither vehicle blocked the driveway nor prevented Respondent from pulling in (Gehr: 171; Exs 11 at 00:01:12 – 00:01:16; 11-A, p 4; 41 at 07:00:53 – 07:01:10; *see also* Ex 40). Neither of the Mele's vehicles was ticketed (Gehr: 171). Respondent instigated this entirely unnecessary altercation to address a perceived problem which simply did not exist.

Instead of waiting on his property for the police to arrive and handle the matter, Respondent crossed the street to confront the Meles on their driveway, despite knowing the Meles' proclivity for violent confrontation and recognizing in the moment that crossing the street could lead to a physical fight (Respondent: 1358; Ex 2 at 07:14:28 – 07:14:33; 42; Ref Rep: 136-7, 10). When Mr. Mele predictably told Respondent, "Let's see . . . what you've got, tough guy . . . [t]ake your fucking shot," Respondent replied in kind instead of de-escalating and walking away (Ex 2-A, pp 3-4). Once again, this altercation was of Respondent's own making. Rather than wait on his property for the police to respond to his 911 call, he repeatedly steered the conflict into completely avoidable violence.

During the fight itself, Respondent goaded Mr. Mele to further violence when the two had disengaged and he could have walked away. When the two men first separated, Respondent said, "Come on . . . you think we're done," and "You want to go again, tough fucking guy" (Ex 2-A, pp 5, 9; Ref Rep: 13). Worse still,

after knocking Mr. Mele to the ground, Respondent became more aggressive, shouting "I'll fucking flatten your face again" (Ex 2-A, p 9; Ref Rep: 13), even as a neighbor pleaded with Respondent to stop (Exs 2-A, p 7). That public and profane escalation of avoidable violence is utterly inconsistent with Respondent's duty to "conduct his everyday affairs in a manner beyond reproach." *Kuehnel*, 49 NY2d at 469.

As the Referee correctly determined, although Respondent faced "extreme" provocation from the Meles," the "nature and extent of the provocation . . . does not in any appreciable manner diminish Respondent's obligation, as a judge, to conduct himself in [a] restrained and dignified manner" (Ref Rep: 8-9). "In fact, the provocation may even increase this obligation," especially given that Respondent "was well aware of the proclivities of the Meles to engage in aggressive behavior when he embarked on a course of conduct that contributed to the tumultuous eruption that ensued" (Ref Rep: 9). Given what he knew about the Meles, Respondent should have been especially mindful of his ethical obligations in the face of instigation, and the fact that he crossed the street to confront Joe Mele anyway aggravates rather than mitigates his misconduct.

B. <u>Respondent physically shoved and verbally threatened responding police officers</u>.

When a pair of police officers arrived on [redacted] Avenue, Respondent – far from coming to his senses and cooperating – redirected his aggressive behavior

toward them. When Officer Gehr decided to take Ms. Grisanti into custody for interfering with the investigation and attempted to handcuff her, Respondent took it upon himself to intervene: he walked right up to Gehr, placed both hands on Gehr's "upper body," and "shoved" (Exs 11 at 00:01:50 – 00:01:52; 12 at 00:01:14 – 00:01:17; 43; Ref Rep: 15). Officer Muhammad responded to the physical threat immediately, placing Respondent in a bear hug and admonishing, "Keep your hands off a cop . . . Do not fight a police officer" (Exs 11 at 00:01:53 – 00:01:55; 11-A, pp 6-7; 12 at 00:01:18 – 00:01:33; 12-A, pp 4-5; Ref Rep: 15).

Since a judge who nonviolently thwarts an officer from effectuating an arrest is subject to discipline (*Matter of Blackburne*, 7 NY3d 213 [2006]), the same must be true for a judge who physically shoves an officer doing the same (Ref Rep: 15). Though that misconduct is so egregious that no precedent is necessary for the proposition, Respondent unfortunately has forced the Commission to create it.

One would think that, after shoving an officer and finding himself physically restrained for it, Respondent would show contrition. Instead, he angrily pointed and yelled at the police while threatening that the officers would "be sorry" and "have a problem" if they arrested his wife and that they "better get off [his] fucking wife" (Exs 11 at 00:02:10 – 00:02:13; 11-A, p 7; 12 at 00:01:34 – 00:02:16; 12-A, pp 5-6; Ref Rep: 15). Those plain threats to police officers effecting lawful duties

were beyond inappropriate for a judge, who – by virtue of his office – is charged with upholding the law. *Cf Blackburne*, 7 NY3d at 213.

