

**STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT**

-----X
In the Matter of the Proceeding Pursuant :
to Section 44, subdivision 4, of the :
Judiciary Law in Relation to :

RICHARD H. MILLER, II, :

a Judge of the Family Court, Broome County. :
-----X

Sixth Judicial District Conference Room
Kilmer Building
31 Lewis Street, 5th Floor
Binghamton, New York 13901
January 7, 2019
9:27 AM

B e f o r e:

ROBERT A. BARRER, ESQ.
Referee

P r e s e n t:

For the Commission

CATHLEEN S. CENCI, ESQ.
Deputy Administrator

S. PETER PEDROTTY, ESQ.
Senior Attorney

ETEENA J. TADJIOGUEU, ESQ.
Staff Attorney

For the Respondent

PAUL DEROHANNESIAN, II, ESQ.
Attorney for Respondent
DerOhannesian & DerOhannesian
677 Broadway, Suite 707
Albany, New York 12207

DEBORAH A. SCALISE, ESQ.
Attorney for Respondent
Scalise & Hamilton LLP
670 White Plains Road, Suite 325
Scarsdale, New York 10583

A l s o P r e s e n t:

HON. RICHARD H. MILLER, II
Respondent

RYAN T. FITZPATRICK
Senior Investigator and FTR Operator

INDEX OF WITNESSES

For the Commission

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Mark Kachadourian, Esq.	21	76	68	222	240
D [REDACTED] L [REDACTED]	260	283	--	307, 317	313
Rebecca Vroman	321	333	--	--	--
Debbi Singer	355	376	--	402	--
Deborah Stone	410	430	419	458, 465	462
Barbara Saraceno	469	480	--	--	--
Robert Wedlake, Esq.	486	513	--	--	--
Louis Micha	521	530	--	--	--
Rachelle Gallagher	541	606	601	768	778

INDEX OF WITNESSES

For the Respondent

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Ofc. Jolene Payne	799	802	--	807	--
James Stilloe	856	867	--	--	--
Martin Shaw	908	913	--	--	--
Jerry Penna	922	935	--	951, 958	954
Richard Balles	964	--	--	--	--
Katherine Fitzgerald, Esq.	977	987	--	993	--
Sandra Conklin	997	1013	--	1016	1021
Artan Serjanej, Esq.	1024, 1100	1101	1047, 1064	1108	1111
Lisa Wojdat	1074	1090	--	1096	--
David Behal	1115	1151	1123	1176, 1184	1181
Sgt. Ronald Kreb	1196	1204	--	1207	--
Diane Marusich	1211	1226	--	--	--
Robin Dean	1242	1263	--	1274, 1283	1280
Hon. Richard H. Miller, II	1296	1431	1339, 1472	1486	1489

ii.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MR. FITZPATRICK: We are on the record.

2 THE REFEREE: Good morning, everyone. Before
3 we get started, can I have the appearances for the record for
4 the Commission?

5 MS. CENCI: Cathleen Cenci, Deputy
6 Administrator.

7 MR. PEDROTTY: Peter Pedrotty, Senior Attorney.

8 MS. TADJIOGUEU: Eteena Tadjogueu, Staff
9 Attorney.

10 THE REFEREE: And we have Ryan Fitzpatrick,
11 who is an investigator, who is running our audio recording
12 device. For the Respondent, Deborah? We're just--

13 MS. SCALISE: --Oh, I'm sorry. Deborah Scalise,
14 Scalise and Hamilton, 670 Post Road, Suite 325, Scarsdale,
15 New York, for the Respondent, the Honorable Richard
16 Miller.

17 MR. DEROHANNESIAN: Paul DerOhannesian,
18 DerOhannesian and DerOhannesian, 677 Broadway, Suite
19 707, Albany, New York 12207.

20 THE REFEREE: And the Respondent, Judge
21 Miller, is present as well. This is a hearing in the Matter of
22 Richard H. Miller, II, Broome County Family Court Judge,
23 pursuant to Section 44(4) of the Judiciary Law. My name is
24 Robert Barrer. I've been appointed by the Commission on
25 Judicial Conduct as a Referee to hear and report proposed

1.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 findings of fact and conclusions of law. These proceedings
2 are being digitally recorded by Mr. Fitzpatrick, who will go
3 on the record and off the record at my direction. We are
4 transcribing everything. In order to facilitate a clear and
5 accurate record, I'd ask that we not speak over each other,
6 that everyone identify themselves and speak clo-- slowly,
7 clearly and directly into your microphones. Please try
8 mov-- avoid moving away from the microphones and
9 talking over each other. If you have cell phones, please
10 place them on silent, so we don't interrupt each other. Mr.
11 Fitzpatrick will keep a running list of exhibits, which will
12 be included in the appendix to the transcript. The
13 Commission counsel will use numbers and the
14 Respondent's exhibit will be with letters. I will indicate on
15 the record what exhibits have been received and have not
16 been received. We will address stickers and notations on
17 the exhibits as we go forward. All of the exhibits will be
18 provided eventually to the Commission for its determination
19 and the audio recording will be transcribed. When the
20 transcripts are prepared, I will ask each of you to submit to
21 me proposed findings of fact and conclusions of law, and
22 I'd like you to do that by email, in Word documents, if
23 possible. If you use Word Perfect, that's fine, we can
24 convert them. I will have a discussion with you at the end
25 of the hearing about timing, but generally I'd like to get the

2.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 briefs 30 days after the transcripts are received. If you have
2 scheduling issues, we'll talk about them later. The rules of
3 evidence applicable to non-jury trials will apply. As a
4 result, I'm going to be a little bit more liberal in what I
5 receive, but I will certainly let you know in my report what
6 weight I give to things. You can make an opening
7 statement, it's not necessary, because we're non-jury. I
8 assure you, I've read all the materials that have been
9 submitted, the administrative complaint and the Answer. I
10 think I'm quite familiar with what the issues are. It won't
11 be necessary to stand at the podium or to stand when you
12 object. You're perfectly comfortable to do your
13 examinations from a seated position and to object from a
14 seated position here. I'll tell you my function as the
15 Referee is several fold. I want to run a fair hearing for all
16 concerned. I want the Commission to be able to present its
17 case. I want the Respondent to be able to present whatever
18 case he should decide to present, if any. I want to protect
19 the rights of the Respondent. I want to ensure that the truth
20 comes out, and I want to ensure that we protect the rights of
21 any witnesses who appear here. So, I think that we can
22 proceed. If you'd like to make an opening statement, you're
23 certainly welcome to do it. If you're asking me whether I'd
24 like it, I don't think it's necessary, but that's a hint, but it's
25 up to you. Ms. Cenci, would you like to make an opening

3.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 statement?

2 MS. CENCI: No. We'll waive, Your Honor.

3 MR. DEROHANNESIAN: We--

4 THE REFEREE: --Respondent?

5 MR. DEROHANNESIAN: We're not going to
6 make an opening statement, but we do want to put on the
7 record about the issue about the subpoenas.

8 THE REFEREE: Certainly.

9 MR. DEROHANNESIAN: I can give you--
10 Because we've had communication with one of the
11 witnesses.

12 THE REFEREE: Okay. Let's-- On this record, let
13 me just say that we had a telephone conference with counsel
14 on Friday morning, the 4th, and we discussed subpoenas
15 and subpoenas *duces tecum*. I did sign a volume of
16 subpoenas for Respondent. As to the subpoenas *duces*
17 *tecum*, I edited those and we received this morning a letter
18 from Gregory Gates, and I know that Respondent's counsel
19 has spoken with Mr. Gates and if you could make whatever
20 record you want about that subpoena, that would be great.

21 MR. DEROHANNESIAN: I will. I'm going to
22 actually mark this subpoena and the others. You said use
23 letters, right?

24 THE REFEREE: Yes, please.

25 MR. DEROHANNESIAN: And do you want me to

4.

(Hon. Richard H. Miller, II)

1 put my writing on it or do you want me to use stickers?

2 THE REFEREE: Do we have stickers, Mr.

3 Fitzpatrick? Why don't you give a group of stickers to Mr.

4 DerOhannesian and then we can let them mark whatever

5 they need to mark.

6 MS. SCALISE: Do you want them A, B, C, or do

7 you want like--

8 MR. DEROHANNESIAN: --Yeah.

9 MS. SCALISE: --A-1, A-2, A-3?

10 THE REFEREE: A, B, C, is fine. I think it makes

11 sense.

12 MS. SCALISE: Okay.

13 THE REFEREE: Honestly, I've never understood,

14 in 36 years of practice, why we have different letters and

15 numbers for different sides. Once an exhibit is entered, it's

16 everyone's exhibit, so that remains a mystery that probably

17 will never change.

18 MS. SCALISE: I would expect that it's because of

19 for purposes of identification. You don't want to have like

20 two IDs, one, you know, or two.

21 MS. CENCI: And, Your Honor, as requested, I did

22 pre-mark for identification all of the proposed Commission

23 exhibits, so--

24 THE REFEREE: --That's excellent. Thank you.

25 MS. CENCI: They've already-- They're designated

5.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 with numbers and then subdivision letters where they
2 pertain to a particular charge or matter.

3 THE REFEREE: That's fine. Thank you for doing
4 that. It'll make things a little more efficient. When I run
5 the world, we'll change that system.

6 MR. DEROHANNESIAN: I have another question
7 about the recording. When is the microphone on, and when
8 isn't it on?

9 THE REFEREE: That is an excellent question. I
10 don't know the answer. I think when we go off the record,
11 do you shut off the microphones?

12 MR. FITZPATRICK: Correct. They're on all the
13 time unless--

14 MR. DEROHANNESIAN: --So, while we're on
15 the record, my communications can be picked up by the
16 microphone?

17 THE REFEREE: Yes. So, please be careful if you
18 choose to communicate with your client. And I'm going to
19 give you the Gates letter, so you can mark that as well.

20 MR. DEROHANNESIAN: Yes. Good idea.
21 Separate letter or do you want to--

22 THE REFEREE: --Staple that--

23 MR. DEROHANNESIAN: --or B-1? Do you want
24 me to--

25 THE REFEREE: --Any way you'd like.

6.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 MR. DEROHANNESIAN: Okay.

2 MS. CENCI: You're Honor, with respect, isn't this
3 a matter that's more appropriate for Respondent's case?

4 THE REFEREE: Yeah. I--

5 MS. CENCI: --I'm not sure why we're proceeding
6 with Respondent's subpoenas when they're not even
7 returnable today and it's the Commission's case.

8 THE REFEREE: We can do it on another break. Is
9 there anything else that we need to take up before we start
10 with the evidence?

11 MR. DEROHANNESIAN: Well, I think it is-- The
12 reason I think it's important as it relates to whether
13 documents are going to be produced in a timely way and the
14 scope and I think Mr. Gates offered--

15 THE REFEREE: --He's not-- he's not a witness
16 this morning, so let's get-- let's get the Commission's case
17 going. We can take care of this on a break. Do you have
18 anything that pertains to the beginning of the proceeding
19 before we start?

20 MS. SCALISE: Yes, we do, and I'm going to
21 address that.

22 THE REFEREE: You can sit, if you'd like.

23 MS. SCALISE: I can't, I argue better standing.
24 Sorry, it's training.

25 THE REFEREE: Okay.

1 MS. SCALISE: So, we sent you an email yesterday
2 with respect to whether the witnesses can have counsel. I
3 don't know if he has come with counsel, but I wanted to
4 address it before we start. I wanted to--

5 THE REFEREE: --I'll address that if we-- Who's
6 the first witness?

7 MS. CENCI: It depends up-- It's either Mr.
8 Kachadourian or Ms. Gallagher.

9 THE REFEREE: Okay. Do either of them have
10 counsel with them?

11 MS. CENCI: Not to my knowledge.

12 THE REFEREE: Okay. Then it's a moot point.

13 MS. SCALISE: Okay. I just wanted to add one
14 thing that is a fact--

15 THE REFEREE: --Yes.

16 MS. SCALISE: --that we didn't have, so you can
17 think about it. The judge, after reviewing what I had
18 already sent, informed me that there was a third publication
19 of information about proceedings and that would have been
20 on December 8th of 2017. There were witnesses before the
21 Commission and the very next day, on December 9th of
22 2017, it was publicized on a local television station.

23 THE REFEREE: Okay.

24 MS. SCALISE: So, that's the only thing I wanted
25 to add. Thank you.

1 THE REFEREE: All right. Thank you.

2 THE RESPONDENT: All of the stations.

3 MS. SCALISE: I'm sorry, all of the stations.

4 THE RESPONDENT: All of the stations.

5 THE REFEREE: Yes. All right. Let's proceed.

6 MS. CENCI: Yes, Your Honor. As I indicated in
7 my discovery letter of November 9, 2018, I'd like to move
8 to amend paragraph 14 of the Formal Written Complaint.
9 There's a typographical error.

10 THE REFEREE: If you could just state what the
11 error is and what your proposed--

12 MS. CENCI: --Yes.

13 THE REFEREE: --amendment is?

14 MS. CENCI: The reference-- the first reference on
15 the end of the second line to "Ms. L [REDACTED]" should be
16 amended to read, "Ms. Gallagher."

17 MS. SCALISE: Paragraph 14.

18 MS. CENCI: So, the sentence would now read,
19 "On various occasions in chambers in 2017, Respondent
20 spoke with Mr. Iannone on the telephone with the speaker
21 function activated, such that Ms. Gallagher and Mr.
22 Kachadourian heard graphic discussions between
23 Respondent and Mr. Iannone," et cetera.

24 THE REFEREE: All right. I-- Is-- And is there
25 any other amendment to paragraph 14?

1 MS. CENCI: No.

2 THE REFEREE: All right. Any objection from
3 Respondent's counsel?

4 MR. DEROHANNESIAN: No, Your Honor.

5 THE REFEREE: All right. So, we'll consider that
6 amended.

7 MS. CENCI: Okay. Thank you.

8 THE REFEREE: All right. Are you ready to
9 proceed with your first witness?

10 MS. CENCI: Before doing so, Your Honor, I
11 would like to address the issue of the stipulations to the
12 exhibits, which I would offer into evidence. I don't think
13 you had received a copy of this letter, but I did receive a
14 response to my request for stipulations to the foundation of
15 the documents which were provided in discovery. I got that
16 on January 2nd in the evening. That was last Wednesday,
17 and I haven't had a chance to further discuss the objections
18 with Respondent's counsel, and I'm not sure exactly what,
19 in all cases, the objection is.

20 THE REFEREE: Do we need to address this before
21 the first witness comes?

22 MS. CENCI: Well--

23 THE REFEREE: --The reason I ask is if we've got
24 somebody here and it's not going to be dependent on the
25 stipulation, then maybe we should get that witness going

10.

(Hon. Richard H. Miller, II)

1 and cover this on a break? I haven't seen it, so I really
2 don't-- I don't know what you've asked--

3 MS. CENCI: Yes.

4 THE REFEREE: --to be stipulated to and I don't
5 know what the response is.

6 MS. CENCI: I think you did-- You did-- You may
7 not recall, but in my discovery letter, which I did copy you
8 on of November 9th, all I asked was that there be a
9 stipulation to the authenticity of the documents, not that
10 they're admissible or that any other substantive objection be
11 waived. I'm simply asking for a stipulation that these
12 documents are what they purport to be, and then we could,
13 you know, deal with the substantive objections. I'm
14 perfectly willing to hold off on this if you'd prefer to go
15 ahead with the first witness.

16 THE REFEREE: Well, if I could just hear briefly
17 from Respondent's counsel? Is there an issue we need to
18 address?

19 MR. DEROHANNESIAN: I don't think so. Not
20 now. I think as we get the exhibit, we'll tell you if we have
21 an objection or not, to that exhibit. In many--

22 THE REFEREE: --Okay. Do you have a
23 foundational witness who would be coming today?

24 MS. CENCI: Your Honor, there are various
25 documents. The first set of documents are certified

11.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 dispositions from courts of criminal records. First of all, I
2 don't know what the objection is there, because they're
3 certified, they're self-authenticating.

4 THE REFEREE: Right. I mean, if they're certified,
5 I'm going to take them.

6 MS. CENCI: Okay. So, and then, with respect to
7 some of the estate records, as I understand or I'm trying to
8 understand the nature of the objection, it has not to do with
9 the authenticity, but rather with the date of the exhibits, and
10 perhaps counsel could articulate the objection more--

11 THE REFEREE: Which charge is that?

12 MS. CENCI: Well, it's all the estate records. If I--
13 Perhaps, could I do this, Your Honor? What I have done as
14 I indicated-- I prepared-- So, perhaps we could mark this
15 as Referee's exhibit, whatever number or letter you like,
16 and I'll give a copy also--

17 THE REFEREE: --All right.

18 MS. CENCI: I've just simply marked-- pre-marked
19 the exhibits which were furnished, with numbers and letters
20 so that they can be identified.

21 THE REFEREE: Okay. I think that'd be a
22 Commission exhibit, it wouldn't be my exhibit. But that's
23 okay, so this is something that you've provided to
24 Respondent with a request that these be stipulated to, or is
25 this your entire exhibit list?

(Hon. Richard H. Miller, II)

1 MS. CENCI: It's basically the Schedule A to the
2 discovery letter and I've just simply added exhibit numbers
3 to the documents.

4 THE REFEREE: All right. Let's make that a
5 Commission exhibit and pick any-- whatever the last
6 number or letter is.

7 MS. CENCI: This goes through Exhibit 10C, so I
8 guess it would be 11.

9 THE REFEREE: Sure. That'd be fine.

10 MS. SCALISE: With respect to that, this is for
11 identification purposes?

12 THE REFEREE: Yes. It's just for identification.

13 MS. CENCI: So, Your Honor, what I would
14 purport to do would be to offer the exhibits into evidence as
15 they are described in Commission Exhibit 11.

16 THE REFEREE: That's fine. We can--

17 MS. CENCI: --Okay.

18 THE REFEREE: --we'll rule on them as we go.

19 MS. CENCI: So, all right. So, the--

20 THE REFEREE: --Do you by chance have an extra
21 copy of that?

22 MS. CENCI: Yes.

23 THE REFEREE: Because I'll use that as a working
24 copy and I can just write on it.

25 MS. CENCI: Or you can have this one.

13.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 THE REFEREE: Well, no. I don't want to write on
2 the original.

3 MS. CENCI: Okay. Sure.

4 THE REFEREE: You can give that to Mr.
5 Fitzgerald [sic].

6 MS. CENCI: Are-- So, the first group of exhibits
7 pertains to charge one, that's Exhibit 1A through 1L, and
8 these are all certified records. With respect to 1C, which
9 is-- which is a court order, which I believe is also self-
10 authenticating, unless we want to call the judge who issued
11 it.

12 THE REFEREE: That won't be necessary. And
13 respond-- And just for the record, when was Respondent's
14 counsel provided with these documents?

15 MS. CENCI: November 9, 2018.

16 THE REFEREE: Okay. Is there any objection to the
17 receipt of Commission Exhibits 1A through 1L?

18 MR. DEROHANNESIAN: Yes.

19 THE REFEREE: What is the objection?

20 MR. DEROHANNESIAN: We don't believe they're
21 relevant at this point. There's been no testimony to
22 establish the necessity of them and only when we hear the
23 testimony can we then address whether many of these
24 documents which are, I believe, perhaps remote or not
25 necessary.

1 THE REFEREE: Is there any objection as to the
2 authenticity?

3 MR. DEROHANNESIAN: For any certified copies,
4 there is not an objection, for any certified copy of court
5 records.

6 THE REFEREE: All right. Then that's fine. I
7 agree. Let's wait and hear some testimony and see if
8 they're relevant.

9 MS. CENCI: Okay. Your Honor, I just would point
10 out this speaks directly to paragraph 10 of the Formal
11 Written Complaint regarding these various individuals and
12 the allegation is they all have criminal records. I'm not sure
13 how any witness could establish definitively a criminal
14 record. These are the documents which establish that fact.
15 We will hear testimony, of course, but--

16 THE REFEREE: --Isn't it collateral? I mean, it's
17 very dis-- Just let me see if that paragraph was admitted.

18 MS. CENCI: No, it was denied.

19 THE REFEREE: It's denied. You know what? I'm
20 going to hold off on that. Let's get some testimony in, and-
21 - We don't even know if the witnesses are going to say
22 what's reported in paragraph 10. They may not say that and
23 that becomes irrelevant. If you were-- For example, if you
24 were to ask Ms. Gallagher and Ms. Kachadourian about this
25 event and they said they have no idea, they didn't hear it, it

15.

(Hon. Richard H. Miller, II)

1 never happened, then this becomes irrelevant. So, let's put
2 some testimony on, and let's see how that goes and re-offer
3 it.

4 MS. CENCI: All right. Do you prefer-- Do you
5 prefer that I discontinue the offer of the exhibits at this time
6 or--

7 THE REFEREE: --No. You can let it stand. We'll
8 let it be pending--

9 MS. CENCI: --Move along or--

10 THE REFEREE: --Absolutely. Move along.

11 MS. CENCI: Okay. So, the next set of Exhibits 2A
12 through 2X pertain to the *Estate of Roger Funk*, and that is
13 the subject of charges II and III of the Formal Written
14 Complaint, and as I've indicated, Exhibits 2A, for
15 identification, through 2T, are all records of the Broome
16 County Surrogate's Court. Then there are some additional
17 records as well, and I would offer those into evidence.

18 THE REFEREE: As to Exhibits 2A through 2T, is
19 there any objection as to the authenticity of the records?
20 And you pro-- You were provided with these back in
21 November, right?

22 MR. DEROHANNESIAN: I don't believe the
23 objection is authenticity. I do believe there is a lot of
24 objections as to whether they belong in the hearing. For
25 example, the funeral bill from 2014.

16.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: Okay. I think I removed that.

2 MR. DEROHANNESIAN: It's on the list.

3 MS. CENCI: Do you-- Are you looking at the--
4 Where is that?

5 MS. SCALISE: 2E.

6 MS. CENCI: Oh. Oh, I'm sorry, Your Honor. 2E.
7 That's relevant to the expenses for the mother of the
8 decedent. I can reserve on that.

9 MR. DEROHANNESIAN: Well, I don't want to go
10 through every-- I think as they come in, I'll say,
11 "Objection. No Objection."

12 THE REFEREE: Right.

13 MR. DEROHANNESIAN: I don't--

14 THE REFEREE: --You know, I think we're a little
15 ahead of ourselves.

16 MS. CENCI: Your Honor, I am not going to-- I
17 have not intended to produce the clerk of the court--

18 THE REFEREE: --I don't-- I don't--

19 MR. DEROHANNESIAN: --It may not--

20 THE REFEREE: --Just a minute. I don't think you
21 need to do that, but right now, we don't have any-- we
22 don't have any testimony.

23 MS. CENCI: Well, we have the charges, and I'm
24 simply attempting to--

25 THE REFEREE: --Which have been-- Which have

17.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 been denied and I really think--

2 MS. CENCI: --Okay.

3 THE REFEREE: --we should put a witness on and
4 if--

5 MS. CENCI: --I certainly will, Your Honor, but I'm
6 simply-- I mean, the allegation is that the judge was
7 handling this estate before he went on the bench. These
8 records show that. I'm simply trying to put in proof of
9 certain allegations in the complaint.

10 THE REFEREE: And I-- And I understand that,
11 and I suspect very strongly that these are going to come in,
12 but if Ms. Gallagher testifies that she never did any legal
13 work for the Respondent, then you're not going to be able
14 to prove that case. We-- I just want a little predicate--

15 MS. CENCI: --Okay.

16 THE REFEREE: --before we-- before we get into
17 that.

18 MS. CENCI: I understand, Your Honor. We'll--
19 We can proceed with the witness--

20 THE REFEREE: --I think you're going to get these
21 exhibits in, but I think we're a little far ahead of ourselves.

22 MS. CENCI: May I just have a brief moment to see
23 which witnesses are actually here?

24 THE REFEREE: Certainly.

25 MS. CENCI: Okay. Thank you.

18.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MR. DEROHANNESIAN: These microphones are
2 on.

3 MS. SCALISE: Yes, I know they are.

4 MS. CENCI: Your Honor, if you're ready, the
5 Commission will call Mark Kachadourian.

6 THE REFEREE: That'd be fine. Thank you.

7 MR. DEROHANNESIAN: So, because these
8 microphones are on, if I want to have a confidential
9 communication--

10 THE REFEREE: --I think you should put your hand
11 over it and lean back.

12 MS. CENCI: He'll be right with us.

13 THE REFEREE: Thank you. Do we have some
14 water for the witness?

15 COURT OFFICER: Yeah, I'll grab one.

16 THE REFEREE: All right. Thanks.

17 MR. KACHADOURIAN: Morning.

18 THE REFEREE: Good morning. Would you state
19 your name and spell it for the record?

20 MR. KACHADOURIAN: Sure. My name is Mark
21 Kachadourian, K-A-C-H-A-D-O-U-R-I-A-N. First name is
22 spelled M-A-R-K.

23 THE REFEREE: Thank you. Will you raise your
24 right hand? Do you swear or affirm under the penalty of
25 perjury that the testimony you are about to give is the truth,

19.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 the whole truth and nothing but the truth?

2 MR. KACHADOURIAN: Yes, I do.

3 MARK KACHADOURIAN. ESQ.,

4 having been duly sworn, was examined and testified as follows:

5 THE REFEREE: Have a seat. Mr. Kachadourian,
6 my name is-- Yes, sit down. My name is Robert Barrer,
7 I'm a Referee appointed by the Commission on Judicial
8 Conduct to hear this proceeding. They are being digitally
9 recorded. The recording will then be transcribed. In order
10 to facilitate and clear and proper record, we'll keep a few
11 things in mind. Speak clearly, slowly and directly into the
12 microphone. If there is an objection to a question, please
13 wait until I've ruled before you answer. As I'm sure you
14 are aware, because it's being recorded, a shake of the head,
15 a nod, or an uh-huh is not going to be a sufficient record, so
16 please answer verbally. These proceedings are confidential
17 under the Judiciary Law, and if you need a break at some
18 point, let me know and I would be happy to accommodate
19 you.

20 THE WITNESS: Thank you.

21 THE REFEREE: So, with that, Ms. Cenci?

22 THE WITNESS: Morning.

23 MS. CENCI: Good morning, Mr. Kachadourian.

24

25

20.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 DIRECT EXAMINATION

2 BY MS. CENCI:

3 Q. First of all, would you state and spell your full name for the record?

4 A. Sure. First name is Mark, M-A-R-K, last name is Kachadourian, K-
5 A-C-H-A-D-O-U-R-I-A-N.

6 Q. Do you live in Broome County?

7 A. That's correct.

8 Q. What town or city do you live in?

9 A. I live in the Town of Vestal.

10 Q. How long have you resided in Broome County?

11 A. I would say probably about 55 years.

12 Q. Okay. We won't ask you how you-- how old you are.

13 A. Right.

14 Q. Do you have a family?

15 A. Yes, I do.

16 Q. Do you live with your family?

17 A. Yes, I do.

18 Q. Who--

19 A. --I have a wife and three children--

20 Q. --who are they? Now, you have an occupation or a profession?

21 A. Yes, I do. I'm a court attorney for New York State at Broome County
22 Family Court.

23 Q. And are you admitted to practice in the State of New York?

24 A. Yes, I am.

25 Q. Could you briefly describe your educational background, please?

21.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

- 1 A. I got my bachelor's degree from Binghamton University and got my
2 law-- JD degree from Syracuse University College of Law and--
3 Q. --When was that?
4 A. I attended Syracuse from 1981 to 1984.
5 Q. When were you admitted to practice?
6 A. I was admitted in 1985.
7 Q. Now, prior to the time that you became a court attorney here in
8 Broome County, did you practice law?
9 A. Yes, I did.
10 Q. Can you briefly describe the nature and history of your practice?
11 A. Sure. I had a private law practice. Well, graduating from law school,
12 I worked in Manhattan for a while and then-- a short while, and then I
13 relocated here and worked for a law firm called Rappaport and
14 Rappaport, and then after that, I went out on my own and had my own
15 private practice for approximately-- Off the top of my head, I would
16 say between 25 and 30 years.
17 Q. What was the nature of your private practice? What kind of cases or
18 matters did you handle?
19 A. It was focused on family court law, family law.
20 Q. Now, do you know Judge Richard Miller, the Respondent here in this
21 proceeding?
22 A. Yes, I do.
23 Q. How do you know him?
24 A. I know him through--
25 Q. --Well, let me-- Withdrawn.

22.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. Sure.

2 Q. Do you recall when and how you first made his acquaintance?

3 A. No, I don't.

4 Q. Do you know about how long ago it was that you initially made his
5 acquaintance?

6 A. I would say probably-- You know, the majority of my practice, when
7 I practiced, was focused in Tioga County, New York, and I did
8 practice in Broome County, as well. There were times where he
9 handled cases in Tioga County and, you know, we ran into each other
10 and, you know, I remember one or two occasions where we went to--
11 grabbed a quick bite to eat. So, that was probably, I would say, 10, 15
12 years ago, roughly. But, his family, I knew of him. His family-- His
13 dad was an assemblyman in the area and he, you know-- Judge Miller
14 ran for political office previously and, you know, so I was aware of
15 who he was.

16 Q. Okay. Now, just for the record, Judge Miller is a Family Court Judge
17 in Broome County, is that correct?

18 A. That's correct.

19 Q. Do you know whether he held any prior judicial offices?

20 A. Yes. At least from what was told to me by Judge Miller and also from
21 what I've read, it was my understanding he also was a judge for the
22 Village of Johnson City and also the Town of Union.

23 Q. And if I understand your testimony correctly, when you first met him,
24 did you meet him in your capacity as an attorney and in his capacity as
25 an attorney? Did you ever appear before him--

23.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. --No.

2 Q. --in his judicial capacity?

3 A. No. I-- To the best of my recollection, I've never appeared before
4 him.

5 Q. So, are you aware that Judge Miller ran for election to his position as
6 Broome County Family Court Judge?

7 A. Yes.

8 Q. Were you involved in his campaign for that office in any fashion?

9 A. Yes, I was.

10 Q. How did you come to be involved in the campaign?

11 A. We spoke about it. He, you know-- I was always interested in politics
12 and, you know, and years ago, I worked on a congressional campaign,
13 here locally and, you know-- I don't know how-- I can't recollect the
14 first time we met or discussed it, but the conversations eventually led
15 to me helping him out.

16 Q. Did you volunteer or did he ask you to help?

17 A. I can't recollect. I don't-- I think it was a combination of both, you
18 know?

19 Q. Did you hold any leadership position in the campaign?

20 A. No.

21 Q. What did you do, in general?

22 A. In general? We went around, we put up signs at various locations. In
23 general, you know, helped him prepare for a debate, I think, was one
24 of the things. There was a debate at SUNY Broome and I helped him
25 prepare for that. Let's see. We attended a few, I don't know how

24.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 many high school, local high school football games, I would go with
2 him and, you know, I would be with him--

3 Q. --Were there other-- I'm sorry. Go ahead.

4 A. Things along those lines.

5 Q. Okay. Were there other individuals, to your knowledge, who assisted
6 in the campaign?

7 A. Yes.

8 Q. Who were some of those people?

9 A. It's my understanding that there was Mr. Jerry Penna, along the lines
10 of being treasurer of the campaign, I'm not exactly sure. There was a
11 fellow named Bijoy Datta. I think he's currently the chairman of the
12 Republican Party and he helped-- It's my understanding from at least
13 what I've-- that he was the campaign manager of Judge Miller's
14 campaign. There was also an individual named Anthony Paniccia,
15 who owns, I think, Delta Engineering. He was part of the campaign. I
16 think-- I think there was Rachelle Gallagher, I think she assisted in
17 the campaign. Her and her husband would attend meetings.

18 Q. Okay.

19 A. And there were other individuals who I can't, off the top of my head,
20 recollect. I'm sure if I sat here for a few minutes, I could remember
21 every-- quite a few more, but those are the people that come to the
22 forefront.

23 Q. Okay. You mentioned Rachelle Gallagher.

24 A. Yes.

25 Q. You know Rachelle Gallagher?

25.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. Yes, I do.

2 Q. How do you know her?

3 A. She is the judge's-- It's my understanding, from what the-- Judge
4 Miller represented to me that she was the court clerk for the Village of
5 Johnson City during-- for the previous ten years prior to Judge Miller
6 taking office in Broome County Family Court and she became the
7 secretary when Judge Miller took office on January 2, 2015, at
8 Broome County Family Court. She was the secretary that Judge
9 Miller brought along.

10 Q. Okay. How did you come to be a court attorney in Broome County
11 Family Court?

12 A. I was-- I was-- Judge Miller got elected, we discussed me being court
13 attorney, he asked me to be court attorney, I accepted the position.

14 Q. When did that begin?

15 A. That began January 2, 2015.

16 Q. Briefly, what are your duties as court attorney, as far as you
17 understand them?

18 A. As far as I understand them, my duties include assisting the judge in
19 making decisions, you know, advising him on the law. What Broome
20 County Family Court is doing, or since I took office, or accepted the
21 position, they have court attorneys conducting conferences, like pre-
22 trial conferences in hopes of maybe settling cases or seeing what the
23 main issues are if the cases do go to trial, so I did hold conferences
24 with attorneys and their clients on certain days and, you know, in
25 addition to assisting the judge in making decisions. So, you indicated

26.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

- 1 that Judge Miller asked you to be his court attorney?
- 2 A. That's correct.
- 3 Q. Do you-- Are you considered his personal appointee?
- 4 A. Am I considered at this-- at this immediate time, or back in January of
- 5 2015?
- 6 Q. Okay. It-- Let's take January of 2015.
- 7 A. That was my understanding.
- 8 Q. Okay. Now--
- 9 A. --I didn't-- I don't know like the legal ramifications or definitions of
- 10 personal appointee. I know I was paid by New York State, I worked
- 11 for Broome County Family Court, so-- and I worked under Judge
- 12 Miller. That's the best I can explain it.
- 13 Q. Are there other family court judges in Broome County?
- 14 A. Yes, there are. There are three other family court judges.
- 15 Q. And are there other court attorneys?
- 16 A. Yes, there are. One for each judge.
- 17 Q. Now, initially, when you first began working for-- with Judge Miller
- 18 in 2015, how would you describe your working relationship with him?
- 19 A. As far as I can recollect, initially, I thought-- I thought things were
- 20 good at the point-- at that point, initially.
- 21 Q. Did the nature of your relationship change?
- 22 A. It did.
- 23 Q. Can you describe when and how that change came about?
- 24 A. I can't rem-- I can't point out a specific day, but it did change. There
- 25 were certain issues that came up that caused it to change.

27.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 Q. What were some of the issues?

2 A. Some of the issues included how he treated Ms. Gallagher and his
3 conversations with me about that. He-- The conversations included--
4 There was-- There was another secretary that Judge Miller thought
5 about bringing with him and her name was Lisa Wojdat and it's my
6 under--

7 THE REFEREE: --Would you spell that, please?

8 A. Lisa, L-I-S-A, Wojdat, I'm not exactly sure, W-O-D-J-A-C-T [sic]?
9 I'm not sure. And according to Judge Miller, it's my understanding
10 she may have been a court clerk at the Town of Union Court and he
11 would express to me his regrets of not bringing her and also he would--
12 - I mean, that was a constant conversation. I mean, constant subject
13 that he would bring up to me, that he really regretted not bringing her,
14 he regretted hiring Rachelle and he would go into the reasons why
15 and--

16 Q. --Well, can-- If I could just interrupt?

17 A. Sure.

18 Q. What did he say about why he regretted hiring Rachelle and not Lisa
19 Wojdat?

20 MR. DEROHANNESIAN: Could I object to that on
21 foundation, the time when we're talking about?

22 THE REFEREE: Sure. Can you give us any
23 timeframe?

24 A. I would say--

25 Q. --Can you?

28.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. --mid to end of '15, going in-- And then it just continued. I mean, it
2 continued. It was-- It was right up until June of 2017.

3 THE REFEREE: That's fine. Thank you.

4 A. And there are-- Before I get to that, there were anoth-- There was
5 another concern that kind of changed the dynamics of things that he
6 would constantly go to his old former law office on a constant basis,
7 so the combination of that contributed to the change of dynamics.
8 But, as to--

9 Q. --But with respect to statements made by Judge Miller regarding
10 Rachelle Gallagher as opposed to Lisa Wojdat, what did he say about
11 that?

12 A. I just want to interject one thing before--

13 THE REFEREE: --You know what, don't do that.

14 THE WITNESS: Okay. Sure.

15 THE REFEREE: Just answer the questions.

16 THE WITNESS: Sure. Absolutely.

17 A. What he would say was he would tell me that one of the simple things
18 was that he would walk into Rachelle's office and say how sterile it
19 was, you know, there's no pictures up here and, you know, he's tired
20 of-- This is his office, he's tired of the way it looks, and he goes, "If
21 we had Lisa here, it wouldn't look this way." And then he would go
22 on to say-- He would go on to say that he has certain needs and Lisa
23 would satisfy those needs. You know, and he was referring to sexual
24 needs when he spoke to me about it.

25 Q. How do you know he was referring to sexual needs?

29.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. Because that's what he said. And he said-- He even went as far as
2 saying that she would satisfy my sexual needs and I said, "I don't want
3 any parts of that."

4 Q. And with reference to Rachelle, what did he say about her, if
5 anything?

6 A. He would say that-- He would say, around mid to end of 2015 that I
7 was-- he was the president, I was his chief of staff and I was to talk to
8 Rachelle, so none of this would get back to him, and he would
9 constantly say, "Did you speak to her? Did you straighten her out?"
10 And, "Did you tell her what real secretaries are supposed to do, you
11 know, that she's not doing it," and you know, it's just ...

12 Q. So, were you in a position to be able to see what secretarial duties
13 Rachelle Gallagher was actually performing?

14 A. Yes, I was.

15 Q. And why-- How and why were you able to do that?

16 A. As a court attorney, you know, I was-- We interacted together. I
17 mean, Rachelle, the judge and myself, as far as the court matters, we
18 all interacted together and, you know, and I was constantly with the
19 judge or with Rachelle. We were all together on the majority of the
20 occasions and I would see what she was responsible to do. I mean,
21 she had things to do that affected what I was doing and, you know, so
22 I did see what she was doing.

23 Q. Did the judge ever express to you or in your presence to Rachelle any
24 dissatisfaction with her secretarial duties?

25 A. He-- I cannot recollect him expressing it to her. He would always

30.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 express it to me. In June of 2017, she went on a trip to, I think it was
2 Clemson, South Carolina, and during that time, he started berating me
3 and saying, "I wish I had fired her. I should have never listened to
4 you," and he said that he was looking for a file and he couldn't find it
5 and he asked me how she filed her files, and he couldn't find a file
6 and that was one occasion I could remember where he expressed the
7 dissatisfaction of-- It was June 2017.

8 Q. But prior to that?

9 A. Prior to--

10 Q. --His expressions to you of his dissatisfaction with Ms. Gallagher, did
11 that, as far as he indicated, have anything to do with her secretarial
12 duties?

13 A. Could you give me a moment to think? No, not that I could recollect.

14 Q. So, you indicated that he wanted you to talk to Rachelle Gallagher
15 about, what was it exactly?

16 A. What real secretaries are supposed to do.

17 Q. And what did you understand that to mean?

18 A. The way he described it and the way he expressed it was from
19 everything to getting him coffee to satisfying him sexually to
20 designing or-- to rearranging the room to his satisfaction, all of those
21 things.

22 Q. Were you Rachelle Gallagher's supervisor in any respect?

23 A. No, not at all.

24 Q. Do you know or know of an individual by the name of David
25 Iannone?

31.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. I was introduced to him through Judge Miller.

2 Q. Do you recall when and where that introduction occurred?

3 A. I think-- I don't remember the exact date and time. I think it was
4 probably the fall of 2014.

5 Q. During the campaign season?

6 A. Yes.

7 Q. What, if anything, did Judge Miller say to you about Mr. Iannone? I
8 mean, what was the context--

9 MR. DEROHANNESIAN: --Object. There's a
10 question.

11 BY MS. CENCI:

12 Q. Withdrawn. Withdrawn. Un-- What was the context under which
13 you were introduced to this individual?

14 A. He assisted Judge Miller during his campaign and it was my
15 impression he appeared to be a long-- or from what Judge Miller
16 explained, a long-time friend or acquaintance.

17 Q. Did you know anything else about Iannone's background?

18 A. No. Not at all. I never met the individual prior to that.

19 Q. Do you know a D [REDACTED] L [REDACTED]?

20 A. Yes, I do.

21 Q. Who is she?

22 A. She is part of-- In Broome County Family Court, there's what's called
23 chamber staff, which is court attorneys and secretaries to the judge,
24 and then there's what's referred to as back office staff who is civil
25 service, who regardless of the changes of judges and court attorneys or

32.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 secretaries, they remain there and she's part of the back office staff at
2 the Broome County Family Court.

3 Q. I don't think I asked you this earlier, but could you describe the layout
4 of the family court offices?

5 A. The courtrooms are on the second floor. The court attorneys,
6 including myself, are on the second floor. Three of the four judges are
7 on the second floor. The first floor is made up of the back office staff
8 and the two hearing magistrates, including Judge Miller's chambers,
9 as well.

10 Q. Okay.

11 A. And there's sealed, well, they're not sealed, but they're secured from
12 the public, so that public is not able to gain access to those-- that
13 location, both on the first and second floor.

14 Q. You indicated that your office was on the second floor?

15 A. Yes.

16 Q. I believe you stated earlier that you also spent quite a bit of time with
17 Judge Miller?

18 A. That's correct. I would say he was in his chambers, I was probably
19 there 75, 85 percent of the time with him.

20 Q. Where was Ms. Gallagher stationed in reference to the judge's
21 chambers?

22 A. Let's say that this is his chambers, there would be a wall with a door
23 here, and then she would be right next door. So, they would be right--

24 THE REFEREE: --Let me stop you.

25 THE WITNESS: Sure.

33.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 THE REFEREE: Here, here and there--

2 THE WITNESS: --Right.

3 THE REFEREE: --doesn't cut it--

4 THE WITNESS: --They were--

5 THE REFEREE: --for the record.

6 THE WITNESS: Sure.

7 THE REFEREE: So, try and explain--

8 THE WITNESS: --They were adjacent, right next to
9 each other. They were divided by a wall and a door.

10 BY MS. CENCI:

11 Q. All right. Now, just getting back to D [REDACTED] L [REDACTED]. You said she
12 was one of the office workers in the front office?

13 A. Back office staff.

14 Q. Back office.

15 A. Yes, that's correct.

16 Q. I beg your pardon. Do you know whether D [REDACTED] L [REDACTED] and this
17 Dave Iannone were acquainted?

18 A. Yes, I do.

19 Q. How do you know about that?

20 A. Because I was in-- I was in Rachelle Gallagher's office at the time
21 Judge Miller was there with D [REDACTED]. D [REDACTED]-- This was in or about mid
22 to late 2016, is the best of my recollection. I don't-- I was in Ms.
23 Gallagher's office with Judge Miller and D [REDACTED] L [REDACTED]. D [REDACTED]
24 L [REDACTED], I think, needed some work done on her floor in her house
25 and Judge Miller indicated, "I know the perfect individual for that,"

34.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 and you know, so based upon that, he gave-- It's my recollection he
2 gave her his phone number as a result of that.

3 Q. Judge Miller gave--

4 A. --D [REDACTED] L [REDACTED]-- It's my recollection that Judge Miller helped
5 them connect so Mr. Iannone does-- It's my understanding from Mr--
6 Judge Miller that he works on floors, so he introduced those two.

7 Q. Did you ever hear Judge Miller discuss D [REDACTED] L [REDACTED] with any
8 other individual?

9 A. No. No. You mean introducing them-- her to--

10 Q. --No. No. I don't think you understood my question.

11 A. Oh. Okay.

12 Q. I'll try to rephrase it.

13 A. Sure.

14 Q. You indicated that you were frequently in chambers?

15 A. Yes.

16 Q. Did Judge Miller have any conversations with any third parties on the
17 telephone in chambers that you were able to overhear?

18 A. Yes.

19 Q. How were you able to overhear those conversations?

20 A. I was-- Judge Miller, when he was on his cell phone, he would use his
21 speaker phone and he would have conversations about Ms. L [REDACTED]
22 with my-- with myself being present, with-- I remember a
23 conversation with an individual he had describing the interactions
24 between Mr. Iannone and Ms. L [REDACTED].

25 Q. All right. Just for our record, is it your testimony you could-- you

35.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 could hear the judge discuss these two individuals on his cell phone?

2 A. Yes.

3 Q. Do you know with whom he was talking?

4 A. On one occasion, it was Mr. Penna.

5 Q. That's Jerry Penna--

6 A. --Yes.

7 Q. --that you referenced earlier? When was that?

8 A. That would have been-- I would say that specific conversation was
9 probably in or around March of 2017.

10 Q. Okay. What do you-- First of all, how do you know the judge was
11 talking with Jerry Penna?

12 A. It was on speaker phone.

13 Q. And what did you hear him say?

14 A. He would describe the interactions between David Iannone and D [REDACTED]
15 L [REDACTED]. He would-- He would indicate how they would have sex,
16 how she was in bed, how wet the bed would get, how she was a
17 sprayer, how they would have to put towels on the bed and it was
18 along those lines.

19 Q. This is a conversation that you're saying that he had with Jerry Penna
20 or--

21 A. --He would have with myself, he would have it with David Iannone,
22 he would have it with Jerry Penna. These conversations, it wasn't just
23 one conversation, it was multiple times.

24 Q. Okay. All right. So, just for purposes of our record--

25 A. --Sure.

36.

(Kachadourian - Direct)

1 Q. --did you hear Judge Miller discuss on the telephone Ms. L [REDACTED]
2 with David Iannone? Hear him talking with Dave Iannone?

3 A. Yes. Yes.

4 Q. Okay. When was that?

5 A. That was towards the end of 2016 or early 2017.

6 Q. What did you-- First of all, how did you know he was talking with
7 David Iannone?

8 A. I am familiar with Mr. Iannone's voice. Again, it was on speaker
9 phone.

10 Q. What did you hear Judge Miller say? What did you hear Mr. Iannone
11 say?

12 A. I heard Mr-- Judge Miller was asking like, "How was it?" Judge--
13 Dave Iannone-- Dave Iannone would indicate, "She's a sprayer.
14 She's, you know, she loves sex and she's going to wear me out." I
15 can't, you know, and, "the beds were so wet that they had to put
16 towels down so the beds wouldn't get ruined," you know, things along
17 those lines.

18 Q. Did you hear anyone use the word rotation?

19 MR. DEROHANNESIAN: Objection. Leading and
20 suggestive.

21 THE REFEREE: I agree.

22 BY MS. CENCI:

23 Q. What else did you hear? Do you recall any specific remarks?

24 THE REFEREE: And just to clarify, you're talking
25 about conversations between Judge Miller and Mr.

37.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 Iannone?

2 MS. CENCI: Yes.

3 THE REFEREE: At this time?

4 MS. CENCI: Yes. Thank you, Your Honor.

5 A. Yes. There was more than what I represented and that included the
6 fact that Judge Miller wanted-- suggested that he wanted to get in on
7 a rotation and reserve a night a week for himself.

8 Q. Reserve a night a week?

9 A. For himself and Ms. L [REDACTED] and ...

10 Q. Was there some response by Mr. Iannone to that remark?

11 A. That I can't recollect. I mean, he-- Specifically, I can't recollect what
12 the response was, but there was no opposition to it.

13 THE REFEREE: Now, that--

14 THE WITNESS: --Okay.

15 THE REFEREE: You've answered the question.

16 THE WITNESS: All right.

17 THE REFEREE: I'll strike that last remark.

18 THE WITNESS: Sure.

19 BY MS. CENCI:

20 Q. Did there come a time when someone referenced to you photographs
21 of Ms. L [REDACTED]?

22 A. That's correct. I would say--

23 Q. --When was that?

24 A. --in or around April of 2017, Judge Miller asked me to come in his
25 chambers and he had something to show me. I didn't know what it

38.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 was, and he showed me a nude photograph of Ms. L [REDACTED] on his
2 cell phone.

3 Q. Did you know for a fact that this was Ms. L [REDACTED]? Were you able
4 to recognize her in the photograph?

5 A. I was able to recognize her and I was told by Judge Miller it was her.

6 Q. Can you describe more specifically the photograph that you were
7 shown?

8 A. Yes. It was a nude-- completely nude frontal photograph of not
9 showing a face.

10 Q. And you said the judge did-- acknowledged you that it was D [REDACTED]
11 L [REDACTED]?

12 A. That's correct.

13 Q. Did he say where or how he'd obtained this photograph?

14 A. No. I cannot recollect that.

15 Q. And you indicated that you recognized the pho-- the person in the
16 photograph as D [REDACTED] L [REDACTED], although there was no--

17 A. --That's correct.

18 Q. --head?

19 MR. DEROHANNESIAN: Object to summarizing
20 the testimony.

21 MS. CENCI: Well--

22 THE REFEREE: --Well, it's that, sure, but yeah, I'd
23 like to hear that, too.

24 BY MS. CENCI:

25 Q. How were you able to recognize the person?

39.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. D■■■■'s build-- D■■■■'s build-- I've worked with her, you know, the
2 last-- prior to that photograph, probably the last two years, you know,
3 and we've seen each other on a daily basis. She has a very thin frame
4 and she does have large breasts and you know, it just-- you could
5 recognize who it was by--

6 Q. --What was your reaction to having been shown this photograph?

7 A. I was disgusted by it. Just felt like throwing up and I just-- It just was
8 disgusting, because how could you-- You know, it just-- Like, I felt
9 like someone was being taken advantage of, someone's innocence was
10 lost and how could you work with somebody and it's just against
11 human nature to do things like that.

12 Q. Did you express any of your reaction to Judge Miller?

13 A. I didn't say those things that I just told you. No, I didn't. I just-- No,
14 I didn't. I just walked away. I just like-- I walked away and I told-- I
15 had to tell somebody and I told-- I remember I told Rachelle, I said,
16 "Rachelle, you're not going to believe what just happened. I can't
17 believe it," and I said, "Promise me you won't tell anybody," because
18 I was afraid the repercussions from it and so I told her and I didn't tell
19 anybody else.

20 Q. Was this the first time that Judge Miller had shown you a photograph
21 of that nature?

22 A. No.

23 MR. DEROHANNESIAN: Objection. Leading and
24 suggesting.

25 THE REFEREE: That's all right. Let's continue.

40.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. No. I-- As far as I could remember, he represented-- He had a-- He
2 had a friend or an acquaintance that owned like maybe possibly a strip
3 club or a strip place and they were sending him photos. He showed
4 me one time those photos. I didn't know what was on his phone. I
5 said, "That's it. I don't want to see these anymore," and, you know,
6 so it wasn't the first time.

7 Q. When was that?

8 A. That would probably be like around 2015, mid 2015.

9 Q. Okay. Did you know any of the individuals in those photos?

10 A. No, I didn't.

11 Q. And again, what kinds of photographs were they?

12 A. They were female-- females without any clothes on.

13 Q. What was the judge's reaction when you said you didn't want to see
14 that?

15 A. He kind of giggled a little bit and just, you know-- I think after that,
16 he kind of realized that I'm not into that type of thing.

17 Q. Now, you referenced some conversations that you overheard the judge
18 having with Jerry Penna.

19 A. Yes.

20 Q. And, again, where was the judge when he was having those
21 conversations?

22 A. In his chambers.

23 Q. Do you know whether-- And you indicated that they discussed D [REDACTED]
24 L [REDACTED], correct?

25 A. Yes. As a matter of fact, there was one meeting that Jerry Penna

41.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 actually came to chambers and I happened to be in chambers, Jerry
2 Penna was there, the judge was there, and the judge directed Ms.
3 Gallagher to go down and get Ms. L [REDACTED] and bring her here and
4 under-- bring her in chambers.

5 Q. What happened then?

6 A. She came into chambers and the judge and Ms. L [REDACTED] discussed a
7 couple of things about work and then she left.

8 Q. And did something happen after she left?

9 A. Yes, there was discussions about her figure and things of that sort.

10 Q. Who was discussing that?

11 A. Judge Miller, Jerry Penna, and I think there was another male
12 individual there. I think he was part of the maintenance staff. I'm not
13 sure-- I can't recollect.

14 Q. Do you know the person's name?

15 A. No, I don't.

16 Q. What did they say about Ms. L [REDACTED]?

17 A. They discussed her figure and they discussed other things about other
18 female anatomy as well.

19 Q. Without characterizing, do you recall more specifically what they
20 said?

21 A. About the size of her breasts and there was discussions about that,
22 there was discussions about females like females from the Far East,
23 how they described, you know, their anatomy and things of that sort,
24 because I think Mr. Penna and the other individual may have been in
25 Vietnam and were in Southeast Asia. They were describing with the

42.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 judge female anatomies. I-- This is not a topic--

2 Q. --Are you--

3 A. --I'm comfortable with discussing.

4 Q. --Okay. I was just going to say are you uncomfortable?

5 A. Yes.

6 Q. Right now? And I apologize for having to ask you these questions,
7 but if you could recall and tell us as specifically as you can recall--

8 A. --One specific--

9 Q. --what the comments were?

10 A. Like comments like the lack of hair on the female vagina for-- from
11 women from the Southeast Asia. You know, things of that sort and I
12 don't really want to discuss further. It's really uncomfortable talking
13 about that.

14 Q. And I'm not sure if we got the relative timeframe when this incident
15 occurred. Do you recall?

16 A. Let's see. Again, I would say late '16, early '17.

17 Q. And you indicated that there are other court attorneys in family court,
18 correct?

19 A. That's correct.

20 Q. How many?

21 A. There are three other court attorneys.

22 Q. Do you know a S [REDACTED] L [REDACTED]?

23 A. Yes, I do.

24 THE REFEREE: Spell that name, please?

25 MS. CENCI: I believe it's L [REDACTED],

43.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 Your Honor.

2 THE REFEREE: Thank you.

3 BY MS. CENCI:

4 Q. How do you know her?

5 A. She-- Her office is right next door to mine.

6 Q. Do you have any personal or other relationship with her?

7 A. None other than a professional relationship.

8 Q. Did Judge Miller ever discuss Ms. L [REDACTED] with you?

9 A. Yes, he did. He-- There was one incident where he was upstairs,
10 right outside our offices and made a comment to me which, you know,
11 was-- He made a comment indicating that, "Wouldn't it be nice to
12 have sex with her bent over a desk?" And I said, "Judge," I said,
13 "You can't be talking like that. I mean, she's within earshot of you
14 and what if she heard you? It's just wrong. I mean, it's just-- You
15 can't do that." So, yes he--

16 Q. --What was his reaction?

17 A. He had no real reaction to it.

18 Q. Did there come a time in or about May of 2017 when you and Judge
19 Miller took a trip to Albany?

20 A. Yes. I think it was with the New York State Family Court Association
21 meeting. There was a meeting, I'm not sure if it was an annual
22 meeting, in Albany, New York, and it took place-- I think it was at
23 the State Capitol in Albany.

24 Q. Do you happen to recall the date?

25 A. I'm not that good, but if I was-- If I had to recollect, I would say in or

44.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 about May 18, 2017.

2 Q. Okay. So, did you and the judge travel together to Albany?

3 A. Yes, we did. We traveled together to Albany we would--

4 Q. --What did you do there?

5 A. I think the association had arranged meetings with various assembly
6 persons and various senate-- elected senate officials, so we would go
7 and meet these individuals, these office holders and indicate the--
8 what the family court association's needs were or how they could
9 assist in their needs and--

10 Q. --Was one of the individuals that you saw a Sen. Akshar?

11 A. We-- He was-- We did meet with Sen. Akshar, however, he was not
12 part of the family court association group meeting. We had a break
13 between meeting the senators, the assembly people. We had maybe a
14 15-minute, 30-minute break and so Judge Miller suggested that, "Hey,
15 since we're here, why don't we run up and meet our local senator,
16 Sen. Fred Akshar." So, we went up and Sen. Akshar took a few
17 minutes to meet with us and we met in his office and--

18 Q. --Okay. Did you know Mr.-- Did you know Sen. Akshar at the time?

19 A. I've met him maybe on three se-- three different occasions. I don't
20 know him personally, but I know who he is and I think he knows who
21 I am.

22 Q. While you were there with Sen. Akshar, was there some discussion
23 about obtaining his cell phone number?

24 A. Yes. We were finished with the meeting with Sen. Akshar. We were
25 walking down the hall and the-- Judge Miller requested that-- asked

45.

(Kachadourian - Direct)

1 Sen. Akshar for his cell phone number and the senator responded by
2 saying, "If you want to get a hold of me, it would be better if you get a
3 hold of me through my office, my senate office--

4 Q. --Okay.

5 A. --and that's the best way to reach me."

6 Q. Okay.

7 A. He refused-- He did not give the judge his cell number.

8 Q. Did you observe any reaction on the part of Judge Miller at that time?

9 A. Yes.

10 Q. What was his reaction?

11 A. He was offended by it. He felt insulted by Sen. Akshar and our trip
12 back to Binghamton from Albany took approximately two and a half
13 hours or so. During the entire trip, he was just-- he was irate with the
14 fact that Sen. Akshar wouldn't give him his number and then he came
15 up with an idea that-- for a way to get Sen. Akshar's number. He said
16 he was going to ask Rachelle Gallagher to do sexual favors for the
17 senator, that way there-- he would be able to obtain his phone number
18 through that method.

19 Q. Now, did-- but did you respond to him at all when he said that?

20 A. I just said-- I just thought the whole thing was-- I said, "You can't do
21 that." I said, "This is crazy." I mean, you can't do things like that.
22 The whole thing-- Just, "You can't do that."

23 Q. Now--

24 A. --And I-- You know.

25 THE REFEREE: You've answered the question.

46.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 THE WITNESS: Okay. Sorry.

2 THE REFEREE: It's all right.

3 BY MS. CENCI:

4 Q. Did you report the judge's statement about Sen. Akshar and Rachelle
5 Gallagher to anyone? Or tell? I mean, when I say report, did you tell
6 anyone what he had said?

7 A. No. I think we came back to-- At or about that time-- Subsequently,
8 I've told the New York State Inspector General about it.

9 Q. Okay.

10 A. I've told-- You know, I've-- I have counsel in this-- in certain
11 proceedings. I've told that counsel about it.

12 Q. Did you tell Rachelle what the judge had said?

13 MR. DEROHANNESIAN: Objection. Objection.

14 A. No. I came in--

15 THE REFEREE: --Hold on. Hold on just a second.

16 MR. DEROHANNESIAN: He gave an answer and
17 now she's leading and suggesting him to some other area,
18 and I'd ask that she go into another area to avoid what
19 happened a few minutes ago on another topic.

20 THE REFEREE: Just-- That's all right. Why don't
21 you just ask a question?

22 BY MS. CENCI:

23 Q. Did you tell Rachelle Gallagher what the judge had said about her?

24 A. No. What happened was--

25 THE REFEREE: --You've answered the question.

47.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. Yes. I eventually did. Two or three days later, I did tell Rachelle as a
2 result of what she told me.

3 MS. SCALISE: Move to strike that last part?

4 MS. CENCI: Okay.

5 THE REFEREE: Let's--

6 MS. SCALISE: It became a no and then a yes?

7 THE REFEREE: Okay. Let's hold on for just a
8 second. We'll have one lawyer per witness and let's ask a
9 question and we'll get an answer.

10 MS. CENCI: I think he answered it. He said--

11 THE REFEREE: --All right. Thanks. Let-- Fine.

12 MS. CENCI: Yes, later, but--

13 THE REFEREE: The record is the record and let's
14 move on.

15 BY MS. CENCI:

16 Q. Now, do you-- As you sit here today, do you still serve as Judge
17 Miller's court attorney?

18 A. I don't think so. No.

19 Q. When did that situation change?

20 A. I think it changed in or around the end of June, early Jul-- I would say
21 the end of June 2017.

22 Q. What changed at that time?

23 A. What changed at that time? In or around the end of June, early July, I
24 can't remember specifically as to what time, Rachelle was contacted
25 by the New York State IG's Office, Inspector General's Office and

48.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 based upon that contact, we were asked to appear before the New
2 York State Inspector General's Office in Albany, and we went up
3 there and then-- and gave testimony, I guess you would call it. And
4 then when we returned, we were separated from Judge Miller and--

5 Q. --Were you taken out of your office?

6 A. Yes.

7 Q. Were you-- How were you separated?

8 A. We were asked, both Rachelle and I were told to start reporting to
9 work here at the district office at this location.

10 Q. So, Mr. Kachadourian, did there come a time when you had any
11 concerns about your personal safety working in the Broome County
12 Family Court system?

13 A. Yes. I mean, yes. We were--

14 Q. --And who made you-- How did you become afraid? Why were you
15 afraid?

16 A. Through various associates of Judge Miller. I remember a
17 conversation I had with Judge Miller when he was on his cell phone.
18 He had this individual, I'm just trying to think of his name. He put
19 him on his cell phone. He was walking at the Oakdale Mall and he
20 was exercising he told me and he goes, "I've got somebody I want you
21 to speak to," and he goes, "Here, let me put him on the phone." And
22 then, this individual said, "You know, if you ever cross-- you or
23 Rachelle ever cross Judge Miller, you're going to have to answer to
24 me." And--

25 Q. --Did you know this person?

49.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

- 1 A. Did I know him?
- 2 Q. Yes.
- 3 A. I knew who he was because he was there during a campaign and I--
- 4 My mind is drawing a blank as to his name right now. I'm
- 5 embarrassed, but--
- 6 Q. --When did this conversation occur?
- 7 A. This was early on in the judge's term.
- 8 Q. So, just so I understand it, you're saying that the judge telephoned
- 9 you?
- 10 A. Yes.
- 11 Q. And he said that he was with somebody?
- 12 A. Yes, that he wanted me to speak to.
- 13 Q. After this person said what he said, did you respond to him?
- 14 A. I was like-- It's like--
- 15 Q. --No. Just yes or no. Did you say something back to him?
- 16 A. I just-- I probably said something along the lines of, "Okay." You
- 17 know? I didn't know what to say. I was like-- You freeze at the
- 18 moments like that. I mean, you don't expect somebody to say that to
- 19 you.
- 20 Q. Did you ever discuss this situation with Judge Miller afterwards?
- 21 A. No. I didn't know how to discuss something like that.
- 22 Q. Were there other events that made you feel fearful?
- 23 A. Yes. He has-- Judge Miller has either friends-- I don't know you'd
- 24 want to characterize them. They appear to be friends from what he'd
- 25 told me, friends of his. One was Frankie Saraceno. He introduced

50.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 Frankie or he represented Frankie to be an enforcer of his and I'm--
2 Also, he had another individual, David English, who was like a-- Like
3 if things really got bad, he was like the supreme enforcer for the
4 judge. And this included one time, the judge was owed money, he had
5 Frankie Saraceno obtain money for him. He was owed money and the
6 person apparently wasn't paying it, so Frankie's services were called
7 to collect the money and Frankie collected the money and lo and
8 behold, Frankie would not turn over the money to Judge Miller. And
9 so, Judge Miller had to call David English to obtain the money from
10 Frankie, because Frank wasn't turning the money over--

11 Q. --How do you know about this?

12 A. I was there during these conversations and I was there when Frankie
13 was crying on the phone, on the speaker phone to Judge Miller,
14 begging him to call off Dave English and that he'll get his money.

15 Q. Did you know anything else about Dave English?

16 A. They--

17 Q. --Had you ever met him, for one thing?

18 A. Yes. The judge-- We-- He rents or lives in one of the judge's--
19 where the judge's LLC's, or family's LLC's house and we would go
20 over-- We went over there and the judge introduced me to him.

21 Q. You went with the judge to this residence?

22 A. Yes.

23 Q. Why?

24 A. I don't-- He just told me to come with him or I just went with him. I
25 just was-- He just said, "Come on. We're going." You know?

51.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

- 1 Q. Was this a trip that you made from family court?
- 2 A. Yes.
- 3 Q. So, during the work week?
- 4 A. Yes.
- 5 Q. And what happened there?
- 6 A. He introduced me to David English.
- 7 Q. When you called him a-- You called these people enforcers, what--
- 8 Why'd you use that term?
- 9 A. That's who the judge told me they were.
- 10 Q. Did he ever mention a Marty Shaw to you?
- 11 A. Yes. We would go visit with Marty Shaw, too, and it's-- The Judge
- 12 represented to me that he's a-- He was just out of Attica. He was a
- 13 friend of the judge's.
- 14 Q. Okay. And again, you went with the judge to visit this Mr. Shaw?
- 15 A. Yes.
- 16 Q. How did that come about?
- 17 A. The judge would ask me to go with him on these certain trips.
- 18 Q. What happened when you went to see Marty Shaw?
- 19 A. It was my understanding that Marty Shaw is an electrician and that
- 20 Judge Miller or one of his LLCs or his family's LLCs owns a property
- 21 that jud-- that Marty Shaw did electrical work on and I just saw
- 22 payments being made.
- 23 Q. How did you know about Mr. Shaw's criminal record?
- 24 A. I was told by Judge Miller.
- 25 Q. Do you know a James Stilloe?

52.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. Yes. That's the individual who made the phone call to me. Yes.
2 That's-- He would--

3 Q. --So, okay. I'm sorry. Excuse me. When you say the individual who
4 made the phone call to you, what were you referring--

5 A. --That I would have to answer to him if we should cross Judge
6 Miller-- or if Rachelle or I would cross Judge Miller, he was--

7 Q. --That was the name of the individual that you couldn't recall earlier?

8 A. Yeah. Yes. That was him.

9 Q. Okay. Did you know Mr. Stilloe?

10 A. I-- He was, you know, like I said early on, I was-- I did a great deal
11 of work in Tioga County. Judge Miller would appear in Tioga County
12 and I remember one occasion, he introduced me to Mr. Stilloe, "This
13 is my driver." You know, he was a driver for the judge and so, I
14 remember that one occasion of meeting him, and then also, Mr. Stilloe
15 appeared during the campaign. He was part of the campaign. I would
16 see him with the judge during the campaign.

17 Q. Okay.

18 A. I think he assisted during the campaign.

19 THE REFEREE: Ms. Cenci, do you have the
20 spelling of that-- Stillwell?

21 THE WITNESS: Stilloe.

22 MS. CENCI: Stilloe.

23 THE REFEREE: Spell it.

24 MS. CENCI: It's char-- paragraph 10 of the Formal
25 Written Complaint, Your Honor. S-T-I-L-L-O-E, I believe

53.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 it is.

2 THE REFEREE: Got it. Thank you.

3 MS. CENCI: Okay.

4 BY MS. CENCI:

5 Q. Were there any other incidents which occurred which made you feel
6 fearful?

7 A. Yes. I mean, there was a time in early, I would say approximately
8 maybe around April of 2017, where Judge Miller was on the phone
9 again, the speaker phone, and he said to Mr. Penna that, "He has my
10 shoes sizes and he has Rachelle Gallagher's shoe sizes and he already
11 has cement boots made up to our shoe sizes and that if we betrayed
12 him, that we would be found at the bottom of the river."

13 Q. Who said this?

14 A. Judge Miller.

15 Q. And how is it that you were able to overhear this?

16 A. I was in the room.

17 Q. Was anyone else in the room?

18 A. Rachelle may have been, or she may have been in her office or right in
19 bet-- in the doorway, but she-- So, she may have been there. I can't
20 be 100 percent sure.

21 Q. What was your reaction? Did you say anything to the judge?

22 A. I mean, I was scared. I was like-- I was-- I wanted to kind of change
23 the topic or lighten the mood and he was dead serious and his face was
24 red and he was dead serious about it.

25 Q. Did you come to hear of any threat that Dave Iannone may have made

54.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 against you?

2 A. We were-- I received a phone call from Judge Fitzgerald, who is the
3 Administrative Judge for our district and she asked us to contact the
4 local, our local police agencies, Vestal Police, to-- because of her
5 concerns that David Iannone was going to, under the right
6 circumstances, if he was terminally ill, was going to put a bullet in my
7 head and the head of Rachelle Gallagher's, so we were directed to
8 contact the Vestal Police, put them on notice, take-- make rounds
9 around our house for security reasons.

10 Q. Do you know when that was?

11 A. I would have to say--

12 Q. --Well, if I could withdraw the question.

13 A. Sure.

14 Q. When was that threat, if I can call it that, relayed to you in reference to
15 the removal of you and Judge--

16 A. --It was subsequent to our removal. It was after our removal. The--
17 We were notified by Ms. Fitzgerald-- Judge Fitzgerald after our
18 removal that that occurred.

19 Q. So, it was-- So, it-- This would have been after you met with the IG?

20 A. Yes.

21 Q. And just for the record, when you say you were removed--

22 A. --Relocated.

23 Q. You were relocated, do-- Was Judge Miller allowed to remain in his
24 office, in his chambers?

25 A. No. We were told that he was going to work out of the state office

55.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 building across the street.

2 Q. Now, I want to ask you about some other areas, if I could?

3 THE REFEREE: Do you need a break?

4 THE WITNESS: I'm fine.

5 THE REFEREE: Okay.

6 MR. DEROHANNESIAN: At some point--

7 MS. CENCI: --Do you need a break?

8 MR. DEROHANNESIAN: --I don't need it right
9 away, but at some point.

10 THE REFEREE: Just let us know when it's a
11 convenient time to take a break. Are you going to a
12 different area?

13 MS. CENCI: Yes. I was going to--

14 THE REFEREE: --Let's take a short break. Let's
15 go off the record.

16 (OFF THE RECORD)

17 THE REFEREE: Let the record reflect that all
18 counsel are present and the Respondent is present. Mr.
19 Kachadourian, you are still under oath. Go.

20 BY MS. CENCI:

21 Q. Mr. Kachadourian, are you aware of any restrictions upon yourself as
22 to political activity as a court attorney?

23 A. It's my understanding that-- I don't have any first-hand knowledge of
24 this, that we're not allowed to-- We're under the same guidelines as
25 the judge, so--

56.

(Kachadourian - Direct)

- 1 Q. --Okay.
- 2 A. --it's my belief we're under the same guidelines as the judge where
3 it's prohibited.
- 4 Q. All right. Did Judge Miller ever ask you to engage in any political
5 activity while you were his court attorney?
- 6 A. He would ask me to keep names and addresses and phone numbers of
7 individuals we met at lunch or individuals we'd come across on a
8 computer for future campaigns.
- 9 Q. Did you maintain such a list?
- 10 A. No, I did not.
- 11 Q. Did he tell you why he wanted you to do this?
- 12 A. It would benefit him politically and he also asked me to-- He asked
13 me to speak to Rachelle about-- There was one incident where in or
14 about 2017, I would say June 2017, it's my rec-- It's my recollection
15 that his brother-in-law, his sister's husband was running for mayor of
16 Johnson City and that he had asked her to obtain signatures for him,
17 like petitions for--
- 18 Q. --Okay.
- 19 A. Petitions on the signatures and in coming back from one of his trips
20 from the judicial institute, he called me and said, "Did you hear what
21 happened?" And I was frightened. I thought somebody got hurt, and
22 he went on to say-- state that Rachelle got zero signatures for his
23 brother-in-law. He was very upset about it.
- 24 Q. Do you know the name of his brother-in-law?
- 25 A. Rick Balles.

57.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 Q. Did he-- Did Judge Miller ask you to do anything in reference to Mr.
2 Balles's campaign?

3 A. No. No, other than he-- There may have been one instance that, and I
4 can't be 100 percent certain, where he kind of hinted at making a
5 contribution, but he did not ask me to partake in it.

6 Q. Now--

7 MR. DEROHANNESIAN: (Unintelligible). I
8 would object to that. I mean, he doesn't know and he
9 doesn't recall and now is speculating.

10 THE REFEREE: And it's going to get zero weight.

11 MR. DEROHANNESIAN: Okay.

12 THE REFEREE: I don't understand.

13 MR. DEROHANNESIAN: Okay.

14 THE REFEREE: I don't understand it anyway.

15 MR. DEROHANNESIAN: Okay.

16 THE REFEREE: Can I just inquire?

17 THE WITNESS: Sure.

18 THE REFEREE: Did he ask Ms. Gallagher to get
19 signatures during work hours?

20 THE WITNESS: Was the question asked during
21 work hours?

22 THE REFEREE: Yeah, yeah. No. Did he ask her to
23 get signatures while she was on work hours?

24 THE WITNESS: He didn't specify as to what hours.

25 THE REFEREE: Thank you.

58.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 BY MS. CENCI:

2 Q. I'd like to turn to a different area now. You indicated in your earlier
3 testimony when you were describing the change in your relationship
4 with the judge, something about trips to the law office?

5 A. That's correct.

6 Q. Was it your understanding that Judge Miller had been in private
7 practice before becoming a family court judge?

8 A. My understanding, yes. That's my understanding. He had a law
9 office. He operated a law office in addition to serving as a part-time
10 village justice for Village of Johnson City and Town of Union Justice
11 for the Town of Union.

12 Q. Where was the law office located, if you know?

13 A. It's my recollection the specific address may have been 2403 North
14 Street in Endicott or Endicott, New York. I'm not sure about specific
15 numbers, but it was around those numbers.

16 Q. But had you-- had you been to that location?

17 A. Yes, I had-- I've been at-- He took me there on numerous occasions.

18 Q. When you say he took you there, are you ref-- what time frame are
19 you referring to? Before or after he became family court judge?

20 A. After he was elected judge. After he took office.

21 Q. So, while you were his court attorney? Is that what you're--

22 A. --That's correct.

23 Q. --That time frame? Can you be more specific as to the time frame?

24 A. It was throughout 2015, 2016, early part-- early up until June of 2017.

25 Q. When you say he took you there, what do you mean by that?

59.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. We would-- Once he would break from court or hearing cases, he'd
2 ask me to come with him and he would go to his law office or his--
3 At that time, after he became elected, it became the law office of
4 Artan Serjanej, but he would ask me to accompany him and go over
5 there with him.

6 Q. And you said this occurred on numerous occasions. Can you be any
7 more specific about approximate number of times?

8 A. During the two and a half years, the approximate number of times I
9 would say at least-- I would say at least on 30 separate occasions.

10 Q. Did he say why he wanted you to accompany him?

11 A. No, he did not say.

12 Q. What, if anything, did Judge Miller do during these visits to the
13 former law office?

14 A. We would get there and he would work on cases, law-- legal cases.
15 He would work there with-- There was a-- I remember specifically,
16 our first-- my first trip there with him and he started working on cases
17 with Donna Filip, who was his former secretary or Artan's current
18 secretary. I don't know what the arrangement is. And-- But, she was
19 present, Artan was present and then they'd start working on these
20 cases that-- And I was so upset about it and disturbed by it, I-- We
21 were all in a conference room, I said-- I said, "This is not going to
22 happen. This is going to stop." I slammed my fist on the table, the
23 conference table, and I said, "Judge Miller is not going to risk-- He
24 just was elected family court judge. Just-- It's like-- That's like
25 signing a \$2 million dollar contract, and he's not going to risk his

60.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 career for \$10,000, \$15,000 paydays, you know, for legal fees," and
2 af-- and nobody listened to me. He wouldn't listen to me and he
3 would just-- And I just-- And then the visits continued and
4 continued. He continued to work on cases after that and he never
5 respected my point of view or my opinion on that.

6 Q. Do you know what some of the cases were that he worked on?

7 A. There were-- Yes. I remember some of them. They were-- Some of
8 them were estates, including-- I remember the *Whalen* estate and
9 there were other estates as well. *Behal* estate. There may have been
10 early on a personal injury case as well.

11 Q. Did Judge Miller ever ask you to assist him with any of these legal
12 matters?

13 A. On visa cases. I remember he asked me to-- There was also the
14 *Saraceno* case-- estate, too. Did he ever ask me? Yes, he did ask me
15 on one occasion, I specifically remember about the *Behal* estate. I
16 think the surrogate's court judge had asked him for an accounting and
17 I think he needed a specific form for that and he asked me if I could
18 obtain or he asked me if I could get an attorney to do the accounting or
19 in addition to getting the forms that were needed for the accounting.

20 Q. Where did this conversation occur?

21 A. This conversation occurred-- Part of it occurred in his chambers and
22 part of it occurred in his car.

23 MS. CENCI: Your Honor, may I show the witness
24 an exhibit?

25 THE REFEREE: Sure. Can you just identify the

61.

(Kachadourian - Direct)

1 number?

2 MS. CENCI: Yep.

3 BY MS. CENCI:

4 Q. Mr. Kachadourian, I'm showing you what's been marked as
5 Commission Exhibit 4III, and ask if you could look at that? And
6 what-- do you recognize it?

7 A. Yes, I recognize this.

8 Q. When did you first see that document?

9 A. I would say the first third or the first quarter of 2017.

10 THE REFEREE: Just so we're clear, this is an eight-
11 page combination of things. It's not a single document.
12 There's eight pages that you've stapled as one doc-- as one
13 exhibit.

14 MS. CENCI: Yes.

15 THE REFEREE: Is that correct?

16 MS. CENCI: Yes.

17 THE REFEREE: All right. Mr. DerOhannesian, you
18 have this, right?

19 MR. DEROHANNESIAN: Yes.

20 THE REFEREE: And this is also Exhibit B to the
21 complaint?

22 MS. CENCI: Yes. So, thank you, Your Honor, for
23 that clarification. Now, if I'll ask the witness.

24 BY MS. CENCI:

25 Q. Mr. Kachadourian, when you saw Exhibit 4III, was it all the pages?

62.

(Kachadourian - Direct)

- 1 A. No. Specifically, I remember page 2, and the reason why I remember
2 page 2 is that the judge-- It appears that this is for Jerry Behal's estate
3 and his brother, Dave Behal came to chambers while I was there and
4 the judge and Mr. Dave Behal, who was represented to me was the
5 executor of the estate, went over these doc-- went over page 2.
- 6 Q. Okay. But it-- How did you come by the document? How did you
7 come to see it?
- 8 A. The judge had this. He-- I saw him and Mr. Behal going over this.
9 They wanted to go over the-- They wanted to do an accounting or go
10 over the expenses. I remember them going through it.
- 11 Q. You indicated that the judge asked you if you would find a form or
12 take some action?
- 13 A. That's correct.
- 14 Q. Can you place that in context?
- 15 A. He-- It's my understanding that the court, the surrogate's court
16 wanted Judge Miller to-- or wanted an accounting of this estate and
17 Judge Miller asked me if I knew somebody that could do the
18 accounting or if I could get the forms for him for the accounting.
19 However, he represented to me that he eventually got the forms from a
20 different attorney, from another attorney.
- 21 Q. Did the judge show you any documents--
- 22 A. --Yes. He showed me this. Yes.
- 23 Q. --when he made you this-- the request?
- 24 A. Yes.
- 25 Q. What did he show you?

63.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. He showed me-- I can't remember if it's exactly this document, but he
2 showed me these documents exactly like this about the estate.

3 Q. And by this, you're pointing to page 2?

4 A. That's correct.

5 Q. Did you ever see the emails?

6 A. I cannot recollect. I remember-- I remember when he showed me this
7 that these emails may have--

8 THE REFEREE: "This," being the second page?

9 A. Page 2, that the emails may have been attached, but I cannot be 100
10 percent certain. Yes, I remember him discussing-- I remember him
11 talking to Donna about the cost for attorney fees and stuff and Donna,
12 you know, questioning him how much the attorney's fees should be
13 taken out. Those issues came up. I remember overhearing those
14 conversations and he said, "No." He wanted his regular attorney fees
15 and he wasn't going to cut--

16 THE REFEREE: That's-- Yeah, that's not
17 responsive--

18 THE WITNESS: --Okay.

19 THE REFEREE: So, let's (unintelligible)--

20 THE WITNESS: --But, I mean, that's in here about
21 the lawy--

22 THE REFEREE: --I understand.

23 THE WITNESS: --Okay.

24 THE REFEREE: --But, the question--

25 THE WITNESS: --Sure.

64.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 THE REFEREE: --is not other conversations.

2 THE WITNESS: Sure.

3 THE REFEREE: The question was can-- About
4 identifying the exhibits and the pages there.

5 MR. DEROHANNESIAN: And he's referring to a
6 document not in evidence.

7 THE WITNESS: Okay.

8 THE REFEREE: Right. And I think he's answered
9 the questions. There's nothing pending right now.

10 BY MS. CENCI:

11 Q. So, let me try to refresh your recollection, Mr. Kachadourian. Do you
12 recall giving testimony about this matter before the Commission on an
13 earlier occasion?

14 A. Yes, I do.

15 Q. Okay.

16 MR. DEROHANNESIAN: I would object. The
17 witness hasn't said that he needs refreshing.

18 MS. CENCI: I think he said he didn't recall if he
19 saw the emails.

20 THE REFEREE: Let me-- I'm just trying to recall
21 what he said. Yeah, I'll allow it. It's non-jury, so let's--
22 we'll get there anyway, so let's cut to the chase. So, the
23 question was, do you remember giving testimony-- There's
24 nothing pending, so let's wait--

25 THE WITNESS: Yeah. Yeah.

65.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 MS. CENCI: Okay.

2 THE REFEREE: Do you remember giving
3 testimony before the Commission?

4 THE WITNESS: Yes, I did.

5 THE REFEREE: Yes.

6 THE WITNESS: Yes.

7 BY MS. CENCI:

8 Q. Okay. That was on August 8, 2017?

9 A. That's correct.

10 Q. And that was up in the Commission offices in Albany, New York. Is
11 that right?

12 A. That-- Yes, it is.

13 Q. And I questioned you and you gave testimony under oath. Is that
14 right?

15 A. That's correct.

16 MS. CENCI: Your Honor, should I mark the
17 transcript for identification? I'd like to show it to him.

18 THE REFEREE: No, I don't think so. Not yet.

19 MS. CENCI: Okay.

20 BY MS. CENCI:

21 Q. Do you recall, Mr. Kachadourian, that I showed you an Exhibit 3 and I
22 asked you this question, this is at page 34, line 18;

23 "Q. So, I--"

24 MR. DEROHANNESIAN: --Hold it for a second.

25 34--

66.

(Kachadourian - Direct)

1 MS. CENCI: 34.

2 MS. SCALISE: Line 18.

3 THE REFEREE: Flip that over. You don't need this
4 right now.

5 MS. CENCI: Ready?

6 MR. DEROHANNESIAN: Yes. Yes.

7 THE REFEREE: Okay.

8 MS. CENCI: Okay.

9 BY MS. CENCI:

10 Q. So, did I ask you this question;

11 "Q. So, I'm showing you, I marked it Exhibit 3.

12 Is that the documentation the judge gave you?

13 "A. Yes, it is."

14 MS. CENCI: And may I show the witness the
15 Exhibit 3?

16 THE REFEREE: Yes. Just don't trip.

17 A. Yes. That's the exhibit.

18 Q. Okay. So, does--

19 A. --That re--

20 Q. --that prior testimony refresh your recollection as to whether you saw
21 that whole packet that we marked today as Exhibit 4III?

22 A. Yes. It does.

23 Q. And what is your refreshed recollection as to that?

24 A. Those documents were attached to page 2.

25 Q. When you received it?

67.

(Kachadourian - Voir Dire)

1 A. When I received it.

2 MS. CENCI: Your Honor, I'm going to move
3 Exhibit 4III into evidence at this time.

4 THE REFEREE: Any objection?

5 MR. DEROHANNESIAN: A few questions on
6 foundation.

7 THE REFEREE: Sure.

8 VOIR DIRE BY

9 MR. DEROHANNESIAN:

10 Q. Mr. Kachadourian, when did you receive the Exhibit 3-- 4III?

11 THE REFEREE: --4.

12 A. It's my belief it was the first third or first quarter of 2017.

13 Q. And did you have it again after that?

14 A. Did I have it again?

15 Q. Did you receive it or obtain it after that?

16 A. That I don't know. You mean, if I received it twice?

17 Q. Did you see it or obtain it more than that one occasion that you say
18 Judge Miller gave it to you?

19 A. I believe-- I believe so.

20 Q. Well, when was the second time?

21 A. I would say-- I don't know. I don't know if I received it a second
22 time. I can't recollect.

23 Q. Did you provide it to anyone?

24 A. I cannot recollect.

25 Q. Did you turn over that document to anyone?

68.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Voir Dire)

1 A. I cannot-- Sitting here today, I cannot recollect.

2 Q. And did you ever have a copy in your hand without Judge Miller being
3 present, other than when Ms. Cenci showed it to you?

4 A. That, I-- Do you want to repeat that question?

5 Q. Did you ever have a copy of that exhibit in your possession other than
6 when you say Judge Miller showed it to you?

7 A. No. The first time I saw it was when he handed it to me.

8 THE REFEREE: No, that's not-- Listen carefully.

9 THE WITNESS: Okay. Okay. Sure. Sure.

10 THE REFEREE: He said, "Did you ever have this
11 document in your possession other than when Judge Miller
12 gave it to you?"

13 THE WITNESS: No. I don't believe so.

14 BY MR. DEROHANNESIAN:

15 Q. And is that document complete from when you first saw it?

16 A. I cannot be certain.

17 Q. Is there something missing?

18 A. I cannot be certain.

19 Q. Did you say something was missing?

20 A. I don't think so.

21 THE REFEREE: No, I-- No, he didn't say that.

22 BY MR. DEROHANNESIAN:

23 Q. So, to your knowledge that is complete with everything that you say
24 was in the package?

25 A. I cannot be certain.

69.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Voir Dire)

1 THE REFEREE: Any objection?

2 BY MR. DEROHANNESIAN:

3 Q. Do you have any knowledge of whether that is the complete document
4 that you say Judge Miller had or showed you?

5 A. No. I cannot recollect.

6 MR. DEROHANNESIAN: I would object based on
7 the witness's answer that--

8 THE REFEREE: --I think there's sufficient
9 foundation. I'll receive 4III.

10 MS. CENCI: Thank you. I'll just retrieve Exhibit 3.
11 Is that all right?

12 THE REFEREE: Yeah. Right?

13 MS. CENCI: So we can get (unintelligible). Thank
14 you.

15 DIRECT EXAMINATION

16 BY MS. CENCI:

17 Q. Mr. Kachadourian, do you know whether Judge Miller ever attempted
18 to involve Rachelle Gallagher in any of his work on these estate
19 matters?

20 A. Yes.

21 Q. How do you know about that?

22 A. Because I was present.

23 MS. CENCI: May I approach the witness?

24 THE REFEREE: Sure. Certainly.

25 MS. CENCI: I show you Exhibit 2V for

70.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 identification.

2 THE REFEREE: D, as in Delta?

3 MS. CENCI: V, as in Victor.

4 THE REFEREE: Oh, V.

5 BY MS. CENCI:

6 Q. Do you recognize that, Mr. Kachadourian?

7 A. Yes, I do.

8 Q. How do you recognize it?

9 A. I happened to be present when Judge Miller asked Rachelle to prepare
10 a correspondence-- this correspondence.

11 Q. Okay. And for the record, what's the date of that correspondence?

12 A. The date of the correspondence is November 2015-- November 6,
13 2015.

14 Q. And when in reference to the occasion-- When in reference to that
15 date was this occasion?

16 A. I believe it was November 6, 2017-- I mean, 2015.

17 Q. Where did this conversation occur?

18 A. It occurred in Ms. Gallagher's office.

19 Q. In family court chambers?

20 A. That's correct. In family court chambers.

21 Q. Who else-- Who was present?

22 A. Rachelle, myself and Judge Miller.

23 Q. And so you-- What did Judge Miller say about preparing that?

24 A. He asked her to prepare the correspondence to Mr. Hayes and the
25 reason behind it was--

71.

(Kachadourian - Direct)

1 THE REFEREE: --No, no. That's--

2 THE WITNESS: Oh, okay. Sure.

3 THE REFEREE: That's not pending.

4 A. He asked her to prepare the correspondence.

5 Q. And do you know whether she did so?

6 A. Yes, she did.

7 Q. How do you know she did that?

8 A. Because I was there when she did it.

9 Q. So, she prepared that letter?

10 A. Yes.

11 Q. Did you witness any other conversation about the letter?

12 A. Yes. Judge Miller asked that she make copies of checks that were
13 attached to the letter, so she would make copies of those checks.

14 Q. Do you know what happened to-- This is obviously a photocopy,
15 correct?

16 A. Yes.

17 Q. Do you know what happened to the original of that letter and the
18 enclosures?

19 A. Do I know what happened to it? No, I don't know what happened. I
20 don't know. No, I do not.

21 Q. Did the judge say why he wanted Rachelle to prepare this document?

22 A. Yes.

23 Q. What'd he say?

24 A. That the checks that were attached were unsigned.

25 Q. Did he say anything else about, that you recall, about that letter?

72.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Direct)

1 A. Not that I can recall. No.

2 Q. Was-- Withdrawn. I'm going to reserve the introduction of that for
3 another witness, Your Honor, okay?

4 THE REFEREE: That's fine.

5 BY MS. CENCI:

6 Q. You mentioned a *Saraceno* estate?

7 A. Yes.

8 Q. Did you ever see any documents relative to that estate?

9 A. Yes.

10 Q. Where did you see them?

11 A. In Judge Miller's chambers.

12 Q. Do you know how they got there?

13 A. He brought them in.

14 Q. What, if anything, did you observe him do with these records?

15 A. He would show me the letter. The surrogate's court-- This was an
16 estate out of Tioga County, and the surrogate judge there is Judge
17 Gerald Keene, and I observed-- being shown a letter from Judge
18 Keene to-- requesting that an accounting be done of that estate.

19 Q. Did the judge ask you to assist him or for any advice in any way?

20 A. He did not ask me to assist him, and I do not think he asked me for
21 advice on that estate.

22 Q. What was the context under which he showed you this letter from the
23 surrogate?

24 A. It was-- He showed it to me under the context that this is something
25 that has to be done or has to get done and however he represented it to

73.

(Kachadourian - Direct)

1 me that he didn't feel an accounting was necessary in that estate.

2 MS. CENCI: May I have a moment, Your Honor?

3 THE REFEREE: Certainly.

4 BY MS. CENCI:

5 Q. Mr. Kachadourian, you are a plaintiff in a federal lawsuit against
6 Judge Miller. Is that correct?

7 A. That's correct.

8 Q. And was that, to your knowledge, filed recently?

9 A. It's my belief that that was filed in December of 2018.

10 Q. Do you know if there was any reason for the timing of the filing of the
11 suit at that time?

12 MR. DEROHANNESIAN: Objection.

13 THE REFEREE: Yeah. What's the basis of the
14 objection?

15 MR. DEROHANNESIAN: It's not relevant.

16 THE REFEREE: Well, actually, it's really-- it's
17 bolstering at this point. It's a fact and I know where you're
18 going and-- You know what, I'll let it go. I know-- I know
19 the reason and I know the answer, but go ahead and ask it,
20 if you know. Is there a reason why it was filed at that time?

21 THE WITNESS: Yes.

22 THE REFEREE: What was the reason?

23 THE WITNESS: The reas-- We were-- The reason
24 was it was my belief that it was two days prior to a deadline,
25 the statute of limitations.

74.

(Kachadourian - Direct)

1 BY MS. CENCI:

2 Q. How, if at all, have you been personally affected by Judge Miller's
3 conduct?

4 A. It's affected me both emotionally and physically.

5 MS. SCALISE: Hold on just a sec.

6 MR. DEROHANNESIAN: Can we have a moment?

7 MS. SCALISE: Can we have a moment?

8 THE REFEREE: Just a sec.

9 MR. DEROHANNESIAN: We would object to that
10 question.

11 THE REFEREE: On grounds?

12 MR. DEROHANNESIAN: Outside the scope of the
13 complaint.

14 THE REFEREE: And relevance?

15 MR. DEROHANNESIAN: That's the relevance. If
16 it was in the complaint, it would be relevant or relates to the
17 complaint.

18 THE REFEREE: Sustained.

19 MS. CENCI: Well, it's not a great note to end on,
20 but I have no further questions.

21 THE REFEREE: Thank you. Counsel, do you need
22 any time before you begin?

23 MR. DEROHANNESIAN: Yeah. A few minutes
24 would be helpful.

25 THE REFEREE: All right. Let's take five minutes.

75.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Is that all right?

2 MR. DEROHANNESIAN: Yep.

3 MS. SCALISE: Yep.

4 THE REFEREE: All right. Let's take five, and
5 same rules apply as before.

6 THE WITNESS: Sure. Sure.

7 (OFF THE RECORD)

8 THE REFEREE: Let the record reflect that all
9 counsel are present and the Respondent is present. Mr.
10 Kachadourian, you are still under oath. Whenever you're
11 ready.

12 CROSS-EXAMINATION

13 BY MR. DEROHANNESIAN:

14 Q. Mr. Kachadourian, you knew Judge Miller from selling him and his
15 wife a used car several years ago, correct?

16 A. How many years ago?

17 Q. You tell me.

18 A. I don't recollect.

19 THE REFEREE: Several.

20 BY MR. DEROHANNESIAN:

21 Q. Did you sell Judge Miller and his wife a used car?

22 A. Yes.

23 Q. And that was out of your used car business?

24 A. Not out of mine, out of my wife's.

25 Q. She has a--

76.

(Kachadourian - Cross)

1 A. --No. It-- No. Let me st-- Judge Miller came to me and indicated
2 that he had a 1999 Lincoln Continental that was his dad's and it
3 burned up and-- or he was driving up the hill and the motor burned
4 up, and he was looking for a replacement for that, because he felt
5 emotionally attached to that vehicle because it was his dad's, and he
6 found one in Elmira or we found one-- I can't remember, in Elmira--
7 We drove to Elmira and picked it up.

8 THE REFEREE: All he wanted to know is--

9 THE WITNESS: --Yes. Yes.

10 THE REFEREE: --did you sell him a used car?

11 THE WITNESS: No, I did not.

12 BY MR. DEROHANNESIAN:

13 Q. Did your wife?

14 A. My wife-- Yes, that's correct.

15 Q. And what's the name of that business?

16 A. Noramar Enterprises, LLC.

17 Q. And you also have--

18 THE REFEREE: --Spell it, please.

19 A. N-O-R-A-M-A-R Enterprises, LLC.

20 Q. And who's the principal of that LLC?

21 A. I-- My wife is.

22 MS. CENCI: Your Honor, may I have an objection--

23 THE WITNESS: Yes.

24 MS. CENCI: --to the relevance of this questioning?

25 THE REFEREE: I would love to know the

77.

(Kachadourian - Cross)

1 relevance.

2 MR. DEROHANNESIAN: I'll get back to that.

3 THE REFEREE: Okay. Thanks.

4 BY MR. DEROHANNESIAN:

5 Q. Do you have your own business in your name?

6 A. I'm going to refuse to answer that. No, I don't-- I don't believe so. I
7 believe it's in my wife's name. But I'm-- From here on with
8 questions regarding to my wife's business, I'm going to refuse to
9 answer that.

10 Q. On what ground?

11 A. On relevancy.

12 THE REFEREE: Well, that's not for you-- for you
13 to say. So, what-- First of all, let--

14 MS. CENCI: --Did-- I thought we had a sys-- I'm
15 sorry, Your Honor. I thought we-- you sustained the
16 objection?

17 THE REFEREE: I did. It-- Let's have a question
18 and then we'll have an answer.

19 BY MR. DEROHANNESIAN:

20 Q. Prior to testifying today, did you review any materials?

21 A. Yes.

22 Q. What materials did you review?

23 MS. CENCI: May I ask for clarification? Are you
24 talking about just today, counsel?

25

78.

(Kachadourian - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Prior to your-- In preparation for your testimony today, did you
3 review any materials?

4 A. Yes.

5 Q. What materials did you review in preparation for your testimony
6 today?

7 A. Notes that I have made.

8 Q. Your personal notes?

9 A. Yes.

10 Q. And did you provide those to the Commission?

11 A. I prepared them last evening.

12 Q. Other than the notes that you prepared last evening, did you review
13 any other documents or materials in preparation for your testimony
14 today?

15 A. I don't believe so.

16 Q. You don't believe so?

17 A. No.

18 Q. Nothing else?

19 A. No.

20 Q. Did you review your prior testimony to the Commission prior to
21 testifying today?

22 MS. CENCI: Again, counsel, are you asking--

23 A. --No. I didn't--

24 THE REFEREE: --Just a minute.

25 A. No, I did not.

79.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 MS. CENCI: Excuse me. May I--

2 THE REFEREE: --Wait. You have-- Wait, well
3 hold on. We have an objection.

4 MS. CENCI: May I just ask for clarification? Are
5 you asking him if on this date he reviewed his prior
6 testimony?

7 THE REFEREE: No, I think the question is clear.
8 In preparation for coming in today, whether it was last night
9 or any other time, did you review any transcript of your
10 prior testimony?

11 A. Before the Commission, you ask?

12 Q. Yes.

13 A. No. I don't believe-- I don't believe I have access to that transcript.

14 Q. Did you review the summary of your interview with the inspector
15 general prior to testifying today?

16 A. Oh, yes. Now I remember. On December 27th, Ms. Cenci came to--
17 came, served me with subpoenas and I had an opportunity to read
18 quickly, I would say less than three minutes to five minutes, glance at
19 the-- I believe it was a transcript, and I'm not 100 percent certain, and
20 also-- Yes. So the answer to that is yes.

21 Q. So, you reviewed the transcript of your testimony?

22 A. When you say review it, it may have been 100 pages. I went through
23 it within three minutes to five minutes.

24 Q. And did you review the summary of your interview with the inspector
25 general when Ms. Cenci came to you on December 27th?

80.

(Kachadourian - Cross)

1 A. I believe so. Again, it was just a quick glance.

2 Q. Let me show you what's been marked Respondent's I for
3 identification. I'll give you a chance to look at it.

4 THE REFEREE: Do you have a date on that
5 transcript?

6 MR. DEROHANNESIAN: August 8, 2017.

7 THE REFEREE: Thank you.

8 BY MR. DEROHANNESIAN:

9 Q. I want to give you a second to look at it, because it's-- there's several
10 items there. Have you had a chance to look at it?

11 A. It's approximately 45 to 50 pages.

12 THE REFEREE: That's not what he asked. Have
13 you had a chance to look at it? It's a yes or no question.

14 THE WITNESS: Look at it in what sense?

15 THE REFEREE: Please, you've been an attorney a
16 long time. Take a look at it, make sure you see what it is.

17 A. Yes, I've seen what it is. It is a transcript of my appearance on August
18 8th.

19 Q. And-- As well as some attachments to that.

20 A. That's correct.

21 Q. And is that the material that you were presented by Ms. Cenci on
22 December 27th?

23 A. That's my recollection. Yes, it is.

24 Q. And did she give you a copy of that?

25 A. No, she did not.

81.

(Kachadourian - Cross)

1 Q. Okay. And how much time did you spend with Ms. Cenci on
2 December 27th?

3 A. I don't recollect.

4 Q. Was it more than 30 minutes?

5 A. I believe so.

6 Q. Was it more than an hour?

7 A. I'm not 100 percent certain. I believe it may have been.

8 Q. Where was that meeting?

9 A. That meeting took place on the first floor of the Broome County
10 Family Court offices.

11 Q. Okay.

12 A. In a conference room.

13 Q. Did you make any notes during that meeting?

14 A. No, I did not. I attempted to write down who was present, but I
15 wasn't-- I-- There were two individuals who were present here that I
16 attempted to write down their names. Other than that, no other notes.

17 Q. I'd like to show you Respondent's F.

18 THE REFEREE: F, as in Frank?

19 MR. DEROHANNESIAN: Yes.

20 MS. CENCI: Is that the one with the cross-out?

21 MR. DEROHANNESIAN: Yeah.

22 MS. CENCI: Okay.

23 MR. DEROHANNESIAN: We took a second to
24 show Ms. Cenci first. This is one of the items I pre-marked.

25 THE REFEREE: Yes.

82.

(Kachadourian - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Mr. Kachadourian, do you recognize Respondent's F?

3 A. Do I recognize it?

4 Q. Yes.

5 A. Yes, I do.

6 Q. You've seen a copy of it?

7 A. I saw a copy of this on Friday, approximately 2:00 to 3:00 PM this
8 past Friday afternoon. That's correct. It was provided to me by the
9 offices of William Dreyer.

10 Q. Your attorney in the federal lawsuit?

11 A. That's correct.

12 Q. And that was Mr. Joshua Friedman who gave you a copy, correct?

13 A. He didn't give me a copy. He emailed me a copy, and I think it was
14 approximately either 1:49 PM or 2:49 PM on this past Friday
15 afternoon.

16 Q. And looking at Respondent's Exhibit F, and item number 1, did you
17 look for copies of all memoranda, notes, reports, emails or other
18 correspondence?

19 MS. CENCI: Your Honor, I have an objection. This
20 is a-- We don't know, for the record, but now counsel has
21 him reading from it. This is a subpoena which Your Honor
22 signed requiring the production of documents tomorrow.

23 THE REFEREE: I understand. That-- He's just--
24 That's fine.

25 MS. CENCI: Well, I object to this witness being

83.

(Kachadourian - Cross)

1 asked about this prior to the return date of the subpoena.

2 THE REFEREE: Well, it's his-- I-- What's the
3 basis of the objection? He hasn't asked-- He hasn't asked
4 the witness to produce them here today. He's merely asked
5 him, "Have you looked?" And he-- That's a yes or no
6 question.

7 MS. CENCI: But Your Honor, it's possible that the
8 validity of this subpoena will be challenged tomorrow when
9 it's-- when it's returnable and I object to the witness, who
10 is not represented by counsel, being asked about the
11 contents of it or anything else.

12 THE REFEREE: I don't see any harm in asking
13 whether he looked for anything, and it's not returnable until
14 tomorrow, so the answer-- I'm not going to speculate on
15 what the answer is. It's really simple. Have you looked for
16 any of those documents?

17 BY MR. DEROHANNESIAN:

18 Q. In items 1, 2, or 3?

19 A. Okay. Again, once I received this on Friday-- Yes.

20 THE REFEREE: Mr. Kachadourian, it's a yes or no
21 question. Did you look for these things?

22 THE WITNESS: It's not as simp-- Yes, I did. Yes,
23 I did.

24 THE REFEREE: Then just say I guess-- Thank you.

25 THE WITNESS: Yes, I did.

84.

(Kachadourian - Cross)

1 THE REFEREE: Next question.

2 BY MR. DEROHANNESIAN:

3 Q. And did you obtain any documents responsive to either items 1, 2, or
4 3?

5 A. Did I obtain? I've-- I emailed--

6 THE REFEREE: No, no.

7 MS. CENCI: Excuse me.

8 THE REFEREE: No, no. That's not what he asked.

9 MS. CENCI: Your Honor. I'm sorry, but I must
10 object that this document is not in evidence.

11 THE REFEREE: I agree. I--

12 MS. CENCI: --He's being asked about the contents
13 of a document not in evidence.

14 THE REFEREE: It's really-- It's a procedural issue.
15 It's not substantive. I don't know. I'm happy to let him
16 continue, because I don't think any of this matters yet.
17 Let's just get through it. Do you understand the question?

18 THE WITNESS: Could you please repeat the
19 question?

20 THE REFEREE: Did you find any of the documents
21 enlisted in Exhibit R-F, in 1, 2, or 3? Did you find any of
22 the things that you looked for?

23 THE WITNESS: I don't believe so.

24 THE REFEREE: Next question.

25

85.

(Kachadourian - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. If you look at Respondent's Exhibit I, attachment A. Can you tell me
3 if attachment A are records which you had in your possession at any
4 time?

5 A. I don't recollect.

6 Q. You don't recollect what?

7 A. Recall. I don't--

8 MS. CENCI: --What-- I'm sorry. Counsel, what is
9 attachment A to--

10 MR. DEROHANNESIAN: --That's-- That's not
11 what you gave me in discovery. It's the exhibits attached to
12 his testimony.

13 MS. CENCI: Okay. First of all, we're talking again
14 about something that's not in evidence.

15 THE REFEREE: I--

16 MS. CENCI: --I'm not sure what Exhibit A is.

17 THE REFEREE: Why don't you identify it for the
18 record, Mr. Kacha-- DerOhannesian?

19 MR. DEROHANNESIAN: Respondent's I is the
20 testimony of Mark Kachadourian, with exhibits attached as
21 provided by--

22 MS. CENCI: --So, there's an Exhibit 1, and it's
23 Exhibit A to Exhibit 1?

24 MR. DEROHANNESIAN: See?

25 MS. CENCI: Yeah. That's attachment A to Exhibit

86.

(Kachadourian - Cross)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1.

MR. DEROHANNESIAN: Respondent I.

MS. CENCI: Yeah, but you're talking about an exhibit-- It's an exhibit to an exhibit.

THE REFEREE: I understand.

MS. CENCI: It's an attachment to an exhibit to an exhibit and I just want to be clear. Okay.

THE REFEREE: That's right.

MR. DEROHANNESIAN: Yeah.

THE REFEREE: Let's get to the point. What's the question?

BY MR. DEROHANNESIAN:

Q. With respect to attachment A, did you at any time, have those documents in your possession?

THE REFEREE: And those are checks, correct?

MR. DEROHANNESIAN: Correct.

THE REFEREE: Cop-- Photocopies of checks.

A. I don't believe I had those in my possession. I-- However, I can't recall.

Q. Did you provide those checks in attachment A to the Commission?

A. I can't recall.

Q. To the inspector general?

A. That I can't recall.

Q. And with respect to the inspector general interview, you reviewed that before testifying before the Commission, correct?

87.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 THE REFEREE: Could you rephrase that?

2 MR. DEROHANNESIAN: Yes.

3 THE REFEREE: I don't think you said it right.

4 BY MR. DEROHANNESIAN:

5 Q. You testified before the Commission on August 8, 2017, correct?

6 A. That's correct.

7 Q. And prior to that, you reviewed a summary of an interview with the
8 inspector general, correct?

9 A. I believe so. I believe we were shown it. That's correct. I believe
10 that's the case.

11 Q. And you made a few corrections on that document?

12 A. I believe that's what occurred. That's my-- That's what I remember.

13 Q. And then you swore to the truth and accuracy of the statements
14 contained in the inspector general's report, correct?

15 A. I don't have any first-hand recollection of that, but I have no reason to
16 doubt what you're saying is true.

17 Q. Well, you don't remember?

18 A. I don't remember.

19 Q. Okay. Bringing your attention to when you testified on August 8,
20 2018--

21 MS. SCALISE: --'17.

22 BY MR. DEROHANNESIAN:

23 Q. 2017. First, I'd like to show you the reference in this question, which
24 is Exhibit 1.

25 THE REFEREE: Well, wait. Why don't you have--

88.

(Kachadourian - Cross)

1 Before you show him anything, just ask him a question. He
2 may know the answer. Then you don't have to refresh his
3 recollection.

4 BY MR. DEROHANNESIAN:

5 Q. This is page 6, line 20:

6 "Q. I'm going to mark that as Exhibit 1. I'll show
7 you that and ask you if this is an accurate statement
8 attributed to you. You made those statements that are
9 recorded in there?

10 "A. Yes, I did.

11 "Q. Apart from the changes which you initialed, is
12 that right?

13 "A. Yes. I didn't see-- Like on page 3, bottom of
14 3, there's a footnote. Ms. L [REDACTED] was informed about
15 the allegation by Administrative Judge Molly Fitzgerald on
16 Tuesday, July 18th.

17 "Q. Okay. You didn't say that?

18 "A. No.

19 "Q. Okay.

20 "A. I mean, I don't, you know, I can't swear to the
21 accuracy of it, but--

22 "Q. --All right. But apart from the--

23 "A. --Right. Footnote, yes.

24 "Q. With the changes that you've made, you can
25 swear to the accuracy of it?

89.

(Kachadourian - Cross)

1 "A. Yes. Yes, I can."

2 Did you make those answers to those questions?

3 A. I don't know what you're reading. I don't know what you're reading.

4 THE REFEREE: You said you didn't recall, and
5 he's attempted to refresh your recollection. Does that
6 refresh your recollection that you made that statement?

7 A. Yes.

8 Q. Okay. And you swore to the accuracy also of the summary of the
9 inspector general's interview with you, with the exception of the
10 correction that you made?

11 A. I believe that to be true.

12 Q. You believe it to be true or it is true?

13 A. I believe it to be true.

14 Q. And with respect to the notes that you reviewed in preparation for
15 your testimony, do you have those notes with you?

16 A. Yes, I do.

17 MR. DEROHANNESIAN: Mark this?

18 THE REFEREE: That's your preference.

19 MS. CENCI: Your Honor, be-- As I indi-- I'm
20 sorry to interrupt, but as I indicated before, I've already
21 started using numbers for the pre-marked Commission
22 exhibits.

23 THE REFEREE: Yes.

24 MS. CENCI: So, I think something was just marked

25 Exhibit 1 and--

90.

(Kachadourian - Cross)

1 MR. DEROHANNESIAN: --No, I.

2 THE REFEREE: No, no. I.

3 MS. CENCI: Oh, did you say I? I beg your pardon.

4 THE REFEREE: I. Why don't you show it to Ms.
5 Cenci first? And what have you marked that?

6 MR. DEROHANNESIAN: Respondent J.

7 BY MR. DEROHANNESIAN:

8 Q. I'm going to show you Respondent's J. Can you identify what that is?

9 A. That's notes I made in preparation to help me recollect dates for
10 today's hearing.

11 Q. And when you prepared that, did you look at any documents or items
12 to help you make those notes?

13 A. No, I did not.

14 Q. Did you have any discussions with Judge Molly Fitzgerald, other than
15 the one you testified to on direct, in the spring of 2018 concerning
16 your allegations against Judge Miller?

17 A. What timeframe in 2018 did you state?

18 Q. From the ti-- You indicated that in 2018, you spoke to Judge
19 Fitzgerald, is that correct?

20 A. Judge Fitzgerald called me--

21 Q. --Yes. So, you spoke to her?

22 A. --about the concern--

23 Q. --And--

24 A. --About the concern of our safety.

25 Q. Yeah, when was that?

91.

(Kachadourian - Cross)

1 A. I would say-- I don't have a specific date as recollection. It was
2 2000-- I believe it was in 2018, she called.

3 Q. Okay. And the date? February, March, April, May?

4 A. I don't recollect.

5 Q. Was that just one call that you had with Judge Fitzgerald about any of
6 the matters that you have testified about?

7 A. Telephone call?

8 Q. Telephone call, in person, email, text message. Any communi-- form
9 of communication.

10 A. I remember when we were placed here in June or July of 2017, I
11 remember when we were placed here, we met with the district
12 executive and Judge Fitzgerald. I remember her being at a meeting
13 with us. That was one. This-- I remember the phone call. She called
14 concerning our safety. That's two. I can't remember any other
15 meetings or conversations I had with Judge Fitzgerald. I don't
16 recollect any others.

17 Q. And when you met with her in 2017, the summer of 2017, did you
18 discuss the allegations against Judge Miller?

19 A. I don't remember what was discussed at that time.

20 Q. So, you don't recall the purpose or what occurred at that meeting with
21 Judge Fitzgerald in the summer of 2017?

22 A. No.

23 Q. Is that correct?

24 A. It-- I remember it taking place in judge-- I mean, District Executive
25 Gates' office. I don't know if it was a scheduled meeting or if it

92.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 was-- she happened to be there. I just can't recollect.
- 2 Q. Do you recall the subject matter of your meeting with Judge Fitzgerald
- 3 and District Administrator Gates in the summer of 2017?
- 4 A. I remember-- I remember in addition to that meeting, there was
- 5 another meeting--
- 6 Q. --Okay. At-- We'll talk about another meeting in a second.
- 7 A. Okay.
- 8 Q. But first, do you recall or you don't recall--
- 9 A. --I don't re--
- 10 Q. --the subject matter of your meeting with Judge Fitzgerald and
- 11 Administrator Gates in the summer of 2017?
- 12 A. I don't recall. I don't recall--
- 13 Q. --Okay.
- 14 A. --the specific-- No, I don't recall.
- 15 Q. Okay.
- 16 A. I can't.
- 17 Q. Now, you were about to say there was another meeting.
- 18 A. I believe that there was-- When we first came here, we met with
- 19 District Executive Gates and he indicated to us the reason why we
- 20 were being placed here and, you know, and that we were being
- 21 separated from Judge Miller. I remem-- I think I remember that.
- 22 Q. That was the second meeting?
- 23 A. I think that was separate from the meeting with-- that included Judge
- 24 Fitzgerald. That's correct.
- 25 Q. And then, when was the next time you had contact with Judge

93.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Fitzgerald about any aspect of the allegations that you have made
2 against Judge Richard Miller?

3 MS. CENCI: Your Honor, I have an objection--

4 THE WITNESS: --I haven't made any allegations,
5 sir.

6 THE REFEREE: Well, hold on. There's an
7 objection.

8 MS. CENCI: Yeah. There's no foundation for that
9 question. That-- There's been no evidence of any
10 allegations by this witness.

11 THE REFEREE: Yeah, I'm not sure where we're
12 going with that.

13 THE WITNES: And I want to--

14 THE REFEREE: --No.

15 THE WITNESS: No? Okay.

16 BY MR. DEROHANNESIAN:

17 Q. Did you have other meetings with Judge Fitzgerald where you
18 discussed the conduct of Judge Miller?

19 A. I can't recollect. I don't think so.

20 Q. Did you speak to Judge Rita Connerton?

21 MS. CENCI: Your Honor, I have an objection.

22 THE WITNESS: Yeah.

23 THE REFEREE: What's the objection?

24 MS. CENCI: Judge Rita Conner-- Rita Connerton's
25 name has not even been mentioned on direct. It's

94.

(Kachadourian - Cross)

1 completely irrelevant. Counsel's on a fishing expedition.

2 THE REFEREE: Well, I think that for cross-
3 examination, it goes to not only the scope of the direct but
4 also anything that has to do with bias or credibility. If that's
5 where we're headed, we should get there, but we haven't
6 heard from--

7 BY MR. DEROHANNESIAN:

8 Q. --First of all, we should identify who is Judge Rita Connerton?

9 A. Judge Rita Connerton is a Broome County Family Court Judge and I
10 also believe that she is the Supervising Family Court Judge for our
11 judicial district.

12 Q. Is she the supervising judge of-- in family court?

13 A. I believe so, yes.

14 Q. And did you discuss with Judge Connerton any aspects of the conduct
15 of Judge Miller?

16 A. I don't think so. I don't believe so. I remember her coming to my
17 office when we first went back and she asked me what I would like to
18 do and I told her, you know, I would be interested in helping out the
19 other court attorneys. I remember that conversation, and I don't
20 believe we've ever had, other than, "Hello," "Goodbye," or you know,
21 don't believe we'd ever had any other conversations. I can't recollect
22 any others.

23 Q. How many meetings have you had-- Excuse me, meetings or phone
24 calls, with the Commission on Judicial Conduct?

25 A. I can't re-- Meetings? We had one meeting in Albany, I believe. We

95.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 had another meeting on December 27, 2018, here at Broome County
2 Family Court. So, I believe we had two meetings and we had phone
3 conversations that took part about when the meetings were, what time
4 they were, where they were going to occur and about my availability
5 to make sure I was available on today's date. How many phone
6 conversations? Maybe, possibly, three or four, to the best of my
7 recollection.

8 Q. And you met with the inspector general on how many occasions?

9 A. We met with the inspector general on one occasion up in Albany, at
10 the towers and we met at a second, with the inspector general at the
11 law offices of Dreyer-Boyajian, on a second occasion.

12 Q. And when was that second occasion?

13 A. I'm not-- I'm having trouble with dates. I can't recollect.

14 Q. What about years?

15 A. Years? 2000-- I believe it took place in 2018, the second one.

16 Q. When you say Dreyer-Boyajian, they are the attorneys representing
17 you in your civil lawsuit against Judge Miller and the State of New
18 York?

19 A. That's correct, and also--

20 Q. --And the Office of Court Administration?

21 A. That's correct.

22 Q. And when did you first contact any attorney, whether it was Dreyer-
23 Boyajian or any other law firm in connection with any conduct of
24 Judge Miller?

25 A. The first contact I had, counselor, was with-- attempted contact was

96.

(Kachadourian - Cross)

1 with your office, sir.

2 Q. Mm-hmm. And when was that?

3 A. I would say about in May or June of 2017, I contacted your office and
4 left a message for you to call me back, but you never did.

5 Q. When you called my office on June 18th, they informed you that I was
6 in California?

7 A. That's not true.

8 Q. Okay. And then two weeks later--

9 A. --I don't--

10 Q. --I called your cell phone. Correct?

11 A. June 18th? I believe I called your office earlier than that, sir.

12 Q. In any event, you called my office?

13 A. Left a message and no phone call was ever returned.

14 Q. In any event, you called-- You're saying that call was for the purpose
15 of retaining counsel against Judge Miller?

16 A. No. No, it was not.

17 THE REFEREE: I think that-- I think you're
18 confused. He asked when you first contacted a lawyer
19 about the allegations.

20 MS. CENCI: Well, if I recall, Your Honor, the
21 question was when-- what was your first contact with any
22 attorney regarding the conduct--

23 THE REFEREE: --That's fair--

24 MS. CENCI: --of Judge Miller.

25 MR. DEROHANNESIAN: Yeah.

97.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. And you said that's when you called my office?

3 A. That's correct.

4 Q. Now, you knew that I represented Judge Miller, correct?

5 A. That's correct.

6 Q. And we had met before, correct?

7 A. That's correct.

8 Q. And we'll come back to that.

9 A. Sure.

10 Q. Later. And your lawsuit is not just against Judge Miller, correct?

11 A. I believe you're correct.

12 Q. It is also against the Office of Court Administration, correct?

13 A. That's my understanding.

14 Q. Well, have you seen the lawsuit that you filed?

15 A. Yes. Yes, I have.

16 Q. Have you reviewed it?

17 A. I have.

18 Q. In terms of your background before you worked with Judge Miller, I
19 think you told Ms. Cenci that you worked at Rappaport and
20 Rappaport?

21 A. That's correct.

22 Q. And from what-- when to when was that?

23 A. I can't recollect.

24 Q. Was it for one year, two years, three years, five years?

25 A. My guess would be approximately two years.

98.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. And that was in the Binghamton area?

2 A. That's correct.

3 Q. And were you doing family court work then?

4 A. That's correct.

5 Q. Were you doing assigned counsel work?

6 A. No. I don't think so. I don't-- I do not think so, but I can't recollect.

7 Q. And in addition to your income from the practice of law, did you have
8 any other business from the time that you graduated from law school
9 until you joined Judge Miller?

10 A. Any other business source of income? No. I don't believe so.

11 Q. And ...

12 A. Could you repeat that question again?

13 Q. Sure.

14 A. I just want to make sure I got it right.

15 Q. From the time you graduated law school--

16 A. --Right.

17 Q. --until you worked for Judge Miller--

18 A. --Right.

19 Q. --in January 2015, did you receive income from any work from any
20 other source?

21 THE REFEREE: Besides the practice of law?

22 BY MR. DEROHANNESIAN:

23 Q. Besides the practice of law?

24 A. My wife and I owned a company prior to joining Judge Miller. Yes.

25 Q. And what is the name of the company that you and your wife owned?

99.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. I don't see how--

2 THE REFEREE: --It's not for you to say whether
3 it's relevant. It's a very fair question. What's the name of
4 the company? I'm not here to answer your questions.
5 You're here to answer the questions that are asked of you.

6 A. Noramar, N-O-R-A-M-A-R, Enterprises LLC.

7 Q. And from what period of time were you involved with Noramar
8 Enterprises LLC?

9 A. I don't remember when it was first established, but I would say--

10 Q. --How about 1999, that you filed with the Secretary of State?

11 A. That's possible. That sounds-- I believe that to be correct.

12 Q. And until when did Noramar Enterprises LLC exist?

13 A. Pardon me?

14 Q. Until when did Noramar Enterprises LLC exist?

15 A. It exists today.

16 Q. And who is the president of Noramar?

17 A. My wife is.

18 Q. And when did she become president?

19 MS. CENCI: Your Honor, objection.

20 THE REFEREE: Well, are we going somewhere--

21 MS. CENCI: --It's irrelevant.

22 MR. DEROHANNESIAN: Yes.

23 THE WITNESS: Yeah.

24 MR. DEROHANNESIAN: Yes.

25 THE REFEREE: All right. Let's get to it.

100.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. You were president of Noramar, correct?

3 A. When?

4 Q. From 1999 until when?

5 A. That I can't recollect, sir. I don't recollect.

6 Q. You don't recollect being the president?

7 A. No. I can't-- Sir, this whole process has been very strenuous on me
8 and I'm having difficulty just-- I've got other things going on in my
9 life that are very strenuous as well, so I'm having a difficulty
10 remember specific dates and approx-- Especially when they relate to
11 20 years ago.

12 Q. You're still involved with Noramar, correct?

13 A. No, I'm not.

14 Q. When--

15 A. --Yes. I would say yes. My wife is. She's the owner, and yes, I
16 believe to be still involved.

17 Q. Pardon?

18 A. Yes. The answer is-- I-- She is the owner of Noramar.

19 Q. And you were president for many years, correct?

20 A. I cannot recollect as to what many years means or--

21 MR. DEROHANNESIAN: I need some more
22 stickers.

23 THE WITNESS: You know what? I think at this
24 point, I may request an adjournment to have my counsel
25 present.

101.

(Hon. Richard H. Miller, II)

1 THE REFEREE: Well, that's not-- That's not going
2 to happen, so ...

3 MS. CENCI: Your Honor, I'm going to be objecting
4 and moving to strike all of this testimony because it appears
5 to be completely irrelevant.

6 THE REFEREE: Well, let's-- Can we get it all--
7 You know what? I think what I'm going to do is I'm going
8 to ask the witness to step out--

9 MR. DEROHANNESIAN: --Thank you.

10 MS. CENCI: --Yes. Can we have an offer of proof?

11 THE REFEREE: --and ask for an offer of-- Yes.

12 MS. CENCI: Thank you.

13 THE REFEREE: So, Mr. Kachadourian, if you
14 could step out. Leave this here. We're still on the record.

15 MS. SCALISE: Can we shut the door, please?

16 THE REFEREE: Yep.

17 MS. SCALISE: Oh, I didn't realize he was coming
18 back. Sorry.

19 THE REFEREE: Yeah. He's-- All right. Counsel
20 for Respondent, can we have an offer of proof--

21 MR. DEROHANNESIAN: --Yes.

22 THE REFEREE: --of where we're headed?

23 MR. DEROHANNESIAN: Yes. Mr. Kachadourian
24 has been actively involved in this used car business for
25 many years. We have information received directly from

102.

(Hon. Richard H. Miller, II)

1 the Department of Motor Vehicles and others that he has
2 been investigated for misconduct involving the use of
3 dealer plates on vehicles which should not have been used
4 on personal vehicles, on his own personal vehicles. I have
5 additional information that there are requirements to be an
6 auto dealer. You have to sell a certain amount of cars. I've
7 been told that-- from another dealer that Mr. Kachadourian
8 sought to conceal the true source of the sale of vehicles so
9 that he could continue to maintain his license. He asked
10 this dealer to utilize his car sales as part of his numbers. So,
11 that's the second thing. The third thing is he was asked,
12 under oath, by the Office of Court Administration when he
13 applied for a job to list his employment from the time he
14 graduated from law school. He did that under penalty of
15 perjury. He never listed Noramar Enterprises and any
16 involvement, and that's why I think you see his reluctance
17 to answer questions. There's also an investigation by motor
18 vehicles into the misuse of the plates.

19 THE REFEREE: Well, the investigation, honestly,
20 unless it's come up with a conclusion, I think is irrelevant,
21 but I think it's very fair if he swore under oath to UCS that
22 he had no other employment and did, that to me goes to his
23 credibility. The other stuff, I think not, so I have no issue
24 asking him and identifying that document, and if he didn't
25 include it, then I think that's fair. But the fact that

103.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 somebody investigated him, I don't see as any relevance at
2 all.

3 MS. CENCI: Your Honor, may I respond?

4 THE REFEREE: Once sec.

5 MR. DEROHANNESIAN: Well, one more thing
6 about my offer. I seek to ask him did he do those acts. If
7 he denies it, I think I'm bound by that. I'm not going
8 beyond that to the--

9 THE REFEREE: --Well, what difference-- Boy,
10 that's-- I think that's really far afield.

11 MR. DEROHANNESIAN: Okay.

12 THE REFEREE: I have no issue with the failure to
13 include the source of income, especially-- It's particular--
14 It would be ironic if we wouldn't allow that, given one of
15 the charges against Judge Miller, but I think that that is a
16 fair question, but the things about being investigated and
17 the use of dealer plates really have no bearing on his
18 credibility on whether these facts occurred or didn't occur.

19 MR. DEROHANNESIAN: I understand.

20 THE REFEREE: If he was convicted of something,
21 especially any kind of false statement, that I think would be
22 relevant, but ...

23 MR. DEROHANNESIAN: And I'll accept your
24 ruling, just so I make my rec-- our position is that we have
25 a good-faith basis to ask questions about bad acts and they

104.

(Hon. Richard H. Miller, II)

1 would relate to his credibility and assessing his credibility.

2 THE REFEREE: Well, I don't-- I don't see it. I
3 think the use of dealer plates, if that's even true, is too far
4 afield, but if you want to ask him about forms that he filled
5 out and swore under oath are true and are not--

6 MR. DEROHANNESIAN: --Mm-hmm.

7 THE REFEREE: --that, I think is fair.

8 MR. DEROHANNESIAN: And then I was showing
9 him the articles of incorporation to show that he was the
10 president. That's-- was actually the next thing that I was
11 doing, just to help him, because he's having trouble
12 remembering that he was the president.

13 THE REFEREE: Yeah, well that-- We're going to
14 limit it just to that issue--

15 MR. DEROHANNESIAN: --Okay.

16 THE REFEREE: Well, actually, he said he was-- he
17 still is involved, even today. Yeah, Ms. Cenci.

18 MS. CENCI: Thank you. Your Honor, I understand
19 you're going to allow Mr. DerOhannesian to question the
20 witness about some job application that he filled out?

21 THE REFEREE: If I understand counsel's proffer--
22 One sec. The door is open.

23 MS. CENCI: May I see the document that counsel--

24 THE REFEREE: --Sure. Show it to Ms. Cenci.

25 MS. CENCI: --is intending to show?

105.

1 THE REFEREE: --My-- It's my understanding of
2 the proffer that he intends to introduce evidence that this
3 witness submitted some form under oath to UCS and it was
4 false.

5 MS. CENCI: Yes, which he's characterizing as
6 false. That's why I want to see what it says.

7 THE REFEREE: Yeah. Show her.

8 MR. DEROHANNESIAN: And I'll give a copy to
9 Your Honor.

10 THE REFEREE: I don't need to see it just yet.

11 MR. DEROHANNESIAN: You don't? And you
12 can keep that.

13 MS. CENCI: Oh, thank you.

14 THE REFEREE: And then how much more do you
15 have of this witness after this, just timewise?

16 MR. DEROHANNESIAN: Quite a bit.

17 THE REFEREE: I'm thinking this might be, after
18 we do this one issue, this might an appropriate time to break
19 for lunch.

20 MR. DEROHANNESIAN: I mean, my whole cross-
21 examination?

22 THE REFEREE: Yes. How much longer?

23 MR. DEROHANNESIAN: It's lengthy.

24 THE REFEREE: All right. Then I think--

25 MR. DEROHANNESIAN: --Yeah.

1 THE REFEREE: --it would be a good time to take
2 our lunch break, so let's--

3 MR. DEROHANNESIAN: --Yeah. After this topic
4 would be a good ...

5 MS. CENCI: I don't really see where you're going
6 with this.

7 THE REFEREE: Can I-- Let me see that. Let me
8 see the document.

9 MS. CENCI: It doesn't say anything about, you
10 know?

11 THE REFEREE: If it says that it's under oath, that's
12 fine.

13 MS. CENCI: This is my copy or do you want it?

14 MR. DEROHANNESIAN: You--

15 THE REFEREE: Yeah, let me just take a look, if
16 you would, please?

17 MS. CENCI: It doesn't say what counsel says it
18 purports to say, and if he's applying for a legal job, why
19 would he put down that he also owns or is involved as an
20 officer, potentially, of an LLC? I mean ...

21 THE REFEREE: If this-- If we were talking about
22 the fact that he was an usher in a movie theater in high
23 school, I would agree with you, but if he is currently--

24 MS. CENCI: --But--

25 THE REFEREE: --at the time this is submitted, is

1 involved with a business, I think it's relevant. I don't know
2 that it's going to prove what Respondent's counsel thinks
3 it's going to prove and destroy his credibility, but I think we
4 can get right to the point. Let's do it. He-- I assume the--
5 You're going to ask him, "Did you understand this, that you
6 had to be truthful?" And he's going to say, "Yes." And,
7 "Did you list this car company?" And he's going to say,
8 "No," and that, I think, is where we're headed.

9 MR. DEROHANNESIAN: Can I refresh his
10 recollection that he was president?

11 THE REFEREE: Sure.

12 MR. DEROHANNESIAN: Yeah.

13 THE REFEREE: Sure. Because if he-- If it was--
14 If he was the president of the company at the time that this
15 was filled out, he should have listed it. But--

16 MS. CENCI: --I'm sorry. I don't want to argue,
17 Your Honor, but it says employment history. That's not
18 employment, it's--

19 THE REFEREE: --I-- Well, let-- But let's get--
20 Let's get to it and then we'll take our lunch break. I know
21 where we're headed and it's not worth more than where
22 we're headed quickly. So, can we bring him back, please?

23 MS. CENCI: By the way, Your Honor, I would also
24 note that I was not provided with this document as in
25 discovery. I was told there were no documents that were

(Kachadourian - Cross)

1 going to be introduced into evidence.

2 THE REFEREE: Well, I think it's for impeachment
3 only and I don't think he's offering it.

4 MR. DEROHANNESIAN: Right. Well, it's not
5 part of my direct case.

6 MS. CENCI: Well, if he's not offering it, then I
7 would object to the witness being asked about the contents
8 of it.

9 THE REFEREE: Let the record reflect that the
10 witness has returned. All counsel are present. Respondent
11 is present. Mr. DerOhannesian, let's move on.

12 MR. DEROHANNESIAN: Okay.

13 BY MR. DEROHANNESIAN:

14 Q. I'd like to show you Respondent's J for identification, and if you
15 would look at it? Do you recognize that?

16 MS. CENCI: I'm sorry. Wasn't Respondent's
17 Exhibit J the notes?

18 MR. DEROHANNESIAN: No. This is the articles
19 of incorporation.

20 MS. CENCI: Yeah, but I think you've done the
21 wrong exhibit--

22 THE REFEREE: --Yes, that's correct. It should--
23 That should be K.

24 MR. DEROHANNESIAN: Oh. I'm sorry.

25 MS. SCALISE: I'm sorry. I should have told you

109.

(Kachadourian - Cross)

1 that.

2 MS. CENCI: Okay.

3 THE REFEREE: Thank you, Ms. Cenci.

4 BY MR. DEROHANNESIAN:

5 Q. I'm showing you Respondent's K. Do you recognize those
6 documents?

7 THE REFEREE: Try not to hit the mic.

8 THE WITNESS: Oh, sorry.

9 THE REFEREE: It's all right. So we don't get
10 feedback.

11 A. They're documents dated 19 years ago and your-- Do I recognize
12 them? I don't have first-hand recollection of them, but--

13 MS. SCALISE: No, what is he looking at?

14 BY MR. DEROHANNESIAN:

15 Q. Do you see your signature on them?

16 A. Yes, I do.

17 Q. And you signed as-- Does that refresh your recollection that you
18 signed as president of Noramar Enterprises?

19 A. Yes.

20 Q. And have you ever filed any document with the Secretary of State
21 changing your status as president of Noramar Enterprises?

22 A. That I-- That I do not know.

23 Q. Do you recall applying to the Office of Court Administration to work
24 for Judge Miller in December of 2014?

25 A. Yes.

110.

(Kachadourian - Cross)

- 1 Q. And you had to fill out paperwork, correct?
- 2 A. Yes. That's correct.
- 3 Q. And part of the paperwork you had to fill out was an employment
- 4 application?
- 5 A. I believe so, but I cannot remember exactly. I believe we had to fill
- 6 out paperwork. I believe you're correct.
- 7 Q. And were you asked to list your employment history?
- 8 A. Yeah, I believe-- I'm not sure. I would have to see the
- 9 documentation. But it--
- 10 Q. --Let me show you Respondent's Exhibit K, for identification.
- 11 THE REFEREE: L.
- 12 MS. SCALISE: L.
- 13 MR. DEROHANNESIAN: L.
- 14 A. Yes.
- 15 Q. Do you recognize that form?
- 16 A. Yes, I do.
- 17 Q. It's a form that you signed?
- 18 A. Yes.
- 19 Q. You signed it on December 3, 2014?
- 20 A. Pardon me?
- 21 Q. You signed it on December 3, 2014?
- 22 A. That's correct.
- 23 Q. And you were asked about your employment history?
- 24 A. That's correct.
- 25 Q. And you did not list any employment with Noramar Enterprises,

111.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 correct?

2 A. I wasn't an employee at Noramar.

3 Q. And--

4 THE REFEREE: --It's a--

5 THE WITNESS: No. No, I did not.

6 THE REFEREE: Do you understand the question?

7 Did you list Noramar Enterprises?

8 THE WITNESS: No, I did not. That's correct.

9 BY MR. DEROHANNESIAN:

10 Q. And you affirmed the truthfulness of your statements about your
11 employment history, correct?

12 A. That's correct.

13 Q. Have you also filed financial disclosures with the State of New York?

14 A. Financial disclosures, yes.

15 Q. Okay.

16 A. I believe-- I believe-- I was-- They re-designated my position, so
17 based on that re-designation, I was required to fill out a financial
18 disclosure form.

19 Q. When is the first one you filed?

20 A. I don't recollect. I believe it was possibly two to three years ago. I'm
21 not sure.

22 Q. Did you complete one at the time that you were working for Judge
23 Miller in 2015?

24 A. A financial disclosure?

25 Q. Yes.

112.

(Kachadourian - Cross)

1 A. I don't believe so. It's not--

2 Q. --In 2016, did you file a financial disclosure?

3 A. I don't believe so. I think-- I don't believe so.

4 Q. In 2017, did you file a financial disclosure?

5 A. It may have been possible, yes.

6 Q. And did you list Noramar Enterprises?

7 A. I can't recollect.

8 Q. In that disclosure?

9 A. I can't recollect. I believe, if I had to guess--

10 MS. CENCI: --Your Honor, excuse me. I really
11 must object. There is no showing that this-- whatever this
12 disclosure form--

13 THE WITNESS: --I believe, it was--

14 MS. CENCI: --required the disclosure of this
15 Noramar Enterprises.

16 THE REFEREE: I understand and I think we're
17 done.

18 MR. DEROHANNESIAN: Yes. I am.

19 THE REFEREE: And he answered the question that
20 he can't recall.

21 MR. DEROHANNESIAN: That's right.

22 THE REFEREE: All right. I think it's a good time
23 to take our lunch break.

24 MR. DEROHANNESIAN: It is.

25 MS. CENCI: Can we move Exhibit L into evidence?

113.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 THE REFEREE: Do you object?

2 MR. DEROHANNESIAN: It-- I don't object.

3 THE REFEREE: Well, we'll receive it. All right.

4 We're going to take our lunch break. It's 12:35. I've been
5 advised that if we take an hour, that should be sufficient for
6 everybody to get out, get something to eat and get back. Is
7 that okay with counsel?

8 MS. CENCI: Are we not going to finish with this
9 witness first, Your Honor, or--

10 THE REFEREE: --Mr. DerOhannesian advises that
11 he has--

12 MR. DEROHANNESIAN: --There's quite a bit left
13 to go.

14 THE REFEREE: --quite a bit more. What's your
15 best judgment as to the amount of time you have left, based
16 on where we're-- where we've been this morning?

17 MR. DEROHANNESIAN: Roughly three-to-one
18 with, you know, cross will probably be about three times as
19 long as direct, maybe.

20 THE REFEREE: No, no. Just how many-- how
21 many more-- how much more time now? Are we talking
22 an hour?

23 MR. DEROHANNESIAN: I think closer to two
24 hours.

25 THE REFEREE: All right. Then we'll--

114.

(Kachadourian - Cross)

1 MS. CENCI: --You have two more hours of cross--

2 MR. DEROHANNESIAN: --I-- Look, I don't
3 know. It depends how the witness answers. I think we've--
4 I don't think my first hour would have taken as long as it
5 did, but I think--

6 THE REFEREE: --All right. So, let's-- We'll take
7 our lunch break. Let's go off the record.

8 (OFF THE RECORD)

9 THE REFEREE: All right. We are back on the
10 record. All counsel are present. The Respondent is present
11 and the witness is back and you're still under oath, Mr.
12 Kachadourian. Counsel?

13 MR. DEROHANNESIAN: Yep.

14 BY MR. DEROHANNESIAN:

15 Q. Mr. Kachadourian, did you speak to anyone during the lunch break
16 about your testimony?

17 A. No, I did not.

18 Q. Are you familiar with the rules and regulations of the State of New
19 York governing conduct of non-judicial employees?

20 A. No.

21 Q. Have you ever reviewed the rules and regulations governing the
22 conduct of non-judicial employees of the Office of Court
23 Administration?

24 A. I cannot recollect.

25 Q. You're familiar with the website DaleEarnhardtInc.com?

115.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. That's correct.

2 Q. That's a site that you reserved?

3 A. That's correct.

4 Q. And you were found to have engaged in bad faith when you got and
5 obtained that website name, correct?

6 A. I don't believe that's correct.

7 Q. Was there an arbitrator's decision in that case?

8 A. I believe so--

9 MS. CENCI: --Your Honor. Excuse me. I object.

10 This is improper impeachment. He can't impeach on these
11 kinds of quote, unquote, "prior bad acts."

12 THE WITNESS: I could--

13 THE REFEREE: --Just a minute.

14 MS. CENCI: It's irrelevant and it's improper.

15 THE REFEREE: Well, if-- I could see how it could
16 be, depending on what the next question and answer is.

17 A. Can I have an opportunity to explain my answer?

18 Q. Were you found to have engaged in bad faith by a panel of arbitrators
19 in your use of the website DaleEarnhardtInc.com?

20 A. I don't recollect, but can I have an opportunity to explain?

21 Q. No.

22 THE REFEREE: No.

23 A. Okay.

24 Q. I'm going to show you Respondent's Exhibit M. After you've had a
25 chance to look at it, let me know that you've had an opportunity to

116.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 review it. Does that refresh your recollection looking at the last page
2 of the arbitration panel's decision that you were found to have used
3 the domain name DaleEarnhardtInc.com in bad faith?

4 A. I think the document speaks for itself.

5 THE REFEREE: No, that's--

6 THE WITNESS: That's--

7 THE REFEREE: --It's a simple question.

8 THE WITNESS: Specifically, it says, "This panel
9 finds that based upon all of the evidence available in this
10 case that respondent was and is using the domain name in
11 bad faith."

12 THE REFEREE: Are you the respondent in that
13 document?

14 THE WITNESS: Yes, I was.

15 THE REFEREE: Then the answer is yes.

16 THE WITNESS: Yes.

17 BY MR. DEROHANNESIAN:

18 Q. And that's something that-- One of the things you would do is take
19 and obtain domain names, correct, and register them?

20 A. Can I see that again?

21 Q. You want to see this again?

22 A. Yes.

23 THE REFEREE: Do we have a timeframe for this
24 next question?

25

117.

(Kachadourian - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Throughout the period of 2000 until present, you have registered other
3 domain names, correct?

4 A. This was in 2000-- Yes, that's correct.

5 Q. The Earnhardt decision was in 2002, correct?

6 A. That's correct.

7 Q. But you would register a name of, for example, ThomasWLibous.com,
8 correct?

9 A. That's correct.

10 Q. And he was a state senator here, correct?

11 A. That's correct.

12 Q. And he never gave you permission to do that, did he?

13 A. No, he did not.

14 Q. And you used other names of Sen. Libous without his permission,
15 correct?

16 A. Could you be more specific? I don't recall--

17 Q. --You registered other domain names in the name of Thomas Libous
18 without his permission?

19 A. I don't have any recollection.

20 Q. For example, Senator ThomasWLibous.com. You registered that
21 name?

22 A. I don't have any recollection.

23 Q. And you never had any permission from Sen. Libous, his family, to do
24 that, did you?

25 A. That's-- I don't have any recollection. Do you have a timeframe, sir?

118.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 MS. CENCI: Your Honor, I move to strike all of
2 this testimony. It's improper--

3 MR. DEROHANNESIAN: --I'll move on to the
4 next question.

5 MS. CENCI: --impeachment, and with respect to
6 Exhibit M--

7 THE REFEREE: --Which hasn't been offered.

8 MS. CENCI: --which hasn't been offered and
9 counsel asked the witness to characterize the-- some
10 conclusion in there and we don't have any--

11 THE REFEREE: --No. I don't-- I don't think that's
12 true. I think-- I think the way I understood this, and it's not
13 in evidence, he asked a question, I think the witness said he
14 didn't recall, and he used Exhibit M just to refresh his
15 recollection, and the witness tried to give a cute answer
16 instead of just answering yes and had to read it. It was a
17 very specific question.

18 MS. CENCI: But Your Honor, there's no context.
19 It's obviously a multi-page document. I haven't even seen
20 it. And it's-- We don't know in what context this arose.

21 THE REFEREE: Well, I think you can explore that
22 on re-direct, but--

23 MS. CENCI: --I think it's collateral, Your Honor,
24 and I object. I move to strike all of this testimony.

25 THE REFEREE: I'll overrule that.

119.

(Kachadourian - Cross)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. DEROHANNESIAN:

Q. You indicated you worked in the Tioga County Family Court system?

A. That's correct.

Q. Do you have a contract for that?

A. Did I have a contract? Yes, I did.

Q. And that contract was from 1997 until what year?

A. I think the contract terminated in 2000-- I think it was the end of--

Q. --Do you have the exhibit, your employment application? Does that help--

MS. CENCI: --Sir, the witness was not finished with his answer. He was answering.

MR. DEROHANNESIAN: Okay. I know.

A. I think it was-- I think the contract-- the contract terminated at the end of 2013, to the best of my recollection.

Q. Okay. And how much were you being paid under that contract when it terminated?

A. I don't have-- I could give you a rough estimate. I don't have a specific amount.

Q. Was it roughly \$110,000?

A. My recollection, I would say that's pretty close. I'm not saying that it's specific, but that's close.

Q. And the contract was not renewed, correct?

A. The contract, no, it was not renewed.

Q. Okay. And while you were doing work under that contract and

120.

(Kachadourian - Cross)

1 performing services under that contract, you represented someone
2 named Bonita Pratt, correct, and her son? Excuse me, you represented
3 Bonita Pratt's son, correct?

4 A. I can't recollect.

5 Q. And Ms. Pratt and her son accused you of double-dipping, whereby
6 you collected a fee for work being performed under the Tioga County
7 contract?

8 MS. CENCI: Your Honor, now we're getting into
9 hearsay. I object.

10 THE WITNESS: Yeah. No, I'm going to object.

11 THE REFEREE: Well, you have no basis to object.
12 Just--

13 MS. CENCI: --Objection. The-- Now, counsel's
14 asking about hearsay.

15 THE REFEREE: Well, it's an accusation and I
16 agree. I'll sustain the objection. If there's-- If this witness
17 was found to have committed some type of misconduct or
18 pled guilty, that's different, but an accusation is not proof of
19 anything.

20 BY MR. DEROHANNESIAN:

21 Q. Was that matter referred to the attorney grievance committee or then
22 commission on professional--

23 THE REFEREE: --No, that's all confidential.

24 That's under Section 90 of the Judiciary Law that the--

25 Unless it is-- there is a finding by a grievance committee or

121.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 a court, then that's all confidential and it's just an allegation
2 unless there's something more.

3 BY MR. DEROHANNESIAN:

4 Q. And while you had the contract with Tioga County, was there any
5 other attorney who performed services with you?

6 A. Yes. Back in-- I don't know when the contract was first started. You
7 represented it started in 1997. If, in fact, that's the case, in the initial--
8 When we first-- When I first obtained the contract, there was an
9 attorney whose name was Harvey Singer. We both submitted a bid
10 together. There were several bids submitted, but her-- him and I
11 submitted the bid together at that time.

12 Q. How many years did you work with Mr. Singer--

13 A. --Mr. Sing--

14 Q. --first under the Tioga County contract?

15 A. Under the Tioga County contract, I cannot recollect, but I would say, I
16 don't know if it was two to four years, but soon after we entered the
17 contract, he developed lung cancer and you know, eventually he
18 passed away as a result.

19 Q. And when did he pass away?

20 A. I'm just-- I don't recollect. I would say approximately-- If I was to
21 guess, 2000, 2002, 2001, somewhere in that timeframe.

22 Q. And did you maintain contact with Mr. Singer after he finished
23 working with you?

24 A. Well, he-- When he died, he finished working with me. I mean, he--
25 I continued to share--

122.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. --When you--

2 A. --the contract. I mean, it is my recollection even though he was ill and
3 home in bed, I still-- He still--

4 Q. --Yeah.

5 A. --I felt he should still share in that, because he was, you know--

6 Q. --And-- And did you-- So, you had a relationship with him until he
7 died, correct?

8 A. Yes. I would-- I visited him at his house when he was ill and
9 bedridden.

10 Q. And you knew his wife?

11 A. I knew his wife, that's correct.

12 Q. What is his wife's name?

13 A. His wife's name is Debbi Singer.

14 Q. And did you continue contact with Debbi Singer after he passed away
15 in about 2002?

16 A. Well, what happened was he passed--

17 Q. --Simple question. Did you main--

18 THE REFEREE: --I don't understand the question.

19 MR. DEROHANNESIAN: Okay.

20 THE REFEREE: What does contact mean?

21 BY MR. DEROHANNESIAN:

22 Q. Did you see Debbi Singer after her husband, Harvey, passed away?

23 A. Harvey rented the office upstairs from me-- or downstairs from me
24 and I was upstairs and she-- when he passed away, there was furniture
25 leftover and I think there was like a chair and a desk and other chairs

123.

(Kachadourian - Cross)

1 and I had contact with her. She went and sold, I believe she sold some
2 to an auction here or whatever, and whatever she couldn't sell, she
3 sold to me and I purchased the remaining.

4 Q. And did you continue to see her and have contact with Ms.--

5 A. --After that?

6 Q. Yes.

7 A. I don't-- You know, I-- The few times I appeared in family court, I
8 saw-- may have seen her in the lobby one time, because she's chief
9 clerk of the family court up until she retired, maybe a year or two ago,
10 but I did not-- I don't recollect if I ever saw her or spoke to her after
11 that.

12 Q. So, you would see her in family court when you were a practicing
13 lawyer?

14 A. Yes. I may have ran into her in the lobby one time. I remember we
15 said, "Hello," and I may have ran into her at the mall once. I can't
16 recoll-- Other than that, I don't recall other meetings.

17 Q. And did you see her when she-- when you began working for Judge
18 Miller?

19 A. Yes. Yes. She was the chief clerk of the family court at that time.

20 Q. She was the chief clerk of the family court in Broome County?

21 A. That's correct.

22 Q. Correct? So, you didn't need to be introduced to her, because you
23 knew her already, correct?

24 A. That makes sense.

25 Q. Okay. And it would be fair to say you had a good relationship with

124.

(Kachadourian - Cross)

- 1 Debbi Singer when you began working for Judge Miller?
- 2 A. That's correct.
- 3 Q. And you felt comfortable talking to Debbi Singer, is that fair to say?
- 4 A. Felt comfortable talking to her? I felt comfortable. It depends on
- 5 what the topic was.
- 6 Q. And you would discuss Debbi Singer with Judge Miller, correct?
- 7 A. No, he would discuss Debbi Singer with me.
- 8 Q. Did you discuss your relationship with Debbi Singer to Judge Miller?
- 9 A. There was no relationship.
- 10 Q. Did you discuss your friendship with Debbi Singer to Judge--
- 11 A. --There was no--
- 12 Q. --Miller?
- 13 A. There was no friendship to discuss.
- 14 Q. Did you make any comments concerning the state of your relationship
- 15 with Debbi Singer to Judge Miller?
- 16 A. No, I did not.
- 17 Q. You say you were involved in the campaign of Judge Miller, is that
- 18 correct?
- 19 A. That's correct.
- 20 Q. And when you say you were involved, I think you said you went to
- 21 some football-- high school football games, correct?
- 22 A. I remember going to ME Stadium. I remember two specific times I
- 23 went with him. I remember a third time going where he didn't show
- 24 up and then I left. I remember going to Johnson City field to see a
- 25 high school game, as well--

125.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. --Yeah.

2 A. --so, yes, that's correct.

3 Q. And did you collect signatures for his petitions?

4 A. Did I collect signatures? No, I did not.

5 Q. And did you write speeches?

6 A. He was-- I did write one speech. He called me on the morning that he
7 was going to get inaugurated, or the sworn-in ceremony and he asked
8 me to write up something and I quickly, you know, before that
9 morning, I got up and I jotted down a few things. However, 99
10 percent of it which wasn't read, so ...

11 Q. Well, did you actually write something for him?

12 A. Yes, I think I did.

13 Q. And do you have a copy of what you say you wrote?

14 A. No, I do not.

15 Q. And was that the only time you say you ever wrote anything for him?

16 A. I wrote the court decisions, assisted in writing court decisions.

17 Q. I'm talking about speeches during the campaign.

18 A. Speeches. I can't-- I'm trying to think. I can't-- I can't recall.

19 Q. Do you recall testifying that you wrote speeches, in the plural?

20 THE REFEREE: Testify where?

21 BY MR. DEROHANNESIAN:

22 Q. Before the Commission on Judicial Conduct?

23 A. Yeah, I don't recall. I don't recall.

24 Q. Page 5, and we have Respondent's I, if that helps you--

25 A. --Sure.

126.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. --follow along since this has been marked. At line 19: "How did that
2 come about?" Were you asked this question and did you make this
3 answer on August 8, 2017?

4 "Q. How did that come about?

5 "A. You know, that's a decision he made. I did
6 assist him throughout the campaign. We did-- You know,
7 my family has real estate in the area and, you know, we put
8 his signs or whatever, his billboards on our property, so we
9 helped him. We helped him financially, contributed to his
10 campaign and, you know, I helped him write speeches and
11 those sort of things, you know, on a campaign, whatever a
12 campaign person does and assists in those things."

13 Did you make that answer to that question?

14 A. That was my answer. That's correct.

15 Q. Okay, so you said, "speeches," in your testimony, correct?

16 A. That's correct.

17 Q. Was there only one speech that you say--

18 A. --I can't recollect. I can't recall at this time.

19 Q. And things of those sorts. What are, "things of those sorts," when you
20 use that phrase there? Did-- Was that in reference to anything else
21 that you wrote?

22 A. I remember we would go-- I don't know what you would call it, like a
23 community bazaar or something in one of the outlying towns and I
24 accompanied him. I'm just trying to think. Things of that sort.

25 Q. That-- Is there anything else you can think of that you say you did,

127.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 other than what you've testified to on direct or what was in your
2 answer to the Commission?

3 A. I can't recollect anything else.

4 Q. So, in this campaign, how many positions were open or available?

5 A. In this campaign?

6 MS. CENCI: I don't understand the question--

7 MR. DEROHANNESIAN: --If you can't

8 understand, I'll rephrase it.

9 BY MR. DEROHANNESIAN:

10 Q. When Judge Miller ran for family court judge, how many openings for
11 the position of Broome County Family Court Judge were there?

12 A. Oh, two.

13 Q. Okay. And how many candidates?

14 A. I believe there were four candidates.

15 Q. Okay. And one of the candidates was Mark Young?

16 A. Yes, that's correct.

17 Q. And he won his position?

18 A. Yes, that's correct.

19 Q. And another was Daniel D. Reynolds?

20 A. I'm not sure of his middle initial, but it was Daniel Reynolds.

21 Q. Okay. Dan Reynolds, correct?

22 A. Yes, that's correct.

23 Q. And he's the brother of the chief administrative judge?

24 A. I believe that to be true.

25 Q. That being Molly Reynolds, correct?

128.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. I believe that to be true.

2 Q. And then, the third candidate was Peter Charnetsky?

3 A. Yes. Yes, that's-- There were four candidates. It was--

4 Q. --And he was an incumbent--

5 A. --Yes, that's correct.

6 Q. --family court judge, correct?

7 A. Yes.

8 Q. And Judge Miller, correct?

9 A. Yes.

10 Q. And Judge Miller and Judge Young were the ones who won that
11 election, correct?

12 A. Yes.

13 Q. Now, when you were appointed-- Excuse me. When you received
14 your job, were you appointed by Judge Miller?

15 A. I think it-- I'm-- Judge Miller decided to select me. Yes. I would
16 answer that yes.

17 Q. So, you're not a civil service person, correct?

18 A. I believe now I am. I believe I was-- I'm part of the civil service
19 union, so I believe I am a civil service--

20 Q. --When did you become a unionized member?

21 A. I-- It's-- The minute I took office, it was my understanding. We
22 were required, it's mandatory, to join the union.

23 Q. Okay. Were you appointed by Judge Miller?

24 THE REFEREE: Just to clarify, you were required
25 to join the union or you--

129.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 THE WITNESS: --Yes, it's mandatory.

2 THE REFEREE: --or did you get union benefits?

3 THE WITNESS: No--

4 THE REFEREE: --You actually joined as a voting
5 member of the union--

6 THE WITNESS: No, you have to-- They-- No.

7 They have to-- They take the union dues right out of--

8 THE REFEREE: --That's an agency shop.

9 THE WITNESS: Oh, okay.

10 THE REFEREE: Did you actually join the union?

11 THE WITNESS: No. No.

12 THE REFEREE: No? Okay. So, you were an
13 agency shop member--

14 THE WITNESS: --Okay.

15 THE REFEREE: --of the union. Thank you.

16 Because I didn't think that was correct.

17 THE WITNESS: Okay.

18 MR. DEROHANNESIAN: That made the point I
19 was getting to, so thank you.

20 THE REFEREE: Okay.

21 BY MR. DEROHANNESIAN:

22 Q. And have you sought any other position within the Office of Court
23 Administration since joining Judge Miller?

24 A. Yes.

25 Q. And what position was that?

130.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 A. Well, Judge Miller was-- While we were together working, I applied
2 for deputy chief clerk. There were-- Margaret Raftis had retired and
3 there was an opening and I applied for that and I--
- 4 Q. --deputy chief clerk of the family court?
- 5 A. That's correct. And--
- 6 Q. --Did you apply for any other position?
- 7 A. I believe, yes, I did. I--
- 8 Q. --What other position?
- 9 A. I believe I applied, while we were together, I applied-- It's my belief,
10 and I don't have timeframes for this, but I believe we were together, I
11 applied for the hearing magistrate position. There was an opening in
12 Tioga County.
- 13 Q. Did you apply for any other positions?
- 14 A. During what timeframe?
- 15 Q. From the time you worked for Judge Miller until today?
- 16 A. Yes.
- 17 Q. What position was that?
- 18 A. Those two, deputy chief clerk, hearing magistrate in Tioga County and
19 for a hearing magistrate position here in Broome County.
- 20 Q. Are any of those still pending?
- 21 A. No, they're not.
- 22 Q. Okay. When Judge Miller became judge in January of 2015 and the
23 immediate period before that, November, December, did you assist
24 Judge Miller in the transfer of his practice?
- 25 A. I tried to. There was-- And I'm not sure the exact timeframe of this,

131.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 but what he had asked me to do is assist him--

2 Q. --First, did you assist him in any way in transferring any of his private
3 files?

4 A. It's not a yes or no question.

5 MS. CENCI: Can we get clar-- Excuse me. Can we
6 get clarification--

7 THE WITNESS: --I mean, I need an explanation.

8 THE REFEREE: Just a minute. Wait a second.

9 They clarified-- I-- The point was November and
10 December.

11 MR. DEROHANNESIAN: Yeah.

12 MS. CENCI: Yes, but as to what is meant by
13 transfer of files.

14 THE REFEREE: I understand that to mean from
15 Judge Miller to another lawyer. Is that your question?

16 MR. DEROHANNESIAN: Yeah. Yeah.

17 BY MR. DEROHANNESIAN:

18 Q. Do you understand my question or not?

19 A. Yes, and I'd like to explain my answer.

20 Q. First, did you assist Judge Miller in transferring his private files from
21 private practice to any attorney?

22 A. I don't-- I-- That's not a yes or no-- I don't believe so.

23 Q. Did you put Judge Miller in contact with David Kapur?

24 A. Yes, I did.

25 Q. And David Kapur was a friend of yours, correct?

132.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. No, he was-- He's a professional. We say, "Hello," and "Goodbye."
2 And other than that, I mean--

3 Q. --You suggested Mr. Kapur to take over certain files?

4 A. It's David Kapur, K-A-P-U-R. I-- May I explain?

5 THE REFEREE: Sure.

6 A. Okay. Judge Miller came to me and said, you know, I said, "You have
7 to wind down your practice and I wound down my practice, you've
8 got to wind down your practice," and he said, "Well, do you know of a
9 firm or of anyone that would be willing to do that?" And so, I
10 contacted David Kapur. They're both in Endicott, New York. Their
11 offices are within a quarter mile and I thought it would be convenient
12 for the clients to go from one office to the other. And so, as a result of
13 that, Mr. Kapur spent, I believe, approximately \$1,000 and ran ads in
14 the local paper, saying that Mr.-- Judge Miller's files were going to
15 be transferred to David Kapur's office. So, what happened was I was
16 with Judge Miller and he asked me to attend with him and David
17 Kapur was coming and there was-- all of his files were supposed to
18 be transferred and we get to the office and Mr.-- Judge Miller and his
19 secretary out of maybe, it seems like hundreds and hundreds of files,
20 maybe in excess of 500 files, pulled out 12 files and said, "These are
21 the files that we're transferring to Mr. Kapur and Artan Serjanej is
22 going to handle all of the rest." And it kind of-- I find-- Kind of felt--
23 - I kind of felt that, you know, here I am putting my reputation on the
24 line getting a professional to agree and put an ad out there to take over
25 his practice and he, you know, hands over 12 files that-- And I just

133.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 felt-- I felt it was a bit-- I didn't think that was a professional thing to
2 do or the right thing to do.
- 3 Q. Were any of the files in question files that you had any involvement
4 with as an attorney?
- 5 A. Not that I'm aware of. No.
- 6 Q. They all were Richard Miller, Esq., files, correct?
- 7 A. I believe that to be true.
- 8 Q. Okay. Now, you said Mr. Kapur put ads in the paper indicating that
9 Rick Miller was no long going to be practicing.
- 10 A. I don't remember exactly what the ad said, but it was something along
11 the lines that David Kapur is taking over the practice. Something
12 along those lines.
- 13 Q. Okay.
- 14 A. Like when attorneys are closing their offices and--
- 15 Q. --And then, did you ever receive any money from Mr. Kapur?
- 16 A. No.
- 17 Q. Okay.
- 18 A. No.
- 19 Q. And Mr. Serjanej took some files?
- 20 A. All the files remained at the North Street office and that's where Mr.
21 Serjanej practices.
- 22 Q. And you didn't have a list of what files went to whom. Is that fair to
23 say?
- 24 A. That's correct.
- 25 Q. Before you began working with Judge Miller, did you know Rachelle

134.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Gallagher?

2 A. No, I don't think I ever met her in my life.

3 Q. Had you met her during the campaign?

4 A. I-- Yes, I did.

5 Q. And since working with Judge Miller, have you had a chance to see
6 Rachelle Gallagher outside of the courthouse?

7 A. Yes, I believe so.

8 Q. And would you see Rachelle Gallagher outside of the courthouse for
9 coffee?

10 A. No.

11 Q. Would you see Rachelle Gallagher outside of the courthouse and have
12 meals with her?

13 A. Her and her husband and I would go to lunch maybe, I would say on a
14 very rare occasion, we would go to a McDonald's, the three of us
15 together, and also on one occasion, I believe her and her husband and
16 her son and myself, my son and my wife, went to a restaurant called
17 Cortese here locally.

18 Q. Did you attend sporting events with Ms. Gallagher?

19 A. Not with her. My son and I-- She has a son named D [REDACTED] G [REDACTED]
20 and my son are friend-- are somewhat friendly, so her son played
21 football I think two years ago and I think we did not sit together, but I
22 think my son and I had attended a portion of that-- D [REDACTED]'s football
23 game, and we also attended I think maybe about two or three years
24 ago when he played modified, my son attends Vestal and he attends
25 JC, JC played Vestal, so my son and I went to the JC/Vestal middle

135.

(Kachadourian - Cross)

- 1 school game.
- 2 Q. Did--
- 3 A. --A portion of the game. We didn't stay the entire time.
- 4 Q. Did you attend events with Ms. Gallagher or her husband with tickets
- 5 obtained by Mr. Gallagher?
- 6 A. I don't believe so.
- 7 Q. Did you attend the Spiedie Fest in Binghamton with Ms. Gallagher?
- 8 A. Yes. No, not with Ms. Gallagher. I attended with my family. We
- 9 did-- I think we met her husband and her son and her-- Maybe we
- 10 talked to each other and introduced ourselves and--
- 11 Q. --And did you attend a public event at Binghamton University with
- 12 Ms. Gallagher since the time you've commenced work with Judge
- 13 Miller?
- 14 A. Yea-- There was a concert, I think it was the Steve Miller Band. I
- 15 went with my wife. That's correct. I went with my wife and she went
- 16 with her husband. Yes, that's correct.
- 17 Q. And did you pay for those tickets?
- 18 A. I don't recollect. I think they were-- I don't think so. No. I think--
- 19 Q. --Were those tickets that were obtained by Mr. Gallagher in his
- 20 position at a TV station?
- 21 A. I don't know how they were obtained.
- 22 Q. But they were provided-- You got the tickets for the Binghamton
- 23 University event through the Gallaghers?
- 24 A. Yes, I believe that to be the case.
- 25 Q. And your contact with Ms. Gallagher outside of the courthouse has

136.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 continued after July of 2017, correct?
- 2 A. Outside the courthouse?
- 3 Q. Yes.
- 4 A. I don't have a relationship. I don't-- I wouldn't characterize--
- 5 Q. --No. That wasn't my question.
- 6 A. --it as a relationship. Okay.
- 7 Q. Did you continue to-- These events that you've talked about, did
- 8 some of them occur since July 2017?
- 9 A. I cannot recall. I don't-- I can't recall.
- 10 Q. Now, in-- When you started in 2015 with Judge Gallagher--
- 11 A. --Judge Miller.
- 12 Q. Excuse me, Judge Miller, did you have any issues with him in
- 13 January?
- 14 A. Of what year?
- 15 Q. 2015.
- 16 A. I mean, that phone call was made by Stiloe around-- early on and,
- 17 you know, it's-- I had troubles. During the campaign, his wife and
- 18 his mother would-- and other friends--
- 19 Q. --Let me-- Just a second. Were-- Other than the phone call that you
- 20 say occurred, did you have any problems with Mr.-- Judge Miller in
- 21 January of 2015?
- 22 A. I was concerned in the way that it was handled with his office being
- 23 transferred--
- 24 Q. --Okay.
- 25 A. --with the files being transferred.

137.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. When Judge Miller assumed his role as judge, did you have any issues
2 with him in January of 2015, how he was conducting himself as
3 judge?

4 A. I don't think so. I don't-- As judge, no, I don't think so. No.

5 Q. How about in February of 2015? Any concerns that you had with how
6 Judge Miller was behaving or conducting himself as judge?

7 MS. CENCI: Your Honor, can I ask for
8 clarification? Are we talking about conduct on the bench?

9 THE REFEREE: I interpret the question to mean
10 judicial conduct, as a judge, not necessarily on the bench,
11 could be chambers. That's the way I interpret that question.

12 MR. DEROHANNESIAN: Correct, Your Honor.
13 That's how I--

14 THE REFEREE: --As opposed to things outside of
15 the building.

16 MR. DEROHANNESIAN: Yeah. Correct.

17 MS. CENCI: Thank you for the clarification, Your
18 Honor. It was not clear.

19 THE REFEREE: That's my understanding.

20 A. I don't think so. Not in February.

21 Q. Okay.

22 A. It's to the best--

23 Q. --How about in March of 2015, did you have any concerns about
24 Judge Miller's conduct as a judge?

25 A. Again, as a judge, there came a time where I--

138.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. --For-- I'm trying to--

2 A. --Go ahead. Go ahead.

3 Q. Go. Get a time period.

4 MS. CENCI: Your Honor, may the witness be
5 allowed to answer the question?

6 THE REFEREE: Yeah, no. I agree. I-- You asked
7 about February, I think he said no.

8 MR. DEROHANNESIAN: Yeah. Yep.

9 BY MR. DEROHANNESIAN:

10 Q. March?

11 A. I can't specifically recall specific months. This whole experience has
12 been very traumatic and it's difficult for me to remember and a lot of
13 it, I've tried to erase from my memory. But, there was a time period
14 that occurred that yes, I was concerned about his conduct, espec--
15 when it came to the way he was-- the way he was talking about, you
16 know, wanting me to speak to Rachelle about, you know, about
17 certain things and about him, you know, wanting to have this Lisa
18 Wojdat, you know. And-- But, I don't know specifically what
19 timeframe that was.

20 Q. Now, here's my question.

21 A. Sure.

22 Q. Do you recall anything occurring by Judge Miller in March of 2015
23 that you felt was inappropriate in terms of his judicial conduct?

24 A. I have no recollection.

25 Q. In April of 2015, do you have any specific recollection of any

139.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 concerns you had with Judge Miller's conduct?
- 2 A. I have no recollection.
- 3 Q. In May of 2015, do you have any specific recollection of any concerns
- 4 you had with Judge Miller's conduct as a judge?
- 5 A. I believe it was-- I can't-- You know, I can't remember specific
- 6 months, but during that timeframe, the way he was treating Rachelle
- 7 was troubling.
- 8 Q. Was that in May?
- 9 A. That I cannot recall.
- 10 Q. Okay. So, you have-- Do you have any specific recollection of any
- 11 conduct which concerned you occurring in May of 2015?
- 12 A. I cannot recall. I cannot recall specific months.
- 13 Q. In June of 2015, do you have any specific recollection of any conduct
- 14 by Judge Miller that caused you concern?
- 15 A. I believe in or about that timeframe, he would-- he would berate me
- 16 saying-- you know, he would criticize Rachelle and I would defend
- 17 Rachelle. I said, "She's doing everything she's supposed to be
- 18 doing," and he started yelling at me, asking me why I held her on a
- 19 pedestal and why do I keep defending her and-- you know, and I
- 20 would say it's, you know, it was all in a--
- 21 Q. --My question though is if you have a specific recollection--
- 22 A. --Specific.
- 23 Q. --of any event in June of 2016--
- 24 A. --'15?
- 25 Q. --that caused you concern about his conduct?

140.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. Was it '15 or '16?

2 Q. '15.

3 A. I can't recall specific months. I mean, we could go through June, July,
4 August, September and it's going to be the same answer. I can't recall
5 by months.

6 Q. Well, because there are some specific dates you do recall that you
7 testified to in 2017.

8 A. Right.

9 Q. Correct? So, that's why I-- Let's go back then to July of 2017. Is it
10 fair to say you have no specific recollection of any conduct by Judge
11 Miller causing you concern--

12 A. --I don't--

13 Q. --in July of 2015?

14 A. In July of 2017 or '15?

15 Q. '15. '15.

16 THE REFEREE: '15.

17 A. '15? I mean, he showed me those photographs, those nude
18 photographs about that time on his cell phone.

19 Q. Do you have a specific recollection of any photographs being
20 displayed to you in July of 2015 by Judge Miller?

21 A. I can't recollect as to months, no.

22 Q. In August of 2015, do you have any specific recollection of any
23 conduct by Judge Miller that caused you concern?

24 MS. CENCI: Your Honor, this has been asked and
25 answered. The witness has already said--

141.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 THE REFEREE: --Yeah. I don't know where we're
2 going with this.

3 MR. DEROHANNESIAN: I'm trying to get dates
4 and of when certain things happened and if he had a
5 recollection, I'm trying to get that.

6 MS. CENCI: He's already said that if he was asked
7 throughout 2015--

8 THE REFEREE: No, I understand.

9 MS. CENCI: --he couldn't say.

10 THE REFEREE: I don't know. It's fair to try and
11 push and get some concrete dates for some of these
12 significant events. There is a valid reason why he would
13 want to know that.

14 MS. CENCI: But he's already-- He's already
15 answered the question.

16 MR. DEROHANNESIAN: I don't think--

17 BY MR. DEROHANNESIAN:

18 Q. Is it fair to say you have no rec-- Mr. Kachadourian?

19 A. Yes.

20 Q. I'm sorry to interrupt. Mr. Kachadourian, is it fair to say that you have
21 no specific recollection of any conduct causing you concern from July
22 until December of 2015?

23 A. I don't believe that to be true, no.

24 Q. Okay. What specific month do you recall any conduct causing you
25 concern in 2015?

142.

(Kachadourian - Cross)

1 A. I can't-- I can't specify as to what month something occurred.

2 Q. Okay.

3 A. My memory is not that good, sir.

4 Q. So, there is no specific date or time period in 2015 that you can
5 identify any conduct that you would identify as causing you concern?

6 A. Sir, it was an ongoing course of conduct in 2015--

7 Q. --All right.

8 A. --towards the latter--

9 Q. --That--

10 A. --towards the fall of 2015.

11 THE REFEREE: Let him answer. Go ahead.

12 A. Towards the-- towards the fall-- end-- fall of 2015, I was concerned.
13 I mean, he made comments to me that I'm his chief of staff, he's the
14 president and nothing's going to get back to him and I'm supposed to
15 do-- tell-- do these things or whatever. So, he-- So, when he
16 would-- He's hounding me throughout the latter half of '15 through
17 '16, '17, did I speak to Rachelle? Did I tell her what real secretaries
18 do? I should have hired Lisa Wojdat. She would have, you know, she
19 wears the short skirts. She would satisfy my needs. She would satisfy
20 your needs. Yeah, those were concerns. As to specific months, sir, I
21 cannot recollect which one.

22 Q. Okay. Did you make any notes or records of anything occurring in
23 2015?

24 A. I don't think so, no.

25 Q. Did the notes you made last night refer to 2000-- any events in 2015?

143.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. One did. That's correct. Towards the end of 2015.

2 Q. One event?

3 A. Where did they go? Did I-- Thought they were-- Oh, it's-- Here they
4 are. Right. That's-- Right.

5 THE REFEREE: What's right?

6 A. That's correct. There's one note on my notes--

7 Q. --Mm-hmm.

8 A. --for here, but throughout 2015, especially the latter half of 2015, I
9 didn't have to write this-- everything down. That's--

10 Q. --So again, in your note that you wrote last night, end of 2015, she's
11 upset?

12 A. That's correct. That's one thing. Other things I didn't have to write--

13 MS. CENCI: --Is--

14 A. --down, they were clear in my memory.

15 MS. CENCI: Is that document in evidence, Your
16 Honor?

17 THE REFEREE: I don't believe so.

18 BY MR. DEROHANNESIAN:

19 Q. Now, January 2016 is when you first told somebody that you were
20 working in a difficult environment, correct?

21 A. I can't recollect. No, I don't believe that to be true. I believe in parts
22 of 2015, parts of 2016, I would tell Rachelle what is being done to me
23 and I would go to her basically in tears and explain to her that I really
24 can't take it anymore and I was thinking about leaving and, you know,
25 it was just destroying me.

144.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. January of 2016 is the first time you spoke to anybody outside of the
2 office about your difficult situation?

3 A. Outside the office?

4 Q. Yes.

5 A. I don't recollect.

6 Q. Look at Respondent's I. Let me ask you if you recall telling the
7 inspector general in the interview with their representative that
8 beginning in January 2016, you told Chief Clerk Singer you were
9 working in a "difficult," and those words are-- that word is in quotes,
10 environment.

11 MS. CENCI: What page is that, counsel?

12 MR. DEROHANNESIAN: Page 5 of the IG report.

13 MS. CENCI: Thank you.

14 MR. DEROHANNESIAN: Second full paragraph.

15 MS. CENCI: Thank you.

16 THE WITNESS: I don't have that.

17 MR. DEROHANNESIAN: I'll show you.

18 MS. SCALISE: It's Exhibit A? To that?

19 THE WITNESS: (Unintelligible).

20 MR. DEROHANNESIAN: Again, remember we--

21 Second full paragraph.

22 THE WITNESS: "When questioned why he did
23 not ..."

24 A. Okay. What was your question?

25 Q. So, in January of 2016, you told Clerk Singer you were working in a

145.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 difficult environment, correct?

2 A. Yes.

3 Q. Okay. Now, Judge Miller, prior to January of 2016, began to raise
4 questions about Ms. Gallagher's work, correct?

5 A. In when?

6 Q. Before January 2016--

7 THE REFEREE: --January of si--

8 BY MR. DEROHANNESIAN:

9 Q. --Judge Miller did raise questions to you about Ms. Gallagher's work,
10 correct?

11 A. Not about her work.

12 Q. In 2000-- Did you-- In 2015 or '16, did you hear Judge Gallagher--

13 A. --Judge Miller.

14 THE REFREE: Miller.

15 BY MR. DEROHANNESIAN:

16 Q. Excuse me. Judge Miller. I'll rephrase. In 2015 or early 2016, did
17 you hear Judge Miller raise questions about Ms. Gallagher's work as a
18 secretary to a judge?

19 A. I can't-- Can I have a moment to-- Can I have a moment to--

20 MR. DEROHANNESIAN: Is that okay?

21 THE REFEREE: Sure.

22 MR. DEROHANNESIAN: It's up to--

23 THE REFEREE: He's just thinking.

24 MR. DEROHANNESIAN: Yep.

25 THE WITNESS: Just thinking.

146.

(Kachadourian - Cross)

1 A. I don't believe so. I can't recall. It's-- It pertains to work as it
2 pertains to doing judicial matters and chamber work. I don't believe
3 so, but I don't recall any.

4 Q. Did you at any time while you worked with Judge Miller in 2015, '16
5 and '17 hear Judge Miller tell you that Ms. Gallagher did not prepare
6 the files that he needed for court?

7 A. Yes, I believe in 2017, I believe so, and I believe so-- In June 2017, I
8 do believe he represented that to me.

9 Q. And had he mentioned that before that in other court appearances
10 prior to June of 2017 that files were not prepared for him in family
11 court?

12 A. That's kind of a loaded question in the sense that there are no files in
13 family court. Family court's a paperless court, so there is not
14 supposed to be files. It's all computerized, so-- but the judge wanted
15 some-- he wanted petitions and orders, the most recent petitions and
16 orders and files, so he would have them both on the computer and also
17 file-- hand-- hard copies and I believe there were-- there may have
18 been complaints that those hard copies weren't there at times.

19 Q. And the-- those complaints of Judge Miller pre-dated June of 2017,
20 correct?

21 A. I believe there may have been occasion-- I believe there may have
22 been occasions prior to that.

23 Q. Did you make any notes or records when Judge Miller would tell you
24 that Rachelle had not prepared a file as he thought it should be done
25 for a case before him in family court?

147.

(Kachadourian - Cross)

- 1 A. No, I did not. I would look--
- 2 Q. --You didn't?
- 3 A. No, I did not and I don't think there would have been-- I would be
- 4 surprised if there were more than-- I know it happened in June of
- 5 2017 and I would be sh-- surprised if it happened more than two other
- 6 occasions.
- 7 Q. Did Judge Miller discuss with you the fact that telephone messages
- 8 were not being adequately charted and documented by Ms. Gallagher?
- 9 A. That I don't have any recollection. I don't-- I don't have any
- 10 recollection of that taking place, but then you've got to remember, I
- 11 wasn't there 100 percent of the time, so he may have said that while I
- 12 was not present.
- 13 Q. I'm just asking right now with you, in your presence?
- 14 A. Sure. I have no recollection of that.
- 15 Q. And Judge Miller talked about terminating Ms. Gallagher's
- 16 employment, correct?
- 17 A. That is correct. Yes, he did.
- 18 Q. And Judge Miller first began discussing that-- Well, he discussed it in
- 19 2017, correct?
- 20 A. Yes, he did.
- 21 Q. Did he discuss it in 2016?
- 22 A. I believe he did. Yes, sir.
- 23 Q. It'd be fair to say at the end of 2015, Judge Miller was discussing
- 24 terminating Ms. Gallagher?
- 25 A. At the end of 2015?

148.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. Yes.

2 A. He was-- That's a possibility. He was just expressing his regret of
3 having brought her there.

4 Q. And did you discuss with Ms. Gallagher at the end of 2015 the fact
5 that her job in the Office of Court Administration was in jeopardy?

6 A. No-- I'm not--

7 THE REFEREE: --You know what? I just want to
8 clarify. I don't think she worked for the Office of Court
9 Administration. I think she worked for Judge Miller.

10 MR. DEROHANNESIAN: No-- Well, she's an
11 employee.

12 THE REFEREE: Yeah, but-- I mean, we're a--
13 we're a--

14 MR. DEROHANNESIAN: --I'll rephrase. It's--

15 THE REFEREE: --Yeah, rephrase the question,
16 because we're in the district office and that's the Office of
17 Court Administration and that's part of the UCS, and--

18 MR. DEROHANNESIAN: Do you-- We can--

19 THE REFEREE: --Just be a little more precise.

20 MR. DEROHANNESIAN: Yeah.

21 BY MR. DEROHANNESIAN:

22 Q. Would it be fair to say-- Did you discuss with Ms. Gallagher the fact
23 that Judge Miller may terminate her or was discussing terminating
24 her--

25 A. --I--

149.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 Q. --at the end of 2015?
- 2 A. I-- That was a difficult time for me. It was-- It was--
- 3 Q. --I didn't ask if it was a difficult time.
- 4 A. Okay.
- 5 Q. If you recall, you do and if you don't, fine.
- 6 A. I recall like after he would discuss things with me, I would have to
- 7 share them with somebody and she was there and I shared what was
- 8 being told to me, because it was ripping me apart.
- 9 Q. But was one of the things you discussed with Rachelle Gallagher at
- 10 the end of 2015 the fact that her position with Judge Miller was in
- 11 jeopardy?
- 12 A. No, I did not express it in those terms.
- 13 Q. Did she express in any terms that she was concerned that she may lose
- 14 her job at the end of 2015?
- 15 A. I can't be certain of the timeframe, but there were-- She was hoping
- 16 that he would get better, so she may have been looking for other
- 17 opportunities. I'm not 100 percent sure. I don't-- Was she
- 18 concerned? I don't think she was concerned. No. She didn't express
- 19 any concern to me.
- 20 Q. And Judge Miller told you there was a reason he selected Ms.
- 21 Gallagher instead of Ms. Wojdat?
- 22 A. I-- Wojdat.
- 23 Q. Wojdat.
- 24 A. I believe--
- 25 Q. --First of all, did he give you a reason?

150.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 A. I think he did. Yes.
- 2 Q. And did he tell you one of the reasons was because he felt Ms.
- 3 Gallagher needed the job?
- 4 A. Yes, that's correct.
- 5 Q. And that was a factor in his decision to select Ms. Gallagher, correct?
- 6 A. Based upon his representations to me, I believe that to be the case.
- 7 Q. In terms of issues with Rachelle, do you recall any family court clerk
- 8 raising issues concerning Ms. Gallagher's work performance?
- 9 A. In family court?
- 10 Q. Yes.
- 11 A. Like, we didn't work for them. I--
- 12 Q. --Well--
- 13 A. --So, it's hard to--
- 14 Q. --Were you aware-- Do you know a clerk named Marie Lawrence?
- 15 A. Yes, I do.
- 16 Q. And did Marie Lawrence in 2015 or 2016 express any questions or
- 17 concerns about Ms. Gallagher's work or chambers work?
- 18 A. Not that I'm aware of. The only time that I happened to be there on
- 19 one occasion that Marie Lawrence was present in chambers and
- 20 Rachelle was cham-- was present in chambers and I think Judge
- 21 Miller was present as well, but I cannot recall for sure, but I remember
- 22 Ms. Gallagher being in tears and leaving and I tried to stop her to find
- 23 out what's wrong and she just walked out and I-- I didn't have a
- 24 chance to find out what happened.
- 25 Q. And that meeting where Ms. Gallagher was in tears was in the

151.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 presence of Marie Lawrence, correct?

2 A. Yes, it was.

3 Q. And you don't know what issue Marie Lawrence raised with Judge
4 Miller during that meeting, is that fair to say?

5 A. Yes. That's correct. I don't know.

6 MS. CENCI: Well, excuse me. Objection. The
7 witness has said he wasn't even sure if the judge was there.

8 THE WITNESS: I wa--

9 THE REFEREE: --He said-- I think he said the
10 judge was there.

11 A. I believe he was there, but I'm not 100-- I can't say 100 percent sure,
12 but I--

13 Q. --And you don't know what issue Marie Lawrence may have
14 discussed with Ms. Gallagher, correct?

15 A. That's correct.

16 Q. You don't know what Marie Lawrence may have discussed with
17 Judge Miller about his cases in family court, correct?

18 A. Correct.

19 Q. And you didn't ask?

20 A. The only thing I could remember doing was trying to stop Rachelle
21 from leaving and just trying to calm her down and just trying to see
22 what was wrong, but she just was crying and just walked out.

23 Q. And Ms. Gallagher didn't tell you what happened in that meeting with
24 Clerk Marie Lawrence, correct?

25 A. That's correct.

152.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 Q. And you don't know to this day?
- 2 A. That's correct.
- 3 Q. You said one of your jobs with Judge Miller was to write decisions,
- 4 correct?
- 5 A. Yes.
- 6 Q. And these are like decisions in family court cases, correct?
- 7 A. Yes, that's correct, in addition to let's say if a case was stipulated to,
- 8 you know, I would assist in writing the order based upon what his
- 9 thoughts were and I would--
- 10 Q. --In 2015, how many opinions or decisions did you draft for Judge
- 11 Miller in 2015?
- 12 A. That I cannot-- I cannot recollect. I think the majority of our-- If-- I
- 13 would say about 95-- I'm going to take a total guess. I would say 95
- 14 percent of our cases were settled.
- 15 Q. That's not my question.
- 16 A. Okay.
- 17 Q. I have a different question.
- 18 A. Sure. I can't--
- 19 Q. --In 2015--
- 20 A. --Right.
- 21 Q. --how many opinions or decisions did you write for Judge Miller?
- 22 A. I cannot recall.
- 23 Q. One?
- 24 A. I can't--
- 25 Q. --Can you recall one you did in 2015?

153.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. I cannot recall.

2 Q. You can't recall one, right?

3 A. I cannot recall.

4 Q. Okay. How about in 2016, how many decisions or opinions did you
5 draft for Judge Miller?

6 A. I cannot recall.

7 Q. Can you think of one?

8 A. I cannot recall.

9 Q. Can you think of one decision you wrote in 2016?

10 MS. CENCI: Objection. Asked and answered.

11 A. I cannot recall.

12 Q. Okay. In 2017, how many decisions or opinions did you, as Judge
13 Miller's law clerk, write for Judge Miller?

14 A. I cannot recall.

15 Q. Can you think of one--

16 A. --I cannot recall.

17 Q. --one, that you drafted or wrote for Judge Miller in 2017?

18 A. I cannot recall.

19 Q. Can you recall any communications from court clerks in the family
20 court system concerning the lack of decisions coming from Judge
21 Miller?

22 MS. CENCI: Objection. What-- We don't know
23 what's meant by court clerks, Your Honor. There's only
24 one court clerk as far as I'm aware.

25 MR. DEROHANNESIAN: Okay.

154.

(Kachadourian - Cross)

- 1 BY MR. DEROHANNESIAN:
- 2 Q. There are many clerks in the family court system, correct?
- 3 A. There's a--
- 4 Q. --There's a chief clerk?
- 5 A. That's correct.
- 6 Q. There's deputy clerks?
- 7 A. That's correct. And there's like supervisors and I don't-- Right.
- 8 Q. Right. So, there's a chief clerk like Debbi Singer, correct?
- 9 A. Yes.
- 10 Q. Was there a deputy clerk?
- 11 A. During our time there, there was a deputy clerk called Margaret Raftis,
- 12 but subsequently, she's retired.
- 13 Q. Okay.
- 14 A. So, that position's open, but then there's supervisors like Marie
- 15 Lawrence, was a supervisor.
- 16 Q. Like Marie Lawrence?
- 17 A. Yes.
- 18 Q. How about Rebecca Vroman? What is she?
- 19 A. Right now, Rebecca Vroman is a supervisor.
- 20 Q. Back in 2015--
- 21 A. --In 2015?
- 22 Q. --to '17?
- 23 A. I don't-- I think that you would call them-- They categorized them I
- 24 believe by a 12 or a 16 grade and I believe she was a 16, one of those
- 25 grades and she worked in the-- When she came on board, she came

155.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 from Tompkins County. When she came on board, I think she was
2 assigned to Judge Miller in his courtroom.

3 Q. Okay. She was a court clerk, correct?

4 A. I believe so, yes. That's correct.

5 Q. That phrase make sense to you, right?

6 A. Yes.

7 Q. And did any of the clerks from Singer to Ms. Vroman, Marie
8 Lawrence, ever contact chambers about decisions on cases not getting
9 out?

10 A. Not at all.

11 Q. Never?

12 A. No. We had something called standards and goals.

13 Q. I know.

14 A. And I believe Judge Miller was a stickler when it came to standards
15 and goals and I think we led not if the-- not-- I believe we not only
16 led the county, but we led the, probably the district on accomplishing
17 those goals, meeting standards and goals.

18 Q. And did you ever get any direct communication from any clerk about
19 a decision or decisions that were not done?

20 A. No. Not that I could recall. No.

21 Q. And do you recall Judge Miller discussing with you over the time
22 period from 2015 to '17, the need for you to do a better job writing
23 decisions for him?

24 A. Absolutely not. As a matter of fact, up until his vacation in June of
25 2017 when he went to Myrtle Beach, South Carolina, he was, you

156.

(Kachadourian - Cross)

1 know, texting me, calling me "buddy," and sending me pictures of his
2 family.

3 Q. That's a different que-- My question is--

4 A. --No.

5 Q. --did he address with you at any time--

6 A. --No.

7 Q. --from 2015 to '17, the lack of decisions and opinions in any specific
8 case?

9 A. Absolutely not.

10 Q. Did Judge Miller discuss with you from 2015 to '17, the lack of
11 decisions, as a general matter, as being a problem you were having?

12 A. Absolutely not.

13 Q. Is it your testimony that you made 50 complaints to the chief clerk
14 beginning in 2015?

15 A. That's--

16 MS. CENCI: Objection. They were--

17 THE REFEREE: --No. I don't think he said
18 anything about it.

19 BY MR. DEROHANNESIAN:

20 Q. How many complaints do you say you made to the chief clerk?

21 A. That I can't--

22 MS. CENCI: Objection. What do-- What are we--
23 What do you mean by complaints?

24 BY MR. DEROHANNESIAN:

25 Q. You said in January 2015, you went to Chief Clerk Singer, correct?

157.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. Right.

2 Q. About a difficult work environment.

3 THE REFEREE: '16.

4 BY MR. DEROHANNESIAN:

5 Q. '16.

6 A. '16.

7 Q. How many times did you speak to Chief Singer and make any type of
8 complaint to her?

9 A. I can't recall specifically, but I know me-- At a minimum 5 to 10, or
10 more. It was a-- It was-- Yeah.

11 Q. Or more-- a thousand?

12 A. No. Absolutely not.

13 Q. So, how many?

14 A. I don't recall. It, again, I'd like to emphasize that this whole
15 experience has been difficult and I've tried to erase a lot of it from my
16 memory.

17 Q. So, some things you have tried to erase from your memory during your
18 time period with Judge Miller, correct?

19 A. This whole-- This experience, yes. It's been very difficult to relive it.

20 Q. And so, there's things that just aren't tucked away in your memory
21 when I ask you questions about 2015?

22 A. That's possible.

23 Q. '17, correct?

24 A. That's possible.

25 Q. I want to show you Respondent's N.

158.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 THE REFEREE: What is it?

2 MR. DEROHANNESIAN: (Unintelligible).

3 THE REFEREE: I have it.

4 BY MR. DEROHANNESIAN:

5 Q. I want to show you Respondent's N. Do you recognize that?

6 A. Yes, I do.

7 Q. And what is that?

8 A. It's a complaint entitled, "Rachelle Gallagher and Mark Kachadourian
9 versus-- against the Unified Court System of the State of New York
10 and Richard Miller, II, individually and in his official capacity."

11 Q. That's the complaint that you referred to to Ms. Cenci on direct
12 examination that you filed on December 21st?

13 A. I don't know when it was filed, but that was--

14 THE REFEREE: --Look at the top.

15 A. The top. December 21st. That's correct.

16 Q. And that was-- Complaint was filed in connection with your attorney,
17 correct?

18 A. That's correct.

19 Q. And bringing your attention to paragraph 64 on page 21.

20 A. Paragraph-- What paragraph?

21 Q. Paragraph 64.

22 THE REFEREE: 64.

23 BY MR. DEROHANNESIAN:

24 Q. On page 11.

25 A. Oh, page 11. Yes, I've read it.

159.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Kachadourian - Cross)

1 Q. And does that refresh your recollection that you claimed that you
2 made 50 complaints to the chief clerk about Judge Miller between
3 2015 and 2017?

4 A. That's not what it says. It says "plaintiffs," plaintiffs referring to
5 Rachelle and I.

6 Q. Okay. So, how many did you make?

7 A. I-- Again--

8 MS. CENCI: Objection. Asked and answered.

9 THE REFEREE: No. That's fair, based on this
10 paragraph.

11 A. You know, I went down there on numerous occasions.

12 THE REFEREE: What's your best judgment?

13 A. Best judgment, 5 to 15 times. Ten-- I'd say at least 5, as many as 15.
14 I don't recollect. I don't recall.

15 Q. And you made the decision in December of 2015 to report Judge
16 Miller's harassment and abuse, correct?

17 A. December 2015?

18 Q. First, is that when you decided with Rachelle Gallagher, the two of
19 you, that you were going to end and report Judge Miller's behavior as
20 you alleged it to be?

21 A. I don't think-- It never was that way. It never-- It's--

22 Q. --Okay. Would you look at the complaint--

23 A. --Sure.

24 Q. --which is Respondent's N, paragraph 61 on page 11.

25 A. Okay.

160.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. And does that refresh your recollection that you claim you and
2 Rachelle, plaintiffs, decided in December 2015 to report Judge
3 Miller's behavior?

4 A. That's true.

5 Q. So, you did decide, you and Rachelle in December of 2015, to report
6 Judge Miller's behaviors that you deemed inappropriate, correct?

7 A. That's correct.

8 Q. And when did you first retain the attorneys for this federal complaint?

9 A. We didn't first retain the attorneys for a federal complaint, we
10 contacted the attorneys to explain the situation we're in and how to--
11 where to go.

12 Q. And when was that communication or contact made?

13 A. That contact was made-- The New York State IG's office contacted
14 chambers and wanted to speak to, I believe it was to speak to us and it
15 was after-- I believe it was within that timeframe, within a week to
16 ten days, I believe, because we didn't know what to do.

17 Q. So, was it July 2017 that you contacted attorneys in connection with
18 any potential civil claim?

19 A. If the--

20 MS. CENCI: Objection. He hasn't said-- He said
21 he did not contact an attorney with regard to his civil claim.
22 He said he contacted the attorney--

23 THE REFEREE: --No, he-- Following the IG
24 contact. No, I understand.

25 A. Right. Right. We-- I don't have a specific time as to when the IG's

161.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 office contacted Rachelle or left a message, but it was-- I want to say
2 we didn't know what to do, so we contacted an attorney I would say
3 within a-- I would say within a ten-day timeframe of that. So, I
4 would say if it's end of June, July of 2017.

5 Q. You certainly had lawyers from the law firm that filed this lawsuit
6 with you when you spoke to the inspector general?

7 A. That-- When we-- When we were in Albany and spoke to-- Yes,
8 that's correct.

9 Q. On July 7, 2017, correct?

10 A. Yeah. If that's when we spoke to them, then they were with us.

11 Q. Well, I want you to be sure.

12 A. Sure.

13 Q. If you look at Respondent's I, and attachment A, does that refresh
14 your recollection that on July 7, 2017, you had--

15 A. --That's correct.

16 Q. --the lawyers who filed the lawsuit with you or a representative of the
17 firm?

18 A. They are the same attorneys. That's correct.

19 Q. So, on July 7th, they were there. When before that did you first contact
20 them?

21 A. I would say, again, my answer is going to be that within the ten-day
22 timeframe of when we were contacted by the IG's office. The IG's
23 office initiated the-- initiated this and we res-- We didn't know what
24 to do or how to proceed, so we decided it would be best if we had
25 lawyers to seek guidance on where to go--

162.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. --Okay.

2 A. --or how to handle this.

3 Q. And did you decide you should both have the same lawyer?

4 A. That's not a decision we made. No. That's the dec-- We left-- I--
5 No. That's not a decision I--

6 Q. --Okay.

7 A. --I'm not capable of making that decision.

8 Q. Okay. So, you do have-- You always had the same lawyer, correct?

9 A. It was, initially, it was my belief that-- Yes. I was retained-- William
10 Dreyer was my attorney and when we first started this, Ben Hill, part
11 of that firm, was Rachelle's attorney.

12 Q. And same firm represented both of you from the first day that you
13 contacted an attorney?

14 A. That's correct. Yes.

15 Q. And when you were interviewed by the inspector general, was that at
16 the same date and place you and Rachelle-- Were you and Rachelle
17 interviewed at the same date and place by the inspector general?

18 A. Yes. Yes, we were.

19 Q. Is that fair to say?

20 A. Yes, it is.

21 Q. When you gave testimony to the Commission on Judicial Conduct,
22 was that on the same date in Albany?

23 A. Yes, it was.

24 MS. CENCI: Same date as what, counsel?

25

163.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Was it on the same date that you and Rachelle gave testimony to the
3 Commission on Judicial--

4 THE REFEREE: No, no. When you spoke with the
5 IG, was that the same day you--

6 MR. DEROHANNESIAN: --That was the first
7 question.

8 THE REFEREE: Right.

9 BY MR. DEROHANNESIAN:

10 Q. And you said that was the same date for the inspector general, correct?

11 A. Yes. Yes.

12 Q. You were together?

13 A. Yes.

14 Q. And when you gave testimony on August 8, 2017, were you and
15 Rachelle together that day?

16 A. Yes, but we weren't in the room together.

17 Q. No, but did you drive up--

18 A. --Yes.

19 Q. --to Albany together?

20 A. Yes. Yes, with her husband. Yes, he drove us.

21 Q. And then the Commission called you how many times after that?

22 A. The Commission called us--

23 Q. --Mm-hmm.

24 A. --after that-- after the interview?

25 Q. After your testimony?

164.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. Okay.

2 Q. In July of 2017?

3 MS. CENCI: Haven't we been over this, Your
4 Honor?

5 THE REFEREE: Ad nauseam.

6 MR. DEROHANNESIAN: Not this question that's
7 coming though.

8 THE REFEREE: All right. How much longer do
9 you think you have?

10 MR. DEROHANNESIAN: I've got a while.

11 THE REFEREE: Well, I-- All right. I don't want to
12 unfairly or unduly restrict you, but--

13 MR. DEROHANNESIAN: --There was a lot on
14 direct. I mean, this is not--

15 THE REFEREE: --No, I understand. But I mean,
16 it's-- I know the answers to all of these questions. I know
17 where we're headed.

18 MR. DEROHANNESIAN: --Well, I--

19 THE REFEREE: --and I think we've got a good
20 record. But, go ahead. I'm not stopping you.

21 MR. DEROHANNESIAN: Okay.

22 A. Could you repeat the question?

23 Q. How many phone calls did you have with the Commission?

24 A. Okay.

25 Q. After you gave testimony and until your meeting in December of

165.

(Kachadourian - Cross)

1 2018?

2 A. I believe there were-- And this is just rough estimates, I believe there
3 were approximately, possibly three to six. And I'm-- I just want to be
4 safe when I say that, because we were scheduling to make sure our
5 availability for today's date, our availability to be served the subpoena
6 on December 27, so I think that may have been-- Oh, there was-- It
7 was our understanding that we were supposed to appear here on
8 November 27, if I'm not mistaken, but that date was adjourned, so
9 there were phone calls letting us know that it had been adjourned,
10 so--

11 Q. --Okay. Let me bring your attention to January 3, 2018.

12 A. Okay.

13 Q. Did you have a phone call with the Commission in which Ms.
14 Gallagher was present with you?

15 A. I can't recall specifically. I mean, January 3rd-- When would that be?
16 What is that?

17 MR. DEROHANNESIAN: Do you have your notes
18 on that?

19 MS. CENCI: Did you say January 18th?

20 MR. DEROHANNESIAN: January 3rd.

21 MS. CENCI: 2000--

22 BY MR. DEROHANNESIAN:

23 Q. Do you recall a phone call that you had with the Commission where
24 both you and Ms. Gallagher were being interviewed about substantive
25 matters in the presence of each other?

166.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Kachadourian - Cross)

1 MS. CENCI: Well, I have to object--

2 A. No.

3 MS. CENCI: --to that, Your Honor. There's no
4 foundation for that.

5 THE REFEREE: Yeah, I don't know where we're
6 going, but what-- January-- Did you ask-- January 3rd is a
7 Wednesday of the-- of 2018. And he just wants-- Did
8 you-- Were you interviewed by the Commission or the IG
9 together?

10 MR. DEROHANNESIAN: In a phone call?

11 THE REFEREE: You two? Yes. Sitting in the
12 same room while each other could hear what was being
13 asked.

14 THE WITNESS: I don't believe we were
15 interviewed substant-- substantively-- I think we were--

16 THE REFEREE: --No, no. Any conversation?

17 THE WITNESS: Any-- All our conversations, I
18 believe, as-- with respect to the dates and adjournments, I
19 believe we were together, and so we would be aware of
20 what dates we were-- had to appear and the cancellation of
21 the November 27--

22 THE REFEREE: --All right. How about substantive
23 conversations?

24 THE WITNESS: I don't believe-- I don't believe
25 so.

167.

(Kachadourian - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Let me show you Respondent's P for identification.

3 A. Sure.

4 Q. I'll give you a chance to take a look.

5 A. Okay.

6 Q. Does that refresh your recollection of a phone call on January 3, 2018?

7 A. It-- I do have a recollection of that phone call, but I'd like to-- These
8 topics, like this Ms. Filip is the godm--

9 THE REFEREE: --Yeah, but that's not the question.

10 THE WITNESS: Okay.

11 MR. DEROHANNESIAN: That's not my question.

12 A. I recall-- I recall that conversation. Yes.

13 Q. Okay. And that was a phone call, correct?

14 A. Yes.

15 Q. And the phone call was between the Commission investigator, you
16 and Ms. Gallagher, correct?

17 A. That's correct.

18 Q. You were in the presence of each other, correct?

19 A. That's correct.

20 Q. When I say "you," I mean you and Ms. Gallagher.

21 A. That's correct.

22 Q. The Commission representative was on the phone?

23 A. That's correct.

24 Q. And was there another phone call with the Commission where you and
25 Ms. Gallagher were together discussing with their investigator

168.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 questions about these allegations?

2 A. I don't-- I believe-- I don't-- Were we speaking to the investigator?
3 I don't believe that was the case. I believe we were speaking to Ms.
4 Cenci.

5 Q. Okay. And when it was with Ms. Cenci on April 20, 2018, were you
6 and Ms. Gallagher present together?

7 A. I remember a conversation where Ms. Gallagher and I were together,
8 but I don't know if it was April 20th.

9 Q. I'll show you Respondent R for identification.

10 MS. CENCI: What happened to Q? R?

11 MR. DEROHANNESIAN: Wasn't--

12 THE REFEREE: --Yeah, the last one was P-- or Q.

13 MS. SCALISE: Oh, I'm sorry. It should have
14 been Q.

15 MR. DEROHANNESIAN: Should have been Q.

16 MS. SCALISE: I'm sorry. Yeah.

17 THE REFEREE: Q.

18 MS. SCALISE: But the last one was Q?

19 THE REFEREE: No. P was--

20 MS. SCALISE: --P?

21 THE REFEREE: --a message regarding the--

22 MS. SCALISE: --Right.

23 THE REFEREE: --1/3/18 phone call.

24 MS. CENCI: --Was there N and O?

25 MS. SCALISE: We missed O.

169.

(Kachadourian - Cross)

1 MR. DEROHANNESIAN: There's no O?

2 MS. CENCI: I don't think there's an N--

3 MS. SCALISE: --No, there is an O, but you went
4 across instead of down, so ...

5 THE REFEREE: Doesn't matter.

6 MS. SCALISE: Okay.

7 THE REFEREE: Just pick any letter.

8 MS. SCALISE: Okay. The one that's on there is
9 fine. We'll come back to O--

10 MR. DEROHANNESIAN: --We'll use R for now?

11 THE REFEREE: Yeah, that's fine.

12 MS. SCALISE: We'll come back to O-- Yeah.

13 MS. CENCI: Okay.

14 THE REFEREE: We don't like Q anyway.

15 MR. DEROHANNESIAN: We'll get back to it,
16 because I've got it on my list.

17 THE WITNESS: I ...

18 BY MR. DEROHANNESIAN:

19 Q. Does that refresh your recollection?

20 A. Yes.

21 Q. Of a phone call with Ms. Cenci?

22 A. Yes.

23 Q. On what date?

24 A. The date is dated April 20, 2018.

25 Q. And in that phone call, were you and Ms. Gallagher together?

170.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. I believe so. Yes.

2 THE REFEREE: Do you need a break, Mr.
3 Kachadourian?

4 THE WITNESS: I was wondering if we could take a
5 break maybe at 3:00?

6 THE REFEREE: Yeah, let's take a five-minute
7 break.

8 THE WITNESS: 3:00? We could wait until 3:00 if
9 you want.

10 THE REFEREE: No, let's do it right now.

11 THE WITNESS: Right now?

12 THE REFEREE: Let's take a five-minute break.

13 THE WITNESS: Okay.

14 (OFF THE RECORD)

15 THE REFEREE: All right. We are back on the
16 record. Counsel for all the parties is present and the
17 Respondent is present. Mr. Kachadourian, the witness, is
18 back. A reminder, you are on-- still under oath. Counsel?

19 BY MR. DEROHANNESIAN:

20 Q. You described going to Artan Serjanej's office, correct? Several trips
21 there?

22 A. Yes.

23 Q. When was the first time that you went there?

24 A. I do not recall.

25 Q. What year?

171.

(Kachadourian - Cross)

- 1 A. I would-- 2015.
- 2 Q. And was it in the first few months of 2015?
- 3 A. I believe so. Yes.
- 4 Q. And is that when you were in a room and slapped your hand on the
- 5 table and said, "We're not going to do this?"
- 6 A. Yes.
- 7 Q. That was the first time--
- 8 A. --That's my first recollection.
- 9 Q. Yeah.
- 10 A. Yes.
- 11 Q. So, was this a conference room you did this in?
- 12 A. Yes. It was in the rear of the office. It appears to be a conference
- 13 room.
- 14 Q. And Mr. Serjanej was present?
- 15 A. That's correct.
- 16 Q. And Judge Miller?
- 17 A. That's correct.
- 18 Q. And show me how you slapped your hand, please?
- 19 A. I just went.
- 20 Q. And what did you say?
- 21 A. I-- Something along the lines of, "Judge Miller," just-- You know,
- 22 along the lines of, "signed a \$2 million contract including his benefits
- 23 for the next ten years and he's not going to throw it away, you know,
- 24 doing this stuff."
- 25 Q. Okay.

172.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 A. You know.
- 2 Q. And you said it should stop?
- 3 A. Yes.
- 4 Q. And did you go back?
- 5 A. Yes, I did. He asked me to go back with him.
- 6 Q. And you went back three, four, five times?
- 7 A. Yes.
- 8 Q. Is it-- There were reasons to go to Mr. Serjanej's office that involved
- 9 matters not pertaining to Judge Miller's private cases, correct?
- 10 A. I don't know that.
- 11 Q. Well, you knew that Artan Serjanej was the personal attorney for
- 12 Judge Miller?
- 13 A. I-- This is the first I've heard of that.
- 14 Q. Did you know that Artan Serjanej was the personal attorney for Judge
- 15 Miller's wife?
- 16 A. This is the first I'm hearing of that.
- 17 Q. Did you know that Artan Serjanej was the personal attorney for Judge
- 18 Miller's mother?
- 19 A. First I'm hearing of that.
- 20 Q. And you knew that Artan Serjanej-- Did you know that Artan Serjanej
- 21 assisted Mr. Miller in legal matters?
- 22 THE REFEREE: Which Mr. Miller? Judge Miller?
- 23 MR. DEROHANNESIAN: Judge Miller.
- 24 THE REFEREE: Okay.
- 25 A. Yes, they worked together on cases.

173.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 Q. Well, when I say "assisted," were there matters that involved
2 information that Judge Miller had to collect in response to an inquiry
3 from an attorney of Mr. Miller's?
- 4 A. That, I'm not aware of.
- 5 Q. Do you recall Judge Miller being asked by me to collect information
6 for a legal matter that he was involved in?
- 7 A. Yes, I do. Yes. I don't remember the name of the matter, but I do--
- 8 Q. --I don't ask you to remember the name of the matter--
- 9 A. --Yes.
- 10 Q. --but there was a matter which Mr. Miller had a legal obligation to
11 obtain information, correct?
- 12 A. I believe so, yes. That's correct.
- 13 Q. And you would go with Mr. Miller to Mr. Serjanej's office to help get
14 that information?
- 15 A. I didn't help get it--
- 16 Q. --Okay.
- 17 A. --I went with him.
- 18 Q. Okay. Correct. You did not help get him that information, but Mr.--
19 Judge Miller, at that time, not for a matter-- not to represent
20 somebody, but the respond to a legitimate inquiry had to go to Mr.
21 Serjanej's office at the request of his attorney, correct?
- 22 A. I don't know when he-- what specific times he went for what
23 occasion, but there was an occasion, I do recall, that I believe, as you
24 characterized, a matter that he may have been working on with you
25 where he had to obtain information. That's correct.

174.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 Q. And that required getting information on more than one occasion?
- 2 A. I believe that to be true.
- 3 Q. And you weren't keeping track of how many times or what visits--
- 4 A. --No.
- 5 Q. --involved in a request from Judge Miller's attorney to get
- 6 information, correct?
- 7 A. That's correct.
- 8 Q. And so, you might go to the office on the occasions that Judge Miller
- 9 was collecting information and sit by yourself?
- 10 A. That's correct.
- 11 Q. Were there times that you had something to eat while you were at Mr.
- 12 Serjanej's office?
- 13 A. This is how that worked--
- 14 Q. --First, did you eat at Mr. Serjanej's office with Judge Miller?
- 15 A. I believe on one occasion, we went across the street at a pizzeria and I
- 16 believe we brought that pizza back and I believe-- I believe I either
- 17 had one or two slices there. I think that happened on one occasion.
- 18 Yes.
- 19 Q. So, you recall one occasion where you had a pizza at Mr. Serjanej's
- 20 office and Judge Miller, correct?
- 21 A. That's correct.
- 22 Q. No legal business of any kind being discussed at that time?
- 23 A. No, we were there for something else other than getting a pizza.
- 24 Q. And do you recall other occasions that you went and had something to
- 25 eat at Mr. Serjanej's office?