The Commission should reject the Referee's conclusion that those statements did not constitute "threats," but merely "conveyed Respondent's ardent belief that his wife was improperly detained and further detention would lead to controversy" (Ref Rep: 9-10). *See Matter of Marshall*, 8 NY3d 741, 743 (2007) (Commission is not "bound to accept the Referee's findings").

First, the Referee's interpretation of Respondent's motivation does not categorically make the words unthreatening; the two are not mutually exclusive. Second, the Referee made that finding in part because "neither recipient of these remarks testified that he was intimidated or threatened by these comments" (Ref Rep: 10) – a conclusion that misapprehends the record and, in any event, answers the wrong question. The issue is not whether these seasoned officers were personally intimidated by Respondent's comments, but whether Respondent intended to influence the officers' conduct by suggesting that they might face negative consequences if they followed through with an arrest. Inasmuch as Respondent had just told Muhammad and Gehr that his son and daughter were police officers, it is difficult to interpret Respondent's comments that the officers were "going to be sorry" and were "going to have a problem" any other way. Indeed, that is plainly how Muhammed interpreted them, given his immediate

response, "We're not doing that. We're not <u>threatening</u> that" (Ex 12-A, p 6, emphasis added), and his subsequent hearing testimony that he considered those comments "empty <u>threats</u> to [him] personally" (Muhammad: 271, emphasis added). All told, given that Muhammed understood Respondent's threat for what it was, and since Respondent's tortured attempts at the hearing to explain otherwise fell flat,[15] the Commission should find that Respondent threatened the officers.

In any event, classified as "threats" or not, a judge plainly violates the Rules and undermines public trust and confidence in the judiciary by telling officers that they would "be sorry" for arresting the judge's wife and had "better" accede to the judge's demands to back off. The Referee recognized as much, finding these remarks "improper and unseemly" (Ref Rep: 10). Thus, Respondent's aggressive interactions with the police, following the brawl, violated the Rules (Ref Rep: 8).

C. <u>Respondent repeatedly invoked personal relationships with BPD officers and the Mayor of Buffalo in an apparent bid for special treatment</u>.

After shoving Officer Gehr and promising that the officers "would be sorry" did not convince them to unhandcuff his wife, Respondent started dropping names: he told the officers that his son and daughter were BPD officers, lied that BPD

[15] Respondent testified that he meant that the officers would feel sorry upon reflection, but that is belied by the aggressive tone and tenor of Respondent's voice as heard on the audio recording. Moreover, when asked to explain what he meant by "You better get off my fucking wife," Respondent inexplicably said that he did not consider the word "better" to "have any meaning" (Respondent: 1392) – a clear indication that he knew that statement was indefensible.

Deputy Commissioner Gramaglia was his cousin, and touted his "good friends[hip] with Byron Brown," Buffalo's mayor (Exs 11-A, pp 18, 22; 12-A, pp 7, 15; Ref Rep: 15-16).[16] These gratuitous references to Respondent's personal and political connections constituted additional misconduct.

Every judge has "a duty to conduct himself in such a manner as to inspire public confidence in the integrity, fair-mindedness and impartiality of the judiciary." *Matter of Esworthy,* 77 NY2d 280, 282 (1991). A judge who makes repeated representations to law enforcement that he has personal relationships with people of special influence – particularly at a time when he is under police investigation – violates that duty. Indeed, Respondent's conduct suggests that he wrongly believes "there are 'two systems of justice, one for the average citizen and another for people with influence,' and that those who have the right 'connections' can manipulate the system for their personal benefit." *Matter of Dixon,* 2017 Ann Rep of NY Commn on Jud Conduct at 100, 113; *see also Matter of Schilling*, 2013 Ann Rep of NY Commn on Jud Conduct at 286, 299.

By repeatedly dropping names as he did, inventing a familial relationship with a deputy commissioner, and explicitly asserting that he was going to call his children's lieutenants (Exs 11-A, pp 18, 22; 12 at 00:02:24 – 00:02:28; 12-A, p 7;

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[16] As it turned out, that was not the first time Respondent had dropped names that day to try to get what he wanted. Indeed, when he called 911 to try to get the Meles' cars ticketed or towed, he gratuitously told the operator that his children were police and in the fire department.

Ref Rep: 15), Respondent demonstrated a misguided sense of entitlement and clear desire to pressure Officers Gehr and Muhammed to afford him and his wife special treatment. Indeed, the clear import of these name-drops was that the officers should accede to Respondent's wishes because of his personal connections, including to superior officers and political figures. Respondent made that intent even clearer when he subsequently asked the officers to unhandcuff his wife as a "favor" (Ex 11-A, p 23). As the Referee correctly determined, all of that was "a continuation of [Respondent's] improper and unseemly attempt to obtain preferential treatment by familial and political connections," which constituted judicial misconduct (Ref Rep: 8, 10).

At the hearing, Respondent aggravated his misconduct by refusing to acknowledge he was wrong and accepting responsibility (*see Matter of Ayres*, 30 NY3d 59, 65 [2017]). Instead, Respondent incredulously insisted that he was simply "making conversation" and telling the officers that he empathized with their work (Respondent: 1225, 1403). But the timing and context of the name-drops – right after his threats had failed and his wife was being put in the police car – undermine that explanation. Moreover, the substance of Respondent's remarks – a threat to call superior officers, a fabrication of a familial relationship with a BPD Deputy Commissioner, and a pronouncement that he was "good friends" with the mayor – could not reasonably be construed as benign conversation during such a

high-stakes moment. Indeed, Officer Hy recognized as much, remarking that Respondent was "dropping everybody's name with a badge," "expecting special treatment," and making the police "look dirty" (Exs 11-A, p 26; 12-A, p 22). There is no basis for the Commission to view those remarks differently.

D. Respondent aggravated his misconduct by refusing to concede facts clearly established by video.

The Court of Appeals has made clear that a judge's "misconduct is compounded" when he "fail[s] to recognize [his] breaches of our ethical standards" and "continue[s] to minimize the import of his actions" during Commission proceedings. *Ayres*, 30 NY3d at 65; *see also Matter of Astacio*, 32 NY3d 131, 136 (2018). Respondent did precisely that here.

Respondent set the Mele altercation in motion by calling 911 to report that "two of [his neighbor's vehicles were] blocking [his] driveway," and "when [he] came in, [he] almost hit 'em" (Exs 1; 1-A, p 1). But video footage unmistakably demonstrates that the Meles' vehicles were not blocking Respondent's driveway, and that he was able to pull into the driveway and park in a single, smooth movement (Ex 41 at 07:00:53 – 07:01:10; *see also* Ex 40). Despite the video evidence, Respondent doubled down at the hearing, testifying that he was unable to pull in "straight," and instead had to "maneuver" his car "at an angle" to enter his driveway (Respondent: 1338). Respondent's refusal to concede what the video

clearly shows establishes that he "continue[s] to minimize the import of his actions." *Ayres*, 30 NY3d at 65.[17]

*   *   *

In sum, Respondent violated a host of Rules in connection with the street brawl he instigated and escalated on June 22, 2020, as well as his violent and aggressive interactions with responding police officers in the aftermath of the fighting.

POINT II

RESPONDENT REPEATEDLY PRESIDED OVER CASES HANDLED BY AN ATTORNEY WHO OWED HIM A SUBSTANTIAL AMOUNT OF MONEY, WITHOUT DISCLOSING THE FINANCIAL RELATIONSHIP.

In 2015, attorney Matthew Lazroe agreed to buy Respondent's law practice for $10,000 down and $365 per month for the next four years. Respondent did not put Mr. Lazroe on his recusal list upon becoming a judge, and he presided over eight cases in which Mr. Lazroe represented one of the parties while Mr. Lazroe was still making payments to Respondent, or within two years of the final payment. At no point did Respondent disclose his financial relationship with Mr.

[17] Relatedly, while Respondent claimed at the hearing to accept responsibility for the brawl, it is noteworthy that in the immediate aftermath of the fight, he repeatedly lied to the police to deflect blame upon everyone else by falsely claiming that he was in his house when the Meles attacked his wife. That pattern of dishonesty as to that critical fact demonstrates that Respondent chose to accept responsibility only after lying to evade it had proved unsuccessful, and thus undercuts the sincerity of his acceptance.

Lazroe to any of the parties in those eight cases, over the course of which Respondent awarded more than $8,000 in fees to Mr. Lazroe (Ref Rep: 17-20).