175.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. I don't recall any other times eating at Mr. Serjanej's office. What we
2 would do is we would go there, we had about an hour, hour and a half
3 for lunch or whatever it was, and we would go there and he would
4 conduct whatever he's conducting and we would stay there. When we
5 had five minutes left or 15 minutes left to get back to the office or get
6 back to chambers and we would stop at a spiedie place in Endwell,
7 New York, and bring those spiedies back to chambers. He'd run
8 upstairs, you know, and we just ate on the way back.

9 Q. When you say you had to rush to get back because Judge Miller was
10 heading back to court?

11 A. That's correct.

12 Q. Because he was in court during the day?

13 A. That's correct. Yes.

14 Q. A family court judge in Broome County spends most of his or her day
15 in court during the day?

16 A. The majority. That's correct.

17 Q. Okay. Are you in court with Judge Miller when he's in court, the
18 majority of the time?

19 A. I would say unless I was having conferences on my own with
20 attorneys and their client-- respective clients, I would say if he was
21 having a hearing outside of the initial appearances, if it was a hearing,
22 yes, I was there.

23 Q. Okay. Like on emergency petitions, you would be present for those?

24 A. Emergency petitions, I think, yes. That's correct.

25 Q. You'd be sitting right there next to Judge Miller--

176.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 A. --Not next to him. I would say maybe about--
- 2 Q. --Well, in the room?
- 3 A. In the room. That's correct. Maybe about 20 feet from him.
- 4 Q. Okay. And that's your recollection of your presence during
- 5 emergency petitions, correct?
- 6 A. Not all emergencies, but some emergency petitions, yes. I would say
- 7 60 to 80 percent of them. Sometimes, he wouldn't hear the
- 8 emergencies. Sometimes, he would reschedule them and ask them to
- 9 come back.
- 10 Q. Okay. Would it be fair to say that most of your visits to Mr. Serjanej's
- 11 office were during the lunch hour?
- 12 A. Yes.
- 13 Q. Did you ever collect or make any lists of names with respect to any
- 14 political activity or event?
- 15 A. No.
- 16 Q. And you said that you don't have a background in estate work,
- 17 correct?
- 18 A. Right.
- 19 Q. You don't have a background in estate work?
- 20 A. No.
- 21 Q. You don't know how to complete estates?
- 22 A. No.
- 23 Q. And you said you never performed any legal work for Judge Miller?
- 24 A. I didn't say that. I said there was legal work that involved you that I
- 25 assisted collecting or mailing things when the judge was out of town.

177.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 Q. Okay.
- 2 A. I think I-- My own expense, I had to go to Kinko's and make copies
- 3 and FedEx things to you or--
- 4 Q. --FedEx things to me?
- 5 A. Yes.
- 6 Q. Right? Things that--
- 7 A. --Yes.
- 8 Q. --I'd asked Judge Miller to collect, right?
- 9 A. I think so, yes.
- 10 Q. That had nothing to do with helping private clients in collecting
- 11 money on private cases?
- 12 A. That's correct.
- 13 Q. Thank you. Just want to be clear, is it fair to say that you never
- 14 assisted Judge Miller in his private legal work?
- 15 A. That's correct.
- 16 Q. That is correct.
- 17 A. That's correct.
- 18 Q. Now, Mr. David Behal.
- 19 A. Yes.
- 20 Q. Let's see. Did you know-- You said he-- You saw him one day?
- 21 A. I saw him. He came to the chambers. He wanted to get through the
- 22 back door.
- 23 Q. Okay. Okay. When was that? May of 2017, maybe?
- 24 A. Maybe.
- 25 Q. Right?

178.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. I would gue-- I would say earl--

2 Q. --Does that seem fair to you? May of 2017?

3 A. Yes, that seems fair to me. Yes.

4 Q. Okay. And you've got the email there. I think it's resp-- petitioner
5 4III.

6 THE REFEREE: I think it's in this.

7 BY MR. DEROHANNESIAN:

8 Q. So, first of all, David Behal, like before May of 2017, had you-- did
9 you know him at all?

10 A. Before May of 20--

11 Q. --Yeah.

12 A. Yes.

13 Q. Okay. Had you ever been to his house?

14 A. No.

15 Q. In Virginia?

16 A. Oh, in Virginia. Yes. Yes.

17 Q. Oh, you have been to his house?

18 A. Yes.

19 Q. He lives in Virginia, doesn't he?

20 A. Yes, he does.

21 Q. Did you drive to Virginia?

22 A. Judge Miller drove to Virginia. I was a passenger in a vehicle.

23 Q. And was that in January 2017?

24 A. No, that-- I believe-- I believe it was January 2016.

25 Q. Okay. So, it was in January. We'll come back to the year. Now, did

179.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 it have something to do with President Trump?
- 2 A. Yes, it did.
- 3 Q. It was his inauguration--
- 4 A. --That's correct.
- 5 Q. --of the president, Trump, correct?
- 6 A. Yes.
- 7 Q. And was this something you were invited to?
- 8 A. I was invited to? Yes.
- 9 Q. By whom?
- 10 A. By my sister.
- 11 Q. Okay. And was she with you at Mr. Behal's house?
- 12 A. No.
- 13 Q. Was it just you and Mr. Behal?
- 14 A. No.
- 15 Q. Who else was there?
- 16 A. To my recollection, it was Mr.-- It was Judge Miller--
- 17 Q. --Judge Miller?
- 18 A. Yes. Rick Balles, his brother-in-law. Rick Balles, myself. It was
- 19 Dave-- Mr. Behal had a son, I don't recall what his name was. He
- 20 had a wife, but I don't recall what her name was, and also who came
- 21 over visited was, I'm not sure exactly of her first name, it was Judge
- 22 Miller's sister. I think it's Mandy--
- 23 Q. --Okay.
- 24 A. --who resides in Virginia and I believe she has a-- She brought her
- 25 daughter with her, but I can't recall her name.

180.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. Okay. Let's assume that President Trump was inaugurated on January
2 20--

3 A. --Okay.

4 Q. --2017.

5 MS. CENCI: I'll stipulate to that, Your Honor.

6 A. I think 6--

7 MR. DEROHANNESIAN: Thank you.

8 A. Was it '17 or '16?

9 THE REFEREE: '16.

10 BY MR. DEROHANNESIAN:

11 Q. So, in January 2000--

12 THE REFEREE: Oh, no. Yeah.

13 MS. CENCI: '16.

14 THE REFEREE: '17. '16.

15 MR. DEROHANNESIAN: Yeah, '16 was the
16 election. The inauguration was in '17-- was the
17 inauguration.

18 THE REFEREE: '17 is the inauguration--

19 THE WITNESS: Oh, okay.

20 BY MR. DEROHANNESIAN:

21 Q. So, this is two years into your term with Judge Miller, correct?

22 A. Yes.

23 Q. And did Judge Miller threaten you that you had to go to this
24 inauguration of President Trump?

25 A. No, he--

181.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. --Okay. Did he--

2 A. --I called him-- I called him the morning of the inauguration. I-- He
3 was-- He was-- I told him I didn't want to go and--

4 Q. --What-- Wait--

5 THE REFEREE: What? Hold on. I am totally
6 confused.

7 MR. DEROHANNESIAN: Yeah.

8 THE REFEREE: But let's--

9 BY MR. DEROHANNESIAN:

10 Q. You went with Judge Miller to Virginia?

11 A. Yes, that's correct.

12 MS. CENCI: Your Honor?

13 BY MR. DEROHANNESIAN:

14 Q. Before--

15 MS. CENCI: Can I object? This-- Where is the
16 relevance of this?

17 THE REFEREE: Actually, this is more relevant than
18 where we've been for the last hour and a half. When did
19 you leave to go to Virginia?

20 A. You indicated the inaugural was on January 20th?

21 Q. Yes.

22 A. If it was the 20th-- And I can't-- I'm not 100 percent certain, I believe
23 it would have been the 19th--

24 Q. Okay.

25 A. --but I'm not 100 percent certain.

182.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 Q. And were you forced by Judge Miller to get in a car and go to
2 Virginia?
- 3 A. He insisted that I go with him. That's correct.
- 4 THE REFEREE: That's not-- Listen carefully--
5 THE WITNESS: --Yeah.
6 THE REFEREE: --We will get out of here faster--
7 THE WITNESS: --Sure.
8 THE REFEREE: --if you listen carefully and
9 answer.
- 10 THE WITNESS: I'm doing the best--
11 THE REFEREE: --Did he force you to go?
- 12 A. Yes.
- 13 Q. And what were his words that constituted, in your opinion, force to get
14 in a car and go to Virginia?
- 15 A. I told him I didn't want to go. I told him I just didn't want to go. I
16 didn't want to go and he said, "No," I-- "You're coming." You
17 know, and--
- 18 Q. --And when you got to Mr. Behal's house, did you tell Mr. Behal,
19 "You know, I really don't want to be here?"
- 20 A. No. I did not.
- 21 Q. Did you tell him you were having a good time?
- 22 A. I didn't have a good time. No, I wouldn't say that.
- 23 Q. You had photos with you in front of floats, correct?
- 24 A. There were photos in front of floats?
- 25 Q. Yeah, from the inauguration?

183.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 A. I believe there were photos, but I don't recall any floats.
- 2 Q. And did you ever make any complaint to anyone that you had been,
- 3 quote, "forced" to go to Virginia with Judge Miller in January of
- 4 2017?
- 5 A. Yes, I told my wife.
- 6 Q. Anyone else?
- 7 A. I can't recall.
- 8 Q. Well, did you ever tell the inspector general that you were forced to go
- 9 to Virginia?
- 10 A. No, never was asked. No.
- 11 Q. Did you ever tell the Commission on Judicial Conduct?
- 12 A. No.
- 13 Q. Did you ever tell the Commission on Judicial Conduct that you knew
- 14 Mr. Behal and had been at his house?
- 15 A. No. As a matter of fact, I kind of wanted to-- No, I did not.
- 16 Q. And when Mr. Behal showed up to see Judge Miller, you knew who
- 17 he was because you had been at his house, correct?
- 18 A. Yes.
- 19 Q. You felt comfortable with him?
- 20 A. I didn't have a problem with Mr. Behal.
- 21 Q. And did you offer to help Mr. Behal in any matter?
- 22 A. No.
- 23 Q. Did you look at-- Was Judge Miller in the courtroom when Mr. Behal
- 24 came in?
- 25 A. Mr. Behal attempted to come through the rear doors. I directed him,

184.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 "You can't do that." I believe he contacted me. I said, "No, you
2 cannot do that. Only employees can. You have to go through the
3 magnetometer to come through the front." I believe when he came in,
4 Mr.-- Judge Miller was not initially there. I-- He was not there. I
5 can't say for a fact he was in the courtroom.
- 6 Q. So, you--
- 7 A. --When he came into chambers.
- 8 Q. So, Mr.-- Judge Miller was not present when Mr. Behal entered the
9 chambers, correct?
- 10 A. Right. I recall him saying that, "If I'm in the courtroom or if I'm not
11 here, let him in and tell him to wait for me and I'll be back shortly."
- 12 Q. So, you were with Mr. Behal alone for a period of time, correct?
- 13 A. I believe so, yes.
- 14 Q. And is that the only occasion that you recall David Behal being in
15 your presence in Binghamton, New York?
- 16 A. In Binghamton, yes. But I did see him in Johnson City, New York.
- 17 Q. Okay. And where was that?
- 18 A. That was at Judge Miller's child's graduation. I think it was his
19 daughter's high school graduation. I think there were tables set up out
20 back.
- 21 Q. What year was that?
- 22 A. Oh, Jesus. I'm not good with years. I can't recall.
- 23 Q. You were working for Judge Miller?
- 24 A. Yes. Yes.
- 25 Q. Okay.

185.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. And he happened to be-- We happened, my wife and I, may have sat
2 at a table with Mr. Behal and I believe it was with his mother. We
3 spoke for maybe a couple of minutes.

4 Q. And that was in 2015, '16 or '17?

5 A. I don't-- It wasn't '17. It was the year Judge Miller's daughter
6 graduated from high school in the spring.

7 Q. Now, you mentioned something about a strip club. Do you recall that?

8 A. Yes.

9 Q. And you said that Judge Miller knows someone who owns a strip
10 club?

11 A. I didn't say it. He knows-- I believe he-- The photograph originated
12 from somebody that runs--

13 Q. --No-- Did you-- Did you say that Judge Miller--

14 A. --I think his-- I think his name was Lenny something. I'm not sure. I
15 think he mentioned his name was Lenny. I don't know. I can't
16 remember the last name. I think that was the name.

17 Q. Are you saying that Judge Miller had a friend who owns a strip club?

18 A. No, I'm not saying that.

19 Q. You never said that?

20 A. I don't believe I did.

21 Q. Let me ask you if you recall testifying in front of the Commission as
22 follows on August 8th.

23 MS. CENCI: Page? Page, please?

24 MR. DEROHANNESIAN: Page 21. If you want to
25 follow along.

186.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 BY MR. DEROHANNESIAN:

2 Q. Line 3. There were-- Did you-- Were you asked this question and
3 did you give this answer?

4 "Q. There were other occasions when the judge
5 tried to show you nude photos?

6 "A. There were like a couple of times. Like, he
7 had a friend who had like, I'm not even sure. I'm just not
8 100 percent sure. A friend that would send him
9 photographs, like-- But he-- that owned a strip club in
10 Binghamton."

11 So, did you make that answer to that question?

12 A. Yes. That's correct.

13 Q. So, you testified under oath that Judge Miller had a friend who owns a
14 strip club, correct?

15 A. The testimony speaks for itself, counselor.

16 Q. Okay. What is the name of this friend of Judge Miller that you say
17 owns a strip club in Binghamton?

18 A. I believe he-- Judge Miller indicated his name was Lenny something.
19 I believe that comes to mind.

20 Q. Well, when you testified, you had no idea who it was, right?

21 A. I believe that the name was Lenny. That name comes to-- rings a
22 bell, but I can't remember his last name.

23 Q. Same page. Were you asked this question and gave this answer?

24 "Q. Do you know who that is?

25 "A. No. I wouldn't know. He like owns some

(Kachadourian - Cross)

- 1 plazas and stuff, like little strip plazas.”
- 2 A. I believe that to be--
- 3 Q. --And then question from Ms. Cenci:
- 4 “Q. Not one of the Judge’s Italian friends that are
- 5 mentioned in this statement?
- 6 “A. No, no, no, no.”
- 7 Was that your answer to those questions?
- 8 A. Yes.
- 9 Q. So, were you talking about a strip plaza or a strip club when you
- 10 testified to the Commission in August of 2017?
- 11 A. I believe that this individual, at least from what was told to me, is in
- 12 the strip club business but also owns the strip plazas.
- 13 Q. Oh, so it’s somebody who owns--
- 14 A. --Yes.
- 15 Q. --a strip plaza and a strip club?
- 16 A. I believe that to be true.
- 17 Q. But you don’t know his name?
- 18 A. I believe his name is Lenny something.
- 19 Q. But you never mentioned Lenny to the Commission?
- 20 A. That’s correct. I didn’t. It just--
- 21 Q. --To this date, have you ever given the name Lenny?
- 22 A. No, I have not.
- 23 Q. No one’s ever asked you the name of this person?
- 24 A. No, they have not.
- 25 Q. Do you know what Lenny looks like?

188.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. No, I've never met him.

2 Q. Do you know where he lives?

3 A. No.

4 Q. Do you know how old he is?

5 A. No.

6 Q. And who were these Italian friends that the Commission was asking
7 you about? I'll withdraw it. Let me ask you do you-- Were you
8 focusing on Italians when you were--

9 MS. CENCI: --Your Honor, I object. That was a
10 question that was asked of the witness. He never said that.

11 THE REFEREE: Yeah, there's nothing. You don't
12 have to look at that right now. You really have to know
13 what's going on in Ms. Cenci's mind to really explore that,
14 so let's move on.

15 BY MR. DEROHANNESIAN:

16 Q. You say a couple months after the trip with Judge Miller-- How
17 about, did you take another trip with Judge Miller in his car after
18 January of 2017?

19 A. We would go to various counties. We would go to Madison County,
20 we would go to Chenango County, we would go to Delaware County,
21 and I don't have specific dates or times as to when we traveled to
22 those counties.

23 Q. Now, but you took a trip to Albany, New York, right?

24 A. Yes. Yes, we did.

25 Q. Was that the first trip to Albany, New York, you took with Judge

189.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Kachadourian - Cross)

- 1 Miller in May of 2017?
- 2 A. The first trip with him? No, it was not.
- 3 Q. Had you taken another trip with Judge Miller for a judicial conference
- 4 or lobbying effort other than May of 2017?
- 5 A. I believe so. I believe we went the year prior to that, as well.
- 6 Q. So, in 2-- In May of 2016, you went with Judge Miller to the family
- 7 court association lobbying effort?
- 8 A. I think that's what it's called. Yes.
- 9 Q. And you were invited by Judge Miller?
- 10 A. That's-- I was asked to go.
- 11 Q. Well, was that a requirement that judges have law clerks with them at
- 12 this get together?
- 13 A. No, I was the only-- I believe I was the only law clerk that was there.
- 14 Q. That was in May of 2016?
- 15 A. May of 2016? I believe that to be correct.
- 16 Q. So, there were many family court judges. You were the only clerk that
- 17 was with a family court judge?
- 18 A. I believe there were approximately six to eight judges and I was the
- 19 only law clerk. That's correct.
- 20 Q. Okay. How about in May of 2017? About how many family court
- 21 judges were there?
- 22 A. I think there were less at that. I would say five to six, possibly most
- 23 seven. I would say five to six judges and I was the only law clerk
- 24 there.
- 25 Q. The only law clerk?

190.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 A. Yes.
- 2 Q. Now, in May of 2016, did you say to Judge Miller, "I don't want to go
3 with you to Albany?"
- 4 A. No, I wouldn't say that to him.
- 5 Q. Did you say that to him in May of--
- 6 A. --I would not say that to him.
- 7 Q. And in May of 2017, did you say to Judge Miller, "You know, after
8 the last two years and five months, I don't want to take this trip with
9 you?"
- 10 A. I would not say that to him.
- 11 Q. You went with Judge Miller, right?
- 12 A. That's correct.
- 13 Q. And you spoke about this trip to other people besides-- Excuse me.
14 You spoke to people outside of the court system about your trip to
15 Albany, correct?
- 16 A. I cannot recall.
- 17 Q. Do you know who Garo Kachadourian is?
- 18 A. Yes, I do.
- 19 Q. What is his relationship to you?
- 20 A. He is-- Biologically, he's my cousin and legally, he's my uncle. My
21 grandparents adopted him.
- 22 Q. Okay. Your cousin and uncle, correct?
- 23 A. That's correct.
- 24 Q. And you have called him about this case, correct?
- 25 A. No, I have not.

191.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 Q. And you've spoken to him about this case?
- 2 A. I have not.
- 3 Q. And you spoke to Mr. Kachadourian about your trip to Albany,
- 4 correct?
- 5 A. I do not believe that to be true.
- 6 Q. We'll come back to that in a second.
- 7 A. Sure.
- 8 Q. But with respect to the trip to Albany, I think you said at one point,
- 9 you saw Sen. Akshar, correct?
- 10 A. Yes. That's correct.
- 11 Q. And he is the New York State Senator for Broome and Tioga County,
- 12 correct?
- 13 A. That's correct.
- 14 Q. The successor to Tom Libous, correct?
- 15 A. That's correct.
- 16 Q. And at some point, Judge Miller wanted to see his local senator,
- 17 correct?
- 18 A. That's correct.
- 19 Q. And when they met, did Sen. Akshar know who Judge Miller was?
- 20 A. Yes. Yes, he did.
- 21 Q. This was not a stranger encounter, was that fair to say?
- 22 A. It wasn't a scheduled meeting. It-- We entered his office and asked
- 23 his secretary, "Is he available?" and the secretary paged him and he
- 24 appeared.
- 25 Q. But when Judge Miller met Sen. Akshar, it wasn't as though Sen.

192.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 Akshar didn't know who this man was?
- 2 A. He knew who he was. Yes, he did.
- 3 Q. Okay. Both had run in elections in the last few years--
- 4 A. --That's correct.
- 5 Q. --on the Republican ticket, correct?
- 6 A. That's correct.
- 7 Q. Correct?
- 8 A. Yes.
- 9 Q. So, they were no strangers in the political world in Broome County--
- 10 A. --No, I believe they knew each other and I've seen them interact
- 11 previously.
- 12 Q. And you say that at some point, Judge Miller was concerned about a
- 13 cell phone number, correct?
- 14 A. About Sen. Akshar's cell?
- 15 Q. Yes.
- 16 A. Yes.
- 17 Q. And was it in the car that he then references the cell phone again in
- 18 connection with Ms. Gallagher?
- 19 A. Well, it was first in the State Capitol and then it was in the automobile
- 20 on the way back. He brought up Ms. Gallagher's name in the
- 21 automobile on the way back.
- 22 Q. Okay. And you say that Judge Miller made a comment about Sen.
- 23 Akshar would be sexually satisfied by Rachelle Gallagher, correct?
- 24 A. I don't-- I can't recall saying those specific words.
- 25 Q. Well, I know you said you blocked out a lot. Can you remember what,

193.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 if anything, Judge Miller said?
- 2 A. Judge Miller--
- 3 Q. --The exact words?
- 4 A. I can't remember exact words. I'm not that good.
- 5 Q. Can you be sure of any phrase that he used with respect to that
- 6 discussion--
- 7 A. --I can-- This--
- 8 Q. --Can--
- 9 A. --I could recall the discussion. We were in the car, heading back from
- 10 Albany to--
- 11 Q. --My question is just what words did Judge Miller say that you are
- 12 sure that he said? That you are 100 percent sure?
- 13 A. I can't be 100 percent sure of it.
- 14 Q. Okay.
- 15 A. I can't be sure.
- 16 Q. Fine. In any event, the theory--
- 17 A. --Right.
- 18 Q. --was Rachelle Gallagher would have some type of sexual contact
- 19 with State Sen. Akshar so that Judge Miller could get his cell phone
- 20 number. Is that correct?
- 21 A. Along those lines. That's absolutely correct.
- 22 Q. Nothing else? It was only to get a cell phone number, correct?
- 23 A. Yes.
- 24 Q. And did you say to Judge Miller, "You know, there must be other
- 25 ways to get his cell phone number."

194.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 A. No, the judge was yelling. His face was bright red.
- 2 Q. And-- And--
- 3 A. --He was sweating and he was just--
- 4 Q. --And--
- 5 A. --upset.
- 6 Q. And he--
- 7 A. --He was upset he didn't get his cell phone number. He felt-- He felt
- 8 not only didn't he get his cell phone number, he felt that he was
- 9 insulted, he was offended and that he should have-- the senator
- 10 should have given him his cell phone number.
- 11 Q. Did you suggest there's better ways to get his cell phone number?
- 12 A. No, I didn't. I did--
- 13 Q. --Did you ask him, "Hey, isn't it possible you already have his cell
- 14 phone number?"
- 15 A. That discussion came up. I thought he already had his cell phone
- 16 number.
- 17 Q. Yeah. Was the word you used to Ms. Cenci this morning, "crazy,"
- 18 when you described this suggestion?
- 19 A. I don't rec-- I can't recall what I said this morning, but to me it is--
- 20 Q. --You said crazy.
- 21 A. --It is crazy.
- 22 Q. It is crazy, isn't it?
- 23 A. It is crazy, the whole--
- 24 Q. --Crazy, is your word, correct?
- 25 A. Yes. Yes.

195.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. Then you say that there's-- Judge Miller would show you a photo, is
2 that correct, or showed you a photo?

3 A. Of Ms. L [REDACTED]?

4 Q. Is that-- That's what you said, isn't it?

5 A. Are you referencing--

6 Q. Yeah.

7 THE REFEREE: Just-- He's trying to gain a
8 reference.

9 BY MR. DEROHANNESIAN:

10 Q. Yes. You said he showed you--

11 A. --Yes. Yes, he did. It was on his cell phone.

12 Q. And this was in late 2016 and early 2017?

13 A. I believe it occurred in or about April '17, I believe.

14 Q. Well, is that-- Is that-- When you say April, is that what you mean by
15 early 2017?

16 A. Yes.

17 Q. Pardon?

18 A. Yes. The early part of 2017.

19 Q. Could it have been in 2016?

20 A. It could have been, I guess. I don't ...

21 Q. So, it could be any time from 2016 to April of 2017?

22 A. I believe it was in April of 2017. I-- that's my belief.

23 Q. And you say there was a picture you saw?

24 A. Yes, that's correct.

25 Q. Did you look at the picture?

196.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 A. Yes, I did.
- 2 Q. How many seconds did you look at it?
- 3 A. I would say--
- 4 Q. --Two seconds, five seconds, three sec--
- 5 A. --Two seconds.
- 6 Q. Two seconds?
- 7 A. One second, two seconds.
- 8 Q. One or two seconds? What was the size of the image?
- 9 A. The size of the image was prob-- I would say maybe something along
- 10 the lines of two and a half inches by four inches, three inches-- I
- 11 don't-- Something along--
- 12 Q. --Where were you standing or seated?
- 13 A. I was standing next to the judge.
- 14 Q. Okay. And--
- 15 A. --I was in his chambers, next to his desk.
- 16 Q. And was he seated or standing?
- 17 A. Standing next to me.
- 18 Q. So, just so I get it. I'm shorter than Judge Miller. Like this?
- 19 A. Just like that.
- 20 Q. Just like that?
- 21 A. Yes.
- 22 Q. So, if you assume that Judge Miller is taller than me.
- 23 A. Yes.
- 24 Q. And he had the phone in his hand.
- 25 A. Yes.

197.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 Q. Is that right?
- 2 A. Yes.
- 3 Q. And you claim he had the phone in his hand, correct?
- 4 A. Yes.
- 5 Q. So, it'd be fair to say that it was at least three feet from you, the
- 6 phone?
- 7 A. Three feet from me? No, I would say about a foot and a half.
- 8 Q. A foot and a half?
- 9 A. At the most.
- 10 Q. While he's seated, right now?
- 11 A. He wasn't seated. He was standing next to me.
- 12 Q. But now he was standing?
- 13 A. I never-- I don't think I said he was sitting.
- 14 Q. We'll let the record reflect that.
- 15 A. Okay. I can't-- I believe he was standing. I believe we were in
- 16 chambers next to his desk. I believe we were standing next to each
- 17 other.
- 18 Q. Was there any background in the photo?
- 19 A. I do not think so.
- 20 Q. Can you say?
- 21 A. I believe there wasn't.
- 22 Q. Page 19 of your testimony before the Commission, line 5. Were you
- 23 asked this question and did you make this answer?
- 24 A. Yes.
- 25 Q. "Q. Do you know or recall whether there was any

198.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 background?

2 "A. I can't recall. I was just like shocked just
3 seeing that. I just like-- I don't recall."

4 Was that your answer to that question?

5 A. Yes.

6 MS. CENCI: It's consistent with his--

7 THE REFEREE: --That's not inconsistent.

8 MS. CENCI: --testimony, Your Honor.

9 THE REFEREE: Yeah. It's not inconsistent.

10 BY MR. DEROHANNESIAN:

11 Q. Did you see a face?

12 A. No, I did not.

13 Q. Did you determine an age?

14 A. Determine an age? At the moment I saw the photo? No. I didn't
15 determine. I--

16 Q. --Did you see a--

17 A. --I would--

18 Q. --Did you determine an age?

19 A. At that moment, I didn't-- I didn't calculate an age. No. That's not
20 the-- That didn't come to mind.

21 Q. Could you tell if it was an adult or child?

22 A. Oh, it was an adult.

23 Q. Did you see a face?

24 A. No, I did not.

25 Q. Did you see a tattoo?

199.

(Kachadourian - Cross)

1 A. I can't recall.

2 Q. Did you see any clothing?

3 A. No, I did not.

4 Q. Did you see any jewelry?

5 A. I cannot recall.

6 THE REFEREE: Bless you.

7 MS. CENCI: Thank you.

8 BY MR. DEROHANNESIAN:

9 Q. Did you see anything in the photo, first of all, that involved any
10 personal property?

11 A. I don't recall. I don't think so.

12 Q. Did you see any scars?

13 A. I don't recall.

14 Q. Have you ever been asked to look at any photos since you left Judge
15 Miller's chambers?

16 THE REFEREE: By whom?

17 BY MR. DEROHANNESIAN:

18 Q. By any investigating agency?

19 THE REFEREE: Okay.

20 A. Any photos of Ms. L [REDACTED]?

21 Q. Of anyone?

22 A. Of any--

23 Q. --Ms. L [REDACTED] or anyone?

24 A. No. I don't believe so.

25 Q. Have you ever been asked to look at anyone's cell phone since you

200.

(Kachadourian - Cross)

- 1 have made these allegations?
- 2 A. No, I don't believe so.
- 3 Q. Are you aware that any photo exists in anyone's possession of what
- 4 you claim you saw on that phone?
- 5 A. I am not aware. I am not aware of that.
- 6 Q. When I asked about-- You talked about Marty Shaw, correct?
- 7 A. Yes.
- 8 Q. Do you know who Marty Shaw is?
- 9 A. I believe he's an electrician for the Village of Endicott, New York.
- 10 Q. And how long has Marty Shaw been an electrician for the Village of
- 11 Endicott?
- 12 A. I do not know that.
- 13 Q. Do you think it's a month, a year or more?
- 14 A. I believe I-- If he's still in that same position, I believe it's in excess
- 15 of two years at least.
- 16 Q. And you said something, he had a criminal record?
- 17 A. He-- I was told by Judge Miller he had a-- He was released from
- 18 Attica.
- 19 Q. How old is Marty Shaw?
- 20 A. I believe Marty Shaw-- I would say-- I was never told how old he
- 21 was, but if I was to take a guess or estimate his age, I believe he
- 22 was-- be about 58 to 62. Somewhere in that range.
- 23 Q. And he completed his time in 1985, correct?
- 24 A. I don't know. I have no idea of when he completed his time.
- 25 Q. And he's been a member, without any problems in 35 years. Isn't that

201.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 correct?

2 A. That, I don't know.

3 MS. CENCI: Well--

4 THE REFEREE: --Member of what?

5 MR. DEROHANNESIAN: The community.

6 THE REFEREE: Okay.

7 A. I don't know that.

8 Q. He's worked as an electrician for a municipality for decades. Isn't
9 that true?

10 A. That I don't know.

11 Q. Well, do you-- You never met him?

12 A. Yes, I met him. Yes, I did.

13 Q. Okay. Were you scared when you met him?

14 A. You have to watch what you say in front of him, because he was-- he
15 made threats to me--

16 Q. --Did-- Okay. In your presence?

17 A. Yes.

18 Q. Okay. And where was that?

19 A. It was in the presence of Judge Miller.

20 Q. Mm-hmm. And when was that?

21 A. I would say about 2016.

22 Q. Yeah. Where was that?

23 A. That took place-- I can't recall. I can't recall where it took place. We
24 would often visit him-- We would visit him at his place of
25 employment and--

202.

(Kachadourian - Cross)

- 1 Q. --Where was this?
- 2 A. I don't recall whether it was his place of employment or somewhere
3 else.
- 4 Q. Okay. And is this something that you testified to before the
5 Commission?
- 6 A. No, I just remembered it as you were--
- 7 Q. --Just remembered it?
- 8 A. Yeah, as you're speaking.
- 9 Q. When?
- 10 A. Just now.
- 11 Q. Like when? It's 3:45 now.
- 12 A. Just now. You jogged my memory.
- 13 Q. Just now?
- 14 A. Yes.
- 15 Q. You never remember it when you were speaking to the inspector
16 general's office?
- 17 A. No, this has been a-- I told you, it's very traumatic going through this
18 and I'll tell you both emotionally and physically and I tried to, going
19 through this, having to testify before the Commission, having to
20 testify before the IG's office, having to relive this nightmare is not
21 very pleasant and I, as self-preservation, you want to try to erase it
22 from your memory.
- 23 Q. Well, how about when you filed your federal lawsuit against the State
24 of New York, did you remember it then?
- 25 A. No, I did not. You jogged my memory, sir.

203.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. Okay. So, it's fair to say on January 7, 2018, [sic] is the first time
2 you've ever mentioned any meeting with Mr. Stilloe where he
3 threatened
4 you--

5 A. --Not Mr. Stilloe, Mr. Shaw--

6 THE REFEREE: --Shaw.

7 BY MR. DEROHANNESIAN:

8 Q. Shaw. Mr. Shaw?

9 A. That's correct.

10 Q. Is that correct?

11 A. That's correct.

12 Q. You agree it's not in any report?

13 A. I believe you-- I believe that to be correct.

14 Q. Okay. And Mr. James Stilloe, is that someone that you've also met?

15 A. Yes, Mr. Stilloe--

16 Q. --So, first you've met him?

17 A. Yes.

18 Q. How many occasions?

19 A. I can't say specifically how many occasions. I could tell you, you
20 know, we-- he assisted the judge on his campaign. I remember
21 specifically there was-- You know, I've met him through that and
22 then I met him, you know, on various occasions subsequent to that.

23 Q. And you've been to lunch with him? With Mr. Stilloe?

24 A. I can't recall if I have or not.

25 Q. In the first year that you were with Mr.-- Judge Miller, go to lunch

204.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 with Mr. Stilloe?

2 A. That I cannot recall. I don't recall. I can't recall that. It's possible,
3 but I don't recall specifically.

4 Q. Does he also a used car dealer?

5 A. That I don't know.

6 Q. Do you know him as a car dealer?

7 A. I think he runs-- I think Mr. Stilloe runs-- The judge had a son who
8 was, I think, getting engaged and made reference that Mr. Stilloe owns
9 a pawn shop and they were thinking about purchasing a ring from
10 there. I believe his source of income is a pawn shop.

11 Q. And wouldn't it be fair to say that you do not believe or you did not
12 believe and do not believe that Mr. Stilloe is any threat to your
13 physical safety?

14 A. I believe he is, based upon what he said.

15 Q. Well, have you ever given a different version of that belief about Mr.
16 Stilloe?

17 A. I don't believe-- I-- I'm not sure--

18 Q. --Well, let's take a look at the inspector general interview.

19 A. Sure.

20 Q. And recall this morning, we spoke about you swore to the truth of
21 what was in that report, correct? (Unintelligible)?

22 A. I take offense questioning my honesty, counselor.

23 THE REFEREE: Well, just answer the questions.

24 Address that later.

25 A. Right.

205.

(Kachadourian - Cross)

- 1 Q. Okay. This is showing you Respondent's I, for identification.
- 2 A. Sure.
- 3 Q. This is the inspector general's summary of interview with you.
- 4 A. Yes, I-- Yes. Of July 7, 2017.
- 5 Q. Let me bring your attention to the first full paragraph.
- 6 A. On page 4?
- 7 Q. Yes.
- 8 A. Okay.
- 9 Q. Does that refresh your recollection that you told the inspector general
- 10 that you did not believe that Mr. Stilloe posed a threat to your physical
- 11 safety?
- 12 A. That's what I said at that time. Yes.
- 13 Q. Okay. And when you testified in front of the Commission, you
- 14 affirmed under oath the truthfulness of the statements you made to the
- 15 inspector general, correct?
- 16 A. That's correct.
- 17 Q. Now, you also-- You mentioned a person by the name of Jerry Penna,
- 18 correct?
- 19 A. Yes.
- 20 Q. Mr. Penna is an insurance agent in Broome County?
- 21 A. I believe that to-- I don't know if today, but back when I knew him,
- 22 that's correct. He was an insurance broker, agent.
- 23 Q. Now, one of the things that I think you told the inspector general was
- 24 that he was in a building housing, quote, "unsavory characters." Do
- 25 you recall saying that?

206.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. Yes, I do.

2 Q. And who are the unsavory characters that you say are in the building
3 that Mr. Penna, the insurance agent, is with?

4 A. I don't recall.

5 Q. Do you have-- Can you identify one person, by any means, whether
6 it's first name, last name, job, who you allege Jerry Penna has as an
7 unsavory character in his building?

8 MS. CENCI: Wait a minute. Excuse me, Your
9 Honor. Has it been established that the building belongs to
10 Mr. Penna? I don't think so.

11 THE REFEREE: I don't--

12 MR. DEROHANNESIAN: --I'll rephrase it. Your--

13 THE REFEREE: --I'm lost anyway, so it doesn't
14 matter.

15 BY MR. DEROHANNESIAN:

16 Q. Your statement to the IG was that Mr. Penna was-- had an office in a
17 building housing, quote, "unsavory characters."

18 A. That's correct.

19 Q. Who are the unsavory characters in the building where Mr. Penna is
20 located?

21 A. I don't know their names.

22 Q. Can you identify them in any way?

23 A. Yes. I could ...

24 Q. First of all, have you been to the building?

25 A. Yes, I have.

207.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. Okay. Did you go inside the building?

2 A. Yes, I did.

3 Q. Okay. And did you go to any part of that building other than Mr.
4 Penna's office?

5 A. No, I did not.

6 Q. And can you give me any names?

7 A. No, I cannot.

8 THE REFEREE: You said you could identify them
9 in some fashion. Let's just do that. Any way you can.

10 A. I just don't-- Out of concern of my safety, I'm not even going to
11 discuss. I don't want to-- I'm serious. I don't want to-- From what I
12 was told, I don't want to--

13 THE REFEREE: --Told by whom? You were told
14 by somebody. Who told you something?

15 A. I just-- I can't answer that. I don't recollect.

16 Q. Are you refusing to answer?

17 A. No, I'm not. I can't remember.

18 Q. You also testified this morning about Mr. Penna made a statement in
19 your presence about females from the Far East.

20 A. That's correct. We were in--

21 Q. --Wait a minute.

22 A. Sure.

23 Q. Is that correct?

24 A. Sure. That's correct.

25 Q. And the references to these females from the Far East was sexual in

208.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 nature, correct?

2 A. That's correct.

3 Q. I want you to look in Respondent's I, in your testimony to the
4 Commission, your interview with the inspector general, your phone
5 calls with the Commission, and show me where, at any time, you
6 made any reference to Mr. Penna and Judge Miller talking about--

7 THE REFEREE: --You know what? That's
8 improper. Just ask him if he ever said that, because you're
9 doing this backwards. He never said that he said it in those
10 things, so--

11 MR. DEROHANNESIAN: --Okay.

12 THE REFEREE: --let's just get-- Let's cut to the
13 chase.

14 BY MR. DEROHANNESIAN:

15 Q. Did you ever tell the inspector general in their interview with you
16 anything about Mr. Penna making statements about young Asian girls
17 and Judge Miller?

18 A. It-- They never made reference to young Asian girls, it was just Asian
19 females.

20 Q. Is there any-- Did you ever tell the inspector general anything about
21 Asian girls and Judge Miller and Mr. Penna?

22 A. No, I didn't want to discuss those things, but I was told I was--

23 Q. --You didn't want to discuss--

24 A. --I--

25 MS. CENCI: --Excuse me. Your Honor, can the

209.

(Kachadourian - Cross)

1 witness finish the answer?

2 THE REFEREE: Just-- Yeah.

3 A. I-- It's uncomfortable for me to discuss things like that and it's
4 something that I avoid discussing or don't want to discuss so I didn't,
5 and when I was told when I come here today, make sure to give
6 details, so I did give those details and it made me uncomfortable doing
7 it, and I don't like doing it, and I'd prefer not doing it. So, that's
8 maybe why I didn't do it at that time.

9 Q. When you testified in front of the Commission on Judicial Conduct in
10 August of 2017--

11 A. --Right.

12 Q. --you were asked about Mr. Penna, correct?

13 A. I believe so. Yes.

14 Q. And did you discuss and mention anything about a conversation with
15 Judge Miller about Asian women and sex?

16 A. No, I did not. I don't-- I don't think so, without looking at every
17 page. I'm not 100 percent--

18 Q. --I want to make sure if you think you did.

19 A. I don't think so.

20 Q. How about in any of your phone calls with the Commission on
21 Judicial Conduct, did you ever mention anything about a conversation
22 with Jerry Penna and Judge Miller and Asian girls and sexual matters?

23 A. No. I may have referenced that sexual matters were discussed at that
24 meeting, but I didn't reference Asian females.

25 Q. Is today the first time you've ever mentioned anything about Jerry

210.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

- 1 Penna making any comment about Asian women or heard?
- 2 A. It was a conversation that took place between Judge Miller, Jerry
- 3 Penna and a third individual, who I believe was a maintenance worker
- 4 in the building, and I believe the maintenance worker and Jerry Penna
- 5 were both stationed in Southeast Asia and that conversation took place
- 6 at that time.
- 7 Q. And did you ever mention this conversation with Mr. Penna--
- 8 A. --Right.
- 9 Q. --the janitor, Judge Miller and Asian women, prior to today?
- 10 A. No, I did not.
- 11 Q. To anyone in the world?
- 12 A. I may have mentioned it to-- I'm not 100 percent sure. I may have
- 13 mentioned it to one other person.
- 14 Q. Okay. Did you make any notes concerning this conversation?
- 15 A. No, I did not.
- 16 Q. And you said you were asked to provide details today?
- 17 A. Yes.
- 18 Q. And who asked you to provide details?
- 19 A. Ms. Cenci.
- 20 Q. And when you met with the inspector general, the summary of your
- 21 interview was five pages? Is that right?
- 22 A. Six pages.
- 23 Q. Six?
- 24 A. Yes.
- 25 Q. And is it your testimony today that David Iannone has a criminal

211.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 record?

2 A. I don't know that.

3 Q. You don't know that, right?

4 A. No, I don't.

5 Q. Did you tell the inspector general that you believed he had a juvenile
6 criminal record?

7 A. I may have said that.

8 Q. And as a family court lawyer, what is a juvenile criminal record?

9 A. I-- Do you have a reference to a page, so I could see--

10 Q. --Sure. Look at page 4 in the inspector general report.

11 A. Do you have a paragraph?

12 Q. In the second full paragraph.

13 A. Okay.

14 Q. First sentence.

15 A. I don't see it there. Page 4, first paragraph. Second--

16 THE REFEREE: --Second full paragraph. First
17 line--

18 THE WITNESS: --Is it-- Oh, second?

19 THE REFEREE: Is there a reference there to a
20 juvenile record?

21 THE WITNESS: The first line, no.

22 THE REFEREE: Anywhere in that paragraph?

23 THE WITNESS: (Unintelligible).

24 THE REFEREE: Because the question is, he wants
25 to know what it means to have a juvenile record.

212.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 MR. DEROHANNESIAN: Criminal.

2 THE REFEREE: Criminal record.

3 THE WITNESS: And you say that's on page 4,
4 line--

5 THE REFEREE: Well, anywhere. You must know
6 what that is--

7 THE WITNESS: --I don't see it.

8 THE REFEREE: --you're a family court attorney.

9 A. I don't-- No. I'll tell you what it means to me is we were moving in
10 Judge Miller's chambers and Dave Iannone was assisting us and what
11 happened was Judge Marty Smith happened to walk by and Mr.
12 Iannone informed me that he grabbed Judge Smith when he was
13 before him as a juvenile by the neck and that he appeared before him
14 as a juvenile and was sent to detention. That's what Mr. Iannone told
15 me.

16 Q. Okay. Do you have any knowledge of any criminal record that Mr.--

17 A. --No, other than what Mr. Iannone said.

18 Q. Okay. Juveniles in family court get sent to detention centers, correct?

19 A. That's my understanding. That's correct.

20 Q. They're not criminals, correct?

21 A. That's correct.

22 Q. And how old is Mr. Iannone now?

23 A. Oh, geez. I would say a rough estimate-- If I was to guess, I would
24 say anywhere between 48 and 52, or maybe older, 56.

25 Q. Can I have just a moment?

213.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 THE REFEREE: Certainly.

2 THE WITNESS: How long will it take until these
3 proceedings end?

4 THE REFEREE: What?

5 THE WITNESS: What time do these proceedings
6 end today?

7 THE REFEREE: That's a very good question. I
8 think we're almost done with you.

9 THE WITNESS: Okay. Okay.

10 MS. CENCI: I'll be brief on redirect.

11 THE REFEREE: I'm sure.

12 COURT OFFICER: Anyone else need more water?

13 BY MR. DEROHANNESIAN:

14 Q. Do you recall, Mr. Kachadourian, testifying before the Commission
15 that you had no personal relationship with Ms. Gallagher outside of
16 work?

17 A. No, I don't recall that.

18 Q. If you'd look at your testimony?

19 A. Sure.

20 Q. Page 16, line 13.

21 A. That's correct.

22 Q. Were you asked this question and did you make this answer:

23 "Q. You don't have any personal relationship with
24 her," meaning Rachelle Gallagher, "outside of work?"

25 "A. Not at all."

214.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 A. That's correct.

2 Q. Did you make that answer to that question?

3 A. Yes, I did.

4 Q. Did you ever provide any documents or property to the inspector
5 general's office?

6 A. I can't recall.

7 Q. Did you ever provide any documents pertaining to this case to the
8 Commission on Judicial Conduct?

9 A. I can't recall.

10 Q. Did you ever remove any documents of Judge Miller from his office at
11 any time in June or July of 2017?

12 A. No, I did not.

13 Q. Have you-- You are claiming that you suffered physical injury as a
14 result--

15 THE REFEREE: --I struck that, so we're not going
16 to go there.

17 MR. DEROHANNESIAN: You-- We're not-- I
18 thought that was part of the--

19 THE REFEREE: --She asked a question and I said I
20 sustained the objection.

21 BY MR. DEROHANNESIAN:

22 Q. After you were removed-- Excuse me. After you left Judge Miller's
23 presence in July of 2017, did you continue to see D [REDACTED] L [REDACTED] in
24 court?

25 A. Not in court, no. She was-- There was a period of time where she

215.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 wasn't there.

2 Q. And did Ms. L [REDACTED] ever threaten to harm you?

3 A. To my face? Did she ever say she she's--

4 THE REFEREE: --That's not the question.

5 A. It's my understanding there may have-- Yes. It's-- There were
6 concerns.

7 Q. What threat, if any, do you say Ms. D [REDACTED] L [REDACTED] made against
8 you?

9 A. We were advised by, whether it was Marie Lawrence or Debbi Singer,
10 that they had concerns for Rachelle and my safety with respect to
11 D [REDACTED].

12 Q. Okay. What was the alleged issue or threat of Ms. L [REDACTED] against
13 you?

14 A. I'm-- I was never told what the threat was or what--

15 Q. Did you ever say that Ms. L [REDACTED] was going to physically harm you
16 and Ms. Gallagher?

17 A. As far as my recollection was, we were advised--

18 THE REFEREE: --No, no. The question was, did
19 you ever say that to anybody?

20 A. Oh, did I ever say that? Could you-- I'm sorry. Could you repeat the
21 question?

22 Q. Did you ever say that Ms. L [REDACTED] was going to physically come to
23 Broome County Family Court to harm you and Rachelle Gallagher?

24 A. I had concerns and I'm not sure if-- who I said it to or if I said it to
25 anybody, but I did have concerns that she is an employee there and she

216.

(Kachadourian - Cross)

1 bypasses the magnetometer and that I did have-- I did have concerns
2 that she would harm either Rachelle or I. Yes, I-- I'm not sure if I
3 said it to-- Yes, I believe I may have told Ms. Singer that, is one
4 person. I may have told-- I believe I mentioned it to Ms. Singer.

5 Q. Was it on March 20, did someone tell you that Ms. L [REDACTED] had
6 threatened you?

7 A. I can't recall. It's-- I can't recall that.

8 Q. Let me show you--

9 A. --Sure.

10 Q. --Respondent's Q, for identification. Do you recall? Do you know
11 what that is?

12 MS. CENCI: Counsel, did you give a year? You
13 said March?

14 MR. DEROHANNESIAN: 2018.

15 MS. CENCI: '18. Thank you.

16 BY MR. DEROHANNESIAN:

17 Q. Do you know what that is?

18 A. It's marked as, "supplemental declaration of Mark Kachadourian,"
19 and it's dated April--

20 Q. --Do you recognize it?

21 A. Yes, I do.

22 THE REFEREE: What's the date?

23 A. It's dated April 12, 2018.

24 Q. Do you see anybody's handwriting on that you recognize?

25 A. Yes, mine.

217.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. Did you sign it?

2 A. My signa-- Yes. I signed it Ap-- I believe April 12, 2018.

3 Q. Fair to say it's your declaration?

4 A. That's-- Supplemental declaration. That's correct.

5 Q. Sworn to?

6 A. Yes, that's correct.

7 Q. So-- Okay. And if you look at the first page, paragraph 3. Does that
8 refresh your recollection as to whether on March 20, you say D [REDACTED]

9 L [REDACTED] had threatened to harm you and Ms. Gallagher?

10 A. Yes.

11 Q. Is that correct? That happened on March 20th?

12 A. Yeah.

13 THE REFEREE: No. That was not your question.

14 MR. DEROHANNESIAN: Okay.

15 THE REFEREE: Does it refresh your recollection?

16 MR. DEROHANNESIAN: Okay.

17 A. Yes.

18 Q. Now that it's refreshed your recollection, in fact, on March 20th, did
19 someone tell you that D [REDACTED] L [REDACTED] had threatened to harm you and
20 Ms. Gallagher physically?

21 A. Yes.

22 Q. And who was that employee?

23 A. That employee is-- Her name is Rebecca Vroman.

24 Q. And did Ms. Vroman say anything else to you about where she heard
25 this threat from Ms. L [REDACTED]?

218.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 MS. CENCI: Your Honor, I have to object. We're
2 deep into hearsay at this point.

3 THE REFEREE: All right. Are we almost done?

4 MR. DEROHANNESIAN: Mm-hmm.

5 THE REFEREE: Let's get there. Just ask another
6 question or the same one. Just ask it--

7 THE WITNESS: --I'm sorry. Sorry. If you could
8 repeat the question. I'm sorry.

9 BY MR. DEROHANNESIAN:

10 Q. Did Rebecca Vroman tell you when or where Ms. L [REDACTED] made the
11 threat to physically harm you and Ms. Gallagher?

12 MS. CENCI: Objection.

13 THE REFEREE: Overruled.

14 A. No, she did not.

15 Q. And is it your opinion that--

16 THE REFEREE: --We don't care about his opinion.
17 Just ask facts.

18 BY MR. DEROHANNESIAN:

19 Q. Do you have any information that Judge Miller directed or authorized
20 any threat from Ms. L [REDACTED]?

21 A. No, I do not.

22 MR. DEROHANNESIAN: Can I have a moment?

23 THE REFEREE: Certainly.

24 BY MR. DEROHANNESIAN:

25 Q. So, a couple of final questions. You said you can't remember

219.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 everything, right?

2 A. That's true.

3 Q. And now that you've had a little bit more time here this afternoon, can
4 you think or identify one case, decision or opinion that you wrote for
5 Judge Miller?

6 MS. CENCI: Objection. Asked and answered.

7 THE REFEREE: No, I think that's fair. It's a very
8 short question.

9 A. Specific names? No, I can't. I remember I-- During-- As a family
10 court judge, there's hearing magistrates and when hearing magistrates
11 receive an objection, the court attorneys for the judge write opinions
12 and I remember writing opinions or decisions about those instances. I
13 remember writing a couple decisions about-- I remember one case
14 specifically, I remember the attorney-- one of the attorneys involved, I
15 remember the mom and the father. I remember writing a decision on
16 that case. You know, but I don't have specific names and I don't
17 think, you know ...

18 Q. You said there were approximately 30 visits to Mr. Serjanej's office?

19 A. I would say-- Over the two and a half years we were together, I would
20 say-- I would say-- I don't think my answer was exactly 30, it was a
21 range--

22 Q. --So, that's just a guess? Do you really have any way of knowing?

23 A. The exact figure? No, I do not.

24 Q. So, it could be a couple?

25 A. No, it's more than a couple.

220.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Cross)

1 Q. But the first one is when you slapped your hand down, right?

2 A. That's correct.

3 Q. And did you ever afterwards say, "Stop. I'm not going over there to
4 be part of this?"

5 A. I was never part of that.

6 Q. Well, did you ever say, "I'm not going to go over and be present for
7 whatever is happening in Mr. Serjanej's office?"

8 A. I would-- He wanted me to accompany him. I would just read
9 automobile magazines in the lobby. And one particular magazine I
10 read over and over again. It was about a 1965 white Buick Riviera
11 because a friend of mine in New Jersey has a 1965 Riviera, so I would
12 sit there and just read that same article over and over again.

13 Q. And did you ever tell anyone in the court system or the Commission
14 on Judicial Conduct that you didn't want to take out of town trips with
15 Mr. Miller, whether it was the inauguration or in Albany for the
16 family court association?

17 A. No, you don't want to cross Mr. Miller. You haven't seen the other
18 side of Mr. Miller or else you wouldn't have done that either.

19 Q. But did you ever report going to the inauguration with anyone at any
20 time in the course of this investigation with the inspector general or
21 the Commission on Judicial Conduct?

22 A. I don't believe. I don't believe. There was made-- a reference made.
23 I think we made a reference or I made a reference to it, because he
24 filled out an insurance paper where he claimed he was hurt at work on
25 the day he was in Washington during the inauguration, so I may have

221.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 indi-- I may have referenced that.

2 Q. I have nothing else. Thank you.

3 THE REFEREE: Ms. Cenci?

4 MS. CENCI: Okay.

5 REDIRECT EXAMINATION

6 BY MS. CENCI:

7 Q. Thank you, Your Honor. I'll try to be brief. How are you doing, Mr.
8 Kachadourian?

9 A. Good, thank you.

10 Q. Okay. With respect to Mr. Iannone and his record, I'll show you
11 Exhibit 1A, it's for identification.

12 A. Mm-hmm.

13 Q. I don't know if you've ever seen that before.

14 A. No, I've never seen this.

15 Q. Okay.

16 MS. CENCI: Your Honor, I'm going to offer
17 Exhibit 1A and the rest of the criminal records into
18 evidence, and I would defer to the testimony about these
19 individuals. That would be Exhibits 1A through 1L, and as
20 I indicated, they are all certified records with the exception
21 of one order.

22 THE REFEREE: Okay. I'll make it really easy. I'll
23 reserve and let you know. And I'd like to see them. I
24 would ...

25 MS. CENCI: You want to see them now?

222.

(Kachadourian - Redirect)

1 THE REFEREE: Yeah, I'll take them. I'll probably
2 look at them tonight, but I will-- I will reserve on 1A to 1L.
3 I assume-- Respondent, I assume you object?

4 MS. SCALISE: Yeah.

5 THE REFEREE: Grounds?

6 MR. DEROHANNESIAN: We do. There's a
7 couple-- First of all, with respect to Mr. Iannone, which is
8 number 1B--

9 THE REFEREE: --Well, he's A, B. He's A and B.
10 1A and 1B.

11 MR. DEROHANNESIAN: That is not a criminal
12 matter, harassment in the second degree.

13 THE REFEREE: All right.

14 MR. DEROHANNESIAN: I would argue that the
15 other items are collateral and in some cases very remote in
16 time. For example, Mr. English, petit larceny from 1991.
17 Some of these on the listing doesn't have the dates but
18 several of them, when you look at them, are remote in time.
19 The same thing with respect to like Martin Shaw, who was
20 released in 1985. That's-- I'd ask if you can take notice of
21 that from the internet--

22 THE REFEREE: --Okay.

23 MR. DEROHANNESIAN: --Department of
24 Corrections website. These are old, ancient and remote--

25 THE REFEREE: --Okay. I'll take a look, but I'll

223.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 reserve, so anything further?

2 MS. CENCI: Yes. Thank you.

3 THE REFEREE: Okay.

4 BY MS. CENCI:

5 Q. Mr. Kachadourian, you acknowledged that you said for the first time
6 today what you heard Judge Miller and Mr. Penna discussing about
7 Asian women.

8 A. Yes.

9 Q. And why is it that you didn't disclose that earlier?

10 A. It's hard for me.

11 MR. DEROHANNESIAN: Objection.

12 THE REFEREE: I think he already said because it
13 was too unpleasant.

14 THE WITNESS: Right.

15 THE REFEREE: So, I-- Plus--

16 MS. CENCI: --And--

17 THE REFEREE: --That's all right. Go ahead.

18 BY MS. CENCI:

19 Q. Who was the one other person that you told about that?

20 A. There was-- I may have made reference to-- I may have made
21 reference, but I didn't tell her specifically what was said, may have
22 been Rachelle Gallagher.

23 Q. And you said when you talked to the IG, and by the way, that wasn't
24 testimony under oath, was it?

25 A. The IG?

224.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

- 1 Q. When you met with the inspector general.
- 2 A. I don't--
- 3 Q. --You were interviewed. Is that right?
- 4 A. I think it was an interview. I don't remember-- I don't recollect a
- 5 transcriber being there. I remember the IG taking notes.
- 6 Q. Okay. And the document that you were shown by Mr.
- 7 DerOhannesian, that was a summary not prepared by you, but that was
- 8 prepared by someone in the IG's office. Is that correct?
- 9 A. Right.
- 10 Q. Okay.
- 11 A. That was prepared by-- I forgot her name. It was a female inspector
- 12 general.
- 13 Q. And Mr. DerOhannesian jogged your memory with respect to a threat
- 14 by Mr. Shaw.
- 15 A. That's correct.
- 16 Q. What was the threat?
- 17 A. It was a threat that at that time, Mr. Shaw was going out with-- or was
- 18 on a dinner date or a date with Mr. Kapur's ex-girlfriend and if
- 19 I-- that he told me, you know, he'd-- I have to answer to him if I
- 20 repeated that or told anybody of that.
- 21 Q. Mr. Shaw said that to you?
- 22 A. Yes.
- 23 Q. Just briefly, earlier in your testimony today, Mr. DerOhannesian
- 24 showed you the inspector general's summary of your statement and if
- 25 I could, Your Honor?

225.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 THE REFEREE: Sure.

2 BY MS. CENCI:

3 Q. That is-- and-- Oh, you opened it right to the page I think. No.

4 Okay. And I think you may have said that you hadn't seen attachment
5 A?

6 A. I can't recollect.

7 Q. It's a bad copy, but the *Estate of Roger Funk*, those were checks.

8 A. I--

9 Q. --Can I ask you, did Judge Miller have any practice with respect to
10 having someone in the court office make photocopies of records for
11 him?

12 A. Yes.

13 Q. What was that practice, as far as you know?

14 A. He would ask Rachelle Gallagher to make copies of these-- of items
15 like these checks for him for his personal use.

16 Q. With regard to Respondent's Exhibit L, your employment application.
17 Do you have that up there?

18 THE REFEREE: It should-- It should. Yep. It
19 should be in there.

20 A. Oh.

21 Q. Okay. You were asked-- It was pointed out that you did not indicate
22 this business that you said your wife was involved with?

23 A. Yes.

24 Q. And did you consider that employment on your part?

25 A. No, that was more of an investment. No, that was--

226.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 Q. --Okay.

2 A. No.

3 Q. You said in response to a question by Mr. DerOhannesian that judge
4 discussed Debbi Singer with you. What did he say to you about Debbi
5 Singer?

6 A. He ...

7 Q. Did he make comments about Debbi Singer to you?

8 A. Yes.

9 MR. DEROHANNESIAN: Objection. No, he didn't
10 go into that on direct or cross.

11 MS. CENCI: You asked him on cross.

12 THE REFEREE: I think you did.

13 BY MS. CENCI:

14 Q. What'd he-- What did he say to you about Debbi Singer?

15 MR. DEROHANNESIAN: Could I have a cop--
16 whatever Mr.-- the witness is writing down?

17 THE REFEREE: I don't know what he's doing.
18 What-- Mr. Kachadourian, what are you doing?

19 THE WITNESS: Just making a note. I was a
20 member of the House of Delegates in the New York State
21 Bar Association, so I wrote, "House of Delegates."

22 THE REFEREE: Okay.

23 A. Yes, he made a comment regarding Debbi Singer and Ms. Singer has
24 horses--

25 Q. --What-- But, just, if I could? When do you recall him making a

227.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 comment about her?

2 A. In or about 2016.

3 Q. What did he say?

4 A. He said he would-- She liked to ride horses. She owns, I think, two
5 horses and said he would like to ride her like a horse, whatever. You
6 know, so I don't like to talk about those things, I really don't.

7 Q. Yep.

8 A. It's upsetting and--

9 Q. --Understood. You said that at some point you applied for a couple of
10 positions, the deputy chief clerk and a hearing magistrate's position?

11 A. For Tioga-- Yes, Tioga and Broome County. That's correct.

12 Q. And why'd you do that?

13 A. I just wanted to get out of the situation I was in. I--

14 Q. --Being-- You mean, the position that you currently hold?

15 A. Yes.

16 Q. Why'd you want to get out of it?

17 MR. DEROHANNESIAN: Objection.

18 A. It was--

19 THE REFEREE: --Overruled.

20 A. --for my own sanity.

21 Q. You talked about Mr. Serjanej taking over or being in the law office
22 that had been Judge Miller's office. Did you know Mr. Serjanej
23 before, you know, January 2015?

24 A. I don't think so. I don't-- I can't recall if I met him during the camp--
25 I don't think I met him during the campaign, but I can't be 100 percent

228.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 certain. I'd-- Oh, Mr. Serjanej owned a bar, I believe, out in the
2 countryside. He owned a bar. A bar, like a restaurant/bar type of
3 thing and I believe Judge Miller held a dinner or some sort of
4 reception, you know, celebrating his election, or his-- celebrating the
5 fact that he had won his position.

6 Q. Mm-hmm.

7 A. And I believe-- You know, I remember se-- knowing him owning
8 that bar then and I think it was-- The first time may have been
9 around-- I think it took place at the end of November 2-- December
10 2014 or early 2000--

11 Q. --Okay, but he was a lawyer, right?

12 A. Yes.

13 Q. Also?

14 A. Yes.

15 Q. Did you know anything about the nature of his law practice?

16 A. No, I did not.

17 Q. Do you know whether he did estate work at all?

18 A. I have-- I do not know that.

19 Q. Was Mr. Serjanej always present when you would make these visits to
20 the law office during the lunch hour?

21 A. No, he--

22 MR. DEROHANNESIAN: --Objection. Leading.

23 THE REFEREE: It's overruled.

24 A. He was not always present, but Donna Filip was-- If he wasn't there,
25 Donna Filip would be there.

229.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 Q. Was Donna always there?

2 A. There were times when Donna was-- wasn't there and he was there.
3 There were times when he was there and she wasn't there and there
4 were times that both of them were there.

5 Q. Then you said that in June of 2017, there was something about
6 Rachelle not having prepared the files? Do you recall that testimony?

7 A. Yes. She was in--

8 Q. --Had she taken a vacation at that time?

9 A. Yes, she was in Clemson, South Carolina.

10 Q. Is that why the files weren't prepared?

11 A. I don't--

12 THE REFEREE: --Objection. Well, objection. You
13 know what? Wrong training. How would he know?

14 MS. CENCI: Well, I assume he was there.

15 THE REFEREE: I guess I was sustaining the
16 objection that I was expecting, but no one made it, so go
17 ahead.

18 MS. CENCI: Okay. Let-- Your Honor, I'll
19 withdraw it.

20 THE REFEREE: Go ahead.

21 MS. CENCI: And thank you for that.

22 BY MS. CENCI:

23 Q. But do you know whether Rachelle had notified the judge of her
24 vacation before departing?

25 A. Before the?

230.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 Q. Before departing, did she--

2 A. --Yes, she did.

3 Q. Okay. So, it was-- Was it a scheduled vacation, as far as you know?

4 A. Yes, it was.

5 Q. You said the judge talked about terminating Rachelle's employment?

6 A. Yes. Yes. And--

7 Q. --What was the context in which he would say that to you?

8 A. He would just yell and-- Last time was in June of 2017, May or June
9 of 2017, whenever she was in South Carolina and said, "Damn, this is
10 the last time I'm listening to you. I should have never listened to
11 you," and it-- It was--

12 Q. --Was that the only time he talked about terminating her employment?

13 A. No, he never used the word terminate, she-- he goes-- He was
14 expressing his dissatisfaction, "She doesn't do what secretaries do"
15 and he kept bringing up Lisa, that she would satisfy his sexual needs
16 and he has-- he's 52 years old, he has personal needs and would go
17 into the fact that he--

18 MR. DEROHANNESIAN: Objection. This is
19 nonresponsive.

20 THE REFEREE: We've heard this before anyway.

21 Let's ask another question.

22 BY MS. CENCI:

23 Q. With regard to the *Behal* estate.

24 A. Yes.

25 Q. Was it your understanding that there was any other attorney

231.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 supposedly involved in that estate after Judge Miller took the family
2 court bench? Just, if you know?

3 A. The day that Mr. Behal came to chambers, he ran across-- He met in
4 the lobby, he told me Mr. Artan Serjanej and he goes-- He expressed
5 how dissatisfied he was with him. I think Mr. Serjanej may have
6 been-- They may have been using Mr. Serjanej and Donna to help
7 assist in that and Mr. Behal expressed his-- I overheard him say
8 that-- Or he just was not happy with Mr. Serjanej and it was just by
9 chance the two happened to run into each other in the family court
10 lobby outside.

11 Q. Okay. But apart from that, do you know any knowledge as to--

12 A. --No, I do not.

13 Q. --Mr. Serjanej's involvement in the estate?

14 A. No.

15 Q. You were asked by Mr. DerOhannesian about getting some responses
16 or some information together in response to his inquiry of you?

17 A. Yeah, I think-- I think he referenced a subpoena that was emailed to
18 me around 1:49 or 2:49 PM on Friday and I had--

19 Q. --No, no, no.

20 THE REFEREE: No, no, no. That's not-- That's
21 not.

22 BY MS. CENCI:

23 Q. No, no.

24 A. Oh, that's not it?

25 Q. No, I'm sorry if I'm-- My question's not clear.

232.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 A. Yes.

2 Q. You were asked about having to get some information for Mr.
3 DerOhannesian for some legal matter--

4 A. --Oh.

5 Q. --pertaining to Judge Miller?

6 A. Yeah.

7 Q. Do you recall Mr. DerOhannesian just asking you that out-- a couple
8 hours ago?

9 A. Yes, I remember-- I remember going to Judge Miller--

10 Q. --Just, yeah. That's-- I'm just drawing your attention to that--

11 A. --I think so, yes. Yeah.

12 Q. That testimony. What was the information that you were being
13 asked--

14 MR. DEROHANNESIAN: --I object to that.

15 BY MS. CENCI:

16 Q. --to gather?

17 THE REFEREE: What's the objection based on?

18 MR. DEROHANNESIAN: Now he's getting into
19 attorney/client.

20 THE REFEREE: But he's not-- If he knows about
21 it--

22 MS. CENCI: --He's a third-party.

23 THE REFEREE: --then there's been a waiver. No,
24 he's not-- Is this the bit where you spent your own money
25 to go to Kinko's and make copies and FedEx them?

233.

(Kachadourian - Redirect)

1 THE WITNESS: Yes. Yes. Yes.

2 MR. DEROHANNESIAN: No.

3 THE REFEREE: So, was it for this proceeding?

4 MR. DEROHANNESIAN: No.

5 MS. CENCI: I don't know, Your Honor. I'd like to
6 know.

7 THE REFEREE: Okay. Well--

8 MS. CENCI: --This was-- This was brought out on
9 cross-examination.

10 MR. DEROHANNESIAN: It can't be for this
11 proceeding because it was before there was any matter
12 conducted. It was before.

13 THE REFEREE: If he knows. Do you know what it
14 was about?

15 THE WITNESS: Yes.

16 MS. CENCI: What was it about?

17 THE REFEREE: Did it have anything to do with
18 this proceeding?

19 THE WITNESS: No, not this proceeding.

20 THE REFEREE: And was it something, some
21 personal legal business of Judge Miller as opposed to
22 something he was doing for someone else?

23 THE WITNESS: Yes, I believe that you phrased it
24 properly, yes.

25 THE REFEREE: So, it was personal legal business

234.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 of the judge. Fine. I don't think we need to go beyond that.

2 BY MS. CENCI:

3 Q. Okay. And that's why you knew that Mr. DerOhannesian was
4 representing Judge Miller when you initially called him, you said?

5 A. Before we--

6 Q. --Before you contacted Mr. Dreyer's office?

7 A. That's correct.

8 Q. Just with respect to some memoranda that you were shown that was
9 prepared by my office, with regard to the January 3, 2018,
10 memoranda, I think it was marked Exhibit P, and I don't know if
11 that's still up on the desk there, Your Honor? On the bench?

12 THE REFEREE: I don't know.

13 MS. CENCI: It was not introduced into evidence,
14 but it was shown to the witness.

15 THE WITNESS: I don't see it.

16 THE REFEREE: K--

17 MS. SCALISE: I thought that was the January
18 2018--

19 MR. DEROHANNESIAN: --Yes.

20 THE WITNESS: Yeah.

21 MS. SCALISE: That's January 2018 memo.

22 MS. CENCI: All right. Do you have that, because it
23 was marked?

24 MR. DEROHANNESIAN: Mm-hmm.

25 MS. CENCI: I want to show him what was marked.

235.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 No.

2 MS. SCALISE: I think it's up there.

3 MS. CENCI: Oh.

4 THE REFEREE: P is not.

5 MS. CENCI: No. I have my own copy, but does
6 that suffice to save time?

7 MS. SCALISE: What's this underneath this?

8 MR. DEROHANNESIAN: Paper.

9 MS. SCALISE: Paper.

10 THE REFEREE: It's a memo regarding a January 3
11 phone call?

12 MS. CENCI: Yeah.

13 MS. SCALISE: Yes, that's what I have, too.

14 MS. CENCI: Could we use my copy? Is that all
15 right?

16 MR. DEROHANNESIAN: Sure.

17 MS. CENCI: Just to save time and just--

18 THE REFEREE: --If that's the same exhibit, we'll--

19 MR. DEROHANNESIAN: --Yeah. I'm--

20 THE REFEREE: --deem it--

21 MR. DEROHANNESIAN: --Yes.

22 MS. SCALISE: Yes.

23 THE REFEREE: --marked P.

24 BY MS. CENCI:

25 Q. Okay. I just want to show the witness. Do you recall Mr.

236.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 DerOhannesian showed you that?

2 A. Yes.

3 Q. Okay. Now, do you remember whether I called you on that occasion
4 or you called me?

5 MR. DEROHANNESIAN: I found it.

6 MS. CENCI: You found it?

7 MS. SCALISE: Yep.

8 A. I don't-- I don't specifically recall, but I would think that--

9 THE REFEREE: Well, no. That's okay. You
10 answered the question.

11 THE WITNESS: Okay. Okay.

12 BY MS. CENCI:

13 Q. Did I-- Did I say that I wanted to ask you some questions in
14 clarification of some matters?

15 A. I believe that to be true.

16 Q. And you said that you were together with Rachelle Gallagher at the
17 time. Did I speak to you separately?

18 A. Yes, you did. I mean, you-- I can't-- Oh, boy.

19 Q. To the best of your recollection.

20 A. Yes.

21 Q. Okay.

22 A. You spoke to us separately.

23 Q. Okay. Thank you. Now, with regard to the April 20, 2018, telephone
24 call, can I--

25 MR. DEROHANNESIAN: --I've got that.

237.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Redirect)

1 MS. CENCI: Do you have that?

2 MR. DEROHANNESIAN: It's there in my
3 notebook.

4 MS. CENCI: I'm showing you that.

5 THE REFEREE: What exhibit is that? Just the
6 letter?

7 MS. CENCI: That's--

8 THE REFEREE: --R?

9 MS. CENCI: R. Thank you.

10 BY MS. CENCI:

11 Q. So, does that refresh your recollection as to whether I called you or
12 you called me?

13 A. Yes, it does.

14 Q. What's your recollection in that regard?

15 A. That we called you.

16 Q. And what was your-- the purpose for your call?

17 A. The purpose of our call was to see-- if we could see if this matter was
18 going to be resolved, I think. I think that was it.

19 Q. Well, read the-- Read the memo and see if it refreshes your
20 recollection.

21 A. Or the length of it, I mean, it was dragging on at that point and we
22 were hopeful--

23 MR. DEROHANNESIAN: --Object. That's an--
24 We need to get it.

25

238.

(Kachadourian - Redirect)

1 BY MS. CENCI:

2 Q. Okay. So, is it fair to say you called to find out what the status of the
3 Commission proceeding was?

4 A. Yes. Yes, that's correct.

5 Q. Okay.

6 MS. CENCI: May I have a moment, Your Honor?

7 THE REFEREE: Certainly.

8 MS. CENCI: I have nothing further.

9 THE REFEREE: Resp-- Mr. DerOhannesian,
10 anything based on-- just on what counsel asked on redirect?

11 THE WITNESS: Do you want-- Do you want this
12 back?

13 THE REFEREE: This-- Here, just leave it right
14 here.

15 THE WITNESS: I think this one was hers, I'm not
16 sure.

17 THE REFEREE: That's all right. Just leave it.

18 THE WITNESS: Okay.

19 MR. DEROHANNESIAN: First, Judge, I'd like to
20 strike from the record the witness's comment about his
21 involvement with the Bar Association and House of
22 Delegates.

23 THE WITNESS: Well, he asked me what it was.

24 THE REFEREE: I know, that's--

25 MR. DEROHANNESIAN: --Yeah.

239.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Recross)

1 THE REFEREE: It carries zero weight.

2 MR. DEROHANNESIAN: Okay.

3 THE REFEREE: I assure you that in terms of
4 credibility, it's a zero and it was prompted by my question,
5 but it carries zero weight.

6 RECROSS-EXAMINATION

7 BY MR. DEROHANNESIAN:

8 Q. You made a reference that Judge Miller discussed something about a
9 horse and Debbi Singer, correct?

10 A. Yes, that's correct.

11 Q. Did you ever say anything to the inspector general in July of 2017
12 about a horse and Debbi Singer?

13 A. No, I did not.

14 Q. When you testified in front of the Commission on Judicial Conduct in
15 August of 2017, did you mention anything about Ms. Singer and a
16 horse?

17 A. No.

18 Q. In any of your phone calls or meetings with the Commission on
19 Judicial Conduct, the phone calls you discussed with Ms. Cenci on her
20 redirect, or your meeting in December of 2018, did you mention
21 anything about Debbi Singer, Judge Miller and a horse?

22 A. I mentioned it to Ms. Cenci on December 27, 2018.

23 Q. And have you seen any note or record reflecting that you actually said
24 that on December 27, 2018?

25 A. No, I have not.

240.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Recross)

1 Q. And that's the first time that this two and a half-- since July of 2017
2 that you say you mentioned it to anyone, correct?

3 A. Yes, that's correct.

4 Q. And did you include any such comment in the federal lawsuit that you
5 filed against Judge Miller, the State of New York and Office of Court
6 Administration?

7 A. No, I don't believe that that was in that note.

8 Q. And do you have a diary which you kept with respect to activities and
9 accounts of your interactions with Judge Miller?

10 A. No, I do not.

11 Q. Did you-- Is there a calendar that you provided the inspector general
12 or Commission on Judicial Conduct?

13 A. I believe I provided the-- a partial calendar that may have included
14 several weeks. I don't recollect.

15 Q. And whose calendar was that?

16 A. That was mine.

17 MS. CENCI: Your Honor, this is beyond the scope
18 of the very limited--

19 THE REFEREE: --I agree.

20 MS. CENCI: --redirect.

21 THE REFEREE: I agree.

22 BY MR. DEROHANNESIAN:

23 Q. Do you have that calendar?

24 A. No, I do not.

25 Q. Do you know who does?

241.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Recross)

1 A. No, I do not.

2 MR. DEROHANNESIAN: I would ask that the
3 witness not discuss his testimony with any other witnesses
4 in this proceeding.

5 THE REFEREE: I agree. Well, any further
6 questions based on that recross?

7 MS. CENCI: Nothing further.

8 THE REFEREE: I have a question. Possibly two.
9 Mr. Kachadourian, during the period of time that you served
10 as a law clerk for Judge Miller, did you keep either a
11 notebook or a folder or a file of the decisions that you
12 wrote?

13 THE WITNESS: Not a complete file, no.

14 THE REFEREE: How about incomplete?

15 THE WITNESS: I think-- I think-- We have-- We
16 have a list. I would write the decisions on a computer at
17 work.

18 THE REFEREE: Right.

19 THE WITNESS: And if I went through that
20 computer, I probably could find some of the decisions that
21 are still there.

22 THE REFEREE: Right, but those would be
23 unsigned, wouldn't they?

24 THE WITNESS: Unsigned. Right. Yes.

25 THE REFEREE: So, my question was a little bit

242.

(Hon. Richard H. Miller, II)

1 different. Once the decisions came out, did you make an
2 extra copy that you kept either in a book, you know, a three-
3 ring binder or in a--

4 THE WITNESS: --No. No.

5 THE REFEREE: --folder or a personal file so you
6 would remember what things you had written?

7 THE WITNESS: No.

8 THE REFEREE: And did you discuss the issues that
9 you were having at work with your wife?

10 THE WITNESS: I-- Is that privileged
11 communications?

12 THE REFEREE: It's, you know, the substance is.
13 Yes or no is not privileged.

14 THE WITNESS: I-- Yes, I would go home and it
15 affected my relationship with my wife. It's affected my
16 relationship with my children. So, she-- yeah. I mean, she
17 knows that something is going on.

18 THE REFEREE: Did you discuss the specifics?
19 That's really my question.

20 THE WITNESS: No. No. No.

21 THE REFEREE: You did not? Was there anybody
22 outside of the court system that you discussed the specifics?

23 THE WITNESS: No, there is not.

24 THE REFEREE: Okay. All right. Based on my
25 questions, Ms. Cenci? Mr. DerOhannesian?

243.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kachadourian - Recross)

1 MS. CENCI: Nothing.

2 MR. DEROHANNESIAN: You got into the
3 relationship. Is that going to be part of the record?

4 THE REFEREE: What relationship?

5 MR. DEROHANNESIAN: That it affected his
6 relationship?

7 THE REFEREE: Oh, I-- I'll strike that.

8 MR. DEROHANNESIAN: Okay.

9 THE REFEREE: And it gets zero consideration.

10 MR. DEROHANNESIAN: Okay.

11 THE REFEREE: All right. Anything further of this
12 witness?

13 MS. SCALISE: Just one question.

14 MR. DEROHANNESIAN: Yes. Yes.

15 THE REFEREE: And yes, I will strike that.

16 BY MR. DEROHANNESIAN:

17 Q. One question. When you interviewed for any of your other positions
18 in the Office of Court Administration, did you provide samples of any
19 of the decisions you had written for Judge Miller?

20 A. I may have. I may have and I may have deleted the names or changed
21 the names. I may have. I think--

22 Q. --And do you have copies of those?

23 A. No, I do not. I think the office-- I think the office here may have
24 copies, if in fact I did. I cannot recall.

25 Q. If, in fact, you did?

244.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 A. Right.

2 THE REFEREE: Anything further?

3 MS. CENCI: No further questions.

4 MR. DEROHANNESIAN: None.

5 THE REFEREE: All right. You're excused for the
6 day with the specific instruction please do not discuss your
7 testimony with anyone outside of the proceedings and in
8 particular, the witnesses and Ms. Gallagher and Ms.

9 L [REDACTED], who are testifying I think tomorrow. For--

10 MS. CENCI: --I was hoping for today, Your Honor.

11 THE REFEREE: Well, it's quarter to 5:00--

12 MS. CENCI: --At least--

13 THE REFEREE: --I really don't think we can-- we
14 can do that. But, let's excuse the witness and go off the
15 record.

16 MR. DEROHANNESIAN: Yeah, I was going to ask
17 that the witness be available for recall, just in case
18 something develops with the documents that are produced?

19 THE REFEREE: Sure.

20 MR. DEROHANNESSIAN: That the subpoena still
21 be--

22 THE REFEREE: --Do you have any plans to leave
23 the state in the next week or two?

24 THE WITNESS: No. No. I don't think so. I mean,
25 as long as I--

(Hon. Richard H. Miller, II)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE REFEREE: --All right. Hopefully, we will not
need you. I can't imagine we will.

THE WITNESS: If I have-- If I could have like,
maybe four hours' notice or something?

THE REFEREE: We'll take care of that.

THE WITNESS: Okay.

THE REFEREE: So, we're going to excuse you.

Let's go off the record.

(Whereupon, the proceeding was adjourned at 4:47 PM on
January 7, 2019.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

COMMISSION

		<u>Ident.</u>	<u>In Evid.</u>
1A	Certificate of Disposition and Local Court Criminal Disposition Report, Vestal Town Court, <i>People v David J. Iannone</i> , Forgery, 3 rd Degree, (2 pages).	14	---
1B	Certificate of Disposition, Union Town Court, <i>People v David J. Iannone</i> , Harassment, 2 nd Degree, (15 pages).	14	---
1C	Order of Hon. Christopher P. Baker, revoking Iannone Pistol Permit, dated June 4, 2018, (3 pages).	14	---
1D	Certificate of Disposition, Johnson City Village Court, <i>People v David Jon English</i> , Petit Larceny, 1991.	14	---
1E	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2000.	14	---
1F	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2004.	14	---

i.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1	1G	Certificate of Conviction, Steuben County	14	---
2		Court, <i>People v David English</i> , Criminal		
3		Possession of Forged Instrument, two counts.		
4	1H	Certificate of Conviction, Binghamton City	14	---
5		Court, <i>People v David English</i> , Petit Larceny.		
6	1I	Certificate of Conviction, Broome County	14	---
7		Court, <i>People v David English</i> , Attempted		
8		Criminal Sale of a Controlled Substance, 3 rd		
9		Degree, (2 pages).		
10	1J	Certificate of Conviction, Broome County	14	---
11		Court, <i>People v David J. English</i> , Attempted		
12		Arson, 3 rd Degree, (9 pages).		
13	1K	Certificate of Conviction, Binghamton City	14	---
14		Court, <i>People v James Stilloe</i> , Falsely		
15		Reporting an Incident, with Certificate of		
16		Conviction, (6 pages).		
17	1L	District Attorney/Superior Court Disposition	14	---
18		Report, Broome County Court, <i>People v</i>		
19		Martin Shaw, Robbery, 1 st Degree and		
20		Attempted Robbery, 1 st Degree.		
21				
22		<u>Estate of Roger Funk</u>		
23	2A	Surrogate's Court Record History,	16	---
24		(2 pages).		
25				

ii.

1	2B	Petition for Probate, filed May 2, 2014,	16	---
2		(5 pages).		
3	2C	Last Will and Testament of Roger L. Funk	16	---
4		with Affidavits, filed May 2, 2014, (7 pages).		
5	2D	Affidavit of Assets and Debts, filed May 2,	16	---
6		2014, (2 pages).		
7	2E	Coleman & Daniels Funeral Home expenses	16	---
8		for Jean Funk, filed May 2, 2014.		
9	2F	Family Tree of Roger L. Funk, filed May 2,	16	---
10		2014, (2 pages).		
11	2G	Application for Preliminary Letters	16	---
12		Testamentary, filed May 20, 2014, (2 pages).		
13	2H	Affidavit of Domicile, filed May 20, 2014.	16	---
14	2I	Affidavit of Donna Filip, filed May 29, 2014.	16	---
15	2J	Waiver of Process, Consent to Probate, filed	16	---
16		May 29, 2014.		
17	2K	Letter to Fiduciary Thomas M. Hayes from	16	---
18		Rebecca A. Malmquist, Chief Clerk, dated		
19		May 30, 2014.		
20	2L	Decree Granting Probate, dated May 30,	16	---
21		2014.		
22	2M	Grant of Letters Testamentary, dated May 30,	16	---
23		2014.		
24	2N	Letter to Thomas M. Hayes from Rebecca A.	16	---
25		Malmquist dated October 7, 2015.		

iii.

1	2O	Letter to Thomas M. Hayes from Rebecca A.	16	---
2		Malmquist, dated July 20, 2017.		
3	2P	Citation to Thomas M. Hayes, dated April 27,	16	---
4		2018.		
5	2Q	Order for Service of Process, dated April 27,	16	---
6		2018.		
7	2R	Affidavit for By Mail, dated April 27, 2018.	16	---
8	2S	Affidavit Concerning Deliverability of	16	---
9		Process Served by Mail, sworn to June 4,		
10		2018.		
11	2T	Order Revoking Letters, dated June 5, 2018.	16	---
12	2U	Consent to Change Attorney, dated March 6,	16	---
13		2015 (not filed with court).		
14	2V	Letter addressed to Thomas Hayes from	16	599
15		“Donna Filip,” dated November 6, 2015, with		
16		attached copies of checks, (Exhibit A to the		
17		Formal Written Complaint), (2 pages).		
18	2W	Checks dated December 1, 2015 (Exhibit D to	16	602
19		the Formal Written Complaint).		
20	2X	Certified Records of Citizens Bank,	16	---
21		(68 pages).		
22		<u>Estate of Jerry J. Behal, Jr.</u>		
23	4A	Document and Info Sheet, (2 pages).	517	---
24				
25				

1	4B	Records of filings of Probate Petition,	499	---
2		Wrongful Death Petition, Compel Fiduciary		
3		to Account Petition and Judicial Settlement of		
4		Final Account, (4 pages).		
5	4C	Petition for Probate, filed October 26, 2011,	491	492
6		(6 pages).		
7	4D	Last Will and Testament of Jerry J. Behal, Jr.,	499	---
8		filed October 26, 2011, (4 pages).		
9	4E	Affidavit of Subscribing Witnesses, filed	499	---
10		October 26, 2011.		
11	4F	Waiver of Process, Consent to Probate, filed	499	---
12		October 26, 2011.		
13	4G	Family Tree, filed October 26, 2011,	499	---
14		(2 pages).		
15	4H	Affidavit of Assets and Debts, filed October	499	---
16		26, 2011, (3 pages).		
17	4I	Affidavit of Sole Heirship filed November 1,	499	---
18		2011.		
19	4J	Notice of Probate, with Affidavit of Mailing,	499	---
20		filed November 2, 2011, (2 pages).		
21	4K	Certificate of Disqualification of David H.	499	---
22		Guy, filed November 2, 2011.		
23	4L	Order of Assignment, filed November 2,	499	---
24		2011.		
25				

1	4M	Decree Granting Probate With Limitations,	499	---
2		filed November 2, 2011, (2 pages).		
3	4N	Letters Testamentary, filed November 2,	499	---
4		2011.		
5	4O	Letter to David J. Behal from Rebecca A.	499	---
6		Malmquist, dated November 3, 2011.		
7	4P	Letter to David J. Behal from Rebecca A.	499	---
8		Malmquist, dated June 8, 2012.		
9	4Q	Letter to David J. Behal from Rebecca A.	499	---
10		Malmquist, dated August 7, 2012.		
11	4R	List of Assets/Inventory, filed September 19,	499	---
12		2012, (4 pages).		
13	4S	Petition of David J. Behal, dated December	499	---
14		28, 2013, filed July 11, 2014, (5 pages).		
15	4T	Waiver and Consent of Jennifer Behal, filed	499	---
16		July 11, 2014, (2 pages).		
17	4U	Waiver and Consent of Joseph Behal, filed	499	---
18		July 11, 2014, (2 pages).		
19	4V	Waiver and Consent of Karen Behal, filed	499	---
20		July 11, 2014, (2 pages).		
21	4W	Waiver and Consent of Donna Ougheltree,	499	---
22		filed July 11, 2014, (2 pages).		
23	4X	Waiver and Consent of Sylvia Behal, filed	499	---
24		July 11, 2014, (2 pages).		
25				

1	4Y	Attorney's Affidavit of Richard H. Miller,	499	501
2		filed December 12, 2014, (2 pages).		
3	4Z	Order and Decree, filed January 23, 2015,	499	501
4		(3 pages).		
5	4AA	Petition for A Compulsory Accounting and	499	501
6		Related Relief, filed October 13, 2015,		
7		(3 pages).		
8	4BB	Compulsory Accounting Citation, dated	499	501
9		October 14, 2015.		
10	4CC	Notice of Appearance of Artan Serjanej, Esq.,	499	501
11		filed November 23, 2015.		
12	4DD	Order of David Guy, filed January 14, 2016.	499	501
13	4EE	Amended Order Filed March 1, 2016.	499	501
14	4FF	Letter to Judge Guy from Artan Serjanej,	499	501
15		dated April 29, 2016, filed May 2, 2016.		
16	4GG	Order of David Guy, filed May 2, 2016.	499	501
17	4HH	Notice of Appearance of Robert H. Wedlake,	499	501
18		Esq., filed September 21, 2016.		
19	4II	Order of David H. Guy, filed September 21,	499	501
20		2016.		
21	4JJ	Letter to Hon. David H. Guy from Artan	499	501
22		Serjanej, dated October 7, 2016.		
23	4KK	Order of David H. Guy, filed October 20,	499	501
24		2016.		
25				

1	4LL	Order of David H. Guy, filed December 1,	499	501
2		2016.		
3	4MM	Order of David H. Guy, filed April 6, 2017.	499	501
4	4NN	Amended Order of David H. Guy, filed May	499	501
5		8, 2017.		
6	4OO	Petition for Judicial Settlement of Account,	499	501
7		filed May 26, 2017, (6 pages).		
8	4PP	Accounting by Executor, filed May 26, 2017,	499	501
9		(25 pages).		
10	4QQ	Letter from Hon. David H. Guy to Artan	499	501
11		Serjanej, Esq., dated June 15, 2017.		
12	4RR	Certificate of Disqualification of David H.	499	501
13		Guy, dated September 15, 2017.		
14	4SS	Order of Assignment of Hon. Molly Reynolds	499	501
15		Fitzgerald, dated September 18, 2017.		
16	4TT	Accounting Citation filed October 16, 2017.	499	501
17	4UU	Affidavits of Service of Accounting Citation,	499	501
18		sworn to in November 2017, (8 pages).		
19	4VV	Order of Hon. Julie A. Campbell, filed	499	501
20		November 20, 2017.		
21	4WW	Supplemental and Amended Supplemental	499	501
22		Citation, dated November 20 and November		
23		30, 2017, (2 pages).		
24	4XX	Objections to Accounting, filed December 4,	499	501
25		2017, (4 pages).		

1	4YY	Affidavits of Service of Amended	499	501
2		Supplemental Citation, filed January 19,		
3		2018, (2 pages).		
4	4ZZ	Letter to Hon. Molly R. Fitzgerald from Hon.	499	501
5		Julie A. Campbell, dated January 24, 2018.		
6	4AAA	Order of Re-Assignment by Hon. Molly	499	501
7		Fitzgerald, dated January 25, 2018.		
8	4BBB	Affirmation of Artan Serjanej in Reply to	499	501
9		Objections, with attached Schedules		
10		(27 pages).		
11	4CCC	Order of Hon. Gerald Keene, filed February 9,	499	501
12		2018.		
13	4DDD	Amended Order of Hon. Keene, dated March	499	501
14		9, 2018.		
15	4EEE	Order of Hon. Keene, dated April 6, 2018.	499	501
16	4FFF	Order of Hon. Keene, dated April 19, 2018.	499	501
17	4GGG	Affidavit of Robert H. Wedlake, filed August	499	501
18		6, 2018, (2 pages).		
19	4HHH	Decree of Judicial Settlement, filed August	499	501
20		15, 2018, (3 pages).		
21	4III	Emails between Dave Behal, Donna Filip and	62	70
22		Richard Miller, dated March 1, 2017 to May		
23		9, 2017 (Exhibit B to the Formal Written		
24		Complaint), (8 pages).		
25				

1	4KKK	Letter from Robert Wedlake to Artan Serjanej	509	---
2		dated June 5, 2017.		
3		<u>Estate of Antoinette Saraceno</u>		
4	5A	Sticky Notes, (8 pages).	411	420
5	5B	Petition for Probate, filed December 10, 2010,	411	416
6		(5 pages).		
7	5C	Family Tree, filed December 10, 2010,	411	416
8		(2 pages).		
9	5D	Last will and Testament of Antoinette A.	411	416
10		Saraceno, with affidavits of subscribing		
11		witnesses, (7 pages).		
12	5E	Notices of Probate with Affidavits of	411	416
13		Services, filed December 10, 2011,		
14		(16 pages).		
15	5F	Renunciations of Nominated Executor and/or	411	416
16		Trustee, filed December 10, 2010, (4 pages).		
17	5G	Letter from Richard H. Miller, II (by "DF"),	411	416
18		to Tioga County Surrogate's Court Clerk,		
19		dated February 16, 2011.		
20	5H	Amended Petition for Probate, filed February	411	416
21		17, 2011, (6 pages).		
22	5I	Amended Family Tree, filed February 17,	411	416
23		2011, (2 pages).		
24	5J	Waivers of Process: Consent to Probate, filed	411	416
25		February 17, 2011, (6 pages).		

x.

1	5K	Notice of Probate with Affidavit of Service,	411	416
2		filed February 17, 2011, (3 pages).		
3	5L	Probate Citation to John I. Saraceno, dated	411	416
4		February 28, 2011.		
5	5M	Memorandum to Richard H. Miller, II, Esq.,	411	416
6		from Deborah A. Stone, dated February 28,		
7		2011.		
8	5N	Court Appearance Notice dated April 7, 2011.	411	416
9	5O	Affidavit for Service of Process By Mail by	411	416
10		Donna Filip, Affidavit Concerning		
11		Deliverability of Process Served by Mail of		
12		Richard H. Miller, II, and certified mail		
13		receipts, filed April 8, 2011, (5 pages).		
14	5P	Letter to Surrogate's Court from John I.	411	416
15		Saraceno, filed April 8, 2011, with enclosures		
16		(21 pages).		
17	5Q	File Minutes from April 15, 2011.	411	416
18	5R	Order Granting Preliminary Letters with	411	416
19		Limitations, dated April 15, 2011.		
20	5S	Preliminary Letters Testamentary, dated April	411	416
21		15, 2011.		
22	5T	Letter to Surrogate's Court from John	411	416
23		Saraceno, filed May 9, 2011, with enclosures		
24		(6 pages).		
25				

1	5U	Letter to John I. Saraceno, Jr., from Deborah	411	416
2		A. Stone, dated May 17, 2011, with enclosed		
3		affidavit of service form (2 pages).		
4	5V	Completed Affidavit of Service of Objections,	411	416
5		filed June 27, 2011, (2 pages).		
6	5W	Letter to Hon. Vincent Sgueglia signed by	411	416
7		Frank Saraceno, Sr., and Sam Saraceno, filed		
8		June 29, 2011.		
9	5X	Letter to Frank Saraceno, Sr., and Sam	411	416
10		Saraceno, from Deborah A. Stone, dated July		
11		13, 2011, copied to Richard H. Miller, II, Esq.		
12	5Y	Letter to Judge Sgueglia from Richard H.	411	416
13		Miller, II, with enclosed Notice of Motion to		
14		Dismiss Objections, Affidavit of Executor		
15		and Attorney's Affirmation, filed July 18,		
16		2011, (7 pages).		
17	5Z	Letter to Chief Clerk from Richard H. Miller,	411	416
18		II, with Affidavit of Service by Donna Filip,		
19		filed August 18, 2011, (3 pages).		
20	5AA	Order dismissing objections, dated August 26,	411	416
21		2011, (2 pages).		
22	5BB	Decree Granting Probate, dated August 26,	411	416
23		2011.		
24	5CC	Letters Testamentary, dated August 26, 2011.	411	416
25				

1	5DD	Letter to Frank Saraceno, Sr., from Deborah	411	416
2		A. Stone, dated August 26, 2011.		
3	5EE	Letter to Richard H. Miller, II, Esq., from	411	416
4		Camelia M. Daniels, dated March 1, 2012.		
5	5FF	Letter to Tioga County Surrogate's Court	411	416
6		Clerk from Richard H. Miller, II, dated March		
7		1, 2012, with Enclosed Inventory of Assets,		
8		received March 15, 2012, (5 pages).		
9	5GG	Note dated March 20, 2012, on Letters	411	416
10		Testamentary from RH Miller, II, requesting		
11		new letter for real estate transfer, received		
12		March 20, 2012.		
13	5HH	Letter from Carmela M. Daniels to Richard H.	411	416
14		Miller, II, Esq., dated September 12, 2013,		
15		with enclosed form (2 pages).		
16	5II	Letter from Camela M. Daniels to Richard H.	411	416
17		Miller, Esq., dated December 27, 2013, with		
18		enclosed form (2 pages).		
19	5JJ	Citation to Frank Saraceno, Sr., dated March	411	416
20		20, 2014.		
21	5KK	Order of Hon. Gerald A. Keene, Surrogate,	411	416
22		dated March, 24, 2014.		

1	5LL	Letter to Deborah A. Stone, Chief Clerk, from	411	416
2		Richard H. Miller, II, dated July 23, 2014,		
3		enclosing Original Report of fiduciary,		
4		requesting additional time to collect receipts,		
5		releases and discharges from beneficiaries,		
6		received July 28, 2014 (2 pages).		
7	5MM	Letter to Richard H. Miller, Esq., from	411	416
8		Deborah Stone, dated August 2, 2016, with		
9		enclosed form (2 pages).		
10	5NN	Letter to Frank Saraceno from Kiyoko	411	416
11		Matsuhashi, dated August 16, 2016, with		
12		enclosed sample of substitution of attorneys		
13		form (2 pages).		
14	5OO	Letter to Frank Saraceno from Kiyoko	411	416
15		Matsyhashi, dated December 9, 2016.		
16	5PP	Letter to Richard H. Miller, Esq., from	411	416
17		Deborah A. Stone, dated March 28, 2017,		
18		with enclosed form (2 pages).		
19	5QQ	Letter to Frank Saraceno, Sr., from Deborah	411	416
20		A. Stone, dated January 22, 2018.		
21	5RR	Letter to Surrogate's Court Chief Clerk from	411	416
22		Artan Serjanej, dated January 29, 2018,		
23		enclosing Notice of Appearance, received		
24		February 2, 2018 (2 pages).		
25				

1	5SS	Order of Hon. Gerald A. Keene, dated	411	416
2		February 5, 2018.		
3	5TT	Letter to Deborah A. Stone from Artan	411	416
4		Serjanej, dated April 18, 2018, with		
5		enclosures, (52 pages).		
6	5UU	Checks dated April 4, 2012.	473	474
7	5VV	Memorandum of interview of Deborah Stone	459	462
8		dated December 12, 2017, with notes,		
9		(2 pages).		
10	<u>Estate of Deborah Brigham</u>			
11	6Q	Checks from Beverly Brigham payable to	602	604
12		Respondent, dated November 24, 2015,		
13		(Exhibit C to the Formal Written Complaint)		
14		(3 pages).		
15	<u>Checks</u>			
16	7C	Copies of checks from Louis Micha to	525	528
17		Richard H. Miller, dated from December 9,		
18		2014 to March 22, 2018, and Receipts		
19		(Exhibit E to the Formal Written Complaint),		
20		(46 pages).		
21				
22				
23				
24				
25				

1 **Financial Disclosure Forms**

2	8A	Annual Statements of Financial Disclosure	794	794
3		filed by Richard H. Miller, II, with the Ethics		
4		Commission for the Unified Court System for		
5		reporting year 2014 (13 pages).		
6	8B	Annual Statements of Financial Disclosure	794	794
7		filed by Richard H. Miller, II, with the Ethics		
8		Commission for the Unified Court System for		
9		reporting year 2015 (6 pages).		
10	8C	Annual Statements of Financial Disclosure	794	794
11		filed by Richard H. Miller, II, with the Ethics		
12		Commission for the Unified Court System for		
13		reporting year 2016 (6 pages).		
14	8D	Annual Statement of Financial Disclosure for	794	794
15		reporting year 2015, as amended by Richard		
16		H. Miller on November 16, 2017 (6 pages).		

17 **Income Tax Returns**

18	9A	2015 U.S. Individual Income Tax Return	794	795
19		(Bates Nos.: 101-001 to 101-025).		
20	9B	2015 Amended U.S. Individual Tax Return	794	795
21		(Bates Nos.: 102-001 to 102-006).		
22	9C	2015 U.S. Individual Income Tax Return	794	795
23		(Amended) (Bates Nos.: 103-001 to 103-017).		
24				
25				

1	9D	2015 New York Resident Income Tax Return	794	795
2		(Bates Nos.: 104-001 to 104-008).		
3	9E	2015 New York Amended Resident Income	794	795
4		Tax Return (Bates Nos.: 105-001 to 105-007).		
5	9F	2016 U.S. Individual Tax Income Tax Return	794	795
6		(Bates Nos.: 201-001 to 201-029).		
7	9G	2016 Amended U.S. Individual Income Tax	794	795
8		Return (Bates Nos.: 202-001 to 202-006).		
9	9H	2016 U.S. Individual Income Tax Return	794	795
10		(Amended) (Bates Nos.: 203-001 to 203-027).		
11	9I	2016 New York Resident Income Tax Return	794	795
12		(Bates Nos.: 204-001 to 204-011).		
13	9J	2016 New York Amended Resident Income	794	795
14		Tax Return (Bates Nos.: 205-001 to 205-009).		
15	<u>Correspondence</u>			
16	10A	Letter to Cathleen S. Cenci from Paul	795	796
17		DerOhannesian, II, dated April 16, 2018.		
18	10B	Letter to Hon. Richard H. Miller, II, c/o Paul	795	796
19		DerOhannesian, II, with enclosure, dated May		
20		7, 2018, (5 pages).		
21	10C	Letter to Cathleen S. Cenci from Paul	796	796
22		DerOhannesian, with enclosure, dated May		
23		30, 2018, (7 pages).		
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Additional Exhibits

11	Schedule of Commission Exhibits.	13	---
12	Letter from Debbi Singer to Judge Miller dated March 10, 2017 (3 pages).	407	1499
13	Rachelle Gallagher's notes.	769	---
14	Transcript of Jerry Penna's testimony	953	---
15	Letter from Cathleen Cenci to Lisa Wojdat dated October 2, 2017.	1091	1113
16	Memorandum of interview of David Behal dated August 15, 2017.	1167	---
17	Letter from Cathleen Cenci to David Behal dated August 4, 2017.	1181	1184
18	Email from Gregory Gates dated April 13, 2016, to Sixth Judicial District Judges with attached memorandum from Hon. Michael V. Coccoma (3 pages).	1469	1473
19	Insurance claim document dated February 18, 2017 (2 pages).	1484	1486

EXHIBITS

RESPONDENT

		<u>Ident.</u>	<u>In Evid.</u>
1			
2			
3			
4			
5	A	Subpoena for John McConnell.	688 ---
6	F	Subpoena.	82 ---
7	I	Transcript of Mark Kachadourian's Testimony.	86 ---
8	J	Mark Kachadourian's Notes.	91 ---
9	K	Noramar Enterprises documents.	109 ---
10	L	Nomination for appointment of attorneys.	111 114
11	M	Arbitration decision.	116 ---
12	N	Federal complaint.	158 ---
13	O	Supplemental declaration of Mark Kachadourian.	217 ---
14			
15	P	Memorandum of phone call of January 3, 2018.	168 ---
16			
17	Q	Rebecca Vroman's letter.	349 ---
18	R	Memorandum of phone call of April 20, 2018.	169 ---
19			
20	S	Summary of inspector general interview of Debbi Singer.	377 ---
21			
22	T	Work Safe document.	385 ---
23	U	Debbi Singer's notes.	387 ---
24	V	Letter from Judge Miller to Debbi Singer dated March 1, 2017 (3 pages).	394 1499
25			

1	W	Memorandum of interview of Deborah Stone	453	---
2		on December 6, 2017.		
3	X	Updated records for <i>Estate of Antoinette</i>	537	537
4		<i>Saraceno</i> , (74 pages).		
5	Y	Transcript of Rachelle Gallagher's	609	---
6		testimony.		
7	Z	Calendar.	724	---
8	AA	Photograph of Richard Balles and Mark	973	975
9		Kachadourian.		
10	BB	Photograph of Richard Balles, Judge Miller,	973	975
11		Mark Kachadourian and others.		
12	CC	Consent to change attorney signed by Artan	1044	1049
13		Serjanej and David Behal dated March 20,		
14		2015.		
15	DD	Consent to change attorney signed by Artan	1062	1066
16		Serjanej and Thomas Hayes dated March 5,		
17		2015.		
18	EE	Emails with Surrogate's Court and Artan	1067	---
19		Serjanej.		
20	FF	Emails of October and November 2015	1119	1120
21		(3 pages).		
22	GG	Emails of March, April and May 2017	1122	1125
23		(3 pages).		
24	HH	Email from Jolene to David Behal dated May	1135	1136
25		15, 2013.		

xx.

1	II	IRS forms and publications printout.	1143	1144
2	JJ	Email between Sgt. Kreb and captain.	1197	---
3	KK	Email.	1207	---
4	LL	Email from Rebecca Vroman to Mark	1337	1340
5		Kachadourian dated January 23, 2017.		
6	MM	Standards and goals statistics (7 pages).	1340	1342
7	NN	Employee evaluation email to Judge Mulvey	1367	1368
8		dated January 20, 2016 (2 pages).		
9	OO	Email from Jane Sbarra dated	1386	1387
10		January 11, 2019.		
11	PP	Financial disclosure forms sent from	1387	1388
12		Respondent to Chief Clerk on January 31,		
13		2019 (5 pages).		
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

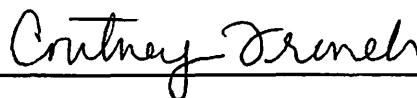
REFEREE

		<u>Ident.</u>	<u>In Evid.</u>
1	Email from Cathleen Cenci to the Referee, Paul DerOhannesian and Deborah Scalise dated January 4, 2019.	258	258
2	Email from Deborah Scalise to the Referee, Cathleen Cenci and Paul DerOhannesian dated January 6, 2019 (4 pages).	258	258
3	Subpoena for Mayor Greg Deemie dated January 4, 2019.	689	689
4	Letter from Shawn Kerby to the Referee dated January 9, 2019, (6 pages).	732	732
5	Letter from Edward Lindner to the Referee dated January 10, 2019, (66 pages).	893	893
6	Letter from Shawn Kerby to the Referee dated January 11, 2019, (2 pages).	1186	1188

CERTIFICATION

I, COURTNEY FRENCH, A Junior Administrative Assistant of the State Commission on Judicial Conduct, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the proceedings transcribed by me, to the best of my knowledge and belief, in the matter held on January 7, 2019.

Dated: February 5, 2019



Courtney French

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

**STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT**

-----X
In the Matter of the Proceeding Pursuant :
to Section 44, subdivision 4, of the :
Judiciary Law in Relation to :

RICHARD H. MILLER, II, :

a Judge of the Family Court, Broome County. :
-----X

Sixth Judicial District Conference Room
Kilmer Building
31 Lewis Street, 5th Floor
Binghamton, New York 13901
January 8, 2019
8:57 AM

B e f o r e:

ROBERT A. BARRER, ESQ.
Referee

P r e s e n t:

For the Commission

CATHLEEN S. CENCI, ESQ.
Deputy Administrator

S. PETER PEDROTTY, ESQ.
Senior Attorney

ETEENA J. TADJIOGUEU, ESQ.
Staff Attorney

For the Respondent

PAUL DEROHANNESIAN, II, ESQ.
Attorney for Respondent
DerOhannesian & DerOhannesian
677 Broadway, Suite 707
Albany, New York 12207

DEBORAH A. SCALISE, ESQ.
Attorney for Respondent
Scalise & Hamilton LLP
670 White Plains Road, Suite 325
Scarsdale, New York 10583

A l s o P r e s e n t:

HON. RICHARD H. MILLER, II
Respondent

RYAN T. FITZPATRICK
Senior Investigator and FTR Operator

INDEX OF WITNESSES

For the Commission

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Mark Kachadourian, Esq.	21	76	68	222	240
D [REDACTED] L [REDACTED]	260	283	--	307, 317	313
Rebecca Vroman	321	333	--	--	--
Debbi Singer	355	376	--	402	--
Deborah Stone	410	430	419	458, 465	462
Barbara Saraceno	469	480	--	--	--
Robert Wedlake, Esq.	486	513	--	--	--
Louis Micha	521	530	--	--	--
Rachelle Gallagher	541	606	601	768	778

INDEX OF WITNESSES

For the Respondent

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Ofc. Jolene Payne	799	802	--	807	--
James Stilloe	856	867	--	--	--
Martin Shaw	908	913	--	--	--
Jerry Penna	922	935	--	951, 958	954
Richard Balles	964	--	--	--	--
Katherine Fitzgerald, Esq.	977	987	--	993	--
Sandra Conklin	997	1013	--	1016	1021
Artan Serjanej, Esq.	1024, 1100	1101	1047, 1064	1108	1111
Lisa Wojdat	1074	1090	--	1096	--
David Behal	1115	1151	1123	1176, 1184	1181
Sgt. Ronald Kreb	1196	1204	--	1207	--
Diane Marusich	1211	1226	--	--	--
Robin Dean	1242	1263	--	1274, 1283	1280
Hon. Richard H. Miller, II	1296	1431	1339, 1472	1486	1489

ii.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: Good morning, it's Tuesday,
2 January 8. We are back on the record. Same appearances
3 from counsel from yesterday, and the Respondent is present.
4 Ms. Scalise, did you want to make a record of something
5 regarding subpoenas? Oh, also, a quick reminder, please
6 silence your cell phones.

7 MS. SCALISE: Yes. I spoke-- Yesterday, I think I
8 explained to you that I spoke to Ms. Sacco, who is the
9 attorney for the Village of Johnson City. Those two
10 witnesses are on standby for tomorrow afternoon or
11 Thursday morning, as necessary, as long as we get
12 information from you as to how we're going to proceed and
13 how far we go. In addition, last Friday, I spoke to John
14 McConnell, who's counsel to OCA. Because I sent him a
15 subpoena directly, he called me back. We spoke to him
16 about only that subpoena. I'm waiting to hear back on all of
17 the other judges and other court employee subpoenas. We
18 did modify our request and I don't know if they're going to
19 oppose, but he asked, and we agreed, to modify our request.
20 Lastly, I got a s-- an email forwarded from you last night,
21 and the civil attorneys for Mark Kachadourian and Rachelle
22 Gallagher sent us what they had. The response was that, as
23 to number one, no responsive documents located. As to
24 number two, the EEOC documents they sent us, and as to
25 three, no documents located. We may want to explore that

247.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 again later once the witnesses testify and as things come in
2 from OCA. Some of these witnesses may be subject to
3 recall. And that's what I wanted to put on the record.
4 Thank you.

5 THE REFEREE: Thank you, that's fine. I actually
6 thought this would be a good opportunity to mention I did
7 look at the question that Ms. Cenci raised in a letter earlier
8 about character witnesses. And her statement about the law
9 is, I happen to agree with and I did a little research on that
10 issue and based on my research, and there are two cases that
11 I just want to cite to everyone. One is *People v Kennard*--
12 K-E-N-N-A-R-D. It's a 2018 Fourth Department decision,
13 160 AD 3rd, 1378, as well as a Court of Appeals decision,
14 *People v Kuss*-- K-U-S-S. That's a 1973 decision. 32 NY
15 2nd, 436. That, in the event character witnesses are called,
16 they can certainly testify about their knowledge of certain
17 traits about good character, but cannot offer evidence of
18 specific good deeds, if you will. So, that-- In the event it
19 comes up, that-- that's going to be my ruling and if that
20 helps you in deciding whether to call or not call witnesses,
21 that's fine, but those two cases are the ones that I find to be
22 controlling on that issue.

23 MS. SCALISE: May I just address that issue for one
24 moment?

25 THE REFEREE: Sure, sure.

248.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. SCALISE: While I understand the criminal
2 cases and what they say, the problem with that ruling, and I
3 had this in a hearing just in September at the Commission,
4 is that part of what character witnesses can testify to, and
5 while the judge can testify to this, too, is if there were
6 discussions about what happened and whether there was
7 any contrition about any of the circumstances and that's
8 probative for the Commission itself later on when they read
9 the record. So, we may, again, make an application once
10 we-- Normally, we just do the usual character and
11 everything else, but in these proceedings, because there is
12 mitigation that may be available through some of these
13 character witnesses, we may make an application, so I'm
14 asking you to keep an open mind. Depending on what it is,
15 we'll give an offer of proof and then, you know, we'll
16 accept whatever ruling.

17 THE REFEREE: That's fine. That makes sense and
18 I'm trying to be sensitive here when I make rulings to the
19 concept that I'm not the ultimate finder of fact and I-- I
20 therefore want to make sure the record is clear in the event
21 that I make a ruling and the Commission should disagree
22 with it, which is entirely possible.

23 MS. SCALISE: Yes, thank you.

24 THE REFEREE: So, let's go off the record--

25 MS. CENCI: --Your Honor.

249.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: Oh, I'm sorry.

2 MS. CENCI: Just-- I just wanted to say that the next
3 witness-- Commission witness is D [REDACTED] L [REDACTED], and she
4 does have her attorney here, and she would like to have her
5 attorney present in the room while she testifies. And I
6 know we had some email discussions about whether
7 Commission witnesses or hearing witnesses would be
8 allowed to have their attorney present and so, I just wanted
9 to make you aware of that so you that can you make a
10 ruling--

11 THE REFEREE: --That's-- That's helpful to know.
12 I know the position of Respondent's counsel. Does the
13 Commission take a position on that?

14 MS. CENCI: The Commission has a policy which I
15 quoted to you in one of our correspondences, which does
16 permit a witness to be represented by counsel at all
17 proceedings, including hearings. There are restrictions
18 upon what the counsel can do. Essentially, counsel cannot
19 actively participate in the proceeding, cannot question the
20 witness, or raise objections, but they can have an
21 opportunity to consult if felt necessary.

22 THE REFEREE: Well, it-- I've done a lot of
23 thinking about that particular issue and I-- I was pleased
24 that Mr. Kachadourian didn't have counsel with him
25 yesterday, because if-- For Mr. Kachadourian and Ms.

250.

(Hon. Richard H. Miller, II)

1 Gallagher, my ruling would be they cannot have counsel
2 present. And the reason for that is-- it was two-fold. One,
3 I think, as a legal question, and I can certainly get overruled
4 by the Commission on this, I think the statute and the
5 regulations trump the policy. I don't think the policy can
6 overrule the confidentiality obligations, but even if it did, I
7 was going to find that as to Kachadourian and Gallagher,
8 that it's unique because of the presence of the civil action
9 that they just commenced against the Respondent. What I
10 don't know, and I would like to hear from counsel for
11 Respondent, is whether there is any indication that D [REDACTED]
12 L [REDACTED] has commenced, or is about to commence, a
13 proceeding against the Respondent. Because if-- If that
14 action is time-barred-- would be time-barred, then I would
15 allow her counsel to be here, but if it's not, and she still has
16 time within which to bring an action, then I would say no.

17 MS. CENCI: I'm not--

18 THE REFEREE: --And I know it's contrary to the
19 policy, and I could well be wrong, and we'll deal with that,
20 but--

21 MS. CENCI: --I'm not sure Respondent's counsel
22 would be able to answer that question, but--

23 MS. SCALISE: --So, we're not aware of any civil
24 suit at this point in time. Statute is not time-barred as far as
25 we know from the information, the incidents reported in the

251.

(Hon. Richard H. Miller, II)

1 discovery, as well as information we've gotten in our
2 investigation. I would ask that our correspondence with
3 respect to this issue be made part of the record so that if
4 there is a ruling in the future, by either the Commission or
5 the Court of Appeals, we have that in the record. I do still--
6 We do still adhere to the fact that it's the Respondent's
7 confidentiality that is important here, and I know that you
8 had admonished-- or, explained to the witnesses that they
9 should not speak to anybody else because they're subject to
10 recall. And the subpoena we got back yesterday from Ms.
11 Gallagher's and Mr. Kachadourian's attorneys did not
12 indicate that they were coming in, so at this point, I don't
13 know unless someone shows up tomorrow.

14 THE REFEREE: Are we more than 300 days past
15 the last conceivable incident involving Ms. L [REDACTED]?

16 MR. DEROHANNESIAN: No.

17 MS. SCALISE: No.

18 MS. CENCI: 300 days?

19 THE REFEREE: Well, because you have to bring--
20 You have to go--

21 MS. CENCI: --I understand, but--

22 THE REFEREE: --to file with EEOC.

23 MR. DEROHANNESIAN: There's also a 1983
24 (unintelligible)--

25 MS. SCALISE: --And that as well--

252.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: --Your Honor, if I could-- I think,
2 with all--

3 THE REFEREE: --One second.

4 MS. SCALISE: As well as a 1983 action--

5 THE REFEREE: --Yeah--

6 MS. SCALISE: --that's potentially there.

7 THE REFEREE: Yep.

8 MS. CENCI: Of course, I'll abide by your ruling,
9 but I think the problem, however, with the concept of not
10 allowing the witness to have counsel is that, you know, if
11 there's prejudice to the witness, that's already been done.

12 THE REFEREE: No, I understand that and I'm very
13 sensitive to that, and certainly in the event there would be a
14 Fifth Amendment issue, I would raise that independently. I
15 don't know what prejudice there could be to the witness
16 from not having counsel who's not allowed to do anything.

17 MS. CENCI: Yeah. But-- And also, in terms of the
18 alleged breach of confidentiality, regardless of whether the
19 counsel is in the room while the witness is testifying, the
20 witness is of course free to discuss with his or her counsel
21 any matters that they deem relevant.

22 THE REFEREE: No, I agree. Is the witness's
23 counsel here?

24 MS. CENCI: Yes.

25 THE REFEREE: Who is it?

253.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: Her name is Diane-- Martha Lyons.
2 She's a local attorney.

3 THE REFEREE: Could we have her perhaps come
4 in?

5 MS. CENCI: Of course. Sure.

6 MS. LYONS: Certainly.

7 THE REFEREE: Ms. Lyons?

8 MS. LYONS: Yes.

9 THE REFEREE: Hi. Robert Barrer, I'm the
10 Referee. I've been appointed by the Commission, and--
11 Have a seat.

12 MS. LYONS: Certainly.

13 THE REFEREE: We've just been having a
14 discussion about whether you will be allowed to remain in
15 the room while your client testifies.

16 MS. LYONS: Mm-hmm.

17 THE REFEREE: There are competing concerns that
18 have been raised. There is, of course, a statute and
19 regulations dealing with confidentiality.

20 MS. LYONS: Of course.

21 THE REFEREE: And there is also a Commission
22 policy that allows for witnesses to have counsel in the room.
23 Although they may be present, they're not allowed to
24 participate in the proceedings.

25 MS. LYONS: I do understand that.

254.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: And we've had discussions and I
2 received letter briefs from both the Commission and
3 Respondent's counsel on this issue. We know that Mr.
4 Kachadourian and Ms. Gallagher have already commenced
5 a civil action against the UCS and Judge Miller. To the best
6 of my knowledge, Ms. L [REDACTED] has not done that.

7 MS. LYONS: To the best of my knowledge, she has
8 no intent of doing that.

9 THE REFEREE: Well, that really was-- was the
10 issue, and my concern quite honestly is that I think it would
11 be unfair to allow a party to a civil case to take advantage of
12 information from a confidential proceeding, as we are
13 present here today--

14 MS. LYONS: --Mm-hmm--

15 THE REFEREE: --and then be able to use that in the
16 civil case, where otherwise you would not have access to it.

17 MS. LYONS: I can tell you that that is not a reason
18 for which I was retained and that my client and I were both
19 as surprised to see that in the newspaper over the holidays.
20 She is not a party to that proceeding, doesn't intend to bring
21 a case. She would tell you that herself.

22 THE REFEREE: That's-- I mean-- Is there--
23 Could you advocate for your client why you want to be
24 present, just so I can have it on the record?

25 MS. LYONS: Well, initially, sir, my client was

255.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 represented by an attorney who I understand was retained
2 by Mr. Miller. Had some other information that came to
3 light subsequent to her first appearance with the committee
4 and retained me thereafter to represent her in this matter.
5 She is concerned about retaliation. She has gone through
6 tremendous stress regarding this incident, is here under
7 subpoena, not willingly, and feels that she needs the
8 assistance of counsel to get through this. I think she will
9 tell you the same if she is asked these questions. And
10 forgive me, I'm getting over a cold, so I'm a little squeaky.

11 THE REFEREE: That's all right. Do you
12 understand that if you were allowed to remain in the room,
13 that you're not allowed to object or participate?

14 MS. LYONS: I do understand that I can't say a
15 word and certainly understand the confidentiality
16 requirements.

17 THE REFEREE: Anything else from counsel for the
18 Commission?

19 MS. CENCI: No, Your Honor.

20 THE REFEREE: How about for Respondent?

21 MS. SCALISE: We renew our objection as stated
22 previously.

23 THE REFEREE: Counsel, as an officer of the court,
24 can you represent that there is no present intent to bring an
25 action by Ms. L [REDACTED]?

256.

(Hon. Richard H. Miller, II)

1 MS. LYONS: Absolutely.

2 THE REFEREE: And do you think you would
3 know?

4 MS. LYONS: I do think I would know and our
5 discussions regarding that lawsuit, because we have
6 discussed it since it became public, is that she wants
7 absolutely nothing to do with it. So, I have counseled her
8 with regards to speaking with the investigators or anything
9 else that she is not obligated. If subpoenaed, she would
10 have to appear, but doesn't need to volunteer anything to
11 anyone with regards to that lawsuit.

12 THE REFEREE: All right. Anything further?

13 MS. SCALISE: Here's the problem. She's named
14 as a witness in the federal lawsuit as you know, and we, you
15 know, we can only speak about today and not, you know, on
16 a prospective basis. We have no way of knowing what the
17 decisions will be after today and we're still very
18 uncomfortable and we still object.

19 THE REFEREE: All right. Anything further?

20 MS. LYONS: Well, certainly, sir, that I have been
21 privy to discussions regarding this incident with Ms.
22 I [REDACTED] from the date of my retention, so I don't expect
23 to hear anything that I don't already know or earth
24 shattering from these events. And as I said, I-- You know,
25 I would represent that I would not represent her if she were

257.

(Hon. Richard H. Miller, II)

1 to join that lawsuit if that is beneficial, but I don't believe
2 she has any intent whatsoever of becoming involved in such
3 a suit.

4 THE REFEREE: All right, thank you. Anything
5 further? All right. It's my decision that I'm going to allow
6 counsel to remain. I'm going to mark as a referee exhibit a
7 January 4, 2019, email from Ms. Cenci to me. We'll call
8 that Referee 1.

9 MS. SCALISE: Roman numeral?

10 THE REFEREE: No.

11 MS. SCALISE: Okay.

12 THE REFEREE: And as Referee 2, I'm going to
13 mark a January 6, 2019, email from Ms. Scalise to me, and
14 if your witness is here, I'd--

15 MS. LYONS: --She is--

16 THE REFEREE: --She should come in.

17 MS. LYONS: Would you like me to bring her in?

18 THE REFEREE: Yes, please.

19 MS. LYONS: And where would you like me, sir?

20 THE REFEREE: Yeah, but it's-- I've said it. So,
21 that's all you need to do.

22 MS. CENCI: Your Honor, for the record, the
23 Commission calls D [REDACTED] L [REDACTED].

24 THE REFEREE: Could you raise your right hand,
25 please? Do you swear or affirm under the penalty of

258.

(Hon. Richard H. Miller, II)

1 perjury that the testimony you're about to give is the truth,
2 the whole truth, and nothing but the truth?

3 MS. L [REDACTED]: I do.

4 D [REDACTED] L [REDACTED],

5 having been duly sworn, was examined and testified as follows:

6 THE REFEREE: Have a seat.

7 THE WITNESS: Thank you.

8 THE REFEREE: Ms. L [REDACTED] my name is Robert
9 Barrer. I am appointed by the Commission on Judicial
10 Conduct as a special Referee to preside over the proceeding
11 that we're here for today. I'm an attorney from Syracuse.
12 You're going to be asked some questions by Ms. Cenci,
13 counsel for the Commission. And you, I'm sure, will be
14 asked questions by one of the attorneys for the Respondent,
15 Judge Miller.

16 THE WITNESS: Okay.

17 THE REFEREE: It's important when you testify that
18 you do so verbally. Shaking the head or nodding doesn't
19 work.

20 THE WITNESS: Right.

21 THE REFEREE: I used to work for a judge many
22 years ago and he had a very funny saying, he says, "We
23 can't get that unless your head rattles." No one's going to
24 hear anything. So, if you could try and speak up towards
25 the microphone. If you need a break at some point, please

259.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Direct)

1 let us know. We've allowed your counsel to remain in the
2 room. You cannot consult with her in the room, and she's
3 not allowed to object or to participate. If you feel the need
4 to consult with her, please let me know and we will try and
5 accommodate you.

6 THE WITNESS: Okay.

7 THE REFEREE: All right. And with that, Ms.
8 Cenci?

9 MS. CENCI: Thank you.

10 DIRECT EXAMINATION

11 BY MS. CENCI:

12 Q. Good morning.

13 A. Good morning.

14 Q. Would you tell us your full name, please?

15 A. My name is D [REDACTED] L [REDACTED].

16 Q. And do you reside in Broome County?

17 A. Yes, I do.

18 Q. In what township or city do you reside?

19 A. I reside in the-- In Johnson City. Town of Union.

20 Q. About how long have you lived in Broome County?

21 A. I have lived in Broome County since 1986.

22 Q. And can you tell us a little bit about your education?

23 A. I just have a GED.

24 Q. Do you have current employment?

25 A. Yes, I do.

260.

(L [REDACTED] - Direct)

- 1 Q. What is that?
- 2 A. I currently work for the New York State Unified Court System-- New
3 York State.
- 4 Q. In what capacity?
- 5 A. I am a senior court office assistant.
- 6 Q. How long have you held that position?
- 7 A. I have been a senior court office assistant since November 30th of
8 1998. I've been with New York State since October 31st of 1991.
- 9 Q. In your capacity as a senior court office assistant, are you assigned to a
10 particular court?
- 11 A. Family court. Broome County Family Court.
- 12 Q. Okay. And what is the general nature of your duties?
- 13 A. General-- The general duties are you have in-court duties and out-of-
14 court duties. Out-of-court duties you assign counsel, assign attorneys
15 for the children, you schedule, re-schedule, you take care of the
16 emails, the faxes, telephone calls, paperwork and you deal with the
17 public. In-court duties, you take care of the paperwork, while you're
18 in court for the judge, you make sure everything is rec-- being
19 recorded, and you schedule, re-schedule. It's a busy job.
- 20 Q. It sounds it.
- 21 A. Yes.
- 22 Q. Are you currently assigned to any particular judge when you're doing
23 your in-court duties?
- 24 A. Presently, I'm assigned to Judge Pines.
- 25 Q. Okay. How long have you been-- Approximately, how long have you

261.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Direct)

1 been assigned to Judge Pines?

2 A. I have been assigned-- This is the second time with Judge Pines. I--
3 This is-- Let me see. Probably about a year and a half, I've been with
4 Judge Pines this time.

5 Q. So since in or about mid-2017, would you say?

6 A. Maybe it's 2000-- Yes. Yes, yes. Sorry. Yes.

7 Q. Okay. How many family court judges are there in Broome County?

8 A. There's four. There's Judge Pines, Charnetsky, Connerton, and
9 Miller.

10 Q. Okay. Do you know Judge Richard Miller?

11 A. From work, yes.

12 Q. Have you had any occasion to work with him in Broome County
13 Family Court?

14 A. Yes, I did.

15 Q. Was there a period of time during which you were assigned to work
16 with Judge Miller?

17 A. I was assigned on Judge Miller's team in, I think it was 2016, and
18 until 2017.

19 Q. Okay. What, if anything, happened in 2017, if you know, to change
20 that?

21 A. There was a big disruption and I was taken off Judge Miller's team
22 and put on Judge Pines' team.

23 Q. Can you describe what the team is and how that works?

24 A. Yes. The team is, you have the judge, first and foremost, then you
25 have the judge's court attorney, judge's secretary, then the team--

262.

(L [REDACTED] - Direct)

1 Well, I consider the team-- You have the-- Grade 16 is the
2 supervisor, and you have, I call them peons, the grade 12s are
3 underneath, so-- I'm a grade 12. At the bottom.

4 Q. You're the ones that do the work, is that right? So, how many people
5 on the team?

6 A. The whole team, or-- Well, like I said, there's the judge, the court
7 attorney, secretary, supervisor, and two grade 12s. So, there's what--
8 that's seven.

9 Q. So, in addition to yourself, who are-- who, if anyone, is the grade 12?

10 A. There's--

11 Q. --Or-- And let's talk about the time when you were assigned with
12 Judge Miller.

13 A. Okay.

14 Q. Who is-- Was there another grade 12 in your position?

15 A. There was-- We had a quite a-- There was-- Wendy-- We had
16 Wendy for a while.

17 THE REFEREE: Last name, please?

18 A. Wendy-- Oh, my God. Quarella for while. Wendy Quarella, who has
19 since made a lateral. There was-- Amanda Hendricks was the
20 supervisor. Rebecca Vroman was a supervisor. Who was the other...
21 It's escaping me right now, I'm sorry.

22 Q. That's okay. We can--

23 A. --Get--

24 Q. --That's fine.

25 A. Okay.

263.

(L [REDACTED] - Direct)

- 1 Q. We can come back to that. Is it fair to say that there was a transition, a
2 turnover of personnel, on the team of Judge Miller?
- 3 A. Yes. Yes. There was.
- 4 Q. And just for the record, were you already employed by the Broome
5 County Family Court when Judge Miller became a family court judge?
- 6 A. Yes.
- 7 Q. And you had been for some years, is that right?
- 8 A. Yes.
- 9 Q. Did you know Judge Miller in any capacity prior to the time that he
10 became family court judge?
- 11 A. I did not.
- 12 Q. Now, I want to ask your-- you some questions about an individual by
13 the name of David Iannone.
- 14 A. Okay.
- 15 Q. Are you acquainted with that individual?
- 16 A. I was acquainted with Mr. Iannone.
- 17 Q. And when and how did you first make his acquaintance?
- 18 A. I first made David Iannone's acquaintance through Judge Miller.
- 19 Q. How did-- How did that happen?
- 20 A. Judge Miller had told me a couple of times that if you needed any
21 work done on your house, I know of a gentleman who would be able
22 to do that. I said, "Well, as a matter of fact, I have some tile work that
23 I need done in my bathroom," and Judge Miller said that he knew of
24 someone who could do the work for me.
- 25 Q. And that was Mr. Iannone?

264.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Direct)

- 1 A. That was Mr. Iannone.
- 2 Q. So, how did you come to make his acquaintance?
- 3 A. Judge Miller had me follow him to his office's chambers. There's--
- 4 His-- Judge's chambers here, secretary's office here, adjoining, and
- 5 Judge Miller got his cell phone, called David Iannone, they chatted for
- 6 a minute, and Judge Miller put me on the phone with David Iannone,
- 7 and Mr. Iannone and I made arrangements-- This was the end of
- 8 January 2017-- and we made arrangements the following day, which
- 9 was a Friday, for Mr. Iannone to come to my house, look at the tile
- 10 work in my bathroom, and give me an estimate.
- 11 Q. Okay. Now, you were present-- Was this in chambers where the
- 12 judge made this cell phone call?
- 13 A. This-- It was in between. There's-- There's his chambers and the
- 14 secretary-- It-- Like I said, they're adjoining, so Judge Miller was
- 15 standing there with his cell phone, Rachelle Gallagher was at her desk
- 16 right there.
- 17 Q. Was there anyone else present?
- 18 A. No.
- 19 Q. Do you recall, what, if anything, Judge Miller said on the phone to Mr.
- 20 Iannone? You said he-- they chatted for a minute, do you recall--
- 21 A. --They chatted for a minute, "I have someone here who needs some
- 22 tile work done. Can you-- Do you mind speaking with her? It's
- 23 D [REDACTED] L [REDACTED]. She works on my team."
- 24 Q. And so thereafter, what happened with respect to your meeting with
- 25 Mr. Iannone?

265.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Direct)

- 1 A. Mr. Iannone came over the following day, a Friday, and he-- I guided
2 him upstairs into the bathroom, he looked at the tile work, and he
3 proceeded to give me different ideas and--
- 4 Q. --Did he do the tile work in your home?
- 5 A. He did not.
- 6 Q. Thereafter, did you have any further contact with Mr. Iannone?
- 7 A. Yes, we dated.
- 8 Q. And when you say you dated, did you have a romantic relationship
9 with him?
- 10 A. Yes, we did.
- 11 Q. And forgive me, but I need to ask you these questions. Did you enter
12 into an intimate relationship with him?
- 13 A. Yes, we did.
- 14 Q. And about how long did that relationship last?
- 15 A. That lasted about a year.
- 16 Q. Now, during that time, do you know whether Judge Miller was aware
17 that you were seeing Mr. Iannone?
- 18 A. I'm assuming yes. Yes.
- 19 Q. How would he know that, to your knowledge?
- 20 A. Because Judge Miller and David Iannone were friends.
- 21 Q. Okay. So, in or about late June or early July of 2017, did you become
22 aware that someone was claiming that there existed, allegedly, a
23 photograph of yourself?
- 24 A. Yes.
- 25 Q. How did you become aware of that allegation?

266.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Direct)

1 A. I became aware by Supreme Court Judge Molly Fitzgerald wanting to
2 meet with me with an HR person behind closed doors, and Supreme
3 Court Judge Molly Fitzgerald revealed to me that there allegedly is a
4 photo of me naked from the neck to the belly, the torso.

5 Q. Did she say anything else about this photograph?

6 A. She said that there-- She said she couldn't reveal too much
7 information, but there is a lawsuit going against Judge Miller, a sexual
8 harassment lawsuit, somehow this picture of this alleged photo of me
9 is involved, and I didn't understand the connection. I didn't
10 understand-- I didn't understand.

11 Q. Did you ask her any questions?

12 A. I did not-- No. I didn't ask her-- I don't think I asked her any
13 questions. I was just taken aback by there was a lawsuit and my
14 photo, allegedly, my photo-- a photo of me was involved and I didn't
15 understand why. I didn't-- What do I have to do with this?

16 THE REFEREE: Ms. L [REDACTED], do you have the
17 name of the HR person who you met with?

18 THE WITNESS: Christine Roche.

19 THE REFEREE: R-O-A-C-H?

20 THE WITNESS: R-O-C-H-E.

21 THE REFEREE: Thank you.

22 THE WITNESS: Yes.

23 THE REFEREE: Thank you.

24 BY MS. CENCI:

25 Q. So, what, if anything, did you do after learning this information?

267.

(L [REDACTED] - Direct)

- 1 A. I was-- I was dumbfounded. I didn't know. I didn't know what-- I
2 just-- I didn't understand. I thought-- I didn't bring a lawsuit against
3 Mr. Miller, Judge Miller. I didn't-- I didn't supply a photo to him. I
4 didn't understand how my name came up. I didn't understand.
- 5 Q. Had you supplied a photograph to anyone? Of the nature that you've
6 described?
- 7 A. No, no.
- 8 Q. So, did you continue to work in the court--
- 9 A. --Yes--
- 10 Q. --after learning this information?
- 11 A. Yes.
- 12 Q. Did you continue to see Judge Miller?
- 13 A. Yes, I was on-- still on his team, yes.
- 14 Q. And did you-- Did he ever say anything to you about this photograph?
- 15 A. No.
- 16 Q. Did you ask him about it?
- 17 A. No.
- 18 Q. Did you have any idea as to whether, if in fact this photograph existed,
19 the source of it, where had it-- it had come from?
- 20 A. I've-- I did not think that there was a photo out there of me because I
21 didn't supply one, and I didn't understand. Like I said, I didn't
22 understand how my name got brought into this.
- 23 Q. Did you undertake to make any inquiries of anyone to ascertain
24 whether or not--
- 25 A. --I--

268.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Direct)

1 Q. --there was such a photograph?

2 A. Yes. I inquired of Mr. Iannone a number of times because I-- David
3 Iannone and Mr. Miller were friends. I said, "Do you have any idea,
4 do you know how my name brought-- got brought into this? What is
5 going on? I don't get it. I don't get it." And he repeatedly said no.

6 MR. DEROHANNESIAN: I would object to the
7 hearsay of Mr. Iannone.

8 MS. CENCI: It goes to her subsequent actions, Your
9 Honor.

10 THE REFEREE: I'm going to allow it.

11 A. He repeatedly denied and says, "I don't-- I don't have any idea of
12 what-- what's going on. No idea." And I just-- I just-- I didn't
13 understand. I didn't get it. I didn't get it. And he repeatedly said, "I
14 don't know. I don't know." Okay, all right, okay.

15 Q. Did you ultimately come to view a photograph of your naked torso?

16 A. Yes, I did.

17 Q. Approximately when did that happen?

18 A. It was in December, it was-- I think it was mid-December. End
19 December-- End of December.

20 THE REFEREE: Of 2017?

21 THE WITNESS: Of 2017, sorry. Yes, 2017.

22 A. And I repeatedly asked him, because it was-- It was just gnawing at
23 me. I repeatedly asked him, I said, "David"-- Mr. Iannone-- "David,
24 is there a photo of me? Is there a photo"-- "No. No. There's not a
25 photo." I said, "Are you sure? Are you sure?" Because it-- He

269.

(L [REDACTED] - Direct)

1 repeatedly said no. And I would think about it, I said, "David, are you
2 sure, really?" And finally--

3 MR. DEROHANNESIAN: --I'm going to object.
4 We have an ongoing objection to the hearsay of Mr.
5 Iannone's--

6 THE REFEREE: --Yeah, it's-- I'll keep it as an
7 ongoing objection. I'm not accepting--

8 MR. DEROHANNESIAN: --Because now we
9 have--

10 THE REFEREE: --it for the truth of the matter, it's
11 serving her state of mind.

12 MS. CENCI: Thank you.

13 MR. DEROHANNESIAN: With that understanding.

14 THE REFEREE: Yes. And it's a continuing
15 objection.

16 MR. DEROHANNESIAN: Okay, thank you.

17 A. And he repeatedly denied it and I would ask him, and finally, he just--
18 He whipped out his cell phone, he pushed some buttons, and he
19 showed me, and he said, "Here. This is the photo. This is the photo."
20 He said, "I showed this to Mr. Miller and Mark Kachadourian when
21 they were in a restaurant at lunchtime," and he showed the photo to
22 Mr. Miller and Kacha-- and Mark Kachadourian, and it was a photo
23 of a naked person from the neck to the belly.

24 Q. Did you have any reason to believe that this was in fact a photograph
25 of yourself?

270.

(L [REDACTED] - Direct)

1 A. The-- It-- I don't know if it was or not, but the only-- and it's weird
2 because the only thing that stuck out to me was the photo had-- the
3 person was wearing a neck-- a necklace of an elephant, there's a little
4 elephant on the necklace because I like elephants, and I-- And I
5 looked at that and I thought, I just thought, "If that's me, what did you
6 do? What did you do?"

7 Q. And did you ask Mr. Iannone whether he had-- Whether it was a
8 picture of yourself?

9 MR. DEROHANNESIAN: Objection, leading.

10 THE REFEREE: And I'll allow it.

11 A. I did not directly ask him. I was just so dumbfounded I just-- I just--
12 I was having some flashbacks that I thought, "This whole time, I've
13 been say-- I've been telling myself and thinking there was no photo.
14 You've been denying this all of this time. Now, you're showing me
15 this photo," and I just-- I was thinking, "Oh, wow, what did I do?
16 What did I do?"

17 MR. DEROHANNESIAN: Judge, I would-- It's
18 non-responsive.

19 THE REFEREE: I agree. Ask another question,
20 please.

21 BY MS. CENCI:

22 Q. Well, what, if anything, did you do once you learned this information?

23 A. I didn't do anything. I didn't-- I didn't know-- I didn't do anything.
24 I didn't do anything.

25 Q. Did you make any requests of Mr. Iannone, as to the photograph

271.

(L [REDACTED] - Direct)

1 itself?

2 A. I asked him to delete--

3 MR. DEROHANNESIAN: --Again, Judge, leading
4 and suggestive.

5 MS. CENCI: Well, Your Honor--

6 THE REFEREE: --Actually, I don't think so.
7 Overruled.

8 MS. CENCI: Thank you.

9 A. I wanted him to delete it and I asked him to delete it and just-- just get
10 rid of it. I just...

11 Q. Did you have any knowledge as to whether or not Judge Miller and
12 Mr. Iannone had telephone conversations in which they discussed
13 you? Did you know anything about that?

14 MR. DEROHANNESIAN: Objection.

15 A. No, I do not--

16 THE REFEREE: --One second. You have to--
17 That's all right. If somebody objects, then wait until we get
18 a ruling and then you answer. So, with that, that's the
19 procedure. What's the objection?

20 MR. DEROHANNESIAN: I'm object-- I think the
21 question was, "Do you have any knowledge of what a third
22 party may have been doing or saying?"

23 THE REFEREE: Actually, I think the question was,
24 "Do you know whether there were"--

25 MS. CENCI: --Correct--

272.

(L [REDACTED] - Direct)

1 THE REFEREE: --“conversations”? And I think
2 that’s not leading and so you can go ahead and answer.

3 A. I do not know of the-- of any conversations between Miller and
4 Iannone as far as conversations of the photo.

5 Q. About you?

6 A. About me. Yes.

7 Q. In general?

8 A. Yes.

9 Q. Did you ever give anyone permission to discuss with Judge Miller or
10 anyone else your personal sex life--

11 MR. DEROHANNESIAN: --Objection. That’s
12 irrelevant to the charge in this proceeding.

13 THE REFEREE: One second. Sustained.

14 BY MS. CENCI:

15 Q. Now, you said that your relationship with Mr. Iannone ended after
16 about a year, is that right?

17 A. Yes, that is correct.

18 Q. So, would that have been about January of 2018?

19 A. Yes.

20 Q. Did you have any reason to become fearful of Mr. Iannone at that time
21 or at any time?

22 MR. DEROHANNESIAN: Objection.

23 THE REFEREE: Just hold on one second. Ground?

24 MR. DEROHANNESIAN: That’s not relevant to
25 this proceeding.

273.

(L [REDACTED] - Direct)

1 THE REFEREE: Sustained.

2 BY MS. CENCI:

3 Q. Did Mr. Iannone ever make any statements to you regarding the
4 Commission's investigation of Judge Miller?

5 A. Yes.

6 Q. What did he say about that?

7 MR. DEROHANNESIAN: Objection.

8 MS. CENCI: It goes to her state of mind--

9 THE REFEREE: --Well, hold on one second. Hold
10 on.

11 MS. CENCI: It goes to her state of mind.

12 MR. DEROHANNESIAN: What a third party feels
13 about this investigation, any party, is not relevant for their
14 determination of the facts.

15 THE REFEREE: Could you ask the question one
16 more time, please?

17 MS. CENCI: Did Mr. Iannone ever make any
18 statements to Ms. L [REDACTED] about the Commission's
19 investigation of Judge Miller?

20 THE REFEREE: Okay, that's a yes or no question.

21 A. Yes.

22 Q. What did he say about that?

23 MR. DEROHANNESIAN: Objection.

24 THE REFEREE: Sustained.

25

274.

(L [REDACTED] - Direct)

1 BY MS. CENCI:

2 Q. Do you know an individual by the name of Jerry Penna?

3 A. Yes. I-- I believe I've met him. Yes.

4 Q. When in reference to these events that you've been testifying about
5 did you meet Mr. Penna?

6 A. I met Mr. Penna in Judge Miller's chambers. I don't remem-- It-- I
7 think-- I don't know the exact date. I don't know the-- but I do
8 remember meeting Mr. Penna.

9 Q. Was Judge Miller present when you met him?

10 A. Yes.

11 Q. Now, Ms. L [REDACTED], you indicated there was a lot of disruption and
12 various personnel and things changed around in 2017. Did you--
13 were you interviewed by anyone from the Court Administration's
14 Inspector General's Office?

15 A. Yes, I was.

16 Q. And at that time, was that in or about July of 2017, if you recall?

17 A. Yes.

18 Q. At that time, had you seen this naked photograph?

19 A. I did not, no.

20 Q. And at that time, did you have any reason to suspect that there was
21 one?

22 A. No.

23 Q. You said that you did not give Mr. Iannone permission to take such a
24 photograph?

25 MR. DEROHANNESIAN: Objection.

275.

(L [REDACTED] - Direct)

1 THE REFEREE: I there was-- I think it was
2 sustained and there's no-- that's not in the record, so, I--
3 I'll sustain the objection to the question in that form.

4 BY MS. CENCI:

5 Q. Do you know how Mr. Iannone could have, if in fact he did, taken a
6 photograph of yourself such as the one that he showed you?

7 MR. DEROHANNESIAN: Object to the form of
8 that.

9 THE REFEREE: What's the form objection?

10 MR. DEROHANNESIAN: Well, it also calls for the
11 speculation of the witness.

12 MS. CENCI: No. She's a participant.

13 THE REFEREE: Could you ask the question one
14 more time? I think it's appropriate. I just want to hear it
15 one more time.

16 MS. CENCI: You sustained the objection to she
17 didn't give permission for him to photograph her?

18 THE REFEREE: Correct, yeah. Just ask the
19 question again. I think you're okay--

20 MS. CENCI: --Okay--

21 THE REFEREE: --I just want to hear it again.

22 MS. CENCI: If, in fact, Mr. Iannone did take a
23 photograph of yourself unclothed, without your knowledge,
24 do you know how that could have happened?

25 MR. DEROHANNESIAN: Object. Now I've got

276.

(L [REDACTED] - Direct)

1 additional objections. That is definitely form and it also
2 improperly summarizes the witness's testimony because she
3 did not know for sure who this person was and the
4 question--

5 MS. CENCI: --We have to get there, Your Honor--

6 MR. DEROHANNESIAN: --the question assumes a
7 fact not in evidence.

8 THE REFEREE: Yeah, it-- Actually, given that the
9 witness has testified that she had a relationship that was
10 romantic and intimate, I think it's-- frankly, I think it's
11 obvious that it could--

12 MS. CENCI: --Well--

13 THE REFEREE: --that it could-- that it could have
14 happened, not that it did. I have no idea how it happened,
15 but--

16 MS. CENCI: --So, just so I'm clear, Your Honor,
17 for the record, you sustained the objection as to whether or
18 not she had willingly provided this photo.

19 THE REFEREE: And she said-- Well, I think she
20 already said she didn't know and she didn't give the photo
21 to anybody. So, she said that very clearly, did not provide
22 the photo to anyone, and I think the testimony is Mr.
23 Iannone said-- showed her a photo but didn't say, "It's
24 you," he just showed her the photo. So, I think the record
25 is-- has what you want in it. We can't speculate because

277.

(L [REDACTED] - Direct)

1 unless the witness knows--

2 MS. CENCI: --I understand.

3 THE REFEREE: And maybe just ask her if she
4 knows.

5 BY MS. CENCI:

6 Q. Ms. L [REDACTED], you indicated that you had to interact with Judge
7 Miller at court after you learned about this photograph. Did you ever
8 encounter him in any social situation after learning of the photo?

9 MR. DEROHANNESIAN: Object to the form of
10 that. I think there was a statement in her question.

11 THE REFEREE: No, it's-- I'll overrule it.

12 A. Yes.

13 Q. When was that approximately?

14 A. It was a New Year's Eve party and Mr. Miller invited Mr. Iannone and
15 Mr. Iannone invited me to accompany Mr. Iannone to a New Year's
16 Eve party at Mr. Miller's mother's house.

17 Q. When you say "Mr. Miller," are you talking about Judge Miller?

18 A. Judge Miller, yes.

19 Q. The individual here in the room?

20 A. Correct.

21 Q. Is that right?

22 A. Right, yes. Correct.

23 Q. Did you interact with Judge Miller at that time?

24 A. Yes.

25 Q. Did you talk with him?

278.

(L [REDACTED] - Direct)

1 A. Briefly, yes.

2 Q. What, if anything, did he say to you or about you on that occasion?

3 MR. DEROHANNESIAN: I would object to that. It
4 doesn't relate to a charge in this case. It doesn't take place
5 in--

6 THE REFEREE: --Well, it's-- It's-- There's no
7 foundation for it.

8 MS. CENCI: Well, she said she-- she interacted
9 with the judge at the time.

10 THE REFEREE: Well, if they spoke-- Yeah, let's--
11 Did you speak with Judge Miller at that party?

12 THE WITNESS: Yes. Brief-- Yes.

13 BY MS. CENCI:

14 Q. What did he say to you?

15 MR. DEROHANNESIAN: I would object.

16 THE REFEREE: Overruled.

17 A. It was the normal, "Hey, how are you doing? Welcome to the New
18 Year's Eve party," and we sat down-- Mr. Iannone and I sat down and
19 had some dinner.

20 Q. Did the judge make any comments--

21 MR. DEROHANNESIAN: --Again, I object--

22 BY MS. CENCI:

23 Q. --about you--

24 MR. DEROHANNESIAN: --But--

25 THE REFEREE: --Let her ask the question.

279.

(L [REDACTED] - Direct)

1 BY MS. CENCI:

2 Q. Did the judge make any comments about you?

3 THE REFEREE: In-- Well-- In your presence.

4 MS. CENCI: Yes.

5 A. Yes.

6 Q. What did he say?

7 MR. DEROHANESSIAN: I would object to
8 comments taking place outside the court system, not related
9 to any charge in this case.

10 THE REFEREE: Overruled.

11 A. When Iannone-- Mr. Iannone and I were sitting at the kitchen table,
12 there was me, Mr. Iannone, and Judge Miller. I was taking some
13 meatballs from one of the trays and putting the meatballs on my plate
14 and Judge Miller said-- made a comment of, "D [REDACTED] really likes
15 David's balls."

16 Q. And how did that make you feel?

17 THE REFEREE: Over-- Sustained.

18 MR. DEROHANNESIAN: Yes.

19 BY MS. CENCI:

20 Q. Did you know anything about whether or not David Iannone had any
21 criminal record?

22 A. There-- The only record I knew of Mr. Iannone that-- in which he
23 informed me was that he was a JD, a juvenile delinquent, but his
24 records had been sealed.

25 Q. Did you know whether or not Mr. Iannone had a permit to-- a pistol

280.

(L [REDACTED] - Direct)

1 permit to carry a weapon?

2 MR. DEROHANNESIAN: Objection.

3 THE REFEREE: Sustained.

4 MS. CENCI: May I have a moment?

5 THE REFEREE: Certainly.

6 BY MS. CENCI:

7 Q. So, you're kind of far away, are you wearing a necklace today?

8 A. Yes. Yes. Yes.

9 Q. It is an elephant?

10 A. It is. I love elephants.

11 MR. DEROHANNESIAN: Objection. Irrelevant.

12 MS. CENCI: Well, it's not--

13 THE REFEREE: --No, overruled.

14 BY MS. CENCI:

15 Q. Do you have elephant necklaces or...?

16 A. I have a number of elephant necklaces.

17 Q. About how many?

18 A. Seven or eight from-- yes.

19 Q. And you said that the photograph that you saw that Mr. Iannone
20 showed you, the person was wearing an elephant necklace?

21 A. Yes, yes.

22 MR. DEROHANNESIAN: Objection.

23 THE REFEREE: No. Overruled.

24 BY MS. CENCI:

25 Q. Did you recognize the necklace itself?

281.

(L [REDACTED] - Direct)

1 A. I did.

2 Q. How did you recognize it?

3 A. My neck-- My Avon-- My necklace is-- My elephant necklaces are
4 from Avon and I remember that one because it was silver and it had a
5 little-- a little jade in it-- a little-- I don't know-- a little jewel in it
6 and it was pink. It's pink.

7 Q. Okay, so, not the necklace you're wearing today but a different one?

8 A. No. No.

9 Q. Okay, thank you.

10 THE REFEREE: Anything further from
11 Commission? Ms. Cenci, anything further?

12 MS. CENCI: Nothing further, Your Honor.

13 THE REFEREE: Ms. L [REDACTED], do you need a
14 break or can we continue?

15 THE WITNESS: No, I'm fine.

16 THE REFEREE: All right. Counsel? Do you need
17 a break?

18 MR. DEROHANNESIAN: Yeah, I think I'd take a
19 break.

20 THE REFEREE: Let's take five minutes.

21 THE WITNESS: Okay.

22 THE REFEREE: If you would please not discuss the
23 substance of your testimony with anyone. Then we'll take
24 five minutes.

25 (OFF THE RECORD)

282.

(L [REDACTED] - Cross)

1 THE REFEREE: Counsel for the Commission and
2 the Respondent are present. The Respondent is present and
3 our witness is here. Ms. L [REDACTED], you're still under oath,
4 so now--

5 THE WITNESS: --Yes--

6 THE REFEREE: --you're going to be questioned by
7 counsel for Judge Miller, Mr. DerOhannesian.

8 CROSS-EXAMINATION

9 BY MR. DEROHANNESIAN:

10 Q. Good morning, Ms. L [REDACTED].

11 A. Good morning.

12 Q. My name is Paul DerOhannesian. I'm an attorney and I represent
13 Judge Miller.

14 A. Okay.

15 Q. Is it okay if I ask you some questions about family court?

16 A. Certainly.

17 Q. As well as some of your testimony?

18 A. Yes.

19 Q. Prior to testifying today, are you aware there was a lawsuit filed by
20 Rachelle Gallagher and Mark Kachadourian?

21 A. Yes.

22 Q. Have you had an opportunity to review that prior to testifying?

23 A. No.

24 Q. Are you aware of the allegations in that lawsuit?

25 A. Yes.

283.

(L [REDACTED] - Cross)

1 Q. And you did not read the allegations?

2 A. No.

3 Q. Someone told you about the allegations?

4 A. Yes.

5 Q. And who is the person who told you about the allegations in that law--

6 A. --Mol-- Supreme Court Judge Molly Fitzgerald.

7 Q. And did she mention to you that you appeared to be identified in that
8 lawsuit?

9 A. Yes.

10 Q. Did you review the allegations made against you with your attorney
11 who's here today? Do you understand my question?

12 A. No, I don't.

13 Q. Okay. You said Judge Fitzgerald told you in the federal lawsuit there
14 was allegation, or allegations, against you, correct?

15 A. Not against-- Not against me.

16 Q. Okay. So, you're not aware of any statements that were attributed to
17 you in the federal lawsuit?

18 MS. CENCI: Your Honor, can I have an objection?

19 I'm looking, first of all, for the complaint. I'm not at all
20 sure she is named in the complaint--

21 MR. DEROHANNESIAN: --Not as a party-- I
22 think--

23 THE REFEREE: --Hold on just a second. Let her
24 finish the objection.

25 MS. CENCI: I think-- Did-- Was that marked--

284.

(L [REDACTED] - Cross)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. DEROHANNESIAN: --Yes--

MS. CENCI: --earlier as an exhibit?

MR. DEROHANNESIAN: Yes. It was.

THE REFEREE: It was not received, but I think it was marked.

MR. DEROHANNESIAN: It was marked.

MS. CENCI: Okay. May I see the exhibit?

THE REFEREE: I have a copy of--

MS. CENCI: --Because we're talking about it and it hasn't been shown to the witness.

THE REFEREE: Well, she said she-- She's testified she hasn't read it, so that's--

MS. CENCI: --Yes--

THE REFEREE: --We're not going to show it--

MS. CENCI: --But I think counsel may be mischaracterizing what it says.

MR. DEROHANESSIAN: Well, I would refer to the testimony yesterday.

THE REFEREE: Well, let's be clear. The witness has said that she has not read the complaint. She heard about it from Judge Fitzgerald. And why don't you ask another question?

BY MR. DEROHANNESIAN:

Q. Okay. What is the nature of what Judge Fitzgerald told you about the federal lawsuit?

285.

(L [REDACTED] - Cross)

1 A. She said that she could not go into detail except that there was
2 presently a sexual harassment suit against Judge Miller.

3 Q. Did she tell you anything else about any of the other factual
4 allegations in that lawsuit?

5 A. No.

6 Q. Okay. Has anyone discussed with you, whether a judge, a lawyer, or
7 anyone else, any of the allegations in that federal lawsuit?

8 MS. CENCI: Objection, Your Honor. This is
9 irrelevant. The witness is not a party to the lawsuit and it's
10 completely irrelevant whether or not anybody told her what
11 was in it.

12 THE REFEREE: Yeah, I'll allow this, as long--

13 MR. DEROHANNESIAN: --I'm going to come--
14 I'm finishing that--

15 THE REFEREE: --as you can get to the point right
16 now--

17 MR. DEROHANNESIAN: --I'm coming back in a
18 minute or two, after I finish that-- this predicate part of it.

19 THE REFEREE: All right.

20 BY MR. DEROHANNESIAN:

21 Q. Did you review any documents of any kind prior to testifying to
22 today?

23 A. No.

24 Q. Did you review any testimony prior to testifying today?

25 A. No.

286.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Cross)

- 1 Q. I want to ask about the team in family court and focusing on the
2 period of 2015 to '17--
- 3 A. --Okay--
- 4 Q. --while Judge Miller was there, and then some questions about the
5 team after Judge Miller left. So, you would have first met Judge
6 Miller in 2015?
- 7 A. Correct.
- 8 Q. And when you say you're assigned to a team, that means only one
9 judge?
- 10 A. Yes, correct.
- 11 Q. And you had a chance to see him in court--
- 12 A. --Yes--
- 13 Q. --interact with Judge Miller--
- 14 A. --Yes--
- 15 Q. --and during the time period that you were with him, did he treat you
16 well?
- 17 A. He did.
- 18 Q. And he treated you fairly?
- 19 A. He did.
- 20 Q. And during the time period that you worked with Judge Miller, did
21 you see him interact with other court personnel?
- 22 A. I did.
- 23 Q. And would you say that he treated other people, court personnel,
24 fairly?
- 25 A. He did.

287.

(L [REDACTED] - Cross)

- 1 Q. And nicely?
- 2 A. Yes, he did.
- 3 Q. And with respect to lawyers who appeared in front of him, was he nice
- 4 to lawyers?
- 5 A. Yes, he was.
- 6 Q. With respect to-- Family court can be very emotional?
- 7 A. Yes.
- 8 Q. Parties get upset?
- 9 A. Yes.
- 10 Q. And would you say that he handled the emotional nature of parties
- 11 well?
- 12 A. He did.
- 13 Q. And during this period that you were on the team, the chief clerk was
- 14 Debbi Singer?
- 15 A. Correct.
- 16 Q. And I think you mentioned the name Rebecca Vroman? Is that
- 17 correct?
- 18 A. Yes.
- 19 Q. And she was part of that team?
- 20 A. At one point, yes.
- 21 Q. At-- During a portion of 2015 to '17?
- 22 A. Yes.
- 23 Q. Okay. So, when we talk about court personnel, we're talking about
- 24 the team that you described, correct?
- 25 A. Correct.

288.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Cross)

- 1 Q. And that includes yourself, the chief clerk, and other clerks?
- 2 A. And other-- Yes.
- 3 Q. In the courtroom, I think you mentioned a court attorney can be
- 4 present?
- 5 A. Yes.
- 6 Q. As part-- And I think you ref-- you called that part of the team?
- 7 A. Part of the team.
- 8 Q. When you say "court attorney," who would that be during the period
- 9 that you worked with Judge Miller?
- 10 A. That would be Mark Kachadourian.
- 11 Q. So you know who Mark Kachadourian is?
- 12 A. Correct.
- 13 Q. Would Mark Kachadourian be in the courtroom sometimes?
- 14 A. Sometimes.
- 15 Q. When you say sometimes, was he there-- What-- How often would
- 16 he be there when Judge Miller was on the bench?
- 17 A. Not all the time. Sometimes. Sometimes on the record, sometimes off
- 18 the record.
- 19 Q. And after Judge Miller left, did you continue to have interactions with
- 20 Mr. Kachadourian?
- 21 A. No.
- 22 Q. Okay. So, you haven't worked with Mr. Kachadourian since Judge
- 23 Miller no longer works with you?
- 24 A. Correct.
- 25 Q. Fair to say? And during the time period that you worked with Mr.

289.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Cross)

1 Kachadourian, did you make observations of him?

2 A. I-- What-- Be more specific.

3 Q. Did you make any observations of Mr. Kachadourian and how he
4 viewed you or looked at you?

5 MS. CENCI: Objection.

6 THE REFEREE: You know what, I'll sustain it as to
7 form because I don't understand the question.

8 MR. DEROHANNESIAN: Okay.

9 THE REFEREE: So, re-- please rephrase it.

10 BY MR. DEROHANNESIAN:

11 Q. During the period that you worked with Mr. Kachadourian, did you
12 have any concerns about how Mr. Kachadourian was interacting with
13 you?

14 MS. CENCI: Objection.

15 THE REFEREE: Sustained.

16 BY MR. DEROHANNESIAN:

17 Q. At some point, did you have cause or concern to file any complaint
18 against any individual that you worked with in family court?

19 MS. CENCI: Objection. It's irrelevant, Your
20 Honor, unless it's about Respondent.

21 THE REFEREE: Well, that's a yes or no question.
22 So, did you file that complaint against anybody?

23 A. I-- Can you ask that again?

24 Q. Yes. While you worked, either with Judge Miller or after Judge
25 Miller, did you file any complaint with the Office of Court

290.

(L [REDACTED] - Cross)

1 Administration--

2 A. --No, no--

3 Q. --or State of New York?

4 A. No.

5 Q. Did you ever file a complaint involving Rachelle Gallagher?

6 MS. CENCI: Objection--

7 THE REFEREE: --Sustained--

8 MS. CENCI: --She said no.

9 BY MR. DEROHANNESIAN:

10 Q. Did you ever file a complaint involving Mark Kachadourian?

11 THE REFEREE: I think it's asked and answered, so,
12 she's already said no.

13 BY MR. DEROHANNESIAN:

14 Q. Outside of the State of New York, did you file any type of complaint
15 against Mr. Kachadourian or Rachelle Gallagher?

16 MS. CENCI: Your Honor, hasn't the question been
17 asked and answered?

18 THE REFEREE: Not that question, but what do you
19 mean "outside the State of New York"?

20 MR. DEROHANNESIAN: Well, I may have been
21 unduly restrictive in my question the first time.

22 THE REFEREE: You're talking about out-- In
23 another state-- Because I--

24 MR. DEROHANNESIAN: --Or any other body or
25 entity.

291.

(L [REDACTED] - Cross)

1 MS. CENCI: I object on the basis of relevance,
2 Your Honor.

3 THE REFEREE: I really don't understand the
4 question.

5 MR. DEROHANNESIAN: Okay.

6 BY MR. DEROHANNESIAN:

7 Q. Do you recall expressing an opinion at one time, whether Mr.
8 Kachadourian had treated you professionally?

9 MS. CENCI: Objection.

10 THE REFEREE: No, I'll allow it.

11 A. Ask again, please.

12 Q. Do you recall giving your opinion at one time as to whether or not Mr.
13 Kachadourian treated you professionally?

14 A. Professionally, or--

15 Q. --Yeah--

16 THE REFEREE: --Yes--

17 BY MR. DEROHANNESIAN:

18 Q. --respectfully.

19 A. Oh, he's resp-- Yeah, he's treated me respectfully.

20 THE REFEREE: The question was, did you ever
21 express an opinion whether he had done so? That was the
22 question. Did you ever tell anybody that you thought he
23 either had or hadn't treated you respectfully?

24 THE WITNESS: No.

25

292.

(L [REDACTED] - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. And did you ever tell-- You know Rebecca Vroman, correct?

3 A. Correct.

4 Q. And has she treated you well?

5 A. Yes.

6 Q. And professionally?

7 A. Mostly.

8 Q. And when you say "mostly," why can't you say completely?

9 MS. CENCI: Your Honor--

10 THE REFEREE: --Do you have an objection?

11 MS. CENCI: Objection.

12 THE REFEREE: Sustained.

13 BY MR. DEROHANNESIAN:

14 Q. And have you ever filed a complaint against Ms. Vroman?

15 MS. CENCI: Objection.

16 THE REFEREE: Sustained.

17 BY MR. DEROHANNESIAN:

18 Q. Have you been-- expressed an opinion concerning how Rebecca
19 Vroman has interacted with you?

20 MS. CENCI: Objection.

21 THE REFEREE: Sustained.

22 BY MR. DEROHANNESIAN:

23 Q. Did you ever tell Ms. Vroman that you were going to physically harm
24 Ms. Gallagher?

25 MS. CENCI: Objection.

293.

(L [REDACTED] - Cross)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE REFEREE: Sustained.

MR. DEROHANNESIAN: Can I be heard on that?

THE REFEREE: Yeah.

MR. DEROHANNESIAN: Yesterday, there was testimony from Mr. Kachadourian that Ms. L [REDACTED] had made a threat against them--

MS. CENCI: --Objection--

MR. DEROHANNESIAN: --when I confronted him with paragraph 87 of the federal complaint. Paragraph 87. He identified that allegation of the complaint pertaining to this witness.

THE REFEREE: You know what, overruled. I'm going to allow that. I-- That--

MR. DEROHANNESIAN: --It did--

THE REFEREE: --That refreshes my memory about what was testified to yesterday.

MS. CENCI: Your Honor, may I have an objection? We have been referring to this federal complaint, which is not in evidence, I believe it was marked as Respondent's Exhibit N in for identification. Your Honor has it in front of him. It's being referred to. It's being mischaracterized. This witness's name does not appear in that document.

MR. DEROHANNESIAN: Who is it?

THE REFEREE: Just a minute. Finish, go ahead.

MS. CENCI: That's my objection.

294.

(L [REDACTED] - Cross)

1 THE REFEREE: All right. It's my recollection of
2 the testimony yesterday, independent of the unadmitted
3 exhibit, that this event occurred, and that is my
4 understanding of this question. It is independent of-- This
5 is a reference.

6 MS. CENCI: But now counsel is try-- is asking for
7 hearsay.

8 MR. DEROHANNESIAN: No.

9 THE REFEREE: You know what, why don't you
10 get to the point and just ask the question directly?

11 BY MR. DEROHANNESIAN:

12 Q. My question was, did you make a statement to Rebecca Vroman
13 where you threatened the physical safety of Mark Kachadourian?

14 MS. CENCI: That objection was sustained, Your
15 Honor.

16 MR. DEROHANNESIAN: Not yesterday.

17 THE REFEREE: I don't think so.

18 MR. DEROHANNESIAN: No, yeah.

19 THE REFEREE: I will allow it--

20 MS. CENCI: --Just--

21 THE REFEREE: --That's a very direct question.

22 MS. CENCI: Okay.

23 BY MR. DEROHANNESIAN:

24 Q. Do you recall what I just asked you?

25 A. Can you repeat that-- the question?

295.

(L [REDACTED] - Cross)

1 Q. Yeah, sure. Yeah, that's-- with all this kind of noise, it's hard so, feel
2 free to ask me to repeat anything. Did you, at any time, say to
3 Rebecca Vroman, that you were going to physically harm Mr.
4 Corcoran [sic]?

5 A. Kachadourian.

6 THE REFEREE: Kachadourian.

7 BY MR. DEROHANNESIAN:

8 Q. Kachadourian.

9 A. No.

10 Q. Did you, at any time, say to Rebecca Vroman that you were going to
11 physically harm Rachelle Gallagher?

12 A. No.

13 Q. You discussed how you came to meet Mr. Iannone, do you recall that?

14 A. Yes.

15 Q. With-- Through Judge Miller, you said?

16 A. Yes.

17 Q. And when you met Mr. Iannone, Rachelle Gallagher was present?

18 A. Yes-- No. No, no. When-- No, that's incorrect. I believe I said
19 when I first spoke to Mr. Iannone on the telephone, Mr. Miller--
20 Judge Miller's telephone, Rachelle Gallagher was present. On the
21 telephone.

22 Q. And Ms. Gallagher was part of the conversation?

23 A. She was not part of the conversation.

24 Q. You recall you testified before the Commission on Judicial Conduct,
25 correct?

296.

(L [REDACTED] - Cross)

1 A. Correct.

2 Q. You did so on two occasions?

3 A. Correct.

4 Q. I'm going to ask you about testimony in October of 2017, and ask you
5 if you were asked these questions and did you make these answers?

6 MS. CENCI: Page, please.

7 THE REFEREE: Yep.

8 BY MR. DEROHANNESIAN:

9 Q. Page 9, line 1:

10 "Q. Did Richard Miller introduce to Mr. Iannone?

11 "A. He did not directly.

12 "Q. Did he indirectly?

13 "A. Indirectly.

14 "Q. How did that come about?

15 "A. I asked Judge Miller and his secretary, Rachelle
16 Gallagher, if they knew of anybody who did tile work,
17 because I needed some tile work done in my bathroom, and
18 they said, 'Well, yes, we do know a good person to give you
19 an estimate. David Iannone.'"

20 Did you make those answers to those questions?

21 A. I did.

22 Q. And that was the first time that you testified in front of the
23 Commission?

24 A. Correct.

25 MS. CENCI: Objection.

297.

(L [REDACTED] - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. In October 2017?

3 THE REFEREE: What's the objection?

4 MS. CENCI: It was not the first time.

5 BY MR. DEROHANNESIAN:

6 Q. I'm sorry. That was the second time that you testified before the
7 Commission. No-- That was the first time.

8 A. That's the first time, yeah. You were correct.

9 MR. DEROHANNESIAN: See what happens when
10 I listen to you?

11 MS. CENCI: I beg your pardon.

12 MR. DEROHANNESIAN: No.

13 MS. CENCI: You were right, I'm sorry. I withdraw
14 the objection.

15 THE REFEREE: Okay, next question.

16 MR. DEROHANNESIAN: Only because there were
17 two times that I wanted to--

18 THE REFEREE: --That's fine--

19 MR. DEROHANNESIAN: --That's why I'm--

20 THE REFEREE: --That's fine.

21 MS. CENCI: I'm sorry. I apologize.

22 MR. DEROHANNESIAN: That's okay.

23 BY MR. DEROHANNESIAN:

24 Q. And Mr. Iannone, in fact, you would describe as a good handyman?

25 A. Yes.

298.

(L [REDACTED] - Cross)

1 Q. He's good around the house?

2 A. Yes.

3 Q. He cooks?

4 THE REFEREE: Sustained.

5 BY MR. DEROHANNESIAN:

6 Q. Mr. Iannone did do a lot around the house, didn't he?

7 A. No.

8 Q. No? Okay. You would describe him as honest?

9 A. Not entirely.

10 Q. Well, hardworking?

11 A. Yes.

12 MS. CENCI: Your Honor, I have an objection to
13 asking--

14 THE REFEREE: --Sustained.

15 BY MR. DEROHANNESIAN:

16 Q. Decent?

17 MS. CENCI: Objection.

18 THE REFEREE: Sustained.

19 BY MR. DEROHANNESIAN:

20 Q. And would it be fair to say that Mr. Iannone helped you in many
21 ways?

22 A. No.

23 Q. Would it be fair to say that he helped you get through some of your
24 issues and problems?

25 A. No.

299.

(L [REDACTED] - Cross)

1 MS. CENCI: Your Honor, I object.

2 THE REFEREE: Sustained.

3 BY MR. DEROHANNESIAN:

4 Q. Asking you-- Let me ask you about family court and in terms of the
5 environment and the people that you worked with. Would it be fair to
6 say that you would describe that environment as a snake pit?

7 A. Yes, at times.

8 Q. And that's a word that you've used, correct?

9 A. Yes, that-- Yes, correct.

10 Q. And when you described the family court environment that you
11 worked in as a snake pit, you would describe it as mean?

12 A. It can be mean.

13 Q. Vindictive?

14 A. It can be.

15 Q. And awful?

16 A. It can be.

17 Q. Those are words that you have uttered about the work environment
18 when you were in family court, correct?

19 A. Correct.

20 MS. CENCI: Can we have a timeframe, Your
21 Honor?

22 THE REFEREE: Can you give us that? Are you
23 talking about during the time you were on Judge Miller's
24 team or was this throughout your entire history of family
25 court?

300.

(L [REDACTED] - Cross)

1 THE WITNESS: Not the entire history, but I would
2 say the last-- the last few years-- couple few years.

3 THE REFEREE: Preceding your time on Judge
4 Miller's team, as well?

5 THE WITNESS: At times, yes. At times, yes.

6 BY MR. DEROHANNESIAN:

7 Q. And after you left Judge Miller, too, correct?

8 A. No. I-- I'm back with Judge Pines, on Judge Pines' team, and it's--
9 it's much better.

10 Q. But, in 2017, you described the environment as mean, correct?

11 A. Yes.

12 Q. As vindictive?

13 A. Yes.

14 Q. And awful?

15 A. And awful.

16 Q. And that was after Judge Miller left family court that you made that
17 description?

18 A. Yes.

19 Q. I think you took-- You've had-- I think you testified Judge
20 Fitzgerald, the supreme court judge, spoke to you about the federal
21 lawsuit, correct?

22 A. Correct.

23 Q. And then in July of 2017, she brought you in and told you there was
24 an allegation, correct?

25 A. Correct.

301.

(L [REDACTED] - Cross)

1 Q. And, I think you said that she told you that you were dating a criminal,
2 is that correct?

3 A. I don't--

4 THE REFEREE: --I don't think she said that at all.

5 BY MR. DEROHANNESIAN:

6 Q. Did she say that to you? Did Judge Fitzgerald tell you that you were
7 dating a criminal?

8 A. No.

9 Q. She said there was a sexual harassment charge filed against Judge
10 Miller?

11 A. Correct.

12 Q. When you met with the inspector general, that was separate from the
13 meeting with Judge Fitzgerald?

14 A. Correct.

15 Q. And the interviewer told you that Mr. Iannone had a juvenile criminal
16 record?

17 A. Correct.

18 Q. Did you know anything about that? When she said that to you?

19 A. I knew about his juvenile record but not criminal.

20 Q. You understand the difference?

21 A. Yes.

22 Q. And that's why you said you knew about a juvenile record--

23 A. --But not the criminal record--

24 Q. --a criminal record.

25 A. Right.

302.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Cross)

1 Q. So, did the interview ever say to you what this alleged crime was or
2 not?

3 A. No.

4 Q. She just left it there, right?

5 A. Left it there.

6 Q. And did you ever find out whether or not Mr. Iannone had any
7 criminal record of any kind?

8 A. No.

9 Q. Did that have an impact on you when you heard that?

10 MS. CENCI: Heard what?

11 MR. DEROHANNESIAN: I withdraw it.

12 THE REFEREE: Just object.

13 MR. DEROHANNESIAN: Yeah.

14 MS. CENCI: Objection.

15 THE REFEREE: Sustained.

16 BY MR. DEROHANNESIAN:

17 Q. You had described to the inspector general that Mr. Iannone had been
18 really good to you, correct?

19 A. Correct.

20 Q. And I think with respect to the time you say you saw Mr.-- Judge
21 Miller at some type of event, what-- that was New Year's?

22 A. New Year's Eve, yes.

23 Q. And during that, you said there was a conversation, correct?

24 A. Yes.

25 Q. And I believe you said that Judge Miller said something about balls,

303.

(L [REDACTED] - Cross)

1 correct?

2 A. Correct.

3 Q. Now, you have been asked about that statement before, correct? Did
4 you give testimony in front of the Commission concerning that
5 conversation?

6 A. I don't think I did. I don't think I did. Yes-- Or, did-- Yes, I did.
7 I'm sorry. Yes, I did. Yes, I did. Yes, the second time that I met
8 with--

9 Q. --Yes.

10 A. Yeah, okay. Sorry. Yes.

11 Q. And when you testified-- And have you had a chance to review that
12 before testifying today?

13 A. Yes.

14 Q. So-- So, you did look at that testimony?

15 A. Yes. The transcripts, yes.

16 Q. Okay, when did you do that?

17 A. We did that just last Wednesday, I believe.

18 Q. And had you-- Because I had thought I had asked you earlier if
19 looked at anything to prepare for today? Do you remember that
20 question?

21 A. I don't know as if it was worded if I-- to prepare for today but--

22 Q. --Okay, well, is there anything else that you looked at besides your
23 testimony on March 28, 2018?

24 THE REFEREE: Do you understand the question?

25 THE WITNESS: No. I don't--

304.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Cross)

1 THE REFEREE: What he wants to know is, in order
2 to come and testify today, what things, if any, did you
3 review to help refresh your recollection or to prepare so that
4 you could testify today? That's what he wants to know.

5 A. The transcripts.

6 Q. Anything else?

7 A. No.

8 Q. And when you testified about the conversation with Judge Miller on
9 March 28, 2018, you used the phrase and sentence that, "D [REDACTED] really
10 likes David's meatballs," correct?

11 A. His meatballs, his balls. Yes.

12 Q. Well, no. This is important. When you testified before the
13 Commission, did you testify that the phrase that you heard was,
14 "D [REDACTED] really likes David's meatballs"?

15 A. Okay.

16 Q. You did?

17 A. Yes.

18 Q. Okay. It wasn't the phrase that you used today, you agree?

19 A. I agree.

20 MR. DEROHANNESIAN: Can I have just a
21 minute?

22 THE REFEREE: Sure.

23 BY MR. DEROHANNESIAN:

24 Q. During that New Year's Eve event, people were eating?

25 A. Correct.

305.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Cross)

- 1 Q. And there was a food spread on the table?
- 2 A. Correct.
- 3 Q. Of many different items, correct?
- 4 A. Correct.
- 5 Q. Now, different people brought different things to the party?
- 6 A. Correct.
- 7 Q. And it wasn't just you, Mr. Iannone, and Judge Miller, correct?
- 8 A. Correct.
- 9 Q. There were many people there, correct?
- 10 A. Correct.
- 11 Q. And it was a New Year's Eve celebration, correct?
- 12 A. Correct.
- 13 Q. Now, with respect to the photo that you looked at, at one point, this
- 14 was a photo that was-- Mr. Iannone-- Excuse me, Mr. Iannone told
- 15 you, that with respect to that photo, it was something that was shown,
- 16 I believe you said, at a restaurant?
- 17 A. Yes.
- 18 Q. And he also told you that that photo was never forwarded to anyone,
- 19 correct?
- 20 A. Correct.
- 21 Q. And during your relationship, there were times that the two of you
- 22 would engage in mutual activity, which included videography?
- 23 A. Correct.
- 24 Q. Okay, and you participated in that, correct?
- 25 A. Correct.

306.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Redirect)

1 Q. I think that's it for our questions. Let me just check.

2 THE REFEREE: Anything further from
3 Respondent?

4 MR. DEROHANNESIAN: One quick thing I want
5 to check. I have it, here it is. I have one brief item. No
6 further questions, Your Honor. Thank you.

7 THE REFEREE: Ms. Cenci?

8 MS. CENCI: Thank you.

9 REDIRECT EXAMINATION

10 BY MS. CENCI:

11 Q. Ms. L [REDACTED], you were asked by Respondent's counsel about how
12 you felt Judge Miller treated you in the courtroom?

13 A. Yes.

14 Q. Did he ever make any comments to you of a sexual nature?

15 MR. DEROHANNESIAN: Objection.

16 THE REFEREE: Overruled.

17 A. No.

18 Q. When you-- Did he make some comment about it being hot in the
19 room?

20 MR. DEROHANNESIAN: Objection.

21 THE REFEREE: That-- No, I didn't hear the
22 question.

23 BY MS. CENCI:

24 Q. Did he make some comment about being hot in the courtroom?

25 THE REFEREE: You have an objection?

307.

(L [REDACTED] - Redirect)

1 MR. DEROHANNESIAN: Yes.

2 THE REFEREE: Overruled.

3 A. Yes.

4 Q. What did he say and when, if you can recall?

5 A. It was--

6 MR. DEROHANNESIAN: Objection, unless the
7 witness hasn't testified she has direct knowledge of this.

8 THE REFEREE: Well-- That's my understanding.
9 Is this something you heard?

10 THE WITNESS: I was--

11 THE REFEREE: --If you heard it--

12 THE WITNESS: --I was in the courtroom and I
13 heard it.

14 THE REFEREE: Okay. Give us a time frame, as
15 best as you can.

16 THE WITNESS: As best I can, summer of 2017.

17 THE REFEREE: And what did you hear?

18 THE WITNESS: I heard my-- At the time, my
19 supervisor, Amanda Hendricks, was in the courtroom
20 showing me how to prepare a DS-- a department of social
21 services TOP, a temporary order of protection, so I was
22 concentrating on Amanda Hendricks showing me how to
23 prepare the DSS TOP. Afterward, Amanda told me--

24 MR. DEROHANNESIAN: --This is the problem,
25 Your Honor.

308.

(L [REDACTED] - Redirect)

1 THE REFEREE: This is the--

2 MS. CENCI: That's not our--

3 MR. DEROHANNESIAN: --This is the exact--

4 THE REFEREE: --Just a second. Just a second.

5 THE WITNESS: Afterward, Amanda asked me if I
6 would want to file a complaint against Judge Miller--

7 THE REFEREE: --Okay, that we're going to not
8 hear. Did you hear Judge Miller say-- say anything about it
9 being hot in the courtroom?

10 THE WITNESS: Yes.

11 THE REFEREE: That's what I want to hear. What
12 did Judge Miller say?

13 THE WITNESS: He continually said, "It's hot in
14 here. It's really hot in here."

15 BY MS. CENCI:

16 Q. Did he reference you in any way--

17 MR. DEROHANNESIAN: --Objection. Now it's
18 leading and suggestive.

19 THE REFEREE: Yeah, I--

20 MR. DEROHANNESIAN: --And improper redirect.

21 THE REFEREE: Well, it is that, but--

22 MS. CENCI: --Well, Your Honor, counsel asked
23 about how she was treated in the courtroom.

24 MR. DEROHANNESIAN: Well, now she's trying
25 to impeach her own witness, too, because--

309.

(L [REDACTED] - Redirect)

1 MS. CENCI: --No--

2 THE REFEREE: --No, no. I don't think that's-- I
3 don't think that's it at all. You heard Judge Miller say, "It's
4 hot in here"?

5 THE WITNESS: Correct.

6 THE REFEREE: Was it hot, temperature wise, in
7 the courtroom?

8 THE WITNESS: To me, yes, it was.

9 THE REFEREE: Okay, anything further?

10 BY MS. CENCI:

11 Q. When you heard Judge Miller say, "It's hot in here," did you hear him
12 say anything else, particularly in reference to you?

13 MR. DEROHANNESIAN: Objection.

14 THE REFEREE: Overruled.

15 A. He would say, "Maybe it's because of D [REDACTED]."

16 Q. When in reference to when you found out about this naked photograph
17 did this occur? Before or after?

18 A. Before. Before. Yes.

19 Q. Can you say about how much before? I think you gave a timeframe.

20 A. It was the summer, so it was a little bit before-- it must have been a
21 little bit before, the same month, maybe? Was it July of 2017?

22 Q. Okay. Now, you were also asked some questions about how you felt
23 Judge Miller treated other people in the courtroom, particularly in
24 reference to Rebecca Vroman. Were you always present when Ms.
25 Vroman was in the courtroom?

310.

(L [REDACTED] - Redirect)

1 A. No.

2 Q. So, there may have been other occasions when she was there with the
3 judge and you were not, is that correct?

4 A. Correct.

5 Q. And you-- It's fair to say you wouldn't know how the judge treated
6 her on those occasions?

7 MR. DEROHANNESIAN: Objection. Objection.

8 THE REFEREE: Yeah, I can answer that for her.

9 Yes, she would not be aware of that.

10 BY MS. CENCI:

11 Q. You were also asked some questions about your knowledge of David
12 Iannone's criminal record, if any, is that right?

13 A. Correct.

14 Q. Your Honor, may I show the witness Exhibit 1A, for identification?

15 THE REFEREE: No.

16 MS. CENCI: Why not?

17 THE REFEREE: Because it's irrelevant to any of
18 the charges that are pending before Judge Miller, and if I
19 understand correctly, you're looking at Exhibit 1A and 1B,
20 is that--

21 MS. CENCI: --Well, 1C. I'd also like to show her
22 1C, and ask her if she had any knowledge as to those events
23 reflected in that?

24 THE REFEREE: I think she said, as to the predicate
25 for 1C, I think she said she did not know about that, if I

311.

(L [REDACTED] - Redirect)

1 reca--

2 MS. CENCI: --I don't believe she was asked about
3 the revocation of Mr. Iannone's--

4 THE REFEREE: --Yeah, but why--

5 MS. CENCI: --pistol permit and when.

6 THE REFEREE: I understand, but what relev--

7 Let's assume that she knew it, or she didn't know it. What
8 is the relevance to the charges against Judge Miller?

9 MS. CENCI: She was asked about it by
10 Respondent's counsel.

11 THE REFEREE: I don't know why he asked about
12 it. I don't think it's relevant to any of the charges.

13 MS. CENCI: All right.

14 BY MS. CENCI:

15 Q. And in terms of any videography you may have made with Mr.
16 Iannone, did you ever give him or anyone else permission to
17 disseminate any of that?

18 A. Absolutely not.

19 MR. DEROHANNESIAN: Objection.

20 THE REFEREE: Overruled.

21 MS. CENCI: Thank you. Nothing further.

22 THE REFEREE: Anything further by Respondent's
23 counsel?

24 MR. DEROHANNESIAN: Yes.

25 THE REFEREE: Go ahead.

312.

(L [REDACTED] - Recross)

1 RECROSS-EXAMINATION

2 BY MR. DEROHANNESIAN:

3 Q. Is it fair to say the heat in the courtroom was a subject of discussion
4 on many occasions?

5 A. Yes.

6 Q. Or would-- You know people talked about how it would be hot in the
7 courtroom?

8 A. Yes.

9 Q. Okay. That wasn't-- That wasn't just one time when the question of
10 the temperature in the courtroom came up, fair to say? Do you
11 understand my question?

12 A. I-- Can you ask it again?

13 Q. Yeah.

14 A. Only because--

15 Q. --Let me just ask it again.

16 A. Okay. Okay, go ahead.

17 Q. Did people on the team talk about the heat in the courtroom? Let me
18 try again.

19 A. Yeah.

20 Q. Okay. That's okay, if you don't understand, please say so.

21 A. Well, no--

22 Q. --No, no, that's okay. Now, is it-- did people say, "It's hot in the
23 courtroom"?

24 A. Say it again.

25 Q. Would people on the team, whether it's the judge or a clerk, talk about

313.

(L [REDACTED] - Recross)

1 the temperature in the courtroom from time to time?

2 A. Time to time.

3 THE REFEREE: Yes? Time to time?

4 THE WITNESS: Yes, yes. Time to time.

5 BY MR. DEROHANNESIAN:

6 Q. And there was certainly one occasion that you remember it being
7 warm in the hot-- courtroom, correct?

8 A. Correct.

9 Q. At least once.

10 A. At least once, yes.

11 Q. If it's not every day, but more than one or two times, correct? Fair to
12 say?

13 A. Fair to say.

14 Q. Now, Ms. Cenci asked you about a conversation or statement that you
15 said Judge Miller made about "it's hot in here"?

16 A. Correct.

17 Q. And then something that he said after that about you being in the
18 courtroom, correct?

19 A. Correct.

20 Q. You did not hear that statement, correct?

21 A. I heard that statement.

22 Q. And you were not listening at that time, were you?

23 A. I was listening--

24 MS. CENCI: Objection.

25 A. --because I heard the statement.

314.

(L [REDACTED] - Recross)

1 MS. CENCI: Withdrawn.

2 BY MR. DEROHANNESIAN:

3 Q. You were asked about that comment before when you testified,
4 correct?

5 THE REFEREE: Today or at another proceeding?

6 MR. DEROHANNESIAN: At another proceeding.

7 A. Say again? When? What--

8 Q. --Okay. You said you reviewed your testimony in front of the
9 Commission, correct?

10 A. Correct.

11 Q. You reviewed your testimony of March 28, 2018, correct?

12 A. Correct.

13 Q. And when you testified you were asked about a statement concerning,
14 "It's hot in here," correct?

15 A. Correct.

16 Q. You were with your lawyer that day, correct?

17 A. When-- Correct.

18 Q. The lawyer who is here today at your side, correct?

19 A. Correct. Correct.

20 Q. You took an oath, correct?

21 A. Correct.

22 Q. And you swore to tell the truth--

23 A. --Correct--

24 Q. --just like you did today, correct?

25 A. Correct.

315.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(L [REDACTED] - Recross)

1 Q. Were you asked this question, and did you make this answer under
2 oath on March 28, 2018? It's a long answer. I'm going to go slowly.
3 If you want me to stop, please say so.

4 A. Mm-hmm.

5 Q. This is page 11, and in fact, because it's long, let me mark-- give you
6 a copy to follow along.

7 THE REFEREE: You know what, just ask the
8 question. Give the question and then the answer.

9 BY MR. DEROHANNESIAN:

10 Q. This is page 11, March 28, 2018, line 12:

11 "Q. Okay, what? Approximately when did this
12 occur?

13 "A. It was before-- It was before Ms-- Judge Miller
14 was ousted-- was taken off the bench. I was having
15 difficulty preparing a department of social services, DSS
16 TOP, temporary order of protection. I'm a grade 12. I
17 opted to ask a grade 16, a supervisor, to assist, because I
18 was unsure as to how to proceed and I didn't want to make
19 any mistakes. Amanda, we call Mandy, Mandy Hendricks,
20 I called Mandy. Mandy came up. She was assisting me. It
21 was off the record. Mr.-- Or, Judge Miller was still on the
22 bench, nobody else was in the courtroom, and I was
23 preoccupied trying to make sure-- I was preoccupied with
24 trying to have to prepare the temporary order of protection,
25 and I guess Judge Miller was making comments about, 'It's

316.

(L [REDACTED] - Redirect)

1 hot in here. D [REDACTED] s in the courtroom. It's just really hot in
2 here.' Afterward, Mindy [sic] had prepared the TOP.
3 Mandy and I went downstairs and Mandy said she asked
4 me, 'What? Did you hear what Judge Miller said?' I said,
5 'No, I didn't. I was preocc-- dash-- I didn't. No. No. I
6 was preoccupied with how to prepare the TOP.' She said
7 he kept commenting about how hot it was in the courtroom
8 and Mandy commented that she said, 'I feel it's
9 inappropriate that Judge Miller was saying those things to
10 you,' and she suggested I file a complaint. I said, 'No, I
11 can't do that. No, because I wasn't really listening to what
12 he was saying. I was--'

13 Did you make that answer to that question under oath on March 28,
14 2018?

15 A. Yes, I did.

16 Q. Thank you.

17 THE REFEREE: Anything further? Ms. Cenci?

18 MS. CENCI: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. CENCI:

21 Q. The passage that Mr. DerOhannesian just read to you, you told Mandy
22 no, you didn't hear what the judge said, is that true? What you said to
23 her?

24 MR. DEROHANNESIAN: Object--

25 THE REFEREE: --One more time?

317.

(L [REDACTED] - Redirect)

1 BY MS. CENCI:

2 Q. Did you tell this Mandy that no, you hadn't heard what Judge Miller
3 had said?

4 MR. DEROHANNESIAN: Objection.

5 BY MS. CENCI:

6 Q. Did you say that to her?

7 A. I did.

8 Q. Okay. But, did you in fact hear what he had said?

9 MR. DEROHANNESIAN: Objection.

10 THE REFEREE: No, overruled.

11 A. I did.

12 Q. Why did you tell her no, you hadn't heard what he said?

13 MR. DEROHANNESIAN: Objection.

14 THE REFEREE: No, I'll hear it.

15 A. I was under the impression that Amanda Hendricks wanted me to
16 pursue a complaint against Judge Miller and I just-- I said nope.

17 Q. You did not want to be involved that, is that fair to say?

18 A. I did not want to do that, no.

19 Q. Thank you. Nothing further.

20 MR. DEROHANNESIAN: Nothing else, Your
21 Honor, thank you.

22 THE REFEREE: I do have a question. Ms.

23 L [REDACTED] about the photograph that you saw in December
24 of 2017, did you ever see that photograph any other time
25 than that one occasion?

318.

(L [REDACTED] - Redirect)

1 THE WITNESS: I did not.

2 THE REFEREE: Was it you in the photograph?

3 THE WITNESS: I don't know.

4 THE REFEREE: Okay. Thank you. Based on that--
5 those two questions, Commission, anything further?

6 MS. CENCI: Nothing further.

7 MR. DEROHANNESIAN: No--

8 THE REFEREE: --Respondent?

9 MR. DEROHANNESIAN: No.

10 THE REFEREE: Ms. L [REDACTED], thank you very
11 much for coming. I just-- Could you-- I forgot to do this.
12 Could you just give your appearance?

13 MS. LYONS: Certainly. Martha--

14 THE REFEREE: --Name, firm, and address.

15 MS. LYONS: Martha A. Lyons. I'm an attorney
16 here in Binghamton. I own the firm. It's 188 Court Street,
17 Binghamton, New York, 13901.

18 THE REFEREE: Thank you. I should have done
19 that earlier, and I apologize. Ms. L [REDACTED], thank you for
20 coming. These proceedings, just a reminder, are
21 confidential. Please don't discuss your testimony.

22 THE WITNESS: (Unintelligible), thank you.

23 THE REFEREE: Thank you. Ms. Cenci, you have
24 another witness? Do you need a-- Do you need any time or
25 can we just go right to the next one? You tell me.

319.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: We're all set. Mr. Pedrotty is going to
2 call the next witness.

3 THE REFEREE: That's fine. Anybody need time?

4 MR. DEROHANNESIAN: No, I don't think so.

5 THE REFEREE: All right, let's-- Next witness.

6 MR. PEDROTTY: Rebecca Vroman.

7 MS. CENCI: Is this mine? Thank you.

8 THE REFEREE: All right, Ms. Vroman, could you
9 raise your right hand, please?

10 MS. VROMAN: Sure.

11 THE REFEREE: Do you swear or affirm under the
12 penalty of perjury that the testimony you are about to give is
13 the truth, the whole truth, and nothing but the truth?

14 MS. VROMAN: I do.

15 R E B E C C A V R O M A N,
16 having been duly sworn, was examined and testified as follows:

17 THE REFEREE: Okay, have a seat. Ms. Vroman,
18 my name is Robert Barrer. I'm a Referee appointed by the
19 Commission on Judicial Conduct to conduct these
20 proceedings, and you're here to give testimony under oath.
21 It's important when you testify that you do so verbally, as
22 opposed to shaking your head or nodding.

23 THE WITNESS: Correct.

24 THE REFEREE: Or saying "uh-huh" because we
25 are recording everything, so we need to know exactly what

320.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Direct)

1 everyone says. If there is a question that's asked and then
2 there's an objection, please wait until I either overrule or
3 sustain the objection, and with that, Mr. Pedrotty has some
4 questions for you for the Commission.

5 MR. PEDROTTY: Thank you very much.

6 DIRECT EXAMINATION

7 BY MR. PEDROTTY:

8 Q. Good morning, Ms. Vroman.

9 A. Good morning.

10 Q. Thank you very much for waiting so patiently.

11 A. No problem.

12 Q. Where do you reside, in what city or township?

13 A. Binghamton, New York.

14 Q. Is that in Broome County?

15 A. Yes.

16 Q. How long have you lived in Binghamton, New York for?

17 A. Since 2001.

18 Q. And are you employed?

19 A. Yes, I am.

20 Q. With whom are you employed?

21 A. Broome County Family Court.

22 Q. How long have you been employed at Broome County Family Court?

23 A. I've been in Broome County Family Court since October of 2016. I'm
24 sorry, August. August of 2016.

25 Q. And when you started your employment there, what was your

321.

(Vroman - Direct)

- 1 position?
- 2 A. I was the court assistant for Judge Miller.
- 3 Q. Is that in the Broome County Family Court?
- 4 A. Yes.
- 5 Q. And prior to your employment with the Broome County Family Court,
- 6 did you have any other court experience?
- 7 A. I started actually in October of 2014, at Tompkins County Family
- 8 Court.
- 9 Q. And what did you do there?
- 10 A. I was a court assistant for Judge Mill-- Or, Judge Rowley and Judge
- 11 Cassidy.
- 12 Q. As a supervising court assistant for Broome County Family Court, are
- 13 you a grade 16, is that correct?
- 14 A. Correct, yes.
- 15 Q. And you know Judge Richard Miller?
- 16 A. Yes, I do.
- 17 Q. How do you know him?
- 18 A. I worked for him.
- 19 Q. During what period of time did you work for him?
- 20 A. August of 2016 through June of 2017.
- 21 Q. What were your duties and responsibilities for Judge Miller?
- 22 A. I was responsible for being in the courtroom with him, running the
- 23 recording, making sure I schedule all of his court appearances,
- 24 supervising the team for-- to make sure all the paperwork and data
- 25 entry and every-- all the orders and everything were processed.

322.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Direct)

1 Q. When you say "supervising his team," what are you referring to,
2 specifically?

3 A. Each team in Broome County Family Court, it consists of three
4 people. There's myself, the supervising 16, and two grade 12s, who
5 work underneath me to do all the back office paperwork and stuff that
6 needs to be done.

7 Q. Who were the grade 12s at that time?

8 A. When I first started it was Eric Johnson and D [REDACTED] L [REDACTED], and then
9 I've also had other people in there. Erin O'Connell was transferred in
10 and Eric Johnson transferred out.

11 Q. How would you describe your relationship-- working relationship
12 with Judge Miller, at least initially when you started there?

13 A. When I first started, we got along with each other very well. We had a
14 good working relationship, we understood each other. We worked
15 well together. We communicated well with each other, and I thought
16 we worked very well as a team.

17 Q. Did that change at some point?

18 A. Yes, it did.

19 Q. Now, as supervising court assistant for Judge Miller, did you have
20 occasion to assist him in his capacity as the assigned emergency intake
21 judge?

22 A. Yes, I did.

23 Q. Can you describe what that entails? What is an emergency intake
24 judge?

25 A. Every week it switches off and on between the judges that are in

323.

(Vroman - Direct)

1 family court. So, one week a month, we had-- we were assigned to
2 take any emergency petitions that were filed and we would have to
3 review them and then the judge would determine whether or not to
4 hear that case at that time or to schedule it to be heard at another time.

5 Q. What are emergency petitions?

6 A. Like a family offense petition, somebody asking for an order of
7 protection or somebody asking for an emergency custody visitation
8 order. Something to that effect.

9 Q. During these weeks in which a judge is an emergency intake judge,
10 did they hear both these emergency petitions and their regular
11 caseload?

12 A. Correct.

13 Q. Can you just explain the process in which these emergency petitions
14 come in and then make their way up to you in the courtroom with the
15 judge?

16 A. First of all, they're filed with the reception area. Once they're filed at
17 the reception area, they're date-stamped and then the reception people,
18 like the person who is doing docketing, which is assigning it to
19 whatever judge it's going to be assigned to, and then once it's
20 docketed, that is handed off to one of my team, one of my grade 12s,
21 and then they data enter all of the information into the Unified Court
22 Sys-- Management System, UCMS. Once they have it all data
23 entered and everything is docketed and has a docketing number and all
24 that, then they email the petition and everything to me in the
25 courtroom, where I would print it out and then give it to the judge to

324.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Direct)

1 review to decide as to what he was going to do with it at that time.

2 Q. Thank you. Do you have any control over how many emergency
3 petitial-- petitions are filed in a certain day?

4 A. Absolutely not.

5 Q. And do you have any control over how much time it takes for an
6 emergency petition to make it from reception and up to in your
7 hands--

8 A. --No, I do not--

9 Q. --to hand off to the judge?

10 A. Uh-uh, I'm in the courtroom.

11 THE REFEREE: You have to--

12 THE WITNESS: --I'm sorry.

13 THE REFEREE: You're doing a good job, just try
14 and wait until he finishes the question, okay--

15 THE WITNESS: --I'm sorry--

16 THE REFEREE: --but you're doing fine.

17 BY MR. PEDROTTY:

18 Q. Okay, I'd like to direct your attention now to February 6, 2017. Was
19 this a day during which Judge Miller was assigned as the emergency
20 intake judge for the week?

21 A. Yes, he was.

22 Q. Can you tell me what happened that day?

23 A. We had a full caseload that day, so we had regular cases scheduled for
24 the morning and the afternoon. We were scheduled to start
25 proceedings again at 1:30 in the afternoon. We did not start at the

325.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Direct)

- 1 time.
- 2 Q. Why not?
- 3 A. Because the judge was not there.
- 4 Q. What time did you start at?
- 5 A. We didn't start until after 2:00.
- 6 Q. Okay.
- 7 A. We got going with our cases, which we-- I believe we had seven
- 8 cases scheduled for that afternoon, and then--
- 9 Q. --And by "seven cases scheduled," do you mean regular cases?
- 10 A. Seven regular cases, yes.
- 11 Q. Okay.
- 12 A. And they're-- were all 15 minutes long.
- 13 Q. Okay.
- 14 A. Supposed to be scheduled for 15 minutes long. At 2:30, 2:40,
- 15 somewhere around there, I started receiving emails with emergency
- 16 petitions in them for the judge to review. As soon as I received them,
- 17 I would print them out because we had a printer right there in the
- 18 courtroom, and I would clip them together and hand them, you know,
- 19 slide them over to the judge for him to review in between our cases.
- 20 Q. What was the judge doing and saying as you were handing these
- 21 emergency petitions to him?
- 22 A. At first, he was just taking them, it was no problem, but after-- We
- 23 ended up getting six of them between quarter to 3:00 and a little bit
- 24 after 4:00. So, there was six emergency petitions that came in, like all
- 25 at once, and the more I handed to him, the more upset he got.

326.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Direct)

- 1 Q. What do you mean by that?
- 2 A. He was getting frustrated and making comments and-- and just
- 3 shaking his head and getting-- you could see he was getting upset.
- 4 Q. What were the comments he was making?
- 5 A. He started telling me to go faster, that I was going too slow. He had
- 6 some place he needed to be at 4:00, so we needed to get out of there,
- 7 and he just-- you know, it just kept going on and on and on.
- 8 Q. Had he previously told you that he needed to be out of there by 4:00?
- 9 A. No, he did not.
- 10 Q. And then what happened as the end of the day neared and the last
- 11 petitions were coming in?
- 12 A. When I was-- When we had finished the one case and I was emailing
- 13 the court officers on the second floor to let them know to send in the
- 14 last emergency that had come in to be heard, he yelled at me and told
- 15 me I was going too slow and that I needed to move faster and he just
- 16 was being very rude and disrespectful and condescending and
- 17 demeaning and just very belligerent to me.
- 18 Q. What was he doing as he was yelling at you?
- 19 A. He was standing up and he was just yelling at me.
- 20 Q. How close was he to you?
- 21 A. He was like from him to me.
- 22 Q. Approximately three to four feet?
- 23 A. Yes. Because that's how far away we sit apart from each other.
- 24 Q. Did you respond in any way?
- 25 A. I did not respond because I was just so flabbergasted by the way he

327.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Direct)

1 was talking to me because it was the first time he had ever treated me
2 that way and I was just taken aback by it all.

3 Q. Was there anyone else present for this conversation?

4 A. No, like I said, it was in between cases. The litigants from the
5 previous one had left and the court officer goes out with them, and I
6 was in the process of typing the email for court security to send in the
7 next case, so, that's when he started yelling at me and telling me that I
8 wasn't doing my job properly and I was going too slow.

9 Q. Where were the grade 12s?

10 A. They're downstairs on the first floor.

11 Q. How about Mark Kachadourian, was he there?

12 A. He was not there.

13 Q. How often is he in the courtroom?

14 A. Almost all the time.

15 Q. If you know, do you know why he was not there--

16 A. --I don't know--

17 Q. --on this particular occasion?

18 THE REFEREE: Okay, you have to let him finish
19 his question.

20 THE WITNESS: I'm sorry.

21 THE REFEREE: It's hard, but that's okay.

22 THE WITNESS: I'm sorry.

23 BY MR. PEDROTTY:

24 Q. What time, ultimately, that day did the court proceedings end?

25 A. I believe it was 4:30 or a little bit after.

328.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Direct)

- 1 Q. Is there a particular time when court proceedings do end during
2 emergency intake weeks?
- 3 A. Well, we're supposed to go until 4:30, but we try to be done by 4:00,
4 4:15.
- 5 Q. To your knowledge, was the judge aware that this was an emergency
6 intake day?
- 7 A. Yes. The calendar for emergency intake week is done for the whole
8 year and given out in November or December before that year starts.
- 9 Q. What, if anything, did you do as a result of this incident?
- 10 A. I was very upset. When I got done with my court stuff, I had gone
11 downstairs to my office area and I was very upset, so I went to talk to
12 my chief clerk but remembered she wasn't there that day, so I went to
13 my deputy chief clerk and I talked to her.
- 14 Q. The chief clerk, who was that?
- 15 A. Debbi Singer.
- 16 Q. And who was the deputy chief clerk?
- 17 A. Margaret-- Oh, goodness. I can't think of her last name. I just-- It
18 just-- I just lost it.
- 19 Q. Okay, we can move on.
- 20 A. Sorry.
- 21 Q. So, did you end up doing anything then?
- 22 A. I spoke with Margaret-- It's Raftis, sorry--
- 23 Q. --Okay--
- 24 A. --I spoke with her and let her know what had transpired. She told me
25 to document everything and talk to Debbi when she came in next time.

329.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Direct)

1 Q. Did you do that?

2 A. Yes, I did.

3 Q. And what, if anything, happened as a result of you reporting the
4 incident to Debbi?

5 A. I had-- Nothing happened that I know of.

6 Q. Did you ever become aware of whether or not Judge Miller knew of
7 your complaint against him?

8 A. The only way I knew about it was that I was told by his secretary that
9 he was asking her to get a copy of my letter of complaint from me so
10 that he could read it.

11 Q. Do you know if Judge Miller did anything as a result of finding out
12 about the complaint that you made against him?

13 A. Apparently, he went to Debbi and supposedly, I-- I've seen--

14 MR. DEROHANNESIAN: Objection.

15 THE REFEREE: Sustained.

16 BY MR. PEDROTTY:

17 Q. Did Judge-- Did you ever have any other communications with Judge
18 Miller about this incident?

19 A. No, I did not.

20 Q. Did he ever apologize to you for it?

21 A. No, he did not.

22 Q. How would you characterize his demeanor and behavior towards you
23 after this incident?

24 A. It was very cool, very cold. He would come in the courtroom in the
25 morning and I would say, "Good morning," and he would totally

330.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Direct)

1 ignore me. He wouldn't even look at me at times, and even if he came
2 into the courtroom in the afternoon, I'd say, "Good afternoon," he
3 wouldn't acknowledge my presence. I mean, he just was very-- He
4 totally shut down as far as talking to me or conversing or
5 communicating with me at all.

6 Q. Did there come a time when you made a change in your position at the
7 family court?

8 A. Yes.

9 Q. When was that and what was the change?

10 A. The change was made in I believe July of 2017. What had happened
11 was one of our 16s, who was in charge of doing appeals and handling
12 the traveling judges, she transferred to Tioga County, so we had hired
13 a new 16 to replace her, but she had no court experience whatsoever
14 and she was very overwhelmed by the position and she couldn't
15 handle it. And so, Debbi decided to put me in that position and put
16 the new 16 in my position.

17 Q. To your knowledge, was this change in position any way related to the
18 incident with Judge Miller?

19 A. No, it was not.

20 Q. One moment.

21 THE REFEREE: That's fine.

22 BY MR. PEDROTTY:

23 Q. Are you aware that Judge Miller made a complaint about you with
24 Debbi Singer?

25 A. Yes.

331.

(Vroman - Direct)

1 Q. How are you aware of that?

2 A. I was shown the complaint and talked to about it by Debbi Singer.

3 Q. Okay. And do you know what happened as a result of that complaint?

4 A. I do not know what happened.

5 Q. Did you talk about the-- Did you communicate with Debbi Singer in
6 reference to Judge Miller's supposed complaints about you?