A judge – subject to disclosure and remittal – must "disqualify himself . . . in a proceeding in which the judge's impartiality might reasonably be questioned," including where "the judge knows that he . . . has an economic interest . . . in a party to the proceeding or has any other interest that could be substantially affected by the proceeding." Rules 100.3(E)(1)(c). A judge also must minimize the risk of conflict between his judicial obligations and extrajudicial duties by refraining from engaging in financial and business dealings that may be reasonably perceived to exploit his judicial position, as well as refraining from involving himself in a continuing business relationship with a lawyer likely to come before the court on which the judge serves. Rules 100.4(D)(1)(a), 100.4(D)(1)(c). Respondent committed judicial misconduct by failing to disclose his financial arrangement with Mr. Lazroe, while at the same time issuing rulings favorable to Mr. Lazroe's clients and signing orders that paid him thousands of dollars in attorney's fees.

The Court of Appeals and the Commission have repeatedly disciplined judges for violating these Rules. *See, e.g.*, *Matter of Doyle*, 23 NY3d 656 (2014) (judge repeatedly presided over cases in which a close personal friend and the judge's personal attorney appeared as counsel for one of the parties, without disclosures); *Matter of Pulver*, 2005 Ann Rep of NY Commn on Jud Conduct at

203, 208 ("It was improper for respondent to engage in continuing business and financial dealings with an attorney appearing in respondent's court . . . at a time when respondent and the attorney were business partners"); *Matter of Torraca*, 2001 Ann Rep of NY Commn on Jud Conduct at 125, 126 (disciplining judge for presiding over cases involving an attorney who was making payments to the judge in connection with a business agreement).

Here, as in *Torraca*, Respondent presided over Mr. Lazroe's cases "[d]uring a time when [the] attorney . . . was making payments to [R]espondent" in connection with a "business dealing[ ]," and without making a "disclosure to any of the opposing parties." *Torraca*, 2001 Ann Rep at 126. Specifically, while Mr. Lazroe was paying Respondent $365 per month, Respondent presided over:

- *Bayview Loan Servicing, LLC v Mary Lee Fornes et al.*, in which Respondent signed an order discontinuing the case against Mr. Lazroe's client after Mr. Lazroe's name had appeared as the defendant's attorney on several case documents (Ex 16, pp 9-11, 13-14; Lazroe: 296; Ref Rep: 20);

- *Buffalo Seminary v Stephanie Satterwhite*, in which Respondent signed an order upon Mr. Lazroe's affidavit, awarding his client nearly $14,000 (Ex 29, p 39; Ref Rep: 20);

- *Matter of Application of M[redacted] F[redacted]*, in which Respondent signed an order appointing Mr. Lazroe as a court evaluator, presided over a proceeding in which Mr. Lazroe appeared before Respondent, and directed that Mr. Lazroe be paid more than $2,000 (Ex 17, pp 8-9, 44-45, 51; Lazroe: 305; Ref Rep: 20);

- *Trifera, LLC v Morrison, Unknown Heirs*, in which Respondent appointed Mr. Lazroe as guardian *ad litem* and directing that he be paid $250 (Ex 18, pp 9-10, 12; Ref Rep: 20); and

- *Federal National Mortgage Association v Anderson, et al*., in which Respondent appointed Mr. Lazroe as guardian *ad litem* in a mortgage foreclosure case, and ultimately ordered that Mr. Lazroe be paid $600 (Ex 19, pp 4-5, 7, 16, 22; Ref Rep: 20).

As in *Torraca*, "Such conduct is contrary to the ethical rules which prohibit a judge from engaging in business dealings that cast reasonable doubt on the judge's capacity to act impartially and that involve the judge in frequent transactions or continuous business relationships with lawyers or others likely to come before the judge's court." *Torraca*, 2001 Ann Rep at 126.

Additionally, for two years following the final payment, Respondent was required to disclose his relationship with Mr. Lazroe in any case that Mr. Lazroe had before Respondent. Advisory Comm on Jud Ethics Ops 05-130(B), 06-62. Respondent presided over the following cases without making any disclosures:

- *Greater Woodlawn Federal Credit Union v Charles Pachuki et al*, in which Respondent signed an order appointing Mr. Lazroe as referee and setting his fee at $150 (Ex 20, pp 11-14; Ref Rep: 20);

- *Matter of the Application of W[redacted] [redacted]. L[redacted]*, in which Respondent appointed Mr. Lazroe as court evaluator, presided over multiple proceedings at which Mr. Lazroe appeared before Respondent, and directing that Mr. Lazroe be paid over $5,000 (Ex 21, pp 9, 11, 31, 33, 70-71, 31; Lazroe: 306; Ref Rep: 20); and

- *Rasheena Jones v Jerry Gradl Motors, Inc*., in which Mr. Lazroe represented the plaintiff and had several conferences with Respondent (Ex 22, p 2; Lazroe: 348; Ref Rep: 20).

As the Referee wrote, “Respondent was obligated, at a minimum, to provide the litigants and attorneys notice of his continuing receipt of payments from Mr. Lazroe,” which created at least “the appearance of impartiality” (Ref Rep: 18). He failed to do so, even knowing the importance of a recusal list from his judicial institute training and through discussion with his Administrative Judge and/or the District Executive, and despite being cognizant enough to place “a lot of [other] individuals” on his recusal list (Respondent: 1238-40, 1310-12).

Perhaps Mr. Lazroe slipped through the cracks because – as Respondent contended – he “did not know of his obligation to inform the parties of Mr. Lazroe’s connection with him” (Ref Rep: 18), or because – as he testified – he did not always read documents before signing them and sometimes signed blank appointment orders that would have attorney names added after the fact (Respondent: 1316, 1318). But as the Referee correctly determined, such excuses “a[re] all irrelevant as to whether he was obligated to give notice” (Ref Rep: 18), and indeed doubly troubling, as signing official documents and orders without reading them is misconduct in and of itself.

All told, the fact that Respondent presided over as many as eight matters involving Mr. Lazroe, repeatedly permitted Mr. Lazroe to appear before him, and facilitated remuneration to Lazroe and his clients despite a business relationship that financially indebted Mr. Lazroe to Respondent, reveals Respondent’s utter

disregard for his ethical obligations and gives rise to the inevitable appearance that he was using the powers of his office to put money in the hands of a lawyer who then or recently owed him money. That "lack of sensitivity to the ethical standards for judges . . . warrants public discipline" (Ref Rep: 18).

POINT III

RESPONDENT FAILED TO PROPERLY REPORT $15,000 IN INCOME ON HIS FINANCIAL DISCLOSURE STATEMENT, AS WELL AS OVER $43,000 IN INCOME TO THE CLERKS OF THE HIS COURTS, AS REQUIRED BY LAW.

As a judge of a court of record, Respondent is required each year to file a FDS with the Ethics Commission for the UCS. *See* 22 NYCRR § 40.2(a); Rule 100.4(I). Additionally, Respondent is also required each year to report to the clerk of each court on which he serves the date, place, and nature of any activity for which he received compensation of more than $150, along with the name of the payor and the amount. Rule 100.4(H)(2). Respondent violated those rules by failing to report $15,000 in income from the sale of his law firm on his 2015 FDS, and over $43,000 in income to the clerks of his courts from 2015 through 2019.

A. Respondent filed an inaccurate and misleading FDS in 2015.

The information provided by a judge on his financial disclosure forms "is available to the public and, among other things, enables lawyers and litigants to determine whether to request a judge's recusal." *Matter of Alessandro*, 13 NY3d 238, 249 (2009); *see also Matter of Miller*, 35 NY3d 484, 491 (2020).

Accordingly, "[j]udges must complete their financial disclosure forms with diligence, making every effort to provide complete and accurate information." *Alessandro,* 13 NY3d at 249; *see also*; *Matter of Miller*, 2021 Ann Rep of NY Commn on Jud Conduct at 197, 213, *aff'd* 35 NY3d at 484.

The Court of Appeals and the Commission have consistently held that a judge's failure to file accurate and complete financial disclosure forms constitutes misconduct. *Miller*, 35 NY3d at 491; *see also Alessandro*, 13 NY3d at 249; *Matter of Anderson*, 2013 Ann Rep of NY Commn on Jud Conduct at 75, 89-90. That an inaccurate filing may have resulted from a mistake does not mitigate or excuse the misconduct, because "even if inadvertent, [faulty filings] create the appearance that [the judge] was intentionally concealing his extra-judicial activity." *Matter of Ramich*, 2003 Ann Rep of NY Commn on Jud Conduct at 154, 159. Thus, even "careless" or negligent omissions from a judge's FDS warrant discipline. *See Alessandro*, 13 NY3d at 248-49 (admonishing a judge who made "careless" omissions from his FDS forms).

Here, the FDS Respondent filed for 2015 did not include the majority of the compensation he received from the sale of his law practice (Ref Rep: 21-24). Mr. Lazroe and Mr. Pecoraro paid Respondent a total of $15,000 as a down payment in May of 2015, and then $4,380 in monthly installments that year (Exs 14; 15; Respondent: 1234-35; Ref Rep: 23-24). Although Respondent reported the

installment payments, he failed to report the $15,000 down payment in his responses to questions 12(a), 12(b), 13 and 18 (Ex 23; Ref Rep: 23-24).