7 A. Yes.

8 Q. To your knowledge, did Debbi Singer seem to be satisfied with your
9 response?

10 MR. DEROHANNESIAN: Objection.

11 THE REFEREE: Sustained.

12 MR. PEDROTTY: I have no further questions.

13 THE WITNESS: Thank you.

14 MR. DEROHANNESIAN: Can we have a break?

15 THE REFEREE: What?

16 MR. DEROHANNESIAN: Can we have a break?

17 THE REFEREE: Sure, how much time do you
18 need? Five minutes?

19 MR. DEROHANNESIAN: Five to ten?

20 THE REFEREE: All right. We'll take a short break,
21 please don't discuss your testimony with anybody. You can
22 get up, stretch, or do what you need to do.

23 (OFF THE RECORD)

24 THE REFEREE: Oh, let's go back off the record.

25 MS. SCALISE: Oh, here he is. Here he is.

332.

(Vroman - Cross)

(OFF THE RECORD)

THE REFEREE: Thank you. Counsel for the Commission is present. Counsel for the Respondent is present. Judge Miller is present. Our witness has returned. Ms. Vroman, you're still under oath, and counsel, proceed.

CROSS-EXAMINATION

BY MR. DEROHANNESIAN:

Q. Good morning, Ms. Vroman.

A. Good morning.

Q. My name is Paul DerOhannesian. I represent Judge Miller. I want to ask you some questions first, kind of set the table about family court, how it operates and what different people do, including yourself. I know there's different clerks, and maybe they do different things. Let me ask you to focus on what you were doing when you worked with Judge Miller. Is part of-- You described emergency petitions, getting information when they're coming in, is that correct?

A. Correct.

Q. And then do you communicate any information to the judge, like a file or anything else?

A. I usually print off the actual emergency petition and hand it to the judge.

Q. Okay, what about his clerk? Would his clerk get that?

A. Yes. Rachelle and Mark both would get it.

Q. Okay, would they get that in the courtroom or someplace else?

A. They would get it via email wherever they're located.

333.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Cross)

1 Q. So, they are sent it, whether they actually open up their email, you
2 don't know.

3 A. Correct.

4 Q. Now, I know that on the one day that you talked about, Mr. Corcor--
5 Kachadourian was not in the courtroom, correct?

6 A. Correct.

7 Q. But if the clerk is in the courtroom, would you give him a copy then,
8 or would you have to look at a computer to read--

9 MS. CENCI: --Excuse me. Counsel, you're saying
10 "clerk." Who are--

11 MS. SCALISE: --Law secretary?--

12 MS. CENCI: --you referring to?

13 BY MR. DEROHANNESIAN:

14 Q. Are you-- Your title is?

15 A. I'm a court assistant.

16 Q. Court assistant, excuse me. Would you, as court assistant, provide a
17 copy of the emergency petition to the judge's law clerk, if you were in
18 the courtroom?

19 THE REFEREE: Now, just to be clear, do you think
20 that-- Do you think of Mr. Kachadourian, if you're thinking
21 of him, as the law clerk?

22 THE WITNESS: Yes.

23 THE REFEREE: Even though he's called a court
24 attorney?

25 THE WITNESS: Correct.

334.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Cross)

1 THE REFEREE: But in your mind, he's the law
2 clerk?

3 THE WITNESS: Yes.

4 THE REFEREE: And everybody thinks that in the
5 court system, right?

6 THE WITNESS: Pretty much, yes.

7 THE REFEREE: Okay, so-- If, we-- If you hear
8 "court clerk"-- If you hear "law clerk," you know that's
9 Mr. Kachadourian.

10 THE WITNESS: Correct.

11 THE REFEREE: All right, proceed.

12 MR. DEROHANNESIAN: I can't remember my
13 question, but let me try.

14 THE REFEREE: It was a good one.

15 MR. DEROHANNESIAN: It was a good one, and
16 that--

17 THE WITNESS: --I do remember it.

18 BY MR. DEROHANNESIAN:

19 Q. Do you?

20 A. Yes. You asked me if he was in the courtroom if I would provide him
21 with a petition.

22 Q. Exactly. Can you answer--

23 A. --If he--

24 Q. --the question?

25 A. If he-- Yes. If he is in the courtroom, I try-- I print it off and I would

335.

(Vroman - Cross)

1 usually get his attention and hand it to him to review before the judge
2 because the judge would be in the middle of a proceeding.

3 Q. And would that be a standard practice for all the family court judges?

4 A. I wouldn't know.

5 Q. Okay. But for Judge Miller it was?

6 A. Yes.

7 Q. If-- If Mr. Kachadourian was present?

8 A. Correct.

9 Q. And you said that-- I know like-- You also mentioned there's a
10 general calendar, was that the phrase you used? I forgot. There was a
11 type of calendar you said, in addition to the emergency calendar.

12 THE REFEREE: Regular calendar.

13 A. A regular calendar of cases, yes.

14 Q. Is a regular calendar something that is set before the day in question?

15 A. Yes.

16 Q. And who sets that up?

17 A. I do and my grade 12s.

18 Q. Okay. To set up the regular calendar, is that something you need
19 information to do?

20 A. Yes.

21 Q. Where do you get information from to set up the calendar?

22 A. We either schedule the next appearance in the courtroom, or if it's a
23 new petition, it was filed and data entered, the grade 12s downstairs
24 would pick a day to schedule it to come in and data enter it in the
25 computer at that time.

336.

(Vroman - Cross)

- 1 Q. So, it sounds like a matter can be adjourned from a prior date?
- 2 A. Yes.
- 3 Q. And then it shows up on your calendar in the computer?
- 4 A. Correct.
- 5 Q. So, that's one set of cases?
- 6 A. Yes.
- 7 Q. And another could be new petitions that are filed--
- 8 A. --Correct--
- 9 Q. --correct?
- 10 A. Mm-hmm.
- 11 Q. Sometimes the calendar will change because someone's not going to
- 12 be there. Let's say, the judge is not present that day.
- 13 A. Correct.
- 14 Q. And then parties are notified this case is being moved.
- 15 A. Yes.
- 16 Q. Perhaps a trial is going on that ties up the judge, the calendar has to be
- 17 changed.
- 18 A. Yes.
- 19 Q. Now, to manage the calendar-- Where-- You need information about
- 20 the judge's schedule.
- 21 A. Yes.
- 22 Q. Where do you get information about the judge's schedule from?
- 23 A. I get the information about the judge's schedule from his secretary,
- 24 Rachelle.
- 25 Q. Would that be the normal practice or procedure?

337.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Cross)

- 1 A. Yes.
- 2 Q. For most judges?
- 3 A. Yes.
- 4 Q. Again, I shouldn't ask--
- 5 A. --That I know--
- 6 Q. --That you know.
- 7 A. Yes.
- 8 Q. Could you also get it from the judge?
- 9 A. Yes, I could.
- 10 Q. Was that, in Judge Miller's case, did you get information about his
- 11 schedule from both him and Rachelle?
- 12 A. Most of the time it was from Rachelle, very few-- Very little from the
- 13 judge himself.
- 14 Q. And unless someone tells you that the judge can't be present, you
- 15 don't-- you wouldn't know, right?
- 16 A. I wouldn't know. What usually happens is if he's not going to be
- 17 present, it's actually entered into our Outlook calendar. It'll be, you
- 18 know, blocked off there, like if he's-- If he's going to be at an
- 19 appointment from 9:00 to 10:00, it's says it in the Outlook calendar
- 20 that he's not going to be there, because that's what Rachelle does.
- 21 Q. Okay, so, Rachelle would have to put that in the calendar for you to
- 22 know that?
- 23 A. Correct.
- 24 Q. You're not in a pos-- Again, unless you're given the information
- 25 about the judge's schedule, you can't do your job in scheduling?

338.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Cross)

- 1 A. Correct.
- 2 Q. And what-- As part of your jobs, were you also tracking decisions
3 that were due in cases?
- 4 A. No.
- 5 Q. Did you, you know, bring to anyone's attention if a decision was due
6 or pending in a case?
- 7 A. Can you clarify what you mean by a decision?
- 8 Q. Yes. If Judge Miller or a family court judge has a decision pending
9 and it-- Is there-- Let me back up. Is there a time limit by which
10 decisions or orders should be issued?
- 11 A. Decisions and-- Decisions are to be done within 30 days from the last
12 court appearance. Orders are supposed to be submitted within 30 days
13 of the last court appearance.
- 14 Q. Okay. Let me give you another phrase that sometimes is used in the
15 court system, see if you've ever heard this one. Standard and goals.
- 16 A. Yes.
- 17 Q. For the benefit of those who may not have been involved in the world
18 of New York State Courts, explain standard and goals.
- 19 A. What happens is when a case comes to court and issue is joined,
20 which means all the parties are present, or have been served and they
21 are aware of what is going on and has a copy of the petition, we then
22 have six months to finish the case from beginning to end. If we don't,
23 then we are considered over standards and goals.
- 24 Q. And in the world that you work in, how important is standard and
25 goals in the six months?

339.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Cross)

1 A. It's very important.

2 Q. Okay. And who tracks those deadlines for standard and goals?

3 A. The chief clerk does and then it comes to me and it also goes to the
4 judge and his secretary.

5 Q. So, you're involved in the process-- Are you involved in the process
6 of notifying a judge about standard and goals issues?

7 A. I do a report for the chief clerk and then the chief clerk is the one that
8 shares the reports with the judge.

9 Q. And if a case is approaching standard and goals, would you notify the
10 judge or his law clerk that deadline is coming up?

11 A. Yes, I would.

12 Q. And did you on occasion notify Judge Miller's law clerk that
13 standards and goal was approaching on a case?

14 A. Yes.

15 MR. PEDROTTY: Can we just object to this point
16 and we can ask where counsel is going with this line of
17 questioning?

18 THE REFEREE: Is your objection relevance?

19 MR. PEDROTTY: Yes.

20 THE REFEREE: And the relevance is?

21 MR. DEROHANNESIAN: I think we're-- I'm
22 setting the foundation for some subsequent testimony from
23 another witness.

24 THE REFEREE: All right, as long as--

25 MR. DEROHANNESIAN: --And also--

340.

(Vroman - Cross)

1 THE REFEREE: --we don't go on too long--

2 MR. DEROHANNESIAN: --No, no.

3 BY MR. DEROHANNESIAN:

4 Q. So, you can't remember the specific cases, but there were cases that
5 you would notify Judge Miller's law clerk that standards and goals
6 was approaching, correct?

7 A. Yes, that was part of my job.

8 Q. You know what the phrase reserved decision means?

9 A. Yes.

10 Q. What is a reserved decision?

11 A. Reserved decision is if we have a fact finding and the judge is not
12 ready to make a determination at that point in time, so he puts the case
13 on reserve decision until he gets ready-- gets-- figures out how he
14 wants to decide on the case and writes a decision on the matter.

15 Q. And in terms of scheduling, had Judge Miller expressed a concern
16 about double booking?

17 A. Yes, he had.

18 Q. And is double booking what it sounds like, two cases at the same
19 time?

20 A. Yes, it is.

21 Q. Okay. Is there an issue as to how long to-- Strike that. When you set
22 a case down, I think you said 15 minutes, was that for regular cases?
23 Or emergency--

24 A. --That was-- Yes, that was for regular cases for an initial appearance
25 or a pre-trial conference, we always set them aside for 15 minutes.

341.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Cross)

1 Q. And for emergency petitions?

2 A. We don't set aside time for that because we don't know if they're
3 coming in.

4 Q. Okay, so you can't really say how long an emergency petition would
5 be from a scheduling point of view?

6 A. Correct.

7 Q. Okay. And when you say 15 minutes for a regular petition, there's a
8 human factor that may affect that in the real word, too--

9 A. --Correct--

10 Q. --correct?

11 A. Mm-hmm.

12 Q. So, again, the standard might--

13 THE REFEREE: --One second. "Mm-hmm" is
14 "yes," right?

15 THE WITNESS: Yes. I'm sorry.

16 MR. DEROHANNESIAN: I'm sorry.

17 THE REFEREE: That's all right.

18 BY MR. DEROHANNESIAN:

19 Q. So, the 15 minutes is certainly what you strive for, but in the real
20 world of family court, it could be more than 15 minutes.

21 A. Correct.

22 Q. Before I go back to court calendars and emergency petitions, I want to
23 ask you about a conversation with Rachelle Gallagher--

24 MR. PEDROTTY: --Objection.

25 THE REFEREE: Well, let him finish the question.

342.

(Vroman - Cross)

1 MR. PEDROTTY: Yes, I'm sorry.

2 BY MR. DEROHANNESIAN:

3 Q. --and whether you ever said to Rachelle Gallagher that D [REDACTED]
4 L [REDACTED] was going to physically harm either her or Mr.
5 Kachadourian in the work place.

6 MR. PEDROTTY: Objection. Beyond the scope of
7 direct, relevance.

8 MR. DEROHANNESIAN: Again, it's because the
9 previous testimony of two witnesses.

10 MR. PEDROTTY: Hearsay.

11 THE REFEREE: Could you repeat the question? I
12 don't think we're going to do this, just-- but could you
13 repeat the question one more time--

14 MR. DEROHANNESIAN: --Sure.

15 THE REFEREE: I want to focus on it.

16 MR. DEROHANNESIAN: And I offer this question
17 because of the variations in answers from other witnesses to
18 this because it--

19 THE REFEREE: --I understand, but you-- Let me
20 hear the question.

21 MR. DEROHANNESIAN: What Mr. Kachadourian
22 said and then what Ms. L [REDACTED] said and--

23 THE REFEREE: --Yes--

24 MR. DEROHANNESIAN: --the person involved is
25 right here.

343.

(Vroman - Cross)

1 THE REFEREE: I understand. Let me hear the
2 question.

3 BY MR. DEROHANNESIAN:

4 Q. Did you state to Rachelle Gallagher that D [REDACTED] L [REDACTED] was going to
5 physically harm either Rachelle Gallagher or Mark Kachadourian in
6 the work place?

7 MR. PEDROTTY: And I renew my objections.

8 THE REFEREE: Overruled. You can answer.

9 A. Yes, I did.

10 Q. Okay, and when was that?

11 A. It was last fall-- summer or fall.

12 Q. Was it after Judge Miller left his family court assignment?

13 A. Yes.

14 Q. Is that something that you put in an email to anyone?

15 A. No.

16 Q. Did you write a memo?

17 A. No.

18 Q. Did you contact anyone at the-- within the court system about that?

19 A. No.

20 Q. The standards and goals for Judge Miller, do you know how they
21 work?

22 A. They were--

23 MR. PEDROTTY: --Objection. Relevance.

24 THE REFEREE: Is your question, "Did he comply
25 with standards and goals?"

344.

(Vroman - Cross)

1 MR. DEROHANNESIAN: Yes. Yeah.

2 THE REFEREE: Generally, was he compliant?

3 THE WITNESS: Yes, he was.

4 THE REFEREE: All right.

5 BY MR. DEROHANNESIAN:

6 Q. Did he make comments to you about your hard work?

7 A. Yes.

8 Q. And, in fact, he told you that you were a hard worker?

9 A. Yes, he did.

10 Q. And that was both before and after February 6, 2017?

11 A. Only before.

12 Q. Okay. And after that day in February, he continued to work with
13 you?

14 A. Yes.

15 Q. The two of you had to work together?

16 A. Correct.

17 Q. Correct? And in the family courtroom of Judge Miller, there is the
18 judge, correct? Let's talk about the team. The judge--

19 A. --Yes--

20 Q. --sometimes his law clerk can be there, correct?

21 A. Correct.

22 Q. You would be present?

23 A. Yes.

24 Q. Who else would be present, administratively?

25 A. Just the court officer.

345.

(Vroman - Cross)

- 1 Q. Is there any other clerk that comes in during the proceeding?
- 2 A. Only if I'm not there--
- 3 Q. --Okay--
- 4 A. --or if they have to drop something off to me.
- 5 Q. Okay. So, there's a clerk, or an assistant to a clerk-- Do you-- Is that
- 6 how-- fair-- I want to describe your position correctly. Would you
- 7 call yourself--
- 8 A. --I'm a court assistant.
- 9 Q. Court assistant.
- 10 A. Yes.
- 11 Q. So, is there someone besides a court assistant-- like, a court clerk
- 12 present also?
- 13 A. No.
- 14 Q. And then the secretary can come in on occasion?
- 15 A. Yes.
- 16 Q. And then I think you said there's security personnel?
- 17 A. Yes.
- 18 Q. Is that usually one or two?
- 19 A. Usually one.
- 20 Q. Okay, these are people in uniforms like our sergeant here today?
- 21 A. Correct.
- 22 Q. Right?
- 23 A. Mm-hmm.
- 24 Q. And that's standard operating procedure--
- 25 A. --Yes--

346.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Cross)

- 1 Q. --in family court. And there's also-- there's no court stenographer
2 present, right?
- 3 A. No.
- 4 Q. There's a recording system--
- 5 A. --Yes--
- 6 Q. --and you see here how we have Mr. Fitzpatrick here at an FTR-- Do
7 you know what FTR is?
- 8 A. Yes.
- 9 Q. Is there an FTR system?
- 10 A. Yes.
- 11 Q. And that's also on in the family court during proceedings, correct?
- 12 A. Yes, it is.
- 13 Q. Let's talk about February 6, 2017. Okay?
- 14 A. Yes.
- 15 Q. To just orient you. I think you said there was a regular calendar that
16 had how many cases on it?
- 17 A. Seven in the afternoon and seven in the morning.
- 18 Q. Okay. And those would be pre-scheduled cases, correct?
- 19 A. Correct.
- 20 Q. And again, when you say 15 minutes, that would be an approximate
21 time?
- 22 A. Correct.
- 23 Q. Is that a full load for an afternoon, seven cases?
- 24 A. No.
- 25 Q. Okay. So, what would a full load be in the afternoon?

347.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Cross)

- 1 A. A full load would probably be about ten to 12 cases.
- 2 Q. Okay. Now, in addition on that day, February 6th, there are emergency
- 3 petitions that came in that Judge Miller was assigned to.
- 4 A. Yes.
- 5 Q. The nature of an emergency petition is you don't know before you get
- 6 to work that day that case will be on your calendar, is that fair to say?
- 7 A. Correct.
- 8 Q. That's why you can't schedule it the day before?
- 9 A. Right.
- 10 Q. And were there six, seven, eight, or nine emergency petitions?
- 11 A. That afternoon there were six. I can't remember how many there were
- 12 in the morning.
- 13 Q. Okay. Were there nine emergency petitions received after 1:00 PM?
- 14 A. That, I am not aw-- I couldn't tell you.
- 15 Q. I think you said you made a note after this incident that you described
- 16 on February 6th, correct?
- 17 A. Correct.
- 18 Q. And the purpose of that note was someone asked you to document
- 19 what happened, right?
- 20 A. Correct.
- 21 Q. And did you prepare that or someone else?
- 22 A. I prepared it.
- 23 Q. Okay, and did you give it to someone?
- 24 A. I gave it to my chief clerk, Debbi Singer.
- 25 Q. Okay. I just want to show you something here.

348.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Cross)

1 THE REFEREE: Should be up to S, right?

2 MR. DEROHANNESIAN: I have Q.

3 MS. SCALISE: We skipped the letter S.

4 THE REFEREE: We skipped it? That's fine.

5 MS. SCALISE: Yeah.

6 BY MR. DEROHANNESIAN:

7 Q. Let me show you Respondent's Q. First, can you identify what that is
8 that I'm showing you?

9 A. This is the letter that I prepared regarding what had happened that
10 afternoon.

11 THE REFEREE: Is there a date on it?

12 THE WITNESS: February 8th, 2017.

13 BY MR. DEROHANNESIAN:

14 Q. And that's actually my first question, what the Referee asked you.
15 Was this prepared on the 6th or the 8th?

16 A. This was prepared on the 8th.

17 Q. Okay. And you prepared it, correct?

18 A. Correct.

19 Q. And this was describing the calendar that day, correct?

20 A. Correct.

21 Q. As well as the interaction with Judge Miller?

22 A. Yes.

23 Q. And does that refresh your recollection that the reception team on
24 February 6th received nine emergency petitions?

25 A. Yes, it does.

349.

(Vroman - Cross)

1 Q. Okay. And the nine emergency petitions after 1:00 PM would be on
2 top of the regular calendar, correct?

3 A. Correct.

4 Q. Would it be fair to say that once Judge Miller started on afternoon of
5 February 6th, it was pretty much non-stop court activity?

6 A. Yes.

7 Q. Were there any adjournments in there where people went for a coffee
8 break or something like that?

9 A. No.

10 Q. Because it was-- that-- because it was so busy, right?

11 A. Correct.

12 Q. There was no time for you, Judge Miller, or staff to get a break?

13 A. Correct.

14 Q. And if security wants a break, they just bring somebody else in,
15 correct?

16 A. Yes.

17 Q. Judges and court assistants don't have somebody else rotate in, right?

18 A. No.

19 MR. DEROHANNESIAN: Can I have a moment?

20 THE REFEREE: Yes.

21 BY MR. DEROHANNESIAN:

22 Q. I want to switch to a different time period when you were with Judge
23 Miller, and that would be July 3rd to July 11th, 2017.

24 A. Okay.

25 Q. The last week that he was in family court.

350.

(Vroman - Cross)

- 1 A. Correct.
- 2 Q. Do you recall that time period, that week?
- 3 A. Yes.
- 4 Q. Okay. Were you working with Judge Miller that week?
- 5 A. Yes, I was.
- 6 Q. And who was handling Judge Miller's cases?
- 7 A. I was.
- 8 Q. Anyone else?
- 9 A. My-- Me and my team.
- 10 Q. Well, what about Rachelle Gallagher? Was she there to assist?
- 11 A. No.
- 12 Q. Was Mark Kachadourian there to assist?
- 13 A. No.
- 14 Q. And had there been some time period before that also where they
- 15 weren't available to assist?
- 16 A. Yes.
- 17 Q. And Judge Miller was handling things by himself?
- 18 A. Yes.
- 19 Q. You don't have the precise date when that started with-- That Judge
- 20 Miller was by himself without any assistance?
- 21 A. No, I don't.
- 22 MR. PEDROTTY: Objection.
- 23 THE REFEREE: Overruled.
- 24 BY MR. DEROHANNESIAN:
- 25 Q. So, in any event, after February 6th, 2017, until obviously during the

351.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Vroman - Cross)

1 week, that final week, it was the two of you doing cases alone, is that
2 fair to say?

3 A. Yes, we were.

4 Q. Okay. And you got the job done, right? The two of you?

5 A. Yes, we did.

6 Q. Okay. And, in fact, from February 6th on, the two of you continued to
7 get the job done in family court, correct?

8 A. Yes, we did.

9 Q. And it would be fair to say that whatever transpired on February 6th,
10 2017, did not impede your ability to get your job done?

11 A. No, it did not.

12 Q. Thank you, I have nothing else.

13 THE REFEREE: Mr. Pedrotty, anything further?

14 MR. PEDROTTY: I have no follow-up.

15 THE REFEREE: All right. Ms. Vroman, thank you
16 very much for coming. I just want to remind you that these
17 proceedings are confidential. Please don't discuss your
18 testimony with anyone. Thank you for coming.

19 THE WITNESS: Thank you.

20 THE REFEREE: We have Debbi Singer next?

21 MS. CENCI: Yes, thank you.

22 THE REFEREE: Are we ready to just go with--

23 MR. PEDROTTY: --Yeah.

24 THE REFEREE: Let's do it.

25 MR. PEDROTTY: You want a break?

352.

(Hon. Richard H. Miller, II)

1 THE REFEREE: Do you need a break? All right,
2 we'll take a five minute break. Let's go off the record.

3 (OFF THE RECORD)

4 MR. FITZPATRICK: We're back on the record.

5 MR. PEDROTTY: Now?

6 MR. FITZPATRICK: Now we're back on the
7 record.

8 MS. SCALISE: One-- One quick piece of business.
9 You want to do that now?

10 THE REFEREE: Can it wait?

11 MS. SCALISE: All right, it can wait.

12 MR. DEROHANNESIAN: Yeah.

13 THE REFEREE: All right, let's wait.

14 MR. PEDROTTY: Commission calls Debra [sic]
15 Singer.

16 THE REFEREE: Can you raise your right hand?

17 THE WITNESS: I can.

18 THE REFEREE: Do you swear or affirm under the
19 penalty of perjury that the testimony you are about to give is
20 the truth, the whole truth, and nothing but the truth?

21 MS. SINGER: I do.

22 DEBBI SINGER,

23 having been duly sworn, was examined and testified as follows:

24 THE REFEREE: Thank you, sit down. Ms. Singer,
25 my name is Robert Barrer. I'm a Referee appointed by the

353.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 Commission on Judicial Conduct to conduct the
2 proceedings here today. You're going to be asked some
3 questions by counsel for the Commission and then as well
4 by counsel for Judge Miller, so if you could make sure that
5 you verbalize your answers. No shaking the head or
6 gesturing.

7 THE WITNESS: Sure. Thank you.

8 THE REFEREE: And if you could also wait until
9 the question is fully asked before you answer, that would be
10 great. And then lastly, if there's an objection, please wait
11 until we issue a ruling.

12 THE WITNESS: Sure.

13 THE REFEREE: How does that sound?

14 THE WITNESS: Sounds quite familiar.

15 THE REFEREE: I think you know it, right?
16 Because you give that speech?

17 THE WITNESS: No.

18 THE REFEREE: Thank you. Mr. Pedrotty.

19 MR. PEDROTTY: I'm sorry, did you administer the
20 oath? I can't remember.

21 THE WITNESS: Yes.

22 THE REFEREE: I did.

23 MR. PEDROTTY: You did? Okay. Thank you
24 very much. I just wanted to check and make sure--

25 THE REFEREE: --I did a really good job, too--

354.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Direct)

1 MR. PEDROTTY: --I bet you did. Comm--
2 THE REFEREE: --You know that, the oath, right?
3 THE WITNESS: Yes.
4 THE REFEREE: You ever administer it?
5 THE WITNESS: No.
6 THE REFEREE: Okay.

7 DIRECT EXAMINATION

8 BY MR. PEDROTTY:

9 Q. Hi, Ms. Singer. Thank you so much for being so patient and waiting
10 today. Can you please state your full name for the record?
11 A. Debbi DeGregorio Singer.
12 Q. In what county do you live?
13 A. Broome.
14 Q. In what city or township do you live?
15 A. I live in the Town of Union but my address is Endicott.
16 Q. Okay. How long have you lived in Broome County for?
17 A. 27 years, I guess.
18 Q. And you are currently retired, correct?
19 A. I am.
20 Q. Thank you for coming out of retirement to come in today.

21 THE REFEREE: Congratulations.

22 THE WITNESS: Thank you.

23 MR. PEDROTTY: We're all jealous here.

24 THE WITNESS: There's no downside.

25

(Singer - Direct)

1 BY MR. PEDROTTY:

2 Q. Where were you employed prior to being retired?

3 A. For the Unified Court System in Broome County Family Court.

4 Q. And for how many years total did you work for Broome County
5 Family Court?

6 A. 27.

7 Q. When did you retire?

8 A. June of 2018.

9 Q. And prior to your retirement, what position did you hold at the
10 Broome County Family Court?

11 A. I was the chief clerk.

12 Q. And prior to holding that position, what was your position at the
13 court?

14 A. I was the deputy chief clerk prior to that.

15 Q. As chief clerk, what did your duties and responsibilities include?

16 A. Well, I oversaw all the daily operations of the court in the back office.
17 I hired-- Interviewed and hired, I evaluated staff performance,
18 trained, put out a lot of fires all day long, dealt with any issues that
19 may arise, either with the public or with attorneys or with the judges
20 or magistrates that work there. I was a liaison.

21 Q. You basically ran the family court.

22 A. Yes.

23 Q. And did you report to anyone or were you supervised by anyone?

24 A. I reported directly to the district office.

25 Q. Anyone in particular?

356.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Direct)

- 1 A. When I retired, it was Greg Gates and Amanda Garner, were my chain
2 of command.
- 3 Q. What were their positions?
- 4 A. Greg was the district executive and Amanda, the deputy district
5 executive.
- 6 Q. Who, generally speaking, did you supervise?
- 7 A. I supervised all the back office staff.
- 8 Q. Which would include what?
- 9 A. Well, we always-- By grades, all the grade 16s and grade 12s and the
10 deputy.
- 11 Q. So, the supervising court assistants?
- 12 A. Yes.
- 13 Q. And the court assist--
- 14 A. --And the senior court assistant. Forgive me, I've filed it all under
15 "Forget."
- 16 Q. And then the grade 12 court assistants, as well?
- 17 A. Yes, yes.
- 18 Q. Did you supervise any of the personal appointees of the family court
19 judges?
- 20 A. No, I did not.
- 21 Q. Did you supervise any of the-- So, the court attorneys of the family
22 court judges?
- 23 A. No.
- 24 Q. Or their legal secretaries?
- 25 A. No.

357.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Direct)

- 1 Q. Are you familiar with Rachelle Gallagher?
- 2 A. Yes.
- 3 Q. How are you familiar with her?
- 4 A. She started working for family court as Judge Miller's secretary in
- 5 January of 2015. I did not know her prior to that.
- 6 Q. How would you describe your relationship to her?
- 7 A. With her?
- 8 Q. With her.
- 9 A. Very good. She's friendly and outgoing and helpful.
- 10 Q. Was it purely a professional relationship or did you have any other
- 11 social relationship with her?
- 12 A. Purely professional.
- 13 Q. Do you know Mark Kachadourian?
- 14 A. I do.
- 15 Q. How do you know him?
- 16 A. We go way back. Mark-- My-- A former-- My late husband, excuse
- 17 me, was an attorney, and they had offices in the same building, so I
- 18 have probably known him for 30 years.
- 19 Q. And then did you also know him as the court attorney to Judge
- 20 Richard Miller?
- 21 A. Yes.
- 22 Q. How would you describe your working relationship with him when he
- 23 was the court attorney for Judge Richard Miller?
- 24 A. It was very good.
- 25 Q. Do you have any-- During the time in which he was the court attorney

358.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Direct)

1 for Judge Miller, did you have any social relationship with Mark
2 Kachadourian?

3 A. No.

4 Q. Okay. At this time, do you have any social relationship with Mark
5 Kachadourian?

6 A. I do not.

7 Q. Did you supervise either Rachelle Gallagher or Mark Kachadourian?

8 A. No.

9 Q. Who was their supervisor?

10 A. Their direct supervisor would have been Judge Miller.

11 Q. And you know Judge Richard Miller?

12 A. I do.

13 Q. Can you explain the nature of your relationship with him and how
14 long you've known him for?

15 A. Probably known him for decades because he did-- He practiced law in
16 family court prior to becoming a judge.

17 Q. So, you knew him as a practitioner in the family court when you were
18 the--

19 A. --Yes--

20 Q. --deputy clerk and then chief clerk?

21 A. Mm-hmm.

22 Q. Okay.

23 THE REFEREE: You have to say yes or no.

24 THE WITNESS: Oh, yes. Sorry about that.

25 THE REFEREE: That's all right. Very natural.

359.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Direct)

1 BY MR. PEDROTTY:

2 Q. Do you recall when Judge Miller became a family court judge?

3 A. January of 2015.

4 Q. Okay. Could you describe your working relationship with him after
5 he became a judge?

6 A. It was good. He would come down and discuss things with me and he
7 was quite, you know, open about that, you know, stopping by and
8 saying hello.

9 Q. I'd like to direct your attention now to approximately June 2017. Did
10 there come a time when you advised anyone at the court system about
11 concerns relating to Judge Miller's conduct?

12 A. You said July or June '17?

13 Q. In or around June 2017.

14 A. Yes, at that point I did.

15 Q. Who did you advise about these concerns?

16 A. I spoke to Greg Gates.

17 Q. Why did you go to Greg Gates?

18 A. Because he's in my chain of command.

19 Q. What was the nature of these concerns that you relayed to him?

20 A. The nature of those concerns were reports that I had been getting from
21 Rachelle and Mark regarding Judge Miller's interactions with them.

22 Q. What type of concerns were they that these two individuals were
23 relaying to you?

24 A. Sexual harassment and eventually a death threat is what they reported
25 to me.

360.

(Singer - Direct)

1 Q. What kind of death threat?

2 A. It was described as Judge Miller said to them that he had cement boots
3 made in their size and he knew people that could make them disappear
4 where no one would ever find them if they were to report on anything
5 that he's done.

6 Q. What do you recall about their concerns of sexual harassment?

7 A. They felt very intimidated. They felt--

8 MR. DEROHANNESIAN: --Objection about their
9 feelings.

10 THE REFEREE: Sustained. What did they say?

11 A. What did they say? They said they were afraid for their jobs and they
12 were afraid that there might be other types of retaliation.

13 Q. What-- I asked you about the sexual harassment claims that they told
14 you about. What did they tell you about the-- specifically sexual
15 harassment?

16 A. Okay--

17 MR. DEROHANNESIAN: --Objection.

18 THE REFEREE: What's the basis of the objection?

19 MR. DEROHANNESIAN: It's hearsay and we have
20 those declarants available. One has testified, another will.

21 THE REFEREE: Well--

22 MR. PEDROTTY: --Just to explain the actions you
23 took.

24 THE REFEREE: Just a minute. I'm going to take it,
25 not for the truth of what they said, but for the factual

361.

(Singer - Direct)

1 predicate of her complaints to the district executive. Go
2 ahead.

3 A. Okay. So, as to the sexual harassment complaints?

4 Q. Yeah. What did they tell you about-- with respect to the sexual
5 harassment concerns?

6 A. Rachelle had reported that Judge Miller expected her to service Sen.
7 Fred Akshar so that he could have favor in Albany and her
8 explanation to me was that when he said "service," he gestured to his
9 lap area, I guess we'd say. And also, there had been statements to her
10 that she needed to perform like a secretary should perform, in other
11 words, give sexual favors.

12 Q. Do you recall them advising you about something related to a
13 photograph?

14 A. Yes.

15 Q. What and who advised you about this?

16 A. Rachelle first reported it to me that Judge Miller had shown a nude
17 photo to Mark Kachadourian in Rachelle's office. Rachelle said she
18 didn't see it, but later Mark had spoken to her about it. And then, at a
19 later date, Mark did come to me and say that he had been shown a
20 nude photo by Judge Miller.

21 Q. Did he say what the nude photo was reportedly of?

22 A. It was a woman without clothing from the neck down, I believe.
23 That's what I recall of his description.

24 Q. Did either of them say who the photo was purportedly of?

25 MR. DEROHANNESIAN: Objection. Leading and

362.

(Singer - Direct)

1 suggestive.

2 THE REFEREE: That's all right. Overruled.

3 A. They did say that they thought it was D [REDACTED] L [REDACTED].

4 Q. Is there anything else you can recall about the sexual harassment
5 concerns by Rachelle Gallagher?

6 A. I think in general I've described what I recall, but also that she-- She
7 said he mentioned there was a secretary in another job--

8 THE REFEREE: --Wait, she said he said--

9 THE WITNESS: --Rachelle.

10 THE REFEREE: Rachelle.

11 A. Rachelle said that Judge Miller reported there was a secretary or clerk
12 in a prior position that Judge Miller had held that was giving him
13 sexual favors and that she should do the same.

14 Q. When did Rachelle Gallagher first start coming to you and talking
15 with you about Judge Miller's conduct?

16 A. Conduct, specifically?

17 Q. Yeah. When did she start coming to you about Judge Miller?

18 A. Okay. I would say that in 2015, the first year Judge Miller was on the
19 bench, she had made some complaints. They weren't of sexual
20 harassment at that point, just more about she couldn't leave her office.
21 She had to keep the door closed, she couldn't socialize with staff. She
22 could not eat lunch in the lunchroom, she either had to eat in the office
23 with the door closed or leave the building pretty much. Those are the
24 complaints that she started with. It was probably more into 2016 that
25 Rachelle started reporting more sexual harassment complaints.

363.

(Singer - Direct)

1 Q. Approximately when in 2016?

2 A. Maybe--

3 Q. --To the best of your recollection.

4 A. To the best-- Maybe summertime. Or the fall. Somewhere in there.

5 Q. And did that continue on for a time period?

6 A. Yes, it did.

7 Q. And when did Mark Kachadourian first come to you with concerns
8 about Judge Miller's conduct?

9 A. He came later.

10 Q. Approximately what time?

11 A. Maybe the end of 2016. I'm not certain on those dates but that's my
12 recollection.

13 Q. What was it, ultimately, that made you decide, you know, that in-- in
14 or around June 2017, this was the time to bring these concerns to
15 somebody else in OCA, including Greg Gates? What was it?

16 A. It was--

17 MR. DEROHANNESIAN: --Objection.

18 THE REFEREE: What's the basis of the objection?

19 MR. DEROHANNESIAN: Her theory or
20 motivations are not relevant. It's what she did that's
21 relevant.

22 THE REFEREE: I agree. Sustained.

23 BY MR. PEDROTTY:

24 Q. When Rachelle Gallagher started coming to you with these concerns
25 about sexual harassment, what did you advise her to do?

364.

(Singer - Direct)

1 A. I advised her to get a lawyer, speak to the union, or-- and/or report it
2 up her chain of command, which is not me.

3 Q. Approximately what timeframe did you give her that advice?

4 MR. DEROHANNESIAN: Objection. Could I
5 object as to the foundation for that question?

6 THE REFEREE: No, well-- No, she answered it. I
7 don't-- If we could get a timeframe--

8 MR. DEROHANNESIAN: --Like time or place--
9 Yeah, yeah--

10 THE REFEREE: --then I think we're in better
11 shape.

12 MR. PEDROTTY: Which is my question.

13 THE WITNESS: Okay.

14 THE REFEREE: I thought that was the question.

15 A. The timeframe would have been right around when she started
16 reporting the sexual harassment--

17 Q. --Which you said was sometime--

18 A. --Which was like--

19 Q. --in the summer of 2016, was that your testimony?

20 A. Yes, correct.

21 Q. Why did you not initially report these allegations in the summer of
22 2016 to Greg Gates or anyone else in OCA?

23 MR. DEROHANNESIAN: Objection.

24 THE REFEREE: Sustained.

25

(Singer - Direct)

1 BY MR. PEDROTTY:

2 Q. Did you have any obligation to report these concerns to anyone in
3 OCA?

4 MR. DEROHANNESIAN: Objection.

5 THE REFEREE: Overruled. If she knows.

6 BY MR. PEDROTTY:

7 Q. If you know.

8 A. I don't know if I had an obligation.

9 Q. You said before you were not their supervisor, correct?

10 A. Correct.

11 Q. Did you have any belief that since you were not their supervisor that
12 you had no obligation to report these concerns?

13 THE REFEREE: Sustained. Because he was going
14 to object but I--

15 MR. DEROHANNESIAN: --Yeah--

16 THE REFEREE: --beat him to the draw.

17 BY MR. PEDROTTY:

18 Q. Did Judge Miller ever make any comments to you that you felt were
19 inappropriate?

20 A. A couple times.

21 Q. Let me direct your attention to a luncheon at the courthouse in or
22 about May 2017. Do you remember that luncheon?

23 A. Yes.

24 Q. What was the luncheon?

25 A. It was one of our dish to pass luncheons where everybody makes a

(Singer - Direct)

1 dish and brings it in and we eat lunch together.

2 Q. Did you bring a dish yourself?

3 A. I did, mm-hmm.

4 Q. And then did you have an interaction with the judge after this
5 luncheon?

6 A. Yes, after--

7 Q. --Tell us about that.

8 A. After the luncheon, the judge stopped in my office to say he really
9 liked the dish that I made and he said, "If I knew you could also cook,
10 I would have gone for the widow." I happen to be a widow. I took it
11 to mean, you know, he would have made a pass or something, if you
12 will.

13 Q. Did you respond in any way--

14 MR. DEROHANNESIAN: --Objection to the extent
15 that that answer goes into the mind of a third party.

16 THE REFEREE: I agree. Sustained.

17 BY MR. PEDROTTY:

18 Q. What was your reaction hearing that?

19 A. I was surprised, shocked, and disgusted, I guess you could say.

20 Q. Did you respond to him in any way?

21 A. I diverted by talking about the recipe that I had made.

22 Q. Was anyone else present?

23 A. I don't believe so.

24 Q. How would you describe the judge's demeanor when he said this?

25 A. Just normal. It wasn't-- Laughing, happy.

367.

(Singer - Direct)

1 Q. Did you find it funny?

2 A. No.

3 MR. DEROHANNESIAN: Objection. Leading.

4 THE REFEREE: It's all right. I'll overrule.

5 BY MR. PEDROTTY:

6 Q. Why didn't you respond in any way to what he had said?

7 MR. DEROHANNESIAN: Objection.

8 THE REFEREE: Sustained.

9 BY MR. PEDROTTY:

10 Q. Let me direct your attention then to in or about June 2017. Do you
11 recall an interaction with the judge in which he-- or, in which you
12 were having a hot flash?

13 A. Yes.

14 Q. Can you tell us about that incident?

15 A. Unfortunately, I have frequent hot flashes. The judge was in my
16 office speaking to me and I had a hot flash and I always kept an
17 expandable fan there for that purpose. I began fanning myself and I
18 said, "I apologize, I'm having a hot flash," continued our
19 conversation, and he went back to his chambers and--

20 Q. --What-- Did he say anything at the time when you said you were
21 having a hot flash?

22 A. Well, he told-- This was reported by Rachelle, that he said he was--

23 MR. DEROHANNESIAN: --Objection. Objection.

24 THE REFEREE: Well, hold on. What's the
25 objection?

368.

(Singer - Direct)

1 BY MR. PEDROTTY:

2 Q. Did he say anything to you when you said you were-- Excuse me, you
3 were having a hot flash?

4 A. No. He reported it to Rachelle.

5 MS. SCALISE: It's hearsay.

6 MR. DEROHANNESIAN: Wait-- What was that
7 answer?

8 THE REFEREE: "He reported it to Rachelle."

9 MR. DEROHANNESIAN: That's--

10 THE REFEREE: --We don't know what it was--
11 What "it" was.

12 MR. DEROHANNESIAN: But was the testimony
13 that Judge Miller said that or someone else said that to her?

14 THE REFEREE: The testimony was that she did not
15 hear Judge Miller say anything to her and-- Yeah, I assume
16 when Ms. Gallagher comes we'll find out.

17 MR. DEROHANNESIAN: But that-- that should
18 come in through Ms. Gallagher and not through--

19 THE REFEREE: --Right, so there's-- Nothing has
20 come in yet.

21 MR. DEROHANNESIAN: Okay. Then I'd ask that
22 be stricken then.

23 THE REFEREE: There's nothing to strike.

24 MS. SCALISE: The reference to what she was
25 reported to Rachelle Gallagher, it should be stricken. She

369.

(Singer - Direct)

1 doesn't know what was reported, she wasn't there.

2 THE REFEREE: And that's what the record--

3 That's what it says. She has no idea what was said. And

4 so, it's irrelevant.

5 BY MR. PEDROTTY:

6 Q. Was there another occasion in June 2017 when the judge commented
7 on how you looked in an outfit?

8 A. Yes.

9 Q. Can you tell us about that incident?

10 THE REFEREE: I'm sorry, when was that date?

11 MR. PEDROTTY: In or about June 2017.

12 THE REFEREE: Thank you.

13 A. I was standing in the middle of my office doing something, my door
14 was open, he walked by, he-- Judge Miller walked by, he stopped--
15 he stepped in and said to me, "You look really hot in that outfit. You
16 should always wear that outfit."

17 Q. What were you wearing?

18 A. I was wearing a skirt that went down to my knees and a matching top
19 that had a cowl neck on it.

20 Q. How would you describe the outfit?

21 A. Professional.

22 Q. What was your reaction to hearing that?

23 A. I was shocked and disgusted by it.

24 Q. Did you respond to him in any way?

25 A. I did not.

370.

(Singer - Direct)

- 1 Q. Did you ever say to the judge that you felt that these comments were
2 inappropriate?
- 3 A. I did not.
- 4 Q. Why not?
- 5 A. As a chief clerk, you sort of walk a fine line. You-- Part of your job
6 is keeping everybody happy to some extent and I choose my battles
7 and I, you know, I just let it ride.
- 8 Q. When you advised Greg Gates of your concerns about-- of the
9 concerns about Judge Miller, did you ex-- tell him about these
10 incidents, as well? That you personally experienced?
- 11 A. I-- We had many conversations and I'm sure I did mention my own
12 experiences.
- 13 Q. Are you familiar with Rebecca Vroman?
- 14 A. Yes.
- 15 Q. How are you familiar with her?
- 16 A. I hired her to be a grade 16 supervi-- court assistant at Broome
17 County Family Court a few years ago.
- 18 Q. And she worked for Judge Richard Miller at some point?
- 19 A. At some point, yes.
- 20 Q. Now, in or about February 2017, did Ms. Vroman report concerns to
21 you about Judge Miller's conduct towards her?
- 22 A. She did.
- 23 Q. What was the nature of her concern?
- 24 A. The nature of her concern was that he had berated her in the
25 courtroom, screaming and yelling at her, and she was-- she felt very

371.

(Singer - Direct)

1 demeaned by it and she wrote a letter about it.

2 MR. DEROHANNESIAN: I object to the question
3 and answer, if it's offered for the truth. We have Ms.
4 Vroman's testimony on what happened.

5 MR. PEDROTTY: I'm trying to get to the
6 subsequent action.

7 THE REFEREE: No, I think we're fine up until
8 now, so, overruled.

9 BY MR. PEDROTTY:

10 Q. To your knowledge, did the judge become aware of her complaint?

11 A. To my knowledge, he did.

12 Q. What did he do as a result?

13 THE REFEREE: Just what you observed of her,
14 directly.

15 A. I received a two-page type written letter from Judge Miller regarding
16 Rebecca Vroman.

17 Q. And what-- Was he expressing-- What was in his letter, to the best of
18 your recollection?

19 A. There-- There were numbered points. I think at least nine of them.
20 Each one was something he felt-- the judge felt that Rebecca had
21 done wrong.

22 Q. Did you investigate his complaints?

23 A. I did.

24 Q. How did you do that?

25 A. Some of-- Some of the complaints I already knew the whole situation.

372.

(Singer - Direct)

1 About others, I wrote to her and asked her to fill me in on what the
2 situations were because I needed to address it with the judge,
3 obviously.

4 Q. And what did you determine after you had investigated his
5 complaints?

6 A. Most of them were unfounded. The few, there might have been two
7 or three, that I felt Rebecca could improve her work product and we
8 discussed how she would do that.

9 Q. Did-- What did you believe the reason was for Judge Miller's
10 complaints against Rebecca Vroman?

11 A. I felt they retaliatory due to the fact that she had written a letter
12 complaining about him to me. His behavior.

13 Q. Do you have any personal knowledge about when Judge Miller
14 regularly started court sessions?

15 A. Yes.

16 Q. What-- What is your knowledge about when he started court sessions
17 in the morning and in the afternoon?

18 A. They started late, in other words, behind the sch-- behind schedule.
19 They didn't start on the scheduled time.

20 Q. What was the scheduled time?

21 A. I don't know if I specifically remember, but it was maybe 9:30, was
22 the first scheduled case in the morning, and in the afternoon, maybe
23 1:30.

24 Q. And then when, typically, did the judge start his court sessions and in
25 the morning and afternoon?

373.

(Singer - Direct)

1 A. They might have-- In the morning, might have started at quarter to
2 10:00, 10:00, 10:15, depending on the day.

3 Q. How about the afternoon?

4 A. The same. They would start at 1:45, 2:00, et cetera.

5 Q. And what happened as a result, if you know, of your reporting the
6 concerns about Judge Miller's conduct to OCA?

7 A. I believe that's when the ethics commission started their investigation.

8 Q. Do you know if there was an investigation completed?

9 MR. DEROHANNESIAN: Objection. No-- I'll
10 withdraw it.

11 THE REFEREE: Go ahead. You can-- Do you
12 know?

13 BY MR. PEDROTTY:

14 Q. If you know.

15 A. That-- Whether the ethics commission started an investigation? Yes.

16 THE REFEREE: Whether it was completed.

17 THE WITNESS: What-- This has not been
18 completed to my knowledge.

19 BY MR. PEDROTTY:

20 Q. Not this. Do you know if OCA did an investigation of the concerns
21 you brought to their attention?

22 A. I don't know. I really don't know. I reported it to Greg Gates. I
23 know he spoke with Judge Coccoma. I assume they did start an
24 investigation.

25 MR. DEROHANNESIAN: Well, objection-- I

374.

(Singer - Direct)

1 mean--

2 THE REFEREE: --That's all right. It doesn't

3 matter.

4 BY MR. PEDROTTY:

5 Q. Now, is it-- What changes in Judge Miller's court occurred in or
6 around July of 2017?

7 A. Judge Miller was given an office outside of the courthouse and we
8 started looking for-- We divvied up his cases to the other three judges
9 and started looking for help across the district to bring in an out-of-
10 county judge.

11 Q. When you say he was moved outside of the courthouse where was he
12 moved to?

13 A. An office in the state office building. In Binghamton.

14 Q. Do you know where Mark Kachadourian and Rachelle Gallagher were
15 at that time, were they--

16 A. --They remained at the courthouse.

17 Q. Now, is your understanding as chief clerk that the family-- each of the
18 family court judges were required to file an annual report of
19 extra-judicial income with you?

20 A. Yes. They are.

21 Q. And since Judge Miller assumed the bench in January of 2015, to the
22 date of your retirement in June 2017, did you ever receive a single
23 report of extra-judicial income from Judge Miller?

24 A. I did not.

25 Q. I'm sorry. I'm sorry. June 2018.

375.

(Singer - Cross)

1 A. I did not receive a report at all-- ever.

2 Q. You did not receive a report ever of extra-judicial income from Judge
3 Miller?

4 A. Correct.

5 Q. Did you ever get any other reports of extra-judicial income from the
6 other family court judges?

7 A. Yes.

8 Q. I have no further questions.

9 MR. DEROHANNESIAN: Can I have a moment?

10 THE REFEREE: Sure.

11 CROSS-EXAMINATION

12 BY MR. DEROHANNESIAN:

13 Q. Good morning. My name is Paul DerOhannesian. I represent Judge
14 Miller. I want to ask you some general questions about family court,
15 as well as some particular questions about what you've said here
16 today. I know you said that Ms. Gallagher came to you-- Let me ask
17 you this. What have you looked at to help you testify today?

18 A. I have reviewed my deposition to the ethics commission and certain
19 email or letters or memos that may have been written back and forth
20 regarding Judge Miller.

21 Q. And you said Ms. Gallagher first complained to you in what year?

22 A. First complaints, probably the first year, which was 2015, when Judge
23 Miller was on the bench.

24 Q. And I think you said you were-- You said you reviewed a deposition
25 you gave?

(Singer - Cross)

1 A. Yes.

2 Q. And that was to whom?

3 A. To the ethics commission.

4 Q. Who is the-- When you say, "ethics commission," you mean the
5 Commission on Judicial Conduct or the inspector general?

6 THE REFEREE: It's just two different things.

7 A. Okay. The Commission on Judicial Conduct.

8 Q. You were interviewed by the inspector general though, also, is that
9 correct?

10 A. Yes, at some point, and I can't remember when.

11 Q. Would that have been in July of 2017?

12 A. I'm not sure.

13 Q. I'd like to you show you Respondent's Exhibit S. I'll give you a
14 chance to look at it. I want to bring your attention to the--

15 THE REFEREE: --First, can we identify just what it
16 is?

17 MR. DEROHANNESIAN: Yep.

18 THE REFEREE: Do you know, Ms. Singer, what
19 that is?

20 THE WITNESS: This is the report by the inspector
21 general?

22 THE REFEREE: Is that a summary of its interview
23 with you?

24 THE WITNESS: A summary, yes.
25

377.

(Singer - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. And looking at Respondent's S? Is that what the label is on top?

3 A. Yes. Yes, it is.

4 Q. And bring your attention to the page that says 10. It's not the tenth
5 page, but at the bottom, do you see there's page numbers, it begins
6 with 9?

7 A. Yes.

8 Q. So, it'd be the second page of the exhibit, but it's marked 10. Does
9 this refresh your recollection that you told the inspector general's
10 office that Ms. Gallagher first complained about Judge Miller at the
11 end of 2016?

12 MR. PEDROTTY: Objection. I don't believe that--

13 THE REFEREE: --I don't think she said that she
14 doesn't have a recollection.

15 MR. PEDROTTY: Right.

16 THE REFEREE: So, I-- If you're trying to--

17 MR. DEROHANNESIAN: --She said it was 2015.

18 THE REFEREE: I understand that, but if you-- I
19 mean, it's non-jury, and I think the proper way is to ask her,
20 "Well, couldn't have been '16?" She hasn't said that she
21 needs her memory refreshed. She said it was '15--

22 BY MR. DEROHANNESIAN:

23 Q. --Then let me do it the other way, and we can just say, did you tell the
24 inspector general that it was in 2016 that Ms. Gallagher first
25 complained about Judge Miller?

378.

(Singer - Cross)

1 A. Yes.

2 Q. Now, when you testified in front of the Commission on Judicial
3 Conduct, you were asked a question about this document.

4 THE REFEREE: This--

5 MR. DEROHANNESIAN: --I'll just hold on to it
6 for a second.

7 THE REFEREE: Okay.

8 BY MR. DEROHANNESIAN:

9 Q. You were asked about that document which is in your hand, correct?

10 A. Please repeat the question.

11 THE REFEREE: Put the document down and just--

12 THE WITNESS: --Okay.

13 THE REFEREE: We'll wait until the question is
14 complete. It's a little distracting to have it, so--

15 THE WITNESS: --Right.

16 THE REFEREE: Let him ask the question.

17 BY MR. DEROHANNESIAN:

18 Q. So, when you testified to the Commission, they showed that document
19 to you, Respondent's Exhibit S, correct?

20 A. Yes.

21 Q. And they identified it as Exhibit 4. Do you see a label on the front of
22 that?

23 A. Yes.

24 Q. And you were asked questions under oath by the Commission,
25 correct?

379.

(Singer - Cross)

1 A. Yes.

2 Q. And you were asked whether, in looking at that document,
3 Respondent's S, which was Exhibit 4 at your testimony, you adopted
4 them under oath as accurate--

5 A. --Yes--

6 Q. --do you recall that?

7 A. Yes.

8 Q. And you did when you testified in front of the Commission on
9 October 3, 2017, swear to the truth of what is in the inspector
10 general's interview, correct?

11 A. Yes, I did.

12 Q. Mr. Kachadourian first complained to you about Judge Miller around
13 May of 2017, correct?

14 A. I have trouble remember the exact timeline.

15 Q. You would agree that in July 2017, your memory would be better than
16 it is today concerning--

17 A. --In July of '17?

18 Q. Yes.

19 A. Yes.

20 Q. And you were asked that question by the inspector general concerning
21 when Mr. Kachadourian first complained to you, correct?

22 A. Yes.

23 Q. And did you tell the inspector-- Well, I'll let you look at--

24 THE REFEREE: --No, just ask her the question.

25 She'll probably agree with you.

380.

(Singer - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Did you tell the inspector general during your interview in July 2017
3 that Mr. Kachadourian first made complaints to you about two months
4 ago?

5 A. I-- I'm not sure unless I looked at it. If that's what it says, I attest to
6 it.

7 Q. No, no, please. If you don't recall, let's see if this helps. Showing
8 you Respondent's Exhibit S. If you look at the bottom of the second
9 page of the exhibit, it's called page 10 on the piece of paper, and in
10 particular, the first sentence of the last paragraph on the page.

11 A. Yes, that's correct. "Complaints from Mr. Kachadourian began about
12 two months ago."

13 Q. So, that's what you said to the inspector general in July 2017, correct?

14 A. Yes.

15 Q. And just to put a date in July, if you look at the front page of
16 Respondent's S in the first line, does that help you refresh the date in
17 July of 2017?

18 A. July 14th of 2017.

19 Q. Does that sound about right?

20 A. Yes.

21 Q. On-- What-- On what date did you first document any complaint
22 from Rachelle Gallagher?

23 A. Document in what way?

24 Q. In writing, email, or memorandum.

25 A. I don't remember when I first documented it. Not off the top of my

381.

(Singer - Cross)

1 head.

2 Q. Well, did you document at any time any of the statements that you say
3 that Rachelle Gallagher made?

4 A. Yes.

5 Q. When was that? What's the first documentation that you know about?

6 A. I don't remember. Isn't that the same question you just asked me?

7 Q. Did you document or email anyone in the Office of Court
8 Administration concerning of Rachelle Gallagher's complaints?

9 A. I believe I did it with a phone call.

10 Q. And who is the person you phoned?

11 A. Greg Gates.

12 Q. And when you do believe you made a phone call to Greg Gates?

13 A. Sometime mid-2017.

14 Q. Would it be after Mr. Kachadourian had come to you with a
15 complaint?

16 A. I believe so.

17 Q. And before you were interviewed by the inspector general?

18 A. To the best of my knowledge, yes.

19 Q. Are you aware of the existence of any note or writing or email by you
20 prior to June of 2017 relating to any statements made to you by
21 Rachelle Gallagher?

22 A. I don't recall off-hand.

23 Q. That's a different question. Are you aware of any document that
24 exists relating to any complaint made to you by Rachelle Gallagher
25 prior to June 2017?

382.

(Singer - Cross)

1 MR. PEDROTTY: Asked and answered. She said
2 she--

3 THE REFEREE: --I agree. I think she did answer
4 that. She said she's nev-- She has no recall of that. She
5 didn't say no, but said she doesn't recall.

6 BY MR. DEROHANNESIAN:

7 Q. And do you have any recollection or knowledge of any document,
8 record created by you prior to June of 2017 of any complaint made to
9 you by Mark Kachadourian?

10 A. It's tough to answer because I don't recall exact timelines, so I-- I
11 don't recall.

12 Q. Has anyone ever shown you any document or record that establishes
13 any complaint made to you by Rachelle Gallagher prior to June of
14 2017?

15 A. Not that I recall.

16 Q. Has anyone shown you any document or record that establishes any
17 complaint made to you prior to June '17 by Mark Kachadourian?

18 A. Not that I recall.

19 Q. Is Greg Gates the first person you recall reporting anything concerning
20 any allegation by Ms. Gallagher or Mr. Kachadourian?

21 A. Yes.

22 Q. Prior to June of 2017, you were-- had received training with respect
23 to policies of the Office of Court Administration for the reporting of
24 either sexual harassment or physical harassment?

25 A. Yes.

383.

(Singer - Cross)

- 1 Q. And you were aware, prior to June of 2017, that employees have the
2 option of calling a toll-free number?
- 3 A. Are you referring to the Work Life program?
- 4 Q. I am referring to the Work Life program.
- 5 A. Yes, I'm aware of that.
- 6 Q. You're aware of the Work Life program?
- 7 A. Absolutely.
- 8 Q. And that's been a policy of the Office of Court Administration,
9 correct?
- 10 A. Correct.
- 11 Q. The Work Life program is designed so that employees can
12 communicate any complaints concerning the workplace environment
13 in the court system, correct?
- 14 A. Correct.
- 15 Q. And it's the goal of the Office of Court Administration under the
16 Work Life program to respond immediately to any such complaint,
17 correct?
- 18 A. It is the goal, yes.
- 19 Q. And you were aware of that prior to June of 2017?
- 20 A. Yes.
- 21 Q. In addition to phoning the Work Safe office, an individual employee
22 may email the Office of Court Administration, correct?
- 23 A. I assume, yes.
- 24 Q. You assume yes?
- 25 A. You're saying they could either call Work Life--

384.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Cross)

1 Q. --Yes--

2 A. --or they can email--

3 Q. --Or they can email Work Life.

4 MS. SCALISE: Is it Work Life or Work Safe?

5 MR. DEROHANNESIAN: Work Safe, I'm sorry.

6 MS. SCALISE: Just for the record, is it Work Life
7 or is it Work Safe?

8 THE WITNESS: I thought it was the Work Life
9 program.

10 MR. DEROHANNESIAN: Okay, well--

11 THE WITNESS: --Are they two different things?

12 THE REFEREE: We'll find out.

13 MS. SCALISE: I guess so.

14 BY MR. DEROHANNESIAN:

15 Q. Let me show you Respondent's T for identification, and give you a
16 chance to look at that.

17 A. Two different programs.

18 Q. Two different programs?

19 A. That's my understanding.

20 Q. So, you think there's a Work Life and a Work Safe program?

21 A. Yes.

22 Q. Okay. Are you familiar with the Work Safe office program?

23 A. I don't recall.

24 Q. All right. Well, looking at Respondent's T, does that refresh your
25 recollection that there is a Work Safe program--

385.

(Singer - Cross)

1 A. --Yes--

2 Q. --in the Office of Court Administration?--

3 MR. PEDROTTY: --Objection. Relevance.

4 THE REFEREE: I-- Overruled. I think we're
5 getting to the point.

6 BY MR. DEROHANNESIAN:

7 Q. It does?

8 A. I'm sorry, the question?

9 THE REFEREE: Does it refresh your recollection
10 that there is such a thing as a Work Safe program?

11 THE WITNESS: Yes. Yes, it does.

12 BY MR. DEROHANNESIAN:

13 Q. Prior to June of 2017, did you advise Rachelle Gallagher to contact
14 the Work Safe office?

15 A. I did not.

16 MR. PEDROTTY: Objection.

17 THE REFEREE: Overruled.

18 BY MR. DEROHANNESIAN:

19 Q. And prior to June 2017, did you advise Mark Kachadourian to contact
20 the Work Safe office?

21 A. I did not.

22 Q. Now, in June 2017, you received complaints from Rachelle Gallagher,
23 is that correct?

24 A. Yes.

25 Q. And Mark Kachadourian?

386.

(Singer - Cross)

- 1 A. Yes.
- 2 Q. And do you have a record-- or-- concerning that contact that you
- 3 had?
- 4 A. Contact with them?
- 5 Q. Yes.
- 6 A. I had documented some notes to myself.
- 7 Q. I'm going to show you Respondent's U for identification. Do you
- 8 recognize that?
- 9 A. I do.
- 10 Q. Are those the notes that you're referring to that you wrote?
- 11 A. Yes.
- 12 Q. Is it fair to say that those are the only notes or record that you made
- 13 concerning the information given to you by Rachelle Gallagher or Mr.
- 14 Kachadourian in June of 2017?
- 15 A. To my recollection, yes.
- 16 Q. What's to your recollection?
- 17 A. That these are the only notes I made.
- 18 Q. You're not aware of any other notes that you made?
- 19 A. To myself?
- 20 Q. Yeah.
- 21 A. No.
- 22 Q. Are you aware of any notes you made to anyone else concerning their
- 23 allegations?
- 24 A. Not until I reported it to the district office.
- 25 Q. Did you make any record in your notes of any death threat by Judge

387.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Cross)

1 Miller?

2 A. I don't recall.

3 Q. You don't recall if it's in your notes?

4 A. That's correct.

5 Q. Do you recall if you made any documentation in your notes of
6 Rachelle Gallagher allegedly having to service some state senator,
7 particular Sen. Akshar?

8 A. You're asking did I put that in my notes?

9 Q. Yes.

10 A. Not that I recall.

11 Q. Do you recall saying anything about the services to be provided Sen.
12 Akshar were to improve or enhance the stature of the Broome County
13 Family Court?

14 A. Not the Broome County Family Court.

15 Q. Your statement was that the services were to enhance the--

16 A. --Judge Miller's favor in Albany.

17 Q. In Albany, correct?

18 A. Yes.

19 Q. That was your statement. Can you show me anything about your notes
20 in Respondent U where you documented anything about the theory
21 that the sexual favors were to be-- enhance Judge Miller's--

22 MR. PEDROTTY: --Objection. Objection. First of
23 all, I don't believe that's all of her notes.

24 MR. DEROHANNESIAN: Well--

25 THE REFEREE: --That-- That-- I don't think

388.

(Singer - Cross)

1 that's the question. Are you offering Exhibit--

2 MR. DEROHANNESIAN: --No--

3 THE REFEREE: --U--

4 MR. DEROHANNESIAN: --No.

5 MR. PEDROTTY: Okay. Objection, then.

6 THE REFEREE: And why don't you--

7 MR. DEROHANNESIAN: --I'm not offering it--

8 MR. PEDROTTY: --If he's not offering it, then why
9 is--

10 THE REFEREE: --What is your question?

11 MR. PEDROTTY: What is the purpose for which
12 he's showing it to her then?

13 THE REFEREE: That's all right. Just-- What is the
14 question?

15 MR. DEROHANNESIAN: Did you document
16 anything about providing sexual services to Sen. Akshar for
17 any reason or motivation?

18 MR. PEDROTTY: Asked and answered.

19 THE REFEREE: You can answer the question. Did
20 you document it?

21 THE WITNESS: I don't remember documenting it
22 on-- in writing.

23 BY MR. DEROHANNESIAN:

24 Q. You said you did advise Ms. Gallagher to get a lawyer, correct?

25 A. Yes.

389.

(Singer - Cross)

- 1 Q. And you did that in 2016, you said?
- 2 A. I did that about every other time that she or Mark spoke to me.
- 3 Q. And I think you specifically identified the summer of 2016. Correct?
- 4 A. I-- I will--
- 5 Q. --Was that your testimony today or not?
- 6 A. Yes, I guess it was. It's getting confusing with the dates. I apologize.
- 7 Q. Well, I want to give you time to think. Is that what you said this
- 8 morning, the summer of 2016?
- 9 A. Yes.
- 10 Q. The Work Place, Work Safe, you said those were the two programs?
- 11 A. Work Life--
- 12 Q. --Yep--
- 13 A. --and Work Safe.
- 14 Q. Work Life involves domestic violence or home violence?
- 15 A. Work Life encompasses everything. If an employee is having any
- 16 kind of struggles, whether it be financial or with their children, or
- 17 drugs, or anything, they can be referred to Work Life, and Work Life
- 18 will hook them up with someone who can help whatever situation
- 19 they're in.
- 20 Q. And Work Safe deals specifically with issues of harassment in the
- 21 workplace, correct?
- 22 A. Correct.
- 23 Q. With respect to the family court work environment, were you in the
- 24 courtroom every day?
- 25 A. No.

390.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Cross)

1 Q. Did you have an assignment that took you to the courtroom on a
2 regular basis?

3 A. No.

4 Q. So, you would not be in the courtroom when a judge began
5 proceedings?

6 A. Generally not.

7 Q. And you would not be in the courtroom when the judge ended
8 proceedings?

9 A. Generally not.

10 Q. Your job was not to be assigned to a courtroom, fair to say?

11 A. That is fair to say.

12 Q. As chief clerk, you had an office?

13 A. Yes.

14 Q. And you were supervising not just Judge Miller, but other courts,
15 correct? Or courtrooms, I should say.

16 A. Within the family court, yes.

17 Q. Apart from conflict between Rachelle Gallagher and Judge Miller, or
18 conflict between Mark Kachadourian and Judge Miller, was there--

19 MR. PEDROTTY: --Objection.

20 THE REFEREE: He hasn't finished his question.

21 Go ahead.

22 BY MR. DEROHANNESIAN:

23 Q. Did Mark Kachadourian and Rachelle Gallagher have conflict that
24 was reported to you with another court clerk?

25 MR. PEDROTTY: Objection.

391.

(Singer - Cross)

- 1 THE REFEREE: Overruled.
- 2 A. I recall one court clerk that there were some issues with. With
- 3 Rachelle and Mark.
- 4 Q. What is the name of that clerk?
- 5 A. Marie Lawrence.
- 6 Q. Okay. And there was an accusation that Marie Lawrence was
- 7 bullying--
- 8 A. --Yes--
- 9 Q. --Rachelle Gallagher?
- 10 A. Yes.
- 11 Q. And there was an accusation that Marie Lawrence was bullying Mark
- 12 Kachadourian?
- 13 A. Yes.
- 14 Q. And with respect to this incident in the workplace, did you, as chief
- 15 clerk, make any documentation of that allegation?
- 16 A. Yes.
- 17 Q. Where is that allegation located? Documentation?
- 18 A. I don't know. I don't have it.
- 19 Q. To whom did you provide notification of that allegation?
- 20 A. Oh, I can't remember. I do remember documenting it and having
- 21 discussions with Judge Miller about it.
- 22 Q. Did you notify any of your supervisors that Marie Lawrence said that
- 23 Rachelle Gallagher and Mark Kachadourian were bullying them?
- 24 THE REFEREE: No, you have that backwards.
- 25 A. No, the other way. Marie Lawrence.

392.

(Singer - Cross)

- 1 Q. Did you make any report that Marie Gallagher--
2 A. --No, Marie Lawrence.
3 Q. Marie Lawrence was bullying Rachelle Gallagher or Mark
4 Kachadourian?
5 A. Did I report it?
6 Q. In writing?
7 A. I may have-- I just can't-- It's been so long I can't remember.
8 Q. Well, do you know what year it was that--
9 A. --It was early-- Probably 2015. Early on.
10 Q. When you say "probably," do you know?
11 A. I'm saying probably. 2015, the first year Judge Miller was on the
12 bench.
13 Q. Did you investigate the allegation?
14 A. I spoke to Judge Miller about it.
15 Q. Other than speaking to Judge Miller, did you do any other
16 investigation?
17 A. Besides speaking with Rachelle and Mark, not that I recall.
18 Q. Did you make any findings of fact that you documented with respect
19 to the bullying allegation?
20 A. No.
21 Q. Did that bullying allegation involve cursing?
22 A. Yes.
23 Q. Did it involve foul language?
24 A. Yes.
25 Q. Is it fair to say that Judge Miller was not the subject of the complaint

393.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Cross)

1 between Marie Lawrence, Rachelle Gallagher, and Mark
2 Kachadourian?

3 A. He-- I'm sorry. Please repeat that.

4 Q. Yeah.

5 THE REFEREE: The complaint had nothing to do
6 with Judge Miller. It was between Lawrence, Gallagher,
7 and Kachadourian. That's the question--

8 A. --Yes. Yes.

9 Q. Thank you.

10 MR. DEROHANNESIAN: Can I have a moment?

11 THE REFEREE: Sure, take your time.

12 BY MR. DEROHANNESIAN:

13 Q. I think you said there was some form of concern addressed by Judge
14 Miller about Rebecca Vroman, correct?

15 A. Yes.

16 Q. And you were asked questions about that. And did Judge Miller
17 outline those concerns in any type of document?

18 A. Yes. He sent me a two-page typewritten letter.

19 Q. And I think you referred to that this morning, correct?

20 A. Yes, I did.

21 Q. Let me show you Respondent's V for identification.

22 A. Yes, this is the letter that Judge Miller sent to me.

23 Q. Okay. One question about whether that is the letter is you referred to
24 it as being two pages and this appears to be three pages.

25 A. Yes, it is. I stand corrected.

394.

(Singer - Cross)

- 1 Q. But it-- So, it is a fair and accurate copy of the letter that Judge Miller
2 sent to you concerning Rebecca Vroman?
- 3 A. Yes, it is.
- 4 Q. And you said that after you got that you did an investigation.
- 5 A. If you want to call it that, yes.
- 6 Q. Well, you--
- 7 A. --I looked into the allegations.
- 8 Q. I don't want to call it anything. You tell me, did you use that word
9 this morning?
- 10 A. What-- I did look into all the allegations.
- 11 Q. So, you looked into it?
- 12 A. Yes.
- 13 Q. When you say you looked into the allegations, what did looking into
14 Judge Miller's three-page letter consist of for you?
- 15 A. It consisted of an email that I sent to Rebecca Vroman asking her
16 about several points that I needed clarification on. There were many
17 that I could answer right off the top of my head, without discussion,
18 but there were several I needed her input.
- 19 Q. So, when you said that you looked into Judge Miller's three-page
20 letter, you sent an email to Rebecca Vroman.
- 21 A. I did.
- 22 Q. What other looking into did you do into-- do about his letter?
- 23 A. Well, after I contacted Rebecca and got an answer from her, I wrote a
24 letter in response to Judge Miller--
- 25 Q. --Okay--

395.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Cross)

1 A. --explaining--

2 Q. --Okay, there was a response.

3 A. Yes.

4 Q. But in terms of looking into Judge Miller's letter, did you do anything
5 other than send an email to Rebecca Vroman?

6 A. I can't recall.

7 Q. Do you have any record or recollection of doing anything to look into
8 Judge Miller's three-page letter, other than emailing Rebecca
9 Vroman?

10 MR. PEDROTTY: Objection. Asked and answered.

11 THE REFEREE: I think that's true. I'll sustain it.

12 She said that she-- For many of the things, she knew off the
13 top of her head, and the others she had to obtain
14 clarification or information from Rebecca.

15 BY MR. DEROHANNESIAN:

16 Q. There were some of the nine points that Judge Miller addressed that
17 you did find some basis to, correct?

18 A. Yes.

19 Q. And some of those you addressed directly with Ms. Vroman, correct?

20 A. I believe I addressed everything with her, only it-- if it needed to be
21 addressed.

22 Q. And it-- There were certain--

23 A. --So--

24 Q. --items that you found had merit in Judge Miller's--

25 A. --Yes--

396.

(Singer - Cross)

1 Q. --letter?--

2 A. --that is true.

3 Q. And you used the word that, even with finding some things had merit,
4 that you felt that letter was retaliatory, correct?

5 A. Because the bulk of it, I felt, had no merit.

6 Q. Based on your looking into and asking Rebecca Vroman.

7 A. On those issues, I got her input and figured it out from there, but the
8 bulk of the issues, I knew the answers to. Like typing too loudly in
9 the courtroom.

10 Q. How about that she was sometimes falling asleep in the courtroom?

11 MR. PEDROTTY: Objection.

12 BY MR. DEROHANNESIAN:

13 Q. But wasn't there an allegation that she was falling asleep in the
14 courtroom?

15 A. Yes.

16 Q. Okay. And other than asking Ms. Vroman whether she was falling
17 asleep, did you ask or investigate with anyone else?

18 A. I didn't ask her about that. I used my own observations that Rebecca
19 was a competent clerk and on the job.

20 Q. That was based on you not being in the courtroom on a daily basis,
21 correct?

22 A. It was-- Correct.

23 Q. Okay. Have you ever been asked by the Commission on Judicial
24 Conduct to obtain any recordings of Judge Miller's court proceedings?

25 MR. PEDROTTY: Objection.

397.

(Singer - Cross)

1 THE REFEREE: Overruled.
2 MR. PEDROTTY: Objection. I think it's a--
3 THE REFEREE: --Overruled.
4 A. I don't recall. Could you be more specific?
5 Q. Have you-- Outside of the courtroom, have you seen Judge Miller in
6 the last three to six months?
7 A. No.
8 Q. Have you seen him in Sam's Club?
9 A. No.
10 Q. Shopping?
11 A. I don't-- Oh--
12 Q. --Have you been at Sam's--
13 A. --Parking lot. Yes. But I don't know if it's the last three to six
14 months. Definitely ran into him in the parking lot.
15 Q. In 2018? In 2017?
16 A. I don't know.
17 Q. He was with his son?
18 A. Yes.
19 Q. And when you saw Judge Miller, did you comment to him in the
20 parking lot of Sam's Club about the nice blue sweat top he was
21 wearing?
22 MR. PEDROTTY: Objection.
23 THE REFEREE: No. Overruled. I'm really
24 curious.
25 A. I don't remember.

398.

(Singer - Cross)

- 1 Q. You don't remember?
- 2 A. No.
- 3 Q. Now, when you said you made a comment about having a hot flash,
- 4 no one else was present?
- 5 A. Not to my recollection.
- 6 Q. And did you expect Judge Miller to react or respond to that comment?
- 7 A. He made that comment to me.
- 8 Q. No, did-- When you made your comment about having a hot flash--
- 9 A. --Oh--
- 10 Q. --was it your expectation that he respond to you in some way?
- 11 A. No. I always apologized when anyone was in my office if I had a hot
- 12 flash. It's semi-embarrassing, I guess. So, I would have apologized.
- 13 Q. In any event, you chose to make the statement--
- 14 A. --Yes--
- 15 Q. --correct?
- 16 A. Yep.
- 17 Q. And then you say that he went-- that was on June 5th, 2017, correct?
- 18 A. I'm not certain of the date.
- 19 THE REFEREE: Anything else?
- 20 MR. DEROHANNESIAN: Yes.
- 21 BY MR. DEROHANNESIAN:
- 22 Q. I'm going to show you Respondent's U, which you identified as your
- 23 notes. Did I ask you when you created those notes?
- 24 A. I don't know if you asked me that.
- 25 Q. Well, let's-- Let me ask you now. When did you create the notes that

399.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Cross)

- 1 are Respondent's U?
- 2 A. I'm not certain when I created them.
- 3 Q. Was it soon after you went to Greg Gates or before you went to Greg
- 4 Gates?
- 5 A. I believe it was before I went to Greg Gates.
- 6 Q. Fair to say June or July of 2017?
- 7 A. Or earlier.
- 8 Q. Okay. Well, it couldn't be earlier than the week of June 5th, could it?
- 9 A. I'm not sure.
- 10 Q. Well, let me ask you this. Do you recall when the matter involving the
- 11 statement that you say Judge Miller said about a hot flash occurred?
- 12 A. My notes say during the week of June 5th.
- 13 Q. The-- Do your notes help you remember that?
- 14 A. Yes, they do.
- 15 Q. And for you to write about the week of June 5th, then you could not
- 16 have created your notes before June 5th. Does that make sense to you?
- 17 A. These notes were done before June 5th, because it refers to May
- 18 dates--
- 19 Q. --I know--
- 20 A. --but that note about the hot flash? Yes, the week of June 5th.
- 21 Q. You couldn't have written that note about the week of June 5th prior to
- 22 the week of June 5th.
- 23 A. Correct.
- 24 Q. Make sense?
- 25 A. That note, correct.

400.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Cross)

1 Q. Okay. So, it was during that week of June 5th that you say this
2 occurred, correct?

3 A. Yes.

4 Q. And you say that Judge Miller went back to chambers and shared that
5 comment with Rachelle Gallagher, correct?

6 A. Yes.

7 MR. PEDROTTY: What comment, Your Honor?

8 THE REFEREE: I have no idea.

9 MR. DEROHANNESIAN: Yeah, well-- Let's be
10 clear.

11 BY MR. DEROHANNESIAN:

12 Q. The comment-- You claim that Judge Miller made a comment about
13 you having a hot flash, correct?

14 A. Yes.

15 Q. And that his response to that, "It's nice to know I still have that effect
16 on you," was communicated by Judge Gallagher [sic] to Rachelle
17 Gallagher that day.

18 MS. SCALISE: Judge Miller.

19 THE REFEREE: Judge Miller to Gallagher--

20 MR. DEROHANESSIAN: --I'm sorry--

21 THE REFEREE: --and Gallagher related it to her.

22 MR. DEROHANESSIAN: Correct.

23 MS. SCALISE: Correct.

24 THE REFEREE: Is that correct?

25 A. To my recollection, that's--

401.

(Singer - Redirect)

1 Q. --Yeah, that--

2 A. --Okay. That makes sense.

3 Q. That Judge Miller went that day and told Rachelle Gallagher about the
4 comment that was made to you, correct?

5 A. Yes.

6 Q. Other than your notes, do you have any formal record or report that
7 you filed with the Office of Court Administration about either Marie
8 Lawrence, Rachelle Gallagher, Mark Kachadourian or Judge Miller?

9 A. A written report?

10 Q. Yes.

11 A. Not to my knowledge.

12 MR. DEROHANNESIAN: Then nothing else, thank
13 you.

14 THE REFEREE: Thank you. Mr. Pedrotty--

15 MS. SCALISE: --Wait, he wants-- He has one more
16 thing.

17 THE REFEREE: All right.

18 MR. DEROHANNESIAN: I have nothing else,
19 Your Honor.

20 THE REFEREE: All right, thank you. Mr. Pedrotty,
21 anything?

22 MR. PEDROTTY: Yes.

23 REDIRECT EXAMINATION

24 BY MR. PEDROTTY:

25 Q. Just to clarify and follow up to some of Mr. DerOhannesian--

402.

(Singer - Redirect)

1 DerOhannesian's questions about this comment that the judge-- about
2 this incident in or around June 5th in which you said that you had a hot
3 flash, did the judge respond to you personally? After having now
4 looked at your notes?

5 A. After-- Sorry. Having referred to my notes, he replied, "It's nice to
6 know I still have that effect on you."

7 Q. And he replied that to you?

8 A. Yes.

9 Q. And then what did you learn he did later with respect to that
10 comment?

11 A. He went back to chambers and shared it with at least Rachelle
12 Gallagher.

13 Q. He shared that he had made that comment to you?

14 A. Yes.

15 Q. Is there any reason why you didn't report Rachelle Gallagher's
16 allegations to OCA sooner?

17 A. Yes.

18 MR. DEROHANNESIAN: Objection.

19 THE REFEREE: Sustained.

20 MR. PEDROTTY: Mr. DerOhannesian got into this
21 at length about why she didn't report, Your Honor--

22 THE REFEREE: --It really-- I-- To be really
23 candid, what difference does it make? If this witness had
24 an obligation to report it, she either did or didn't. That-- It
25 doesn't matter what this witness-- what was going on in her

403.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Singer - Redirect)

1 mind. To the extent she said it on cross, it's totally
2 irrelevant. The allegations in the complaint are quite clear
3 and honestly, the timing of what-- when this was reported
4 to UCS or anywhere else has some bearing on the civil case,
5 but I don't see how it has bearing here. The judge is
6 accused of doing A, B, and C. And it-- he either did or
7 didn't do that. And if he did, then the Commission will
8 prove it, and if he didn't, then it won't prove it, or it will be
9 discounted by the defense. But what difference does it
10 make why this witness did anything?

11 MR. PEDROTTY: Let me try to ask another
12 question, then.

13 THE REFEREE: All right, thank you.

14 MR. PEDROTTY: We'll see how it goes.

15 BY MR. PEDROTTY:

16 Q. What, if anything, did Rachelle Gallagher tell you with respect to you
17 reporting these allegations?

18 MR. DEROHANNESIAN: Objection.

19 THE REFEREE: I'll hear it.

20 A. She told me, each and every time, she would preface her remarks with
21 I couldn't say anything about it to anyone for fear of retaliation. And
22 usually by the end of the conversation, she would reiterate, "Please
23 don't say anything."

24 MR. DEROHANNESIAN: I ask that be stricken.

25 That's hearsay.

404.

(Singer - Redirect)

1 THE REFEREE: She'll be here. I'll allow it. I'm
2 not going to strike it.

3 MR. PEDROTTY: Very good. I'm done. Thank
4 you.

5 THE REFEREE: All right. Anything based on that?

6 MR. DEROHANNESIAN: No, no.

7 THE REFEREE: I mean, I don't accept that for the
8 truth, that was--

9 MR. DEROHANNESIAN: --That's fine.

10 THE REFEREE: It-- I don't believe it was offered
11 for the truth of the matter.

12 MR. DEROHANNESIAN: Well-- We have a
13 record--

14 THE REFEREE: --If it was, I don't accept it, and--

15 MR. DEROHANNESIAN: --Okay--

16 THE REFEREE: --somebody else can feel
17 otherwise.

18 MR. DEROHANNESIAN: Thank you.

19 THE REFEREE: Anything further?

20 MR. PEDROTTY: I guess-- At this point, there was
21 a lot of talk about a-- Mr. DerOhannesian asked Ms. Singer
22 about the letter that the judge sent to Ms. Singer about Ms.
23 Vroman. I wonder at this time if we could offer that and
24 also offer Ms. Singer's response as well, so that it's clear in
25 the record what the judge's complaints were and what Ms.

405.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 Singer's response was.

2 THE REFEREE: Any objection?

3 MR. DEROHANNESIAN: I won't dispute the
4 foundation for either exhibit. Can I think over the lunch
5 break whether we'll--

6 THE REFEREE: --Yes--

7 MR. DEROHANNESIAN: --Because we don't need
8 the witness for that.

9 THE REFEREE: Right. I think we can excuse the
10 witness and we'll take that we'll hold the offer--

11 MR. PEDROTTY: --Mm-hmm--

12 THE REFEREE: --so, let's go off the record.

13 (OFF THE RECORD)

14 THE REFEREE: All right. All counsel are present
15 and the Respondent is present. Mr. Pedrotty, you had
16 something you wanted to address?

17 MR. PEDROTTY: Yeah, I'd like to renew my offer
18 into evidence the correspondence between Respondent and
19 Debbi Singer regarding Rebecca Vroman.

20 THE REFEREE: And the purpose of the offer is
21 what?

22 MR. PEDROTTY: Primarily to clarify the record.
23 There's been a lot of discussions about this correspondence.
24 I think it would just clarify things if we could just get these
25 letters in, so everybody can see what they're regarding, and

406.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 you can give them whatever weight you deem is fit.

2 MR. DEROHANNESIAN: Is the offer two letters or
3 just--

4 MR. PEDROTTY: --Two letters. You had already
5 marked the letter--

6 MR. DEROHANNESIAN: --V--

7 MR. PEDROTTY: --Yeah-- letter from Judge
8 Miller to Debbi Singer as Respondent's V, and I have
9 marked for identification as Exhibit 12, a three-page letter,
10 dated March 10, 2017, from Debbi Singer to Judge Miller.

11 THE REFEREE: So, it's the response from Debbi
12 Singer to--

13 MR. PEDROTTY: --Correct--

14 THE REFEREE: --Judge Miller. Any objection?

15 MR. DEROHANNESIAN: I am. At this time,
16 we're not offering the-- the exhibit we marked.

17 THE REFEREE: They are.

18 MR. DEROHANNESIAN: They are. We're not
19 offering it. I don't believe it's necessary or relevant at this
20 point. I think I indicated I had no foundational issues with
21 their exhibit, that's why I was going to allow it--

22 THE REFEREE: --No, I understand, but-- Well,
23 there's two-- There's two offers. What are the-- What are
24 the identifications?

25 MR. PEDROTTY: Respondent's Exhibit V, which

407.

(Hon. Richard H. Miller, II)

1 is a three-page letter from Respondent dated March 1st,
2 2017, to Debbi Singer--

3 THE REFEREE: --That's the response, right?

4 MR. PEDROTTY: That's the initial letter from
5 Judge Miller--

6 THE REFEREE: --Right--

7 MR. PEDROTTY: --to Debbi Singer. And then
8 Commission's Exhibit 12 is the response from Debbi
9 Singer. It's a three-page letter dated March 10, 2017.

10 MR. DEROHANNESIAN: We may address the
11 exhibit issue later on. Judge--

12 THE REFEREE: --Well, do you object to--

13 MR. DEROHANNESIAN: --Yeah--

14 THE REFEREE: --either or both?

15 MR. DEROHANNESIAN: Object to both right
16 now. I did not offer. I never offered.

17 THE REFEREE: You know what? I haven't seen
18 them--

19 MR. DEROHANNESIAN: --Oh--

20 THE REFEREE: --so, let me take a look.

21 MR. DEROHANNESIAN: I asked questions about
22 it.

23 THE REFEREE: Yeah. So, this is-- All right.

24 Well, let's bring the witness in and I'll take a look at these
25 on a break or when we get a chance. Ms. Stone?

408.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. STONE: Yes.

2 THE REFEREE: Raise your right hand. Do you
3 swear or affirm under the penalty of perjury that the
4 testimony you are about to give is the truth, the whole truth,
5 and nothing but the truth?

6 MS. STONE: Yes.

7 DEBORAH STONE,

8 having been duly sworn, was examined and testified as follows:

9 THE REFEREE: Your name is Deborah Stone?

10 THE WITNESS: Yes.

11 THE REFEREE: My name is Robert Barrer. I'm a
12 Referee that has been appointed by the Commission on
13 Judicial Conduct to preside over the hearing that we're
14 having today. These matters are confidential, so I'd ask you
15 not to discuss them with anybody. If you have your cell
16 phone, I hope it's on silent.

17 THE WITNESS: It's turned off.

18 THE REFEREE: Perfect. Ms. Tadjigoue is going
19 to ask you some questions and if you would move your
20 water bottle from that--

21 THE WITNESS: --Absolutely.

22 THE REFEREE: Great. Try and speak your
23 answers instead of shaking your head--

24 THE WITNESS: --Okay--

25 THE REFEREE: --or gesturing.

409.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 DIRECT EXAMINATION

2 BY MS. TADJIOGUEU:

3 Q. Good afternoon, Ms. Stone.

4 A. Hi.

5 Q. What is your occupation?

6 A. I'm the chief clerk for Tioga County Surrogate's Court.

7 Q. How long have you been the chief clerk?

8 A. 16 years.

9 Q. Would you describe your general duties and responsibilities, please?

10 A. Surrogate's court deals with wills, probates, administrations,
11 accountings, guardianships and adoptions. And day-to-day varies,
12 depending on what type of files come in, and we review the files and
13 send them over to the judge when they're ready for issuance of letters.
14 If they're not ready, citations are issued, and it's scheduled for a court
15 date.

16 Q. When you say "we," who are you referring to?

17 A. I have one grade 12 who is full-time. She started in 2015 and she
18 generally does the initial review on an estate and will ask for any
19 obvious things that might be missing, and then it comes to me for a
20 second review before it-- before it goes forward.

21 Q. What is this grade 12's name, what is her name?

22 A. Her name is Kiyoko Matsuhashi.

23 Q. Could you spell that, please?

24 A. K-I-Y-O-K-O. M-A-T-S-U-H-A-S-H-I. And she goes by Kiki. K-I-
25 K-I.

410.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

- 1 Q. Is there anyone else in addition to Kiki that you supervise?
- 2 A. Not at this time. I had some previous grade 12s and at one point there
- 3 were two part-time, but right now, she is the only one there.
- 4 Q. Who do you report to?
- 5 A. I report to the district office. I have-- The judge is Judge Keene.
- 6 Q. Which judicial district is your--
- 7 A. --Sixth Judicial District--
- 8 Q. --court located? Ms. Stone, I'd like to direct your attention to the
- 9 *Estate of Antoinette Saraceno.*
- 10 A. Okay.
- 11 Q. Are you familiar with this estate?
- 12 A. Yes, I am.
- 13 Q. How are you familiar with this estate?
- 14 A. I am the one that had the primary responsibility for processing the
- 15 estate and I am the keeper of the records, so anything that anybody
- 16 else does on the estate goes through me.
- 17 Q. Did you bring a copy of your-- of the records for this estate with you
- 18 today?
- 19 A. I brought the file, yes.
- 20 Q. I'm going to show the witness what's been marked for identification
- 21 as Exhibits 5A through 5TT.
- 22 A. Okay.
- 23 Q. Would you please look through those records?
- 24 A. Mm-hmm. Okay.
- 25 Q. Do you recognize those exhibits?

411.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

- 1 A. Yes, I do.
- 2 Q. What are they, generally speaking?
- 3 A. They are documents from the official estate file.
- 4 Q. Would you compare the exhibits that have been pre-marked with your
- 5 file?
- 6 A. Sure.
- 7 Q. Would you please do that?
- 8 A. The sticky notes I did not bring with me, because they're not an actual
- 9 part of the official file.
- 10 Q. Okay.
- 11 A. They appear to be accurate.
- 12 Q. They're a true and accurate of your--
- 13 A. --Yes, they are--
- 14 Q. --of your file?
- 15 MS. SCALISE: Other than the sticky notes.
- 16 THE REFEREE: Right.
- 17 MR. DEROHANNESIAN: Which are not being
- 18 offered.
- 19 BY MS. TADJIOGUEU:
- 20 Q. Are Exhibits--
- 21 THE REFEREE: --Nothing's been offered yet.
- 22 BY MS. TADJIOGUEU:
- 23 Q. Are Exhibits 5B through 5TT, an accurate-- a true and accurate copy
- 24 of the record that you have with-- that you brought with you today?
- 25 A. Yes.

412.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 Q. At this time, I'd like to move Exhibits 5B through 5TT into evidence.

2 MR. DEROHANNESIAN: Did you say 5B?

3 MS. TADJIOGUEU: 5B through 5TT.

4 MR. DEROHANNESIAN: Can I just see them
5 quickly?

6 MS. TADJIOGUEU: Absolutely.

7 THE REFEREE: Mr. DerOhannesian, just let me
8 inquire while you're reading that. Is there any dispute that
9 the Respondent represented that estate prior to the time he
10 became an elected family court judge?

11 MR. DEROHANNESIAN: No, and our answer
12 admits that in those--

13 THE REFEREE: --I understand, but I'm just--

14 MR. DEROHANNESIAN: --No--

15 THE REFEREE: --seeing some of the documents
16 and I think that might help us cut to the chase--

17 MS. SCALISE: --Yes, but then when we
18 corresponded with the Commission, we advised that we had
19 no problem with anything--

20 THE REFEREE: --Right, so--

21 MS. SCALISE: --after that date.

22 THE REFEREE: I understand. So, with respect to
23 Charge--

24 MS. TADJIOGUEU: --That's not correct as to the
25 *Estate of Saraceno*--

413.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 MS. SCALISE: --Yes--

2 MS. TADJIOGUEU: --you would not stipulate to
3 any of those documents.

4 MR. DEROHANNESIAN: No, no-- There's
5 another--

6 THE REFEREE: --No, no. Just-- Don't worry
7 about what happened before--

8 MS. SCALISE: --Right, so, any--

9 THE REFEREE: --I only care about today--

10 MS. SCALISE: --So, we advised that anything after
11 that date--

12 THE REFEREE: --All right. So-- I understand.
13 But let me just state for the record and see if I can get
14 counsel to agree. Ms. Tadjogueu, so, am I am correct,
15 then, that the issue with respect to this witness is whatever
16 may have happened after Respondent took office in January
17 of '15--

18 MS. TADJIOGUEU: --No, the issue is that
19 Respondent would not stipulate to the authenticity of the
20 documents.

21 THE REFEREE: I don't-- I don't care about that.

22 MS. TADJIOGUEU: Okay.

23 THE REFEREE: I'm talking about today--

24 MS. TADJIOGUEU: --Yes--

25 THE REFEREE: --Charge III alleges that he

414.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 performed work improperly after he became a family court
2 judge.

3 MS. TADJIOGUEU: That is correct.

4 THE REFEREE: So--

5 MS. TADJIOGUEU: --There are certain allegations
6 within the *Estate of Saraceno* that Respondent has denied.

7 THE REFEREE: I understand, but I--

8 MS. TADJIOGUEU: --Okay. I'll listen to your
9 question, I apologize.

10 THE REFEREE: I understand, but I think I'm
11 helping you out--

12 MS. TADJIOGUEU: --Okay--

13 THE REFEREE: --because they've just stipulated
14 that--

15 MS. CENCI: --It doesn't mean that we can't--

16 THE REFEREE: --No, he stipulate-- They--

17 MS. CENCI: --offer evidence--

18 THE REFEREE: --I think we're all in agreement
19 that the Respondent was the attorney for the estate prior to
20 becoming a family court judge and Charge III in the
21 complaint is that he performed work after he became family
22 court judge. Is that-- Am I reading that correctly?

23 MS. SCALISE: Yes.

24 MS. TADJIOGUEU: That's the general allegation,
25 correct.

415.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 THE REFEREE: Okay. That's fine, so-- I'm not
2 stopping you. As soon as-- Have you finished reading the--
3 MR. DEROHANNESIAN: --Just about. One-- The
4 last one I'm on right now.
5 MS. TADJIOGUEU: Your Honor, respectfully,
6 there are certain allegations that relate to specifics of the
7 estate and what happened in the estate--
8 THE REFEREE: --Oh--
9 MS. TADJIOGUEU: --and so, these documents are
10 proof for those allegations.
11 THE REFEREE: That's fine, but I'm just trying to
12 save us all time so we can get right to the meat of it and--
13 MR. DEROHANNESIAN: --Almost there. The
14 offer is 5B, as in Bravo, through 5--
15 MS. SCALISE: --TT.
16 MR. DEROHANNESIAN: TT--
17 THE REFEREE: --Tango, Tango. 5TT.
18 MR. DEROHANNESIAN: No objection.
19 THE REFEREE: Received. Mr. Fitzpatrick, you
20 hang on to the marked copies.
21 MS. TADJIOGUEU: I am going to continue to
22 show Respondent-- not Respondent--
23 THE REFEREE: --Sure, go ahead--
24 MS. TADJIOGUEU: --the witness Exhibit 5A.
25 THE REFEREE: All right.

416.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 THE WITNESS: Okay.

2 BY MS. TADJIOGUEU:

3 Q. If you would flip through that document, please. Do you recognize
4 that document?

5 A. Yes, I do.

6 Q. How do you recognize it?

7 A. It's a computer generated notes from within the database. It's referred
8 to as "sticky notes."

9 Q. Are you familiar with the process for how information-- entries are
10 made into the sticky notes program?

11 A. Yes, I am.

12 Q. Would you describe how that-- How they're made?

13 A. When a phone call is made or someone comes in person, or there's an
14 email pertaining to an estate, the contents of that is either cut and paste
15 in-- pasted into the program or summarized into the program, for
16 future reference.

17 Q. Is the information added at or about the time that the event is--

18 A. --Yes--

19 Q. --occurs?

20 A. Yes.

21 Q. Who adds information into sticky notes?

22 A. It is either myself or Kiki. When Kiki adds anything, I automatically
23 get a copy of everything that she adds into the system.

24 Q. How do you get a copy?

25 A. She emails everything-- everything to me.

417.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 Q. Do you and your staff have a duty to add information to the sticky
2 notes program?

3 A. I think it varies from county to county how they use that program.
4 This is how we've developed it and how we've used it.

5 Q. Do you and your staff have a duty to ensure that the information in the
6 sticky notes program is accurate?

7 A. Yes, we do.

8 Q. How often do you use the sticky notes?

9 A. Daily.

10 Q. Do you rely on the accuracy of the information that's in there?

11 A. Yes, we do.

12 Q. Is the sticky notes program maintained by the Tioga County
13 Surrogate's Court?

14 A. It is maintained by Tioga County Surrogate's Court and it is backed up
15 through the normal process with a database through Albany and
16 whatever other precautions they have.

17 MS. TADJIOGUEU: Your Honor, at this time I
18 would offer Exhibit 5A under the business records
19 exception.

20 MR. DEROHANNESIAN: May I take a look?

21 THE REFEREE: Sure.

22 THE WITNESS: And I remembered, I do have that
23 in the car if you want it.

24 THE REFEREE: Ms. Stone, is that a software
25 program?

418.

(Stone - Voir Dire)

1 THE WITNESS: Yes, it's a database program that is
2 used statewide for surrogate's court.

3 THE REFEREE: Okay. Is that title called "sticky
4 notes"?

5 THE WITNESS: It is actually referred to as "sticky
6 notes," yes.

7 THE REFEREE: All right. I mean, somebody in
8 another county would know what that is, right?

9 THE WITNESS: Yes, absolutely.

10 THE REFEREE: Thank you.

11 MR. DEROHANNESIAN: Can I ask just a few
12 questions?

13 THE REFEREE: Yes.

14 VOIR DIRE

15 BY MR. DEROHANNESIAN:

16 Q. On Exhibit 5A, are these all your entries?

17 A. Some of them are made by staff members.

18 Q. And who-- Who are the--

19 A. --Kiko-- Kiyoko Matsushashi and prior to her was Camela Daniels,
20 who is no longer here. She moved out of state.

21 Q. Is there a "Daniels," "C.M. Daniels?"

22 A. Yeah, Camela Daniels.

23 Q. That's who you were just referring?

24 A. Yes.

25 Q. And do you know about the accuracy of the information that they

419.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 entered?

2 A. I-- I do. They sent me copies of their entries and then I would review
3 them if I had any questions, I'd pull-- I'd get the file.

4 Q. But when they said they had a communication, do you know if they
5 had the communications documented?

6 A. I-- They would not write down that they had a communication if they
7 didn't.

8 THE REFEREE: Well, that's-- That's not the
9 question. I-- It's kind of an obvious-- He knows the
10 answer's "no." You don't know-- If they said they had a
11 phone call--

12 THE WITNESS: --Okay--

13 THE REFEREE: --You don't independently know
14 that they did or didn't.

15 THE WITNESS: Okay.

16 THE REFEREE: Correct?

17 THE WITNESS: Yes.

18 MR. DEROHANNESIAN: Can I have a moment?

19 No objection, Your Honor.

20 THE REFEREE: Received.

21 BY MS. TADJIOGUEU:

22 Q. Ms. Stone, you can-- Excuse me, you can place your file-- I'll refer
23 to the exhibits. Directing your attention back to the *Estate of*
24 *Antoinette Saraceno*, approximately when was this estate opened?

25 A. It was filed in 2010 and it was-- an amended petition was filed in

420.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 February of 2011, the original petition listed three distributees and ten
2 beneficiaries. The amended petition listed, I believe it was ten
3 distributees and 24 beneficiaries.

4 Q. How would you describe the size and complexity of the estate?

5 A. I think it was complex in the sense that there were so many
6 beneficiaries. That makes it a little more involved, but other than that,
7 from-- we had objections filed. We don't have objections filed on
8 every estate. We had *pro se* objections filed, which that makes it a
9 little more complicated.

10 Q. And Judge Miller, the Respondent here in this proceeding, was the
11 attorney who originally handled the estate, correct?

12 A. Yes.

13 Q. Did there come a time when another attorney handled that estate?

14 A. Yes.

15 Q. Who was that attorney?

16 A. Artan S-- I can't pronounce his name.

17 Q. Is it Artan Serjanej?

18 A. That's it.

19 Q. Approximately when did Mr. Serjanej take over the estate?

20 A. He took it over in February 2018.

21 Q. Ms. Stone, I'm going to show you what has been marked as Exhibit
22 5HH. In the fall of 2013, had the estate been closed?

23 A. No.

24 Q. And do you rec-- You recognize Exhibit 5HH, correct?

25 A. Yes, it's a computer generated warning letter when we're seeking

421.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 documents.

2 Q. What were-- What was the court seeking?

3 A. In this case, since it wasn't closed yet, we were seeking what's
4 referred to as a 207.42, which is a two-year report that just explains to
5 the court why it hasn't been closed yet.

6 Q. What type of information goes into this two-year report that you're
7 referring to? I just want to be clear for the record.

8 A. The gross-- The estimated-- The approximate gross estate value, the
9 approximate amount that has been distributed to the distributees and
10 the amount currently remaining in the fiduciary's control, and an
11 explanation as to why it has not been finished up yet.

12 Q. Did Judge Miller submit this to your report in 2013?

13 A. Ye-- It was eventually submitted-- I don't-- I-- I don't recall the
14 date.

15 Q. Would referring Exhibit-- Would ref-- Is there something that might
16 refresh your recollection as to that?

17 A. There's probably-- Yeah, there should be one in there that shows
18 when it was actually filed. Can I look through these?

19 THE REFEREE: Yeah, go ahead. Take a look.

20 THE WITNESS: Okay.

21 A. The two-year report was filed in July of 2014.

22 Q. What exhibit--

23 MR. DEROHANNESIAN: --The witness is
24 referring to an exhibit. Can I have the exhibit number?

25 THE REFEREE: Yeah--

422.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 THE WITNESS: --Oh, I'm sorry--

2 THE REFEREE: --Yeah, if you refer to something
3 in particular, let us know what the document number is that
4 you're referring to.

5 THE WITNESS: 5CC.

6 MR. DEROHANNESIAN: Thank you.

7 THE WITNESS: Mm-hmm--

8 THE REFEREE: --All right--

9 THE WITNESS: --No, no. Wait a second, 5LL.

10 MR. DEROHANNESIAN: 5LL?

11 THE WITNESS: Sorry.

12 BY MS. TADJIOGUEU:

13 Q. Ms. Stone, Exhibit 5LL makes reference to an original report. Is that
14 right?

15 A. Yes.

16 Q. Is an original report the same thing as a two-year report?

17 A. Yes, I think what he's referring to here is that he was submitting the
18 original with the original signature and not a copy.

19 Q. Was there any activity on the estate in 2014?

20 A. Other than-- Let's see. A citation had been issued.

21 Q. Why was the-- a citation issued?

22 A. Generally when-- It was issued-- Because we were looking for the
23 two-year report, we do a series of letters that go out, reminder letters,
24 or sometimes referred to as a warning letter, and after several of those,
25 then a citation is issued.

423.

(Stone - Direct)

- 1 Q. To be clear though, the original report that was filed was not the two-
2 year report that you were-- the court was looking for. Is that correct?
- 3 A. It-- It is, it just was not filed until after we were scheduled to go to
4 court.
- 5 Q. Would you take a look at Exhibit 5MM, please?
- 6 A. Mm-hmm. That is another warning letter for a report.
- 7 Q. Did you send that letter to Judge Miller?
- 8 A. Kiki did.
- 9 Q. Why was the letter sent?
- 10 A. Because every two years, that same report comes up and is due again
11 if the estate is still not closed.
- 12 Q. And where was this letter mailed to?
- 13 A. It was mailed to Richard Miller, North Street in Endicott.
- 14 Q. Why was it mailed to him at his law office?
- 15 A. Because he was still the attorney of record.
- 16 Q. Did you know at the time that this letter was mailed that Judge Miller
17 had been elected to the family court bench?
- 18 A. No.
- 19 Q. Do you keep up with Broome County judicial news?
- 20 A. No, I do not.
- 21 Q. Do you reside in Broome County?
- 22 A. No, I do not.
- 23 Q. Do you reside in Tioga County?
- 24 A. No, I do not.
- 25 Q. Ms. Stone, I'd like to direct your attention to October 12, 2016. Did

424.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

- 1 you speak to Judge Miller about the estate on this date?
- 2 A. Yes, I did.
- 3 Q. Where did the conversation occur?
- 4 A. I was in my office and he called.
- 5 Q. Did Judge Miller refer to himself as a judge during that call?
- 6 A. I believe he referred to himself as Rick Miller.
- 7 Q. What did he say?
- 8 A. He was-- He stated that there was one individual that was going to be
9 difficult to get a waiver from and inquired how to go about closing the
10 estate. I informed him that if he couldn't get somebody to cooperate,
11 a formal accounting would probably be required.
- 12 Q. Did Judge Miller use a certain term when he asked to close the estate?
- 13 A. He then asked if-- if I would inquire if Judge Keene would close the
14 estate by motion.
- 15 Q. What does it mean to close an estate by motion?
- 16 A. I'm not sure because I've never closed an estate by motion.
- 17 Q. What did you understand that to mean?
- 18 A. I-- I understood that to mean that it was going to be informally closed
19 because he couldn't get all of the documents and he didn't want to
20 pursue a formal closing, so it was going to be somewhere in between I
21 guess.
- 22 Q. How did you-- How did you respond to his request to close the estate
23 by motion?
- 24 A. I told him I would discuss it with the judge.
- 25 Q. Did you discuss it with the judge?

425.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

- 1 A. I did not verbally discuss it with him. I wrote him a note.
- 2 Q. And in res-- In response to that note, what did you do?
- 3 A. The judge wrote back and said a formal accounting would be required.
- 4 I called Mr. Miller, I told him, and he just said, "Okay."
- 5 Q. How did you call Judge Miller?
- 6 A. He had left a phone number for me to return his call.
- 7 Q. Do you know if that was-- Do you know if that was his cell phone?
- 8 A. I have no idea. I know it started with, I believe, "222," but I-- that's
- 9 all that I remember.
- 10 Q. What, if any, response did Judge Miller give to you when you told
- 11 him--
- 12 A. --He just said, "Okay," and then-- It was a very short conversation.
- 13 Q. Did Judge Miller file that formal accounting?
- 14 A. There was no formal accounting filed.
- 15 Q. Subsequently, did you speak with the-- the wife of the executor of the
- 16 estate?
- 17 A. I spoke with her in August of 2016 and December 2016.
- 18 Q. What was the substance of the first conversation that you had with
- 19 her?
- 20 A. The first one--
- 21 THE REFEREE: --Do you have a name?
- 22 THE WITNESS: Barbara Saraceno.
- 23 THE REFEREE: Thank you.
- 24 THE WITNESS: Mm-hmm.
- 25 A. She, I believe, inquired if the estate had been closed or if anything had

426.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 been filed and I had said-- and she mentioned that--

2 MR. DEROHANNESIAN: --Objection to what Mrs.
3 Saraceno said.

4 THE REFEREE: Well, it's not for the truth, so I'll
5 take it.

6 THE WITNESS: Okay.

7 A. I-- And I would have to double check it-- I'm going by the notes--

8 Q. --Please refer to Exhibit-- Well, 5A might help you refresh your
9 recollection.

10 A. Okay. And I believe it may have been-- Okay. So, in October of
11 2016, Kiki spoke with Barbara Saraceno.

12 MR. DEROHANNESIAN: You said '15 or '16?

13 THE REFEREE: '16--

14 THE WITNESS: '16--

15 MS. SCALISE: --'16.

16 THE WITNESS: '16.

17 A. And she told-- She was told that they received the two-year warning
18 letter and it didn't have any attachments to it and she inf-- Kiki
19 informed Barbara that it's because that was the fiduciary's copy and
20 the main--

21 MR. DEROHANNESIAN: --Objection.

22 THE REFEREE: What's the objection? This is in
23 evidence so she can just read it.

24 BY MS. TADJIOGUEU:

25 Q. Ms. Stone, could I just direct your attention to page 3 of Exhibit 5A?

427.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Direct)

1 At the bottom, what is the date that that conversation took place?

2 A. Page 3?

3 Q. The third page. They're not numbered. The third page of Exhibit 5A.

4 A. Okay. Page-- Okay. The conversation was August 15, 2016.

5 Q. I believe you testified that it was October, but it's correct that it was
6 August, correct?

7 A. August was when Kiki spoke to Barbara Saraceno.

8 Q. What was the first conversation that you had with Ms. Saraceno?

9 A. That I had-- I spoke with her in December. December 16, 2016.

10 Q. And what was the substance of that conversation?

11 A. She called to inquire if anything had been filed by Mr. Miller, as he
12 told them that-- that they-- he would be finishing--

13 MR. DEROHANNESIAN: --Objection. Now,
14 we're getting into double--

15 THE REFEREE: --Yeah, are you just reading from
16 the-- You can just read that.

17 THE WITNESS: Okay.

18 A. "Telephone conference with Barb Sarasoni-- Saraceno-- inquiring on
19 if Attorney Miller had filed anything since he told them he would
20 finish it up. Clerk read notes stating that a substitution of attorney was
21 going to be filed but nothing has been filed yet. Ms. Saraceno stated
22 her husband fell and is now in nursing home, she will contact Attorney
23 Miller."

24 Q. Ms. Stone, did you add that note after you had the call with Ms.
25 Saraceno?

428.

(Stone - Direct)

- 1 A. Yes.
- 2 Q. I'd like to direct your attention to January 22, 2018, and if you would
3 please look at Exhibit QQ.
- 4 A. Okay.
- 5 Q. 5QQ, for the record.
- 6 A. 5QQ, yep.
- 7 Q. Do you recognize-- You recognize this document, correct?
- 8 A. Yes.
- 9 Q. Who was the letter sent to?
- 10 A. Frank Saraceno, Jr.
- 11 Q. Why was this letter--
- 12 A. --Or, senior, I'm sorry.
- 13 Q. Why was this letter mailed?
- 14 A. It was mailed because we were still looking for receipts and releases.
- 15 Q. Aft--
- 16 A. --We were still looking to informally close the estate.
- 17 Q. After mailing that January 22nd letter, was there some activity on the
18 estate?
- 19 A. I believe it was a month later when the attorneys were substituted.
- 20 Q. Which attorneys were substituted?
- 21 A. Rick Miller was no longer the estate attorney and Artan was now the
22 attorney.
- 23 Q. Ms. Stone, would you please look at Exhibit 5TT?
- 24 A. Okay.
- 25 Q. Would you explain for the record what an inventory of assets is?

429.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 A. An inventory of assets is what is filed, depending on the timeline of
2 the estate, six-- nine months or 12 months after letters are issued. At
3 the time that this estate was established, it was a six-month
4 requirement and then it went to a nine-month requirement and then a
5 one-year requirement. But it documents what estates have been
6 located-- what assets have been located in the estate.

7 Q. What is the current status of the *Saraceno* estate?

8 A. The estate was informally closed this past Friday, January 4th.

9 Q. And is it common for an estate of this size and complexity to be
10 pending for eight years?

11 MR. DEROHANNESIAN: Objection. Irrelevant.

12 THE REFEREE: I agree. Totally irrelevant.

13 Sustained.

14 THE WITNESS: It is--

15 THE REFEREE: --No, no. When I sustain it, that
16 means you don't answer.

17 THE WITNESS: I know-- I know that.

18 THE REFEREE: I knew you knew that.

19 THE WITNESS: Sorry.

20 MS. TADJIOGUEU: I have no further questions.

21 CROSS-EXAMINATION

22 BY MR. DEROHANNESIAN:

23 Q. Ms. Stone, my name is Paul DerOhannesian. I'm an attorney and I
24 represent Judge Richard Miller.

25 A. Okay.

430.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 Q. With respect to the *Saraceno* estate, there were many people who had
2 a pecuniary interest in the estate?

3 A. Yes.

4 Q. And that was one of the things that made this more complex than
5 other estates?

6 A. It takes longer to get receipts from 24 people than it does from three.

7 Q. And I want to ask you about that and before we get to that, even to
8 start to the estate, you have to notify those, you said 24 people?

9 A. Mm-hmm.

10 Q. And Exhibit--

11 THE REFEREE: --Is that-- Excuse me. Is that a
12 "yes"?

13 THE WITNESS: Yes, I'm sorry.

14 THE REFEREE: Excuse me, could we go off the
15 record for just one moment?

16 (OFF THE RECORD)

17 THE REFEREE: All counsel are present, the
18 Respondent is present, and the witness is here and under
19 oath. Thank you.

20 BY MR. DEROHANNESIAN:

21 Q. Okay, Ms. Stone, looking at Exhibit 5K, does that reflect the list of-- I
22 think you said 24 people, from whom you would need what's called
23 receipts and releases?

24 A. There's 17 listed here.

25 Q. And the other-- And that document I showed you is just to get the

431.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

- 1 estates started?
- 2 A. Yes.
- 3 Q. Okay, those who need notice and because if there were no will, these
- 4 people would have some type of financial interest in the estate?
- 5 A. No.
- 6 Q. Okay. The theory under which these 17 people are on that list is
- 7 because they are listed in the will?
- 8 A. They're listed in the will.
- 9 Q. Okay. Now, in addition, you said there were 24 releases, seven more
- 10 than the 17 listed there.
- 11 A. Correct.
- 12 Q. And those seven would reflect who or what?
- 13 A. They may have been distributees who signed waivers and were also
- 14 getting something.
- 15 Q. Okay. We'll come back to the receipts in a second because I think
- 16 that's part of what we want to talk about, but you were also asked
- 17 about a 207.42 report. That's an Office of Court Administration
- 18 document?
- 19 A. Yes.
- 20 Q. And that asks the representative of the estate, or the fiduciary, to use a
- 21 more precise word, to file a document indicating the status of the
- 22 estate?
- 23 A. Correct.
- 24 Q. It'd be fair to say that's a way of tracking the estate to see what's
- 25 happening?

432.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

- 1 A. Yes.
- 2 Q. And those letters are sent by surrogate's court in New York State
- 3 routinely--
- 4 A. --Yes--
- 5 Q. --if not automatically?
- 6 A. Not automatically. Routinely.
- 7 Q. The date or deadline will show up on the computer--
- 8 A. --Right--
- 9 Q. --and then somebody decides whether to send the letter, correct?
- 10 A. Correct.
- 11 Q. Depending on what other information--
- 12 A. --Right--
- 13 Q. --the surrogate's court may have pertaining to the estate?
- 14 A. Right.
- 15 Q. So, I think you were asked about Exhibit 5H--
- 16 THE REFEREE: --HH.
- 17 MS. SCALISE: HH.
- 18 BY MR. DEROHANNESIAN:
- 19 Q. 5HH. And let me show it to you because you may not recall this.
- 20 A. Okay.
- 21 Q. I think that was the one you were asked about on direct examination.
- 22 A. Yes.
- 23 Q. Okay. I'll give them back to you as I ask you questions. Is this a form
- 24 letter?
- 25 A. Yes.

433.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 Q. Would it be fair to say that the sending of this letter to estates and
2 their fiduciaries and their attorneys is not an unusual occurrence?

3 A. Correct.

4 Q. And it's quite often that an estate needs to re-- be reminded to do
5 that?

6 A. Right. They're getting better, but yes.

7 Q. And there's a part here that has an address on it. Do you see an
8 address here?

9 THE REFEREE: You mean an addressee?

10 MR. DEROHANNESIAN: An addressee.

11 A. Yes.

12 Q. And who's the addressee?

13 A. Richard Miller.

14 Q. Yes. Now, it also has something in writing above that.

15 A. It went by fax.

16 Q. Okay. Do you know if this was mailed or not?

17 A. No, it went by fax.

18 Q. Okay, so this would be faxed. Do you have the fax number or a fax
19 receipt for this?

20 A. I-- Not with me. If it bounces back, then we take further action. We
21 do track it in our data-- in our email to make sure that it went through.

22 Q. And there is a database that has the address of the attorney involved in
23 the estate?

24 A. Yes.

25 Q. Is that where this address comes up?

434.

(Stone - Cross)

1 A. Yes.

2 Q. And I don't know if my question was clear, to get the addressee or the
3 attorney for the estate, is that kept on file in some type of database?

4 A. It's in the same database.

5 Q. So, that's where you send a letter to, depending on what address you
6 have for the attorney for the estate?

7 A. Correct.

8 Q. Is that correct? Part of this letter is about estates being closed
9 informally and some states requiring an accounting?

10 A. Mm-hmm.

11 THE REFEREE: Excuse me, is that a "yes"?

12 THE WITNESS: Yes. Sorry.

13 MR. DEROHANNESIAN: Don't mean to be rude,
14 but you understand why we need a verbal response.

15 THE WITNESS: Yep. I do.

16 BY MR. DEROHANNESIAN:

17 Q. And you had mentioned, for example, this estate was closed
18 informally, correct?

19 A. Yes.

20 Q. Meaning that everybody involved or who had an interest eventually
21 signed a receipt and release.

22 A. In this case, we accepted cancelled checks because they were having
23 difficulty locating some of the people after the-- certain amount of
24 time.

25 Q. Okay, so, when you say an informal-- and that's the discretion of the

435.

(Stone - Cross)

1 court?

2 A. Yes.

3 Q. Okay. Certainly if everyone gets a signed receipt and release for the
4 estate, that will yield an informal closure of the estate?

5 A. Yes.

6 Q. You don't go into all the details of that here, you just say it may
7 require an accounting, which is a much more involved proceeding?

8 A. Right.

9 Q. And there was no reason in this case to require an accounting, is that--

10 A. --Only at the indication that someone was not going to be willing to
11 sign a receipt and release.

12 Q. Some cases, it's mandatory, such as when an attorney is an executor
13 and fiduciary?

14 A. Correct.

15 Q. The law requires that the accounting of--

16 A. --Or if there's a minor child.

17 Q. So, sometimes, no matter what, the court must require an accounting
18 in an estate, correct?

19 A. Yes.

20 Q. And that letter was-- When was that sent? Sorry. I guess it--

21 MS. SCALISE: --HH.

22 BY MR. DEROHANNESIAN:

23 Q. 5HH, the one that--

24 A. --Oh, no, I don't have 5HH.

25 THE REFEREE: September 12, 2013.

436.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

- 1 BY MR. DEROHANNESIAN:
- 2 Q. Okay. And you said you did get a response and a 207.42, correct?
- 3 A. It was filed in 2014.
- 4 Q. Okay.
- 5 A. I believe the day before-- I believe a citation went out and it was filed
- 6 the day before the court date.
- 7 Q. And this citation says show us why-- It basically asks you to come
- 8 into court--
- 9 A. --Right--
- 10 Q. --and give an explanation, right?
- 11 A. Correct.
- 12 Q. Is 5LL the document that you refer to as the original 207.42?
- 13 A. Yes. I believe it was faxed to us the day before the court date and we
- 14 asked them to file them the original. We took it off the calendar based
- 15 on the facts, and then we were waiting on the original that came in
- 16 July.
- 17 Q. Okay, that-- And when you say the original copy, you're talking about
- 18 the 207.42 for--
- 19 A. --Yes, with the original signatures on it.
- 20 Q. Okay. So, at that point, the estate is up to date?
- 21 A. Yes.
- 22 Q. Okay. At that point, did you know whether or not any money had
- 23 been distributed in the estate?
- 24 A. It-- I did not know. The report says, "did not answer the questions
- 25 about what had been distributed." It just said, "requesting an

437.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 additional time to collect all the receipts and releases and discharges,"
2 which implies it's been distributed.

3 Q. Not sure, but it implies it.

4 A. Yes.

5 Q. Okay.

6 THE REFEREE: Mr. DerOhannesian, I don't mean
7 to stop you, but just to clarify, I don't think that anything in
8 this proceeding has to do with any delay that might have
9 occurred prior to Judge Miller taking the bench. I don't
10 think that we are of any concern to the way the estate was
11 handled and you know, reminders are really common and
12 every-- and we all know that you've established it and
13 everybody knows it, so, I'm not sure-- I'm not sure why
14 were concerned at all with anything that happened prior to
15 the elevation of Judge Miller to the bench.

16 MR. DEROHANNESIAN: And while that was an
17 argument I think I had made myself at one point in this
18 case, I think given the way these documents were presented,
19 and they're going to be part of this record, there's an
20 explanation required. The second part of this is for a
21 further explanation of anticipated testimony in this case.

22 THE REFEREE: No, I don't quarrel with that, but
23 you didn't object to the introduction of--

24 MR. DEROHANNESIAN: --That's correct. And
25 now--

438.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 THE REFEREE: --these records. It-- Had you, I
2 probably would have sustained it, because I really-- I mean,
3 I'm not stopping you, I'm just telling you that the-- Charge
4 III in the-- in the petition alleges that Judge Miller did work
5 after he was a judge, which is prohibited. I don't think the
6 Commission had jurisdiction to sanction him for doing a
7 bad job before he was a judge. So, that-- I--

8 MR. DEROHANNESIAN: --That-- Yeah, thank
9 you--

10 THE REFEREE: --You can continue, I'm not
11 stopping you--

12 MR. DEROHANNESIAN: --And-- And--

13 THE REFEREE: --but it just seems to me that
14 we're--

15 MR. DEROHANNESIAN: --I think--

16 THE REFEREE: --far afield--

17 MR. DEROHANNESIAN: --why this is-- I think
18 we'll-- Why this is important to this proceeding will
19 become clearer later than perhaps it is now.

20 THE REFEREE: That's fine. Continue. I'm not
21 stopping you.

22 MR. DEROHANNESIAN: All right. And I
23 appreciate that opportunity to develop this.

24 BY MR. DEROHANNESIAN:

25 Q. Let me show you Exhibit 5TT, and I think you re-- referenced this

439.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

- 1 also, Ms. Stone. This is a 2018 document?
- 2 A. Yes.
- 3 Q. Now, part of that exhibit has what are called receipts and releases,
- 4 correct?
- 5 A. Yes.
- 6 Q. Do you know if that's 17 or 24?
- 7 A. I would have to count them, but I believe it is not all of them because
- 8 we just finished up getting all of them.
- 9 Q. And those records aren't here?
- 10 A. They're--
- 11 Q. --Do you have-- You did-- The last ones that show the receipts?
- 12 A. The last of the documents that came in are right here.
- 13 Q. Are those part of the--
- 14 A. --They just-- The last cancelled checks came in on Friday.
- 15 Q. Would that-- And that's what you needed to close the estate?
- 16 A. That-- Yeah. On December 21st, there was the two-year report, an
- 17 affidavit of completion of the estate, an attorney's affirmation, and a
- 18 bunch of receipts and releases that were filed, and then I made an
- 19 acq-- an inquiry to the attorney and he sent me two-- two last
- 20 cancelled checks.
- 21 Q. Okay. And let's break this up. Let's start with-- And those aren't--
- 22 Records aren't in evidence yet?
- 23 A. I-- Not to my knowledge, no.
- 24 Q. I may ask you some questions about that. Let's deal with what we've
- 25 got here.

440.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 A. Okay.

2 MR. DEROHANNESIAN: Do you mind if I
3 approach the witness--

4 THE REFEREE: --Not at all--

5 MR. DEROHANNESIAN: --just to try to speak--
6 keep my voice up so the attorneys can hear me.

7 BY MR. DEROHANNESIAN:

8 Q. So, Exhibit 5TT, if you go through this, there's a cancelled check to
9 Salvatore Saraceno.

10 A. Correct.

11 Q. Do you see that? And it was from 2012?

12 A. Yes.

13 Q. Correct? One to M [REDACTED] S [REDACTED] from 2011?

14 A. Yes.

15 Q. Now there's a release-- receipt and release from Lisa Strahley for
16 \$1,000.

17 A. Unnotarized.

18 Q. And it's not notarized. And surrogate's court want notarized receipts
19 and releases, right?

20 A. Yes.

21 Q. And if you don't give them a receipt and release that's notarized,
22 there's a red flag that goes up and a stop sign.

23 A. Yes.

24 Q. Have you seen that happen before in estates?

25 A. Typically, they all come in notarized, but I can't say that that's 100

441.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

- 1 percent.
- 2 Q. I'll confess that I've done it. Okay, Mr. M [REDACTED] S [REDACTED] has a check
- 3 for \$1,000, in 2011. Lisa-- it looks like "S [REDACTED]"-- an unnotarized
- 4 receipt and release.
- 5 A. Right, it's for M [REDACTED] and that's why they attached the cancelled
- 6 check--
- 7 Q. --Okay--
- 8 A. --along with it.
- 9 Q. Now, that-- For example, she signs the release that she got the
- 10 money--
- 11 A. --Mm-hmm--
- 12 Q. --but she didn't get it notarized.
- 13 A. Correct.
- 14 THE REFEREE: "Yes"? You said "mm-hmm"?
- 15 THE WITNESS: I'm sorry.
- 16 THE REFEREE: That's all right.
- 17 A. Correct.
- 18 Q. So, R [REDACTED] S [REDACTED] gets a check that's attached to this document for
- 19 \$1,000 in 2011? Is that right?
- 20 A. Yes.
- 21 Q. And again, Lisa Strahley, as the parent, signed a--
- 22 A. --Yeah--
- 23 Q. --receipt and release, but didn't get it notarized.
- 24 A. Yes.
- 25 Q. You can't close the estate yet.

442.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

- 1 A. Right.
- 2 Q. In 2011, another thousand dollars is given to B [REDACTED] S [REDACTED]. Lisa, as
3 a parent, signs it, but doesn't have it notarized.
- 4 A. Correct.
- 5 Q. Anthony Saraceno gets a check for \$1,000 in 2011--
- 6 A. --Yes.
- 7 Q. You agree that's--
- 8 A. --Yes--
- 9 Q. --kind of proof that he got it. Cathleen Saraceno, a check for \$1,000
10 in 2011. Nick Saraceno in 2011. Nick Saraceno signs a receipt and
11 release, doesn't get it notarized.
- 12 A. Correct.
- 13 Q. Any one of these is enough to stop the estate.
- 14 A. Yes.
- 15 Q. Because it's not notarized.
- 16 A. Right.
- 17 Q. Anthony Saraceno gets \$1,000. He signs the release but doesn't have
18 it notarized.
- 19 A. Right.
- 20 Q. Andrew Saraceno has another release that he signed, not notarized.
- 21 A. Correct.
- 22 Q. Chris Singleton gets \$1,000, signs a release, doesn't get it notarized.
- 23 A. Correct.

24 THE REFEREE: I think you made your point.

25

443.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. And there are signed releases for the beneficiaries, but they're-- none
3 of them are notarized. Oh, here's one that was notarized.

4 A. Correct.

5 Q. For John Saraceno, Jr.

6 A. Right.

7 Q. So, that was okay. Vincenzo Saraceno got his notarized, and there's
8 several checks reflecting the payment. So, this is in April of 2018,
9 Artan Serjanej submitted those to you. Correct?

10 A. Correct.

11 Q. And he describes in that letter the difficulties of reaching out to these
12 people to get signed receipts and releases at this point?

13 A. Yes, he does.

14 Q. That's the last document that you-- was offered by the Commission
15 today. I want to get the rest of the story after that document that leads
16 to the closure last Friday.

17 A. Okay.

18 Q. Were additional receipts and releases submitted?

19 A. On December 21st, there were numerous ones submitted, one of which
20 was on the list that was not actually enclosed for a--

21 Q. --Any signed receipts and releases that were notarized?

22 A. So far, they appear to be all notarized.

23 THE REFEREE: Mr. DerOhannesian, do you have
24 Exhibit 5RR? Could I just see that for a moment?

25 MR. DEROHANNESIAN: Uh-huh.

444.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Stone - Cross)

1 THE REFEREE: Can I just ask, Ms. Stone, once
2 5RR was submitted and Mr. Serjanej appeared, was his
3 name placed on the docket and Richard Miller's removed?

4 THE WITNESS: Yes, there was an order made.

5 MS. TADJIOGUEU: Exhibit 5SS, I believe--

6 THE REFEREE: --Yeah. Is that-- S-- Is that the
7 order of Judge Keene that submitted counsel?

8 THE WITNESS: Yes.

9 THE REFEREE: And did that mean, as of that date,
10 Richard Miller had no inv-- no more involvement in this
11 estate?

12 THE WITNESS: Yes.

13 THE REFEREE: Thank you. Doesn't that resolve
14 everything?

15 BY MR. DEROHANNESIAN:

16 Q. So-- It-- Were additional receipts and releases which were notarized
17 submitted by Mr. Serjanej after--

18 A. --Yes, there are a few that are not notarized but the checks are with
19 them.

20 Q. And the court made a decision to accept the proof of payment--

21 A. --Yes--

22 Q. --to resolve the estate. And you would agree that the payments for all
23 these individuals were made many years before 2014?

24 A. It appears to be, yes.

25 Q. Is it fair to say what delayed this estate from being closed in 2014 was

445.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

- 1 the lack of receipts and releases for those checks that we have in
2 evidence?
- 3 A. It appears so.
- 4 Q. Is that correct?
- 5 A. Yes.
- 6 Q. Is that a fair summary of why this estate took so long to close?
- 7 A. Yes.
- 8 Q. Now, Mr. Serjanej's notice of appearance, the Referee referred to it,
9 5RR, is that correct?
- 10 A. Yes.
- 11 Q. Are you aware of a consent to change attorney that was signed by Mr.
12 Serjanej in 2015?
- 13 A. No, I'm not.
- 14 Q. Pardon?
- 15 A. Not that I recall.
- 16 Q. So, if there was a consent to change in the first 90 days of 2015, you
17 don't have that knowledge, correct?
- 18 A. No, I don't.
- 19 Q. Next, you testified about Exhibit 5MM. Now that appears to be a
20 form letter requesting a 207.42?
- 21 A. Yes, it is.
- 22 Q. One was already submitted, correct?
- 23 A. In 2014.
- 24 Q. Right, but now you're looking for what-- Basically--
- 25 A. --Everything--

446.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

- 1 Q. --where's the receipts and releases?
- 2 A. Well, we're looking for a continued explanation--
- 3 Q. --Why?--
- 4 A. --after two years go by--
- 5 Q. --Okay--
- 6 A. --we ask again.
- 7 Q. So, even though it's the same form letter, you got a report, but you
- 8 need another-- some other explanation why it's not closed yet.
- 9 A. Right, the report is due every two years.
- 10 Q. Okay. Now, there is a name, or it is an addressee on that case,
- 11 correct?
- 12 A. Yes.
- 13 Q. And it says, "Richard Miller"?
- 14 A. Yes, it does.
- 15 Q. North Street?
- 16 A. Yes.
- 17 Q. And does that say whether it was via fax like the other one?
- 18 A. It does not say fax, so it must have gone regular mail.
- 19 Q. So, when you say it must have, that's what you--
- 20 A. --That's what our procedure would be.
- 21 Q. Okay. So, it wasn't faxed?
- 22 A. Correct.
- 23 Q. So, on August 2, 2016, do you know if Mr. Richard Miller was at that
- 24 address?
- 25 A. I have no idea.

447.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 Q. Do you have any information that Richard H. Miller, II, received
2 Exhibit 5MM?

3 A. I just know it didn't come back to us.

4 Q. Well, that's a different question, isn't it?

5 THE REFEREE: No, she answered. All she knows
6 is that it didn't come back.

7 BY MR. DEROHANNESIAN:

8 Q. Do you have any information that Richard H. Miller was aware of
9 Exhibit 5MM?

10 A. I-- Other than that he subsequently called in October.

11 Q. In October?

12 A. In October of 2016.

13 Q. And was that about Exhibit MM [sic]?

14 A. My recollection, yes.

15 Q. Did you refer to Exhibit MM [sic]?

16 A. I referred to the closing of the estate.

17 Q. Okay, well, was Exhibit 5MM sent by email?

18 A. I would have to look at the sticky notes to see if it went by email.

19 Q. Do you have those sticky notes with you or do I have them?

20 A. I don't have them. Thank you. They were sent by email.

21 Q. Pardon?

22 A. They were sent by email.

23 Q. Okay, now, I just want to clarify this because I-- When you say "this,"
24 are we talking about Exhibit 5MM?

25 A. Yes, we are.

448.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 Q. So, I think you said it wasn't sent by fax and you assumed it was sent
2 by mail.

3 A. Right.

4 Q. Do you--

5 A. --But--

6 Q. --Do you want to change your answer?

7 A. Yes, it was emailed to the attorney and mailed to the fiduciary.

8 Q. Okay, so, do you have the email address that Exhibit MM [sic] was
9 emailed to?

10 A. Not on these sticky notes.

11 Q. So, when you say, again, it didn't come back by mail, that's really not
12 relevant now because it wasn't mailed.

13 A. Correct.

14 Q. Okay.

15 THE REFEREE: How do you know that the letter
16 was emailed?

17 THE WITNESS: Because the sticky notes here that
18 Kiki put in here, it says, "Emailed to attorney, mailed to
19 fiduciary."

20 THE REFEREE: All right, thank you.

21 BY MR. DEROHANNESIAN:

22 Q. Now, what is the email address referred to in the sticky notes that it
23 was sent to?

24 A. I do not have that in front of me.

25 Q. Okay. In any event, do you have any verification or proof that Exhibit

449.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 MM [sic] was sent by email?

2 A. If it would have been kicked back, we would have mailed it.

3 THE REFEREE: Yeah, that-- Actually, he-- All he
4 wanted to know is do you have some way to verify that
5 somebody actually emailed to it, as opposed to the note--

6 THE WITNESS: --Mm-hmm--

7 THE REFEREE: --saying it was emailed.

8 THE WITNESS: Only if I look back at our email.

9 THE REFEREE: How would you determine that?

10 THE WITNESS: I would have to go back and
11 review the email that is still in the system and look to see
12 and find the actual email.

13 THE REFEREE: In the sent files?

14 THE WITNESS: In the sent files.

15 THE REFEREE: All right, thank you.

16 BY MR. DEROHANNESIAN:

17 Q. Assuming that you sent Exhibit MM [sic] by email, to some email
18 address, do you have any record or documentation that Richard H.
19 Miller opened the email sent which included Exhibit 5MM?

20 A. No.

21 Q. Now, did you-- The next activity after August 2nd, was there a letter
22 on your sticky notes that you referred to?

23 A. The next activity was a phone call with Kiki and Barbara Saraceno.

24 Q. Is there-- Is there an August 16th--

25 A. --There was an August 15th phone call with Kiki and Barbara

450.

(Stone - Cross)

- 1 Saraceno. If there was a letter, it would be reflected in the file and not
2 in the sticky notes.
- 3 Q. Did you say there was a note on August 15th?
- 4 A. Yes.
- 5 Q. And-- Do you have that in front of you?
- 6 A. I do.
- 7 Q. May I take a look at it? And on August 16th, according to the records
8 of the court, Barbara Saraceno tells you that Richard Miller isn't-- or
9 can't handle the estate because he's been a judge?
- 10 A. On the 15th of August, she told Kiki that she spoke with Donna, who
11 used to be Attorney Miller's secretary, and told her that Richard Miller
12 is a judge now and no longer practicing. He will not have time to be
13 estate attorney.
- 14 Q. Okay. Now, did you take that note?
- 15 A. Kiki took that note.
- 16 Q. Okay. But you reviewed all her notes, right?
- 17 A. I did.
- 18 Q. So, you certainly know at that point that he's-- Is that the first you
19 now know that--
- 20 A. --Yes--
- 21 Q. --Richard Miller is a Broome County Family Court judge?
- 22 A. Yes.
- 23 Q. And at this point, you had had no contact with Richard H. Miller since
24 2014?
- 25 A. No.

451.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 Q. Is that a fair statement?

2 A. That's a fair statement.

3 Q. And on October 12, 2016, you have a telephone call with Richard
4 Miller?

5 A. Yes.

6 Q. And in the call on October 12, 2016, Richard Miller tells you that he
7 could not handle the estate, correct?

8 A. He told me that he-- he indicated that he was trying to wrap it up. He
9 wanted to know how he could close it out.

10 Q. My question was, did Richard Miller tell you on August 12, 2016, that
11 he could not handle the estate?

12 THE REFEREE: October 12th, I think.

13 BY MR. DEROHANNESIAN:

14 Q. October 12th.

15 A. I don't recall. That's not what is in my note.

16 Q. Well-- Have you been interviewed about that conversation by an
17 investigator from the Commission on Judicial Conduct?

18 A. We discussed this note.

19 Q. That specific note, correct?

20 A. Yes.

21 Q. In some detail?

22 A. Not great detail, but we did discuss it.

23 Q. I'm going to show you Respondent's Exhibit-- Let me first ask you
24 this. Do you recall having phone calls with an investigator from the
25 Commission on Judicial Conduct?

452.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

- 1 A. Yes.
- 2 Q. More than one?
- 3 A. Yes.
- 4 Q. You've had several calls with the Commission, correct?
- 5 A. Yes.
- 6 Q. You've had several emails with them, correct?
- 7 A. Yes.
- 8 Q. The topic of the October 12th phone call came up, correct--
- 9 A. --Yes--
- 10 Q. --in more than one communication or contact with the Commission,
- 11 correct?
- 12 A. Yes.
- 13 Q. I want to show you Respondent's W for identification, and bring your
- 14 attention to the third paragraph, third sentence. First ask you just to
- 15 read it to yourself--
- 16 MS. CENCI: --I'm sorry, but what was the number--
- 17 the letter you looked it?
- 18 THE REFEREE: W.
- 19 MS. CENCI: W? Thank you.
- 20 BY MR. DEROHANNESIAN:
- 21 Q. Have you had a chance to look at--
- 22 A. --Yep. Yes.
- 23 THE REFEREE: Yes.
- 24 BY MR. DEROHANNESIAN:
- 25 Q. After looking at Respondent's W, do you now recall a phone call on

453.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 December 6th, 2017, with the Commission on Judicial Conduct?

2 A. Yes.

3 Q. And in your telephone interview with Laura Misjak, of the
4 Commission-- M-I-S-J-A-K-- did you tell her that part of the October
5 12th, 2016, conversation, was about how he, Richard Miller, could not
6 handle the estate?

7 A. It was based on a note that I sent to the judge--

8 Q. --That's a different--

9 THE REFEREE: --You have to listen. That's not
10 what he asked you.

11 THE WITNESS: Okay.

12 THE REFEREE: He wanted to know, having looked
13 at that Exhibit W, do you now recall-- And then finish the
14 question?

15 BY MR. DEROHANNESIAN:

16 Q. Telling investigator Laura Misjak that part of the October 12th, 2016,
17 discussion and telephone call with Richard Miller was about how he,
18 Richard Miller, could not handle the estate?

19 A. Yes.

20 Q. October 12, 2016, was the first time you had spoken to Richard Miller
21 since 2014?

22 A. Yes.

23 Q. October 12, 2016, is the first time you had any contact directly with
24 Richard Miller since 2014?

25 A. Yes.

454.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 Q. Since October 12th of 2016, has Richard Miller called the Tioga
2 County Surrogate's Court on the *Estate of Saraceno*?

3 A. No.

4 Q. Since October 12th, 2016, to today, January 8, 2019, has Richard H.
5 Miller written the Tioga Surrogate's Court concerning the *Estate of*
6 *Saraceno*?

7 A. No.

8 Q. Since October 12th of 2016, has Richard H. Miller, up until today,
9 January 8, 2019, communicated in any fashion with the Tioga
10 Surrogate's Court on the *Estate of Saraceno*?

11 A. No.

12 Q. Do you have any information that Richard H. Miller prepared any
13 legal document submitted to the Tioga County Surrogate's Court with
14 respect to the *Estate of Saraceno* since he became a judge on January
15 1, 2015?

16 A. I have no personal knowledge of any of that.

17 Q. And the records don't reflect any such--

18 A. --No--

19 Q. --information?

20 THE REFEREE: So, it's "no" to the finished
21 question. You said "no" before he finished, because you--

22 THE WITNESS: --I'm sorry.

23 THE REFEREE: That's all right.

24 BY MR. DEROHANNESIAN:

25 Q. Let me repeat it because I want to make sure that it's clear. Do you

455.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

1 have any information that Richard H. Miller prepared any legal
2 document submitted to the Si-- Tioga County Surrogate's Court on
3 the *Estate of Saraceno* since he became a judge on January 1, 2015?

4 A. No.

5 Q. Do you have any information that Richard H. Miller assisted in the
6 preparation of any legal document submitted to the Tioga County
7 Surrogate's Court on the *Estate of Saraceno* since he became a judge
8 on January 1, 2015?

9 A. No.

10 Q. Do you have your sticky notes there?

11 A. Yes.

12 THE REFEREE: Do you need a break?

13 MR. DEROHANNESIAN: No.

14 MS. SCALISE: Just to finish up on--

15 MR. DEROHANNESIAN: --No--

16 MS. SCALISE: --one issue.

17 BY MR. DEROHANNESIAN:

18 Q. Are the sticky notes kept in any chronological order?

19 A. Sometimes the system kind of doesn't always put them in exact order.
20 They're pretty much in chronological order but if I put several notes in
21 on one day, they might not turn up in the order.

22 Q. It depends on when people put them in?

23 A. Even-- Even if I can put two notes in right after the other, they don't
24 always come out in the order I prefer.

25 Q. Well, for example, in Exhibit A [sic], before we get to the same day,

456.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Cross)

- 1 2018 is on top--
- 2 A. --Yes--
- 3 Q. --2011--
- 4 A. --Yes--
- 5 Q. --is in the back.
- 6 A. Right.
- 7 Q. So, it's in inverse order?
- 8 A. Yes.
- 9 Q. But when you look at notes on the same day, you can't tell what the
- 10 order was?
- 11 A. Right.
- 12 Q. And there's no time of those calls, correct?
- 13 A. There is a time on a system, I don't believe the time prints up.
- 14 Q. So, when you look at your sticky notes, you can't tell the time of a call
- 15 on a particular day?
- 16 A. Right. Generally, if I've got more than one call on the same day, I try
- 17 to put them in the same sticky note in the order that they came in, if
- 18 the sticky note-- if I have enough room to do so.
- 19 Q. But, you can't be sure when a call has the same date-- two calls, three
- 20 calls-- what the order is.
- 21 A. Not on paper.
- 22 Q. When I say on paper, as in Exhibit--
- 23 A. --Correct--
- 24 Q. --5A--
- 25 THE REFEREE: --A.

457.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Redirect)

1 MS. SCALISE: AA.

2 MR. DEROHANNESIAN: 5AA? I-- Or A?

3 MS. SCALISE: Oh, is it A?

4 THE REFEREE: That's just A. Single A.

5 MS. SCALISE: Okay. I'm sorry, excuse me.

6 MR. DEROHANNESIAN: No further questions.

7 THE REFEREE: Ms. Tadjigoue?

8 REDIRECT EXAMINATION

9 BY MS. TADJIOGUEU:

10 Q. Ms. Stone, just to clarify, you had two conversations with the judge in
11 October of 2016, correct?

12 A. I know I had a-- I sent him a note and he replied to the note.

13 Q. You had two conversations with Judge Miller in 2016?

14 A. Yes. Yes.

15 Q. What was the date of the last communication with Judge Miller?

16 A. I believe it was two days later. October-- First one was October 12th,
17 2016, when he called me, and then I called him back on October 14th,
18 2016.

19 Q. That was the last time that you spoke with Judge Miller?

20 A. Yes.

21 Q. You testified in regard to Exhibit 5MM that it was sent by email?

22 A. Yes.

23 Q. Do you recall the email address that it was sent to?

24 A. I do not.

25 Q. I'd like to show you-- I'm going to show the witness what has been

458.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Redirect)

1 marked as Exhibit 13 for identification.
2 MR. DEROHANNESIAN: What is the context?
3 MS. TADJIOGUEU: Exhibit 5-13.
4 MS. CENCI: No.
5 THE REFEREE: No, no.
6 MS. CENCI: The next-- The next numbered
7 Saraceno would be 5--
8 MR. DEROHANNESIAN: --Are you looking--
9 MS. CENCI: --No-- Okay, nevermind.
10 THE REFEREE: Oh, you want to keep it in
11 sequence, then?
12 MS. CENCI: I wanted to keep the--
13 THE REFEREE: --So, that would-- That would be--
14 MS. CENCI: --things to that pertain to--
15 THE REFEREE: --5WW--
16 MS. TADJIOGUEU: --5VV--
17 THE REFEREE: --VV?
18 MS. CENCI: VV.
19 MS. TADJIOGUEU: 5VV.
20 MS. CENCI: Thank you.
21 MS. SCALISE: Wait, 5--
22 MS. CENCI: --Later on that will be helpful--
23 MS. SCALISE: --VV, as in--
24 THE REFEREE: Victor, Victor.
25 MS. CENCI: Someone has to write--

459.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Redirect)

1 MS. SCALISE: --Is there a UU--

2 THE REFEREE: --Yes--

3 MS. SCALISE: --a post-hearing memo, Your
4 Honor, and a report, so it may be easier.

5 THE REFEREE: It may.

6 BY MS. TADJIOGUEU:

7 Q. Would you please review that exhibit and put it down when you finish
8 reviewing it?

9 A. Okay.

10 Q. Does Exhibit 55-- Sorry. Does Exhibit 5VV help refresh your
11 recollection as to the email address that you used to communicate with
12 Judge Miller?

13 A. Yes.

14 Q. What was that email address?

15 A. The email address rhm2law@[REDACTED] was in our database.

16 THE REFEREE: Do you remember that
17 independently, or are you just reading it?

18 THE WITNESS: I read the--

19 THE REFEREE: --Okay, but her question was--

20 THE WITNESS: --Okay--

21 THE REFEREE: --having looked at 5VV--

22 THE WITNESS: --Mm-hmm--

23 THE REFEREE: --does it refresh you recollection
24 as to what the email address is?

25 THE WITNESS: No, I don't know it off the top of

460.

(Stone - Redirect)

1 my head--

2 THE REFEREE: --Okay. So, you can-- but you can
3 read it.

4 THE WITNESS: I can read it.

5 THE REFEREE: Okay. I think that was the
6 question.

7 MS. TADJIOGUEU: What was the email address or
8 will you-- I mean, will you accept--

9 THE REFEREE: --No, no. I mean-- Your question
10 was, "Does it refresh your recollection?" and the answer is
11 "no," but it's in the document, so, if you offer it, maybe
12 then she can read it.

13 MS. TADJIOGUEU: I'd like to offer Exhibit 5VV--

14 THE REFEREE: --VV--

15 MS. TADJIOGUEU: --into evidence.

16 THE REFEREE: Any objection?

17 MR. DEROHANESSIAN: Can I have a moment?

18 MS. SCALISE: Is it just the one page?

19 MR. DEROHANNESIAN: Yeah, is it one page?

20 MS. SCALISE: Or is two pages?

21 THE REFEREE: There's two pages. Are you
22 offering both?

23 MR. DEROHANNESIAN: Or just the first page?

24 MS. TADJIOGUEU: Just the first page.

25 MR. DEROHANNESIAN: Let me think. Can I

461.

(Stone - Recross)

1 have just a second? All right. No objection.

2 THE REFEREE: All right.

3 MS. SCALISE: Both pages--

4 MR. DEROHANNESIAN: --Both pages--

5 MS. SCALISE: --Both pages.

6 THE REFEREE: Both pages? All right. Received.

7 MS. CENCI: Sure.

8 MS. TADJIOGUEU: No further questions.

9 THE REFEREE: Now ask for the question.

10 MS. TADJIOGUEU: Oh, well--

11 BY MS. TADJIOGUEU:

12 Q. --What is the email address that you used to communicate with Judge
13 Miller?

14 A. The email address is rhm2law@[REDACTED].

15 MS. TADJIOGUEU: Thank you very much. No
16 further questions.

17 THE REFEREE: Perfect. Anything further?

18 MR. DEROHANNESIAN: Yes.

19 RECROSS-EXAMINATION

20 BY MR. DEROHANNESIAN:

21 Q. On Exhibit 5VV, Ms. Stone, if you can look at that, it's in evidence,
22 so I can ask you a question now and read from it. This is an interview
23 that you gave on December 12, 2017, to the Commission on Judicial
24 Conduct, correct?

25 A. Yes, it is.

462.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Recross)

- 1 Q. This is separate from the phone interview that I asked you about,
2 containing questions about the October 12, 2017, phone call, correct?
- 3 A. Yes.
- 4 Q. Excuse me, October 12, 2016, phone call.
- 5 A. Okay.
- 6 Q. This is a separate interview, correct?
- 7 A. Yes.
- 8 Q. Did you tell the Commission on December 12, 2017, bringing your
9 attention to the third paragraph, "Ms. Stone verified that a warning
10 letter was sent via email to Richard Miller on March 12, 2017, but
11 there was no verification that he had received or opened the mail--
12 email."
- 13 A. On March 28th?
- 14 Q. Yes.
- 15 A. Yes.
- 16 Q. "No response email was sent and the clerk's office does not typically
17 follow up on form letters to ensure they were received via email." Did
18 you say that?
- 19 A. Yes.
- 20 Q. "Ms. Stone could not verify whether an August 2, 2000 [sic] email
21 was sent and if he, Richard Miller, opened and responded to that email
22 because emails over a year old are archived and her archive system
23 was not working."
- 24 A. It doesn't work well.
- 25 Q. But--

463.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Recross)

1 A. --This says "not working," but yes, it does not work well.

2 Q. Now, I'd like you to look at the second page, which is in handwriting.
3 Going down to where it says March 28, 9:05, rhm2law@[REDACTED], do
4 you see where it says, "We request they acknowledge"?

5 A. Yes.

6 Q. Is that something the court-- Did you tell the investigator that the
7 surrogate's court requests that the attorney acknowledge the email?

8 A. Yes, we do. It's usually in green so it gets the attention.

9 Q. There's no record of that in this case, do you agree?

10 A. Agreed.

11 Q. The next line says, "We send email and copy our own,"-- I can't read
12 the next thing-- "and unread until other party acknowledges."

13 MS. CENCI: Sits. "Sits as unread."

14 MR. DEROHANNESIAN: Yes. Right?

15 BY MR. DEROHANNESIAN:

16 Q. To-- "We send email and copy our own,"-- I can't make out the next
17 letters-- "unread until other party acknowledges." Did you say that to
18 the Commission investigator?

19 A. Yes. It stays as unread until the party acknowledges and then we
20 change it to having been read.

21 Q. And did you say here, in this case, it was marked as unread?

22 A. Yes, it was.

23 Q. The email sent to rhm2@[REDACTED] [sic], correct?

24 A. Yes.

25 MR. DEROHANNESIAN: Thank you.

464.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stone - Redirect)

1 THE REFEREE: Ms. Tadjigoueu?

2 REDIRECT EXAMINATION

3 BY MS. TADJIOGUEU:

4 Q. Ms. Stone, which email was marked as unread?

5 A. I can't tell by these notes, I'm assuming it's the March--

6 MR. DEROHANNESIAN: --We don't want
7 guesses.

8 THE REFEREE: Yeah, we don't want to-- We
9 don't want assumptions.

10 THE WITNESS: Sure.

11 THE REFEREE: Just to clarify, you sent an email to
12 that email address, and attached to the email is the letter?
13 That's an attachment.

14 THE WITNESS: That's correct.

15 THE REFEREE: And you CC your-- the clerk's--

16 THE WITNESS: --The court--

17 THE REFEREE: --office on the email directed to, in
18 this case, Richard Miller.

19 THE WITNESS: Right.

20 THE REFEREE: And when it comes in as a CC it
21 shows up at the top of the inbox as unread.

22 THE WITNESS: Yes.

23 THE REFEREE: And it sits there, unread, until
24 somebody affirmatively either marks it as read or deletes it.

25 THE WITNESS: Right--

465.

(Stone - Redirect)

1 THE REFEREE: --Or files it.

2 THE WITNESS: Right. So, if we get a phone call,
3 we mark-- we unmark it. If we get a response email, we
4 unmark it.

5 THE REFEREE: Okay.

6 BY MS. TADJIOGUEU:

7 Q. Ms. Stone, referring to the third paragraph of this exhibit, it says that
8 the warning letter that was sent via email to Richard Miller on March
9 28, 2017, there was no verification? Does that-- Is that the email that
10 was not-- that was marked unread?

11 A. I believe so.

12 MS. TADJIOGUEU: Okay. I have no further
13 questions.

14 THE REFEREE: Okay. Anything further based on
15 that?

16 MR. DEROHANNESIAN: No, Your Honor.

17 THE REFEREE: All right, well, thank you very
18 much for coming. You're excused. Just a reminder, these
19 proceedings are confidential, so please don't discuss your
20 testimony with anybody. You can take your original file
21 back, but anything with a sticker--

22 THE WITNESS: --It's all yours--

23 THE REFEREE: --leave here. And thank you for
24 coming.

25 THE WITNESS: Thank you.

466.

(Hon. Richard H. Miller, II)

1 THE REFEREE: All right, let's go off the record--

2 MS. SCALISE: --I'm sorry. Before she leaves--

3 THE REFEREE: --Oh--

4 MS. SCALISE: --one quick question.

5 MR. DEROHANNESIAN: Yeah, she referred to
6 some documents that were from 2018, but we didn't have
7 copies of. Could I--

8 THE REFEREE: --Do you think you need them?

9 MR. DEROHANNESIAN: Just in case, if she could
10 copy them and send them here, and we'll mark--

11 THE REFEREE: --Could you do that for us?

12 THE WITNESS: I can probably use the copier here
13 and get them for you.

14 THE REFEREE: Perfect--

15 MR. DEROHANNESIAN: --Perfect--

16 THE REFEREE: --if you could do that on the way
17 out that would be great--

18 MS. SCALISE: --Because that would give us the
19 full file.

20 THE WITNESS: Sure.

21 THE REFEREE: Yeah. Thank you. And now
22 we're off the record.

23 (OFF THE RECORD)

24 MR. FITZPATRICK: We're back on the record.

25 THE REFEREE: We're back on the record. All

467.

(Hon. Richard H. Miller, II)

1 counsel are present and the Respondent is present. Ma'am?
2 Right up here. Good afternoon. Could you raise your right
3 hand? Stay standing. Do you swear or affirm under the
4 penalty of perjury that the testimony you're about to give is
5 the truth, the whole truth, and nothing but the truth?

6 MS. SARACENO: I do.

7 BARBARA SARACENO,

8 having been duly sworn, was examined and testified as follows:

9 THE REFEREE: Perfect. Have a seat. Ma'am, my
10 name is Robert Barrer, and the Commission on Judicial
11 Conduct appointed me as the Referee to oversee the hearing
12 that we're having today. So, you're here to give testimony
13 and you're under oath, and you're going to be asked
14 questions by Ms. Tadjigoueu and probably Mr.
15 DerOhannesian. It's important when you answer that you
16 do so verbally as opposed to shaking your head--

17 THE WITNESS: --Okay--

18 THE REFEREE: --and if you could wait until the
19 question is asked before you answer, so we don't have two
20 people talking at once--

21 THE WITNESS: --Okay--

22 THE REFEREE: --That works, and if anybody-- if
23 one of these lawyers objects to a question, wait until I give
24 you the signal to answer. How's that? Is that fair?

25 THE WITNESS: I guess.

468.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Direct)

1 THE REFEREE: Okay.

2 DIRECT EXAMINATION

3 BY MS. TADJIOGUEU:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. Would you please state and spell your full name for the record?

7 A. Yes. Barbara Saraceno. S-A-R-A-C-E-N-O.

8 Q. Do you reside in Broome County, Ms. Saraceno?

9 A. Yes.

10 Q. What city or town do you reside in?

11 A. Endicott, New York.

12 Q. How long have you lived in Endicott, New York?

13 A. 22 years or more.

14 Q. Are you employed?

15 A. No.

16 Q. What was your prior occupation, if any?

17 A. I was a real estate agent.

18 Q. How long were you in the real estate industry?

19 A. 20-- 23 years.

20 Q. Mrs. Saraceno, you were recently widowed, correct?

21 A. Right.

22 Q. When did your husband pass away?

23 A. December 13th.

24 Q. 2018?

25 A. 2018.

469.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Direct)

1 THE REFEREE: I'm very sorry for your loss.

2 THE WITNESS: Yeah.

3 BY MS. TADJIOGUEU:

4 Q. And what was your husband's name?

5 A. Frank.

6 Q. How long were you married to Mr. Saraceno?

7 A. 55 years.

8 Q. That's wonderful. I'd like to direct your attention to the *Estate of*
9 *Antoinette Saraceno*.

10 A. Okay.

11 Q. Did you know Antoinette?

12 A. Yes. She was my sister-in-law.

13 Q. And when did Antoinette die?

14 A. Oh my goodness. It had to be nine years ago.

15 Q. In 2010?

16 A. I think it was 2010, yes. I don't have the exact.

17 Q. Did Antoinette have a will?

18 A. Yes, she did.

19 Q. Who drafted her will? Who drafted her will?

20 A. I believe Rick Miller.

21 Q. Judge Miller who is seated here today?

22 A. Yes.

23 Q. Did Judge Miller also represent the estate?

24 A. Yes.

25 Q. Did your husband have any formal involvement with the estate?

470.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Direct)

- 1 A. With who?
- 2 Q. With the estate of Antoinette? Was your husband involved with the
- 3 estate?
- 4 A. Yes.
- 5 Q. How was he involved?
- 6 A. He was the executor.
- 7 Q. Mrs. Saraceno, how do you know-- You know Judge Miller, correct?
- 8 A. Yes.
- 9 Q. How do you know him?
- 10 A. I've known him because he closed on our first house we bought. I
- 11 used him as an attorney then.
- 12 Q. When was that?
- 13 A. 20-- 20 some years ago. 21 years I think it is now.
- 14 Q. Is that how you initially met Judge Miller, through that transaction?
- 15 A. No, I had a-- I met him through my son. My son was friends with
- 16 him--
- 17 Q. --What is your son's name?--
- 18 A. --was doing work for him.
- 19 Q. What is your son's name?
- 20 A. Frank, also.
- 21 Q. Frank, Jr.?
- 22 A. No, he's not a junior because it's-- it's-- his name is really Francis,
- 23 but he goes by Frank.
- 24 Q. Was your husband friends with Judge Miller?
- 25 A. Was he friends with him? He liked him very much, you know, they--

471.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Direct)

1 You know, every time he'd come in, they'd go across the street for
2 lunch or whatever and-- Yeah, as he was-- He did like him very
3 much.

4 Q. Has Judge Miller ever been to your home?

5 A. Yes, he has.

6 Q. How many-- Approximately how many times?

7 A. Not-- Just with my son or to come in, you know, mostly with him,
8 right.

9 Q. Mrs.-- What type of work did your son Frank do?

10 A. I don't know. He helped him with his campaigning, maybe putting up
11 signs, things like that, or-- mainly--

12 Q. --Did he--

13 A. --things like that--

14 Q. --Did Judge Miller ever hire your son for anything?

15 A. I don't know if he actually did or got paid or what or, you know-- I
16 don't know if you say he hired him, but he helped him.

17 Q. What industry is your son in?

18 A. My son is 56.

19 Q. What is his occupation?

20 A. Right now, he does-- He's not employed.

21 Q. Formerly, what was his occupation?

22 A. He did a lot of carpenter work and things like that.

23 Q. Mrs. Saraceno, I'd like to direct your attention to 2012. Was Mr.--
24 Was Judge Miller paid for his work handling the *Estate of Antoinette*
25 *Saraceno*?

472.

(Saraceno - Direct)

1 A. Yes. I have cancelled checks that show who got paid, but I was not
2 involved with any of it.

3 Q. I'm going to show you what has been marked for identification as
4 Exhibit 5UU.

5 A. Okay. That's right.

6 Q. Do you recognize that document?

7 A. Yes.

8 Q. How do you recognize it?

9 A. Because I have one in my possession.

10 Q. Would you describe it for the record? Would you describe the exhibit
11 for the record?

12 THE REFEREE: Tell us what this is.

13 A. This is checks that were written out to the real estate agents. They did
14 work for him, and for Rick Miller's service.

15 THE REFEREE: How many checks are there?

16 THE WITNESS: Four here. But we had a lot more.

17 We have them from the--

18 THE REFEREE: --But just on this piece of paper.

19 THE WITNESS: Four.

20 THE REFEREE: Four.

21 BY MS. TADJIOGUEU:

22 Q. Do you recognize the signature on that exhibit?

23 A. Yes. It was my husband's.

24 Q. When did you first see the original copy of those checks?

25 A. Oh my goodness. I didn't have anything to do with any of it until

473.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Direct)

1 people asked me about what was-- if I had any records and that's
2 when I pulled this out and that was probably-- the clerk's called and
3 told me that things were not filed and at that time, I got them out, and
4 they said I needed to hire another attorney because it wasn't
5 completed and at that point, I said I was not going to hire another
6 attorney because he was paid good money, which I felt was good
7 money, but maybe I was wrong, so I maybe should not have made that
8 statement because I have no idea on it, but I took some of real estate,
9 you know, into that and figured that was good money and I wasn't
10 going to pay someone else to finish it.

11 MS. TADJIOGUEU: Mr. Referee, I would like to
12 offer Exhibit 5UU into evidence.

13 THE REFEREE: Any objection?

14 MR. DEROHANNESIAN: May I just take a look--
15 quick look? No objection.

16 THE REFEREE: Received.

17 BY MS. TADJIOGUEU:

18 Q. Mrs. Saraceno, I'd like to direct your attention to August 2016. I'm
19 going to show you what has been marked as Exhibit 5MM. Do you
20 recognize that letter?

21 A. Yes. I've seen this.

22 Q. Did you receive that letter in the mail?

23 A. Yes, I did.

24 Q. Around the time that you received that letter, was your husband
25 residing at home?

474.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Direct)

- 1 A. Yes, at that time, I think he was-- No--
2 Q. --Do--
3 A. --he had been in-- No, he had been in the nursing home until 2017 he
4 got out, but he was in there for a year and a half, so, it would have to
5 have been, yeah.
6 Q. While he was in the nursing home, were you opening mail that was
7 addressed him?
8 A. Did I what?
9 Q. While he was in the nursing home, would you open letters that were
10 addressed to your husband?
11 A. Yes.
12 Q. Around-- In August of 2016, around when you received this letter,
13 were you communicating with the Tioga Surrogate's Court?
14 A. Yes. They had called me.
15 Q. How many times did they call you?
16 A. Probably three times altogether.
17 Q. What was the subject matter of those calls?
18 A. They just asked-- told me again that this was not resolved yet, wasn't
19 sent in, and they had asked me to get another attorney to finish it and I
20 had said that that I had talked to-- I believe, I don't-- That I had
21 talked to Rick and he said that he was going to get someone-- It was
22 going to be taken care of and not to worry about it.
23 Q. Were the conversations that you had with the Tioga Surrogate's Court
24 by phone?
25 A. Yes.

475.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Direct)

- 1 Q. Would-- Who initiated those telephone calls? Who-- Did you call
2 the Tioga County Court?
- 3 A. No. I might have called them back if they called me.
- 4 Q. Now, after receiving Exhibit 5MM, did you speak to-- Did you
5 contact the law office of Judge Miller?
- 6 A. After this date? I don't think so.
- 7 Q. Around the time that you were re-- communicating with the Tioga
8 County Court, did you communicate with Judge Miller's law office?
- 9 A. I did call the office, yes.
- 10 Q. Who did you speak to?
- 11 A. Donna at the time, which was his secretary.
- 12 Q. What did you say to Donna? What did you say to Donna?
- 13 A. I'd just asked her anything about this and she said that all the records
14 were downstairs in their basement.
- 15 Q. Did she say anything else?
- 16 A. Not at that time, but then I heard there was another attorney taking
17 over.
- 18 Q. You heard from who? Who did you hear that from?
- 19 A. It must be Donna.
- 20 Q. I'd like to direct your attention to October 2016. Did you speak to
21 Judge Miller about the estate?
- 22 A. I think at that time I did. I did and then he said, "Okay, this-- this
23 was-- would be taken care of."
- 24 Q. Who initiated that call? Did you call Judge Miller?
- 25 A. I must-- Yes, after I got this and this was in '16. Yes, I did call.

476.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Direct)

1 Q. How did you reach him? How did you reach him?

2 A. Probably at-- I don't know. I think I might have had his cell phone
3 number at one point. Or the office. That'd be the only way.

4 Q. What did you say to Judge Miller when you spoke to him?

5 A. That I got this letter and that it wasn't-- It needed to be taken care of--
6 That things weren't filed.

7 Q. After your conversation with Judge Miller, did you speak to the Tioga
8 Surrogate's Court?

9 A. Yes, I think I did. I think that was another call that they made to me
10 and I told them that it was going to be taken care of.

11 Q. Ultimately, did another attorney take over the case?

12 MR. DEROHANNESIAN: Object to the form--

13 A. --Yes--

14 MR. DEROHANNESIAN: --of that question.

15 THE REFEREE: Overruled.

16 A. Yes, they did.

17 Q. Who was that attorney?

18 A. Ari-- I don't know his last name.

19 Q. Is it Artan Serjanej? Artan Serjanej?

20 A. Yes. In fact, he came to the house.

21 Q. Mrs. Saraceno, when you spoke to the Tioga County Surrogate's
22 Court after speaking to Judge Miller, what did you say to the court?
23 To the best of your recollection?

24 MR. DEROHANNESIAN: If she recalls.

25 A. I don't know.

477.

(Saraceno - Direct)

1 THE REFEREE: Yeah--

2 MS. TADJIOGUEU: --Well--

3 THE REFEREE: --that's all right. She says she
4 doesn't recall.

5 A. I don't know what I would have said to her at that time, just maybe
6 about this.

7 Q. Is there something that would refresh your recollection about what you
8 said to the court?

9 A. No, just what I had said before that I felt that Miller was paid for this
10 and I wasn't going to hire another attorney.

11 MR. DEROHANNESIAN: Objection. It's been
12 asked and answered.

13 THE REFEREE: That's all right. We're-- Just go
14 ahead and ask another question.

15 A. Yeah.

16 Q. I would like to show the witness Exhibit 5A to see if that will refresh
17 her recollection about what she said.

18 THE REFEREE: Sure, go ahead. You can do that.
19 See if it will refresh her memory. Okay, so you're showing
20 her Exhibit 5A?

21 MS. TADJIOGUEU: Correct.

22 BY MS. TADJIOGUEU:

23 Q. And I direct your attention to the entry on December 16, 2016, if you
24 could just review that, and when you're finished reviewing, let me
25 know.

478.

(Saraceno - Direct)

1 A. Yes, that must be when I--

2 THE REFEREE: --Okay. Did you read it?

3 THE WITNESS: Yes.

4 THE REFEREE: All right, now she's going to ask
5 you another question.

6 BY MS. TADJIOGUEU:

7 Q. Does that refresh your recollection as to what you said to the Tioga
8 Surrogate's Court?

9 A. It must be right after that. I don't know-- It doesn't-- I don't know
10 for sure. I didn't take any copies of her calls, or-- I wasn't handling
11 any of this from the beginning.

12 Q. I understand, Mrs. Saraceno, and we're just asking questions of you.
13 After refreshing your recollection, what did you say to the Tioga
14 County Surrogate's Court?

15 MR. DEROHANNESIAN: Objection. She said she
16 doesn't remember.

17 THE REFEREE: I think that's correct. I think she
18 said it had not refreshed her recollection.

19 MS. TADJIOGUEU: I have no further questions. I
20 have no further questions.

21 THE REFEREE: All right. Now, one more attorney
22 is going to ask you some questions--

23 THE WITNESS: --Okay--

24 THE REFEREE: --and then we'll have you on your
25 way.

479.

(Saraceno - Cross)

1 MR. DEROHANNESIAN: I just want to do a few
2 things.

3 CROSS-EXAMINATION

4 BY MR. DEROHANNESIAN:

5 Q. My name is Paul DerOhannesian, and I'm a lawyer, and I represent
6 Richard Miller, Judge Miller, okay?

7 A. Okay.

8 Q. I'll ask you a few questions.

9 A. Okay.

10 Q. Okay? If you don't understand me, please say so. If you have
11 trouble--

12 A. --I do have trouble hearing. Hearing aids--

13 Q. --Hearing, please say so. I'll try to keep my voice up, but it's okay to
14 say, "Stop, repeat it," okay?

15 A. Okay.

16 Q. Who was handling the estate before you?

17 A. Who was handling it?

18 Q. Excuse me. Was your husband the executor of the estate?

19 A. Yes--

20 Q. --Okay--

21 A. --and I had nothing to do with it.

22 Q. Okay. And he was-- Your husband was executor until when?

23 A. Well, he remained the only executor to it.

24 Q. Okay.

25 A. So, he was in and out of the nursing home, but he was, you know, he

480.

(Saraceno - Cross)

- 1 was told to distribute the checks to everybody at that time--
- 2 Q. --Mm-hmm--
- 3 A. --by Rick Miller.
- 4 Q. That was in 2011--
- 5 A. --Right--
- 6 Q. --is when checks were given to all the people--
- 7 A. --Right--
- 8 Q. --in the will, right?
- 9 A. And I have copies of those, also.
- 10 Q. That's right. So, in 2011, the checks were given to everybody who
- 11 was entitled to get money in the will, correct?
- 12 A. I believe so.
- 13 Q. Yeah. And then in 2012, you showed some checks that you paid for
- 14 different people that were involved in the estate.
- 15 A. Right. I've seen those in there, too.
- 16 Q. That includes Richard Miller's fee.
- 17 A. Right.
- 18 Q. Now, there were other-- It looks like Realty USA, Coldwell Banker,
- 19 they also got checks. That's part of their serv--
- 20 A. --That's correct. That's from the sale of the house, yes.
- 21 Q. That was part of the estate?
- 22 A. Right.
- 23 Q. So, in 2016 and 2017, your husband was the executor, correct?
- 24 A. Yes, but by that--
- 25 Q. --He was alive--

481.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Cross)

- 1 A. --But by that time, yes, I think everything had been settled.
2 Q. Because all the money had been given out, correct?
3 A. That's right.
4 Q. So, when you get a letter, your husband is still alive, correct?
5 A. Right.
6 Q. He's technically still the executor, correct?
7 A. Right.
8 Q. You're trying to figure out what's going on--
9 A. --Right--
10 Q. --correct?
11 A. Yeah, I-- Like I said, he had a big box downstairs and when all this
12 come up, I had to go and dig up checks and whatever else he had there
13 and it was very neatly done, everything had been done.
14 Q. And I think-- It'd be fair to say, you didn't have any idea what the
15 problem was when you got a letter from the court?
16 A. No, I did not.
17 Q. Because everybody got their money.
18 A. That's right.
19 Q. That's what you-- To you, it was finished and over with, right? And
20 you spoke to Rich Miller, correct?
21 A. Pardon?
22 Q. You spoke to Rick Miller at some point--
23 A. --At some point, probably--
24 Q. --and he said he would take care of it, correct?
25 A. Right. That it wasn't filed by the judge or some-- and the judge had

482.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Cross)

- 1 retired--
- 2 Q. --Okay--
- 3 A. --that was on to begin with.
- 4 Q. So--
- 5 A. --So, they had another judge, so--
- 6 Q. --Okay. And then after that, you had another attorney who did
- 7 whatever had to be done on the estate.
- 8 A. Right. But I didn't solicit him.
- 9 Q. Right. And that's the person named Artan?
- 10 A. Yes.
- 11 Q. And is he the one that actually did the work to close out the estate?
- 12 A. Yeah, just recently.
- 13 Q. Yeah. But it was Mr. Serjanej, correct?
- 14 A. Yes.
- 15 Q. And when you called Donna, she told you the file was in the basement
- 16 of the office?
- 17 A. But then they couldn't find them.
- 18 Q. Okay.
- 19 A. So, I had to produce everybody's addresses, and I did that for him, and
- 20 took it down to him and then, I believe, in-- A couple of days ago, he
- 21 called my daughter and told her that everything had been filed and is
- 22 done.
- 23 Q. Did he tell you that--
- 24 A. --And it's completed--
- 25 Q. --last Friday--

483.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Cross)

- 1 A. --Just-- Yes--
- 2 Q. --it had been completed? Just last Friday.
- 3 A. Right.
- 4 Q. Okay. You said-- Did he call you? Mr. Serjanej?
- 5 A. No, he did not call me.
- 6 Q. He called your daughter?
- 7 A. Right. And I was in Florida, so anyway, she got the call and she just
- 8 told me the-- that he had called and said not to worry about anything,
- 9 that everything has been filed and done.
- 10 Q. I think-- I heard you say a few minutes ago that when you spoke to
- 11 the court, they asked for another attorney on the estate. Is that right?
- 12 A. That was back way before then.
- 13 Q. Okay. And when you called Donna, Donna said that another attorney
- 14 was going to handle it, right?
- 15 A. Right.
- 16 Q. And by another, not Richard Miller.
- 17 A. I don't know, she didn't say who.
- 18 Q. But she said another attorney?
- 19 A. Right.
- 20 Q. Okay.
- 21 A. That was renting his building.
- 22 Q. That was renting his building?
- 23 A. Right.
- 24 Q. That's who the other attorney was?
- 25 A. Right.

484.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Saraceno - Cross)

1 Q. Who was going to help close out the estate?

2 A. Right.

3 MR. DEROHANNESIAN: Can I have a moment?

4 No further questions.

5 THE REFEREE: Ms. Tadjigoeu, anything further?

6 MS. TADJIOGUEU: No, the witness is excused.

7 THE REFEREE: Thank you. Ms. Saraceno, thank
8 you very much for coming. We appreciate your time.

9 We're very sorry for your loss.

10 THE WITNESS: Thank you.

11 THE REFEREE: One last note before you go. This
12 is proceeding is supposed to be confidential--

13 THE WITNESS: --Okay--

14 THE REFEREE: --so, to the best of your ability,
15 please try not to talk about it with anybody.

16 THE WITNESS: Okay.

17 THE REFEREE: All right?

18 THE WITNESS: All right.

19 THE REFEREE: And have a wonderful afternoon.

20 THE WITNESS: All right. And I appreciated

21 Miller's-- all the work he did, so-- Okay--

22 THE REFEREE: --Good. Thank you. Let's go off
23 the record.

24 (OFF THE RECORD)

25 THE REFEREE: We're here--

485.

(Wedlake - Direct)

1 MR. PEDROTTY: --Commission calls-- Sorry--

2 THE REFEREE: --We're here with all counsel and
3 Respondent is present.

4 MR. PEDROTTY: Commission calls Robert
5 Wedlake. Don't trip our witness, Cathy.

6 MS. CENCI: Sorry about that.

7 THE REFEREE: Raise your right hand, please. Sir,
8 do you swear or affirm under the penalty of perjury that the
9 testimony you are about to give is the truth, the whole truth,
10 and nothing but the truth?

11 MR. WEDLAKE: Yes.

12 ROBERT WEDLAKE, ESQ.,

13 having been duly sworn, was examined and testified as follows:

14 THE REFEREE: Please have a seat. Sir, my name
15 is Robert Barrer, and I've been appointed by the
16 Commission on Judicial Conduct to serve as the Referee for
17 this proceeding, so I will be running the show, if you will,
18 and you are going to be asked some questions by Mr.
19 Pedrotty, and then Mr. DerOhannesian. So, with that,
20 please make sure that your answers are verbal and directed
21 towards the-- the mic, if you will. Thank you.

22 DIRECT EXAMINATION

23 BY MR. PEDROTTY:

24 Q. Good afternoon, Mr. Wedlake.

25 A. Good afternoon.

486.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 Q. Would you please place your full name on the record?

2 A. It's Robert H. Wedlake.

3 Q. How are you employed?

4 A. I'm an attorney at law licensed in the State of New York and I'm a
5 partner with the law firm of Hinman, Howard and Kattell, LLP.

6 Q. Where is the law firm located?

7 A. It's located at 80 Exchange Street, Binghamton, New York, 13901.

8 Q. How long have you been with the firm for?

9 A. Since January 1, 1996.

10 Q. For how many years have you been practicing law?

11 A. I was admitted in January of 1978. I started, you know, before that in
12 November of 1977, was when I was first hired, but I was admitted in
13 January of '78. So, you can do the math.

14 Q. I can't right now, actually. What are your areas of practice?

15 A. I have a varied practice. I would say approximately 30 percent is
16 litigation. I don't do any negligence. I don't do any criminal. I don't
17 do any personal injury. My litigation is corporate litigation, also I
18 have a niche in terms of real property litigation, such as adverse
19 possession, boundary dispute, title disputes. Probably 20, 25 percent
20 of my practice is fairly mundane real estate. When I say mundane real
21 estate, they can be residential closings, but we also-- I also represent
22 land owners and clients that have commercial properties, commercial
23 leasing and the like. Probably 15 to 20 percent is related to estate
24 work, both probating wills and administration of estates. I've tried
25 several contested accountings. I've actually tried several will contests,

487.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 also, but I also do basic wills, estate planning. Anything that's
2 sophisticated, I would give it to one of my partners. I do some other
3 miscellaneous practice. No criminal, no traffic, no family court, no
4 custody.

5 Q. Okay.

6 A. None of that.

7 Q. Okay. For how many years have you been practice estate law?

8 A. Since 1978, that would be about 40 years.

9 Q. Okay. I'd like to ask you now about the *Estate of Jerry Behal*.

10 A. Mm-hmm, yes.

11 Q. Are you familiar with that estate?

12 A. Yes.

13 Q. How are you familiar with it?

14 A. I appeared in that proceeding in surrogate's court on behalf of Joshua
15 Behal, who was a nephew of the decedent and a named legatee. I
16 think he was a 1/6th beneficiary under the estate.

17 Q. So, there were six beneficiaries, then?

18 A. Five or six.

19 Q. Do you remember who they were?

20 A. Yes. When I say yes, some of his siblings were beneficiaries. Joe
21 Behal-- Joseph Behal, also the son-- the son of the executor was the--
22 was one of the beneficiaries. The executor was a David Behal and the
23 son, who might have been Joseph Behal-- I-- The names, don't hold
24 me to it--

25 Q. --That's--

488.

(Wedlake - Direct)

1 A. --was also a beneficiary. The decedent left his residuary estate to his
2 nieces and nephews and what I understand would be his significant
3 other, a Donna Ougheltree, whom I believe that the decedent may
4 have been residing with at the time of his death. I don't know that for
5 a fact. That's what I surmised.

6 Q. But you represented one of the beneficiaries and that was Joshua
7 Behal, you said?

8 A. That's correct.

9 Q. What was his relation to the decedent?

10 A. He was a--

11 THE REFEREE: --Nephew--

12 A. --A nephew.

13 Q. Were you initially involved in the matter when the will was admitted
14 to probate in November of 2011?

15 A. No. No, my involvement did not start until I believe 2016.

16 Q. Approximately what month?

17 A. I believe it was August of 2016.

18 Q. Do you recall when you filed a notice of appearance in the case?

19 A. I think within the fall of 2016, I filed the notice of appearance, I
20 believe.

21 Q. Who actually hired you to represent Joshua?

22 A. Well, my contact was from his grandmother. My client, Joshua, is
23 autistic. He is receiving Social Security Disability as a result of that
24 disability. He is functional. Also, quite frankly, Joshua, at this point
25 in time may be 22 years old, so back in 2016, he was 19, 20 years old.

489.

(Wedlake - Direct)

1 He was residing with his grandmother, Sharon Rogers, whom I had
2 represented for many years. In fact, Sharon Rogers, perhaps 30, 35,
3 40 years ago had worked in my former law office. I with-- I've been
4 with Hinman, Howard and Kattell since January 1, 1996. Prior to that,
5 I was with another law firm. So, I've always represented Sharon with
6 respect to her various issues and she contacted me with respect to this
7 issue on behalf of Josh. She's also the representative payee for Josh
8 with respect to his Social Security Disability payments.

9 Q. What was your understanding of why she felt her grandson needed
10 representation at that time?

11 A. My recollection is that she explained that the estate had been ongoing
12 at that point for approximately five years, and that she indicated that
13 Josh was a beneficiary, and that some of his siblings were
14 beneficiaries, and that they were concerned that there had been no
15 distributions. They were concerned-- You know-- They had-- were
16 not receiving a lot of information about-- from the executor, from any
17 other person, and there was a concern on their part that something was
18 amiss, what's going on, why is it taking this long.

19 Q. What was-- Withdrawn. Who was the attorney of record for the
20 executor when you came into the matter?

21 A. Artan Serjanej.

22 Q. Did you have an understanding that it was another attorney prior to
23 your coming into the matter?

24 A. Yeah. Yes, I know for a fact that Richard Miller was the attorney of
25 record. One of the first things I did is I instructed my paralegal to go

490.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 to the surrogate's court and to secure copies of relevant documents. I
2 wanted to find out what had been filed and what was going on. So, I
3 did secure a copy of the probate petition that had been originally filed
4 and some other documentation. I also procured a copy of the petition
5 that Donna Ougheltree had se-- had filed *pro se* to have it compel an
6 accounting. So, I-- I familiarized myself with what the records were
7 at the surrogate's court.

8 Q. Okay.

9 MR. PEDROTTY: May I approach the witness?

10 THE REFEREE: Yes, please.

11 BY MR. PEDROTTY:

12 Q. I'm showing the witness what's been marked for identification as 4C.
13 Do you recognize that exhibit?

14 A. It appears to be a copy of the filed probate petition in the *Estate of*
15 *Jerry J. Behal, Jr.* I note that it's stamped as being filed in the
16 surrogate's court on October 26, 2011, so I believe that this is a copy
17 of what I also obtained from the surrogate's court.

18 MR. PEDROTTY: I offer that exhibit into evidence,
19 Your Honor.

20 THE REFEREE: Let me just inquire quickly. Same
21 question as earlier--

22 MR. DEROHANNESIAN: --Right--

23 THE REFEREE: --stipulate that--

24 MR. DEROHANNESIAN: --We'll stipulate that
25 Judge--

491.

(Wedlake - Direct)

1 THE REFEREE: --Just a minute. That Respondent
2 was the attorney--

3 MR. DEROHANNESIAN: --Richard Miller was the
4 attorney for the--

5 THE REFEREE: --Let me finish. Stipulate that
6 Respondent was the attorney of record for the estate, or
7 the-- or fiduciary prior to becoming family court judge.

8 MR. DEROHANNESIAN: Yes.

9 THE REFEREE: All right. What are you-- What's
10 the exhibit that you're offering?

11 THE WITNESS: It's 4C.

12 THE REFEREE: What is it?

13 MR. DEROHANNESIAN: Petition for probate.

14 THE REFEREE: Any objection?

15 MR. DEROHANNESIAN: I don't object. I think
16 there's quite a few like in the other estate. I'm willing to
17 stipulate to the facts--

18 MR. PEDROTTY: --Respondent even admitted that
19 it was--

20 THE REFEREE: --All right, so, you don't object to
21 the petition?

22 MR. DEROHANNESIAN: I don't-- I--

23 THE REFEREE: --Admitted. Received.

24 MS. SCALISE: But in order to save time--

25 THE REFEREE: --No, I understand. I-- If were

492.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 going to go through everything, then I'll stop it, but that's
2 fine. Let's--

3 MR. PEDROTTY: --If it will save time at this point
4 and are willing to just stipulate to the authenticity of the
5 entire *Behal* estate, it'll save Rebecca Malmquist.

6 MR. DEROHANNESIAN: I don't want to--

7 THE REFEREE: --Just a minute. There's no reason
8 to admit the entire estate file. It's not relevant and not in
9 dispute. What is in dispute is what work, if any, was done
10 by the Respondent after he became a judge. So, that's what
11 we really have to focus on.

12 MR. PEDROTTY: Your Honor, we want to be able
13 to put in proof of our specifications. There's many
14 specifications that refer specifically in-- Yeah-- to these
15 documents--

16 THE REFEREE: --Well, tell me what the-- Fine.
17 I'm looking at--

18 MR. PEDROTTY: --And--

19 THE REFEREE: --in paragraph 12-- Excuse me,
20 page 12 of the esta-- of the petition and it says that a
21 petition was filed and we've just admitted that. Then
22 paragraph 47--

23 MR. DEROHANNESIAN: --Which is admitted in
24 our Answer--

25 THE REFEREE: --Just a minute. Paragraph 47 said

493.

(Hon. Richard H. Miller, II)

1 there was a petition for an order authorizing settlement and
2 then it was an attorney's affidavit in support, and I
3 guarantee that even if they object, it's going to be admitted.
4 I don't think they will. And there's an order, paragraph 48
5 of the petition-- Excuse me, of the complaint. That's going
6 to get it in--

7 MR. PEDROTTY: --Once-- And once we get to
8 paragraph 48, that's after January 1, 2015, which they did
9 stipulate to the authenticity of--

10 THE REFEREE: --Right, so what--

11 MR. PEDROTTY: --all those documents.

12 THE REFEREE: I agree. What do we need other
13 than the petition, which we just admitted--

14 MS. CENCI: --Can we excuse the witness, Your
15 Honor, while we do this?

16 THE REFEREE: Sure--

17 MS. CENCI: --I mean--

18 THE REFEREE: --Why don't we go off the record?
19 Actually, stay on the record-- Stay on the record. You can
20 excuse yourself for just a moment. The witness has left the
21 room and the door is closed. Okay. I apologize if it seems
22 as though I'm trying your case for you. I don't intend to do
23 that. I hate it when other people do it, so I apologize if
24 that's the perception. All I'm trying to suggest is there is no
25 dispute that the Respondent was the attorney for the estate

494.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 and there's nothing in this complaint that includes any
2 allegation that the Respondent improperly handled this
3 estate before he became a judge. The only issue, unless I'm
4 missing something-- I'm happy to have you tell me that I
5 am-- the only issue is, did he perform work after he became
6 a judge? Am I missing something?

7 MS. CENCI: Well, Your Honor, if I may speak.

8 THE REFEREE: --Please.

9 MS. CENCI: We're trying to put into context what
10 was happening with-- within the estate at the time that we
11 allege that certain activities took place--

12 THE REFEREE: --And why--

13 MS. CENCI: --by Respondent--

14 THE REFEREE: --Why is it relevant? Because
15 assume-- Assume that--

16 MS. CENCI: --It's relevant-- Well, it's--

17 THE REFEREE: --He did a great job or he did a
18 terrible job--

19 MS. CENCI: --It has nothing to do with whether it's
20 a good job or a bad job, it has to do with the court
21 repeatedly demanding the accounting, it not being filed, and
22 the timeframe when the other stuff was happening, that's
23 when the judge got involved.

24 THE REFEREE: No, I understand, but assum-- So,
25 we'll make the assumption, just to bear me out, we'll make

495.

(Hon. Richard H. Miller, II)

1 the assumption and we'll view everything in a light most
2 unfavorable to the judge. If he commences a proceeding,
3 and he ignores it, he does a terrible job. Everything--
4 Every time he's prompted by everyone, he ignores it--

5 MS. CENCI: --No, no. No, the problem--

6 THE REFEREE: --Just let me finish---

7 MS. CENCI: --The prompts came after he got on the
8 bench--

9 THE REFEREE: --I understand that but let me--
10 Let me finish. Everything he does beforehand is terrible.
11 He gets on the bench, they continue to inquire, and now it
12 matters, but assum-- I'm assuming for the sake of
13 discussion, everything before he became a judge was
14 handled horribly and delayed and he did it on purpose,
15 because he's a bad guy.

16 MS. CENCI: I-- I don't-- I'm not sure--

17 THE REFEREE: --That-- It's irrelevant to the
18 petition.

19 MS. CENCI: I'm not sure why you keep talking
20 about things being done and delayed in the beginning--

21 THE REFEREE: --So, what difference does it
22 make?

23 MS. CENCI: Well, first of all, we have-- we're
24 trying to prove that there was, in fact, an estate proceeding
25 filed in the Broome County Court.

496.

(Hon. Richard H. Miller, II)

1 THE REFEREE: We've got-- We've got that--

2 MS. CENCI: --Okay, that's one document-- We
3 finally got one document--

4 THE REFEREE: --4C-- 4C--

5 MS. CENCI: --that sort of, you know, shows that.
6 But thereafter, we're trying to-- and, you know, maybe not
7 every single document needs to go into evidence, but we're
8 trying to make a record that, you know, someone else, other
9 people are going to review, in addition to yourself, that--
10 To tell a story here as to what happened in this estate, right?
11 And just because a-- something's been admitted, doesn't
12 mean we're not entitled to put in proof with respect to that
13 allegation.

14 THE REFEREE: No, I understand that. But you--
15 Here's the state of proof now. The current state of proof--
16 And he just-- He just did this. He said this thing was
17 dragging for five years before he was asked by Joshua's
18 grandmother to get involved because nothing was
19 happening--

20 MS. CENCI: --Right--

21 THE REFEREE: --and by the time he got involved,
22 Artan Serjanej was counsel of record. So, we now-- We
23 know that the petition was filed and I think-- I'm not
24 stopping you. I'm just suggesting--

25 MS. CENCI: --Well, you are, Your Honor, because

497.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 what-- I asked the Respondent's counsel to stipulate to the
2 foundation for these documents. You have not allowed us
3 even to offer them into evidence.

4 THE REFEREE: Well-- But-- Let's assume that--

5 MS. CENCI: --Let's assume some of them-- Excuse
6 me, I don't mean to interrupt but--

7 THE REFEREE: --All right, I apologize.

8 MS. CENCI: Let's assume that there's an objection
9 to the relevancy to some of these documents. We haven't
10 had a chance to offer them. We haven't had a chance to
11 offer the documents into evidence.

12 THE REFEREE: I-- You know what, that's fine. I
13 understand your concern and I know that if I artificially
14 restrict the record, it's unfair to the Commission, because
15 the Commission's entitled to prove its case. All I'm
16 suggesting to you, in the strongest possible way, is you
17 don't need this, it's not in your complaint. It-- What is in
18 the complaint is that this thing started in 2011 when Jerry
19 Behal, Jr., died. Then in October, they filed a petition, then
20 you allege that Respondent filed a petition on behalf of the
21 executor for an order settling the case, and then by order of
22 January 23, '15, three weeks after he became a judge, the
23 settlement is approved--

24 MS. CENCI: --Okay, we don't--

25 THE REFEREE: --Now--

498.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: --We don't have any evidence of that--

2 THE REFEREE: --No, I understand that, but what

3 I'm-- what I was trying to cut to the chase is, just offer

4 those. I think they'll admit it.

5 MS. CENCI: Well, this-- But, look, there's--

6 There's paragraphs upon paragraphs of specifications here

7 in the Formal Written Complaint.

8 THE REFEREE: But, you know what--

9 MS. CENCI: --These are all documentary--

10 THE REFEREE: --but that's after. I understand

11 that, but that's all after he became a judge and I think that's

12 fine. What I'm trying to do is-- you've got from 4B, you

13 go to--

14 MS. CENCI: --So, so--

15 THE REFEREE: --You go to 4X-- It-- Of things

16 you don't need. Now, if you want-- I'm going-- I'm not

17 going to stop you. You go ahead and do it. I just think

18 you're wasting our time and--

19 MS. CENCI: --We'll offer--

20 THE REFEREE: --we're not going to finish the last

21 witness today.

22 MS. CENCI: We'll offer 4Y through 4HHH.

23 THE REFEREE: Any objection to that?

24 MR. DEROHANNESIAN: So--

25 THE REFEREE: 4Y--

499.

(Hon. Richard H. Miller, II)

1 MR. DEROHANNESIAN: --to 4 triple-- We're not
2 offering anything else before that?

3 MS. CENCI: Apparently, we're--

4 THE REFEREE: --No, no, I'm not-- I'm trying to
5 help you. To help all the parties. So, if-- At the moment,
6 4Y to 4HHH.

7 MR. DEROHANNESIAN: Well, can I be heard on
8 the first set?

9 THE REFEREE: The ones-- No. Only on 4Y to
10 4HHH.

11 MR. PEDROTTY: I just-- I'd like to--

12 THE REFEREE: --I think-- I think he's going to
13 say yes. Let's get these admitted.

14 MR. PEDROTTY: Okay.

15 THE REFEREE: He's going to be overruled if he
16 says that he objects, but I think it would be better if he
17 agreed.

18 MR. DEROHANNESIAN: If they're offering 4Y
19 through 4III--

20 THE REFEREE: --HHH--

21 MS. SCALISE: --HHH--

22 MR. DEROHANNESIAN: --Okay. Respondent
23 will not object, but Respondent may ask questions about
24 these now--

25 THE REFEREE: --That's fine. I'm just trying--

500.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MR. DEROHANNESIAN: --I mean, that's--

2 THE REFEREE: --I'm saving-- I've saved all this
3 time--

4 MR. DEROHANNESIAN: --I think as we saw with
5 the last witness-- It-- I don't-- One of the problems I have
6 is it creates confusion if this is in the record, then something
7 may have to be explained.

8 THE REFEREE: No, I'm-- No--

9 MR. DEROHANNESIAN: --That's why, but if
10 they're offering it--

11 THE REFEREE: --Resp-- 4Y-- I understand--

12 MR. DEROHANNESIAN: --and that's what they
13 want--

14 THE REFEREE: 4Y to 4HHH are received.

15 MS. CENCI: Thank you. Can we bring the witness
16 back?

17 COURT OFFICER: You want the witness back in,
18 Judge?

19 THE REFEREE: Yes. Yes. Now you can do
20 whatever you like.

21 MR. PEDROTTY: Go home?

22 THE REFEREE: If that's your preference--

23 MS. CENCI: --Okay--

24 THE REFEREE: --that would be fine-- I think you
25 can ask any other-- Okay, let's-- We're-- The witness is

501.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 back in the room and counsel have not left and Respondent
2 has not left. Mr. Pedrotty-- Sir, while you were out, we
3 admitted a large volume of exhibits and Mr. Pedrotty has
4 questions for you.

5 MR. PEDROTTY: Thank you. Thank you.

6 BY MR. PEDROTTY:

7 Q. Do you know Judge Richard Miller?

8 A. Yes.

9 Q. How do you know him?

10 A. Professionally.

11 Q. For how long have you known him?

12 A. Boy, I'm not sure how old Judge Miller is. As I've already testified,
13 I've been practicing for 40 years. I would imagine it's been
14 approximately 30 years.

15 Q. Do you ever appear before him in any court?

16 A. Yes.

17 Q. Okay. In what courts?

18 A. Previously, he was a Town of Union Justice. Part of my practice,
19 which I didn't mention, is I do evictions, primarily for landlords and I
20 have appeared in front of Judge Miller in the-- when he was a town
21 justice, primarily for evictions.

22 Q. And did you also know him professionally as an attorney?

23 A. Yes--

24 THE REFEREE: --You've answered, thank you.

25 Let him ask you another question.

502.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 BY MR. PEDROTTY:

2 Q. What kinds of matters did you do with him as an attorney?

3 A. I believe we had several real estate deals, primarily residential. In
4 fact, maybe exclusively residential. In other words, I don't know that
5 I've ever did a commercial deal with Judge Miller.

6 Q. Let me get you back to the *Estate of Jerry Behal*, then, and I'll direct
7 your attention to September 2016. What was the status of the
8 accounting when you first appeared in that matter?

9 A. There was no accounting that was filed. As I mentioned, a *pro se*
10 Donna Ougheltree had filed a petition to compel an accounting. There
11 had been-- my recollection is several orders by a Judge Guy directing
12 the filing of an accounting that had not been done.

13 Q. You mentioned several orders. During what period of time are these
14 several orders being issued by Judge Guy?

15 A. To be honest with you, I'd have to review the file. I think that when I
16 first came in, in the fall of 2016, there had been at least one or more
17 orders directing the filing of the comp-- of an accounting.

18 Q. And in the months following your appearance in the matter, did you
19 attempt to contact the-- attorney Serjanej's office about the matter?

20 A. Yes.

21 Q. What happened when you attempted to get in contact with Mr.
22 Serjanej?

23 A. Well, at that-- In that timeframe, my inquiries were I called and I
24 asked to speak to attorney Serjanej and I spoke with, I believe, a
25 paralegal or an assistant by the name of Donna. And Donna was--

503.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 tried to address some of my questions and concerns.

2 Q. Donna did rather than Artan Serjanej?

3 A. At-- At that point in time, yes. You have to understand that
4 subsequently, I did have direct communications with attorney Serjanej
5 but not initially.

6 Q. Okay. During what period of time did you-- Were you unable to have
7 communications with attorney Serjanej?

8 A. Approximately anywheres-- You know, I'm struggling a little bit,
9 maybe for as much as eight months to a year.

10 Q. Showing the witness Exhibit 4III, which is in evidence. I'm showing
11 you-- I'm directing you to page 2 and page 3 of that document. Could
12 you review that and then let me know when you're finished?

13 MR. DEROHANNESIAN: 4--

14 MR. PEDROTTY: --III.

15 A. I'm finished.

16 Q. Do you recognize that document?

17 A. It looks a lot like a document that was provided to me by the office of
18 Mr. Serjanej. It appears to be like a spreadsheet which shows the
19 income coming into the estate and the description of the asset or the
20 source of the revenue, and also some of the expenses. It's in-- It is in
21 chr-- somewhat chronological order.

22 Q. Who at the office of Serjanej provided that to you?

23 A. Donna.

24 Q. Approximately when did she provide that to you?

25 A. It was the fall of 2016. It wasn't that much-- not too long after I

504.

(Wedlake - Direct)

- 1 appeared in the matter. Because after I appeared in the matter, I tried
2 to, you know, contact Mr. Serjanej at his office to find out what was
3 going on. Because like I said, part of the problem was my client had
4 no information about the status of the estate and this was-- at this
5 point in time, you know, the decedent had been dead for five years.
- 6 Q. Do you notice any difference between the spreadsheet in Exhibit 4III
7 and the spreadsheet that was sent to you by Ms. Filip in 2016?
- 8 A. You know, there could be. There could be. I'd have to compare it.
9 There might be some difference, you know, I'm not sure--
- 10 Q. --Can I direct your attention to the last date on the spreadsheet, on the
11 second page, on the right hand side?
- 12 A. January 25, 2017.
- 13 Q. Do you believe the copy of the spreadsheet that Donna Filip provided
14 to you had that date?
- 15 A. No, because I was provided the spreadsheet in the fall of 2016, and it
16 was only once. So, in other words, I didn't receive any updates, so it
17 would have been impossible for me to have this because I did-- You
18 know, I received it in late-- the fall of 2016.
- 19 Q. Okay, thank you. You can put that aside for now. Do you recall any
20 attorney conferences in the *Estate of Behal* in or around late 2016,
21 early 2017?
- 22 A. I do recall attending several attorney conferences with Judge Guy.
- 23 Q. Who attended the conferences on behalf of the executor?
- 24 A. I recall that one of the conferences Donna appeared on behalf of the
25 executor and at the other conferences, Mr. Serjanej appeared.

505.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 Q. What was your response to the fact that Donna appeared on behalf of
2 Mr. Serjanej?

3 MR. DEROHANNESIAN: Objection.

4 THE REFEREE: Sustained.

5 BY MR. PEDROTTY:

6 Q. Did you have any communications with Judge Miller about the *Behal*
7 estate?

8 A. Yes.

9 Q. When was that communication, approximately?

10 A. That communication was approximately in October of 2016.

11 Q. What was the communication?

12 A. Judge Miller contacted me with respect to a matter not related to the
13 estate. It was a-- with respect to a real estate matter unrelated to the
14 estate at all. It's my recollection that I used that opportunity to
15 question Judge Miller with respect to his knowledge of Mr. Serjanej.
16 I was doing that-- I didn't feel it was an *ex parte* communication.
17 You have to understand, I don't practice in family court at all, okay?
18 And I was trying to get information to assist me in representing my
19 client because my client was fearful that there may be some nefarious,
20 you know, action being taken by the executor or by attorney Serjanej.
21 And so, I knew that Judge Miller knew Mr. Serjanej, and I attempted
22 to solicit from Judge Miller what information I could get, which
23 would give me a feel of what kind of guy this attorney was and this
24 executor was, to the end of trying to get as much information so that I
25 could advise my client accordingly.

506.

(Wedlake - Direct)

1 Q. Do you recall saying anything else to Judge Miller about attorney
2 Serjanej and his performance on the matter?

3 A. You know, I don't remember word for word the conversation. I think
4 I expressed to Judge Miller my feeling that attorney Serjanej was not
5 experienced-- I'll put it nicely, was not experienced in these kind of
6 matters.

7 Q. What, if anything, did Judge Miller say in response about your
8 concerns relating to the *Behal* matter?

9 A. I don't recall what Judge Miller told me specifically, but I do recall
10 that in sum and substance he indicated that he was friends with the
11 executor and that he stated to me that-- that David, who was the
12 executor, would not be stealing or pilfering money from the estate. I
13 do recall that. I don't recall his comments with respect to Mr.
14 Serjanej, I just don't. But the gist of it was that, look, the money's not
15 being stolen, you know, that you don't have to worry, the money's not
16 disappearing. The money from the estate.

17 Q. Okay. Did there come a time when the-- when an accounting was
18 finally filed?

19 A. Yes.

20 Q. Do you recall when that was, approximately?

21 A. Well, I believe it was 2017. I-- You know, I-- Obviously, if you have
22 the records from the surrogate's court, you'll have that information
23 precisely. I do recall that there was a-- accounting that was filed and
24 then there was a supplemental accounting because the first accounting
25 that was filed I believe may have been rejected by the surrogate's

507.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 court for a number of factors.

2 Q. Did you review the accounting that was filed?

3 A. Yes.

4 Q. Did you have any concerns about it?

5 A. Yes.

6 Q. What were those concerns?

7 MR. DEROHANNESIAN: Objection.

8 THE REFEREE: Well-- No, that-- I'm going to
9 sustain that. Did you file objections?

10 THE WITNESS: Yes.

11 THE REFEREE: Do-- Have we admitted the
12 objections?

13 MR. PEDROTTY: Yes.

14 THE REFEREE: What-- What exhibit number or
15 letter are the objections?

16 MR. PEDROTTY: 4XX is the formal objections.

17 THE REFEREE: Okay.

18 BY MR. PEDROTTY:

19 Q. Before you filed formal objections, did you do anything in response to
20 the accounting that the executor had filed? And let me direct your
21 attention that-- it was May-- Since the records are in evidence, the--
22 I'm going to show you Exhibit 400. Does that refresh your
23 recollection as to when the executor filed the accounting?

24 THE REFEREE: No, he can just read it because it's
25 in evidence. So, just--

508.

(Wedlake - Direct)

1 BY MR. PEDROTTY:

2 Q. --What is-- Please note the date of--

3 A. --It was filed--

4 Q. --when it was filed.

5 A. This was a petition for judicial settlement of account filed by David J.
6 Behal. It was filed in the Broome County Surrogate's Court on May
7 26, 2017.

8 Q. In or about May or June 2017, did you do anything in response to that
9 accounting?

10 A. Well, prior to file-- filing the formal objections, I wrote Mr. Serjanej
11 a letter outlining what I felt were the deficiencies with his effort to file
12 an accounting and some of-- highlighting some of my client's, you
13 know, concerns.

14 THE REFEREE: Is this going to be 4KKK?

15 MR. PEDROTTY: Unfortunately.

16 BY MR. PEDROTTY:

17 Q. I'm showing the witness a three-page letter, which has been marked
18 for identification as Exhibit 4KKK. The letter is dated June 5, 2017.
19 It is from Mr. Wedlake to attorney Serjanej. Do you recognize that
20 document?

21 A. I believe this is the letter that I just referred to in my testimony. The
22 letter that I sent to Mr. Serjanej pointing out what I felt was the
23 deficiencies with his accounting.

24 MR. PEDROTTY: At this time, I offer Exhibit
25 4KKK into evidence.

509.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 THE REFEREE: Any objection?

2 MR. DEROHANNESIAN: If I could just take a
3 look at it, please?

4 MR. PEDROTTY: Forgive me for not showing it to
5 you.

6 MR. DEROHANNESIAN: What?

7 MR. PEDROTTY: Forgive me for not showing it to
8 you.

9 THE REFEREE: No, okay.

10 MR. DEROHANNESIAN: It wasn't on the list.

11 MR. PEDROTTY: But it has been provided to you.

12 MR. DEROHANNESIAN: Yeah, yeah. I would
13 object on relevancy to the June 2017--

14 THE REFEREE: --Can I see it? Please?

15 MR. PEDROTTY: It is alleged that the Resp--

16 THE REFEREE: --Let me just-- Let me just see it
17 quickly. I'm a fast reader. I don't think the Respondent is
18 mentioned here at all.

19 MR. PEDROTTY: It is alleged that Respondent was
20 actively working on the accounting in or around March
21 through April of 2017. There are emails in which
22 Respondent is named, in which there-- information about
23 this accounting going back and forth. There's testimony
24 admitted by Mr. Kachadourian that he was provided with
25 these emails and then the accounting was filed in May 2017,

510.

(Wedlake - Direct)

1 and Mr. Wedlake, as an experienced estate attorney, is
2 testifying about the issues that were involved with this
3 accounting that was filed and which Respondent was
4 allegedly working on.

5 THE REFEREE: I don't see it. I'm going to sustain
6 the objection. If you can tie it to the Respondent, I'll
7 reconsider, but at the moment, based on this witness's
8 testimony, I don't see a connection. Maybe you can
9 establish that.

10 BY MR. PEDROTTY:

11 Q. I'm showing the witness Exhibit 4QQ in evidence. Would you please
12 identify what that is and what it says?

13 A. 4QQ is a letter dated June 15, 2017, from Judge Guy on official
14 surrogate's court stationery referencing the estate. The substance of
15 the letter--

16 THE REFEREE: You can just read it, if you'd like.

17 It's been admitted.

18 A. "The court is in"-- "The court is in receipt of your client's petition"--
19 And this is directed to Mr. Serjanej. "The court is in receipt of your
20 client's petition to account and account verified on May 25, 2017.
21 Please be advised that the account is not sufficient and will not be
22 approved by the court until schedules are correct and the account
23 balances." It goes on and indicates that "unless receipts and releases
24 are filed by August 18, 2017, at 4:30 PM, the court is directing that
25 you file with the chief clerk of the court an amended account in proper

511.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Direct)

1 form and balance at that time.”

2 Q. Thank you. Now showing the witness Exhibit 4XX. What is the date
3 on that document?

4 A. The document is dated November 30, 2017.

5 Q. And is there a filing date on it as well?

6 A. It is filed with the Broome County Surrogate’s Court on December 4,
7 2017.

8 Q. Are those the formal objections that you filed to the accounting?

9 A. Yes.

10 Q. What is the current status of this estate?

11 A. The matter has been resolved.

12 Q. How did that happen?

13 A. We had a trial on my objections-- on my client’s objections, I should
14 say, in, I believe it was July or August of 2018. After testimony was
15 taken, there was a settlement arrived at after lunch. Since then, there
16 has been a final decree of judicial settlement. There has been
17 distributions, and I believe that the surrogate’s file is closed.

18 MR. PEDROTTY: Okay, I have no further
19 questions.

20 THE REFEREE: Mr. DerOhannesian?

21 MR. DEROHANNESIAN: Yes. I’ll check with you
22 once.

23 MR. PEDROTTY: I think these exhibits here and
24 (unintelligible) over there.

25 MR. DEROHANNESIAN: Thank you.

512.

(Wedlake - Cross)

1 THE REFEREE: Mr. Pedrotty, you want to pick up
2 this KKK?

3 MR. PEDROTTY: So unfortunate.

4 THE REFEREE: That's all right. Thank you.

5 CROSS-EXAMINATION

6 BY MR. DEROHANNESIAN:

7 Q. Mr. Wedlake, you said had one direct communication with Richard
8 Miller about the *Behal* estate, correct?

9 A. I said I received a call from Richard Miller in, I believe it was the fall
10 of 2016, shortly after I appeared in court.

11 Q. Now, at that time, you knew that Richard Miller was a judge of the
12 Broome County Family Court?

13 A. Yes. Yes.

14 Q. And this was a call that Judge Miller initiated?

15 A. Yes.

16 Q. And he asked you about a deed of his property, correct?

17 A. Well, yes. When I say his property, it was a lot adjacent to his
18 residence that I represented the sellers and Judge Miller, I think
19 represented himself *pro se* with respect to that purchase.

20 Q. And he asked you if you had a copy of the deed, correct?

21 A. Yeah. Yes. I-- You know, again, I don't remember the exact
22 conversation.

23 Q. But that was it in terms of what Judge Miller said to you as to the
24 purpose for his call?

25 A. Yes.

513.

(Wedlake - Cross)

- 1 Q. Now, you took advantage of the opportunity that you had Judge Miller
2 on the phone to ask him a question about the *Behal* estate, correct?
- 3 A. I asked him several questions, yes, that's correct.
- 4 Q. And you know he's a judge, correct?
- 5 A. Yes.
- 6 Q. You're an experienced attorney in the community, correct?
- 7 A. Yes.
- 8 Q. You're familiar with rules of ethics for judges, too, correct?
- 9 A. Generally. I've never been a judge, but generally, yes.
- 10 Q. Well, you knew they're not supposed to practice law.
- 11 A. That's correct and--
- 12 Q. --Or do you think--
- 13 A. --I'm aware of the *ex parte* communication rules, yeah.
- 14 Q. Right. So, but you asked him some questions, correct?
- 15 A. Yes.
- 16 Q. And you felt that was appropriate, correct?
- 17 A. Yes.
- 18 Q. And Richard Miller didn't bring up the *Estate of Behal*, you did,
19 correct?
- 20 A. That's my recollection.
- 21 Q. Because you were looking for facts, correct?
- 22 A. And information, yes.
- 23 Q. In fact, you weren't looking for legal opinions were you?
- 24 A. No, no. I was trying to find out information with respect to this-- you
25 know, with respect-- that would assist me in advising my client.

514.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Cross)

1 Q. And that factual information included a concern raised by your client
2 whether funds were properly managed, correct?

3 A. Yes.

4 Q. And to that extent, Richard Miller could be a factual witness in that
5 matter, correct?

6 A. Well, I was trying to see what information I could get from him. I
7 quite frankly didn't know how much infor-- I didn't know, for
8 instance, that-- He volunteered to me that he was good friends with
9 the executor. I had no knowledge of that--

10 Q. --Okay.

11 A. As far as I knew, he was a-- you know, this was just a client for Judge
12 Miller.

13 Q. Okay, so that was a piece of information, factual information, that
14 would assist you in doing your job, correct?

15 A. Yes.

16 Q. And you viewed that as an appropriate inquiry?

17 A. Yes.

18 Q. Even though he was an elected judge, correct?

19 A. Yes.

20 Q. And would it be fair to say that you felt any question that you asked
21 Judge Miller in that phone call you had in 2016 was an appropriate
22 inquiry by you to obtain factual information?

23 A. Yes.

24 Q. And you didn't ask Judge Miller to perform any legal work on the
25 *Behal* estate, did you?

515.

(Wedlake - Cross)

- 1 A. No.
- 2 Q. I think you expressed that Mr. Seran-- Serjanej seemed to have some
3 struggles with handling the estate, correct?
- 4 A. Absolutely. The answer is yes.
- 5 Q. And he appeared to lack some experience, correct?
- 6 A. Yes.
- 7 Q. And that continued for a while, correct?
- 8 A. Yes.
- 9 Q. Until you settled the case? For--
- 10 A. --I'm not sure I understand your question. I don't know--
- 11 Q. --Okay. Then not a good question, okay. Okay. That impression did
12 not end when that phone call ended or soon thereafter, that Mr.
13 Serjanej was struggling with his experience level.
- 14 A. That's a true statement and I think the accounting that he filed speaks
15 for itself.
- 16 Q. Okay. Would it be fair to say that Judge Miller did not tell you he was
17 going to do any legal work on the estate? Is that fair?
- 18 A. That's a fair statement. I don't recall Judge Miller volunteering that
19 he was going to step in or anything like that, no.
- 20 Q. Would it be fair to say that Judge Miller didn't give you the
21 impression that he was going to perform any legal work or services in
22 the *Behal* estate?
- 23 A. I did not receive that impression.
- 24 Q. And is it also fair to say that you have no knowledge or information
25 that Judge Miller performed any work or legal services on the *Behal*

516.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wedlake - Cross)

1 estate?

2 A. After he became a sitting judge?

3 Q. Correct.

4 A. That is a correct statement. I have no knowledge that Judge Miller
5 performed any legal services on the *Behal* estate after he became a
6 sitting judge.

7 MR. DEROHANNESIAN: Nothing else, Your
8 Honor.

9 THE REFEREE: Mr. Pedrotty, in view of all the
10 testimony of this witness and the documents that you
11 already have in evidence, do you want to go back and try
12 and get-- and lay a foundation for 4A and B and 4D
13 through 4X?

14 MR. PEDROTTY: Can I have a moment, Your
15 Honor?

16 THE REFEREE: Sure, take your time.

17 MR. DEROHANNESIAN: Can I say something?

18 THE REFEREE: Yes.

19 MR. DEROHANNESIAN: With respect to the
20 complaint, which refers to many of those docu-- facts in
21 those documents--

22 THE REFEREE: --Yes--

23 MR. DEROHANNESIAN: --paragraph 46, 47, and
24 48--

25 THE REFEREE: --Yes--

517.

(Hon. Richard H. Miller, II)

1 MR. DEROHANNESIAN: --The Respondent
2 admitted those facts. I think that negates the necessity.

3 THE REFEREE: I'm not disagreeing with you and--

4 MR. DEROHANNESIAN: --Okay--

5 THE REFEREE: --and that's why I want them--
6 Let's go off the record.

7 (OFF THE RECORD)

8 THE REFEREE: Counsel for the parties are present.
9 The Respondent is still present. We've had a discussion off
10 the record about an amendment of Respondent's Answer to
11 the petition and am I correct, counsel, that at this time,
12 Respondent's Answer is being amended so that paragraph
13 48 of the petition is now admitted? It was previously deny
14 knowledge or information. Is that accurate?

15 MR. DEROHANNESIAN: That is accurate, yes.

16 THE REFEREE: And let me just ask for the record,
17 Judge Miller, is that okay with you?

18 THE RESPONDENT: It is.

19 THE REFEREE: All right. Thank you. So, now
20 that we have admission of 40-- paragraphs 46, 47, and 48,
21 the admission of Exhibits 4C, and 4Y through 4III--

22 MS. SCALISE: --I thought it was 4HHH-- I'm
23 sorry.

24 THE REFEREE: No, that is-- 4III had been
25 admitted previously.

518.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. SCALISE: Oh, okay.

2 MR. PEDROTTY: Yeah, correct.

3 THE REFEREE: So, now that we have those things
4 on the record, Mr. Pedrotty, is there anything else you
5 would like to request be moved into evidence?

6 MR. PEDROTTY: Let me just consult with my
7 Deputy Administrator, but I believe-- Yeah, we're fine with
8 the exhibits that are evidence relating to the *Behal* estate.

9 THE REFEREE: Okay. And with that then, Mr.
10 Wedlake, we're going to excuse you. Thanks everyone
11 here. Please understand that these proceedings are
12 confidential--

13 THE WITNESS: --Sure--

14 THE REFEREE: --and I'd ask that you not discuss
15 them with anyone and in particular, many of us here have
16 friends within your firm, so please be judicious.

17 THE WITNESS: I will do so.

18 THE REFEREE: Just say you were busy this
19 afternoon. You probably can't say you were playing golf,
20 but--

21 THE WITNESS: --Correct--

22 THE REFEREE: --prior engagement.

23 THE WITNESS: Correct.

24 THE REFEREE: All right. Thank you for coming.

25 THE WITNESS: Okay.

519.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MR. DEROHANNESIAN: Thank you, sir.

2 THE WITNESS: Yep.

3 MS. CENCI: Thank you.

4 THE WITNESS: Yep.

5 THE REFEREE: Let's go off the record.

6 MR. PEDROTTY: Thank you for your time.

7 (OFF THE RECORD)

8 THE REFEREE: Sir, could you stand here, sir?

9 Counsel for the Commission and Respondent are present.

10 The Respondent is present. Sir, could you raise your right
11 hand, please? Do you swear or affirm under the penalty of
12 perjury that the testimony you are about to give is the truth,
13 the whole truth, and nothing but the truth?

14 MR. MICHA: I do.

15 LOUIS P. MICHA,

16 having been duly sworn, was examined and testified as follows:

17 THE REFEREE: Perfect. If you would sit down,
18 sir. My name is Robert Barrer, and I've been appointed by
19 the Commission on Judicial Conduct to preside over this
20 appearance this afternoon.

21 THE WITNESS: Okay.

22 THE REFEREE: You're going to be asked some
23 questions by counsel for Commission, Ms. Tadjigoueu, and
24 then you're also going to be asked some questions by Mr.
25 DerOhannesian--

520.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Direct)

1 THE WITNESS: --Okay--

2 THE REFEREE: --who represents Judge Miller.

3 THE WITNESS: All right.

4 THE REFEREE: These proceedings are
5 confidential, so when you're done, we ask that you not
6 discuss what happened here with anyone else--

7 THE WITNESS: --Okay--

8 THE REFEREE: --and then the other thing is, your
9 microphone here. If you would wait until the question is
10 fully asked and then answer verbally as opposed to shaking
11 your head or saying "Uh-huh."

12 THE WITNESS: Sure.

13 THE REFEREE: So, "uh-huh" doesn't cut it, "yes"
14 is the preferred answer.

15 THE WITNESS: Okay.

16 THE REFEREE: Thank you. Ms. Tadjioqueu?

17 DIRECT EXAMINATION

18 BY MS. TADJIOQUEU:

19 Q. Would you state and spell your name for the record, please?

20 A. Louis P. Micha. It's L-O-U-I-S. Last name is spelled M-I-C-H-A.

21 Q. Mr. Micha, do you reside in Broome County?

22 A. Yes.

23 Q. In what town or city do you reside in?

24 A. Vestal, New York.

25 Q. Are you employed?

521.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Direct)

- 1 A. Yes.
- 2 Q. Where are you employed?
- 3 A. Broome Tioga BOCES.
- 4 Q. What is your title there?
- 5 A. Teacher's aide.
- 6 Q. Do you know the Respondent, Judge Richard Miller?
- 7 A. Yes, I do.
- 8 Q. How do you know him?
- 9 A. He's my landlord and my counsel for my divorce.
- 10 Q. When was this divorce that you are referencing?
- 11 A. It was in-- I started it sometime in 2'13 and it ended in 2'14, May
- 12 2'14.
- 13 Q. Is that how you first became acquainted with Judge Miller?
- 14 A. Yes.
- 15 Q. Through the divorce?
- 16 A. Through the divorce.
- 17 Q. From the year 2013 through 2014, is that correct--
- 18 A. --Through 2014--
- 19 Q. --That's the time period that the--
- 20 A. --Correct--
- 21 Q. --divorce was pending?
- 22 A. That year, yes.
- 23 Q. And when did you become a tenant of Mr. Miller's?
- 24 A. Around November-- Just before November 8th of 2013. I'm going to
- 25 say probably--

522.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Direct)

1 MR. DEROHANNESIAN: I object to that because
2 there is no foundation that Judge Miller was in fact the
3 landlord or owner of the building.

4 THE REFEREE: No, he said he was the landlord. I
5 think that is a-- That-- You can explore that--

6 MR. DEROHANNESIAN: --Okay--

7 THE REFEREE: --That's this witness's testimony
8 and understanding and we'll continue. Next question.

9 BY MS. TADJIOGUEU:

10 Q. Was Judge Miller your landlord?

11 A. Yes. When I moved in, in roughly between October and November.

12 Q. Where was the apartment located? What was the address?

13 A. The-- The-- Oh. 2 [REDACTED] North Street.

14 Q. In what city or town?

15 A. Endicott, New York.

16 Q. Would you describe the building that you lived in?

17 A. It was a two-story building that Mr. Miller's practice was on the
18 bottom and I was up above, second floor.

19 Q. How did you learn about the vacancy?

20 A. Through a gentleman by the name of Dave Iannone. He had heard
21 that, you know, or knew I was going through this divorce and he had
22 said that there is going to be vacancy upstairs, would I be interested,
23 so I took a look at it and I took the apartment.

24 Q. Did Mr. Iannone show you the apartment?

25 A. Yes.

523.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Direct)

- 1 Q. What, if any, association did Mr. Iannone have with the apartment?
- 2 A. I gathered he was as a super kind of a person that, you know, if I had a
- 3 problem I'd go to him. So...
- 4 Q. Why did you gather that? Did you communicate with him--
- 5 A. --I-- He--
- 6 Q. --about problems at the apartment?
- 7 A. He was-- The last tenant was leaving and he was doing some repairs
- 8 at that point, and I just talked to him and he just said, you know,
- 9 "Anything comes up, give me a-- give me a holler," so--
- 10 Q. --Did you ever call Mr. Iannone about issues you were having with the
- 11 apartment?
- 12 A. A couple of times. I had a little furnace problem, heating problem, I
- 13 guess I should say, and had a leak problem. Roof leak.
- 14 Q. What were the terms of the rental agreement?
- 15 A. Terms? No terms. I had no contract.
- 16 Q. There was no written lease?
- 17 A. No.
- 18 Q. How much was your rent?
- 19 A. \$500 a month.
- 20 Q. Did that include utilities?
- 21 A. No.
- 22 Q. When did you typically pay your rent?
- 23 A. Typically, before the first of the month of the next month. I always
- 24 did it like towards the end of one month.
- 25 Q. You paid in advance?

524.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Direct)

1 A. In advance, yes.

2 Q. Who did you pay-- How did you pay your rent?

3 A. I wrote a check and I used--

4 Q. --Who did you pay your rent to?

5 A. I'd give it to the lady downstairs, Donna.

6 THE REFEREE: No, no, the question was--

7 THE WITNESS: --Oh--

8 THE REFEREE: --to whom was the question made
9 payable?

10 THE WITNESS: Oh, written to?

11 A. It was Mr. Miller.

12 Q. How did you pay your rent?

13 A. I would just hand the check to the receptionist, paralegal, whatever
14 she was, secretary, downstairs and she would make a copy of it and
15 give it back to me and--

16 Q. --Did you always-- What was the name of this secretary or paralegal?

17 A. I just knew her name was Donna.

18 Q. Did you always pay your rent to Donna?

19 A. Yes.

20 Q. I'd like to show you what's been marked for identification as Exhibit
21 7A. I'm sorry, Mr. Micha. I'm going to show you what's been
22 marked as Exhibit 7C. Would you please take a look at that
23 document?

24 THE REFEREE: Ms. Tadjioqueu, just to confirm,
25 this is the same-- These documents, 7C, are the same that

525.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Direct)

1 are Exhibit E--

2 MS. TADJIOGUEU: --To the Formal Written
3 Complaint--

4 THE REFEREE: --to the Commission's complaint?

5 MS. TADJIOGUEU: That is correct.

6 MR. DEROHANNESIAN: Could you check the last
7 page? I think the last-- There's one additional page on--
8 that they just marked compared to my Exhibit E, but I don't
9 know if that's--

10 THE REFEREE: --That's fine. Whatever--
11 Whatever it is. But he's identifying whatever he can
12 identify.

13 MR. DEROHANNESIAN: Okay.

14 BY MS. TADJIOGUEU:

15 Q. What is the last date in Exhibit 7C, Mr. Micha?

16 MS. SCALISE: 7C?

17 MS. TADJIOGUEU: 7C--

18 THE REFEREE: --C--

19 MS. TADJIOGUEU: --as in "cat."

20 THE REFEREE: "C" as in "Charlie."

21 A. The last page? March 22, 2018.

22 MR. DEROHANNESIAN: Well, that's-- Okay. I
23 thought I saw April.

24 A. For April rent of 2'18.

25 MR. DEROHANNESIAN: Yes, okay.

526.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Direct)

1 BY MS. TADJIOGUEU:

2 Q. Do you recognize that document? Those-- That exhibit?

3 A. Yes, and these--

4 Q. --What is it?

5 A. It's my check for rent.

6 Q. Was it the regular practice of Donna to provide you-- To make a copy
7 of the check and provide you with a receipt--

8 A. --Yes--

9 Q. --each time you paid her?

10 A. Most of the time, yes. There's a few times she didn't have the receipt
11 book, so she would just make a-- you know, like a copy on a piece of
12 paper and put it on the copier and didn't sign it or whatever.

13 Q. Did you see Ms. Filip make the copy of the check?

14 A. Yes.

15 Q. Did you see her write the receipt?

16 A. Yes. She was always in front of me. Yep.

17 Q. Was it Ms. Filip's regular practice to make the copy of the check and
18 provide you with a receipt pretty much after you handed her your rent
19 check?

20 A. Yes.

21 Q. Mr. Micha, do you-- What did you do with the-- with the copy that
22 Donna gave to you?

23 A. I kept it in a file in my file cabinet.

24 Q. Do you see any difference between Exhibit 7C and the records that
25 you have in your files?

527.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Direct)

1 A. No, because there's copies like where she signed, she didn't have the
2 receipt-- the paper receipt, like on this one here, so, no, it looks the
3 same. It looks normal.

4 THE REFEREE: Are you offering 7C?

5 MS. TADJIOGUEU: Yes, I'd like to offer 7C into
6 evidence.

7 THE REFEREE: Any objection?

8 MR. DEROHANNESIAN: No.

9 THE REFEREE: Received.

10 BY MS. TADJIOGUEU:

11 Q. Ultimately, was the cash that-- Ultimately, was the check that you
12 wrote to Judge Miller cashed?

13 A. Check, yes.

14 Q. How do you know that?

15 A. I have a copy in my-- I-- This is through Visions Credit Union, so
16 there's a-- copy of it shows up in the records of Visions, so I could
17 see ev-- you know, the number in my checking.

18 Q. Was it your practice to check to see who had actually cashed the check
19 each month?

20 A. It wasn't my practice to see who did it. It was just a practice to see
21 that it was cashed.

22 Q. Why was that?

23 A. I was on a strict budget.

24 Q. Who typically cashed the checks?

25 A. Mr. Miller.

528.

(Micha - Direct)

- 1 Q. When you moved into the apartment, it was Judge Miller who re--
2 who was practicing downstairs on the first floor, is that correct?
- 3 A. Correct.
- 4 Q. Did there come a time when another attorney moved into that office?
- 5 A. Yes. I'm not sure the exact date but it was Artan-- Arjenian [sic], if I
6 say it right.
- 7 Q. Are you currently residing in the apartment, Mr. Micha?
- 8 A. No, no.
- 9 Q. When did you move?
- 10 A. I left it end of-- end of September of this year-- of 2'18.
- 11 Q. After Mr. Serjanej--
- 12 A. --Serjanej--
- 13 Q. --took over the practice, would you still have occasion to see Judge
14 Miller in the law office?
- 15 A. No. I-- No. I had no reason to see him.
- 16 Q. When you were paying-- When you were paying your rent check to
17 Donna each month, did you ever see Judge Miller in the office?
- 18 A. Once in a while he might be there but, yeah, very seldom I'd run into
19 him-- You know-- He wasn't like sitting where the lobby is, he might
20 be some-- in-- or in the back or somewhere, you know, but I-- Yeah,
21 I did--
- 22 Q. --Did the run-ins occur after Mr. Serjanej had taken over the law
23 practice? Or the office, I'm sorry. I apologize.
- 24 A. I don't-- Maybe once or twice, I don't know for sure but about once
25 or twice I may have run into him, but outside, getting in his car, you

529.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Cross)

1 know.

2 MS. TADJIOGUEU: I don't have any further
3 questions, Your Honor.

4 THE REFEREE: Thank you. Mr. DerOhannesian?

5 CROSS-EXAMINATION

6 BY MR. DEROHANNESIAN:

7 Q. So, again, you have no idea when it was that you may have seen
8 Richard Miller?

9 A. Not exact dates or anything, it's--

10 Q. --Or years?

11 A. Right.

12 Q. Okay.

13 A. I mean, I just--

14 Q. --Fair to say you don't know--

15 A. --come and go--

16 Q. --when that was that you saw him?

17 A. Right.

18 Q. And there's no reason for you to have tried to remember a date when
19 you would have seen Richard Miller?

20 A. Nope. I was on the go all the time.

21 Q. And you know at one time that's where he had an office, correct?

22 A. Correct.

23 Q. You said there was no lease--

24 A. --No lease--

25 Q. --correct?

530.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Cross)

- 1 A. No.
- 2 Q. And the checks would be dropped off--
- 3 A. --Yes--
- 4 Q. --correct?
- 5 A. Everything went-- in my opinion, is just good faith--
- 6 Q. --Mm-hmm, mm-hmm--
- 7 A. --because I, you know, I was a good tenant. I kept up with my
- 8 payments. I didn't miss a payment.
- 9 Q. So, you didn't have direct contact with Mr. Miller while you were a
- 10 tenant, correct?
- 11 A. As a tenant? Like I sa-- You mean when he was downstairs? As a--
- 12 Q. --Well, did that change when-- Well, when he was downstairs, you
- 13 had contact with him?
- 14 A. Yeah.
- 15 Q. Okay. And then when he wasn't downstairs, you didn't have contact
- 16 with him--
- 17 A. --Right--
- 18 Q. --is that fair to say?
- 19 A. Tr-- Correct.
- 20 Q. And would it be fair to say, you don't know what happened to the
- 21 money when the check was cashed?
- 22 A. No.
- 23 Q. Would it be fair to say you don't know who the legal owner of the
- 24 building is?
- 25 A. No.

531.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Micha - Cross)

1 Q. You don't know if it changed during that period that you were there?

2 A. Uh-huh.

3 Q. If it stayed the same, you didn't know that?

4 A. Nope.

5 Q. So, you have no idea who the owner of the building is?

6 A. No.

7 Q. You have no idea how money was managed by whoever owned the
8 building?

9 A. No.

10 Q. You don't know what account the checks were deposited in, do you?

11 A. No.

12 Q. Just that they were cashed?

13 A. Cashed.

14 Q. Is that fair-- That's what you know?

15 A. True, yes.

16 Q. Thank you.

17 THE REFEREE: Is that it?

18 MR. DEROHANNESIAN: That's it.

19 THE REFEREE: Ms. Tadjigoeu?

20 MS. TADJIOGUEU: I have nothing further.

21 THE REFEREE: Sir, thank you very much for
22 coming--

23 THE WITNESS: --Okay--

24 THE REFEREE: --I'm sorry you had to wait so
25 long--

532.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE WITNESS: --No problem--

2 THE REFEREE: --We appreciate your-- your
3 effort. Again, if you would try and keep this confidential,
4 we would appreciate it.

5 THE WITNESS: Okay.

6 THE REFEREE: We're going to excuse you. Stay
7 on the record.

8 THE WITNESS: Okay.

9 THE REFEREE: You can leave. Thank you very
10 much. Have a good evening.

11 THE WITNESS: This stays here, right?

12 THE REFEREE: Yes, that stays here. Keep the
13 water.

14 THE WITNESS: (Unintelligible).

15 MR. PEDROTTY: Thank you, sir.

16 MS. TADJIOGUEU: Thank you very much
17 (unintelligible).

18 MS. SCALISE: I've got to get some legal pads
19 tonight.

20 THE REFEREE: All right, the witness has left the
21 room. It's late, I'm not going to ask the Commission if it
22 rests--

23 MS. CENCI: --Oh--

24 THE REFEREE: --No, I'm not-- I'm not going to
25 ask that because I don't think you have and what I do want

533.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 to know is, other than Ms. Gallagher, do you anticipate, at
2 the moment, any other witnesses? In your direct case?

3 MS. CENCI: I am hopeful that she will be the last
4 witness. I do have a number of other documents to offer
5 and I don't want to speak for Respondent's counsel, but I
6 think we have a stipulation as to some of the financial
7 records, and-- and then, of course, we're waiting on your
8 ruling with regard to the criminal records--

9 THE REFEREE: --As well as--

10 MS. CENCI: --and orders--

11 MR. PEDROTTY: --The letters regarding Vroman--

12 THE REFEREE: --Yes, we also have Exhibits 12
13 and--

14 MS. CENCI: --You know, there's a few things, so--

15 THE REFEREE: --V, which I'm going to wait until
16 after Ms. Gallagher testifies--

17 MS. CENCI: --Yes, okay--

18 THE REFEREE: --and I'll rule on both those groups
19 of exhibits.

20 MS. CENCI: The other thing is, I do have some
21 passages of Respondent's investigative testimony to offer as
22 admissions and--

23 THE REFEREE: --Do you want to offer those as
24 copies or do you want to have somebody read them?

25 MS. CENCI: I would like to read them in if--

534.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: --Are they lengthy?

2 MS. CENCI: Excuse me?

3 THE REFEREE: Are they lengthy?

4 MS. CENCI: I don't think so.

5 MS. SCALISE: Okay, so, we actually talked about
6 this at lunch time and we'd like to review them with the
7 judge. I'm just not sure-- I think they're underlined, is that
8 how you're--

9 MS. CENCI: --Yeah, it's the--

10 MS. SCALISE: --looking at it?

11 MS. CENCI: --question and answer--

12 MS. SCALISE: --Okay, so if we're going to--
13 Okay, so, if we're going to add them in, I'd like them
14 redacted, but I still have to talk to the judge, because there's
15 other stuff. If not, if you're going to read them in, it may be
16 less than what's here. So, are you saying that everything--

17 MS. CENCI: --I will--

18 MS. SCALISE: --that's underlined--

19 MS. CENCI: --Yeah--

20 MS. SCALISE: --is what you want to put in?

21 MS. CENCI: Yes.

22 MS. SCALISE: But nothing that's not underlined?

23 MS. CENCI: Right. So, I would ask to read the
24 question and answer that I'm offering. And then, of course,
25 Your Honor, you can decide whether it constitutes an

535.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 admission or not, but--

2 THE REFEREE: --Well, I think that would be one
3 of the proposed-- Well, I think if he's-- If he said it in his
4 testimony--

5 MS. CENCI: --Yeah, right--

6 THE REFEREE: --under the rules of evidence, it
7 would be admission.

8 MS. CENCI: Yes.

9 THE REFEREE: And then its value, I guess, would
10 have to be determined-- All right. Well, let's go off the
11 record and let's--

12 (Whereupon, the proceeding was adjourned at 5:43 PM
13 on January 8, 2019)

14

15

16

17

18

19

20

21

22

23

24

25

536.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

COMMISSION

		<u>Ident.</u>	<u>In Evid.</u>
1A	Certificate of Disposition and Local Court Criminal Disposition Report, Vestal Town Court, <i>People v David J. Iannone</i> , Forgery, 3 rd Degree, (2 pages).	14	---
1B	Certificate of Disposition, Union Town Court, <i>People v David J. Iannone</i> , Harassment, 2 nd Degree, (15 pages).	14	---
1C	Order of Hon. Christopher P. Baker, revoking Iannone Pistol Permit, dated June 4, 2018, (3 pages).	14	---
1D	Certificate of Disposition, Johnson City Village Court, <i>People v David Jon English</i> , Petit Larceny, 1991.	14	---
1E	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2000.	14	---
1F	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2004.	14	---

i.

1	1G	Certificate of Conviction, Steuben County	14	---
2		Court, <i>People v David English</i> , Criminal		
3		Possession of Forged Instrument, two counts.		
4	1H	Certificate of Conviction, Binghamton City	14	---
5		Court, <i>People v David English</i> , Petit Larceny.		
6	1I	Certificate of Conviction, Broome County	14	---
7		Court, <i>People v David English</i> , Attempted		
8		Criminal Sale of a Controlled Substance, 3 rd		
9		Degree, (2 pages).		
10	1J	Certificate of Conviction, Broome County	14	---
11		Court, <i>People v David J. English</i> , Attempted		
12		Arson, 3 rd Degree, (9 pages).		
13	1K	Certificate of Conviction, Binghamton City	14	---
14		Court, <i>People v James Stilloe</i> , Falsely		
15		Reporting an Incident, with Certificate of		
16		Conviction, (6 pages).		
17	1L	District Attorney/Superior Court Disposition	14	---
18		Report, Broome County Court, <i>People v</i>		
19		Martin Shaw, Robbery, 1 st Degree and		
20		Attempted Robbery, 1 st Degree.		
21				
22		<u>Estate of Roger Funk</u>		
23	2A	Surrogate's Court Record History,	16	---
24		(2 pages).		
25				

ii.

1	2B	Petition for Probate, filed May 2, 2014,	16	---
2		(5 pages).		
3	2C	Last Will and Testament of Roger L. Funk	16	---
4		with Affidavits, filed May 2, 2014, (7 pages).		
5	2D	Affidavit of Assets and Debts, filed May 2,	16	---
6		2014, (2 pages).		
7	2E	Coleman & Daniels Funeral Home expenses	16	---
8		for Jean Funk, filed May 2, 2014.		
9	2F	Family Tree of Roger L. Funk, filed May 2,	16	---
10		2014, (2 pages).		
11	2G	Application for Preliminary Letters	16	---
12		Testamentary, filed May 20, 2014, (2 pages).		
13	2H	Affidavit of Domicile, filed May 20, 2014.	16	---
14	2I	Affidavit of Donna Filip, filed May 29, 2014.	16	---
15	2J	Waiver of Process, Consent to Probate, filed	16	---
16		May 29, 2014.		
17	2K	Letter to Fiduciary Thomas M. Hayes from	16	---
18		Rebecca A. Malmquist, Chief Clerk, dated		
19		May 30, 2014.		
20	2L	Decree Granting Probate, dated May 30,	16	---
21		2014.		
22	2M	Grant of Letters Testamentary, dated May 30,	16	---
23		2014.		
24	2N	Letter to Thomas M. Hayes from Rebecca A.	16	---
25		Malmquist dated October 7, 2015.		

iii.

1	2O	Letter to Thomas M. Hayes from Rebecca A.	16	---
2		Malmquist, dated July 20, 2017.		
3	2P	Citation to Thomas M. Hayes, dated April 27,	16	---
4		2018.		
5	2Q	Order for Service of Process, dated April 27,	16	---
6		2018.		
7	2R	Affidavit for By Mail, dated April 27, 2018.	16	---
8	2S	Affidavit Concerning Deliverability of	16	---
9		Process Served by Mail, sworn to June 4,		
10		2018.		
11	2T	Order Revoking Letters, dated June 5, 2018.	16	---
12	2U	Consent to Change Attorney, dated March 6,	16	---
13		2015 (not filed with court).		
14	2V	Letter addressed to Thomas Hayes from	16	599
15		“Donna Filip,” dated November 6, 2015, with		
16		attached copies of checks, (Exhibit A to the		
17		Formal Written Complaint), (2 pages).		
18	2W	Checks dated December 1, 2015 (Exhibit D to	16	602
19		the Formal Written Complaint).		
20	2X	Certified Records of Citizens Bank,	16	---
21		(68 pages).		
22		<u>Estate of Jerry J. Behal, Jr.</u>		
23	4A	Document and Info Sheet, (2 pages).	517	---
24				
25				

1	4B	Records of filings of Probate Petition,	499	---
2		Wrongful Death Petition, Compel Fiduciary		
3		to Account Petition and Judicial Settlement of		
4		Final Account, (4 pages).		
5	4C	Petition for Probate, filed October 26, 2011,	491	492
6		(6 pages).		
7	4D	Last Will and Testament of Jerry J. Behal, Jr.,	499	---
8		filed October 26, 2011, (4 pages).		
9	4E	Affidavit of Subscribing Witnesses, filed	499	---
10		October 26, 2011.		
11	4F	Waiver of Process, Consent to Probate, filed	499	---
12		October 26, 2011.		
13	4G	Family Tree, filed October 26, 2011,	499	---
14		(2 pages).		
15	4H	Affidavit of Assets and Debts, filed October	499	---
16		26, 2011, (3 pages).		
17	4I	Affidavit of Sole Heirship filed November 1,	499	---
18		2011.		
19	4J	Notice of Probate, with Affidavit of Mailing,	499	---
20		filed November 2, 2011, (2 pages).		
21	4K	Certificate of Disqualification of David H.	499	---
22		Guy, filed November 2, 2011.		
23	4L	Order of Assignment, filed November 2,	499	---
24		2011.		
25				

1	4M	Decree Granting Probate With Limitations,	499	---
2		filed November 2, 2011, (2 pages).		
3	4N	Letters Testamentary, filed November 2,	499	---
4		2011.		
5	4O	Letter to David J. Behal from Rebecca A.	499	---
6		Malmquist, dated November 3, 2011.		
7	4P	Letter to David J. Behal from Rebecca A.	499	---
8		Malmquist, dated June 8, 2012.		
9	4Q	Letter to David J. Behal from Rebecca A.	499	---
10		Malmquist, dated August 7, 2012.		
11	4R	List of Assets/Inventory, filed September 19,	499	---
12		2012, (4 pages).		
13	4S	Petition of David J. Behal, dated December	499	---
14		28, 2013, filed July 11, 2014, (5 pages).		
15	4T	Waiver and Consent of Jennifer Behal, filed	499	---
16		July 11, 2014, (2 pages).		
17	4U	Waiver and Consent of Joseph Behal, filed	499	---
18		July 11, 2014, (2 pages).		
19	4V	Waiver and Consent of Karen Behal, filed	499	---
20		July 11, 2014, (2 pages).		
21	4W	Waiver and Consent of Donna Ougheltree,	499	---
22		filed July 11, 2014, (2 pages).		
23	4X	Waiver and Consent of Sylvia Behal, filed	499	---
24		July 11, 2014, (2 pages).		
25				

1	4Y	Attorney's Affidavit of Richard H. Miller,	499	501
2		filed December 12, 2014, (2 pages).		
3	4Z	Order and Decree, filed January 23, 2015,	499	501
4		(3 pages).		
5	4AA	Petition for A Compulsory Accounting and	499	501
6		Related Relief, filed October 13, 2015,		
7		(3 pages).		
8	4BB	Compulsory Accounting Citation, dated	499	501
9		October 14, 2015.		
10	4CC	Notice of Appearance of Artan Serjanej, Esq.,	499	501
11		filed November 23, 2015.		
12	4DD	Order of David Guy, filed January 14, 2016.	499	501
13	4EE	Amended Order Filed March 1, 2016.	499	501
14	4FF	Letter to Judge Guy from Artan Serjanej,	499	501
15		dated April 29, 2016, filed May 2, 2016.		
16	4GG	Order of David Guy, filed May 2, 2016.	499	501
17	4HH	Notice of Appearance of Robert H. Wedlake,	499	501
18		Esq., filed September 21, 2016.		
19	4II	Order of David H. Guy, filed September 21,	499	501
20		2016.		
21	4JJ	Letter to Hon. David H. Guy from Artan	499	501
22		Serjanej, dated October 7, 2016.		
23	4KK	Order of David H. Guy, filed October 20,	499	501
24		2016.		
25				

1	4LL	Order of David H. Guy, filed December 1,	499	501
2		2016.		
3	4MM	Order of David H. Guy, filed April 6, 2017.	499	501
4	4NN	Amended Order of David H. Guy, filed May	499	501
5		8, 2017.		
6	4OO	Petition for Judicial Settlement of Account,	499	501
7		filed May 26, 2017, (6 pages).		
8	4PP	Accounting by Executor, filed May 26, 2017,	499	501
9		(25 pages).		
10	4QQ	Letter from Hon. David H. Guy to Artan	499	501
11		Serjanej, Esq., dated June 15, 2017.		
12	4RR	Certificate of Disqualification of David H.	499	501
13		Guy, dated September 15, 2017.		
14	4SS	Order of Assignment of Hon. Molly Reynolds	499	501
15		Fitzgerald, dated September 18, 2017.		
16	4TT	Accounting Citation filed October 16, 2017.	499	501
17	4UU	Affidavits of Service of Accounting Citation,	499	501
18		sworn to in November 2017, (8 pages).		
19	4VV	Order of Hon. Julie A. Campbell, filed	499	501
20		November 20, 2017.		
21	4WW	Supplemental and Amended Supplemental	499	501
22		Citation, dated November 20 and November		
23		30, 2017, (2 pages).		
24	4XX	Objections to Accounting, filed December 4,	499	501
25		2017, (4 pages).		

1	4YY	Affidavits of Service of Amended	499	501
2		Supplemental Citation, filed January 19,		
3		2018, (2 pages).		
4	4ZZ	Letter to Hon. Molly R. Fitzgerald from Hon.	499	501
5		Julie A. Campbell, dated January 24, 2018.		
6	4AAA	Order of Re-Assignment by Hon. Molly	499	501
7		Fitzgerald, dated January 25, 2018.		
8	4BBB	Affirmation of Artan Serjanej in Reply to	499	501
9		Objections, with attached Schedules		
10		(27 pages).		
11	4CCC	Order of Hon. Gerald Keene, filed February 9,	499	501
12		2018.		
13	4DDD	Amended Order of Hon. Keene, dated March	499	501
14		9, 2018.		
15	4EEE	Order of Hon. Keene, dated April 6, 2018.	499	501
16	4FFF	Order of Hon. Keene, dated April 19, 2018.	499	501
17	4GGG	Affidavit of Robert H. Wedlake, filed August	499	501
18		6, 2018, (2 pages).		
19	4HHH	Decree of Judicial Settlement, filed August	499	501
20		15, 2018, (3 pages).		
21	4III	Emails between Dave Behal, Donna Filip and	62	70
22		Richard Miller, dated March 1, 2017 to May		
23		9, 2017 (Exhibit B to the Formal Written		
24		Complaint), (8 pages).		
25				

1	4KKK	Letter from Robert Wedlake to Artan Serjanej	509	---
2		dated June 5, 2017.		
3		<u>Estate of Antoinette Saraceno</u>		
4	5A	Sticky Notes, (8 pages).	411	420
5	5B	Petition for Probate, filed December 10, 2010,	411	416
6		(5 pages).		
7	5C	Family Tree, filed December 10, 2010,	411	416
8		(2 pages).		
9	5D	Last will and Testament of Antoinette A.	411	416
10		Saraceno, with affidavits of subscribing		
11		witnesses, (7 pages).		
12	5E	Notices of Probate with Affidavits of	411	416
13		Services, filed December 10, 2011,		
14		(16 pages).		
15	5F	Renunciations of Nominated Executor and/or	411	416
16		Trustee, filed December 10, 2010, (4 pages).		
17	5G	Letter from Richard H. Miller, II (by "DF"),	411	416
18		to Tioga County Surrogate's Court Clerk,		
19		dated February 16, 2011.		
20	5H	Amended Petition for Probate, filed February	411	416
21		17, 2011, (6 pages).		
22	5I	Amended Family Tree, filed February 17,	411	416
23		2011, (2 pages).		
24	5J	Waivers of Process: Consent to Probate, filed	411	416
25		February 17, 2011, (6 pages).		

x.

1	5K	Notice of Probate with Affidavit of Service,	411	416
2		filed February 17, 2011, (3 pages).		
3	5L	Probate Citation to John I. Saraceno, dated	411	416
4		February 28, 2011.		
5	5M	Memorandum to Richard H. Miller, II, Esq.,	411	416
6		from Deborah A. Stone, dated February 28,		
7		2011.		
8	5N	Court Appearance Notice dated April 7, 2011.	411	416
9	5O	Affidavit for Service of Process By Mail by	411	416
10		Donna Filip, Affidavit Concerning		
11		Deliverability of Process Served by Mail of		
12		Richard H. Miller, II, and certified mail		
13		receipts, filed April 8, 2011, (5 pages).		
14	5P	Letter to Surrogate's Court from John I.	411	416
15		Saraceno, filed April 8, 2011, with enclosures		
16		(21 pages).		
17	5Q	File Minutes from April 15, 2011.	411	416
18	5R	Order Granting Preliminary Letters with	411	416
19		Limitations, dated April 15, 2011.		
20	5S	Preliminary Letters Testamentary, dated April	411	416
21		15, 2011.		
22	5T	Letter to Surrogate's Court from John	411	416
23		Saraceno, filed May 9, 2011, with enclosures		
24		(6 pages).		
25				

1	5U	Letter to John I. Saraceno, Jr., from Deborah	411	416
2		A. Stone, dated May 17, 2011, with enclosed		
3		affidavit of service form (2 pages).		
4	5V	Completed Affidavit of Service of Objections,	411	416
5		filed June 27, 2011, (2 pages).		
6	5W	Letter to Hon. Vincent Sgueglia signed by	411	416
7		Frank Saraceno, Sr., and Sam Saraceno, filed		
8		June 29, 2011.		
9	5X	Letter to Frank Saraceno, Sr., and Sam	411	416
10		Saraceno, from Deborah A. Stone, dated July		
11		13, 2011, copied to Richard H. Miller, II, Esq.		
12	5Y	Letter to Judge Sgueglia from Richard H.	411	416
13		Miller, II, with enclosed Notice of Motion to		
14		Dismiss Objections, Affidavit of Executor		
15		and Attorney's Affirmation, filed July 18,		
16		2011, (7 pages).		
17	5Z	Letter to Chief Clerk from Richard H. Miller,	411	416
18		II, with Affidavit of Service by Donna Filip,		
19		filed August 18, 2011, (3 pages).		
20	5AA	Order dismissing objections, dated August 26,	411	416
21		2011, (2 pages).		
22	5BB	Decree Granting Probate, dated August 26,	411	416
23		2011.		
24	5CC	Letters Testamentary, dated August 26, 2011.	411	416
25				

1	5DD	Letter to Frank Saraceno, Sr., from Deborah	411	416
2		A. Stone, dated August 26, 2011.		
3	5EE	Letter to Richard H. Miller, II, Esq., from	411	416
4		Camelia M. Daniels, dated March 1, 2012.		
5	5FF	Letter to Tioga County Surrogate's Court	411	416
6		Clerk from Richard H. Miller, II, dated March		
7		1, 2012, with Enclosed Inventory of Assets,		
8		received March 15, 2012, (5 pages).		
9	5GG	Note dated March 20, 2012, on Letters	411	416
10		Testamentary from RH Miller, II, requesting		
11		new letter for real estate transfer, received		
12		March 20, 2012.		
13	5HH	Letter from Carmela M. Daniels to Richard H.	411	416
14		Miller, II, Esq., dated September 12, 2013,		
15		with enclosed form (2 pages).		
16	5II	Letter from Camela M. Daniels to Richard H.	411	416
17		Miller, Esq., dated December 27, 2013, with		
18		enclosed form (2 pages).		
19	5JJ	Citation to Frank Saraceno, Sr., dated March	411	416
20		20, 2014.		
21	5KK	Order of Hon. Gerald A. Keene, Surrogate,	411	416
22		dated March, 24, 2014.		

1	5LL	Letter to Deborah A. Stone, Chief Clerk, from	411	416
2		Richard H. Miller, II, dated July 23, 2014,		
3		enclosing Original Report of fiduciary,		
4		requesting additional time to collect receipts,		
5		releases and discharges from beneficiaries,		
6		received July 28, 2014 (2 pages).		
7	5MM	Letter to Richard H. Miller, Esq., from	411	416
8		Deborah Stone, dated August 2, 2016, with		
9		enclosed form (2 pages).		
10	5NN	Letter to Frank Saraceno from Kiyoko	411	416
11		Matsuhashi, dated August 16, 2016, with		
12		enclosed sample of substitution of attorneys		
13		form (2 pages).		
14	5OO	Letter to Frank Saraceno from Kiyoko	411	416
15		Matsyhashi, dated December 9, 2016.		
16	5PP	Letter to Richard H. Miller, Esq., from	411	416
17		Deborah A. Stone, dated March 28, 2017,		
18		with enclosed form (2 pages).		
19	5QQ	Letter to Frank Saraceno, Sr., from Deborah	411	416
20		A. Stone, dated January 22, 2018.		
21	5RR	Letter to Surrogate's Court Chief Clerk from	411	416
22		Artan Serjanej, dated January 29, 2018,		
23		enclosing Notice of Appearance, received		
24		February 2, 2018 (2 pages).		
25				

1	5SS	Order of Hon. Gerald A. Keene, dated	411	416
2		February 5, 2018.		
3	5TT	Letter to Deborah A. Stone from Artan	411	416
4		Serjanej, dated April 18, 2018, with		
5		enclosures, (52 pages).		
6	5UU	Checks dated April 4, 2012.	473	474
7	5VV	Memorandum of interview of Deborah Stone	459	462
8		dated December 12, 2017, with notes,		
9		(2 pages).		
10	<u>Estate of Deborah Brigham</u>			
11	6Q	Checks from Beverly Brigham payable to	602	604
12		Respondent, dated November 24, 2015,		
13		(Exhibit C to the Formal Written Complaint)		
14		(3 pages).		
15	<u>Checks</u>			
16	7C	Copies of checks from Louis Micha to	525	528
17		Richard H. Miller, dated from December 9,		
18		2014 to March 22, 2018, and Receipts		
19		(Exhibit E to the Formal Written Complaint),		
20		(46 pages).		
21				
22				
23				
24				
25				

1 **Financial Disclosure Forms**

2	8A	Annual Statements of Financial Disclosure	794	794
3		filed by Richard H. Miller, II, with the Ethics		
4		Commission for the Unified Court System for		
5		reporting year 2014 (13 pages).		
6	8B	Annual Statements of Financial Disclosure	794	794
7		filed by Richard H. Miller, II, with the Ethics		
8		Commission for the Unified Court System for		
9		reporting year 2015 (6 pages).		
10	8C	Annual Statements of Financial Disclosure	794	794
11		filed by Richard H. Miller, II, with the Ethics		
12		Commission for the Unified Court System for		
13		reporting year 2016 (6 pages).		
14	8D	Annual Statement of Financial Disclosure for	794	794
15		reporting year 2015, as amended by Richard		
16		H. Miller on November 16, 2017 (6 pages).		

17 **Income Tax Returns**

18	9A	2015 U.S. Individual Income Tax Return	794	795
19		(Bates Nos.: 101-001 to 101-025).		
20	9B	2015 Amended U.S. Individual Tax Return	794	795
21		(Bates Nos.: 102-001 to 102-006).		
22	9C	2015 U.S. Individual Income Tax Return	794	795
23		(Amended) (Bates Nos.: 103-001 to 103-017).		
24				
25				

1	9D	2015 New York Resident Income Tax Return	794	795
2		(Bates Nos.: 104-001 to 104-008).		
3	9E	2015 New York Amended Resident Income	794	795
4		Tax Return (Bates Nos.: 105-001 to 105-007).		
5	9F	2016 U.S. Individual Tax Income Tax Return	794	795
6		(Bates Nos.: 201-001 to 201-029).		
7	9G	2016 Amended U.S. Individual Income Tax	794	795
8		Return (Bates Nos.: 202-001 to 202-006).		
9	9H	2016 U.S. Individual Income Tax Return	794	795
10		(Amended) (Bates Nos.: 203-001 to 203-027).		
11	9I	2016 New York Resident Income Tax Return	794	795
12		(Bates Nos.: 204-001 to 204-011).		
13	9J	2016 New York Amended Resident Income	794	795
14		Tax Return (Bates Nos.: 205-001 to 205-009).		
15	<u>Correspondence</u>			
16	10A	Letter to Cathleen S. Cenci from Paul	795	796
17		DerOhannesian, II, dated April 16, 2018.		
18	10B	Letter to Hon. Richard H. Miller, II, c/o Paul	795	796
19		DerOhannesian, II, with enclosure, dated May		
20		7, 2018, (5 pages).		
21	10C	Letter to Cathleen S. Cenci from Paul	796	796
22		DerOhannesian, with enclosure, dated May		
23		30, 2018, (7 pages).		
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Additional Exhibits

11	Schedule of Commission Exhibits.	13	---
12	Letter from Debbi Singer to Judge Miller dated March 10, 2017 (3 pages).	407	1499
13	Rachelle Gallagher's notes.	769	---
14	Transcript of Jerry Penna's testimony	953	---
15	Letter from Cathleen Cenci to Lisa Wojdat dated October 2, 2017.	1091	1113
16	Memorandum of interview of David Behal dated August 15, 2017.	1167	---
17	Letter from Cathleen Cenci to David Behal dated August 4, 2017.	1181	1184
18	Email from Gregory Gates dated April 13, 2016, to Sixth Judicial District Judges with attached memorandum from Hon. Michael V. Coccoma (3 pages).	1469	1473
19	Insurance claim document dated February 18, 2017 (2 pages).	1484	1486

EXHIBITS

RESPONDENT

		<u>Ident.</u>	<u>In Evid.</u>
1			
2			
3			
4			
5	A	Subpoena for John McConnell.	688 ---
6	F	Subpoena.	82 ---
7	I	Transcript of Mark Kachadourian's	86 ---
8		Testimony.	
9	J	Mark Kachadourian's Notes.	91 ---
10	K	Noramar Enterprises documents.	109 ---
11	L	Nomination for appointment of attorneys.	111 114
12	M	Arbitration decision.	116 ---
13	N	Federal complaint.	158 ---
14	O	Supplemental declaration of Mark	217 ---
15		Kachadourian.	
16	P	Memorandum of phone call of January 3,	168 ---
17		2018.	
18	Q	Rebecca Vroman's letter.	349 ---
19	R	Memorandum of phone call of April 20,	169 ---
20		2018.	
21	S	Summary of inspector general interview of	377 ---
22		Debbi Singer.	
23	T	Work Safe document.	385 ---
24	U	Debbi Singer's notes.	387 ---
25	V	Letter from Judge Miller to Debbi Singer	394 1499
		dated March 1, 2017 (3 pages).	

1	W	Memorandum of interview of Deborah Stone	453	---
2		on December 6, 2017.		
3	X	Updated records for <i>Estate of Antoinette</i>	537	537
4		<i>Saraceno</i> , (74 pages).		
5	Y	Transcript of Rachelle Gallagher's	609	---
6		testimony.		
7	Z	Calendar.	724	---
8	AA	Photograph of Richard Balles and Mark	973	975
9		Kachadourian.		
10	BB	Photograph of Richard Balles, Judge Miller,	973	975
11		Mark Kachadourian and others.		
12	CC	Consent to change attorney signed by Artan	1044	1049
13		Serjanej and David Behal dated March 20,		
14		2015.		
15	DD	Consent to change attorney signed by Artan	1062	1066
16		Serjanej and Thomas Hayes dated March 5,		
17		2015.		
18	EE	Emails with Surrogate's Court and Artan	1067	---
19		Serjanej.		
20	FF	Emails of October and November 2015	1119	1120
21		(3 pages).		
22	GG	Emails of March, April and May 2017	1122	1125
23		(3 pages).		
24	HH	Email from Jolene to David Behal dated May	1135	1136
25		15, 2013.		

xx.

1	II	IRS forms and publications printout.	1143	1144
2	JJ	Email between Sgt. Kreb and captain.	1197	---
3	KK	Email.	1207	---
4	LL	Email from Rebecca Vroman to Mark	1337	1340
5		Kachadourian dated January 23, 2017.		
6	MM	Standards and goals statistics (7 pages).	1340	1342
7	NN	Employee evaluation email to Judge Mulvey	1367	1368
8		dated January 20, 2016 (2 pages).		
9	OO	Email from Jane Sbarra dated	1386	1387
10		January 11, 2019.		
11	PP	Financial disclosure forms sent from	1387	1388
12		Respondent to Chief Clerk on January 31,		
13		2019 (5 pages).		
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

REFEREE

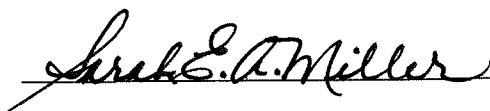
		<u>Ident.</u>	<u>In Evid.</u>
1	Email from Cathleen Cenci to the Referee, Paul DerOhannesian and Deborah Scalise dated January 4, 2019.	258	258
2	Email from Deborah Scalise to the Referee, Cathleen Cenci and Paul DerOhannesian dated January 6, 2019 (4 pages).	258	258
3	Subpoena for Mayor Greg Deemie dated January 4, 2019.	689	689
4	Letter from Shawn Kerby to the Referee dated January 9, 2019, (6 pages).	732	732
5	Letter from Edward Lindner to the Referee dated January 10, 2019, (66 pages).	893	893
6	Letter from Shawn Kerby to the Referee dated January 11, 2019, (2 pages).	1186	1188

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I, SARAH E. A. MILLER, Secretary II of the State Commission on Judicial Conduct, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the proceedings transcribed by me, to the best of my knowledge and belief, in the matter held on January 8, 2019.

Dated: February 5, 2019


Sarah E. A. Miller

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X
In the Matter of the Proceeding Pursuant :
to Section 44, subdivision 4, of the :
Judiciary Law in Relation to :

RICHARD H. MILLER, II, :

a Judge of the Family Court, Broome County. :
-----X

Sixth Judicial District Conference Room
Kilmer Building
31 Lewis Street, 5th Floor
Binghamton, New York 13901
January 9, 2019
9:01 AM

B e f o r e:

ROBERT A. BARRER, ESQ.
Referee

P r e s e n t:

For the Commission

CATHLEEN S. CENCI, ESQ.
Deputy Administrator

S. PETER PEDROTTY, ESQ.
Senior Attorney

ETEENA J. TADJIOGUEU, ESQ.
Staff Attorney

For the Respondent

PAUL DEROHANNESIAN, II, ESQ.
Attorney for Respondent
DerOhannesian & DerOhannesian
677 Broadway, Suite 707
Albany, New York 12207

DEBORAH A. SCALISE, ESQ.
Attorney for Respondent
Scalise & Hamilton LLP
670 White Plains Road, Suite 325
Scarsdale, New York 10583

A l s o P r e s e n t:

HON. RICHARD H. MILLER, II
Respondent

RYAN T. FITZPATRICK
Senior Investigator and FTR Operator

INDEX OF WITNESSES

For the Commission

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Mark Kachadourian, Esq.	21	76	68	222	240
D [REDACTED] L [REDACTED]	260	283	--	307, 317	313
Rebecca Vroman	321	333	--	--	--
Debbi Singer	355	376	--	402	--
Deborah Stone	410	430	419	458, 465	462
Barbara Saraceno	469	480	--	--	--
Robert Wedlake, Esq.	486	513	--	--	--
Louis Micha	521	530	--	--	--
Rachelle Gallagher	541	606	601	768	778

INDEX OF WITNESSES

For the Respondent

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Ofc. Jolene Payne	799	802	--	807	--
James Stilloe	856	867	--	--	--
Martin Shaw	908	913	--	--	--
Jerry Penna	922	935	--	951, 958	954
Richard Balles	964	--	--	--	--
Katherine Fitzgerald, Esq.	977	987	--	993	--
Sandra Conklin	997	1013	--	1016	1021
Artan Serjanej, Esq.	1024, 1100	1101	1047, 1064	1108	1111
Lisa Wojdat	1074	1090	--	1096	--
David Behal	1115	1151	1123	1176, 1184	1181
Sgt. Ronald Kreb	1196	1204	--	1207	--
Diane Marusich	1211	1226	--	--	--
Robin Dean	1242	1263	--	1274, 1283	1280
Hon. Richard H. Miller, II	1296	1431	1339, 1472	1486	1489

ii.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: Counsel for the Commission is
2 present. Counsel for Respondent is present. The
3 Respondent is present. Is there anything that we need to
4 address before we start with the next witness?

5 MR. DEROHANNESIAN: Yes. During Ms.
6 Stone's testimony, she referred to some documents, which
7 were not identified, placed in evidence. We gave her the
8 opportunity to get copies of those so that we could make an
9 exhibit that she referred to. She made a copy, provided a
10 copy to the Commission, copy to the Respondent, and
11 they've been marked Respondent's X. These, I believe,
12 were the post-January 2018 records that were--

13 THE REFEREE: --From the estate.

14 MR. DEROHANNESIAN: Yes, of *Saraceno*.

15 THE REFEREE: Right. It-- Is there any-- Are you
16 offering those?

17 MR. DEROHANNESIAN: I'm offering those.

18 THE REFEREE: Any objection?

19 MS. CENCI: I don't think so, Your Honor. I just
20 can't recall where I put the-- our copy of it. We did receive
21 a copy as well. Can I--

22 MR. DEROHANNESIAN: --Yeah--

23 MS. CENCI: --I misplaced it. Do you mind? Thank
24 you. No objection, Your Honor.

25 THE REFEREE: Received. Was there also a

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 question about a subpoena?

2 MR. DEROHANNESIAN: Yes.

3 THE REFEREE: Or updated or modified subpoena?

4 MR. DEROHANNESIAN: Yes. Thank you. This
5 is for Judge Mulroy. There was some language in the other
6 one that talked about a letter in lieu of testimony. She asked
7 that be omitted.

8 THE REFEREE: And just-- And she's aware of
9 this?

10 MR. DEROHANNESIAN: She's aware of-- Yes.

11 THE REFEREE: All right, so I-- Any objection
12 from the Commission to signing the revised or updated
13 subpoena?

14 MS. CENCI: You did send this to me last night, is
15 that right?

16 MS. SCALISE: Yes.

17 MR. DEROHANNESIAN: Yes.

18 THE REFEREE: Yes.

19 MS. CENCI: And it's-- She's-- It's not a subpoena
20 for records, it's a--

21 MR. DEROHANNESIAN: --No--

22 MS. CENCI: --she's a subpoenaed witness?

23 MS. SCALISE: Right.

24 MR. DEROHANNESIAN: Yes.

25 MS. SCALISE: Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: I mean, I have no objection,
2 assuming-- I have no objection to the subpoena.

3 THE REFEREE: Okay.

4 MS. CENCI: I don't know about her testimony, but.

5 THE REFEREE: Right. We'll take that-- We'll
6 take that as we find it, but I'm going to sign it and hand it
7 back to counsel. And I'm also going to modify with the
8 same modification, changing the word, "will," to "may."

9 MR. DEROHANNESIAN: Okay. I will give
10 Respondent's X to Mr. Fitzpatrick.

11 THE REFEREE: Yep, thank you. Anything else
12 procedural before we-- Nothing from Respondent.
13 Anything from the Commission?

14 MS. CENCI: No, we're ready with the witness,
15 Your Honor.

16 THE REFEREE: All right. Let's bring Ms.
17 Gallagher back in-- or in.

18 THE REFEREE: Good morning.

19 MS. GALLAGHER: Good morning.

20 THE REFEREE: Raise your right hand. Do you
21 swear or affirm, under the penalty of perjury, that the
22 testimony you're about to give is the truth, the whole truth,
23 and nothing but the truth?

24 MS. GALLAGHER: Yes.
25

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RACHELLE GALLAGHER

Having been duly sworn, was examined and testified as follows:

THE REFEREE: Please sit down.

THE WITNESS: Thank you.

THE REFEREE: Ms. Gallagher, my name is Robert Barrer and I'm an attorney from Syracuse. I've been appointed by the Commission on Judicial Conduct to serve as the Referee for the proceedings that we're here for.

THE WITNESS: Okay.

THE REFEREE: And that means I'm the one who's going to direct how everything happens. You're going to be asked some questions by counsel for the Commission about this proceeding, which I think you know why we're here. And then when the Commission is done, you'll be asked questions by counsel for Judge Miller.

THE WITNESS: Okay.

THE REFEREE: If you need a break or any extra time, would you let us know?

THE WITNESS: Sure. Yes.

THE REFEREE: It's important that when you answer questions, you do so verbally as opposed to shaking your head or saying "uh-huh" because everything is being recorded and we'd like to make sure we have a good record. Does that seem reasonable?

THE WITNESS: Yes.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Direct)

1 THE REFEREE: And it's also important that you
2 wait until a question is fully asked before you answer, so
3 we're not talking over each other. And if somebody
4 objects, please wait until I make a ruling and then I'll give
5 you the high sign whether to answer.

6 THE WITNESS: Okay.

7 THE REFEREE: All right?

8 THE WITNESS: Sure. Thank you.

9 THE REFEREE: Okay. Thank you. Counsel?

10 MS. CENCI: Thank you. Good morning, Ms.

11 Gallagher.

12 THE WITNESS: Morning.

13 MS. CENCI: How are you?

14 THE WITNESS: I'm all right.

15 DIRECT EXAMINATION

16 BY MS. CENCI:

17 Q. Would you state and spell your full name for our record, please?

18 A. Rachelle Gallagher, R-A-C-H-E-L-L-E, Gallagher, G-A-L-L-A-G-H-
19 E-R.

20 Q. And are you a resident of Broome County?

21 A. Yes, I am.

22 Q. In what city or township do you reside?

23 A. The Town of Union, Village of Johnson City.

24 Q. About how long have you lived in Broome County?

25 A. I've lived in Broome County for 26 years or so.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

- 1 Q. And do you have a family here?
- 2 A. Yes, I do.
- 3 Q. What family do you have?
- 4 A. I'm married. I have four children and three grandchildren.
- 5 Q. Oh, wow. Can you tell us a little bit about your education?
- 6 A. I attended two years at Broome Community College. I do not have my
- 7 degree, though. Accounting, that's what I majored in.
- 8 Q. Accounting was your course of study?
- 9 A. Yes.
- 10 Q. Now, do you have a current occupation or employment?
- 11 A. I'm employed by Broome County Family Court, secretary to Judge
- 12 Miller.
- 13 Q. You still hold that title?
- 14 A. Yes, I do.
- 15 Q. So, that's Judge Richard Miller, the gentleman seated here in the
- 16 room?
- 17 A. Yes.
- 18 Q. How long have you known Judge Miller, approximately?
- 19 A. Approximately 16 or 17 years.
- 20 Q. Does that take us back to early 2000s?
- 21 A. Yes.
- 22 Q. About when and how did you first make his acquaintance?
- 23 A. He was childhood friends with my husband and then he married my
- 24 husband and I.
- 25 Q. What's your husband's name?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

- 1 A. Scott Gallagher.
- 2 Q. When were you married?
- 3 A. 2002.
- 4 Q. Prior to the time that you were employed as Judge Miller's secretary
- 5 in family court, did you have employment?
- 6 A. I worked for him at the Johnson City Village Court.
- 7 Q. Okay. Was he a judge there?
- 8 A. Yes.
- 9 Q. Do you recall approximately when you began that employment?
- 10 A. February of 2005.
- 11 Q. How did you come to be employed there?
- 12 A. He asked me to come to work for him.
- 13 Q. What was your title or job description?
- 14 A. I was a chief court clerk.
- 15 Q. You were chief court clerk--
- 16 A. --Yes--
- 17 Q. --in the Johnson City Village Court?
- 18 A. Yes.
- 19 Q. Were there other judges of the court other-- in addition to Judge
- 20 Miller?
- 21 A. There was an acting judge also--
- 22 Q. --But-- I'm sorry. We're starting to talk over each other.
- 23 A. Yes, there was.
- 24 Q. I apologize. But-- So, there was an acting judge but essentially was
- 25 Judge Miller the primary judge of that court?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

- 1 A. Yes.
- 2 Q. In addition to yourself, were there other court employees?
- 3 A. Yes, there were.
- 4 Q. Approximately how many?
- 5 A. Two or three--
- 6 Q. --Were you--
- 7 A. --maybe four, depend-- depending.
- 8 Q. Did you start out as chief clerk?
- 9 A. I did not but within a few months, they made me the chief clerk.
- 10 Q. Can you try to keep your voice up so I can hear you?
- 11 A. Oh, Sorry. Sorry.
- 12 THE REFEREE: Ms. Cenci, you're actually
- 13 lowering your voice. I think if you raise yours, she'll match
- 14 it.
- 15 MS. CENCI: Okay.
- 16 A. Sorry.
- 17 Q. I know. The witness-- I think the witness has a cold, did you tell me
- 18 that?
- 19 A. I have a cold. I'm sorry.
- 20 Q. Did you have supervisory duties over the other clerks in Johnson City?
- 21 A. I did. I did, at the direction of Judge Miller. He was the supervisor
- 22 and then, you know, he directed me to supervise under him.
- 23 Q. How long did you work with Judge Miller in the Johnson City Village
- 24 Court?
- 25 A. Just shy of 10 years.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. Until approximately what month and date?

2 A. December 31, 2014.

3 Q. Now, was that because Judge Miller was elected to the family court?

4 A. Yes.

5 Q. And, if you know, was that a contested judicial election?

6 A. Yes, it was.

7 Q. Were you active at all in Judge Miller's campaign for family court?

8 A. Yes, I was.

9 THE REFEREE: You have to wait--

10 THE WITNESS: --Oh, sorry.

11 THE REFEREE: That's okay, just wait until she's
12 finished.

13 BY MS. CENCI:

14 Q. What did you do with respect to the campaign?

15 A. He had me attend like weekly meetings and he had me walk door-to-
16 door with him and hand out flyers and make phone calls and, I guess,
17 attend meetings at his mother's house.

18 Q. Were you in any kind of leadership or in-charge role in the campaign?

19 A. He put me on some sort of committee where he had like his meetings.
20 He had like these committee meetings every, I think, Sunday maybe,
21 towards the end of the campaign.

22 Q. Who were some of the other people who were involved in the
23 campaign?

24 A. His mother, his brother-in-law, Rick Balles, Anthony Paniccia, Jerry
25 Penna, Brett Noonan. I can't recall, really. There were some more.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. Do you know Mark Kachadourian?

2 A. Mark Kachadourian, yes, also him.

3 Q. So, he was also involved in the campaign?

4 A. Yes.

5 MR. DEROHANNESIAN: Object to leading.

6 THE REFEREE: It's preliminary, so. It is leading
7 but it's preliminary so I'll let it go.

8 MS. CENCI: Just to clarify that "also him" part,
9 Your Honor, of the response.

10 THE REFEREE: What-- Mark Kachadourian was
11 involved. Is that what you trying--

12 MS. CENCI: --I'm just trying to clarify she said,
13 "Yes, Mark Kachadourian," she knows him and she said,
14 "Also him."

15 THE REFEREE: I think it's clear but--

16 MS. CENCI: --All right--

17 THE REFEREE: --Mark Kachadourian was also
18 involved in the campaign.

19 THE WITNESS: Yes, he was.

20 THE REFEREE: All right. Thank you.

21 BY MS. CENCI:

22 Q. How did you come to be Judge Miller's personal secretary in family
23 court?

24 A. Well, the whole 10 years throughout working in Johnson City Court, it
25 was-- I went to work for him initially because he had lost his first bid

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Direct)

1 for family court and he said, "Our goal is we're going to be there in 10
2 years," and that's what the goal was that we worked for.

3 Q. So, is it fair to say you had an understanding that if he were elected
4 family court judge that you would--

5 A. --Yes--

6 Q. --be brought to family court as well?

7 A. Mm-hmm. Yes. Mm-hmm.

8 Q. And when did you begin your job in family court?

9 A. January 2, 2015.

10 Q. Can you describe the layout of the offices at family court? First of all,
11 what-- in what building are they located?

12 A. It's right downtown. It's a building that's owned by-- It's behind the
13 supreme court. I believe it's owned by the county and we're on the
14 first floor. We're by the back door. It's almost like a suite. Our
15 offices are right next to each other.

16 Q. Your office and whose?

17 A. And Judge Miller. We adjoin. Our offices adjoin. There's a door that
18 separates the two of us, our offices.

19 Q. Do you share your office with anyone else?

20 A. No.

21 Q. Where in reference to any of the other family court clerk personnel are
22 your offices located?

23 A. We're pretty much removed really from the other judges. The other
24 judges are on the second floor with their staff and it's pretty much the
25 back office staff that's on the first floor. And the chief court clerk is

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301

Empire State Plaza

Albany, New York 12223

(Gallagher - Direct)

- 1 on first floor and deputy chief clerk.
- 2 Q. When you say, "back office staff," what are you referring to?
- 3 A. The non-appointed positions.
- 4 Q. You mentioned-- We mentioned Mark Kachadourian. Did you know
- 5 him before you met him or saw that he was involved in Judge Miller's
- 6 campaign for family court?
- 7 A. No, I had never met him before.
- 8 Q. Did he come to be employed--
- 9 A. --Yes--
- 10 Q. --at Broome County Family Court?
- 11 A. Yes.
- 12 Q. In what capacity, if you know?
- 13 A. Court attorney for Judge Miller.
- 14 Q. So, is it fair to say that beginning in January of 2015, you had some
- 15 contact with Mr. Kachadourian in your professional capacity?
- 16 A. Yes.
- 17 Q. Did you have occasion to interact with Mr. Kachadourian on a regular
- 18 basis in family court?
- 19 A. Yes.
- 20 Q. Could you describe that? How-- What kinds of interaction did you
- 21 have?
- 22 A. Well, we worked together as a team on a daily basis, working on
- 23 cases, calendar.
- 24 Q. When you say, "We worked as a team," who are you referring to?
- 25 A. The judge, Mr. Kachadourian and myself.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

- 1 Q. The three of you?
- 2 A. Yes.
- 3 Q. Where was Mr. Kachadourian's office?
- 4 A. His office was upstairs.
- 5 Q. How were you able to work as a team if he was upstairs and you and
- 6 the judge were downstairs?
- 7 A. He spent the majority of the time downstairs with us because the other
- 8 judges had their staff all together and he was separated, so he was
- 9 pretty much downstairs all the time with us.
- 10 Q. And when you say, "with us--"
- 11 A. --Judge Miller and myself.
- 12 Q. In Judge Miller's chambers?
- 13 A. Pretty much mostly in Judge Miller's chambers, yes.
- 14 Q. How would you describe your working relationship with Judge Miller
- 15 when you first began as his personal secretary?
- 16 A. Seemed to change. Changed a lot.
- 17 Q. How had it been prior to that time? You said you worked for about 10
- 18 years with him in Johnson City?
- 19 A. Yeah, we were friends. Our family were friends. Him and my
- 20 husband were friends and when we went to family court, everything
- 21 seemed to kind of change.
- 22 Q. How did it change?
- 23 A. He started to become angry a lot and he just-- he just kind of became
- 24 mean.
- 25 Q. Did you know-- You referred to being friends, did you know Judge

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Miller's family?

2 A. Yes.

3 Q. Who did you know of his family?

4 A. Our kids were about the same age and the kids were friends and we
5 traveled together like with sporting events and him and my husband
6 coached basketball together and so.

7 Q. Did Judge Miller have a wife?

8 A. Yes.

9 Q. Was he married?

10 A. He was married.

11 Q. Did you know his wife?

12 A. Yes.

13 Q. Did Judge Miller ever talk about his relationship with his wife to you
14 in family court offices?

15 A. Yes.

16 Q. What did he say?

17 MR. DEROHANNESIAN: Objection.

18 THE REFEREE: Overruled.

19 A. It seemed-- When we started in family court, he seemed to become
20 like very angry all the time and he started talking about his sexual
21 relationship with his wife and not really-- That they were roommates
22 and he seemed to be very angry and he became very-- started talking
23 about like his lack of sex and his home life and just became very
24 angry.

25 Q. Did Judge Miller ever-- Well, let me ask you this question,

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 withdrawn. Did you have any romantic or sexual relationship with
2 Judge Miller ever at any time?

3 A. No, never.

4 Q. Apart from the comment that you just described about his sexual
5 relationship with his wife, did he otherwise talk to you about sex?

6 A. He always was maybe a little sexual, but when we started in family
7 court, it became that he was demanding sex and he wanted sex, more
8 sex, and everything revolved around sex and his lack of sex. And I
9 would overhear him talking to Mark about demanding Mark talk to me
10 about satisfying his needs and he had needs that he wasn't being--
11 that weren't being met and Mark needed to talk to me about it, about
12 me satisfying his needs and if not, I was not going to have a job and
13 no, he never talked like that before.

14 Q. During the time that we're talking about, beginning in January of 2015
15 and thereafter, when you were in family court, did he talk to you
16 directly about his sexual needs?

17 A. Yes.

18 Q. What did he say to you?

19 A. He would say that-- He would say-- He would point to his genitals
20 and say people needed to satisfy his needs and people-- everyone
21 needed to satisfy his needs and I would overhear him talk to Mark
22 about it. And then when I would say, "Well, Judge Connerton wants
23 to talk to you, Judge Connerton's having a meeting, he says, "I'm not
24 going to talk to her unless she wants to satisfy my needs," and he
25 would point to himself and then one time Judge Connerton came

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301

Empire State Plaza

Albany, New York 12223

(Gallagher - Direct)

1 down about wanting Judge Miller to go talk to Debbi about some
2 weddings and--

3 THE REFEREE: --Debbi?

4 A. Debbi Singer is the chief clerk, about some weddings and he said,
5 "I'm not going down there unless she plans on," and he would point to
6 himself and say, "satisfy my needs," so, when he would say, "satisfy
7 my needs," I knew what he was talking about.

8 Q. Did you respond to him in any fashion when he would say to you
9 directly he wanted you to satisfy his needs?

10 A. Most of the times it was indirectly, but I would overhear it when he
11 was talking to Mark all the time. But I would catch him because we
12 were right there.

13 Q. You would catch him--

14 A. --Him talking to Mark about it.

15 Q. And by that do you mean you would see him?

16 A. He would be telling Mark. Yeah.

17 Q. Because you indicated he would point to his genitals.

18 A. Right. Point to himself.

19 Q. Can you give us some idea of about how many times you heard the
20 judge make these remarks?

21 A. No, not really. It seemed to be more frequent more in 2017. Things
22 started to be more frequent.

23 Q. Do you know a person by the name of Lisa Wojdat?

24 A. Yes.

25 Q. Who is she?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 A. She worked in the Town of Union and when we were getting-- when
2 I was getting ready to come to family court, one of the clerks in
3 Johnson City had said, "Well, Rick had promised Lisa to go, too," and
4 I didn't know that. And then, that's how that came about, that he
5 had-- I was told he--

6 Q. --So, she had been a court clerk that worked with Judge Miller in the
7 Town of Union?

8 A. Yes. Yes.

9 Q. I don't-- I'm-- You talked about his having, excuse me, a position, a
10 judicial position in Johnson City Village, did he also have a position in
11 the Town of Union?

12 A. Yes, he did.

13 Q. Now, back at family court chambers, did Judge Miller-- Did you ever
14 hear Judge Miller talk about Lisa Wojdat?

15 A. He would really-- He would just-- We were in the same building so
16 he would just go over and spend a lot of time with her.

17 Q. No, no. I'm directing your attention now to your time at family court.

18 A. Mm-hmm.

19 Q. In the family court chambers.

20 A. Oh, in family court.

21 Q. Yeah. Did Judge Miller talk about Lisa Wojdat?

22 A. Yes.

23 Q. What did he say about her?

24 A. He would say things like she was a dirty whore and she would do
25 anything and she would satisfy his needs if she was there and he

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 should have brought her with him and he would refer to different
2 comments about things that he caught her doing and-- before.

3 Q. Did Judge Miller ever express any dissatisfaction with your work as
4 secretary?

5 A. No.

6 Q. So, as far as you understood it, this-- these references to his needs not
7 being met, what was he referring to?

8 MR. DEROHANNESIAN: Objection to the form of
9 the question as well as leading and suggesting.

10 THE REFEREE: No, I'll overrule it. You can
11 answer.

12 A. Well, at one point, he was having me do things for his taxes and Mark
13 and I were in his office and he did say that I wasn't a real secretary
14 and I-- He said, "Mark, tell her what a real secretary does. Tell her
15 what a real secretary does." And I was kind of confused and he's like,
16 "Tell her what she's supposed to do for her job."

17 Q. What did you understand that to mean?

18 A. Then he went on to say about, "Have a talk with her. Have a talk with
19 her," and Mark would always be like kind of embarrassed but, then he
20 would eventually tell me what he was talking about, that--

21 Q. What did Mark say?

22 A. Satisfying his needs.

23 Q. What did you understand that to mean? What needs?

24 A. Well, I guess it would always be-- He would talk about Lisa and how
25 Lisa would satisfy his needs and that's how it ended up.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. His sexual needs?

2 A. Sexual needs.

3 Q. Are you acquainted with an individual by the name of David Iannone?

4 A. I met him through the judge. I don't know when I met him, maybe
5 around election time and he would bring him into family court and
6 then he arranged him to go out with someone we worked with at
7 family court.

8 Q. Who was that?

9 A. D [REDACTED] L [REDACTED].

10 Q. How do you know that the judge arranged for those two to go out?

11 MR. DEROHANNESIAN: Object to summarizing
12 the witness's testimony as well as leading.

13 THE REFEREE: Yeah. No, based on everything we
14 know, I'm not sure that's 100 percent accurate, but that's
15 okay. You can answer the question if you understand it.

16 A. When I was working in chambers, he would have D [REDACTED] down and he
17 talked to her about she needed her floor done and then he called Dave
18 and say, "David," you know, "You have to go see her," you know,
19 "You got to go meet her and you can go have sex with her and she's a
20 hottie," and she gave D [REDACTED]-- he gave D [REDACTED]-- Judge Miller gave
21 D [REDACTED] Dave's number about having a floor replaced or something.
22 And that happened in front of me. So, then--

23 Q. --Excuse me for one moment. You heard the judge talking with Dave
24 Iannone?

25 A. We would hear the conversation. I would hear the conversations, yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. Was this conversation in person or over the telephone?

2 A. Over the telephone.

3 Q. And how did you know who the judge was talking to?

4 A. He would always have his phone on speaker, so unfortunately, we
5 would have to hear these conversations.

6 Q. Now, you said D [REDACTED] L [REDACTED] works at family court?

7 A. Yes.

8 Q. And so-- How do you know that they began a relationship? You
9 alluded to that earlier.

10 MS. SCALISE: Can we say who-- Sorry, can you
11 clarify who "they" is?

12 MS. CENCI: Yes. Thank you, counsel. D [REDACTED]
13 L [REDACTED] and Mr. Iannone.

14 A. After this happened, the judge would frequently, on speaker phone,
15 with Mr. Iannone, talk about them having sex and it would be done on
16 speaker phone in my office or his office, on speaker phone. And
17 Mark and I would hear the conversations and they would talk about
18 sex and positions and orgasms and everything. We had to hear it.

19 Q. So, just to clarify, who did you hear the judge talking to?

20 A. Dave Iannone.

21 Q. And--

22 A. --And he would discuss having sex with D [REDACTED] L [REDACTED], and she was
23 a co-worker of ours, and the judge would put it on speaker phone and
24 we had to listen to the whole graphic details about their sex life.

25 Q. Do you recall some of these graphic details?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 A. Yes.

2 Q. What were they?

3 A. Well, he would call and--

4 Q. --Excuse me--

5 THE REFEREE: --When you say, "He--"

6 MS. CENCI: --Yes, when you say--

7 A. --Dave Iannone.

8 THE REFEREE: Thank you.

9 MS. CENCI: Thank you, Your Honor.

10 THE REFEREE: That's alright. Take your time.

11 A. Whether he would call or the judge would call and he would put it on
12 speaker and they talked about-- Dave would say obscene things.
13 Should I--

14 THE REFEREE: --If you--

15 BY MS. CENCI:

16 Q. Rather than characterize them, can you--

17 A. --He would--

18 Q. --tell us what some of those things were that you recall?

19 A. He would talk about fucking her for hours and how she was a sprayer
20 and talk about her orgasms and the sheets would be all wet and this
21 went on multiple different phone calls and she must have had a futon,
22 I don't know. I never been in her house. Something about a futon,
23 never made it past the futon and the judge would listen and get all
24 excited about these phone calls and he had asked for pictures and
25 videos and--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. --Who had asked who for pictures and videos?

2 A. The judge asked Dave for pictures and videos.

3 Q. Of what?

4 A. Of this-- these incidences with Dave and D[REDACTED].

5 Q. Did you ever hear either of the two of them use the word or the
6 phrase, "Get in on the rotation?"

7 MR. DEROHANNESIAN: Objection. That's
8 leading.

9 THE REFEREE: It's definitely leading.

10 MR. DEROHANNESIAN: And can we go to
11 another topic because we went through this before?

12 THE REFEREE: Well, not with this witness, so, I--
13 It's part of the complaint, so I think we'll allow it. Just try
14 not to be leading.

15 BY MS. CENCI:

16 Q. Did you hear either of these two use the term, "Rotation"?

17 MS. SCALISE: Again.

18 THE REFEREE: --I mean, it is-- It is leading.

19 MR. DEROHANNESIAN: Are we just-- I mean,
20 come on.

21 MS. CENCI: I thought you just overruled it, but--

22 MR. DEROHANNESIAN: --No, no.

23 THE REFEREE: --No, no. I didn't. I sustained it.
24 Try and ask in a non-leading manner.

25

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 BY MS. CENCI:

2 Q. Do you recall any other conversation that you overheard between
3 Judge Miller and Mr. Iannone relative to D [REDACTED] L [REDACTED]?

4 A. He also did ask--

5 THE REFEREE: --He being?

6 A. Judge Miller did ask if he could get in the lineup or get in the rotation.
7 He would ask to have a day a week reserved for him. He would ask
8 Mr. Iannone that. And like I said, unfortunately we had to listen to
9 this. It was on speaker phone.

10 Q. You referred to videos or pictures. Did you ever see any--

11 A. --I never seen--

12 Q. --Let me just finish my question--

13 THE REFEREE: --You have to let her finish--

14 MS. CENCI: --if I could.

15 THE WITNESS: Sorry.

16 THE REFEREE: It's alright.

17 MS. CENCI: It's okay. Do you need a break?

18 THE WITNESS: No.

19 THE REFEREE: Okay. Thank you.

20 BY MS. CENCI:

21 Q. Did you ever see any photographs or video footage of any of these
22 events that you're describing?

23 A. No, I didn't see any photographs or videos. Mark did tell me that--

24 MR. DEROHANNESIAN: --Objection. Not
25 responsive.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 THE REFEREE: You know, that's right. Let's wait
2 until the next question. Your answer is you never saw it.

3 THE WITNESS: I never seen a photo or video.

4 BY MS. CENCI:

5 Q. You mentioned a Jerry Penna active in the campaign.

6 A. Yes.

7 Q. Did you know Mr. Penna prior to the campaign?

8 A. No, I had never met him before.

9 Q. Did you ever see Jerry Penna in chambers? Family court chambers?

10 A. Yes. Judge Miller would bring him in or have me go get him into
11 family court chambers.

12 Q. Do you know whether Jerry Penna was acquainted with D [REDACTED]
13 L [REDACTED]?

14 A. I know that at one point, I believe the first time he met her, Judge
15 Miller ordered me to go get D [REDACTED]--

16 THE REFEREE: Really all she wanted to know is
17 do you know if they were acquainted?

18 A. No. I think they met when I--

19 Q. --Were you present for a meeting, if I can call it that, between Jerry
20 Penna and D [REDACTED] L [REDACTED]?

21 A. Judge Miller had me get D [REDACTED] from her office and bring her down to
22 meet Jerry Penna.

23 Q. Did you do that?

24 A. I did and--

25 Q. --Were you present?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 A. I did. I stayed into the office because I think she was a little
2 uncomfortable.

3 Q. What happened?

4 MR. DEROHANNESIAN: Objection. You know,
5 getting the opinions of a third party.

6 THE REFEREE: Yeah, we'll strike that. That's an
7 operation of someone else's mind.

8 THE WITNESS: Sorry.

9 THE REFEREE: That's all right.

10 BY MS. CENCI:

11 Q. Well, did Judge Miller say why he wanted you to bring D [REDACTED]
12 L [REDACTED] into chambers?

13 A. They were talking about her beforehand and he wanted Jerry Penna to
14 see her.

15 Q. When you say they were talking about her, who--

16 A. --Jerry Penna and Judge Miller were talking about D [REDACTED].

17 Q. Did you-- And you heard the conversation?

18 A. Yes.

19 Q. What did you hear them say before D [REDACTED] was brought into the
20 chambers?

21 A. It was just about the Dave Iannone talk but I can't recall exactly how
22 the conversation went.

23 Q. So, you indicated that you did go and get D [REDACTED]. Did you bring her to
24 chambers?

25 A. Yes, I did.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

- 1 Q. Did you stay in chambers?
2 A. Yes, I did.
3 Q. What happened in chambers once D [REDACTED] arrived?
4 A. They just were asking her-- I can't remember. Just--
5 Q. --Was it work related?
6 A. Maybe work related and then weather, just nothing really.
7 Q. About how long did she stay there?
8 A. Just a few minutes.
9 Q. Then what happened?
10 A. Then she left.
11 Q. And did Mr. Penna remain in chambers with the judge?
12 A. Yes, he did.
13 Q. And did you remain in chambers?
14 A. I did initially, yes.
15 Q. When you left where did you go?
16 A. I think I initially walked her down maybe. I can't remember. And
17 then I returned back, just a short walk down the hall, I believe. And
18 then I did go back in.
19 Q. You went back into where?
20 A. The judge's chambers.
21 THE REFEREE: When you say, "The judge's
22 chambers," just so we're clear, there's an office with a door
23 that closes that is the chambers and then an anteroom which
24 is your office, right?
25 THE WITNESS: Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 THE REFEREE: And when you refer to chambers
2 are you talking about the whole suite of offices or just
3 Judge Miller's individual office? Because I know
4 sometimes people will speak of chambers, and it's the entire
5 setup. So, that's what I'm trying to get you to explain to us,
6 if you can.

7 THE WITNESS: Chambers was really, I believe, the
8 entire setup. He referred to even my office as his office, so
9 I believe it was the whole setup. There was a door but it
10 was very rarely if-- very rarely closed.

11 THE REFEREE: All right, that's fine. When you're
12 explaining where people are, if you could clarify for us
13 whether you're speaking of the judge's individual office as
14 opposed to the whole suite, that'll be helpful.

15 THE WITNESS: Okay, perfect. Will do.

16 THE REFEREE: Sorry to interrupt.

17 MS. CENCI: Yes, forgot where we were.

18 BY MS. CENCI:

19 Q. So, can you say approximately when this-- I'm calling it a meeting,
20 but when this event occurred?

21 A. 2017. Maybe the spring of 2017.

22 Q. So, after you returned to the chambers area, were you in your office?

23 A. I was in the doorway.

24 Q. Between your office and the judge?

25 A. Between my office and the judge's office.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. Did you hear any conversation between the judge and Mr. Penna at
2 that time?

3 A. Yes, I did.

4 Q. What did you hear?

5 A. Discussions about D [REDACTED] L [REDACTED]'s breasts.

6 Q. Can you be any more specific?

7 A. About very large breasts, then it went on to other topics like that. I
8 just walked away.

9 Q. I want draw your attention to April or May of 2017, and ask you if
10 Judge Miller showed you a drawing of some kind?

11 A. Yes.

12 Q. Can you describe that?

13 A. The judge gave me like a folded up piece of paper and had a couple
14 pieces of fruit on it, and he asked me to pick the juiciest fruit. And I
15 just said, "Okay." So, I picked something and he's like, "Now open it
16 up," and he was-- And I opened it up and it was naked women and he
17 thought that was hysterical.

18 Q. What was your reaction?

19 A. I was kind of embarrassed and I gave it right back to him and I walked
20 away.

21 Q. I'm going to draw your attention to in or about May of 2017, and ask
22 whether you're aware whether the judge made a trip to Albany at that
23 time?

24 A. Yes.

25 Q. Were you advised as to what the purpose of the trip to Albany was?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

- 1 A. I believe it was called like maybe Outreach Day something. I don't
2 know what it was exactly.
- 3 Q. Do you know whether-- I'm sorry, I didn't hear.
- 4 A. I don't know what it was for exactly.
- 5 Q. Was it something in connection with his judicial duties, as far as you
6 know?
- 7 A. Yes, something with family court, but I don't know more specific.
- 8 Q. Do you know whether the judge traveled to Albany alone or with
9 someone else?
- 10 A. The judge and Mr. Kachadourian went to Albany for this, I think they
11 called it Outreach Day.
- 12 Q. About how long did they spend there, if you know?
- 13 A. I believe they must have been there most of day.
- 14 Q. Were you present when Judge Miller returned to chambers after that
15 trip?
- 16 A. It was-- I wasn't immediately after. It was like the day after. So, it
17 was a Thursday and yes I was.
- 18 Q. How would you describe the judge's demeanor on that occasion?
- 19 A. He was very angry.
- 20 Q. Did he say why?
- 21 A. He came in and he demanded that I had to go to Albany and take care
22 of Freddie's needs and I said, "What?" and he started punching my
23 desk and he was just very angry and very mean and demanded that I
24 go take one for the team and take care of Freddie's needs, and I said,
25 "No. Freddie can take care of his own needs. I'm not," and he just

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 was mean and screaming and yelling and like punching the glass on
2 my table.

3 Q. Who's Freddie?

4 A. Our local senator is Fred Akshar.

5 Q. Do you know Mr. Akshar?

6 A. I just know him because he was in law enforcement and I worked in
7 the courts so I don't really know him that well.

8 Q. Are you referring to him as Freddie or the judge did?

9 A. The judge did. I think he went by Freddie. I think everybody called
10 him Freddie.

11 Q. Did the judge say why he was angry or why he wanted you to take this
12 action?

13 A. No. No.

14 Q. Did you have any conversation with Mr. Kachadourian about this
15 incident after the fact?

16 A. When the judge went to court, I called Mark and asked him to come
17 down because I was really upset and I told him what happened. I was
18 really just very very upset and he-- Mark came down and I talked to
19 Mark about it.

20 Q. What did you understand the judge to mean when he said these words
21 about taking care of Freddie?

22 A. He was saying, "I got to send someone to Albany. I got to send
23 someone to take care of his needs," and "Take one for the team," and
24 this is just the talk that he had about satisfying his needs because
25 that's what he would do when he would point to his self.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

- 1 Q. So, what did you understand this to mean?
- 2 A. He wanted me to go and probably have sex with Fred.
- 3 Q. Did he use those words, the judge?
- 4 A. Sex?
- 5 Q. Yes.
- 6 A. No. Not to me.
- 7 Q. Did he say why he wanted you to do this?
- 8 A. No.
- 9 Q. Did you ever object to Judge Miller using these references to sex?
- 10 Did you ever object to him?
- 11 A. We would try to change the subject, walk away and then eventually
- 12 told him no, I wasn't interested and then I just started looking...
- 13 Q. Started looking for what?
- 14 THE REFEREE: Do you understand the question?
- 15 Did you ever say anything to Judge Miller directly and
- 16 object? That was really the question. What is the answer to
- 17 that?
- 18 A. With that, with Fred I said, "No. No, I'm not," and with the other
- 19 stuff we just kind of ignored him and walked away and let him know
- 20 we weren't-- I wasn't interested and no, we didn't.
- 21 Q. Did you think Judge Miller actually wanted to have sex with you?
- 22 A. Yes.
- 23 Q. So, in May of 2017, after this remark about Sen. Akshar, that's when
- 24 you finally told the judge no. Is that right?
- 25 A. I told him no, yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. Did you ever discuss with anyone else these various comments that
2 the judge had made to you over time?

3 THE REFEREE: Do you have a time frame?

4 MS. CENCI: Well, I say ever first, Your Honor.

5 THE REFEREE: It's a little broad.

6 MR. DEROHANNESIAN: Yeah.

7 BY MS. CENCI:

8 Q. Did you tell anyone about these remarks?

9 MR. DEROHANNESIAN: Again, I object unless
10 you're going to have a reference.

11 MS. CENCI: Well, it's a yes or no first, Your
12 Honor.

13 THE REFEREE: Yeah, I think that's fair. Do you
14 understand the question?

15 THE WITNESS: Yes, I did.

16 THE REFEREE: Okay. You did say something.

17 THE WITNESS: Yes. Yes.

18 THE REFEREE: And now let's try to get a time
19 frame.

20 THE WITNESS: Yes. Yes.

21 BY MS. CENCI:

22 Q. Who did you tell?

23 A. I went down to the chief court clerk.

24 Q. That's Debbi Singer?

25 A. Debbi Singer.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. Did you have any-- How many times--

2 MR. DEROHANNESIAN: If we're going to get
3 into this, I'd like a foundation as to date or--

4 THE REFEREE: Well, we're almost there because
5 we're not getting the substance of it. I think she's trying to
6 lay the foundation now.

7 BY MS. CENCI:

8 Q. How many times did you talk to Debbi Singer about the judge's
9 conduct?

10 A. Many many times.

11 Q. And why did you go to Debbi Singer?

12 A. Looking for guidance. Looking for help.

13 Q. Did she give you guidance and help?

14 MR. DEROHANNESIAN: Objection. We still
15 don't have any date and timeframe. We're getting
16 substance.

17 THE REFEREE: Well, we're almost there.
18 Overruled.

19 A. I'm sorry?

20 Q. Did she provide you with any guidance or help?

21 A. Initially, she-- I went down initially several times and then by the end
22 of 2015, I went down kind of really to pretty much say goodbye
23 because I didn't think anything was being done and she had told me
24 things had happened to her too and he had made comments to her too,
25 and I kind of thought I wasn't coming back. And she had made

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 comments to me that he was doing the same type of antics to her.

2 MR. DEROHANNESIAN: Objection to what
3 Singer said. It's hearsay. I mean they had the chance to ask
4 Singer.

5 THE REFEREE: Yeah, I agree. I'll sustain it and
6 strike it, but we've already had her testify as well.

7 BY MS. CENCI:

8 Q. My question, Ms. Gallagher, my question was, I think, did she provide
9 you with any guidance or assistance? You said you went to her for--

10 A. --No.

11 Q. And did-- Was she your supervisor? Did you report to her?

12 A. No. She was the chief clerk of the court, though, but she wouldn't
13 have been my supervisor. Judge Miller would have been my
14 supervisor, but then, I guess she would have been his supervisor,
15 maybe, I guess.

16 Q. You didn't really know who to report to beyond Judge Miller. Is that
17 fair to say?

18 THE REFEREE: Objection. This is leading.

19 MR. DEROHANNESIAN: Objection. As I said,
20 yeah.

21 THE REFEREE: This is leading. Sustained.

22 BY MS. CENCI:

23 Q. When did you first-- If you can recall, about when did you first go to
24 Ms. Singer with your concerns?

25 A. I was definitely going down towards the end of 2015 and discussing

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

- 1 things with Ms.-- incidences with her.
- 2 Q. In addition to these comments of a sexual nature, did you have other
- 3 concerns about the judge?
- 4 A. I was concerned about my safety.
- 5 Q. Why was that?
- 6 A. He would make comments about-- He would make comments about
- 7 taking people out at the knees. He made a comment-- He was on the
- 8 phone with Jerry Penna and he made a comment, and this was like in
- 9 2017, about if we ever betray-- if we ever betrayed him, this was a
- 10 quote, I'm assuming Mark and I that he would-- We would be found--
- 11 He had cement boots and we'd be found at the bottom of the river,
- 12 so--
- 13 Q. --You said this was in 2017? Can you be more specific?
- 14 A. May.
- 15 Q. May.
- 16 A. Approximately May.
- 17 Q. Do you know or know the name David English?
- 18 A. That was the name that Judge Miller told us that he rented from the
- 19 judge and the judge told us that he would do anything for him and he
- 20 was going to die anyway and he didn't care if he killed people. He'd
- 21 do anything for the judge because he was going to die anyway.
- 22 Q. This is what the judge told you?
- 23 A. Yes.
- 24 Q. Can you say approximately when he said that?
- 25 A. Approximately 2017.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. And did he make this comment just to you or was anyone else
2 present?

3 A. I believe Mark was present.

4 Q. You know a Marty Shaw or know the name Marty Shaw?

5 A. I never met Marty Shaw, but that's another one of his acquaintances
6 that he would talk about that would do dirty work for him.

7 Q. "He," being the judge?

8 A. Yes.

9 Q. James Stilloe. Do you know James Stilloe or know the name?

10 A. James Stilloe is another one of the judge's friends and he called-- The
11 judge called Mark at the beginning of 2015, saying if Mark--

12 MR. DEROHANNESIAN: --Objection. There's no
13 foundation.

14 THE REFEREE: Sustained. For what happened to
15 Mark.

16 MS. CENCI: Well, she hasn't said that.

17 THE REFEREE: We know what this is so,
18 sustained.

19 BY MS. CENCI:

20 Q. Do you know James Stilloe personally?

21 A. I do. He's one of the judge's friends.

22 Q. What do you know of his background?

23 A. He always seemed to have a lot of issues, domestic violence issues. I
24 believe he was convicted of falsely reporting an incident.

25 Q. How do you know about that?

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Direct)

1 A. Because he dragged the judge and I into it.

2 Q. When was that?

3 A. That was roughly 2006 or '07. I don't know.

4 Q. Did you know anything about David English's background other than
5 what you said about his being ill?

6 A. Just what the judge said. I don't know--

7 Q. --What did he say about him?

8 A. That he would do anything for him and he had-- the judge said that
9 David English would do anything for him and he was going to die
10 anyway because he had some disease and--

11 MR. DEROHANNESIAN: Objection. Asked and
12 answered.

13 THE REFEREE: Sustained. I mean, we did go over
14 this.

15 BY MS. CENCI:

16 Q. We talked about David Iannone. Did you know anything about his
17 background?

18 A. The judge-- Judge Miller told us that he had a conviction when he
19 was a kid where he threatened to kill Judge Smith or something, but
20 that's just what the judge said. I don't know any of that to be true.

21 Q. Did Judge Miller ever reference David Iannone in terms of doing
22 things for the judge?

23 MR. DEROHANNESIAN: Objection. Leading.
24 Suggestive.

25 THE REFEREE: That's all right. Overruled.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 BY MS. CENCI:

2 Q. Do you know whether he did anything for the judge?

3 A. No, I don't know that.

4 Q. Any work or anything of--

5 MR. DEROHANNESIAN: --Objection. Objection.

6 BY MS. CENCI:

7 Q. Any kind of an employment relationship they might have?

8 A. Yes, he was--

9 MR. DEROHANNESIAN: --Objection.

10 THE REFEREE: Sustained. She said no, so now
11 you're leading and she didn't say she didn't recall, she said,
12 "Did not know."

13 BY MS. CENCI:

14 Q. Did you-- withdrawn. Did you come to learn of a threat allegedly
15 made against your life by David Iannone?

16 A. Yes, I did.

17 Q. How did you learn about that?

18 A. Judge Molly Fitzgerald told me about that.

19 Q. When was that?

20 A. I believe it was in March of 2018.

21 MR. DEROHANNESIAN: I would object to this as
22 outside the scope of the charge and there's no connection
23 to--

24 MS. CENCI: --Your Honor, this is a continuing
25 course of conduct I--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 MR. DEROHANNESIAN: --but--

2 THE REFEREE: --Hold on. Let me-- Let him
3 finish his objection.

4 MS. CENCI: I'm sorry. I thought he was.

5 MR. DEROHANNESIAN: --and there's been no
6 foundation to make it relevant. I can address that further
7 outside the presence of the witness.

8 THE REFEREE: Well, no, I understand that. I'm
9 just-- You know what, let's take a short break and excuse
10 the witness.

11 THE WITNESS: Okay. All right.

12 THE REFEREE: Let's take-- We'll give you a little
13 break and you can relax. Please don't talk with anybody
14 about testimony. We're going to stay on the record.

15 MR. FITZPATRICK: If-- Mr. DerOhannesian, can
16 you pull your microphone a little closer to you?

17 MR. DEROHANNESIAN: You think this works?

18 MR. FITZPATRICK: That's fine. Yeah. Thank
19 you.

20 THE REFEREE: All right. We had testimony
21 yesterday about the conversations with Judge Fitzgerald and
22 what may or may not have happened in, I believe, in March
23 of '18 about this type of threat. It was either yesterday or it
24 was from Kachadourian, but I know we've already had
25 some testimony about it. It certainly post-dates the

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 complaint.

2 MR. DEROHANNESIAN: And it has-- There's no
3 showing that it's connected to Judge Miller. There has to
4 be a nexus to show that he is somehow involved with any
5 conduct by some third party, assuming it's true. Then the
6 other objection is, it's not even part of the complaint against
7 him.

8 MS. CENCI: Can I respond?

9 THE REFEREE: Yeah, could you address both of
10 those?

11 MS. CENCI: Yes.

12 THE REFEREE: Because clearly it does post-date
13 the complaint, which is dated--

14 MR. DEROHANNESIAN: --and they amended the
15 complaint on other grounds but they never amended to
16 include that.

17 THE REFEREE: Well, if the complaint is dated July
18 9, 2018, which is after this--

19 MR. DEROHANNESIAN: --No. It's before. She
20 said, I believe, February or March.

21 MS. SCALISE: (Unintelligible)

22 THE REFEREE: No, no. You didn't hear me. The
23 complaint is dated July 9, 2018--

24 MR. DEROHANNESIAN: --Yes--

25 THE REFEREE: --but there are no allegations in the

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 complaint about that alleged conduct. So, that's what I
2 would like you to address.

3 MR. DEROHANNESIAN: Yes. Ms. Cenci.

4 THE REFEREE: Counsel for the Commission?

5 MS. CENCI: It's alleged, as you know Your Honor,
6 in part that the Respondent would make reference to these
7 various individuals, it's our theory to intimidate the-- his
8 personal appointees, one of whom was David Iannone, and
9 I know we've had discussions about whether or not we can
10 prove up what his criminal record actually is but testimony,
11 if allowed, will be to the effect that the threat was made
12 because this friend of the judge was upset about the
13 Commission proceeding and blames Mr. Kachadourian and
14 Ms. Gallagher for the Commission proceeding against the
15 judge. Now, he's obviously a friend and associate of the
16 judge.

17 THE REFEREE: Well, I think that you-- I think you
18 have traction with paragraph 10 of the complaint, which
19 says, "Beginning in or about 2015." It doesn't say that it
20 ended. I mean, I think that can be read to mean that it's
21 continuing--

22 MS. CENCI: --Yes, and--

23 THE REFEREE: --So, I think you're correct on that
24 and that's fair. Could you address Mr. DerOhannesian's
25 point about connecting this threat in March of '18 to Judge

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 Miller?

2 MS. CENCI: Well, I just said, if the testimony is
3 allowed, it will show that the threat was made because this
4 associate of the judge was upset about the Commission
5 proceeding.

6 THE REFEREE: Is there going to be any testimony
7 or any evidence-- I don't know if anyone is calling
8 Iannone, but is anyone going to tie that in and say that what
9 happened in March of '18 was at the direction or the behest
10 of Judge Miller?

11 MS. CENCI: Well I think Your Honor can make
12 inference from the proof and I know that there were
13 objections to questions about how the judge's conduct has
14 affected the witnesses' state of mind and I think you
15 sustained those objections and with due respect, I think that,
16 you know, that that's very relevant as to how his conduct
17 has affected these individuals. And this is a continuing fear
18 that they have. Fear of the judge. Fear of retaliation. Fear
19 of his criminal associates, and I think it's very relevant.

20 THE REFEREE: So, her testimony is going to be
21 that in March of '18, Judge Fitzgerald brought her in and
22 reported that there were threats against her and Mark
23 Kachadourian. And I think he testified that as a result of
24 that, he was physically moved out of the office-- Weren't
25 they moved to the county office building?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: No.

2 MR. DEROHANNESIAN: That-- I thought that
3 was because of the D [REDACTED] L [REDACTED] threat. They were
4 threatened by D [REDACTED] L [REDACTED] and that--

5 MS. CENCI: --No, no. They were not moved to the
6 county office building. The judge was moved to the county
7 office building.

8 THE REFEREE: All right. And were they were
9 kept in chambers? In the same chambers that they were?

10 MS. CENCI: Yes, I believe so. But Your Honor, I
11 also want to draw your attention to Commission Exhibit, I
12 believe it's 1C, the order. This too is very relevant and I
13 ask again if that that be received in evidence.

14 THE REFEREE: I got it here. Let me pull it out.

15 MS. CENCI: If I can refer to it. This individual was
16 issued a pistol permit by application dated June 28, 2017. I
17 mean, this is exactly at the time all of the fallout, if you
18 will, is occurring as a result of the IG's investigation. And
19 now, of course thankfully, that permit has been revoked.

20 MR. DEROHANNESIAN: Can I follow up? I don't
21 want to interrupt.

22 MS. CENCI: See, I want to--

23 THE REFEREE: --Just a-- No, just a minute. I'm
24 really, I'm just finishing reading.

25 MS. CENCI: And then-- I'm sorry. I'll wait until

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 you're finished.

2 THE REFEREE: Aren't the documents that relate to
3 these people's criminal convictions and their criminal
4 history, aren't they collateral matters?

5 MS. CENCI: No. Your Honor, again, there's an
6 allegation, a specific allegation in paragraph 10 of the
7 Formal Written Complaint, which requires me to
8 affirmatively prove that these individuals have criminal
9 records. There's no witness here who can testify to that.
10 The records speak to that. The records that are being
11 offered.

12 THE REFEREE: No, I understand your point but as
13 a matter of evidence, of trial evidence, and I know the
14 standard is relaxed because it's non-jury, I'm really
15 concerned that as an evidentiary question, these are
16 collateral matters. It's not part of the-- I'm trying to
17 remember the terms but it's not-- It's not part of the *res*
18 *gestae* of the charges.

19 MS. CENCI: Well, but it is.

20 THE REFEREE: Yeah, but he's not charged with
21 being a criminal, and the Respondent is not charged with
22 having a criminal record. It doesn't make up an element.
23 It's detail and that's why I'm concerned that it's collateral.

24 MS. CENCI: Well, how is it collateral when the
25 charge says, "the Respondent repeatedly referred to these

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 various individuals, all of whom have criminal records, and
2 said these friends would do whatever Respondent told them
3 to do.”

4 THE REFEREE: But that’s--

5 MS. CENCI: --Now, you may-- Excuse me. You
6 may find that that’s, you know, that that’s not something
7 that you think is significant, but I’m entitled to and indeed
8 must prove the allegation in the charge. And it says, “They
9 have criminal records.”

10 THE REFEREE: But you’ve set that phrase off from
11 the-- It’s an explanatory parenthetical, if you will.

12 MS. CENCI: But how do I establish that without
13 these records?

14 THE REFEREE: The witnesses have said it.

15 MS. CENCI: No, they do not know for a fact--

16 THE REFEREE: Their testimony-- It says this guy
17 had a criminal record. That’s a fact. That becomes
18 evidence. It’s-- They believe it.

19 MS. CENCI: First of all, they haven’t said that.

20 THE REFEREE: Well, if they don’t know it--

21 MS. CENCI: That’s correct, but they haven’t said it
22 as each of these individuals.

23 THE REFEREE: Right, but they don’t know--

24 MS. CENCI: --May I ask Your Honor, what is the
25 problem with receiving certified court dispositions into

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 evidence? What is the problem with that?

2 THE REFEREE: The problem is it-- I think it's
3 being used to unfairly cast a shadow on the Respondent
4 with respect to these proceedings. The charges against him
5 are incredibly serious and we all know that and if they're
6 true, okay, the Commission will deal with it. If they're not
7 true, then he deserves to be exonerated. That's not for
8 today. That has nothing to do with me. I'm going to really
9 make recommendations, the Commission will make a
10 decision. But he's not charged-- That the fact that they
11 actually have criminal records, how is that relevant if these
12 people didn't know it?

13 MS. CENCI: Your Honor, with all due respect, your
14 job is to make findings of fact--

15 THE REFEREE: --I agree--

16 MS. CENCI: --and conclusions of law. I'm not sure
17 how you can make a finding of fact, one way or the other,
18 as to each of these person's-- of whether or not they indeed
19 have criminal records without these documents. And the
20 problem is if you don't admit them and you are later
21 deemed to have erred in that respect, there's no way for me
22 then to get them into the record. So, this a confidential
23 proceeding--

24 THE REFEREE: --Well, as a matter of procedure,
25 let's assume that you've marked the exhibit and I sustain

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 the objection and the Commission decides he was
2 completely wrong, absolutely should have admitted them.

3 MS. CENCI: I'm at sea right now because I don't
4 know-- Have we heard an objection today as to these
5 criminal records? I mean--

6 THE REFEREE: --We had it the other day, and the
7 objection as I understood it to be was relevance and I take
8 as part of relevance that it's a collateral matter. I would
9 really--

10 MS. CENCI: --I don't see how it's collateral when
11 it's right in the charge. It's not that I--

12 THE REFEREE: --I didn't bring my Fisher On
13 Evidence but--

14 MS. CENCI: --It's not that I, you know, I'm trying
15 to prove something that's not charged and they don't have
16 notice of. It's right there, so, I'm not sure--

17 THE REFEREE: --The record is open and I want to
18 give it more thought and I'd like to do some research. I
19 would love to hear from each of you, if you can, on why or
20 why not these exhibits are collateral. And I think it's a
21 really straightforward evidentiary question and I could well
22 be wrong, and if I am I'll change my current view, which is
23 that I don't think they should be accepted, but I think you
24 are entitled to--

25 MS. CENCI: --I mean, can I-- excuse me, can I ask

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 for a stipulation that, in fact, they all have criminal records?
2 Maybe that would alleviate your concern about the
3 documents themselves, but I've got to get this in.

4 THE REFEREE: Well, define "criminal record."

5 MR. DEROHANNESIAN: No. Yeah.

6 THE REFEREE: Because part of it, I think, one of
7 the individuals, Martin Shaw, this one was troubling to me.
8 That's 1L. That's from 1981.

9 MS. CENCI: Yes and he served a prison sentence. I
10 mean, Your Honor--

11 THE REFEREE: --For robbery--

12 MS. CENCI: --it doesn't go to the admissibility of
13 the document.

14 THE REFEREE: Well, no, I think that--

15 MS. CENCI: --If you want to give it less weight or
16 something, you can. But it simply says what it says. He has
17 a prison record.

18 THE REFEREE: Let me say it this way. I can tell
19 you that I'm probably going to give it zero weight, but I'm
20 very concerned that I not foreclose the Commission from
21 presenting its evidence. There's plenty of information here
22 and there's direct testimony about threats and we haven't
23 heard the Respondent's case yet. But I really would like to
24 hear from you on that legal issue of proving a collateral
25 matter and it's only Wednesday--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: --See, you're characterizing it as
2 collateral and that's the problem. You've already
3 determined that it's collateral.

4 THE REFEREE: Prove me wrong. Tell me that I'm
5 wrong. Brief that issue. Just brief it between now and the
6 end of the week.

7 MS. CENCI: I don't have access to any-- I'm not in
8 my office. I can't brief anything to you, Your Honor.

9 THE REFEREE: Is there anybody at the
10 Commission who can take a look at that for you?

11 MS. CENCI: You're looking at the legal staff here,
12 but--

13 THE REFEREE: --No, that--

14 MS. CENCI: --we'll do our best. We'll do our best.

15 THE REFEREE: I really am very concerned that I
16 not foreclose the Commission from offering its proof. I
17 don't want to artificially restrict the record.

18 MS. CENCI: Could we call the witness back in
19 because--

20 MR. DEROHANNESIAN: --Wait a minute.
21 There's other issues with this witness which is this
22 connection to the defendant. The idea that a third party
23 engages in an act, whatever it is-- Let's assume without
24 accepting that Iannone did that, which I don't. But
25 assuming that, you still have to connect it to the defendant.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: That's a one question on a cross-
2 exam.

3 MR. DEROHANNESIAN: And all the records that
4 were supplied by the Commission with respect to that
5 threat, none of them connect it to Judge Miller.

6 THE REFEREE: I understand. That means that if
7 that's true, then the fact won't be proven. But I think she
8 can testify about it and on cross-exam, you certainly, very
9 easy to cross-examine that.

10 MR. DEROHANNESIAN: But it's prejudicial to
11 introduce something like that in the record, you know,
12 something so powerful about, you know, a threat to kill
13 coming from Mr. Iannone.

14 THE REFEREE: We've already had it. It came
15 through another witness and I don't recall that witness
16 being cross-examined on a lack of connection to the judge.
17 I'm going to allow it, and I think it's really easy on cross to
18 address that. So, let's bring the witness back.

19 MR. DEROHANNESIAN: So, I guess my objection
20 would be that it goes outside the scope of the complaint.

21 THE REFEREE: I think para--

22 MR. DEROHANNESIAN: --The complaint was not
23 amended to include this threat as part of the actual
24 allegations against Judge Miller, and there is no factual
25 predicate to connect the threat or actions of the third party

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 to the defendant, either direct or--

2 THE REFEREE: --I think it goes to weight. So, I
3 think paragraph 10 allows it and so I'll hear it--

4 MS. SCALISE: --Can we have just a second?

5 THE REFEREE: Yes.

6 MR. DEROHANNESIAN: Third objection is that
7 this witness is testifying that she heard it from Judge
8 Fitzgerald, who heard it from another party. Now we're
9 getting into triple hearsay. She has no even hearsay
10 knowledge. It's triple hearsay, foundation.

11 MS. CENCI: Your Honor, I-- Ms. L [REDACTED] was
12 not allowed to testify-- I believe I sought to have Ms.
13 L [REDACTED] testify about this and I think that was sustained
14 but--

15 THE REFEREE: --Did Kachadourian testify about
16 this?

17 MS. SCALISE: Give me a second, I'll look--

18 THE REFEREE: I'll have to go back and look. I
19 mean, I thought we had testimony about this.

20 MR. DEROHANNESIAN: There was my
21 questioning Kachadourian about the threat that D [REDACTED]
22 L [REDACTED] allegedly made. That is the threat that I believe I
23 focused on on cross-examination because I knew L [REDACTED]
24 was coming in, I could question her, "Is this true that you
25 did it?" That's what I did yesterday.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. CENCI: Your Honor, as to the hearsay, it does go to the witness's state of mind which I feel is very relevant.

MR. DEROHANNESIAN: But--

THE REFEREE: --That's all right.

MR. DEROHANNESIAN: I believe it may be quadruple when you look at the records and the testimony. I think it was actually from the Commission, from Ms. Cenci to Judge Fitzgerald that all this is being communicated. So, it may even be fourth hearsay.

THE REFEREE: What is she going to say, that Judge Fitzgerald called her, told her there was a threat and did Judge Fitzgerald tell her who the threat was from?

MS. CENCI: I believe so, Your Honor.

THE REFEREE: I'm going to allow it. I think that the rules of evidence are relaxed, and I think it goes to the weight, not the admissibility, so let's bring the witness back. And the witness is certainly subject to cross-examination. Ms. Gallagher, thank you. You're still under oath. Thanks. Ms. Cenci?

BY MS. CENCI:

Q. Ms. Gallagher, sorry for the delay.

A. That's okay.

Q. Before you left, I was asking you about whether you learned of an alleged threat from Mr. Iannone against you. Did you learn about that?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 A. Yes.

2 Q. And I think you were beginning to tell us how you learned about the
3 threat? How did you learn about it?

4 A. Judge Molly Fitzgerald stopped by my office, I believe it was March
5 maybe 2018, and told me that there was credible evidence that--

6 MR. DEROHANNESIAN: --I want to make my
7 record is clear that I'm objecting on the ground that it's
8 outside the scope of the complaint, there's no connection.
9 Now, we're also getting into the witness giving hearsay
10 opinion testimony concerning someone else's opinion on
11 credibility of something. And that's further objection that--
12 If that's what this planned testimony is, it's totally
13 improper.

14 THE REFEREE: Overruled.

15 MR. DEROHANNESIAN: Okay.

16 MS. CENCI: Thank you.

17 BY MS. CENCI:

18 Q. What did Judge Fitzgerald tell you?

19 A. She told me that there was credible evidence that David Iannone had
20 just received a pistol permit and if he were to become terminally ill, he
21 would put a bullet through Mr. Kachadourian and myself, head.

22 Q. What was your reaction to learning that?

23 MR. DEROHANNESIAN: Objection, irrelevant
24 because there's no connection. Her state of mind would be
25 irrelevant.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 THE REFEREE: The second part of your objection
2 is sustained. The first is not. Ask another question.

3 BY MS. CENCI:

4 Q. What happened as a result of this information, if you know?

5 A. I--

6 MR. DEROHANNESIAN: Objection. Not relevant
7 what happened.

8 THE REFEREE: No, overruled.

9 A. I was very upset, I--

10 MR. DEROHANNESIAN: Objection, not
11 responsive.

12 THE REFEREE: That's all right. Go ahead.

13 A. Very upset. Just totally worried about my safety, my family's safety.
14 I don't sleep at night. I worry about--

15 MR. DEROHANNESIAN: --Objection. This is all
16 non-responsive. We're--

17 THE REFEREE: -- I think we've got enough. She
18 was very upset and that's obvious. Ask another--

19 BY MS. CENCI:

20 Q. --Were any changes made in terms of court security, if you know?

21 MR. DEROHANNESIAN: Objection. Irrelevant.

22 THE REFEREE: Overruled.

23 A. They have now placed an officer at the back door just outside my
24 office.

25 Q. And Ms. Gallagher, you have brought a federal lawsuit, or someone

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 brought that on your behalf against Judge Miller and the court system,
2 is that right?

3 A. Yes.

4 Q. I'd like to turn to some other areas, if I could now? Do you know
5 Rebecca Vroman?

6 A. Yes.

7 Q. Who is she?

8 A. She is a court staff employee and she was our supervisor of our team.
9 They have teams. And she worked with us, directly with our team, as
10 in Judge Miller's team.

11 Q. Do you recall about when she came to work in family court?

12 A. Maybe about the summer of '16.

13 Q. 2016?

14 A. Correct. Yes, I believe.

15 Q. Did the judge make any comments to you about Rebecca Vroman at
16 that time?

17 A. He would say that she was fat and ugly and he was going to be the
18 laughing stock of Broome County and he was-- his intentions was to
19 get her fired. He didn't want her working in his-- with him.

20 Q. Did he say why he did not want her working with him?

21 A. He said he would be the laughing stock of Broome County.

22 Q. You said she was on the team, correct?

23 A. Yes.

24 Q. So, you worked with her?

25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. How was your working relationship with her?

2 A. She was fine. She was very knowledgeable, so she helped us a lot and
3 trained us on things. She was pleasant.

4 Q. Did she-- You said she was knowledgeable. Did she appear
5 competent to you?

6 A. Yes.

7 MR. DEROHANNESIAN: Objection.

8 THE REFEREE: Overruled.

9 BY MS. CENCI:

10 Q. Now, we talked about your role in Judge Miller's campaign for family
11 court. Once you became his personal secretary, did he ever ask you to
12 do any kind of political activity?

13 A. Yes.

14 Q. What did he ask you to do?

15 A. He wanted me to keep lists of staff and what they were registered
16 voters and he wanted me to keep lists. Like if he met people, as to
17 their address, find out what they were voting-- what they were
18 registered. He wanted me to keep lists and he wanted me to make the
19 office a campaign office.

20 Q. Is that what he said?

21 A. Yes.

22 Q. When was this?

23 A. Pretty much right from the beginning. He wanted us to work on-- He
24 wanted myself and Mr. Kachadourian to work on campaign issues
25 with making thank you cards and he wanted us to start developing

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301

Empire State Plaza

Albany, New York 12223

(Gallagher - Direct)

1 working on campaign things right from the beginning. So, pretty
2 much over the whole period of time.

3 Q. So, if you know, how long is a family court term?

4 A. 10 years.

5 Q. What campaign, if any, did the judge reference at this time?

6 A. He wanted me working on his brother-in-law, Rick Balles, and he
7 actually had him come into chambers and have us take pictures of
8 him.

9 Q. When was that?

10 A. Spring of '17. 2017.

11 Q. What were the pictures for?

12 A. His brother-in-law was running for mayor of Johnson City and he also
13 wanted, directed me to run an office there for his friend Artan
14 Serjanej. He wanted him to run for judge.

15 Q. When you say, "He--"

16 A. Judge Miller wanted me to have a campaign office there for Artan
17 Serjanej.

18 Q. Office where?

19 A. In Broome County Family Court.

20 Q. Did Judge Miller ask you to do anything else with regard to his
21 brother-in-law's campaign for mayor?

22 A. He demanded that I get signatures.

23 Q. What kind of signatures?

24 A. Petition-- Like on a petition committee. Petition signatures.

25 Q. Have you done that in the past?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

- 1 A. I've done that in the past, yes, for Judge Miller, maybe for others, I'm
2 not sure.
- 3 Q. Did you collect signatures for Mr. Balles?
- 4 A. I did not because at that point, Mr. Kachadourian told me that we
5 weren't allowed to do that.
- 6 Q. I was going to ask you if you were aware of any restrictions on
7 political activity on yourself as a court employee?
- 8 A. I wasn't aware of that before because Judge Miller always had me do
9 that. And then when we started in family court, Mark said we weren't
10 allowed to do that.
- 11 Q. Did you speak with the judge about your failure to have collected
12 these petitions?
- 13 A. Yes, I said, "We're-- I can't do that. We're not allowed to do that."
- 14 Q. What was his reaction?
- 15 A. He was very angry.
- 16 Q. I want to turn to another area right now, if I could? Were you aware
17 whether Judge Miller, as a Johnson City Village Court Judge or Town
18 of Union Judge, also had a private practice of law?
- 19 A. Yes.
- 20 Q. How were you aware of that?
- 21 A. Well, when I worked for him in the Village of Johnson City, we would
22 have to fax things or talk to his secretary. First it was Terry Hoosier, I
23 think was her name and then it was Donna Filip, and go over conflicts
24 every week.
- 25 Q. Conflicts for what?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

- 1 A. To see if there were conflicts with the cases. Like if he represented
2 any of the maybe defendants that were coming in. So, every week we
3 had to go over. Is that what you were talking--
- 4 Q. --Well, no. I'm just-- That's fine. I just asked you how you knew he
5 was in private practice.
- 6 A. And he also had represented me in matters.
- 7 Q. Now, you mentioned this Donna Filip. Who was she?
- 8 A. She was his secretary at his law office.
- 9 Q. Where was the law office, if you know?
- 10 A. North Street in Endwell.
- 11 Q. Have you been there?
- 12 A. Yes.
- 13 Q. Do you know whether after Judge Miller became a family court judge,
14 he was in contact with Ms. Filip?
- 15 A. Yes.
- 16 Q. How do you know about that?
- 17 A. She-- He talked on speaker phone and she called almost on a daily
18 basis, many times a day.
- 19 Q. For what period of time are you talking about?
- 20 A. 2015, the whole time we were there. She was calling the whole time.
21 She came down at different times and would bring him files.
- 22 Q. What files?
- 23 A. Whatever files. I don't know what files they were, just files.
- 24 Q. Files from the law office?
- 25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. Did you have any occasion to see any of these files? See any records
2 pertaining to these files?

3 A. With what she brought down? No, I didn't see that stuff.

4 Q. Do you know whether the judge had any occasion to go to the law
5 office while he was family court judge?

6 A. Yes, he did that often.

7 Q. How did you know that?

8 A. He would tell us.

9 Q. When you say "us," who are you referring to?

10 A. He would tell Mark and I. Like he would be late or he would have to
11 go down there at lunch and he would tell us what he was doing or
12 have us go with him. I didn't go often. I only went a few times.

13 Q. When he would say what he was doing, what did he say?

14 A. He had to run to the law office.

15 Q. Did the judge ever ask you to do anything relating to the law office
16 after you became his personal secretary?

17 A. Yes.

18 Q. What-- Generally, what did he ask you to do?

19 A. He had me go to his law office one time to make copies of things and
20 then he had Mark and I one time take some files off site to copy some
21 things for him. And then one time in family court, he had me type a
22 letter for him about a case.

23 Q. May I approach the witness?

24 THE REFEREE: Yes.

25

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 BY MS. CENCI:

2 Q. Ms. Gallagher, I'm showing you Exhibit 2V for identification.

3 MS. SCALISE: I'm sorry, what did you say it was?

4 BY MS. CENCI:

5 Q. 2V as in Victor. It's a poor copy, but do you recognize that?

6 A. Yes, this is the letter I typed.

7 Q. When did you type the letter?

8 A. I'm-- It's dated November 6, 2015, so I'm assuming that day.

9 Q. And how did you come to type this letter?

10 A. Judge Miller brought in his mail and he opened this mail and there
11 were checks that weren't signed, so he was really upset and he wanted
12 me to copy these checks and this envelope, stuff that it came in and he
13 asked me to write a letter sending it back.

14 Q. So, I've shown you a two-page document, is that right?

15 A. Yes.

16 THE REFEREE: What's the second page?

17 THE WITNESS: A copy of three unsigned checks.

18 BY MS. CENCI:

19 Q. So, did the judge dictate the letter to you or how did you come to type
20 it up?

21 A. I don't believe he dictated it. He just asked me to do something brief
22 and then I did something brief and then he had me change it like two
23 more times, even though it was pretty generic.

24 Q. Now, that's not a letter from yourself, is it?

25 A. No.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Direct)

1 Q. And that's not a letter from Judge Miller either, is it?

2 A. No. No, it's not.

3 Q. Who does the letter purport to be from?

4 A. Donna Filip.

5 Q. And you typed that letter, is that right?

6 A. Yes.

7 Q. Why did you type the letter as coming from Donna Filip?

8 A. Because Judge Miller asked me to.

9 Q. What did you do with this letter once you typed it?

10 A. I gave it back to Judge Miller.

11 Q. The original?

12 A. Yes.

13 Q. And what about the checks on the following page? What did you do
14 with those?

15 A. I gave those back to him also.

16 Q. Why did you do that? Did he ask for the letter back or what? Why
17 did you give it back to him?

18 A. He asked me to type it for him and I gave them back. He asked me to
19 type it, make copies of everything and give it back to him.

20 Q. So, Your Honor, I'm going to move Exhibit 2V into evidence.

21 THE REFEREE: Any objection?

22 MR. DEROHANNESIAN: May I see it?

23 THE REFEREE: You haven't seen this before?

24 MR. DEROHANNESIAN: I've seen it. I want to

25 make sure it's-- There's-- I've seen different versions. No

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301

Empire State Plaza

Albany, New York 12223

(Gallagher - Direct)

1 objection.

2 THE REFEREE: Received.

3 BY MS. CENCI:

4 Q. Now, just for the record, Ms. Gallagher?

5 A. Yes.

6 Q. Where did you type that letter, Exhibit 2V, now in evidence?

7 A. In my office.

8 Q. In family court?

9 A. In family court, yes.

10 Q. And is that where you had the conversation with the judge about
11 preparing the letter?

12 A. The conversation was in his office, which was yeah, adjoining to my
13 office.

14 Q. In family court chambers?

15 A. Yes, in family court chambers.

16 Q. I'd like to show the witness Exhibit 2W for identification. Showing
17 you 2W for identification.

18 A. Okay. Mm-hmm.

19 Q. Do you recognize that?

20 A. Yes. He had me copy these checks.

21 Q. "He" being?

22 A. Judge Miller had me copy these checks.

23 Q. That's a photocopy, correct?

24 A. Yes.

25 Q. Was it the original checks that you photocopied?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 A. No, they were different checks.

2 Q. No, I'm sorry. In the exhibit you're looking at, is that a photocopy of
3 original checks he gave you?

4 A. Oh, I'm not sure.

5 Q. So, you might have copied a copy of checks?

6 A. Could be. Yeah, I don't remember.

7 Q. What-- Where did this occur?

8 A. Broome County Family Court.

9 Q. Did the judge say why he wanted you to photocopy the checks?

10 A. He had me photocopy everything. He kept copies of everything.

11 Q. Do you know where the judge had the original of those checks?

12 A. Yes.

13 Q. You saw the originals?

14 A. Yes.

15 MR. DEROHANNESIAN: Again, the foundation
16 for personal knowledge.

17 THE REFEREE: She asked, "Do you know if he
18 had the originals?" and she said, "Yes," so that's the
19 foundation. You can explore it on cross but the answer
20 stands.

21 MS. CENCI: Your Honor, I'd like to--

22 THE REFEREE: --Are you offereing?

23 MS. CENCI: I'd like to offer that, yes.

24 THE REFEREE: Any objection? 2W.

25 MR. DEROHANNESIAN: May I *voir dire*?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Voir Dire)

1 THE REFEREE: Yes.

2 VOIR DIRE BY

3 MR. DEROHANNESIAN:

4 Q. What is 2W a copy of?

5 A. Checks.

6 Q. And are they checks that you saw? Did you see original checks that
7 you copied?

8 A. Yes, and he had me copy-- After that, he had me copy money orders
9 because he cashed those into money orders, I had to copy those too.

10 Q. So, you're saying that 2W are photocopies of original checks, correct?

11 A. I'm not sure. I'm not sure if they were. The money orders were
12 original money orders I copied.

13 Q. Where did you get the original checks from if you got original checks?

14 A. These checks were original checks. Those ones--

15 THE REFEREE: --After-- when you say these,
16 that's 2V?

17 THE WITNESS: 2V are original checks.

18 BY MR. DEROHANNESIAN:

19 Q. And 2W?

20 A. I can't remember those ones.

21 Q. Do you know where you got whatever you copied, which is--

22 A. --He would give me things to copy.

23 Q. And again, you don't know if these are copies of a copy or copies of
24 an original?

25 A. I don't know.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 MR. DEROHANNESIAN: I would object on lack
2 of foundation.

3 THE REFEREE: Overruled. Admit. So, I'll receive
4 2W.

5 MS. CENCI: I'd like to show another exhibit, Your
6 Honor.

7 THE REFEREE: Just for the record, is-- are the two
8 checks that are the copy, that is 2W, that's Exhibit D to the
9 complaint, isn't it?

10 MS. CENCI: Yes.

11 THE REFEREE: Thank you. Yep, go ahead.
12 You're all set.

13 MS. CENCI: Oh, they're just looking at the exhibit.

14 THE REFEREE: Oh, okay, thank you.

15 MS. CENCI: Okay?

16 MR. DEROHANNESIAN: Mm-hmm.

17 DIRECT EXAMINATION

18 BY MS. CENCI:

19 Q. Ms. Gallagher, I'll show you Exhibit 6Q--

20 A. --Okay--

21 Q. --for identification and ask you to take a look at that. Do you
22 recognize that document?

23 A. These are-- Yes.

24 Q. What is that?

25 A. These were copies of checks, too.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Q. Where did you see them initially? Where did you see that?

2 A. Those ones, I'm not sure if those ones were-- He had me copy those
3 also or had me make copies of those. I can't remember exactly how
4 those ones went.

5 Q. Okay.

6 A. But he always would have me make copies of copies and copies of
7 checks and, I mean, on a daily basis.

8 Q. So, can you identify Exhibit 6Q as something the judge had you copy?

9 A. This one was copies of Richard-- Well, this was, I think it's Mallard,
10 and Richard Miller and Richard H. Miller. Three checks.

11 Q. From a person by the name of Brigham?

12 A. Beverly Brigham. That was an estate that he talked to us about that he
13 was working on.

14 Q. So, what's your testimony as to whether or not you can identify this as
15 something you've seen before?

16 A. These were copied. I'm not sure if he had me copy copies of them or
17 had me copy the checks. I can't-- I don't know.

18 Q. So--

19 A. --The only ones I know for a fact that he had me copy these--

20 Q. --Okay, wait.

21 THE REFEREE: These-- These-- You have to give
22 a number when you're talking about these and this and that.

23 THE WITNESS: Yep. Okay, sorry. Go ahead.

24 BY MS. CENCI:

25 Q. Focus on Exhibit Q-- 6Q for a moment.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 A. Yes.

2 Q. I just-- So, we can understand your testimony, you have seen either of
3 these checks or photocopies of them before, is that correct?

4 A. Yes.

5 Q. And did you see them-- Where did you see them?

6 A. I believe he had me make copies of those also. That's how I got
7 those.

8 Q. Okay, so it was either a copy of the original checks or a copy of a
9 copy, is that what you're telling me?

10 A. I'm not sure.

11 THE REFEREE: Well, it had to be one or the other

12 A. One or the other, I'm not sure.

13 Q. But it was the judge who provided that to you?

14 A. Yes.

15 Q. And again, where was that?

16 A. Broome County Family Court.

17 Q. Can you say in reference to the date on the checks, when this
18 occurred?

19 A. Well, I mean I don't know. They're dated November 24th, '15.

20 MS. CENCI: Okay. Your Honor, I move Exhibit
21 6Q into evidence.

22 THE REFEREE: Any objection?

23 MR. DEROHANNESIAN: No objection.

24 THE REFEREE: Received.

25 MS. CENCI: Thank you. Can I have a moment,

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Direct)

1 Your Honor?

2 THE REFEREE: Yes.

3 MS. CENCI: I've no further questions.

4 THE REFEREE: Do you need a break or you're all
5 right?

6 THE WITNESS: I'm all right.

7 THE REFEREE: Ready?

8 MR. DEROHANNESIAN: This would be a good
9 time for a break.

10 THE REFEREE: All right. Let's take a-- Five
11 minutes enough?

12 MR. DEROHANNESIAN: A little bit more.

13 THE REFEREE: Ten?

14 MR. DEROHANNESIAN: Ten.

15 THE REFEREE: Seven and a half?

16 MS. SCALISE: Ten.

17 THE REFEREE: Eight? Ten. Okay, let's go off the
18 record.

19 (OFF THE RECORD)

20 THE REFEREE: Counsel for the Commission is
21 present. Counsel for the Respondent is present and the
22 Respondent himself is present and we're going to have the
23 cross-examination of Ms. Gallagher.

24 THE REFEREE: Ms. Gallagher, you're still under
25 oath.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 THE WITNESS: Okay.

2 THE REFEREE: All right, any time you're ready.

3 CROSS-EXAMINATION BY

4 MR. DEROHANNESIAN:

5 Q. Can you identify by the name the individuals with whom you have
6 spoken to about your testimony today?

7 A. Who I spoke to about today? I haven't spoken to anybody today.

8 THE REFEREE: Well, what he's trying to find out
9 is in preparation for coming here today and testifying--

10 THE WITNESS: --Oh--

11 THE REFEREE: --did you talk to anybody about
12 what you're going to say?

13 THE WITNESS: Cathleen and these two, I'm sorry,
14 I don't know their names.

15 THE REFEREE: Commission lawyers?

16 THE WITNESS: Yes.

17 THE REFEREE: All right.

18 BY MR. DEROHANNESIAN:

19 Q. And prior to today, have you met with the Commission lawyers?

20 A. Yes.

21 Q. And when was the last time that you met with them?

22 A. I don't know.

23 Q. Pardon?

24 THE REFEREE: You have to keep your voice up if
25 you can.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. I'm not sure when the last time was.
- 2 Q. Was it in the past week?
- 3 A. Oh, December 27th.
- 4 Q. And how long was that meeting?
- 5 A. Maybe approximately two hours.
- 6 Q. And was Mr. Kachadourian present at that time, also?
- 7 A. No.
- 8 Q. Did you see Mr. Kachadourian that day?
- 9 A. He came in sick and went into his meeting and then he left after his
- 10 meeting.
- 11 Q. Have you seen Mr. Kachadourian since December 27th?
- 12 A. Briefly.
- 13 Q. Have you spoken to Mr. Kachadourian since December 27th?
- 14 A. Yes, I have.
- 15 Q. And how many occasions have you spoken to Mr. Kachadourian since
- 16 December 27, 2017 [sic]?
- 17 MS. CENCI: Well, Your Honor, I object unless it's
- 18 in reference to her testimony.
- 19 MR. DEROHANNESIAN: I have to start someplace
- 20 to narrow it.
- 21 MS. CENCI: I mean, they work together.
- 22 THE REFEREE: Well, I was going to ask that. You
- 23 see him every day at work?
- 24 THE WITNESS: Yes.
- 25 THE REFEREE: So, now you--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. And since December 27th, have you had occasion to discuss with Mr.
3 Kachadourian the testimony in this proceeding?

4 A. We have not discussed the testimony.

5 Q. Have you seen Mr. Kachadourian since Monday of this week?

6 A. No, I didn't work yesterday. I was very sick.

7 Q. Have you spoken to Mr. Kachadourian since Monday of this week?

8 A. I just let everybody know that I was not coming in because I was sick.

9 Q. Have you spoken to Mr. Kachadourian since Monday of this week?

10 A. To let everybody know I wasn't coming in because I was sick.

11 THE REFEREE: You called him to tell him you
12 weren't coming?

13 THE WITNESS: And Cheryl, the chief clerk.

14 THE REFEREE: All right.

15 BY MR. DEROHANNESIAN:

16 Q. And prior to testifying today, what materials have you reviewed?

17 A. Whatever was given to me.

18 Q. That's my question. What material was given to you?

19 A. Whatever Cathleen had me review.

20 THE REFEREE: What he's trying to find out is
21 what you actually looked at. Can you tell us what it was
22 that you were given to look at?

23 A. She had me review the testimony that I provided before.

24 Q. Anything else?

25 A. I don't believe so.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. Did you look at any documents besides the testimony you previously
2 provided?
- 3 A. I reviewed the recently filed federal claim.
- 4 Q. Do you mean the federal lawsuit you filed?
- 5 A. Yes.
- 6 Q. Did you review anything else besides the testimony before the
7 Commission and the federal lawsuit that you filed?
- 8 A. Not that I'm aware of.
- 9 Q. And when you refer to the testimony you reviewed-- I'll show you
10 Repondent's Y for identification. If you would look at that.
- 11 A. There were several things that we didn't go over that are in here.
- 12 Q. Does Exhibit Y contain anything that you went over?
- 13 A. Oh, Y?
- 14 Q. That whole item. That whole set of papers is Respondent's Y.
- 15 A. There were things in there, yes, that we didn't go over.
- 16 Q. Okay, well, are there things in there that you did go over?
- 17 A. Yes.
- 18 Q. Okay, what-- There's testimony? Is that the testimony you're
19 referring to?
- 20 A. The testimony, yes.
- 21 Q. Okay, and then do you see a report from the inspector general? Right
22 after the testimony?
- 23 A. Exhibit 1?
- 24 Q. Yes.
- 25 A. I don't believe that that was attached.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. So, you don't believe that was attached to the testimony you provided?

2 A. I don't believe so. I don't recall if it was.

3 Q. Is there anything besides the testimony in that packet, Respondent's Y
4 that you did review?

5 A. That I did review?

6 Q. Yes.

7 A. I don't know what B is because you can't read it. C we did not
8 review. 3 we did not review. 4, 6, 7, we did not go over 7. I don't
9 think we went over 9, that wasn't-- We didn't go over 10. So, there
10 were things in there, yes, that no, we did not go over.

11 Q. And when you testified before the Commission Judicial Conduct,
12 were there exhibits that they marked and gave you?

13 A. Yes.

14 Q. And are those exhibits attached to your testimony?

15 A. Some of them I don't believe were mine.

16 Q. So, are there exhibits-- Are the exhibits that you were shown at your
17 deposition or testimony, attached in part of Respondent Y?

18 A. Some of them are not.

19 MR. DEROHANNESIAN: Could I have a
20 stipulation that this exhibit does contain the exhibits which
21 were marked?

22 MS. CENCI: Yes, sure. I'm not-- I think the
23 witness is just confused.

24 THE REFEREE: Just so we have a clear record,
25 Exhibit Y is testimony from August 8, 2017, before the

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Commission, correct?

2 MR. DEROHANNESIAN: With exhibits that were
3 marked during the proceeding.

4 THE REFEREE: And your stipulation is that the
5 exhibits to this transcript, Exhibit Y, are what?

6 MR. DEROHANNESIAN: Are the exhibits which
7 were identified during the testimony on top-- There's a list
8 of what they are attached to the transcript.

9 MS. CENCI: Wait, 1 through 9, counsel, is that
10 what you-- or 1 through 10, is that what you have? Is that
11 what that is?

12 MS. SCALISE: You want to take--

13 MS. CENCI: --I mean, there were other statements
14 by her that were provided, I just want to--

15 MR. DEROHANNESIAN: --Yes. No, no. I
16 meant--

17 THE REFEREE: --Yes, there are 10 exhibits on
18 Exhibit Y.

19 MS. CENCI: Yes. Yes.

20 THE REFEREE: All right. That's fine.

21 MR. DEROHANNESIAN: And then, for the record,
22 there was one that's not legible in there and I'd asked Ms.
23 Cenci what that was. If you would look at attachment B
24 and attachment B is what is received in evidence today as
25 Exhibit 2V.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 MS. CENCI: Yeah, I don't know that it had the
2 checks attached or if it was just the letter. I couldn't say
3 that but--

4 MR. DEROHANNESIAN: --We believe--

5 MS. CENCI: --We believe it to be the November 6,
6 2015, letter that was marked as Exhibit 2V.

7 MR. DEROHANNESIAN: So, that was the only
8 part in there that's illegible and we've discussed that before
9 testimony began.

10 THE REFEREE: That's fine. You've got your
11 information clarified on the record.

12 BY MR. DEROHANNESIAN:

13 Q. Yes. Yes. On July 7, 2017, you were interviewed by the inspector
14 general of the Office of Court Administration?

15 A. Yes.

16 Q. Were you interviewed by anyone else prior to July 7, 2017, about any
17 of the allegations which you have made against Judge Miller?

18 A. Interviewed? I don't believe so.

19 Q. On-- Pardon?

20 THE REFEREE: No, she said she doesn't believe
21 so.

22 BY MR. DEROHANNESIAN:

23 Q. On July 7, 2017, where did your interview with the inspector general
24 take place?

25 A. In Albany.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And how did you get to Albany on July 7th?

2 A. My husband.

3 Q. Was anyone else with you?

4 A. Mr. Kachadourian.

5 Q. Was he in the car with you?

6 A. Yes.

7 Q. And when you were interviewed by the inspector general, was an
8 attorney with you?

9 A. Yes.

10 Q. From the-- a law firm in Albany?

11 A. Yes.

12 Q. The same law firm that represents you in the federal lawsuit which
13 you have filed against Judge Miller, correct?

14 A. Yes.

15 Q. Did you speak to your private attorney before the inspector general
16 interview?

17 A. I believe briefly we did, yes.

18 Q. And would it be fair to say that you have had many conversations with
19 your attorney concerning the allegations against Judge Miller since
20 July 7, 2017?

21 MS. CENCI: Your Honor, I object. I don't see the
22 relevance of this. Her--

23 THE REFEREE: --No, I'll overrule it and I assume
24 we're not going to get into the substance of the
25 conversations.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 MR. DEROHANNESIAN: Correct. Correct.

2 A. I don't know about-- I mean, we've had conversations, yes.

3 Q. Approximately how many in the past year since July 2017?

4 A. Quite honestly, I don't think we've really had a lot of conversations.

5 Q. That's not my question.

6 A. I'm not sure to be honest with you.

7 Q. You had discussions to prepare for the federal lawsuit you filed,
8 correct?

9 A. Not in person. Just over the phone.

10 Q. Those are discussions, correct?

11 A. Yes.

12 Q. And you also have prepared with that firm, filings with the EEOC,
13 correct?

14 A. That is correct.

15 THE REFEREE: Just try to keep your voice up if
16 you can.

17 THE WITNESS: Okay, I'm sorry.

18 THE REFEREE: I know you're not feeling well but
19 do the best you can.

20 BY MR. DEROHANNESIAN:

21 Q. And those were also prepared in connection with your private law firm
22 in Albany, correct?

23 A. That is correct.

24 Q. And during your interview with the inspector general, you knew that
25 they wanted to hear what you had to say about Judge Miller, correct?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. They--
- 2 Q. --The inspector general--
- 3 A. --The inspector general, yes.
- 4 Q. And you weren't trying to hold back at that point, correct?
- 5 A. Correct.
- 6 Q. And during approximately one month later, you were in Albany to
- 7 testify, correct?
- 8 A. I believe so, yes.
- 9 Q. And if you look at Respondent's Y, that would be August 8, 2017,
- 10 correct?
- 11 A. Correct.
- 12 Q. And when you testified, one of the questions you were asked was
- 13 about the interview you gave the inspector general, correct?
- 14 A. I guess, yes.
- 15 Q. Are you guessing?
- 16 A. I'm sure, yes, I was.
- 17 Q. Okay, and you were asked about the report that the inspector general
- 18 had prepared concerning their interview of you, correct?
- 19 A. Yes.
- 20 Q. And you were asked to affirm and swear to the truthfulness and
- 21 accuracy of what you told the inspector general, correct?
- 22 A. Yes.
- 23 Q. And you did affirm that the inspector general's summary was fair and
- 24 accurate summary of your interview, correct?
- 25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. Have you spoken to Judge Molly Fitzgerald about allegations against
2 Judge Miller?

3 A. Before we went to--

4 Q. --First at any time.

5 A. Yes, but not in depth.

6 Q. When was the first time that you spoke to Judge Fitzgerald about any
7 allegation against Judge Miller?

8 MS. CENCI: Your Honor, at this point, I do have an
9 objection. This seems to be fishing for information relative
10 to the civil lawsuit and does not seem relevant to this
11 proceeding. If counsel wants to impeach the witness with
12 respect to a prior statement, I think he's free to try and do
13 that, but he just seems to be asking questions in a fishing
14 expedition, not with respect to this proceeding.

15 THE REFEREE: Well, you brought out on direct
16 conversation that occurred in March of '18.

17 MS. CENCI: Yes, but not any conversation about
18 any-- about anything relative to Judge Miller.

19 THE REFEREE: I agree but I don't think we've
20 reached the point where your objection would be sustained.
21 I understand it and I'm very cognizant of what your
22 objection is but I think we're still a little preliminary
23 because all we've asked-- all he'd asked is has she ever
24 talked to them. And we don't have any substance, we don't
25 have a time frame, so I hear you and keep listening.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Do you recall my question, ma'am?

3 A. No, I'm sorry.

4 THE REFEREE: All right, start over.

5 BY MR. DEROHANNESIAN:

6 Q. When is the first time you spoke to Judge Molly Fitzgerald about any
7 allegation against Judge Richard Miller?

8 A. I believe the end of June-- sometime in June--

9 THE REFEREE: --What year--

10 A. 2017.

11 Q. When is the next time after June of 2017 that you spoke to Judge
12 Fitzgerald about any allegation against Judge Richard Miller?

13 A. Maybe in March of 2018. I'm not sure. I don't really speak to her or
14 see her.

15 Q. So, you're saying from June of 2017 until March of 2018, you did not
16 speak to Judge Fitzgerald about any accusation against Judge Miller?

17 MS. CENCI: Objection. That's not what she said.

18 THE REFEREE: I think the record will bear that
19 out. I think it is. He said when was the first time and she
20 said in June of '17. When was the next time? She said, "I
21 think it's around March of '18," so, it's-- I think it's a fair
22 statement of what she said. Overruled.

23 A. I don't recall but I know she stopped in my office in March of 2018,
24 but I don't see her, I don't work with her. You know, I'll occasionally
25 see her in the parking lot and say hello and that's about it. I don't

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 recall.

2 Q. And in March of 2018, when she approached you about some
3 information that she had, correct?

4 A. Correct.

5 Q. And that was about Mr. Iannone, correct?

6 A. Iannone, yes. Correct.

7 Q. We'll talk about that later. Have you spoken to Judge Rita Connerton
8 about any allegation or accusation that you have made against Judge
9 Miller?

10 MS. CENCI: Objection.

11 THE REFEREE: Grounds?

12 MS. CENCI: Same, Your Honor. He's fishing
13 around for information relative to the lawsuit against the--
14 against court officials. And Rita Connerton was not
15 mentioned in the witness's direct testimony at all. It's
16 completely irrelevant to this proceeding.

17 THE REFEREE: Isn't that so?

18 MR. DEROHANNESIAN: It has not been
19 mentioned yet, that is correct.

20 THE REFEREE: So, isn't it outside the scope of the
21 direct?

22 MR. DEROHANNESIAN: It is not-- It is not part
23 of the direct but it's also part of whether or not there's been
24 any shaping of the witness's testimony. I don't think I'm
25 limited by who the Commission asked about.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 THE REFEREE: No, I mean, obviously you can
2 explore anything that has to do with credibility and bias and
3 shaping of testimony if you have any belief that that
4 occurred, any reasonable belief that it occurred. But it
5 seems-- I mean, does she even know who Judge Connerton
6 is? I think you need to establish--

7 MR. DEROHANNESIAN: --I would agree with
8 that. Yes.

9 THE REFEREE: All right. Let's--

10 BY MR. DEROHANNESIAN:

11 Q. Do you know who Judge Rita Connerton is?

12 A. Yes.

13 Q. Who is she?

14 A. She is a family court judge. She works upstairs, second floor.

15 Q. And is-- she was referred to as the supervising family court judge?

16 A. Yes.

17 Q. And you've known her since January 1st of 2015?

18 A. Yes. January 2nd, yes.

19 Q. At any time prior to July 1, 2017, while you were working, did you
20 approach Judge Connerton to tell her anything that you say Judge
21 Miller was doing?

22 MS. CENCI: Objection.

23 THE REFEREE: Overruled. You can answer.

24 A. I don't know if I did or not. I really can't recall.

25 Q. Is it fair to say you have no recollection of ever making any report to

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Judge Connerton from the day you started working until you went to
2 the inspector general for an interview. Is that fair to say?

3 A. Yes.

4 Q. In 2015, did you make-- receive any training from the State of New
5 York with respect to reporting conduct or misconduct in the
6 workplace?

7 A. I did.

8 Q. Did you receive training in 2016 with respect to the reporting of
9 conduct or misconduct in the workplace?

10 A. I'm not sure about '16, but in '15 we did receive that. We had to go to
11 the state office building for that training and there was a question
12 asked like what if the--

13 Q. --I didn't ask you about questions. You received the training, correct?

14 A. Yes.

15 Q. And was Mr. Kachadourian part of that training?

16 A. Yes.

17 Q. And did this training provide you information on how to make reports
18 concerning any harassing behavior in the workplace?

19 A. Not if it pertained to a judge.

20 Q. Did it provide you with information on how to make a complaint
21 involving harassing behavior of any employee or co-worker?

22 A. Yes.

23 Q. And did it provide you with information on where to make that report?

24 A. I don't recall.

25 Q. Did the training you received from the State of New York provide you

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301

Empire State Plaza

Albany, New York 12223

(Gallagher - Cross)

1 with information such as a phone number to call to make a complaint
2 concerning harassing behavior in the workplace?

3 A. I don't recall.

4 THE REFEREE: You have to keep your voice up.

5 A. I don't recall.

6 Q. Did the training you received in 2015 provide you information with an
7 email address to contact should you feel there was inappropriate
8 behavior in the workplace?

9 MS. CENCI: Your Honor, may I have an objection
10 or at least ask for some clarification? The witness has
11 already said that the training didn't cover reporting judicial
12 conduct. Is counsel going to confine his questioning to
13 reporting other employees' conduct? And if so, I'm not
14 sure how that's relevant.

15 THE REFEREE: I agree with you. I'm not sure
16 where we're headed.

17 MR. DEROHANNESIAN: Mm-hmm.

18 THE REFEREE: But she was quite clear that she
19 did have training and she volunteered that it didn't include
20 judges. I think that's a fair inquiry.

21 BY MR. DEROHANNESIAN:

22 Q. And the training you received, did it not include people that you work
23 with in the court system?

24 A. It did include, yes.

25 Q. And Judge Miller is someone that you work with in the court system,

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 correct?

2 A. Yes, but there was a question asked if it-- about judges and it said
3 that--

4 Q. --I didn't ask you about the question. Would you recall the name of
5 the program you were trained?

6 A. Not off the top of my head.

7 Q. Pardon?

8 A. I-- I don't know off-hand.

9 Q. I'd like to show you Respondent's T for identification. Does that
10 refresh your recollection that you received training in a program
11 called, "The Work Place Safe Program?"

12 A. I did review this, I think after the fact, I guess.

13 Q. So, the training you received was pursuant to the Work Safe Office
14 Program, correct?

15 A. I'm assuming, yes.

16 Q. And looking at Respondent's T. Does that refresh your recollection of
17 a phone number that you can call to report allegations of misconduct
18 against employees of the court system?

19 MS. CENCI: Your Honor, I have an objection.

20 Respondent is not an employee of the court system. He is
21 an elected judge. I'm not sure where counsel is going with
22 this. If it has-- If it has to do with reporting some other
23 employee, I'd ask that somehow this be tied in with that,
24 that there be some connection made. It's not relevant to a
25 complaint about judicial conduct.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 THE REFEREE: Well, what hasn't been
2 established, at least in my mind, is that the Work Safe and I
3 don't remember what the other one's called?

4 MS. SCALISE: Work Life.

5 THE REFEREE: Work Life? I don't think it's been
6 established as a fact that judges are not included in those
7 programs. I think it's probably a very easy thing to
8 determine whether they are or are not included, and I'm
9 sure you know that one way or the other. I assume all
10 counsel know that one way or the other. I happen not to
11 know so I think that so far, we're still on solid ground.

12 MR. DEROHANNESIAN: Actually, there's been
13 testimony about employees in this case, too, misconduct.
14 It's relevant certainly on that aspect if nothing else. And I
15 don't want to--

16 THE REFEREE: --That's fine. Let's continue.

17 BY MR. DEROHANNESIAN:

18 Q. Does that refresh your recollection, and again, I'm referring to
19 Repondent's T, that there is a phone number that you can call to make
20 complaints under the Work Safe Office Program?

21 A. I think I was given this at some point after I made some complaints,
22 yes.

23 THE REFEREE: That's not what he asked you.
24 What he said is--

25 THE WITNESS: --I see the phone number, yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 THE REFEREE: He said you've looked at Exhibit
2 T, and having looked at it, do you now remember that there
3 was a phone number that you could call? Not what the
4 number is, but that a phone number exists for making
5 complaints. That's the question. Do you now remember
6 that?

7 THE WITNESS: I don't remember being given this.
8 I remember I went to--

9 BY MR. DEROHANNESIAN:

10 Q. --Do you remember that as part of your training, you were given an
11 email address you could contact to report allegations of misconduct
12 against employees of the court system?

13 A. I remember going to a class at the state office building and I don't
14 think they gave us any literature, but we went to a class. But I believe
15 you if they--

16 Q. --The purpose of that class was to inform you that you had the right to
17 make complaints against people you work with, correct?

18 A. Yes.

19 Q. And that was in 2015, correct?

20 A. Correct.

21 Q. You have a computer at home, correct?

22 A. I do not.

23 Q. You have a computer at work?

24 A. Yes.

25 Q. You have a smart phone?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Yes.

2 Q. Did you ever Google or search, "Complaint against judge?"

3 MR. DEROHANNESIAN: You need a break,
4 ma'am?

5 MS. CENCI: Your Honor, how-- may I ask, how is
6 this relevant? Whether or not she made a complaint against
7 Respondent--

8 THE REFEREE: --No, I think it is but do you need a
9 break?

10 A. No, I don't think I ever did Google that, no, but I was fearful for my
11 life, too.

12 Q. No, I didn't ask you that, ma'am.

13 A. Okay. I don't think I ever Googled that, no. To be honest with you,
14 no, I don't think I ever Googled that.

15 Q. Did you ever Google-- or excuse me, did you ask Mr. Kachadourian
16 in 2015 or 2016 how you or he could make a complaint against a
17 judge?

18 A. Mr. Kachadourian?

19 Q. Yes.

20 THE REFEREE: Yes. He misspoke.

21 A. We did talk about it, yes.

22 Q. And did Mr. Kachadourian tell you that there was such a thing as a
23 website, Commission on Judicial Conduct, to file a complaint?

24 MS. CENCI: Objection. Hearsay.

25 THE REFEREE: No, I'll allow it.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. I don't recall that.

2 Q. When you drove to the Commission on Judicial Conduct on August
3 8th, did you drive from Binghamton?

4 A. Yes.

5 Q. Who drove you?

6 A. My husband.

7 Q. Was anyone else with you when you drove from Binghamton to
8 Albany on August 8th?

9 A. Mr. Kachadourian.

10 Q. Did you talk on the way to Albany?

11 A. We tried not to talk about that stuff. It's just too stressful.

12 Q. And did you talk about Judge Miller on the way from Binghamton to
13 Albany?

14 A. We might have. I don't know.

15 Q. And when you returned on the way back to Binghamton, did you talk
16 about the questions you had been asked?

17 A. I really don't know. We could have. I think we were both pretty
18 upset.

19 Q. Didn't ask you that, ma'am.

20 A. I don't recall.

21 Q. The question is, did you talk to Mr. Kachadourian--

22 THE REFEREE: --Kachadourian--

23 BY MR. DEROHANNESIAN:

24 Q. --Kachadourian about your testimony when you were driving back on
25 August 8th from Albany, New York, to Binghamton?

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 A. I don't recall.

2 Q. Your husband, Scott Gallagher, was driving, correct?

3 A. Yes.

4 Q. Mr. Gallagher knew the reason you were going to Albany.

5 A. Yes.

6 Q. He knew the nature of the allegations that you were making against
7 Judge Miller.

8 A. Yes.

9 MS. CENCI: Well, objection. It hasn't been
10 established that the witness ever made any allegations at
11 that point against Judge Miller.

12 MR. DEROHANNESIAN: Inspector general on--

13 THE REFEREE: --No, I think she talked to the
14 family court clerk in 2015. It started early. So, yes, that-- I
15 think you're not accurate.

16 MS. CENCI: Well, what do we talk-- How are we
17 characterizing allegations? If she talked to someone that--
18 I think that's a mischaracterization. It's not an allegation.

19 THE REFEREE: I disagree. Overruled if that was
20 an objection.

21 BY MR. DEROHANNESIAN:

22 Q. Your husband, Scott Gallagher, in 2017, worked for a television
23 station in Binghamton?

24 A. That is correct.

25 Q. He still works for that same station?

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 A. Yes. I-- He changed jobs at one point. I'm not sure which year it
2 was.

3 Q. Was he terminated from one station?

4 A. He wasn't terminated, they--

5 MS. CENCI: --Objection.

6 THE REFEREE: Sustained.

7 BY MR. DEROHANNESIAN:

8 Q. When did he leave?

9 A. I believe in 2016 he changed jobs.

10 Q. And in 2017, he was working at Channel 40--

11 A --Correct--

12 Q. --as an assignment editor, correct?

13 A. Correct.

14 Q. And assignment editors help put together the stories that will be aired
15 on television, correct?

16 A. Correct.

17 Q. The day after your testimony in Albany, there were television reports
18 concerning allegations against Judge Miller, correct?

19 A. Correct, but they didn't start with Fox40.

20 Q. I didn't--

21 THE REFEREE: --That's not what he asked.

22 THE WITNESS: Oh.

23 THE REFEREE: He said "television reports,"
24 plural.

25 A. Okay. Whatever date, I'm not sure.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. That-- The reports were the day or two after your testimony in
2 Albany, correct?

3 A. I don't know what day.

4 Q. And there were also reports in the Binghamton newspaper the day or
5 two after your testimony in Albany on August the 8th, correct?

6 A. I guess. I'm not sure. I don't read the paper.

7 Q. Were you aware of news reports concerning Judge Miller after your
8 testimony in Albany on August 8, 2017?

9 A. Yes, I was.

10 Q. You were still working for the Office of Court Administration when
11 you returned to work on August the 9th, correct?

12 A. Yes.

13 MS. CENCI: Well, I have an objection, Your
14 Honor. Technically, I don't think she worked for the Office
15 of Court Administration.

16 MR. DEROHANNESIAN: By whom were you--

17 THE REFEREE: --I think she-- I think she works
18 for the Unified Court System and the Office of Court
19 Administration is an arm of the UCS, but she-- she's an-- I
20 don't know who the paycheck is. I think it's UCS, but--

21 BY MR. DEROHANNESIAN:

22 Q. --You were still employed in family court when you returned on
23 August the 9th, correct?

24 A. Yes.

25 Q. And on the Unified Court System website, they post news reports,

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

- 1 correct?
- 2 A. I don't know.
- 3 Q. Are you aware of the daily news briefing that occurs on the Unified
- 4 Court System and Office of Court Administration website?
- 5 A. No.
- 6 Q. Between your interview with the inspector general on July 7th and
- 7 your testimony on August 8th, did you speak to an individual named
- 8 Garo Kachadourian?
- 9 A. Not that I'm aware of.
- 10 Q. Do you know who Garo Kachadourian is?
- 11 A. That is Mark's relative.
- 12 Q. Have you ever met him?
- 13 A. Yes.
- 14 Q. On how many occasions?
- 15 A. Probably many, I guess.
- 16 Q. When you say many, do you mean more than a couple dozen?
- 17 A. Probably a few dozen.
- 18 Q. Going back many years? Would you--
- 19 A. --I met him through Judge Miller because he always seemed to be
- 20 coming to Judge Miller through village court with tickets and things
- 21 and then that's how I met him.
- 22 Q. So, you met Garo Kachadourian when you were working in Johnson
- 23 City, correct?
- 24 A. Yes.
- 25 Q. In addition to in person meeting with Garo Kachadourian, did you also

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 have phone calls with Mr. Kachadourian from the time you were in
2 Johnson City Court right up and through today?

3 MS. CENCI: Objection, Your Honor. Can we have
4 some showing of relevance?

5 MR. DEROHANNESIAN: I have to lay a
6 foundation for--

7 THE REFEREE: --All right. I have no idea where
8 you're headed because so far--

9 MR. DEROHANNESIAN: --You know,
10 foundations are--

11 THE REFEREE: --No, I understand but-- All right,
12 let's--

13 MR. DEROHANNESIAN: --You have to prep the
14 meals.

15 THE REFEREE: I'm familiar with the cooking
16 process.

17 A. No.

18 Q. You never had phone calls with Garo--

19 A. --Yes, but not up until today, no.

20 Q. Okay. You had phone calls with Mr. Kachadourian, correct?

21 A. I had had some, yes.

22 Q. Some when you were in Johnson City Court?

23 A. Yes.

24 Q. Some while you were working for Judge Miller in family court?

25 A. In the beginning, mm-hmm.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And then there were calls after July 7, 2017.

2 A. He called me saying he only felt sorry for what I was going through
3 and this and that and then I really stopped talking to him.

4 Q. Yes?

5 THE REFEREE: Okay, that's fine. You've
6 answered the question.

7 BY MR. DEROHANNESIAN:

8 Q. And was that in July of 2017?

9 A. Could be. I don't know.

10 Q. And did you tell him that you were involved in something really big?

11 A. No.

12 Q. And did you tell him to watch the news?

13 A. No.

14 Q. And did you tell him there would be stories about Judge Miller
15 coming up in the press?

16 A. No.

17 Q. Now, you're currently working in family court, correct?

18 A. Yes.

19 Q. And you said you're still working for Judge Miller, is that what your
20 testimony is?

21 A. I guess. I guess that's--

22 Q. --You haven't done any work for Judge Miller since July of 2017,
23 have you?

24 A. Well, I still have to go over some vouchers that come in for him which
25 are still coming in and-- I still do his, I guess, work that comes in.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 And then there's a judge that's assigned to cover for him and I do
2 work for him.
- 3 Q. And who's that?
- 4 A. Judge Rosa.
- 5 Q. Okay. So, that's the judge that you are doing work for now?
- 6 A. Well, I do transport orders and I fill in for other people.
- 7 Q. But you haven't performed any work as directed by Judge Miller since
8 July of 2017?
- 9 A. That is correct.
- 10 Q. And who is your current supervisor?
- 11 A. Cheryl Lidell Obenauer. She's the chief clerk.
- 12 Q. And who is your supervisor when you started work on January of
13 2015?
- 14 A. Judge Miller would have been my direct supervisor.
- 15 Q. Did you have any other supervisor?
- 16 A. The chief clerk was Debbi Singer.
- 17 Q. Any other supervisor or just those two individuals?
- 18 A. I think just those two.
- 19 Q. When you worked for Judge Miller, you had certain tasks, is that
20 correct?
- 21 A. Yes.
- 22 Q. Prior to January 1, 2015, had you ever been a secretary to a judge?
- 23 A. No.
- 24 Q. Your work in Johnson Court was as a court clerk, correct?
- 25 A. Correct.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. Would it be fair to say that there were new tasks that you were asked
2 to do when you began working for Judge Miller?

3 A. Yes.

4 Q. Was one of your tasks to inform the court clerks of Judge Miller's
5 schedule?

6 A. I guess if he told me to, yeah.

7 Q. Well, did court clerks have to set a schedule in court for cases for
8 Judge Miller?

9 A. Yes, they did it in court. So, he usually told them when he would be
10 in and out.

11 Q. Was one of your tasks to provide information to the court clerks about
12 Judge Miller's schedule to assist clerks who worked in family court?

13 MS. CENCI: Objection. Asked and answered. She
14 said if he told her to.

15 A. If he told me to.

16 THE REFEREE: --Yeah, that's fine. Overruled.

17 BY MR. DEROHANNESIAN:

18 Q. So, he told you his schedule. Your job was to inform the clerk of that,
19 correct?

20 A. If he told me. If he told me. He liked to do a lot of the scheduling
21 himself because his schedule would change a lot.

22 Q. And part of Judge Miller's schedule involved medical visits, correct?

23 A. That's what he said.

24 Q. Well, you knew that Judge Miller had multiple back surgeries,
25 correct?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. In the past, yes he did.

2 Q. And those surgeries require ongoing physical therapy, correct?

3 A. Correct.

4 Q. And he had appointments for physical therapy after he became family
5 court judge, correct?

6 MS. CENCI: Objection. If-- How would she know
7 that, Your Honor, unless that's what he said? But she
8 wouldn't know that.

9 THE REFEREE: I don't know how she would know
10 he had back surgery but she said he did. She said that she
11 knew that.

12 MS. CENCI: Well, I object at this point to the
13 appointments for physical therapy.

14 THE REFEREE: Only if she knows, I mean. The
15 question is, did he have physical therapy--

16 MR. DEROHANNESIAN: --Yes--

17 THE REFEREE: --and the answer has to be only if
18 she knows.

19 BY MR. DEROHANNESIAN:

20 Q. Did you know that Judge Miller was receiving physical therapy after
21 he became family court judge?

22 A. There were times that he did have physical therapy but he wouldn't
23 tell me.

24 Q. Okay. But you knew that Judge Miller was undergoing physical
25 therapy?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. At some point he was under physical therapy but he wouldn't tell me
2 his schedule. He didn't tell me when he had it.

3 Q. This was-- You knew that he had physical therapy after he became
4 family court judge?

5 A. At some point he had physical therapy, but I didn't know his schedule.

6 Q. And you knew that he had--

7 THE REFEREE: --But that-- No, the answer is yes
8 or no. Did you know that?

9 A. At some point, he had physical therapy but I couldn't tell you when.

10 Q. And were you aware that there were particular times that he was
11 limited to for his physical therapy?

12 A. No.

13 Q. Prior to January 1, 2015, you say you knew Judge Miller, correct?

14 A. Correct.

15 Q. And from approximately 2000, you said?

16 A. 2001.

17 Q. 2001? And then in 2002, you asked Judge Miller to perform your
18 wedding to Scott Gallagher, correct?

19 A. I did not.

20 Q. Scott Gallagher asked.

21 A. Yes.

22 Q. Did you object?

23 A. No.

24 Q. Did you have someone else that you wanted instead of Judge Miller to
25 perform your wedding?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. No.
- 2 Q. So, in 2002, Judge Miller performs your wedding, correct?
- 3 A. Correct.
- 4 Q. And at that point, are you working in court?
- 5 A. No.
- 6 Q. When did you begin working as a court clerk?
- 7 A. 2005.
- 8 Q. Between 2002 and 2005, did you continue to see Judge Miller in any--
- 9 A. --Occasionally.
- 10 Q. Did you see Judge Miller socially between 2002 and 2005?
- 11 A. Occasionally.
- 12 Q. You mentioned that Judge Miller did legal work for you?
- 13 A. Yes.
- 14 Q. And during what period of time was Judge Miller your-- acting as
- 15 your private attorney?
- 16 A. 2005 for various times, off and on for a couple of years.
- 17 Q. How about in 2010 to 2015, the five years or so before Judge Miller
- 18 assumed the family court bench?
- 19 A. Maybe 2010, '11, yes.
- 20 Q. And did he also represent your husband Scott as a private attorney?
- 21 A. Maybe before we were married.
- 22 Q. How about while you were married?
- 23 A. I don't believe so.
- 24 Q. Prior to working for Judge Miller in family court on January 2015, had
- 25 you been to Judge Miller's home?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. Yes.
- 2 Q. Had you had meals with Judge Miller at his home?
- 3 A. Once, I believe.
- 4 Q. Prior to beginning your work for Judge Miller on January 1, 2015, did
5 you see Judge Miller socially outside of Johnson City Court or Village
6 Court?
- 7 A. Occasionally.
- 8 Q. At social events?
- 9 A. Yeah.
- 10 Q. Prior to January 1 of 2015, when Richard Miller became Judge Miller,
11 did you call his home?
- 12 A. I don't think I would have but--
- 13 Q. --Well, prior to Judge Miller becoming a family court judge, did you
14 call his phone, whether it's a cell phone or home phone, outside of
15 court hours?
- 16 A. Probably, yes.
- 17 Q. And sometimes his wife would answer the phone, correct?
- 18 A. No, I don't ever remember that.
- 19 Q. And would it be fair to say there were several calls that you made to
20 Judge Miller prior to January 1, 2015, outside of office hours?
- 21 A. Yes, and he would call me a lot outside and I would call him back,
22 yeah.
- 23 Q. Prior to January 1, 2015, excuse me-- After Judge Miller was elected
24 in November of 2014, is it fair to say that you sought the position as
25 Judge Miller's secretary?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. I sought it?
- 2 Q. I'll rephrase it. After Judge Miller was elected to the family court in
3 November 2014, did you speak to Garo Kachadourian about obtaining
4 a position with Judge Miller?
- 5 A. Garo? I don't believe so. I don't think Garo had anything to do with
6 it.
- 7 Q. You knew that Garo Kachodourian was friend or friendly with Judge
8 Miller?
- 9 A. Garo was related to Mark and Garo knew and Mark knew Rick had
10 promised Mark and I that we were going.
- 11 Q. My question is, did you ask Garo Kachadourian to help you secure a
12 position with Judge Miller when he became family court judge?
- 13 A. Not that I recall.
- 14 Q. And do you recall speaking to James Stilloe about wanting to work for
15 Judge Miller?
- 16 A. No, I did not.
- 17 Q. Do you know who James Stilloe is?
- 18 A. Yes.
- 19 Q. Do you recall being with Mr. Stilloe on election night in November
20 2014?
- 21 A. I wasn't-- My husband-- I was with my husband. He could have
22 been there but I don't know if he was or not.
- 23 Q. Do you recall expressing to anyone a concern that Judge Miller may
24 select someone other than you for the position of secretary to Judge
25 Miller, Family Court Judge?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Judge Miller had brought it up to me that after he was elected, that
2 there was other people that he-- That there were other people he was
3 going to take, so I did speak to a few people about that but not Garo.

4 Q. So, you did speak to people about wanting the position as secretary to
5 Judge Miller, correct?

6 A. Not wanting. I mean, I thought I had the position. I thought I was
7 going with him.

8 Q. Did you express a concern that someone else other than you would
9 obtain the position as secretary to Judge Miller?

10 A. People told me that he--

11 Q. --Not what people told you. Did you express to anyone that you were
12 concerned that Judge Miller would select someone else other than you
13 as his secretary?

14 A. I spoke to my attorney about something, yes.

15 Q. Back in November and December of 2014?

16 A. Yes.

17 Q. And which attorney was that?

18 MS. CENCI: Objection, Your Honor.

19 THE REFEREE: What grounds?

20 MS. CENCI: Counsel is now asking about a
21 confidential communication between-- Well, if you could
22 just hear me out?

23 THE REFEREE: All right.

24 MS. CENCI: That she had with her attorney where
25 she may have discussed-- I'm not sure where we are at this

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 point-- concerns about getting hired.

2 THE REFEREE: The attorney-client privilege
3 protects communications not facts.

4 MS. CENCI: But it's not relevant.

5 THE REFEREE: Well, it could be and at the
6 moment, all we have are yes or no questions, no one has
7 asked about the substance of any communication.

8 MS. CENCI: Nobody's--

9 THE REFEREE: --So, I see where they're headed. I
10 think it's fair at this point. You want to re-ask your
11 question?

12 BY MR. DEROHANNESIAN:

13 Q. You say you spoke to an attorney. You said you spoke to your
14 attorney in November 2014 or December 2014 about your concern
15 that someone else might be selected as secretary to Judge Miller,
16 correct?

17 A. Yes, an attorney friend of mine I did speak to about that.

18 Q. Was it a friend who's an attorney or was it your attorney?

19 A. It was a friend attorney at that time.

20 Q. Not someone who was representing you?

21 A. Not-- No.

22 Q. And what is that attorney's name?

23 MS. CENCI: Objection.

24 THE REFEREE: No, overruled.

25 MS. CENCI: Your Honor, I'd ask for an offer of

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 proof at this point. Where is counsel going with this?
2 She's spoken to someone about--

3 MR. DEROHANNESIAN: --Can I be allowed to do
4 a cross-examination or not? Or does she have to help--

5 MS. CENCI: --Well, no. I'm asking for-- I'm
6 asking for--

7 THE REFEREE: Just a minute. Let her--

8 MS. CENCI: --I'm asking for the relevance of this.
9 If she was concerned whether or not she would get a
10 position, I ask why is that relevant?

11 THE REFEREE: I know why it's relevant. It's-- It
12 should be obvious. It goes to bias and credibility.

13 MR. DEROHANNESIAN: Yep. And another issue
14 which-- but again, if we're going to have these discussions
15 in front of the witness, I--

16 THE REFEREE: --We're not. Overruled.

17 MR. DEROHANNESIAN: Okay.

18 THE REFEREE: What's the name of your-- of this
19 friend who was a lawyer?

20 THE WITNESS: My friend was Carole Cassidy and
21 I didn't really want to give her name because the judge has
22 been reaching out to her, trying to find out what I've said to
23 her.

24 THE REFEREE: That'll be stricken.

25 THE WITNESS: Okay.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. When were-- On what date were you informed that Richard Miller
3 had selected you to be his secretary for family court?

4 A. I don't recall.

5 Q. Was it before January 1?

6 A. Yes.

7 Q. Was it in December of 2014?

8 A. Probably, yes.

9 Q. Was it Judge Miller who told you that you were selected to be his
10 secretary or did someone else tell you?

11 A. He told me.

12 Q. And did Judge Miller tell you the reasons that he offered you the
13 position?

14 A. No. He told me and he told me not to tell anybody.

15 Q. Prior to January 1, 2015, you worked as a clerk in the Village of
16 Johnson City you said?

17 A. Yes.

18 Q. From 2000-- From February 2005 to 2014.

19 A. Correct.

20 Q. Judge Miller was the judge during that time period?

21 A. Yes.

22 Q. And you said there was another judge?

23 A. Yes.

24 Q. You called him an acting judge?

25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. Was that Judge Dellapenna?
- 2 A. Dellapenna, yes.
- 3 Q. How do you spell it? Dellapenna?
- 4 A. Dellapenna, yes.
- 5 Q. Now, other clerks worked with you from 2005 to 2014, correct?
- 6 A. Correct.
- 7 Q. Some-- excuse me, any other clerk-- No other clerk worked for the
- 8 entire time period, is that fair to say, of 2005 to 2014?
- 9 A. No, I was told that I was the longest clerk that's ever worked for him.
- 10 Q. Right, that's what I'm saying.
- 11 A. Mm-hmm. From past to--
- 12 Q. --There was no one that spanned nine years in Johnson City.
- 13 A. Right, and Union I was told, too. That I was the longest clerk.
- 14 Q. So, for example, do you know who Maureen Aissa is?
- 15 A. Yes.
- 16 Q. And you've spoken to the Commission about Maureen Aissa, correct?
- 17 A. Yes.
- 18 Q. She worked there from 2005 to 2008, correct?
- 19 A. She was there before me.
- 20 Q. Do you know someone-- But she was a clerk there.
- 21 A. Yes.
- 22 Q. While you were there.
- 23 A. Yes.
- 24 Q. For a couple of years.
- 25 A. Mm-hmm.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. And do you know Sandra Gilroy?
- 2 A. She's not Gilroy now, she's--
- 3 Q. --Sandra Conklin?
- 4 A. Maybe Conklin, yeah.
- 5 Q. Okay. Do you know who that-- Sandra Gilroy?
- 6 A. Yeah, she worked there for a brief amount of time.
- 7 Q. From 2005 to 2006?
- 8 A. Maybe she worked there six months?
- 9 Q. And was Sandra Gilroy someone you had a social relationship with
- 10 outside of work?
- 11 A. From my previous marriage, I've met her through that and she was
- 12 going through a rough time and needed a job and--
- 13 Q. --My question is did you have social relationship?
- 14 A. I did. Yes, I did.
- 15 Q. Yes. And you and her and your husbands would go camping together,
- 16 correct?
- 17 A. Correct.
- 18 Q. And it be fair to say you were friends during the time period that she
- 19 worked in Johnson City Court?
- 20 A. Yes, but she had a friend-- a girlfriend at the time that didn't really
- 21 care for her to be working with another female, so it made things
- 22 rather difficult.
- 23 Q. And you still consider her your friend, correct?
- 24 A. No.
- 25 Q. Well, you were friendly with her while she worked there?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Yeah.

2 Q. You socialized with her while she worked there?

3 A. Yeah.

4 Q. Carrie Aurelio also worked with you as a clerk?

5 A. Mm-hmm. Mm-hmm.

6 Q. Also about a two-year period from 2008 to 2010?

7 A. Mm-hmm.

8 Q. Yes?

9 A. Yes.

10 Q. You had a good relationship with her?

11 A. Yes.

12 Q. Another clerk you worked with was Andrea Litwak, is that right?

13 A. Yes.

14 Q. And she was there from 2011 to 2013?

15 A. Maybe, yeah. I guess. Maybe she was there two years.

16 MS. CENCI: Excuse me, counsel, do you have the
17 spelling on that?

18 MR. DEROHANNESIAN: Litwak?

19 MS. CENCI: Lit-- Do you know how to spell it?

20 MR. DEROHANNESIAN: Yeah, I think she's on
21 the witness list, L-I-T-W-A-K.

22 MS. CENCI: Thank you.

23 BY MR. DEROHANNESIAN:

24 Q. Cheryl Kvassay worked?

25 A. Yes.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

- 1 Q. As a clerk in Johnson Court?
- 2 A. Yes.
- 3 Q. Yes?
- 4 A. Yes.
- 5 Q. And Lisa Wojdat worked as a clerk there?
- 6 A. No.
- 7 Q. Lisa Wojdat worked as a clerk in Union?
- 8 A. Yes.
- 9 Q. And you knew her?
- 10 A. Not well.
- 11 Q. Did you work with her?
- 12 A. No, I didn't work with her.
- 13 Q. Have you ever met her?
- 14 A. I met her, yes.
- 15 Q. Where had you met her?
- 16 A. She was a court clerk so I know her through being a court clerk.
- 17 Q. Do you know what year it was that you would have met her?
- 18 A. I don't.
- 19 Q. Be fair to say you had no conversations with Ms. Wojdat unrelated to
- 20 work?
- 21 A. Unrelated to work? No, we've had other conversations.
- 22 Q. Okay. And did any of your conversations ever involve Judge Miller?
- 23 A. She didn't particularly care for Judge Miller.
- 24 Q. I didn't ask you that. I said--
- 25 A. --Could be, yes. Yes. Mm-hmm.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And did any of the conversations ever get into any personal aspect of
2 her relationship with Judge Miller?

3 A. Could be, yes.

4 Q. Well, did she ever say to you that she had some type of relationship
5 with Judge Miller?

6 A. No.

7 Q. You say that she didn't like Judge Miller, right?

8 A. Correct.

9 Q. That's your testimony, right?

10 A. There was a period of time where she didn't like him, yes.

11 Q. And you're positive of that, right? Yes?

12 A. Yeah. I know that she walked out--

13 THE REFEREE: --That's okay.

14 THE WITNESS: Oops. I thought he asked--

15 THE REFEREE: --Just wait for the next question.

16 THE WITNESS: Okay.

17 BY MR. DEROHANNESIAN:

18 Q. During the time period that you worked with Judge Miller, from 2005
19 to 2014, that's the time period, right?

20 A. Yes.

21 Q. You didn't work with him before that?

22 A. No.

23 Q. So, from the period of 2005 to 2014, when you worked for Judge
24 Miller, did you ever file any complaint against Judge Miller?

25 A. No.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 Q. During the period of 2005 to 2014, did you ever tell anyone in
2 Johnson City about any misconduct or misbehavior by Judge Miller?

3 A. I don't recall.

4 Q. Would it be fair to say that during the nine years of 2005 to 2014,
5 while you were working for Judge Miller, you never said anything or
6 made any complaint to your husband about Judge Miller?

7 MS. CENCI: I object. I think this was asked and
8 answered.

9 THE REFEREE: I don't remember. I'll take your
10 word for it but let's get the next question.

11 MR. DEROHANNESIAN: Did I get an answer?
12 Can I get an answer?

13 THE REFEREE: Did you answer? Did you ever
14 make a complaint to your husband about Judge Miller in
15 this 2005 to 2014 period?

16 MS. CENCI: I object to the use of the term
17 complaint. Her--

18 THE REFEREE: --All right, that's fair. Why don't
19 you re-ask the question?

20 BY MR. DEROHANNESIAN:

21 Q. Did you, during the 2005 to 2014, nine-year period, did you ever
22 express any concern to your husband about anything that Judge Miller
23 had said or done?

24 A. I don't believe so. I don't recollect.

25 Q. And during the time period of 2005 to 2014 in Johnson City, are you

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 aware of any court clerk who filed any personnel complaint against
2 Judge Miller?

3 A. I'm not aware-- I don't recollect.

4 Q. You have no knowledge of any, correct?

5 MS. CENCI: Can I ask for clarification as to what is
6 meant by a personnel complaint?

7 MR. DEROHANNESIAN: Fine, I can be broad--

8 THE REFEREE: --Rephrase it.

9 BY MR. DEROHANNESIAN:

10 Q. Sure, I'll rephrase it. During the time period that you worked in
11 Johnson City Court, are you aware of any court clerk who made any
12 complaint or allegation that was filed against Judge Miller while he
13 was judge?

14 A. I believe so, yes.

15 Q. And who was that? Who's that?

16 A. Leah Delamater-- Delamater?

17 Q. And have you seen that?

18 A. No.

19 Q. No.

20 A. And yeah, I'm not sure. That's all I'm aware of.

21 Q. And you say that you wanted to work for Judge Miller starting January
22 1, 2015, correct?

23 A. Correct.

24 Q. Now, you said things changed on January 1, 2015?

25 A. Correct.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. Because you had a good working relationship with Judge Miller prior
2 to that, correct?

3 A. Correct.

4 Q. For nine years you had no problem working with Judge Miller,
5 correct?

6 A. Not really.

7 Q. And did something change on January 2 that didn't exist in December
8 when you were working with him?

9 A. He just became more aggressive. He became more mean and--

10 Q. --Okay, this change, did it take place the day after he was sworn?

11 A. It started around like after election time. He started to get like angry
12 and--

13 Q. --And that's before he offered you the job, correct? Is that what
14 you're saying?

15 A. Yes. He changed-- He started to change, yes.

16 Q. And did you say, "Wait a minute, I don't think I want to work with
17 this man. He's changing?"

18 A. I always thought he would get better and this would blow over.

19 Q. When he offered you the job, did you say, "Wait a minute, I've seen
20 changes?" Did you say anything to him when he offered you the job?

21 A. No.

22 Q. How much was that job paying you?

23 MS. CENCI: Which job now?

24 BY MR. DEROHANNESIAN:

25 Q. When he hired you?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. Maybe \$40-something. I really don't know.
- 2 Q. About \$48,000, maybe?
- 3 A. Maybe.
- 4 Q. \$47,976? How much do you make now?
- 5 A. \$50-something.
- 6 Q. \$56,000?
- 7 A. Maybe.
- 8 Q. Something like that?
- 9 A. Yeah.
- 10 Q. So, one change was what? You said he became angry after he was
- 11 elected?
- 12 A. Yeah, he started kind of like ignoring me, not coming around and then
- 13 when we started, he just became--
- 14 Q. --Okay, so--
- 15 MS. CENCI: --Can she finish the wit-- the answer,
- 16 please?
- 17 THE REFEREE: Yes, I thought she did. Are you
- 18 done?
- 19 A. And then it just seemed like he-- When we started he just became
- 20 very demanding and mean and angry. Just became so angry.
- 21 Q. Okay. You said he was mean, demanding, and angry, right?
- 22 A. Yes.
- 23 Q. Now, this change-- When you reported to work the first day, it was
- 24 different from going to work for Judge Miller in Johnson City, is that
- 25 what you're saying?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Not the first day, no.

2 Q. How about the second day?

3 A. Probably not the second day.

4 Q. Third day?

5 A. Nope.

6 Q. How about the following week?

7 A. No. No. Within the first month, I think we really-- I started--

8 Q. --So, the third week?

9 MS. CENCI: I'm sorry, but can the witness please
10 be allowed to complete her response?

11 THE REFEREE: You have to let her finish.

12 A. Like within the first month.

13 Q. Would it have been the third week?

14 THE REFEREE: That's within the first month.

15 BY MR. DEROHANNESIAN:

16 Q. What is the first incident you recall in the first month of working
17 where Judge Miller became mean, demanding or angry?

18 A. He was screaming and yelling at Donna on the phone about different
19 files and he was getting a lot of phone calls about her with-- issues he
20 had with her and he just seemed he had a lot on his plate.

21 Q. And then do you recall any other incident in January of 2015?

22 A. That's all I really recall offhand.

23 Q. Let's go to February 2015.

24 A. Right about the same.

25 Q. Angry?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Angry.

2 Q. Demanding, mean, right?

3 A. Mm-hmm.

4 THE REFEREE: Is that a yes?

5 THE WITNESS: Yes, yes. I'm sorry.

6 THE REFEREE: That's all right.

7 BY MR. DEROHANNESIAN:

8 Q. What's the first incident that you can recall occurring in February
9 2015?

10 A. I just remember the first six months, it was really a lot of him--

11 Q. --No, I didn't ask--

12 A. --February, I don't know.

13 Q. Can you recall any specific incident in February of 2015?

14 MS. CENCI: Asked and answered.

15 THE REFEREE: I agree.

16 BY MR. DEROHANNESIAN:

17 Q. Be fair to say, you don't have a specific recall of any incident in
18 February 2015?

19 MS. CENCI: Asked and answered.

20 THE REFEREE: I think she said for six months.

21 BY MR. DEROHANNESIAN:

22 Q. In March of 2015, can you tell me the first specific incident that you
23 can recall of Judge Miller being mean, demanding or angry?

24 A. March-- Just seemed like there was a lot of--

25 Q. --No, I'm not asking you what--

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 THE REFEREE: --Let her finish. Let her finish
2 what she's saying.

3 A. Trying to close his shop and dealing with Donna and he just would
4 seem so angry and scream and yell and then he just started--

5 Q. --What specific incident in March of 2015, can you recall?

6 A. '16 did you said?

7 THE REFEREE: '15.

8 BY MR. DEROHANNESIAN:

9 Q. '15.

10 A. I'm not sure if I can recall anything from that day-- from that month.

11 Q. In April of 2015, do you have any specific recall of any incident of
12 Judge Miller being mean, demanding or angry?

13 A. Again, just, you know, just trying to get stuff done with his law office
14 and just he seemed very demanding and--

15 Q. --Can you recall any specific incident in April of 2015?

16 A. I don't recall now.

17 Q. And in May of 2015, can you recall any specific incident of Judge
18 Miller being mean, demanding or angry?

19 A. I think within that time frame, like April, May, June, was a lot of-- He
20 had some issues going on and he wanted us-- He had to go back and
21 forth to his law office to copy stuff and he had us going off to take
22 files out of work to copy some things and he seemed--

23 Q. --And what specific incident do you recall in April or May of 2015?

24 A. Well, I know I had to type a letter he had-- We had to take files to like
25 Kinko's or something for--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. --Was that in April 2015?

2 A. The letter might have been April but the files, May or June, we had to
3 go to Kinko's. We went to his law office to make copies of things. I
4 think they were for you.

5 Q. That was in April, May of 2015?

6 A. I think so.

7 Q. You believe that Judge Miller needed to collect information for his
8 attorney? Is that what you believe?

9 A. I believe so. Then he had us do some stuff, copy stuff.

10 Q. And are you saying in connection with his need to collect information
11 for an attorney, he became mean, demanding or angry?

12 A. Yes.

13 Q. Other than collecting papers for his private attorney on some matter,
14 can you recall any other specific matter in April, May or June of
15 2015?

16 A. That's when he started to get more sexual and make comments about
17 satisfying his needs and he did that right up until--

18 Q. --One at a time. What is the first time in April, May, or June that you
19 say he made any sexual comment that you specifically recall?

20 A. I don't know right offhand.

21 Q. Can you recall anything specific in April, May, or June of a sexual
22 nature?

23 MS. CENCI: Objection. She just answered the
24 question, Your Honor.

25 THE REFEREE: I think she has. Are you going to

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 go through every month?

2 MR. DEROHANNESIAN: For a few months. I

3 mean--

4 THE REFEREE: --That's all right. Go ahead.

5 MR. DEROHANNESIAN: The way this is

6 presented--

7 THE REFEREE: --That's fine. Go ahead.

8 BY MR. DEROHANNESIAN:

9 Q. In July of 2015, do you have any specific recall of any incident of
10 Judge Miller being mean, demanding, or angry?

11 A. I just know that throughout that year but I can't--

12 Q. --I'm not asking--

13 --THE REFEREE: --She hasn't finished. Let her
14 finish the answer--

15 A. --tell you like dates-- exact dates and the first year I didn't quite take
16 too many notes. I don't know exactly.

17 Q. My question is do you have any specific recall of incidents during a
18 specific time period? If you do, tell me, and if you don't, say you
19 don't. Fair?

20 A. Fair. I know that by December I heard enough that I went to--

21 Q. --That's not my question.

22 A. Okay.

23 THE REFEREE: That's the answer, so--

24 BY MR. DEROHANNESIAN:

25 Q. --Do you have any specific recall of any incident of Judge Miller

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 being mean, demanding or angry in July of 2015?

2 A. So long ago. I don't know. I don't recall right now.

3 Q. And in August of 2015, do you have any specific recall of any incident
4 of Judge Miller being mean, demanding or angry?

5 A. I don't recall. I don't know.

6 THE REFEREE: You have to try and keep your
7 voice up.

8 A. I don't recall exactly, dates and--

9 Q. --How about for the time period from September until the end of
10 December 2015? Can you recall any specific incident of Judge Miller
11 being mean, demanding or angry?

12 A. Dates and times, I can't tell you. I can't remember--

13 Q. --That's not my--

14 THE REFEREE: --That's the answer you get--

15 A. --but he got very-- He did get very aggressive towards the end of the
16 year and he would-- I would hear him, you know, they would be in
17 the next room and he would tell Mark, you know, "Tell her," you
18 know, "she's not satisfying my needs. If she doesn't start satisfying
19 my needs, I'm getting rid of her," and I had heard enough and then by
20 December, I just figured I wasn't coming back. He was getting rid of
21 me and I had went down and told Debbi that, you know, I--

22 Q. --When was it that you say you first heard Judge Miller say anything
23 to Mark about you in a sexual manner in 2015?

24 A. I can't recall dates right now off hand. I don't know. But like I said,
25 I--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 THE REFEREE: --You answered the question.

2 BY MR. DEROHANNESIAN:

3 Q. Now, you said in December 2015, you were concerned you might lose
4 your job, correct?

5 A. He had told Mark that he--

6 Q. --Did you have a concern in December of 2015 that you would lose
7 your job?

8 A. I--

9 MS. CENCI: --I think the witness has repeatedly
10 said that, Your Honor. I think she just said--

11 THE REFEREE: --I think so, too.

12 BY MR. DEROHANNESIAN:

13 Q. In December of 2015, correct?

14 THE REFEREE: --Yes, she just said that's why she
15 went to go talk to Debbi Singer.

16 BY MR. DEROHANNESIAN:

17 Q. And in December of 2015, had you received your training with the
18 State of New York by that point?

19 A. Yes.

20 MR. DEROHANNESIAN: Can I have a moment?

21 THE REFEREE: Yes.

22 BY MR. DEROHANNESIAN:

23 Q. When you worked in Johnson City Court, do you recall making an
24 accusation against Andrea Litwak that she was having an affair with
25 Judge Dellapenna?

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 MS. CENCI: Objection-- Objection, Your Honor.

2 A. Never-- oops.

3 THE REFEREE: Well, does it-- Beat me to the
4 draw. She said no, so.

5 BY MR. DEROHANNESIAN:

6 Q. You have a son, D [REDACTED]?

7 A. Yes.

8 Q. He has a godfather?

9 A. Yes.

10 Q. And who's the godfather?

11 A. Richard Balles.

12 Q. That's the same Richard Balles you referred to on direct examination?

13 A. Yes.

14 Q. And your son had a little league coach?

15 A. A couple.

16 Q. And he was disciplined for something on his phone?

17 A. No.

18 MS. CENCI: Your Honor, I object. They're really
19 going far afield.

20 THE REFEREE: Sustained.

21 BY MR. DEROHANNESIAN:

22 Q. And you work with someone named Kim Cunningham?

23 A. I did.

24 Q. She was in Johnson City Court?

25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. She said that you had threatened her at Johnson City?

2 MS. CENCI: Objection.

3 THE REFEREE: Sustained.

4 BY MR. DEROHANNESIAN:

5 Q. Kim Cunningham filed a grievance against you?

6 MS. CENCI: Objection.

7 THE REFEREE: Sustained.

8 BY MR. DEROHANNESIAN:

9 Q. Ms. Cunningham filed a hostile work environment claim against you?

10 MS. CENCI: Objection.

11 THE REFEREE: Sustained. Let's move to another
12 area.

13 BY MR. DEROHANNESIAN:

14 Q. You were found on June 20, 2014, to have created an offensive and
15 hostile work environment--

16 MS. CENCI: --Objection.

17 BY MR. DEROHANNESIAN:

18 Q. --at the Village of Johnson City?

19 MS. CENCI: Objection.

20 THE REFEREE: Sustained.

21 BY MR. DEROHANNESIAN:

22 Q. You received a counseling memo?

23 MS. CENCI: Objection, Your Honor.

24 THE REFEREE: Sustained. Let's move on.

25 MR. DEROHANNESIAN: I just want to make my

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 record.

2 THE REFEREE: All right.

3 MS. CENCI: First of all, you're not even asking
4 questions. You're making statements.

5 THE REFEREE: Well, it's cross-examination.

6 MS. CENCI: It's totally irrelevant and improper
7 impeachment.

8 BY MR. DEROHANNESIAN:

9 Q. While you were an employee of the Village of Johnson City, were you
10 ordered to attend a counseling course?

11 MS. CENCI: Your Honor, I have to object. I
12 believe this is--

13 THE REFEREE: --Sustained.

14 MS. CENCI: --irrelevant. The same thing.

15 THE REFEREE: I-- Just object and I'll rule.

16 MS. CENCI: Thank you.

17 BY MR. DEROHANNESIAN:

18 Q. While you were an employee of the Village of Johnson City, were you
19 ordered to complete instruction so that your words and actions would
20 not be perceived as hostile?

21 MS. CENCI: Objection.

22 THE REFEREE: Sustained.

23 MS. CENCI: Would you direct counsel to
24 discontinue this line of questioning, Your Honor? I believe
25 you've already told him to stop.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 THE REFEREE: I think you have got the drift of
2 where we're headed with the rulings. Is it all-- Are all--
3 Are you-- Do you have more on this same issue?

4 MR. DEROHANNESIAN: No.

5 THE REFEREE: All right, then let's move on.

6 BY MR. DEROHANNESIAN:

7 Q. Garo Kachadourian has a blog in Broome County?

8 A. I believe he used to.

9 Q. Are you familiar with it?

10 A. Yes.

11 Q. Is it called BC Voice?

12 A. I believe it was, yes.

13 Q. And would you call Mr. Garo Kachadourian to ask him about his
14 blog?

15 A. No, I--

16 MS. CENCI: Objection.

17 THE REFEREE: Sustained.

18 BY MR. DEROHANNESIAN:

19 Q. Did you contact Mr. Kachadourian-- Garo Kachadourian, and ask him
20 to place information about a fellow worker on his BC Voice blog?

21 MS. CENCI: Objection.

22 THE REFEREE: It's sustained unless-- If you-- If
23 it's Judge Miller, ask that directly. If it's anybody else, then
24 it's sustained.

25

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Did you tell Garo Kachadourian that you wanted to get even with one
3 of your co-workers at Johnson City Court?

4 MS. CENCI: Objection.

5 THE REFEREE: Sustained.

6 BY MR. DEROHANNESIAN:

7 Q. Are you under any medication, today?

8 A. I take medication every day.

9 Q. And what kind of medication?

10 MS. CENCI: Objection.

11 THE REFEREE: Ask a-- Ask if it affects her ability
12 to recall, not the name.

13 BY MR. DEROHANNESIAN:

14 Q. Do your medications affect your mood?

15 A. Throughout all this, I'm on anxiety medicine, which is a very low
16 dose.

17 Q. Would it be fair to say that you were medicated while you were
18 working in the Johnson City court system in 2014?

19 MS. CENCI: Objection.

20 THE REFEREE: Sustained.

21 BY MR. DEROHANNESIAN:

22 Q. Fair to say that since 2014, that you've been under the care of a doctor
23 for your mental state?

24 MS. CENCI: Objection.

25 THE REFEREE: Sustained.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Be fair to say that since 2014 until today that you take psychotropic
3 medications?

4 MS. CENCI: Objection.

5 THE REFEREE: Sustained.

6 BY MR. DEROHANNESIAN:

7 Q. One of the issues that Judge Miller would address with you as part of
8 your job was preparing files for court, correct?

9 A. We're a paperless court.

10 Q. Did--

11 THE REFEREE: --Did you not understand the
12 question?

13 THE WITNESS: Yes.

14 THE REFEREE: All right. Why don't you rephrase
15 it?

16 BY MR. DEROHANNESIAN:

17 Q. Judge Miller addressed with you his request to prepare files and
18 information for his court cases?

19 A. Yes.

20 Q. And that was one of your assignments, correct?

21 A. Yes.

22 Q. And Judge Miller would address with you when he felt you had not
23 prepared files for him, correct?

24 A. Correct.

25 Q. And that was an issue between you and him, correct?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Not that I'm aware of.

2 Q. Well, Judge Miller expressed displeasure over your preparation of his
3 court files, correct?

4 A. Not that I'm aware of.

5 Q. One of your assignments for Judge Miller was to take messages,
6 correct?

7 A. Correct.

8 Q. Judge Miller would address with you whether or not he felt you were
9 accurately obtaining messages for him, correct?

10 A. No, I don't remember that.

11 Q. Judge Miller addressed with you his concerns about not getting
12 information from people who contacted chambers?

13 A. No, I don't ever recall that either.

14 Q. And Judge Miller discussed with you his concerns about your failure
15 to provide scheduling information to the court clerks?

16 A. He never addressed that with me.

17 MR. DEROHANNESIAN: This would be a logical
18 point for a break.

19 THE REFEREE: Approximately how much more do
20 you have for this witness?

21 MR. DEROHANNESIAN: I've got-- I've got a fair
22 amount more.

23 THE REFEREE: All right. Then why don't-- Let's
24 see, it's almost 20 to 1:00, let's go-- Let's take a lunch
25 break. We'll go off the record.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MR. FITZPATRICK: We're off the record.

2 (OFF THE RECORD)

3 THE REFEREE: Counsel for the parties are present
4 and Respondent is present. And did you want to put
5 something on the record, Mr. DerOhannesian?

6 MR. DEROHANNESIAN: First, I'd ask Ms. Scalise
7 what relates to a subpoena that was issued.

8 MS. SCALISE: So, I got a call and an email from
9 Ms. Kerby. Her name is Shawn Kerby, she's deputy--
10 assistant deputy counsel at OCA to John McConnell, who's
11 counsel to OCA, or maybe I should say the Unified Court
12 System. At any rate, they have responded to the subpoena
13 but they're responding directly to you, okay, because you're
14 the one who issued it. Now, they're not-- He's going to
15 review a letter, but this is what she told me and this is what
16 the letter is going to say but I just wanted to put it on the
17 record, and respectfully ask you to stay around a little bit
18 because part of it is a redacted copy of the IG's report. And
19 when, you know, we have a redacted copy but then there's
20 an original copy, so, you might have to review that to see if
21 we're entitled to anything else. But what they've redacted
22 from the IG's report are all dates of birth and bank account
23 numbers. We don't really care about that.

24 THE REFEREE: Do you have an idea of how long
25 the document is?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. SCALISE: So, I'm not sure. So, these are things she said they've responded to. The first thing was Greg Gates' letter, which you had the other day. So, they treated the subpoena as if it was not to him but to the person who took his position. I think I told you the other day that we modified the subpoena to ask for things for the Sixth Judicial District.

THE REFEREE: Right.

MS. SCALISE: So, they have responsive documents with respect to the EEOC and the financial disclosure forms and the reports that you have to make locally. In addition, there's the IG's report, which is redacted and unredacted, and you know, emails and things like that. So, the only thing they're objecting to us having is the unredacted IG's report, which is for the reasons I just mentioned. Dates of birth, bank account numbers, information, things like that--

THE REFEREE: --So, assuming that to be the case, then you don't have any problem with the redaction.

MS. SCALISE: No, I just-- You'd just have to just examine them to make sure that the redactions are correct, and then you can turn over to us what you think is relevant.

THE REFEREE: Without seeing it, that sounds reasonable, but I have to see it and I want to hear from counsel before. I mean, we're just speaking in an amorphous state.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Hon. Richard H. Miller, II)

1 MS. CENCI: I guess it's a little bit strange because
2 the subpoenas obviously were issued by Your Honor, but
3 the records--

4 THE REFEREE: --I don't think they need to come
5 to me, honestly.

6 MS. CENCI: Right. The records are being produced
7 to you and it's just a little bit different that you'd be actually
8 seeing-- the first person to see them, whereas ordinarily,
9 you know, you wouldn't see a record unless it was marked
10 and offered.

11 THE REFEREE: Right. I've tried not to look at
12 things that are not admitted and so far haven't and I-- Well,
13 let's see what I get and we'll address it later.

14 MS. SCALISE: And so, this all occurred because I
15 sent the email to Mr. McConnell on his subpoena because
16 I'm downstate, and it just is easier. He responded to me on
17 Friday night. I modified what our request was. He said,
18 "I'm not going to do the whole state of all this information.
19 What do you really need? I don't really want have to send a
20 lawyer up there and oppose this." So, that's why things are
21 being produced, I guess, to you. I don't really, you know,
22 see any reason for that but they said they're going to
23 produce them today to this building and they'll make sure a
24 copy comes to you. So, Mr. McConnell is at lunch and
25 when he gets back, he's going to review the letter and then

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 once the letter is done, he'll send it somewhere here up to
2 us.

3 THE REFEREE: Okay, well let's see how it shakes
4 out but--

5 MS. SCALISE: --Okay. I just wanted to put it in the
6 record.

7 THE REFEREE: Well, I appreciate it. All right,
8 ready for the witness?

9 MR. DEROHANNESIAN: Now, I do want to say
10 something about this witness and the offer of proof that I
11 want to make with respect to the certain lines of questioning
12 that I was prohibited from and why I'm doing it.

13 THE REFEREE: All right.

14 MR. DEROHANNESIAN: When Ms. Gallagher
15 was employed in Johnson City, she made a-- she had filed
16 against her, a hostile work environment claim by Kim
17 Cunningham. Kim Cunningham is prepared to testify to
18 Ms. Gallagher's behaviors, her threatening behaviors
19 toward others, her harassing behavior toward others, and
20 that resulted in a formal complaint being filed by her. That--
21 - She can testify to both those, the underlying acts as well
22 as the filing.

23 THE REFEREE: So, that would solidify my
24 admitting all the criminal history records. If you think that
25 that should come in, because I think that's collateral, then

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 shouldn't I admit all of the criminal history? Let me just--

2 MS. CENCI: Your Honor, could we just deal with--

3 MR. DEROHANNESIAN: --Wait--

4 MS. CENCI: --one thing at a time?

5 MR. DEROHANNESIAN: Yeah.

6 THE REFEREE: No, I know. I'm just trying to
7 point out that that's-- That seems awfully collateral. It's
8 not-- She's not on trial. The issue here is whether Judge
9 Miller did the things that are alleged in the administrative
10 complaint and whether Ms. Gallagher is a great employee
11 or the worst thing ever, that's not the issue.

12 MR. DEROHANNESIAN: One question is her
13 credibility. And on the issue of credibility, a witness can be
14 cross-examined on prior bad acts. If they're collateral acts,
15 I may be bound by the answer. The next question will be,
16 are they collateral or I'm bound by the answer, or do they
17 relate to bias, hostility, motive, or some other purpose. My
18 first argument is to give you the facts and then I'll give you
19 the reasons. So, the facts are, and there's a good faith basis
20 for this, from Ms. Cunningham and other individuals who
21 work there, that there was a pattern of hostile behavior by
22 Ms. Gallagher toward others, of making false allegations
23 against others, not just the allegation about a judge having
24 an affair. So, their complaint is filed and the result of that
25 complaint is that Ms. Gallagher was found-- was asked and

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 requested and ordered to attend counseling to address her
2 behaviorial issues and to find ways of dealing with it, and
3 there was a specific program that she was sent to for
4 counseling. We have testimony from the mayor that we've
5 subpoenaed, who is prepared to put that on the record today
6 or tomorrow. The reason this is important is you have a
7 woman who is claiming a hostile work environment against
8 my client, Judge Miller. She's acting and playing Snow
9 White here, that she has no idea what to do, how to respond
10 in this situation. So, number one, she does know how to
11 respond. She's had experience. She's not a novice when it
12 comes to problems in the workplace. There were many
13 significant problems. This is one that actually rose to the
14 level of findings. The second thing, it shows a pattern on
15 her part of using the system to advance her employment
16 interest. She made complaints against other employees as
17 part of this angry and false statement behavior. She
18 engaged in a pattern, not only of angry behavior, but trying
19 to undermine colleagues to maintain her position. And that
20 was the basis of the questions concerning calling Garo
21 Kachadourian. Where he is prepared to testify, it was to
22 undermine the employee I mentioned and her position in the
23 court system, to put false-- to put out information that was
24 damaging to her family and to do it anonymously, and that
25 she specifically said to Mr. Kachadourian this was a way to

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 get back at her fellow workers. Now, that gets into not just
2 credibility but bias, motive and hostility in bringing
3 allegations, false and otherwise, against individuals to
4 advance and protect her career. And she has used others,
5 such as Mr. Kachadourian, Garo Kachadourian, to attack
6 co-workers. So, not just the Litwak, not just the Garo
7 Kachadourian, but in particular the hostile work
8 environment pertaining to Kim Cunningham. We have both
9 the witness involved, the mayor involved, good faith basis,
10 we should at a minimum be allowed to inquire, which I
11 believe the objection was sustained. The second issue is
12 whether we can bring in direct proof of that. My argument
13 would be now we're getting into showing her bias, motive,
14 and hostility toward co-workers, as well as a pattern of
15 behavior when it comes to the workplace and making false
16 accusations against--

17 THE REFEREE: --How does-- How does-- How
18 does that show, assume it all to be correct--

19 MR. DEROHANNESIAN: --Mm-hmm--

20 THE REFEREE: --how does it show that she would
21 make false accusations against her boss?

22 MR. DEROHANNESIAN: She'll make false
23 allegations against a co-worker or colleague to protect her
24 job and advance her career.