At the hearing, Respondent acknowledged that the $15,000 down payment was missing from his 2015 FDS but claimed that he did not include it because "at the time I got the down payment, I was not a Judge" (Respondent: 1254; Ref Rep: 22). But that is simply untrue: Respondent signed an oath card and became a Court of Claims Judge on May 14, 2015, then signed the law practice sales agreement on May 18, 2015, and then received the down payment money from Mr. Lazroe on May 20, 2015 (Exs 14; 15; Respondent: 1138). It is also irrelevant, as the Referee correctly determined, because "the fact remains that the FDS was inaccurate when filed" (Ref Rep: 22). Indeed, given that the purpose of an FDS filing is to alert the public to potential conflicts of interest, the fact that a person paid a judge thousands of dollars shortly before the judge took the bench, and within the same reporting year, falls squarely within the reporting requirement.

As to question 13, where Respondent identified attorneys Pecoraro and Lazroe as the source of income for the "sale of law office" but indicated that he received "under $5,000" (Ex 23), Respondent rationalized that he disclosed the down payment in answering question 13, where he wrote that he received between $20,000 and $60,000 from "law office closed May 2015, clients" (Ex 23; Respondent: 1255). But that makes no sense, both because $15,000 is not between

$20,000 and $60,000, and because he received the down payment from the purchasing attorneys, not from his "clients" or from the mere closure of the office. Finally, as to question 18, where Respondent listed attorneys Pecoraro and Lazroe as debtors for the "sale of law firm" but listed the amount received as "under $5,000.00" (Ex 23), Respondent acknowledged that he should have selected the "category of amount" that reflected $5,000 to $20,000 (Respondent: 1294).

To be sure, Respondent amended his 2015 FDS in June 2021 (Resp Exs S, U, W, Y; Respondent: 1262). However, that amended filing does not excuse the impropriety of his failing to file accurately in the first place, particularly where he filed the amended form only after learning of the Commission's investigation. *See Miller*, 35 NY3d at 491 (failure to amend tax returns until under investigation by the Commission "impedes the purpose of these disclosure forms" and constitutes misconduct); *Matter of Dier*, 1996 Ann Rep of NY Commn on Jud Conduct at 79, 80-81 (sustaining charge of failure to report income notwithstanding that the judge later amended his filing). Thus, Respondent's failure to disclose the $15,000 down payment on his 2015 FDS constitutes misconduct (Ref Rep: 21-22, 25).

B. Respondent failed to report any income from his law sale to the clerks of his courts, as required by Rule 100.4(H)(2).

In 2015, Respondent was appointed to the Court of Claims and the Erie County Supreme Court. From May 2015 through June 2019, in connection with the sale of his law practice, Respondent received over $27,000 from Mr. Lazroe

and nearly $16,000 from Mr. Pecoraro (Exs 14; 15; Respondent: 1234-35). Rule 100.4(H)(2) required Respondent to report that income on an annual basis to the clerks of his two courts, as it constituted extrajudicial income in excess of $150. His failure to do so from 2015 through 2019 – which he admitted at the hearing (Respondent: 1263, 1303-04) – constitutes misconduct. *Miller*, 35 NY3d at 488, 491 (disciplining judge for *inter alia* failing to report extrajudicial income to clerk of court); *Matter of Ramich*, 2003 Ann Rep at 155, 159 (same).[18]

Respondent sought to excuse this lapse by claiming that he "wasn't familiar with that Rule" (Respondent: 1263, 1303-04). But that assertion is hard to believe, given that Respondent's Administrative Judge sent an email in 2021 to all the judges in Respondent's judicial district reminding them of the 22 NYCRR 100.4(H)(2) reporting requirement, and noting that the District Executive had sent a similar reminder on a yearly basis. Though Respondent acknowledged receipt of that email but denied ever getting a reminder from the District Executive, he could not explain why his Administrative Judge would have noted the existence of the annual reminders if they had not been sent (Respondent: 1308). The more likely scenario is that Respondent indeed got annual reminders from the District Executive, but either ignored or disregarded them.

[18] In his report, the Referee made no findings at all as to this aspect of Charge III. Respondent does not dispute these factual allegations (Respondent: 1263, 1303-04), which were overwhelmingly proved at the hearing, and which Commission thus should find.