25 THE REFEREE: But-- Counsel?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: Your Honor, I'm not sure even where
2 to start. First of all, she's the personal appointee of the
3 judge, I'm not-- I don't understand the theory of advancing
4 her career if she's, you know, bringing a complaint against
5 the person who hired her and presumably could fire her,
6 but, in terms of either questioning the witness or bringing in
7 extrinsic evidence of whatever this incident allegedly was
8 back in some prior year and some prior court, that's
9 improper. That's an attempt to impeach the witness based
10 on prior bad acts, and that's-- I don't believe that's
11 admissible. Even assuming it's true, the problem is we
12 would have to retry whatever that incident was. We're
13 getting into a whole collateral matter even just to establish
14 that in fact she did what counsel alleges she did. It
15 wouldn't be relevant to this proceeding at all. There's no
16 evidence here that this witness, in fact, ever filed a claim for
17 harassment against the judge until the federal lawsuit. I
18 mean, this--

19 THE REFEREE: --Well, no, that's not so. She
20 started making complaints about him to Debbi Singer in
21 2015, if her testimony is to be credited, so---

22 MS. CENCI: --I would characterize that more as
23 venting or-- I mean, you're using the word complaint like
24 it's some kind of an official, you know, an official
25 document or official complaint. So, and--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: --No, I don't think so. I don't
2 think so. She's raising concerns about it.

3 MS. CENCI: This apparently is allegedly a
4 complaint made against Ms. Gallagher, not the other way
5 around.

6 THE REFEREE: Well, no, I think counsel said that
7 she filed-- that she made false complaints against some of
8 her co-workers. Is that--

9 MS. CENCI: --I don't think that's what he's saying.

10 THE REFEREE: Did I hear that correctly? That--

11 MR. DEROHANNESIAN: --Say it again?

12 THE REFEREE: Your offer of proof is that she
13 made complaints against other people or somebody made a
14 complaint against her?

15 MR. DEROHANNESIAN: Both. Both.

16 MS. CENCI: What are you terming a complaint?
17 You talked about some investigation or some hostile work
18 environment but, you know, if you're talking about hearsay
19 and just people saying things, I don't-- I don't think that's
20 admissible--

21 THE REFEREE: --I mean, honestly to me, fair
22 cross-examination of this witness would include, and I
23 would expect that it would include, exploring the fact that
24 she knew there were mechanisms that she could follow to
25 register complaints about the work environment. I mean,

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 for her to say-- Now, she may say and I think she--

2 MS. CENCI: --I think she's already been asked
3 that-- She has.

4 THE REFEREE: No. No. I think she said she was
5 afraid of retaliation or she was intimidated. That's fine but
6 she obviously knew that there were avenues to register
7 complaints. She didn't do it and she explained why. I
8 mean, for her to say she didn't know at all is silly.

9 MS. CENCI: And she's already testified to that.

10 THE REFEREE: Yes. Yes. And I think that's right.
11 So, she knew and the fact that she didn't bring a formal
12 chain-- or formal complaint up the chain of command, you
13 know, I suppose that's a credibility issue but of course she
14 knew how to do it. Everybody who's in this court system
15 knows how to do it, so, she-- For her to say she didn't
16 know at all would be silly but she said the reason she didn't
17 is because she was-- felt intimidated.

18 MS. CENCI: And as we all know, Your Honor, only
19 the Commission on Judicial Conduct can actually discipline
20 a judge for conduct such as this. I mean, Court
21 Administration did remove him from his duties, but this
22 body is the only body which actually can take action for that
23 kind of complaint. So, all of this seems very--

24 THE REFEREE: --I really don't want to try her
25 employment history in the village court. I mean, that to me,

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 that's where we're headed. I don't see that as a reasonable
2 or appropriate at all. I think you can cross-examine the
3 witness about facts but you're going to be--

4 MS. SCALISE: --But you sustained those
5 objections.

6 THE REFEREE: No, no. If you want to ask her
7 about her knowledge of the discipline and grievance system,
8 that's fine. You're going to be bound by her answer.

9 MS. SCALISE: Of course, but we're--

10 MR. DEROHANNESIAN: --We were-- We
11 weren't allowed to ask questions about Litwak, the false
12 complaint or this matter at all.

13 THE REFEREE: What is the factual basis? You--
14 Was she actually disciplined?

15 MR. DEROHANNESIAN: She was told to attend
16 counseling for anger management.

17 THE REFEREE: Who told her that?

18 MR. DEROHANNESIAN: The village.

19 MS. CENCI: What's your evidence of that? You're
20 going to get her personnel file? I don't--

21 THE REFEREE: --You're going to bring in the
22 mayor--

23 MR. DEROHANNESIAN: --We have information
24 and I believe that the mayor, if presented, and he's
25 available, would testify to the counseling that it was

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 ordered. The complainant does not have knowledge of
2 what the punishment was, the village does and it's their
3 prepared--

4 THE REFEREE: --All right. So, let's assume she's
5 counseled for anger management issues.

6 MR. DEROHANNESIAN: Mm-hmm.

7 THE REFEREE: How does that bear on whether
8 this-- the events in the administrative complaint here
9 happened or didn't happen?

10 MR. DEROHANNESIAN: Well, it would go to
11 whether or not-- why was she angry and the underlying
12 facts, which were making complaints about others as well
13 as engaging in angry and demeaning and mean behavior
14 toward others, which is what she's alleging here.

15 THE REFEREE: She's alleging somebody else did
16 it.

17 MR. DEROHANNESIAN: Yeah.

18 THE REFEREE: Did she do that before? Did she
19 allege somebody else was mean and angry?

20 MR. DEROHANNESIAN: And then that's what she
21 did and then she counter-attacked as part of that process.
22 That's the fact-- That's what--

23 THE REFEREE: --What do you mean counter-
24 attacked? Somebody alleged against her?

25 MR. DEROHANNESIAN: After a complaint is

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 made against her, then she starts going and making
2 complaints about others. She becomes angry. She becomes
3 hostile. It resulted in the counseling for anger management.

4 THE REFEREE: And so is the offer of proof that
5 she was aware that Judge Miller was unhappy with her
6 performance as a secretary--

7 MR. DEROHANNESIAN: --No--

8 THE REFEREE: --and therefore--

9 MR. DEROHANNESIAN: No, I think it goes to the
10 fact that she's someone who engages in behaviors to quote,
11 "protect herself, protect her job," at the risk of colleagues
12 and make unfair accusations, because that's how it perked
13 up to that point.

14 THE REFEREE: Yeah, but we'd have to then try the
15 issue of why she did that.

16 MR. DEROHANNESIAN: Not necessarily. The
17 first question is can I ask the question? Now the question is
18 does it relate to some other factor where I could bring in
19 extrinsic proof, whether it's bias, motive, hostility,
20 awareness of the process for reporting. That she's not, you
21 know, this sweet, innocent individual who has no idea what
22 to do in 2015 and '16, if you believe that's who she is. The
23 other reason is she told the Commission. The Commission
24 asked her-- This came up in, I think, the judge's testimony
25 and in a phone call on January 3, 2018. When asked about

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 it, she said that she never saw the complaint and it was
2 unfounded as though nothing happened. Well, that's a lie to
3 the Commission.

4 MS. CENCI: Well, I think you're going to be stuck,
5 if you're even allowed to go there, you're going to be stuck
6 with her response because that would truly be collateral if
7 you try to then bring in some extrinsic evidence.

8 THE REFEREE: Yeah, I really don't see how we
9 can allow evidence attacking this witness's employment in
10 the village courts. I just don't see how that's fair and
11 reasonable. I guess I don't-- I don't really have a--

12 MR. DEROHANNESIAN: --Motive is never
13 collateral. Motive is not collateral. I agree that if it's--

14 THE REFEREE: --I don't see the connection
15 between what's alleged in-- What you're saying happened
16 in the village, let's assume it's true.

17 MR. DEROHANNESIAN: Mm-hmm.

18 THE REFEREE: That she did this to go after a co-
19 worker in the village. How does that indicate that the
20 allegations here against Judge Miller are false?

21 MR. DEROHANNESIAN: Gives her motive to do it
22 now. She'll go after--

23 THE REFEREE: --What's the motive?

24 MR. DEROHANNESIAN: This is how you can get
25 someone. This is how to go after someone to make their

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 life--

2 THE REFEREE: --Didn't work because she got
3 counseled, so it failed.

4 MR. DEROHANNESIAN: That's still a disciplinary
5 thing, to be--

6 THE REFEREE: --She got disciplined.

7 MR. DEROHANNESIAN: Yes.

8 THE REFEREE: So, how is that--

9 MR. DEROHANNESIAN: --Now I can do that
10 against someone else. Now I can do that.

11 THE REFEREE: Geez, I don't see that at all. I
12 really don't. So, she brings a false allegation against
13 somebody, gets disciplined and counseled, and now she's
14 going to bring another false allegation against somebody
15 else knowing that she's already been disciplined and
16 counseled for doing that. Is that what you're saying?

17 MR. DEROHANNESIAN: So, it is two-fold.
18 There's the-- her behavior but there's also false allegations
19 that she's making to protect her job. I gave one example of
20 what was going on with one individual against a judge. I
21 think that's-- goes to credibility. I think that shows what
22 she's--

23 THE REFEREE: Was that not true about the woman
24 having an affair with the judge?

25 MR. DEROHANNESIAN: That's not true and that

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 woman is prepared to say to that. That is was a false
2 allegation made against her as well as the judge.

3 MS. CENCI: She's--

4 MR. DEROHANNESIAN: --And that's going on at
5 the same time in this work environment.

6 MS. SCALISE: And then the-- I'm sorry.

7 MS. CENCI: The witness never-- excuse me. The
8 witness never testified that she made an allegation that the
9 judge was having an affair with this person. She said she
10 heard that that's what was going on.

11 THE REFEREE: I agree with you.

12 MR. DEROHANNESIAN: So, there's multiple
13 things going on, both accusations made against her, she
14 makes accusation. The result of all those allegations was,
15 "You, Ms. Gallagher, have to go to anger management
16 training."

17 THE REFEREE: And--

18 MR. DEROHANNESIAN: --I'm giving you the
19 factual background.

20 THE REFEREE: Fine, and that's your offer of
21 proof.

22 MR. DEROHANNESIAN: Yes, and I believe at the
23 minimum, I should be and should have been allowed to ask
24 a question and get an answer. Then second thing, I do
25 believe I that I should be allowed to bring in the extended

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 extrinsic proof.

2 THE REFEREE: So, what is it that you want to ask
3 her now?

4 MR. DEROHANNESIAN: The questions that I
5 asked bef--

6 THE REFEREE: --Well, just-- You had 20 of them.
7 I mean, let's get to the heart of it. What is it that you really
8 want to ask her?

9 MR. DEROHANNESIAN: That Ms. Cunningham
10 had made a complaint against her which I will specify
11 involved her mean and aggressive behavior. That there
12 were complaints that she had made false allegations against
13 colleagues and that she responded by making accusations
14 against more colleagues. And I gave you one example,
15 Andrea Litwak, with respect to a complaint of her and the
16 judge.

17 MS. CENCI: And these are oral complaints or oral
18 allegations?

19 THE REFEREE: Yeah, okay and then--

20 MR. DEROHANNESIAN: --And also I had earlier
21 the issue about another co-worker, where she asked Garo
22 Kachadourian to put information about that woman's
23 family, which was an attempt to--

24 THE REFEREE: --Well, she said no. She-- That--
25 You already asked that question.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MR. DEROHANNESIAN: I was allowed to ask
2 that?

3 THE REFEREE: She said no to that. So, that you
4 already have that in the record.

5 MR. DEROHANNESIAN: And that the result of
6 these matters, both her allegations and the allegations
7 against her, was that she was ordered to attend and
8 complete counseling to understand how her words and
9 actions can be perceived as hostile.

10 THE REFEREE: And what--

11 MS. CENCI: --May I-- Excuse me, Your Honor,
12 may I ask counsel as part of this offer of proof, since he has
13 not to my knowledge seen any documentation of this event,
14 what is he relying on? If he's relying on hearsay from this
15 Kim Cunningham, you know, this is--

16 THE REFEREE: --Do you have a counseling memo
17 or a--

18 MR. DEROHANNESIAN: --I don't have the
19 physical-- that's why I subpoenaed it and the mayor's
20 prepared with his attorney to come give you what they
21 know about the result--

22 MS. CENCI: --What--

23 MS. SCALISE: --Okay, so--

24 MR. DEROHANNESIAN: --But I also have spoken
25 to many people who were involved at that time in the court,

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 both me and my investigator. So, several individuals, some
2 of whose names I used in my questioning already, some
3 who I haven't used in my questioning, these individuals
4 gave me the basis for that. And Ms. Cunningham gave me
5 the basis of her allegation directly.

6 MS. SCALISE: Can I just--

7 THE REFEREE: --See, I think if you had proof or a
8 reasonable suspicion that she had made false allegations of
9 sexual harassment or hostile work environment against her
10 boss, then I think you might be on the right track. But now
11 you're saying that this has something to do with a co-
12 worker.

13 MS. SCALISE: Can I just address one issue?

14 THE REFEREE: Sure.

15 MS. SCALISE: We had good faith basis to issue the
16 subpoenas. You struck them, the subpoenas for the mayor
17 and another person--

18 THE REFEREE: --Right.

19 MS. SCALISE: Any of the documents that we
20 would've gotten with respect to her personnel file. So, we
21 are left now with only verbal information. Counsel for the
22 mayor and Kim Cunningham have now said that they will
23 come with them and advise them as they go along and if
24 you order information to be disclosed, they will do that.
25 The point of the matter is you struck it so we don't have the

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 document. We have information from the witnesses as Mr.
2 Kachadourian said. I'm sorry, Mr.--

3 MR. DEROHANNESIAN: --DerOhannesian--

4 MS. SCALISE: --DerOhannesian said.

5 MS. CENCI: How would this Kim Cunningham
6 know what document, if any, was placed in another
7 employee's personnel file?

8 THE REFEREE: Unless she put it there, she
9 wouldn't know.

10 MS. SCALISE: Well, if she made the complaint
11 then she would know there was something in there.

12 THE REFEREE: But she wouldn't know that it's in
13 the personnel file.

14 MS. SCALISE: If you make a written complaint, in
15 all likelihood it's going to be there if someone gets
16 counseled for it.

17 MS. CENCI: And she certainly wouldn't know--

18 THE REFEREE: --We're talking about the State of
19 New York and bureaucracy, so I wouldn't assume anything.

20 MS. SCALISE: I get it-- I get it but what I'm
21 saying is we have no way of knowing because you struck it
22 from our subpoena.

23 MS. CENCI: They're fishing, Your Honor, this is
24 way beyond the pale.

25 THE REFEREE: I think you really-- I think that

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 given your offer of proof, if you want to ask her a few
2 questions about what happened to her and any false
3 allegations that she made, go ahead. But you're going to be
4 bound by the answer and your offer of proof, I think is very
5 clear on the record. Is there anything else, in terms of an
6 offer of proof, that you want to make about what you would
7 like to explore with Ms. Gallagher or anyone else because
8 we can't try Ms. Gallagher's employment at the village.

9 MR. DEROHANNESIAN: Mm-hmm.

10 THE REFEREE: I won't do that. I hope I'm right.
11 I really hope I'm right because I hope this doesn't have to
12 be retried again but I have to protect competing interests
13 here.

14 MR. DEROHANNESIAN: The only thing I want to
15 do as part of my offer of proof and I don't need to do it
16 now, is I was going to put in all the subpoenas that were
17 presented and say that one of those subpoenas is the one to
18 go to Kim Cunningham and the village to produce those
19 documents that we have been told by employees and
20 representatives of the village exist and would support the
21 claim. So, that's the only other thing that I would ask.

22 THE REFEREE: No, I think that's fair and I mean,
23 to be sure, we'll give you a chance to put that in the record.
24 There was a subpoena presented to Greg Deemie, the
25 mayor, that had document requests and I struck the

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 document request. So, that is-- that's now part of your
2 offer of proof. Was there another witness from the village?

3 MR. DEROHANNESIAN: Well, Kim Cunningham.

4 THE REFEREE: Was that a *duces tecum*?

5 MR. DEROHANNESIAN: That's what I'm--

6 THE REFEREE: --I'm just looking here as we--

7 MS. SCALISE: --You have them in one of your
8 folders.

9 MR. DEROHANNESIAN: Yeah. I have them.

10 Respondent's A, is a McConnell subpoena.

11 MS. SCALISE: Deemie is--

12 THE REFEREE: --I'm just looking to see if there
13 was a subpoena to Cunningham that had documents.

14 MR. DEROHANNESIAN: This looks like
15 Respondent G, is--

16 THE REFEREE: --There was a subpoena to Kim
17 Cunningham, it had no document request.

18 MR. DEROHANNESIAN: Okay.

19 THE REFEREE: So, that was signed as is.

20 MS. SCALISE: So, it's just Deemie and it was
21 stricken.

22 THE REFEREE: So, I think you've got that. That's
23 in the record now and that's--

24 MR. DEROHANNESIAN: --So, I don't think we
25 ever made these-- offered these into--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: --This is G? I can't read your
2 writing.

3 MR. DEROHANNESIAN: G, I agree. G.

4 THE REFEREE: G. We'll make that Referee's
5 Exhibit 3.

6 MS. CENCI: I thought the-- Okay. So, the Kim
7 Cunningham subpoena, it says she's a character witness.

8 THE REFEREE: Well, this--

9 MR. DEROHANNESIAN: --G--

10 MS. CENCI: --And we talked about what was
11 admissible in terms of character--

12 THE REFEREE: Yes.

13 MR. DEROHANNESIAN: We'll get to the
14 character--

15 THE REFEREE: --Yeah, but that's what the
16 subpoena says--

17 MR. DEROHANNESIAN: --Yeah--

18 THE REFEREE: --and we signed on--

19 MR. DEROHANNESIAN: --We did not have
20 documents on it.

21 THE REFEREE: Right.

22 MR. DEROHANNESIAN: Should I give you the
23 other subpoenas now so we can mark them?

24 THE REFEREE: You know, let's finish with Ms.
25 Gallagher and get her out of here, then we'll do this

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 afterwards, so--

2 MR. DEROHANNESIAN: --And I have one other
3 request which is, if there are going to be objections made to
4 my questions, that they not be speaking objections, and if
5 there's an argument, that we do that with the witness not
6 present because what's happened is the counsel winds up
7 instructing the witness, so, I would ask--

8 THE REFEREE: --No, I don't think that's
9 necessarily the case but Ms. Cenci is very familiar with the
10 rules and she knows not to make speaking objections. So,
11 we're going to bring Ms. Gallagher in. I am going to allow
12 a limited number of questions about this issue, but I urge
13 you, get to the point of the questions so that we're not here
14 with question after question after question, and then let's
15 move on and get this witness completed. So, let's bring her
16 back in. And we'll deal with the subpoenas afterwards once
17 the witness is done. Ms. Gallagher, you're still under oath--

18 THE WITNESS: --Okay, all right--

19 THE REFEREE: --and we have some more
20 questions for you. Thank you, very much.

21 THE WITNESS: Okay.

22 THE REFEREE: Counsel?

23 BY MR. DEROHANNESIAN:

24 Q. While you worked in the Village of Johnson City, do you recall
25 making allegations against co-workers?

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 A. Co-workers? Can you--

2 Q. --Other clerks of the court.

3 A. When?

4 Q. During the time period that Kim Cunningham was employed there.

5 A. No, I didn't directly make allegations against her.

6 Q. And did you make allegations against colleagues when Ms.

7 Cunningham filed a workplace allegation against you?

8 MS. CENCI: Objection, Your Honor.

9 THE REFEREE: Overruled.

10 MS. CENCI: To the form.

11 THE REFEREE: If the witness understands it. I'm

12 having a little trouble understanding that question as well.

13 Maybe you can clarify?

14 BY MR. DEROHANNESIAN:

15 Q. Kim Cunningham filed a complaint against you in Johnson City,
16 correct?

17 A. I was never given a copy of a complaint.

18 THE REFEREE: That wasn't the question. Not that
19 you received it, did she make a complaint against you to
20 your knowledge?

21 A. To my knowledge, yes.

22 Q. And that complaint involved statements that you would make to your
23 co-workers including Ms. Cunningham, correct?

24 MS. CENCI: Objection.

25 THE REFEREE: Overruled.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 MS. CENCI: She said she didn't see the complaint.

2 THE REFEREE: That's-- One is not indicative of
3 the other, so--

4 A. I'm not sure what the complaint was.

5 Q. And Ms. Cunningham indicated that you had engaged in hostile and
6 violent behavior in the workplace.

7 A. I never--

8 MS. CENCI: --Your Honor, do I-- Excuse me, do
9 I-- Can I have a continuing objection?

10 THE REFEREE: Yes.

11 MS. CENCI: Thank you.

12 THE REFEREE: Overruled.

13 BY MR. DEROHANNESIAN:

14 Q. Ms. Cunningham accused you of engaging in hostile activity in the
15 workplace, correct?

16 A. I was never given a copy of anything, so I don't know what that said.

17 THE REFEREE: Well, that's not really-- That was
18 not really the question. Not whether you saw anything in
19 writing, it's-- Were you-- Was it your understanding that
20 this complaint had been made against you alleging hostile
21 and violent behavior in the work place?

22 A. My understanding was they were doing an investigation about Judge
23 Miller and myself.

24 Q. And there were allegations by Ms. Cunningham that you had engaged
25 in hostile behavior toward colleagues, correct?

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 A. I'm not aware of that.

2 Q. You were asked about statements you made about your colleagues,
3 correct?

4 A. I don't believe so.

5 Q. You were asked about allegations you made against colleagues,
6 correct?

7 MS. CENCI: Objection.

8 THE REFEREE: Overruled.

9 A. I don't recall that.

10 Q. And eventually you got a memo, correct?

11 A. I never got the memo. The judge got the memo. I never got a copy of
12 it and I-- He briefly told me what was in the memo, and he told me
13 not to sign it or anything and he then said he was getting me an
14 attorney which then was Artan Serjanej.

15 Q. And then you were found-- And part of that memo was that you had
16 engaged in a hostile work environment activity?

17 A. I was told it was unfounded.

18 Q. And you had to go to counseling as part of that memo, correct?

19 A. I was told it was unfounded but they recommended one session of
20 some counseling.

21 Q. And then you went to that counseling, correct?

22 A. That is correct.

23 Q. Pardon?

24 A. That is correct.

25 Q. D [REDACTED] L [REDACTED]. You knew her during the time period that you

(Gallagher - Cross)

1 worked with Judge Miller, correct?

2 A. Correct.

3 Q. And you would talk to D [REDACTED] L [REDACTED] outside of the courthouse,
4 correct?

5 A. She called me a few times, yes.

6 Q. And you would meet with Ms. L [REDACTED] outside the courthouse?

7 A. No, I don't believe I ever did.

8 Q. You met Ms. L [REDACTED] for lunch one day?

9 A. I don't think so. Not that I recall. I don't believe I ever did.

10 Q. And did you ever see any photo of D [REDACTED] L [REDACTED]?

11 A. No.

12 Q. Did you ever see any naked photo of anyone while you were working
13 with Judge Miller?

14 A. Just the pictures he showed me, like the images. Like it showed the
15 fruit, the pictures of the fruit, and you opened it up and it was the
16 naked women.

17 Q. Okay. Were those photographs?

18 A. They were like maybe pictures, like drawings, maybe that were
19 copied.

20 Q. Okay, I'm asking about photographs of individuals. While you were
21 working, did you ever see any naked photograph of a-- what appeared
22 to be a live woman?

23 A. No.

24 Q. The only thing you know about a photo of D [REDACTED] L [REDACTED] is what
25 somebody else told you, right?

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301

Empire State Plaza

Albany, New York 12223

(Gallagher - Cross)

- 1 A. That is correct.
- 2 Q. You knew Mr. Iannone from before you started working with Judge
3 Miller, correct?
- 4 A. No.
- 5 Q. You knew Mr. Iannone from your days in Johnson City Court?
- 6 A. Briefly, I believe, the judge brought him in and I might have met him
7 through--
- 8 Q. --My question is, did you know Mr. Iannone before you started
9 working with Judge Miller?
- 10 A. No.
- 11 Q. Did you know the name David Iannone before you started working
12 with Judge Miller?
- 13 A. No.
- 14 Q. When is the first time that you heard the name David Iannone?
- 15 A. It must be with Judge Miller. I don't know. I didn't really know him
16 well.
- 17 Q. Was Mr. Iannone in chambers the first or second day he took office?
- 18 A. He came-- Yes, in the beginning.
- 19 Q. Okay, sometime in the first week?
- 20 A. Yes.
- 21 Q. And he helped move furniture.
- 22 A. That is correct.
- 23 Q. Is that correct? When Mr. Iannone moved furniture into Judge
24 Miller's chambers, did you know his name was David Iannone?
- 25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. Were you introduced to him?
- 2 A. I knew him before that.
- 3 Q. That's my question. So, when Mr. Iannone shows up in chambers of
- 4 Judge Miller for the first week of January 2015, you knew who he
- 5 was?
- 6 A. Yes, I thought you were saying before I worked for him did I know
- 7 who he was.
- 8 Q. So, how much time before January 2015, did you know David
- 9 Iannone? Months or years?
- 10 A. I really don't really have too many memories of him. I don't know.
- 11 He would pop in to village court but I can't tell you when or--
- 12 Q. --And there were no problems with Mr. Iannone at that time, correct?
- 13 A. I didn't know him at all.
- 14 Q. And when he moved the furniture in, were you introduced by Judge
- 15 Miller to him?
- 16 A. I can't remember that. When that happened--
- 17 Q. --But you recognized--
- 18 A. --but I knew who he was, yes.
- 19 Q. And then did you see him again in 2015 or '16?
- 20 A. Yes.
- 21 Q. And did you see him outside of court?
- 22 A. Yes, I believe Judge Miller took us to lunch with him before.
- 23 Q. When you say took you to lunch, you, Mr. Iannone, and Judge Miller?
- 24 A. And Mark Kachadourian.
- 25 Q. Okay. And do you recall when you went to lunch with Mr. Iannone,

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Judge Miller, and Mark Kachadourian?
- 2 A. To be honest with you, no, I don't.
- 3 Q. Do you know if it was 2015 or '16 of the--
- 4 A. --I would say it was probably 2015.
- 5 Q. Okay. And you got along with Mr. Iannone at lunch?
- 6 A. Yeah.
- 7 Q. There were no problems?
- 8 A. Nope.
- 9 Q. Correct?
- 10 A. Correct.
- 11 Q. Did you see Mr. Iannone again at lunch in 2017?
- 12 A. Not that I'm aware of. Not that I recall.
- 13 Q. Do you recall going to lunch with Mr. Iannone where the topic was
- 14 D [REDACTED] L [REDACTED]?
- 15 A. Going to lunch-- Not that I'm aware of.
- 16 Q. Do you recall a meeting with Mr. Iannone at any time where the topic
- 17 of discussion was D [REDACTED] L [REDACTED]?
- 18 A. No. I don't recall that.
- 19 Q. Do you recall discussing with Mr. Iannone trying to help D [REDACTED]
- 20 L [REDACTED] in any of her issues or problems?
- 21 A. Yes.
- 22 Q. You had phone calls to that effect?
- 23 A. I believe he texted me and called me, yes.
- 24 Q. And would it be fair to say you had multiple texts or phone calls
- 25 concerning you and Mr. Iannone trying to help D [REDACTED] L [REDACTED], is

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 that correct?
- 2 A. Yes, he was reaching out to me, yes.
- 3 Q. And do you recall ever getting together with Mr. Iannone to discuss
- 4 D [REDACTED] L [REDACTED] and how you or he could help her?
- 5 A. No.
- 6 Q. Do you recall the period of time that you were having discussions with
- 7 Mr. Iannone concerning Ms. L [REDACTED] and her wellbeing?
- 8 A. It would have been in 2017.
- 9 Q. And would it be fair to say that he would call you about Ms.
- 10 L [REDACTED], correct?
- 11 A. Correct.
- 12 Q. And you would call him about Ms. L [REDACTED], correct?
- 13 A. I don't know if I ever called him.
- 14 Q. Would you text Mr. Iannone about this--
- 15 A. --Yes, if he initiated it, I would probably get back to him.
- 16 Q. He certainly didn't force you to engage in communications concerning
- 17 Ms. L [REDACTED], correct?
- 18 A. I think he would want me to try to talk to her, yes.
- 19 Q. Well, he wanted you to talk to her but he wasn't threatening you.
- 20 A. No.
- 21 Q. He wasn't saying, "If you don't talk to me about Ms. L [REDACTED],
- 22 something's going to happen," right?
- 23 A. You're right, correct.
- 24 Q. You were concerned about her welfare?
- 25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. Mr. Iannone was concerned about her welfare.
- 2 A. Yes.
- 3 Q. Now, at some point, you said this morning, you received information
- 4 from Judge Fitzgerald about something that Mr. Iannone may have
- 5 said, is that correct?
- 6 A. That is correct.
- 7 Q. And that was in March of 2018?
- 8 A. Correct.
- 9 Q. And that's the first time you heard anything about any concern about
- 10 anything Mr. Iannone may have said, correct?
- 11 A. I believe so.
- 12 Q. The only person who gave you information about what Mr. Iannone
- 13 said or didn't say was Judge Fitzgerald, correct?
- 14 A. That is correct.
- 15 Q. The-- Did you speak to anyone else who allegedly had any contact
- 16 with Mr. Iannone?
- 17 A. I don't believe so.
- 18 Q. You understand my question?
- 19 A. Yes.
- 20 Q. In other words, you have no first-hand knowledge of what Mr.
- 21 Iannone said, correct?
- 22 A. Correct.
- 23 Q. You don't know how many people that went through before you
- 24 received that information?
- 25 A. Correct.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And when Judge Fitzgerald spoke to you, she did not say anything
2 about Judge Miller being part of that statement, correct?

3 A. No, she did not.

4 Q. And it would be fair to say that you have no information that Judge
5 Miller was in any way behind or directed or authorized Mr. Iannone's
6 statement if Mr. Iannone said that?

7 A. No, but what he said in the past--

8 Q. --That's not my question.

9 A. Okay.

10 Q. Do you understand my question?

11 A. Yes.

12 Q. With respect to whatever Judge Fitzgerald reported to you, that Mr.
13 Iannone may have said, you have no information that Judge Miller
14 directed or authorized his statement.

15 A. That's correct.

16 Q. You mentioned a Donna Filip, correct?

17 A. Yes.

18 Q. Did you know Donna Filip before January 1, 2015, when you began
19 working for Judge Miller as family court judge?

20 A. Yes.

21 Q. Be fair to say you had known her for many years?

22 A. Her and I started working for Judge Miller about the same time, 2005.

23 Q. And is Donna Filip someone that you would see outside of working
24 for Judge Miller?

25 A. She dates my neighbor next door.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. My question is, during the period that before you worked for Judge
2 Miller as family court judge, would you see Donna Filip outside of the
3 work environment?

4 A. Maybe right up from 2005 to maybe 2008 or so, we were friendly and
5 then we were not after that.

6 Q. And at some point, does Donna Filip have some type of relationship to
7 one of your children?

8 A. She became the godmother to my daughter in maybe 2006, '07, '08,
9 somewhere in there.

10 Q. So sometime in between 2006, 2008, is there some type of event
11 where she becomes godmother?

12 A. Yeah, she became the godmother, yes.

13 Q. As in going to church? Was there a church?

14 A. Yes, church ceremony.

15 Q. You remember the church?

16 A. Yes.

17 Q. Was Judge Miller there?

18 A. Yes. I believe so. I think so.

19 Q. And your daughter was about how old then?

20 A. She was like eight, nine. She was older.

21 Q. And that was you said about 2000 what?

22 A. '08, maybe.

23 Q. Did you know Jerry Penna before you began working as secretary to
24 Judge Miller?

25 A. I met him through Judge Miller during the campaign for family court.

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301

Empire State Plaza

Albany, New York 12223

(Gallagher - Cross)

- 1 Q. He was Judge Miller's campaign manager?
- 2 A. I thought Judge Miller said it was Anthony Paniccia but he was
- 3 involved with the campaign, whether he was manager or not, I'm not
- 4 sure.
- 5 Q. Was he a treasurer? He had a position in the campaign.
- 6 A. He had a position, I guess, yes.
- 7 Q. Now, I want to make sure I understand how many times you say Mr.
- 8 Penna came to chambers. Did he come once, twice, three times or
- 9 more to chambers?
- 10 A. Handful of times.
- 11 Q. And this morning you described how many times?
- 12 A. I don't know.
- 13 Q. Well, do you recall you said certain things happened when Mr. Penna
- 14 was there?
- 15 A. Yes.
- 16 Q. How many times were you referring to?
- 17 A. Well, the one particular time when I was ordered to go get D [REDACTED], that
- 18 was one particular time I was talking about.
- 19 Q. Was there any other time that you referred to this morning with Mr.
- 20 Penna coming over?
- 21 A. That I referred to this morning, no.
- 22 Q. So, he would come to see Judge Miller, correct?
- 23 A. Correct.
- 24 Q. You knew that they were-- He had worked on the campaign?
- 25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And in April 2017 is when he came to and loudly discussed matters of
2 a sexual nature and women?

3 A. Mm-hmm.

4 THE REFEREE: Is that a yes?

5 A. Yes. Sorry.

6 Q. So, April of 2017, correct?

7 A. April or May, somewhere in there.

8 Q. Well, I'll show you Respondent's Y, which we spoke--

9 A. --Yes--

10 Q. --this morning in your testimony and the inspector general's report.

11 A. Mm-hmm.

12 Q. Remember we talked about that? If you look at Respondent's Y, the
13 inspector general report, page 8, in the second full paragraph.

14 THE REFEREE: Is there a pending question?

15 MS. CENCI: What's the--

16 BY MR. DEROHANNESIAN:

17 Q. Does that refresh your recollection as to when Mr. Penna was in Judge
18 Miller's chambers and had the discussion you were talking about?

19 MS. CENCI: She didn't say she couldn't recall,

20 Your Honor. I object. She gave a date.

21 MR. DEROHANNESIAN: She did.

22 THE REFEREE: I think that's right, so, what's your
23 next question?

24 BY MR. DEROHANNESIAN:

25 Q. Did you tell the inspector general it was April or May of 2017?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Well, that's what-- Is that what this says?

2 THE REFEREE: That doesn't matter what it--

3 THE WITNESS: --But it says right here.

4 THE REFEREE; You've given testimony--

5 THE WITNESS: --Yeah--

6 THE REFEREE: --He's now asking you another

7 question. Did you tell the inspector general?

8 BY MR. DEROHANNESIAN:

9 Q. That Mr. Penna was there in April or May 2017 when this discussion
10 took place concerning matters of a sexual nature?

11 MS. CENCI: What page are you on, counsel?

12 What-- May I ask, what page?

13 MR. DEROHANNESIAN: Of the IG report?

14 A. March or April, Mr. Penna visited Judge Miller's chambers.

15 Q. Yep. Okay. Is that when it occurred?

16 A. Those--

17 Q. What is your testimony today as to when Mr. Penna came to
18 chambers?

19 A. I can't remember. Earlier, but it's--

20 Q. --Well, the time you say Mr. Penna came to chambers you knew it was
21 Mr. Penna, right?

22 A. Yes.

23 Q. You knew who he is?

24 A. Mm-hmm.

25 Q. And the day that you said there was this sexual discussion was when

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301

Empire State Plaza

Albany, New York 12223

(Gallagher - Cross)

1 Ms. L [REDACTED] came into the office, correct?

2 A. Mm-hmm.

3 THE REFEREE: Yes?

4 A. Yes.

5 THE REFEREE: It's all right.

6 BY MR. DEROHANNESIAN:

7 Q. It was in 2017, correct?

8 A. Correct.

9 Q. Was it in April of 2017?

10 A. There were-- There was another time also when the janitor was there
11 when Jerry Penna was there and they were talking about-- with the
12 D [REDACTED] that was March or April, I don't know. The May one was what
13 you pointed out on page 9.

14 Q. Okay, that's what I'm trying to do is--

15 A. --Okay--

16 Q. --understand what happened and which month. You talked about a
17 matter with Ms. L [REDACTED]?

18 A. Yes.

19 Q. Was that in March?

20 A. March or April. I don't have the exact date.

21 Q. Okay, so, the-- Okay, so in either March of 2017 or April of 2017 is
22 when you heard Mr. Penna allegedly discuss matters of a sexual nature
23 with Judge Miller, correct?

24 A. Yes.

25 Q. And that's what you testified about this morning, correct?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Yes.

2 Q. Mr. Penna comes into the suite of Judge Miller, correct?

3 A. Yes.

4 Q. And they talk. Did you hear what they were talking about at first?

5 A. Talking about when I--

6 MS. CENCI: --Objection. What date?

7 BY MR. DEROHANNESIAN:

8 Q. March or April of 2017, when you say-- talking about the event that
9 you testified to this morning, which you just told me occurred in either
10 March or April of 2017? Do you know the matter I'm talking about
11 now?

12 A. When I was asked to retrieve Ms. D [REDACTED] L [REDACTED] --

13 Q. --Yes--

14 A. --brought her back.

15 Q. That is the event that you talked about this morning, correct?

16 A. Yes.

17 Q. And there's only one occasion when you say you heard a discussion
18 involving Mr. Penna and Judge Miller involving D [REDACTED] L [REDACTED],
19 correct?

20 A. Yes.

21 Q. And it was in March or April of 2017.

22 A. And then there was another issue in May, but it wasn't involving
23 D [REDACTED], it was involving--

24 THE REFEREE: --Well, that's-- He didn't ask
25 about that.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 MR. DEROHANNESIAN: Yeah.

2 THE REFEREE: He only asked about Ms.

3 L [REDACTED]

4 A. Okay. Yes.

5 Q. And so, on that day when Mr. Penna comes in, how long does Judge
6 Miller and Mr. Penna talk at first?

7 A. I don't know. I'm sorry, I don't recall exactly.

8 Q. Could it have been seconds?

9 A. Maybe a few minutes. I don't recall exactly.

10 Q. And during that time period, did you hear anything being discussed?

11 A. I don't know what they were talking about.

12 Q. And then you said Judge Miller asked you to get Ms. L [REDACTED]?

13 A. Yes.

14 Q. Is that right?

15 A. Yes.

16 Q. Ms. L [REDACTED] came in--

17 A. --Yes--

18 Q. --and then does she go into Judge Miller's office?

19 A. Yes.

20 Q. Are you in your office?

21 A. No.

22 Q. Are you standing?

23 A. I'm standing.

24 Q. And you're standing--

25 A. --in the doorway.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. The doorway of Judge Miller's office?
- 2 A. Between my office and his office.
- 3 Q. And then you say you heard something said to Ms. L [REDACTED]?
- 4 A. They were just making small talk. I don't know exactly what was
- 5 discussed to her.
- 6 Q. And you stood there watching?
- 7 A. I stood there.
- 8 Q. And listening?
- 9 A. Mm-hmm.
- 10 THE REFEREE: Yes?
- 11 A. Yes. Yes, sorry.
- 12 Q. There was nothing inappropriate?
- 13 A. No, not that I'm aware of.
- 14 Q. And then you walked Ms. L [REDACTED] down the hallway.
- 15 A. Yeah, I don't know if I took her down the whole hallway but then I
- 16 came back.
- 17 Q. You took her down part of the way. And when you came back, did
- 18 you go to your desk?
- 19 A. Yes.
- 20 Q. Sat down?
- 21 A. Yes.
- 22 Q. And while you were sitting down is when you continued to hear
- 23 conversation?
- 24 A. Yes.
- 25 Q. You weren't standing up at that point?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. No, I don't believe so.
- 2 Q. You weren't in the doorway.
- 3 A. I don't think so. I...
- 4 Q. And was the door closed?
- 5 A. Not at that point.
- 6 Q. Was the door closed at any point?
- 7 A. I believe they did close it after.
- 8 Q. And did you hear anything while the door was closed?
- 9 A. No.
- 10 Q. And did you hear anything before the door was closed?
- 11 A. Yes.
- 12 Q. Were you offended by what was said?
- 13 A. Yes.
- 14 Q. Upset?
- 15 A. Yes.
- 16 Q. Tell someone right away what you heard?
- 17 A. Yes.
- 18 Q. And who did you tell?
- 19 A. I told Mark and then I told Debbi Singer.
- 20 Q. And that would have been right after, that same day?
- 21 A. I can't recall but I'm-- probably. I'm not sure 100 percent.
- 22 Q. You were upset at Mr. Penna?
- 23 A. Yes.
- 24 Q. You felt Mr. Penna had done something inappropriate?
- 25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And you also said that Mr. Penna at some point made a comment
2 about cement boots?

3 MS. CENCI: Objection.

4 THE REFEREE: What's the objection?

5 MS. CENCI: I believe counsel is misstating the
6 testimony.

7 BY MR. DEROHANNESIAN:

8 Q. Did you say Mr. Penna ever said anything about cement boots?

9 A. No, I did not.

10 Q. So, just so I'm sure, you never heard Mr. Penna talk about cement
11 boots.

12 A. Judge Miller had a conversation with Jerry Penna about having
13 cement boots made out in our shoe size and if we were to ever betray
14 him, we'd be found--

15 Q. --So, you heard that.

16 A. Yes.

17 Q. That's on a different day.

18 A. Yes.

19 Q. And was that in April or May of 2017?

20 A. Yes.

21 Q. And was that in person?

22 A. Judge Miller had--

23 THE REFEREE: --It's a yes or no question, do you
24 understand?

25 THE WITNESS: I'm sorry.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 THE REFEREE: It's all right. It's very hard to
2 testify like this. So, did you hear that in person or is that
3 over the phone?

4 THE WITNESS: Yes, I heard it in person.

5 THE REFEREE: Okay. Thank you. Do you need a
6 break?

7 THE WITNESS: No, I'm good.

8 THE REFEREE: All right, Mr. Kacha--

9 MR. DEROHANNESIAN: --DerOhannesian.

10 THE REFEREE: Mr. DerOhannesian, please.
11 Whatever your name is.

12 BY MR. DEROHANNESIAN:

13 Q. Was that comment in person, in front of you?

14 MS. CENCI: Objection. She just answered that.

15 THE REFEREE: She just said it was.

16 BY MR. DEROHANNESIAN:

17 Q. And this was in April or May of 2017, correct?

18 A. Yes.

19 Q. And you weren't comfortable with that, right?

20 A. Nope.

21 Q. Do you-- Were you comfortable being around Mr. Penna?

22 A. No.

23 Q. Were you afraid of Mr. Penna?

24 A. Yes.

25 Q. Were you so afraid of Mr. Penna that you wouldn't want to be sitting

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 next to him at a social event?
- 2 A. Yes. Which--
- 3 Q. --Do you recall attending a wedding on April 24, 2017?
- 4 A. Yes.
- 5 Q. And on April 24, 2017, was that a wedding that involved someone in
- 6 Rick Balles' family?
- 7 A. Yes.
- 8 Q. Were you invited to go to the Rick Balles wedding?
- 9 A. Yes.
- 10 Q. And did you accept the invitation to go to the wedding of Mr. Balles'
- 11 daughter, Terry Balles?
- 12 A. Nicole. It was his daughter Nicole, and yes we did go. She used to
- 13 babysit our children.
- 14 Q. Now, you weren't forced to go to that wedding, were you?
- 15 A. No.
- 16 Q. How many people would you say were at that wedding?
- 17 A. Couple hundred.
- 18 Q. Big wedding?
- 19 A. Big wedding.
- 20 Q. Couple hundred people. And at the wedding of Ms. Balles to her
- 21 fiancé, Cal Brown, was that her--
- 22 A. --Yes.
- 23 Q. But you knew Balles, not Brown?
- 24 A. Correct.
- 25 Q. That's who invited you to the wedding was the fiancé, correct?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Correct.

2 Q. Jerry Penna was there, right?

3 A. Yes.

4 Q. And who sat next to Jerry Penna at the wedding on April 24, 2017?

5 MS. CENCI: Objection.

6 THE REFEREE: Overruled.

7 BY MR. DEROHANNESIAN:

8 Q. I'm sorry, April 29th was the wedding.

9 A. He moved his wife and sat right next to me. Made me very
10 uncomfortable and we had--

11 Q. --I didn't ask you that. So, on April 29th at the wedding, you sat next
12 to Mr. Penna, correct?

13 MS. CENCI: Objection. She did not say that.

14 THE REFEREE: The record's very clear what
15 happened.

16 BY MR. DEROHANNESIAN:

17 Q. And you were sitting next to Mr. Penna for a period of time, correct?

18 MS. CENCI: Objection.

19 THE REFEREE: No, overruled.

20 MS. CENCI: She said Mrs. Penna.

21 MR. DEROHANNESIAN: --Now, here we go
22 again. This is exactly what I objected to.

23 THE REFEREE: Overruled.

24 MS. CENCI: But he's mis--

25 THE REFEREE: Overruled. The record's really

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 clear and now it's another question. Did you sit next to him
2 for a period of time?

3 A. Yes. He switched--

4 THE REFEREE: Yes. That's the answer.

5 A. Yes, I did.

6 THE REFEREE: Next question.

7 BY MR. DEROHANNESIAN:

8 Q. You sat with Mr. Penna for more than a half an hour, correct?

9 A. Yes.

10 Q. You sat next to Mr. Penna for more than an hour?

11 A. Yes.

12 Q. You ate next to Mr. Penna?

13 A. Yes.

14 Q. You drank next to Mr. Penna, correct?

15 A. Yes. I'm not sure if I really drank. I didn't feel well.

16 Q. And you had conversation with Mr. Penna, correct?

17 A. Yes.

18 Q. Your conversation with Mr. Jerry Penna on April 29, 2017, covered
19 many topics, correct?

20 A. I can't recall.

21 Q. Do you recall talking to Mr. Penna about your health?

22 A. We talked about-- Yes, having back and neck issues.

23 Q. Because Mr. Penna has back and neck issues, correct?

24 A. That is correct, yes. So, we did talk about that.

25 Q. So, you shared with each other information about your physical

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 condition, correct?
- 2 A. That is correct.
- 3 Q. That was one of the topics, correct?
- 4 A. That is correct. We did talk about that.
- 5 Q. And you knew Mr. Penna because he had been to chambers in March
- 6 or April of 2017, correct?
- 7 A. Yes.
- 8 Q. And you talked about what was going on in your personal life and
- 9 family life with Mr. Penna, correct?
- 10 A. Not that I'm aware of.
- 11 Q. Well, you talked about the kids, your kids and what they were doing?
- 12 A. I'm not sure if we did or not.
- 13 Q. Mr. Penna talked about what his family was up to?
- 14 A. I remember talking to his wife about his daughter but I don't know if I
- 15 talked to him about that.
- 16 Q. Mr. Penna was sitting next to his wife, correct?
- 17 A. Yes.
- 18 Q. He is married, correct?
- 19 A. Yes.
- 20 Q. They were both there at the wedding?
- 21 A. Yes.
- 22 Q. And he asked you about work?
- 23 A. I guess. I'm not sure. I don't recall.
- 24 Q. "How are things going at work?" he asked you?
- 25 A. Maybe. I'm not sure.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. Well, did you ever say to Mr. Penna on April 29, 2017, while you
2 were sitting next to him at the wedding, that there were any problems
3 or issues that you were having with Judge Miller?

4 A. I was very ill that day and I don't remember discussing any--

5 Q. --Well, do you have any recollection--

6 MS. CENCI: --Excuse, me.

7 THE REFEREE: I think she--

8 MS. CENCI: --she hasn't completed the response.

9 THE REFEREE: Did you complete your answer?

10 THE WITNESS: Yes.

11 BY MR. DEROHANNESIAN:

12 Q. You never said anything to Mr. Penna on April 29, 2017, about any
13 problems that you say you were having with Judge Miller, correct?

14 A. I don't know if I did or not. I don't know.

15 Q. Do you recall making any complaint or statement about Judge Miller
16 on April 29th to Mr. Penna?

17 A. I have no idea.

18 Q. And then you went back to work after the wedding, correct?

19 A. Yes.

20 Q. And then you mentioned that-- a name, James Stilloe.

21 A. Mm-hmm. Yes.

22 Q. Correct?

23 A. Yes.

24 Q. You know James Stilloe from before the days that you started working
25 with Judge Miller?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. Not from before I started working with Judge Miller. I met him
2 through Judge Miller.
- 3 Q. Before-- I'll clar-- You're correct. Before you began working in
4 family court with Judge Miller, did you know Mr. Stilloe?
- 5 A. Yes.
- 6 Q. When did you first meet Mr. Stilloe?
- 7 A. I really have no idea. Maybe-- I really don't know.
- 8 Q. Days, months, years?
- 9 A. Maybe-- I really don't know. I didn't know him that well.
- 10 Q. Well, going back to 2006?
- 11 A. Maybe, yeah. Could be.
- 12 Q. And you had spoken to him before you worked with Judge Miller on
13 many occasions, correct?
- 14 A. Usually, it was with Judge Miller because he kind of was always with
15 Judge Miller and then--
- 16 Q. --and there were times you were with Mr. Stilloe without Mr. Miller,
17 correct?
- 18 A. He seemed to like kind of follow me sometimes, but--
- 19 Q. --My question is, were you alone with Mr. Stilloe on some occasions
20 prior to the time you began working with Judge Miller?
- 21 A. I was never-- I was alone with him once, one time.
- 22 Q. Had you been with him to Cinco de Mayo?
- 23 A. That-- No, I was not alone with him that night. I think it was the next
24 night.
- 25 Q. Well, the Cinco de Mayo, was that a social event you went to?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Yes. My husband was there, too.

2 Q. Was Judge Miller there?

3 A. I don't recall.

4 Q. You had the chance to socialize with him at the Cinco de Mayo event?

5 THE REFEREE: With whom? Judge Miller or
6 Stilloe?

7 BY MR. DEROHANNESIAN:

8 Q. Mr. Stilloe. Mr. Stilloe.

9 A. Probably. There were a lot of people there. I don't--

10 Q. --And then again, I think did you say you saw him the next night
11 again?

12 A. Yes.

13 Q. And where did you see him the next night?

14 A. He called because he had an order of protection with his wife and he
15 needed someone to talk to and he was talking to Judge Miller and
16 somehow it ended up for me to go over and talk to him so he didn't go
17 over to his wife's house. So, I went and picked him up while he was
18 waiting for the police to call back and he ended up stepping in like
19 dog feces in the brand new car, so we ended up at the car wash while
20 he made his calls to CPS. He was on the phone with the judge and
21 CPS and the police and whoever.

22 Q. Who was with him in person?

23 A. Nobody.

24 Q. What about you? You were there.

25 A. Me. Yeah. But, you know, I was washing my stuff and he was in the

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 laundrette making all these calls.
- 2 Q. And did you suggest that he contact the child abuse hotline?
- 3 A. No, the judge did.
- 4 Q. Well, did you hear any conversation between the judge and Mr.
- 5 Stilloe?
- 6 A. Yes.
- 7 Q. And there was a charge brought against Mr. Stilloe with respect to that
- 8 phone call, correct?
- 9 A. Yes, I guess. Yeah.
- 10 Q. Was there a trial?
- 11 A. Yes.
- 12 Q. Do you know about the trial?
- 13 A. Yes.
- 14 Q. Did you appear at the trial?
- 15 A. He had myself and Judge Miller testify.
- 16 Q. So, you testified at the trial of Mr. Stilloe, correct?
- 17 A. Yes.
- 18 Q. And you testified on behalf of Mr. Stilloe, correct?
- 19 A. That is correct.
- 20 Q. Was Mr.-- And after that, this was about 2006 or '07, you think?
- 21 A. Maybe. Not sure.
- 22 Q. Did you see Mr. Stilloe again before or on occasion outside of the
- 23 courtroom or courthouse where Judge Miller worked?
- 24 A. Not too much really after that because Judge Miller didn't have him
- 25 come around after that, so.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. Well, not too much is how much?
- 2 A. Judge Miller didn't really have him-- bring him around because he
- 3 had the conviction, so--
- 4 Q. --Well, and again, this conviction involved this child matter that you
- 5 were present with the feces and the kids?
- 6 A. Yeah, I-- He-- Yeah.
- 7 Q. Is that-- That matter right?
- 8 A. Mm-hmm. Yes.
- 9 Q. It's not some other matter you're talking about. That's the one?
- 10 A. Well, he had a matter before that which is why there was an order of
- 11 protection, the domestic.
- 12 Q. So, Mr. Stiloe, did you see him in November of 2014? Do you--
- 13 A. --Oh, election-- Maybe election time.
- 14 Q. How about election night?
- 15 A. He might have been there but I don't-- I don't remember. I pretty
- 16 much was with, you know, Mr. Kachadourian and my husband.
- 17 Q. Do you recall election night and speaking to Mr. Stiloe about the
- 18 position of secretary to Judge Miller as family court judge?
- 19 A. No, I do not.
- 20 Q. Do you recall speaking to Mr. Stiloe about Lisa Wojdat?
- 21 A. No, I do not.
- 22 Q. Did you tell Mr. Stiloe on election night, November 2014, quote, "If
- 23 he's taking that F-ing Lisa instead of me, I'm going to be pissed." Did
- 24 you make that statement to Mr. Stiloe?
- 25 A. No. No.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. And now, Rick Balles you said you know?
- 2 A. Yes.
- 3 Q. And that's-- And you know his family not just Rick, right?
- 4 A. Correct.
- 5 Q. And we talked about the Balles wedding--
- 6 A. --Yes--
- 7 Q. --with a couple hundred people. And you knew Rick Balles was
- 8 related to Judge Miller, correct?
- 9 A. Yes.
- 10 Q. That's his brother-in-law?
- 11 A. Yes.
- 12 Q. And do you recall contacting Mr. Balles about your employment with
- 13 Judge Miller?
- 14 A. When?
- 15 Q. At any-- First at any time, do you recall having contact with Mr.
- 16 Balles to talk about your employment with Judge Miller?
- 17 A. Over 15 years or 14 years or--
- 18 Q. --Okay, let's focus on December of 2016. Did you call, email, write
- 19 or text Mr. Balles about your work with Judge Miller?
- 20 A. I believe he came over to the house and I had--
- 21 Q. --First, do you recall some type of contact in that time period?
- 22 A. I do believe so and I--
- 23 Q. --Okay, do you recall whether you had more than one contact?
- 24 A. I don't recall.
- 25 Q. Do you recall if you had phone calls with Mr. Balles in December of

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 2016?

2 A. I'm not sure, really. I mean, my husband might have, I'm not sure if I
3 really--

4 Q. --I'm asking about you. Did you text Mr. Balles in December of
5 2016?

6 A. I could have, I'm not sure.

7 Q. When you say you could have, would you have had his phone
8 number?

9 A. Yeah, I do have his phone number but I don't really recall texting him.

10 Q. Do you recall in December 2016 there was some form of
11 communication telling Mr. Balles that you were concerned that Judge
12 Miller was going to fire you?

13 A. I remember having a discussion with him about I was concerned about
14 Judge Miller and things he was doing and saying and--

15 Q. --Well, no, my first question is did you say anything in substance to
16 Mr. Balles that you were concerned that Judge Miller may fire you?

17 A. I don't know if I did or not.

18 Q. And did you say anything to Mr. Balles about any issue or problem
19 that you were having Judge Miller when you spoke to him or
20 communicated with him in December 2016?

21 A. I believe we discussed a few things, yes.

22 Q. Did you discuss anything about any harassing behavior to Mr. Balles?

23 A. I believe we did, yes.

24 Q. About any other type of behavior that you found inappropriate on
25 Judge Miller's part?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. We did talk about it a little bit.

2 Q. And let me ask if you ever reported what you claim you said to Mr.
3 Balles to anybody?

4 A. Anybody as in who?

5 Q. As in anybody in the world, did you talk about this conversation to
6 Mr. Balles?

7 A. I spoke to Debbi Singer.

8 Q. And you mentioned the name Richard Balles?

9 A. To Debbi Singer?

10 Q. Yes.

11 A. No.

12 Q. Did you tell ever-- Prior to today at 3:00 PM on January 9, 2018--

13 THE REFEREE: '19.

14 BY MR. DEROHANNESIAN:

15 Q. '19. Did you ever report to anyone this conversation with Mr. Balles?

16 MS. CENCI: Objection. Relevance?

17 THE REFEREE: I tend to agree. What-- Sustained.

18 BY MR. DEROHANNESIAN:

19 Q. Just want to talk about a-- before we talk about some other people, a
20 period of time that you were away in June of 2017.

21 A. Okay.

22 Q. Were you away for a period of time in June?

23 A. I took a week off in June. It was the first week I'd taken in the time
24 we'd been in family court.

25 Q. Was that a full week you took off?

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 A. Yes, it was.

2 Q. A Monday through Friday, or did you take a week off beginning at a
3 different day?

4 A. Again, I can't remember. I'm sorry.

5 THE REFEREE: It's all right. Nothing to apologize
6 for.

7 A. It might have been Monday through Friday. I'm not sure.

8 Q. But it was five days?

9 A. It might have been six. I'm not sure.

10 Q. Do you know if it was June 5th through June 9th, that you took off?

11 A. I can't remember. I'm sorry. Could be.

12 Q. I want to show you what's been marked Respondent's Z. Take a look
13 at this.

14 A. Okay.

15 Q. And I'm going to bring your attention to a particular page. I believe
16 it's page 22 that I'm referring to and it has the week starting June 1
17 through June 8.

18 A. Okay.

19 Q. First of all, it may be hard to read, and if you need a magnifying glass,
20 let me know. Can you read it? See if it helps refresh your recollection
21 of the exact days you took off. Can you read it okay?

22 A. It looks like I used annual leave the-- June 5th, 6th, 7th, 8th-- wait, 7th,
23 9th, 10th.

24 Q. So, the first day off was when? June 5th?

25 A. Yes, it looks like that.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. So, the 5th, the 6th--
- 2 A. --The 7th--
- 3 Q. --the 7th, and then the next day?
- 4 A. Would be Thursday the 9th, Friday the 10th.
- 5 Q. So, it appears Monday through Friday--
- 6 A. --Yes--
- 7 Q. --June 5th through 10th, correct?
- 8 A. Yep.
- 9 Q. That week you took time off?
- 10 A. Yes.
- 11 Q. You weren't in the building at that point, correct?
- 12 A. Yeah.
- 13 Q. When I say the building, family court.
- 14 A. Correct.
- 15 Q. Probably in another building someplace with-- It certainly wasn't
- 16 family court. You knew-- After you began working with Mr.-- for
- 17 Judge Miller, you did see Mr. Kachadourian outside of work, correct?
- 18 A. Sometimes, yes.
- 19 A. Be fair to say, your family socialized?
- 20 Q. Sometimes, yes.
- 21 A. You had children that engaged in similar activities?
- 22 Q. Sometimes, yes.
- 23 A. Sometimes you would go to dinner together with Mr. Kachadourian?
- 24 Q. I think once.
- 25 A. Were there some activities that your husband was able to facilitate you

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 and Mr. Kachadourian going to?
- 2 A. Maybe something yes, yeah. Mm-hmm.
- 3 Q. Do you remember what kind of events they were?
- 4 A. At the Anderson Center. It was like a concert at the Anderson Center.
- 5 Q. Were these like comp tickets that--
- 6 A. --No, they were-- My mother-in-law works there. They were from my
- 7 mother-in-law.
- 8 Q. How about your husband? Did he ever get some tickets that allowed
- 9 you and Mr. Kachadourian to socialize together?
- 10 A. No, my mother-in-law is the house manager there.
- 11 Q. And that's a concert venue?
- 12 A. Yes.
- 13 Q. And how many times did you do that with Mr. Kachadourian?
- 14 A. I think just once, and then my husband got Harlem Globetrotter tickets
- 15 and I gave them to Judge Miller and I think Judge Miller might have
- 16 gave them to the Kachadourians.
- 17 Q. Do you remember when that was?
- 18 A. Like February or March, maybe '16 or '17, I think. I don't know.
- 19 Q. Was it your intent that Judge Miller take advantage of those tickets?
- 20 A. Yeah, I asked him if he wanted them.
- 21 Q. And then apparently Judge Miller couldn't or chose not to--
- 22 A. --He called them and asked them if they wanted them.
- 23 Q. And Mr. Kachadourian took advantage of that opportunity?
- 24 A. I think his wife and son might have went. I'm not sure.
- 25 Q. Did you go?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. No.
- 2 Q. I think you testified about there was a list of names that Judge Miller
- 3 wanted you to maintain, correct?
- 4 A. Yes.
- 5 Q. And you say that the list of names related-- it was for some type of
- 6 political purpose, correct?
- 7 A. Yes.
- 8 Q. And this list you started to create, correct?
- 9 A. Yes.
- 10 Q. And you kept the list, correct?
- 11 A. Yes.
- 12 Q. And the list was in your drawer at work?
- 13 A. Yes.
- 14 Q. Okay. So, you had physical possession of it, correct?
- 15 A. Yes, I did. I got rid of--
- 16 Q. --Well, one question at a time.
- 17 A. Okay.
- 18 Q. So, you had the list and did you give the list that you say Judge Miller
- 19 wanted you to do to the inspector general?
- 20 A. I don't know if I did or not. I'm not sure.
- 21 Q. Did you provide the list or a photocopy of the list that was in your desk
- 22 that you say was created for political purposes to the Commission on
- 23 Judicial Conduct?
- 24 A. No, those items came out missing from my drawer.
- 25 Q. Well, you had them in your drawer, correct?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. Mm-hmm.
- 2 Q. Yes?
- 3 A. Yes.
- 4 Q. You copy things while you're with Judge Miller, correct?
- 5 A. Yes.
- 6 Q. You copy checks?
- 7 A. Yes.
- 8 Q. Mr. Kachadourian copied things while he was there, correct?
- 9 A. I guess.
- 10 Q. I mean, you copied items that you gave to the inspector general,
- 11 correct?
- 12 A. Yes.
- 13 Q. You copied items that you gave to the Commission on Judicial
- 14 Conduct, correct?
- 15 A. Yes.
- 16 Q. And the items you were copying was to support your allegations,
- 17 correct?
- 18 A. Yes.
- 19 Q. You weren't trying to hold back.
- 20 A. Right.
- 21 Q. You want to tell them everything you knew, right?
- 22 A. I didn't but yeah, I guess.
- 23 Q. And did he give them a list or a photocopy of any list of names that you
- 24 say that Judge Miller asked you to create?
- 25 A. Couldn't find it.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. And you looked for it, you say?
- 2 A. Yes.
- 3 Q. Did Mark Kachadourian look for it?
- 4 A. I don't know.
- 5 Q. And while you were working for Judge Miller, did you collect any
- 6 petitions for any candidate?
- 7 A. When I was working in family court or--
- 8 Q. --Family court. While you're working for Judge Miller in family court,
- 9 did you collect any petitions for any candidate?
- 10 A. I can't remember but I don't believe that I did because when I went to
- 11 family court, Mark said we weren't able to do that. I didn't know that.
- 12 Q. You have no knowledge of any petitions that you collected while you
- 13 worked for Judge Miller as a family court judge, correct?
- 14 A. That is correct.
- 15 Q. And while you were working for Judge Miller as a family court judge,
- 16 did he ever put a political sign on your lawn?
- 17 A. Did he?
- 18 Q. Did you?
- 19 A. Did I? No. He probably did but I didn't myself.
- 20 Q. Who he?
- 21 A. Judge Miller.
- 22 Q. No, I'm saying, on your lawn while you worked for Judge Miller when
- 23 he was family court judge, did you ever place a political sign on your
- 24 lawn for a candidate for office?
- 25 A. My husband might have but I never did.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And that was for Mr. Balles? Or was it for the opponent for Mr.
2 Balles?

3 A. Since we started working there, maybe his first election might have
4 been Mr. Balles and then after that was the opponent.

5 Q. Specifically last year. Excuse me, September-- not last year,
6 September--

7 A. --He's ran a couple of times though since we've been here.

8 Q. In September and November 2017?

9 A. Yeah, he ran then and then he ran the year before that and I think he
10 ran the year before that. The first time, I think, my husband--

11 Q. --I'm just asking, did you engage in having a sign on your lawn--

12 A. --I did not. It's not my property, it's my husband's property and where
13 the sign was placed was not our property.

14 Q. I think you said there was something about Sen. Akshar that Judge
15 Miller said to you?

16 A. Yes.

17 Q. And he told you to your face--

18 A. --Yes--

19 Q. --that you should have type of sexual service for Sen. Akshar, correct?
20 Is that right?

21 A. That I should go to Albany and satisfy his needs.

22 Q. Mm-hmm. And there was a theory under which you were supposed
23 to-- There was a benefit to be gained by you doing this, correct?

24 A. Benefit for me?

25 THE REFEREE: Object to the-- Object to the form.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Object to the form.

2 BY MR. DEROHANNESIAN:

3 Q. Yeah. Did Judge Miller indicate the reason-- I'll rephrase.

4 THE REFEREE: Just object to the form.

5 BY MR. DEROHANNESIAN:

6 Q. Did Judge Miller indicate--

7 MS. CENCI: --I'll object to the form.

8 THE REFEREE: Sustained.

9 BY MR. DEROHANNESIAN:

10 Q. You claimed that there was a reason or benefit to be gained by you
11 having some type of contact with Sen. Akshar.

12 THE REFEREE: Benefit to whom?

13 MR. DEROHANNESIAN: To anyone.

14 A. My knowledge, no. Mark told me. You want me to get into that?

15 Q. Well, so Mark told you the reason? Mark told you that it was to get
16 Sen. Akshar's telephone number, right?

17 A. No, he said that the judge was furious he didn't get his phone number
18 and then this conversation started.

19 Q. He didn't tell you-- Didn't he say to you-- Didn't he, Mark
20 Kachadourian, say to you, "If you have sex with Sen. Akshar, this is
21 how we'll get his number?"

22 A. Did he tell me that? No.

23 Q. Let me ask you if you testified in the Commission on Judicial Conduct
24 on August 8, 2017. You did, correct?

25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And if you were asked this question, made this answer? This is August
2 8, 2017, page 23, line 4:

3 "Q. Do you know what he was angry about?

4 "A. Well, Mark told me that after that apparently
5 when they were in Albany, he asked senator for his cell
6 number and the senator wouldn't give him his cell number,
7 so, in turn thought, quote, 'Well, you know, this is how I'll
8 get his number I guess.' Close quote. I don't know."

9 Did you make that answer to that question?

10 A. Yes.

11 MR. DEROHANNESIAN: Be a good time for a
12 break, if that's possible?

13 THE REFEREE: Yeah. Any guesstimate on how
14 much more you have?

15 MR. DEROHANNESIAN: Yeah. Maybe 20, 30.

16 THE REFEREE: Okay, let's take a break. Six
17 minutes. Let's go off the record.

18 (OFF THE RECORD)

19 THE REFEREE: Counsel for the Commission is
20 here, is present. Counsel for the Respondent is here. The
21 Respondent is present, and I received a package with a
22 transmittal letter dated January 9, 2019, from Shawn Kerby,
23 assistant deputy counsel, and it's addressed to me and it's
24 regarding subpoenas issued to the Unified Court System.
25 I've marked the letter as Referee Exhibit 4. I've given

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 copies of the letter only to counsel. There's a volume of
2 exhibits that accompany the letter. I haven't looked at them
3 and don't intend to do that right now. We'll address it later.
4 So, let's bring the witness back. Hopefully we can
5 conclude the witness rapidly. And here you're still under
6 oath.

7 THE WITNESS: Okay.

8 THE REFEREE: I think we're on the last part.

9 THE WITNESS: Okay. Thank you.

10 BY MR. DEROHANNESIAN:

11 Q. Do you know Marty Shaw from prior to the time that you worked with
12 Judge Miller as family court secretary?

13 A. No.

14 Q. Have you ever met Marty Shaw?

15 A. No.

16 Q. Did you ever hear Marty Shaw say anything?

17 A. No.

18 Q. Do you have any direct information concerning anything about Marty
19 Shaw's background?

20 A. Just the judge would say he was just released from Attica and he was
21 doing work for the judge and he was a dangerous person.

22 Q. And when you say, "Just released," you mean as in recently?

23 A. I have no idea. That's-- I don't know. That's just what I heard.

24 Q. Like in 1985, recently?

25 A. I have no idea. That's just what I heard. I don't know anything about

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 the individual.

2 Q. I think you said, excuse me, you're looking for-- you made copies of
3 certain documents that you turned over to the Commission?

4 A. Okay.

5 Q. Is that right?

6 A. Yes.

7 Q. And to the inspector general?

8 A. Yes.

9 Q. There were no copies of any list that you maintained though, correct?

10 A. No.

11 Q. And was there a time period that you specifically made copies to
12 provide to the investigators?

13 A. Timeframe? No.

14 Q. When did you first begin making copies of items that you could turn
15 over to the inspector general or the Commission?

16 A. I really don't know. I-- I'm not sure. I know the letter I wrote in
17 April, I think it was in '15, I just kind of kept one of those.

18 Q. Was that so you could turn that over to the investigators later?

19 A. Well, I wanted to talk to Mark about it, like I don't know if we should
20 be doing this and I just kind of held a copy of it.

21 Q. Okay. So, you had one-- Is there anything else that you copied before
22 April so you would have something to turn over to investigators?

23 A. Not that I'm aware of.

24 Q. And while we're on that letter, that's Exhibit 2V, that's the letter
25 you're referring to?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Yes.

2 Q. So, you kept a copy of that you said?

3 A. Yes.

4 Q. And one of the reasons to keep a copy is so that you could provide it
5 to investigators at some point?

6 A. Well, no. I don't think so. I just wanted to-- I kept a copy in my desk
7 because I wanted to talk to Mark about it, like I didn't know what
8 was--

9 Q. --Did you talk to Mark about it?

10 MS. CENCI: Your Honor, she didn't complete--

11 THE REFEREE: --You got to let her finish.

12 A. I think I put it away at first and eventually did talk to him about it.

13 Q. When?

14 A. I can't recall.

15 Q. Was it in-- What year?

16 A. Maybe that year.

17 Q. 2015?

18 A. Probably. I don't know.

19 Q. 2016?

20 A. I don't recall.

21 Q. 2017?

22 A. I'm not sure.

23 Q. And certainly you didn't throw the letter out.

24 THE REFEREE: Obviously, because it's here.

25

(Gallagher - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Correct?

3 A. Correct.

4 Q. It was copied before Judge Miller asked you to keep and maintain any
5 list, correct?

6 A. Keep any list of what? The political list?

7 Q. Yes.

8 A. The political list started in the beginning when we took office.

9 Q. And it was going on in November of 2015, you say? The list?

10 A. Still then? Yes.

11 Q. Yeah. And in 2016?

12 A. Yeah, but I got so busy I didn't have time to keep doing that.

13 THE REFEREE: That wasn't the question. You
14 have to listen carefully to the question.

15 A. I'm sorry, I'm not sure at what point I stopped doing that.

16 Q. And in any event, you were too busy to make a copy of it, correct?

17 A. No, I had a copy in my desk and I'm not sure what happened to it.

18 Q. Well, you had the original, too.

19 A. The list?

20 Q. Yes.

21 A. I'm not sure what happened to the list.

22 Q. Was it-- Was it put on a computer?

23 A. No. Handwritten.

24 Q. And then I think-- Were there other-- What items did you turn over?
25 What physical items to the inspector general?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. That-- I can't-- It's probably--
2 Q. That, the letter we just looked at?
3 A. The letter we just looked at, a copy of some checks.
4 Q. The checks that you talked about--
5 A. --That went with it.
6 Q. How about this one, Exhibit 6Q?
7 A. I'm not sure if I turned this one over or if Mark turned this one over.
8 I'm not sure where that one.
9 Q. Mark has his own set of items that he turned over?
10 A. Well, we had-- We didn't have shredders. So, when we had made
11 copies of some things for the judge and they weren't like copied
12 correctly, we couldn't put them in the shredder, so I just had-- put
13 them in my desk.
14 Q. So, when you say you made a copy for the judge--
15 A. --Yeah--
16 Q. --you made another copy for somebody else, right?
17 A. For the judge.
18 Q. And he took his copy, right?
19 A. Right.
20 Q. You made another copy?
21 A. Like I said, if we couldn't shred them if they weren't copied perfectly,
22 because we had no shredders.
23 Q. So, there'd be two copies?
24 A. Yeah, or-- Yeah.
25 Q. And you would keep the second copy?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Until the shredders came to be taken and--

2 Q. --When did you and Mark decide to keep copies?

3 A. I don't recall.

4 Q. Do you know if you would-- were in the office, if you look at Exhibit
5 6Q, on June 25, 2017?

6 A. June 25, 2017? I probably was.

7 Q. Do you think that's when the check was copied?

8 A. I have no idea.

9 Q. Do you know when Mark would go in to copy items?

10 A. Things weren't copied there, also. He had us copy some stuff at this
11 office and he had to take some things to Kinko's and have them
12 copied.

13 Q. And these would be items that came from Judge Miller's office,
14 correct?

15 A. Correct.

16 Q. Now, looking at the year 2016, beginning in January, do you have any
17 specific recall of any mean or misbehaving conduct by Judge Miller in
18 January of 2016?

19 A. January? Not that I can think of offhand.

20 Q. And how about in February 2016, do you have a specific recall of any
21 misconduct or inappropriate behavior by Judge Miller?

22 A. It just seemed to be a constant pattern of angry and mean and
23 negativity and--

24 Q. --I understand that. You have said that. My question is, do you have a
25 recollection of any specific act of misbehavior or misconduct in

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 February of 2016?

2 A. Not that I can recall offhand.

3 Q. Do you have any recollection of any specific misconduct or
4 misbehavior by Judge Miller in March of 2016?

5 A. Not that I can recall.

6 Q. Do you have any specific recall of any misbehavior or misconduct by
7 Judge Miller in April of 2016?

8 A. When things would happed I would go down and I would report them
9 and I just--

10 Q. --That's a different question. My question is do you have a specific
11 recall of any specific act of misbehavior or misconduct by Judge
12 Miller in April of 2016?

13 A. April 2016, I believe was when he wanted me-- was ordering me to
14 help him with his taxes and he was very aggressive and telling me I
15 wasn't a real secretary. And on or about April 2016, I wasn't a real
16 secretary. I didn't do what real secretaries did and telling Mark that
17 he needed to have a talk with me about what real secretaries did and
18 he went on the Lisa topic.

19 Q. And was Mark present for that?

20 A. Yes.

21 Q. This is what Mark told you?

22 A. I was there. We were working on his taxes in his office.

23 Q. So, Mark was present when this was happening?

24 A. Yes. Yes.

25 Q. Any other specific recall in April of 2015?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. '16, you said.

2 Q. Yeah, '16.

3 A. '16 now?

4 Q. Yes.

5 A. That's all I can remember right now.

6 Q. And in May of 2016, do you have any recall of any specific act of
7 misbehavior or misconduct by Judge Miller?

8 A. I didn't quite-- You know, I didn't really take a lot of notes--

9 Q. --I didn't ask you that question--

10 A. --so, I don't recall exactly but like if I would hear things, I would go
11 report them, so--

12 Q. --No, my question is--

13 A. --but I can't tell you if I remember exactly everything in that month.

14 THE REFEREE: I think she's trying to answer you
15 as best as she can.

16 THE WITNESS: I'm trying to think--

17 THE REFEREE: --You're doing fine. Don't worry.

18 MR. DEROHANNESIAN: But it-- Do you need a
19 break?

20 THE WITNESS: Okay. No, I'm good.

21 MR. DEROHANNESIAN: You sure?

22 BY MR. DEROHANNESIAN:

23 Q. Is it fair to say you don't have recall of any specific act of misbehavior
24 or misconduct by Judge Miller in May of 2016?

25 A. I guess, yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And in June of 2016, do you have any recollection of any specific act
2 of misbehavior or misconduct by Judge Miller?

3 A. Not that I can recall offhand.

4 Q. And in July of 2016, do you have any recollection of any specific act of
5 misbehavior or misconduct by Judge Miller?

6 A. July? I don't have any dates offhand that I can tell you.

7 THE REFEREE: Let's take a short break?

8 THE WITNESS: No.

9 THE REFEREE: We'd be happy to do that.

10 THE WITNESS: Okay, no, I'm good.

11 MR. DEROHANNESIAN: You're sure?

12 A. I don't recall in July.

13 Q. And in August of 2016, do you have any recollection of any specific
14 act of misbehavior or misconduct by Judge Miller?

15 A. Not that I can recall offhand.

16 Q. And in September of 2016, can you recall any specific act of
17 misbehavior or misconduct by Judge Miller?

18 A. He said stuff like on a daily-- almost a daily basis about-- so I can't
19 tell you like exact dates.

20 Q. I'm not asking for dates.

21 THE REFEREE: You know what, that answer's fine
22 and she's doing the best that she can do and she's very
23 upset. So, let's take a short break. Let's go off the record.

24 (OFF THE RECORD)

25 THE REFEREE: I suggest that you-- Either do

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 something-- because it's really-- It's taking an excessive
2 amount of time.

3 MR. DEROHANNESIAN: I only have a couple
4 months left and I was going to stop there.

5 THE REFEREE: You're not going to do '17?

6 MR. DEROHANNESIAN: No.

7 THE REFEREE: All right. Where did we leave off?

8 MR. DEROHANNESIAN: I was just going to ask
9 because I didn't write it down, maybe--

10 MS. SCALISE: September.

11 MR. DEROHANNESIAN: September.

12 THE REFEREE: September.

13 MR. DEROHANNESIAN: Was there an answer or
14 not?

15 MS. SCALISE: No.

16 THE REFEREE: We're back on the record.
17 Counsel for the Commission is present. Counsel for
18 Respondent is present. Respondent is present. And our
19 witness is back. Thank you. You're still under oath. Let's
20 see if we can't wrap this up.

21 THE WITNESS: Okay.

22 THE REFEREE: All right, let's proceed.

23 BY MR. DEROHANNESIAN:

24 Q. We're focusing on September of 2016. Do you have any specific
25 recall of any specific act of misbehavior or misconduct by Judge

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 Miller?

2 A. Not that I recall.

3 Q. And in October of 2016, do you have any recollection of any specific
4 act of misbehavior or misconduct by Judge Miller?

5 A. Not that I recall.

6 Q. And in November of 2016, can you recall any specific act of
7 misbehavior or misconduct by Judge Miller?

8 A. Not that I recall.

9 Q. And in December of 2016, can you recall any specific act of
10 misbehavior or misconduct by Judge Miller?

11 A. That's when it started to getting heated up again and he was saying I
12 don't satisfy his needs and I can hear him, like he would tell Mark,
13 "Go talk to her. Go talk to her. She's not doing her job." And so, I
14 would hear him say this and then I would say to Mark, "Well, what do
15 you need to talk to me about now?" And he told Mark, "I'm 52 years
16 old or whatever, or 53," I don't even know what he said, and, "I have
17 needs that I didn't have before and you need to talk to her about that."

18 Q. And that was said in December of 2016?

19 A. I believe so.

20 Q. And was Mark present for that?

21 A. He was telling me things and then he told Mark that, "You need to
22 talk to her about that," but he was telling me that I don't satisfy his
23 needs. Then he told Mark, "You better talk to her." And then he went
24 in to talk to Mark and Mark told me he said he's 52 or 53 years old,
25 and I believe that was in December of '16.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 Q. In the first two years, 2015 and 2016, would you describe Judge
2 Miller as jovial?
- 3 A. Yeah, he-- It was like he was two different people. He would be
4 jovial with-- but then he would get really just mean and I didn't see
5 that side of him before.
- 6 Q. When you say before, before 2016 or 2015?
- 7 A. Before we were in family court.
- 8 Q. Again, I think your testimony is he changed within the first month of
9 becoming a family court judge, correct?
- 10 A. Yes.
- 11 Q. And it was in December of 2015 that you and Mr. Kachadourian
12 decided to report Judge Miller's behavior, correct?
- 13 A. I'm not sure if Mark did. I know I did. I'm not sure. I know I did
14 though a couple of times. I know I did.
- 15 Q. In December of 2015?
- 16 A. Yes.
- 17 Q. That's when you decided-- Again, so it is correct that in December
18 2015, you decided to report what you felt was inappropriate behavior
19 by Judge Miller, correct?
- 20 A. I had went down a few times before but in December of 2015, I went
21 and told her like almost everything that was going on.
- 22 Q. And from 2015 to 2017, do you claim that you complained to the chief
23 clerk 50 times about Judge Miller's--
- 24 A. --50 times or more?
- 25 Q. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Yes.

2 Q. Were those all to the same person?

3 A. Chief clerk.

4 Q. That's Debbi Singer?

5 A. Yes.

6 Q. Were those 50 times always in Debbi Singer's office?

7 A. Maybe, not always.

8 Q. How many of the times would you-- out of those 50 would you say
9 were in 2016?

10 A. I can guess maybe-- What year did you say?

11 Q. 2016.

12 THE REFEREE: '16.

13 A. '16? Well, I don't know. Maybe 20, I guess. I think a lot more of the
14 complaints were in 2017.

15 Q. Is there any way you can divide up how many were in 2016 and 2017?

16 A. Honestly, I really can't. It seemed like there were probably more in
17 2017.

18 Q. Another question about the letter that you say you typed in November
19 2015?

20 A. Yes.

21 Q. Were you at your desk when you typed that?

22 A. Yes.

23 Q. And do you remember what time of day it was?

24 A. Honestly, I don't.

25 Q. It was just sometime that day.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 A. Yes.
- 2 Q. And it was a time of day when Judge Miller wasn't in court, correct?
- 3 A. Correct.
- 4 Q. And Judge Miller would be in court generally in the morning and in
- 5 the afternoon, correct?
- 6 A. Yes.
- 7 Q. And generally would he take a lunch break?
- 8 A. Yes.
- 9 Q. And would he have lunch in his office?
- 10 A. No, he usually left.
- 11 Q. So, sometimes he was in the office for lunch and sometimes he was
- 12 out of the office for lunch?
- 13 A. I would say 98 percent of the time, he left for lunch.
- 14 Q. After Judge Miller left his assignment in family court, did you make
- 15 any type of complaint against another employee in family court?
- 16 MS. CENCI: Objection to the relevance, Your
- 17 Honor.
- 18 THE REFEREE: No, I'll hear it. Overruled.
- 19 A. There--
- 20 THE REFEREE: It's a yes or no question.
- 21 A. Yes.
- 22 Q. And who was the person or persons that you made complaints against?
- 23 A. D [REDACTED] L [REDACTED].
- 24 Q. Anyone else?
- 25 A. Maybe court security.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. Court security?

2 A. Yes.

3 THE REFEREE: I'm sorry, complained about court
4 security?

5 THE WITNESS: Yes.

6 THE REFEREE: All right.

7 BY MR. DEROHANNESIAN:

8 Q. And one of those individuals was Sgt. Kreb of the Office of Court
9 Administration Security?

10 A. I don't know if I necessarily complained about him.

11 Q. And the nature of your complaint about the court security personnel
12 was what?

13 A. On the day of D [REDACTED]'s first return to work, they allowed one of Judge
14 Miller's friends, who he used to practice with, to walk by my office
15 and it was supposed to be a secure area and he just made like a
16 threatening direct eye contact with me.

17 Q. And the allegation against the sergeant and lieutenant was what?

18 A. Oh, I don't know if I-- I don't-- I didn't make an allegation against
19 people-- them.

20 Q. But that security had allowed someone past your office?

21 A. Yes. Yeah.

22 Q. Because no one was supposed to be allowed?

23 A. Well, since the time we were there, they didn't allow people back
24 there and it just-- with what we were dealing with and security issues
25 and then for this person to be allowed to come by and stare at me in a

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

- 1 threatening way was pretty scary.
- 2 Q. Was anything said to you by that person?
- 3 A. No.
- 4 Q. And were you questioned about that allegation by someone,
5 interviewed?
- 6 A. I believe so, yes.
- 7 Q. And then you said you filed a complaint against D [REDACTED] L [REDACTED]
8 while she worked in family court after Judge Miller was no longer on
9 the bench?
- 10 A. Yes.
- 11 Q. And did you file a complaint that D [REDACTED] L [REDACTED] had threatened
12 you?
- 13 A. I did not.
- 14 Q. What was the nature of the complaint that you filed with the Office of
15 Court Administration concerning D [REDACTED] L [REDACTED] after Judge Miller
16 left family court?
- 17 A. She-- We were told by someone that she was acting strange and she
18 had threatened-- She had made accusations that she would maybe
19 come in and hurt Mark and I. And that was just what we had heard, so
20 we just wanted to make sure someone had followed up on that.
- 21 Q. You didn't hear that from D [REDACTED] L [REDACTED], did you?
- 22 A. No, we did not.
- 23 Q. You have no first-hand knowledge of D [REDACTED] L [REDACTED] making any
24 threatening statements to you?
- 25 A. No, we do not.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. Who alleged that D [REDACTED] L [REDACTED] made those statements?

2 MS. CENCI: Now, Your Honor, I have an
3 objection. It doesn't matter.

4 THE REFEREE: Sustained. Sustained.

5 BY MR. DEROHANNESIAN:

6 Q. There are a couple of other things that you've testified to this morning
7 I want to ask you about. One was that Judge Miller said that he would
8 not go see Judge Connerton unless she was going to satisfy his needs,
9 correct?

10 A. Yes.

11 Q. And is today the first time that you've ever given any information or
12 reported that event?

13 A. No.

14 Q. Can you show me in Respondent's Y where in your testimony there is
15 any reference to this alleged statement by Judge Miller, that he
16 wouldn't go see Judge Connerton unless she was going to satisfy his
17 needs?

18 A. I don't believe I remember that at that point. I don't think I put that in
19 there. There were other things too that--

20 Q. --All right, one--

21 THE REFEREE: --She didn't say that she said it
22 there, so.

23 THE WITNESS: I didn't.

24 BY MR. DEROHANNESIAN:

25 Q. Did you tell the inspector general anything about a statement that

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Judge Miller said he wouldn't see Judge Connerton unless she would
2 service him?

3 A. No, I told Debbi Singer that though.

4 Q. Have you seen any document or report that states you ever told
5 someone that Judge Miller said he would not see Judge Connerton
6 unless she serviced him?

7 A. Have I seen any report? No.

8 Q. And you spoke to Debbi Singer before you spoke to the inspector
9 general, right?

10 A. Yes.

11 Q. You spoke to Debbi Singer before you spoke to the Commission on
12 Judicial Conduct, correct?

13 A. Yes.

14 Q. And did you say it at any time to the Commission on Judicial Conduct
15 in 2017, when you had contact with them?

16 A. There were a lot of other little things that we left out.

17 THE REFEREE: That's a yes or no question.

18 THE WITNESS: Yep.

19 THE REFEREE: You didn't tell--

20 A. I'm sorry. What was--

21 Q. --And I think you testified this morning that you claim that Judge
22 Miller said that he wouldn't talk to Debbi Singer about something
23 unless Debbi Singer would engage in some type of relations with him,
24 correct?

25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And did you tell Debbi Singer that?

2 A. Yes.

3 Q. Did you see Debbi Singer put that down in any report ever?

4 A. I don't know if she took notes when we were there. I don't--

5 Q. --She did take notes, right?

6 A. I don't-- I'm not aware if she did or not.

7 Q. Well, did you see her take notes ever, what you reported?

8 A. I don't think so.

9 Q. How about when you spoke to the inspector general in July of 2017?

10 Did you say anything to the inspector general about Judge Miller

11 saying that he wouldn't speak to the chief clerk of the family court

12 unless she had sexual relations with him?

13 A. No, I did not say anything.

14 Q. How about when you testified under oath in August of 2017? Did you

15 mention anything in your testimony about a statement that Judge

16 Miller said allegedly that he wouldn't see the chief clerk, Debbi

17 Singer, unless she would have sexual relations with him?

18 A. It wasn't asked and wasn't brought up. I know I was under oath but it

19 wasn't a topic--

20 Q. --You weren't trying to hold back information on Judge Miller were

21 you?

22 A. No.

23 Q. I mean, you had checks that you-- and a letter from 2015--

24 A. --There were things I forgot. He also wanted to take life insurance out

25 on us.

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301

Empire State Plaza

Albany, New York 12223

(Gallagher - Cross)

1 Q. One question at a time.

2 A. Okay.

3 Q. You also talked about this morning, "Everybody needs to satisfy me,"
4 correct?"

5 A. Mm-hmm.

6 Q. Is that a yes?

7 THE REFEREE: Is that yes?

8 A. Yes. Sorry.

9 Q. Did you ever tell the inspector general anything about a statement
10 allegedly made by Judge Miller that everybody needed to satisfy him?

11 A. I don't know.

12 THE REFEREE: I'm sorry?

13 A. I'm not aware. I don't know if I did or not.

14 Q. You didn't testify to that in front of the Commission?

15 A. I don't think so.

16 Q. Did you tell the Commission in any of your meetings with them?

17 A. No, I don't think so.

18 Q. And you didn't tell Judge Connerton or Judge Fitzgerald about the
19 statements about Chief Clerk Singer or Judge Connerton, correct?

20 A. No, I did not talk to Judge Connerton.

21 Q. Now, I think you said that Donna Filip brought files to the office?

22 A. Yes.

23 Q. And she called all the time?

24 A. Yes.

25 Q. Did you look at the files?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. No.

2 Q. Did you ever testify that Donna Filip came to the office-- Excuse me,
3 did you tell the inspector general that Donna Filip came to the
4 chambers all the time?

5 A. No.

6 Q. Did you tell the Commission in your testimony in August of 2018
7 [sic], that Donna Filip came to the office all the time?

8 A. I don't think she came all the time but she came and brought files to
9 him.

10 THE REFEREE: I think you said '18, you meant
11 '17.

12 MR. DEROHANNESIAN: Yes.

13 BY MR. DEROHANNESIAN:

14 Q. Did you tell the inspector general that Donna Filip called all the time?

15 A. I'm not sure.

16 Q. Well, take a look at Respondent's Y and see if there's any reference in
17 the interview notes?

18 A. Well, I didn't think that that pertained to what we had going on.

19 Q. Well, you talked about Judge Miller allegedly practicing law to the
20 inspector general, right?

21 MS. CENCI: Objection, Your Honor.

22 THE REFEREE: I think we're confusing two
23 different issues and what is the specific question--

24 BY MR. DEROHANNESIAN:

25 Q. Did you tell the inspector general that Donna Filip was calling Judge

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

- 1 Miller all the time?
- 2 THE REFEREE: That's the question and--
- 3 A. --I don't believe I did, no.
- 4 Q. And did you testify that Donna Filip was calling all the time to the
- 5 office?
- 6 A. She would call his cell phone.
- 7 Q. Did you testify to that in front of the Commission?
- 8 A. No.
- 9 Q. Did you mention it and document that-- Do you see any
- 10 documentation of you making that statement prior to today in January
- 11 of 2019?
- 12 A. No.
- 13 Q. You testified this morning that Judge Miller asked for a picture and
- 14 video of D [REDACTED] L [REDACTED], correct?
- 15 A. Yes.
- 16 Q. Did you ever say to the inspector general that Judge Miller asked for a
- 17 photo or video of D [REDACTED] L [REDACTED]?
- 18 A. I don't know.
- 19 Q. Did you discuss with the inspector general D [REDACTED] L [REDACTED]?
- 20 A. That would be page number 6, is that one with the--
- 21 Q. --The inspector general--
- 22 A. --Exhibit 1?
- 23 Q. Yes. That is the inspector general report.
- 24 A. Yes. I-- It was discussed.
- 25 Q. Yeah, so you discussed D [REDACTED] L [REDACTED], correct?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 A. Yes.

2 Q. And did you tell the inspector general about this statement in
3 connection with Ms. L [REDACTED] that Judge Miller allegedly said that he
4 asked for a picture or video of D [REDACTED] L [REDACTED]?

5 A. No, just described the conversations as graphic. No, I did not.

6 Q. How about when you testified in August of 2017? Did you say
7 anything about Judge Miller wanting a photograph or video of D [REDACTED]
8 L [REDACTED]?

9 A. I don't know.

10 THE REFEREE: Mr. DerOhannesian, if you know
11 the answer to this, why don't you rephrase your question to
12 cut to the chase?

13 MR. DEROHANNESIAN: Okay.

14 THE REFEREE: Otherwise she's going to read the
15 entire transcript.

16 A. I mean, it just talks about phone calls and talks about the topic of the
17 naked picture.

18 Q. But not once do you ever say-- Not once do you testify that Judge
19 Miller said or asked for a photograph or video of D [REDACTED] L [REDACTED],
20 correct?

21 MS. CENCI: Counsel, if you want to put her prior
22 testimony into evidence--

23 MR. DEROHANNESIAN: --I don't-- No, I want to
24 do my job the way I want to.

25 THE REFEREE: No-- Overruled.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. And Ms. Gallagher, you did have a chance to review the transcript we
3 talked about this morning prior to testifying, correct?

4 A. Yes, I guess I didn't say that then at that point, no.

5 Q. In fact, are you aware of any record or document, any place in the
6 world, that shows that you said or reported to anyone this alleged
7 statement of Judge Miller, that he asked or wanted a video of D [REDACTED]
8 L [REDACTED]?

9 A. No, I just heard the conversation. They would talk on speaker phone.

10 Q. My question--

11 THE REFEREE: That's not what he asked.

12 A. A document, no. No document.

13 THE REFEREE: There you go. Thank you.

14 BY MR. DEROHANNESIAN:

15 Q. And you also said this morning that Judge Miller at some point was
16 making reference to Lisa Wojdat, right? Lisa Wojdat?

17 A. Yes.

18 Q. Correct?

19 A. Yes.

20 Q. And that Judge Miller called Lisa a dirty whore.

21 A. Yes.

22 Q. Correct?

23 A. Yes.

24 Q. And did you tell the inspector general anything about this statement
25 that you say that Judge Miller made about Lisa Wojdat being a dirty

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 whore?

2 A. Did I tell the inspector general?

3 Q. Yes.

4 A. Just-- These were conversations that he had had with me. I'm not
5 sure if I told--

6 Q. --My question is--

7 A. --I don't believe I got into those details with--

8 Q. --And did you tell the Commission when you testified in August,
9 anything about this alleged statement of Lisa Wojdat being a dirty
10 whore?

11 A. I don't believe so.

12 Q. Are you aware of any record or documentation that at any time you
13 had reported to anyone in the world this alleged statement that Judge
14 Miller said that Lisa Wojdat was a dirty whore?

15 A. Statement? No, it was just based on what he told us. So, no
16 statement.

17 Q. But you're not aware of-- Prior to today, are you aware of any record
18 or document that says you have in fact said that before today?

19 A. A statement, no. But I know I reported to Debbi what was everything
20 that was said.

21 Q. So, Debbi Singer, you say, you told about this--

22 A. --She might know-- She might know--

23 THE REFEREE: --Wait a minute. Hold on. One at
24 a time. You finish your answer. Go ahead.

25 A. She might have documented things.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. And she might not have, right?

2 A. And she might not have.

3 Q. You don't know.

4 A. I don't know.

5 Q. But you think you told her or you don't know?

6 A. Yes, I did.

7 Q. And no one else-- You haven't seen a document that shows that?

8 A. No. I haven't seen--

9 Q. --Back to my question. You're not aware of any document in the
10 world that shows that you've made that statement to anyone?

11 A. No.

12 Q. Now, you also said in May of 2017--

13 THE REFEREE: --Hold one second, that's a double
14 negative. You said you're not aware and you said no. So,
15 are you saying you are or are not?

16 A. I'm not aware of any document.

17 Q. Now in May of 2017, you claim that Judge Miller stated to you that he
18 wanted to have sexual relations with you, correct?

19 A. May of 2017? Tell-- Say that again?

20 Q. You testified this morning that in May of 2017, Judge Miller said to
21 you that he wanted to have sex with you.

22 MS. CENCI: Objection. Mischaracterization of the
23 prior testimony.

24 THE REFEREE: I don't recall it. Just phrase it in a
25 different way. Did she say that?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 BY MR. DEROHANNESIAN:

2 Q. Did you say that this morning?

3 A. No.

4 Q. Did you say in sum and substance that he wanted to have sexual
5 relations with you in May of 2017?

6 MS. CENCI: Objection.

7 THE REFEREE: Overruled. Okay, you can answer.

8 A. I believe that Cathleen said--

9 Q. --Cathleen--

10 A. --do you believe--

11 Q. --Pardon--

12 A. --he wanted to.

13 Q. Say it again?

14 A. I believe Cathleen said, "Do you believe he wanted to have sexual
15 relations with you?"

16 THE REFEREE: You're saying that when counsel
17 asked you a-- Did counsel ask you that question--

18 THE WITNESS: --Yes--

19 THE REFEREE: --and that's what you said this
20 morning?

21 THE WITNESS: Yes.

22 THE REFEREE: All right.

23 BY MR. DEROHANNESIAN:

24 Q. Did you testify that you thought Judge Miller wanted to have sex with
25 you in May of 2017?

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 A. When I was asked that I said yes, I do believe that.

2 Q. And that you told him no.

3 A. No was the stuff with Fred Akshar. Absolutely not.

4 Q. No. That you told Judge Miller you would not have sexual relations
5 with him. Did you say that this morning?

6 MS. CENCI: Objection. Counsel is arguing with
7 the witness.

8 THE REFEREE: You know what, I also think it's--
9 I don't know that that's accurate. My recollection of what
10 was testified to is that there were two separate issues. One
11 was Sen. Akshar--

12 MS. CENCI: --Yes--

13 THE REFEREE: --I'm not sure if I'm pronouncing
14 that correctly. One was Sen. Akshar and one was directly
15 with the judge, and my recollection of the testimony is that
16 with respect to Sen. Akshar, the witness said that she said
17 no.

18 MR. DEROHANNESIAN: Okay.

19 THE REFEREE: And then with respect to the
20 Respondent, Judge Miller, directly, she walked away and
21 changed the topic.

22 MS. SCALISE: That's not-- I actually took down
23 the questions as best as I could. I'm not a court reporter.
24 And so he's--

25 MR. DEROHANNESIAN: --The records--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 THE REFEREE: --Well, you know what, let's just--
2 Just ask the question.

3 MS. SCALISE: The record speaks for itself but--

4 THE REFEREE: --I agree. The record does speak
5 for itself.

6 MS. SCALISE: But there were three questions
7 about Fred and then there was a very specific question
8 about--

9 MR. DEROHANNESIAN: --Yes, I have that, too--

10 MS. SCALISE: --from Ms. Cenci.

11 THE REFEREE: All right. Ask your question. You
12 know what, I don't care what she said earlier, just ask her
13 now.

14 MR. DEROHANNESIAN: And I-- Once again, I'm
15 going to object because on a crucial issue, you have the
16 Commission attorney interjecting herself, trying to coach
17 the witness.

18 THE REFEREE: I don't think she was.

19 MR. DEROHANNESIAN: Totally improper.

20 THE REFEREE: I don't think she was.

21 MR. DEROHANNESIAN: She was.

22 THE REFEREE: All right. Well, let's just ask a
23 question.

24 BY MR. DEROHANNESIAN:

25 Q. First, did you say this morning that Judge Miller asked to have sexual

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 relations with you?

2 A. I don't believe I said that.

3 Q. Did Judge Miller ever ask to have sexual relations with you?

4 A. Did he ask to have-- No. He wanted me to satisfy his needs.

5 Q. And by that you meant and believed he was talking about sexual
6 matters, right?

7 A. Yes, because he would go like this with his hands. I interpreted it.

8 Q. Right. And you claimed he said that in May of 2017.

9 A. He said that a lot.

10 Q. Well, now we-- Okay. Do you claim that in May of 2017, Judge
11 Miller asked you to satisfy his sexual needs, correct?

12 MS. CENCI: Objection.

13 A. He did ask that a lot.

14 THE REFEREE: Overruled.

15 MS. CENCI: She just answered that.

16 THE REFEREE: Overruled. Go ahead.

17 A. He did ask that a lot.

18 Q. Okay.

19 THE REFEREE: And now he's asking do you have
20 specific recollection that it was May of '17 as one of the
21 times?

22 A. I'm not sure. I can't recall.

23 Q. Well--

24 A. --I know that May was-- It's very heated. May was very heated.

25 There was the incident with the cement boots. There was the incident

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 with Fred.

2 Q. Asking about Judge Miller.

3 A. I can't remember.

4 Q. Very specific question about Judge Miller.

5 THE REFEREE: She answered you.

6 BY MR. DEROHANNESIAN:

7 Q. Now, did the inspector general-- Did you ever say anything that Judge
8 Miller at any time was asking you for sexual favors or to perform
9 sexual acts with him?

10 A. He would say, "satisfy his needs."

11 THE REFEREE: Okay, but did you say that to the
12 inspector general?

13 BY MR. DEROHANNESIAN:

14 Q. Did you say that to the inspector general?

15 A. What page?

16 THE REFEREE: No, all he wants to know is did
17 you say anything about that to the inspector general and
18 he's pointed you to-- and you're looking at the report.

19 MR. DEROHANNESIAN: I'll withdraw the
20 question.

21 THE REFEREE: Okay.

22 THE WITNESS: I don't see-- It's not in there.

23 THE REFEREE: That's okay. Don't worry about it.
24 Just put it down.

25 MS. CENCI: Can I ask for a stipulation that in fact

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 it is in the inspector general's report?

2 THE REFEREE: No, you can do it on redirect.

3 MR. DEROHANNESIAN: No.

4 THE REFEREE: If you want to redirect. Next
5 question.

6 BY MR. DEROHANNESIAN:

7 Q. Did you ever-- Did you say this morning that Judge Miller talked to
8 you about Mr. Serjanej running for office?

9 A. Yes.

10 Q. Did you report to the inspector general that Mr. Serjanej-- that Judge
11 Miller asked you to assist with Mr. Serjanej running for office?

12 A. I don't believe so.

13 Q. Did you testify before the Commission that Judge Miller asked you to
14 get involved or assist Mr. Serjanej in any way in running for office?

15 A. No, I don't believe so because I didn't think it was an issue because I
16 didn't think he was really running, so...

17 Q. Did you tell anyone before today that Judge Miller allegedly asked
18 you to get involved in political work for Artan Serjanej?

19 A. Maybe a friend, Carole Cassidy.

20 Q. And what year was that?

21 A. I was talking to her throughout this process. She was--

22 Q. --Is she an official with the Office of Admin--

23 A. --No. No. She's an attorney.

24 Q. Did you tell anyone from the Office of Court Administration--

25 A. --Oh, the question is with the Office of Court Administration?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Cross)

1 Q. Well, first I asked about the inspector general and you said no, you
2 didn't tell them.

3 A. Oh, I thought you said anyone.

4 Q. Correct?

5 A. No, I didn't tell them.

6 Q. And did you tell the Commission on Judicial Conduct anything about
7 Judge Miller asking you to get involved in Mr. Serjanej's political
8 activities, if there were such activities?

9 A. I believe I just left it at campaign office.

10 Q. Without any mention of Artan Serjanej?

11 A. Right. I believe I left it as campaign office.

12 Q. And did I ask you did you ever make the comment to the inspector
13 general that Judge Miller said everybody needs to satisfy me?

14 MS. CENCI: Wasn't this asked and answered?

15 MR. DEROHANNESIAN: But did I?

16 THE REFEREE: I think you did.

17 MR. DEROHANNESIAN: Did I?

18 MS. CENCI: I think so.

19 THE REFEREE: I think you did. I can't be sure. I
20 think you did.

21 BY MR. DEROHANNESIAN:

22 Q. Did you ever mention to the Commission the statement that you say
23 Judge Miller made that "everybody needs to satisfy me?"

24 A. I believe I did. Do you want me to look?

25 Q. Yes, if you can find that someplace.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Gallagher - Cross)

1 MS. CENCI: Your Honor, at this point, I have an
2 objection because if it--

3 THE REFEREE: --Well, that we'll-- I don't want to
4 do it in front of the witness.

5 MS. CENCI: Okay, we can excuse the witness then,
6 if we could because--

7 THE REFEREE: --Can it wait until after the witness
8 is done or it relates to the witness's testimony?

9 MS. CENCI: Well, there's-- It does relate to her
10 testimony.

11 THE REFEREE: All right. Well, hang on. How
12 much more do you have?

13 MR. DEROHANNESIAN: This is it.

14 THE REFEREE: All right. Then we'll-- You're
15 done?

16 MR. DEROHANNESIAN: Yes.

17 THE REFEREE: Well, she said she was going-- she
18 was looking to see if that was--

19 MS. CENCI: --But if it refreshes her recollection
20 but--

21 THE REFEREE: --Just a minute. Just a minute.
22 Just a minute. There was a pending question and the
23 question was, did you tell that to the Commission, I believe,
24 or did you tell anybody about that alleged statement
25 everyone needs to satisfy-- You're looking at Exhibit Y

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 and then do you have an answer to that question?

2 THE WITNESS: If he knows what page it's on or if
3 it's not on there. I don't know offhand if I did or not.

4 THE REFEREE: Okay, that's fine. Could you step
5 out for just a moment?

6 THE WITNESS: Okay, sure.

7 THE REFEREE: Yes?

8 MS. CENCI: I think my concern is that the witness
9 may have been trying to answer the question based upon
10 what is recorded there and that's influencing perhaps her
11 response. Not everything gets recorded, so--

12 THE REFEREE: --I agree. But, I think--

13 MS. CENCI: --at this point, if he's finished--

14 THE REFEREE: --No, no, I understand your
15 objection. I think the cross-examination is fair. Those are
16 all reasonable and honestly expected areas that you would
17 cross a witness on, and I think it is-- would be certainly
18 easy on redirect to address those questions. So, Mr.
19 DerOhannesian, you're done at the moment with your--

20 MR. DEROHANNESIAN: --If there was an answer
21 to the question?

22 THE REFEREE: She said she couldn't find it.

23 MR. DEROHANNESIAN: Okay.

24 THE REFEREE: Or there was nothing she was
25 aware of.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Redirect)

1 MR. DEROHANNESIAN: There was an answer to
2 that effect?

3 THE REFEREE: Yes, I think there was an answer.
4 All right. So, let's bring the witness back and then you can
5 redirect. I also think this can be covered well in your post-
6 hearing submissions.

7 MS. CENCI: I'll be very brief.

8 THE REFEREE: That's fine. Please sit down.
9 You're still under oath. Ms. Saraceno?

10 MS. CENCI: Cenci. We are all getting mixed up
11 with names today.

12 THE REFEREE: Could we go off the record for just
13 a minute?

14 (OFF THE RECORD)

15 THE REFEREE: Counsel for the Commission is
16 present. Counsel for the Respondent is present.
17 Respondent is present and our witness is here. Please
18 continue.

19 REDIRECT EXAMINATION

20 BY MR. CENCI:

21 Q. Ms. Gallagher.

22 A. Yes.

23 Q. I'm going to try and make this quick. Okay.

24 A. Okay.

25 Q. Mr. DerOhannesian asked you about your recollection of any acts of

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Redirect)

1 misconduct by Judge-- specific months by Judge Miller. Do you
2 recall that?

3 A. I'm sorry, what was that?

4 Q. That was a bad question. I'll rephrase it. You-- Mr. DerOhannesian
5 asked you whether you recalled specific acts of misconduct in specific
6 months in 2016. Do you remember those questions?

7 A. Yes.

8 Q. I'm going to show you a document that I'd like to have marked as the
9 next numbered exhibit.

10 THE REFEREE: Mr. Fitzpatrick, what number are
11 we up to?

12 MR. FITZPATRICK: This would be 13.

13 THE REFEREE: 13.

14 MS. CENCI: May I?

15 THE REFEREE: Sure. Absolutely, please.

16 BY MS. CENCI:

17 Q. Just take a moment--

18 A. --Okay--

19 Q. --and read that to yourself. Take your time and let us know when
20 you're finished. Actually, I was going to have you stop at the first
21 page, but--

22 A. --All right.

23 Q. Have you gotten through the first page?

24 A. Yes.

25 Q. Now, putting that aside--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Redirect)

1 THE REFEREE: --Put it down.

2 BY MS. CENCI:

3 Q. Does that refresh your recollection as to any specific acts of
4 misconduct by Judge Miller in April of 2016?

5 A. Yes.

6 Q. Now that your recollection is refreshed, can you tell us what those
7 were?

8 A. Well, just about the campaign, the one campaign-- we're setting up a
9 campaign office and...

10 Q. Okay.

11 A. I just glanced at it briefly. I'm nervous.

12 Q. I'm sorry?

13 A. I glanced at it briefly. I'm nervous.

14 Q. I'm sorry.

15 THE REFEREE: It's all right. Take your time.

16 BY MS. CENCI:

17 Q. Do you need to look-- Would you like to look at the document again?
18 I didn't mean to rush you.

19 A. Yes, please.

20 Q. We're talking about April of 2016.

21 A. Okay.

22 Q. Okay? Now, does it refresh your recollection more specifically as to
23 acts of misconduct by the judge during that month?

24 A. But I think we did talk about that when in April of '16, about when he
25 was having me help with the taxes and he said I wasn't a real secretary

STATE COMMISSION ON JUDICIAL CONDUCT

Corning Tower, Suite 2301

Empire State Plaza

Albany, New York 12223

(Gallagher - Redirect)

1 because I don't do what real secretaries do. I do believe we did talk
2 about that already.

3 Q. So, that was in April of 2016?

4 A. '16.

5 Q. Okay. And anything else that occurred during that month that you
6 now recall?

7 A. Wanting to get the campaign--

8 MR. DEROHANNESIAN: I think we're getting into
9 improper redirect.

10 THE REFEREE: I'm not sure this is changing
11 anything or addressing--

12 MR. DEROHANNESIAN: --What I asked.

13 THE REFEREE: Yeah, exactly. I think the scope of
14 redirect is what was on cross, certainly can-- Go ahead, go
15 ahead. Ask your question.

16 BY MS. CENCI:

17 Q. Okay. You were asked whether you recalled specific acts of
18 misconduct by the judge in May of 2016 and I think you said you
19 could not recall. Does the document you just reviewed refresh your
20 recollection in that regard?

21 A. You said April. Do you want me to look at May now?

22 THE REFEREE: Now May.

23 BY MS. CENCI:

24 Q. May.

25 A. Yes.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Redirect)

1 Q. What do you now recall happening in May of 2016?

2 A. That he wanted me to, you know, do some campaign work with his
3 mother and how he had spoke to George Phillips, I think the guy's
4 name was, and he was running for something and he told him that he
5 was going to have his team work for his campaign and then told Mark
6 and I we were going to work his campaign.

7 Q. When you say he you're referring to Judge Miller?

8 A. The judge spoke to that candidate on the phone.

9 Q. And that was in August--

10 A. --May--

11 Q. --Excuse me, May of 2016?

12 A. That is correct.

13 Q. You were also asked if you recalled any specific incidents in July and
14 August of 2016 and you said you didn't recall. Could-- Does the
15 document refresh your recollection?

16 A. And August was that we needed, again, get the campaign office and in
17 family court he wanted us to make my office a campaign office and
18 told us again that-- well, he told us we work for him and not New
19 York State.

20 Q. And you were asked about specific acts in September of 2016 and you
21 said, I think, you didn't recall. Can you-- Having looked at the
22 document, can you now-- does it refresh your--

23 A. --Yeah, that's when he brought his brother-in-law, Rick Balles, in
24 about the pictures for his campaign.

25 MR. DEROHANNESIAN: I don't-- Was this

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Redirect)

1 identified, this document?

2 THE REFEREE: Yes, this is Exhibit 13.

3 MS. CENCI: Exhibit 13.

4 MS. SCALISE: Can we take a look at that?

5 MR. DEROHANNESIAN: Yeah.

6 MS. SCALISE: We think we're looking at
7 something different.

8 MS. CENCI: No, we're finished. You can take a
9 look.

10 THE REFEREE: Yeah, it's just--

11 MS. SCALISE: --No, we weren't shown it before
12 you gave it to the witness.

13 THE REFEREE: It's just to refresh recollection.

14 MS. CENCI: It's all right. Just refreshing her
15 recollection.

16 MS. SCALISE: No, she's reading from it.

17 THE REFEREE: Well, no. I don't think so. But the
18 question is--

19 MS. SCALISE: --Can we see it as the questioning
20 goes on?

21 THE REFEREE: Yeah. Yes.

22 MR. DEROHANNESIAN: It may be what I have in
23 my hand.

24 THE REFEREE: Take a look.

25 MS. SCALISE: Different.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Redirect)

1 MS. CENCI: May I proceed with questioning, Your
2 Honor?

3 THE REFEREE: Yes.

4 MS. CENCI: Thank you.

5 BY MS. CENCI:

6 Q. And then you were asked some questions about what you may or may
7 not have told the Commission on Judicial Conduct, the inspector
8 general, etc. And you were asked whether you told the Commission
9 or you reported the judge's comment concerning Lisa Wojdat. Do you
10 remember that question by Mr.--

11 A. --Yes.

12 Q. If you could take a look at the transcript of your testimony, which I
13 think it's Respondent's--

14 THE REFEREE: --Exhibit Y--

15 BY MS. CENCI:

16 Q. --Exhibit Y, and directing your attention to page 8.

17 A. Okay.

18 Q. Could you read the question and answer to yourself, beginning at line
19 22? All right?

20 A. Yes.

21 Q. Now, does that refresh your recollection as to what, if anything, you
22 testified about Lisa Wojdat in the judge's comments?

23 A. Yes. Mm-hmm. Yes.

24 Q. What-- How does it refresh your recollection?

25 A. That he just said that she was very sexual and she would do anything.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Redirect)

1 Q. And you did say that under oath previously, correct?

2 A. Yes.

3 Q. With respect to the judge's request for pictures. Do you recall those
4 questions, whether you told the Commission or anyone else about the
5 judge's request for pictures or videos? I'd ask you to take a look at
6 page 16 of your transcript that's in front of you, transcript of your
7 testimony rather, on August 8th?

8 A. Okay.

9 Q. And-- Actually, it starts at the bottom of page 15, sorry. Starting at
10 line 24 at the bottom there. Do you see that? And if you could just
11 read that and through the top of page 16.

12 A. Oh, yeah.

13 Q. So, does that refresh your recollection as to whether you testified
14 under oath that you heard Mr. Iannone say to Judge Miller on speaker
15 phone, "Send me pictures. Send me videos."

16 A. Yes. I did.

17 Q. You did testify to that?

18 A. I did.

19 THE REFEREE: I think you misspoke. I-- Did
20 you-- I think you--

21 MS. CENCI: --Oh, I'm sorry. I beg your pardon.
22 You're right. I did misspeak.

23 THE WITNESS: Did--

24 THE REFEREE: --Well, ask your question again.

25

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Redirect)

1 BY MS. CENCI:

2 Q. Did you testify that Judge Miller asked Mr. Iannone for pictures and
3 videos?

4 A. Yes.

5 Q. And you heard that?

6 A. Yes.

7 Q. You also were asked about whether you had ever reported that Donna
8 Filip was-- had called the judge on the telephone, is that right?

9 A. Yes.

10 Q. And did you testify previously, however, that she and the judge were
11 in contact?

12 A. Yes, I believe I did.

13 Q. This wedding you attended of Mr. Balles' daughter.

14 A. Daughter, yes.

15 Q. And the date of that, was that sometime in the end of April of 2017?

16 A. April 29th, I believe, it was 2017.

17 Q. All right, and you were asked about sitting with that-- the Pennas at
18 that wedding. Do you recall those questions?

19 A. Yeah, we were assigned to the same table, yes.

20 Q. And when in reference to that wedding did you overhear the judge
21 telling Mr. Penna about the cement boots? Do you recall?

22 A. After. It was after-- The cement boots were after. The cement boots
23 were in May of '17.

24 MS. CENCI: If I could just have one moment, I
25 think--

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Redirect)

1 THE REFEREE: You can take as much time as you
2 like. Did you get your Exhibit T back? Exhibit 13?

3 MS. SCALISE: We have it.

4 MR. DEROHANNESIAN: We have it.

5 MS. SCALISE: We have it.

6 THE REFEREE: All right.

7 BY MS. CENCI:

8 Q. Just with regard to the trial that you said you attended and testified on
9 the charges against Mr. Stilloe?

10 A. Yes.

11 Q. What-- Why-- Did you testify under subpoena or did you testify
12 voluntarily? Do you remember?

13 A. I can't remember.

14 Q. Did someone ask you to testify?

15 A. I believe he did.

16 MR. DEROHANNESIAN: Objection.

17 MS. CENCI: Well--

18 THE REFEREE: --Overruled. You said he did.

19 Who's he?

20 THE WITNESS: I believe-- Jimmy Stilloe asked
21 the judge and I, myself, to testify.

22 BY MS. CENCI:

23 Q. Did Judge Miller ask you to testify on behalf of Mr. Stilloe?

24 THE REFEREE: She just said Jimmy Stilloe did.

25 MS. CENCI: I'm asking another question.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Recross)

1 MR. DEROHANNESIAN: Well then she's leading
2 and suggestive.

3 THE REFEREE: That's all right. Non-jury. Go
4 ahead.

5 BY MS. CENCI:

6 Q. Did Judge Miller ask you to testify?

7 A. I can't remember honestly.

8 Q. Mr. Stiloe was Judge Miller's client?

9 A. Yes.

10 Q. Were you in any fear of Mr. Stiloe back at that point in time?

11 A. No.

12 MS. CENCI: I have nothing further.

13 THE REFEREE: Anything based on redirect only?

14 MR. DEROHANNESIAN: I will, just give me a
15 second.

16 THE REFEREE: All right. That's fine.

17 RECROSS-EXAMINATION BY

18 MR. DEROHANNESIAN:

19 Q. I want to ask you about the Exhibit 13 you were shown.

20 A. Okay.

21 Q. What is Exhibit 13?

22 A. Those are typed notes, I believe.

23 Q. Are they your typed notes?

24 A. Yes.

25 Q. You sure?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Recross)

1 A. Yes.

2 Q. And when did you prepare these typed notes?

3 A. At the beginning when this all started, I think I gave them to--

4 Q. --You said the beginning?

5 THE REFEREE: You didn't finish what you were
6 saying. You gave them to?

7 THE WITNESS: I believe Ms. Cenci.

8 THE REFEREE: All right. That's fine. Thank you.

9 THE WITNESS: I don't have a copy of those.

10 BY MR. DEROHANNESIAN:

11 Q. And in Respondent's Y, when you testified you identified-- Do you
12 see in Respondent's Y, are those notes of yours?

13 MS. CENCI: Objection.

14 THE REFEREE: What's the objection?

15 MS. CENCI: This document is not in evidence.

16 THE REFEREE: He's only asked her to identify a
17 piece of paper. He's not asking her to read from it.

18 THE WITNESS: Can I see the--

19 MS. CENCI: --What is it?

20 THE REFEREE: I have no idea.

21 MR. DEROHANNESIAN: Respondent's Y.

22 MS. SCALISE: It's Exhibit 4 to Respondent's Y.

23 THE REFEREE: One more time?

24 MS. SCALISE: Exhibit 4 to Respondent's Y.

25 THE REFEREE: Thank you.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Recross)

1 BY MR. DEROHANNESIAN:

2 Q. Are those your notes?

3 A. Yeah, I think that were typed into that.

4 THE REFEREE: When you do that and that--

5 THE WITNESS: --I'm sorry, I think these were
6 written out and then they were typed into that Exhibit 13,
7 maybe?

8 THE REFEREE: So, Exhibit 4 to Exhibit Y--

9 THE WITNESS: --What's this one, 13--

10 THE REFEREE: --was typed and then it became
11 Exhibit 13.

12 MS. CENCI: It's not Exhibit 4.

13 MS. SCALISE: I'm sorry, I can't read what it says
14 because my sticker is a little bit-- Is it Exhibit 7?

15 THE WITNESS: I--

16 THE REFEREE: --Well, that's a 7.

17 THE WITNESS: 7?

18 MS. SCALISE: I can't read it on here because the
19 sticker didn't come through.

20 THE REFEREE: That's okay. We'll straighten it
21 out.

22 MS. SCALISE: Okay.

23 THE REFEREE: Exhibit 7 to Y.

24 MS. SCALISE: Exhibit Y.

25 THE REFEREE: I got it, please. Is-- You're saying

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Recross)

1 were notes that were then typed and became Exhibit 13. Is
2 that--

3 THE WITNESS: --I'm not sure if they're exact,
4 but--

5 THE REFEREE: Okay, Mr. DerOhannesian asked if
6 indeed Exhibit 7 to Exhibit Y are your notes. I think you
7 said yes.

8 THE WITNESS: Yes.

9 THE REFEREE: All right, next question.

10 BY MR. DEROHANNESIAN:

11 Q. And there's information in the typed notes that's not in the hand notes,
12 correct?

13 A. Yes.

14 Q. There's quite a bit more in your typed notes, correct?

15 MS. CENCI: Object to the characterization.

16 A. I'm not sure.

17 MS. CENCI: Objection.

18 THE REFEREE: That's all right. She gave you a
19 better answer.

20 BY MR. DEROHANNESIAN:

21 Q. When did you turn this over to anyone?

22 THE REFEREE: This meaning?

23 MR. DEROHANNESIAN: Exhibit 13.

24 A. When I met with them in August--

25 MS. CENCI: --Counsel, this was provided in

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Recross)

1 discovery.

2 THE REFEREE: I understand. That's fine.

3 A. 7/8/2017?

4 MS. CENCI: This is beyond the scope of the very
5 limited redirect.

6 THE REFEREE; Well, you used Exhibit 13 and this
7 is fair. Yeah, this is fair.

8 BY MR. DEROHANNESIAN:

9 Q. So, this exhibit that you used to testify on redirect was prepared by
10 you, correct?

11 A. Yes.

12 Q. Typed by you?

13 A. I believe so.

14 Q. After--

15 A. --No, not after.

16 Q. Not after you testified?

17 A. No.

18 Q. It was never included as part of your notes in Exhibit 4? I mean in the
19 testimony to the Commission?

20 A. I don't know why.

21 Q. What?

22 A. I don't know. I didn't put it all together.

23 Q. And you agree that your typed notes added information and events
24 which are not in your handwritten notes, correct?

25 A. I think there is. They're very similar but they're slightly different.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Recross)

1 Q. Slightly or are there many more events that you have typed up than in
2 your handwritten notes?

3 MS. CENCI: Asked and answered.

4 THE REFEREE: Sustained. I think she's already
5 addressed that and then it's just a question of degree. She
6 said there's a variance.

7 THE WITNESS: I don't have copies of--

8 THE REFEREE: --That's okay. You're doing fine.
9 You're almost done.

10 BY MR. DEROHANNESIAN:

11 Q. Can you tell me by looking at your handwritten notes, I'm looking at
12 your typed notes, how many more entries there are on your typed notes
13 than your handwritten notes?

14 MS. CENCI: Objection.

15 THE REFEREE: Sustained.

16 BY MR. DEROHANNESIAN:

17 Q. Will you agree, when you typed notes of events, you added specific
18 dates which were not included on your handwritten dates?

19 A. Well, this starts--

20 THE REFEREE: It's a very simple question. He
21 wants to know if you added dates when the typed document
22 was prepared that are not on the handwritten document?
23 Are you able to answer that? Yes or no?

24 A. I'm sorry, your question again?

25 THE REFEREE: Is it true that in the typed version,

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Recross)

1 there are dates added that are not also in the handwritten
2 version?

3 A. Yes, that is true.

4 THE REFEREE: All right, next question.

5 MR. DEROHANNESIAN: Let me see if I'm
6 finished.

7 THE REFEREE: That's all.

8 THE WITNESS: Okay. They're fairly the same but
9 I don't know.

10 THE REFEREE: That's okay. Don't worry. You're
11 doing fine.

12 MR. DEROHANNESIAN: May I have one
13 question?

14 MS. SCALISE: We might have two questions.

15 MR. DEROHANNESIAN: Maybe it's two
16 questions.

17 BY MR. DEROHANNESIAN:

18 Q. The Exhibit 13. Do you know the date you prepared these?

19 A. Do not, I'm sorry.

20 THE REFEREE: You have to say it a little louder.

21 A. I'm sorry. I do not know.

22 Q. And was the time that you prepared these after you testified on August
23 8th to the Commission?

24 A. No, I believe I took those with me.

25 Q. These being the handwritten notes?

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Gallagher - Recross)

1 A. All the notes.

2 Q. But there was never a reference to your typed notes in your testimony,
3 correct?

4 A. I don't believe so.

5 Q. The only notes referred to in your testimony are the handwritten ones
6 that were attached as Exhibit 7, correct?

7 MS. CENCI: Objection, Your Honor. This is
8 irrelevant. It's irrelevant, Your Honor.

9 THE REFEREE: Yeah, do you want to-- You're
10 doing it-- Well, it's not-- I don't know that it's irrelevant,
11 but do you want her to read the entire transcript? I mean, if
12 there's-- If there is-- There must be a reference in the
13 testimony to that exhibit.

14 MR. DEROHANNESIAN: There is. There is.

15 MS. CENCI: Objection. No. Your Honor, I will
16 state as an officer of the court, that I obtained those
17 additional notes, Exhibit 13, I believe, from later on after
18 the testimony.

19 MR. DEROHANNESIAN: That-- that-- that--

20 MS. CENCI: --Everything was provided to
21 Respondent's counsel, all of these notes, various statements,
22 so--

23 THE REFEREE: No, no. That's fine.

24 MR. DEROHANNESIAN: That's fine.

25 THE REFEREE: You clarified-- You've clarified

(Gallagher - Recross)

1 the timing. We're done.

2 MR. DEROHANNESIAN: That's right. I think-- I
3 haven't disputed that I wasn't given them. I have received
4 them. My question was just what she said.

5 THE REFEREE: On timing, we're done. Thank
6 you. Anything further?

7 THE WITNESS: I'm sorry. I didn't know when
8 they were.

9 THE REFEREE: That's okay. Anything further?

10 MR. DEROHANNESIAN: No, Your Honor.

11 THE REFEREE: All right, Ms. Gallagher, thank you
12 very much for coming.

13 THE WITNESS: All right. Thank you.

14 THE REFEREE: I just want to remind you that our
15 proceedings here are confidential. Please don't discuss this
16 with anybody and thank you for coming.

17 THE WITNESS: All right. Thank you.

18 THE REFEREE: We're going to stay on the record.
19 Thank you for coming. Do you need-- You can go. Need
20 some tissues for the road?

21 THE WITNESS: No, I'm all set. Thank you.

22 THE REFEREE: Okay, good. Does the
23 Commission intend to call any more live witnesses at this
24 time?

25 MS. CENCI: I do not, Your Honor, with the

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 understanding and I'm just going to confirm that with
2 counsel, that there is a stipulation as to some of the
3 remaining documents that I want to offer into evidence.

4 THE REFEREE: That's fine. If you don't get the
5 stipulation, then you absolutely have the right to bring in
6 somebody, but at the moment, as we sit here, probably don't
7 have another witness?

8 MS. CENCI: Probably not.

9 THE REFEREE: All right.

10 MS. SCALISE: Are you talking about the one
11 document that we spoke of? His additional--

12 MS. CENCI: --No, we have the tax--

13 THE REFEREE: --Wait, hold on. Let's-- I don't
14 want to cross-talk, I just--

15 MS. SCALISE: --I just want to make sure I was
16 talking about the same thing and then I have to ask you
17 something about a subpoena.

18 THE REFEREE: That's fine. Let me do one thing
19 at a time.

20 MS. SCALISE: Okay.

21 THE REFEREE: All right. The objection to
22 Exhibits V and 12, and that is the March 1, 2017, letter
23 from Judge Miller to Debbi Singer and her March 10, 2017,
24 response. The objection is sustained at this time without
25 prejudice to renewal of the offer after Judge Miller testifies,

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 if he testifies. So, I'm going to return those exhibits. I'm
2 going to continue to hold on the criminal records, the
3 conviction records, because we've discussed that. I want to
4 talk just briefly about--

5 MR. DEROHANNESIAN: --May I ask something
6 on the issue of the certificate, certified criminal records?

7 THE REFEREE: No, I really don't need anything
8 right now. I really want to do in order so I don't forget.
9 Today we received the January 9, 2019, letter from the UCS
10 from Shawn Kerby, Assistant Deputy Counsel. I've marked
11 that as Referee's Exhibit 4. It contains a discussion about
12 subpoenas. The bottom line of the document-- of the
13 documents that we've been provided, is that the UCS has
14 no objection to sharing items 1 through 4, with the
15 exception of the unredacted inspector general's report. So,
16 my question to counsel is does anybody here object to my
17 providing items 1 through 4 and the unredacted IG report to
18 both of you?

19 MS. CENCI: I have no--

20 MS. SCALISE: --You mean the redacted or the
21 unredacted?

22 THE REFEREE: Excuse me, redacted. Thank you
23 for clarifying.

24 MS. SCALISE: Thank you.

25 THE REFEREE: Do you have any objection to my

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 doing that?

2 MS. CENCI: I have no objection to 1 through 4. As
3 to the inspector general's report, I'm not sure exactly what
4 was redacted and what was left in, so--

5 THE REFEREE: --According to the letter, the
6 second full paragraph on page 6 provides as follows:
7 "Please be advised that the names and addresses of the
8 individuals interviewed referenced in the report have been
9 redacted for personal privacy and confidentiality purposes.
10 In addition, given the nature of the allegations reflected in
11 the report that concerns substantiated threats of physical
12 harm, such identities have been redacted to protect the life
13 and safety of the individuals (an unredacted copy of the IG
14 report is also attached exclusively for review and use by the
15 court). Similarly, the addresses and bank account numbers
16 reflected on exhibits to the IG report have been redacted for
17 personal and financial privacy reasons. Accordingly--" and
18 that's the end of that paragraph. I believe that that's what
19 was redacted and what I would intend to do, if no one
20 objects, is to briefly compare the unredacted and redacted
21 reports and confirm that that's what's been redacted and
22 then I would take the unredacted report, seal it, and return it
23 to counsel. Does anybody object to my doing that?

24 MS. SCALISE: Counsel to OCA.

25 THE REFEREE: Counsel to OCA. Does anybody

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 object to that?

2 MS. CENCI: No objection.

3 MS. SCALISE: No objection. I do have another
4 issue though.

5 THE REFEREE: Okay, that's fine. So, we're
6 making progress. Yes, Ms. Scalise?

7 MS. SCALISE: Okay. The-- When I spoke to Mr.
8 McConnell on Friday, he asked if he had to personally
9 appear. I said no but we want records and we modified it to
10 the 6th. At that point in time, he had not gotten the
11 subpoenas for Judge Connerton, Krebs, Yardman, Fitzgerald.
12 And so, Sgt. Krebs, John Yardman, Gregory Gates, Hon.
13 Molly Reynolds Fitzgerald and Hon. Rita Connerton, he
14 couldn't speak to that at that point and neither could I. This
15 letter presumes that they don't have to physically appear
16 because we asked for documents.

17 THE REFEREE: Right.

18 MS. SCALISE: However, we're still in the midst of
19 our case and we may need them to physically appear. So,
20 having said that either we'll give you new subpoenas for
21 their physical appearance, okay, which then I guess they'll
22 have to give to OCA counsel, or we can review these after
23 we review the documents and see if we need them. But in
24 any case, I wanted to put on the record that we don't agree
25 with that interpretation because the subpoena was for the

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 person and the documents.

2 THE REFEREE: Right. Your rights are fully
3 reserved. All right. It's now 5:00 and can I just ask the
4 sergeant what's the weather outside?

5 COURT OFFICER: Didn't look bad a minute ago,
6 Judge.

7 THE REFEREE: Okay, thanks. All right, then let's
8 go off the record.

9 (OFF THE RECORD)

10
11 (Whereupon, the proceeding was adjourned at 5:01 PM on January 9, 2019.)

12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

COMMISSION

		<u>Ident.</u>	<u>In Evid.</u>
1A	Certificate of Disposition and Local Court Criminal Disposition Report, Vestal Town Court, <i>People v David J. Iannone</i> , Forgery, 3 rd Degree, (2 pages).	14	---
1B	Certificate of Disposition, Union Town Court, <i>People v David J. Iannone</i> , Harassment, 2 nd Degree, (15 pages).	14	---
1C	Order of Hon. Christopher P. Baker, revoking Iannone Pistol Permit, dated June 4, 2018, (3 pages).	14	---
1D	Certificate of Disposition, Johnson City Village Court, <i>People v David Jon English</i> , Petit Larceny, 1991.	14	---
1E	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2000.	14	---
1F	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2004.	14	---

i.

1	1G	Certificate of Conviction, Steuben County	14	---
2		Court, <i>People v David English</i> , Criminal		
3		Possession of Forged Instrument, two counts.		
4	1H	Certificate of Conviction, Binghamton City	14	---
5		Court, <i>People v David English</i> , Petit Larceny.		
6	1I	Certificate of Conviction, Broome County	14	---
7		Court, <i>People v David English</i> , Attempted		
8		Criminal Sale of a Controlled Substance, 3 rd		
9		Degree, (2 pages).		
10	1J	Certificate of Conviction, Broome County	14	---
11		Court, <i>People v David J. English</i> , Attempted		
12		Arson, 3 rd Degree, (9 pages).		
13	1K	Certificate of Conviction, Binghamton City	14	---
14		Court, <i>People v James Stilloe</i> , Falsely		
15		Reporting an Incident, with Certificate of		
16		Conviction, (6 pages).		
17	1L	District Attorney/Superior Court Disposition	14	---
18		Report, Broome County Court, <i>People v</i>		
19		Martin Shaw, Robbery, 1 st Degree and		
20		Attempted Robbery, 1 st Degree.		
21				
22		<u>Estate of Roger Funk</u>		
23	2A	Surrogate's Court Record History,	16	---
24		(2 pages).		
25				

ii.

1	2B	Petition for Probate, filed May 2, 2014,	16	---
2		(5 pages).		
3	2C	Last Will and Testament of Roger L. Funk	16	---
4		with Affidavits, filed May 2, 2014, (7 pages).		
5	2D	Affidavit of Assets and Debts, filed May 2,	16	---
6		2014, (2 pages).		
7	2E	Coleman & Daniels Funeral Home expenses	16	---
8		for Jean Funk, filed May 2, 2014.		
9	2F	Family Tree of Roger L. Funk, filed May 2,	16	---
10		2014, (2 pages).		
11	2G	Application for Preliminary Letters	16	---
12		Testamentary, filed May 20, 2014, (2 pages).		
13	2H	Affidavit of Domicile, filed May 20, 2014.	16	---
14	2I	Affidavit of Donna Filip, filed May 29, 2014.	16	---
15	2J	Waiver of Process, Consent to Probate, filed	16	---
16		May 29, 2014.		
17	2K	Letter to Fiduciary Thomas M. Hayes from	16	---
18		Rebecca A. Malmquist, Chief Clerk, dated		
19		May 30, 2014.		
20	2L	Decree Granting Probate, dated May 30,	16	---
21		2014.		
22	2M	Grant of Letters Testamentary, dated May 30,	16	---
23		2014.		
24	2N	Letter to Thomas M. Hayes from Rebecca A.	16	---
25		Malmquist dated October 7, 2015.		

iii.

1	2O	Letter to Thomas M. Hayes from Rebecca A.	16	---
2		Malmquist, dated July 20, 2017.		
3	2P	Citation to Thomas M. Hayes, dated April 27,	16	---
4		2018.		
5	2Q	Order for Service of Process, dated April 27,	16	---
6		2018.		
7	2R	Affidavit for By Mail, dated April 27, 2018.	16	---
8	2S	Affidavit Concerning Deliverability of	16	---
9		Process Served by Mail, sworn to June 4,		
10		2018.		
11	2T	Order Revoking Letters, dated June 5, 2018.	16	---
12	2U	Consent to Change Attorney, dated March 6,	16	---
13		2015 (not filed with court).		
14	2V	Letter addressed to Thomas Hayes from	16	599
15		“Donna Filip,” dated November 6, 2015, with		
16		attached copies of checks, (Exhibit A to the		
17		Formal Written Complaint), (2 pages).		
18	2W	Checks dated December 1, 2015 (Exhibit D to	16	602
19		the Formal Written Complaint).		
20	2X	Certified Records of Citizens Bank,	16	---
21		(68 pages).		
22		<u>Estate of Jerry J. Behal, Jr.</u>		
23	4A	Document and Info Sheet, (2 pages).	517	---
24				
25				

1	4B	Records of filings of Probate Petition,	499	---
2		Wrongful Death Petition, Compel Fiduciary		
3		to Account Petition and Judicial Settlement of		
4		Final Account, (4 pages).		
5	4C	Petition for Probate, filed October 26, 2011,	491	492
6		(6 pages).		
7	4D	Last Will and Testament of Jerry J. Behal, Jr.,	499	---
8		filed October 26, 2011, (4 pages).		
9	4E	Affidavit of Subscribing Witnesses, filed	499	---
10		October 26, 2011.		
11	4F	Waiver of Process, Consent to Probate, filed	499	---
12		October 26, 2011.		
13	4G	Family Tree, filed October 26, 2011,	499	---
14		(2 pages).		
15	4H	Affidavit of Assets and Debts, filed October	499	---
16		26, 2011, (3 pages).		
17	4I	Affidavit of Sole Heirship filed November 1,	499	---
18		2011.		
19	4J	Notice of Probate, with Affidavit of Mailing,	499	---
20		filed November 2, 2011, (2 pages).		
21	4K	Certificate of Disqualification of David H.	499	---
22		Guy, filed November 2, 2011.		
23	4L	Order of Assignment, filed November 2,	499	---
24		2011.		
25				

1	4M	Decree Granting Probate With Limitations,	499	---
2		filed November 2, 2011, (2 pages).		
3	4N	Letters Testamentary, filed November 2,	499	---
4		2011.		
5	4O	Letter to David J. Behal from Rebecca A.	499	---
6		Malmquist, dated November 3, 2011.		
7	4P	Letter to David J. Behal from Rebecca A.	499	---
8		Malmquist, dated June 8, 2012.		
9	4Q	Letter to David J. Behal from Rebecca A.	499	---
10		Malmquist, dated August 7, 2012.		
11	4R	List of Assets/Inventory, filed September 19,	499	---
12		2012, (4 pages).		
13	4S	Petition of David J. Behal, dated December	499	---
14		28, 2013, filed July 11, 2014, (5 pages).		
15	4T	Waiver and Consent of Jennifer Behal, filed	499	---
16		July 11, 2014, (2 pages).		
17	4U	Waiver and Consent of Joseph Behal, filed	499	---
18		July 11, 2014, (2 pages).		
19	4V	Waiver and Consent of Karen Behal, filed	499	---
20		July 11, 2014, (2 pages).		
21	4W	Waiver and Consent of Donna Ougheltree,	499	---
22		filed July 11, 2014, (2 pages).		
23	4X	Waiver and Consent of Sylvia Behal, filed	499	---
24		July 11, 2014, (2 pages).		
25				

1	4Y	Attorney's Affidavit of Richard H. Miller,	499	501
2		filed December 12, 2014, (2 pages).		
3	4Z	Order and Decree, filed January 23, 2015,	499	501
4		(3 pages).		
5	4AA	Petition for A Compulsory Accounting and	499	501
6		Related Relief, filed October 13, 2015,		
7		(3 pages).		
8	4BB	Compulsory Accounting Citation, dated	499	501
9		October 14, 2015.		
10	4CC	Notice of Appearance of Artan Serjanej, Esq.,	499	501
11		filed November 23, 2015.		
12	4DD	Order of David Guy, filed January 14, 2016.	499	501
13	4EE	Amended Order Filed March 1, 2016.	499	501
14	4FF	Letter to Judge Guy from Artan Serjanej,	499	501
15		dated April 29, 2016, filed May 2, 2016.		
16	4GG	Order of David Guy, filed May 2, 2016.	499	501
17	4HH	Notice of Appearance of Robert H. Wedlake,	499	501
18		Esq., filed September 21, 2016.		
19	4II	Order of David H. Guy, filed September 21,	499	501
20		2016.		
21	4JJ	Letter to Hon. David H. Guy from Artan	499	501
22		Serjanej, dated October 7, 2016.		
23	4KK	Order of David H. Guy, filed October 20,	499	501
24		2016.		
25				

1	4LL	Order of David H. Guy, filed December 1,	499	501
2		2016.		
3	4MM	Order of David H. Guy, filed April 6, 2017.	499	501
4	4NN	Amended Order of David H. Guy, filed May	499	501
5		8, 2017.		
6	4OO	Petition for Judicial Settlement of Account,	499	501
7		filed May 26, 2017, (6 pages).		
8	4PP	Accounting by Executor, filed May 26, 2017,	499	501
9		(25 pages).		
10	4QQ	Letter from Hon. David H. Guy to Artan	499	501
11		Serjanej, Esq., dated June 15, 2017.		
12	4RR	Certificate of Disqualification of David H.	499	501
13		Guy, dated September 15, 2017.		
14	4SS	Order of Assignment of Hon. Molly Reynolds	499	501
15		Fitzgerald, dated September 18, 2017.		
16	4TT	Accounting Citation filed October 16, 2017.	499	501
17	4UU	Affidavits of Service of Accounting Citation,	499	501
18		sworn to in November 2017, (8 pages).		
19	4VV	Order of Hon. Julie A. Campbell, filed	499	501
20		November 20, 2017.		
21	4WW	Supplemental and Amended Supplemental	499	501
22		Citation, dated November 20 and November		
23		30, 2017, (2 pages).		
24	4XX	Objections to Accounting, filed December 4,	499	501
25		2017, (4 pages).		

1	4YY	Affidavits of Service of Amended	499	501
2		Supplemental Citation, filed January 19,		
3		2018, (2 pages).		
4	4ZZ	Letter to Hon. Molly R. Fitzgerald from Hon.	499	501
5		Julie A. Campbell, dated January 24, 2018.		
6	4AAA	Order of Re-Assignment by Hon. Molly	499	501
7		Fitzgerald, dated January 25, 2018.		
8	4BBB	Affirmation of Artan Serjanej in Reply to	499	501
9		Objections, with attached Schedules		
10		(27 pages).		
11	4CCC	Order of Hon. Gerald Keene, filed February 9,	499	501
12		2018.		
13	4DDD	Amended Order of Hon. Keene, dated March	499	501
14		9, 2018.		
15	4EEE	Order of Hon. Keene, dated April 6, 2018.	499	501
16	4FFF	Order of Hon. Keene, dated April 19, 2018.	499	501
17	4GGG	Affidavit of Robert H. Wedlake, filed August	499	501
18		6, 2018, (2 pages).		
19	4HHH	Decree of Judicial Settlement, filed August	499	501
20		15, 2018, (3 pages).		
21	4III	Emails between Dave Behal, Donna Filip and	62	70
22		Richard Miller, dated March 1, 2017 to May		
23		9, 2017 (Exhibit B to the Formal Written		
24		Complaint), (8 pages).		
25				

1	4KKK	Letter from Robert Wedlake to Artan Serjanej	509	---
2		dated June 5, 2017.		
3		<u>Estate of Antoinette Saraceno</u>		
4	5A	Sticky Notes, (8 pages).	411	420
5	5B	Petition for Probate, filed December 10, 2010,	411	416
6		(5 pages).		
7	5C	Family Tree, filed December 10, 2010,	411	416
8		(2 pages).		
9	5D	Last will and Testament of Antoinette A.	411	416
10		Saraceno, with affidavits of subscribing		
11		witnesses, (7 pages).		
12	5E	Notices of Probate with Affidavits of	411	416
13		Services, filed December 10, 2011,		
14		(16 pages).		
15	5F	Renunciations of Nominated Executor and/or	411	416
16		Trustee, filed December 10, 2010, (4 pages).		
17	5G	Letter from Richard H. Miller, II (by "DF"),	411	416
18		to Tioga County Surrogate's Court Clerk,		
19		dated February 16, 2011.		
20	5H	Amended Petition for Probate, filed February	411	416
21		17, 2011, (6 pages).		
22	5I	Amended Family Tree, filed February 17,	411	416
23		2011, (2 pages).		
24	5J	Waivers of Process: Consent to Probate, filed	411	416
25		February 17, 2011, (6 pages).		

x.

1	5K	Notice of Probate with Affidavit of Service,	411	416
2		filed February 17, 2011, (3 pages).		
3	5L	Probate Citation to John I. Saraceno, dated	411	416
4		February 28, 2011.		
5	5M	Memorandum to Richard H. Miller, II, Esq.,	411	416
6		from Deborah A. Stone, dated February 28,		
7		2011.		
8	5N	Court Appearance Notice dated April 7, 2011.	411	416
9	5O	Affidavit for Service of Process By Mail by	411	416
10		Donna Filip, Affidavit Concerning		
11		Deliverability of Process Served by Mail of		
12		Richard H. Miller, II, and certified mail		
13		receipts, filed April 8, 2011, (5 pages).		
14	5P	Letter to Surrogate's Court from John I.	411	416
15		Saraceno, filed April 8, 2011, with enclosures		
16		(21 pages).		
17	5Q	File Minutes from April 15, 2011.	411	416
18	5R	Order Granting Preliminary Letters with	411	416
19		Limitations, dated April 15, 2011.		
20	5S	Preliminary Letters Testamentary, dated April	411	416
21		15, 2011.		
22	5T	Letter to Surrogate's Court from John	411	416
23		Saraceno, filed May 9, 2011, with enclosures		
24		(6 pages).		
25				

1	5U	Letter to John I. Saraceno, Jr., from Deborah	411	416
2		A. Stone, dated May 17, 2011, with enclosed		
3		affidavit of service form (2 pages).		
4	5V	Completed Affidavit of Service of Objections,	411	416
5		filed June 27, 2011, (2 pages).		
6	5W	Letter to Hon. Vincent Sgueglia signed by	411	416
7		Frank Saraceno, Sr., and Sam Saraceno, filed		
8		June 29, 2011.		
9	5X	Letter to Frank Saraceno, Sr., and Sam	411	416
10		Saraceno, from Deborah A. Stone, dated July		
11		13, 2011, copied to Richard H. Miller, II, Esq.		
12	5Y	Letter to Judge Sgueglia from Richard H.	411	416
13		Miller, II, with enclosed Notice of Motion to		
14		Dismiss Objections, Affidavit of Executor		
15		and Attorney's Affirmation, filed July 18,		
16		2011, (7 pages).		
17	5Z	Letter to Chief Clerk from Richard H. Miller,	411	416
18		II, with Affidavit of Service by Donna Filip,		
19		filed August 18, 2011, (3 pages).		
20	5AA	Order dismissing objections, dated August 26,	411	416
21		2011, (2 pages).		
22	5BB	Decree Granting Probate, dated August 26,	411	416
23		2011.		
24	5CC	Letters Testamentary, dated August 26, 2011.	411	416
25				

1	5DD	Letter to Frank Saraceno, Sr., from Deborah	411	416
2		A. Stone, dated August 26, 2011.		
3	5EE	Letter to Richard H. Miller, II, Esq., from	411	416
4		Camelia M. Daniels, dated March 1, 2012.		
5	5FF	Letter to Tioga County Surrogate's Court	411	416
6		Clerk from Richard H. Miller, II, dated March		
7		1, 2012, with Enclosed Inventory of Assets,		
8		received March 15, 2012, (5 pages).		
9	5GG	Note dated March 20, 2012, on Letters	411	416
10		Testamentary from RH Miller, II, requesting		
11		new letter for real estate transfer, received		
12		March 20, 2012.		
13	5HH	Letter from Carmela M. Daniels to Richard H.	411	416
14		Miller, II, Esq., dated September 12, 2013,		
15		with enclosed form (2 pages).		
16	5II	Letter from Camela M. Daniels to Richard H.	411	416
17		Miller, Esq., dated December 27, 2013, with		
18		enclosed form (2 pages).		
19	5JJ	Citation to Frank Saraceno, Sr., dated March	411	416
20		20, 2014.		
21	5KK	Order of Hon. Gerald A. Keene, Surrogate,	411	416
22		dated March, 24, 2014.		

1	5LL	Letter to Deborah A. Stone, Chief Clerk, from	411	416
2		Richard H. Miller, II, dated July 23, 2014,		
3		enclosing Original Report of fiduciary,		
4		requesting additional time to collect receipts,		
5		releases and discharges from beneficiaries,		
6		received July 28, 2014 (2 pages).		
7	5MM	Letter to Richard H. Miller, Esq., from	411	416
8		Deborah Stone, dated August 2, 2016, with		
9		enclosed form (2 pages).		
10	5NN	Letter to Frank Saraceno from Kiyoko	411	416
11		Matsuhashi, dated August 16, 2016, with		
12		enclosed sample of substitution of attorneys		
13		form (2 pages).		
14	5OO	Letter to Frank Saraceno from Kiyoko	411	416
15		Matsyhashi, dated December 9, 2016.		
16	5PP	Letter to Richard H. Miller, Esq., from	411	416
17		Deborah A. Stone, dated March 28, 2017,		
18		with enclosed form (2 pages).		
19	5QQ	Letter to Frank Saraceno, Sr., from Deborah	411	416
20		A. Stone, dated January 22, 2018.		
21	5RR	Letter to Surrogate's Court Chief Clerk from	411	416
22		Artan Serjanej, dated January 29, 2018,		
23		enclosing Notice of Appearance, received		
24		February 2, 2018 (2 pages).		
25				

1	5SS	Order of Hon. Gerald A. Keene, dated	411	416
2		February 5, 2018.		
3	5TT	Letter to Deborah A. Stone from Artan	411	416
4		Serjanej, dated April 18, 2018, with		
5		enclosures, (52 pages).		
6	5UU	Checks dated April 4, 2012.	473	474
7	5VV	Memorandum of interview of Deborah Stone	459	462
8		dated December 12, 2017, with notes,		
9		(2 pages).		
10	<u>Estate of Deborah Brigham</u>			
11	6Q	Checks from Beverly Brigham payable to	602	604
12		Respondent, dated November 24, 2015,		
13		(Exhibit C to the Formal Written Complaint)		
14		(3 pages).		
15	<u>Checks</u>			
16	7C	Copies of checks from Louis Micha to	525	528
17		Richard H. Miller, dated from December 9,		
18		2014 to March 22, 2018, and Receipts		
19		(Exhibit E to the Formal Written Complaint),		
20		(46 pages).		
21				
22				
23				
24				
25				

Financial Disclosure Forms

8A	Annual Statements of Financial Disclosure filed by Richard H. Miller, II, with the Ethics Commission for the Unified Court System for reporting year 2014 (13 pages).	794	794
8B	Annual Statements of Financial Disclosure filed by Richard H. Miller, II, with the Ethics Commission for the Unified Court System for reporting year 2015 (6 pages).	794	794
8C	Annual Statements of Financial Disclosure filed by Richard H. Miller, II, with the Ethics Commission for the Unified Court System for reporting year 2016 (6 pages).	794	794
8D	Annual Statement of Financial Disclosure for reporting year 2015, as amended by Richard H. Miller on November 16, 2017 (6 pages).	794	794

Income Tax Returns

9A	2015 U.S. Individual Income Tax Return (Bates Nos.: 101-001 to 101-025).	794	795
9B	2015 Amended U.S. Individual Tax Return (Bates Nos.: 102-001 to 102-006).	794	795
9C	2015 U.S. Individual Income Tax Return (Amended) (Bates Nos.: 103-001 to 103-017).	794	795

1	9D	2015 New York Resident Income Tax Return	794	795
2		(Bates Nos.: 104-001 to 104-008).		
3	9E	2015 New York Amended Resident Income	794	795
4		Tax Return (Bates Nos.: 105-001 to 105-007).		
5	9F	2016 U.S. Individual Tax Income Tax Return	794	795
6		(Bates Nos.: 201-001 to 201-029).		
7	9G	2016 Amended U.S. Individual Income Tax	794	795
8		Return (Bates Nos.: 202-001 to 202-006).		
9	9H	2016 U.S. Individual Income Tax Return	794	795
10		(Amended) (Bates Nos.: 203-001 to 203-027).		
11	9I	2016 New York Resident Income Tax Return	794	795
12		(Bates Nos.: 204-001 to 204-011).		
13	9J	2016 New York Amended Resident Income	794	795
14		Tax Return (Bates Nos.: 205-001 to 205-009).		
15	<u>Correspondence</u>			
16	10A	Letter to Cathleen S. Cenci from Paul	795	796
17		DerOhannesian, II, dated April 16, 2018.		
18	10B	Letter to Hon. Richard H. Miller, II, c/o Paul	795	796
19		DerOhannesian, II, with enclosure, dated May		
20		7, 2018, (5 pages).		
21	10C	Letter to Cathleen S. Cenci from Paul	796	796
22		DerOhannesian, with enclosure, dated May		
23		30, 2018, (7 pages).		
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Additional Exhibits

11	Schedule of Commission Exhibits.	13	---
12	Letter from Debbi Singer to Judge Miller dated March 10, 2017 (3 pages).	407	1499
13	Rachelle Gallagher's notes.	769	---
14	Transcript of Jerry Penna's testimony	953	---
15	Letter from Cathleen Cenci to Lisa Wojdat dated October 2, 2017.	1091	1113
16	Memorandum of interview of David Behal dated August 15, 2017.	1167	---
17	Letter from Cathleen Cenci to David Behal dated August 4, 2017.	1181	1184
18	Email from Gregory Gates dated April 13, 2016, to Sixth Judicial District Judges with attached memorandum from Hon. Michael V. Coccoma (3 pages).	1469	1473
19	Insurance claim document dated February 18, 2017 (2 pages).	1484	1486

EXHIBITS

RESPONDENT

		<u>Ident.</u>	<u>In Evid.</u>
1			
2			
3			
4			
5	A	Subpoena for John McConnell.	688 ---
6	F	Subpoena.	82 ---
7	I	Transcript of Mark Kachadourian's	86 ---
8		Testimony.	
9	J	Mark Kachadourian's Notes.	91 ---
10	K	Noramar Enterprises documents.	109 ---
11	L	Nomination for appointment of attorneys.	111 114
12	M	Arbitration decision.	116 ---
13	N	Federal complaint.	158 ---
14	O	Supplemental declaration of Mark	217 ---
15		Kachadourian.	
16	P	Memorandum of phone call of January 3,	168 ---
17		2018.	
18	Q	Rebecca Vroman's letter.	349 ---
19	R	Memorandum of phone call of April 20,	169 ---
20		2018.	
21	S	Summary of inspector general interview of	377 ---
22		Debbi Singer.	
23	T	Work Safe document.	385 ---
24	U	Debbi Singer's notes.	387 ---
25	V	Letter from Judge Miller to Debbi Singer	394 1499
		dated March 1, 2017 (3 pages).	

1	W	Memorandum of interview of Deborah Stone	453	---
2		on December 6, 2017.		
3	X	Updated records for <i>Estate of Antoinette</i>	537	537
4		<i>Saraceno</i> , (74 pages).		
5	Y	Transcript of Rachelle Gallagher's	609	---
6		testimony.		
7	Z	Calendar.	724	---
8	AA	Photograph of Richard Balles and Mark	973	975
9		Kachadourian.		
10	BB	Photograph of Richard Balles, Judge Miller,	973	975
11		Mark Kachadourian and others.		
12	CC	Consent to change attorney signed by Artan	1044	1049
13		Serjanej and David Behal dated March 20,		
14		2015.		
15	DD	Consent to change attorney signed by Artan	1062	1066
16		Serjanej and Thomas Hayes dated March 5,		
17		2015.		
18	EE	Emails with Surrogate's Court and Artan	1067	---
19		Serjanej.		
20	FF	Emails of October and November 2015	1119	1120
21		(3 pages).		
22	GG	Emails of March, April and May 2017	1122	1125
23		(3 pages).		
24	HH	Email from Jolene to David Behal dated May	1135	1136
25		15, 2013.		

xx.

1	II	IRS forms and publications printout.	1143	1144
2	JJ	Email between Sgt. Kreb and captain.	1197	---
3	KK	Email.	1207	---
4	LL	Email from Rebecca Vroman to Mark	1337	1340
5		Kachadourian dated January 23, 2017.		
6	MM	Standards and goals statistics (7 pages).	1340	1342
7	NN	Employee evaluation email to Judge Mulvey	1367	1368
8		dated January 20, 2016 (2 pages).		
9	OO	Email from Jane Sbarra dated	1386	1387
10		January 11, 2019.		
11	PP	Financial disclosure forms sent from	1387	1388
12		Respondent to Chief Clerk on January 31,		
13		2019 (5 pages).		
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

REFEREE

		<u>Ident.</u>	<u>In Evid.</u>
1	Email from Cathleen Cenci to the Referee, Paul DerOhannesian and Deborah Scalise dated January 4, 2019.	258	258
2	Email from Deborah Scalise to the Referee, Cathleen Cenci and Paul DerOhannesian dated January 6, 2019 (4 pages).	258	258
3	Subpoena for Mayor Greg Deemie dated January 4, 2019.	689	689
4	Letter from Shawn Kerby to the Referee dated January 9, 2019, (6 pages).	732	732
5	Letter from Edward Lindner to the Referee dated January 10, 2019, (66 pages).	893	893
6	Letter from Shawn Kerby to the Referee dated January 11, 2019, (2 pages).	1186	1188

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Dated: February 5, 2019

Genelia Wale

Letitia Walsh

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

**STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT**

-----X
In the Matter of the Proceeding Pursuant :
to Section 44, subdivision 4, of the :
Judiciary Law in Relation to :

RICHARD H. MILLER, II, :

a Judge of the Family Court, Broome County. :
-----X

Sixth Judicial District Conference Room
Kilmer Building
31 Lewis Street, 5th Floor
Binghamton, New York 13901
January 10, 2019
9:01 AM

B e f o r e:

ROBERT A. BARRER, ESQ.
Referee

P r e s e n t:

For the Commission

CATHLEEN S. CENCI, ESQ.
Deputy Administrator

S. PETER PEDROTTY, ESQ.
Senior Attorney

ETEENA J. TADJIOGUEU, ESQ.
Staff Attorney

For the Respondent

PAUL DEROHANNESIAN, II, ESQ.
Attorney for Respondent
DerOhannesian & DerOhannesian
677 Broadway, Suite 707
Albany, New York 12207

DEBORAH A. SCALISE, ESQ.
Attorney for Respondent
Scalise & Hamilton LLP
670 White Plains Road, Suite 325
Scarsdale, New York 10583

A l s o P r e s e n t:

HON. RICHARD H. MILLER, II
Respondent

RYAN T. FITZPATRICK
Senior Investigator and FTR Operator

INDEX OF WITNESSES

For the Commission

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Mark Kachadourian, Esq.	21	76	68	222	240
D [REDACTED] L [REDACTED]	260	283	--	307, 317	313
Rebecca Vroman	321	333	--	--	--
Debbi Singer	355	376	--	402	--
Deborah Stone	410	430	419	458, 465	462
Barbara Saraceno	469	480	--	--	--
Robert Wedlake, Esq.	486	513	--	--	--
Louis Micha	521	530	--	--	--
Rachelle Gallagher	541	606	601	768	778

INDEX OF WITNESSES

For the Respondent

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Ofc. Jolene Payne	799	802	--	807	--
James Stilloe	856	867	--	--	--
Martin Shaw	908	913	--	--	--
Jerry Penna	922	935	--	951, 958	954
Richard Balles	964	--	--	--	--
Katherine Fitzgerald, Esq.	977	987	--	993	--
Sandra Conklin	997	1013	--	1016	1021
Artan Serjanej, Esq.	1024, 1100	1101	1047, 1064	1108	1111
Lisa Wojdat	1074	1090	--	1096	--
David Behal	1115	1151	1123	1176, 1184	1181
Sgt. Ronald Kreb	1196	1204	--	1207	--
Diane Marusich	1211	1226	--	--	--
Robin Dean	1242	1263	--	1274, 1283	1280
Hon. Richard H. Miller, II	1296	1431	1339, 1472	1486	1489

ii.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: Counsel for the Commission is
2 present. Counsel for the Respondent is present, and the
3 Respondent himself is present. At the end of yesterday's
4 session, we a had a discussion about the response of the
5 Commission on Judicial Conduct to the subpoenas, and I
6 told everyone that what I would do last night is go through
7 the redacted copy of the inspector general's report and
8 compare that to the redacted [sic] version to confirm that
9 the letter from Shawn Kerby, assistant deputy counsel of the
10 court system, was accurate as to what had been redacted.
11 Everyone agreed that I should do that. I did in fact do that,
12 and I can confirm on the record that the redactions are as
13 indicated in the letter, so, I'm going to take the unredacted
14 report at the conclusion of the hearing and send it back to
15 Shawn Kerby and not maintain that. I have the redacted
16 copy of the report that hasn't been marked, hasn't been
17 received, and I'll hang on to it. If no one offers it and it's
18 not received, I'll discard it. All right, so that's-- that's that
19 piece of business. I was giving some thought to this
20 question of the Commission's offer of the criminal records,
21 and I don't need a response but I just wanted to offer a
22 thought that I had last night about that issue for you to
23 consider over the next day or so. And that is, it's a
24 rhetorical question, does it matter whether these people
25 actually have criminal records or is it the perception on Mr.

792.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 Kachadourian, Ms. Gallagher, and possibly others that they
2 do have criminal records? So, I-- I just was thinking about
3 that and that may be an issue and I wish you would think
4 about that.

5 MS. CENCI: Well--

6 THE REFEREE: --Because I don't want to--

7 MS. CENCI: --Your Honor--

8 THE REFEREE: --get into an argument now
9 because we've had it, but--

10 MS. CENCI: --I expect today, sometime this
11 morning, hopefully, to have for you a letter from our deputy
12 administrator for litigation, briefing-- essentially briefing
13 the issues as--

14 THE REFEREE: --That'd be fine--

15 MS. CENCI: --you've indicated. And I think in
16 there, yes, it is our position that because it's alleged in the
17 complaint as a fact, that-- that we should be entitled to
18 present that proof.

19 THE REFEREE: No, that's fine. 100 percent I will
20 consider it, but I just wanted you to have the benefit of
21 that-- that thought on that issue. So, the Commission, do
22 you have-- you have to say something on the record, I
23 believe, about the financial records?

24 MS. CENCI: Yes. I wanted to offer into evidence
25 the remainder of the records which have been stipulated to.

793.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE REFEREE: Can you recite the exhibit designations?

MS. CENCI: Yes. So, Exhibits 8A, 8B, and 8C, and 8D, are financial disclosure forms filed by Respondent with the Ethics Commission for the Unified Court System.

THE REFEREE: Okay. Those are offered. Any objection?

MS. SCALISE: No objection.

THE REFEREE: Received.

MS. CENCI: Thank you. Exhibits 9A, 9B, through 9J, are copies of Respondent's individual income tax returns, federal and state, and amended returns. I can-- I probably should describe more specifically each one because they--

THE REFEREE: --Go ahead--

MS. CENCI: --look very similar. 9A was the 2015 federal tax return, originally filed. 9B, the 2015 amended federal tax return. And-- As well as 9C. There are two forms.

THE REFEREE: Two separate amendments?

MS. CENCI: Well, there are two forms that you file. One is more of a-- like a summary page and then there's the underlying actual return.

THE REFEREE: All right, that's fine. But A, B, and C relate to the tax year 2015?

(Hon. Richard H. Miller, II)

1 MS. CENCI: Correct.

2 THE REFEREE: All right.

3 MS. CENCI: 9D is the originally filed 2015 New
4 York State Resident Income Tax Return and 9E is the 2015
5 State Amended Tax Return.

6 THE REFEREE: All right.

7 MS. CENCI: 9F is the 2016 U.S. Individual Tax
8 Return that was originally filed. 9G is the 2016 amended
9 federal return, as well as 9H. The two different forms--

10 THE REFEREE: --Two different forms, right?--

11 MS. CENCI: --that I indicated. And then 9I is the
12 2016 New York State Resident Tax Return--

13 MR. DEROHANNESIAN: --2016?

14 MS. CENCI: Yes. 2016, as originally filed. And
15 9J, the 2016 New York State Amended Return, and those
16 offered.

17 THE REFEREE: Any objection?

18 MS. SCALISE: No objection.

19 THE REFEREE: Received.

20 MS. CENCI: Thank you. Lastly, there are three
21 pieces of correspondence. 10A is a letter from myself to
22 Mr. DerOhannesian, dated April 16, 2018. 10B--

23 MR. DEROHANNESIAN: --B--

24 MS. CENCI: --I'm sorry. I beg-- I beg your
25 pardon. I make-- It's a letter to me from Mr.

795.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 DerOhannesian.

2 MS. SCALISE: Okay. That was A?

3 MS. CENCI: That's A. Dated April 16, 2018. And
4 10B is a letter to the Respondent, care of Mr.
5 DerOhannesian, dated May 7, 2018. And 10C is a letter to
6 myself from Mr. DerOhannesian, dated May 30, 2018.

7 THE REFEREE: Any objection?

8 MS. SCALISE: No objection.

9 THE REFEREE: Received.

10 MS. CENCI: Thank you.

11 THE REFEREE: All right. And did you have
12 testimony you wished to read in?

13 MS. CENCI: Yes, I did, Your Honor. Should I--

14 MS. SCALISE: --May I-- May I make just a quick
15 application? I'm sorry. I know that you have to finish your
16 case. One of our character witnesses, who should be
17 relatively brief, she doesn't have any fact evidence. She has
18 three children at home with a snow day, so I was hoping we
19 could sort of take her out of turn and she can get to where
20 she needs to be?

21 THE REFEREE: Who is it?

22 MS. SCALISE: Her name is--

23 MR. DEROHANNESIAN: --Jolene Payne--

24 MS. SCALISE: --Jolene Payne.

25 THE REFEREE: Any objection?

796.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: Not to taking a person out of witness--
2 out of order, Your Honor, but I may ask for an offer of
3 proof as the purpose to the testimony.

4 THE REFEREE: Well, it's character, and I think
5 we've had-- We've had--

6 MS. CENCI: --It's a character witness?

7 MS. SCALISE: Character witness, yes.

8 MS. CENCI: Okay.

9 MS. SCALISE: Yes, and the subpoena actually
10 said--

11 THE REFEREE: --Right--

12 MS. SCALISE: --You know--

13 MS. CENCI: --No--

14 THE REFEREE: --No, I think we should do that--

15 MS. CENCI: No objection.

16 THE REFEREE: Let's--

17 MS. SCALISE: --Thank you very much--

18 MR. DEROHANNESIAN: --Thank you--

19 THE REFEREE: --Let's do that.

20 MR. DEROHANNESIAN: And if-- I have two
21 revised subpoenas for court officers Yardman and Kreb. It
22 may not be necessary. We have to speak to the counsel for
23 OCA.

24 THE REFEREE: All right. Let me have those.

25 MR. DEROHANNESIAN: I'll be getting a new one,

797.

(Hon. Richard H. Miller, II)

1 this says it will be on--

2 THE REFEREE: --Yep.

3 MR. DEROHANNESIAN: And I'm going to excuse
4 some of-- (unintelligible)--

5 THE REFEREE: --Okay.

6 COURT OFFICER: Ready for witness, Judge?

7 THE REFEREE: Yes. Some of us will remember
8 snow days, when it mattered.

9 MS. CENCI: We don't get that much snow
10 anymore. We haven't snow in Albany, really, this-- this
11 winter. Have we had a snowfall?

12 MR. PEDROTTY: We'll get it in April.

13 MS. CENCI: Yeah.

14 THE REFEREE: Raise your right hand. Do you
15 swear or affirm under the penalty of perjury that the
16 testimony you are about to give is the truth, the whole truth,
17 and nothing but the truth?

18 MS. PAYNE: I do.

19 J O L E N E P A Y N E,

20 having been duly sworn, was examined and testified as follows:

21 THE REFEREE: Okay. Please have a seat. My
22 name is Robert Barrer, I'm a special Referee who was
23 appointed by the Commission on Judicial Conduct to
24 oversee this proceeding. And you're going to be asked
25 some questions by the attorney for Judge Miller and then

798.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Payne - Direct)

1 you may or may not be asked some questions by counsel for
2 the Commission. It's important when you testify that you
3 answer verbally as opposed to shaking your head. It's also
4 important that you wait until the question is fully asked
5 before you answer, and in the event that there's an
6 objection, please wait until I give you the signal to go ahead
7 and answer it.

8 THE WITNESS: Okay.

9 THE REFEREE: How's that?

10 THE WITNESS: Yes, sir.

11 THE REFEREE: That's great. Okay. Ms. Scalise?

12 MS. SCALISE: Thank you. Thank you.

13 DIRECT EXAMINATION

14 BY MS. SCALISE:

15 Q. Ms. Payne, we met earlier today--

16 A. --Yes, ma'am--

17 Q. --for the first time? Okay. What do you do for a living?

18 A. I'm a police officer with Endicott PD.

19 Q. How long have you been with Endicott PD?

20 A. I was hired in June of this year.

21 Q. Okay. And so are you assigned anywhere?

22 A. To our roads, yes.

23 Q. Okay. So, patrol?

24 A. Yes. Yes.

25 Q. Okay. And prior to that, what did you do?

799.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Payne - Direct)

- 1 A. I was a stay-at-home daycare provider in my own home. Licensed to
2 the state.
- 3 Q. Okay. And do you know Judge Rick-- Richard Miller?
- 4 A. Yes, ma'am.
- 5 Q. Okay. How did you come to know him?
- 6 A. I was hired by him, I believe it was January of 2012.
- 7 Q. And what position did you hold?
- 8 A. I was a secretary for him in his law office.
- 9 Q. How long did you remain there?
- 10 A. About a year and a half.
- 11 Q. Were there any other employees?
- 12 A. There was a couple other employees.
- 13 Q. And did you work closely with them every day?
- 14 A. One--
- 15 Q. --One other employee?
- 16 A. One other, yeah.
- 17 Q. And who was that?
- 18 A. Danuta Filip.
- 19 Q. Known as Donna?
- 20 A. Yes.
- 21 Q. Okay. So, do you know, without telling us what it is, you know, what
22 Judge Miller's reputation is for honesty and trustworthiness in the
23 legal community?
- 24 A. Yes, ma'am.
- 25 Q. Now, who have you spoken to over the years about that reputation for

800.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Payne - Direct)

1 trustworthiness? Without giving us names, you can tell us what they
2 did.

3 A. Okay. Other attorneys, other police officers, clients of his.

4 Q. Have you ever been a client of his?

5 A. I have.

6 Q. And do you know some of the other clients of his?

7 A. Yes, ma'am.

8 Q. Okay. Without telling us what they exactly said, do you-- Do you
9 have an opinion, after speaking to them, as to what his reputation is
10 for honesty and trustworthiness in the legal community?

11 A. Yes, ma'am.

12 Q. And having known that and shared that opinion, what is his reputation
13 for honesty and trustworthiness in the community?

14 A. He's a good man. He's-- I have never heard anybody say anything
15 negative about him. He's-- He's honest, he's trustworthy, nice-- nice
16 man.

17 Q. Now, I'm sure that you may have read some news reports about this
18 matter?

19 A. A little bit.

20 Q. Okay. And do you know, generally--

21 MS. CENCI: --Objection. There have not been any
22 news reports, to my knowledge, about the Commission
23 proceeding.

24 MS. SCALISE: Let me rephrase that, I'll withdraw.

25 THE REFEREE: Thank you.

801.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Payne - Cross)

1 BY MS. SCALISE:

2 Q. Okay. Have you read news reports about allegations that were
3 brought in a civil suit against Judge Miller?

4 A. Yeah. I've read stuff--

5 Q. --Thank you--

6 A. --regarding it.

7 Q. Okay. And have-- Knowing what was alleged in those lawsuits, did it
8 change your opinion of him in any way?

9 A. No, ma'am.

10 MS. SCALISE: Okay. I have nothing further.

11 THE REFEREE: Thank you. Ms. Cenci, anything?

12 CROSS-EXAMINATION

13 BY MS. CENCI:

14 Q. Good morning, Ms. Payne. My name is Cathleen Cenci. I serve as
15 counsel for the Commission on Judicial Conduct in this matter.

16 A. Good morning.

17 Q. How old are you?

18 A. I'm 32.

19 Q. Did you first meet Judge Miller when you were hired as his secretary?

20 A. Yes, ma'am.

21 Q. Was that a position that you applied for? How did that come about?

22 A. I knew another attorney that he knew and he had recommended me for
23 it, so there was no official application process, but I met him. We had
24 a meeting and hired me that way.

25 Q. And you're currently an Endicott police officer?

802.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Payne - Cross)

1 A. Yes, ma'am.

2 Q. Do you have any occasion to interact with Judge Miller or have you
3 since he's been on the family court bench?

4 A. No, ma'am.

5 Q. Now, what attorneys did you speak with regarding the judge's
6 reputation?

7 A. Brett Noonan and there was another one, but I honestly don't
8 remember his name.

9 Q. So, you spoke with two attorneys?

10 A. Yes, ma'am.

11 Q. When was the last time you spoke with these individuals about the
12 judge's reputation?

13 A. I'm going to say about six months ago?

14 Q. That was before you read the news reports about sexual harassment--

15 A. --Possibly--

16 THE REFEREE: --Well, hold on. You have to wait
17 until she--

18 THE WITNESS: --Oh-- Sorry--

19 THE REFEREE: --That's all right. Wait until she
20 finishes her question and then you answer.

21 THE WITNESS: Yeah.

22 BY MS. CENCI:

23 Q. Would that have been before you read the news reports about the
24 sexual harassment lawsuit against the judge?

25 A. Possibly, but I don't-- I don't recall.

803.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Payne - Cross)

- 1 Q. And you indicated that you'd been a client of the judge's law practice?
- 2 A. Yes, ma'am.
- 3 Q. Is that right? Does he currently represent you in any matters?
- 4 A. No, ma'am.
- 5 Q. And you said that you also spoke with some police officers about the
- 6 judge's reputation?
- 7 A. Yes, ma'am.
- 8 Q. Which police officers did you speak with about the reputation of the--
- 9 Judge Miller?
- 10 A. That-- A lot. I can't recall all of them, but I know Katie Thorpe, who
- 11 works for Johnson City Police Department, and several officers in my
- 12 department.
- 13 Q. Okay. But you-- your department-- Does your department appear
- 14 before the judge in family court?
- 15 A. No, ma'am, not in family court.
- 16 Q. Okay. So, is it fair to say any contact that they may have had with the
- 17 judge would have been the past?
- 18 A. Possibly.
- 19 Q. And when was it that you talked with Katie Thorpe about the judge's
- 20 reputation?
- 21 A. Katie and I are very close friends. We've talked about him several
- 22 times throughout the years.
- 23 Q. When was the last time, if you can?
- 24 A. After I found out about all of this.
- 25 Q. Have you been subpoenaed to testify here today?

804.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Payne - Cross)

1 A. Yes, ma'am.

2 Q. Did you ask for a subpoena?

3 A. No. I didn't ask, but I was willing to come in.

4 Q. You would have testified voluntarily if you had not received a
5 subpoena, is that correct?

6 A. Absolutely.

7 Q. Okay. Has anyone told you the nature of the charges ag-- the
8 Commission on Judicial Conduct's charges against Judge Miller?

9 A. His attorneys just spoke to me about it.

10 Q. What did they tell you?

11 A. That he had asked for personal services to himself, that-- There was a
12 few things. He asked for the woman to perform services for another
13 judge, I believe.

14 Q. Did-- Were you given-- Do you recall anything else that they said
15 about the charges?

16 A. Not specifically. I just remember that they were atrocious.

17 Q. Did they-- When you say "atrocious," what do you mean by that?
18 You were-- Were you shocked?

19 A. To think that-- Yeah. Because he's not that type of person.

20 MS. CENCI: Well-- Object to the-- Object to the
21 volunteer part of that response.

22 MS. SCALISE: She opened the door.

23 THE REFEREE: I was just thinking the same thing.
24 I think that's a fair response to that question.

25 MS. CENCI: We're talking about reputation only,

805.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Payne - Cross)

1 Your Honor, not personal opinion.

2 THE REFEREE: No, I understand that, but I think
3 that-- that's a responsive answer to your question.

4 MS. CENCI: Okay.

5 BY MS. CENCI:

6 Q. So, you found what they told you about the charges shocking, is that
7 correct?

8 A. Yeah.

9 Q. You said you talked with other clients of the judge about his
10 reputation?

11 A. Yes--

12 Q. --What other clients did you talk to about that?

13 A. I-- When I worked in his law office, we all spoke. I worked directly
14 with his clients and yeah, we would speak about him.

15 Q. Okay. So, the last-- Is it fair to say that the last time you spoke with
16 any client of the judge about his reputation for honesty and
17 truthfulness, was in or about 2013?

18 A. Probably.

19 MS. CENCI: Okay, thank you. I don't have
20 anything further.

21 THE REFEREE: Ms. Scalise?

22 MS. SCALISE: Oh, just one second.

23 THE REFEREE: Oh, and just to clarify. What--
24 When did you work for Judge Miller? I'm-- I think I
25 missed that.

806.

(Payne - Redirect)

1 THE WITNESS: I started in January and I want to
2 say it was about 2012, '13. I worked for him for a year and
3 a half.

4 THE REFEREE: But you started in January of '12?

5 THE WITNESS: I think it was '12.

6 THE REFEREE: Okay, thank you.

7 THE WITNESS: Mm-hmm.

8 MS. SCALISE: May I have just two--

9 THE REFEREE: --Yes--

10 MS. SCALISE: --maybe three, depending on the
11 answer.

12 REDIRECT EXAMINATION

13 BY MS. SCALISE:

14 Q. You described, when you found out about the charges, that they were
15 atrocious and they were shocking, you remember that?

16 A. Yes, ma'am.

17 Q. Okay. Why did you react in that way?

18 A. Because I've never heard anybody say anything remotely close to Mr.
19 Miller being that way. It's just-- It's not something that I would have
20 expected.

21 Q. And you personally were in the office with him on a daily basis?

22 A. Yes, ma'am.

23 Q. Did you ever view any similar behavior by Judge Miller?

24 A. Never.

25 Q. Okay.

807.

(Payne - Redirect)

1 MS. CENCI: Objection, Your Honor. Reputation
2 only, not personal observations or opinions.

3 THE REFEREE: Sustained. That answer will be
4 stricken.

5 BY MS. SCALISE:

6 Q. Thank you. Now, you did mention that after the news article came out
7 you had discussions--

8 A. --Yes--

9 Q. --with others about what they read and what you read?

10 A. Yes, ma'am.

11 Q. Okay, and what did you learn in those discussions from other people
12 about his reputation for honesty and trustworthiness after the
13 newspaper article?

14 MS. CENCI: Objection. No foundation.

15 THE REFEREE: No, I'll allow it. You can answer.

16 A. Nobody could believe the allegations about it--

17 MS. CENCI: --Objection. Move to strike the
18 response.

19 THE REFEREE: Yeah, I'm going to grant that.

20 Let's strike that. Ask another question.

21 MS. SCALISE: Okay.

22 BY MS. SCALISE:

23 Q. After speaking with those people, did they indicate they changed his--
24 their opinion about him in any way, for honesty and trustworthiness?

25 MS. CENCI: Objection.

808.

(Payne - Redirect)

1 THE REFEREE: Sustained. I think that you should
2 ask this witness if her opinion changed.

3 MS. SCALISE: Okay. Lastly-- that was my next
4 question, so I will move on--

5 THE REFEREE: --Which I think we covered on
6 direct--

7 MS. SCALISE: --Okay--

8 THE REFEREE: --but go ahead and ask it again.

9 BY MS. SCALISE:

10 Q. After the newspaper articles, and after discussions with other people,
11 did you in any way change your opinion of Judge Miller's reputation
12 for honesty and trustworthiness?

13 A. No, ma'am.

14 MS. SCALISE: Thank you very much.

15 THE REFEREE: All right. Ms. Cenci anything
16 further?

17 MS. CENCI: Nothing further. Thank you.

18 THE REFEREE: All right. Is it officer?

19 THE WITNESS: Yes.

20 THE REFEREE: Thank you very much for coming.
21 These proceedings are confidential, so we would appreciate
22 it if you would not discuss your testimony here today.

23 THE WITNESS: Yes, sir.

24 THE REFEREE: Go back and take care of your
25 family.

809.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE WITNESS: Thank you very much, I appreciate
2 that.

3 THE REFEREE: All right.

4 MS. SCALISE: May I just escort her? I-- Or--
5 You'll escort her, I guess. Thank you very much.

6 THE REFEREE: All right. All right, we have
7 testimony you wish to read, Ms. Cenci?

8 MS. CENCI: Thank you, Your Honor.

9 THE REFEREE: It would be helpful if when you do
10 that, you give line and page--

11 MS. CENCI: --I will--

12 THE REFEREE: --if you can. And is it all coming
13 from one source?

14 MS. CENCI: Yes.

15 THE REFEREE: What is the source?

16 MS. CENCI: So, Respondent appeared at the
17 Commission's Albany offices on November 28, 2017.
18 Present was Michael Whiteman, who was acting as the
19 Referee at the time. I was present and conducted the
20 examination of Respondent, who was represented by Paul
21 DerOhannesian, as his-- with his-- at the time. And Laura
22 Misjak, a Commission investigator, operated the recording
23 equipment.

24 THE REFEREE: Okay. And I--

25 MS. CENCI: --Are you ready, Paul--

810.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MR. DEROHANNESIAN: --I am--

2 MS. CENCI: --Are you ready?

3 THE REFEREE: And he-- Respondent was under
4 oath?

5 MS. CENCI: Yes.

6 THE REFEREE: Just for clarification, why don't
7 read or at least cite the page and line where the oath was
8 provided? You don't have to read it but just tell us where
9 that is. And is the transcript certified?

10 MS. CENCI: Yes, it is.

11 THE REFEREE: And recite that, as well, if you
12 would. Either at the beginning or the end, just so we have it
13 for the record.

14 MS. CENCI: So, the Referee administered the oath
15 at the bottom of page 2, and the top of page 3. Do-- Would
16 you like me to read the oath?

17 THE REFEREE: No, no, I just-- That's fine.

18 MS. CENCI: Okay.

19 THE REFEREE: And then you have a certification?

20 MS. CENCI: Yes. And the transcript was certified
21 by Courtney French, who is a secretary in our offices, on
22 December 8, 2017.

23 THE REFEREE: What page is that on?

24 MS. CENCI: That's not actually numbered. It's--

25 THE REFEREE: --All right. So, it comes at the end

811.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 of the transcript?

2 MS. CENCI: It comes all the way at the end after
3 the index to the exhibits. The transcript, in total, is 167
4 pages.

5 THE REFEREE: All right, thank you.

6 MS. CENCI: Okay? So, the first passage is at page
7 6, lines 4 and 5:

8 "Q."-- by myself -- "Did you ever work with a
9 Donna or Danuta Filip?

10 "A. She assisted in the office at times--"

11 THE REFEREE: --Excuse me. Mr. Pedrotty, could
12 you shut that?

13 MS. CENCI: At page 7, lines 10 through 24:

14 "Q. Now with respect to the family court, you ran
15 for and were elected in the fall of 2014, is that correct?

16 "A. That's correct.

17 "Q. And when did you assume office?

18 "A. January 1, 2015"--

19 Answer? Answer. Sorry.

20 "Q. At that time, did you have a court staff or a
21 court team in the family court?

22 "A. I had a secretary and a court attorney. No one
23 was appointed as yet as court staff, court clerk or anyone
24 else.

25 "Q. Who was your secretary?

812.

(Hon. Richard H. Miller, II)

1 "A. Rachelle Gallagher.

2 "Q. And your court attorney?

3 MS. SCALISE: Excuse me.

4 MS. CENCI: Bless you.

5 "A. Mark Kachadourian.

6 "Q. And were those your personal appointees?

7 "A. They were."

8 At page 22, it begins at line 14, and it continues
9 through line 4 on page 23:

10 "Q. Mm-hmm. Well, in July wasn't that when
11 Court Administration removed you from family court
12 duties?

13 "A. In fact, I'm-- I appreciate you bringing that up
14 because--

15 "Q. Well, we're going somewhat out of order here.

16 "A. Well, no, I was-- I was asked to meet with our
17 administrative judge on June 11, with my supervising judge,
18 and someone from OCA, or the administrator from OCA.
19 No one told me anything. I asked them, 'What's the
20 specifics,' or, 'What's going on?' They said, 'There's been
21 a complaint made.' That's all they said and they asked me
22 if I'd take some time off. I wasn't at any time told that I
23 would be ordered out of any type of office. I came-- It
24 came to be known to me later on that day when I left on
25 June 11, or July 11, that I was locked out of the building.

813.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 Nobody told me that. They told me, 'You would meet with-
2 - in the-- someone from the inspector general's office on
3 Friday, the 14th of July.' I contacted counsel, I went in, and
4 we sat through an interview with the inspector general's
5 office."

6 At page 33, it starts at line 10, and it continues
7 through line 7 on page 34:

8 "Q. Okay. Let's just get back to the allegations, all
9 right? Did there come a time in May of this year, 2017,
10 when you met with a Sen. Akshar here in Albany?

11 "A. I came to Albany, I'm not sure specifically
12 when in 2017.

13 "Q. All right. And you met with Sen. Akshar?

14 "A. No. Actually, I was the chairman for the family
15 court judges for New York State for the lobbying
16 committee. There were about six family court judges and
17 we, along with the city court judges, met at Building 4. We
18 met-- We went and met with Mark Bloustein and we had
19 two people that went with us, and this was the lobby on
20 issues for all of the family court judges for the state and the
21 city court judges. We went together. I've been doing that
22 for three years. I was made chairman last year, coming into
23 this year, and we met with that delegation, which we met
24 with a number of senators, assemblypeople, the ranking
25 members of the committees that would actually deal with

814.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 the court system.

2 "Q. Was Sen. Akshar among the people that you met
3 with during that trip to Albany?

4 "A. We were also-- I-- Yeah. I also went into his
5 office because what we told all of the members was try to--
6 or the other judges, try to contact the senator or
7 assemblypeople within their district to contact them. So, I
8 did. I stopped. I went to the senator's office.

9 "Q. Was Mr. Kachadourian with you on that trip?

10 "A. He was, in fact. I brought him with me."

11 And then there's-- On that same page, lines 11--

12 THE REFEREE: --Page 34, right?

13 MS. CENCI: 34, 11 through 14:

14 "Q. And did you ask for Sen. Akshar's cell number
15 so that you could be in contact with him?

16 "A. Mr. Kach-- Mr. Kachadourian might have
17 asked me to ask him for his cell number."

18 And then same page, lines 17 and 18:

19 "Q. Did you get the cell number-- cell phone
20 number?

21 "A. I don't have his cell phone number."

22 And also, on page 34, beginning at line 25, and
23 continuing on page 35 with line 1:

24 "Q. On the way back, did you travel by vehicle with
25 Mr. Kachadourian?

815.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 "A. I did."

2 At page 36, lines 13 through 16, and lines 22 and 23:

3 "Q. Do you know D [REDACTED] L [REDACTED]?"

4 "A. I do.

5 "Q. Is she a court employee?

6 "A. She is.

7 "Q. Who's David Iannone?

8 "A. David Iannone is a gentleman that I got to know
9 over the years."

10 At page 37, it starts at line 24 and it continues
11 through line 9 on page 38:

12 "Q."--

13 THE REFEREE: --Line 8-- Excuse me. Line 9?
14 You said continues to page 38, line...? Did you say 8 or 9?
15 I just didn't hear you.

16 MS. SCALISE: Line 14--

17 MS. CENCI; --I beg your pardon. I'll say it again.
18 I'm not sure what I said.

19 THE REFEREE: All right.

20 MS. CENCI: It starts at page 37, with line 24 and it
21 continues through line 14 on page 38.

22 THE REFEREE: Thank you, my mistake.

23 MS. CENCI: I think I may have misspoken.

24 THE REFEREE: I'll take it.

25 MS. CENCI:

816.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 "Q. Okay, so did you come to find out that Mr.
2 Iannone and Ms. L [REDACTED] established some kind of
3 relationship?"

4 MS. SCALISE: I think there's one word you left
5 out. "...Some kind of a relationship."

6 MS. CENCI: Yes.

7 "Q. Okay, so did you come to find out that Mr.
8 Iannone and Ms. L [REDACTED] established some kind of a
9 relationship?"

10 "A. What I know is Ms. L [REDACTED] was getting some
11 tile work done and she had asked me, 'Judge, do you know
12 anyone that knows anyone who does tile work?' Mr.
13 Iannone had a friend that did tile work and I suggested she
14 could contact him because he-- they could assist with doing
15 the tile work for her. She indicated to me in the past that
16 Judge Connerton, when she was repairing her roof, she
17 asked her the same question and she's-- told her whatever
18 contractors to do roofing work and she'd done it. So then,
19 the two of them had communication about the tile work.

20 "Q. Yeah, and did you come to find out that they
21 then began a personal relationship?"

22 "A. That they were dating? Did I find out that they
23 were dating?"

24 "Q. Yeah.

25 "A. I did."

817.

(Hon. Richard H. Miller, II)

1 And then at page 38, beginning at line 22, continuing
2 through line 1 on page 39:

3 "Q. Did you ever speak with David Iannone from
4 chambers on your cell phone?

5 "A. Usually not.

6 "Q. Did you ever?

7 "A. I might have. I might have called him."

8 Also on page 39, lines 15 through 20:

9 "Q. Do you know whether Ms. Gallagher and Mr.
10 Kachadourian were acquainted with Mr. Iannone?

11 "A. I don't know to what extent.

12 "Q. Did you introduce them to him?

13 "A. Well, no, he-- They met him, I think, when he
14 was-- through the campaign."

15 At page 41, lines 4 through 10:

16 "Q. You mentioned Jerry Penna. He was the
17 treasurer of your family court campaign?

18 "A. He's also my insurance agent, yes.

19 "Q. Okay. And--

20 "A. --And he's also a family friend that I've known
21 probably--

22 "Q. --Mm-hmm--

23 "A. --since I was very young."

24 Also at page 41, lines 20 and 21:

25 "Q. Did there come a time when Mr. Penna visited

818.

(Hon. Richard H. Miller, II)

1 you in chambers?

2 “A. He has come to see me, correct.”

3 At page 42, lines 14 through 24:

4 “Q. You mentioned Chief Clerk Debbi Singer. You
5 know Clerk Singer?

6 “A. Yes. She’s been there-- She’s been there
7 20-plus years. She was there when I-- when I started out as
8 an attorney. She worked for family court.

9 “Q. How would you describe your relationship with
10 her?

11 “A. Professional. Good. She’s very efficient. She’s
12 been a-- very efficient over the years, too. Very helpful
13 when it came to family court. She organized stuff in the
14 chambers, got furniture there. She’s very professional. She
15 does a good job.

16 “Q. And would you believe her to be truthful?

17 “A. Yes.”

18 Page 44, lines 19 to 25, and it continues through line
19 2 on 45:

20 “Q.”-- This is in reference to Debbi Singer at line
21 19:

22 “Q. Do you know her to be a widow?

23 “A. Mr. Kachadourian and Mrs.--

24 “Q. --Is she a widow?

25 “A. Mr. Kachadourian and Mr. [sic] Singer’s

819.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Hon. Richard H. Miller, II)

1 husband were partners together. Mr. Singer passed away
2 years ago and I don't remember when I used to practice
3 with him, too, and then Debbi Singer's worked in the family
4 court since then, so, yes, I know she was married. Her
5 husband died of cancer and she actually took care of him."

6 Also on page 45, lines 24 and 25:

7 "Q. Let's move to Rebecca Vroman. Who is Ms.
8 Vroman?

9 "A. She's one of the court clerks."

10 At page 48, lines 7 through 11:

11 "Q. So, you did have issues with Ms. Vroman?

12 "A. Yes.

13 "Q. Did you want her to be fired?

14 "A. No, I had nothing to do with hiring or firing her.
15 I just wanted someone different to be assigned to my team."

16 At page 49, it begins at line 22 and it continues
17 through line 1 on page 50:

18 "Q. Did you ever direct or tell Mark Kachadourian
19 that he needed to talk to Rachelle Gallagher to straighten
20 things out?

21 "A. I asked him to speak to her also. I did it-- I did
22 it with both of them.

23 "Q. Was he her supervisor?

24 "A. No. I was."

25 At page 50, line 12 through 22:

820.

(Hon. Richard H. Miller, II)

1 "Q. Judge, do you know a Mr. Stilloe?

2 "A. I do.

3 "Q. What's his first name?

4 "A. James.

5 "Q. And who is he?

6 "A. He was a former client of mine.

7 "Q. Does he have a criminal record?

8 "A. I don't know if he does.

9 "Q. What about Mr. Iannone? Does he have a
10 criminal record to your knowledge?

11 "A. Maybe something with division of youth when
12 he was young."

13 Page 52, lines 1 through 24:

14 "Q. Who is David English? Are you acquaint--
15 acquainted with him?

16 "A. He's a tenant in one of my-- in one of the
17 properties.

18 "Q. One of your properties?

19 "A. One of the properties that I have an interest in,
20 yes."

21 Oh, I beg your pardon, I skipped lines 5 and 6. So, at
22 line 7:

23 "Q. Does he have a criminal record to your
24 knowledge?

25 "A. He may.

821.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 "Q. Do you know whether Mr. Kachadourian or Ms.
2 Gallagher are acquainted with Mr. English?

3 "A. No, I don't.

4 "Q. You never introduced him to them?

5 "A. We might have. I don't know if Mark was with
6 me when I had-- that he paid me rent. Mark might have
7 been with me when I got rent money from him when he
8 paid his rent.

9 "Q. Do you know a Frankie Saraceno?

10 "A. I do.

11 "Q. Who is he?

12 "A. Frank was somebody that I represented in the
13 past and someone I knew.

14 "Q. Is this Frank, Jr.?

15 "A. There's a senior and a junior.

16 "Q. Well, is it Frank Jr. who you represented?

17 "A. Both Frank Sr. and Frank Jr. I represented."

18 At page 53, lines 2 through 4:

19 "Q. How about a Marty Shaw? Do you know a
20 Marty Shaw?

21 "A. Marty Shaw is-- Yes, I do. He's an electrician
22 that's doing work for me."

23 And then at line 12 and 13:

24 "Q."--

25 THE REFEREE: --Same page?

822.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: Same page.

2 "Was he"-- "Q. Was he in prison?

3 "A. I don't know his background and his past."

4 Then at page 53, lines 19 through 25:

5 "Q. Are you related to a Mr. Balles? B-A-L-L-E-S?

6 "A. I am.

7 "Q. Did he run for office recently?

8 "A. Yes, that's my brother-in-law.

9 "Q. Okay, what office did he run for?

10 "A. He ran-- He's a trustee. He ran for mayor in
11 the Village of Johnson City."

12 At page 54, beginning at line 17 and continuing
13 through line 3 on 55:

14 "Q. Judge, when you knew that you were going to
15 become family court judge, you were aware that you had to
16 wrap up your law practice-- law practice, is that correct?

17 "A. Correct.

18 "Okay"-- "Q. Okay. What arrangements did you
19 make with respect to pending client matters?

20 "A. Actually, based on advice from Mark, he
21 wanted me to refer everything over to attorney David
22 Kapur. So, we've actually met with Mr. Kapur and we're
23 transferring files. Some of the files actually went to
24 attorney Artan Serjanej, who ended up in my old law office
25 space, attorney Brett Noonan, who actually shared some

823.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 space in the office, and Mr. Kapur.”

2 At page 55, beginning at line 18, and continuing
3 through line 7, on page 56:

4 “Q. Did you sit down and make a list of all your
5 clients?

6 “A. I think at the time, yes. Yes. There was a list
7 made. What happened with the family court judge race was
8 that there was-- The governor created a judgeship-- an
9 additional judgeship for our county, so all the parties had
10 already gone through and filed petitions because there was
11 one seat that was open. So, I got into the race. It would
12 have been probably like July timeframe. It wasn't
13 something I had planned for months and weeks. It was a
14 short timeframe that I had to get signatures and petitions
15 and then run.

16 “Q. But you had been in practice for about 20 years?

17 “A. Correct.

18 “Q. So, is it fair to say you had lots of files in your
19 law office, both pending and closed?

20 “A. Yeah, there were. Right. Many files in the
21 office, pending and closed.”

22 At page 56, lines 22 through-- and continuing
23 through line 18 on page 57:

24 “Q. So, Mr. Kapur took physical possession of
25 certain files?

824.

(Hon. Richard H. Miller, II)

1 "A. Correct.

2 "Q. And certain files were left?

3 "A. Went back to attorney Serjanej--

4 "Q. --Okay--

5 "A. --who has actually taken the space in my office.

6 "Q. Okay, so just for the record, where is your office
7 located?

8 "A. 2 [REDACTED] North Street.

9 "Q. In what location?

10 "A. In Endicott, New York.

11 "Q. Okay, and Mr. Serjanej took over occupation of
12 that space?

13 "A. Well, then he chose to take that space, correct.

14 "Q. Okay, what's your arrangement with him with
15 respect to the occupation of that space?

16 "A. He pays the-- It's actually my wife who owns
17 the building, but she directs things through me-- through
18 myself, so, quote, 'Let's pay the taxes and pay the utilities.
19 These taxes, utilities, and possibly insurance, too.' End
20 quote.

21 "Q. So, your wife owns the building?

22 "A. Correct.

23 "Q. And Mr. Serjanej does not pay rent but he pays
24 the expenses?

25 "A. Correct, which would-- It's probably-- That's

825.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 what the rent would be.”

2 Page 58, starting at line 25, continuing through page
3 59, at line 7:

4 “Q. When did Mr. Serjanej actually begin
5 occupation of the law office space?

6 “A. It would have been when I transitioned out, so it
7 would have to be right probably-- I’m guessing like in
8 January.

9 “Q. Do you--

10 “A. --Or late December, even, of 2014 going into
11 2015.

12 “Q. Do you have any written agreement with him?

13 “A. No.”

14 Also on page 59, beginning at line 14 and continuing
15 through line 1 on page 60:

16 “Q. What about Donna Filip? Does she have a key
17 to that office?

18 “A. I don’t know that.

19 “Q. Did she?

20 “A. I don’t-- I don’t know that.

21 “Q. Did you ever give her a key?

22 “A. Did I give her a key to office? I may have. I
23 don’t know. I may have.

24 “Q. Now, I think you’ve touched a little bit on your
25 court hours, but how frequently did you have occasion to

826.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 visit the law office after you became a family court judge?

2 "A. I had some of my own pending issues, or I
3 should say files, that Mr. Serjanej was working on, so from
4 time to time, you know, I would-- I would go there."

5 And then at page 60, lines 7 through 11:

6 "Q. Okay, what about lunch time? Did you have
7 occasion to bring Mr. Kachadourian to the law office?

8 "A. For lunch?

9 "Q. During lunch?

10 "A. Yeah. I-- In fact, I think I bought them lunch--
11 Brought them lunch."

12 And then also on page 60, line 25, continuing
13 through page 61, with line 12-- through line 12:

14 "Q. Okay, but there were some pending matters.
15 Specifically, there were some estates that were pending that
16 you hadn't received your fees on? Is that correct?

17 "A. There were old files from prior to me becoming
18 a family court judge that I did work on, correct.

19 "Q. That you were owed fees?

20 "A. For the-- For the work that I-- that I did on the
21 file while I was a practicing attorney.

22 "Q. Now is there also an apartment or some kind of
23 unit other in the 2█ North Street, in addition to the law
24 office?

25 "A. Yes. There's a-- There's an-- There's an

827.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 upstairs apartment.

2 "Q. Okay. Is there a tenant?

3 "A. Yes."

4 Page 63, lines 22 through 24:

5 "Q. Okay, so, Louis Micha, is he the tenant that
6 resides at 2 [REDACTED] North Street in the apartment?

7 "A. Yes."

8 At page 65, lines 20 through 25, and continuing on
9 page 66, through line 14:

10 "Q. But you didn't have an arrangement with Mr.
11 Micha either as to how he was supposed to get payment to
12 you or your wife?

13 "A. Right.

14 "Q. Do you know?

15 "A. He would-- He would leave checks. He would
16 leave them down there.

17 "Q. Do you know how he knew to do that?

18 "A. He-- I may have told him. He was probably-- I
19 had to tell him at some point, yes.

20 "Q. Did you-- Judge, did you report this income on
21 your financial disclosure forms?

22 "A. Yes.

23 "Q. For the Ethics Commission, you did?

24 "A. Yes, I have since done that. I actually submitted
25 that in-- I think an amended one. I think this--

828.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 "Q. --You've amended?

2 "A. This month.

3 "Q. What-- Oh, you've recently amended your
4 financial disclosure?

5 "A. I did.

6 "Q. Okay, for what year?

7 "A. 2015."

8 And then also at page 66, beginning at line 17
9 continuing through line 12 on page 67:

10 "Q. I'm going to show you, first of all, Exhibit 4,
11 which appears to be a financial disclosure form for the
12 Ethics Commission for calendar year of 2015. Did you
13 originally file that?

14 "A. Yes, it appears I did.

15 "Q. Did you disclose these-- Re-- This rental
16 income?

17 "A. Part of-- Part of the issue was-- I had the-- If
18 the-- If the-- It said with taxes and everything, if they're
19 running in a deficit, these properties ran in a deficit, so
20 based on the advice of the accountant, it appears that it
21 wasn't listed as income because all of the properties were
22 running in a deficit for rental properties.

23 "Q. So, the answer is no, you didn't disclose it?

24 "A. No.

25 "Q. Let me show you Exhibit 5. That's for 2016."--

829.

(Hon. Richard H. Miller, II)

1 And then there's just some-- I'm skipping lines 5, 6, and 7,
2 as it's colloquy with counsel. At line 8-- 8 through 13--

3 THE REFEREE: --This is on page 67?

4 MS. CENCI: Page 67, yes.

5 THE REFEREE: So, we have page 66, 1 through--
6 line 17 through page 67--

7 MS. CENCI: --It actually is-- Goes through line 4.

8 THE REFEREE: To line 4, and then--

9 MS. CENCI: --But the-- But the answer to
10 question--

11 THE REFEREE: --and then you continue--

12 MS. CENCI: --on line 4 is at line 8. So, it's:

13 "Q. Let me show you Exhibit 5, that's for 2016.

14 "A. Yes, that's the disclosure.

15 "Q. Okay, did you report the 2016 rental income on
16 your 2016--

17 "A. --It--

18 "Q. --disclosure form?

19 "A. The property was running at a deficit, so, no,
20 based on the same answer."

21 And then also on page 67, lines 24 and 25, and it
22 continues on page 68, through line 4:

23 "Q. What other properties do you own?

24 "A. It's listed on page 5. 394 Main Street and 3
25 Oakdale Road.

830.

1 "Q. What is at 394 Main Street?

2 "A. It's a building. There was-- It was actually
3 going to be my-- It was-- It was actually going to be my
4 office when I originally got it. It was going to-- I was
5 going to move my office."

6 And then at page 68, lines 23 through 25, and that
7 continues on page 69, through the whole page.

8 THE REFEREE: To-- ending line 25?

9 MS. CENCI: Well, actually, line 24, Your Honor.

10 THE REFEREE: So, 1 to 24?

11 MS. CENCI: 1 to 24, thank you.

12 "Q. Okay, and there's also 3█ Oakdale Road?

13 "A. Correct.

14 "Q. What kind of property is that?

15 "A. It's a residential piece of property.

16 "Q. One family?

17 "A. One family.

18 "Q. Is that occupied?

19 "A. Now. Mr. English has been in there, yes.

20 "Q. Mr. English is your tenant at 3█ Oakdale
21 Road?

22 "A. It's Ms. Caforio and him. It's the two of them.
23 It's Michelle Caforio and David English.

24 "Q. So, how are these properties actually owned?
25 There's an LLC that owns them?

(Hon. Richard H. Miller, II)

1 "A. Through the LLC.

2 "Q. Who's involved in that?

3 "A. My mom and myself.

4 "Q. Does your mother also have some-- other
5 properties? Property in Olean?

6 "A. She does.

7 "Q. Okay, do-- Who arranges for the maintenance
8 on the various properties at 2-- 2 [REDACTED] North Street, 394
9 Main, and 3 [REDACTED] Oakdale Road, in addition to the Olean
10 property? Are you actively involved in the management?

11 "A. Yeah, unfortunately.

12 "Q. Now, does David Iannone do any work on any
13 of these properties for you?

14 "A. He would-- He would help me at times."

15 Page 73, lines 24 and 25, which continues through
16 line 17 on page 74:

17 "Q. So, you handled Roger Funk's estate?

18 "A. Yes.

19 "Q. You began probate proceedings?

20 "A. Right.

21 "Q. Okay, so did you know Thomas Hayes, the
22 executor?

23 "A. Thomas was his partner, yes.

24 "Q. Okay, did you know him?

25 "A. He was Roger's partner. No, other than from

832.

(Hon. Richard H. Miller, II)

1 what Roger said about him, I never met Tom here.

2 “Q. Okay. So, who hired you to handle the *Funk*
3 estate?

4 “A. Tom did.

5 “Q. Okay, you didn’t know--

6 “A. --You know, but I got to know him by phone. I
7 never met him. He never came to-- you know, here.

8 “Q. Okay, so Tom Hayes, the executor, was a
9 resident of California, as well, is that right?

10 “A. Tom Hayes lived in California.

11 “Q. And you never personally met him?

12 “A. No.”

13 And at page 74, lines 21 through 25, and it continues
14 through line 3 on page 75:

15 “Q. What was the status of the matter at the end of
16 the 2014, just before you took the family court bench?

17 “A. We pretty much-- I’d have-- We pretty much
18 had the entire estate done. What happened was Mr. Hayes
19 had cancer, also, and he became ill, and when Roger was
20 like that, too, he just kind of checked out with everything,
21 and I understood that, you know? So that issue of mortality,
22 Tom was now dealing with it, and that’s why it wasn’t
23 concluded in ’14.”

24 And then lines 6 through 13, on page 75:

25 “Q. What was left to do on the estate?

833.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Hon. Richard H. Miller, II)

1 "A. There wouldn't-- Probably just signing an
2 inventory, that's it. Everything was done.

3 "Q. Okay. Did you have an agreement with Mr.
4 Hayes as to your legal fee?

5 "A. Yeah.

6 "Q. What was that?

7 "A. It was a percentage of the estate."

8 And then at line-- On page 75, lines 19 to 20:

9 "Q. What arrangements did you make with anyone
10 else to complete it?

11 "A. Attorney Serjanej took the file over."

12 Page 77, lines 1 through 12:

13 "Q. Just for the record, it's a letter dated November
14 6, 2015. It appears to be from Donna Filip to Mr. Hayes,
15 and it's referring to checks numbered 102, 103, and 104,
16 which are attached. Did you ever see the checks that are
17 attached there?

18 "A. I don't know if I did. I may have.

19 "Q. What's your recollection about them?

20 "A. Other than what attorney Serjanej had spoken to
21 me about-- One was, I guess, going to be for my-- the fee
22 that I performed on and the other went to Mr. Hayes and
23 Mr. Hayes wanted the other check to go to Donna for--

24 "Q. --Hold on to that for a second--

25 "A. --cleaning and caregiving she did for Mrs.

834.

(Hon. Richard H. Miller, II)

1 Funk.”

2 And then at lines 16 through 21, on page 77:

3 “Q. You’ll agree, though, that it says, ‘Donna Filip,

4 [REDACTED]

5 “A. Correct.

6 “Q. Do you know that to be Donna Filip’s home
7 address?

8 “A. I’m not sure of the address, but she-- but the
9 street. She lives on Dennison Avenue.”

10 At page 81, lines 8 through 17:

11 “Q. What’s your best recollection as to what Ms.
12 Gallagher said to you about this letter?