In any event, Respondent's professed ignorance of the annual reporting requirement is unavailing. *Miller*, 35 NY3d at 488, 491 (disciplining judge for failure to file annual reports with the clerk of his court, notwithstanding the judge's claim "that he was not aware of the requirement"); *see generally Matter of VonderHeide*, 72 NY2d 658 (1988). And, although Respondent testified to his belief that because he filed FDS forms, "that's sufficient . . . and . . . 100.4(H)(2) does not apply to [him]" (Respondent 1266), the Court of Appeals rejected that very claim in *Miller*, imposing discipline for a 100.4(H)(2) violation where the judge "believed his obligations were satisfied by the Ethics Commission FD[S]." *Miller*, 35 NY3d at 488, 491. Accordingly, Respondent's failure to annually report extrajudicial income with the clerks of his courts constitutes misconduct.

POINT IV

RESPONDENT'S MISCONDUCT WAS EGREGIOUS AND COMPELS HIS REMOVAL FROM JUDICIAL OFFICE.

Respondent's violent and disgraceful misconduct surrounding the Mele brawl, his repeatedly presiding and awarding substantial fees to an attorney without disclosing his profound financial conflict with that attorney, and his repeated inattention to important financial reporting requirements, warrant his removal from judicial office.

As the Court of Appeals held in *Matter of Hedges,* 20 NY3d 680 (2013), "[b]ecause 'relatively slight improprieties subject the judiciary as a whole to public

criticism and rebuke,' it is essential that we consider 'the effect of the Judge's conduct on and off the Bench upon public confidence in his [or her] character and judicial temperament.'" *Id. at* 677 (quoting *Matter of Aldrich*, 58 NY2d 279, 283 [1983]). In this case, the negative effect of Respondent's display of violence and profanity on the public's perception of his judicial temperament it obvious and profound. All told, Respondent "exhibited a 'pattern of injudicious behavior . . . which cannot be viewed as acceptable conduct by one holding judicial office,'" and he should be removed. *Matter of Jung*, 11 NY3d 365, 374 (2008) (internal citation omitted).

Respondent's uncontrolled behavior on June 20, 2022, revealed far more than poor judgment, as he started and escalated an entirely unnecessary fight that led to his bare-chested street brawl with a neighbor and ultimately resulted in his arrest. That evening, he:

- confronted Joe Mele – whom he knew to be combative – over a non-existent parking dispute of Respondent's own invention;
- crossed the street to the Meles' property, knowing full-well that doing so could prompt a physical altercation;
- yelled at the Meles using explicit language in public, and then physically brawled with Mr. Mele in the street as neighbors looked on;
- paraded around the street shirtless while taunting Mr. Mele to get up and continue fighting, after Mr. Mele had fallen to the ground;

- physically shoved a responding police officer to intentionally interfere in the officer's lawful performance of his lawful duties;
- repeatedly threatened the officers when they refused to accede to Respondent's demands; and
- sought special treatment from the police by asserting various familial relationships with police personnel, inventing a fictious familial relationship with the Deputy Commissioner of the BPD, and gratuitously touting his friendship with the Mayor of Buffalo.

The public can have no confidence whatsoever in a judge who put on such a deranged display of violence and aggression before trying to threaten and name-drop his way out of trouble, nor in a system of government that permits a judge who committed such blatant misconduct to remain in office – particularly where the entire event was captured and has been widely viewed on video.[19] All told, Respondent demonstrated a fatal lack of appreciation for the fundamental obligations of a judge to promote respect for the law, and act with the requisite dignity so that the integrity of the judiciary is preserved.

Respondent's failure to disclose his financial relationship with Mr. Lazroe in eight cases in which Mr. Lazroe represented a party, is itself removable. As the Court of Appeals has repeatedly expressed, a judge may face removal for a

[19] The parties stipulated at the hearing that the Mele altercation received considerable media attention (Grisanti: 1418, 1420). Notably, some of the video footage is already in the public sphere on YouTube. As of the date of this writing, at least three posted bodycam videos have been viewed a total of about 50,000 times. *See* www.youtube.com/watch?v=jDzMlt9R6eY; www.youtube.com/watch?v=iAvmpq-Y_uk; www.youtube.com/watch?v=CVKpyLdMSmI. Two of those videos are re-posts of television media coverage of the brawl.