13 “A. She was offering to send this letter out so that I
14 would get payment on a file that I worked on in 2014.

15 “Q. Rachelle Gallagher was, at that time, your
16 personal secretary in chambers, correct?

17 Or “Question”-- “A. Sorry-- Correct.

18 “Q. How, if you know, did she come to be involved
19 in an estate matter?

20 “A. It wasn’t-- What I was being-- I was going to
21 be paid for work that I did in the past and she was made
22 aware of that.”

23 Page 82, lines 15 through 20:

24 “Q. But why is your personal secretary in chambers
25 getting involved in sending out letters so you can get paid

835.

(Hon. Richard H. Miller, II)

1 for legal work?

2 "A. She may have-- I said she knew that I was
3 getting paid from some other matters on old files that I had.

4 "Q. How did she know that?

5 "A. I told her."

6 And then, at page 83, lines 19 through 24:

7 "Q. Well, how-- How did-- I thought you said that
8 it was initially Rachelle Gallagher who composed it?

9 "A. Correct.

10 "Q. How do you know she didn't send it?

11 "A. These checks-- These checks weren't sent. I
12 had it. I had the information."

13 At page 84, beginning at line 17, continuing through
14 line 3 on page 85--

15 THE REFEREE: --Wait a minute. Lines-- So, it
16 would be lines 17 to 25, right--

17 MS. CENCI: --Correct, yes--

18 THE REFEREE: --and then page-- continuing to
19 page 85--

20 MS. CENCI: --page 85, 1 through 3.

21 THE REFEREE: 1 through 3. Thank you.

22 MS. CENCI:

23 "Q. Okay. And so, do you recognize the
24 handwriting on any of the checks?

25 "A. This may be Donna's handwriting on 102 and

836.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 the second check.

2 "Q. Do you know whether Mr. Hayes was in
3 Broome County on October 31, 2015?

4 "A. The third check looks like Mr. Hayes' writing
5 and actually, there's Mr. Hayes' writing-- I could-- Now I
6 can differentiate. Donna, it looks like wrote the-- would
7 have been my name.

8 "Q. On check 102?

9 "A. Right, and her name, and Mr. Hayes wrote the
10 second line on the first check, the second check, and he
11 wrote the entire amount on the third check."

12 At page 85, lines 7 through 17:

13 "Q. Do you know how it-- If pre-- Assuming that
14 the checks themselves, that the blank checks were--
15 remained at the law office, do you know how Mr. Hayes
16 would have come to fill them out? Did somebody send
17 them to him?

18 "A. The law office sent him the checks.

19 "Q. How do you know that?

20 "A. I was told that.

21 "Q. And he forgot--

22 "A. --And I didn't--

23 "Q. --to sign them?

24 "A. Correct."

25 Page 86, lines 18 through 25, continuing on page 87

837.

(Hon. Richard H. Miller, II)

1 with lines 1 through 7:

2 "Q. So, when was the last time that you saw this
3 letter in Exhibit 6?

4 "A. It would have been probably November of '15.

5 "Q. Where is the original of it? You said it was
6 never sent out? Where is it, to your knowledge?

7 "A. I don't know. Maybe back in the law firm, I
8 don't know, but they weren't sent. That letter wasn't sent.

9 "Q. Well, the last time you saw it-- I-- was in
10 chambers when Ms. Gallagher showed it to you?

11 "A. The cover letter?

12 "Q. Yeah.

13 "A. Yes.

14 "Q. Okay, that was the last time you saw it?

15 "A. Right. That was returned back to Artan's office.

16 "Q. How do you know that?

17 "A. I returned it back to Artan's office."

18 And that-- Counsel can you stipulate that Exhibit 6
19 that was referred to is the same as Exhibit 2V in evidence?

20 MR. DEROHANNESIAN: Exhibit 6?

21 MS. CENCI: I was referring to Exhibit 6 at the--

22 THE REFEREE: --6 to the transcript.

23 MS. CENCI: Transcript. Is Exhibit 2V in evidence.

24 THE REFEREE: "B" as in "boy," or "V" as in--

25 MS. CENCI: --"V" as in "Victor."

838.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. SCALISE: Oh, "V," sorry.

2 THE REFEREE: And that's also Exhibit A to the
3 complaint, right?

4 MS. CENCI: Yes.

5 MS. SCALISE: Yes.

6 MR. DEROHANNESIAN: Yes.

7 MS. CENCI: Thank you.

8 MS. SCALISE: Yeah--

9 MR. DEROHANNESIAN: --I'll let-- Excuse me--

10 MS. SCALISE: --Yes.

11 THE REFEREE: All right.

12 MS. SCALISE: It's okay.

13 MS. CENCI: Thank you. I'm now-- The next

14 passage is going to refer to Exhibit 7. It's at page 89.

15 Question at line 2 and through line 4. Can we stipulate that

16 Exhibit 7 that I'm about to refer to is the same as Exhibit--

17 MS. SCALISE: --2W and Exhibit D to the Formal
18 Written Complaint?

19 MS. CENCI: Yes, thank you, counsel.

20 MS. SCALISE: Yes, we can stipulate to that.

21 MS. CENCI: Thank you. So, the question--

22 THE REFEREE: --So, we're at page 89, lines 2 to 4,
23 right?

24 MS. CENCI: Correct.

25 "Q. I'm showing you Exhibit 7. Did you receive the

839.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 original of those checks?

2 "A. I did."

3 And then at page 90, lines 14 through 16:

4 "Q. And my question is how did you come by these
5 checks?

6 "A. Again, they were either mailed, or I was asked
7 to stop at the law office and pick them up. I think I may
8 have stopped at the law office."

9 At page 91, lines 7 through 18, again referring to that
10 same exhibit:

11 "Q. Did you-- Did you in fact receive and cash
12 these checks?

13 "A. Those checks were deposited into a bank
14 account.

15 "Q. That you own?

16 "A. Correct.

17 "Q. Okay. Did you report this income on your
18 financial disclosure form for the Ethics Commission?

19 "A. From the orig"-- Excuse me.

20 "A. From the initial form, I thought I did. When it
21 was in, I guess-- I think it was question number 8 on the
22 ethics form about bank accounts. Anything in there-- in
23 excess of value over \$1,000 and I have since amended the
24 form to add it into, I think it was section 13, where it said,
25 'Income from the prior law practice.' I listed the bank

840.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 accounts and they were deposited into a bank account.”

2 Page 92, lines 6 through 14:

3 “Q. Well, you had to file as a judge for the prior
4 year, if you’ll recall. This is a handwritten format but it’s
5 essentially the same. I’ll show you Exhibit 8. Didn’t you
6 file that in 2015 for calendar year 2014?

7 “A. Yes.

8 “Q. And on that form, did you report income from
9 your practice of law?

10 “A. These-- Number 13 I think. And it was
11 continued on one of the back pages.”

12 “Q. You reported law office income? It’s like the
13 third page from the end.

14 “A. Yes, I did.”

15 Page 95, lines 17 through 25, and then it continues
16 on page 96, lines 1 through 3:

17 “Q. Let’s move on to the *Estate of Deborah*
18 *Brigham*. Did you handle any part of this estate when you
19 were in practice?

20 “A. I did.

21 “Q. What did you do in that regard?

22 “A. I represented the estate.

23 “Q. Who retained you?

24 “A. The executrix.

25 “Q. Who was that?

841.

(Hon. Richard H. Miller, II)

1 "A. It would have been Mr. Brigham's wife, or it
2 would be the mother of the decedent.

3 "Q. Okay, that's Beverly Brigham?

4 "A. Correct."

5 And then also on page 96, lines 12 through 19:

6 "Q. So, what remained to be done in the estate when
7 you took the family court bench?

8 "A. It was pretty well done, Ms.-- What happened
9 is, she was sick, meaning Beverly, and I remember they just
10 kind of put the brakes on everything and I don't remember
11 when-- It was right-- Probably at the time that either I won
12 the election in a transition before I was getting sworn in and
13 so they just really didn't want me to do anything. Kind-- It
14 was kind of similar to what happened in the other estate."

15 And then at page 96, lines 24 and 25, continuing
16 onto page 97, with line 1:

17 "Q. What was-- Did you have some arrangement
18 with her as to what your legal fee was going to be?

19 "A. It was a percentage."

20 Okay, at page 98, lines 9 through 18:

21 "Q. Let me show you Exhibit 11. For the record,
22 it's a copy of a letter from Broome County Surrogate's
23 Court dated October 7, 2015, regarding the *Estate of*
24 *Deborah Brigham*. Do you see your name at the bottom of
25 that letter?

842.

(Hon. Richard H. Miller, II)

1 "A. Yeah, I do.

2 "Q. Do you know why, as of October 2015,
3 Surrogate's Court still had you listed there?

4 "A. No.

5 "Q. As the estate attorney?

6 "A. No. I took the bench January 1. No."

7 Page 99, lines 8 and 9. Counsel, we're going to be
8 referring to Exhibit 12 to this transcript. Can we stipulate
9 that it's a reference to-- Where's the *Brigham* checks?
10 Ryan, what ex-- What exhibit are the *Brigham* checks?

11 MR. FITZPATRICK: 6Q.

12 MS. CENCI: Thank you. Can we stipulate that
13 Exhibit 12 to this transcript is equivalent to Exhibit 6Q in
14 evidence?

15 MS. SCALISE: Yes.

16 MS. CENCI: Thank you.

17 MS. SCALISE: And also Exhibit C to the Formal
18 Written Complaint, as well.

19 MS. CENCI: Thank you very much, counsel.

20 THE REFEREE: Ms. Cenci, if you decide you need
21 a break from speaking, let me know, or-- keep going. It's
22 your--

23 MS. CENCI: --Do you need a break from my
24 speaking?

25 THE REFEREE: I do not. I do not, but if you need

843.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 one, let me know.

2 MS. CENCI: I'm fine, thank you.

3 MS. SCALISE: I think we're close, maybe half--
4 more than halfway there?

5 MS. CENCI: Yeah, it's-- I think it's pretty short
6 here on in. I hope.

7 THE REFEREE: Because it's-- It's been
8 scintillating.

9 MS. CENCI: Okay, so now I'm at page 99, lines 8--

10 THE REFEREE: --You did-- You did 8 and 9--

11 MS. CENCI: --8 and 9:

12 "Q. Let me show you Exhibit 12. Do you recognize
13 those checks?

14 "A. These are checks that I received."

15 Also page 99, lines 24 and 25, and continued through
16 line 1 on page 100:

17 "Q. Do you why they're-- So, you're saying the
18 three altogether represented your legal fee in the estate?

19 "A. Correct."

20 On page 100, lines 10 through 14:

21 "Q. Did you report this income on your financial
22 disclosure report?

23 "A. Yes, I have since done so.

24 "Q. Okay. Initially, you did not disclose it, is that
25 right?

844.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 "A. I disclosed it as being in the bank accounts, but I
2 didn't specifically insert a line as to income on 13, so that's
3 what I did."

4 Page 102, lines 18 through 25, it continues on page
5 103, through line 2:

6 "Q. Did you report this income from the *Brigham*
7 estate to the IRS?

8 "A. I have.

9 "Q. And to New York State?

10 "A. I have.

11 "Q. Was that initially or have you filed amended
12 returns?

13 "A. I have filed amended returns. I did those.

14 "Q. When did you do that?

15 "A. I've been working with my accountant on
16 things. It would have been this year. I spoke to my
17 accountant about all of these, so under advice of my
18 account, I filed the returns."

19 At page 113, line 11 through line 24--

20 MS. SCALISE: Page 113? I'm sorry.

21 MR. DEROHANNESIAN: Hold on.

22 MS. CENCI: 113. 11 through 24.

23 MS. SCALISE: 103-- I'm sorry. I'm sorry, are we
24 missing--

25 THE REFEREE: --Page 113, lines 11 to 24, correct?

845.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. SCALISE: Yeah, I think we're missing page

2 113.

3 MS. CENCI: Are you missing that?

4 MR. DEROHANNESIAN: Yeah.

5 MS. CENCI: Okay. Do you have the original
6 transcript?

7 MR. DEROHANNESIAN: Yes.

8 MS. CENCI: I think it's out of order or something?

9 MR. DEROHANNESIAN: It is. Pages--

10 MS. SCALISE: Nope. Just don't have that page.

11 MR. DEROHANNESIAN: I have the original
12 transcript in my hand.

13 MS. CENCI: Okay, thanks.

14 THE REFEREE: Do you have that page--

15 MR. DEROHANNESIAN: --Yep--

16 THE REFEREE: --Mr. DerOhannesian?

17 MS. CENCI: Do you want to look at it before I read
18 it?

19 MR. DEROHANNESIAN: Yeah. Just tell me the
20 lines.

21 MS. CENCI: 11-- It's 11 through 24.

22 MR. DEROHANNESIAN: Okay.

23 MS. CENCI: Okay?

24 MR. DEROHANNESIAN: Mm-hmm.

25 MS. CENCI: Thank you.

846.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

“Q. Let’s move on to the *Estate of Jerry Behal*. Do you know David Behal?

“A. I do.

“Q. What’s your relationship with him?

“A. He was my best friend growing up. I was his best man. Close friends.

“Q. And Jerry Behal was his brother?

“A. Jerry would-- Yes-- was his brother. He lost three siblings in 18 months and he was the only remaining child alive.

“Q. Okay, so David Behal was the executor of Jerry Behal’s estate?

“A. Correct.

“Q. And this was a matter that you had begun?

“A. Yes.

“Q. While you were still in practice?

“A. While I was in practice as an attorney.”

At page 114, lines 3 through 5, and 12 through 18:

“Q. Who was handling it after you became family court judge, if you know?

“A. Attorney Serjanej.

“Q. What had to happen on it?

“A. What specific work? Most everything I had done. There was an outstanding check on-- I think on a wrongful death claim that had not come through when I left.

(Hon. Richard H. Miller, II)

1 That's-- I think that was the status on the file. Most all the
2 things had been distributed. There was another-- No, there
3 was another piece to it, too-- There was a piece of real
4 estate that wasn't transferred at the time I left."

5 At page 115, lines 21 through 25, continues on page
6 116, through line 1:

7 "Q. Okay. So, would you agree that these appear to
8 be emails sent to and from Dave Behal and Donna Filip on
9 which you are also the recipient?

10 "A. It appears that they were sent to my email
11 account.

12 "Q. Okay. That's rhm2law@[REDACTED]?"

13 "A. Correct. That's my old office account."

14 So, at page 116, lines 5 and 6:

15 "Q. Why did you still have a law account-- email
16 account, rhm2law?

17 "A. I just left the same-- the name the same."

18 THE REFEREE: I didn't hear you, what?

19 MS. CENCI: "I just left the name the same."

20 THE REFEREE: Thank you.

21 MS. CENCI: At page 117, lines 18 and 19, in
22 reference to David Behal:

23 "Q. Did he visit with you in chambers?

24 "A. He did."

25 Page 118, lines 8 through 15:

848.

(Hon. Richard H. Miller, II)

1 "Q. So, your testimony is that Mr. Serjanej was
2 handling the *Jerry Behal* estate?

3 "A. Correct.

4 "Q. In March, April, and May of 2017?

5 "A. Correct.

6 "Q. But he is not copied on any of these emails?

7 "A. I don't know who's copied on the emails, other
8 than what you're showing me."

9 Page 120, lines 24 and 25:

10 "Q. Did you handle that wrongful death action?

11 "A. Yes, I initially did. I brought the action."

12 At page 123, lines 13 through 25, and continuing on
13 124, with lines 1 through 7:

14 "Q. Right, but--

15 "A. So, what I'm trying to tell you is, from the
16 portion of time that I worked on it, we accounted for many
17 items. Most all of those items were completed except for
18 those two major items, so most of that accounting was
19 actually done back in '14, and it wouldn't have changed. It
20 would just be receiving the dollar amounts. We already
21 knew what the amount of the wrongful death was going to
22 be. We knew it was going to be \$100,000, but I didn't
23 know what the value was going to be actually on the estate.
24 It was a piece of property out in the boonies--

25 MS. SCALISE: --I'm sorry, there's a--

849.

(Hon. Richard H. Miller, II)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. DEROHANNESIAN: --Yeah--

MS. SCALISE: --You left out a word, "real estate."
"On the real estate."

MS. CENCI: I beg your pardon.

--but I didn't know what the value was going to be
actually on the real estate. It was a piece of property out in
the boonies out in a county, in Tioga County, right near
Broome County.

"Q. But you didn't file the accounting?

"A. No.

"Q. In the court?

"A. No, because--

"Q. --That was done afterwards?

"A. You'd have to do it afterwards, right.

"Q. Okay, so my question to you is, were you aware
that there were objections to the accounting that was filed
with the court?

"A. Yes, I was aware."

At page 126, lines 11 and 12 and lines 22 and 23:

"Q. Have you been paid your legal fee in this *Behal*
estate?

"A. No.

"Q. What was your original arrangement with Mr.
Behal as to legal fees?

"A. Percentage of the estate."

850.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 Okay, page 127:

2 "Q. Let's go on"--

3 THE REFEREE: Line?

4 MS. CENCI: I'm sorry, Your Honor. Line 21
5 through 25:

6 "Q. Let's go on to *Estate of Antoinette Saraceno*.
7 Did you handle this estate?

8 "A. I did.

9 "Q. Okay, and that was in Tioga County?

10 "A. Correct."

11 Okay. At page 130, it's lines 2 through 7:

12 "Q. Okay, so what was the status of the *Saraceno*
13 estate as of December 31, 2014?

14 "A. It should have been-- It should have been
15 closed.

16 "Q. But it wasn't, was it?

17 "A. I thought it was closed in like, 2012, 2013?
18 2012, it would have been closed."

19 And then, at page 130, lines 10 through 20:

20 "Q. Okay, but in terms of the surrogate's court, did
21 you know whether they were still waiting for things?

22 "A. I don't know what they were waiting for. I
23 mean, we had noticed there was an issue of someone from
24 California. One of the beneficiaries didn't-- There was a
25 table-- table and chairs and--

851.

(Hon. Richard H. Miller, II)

1 "Q. --Piano?

2 "A. Possibly. And he didn't-- He didn't want the
3 stuff. And we went through a lot, but the beneficiaries were
4 elderly, in their '80s, all the siblings. There were three
5 brothers that were alive at the time and this one-- This was
6 one of the-- their nephews from a predeceased sibling, that
7 lived down in California."

8 At page 132, lines--

9 MR. DEROHANNESIAN: --Did you-- 132?

10 MS. CENCI: 132.

11 MR. DEROHANNESIAN: Yeah.

12 MS. CENCI: Lines 22 through 25. And it continues
13 on 133, with line 1 through 12:

14 "Q. Mm-hmm. Would you, Judge, refer to your
15 DayMinder, Exhibit 10, again?

16 "A. Mm-hmm.

17 "Q. Okay. So, an entry for October 10, 2016, did
18 you write the word 'Saraceno'?

19 "A. I did.

20 "Q. Okay. And why did you write that?

21 "A. I don't-- I don't know why I wrote it.

22 "Q. And--

23 "A. --I know Mr. Saraceno was sick, but--

24 "Q. --Mm-hmm, and then you see the entry for
25 October 12? There's a circle and next to that, did you write,

852.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 'Frank Saraceno?'

2 "A. Yeah, it says 'Frank Saraceno' on the 12th.

3 "Q. Is he the same Frank Saraceno who is one of the
4 beneficiaries of this estate?

5 "A. He would have been the executor."

6 At Page 135, question-- Or-- Sorry--

7 THE REFEREE: --Line.

8 MS. CENCI: Line 19 through 23:

9 "Q. Mm-hmm, on this same date, October 12, did
10 you also write, 'Donna office,' and circle the time 5:15?

11 "A. I wrote 'Donna office,' and 5:15 is circled.

12 "Q. Is that a reference to Donna Filip?

13 "A. That's a referen-- It may-- It may be Donna."

14 And at page 136, lines 3 through 6:

15 "Q. Did you receive a legal fee in this estate?

16 "A. I did.

17 "Q. When was that?

18 "A. 2012."

19 And then last, at page 156, lines 20 through 25,
20 which continues on 157, with lines 1 through 5:

21 "Q. Judge, there's also a requirement under the
22 Rules Governing Judicial Conduct that you file an annual
23 report with the clerk of the court of any outside non-judicial
24 income. Were you aware of that requirement?

25 "A. No.

853.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 "Q. Is it fair to say that you've never filed any such
2 annual report?

3 "A. Correct. An annual report with the clerk of the
4 court?

5 "Q. Right.

6 "A. No. No one had asked me to and I hadn't--

7 "Q. --You were not aware of the require-- that
8 requirement?

9 "A. No."

10 And that completes the reading of the proposed
11 admissions, Your Honor.

12 THE REFEREE: All right. Anything else from the
13 Commission, with the understanding, of course, that we'll
14 address the exhibits at some other point? Any other proof
15 that you want to put in now?

16 MS. CENCI: I will rest, Your Honor, at this point.

17 THE REFEREE: All right, then let's go off the
18 record.

19 (OFF THE RECORD)

20 THE REFEREE: Let me just inquire of the
21 Commission. Other than the issue of the exhibits, which
22 we're going to discuss at another time, does the
23 Commission rest?

24 MS. CENCI: Yes.

25 THE REFEREE: All right. Okay. We'll let Mr.

854.

(Hon. Richard H. Miller, II)

1 DerOhannesian--

2 MR. DEROHANNESIAN: --Yep--

3 THE REFEREE: --Ready to proceed?

4 MR. DEROHANNESIAN: Yes.

5 THE REFEREE: Who's your first witness?

6 MR. DEROHANNESIAN: First witness is James
7 Stilloe.

8 THE REFEREE: All right. Let's bring him in.
9 Here's your subpoenas.

10 MR. DEROHANNESIAN: Oh, thank you. I don't
11 know if they're necessary, some of them showed up
12 anyway.

13 THE REFEREE: Mr. Stilloe?

14 MR. STILLOE: Yes, sir.

15 THE REFEREE: Raise your right hand. Sir, do you
16 swear or affirm under the penalties of perjury that the
17 testimony you are about to give is the truth, the whole truth,
18 and nothing but the truth?

19 MR. STILLOE: I do.

20 JAMES STILLOE,

21 having been duly sworn, was examined and testified as follows:

22 THE REFEREE: Here, please have a seat. Sir, my
23 name is Robert Barrer, and I've been--

24 THE WITNESS: --Nice to meet you--

25 THE REFEREE: --Pleasure. I've been appointed by

855.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Stilloe - Direct)

1 the Commission on Judicial Conduct to serve as a special
2 Referee for this case, which means I'm going to help run
3 the proceedings. You're going to be asked some questions
4 by counsel for Judge Miller, and then I presume you'll also
5 be asked some questions by counsel for the Commission.
6 It's important when you answer that you do so verbally, as
7 opposed to just shaking your head--

8 THE WITNESS: --Okay--

9 THE REFEREE: --Make sure the question is fully
10 answered before you respond-- Fully asked before you
11 respond.

12 THE WITNESS: Okay.

13 THE REFEREE: And in the event that either
14 counsel objects, please wait until I tell you to give an
15 answer, is that all right?

16 THE WITNESS: Yes, sir.

17 THE REFEREE: Perfect. Proceed.

18 DIRECT EXAMINATION

19 BY MR. DEROHANNESIAN:

20 Q. Tell us your name, please?

21 A. James Stilloe.

22 Q. And what do you do for a living?

23 A. I own a second-hand jewelry store on Main Street in Endwell.

24 Q. And how long have you been doing that?

25 A. This is my tenth year.

856.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Direct)

1 Q. Okay. And do you know Rick Miller?

2 A. Yes, I do.

3 Q. And how do you know Rick Miller?

4 A. I know Rick Miller from my cousin, Aldo Rossi, quite a few years ago
5 introduced us and-- yeah. Cousin Aldo Rossi introduced us.

6 MS. CENCI: I'm sorry, who?

7 THE WITNESS: Aldo Rossi.

8 MS. CENCI: Thank you.

9

10 BY MR. DEROHANNESIAN:

11 Q. And so, about how long would you say you've known Rick Miller?

12 A. 20, maybe over 20-- 20 years.

13 Q. Okay. Did you get a chance to work on his campaign in 2014?

14 A. Yes, I did.

15 Q. For family court judge?

16 A. Yes.

17 Q. And did you know someone by the name of Rachelle Gallagher?

18 A. Yes.

19 Q. How did you know her or first meet her?

20 A. I first met her in the Johnson City Court.

21 Q. And when-- about when was that? And you don't have to give me a
22 precise date, but just a rough time period.

23 A. Somewheres around 13, 14 years ago.

24 Q. Okay. And after you met her, how would you describe the contact and
25 interactions that you had with her?

857.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Direct)

1 MS. CENCI: Objection to the relevance, Your
2 Honor.

3 THE REFEREE: No. Not yet. Overruled.

4 BY MR. DEROHANNESIAN:

5 Q. Did you see her-- If I could lead a little bit-- Did you see Ms.
6 Rachelle Gallagher outside of court?

7 A. I did.

8 Q. Okay. Would you socialize with her?

9 A. Yes.

10 Q. Go out places with her?

11 A. Yes.

12 Q. Okay. Would you say you had a pretty good relationship with her?

13 A. Yes.

14 Q. Mm-hmm?

15 A. Yep.

16 Q. At some point, were you involved in a matter where she present that
17 led to some type of charges against you?

18 A. Yes.

19 Q. Can you explain the background of that?

20 A. I was going through a divorce and Judge Miller was my attorney, and
21 my daughter called me, who was seven, or maybe she was nine at that
22 time. She's 20 now, she was-- So, she was seven or nine, I don't
23 know exactly. She was in a panic, there was something wrong with
24 mommy, and I was out of the house with my ex-wife and living at my
25 mother's house when my daughter called, and there became an issue

858.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Direct)

1 that was wrong with her mother, so I called 911. And when I called
2 911, the police went to the house and took the phone from my
3 daughter and said that there's nothing wrong, the children are going to
4 be going to the step-grandmother's house. I said, "Please, I'm a block
5 away. Our house is a block away from my mother's house-- a block
6 and a half." Anth-- E [REDACTED]'s first holy communion was the next day,
7 and I know the step-mother lives in Greene, and I'm like, "Oh, gosh,
8 can I just pick up the kids for the first holy communion?" And the
9 officer hung up on me--

10 MS. CENCI: --Your Honor, at this point, I have an
11 objection to the relevance of all of this.

12 THE REFEREE: Yeah--

13 MR. DEROHANNESIAN: --Well, I want--

14 THE REFEREE: --I do, too-- I'm having a tough
15 time understanding.

16 MR. DEROHANNESIAN: Well, what is--

17 BY MR. DEROHANNESIAN:

18 Q. And did you make a call to the child abuse hotline?

19 A. I did, but I called Rachelle first.

20 Q. Okay. And what did Rachelle--

21 A. --And after this happened and the police hung up, I called Rachelle
22 and said, "Rachelle, this is just what happened." She said, "I'll be
23 right there." And she came to my mother's house, in a new car that
24 she-- she just got. Well, when I got into the car, I stepped in dog
25 poop, it went on the carpet. We went from there to wash-- to the

859.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Direct)

1 laundromat, to wash the car, and that's where I made the call to the
2 800 number. Rachelle was with me at that time and advised me on
3 that's what I should do.

4 Q. Okay.

5 MS. CENCI: Objection.

6 THE REFEREE: Well--

7 MR. DEROHANNESIAN: --Okay.

8 THE REFEREE: Where are we going?

9 MR. DEROHANNESIAN: Well, I just wanted to
10 bring it out, because I think it's going to come up later.

11 THE REFEREE: All right.

12 BY MR. DEROHANNESIAN:

13 Q. And did that result in a trial?

14 A. Yes.

15 Q. Rachelle testified for you?

16 A. Yes.

17 Q. On your behalf? Yes? Was there a conviction?

18 A. Yes.

19 Q. And what was the conviction for?

20 A. Falsely reporting child abuse.

21 Q. Okay. And when would that have-- When did that occur?

22 A. That was in, I want to say, 2002 or '03.

23 Q. Okay. So, maybe about 16 years ago--

24 A. --Yes--

25 Q. --or more?

860.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Direct)

- 1 A. Yes.
- 2 Q. Approximately?
- 3 A. Now-- Yeah. Time flies. It was while she was in JC Court.
- 4 Q. Okay. Did you consi-- continue to see Ms. Gallagher after that?
- 5 A. Yes. Yeah-- Yes.
- 6 Q. And again, both-- That would be outside of her court duties, you
- 7 would continue to socialize with her after that matter?
- 8 A. Yes.
- 9 Q. And after the trial? You said you worked on the campaign for Judge
- 10 Miller, correct?
- 11 A. Yes.
- 12 Q. That was in 2014, does that sound right?
- 13 A. Yes.
- 14 Q. Okay. And was there some sort of reception election night?
- 15 A. Yes, there was on Route 26, yep.
- 16 Q. And were you with Ms. Gallagher at that time?
- 17 A. No, I was not with her, but I seen her there.
- 18 Q. Okay. And at some point, did you have occasion to talk to Ms.
- 19 Gallagher at the election eve reception?
- 20 A. Yes. I went by the table and she was--
- 21 MS. CENCI: --Objection. He-- He's giving now a
- 22 narrative. He was only asked--
- 23 THE REFEREE: --All right, just-- That's fine--
- 24 MS. CENCI: --if he talked with her.
- 25 THE REFEREE: Ask another question.

861.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Direct)

1 BY MR. DEROHANNESIAN:

2 Q. And at some point, did the topic of Judge Miller and who would be
3 working for him come up with Ms. Gallagher?

4 A. Yes.

5 Q. Can you tell me what you recall saying to Ms. Gallagher, or what Ms.
6 Gallagher said to you about the position that would be available for
7 Judge Richard Miller as family court judge?

8 MS. CENCI: Objection.

9 THE REFEREE: Ground?

10 MS. CENCI: He's attempting to collaterally attack
11 another witness's testimony.

12 MR. DEROHANNESIAN: So-- As a prior oral
13 inconsistent statement. I have--

14 MS. CENCI: --If it's collateral-- It's completely
15 and utterly a collateral, Your Honor.

16 THE REFEREE: Is-- Is the gist of the testimony
17 going to address--

18 MR. DEROHANNESIAN: --What I'd ask--

19 THE REFEREE: --Yes, what you asked Ms.
20 Gallagher?

21 MR. DEROHANNESIAN: That she denied saying.

22 THE REFEREE: Yep. But, isn't that collateral?
23 Isn't that a collateral attack?

24 MR. DEROHANNESIAN: No.

25 THE REFEREE: Why not?

862.

(Stilloe - Direct)

1 MR. DEROHANNESIAN: First of all, it goes to her
2 interest and her motive for wanting the job at virtually any
3 expense, particularly when you hear the comment that she
4 denied making. It also goes to her feelings or attitudes,
5 whether she really was fearful of Mr. Stilloe, why is she
6 going to Mr. Stilloe, asking-- making this comment, if she
7 then wants to say that, "Oh, Mr. Stilloe is such a terrible"--

8 MS. CENCI: --Ye--

9 MR. DEROHANNESIAN: --"person"--

10 THE REFEREE: --Well, you don't-- As to the
11 second issue, I think that's fair. As to the first, I-- I don't
12 see it.

13 MR. DEROHANNESIAN: Mm-hmm.

14 THE REFEREE: Well-- You know, I'll take it for
15 what it's worth--

16 MR. DEROHANNESIAN: --Okay--

17 THE REFEREE: --I suspect it's not going to be
18 worth much, but go-- go ahead.

19 MR. DEROHANNESIAN: Okay.

20 THE REFEREE: Did you have a conversation with
21 Ms. Gallagher--

22 THE WITNESS: --Yes--

23 THE REFEREE: --the evening of the election about
24 working for Judge Miller?

25 THE WITNESS: Yes. She said, "If he takes Lisa

863.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Direct)

1 over me, I'm going be f-ing pissed."

2 THE REFEREE: Okay.

3 BY MR. DEROHANNESIAN:

4 Q. And was this at a victory party?

5 A. Yes, it was a-- the-- you know, the congratulation party, you know,
6 that was thrown.

7 Q. It may not have been election night?

8 A. Oh, no, it wasn't election night, no.

9 Q. It was after the election?

10 A. Yeah, it was after the election for the congratulation party.

11 Q. Okay. Were those her exact words?

12 A. Pretty close.

13 Q. You remember her exact words?

14 A. It was a little bit more vicious than the way I just said it.

15 MS. CENCI: Objection to the characterization, Your
16 Honor.

17 THE REFEREE: That's all right. Do you remember
18 the exact words she said? You can say it here. It doesn't
19 matter. We've all heard it before.

20 THE WITNESS: "If he takes Lisa over me, I'm
21 going to be f-ing pissed."

22 THE REFEREE: Okay.

23 THE WITNESS: Without the "f-ing." Worse.

24 MR. DEROHANNESIAN: Okay.

25 THE REFEREE: Okay.

864.

(Stilloe - Direct)

1 BY MR. DEROHANNESIAN:

2 Q. When Judge Miller became family court judge, did you ever visit
3 him--

4 A. --Yes--

5 Q. --in family court?

6 THE REFEREE: You have to wait until he finishes
7 the question.

8 THE WITNESS: Sorry.

9 THE REFEREE: It's all right. Very natural.

10 BY MR. DEROHANNESIAN:

11 Q. And do you remember either occasion that you visited Judge Miller in
12 family court?

13 A. Yes.

14 Q. How many times can you recall visiting Judge Miller?

15 A. Two.

16 Q. Do you want to-- Can you recall the first time?

17 A. We were putting a picture-- He wanted something with a picture. I
18 don't know if we hung it, or we were getting a picture. He had a
19 picture, we did something with the picture that was on the far side of
20 the off-- of his office wall.

21 Q. How about the second time?

22 A. The second time, we went for lunch. He had to pick something up and
23 we just were in there for a short time.

24 Q. Now, when you visited Judge Miller in Broome County Family Court,
25 did you see Rachelle Gallagher there?

865.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Direct)

- 1 A. I did.
- 2 Q. Okay. Did you talk to her?
- 3 A. Very shortly, "Hi." She was sitting at a desk--
- 4 Q. --Okay--
- 5 A. --not-- not really, no.
- 6 Q. Just pleasantry?
- 7 A. Yes.
- 8 Q. Okay, it-- You knew who she was and she knew you, correct?
- 9 A. Yes. Yep.
- 10 Q. How about a ma-- a person by the name of Mark Kachadourian? Did
- 11 you recognize him?
- 12 A. Yes.
- 13 Q. And how did you know Mark Kachadourian?
- 14 A. Mark I knew from back when I was in the auto business, the car
- 15 business. He was a car dealer at the time.
- 16 Q. Mm-hmm. And did you see Mr. Kachadourian in Judge Miller's suite
- 17 when you went to Broome County Family Court?
- 18 A. In his suite? No, we could-- I don't know if that was his office, but
- 19 where the girls worked there, that-- I don't know if that was his
- 20 office. There's two different spots, I believe.
- 21 Q. Okay. Well, did you see Mr. Kachadourian in the office or not?
- 22 A. Yes, yes.
- 23 Q. And did you-- How about any place else, did you see him? I mean,
- 24 did you go out to lunch or anything like that?
- 25 A. I think we went to lunch and then we went back to the office.

866.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Cross)

1 Q. Who's "we"?

2 A. Judge Miller and Mark Kachadourian and I. This was shortly after the
3 election.

4 Q. Okay. Now, from time to time, do you still have contact with Judge
5 Miller-- Excuse me. From the time he became family court judge,
6 you had contact with him, correct?

7 A. Yes.

8 Q. Okay. At any time during any phone call, did you ever say to Judge
9 Miller, in a phone call, that if Mark Kachadourian or Rachelle
10 Gallagher were ever to betray Judge Miller, they would have to
11 answer to you, Mr. Stilloe?

12 A. No.

13 Q. And did you ever make any comment like that at any time, place, or
14 setting? Whether on the phone or any place else?

15 A. No.

16 MR. DEROHANNESIAN: If I could have a
17 moment. No further questions.

18 THE REFEREE: Okay. Ms. Cenci?

19 CROSS-EXAMINATION

20 BY MS. CENCI:

21 Q. Good morning, Mr. Stilloe.

22 A. Good morning.

23 Q. I'm Cathleen Cenci and I'm serving as counsel for the Commission in
24 this matter.

25 A. Yes, ma'am.

867.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Cross)

1 Q. You said you've known Judge Miller for quite a number of years?

2 A. Yes.

3 Q. Has Judge Miller spoken to you about the Commission's proceeding
4 against him?

5 A. No.

6 Q. Okay. You don't know anything about the allegations, as to why
7 we're here today?

8 A. Yeah, I read it online.

9 Q. No, the Commission's proceedings.

10 A. Oh, no. Here today, no the-- an investigator called me to come here.

11 Q. Did the investigator tell you anything about the proceeding?

12 A. No.

13 Q. So, in all the time you've known Judge Miller, he's never said
14 anything to you about anybody making allegations that he was
15 sexually inappropriate as a judge?

16 A. I'm sorry, you said--

17 Q. --Okay, bad question. Are you aware whether or not Rachelle
18 Gallagher or Mark Kachadourian have made allegations against Judge
19 Miller?

20 A. Yes, I read it online, yes.

21 Q. Okay. Other than that--

22 A. --No--

23 Q. --you haven't spoken to anyone?

24 THE REFEREE: You have to-- Hold on. You have
25 to--

868.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Cross)

1 THE WITNESS: --I'm sorry--

2 THE REFEREE: --wait until she finishes. Go
3 ahead, start again.

4 BY MS. CENCI:

5 Q. Other than reading about it online, you haven't spoken to anyone
6 about it?

7 A. Two investigators, or some inves-- Does that-- Is that what you
8 mean? The investigators?

9 Q. I don't know. Who are the investigators?

10 A. I think for the-- Well, the one that was here today.

11 Q. Okay. These are people hired by Judge Miller or his attorneys, to your
12 knowledge?

13 A. I have no idea. I don't know who they're hired by. I don't know if by
14 the state, I don't know who they're--

15 Q. --So, what did they tell you?

16 A. That I had to come here this morning at 9:30-- I didn't have to, but if
17 I was going to testify because-- to show up here at 9:30.

18 Q. But they didn't say anything to you about what it was all about?

19 A. Yes.

20 Q. Was there ever a time that you went walking with Judge Miller in the
21 Oakdale Mall?

22 A. I don't think I've ever been in the Oakdale Mall with Judge Miller.

23 Q. Did you ever go walking with him?

24 MR. DEROHANNESIAN: Objection, asked and
25 ans--

869.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Cross)

1 THE REFEREE: --No, that's a different question.

2 Overruled--

3 MR. DEROHANNESIAN: --Yeah, yes, it is. Yeah.

4 A. Yes.

5 Q. Was-- Would that have been after he became family court judge?

6 A. Yes.

7 Q. You said you visited him in chambers in family court only two times,
8 is that right?

9 A. Yes.

10 Q. And once was to hang a picture?

11 A. Yes. Just getting his office ready, yep.

12 Q. Do you-- Are you employed by Judge Miller--

13 A. --No--

14 Q. --in any respect?

15 THE REFEREE: Hold on. You have to wait until--

16 THE WITNESS: --I'm sorry, Judge, I apologize.

17 THE REFEREE: Don't worry about it. Don't worry
18 about it. Just-- One more time?

19 BY MS. CENCI:

20 Q. Are you employed by him, ever, in any respect?

21 A. No.

22 Q. Okay. And the second time you said you went there and you went to
23 lunch?

24 A. Yes, ma'am.

25 Q. Okay. Was that the time you say that Mr. Kachadourian also went to

870.

(Stilloe - Cross)

- 1 lunch with you?
- 2 A. Yes.
- 3 Q. What dates were these two visits?
- 4 A. Shortly after the election.
- 5 Q. Well, the election would have been in the fall of 2014.
- 6 A. Whenever he was in the office for-- maybe a couple months, month
- 7 or two. Not long.
- 8 Q. So, if I told you he took office January 2, 2015, when, in reference to
- 9 that date, would have been the first time you were there?
- 10 A. It was kind of-- It was warm weather out, so a couple months after
- 11 that.
- 12 Q. It was warm weather?
- 13 A. I think so, yes.
- 14 Q. So, the spring of 2015? I don't know when it gets warm here in--
- 15 A. --Well, April, May--
- 16 Q. --Binghamton--
- 17 A. --somerheres in there. I don't know exactly.
- 18 Q. April or May 2015?
- 19 A. If he went in office in the-- And he was in office in January, well a
- 20 couple months after that, so, January, February, March-- It was warm,
- 21 so maybe April? I'm not quite positive.
- 22 Q. Okay. And when-- What was the date of the second visit?
- 23 A. That was the second visit.
- 24 Q. Oh, okay. When was the first visit?
- 25 A. Shortly after he went into his office and was setting up. His office just

871.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Cross)

1 got set up and it was all-- He was proud of his office and he wanted
2 me to show-- show me his office.

3 Q. Okay, and that's when you hung the picture?

4 A. Yes, ma'am.

5 Q. Mr. Stilloe, you've acknowledged that you do have a conviction for
6 false re-- falsely reporting an incident. Is that right?

7 A. Falsely reporting child abuse.

8 Q. Well-- So, was that-- Excuse me. Was that trial that you had in the
9 city court-- the Bing-- the City Court of Binghamton?

10 A. I think so, yes. Yes.

11 Q. And--

12 A. --It was all family court related with my divorce, all of it was over my
13 divorce in family court.

14 Q. Yes, but you were charged with a crime.

15 A. Yes.

16 Q. You had a trial.

17 A. Yes.

18 Q. And you were convicted.

19 A. Yes.

20 Q. And it was falsely reporting an incident, in violation of Penal Law
21 240.50-04. Do you recall that?

22 A. Yes.

23 Q. And you were sentenced to 60 days in jail with credit for time served,
24 is that right?

25 A. Yes.

872.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Cross)

1 Q. So, you were convicted of making a false report?

2 MR. DEROHANNESIAN: Objection. Asked and
3 answered and argumentative.

4 THE REFEREE: Sustained.

5 BY MS. CENCI:

6 Q. You lied.

7 MR. DEROHANNESIAN: Objection. Asked and
8 answered.

9 THE REFEREE: Sustained.

10 BY MS. CENCI:

11 Q. The jury found you guilty, is that right?

12 MR. DEROHANNESIAN: --Objection--

13 THE REFEREE: --Sustained. It hasn't been
14 established that there was a jury.

15 MS. CENCI: He said there was a jury trial--

16 THE REFEREE: --He said a trial.

17 MS. CENCI: Oh, I'm sorry.

18 BY MS. CENCI:

19 Q. Was there a jury?

20 A. I don't think so.

21 Q. Was it-- the judge found you guilty?

22 MR. DEROHANNESIAN: Objection.

23 A. I don't know.

24 Q. Sir, was there a jury--

25 MR. DEROHANNESIAN: --Obj--

873.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Cross)

1 BY MS. CENCI:

2 Q. --or was it a trial just before the judge?

3 MR. DEROHANNESIAN: Objection.

4 THE REFEREE: If you object to the form, it's
5 sustained because it's compound.

6 MS. CENCI: I asked him either or--

7 THE REFEREE: --You said--

8 MS. CENCI: --was there-- was it a jury or was it a
9 trial before the judge?

10 THE REFEREE: And the answer could be "yes," it
11 was either a judge or a jury. It-- That's a compound--

12 BY MS. CENCI:

13 Q. --Which was it, Mr. Stilloe?

14 A. I don't know.

15 Q. Why don't you know?

16 MR. DEROHANNESIAN: Objection.

17 THE REFEREE: It's argumentative. Sustained.

18 BY MS. CENCI:

19 Q. You don't recall?

20 A. I really don't. Your kids being torn from you and what they-- what I
21 was put through at that point, I really--

22 Q. --Okay, I haven't--

23 A. --I try to block that out--

24 Q. --asked you anything else. I just asked you if--

25 A. --Okay, I'm sorry. I apologize--

874.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Cross)

1 Q. --you recalled. Okay. Did you serve your sentence?

2 A. I did. I got out early for good behavior. Honest behavior.

3 Q. And you were put on probation for three years, is that right?

4 A. They dropped that, ma'am.

5 Q. What does that mean? Were you put on probation?

6 A. No.

7 MS. CENCI: Your Honor, I want to offer Exhibit
8 1K into evidence.

9 THE REFEREE: Do you know what-- Is Penal Law
10 240.50-04, that's a misdemeanor, isn't it?

11 MS. CENCI: Are you asking me, Your Honor?

12 THE REFEREE: Yes, I'm asking. I'm--

13 MS. CENCI: --I believe so, I don't have the statute
14 with me.

15 MR. DEROHANNESIAN: 240.45?

16 THE REFEREE: Yes. 210-- 210.45. I'm looking
17 at the-- I'm looking at the fifth page of the exhibit. Oh,
18 wait a minute. I'm--

19 MS. CENCI: --Well, the act-- the information is
20 here, Your Honor--

21 THE REFEREE: --The--

22 MS. CENCI: --and it does say that--

23 THE REFEREE: --"Falsely reporting an incident in
24 the third degree, in violation of"--

25 MS. CENCI: --It-- A class A misdemeanor.

875.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Cross)

1 THE REFEREE: Yeah.

2 MR. DEROHANNESIAN: Okay. Judge, I believe
3 the witness has admitted the conviction, and I don't think
4 there's any dispute on that.

5 THE REFEREE: Yeah, I agree.

6 MR. DEROHANNESIAN: And--

7 MS. CENCI: --Well--

8 THE REFEREE: --And--

9 MS. CENCI: --This document-- Excuse me. This
10 document contradicts some of what he has testified to.

11 THE REFEREE: What does it contradict?

12 MS. CENCI: It shows-- Can we excuse the
13 witness?

14 THE REFEREE: You know what, I'm going to
15 sustain--

16 MS. CENCI: --He said he wasn't-- He didn't go--

17 THE REFEREE: --the objection--

18 MS. CENCI: --wasn't sentenced to probation. It's
19 right here.

20 MR. DEROHANNESIAN: And out--

21 THE WITNESS: --I might have been sentenced, but
22 they--

23 MS. SCALISE: --That's not what he said--

24 THE REFEREE: --Just a minute. Just a minute.
25 Just a minute-- I'm going to sustain the objection.

876.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Stilloe - Cross)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. CENCI: On what basis, Your Honor?

THE REFEREE: Relevance. And it's imp-- What--

MS. CENCI: --Have you reviewed-- Excuse me--

THE REFEREE: --Yeah, I did--

MS. CENCI: --Have you reviewed the entire
document?

THE REFEREE: Yeah, I did.

MS. CENCI: It's my contention, at minimum, that
this dis-- This contradicts the witness's testimony.

THE REFEREE: Why don't you show it to him?
Show him the exhibit and ask--

MS. CENCI: --Why would I have to do that, Your
Honor? It's a--

THE REFEREE: --Sustained--

MS. CENCI: --certified document.

THE REFEREE: We'll take it up after the witness
is-- after you're done questioning him.

MS. CENCI: And he didn't say he couldn't recall.
He denied it.

MS. SCALISE: That--

THE REFEREE: --Do you have any more questions
for the witness?

MS. CENCI: I do.

THE REFEREE: Ask the questions.

877.

(Stilloe - Cross)

1 BY MS. CENCI:

2 Q. Mr. Stilloe, this-- You called it a "used jewelry store," is that what
3 you said you run?

4 THE REFEREE: Second-hand jewelry.

5 BY MS. CENCI:

6 Q. Second-hand?

7 A. Yes.

8 Q. Is it a pawn shop?

9 A. No, ma'am.

10 Q. Okay, so you can't-- You can't pawn jewelry there?

11 A. I do not pawn jewelry at my store.

12 Q. What's the name of the store?

13 A. Solid Gold Jewelry.

14 Q. Where is it located?

15 A. 3212 East Main Street in Endwell.

16 Q. And how long have you had that?

17 A. This will be my tenth year, 2019.

18 Q. Is it fair to say that you don't know, what, if anything, Judge Miller
19 might have said about you when you weren't there in his presence?

20 A. I have no idea.

21 Q. That's right. You don't-- It's fair to say that you don't know what he
22 might have said about you--

23 MR. DEROHANNESIAN: --Objection. Asked and
24 answered--

25

878.

(Stilloe - Cross)

1 BY MS. CENCI:

2 Q. --when you were not present?--

3 THE WITNESS: --I don't really understand, Judge--

4 THE REFEREE: --Overruled. It-- The answer is--

5 There's only one possible answer to the question, which is,
6 you don't know what the judge might have said about you if
7 you weren't there to hear it.

8 THE WITNESS: Yes.

9 THE REFEREE: Correct.

10 BY MS. CENCI:

11 Q. And, by the way, are you here pursuant to a subpoena or are you
12 testifying voluntarily?

13 A. Voluntarily.

14 Q. Okay. Judge Miller is your friend?

15 A. Yes, he is.

16 Q. You want to help him?

17 A. I don't know if he needs my help.

18 THE REFEREE: That's not what-- That's not what
19 she asked, though. Would you-- Do you want to help him?

20 THE WITNESS: Sure.

21 MS. CENCI: Nothing further.

22 THE REFEREE: Any redirect?

23 MS. SCALISE: Can I have just a second?

24 MR. DEROHANNESIAN: No, Your Honor.

25 THE REFEREE: All right. Mr. Stilloe, could you

879.

(Hon. Richard H. Miller, II)

1 step out for just a moment?

2 THE WITNESS: Yes. Excuse me.

3 THE REFEREE: All right. Let's talk about Exhibit
4 1K. He was asked about probation and he said, "It was
5 dropped." I don't know what that means. Maybe he was--
6 I don't practice in that area and I don't know what that
7 means, but 1K said he was given probation and I'm not in a
8 position to comment on what it means that probation is
9 dropped. It could be done early, I really don't know what
10 that means.

11 MR. DEROHANNESIAN: I believe what you just
12 said is--

13 THE REFEREE: --I--

14 MR. DEROHANNESIAN: --how I interpret that to
15 mean. That after someone's sentenced to probation at some
16 point, sometimes it's early, sometimes it's later, probation
17 says, "We don't want you on probation."

18 THE REFEREE: Yeah. I don't know that that
19 occurred here.

20 MR. DEROHANNESIAN: Yeah.

21 THE REFEREE: But I don't find-- I don't find it
22 inconsistent that this misdemeanor sentence has probation
23 and then he said, "It was dropped early." And plus, it's not
24 perjury-- It-- I don't--

25 MR. DEROHANNESIAN: --You--

880.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: --But it's a false report. It involves
2 dishonesty.

3 THE REFEREE: Which he admitted and there's no
4 dispute that he was convicted of falsely reporting an
5 incident. So, what is the purpose-- I know that you've
6 previously offered the group of certified convictions and
7 we'll address that, and you may get all of them in anyway,
8 once we address that separately. But as to this particular
9 witness, while-- Excuse me-- while he's here, he has
10 admitted the conviction. What is the purpose now of
11 admitting 1K?

12 MS. CENCI: Your Honor, as you know, I attempted
13 to prove this as part of my case in chief, which I believe we
14 were entitled to do. Excuse me, if I could just complete my
15 response. You reserved ruling on that, even though I've
16 concluded the case. We've prepared a-- a brief letter-- a
17 letter brief supporting our position as to why these records
18 go in, regardless of whether Mr. Stilloe--

19 THE REFEREE: --I agree and you may win--

20 MS. CENCI: --showed up here or not, but now that
21 he's here, I don't see why you're precluding it. It's my
22 contention that, at minimum, it shows something
23 inconsistent with what he said. They should have been
24 received. They should be received as part of our case in
25 chief, and I don't see how I'm precluded from introducing

881.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 the record, just because the witness admitted the underlying
2 charge and conviction.

3 MR. DEROHANNESIAN: May I say something?

4 THE REFEREE: You don't need to. Reserve-- I'm
5 continuing to reserve on this and all of the convictions.
6 Anything further from this witness?

7 MR. DEROHANNESIAN: No, Your Honor.

8 THE REFEREE: All right. Let's bring him back in.
9 Mr. Stilloe, have a seat. You're still under oath. Any
10 redirect?

11 MR. DEROHANNESIAN: No, Your Honor.

12 THE REFEREE: Okay. Recross, your rights are
13 reserved as to Exhibit 1K. Any recross-examination?

14 MS. CENCI: There was no redirect, so, no. There's
15 no recross.

16 THE REFEREE: All right-- No, okay. Nothi--
17 Any other questions that either of you want to ask this
18 witness?

19 MS. SCALISE: No.

20 MR. DEROHANNESIAN: No.

21 THE REFEREE: All right. Mr. Stilloe, thank you
22 for coming. Please know that these proceedings are
23 confidential and we ask you not to discuss them with
24 anyone.

25 THE WITNESS: Yes, judge.

882.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: All right, thank you.

2 THE WITNESS: Thank you.

3 THE REFEREE: Next-- Next witness.

4 MS. CENCI: Your Honor, I do-- I do now have
5 available to email to you, and counsel, the letter brief.

6 THE REFEREE: All right, let-- Why don't you do
7 that and we'll--

8 MS. CENCI: --Which I hope I can do on my phone.

9 THE REFEREE: All right, who's the next witness?

10 MR. DEROHANNESIAN: Marty Shaw.

11 THE REFEREE: All right.

12 MS. SCALISE: And would we be given an
13 opportunity, if we want to, to respond because--

14 THE REFEREE: --Yes, absolutely--

15 MS. SCALISE: --we haven't seen it and--

16 THE REFEREE: --Yes, absolutely.

17 MS. SCALISE: Okay.

18 MS. CENCI: Your Honor, and I'd ask for an offer
19 of proof as to Mr. Shaw's testimony.

20 MS. SCALISE: Well, can counsel come back in the
21 room before we can answer that offer?

22 MS. CENCI: Oh, I'm sorry, I didn't realize he had
23 gone.

24 THE REFEREE: You--

25 MS. CENCI: --I'd ask for an offer of proof--

883.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: --Can you hang on just a minute
2 before you bring him in? Okay and why is that?

3 MS. CENCI: It-- To my knowledge, he is not a
4 witness to any of the events alleged in the Formal Written
5 Complaint. His name was mentioned and bandied about,
6 you know-- but I don't know that he has any information as
7 to the act-- the allegations of the complaint.

8 THE REFEREE: It-- In a nutshell, what are we
9 going to hear?

10 MR. DEROHANNESIAN: His name has been
11 thrown about quite a bit as being someone who is
12 apparently a bad character of bad repute. His-- fact-- It
13 hasn't been decided yet, but there's this issue about his
14 certificate of conviction.

15 THE REFEREE: No, I understand that but is he--
16 Does he have any relationship with Mark Kachadourian or
17 Rachelle Gallagher? I'm trying to remember, what was the
18 context in which his name came up?

19 MR. DEROHANNESIAN: The multiple times both
20 witnesses said that this was an individual that they were
21 fearful of and an enforcer for Judge Miller. So, I think the
22 lack of relationship may be important, too, as well as
23 whether he-- Was he in chambers at all? No? And I think
24 also to explain his background. And again, the i-- the idea
25 that he has some terrible criminal history, for someone

884.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 who-- 30 years ago, and it was used to sully the reputation
2 of Judge Miller. And that's why they want to put that
3 certificate in. I don't know if it's going in or not. I'd just
4 as soon let him testify, he can be in-- If you feel it's
5 relevant, a 35-year-old conviction, he'll be impeached with
6 it. If you think it's not...

7 MS. CENCI: Your Honor--

8 THE REFEREE: --It-- One second.

9 MR. DEROHANNESIAN: It--

10 THE REFEREE: Yes. You were--

11 MR. DEROHANNESIAN: --Just-- Again, is he an
12 enforcer or not? He can be asked that question directly
13 because that's the allegation.

14 MS. CENCI: It doesn't matter, Your Honor.
15 Respondent said he was an enforcer. It's not--

16 MS. SCALISE: --No, that's--

17 THE REFEREE: --No, no--

18 MS. CENCI: --It wouldn't matter if, in fact, he
19 thought him-- of himself as an enforcer--

20 THE REFEREE: --Just a-- Wait a sec--

21 MS. CENCI: --or not. It's what the judge told these
22 people about these individuals.

23 MR. DEROHANNESIAN: And the--

24 THE REFEREE: --Just a second. I--

25 MS. CENCI: --And the fact that they actually do

885.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 have criminal-- criminal histories, but I--

2 THE REFEREE: --So--

3 MS. CENCI: --but I--

4 THE REFEREE: --I understand. So, is Exhibit--

5 And then that's Exhibit 1L--

6 MR. DEROHANNESIAN: --Mm-hmm--

7 THE REFEREE: --Ms. Cenci, that you are offering.

8 This is a robbery first degree and attempted robbery first
9 degree from 1981?

10 MS. CENCI: Yes.

11 THE REFEREE: And this is-- It's hard to read.

12 MS. CENCI: He was sentenced to four to 12 on the
13 one charge and three to nine on the other.

14 THE REFEREE: And this was--

15 MS. CENCI: --Years--

16 THE REFEREE: --Right. All right, I understand--

17 MS. CENCI: --in prison.

18 THE REFEREE: And these were felonies in 1981?

19 MS. CENCI: Apparently. I'm sorry, Your Honor,
20 I'm trying to send you the memo at the same time.

21 THE REFEREE: No, that's okay. I'm just-- I'm
22 looking at-- I'm trying to get the date here and the copies
23 are bad.

24 MS. CENCI: But even if you determine that that's
25 remote in time, it would not-- There's no relevance to the

886.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 witness testifying about it.

2 MR. DEROHANNESIAN: They have this big
3 exhibit, so they're making it relevant. They're--

4 MS. CENCI: --Well--

5 MR. DEROHANNESIAN: --going to make an
6 argument about him and if we--

7 MS. SCALISE: --And on his direct--

8 THE REFEREE: --On whose direct?

9 MS. SCALISE: On Mr. Kachadourian's direct--

10 MR. DEROHANNESIAN: --Kachadourian--

11 MS. SCALISE: --Kachadourian's direct, okay, the
12 first day, on direct, okay, there were all these questions
13 from the Commission about who the judge told him and
14 what the judge told him who were his friends. And initially
15 there-- comments about Saraceno, then he gets to English,
16 Marty Shaw, enforcers that the judge told him about. Marty
17 Shaw, "just out of Attica"--

18 MR. DEROHANNESIAN: --"Just out of Attica"--

19 MS. SCALISE: --"Just out of Attica," the judge's
20 friend visits with the judge, you know--

21 MS. CENCI: --But so what? Maybe the judge
22 wasn't sa-- wasn't telling them the truth.

23 MS. SCALISE: And then they said Shaw--

24 MS. CENCI: --It doesn't matter--

25 MS. SCALISE: --Okay. But it--

887.

(Hon. Richard H. Miller, II)

1 THE REFEREE: --One at a time, please--

2 MS. SCALISE: --does matter if you're going to put
3 that information in there. They introduced and opened the
4 door for that witness. They are now--

5 MS. CENCI: --To say what, that he wasn't-- in--
6 just out of Attica?--

7 THE REFEREE: --Please, Ms. Cenci, you have to
8 let counsel finish.

9 MS. CENCI: I--

10 MS. SCALISE: --They repeatedly have said there
11 were threats, trying to link them up to the judge, okay, and
12 that they feared for themselves. He also said that he was an
13 electrician and he was-- there were payments were made
14 and that there was a criminal record, as told by Judge
15 Miller. The "just out of Attica" alone is so inflammatory
16 that you want to make this connection that the judge has
17 threatened people. There is an allegation in these charges
18 with respect to the threat. You opened the door for your
19 witness, you want to put in a criminal conviction for-- from
20 the 1980s. I think that this witness should be allowed, and
21 we prese-- you know, posit he should be allowed to defend
22 to that and we should be allowed to do that as to his
23 connections with the judge.

24 MS. CENCI: Your Honor, the witnesses are the
25 people speaking to each other and the listeners. That would

888.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 be Respondent, Rachelle Gallagher, and Mr. Kachadourian.
2 Whether or not-- You know, he's free to testify that he
3 never made those statements about these individuals'
4 backgrounds or-- the-- the threats. It's not-- It's not
5 relevant what this individual has to say.

6 MS. SCALISE: It's totally probative--

7 MS. CENCI: --He wasn't there--

8 THE REFEREE: --Wait just a minute.

9 MS. CENCI: He wasn't there. He wasn't present,
10 he wouldn't know what, if anything, the judge said about
11 him.

12 THE REFEREE: I underst--

13 MS. CENCI: --If-- If anything.

14 THE REFEREE: Okay. Okay. Anything else?

15 MS. SCALISE: Yes.

16 THE REFEREE: Not fr-- No, from Ms. Cenci--

17 MS. SCALISE: --Oh, sorry--

18 THE REFEREE: --because I want to respond but I
19 want to make sure you've said what you want to say. Here
20 is my-- Here is my predicament. And I'm really struggling
21 with this. I think that what is relevant is what the witnesses,
22 Kachadourian and Gallagher, knew and understood and
23 believed. And if they believed that Judge Miller was a
24 crime boss, who had all of these henchmen around him,
25 that's fine. That's their belief. Whether that is in fact true,

889.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 is a different story. And so, if they believed that these
2 people, who are associates of Judge Miller, had criminal
3 backgrounds, it doesn't matter whether they did or didn't.
4 That's their belief. So, their testimony is that Judge Miller
5 told them that all of these people that he knew were
6 unsavory and had bad reputations and were violent and
7 were going to kill them. That's their belief, and if we're
8 going to preclude Mr. Shaw from coming in and denying all
9 these things that he had no part of, then I get that, but then,
10 for sure, we don't admit these criminal convictions
11 because-- just because they're in the complaint, doesn't
12 mean they make up an element of any charge at all. It--

13 MS. CENCI: --Well, I-- Your Honor--

14 THE REFEREE: --So, I'm really-- I'm struggling
15 with the idea--

16 MS. CENCI: --I-- I--

17 THE REFEREE: --that we shouldn't allow Mr.
18 Shaw to come in, but we should allow his conviction to
19 come in. I don't think we get it both ways. That's what I'm
20 struggling with.

21 MS. CENCI: Well, you haven't seen the memo, see,
22 and that's...

23 THE REFEREE: Do you have another witness
24 besides Mr. Shaw here?

25 MS. SCALISE: We do, except that--

890.

(Hon. Richard H. Miller, II)

1 THE REFEREE: --Who--

2 MS. SCALISE: --I'd like to, you know, if we have
3 to release him--

4 THE REFEREE: --No, no--

5 MS. SCALISE: --we'd like to release him--

6 THE REFEREE: --I don't think release him, but--

7 MS. SCALISE: --Okay--

8 THE REFEREE: --I'll-- I'm-- I really want to--

9 MS. SCALISE: --Can I just--

10 THE REFEREE: --keep going--

11 MS. SCALISE: --Can I just bring it full circle?

12 THE REFEREE: Yes.

13 MS. SCALISE: Okay. You can't have your cake
14 and eat it, too, okay? You can't say, "You surround
15 yourself with criminals," and not allow you to assess who
16 these people are, what their credibility is, whether they
17 knew Ms. Gallagher and Mr. Kachadourian. At the end of
18 the day, you know, that's for you to assess their credibility
19 and whether there is any link to the judge. You know, these
20 allegations are trying to-- they're trying to boot strap
21 allegations by the fact that it's what they believe, but you
22 get to assess the credibility of the other people, too. These
23 people are mentioned here. It's their reputations that are at
24 stake, as well as the judge's, because in the very specific
25 charge, there is information that there were threats, okay?

891.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: No, I-- I understand that. Who--

2 MS. SCALISE: --And what we learned in the
3 evidence yesterday was that, you know, maybe somewhere
4 there was quadruple hearsay of one threat and now we're
5 getting this whole thing about enforcers and "just out of
6 Attica," when the conviction's more than-- you know, 30
7 years old, you know? It's-- It's just--

8 THE REFEREE: --I understand--

9 MS. SCALISE: --a little bit ridiculous that you can
10 say it both ways and you know, not allow us to present our
11 case to defend our client.

12 MS. CENCI: I just sent-- I just sent the--

13 THE REFEREE: I under-- I understand--

14 MS. CENCI: --the memoran-- the memorandum
15 letter--

16 THE REFEREE: --Okay--

17 MS. CENCI: --to-- to each of you--

18 THE REFEREE: --let me take a look at it.

19 MS. CENCI: Which I'd like to make part of the
20 record, somehow. I don't know if we can print it out, but
21 I'd like it to be made part of the record.

22 THE REFEREE: All right, just-- I'm trying to see if
23 I have it here.

24 MS. CENCI: I just want to make sure, did it come
25 through?

892.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: I don't see it yet.

2 MS. CENCI: Oh--

3 THE REFEREE: --Oh, just came in.

4 MS. CENCI: Oh, okay.

5 THE REFEREE: Let's go off the record.

6 (OFF THE RECORD)

7 THE REFEREE: All right, we're back on the
8 record. Counsel for the Commission is present. Counsel
9 for the Respondent is present and the Respondent is present,
10 as well. We've had a continuing discussion in this
11 proceeding about the admission of Commission Exhibits 1A
12 through 1L and I have invited the parties to brief that issue.
13 This morning, we received a letter dated today's date,
14 January 10th, from Edward Lindner, L-I-N-D-N-E-R, with--
15 which is a letter brief on behalf of the Commission in
16 support of the admission of 1A through 1L. We will mark
17 that letter as Referee's Exhibit 5, which I have read and it's
18 my determination that I'm not going to accept Exhibits 1A
19 through 1L. I would like Ms. Cenci to make a formal offer
20 of the exhibits and identify them for the record, and I will
21 repeat my ruling, but would you please make your offer--

22 MS. CENCI: --Yes, Your Honor--

23 THE REFEREE: --of those exhibits, whatever you
24 want to offer.

25 MS. CENCI: Yes, Your Honor.

893.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: And if there's a-- If you include a
2 date, that would be helpful.

3 MS. CENCI: Sure. Okay. Commission Exhibit 1A
4 is a certificate of disposition of the Vestal Town Court,
5 criminal part, in the matter of *People of the State of New*
6 *York v David J. Iannone*, defendant. Forgery in the third
7 degree, the disposition-- Do you want me to read the--
8 everything that's in the document?

9 THE REFEREE: No, just-- Just the char-- The
10 disposition, the charge, and the date, if you have it.

11 MS. CENCI: Okay. And--

12 THE REFEREE: --The date of the disposition.

13 MS. CENCI: Disposition was a CD and restitution
14 and there's an attached local court criminal disposition
15 report.

16 THE REFEREE: Okay. I think the disposition's on
17 the front page. The last of the series of dates. Do you have
18 that?

19 MS. CENCI: The disposition date? August 22,
20 1991.

21 THE REFEREE: All right and--

22 MS. CENCI: --Okay, so, I offer that.

23 THE REFEREE: Objection? Is-- You object?

24 MR. DEROHANNESIAN: Yes.

25 THE REFEREE: Sustained. What's next?

894.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: Commission Exhibit 1B. It's a multi-
2 page document.

3 MR. DEROHANNESIAN: Are you waiting for me?

4 THE REFEREE: No, no--

5 MR. DEROHANNESIAN: --Oh--

6 THE REFEREE: --Ms. Cenci.

7 MS. CENCI: I was just counting the pages. I
8 believe it's 16 pages, and the top page, the first page, is a
9 certificate of disposition of the Union Town Court, criminal
10 part, in the matter of the *People of the State of New York v*
11 *David J. Iannone*. Conviction for harassment second
12 degree on-- No-- Disposition date says August 1, 1996,
13 with a fine of \$50 and a CD.

14 THE REFEREE: "CD" being conditional discharge?

15 MS. CENCI: Conditional discharge.

16 THE REFEREE: Okay. Do you object?

17 MR. DEROHANNESIAN: We do.

18 THE REFEREE: Sustained. What's next?

19 MS. CENCI: I-- Can I-- Okay, so--

20 THE REFEREE: --I'm sorry. Was there something
21 more you wished to say about Exhibit--

22 MS. CENCI: --No, I guess--

23 THE REFEREE: --1B?--

24 MS. CENCI: --I'd just like to get on the record what
25 the nature of the objection is? For all of these? They're

895.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 certified records, public documents--

2 THE REFEREE: --Okay. There's no objection, I
3 understand as to authenticity of the records it's relevance.

4 MR. DEROHANNESIAN: Correct.

5 MS. CENCI: It's Commission Exhibit 1C for
6 identification, is a three-page order, dated June 4, 2018, of
7 the Hon. Christopher E. Baker, Acting Tioga County Court
8 Judge.

9 THE REFEREE: What court is it?

10 MS. CENCI: County Court of-- County Court of
11 Tioga County.

12 THE REFEREE: Good. Thank you.

13 MS. CENCI: In the matter of *Tioga County, as*
14 *Pistol Permit Administrator*, petitioner, *v David J. Iannone*,
15 respondent. I offer that.

16 THE REFEREE: What's the-- the decretal
17 paragraph? You can read that into the record. Which is the
18 paragraph on page 3.

19 MS. CENCI: Yeah. "Ordered that the Respondent's
20 Smith and Wesson, M&P .40 S & W, serial number of
21 HWX9648, which is currently in the possession of the
22 Tioga County Sheriff's Office, is to be transferred to Lock-
23 N-Load, Owego, New York, a FFL dealer, for sale or
24 transfer to a party other than the Respondent with the lawful
25 authority to possess said pistol."

896.

(Hon. Richard H. Miller, II)

1 THE REFEREE: You have a date of the order?

2 MS. CENCI: I indicated it's June 4, 2018. It's not
3 really--

4 THE REFEREE: --All right. Is there an object--

5 MS. CENCI: --Can I read any other part of the--

6 THE REFEREE: --No.

7 MS. CENCI: Oh, I'm sorry, Your Honor, the first
8 decretal paragraph is more significant, it's on page--
9 bottom of page 2. May I read that?

10 THE REFEREE: Yes.

11 MS. CENCI: Thank you. "It is hereby ordered that
12 the Respondent, David J. Iannone's pistol permit privileges
13 including permit number C2018-018, are permanently
14 revoked."

15 THE REFEREE: All right. Is there an objection?

16 MR. DEROHANNESIAN: Yes, and for our other
17 reasons that we've stated previously, I want to incorporate
18 those as our objections to these exhibits.

19 THE REFEREE: Yes. All of those are included.
20 Sustained.

21 MS. CENCI: Commission Exhibit 1D is a one-page
22 certificate of disposition of the Johnson City Village Court,
23 criminal part, in the matter of *The People of the State of*
24 *New York v David Jon English*, defendant, convicted for
25 petit larceny. Disposition date September 3, 1991.

897.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 Disposition of a CD and a fee and surcharge.

2 THE REFEREE: Is there an objection?

3 MR. DEROHANNESIAN: Yes, again, for all the
4 reasons previously stated.

5 THE REFEREE: Sustained.

6 MS. CENCI: Commission Exhibit 1E is a one-page
7 certificate of conviction of the Johnson City Village Court,
8 criminal part, in the matter of *The People of the State of*
9 *New York v David English*, defendant, charged with petit
10 larceny on February 18, 2000, with a sentence of \$95 fine
11 and 90 days in jail.

12 THE REFEREE: Is there an objection?

13 MR. DEROHANNESIAN: There is here, yes.

14 THE REFEREE: Sustained.

15 MS. CENCI: Commission Exhibit 1F, is a one-page
16 certificate of disposition of the Johnson City Village Court,
17 criminal part, in the matter of *The People of the State of*
18 *New York v David J. English*, defendant, on a charge of
19 petit larceny, with a disposition date of November 29, 2004,
20 conditional discharge and a fee.

21 THE REFEREE: Is there an objection?

22 MR. DEROHANNESIAN: There is.

23 THE REFEREE: Sustained.

24 MS. CENCI: Commission Exhibit 1G is a one-page
25 certificate of conviction of the count-- the-- County--

898.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 County of Steuben for David English. Let's see. Original
2 offense criminal possession of a forged instrument, second
3 degree, one count in violation of Penal Law 170.25, with a
4 disposition pled guilty of Ju-- on July 25, 2000, sentenced
5 on September 28, 2000, to three to six years in custody. I
6 have original offense number 2, grand larceny in the third
7 degree, one count, in violation of Penal Law 155.35,
8 disposition satisfied by plea to charge 1. And it says second
9 felony offender with a--

10 THE REFEREE: --Do you have--

11 MS. CENCI: --surcharges imposed. And then it
12 says Willard Parole supervision.

13 THE REFEREE: Is there an objection?

14 MR. DEROHANNESIAN: There is, Your Honor.

15 THE REFEREE: Sustained.

16 MS. CENCI: Commission Exhibit 1H is a one-page
17 certificate of conviction, disposition, City Court of
18 Binghamton for David English. Petit larceny, disposition
19 pled guilty, February 16, 2000. Sentenced to 90 days in jail.

20 THE REFEREE: Is there an objection?

21 MR. DEROHANNESIAN: Yes--

22 THE REFEREE: --Sustained--

23 MR. DEROHANNESIAN: --there is.

24 MS. CENCI: Commission Exhibit 1I is a-- it's two
25 pages but the top is the certification page and the second

899.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 page is the certificate of conviction for the County Court of
2 Broome County in the matter of the *People of the State of*
3 *New York against David S. English*, certifying the judgment
4 of conviction on May 14, 1992, for the offense of attempted
5 criminal sale of a controlled substance in the third degree,
6 in violation of Sections 110 and 220.39(1) of the Penal
7 Law, a class C felony, with a sentence imposed on that
8 same date. As a second felony offender, defendant
9 sentenced to an indeterminate term of imprisonment,
10 minimum of three and a half years to seven years.

11 THE REFEREE: I-- I have a question for you about
12 this Exhibit 1I. Isn't his name David Jon English? J-O-N?
13 Isn't that the one we're talking about?

14 MS. CENCI: Yeah, it's the same date of--

15 THE REFEREE: --This one says "David S.
16 English"--

17 MS. CENCI: --Yeah, it's the same date of birth,
18 though. I think that's just a typo. The date of birth is the
19 same on all these documents.

20 THE REFEREE: Yes. I agree the date of birth is the
21 same, do you object?

22 MR. DEROHANNESIAN: I do object and I would
23 point that out, also, that it appears to be a different name.

24 THE REFEREE: I'm not convinced--

25 MS. CENCI: --It's the same--

900.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: --it's a different name because the
2 date of the birth I noticed is the same, but I'm going to
3 sustain the objection, and I think that's-- It's odd. It may
4 well be another ground for not admitting it, but I'll assume
5 it's the same person because it's the date of birth, and I'm--
6 and I suspect it is just a typo, but--

7 MS. CENCI: --At the end, Your Honor, are you
8 going to put on the record your reason for sustaining the
9 objection?

10 THE REFEREE: Yes.

11 MS. CENCI: Okay, thank you.

12 THE REFEREE: All right. So, now we're up to--
13 That was 1-- That was 11.

14 MS. CENCI: Yep. Commission Exhibit 1J, for
15 identification is-- three, four, five, six, seven, eight-- a
16 nine-page document, certifying-- Sorr-- with a certificate
17 of conviction for the County Court, County of Broome, in
18 the matter of *The People of the State of New York against*
19 *David J. English*, that on September 14, 1988, defendant
20 was convicted of attempted arson in the third degree in
21 violation of Sections 110, 150.20(1) of the Penal Law, class
22 D felony. And sentence was imposed on November 1,
23 1988. A term of imprisonment in the Broome County Jail
24 for six months with credit for time served and probation for
25 a period of five years.

901.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: Is there an objection?

2 MR. DEROHANNESIAN: There is.

3 THE REFEREE: Sustained.

4 MS. CENCI: Commission Exhibit 1L is a two-page
5 document. The first is a--

6 THE REFEREE: --Oh, no, aren't we on K?

7 MS. CENCI: Oh, I-- I'm sorry--

8 THE REFEREE: --That's all right--

9 MS. CENCI: --I'm out of order.

10 THE REFEREE: Take-- Take your time.

11 MS. CENCI: Exhibit 1K. Six-page document
12 certifying-- It's a certificate of conviction or disposition
13 from the City Court of Binghamton for defendant James
14 Stiloe, for the offense of false report of child abuse in
15 violation of Penal Law 240.50-4, conv-- conv-- disposition
16 convicted after trial on May 23, 2008. Sentence date 10--
17 October 17, 2008, 60 days and three years probation.

18 THE REFEREE: Is there an objection?

19 MR. DEROHANNESIAN: There is an objection I
20 want to add on this one that one of the additional reasons
21 that the Commission offered it was to contradict the
22 witness's testimony. It is also an objection that the sentence
23 of any of these individuals is not relevant. It is the
24 conviction that may be relevant to credibility should they
25 testify. So, that's an additional object-- or, point I wanted

902.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 to make.

2 THE REFEREE: Sus--

3 MS. CENCI: --Well--

4 THE REFEREE: --Sustained.

5 MS. CENCI: Okay. I was asked to read the
6 documents (unintelligible)--

7 THE REFEREE: --No, that's fine. No, I-- And that
8 was my request and it was appropriate that you do so. I also
9 note that he admitted the conviction on--

10 MR. DEROHANNESIAN: --Yes--

11 THE REFEREE: --his testimony.

12 MS. CENCI: Okay.

13 THE REFEREE: Now, we're on 1L.

14 MS. CENCI: Yes. This is a two-page document.
15 The first is the-- the certification page and the second is a
16 district attorney superior court criminal disposition report
17 for Martin-- I believe it's "J."-- Shaw, showing a
18 conviction for robbery in the first degree, in violation of
19 Section 160.15(2) of the Penal Law. Sent-- Sentenced for
20 that charge on February 27, 1981, to four to 12 years, and a
21 second charge of a violation of Penal Law 160.15(2), and it
22 says, "Disposition code"-- I don't know. I'm not sure.

23 THE REFEREE: Well, on charge it's says, "Conv"--
24 "C-O-N-V," so, conviction.

25 MS. CENCI: Yeah.

903.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: It looks to me like 160--

2 MS. CENCI: --Sentence--

3 THE REFEREE: --.15 of the Penal Law.

4 MS. CENCI: Yeah, it says, "160.15." I think they
5 were two-- two counts of the same--

6 THE REFEREE: --Well, it's-- Charge 1 is 160.15,
7 as well, so--

8 MS. CENCI: --Right, so there--

9 THE REFEREE: --that would be my assumption--

10 MS. CENCI: --were two counts. And then the
11 sentence on charge 2 was three to nine years.

12 THE REFEREE: And those are concurrent, right?
13 To be served concurrently? Isn't that the box that's
14 checked?

15 MS. CENCI: Yes, the boxes are checked concurrent.

16 THE REFEREE: All right. Is there an objection?

17 MR. DEROHANNESIAN: There is.

18 THE REFEREE: Sustained. It's my finding that
19 these convictions are both-- Well, in part, remote. Some
20 are remote. Certainly, the last one is-- is so old that
21 impeaching a witness with that or using it here-- I--
22 Frankly, I think it violates public policy of giving somebody
23 a second chance, but apart from that, it's my view as I read
24 paragraph 10 of the-- of the administrative complaint, that
25 the issue in this case is whether or not the Respondent told

904.

(Hon. Richard H. Miller, II)

1 Mr. Kachadourian and Ms. Gallagher and mentioned or
2 referred to these people as criminals or unsavory, or that
3 they had criminal records. Whether they in fact had them or
4 not, I find is not relevant. It is what they believed and they
5 understood when these alleged statements of the
6 Respondent were made. He could have been making them
7 up, and it wouldn't matter, because it's their perception and
8 their understanding and their reaction. So, whether they
9 were in fact convicted criminals, is really irrelevant. Plus,
10 some of the charges are totally irrelevant, and I don't think
11 make any difference whatsoever in whether these people
12 are-- are violent, or enforcers, but I think that the issue,
13 really, is whether Kachadourian and Gallagher believed
14 what was told to them, not whether it was in fact true. So,
15 that's my ruling. I think I'm right, and certainly, the
16 Commission is free to argue otherwise after the hearing.
17 All right. That having been said, and given the ruling, do
18 you have witnesses that have nothing to do with this issue?
19 Because we don't-- We really don't need Mr. Shaw to
20 come in and say that his conviction was in 1981, because it
21 really doesn't matter, does it?

22 MR. DEROHANNESIAN: And-- But I was also
23 going to ask him whether were-- whether there was ever
24 any discussion with Judge Miller about him being an
25 enforcer or making any threats to show--

905.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: --Well, threats to these two.

2 MR. DEROHANNESIAN: To any-- About any--
3 Yeah, to these two.

4 THE REFEREE: To these two. Not anybody else.
5 It should be quick.

6 MR. DEROHANNESIAN: Yeah.

7 THE REFEREE: Let's bring him in.

8 COURT OFFICER: Mr. Shaw, correct?

9 THE REFEREE: Yes. So, I'm going to give these
10 back.

11 MS. CENCI: Your Honor, I'm sorry.

12 THE REFEREE: What? Should we hold the
13 witness?

14 MS. CENCI: Part-- Part-- Well-- Just-- Part of
15 the-- I had requested that--

16 THE REFEREE: --Oh, okay. Hang on one sec. I
17 know we keep doing this.

18 MS. CENCI: --I'm sorry--

19 COURT OFFICER: --Okay--

20 THE REFEREE: Stand there. Don't go back.

21 MS. CENCI: He-- You just handed me back the
22 exhibits that you declined to introduce into evidence--

23 THE REFEREE: --Yes.

24 MS. CENCI: Are you also declining to provide them
25 with the record of the proceeding to the Clerk of the

906.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 Commission in the event that the Commission determines
2 that they should be included as part of the record? Because
3 otherwise I don't know how that would be accomplished.

4 THE REFEREE: I'm not going to do that. I think
5 that we have accomplished what, I believe, in fairness the
6 Commission needs by reciting what's there. If it's-- If it's
7 determined that my ruling was in error, they will have
8 certainly sufficient basis to understand that paragraph 10
9 was accurate. So, I'm not going to send these--

10 MS. CENCI: --Thank you. I just wanted to clarify--

11 THE REFEREE: --Well, that's fine. I'm not going
12 to send-- but I did-- I have determined that we're going to
13 mark the letter as Referee Exhibit 5 and at some point, we'll
14 get that done. So, let's get the witness.

15 MS. CENCI: Okay. Thanks.

16 THE REFEREE: Good morn-- Wow. It's good
17 afternoon. Right here.

18 MR. SHAW: Okay.

19 THE REFEREE: Sir, can you raise your right hand?

20 MR. SHAW: Yes.

21 THE REFEREE: Do you swear-- Do you swear or
22 affirm under the penalty of perjury that the testimony you
23 are about to give is the truth, the whole truth, and nothing
24 but the truth?

25 MR. SHAW: I do.

907.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Shaw - Direct)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MARTIN SHAW,

having been duly sworn, was examined and testified as follows:

THE REFEREE: Okay, please sit down. Sir, my name is Robert Barrer. I've been appointed by the Commission on Judicial Conduct to serve as special Referee for this proceeding. So, it's my job to rule on any objections that may be made.

THE WITNESS: Sure.

THE REFEREE: You're going to be asked some questions by counsel here. It's important that you wait until the question has been asked completely before you respond--

THE WITNESS: --Okay--

THE REFEREE: --so we don't get two people talking at once. It's also important that you answer verbally instead of shaking your head--

THE WITNESS: --Okay--

THE REFEREE: --or gesture.

THE WITNESS: All right, sir.

MR. DEROHANNESIAN: Okay.

THE REFEREE: Counsel?

DIRECT EXAMINATION

BY MR. DEROHANNESIAN:

Q. Let me start over again. Tell us your name, please?

A. My name is Martin Shaw.

908.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Shaw - Direct)

1 Q. And what is your occupation?

2 A. I'm a master electrician for the Village of Endicott.

3 Q. How old are you?

4 A. I'm 66.

5 Q. And how long have you been a master electrician for the Village of
6 Endicott?

7 A. 21 years in July.

8 Q. And before that what did you do?

9 A. I worked for myself.

10 Q. As an electrician?

11 A. As an electrician, yes.

12 Q. And do you know Richard Miller?

13 A. Yes, I do.

14 Q. How do you know him?

15 A. I've done some work for Rick-- Richard at a couple of his houses,
16 and we met at therapy. I was-- I was-- I pulled some muscles in my
17 neck and I was going for physical therapy and my therapist said,
18 "Geez, he's talking about refurbished"--

19 MS. CENCI: --Okay, objection.

20 THE REFEREE: That's all right. Ask another
21 question.

22 MR. DEROHANNESIAN: Yeah.

23 BY MR. DEROHANNESIAN:

24 Q. And about how long ago was it that you met Rick Miller at your
25 physical therapy?

909.

(Shaw - Direct)

- 1 A. Oh, I'd say two and a half-- About two and a half years now.
- 2 Q. Okay. So, that's how long you've known him?
- 3 A. Yes, sir.
- 4 Q. Is that fair to say? So, your full-time job is with Endicott?
- 5 A. Yes, sir.
- 6 Q. Is that right--
- 7 A. --I share the same office with the SWAT team. I've been there for 21
- 8 years with the SWAT team.
- 9 Q. Okay.
- 10 A. I'm the only civilian there, so I work with them.
- 11 Q. Okay and that--
- 12 A. --I do-- I did some things with them.
- 13 Q. And that position has stayed the same with Endicott?
- 14 A. Yes, sir. Yes, sir.
- 15 Q. At some point in your past, did you have some type of criminal justice
- 16 issue?
- 17 A. Yes, about--
- 18 Q. --How long ago-- How long ago was that?
- 19 A. Oh, geez, almost 30 years ago.
- 20 Q. Okay. Do you remember what year?
- 21 A. '80?
- 22 Q. That you got released?
- 23 A. And then-- I was released and then I was-- after six months of being
- 24 on parole, I was issued a certificate of relief, and which means I can
- 25 hold political office, I can vote-- because I was doing so well in my

910.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Shaw - Direct)

1 math and going to school as a master electrician training--

2 MS. CENCI: --Objection--

3 A. --as an apprentice.

4 MS. CENCI: Objection. Move to strike.

5 THE REFEREE: Overruled.

6 MR. DEROHANNESIAN: Yeah.

7 BY MR. DEROHANNESIAN:

8 Q. So, you have what's called a certificate of relief?

9 A. Yes. Yes, sir.

10 Q. Okay. And what was your conviction for?

11 A. I happened to be in a car with another guy who held up a gas station.

12 MS. CENCI: Objection. He asked what the
13 conviction was for.

14 THE REFEREE: I-- Do you know what the charge
15 was that you were convicted for?

16 THE WITNESS: Aiding and abetting.

17 THE REFEREE: Aiding and abetting what?

18 THE WITNESS: In an armed robbery.

19 THE REFEREE: Okay.

20 MR. DEROHANNESIAN: Okay.

21 THE WITNESS: Yes.

22 BY MR. DEROHANNESIAN:

23 Q. Would it be fair to say since you've got out 34 years ago, you've had
24 no problems with the law?

25 A. Oh, absolutely not, sir. No.

911.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Shaw - Direct)

1 Q. Okay.

2 A. And I've been working with the police for the last 21 years and side
3 by side on-- on an everyday basis. I--

4 Q. --Can we just have-- Okay.

5 A. Go ahead.

6 Q. Just a few questions about Judge Miller. At any time that you've been
7 with Judge Miller, has he ever asked you to act as his enforcer?

8 A. Oh, absolutely, not--

9 MS. CENCI: --Objection. Objection--

10 A. --Absolutely not.

11 THE REFEREE: Well-- Just-- No, no-- You have
12 to wait. There's an--

13 MS. CENCI: --Objection.

14 THE REFEREE: What's the ground?

15 MS. CENCI: The-- We don't know what that term
16 means.

17 THE REFEREE: Well, I-- Do you know what the
18 term "enforcer" means?

19 THE WITNESS: Yes. Yes, sir. That's why I'm
20 here. I--

21 THE REFEREE: --Well, just a minute. It's-- Do
22 you know what it means? What it does it mean to you?

23 THE WITNESS: Well, apparently--

24 MS. CENCI: --I--

25 THE REFEREE: --No, no. Just to you, what does

912.

(Shaw - Cross)

1 that term mean?

2 THE WITNESS: Somebody that delegates a job to
3 another person.

4 THE REFEREE: In a criminal sense?

5 THE WITNESS: Yes.

6 THE REFEREE: All right.

7 BY MR. DEROHANNESIAN:

8 Q. And specifically, did you ever hear Judge Miller ever make any threats
9 against Rachelle Gallagher or Mark Kachadourian?

10 A. Absolutely not, sir.

11 THE REFEREE: That-- You've answered the
12 question.

13 BY MR. DEROHANNESIAN:

14 Q. And did he ever ask you, specifically, with respect to Rachelle
15 Gallagher or Mark Kachadourian to act as his enforcer?

16 A. No, sir. Not at all ever.

17 MR. DEROHANNESIAN: I have nothing else.

18 THE REFEREE: All right. Ms. Cenci, any
19 questions?

20 CROSS-EXAMINATION

21 BY MS. CENCI:

22 Q. Mr. Shaw, I'm Cathleen Cenci and I'm acting as counsel for the
23 Commission in this proceeding.

24 A. Okay.

25 Q. Are you friends with Judge Miller?

913.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Shaw - Cross)

- 1 A. I consider myself a friend, yes.
- 2 Q. And are you testifying here today pursuant to a subpoena or are you
- 3 testifying voluntarily?
- 4 A. Voluntarily, I came on my own.
- 5 Q. Okay. Do you know anything about the Commission's charges
- 6 against the judge?
- 7 A. No, I don't. I--
- 8 Q. --But some--
- 9 A. --I did read something that was in the paper a week ago. Other than
- 10 that, I know nothing. It just-- We never had a conversation about
- 11 anything.
- 12 Q. Okay, but someone told you before you got in that chair that there was
- 13 something about an enforcer that you were here to testify about, is that
- 14 right?
- 15 A. Yes.
- 16 Q. Who told you that?
- 17 A. Well, the-- vest-- investigator said that they're looking at some
- 18 people and I go, "Why would it be me bec-- of all people?"
- 19 Q. Okay. Some private investigator talked to you?
- 20 A. Yes.
- 21 Q. When was that?
- 22 A. Maybe a month ago.
- 23 Q. And do you know whether that person was hired by Judge Miller or--
- 24 A. --Oh, I don't know that much--
- 25 Q. --his legal team?

914.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Shaw - Cross)

- 1 A. It was a brief conversation.
- 2 Q. Okay. So, some investigator just starts asking you questions and you
- 3 answer--
- 4 A. --Well--
- 5 Q. --but you don't know why he's--
- 6 A. --Yes, I know why.
- 7 Q. Okay, why?
- 8 A. It pertained-- It pertained to Rick-- Rick Miller, Judge Miller, and
- 9 they just asked me if we were friends and I said, "Yes, we're friends,
- 10 absolutely," and I've done work for both his parents' house, his house,
- 11 his apartment houses, and how it-- how we met.
- 12 Q. Okay.
- 13 A. So I--
- 14 Q. --And did that person tell you anything about why they were asking
- 15 you these questions?
- 16 A. No, I just thought that it-- you know, if they're looking at current
- 17 friends of his, I consider myself a friend because I do work for him
- 18 and he's been good to me.
- 19 Q. Oh, I'm sure. Did you-- When this investigator contacted you, did
- 20 you contact Judge Miller--
- 21 A. --No--
- 22 Q. --to let him know?
- 23 A. No.
- 24 Q. No? You didn't ask him why--
- 25 A. --No--

915.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Shaw - Cross)

1 Q. --some investigator coming to talk--

2 A. --It--

3 THE REFEREE: --You have to wait until she
4 finishes.

5 THE WITNESS: I'm sorry.

6 BY MS. CENCI:

7 Q. You weren't curious as to why some investigator was coming to talk
8 to you about him?

9 A. I did speak with one of-- another--

10 Q. --Well, no-- I said-- No, I didn't--

11 A. --No--

12 Q. --Were you cu-- You weren't curious?

13 A. No.

14 Q. You said that you've done some work for the judge at his houses?

15 A. Mm-hmm.

16 Q. Does he own rental properties?

17 A. Yes.

18 Q. You do electrical work there?

19 A. Yes, I'm a master electrician in the Triple Cities.

20 Q. Do you do any other kind of work for Judge Miller?

21 A. Other than electrical work? No, nothing-- nothing, no.

22 Q. Do-- Did you ever have occasion to collect rents from any of the
23 tenants of his?

24 A. Absolutely not.

25 Q. Have you ever been with anyone else when rent was being collected

916.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Shaw - Cross)

- 1 from--
- 2 A. --No--
- 3 Q. --individuals?
- 4 A. No, that would never have anything to do with me. I just do electrical
- 5 work, he pays me--
- 6 Q. --Mm-hmm--
- 7 A. --and sometimes I have to call him because I know he's busy in order
- 8 to get paid.
- 9 Q. Okay. Now, you said your understanding of what an enforcer is that
- 10 the person delegates a job to another person? Is that-- Is that-- Did I
- 11 have that right?
- 12 A. No.
- 13 Q. Is that what you said? No?
- 14 A. I said I think what it meant-- means is when you delegate a job to a
- 15 person like when-- if-- at work, if I'm at work, they'll assign me a
- 16 job to put a camera up, for example, to help them to, say, in order to
- 17 enforce the law, so that's--
- 18 Q. --No, but you said-- Oh, sorry--
- 19 A. --how I take it.
- 20 Q. You said that in the-- something about in the criminal context it was--
- 21 A. --No, I didn't say criminal.
- 22 Q. Okay. Well, the record will speak for itself in that regard. You talked
- 23 about your criminal conviction and I think you said it was for aiding
- 24 and abetting an armed robbery.
- 25 A. Yes.

917.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Shaw - Cross)

1 Q. Is that what you said?

2 A. Mm-hmm. Yes, ma'am.

3 Q. Weren't you actually convicted of two counts of robbery in the first
4 degree?

5 A. By-- By jury I-- By jury.

6 Q. Right, you were convicted of robbery.

7 A. By jury.

8 Q. Yes. And you were sentenced to how many years in prison?

9 A. Four--

10 MR. DEROHANNESIAN: --Obj--

11 A. --to 12.

12 Q. Okay.

13 MR. DEROHANNESIAN: Objection.

14 THE REFEREE: Overruled.

15 BY MS. CENCI:

16 Q. You were sentenced to four to 12 years in prison, is that right?

17 A. Yes, I was.

18 Q. Did you serve your prison sentence?

19 A. I sure did.

20 Q. Is it fair to say you're here today because you want to help Judge
21 Miller out of whatever this situation is that he's in?

22 A. No, I'm here because I'm a friend and I feel that's the-- the context of
23 the whole situation is false. And I feel bad for him.

24 Q. Okay. So, what do you know about the context of the situation which
25 you feel is false?

918.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Shaw - Cross)

- 1 A. Just-- Just what I read in the paper.
- 2 Q. Okay. What did you read in the paper?
- 3 A. That there were some allegations and verbal talk, which I've-- I
- 4 wasn't privy to any of that. I'm his master electrician, I only work for
- 5 him, and I know nothing. But I know his personality because I've
- 6 been around with him.
- 7 Q. Mm-hmm.
- 8 A. And he's never been off-key with me. He's never been off-key--
- 9 Q. --Okay--
- 10 A. --about his family--
- 11 Q. --I didn't ask you that.
- 12 A. Okay.
- 13 Q. Have you visited the judge in chambers?
- 14 A. Absolutely not.
- 15 Q. Is it fair to say that if-- if, in fact, Judge Miller used your name,
- 16 mentioned your name to other people when you weren't there, you
- 17 wouldn't know about that, would you?
- 18 MR. DEROHANNESIAN: Object to the form of the
- 19 question.
- 20 THE REFEREE: The answer's obvious.
- 21 THE WITNESS: Right?
- 22 THE REFEREE: You can answer.
- 23 A. Yes.
- 24 Q. Okay. Thank you.
- 25 THE REFEREE: Anything further?

919.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. DEROHANNESIAN: No.

THE REFEREE: Sir, thank you very much for
coming in--

THE WITNESS: --Thank you--

THE REFEREE: --I just want to advise that these
proceedings are confidential, so please don't discuss--

THE WITNESS: --Absolutely--

THE REFEREE: --your testimony here today--

THE WITNESS: --You betcha--

THE REFEREE: --with anyone.

THE WITNESS: You bet.

THE REFEREE: Thank you for coming.

THE WITNESS: Thank you very much.

THE REFEREE: Drive safely.

THE WITNESS: Thank you. Thank you, sir.

MS. SCALISE: Thank you.

THE WITNESS: Thank you.

THE REFEREE: All right. I think we're going to
take our lunch break, so let's go off the record.

MR. FITZPATRICK: We're off the record.

(OFF THE RECORD)

MR. FITZPATRICK: We're back on the record.

THE REFEREE: We-- We have counsel for the
Commission present and I'm pausing. We have counsel for
Respondent present and Respondent is present, as well.

920.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 Who is your witness, Mr. Der--

2 MR. DEROHANNESIAN: --Jerry Penna.

3 THE REFEREE: All right.

4 COURT OFFICER: He just went in the restroom,
5 Judge.

6 THE REFEREE: What?

7 COURT OFFICER: I think he just went in the
8 restroom, he should be--

9 THE REFEREE: --All right. Well, we'll wait.

10 MR. FITZPATRICK: Should we go off the record?

11 THE REFEREE: Yeah, let's go off the record.

12 Thank you.

13 (OFF THE RECORD)

14 THE REFEREE: All right. We're present with all
15 counsel and Respondent, as well. Sir, can you raise your
16 right hand? Do you swear or affirm under the penalty of
17 perjury that the testimony you are about to give is the truth,
18 the whole truth, and nothing but the truth?

19 MR. PENNA: Yes, I do.

20 J E R R Y M. P E N N A,

21 having been duly sworn, was examined and testified as follows:

22 THE REFEREE: Please sit down. Sir, my name is
23 Robert Barrer. I'm a-- I've been appointed by the
24 Commission on Judicial Conduct to serve as a special
25 Referee for this matter, which means I'm going to help run

921.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

1 this. You're going to be asked some questions by the
2 attorney for the Respondent, who is Judge Miller, and then
3 you will probably be asked questions by the attorney for the
4 Commission on Judicial Conduct. It's important that you
5 when you answer the questions you-- you do so verbally as
6 opposed to shaking your head. It's also important that you
7 wait until the question is fully asked before you answer.
8 And if there's an objection, please wait, and then I'll tell
9 you whether to proceed. Is that-- sound okay to you?

10 THE WITNESS: Yes, it does. Thank you.

11 THE REFEREE: All right. Counsel?

12 DIRECT EXAMINATION

13 BY MR. DEROHANNESIAN:

14 Q. Tell the Referee who you are and what you do.

15 A. My name is Jerry M. Penna. I'm an insurance broker. I own an
16 insurance agency in the Southern Tier area and I've been in the
17 business for 46 years.

18 Q. How old are you?

19 A. 70 years old.

20 Q. And what's your background?

21 A. My background is a native of Binghamton area. Went to school in
22 Binghamton. Went to college. Spent 14 months in Vietnam. Came
23 out of the service, I received a 19-month discharge. Normal stay in
24 the Army is 24 months, and I got an honorable discharge at 19
25 months. That was in 1970-- 1971, 1972. I took three months off and

922.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

1 then went into the insurance business, and I've been in the insurance
2 business since that date.

3 Q. So, you're a native of the Broome County area, correct?

4 A. I'm a native of the Broome County, yes. The only time I've left the
5 area is when I was overseas.

6 Q. And do you know someone by the name of-- Well, let me ask you
7 about your business. Where is this business located?

8 A. The agency?

9 Q. Yes.

10 A. It's on Azon Road in Johnson City.

11 Q. How long have you been on Azon Road in Johnson City?

12 A. 2000 and-- January of 2012.

13 Q. Okay. And is this a building that has unsavory characters in it?

14 MS. CENCI: Objection.

15 MR. DEROHANNESIAN: There was testimony--

16 THE REFEREE: --No, overruled. Well, first of all,
17 do you know what an unsavory character is? Do you know
18 what that term means?

19 THE WITNESS: Yeah, you're going to make me
20 think. Unsavory, I believe, means unacceptable, sleazy,
21 undesirable, despicable, et cetera, et cetera.

22 MS. CENCI: Your Honor, I object to move to strike.

23 The witness's opinion is irrelevant.

24 MR. DEROHANNESIAN: Well--

25 THE REFEREE: --No, overruled.

923.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

1 MR. DEROHANNESIAN: And he had been there,
2 too, once I think he claimed.

3 BY MR. DEROHANNESIAN:

4 Q. Tell me about this building that you're in. Describe it.

5 A. It's a-- The office-- It's a building-- is a professional building, built
6 in 19-- the late '80s, I believe. We occupy about 3,500 square feet. I
7 have a very professional office. Amenities are beautiful. We're very
8 proud of it. It's-- We were told, and it's just a fact, that it's one of the
9 nicest insurance agencies in the Southern Tier. We've also been told
10 this by company representatives that visit our office and our client
11 base. And in addition to that, I have a staff of females, all licensed
12 with the State of New York. Very professional. They dress
13 professionally every day. They act in a very professional manner.
14 I've got my licenses with the state for 46 years in my office, also. We
15 have never, and the record will attest to that, there's never been a
16 complaint--

17 MS. CENCI: --Your Honor, the witness is giving a
18 narrative.

19 THE REFEREE: Yeah, I think we're--

20 MR. DEROHANNESIAN: --(Unintelligible)--

21 THE REFEREE: --Ask another question.

22 THE WITNESS: Does that satisfy--

23 MR. DEROHANNESIAN: --Yeah--

24 THE WITNESS: --Okay--

25 THE REFEREE: --Yeah, that's fine.

924.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

1 THE WITNESS: Okay, I'm sorry, I didn't--

2 THE REFEREE: --No, you're fine--

3 BY MR. DEROHANNESIAN:

4 Q. --And when you say a "professional building," are there other
5 professional tenants in the building?

6 A. Yes, there is. There's a professional electrical contractor on the
7 second floor, but far from our occupancy. Schuler-Haas is the name
8 of that electrical contractor.

9 Q. Do you know Judge Richard Miller?

10 A. Do I know him? Yes, I do.

11 Q. Tell me how you first met him or how long you've known him?

12 A. I attended his championship basketball game at the arena when he was
13 17 or 18 years old. He was a senior in high school. So, 17 or 18 years
14 old in the championship game. I knew the family before that, the
15 Hon. Richard Miller, his mother, Rita, and they were friends with my
16 in-laws. His sister Mandy was in our wedding. She was a bridesmaid
17 for my wife. So, over the years, we've maintained a respectable and
18 honorable friendship.

19 Q. And did you play any role in Judge Miller's campaign for family court
20 judge in 2014?

21 A. Yes, I did.

22 Q. What role did you play?

23 A. I was the treasurer.

24 Q. Okay. Have you been asked to be treasurer of political-- other
25 political campaigns besides Judge Miller's?

925.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

1 A. Yes, I have--

2 MS. CENCI: --Objection.

3 MR. DEROHANNESIAN: Okay.

4 MS. CENCI: Objection. Irrelevant.

5 THE REFEREE: Yeah.

6 MR. DEROHANNESIAN: That's it.

7 THE REFEREE: Okay. Ask another question.

8 MR. DEROHANNESIAN: Yeah.

9 BY MR. DEROHANNESIAN:

10 Q. So, you played the role of treasurer in Judge Miller's campaign,
11 correct?

12 A. Yes, I did.

13 Q. Did you have a chance to visit Judge Miller at his chambers at Broome
14 County Family Court at some point after he was elected?

15 A. Yes, I did.

16 Q. Can you recall approximately or give a sense of how many times you
17 may have been-- and I realize you may not have an exact number, but
18 if you do, that's fine, too. Give us your best ability to reference those
19 visits to Judge Miller.

20 A. Less than a handful.

21 Q. Okay. When-- What was the purpose when you would go to visit
22 Judge Miller at his chambers?

23 A. He's a client of ours and due to his scheduling, I would meet with
24 him, like I said, on those occasions to deal with insurance related
25 matters.

926.

(Penna - Direct)

- 1 Q. Okay. And when you would do that, do you recall the time of some of
2 these meetings?
- 3 A. They were at the end of the day, 4:00, quarter to 4:00, towards the end
4 of the day, 4:15.
- 5 Q. Mm-hmm.
- 6 A. I don't have an exact time, sir.
- 7 Q. And what about other reasons that you went to courthouse to meet
8 Judge Miller when he was family court judge?
- 9 A. I had no other reasons to.
- 10 Q. Did you ever socialize or go someplace after meeting him?
- 11 A. Yeah, on occasion, we would to get caught up on news with family
12 and everything. We-- I think we went to dinner once or had a
13 sandwich, but that was the extent of it.
- 14 Q. I'd like to bring your attention to the year 2017 and the month March
15 and April of 2017. One date I want to ask you about is April 29,
16 2017, which was a wedding. Were you present at a wedding on April
17 29?
- 18 A. I was-- My wife and I did attend a wedding.
- 19 Q. Okay--
- 20 A. --On or about-- On or about that date, yes.
- 21 Q. So, I'll come-- I'll come back to the wedding, but just to give you a
22 reference point--
- 23 A. --Go ahead--
- 24 Q. --March and April would be the two months right before that-- that
25 wedding, okay?

927.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

- 1 A. Okay.
- 2 Q. And I want to ask you if you recall being in Judge Miller's chambers
3 in that time period?
- 4 A. Difficult question for me to answer accurately.
- 5 Q. Okay.
- 6 A. Before the wedding, sir?
- 7 Q. Yes. Would it be fair to say you would have been there at some point
8 before the wedding?
- 9 A. Yes.
- 10 Q. Okay.
- 11 A. Okay. Exact date I don't have an exact for, I'm sorry, I'm not--
- 12 Q. --That's fine--
- 13 A. --My memory's not that good.
- 14 Q. So, before April 29th, did you meet with Judge Miller and have a loud
15 conversation with him in which matters of a sexual nature were being
16 discussed by you and Judge Miller?
- 17 A. No.
- 18 Q. And before April 29th of 2017, March, April, or any time before that,
19 did you ever have a conversation with Judge Miller in his judicial
20 chambers about sex, women?
- 21 A. No.
- 22 Q. At any time before April 29th, 2017, in the March and April time
23 period, or any time before that, did you have any conversation with
24 Judge Miller in his chambers about quote, "the large size of Ms.
25 L [REDACTED]'s breasts"?

928.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

- 1 A. No.
- 2 Q. And just so that we're-- cover any potential possibility, after April
3 29th, 2017, did you have any discussion at any time in Judge Miller's
4 chambers where you discussed sex, women, and the large size of Ms.
5 L [REDACTED]'s breasts?
- 6 A. No.
- 7 Q. And did you ever discuss at any time with Judge Miller in his
8 chambers anything about quote, "Asian women"?
- 9 A. No.
- 10 Q. At any time that you would speak to Judge Miller in his chambers, did
11 Judge Miller ever say anything about having cement shoes in the size
12 of Ms. Gallagher or Mr. Kachadourian?
- 13 A. No.
- 14 Q. At any time when you visited Judge Miller, did he ever say to you
15 anything about cement shoes or concrete shoes of any kind for
16 anybody?
- 17 A. No.
- 18 Q. At any time during any of your meetings with Judge Miller at the
19 Broome County Family Court, did he ever make any comment to you
20 in jest, words, or substance, that he would take them, Rachelle
21 Gallagher and Mark Kachadourian, down if they ever betrayed him?
- 22 A. No.
- 23 Q. I said I wanted to go back to April 29, 2017, and ask about a wedding.
24 Do you know whose wedding that was?
- 25 A. The daughter of Rick and Tammy Balles.

929.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

- 1 Q. Okay. Fairly large wedding?
- 2 A. Yes.
- 3 Q. Okay. And did you have an assigned seat at that wedding?
- 4 A. We had an assigned table--
- 5 Q. --Mm-hmm--
- 6 A. --and I believe we-- I believe the seat was assigned, but I know we
- 7 had an assigned table, so.
- 8 Q. Mm-hmm. And do you recall who was at your table?
- 9 A. Yes.
- 10 Q. And let me bring your attention to someone named Rachelle
- 11 Gallagher.
- 12 A. She sat to my left.
- 13 Q. Did you know her from before April 29th?
- 14 A. Yes.
- 15 Q. How did you know Rachelle Gallagher?
- 16 A. I knew her. I met her just after the inauguration of when Rick became
- 17 a judge.
- 18 Q. Okay. Had you spoken to her before?
- 19 A. On occasion, yes.
- 20 Q. Okay. And would you describe-- So, that would be sometime after
- 21 Rick was elected, you think, or around the time of his election as
- 22 family court judge when--
- 23 A. --Yes, and then if I visited him in his chambers, of course, just the
- 24 passageway to get to his office--
- 25 Q. --Mm-hmm--

930.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

- 1 A. --we would have to go through her office, I believe.
- 2 Q. Okay. And you said she was sitting to your left?
- 3 A. At the recep-- At the wedding table, yes.
- 4 Q. Yes. Did-- How long would you say you were sitting with her the
- 5 night of the April 29th, 2017, wedding?
- 6 A. For the duration of the entire dinner and for the most part of the
- 7 cocktail reception period. Sitting, kind of, you know, constantly right
- 8 next to her, yes, if that's what you mean.
- 9 Q. And did you have fairly continuous conversation with her?
- 10 A. Yes, we did.
- 11 Q. Your wife was there?
- 12 A. My wife was sitting to my right.
- 13 Q. And her husband was there?
- 14 A. My wife?
- 15 Q. No, excuse me-- Rachelle's husband was there also?
- 16 A. He was sitting to her left.
- 17 Q. Le-- Okay. So, you were actually sitting next to each other?
- 18 A. Yes.
- 19 Q. Side-by-side?
- 20 A. Yes.
- 21 Q. And what were some of the topics of conversation you had with her?
- 22 A. The consumed conversation was--
- 23 MS. CENCI: --Objection. Objection.
- 24 THE REFEREE: Overruled.
- 25 A. The consumed conversation was about her back ailment. Her back

931.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

1 and neck-- her spine.

2 Q. Okay. So, a fair amount of conversation was about her health
3 condition?

4 A. 99 percent of it was.

5 Q. And yours?

6 A. I listened to her.

7 Q. Do you know something about backs and--

8 A. --I've had four major back operations.

9 Q. Okay. So, that was a-- a significant topic?

10 A. It was a significant topic.

11 Q. Okay. Have other small talk about things going on in your lives?

12 A. No conversation.

13 Q. Okay. Now, at any time while you were speaking to Ms. Gallagher on
14 April 29th, 2017, did she indicate to you that she had any concerns
15 about any conduct by Judge Miller?

16 A. No words expressed regarding that.

17 Q. Did she have any complaints at all about her job or Judge Miller, as
18 she sat next to you on April 29th, 2--

19 A. --No complaints about her job nor-- not of over Richard Miller.

20 Q. Okay. How would describe her mood talking to you on April 29th,
21 2017?

22 MS. CENCI: Objection. Calls for an improper
23 conclusion.

24 THE REFEREE: I agree. What were his
25 observations?

932.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

1 MR. DEROHANNESIAN: Okay. Fair enough.

2 BY MR. DEROHANNESIAN:

3 Q. Describe your observations of Ms. Gallagher's--

4 A. --Very-- Very--

5 Q. --demeanor?

6 A. Yeah. She was a very-- a very depressed state of mind because of her
7 back because that was the-- that was the conversation.

8 Q. Mm-hmm.

9 A. And I sympathized for her because I can-- I could recollect what I
10 went through.

11 Q. Mm-hmm.

12 A. Conversation, just was regarding what she was experiencing. The
13 pain, the discomfort, the inconvenience, the normal things that I could
14 relate to. It was a friendly conversation.

15 Q. Okay.

16 A. And then I would engage by expressing to her maybe something for
17 her to consider, you know, "Do you have a heating pad?" Does--
18 "The chair you sit in makes a difference," et cetera, et cetera. The
19 normal things that would apply to someone who has a back problem.

20 Q. Are you okay in that chair right now?

21 A. No, I'm not, but I have an obligation to make and I have to do it.

22 Q. Okay.

23 A. Do I have a choice?

24 THE REFEREE: Would you prefer to stand?

25 THE WITNESS: I'm fine.

933.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Direct)

1 THE REFEREE: All right. Seriously, sir, if you'd
2 rather stand it'd be fine--

3 THE WITNESS: --I-- I'm fine-- Thank you. I'll be
4 fine. I'll stand if I...

5 BY MR. DEROHANNESIAN:

6 Q. Now, you've been interviewed before by the Commission in this
7 matter, correct?

8 A. Yes, I have.

9 Q. And you provided testimony to the Commission?

10 A. Yes, I did.

11 Q. And you were asked to maintain confidentiality?

12 A. Yes, I did.

13 Q. Is this a confidential matter in the Broome County area?

14 A. No, it is not.

15 Q. Is it widely discussed?

16 A. Yes, it is.

17 Q. And that's been true for some time?

18 A. Yes, it has.

19 Q. And, including when you testified before the Commission?

20 A. I said that under oath and I'll say it again under oath.

21 Q. Okay.

22 MR. DEROHANNESIAN: I have nothing else.

23 Thank you.

24 THE REFEREE: Thank you. Ms. Cenci?

25

934.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 CROSS-EXAMINATION

2 BY MS. CENCI:

3 Q. Hello, Mr. Penna.

4 A. How are you today?

5 Q. Do you remember me?

6 A. Nice to see you.

7 Q. You just indicated that the Commission proceeding's been widely
8 discussed in Broome County? Is that what you--

9 A. --That's not what I said.

10 Q. Okay. Well--

11 A. --That's not what he asked me.

12 Q. Yeah. What did you mean by "this matter"?

13 A. The matter of the alleged charges against Richard Miller is a subject
14 of conversation, topic of conversation in the area. That's what--

15 Q. --Do you mean the recent lawsuit that was publicized?

16 A. Everything that was on television.

17 Q. Mm-hmm.

18 A. Matter of fact, it became public on television.

19 Q. Okay.

20 A. Numerous times.

21 Q. Now, are you referring to in or about July of 2017, when the judge
22 was removed from his position as family court judge by the-- by the
23 Office of Court Administration?

24 A. That and the most recent of what he's being--

25 Q. --Okay--

935.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Penna - Cross)

1 A. --the process that I'm participating in now.

2 Q. Okay. That's what I'm asking you. What has been public about this
3 proceeding?

4 A. It was announced on television that he's being-- he was in the
5 newspaper, he was on the front page of the newspaper. It was on
6 Channel 34--

7 Q. --That what?

8 A. That he's being charged.

9 Q. In a lawsuit?

10 A. In a lawsuit. And that's what--

11 Q. --Okay--

12 A. --I'm making reference to--

13 Q. --That-- I just wanted to clarify it's not this proceeding--

14 A. --Yeah, that's what I'm making referen-- I apologize. You know, it's
15 just--

16 THE REFEREE: --Well, I-- I-- I don't know that
17 you've established, and I don't think it matters, whether this
18 witness knows the difference--

19 MS. CENCI: --Okay--

20 THE REFEREE: --but I think that's the issue.

21 THE WITNESS: It's public knowledge, that's all
22 I'm-- can make it.

23 THE REFEREE: No, that's fine. There's nothing
24 pending, just--

25 THE WITNESS: --Okay, I'm sorry--

936.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 THE REFEREE: --She'll ask you another question.

2 THE WITNESS: I'm sorry.

3 BY MS. CENCI:

4 Q. So, Mr. Penna, are you aware that one of the allegations in this
5 proceeding for which you're testifying today is that you and Judge
6 Miller discussed sex and sexual topics in his chambers. Are you
7 aware of that?

8 A. Well, that was brought to my attention by asking questions and I'm
9 responding to what I've been asked, ma'am.

10 Q. Okay--

11 THE REFEREE: --Yeah, she wants the-- prior to
12 today.

13 THE WITNESS: Yes, because I was deposed.

14 MR. DEROHANNESIAN: --No-- If you could--

15 BY MS. CENCI:

16 Q. No, today you are aware-- I think-- I think it's true. You are aware
17 because you were asked about it today.

18 A. But-- But I was asked about it when I met with you, ma'am.

19 THE REFEREE: There you--

20 MR. DEROHANNESIAN: --Yes, thank you.

21 BY MS. CENCI:

22 Q. And when you met with me, that was for testimony in-- on January 8th
23 of 2018--

24 A. --That's on-- in the-- Oneonta--

25 Q. --do you recall?--

937.

(Penna - Cross)

1 A. --correct?

2 Q. Yes.

3 A. Yes.

4 Q. It took us a while to get together to do that testimony--

5 A. --Well, because I had surgery--

6 Q. --Sir. Please--

7 THE REFEREE: --You have to wait-- What--

8 She'll--

9 THE WITNESS: --I'm sorry--

10 THE REFEREE: --It's okay. She'll ask you

11 questions.

12 THE WITNESS: I'm sorry--

13 BY MS. CENCI:

14 Q. --It's just a yes or no--

15 A. --I'm sorry--

16 Q. --It's just a yes or no.

17 A. Okay.

18 Q. It took us a while--

19 A. --Yes, it did--

20 Q. --for you to actually give the testimony--

21 THE REFEREE: --You have to wait--

22 THE WITNESS: --I-- Okay. I'm sorry.

23 BY MS. CENCI:

24 Q. In fact, at one point, you sent your subpoena back to me in the mail,
25 did you not?

938.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 A. Yes, I did.

2 Q. Is it fair to say that what you know of the allegations concerning you
3 are embarrassing to you?

4 A. Embarrassing from a standpoint I've never experienced this in my life,
5 and it's embarrassing because it applies to a gentleman whose--

6 Q. --No, I didn't ask you why--

7 THE REFEREE: --He-- No, I think he's answering
8 your question-- Continue--

9 A. --Let me answer your question, if I may, if--

10 THE REFEREE: --Yes, finish your answer.

11 THE WITNESS: Stop me if I'm--

12 THE REFEREE: --No, keep going--

13 THE WITNESS: --doing something wrong--

14 MS. CENCI: --Well, I asked for a yes or no.

15 BY MS. CENCI:

16 Q. Is it fair to say that the allegations are embarrassing to you?

17 A. I answered you and I said yes.

18 Q. Thank you. Now, you served in Vietnam as a young man, is that
19 right?

20 A. Yes, I did.

21 Q. And about how old were you then?

22 A. 20-- 23, 22.

23 Q. Did you get to know any Asian women at that time?

24 A. Yes.

25 Q. Did you ever discuss with Judge Miller your experiences with any

939.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 Asian women?

2 A. No.

3 Q. To your knowledge, did he know that you had served in Vietnam?

4 A. Yes, he did.

5 Q. How did he know that?

6 A. Because of our friendship over the years, which it-- would apply to
7 my life-- was introduce-- And everybody, all of my acquaintances,
8 ma'am, knew I was in Vietnam. Family, relatives, family friends.

9 Q. And Judge Miller is a friend of yours, correct?

10 A. Yes, he is.

11 Q. For a long time you've known the family?

12 A. That's correct.

13 Q. And he's also a client, is that right?

14 A. Yes, ma'am.

15 Q. How many properties-- Does he insure properties with your agency?

16 A. Yes, he does.

17 Q. How many? Can you say?

18 A. That's-- I maintain and-- Excuse me, if I'm wrong, but I maintain a
19 confidentiality for all matters related to one of my clients, so I don't
20 know how you want to handle that, sir.

21 THE REFEREE: You can answer in this proceeding
22 because this is confidential, so it's not going to get out.

23 THE WITNESS: Okay, fine.

24 THE REFEREE: So, go ahead and answer.

25 A. His residential property, there's another piece of property in Endicott,

940.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 and then there's a piece of property in Johnson City. Three real
2 pieces-- real properties, by definition. They're real properties,
3 ma'am.

4 Q. Okay. Does he insure-- Do you insure vehicles?

5 A. Yes, I do.

6 Q. Does he insure any vehicles with you?

7 A. Yes, he does.

8 Q. How many?

9 A. Four, maybe five, because of family drivers. I don't have the schedule
10 in front of me, ma'am.

11 Q. Okay.

12 A. They're for family vehic-- To answer your question, ma'am, they're
13 family driven vehicles.

14 Q. Okay. Do you-- Are-- I'm not sure if you were asked this, but do
15 you-- Do you sell or provide life insurance?

16 A. No, I don't.

17 Q. Are there any other things that your agency insures for Judge Miller?

18 A. No.

19 Q. Are there clients of his family that you insure?

20 MS. SCALISE: I'm--

21 THE REFEREE: --You've-- You asked that one--

22 MS. CENCI: --I beg-- I-- Withdrawn.

23 THE REFEREE: Yeah.

24 BY MS. CENCI:

25 Q. Are-- Do-- Are any of Judge Miller's family clients of your insurance

941.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

- 1 agency?
- 2 A. Family meaning his-- his sons or daughters?
- 3 Q. Well, for example, his mother?
- 4 A. No.
- 5 Q. His wife?
- 6 A. Yes.
- 7 Q. His sons or daughters?
- 8 A. His son.
- 9 Q. Any of his siblings, if you know?
- 10 A. No others to the best of my knowledge.
- 11 Q. Okay. Would you say that the Millers are good clients of yours?
- 12 A. Yes, they are.
- 13 Q. When you said you had visited the judge in chambers a handful of
- 14 times, what did you mean by a handful?
- 15 A. Less than five.
- 16 Q. And that was since the time he became family court judge up until
- 17 today?
- 18 A. Incorrect. That was from the-- he became judge and had his office,
- 19 the occupancy of his office, up until the time he was dismissed from
- 20 his office.
- 21 Q. Okay.
- 22 A. Whenever date that was.
- 23 Q. And you said you did see Rachelle Gallagher there in chambers--
- 24 A. --Yes, I did--
- 25 Q. --when you visited? How about Mark Kachadourian? Do you know

942.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 him?

2 A. Yes, I do.

3 Q. Did you see him when you visited--

4 A. --I saw him on occasion, yes, I did.

5 THE REFEREE: Okay, you have to wait until she
6 finishes the question.

7 BY MS. CENCI:

8 Q. Did you see him when you visited in chambers?

9 A. Yes.

10 Q. And other than visiting in chambers, did you have occasions to talk
11 with Judge Miller on the telephone?

12 A. Yes.

13 Q. And do you know whether, on those occasions, he was in chambers at
14 work when he spoke with you on the phone?

15 A. I wouldn't know that.

16 Q. This wedding that you attended with-- where Rachelle Gallagher was
17 seated next to you, who sat down first? You or she?

18 A. I honestly can't remember, ma'am, and I'd be lying if I told you
19 anything different.

20 Q. Okay. So, you don't recall that she came along and sat down next to
21 you?

22 A. I-- To answer your question, I can't remember who sat in the chair
23 first.

24 Q. Was there any particular reason why you wanted or didn't want to sit
25 near Rachelle Gallagher?

943.

(Penna - Cross)

1 A. That didn't enter my mind.

2 Q. You said she-- she talked a lot about her back problems?

3 A. Yes, I said that.

4 Q. Did she seem uncomfortable to you at all?

5 A. Yes, she--

6 THE REFEREE: --You-- No, go ahead. You can
7 answer.

8 A. Uncomfortable from a standpoint of sitting or uncomfortable from a
9 standpoint of talking to me?

10 Q. Well, sometimes when people talk a lot, it's because they're
11 uncomfortable. Did you get that impression?

12 A. No, she was very--

13 Q. --Okay--

14 A. --No, she was very passive-- Very-- Or, just regular conversation.

15 Q. Mm-hmm. When was the first time you heard the phrase "cement
16 shoes," in reference to this proceeding?

17 A. When I met with you in Oneonta.

18 Q. And when you and I met in Oneonta for testimony, I had been trying
19 to get you-- I know you had-- You said some problems with your
20 knees, but we-- you and I had been trying to schedule your testimony
21 for some time, correct?

22 A. Yes.

23 Q. After you were first subpoenaed by the Commission for that
24 testimony, and before giving that testimony, did you contact Judge
25 Miller?

944.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 A. Did I contact him?

2 Q. Yes--

3 A. --Directly?--

4 Q. --Relev-- Relative to the subpoena?--

5 A. --I had conversation with him, if that's what you mean--

6 THE REFEREE: --No, no-- You have to-- One sec.

7 You have to wait for her to finish.

8 THE WITNESS: Okay.

9 BY MS. CENCI:

10 Q. Relative to the subpoena?

11 A. No. We talked-- No, if I'm answering your question correctly--

12 THE REFEREE: --Go ahead, if--

13 BY MS. CENCI:

14 Q. --Okay. So, you got a subpoena, and it's-- obviously, it said it was
15 from the Judicial Conduct Commission, correct?

16 A. Correct, correct.

17 Q. Didn't you wonder what it was all about?

18 A. I knew what it was all about because it self-explanatory.

19 Q. You knew that it was about Judge Miller?

20 A. Well-- Well--

21 Q. --No, I'm talking about the first time you were subpoenaed, when you
22 gave testimony--

23 A. --Did I know-- No-- No. The first time I knew about it is when the
24 gentleman appeared in my office to serve me with that, if I'm
25 answering your question.

945.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 Q. No--

2 THE REFEREE: --I think you're talking about two
3 different things--

4 MR. DEROHANNESIAN: --Yeah--

5 THE REFEREE: --Start again--

6 BY MS. CENCI:

7 Q. --My-- My question is, when you initially received a subpoena to
8 testify--

9 A. --Yes--

10 Q. --for which you eventually appeared in January of 2018, did you
11 contact Judge Miller to see what it was all about?

12 A. No.

13 Q. Why not?

14 MR. DEROHANNESIAN: Objection.

15 THE REFEREE: No, you can answer. Go ahead.

16 THE WITNESS: I can answer?

17 THE REFEREE: Yeah.

18 A. Be-- Because I didn't.

19 Q. Because what?

20 A. Because I just didn't.

21 Q. So, you weren't curious as to why the Judicial Conduct Commission
22 was issuing a subpoena to you?

23 A. Initially, to answer your question, no. Initially, you said initially.

24 Q. Right. Well did there come a time--

25 A. --So, I'm responding when you say initially it was like, to me, it's

946.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 immediate.

2 Q. Oh, okay. But after you got the subpoena. At any time after you got
3 the subpoena--

4 A. --I don't recall--

5 Q. --did you--

6 THE REFEREE: --Well, hold on-- Let her finish.

7 BY MS. CENCI:

8 Q. Did you contact Judge Miller?

9 A. I was in for surgery, I'm going to respond, because I went into
10 surgery, I did.

11 THE REFEREE: No, no-- He's-- No-- Your-- I
12 don't think you're understanding. You got the subpoena--

13 THE WITNESS: --Yes--

14 THE REFEREE: --you initially-- you were fine.

15 THE WITNESS: But--

16 THE REFEREE: --At some point, after you got that
17 subpoena, but before you went to Oneonta--

18 THE WITNESS: --That was in--

19 THE REFEREE: --did--

20 THE WITNESS: --Was that--

21 THE REFEREE: That's the question.

22 THE WITNESS: Yes. Yes, it was, because then it
23 was on television, also.

24 BY MS. CENCI:

25 Q. Okay. So, you did contact Judge Miller?

947.

(Penna - Cross)

- 1 A. We had communication, yes.
- 2 Q. All right. Tell us about that. What did you discuss? What did you
- 3 say to him and what did he say to you?
- 4 A. I was just surprised. I was shocked. It was on television, you know,
- 5 what happened, what's-- you know, I was surprised.
- 6 Q. Right. What did you--
- 7 A. --I can't remember my exact words, ma'am. That was well over two
- 8 years ago.
- 9 Q. Did you ask him, "What's this all about? Why am I being
- 10 subpoenaed?"
- 11 A. I might have and if I did it was be-- and he responded and I can't
- 12 remember his exact words, ma'am, I'm not that good. I'm accuse--
- 13 accused or allegations-- I can't say anything else or I'd be lying. I
- 14 can't remember exactly what I said.
- 15 Q. Mr. Penna, your name was never in these news reports, was it?
- 16 A. We're talking about him, ma'am.
- 17 Q. I'm asking you a question. You--
- 18 THE REFEREE: --It's a separate question--
- 19 BY MS. CENCI:
- 20 Q. --You-- Your name was-- You did not read your name in connection
- 21 with any of these news report--
- 22 A. --That's correct.
- 23 Q. Okay. So, now you get a subpoena from the Commission on Judicial
- 24 Conduct--
- 25 A. --Correct--

948.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 Q. --and you've acknowledged now that you did talk to Judge Miller
2 about the subpoena?

3 MR. DEROHANNESIAN: Object to the form of
4 that question. As well as argumentative.

5 THE REFEREE: No, I-- Go ahead. You-- It's--
6 Overruled.

7 MS. CENCI: I haven't finished my question.

8 A. I understand--

9 THE REFEREE: --It's all right. It's overruled,
10 anyway--

11 A. --I understand your question. I'm just trying to recollect during that
12 period, to be exact with you. And it's very difficult for me to be exact
13 in answering that question, because of the activity during that period.

14 Q. Okay.

15 A. When exactly did I, when I didn't, I don't recollect exactly when.

16 Q. When you spoke with the judge, did he tell you that there was an
17 allegation that you and he discussed sex and women's body parts and
18 basically dirty talk in chambers? Did he tell you anything of that
19 nature?

20 A. That-- That I remember, no.

21 Q. Okay.

22 A. There was nothing specific about the allegations, to answer your
23 question.

24 Q. So, what do you recall him saying about why you might be
25 subpoenaed to testify?

949.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Cross)

1 A. Once again, I don't remember--

2 MR. DEROHANNESIAN: --Objection. I don't
3 think there's a foundation for that.

4 THE REFEREE: No, overruled.

5 A. I can't remember exactly other than he's being accused and he
6 adhered to that to the best of my knowledge, without getting into
7 specifics.

8 Q. But did what he told you satisfy your curiosity as to your role in the
9 matter?

10 A. I didn't make it an issue because it was an obligation that I had to
11 honor, ma'am, and that was my primary concern, that I have to honor
12 this. So, I concentrated on-- By concentrating on addressing-- and
13 we had numerous conversations-- addressing what my obligation was
14 to adhere to honor that subpoena. To me, that was my concern and
15 that's what consumed me. "Am I doing something wrong?" because
16 you were very persistent in making sure I was going to appear, but the
17 difficulty was I couldn't because of the disability of my left knee
18 replacement.

19 Q. Okay.

20 A. That I recollect, very clearly.

21 Q. So, you-- Is it fair to say you weren't concerned about the substance
22 of your testimony--

23 A. --No, I wasn't, ma'am--

24 Q. --only whether you could attend the proceeding?

25 A. No, I wasn't, ma'am, because I knew I didn't-- didn't do anything

950.

(Penna - Redirect)

1 wrong. I mean--

2 Q. --Mm-hmm--

3 A. --as an individual.

4 Q. Okay.

5 A. But I have to appear and that's how I-- that's how I interpreted that.

6 Q. Lastly, did you get a subpoena for today's-- today's hearing? Or are
7 you testifying voluntarily?

8 A. I don't believe I received anything, ma'am.

9 Q. So, you were asked by someone to appear and you just appeared
10 without a subpoena, correct?

11 A. Correct. To the best of my knowledge.

12 MS. CENCI: Nothing further.

13 THE REFEREE: Anything further? You want to
14 stand up?

15 THE WITNESS: No, thank you.

16 THE REFEREE: You can go ahead, it's all right.

17 REDIRECT EXAMINATION

18 BY MR. DEROHANNESIAN:

19 Q. You-- Just to put a reference on when you said news reports first
20 began about Judge Miller leaving the family court, was that-- was that
21 around the time that Judge Miller physically left family court that
22 there were first news reports?

23 A. I don't-- I don't know if that was simultaneous but I knew it was
24 within a short period. Very short. It could have been three days, it
25 could have been two days, it could have been four days.

951.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Redirect)

- 1 Q. But in the time period of 2017, long before you received your
2 subpoena, correct?
- 3 A. Yes.
- 4 Q. And that's why you knew there was something going with Judge
5 Miller?
- 6 A. Yes.
- 7 Q. And news reports referred to investigations of Judge Miller as a
8 judge?
- 9 A. Yes, and also the talk of the community--
- 10 Q. --Mm-hmm--
- 11 A. --because everybody was like engaged in that conversation.
- 12 Q. So, that news-- Those news reports generated buzz or talk in the
13 community, correct?
- 14 A. It-- It just blew up. It just was front-page news.
- 15 Q. And you also said, I think, that when you went down to testify in
16 January of 2018, you were asked questions concerning what I've
17 asked you about, correct?
- 18 A. Yes.
- 19 Q. The-- The-- About these conversations and that you were
20 embarrassed, correct?
- 21 A. Yes, I was.
- 22 Q. Why were you embarrassed?
- 23 A. I've never experienced that. It was emb-- It was just embarrassing
24 talking about unfounded sex, asked questions about my ethnic
25 background, referencing concrete boots, why was I the chosen one to

952.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Redirect)

1 be appointed as his treasurer. To me those are demeaning because I
2 don't think like that as an individual. I don't live my life like that, but
3 I was exposed to have to answer those questions.

4 Q. Was there a reference to your heritage?

5 A. Concrete boots.

6 Q. Mm-hmm.

7 A. That's a reference to Italian heritage. Yes, it is. And I remember my
8 answer. If I may say that?

9 THE REFEREE: Yes.

10 A. My answer was, "I don't own a pair of boots. I wear Johnston and
11 Murphy shoes. I'm a military individual, check the record," and I said
12 this. I-- "My shoes shine. I don't dirty my shoes because I don't go
13 into mud." And I said that to the miss, Mrs., I'm sorry. "I don't walk
14 in mud, so I don't need boots." That was my answer.

15 Q. Thank you, sir.

16 THE REFEREE: Anything further?

17 MS. CENCI: Your Honor, can we mark the January
18 8, 2018, transcript for identification, please?

19 THE REFEREE: Yes. What number are we up to?

20 MR. FITZPATRICK: 14.

21 THE REFEREE: 14.

22 MS. CENCI: May I?

23 THE REFEREE: Yes.

24

25

953.

(Penna - Recross)

1 RECROSS-EXAMINATION

2 BY MS. CENCI:

3 Q. Mr. Penna, I'm showing you Exhibit 14 for identification. Did
4 Respondent's counsel review that test-- transcript with you before
5 your testimony today?

6 A. I've never seen this.

7 Q. Never seen it before? Okay.

8 A. The only thing I've seen is what you sent to me.

9 Q. Would you look at that, please?

10 A. My answer is referencing the cover of this, ma'am, not what's inside.

11 THE REFEREE: Well, take a look at that to
12 yourself, skim through it, and then you'll have a question.
13 But right now, they just want you to look at it.

14 THE WITNESS: Do you want me to respond to
15 this?

16 THE REFEREE: No-- Just--

17 MS. CENCI: --I--

18 THE REFEREE: --take a look at it and then-- then
19 you'll--

20 THE WITNESS: --Read the whole thing, sir?

21 THE REFEREE: Just skim it. Just see if you can
22 take a look at it. And I think you're going to get a question,
23 "Do you know what it is?"

24 THE WITNESS: I can continue, Your Honor, but I
25 believe I think I know what this is.

954.

(Penna - Recross)

1 THE REFEREE: What do you think it is?

2 A. This was my testimony-- or, when I was deposed when I met you in
3 Oneonta.

4 Q. Yes. That's your transcript, correct? January 8, 2018?

5 A. If that's-- Yes, it's-- I believe it's-- Yes.

6 THE REFEREE: All right. That's-- That's your
7 answer, fine. Now you-- Next question.

8 BY MS. CENCI:

9 Q. Can you tell me where in that transcript I asked you about your ethnic
10 background?

11 A. You didn't ask me about my ethnic background, but it was actually
12 related to concrete boots. Concrete boots are--

13 Q. --Okay--

14 A. --It's almost synonymous with Italian heritage.

15 Q. But you concede, I never asked you about your ethnic--

16 A. --I'm an intelligent man, ma'am, and I understand that--

17 THE REFEREE: --No, I-- He's answered the
18 question and it's--

19 A. --I'm answering the question. I'm an int-- I'm just telling you how I
20 feel.

21 THE REFEREE: All right, that's fine. You've
22 answered the question. And at-- And he answered-- His
23 answer explains his feelings and I think-- you're not talking
24 about two different things.

25 MS. CENCI: All right. Yeah, I know. Thank you.

955.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Recross)

1 THE REFEREE: Thank you.

2 BY MS. CENCI:

3 Q. Mr. Penna, and you can look at the transcript if you need to, but you
4 testified that you didn't talk-- during that transcript, did you say you
5 never talked with Judge Miller once you got the subpoena?

6 MR. DEROHANNESIAN: Objection.

7 THE REFEREE: No, overruled.

8 A. Could you rephrase that again, ma'am? "I never talked....," you said?

9 Q. Well, on January 8, 2018, did I ask you these questions and did you
10 give me these answers? At page 13--

11 A. --To answer your question--

12 THE REFEREE: --No, no. Listen to the-- Listen to
13 what she said. She wants to know-- She's going to read
14 something and ask if you said that. Go ahead.

15 MS. CENCI: "Q. Let me ask you this question. Did
16 you-- When you initially were contacted by the
17 Commission, did you speak to Judge Miller about that?

18 "A. About what ma'am?

19 "Q. About being contacted by the Commission?

20 "A. No.

21 "Q. So, when you received the subpoena back in, I
22 guess, early October--

23 "A. --No.

24 "Q. You didn't-- You never mentioned it to Judge
25 Miller?

956.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Recross)

1 "A. No, no.

2 "Q. Have you discussed with him at all the
3 Commission on Judicial Conduct?

4 "A. No."

5 BY MS. CENCI:

6 Q. Was-- Did you give those answers to those questions?

7 A. Well, if it's on record, I did, ma'am. I mean, if that's on record. If I
8 said that, I'm not going to dispute that.

9 Q. And you were sworn to tell the truth on that occasion?

10 A. And that was to the best of my knowledge, ma'am, yes.

11 Q. And you gave different answers today. Today you have admitted that
12 you did, in fact, speak--

13 MR. DEROHANNESIAN: --No, I--

14 BY MS. CENCI:

15 Q. --with the judge, did you not?

16 A. Not--

17 MR. DEROHANNESIAN: --Object--

18 THE REFEREE: --Just a minute. Just a minute.

19 You asked a question, do you have an--

20 MR. DEROHANNESIAN: --Objection--

21 THE REFEREE: --objection?

22 MR. DEROHANNESIAN: Yes.

23 THE REFEREE: What's the objection?

24 MR. DEROHANNESIAN: The objection is--

25 THE REFEREE: --Without speaking-- Just what is

957.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Redirect)

1 it? Is it form?

2 MR. DEROHANNESIAN: Form--

3 THE REFEREE: --Sustained--

4 MR. DEROHANNESIAN: --Argumentative.

5 MS. CENCI: I have nothing further.

6 THE REFEREE: Anything further?

7 REDIRECT EXAMINATION

8 BY MR. DEROHANNESIAN:

9 Q. Ms. Cenci said it took a while to get you to come in and testify?

10 A. Yes, sir.

11 Q. Could you explain what the issue was?

12 A. The issue was I had scheduled a left knee replacement with Dr.
13 Dermot Reynolds at Guthrie Hospital. All the preliminary tests were
14 done, date was set for surgery, and I received the summons or
15 subpoena. I acted on that immediately and engaged in conversation
16 and she was very persistent, not rude, very persistent and articulated
17 that, you know, I have an obligation to adhere to this. I says, "Yes,
18 ma'am, I know that. I know how to read. I'm an honorable man, and
19 I have no intentions of dishonoring it. Unfortunately, I have a surgery
20 scheduled." I can't remember every word said and I won't hold her
21 hostage to that either. That wouldn't be fair, but I said, "Ma'am, I
22 have surgery, and I cannot attend this, so that's why I'm calling you."
23 "Well, you have to honor this." And I said, "Well, ma'am, I have
24 surgery scheduled, that's why I'm calling you." And she wouldn't
25 retreat. I expressed words of dissatisfaction by saying to her directly,

958.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Redirect)

1 "Are you a medical authority to overrule this?"

2 Q. Did you have to submit something?

3 A. I did-- I wrote-- I purposely did. I wasn't obligated to. I wrote her--
4 Just for the record, I did-- I saved-- I think I have a copy of that. I
5 may not but I responded, I wrote it on a piece of paper. I think I sent
6 it certified mail. I may be wrong, though, I can't remember.

7 Q. And did you-- If I could just interrupt you briefly, and did you also
8 submit documentation from--

9 A. --Yes--

10 Q. --medical providers?--

11 A. --what I did, I told her-- She said, "Well, how are you going to handle
12 this?" and I said, "Well, I'll"-- "Can't you call your doctor?" I said,
13 "Ma'am, I may not see him for-- surgery is in a few days, I'll se-- I
14 may or may not, and if I do see him, it's going to be in the OR prior to
15 me going in because that's the procedure," and we talked about that.
16 "I'll do my best to make sure I bring this to his attention," which I did
17 upon the completion of the operation and he gave it to his office staff
18 and then they responded to that and I sent her an email. And then
19 after the operation, she followed up and I won't put her on the spot to
20 ask her the definitive time, but it was, I don't want to say every week,
21 it could have been every eight days, she followed up with a phone call.
22 Very polite and being persistent on when I was going to honor the
23 summons.

24 Q. Were you physically able to drive to Albany, New York?

25 A. No, no I was not. I was not physically able to drive locally.

959.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Redirect)

1 Q. Okay.

2 A. And I ex-- I shared that with her. It was an unacceptable answer.
3 And I made an attempt to challenge her on that because she became
4 overly persistent to the extent of she saying-- I says, "I wish this
5 conversation were recorded," because it became-- it became offensive
6 like I was a criminal, like I'm doing something wrong. And I then
7 again said to her, "Does the state know that you would be talking to
8 somebody like this?"

9 Q. My point is, there was a lot of discussion--

10 A. --Yes, there was and I was never accusatory with her. I just took a
11 stand by saying I-- I was defending myself.

12 THE REFEREE: All right. I think we have the
13 point--

14 MR. DEROHANNESIAN: --Thank you--

15 A. I can't atte--

16 THE REFEREE: --You're--

17 MS. SCALISE: --Wait--

18 THE REFEREE: --all set--

19 MS. SCALISE: --one-- one more.

20 MR. DEROHANNESIAN: Okay.

21 THE REFEREE: Thank you.

22 THE WITNESS: I'm leaving one thing out, if I
23 may?

24 THE REFEREE: No-- You know, we-- We've--
25 We understand.

960.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Penna - Redirect)

1 BY MR. DEROHANNESIAN:

2 Q. Okay, and that interchange is before you knew the specifics of the
3 allegations, which was given to you during your interview and then
4 testimony?

5 A. Correct.

6 Q. There was an interview before the testimony?

7 A. Correct. Can I make one other statement?

8 THE REFEREE: No, we're fine. We're fine.

9 MR. DEROHANNESIAN: No.

10 THE REFEREE: Thank you. You-- Anything
11 further?

12 MR. DEROHANNESIAN: No.

13 THE REFEREE: Ms. Cenci? I-- You've acted
14 more than honorably, no one is accusing you of not doing
15 that. You-- You're fine. Do you have any questions?

16 MS. CENCI: No questions, Your Honor.

17 THE REFEREE: Sir, thank you for coming. We
18 appreciate your time. I just want to advise you that these
19 proceedings are confidential so we ask please don't discuss
20 them with anybody--

21 THE WITNESS: --Yes--

22 THE REFEREE: --and thank you for coming in this
23 afternoon.

24 THE WITNESS: Thank you.

25 THE REFEREE: Let's go off the record for just a

961.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 moment.

2 (OFF THE RECORD)

3 THE REFEREE: Counsel for the parties are present
4 and the Respondent is present. Who is our next witness?

5 MR. DEROHANNESIAN: Rick Balles.

6 MS. SCALISE: It's on 79.

7 THE REFEREE: Is it really? Now it's warm.

8 MS. SCALISE: Right?

9 THE REFEREE: Yeah, now it's warm.

10 THE RESPONDENT: 79.

11 MS. SCALISE: It takes a little while to kick in.

12 You just have to hit the temperature button. (Unintelligible)
13 right there.

14 THE REFEREE: Sir, can you raise your right hand?

15 MR. BALLEs: Sure.

16 THE REFEREE: Do you swear or affirm under the
17 penalty of perjury that the testimony you're about to give is
18 going to be the truth, the whole truth, and nothing but the
19 truth?

20 MR. BALLEs: Yes.

21 RICHARD BALLEs,

22 having been duly sworn, was examined and testified as follows:

23 THE REFEREE: Okay. You can sit down. Sir, my
24 name is Robert Barrer. I am appointed by the Commission
25 on Judicial Conduct to serve as special Referee for this

962.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 case.

2 THE WITNESS: Okay.

3 THE REFEREE: I'm going to preside over this
4 hearing this afternoon. You're going to be asked some
5 questions by counsel for Judge Miller and then counsel for
6 the Commission. It's important that when you answer the
7 questions, first, wait until the entire question is asked before
8 you respond.

9 THE WITNESS: Okay.

10 THE REFEREE: Second, if somebody objects, don't
11 talk. Wait until we have a ruling and then I'll tell you to go
12 ahead.

13 THE WITNESS: Okay.

14 THE REFEREE: And it's important that when you
15 answer, you do so verbally as opposed to shaking your head
16 because we have a record and if you shake your head,
17 nothing will appear.

18 THE WITNESS: Okay.

19 THE REFEREE: So, we'll do that. Proceed.

20 MR. DEROHANNESIAN: Judge, I think the
21 witness has a file with him, which--

22 THE REFEREE: --Oh, yeah. Can I have this for a
23 moment? That would be-- The whole file.

24 THE WITNESS: You want the whole thing?

25 THE REFEREE: The whole thing.

963.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Balles - Direct)

1 THE WITNESS: Sure.

2 THE REFEREE: That's great. If you need--

3 MS. CENCI: --Your Honor, can--

4 THE REFEREE: --If you need something, we will
5 talk about it, but for now, we're just going to leave it right
6 here.

7 MS. CENCI: I thought you were going to look
8 through it.

9 THE REFEREE: No. I'm not going to look for--

10 MS. CENCI: --I was going to say, "May I see it?" I
11 don't even know what it is.

12 THE REFEREE: I don't either and I don't want to
13 know. Let's proceed.

14 DIRECT EXAMINATION

15 BY MR. DEROHANNESIAN:

16 Q. Okay. Tell us who you are and what you do.

17 A. My name is Richard Balles and I currently am employed by the
18 Broome County-- I'm a Broome County Legislator.

19 Q. Mm-hmm. What's your background?

20 A. I used to do-- work for Lockheed Martin in Owego in procurement
21 and contracts for 38 years and I retired in 2016.

22 Q. And Lockheed Martin was what kind of company?

23 A. It's multi-billion dollar corporation that involves with aerospace and
24 communications.

25 Q. And that's your background professionally?

964.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Balles - Direct)

- 1 A. Yes.
- 2 Q. And now what do you do?
- 3 A. I'm a Broome County Legislator for District 12 in Broo--
- 4 Q. --That's an elected position?
- 5 A. That's an elected position, right.
- 6 Q. Do you know someone by the name of Judge Richard Miller?
- 7 A. Yes.
- 8 Q. How do you know him?
- 9 A. He's my brother-in-law.
- 10 Q. And how so? Explain the relationship.
- 11 A. Well, we've had a relationship for over, you know, 40 years, that I've
- 12 known Rick. I'm married to his sister, Tammy, and know every-- you
- 13 know, know-- like I said, know the family, I know everybody, the
- 14 Miller family, his wife, Julie, his children. We've gone on vacations
- 15 together. I was the best man in his wedding and that's probably about
- 16 it right now.
- 17 Q. How about Rachelle Gallagher? How-- Do you know her?
- 18 A. Yes. I-- I've known Rachelle through his-- her husband, Scott. Scott
- 19 was a village trustee in Johnson City for a number of years and I
- 20 worked with Scott as a trustee, as well. So, I got to know, you know,
- 21 Scott's wife, Rachelle, through that relationship.
- 22 Q. And did you have any connection to them from a familial point of
- 23 view?
- 24 A. From a what-- I'm sorry--
- 25 Q. --Okay--

965.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Balles - Direct)

1 A. --Can you--

2 THE REFEREE: --Family.

3 BY MR. DEROHANNESIAN:

4 Q. Family. And were you involved at all in any aspect of their family
5 life?

6 A. Oh, yes. Yep. I was godfather to his son. He's got a son named
7 D[REDACTED], so I'm a godfather to him.

8 Q. And that's Rachelle's son?

9 A. Yes.

10 Q. Okay. So, in addition to the baptismal proceedings or godparent
11 proceedings, have you had other social contact with Rachelle
12 Gallagher?

13 A. She was the chief court clerk at the Village of Johnson City while I
14 was a trustee there.

15 Q. And did you continue to see her over the years?

16 A. Oh, yeah-- Very-- You know, always-- We-- You know, we've
17 always had, you know, relationships with Scott and Rachelle because
18 of my relationship of being the godfather and also, you know, we've
19 had a friendship, you know, over the years as well.

20 Q. How close would you describe that relationship up until 2017?

21 A. Very close.

22 Q. And how frequently would you say you would have some form of
23 contact with them? Every month? More? Less?

24 A. I would say, three or four times a month, at least.

25 Q. And was that both-- How would you describe the nature of those

966.

(Balles - Direct)

- 1 contacts?
- 2 A. Professionally and friendship.
- 3 Q. Okay, professionally being the political side?
- 4 A. Political side, right.
- 5 Q. And then personal and familial, the other side. Social.
- 6 A. Corr-- So-- Correct.
- 7 Q. Did you know the Gallaghers well enough to invite them to a wedding
- 8 of any of your children?
- 9 A. Yes. My daughter, Nicole, we invited them in 2017 for their wedding
- 10 and they did attend. Both of them. And--
- 11 Q. --April, go ahead--
- 12 A. --in fact, after the wedding, they even told me and my wife that they
- 13 had a great time and it was a pleasure to attend the wedding.
- 14 Q. Was that a big wedding?
- 15 A. Big wedding, yep.
- 16 Q. Maybe a couple hundred people?
- 17 A. About 300. I'm still taking collections.
- 18 Q. And so, did people have a good time at the wedding?
- 19 A. Yes.
- 20 Q. Okay. And she also knew that you were literally close to Judge Miller
- 21 because of the-- you were married to his sister, right?
- 22 A. Correct.
- 23 Q. I want to bring your attention to December of 2016, and ask you if you
- 24 had any communications with Rachelle Gallagher concerning her
- 25 employment with Judge Miller. First, did you?

967.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Balles - Direct)

1 A. Well, I knew that she got hired as Rick's secretary in the family court,
2 yes.

3 Q. How did you know that?

4 A. Through Rick.

5 Q. And was there a communication with you concerning her employment
6 with Judge Miller around December of 2016?

7 A. She mentioned it to me in conversation. Like I said, you know, I'll
8 have conversations with Rachelle, who's-- just because I'm friends
9 with her and husband, and in the conversation she did say at one time
10 that she was very concerned that she heard, you know, there was a
11 rumor that she may get replaced in her position, and I says, "You
12 know, if that's the ca-- You know, if that's what you heard," I says,
13 "you should talk to, you know, Judge Miller, about that issue." I
14 didn't know anything about it. That's the first time I heard about her
15 concern was her making that conv-- you know, that comment to me.

16 Q. And does the time period of December 2'16 sound approximately
17 correct?

18 A. Yes.

19 Q. And was that the extent of what you said to her in response?

20 A. Yes. Mm-hmm.

21 MR. DEROHANNESIAN: No further questions.

22 MS. CENCI: I have no questions.

23 THE REFEREE: All right. Mr. Balles, thank you
24 very much for coming. These proceedings are confidential,
25 so, we'd appreciate it if you wouldn't say anything about it

968.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Balles - Direct)

1 to anybody.
2 THE WITNESS: Okay. I-- I will.
3 THE REFEREE: And thank you for coming in.
4 THE WITNESS: Okay. Let me ask you a question.
5 That if--
6 THE REFEREE: --You can't. This is not the time.
7 THE WITNESS: Okay.
8 THE REFEREE: So, perhaps afterwards.
9 MS. SCALISE: Maybe he wants his file back?
10 THE WITNESS: Yeah, I just--
11 THE REFEREE: --Would you like your file back, is
12 that your question?
13 THE WITNESS: Yeah, is there anything in there
14 that I can provide or no?
15 THE REFEREE: You know what, I don't think so--
16 THE WITNESS: --Okay--
17 THE REFEREE: --and if there's something that
18 anyone needs from you--
19 THE WITNESS: --I can give it to you--
20 THE REFEREE: --somebody-- somebody will be in
21 touch.
22 THE WITNESS: Okay.
23 MR. DEROHANNESIAN: Thank you.
24 THE WITNESS: All right. Thank you. I appreciate
25 it.

969.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Balles - Direct)

1 THE REFEREE: Good. Thanks for coming. Who
2 do we have next?

3 MR. DEROHANNESIAN: Can I check or do you
4 want to take a break now or--

5 THE REFEREE: --Yeah, let's take a five minute
6 break--

7 MR. DEROHANNESIAN: --Yeah--

8 THE REFEREE: --We'll go off the record.

9 (OFF THE RECORD)

10 THE REFEREE: We are here with counsel for the
11 Commission and counsel for the Respondent, and the
12 Respondent is present. I understand you wish to recall that
13 witness, briefly?

14 MR. DEROHANNESIAN: Yes.

15 THE REFEREE: Fine, let's bring the witness back.
16 Sir, please take a seat. You're still under oath.

17 THE WITNESS: Okay.

18 THE REFEREE: I think you have one other issue to
19 address. You have something here?

20 THE WITNESS: Yes.

21 THE REFEREE: Can I have those?

22 THE WITNESS: Sure.

23 THE REFEREE: Thanks. Just put it here for now.

24 THE WITNESS: Sure.

25

970.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Balles - Direct)

1 BY MR. DEROHANNESIAN:

2 Q. Sorry to call you back, but I know that when you were here you had
3 a-- some information in a folder that you gave to the Referee. I
4 hadn't looked at--

5 THE REFEREE: --Which I did not look at.

6 BY MR. DEROHANNESIAN:

7 Q. The Referee didn't look at it and I believe it's something that you had
8 wanted to show me, correct?

9 A. Yes.

10 Q. And did I ask you if you knew Mark Kachadourian?

11 A. Yes, I believe you did.

12 Q. Okay. Can I ask you how you knew Mr. Kachadourian?

13 A. Through the relationship with, you know, Judge Miller. I got
14 introduced that way, but it was-- you know, I-- I-- probably a three-
15 year relation-- or two-year relationship, really.

16 Q. Okay. And did you have a chance to socialize with him?

17 A. Briefly, not too much.

18 Q. Okay.

19 A. Just-- Like lunch or something like that.

20 Q. Did you go to any events with Mr. Kachadourian?

21 A. Yes, we went to the inauguration of President Trump in 2017.

22 Q. How did that come about?

23 A. I-- Judge Miller asked me if I would like to attend and it's my
24 understanding that Mr. Ka-- What's his last name? I'm sorry.

25 Q. Kachadourian.

971.

(Balles - Direct)

- 1 A. Kachadourian-- was going to get tickets for a number of people that
2 wanted to attend the event and they asked me if I wanted to attend and
3 I said yes.
- 4 Q. So, you went with the help of Mr. Kachadourian's ticket?
- 5 A. Yes.
- 6 Q. Okay. And this was in January 2017?
- 7 A. Correct. Or-- That was July-- Or, no-- What was that--
8 THE REFEREE: --The inauguration was January of
9 '17--
- 10 A. --The inauguration was January. The inauguration-- Yeah, January of
11 2017.
- 12 Q. And had-- Do you know how you got there?
- 13 A. How we got there?
- 14 Q. Yeah.
- 15 A. Oh, we-- Judge Miller drove.
- 16 Q. Was that all of you?
- 17 A. Well, there was other people that also went or met us there, but, you
18 know-- and-- in our vehicle, it was Judge Miller and Mark and then
19 we met the other family members there.
- 20 Q. So, you were with Mark in the car?
- 21 A. Yes.
- 22 Q. Driving down?
- 23 A. Correct.
- 24 Q. And driving back?
- 25 A. Correct.

972.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Balles - Direct)

1 Q. When I say "Mark," I mean Mark Kachadourian.

2 A. Right.

3 THE REFEREE: So, there were three of you in the
4 car?

5 THE WITNESS: Yes.

6 BY MR. DEROHANNESIAN:

7 Q. And do you have any photographs from your trip with Mr.
8 Kachadourian?

9 A. Yes, I've provided them here. There's a duplicate here, yeah.

10 Q. Thank you.

11 A. If you want it. Two copies. If not, I'll take the other one.

12 Q. Let me show you Respondent's AA. Can you tell me what that is?

13 A. Yeah, that was at the inauguration and Judge Miller took a picture
14 from my phone, my cell phone, with me and Mark.

15 Q. So, that was a photograph that was on your phone?

16 A. Correct.

17 Q. And you found that recently?

18 A. Yes.

19 Q. And is that a fair and accurate representation of you and Mr.
20 Kachadourian at the January 2017 inauguration of President Trump?

21 A. Yes.

22 Q. And showing you Respondent's Exhibit BB. Do you recognize that?

23 A. This picture?

24 Q. Mm-hmm.

25 A. Yes.

973.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Balles - Direct)

1 Q. What is that?

2 A. I took a selfie of Mark, Judge Miller, and this is Mark's sister, and this
3 was the Secretary of State for Michigan back in that time.

4 Q. Okay. And is-- You said Mr.--

5 A. --And myself--

6 Q. --Kachadourian is there?

7 A. Yes.

8 Q. And you're prominently displayed in the foreground?

9 A. Yes.

10 Q. Okay, and that's Respondent's--

11 THE REFEREE: --BB.

12 BY MR. DEROHANNESIAN:

13 Q. BB. Is that a fair and accurate representation of the selfie that you
14 took of you and Mr. Kachadourian and Judge Miller?

15 A. Yes.

16 Q. Do you know what the number of days that you were there for the
17 inauguration?

18 A. Just the one night.

19 Q. And do you know where you stayed?

20 A. We stayed at Rick's friend's house, Dave Behal.

21 MR. DEROHANNESIAN: At this time, I'll offer
22 Respondent's AA and BB.

23 THE REFEREE: Have you shown them to counsel?

24 MS. CENCI: I don't think I need to see them. I'm
25 going to object on the basis of relevance.

974.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Balles - Direct)

1 THE REFEREE: Can I see them?

2 MR. DEROHANNESIAN: Yes (unintelligible).

3 THE REFEREE: Yeah, I-- I-- I was initially going
4 to sustain the objection, but I do think they are tangentially
5 relevant to address one bit of Mr. Kachadourian's
6 testimony.

7 MR. DEROHANNESIAN: Yeah.

8 THE REFEREE: So, I am reluctantly overruling
9 your objection and I'll admit-- and I'll receive them
10 because they are just tangentially relevant, and I'm
11 gesturing with my thumb and forefinger not far apart. All
12 right. Anything further?

13 MR. DEROHANNESIAN: No, Your Honor.

14 THE REFEREE: So, we'll receive AA and BB. Sir,
15 I think you can go, again, and I think we really mean it this
16 time.

17 THE WITNESS: Thank you very much.

18 THE REFEREE: Thank you and please keep the--
19 your-- keep this confidential.

20 THE WITNESS: Thank you.

21 MR. DEROHANNESIAN: Call my next witness?

22 THE REFEREE: Yes.

23 MR. DEROHANNESIAN: Kate Fitzgerald, Esq. I
24 think she stepped into the restroom.

25 THE REFEREE: All right. Let's go off the record.

975.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

(OFF THE RECORD)

THE REFEREE: All right, counsel-- Oh, oh.
Counsel for the Commission is present. Counsel for the
Respondent is present and the Respondent is present. And I
believe our witness is Kate--

MR. DEROHANNESIAN: --Fitzgerald.

THE REFEREE: Fitzgerald. Good afternoon.
Could you raise your right hand, please? Do you swear or
affirm that the testimony you are about to give will be the
truth, the whole truth, and nothing but the truth?

MS. FITZGERALD: I do.

KATHERINE FITZGERALD, ESQ.,

having been duly sworn, was examined and testified as follows:

THE REFEREE: Please have a seat. My name is
Robert Barrer. I'm a-- I was appointed by the Commission
on Judicial Conduct to serve as special Referee for this
proceeding.

THE WITNESS: Okay.

THE REFEREE: It's important that when you testify
that you wait until the question's been fully asked before
you answer. In the event of an objection, please wait until I
let you know that it's okay to answer. And also please
answer verbally as opposed to shaking the head or gesturing
because we're recording the proceedings and we need
something audible.

976.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Direct)

1 THE WITNESS: Yes.

2 THE REFEREE: Is that fair?

3 THE WITNESS: Yes.

4 THE REFEREE: Thank you. Counsel?

5 DIRECT EXAMINATION

6 BY MR. DEROHANNESIAN:

7 Q. Tell us your name, please?

8 A. Kate Fitzgerald.

9 Q. Tell the Referee what you do for a living.

10 A. I'm an attorney with Hinman, Howard and Kattell in Binghamton,
11 New York.

12 Q. And could you tell him what Hinman, Howard, Kattell [sic] is and
13 what you--

14 THE REFEREE: --Kattell--

15 BY MR. DEROHANNESIAN:

16 Q. --Kattell--

17 A. --Yes--

18 Q. --and what you do there?

19 A. I've been there 38 years. I'm a partner. It's a law firm that was about
20 15 lawyers when I started 38 years ago, and is about 80 to 90 lawyers
21 today and is the oldest firm in Binghamton.

22 Q. So, you're a licensed lawyer in New York State?

23 A. Correct.

24 Q. Do you have a particular area of specialty?

25 A. Domestic relations, matrimonial, family law.

977.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Direct)

1 Q. How long have you practiced in domestic relations in the family law
2 area?

3 A. Almost since I started. Probably 36 or 37 years.

4 Q. And is that what your practice is exclusively focused on?

5 A. Yes, in the beginning it was not always just that but the last ten, 15, 20
6 years, it's been 90 percent domestic relations.

7 Q. And in terms of the geographic scope of your practice, how would you
8 describe it?

9 A. Mm-hmm. Today, because of my age, I just keep it to Broome
10 County, but I used to do Broome, Tioga, Cortland, Otsego, Delaware,
11 but I don't anymore. Just Broome.

12 Q. How long have you confined yourself primarily to Broome County for
13 your practice of family law and domestic relations?

14 A. The last ten years, maybe.

15 Q. And are you active in the legal community concerning family law and
16 domestic relations?

17 A. Well, I'm a director of the Broome County Bar Association right now
18 and I'm on a lot of community boards, some legal, some not legal.

19 Q. And how about in terms of professional activities relating to family
20 law in the Broome County area?

21 A. Well, I've always participated in the New York State family law
22 section, and to some extent, we have a local one which I've
23 participated in.

24 Q. Do you have contact with attorneys in the area who practice in the
25 family law area?

978.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Direct)

- 1 A. Yes, because my cases are-- There's always one of them on the other
2 side of every case I'm on.
- 3 Q. And in the course of your work as a family court attorney, do you
4 practice in Broome County Family Court?
- 5 A. Yes.
- 6 Q. And by that I mean, some family court lawyers may stay in an office
7 and some may go to court?
- 8 A. I-- I was there twice yesterday. I mean, I'm just in and out of family
9 court all the time and supreme court.
- 10 Q. And that's been true for--
- 11 A. --For--
- 12 Q. --decades?
- 13 A. Yes.
- 14 Q. Is that fair to say?
- 15 A. Yes.
- 16 Q. And in your experience as a practicing attorney in family law, have
17 you had occasion to discuss the reputation of individuals who may be
18 judges?
- 19 A. Yes.
- 20 Q. Is that something that lawyers do?
- 21 A. Yes.
- 22 Q. So, in the legal profession, that is not an unusual thing to do?
- 23 A. Correct.
- 24 Q. And when you say you've had discussions about individual judges, I
25 want to bring your attention to Judge Richard Miller. Do you know

979.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Direct)

1 who he is?

2 A. Yes, I do.

3 Q. And how do you know him?

4 A. From my practice. Before he was a judge, we had a number of cases
5 together that were ongoing, lengthy cases, so I knew him well as a
6 colleague before he was judge, and then I have appeared in front of
7 him many times while he was on the bench.

8 Q. And do you have any type of social relationship with Judge Miller?

9 A. No, I mean, I've seen him, this is a small community, at public events,
10 where we've said "Hello." Retirement parties, or-- I saw him at the
11 Broadway Theatre League recently, but I've never socialized with
12 him. I don't know the names of his children. Never done anything
13 with him where we arranged to do something together.

14 Q. So, you don't have any particular friendship with Judge Miller?

15 A. Correct.

16 Q. And in the course of your practice in the Broome County Family
17 Court community, is there a reputation that Judge Miller has for his
18 judicial temperament?

19 A. Yes.

20 Q. And can you tell us what Judge Miller's reputation is in the Broome
21 County Family Court community for judicial temperament?

22 A. From my own personal experience, and from talking to other lawyers,
23 the opinion is that-- I call him Rick-- that Richard Miller has exactly
24 the kind of judicial temperament you want to find in a judge. Fair,
25 calm, reasonable, courteous to people in his courtroom, which is

980.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Direct)

1 always welcome. Not too familiar, just what, personally, I like to see
2 and I believe colleagues like to see.

3 Q. And that is something that has been discussed?

4 A. Absolutely, yes.

5 Q. And--

6 A. --And it's discussed on a comparative basis, too. I mean, that's how
7 we talk about people, too, is comp-- comparatively.

8 Q. Explain what you mean by that?

9 A. I mean, we compare judges--

10 Q. --Okay--

11 A. --we tend to do that. Who-- Who you prefer to be in front of. Who's
12 easier to work with, who's on top of the law, who pays attention to the
13 factual content of the case, that's--

14 Q. --And in terms of temperament--

15 A. --Mm-hmm--

16 Q. --does that opinion encompass how he deals with litigants, witnesses,
17 and court personnel?

18 A. Absolutely.

19 Q. In addition, focusing specifically on Judge Richard Miller, has there
20 been discussion in the family court community with respect to Judge
21 Miller's reputation for sexual propriety?

22 MS. CENCI: Objection.

23 THE REFEREE: What's the ground?

24 MS. CENCI: I don't know what that means.

25 THE REFEREE: I do--

981.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Direct)

1 MS. CENCI: --But-- Can--

2 THE REFEREE: --Ask the witness if she does.

3 BY MR. DEROHANNESIAN:

4 Q. Ms. Fitzg--

5 A. --I--

6 Q. --Do you understand if I use that phrase?

7 A. I think I do, yes.

8 THE REFEREE: Why don't you explain what you
9 mean--

10 THE WITNESS: --All right, well I--

11 THE REFEREE: --what you understand it to mean.

12 A. I guess sexual propriety would be the opposite of sexual impropriety.

13 Q. Okay.

14 THE REFEREE: All right, go-- Go ahead.

15 BY MR. DEROHANNESIAN:

16 Q. And is there a reputation that Judge Miller has in the Broome County
17 Family Court community for sexual propriety?

18 MS. CENCI: Objection. No foundation.

19 THE REFEREE: I agree. Sustained--

20 MR. DEROHANNESIAN: --Okay.

21 THE REFEREE: Why don't you lay some
22 foundation?

23 BY MR. DEROHANNESIAN:

24 Q. In the course of the last several years, have you had occasion to
25 discuss with other attorneys and individuals involved in the Broome

982.

(Fitzgerald - Direct)

1 County Family Court system, the issue and topic of Judge Miller's
2 reputation for sexual propriety? First, have you had those
3 discussions?

4 A. Yes.

5 Q. Okay.

6 A. Let me say that those discussions have occurred since these
7 accusations were made.

8 Q. Mm-hmm.

9 A. I did not have those kinds of discussions before that because there was
10 no issue.

11 Q. Okay.

12 A. People don't go around and say someone is sexually appropriate.

13 Q. Mm-hmm.

14 A. It-- People only notice in life actions or omissions, and I never heard
15 a discussion before I heard rumors of accusations.

16 Q. Okay. And it-- And some of these rumors, have they become public
17 matters, also?

18 A. There are-- They're definitely. I mean, there's a community--
19 someone is not on the bench. The rumors fly, yes.

20 Q. And in addition, newspaper reports--

21 A. --Yes--

22 Q. --have been there for over a year, is that correct?

23 A. Yes, in particular recently, yes.

24 Q. And would that be fair to say that has triggered more discussion--

25 A. --Absolutely--

983.

(Fitzgerald - Direct)

1 Q. --of Judge Miller's reputation for sexual propriety?

2 A. Yes.

3 Q. So, with that background--

4 A. --Mm-hmm--

5 Q. --do you have an opinion as to Judge Richard Miller's reputation for
6 sexual propriety in the Broome County Family Court system?

7 A. Yes, I do.

8 Q. What is that opinion?

9 A. Well, I have to say, most of my discussions have been with women
10 attorneys, but a few men attorneys, and I have not heard anyone say
11 anything that would give credibility to what we've read in the papers,
12 accusations against him, or--

13 MS. CENCI: --Objection. Non-responsive to the
14 question. She was asked about her opinion.

15 A. My opinion is that he has a good reputation for sexual propi--
16 propriety.

17 Q. And, again, by sexual propriety, would that include how he treats
18 women--

19 A. --Yes--

20 Q. --as a judge?

21 A. Yes.

22 Q. And as a lawyer?

23 A. Yes.

24 Q. And have people approached-- It seems like you-- I'm not from
25 Broome County. It seems like you are a significant lawyer when it

984.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Direct)

1 comes to family court practice here. Is that fair to say?

2 A. I am-- Yeah. Probably one of-- If you name the three or four people
3 people think of immediately, I would be certainly on that list.

4 Q. You're head of the Broome County Bar Association?

5 A. I'm on the board of directors.

6 Q. Okay. Have people approached you spontaneously to discuss Judge
7 Miller's reputation?

8 A. Yes.

9 MS. CENCI: Objection. Leading.

10 THE REFEREE: No, overruled.

11 A. Yes, they have.

12 Q. So, it's not just you asking people, people have--

13 A. --No, I can give you an example.

14 Q. Well--

15 THE REFEREE: --We don't want an example.

16 THE WITNESS: Okay.

17 MR. DEROHANNESIAN: Well--

18 THE REFEREE: --Thank you.

19 BY MR. DEROHANNESIAN:

20 Q. But it's happened-- And has it happened more so as there's been
21 more publicity about these charges?

22 A. Yes--

23 MS. CENCI: --Objection. Leading.

24 THE REFEREE: No, overruled.

25 MR. DEROHANNESIAN: Okay.

985.

(Fitzgerald - Direct)

1 A. Yes.

2 Q. I don't know if you can answer this question--

3 A. --Mm-hmm--

4 Q. --answer it, and if you can't, you can't. How many people in the last
5 month or two would you say have approached you to specifically
6 address Judge Miller's reputation on sexual propriety?

7 A. If you're asking me how many lawyers, I would probably say at least
8 a-- I mean, I work in a big practice and I'm out in court every day-- a
9 couple dozen, and then there are many community people--

10 Q. --Mm-hmm--

11 A. --who have spoken to me.

12 Q. Okay. So, you've-- Based on what you've heard about the rumors
13 and accusations concerning Judge Miller--

14 A. --Mm-hmm--

15 Q. --has that changed your opinion of his reputation in any way?

16 MS. CENCI: Objection. We don't know what the
17 rumors and accusations are and I--

18 THE REFEREE: --Oh, I think we do.

19 MS. CENCI: I don't think it's in the record, Your
20 Honor.

21 MR. DEROHANNESIAN: I'll refr--

22 THE REFEREE: --Well, fine-- Let's-- Sustained.

23 BY MR. DEROHANNESIAN:

24 Q. Based on anything that you have seen or heard--

25 A. --Well, the accusations--

986.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Fitzgerald - Cross)

1 THE REFEREE: --Well, hold on just a second.

2 THE WITNESS: Oh.

3 THE REFEREE: He hasn't finished the question.

4 BY MR. DEROHANNESIAN:

5 Q. Based on anything you've seen or heard in the past several months
6 concerning Judge Miller, does that change anything about your
7 opinion?

8 A. No.

9 MR. DEROHANNESIAN: Thank you.

10 THE REFEREE: Thank you. Ms. Cenci?

11 CROSS-EXAMINATION

12 BY MS. CENCI:

13 Q. Good afternoon--

14 A. --Hi--

15 Q. --Ms. Fitzgerald. I'm Cathleen Cenci and I'm serving as a
16 Commission-- counsel for the Commission in this matter. Just,
17 initially, are you-- have you been subpoenaed to testify here today?

18 A. No.

19 Q. Okay. So, you regularly appear in Broome County Family Court as
20 part of your practice, is that right?

21 A. Yes.

22 Q. About how many cases would you say you currently have in that
23 court?

24 A. You know, I counted my cases once be-- I average probably between
25 60 and 90 cases at any given moment.

987.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Cross)

- 1 Q. Okay. And they're-- There are-- There's more than one family court
2 judge, is that right?
- 3 A. Correct.
- 4 Q. So, in terms of your typical caseload and when Judge-- I'm sure--
5 Are you-- Let me withdraw that. You're aware that Judge Miller is
6 no longer sitting in family court, so--
- 7 A. --Correct--
- 8 Q. --I would be referring to the-- prior to when that event occurred.
9 What percentage of your cases would be before him, if you can say?
- 10 A. I would say a third to a half.
- 11 Q. Now, you testified that you, based upon your conversations with
12 people in the legal community--
- 13 A. --Mm-hmm--
- 14 Q. --you testified of your opinion of Judge Miller's judicial temperament.
15 Can you tell us who you spoke to in that regard?
- 16 A. I can tell you that many of the people in my office have appeared in
17 front of Judge Miller, both in family court and when he was on the
18 bench in town court, and we have people who were former DAs who
19 had criminal cases in front of him and I'm including women lawyers
20 and men lawyers. You know--
- 21 Q. --So, people in your firm?
- 22 A. People in my firm, people outside my firm.
- 23 Q. What about-- Can you tell us the names of any of the people outside
24 your firm that you spoke to about the judge's judicial temperament?
- 25 A. Hmm. Trying to think. Probably Carman Garufi. Maybe Jo Fabrizio.

988.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Cross)

- 1 Bruno Colapietro. Trying to think who else. You know, it's--
- 2 Q. --Okay. Can you tell me when you spoke with these people?
- 3 A. No, I can't. I mean, this is the kind of thing you're sitting around in
- 4 the waiting room at family court--
- 5 Q. --Mm-hmm--
- 6 A. --you know, you talk about.
- 7 Q. Sure, sure. I'm just trying to get a timeframe.
- 8 A. You know, or in the coffee room at the office.
- 9 Q. It-- Were you--
- 10 A. --I-- It-- I mean, when a judge goes on the bench, people tend to talk
- 11 about who-- You know--
- 12 Q. --Okay--
- 13 A. --"Have you been in front of this judge, what'd you think?"--
- 14 Q. --Right--
- 15 A. --you know?
- 16 Q. But-- I guess-- Let me ask it this way. Were you-- You were aware
- 17 that he was a part-time judge before he became family court judge,
- 18 correct?
- 19 A. Yes--
- 20 Q. --Okay--
- 21 A. --and I had cases where he was on the other side, where I had the
- 22 husband or wife--
- 23 Q. --Sure--
- 24 A. --and he had the other party.
- 25 Q. But in terms of your testimony about his reputation for judicial

989.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Cross)

1 temperament, were you talking about the entire time that he's been a
2 judge or were you confining it to the family court?

3 A. Well, for me, my only experience in front of him as a judge was in
4 family court.

5 Q. Okay.

6 A. I never appeared in front of him--

7 Q. --Well, we're talking about reputation now.

8 A. Yes. Yes--

9 Q. --So--

10 A. --Certainly my own opinion comes from family court.

11 Q. Yes, okay. So--

12 A. --And most of the people I talk to are family court practitioners, but
13 some of them are, you know, do criminal work, and I just had a
14 conversation the other day that someone initiated with me that was a
15 district attorney for ten years, who said they were very prone to--

16 Q. --Well, object-- Please. Don't give us the statement of--

17 THE REFEREE: --Okay--

18 A. --All right--

19 Q. --someone outside the courtroom--

20 A. --Okay.

21 Q. Thank you. Has anyone told you what the specific allegations are in
22 the Commission on Judicial Conduct's complaint against Judge Miller
23 for which we are here today?

24 A. I believe I know what they are, yes.

25 Q. Who told you what those allegations are?

990.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Cross)

1 A. Again, I would say multiple conversations with people.

2 Q. Okay, our proceedings are confidential, so--

3 MR. DEROHANNESIAN: --Well, I object to that
4 statement. Especially in this case, but--

5 THE WITNESS: --I mean--

6 THE REFEREE: --Well, no, no-- Just hold on.
7 Hold on.

8 THE WITNESS: All right--

9 THE REFEREE: --Everybody-- Stop--

10 THE WITNESS: --Okay--

11 THE REFEREE: --Please stop.

12 MS. CENCI: What--

13 THE REFEREE: --Okay.

14 BY MS. CENCI:

15 Q. Has-- Have you discussed the allegations with Judge Miller directly?

16 A. Never.

17 Q. Did Mr. DerOhannesian either show you the complaint against the
18 judge or tell you what was in the complaint?

19 A. No, my-- Before I even met him months ago--

20 Q. --Okay-- I'm sorry, ma'am--

21 A. --Yes--

22 Q. --Thank you. It's a "no"--

23 A. --I mean--

24 THE REFEREE: --Nope, that's it--
25

991.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Fitzgerald - Cross)

1 BY MS. CENCI:

2 Q. --right?

3 A. Oh, okay.

4 Q. Okay.

5 A. All right. Fine.

6 Q. So, at-- Because-- And I'm--

7 A. --No, he did not--

8 Q. --I understand there have been some things in the press and there have
9 been-- there's been a lawsuit in the press and--

10 A. --But-- It-- Yeah--

11 Q. --this proceeding-- Okay, I just want to make sure we're talking
12 about--

13 A. --I understand--

14 Q. --the Commission on--

15 A. --that there are different issues in this proceeding--

16 Q. --Judicial Conduct--

17 THE REFEREE: --Wait--

18 A. --how I know that, I don't know, but I've known it for a long, long
19 time. And--

20 Q. --But, so--

21 A. --it's through other attorneys just telling me what they hear.

22 Q. Mm-hmm. Okay. But it's fair to say you don't know what exactly
23 Judge Miller--

24 A. --Correct, it is-- It is--

25 Q. --is charged with.

992.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Redirect)

1 A. It is fair to say that--

2 THE REFEREE: --Hold on-- You have to-- You
3 have to wait--

4 THE WITNESS: --Okay--

5 THE REFEREE: --until she finishes, please.

6 THE WITNESS: Oh, I'm sorry.

7 MS. CENCI: If--

8 THE REFEREE: --You know that.

9 THE WITNESS: I do. It's human nature.

10 THE REFEREE: Okay.

11 BY MS. CENCI:

12 Q. If I were to tell you that one of the allegations against the judge was
13 that in chambers, he allegedly showed to chambers staff a photograph
14 of a naked woman, would that change your opinion of his reputation
15 for sexual propriety, as you put it?

16 A. Only if it were true.

17 Q. Okay.

18 MS. CENCI: Thank you, I have nothing further.

19 MR. DEROHANNESIAN: Can I have a moment?

20 THE REFEREE: Yes.

21 REDIRECT EXAMINATION

22 BY MR. DEROHANNESIAN:

23 Q. I think you told Ms. Cenci someone approached you recently who had
24 been a prosecutor?

25 A. Correct.

993.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Fitzgerald - Redirect)

1 Q. How recently?

2 A. Within the last week, after all the art-- big article in the newspaper.

3 Q. Male or female?

4 A. Female.

5 Q. That has any known connection to Judge Miller outside of her
6 professional experience?

7 A. No.

8 MR. DEROHANNESIAN: Thank you, I have
9 nothing else.

10 THE REFEREE: Anything further?

11 MS. CENCI: No, thank you.

12 THE REFEREE: Thank you very much for coming.
13 I just would like to remind you that these proceedings are
14 confidential, so please don't discuss your testimony.

15 THE WITNESS: Okay.

16 THE REFEREE: And thank you for coming.

17 THE WITNESS: Thank you very much.

18 THE REFEREE: Who is our next witness?

19 MS. SCALISE: Sandy Conklin.

20 MS. CENCI: I was going to ask for an offer of proof
21 on this witness, but--

22 THE REFEREE: --All right, let's--

23 MS. CENCI: --I'll wait until they come back.

24 THE REFEREE: Let's close the door, we'll hang on
25 to the witness first.

994.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. SCALISE: We're hanging on to the witness?

2 THE REFEREE: Ms. Cenci's got--

3 MS. CENCI: --I want a--

4 THE REFEREE: --a question here.

5 MS. CENCI: Are we on the record?

6 THE REFEREE: We're on the-- We are on the
7 record.

8 MS. CENCI: I'd like to ask for an offer of proof as
9 to the purpose for this witness's testimony.

10 MS. SCALISE: On Ms. Conklin?

11 THE REFEREE: Yes--

12 MS. CENCI: --Yeah--

13 THE REFEREE: --who is she?

14 MS. SCALISE: So, she used to work in the Union
15 Town Court and the-- Excuse me-- Hold on. Let me just
16 make sure I have the right court because there's been a few.
17 Johnson City Village Court.

18 THE REFEREE: Okay. Is she a character witness?

19 MS. SCALISE: She's partially a character witness,
20 you know, and she's partially a fact witness.

21 THE REFEREE: Okay. And as to the fact part,
22 what is the general subject matter of what she's going to
23 discuss?

24 MS. SCALISE: She knows both the judge and
25 Rachelle Gallagher had worked with her.

995.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: I'm sure there are a lot of people that
2 know the judge and Ms. Gallagher, but what--

3 THE REFEREE: --Well, that's okay--

4 MS. CENCI: --what's the relevance to the
5 testimony?

6 THE REFEREE: Well, as certainly as the character
7 witness--

8 MS. SCALISE: --Yes--

9 THE REFEREE: --she's entitled to put that on
10 because that's quick. Let's hear what she has to say and
11 you certainly can object, so, let's bring the witness in.
12 Could you raise your right hand, please? Ms. Conklin--

13 MS. CONKLIN: --Mm-hmm, yes--

14 THE REFEREE: --do you swear or affirm that the
15 testimony you are about to give will be the truth, the whole
16 truth, and nothing but the truth?

17 MS. CONKLIN: I swear.

18 S A N D R A C O N K L I N,

19 having been duly sworn, was examined and testified as follows:

20 THE REFEREE: Please sit down.

21 MS. SCALISE: May I? Oh, sorry.

22 THE REFEREE: My name is Robert Barrer, and
23 I'm the special Referee who's been appointed by the
24 Commission on Judicial Conduct to preside over our
25 proceeding today. You're going to be asked some questions

996.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct)

1 by first the attorney for Judge Miller and then then by the
2 attorney for the Commission. It's important that when you
3 testify here today, please wait until the question is fully
4 asked before you answer, so we don't have people talking
5 over each other. It's important that when you answer, you
6 do so verbally because if you shake your head, we're
7 recording it and nothing will come out.

8 THE WITNESS: Okay.

9 THE REFEREE: And if there's an objection to a
10 question, please wait until I tell you to go forward. And
11 with that, counsel?

12 MS. SCALISE: Thank you.

13 DIRECT EXAMINATION

14 BY MS. SCALISE:

15 Q. For the record, can you state your name, spelling your last name?

16 A. Sandra Conklin. C-O-N-K-L-I-N.

17 Q. Did you-- Do you go by any other names? Or are you known by--

18 A. --Gilroy--

19 Q. --any other-- I'm sorry?

20 A. Gilroy.

21 Q. As your last name?

22 A. Yes.

23 Q. Okay, when did you last use the name Gilroy?

24 A. 15 years ago.

25 Q. What do you do for a living?

997.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct)

- 1 A. I work for Matthews Auto Group as the dealer trade driver.
- 2 Q. What does that mean?
- 3 A. If you were to go in and purchase a vehicle and they didn't have what
- 4 you wanted, I go pick it up at a different dealership and bring it back.
- 5 Q. How often do you do that?
- 6 A. Three times a week.
- 7 Q. How long have you been employed at-- in that position?
- 8 A. Three years.
- 9 Q. Do you have any children?
- 10 A. Yes. Three boys.
- 11 Q. How old are they?
- 12 A. 24, 22, and 16.
- 13 Q. So, one boy left, right?
- 14 A. Yes.
- 15 Q. Okay. Where do you reside?
- 16 THE REFEREE: Just the town.
- 17 A. Vestal.
- 18 Q. Do you know the Hon. Richard Miller?
- 19 A. Yes, I do.
- 20 Q. How long have you known him?
- 21 A. Probably 15 years.
- 22 Q. How did you come to know him?
- 23 A. I got a job at Village Court in Johnson City.
- 24 Q. How did you get that job?
- 25 A. I was hired by the-- I'm thinking hold on--

998.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct)

1 Q. --Were you hired by the judge?

2 A. No.

3 Q. So, who actually did you work for?

4 A. The town of-- The Village of Johnson City.

5 Q. Okay. And you worked with the judge?

6 A. Yes.

7 Q. Did you work with anybody else?

8 A. Yes.

9 Q. Who was that?

10 A. I worked with Rachelle.

11 THE REFEREE: That's Gallagher?

12 A. Gallagher. Leah and Maureen.

13 Q. Okay. Now, getting back to how you got the job, how did you learn of
14 the job?

15 A. Rachelle was a friend of mine before I started working there.

16 Q. And how long had you been friends before you started working there?

17 A. Probably five years.

18 Q. And did you see her on a regular basis in that five-year period?

19 A. No, we had kids that were growing up together. Her husband and my
20 husband worked at Ohanahey's [phonetic] together, so we would go
21 camping, occasionally.

22 Q. And did there-- How long did you stay in that job in Johnson City?

23 A. One year.

24 Q. Why did you leave?

25 MS. CENCI: Objection.

999.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct)

1 THE REFEREE: Sustained. No, no. Wait until the
2 next question. Sustained means that somebody objected, I
3 said sustained, that means that the question is not
4 appropriate to answer at that time.

5 BY MS. SCALISE:

6 Q. Were you fired?

7 A. No.

8 Q. Did you resign?

9 A. Yes.

10 Q. What was the reason for your resignation?

11 MS. CENCI: Objection, it's the same question.

12 THE REFEREE: Sustained.

13 BY MS. SCALISE:

14 Q. Did Rachelle Gallagher have anything to do with your resignation?

15 MS. CENCI: Objection.

16 THE REFEREE: Sustained.

17 BY MS. SCALISE:

18 Q. Did you observe any conduct by Rachelle Gallagher on the day that
19 you resigned?

20 MS. CENCI: Objection.

21 THE REFEREE: Sustained.

22 BY MS. SCALISE:

23 Q. When was the last time you saw Rachelle Gallagher?

24 A. Probably two years ago at just a picnic.

25 Q. In the time from when you resigned, okay, to the time two or three

1000.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct)

1 years ago, were you friends?

2 A. No.

3 Q. How did you come to be here today?

4 A. I felt that I had-- I knew Judge Miller enough that-- to know that he
5 would not do these-- any of these allegations--

6 MS. CENCI: --Objection.

7 THE REFEREE: Sustained.

8 BY MS. SCALISE:

9 Q. Okay. Are you here voluntarily?

10 A. Yes, I am.

11 Q. Did you get a subpoena?

12 A. No.

13 Q. Who contacted you to request that you come here today?

14 A. A private investigator.

15 Q. And did Judge Miller ever contact you to speak to you about these
16 proceedings here today?

17 A. No.

18 Q. Did you ever speak to him about the proceedings before the Judicial
19 Conduct Commission?

20 A. Maybe over a year ago. Briefly.

21 Q. Okay. And since that time, are you aware of press reports about Judge
22 Miller?

23 A. Yes.

24 Q. Okay. And in that time, have you had the ability-- Let's strike that.
25 Let me go back, okay? When you were working with Judge Miller in

1001.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct)

1 Johnson City Court, did you speak to others about his reputation for
2 honesty and trustworthiness?

3 A. Yes.

4 Q. And who were those other people?

5 A. The girls that we-- I worked with.

6 Q. Okay, and who was that?

7 A. Rachelle, Maureen, and Leah.

8 Q. Okay. And what time period was that?

9 A. 2001.

10 Q. Okay. And did you speak to the other judge who sat in that court?

11 A. Yes.

12 Q. Okay. How about police officers or litigants? Did you speak to any
13 of them about his reputation for honesty and trustworthiness?

14 A. Not so much, no.

15 Q. Okay. And does he have a reputation for honesty and trustworthiness
16 that you're aware of?

17 A. Yes.

18 Q. What is that reputation?

19 A. He's a very good family man. He's trustworthy. He's always happy.
20 He's loyal.

21 Q. Did you ever have occasion to hire him as your lawyer?

22 A. Yes.

23 Q. What did he do for you?

24 A. He was my divorce lawyer.

25 Q. And when was that?

1002.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct)

1 A. 2002.

2 Q. Were you satisfied with his services?

3 A. Yes.

4 Q. And did you ever have occasion to speak to other clients of his when
5 he had a private practice?

6 A. No.

7 MS. CENCI: Objection, Your Honor. I don't think
8 that's the proper reputational group.

9 THE REFEREE: I don't know yet what the question
10 is. I suspect you're right, but at the moment--

11 MS. SCALISE: --Okay, I'll--

12 THE REFEREE: --we're not there yet.

13 MS. SCALISE: I'll withdraw that.

14 BY MS. SCALISE:

15 Q. Did you ever speak to anybody else in the community at large about
16 Judge Miller's reputation for honesty and trustworthiness?

17 A. Yes.

18 Q. And without telling us the names, can you tell us what they did?

19 A. What they did?

20 Q. Yeah, or what they do.

21 THE REFEREE: Yeah. Who are these people?

22 MS. SCALISE: Who are they?

23 THE REFEREE: Just generally.

24 A. My boyfriend.

25 THE REFEREE: Yep.

1003.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct)

1 BY MS. SCALISE:

2 Q. Okay. And according to those conversations, what is his reputation
3 for honesty and trustworthiness in the community at large?

4 A. He's a great person.

5 Q. Okay. Now, you've read news reports?

6 A. Yes.

7 Q. And there's some pretty serious allegations in those news reports?

8 A. Yes.

9 Q. Okay. After reading those reports, did it change your opinion of him
10 in any way?

11 A. No.

12 Q. After reading those reports, did you have discussions with anyone
13 else--

14 A. --Yes--

15 Q. --about--

16 THE REFEREE: --Well, hold on let her finish the
17 question--

18 BY MS. SCALISE:

19 Q. --about Judge Miller's reputation for honesty and trustworthiness?

20 A. Yes.

21 Q. Okay. Did it change any of those persons' opinions about him in any
22 way?

23 A. No.

24 Q. Okay. And after those discussions with the other persons, did you
25 then again possibly change your opinion about Judge Miller and his

1004.

(Conklin - Direct)

1 reputation for honesty and trustworthiness?

2 A. No.

3 Q. Okay. Just a moment. Would you do anything for Judge Miller?

4 A. Yes.

5 Q. Would you lie for him?

6 A. No.

7 MS. SCALISE: I have nothing further. Oh, wait.

8 Hold on a second. Let me ask counsel--

9 THE REFEREE: --That's all right. Take your time.

10 MS. SCALISE: Okay. Okay. Okay.

11 BY MS. SCALISE:

12 Q. Now, you do know Rachelle Gallagher?

13 A. Mm-hmm.

14 Q. Okay.

15 THE REFEREE: Is that a yes?

16 THE WITNESS: Yes.

17 BY MS. SCALISE:

18 Q. Okay. Have you ever had occasion to talk to people about her
19 reputation for honesty or trustworthiness?

20 MS. CENCI: This is objectionable, Your Honor.

21 It's not admissible.

22 THE REFEREE: I think you're correct.

23 MR. DEROHANNESIAN: Can I be heard on that?

24 THE REFEREE: Yep. Could you step out of the
25 room for just a moment, please?

1005.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE WITNESS: Mm-hmm.

2 THE REFEREE: It's my understanding of the law in
3 this area, and I'm referring specifically to Court of Appeals
4 decision in *People v Kuss*, from 1973, and the Fourth
5 Department's decision in *People v Kennard*, from 2018,
6 that when a defendant's character is at issue, and the
7 defendant chooses to testify-- Excuse me-- when it is at
8 issue, the defense may introduce character evidence, but I
9 don't believe you're allowed to put in collateral evidence of
10 a witness's reputation for truth and honesty. I could be
11 wrong, but that's my understanding. You had an objection,
12 Ms. Cenci, what is the basis of your objection?

13 MS. CENCI: Exactly that, Your Honor. You're not
14 allowed to impeach another witness in this fashion by
15 asking about--

16 THE REFEREE: --Okay-- Anything--

17 MS. CENCI: --the reputation. Exactly what you
18 said.

19 THE REFEREE: Thank you.

20 MS. SCALISE: Okay. Just before we get to the
21 legal argument, we've repeatedly seen this through our
22 other witnesses and their witnesses. Mr. Kachatour--
23 Kachourian. I keep saying his name wrong.

24 MR. DEROHANNESIAN: Kachadourian.

25 MS. SCALISE: Kachadourian and Ms. Gallagher

1006.

(Hon. Richard H. Miller, II)

1 said a lot of negative things about a lot of witnesses in our
2 case, including the judge, okay? I think it's fair play to
3 have people who know both attest to the reputation of these
4 other people. In addition, we do have case law, but to now,
5 again, have this two-sided argument that they can say
6 whatever they want and come off as you know, girl scout
7 boy scout, is inherently unfair because there's no one else
8 except for the judge to contest that. If there are other
9 people who have knowledge in the community as to the
10 reputation for honesty and trustworthiness, that is
11 something, while you will have to assess it, there's
12 something to corroborate that maybe they're not honest and
13 maybe they're not trustworthy and people know it.

14 THE REFEREE: But let me inquire. Did we have
15 proof of Mr. Kachadourian or Ms. Gallagher offering
16 evidence of truthfulness as to other people-- Excuse me,
17 other people besides Judge Miller because the-- I don't
18 remember hearing that, it could have been, but I want to
19 understand your argument. Certainly, their testimony about
20 Judge Miller is-- We have to make a judgment as to
21 credibility and that's why we heard Ms. Gallagher, we
22 heard Mr. Kachadourian, and I have to make findings about
23 whether they are credible or not, and I'm going to do that.
24 And Judge Miller's credibility obviously is at issue. I
25 suspect he will testify. I assume he will, but he doesn't

1007.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 have to, but I have to make assessments, but I don't know
2 that you're allowed to introduce collateral evidence of
3 reputation of a complaining witness. I think if you-- If the
4 witness said something and the example that comes to mind
5 is Ms. Gallagher testified about this issue with the wedding,
6 and we then had witnesses-- we had a witness come in to
7 say that's not so, but we didn't hear evidence that a given
8 witness, other than prospective witness Miller, has any
9 reputation for truth or honesty. But you said you have some
10 case law?

11 MR. DEROHANNESIAN: Yes. Yes. It's our
12 position-- I'm going to just-- two sentences from a case,
13 *People v Pavao*. P-A-V-A-O. 59 NY2nd, 282, 289-91. It's
14 a 1983 case.

15 THE REFEREE: The Court of Appeals?

16 MR. DEROHANNESIAN: Court of Appeals.
17 Quote, "The rule is that other qualified witnesses may be
18 called to testify with respect to the witness's reputation for
19 untruthfulness," close quote. Remanding for a new trial
20 where the, quote, "trial court refused to allow defendant to
21 call a witness to testify that one of the prosecution's
22 witnesses had a bad reputation in the community for truth
23 and veracity and noting the witness had highly damaging
24 testimony." The second case is *People v Hanley*, 5 NY3rd
25 108, 112.

1008.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: One second. 5NY3rd?

2 MR. DEROHANNESIAN: 108 at page 112, the
3 quote that I'm about to read. Quote--

4 MS. CENCI: --What year is that, counsel?

5 MR. DEROHANNESIAN: 2005.

6 MS. CENCI: Thank you.

7 MR. DEROHANNESIAN: "The trial court must
8 allow such testimony once a foundation has been laid, so
9 long as it is relevant to contra-- contradict the testimony of
10 a key witness and is limited to general reputation for truth
11 and veracity in the community." I have used those two
12 cases on multiple occasions with respect to the character of
13 sexual assault complainants.

14 THE REFEREE: I'm going to look up-- Let's go
15 off--

16 MR. DEROHANNESIAN: --Yeah--

17 THE REFEREE: --Hold a minute. I'll take all the
18 argument first, and then I'm going to look at the cases right
19 here--

20 MR. DEROHANNESIAN: --Yep.

21 THE REFEREE: Is there any other argument you
22 want to make before we go off the record? Because I think
23 we need to see what the case is saying--

24 MS. CENCI: --I agree, Your Honor--

25 THE REFEREE: --because I'm not familiar with

1009.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 them.

2 MS. CENCI: I would just note that this is not a
3 criminal proceeding and--

4 THE REFEREE: --That may be the answer, but I--

5 MS. SCALISE: --While it may be the answer, every
6 case they cited was a criminal case with a criminal
7 proceeding--

8 MR. DEROHANNESIAN: --No, but it-- The rules
9 of evidence--

10 THE REFEREE: --No, I understand and--

11 MS. SCALISE: --and the rules of evidence apply--

12 MR. DEROHANNESIAN: --On charac--

13 MS. SCALISE: --in an-- on character--

14 MS. CENCI: --But is--

15 MS. SCALISE: --okay, in a non-jury or a jury trial.
16 That applies here. And by the way, the allegations are of
17 such a heinous nature that it's not only the judge's
18 reputation that's at stake, it's his job and his-- his standing
19 in the community. So, if people are going to come in here
20 and stand up and accuse him, it would be fair play to be
21 able to have an explora-- exploration of what their
22 reputation is, especially since they have also sued him in a
23 civil lawsuit.

24 THE REFEREE: Well, the civil lawsuit I don't
25 really think is my issue, that's for another day--

1010.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. SCALISE: --I don't believe it's your issue,
2 okay? But, it's something you can consider as to what the
3 motive may be.

4 THE REFEREE: Well, I think that would-- that
5 would have some bearing on my assessment of their
6 credibility.

7 MS. SCALISE: Yes.

8 THE REFEREE: But let me take a look-- Let's go
9 off the record.

10 MS. SCALISE: Sure.

11 (OFF THE RECORD)

12 THE REFEREE: Counsel for the Commission is
13 present. Counsel for Respondent is present, and the
14 Respondent is present. Before we went off the record, we
15 had argument about the admissibility of evidence relating to
16 the truthfulness of complaining witnesses. Of key
17 complaining witnesses. Mr. DerOhannesian provided us
18 with citations to two Court of Appeals cases, *Pavao* and
19 *Hanley*, and we took a break and I've done some research
20 on that issue and I think that, at this point in time, the
21 controlling law in New York is a Court of Appeals decision,
22 *People v Fernandez*, 19NY3rd, page 70, from 2011. And
23 I'm just going to read a short excerpt from the decision of
24 the Court of Appeals. "We have long held that, quote, 'a
25 party has a right to call a witness to testify that a key

1011.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 opposing witness, who gave substantive evidence, and was
2 not called for the purpose of impeachment, has a bad
3 reputation in the community for truth and veracity,” citing
4 *Pavao*. “Indeed, a trial court must allow such testimony,
5 once a foundation has been laid, so long as it is relevant to
6 contradict the testimony of a key witness and is limited to
7 general reputation for truth and veracity,” citing *Hanley*.
8 “The purpose of this rule is to ensure that the jury is
9 afforded a full picture of the witnesses presented, allowing
10 it to give the proper weight to the testimony of such
11 witnesses,” close quote. And there’s some internal quotes
12 and end of quotes within that paragraph. I can-- ran a
13 Lexis-- a Shepherd’s search on that case and found nothing
14 further from the Court of Appeals on that issue and I think
15 this rule goes back to *People v Hinksman*, H-I-N-K-S-M-A-
16 N, 192NY 421, so I’m going to find that that is the
17 controlling law in New York and if a foundation is laid, that
18 this witness knows the reputation in the community of Ms.
19 Gallagher for truth and veracity, that she may state simply
20 what that reputation is, but with no examples. So, at the
21 moment, that foundation has not been laid. So, let’s bring
22 the witness back and Ms. Scalise, if you’d like to try and lay
23 a foundation--

24 MS. SCALISE: --Yes--

25 THE REFEREE: --then we can proceed.

1012.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct/Cross)

1 MS. SCALISE: Thank you.

2 THE REFEREE: Please have a seat. You're still
3 under oath.

4 THE WITNESS: Okay.

5 BY MS. SCALISE:

6 Q. Ms. Conklin, you said that you know Rachelle Gallagher for a long
7 time?

8 A. Yes.

9 Q. How long?

10 A. Probably 25 years.

11 Q. Okay. And have you had occasion to speak to others in the legal
12 community about her reputation for truthfulness and honesty?

13 A. Yes.

14 Q. Without telling us who, is it more than one person?

15 A. Yes.

16 Q. What is that reputation of Rachelle Gallagher's for truthfulness and
17 honesty?

18 A. Untruthful.

19 MS. SCALISE: I have nothing further.

20 THE REFEREE: Okay. Ms. Cenci?

21 CROSS-EXAMINATION

22 BY MS. CENCI:

23 Q. Hi, Ms. Conklin, I'm Cathleen Cenci.

24 A. Hi.

25 Q. I'm serving as counsel for the Commission in this matter.

1013.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct/Cross)

- 1 A. Okay.
- 2 Q. So, you used to be friends with Rachelle Gallagher?
- 3 A. Yes.
- 4 Q. And when you were friends with her, did you have an opinion as to
- 5 her reputation for truthfulness?
- 6 A. As the years went on, yes.
- 7 Q. Okay. And how many people have you spoken with? You said it was
- 8 more than one. How many have you talked to in the legal community
- 9 about Rachelle Gallagher's reputation?
- 10 A. Probably two.
- 11 Q. Two people?
- 12 A. Mm-hmm.
- 13 Q. Who are they?
- 14 A. Maureen--
- 15 THE REFEREE: --Maureen who? Last name?
- 16 A. I don't know her last name. I used to work with her.
- 17 Q. Is that Maureen Aissa?
- 18 A. Yes.
- 19 Q. Okay. And who is the other person?
- 20 A. As far as--
- 21 Q. --Who you spoke with about Rachelle Gallagher's reputation for
- 22 untruthfulness?
- 23 A. My boyfriend.
- 24 Q. What's his name?
- 25 A. Bill Kalka.

1014.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Direct/Cross)

1 THE REFEREE: Spell it, last name?

2 A. K-A-L-K-A.

3 Q. Okay. Does-- Do you know if he knows Rachelle Gallagher
4 personally?

5 A. Yes, he does.

6 Q. All right. Okay.

7 MS. CENCI: So, Your Honor, based upon that
8 testimony, I would ask that this reputation testimony be
9 stricken, since I don't believe two people constitutes a
10 community under the *Fernandez* case or the others that you
11 and Mr. Kachadourian [sic] cited for the admissibility of
12 such reputational testimony.

13 THE REFEREE: Ms. Scalise, any response to the
14 motion to strike?

15 MS. SCALISE: Yes. If you read the case itself, it
16 was two co-workers, too, okay?

17 THE REFEREE: And I-- I get that--

18 MS. SCALISE: --Yes--

19 THE REFEREE: --but the question, and I believe
20 that the objection was, and a-- there's case law discussion
21 about what constitutes a community. So, I don't think that
22 case said that merely talking to two people constitutes
23 knowledge of the community as a whole.

24 MS. SCALISE: Okay, then--

25 THE REFEREE: --I think the objection is well

1015.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Redirect)

1 taken.

2 MS. SCALISE: Okay. Okay. Can I explore just a
3 little bit more, because limiting-- Because you gave me a
4 very specific instruction as to, you know, what I could ask
5 and what I could elicit.

6 THE REFEREE: You can certainly elicit foundation
7 of how this witness came to have an opinion. Frankly, I'm
8 not sure that it's the legal community as the appropriate
9 community. I think it is a community in which she resides.
10 With respect to Judge Miller, I think then you're talking a
11 legal community. I think it's a different community.

12 MS. SCALISE: Okay.

13 THE REFEREE: So, why don't you--

14 MS. SCALISE: --Thank you--

15 THE REFEREE: --So, sustained. Objection is
16 sustained and I'm not going to strike it until after we see
17 whether the witness can be rehabilitated. Go ahead.

18 REDIRECT EXAMINATION

19 BY MS. SCALISE:

20 Q. Now dire-- Directing your attention to the community at large, greater
21 Broome County--

22 A. --Mm-hmm--

23 Q. --if-- How long have you lived here?

24 A. All my life.

25 Q. Okay. You know a lot of people?

1016.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Redirect)

1 A. Yes.

2 Q. Okay. Do you know some people in common with Roch-- Rachelle
3 Gallagher?

4 A. Yes.

5 Q. Okay. And how did you come to know those people in common with
6 Rachelle Gallagher?

7 A. Worked with them. Met them through other friends.

8 Q. Do you know some people who-- maybe through parents' association
9 or anything like that?

10 A. No.

11 Q. Okay. So, you said something about you camped with her and her
12 husband?

13 A. Yes.

14 Q. Okay. So, you know her husband?

15 A. Ye-- First husband.

16 Q. Okay, so, the camping was with the first husband?

17 A. Mm-hmm.

18 Q. Okay.

19 THE REFEREE: Is that a yes?

20 THE WITNESS: Yes.

21 THE REFEREE: That's all right.

22 BY MS. SCALISE:

23 Q. Okay, so, directing your attention to my question, again, to the
24 community at large, okay, have you had the opportunity to speak with
25 people in the community at large about Rachelle Gallagher's

1017.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Redirect)

1 reputation for honesty and truthfulness?

2 A. Yes.

3 Q. Who may that be?

4 A. My boyfriend, people that I worked with, other friends.

5 Q. Now, are you aware of news stories about the civil action that
6 Rachelle Gallagher and Mark Kachadourian brought against Judge
7 Miller?

8 A. Yes.

9 Q. Did you read any of those stories?

10 A. Yes.

11 Q. Did you have the opportunity since those stories were published to
12 speak to anybody in the community at large about Rachelle
13 Gallagher's reputation for honesty and truthfulness?

14 A. Just my boyfriend after that.

15 Q. Okay. Anybody else?

16 A. No.

17 Q. Okay. From the time where you left that court, in 2000 and what?

18 A. '01.

19 Q. Okay, to the present time, okay, did you have the opportunity to speak
20 to anybody in the community at large about Rachelle Gallagher and
21 her reputation for honesty and truthfulness?

22 A. Yes.

23 MS. CENCI: Objection.

24 THE REFEREE: Yeah, that's all right, go ahead.

25 MS. CENCI: Sustained?

1018.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Conklin - Redirect)

1 THE REFEREE: Sust--

2 MS. CENCI: --Sustained?

3 THE REFEREE: Overruled.

4 BY MS. SCALISE:

5 Q. How many people?

6 A. Just my boyfriend.

7 Q. Okay, anybody else?

8 A. No.

9 Q. Okay. What is that reputation, as you know it?

10 A. Untruthful.

11 Q. Thank you.

12 MS. CENCI: I renew my objection, Your Honor. I
13 don't think it's been established that the witness spoke to a
14 sufficient number of individuals to constitute a community.

15 THE REFEREE: Sustained.

16 MS. SCALISE: She did earlier say in her testimony,
17 co-workers, okay, because it-- at some point I asked about
18 co-workers, okay, and she did say her boyfriend. Can I
19 explore a little bit about the co-workers?

20 THE REFEREE: Why don't we-- How many
21 different people in this are-- in the Broome County area,
22 have you spoken to about Ms. Gallagher's reputation for
23 truth and honesty? You told us about your boyfriend--

24 THE WITNESS: --Mm-hmm--

25 THE REFEREE: --you've told us about Maureen

1019.

(Conklin - Redirect)

1 Aissa--

2 THE WITNESS: --Yes--

3 THE REFEREE: --Okay, that's two. Anyone else?

4 THE WITNESS: I would say mutual friends of
5 people that we camped with.

6 THE REFEREE: How many people?

7 THE WITNESS: Maybe ten.

8 THE REFEREE: Can you tell us their names?

9 THE WITNESS: I-- My gosh, this was so long ago.
10 Jeff Gilroy. Marcia Craig. Joe Craig. Tanner Fitzgerald. I
11 cannot remember the other people's names who were there.

12 BY MS. SCALISE:

13 Q. Any judges?

14 A. No.

15 Q. Judge Miller?

16 A. No. He was not there.

17 Q. Okay. After speaking to all of these people, again, my question is,
18 what is Rachelle Gallagher's reputation for honesty and truthfulness?

19 A. Untruthful.

20 MS. SCALISE: Thank you.

21 THE REFEREE: Anything further? I-- I'll give
22 you a ruling after the witness is gone.

23 MS. SCALISE: I have nothing further.

24 THE REFEREE: Do you wish to explore this
25 concept of community?

1020.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Conklin - Recross)

1 MS. CENCI: I don't mean to belabor this, but if I
2 could just have one quick question.

3 THE REFEREE: Take as many-- as many as you
4 like.

5 RECROSS-EXAMINATION

6 BY CENCI:

7 Q. These individuals that you went camping with, that you just named--

8 A. --Mm-hmm--

9 Q. --when did you speak to them about Rachelle's reputation?

10 A. We spoke about that during different episodes of camping, because of
11 her--

12 Q. --Okay, go-- during the camping. When was the camping trip?

13 A. 20 years ago.

14 Q. Yeah?

15 MS. CENCI: I renew my objection, Your Honor.

16 THE REFEREE: Okay. All right. Yeah, anything
17 further?

18 MS. SCALISE: Nothing further.

19 THE REFEREE: All right. Thank you for coming.
20 I would like to just tell you that our proceedings here are
21 confidential, so please don't discuss them with anyone
22 outside this room.

23 THE WITNESS: Okay.

24 THE REFEREE: Thank you for coming.

25 THE WITNESS: Thank you.

1021.

(Hon. Richard H. Miller, II)

1 THE REFEREE: I'm going to sustain the objection
2 and strike the reputation testimony on the grounds that it
3 hasn't been established that this witness has a sufficient
4 grasp of the relevant community in order to be able to
5 provide the type of reputation testimony that the Court of
6 Appeals discussed in the *Fernandez* case. Do we have a--
7 another witness?

8 MS. SCALISE: Yes, we do.

9 THE REFEREE: Who's next?

10 MS. SCALISE: Artan Serjanej.

11 THE REFEREE: All right. Thank you.

12 COURT OFFICER: Okay, Judge, he's in the
13 restroom.

14 THE REFEREE: Let's go off the record.

15 (OFF THE RECORD)

16 THE REFEREE: Counsel for the Commission is
17 present. Counsel for the Respondent is present, and the
18 Respondent himself is present. Would you raise your right
19 hand please, sir? Do you swear or affirm that the testimony
20 you are about to give will be the truth, the whole truth, and
21 nothing but the truth?

22 MR. SERJANEJ: I do.

23 A R T A N S E R J A N E J, E S Q.,

24 having been duly sworn, was examined and testified as follows:

25 THE REFEREE: All right, please have a seat--

1022.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE WITNESS: --Thank you.

2 THE REFEREE: Sir, my name is Robert Barrer--

3 THE WITNESS: --Yes--

4 THE REFEREE: --I've been appointed by the
5 Commission on Judicial Conduct to be the Referee--
6 special Referee-- and you're going to be giving some
7 testimony. You'll be asked some questions first by the
8 attorney for Judge Miller and then the attorney for the
9 Commission will have a chance to question you. But you
10 are-- You ever do litigation?

11 THE WITNESS: Yes, I do.

12 THE REFEREE: All right, so, you know that you've
13 got to wait until the question is--

14 THE WITNESS: --I understand--

15 THE REFEREE: --fully asked before you answer.

16 THE WITNESS: I understand.

17 THE REFEREE: You know you have to answer
18 verbally instead of shaking the head.

19 THE WITNESS: I'll try my best.

20 THE REFEREE: And in the event that there's an
21 objection, you know you have to wait.

22 THE WITNESS: Yes.

23 THE REFEREE: All right, thank you.

24 THE WITNESS: Thank you.

25 THE REFEREE: All right. Counsel?

1023.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

MS. SCALISE: Thank you.

DIRECT EXAMINATION

BY MS. SCALISE:

Q. Mr. Serjanej, can you spell your last name for the record?

A. S-E-R-J-A-N-E-J.

Q. And your first name?

A. A-R-T-A-N. Artan.

Q. Do you mind if I call you "Artan"?

A. Yes, please.

Q. Okay. I do have your name spelled phonetically in Italian but I think it's easier to say "Artan."

A. It sounds Italian but it's Albanian, yes.

Q. Okay. We'll accept that, okay. Are you a citizen of the United States?

A. I am, since 1997.

Q. Okay. And when did you come to the United States?

A. I've been in the United States since March 28, 1990.

Q. And just briefly, how did you get here?

A. I escaped communism, 1989, January 6, 1989. I left Albania, it was a dictatorship, with about eight other Albanians. Took fishing boat, went to Italy, sought political asylum and they granted us the political asylum. Then the Archdiocese of Detroit sponsored me and my friends and we all came to the United States in 1990.

Q. So, Detroit is a long way to Binghamton. How did you get to Binghamton?

1024.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Serjanej - Direct)

1 A. I met my ex-wife in Lansing, Michigan-- Well, it was Hamtramck is
2 where I lived at that time. She was going to Lansing Medical School.
3 I had just come to United States, I was a spray painter at that time. I
4 was-- spoke enough English just to, you know, ask her out, so she
5 encouraged me to pursue an education, so she bought me this GED
6 book. She said, "You should study," even though I barely spoke
7 enough English, but she encouraged me so, while I was a spray
8 painter, I studied. I took the GED and I passed it in 1992. Then we--
9 She graduated from that-- from med school. We moved to Louisiana,
10 she started her internship, her residency there. I started college at
11 Tulane University, then we moved here in 1994 and I ended up in
12 New York State because she is from the First Ward, Binghamton,
13 New York.

14 Q. Okay.

15 A. That's-- That's how we ended up in Binghamton.

16 Q. Now, when you say you were a spray painter, there's two connotations
17 for that.

18 A. Okay.

19 Q. Somebody who spray paints graffiti and somebody who spray paints
20 houses, which were you?

21 A. I worked at a factory in Detroit. It was an assembly line. They put
22 these Ford parts, you know. In the assembly line, they pass by you
23 really fast and you paint them.

24 Q. Auto parts?

25 A. Auto parts, yes.

1025.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

- 1 Q. And how long did you do that for?
- 2 A. For two years.
- 3 Q. And when you went to Louisiana, you said you went to Tulane?
- 4 A. Tulane University, yes.
- 5 Q. How long did you go to school there?
- 6 A. I went to school from the summer of '92 to '94. It was the fall of-- It
- 7 was actually January '94 when we-- I'm sorry. It was May of 1994
- 8 when we moved upstate.
- 9 Q. Okay. So, when you moved upstate, did you have a degree from
- 10 Tulane?
- 11 A. No, I didn't. I just had some credits.
- 12 Q. Okay. Did you take those credits and transfer them to a school?
- 13 A. I transferred them to BCC. I went to BCC for about a year, a year and
- 14 a half, and then transferred at Binghamton University.
- 15 Q. And Artan, just for the record, what is "BCC"? Because in Boston--
- 16 A. --Broome County--
- 17 Q. --it means something different--
- 18 A. --Broome County Community College.
- 19 Q. Thank you. Okay. And so, did you get a degree at Broome County
- 20 Community College?
- 21 A. I didn't. I took my credits from BCC and I transferred them at
- 22 Binghamton University and I graduated from Binghamton University
- 23 in 1997.
- 24 Q. What degree did you graduate with?
- 25 A. Bachelors of art, BA.

1026.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

- 1 Q. And what subject matter?
- 2 A. Philosophy.
- 3 Q. Okay. Very good for becoming a lawyer, I'm sure. So, did you go to
- 4 law school?
- 5 A. I went to Syracuse Law School in 1997.
- 6 Q. And when did you graduate?
- 7 A. 2000.
- 8 Q. What degree did you graduate with?
- 9 A. Law degree, JD, juris doctorate.
- 10 Q. Did you pass the bar examination?
- 11 A. I did. I passed the bar in 2004. Right after law school, I started
- 12 working for a local congressman, Maurice Hinchey. He's passed
- 13 away now, but I was his district rep. My office was here at the federal
- 14 building in Binghamton. I worked for him for about almost three
- 15 years. Then I decided I couldn't go any higher. I had the top position
- 16 for him in Broome County. The only way I could advance was if I
- 17 went to down-- to Washington D.C. I had plans on doing that, so-- I
- 18 was married at the time, I had a son-- a young son, so I decided to
- 19 practice law, so I passed the bar in 2004.
- 20 Q. Okay. And are you an attorney in good standing in New York?
- 21 A. I am.
- 22 Q. Admitted in any other jurisdictions?
- 23 A. I-- In-- Not in other jurisdictions, states, but I was admitted to
- 24 Northern District of New York in the Second Circuit, federal courts.
- 25 Q. So, when you opened your own practice, did you open it as a sole

1027.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

- 1 practitioner?
- 2 A. Yes.
- 3 Q. What areas of practice-- And what year was that? Excuse me.
- 4 A. 2004. June of 2004 is when, you know, I was sworn in. I worked
- 5 for-- I had done an internship for attorney Stan Drazen and Mark
- 6 Rappaport, they were senior attorneys actually here in Broome-- in
- 7 Binghamton, and I did a lot of work with them before I passed the bar.
- 8 Q. Okay.
- 9 A. So--
- 10 Q. --So, now, in 2004, you passed the bar?
- 11 A. I passed the bar and attorney Drazen, he had an office, a main suite
- 12 here in Binghamton, so he lended me a portion of his office to borrow
- 13 to work. So, he converted one of the rooms into an office for me and I
- 14 worked.
- 15 Q. Okay. So, directing your attention, what was the actual date of
- 16 admission to the bar?
- 17 A. It was June of 20-- 2004. I just don't remember the date.
- 18 Q. Okay, so you opened a sole practice?
- 19 A. Yes, I did.
- 20 Q. Okay. And that was-- That takes space in a-- Well, actually, you
- 21 were given space at Mr. Drazen's office.
- 22 A. Yes, I was working it off for him. So, if he had certain issues for
- 23 research or if he wanted me to write some motions, I would do things
- 24 for him. I would work for him.
- 25 Q. And if you had questions, who did you ask?

1028.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 A. I would ask Mr. Drazen.

2 Q. So, directing your attention to the areas of practice then and now,
3 okay, when you first started, what areas of practice did you practice--
4 you concentrate or focus your practice in?

5 A. Well, because of Mr. Drazen's practice, he was having (unintelligible)
6 with real estate and Mark Rappaport was having (unintelligible) with
7 bankruptcies, and Mark also did a lot of criminal cases, and I would
8 be second chair. I would sit on with him doing trials, so those were
9 the areas that I focused on. Criminal, real estate, I did some
10 immigration at that time as well, and bankruptcies, but I realized I
11 didn't like bankruptcies-- bankruptcies, so I didn't pursue them.

12 Q. Okay. So, directing your attention to your practice today, will you
13 concentrate-- What practice areas do you concentrate or focus in?

14 A. I focus mostly criminal law, family, and real estate. And obviously it
15 expanded to estates, as well.

16 Q. Like trusts and estates?

17 A. Trusts and estates.

18 Q. Okay. Just to finish out the record, you have children?

19 A. I do. I have children and I have one on the way. I just found out
20 yesterday it's a boy.

21 THE REFEREE: Congratulations.

22 THE WITNESS: Thank you.

23 BY MS. SCALISE:

24 Q. Congratulations. So, how many children do you have?

25 A. I have three.

1029.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

- 1 Q. Okay. And you live locally?
- 2 A. I live locally in Endwell, New York, yes.
- 3 Q. Do you know the Hon. Richard Miller?
- 4 A. I do.
- 5 Q. How did you come to know him?
- 6 A. I met Judge Miller back in 2001. I was working for Congressman
7 Hinchey at the time, and one of my responsibilities was to appear at
8 events on the congressman's behalf when he wasn't in town. He lived
9 in the Kingston area, in Poughkeepsie. So, back then, it was an event
10 at a VFW in Johnson City. I think I showed up to give a small speech
11 and present some certificate on behalf of the congressman, actually, to
12 one of the veterans. So, I remember giving a very brief speech and
13 then Rick came afterwards and introduced himself to me, and he said,
14 "My dad and your boss actually, even though they are-- they belong
15 to different parties, but they-- they did a great job," because Maurice
16 Hinchey used to be in the Assembly for 18 years and worked with
17 Rick's dad, so he had nothing but wonderful things to say about my
18 boss, and I liked that.
- 19 Q. Okay, so, when you say "Rick's dad," who was that?
- 20 A. Richard Miller, Sr.
- 21 Q. And he was an assemblyman, as well?
- 22 A. He was in the Senate.
- 23 Q. Okay. So, what is the nature of your relationship today? With--
- 24 A. --Today--
- 25 Q. --Rick-- with Judge Rick Miller?

1030.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 A. It's professional and we're friends, as well.

2 Q. Okay. Did there come a time where you took over his-- files from his
3 practice?

4 A. I took over the building. Sometimes end of 2014, when Judge Miller
5 was just elected in family court, I had a conversation with Judge
6 Miller. He called me, he said that certain arrangements that he had
7 with another attorney, Brett Noonan, fell through and he wanted to
8 have someone-- He didn't want to see the building empty. He said,
9 "I'd like for you to take it over. I've-- I've known you," he said, "for
10 a long time." At that time, I was working out of my home. "If you--
11 If you would like to take over the building, you know, I'd like for you
12 to take it over. I don't want to see it empty."

13 Q. Okay. And who owned the building?

14 A. Julie Miller, Judge Miller's wife.

15 Q. Okay. But you made the arrangements through Judge Miller?

16 A. I had the conversation with Judge Miller, but then I talked to Julie, as
17 well, because we-- At the time, I told him I'm comfortable doing
18 what I'm doing. I don't pay, you know, rent for space, I'm working
19 out of my home, I just want to make sure that this works for me. And
20 I think I took a little time, I talked to Julie as well, and we made an
21 arrangement.

22 Q. Okay, so, what is the arrangement?

23 A. I pay for all the expenses, taxes on the building, insurance, water bill.
24 Any expenses that's related to upkeep, you know, of building, I take
25 care of that, I pay it. Utilities, all of it.

1031.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

- 1 Q. Can you-- Can you tell us where the building is located?
- 2 A. It's located in Endwell, New York. 2 [REDACTED] North Street. It's in-- It's in
- 3 Endwell, New York.
- 4 Q. And mileage wise, how far is that from here?
- 5 A. I'd say about nine miles, eight miles.
- 6 Q. And on a good day, how quick can you get there from downtown
- 7 Binghamton?
- 8 A. It depends how fast I go, but eight, nine minutes. Ten minutes at
- 9 most.
- 10 Q. So, you took over the building?
- 11 A. I took over the building, yes.
- 12 Q. And what does it cost if you would average out the expenses over a
- 13 yearly period per month for you?
- 14 A. I mean, they-- maybe 5, \$600 a week-- a month.
- 15 Q. Okay. And do you recall when you moved into the building?
- 16 A. I don't specifically. I think it was end of January 2015 or early
- 17 February. Maybe first week of February 2015.
- 18 Q. Okay. So, when-- Can you describe when you moved into the
- 19 building what was there?
- 20 A. I didn't understand the question.
- 21 Q. Okay, so, it's a building, right--
- 22 A. --Oh, yeah--
- 23 Q. --Okay, so--
- 24 A. --you're asking me to describe the building.
- 25 Q. Yes, please.

1032.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

- 1 A. It's a two-story house. The first one is the law office. It has a lobby.
2 It has two offices. It has a conference room with a big table like this
3 and it has a-- storage in the back of the building-- storage room. It
4 just has old files in there.
- 5 Q. Okay. And does it have any other storage?
- 6 A. It has a basement, as well, which I have access to, and there's a bunch
7 of old files, actually, down there.
- 8 Q. Okay. Did you also arrange to take over some of the cases that Judge
9 Miller had that went from his prior law practice?
- 10 A. Eventually, some clients wanted to stay with-- with me. They wanted
11 to stay with whoever took over the building. I spoke with them, most
12 of them ended up being clients that had estates that had been pending
13 for-- you know, for years. Work that Judge Miller had worked for
14 years.
- 15 Q. And when you took over the practice, did you get a key to the
16 building?
- 17 A. I did get a key to the building, yes.
- 18 Q. Does Judge Miller have a key to the building?
- 19 A. No, he never had a key to the building.
- 20 Q. Okay. So, are there any clients besides-- Oh, let me-- Strike that.
21 Did you bring any clients of your own with yourself to that practice?
- 22 A. Yeah, I had about 20 or 30 clients of my own at that time.
- 23 Q. And what types of cases were they?
- 24 A. Mostly criminal and family. And some real estate.
- 25 Q. And how do you get your client base?

1033.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

- 1 A. I never advertise. My client base came from word of mouth, other
2 attorneys, assignment cases.
- 3 Q. Are you assigned on the 18B panel?
- 4 A. No, I'm not--
- 5 Q. --You said assignment cases--
- 6 A. --I'm not--
- 7 Q. --so, what kind of assignment cases?
- 8 A. I get assignments from criminal courts-- criminal courts-- criminal
9 cases.
- 10 Q. Okay. Is it *pro bono*?
- 11 A. No.
- 12 Q. So, is there a panel that appoints you from the criminal court cases?
- 13 A. The way it works is you let the courts know that I take assigned cases
14 and the clerks from the courts call me and they say, "We have a case,
15 are you interested?" and--
- 16 Q. --Okay--
- 17 A. --and I make arrangements with courts directly.
- 18 Q. Okay. So, you know, directing your attention to criminal cases, about
19 how much of your practice is criminal?
- 20 A. I'd say at least 60 percent of my practice.
- 21 Q. Okay. And how much of it would you say is real estate?
- 22 A. 20 percent.
- 23 Q. Okay. And then the rest? If you could break--
- 24 A. --The rest--
- 25 Q. --it down percentage.

1034.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

- 1 A. It's family, matrimonial.
- 2 Q. Trusts and estates?
- 3 A. Trusts and estates, yes.
- 4 Q. How many of those do you have?
- 5 A. At this point, I believe I have, I want to say three or four left.
- 6 Q. And do you handle any matters for Judge Miller?
- 7 A. I do. I handle matters for Judge Miller and his mother, his wife, his
- 8 brother-in-law. I'm like a family attorney for the Miller family.
- 9 Q. Do you have any office staff?
- 10 A. I have a volunteer.
- 11 Q. And who would that be?
- 12 A. That's Donna Filip.
- 13 Q. Would her name be Danuta? D-A-N-U-T-A Filip? F-I-L-I-P.
- 14 A. Yes, that's her Polish name.
- 15 Q. Now, after you take over the practice-- I'm sorry, take over the
- 16 building, okay, did there come a time where the clients who stayed
- 17 with you, did you sign notices of substitution?
- 18 A. Yes, we did.
- 19 Q. Okay. I want to first deal with the *Saraceno* estate. Are you familiar
- 20 with that?
- 21 A. Yes, I am.
- 22 Q. Okay. When did you take that matter over?
- 23 A. I became aware of *Saraceno* estate I want to say close to a year ago. It
- 24 was after I testified in Albany. I spoke with Barbara Saraceno, she's
- 25 the wife of the executor of the estate. I learned that the-- This was

1035.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 one of those estates that had started with Judge Miller, that the assets
2 had been fully distributed to beneficiaries, at least, I think that
3 happened sometimes in 2012, 2013, 2014, all the assets had been
4 distributed. Apparently, the-- the-- all the beneficiaries had accepted
5 the assets and they had signed the releases, but the releases had not
6 been notarized, so the court in-- the Surrogate Court in Tioga County
7 considered the matter to be incomplete. So, when I became involved,
8 when I got in the picture, I understood-- I met with the lady. I felt for
9 her, so I wanted to make sure that-- because she was concerned, she's
10 worried, her husband's not feeling good. He passed recently.

11 Q. And you say you met with the lady?

12 A. I meant--

13 Q. --Who did you meet with?

14 A. --Ms.-- You know, Mrs. Saraceno. Barbara.

15 Q. Okay. Can I stop you there?

16 A. Yes.

17 Q. Okay. When do you-- You said earlier after you testified in Albany,
18 was that before the Commission?

19 A. Yes.

20 Q. Okay. Can you place the date of when you testified in Albany before
21 the Commission?

22 A. I really don't remember the date.

23 Q. Okay.

24 THE REFEREE: Do you-- You must have that,
25 right?

1036.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 MS. SCALISE: Yes. I have it right here.

2 MS. CENCI: Do-- Do you want to stipulate the
3 date?

4 MS. SCALISE: Yes.

5 THE REFEREE: Yep. When was that?

6 MS. CENCI: September 28, 2017.

7 BY MS. SCALISE:

8 Q. Does that refresh your recollection--

9 A. --Yes--

10 Q. --that it's September 28, 2017?

11 A. Yes. Yes, it does.

12 Q. Okay. And where was the file in that matter?

13 A. The file was in my office.

14 Q. Okay.

15 A. Now--

16 Q. --So, how did you learn that there was a problem with the *Saraceno*
17 estate?

18 A. The problem-- I spoke-- After I spoke with Mrs. Saraceno, I looked
19 at the file and I was trying to understand what was missing, why was
20 there an issue? Especially because all the beneficiaries-- no one was
21 complaining. The beneficiaries had been paid, "What was the
22 problem, what was the issue?" And she said that she was trying to
23 assist me that the waivers and the receipts had not been notarized, so
24 we looked in my file, we tried to look on the file that we have. I
25 didn't find any of those receipts, or those notarized waivers, so I asked

1037.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 Mrs. Saraceno, "What do you have?" So, she said, "I have stuff, I can
2 bring it to you," so she brought to-- she came to my office and she
3 showed me all the checks, all the waivers, all the receipts. She had a
4 full, complete copy of all the paperwork. So, what I did is I took-- I
5 made a copy of everything, then we tracked it, brand new waivers and
6 receipts, and I started looking for all the beneficiaries. Now there
7 were--

8 Q. --How many were there?

9 A. I'm sorry?

10 Q. How many beneficiaries were there?

11 A. I believe 25. 24, 25. So, we-- They are scattered all over the country
12 and we started using relatives to connect their relatives and I asked a
13 couple times-- I asked for extensions to make-- to get time to have
14 these beneficiaries sign those waivers, notarize them and then bring
15 them back. And that's what we did.

16 Q. Okay, is the estate completed?

17 A. Completed, yes, as of, I believe, January 4. Last Friday.

18 Q. Okay. So, taking a look at-- trying to-- have to find the file with the
19 estate. Hold on just a moment.

20 MS. SCALISE: Is that up there that file? He gave it
21 to him. And he walked out with it. Sorry. It's never good
22 when your assistant walks out. Okay. Taking a look at
23 what's been marked in evidence-- Give me just a moment.
24 The whole thing is 5A? 5A is the whole thing, Cathleen?

25 MS. CENCI: What's that now? Which is--

1038.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 MS. SCALISE: --*Saraceno*.

2 MS. TADJIOGUEU: 5A is the sticky notes.

3 MS. CENCI: The--

4 MS. SCALISE: --Oh, 5A through 5--

5 (Unintelligible).

6 MS. CENCI: It goes all the way through to 5UU.

7 Not "W" but UU.

8 MS. SCALISE: Okay, and then Respondent's X.

9 And then Respondent's X, correct?

10 MS. CENCI: I don't know. What's Resp-- I don't
11 have that here.

12 MS. SCALISE: It's the checks and the stuff that
13 finished out the estate.

14 MS. CENCI: Oh, okay. Sure.

15 BY MS. SCALISE:

16 Q. So, taking a look at the *Saraceno* file, which has been marked 5A in
17 evidence through 5X in evid-- I'm sorry, 5VV in evidence, and then
18 Respondent's X, can you tell us when you filed a notice of
19 appearance? Excuse me, a notice of substitution.

20 A. I'm trying to locate it.

21 THE REFEREE: Isn't that 5RR?

22 THE WITNESS: 5RR?

23 THE REFEREE: So, can we stipulate that it was
24 sent on January 29th and received on February 2nd? If that's
25 what--

1039.

(Serjanej - Direct)

1 MS. SCALISE: --Of what year?

2 MS. CENCI: Yes.

3 MS. SCALISE: Of this year?

4 THE REFEREE: Of '18.

5 MS. SCALISE: Okay. Yes, we can stipulate to that.

6 THE WITNESS: That sounds right, Judge.

7 THE REFEREE: All right.

8 BY MS. SCALISE:

9 Q. So, now how did you come to learn that there was a problem with the
10 *Saraceno* estate?

11 A. I mean, like I said, I had discussions with Barb Saraceno. I also talked
12 to Judge Miller as to what was going on with this case, historically,
13 like, what-- who are the parties, why is this case still lingering, and
14 what's missing, is there something I can do to assist? And-- So, he
15 gave me a little bit of a history, of who the parties are, and what he
16 had done, and I believe his perception was that he thought this was
17 completely done and the fact that no--

18 MS. CENCI: --Object-- Objection, Your Honor, to
19 what his perception was.

20 THE REFEREE: Sustained.

21 BY MS. SCALISE:

22 Q. What did Judge Miller tell you about what he had done in the file,
23 historically?

24 A. He said that he had prepared the waivers, he had sent all the-- the
25 assets to the beneficiaries, and he had received the waivers. He

1040.

(Serjanej - Direct)

1 seemed-- He didn't-- He was puzzled as to why those waivers-- that
2 the signed waivers were not on the file. Why weren't they-- Why
3 isn't this estate closed.

4 Q. Okay, now, directing your attention to the fee in the *Saraceno* estate,
5 did you get paid?

6 A. No, I did not.

7 Q. Okay. So, who got paid to finish out the estate?

8 A. My understanding is that-- The fee was actually never discussed and I
9 waived anything I did. All I was doing is I was trying to close it
10 properly because I was worried that, you know, Mrs. Saraceno was
11 worried, her husband is dying. I just wanted to close it and be done.

12 Q. Okay. Now, directing your attention to the *Behal* estate, are you
13 familiar with that?

14 A. Yes, I am.

15 Q. Okay. And what was that case about?

16 A. That was another estate matter that started with Judge Miller. When it
17 came to me, I believe I got involved sometimes in March of 2005. I
18 became the attorney of record. At that time in '05, there was still--
19 there were assets that had not been sold yet, it was a piece of real
20 estate that they were trying to sell, that was the last piece that needed
21 to be sold and then the funds put, you know, into the bank account.
22 There were six beneficiaries at that time-- I mean, there were six
23 beneficiaries and my understanding is-- or from my recollection that
24 that piece of property sold sometimes in January 2017, but the funds
25 from the sale didn't come to the estate. They got lost-- I-- They got

1041.

(Serjanej - Direct)

1 lost-- UPS lost the checks, so they had to resend the request for the
2 checks to come back. I think the checks came back sometimes April
3 or May of 2017. That's the time that the estate was ready to close.

4 Q. Okay, so, when did you first learn about the *Behal* estate?

5 A. The *Behal* estate-- I learned about the *Behal* estate very early on and I
6 mean, my notice of appearance or consent to change attorney
7 happened-- was March of 2015, so it would have been around that
8 time.

9 Q. And do you know if it was filed with the court?

10 A. I believe so, yes.

11 Q. Okay, so, taking a look at, you know-- taking a look at the file that--
12 handing you documents relating to the *Behal* estate in evidence. Do
13 you recall when you filed the notice of appearance in that matter?

14 A. I think it was March 5, but let me see.

15 MS. CENCI: Exhibit 4CC.

16 A. 4CC?

17 MS. CENCI: If that helps.

18 THE REFEREE: Yes, November 23, 2015. Can we
19 stipulate to that?

20 A. That's a notice of appearance and it says November 16, but--

21 THE REFEREE: --Is there a date stamp on it?--

22 A. --I think there should be a substitution of attorney from March of
23 2015. I think. This one has a date-stamp November 23, 2015, that's
24 the notice of appearance, Exhibit 4CC.

25 Q. I'm sorry, can you say that again?

1042.

(Serjanej - Direct)

1 A. What I'm looking at right now, it's a notice of appearance, it's dated--
2 Date-stamped November 23, 2015, Exhibit 4CC.

3 Q. Okay, but if you take a look at it, what date did you indicate that you
4 had signed it?

5 A. I signed it November 16, 2015.

6 Q. Okay. Thank you.

7 THE REFEREE: I'm looking at the exhibit list,
8 there's a 4JJJ, I don't--

9 MS. CENCI: --It's not in evidence--

10 THE REFEREE: --think that's in ev-- I don't think
11 that's in evidence.

12 MS. SCALISE: Is that what he's ref-- Hold on a
13 second.

14 MR. DEROHANNESIAN: Yes.

15 MS. SCALISE: Okay. So, then I have to add--

16 MS. CENCI: Your Honor, that exhibit list that you
17 have, that was not admitted, was it?

18 THE REFEREE: The exhibit list?

19 MS. CENCI: Yes, because we didn't--

20 THE REFEREE: --Not.

21 MS. CENCI: Yeah.

22 THE REFEREE: Oh, no, I'm sorry. This is a-- This
23 was Exhibit 11--

24 MS. CENCI: --Right, but that's not in ev--

25 THE REFEREE: --Is not in evidence--

1043.

(Serjanej - Direct)

1 MS. CENCI: --in evidence.

2 MS. SCALISE: Correct. So, I would-- I want to lay
3 a foundation, if I may.

4 THE REFEREE: For which?

5 MS. SCALISE: Okay.

6 THE REFEREE: For JJJ?

7 MS. SCALISE: So what is-- 4JJJ, I want to mark as
8 Respondent's CC, okay, because it's not in.

9 THE REFEREE: Why don't you leave it-- Is it
10 marked already as 4JJJ?

11 MS. SCALISE: It may be by now--

12 THE REFEREE: --I don't think it's ever been
13 shown to anybody, so mark it any way you like.

14 MS. SCALISE: Okay. So, Respondent's CC
15 marked for identification. I'd like to show it to the witness.
16 Whoops-- Sorry.

17 THE REFEREE: Careful.

18 THE WITNESS: That's 4CC, also.

19 MS. SCALISE: Oh, okay. So, this is interesting.
20 Can I have one minute? Different date, sorry. Okay.

21 BY MS. SCALISE:

22 Q. So, take a look at what's been marked Respondent's CC.

23 THE REFEREE: They're not the same document.

24 MS. SCALISE: No, they're different documents.

25 A. Okay.

1044.

(Serjanej - Direct)

1 Q. Do you recognize that?
2 A. Yes.
3 Q. Okay, what do you recognize it to be?
4 A. It's a consent to change attorney. It was signed by me and Mr. Behal.
5 Q. Okay. And is that dated differently than the one that is in the file
6 marked currently--
7 A. --Yep--
8 Q. --as petitioner's-- I'm sorry, Commission--
9 A. --4CC--
10 Q. --4CC?
11 A. This is 4CC, but this is also 4CC.
12 Q. That's Respondent's--
13 A. --Okay--
14 Q. --CC.
15 THE REFEREE: CC.
16 MS. SCALISE: Okay. Right.
17 THE REFEREE: This is-- That's just--
18 MS. SCALISE: --That's just CC--
19 THE REFEREE: --CC.
20 THE WITNESS: Okay.
21 THE REFEREE: And this is-- the one with the
22 yellow sticker is 4CC.
23 THE WITNESS: Oh, okay. 4CC--
24 THE REFEREE: --The blue sticker is--
25 THE WITNESS: --I'm sorry. I'm sorry-- Yes--

1045.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 THE REFEREE: --CC.

2 BY MS. SCALISE:

3 Q. So, taking a look at them, do they have different dates?

4 A. Yes, they do.

5 Q. Okay. Was Respondent-- How do you recognize Respondent's 4CC--
6 I'm sorry.

7 THE REFEREE: CC.

8 BY MS. SCALISE:

9 Q. Respondent's CC. Now I'm getting confused.

10 A. One is the Respondent's CC. It's consent to change attorney.

11 Q. And how do you recognize that?

12 A. It has my signature on it.

13 Q. Okay. And does it have a date?

14 A. It has a date. It says March 20, 2015.

15 Q. And was that prepared by you?

16 A. Yes.

17 Q. Okay. Was it filed with the court?

18 A. I believe so, yes.

19 Q. Okay. Did you ever have an issue with the court and not getting
20 correspondence related to this matter?

21 A. I don't remember.

22 Q. Okay.

23 MS. SCALISE: I'd ask that Respondent CC be
24 admitted into evidence.

25 MS. CENCI: Can I *voir dire*, Your Honor?

1046.

(Serjanej - Voir Dire)

1 THE REFEREE: Yes.

2 MS. CENCI: Thank you.

3 VOIR DIRE

4 BY MS. CENCI:

5 Q. So, do you-- Okay, you have them in folders. Hi, Mr. Serjanej.

6 A. Hi, how are you? Nice to see you again.

7 Q. So, I just want to show these two documents, okay? Sorry about the
8 all the double Cs, but there's a yellow sticker, 4CC--

9 A. --CC--

10 Q. --and then there's a blue sticker and it says "Resp. CC."

11 A. Yes.

12 Q. Are there different captions on these two documents?

13 A. Yes, there are.

14 Q. Okay. So, what's the caption on-- Well, tell us the caption on
15 Respondent's CC.

16 A. On Respondent's CC, it's, "In the Matter of Application of David J.
17 Behal, Executor of the Goods, Chattels, and Credits which were of
18 Jerry J. Behal, Jr., Deceased, for Leave to Compromise a Certain
19 Cause of Action for Personal Injury and Death of Decedent."

20 Q. Okay. And is that different from the caption in--

21 A. --It is.

22 Q. Okay. What's the caption in the 4CC?

23 A. It's just, "In the Matter of the *Estate of Jerry J. Behal, Jr.*"

24 Q. And 4CC is in evidence and it's stamped filed with the surrogate's
25 court.

1047.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Voir Dire)

1 A. Right.

2 Q. Now--

3 THE REFEREE: --You said yes?

4 THE WITNESS: Yes.

5 THE REFEREE: Just--

6 THE WITNESS: --I said--

7 THE REFEREE: --I want to make sure it's picked
8 up by the microphone--

9 THE WITNESS: --Right-- Yes, I'm sorry. Yes.

10 BY MS. CENCI:

11 Q. Okay, so, was there a cause of action for personal injury--

12 A. --There was--

13 Q. --related to this estate?

14 A. Yes, there was.

15 Q. And did you handle any aspect of that?

16 A. I only handled the part when the check came in because the matter
17 was handled by another local attorney, but at the time, the money, the
18 assets were coming in, they needed to have the name of an attorney, so
19 that's how I got involved with that.

20 Q. Okay.

21 A. So, they would send the check to us.

22 Q. So, can we agree, though, that these are two different proceedings?

23 A. Yes, they are.

24 Q. All right.

25 MS. CENCI: I'm going to object to the introduction

1048.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 into evidence of this document because I-- I don't think it
2 was ever filed and--

3 MS. SCALISE: --Okay--

4 MS. CENCI: --I'm not sure--

5 THE REFEREE: --Well, the fact it wasn't filed is
6 not a ground for objection. What is the ground? Do you
7 have another ground?

8 MS. CENCI: It's not the same action as the estate.
9 It's a related action.

10 THE REFEREE: Overruled. I'll take it for
11 whatever weight it's worth.

12 MS. SCALISE: Okay.

13 BY MS. SCALISE:

14 Q. So, by filing--

15 MS. SCALISE: --Thank you. I'll move it into
16 evidence? Okay.

17 THE REFEREE: It's received.

18 MS. SCALISE: Thank you. Okay.

19 BY MS. SCALISE:

20 Q. By taking a look at Respondent's CC, did that give notice to anybody
21 that you were involved in the *Estate of Behal*?

22 A. Yes.

23 Q. Okay. And who would that have given notice to?

24 A. To the surrogate court.

25 Q. Okay. Would it also have given notice to the parties in the action?

1049.

(Serjanej - Direct)

- 1 A. That's correct.
- 2 Q. Okay. And how did you come to be involved in the *Behal* estate?
- 3 A. I spoke with David Behal. He requested that I continue to be-- that I
- 4 become involved with the case. He wanted to make sure that the
- 5 estate stayed in the same building that Judge Miller used to work
- 6 before he was sworn in. I had lengthy discussions with him. He
- 7 seemed very knowledgeable. He was very sharp. He had kept great
- 8 records of what was going on with the assets, with the bank accounts,
- 9 with the money he was-- He was very smart. He's a very smart guy.
- 10 Q. And was there a file in the building that you had taken over from
- 11 Judge Miller--
- 12 A. --Yes--
- 13 Q. --Judge Miller's former practice?
- 14 A. Yes.
- 15 Q. Okay. And you were able to obtain that file?
- 16 A. Yes.
- 17 Q. And you used that file?
- 18 A. Yes.
- 19 Q. Okay. Now, with respect to the estate, did you have occasion to meet
- 20 an attorney, Mr. Robert Wedlake?
- 21 A. I did.
- 22 Q. Okay. How did that come about?
- 23 A. Robert Wade-- Wedlake represented one of the beneficiaries.
- 24 Q. Mm-hmm.
- 25 A. He's the-- the grandmother-- The child's grandmother had retained

1050.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 him. So, when the estate became ready to close, when all the assets
2 came in, me and David Behal, like I said, he was-- he's a very smart
3 guy, he had great records, he and I, we sat down, we looked into all
4 the assets, all the money that came in, how much money was in the
5 bank. We created an inventory list and when we presented that
6 inventory list to the surrogate court and to attorney Wedlake, he and I
7 started talking about how to settle the matter as quickly as possible.
8 As-- It happens all the time, you neg-- you engage in negotiations. In
9 the beginning--

10 Q. --Now, looking at the file, did Mr. Wedlake file objections?

11 A. He did.

12 Q. Did you go to trial?

13 A. We did.

14 Q. Okay. Did it-- Did the trial conclude?

15 A. It concluded, yes.

16 Q. Did you settle before there was a verdict?

17 A. Yes, we did.

18 Q. Okay. And you did that with Mr. Behal present?

19 A. Absolutely, yes.

20 Q. And Mr. Behal consented to the settlement?

21 A. Yes, he did.

22 Q. Okay. Now, turning your attention to-- from the accounting time
23 period, okay, to when you settled the matter, okay, did Judge Miller do
24 any legal work in the matter?

25 MS. CENCI: Objection.

1051.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 THE REFEREE: Overruled. Oh-- Well-- Object to
2 the form.

3 MS. SCALISE: Okay.

4 THE REFEREE: Don't--

5 MS. CENCI: --I object to the form.

6 THE REFEREE: Sustained.

7 BY MS. SCALISE:

8 Q. You-- When did you actually take over the file?

9 A. Sometime March of 2015.

10 Q. Okay. And when you took over the file, what needed to be done?

11 A. The inventory. The accounting.

12 Q. Okay. And, with respect to that, did you have any discussion with
13 Judge Miller about the legal work that needed to be done?

14 A. No, I did not.

15 Q. Did you ask about any of the facts or the historical basis of the case?

16 A. I did about all the-- the work he had done before he became a judge,
17 yes, I did.

18 Q. Okay, so, what was left to be done?

19 A. As I said, we needed to do the inventory of all the assets and we
20 needed to account for every item for every asset and it needs to be put
21 down into a proper format for everyone to understand it works out.

22 Q. And with respect to the accounting, the first accounting that was
23 presented--

24 A. --Yes--

25 Q. --that Mr. Wedlake objected to--

1052.

(Serjanej - Direct)

- 1 A. --Yes--
- 2 Q. --okay, who did the work on that?
- 3 A. I did.
- 4 Q. Did you ask Judge Miller for his input?
- 5 A. No, I did not.
- 6 Q. Did Judge Miller offer his input?
- 7 A. No.
- 8 Q. Did Judge Miller give you any legal advice on it?
- 9 A. No, he did not.
- 10 Q. Did Judge Miller get paid to do anything after he took the bench on
- 11 January 1st of 2015, on the *Behal* matter for work after January 1st of
- 12 2015?
- 13 A. No, he didn't.
- 14 Q. Okay. So, now directing your attention to after the accounting. Mr.
- 15 Wedlake filed objections, correct?
- 16 A. That's correct.
- 17 Q. Okay. Did Judge Miller in any way help you or assist you in dealing
- 18 with Mr. Wedlake's objections?
- 19 A. No, he did not.
- 20 Q. Okay. Did he in any way get paid for assisting you for dealing with
- 21 the objections by Mr. Wedlake?
- 22 A. No, he didn't.
- 23 Q. Okay. Did he in any way do anything to assist Mr. Behal with respect
- 24 to the legal matter?
- 25 MS. CENCI: Object to the form of the question--

1053.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1

2 BY MS. SCALISE:

3 Q. --If you know.

4 A. I don't.

5

THE REFEREE: Overruled.

6 BY MS. SCALISE:

7 Q. Okay. Do you know if Judge Miller did any work on the matter?

8 A. He never did any work on the matter.

9 Q. Now, directing your--

10 A. --And I mean it from the time I took over.

11 Q. Okay. So, from the time you took over, okay, to the time it was
12 settled, okay.

13 A. That's correct.

14 Q. You dealt with Mr. Behal?

15 A. I did.

16 Q. Did you meet with him in your office?

17 A. I did.

18 Q. Okay. Do you know what Mr. Behal's relationship is to Judge Miller?

19 A. I believe they are childhood friends.

20 Q. Okay. Did Judge Miller ever come to what now became your law
21 office--

22 A. --Yes--

23 Q. --to meet with Mr. Behal?

24

MS. CENCI: Object to the form--

25 A. --No.

1054.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 THE REFEREE: Can I hear the question one more
2 time? I--

3 MS. SCALISE: --Did Judge Miller--

4 THE REFEREE: --missed it--

5 MS. SCALISE: --ever come to what is now your
6 office to meet with Mr. Behal?

7 A. No.

8 MS. CENCI: I have an objection.

9 THE REFEREE: --No, overruled. Well, actually, do
10 have a--

11 MS. SCALISE: --Do you want me to give a date?

12 THE REFEREE: No, no. It-- Are you asking after
13 he became a family court judge?

14 MS. SCALISE: Yes.

15 THE REFEREE: Or ever?

16 MS. SCALISE: After he became a family court
17 judge.

18 MS. CENCI: If he knows, Your Honor. If he
19 knows.

20 MS. SCALISE: I'll take that--

21 THE REFEREE: --It would have--

22 MS. SCALISE: --He would have to know--

23 THE REFEREE: --I think that's implied--

24 MS. SCALISE: --it's his office.

25 THE REFEREE: Yeah, I--

1055.

(Serjanej - Direct)

1 MS. CENCI: --He wouldn't have to know.

2 MS. SCALISE: Your Honor, he said--

3 THE REFEREE: --No, no, I think-- I think that's--

4 I think that's implied. I mean, obviously, he-- if he came
5 another time and this witness was not there, he wouldn't
6 know about it. But, yeah if you know. Why don't you ask
7 the question again?

8 MS. SCALISE: Okay.

9 BY MS. SCALISE:

10 Q. You said Judge Miller doesn't have a key to your office since January
11 of 2015, is that correct?

12 A. That's correct, he doesn't.

13 Q. Okay. If you're not present in the office, is someone else there?

14 A. The only person who could be there would be Donna. She has a key
15 to my office.

16 Q. Okay. If someone has an appointment in the office, are you aware of
17 it?

18 A. Absolutely, yes.

19 Q. If they drop in, you would not be aware, is that correct?

20 A. That's correct.

21 Q. Okay. So, in the time period from January of 2015 to the time the
22 *Behal* matter settled, are you aware of any meetings that Judge Miller
23 may have had with Mr. Behal in what then became your office?

24 A. No.

25 Q. Okay. Now, do you know if Judge Miller was paid for any legal work

1056.

(Serjanej - Direct)

1 that may have occurred from January 1st of 2015 to the present on the
2 *Behal* estate?

3 A. No, he never got paid for that.

4 Q. Okay. If he was paid, what was he paid for?

5 MS. CENCI: Objection. Can we lay a foundation--

6 THE REFEREE: --Yeah--

7 MS. CENCI: --at the-- whether he was paid?--

8 THE REFEREE: --I think you can lay a foundation
9 for that.

10 MS. SCALISE: Okay.

11 BY MS. SCALISE:

12 Q. Did Judge Miller--

13 THE REFEREE: Can you hold on just--

14 MS. SCALISE: --Okay, sure--

15 THE REFEREE: --one moment? Can we go off the
16 record for just a moment?

17 (OFF THE RECORD)

18 THE REFEREE: All right. Back on. Counsel for
19 the parties is present-- are present, and Respondent is
20 present. Please continue.

21 MS. SCALISE: Okay.

22 BY MS. SCALISE:

23 Q. With respect to the *Behal* estate, is there anything that can refresh your
24 recollection as to who got paid legal fees in that matter?

25 A. Yes, I do. I do have a copy of the decree of judicial settlement and it

1057.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 outlines all the parties who got paid.

2 Q. Okay. And who would-- Did Judge Miller get paid according to that
3 document?

4 A. He did not.

5 Q. So, he got paid nothing?

6 A. He got paid nothing, yes.

7 Q. Thank you. Okay. Now, directing your attention to an exhibit that are
8 called *Funk*?

9 A. Yes.

10 Q. Okay. It should be there in front of you.

11 A. *Estate of Jerry, Saraceno, Behal*. I have *Saraceno* and *Behal*.

12 Q. Do you have *Funk*? There may be a very small file. Okay, this one.

13 A. Is that *Funk*?

14 Q. No.

15 A. Okay.

16 MR. FITZPATRICK: Are you all set with these
17 two?

18 MS. SCALISE: I think so. I'm just looking for the
19 checks on *Funk*. Do you have the checks on *Funk* that were
20 admitted into evidence?

21 MS. CENCI: --It's-- It's 2W, is that what you're
22 looking for?

23 MS. SCALISE: Yes. They're not in here.

24 MS. CENCI: I don't think--

25 THE REFEREE: --That's the same as Exhibit D to

1058.

(Serjanej - Direct)

1 the complaint, so, to save time, if you want to use that,
2 you're welcome to--

3 MS. SCALISE: --Yes--

4 THE REFEREE: --simply treat it that way.

5 MS. CENCI: I'm con-- I hope we haven't lost an
6 exhibit, though.

7 THE REFEREE: I'm sure we haven't.

8 MS. SCALISE: It's not in there.

9 THE REFEREE: Counsel, why don't you take this?

10 MS. SCALISE: That's fine. We could use it just for
11 our purposes--

12 THE REFEREE: --And we'll-- We'll just deem it
13 2W. Here you go. Just--

14 MS. SCALISE: --Thank you.

15 MR. DEROHANNESIAN: You looking for 2V?

16 THE REFEREE: W.

17 MS. SCALISE: Okay. 2V? Yes. Okay.

18 THE REFEREE: 2V? All right.

19 MS. SCALISE: Okay. And 2W.

20 MS. CENCI: Ah, you had them--

21 MS. SCALISE: --They were over there on that file--

22 MS. CENCI: --Oh, no, no.

23 MS. SCALISE: Okay, I'm sorry.

24 BY MS. SCALISE:

25 Q. Taking a look at what's been marked 2V, in evidence--

1059.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 A. --2V as in Victor?

2 Q. Yes--

3 THE REFEREE: --Yes.

4 A. Okay.

5 Q. Do you recognize what that is?

6 A. Yeah, this was shown to me when I testified in Albany.

7 Q. Before the Commission?

8 A. Yes.

9 Q. Okay. And had you ever seen it before?

10 A. No. I had not.

11 Q. Okay. It relates to the *Funk* estate, is that correct?

12 A. Yes.

13 Q. Okay. And Donna Filip, did she work for you at that time?

14 A. I mean, again, like I said, she-- She's like an older sister to me. She's
15 like a volunteer, but she's in and out. So, at the time-- Now, I
16 remember this because I was asked this question so I went back to
17 review my notes and I think I testified in Albany that at the time that
18 this letter was dated, November 6, 2015, Donna actually was in
19 Alabama.

20 Q. Okay. Now, do you know whatever happened-- It's an unsigned
21 letter, correct?

22 A. Yes.

23 Q. Do you know-- Or do you have to your-- to the best of your
24 knowledge, any idea of what happened with respect to the three
25 unsigned checks that are attached?

1060.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 A. With respect to the three unsigned checks, these checks came to the
2 office. It was realized that they were unsigned, then-- then we sent
3 them back to Mr. Hayes, so he can actually sign the checks.

4 Q. Okay. Now, looking at the next exhibit, 2W--

5 A. --Yes--

6 Q. --okay, and what are they?

7 A. These are two checks issued on 12-- First 2015, both checks made out
8 to Richard Miller.

9 Q. Okay. Were there-- Was there a third check or a fourth check that
10 was paid to your law office for work done on the *Funk* estate?

11 A. No, it-- there was not.

12 Q. Okay. Was the *Funk* estate closed out before you took over the space
13 that was Judge Miller's space?

14 A. It wasn't closed. There were funds and everything, you know, in a
15 bank account. I remember doing-- doing a power of attorney for Mr.
16 Hayes. He wanted some funds transferred to him. He signed the
17 power of attorney over to me. I wrote a check, I believe it was like
18 \$60,000, and I sent it to him. I think I may have charged him \$50,
19 \$100, for the POA, but that's it.

20 Q. Okay. And do you know, has it since been closed out?

21 A. Actually, it has not closed out. I recently communicated with the
22 court and I do-- I brought some copies of the emails that I've had
23 with Surrogate Court in Broome County. I was inquiring what is
24 really going on with the file and I got this email saying that they don't
25 have me as the attorney of record, and I sent the surrogate court a copy

1061.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 of the substitution of attorney, which, you know, we received from--
2 from this committee. And I inquired as to why would the committee
3 have a substitution of attorney if the court didn't have it, and
4 eventually I got a bunch of emails from the surrogate court saying why
5 they are, in other words, that they were sending correspondence
6 directly to Mr. Hayes in California without me having any knowledge
7 whatsoever. So, I finally-- December is when I started getting
8 correspondence from court.

9 Q. Okay. So, in your file, you have a copy of a notice of substitution?

10 A. Yes.

11 Q. Okay. And can you give that to us? I'd like to mark that
12 Respondent's DD for identification.

13 A. This is what I sent. I mean, this came from this committee, but this is
14 what I sent to Rebecca.

15 Q. I have to ask you some questions.

16 A. Yes.

17 Q. Okay. So, taking a look at Respondent's DD for identification--

18 A. --Right--

19 Q. --okay, where did you obtain that from?

20 A. I obtained this from the committee.

21 Q. The Commission?

22 A. What's-- With the Commission, yeah.

23 Q. Okay.

24 A. It was one of the exhibits.

25 Q. Okay. Now, with respect to--

1062.

(Serjanej - Direct)

1 MS. CENCI: --Whoa, whoa, whoa.
2 THE REFEREE: --I--
3 MS. SCALISE: --It's in the--
4 MS. CENCI: --I don't give out exhibits.
5 MS. SCALISE: Okay.
6 THE REFEREE: It's okay. That's--
7 MS. SCALISE: --Okay, so--
8 THE REFEREE: --We'll-- We'll figure it out.
9 MS. CENCI: We'll get it on cross, I guess.

10 BY MS. SCALISE:

11 Q. Okay, so did you-- Did you obtain it after testifying before the
12 Commission?
13 A. Yes, I did.
14 Q. Okay. And at some point-- That's your signature on it?
15 A. Yes.
16 Q. Okay. And what do you recognize that document to be?
17 A. It's consent to change attorney.
18 Q. Okay. Did you at some point file that with the court?
19 A. I would have, yes. I don't have a personal-- personal recollection of
20 it, but yes.
21 Q. Okay.

22 MS. SCALISE: I now ask that that be marked
23 Respondent's--

24 THE REFEREE: --Well, it is marked. Can I see it,
25 please?

1063.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Voir Dire)

1 MS. SCALISE: I'm sorry. Accepted as
2 Respondent's DD.

3 THE REFEREE: *Voir dire*?

4 MS. CENCI: May I inquire? Thanks, Your Honor.
5 I'm sure you'll stop me if I get too into the cross-
6 examination, but--

7 THE REFEREE: --You won't.

8 VOIR DIRE

9 BY MS. CENCI:

10 Q. Mr. Serjanej, do you recall that you did testify in Albany during the
11 Commission's investigation, correct?

12 A. Yes.

13 Q. And I did ask you questions about when you were retained for these
14 various matters and you were represented by Mr. Battisti at that time?

15 A. Yes.

16 Q. And do you know if it was Mr. Battisti who, at my request, provided
17 this document to me?

18 A. I really don't.

19 Q. Okay. I didn't-- I did not furnish this document to you. I think--

20 THE REFEREE: --Did-- Did--

21 BY MS. CENCI:

22 Q. --I did not provide this document to you, did I? I don't provide
23 documents to witnesses.

24 THE REFEREE: Well, that's-- That's okay-- I
25 mean--

1064.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Voir Dire)

1

2 BY MS. CENCI:

3 Q. --But I-- But-- Okay. So--

4

5

THE REFEREE: --It-- We're just dealing with
foundation, right, right now?

6

A. I think--

7

8

THE REFEREE: --Yeah, hold on. Just-- It's just
foundation. Do-- Do you object?

9

10

MS. CENCI: Yeah, well-- I think if I could just
continue.

11

BY MS. CENCI:

12

Q. So, did you ever meet with Thomas Hayes?

13

A. Not in person, no.

14

15

Q. So, how-- Other than this document, consent to change attorney, did
he sign any retainer agreement with you or letter of engagement?

16

A. I don't remember.

17

Q. Is that part of your normal practice?

18

19

A. At the time, I was just trying to actually assist, close it. As I said, it's
just one beneficiary, the assets were in, I was just trying to send a-- to
close it by sending a check-- sending the payment to the beneficiary
and I-- it was done.

20

21

22

Q. Mm-hmm.

23

A. It didn't entail any work on my part. I mean--

24

Q. --Yeah--

25

A. --so I was waiving my fee.

1065.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 Q. So, if in fact you did obtain this document in March of 2015-- First of
2 all, is that your signature?

3 A. Yes.

4 Q. And you're saying it was filed with the court. Do you have any
5 evidence of that?

6 A. I mean, like I said, I don't have personal recollection of it, but I would
7 have filed it.

8 Q. You don't have anything that shows it was filed in the court?

9 A. Not with me, no.

10 MS. CENCI: Well, I have no objection--

11 THE REFEREE: --Received--

12 MS. CENCI: --with that proviso.

13 MS. SCALISE: Thank you.

14 BY MS. SCALISE:

15 Q. Okay. By the way, you were just asked about whether you had a
16 retainer with Mr. Hayes?

17 A. Yes.

18 Q. Did you charge Mr. Hayes over \$3,000 that it would require a retainer
19 in legal fees?

20 A. No, I did not.

21 Q. Okay. Thank you. Now, directing your attention to-- You mentioned
22 earlier that you had some email correspondence back and forth with
23 the court?

24 A. Yes, I did.

25 Q. Okay. Can you produce a copy of that?

1066.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 A. I can, yes.

2 MS. SCALISE: I'd like to mark this (unintelligible)
3 as Respondent's EE.

4 BY MS. SCALISE:

5 Q. Now take a look at that.

6 A. Yes.

7 MS. SCALISE: We'll show it to you in just a
8 moment. I just wanted him to take a look at it.

9 MS. CENCI: Okay. Do you have a copy for us?

10 MS. SCALISE: We'll make a copy. I just-- I just
11 got it.

12 MS. CENCI: Oh, okay.

13 MS. SCALISE: Okay.

14 THE REFEREE: Mr. Serjanej, if we were to stop
15 tonight, would you be able to come back in the morning?

16 THE WITNESS: I would have to yes. If you--

17 THE REFEREE: --Well, I mean, do you have--

18 THE WITNESS: --If you ask me to show up, I'll be
19 here.

20 THE REFEREE: No, I understand, but do you have
21 any prior engagements first thing in the morning?

22 THE WITNESS: My morning is okay tomorrow.

23 THE REFEREE: I-- It's quarter to 6:00. I really
24 think we should stop.

25 MS. SCALISE: I have two more questions.

1067.

(Serjanej - Direct)

1 THE REFEREE: All right, so finish your questions.
2 I think we'll do the cross in the morning.

3 MS. CENCI: Your Honor-- Okay, so I don't have to
4 *voir dire*, counsel, can we stipulate that all the dates on this
5 are in December of 2018 and--

6 MS. SCALISE: --Yes--

7 MS. CENCI: --January of 2019?

8 MS. SCALISE: Yes.

9 MS. CENCI: I don't see the relevance.

10 THE REFEREE: Well, we haven't-- You know
11 what, are you going to offer it?

12 MS. SCALISE: Yes.

13 THE REFEREE: We haven't had the foundation yet,
14 so I don't know that--

15 MS. CENCI: --Okay--

16 THE REFEREE: --Why-- We haven't had any
17 questions on it. Let's--

18 MS. CENCI: --He did testify about emails with the
19 court, but okay.

20 THE REFEREE: Yeah, that's all he said is there are
21 emails with the court. So, we don't know anything about
22 them, or why they would be offered if they are offered. So,
23 let's-- Let's hear the questions.

24 BY MS. SCALISE:

25 Q. Okay. So, just to help you refresh your recollection, I'm going to give

1068.

(Serjanej - Direct)

1 you the document that's been marked Respondent's EE. Now, you
2 had correspondence with the court with respect to your notice of
3 appearance, correct?

4 A. Yes, I did.

5 Q. And that's referring to what was Respondent's DD?

6 A. Yes.

7 Q. Okay. Why did you have correspondence with the court about DD?

8 A. Because I was not receiving any correspondence from the court with
9 regards to the matter.

10 Q. Okay.

11 A. And I wanted to-- I was inquiring as to why am I in the dark, why
12 don't I have any correspondence from the court?

13 Q. Okay. So, have you-- Have you since sent Respondent's DD to the
14 court?

15 A. Yes, I did.

16 Q. Okay. And the status of that matter today?

17 A. It's-- The status is that it closed. That they revoked the letters
18 because there was no correspondence from Mr. Hayes and obviously
19 no correspondence from my office because I didn't know that the
20 court was looking for documentation, or closing documents.

21 Q. Okay. So, what's left to do?

22 A. Just the inventory and a report.

23 Q. And what happened to the money in that case?

24 A. The money was disbursed. It went to Mr. Hayes and I believe-- and
25 those checks that went to Mr. Miller for the work that he did before he

1069.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 was sworn in as a judge.

2 MS. SCALISE: I have nothing further for this
3 witness. Thank you.

4 THE REFEREE: All right. I think, in view of the
5 hour, we really have to stop. Mr. Serjanej, I apologize, but
6 if you could be here a little before 9:00?

7 THE WITNESS: I'll be here 8:30.

8 THE REFEREE: Can we start a little before 9:00
9 tomorrow?

10 MS. CENCI: Sure. All right with me.

11 THE REFEREE: Quarter of?

12 MR. DEROHANNESIAN: Let's do 9:00. You
13 know that--

14 MS. SCALISE: --Yeah.

15 MR. DEROHANNESIAN: You know, we're
16 preparing many witnesses--

17 MS. SCALISE: --We have the heavy lift tomorrow--

18 MR. DEROHANNESIAN: --also.

19 THE REFEREE: All right. 9:00. All right. Let's--
20 Mr. Serjanej, let's-- we'll stop for the day. We'll have you
21 come back in the morning. Please don't discuss your
22 testimony with anybody--

23 THE WITNESS: --Yes--

24 THE REFEREE: --and we'll see you bright and
25 early at 9:00, and thank you, and we apologize for having to

1070.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

bring you back.

THE WITNESS: Not at all. Thank you, Your
Honor. See you tomorrow.

THE REFEREE: All right. Let's go off the record.
(Whereupon, the proceeding was adjourned at 5:47 PM
on January 10, 2019).

1071.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

COMMISSION

		<u>Ident.</u>	<u>In Evid.</u>
1A	Certificate of Disposition and Local Court Criminal Disposition Report, Vestal Town Court, <i>People v David J. Iannone</i> , Forgery, 3 rd Degree, (2 pages).	14	---
1B	Certificate of Disposition, Union Town Court, <i>People v David J. Iannone</i> , Harassment, 2 nd Degree, (15 pages).	14	---
1C	Order of Hon. Christopher P. Baker, revoking Iannone Pistol Permit, dated June 4, 2018, (3 pages).	14	---
1D	Certificate of Disposition, Johnson City Village Court, <i>People v David Jon English</i> , Petit Larceny, 1991.	14	---
1E	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2000.	14	---
1F	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2004.	14	---

i.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1	1G	Certificate of Conviction, Steuben County	14	---
2		Court, <i>People v David English</i> , Criminal		
3		Possession of Forged Instrument, two counts.		
4	1H	Certificate of Conviction, Binghamton City	14	---
5		Court, <i>People v David English</i> , Petit Larceny.		
6	1I	Certificate of Conviction, Broome County	14	---
7		Court, <i>People v David English</i> , Attempted		
8		Criminal Sale of a Controlled Substance, 3 rd		
9		Degree, (2 pages).		
10	1J	Certificate of Conviction, Broome County	14	---
11		Court, <i>People v David J. English</i> , Attempted		
12		Arson, 3 rd Degree, (9 pages).		
13	1K	Certificate of Conviction, Binghamton City	14	---
14		Court, <i>People v James Stilloe</i> , Falsely		
15		Reporting an Incident, with Certificate of		
16		Conviction, (6 pages).		
17	1L	District Attorney/Superior Court Disposition	14	---
18		Report, Broome County Court, <i>People v</i>		
19		Martin Shaw, Robbery, 1 st Degree and		
20		Attempted Robbery, 1 st Degree.		
21				
22		<u>Estate of Roger Funk</u>		
23	2A	Surrogate's Court Record History,	16	---
24		(2 pages).		
25				

ii.

1	2B	Petition for Probate, filed May 2, 2014,	16	---
2		(5 pages).		
3	2C	Last Will and Testament of Roger L. Funk	16	---
4		with Affidavits, filed May 2, 2014, (7 pages).		
5	2D	Affidavit of Assets and Debts, filed May 2,	16	---
6		2014, (2 pages).		
7	2E	Coleman & Daniels Funeral Home expenses	16	---
8		for Jean Funk, filed May 2, 2014.		
9	2F	Family Tree of Roger L. Funk, filed May 2,	16	---
10		2014, (2 pages).		
11	2G	Application for Preliminary Letters	16	---
12		Testamentary, filed May 20, 2014, (2 pages).		
13	2H	Affidavit of Domicile, filed May 20, 2014.	16	---
14	2I	Affidavit of Donna Filip, filed May 29, 2014.	16	---
15	2J	Waiver of Process, Consent to Probate, filed	16	---
16		May 29, 2014.		
17	2K	Letter to Fiduciary Thomas M. Hayes from	16	---
18		Rebecca A. Malmquist, Chief Clerk, dated		
19		May 30, 2014.		
20	2L	Decree Granting Probate, dated May 30,	16	---
21		2014.		
22	2M	Grant of Letters Testamentary, dated May 30,	16	---
23		2014.		
24	2N	Letter to Thomas M. Hayes from Rebecca A.	16	---
25		Malmquist dated October 7, 2015.		

iii.

1	2O	Letter to Thomas M. Hayes from Rebecca A.	16	---
2		Malmquist, dated July 20, 2017.		
3	2P	Citation to Thomas M. Hayes, dated April 27,	16	---
4		2018.		
5	2Q	Order for Service of Process, dated April 27,	16	---
6		2018.		
7	2R	Affidavit for By Mail, dated April 27, 2018.	16	---
8	2S	Affidavit Concerning Deliverability of	16	---
9		Process Served by Mail, sworn to June 4,		
10		2018.		
11	2T	Order Revoking Letters, dated June 5, 2018.	16	---
12	2U	Consent to Change Attorney, dated March 6,	16	---
13		2015 (not filed with court).		
14	2V	Letter addressed to Thomas Hayes from	16	599
15		“Donna Filip,” dated November 6, 2015, with		
16		attached copies of checks, (Exhibit A to the		
17		Formal Written Complaint), (2 pages).		
18	2W	Checks dated December 1, 2015 (Exhibit D to	16	602
19		the Formal Written Complaint).		
20	2X	Certified Records of Citizens Bank,	16	---
21		(68 pages).		
22		<u>Estate of Jerry J. Behal, Jr.</u>		
23	4A	Document and Info Sheet, (2 pages).	517	---
24				
25				

1	4B	Records of filings of Probate Petition,	499	---
2		Wrongful Death Petition, Compel Fiduciary		
3		to Account Petition and Judicial Settlement of		
4		Final Account, (4 pages).		
5	4C	Petition for Probate, filed October 26, 2011,	491	492
6		(6 pages).		
7	4D	Last Will and Testament of Jerry J. Behal, Jr.,	499	---
8		filed October 26, 2011, (4 pages).		
9	4E	Affidavit of Subscribing Witnesses, filed	499	---
10		October 26, 2011.		
11	4F	Waiver of Process, Consent to Probate, filed	499	---
12		October 26, 2011.		
13	4G	Family Tree, filed October 26, 2011,	499	---
14		(2 pages).		
15	4H	Affidavit of Assets and Debts, filed October	499	---
16		26, 2011, (3 pages).		
17	4I	Affidavit of Sole Heirship filed November 1,	499	---
18		2011.		
19	4J	Notice of Probate, with Affidavit of Mailing,	499	---
20		filed November 2, 2011, (2 pages).		
21	4K	Certificate of Disqualification of David H.	499	---
22		Guy, filed November 2, 2011.		
23	4L	Order of Assignment, filed November 2,	499	---
24		2011.		
25				

1	4M	Decree Granting Probate With Limitations,	499	---
2		filed November 2, 2011, (2 pages).		
3	4N	Letters Testamentary, filed November 2,	499	---
4		2011.		
5	4O	Letter to David J. Behal from Rebecca A.	499	---
6		Malmquist, dated November 3, 2011.		
7	4P	Letter to David J. Behal from Rebecca A.	499	---
8		Malmquist, dated June 8, 2012.		
9	4Q	Letter to David J. Behal from Rebecca A.	499	---
10		Malmquist, dated August 7, 2012.		
11	4R	List of Assets/Inventory, filed September 19,	499	---
12		2012, (4 pages).		
13	4S	Petition of David J. Behal, dated December	499	---
14		28, 2013, filed July 11, 2014, (5 pages).		
15	4T	Waiver and Consent of Jennifer Behal, filed	499	---
16		July 11, 2014, (2 pages).		
17	4U	Waiver and Consent of Joseph Behal, filed	499	---
18		July 11, 2014, (2 pages).		
19	4V	Waiver and Consent of Karen Behal, filed	499	---
20		July 11, 2014, (2 pages).		
21	4W	Waiver and Consent of Donna Ougheltree,	499	---
22		filed July 11, 2014, (2 pages).		
23	4X	Waiver and Consent of Sylvia Behal, filed	499	---
24		July 11, 2014, (2 pages).		
25				

1	4Y	Attorney's Affidavit of Richard H. Miller,	499	501
2		filed December 12, 2014, (2 pages).		
3	4Z	Order and Decree, filed January 23, 2015,	499	501
4		(3 pages).		
5	4AA	Petition for A Compulsory Accounting and	499	501
6		Related Relief, filed October 13, 2015,		
7		(3 pages).		
8	4BB	Compulsory Accounting Citation, dated	499	501
9		October 14, 2015.		
10	4CC	Notice of Appearance of Artan Serjanej, Esq.,	499	501
11		filed November 23, 2015.		
12	4DD	Order of David Guy, filed January 14, 2016.	499	501
13	4EE	Amended Order Filed March 1, 2016.	499	501
14	4FF	Letter to Judge Guy from Artan Serjanej,	499	501
15		dated April 29, 2016, filed May 2, 2016.		
16	4GG	Order of David Guy, filed May 2, 2016.	499	501
17	4HH	Notice of Appearance of Robert H. Wedlake,	499	501
18		Esq., filed September 21, 2016.		
19	4II	Order of David H. Guy, filed September 21,	499	501
20		2016.		
21	4JJ	Letter to Hon. David H. Guy from Artan	499	501
22		Serjanej, dated October 7, 2016.		
23	4KK	Order of David H. Guy, filed October 20,	499	501
24		2016.		
25				

1	4LL	Order of David H. Guy, filed December 1,	499	501
2		2016.		
3	4MM	Order of David H. Guy, filed April 6, 2017.	499	501
4	4NN	Amended Order of David H. Guy, filed May	499	501
5		8, 2017.		
6	4OO	Petition for Judicial Settlement of Account,	499	501
7		filed May 26, 2017, (6 pages).		
8	4PP	Accounting by Executor, filed May 26, 2017,	499	501
9		(25 pages).		
10	4QQ	Letter from Hon. David H. Guy to Artan	499	501
11		Serjanej, Esq., dated June 15, 2017.		
12	4RR	Certificate of Disqualification of David H.	499	501
13		Guy, dated September 15, 2017.		
14	4SS	Order of Assignment of Hon. Molly Reynolds	499	501
15		Fitzgerald, dated September 18, 2017.		
16	4TT	Accounting Citation filed October 16, 2017.	499	501
17	4UU	Affidavits of Service of Accounting Citation,	499	501
18		sworn to in November 2017, (8 pages).		
19	4VV	Order of Hon. Julie A. Campbell, filed	499	501
20		November 20, 2017.		
21	4WW	Supplemental and Amended Supplemental	499	501
22		Citation, dated November 20 and November		
23		30, 2017, (2 pages).		
24	4XX	Objections to Accounting, filed December 4,	499	501
25		2017, (4 pages).		

1	4YY	Affidavits of Service of Amended	499	501
2		Supplemental Citation, filed January 19,		
3		2018, (2 pages).		
4	4ZZ	Letter to Hon. Molly R. Fitzgerald from Hon.	499	501
5		Julie A. Campbell, dated January 24, 2018.		
6	4AAA	Order of Re-Assignment by Hon. Molly	499	501
7		Fitzgerald, dated January 25, 2018.		
8	4BBB	Affirmation of Artan Serjanej in Reply to	499	501
9		Objections, with attached Schedules		
10		(27 pages).		
11	4CCC	Order of Hon. Gerald Keene, filed February 9,	499	501
12		2018.		
13	4DDD	Amended Order of Hon. Keene, dated March	499	501
14		9, 2018.		
15	4EEE	Order of Hon. Keene, dated April 6, 2018.	499	501
16	4FFF	Order of Hon. Keene, dated April 19, 2018.	499	501
17	4GGG	Affidavit of Robert H. Wedlake, filed August	499	501
18		6, 2018, (2 pages).		
19	4HHH	Decree of Judicial Settlement, filed August	499	501
20		15, 2018, (3 pages).		
21	4III	Emails between Dave Behal, Donna Filip and	62	70
22		Richard Miller, dated March 1, 2017 to May		
23		9, 2017 (Exhibit B to the Formal Written		
24		Complaint), (8 pages).		
25				

1	4KKK	Letter from Robert Wedlake to Artan Serjanej	509	---
2		dated June 5, 2017.		
3		<u>Estate of Antoinette Saraceno</u>		
4	5A	Sticky Notes, (8 pages).	411	420
5	5B	Petition for Probate, filed December 10, 2010,	411	416
6		(5 pages).		
7	5C	Family Tree, filed December 10, 2010,	411	416
8		(2 pages).		
9	5D	Last will and Testament of Antoinette A.	411	416
10		Saraceno, with affidavits of subscribing		
11		witnesses, (7 pages).		
12	5E	Notices of Probate with Affidavits of	411	416
13		Services, filed December 10, 2011,		
14		(16 pages).		
15	5F	Renunciations of Nominated Executor and/or	411	416
16		Trustee, filed December 10, 2010, (4 pages).		
17	5G	Letter from Richard H. Miller, II (by "DF"),	411	416
18		to Tioga County Surrogate's Court Clerk,		
19		dated February 16, 2011.		
20	5H	Amended Petition for Probate, filed February	411	416
21		17, 2011, (6 pages).		
22	5I	Amended Family Tree, filed February 17,	411	416
23		2011, (2 pages).		
24	5J	Waivers of Process: Consent to Probate, filed	411	416
25		February 17, 2011, (6 pages).		

x.

1	5K	Notice of Probate with Affidavit of Service,	411	416
2		filed February 17, 2011, (3 pages).		
3	5L	Probate Citation to John I. Saraceno, dated	411	416
4		February 28, 2011.		
5	5M	Memorandum to Richard H. Miller, II, Esq.,	411	416
6		from Deborah A. Stone, dated February 28,		
7		2011.		
8	5N	Court Appearance Notice dated April 7, 2011.	411	416
9	5O	Affidavit for Service of Process By Mail by	411	416
10		Donna Filip, Affidavit Concerning		
11		Deliverability of Process Served by Mail of		
12		Richard H. Miller, II, and certified mail		
13		receipts, filed April 8, 2011, (5 pages).		
14	5P	Letter to Surrogate's Court from John I.	411	416
15		Saraceno, filed April 8, 2011, with enclosures		
16		(21 pages).		
17	5Q	File Minutes from April 15, 2011.	411	416
18	5R	Order Granting Preliminary Letters with	411	416
19		Limitations, dated April 15, 2011.		
20	5S	Preliminary Letters Testamentary, dated April	411	416
21		15, 2011.		
22	5T	Letter to Surrogate's Court from John	411	416
23		Saraceno, filed May 9, 2011, with enclosures		
24		(6 pages).		
25				

1	5U	Letter to John I. Saraceno, Jr., from Deborah	411	416
2		A. Stone, dated May 17, 2011, with enclosed		
3		affidavit of service form (2 pages).		
4	5V	Completed Affidavit of Service of Objections,	411	416
5		filed June 27, 2011, (2 pages).		
6	5W	Letter to Hon. Vincent Sgueglia signed by	411	416
7		Frank Saraceno, Sr., and Sam Saraceno, filed		
8		June 29, 2011.		
9	5X	Letter to Frank Saraceno, Sr., and Sam	411	416
10		Saraceno, from Deborah A. Stone, dated July		
11		13, 2011, copied to Richard H. Miller, II, Esq.		
12	5Y	Letter to Judge Sgueglia from Richard H.	411	416
13		Miller, II, with enclosed Notice of Motion to		
14		Dismiss Objections, Affidavit of Executor		
15		and Attorney's Affirmation, filed July 18,		
16		2011, (7 pages).		
17	5Z	Letter to Chief Clerk from Richard H. Miller,	411	416
18		II, with Affidavit of Service by Donna Filip,		
19		filed August 18, 2011, (3 pages).		
20	5AA	Order dismissing objections, dated August 26,	411	416
21		2011, (2 pages).		
22	5BB	Decree Granting Probate, dated August 26,	411	416
23		2011.		
24	5CC	Letters Testamentary, dated August 26, 2011.	411	416
25				

1	5DD	Letter to Frank Saraceno, Sr., from Deborah	411	416
2		A. Stone, dated August 26, 2011.		
3	5EE	Letter to Richard H. Miller, II, Esq., from	411	416
4		Camelia M. Daniels, dated March 1, 2012.		
5	5FF	Letter to Tioga County Surrogate's Court	411	416
6		Clerk from Richard H. Miller, II, dated March		
7		1, 2012, with Enclosed Inventory of Assets,		
8		received March 15, 2012, (5 pages).		
9	5GG	Note dated March 20, 2012, on Letters	411	416
10		Testamentary from RH Miller, II, requesting		
11		new letter for real estate transfer, received		
12		March 20, 2012.		
13	5HH	Letter from Carmela M. Daniels to Richard H.	411	416
14		Miller, II, Esq., dated September 12, 2013,		
15		with enclosed form (2 pages).		
16	5II	Letter from Camela M. Daniels to Richard H.	411	416
17		Miller, Esq., dated December 27, 2013, with		
18		enclosed form (2 pages).		
19	5JJ	Citation to Frank Saraceno, Sr., dated March	411	416
20		20, 2014.		
21	5KK	Order of Hon. Gerald A. Keene, Surrogate,	411	416
22		dated March, 24, 2014.		

1	5LL	Letter to Deborah A. Stone, Chief Clerk, from	411	416
2		Richard H. Miller, II, dated July 23, 2014,		
3		enclosing Original Report of fiduciary,		
4		requesting additional time to collect receipts,		
5		releases and discharges from beneficiaries,		
6		received July 28, 2014 (2 pages).		
7	5MM	Letter to Richard H. Miller, Esq., from	411	416
8		Deborah Stone, dated August 2, 2016, with		
9		enclosed form (2 pages).		
10	5NN	Letter to Frank Saraceno from Kiyoko	411	416
11		Matsuhashi, dated August 16, 2016, with		
12		enclosed sample of substitution of attorneys		
13		form (2 pages).		
14	5OO	Letter to Frank Saraceno from Kiyoko	411	416
15		Matsyhashi, dated December 9, 2016.		
16	5PP	Letter to Richard H. Miller, Esq., from	411	416
17		Deborah A. Stone, dated March 28, 2017,		
18		with enclosed form (2 pages).		
19	5QQ	Letter to Frank Saraceno, Sr., from Deborah	411	416
20		A. Stone, dated January 22, 2018.		
21	5RR	Letter to Surrogate's Court Chief Clerk from	411	416
22		Artan Serjanej, dated January 29, 2018,		
23		enclosing Notice of Appearance, received		
24		February 2, 2018 (2 pages).		
25				

1	5SS	Order of Hon. Gerald A. Keene, dated	411	416
2		February 5, 2018.		
3	5TT	Letter to Deborah A. Stone from Artan	411	416
4		Serjanej, dated April 18, 2018, with		
5		enclosures, (52 pages).		
6	5UU	Checks dated April 4, 2012.	473	474
7	5VV	Memorandum of interview of Deborah Stone	459	462
8		dated December 12, 2017, with notes,		
9		(2 pages).		
10	<u>Estate of Deborah Brigham</u>			
11	6Q	Checks from Beverly Brigham payable to	602	604
12		Respondent, dated November 24, 2015,		
13		(Exhibit C to the Formal Written Complaint)		
14		(3 pages).		
15	<u>Checks</u>			
16	7C	Copies of checks from Louis Micha to	525	528
17		Richard H. Miller, dated from December 9,		
18		2014 to March 22, 2018, and Receipts		
19		(Exhibit E to the Formal Written Complaint),		
20		(46 pages).		
21				
22				
23				
24				
25				

1 **Financial Disclosure Forms**

2	8A	Annual Statements of Financial Disclosure	794	794
3		filed by Richard H. Miller, II, with the Ethics		
4		Commission for the Unified Court System for		
5		reporting year 2014 (13 pages).		
6	8B	Annual Statements of Financial Disclosure	794	794
7		filed by Richard H. Miller, II, with the Ethics		
8		Commission for the Unified Court System for		
9		reporting year 2015 (6 pages).		
10	8C	Annual Statements of Financial Disclosure	794	794
11		filed by Richard H. Miller, II, with the Ethics		
12		Commission for the Unified Court System for		
13		reporting year 2016 (6 pages).		
14	8D	Annual Statement of Financial Disclosure for	794	794
15		reporting year 2015, as amended by Richard		
16		H. Miller on November 16, 2017 (6 pages).		

17 **Income Tax Returns**

18	9A	2015 U.S. Individual Income Tax Return	794	795
19		(Bates Nos.: 101-001 to 101-025).		
20	9B	2015 Amended U.S. Individual Tax Return	794	795
21		(Bates Nos.: 102-001 to 102-006).		
22	9C	2015 U.S. Individual Income Tax Return	794	795
23		(Amended) (Bates Nos.: 103-001 to 103-017).		
24				
25				

1	9D	2015 New York Resident Income Tax Return	794	795
2		(Bates Nos.: 104-001 to 104-008).		
3	9E	2015 New York Amended Resident Income	794	795
4		Tax Return (Bates Nos.: 105-001 to 105-007).		
5	9F	2016 U.S. Individual Tax Income Tax Return	794	795
6		(Bates Nos.: 201-001 to 201-029).		
7	9G	2016 Amended U.S. Individual Income Tax	794	795
8		Return (Bates Nos.: 202-001 to 202-006).		
9	9H	2016 U.S. Individual Income Tax Return	794	795
10		(Amended) (Bates Nos.: 203-001 to 203-027).		
11	9I	2016 New York Resident Income Tax Return	794	795
12		(Bates Nos.: 204-001 to 204-011).		
13	9J	2016 New York Amended Resident Income	794	795
14		Tax Return (Bates Nos.: 205-001 to 205-009).		
15	<u>Correspondence</u>			
16	10A	Letter to Cathleen S. Cenci from Paul	795	796
17		DerOhannesian, II, dated April 16, 2018.		
18	10B	Letter to Hon. Richard H. Miller, II, c/o Paul	795	796
19		DerOhannesian, II, with enclosure, dated May		
20		7, 2018, (5 pages).		
21	10C	Letter to Cathleen S. Cenci from Paul	796	796
22		DerOhannesian, with enclosure, dated May		
23		30, 2018, (7 pages).		
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Additional Exhibits

11	Schedule of Commission Exhibits.	13	---
12	Letter from Debbi Singer to Judge Miller dated March 10, 2017 (3 pages).	407	1499
13	Rachelle Gallagher's notes.	769	---
14	Transcript of Jerry Penna's testimony	953	---
15	Letter from Cathleen Cenci to Lisa Wojdat dated October 2, 2017.	1091	1113
16	Memorandum of interview of David Behal dated August 15, 2017.	1167	---
17	Letter from Cathleen Cenci to David Behal dated August 4, 2017.	1181	1184
18	Email from Gregory Gates dated April 13, 2016, to Sixth Judicial District Judges with attached memorandum from Hon. Michael V. Coccoma (3 pages).	1469	1473
19	Insurance claim document dated February 18, 2017 (2 pages).	1484	1486

EXHIBITS

RESPONDENT

		<u>Ident.</u>	<u>In Evid.</u>
1			
2			
3			
4			
5	A	Subpoena for John McConnell.	688 ---
6	F	Subpoena.	82 ---
7	I	Transcript of Mark Kachadourian's	86 ---
8		Testimony.	
9	J	Mark Kachadourian's Notes.	91 ---
10	K	Noramar Enterprises documents.	109 ---
11	L	Nomination for appointment of attorneys.	111 114
12	M	Arbitration decision.	116 ---
13	N	Federal complaint.	158 ---
14	O	Supplemental declaration of Mark	217 ---
15		Kachadourian.	
16	P	Memorandum of phone call of January 3,	168 ---
17		2018.	
18	Q	Rebecca Vroman's letter.	349 ---
19	R	Memorandum of phone call of April 20,	169 ---
20		2018.	
21	S	Summary of inspector general interview of	377 ---
22		Debbi Singer.	
23	T	Work Safe document.	385 ---
24	U	Debbi Singer's notes.	387 ---
25	V	Letter from Judge Miller to Debbi Singer	394 1499
		dated March 1, 2017 (3 pages).	

1	W	Memorandum of interview of Deborah Stone	453	---
2		on December 6, 2017.		
3	X	Updated records for <i>Estate of Antoinette</i>	537	537
4		<i>Saraceno</i> , (74 pages).		
5	Y	Transcript of Rachelle Gallagher's	609	---
6		testimony.		
7	Z	Calendar.	724	---
8	AA	Photograph of Richard Balles and Mark	973	975
9		Kachadourian.		
10	BB	Photograph of Richard Balles, Judge Miller,	973	975
11		Mark Kachadourian and others.		
12	CC	Consent to change attorney signed by Artan	1044	1049
13		Serjanej and David Behal dated March 20,		
14		2015.		
15	DD	Consent to change attorney signed by Artan	1062	1066
16		Serjanej and Thomas Hayes dated March 5,		
17		2015.		
18	EE	Emails with Surrogate's Court and Artan	1067	---
19		Serjanej.		
20	FF	Emails of October and November 2015	1119	1120
21		(3 pages).		
22	GG	Emails of March, April and May 2017	1122	1125
23		(3 pages).		
24	HH	Email from Jolene to David Behal dated May	1135	1136
25		15, 2013.		

xx.

1	II	IRS forms and publications printout.	1143	1144
2	JJ	Email between Sgt. Krebs and captain.	1197	---
3	KK	Email.	1207	---
4	LL	Email from Rebecca Vroman to Mark	1337	1340
5		Kachadourian dated January 23, 2017.		
6	MM	Standards and goals statistics (7 pages).	1340	1342
7	NN	Employee evaluation email to Judge Mulvey	1367	1368
8		dated January 20, 2016 (2 pages).		
9	OO	Email from Jane Sbarra dated	1386	1387
10		January 11, 2019.		
11	PP	Financial disclosure forms sent from	1387	1388
12		Respondent to Chief Clerk on January 31,		
13		2019 (5 pages).		
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

REFEREE

		<u>Ident.</u>	<u>In Evid.</u>
1	Email from Cathleen Cenci to the Referee, Paul DerOhannesian and Deborah Scalise dated January 4, 2019.	258	258
2	Email from Deborah Scalise to the Referee, Cathleen Cenci and Paul DerOhannesian dated January 6, 2019 (4 pages).	258	258
3	Subpoena for Mayor Greg Deemie dated January 4, 2019.	689	689
4	Letter from Shawn Kerby to the Referee dated January 9, 2019, (6 pages).	732	732
5	Letter from Edward Lindner to the Referee dated January 10, 2019, (66 pages).	893	893
6	Letter from Shawn Kerby to the Referee dated January 11, 2019, (2 pages).	1186	1188

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Dated: February 5, 2019

Sarah E. A. Miller

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

**STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT**

-----X
In the Matter of the Proceeding Pursuant :
to Section 44, subdivision 4, of the :
Judiciary Law in Relation to :

RICHARD H. MILLER, II, :

a Judge of the Family Court, Broome County. :
-----X

Sixth Judicial District Conference Room
Kilmer Building
31 Lewis Street, 5th Floor
Binghamton, New York 13901
January 11, 2019
9:02 AM

B e f o r e:

ROBERT A. BARRER, ESQ.
Referee

P r e s e n t:

For the Commission

CATHLEEN S. CENCI, ESQ.
Deputy Administrator

S. PETER PEDROTTY, ESQ.
Senior Attorney

ETEENA J. TADJIOGUEU, ESQ.
Staff Attorney

For the Respondent

PAUL DEROHANNESIAN, II, ESQ.
Attorney for Respondent
DerOhannesian & DerOhannesian
677 Broadway, Suite 707
Albany, New York 12207

DEBORAH A. SCALISE, ESQ.
Attorney for Respondent
Scalise & Hamilton LLP
670 White Plains Road, Suite 325
Scarsdale, New York 10583

A l s o P r e s e n t:

HON. RICHARD H. MILLER, II
Respondent

RYAN T. FITZPATRICK
Senior Investigator and FTR Operator

INDEX OF WITNESSES

For the Commission

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Mark Kachadourian, Esq.	21	76	68	222	240
D [REDACTED] L [REDACTED]	260	283	--	307, 317	313
Rebecca Vroman	321	333	--	--	--
Debbi Singer	355	376	--	402	--
Deborah Stone	410	430	419	458, 465	462
Barbara Saraceno	469	480	--	--	--
Robert Wedlake, Esq.	486	513	--	--	--
Louis Micha	521	530	--	--	--
Rachelle Gallagher	541	606	601	768	778

INDEX OF WITNESSES

For the Respondent

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Ofc. Jolene Payne	799	802	--	807	--
James Stilloe	856	867	--	--	--
Martin Shaw	908	913	--	--	--
Jerry Penna	922	935	--	951, 958	954
Richard Balles	964	--	--	--	--
Katherine Fitzgerald, Esq.	977	987	--	993	--
Sandra Conklin	997	1013	--	1016	1021
Artan Serjanej, Esq.	1024, 1100	1101	1047, 1064	1108	1111
Lisa Wojdat	1074	1090	--	1096	--
David Behal	1115	1151	1123	1176, 1184	1181
Sgt. Ronald Kreb	1196	1204	--	1207	--
Diane Marusich	1211	1226	--	--	--
Robin Dean	1242	1263	--	1274, 1283	1280
Hon. Richard H. Miller, II	1296	1431	1339, 1472	1486	1489

ii.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: Good morning, everybody. It's
2 Friday morning. Counsel for Commission is present.
3 Counsel for the Respondent is present and the Respondent
4 is present. Is Mr. Serjanej here?

5 MR. DEROHANNESIAN: I don't believe so.

6 COURT OFFICER: Just walked in.

7 THE REFEREE: Just walked in? Great. Let's bring
8 him in.

9 MR. DEROHANNESIAN: But, Judge, I was going
10 to ask to take a witness out of order who has a flight to
11 catch?

12 THE REFEREE: Oh, all right. That's fine.

13 MR. DEROHANNESIAN: Lisa Wojdat.

14 THE REFEREE: Did you tell Mr. Serjanej?

15 MR. DEROHANNESIAN: Actually, I haven't. I
16 haven't spoken to him--

17 THE REFEREE: --Why don't you go out and do
18 that--

19 MR. DEROHANNESIAN: --Can I tell him that?

20 THE REFEREE: Yeah. We'll go off the record.

21 (OFF THE RECORD)

22 THE REFEREE: Counsel is present and the
23 Respondent is present. Ms. Cenci, do you have any
24 objection to taking a witness out of order due to a flight
25 issue?

1072.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MS. CENCI: No, Your Honor.

2 THE REFEREE: Thank you, very much. Everyone
3 appreciates that. Let's bring her in.

4 MR. DEROHANNESIAN: Yes, thank you.

5 THE REFEREE: If you could raise your right hand,
6 please? Do you swear or affirm that the testimony you are
7 about to give is going to be the truth, the whole truth and
8 nothing but the truth?

9 MS. WOJDAT: I do.

10 L I S A W O J D A T,

11 having been duly sworn, was examined and testified as follows:

12 THE REFEREE: Thank you. Please have a seat.
13 My name is Robert Barrer. I'm appointed as special
14 Referee by the Commission on Judicial Conduct to oversee
15 the proceedings that we're here for today.

16 THE WITNESS: Okay.

17 THE REFEREE: You're going to be giving some
18 testimony, you'll be asked questions by Judge Miller's
19 lawyer and then when he's done, the Commission lawyer
20 will have a chance to ask you questions as well.

21 THE WITNESS: Okay.

22 THE REFEREE: It's important that when you
23 testify, that you wait until the entire question is asked before
24 you respond, so we don't have people talking over each
25 other.

1073.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Direct)

1 THE WITNESS: Absolutely.

2 THE REFEREE: We are recording these
3 proceedings, so it's important also that you answer verbally,
4 as opposed to shaking your head.

5 THE WITNESS: Right. Okay.

6 THE REFEREE: And lastly, if there's an objection
7 to a question, please wait to answer until I give you the go
8 ahead. How's that?

9 THE WITNESS: Okay.

10 THE REFEREE: That fair?

11 THE WITNESS: That's fair.

12 THE REFEREE: All right. Counsel?

13 DIRECT EXAMINATION

14 BY MR. DEROHANNESIAN:

15 Q. Tell us your name, please?

16 A. My name is Lisa Wojdat.

17 Q. Where do you live now?

18 A. I live in Sunset Beach, North Carolina.

19 MS. CENCI: Could we get a spelling for the record?

20 A. Last name?

21 MS. CENCI: Thank you.

22 A. W-O-J-D, as in dog, A, as in Adam, T, as in Thomas.

23 Q. And how do you pronounce it?

24 A. Voy-dot.

25 Q. So, with-- Like a V?

1074.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Direct)

1 THE REFEREE: Good, I don't think any of us
2 would have done that.

3 A. I know.

4 Q. So, Voy-dot.

5 A. Voy-dot.

6 THE REFEREE: It's pronounced V--

7 THE WITNESS: --It's like V-O-Y-D-O-T, is
8 phonetic.

9 THE REFEREE: And that's pronounced Lisa?

10 THE WITNESS: Lisa.

11 THE REFEREE: Perfect. Thank you.

12 BY MR. DEROHANNESIAN:

13 Q. So, I apologize, because I think we've all mispronounced your name.

14 A. That's fine. I'm used to it.

15 Q. Okay. So, Ms. Wojdat, I'm practicing.

16 A. Mm-hmm.

17 Q. Using the opportunity to practice. Ms. Wojdat, do you currently work
18 or have a job or something that you do?

19 A. I have a business in Sunset Beach--

20 Q. --Okay.

21 A. --I own a beach house and I run an Airbnb.

22 Q. And when did you move to South Carolina?

23 A. End of May of 2018.

24 Q. Do you still commute or connect to the Binghamton area?

25 A. I have twice since, that is it.

1075.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Direct)

- 1 Q. Do you have family here?
- 2 A. Yes.
- 3 Q. Did you grow up in the Broome County area?
- 4 A. I did.
- 5 Q. Okay. Tell me about-- So, you spent your life in Broome County
- 6 until--
- 7 A. --Yes.
- 8 Q. --you went to South Carolina, as you have described? Did you have
- 9 occasion to work in the court system?
- 10 A. Yes.
- 11 Q. Tell us about your work history in the court system?
- 12 A. I began in 1993. I worked for the Town of Union Court for three
- 13 years, and I worked in the Village of Endicott Court for one year, left
- 14 on maternity leave, didn't come back into the court system until-- I
- 15 had two daughters and I was part-time and I believe that was 2001. I
- 16 worked there for another year part-time.
- 17 Q. There, being Village of Endicott?
- 18 A. No, back at the Town of Union.
- 19 Q. The town.
- 20 A. And then I left to work at my kids' school, and then I started back at
- 21 the Town of Union Court full-time.
- 22 Q. So, when-- Did you just end your description?
- 23 A. Well, I worked there seven years, the time-- my timeline for that
- 24 always confuses me, and then I left there, I believe it was in 2015,
- 25 then I worked for two years part-time in the Town of Dickinson Court,

1076.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Direct)

- 1 and then moved to North Carolina.
- 2 Q. So, at the time you moved to South Carolina, you were working in the
- 3 Town of Dickinson Court?
- 4 A. Right.
- 5 Q. All of these courts that you mentioned, are they in the County of
- 6 Broome?
- 7 A. Yes.
- 8 Q. Or town or village courts I should say.
- 9 A. Right.
- 10 Q. They're all in the County of Broome, correct?
- 11 A. They are.
- 12 Q. Near Binghamton?
- 13 A. Yes.
- 14 Q. Do you know-- What kind of work did you do in the court system?
- 15 A. Court clerk. Worked-- When I was full-time, I worked directly for a
- 16 judge. That's the way the Town of Union did that. Village of
- 17 Endicott, we just kind of-- There was one judge and then a, I guess,
- 18 there was another judge there, but was not a full-time judge. But, me
- 19 and the other girl I worked for just kind of worked for them as one.
- 20 And then I was part-time. I kind of worked for both, I just kind of
- 21 picked up the little things that-- mail, processing tickets, didn't go in
- 22 the courtroom, but as a full-time clerk, I assisted the judge, was in the
- 23 courtroom, paperwork.
- 24 Q. Again, fair to say the position was as a clerk, in one capacity or
- 25 another, while you worked in all of the village--

1077.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Direct)

- 1 A. --Yes.
- 2 Q. --and town courts that you've described?
- 3 A. Yes.
- 4 Q. And in the course of your work career, did you make the acquaintance
5 of Judge Richard Miller?
- 6 A. Yes.
- 7 Q. Do you recall where or when you first made the acquaintance of Judge
8 Richard Miller?
- 9 A. Well, that would have been probably 25 years ago when I worked in
10 the Town of Union Court for Woody Gaul, Sr. As a-- an attorney, I
11 had met him.
- 12 Q. So, before he was judge, you knew him?
- 13 A. Yes. I don't believe he was a judge yet then.
- 14 Q. Okay, you knew him as an attorney appearing in the local court?
- 15 A. Yes.
- 16 Q. And then at some point, did he become a village or town judge?
- 17 A. Yes.
- 18 Q. Do you know where that was?
- 19 A. I know he-- Well, Johnson City, obviously.
- 20 Q. Mm-hmm.
- 21 A. But then, he-- When I was working part-time in the Town of Union
22 Court, he was also a full-time judge there and that would have been
23 2001, but I think he was there before I came in as a part-time clerk. A
24 new judge got elected, but Mr. Miller was already there as the judge.
25 You know, they have the elections, they stagger them normally as per

1078.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Direct)

- 1 two judges in a court. So, he was already a judge there when I started
2 there.
- 3 Q. Okay. Would you see Judge Miller in court?
- 4 A. Yes.
- 5 Q. Both as a lawyer and a judge?
- 6 A. At that time, more as a judge.
- 7 Q. Okay.
- 8 A. I didn't really see him as a lawyer then.
- 9 Q. So, in the town-- That was in the Town of Union?
- 10 A. Yes.
- 11 Q. That's where you would have been a clerk where Judge Miller was
12 judge?
- 13 A. Yes.
- 14 Q. Correct? And at some point, Judge Miller ran for the position of
15 Broome County Family Court Judge?
- 16 A. Yes.
- 17 Q. And did you assist in that campaign?
- 18 A. Yes.
- 19 Q. Do you recall what you did to assist in that campaign?
- 20 A. My husband and I helped with a fundraiser he had. My husband's a
21 professor at SUNY Broome for hotel, restaurant, so he had a cooking
22 class, so his kids, you know, they're not all kids, but had cooked for
23 the-- for the fundraiser.
- 24 Q. So, it was a fundraiser with your husband doing the cooking or
25 providing--

1079.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Direct)

1 A. --Yes.

2 Q. --services--

3 A. --Mm-hmm.

4 Q. --for food?

5 A. Mm-hmm.

6 THE REFEREE: Was that a yes?

7 THE WITNESS: Yes.

8 BY MR. DEROHANNESIAN:

9 Q. After he was elected in November, did you have discussions with
10 Judge Miller about the position of secretary in family court?

11 A. Well, I was aware that he was able to bring a person with him. I guess
12 it would be talked about, but--

13 Q. --But did you talk-- Did you talk to Judge Miller directly?

14 A. Yes.

15 Q. Did you ask Judge Miller for that position?

16 A. I said I would like to have-- you know, go with him, but--

17 Q. --Okay.

18 A. --it was not something that it was like, "Oh, yeah. You know, you're
19 it."

20 Q. And did Judge Miller ever promise you the position of secretary?

21 A. No.

22 Q. To Broome-- I'll finish. Did Judge Miller ever promise you the
23 position of being his secretary as Broome County Family Court
24 Judge?

25 A. No.

1080.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Direct)

1 Q. Do you know someone by the name of Rachelle Gallagher?

2 A. Yes.

3 Q. And how do you know Rachelle Gallagher?

4 A. She worked for Judge Miller in the Village of Johnson City Court.

5 Q. And for how long have you known Rachelle Gallagher?

6 A. I would say 10 years. Could be more. All the-- All court clerks talk
7 because of cases or arraignments that one had done for another court
8 and you have questions, cases where you have the same name of the
9 defendant. So, you know, it's a-- it's a community that all court
10 clerks speak.

11 Q. Why would you be speaking to a clerk in another court about a-- Let
12 me rephrase it. Why would another court have a case that belongs in
13 your court?

14 A. Because-- Can I give an example?

15 Q. Yes, please.

16 A. Okay. So, for instance, I'll use Judge Miller in Johnson City, did an
17 arraignment for the Town of Union, because it's an adjacent, you
18 know, court in the county. He was the one who was available or on
19 call, so at that point, Johnson City would do the paperwork. It all has
20 to be put in the computer, everything done, reported, and then it gets
21 transferred. So, many times, that court would call and say, "We have
22 done an arraignment for you. This is what's going on. They're in
23 jail." We need to know that stuff before we get that paperwork,
24 because then all of the originals would come to the court of the
25 jurisdiction that it should be in.

1081.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Direct)

1 Q. This example that you're giving, is that a common occurrence in the
2 local court system?

3 A. Yes.

4 Q. Where judges in another town or village help arraign people--

5 A. --Yes.

6 Q. --from an--

7 A. --It--

8 THE REFEREE: --You have to wait until he's
9 finished.

10 THE WITNESS: Oh, okay. I'm sorry.

11 THE REFEREE: That's all right.

12 BY MR. DEROHANNESIAN:

13 Q. Is that a common practice in the local court system in your experience
14 of judges in adjoining towns and villages assisting in the arraignment
15 of cases for an adjoining town?

16 A. It was until recently.

17 Q. If I could have a moment? In the course of working in the court
18 system as-- I didn't ask if you-- You resided where during this time
19 period?

20 A. Vestal, New York.

21 Q. Okay. It'd be fair to say that's where you spent the last 15 or 20
22 years?

23 A. Vestal, Binghamton area. Yes. Endwell. Mm-hmm.

24 Q. Okay. And in the course of working, as well as in the course of being
25 in the opinion-- being in the community, did you have occasion to

1082.

(Wojdat - Direct)

- 1 have people talk about Judge Miller?
- 2 A. Yes.
- 3 Q. And in the course of people talking about Judge Miller, did people
- 4 talk about his reputation for truthfulness?
- 5 A. Yes.
- 6 Q. And did you form an opinion as to what the community opinion was
- 7 of Judge Miller's truthfulness?
- 8 A. Yes.
- 9 Q. What is that opinion?
- 10 A. Honorable, fair, respectable, nothing bad.
- 11 Q. Did you hear any negative words or opinion concerning his reputation
- 12 for truthfulness?
- 13 A. Could you repeat that, please?
- 14 Q. Sure. Did you ever hear anyone say he was not truthful? He was--
- 15 Was there ever an opinion expressed by people that he was less than
- 16 honest and trustworthy?
- 17 A. No.
- 18 Q. And in the course of working in the court system, speaking to
- 19 individuals within the court system, as well as within the community
- 20 outside of the court system, did people, at some point in time, begin
- 21 discussing his reputation for sexual propriety, and by that I mean not
- 22 engaging in sexually inappropriate behavior?
- 23 A. Can you reword it, please?
- 24 Q. Sure. And in the course of your working in the court system and
- 25 living in the community--

1083.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Direct)

1 A. --Mm-hmm.

2 Q. --did individuals discuss Judge Miller's reputation or image in terms
3 of how he behaves with respect to sexual matters?

4 A. No.

5 Q. Do you understand my question?

6 A. I don't know. I can say I never heard anybody talk about Rick and
7 sexual matters.

8 Q. And do you recall that there were news stories about allegations made
9 against Judge Miller of a sexual nature?

10 MS. CENCI: Objection. Leading.

11 THE REFEREE: No, I'll allow it.

12 A. Yes.

13 Q. And did individuals begin to discuss more about those allegations and
14 their opinions of Judge Miller after those stories?

15 A. Yes.

16 Q. And how would you characterize the opinions in the community of
17 Judge Miller after those stories came out about the sexual allegations?

18 A. Not believable.

19 MS. CENCI: Your Honor, I have an objection. I
20 move to strike. I don't believe that's proper-- that's the
21 proper opinion testimony that's admissible for purposes of
22 reputation.

23 THE REFEREE: Well, you didn't object to the
24 question, but I think that--

25 MS. CENCI: --Well, it was the answer that she

1084.

(Wojdat - Direct)

1 gave.

2 THE REFEREE: Well, you know what? Ask the
3 question again. I think you can phrase it better and get the
4 answer you want--

5 BY MR. DEROHANNESIAN:

6 Q. --Yeah. And it-- And if you don't understand my question, it's okay
7 to tell me, "Stop, I don't understand."

8 A. I will.

9 THE REFEREE: So, I'm going to grant the motion
10 to strike.

11 MS. CENCI: Thank you.

12 BY MR. DEROHANNESIAN:

13 Q. What was the opinion that you heard in the community with respect to
14 Judge Miller's reputation pertaining to allegations of either sexual
15 harassment or improper sexual behavior?

16 A. My same answer.

17 Q. Which is?

18 A. They-- People who I heard speak about it did not believe it, knowing
19 Rick.

20 MS. CENCI: Your Honor, it's the opinion of the
21 witness and not the--

22 MR. DEROHANNESIAN: --That-- No--

23 MS. CENCI: --opinion of the people that she's
24 talking to.

25 THE REFEREE: I think you're right and I think it's

1085.

(Wojdat - Direct)

1 really-- we're dealing with a question of semantics because
2 I'm not sure that there's-- that the witness is un-- is really
3 understanding the question that's been asked.

4 MR. DEROHANNESIAN: Mm-hmm.

5 THE REFEREE: So, let's try one more time.

6 BY MR. DEROHANNESIAN:

7 Q. Did you have an opinion of what Judge Miller's reputation was in the
8 community with respect to engaging in any inappropriate sexual
9 behavior or sexual harassment?

10 A. This is my personal opinion?

11 Q. No.

12 A. This is an opinion of people I spoke to?

13 Q. Yes.

14 A. My opinion--

15 THE REFEREE: --No, no. We're-- What we're
16 trying to get at is the reputation in the community without
17 specific examples from people. For example, we don't
18 want to hear that this person said, "Oh, I think this," or this
19 person said, "Oh, I think that." We're trying to find out
20 whether you're able to tell us in the community as a whole
21 what the reputation was. Do you understand the difference?

22 THE WITNESS: I don't know if I do.

23 THE REFEREE: Okay. Counsel, why don't you--
24 Can you give it another shot?

25 MR. DEROHANNESIAN: Sure.

1086.

(Wojdat - Direct)

1 BY MR. DEROHANNESIAN:

2 Q. Was there an opinion in the community as to Judge Miller's reputation
3 when it came to behaving in a sexually appropriate way and not
4 engaging in sexually inappropriate ways?

5 MS. CENCI: Objection, Your Honor.

6 THE REFEREE: No, I think-- I think that's-- I
7 think he's go it.

8 MS. CENCI: No. I think the-- With due respect, I
9 think the proper question is does the witness have an
10 opinion based upon what she heard from the community.
11 Does she have an opinion as to the judge's reputation, not
12 the other way around.

13 THE REFEREE: No, you're right. No, I agree.
14 You're right and I think that's what he--

15 MR. DEROHANNESIAN: --I thought I asked that
16 question.

17 THE REFEREE: I thought you did, too.

18 MS. CENCI: No.

19 THE REFEREE: But, one more time.

20 BY MR. DEROHANNESIAN:

21 Q. And I'm sorry if this is confusing.

22 A. Okay.

23 THE REFEREE: It's-- The reason we're having an
24 issue is because there are legal parameters that have to be
25 followed in order to get--

1087.

(Wojdat - Direct)

1 MR. DEROHANNESIAN: --Mm-hmm.

2 THE REFEREE: --this type of opinion and counsel
3 know it and it's complicated, so bear with us.

4 THE WITNESS: Okay.

5 BY MR. DEROHANNESIAN:

6 Q. So, did you form an opinion of what the opinion of the community
7 was when it came to Judge Miller's reputation for engaging in
8 sexually appropriate behavior and the allegations of sexual
9 inappropriateness?

10 MS. CENCI: I'm sorry. Objection. You still don't
11 have it right.

12 THE REFEREE: I think he does. Go ahead, if you
13 can.

14 A. So, I'm going to try to understand the question in my words and you
15 tell me if it sounds right.

16 Q. Mm-hmm.

17 A. So, what you're asking me is did I form an opinion of Mr. Miller from
18 what I had heard in the community, talk? I guess I don't understand
19 what I'm not--

20 Q. Yeah, you do. Yeah.

21 THE REFEREE: You're right on there.

22 MR. DEROHANNESIAN: You're right on.

23 THE WITNESS: Okay.

24 THE REFEREE: You get it. Can you answer that?

25 A. From what my opinion is and was is that-- I'm trying to word this

1088.

(Wojdat - Direct)

- 1 correctly so--
- 2 Q. --Mm-hmm.
- 3 A. No one that I have heard or spoke to believed that this allegation is
- 4 true.
- 5 Q. And have you spoken to many people about that since the allegations
- 6 became public?
- 7 A. Yes.
- 8 Q. Have people approached you without asking them?
- 9 A. Yes.
- 10 Q. Now, you said you know Rachelle Gallagher, correct?
- 11 A. Yes.
- 12 Q. You knew her from the community of court clerks, correct?
- 13 A. Yes.
- 14 Q. You knew her from the general community?
- 15 A. Yes. First met her, really, through the court. Knew, you know--
- 16 That's how I first got to know her.
- 17 Q. Mm-hmm. And did people discuss Ms. Gallagher's reputation for
- 18 truthfulness in the community?
- 19 A. Yes.
- 20 Q. Pardon?
- 21 A. Yes.
- 22 Q. And is that something that you discussed with other clerks?
- 23 A. Yes.
- 24 Q. And other people outside the court community?
- 25 A. That knew her, yes.

1089.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Cross)

1 Q. And do you have an opinion as to Ms. Gallagher's reputation for
2 truthfulness in the community?

3 A. Yes.

4 Q. And what is that opinion?

5 A. Manipulator, liar, troublemaker, evil.

6 Q. At any time, did you ever have any type of intimate contact with Judge
7 Richard Miller?

8 A. No.

9 Q. At any time did Richard Miller, as a lawyer or a judge, ever approach
10 you to request intimate relations?

11 A. No.

12 Q. At any time in your presence, did Richard Miller, as a lawyer or judge,
13 ever make any sexually inappropriate comments to you?

14 MS. CENCI: Objection.

15 THE REFEREE: What's the objection?

16 MS. CENCI: It's irrelevant.

17 THE REFEREE: No, I'll allow it.

18 MR. DEROHANNESIAN: No.

19 A. No.

20 MR. DEROHANNESIAN: Thank you. Thank you.

21 THE REFEREE: Ms. Cenci?

22 CROSS-EXAMINATION

23 BY MS. CENCI:

24 Q. Thank you. Ms. Wojdat.

25 A. Yes.

1090.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Cross)

1 Q. Did I get that correct?

2 A. It's okay.

3 Q. I'm Cathleen Cenci, I'm serving as counsel for the Commission in this
4 matter. We haven't met or spoken, is that right?

5 A. Right.

6 Q. You indicated that you moved to Sunset Beach. Is that North
7 Carolina?

8 A. It is North Carolina.

9 Q. In May of 2018. Prior to that time, were you aware of any efforts on
10 behalf of my office to contact you?

11 A. I received a letter.

12 Q. Okay. And did that letter ask you to contact our office?

13 A. Yes. It was vague. There was no name.

14 MS. CENCI: Can I have a document marked, Your
15 Honor?

16 THE REFEREE: Yes. What number are we up to?

17 MR. FITZPATRICK: 15.

18 THE REFEREE: 15.

19 BY MS. CENCI:

20 Q. I'm showing the witness Exhibit 15--

21 THE REFEREE: --Let me just-- quickly. I just
22 want to just, for the date.

23 MS. SCALISE: May we have a-- May we view it as
24 well?

25 MS. CENCI: Sure. Should I show it to the counsel

1091.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Cross)

1 first, Your Honor?

2 THE REFEREE: If you'd like. I mean, they--

3 MS. SCALISE: --We haven't seen it, so ...

4 THE REFEREE: It's short, so it's--

5 MR. DEROHANNESIAN: --Yeah. Yeah. Okay.

6 Thank you. It's 15. Thank you.

7 THE REFEREE: It's Exhibit 15, for identification.

8 BY MS. CENCI:

9 Q. Ms. Wojdat, is that a copy of the letter that you received that you just
10 referenced?

11 A. Yes.

12 Q. You never responded to that letter, did you?

13 A. I did not.

14 Q. When you got the letter, did you have some indication as to what it
15 was all about?

16 A. Some.

17 Q. Did you speak to Judge Miller about having received that letter?

18 A. No, I have not spoke to Judge Miller in--

19 Q. --You answered the question.

20 A. Okay.

21 Q. Thank you.

22 THE REFEREE: So, you did not contact Judge
23 Miller in response to--

24 THE WITNESS: --I did not.

25 THE REFEREE: --getting Exhibit 15? Thank you.

1092.

(Wojdat - Cross)

1 THE WITNESS: I did not.

2 BY MS. CENCI:

3 Q. Now, did you receive a subpoena to appear here today?

4 A. No.

5 Q. So, you flew up from North Carolina voluntarily, is that correct?

6 A. Yes.

7 Q. Who asked you to do that?

8 A. Attorney Paul D, I can't pronounce his last name. So--

9 MR. DEROHANNESIAN: --That's okay.

10 A. --that's how I will refer to him, if that's okay.

11 MR. DEROHANNESIAN: Welcome to the club.

12 MS. CENCI: We've got yours, we still can't get his.

13 So--

14 THE REFEREE: --It's pronounced Paul.

15 MR. DEROHANNESIAN: Right. Thank you.

16 THE WITNESS: Yes.

17 BY MS. CENCI:

18 Q. Did-- So, is someone paying for your airfare?

19 A. Attorney Paul D.

20 Q. All right. You talked initially with Mr. Paul D about the judge's
21 reputation for truthfulness and I believe you said that he's honorable,
22 fair, respectable and that you had heard nothing bad. Did you say that
23 earlier?

24 A. Correct.

25 Q. Okay. When you were working as a court clerk-- Were you working

1093.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Cross)

1 as a court clerk in about 2002, 2003?

2 A. Yes. I thought it was 2001 to 2002. It was about a year I was part-
3 time, so--

4 Q. --Okay. Well, even if you weren't working at the court--

5 A. --Yes.

6 Q. --did you hear at that time about the Commission on Judicial
7 Conduct's censure of Judge Miller for misconduct?

8 A. Yes.

9 Q. Did you think that was something good?

10 MR. DEROHANNESIAN: Objection.

11 THE REFEREE: No, overruled.

12 A. No.

13 Q. So, you had heard something bad?

14 A. I was speaking of the community when I was asked that question.

15 Q. Who are some of the people that you have spoken with about Judge
16 Miller's reputation?

17 A. Several attorneys that I've dealt with along the way.

18 Q. Can you give us their names?

19 MR. DEROHANNESIAN: Well, can she finish her
20 answer first then--

21 THE REFEREE: --I thought she had.

22 MR. DEROHANNESIAN: Besides--

23 THE REFEREE: --Who--

24 MR. DEROHANNESIAN: Besides the-- I don't
25 think--

1094.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Cross)

1 THE REFEREE: --Yes. Yeah, go ahead. Keep
2 going if there's more.

3 A. Court clerks, police officers. Names you want to know?

4 Q. I just want to make sure you finished your answer first. Now can you
5 tell us any of their names?

6 A. Investigator Mike Franz (phonetic), Gretchen Carpentary (phonetic),
7 Mary Wibble (phonetic), Kendra Iannin (phonetic), Paul Battisti--

8 Q. --Okay. If-- Can-- What-- I'm sorry to interrupt you, but if--

9 MR. DEROHANNESIAN: --Hold on, please.

10 BY MS. CENCI:

11 Q. Could you ident-- When you give the name, could you identify if
12 they're on attorney--

13 A. --When I tell-- Sure.

14 Q. --or a court clerk or a police officer?

15 A. Okay. So, Mike Franz is an investigator with the State Police.

16 Q. Okay.

17 A. Kendra Iannin is a court clerk. Mary Wibble is a court clerk.
18 Gretchen Carpentary is a court clerk. Other judges, Judge Dellapenna,
19 Judge Tom Kline. Paul Battisti is an attorney. Mike Mucci is an
20 attorney.

21 Q. And these are people that you spoke with about the judge's
22 reputation?

23 A. Right.

24 Q. Okay. So, anyone else you can think of?

25 A. Well, I'm sure when I walk out of the room I will. I mean, there was

1095.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Redirect)

1 just-- I would say Chris Brown, attorney. Brett Noonan, attorney.
2 I'm trying to think of the clerk's, court clerk's last name who has been
3 a clerk-- Who was a clerk forever in the Town of Chenango. Janet. I
4 can't think of Janet's last name at the moment.

5 Q. When did you have these conversations?

6 A. It was sporadic. It's-- It wasn't one of those things-- It-- More than
7 anything, it would be something somebody-- When the attorneys
8 come into the court, I had worked with Kendra Iannin at the
9 Dickinson Court.

10 Q. When was the last time you spoke with anyone about Judge Miller's
11 reputation?

12 A. Well, I haven't really been here, so it-- probably-- I left Town of
13 Dickinson Court in February. February, March, April, I left there.

14 THE REFEREE: Of what year?

15 A. Of 2018. So, that would have been really the last contact I had with
16 anybody in that community.

17 Q. Do you know whether Judge Miller ever expressed any regret at not
18 having brought you to family court as a secretary?

19 A. No.

20 MS. CENCI: I have no further questions.

21 THE REFEREE: Any redirect?

22 MR. DEROHANNESIAN: Yes.

23 REDIRECT EXAMINATION

24 BY MR. DEROHANNESIAN:

25 Q. After receiving the letter, Exhibit 15, for identification, did you ever

1096.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Redirect)

- 1 receive a subpoena to appear anyplace?
- 2 A. No.
- 3 Q. Did you ever receive any phone call?
- 4 A. No.
- 5 Q. Did you ever receive another letter?
- 6 A. No.
- 7 Q. Was the next contact following up with you about Judge Miller
- 8 someone from my office or an investigator from my office?
- 9 A. Yes.
- 10 Q. I think you were asked when was the last time you spoke to someone
- 11 about Judge Miller's reputation, correct?
- 12 A. Yes.
- 13 Q. And for example, when you referenced some of these folks, I think
- 14 one of the-- You mentioned like an investigator with the State Police?
- 15 A. Yes.
- 16 Q. When approximately would that have been?
- 17 A. That was-- It must have been March or April. It was before I had
- 18 moved away--
- 19 Q. --So that would be--
- 20 A. --He-- I actually saw him in the grocery store and he approached me.
- 21 Q. So you didn't initiate the discussion?
- 22 A. I did not.
- 23 Q. About the judge's reputation with the State Police investigator?
- 24 A. I did not.
- 25 Q. And did he discuss an opinion of others or just his own?

1097.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Wojdat - Redirect)

1 A. His own, as well as his co-workers that just thought it was
2 unbelievable.

3 MS. CENCI: Objection.

4 THE REFEREE: Sustained.

5 BY MR. DEROHANNESIAN:

6 Q. But he was also referencing co-workers in terms of his opinion?

7 A. Yes.

8 Q. Obviously, at some point in the past you have spoken to Judge Miller,
9 correct?

10 A. Yes.

11 Q. I mean, it could have been ten years ago?

12 A. Yes.

13 Q. So, when was the last time that you've had any contact directly with
14 Judge Miller?

15 A. Between a year and two.

16 Q. Okay. And what was the nature of that contact? Was it passing or--

17 A. --Yes. Yes.

18 Q. As in seeing in the community, there was no event or--

19 A. --No.

20 MS. CENCI: Objection. He's leading, Your Honor.

21 THE REFEREE: It is, but it's irrelevant. I think
22 your voices will get picked up.

23 MR. DEROHANNESIAN: This is-- No further
24 questions, Your Honor.

25 THE REFEREE: Anything further?

1098.

(Wojdat - Redirect)

1 MS. CENCI: Nothing further.

2 THE REFEREE: All right. Ms. Wojdat, thank you
3 very much for coming. We appreciate your being here.
4 These proceedings are confidential, so we'd like if you
5 would not discuss your testimony with anyone.

6 THE WITNESS: Okay.

7 THE REFEREE: And have a safe flight.

8 THE WITNESS: Thank you.

9 THE REFEREE: And let's bring in Mr. Serjanej.

10 MS. SCALISE: Yes. And if I may, I have just brief
11 questions to ask him, because we haven't-- And I did not
12 speak to him, but there's an issue that came up that I have to
13 probe a little bit.

14 THE REFEREE: Well, he's already been sworn in
15 and he's testifying. I don't--

16 MS. SCALISE: --I know. I have not talked to him.
17 You gave us an instruction not to speak to him and I--

18 THE REFEREE: --No, I understand that, but what
19 do you need to talk to him about?

20 MR. DEROHANNESIAN: No, no. Ask him.

21 MS. SCALISE: I have-- I have to ask him.

22 THE REFEREE: Oh, ask him. I'm sorry.

23 MS. SCALISE: I don't want to talk to him. I just
24 have questions, because I thought I was done yesterday, but
25 upon information from another witness, there's an issue I

1099.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Direct)

1 need to clear up.

2 THE REFEREE: Any objection?

3 MS. CENCI: Well--

4 THE REFEREE: If you do, tell me what it is and
5 I'll ...

6 MS. CENCI: I mean, she's asking to reopen his
7 direct testimony after she said she was finished. No. No
8 objection.

9 THE REFEREE: Thank you. Let's bring him in.

10 THE WITNESS: Good morning.

11 THE REFEREE: Good morning.

12 THE WITNESS: I was told I could bring my coffee
13 in?

14 THE REFEREE: Please.

15 THE WITNESS: Thank you.

16 THE REFEREE: Sir, you're still under oath.

17 THE WITNESS: Yes.

18 THE REFEREE: And we have a couple more
19 questions from Ms. Scalise that--

20 THE WITNESS: --Yes.

21 THE REFEREE: --she wants to do now.

22 DIRECT EXAMINATION

23 BY MS. SCALISE:

24 Q. Artan, with respect to Donna who worked for you?

25 A. Yes.

1100.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Cross)

1 Q. Okay. Did she have access to email when she worked in your office?

2 A. She has an email address that I gave her when I took over the
3 building.

4 Q. Okay. So, she has a separate email address?

5 A. It's-- No. It's an email address that's connected to my practice.

6 Q. Okay. And do you recall what that email address is?

7 A. I think it's Donna2304@[REDACTED] or something.

8 Q. Okay. And do you know if she also received emails prior to your
9 taking over and maybe even during the-- through Judge Miller's
10 former email address?

11 A. That I don't know.

12 Q. Okay.

13 MS. SCALISE: I have no further questions.

14 THE REFEREE: Thank you.

15 CROSS-EXAMINATION

16 BY MS. CENCI:

17 Q. Good morning, Mr. Serjanej.

18 A. Good morning.

19 Q. How are you today?

20 A. I'm good. Thank you. How are you?

21 Q. I'm good. Thank you. So, when you took over the building at 2[REDACTED]
22 North Street, were you presented with a number of things by Donna
23 Filip to sign?

24 A. I don't understand the question.

25 Q. Well, those-- Some of those consents to change attorney. Did you

1101.

(Serjanej - Cross)

1 sign a number of those early on?

2 A. Eventually, yeah. We did what was called the substitution of an
3 attorney. It was-- We had discussed-- I think I remember off the
4 top--

5 Q. --Okay. I'm sorry, sir. I'm just asking for a yes or no. Did-- Were
6 you presented with a number of these things by Donna for your
7 signature?

8 A. The way how you're formulating the question, I'd have to say no.

9 Q. Okay. When you began the practice, is it fair to say that you really
10 hadn't done much estate work?

11 A. On my own? Yes. It's fair to say. I remember though doing with
12 Stan Drazen a long time ago when I was with his office, he used to do
13 tons of estates and I helped him a lot with research, I helped a lot with
14 forms.

15 Q. But you didn't, as part of your practice--

16 A. --Not. That's correct.

17 Q. --do a lot of estate--

18 THE REFEREE: --Hold on. You have to let him--

19 You have to let her finish--

20 THE WITNESS: --I'm sorry.

21 BY MS. CENCI:

22 Q. You didn't do, yourself, a lot of estate work, is that fair to say?

23 A. That's fair to say.

24 Q. So, with respect to *Saraceno*. Remember you were asked about that
25 estate yesterday?

1102.

(Serjanej - Cross)

1 A. Yes.

2 Q. And you indicated that it's now closed, finally?

3 A. Yes.

4 Q. Correct?

5 A. Yes.

6 Q. And you have not received a fee for your work in that estate?

7 A. No, and I did not want to have a fee with regard to the *Saraceno* estate
8 and I did a lot of thinking last night after I left here, after--

9 Q. --Sir. I'm-- I'm sorry--

10 THE REFEREE: --That's all--

11 MS CENCI: I-- I'm--

12 THE REFEREE: He-- He--

13 BY MS. CENCI:

14 Q. --This is cross-examination and I'm just asking you for a yes or a no.
15 You did not receive a fee. Is that right?

16 A. I did not.

17 Q. So, you voluntarily assisted in closing that estate, correct?

18 A. Correct.

19 Q. And with regard to the *Behal* matter, you mentioned Robert Wedlake,
20 the attorney who appeared on behalf of one of the beneficiaries. Were
21 you aware that Mr.-- whether Mr. Wedlake was attempting to contact
22 you unsuccessfully with regard to that matter?

23 A. I'm not aware of that.

24 Q. You said, I think, yesterday that you weren't aware of any meetings
25 that Judge Miller might have had with David Behal, the executor. Is

1103.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Cross)

- 1 that correct?
- 2 A. I believe the question was in my office. If Judge Miller met with
- 3 Dave Behal in my office.
- 4 Q. Okay. In terms of your presence at the office, you do-- I think you
- 5 said 60 percent criminal practice. Does that take you to court quite
- 6 frequently?
- 7 A. It does. Yes.
- 8 Q. So, what percentage of a typical day would you be spending in the
- 9 office as opposed to out of the office?
- 10 A. I spent 50, 60 percent of the time out of the office.
- 11 Q. Okay. And when you're not in the office, is Donna there, generally?
- 12 A. Not all the time, but yes.
- 13 Q. Okay. And you said she has a key?
- 14 A. She has a key. She's the only person that has a key to my office.
- 15 Q. Do you know Mark Kachadourian?
- 16 A. I do.
- 17 Q. Did Judge Miller ever visit the law office while you were there with
- 18 Mr. Kachadourian?
- 19 A. He-- My recollection is-- The answer is yes, if you want a yes or no.
- 20 Q. Okay. Thank you. And with respect to *Behal*, you received the--
- 21 Ultimately, you received the attorney's fees in that matter, correct?
- 22 A. That's correct.
- 23 Q. Do you have, or is there some arrangement whereby Judge Miller is
- 24 going to be paid for that estate?
- 25 A. No, Judge Miller did not get paid and I kept the entire fee.

1104.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Cross)

1 Q. You kept the entire fee, why?

2 A. Because I did a lot of work.

3 Q. And he didn't?

4 A. Most of the-- Whatever he did--

5 Q. --Just yes or no. Did he-- Did he-- If you know--

6 A. --Not the-- Not since I took over--

7 MS. SCALISE: --Objection.

8 THE REFEREE: All right. I'm confused by the
9 question and the answer, but that-- If you're happy with it,
10 then fine.

11 MS. CENCI: I didn't get an answer.

12 THE REFEREE: I thought you did, but why don't
13 you ask the question again?

14 BY MS. CENCI:

15 Q. Do you know whether Judge Miller did any work in the *Behal* estate?

16 A. He did work--

17 MS. SCALISE: --Are we going-- I'm sorry. Can
18 we characterize--

19 THE REFEREE: --It's-- No. No speaking.
20 Objection. Is it object--

21 MS. SCALISE: --Okay. When? When?

22 THE REFEREE: All right.

23 MS. SCALISE: Because it's important for the
24 purposes of the charges, so if we could focus the witness on
25 a time period?

1105.

(Serjanej - Cross)

1 THE REFEREE: I-- That's well founded.

2 MS. CENCI: That's not my question. My question
3 is does the witness know if the judge did any work in the
4 *Behal* estate?

5 THE REFEREE: At any time?

6 MS. CENCI: At any time.

7 THE REFEREE: Do you know?

8 THE WITNESS: Based on my conversation with
9 Judge Miller, he did work before he was sworn in as a
10 judge.

11 BY MS. CENCI:

12 Q. And there's no current plan for him to be paid for that work?

13 A. There's none. No.

14 Q. Did you know of any relationship between Judge Miller and David
15 Behal, the executor?

16 A. I understand they were childhood friends. That's all I know.

17 Q. You were just asked this morning about an email address or an email
18 account that you provided to Donna. Do you have any knowledge as
19 to whether David E-- David Behal was sending emails to Donna and
20 Judge Miller on the *Behal* estate?

21 A. I have knowledge after these proceedings started. I became aware that
22 there were email correspondence between Mr. Behal, Donna, and an
23 old email that belonged to Judge Miller.

24 Q. Okay. You weren't copied on any of those emails, is that right?

25 A. Not on those emails that became part of these proceedings, no.

1106.

(Serjanej - Cross)

1 Q. And I think you said that in the *Funk* matter, the only fee you received
2 was for the preparation of a power of attorney. Is that correct?

3 A. That's correct. I brought a copy of that, as well, actually. I wanted
4 to--

5 THE REFEREE: --That's not the question.

6 THE WITNESS: I'm sorry.

7 A. But, yes.

8 Q. Is it fair to say that's the only work you did with respect to the *Funk*
9 matter?

10 A. No, I did-- I did an inventory and I did an informal report.

11 Q. To help close the estate?

12 A. That's correct.

13 Q. But you didn't bill for that?

14 A. No, I did not.

15 Q. Do you have any arrangement with anyone as to whether you're going
16 to be paid for that work?

17 A. No, I didn't. I waived my fee.

18 Q. Why?

19 A. I didn't do much. I have a form with me. It was very simple, half an
20 hour work.

21 Q. You did it as a favor to someone? Is that fair to say?

22 A. No. I waived my fee.

23 MS. CENCI: I have no further questions.

24 THE REFEREE: Okay. Any redirect?

25 MS. SCALISE: Just a few, if I may?

1107.

(Serjanej - Redirect)

1 THE REFEREE: Please.

2 REDIRECT EXAMINATION

3 BY MS. SCALISE:

4 Q. When you-- You were asked by Ms. Cenci that you had not done
5 much estate work prior to doing work on the *Saraceno* estate, is-- Do
6 you remember that?

7 A. Yes.

8 Q. Okay. What did you have to do with the *Saraceno* estate that you
9 needed to have extensive prior knowledge for?

10 MS. CENCI: Objection.

11 THE REFEREE: Sustained.

12 MS. SCALISE: Okay.

13 BY MS. SCALISE:

14 Q. So, how complicated was the work on *Saraceno* for you?

15 MS. CENCI: Objection. Calls for a conclusion on
16 the part of the witness.

17 THE REFEREE: Sustained as to form.

18 BY MS. SCALISE:

19 Q. What work did you do on *Saraceno*?

20 A. I reviewed the file and-- The way how-- The way how this entire
21 thing played out, I was thinking about that last night a lot. Mrs.
22 Saraceno came to my office to discuss, you know, the matter. My
23 understanding is that she had received some sort of correspondence
24 from the court and when I was thinking back about that last night
25 some more, I remember she came to my office, sometimes at the end

1108.

(Serjanej - Redirect)

1 of 2016, to talk to me. Apparently, she called Donna. She said, "I
2 have some--" "I have a problem. For some reason, this event's still
3 open." She said, "I can't talk to you, but talk to Artan." Don--
4 Barbara came to my office and she gave me a package. She came
5 with a full package-- Actually, I'm sorry. First, she came to talk to
6 me as to what to do, can I do this thing for her? I said, "I'm so sorry
7 you're going through this." Her husband was in a nursing home. He
8 had been in and out of nursing homes for the-- for about a year. I
9 said, "I'll take care of this for you. This is no big deal. Show me
10 what you have." And I had asked Donna to pull out all of the
11 information that we had on his file. Within a week or a couple of
12 weeks, then Barbara came back in my office with a big package. She
13 brought all these copies of checks, waivers, receipts and we made
14 copies. I remember that now, actually. We made copies in my office.
15 All I did was just regenerate these waivers all over again. We just--
16 All we had to do was copy what was done from before, made sure that
17 the forms actually were still up to date, because those were waivers
18 from 2013, 2014. We just re-dated them, and then I talked with
19 Barbara and I said, "Can you help me locate these people? They are
20 all over the place." And I told her that-- Because she said I-- "We
21 already paid the fee. Is this going to cost me anything?" I said, "No.
22 I will waive my fee. I will take care of this. This should have been
23 done a long time ago. I don't know what happened, but I'll do it for
24 you." And that's what we did.

25 Q. And why did you waive your fee?

1109.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Redirect)

1 A. Because these are elderly people. The work was completely done.
2 Everything was finished. I don't know what happened. I talked to
3 Donna, "Were you in the office at the time, 2014?" But apparently,
4 Donna had some illness. I think she had left for at least a year and a
5 half or two years, so she wasn't in the office at the time. She couldn't
6 tell me what was going on with the practice when Judge Miller was
7 still practicing out of that building before he became a judge. So,
8 something happened during that time and that's why Donna was in the
9 dark and what assisted us was Barbara coming back with this folder
10 and giving us things, and all I did was just copy them and we were
11 fortunate. Eventually we located everyone and, you know, we closed
12 the estate.

13 Q. Okay. And do you recall being asked a question about Mr.
14 Kachadourian coming to the office with Judge Miller?

15 A. Yes.

16 Q. Okay. Do you recall approximately how many times he attended with
17 Judge Miller?

18 A. Hone-- What I remember is four or five times the entire time since I
19 took over the building.

20 Q. Okay. And with respect to that, where would he be physically if
21 you've met with Judge Miller? Where would Mr. Kachadourian be?

22 A. Kachadourian would be in the lobby, right in the front. The only
23 time-- And I would be in the back, in the conference room, which I
24 use as an office, and obviously we close the doors. The only time that
25 Mr. Kachadourian came back maybe once or twice, is when we had

1110.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Recross)

1 food. We brought a pizza or something, would sit in the big
2 conference table and would eat.

3 Q. Do you ever remember early on Mr. Kachadourian coming in, sitting
4 at that table, some work being done by Judge Miller, and he physically
5 pounding on the table saying, "This must stop. Judge Miller is a
6 judge. It's not worth the few thousand dollars that he would get for
7 doing this work?"

8 A. I have never seen Mr. Kachadourian pound or do anything of that
9 nature.

10 Q. I have nothing further.

11 THE REFEREE: Anything further?

12 RECROSS-EXAMINATION

13 BY MS. CENCI:

14 Q. You said that when Barbara Saraceno came to you, you asked Donna
15 questions about the file, correct?

16 A. Yes.

17 Q. Did you ask Judge Miller about it?

18 A. I asked Judge Miller about the history of it, who are these people? I
19 didn't know them--

20 Q. --Mm-hmm.

21 A. --so, he explained to me who they were, who the parties were.

22 Q. Is that all you asked him?

23 A. Pretty much.

24 Q. You didn't ask him why the matter wasn't concluded in surrogate's
25 court?

1111.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Serjanej - Recross)

1 A. I don't know if I would have asked him that question. I understood
2 that there was a problem, that he had completed the file and it wasn't--
3 Technically, he wasn't finished with the estate, with the courts, so I
4 would have asked him, "Who are these people? What's going on with
5 them?"

6 Q. Mm-hmm.

7 A. And, "What did you do?" I mean, he said, "I-- We did the waivers,
8 we distributed the funds and I don't know why the court doesn't have
9 a record of the closing."

10 Q. Did Judge Miller tell you that he had asked anything of the surrogate's
11 court as to how to close the estate?

12 A. No.

13 Q. He didn't tell you that he had asked that it be closed by motion as
14 opposed to a formal accounting?

15 A. No.

16 Q. Nothing further.

17 THE REFEREE: Ms. Scalise?

18 MS. SCALISE: No. Nothing further.

19 THE REFEREE: Mr. Serjanej, thank you very
20 much.

21 THE WITNESS: Thanks a lot.

22 THE REFEREE: We're sorry we had to bring you
23 back today.

24 THE WITNESS: Not at all. Thank you. Thank you.
25 Have a good day.

1112.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 THE REFEREE: And again, these proceedings are
2 confidential.

3 THE WITNESS: Yes.

4 THE REFEREE: Please don't discuss your
5 testimony.

6 THE WITNESS: Yes. Thank you.

7 THE REFEREE: Who's the--

8 MS. CENCI: --Your Honor? The-- Excuse me.
9 Before the next witness is called--

10 THE REFEREE: --I guess.

11 MS. CENCI: --I'd like to offer Exhibit 15 into
12 evidence, the letter that was identified by Ms. Wojdat--

13 THE REFEREE: --Wojdat. Lisa?

14 MS. CENCI: Yes. May I offer that into evidence?

15 THE REFEREE: You can offer it. Any objection?

16 MR. DEROHANNESIAN: If I could just discuss
17 with my co-counsel? No objection.

18 THE REFEREE: Received.

19 MS. CENCI: Thank you.

20 THE REFEREE: Who's the next witness?

21 MR. DEROHANNESIAN: The next witness is
22 David Behal.

23 THE REFEREE: Yep.

24 MR. DEROHANNESIAN: I have some exhibits that
25 I want to get that are in evidence. If I could have a few

(Hon. Richard H. Miller, II)

1 minutes just to--

2 THE REFEREE: --Sure. Let's go off the record.

3 (OFF THE RECORD)

4 THE REFEREE: Back on the-- Back on the record.

5 MR. FITZPATRICK: We're back on the record.

6 THE REFEREE: Back on the record. Counsel for
7 the parties are present and the Respondent is present and we
8 have another witness.

9 COURT OFFICER: Bring him in, Judge? He just
10 stepped into the men's room.

11 THE REFEREE: He just went?

12 COURT OFFICER: Yeah, he was in here and then
13 he just--

14 THE REFEREE: --All right. So, let's go off the
15 record.

16 (OFF THE RECORD)

17 THE REFEREE: Counsel for the parties are present
18 and the Respondent is present. Could you raise your right
19 hand, please? Sir, do you swear or affirm that the testimony
20 you are about to give will be the truth, the whole truth and
21 nothing but the truth?

22 MR. BEHAL: Yes, I do.

23 DAVID BEHAL,

24 having been duly sworn, was examined and testified as follows:

25 THE REFEREE: All right. Please have a seat. Sir,

1114.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

1 my name is Robert Barrer. I've been appointed by the
2 Commission on Judicial Conduct to serve as the special
3 Referee for these proceedings. You're going to be asked
4 some questions today by the attorney for Judge Miller and
5 then when that's done, you'll be asked some questions
6 probably by the attorney for the Commission. It's important
7 that when you testify, you listen carefully to the question
8 and let the whole question be asked before you respond, so
9 we don't have people talking over each other.

10 THE WITNESS: Right.

11 THE REFEREE: In the event that there is a-- an
12 objection by one party or the other, please don't answer
13 until I tell you. And lastly, because we are recording it, it's
14 important that your answers be verbal. Shaking the head
15 won't be reflected in the record. So with that, counsel?

16 DIRECT EXAMINATION

17 BY MR. DEROHANNESIAN:

18 Q. Tell Referee Barrer who you are and what you do.

19 A. My name is David Behal. I live in Northern Virginia. I work for a
20 defense contractor, Northrop Grumman.

21 Q. How long have you lived in Virginia?

22 A. Since 2000.

23 Q. Okay. And what do you do at Northrop Grumman?

24 A. Like a risk management type person, process person, mission
25 assurance.

1115.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Q. Okay. Where did you grow up?
- 2 A. Johnson City.
- 3 Q. And did you stay in the Johnson City, Broome County area until you
- 4 went to Virginia in around 2000?
- 5 A. I moved to San Diego in '89 and I was in Georgia for ten years, and
- 6 then I moved up to Northern Virginia in 2000.
- 7 Q. So, you left the Broome County area in about 1989?
- 8 A. Right.
- 9 Q. Do you know someone by the name of Richard Miller?
- 10 A. Yes.
- 11 Q. And how do you know Richard Miller?
- 12 A. He grew up across the street from me. We're best friends. I met him
- 13 in-- We were four years old. He was the best man in my wedding.
- 14 Q. So, you maintained a friendship with him over the years?
- 15 A. Yes.
- 16 Q. Even after you left in 1989?
- 17 A. Yes.
- 18 Q. Do you still have family in the area that brings you back?
- 19 A. Yes. My mother still lives across the street from Rick's mother.
- 20 Q. So-- And you come see your mother from time to time?
- 21 A. Yes.
- 22 Q. We've heard about an *Estate of Jerry Behal*. Who is Jerry Behal?
- 23 A. He's my brother. He was killed in a motorcycle accident in October
- 24 of 2011.
- 25 Q. And under-- Who was the executor of his estate?

1116.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 A. I was.
- 2 Q. And was there an attorney who helped you at the beginning of that
- 3 estate?
- 4 A. Rick did.
- 5 Q. And at some point, did that change that Rick Miller was no longer the
- 6 attorney for that estate?
- 7 A. Yeah. He--
- 8 Q. --How did you first find out that he either wasn't or couldn't be?
- 9 A. When he was running for family judge in the fall of 2014 I believe, he
- 10 told me if he became judge that he would no longer be able to be
- 11 attorney for the estate and that he would pass it on. He had
- 12 recommendations for me.
- 13 Q. So, that was even before he was elected as judge?
- 14 A. Correct.
- 15 Q. He alerted you that he couldn't handle the estate--
- 16 A. --Right.
- 17 Q. --if he were elected?
- 18 A. Right.
- 19 Q. Well, he was elected judge. What happened then in terms of an
- 20 attorney to assist in handling this-- the estate?
- 21 A. Artan was assigned. You know? I mean, I chose Artan to be the
- 22 lawyer with Rick's recommendation.
- 23 Q. Did you know Artan Serjanej before Judge Miller was elected to the
- 24 position of Broome County Family Court Judge?
- 25 A. Yeah, socially. I mean, he was one of Rick's colleagues and I met

1117.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 him through that. I'm not sure how far before that. You know?
- 2 Q. Just met him? Is that the extent of how you knew him?
- 3 A. Beforehand, yes.
- 4 Q. And at some point, did you sign a-- any type of paper showing that he
- 5 was taking over the estate?
- 6 A. Yes.
- 7 Q. Let me show you Respondent's Exhibit CC. Look at that for a second.
- 8 Do you recognize that exhibit?
- 9 A. Yes. Artan's secretary sent me this. I printed it out, had a paralegal--
- 10 I mean, a notary in Virginia-- someone in my office, she notarized it
- 11 on March 2nd.
- 12 Q. Of what year?
- 13 A. 2015.
- 14 Q. Okay. And you recognized the notary as being someone in your office
- 15 where you work in Virginia?
- 16 A. Correct. What I did is I had her notarize it. I think I faxed it to
- 17 Artan's secretary, and then I sent the hard copy to him.
- 18 Q. Okay. And again, did you say the date that you signed that?
- 19 A. The notary said, it looked like the 2nd of March.
- 20 Q. Okay. And then above it you see where, next to Mr. Serjanej's
- 21 signature, it says, March 20th, 2015?
- 22 A. Correct. And like I said, I sent it to him snail mail, US mail, a hard
- 23 copy.
- 24 Q. Were there times that there were email communications between you,
- 25 Mr. Behal, and the law firm handling the estate prior to 2017?

1118.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 A. Many of them. Yes.
- 2 Q. I want to show you Respondent's FF. First of all, were you asked in
- 3 the last few days to look for emails pertaining to the *Estate of Behal*?
- 4 A. Yes.
- 5 Q. Okay. Can you tell us-- Again, take a look at that. Take a second.
- 6 Could you identify the time period of these emails?
- 7 A. November 2015. From what it's showing that--
- 8 Q. --No. No.
- 9 A. Okay.
- 10 Q. Just the time period.
- 11 A. Novem--
- 12 Q. --Or the dates?
- 13 A. November 18, 2015, November 16, 2015, October 28, 2015, October
- 14 28th, October 26, 2015.
- 15 Q. And these are emails that you recently retrieved from your email
- 16 account--
- 17 A. --Correct.
- 18 Q. --pertaining to the *Estate of Behal*? Correct?
- 19 A. Correct.
- 20 Q. Fair and accurate copies of what you could locate for emails--
- 21 A. --Yes.
- 22 Q. --pertaining to the *Estate of Behal* prior to the--
- 23 A. --And this shows that Artan--
- 24 Q. --No. I don't--
- 25 A. --Okay.

1119.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

1 Q. --prior to 2016?

2 A. Yes.

3 Q. At this time, I'll offer Respondent's FF.

4 THE REFEREE: Any objection? *Voir dire*?

5 MS. CENCI: Just-- Not with respect to this
6 document.

7 THE REFEREE: So, received.

8 BY MR. DEROHANNESIAN:

9 Q. I'm going to leave Respondent's FF to you and maybe we'll talk about
10 it later or if you need it to answer one of my questions that's coming
11 up, you can reference it. I want to show you some emails that are in
12 evidence as Respondent's 4III.

13 MS. CENCI: It's a Commission exhibit?

14 MR. DEROHANNESIAN: Yes.

15 MS. CENCI: Okay.

16 MS. SCALISE: Yeah. You mentioned the
17 Respondent's--

18 MR. DEROHANNESIAN: --I'm sorry.

19 Commission Exhibit 4III.

20 BY MR. DEROHANNESIAN:

21 Q. Do you recognize emails in that exhibit?

22 A. Yes.

23 Q. Are those emails that were provided by you to anyone?

24 A. No, I didn't provide it. I sent them to Don--

25 Q. --No, no. Those.

1120.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 A. No.
- 2 Q. The ones in your hand.
- 3 A. No.
- 4 Q. Did you ever provide those-- Let me rephrase it. Did you provide that
- 5 copy of your email to anyone?
- 6 A. No.
- 7 Q. Do you know where that copy came from?
- 8 A. No idea.
- 9 Q. Do you have an AOL account?
- 10 A. No, I do not.
- 11 Q. Do you see the script at the bottom?
- 12 A. Yes.
- 13 Q. Based on your knowledge of computers, does that indicate to you
- 14 where that was printed from?
- 15 MS. CENCI: Objection. No foundation.
- 16 THE REFEREE: Can I see that exhibit for just a
- 17 moment? No. Overruled.
- 18 A. So, it appears to me that it's printed from an AOL account.
- 19 Q. Okay. Okay. Were you requested to look for emails in your account
- 20 for the time period of 2017?
- 21 A. Yes.
- 22 Q. And in so doing, did you locate any additional email pertaining to the
- 23 *Estate of Behal*?
- 24 A. Yes.
- 25 Q. And in so doing, did you print out your entire email chain for that time

1121.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

1 period?

2 A. Yes.

3 MS. CENCI: Sorry. What was the time period,

4 counsel?

5 THE REFEREE: 2017.

6 MR. DEROHANNESIAN: 2017.

7 MS. CENCI: The year 2017? Thank you.

8 THE REFEREE: That's what I heard.

9 BY MR. DEROHANNESIAN:

10 Q. I'm going to show you Respondent's GG. Can you tell us what

11 Respondent's GG is?

12 A. This is acknowledgement that we were-- It's an email that I received
13 from Donna.

14 Q. Well, there's more than one email there, correct?

15 A. Right.

16 Q. Give us the dates of the emails in Respondent's GG.

17 A. May 9, 2017, April 28, 2017, March 1, 2017, March 1, 2017, and
18 that's it.

19 Q. So, four emails, correct?

20 A. Correct.

21 Q. And are those four emails fair and accurate copies of emails to or from
22 you, pertaining to the *Estate of Behal* in 2017?

23 A. Yes.

24 Q. At this time, I'll offer Respondent's GG.

25 THE REFEREE: Any objection?

1122.

(Behal - Voir Dire)

1 MS. CENCI: Just a point of clarification, if I may.

2 VOIR DIRE

3 BY MS. CENCI:

4 Q. Hi, Mr. Behal.

5 A. Hi.

6 Q. Just looking at Exhibit GG, is there a reference to Rick on that
7 document?

8 MR. DEROHANNESIAN: Object--

9 THE REFEREE: That's not *voir dire*.

10 MR. DEROHANNESIAN: Yeah. Yeah.

11 MS. CENCI: Well--

12 THE REFEREE: --That's cross.

13 MS. CENCI: No, it's-- These are emails, Your
14 Honor--

15 THE WITNESS: --Is there a reference--

16 MS. CENCI: --and I'm trying to establish who
17 they-- You know, who they went to and who they were
18 from.

19 THE REFEREE: But that-- Who they went to and
20 who they're from is not-- is not determinative of whether
21 this is admissible. You really can ask about foundation and
22 then those are absolutely fair questions for cross.

23 BY MS. CENCI:

24 Q. So, Respondent's Exhibit GG, your testimony is this constitutes the
25 entirety of the 2017 emails?

1123.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct/Voir Dire)

1 A. No.

2 THE REFEREE: I don't think that's what he said.

3 BY MS. CENCI:

4 Q. Okay. Why did you produce Exhibit GG in response to the request
5 from Mr. DerOhannesian?

6 A. I wanted to show him that once I sent this stuff to Donna on May 9th,
7 she replied back on May 9th as well, and was going to have a meeting
8 with me, Artan and Donna on Thursday.

9 Q. Okay. But what were you asked to produce with respect to the year of
10 2017?

11 A. Nothing. Unless you're--

12 DIRECT EXAMINATION

13 BY MR. DEROHANNESIAN:

14 Q. --That's-- Let me clarify. Mr. Behal, you told me you had an email--

15 A. --Right.

16 Q. --that you wanted to give me?

17 A. Right.

18 Q. Okay.

19 VOIR DIRE

20 BY MS. CENCI:

21 Q. Okay. This does not represent the entirety of your email exchange
22 with Donna@[REDACTED] [sic] during the year of 2017. Is that correct?

23 A. Absolutely. That's correct.

24 Q. Is that correct? Okay. Thank you. I just wanted to clarify that.

25 THE REFEREE: Any objections?

1124.

(Behal - Direct)

1 MS. CENCI: No objections.

2 THE REFEREE: Received. You can just leave it
3 right there.

4 DIRECT EXAMINATION

5 BY MR. DEROHANNESIAN:

6 Q. I'd like you to look at Respondent's GG and compare it to
7 Commission's Exhibit 4III. If you would take a minute to do so,
8 please?

9 A. I mean--

10 Q. --Okay, first, have you had a chance to compare them?

11 A. Yes.

12 Q. Okay. With respect to header information, are there any differences?

13 A. Yeah, the GG copy, which I provided to you, kind of shows all the
14 "from" "to", the date stamps when it was sent, and this copy--

15 THE REFEREE: "This copy," being?

16 A. 4IIII [sic], does not show-- It looks like it was printed from the AOL
17 account, which doesn't show the time stamps of it.

18 BY MR. DEROHANNESIAN:

19 Q. Okay.

20 A. And it looks like this one-- The three pages--

21 Q. --Which one?

22 THE REFEREE: This? You got--

23 THE WITNESS: --Oh, I'm sorry. GG--

24 THE REFEREE: --That's all right.

25 A. --GG, three pages, is represented in its entirety of all of 4III, which is

1125.

(Behal - Direct)

1 one, six-- six pages of repeats.

2 Q. Okay. But is there-- And then, next question. Is there any email
3 contained in Respondent's GG, which is not contained in
4 Respondent-- Excuse me. Is there any email contained in
5 Respondent's GG, which is not contained in Commission's 4III?

6 A. Yes.

7 Q. Which email is that?

8 A. It was the one from Donna, 5/9 at 5:21 PM, acknowledging that she
9 wants to meet with me on Thursday.

10 Q. Okay. So, that's on May 9, 2017, at 5:21 PM, on Respondent's GG,
11 there's an email from Donna, DonnaLaw2304@[REDACTED] Correct? To
12 you?

13 A. Correct.

14 Q. And it says, "Thank you Dave. I will calculate the attorney's fees and
15 have it ready for you on Thursday." Do you see that?

16 A. Yes.

17 Q. On Respondent's--

18 MS. SCALISE: --4III.

19 BY MR. DEROHANNESIAN:

20 Q. Excuse me. Commission's 4III, is there also some type of
21 spreadsheet?

22 A. Yes.

23 Q. And is that contained in the Respondent's GG?

24 A. No. That would be the content of what I sent them, so it was printed
25 out.

1126.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Q. That would be an attachment?
- 2 A. Correct. It was an Excel spreadsheet with numerous tabs.
- 3 Q. Okay. Is that a spreadsheet you had prepared?
- 4 A. Yes. That was one of the ways I maintained my accounting of what
- 5 came into the estate and--
- 6 Q. --Were you maintaining a checkbook of some sort?
- 7 A. Checkbook? What?
- 8 Q. Well, how'd-- There expenses on there. How did you--
- 9 A. A spreadsheet. Yes.
- 10 Q. Okay. So, you-- But you kept track of expenses for the estate on that
- 11 spreadsheet?
- 12 A. Correct. Right.
- 13 Q. That's a spreadsheet that you prepared?
- 14 A. Yes.
- 15 Q. And that was attached to one of the emails?
- 16 A. Correct. Yes. It would probably be the March 1st, where it says,
- 17 "Attached is a spreadsheet containing a categorizing of expenses."
- 18 MS. CENCI: Exhibit 4III?
- 19 THE WITNESS: I'm sorry. Yes.
- 20 MS. CENCI: Thank you.
- 21 BY MR. DEROHANNESIAN:
- 22 Q. So, the inclusion of the attachment in Exhibit 4III would be not
- 23 contained in Respondent's GG? Correct?
- 24 A. Not that actual printout--
- 25 Q. --Yeah.

1127.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 A. --but as a file.
- 2 Q. Because you had referred to it in the email, correct?
- 3 A. Right. Right. Right.
- 4 Q. Now, at some point did you speak to the Commission on Judicial
5 Conduct about the *Estate of Behal*?
- 6 A. Yes. Around August 15th, I think.
- 7 Q. Of what year?
- 8 A. Of 2017.
- 9 Q. And did the Commission ever request you to look for any data or
10 emails pertaining to the *Estate of Behal* that you had in your
11 possession?
- 12 A. No.
- 13 Q. How about after you spoke to the Commission in August of 2015
14 [sic], did they ever ask or request you produce any documents in your
15 possession--
- 16 A. --I--
- 17 Q. --pertaining to the *Estate of Behal*?
- 18 A. No. I had no other contact with them.
- 19 Q. I'd like to discuss briefly your contact with Judge Miller prior to May
20 of 2017 in his office, as family court judge, and then we'll come back
21 to the period of May 9th. Had you been to Judge Miller's chambers
22 prior to May of 2017?
- 23 A. Yes.
- 24 Q. And do you know what purpose you came up for?
- 25 A. I was home during Christmas time and Rick was being sworn in and

1128.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

1 his family and friends went to see his new office. That would have
2 been January of 2015.

3 Q. And at the time that Judge Miller was sworn in as Broome County
4 Family Court Judge in January of 2015, did you know Mark
5 Kachadourian?

6 A. I met him in the fall of 2014. That was the first time I ever met him.
7 He was campaigning for Rick and I just happened to be in town and
8 they were together.

9 Q. Were you doing campaigning for Rick Miller?

10 A. No.

11 Q. You just happened to see Mr. Kachadourian in some type of political
12 activity?

13 A. Right. I think Rick and Mark were going to a football game and you
14 know, I saw them before they were heading out.

15 Q. You were here on a family visit?

16 A. Yes. It might have been Thanksgiving time, but I'm not sure.

17 Q. And do you recall if you saw--

18 A. --No, it was-- I'm sorry.

19 Q. --Just the fall?

20 A. Yeah.

21 Q. Would it be fair-- The fall of 2014?

22 A. Right. Right.

23 Q. Did you see Mr. Kachadourian when you came to the Broome County
24 Family Court at the swearing in?

25 A. Yes.

1129.

(Behal - Direct)

- 1 Q. So you knew who he was at that point?
- 2 A. Yes.
- 3 Q. And had you seen Mr. Kachadourian after January 2015 outside of
- 4 Judge Miller's family court chambers?
- 5 A. Yes.
- 6 Q. And where was that?
- 7 A. I saw him probably a number of times.
- 8 Q. Okay.
- 9 A. I remember--
- 10 Q. --I mean, outside. Outside of chambers?
- 11 A. Yeah. Yes.
- 12 Q. Okay. Where outside of Judge Miller's chambers would you have
- 13 seen Mr. Kachadourian after January of 2015?
- 14 A. He-- I mean, I know one time, Rick took everyone out to Cortese's,
- 15 his family and Mark and I'm not sure who else, you know, and I was--
- 16 Rick invited me to go there.
- 17 Q. What's Cortese?
- 18 A. It's a restaurant. I'm sorry. A local--
- 19 Q. --In the Binghamton area?
- 20 A. Yes.
- 21 Q. Do you remember when that was or what year?
- 22 A. That was probably 2015 and I probably was still in town.
- 23 Q. Okay.
- 24 A. You know, and I've seen Mark. You know, he actually came to my
- 25 house before.

1130.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Q. Mr. Kachadourian came to your house?
- 2 A. Yes.
- 3 Q. When was that?
- 4 A. That was in January of 2017.
- 5 Q. And do you recall the reason that Mr. Kachadourian came to your
- 6 house-- Excuse me. Your house in Virginia, right?
- 7 A. Correct.
- 8 Q. Do you recall the reason that Mr. Kachadourian came to your house in
- 9 Virginia in January of 2017?
- 10 A. Yes. When Trump got elected, Rick was telling me that Mark had the
- 11 opportunity to get tickets to go see the inauguration and, you know, I
- 12 said, "If you guys come down, you could come stay at my house."
- 13 And then, you know, a couple of weeks later, Rick called again and
- 14 said that, you know, Mark is going to be able to get the tickets and he
- 15 put Mark-- and Rick was on speakerphone and Mark wanted my
- 16 email address so he could send it so he could get tickets to me. I'm
- 17 not sure how it worked. I think he had to provide an email and then,
- 18 you know, the government sent the tickets to my email address.
- 19 Q. Who were they tickets for?
- 20 A. He sent them for me and my son. That's the ones that Mark provided
- 21 to us.
- 22 Q. So you had gotten tickets from Mark Kachadourian?
- 23 A. Correct.
- 24 Q. And how did Mr. Kachadourian get to your house?
- 25 A. He came-- Rick drove down with Mark and Rick's brother-in-law,

1131.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Rick Balles.
- 2 Q. When you say he stayed at your house, did he sleep over?
- 3 A. Yes.
- 4 Q. And during-- How long would you say Judge Miller and Mark
- 5 Kachadourian stayed at your house?
- 6 A. That one night.
- 7 Q. Two days?
- 8 A. Yes.
- 9 Q. Have you driven from Binghamton to your home in Virginia?
- 10 A. Yes. I did it yesterday.
- 11 Q. About how long a drive is that roughly?
- 12 A. 310 miles.
- 13 Q. Ten mile-- Okay. And about how long does that take to do, assuming
- 14 you--
- 15 A. --About five hours.
- 16 Q. Okay. And describe Judge Miller at his-- how he appeared when he
- 17 was interacting with Mark while he was at your house?
- 18 A. Their behavior was normal, from what I've seen, you know, the first
- 19 time I met him and times at the restaurant. It was-- I would
- 20 characterize it as normal--
- 21 Q. --When you say--
- 22 A. --You know, normal interaction.
- 23 Q. Are you saying both Judge Miller and Mark Kachadourian behaved as
- 24 they usually had?
- 25 A. Correct.

1132.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Q. Is that what you mean? But did you go to the inauguration?
- 2 A. Yes.
- 3 Q. Did you go to the inauguration of President Trump with Judge Miller
- 4 and Mark Kachadourian?
- 5 A. Yes.
- 6 Q. Again, describe how they appeared to be at the inauguration?
- 7 A. It was normal.
- 8 Q. Okay.
- 9 A. Normal interaction. Normal behavior by both of them. It was the first
- 10 time my wife ever met Mark, too.
- 11 Q. Okay.
- 12 A. So, she didn't know what she was in for.
- 13 Q. Okay. So, she hadn't come up with you to the other visits?
- 14 A. Right.
- 15 Q. Okay. At my req-- Excuse me. Not at my request, but have you, on
- 16 your own, looked for any emails which were sent to you prior to 2017
- 17 from the rhmlaw2@[REDACTED] account?
- 18 A. Did you ask if I-- was requested or if I did it on my own?
- 19 Q. If you did it on your own?
- 20 A. Yes. After I talked to the investigator.
- 21 Q. An investigator from my office?
- 22 A. Correct.
- 23 Q. Not--
- 24 A. --No. No. After I talked to the August 2017--
- 25 Q. --The Commi-- The Commission?

1133.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

1 A. Commission.

2 Q. Okay.

3 A. You know, she had mentioned something about emails and she asked
4 me, you know, from this account. And then that's when I went on my
5 own and looked like-- did I ever receive any emails from that
6 account?

7 Q. From the rhm2law@[REDACTED] account?

8 A. Yes. Sorry. Yes.

9 Q. Becau-- Well, if you look at Respondent's GG or Commission's
10 4III, are there any emails from rhm2@[REDACTED] [sic] from-- in either
11 of those exhibits?

12 A. No.

13 Q. Okay. So, you understand-- you're looking for emails from
14 RHM2@-- Excuse me. RHM-- Let me rephrase that.

15 THE REFEREE: 2law@[REDACTED].

16 MR. DEROHANNESIAN:

17 Q. Yeah. You're-- You are-- You were looking for any email at any
18 time during the *Behal* estate--

19 A. --Right.

20 Q. --from rhm2law@[REDACTED], correct?

21 A. Correct.

22 Q. Did you locate any?

23 A. I found one email and it was from 2013.

24 MR. DEROHANNESIAN: Do you have a copy of
25 (unintelligible)?

1134.

(Behal - Direct)

1 MS. CENCI: Did you give me this?

2 MR. DEROHANNESIAN: I didn't. I emailed but I
3 didn't give you a copy.

4 MR. CENCI: This is the one with the urologist at
5 the bottom.

6 MR. DEROHANNESIAN: Yes.

7 MS. CENCI: Okay. Thank you.

8 BY MR. DEROHANNESIAN:

9 Q. Let me show you Respondent's HH.

10 MS. CENCI: I wasn't sure what you were trying to
11 tell me. (Unintelligible).

12 MR. DEROHANNESIAN: I kind of had the same
13 reaction when I saw these.

14 BY MR. DEROHANNESIAN:

15 Q. Do you recognize Respondent's HH?

16 A. Yes. Yes.

17 Q. What is Respondent's HH?

18 A. It was an email from one of Rick's assistants or interns at the time
19 of--

20 Q. --Well, first, is it an email from rhm2law@[REDACTED]?

21 A. Yes.

22 Q. And is that the only email you found at any time during the *Estate of*
23 *Behal* that came from the account rhm2law@[REDACTED]?

24 A. Yes.

25 Q. And that's a fair and accurate copy of the email you located?

1135.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

1 A. Yes.

2 Q. I'll offer Respondent's HH.

3 THE REFEREE: Any objection?

4 MS. CENCI: No objection.

5 THE REFEREE: Received. Mr. Behal, that has
6 something to do with a will, doesn't it?

7 THE WITNESS: Yes.

8 THE REFEREE: Thank you.

9 BY MR. DEROHANNESIAN:

10 Q. So, looking at Respondent's HH, it says, "Wednesday, May 15, 2013,
11 Hey Dave, let's try this again. Let me know how it goes. Thanks,
12 Jolene." Do you see that?

13 A. Yes.

14 Q. Do you know who Jolene is?

15 A. I think I met her one time in Rick's office.

16 Q. Okay.

17 A. Yeah. She was an intern, I believe.

18 Q. And is that the only email you could locate at any time coming from
19 Richard H. Miller, rhm2law@[REDACTED]?

20 A. Yes.

21 Q. Okay. Now, you said you've known Judge Miller, previously Rick
22 Miller, for a long, long time?

23 A. Yes.

24 Q. Okay. Can you tell us how often Rick Miller, or when he became
25 Judge Miller, would email you?

1136.

(Behal - Direct)

1 A. Never. When I was driving up yesterday, I was thinking I've never
2 saw Rick on a computer, which is unusual.

3 Q. Let's go back to May of 2017. You talked about a few days of May.
4 May 9, there was the email about a meeting on Thursday. You
5 testified to that?

6 A. Yes.

7 Q. And that's contained in Respondent's GG, correct?

8 A. Yes.

9 Q. On May 10th, what did you do?

10 A. I drove up from Virginia to Johnson City.

11 Q. Okay. And on May 11, 2017, what, if anything, did you do with
12 respect to the *Behal* estate?

13 A. That's when Donna had me meet with her and Artan to go over the
14 accounting.

15 Q. Where did you meet with Donna and Artan to go over the *Behal* estate
16 accounting on May 11, 2017?

17 A. In Artan's office.

18 Q. And is that the meeting that was referenced on May 9?

19 A. Yes.

20 MR. DEROHANNESIAN: Do you want to take a
21 break? This is a good time, or I can continue?

22 THE REFEREE: This is a good time. Let's take a
23 short break.

24 MR. DEROHANNESIAN: Okay. Okay.

25 (OFF THE RECORD)

1137.

(Behal - Direct)

1 THE REFEREE: Counsel for the parties are present
2 and the Respondent is present. Let's bring the witness
3 back. Sir, you're still-- You're still under oath. Continue,
4 please.

5 BY MR. DEROHANNESIAN:

6 Q. We had ended on May 11, 2017, I think, before the break. May 11,
7 2017 was, in fact, a Thursday?

8 A. Yes.

9 Q. Was Judge Miller anyplace near or around Mr. Serjanej's office on
10 May 11th?

11 A. No. Not that I know of.

12 Q. Let's talk about May 12, 2017. Do you know what you did that day?

13 A. Yes. I went to the family court to meet Rick.

14 Q. For what purpose?

15 A. To go out for either lunch, late lunch, or dinner. Yeah.

16 Q. Okay. And when you say family court, to his chambers? Is that where
17 you went?

18 A. Yes. Yes.

19 Q. Okay. So, you got in the building, correct?

20 A. Right.

21 Q. What happens next?

22 A. When I was coming through security, Rick was in court and Mark--

23 Q. --How do you know Rick was in court?

24 A. Because Mark had to come and pick me up at the security stop.

25 Q. Okay.

1138.

(Behal - Direct)

- 1 A. And when we were coming in, you know, we saw Artan.
- 2 Q. And when you say coming in, coming in where in the building?
- 3 Right--
- 4 A. --Right by the metal detector.
- 5 Q. Okay.
- 6 A. We were coming in.
- 7 Q. And you know who Artan is? He's your attorney?
- 8 A. Right. He's my lawyer. I met him. Yeah, we were just meeting the
- 9 night before. That didn't--
- 10 Q. --Artan at that point is your attorney on the estate, correct?
- 11 A. Right.
- 12 Q. And what interaction, if any, did you have with Artan and Mark at the-
- 13 - near the metal detector when you bumped into them?
- 14 A. You know, I just said, "Hi," to Artan.
- 15 Q. Okay.
- 16 A. I told him that, you know, I was here to meet Rick. Go out.
- 17 Q. Mm-hmm.
- 18 A. And on our way walking into the chambers while Rick was still at--
- 19 in court, you know, Mark asked me, "How are things going with the
- 20 estate?"
- 21 Q. Okay. And this is even before you get into Judge Miller's chambers?
- 22 A. Yeah. We were walking down the hallway. Right.
- 23 Q. Okay. And you had just seen Artan yesterday--
- 24 A. --Right. Right.
- 25 Q. --The day before I should say, right?

1139.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 A. Right.
- 2 Q. So, where do you go next?
- 3 A. We go into like Rick's secretary area. We're waiting for Rick.
- 4 Q. When you say, "we," who's "we?"
- 5 A. Mark and I.
- 6 Q. Okay. And when you say, "secretary area--"
- 7 A. --It wasn't in Rick's office. It was outside of Rick's office.
- 8 Q. Was there a secretary there?
- 9 A. No.
- 10 Q. Okay. What happens next?
- 11 A. When we were talking, we were walking down the hallway, you
- 12 know, like I said, Artan-- I mean, Mark asked me how things were
- 13 going and I told him one of the beneficiaries had a problem with the
- 14 accounting on the way that I did the taxes, so--
- 15 Q. --Explain that a second. Do you-- Just briefly, what do you mean
- 16 what you did with the taxes?
- 17 A. There were these K-1 forms that had to be filled out when we were
- 18 trying to do estate taxes.
- 19 Q. Mm-hmm.
- 20 A. So, you know, I was with an accountant and the beneficiary felt that
- 21 there was some kind of-- that they were going to be liable for some
- 22 additional taxes.
- 23 Q. Okay.
- 24 A. So, it was the big hold up when the beneficiary, my nephew, you
- 25 know protested or whatever the term is, to-- on the accounting. And--

1140.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Q. --So, it had something to do with a K-1 schedule?
- 2 A. Right. And the way the money was distributed.
- 3 Q. Okay.
- 4 A. It was either taken to individual taxes on the whole estate versus based
- 5 on the beneficiary's who had lower income, so it was like 38 percent
- 6 on the estate tax versus, you know, 26 percent on the beneficiary's.
- 7 Q. Okay.
- 8 A. That's where the K-1s came in.
- 9 Q. Now, where are you and Mark when you have this discussion about
- 10 the issue concerning taxes?
- 11 A. In the secretarial area outside of Rick's office.
- 12 Q. Standing or sitting?
- 13 A. We were, you know, kind of both. You know, walking and sitting
- 14 down.
- 15 Q. Okay.
- 16 A. Conversation was flowing in there.
- 17 Q. Where is Judge Miller?
- 18 A. He had court. He was in court.
- 19 Q. Okay. What happens next as you're talking about the issue of estate
- 20 taxes?
- 21 A. I asked Mark, what does he know about estate taxes, and he went
- 22 online on the secretary's computer--
- 23 Q. --Mm-hmm.
- 24 A. --and you know, her computer must have-- He must have logged on to
- 25 his own account or whatever they do, I don't know-- sure how they

1141.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 log on there, but he went to the New York State Tax website--
- 2 Q. --And what--
- 3 A. --and he was going to, you know, send me something. I asked him if
- 4 he could send it to me. He didn't want to--
- 5 Q. --Did he say something? What does he say?
- 6 A. He goes, "These are the forms that you need to fill out." You know?
- 7 And I looked at him and I'm like, I'm not sure. I said, "You know,
- 8 can you send those to me?"
- 9 Q. So, what did you say?
- 10 A. So, he-- What was that?
- 11 Q. What did you say?
- 12 A. I asked him, "Could you send them to me?"
- 13 Q. Mm-hmm.
- 14 A. And he said-- He logged off of his computer and that's when he
- 15 logged on to the R-- You know, the RHM [REDACTED] account.
- 16 Q. How do you know-- Where were you?
- 17 A. I was over his shoulder watching him and he was going to download
- 18 them and then send them to me from that account, because I don't
- 19 think he wanted to send them from his account.
- 20 Q. Did he say that?
- 21 A. No, but I assumed--
- 22 Q. --Okay.
- 23 A. --there must have been some kind of policy that you guys can't be
- 24 sending.
- 25 Q. Okay. Say-- Do you see him enter the account or not?

1142.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 A. Yeah. I was right above him.
- 2 Q. Okay.
- 3 A. But he couldn't download it. So what he ended up doing is just
- 4 printing those out.
- 5 Q. Okay.
- 6 A. Those forms out for me.
- 7 Q. So, did you see him enter a password to the RHM2 [REDACTED] account?
- 8 A. Yes. He must have. I didn't see the password, but for him to get into
- 9 the account.
- 10 Q. And you said he printed some items for you?
- 11 A. Yes.
- 12 Q. You have tho-- Still have those items he printed?
- 13 A. Yeah. I did find them.
- 14 Q. And do any of the items that he printed for you have a date on them?
- 15 A. One of them did.
- 16 Q. Let me show you Respondent's II. Do you recognize R II?
- 17 A. Yes.
- 18 Q. What is R II?
- 19 A. It's a forms and publications for estate and gift taxes for the IRS.
- 20 Some guidance and some links to some pages-- I mean links to some
- 21 forms.
- 22 Q. Is that the original of the document that Mr. Kachadourian printed for
- 23 you?
- 24 A. Yes. I-- Last week, I went through my folder stuff of estate and I did
- 25 find this, along with two other forms that were actually printed out.

1143.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Q. And you have those other forms, but they weren't dated?
- 2 A. Correct.
- 3 Q. When they were printed. Is that right?
- 4 A. Yes.
- 5 Q. So, that's not a copy. That is the original of the document that Mr.
- 6 Kachadourian gave you on May 12, 2017?
- 7 A. Yes.
- 8 Q. Same condition today as when he gave it to you on May 12, 2017?
- 9 A. No.
- 10 Q. What's different? The sticker?
- 11 A. No, it's kind of wrinkly.
- 12 Q. Oh, it's a little more wrinkled? Okay. Other than the wrinkles, is it in
- 13 the same condition--
- 14 A. --Yes.
- 15 Q. --as when you received it from Mr. Kachadourian?
- 16 A. Yes.
- 17 THE REFEREE: Can I see it, please?
- 18 MR. DEROHANNESIAN: I will offer
- 19 Respondent's II.
- 20 MS. CENCI: No objection.
- 21 THE REFEREE: Received.
- 22 BY MR. DEROHANNESIAN:
- 23 Q. What happens after Mr. Kachadourian gives you Respondent's II and
- 24 the documents?
- 25 A. He gave me a folder and I put them in the folder and that was it.

1144.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Q. Okay. Where was Judge Miller at that point?
- 2 A. He still wasn't back.
- 3 Q. Okay. What happens next?
- 4 A. You know, we waited until Rick came back.
- 5 Q. When you say, "we--"
- 6 A. --Mark and I waited until Rick came back--
- 7 Q. --Okay.
- 8 A. --from court.
- 9 Q. At some point, does Judge Miller-- Before I get there, were you
10 intending to do something with Judge Miller?
- 11 A. Yes.
- 12 Q. What was your intent?
- 13 A. Go out.
- 14 Q. And?
- 15 A. Eat.
- 16 Q. Okay. As in lunch?
- 17 A. I think, yes.
- 18 Q. Lunch?
- 19 A. Yes.
- 20 Q. Did-- If you know?
- 21 A. Yeah. It'd be lunch.
- 22 Q. Okay. Are you sitting by yourself for a while?
- 23 A. No.
- 24 Q. You're with Mr. Kachadourian?
- 25 A. Yeah.

1145.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Q. Are you talking about other topics?
- 2 A. Yes.
- 3 Q. At some point, does Judge Miller come into the chambers?
- 4 A. Yes.
- 5 Q. What happens then?
- 6 A. We get ready to leave.
- 7 Q. When you say, "we," who?
- 8 A. Rick and I get ready to leave. We leave.
- 9 Q. Was Mr. Kachadourian going to go with you?
- 10 A. No.
- 11 Q. So it's just the two of you that were going to get together--
- 12 A. --Right.
- 13 Q. --and go out. Is that right?
- 14 A. Correct.
- 15 Q. Did you talk to Judge Miller when he comes back?
- 16 A. When he-- When he comes back--
- 17 Q. --When Judge Miller came back into his chambers and before you
- 18 leave, do you talk to him?
- 19 A. Yes.
- 20 Q. Okay. Do you have any discussion about the *Behal* estate while
- 21 you're there with him in chambers?
- 22 A. No.
- 23 Q. And when I say there, on May 12th--
- 24 A. --Right. Right. Right.
- 25 Q. --when you're there, correct? Now, were you-- What happens next

1146.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 after you leave?
- 2 A. We leave the chambers to go eat.
- 3 Q. Okay. Did you do that?
- 4 A. Yes.
- 5 Q. Do you go back to the court with him?
- 6 A. No.
- 7 Q. Where do you go?
- 8 A. Home.
- 9 Q. Okay.
- 10 A. Back to my mother's.
- 11 Q. So, is that the last time you saw Judge Miller on May 12th, when you
- 12 left him at lunch?
- 13 A. Yes.
- 14 Q. On May 13th, what did you do?
- 15 A. It was Mother's Day weekend and my son and I were able to spend
- 16 Mother's Day with our mothers in New York City. We went to see a
- 17 Yankee game, Derek Jeter, Monument Park day and my wife and
- 18 mother went to a show, Wicked.
- 19 Q. Was Judge Miller with you for the trip to New York City?
- 20 A. No.
- 21 Q. Okay. You spent overnight in New York City?
- 22 A. Yes. I believe it was two nights.
- 23 Q. Okay. What happens next in terms of-- Excuse me. You go back to
- 24 Binghamton?
- 25 A. Right. We come back, drop my mother off and then we go back to

1147.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Virginia.
- 2 Q. Okay. When you dropped your mother back off in Binghamton, did
- 3 you see Judge Miller?
- 4 A. No.
- 5 Q. Do you know when you returned to Virginia with your family?
- 6 A. Yeah, it was-- Was it the 16th?
- 7 Q. Pardon?
- 8 A. Or 15th? 15th or 16th?
- 9 Q. Okay. Drive back?
- 10 A. Yes.
- 11 Q. About five hours?
- 12 A. Correct.
- 13 Q. Did you have occasion to come back to New York State for any
- 14 reason in May of 2017?
- 15 A. Yes. My friend's father passed away, like on the 20th of 21st of May
- 16 and there was a funeral that Friday of-- that would have been like the
- 17 24th or so.
- 18 Q. And did you drive back to Broome County for that ceremony or
- 19 funeral?
- 20 A. Yes. Yes.
- 21 Q. It was a Broome County death. Is that right?
- 22 A. Right.
- 23 Q. And when you came back to Broome County on or about May 25,
- 24 2017, did you take any action with respect to the estate of David--
- 25 A. --Of Jerry.

1148.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

- 1 Q. --of *Jerry Behal*?
- 2 A. Yes.
- 3 Q. I'm sorry. What happened on May 25, 2017, with respect to the
- 4 *Estate of Behal*?
- 5 A. Artan had me sign the accounting.
- 6 Q. Where was that?
- 7 A. At Artan's office. He notarized it.
- 8 Q. Was there-- Was Judge Miller present for that?
- 9 A. No.
- 10 Q. Just you and Mr. Serjanej?
- 11 A. Correct.
- 12 Q. Let me show you Commission Exhibit 4PP. Look at the third page of
- 13 what's called an accounting. Do you recognize the third page?
- 14 A. Yes.
- 15 Q. Is that the accounting signature that you're referring to that you placed
- 16 on the accounting on May 25, 2017?
- 17 A. Yes.
- 18 Q. And was it notarized by someone?
- 19 A. Yes, Artan.
- 20 Q. And Exhibit 4PP would have been signed by you in Binghamton, New
- 21 York, correct?
- 22 A. Correct.
- 23 Q. Because you were in town for the funeral on that day?
- 24 A. Correct.
- 25 Q. In or about May of 2017, did Judge Miller meet with you in his family

1149.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Direct)

1 court chambers and go over estate accounts with you?

2 A. No.

3 Q. At any time after January 1, 2015, did Judge Miller prepare any legal
4 documents with respect to the *Estate of Behal*?

5 MS. CENCI: Object to the form.

6 THE REFEREE: What's the form objection?

7 MS. CENCI: If he knows. If he had knowledge of
8 it.

9 THE REFEREE: That-- Yes. We'll qualify that.

10 To your knowledge, did that ever happen?

11 THE WITNESS: To my knowledge, he did not.

12 BY MR. DEROHANNESIAN:

13 Q. At any time after January 1, 2015, did Judge Miller ever provide you
14 with any legal advice with respect to the *Estate of Behal*?

15 A. No.

16 Q. At any time after January 1, 2015, when Judge Miller became family
17 court judge, did he assist or perform any work in the estate
18 accounting?

19 A. Not that I'm aware of.

20 MS. CENCI: Objection. Withdrawn.

21 BY MR. DEROHANNESIAN:

22 Q. Pardon?

23 A. Not that I'm aware of.

24 Q. And to your knowledge, at any time after January 1, 2015, when Judge
25 Miller became family court judge, did he have any input into any legal

1150.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

1 aspect of the *Estate of Behal*?

2 A. Not to my knowledge.

3 Q. Okay. I have nothing else, Your Honor.

4 THE REFEREE: Cross-examination?

5 CROSS-EXAMINATION

6 BY MS. CENCI:

7 Q. Mr. Behal, my name is Cathleen Cenci. I'm the counsel for the
8 Commission in this matter. We have not met or spoken prior to today,
9 have we?

10 A. Not that I know of.

11 Q. When you spoke in August of 2017 with my office, that was with
12 Laura Misjak, an investigator?

13 A. Correct.

14 Q. And that was on the telephone?

15 A. Yes.

16 Q. You were in Vir--

17 A. --Virginia.

18 Q. --Virginia at the time, where you--

19 A. --Yeah.

20 Q. --where you live and work? Is that correct?

21 A. Correct.

22 Q. Now, you said that at some point, Judge Miller told you he couldn't
23 handle your brother's estate any longer and did he recommend Artan
24 Serjanej to you?

25 MR. DEROHANNESIAN: Object to the form of the

1151.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

1 question.

2 THE REFEREE: Overruled.

3 BY MS. CENCI:

4 Q. Did he recommend that Artan Serjanej--

5 A. --Yes.

6 Q. --be retained? Did you actually sign any form of agreement with Mr.
7 Serjanej in terms of what the-- a retainer agreement or a letter of
8 engagement?

9 A. At some point I did, yes.

10 Q. Do you-- Do you have that with you--

11 A. --No, I don't have it with me.

12 Q. --by any chance? Did you have a-- an agreement with Mr. Serjanej
13 with respect to what fee he would be paid?

14 A. I assumed it was going to be the same as what Rick's was going to be.

15 Q. What was your understanding with Judge Miller as to what his fee
16 would be?

17 A. It was going to be a percentage of the estate.

18 Q. So, Judge Miller did do some work on the estate before he became a
19 family court judge, correct?

20 A. Correct.

21 Q. And then Mr. Serjanej was going to do the work thereafter? Is that
22 right?

23 A. Correct.

24 Q. So, what was your agreement or understanding with either of these
25 two gentlemen as to how the fee would be split?

1152.

(Behal - Cross)

- 1 A. My agreement was that-- My understanding was that they were going
2 to work out what Rick paid for and what he did beforehand and then
3 that-- what Artan had to pay, you know, because they had to do some
4 filings and--
- 5 Q. --Okay. The fee ultimately was paid to Mr. Serjanej. Is that right?
- 6 A. Correct.
- 7 Q. Now, you referenced Donna, Mr. Serjanej's secretary. Is that right?
- 8 A. Yes.
- 9 Q. Do you know whether she was working with Judge Miller before he
10 left for family court?
- 11 A. Yes.
- 12 Q. So it's the same secretary that stayed in the office?
- 13 A. Correct.
- 14 Q. You were shown and produced various email correspondences. I just
15 wanted to draw your attention to Exhibit-- Let's start with Exhibit FF.
16 Do you have that there?
- 17 A. Yes.
- 18 Q. At the bottom of the page, it looks like there's the beginning of an
19 email from yourself on Monday, November 16, 2015. Do you see
20 that?
- 21 A. Yes.
- 22 Q. And does it say, "cc: Rick?"
- 23 A. Yes.
- 24 Q. What is that a reference to or who?
- 25 A. That is the contact on my computer for the [REDACTED] account that Donna

1153.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

1 has been using-- was using from 2011 to the current time. It's a

2 contact--

3 Q. Okay.

4 A. I have that email address identified as "Rick--"

5 Q. --Well--

6 A. --meaning Rick's office.

7 Q. This email says, "To: Donna," right?

8 A. Yes.

9 Q. Okay. And then it says, "cc: Rick." What--

10 A. --I don't-- I must be looking at a different one.

11 THE REFEREE: Are you looking at the one that
12 starts on the first page or the second?

13 BY MS. CENCI:

14 Q. Respondent's FF.

15 A. The last page.

16 Q. Oh. First page. I--

17 A. --The last page. Oh, I'm sorry. I thought you said last page.

18 Q. No. I-- If I did, I misspoke. The bottom of the first page.

19 A. Yes.

20 Q. From Dave-- Behal, Dave.

21 A. Right.

22 Q. That's you, right?

23 A. Right.

24 Q. "To: Donna."

25 A. Right.

1154.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

- 1 Q. And then it says, "cc: Rick."
2 A. Right. That was the account that I would send stuff to. That was
3 Donna's known account. She had two accounts. She had that account
4 and she had the [REDACTED] account, but she used both of those accounts. If
5 she--
6 Q. --Isn't "Rick" a reference to rhm2@[REDACTED] [sic]?
7 A. Yeah, that's the way I have it put into my-- as a contact in my
8 computer.
9 Q. So, what you're saying is you sent it to Donna at two different places?
10 A. No.
11 Q. Two different addresses?
12 A. Two different-- Yeah, I sent it to two different addresses. She
13 couldn't always get onto her [REDACTED] account sometimes. You know?
14 She would go to the [REDACTED] account and she asked me to send it to both
15 places.
16 Q. So, you-- Your understanding is that Donna had access to
17 rhm2@[REDACTED] [sic]?
18 A. Right. That was the law-- That was their law--
19 Q. --Just yes or no. Did she have-- You believe she had access to that
20 account?
21 A. Yes.
22 Q. How do you know that?
23 A. Because she told me to send it to it there.
24 Q. Well, but how do you know she had access to it? In other words that
25 she could log into that account and read-- You don't know for sure,

1155.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

1 do you?

2 A. No, because I never receive anything back from that account, other
3 than the one from Joelle [sic].

4 Q. Okay. Now-- Well, let me ask you this. You talked about having to
5 drive up here yesterday 300 miles. Are you here voluntarily?

6 A. Yes.

7 Q. No one has subpoenaed you. Is that right?

8 A. Correct.

9 Q. You're here because Judge Miller is your life-long friend--

10 A. --Right. And I--

11 Q. --Is that fair to say?

12 A. I wanted the people who were making decisions on this to understand,
13 you know, my perspective of what I seen--

14 Q. --Okay.

15 A. --I'm not sure if Rick was aware that I was talking to Mark while he
16 was in the judge's chambers. I wasn't sure if Rick was aware--

17 Q. --Yeah. Well, hold on, please. The judge is your life-long friend. Is
18 that right--

19 MS. SCALISE: --Let him finish and answer.

20 MR. DEROHANNESIAN: I know--

21 THE REFEREE: --I think-- No. You can finish.

22 That's fully responsive.

23 MR. DEROHANNESIAN: You can finish.

24 THE REFEREE: Go ahead.

25 A. I wasn't sure if Rick was aware that Mark was on his computer when

1156.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

1 he was in the judge's account-- You know, when he was at court and
2 I just wanted the people making decisions on this to be aware of--

3 Q. --What were you told about this?

4 A. When the person investigated me?

5 Q. No. Recently, what were you told about this proceeding today?

6 A. What do you mean?

7 Q. And by whom?

8 A. What do you mean?

9 THE REFEREE: What do you know about what's
10 going on here today?

11 THE WITNESS: I don't understand the question.

12 THE REFEREE: Well, what do you think is going
13 on here?

14 A. That there's some kind of you know, misconduct by Rick.

15 Q. Who did you speak to about your testimony before giving it today?

16 A. What do you mean?

17 Q. Well, you didn't just show up--

18 A. --Oh, no.

19 Q. --with a-- you know, and drop in today.

20 A. No.

21 Q. Someone asked you to come, is that right?

22 A. Right.

23 Q. Who asked you to come?

24 A. Paul.

25 Q. Okay. And--

1157.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

1 THE REFEREE: Paul, being Mr.--

2 MS. CENCI: --Mr.--

3 THE REFEREE: --Judge Miller's lawyer?

4 A. Correct.

5 Q. And did he tell you why he wanted you to appear here to give
6 testimony?

7 A. I assume-- He didn't tell me. I'm assuming that, you know, he
8 interviewed me on the 26th of December and--

9 Q. --And he--

10 A. --based on my conversation with him, he said, "I'd like to call you as a
11 witness."

12 Q. Mm-hmm. And he said that there was some issue about Mark
13 Kachadourian? Is that right?

14 A. No.

15 Q. But you just independently recalled that Mark Kachadourian logged
16 onto Judge Miller's email account?

17 A. What was the word you used? He just what?

18 Q. Independently? You just recalled that?

19 A. Yeah. Is-- Yeah.

20 Q. Okay. But--

21 A. --As soon as I got done with the interview when I-- with your office,
22 with Laura, you know, I started saying that this isn't right. You
23 know? I'm like-- You know, I knew that they-- they're trying to
24 build a case that Rick was practicing law while he was a judge.

25 Q. Did you speak with Judge Miller about having been contacted by

1158.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

1 Investigator Misjak?

2 A. I told him, yes.

3 Q. Mm-hmm. So, you didn't email with him, but you spoke with him
4 frequently on the phone. Is that fair to say?

5 A. Yes.

6 Q. And what did he say to you about what was going on?

7 MR. DEROHANNESIAN: Objection, unless he's
8 limited about what.

9 THE REFEREE: Well, who--

10 MR. DEROHANNESIAN: --Objection, unless it's
11 limited in scope as to relevant--

12 MS. SCALISE: --She said-- She said he spoke to
13 him frequently on the phone--

14 MR. DEROHANNESIAN: --Okay.

15 MS. SCALISE: --It implies about what, you know?
16 What were they speaking frequently about--

17 MS. CENCI: --What did-- What did he--

18 THE REFEREE: --I-- My assumption of that
19 question is as it relates to this proceeding, so that's--

20 MR. DEROHANNESIAN: --But that's clear, yes?
21 If that's it? Yeah.

22 MS. CENCI: I'll withdraw.

23 THE REFEREE: That's it?

24 MS. CENCI: I'll withdraw, Your Honor.

25

1159.

(Behal - Cross)

1 BY MS. CENCI:

2 Q. You said after Ms. Misjak contacted you in August of 2017, you
3 spoke with Judge Miller about that contact, is that right?

4 A. Yeah, you're right.

5 Q. What did he say to you?

6 A. I told him. I was the one doing the talking.

7 Q. Mm-hmm.

8 A. I said to him, "I just got interviewed by a woman, you know,
9 regarding you and some accusing you of performing law while being a
10 judge."

11 Q. Accusing him?

12 A. Well, that's what I based it-- That's what my interpretation of the
13 content of the questions. When they're asking you, "Did Judge Miller
14 ever perform legal work for you while he was a judge?" My
15 interpretation of that question is they're accusing him of performing
16 legal work when he was a judge.

17 Q. Okay. What did he say in response?

18 A. He goes, "I hope you just told the truth."

19 Q. That's all he said?

20 A. Yeah.

21 Q. Would you take a look at Commission Exhibit 4III, in evidence? I
22 think that's in front of you.

23 A. Yep.

24 Q. And does that have a print date indicated at the bottom?

25 A. 5/10/2017.

1160.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

1 Q. Okay. That was--

2 A. --First page of it.

3 Q. --That was the day that you were en route to Broome County from
4 your home in Virginia. Is that correct?

5 A. Correct.

6 Q. And it wasn't until the next day, May 11th that you had the meeting
7 with Donna and Artan in the law office?

8 A. Correct.

9 Q. Also correct?

10 A. Correct.

11 Q. How'd that meeting go?

12 A. It was a lot of work. There was a lot of numbers that Artan had. I had
13 a lot of explaining to do to get it in the format that he needed to get it
14 presented so he could present it.

15 Q. Were you happy with what you perceived as Artan's grasp--

16 A. --Yeah.

17 Q. --of the issues?

18 A. Yeah, it was comp--

19 MR. DEROHANNESIAN: Objection. Irrelevant.

20 THE REFEREE: No. That's-- Overruled.

21 A. It was complicated. Artan did a good job. He took something that
22 was handed over to him. We had problems selling the land with-- I
23 had a law firm, Xlander. You know, it took us a year and a half or
24 two years to sell the land, because they kept filling out the wrong
25 forms and Artan was stuck in the middle of all this.

1161.

(Behal - Cross)

1 Q. Mm-hmm.

2 A. Because he had to keep going to court to appear for me, because we
3 weren't closing on the land and--

4 Q. --Well, had Artan been to court at that point?

5 A. I think the first time was November of 2000-- One of these emails
6 that I had, you know, they show that Artan was involved November
7 of--

8 Q. --Okay. So, you were completely satisfied with the meeting that took
9 place on 5/11/2017?

10 A. What do you mean, completely satisfied? I'm not sure what that
11 means.

12 Q. You were completely satisfied with the results of that meeting?

13 THE REFEREE: I think he just said he doesn't
14 understand what you mean by completely satisfied.

15 BY MS. CENCI:

16 Q. Were you completely satisfied with what--

17 MR. DEROHANNESIAN: --Objection.

18 BY MS. CENCI:

19 Q. --with the-- with what happened at that meeting?

20 THE REFEREE: Sustained.

21 A. We accomplished--

22 THE REFEREE: --No, no. You--

23 THE WITNESS: --Yeah.

24 THE REFEREE: Wait for another question.

25

1162.

(Behal - Cross)

1 BY MS. CENCI:

2 Q. So, it was the next day, May 12th, that you visited chambers? Correct?

3 A. Correct.

4 Q. And you say that it was Mark Kachadourian who asked you about how
5 it was going in the estate?

6 A. Yes.

7 Q. Did you know how he knew--

8 A. --Yeah.

9 Q. --what was going on with the estate?

10 A. Yeah. We saw Artan in the lobby. I told him I met with Artan
11 yesterday to go over the accounting and when we were walking back,
12 you know, to the chambers, that's how he knew.

13 Q. And then you say that Mark asked or that you asked Mark what he
14 knew about estate taxes?

15 A. I asked Mark what he knew about estate taxes. Yes.

16 Q. Why did you ask him that?

17 A. Because I was sitting there waiting for Judge Miller to come in and he
18 asked me how things are going. I told him we had problems with
19 estate taxes. The next logical question for me is, "Mark, what do you
20 know about estate taxes?"

21 Q. Okay. Well, hadn't you just had your meeting with the estate attorney,
22 Artan Serjanej?

23 A. Yes.

24 Q. Had you asked Mr. Serjanej these questions?

25 A. Yeah, we were working the issue.

1163.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

- 1 Q. So, did Mr. Serjanej provide the answers to you?
- 2 A. Yeah, we-- He had me talk to my accountant.
- 3 Q. Okay. So, why were you asking yet another individual what he knew
- 4 about estate tax?
- 5 A. Well, why wouldn't I?
- 6 Q. Why did you?
- 7 A. Because I wanted to be informed.
- 8 Q. So, apparently, you hadn't gotten the answers from Mr. Serjanej?
- 9 A. No, we were talking to our accountant.
- 10 Q. Now, what were the forms that you say he went online to try and send
- 11 to you electronically?
- 12 A. They were New York State estate taxes-- or forms. New York State--
- 13 I have them.
- 14 Q. Well, you identified as one of the things Exhibit II. Do you have that
- 15 there?
- 16 A. Yeah.
- 17 Q. Okay. That's not a form, is it?
- 18 A. No. That's a--
- 19 Q. --That's a-- That's a--
- 20 A. --link to forms.
- 21 Q. --link.
- 22 A. Correct.
- 23 Q. So, was he trying to send you a link to forms or forms themselves?
- 24 A. No. He was trying to send me forms, but he also printed this out.
- 25 Q. Okay. And so, did he print out Respondent's Exhibit II from-- Well,

1164.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

- 1 withdrawn. Do you know what computer or account he used to print
2 this?
- 3 A. I'm not sure which account, but I know what computer.
- 4 Q. Okay. So, you don't need an email account to go to the IRS website,
5 would you agree with me?
- 6 A. No, you just go to any Google-- You know, if you have access to
7 internet.
- 8 Q. Now, you say that-- Was it before or after he printed Exhibit II that he
9 logged onto Judge Miller's [REDACTED] account?
- 10 A. It would be after.
- 11 Q. Okay. And you said he had the password?
- 12 A. Yes. He must have.
- 13 Q. What's the password?
- 14 A. I have no idea.
- 15 Q. How do you-- So, you stood there and looked over his shoulder.
- 16 A. Right.
- 17 Q. And you watched him log onto someone else's email account?
- 18 A. Correct.
- 19 Q. And why does this stand out in your memory at this point?
- 20 A. Because this-- The content. That's the main issue of all of this.
- 21 Q. Oh, who told you that?
- 22 A. I can-- deducted it from the questions that were being asked of me
23 from the investigator.
- 24 Q. Ms. Misjak?
- 25 A. Yes.

1165.

(Behal - Cross)

- 1 Q. Did she ever ask you any questions about rhm2@[REDACTED] [sic]?
2 A. She asked me about--
3 Q. --And Mr. Kachadourian logging in--
4 THE REFEREE: --No, no, no, no. He hasn't
5 finished answering.
6 MR. DEROHANNESIAN: No, no, on that.
7 THE REFEREE: Just a-- Finish your answer.
8 A. So, you asked me if she ever asked me about RMA-- The account.
9 Q. Yeah.
10 A. Yes, she did ask me about that.
11 Q. So, she's-- She said to you what about RHM?
12 A. "Why did you send an email to that account?"
13 Q. What did you say to her about that?
14 A. I told her that was a known account that Donna used since day one.
15 Q. And did she say anything to you about Mark Kachadourian using this
16 account?
17 A. No.
18 Q. So, what makes you think that him logging onto rhm2@[REDACTED] is an
19 issue in this case?
20 A. Because obviously, she had some emails.
21 Q. Didn't that come from Mr. DerOhannesian?
22 A. What's that?
23 Q. Isn't he the one that told you that the-- that there's an issue--
24 A. --No.
25 Q. --about Mark Kachadourian logging into this account?

1166.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Cross)

1 A. No.

2 Q. I want to mark an exhibit for identification.

3 THE REFEREE: All right. What number are you up
4 to?

5 MR. FITZPATRICK: 16.

6 THE REFEREE: What? 16?

7 MS. SCALISE: Let me see what it is.

8 MR. DEROHANNESIAN: Misjak.

9 MS. CENCI: Okay. May I show the witness, Your
10 Honor?

11 THE REFEREE: What is it?

12 MS. CENCI: It's a document.

13 THE REFEREE: Go ahead.

14 BY MS. CENCI:

15 Q. Mr. Behal, I ask you to read that, as well as the notes that are attached
16 and when you finish, would you let us know?

17 A. I'm done.

18 THE REFEREE: All right. You've reviewed it?

19 THE WITNESS: Yeah.

20 THE REFEREE: All right. You have a question?

21 BY MS. CENCI:

22 Q. When you spoke with Ms. Misjak, Investigator Misjak, in August of
23 2017, did you tell her that--

24 THE REFEREE: --Put them down here, yeah.
25

1167.

(Behal - Cross)

1 BY MS. CENCI:

2 Q. --Mark Kachadourian had allegedly logged onto Judge Miller's [REDACTED]
3 account?

4 MR. DEROHANNESIAN: Objection.

5 THE REFEREE: What's the objection?

6 MR. DEROHANNESIAN: If the question seeks to
7 obtain an omission, you must show that the witness's
8 attention was brought to the fact first.

9 MS. CENCI: Your Honor, this-- I'm trying to show
10 recent fabrication.

11 THE REFEREE: Well, why don't you just ask the
12 question--

13 MS. CENCI: --I did.

14 THE REFEREE: --The question-- Do you
15 understand the question?

16 THE WITNESS: No.

17 THE REFEREE: The objection is overruled.

18 BY MS. CENCI:

19 Q. Did you tell her about this-- Mr. Kachadourian allegedly logging into
20 this rhm [REDACTED] [sic]?

21 A. No.

22 Q. And did you say anything to her about rhm2@[REDACTED] [sic]?

23 A. No. That was no brought up. The conversation was she referenced
24 the-- a--

25 Q. --You answered. You said no.

1168.

(Behal - Cross)

1 THE REFEREE: Okay. That's fine. You'll get--
2 You'll get a chance to explain.

3 BY MS. CENCI:

4 Q. In fact, Mr. Kachadourian was not mentioned by you or her in this
5 conversation at all?

6 A. Yes, he was.

7 Q. It was?

8 A. Yes.

9 Q. Is it any-- Does it appear anywhere in the document that you just
10 reviewed or the notes?

11 A. Yes.

12 Q. The name?

13 A. Yes.

14 Q. Where?

15 THE REFEREE: Do we know what Exhibit 16 is?

16 MS. CENCI: It's a memorandum prepared by Ms.
17 Misjak on or about August 15, 2017, following her conv--
18 her interview on the telephone of Mr. Behal.

19 THE REFEREE: Do we know if it's accurate?

20 MS. CENCI: I don't have her here in the room
21 obviously, Your Honor.

22 THE REFEREE: Well--

23 MS. CENCI: --I have the witness on the stand
24 though.

25 THE REFEREE: Okay. Good.

1169.

(Behal - Cross)

1 MS. SCALISE: But the question was--

2 MS. CENCI: --Thank you.

3 MS. SCALISE: --does she-- Is his name mentioned
4 anywhere there? And he--

5 THE REFEREE: --Yeah. And that's-- And he's
6 looking to see if that's so.

7 THE WITNESS: Yeah.

8 MS. SCALISE: Right.

9 A. Yeah, the word "Mark" is in here. First paragraph. "We went to the
10 chambers and the judge's assistant, Mark, let him into--"

11 Q. --What page are you on?

12 A. Page 1, first paragraph. Second to the left-- Third-- Second to the last
13 sentence. "Assistant, Mark, let him in." "Let him in to wait."

14 Q. Okay. Anything else about Mark or Mr. Kachadourian?

15 A. I don't see anything else.

16 Q. Certainly nothing in reference to any email account, is that right?

17 MR. DEROHANNESIAN: Objection to referring to
18 an exhibit not in evidence.

19 THE REFEREE: I don't even-- I don't understand
20 the question, but go ahead-- If you can answer it, go ahead.

21 A. What was the question?

22 Q. You claim you told Ms. Misjak that Mark Kachadourian logged onto
23 rhm2@[REDACTED] [sic]?

24 THE REFEREE: No.

25 MR. DEROHANNESIAN: No.

1170.

(Behal - Cross)

1 THE REFEREE: He never said that.

2 MR. DEROHANNESIAN: He never said that.

3 BY MS. CENCI:

4 Q. So, you never said that to her at the time?

5 A. No. When I saw she made a reference--

6 THE REFEREE: --No, no. You've answered the
7 question.

8 BY MS. CENCI:

9 Q. When was the first time you told anyone that information?

10 A. It might have been when I was-- It was right that same day, after I
11 talked to the-- to the investigator person interviewing me, I told my
12 wife. I said, "They were asking about March 7th or a March 2017
13 email and I pulled it up and I looked at it," you know, and I said,
14 "They're trying to say that Rick was performing work, you know,
15 while he was a judge."

16 Q. So you told-- That very same day that you told Investigator Misjak--
17 that you spoke with Investigator Misjak, you told your wife that you
18 now recalled Mr. Kachadourian logging into the judge's email
19 account?

20 A. No, I didn't say I recalled it. No. I said what they were doing and I
21 told her what happened--

22 Q. --I'm sorry.

23 THE REFEREE: --Okay. Hang on. Her question
24 was--

25 MS. CENCI: --My quest-- My question--

1171.

(Behal - Cross)

1 THE REFEREE: --when's the first time you ever
2 told anybody about Mark Kachadourian logging on to the--

3 THE WITNESS: --That same day, I told my wife.

4 BY MS. CENCI:

5 Q. Did you call back the Commission and say, "Hey, I forgot to tell you
6 something?"

7 A. No.

8 MR. DEROHANNESIAN: Objection to the form of
9 that. There is no obligation to call back.

10 THE REFEREE: Yeah, you know. It's
11 argumentative and it's cross-examination. Take it for what
12 it's worth.

13 BY MS. CENCI:

14 Q. Did you contact the Commission ever to provide that information?

15 A. No. No.

16 MR. DEROHANNESIAN: Objection to the form of
17 that.

18 THE REFEREE: Overruled.

19 A. I have no idea--

20 Q. --Is--

21 A. --what protocol is on that and I did not call anyone.

22 Q. Did you think it was important information?

23 A. Yes.

24 Q. But you didn't report it back to the Commission?

25 MR. DEROHANNESIAN: Objection. This is like

1172.

(Behal - Cross)

1 alibi witnesses saying that they should come forward. They
2 have to have notice and a duty to come forward.

3 THE REFEREE: I know. I-- It-- The weight of it
4 on these questions--

5 MR. DEROHANNESIAN: --Okay.

6 THE REFEREE: --is zero, so I-- Just--

7 MS. CENCI: --Your Honor, please?

8 THE REFEREE: It's-- You haven't established as a
9 predicate that he knew that he should, that he knew it was
10 important.

11 MS. CENCI: He just said he thought it was
12 important--

13 THE REFEREE: --And he had not-- No, no. That
14 he had an obligation to do that. He wasn't under subpoena.

15 BY MS. CENCI:

16 Q. Okay. When was the next time you told anyone this information about
17 Mark Kachadourian allegedly logging on to Judge Miller's
18 rhm2 [REDACTED] account [sic]?

19 A. I'm not sure when it was, but I did talk to Artan about it.

20 Q. Did you talk to Judge Miller about it?

21 A. I don't think so. No.

22 Q. So, you did talk to Judge Miller after you were contacted by--

23 A. --Right.

24 Q. --the Commission.

25 A. Right.

1173.

(Behal - Cross)

1 THE REFEREE: Wait until she finishes the
2 question.

3 BY MS. CENCI:

4 Q. And that very day that you were contacted by the Commission, you
5 realized this information and you spoke with Judge Miller, but you
6 didn't talk to him about it?

7 A. Yeah. I mean, I would say I texted Judge Miller and told him I had,
8 but I didn't get to talk to him that day.

9 Q. You texted him what?

10 A. That I had a meeting with the Commission.

11 Q. Okay. So, never at any point prior to today did you tell Judge Miller
12 that Mark Kachadourian had logged onto his email account?

13 A. Yes, I did.

14 Q. When?

15 A. I'm not sure when that is, but I told Artan and he said, "You know,
16 this is something that Rick should probably be aware of." And, you
17 know, I'm not sure how long after that I told Rick.

18 Q. Wasn't it Judge Miller who suggested to you that Mark Kachadourian
19 may have logged onto his email account?

20 A. Absolutely not. He had no idea.

21 Q. When you say he had no idea, there was a password, wasn't there?

22 A. Yes. The--

23 Q. --And you say Mark Kachadourian had the password?

24 A. Yes.

25 Q. To Judge Miller's account?

1174.

(Behal - Cross)

1 A. Yes.

2 Q. But you think Judge Miller had no idea about it?

3 A. He had no idea that Mark logged on when I was in the chambers.

4 Q. Is someone paying your expenses to come up here?

5 A. No.

6 Q. Again, you're here voluntarily?

7 A. Correct.

8 Q. You want to help your life-long friend, don't you?

9 MR. DEROHANNESIAN: Judge, I think he asked
10 and answered.

11 THE REFEREE: Overruled.

12 A. Yes, I wanted--

13 MS. CENCI: --Then I have nothing further.

14 MR. DEROHANNESIAN: Did-- Can--

15 THE REFEREE: You can finish your answer.

16 THE WITNESS: I wanted the people who were
17 making these decisions to be aware of information that was
18 not communicated.