"decision to hear a case" involving someone with whom the judge has a relationship, which is "no small matter" and may present at least "the appearance of bias or favoritism." *Matter of George*, 22 NY3d 323, 328 (2013) (removal for *inter alia* failing to disclose that a party before the judge was a friend and former employee); *see also Matter of Doyle*, 23 NY3d 656, 661 (2014) (removal for *inter alia* presiding over a matter involving the judge's former attorney); *Matter of LaBombard*, 11 NY3d 294, 298 (2011) (removal for *inter alia* presiding over a proceeding involving the judge's former co-worker's son). The facts here are more egregious than those in *George*, *Doyle*, and *LaBombard*, as Respondent not only presided repeatedly over cases involving an attorney who owed him money, but awarded that attorney thousands of dollars in fees while contemporaneously taking payments from him. The impropriety is severe, unmistakable, and seriously damaging to the judiciary. Respondent made his misconduct all the more egregious when he attempted to excuse his failure to recuse in cases involving Mr. Lazroe by admitting that he does not read everything he signs and sometimes signs blank appointment orders (Respondent: 1316-18).

Respondent's inaccurate 2015 FDS and total failure to report the extra-judicial income to the clerks of his courts from 2015 through 2019 reflect additional serious misconduct that, when viewed together with Charges I and II, further compel the sanction of removal. As the Court of Appeals recently held in

Miller, a "years-long delay in filing required local financial disclosure forms" pursuant to Rule 100.4(H)(2) and "failure to amend . . . [an] FD[S] until [the judge] was under investigation" by the Commission "impedes the purpose of these disclosure forms, which is, in part, to 'enable[ ] lawyers and litigants to determine whether to request a judge's recusal.'" 35 NY3d at 491 (quoting *Alessandro*, 13 NY3d at 249). Such a pattern of reporting failures, even if unintentional, may "go[ ] beyond mere carelessness and point[ ] to a pattern of disregard for [the judge's] ethical obligations." *Id.* That describes Respondent's misconduct here.

Finally, Respondent has refused to accept full responsibility for his misconduct – another factor that weighs in favor of removal. *Ayres*, 30 NY3d at 66; *see Matter of Astacio*, 32 NY3d 131, 136 (2018). Indeed, he continues to blame his behavior surrounding the Mele brawl on lousy neighbors, poor policing, and a misinterpretation of his name-drops of the mayor and assorted relatives in the BPD, both real and fictitious. Moreover, his shifting excuses as to why he did not include Mr. Lazroe on his recusal list or disclose his relationship with Mr. Lazroe in eight matters (*see* Comm Reply Brief to Referee: 16-18), and as to why he did not account for $15,000 in income on his 2015 FDS (Ref Rep: 22-24; *see* Answer ¶ RESPONSE #46), show his inclination to avoid rather than accept responsibility. Further, Respondent continues to assert – rather incomprehensibly – that his failure to report to the clerks of his courts thousands of dollars of extra-judicial income for

five consecutive years did not violate of the Rules, despite clear Court of Appeals precedent to the contrary. *Miller*, 35 NY3d at 451. All told, Respondent's refusal to hold himself accountable for his misconduct demonstrates a "failure to recognize and admit wrongdoing," which "strongly suggests that . . . we may expect more of the same" going forward should Respondent remain in office. *Matter of Bauer*, 3 NY3d 158, 165 (2004).

Respondent's various acts of misconduct are egregious in themselves. In the aggregate, they make it abundantly clear that he is unfit for office and should be removed. *Miller,* 35 NY3d at 491; *Matter of O'Connor,* 32 NY3d 121, 128-29 (2018).

CONCLUSION

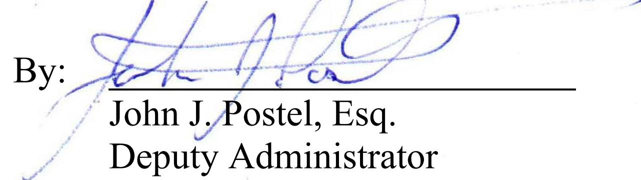
Counsel to the Commission respectfully requests that the Commission confirm all the Findings of Fact and Conclusions of Law in the Referee's Report and find that Charges I, II, and III are sustained, adopt additional findings and conclusions, and issue a determination recommending Respondent's removal from office.

Dated: July 14, 2023
Rochester, New York

Respectfully submitted,

ROBERT H. TEMBECKJIAN

Administrator and Counsel to the Commission on Judicial Conduct

By: 

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