19 MS. CENCI: I didn't ask that. I move to strike. The
20 question was does he want to help his friend. He said yes.
21 Move to strike anything else.

22 THE REFEREE: I'll grant that. Stricken. You can
23 cover it on redirect.

24

25

1175.

(Behal - Redirect)

1 REDIRECT EXAMINATION

2 BY MR. DEROHANNESIAN:

3 Q. One thing I'd like you to clarify is you made the statement, "She told
4 me to send it here," when you were talking about email. Who is "she"
5 in that sentence?

6 A. Donna.

7 Q. And where is "here?"

8 A. To that email account.

9 Q. Okay. Which email account?

10 A. The [REDACTED] one.

11 Q. So, Donna had instructed you to send an email or emails to the
12 rhm2law@[REDACTED] account?

13 A. She instructed me to send them to both. Yes.

14 Q. Now, let's talk about the contact that you had with an investigator
15 from the Commission on Judicial Conduct in August of 2017. Is that
16 the only time that you heard from the Commission?

17 A. Yes.

18 Q. Were you ever subpoenaed to give testimony?

19 A. No.

20 MS. CENCI: Objection.

21 THE REFEREE: What's the ground for the
22 objection?

23 MS. CENCI: He resides out of state.

24 THE REFEREE: I-- There prob-- There's probably
25 a mechanism, but that's a-- You know what? That's fine.

1176.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Redirect)

1 BY MR. DEROHANNESIAN:

2 Q. Did you ever get--

3 THE REFEREE: --You can cover that in your post-
4 hearing brief.

5 BY MR. DEROHANNESIAN:

6 Q. Did you ever get any follow-up request for information from the
7 Commission on Judicial Conduct?

8 A. Zero.

9 Q. Did you ever get any follow-up request for documents from the
10 Commission on Judicial Conduct?

11 A. Zero.

12 Q. When you received a call on August 15, 2017, you were asked
13 questions about--

14 MS. CENCI: --Objection. I don't think it's been
15 established that he received a call.

16 THE REFEREE: Sustained.

17 BY MR. DEROHANNESIAN:

18 Q. Okay. You referred to a meeting with the Commission?

19 A. I received a call.

20 Q. Thank you. And that was one call, correct?

21 A. One call.

22 Q. Had you had a chance to review any items or documents before that
23 call?

24 A. No.

25 Q. Had you searched your email account before that call?

1177.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Redirect)

- 1 A. No.
- 2 Q. Had you done any preparation for the call?
- 3 A. No.
- 4 Q. Did you know you were going to get a call?
- 5 A. I knew I was going to have an interview. Yes.
- 6 Q. Okay. And how did you know that?
- 7 A. She set something up.
- 8 Q. Okay. And do you have any idea what questions or topics were going
9 to be covered in this interview?
- 10 A. No.
- 11 Q. Were you asked to prepare for the call by the Commission?
- 12 A. No.
- 13 Q. Were you asked to look for anything by the Commission?
- 14 A. No.
- 15 Q. Were you asked questions about emails?
- 16 A. Yes.
- 17 Q. Do you have any emails in front of you as you were being asked
18 questions about emails?
- 19 A. No.
- 20 Q. You were asked-- Well, do you know if this interview was recorded?
- 21 A. I don't know. I don't remember if she said it was or not.
- 22 Q. All you're looking at are an Exhibit 16, is a typed report, correct?
- 23 A. With handwritten notes.
- 24 Q. And there's some handwritten notes? Looking at the handwritten
25 notes, does that--

1178.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Redirect)

1 A. --I couldn't see anything, but yeah.

2 Q. First, does it-- Looking at the handwritten notes, does that refresh
3 your recollection about discussing with the investigator Mark?

4 A. Yes.

5 Q. Okay. And looking at the handwritten notes, does it refresh your
6 recollection if you said something about Donna, she had access?

7 A. Yes.

8 MS. CENCI: Your Honor, I don't think the witness
9 has said he had no recollection.

10 THE REFEREE: No, I think that's fair redirect
11 based on the questions you asked about this exhibit, which
12 is not in evidence, and which we don't know how it was
13 prepared or anything. I think that's fair, so overruled.

14 BY MR. DEROHANNESIAN:

15 Q. Did you have a discussion with the investigator about Donna not
16 having access to something?

17 A. No.

18 Q. Do you know what this reference is that you may have made to Donna
19 in not having access?

20 A. I'm not-- I don't understand the question.

21 Q. Can you tell from this what you discussed about Donna or not?

22 A. Not really, just whether she had access.

23 Q. Now, in the-- And in the typed report, the-- Did you tell the
24 investigator that Donna had access to more than one email?

25 A. Yes.

1179.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Redirect)

- 1 Q. At the time that you gave this interview, did you have any context
2 about what allegations, other than your suspicion that it had something
3 to do with the practice of law?
- 4 A. What I saw on Facebook. Someone posted something that Rick was
5 removed from the bench.
- 6 Q. Okay. So there were Facebook postings?
- 7 A. Right.
- 8 Q. But when you were interviewed, did you have-- know what other
9 factual information surrounded May 2017?
- 10 A. Zero. None.
- 11 Q. Zero?
- 12 A. Right.
- 13 Q. Did it provoke your curiosity to look for records or emails that you
14 had after that phone call?
- 15 A. That was the first thing.
- 16 Q. And more recently, on your own, did you bring emails to my
17 attention?
- 18 A. Yes.
- 19 Q. That I hadn't asked you for?
- 20 A. Yes.
- 21 Q. Correct? Because you felt-- Why? Why did you do that?
- 22 A. I wanted the people making the decisions on this case to know what I
23 knew.
- 24 Q. And you came forward and--
- 25 A. --Right.

1180.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Recross)

1 Q. --recently, with emails, correct?

2 A. Correct. Because I-- Correct.

3 Q. And that's why you're here today?

4 A. Right.

5 Q. Because you want-- It's not just for Rick, but for others to know what
6 you know?

7 A. Correct.

8 MR. DEROHANNESIAN: I have nothing else on
9 redirect.

10 THE REFEREE: Any recross?

11 MS. CENCI: Thank you.

12 RECROSS-EXAMINATION

13 BY MS. CENCI:

14 Q. Mr. Behal, you didn't get a call from the Commission on Judicial
15 Conduct out of the blue, did you?

16 A. Yes. Well, for the day of the hearing? Yeah, there were--

17 Q. --Do you live on Chalfont Drive, Hay Market, Virginia?

18 A. Yes.

19 Q. Can you mark this, please?

20 THE REFEREE: Is this 17?

21 BY MS. CENCI:

22 Q. I'm showing you 17. Did you receive the original of that letter?

23 A. Yes.

24 Q. What's the date on it, sir?

25 A. August 4, 2017.

1181.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Recross)

- 1 Q. When you received that letter, what did you do, if anything?
- 2 A. What do you mean?
- 3 Q. Let me ask you this question. When you--
- 4 A. --I looked at my calendar to see what my schedule looked like.
- 5 Q. Okay. When you-- When you got that letter did you wonder what it
- 6 was all about?
- 7 A. Yes.
- 8 Q. And Judge Miller's a judge in the State of New York, correct?
- 9 A. Correct.
- 10 Q. Did you call Judge Miller and say, "I got a letter from the New York
- 11 State Commission on Judicial Conduct. What's this all about?"
- 12 A. I must have.
- 13 Q. All right. So, the first thing you did was you called Judge Miller?
- 14 A. No.
- 15 Q. Did you contact the Commission as requested in that letter?
- 16 A. Yes.
- 17 Q. All right. So, again, you didn't get a phone call, a cold phone call out
- 18 of the blue from the Commission. We wrote you a letter? I wrote you
- 19 a letter and asked you to call my investigator, didn't I?
- 20 A. Yes.
- 21 Q. Before you called the investigator, did you call Judge Miller?
- 22 A. I would assume so, yes.
- 23 Q. And you said that Ms. Misjak, you set something up to do the
- 24 interview?
- 25 A. That's the way I remember it. Yes.

1182.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Recross)

- 1 Q. Okay. So, you called up and then did you arrange to speak on a later
2 date?
- 3 A. I can't remember if I did or not, if we-- If that was the official time or
4 if that-- we were going to have a spe-- a more specific time.
- 5 Q. Okay. But, you talked to her on August 15?
- 6 A. Right.
- 7 Q. Is that right?
- 8 A. Right. I'm not sure if I called her out of the blue and we had-- If I
9 called her on August 15th, I don't think I would have waited until
10 August 15th if I received this August 4th. I would have called her way
11 before August 15th.
- 12 Q. Okay. But you said on your earlier-- Just when Mr. DerOhannesian
13 asked you, you said you thought you had set the interview up
14 somehow, that in other words--
- 15 A. --That's what-- That's what I was thinking.
- 16 Q. You didn't speak to her when you first called?
- 17 A. That's what I believe.
- 18 Q. Okay. You had some time to prepare?
- 19 A. Prepare? No.
- 20 Q. For the interview?
- 21 A. There was nothing to prepare for. She didn't say what it was about or
22 any--
- 23 Q. --I don't-- I don't mean that. I just mean--
- 24 A. --Well, you asked me if I had time to prepare.
- 25 Q. --since you set it up, you had some time in between the initial call and

1183.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Redirect)

1 the time that the interview took place.

2 A. There was-- There was--

3 Q. --Is that right?

4 A. --time-- There was time between the initial call and the interview.
5 Yes.

6 MS. CENCI: Okay. Thank you. I'd like to offer
7 Exhibit 17--

8 THE REFEREE: --17.

9 MS. CENCI: --into evidence.

10 THE REFEREE: Any objection?

11 MR. DEROHANNESIAN: No objection.

12 THE REFEREE: Received. Anything further?

13 MS. SCALISE: Yeah. Are you done--

14 MR. DEROHANNESIAN: --I'm-- Yes.

15 MS. SCALISE: Okay.

16 THE REFEREE: Yes. Yes. Go ahead Mr.
17 DerOhannesian.

18 REDIRECT EXAMINATION

19 BY MR. DEROHANNESIAN:

20 Q. So, you did not prepare in anyway for this phone call, correct?

21 A. Correct.

22 Q. Because you didn't know what to prepare for?

23 A. Correct.

24 Q. Is that fair to say?

25 A. Yes.

1184.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Behal - Redirect)

1 Q. You came to some opinions based on the questions, correct?

2 A. Yes.

3 Q. You began your own review of documents and records?

4 A. Yes.

5 Q. Correct?

6 MS. CENCI: Ob--

7 MR. DEROHANNESIAN: --That's it. Nothing
8 else, Your Honor.

9 MS. SCALIE: One more.

10 MR. DEROHANNESIAN: Oh.

11 BY MR. DEROHANNESIAN:

12 Q. Is there anything in the letter you received that indicates to you the
13 substance of what you were going to be talking about?

14 A. Just the title where it came from.

15 Q. That's it?

16 A. Yeah. Commission on Judicial Conduct.

17 Q. And that's it, correct?

18 A. Correct.

19 Q. Thank you. Nothing else.

20 THE REFEREE: Anything further?

21 MS. CENCI: Nothing further.

22 THE REFEREE: Sir, when you had the initial setup
23 phone call with the investigator, were you told that it
24 concerned Rick Miller?

25 THE WITNESS: I can't remember if it ...

1185.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: That's all I have.

2 THE WITNESS: Yeah.

3 THE REFEREE: All right. So, thank you for
4 coming. We appreciate your time here. These proceedings
5 are confidential, so we would appreciate it if you would not
6 discuss your testimony with anyone.

7 THE WITNESS: All right.

8 THE REFEREE: And thank you for coming. And--
9 Go-- You're all set. Could you shut that door for just a
10 second? Ms. Cenci, I owe you a-- I owe you an apology
11 for my comment about the portion of your cross-
12 examination. That was inappropriate. It was because I
13 thought it was improper to cross-examine the witness with
14 something, notes of an unsworn phone conversation. I
15 should not have done that. I apologize.

16 MS. CENCI: Thank you.

17 THE REFEREE: Next witness. Oh, actually, before
18 we get the next--

19 MS. SCALISE: --Did you receive a document on--

20 MR. DEROHANNESIAN: --Yeah.

21 MS. SCALISE: Yes.

22 THE REFEREE: I received a letter from Shawn
23 Kerby, assistant deputy counsel of the Unified Court
24 System, which I'll just read into the record. It's short.
25 "This letter is submitted in response to the attached

1186.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 subpoena *ad testificandum* issued by Your Honor in the
2 above-referenced Judiciary Law Section 44(4) matter,
3 directed to Sgt. Ron Krebs, assigned to Broome County
4 Family Court. The subpoena was served yesterday--" the
5 letter is dated January 11th. The letter-- "The subpoena was
6 served yesterday afternoon at approximately 2:50 PM for
7 today-- testimony today at 9:00 AM. It's unclear whether
8 Your Honor found the testimony of Sgt. Krebs to be relevant
9 and material to the subject matter of misconduct at this
10 hearing. See Judiciary Law Sections 42 and 44(4). We
11 received no notice from the Respondent or Your Honor
12 regarding such finding. Instead, Respondent's attorneys
13 relayed a telephone call late last night that they seek Sgt.
14 Krebs's testimony regarding (1) the camera system at the
15 court facility, (2) the heating system at the court facility,
16 and (3) an attorney's use of a particular door in a facility on
17 a particular date for which a witness in the matter claimed
18 that the attorney was friends with Respondent and was,
19 quote, "spying," close quote, on her. Given the topic of this
20 particular door, a search of Sgt. Krebs's emails produced the
21 enclosed seven pages. We have no objection to Your
22 Honor re-disclosing these emails to the parties should they
23 be deemed relevant. Similarly, Sgt. Krebs is available on a
24 standby basis to testify should Your Honor find his
25 testimony on this topic relevant and material to the subject

1187.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 matter of misconduct at this hearing.” There is also a
2 footnote to the letter saying, “It should be noted that Sgt.
3 Kreb is not mentioned anywhere in the IG report related to
4 this matter, a copy of which was previously provided to
5 Your Honor.” There are attachments that are a copy of the
6 subpoena and then apparently seven pages. Does anyone
7 object to me disclosing a copy of this letter and the
8 attachments to both parties?

9 MS. SCALISE: No.

10 MR. DEROHANNESIAN: No.

11 MS. CENCI: No.

12 THE REFEREE: No. All right. Let’s go off the
13 record. I’m going to do that. We’ll make copies and--

14 MR. DEROHANNESIAN: --Is there a number to
15 call? He said he’s on-call-- And may have been given a
16 number. I’d like to be able to call Sgt. Kreb now.

17 THE REFEREE: Okay. That’s up to you. I-- Let’s
18 go off the record. I’ll make this copy.

19 MS. SCALISE: Well, just because we’d like to call
20 him to interview him about the content that may be in there.

21 THE REFEREE: Yeah, I--

22 MS. SCALISE: --And then determine whether he
23 would be a witness.

24 THE REFEREE: All right. Well, let’s go off the
25 record.

(Hon. Richard H. Miller, II)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(OFF THE RECORD)

MR. FITZPATRICK: Back on the record.

THE REFEREE: Counsel for the Commission is present, counsel for the Respondent is present and the Respondent is present, as well.

MS. CENCI: Your Honor, I understand Sgt. Krebs is being called and I would ask for an offer of proof as to the purpose of his testimony.

THE REFEREE: Counsel, can you give us a brief--

MR. DEROHANNESIAN: --Yes.

THE REFEREE: --suggestion of what we're going to hear?

MR. DEROHANNESIAN: There was-- Yeah. There was testimony by Ms. Gallagher that there was an incident in family court where she felt threatened because of an individual who approached her. This is the individual that has first-hand knowledge of that incident and what occurred. I believe it contradicts her version and that's based on the information that was supplied through our subpoena that you provided us. I think--

MS. CENCI: --So, now this would be--

THE REFEREE: --One sec. Anything further?

MR. DEROHANNESIAN: Yes. The arrangement of security cameras in the family courtroom, comments about the heat in the courtroom, and potentially character

1189.

1 testimony.

2 THE REFEREE: Ms. Cenci, you had a comment?

3 MS. CENCI: As to the incident, I believe the
4 reference is to Rachelle Gallagher feeling threatened, even
5 assuming that Sgt. Krebs would testify in contradiction to
6 Ms. Gallagher, that would be a collateral attack and that
7 would not be admissible.

8 THE REFEREE: Isn't that so?

9 MR. DEROHANNESIAN: It's not collateral
10 because remember I objected because there was no
11 connection to Judge Miller in that incident. It was
12 overruled. She was allowed to give that testimony and it is
13 now evidence. I don't know whether it's consciousness of
14 guilt to attack my client as being behind that and, in fact,
15 that's what the federal lawsuit alleges also, and the idea that
16 it is in some way connected to her coming forward is the
17 suggestion which is why presumably they thought it was
18 relevant. If it wasn't relevant to their charges they wouldn't
19 have asked her the question, presumably. To rebut any
20 inference that this has anything to do with this case, I think
21 this testimony is relevant. They presented it, I have to
22 answer it.

23 THE REFEREE: Isn't that so?

24 MS. CENCI: At this point, Your Honor, I'm not
25 even sure whether that testimony was elicited on direct or

(Hon. Richard H. Miller, II)

1 on cross, but--

2 MR. DEROHANNESIAN: --No, because I
3 objected. I remember objecting that there was no link. I
4 had made an argument that there should be some connection
5 that this incident is connected to Judge Miller, so that's
6 why--

7 THE REFEREE: --Yeah. I mean, there clearly was
8 no link and candidly, I give it no weight.

9 MR. DEROHANNESIAN: I also made an objection
10 that it wasn't in the charges. I was overruled. And again,
11 I'm presuming they thought it was relevant and they'd want
12 to use it in some way, I should be allowed to give a factual
13 version from a person who was there who has inquired
14 about it. It wasn't just a passing incident. There was some
15 type of inquiry from his supervisors what occurred.

16 THE REFEREE: I mean, perhaps I should simply
17 strike that testimony by Ms. Gallagher as irrelevant, that
18 limited comment--

19 MS. CENCI: --Yeah. At this point, Your Honor,
20 I'm not even sure that it wasn't Mr. DerOhannesian that
21 brought that out, but I--

22 THE REFEREE: --I don't remember, honestly. I
23 can tell you both counsel, I give it zero weight because
24 there was no connection to Respondent--

25 MR. DEROHANNESIAN: --Well, and once it came

1191.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 in, I believe now we have an issue of her credibility, as well
2 as her motivation in bringing a false allegation against my
3 client that she will go to this extent.

4 THE REFEREE: No, but I don't think she said that
5 it was Judge Miller who sent that lawyer the-- past her
6 desk--

7 MR. DEROHANNESIAN: --She felt-- Right.

8 THE REFEREE: --I remember somebody walking
9 past her desk.

10 MR. DEROHANNESIAN: She felt that, but she had
11 no proof of it. So, the-- Again, because she felt is how--
12 How credible are these feelings that Kachadourian and
13 Gallagher have? I didn't put it on. I objected.

14 THE REFEREE: No, I understand.

15 MR. DEROHANNESIAN: I-- Vehemently, I
16 objected to it.

17 THE REFEREE: No, I understand. I-- There was
18 no suggestion, no proof at all that Judge Miller had
19 anything to do with it and ...

20 MR. DEROHANNESIAN: And we do have a good-
21 faith basis now that we have the record. That's what I was
22 always interested in. Is there any documentation even of an
23 incident and what did it show?

24 THE REFEREE: Honestly, I'll allow it. I can tell
25 you in all candor that the incident has zero weight.

1192.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MR. DEROHANNESIAN: I believe you. Here's
2 my concern. This goes to the Commission--

3 THE REFEREE: --Commission may feel otherwise?

4 MR. DEROHANNESIAN: They say, "Ah-ha. Look
5 at this. This is terrible. You're a judge and you're doing
6 this in your own courtroom."

7 THE REFEREE: Yeah. All right. Well, let's hear it
8 and let's keep it brief.

9 COURT OFFICER: More water, Judge?

10 THE REFEREE: What? Yeah. You can-- If there
11 are any, that would be great. Thank you. Sergeant, would
12 you raise your right hand, please? Do you swear or affirm
13 that the testimony you are about to give is the truth, the
14 whole truth, and nothing but the truth?

15 SGT. KREB: So help me, God.

16 SGT. RONALD KREB,

17 having been duly sworn, was examined and testified as follows:

18 THE REFEREE: Please have a seat. Could you
19 identify yourself, please?

20 MR. BATTISTI: Attorney for Mr. Kreb. Attorney
21 Paul Battisti, B-A-T-T--

22 MR. DEROHANNESIAN: --And I leave it to the--

23 MR. BATTISTI: --I-S-T-I.

24 MR. DEROHANNESIAN: --Referee, with respect
25 to the presence of counsel.

1193.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 THE REFEREE: I think I'll allow it. Sir, can you
2 tell me your, slowly, name, law firm, address-- law firm
3 and address?

4 MR. BATTISTI: Paul Battisti, B-A-T-T-I-S-T-I,
5 Battisti Law Offices, 89 Court Street, Binghamton, New
6 York, 13901.

7 THE REFEREE: Okay. Counsel, you understand
8 that you, in my discretion, are being allowed to remain.
9 You have no role. Here, you cannot object or participate.
10 If there's a need for you to consult with your client, you'll
11 have to do so outside the room.

12 MR. BATTISTI: Understood.

13 THE REFEREE: Okay.

14 MS. CENCI: Your Honor?

15 THE REFEREE: Yes?

16 MS. CENCI: If I may, I would just like to note for
17 the record that Mr. Battisti did appear on behalf of another
18 witness during the Commission's investigation, another
19 witness who has testified in this proceeding for Respondent.

20 THE REFEREE: Who was it?

21 MS. CENCI: Mr. Serjanej. I'm not going to--

22 THE REFEREE: --I'm--

23 MS. CENCI: --object at this time, but I would like
24 that noted for the record.

25 THE REFEREE: You are or are not objecting?

1194.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 MS. CENCI: I am not going to object at this time,
2 depending upon the testimony.

3 THE REFEREE: Yeah, I think we'll be okay. I
4 really-- At this point, based on my understanding of what
5 Sgt. Kreb is going to say, I don't think he and Mr. Serjanej
6 have differing interests under 1.7 of the Rules of
7 Professional Conduct and I don't think Mr. Battisti has a
8 conflict. I think we're going to be brief and I don't think
9 it's going to be an issue. If it is, I certainly will address it at
10 the time. Sergeant, my name is Robert Barrer. I've been
11 appointed by the Commission on Judicial Conduct as a
12 special Referee to oversee this proceeding. You're going to
13 be asked some questions by counsel first, for Judge Miller,
14 and then by the Commission. It's important that your
15 answers to the questions be verbal, you have to speak them
16 instead of shaking your head. I think you probably know
17 that. Please wait until the questions have been fully asked
18 before you respond, so we only have one voice being
19 recorded at a time. And in the event that there's an
20 objection, please wait until I tell you to answer. Is that
21 okay?

22 THE WITNESS: Yes, Your Honor.

23 THE REFEREE: And you knew that?

24 THE WITNESS: Yes.

25 THE REFEREE: All right. Perfect. Thank you.

(Kreb - Direct)

1 DIRECT EXAMINATION

2 BY MR. DEROHANNESIAN:

3 Q. Tell us your name and occupation, please?

4 A. Sgt. Ronald R. Kreb, New York State court officer, sergeant.

5 Q. How long have you been with the court officer-- a court officer in
6 New York State court system?

7 A. I have been-- I came on in the New York State court system I think it
8 was June of July of 2006, as a transfer of function.

9 Q. What are your duties and where are you currently assigned?

10 A. Broome County Court, Binghamton, New York.

11 Q. And how many-- Have you worked in the Broome County Family
12 Court?

13 A. Not as a sergeant, but as an officer, yes.

14 Q. When did you work in the Broome County Family Court?

15 A. I'm going to have to go back and think here. I'm been a sergeant now
16 for two years and about a year, so three years ago, so 20-- probably
17 between 2014 through 2017.

18 Q. Okay. And what are your duties and responsibilities?

19 A. I oversee roughly seven to eight officers up in the criminal court of
20 Broome County Court. Just as a field supervisor, it's just a-- Respond
21 to calls that the officer may have where they need assistance, guide my
22 officers' trainings, scheduling, be the front-line supervisor for the
23 officers.

24 Q. Would it be fair to say that you've worked with, as well as supervised,
25 court officers in the Broome County Family Court?

1196.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kreb - Direct)

1 A. There are times that if that sergeant is off that I do assume that
2 supervisory role, duties.

3 Q. And bringing your attention to June of 2018, were you in family court
4 when there was a report of some incident involving Rachelle
5 Gallagher?

6 THE REFEREE: You misspoke. June of '17. Did
7 you say-- Did you mean '17 or '18?

8 MR. DEROHANNESIAN: '18.

9 THE REFEREE: All right. Then I'll withdraw my
10 comment.

11 MR. DEROHANNESIAN: Yeah.

12 THE REFEREE: So, June of '18.

13 A. June of '18?

14 Q. Mm-hmm.

15 A. I don't recall that date of an incident.

16 Q. Let me show you Respondent's JJ.

17 A. Thank you. Thank you.

18 Q. Let's see if recog-- First of all, do you recognize what that is?

19 A. Sure.

20 THE REFEREE: Just to yourself.

21 A. Yes, I recognize it.

22 Q. First of all, what is it?

23 A. This was an email between me and my captain just outlining an email
24 that I--

25 THE REFEREE: --All right. Just-- That's

1197.

(Kreb - Direct)

1 sufficient--

2 BY MR. DEROHANNESIAN:

3 Q. --Okay. That's good.

4 A. Okay.

5 Q. Does that refresh your recollection of when you may have been
6 involved in an incident involving--

7 A. --Yes, it does.

8 Q. --Rachelle Gallagher?

9 A. Yes, it does.

10 Q. What is the-- that date?

11 A. The date that I sent the original email was April 16, 2018. That was
12 the date of the incident.

13 Q. Okay. And were you working in family court that day?

14 A. I don't think I was assigned to family court that day, but I was down
15 on the floor of family court, I don't know, hanging out or whatever I
16 was doing that day when there was an incident.

17 Q. Okay. So, you were in family court--

18 A. --I was on that day, yes.

19 Q. --even if you weren't assigned it.

20 A. Right.

21 Q. Court officers go across to other courts?

22 A. Sure.

23 Q. In this county and other counties? So, were you asked to-- Tell me
24 what, if anything, you observed happen with Rachelle Gallagher in
25 April of 2018?

1198.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kreb - Direct)

1 A. Okay.

2 THE REFEREE: Let me-- Let me have this.

3 A. Sure. So, I was up on the family court floor and there was an attorney
4 that had an issue with a litigant that was kind of hostile and the
5 attorney had asked me if there was an alternate route that they could
6 go to get out of the building, so they didn't have any encounter with
7 that said litigant. Common practice and due to the safety of, you
8 know, the person that I was escorting, I made the decision to take him
9 out through the family court intake offices on the first floor and he
10 was parked out back, closest to the back door of the intake offices.
11 That was the closest path with the least amount of risk and it was
12 common practice that we would do that in the past, so I made the
13 decision to take him out through the back door. With that being said, I
14 had to walk past the offices where Rachelle Gallagher and Mark
15 Kachadourian sit. So, I let the attorney that I let out through that back
16 door and a few minutes later, my lieutenant was posted there, Lt. John
17 Yardman, he was posted there as a manned person, because we had--
18 we have a post that's set up there now because of, you know, a policy
19 that we have in place now. He was there watching that and as I came
20 back into the building, I told sergeant-- Lt. Yardman what was going
21 on with the family court incident and then a few minutes later,
22 Rachelle Gallagher comes out of the office and she asked me--
23 She'll-- She asked me, she's like, "Why did you let Brett Noonan
24 come past the office?" I said, "Well, there was an issue upstairs, it
25 was an incident and he kind of had some fear of a litigant, so I brought

1199.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kreb - Direct)

1 him out here for his safety.” And she’s like, “Well, he’s friends with
2 Rick Miller. He’s probably here to spy on me.” And I told her in a
3 very calm voice, I said, “Rachelle, I can assure you it has nothing to
4 do with anything that you’re-- that you’re-- that you’re-- con-- that’s
5 concerning you,” that it was strictly my decision and it’s-- as a safety
6 standpoint, to take him out this way. She’s like, “Well, he’s friends
7 with Rick,” and I was like, “I understand that. I had no clue. I don’t
8 know who Rick Miller’s friends are.” She’s like, “Okay.” And she
9 turned around and walked back into her office.

10 Q. Did you escort the attorney out the building? Were you with the
11 attorney as he had left the building?

12 A. Oh, absolutely. He was in front-- I believe he was in front of me.

13 Q. Mm-hmm. And so, he was never left un--

14 A. --No.

15 Q. --outside your--

16 THE REFEREE: --Have to let him finish the
17 question--

18 THE WITNESS: --I’m sorry. I’m sorry.

19 BY MR. DEROHANNESIAN:

20 Q. The attorney was never outside your presence?

21 A. No.

22 Q. He wasn’t walking alone?

23 A. No.

24 Q. And did you see any contact at all of any nature between the attorney,
25 Noonan, and Ms. Gallagher?

1200.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kreb - Direct)

- 1 A. Zero.
- 2 Q. And then you were asked about this later on by your supervisors?
- 3 A. Correct.
- 4 Q. And that led to the email that I showed you to refresh your
- 5 recollection?
- 6 A. Absolutely. My lieutenant said, "Can you send me an email on it?"
- 7 Because he overheard the whole conversation, so I sent him an email.
- 8 Q. A couple quick questions about Broome County Family Court. Is
- 9 there a camera monitoring system in the family courtrooms of Broome
- 10 County Family Court?
- 11 A. Yes.
- 12 Q. And who monitors those cameras?
- 13 A. We have a control room, that's where I'm assigned, up on the third
- 14 floor of the county courthouse and we have cameras setup throughout
- 15 the building. We have one, two, three screens with multiple cameras
- 16 on it. We monitor the building.
- 17 Q. And so, is someone assigned to monitor? Is that a separate duty and
- 18 function?
- 19 A. It is. It is.
- 20 Q. Are recordings made?
- 21 A. There are recording capabilities. Yes.
- 22 Q. And you said you've worked in Broome County Family Court?
- 23 A. For a period.
- 24 Q. And has the topic of the HVAC or the heating system come up
- 25 between judges and court personnel?

1201.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kreb - Direct)

- 1 A. Frequently.
- 2 Q. What's been the issue?
- 3 A. I-- Sometimes cold. There's one wall in our-- There's one wall
4 that's in one end of our court that's rumored that didn't have any
5 insulation when it was built. It's cold in that hallway, but certain
6 courtrooms, the heat gets hot. The building gets hot during the
7 summer months, you know? So, it's not always just the HVAC.
- 8 Q. And that's the topic of many individuals?
- 9 A. Sure.
- 10 Q. Not just judges or court per-- court security?
- 11 A. Sure.
- 12 Q. Can I have a moment? How long have you worked in Broome County
13 in one court or another?
- 14 A. Well, if I go back to my days before being a court officer, I was with
15 Broome County government security and I started there in June of
16 2002, and I was assigned to the courthouse. So, I've been in that
17 courthouse since 2002.
- 18 Q. And since June of 2015, you've been functioning as a sergeant within
19 the-- at first-- In June-- January of 2015, you had been an officer?
- 20 A. Yes.
- 21 Q. Your promotion came when?
- 22 A. December 2016.
- 23 Q. Okay. And did you have the occasion to speak to other security
24 officers who work in the Broome County Family Court system?
- 25 A. Yes.

1202.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kreb - Direct)

1 Q. Do security officers talk about the judges they work with and their
2 behavior?

3 A. Yes.

4 Q. And in the course of your discussions with other security officers in
5 the Broome County Family Court system, have other officers
6 expressed opinions about Judge Miller's judicial temperament?

7 A. Yes.

8 Q. And by that, I mean how he behaved in the courtroom toward
9 witnesses, litigants and the people working in the courtroom?

10 A. Yes.

11 Q. Not just security officers, but other people?

12 A. Yes.

13 Q. And do you have an opinion of what that opinion is of those you've
14 talked to concerning Judge Miller's reputation for judicial
15 temperament in the courtroom?

16 A. Sure. I can speak for my officers and me included, you know, never
17 seen anything that was-- anything less than professional. He was
18 always a-- pleasant to work in there. As a matter of fact, coming out
19 of the courtrooms, litigants would even say, you know, that, you
20 know, he is very welcoming, he was very professional, pleasant.
21 Never heard of anything adverse.

22 Q. And for those folks who haven't practiced in a family court setting,
23 how would you describe the atmosphere in terms of people's feelings
24 and emotions in family court?

25 A. Well, family court's an emotional place. I mean, you see a variety--

1203.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kreb - Cross)

1 But again, people coming out of, you know, Judge Miller's courtroom.
2 You know, compared to some other courts that we have had, people
3 would come out like, you know, very, you know, calm, for the most
4 part, very happy. You know, I never heard anything disparaging
5 coming out of their mouths and we hear it all the time from other
6 places.

7 Q. And so, when you say the basis of your opinion would include people
8 who've been litigants--

9 A. --Litigants.

10 Q. --and appeared in front of the judge then?

11 A. Mm-hmm.

12 Q. If I could have a moment? I just want to make sure that when you
13 were talking about comments related to the heat in family court and
14 specifically, in Judge Miller's courtroom, does that include Judge
15 Miller's courtroom?

16 A. Yes.

17 Q. Yes.

18 A. Yes.

19 Q. No further questions.

20 THE REFEREE: Ms. Cenci?

21 MS. CENCI: Thank you.

22 CROSS-EXAMINATION

23 BY MS. CENCI:

24 Q. Sgt. Kreb, I'm Cathleen Cenci. I'm serving as Commission counsel in
25 this proceeding. We haven't met or spoken, have we?

1204.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kreb - Cross)

- 1 A. No, we have not.
- 2 Q. Okay. This incident that you testified about in April of 2018, the door
3 through which you escorted Mr. Noonan, is that known as the rear
4 employee entrance?
- 5 A. That is correct.
- 6 Q. Okay. And ordinarily, who has access to that door?
- 7 A. Sure. Ordinarily, employees, judges, anybody that has an access card
8 and a PIN code.
- 9 Q. Okay. Thank you. And I think you said something about Lt.
10 Yardman had already been posted there due to some prior incident?
- 11 A. Yes. Per the chief judge, they required us to put a person back there.
12 They didn't give us really any specifics as to why until recently--
- 13 Q. --Okay.
- 14 A. --but we have had an officer back there from-- since Judge Coccoma
15 implemented that we have an officer standing by back there.
- 16 Q. Do you-- Do you know approximately when that was implemented?
- 17 A. I cannot recall.
- 18 Q. And you said at the time that this was implemented, the officer being
19 posted by the rear entrance, you weren't aware of the reason. Do you
20 now know the reason?
- 21 A. I have more information now as to the reason.
- 22 Q. Okay. Did it have something to do with a person by the name of
23 David Iannone allegedly threatening Rachelle Gallagher or Mr.
24 Kachadourian, to your knowledge?
- 25 A. Not to my knowledge.

1205.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kreb - Cross)

MR. DEROHANNESIAN: Objection.

BY MS. CENCI:

Q. And was there also a change in the policy or practice with regard to the use of that rear entrance after this April incident?

A. Yes. After the incident, we-- the policy got implemented that nobody other than employees were allowed to go in and out that area or in the intake area.

Q. Which actually was the policy or the practice all along, correct? I mean, you said there were times, but that was the purpose of that entrance, wasn't it?

A. General practice and precedents and everything else, it was a common practice that we would take people out, i.e. jurors even, when we would take them out for their breaks and stuff like that, they would go out that back door. That was back before even I became a sergeant, that was common practice. Matter of fact, attorneys were allowed to go back to that area before this new policy. They'd go back to where you'd view audio stuff, CDs.

Q. Okay.

A. And they could go back there or go visit the chief clerk even.

Q. Did Rachelle Gallagher seem upset or frightened during this incident?

A. I wouldn't say upset or frightened. She seemed kind of-- You know, she was obviously concerned that she saw what she saw--

Q. --Okay.

A. --but she wasn't worked up or anything. No.

Q. Thank you. Nothing further.

1206.

**STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223**

(Kreb - Redirect)

1 THE REFEREE: Thank you. Anything further?

2 REDIRECT EXAMINATION

3 BY MR. DEROHANNESIAN:

4 Q. So the change in policy is no one out the back door, and what about
5 where Ms. Gallagher's door?

6 A. Okay. So, Ms. Gallagher's office area is right near the back door.

7 Q. Mm-hmm.

8 A. There's probably only about a 10-foot difference between her door
9 and the back door, so there's an officer that stands right in the middle.
10 The policy came up-- I'm sorry. Can you repeat that question?

11 Q. What is the change in policy?

12 A. The change in policy now is nobod-- There's actually signs on the
13 wall back there, "No--" "Employees only beyond this point." So, the
14 new policy is employees only are beyond a certain point that they're
15 not allowed to go back there, including jurors when we bring them
16 out, we have to take an alternate route for them now.

17 Q. Okay. And what about Ms. Gallagher's office?

18 A. They can go out the back door, because they have access.

19 Q. This is Respondent's II. I'm going to show you Respondent's II.

20 MR. FITZPATRICK: II is already being used.

21 MR. DEROHANNESIAN: Is it?

22 MR. FITZPATRICK: It is.

23 MS. SCALISE: It is? So it's then-- We'll make it

24 KK.

25 THE REFEREE: Yes, KK. It has to be KK.

1207.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Kreb - Redirect)

1 BY MR. DEROHANNESIAN:

2 Q. And the exhibit (unintelligible) is now Respondent's KK. Do you
3 recognize that email? Do you recognize what that is?

4 A. Yes.

5 Q. Does that help refresh your recollection as to some of the other
6 changes in the policy?

7 MS. CENCI: Objection.

8 THE REFEREE: Sustained, as to form.

9 BY MR. DEROHANNESIAN:

10 Q. Okay. Does that help you refresh your recollection as to any changes
11 with respect to Ms. Gallagher's office?

12 MS. CENCI: Objection. He hasn't said he doesn't
13 recall.

14 THE REFEREE: Correct. Sustained.

15 BY MR. DEROHANNESIAN:

16 Q. Do you recall any changes that affected Ms. Gallagher's office or
17 door?

18 A. Yes.

19 Q. Okay. And what change, if any, affected Ms. Gallagher's office or
20 door?

21 A. That people aren't allowed to go past it, other than employees.

22 Q. And if someone is going past that way, what happens?

23 A. That they be escorted.

24 Q. Thank you.

25 A. Mm-hmm.

1208.

(Kreb - Redirect)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. DEROHANNESIAN: Nothing else.

THE REFEREE: Anything further?

MS. CENCI: Nothing further, Your Honor.

THE REFEREE: Thank you very much, Sergeant.
Just before you leave, I would like to advise you and remind
you that these proceedings are confidential and shall not be
discussed with anyone, counsel. I believe you understand
that?

MR. BATTISTI: Yes, sir.

THE REFEREE: Thank you for coming.

THE WITNESS: Thank you.

THE REFEREE: Who's our next witness?

MR. DEROHANNESIAN: Diane Marusich.

THE REFEREE: All right. Let's call her.

MS. MARUSICH: Hi.

THE REFEREE: Hi. Can you raise your right--
Wow. Beat me to the draw. Ma'am, do you swear or
affirm that the testimony you are about to give will be the
truth, the whole truth--

MS. CENCI: --Who--

THE REFEREE: --and nothing but the truth?

MS. MARUSICH: So help me, God. Yes.

DIANE MARUSICH,

having been duly sworn, was examined and testified as follows:

THE REFEREE: Please sit down.

1209.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 THE WITNESS: Thank you.

2 THE REFEREE: Ma'am, my name is Robert
3 Barrer. I'm appointed by the Commission on Judicial
4 Conduct to be the special Referee for this proceeding and
5 you are going to be asked some questions, first by counsel
6 for Judge Miller, and then most likely by counsel for the
7 Commission.

8 THE WITNESS: Yes.

9 THE REFEREE: It's important that when you
10 testify, you wait until the entire question has been asked and
11 then you can respond. In the event that there is an
12 objection, please don't say anything until I give you the
13 direction to answer. And it's important when you testify
14 that you do so verbally, as opposed to shaking your head,
15 because we're recording everything and if you shake your
16 head, there will be silence. So, we won't know.

17 THE WITNESS: I completely understand.

18 THE REFEREE: And with that, I'm going to just
19 ask you to flip over whatever documents you brought.

20 THE WITNESS: May I refer to them if I need to
21 confirm dates?

22 THE REFEREE: Well, we'll see.

23 THE WITNESS: Okay.

24 THE REFEREE: Let's see what happens.

25 THE WITNESS: Okay.

1210.

(Marusich - Direct)

1 DIRECT EXAMINATION

2 BY MR. DEROHANNESIAN:

3 Q. Tell us your name, please?

4 A. Diane Marusich.

5 Q. And what is your current position?

6 A. I'm currently semi-retired.

7 Q. Okay.

8 A. I work part-time as a bookkeeper and I just completed a three-year
9 opportunity as a board of director on The Agency, which is Broome
10 County's IDA/LDC economic development group.

11 Q. Have you ever held any positions in the Village of Johnson City?

12 A. Yes. I had held an elected position as Johnson City school board
13 member for a total of 10 years. I was appointed in May of 2012 to the
14 position of village trustee when a vacancy occurred, and then I ran for
15 election, fulfilling January 1, 2013 through December 31st of 2014, as
16 village trustee. Those were elected positions. I also held appointed
17 positions within the village.

18 Q. What are some of those other appointed positions and what-- and the
19 time period of those?

20 A. Prior to becoming a trustee, I would estimate that it was-- Let me
21 think. I served on the zoning board of appeals and the planning board
22 for probably four years in its entirety, which would have spanned 2010
23 to approx-- No. 2008 until approximately 2012.

24 Q. And you held a position of trustee until December 31, 2014?

25 A. Correct.

1211.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 Q. Are you a life-long resident of Johnson City?

2 A. Not life-long, but the majority of my life. I have resided in the Village
3 of Johnson City approximately 47 of my 62 years and I have resided at
4 the same address for the past 25 years. So, 15 years, give or take, I did
5 not reside in the village.

6 Q. When you were a trustee with the Village of Johnson City, did you
7 have any particular connection to the Village of Johnson City Court?

8 A. Yes. As a village trustee, the way we were divided and organized
9 were by subcommittee, so the trustees were assigned various oversight
10 to different aspects of the village operations. I was assigned to public
11 safety, which meant that I worked with the village police and fire
12 department and I was also assigned court clerk, and I was also one of
13 the lead negotiator for all of the village employee contracts, both
14 union, non-union, personal service agreements, and that's based on
15 my prior work experience.

16 Q. And in that capacity, how would you interact with the village court or
17 the village people?

18 A. I would make it a point--

19 MS. CENCI: --The village people.

20 THE REFEREE: --People in the village.

21 MR. DEROHANNESIAN: People in the village.

22 THE WITNESS: People in the village.

23 THE REFEREE: Much better.

24 BY MR. DEROHANNESIAN:

25 Q. The village court people.

1212.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 A. I would make it a point periodically to visit with the police
2 department, with the fire department. We would have meetings on-
3 site in the police department. I would make it a point of visiting the
4 court, village court, not Town of Union, because they were co-located
5 in the same building. But I would make it a point of stopping in to
6 visit with the members of the court staff, "How's it going? What do
7 you need? Everything going okay? If you have any issues," because I
8 was technically the liaison--

9 Q. --Mm-hmm.

10 A. --that would go back to the village and report to the village board and
11 the mayor how well things were going.

12 Q. Slight digression into something you said, Town of Union Court and
13 the Village of Johnson City Court, you said they're co-located?

14 A. Well, the court clerks-- Some of the court clerks for the Town of
15 Union occupied space on the second floor of the justice building
16 known as the Korutz Justice Building and-- But I did not interact with
17 them because I was not in a government capacity as an elected public
18 official to interact with them. So, I solely interacted with what I call
19 the left-hand side of the second floor where our village court was
20 located.

21 Q. So, but-- Town of Union and Village of Johnson City are in the same
22 building? Their court-- The court-- Their courts are in the same
23 building?

24 A. Their clerks are in the same building. It's like a shared services.

25 Q. Okay. And did you know someone who was a Village of Johnson

1213.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

- 1 City judge named Richard Miller?
- 2 A. Yes, sir. I do.
- 3 Q. And did you interact with him when he was village judge?
- 4 A. Not in a capacity of judiciary activity. Solely on the basis of
- 5 personnel. I interacted with the judge at times when there was an
- 6 opening that had to be filled--
- 7 Q. --Mm-hmm.
- 8 A. --because we had a tendency for high employee transiency. The part-
- 9 timers would come, they would work for a period of time and then
- 10 they would vacate the position. And being HR-minded, as I was
- 11 brought up to be, it would always concern me why would anybody
- 12 leave any position within the village. I always wanted to know why so
- 13 that the village could improve itself and we had a fair amount of
- 14 turnover in the village court part-time area.
- 15 Q. So, you had interaction with Judge Miller as a judge for personnel
- 16 issues?
- 17 A. Correct.
- 18 Q. Okay.
- 19 A. And for review of applications and for employment consideration. I
- 20 was typically one of the people involved in the interview process.
- 21 Q. Did you know Judge Miller outside of his role as Village of Johnson
- 22 City judge?
- 23 A. Casually, yes.
- 24 Q. What do you mean by causally? Just--
- 25 A. --We were friends. His oldest sister and I grew up with each other.

1214.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 We were in the same high school graduating class. She was our class
2 president. We've maintained a friendship over 40 years, and in that
3 context, I grew up knowing of Ricky.

4 Q. Okay.

5 A. He was always Ricky when he was younger.

6 Q. And in the course of working for the Village of Johnson City, living in
7 the Village of Johnson City, would you hear people discuss Judge
8 Miller's reputation for judicial temperament?

9 A. Yes.

10 Q. And who were the type of people you would be interacting with to
11 hear that?

12 A. I would be interacting with people such as police officers, people
13 involved with the little league program in the Village of Johnson City.
14 The court clerks, themselves, when I would visit them. You have to
15 understand that Johnson City is a very small 15,000-person entity and
16 when you have lived and have grown up in the village as long as some
17 of us have, there's only one or two degrees of separation between
18 anybody that you could meet that may have a relationship and
19 experience, whatever it may be, with myself, with any member of the
20 village employees, including the judge. And so, we're tight-knit.
21 "Once a wild cat, always a wild cat," is the local motto. The other
22 local motto is, "You prick me, I bleed maroon and white." And Judge
23 Miller is in that category, I am in that category, Mayor Deemie is in
24 that category. There's many people that fall in that category that you
25 live in the village for an extended period of time, you get to know one

1215.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 another and you converse about each other.

2 Q. It's not like Manhattan where people may not--

3 A. --Not at all.

4 Q. --know what's going on 10 blocks away?

5 A. Not at all.

6 Q. And did you also hear people discuss Judge Miller's reputation for
7 honesty and truthfulness?

8 A. Judge Miller is one of--

9 Q. --First--

10 A. --Yes, sir?

11 Q. --did you hear people discuss that?

12 A. Yes, I would hear people discuss that.

13 Q. And do you have an opinion as to what the opinion of the people you
14 spoke to is for Judge Miller's trustworthiness and honesty?

15 A. Yes. My opinion is that the others who comment about the judge
16 would give a fair assessment of his honesty, his professionalism, his
17 judicial conduct in conducting the court, a man of high regard, sought
18 after, approachable, patient, a man to be trusted.

19 Q. And in terms of his judicial temperament, what opinion, if any, did
20 you hear how he interacts with court personnel?

21 A. His interaction, and I have heard--

22 MS. CENCI: --Excuse me, Your Honor. I-- At this
23 point, I have to object because it would appear that the
24 witness's knowledge would only have extended through
25 December of 2014 and it would not be relevant to the

1216.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 timeframe at issue here.

2 THE REFEREE: I don't think so, because she has
3 explained her particularly strong connection to the
4 community--

5 MS. CENCI: --But--

6 THE REFEREE: --And-- No, no. I--

7 MS. CENCI: --With respect to court personnel, was
8 the-- was the question.

9 THE REFEREE: Let me hear the question one more
10 time, please?

11 BY MR. DEROHANNESIAN:

12 Q. And based on what you've heard, do you have an opinion as to what
13 the opinion of others is concerning Judge Miller's judicial
14 temperament toward individuals working in the court system?

15 THE REFEREE: Are you asking about village court
16 system or family court?

17 MR. DEROHANNESIAN: In general. Do people
18 discuss it--

19 THE REFEREE: --I don't think-- I don't think
20 you've laid a foundation for her knowledge about anything
21 in family court. You might be able to do that, but--

22 MR. DEROHANNESIAN: --Yep.

23 THE REFEREE: --I don't think you have done that
24 yet. So, sustained.

25

1217.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 BY MR. DEROHANNESIAN:

2 Q. Ms. Marusich, people would talk to you about Judge Miller's
3 reputation as a Village of Johnson City judge, correct?

4 A. Correct.

5 Q. In addition, at some point, he became elected to the family court?

6 A. Correct.

7 Q. And at some point, there were news stories about Judge Miller in
8 family court, correct?

9 A. Correct.

10 Q. And did people continue to discuss with you their opinions about
11 Judge Miller in terms of his judicial temperament, including when he
12 was a family court judge?

13 A. I would. I-- Correct.

14 Q. And based on those discussions, do you have an opinion of the
15 community's opinion of Judge Miller's judicial temperament in
16 dealing with court clerks, whether at the village level or family court
17 level?

18 A. Yes, I would say that the opinion that I heard in the context of village
19 court also extended consistently to his performance as a judge in
20 family court. There was no complaint. There was a continuation of
21 the characterization of a man of integrity, a man of professionalism, a
22 man of honesty, a man who is very approachable, a man who is very
23 fair in often times contentious family court environment in
24 comparison to quasi-criminal court activity in the village. So, yes. I
25 have a strong opinion based on what people had expressed to me that

1218.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 demonstrates some continuity that his behavior did not change. His
2 behavior was consistent and professional at all times.

3 Q. In the Village of Johnson City, were you familiar with an employee,
4 Rachelle Gallagher?

5 A. Yes, I was personally familiar with Rachelle Gallagher.

6 Q. And how did you know Rachelle Gallagher?

7 A. Rachelle Gallagher became known to me in 2012. At that time, she
8 was the lead, longest-serving clerk in the village court and as such,
9 when I came on as trustee, every single employee contract had expired
10 under the oversight of Mayor Hannon and Mayor Greg Deemie, who
11 was then appointed to fulfill Hannon's departure. Because of my prior
12 work history in negotiations, I was asked to negotiate every single
13 employee contract in the village on behalf of the village and in the
14 case of Rachelle, Rachelle had a personal services agreement that I
15 negotiated personally with her, successfully, that was-- I recall that it
16 went into place in July of 2013 and extended for a period of three
17 years. I believe it expired in 2016. So, I had a lot of personal
18 interaction with Rachelle in regard to her PSA contract, as well as the
19 performance of everyone under-- Well, essentially was her direct
20 oversight.

21 Q. PSA meaning, personal--

22 A. --Personal services agreement.

23 THE REFEREE: What is that?

24 THE WITNESS: It's like a private contract. We
25 had PSA agreements for the head of department of public

1219.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 works, we had it for our police chief, we had it for our fire
2 chief and we had it for the senior court clerk. The way it
3 was organized at the time I was trustee, there were only two
4 individuals working in the work on a full-time capacity, that
5 being Rachelle Gallagher and Cheryl Kvassay, but because
6 Cheryl had less time in place, she wasn't part of the
7 negotiation team. It was only Rachelle who represented it
8 and then everyone else was employed on a part-time basis
9 and was not covered under con-- personal contract. But the
10 personal contract was as much a protection for all the
11 individual rights and benefits and grievance process and
12 wage and salary expectations outside of a, you know, the
13 other aspects of CSEA.

14 THE REFEREE: Mm-hmm. Thank you.

15 THE WITNESS: You're welcome.

16 THE REFEREE: Sorry, counsel. Go ahead.

17 BY MR. DEROHANNESIAN:

18 Q. And in addition, did you know Rachelle because you would know all
19 the court clerks--

20 A. --Yes.

21 Q. --in your role as liaison to the--

22 A. --Yes.

23 Q. --village court?

24 A. Eileen, Maureen, Andy. A number of them.

25 Q. And in the course of working in the village court-- Excuse me. In the

1220.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 course of working for the Village of Johnson City, did you have
2 occasion to hear people express opinions about Rachelle Gallagher's
3 truthfulness and credibility?

4 A. Yes.

5 Q. And did those discussions continue right up until the time she left the
6 village court system?

7 A. Yes.

8 Q. And that was in 2014?

9 A. Yes.

10 Q. And did they continue after she left the village court?

11 A. I was not in a position of having that kind of knowledge or oversight--

12 Q. --Mm-hmm.

13 A. --extending beyond--

14 Q. --Mm-hmm.

15 A. --her going to family court, but I could also give you the same parallel
16 in her behavior and activity from 2012 through 2014, which would, to
17 me, suggest--

18 MS. CENCI: --Object--

19 A. --that her behavior's continued.

20 MS. CENCI: Objection.

21 MR. DEROHANNESIAN: Okay. Hold on. Hold
22 on.

23 THE REFEREE: Just a minute.

24 MS. CENCI: Objection.

25 THE REFEREE: We haven't heard what the

1221.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 behavior is--

2 MS. CENCI: --No. She--

3 THE REFEREE: --I think she's actually laying a
4 foundation.

5 MR. DEROHANNESIAN: Yeah.

6 MS. CENCI: --No. Your Honor, I'm sorry. If she's
7 a reputation witness, her testimony's confined to reputation
8 only, not personal observation.

9 MR. DEROHANNESIAN: Agreed.

10 THE REFEREE: I agree and I don't think we've had
11 the question yet. What I heard--

12 MS. CENCI: --Object to the answer. I move to
13 strike the answer. She's talking about her personal
14 observations.

15 THE REFEREE: I agree that she's talking about her
16 personal observations. I think this is an attempt at
17 foundation.

18 MR. DEROHANNESIAN: Yes.

19 THE REFEREE: I haven't heard the reputation
20 question yet.

21 MR. DEROHANNESIAN: Mm-hmm.

22 THE REFEREE: So, overruled. You renew it when
23 we're there. We're not there yet.

24 BY MR. DEROHANNESIAN:

25 Q. So, from the time you first met Rachelle Gallagher, I think you said

1222.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 2012?

2 A. Correct.

3 Q. Until today, have you heard others in the community, whether from
4 the village court system or outside the court system, discuss
5 Rachelle's-- Gallagher's reputation for truthfulness and honesty?

6 A. Yes, sir.

7 Q. And based on those discussions from 2012 until today, in the
8 community, do you have an opinion what the community's opinion is
9 of Rachelle Gallagher's reputation for truthfulness--

10 A. --Yes, sir. I have an opinion.

11 THE REFEREE: You have to--

12 THE WITNESS: --I'm sorry.

13 THE REFEREE: --You have to wait until the
14 question is asked.

15 THE WITNESS: I'm sorry.

16 THE REFEREE: That's all right. You wouldn't be
17 the first person to do that.

18 BY MR. DEROHANNESIAN:

19 Q. Based on your discussions with individuals in the community from the
20 time that you first met Rachelle Gallagher in 2012 until today, do you
21 have an opinion as to what the community believes as an opinion is
22 Rachelle Gallagher's reputation for truthfulness and honesty?

23 A. Yes, sir.

24 Q. And what is that opinion?

25 A. That opinion is that Rachelle Gallagher is not entirely a truthful

1223.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 person. Rachelle Gallagher would refl-- would deflect--

2 MS. CENCI: --Objection. If she's talk--

3 THE REFEREE: --Sustained.

4 MR. DEROHANNESIAN: Are you--

5 THE REFEREE: --It's sustained because I

6 understood that she was going to be giving specific

7 examples.

8 MR. DEROHANNESIAN: Okay. But the first part

9 was not specific. Okay. Yeah.

10 THE REFEREE: No, I'm not-- I'm not striking it. I

11 just-- I'm sustaining--

12 MR. DEROHANNESIAN: --Yeah.

13 THE REFEREE: --what I understand is an objection

14 that we've gone beyond--

15 MR. DEROHANNESIAN: --just the last part?

16 THE REFEREE: Yes.

17 BY MR. DEROHANNESIAN:

18 Q. So, you're allowed to tell-- If you could tell us what the opinion is

19 without giving us specific examples.

20 MS. CENCI: She answered the question, Your

21 Honor.

22 MR. DEROHANNESIAN: Look--

23 THE REFEREE: --You said, "not entirely a truthful

24 person."

25 MS. SCALISE: But she was in the midst of the--

1224.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Direct)

1 THE REFEREE: --Well, just a minute. If you have
2 another question, ask it.

3 BY MR. DEROHANNESIAN:

4 Q. Okay. So, you were saying that her reputation was she was not
5 entirely truthful, correct?

6 A. Correct.

7 Q. Can you continue what those opinions are, in the community,
8 concerning Rachelle Gallagher's reputation for truthfulness and
9 credibility?

10 A. The reputation in the community regarding Rachelle Gallagher's
11 truthfulness and credibility is that she's not credible, she's not truthful.
12 She will deflect and place blame upon others for actions that she,
13 herself, was responsible for or did not make. She was difficult to
14 work with. She was volatile.

15 MS. CENCI: Okay. We're going beyond reputation
16 for truthfulness.

17 THE REFEREE: I agree. I agree.

18 MR. DEROHANNESIAN: Yeah. As to the last
19 part.

20 MS. CENCI: Move to strike.

21 THE REFEREE: The last part about volatile is
22 stricken.

23 MR. DEROHANNESIAN: But the rest stands,
24 correct?

25 THE REFEREE: Yes.

1225.

(Marusich - Cross)

1 MS. CENCI: Are you also striking the "difficult to
2 work with," Your Honor? That has nothing to do with
3 reputation for truthfulness.

4 THE REFEREE: Correct. Stricken.

5 MS. CENCI: Thank you.

6 MR. DEROHANNESIAN: No further questions,
7 Your Honor.

8 THE REFEREE: Thank you. Ms. Cenci?

9 CROSS-EXAMINATION

10 BY MS. CENCI:

11 Q. Thank you. Ms. Marusich? Am I saying that--

12 A. Marusich.

13 Q. Okay. We've had a lot of difficult names. I'm Cathleen Cenci. I'm
14 serving as counsel for the Commission in this proceeding. We haven't
15 met, have we?

16 A. We've never met.

17 Q. Or spoken?

18 A. Never spoken.

19 Q. Are you here today pursuant to a subpoena?

20 A. No.

21 Q. You're testifying voluntarily, is that right?

22 A. I would testify voluntarily for anyone that I was engaged with in any
23 role or capacity as a village trustee.

24 Q. Okay. But you also have a 40-year friendship with Judge Miller's
25 sister, is that right?

1226.

(Marusich - Cross)

- 1 A. I would not define it as a--
- 2 THE REFEREE: --No, no. You have to--
- 3 THE WITNESS: I'm sorry. I'm so sorry.
- 4 THE REFEREE: No, that's okay. It's very natural.
- 5 THE WITNESS: I thought she was done.
- 6 MS. CENCI: Mm-hmm.
- 7 THE REFEREE: But you weren't answering the
- 8 question, you were-- you were going beyond it. She was--
- 9 You have a 40-year friendship with Judge Miller's sister,
- 10 don't you? Yes. Is that correct?
- 11 A. Can you define the degree of friendship?
- 12 Q. I don't know. I wrote that down that you said that on direct, but--
- 13 A. --I've known her for 40 years.
- 14 Q. Okay.
- 15 A. We do not--
- 16 Q. --Are you friends?
- 17 A. Friendly in a sense that we will say hello.
- 18 Q. Okay. And you socialize with her from time to time? Can you re--
- 19 A. --Rarely. I don't send Christmas cards. We do not call one another.
- 20 Q. Mm-hmm.
- 21 A. We are not Facebook friends.
- 22 Q. And you-- And you referred to Judge Miller as Ricky?
- 23 A. Ricky, only because that's how he was known as a child.
- 24 Q. He was the little brother, right?
- 25 A. He was-- He was a little brother, as I have a little brother.

1227.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Cross)

1 Q. Okay.

2 A. He was Mikey, he's Ricky.

3 Q. So, Rachelle Gallagher, to your knowledge, she was still employed by
4 the Johnson City Village Court through December of 2014, was she
5 not?

6 A. That's correct.

7 Q. Okay. She wasn't fired? She wasn't fired, was she? She left to go
8 work for the judge in family court?

9 A. She was not terminated. No, ma'am.

10 Q. Okay. Who are some of the people that you've talked to about her
11 reputation-- Excuse me. About the judge's reputation?

12 A. At work, the people that were working in the court at the time, Eileen
13 Edwards, or Eileen Michalak-Edwards. I always get them confused.
14 Cheryl Kvassay, Andy Rando, Maureen Aissa, and there may have
15 been a couple of others, because I recall for a period of time, it was
16 like a merry-go-round with people getting on and off the village court.

17 Q. Okay. But-- So, when were these conversations that you had with--
18 These were court employees? Village court employees?

19 A. Yes, ma'am.

20 Q. When-- About when did you talk to these people about--

21 A. --It was--

22 Q. --the judge's reputation?

23 A. There was never any specific conversation about the judge's
24 reputation or performance. It was more geared actually about their
25 interactions with Rachelle.

1228.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Cross)

1 Q. Okay. But you answered some questions for Mr. DerOhannesian
2 about your opinion of Judge Miller's reputation for truthfulness and
3 for other traits. Remember those questions?

4 A. Yes, ma'am.

5 Q. Okay. And so, you said that you based that on discussions with
6 people, right?

7 A. Correct.

8 Q. So, are you now saying you didn't really talk about his reputation with
9 them--

10 MR. DEROHANNESIAN: --Object to--

11 BY MS. CENCI:

12 Q. --I'm just trying to understand your testimony.

13 MR. DEROHANNESIAN: Object to the form of
14 that.

15 THE REFEREE: Overruled. Do you understand the
16 question?

17 THE WITNESS: Not quite, but I--

18 THE REFEREE: --Then let her-- Then she can
19 rephrase it.

20 A. Can you rephrase it for me, please?

21 Q. These individuals that you just named--

22 A. --Yes.

23 Q. --the court employees that you spoke to.

24 A. Yes.

25 Q. Are those the people you talked to about Judge Miller's reputation?

1229.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Cross)

- 1 A. At times, yes.
- 2 Q. Okay. And when was the last time you spoke to any of those people
- 3 about his reputation?
- 4 A. The last time I would have popped in, I will give you a specific
- 5 example.
- 6 Q. No. I just want to know like date-wise when you're talking about.
- 7 A. We had a particularly difficult time from March of 2014 through the
- 8 end of 2014.
- 9 Q. And so, you would have been discussing the judge's reputation for
- 10 truthfulness with these people at that time?
- 11 A. Yes.
- 12 Q. Okay. And now, who did you talk to about Rachelle Gallagher's
- 13 reputation?
- 14 A. At that time, specifically--
- 15 Q. --Same--
- 16 A. --I would have spoken to Mayor Greg Deemie--
- 17 Q. --Mayor--
- 18 A. --Trustee Bruce King, Trustee Luke Sloda, Trustee Richard Balles,
- 19 attorney Jeffrey Jacobs, Rachelle Gallagher, Cheryl Kvassay, Eileen
- 20 Edwards, Kim Cunningham--
- 21 Q. --Wait--
- 22 A. --Di--
- 23 Q. --You talked to Rachelle Gallagher about her own reputation?
- 24 MR. DEROHANNESIAN: Well, can she finish?
- 25 A. Not specifically her reputation, an incident that occurred. But it

1230.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Cross)

1 specifically addresses her reputation.

2 Q. Were you aware that Judge Miller was censured by the Commission
3 on Judicial Conduct in 2002?

4 A. That would have no bearing on--

5 THE REFEREE: --That was not the question.

6 A. I was not aware. No, ma'am.

7 Q. You did not know about that?

8 A. I did not know about it.

9 Q. Okay.

10 A. He was not village judge at that time, I don't believe.

11 Q. Do you know anything about the nature of the specific allegations by
12 the Commission on Judicial Conduct for which we are here at this
13 hearing?

14 A. I-- No.

15 Q. Just, if you could, yes or no. Just initially.

16 A. No.

17 Q. You don't. So, if I were to tell you that one of the allegations against
18 Judge Miller in this proceeding is that in 2017, in chambers in family
19 court, he took out his cell phone and displayed to his court attorney a
20 photograph depicting the torso of a nude female and stated that it was
21 a photograph of a court employee. Would that change your opinion of
22 his reputation?

23 MR. DEROHANNESIAN: Objection.

24 THE REFEREE: What's the basis of the objection?

25 MR. DEROHANNESIAN: Character witnesses

1231.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Cross)

1 should not be questioned about the pending charges which
2 are yet to be proven.

3 THE REFEREE: No, I think the question is-- Well,
4 it's an allegation-- I mean, these proceedings are
5 confidential, so I'm a little flummoxed about how to--

6 MS. CENCI: --I think it's-- I think it's proper cross-
7 examination of a character witness, Your Honor. Do you
8 need a cite?

9 THE REFEREE: No, I don't need a cite. I think if
10 you were just to ask the question without reference to the
11 complaint and just the event, and you'd get the same--
12 you'll get the same answer.

13 BY MS. CENCI:

14 Q. Have you heard that Judge Miller has been accused of making
15 sexually inappropriate comments in chambers?

16 MR. DEROHANNESIAN: Objection.

17 THE REFEREE: Overruled.

18 A. No.

19 Q. So, if you knew of a specific act of misconduct by the judge, as I
20 referenced, regarding him allegedly showing a photograph of a naked
21 woman in his chambers, would that change your opinion of his
22 reputation?

23 MR. DEROHANNESIAN: Objection.

24 THE REFEREE: Overruled.

25 A. My answer is I find it highly objectionable that that incident occurred

1232.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Cross)

1 based on the opinions of other people and based upon my knowledge
2 of this individual. It is completely inconsistent--

3 Q. --Which individual, ma'am?

4 A. My-- inconsistent with Judge Miller.

5 Q. Okay. But it doesn't change your opinion of his reputation or the way
6 he treats people--

7 A. --I don't know that this is fact, ma'am. I would not be able to form an
8 opinion until it was factually ascertained that this occurred. I don't
9 form the opinion necessarily on hearsay.

10 Q. Have you heard that Judge Miller has allegedly commented to his
11 court attorney that he thought it might be great having sex with
12 another court attorney while she was bent over a desk?

13 A. No, sir. No, ma'am.

14 MR. DEROHANNESIAN: Objection.

15 A. Ever.

16 MR. DEROHANNESIAN: Object.

17 THE REFEREE: Overruled.

18 BY MS. CENCI:

19 Q. Have you heard any reports or rumors that Judge Miller told his court
20 attorney that he wanted to fire his secretary and hire another one who
21 would satisfy his sexual needs?

22 MR. DEROHANNESIAN: Object to the form.

23 THE REFEREE: Overruled.

24 A. No.

25 Q. Have you heard any reports that Judge Miller told two of his chambers

1233.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Marusich - Cross)

1 staff that his sexual needs were not being met?

2 A. Never.

3 Q. Have you heard any reports that Judge Miller discussed sex in his
4 chambers with other individuals on the telephone?

5 A. Never.

6 Q. Have you ever heard any reports of Judge Miller telling his court staff
7 that he had cement boots in their shoe sizes and that they might be
8 found at the bottom of a river if they betrayed him?

9 A. Am I permitted to comment beyond the simple answer of yes or no?

10 THE REFEREE: Not now. She's just asking have
11 you ever heard--

12 THE WITNESS: --No.

13 THE REFEREE: --that allegation.

14 THE WITNESS: Never.

15 BY MS. CENCI:

16 Q. When was the last time you spoke with Judge Miller?

17 A. I recall that it might have been late summer of 2018.

18 Q. How did you come to talk to him on that date?

19 A. He's a neighbor of my sister who lives up the street and Judge Miller
20 is a very friendly guy and he would wave and say, "Hello."

21 Q. Did you have any other conversation with him at that time?

22 A. Not that I recall, in any depth.

23 Q. Prior to that date, did you have occasion to speak with Judge Miller?

24 A. I see Judge Miller on occasion. I wouldn't say frequently, but maybe
25 three times a year.

1234.

(Marusich - Cross)

1 Q. Has he spoken to you at all or have you spoken to him at all about any
2 pending misconduct allegations against him?

3 A. We did not specifically speak of any pending misconduct
4 conversations.

5 Q. Did you-- Were you aware of news reports about his having been
6 removed from his position in family court?

7 A. I am aware that he was reassigned to a position when it occurred.
8 Yes.

9 Q. Did you talk to him about that at any point?

10 A. I contacted him to just say, "Judge, how you doing?"

11 Q. Any further conversation?

12 A. Not in any specificity or any great length.

13 Q. Mm-hmm. And did you ask him what it was about?

14 A. No.

15 Q. Did he offer any information to you?

16 A. No.

17 Q. And who was it that asked you to appear here today?

18 A. Attorney Paul.

19 MR. DEROHANNESIAN: Paul D.

20 THE REFEREE: Paul D?

21 A. Paul D.

22 Q. All right. Thank you.

23 MR. DEROHANNESIAN: Nothing on redirect,
24 Your Honor.

25 THE REFEREE: No? Thank you for coming. I will

1235.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 let you know that these proceedings are confidential--

2 THE WITNESS: --I understand.

3 THE REFEREE: --and that we would appreciate if
4 you would not say anything about it--

5 THE WITNESS: --I will not.

6 THE REFEREE: --and have a good afternoon and
7 stay warm--

8 THE WITNESS: --Thank you. Referee Robert, nice
9 to meet you. Thank you.

10 MR. DEROHANNESIAN: Thank you. Can we just
11 take a five-minute break and then I'll let--

12 THE REFEREE: --Yes. Let's go off the record.

13 (OFF THE RECORD)

14 THE REFEREE: Counsel for the Commission is
15 present, counsel for the Respondent is present and the
16 Respondent is present. Ms. Cenci, did you have a question
17 about one of the two remaining witnesses--

18 MS. CENCI: --I did. Yes. With respect to Garo
19 Kachadourian, I would ask for an offer of proof.

20 THE REFEREE: That's fair. Counsel, can you tell
21 us what you expect Mr. Kachadourian to say?

22 MR. DEROHANNESIAN: On cross-examination of
23 Ms. Gallagher and Mr. Kachadourian, I asked both about
24 various conversations they had with Mr. Kachadourian. I
25 asked Rachelle Gallagher whether-- Excuse me. I asked

1236.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 Mr. Kachadourian whether he had ever spoken to Garo
2 Kachadourian about his job and getting a job for Rachelle,
3 and by "his job," I meant what if any conversations about
4 getting jobs for him and Rachelle with Judge Miller. I
5 asked Mr. Kachadourian about a discussion he had with Mr.
6 Garo Kachadourian about a trip to Albany where they met
7 Sen. Akshar and that Mr. Kachadourian told Mr. Garo
8 Kachadourian that there were--

9 THE REFEREE: --Mark told?

10 MR. DEROHANNESIAN: Garo.

11 THE REFEREE: Garo?

12 MR. DEROHANNESIAN: About the nature of the
13 girls that he saw in Albany and the physical description of
14 those girls. Mr. Kachadourian denied that when I asked
15 him that he had a conversation about the visit to Albany
16 with Sen. Akshar that I asked Mark Kachadourian if he had
17 made comments to his uncle Garo about Court Clerk Debbi
18 Singer and her looks. He denied that. And a phone call in
19 the summer of 2017, I inquired of Rachelle Gallagher
20 concerning whether or not she spoke to Mr. Kachadourian
21 and discussed this matter involving Judge Miller and the
22 content of that conversation which was-- Basically, he was
23 trying to find out where she was, which I think she denied
24 having any conversation with him in the summer of 2017,
25 discussing allegations, not that there was a substantive

1237.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 allegation, it was basically that she was very light-hearted
2 and jovial about the investigation and termination of or
3 reassignment of Judge Miller. But she denied having any
4 conversation.

5 THE REFEREE: Anything further?

6 MR. DEROHANNESIAN: Well, that's it in terms
7 of the-- Let me just check. That's it in terms of the oral
8 statements that I had. There was one other that I thought
9 was very important, but you did not let me get into it, and
10 I'll just say, this is what the proof would be. I think
11 because you cut me off, I can't--

12 THE REFEREE: --You know what? I would like to
13 hear what the proof would be, because Ms. Cenci, your
14 position I assume is that this would be collateral?

15 MS. CENCI: Yes, Your Honor.

16 THE REFEREE: I am inclined to agree. What
17 else--

18 MR. DEROHANNESIAN: --Well, the other thing
19 that I just want to put on the record, I had asked Ms.
20 Gallagher if she had contacted Mr. Kachadourian to post
21 derogatory information about a fellow court clerk for
22 purposes of advancing her career. Now, I was not allowed
23 to ask her that question, which means there is no statement
24 for me to rebut, so as part of my offer of proof of what I
25 should have been allowed to ask her, that is the statement

1238.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 that I was trying to elicit and my basis was Garo
2 Kachadourian. I am not going to ask him about that now,
3 because I was not permitted to get an answer. On these
4 other topics, I was, and in particular, the comments of Mark
5 Kachadourian to his uncle are not only inconsistent in terms
6 of his testimony about the conversation, they belie his
7 position that he is so shocked that he can't talk about
8 matters of a sexual nature, that he was so hurt and that he's
9 so traumatized by hearing words about S-E-X or B-R-E-A-
10 S-T, that he decompensates and can't handle it, when he's
11 in these conversations about the girls in Albany, it's about
12 S-E-X and the hot girls. That's what he's talking about, so
13 it puts the lie to this idea that he's Snow White and can't--
14 doesn't have any talk and can't handle talk of any sexual
15 matter.

16 THE REFEREE: So, having heard the rest of the
17 proposed offer of proof, is your position still that this would
18 be collateral?

19 MS. CENCI: Absolutely, Your Honor.

20 THE REFEREE: I agree and if that's it, then I--
21 Obviously, you have an exception to it. You put that offer
22 of proof on the record. I really don't think that that's
23 appropriate and if that's-- if that's all that he's being called
24 to testify about, I think we should pick another witness.
25 And part of my reason for saying it is because I don't think

(Hon. Richard H. Miller, II)

1 those things will figure in the charges or will figure in the
2 proposed findings of fact and conclusions of law. As to the
3 credibility issue, I think you have explored it fully on cross-
4 examination and I don't think this is going to add to it.

5 MR. DEROHANNESIAN: I just worry what
6 someone else, getting past the referee stage, says, "Oh, my
7 God. He was so hurt and traumatized." And you know--

8 THE REFEREE: --I don't think that's possible.

9 MS. CENCI: I don't think that's what he testified
10 anyway, Your Honor.

11 THE REFEREE: No, I agree. I agree. But I don't
12 think that's possible and this one, I'm pretty sure I'm right.
13 In fact, I'm really sure I'm right.

14 MR. DEROHANNESIAN: If I could have a
15 moment?

16 THE REFEREE: Yes. Thank you.

17 MR. DEROHANNESIAN: Okay. Thank you.

18 MS. SCALISE: Could we make an exception to
19 your ruling?

20 THE REFEREE: You have an exception.

21 MR. DEROHANNESIAN: Well-- Thank you. So,
22 I'll call Robin Dean, who I would anticipate being my last
23 witness today, unless I get a--

24 THE REFEREE: --That's D-E-A-N?

25 MR. DEROHANNESIAN: Yep. Unless I come up

1240.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 with another idea--

2 THE REFEREE: --All right. And we'll give you
3 time for that, as well.

4 COURT OFFICER: She just went in the ladies'
5 room.

6 THE REFEREE: Off the record. Unbelievable.

7 (OFF THE RECORD)

8 THE REFEREE: Let the record reflect that counsel
9 for the Commission is present, counsel for Respondent is
10 present and Respondent is present. Ms. Dean, could you
11 just raise your right hand, please?

12 MS. DEAN: Mm-hmm. Mm-hmm.

13 THE REFEREE: Do you swear or affirm that the
14 testimony you are about to give is the truth, the whole truth
15 and nothing but the truth?

16 MS. DEAN: Yes, I do.

17 ROBIN DEAN,

18 having been duly sworn, was examined and testified as follows:

19 THE REFEREE: Perfect. Please have a seat. And
20 my name is Robert Barrer. I've been appointed by the
21 Commission on Judicial Conduct to be the special Referee
22 for this proceeding.

23 THE WITNESS: Mm-hmm.

24 THE REFEREE: You're going to be asked some
25 questions by the attorney first for Judge Miller, and then by

1241.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 the attorney for the Commission. It's important that when
2 you testify, you wait until the entire question is asked before
3 you answer so you're not talking against somebody. If
4 there's an objection, please wait, and I'll tell you when you
5 can answer. And it's very important, because we're
6 recording it, that your answers be verbal. A shake of the
7 head will come out as a blank page, so we don't want that.

8 THE WITNESS: Okay.

9 THE REFEREE: Is that fair?

10 THE WITNESS: Yeah. Fair.

11 THE REFEREE: Perfect. Thank you very much.

12 Counsel?

13 DIRECT EXAMINATION

14 BY MR. DEROHANNESIAN:

15 Q. Tell us your name, please?

16 A. Robin Dean.

17 Q. And what is your occupation?

18 A. I'm an accountant at Sal Peretore CPA's firm.

19 Q. And what is your background in training as an accountant?

20 A. I've been there for 29 years. Started off at bookkeeping and then
21 became like an accountant.

22 Q. Did you get some form of training or education to become an
23 accountant?

24 A. Yep. Education and continuing education every year for taxes and
25 law.

1242.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 Q. And what degree do you have?

2 A. Accounting.

3 Q. Okay. And when did you get your accounting degree?

4 A. Well, I have more experience in-- but the-- I le-- I don't have a full
5 accounting degree, but I've been with him doing aud-- you know,
6 underneath my CPA. And he--

7 Q. --And the CPA is who?

8 A. Sal Peretore. And he rever-- he reviews everything I do and signs off
9 on it.

10 THE REFEREE: How do you spell that last name?

11 THE WITNESS: P-E-R-E-T-O-R-E.

12 THE REFEREE: And he's a CPA?

13 THE WITNESS: Yeah.

14 THE REFEREE: Is that here in Binghamton?

15 THE WITNESS: Endicott.

16 THE REFEREE: Endicott. Thank you.

17 THE WITNESS: Yep.

18 BY MR. DEROHANNESIAN:

19 Q. Tell me how that works in the Peretore accounting firm in terms of
20 what you do and what he does.

21 A. Mm-hmm. I prep--

22 Q. --Can you explain that process?

23 A. Okay. I prepare and do the tax returns and business returns, financial
24 statements, et cetera, and he signs on-- It goes through a process. He
25 reviews everything and signs off on it.

1243.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

- 1 Q. Which one out of the two of you would have more contact with the
2 client in terms of getting information and providing direct contact or
3 care for the client?
- 4 A. He has a set of clients that he deals with only, and I have you know,
5 certain clients that I deal with the majority of the time. We have like
6 our set clients, but he-- You know, we know both clients, it's just I
7 have a set that I've dealt with, so he continues and gives me that-- the
8 same clients every year, so I'm more familiar than he is.
- 9 Q. Are you familiar with Richard-- Judge Richard Miller as a client?
- 10 A. Yes. Mm-hmm.
- 11 Q. And how long have you known Richard Miller as a client of the
12 Peretore firm?
- 13 A. For almost about 20 years.
- 14 Q. And for how many of those 20 years have you, Ms. Dean, worked on
15 Mr.-- Judge Miller's tax returns?
- 16 A. Probably about 8 to 10 of those years, half of those years that I fully
17 did prepare his returns.
- 18 Q. And do you work on the ret-- tax returns for anyone else in his
19 family?
- 20 A. No. Well, him and his wife.
- 21 Q. Yes.
- 22 A. And yeah. That's it.
- 23 Q. Okay. And prior to 2015, do you know if Judge Miller and his wife
24 were always filing joint returns? If you know.
- 25 A. Prior? Yes.

1244.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

- 1 Q. Yeah.
- 2 A. Always joint.
- 3 Q. So, you've had about 10 years of experience working with Judge
- 4 Miller?
- 5 A. Yes. Correct.
- 6 Q. And you get information from a client to assist you in preparing
- 7 returns, correct?
- 8 A. Correct.
- 9 Q. Are there various ways that clients can communicate and provide you
- 10 information?
- 11 A. Yes. They can--
- 12 Q. --What are the-- some of the different ways?
- 13 A. Email information, fax or drop informat-- paper information off.
- 14 Q. And how about the data, are there different ways of providing that?
- 15 A. The dat--
- 16 Q. --Like software programs?
- 17 A. Oh, yeah. Some people are on a comput-- You know, they have an
- 18 Excel printout, they summarize, computer, or they just manually write
- 19 their expenses on a sheet.
- 20 Q. Do some people like submit it in some software that might be like
- 21 QuickBooks?
- 22 A. Correct. QuickBooks, yeah. Peachtree. There's several different.
- 23 Q. And there's a variety of ways that you can get the information?
- 24 A. Correct.
- 25 Q. And can you put in context, first of all, did either Richard Miller or

1245.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 Judge Miller, when you worked with him, email you information?

2 A. I never got emails from Rick.

3 Q. Did you ever email Rick?

4 A. No.

5 Q. Okay. So, email was not one way of communicating--

6 A. --No.

7 Q. --with Judge Miller?

8 A. No.

9 Q. How about in terms of the data, how did that come to you?

10 A. He would just meet with me and it would be on a piece of paper and
11 we'd make copies. He would just man-- He would write it out on a
12 paper.

13 Q. Any electronically prepared--

14 A. --No.

15 Q. --information that he would give you?

16 A. No computer, electronic. No.

17 Q. Any type of software that compiled the information?

18 A. No.

19 Q. How does that rate or fare in the scheme of sophistication of the
20 clients you work with?

21 MS. CENCI: Objection.

22 THE REFEREE: Sustained as to form.

23 BY MR. DEROHANNESIAN:

24 Q. How helpful to you is having information submitted to you the way
25 that Judge Miller did?

1246.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 MS. CENCI: Objection. Irrelevant.

2 THE REFEREE: No, I'll allow it. Overruled.

3 A. Yeah. Well, some of our clients are, you know, a little old school.
4 They-- You know, not up to date with computer software, so they
5 still-- They have their own ways and they, you know, give it to us the
6 way they have for years.

7 Q. And is one way easier for you than another way?

8 MS. CENCI: Object to what's easy for her, Your
9 Honor.

10 THE REFEREE: Yeah, I agree. Sustained.

11 BY MR. DEROHANNESIAN:

12 Q. What are some of the issues you had in collecting information with
13 Judge Miller in preparing his returns?

14 A. Not issues--

15 MS. CENCI: --Object that there were any-- She
16 hasn't said there were any issues.

17 THE REFEREE: Yeah, I-- Sustained.

18 BY MR. DEROHANNESIAN:

19 Q. Did you have any issues in terms of getting information or the quality
20 of information that you would get from Judge Miller?

21 MS. CENCI: Objection. Irrelevant.

22 THE REFEREE: Overruled. You can answer.

23 A. So, not any issues, it's-- I just-- A lot of the information after we sit
24 down initially, there's always extra items that he'll still have to get,
25 you know, pertaining to rental properties, extra expenses that are just

1247.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 missed, and so there's a lot of things that later on, we still need to
2 collect further information.

3 Q. That was an ongoing issues?

4 A. Yes.

5 Q. Over many years?

6 A. Many year-- Always the same, which is common.

7 Q. And do you know how many-- In the period of 2014, '15, '16, and
8 '17, how many properties Judge Miller was involved with?

9 A. From my knowledge, three of them.

10 Q. Okay. Apart from his personal residence?

11 A. Correct.

12 Q. And were there any particular issues in 2016 or '17 when it came to
13 filing returns for the previous year?

14 MS. CENCI: Objection. Too broad, Your Honor.

15 THE REFEREE: Sustained. Let's break it up.

16 BY MR. DEROHANNESIAN:

17 Q. Did you provide specific advice to Mr. Miller, then Judge Miller,
18 about whether he should file returns on April 15th in the years 2016 or
19 '17? Do you understand my question?

20 A. Mm-hmm. Yes.

21 Q. You do understand it? Okay.

22 A. Yes. Just-- We-- I might have advised to get the information as
23 much as we can, so that we can file in time, pertaining to his wife,
24 because she-- They have to make estimated taxes, so it's best to get
25 most of the information in. If worst come to-- If there's minute

1248.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 information that we get later on, we could amend it if we had to. But,
2 you know-- Or do an extension.

3 Q. Well, let me ask you some questions about what you just said. What's
4 this about estimated taxes? Who's-- Who was paying estimated
5 taxes?

6 A. I mean, they both jointly, but it does refer to his wife that has income
7 from her bus-- from, you know, or a K-1 that she gets and so she has
8 to make estimated taxes and the first one is April 15th. So that's why
9 she's usually reluctant to do an extension so that she can do her first
10 estimated taxes on time in a more accurate figure on time.

11 Q. So was this an issue over a couple of years?

12 A. Yeah. It was an ongoing issue to get it, because it was always, you
13 know, her stuff was more easier to get because she has a K-1, where
14 Rick had to, you know, add up manually the rentals and, you know,
15 get a lot of-- more information from when-- from his own expenses.
16 So, it always took a little bit more time for him to get us the
17 information.

18 Q. So how did you resolve this issue-- conflict between what Judge
19 Miller's wife wanted and what Judge Miller wanted?

20 A. So in the past, they did it jointly, but currently for 2017, was the first
21 year we did filing separately.

22 Q. And then for the years 2015 and '16, how-- what advice did you give
23 come April?

24 A. Come April, you know, we try to get most, you know, everything in
25 and if there was just one-- you know, something that we didn't-- For

1249.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 instance, like an expense here and there, we could always amend it
2 later, because the main thing is get all of the income in and pay the
3 taxes that are due on time.

4 Q. So, did you-- Are you saying that an actual return was filed in April
5 of 2015 and '16?

6 A. Correct.

7 Q. But couldn't you just file a request for an extension?

8 A. We could.

9 Q. Why did you need to file a whole return?

10 A. Well, no. The return that we filed was completed as far as we knew.

11 Q. Mm-hmm.

12 A. It was-- Yeah. I mean, it was completed. It was just the very-- We
13 didn't need to do an extension at that time.

14 THE REFEREE: Excuse me. Were '15 and '16
15 joint returns?

16 THE WITNESS: Yes.

17 THE REFEREE: And '17 was a married filing
18 separately?

19 THE WITNESS: Mm-hmm. Mm-hmm.

20 THE REFEREE: Yes?

21 THE WITNESS: Yes. Correct. Sorry.

22 THE REFEREE: Thank you.

23 BY MR. DEROHANNESIAN:

24 Q. And how does filing separately help address the issue between Judge
25 Miller's wife and Judge Miller?

1250.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 A. It just-- It helps her separate her income and she can do her estimated
2 taxes on time and she can get her information on time.

3 Q. Now, bringing your attention to 2017, did Judge Miller come to you at
4 some point to address income that he had discovered which he had
5 received in 2015?

6 A. Okay. When would-- did you say that? I'm sorry.

7 Q. Okay. In 2017--

8 A. --'17--

9 Q. --did Judge Miller come to you to address issues concerning income
10 he had received in 2015, which he realized was not received in 2016?

11 A. Correct.

12 MS. CENCI: What-- It's-- I'm sorry. I didn't
13 understand that question.

14 THE REFEREE: I did not either.

15 MR. DEROHANNESIAN: Yep. Yep. Okay.

16 THE REFEREE: Try it one more time.

17 BY MR. DEROHANNESIAN:

18 Q. Let me break it down. At some point, did Judge Miller-- Judge Miller
19 was looking at income received in 2016?

20 A. Correct.

21 Q. And realized it was not income in 2016?

22 A. Yes.

23 Q. It was from a previous year, 2015?

24 A. Correct.

25 Q. And he approached you about wanting to--

1251.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 MS. CENCI: --Yeah, and now we're leading.

2 THE REFEREE: Yes. I agree.

3 MR. DEROHANNESIAN: Okay.

4 THE REFEREE: Sustained.

5 BY MR. DEROHANNESIAN:

6 Q. And what did Judge Miller want to do?

7 A. So, he just came to me with a concern and I said, "Don't worry about
8 it. We can amend it and you just would pay the taxes owed on the
9 income."

10 Q. Now, had there also been questions or concerns expressed to you
11 about his rental properties?

12 A. Yeah. Correct. While he was going through everything, he-- you
13 know, there was also some repairs that he had done on some property
14 and some expenses so that it was more thorough and we recorded
15 those expenses along with doing the amended.

16 Q. And in the course of looking at the 2015 return, did you also review
17 the 2016 return for expenses on the rental properties?

18 A. Correct.

19 Q. Nothing to do with income?

20 A. No. Nope.

21 Q. And how soon after April 15 of 2017 would you say you had this
22 discussion with Judge Miller?

23 A. It was probably not too much longer after we filed, so like a month
24 and a half.

25 Q. Okay.

1252.

(Dean - Direct)

1 A. You know, it wasn't too much longer.

2 Q. About a month and a half after April 15 of 2017?

3 A. Correct.

4 Q. So did you try to gather information to answer the questions of what
5 inc-- additional income there was, if any?

6 A. Yes. He went back and rectified on a sheet and we totaled it and ...

7 Q. Okay. So you're-- But we're dealing with two years, right?

8 A. Right.

9 Q. I'm going to start with the second year, 2016. Exhibit 9G.

10 THE REFEREE: G, as in Golf?

11 MR. DEROHANNESIAN: Golf.

12 BY MR. DEROHANNESIAN:

13 Q. If you look at Exhibit 9G. Give yourself a chance to orient yourself.

14 A. Yeah, this was the amended return for--

15 Q. --For which year?

16 A. --2016, and it really had no basis on income, it was just additional
17 expenses we had to change on his rental properties. I don't have the
18 depreciation in front of me, but I believe he did some roof repairs. It
19 was just some--

20 Q. --Is it fair to say that the cover page of Exhibit G--

21 THE REFEREE: 9G.

22 BY MR. DEROHANNESIAN:

23 Q. 9G.

24 A. Mm-hmm.

25 Q. Shows the difference between the original amount and corrected

1253.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

- 1 amount?
- 2 A. Correct.
- 3 Q. So, there's 13 lines that show original amount and correct amount,
- 4 correct?
- 5 A. Correct.
- 6 Q. So, number-- line 1, adjusted gross income, there was no change?
- 7 A. Correct.
- 8 Q. The itemized deductions, did that change?
- 9 A. That changed, but then it came back out.
- 10 Q. Pardon?
- 11 A. Yes. That-- Yeah, correct.
- 12 Q. What was the change?
- 13 A. The itemized was in some of the property taxes that was fo-- was--
- 14 instead of on the schedule A, his itemized was over on his property tax
- 15 on his rentals. Just a misclassifications.
- 16 Q. And--
- 17 A. --But the net effect was zero.
- 18 Q. When you say the net effect was zero, after you did all the
- 19 computations for the changes to his 2016 return with respect--
- 20 A. --Mm-hmm.
- 21 Q. --to the properties, what if any change in federal tax liability was
- 22 there?
- 23 A. None. Zero for the liability.
- 24 Q. And again, the top page is a summary. Is that correct?
- 25 A. Correct.

1254.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 Q. And is there a-- On the second page where it asks for an explanation
2 on this return, there was no explanation?

3 A. Yeah. Correct. I'm just seeing that now. That might have been a
4 software glitch. It looked like it was going to be typed original, and
5 nothing came out, but--

6 Q. --Mm-hmm.

7 A. But yeah, so it was just--

8 Q. --So, if you were to fill that in, what would you say the reason was
9 for--

10 A. --Just the--

11 Q. --the amended return then?

12 A. Just the original--

13 MS. CENCI: --Well, but--

14 A. --return was filed with omitting some renal property expenses.

15 Q. Okay. Even though it had no effect on tax liability?

16 A. Correct.

17 Q. Now, among the issues in putting this information together, did Judge
18 Miller contact you and say some records had been taken from him?

19 MS. CENCI: Objection. Leading.

20 THE REFEREE: Sustained.

21

22 BY MR. DEROHANNESIAN:

23 Q. Do you recall any of the issues Judge Miller had in collecting
24 information to facilitate completion of the 2015 and 2016 returns?

25 MS. CENCI: Are we talking about amended returns

1255.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 now, counsel? What are we--

2 MR. DEROHANNESIAN: --Amended returns.

3 MS. CENCI: And can we have a timeframe? I--

4 What is this--

5 BY MR. DEROHANNESIAN:

6 Q. --Well, during the years, tax years 2015, and '16--

7 A. --Mm-hmm.

8 Q. --into the preparation of those tax years in 2017, were you aware of
9 issues Judge Miller had in collecting information or documents?

10 MS. CENCI: These are on the amended returns
11 now? Is that what you're talking about?

12 BY MR. DEROHANNESIAN:

13 Q. In any-- First in any form?

14 A. Yes. Yes. At some point, he did come to me and say he couldn't--
15 He didn't have his records available.

16 Q. Did he tell you where those records were?

17 A. I mean, not specifically, he just said they were taken from him and he
18 later-- he-- not specifically, no.

19 Q. Okay. But at some point, you were able to get--

20 A. --Yes.

21 Q. --the 2016 return done?

22 A. Yes.

23 MS. CENCI: Again, you're talking about the
24 original return or the amended--

25 MR. DEROHANNESIAN: --You can cross-

1256.

(Dean - Direct)

1 examine.

2 MS. CENCI: No, I think for the record, it should be
3 clear. Are you talking about the original 2016 return or the
4 amended return?

5 BY MR. DEROHANNESIAN:

6 Q. The issue with the collection of documents--

7 A. --The amended.

8 Q. --was involving the preparation of which returns?

9 A. '16's. Well, the amended ones.

10 Q. The amended returns?

11 A. Yes.

12 MS. CENCI: Thank you.

13 BY MR. DEROHANNESIAN:

14 Q. Now, let's look at the amended federal return for 2015.

15 THE REFEREE: What exhibit is that? Counsel, she
16 has two--

17 MR. DEROHANNESIAN: --Yep.

18 THE REFEREE: --two records up there.

19 THE WITNESS: No. No. These are just '16s.
20 Both of them are. One's original.

21 MR. DEROHANNESIAN: No, I know. I'm
22 looking and I think it's--

23 MS. CENCI: --Are you showing her the original
24 exhibits in evidence, counsel?

25 MS. SCALISE: Yeah.

1257.

(Dean - Direct)

1 MR. DEROHANNESIAN: Yes.

2 MS. CENCI: Okay. Thank you.

3 THE WITNESS: Mm-hmm.

4 BY MR. DEROHANNESIAN:

5 Q. It's going to be 9B. This is the amended return for 2015?

6 A. Correct.

7 Q. And in 2015, when you amended the return--

8 A. --Mm-hmm.

9 Q. --there was a change in income, correct?

10 A. Correct.

11 Q. And do you know what line that was reflected on?

12 A. On the 1040, on line 21, for other income.

13 Q. And that was approximately how much?

14 A. \$27,388.

15 Q. And do you know what the source of that other income was?

16 A. That was other income received that year for services.

17 Q. When you say, "services," as in his professional services as an
18 attorney?

19 A. Correct.

20 Q. And he had come to you sometime shortly after April 15 of 2017 in
21 that-- I think you said month and a half period saying he realized that
22 it shouldn't be included on the '16, it should be on the '15 return?

23 A. Yeah. Let me change that. He actually received it in '16, but on
24 accrual, he-- the services were done in '15, so I said we should record
25 it, even though he received it in '16.

1258.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 Q. Okay. In addition, was that the bulk of the additional income?

2 A. Yes. That was all the other--

3 Q. --Was there any additional income from the rental properties?

4 A. The rentals we also changed. Again, with just additional expenses,
5 going through his records, you know, adding up repairs that he, you
6 know-- get more accurate on all his rentals and make sure they're
7 accurate.

8 Q. And did that result in any additional income from his properties?

9 A. Not income. No.

10 Q. Because the losses--

11 MS. CENCI: --Objection. Counsel is leading the
12 witness.

13 BY MR. DEROHANNESIAN:

14 Q. Why was there no--

15 THE REFEREE: --Sustained.

16 BY MR. DEROHANNESIAN:

17 Q. Was there any net income from his rental properties in 2015 or '16?

18 A. No. Two of his rental properties had losses. One had a small income,
19 but the net of all three of them are net-- are losses.

20 Q. Is that how you view it when you look at the income?

21 A. You view them-- They all flow through--

22 Q. --Together?

23 A. --Right. Together.

24 Q. So, even if one property has a net profit--

25 A. --Mm-hmm.

1259.

(Dean - Direct)

1 Q. --if you have two properties with losses that are greater than that,
2 you're lose-- it's a net loss?

3 A. Yes. It's all combined on a schedule E, so the-- Mm-hmm.

4 Q. So, even after you went through all of the changes and numbers for
5 the rental properties that did not have any material effect in '15 or '16
6 on his tax liability?

7 A. None. No.

8 Q. Is that fair to say?

9 A. Yes, that's fair to say.

10 Q. And it's fair to say that the only net income change was the result of
11 this income from professional services?

12 A. Correct.

13 Q. Do you know when you filed the amended returns for 2015 and '16?

14 A. We filed them not that long after they-- Like I said, about them-- a
15 month and a half after we filed his '17, so about early June.

16 Q. Does it show on the returns when they were filed?

17 A. No. Unfortunately, it doesn't, because they're amended, they had to
18 be paper mailed in.

19 Q. If I could-- If-- I'm going to ask permission to ask a leading question.

20 MS. CENCI: Why ask now?

21 THE REFEREE: Well, just a minute. Let's-- We
22 may not get there. Try without leading.

23 BY MR. DEROHANNESIAN:

24 Q. Do you recall whether or not both amended returns were filed at the
25 same time?

1260.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

- 1 A. They were prepared in-- Yes. At the same time.
- 2 Q. Okay.
- 3 A. And then picked up at the same time, so I'm sure they were mailed in
- 4 at the same time.
- 5 Q. And do you remember the year they were filed?
- 6 A. 2017.
- 7 Q. Okay. So, both amended returns for '15 and '16 were filed in 2017?
- 8 A. Correct.
- 9 Q. Correct? If I could have a moment? In the course of preparing Judge
- 10 Miller's tax returns, was there a discussion concerning monies and
- 11 weddings?
- 12 A. He-- I--
- 13 Q. --First, was there a discussion?
- 14 A. There was a discussion in the past--
- 15 Q. --That's my first question.
- 16 A. I'm not quite sure when. Just in past years. As far as if you--
- 17 Q. --Could it have been before 2017 and '16?
- 18 A. Yes. It could have. Yes.
- 19 Q. Okay. And did he bring to your attention that he performed
- 20 weddings?
- 21 A. Yes.
- 22 Q. Did he tell you what happened to the money when he performed
- 23 weddings as a judge?
- 24 A. Yes. Typically, he would just-- He would turn-- Give it back to the
- 25 church as a donation and it was not recorded as a deduction or as

1261.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Direct)

1 income. It was just a wash, and I said, "That's fine."

2 Q. Well, you said a lot there. Let's talk about that. You said it wasn't
3 recorded as income or a deduction?

4 A. As far as on the taxes. He might have, you know, or the church might
5 have recorded it.

6 Q. Okay. Well, was that your advice?

7 A. It was just a statement, just saying, you know, if he gave it as a
8 donation like he said he did, that was fine--

9 Q. --When you say a donation though--

10 A. --because we're not using it as a deduction.

11 Q. Okay. Explain that.

12 A. He--

13 Q. --Was there-- Did he take a deduction for that money?

14 A. No.

15 Q. There was no charitable deduction?

16 A. No.

17 Q. Is it your understanding the money went directly--

18 A. --Directly.

19 Q. --to the church?

20 A. Correct.

21 Q. Never in his pocket?

22 A. Not even in his hand. Right.

23 THE REFEREE: Wait a minute. One at a time.

24 THE WITNESS: I'm sorry.

25 THE REFEREE: That's all right. Very common.

1262.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Cross)

1 A. Yeah. It was never entered. It was just passed to the church. He
2 didn't accept the money.

3 Q. And is that your definition of a wash?

4 A. That was my definition, is a wash.

5 Q. Okay. On your advice, was that ever included as income?

6 A. No.

7 Q. And it was never reported as income, correct?

8 A. Correct.

9 Q. Because in your professional opinion, it wasn't taken by Judge Miller
10 into his pocket, correct?

11 A. Correct.

12 Q. He just delivered it like the postal service?

13 A. Right.

14 Q. Just to make absolutely certain, at no time did Judge Miller take any
15 type of charitable deduction for any of those sums either, correct?

16 A. Correct.

17 Q. No further questions.

18 THE REFEREE: Ms. Cenci?

19 CROSS-EXAMINATION

20 BY MS. CENCI:

21 Q. Hi, Ms. Dean.

22 A. Hi.

23 Q. I'm Cathleen Cenci, counsel for the Commission in this proceeding.
24 First of all, did you bring any records with you today?

25 A. Well, I had a file, but they had just copies in case I wasn't furnished

1263.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Cross)

1 any copies to look-- of the tax returns.

2 Q. Okay. You didn't bring the file with you though, did you?

3 A. No.

4 Q. Everything you've looked at today has been an exhibit--

5 A. --Was the same that I brought.

6 Q. --shown to you?

7 A. Mm-hmm.

8 Q. Okay.

9 THE REFEREE: Yes?

10 A. Yes. Correct.

11 Q. So, what is your degree exactly?

12 A. Well, I'm just-- I work under Sal. I didn't complete my-- finish my
13 accountant, but I'm listed as an accountant under the CPA firm.

14 Q. Mm-hmm. Is it fair to say that if a client and more specifically, Judge
15 Miller, did not provide to you all of the income he had received, you
16 would have no way of reporting that or preparing that on his tax
17 return?

18 A. Correct. We would have no way of knowing.

19 Q. Right. So, can-- I know you said you don't have the file, but can you
20 tell us when the original 2015 returns were filed? Did you-- Did you
21 file them from your office or how--

22 A. --Yeah, we would e-file them.

23 Q. You would e-file them?

24 A. Mm-hmm.

25 Q. So, can you tell us when that was done?

1264.

(Dean - Cross)

- 1 A. They were all done each year closely to April. Like, we did do them
2 on time.
- 3 Q. Mm-hmm.
- 4 A. The original returns were done.
- 5 Q. Okay. And then with respect-- Is that the same for the 2016?
- 6 A. '16. Mm-hmm.
- 7 Q. You e-filed those?
- 8 A. Correct.
- 9 Q. In or about-- before April--
- 10 A. --Right.
- 11 Q. --15, or whatever it was that year?
- 12 A. Sometimes, the week of. They were always pretty close.
- 13 Q. Now, with respect to the amended returns.
- 14 A. Mm-hmm.
- 15 Q. I thought you said that you gave them-- You prepared them and you
16 gave them back to the judge?
- 17 A. We'd prepare them and he'd come in and yeah, he would have to mail
18 them and he would probably do that right then and there. But, we
19 prepared those and in '17.
- 20 Q. So you prepared them, but he actually submitted them and you--
- 21 A. --Correct.
- 22 Q. So you wouldn't know when he actually submitted them, would you?
- 23 A. Not submitted, but I knew when the information was put into the
24 return and processed.
- 25 Q. Right. Right. Okay. You left it to him to actually file it?

1265.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Cross)

- 1 A. I'm not quite sure if we actually did it for him in the office. We tried
2 to help him out so we could just mail them right out, you know, when
3 he comes in and signs for--
- 4 Q. --Okay.
- 5 A. --everything.
- 6 Q. Now, you'd prepared returns for the judge for prior years, correct?
- 7 A. Mm-hmm. Correct.
- 8 Q. So, for 2014--
- 9 A. --Mm-hmm?
- 10 Q. --tax year, did Judge Miller report income from the practice of law?
- 11 A. We would do-- In 2014, I don't have my records in front of me, but
12 when he was pract-- we would do a schedule C back then.
- 13 Q. That's a schedule C? That's what, income from self-employment?
- 14 A. Correct. When he was doing his law services--
- 15 Q. --Okay.
- 16 A. --we would do a schedule C, so all of that would be recorded on that
17 form.
- 18 Q. And so, when you prepared initially his 2015 return--
- 19 A. --Mm-hmm.
- 20 Q. --there's no schedules-- there was no schedule C?
- 21 A. Correct.
- 22 Q. Did you ask him about that?
- 23 A. Well, he would-- we would do a 2106, would be employee expenses.
- 24 Q. No, no, no. I'm talking about income.
- 25 A. Oh. No, I never asked if there was any receivables. I probab-- Yeah,

1266.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Cross)

1 we just-- I just never asked. No.

2 Q. Okay. And he didn't tell you. It's fair to say you wouldn't know if he
3 didn't tell you that he had income from the practice of law or any
4 outside income--

5 MR. DEROHANNESIAN: --Object to the form of
6 that--

7 BY MS. CENCI:

8 Q. --Other than what he gave you, you would have no way of knowing?

9 MR. DEROHANNESIAN: Not the last question,
10 but the one before that.

11 THE REFEREE: I don't know that she answered it,
12 so--

13 THE WITNESS: --Yeah. I didn't answer. I wasn't
14 clear on the question.

15 THE REFEREE: But you did answer that if he
16 didn't tell you, you wouldn't know, right?

17 THE WITNESS: Correct.

18 BY MS. CENCI:

19 Q. And you said the judge had three properties, rental properties?

20 A. Correct.

21 Q. Did he have the three rental properties prior to the 2015 reporting
22 year?

23 A. I'm-- don't have those-- that in front of me, but I think he's had those
24 three for quite some time.

25 Q. Okay. And would you look at Exhibit 9A in evidence? Do we have

1267.

(Dean - Cross)

1 those here?

2 THE REFEREE: Probably there.

3 THE WITNESS: You might have taken them back.

4 Oh, okay.

5 THE REFEREE: What is 9A?

6 BY MS. CENCI:

7 Q. 9A is the originally filed 2015 federal income tax return.

8 A. Mm-hmm.

9 Q. It's in evidence. There's a-- You see the schedule E?

10 A. Oh, okay. Yes.

11 Q. How many properties are listed on there?

12 A. Just the two.

13 Q. Okay. So--

14 A. --So, yeah.

15 Q. --And there's no rental income reported for any of these properties, is
16 that correct?

17 A. Correct. At the time, before we did the amended--

18 Q. --Mm-hmm.

19 A. --so that would-- Yeah.

20 Q. So, when-- You said he said-- You said he came to you about doing
21 the amendments to both years, 2015 and 2016 returns, about a month
22 and a half after April 15, 2017?

23 A. Correct. Or sooner, but it wasn't too much after.

24 Q. Mm-hmm. And you said he what, had forgotten some things?

25 A. Well, in his situation, it was just a lot of-- the recordkeeping is all

1268.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Cross)

1 manual and he, during the years, he has been out, you know, just--

2 Q. --What did he say to you? Did he say, "I forgot to tell you some
3 things?"

4 MS. SCALISE: --She shouldn't be--

5 MR. DEROHANNESIAN: --Let the-- finish her--

6 THE REFEREE: No, no, no, no, no. Hold on. One
7 at a time.

8 A. Yeah. I'm not sure how it came about. It was just-- He-- There was
9 just some missing-- just informa-- going through his records, he
10 just-- Yeah. I don't really know the whole, like-- It was just some
11 missing information after going through his checkbook--

12 Q. --Mm-hmm.

13 A. --and whatnot, and seeing that we should-- In one-- In the rental--
14 One of the rental properties is vacant, so therefore, that's-- there's
15 income on that one.

16 Q. Okay. Let me show you Exhibit 9C.

17 THE REFEREE: Which one is this, counsel?

18 MS. CENCI: This is the full amended return--

19 THE WITNESS: --Full return. Okay.

20 THE REFEREE: for '15?

21 MS. CENCI: For 2015.

22 A. Yeah, the changes.

23 Q. Is there a schedule E?

24 A. Yeah. They both should have E. Yes.

25 Q. Okay. So, now there are the three properties listed, correct?

1269.

(Dean - Cross)

- 1 A. With the North Street one. Correct.
- 2 Q. And now we're showing rents received for Oakdale Road and North
- 3 Street. Is that right?
- 4 A. Yes. Correct.
- 5 Q. Okay. So there's \$7,200 of additional income that was not originally
- 6 shown. Correct?
- 7 A. Correct.
- 8 Q. And you came up with some additional deductions?
- 9 A. Yes.
- 10 Q. Is that right?
- 11 A. Mm-hmm.
- 12 Q. Now, with regard to the income for his services as an attorney, you
- 13 said something about how he clarified-- When did he receive the
- 14 income?
- 15 A. The income-- The services were performed in--
- 16 Q. --No, no. When did he receive the income?
- 17 A. --The income was received in '16.
- 18 Q. And how do you know that?
- 19 A. Just by him going through and telling me that that's when he received
- 20 it.
- 21 Q. Okay.
- 22 A. For his services in '15.
- 23 Q. And so, when you amended the returns, which return did you put it
- 24 on? 2015 or 2016?
- 25 A. We did it on '15, the time that he would have done-- received the

1270.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Cross)

1 services on an accrual basis.

2 Q. Do you have any information as to how he filed in prior years, accrual
3 or cash basis?

4 A. On the schedule C? No, I don't have that in front of me, but--

5 Q. --But he told you he got that income in 2016?

6 A. He received it-- Yes.

7 Q. He received it. Okay. And I assume you also amended the New York
8 State tax returns similarly--

9 A. --Mm-hmm. Correct.

10 Q. --to the federal returns?

11 A. Yes.

12 THE REFEREE: Now answer yes. Try and wait.

13 A. Correct.

14 THE REFEREE: I know it's hard.

15 THE WITNESS: Okay.

16 BY MS. CENCI:

17 Q. So, Exhibit 9F, I think you were shown that. Maybe not. Exhibit 9F.

18 That's the original--

19 A. --Mm-hmm.

20 Q. --originally filed return for 2016.

21 A. Mm-hmm.

22 Q. Federal return. Again, is there a schedule E?

23 A. Yes.

24 Q. Again, of the three properties, how many properties were listed?

25 A. It was just that-- those two, without the North Street one on those.

1271.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Cross)

1 Q. And there is no rental income shown. Is that correct?

2 A. Correct.

3 Q. And when you prepared the amended return-- Let me show you 9H,
4 in evidence.

5 MS. CENCI: Do you have 9H?

6 MR. DEROHANNESIAN: Yes. It should be up
7 there.

8 MS. SCALISE: It might be up there.

9 THE REFEREE: Right here.

10 MS. CENCI: Oh, okay.

11 BY MS. CENCI:

12 Q. Is that the full amended return for calendar year 2016?

13 A. This one's not the amended one. Yes. 9G is the amended.

14 THE REFEREE: 9G?

15 THE WITNESS: Yes.

16 THE REFEREE: Is the amended 2016 return?

17 THE WITNESS: Correct.

18 BY MS. CENCI:

19 Q. Okay. So, can you show us here on 9H what difference, if any, there
20 is with regard to income and deductions for the two or three
21 properties?

22 A. Both income and expenses.

23 Q. I'm sorry. I just found the schedule E. Could you look at that? Do
24 you see that? Schedule E?

25 A. Yes.

1272.

(Dean - Cross)

1 Q. Okay. Now, how many properties are listed?

2 A. Three on the amended.

3 Q. And was it amended to show income received from the properties?

4 A. The-- Yes.

5 Q. How much total income?

6 A. \$15,600.

7 Q. Okay. So, now we've gone from originally there was zero rental
8 income reported and when it was amended it's gone now to \$15,600.

9 Is that correct?

10 A. Correct.

11 Q. And you came up with some additional deductions to offset that
12 income. Is that right?

13 A. Right. Correct.

14 Q. With regard to this issue of the weddings and the income, do you
15 know if the judge always did every wedding in a church?

16 A. I wasn't pertinent to that information.

17 Q. You wouldn't know that, would you?

18 A. No.

19 Q. Okay. Thank you. I have no further questions.

20 MR. DEROHANNESIAN: Can I have a--

21 THE REFEREE: --Yes.

22 MR. DEROHANNESIAN: Maybe two minutes on
23 this one.

24 THE REFEREE: You know what? Let's go off the
25 record and-- You want to stretch?

1273.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Redirect)

1 MR. DEROHANNESIAN: I think that'd be helpful.

2 (OFF THE RECORD)

3 THE REFEREE: Counsel for the Commission is
4 present, counsel for the Respondent is present and the
5 Respondent is present, as well.

6 MR. DEROHANNESIAN: All right.

7 THE WITNESS: I just sit down?

8 THE REFEREE: Please, sit down. Yes. You're
9 still under oath.

10 THE WITNESS: Okay.

11 REDIRECT EXAMINATION

12 BY MR. DEROHANNESIAN:

13 Q. If you need to refer to exhibits, please say so when I ask you
14 questions--

15 A. --Okay.

16 Q. --and you may not. For-- Prior to tax years 2015 and '16, if you can
17 recall, what was Judge Miller's custom and practice when it came to
18 filing on April 15th?

19 A. We would always have his wife's information, but Rick would always
20 come in later on, close to the due date with his information, just due to
21 his busy schedule and which is a common-- We do get a lot of people
22 that last month and we would sit down. It was never a written
23 appointment. It was just, you know, last minute. We would sit down
24 and have a brief meeting and then there was always a couple things
25 lacking. I would try to go over information that we had this year pri--

1274.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Redirect)

1 from the prior years and so it was still trickling down to the wire and
2 that was common for every year that I did his taxes.

3 Q. So, what are the options come April 15th that you can give?

4 A. So, come April 15th, if we don't have everything to the best of his
5 knowledge and we, you know-- If we don't have-- We would have to
6 put him-- put on extension and if we have most-- I mean, if we have
7 everything best to his knowledge, we would file the return. If there
8 was anything, just like anyone else, that has information later on that
9 they either discovered or they found in their records, we amend the
10 return.

11 Q. So, two options?

12 A. There's two options.

13 Q. File an extension? Correct?

14 A. Correct.

15 Q. Or file the return?

16 A. Correct.

17 Q. And then amend the return if there's a problem?

18 A. If-- Problem or missing information they discover later on. Correct.

19 Q. And with the Millers, was one option chosen over the other?

20 A. For the Millers, I mean, just like anyone, we try to get everything in
21 quick, you know, get them in on time, on the due date. So, that was
22 the goal.

23 Q. And with the Millers, was there a reason that they would file their
24 return rather than request for an extension?

25 A. Partic--

1275.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Redirect)

1 MS. CENCI: --Excuse me-- Are we-- I beg your
2 pardon.

3 A. Particularly, because of--

4 THE REFEREE: --Hold on. Hold on. Just a
5 second.

6 THE WITNESS: Oh.

7 MS. CENCI: Just a timeframe. Are we talking
8 about prior years?

9 BY MR. DEROHANNESIAN:

10 Q. Prior years, were there a reason-- Let's include the years, let's say--

11 A. --Just--

12 Q. --2014, '15 and '16?

13 A. In the past.

14 Q. For the--

15 A. --The main reason too would be his wife. Like I said, in getting the
16 proper-- the, you know, all the income in so that she can pay her
17 estimated. You know, her quarterly estimated and the curr-- and the
18 accurate amount and the first-- Like I said, the first payment is due
19 April 15th. So, that's why it is pertinent to get them in by April 15th.

20 Q. And that was your advice?

21 A. Correct.

22 Q. To do that?

23 A. Yes.

24 Q. And he followed your advice?

25 A. Yes.

1276.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Redirect)

- 1 Q. Now, you mentioned a word on cross-examination that I want to make
2 sure we understand. One was accrual.
- 3 A. --Mm-hmm.
- 4 Q. Did you use that word?
- 5 A. Yes.
- 6 Q. And what was the other word?
- 7 A. Cash basis.
- 8 Q. What is cash basis--
- 9 A. --and accrual--
- 10 Q. --and what is accrual?
- 11 A. Yeah. And that's--
- 12 Q. --And then I'll ask you how it applies here, so first define those words.
- 13 A. Okay. In most-- Some people who do a schedule C, like for instance,
14 Rick wouldn't probably know either or, you know? We just-- The
15 money coming in at the time is when you need to record it. So, in--
- 16 Q. --Under which system?
- 17 A. Cash basis.
- 18 Q. Okay.
- 19 A. Accrual-- I mean, the accrual is the receivables. If they received it
20 afterwards.
- 21 Q. Mm-hmm.
- 22 A. Whether it's recorded the year that they receive it or the year that they
23 earned it, that's accrual basis.
- 24 Q. Was there an issue with Judge Miller about cash versus accrual?
- 25 A. No, it was never explained to him either. I don't think he had any

1277.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Redirect)

- 1 knowledge, you know, of the difference.
- 2 Q. Did you have to determine whether something was in 2015 of '16?
- 3 A. No.
- 4 Q. Was that a question?
- 5 A. We never spoke about that in the past.
- 6 Q. But in 2015 and '16, with respect to his law practice money, was that
- 7 what you were trying to determine what year to report it in?
- 8 A. Correct. When he came to us about the money, you know, we made
- 9 sure that that money was received the year of the services. So that's
- 10 why we amended that particular year.
- 11 Q. Even if he didn't collect the money until 2016?
- 12 A. Correct.
- 13 Q. Did you tell him when to-- that should be recorded? What year?
- 14 A. At that time, like, he didn't-- Yes. We--
- 15 Q. --Did he follow your advice to report it in 2015--
- 16 A. --Yes. Correct.
- 17 Q. And not '16?
- 18 A. Yes.
- 19 Q. Do you know for tax years 2015 and '16, why it was taking time to get
- 20 information?
- 21 A. I just know during those years, you know, he had personal issue, like
- 22 with his surgeries and just lack of information, record keeping. I
- 23 don't--
- 24 Q. --Well, first of all, what do you mean by back issues?
- 25 A. Like surgeries and, you know, there's like-- There was-- That's why

1278.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Redirect)

- 1 things always were kind of late, you know, and getting stuff together.
2 But I wasn't pertinent of anything. Like, why it came after the fact.
- 3 Q. And how would you describe his ability to get information to you?
- 4 A. In bits and pieces. That was common. And that's common with, you
5 know-- He just-- Like, he's not on the computer and when you're
6 doing everything by paper and-- You know, we--
- 7 Q. --That's not the modern sophisticated way?
- 8 A. It's not modern, but it's still used.
- 9 Q. Okay. Now, I know that you were asked about the rental income--
10 the rent being increased on the amended returns for 2015 and '16?
- 11 A. Correct.
- 12 Q. But then the deductions went up also, correct?
- 13 A. Correct.
- 14 Q. So, it's not just the rental-- the rent that came in that changed, so did
15 the expenses?
- 16 A. Right. Well, they didn't ch-- they weren't changed, they just were
17 never entered.
- 18 Q. Okay. That's right. So, it wasn't-- Two things weren't entered--
- 19 A. --Correct.
- 20 Q. The rent and the expenses, correct?
- 21 A. Correct. Correct.
- 22 Q. And to know what the net is, you need to know both, correct?
- 23 A. Correct.
- 24 Q. And in both tax year for-- tax year 2015, what was the net income for
25 rental properties? Do you need to look at your return?

1279.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Recross)

1 A. For both years, I think they were both losses as far as all three
2 combined. There's always a--

3 Q. --Even after you amended the returns?

4 A. I believe so. Let me just look. '15 was a loss and--

5 Q. --You're looking at the return?

6 A. --and '16 as well. Both amendeds.

7 Q. Okay. So, even after you amend it--

8 A. --Mm-hmm.

9 Q. --make all these changes, it's--

10 A. --They're both losses.

11 Q. --his properties are losing money?

12 A. Correct.

13 Q. Would it be fair to say that when you gave Judge Miller advice on
14 what to do, he followed your advice?

15 A. Correct.

16 Q. Nothing else on redirect.

17 THE REFEREE: Ms. Cenci?

18 RECROSS-EXAMINATION

19 BY MS. CENCI:

20 Q. Ms.--

21 THE REFEREE: --Dean.

22 BY MS. CENCI:

23 Q. Ms. Dean. Thank you. I'm sorry.

24 A. That's okay.

25 Q. In your practice, and I don't know if you've ever encountered this, but

1280.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Recross)

1 if another individual is paying your expenses for a property, would
2 that be reportable as income to you?

3 A. If another individual is paying?

4 Q. Another individual is paying the expenses of your property, taxes, you
5 know, your rental property?

6 A. Other than the two people on the return?

7 Q. No, a third party?

8 MR. DEROHANNESIAN: I would object as
9 beyond the--

10 THE REFEREE: --No, I'll allow it.

11 BY MS. CENCI:

12 Q. A-- If a third party is paying some of the expenses of your rental
13 property, is that considered by the IRS, as far as you know, to be
14 income to you?

15 MR. DEROHANNESIAN: Objection.

16 THE REFEREE: Overruled.

17 BY MS. CENCI:

18 Q. If you know?

19 A. If a third-party is paying the expenses other than the two taxpayers,
20 no.

21 Q. No, what?

22 A. It would not be allowed as a deduction.

23 Q. But is it considered income to the taxpayer?

24 A. If they're paying for the expenses? No.

25 THE REFEREE: Give an example. I don't think

1281.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean - Recross)

1 your question is clear.

2 THE WITNESS: Yeah. Like-- I'm not clear on
3 what--

4 BY MS. CENCI:

5 Q. So, the taxpayer owns a rental property.

6 A. Mm-hmm.

7 Q. For which they may report income and other expenses, but someone
8 else is also paying certain expenses on that property--

9 A. --Like a rental? Like a property taxes for them?

10 Q. For example, is that considered--

11 A. --Okay.

12 Q. --income to the taxpayer?

13 A. What-- There-- It wouldn't be income, they just wouldn't be able to
14 use the property taxes as an expense--

15 Q. --It's not income? Okay. Thank you.

16 A. As a deduction.

17 THE REFEREE: Anything further?

18 MR. DEROHANNESIAN: No, Your Honor.

19 THE REFEREE: Ms. Cenci, anything further? I
20 have some questions.

21 MR. DEROHANNESIAN: Well, I'm sorry.

22 THE REFEREE: Take your time. I have a few
23 questions, but I'll wait until you're done.

24 MR. DEROHANNESIAN: Thank you.

25

1282.

(Dean - Redirect)

1 REDIRECT EXAMINATION

2 BY MR. DEROHANNESIAN:

3 Q. To clarify, Judge Miller on his tax returns did not take any deduction
4 for property taxes?

5 THE REFEREE: It-- Can you-- Can you tell us
6 what years are you looking at?

7 BY MR. DEROHANNESIAN:

8 Q. Well, let's look at 2015 and '16.

9 THE REFEREE: Your question is did he take a
10 deduction for property tax on the rental properties?

11 MR. DEROHANNESIAN: Yes.

12 A. For '16 amended, no. Let me see.

13 Q. On North-- The North Street property only? Didn't you understand
14 my question?

15 A. Yep. Yes.

16 Q. For North Street in the years 2015 and '16, was there any deduction
17 for taxes?

18 A. None.

19 Q. Thank you.

20 THE REFEREE: Ms. Cenci, anything?

21 MS. CENCI: Nothing further.

22 THE REFEREE: All right. Ms. Dean, I have a few
23 questions.

24 THE WITNESS: Mm-hmm.

25 THE REFEREE: Would it be fair to say that your

1283.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Dean)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

clients, including Judge Miller, their preference would be to pay as little tax as possible? Is that fair?

THE WITNESS: I mean, that's everyone's goal.

THE REFEREE: Okay. If you have rental property and you receive rental income of \$10,000 a year and you have expenses on those rental properties of \$10,000 that year, do you have to file and include that on a return? So, it's a-- it's a wash--

THE WITNESS: --Yes.

THE REFEREE: Right?

THE WITNESS: It's a wash.

THE REFEREE: Do you-- My question is in that circumstance where your rental income equals your expenses--

THE WITNESS: --your expenses.

THE REFEREE: --do you have to even file a return and report it?

THE WITNESS: For rental property, we put the building, like for depreciation reasons, is you know, reasons to keep it on your schedule E, you know, so that it carries forward for each year. So, for those reasons, you file it. You know, whether it makes any impact, no.

THE REFEREE: All right. So that answer would be yes in order to claim depreciation?

THE WITNESS: Correct.

1284.

(Dean)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE REFEREE: Okay. And did Judge Miller claim depreciation?

THE WITNESS: Yes.

THE REFEREE: All right. As a result of filing the amended return in 2015, did the ultimate tax liability change?

THE WITNESS: Yes. The liability changed due to his other income.

THE REFEREE: And what was-- Did it change as a result of the rental income issue?

THE WITNESS: As well, yes.

THE REFEREE: What was the change in the ultimate tax liability in 2015?

THE WITNESS: The change incurred for his adjusted gross income increased by the \$27,588--

THE REFEREE: --Yes.

THE WITNESS: --and decreased by \$5,200.

THE REFEREE: And the \$5,200 was what?

THE WITNESS: For the rental.

THE REFEREE: Was for the rental?

THE WITNESS: Yes. And then he owed tax on that.

THE REFEREE: All right. And how about in '16? Was there a change in the ultimate tax liability as a result of the amendment?

1285.

(Dean)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE WITNESS: No. That was a wash.

THE REFEREE: All right. And were you ever asked by Judge Miller to assist in the preparation of financial disclosure forms that he may have been obligated to file with-- in connection with his job as a judge? Do you understand my question?

THE WITNESS: No.

THE REFEREE: All right. You assisted and helped with U.S. and New York resident tax returns, right?

THE WITNESS: Correct. Mm-hmm.

THE REFEREE: Okay. Did-- Are you aware of any financial filings that Judge Miller may have been obligated to file with the court system?

THE WITNESS: He came in at one time and he didn't understand some verbiage on some questions, but I'm not quite sure what the filing was for. But he was-- You know, he's not up to date with the fi-- And it was quite confusing for myself, too.

THE REFEREE: Okay. And--

THE WITNESS: --But I've never prepared anything for him. No.

THE REFEREE: Okay. He asked you a question about it. Do you know when that was?

THE WITNESS: Probably at some point during the summer.

1286.

(Dean)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE REFEREE: Of what year?

THE WITNESS: This year.

THE REFEREE: This year being?

THE WITNESS: 2018.

THE REFEREE: 2018?

THE WITNESS: I believe. I could be mistaken,
but--

THE REFEREE: --Okay.

THE WITNESS: And I never kept copies or
anything. He just brought it in and he--

THE REFEREE: --Just to ask you a question?

THE WITNESS: --Yes. He had to furnish some
information and ...

THE REFEREE: Based on my questions, do you
have anything further, Mr. DerOhannesian?

MR. DEROHANNESIAN: No, Your Honor.

THE REFEREE: Ms. Cenci, based on my questions,
do you have anything further?

MS. CENCI: Nothing. Thank you.

THE REFEREE: Ms. Dean, thank you very much
for coming.

THE WITNESS: Okay. You're welcome.

THE REFEREE: I would caution you that our
proceedings here today are confidential, so please don't
discuss your testimony with anyone. You can leave the

1287.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 exhibits there and have a nice weekend.

2 THE WITNESS: Okay. Thank you.

3 THE REFEREE: Thank you for coming.

4 THE WITNESS: You're welcome.

5 THE REFEREE: All right. Let's stay on the record.

6 It's my understanding that at this time, and it could change,

7 but at the present moment, the last witness that Respondent

8 plans to call is the Respondent himself. Is that correct?

9 MR. DEROHANNESIAN: Correct.

10 THE REFEREE: And at this time, do you think that

11 Judge Miller will be your last witness?

12 MR. DEROHANNESIAN: Correct.

13 THE REFEREE: And Ms. Cenci, not binding you,

14 but just as you're sitting here today, do you know for sure

15 that you'll have rebuttal?

16 MS. CENCI: I am not--

17 THE REFEREE: --And I'm not binding you.

18 MS. CENCI: --I'm not certain, but I expect I would

19 have one rebuttal witness on one point--

20 THE REFEREE: --And that's fine. And do you

21 think that rebuttal witness would be relatively brief given

22 the way we've had other witnesses?

23 MS. CENCI: I hope so.

24 THE REFEREE: All right. Based on conversations

25 that we had off the record, I think it's fair to say that if we

1288.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 put in a really full day, we can conclude the presentation
2 with one more day which we've agreed to hold in Albany at
3 Commission offices. I discussed off the record with
4 counsel several proposed dates. We will confirm that to the
5 best of our ability as early next week as we possibly can and
6 hopefully we will finish at that time. I'd ask Mr. Fitzpatrick
7 to keep the original exhibits for now and I don't think
8 there's anything more we need to discuss today. Ms. Cenci,
9 do you?

10 MS. CENCI: Your Honor, in fairness, I do want to
11 raise an issue.

12 THE REFEREE: Yes?

13 MS. CENCI: We are going to be asking for a
14 missing witness charge as to Mr. Iannone. He obviously
15 has relevant testimony, relevant information, and we'll be
16 asking for an unfavorable inference to be drawn from
17 Respondent's failure to call him as a witness. And I raise
18 that now, because you know, we are going to adjourn to
19 another date and, so there's no surprise at that time.

20 THE REFEREE: My understanding of the missing
21 witness inference is that it's a witness that ought to have
22 been called and wouldn't Mr. Iannone be equally available
23 to the Commission? I ask that and then I-- And the second
24 part of my question is can anyone here, you know, as an
25 officer of the court/Commission, tell us whether he's a

1289.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1 resident of New York State?

2 MR. PEDROTTY: My understanding as to the--

3 Well, for one thing, he is a witness who would naturally be
4 expected to provide non-cumulative testimony favorable to
5 Respondent. It goes to the relationship between
6 Respondent and Mr. Iannone. There has been a lot of
7 testimony here that they are good friends. He would
8 naturally be expected to testify in favor of him if he would.
9 He has also been listed on their witness list as a witness and
10 their failure to call him, we're entitled to a negative
11 inference. Of course, they can call him when we re-adourn
12 this matter. They have that opportunity.

13 MS. CENCI: And yes, he does res-- As far as I
14 know, he resides in the State of New York.

15 MR. DEROHANNESIAN: Judge?

16 THE REFEREE: Yes.

17 MR. DEROHANNESIAN: Your first point is that
18 he is equally available. In fact, the Commission
19 subpoenaed him, he appeared and they have his testimony.
20 So to say that they couldn't get him is belied by the record
21 and I'll introduce it-- the exhibit when we come back.

22 MR. PEDROTTY: And I also don't believe that it's--
23 - that he's available to either party, it's that he's available--

24 THE REFEREE: --One sec. Just one-- Mr.
25 Pedrotty, just a minute. Just a minute.

1290.

(Hon. Richard H. Miller, II)

1 MR. PEDROTTY: Sorry.

2 THE REFEREE: I'll give you all the opportunity
3 you want to speak. Yeah?

4 MR. DEROHANNESIAN: So, we've marked that
5 as an exhibit that he did appear for them. They subpoenaed
6 him, so he is available to the Commission and they have
7 taken his testimony and that is a fundamental requirement
8 for the missing witness charge, even before you get to
9 whether it was necessary and on a material point, and
10 whether it is-- contradicts anything of significance, given
11 the testimony of Ms. L [REDACTED] or others, which is a
12 secondary tertiary issue which we can-- is more involved
13 perhaps. But the fundamental one is--

14 THE REFEREE: --Yes.

15 MR. DEROHANNESIAN: --equal access.

16 THE REFEREE: Mr. Pedrotty?

17 MR. PEDROTTY: I--

18 MS. SCALISE: --One more thing. One more thing.

19 THE REFEREE: No, no. Mr. Pedrotty.

20 MR. PEDROTTY: I don't believe the issue is
21 whether he's available to either party, it's that he is
22 available to Respondent's party to be called and also, we
23 did not subpoena him for this hearing, we subpoenaed him
24 in the past for prior testimony.

25 THE REFEREE: Were you looking at Richardson?

1291.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 MR. PEDROTTY: Yes.

2 THE REFEREE: What's the page or chapter number
3 of Richardson?

4 MR. PEDROTTY: It's the 11th Edition, Section 3-
5 140.

6 THE REFEREE: 3-140.

7 MR. PEDROTTY: And the cite to the case law in
8 the seminal case--

9 THE REFEREE: --Hang on, one sec.

10 MR. PEDROTTY: Sorry. Excuse me.

11 THE REFEREE: That's all right. Richardson, 11th
12 Edition?

13 MR. PEDROTTY: Correct.

14 THE REFEREE: And what's the cite that you're
15 using?

16 MR. PEDROTTY: *People v Gonzalez*, which is 68
17 NY2d 424, pincite 427.

18 THE REFEREE: I have that book in the library and
19 I've also looked at this question previously and I know I
20 have written on it, so I know just where to look.

21 MR. DEROHANNESIAN: If you're looking for
22 briefing on it, can you give us a briefing schedule?

23 THE REFEREE: Yeah.

24 MS. SCALISE: But, you know, I think the statute--

25 THE REFEREE: --I'm not sure I need briefing,

1292.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 because I think that the law is whatever it is and you're
2 going to be requesting and I'll take it as a request now--

3 MS. CENCI: --We're just giving notice in case they
4 want to change their minds, so--

5 THE REFEREE: --No. I think that's fair. Yes. I
6 think that's fair and reasonable of the Commission to give
7 that notice now. I'm pretty familiar with the issue and I will
8 address it in my report. Honestly, I was going to do it
9 anyway, because there are other names that have come up
10 and I don't know whether they are or are not available. But
11 that name, Mr. Iannone, obviously figured prominently
12 through the proceedings and I will obviously look at that.
13 So, I thank you. Very courteous of you to give that notice.

14 MR. DEROHANNESIAN: The fact that we list him
15 doesn't have any import--

16 THE REFEREE: --Of course not. Of course not.
17 I'm not deciding anything, I'm just telling you I'm really
18 familiar with it.

19 MS. SCALISE: Yes, but I mean I-- They do not get
20 to dictate how we present our case, what witnesses we call.

21 THE REFEREE: Nor does-- Nor does the
22 Respondent dictate the Commission--

23 MS. SCALISE: --Nor that we get to dictate theirs.
24 You know?

25 THE REFEREE: Yeah, no. I understand. I don't

1293.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 need anything further--

2 MS. SCALISE: --And so-- And Mr. Barrer, just one
3 last thing on this issue and I'm sorry that I have to do this,
4 but you know, there were many witnesses that we thought
5 we were going to call. We interviewed them and they were
6 gone. So, does that mean that they're going to ask for a
7 missing witness charge for each of those witnesses?

8 MS. CENCI: No, just Mr. Iannone.

9 THE REFEREE: No, no. I think we've had enough
10 and I-- It was very courteous and very much appreciated
11 that you gave that heads up to us. Is there anything else we
12 need to discuss?

13 MR. DEROHANNESIAN: May we ask the
14 Commission to provide us with copies of the exhibits which
15 were not pre-marked?

16 THE REFEREE: Yeah. That's-- If it's--

17 MS. CENCI: --The exhibits--

18 THE REFEREE: --of anything that's-- of any--
19 You want things that are received in evidence?

20 MR. DEROHANNESIAN: That weren't already
21 marked. In other words, we have copies of all the items that
22 were on the list, but there were some things that were added
23 by both them and us. So, for example, I don't have copies
24 of some of the exhibits that we--

25 THE REFEREE: --Yeah. That's fine. My

1294.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 suggestion is--

2 MR. DEROHANNESIAN: --Do you understand?

3 THE REFEREE: --send an email to Ms. Cenci--

4 MS. CENCI: --Yep.

5 THE REFEREE: --on Monday.

6 MS. CENCI: We'll have full sets made of every
7 exhibit for everyone.

8 THE REFEREE: That's even better.

9 MR. DEROHANNESIAN: That's even better.

10 MS. CENCI: Okay.

11 THE REFEREE: That's even better. Now, let's go
12 off the record. Oh, and enjoy the weekend everybody.

13 Thank you. Very professional presentation this week.

14 MS. CENCI: Thank you, Your Honor.

15 THE REFEREE: Incredibly well-prepared counsel.
16 Really professional and really competent, so I appreciate
17 that. So, let's go off the record.

18 MR. DEROHANNESIAN: Can we stay here--

19 Yeah, off the record.

20 THE REFEREE: Off the record.

21 (Whereupon, the proceeding was adjourned at 4:19 PM on
22 January 11, 2019.)
23
24
25

1295.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

COMMISSION

		<u>Ident.</u>	<u>In Evid.</u>
1A	Certificate of Disposition and Local Court Criminal Disposition Report, Vestal Town Court, <i>People v David J. Iannone</i> , Forgery, 3 rd Degree, (2 pages).	14	---
1B	Certificate of Disposition, Union Town Court, <i>People v David J. Iannone</i> , Harassment, 2 nd Degree, (15 pages).	14	---
1C	Order of Hon. Christopher P. Baker, revoking Iannone Pistol Permit, dated June 4, 2018, (3 pages).	14	---
1D	Certificate of Disposition, Johnson City Village Court, <i>People v David Jon English</i> , Petit Larceny, 1991.	14	---
1E	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2000.	14	---
1F	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2004.	14	---

i.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1	1G	Certificate of Conviction, Steuben County	14	---
2		Court, <i>People v David English</i> , Criminal		
3		Possession of Forged Instrument, two counts.		
4	1H	Certificate of Conviction, Binghamton City	14	---
5		Court, <i>People v David English</i> , Petit Larceny.		
6	1I	Certificate of Conviction, Broome County	14	---
7		Court, <i>People v David English</i> , Attempted		
8		Criminal Sale of a Controlled Substance, 3 rd		
9		Degree, (2 pages).		
10	1J	Certificate of Conviction, Broome County	14	---
11		Court, <i>People v David J. English</i> , Attempted		
12		Arson, 3 rd Degree, (9 pages).		
13	1K	Certificate of Conviction, Binghamton City	14	---
14		Court, <i>People v James Stilloe</i> , Falsely		
15		Reporting an Incident, with Certificate of		
16		Conviction, (6 pages).		
17	1L	District Attorney/Superior Court Disposition	14	---
18		Report, Broome County Court, <i>People v</i>		
19		Martin Shaw, Robbery, 1 st Degree and		
20		Attempted Robbery, 1 st Degree.		
21				
22		<u>Estate of Roger Funk</u>		
23	2A	Surrogate's Court Record History,	16	---
24		(2 pages).		
25				

ii.

1	2B	Petition for Probate, filed May 2, 2014,	16	---
2		(5 pages).		
3	2C	Last Will and Testament of Roger L. Funk	16	---
4		with Affidavits, filed May 2, 2014, (7 pages).		
5	2D	Affidavit of Assets and Debts, filed May 2,	16	---
6		2014, (2 pages).		
7	2E	Coleman & Daniels Funeral Home expenses	16	---
8		for Jean Funk, filed May 2, 2014.		
9	2F	Family Tree of Roger L. Funk, filed May 2,	16	---
10		2014, (2 pages).		
11	2G	Application for Preliminary Letters	16	---
12		Testamentary, filed May 20, 2014, (2 pages).		
13	2H	Affidavit of Domicile, filed May 20, 2014.	16	---
14	2I	Affidavit of Donna Filip, filed May 29, 2014.	16	---
15	2J	Waiver of Process, Consent to Probate, filed	16	---
16		May 29, 2014.		
17	2K	Letter to Fiduciary Thomas M. Hayes from	16	---
18		Rebecca A. Malmquist, Chief Clerk, dated		
19		May 30, 2014.		
20	2L	Decree Granting Probate, dated May 30,	16	---
21		2014.		
22	2M	Grant of Letters Testamentary, dated May 30,	16	---
23		2014.		
24	2N	Letter to Thomas M. Hayes from Rebecca A.	16	---
25		Malmquist dated October 7, 2015.		

iii.

1	2O	Letter to Thomas M. Hayes from Rebecca A.	16	---
2		Malmquist, dated July 20, 2017.		
3	2P	Citation to Thomas M. Hayes, dated April 27,	16	---
4		2018.		
5	2Q	Order for Service of Process, dated April 27,	16	---
6		2018.		
7	2R	Affidavit for By Mail, dated April 27, 2018.	16	---
8	2S	Affidavit Concerning Deliverability of	16	---
9		Process Served by Mail, sworn to June 4,		
10		2018.		
11	2T	Order Revoking Letters, dated June 5, 2018.	16	---
12	2U	Consent to Change Attorney, dated March 6,	16	---
13		2015 (not filed with court).		
14	2V	Letter addressed to Thomas Hayes from	16	599
15		“Donna Filip,” dated November 6, 2015, with		
16		attached copies of checks, (Exhibit A to the		
17		Formal Written Complaint), (2 pages).		
18	2W	Checks dated December 1, 2015 (Exhibit D to	16	602
19		the Formal Written Complaint).		
20	2X	Certified Records of Citizens Bank,	16	---
21		(68 pages).		
22		<u>Estate of Jerry J. Behal, Jr.</u>		
23	4A	Document and Info Sheet, (2 pages).	517	---
24				
25				

1	4B	Records of filings of Probate Petition,	499	---
2		Wrongful Death Petition, Compel Fiduciary		
3		to Account Petition and Judicial Settlement of		
4		Final Account, (4 pages).		
5	4C	Petition for Probate, filed October 26, 2011,	491	492
6		(6 pages).		
7	4D	Last Will and Testament of Jerry J. Behal, Jr.,	499	---
8		filed October 26, 2011, (4 pages).		
9	4E	Affidavit of Subscribing Witnesses, filed	499	---
10		October 26, 2011.		
11	4F	Waiver of Process, Consent to Probate, filed	499	---
12		October 26, 2011.		
13	4G	Family Tree, filed October 26, 2011,	499	---
14		(2 pages).		
15	4H	Affidavit of Assets and Debts, filed October	499	---
16		26, 2011, (3 pages).		
17	4I	Affidavit of Sole Heirship filed November 1,	499	---
18		2011.		
19	4J	Notice of Probate, with Affidavit of Mailing,	499	---
20		filed November 2, 2011, (2 pages).		
21	4K	Certificate of Disqualification of David H.	499	---
22		Guy, filed November 2, 2011.		
23	4L	Order of Assignment, filed November 2,	499	---
24		2011.		
25				

1	4M	Decree Granting Probate With Limitations,	499	---
2		filed November 2, 2011, (2 pages).		
3	4N	Letters Testamentary, filed November 2,	499	---
4		2011.		
5	4O	Letter to David J. Behal from Rebecca A.	499	---
6		Malmquist, dated November 3, 2011.		
7	4P	Letter to David J. Behal from Rebecca A.	499	---
8		Malmquist, dated June 8, 2012.		
9	4Q	Letter to David J. Behal from Rebecca A.	499	---
10		Malmquist, dated August 7, 2012.		
11	4R	List of Assets/Inventory, filed September 19,	499	---
12		2012, (4 pages).		
13	4S	Petition of David J. Behal, dated December	499	---
14		28, 2013, filed July 11, 2014, (5 pages).		
15	4T	Waiver and Consent of Jennifer Behal, filed	499	---
16		July 11, 2014, (2 pages).		
17	4U	Waiver and Consent of Joseph Behal, filed	499	---
18		July 11, 2014, (2 pages).		
19	4V	Waiver and Consent of Karen Behal, filed	499	---
20		July 11, 2014, (2 pages).		
21	4W	Waiver and Consent of Donna Ougheltree,	499	---
22		filed July 11, 2014, (2 pages).		
23	4X	Waiver and Consent of Sylvia Behal, filed	499	---
24		July 11, 2014, (2 pages).		
25				

1	4Y	Attorney's Affidavit of Richard H. Miller,	499	501
2		filed December 12, 2014, (2 pages).		
3	4Z	Order and Decree, filed January 23, 2015,	499	501
4		(3 pages).		
5	4AA	Petition for A Compulsory Accounting and	499	501
6		Related Relief, filed October 13, 2015,		
7		(3 pages).		
8	4BB	Compulsory Accounting Citation, dated	499	501
9		October 14, 2015.		
10	4CC	Notice of Appearance of Artan Serjanej, Esq.,	499	501
11		filed November 23, 2015.		
12	4DD	Order of David Guy, filed January 14, 2016.	499	501
13	4EE	Amended Order Filed March 1, 2016.	499	501
14	4FF	Letter to Judge Guy from Artan Serjanej,	499	501
15		dated April 29, 2016, filed May 2, 2016.		
16	4GG	Order of David Guy, filed May 2, 2016.	499	501
17	4HH	Notice of Appearance of Robert H. Wedlake,	499	501
18		Esq., filed September 21, 2016.		
19	4II	Order of David H. Guy, filed September 21,	499	501
20		2016.		
21	4JJ	Letter to Hon. David H. Guy from Artan	499	501
22		Serjanej, dated October 7, 2016.		
23	4KK	Order of David H. Guy, filed October 20,	499	501
24		2016.		
25				

1	4LL	Order of David H. Guy, filed December 1,	499	501
2		2016.		
3	4MM	Order of David H. Guy, filed April 6, 2017.	499	501
4	4NN	Amended Order of David H. Guy, filed May	499	501
5		8, 2017.		
6	4OO	Petition for Judicial Settlement of Account,	499	501
7		filed May 26, 2017, (6 pages).		
8	4PP	Accounting by Executor, filed May 26, 2017,	499	501
9		(25 pages).		
10	4QQ	Letter from Hon. David H. Guy to Artan	499	501
11		Serjanej, Esq., dated June 15, 2017.		
12	4RR	Certificate of Disqualification of David H.	499	501
13		Guy, dated September 15, 2017.		
14	4SS	Order of Assignment of Hon. Molly Reynolds	499	501
15		Fitzgerald, dated September 18, 2017.		
16	4TT	Accounting Citation filed October 16, 2017.	499	501
17	4UU	Affidavits of Service of Accounting Citation,	499	501
18		sworn to in November 2017, (8 pages).		
19	4VV	Order of Hon. Julie A. Campbell, filed	499	501
20		November 20, 2017.		
21	4WW	Supplemental and Amended Supplemental	499	501
22		Citation, dated November 20 and November		
23		30, 2017, (2 pages).		
24	4XX	Objections to Accounting, filed December 4,	499	501
25		2017, (4 pages).		

1	4YY	Affidavits of Service of Amended	499	501
2		Supplemental Citation, filed January 19,		
3		2018, (2 pages).		
4	4ZZ	Letter to Hon. Molly R. Fitzgerald from Hon.	499	501
5		Julie A. Campbell, dated January 24, 2018.		
6	4AAA	Order of Re-Assignment by Hon. Molly	499	501
7		Fitzgerald, dated January 25, 2018.		
8	4BBB	Affirmation of Artan Serjanej in Reply to	499	501
9		Objections, with attached Schedules		
10		(27 pages).		
11	4CCC	Order of Hon. Gerald Keene, filed February 9,	499	501
12		2018.		
13	4DDD	Amended Order of Hon. Keene, dated March	499	501
14		9, 2018.		
15	4EEE	Order of Hon. Keene, dated April 6, 2018.	499	501
16	4FFF	Order of Hon. Keene, dated April 19, 2018.	499	501
17	4GGG	Affidavit of Robert H. Wedlake, filed August	499	501
18		6, 2018, (2 pages).		
19	4HHH	Decree of Judicial Settlement, filed August	499	501
20		15, 2018, (3 pages).		
21	4III	Emails between Dave Behal, Donna Filip and	62	70
22		Richard Miller, dated March 1, 2017 to May		
23		9, 2017 (Exhibit B to the Formal Written		
24		Complaint), (8 pages).		
25				

1	4KKK	Letter from Robert Wedlake to Artan Serjanej	509	---
2		dated June 5, 2017.		
3		<u>Estate of Antoinette Saraceno</u>		
4	5A	Sticky Notes, (8 pages).	411	420
5	5B	Petition for Probate, filed December 10, 2010,	411	416
6		(5 pages).		
7	5C	Family Tree, filed December 10, 2010,	411	416
8		(2 pages).		
9	5D	Last will and Testament of Antoinette A.	411	416
10		Saraceno, with affidavits of subscribing		
11		witnesses, (7 pages).		
12	5E	Notices of Probate with Affidavits of	411	416
13		Services, filed December 10, 2011,		
14		(16 pages).		
15	5F	Renunciations of Nominated Executor and/or	411	416
16		Trustee, filed December 10, 2010, (4 pages).		
17	5G	Letter from Richard H. Miller, II (by "DF"),	411	416
18		to Tioga County Surrogate's Court Clerk,		
19		dated February 16, 2011.		
20	5H	Amended Petition for Probate, filed February	411	416
21		17, 2011, (6 pages).		
22	5I	Amended Family Tree, filed February 17,	411	416
23		2011, (2 pages).		
24	5J	Waivers of Process: Consent to Probate, filed	411	416
25		February 17, 2011, (6 pages).		

x.

1	5K	Notice of Probate with Affidavit of Service,	411	416
2		filed February 17, 2011, (3 pages).		
3	5L	Probate Citation to John I. Saraceno, dated	411	416
4		February 28, 2011.		
5	5M	Memorandum to Richard H. Miller, II, Esq.,	411	416
6		from Deborah A. Stone, dated February 28,		
7		2011.		
8	5N	Court Appearance Notice dated April 7, 2011.	411	416
9	5O	Affidavit for Service of Process By Mail by	411	416
10		Donna Filip, Affidavit Concerning		
11		Deliverability of Process Served by Mail of		
12		Richard H. Miller, II, and certified mail		
13		receipts, filed April 8, 2011, (5 pages).		
14	5P	Letter to Surrogate's Court from John I.	411	416
15		Saraceno, filed April 8, 2011, with enclosures		
16		(21 pages).		
17	5Q	File Minutes from April 15, 2011.	411	416
18	5R	Order Granting Preliminary Letters with	411	416
19		Limitations, dated April 15, 2011.		
20	5S	Preliminary Letters Testamentary, dated April	411	416
21		15, 2011.		
22	5T	Letter to Surrogate's Court from John	411	416
23		Saraceno, filed May 9, 2011, with enclosures		
24		(6 pages).		
25				

1	5U	Letter to John I. Saraceno, Jr., from Deborah	411	416
2		A. Stone, dated May 17, 2011, with enclosed		
3		affidavit of service form (2 pages).		
4	5V	Completed Affidavit of Service of Objections,	411	416
5		filed June 27, 2011, (2 pages).		
6	5W	Letter to Hon. Vincent Sgueglia signed by	411	416
7		Frank Saraceno, Sr., and Sam Saraceno, filed		
8		June 29, 2011.		
9	5X	Letter to Frank Saraceno, Sr., and Sam	411	416
10		Saraceno, from Deborah A. Stone, dated July		
11		13, 2011, copied to Richard H. Miller, II, Esq.		
12	5Y	Letter to Judge Sgueglia from Richard H.	411	416
13		Miller, II, with enclosed Notice of Motion to		
14		Dismiss Objections, Affidavit of Executor		
15		and Attorney's Affirmation, filed July 18,		
16		2011, (7 pages).		
17	5Z	Letter to Chief Clerk from Richard H. Miller,	411	416
18		II, with Affidavit of Service by Donna Filip,		
19		filed August 18, 2011, (3 pages).		
20	5AA	Order dismissing objections, dated August 26,	411	416
21		2011, (2 pages).		
22	5BB	Decree Granting Probate, dated August 26,	411	416
23		2011.		
24	5CC	Letters Testamentary, dated August 26, 2011.	411	416
25				

1	5DD	Letter to Frank Saraceno, Sr., from Deborah	411	416
2		A. Stone, dated August 26, 2011.		
3	5EE	Letter to Richard H. Miller, II, Esq., from	411	416
4		Camelia M. Daniels, dated March 1, 2012.		
5	5FF	Letter to Tioga County Surrogate's Court	411	416
6		Clerk from Richard H. Miller, II, dated March		
7		1, 2012, with Enclosed Inventory of Assets,		
8		received March 15, 2012, (5 pages).		
9	5GG	Note dated March 20, 2012, on Letters	411	416
10		Testamentary from RH Miller, II, requesting		
11		new letter for real estate transfer, received		
12		March 20, 2012.		
13	5HH	Letter from Carmela M. Daniels to Richard H.	411	416
14		Miller, II, Esq., dated September 12, 2013,		
15		with enclosed form (2 pages).		
16	5II	Letter from Camela M. Daniels to Richard H.	411	416
17		Miller, Esq., dated December 27, 2013, with		
18		enclosed form (2 pages).		
19	5JJ	Citation to Frank Saraceno, Sr., dated March	411	416
20		20, 2014.		
21	5KK	Order of Hon. Gerald A. Keene, Surrogate,	411	416
22		dated March, 24, 2014.		

1	5LL	Letter to Deborah A. Stone, Chief Clerk, from	411	416
2		Richard H. Miller, II, dated July 23, 2014,		
3		enclosing Original Report of fiduciary,		
4		requesting additional time to collect receipts,		
5		releases and discharges from beneficiaries,		
6		received July 28, 2014 (2 pages).		
7	5MM	Letter to Richard H. Miller, Esq., from	411	416
8		Deborah Stone, dated August 2, 2016, with		
9		enclosed form (2 pages).		
10	5NN	Letter to Frank Saraceno from Kiyoko	411	416
11		Matsuhashi, dated August 16, 2016, with		
12		enclosed sample of substitution of attorneys		
13		form (2 pages).		
14	5OO	Letter to Frank Saraceno from Kiyoko	411	416
15		Matsyhashi, dated December 9, 2016.		
16	5PP	Letter to Richard H. Miller, Esq., from	411	416
17		Deborah A. Stone, dated March 28, 2017,		
18		with enclosed form (2 pages).		
19	5QQ	Letter to Frank Saraceno, Sr., from Deborah	411	416
20		A. Stone, dated January 22, 2018.		
21	5RR	Letter to Surrogate's Court Chief Clerk from	411	416
22		Artan Serjanej, dated January 29, 2018,		
23		enclosing Notice of Appearance, received		
24		February 2, 2018 (2 pages).		
25				

1	5SS	Order of Hon. Gerald A. Keene, dated	411	416
2		February 5, 2018.		
3	5TT	Letter to Deborah A. Stone from Artan	411	416
4		Serjanej, dated April 18, 2018, with		
5		enclosures, (52 pages).		
6	5UU	Checks dated April 4, 2012.	473	474
7	5VV	Memorandum of interview of Deborah Stone	459	462
8		dated December 12, 2017, with notes,		
9		(2 pages).		
10	<u>Estate of Deborah Brigham</u>			
11	6Q	Checks from Beverly Brigham payable to	602	604
12		Respondent, dated November 24, 2015,		
13		(Exhibit C to the Formal Written Complaint)		
14		(3 pages).		
15	<u>Checks</u>			
16	7C	Copies of checks from Louis Micha to	525	528
17		Richard H. Miller, dated from December 9,		
18		2014 to March 22, 2018, and Receipts		
19		(Exhibit E to the Formal Written Complaint),		
20		(46 pages).		
21				
22				
23				
24				
25				

Financial Disclosure Forms

8A	Annual Statements of Financial Disclosure filed by Richard H. Miller, II, with the Ethics Commission for the Unified Court System for reporting year 2014 (13 pages).	794	794
8B	Annual Statements of Financial Disclosure filed by Richard H. Miller, II, with the Ethics Commission for the Unified Court System for reporting year 2015 (6 pages).	794	794
8C	Annual Statements of Financial Disclosure filed by Richard H. Miller, II, with the Ethics Commission for the Unified Court System for reporting year 2016 (6 pages).	794	794
8D	Annual Statement of Financial Disclosure for reporting year 2015, as amended by Richard H. Miller on November 16, 2017 (6 pages).	794	794

Income Tax Returns

9A	2015 U.S. Individual Income Tax Return (Bates Nos.: 101-001 to 101-025).	794	795
9B	2015 Amended U.S. Individual Tax Return (Bates Nos.: 102-001 to 102-006).	794	795
9C	2015 U.S. Individual Income Tax Return (Amended) (Bates Nos.: 103-001 to 103-017).	794	795

1	9D	2015 New York Resident Income Tax Return	794	795
2		(Bates Nos.: 104-001 to 104-008).		
3	9E	2015 New York Amended Resident Income	794	795
4		Tax Return (Bates Nos.: 105-001 to 105-007).		
5	9F	2016 U.S. Individual Tax Income Tax Return	794	795
6		(Bates Nos.: 201-001 to 201-029).		
7	9G	2016 Amended U.S. Individual Income Tax	794	795
8		Return (Bates Nos.: 202-001 to 202-006).		
9	9H	2016 U.S. Individual Income Tax Return	794	795
10		(Amended) (Bates Nos.: 203-001 to 203-027).		
11	9I	2016 New York Resident Income Tax Return	794	795
12		(Bates Nos.: 204-001 to 204-011).		
13	9J	2016 New York Amended Resident Income	794	795
14		Tax Return (Bates Nos.: 205-001 to 205-009).		
15	<u>Correspondence</u>			
16	10A	Letter to Cathleen S. Cenci from Paul	795	796
17		DerOhannesian, II, dated April 16, 2018.		
18	10B	Letter to Hon. Richard H. Miller, II, c/o Paul	795	796
19		DerOhannesian, II, with enclosure, dated May		
20		7, 2018, (5 pages).		
21	10C	Letter to Cathleen S. Cenci from Paul	796	796
22		DerOhannesian, with enclosure, dated May		
23		30, 2018, (7 pages).		
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Additional Exhibits

11	Schedule of Commission Exhibits.	13	---
12	Letter from Debbi Singer to Judge Miller dated March 10, 2017 (3 pages).	407	1499
13	Rachelle Gallagher's notes.	769	---
14	Transcript of Jerry Penna's testimony	953	---
15	Letter from Cathleen Cenci to Lisa Wojdat dated October 2, 2017.	1091	1113
16	Memorandum of interview of David Behal dated August 15, 2017.	1167	---
17	Letter from Cathleen Cenci to David Behal dated August 4, 2017.	1181	1184
18	Email from Gregory Gates dated April 13, 2016, to Sixth Judicial District Judges with attached memorandum from Hon. Michael V. Coccoma (3 pages).	1469	1473
19	Insurance claim document dated February 18, 2017 (2 pages).	1484	1486

EXHIBITS

RESPONDENT

		<u>Ident.</u>	<u>In Evid.</u>	
4				
5	A	Subpoena for John McConnell.	688	---
6	F	Subpoena.	82	---
7	I	Transcript of Mark Kachadourian's	86	---
8		Testimony.		
9	J	Mark Kachadourian's Notes.	91	---
10	K	Noramar Enterprises documents.	109	---
11	L	Nomination for appointment of attorneys.	111	114
12	M	Arbitration decision.	116	---
13	N	Federal complaint.	158	---
14	O	Supplemental declaration of Mark	217	---
15		Kachadourian.		
16	P	Memorandum of phone call of January 3,	168	---
17		2018.		
18	Q	Rebecca Vroman's letter.	349	---
19	R	Memorandum of phone call of April 20,	169	---
20		2018.		
21	S	Summary of inspector general interview of	377	---
22		Debbi Singer.		
23	T	Work Safe document.	385	---
24	U	Debbi Singer's notes.	387	---
25	V	Letter from Judge Miller to Debbi Singer	394	1499
		dated March 1, 2017 (3 pages).		

1	W	Memorandum of interview of Deborah Stone	453	---
2		on December 6, 2017.		
3	X	Updated records for <i>Estate of Antoinette</i>	537	537
4		<i>Saraceno</i> , (74 pages).		
5	Y	Transcript of Rachelle Gallagher's	609	---
6		testimony.		
7	Z	Calendar.	724	---
8	AA	Photograph of Richard Balles and Mark	973	975
9		Kachadourian.		
10	BB	Photograph of Richard Balles, Judge Miller,	973	975
11		Mark Kachadourian and others.		
12	CC	Consent to change attorney signed by Artan	1044	1049
13		Serjanej and David Behal dated March 20,		
14		2015.		
15	DD	Consent to change attorney signed by Artan	1062	1066
16		Serjanej and Thomas Hayes dated March 5,		
17		2015.		
18	EE	Emails with Surrogate's Court and Artan	1067	---
19		Serjanej.		
20	FF	Emails of October and November 2015	1119	1120
21		(3 pages).		
22	GG	Emails of March, April and May 2017	1122	1125
23		(3 pages).		
24	HH	Email from Jolene to David Behal dated May	1135	1136
25		15, 2013.		

xx.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1	II	IRS forms and publications printout.	1143	1144
2	JJ	Email between Sgt. Krebs and captain.	1197	---
3	KK	Email.	1207	---
4	LL	Email from Rebecca Vroman to Mark	1337	1340
5		Kachadourian dated January 23, 2017.		
6	MM	Standards and goals statistics (7 pages).	1340	1342
7	NN	Employee evaluation email to Judge Mulvey	1367	1368
8		dated January 20, 2016 (2 pages).		
9	OO	Email from Jane Sbarra dated	1386	1387
10		January 11, 2019.		
11	PP	Financial disclosure forms sent from	1387	1388
12		Respondent to Chief Clerk on January 31,		
13		2019 (5 pages).		
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

REFEREE

		<u>Ident.</u>	<u>In Evid.</u>
1	Email from Cathleen Cenci to the Referee, Paul DerOhannesian and Deborah Scalise dated January 4, 2019.	258	258
2	Email from Deborah Scalise to the Referee, Cathleen Cenci and Paul DerOhannesian dated January 6, 2019 (4 pages).	258	258
3	Subpoena for Mayor Greg Deemie dated January 4, 2019.	689	689
4	Letter from Shawn Kerby to the Referee dated January 9, 2019, (6 pages).	732	732
5	Letter from Edward Lindner to the Referee dated January 10, 2019, (66 pages).	893	893
6	Letter from Shawn Kerby to the Referee dated January 11, 2019, (2 pages).	1186	1188

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Dated: February 5, 2019

Courtney French
Courtney French

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

**STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT**

-----X
In the Matter of the Proceeding Pursuant :
to Section 44, subdivision 4, of the :
Judiciary Law in Relation to :

RICHARD H. MILLER, II, :

a Judge of the Family Court, Broome County. :
-----X

Commission on Judicial Conduct
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223
February 12, 2019
9:11 AM

B e f o r e:

ROBERT A. BARRER, ESQ.
Referee

P r e s e n t:

For the Commission

CATHLEEN S. CENCI, ESQ.
Deputy Administrator

S. PETER PEDROTTY, ESQ.
Senior Attorney

ETEENA J. TADJIOGUEU, ESQ.
Staff Attorney

For the Respondent

PAUL DEROHANNESIAN, II, ESQ.
Attorney for Respondent
DerOhannesian & DerOhannesian
677 Broadway, Suite 707
Albany, New York 12207

DEBORAH A. SCALISE, ESQ.
Attorney for Respondent
Scalise & Hamilton LLP
670 White Plains Road, Suite 325
Scarsdale, New York 10583

A l s o P r e s e n t:

HON. RICHARD H. MILLER, II
Respondent

RYAN T. FITZPATRICK
Senior Investigator and FTR Operator

INDEX OF WITNESSES

For the Commission

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Mark Kachadourian, Esq.	21	76	68	222	240
D [REDACTED] L [REDACTED]	260	283	--	307, 317	313
Rebecca Vroman	321	333	--	--	--
Debbi Singer	355	376	--	402	--
Deborah Stone	410	430	419	458, 465	462
Barbara Saraceno	469	480	--	--	--
Robert Wedlake, Esq.	486	513	--	--	--
Louis Micha	521	530	--	--	--
Rachelle Gallagher	541	606	601	768	778

INDEX OF WITNESSES

For the Respondent

	<u>Direct</u>	<u>Cross</u>	<u>Voir Dire</u>	<u>Redirect</u>	<u>Recross</u>
Ofc. Jolene Payne	799	802	--	807	--
James Stilloe	856	867	--	--	--
Martin Shaw	908	913	--	--	--
Jerry Penna	922	935	--	951, 958	954
Richard Balles	964	--	--	--	--
Katherine Fitzgerald, Esq.	977	987	--	993	--
Sandra Conklin	997	1013	--	1016	1021
Artan Serjanej, Esq.	1024, 1100	1101	1047, 1064	1108	1111
Lisa Wojdat	1074	1090	--	1096	--
David Behal	1115	1151	1123	1176, 1184	1181
Sgt. Ronald Kreb	1196	1204	--	1207	--
Diane Marusich	1211	1226	--	--	--
Robin Dean	1242	1263	--	1274, 1283	1280
Hon. Richard H. Miller, II	1296	1431	1339, 1472	1486	1489

ii.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 MR. FITZPATRICK: We're on the record.

2 THE REFEREE: Good morning, everyone. We're
3 now on the record. Counsel for the Commission is present.
4 Counsel for Respondent is present. The Respondent is here
5 and, Judge, if you'd raise your hand, right hand? Do you
6 swear that the testimony you're about to give today will be
7 the truth, the whole truth, and nothing but the truth?

8 THE RESPONDENT: So help me God I do.

9 HON. RICHARD H. MILLER, II,

10 having been duly sworn, was examined and testified as follows:

11 THE REFEREE: Thank you. You know the drill
12 about audible answers as opposed to shaking your head,
13 right?

14 THE RESPONDENT: I do.

15 THE REFEREE: Okay. All right, proceed. Thank
16 you.

17 MS. SCALISE: Thank you. Good morning, Your
18 Honor.

19 THE RESPONDENT: Good morning.

20 DIRECT EXAMINATION

21 BY MS. SCALISE:

22 Q. Can you give us your educational background for the record? Where
23 did you go to school and what degrees do you hold?

24 A. Yes. Actually, I went to elementary school at Catholic school, St.
25 Stanislaus Kostka Catholic School. Johnson City High School,

1296.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 graduated 1981. I attended Broome Community College for two
2 years. I graduated with honors there and I was a student trustee on the
3 board of trustees. I was very involved in student government and
4 extracurricular activities, Circle K, Kiwanis. From there I went to St.
5 Bonaventure University from 1983 to 1985. I was a history major
6 with a minor in social science. Again, involved in student government
7 activities, graduated with honors. Then I attended Bridgeport School
8 of Law, where I graduated in 1990. A little time off in between when
9 I actually went to law school because I was going to pursue education.
10 My father was an educator, my sisters, quite a few members in our
11 family were involved in education. Then I attended law school. At
12 law school I was actually a hall director. I worked for the school, my
13 two years of law school. One I was an assistant and I actually ran one
14 of the buildings at Bridgeport. We had probably 200 to 300
15 undergraduate students, I had 24 people working, RAs working for
16 me, to manage a building on campus and then I was asked to be one of
17 the advisors for the fraternity, for Tau Kappa Epsilon. Their faculty
18 advisor wasn't there so they asked me, so I took on the advisement of
19 the fraternity. From there, I actually then came home. I went to work.
20 I worked for a couple of different firms. I actually worked for--

21 Q. --Okay, can I just take it-- We're still on education. I just want to ask
22 you one question. Do you have any honors that either St. Bonaventure
23 or at the Bridgeport School of Law?

24 A. St. Bonaventure University and I was involved in the-- There is a
25 history honor society on that. I think it's Phi Alpha Beta, maybe. It

1297.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 was the history and honors society.

2 Q. And at Bridgeport School of Law?

3 A. Bridgeport School of Law, I was not.

4 Q. Okay. Now, after law school, did you take the bar?

5 A. I did but there was a little gap in between the timeframe.

6 Q. Okay, can you tell us about your employment experience in that gap
7 timeframe?

8 A. Yes, a lot occurred within that timeframe, actually, from the time I
9 passed the bar. I actually was working for different law firms. The
10 first one was Twining, Nemia, Hill and Steflick, in Binghamton, New
11 York, and there I had a chance-- there's actually-- Judge Rose
12 worked there, Bob Rose who was in the Appellate Division. Judge
13 Tate, Jeff Tate, supreme court justice. Judge Carol Cocchiola, who is
14 now a city court judge in Binghamton, those are some of the
15 associates. Bob Nielsen, who worked with-- was counsel to Sen.
16 Tom Libous for about 20 years.

17 Q. Your position there was what?

18 A. A, you know, I was like a paralegal. So, from there then I went to
19 work for Thomas, Cowlson and Place (phonetic) in Endicott, New
20 York. Another group, another attorney there, Dan Seiden, who is now
21 a city court judge, was involved. Joe Mayer and Charlie Cowlson
22 (phonetic) was one of the town attorneys for a local town, Town of
23 Union.

24 Q. And your position there?

25 A. Same position. I was-- It was like similar to a paralegal or a law

1298.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 assistant. From there I went to Cenesky, Alenik, Stefanski and Pool,
2 and that was a firm in Johnson City and Walt Stefanski, he actually
3 was one of the primary partners at the town. He was the town justice,
4 he was the village justice in Johnson City, town justice in the Town of
5 Union, and he was running for county court judge. So, I worked in
6 that firm. Shortly-- When I came back, I was asked to get involved in
7 politics. So, I was asked to run for a trustee position in the Village of
8 Johnson City. That was in 1991 and I was elected actually to that
9 position and I was re-elected to that position three times, '91, '93, and
10 '95. I actually after the legal aspect--

11 Q. --Can I just ask a question about the trustee? Is that a full-time
12 position?

13 A. It's part-time. So, that's in the Village of Johnson City. Literally the
14 law firm was a building away from the village hall, Cenesky, Alenik,
15 Stefanski and Pool, and I was encouraged at that time to do it, too. I
16 was asked by other people to do it. At the time, my father was in the
17 State Assembly, so he was in from '84 to '93, and I was asked to get
18 involved in politics. Not my father-- had nothing to do with my
19 father. It had to do with the mayor and I was asked by other people to
20 run for office.

21 Q. After Cenesky, Alenik, Stefanski and Pool, did you have any other
22 position besides the trustee position?

23 A. I did. I actually went to work for Amerfirst Mortgage and in that
24 timeframe I got engaged. I was married-- We were married in 1993
25 and I hadn't passed the bar yet. I was working as a loan officer,

1299.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 actually, because we did quite a bit of real estate law, and I was
2 working as a loan officer for Amerifirst Mortgage. And then during
3 that time period, I studied and passed the bar. In 1994--

4 THE REFEREE: --What year did you pass the bar,
5 Judge?

6 THE RESPONDENT: In 1994.

7 THE REFEREE: Thank you.

8 BY MS. SCALISE:

9 Q. When were you admitted to practice?

10 A. It would have been-- wait, it would have been '93. So, '94, excuse
11 me, I would have passed the bar in '93 and I was admitted in '94.

12 Q. In what department?

13 A. Third. In--

14 Q. --Do you remain in good standing?

15 A. I do.

16 Q. What did you do upon your admission to practice?

17 A. Actually, I went to work with the law firm-- I was going to go back to
18 Cenesky, Alenik, Stefanski and Pool, but Judge Stefanski actually had
19 a stroke. He was running for county court at the time. He had a
20 stroke. He was disabled and then I went to work with attorney David
21 Cohen in his office. So, I had a-- Shared some space in his office.

22 Q. And did you do any work with him?

23 A. He had-- He was probably in practice 30 years by the time I came in,
24 so I learned a great deal from him. I had my, you know, my own
25 space. He gave me my own space, but the office was connected.

1300.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 Q. So, you were a solo practitioner?

2 A. I was a solo practitioner.

3 Q. What areas of practice did you focus on?

4 A. Civil and criminal but primarily I did a lot of matrimonial, family,
5 trusts and estates, those are the areas-- and criminal law. So, I could--

6 Q. --And that was in 1994 as well?

7 A. That was in '94.

8 Q. And when did you cease your civil practice-- I mean, I'm sorry, your
9 private practice?

10 A. I closed it-- I finished in December of 2014.

11 Q. Now turning your attention to your judicial positions, when did you
12 become a judge?

13 A. I became a judge in April of 1996. If I may, in 1994, I was asked to
14 run for my-- at the time for the Town of Union Supervisor. My father
15 held that position years ago, was a councilman there and there was an
16 incumbent running and I was asked to run for that position and I
17 narrowly lost that in 1994. And then I won the re-election to the
18 village trustee in 1995. In 1996, I was approached by the Town of
19 Union board because the judge had finally retired. The judge that had
20 the stroke had actually-- They officially retired him, so that seat was
21 open and the board appointed me in April of 1996 and I was asked to
22 run for the Town of Union Justice position.

23 Q. So, did you run?

24 A. I did.

25 Q. And did you win?

1301.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 A. I did. I won in '96 and I won in 2000 to that position. And those are
2 four-year terms.

3 Q. So, what about 2004? 2008, were you still Town of Union Justice in
4 those time periods?

5 A. No, 2004, I actually ran for Broome County Family Court Judge. That
6 was the first time I ran for Broome County Family Court Judge and I
7 lost that race.

8 Q. Now, did you hold any other positions as a judge?

9 A. Yes. In 2001, in the Village of Johnson City, I ran for the justice in
10 the Village of Johnson City, so I was sworn in in 2002. So, I won in
11 2001, 2005, 2009, 2013.

12 Q. Did you serve as a judge in any other jurisdiction?

13 A. I did. In 2001 I was asked to serve in the Village of Endicott as the
14 acting justice. And then I served a stint in the Town of Binghamton, I
15 was asked. It would be between '96 and 2002, I'm not sure the
16 specific timeframe. I can't tell you the specific year.

17 Q. Turning your attention to the election for family court in 2004, do you
18 remember that?

19 A. Yes, I do remember it.

20 Q. At that time, did you have any discussions about running again for
21 family court?

22 A. No.

23 Q. In 2004?

24 A. No.

25 Q. And at that time, who was working for you in the courts that you

1302.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 presided in?

2 A. I actually-- I left the Town of Union, so I would have been finishing
3 that term and at the time, specifically which court clerks, there were a
4 number of different clerks I had.

5 Q. Now, turning your attention to your bid for election and-- Permission
6 to lead?

7 THE REFEREE: Sure.

8 BY MS. SCALISE:

9 Q. Was Rachelle Gallagher around at that time and working on your
10 campaign?

11 A. She started working for me in 2005. That's when she started to work
12 at the-- That's when I asked her to be a court clerk in the Village of
13 Johnson City.

14 Q. But prior to that in 2004, you had to run for Broome County Family
15 Court?

16 A. Correct.

17 Q. Did she work on the campaign?

18 A. She may have.

19 Q. Do you recall having any discussions with her or her husband or any
20 of your other campaign workers for running again for family court in
21 10 years?

22 A. No, and if I may tell you, you don't plan on running for these
23 positions. This isn't something anytime when I was involved in
24 politics, either someone asked you to get involved-- It's never been
25 successful I've seen where people get involved in politics to say, "I'm

1303.

(Miller - Direct)

1 going to run for this job.” Usually when-- You’re asked and people
2 seek you out to say, “Hey, would you be interested in running for this
3 job?” So, all the positions I ever ran for, these aren’t things I said,
4 “Hey, I’m running for this.”

5 Q. But there came a time where you ran for family court judge again?

6 A. Correct.

7 Q. And when was that?

8 A. 2014.

9 Q. And in 2014-- Excuse me, let me ask one more question. How can
10 you hold more than one judge’s position, like in Endicott, you know,
11 Binghamton, and Johnson City, I just want to make it clear for the
12 record, how can that work?

13 A. They’re part-time positions and they’re considered part-time.

14 Q. And they’re adjoining jurisdictions so it’s easy to get to?

15 A. Yes, there’s actually-- There’s-- The two villages, the Village of
16 Endicott and the Village of Johnson City are located in the Town of
17 Union, so they’re part of that town. And they each have-- The
18 Village of Endicott has their own police force. The Village of
19 Johnson City has their own local police force, and then the State
20 Police and the sheriff’s department cover the town area.

21 Q. So, it’s a busy court.

22 A. It’s a busy court and we’re dealing with all the police agencies, DA’s
23 office, public defenders, all the private bar and then-- They were busy
24 courts. We’re talking probably four, 5,000 cases from each court.

25 Q. A year.

1304.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 A. A year.

2 Q. What types of cases?

3 A. A lot of vehicle and traffic, landlord/tenant-- had big landlord/tenant
4 part, and the criminal aspect, all the different-- anything that occurred
5 in that jurisdiction, we were arraigning, we were dealing with all the
6 misdemeanors, all the violations, all the felonies were going to county
7 court. But we were-- I was the one that was actually doing the
8 arraignments. I probably did eight felony arraignments over that time
9 of murders that I saw in that jurisdiction. DWIs, domestic violence,
10 I've issued so many orders of protection, up in all hours of the night.
11 So, I-- When we worked, I regularly got called out. If it was a five-
12 day week, I'd say at least four if not all five days I'd get called out
13 anywhere from midnight until 6:00 AM in the morning.

14 Q. Now, turning your attention to the 2014 election for family court.
15 How did that come about?

16 A. The governor actually created an additional judgeship within our
17 county so legislation was passed for that. I had no plans to run for that
18 job and the legislation went through. The incumbent was running and
19 a candidate was announced to run, and then this legislation passed and
20 they created the new judgeship, so it was an open position. And that
21 would have been in the like July timeframe of 2014.

22 Q. And you were elected?

23 A. I was elected.

24 Q. So, turning to your practice at that time, you still had a sole practice at
25 the time, correct?

1305.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 A. I did.

2 Q. What steps did you take to close your practice?

3 A. Immediately sent letters out. I was contacting people by phone.
4 Initially, attorney Brett Noonan was going to take over my office
5 space and then Mark Kachadourian had-- who is my-- currently my
6 law clerk or court attorney in Broome County was involved, suggested
7 that I have attorney David Kapur take over, you know, the files in the
8 office because of-- he stated that he maybe had more experience. So,
9 my initial plan was to have attorney Brett Noonan come to the
10 physical space that I was at and deal with those clients.

11 Q. Any clients who did not go to one of the suggested attorneys?

12 A. So what happened, attorney Kapur actually did an advertisement. He
13 put something in the paper and we actually sat down together, attorney
14 Kapur, Mark Kachadourian, and myself, and went through the files.
15 He didn't take all the files so he went through, took certain files.
16 Other files went back over to my prior law office. Attorney Noonan
17 decided he wasn't going to stay there and he didn't want-- Initially, he
18 was going to come in there, he didn't. So then attorney Artan Serjanej
19 came into that space where my prior practice was located, 2304 North
20 Street. He picked up some of the files and attorney Noonan also
21 picked up some of the files.

22 Q. Did you receive fees for referrals to those three attorneys, that is to
23 say, Mr. Noonan, Mr. Kapur and Mr. Serjanej?

24 A. No, I did not.

25 Q. When you closed your practice, did you sell the practice that's, you

1306.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 know, for the goodwill of the practice, was there any exchange of
2 money with respect to that?

3 A. No.

4 Q. So, what happened-- How did the deal with Mr. Serjanej come about?

5 A. I wanted someone-- and I'd spoke to my wife about it because my
6 wife, she owns the building. The building's in her name. She wanted
7 me to handle things from that aspect so she was under the
8 understanding and told me-- She wanted to have someone in there, in
9 the building and I didn't want the building to sit empty either. So,
10 then there came about that attorney Serjanej was going to come into
11 that space. And in the transition period I was able to talk to clients
12 and speak to them, whether they wanted to stay, who did they want to
13 go with. Some of them, I gave their files back to them. They wanted
14 their files but it wasn't a lot of them that actually took their files back
15 and we talked about it.

16 Q. And with respect to the building, you said your wife owned it. Did
17 she always own it?

18 A. Initially, my father and I owned it. When I purchased it, he held the
19 mortgage on it and then it was transferred to my wife. And I think I
20 originally got it in 1998, it was transferred to my wife in 2002.

21 Q. And was there still a mortgage on it when you became a judge?

22 A. No.

23 Q. I'm sorry, a family court judge?

24 A. No. No, I paid it off but interesting story. My father had me pay a
25 mortgage on it and collected all the money and was-- had it set aside

1307.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 in an account, which I didn't know. When I was paying it, I was
2 paying it off quicker and he told me don't pay it off so quickly. Let
3 the interest accrue and just pay the payments over the cycle but with
4 the mortgage I had a chance to pay it off sooner, and he kept that
5 money in a separate account. He died in 2003 and he had that money
6 set aside, he was giving it back to me. And those are many of the
7 things that my father did over life lessons over time, but that's one that
8 was stuck with me. So, he had that money set aside for our kids and
9 our family and he gave all that money back to us.

10 Q. Now, where was the office located?

11 A. 2 [REDACTED] North Street in Endicott. It's either Endwell or Endicott. It
12 borders right on the Town of Union in the Village of Endicott. But I
13 use the Endwell address.

14 Q. So, it's an Endwell post office?

15 A. Endicott's the post office. Endicott has a post office.

16 Q. So, did you share your space at that address with Mr. Serjanej or other
17 attorneys before you took the bench?

18 A. Not with attorney Serjanej. Attorney Noonan would come in to use
19 space at times but it wasn't any shared space arrangement.

20 Q. And the physical space, what did it consist of? If you could just take
21 us through the entry and the rooms that you had there?

22 A. I'll describe it. It was an old house that was converted over, probably
23 40 feet wide. You'd come in to a porch area, maybe 6-by-10, and then
24 you'd walk into a-- It was a living room before but that would have
25 been the main office area where the-- There was a desk set up so

1308.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 someone can answer the phone, probably 10-by-18. And then to the
2 left there was an office, was a bedroom converted to an office. To the
3 right, a little kitchenette off the main, down a little hallway, a
4 restroom, down the hallway a little further, a conference room that's
5 maybe 10-by-12. Off to the back of the conference room, there was
6 another office. It was probably, I'm guessing, probably 10-by-12, and
7 to the back, there's another storage area that's probably 16-by-6.

8 Q. Where did your staff sit?

9 A. In the front.

10 Q. And where did you sit?

11 A. The first office, off to the left as you came in, there's a door and then I
12 was in that--

13 Q. --And where did you meet with clients?

14 A. In my office.

15 Q. Now--

16 A. --Or in the conference room. It depended on what was going on.

17 Q. And did the attorneys, mainly Mr. Serjanej, Mr. Noonan or Mr. Kapur,
18 did they appear before you when you were a judge?

19 A. No.

20 Q. Did they appear before you after you became a full-time family court
21 judge?

22 A. No, not after I became a full-time family court judge.

23 Q. So, in the deal with Mr. Serjanej, what was the-- What were the
24 details of that deal?

25 A. Speaking to my wife, she wanted to make sure the taxes were paid for,

1309.

(Miller - Direct)

- 1 that the insurance were paid for and the utilities. So, in lieu of rent,
2 that's what he paid.
- 3 Q. And he paid those directly?
- 4 A. He paid those directly.
- 5 Q. Did any-- Was there any payments to your wife or-- Is it a
6 corporation that that building is owned under or is it under her name?
- 7 A. It's-- It was under her name. We were going to transfer it over to the
8 LLC and we were in the process of doing that, in lieu of all of these
9 proceedings, everything stopped, so--
- 10 Q. --So, it's still under her name?
- 11 A. Right. She wants it in the LLC.
- 12 Q. The LLC meaning she has her own business?
- 13 A. No, there's a limited liability, 394 Main Street, LLC, limited liability
14 company that I'm part of.
- 15 Q. By the way, what does your wife do for a living?
- 16 A. My wife's a medical doctor. She's a pulmonologist.
- 17 Q. How long has she been a pulmonologist?
- 18 A. Since 2002.
- 19 Q. Does she work locally?
- 20 A. She works locally for-- She has her own practice. She's in with four
21 other pulmonologists and primarily they work for United Health
22 Services, which is Wilson Hospital. Our other hospital is Lourdes
23 Hospital in Binghamton, and they're the primary pulmonologists.
24 She's regularly on rotation and call in the ICU. They have weeks of
25 rotation. Very busy practice and she's a very intelligent, bright,

1310.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 wonderful woman.

2 Q. Now, with respect to that building where the office was located, was
3 there an apartment upstairs?

4 A. There is, correct.

5 Q. And who occupied that apartment?

6 A. What--

7 Q. What time period?

8 A. Yeah, what timeframe?

9 Q. Well, before you became a judge, did anybody occupy-- a family
10 court judge, did anybody occupy that apartment?

11 A. Yes, a gentleman named Lou Micha.

12 Q. And how long did Mr. Micha occupy the apartment?

13 A. It was a number of years. Up until he moved out in 2018.

14 Q. Did you collect rent from him?

15 A. He actually paid rent, yes, and I collected it.

16 Q. And after you became a judge, where did the rent checks go?

17 A. He would usually-- He didn't want to put a stamp on them. He'd
18 usually leave them in the office, the prior law office downstairs and
19 then I would stop by or they would either mail them out to me, and I
20 would pick them up.

21 Q. And after you became a family court judge, where did your staff from
22 the law office go?

23 A. Artan-- Well, Donna, from time to time, worked with me and she
24 actually stayed with Artan. Jolene Payne was my secretary and Jolene
25 went to open actually a daycare business, so she left and there was--

1311.

(Miller - Direct)

1 At election time in 2014, she was there and then she left to open her
2 daycare business.

3 Q. Now, there came a time where you had positions in family court that
4 you could fill at your discretion?

5 A. That's correct.

6 Q. Why didn't you take Donna Filip to family court with you?

7 A. I had-- There were other resumes that I had. I probably had 10
8 resumes. Jolene was considered. Lisa Wojdat was considered.
9 Rachelle was considered. A lot of the court clerks I looked at at the
10 time. But I chose to take Rachelle because there-- One issue was her
11 daughter was pregnant, she carried the insurance, so she needed the
12 job. In 2014-- '13, there was a workplace violence claim filed against
13 her. She had been going through that process and then it had been
14 determined through the mayor that the party that was alleged against
15 her was separated from her. There was a counseling memorandum
16 and she told me that she's going to be losing her job if I-- When I
17 leave the village, that they were going to terminate her. Her husband
18 was having difficulties with his job at the time and her daughter was
19 pregnant with their first grandchild. So, I felt sorry for her. They
20 needed the insurance. They needed help. They'd been-- Her husband
21 was a friend of mine from high school, so I offered her the position.

22 Q. What's her husband's name?

23 A. Scott Gallagher.

24 Q. Do you know what he did-- does for a living?

25 A. He worked for BNG 12 as an assignment editor back in '14. He

1312.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 works for Channel Fox 40 as an assignment editor for that.

2 Q. Now, just going back to the cases, Mr. Serjanej takes over your
3 office?

4 A. Correct.

5 Q. Not everyone went with Mr. Noonan or Mr. Kapur, right?

6 A. Correct.

7 Q. What happened with the cases that were left that had to be taken over
8 by an attorney?

9 A. Attorney Serjanej took those cases on.

10 Q. And did you discuss those cases with him?

11 A. We went through the historical facts and some I was able to talk to
12 him before I transitioned over to becoming the family court judge.

13 Q. And what about the cases that were closed? The files that were
14 closed? What did you do about those?

15 A. The ones that were supposed to go with attorney Kapur went with
16 attorney Kapur and then the other ones stayed with the-- in 2304
17 North Street.

18 Q. Well, let's say you had a will in a file, did you-- By the way, you said
19 you did some trusts and estates matters?

20 A. Correct.

21 Q. So, if you had a will, did you give it to the client or did you store it in
22 a safe in your office?

23 A. Eighty to 90 of those wills went with attorney Kapur, so he had the
24 originals. He had the files. If there was anything left or an abstract,
25 some of the stuff may have been located within the old office.

1313.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 Q. So, from time to time, did Mr. Serjanej call you or the other attorneys
2 call you about some fact or some issue in a case?

3 A. They did.

4 Q. And what would you discuss with them?

5 A. We would go through some of the historical facts. I-- you know, I
6 couldn't practice. They knew I couldn't practice. It was very clear
7 and evident. It was made clear with everybody and we would go
8 through some of the historical facts.

9 Q. So what would happen if you needed an old file and a former client
10 called? What would you do about that?

11 A. Well, you said a former client calling. Through testimony that I heard,
12 apparently Ms. Gallagher thought it wasn't her responsibility to
13 forward that information on, and which I was surprised and I came to
14 learn that now since and I didn't realize some of that stuff, but if any
15 messages got through to me, I would direct them to call one of the
16 attorneys.

17 Q. And who would that be?

18 A. And it would have been-- If it was one of my old files, it would been
19 attorney David Kapur, attorney Artan Serjanej, or attorney Brett
20 Noonan.

21 Q. So, were there calls that-- to family court that did get through to you?

22 A. There were a few.

23 Q. So, when a former client called, did you discuss the merits of the case
24 with that client?

25 MS. CENCI: Objection.

1314.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 THE REFEREE: Grounds?

2 MS. CENCI: It's vague, Your Honor. Can we have
3 some context? Who are we talking about?

4 THE REFEREE: Well, I think at this point, we're
5 only getting-- This is just a general question about
6 procedure. That's my understanding.

7 MS. SCALISE: That's correct. I can rephrase if
8 you'd like?

9 THE REFEREE: Why don't you rephrase?

10 BY MS. SCALISE:

11 Q. Withdrawn. When a former client called, what did you--

12 THE REFEREE: --This is after he became a family
13 court judge?

14 BY MS. SCALISE:

15 Q. Yes, after you were a family court judge, after January 1, 2015, okay,
16 when a former client called, what did you discuss with them?

17 A. I told them that I cannot practice law, I always made clear, and that
18 they need to contact one of the other attorneys or another attorney of
19 their choosing, whatever it may be. Most of them were elderly people
20 that were contacting me.

21 Q. Now, can you estimate the number of past clients who called on your
22 files since you became a family court judge?

23 A. I'd estimate maybe 10, maybe 15 max.

24 Q. And the substance of the cases they called about?

25 A. Either looking for a will or an abstract or on someone passing, looking

1315.

(Miller - Direct)

1 for some other documents from a family member.

2 Q. Was there ever a time when you received a call from the court,
3 somebody in the court about an old case?

4 MS. CENCI: I'm going to object.

5 THE REFEREE: Yeah, can you be a little more
6 specific because court is a little amorphous.

7 MS. SCALISE: Sure. Okay.

8 MS. CENCI: And old cases also. I don't
9 understand.

10 THE REFEREE: Yeah, why don't you rephrase?

11 BY MS. SCALISE:

12 Q. I'll-- Withdrawn and I'll rephrase. Was there ever a time that you got
13 a call from the surrogate's court about a case that you had worked on
14 prior to becoming a family court judge?

15 A. Yes.

16 Q. What court contacted you and what occurred?

17 A. Tioga County Surrogate's Court.

18 Q. How were you contacted?

19 A. I may have given them a courtesy call. From my recollection, I gave
20 them a courtesy call to tell them there was a document or a letter that
21 was sent out, that number one, I was a family court judge. I couldn't
22 practice law and that another attorney would be handling the case and
23 there's nothing I could do with it. I think when I spoke to Tioga
24 County, they asked about a specific case and it was the case of
25 *Saraceno*, and I was able to share some historical information because

1316.

(Miller - Direct)

1 the executor, Frank Saraceno, was-- I've known him, I was friends
2 with his son, Frank. We used to make sausage together. I used to go
3 over to their house. I knew Barbara. I knew Lisa the daughter. I
4 knew the entire family. I used-- They were friends of mine.

5 Q. So--

6 A. --He was the executor for his sister and he had older siblings. They
7 were all in their 80s and 90s. All the siblings.

8 Q. So, you said there was a letter. Was there a letter to you that
9 occasioned your call to the clerk or did the clerk call you? I just want
10 to make it clear for the record.

11 A. There was a letter that came through from-- to the old office, 2304
12 North Street, and as a courtesy call, I contacted them to tell them that
13 I'm not the attorney. There's nothing that I can do on it. I cannot
14 practice law and that another attorney would be involved with that
15 case.

16 Q. Do you recall who you spoke with at the Tioga County clerk's office?

17 A. No, one of the clerks.

18 Q. Was it the woman who testified here?

19 A. Not certain if it was her.

20 Q. So, when you called the clerk's office, no matter who you spoke to, do
21 you remember the substance of the conversation?

22 A. I do. I said that there was a communication that came through. I
23 cannot practice law. That another attorney would be contacting them
24 and then there may have been a question about some of the historical
25 information and I told them, that they were-- that the executor was

1317.

(Miller - Direct)

1 old. I was kind of perplexed that I did get that communication
2 because I thought I concluded that case back in 2012.

3 Q. So, what was the issue with the case?

4 A. Apparently, they said that there wasn't a final accounting done.
5 There's another form that's signed by the executor saying that
6 everything was disbursed. And in 2012 everything had been
7 disbursed. There were almost 23 beneficiaries. Those are-- That's a
8 file-- As an attorney, when you get a file like that, you never forget it.

9 Q. So, directing your attention back to the calls, you said that you got a
10 letter to your old office. Who initiated the first call?

11 A. The surrogate's court.

12 Q. And then there was a second call?

13 A. First-- Or the first call would have been, excuse me. The first call,
14 when the letter came through, I initiated as a courtesy call to them.
15 And then I got a call back from the surrogate's court and I didn't
16 understand why I'm getting a call back from the surrogate's court
17 because I made it very clear that I-- the attorney, other than what I told
18 the clerk is if they needed anything, you know, to contact me from--

19 Q. --If you couldn't work on the case, why would you say to the clerk, "If
20 you need anything, contact me?"

21 A. As a courtesy to them. If I thought the case was closed out back in
22 2012, if they historically nothing else to my knowledge had been done
23 on that.

24 Q. But you called in October 12th of 2016, is that right? You remember
25 that?

1318.

(Miller - Direct)

- 1 A. Correct.
- 2 Q. So, what was going on between 2012 and 2016 that the clerk had to
3 call you about the case? You said you thought it had been closed.
- 4 A. Correct.
- 5 Q. So, what was the issue?
- 6 A. The-- What I came to find out was just that that inventory was filed to
7 make sure-- To just say everything had been disbursed.
- 8 Q. So, after the call with the surrogate's court clerk, the second call, what
9 did you do to follow up?
- 10 A. I spoke to attorney Serjanej.
- 11 Q. What did you tell him?
- 12 A. I told him that there was an old file. I told him historical information
13 about the Saracenos. I told him that everything had been disbursed
14 back in 2012. I told him that there were a number of distributees.
15 There was an issue with one out in California, so we had to go back in
16 through motion, probably two or three times.
- 17 Q. Do you know what has happened to the *Saraceno* case since?
- 18 A. Through the testimony of the court clerk, through the testimony of
19 Artan Serjanej, through the testimony of Barb Saraceno, that the case
20 has been closed.
- 21 Q. Do you know how long Mr. Serjanej had the case?
- 22 A. I imagine-- It was probably a couple years.
- 23 Q. And that time period that Mr. Serjanej had the case from 2016 through
24 January of 2019, did you do any work on the case?
- 25 A. I did not.

1319.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

- 1 Q. Did you give any advice on the case?
- 2 A. I did not.
- 3 Q. Did you speak to Mrs. Saraceno?
- 4 A. I did.
- 5 Q. And what was the substance of your call with respect to that?
- 6 A. Mrs. Saraceno would be someone I'd liken to like a good friend's
- 7 mother and I didn't want her to worry. Her husband was sick. He was
- 8 dying, he was ill, and I spoke to her and I told her, I said that attorney
- 9 Serjanej, follow up with him, that attorney Serjanej would conclude
- 10 the case for her.
- 11 Q. Now, you heard her testify, right?
- 12 A. I did.
- 13 Q. And did you tell her you would take care of it?
- 14 A. I may have said those specific words.
- 15 Q. What did you mean by that?
- 16 A. Meaning that contact Artan, that Artan would make sure the
- 17 paperwork's filed with surrogate's court, and that the file would be
- 18 closed.
- 19 Q. So, when you called Mr. Serjanej, was that after you spoke to Mrs.
- 20 Saraceno or before you spoke to Mrs. Saraceno?
- 21 A. I don't know which one I spoke to first, but I relayed the information
- 22 to both of them. I can't tell you sequentially which way I did it.
- 23 Q. And when you spoke to Mr. Serjanej about taking over the case, what
- 24 was the substance of that discussion?
- 25 A. I told him that I had distributed everything back in 2012. That all the

1320.

(Miller - Direct)

1 money came in. All the beneficiaries received it. That we actually
2 had signed waivers. So, the confusing part was I had copies of all
3 these signed waivers. The only thing they didn't have was the
4 notarized second pages to it, which usually are filed with the
5 surrogate's court. We would maintain a copy in the file of an estate
6 file itself. Everything else had been distributed. There was zero-- All
7 the assets had been distributed to every beneficiary. It was done.
8 They just needed one piece of paper to say, yes, this is-- It was-- That
9 it was distributed.

10 Q. Now, you said earlier that Frank Serjanej-- I'm sorry. Frank
11 Saraceno, Sr. was this executor, correct?

12 A. Correct, for his sister.

13 Q. But you spoke to Mrs. Saraceno. Why?

14 A. Because Frank was very ill. He was in and out of the hospital. Yes
15 and I didn't even get a chance to see him through this because with all
16 this going on. So, I just stayed away from Mr. Saraceno and he's
17 since passed.

18 Q. Now, as to the payment for work on the *Saraceno* matter, when were
19 you paid?

20 A. In 2012.

21 Q. Did you receive any payments after January 1st of 2015?

22 A. No, I did not.

23 Q. There was another estate, the *Behal* estate. Do you recall that?

24 A. I do.

25 Q. Who is David Behal?

1321.

(Miller - Direct)

1 A. David Behal is my best friend growing up. Lived right across the
2 street from me. I've known him since the age of four.

3 Q. And was that a matter that you worked on before you became a family
4 court judge?

5 A. Yes, it is.

6 Q. What was the substance of the work that you did for David Behal?

7 A. His brother-- He actually lost three siblings in 18 months and his
8 brother, it was his brother Jerry's estate, he got killed when he was
9 driving a motorcycle and hit a car and died. So, Dave was the
10 executor and we garnered assets. At the time I was an attorney. There
11 were multiple-- He had a piece of property out in Tioga County. He
12 had accounts. He worked actually for Binghamton University and he
13 had personal property that they listed, sold. So, when I became a
14 family court judge, there were two issues remaining open. One was I
15 failed a wrongful death claim and there was a \$100,000 policy that
16 was going-- a check was supposed to be coming in on that. I had not
17 received it while I was an attorney. The other issue was a piece of real
18 estate. Attorney Fred Xlander was handling the sale of that piece of
19 real estate and it had not sold as of December of 2014, while I was
20 still practicing.

21 Q. So, in December of 2014, did you discuss with Dave Behal what
22 needed to be done?

23 A. We did and he met Artan Serjanej and he chose to have Artan Serjanej
24 handle the case and that was while I was still an attorney.

25 Q. And so you discussed the estate with Artan Serjanej?

1322.

(Miller - Direct)

1 A. Yes. Yes, I did.

2 Q. After you became a family court judge-- You said he's your best
3 friend?

4 A. Correct.

5 Q. Did you ever discuss the substance of what was going on with the
6 estate with Dave Behal?

7 A. No. He knew we couldn't discuss it and we would have social
8 niceties, discussions, but not the substance of the estate. He and Artan
9 were handling the estate.

10 Q. Did you talk to Artan Serjanej about the *Behal* estate while he was
11 handling it?

12 A. Historical facts and really there was only two issues remaining, as I
13 said. A check to come in for the wrongful death claim and the sale of
14 a piece of property that the brother owned in Tioga County.

15 THE REFEREE: Had the settlement of the wrongful
16 death case been consummated by December of '14?

17 THE RESPONDENT: It had. We were just waiting
18 for a check to come in.

19 BY MS. SCALISE:

20 Q. So, after you became a family court judge, did you direct Mr. Serjanej
21 in any way about the *Behal* estate?

22 A. No, I did not.

23 Q. Did you advise him in any way about the *Behal* estate?

24 A. No, I did not.

25 Q. Were you paid any amount for your work on the *Behal* estate prior to

1323.

(Miller - Direct)

1 December 31st of 2014?

2 A. No, I was not.

3 Q. Do you think you were entitled to any payment for that?

4 A. I wasn't going to take a fee. That was my best friend and I was
5 friends with all his siblings that passed away. I grew up with them.

6 Q. So, did you say I was going to take a fee or I wasn't? Couldn't hear it
7 from here.

8 MS. CENCI: I'm sorry I didn't hear you--

9 THE REFEREE: --Start over.

10 MS. SCALISE: Okay.

11 A. I was not going to take a fee because that was my best friend. I didn't
12 have any brothers. David had two brothers, Ronnie, Jerry and David,
13 and growing up, those were my brothers.

14 Q. Now, you recall Mr. Wedlake testified here?

15 A. I did.

16 Q. And there was a conversation about the *Behal* estate that you had with
17 Mr. Wedlake, do you recall that?

18 A. I do.

19 Q. How did that come about?

20 A. He contacted me on a personal matter and we discussed it. I had my
21 own legal matter on some real estate and I was discussing it, Mr.
22 Wedlake called me about it, and then he asked me a question about
23 Mr. Behal and about attorney Serjanej.

24 Q. Do you recall what he asked you?

25 A. He asked me about accountability and assets and I said this guy can

1324.

(Miller - Direct)

1 account for every penny. He'll have-- He's honest, he's had four
2 background checks that I've been interviewed by the FBI for the
3 positions he held and the security positions he's held and I said, "To
4 my knowledge, Artan Serjanej is capable of representing you. He'll
5 do a good job."

6 Q. So when you said the security positions, you're referring to Mr.
7 Behal?

8 A. To Mr. Behal.

9 Q. I want to turn to a new topic, okay? You're hiring for family court
10 staff.

11 A. Yes.

12 Q. In 2015, you had decisions to make about hiring your staff. What
13 positions were open?

14 A. Secretary and the court attorney.

15 Q. How did you decide who to hire?

16 A. I explained-- It's the court secretary, Mrs. Gallagher, was the primary
17 breadwinner. She needed the insurance. Her daughter Megan was
18 having a baby. She had the insurance in the village. She indicated to
19 me that she'd be losing her job in the Village of Johnson City due to
20 that workplace violence claim once I was leaving. I was hoping
21 there'd be a different environment over in family court and I wanted
22 to give her a chance. So, I brought her over as the secretary.

23 Q. Sorry, how long had she worked for you before that?

24 A. She worked for me for 10 years in the Village of Johnson City.

25 Q. Full-time?

1325.

(Miller - Direct)

1 A. Full-time, as a court clerk and then up to chief court clerk.

2 Q. So, what year did she start working for you in Johnson City?

3 A. 2005.

4 Q. Did you know her prior to that?

5 A. No, I really hadn't because my friend Scott started dating her. She

6 became pregnant and he married her. I actually performed the

7 wedding and then I was also the best man. And I was friends with

8 Scott and I really didn't know Rachelle that well or her background.

9 Q. So, what year did you perform the wedding?

10 A. It would have been-- Her son D [REDACTED]'s 16, so it would have had to

11 been 17 years ago.

12 Q. So about 2002 or '03?

13 A. Right in that timeframe.

14 Q. Do you recall what year you hired her in Johnson City?

15 A. 2005.

16 Q. What were her duties in Johnson City?

17 A. A lot of them were as a court clerk, ministerial duties. I mean, you're

18 seeing the informations, all the informations, the tickets, the UTTs

19 that come through, the uniform traffic tickets, any of the filings, the

20 informations, financial information that they'll take in, giving receipts,

21 preparing reports, interactions with the district attorney's office,

22 public defender's office, all the police agencies and landlord/tenant

23 documents that are being filed. So, a lot of it was, you know,

24 ministerial work. Messages that would come in, phone messages,

25 opening mail.

1326.

(Miller - Direct)

1 Q. When you were on the bench, was she in the courtroom in Johnson
2 City?

3 A. Only on Fridays. There were two specific days I had. Wednesday
4 was an arraignment day and Fridays were the court day where we had
5 an actual ADA that was assigned to that court, and a public defender.
6 So, they were both there the full day as well as, you know, all the
7 private bar.

8 Q. And while you were presiding in Johnson City, did you have to do any
9 personnel reviews of your employees?

10 A. They really did not pursue the issue of doing the personnel reviews, so
11 I really did not do reviews of personnel.

12 Q. And while you were in Johnson City, how was Rachelle Gallagher's
13 work?

14 A. At the time, I thought that she was doing a good job.

15 Q. So, you said at the time. Do you think anything different now?

16 A. Well, yeah. I came to find out a lot of things. I came to find out, you
17 know, from-- A lot of it was going on to these proceedings, what was
18 going on with the court-- other court personnel, that she was
19 dishonest to them. That she was--

20 MS. CENCI: Objection. Objection.

21 THE REFEREE: Hold on.

22 MS. CENCI: This is rank hearsay, Your Honor.

23 THE REFEREE: Yeah, we're getting a little far
24 afield with the question. Let's get another question.

25 MS. SCALISE: Okay. Okay.

1327.

(Miller - Direct)

1 BY MS. SCALISE:

2 Q. You did mention earlier that she had a personnel problem?

3 A. That's correct.

4 Q. Who resolved that problem?

5 A. Mayor Deemie in the Village of Johnson City and the village board.

6 Q. Did you have any input?

7 A. I did not.

8 Q. But you did hire again for a different position knowing that she had an
9 issue.

10 A. I did.

11 Q. Do you know how that issue in Johnson City was resolved?

12 A. She was given a written reprimand on it. She had to go--

13 MS. CENCI: --I'm going to object, Your Honor.

14 I'm going to move to strike. There's no foundation. He
15 said he was not involved in it.

16 THE REFEREE: Yeah, why don't you lay a
17 foundation if you can because right now there isn't.

18 BY MS. SCALISE:

19 Q. Okay. So, was there a process that the mayor and the town board went
20 through?

21 A. Yes, there was.

22 Q. And were you involved in that process at all?

23 A. I was aware of the process going on. I spoke to them at one of their
24 meetings, but I was not the decision maker of how things would be
25 handled.

1328.

(Miller - Direct)

1 Q. And when you spoke to them at one of those meetings, what did you
2 indicate to them?

3 A. That I didn't want to see her lose her job.

4 Q. And when they concluded their procedure, did they advise you of the
5 conclusion?

6 A. Yes, they did.

7 Q. And she didn't lose her job at that point?

8 A. No, she did not.

9 Q. And--

10 A. --She was physically separated from the other employee. She got a
11 reprimand that it--

12 MS. CENCI: --I'm going-- Objection. Move to
13 strike.

14 THE REFEREE: I think she testified to that.

15 MS. CENCI: No. Absolutely not, Your Honor.

16 THE REFEREE: I think she-- Well, the record will
17 bear us out. I think she did.

18 MS. CENCI: She said she never saw the letter. She
19 never saw the complaint and she never saw the letter. And
20 there was a letter, it was not a reprimand. It was a
21 counseling-- one counseling session.

22 THE REFEREE: My notes say that it was Kim
23 Cunningham. Kim made an allegation against her about, I
24 have in quotes, "Hostile and violent behavior." She was
25 told by Miller about the memo, told it was unfounded but

1329.

(Miller - Direct)

1 recommended one session of counseling. That's what my--

2 MS. CENCI: --We also have the transcripts of actual
3 testimony, Your Honor.

4 THE REFEREE: No, I understand. Understand.

5 You know, actually, it really doesn't matter. I really-- I'll
6 grant the motion to strike but I think it really doesn't matter.

7 MS. CENCI: Thank you.

8 BY MS. SCALISE:

9 Q. When did Rachelle Gallagher start as your secretary in family court?

10 A. January of 2015.

11 Q. What would be the start date?

12 A. The 2nd.

13 Q. What were her duties in family court?

14 A. Number one duty was scheduling, handling my schedule, making sure
15 my scheduled information was getting over to the court part. The
16 other one was preparation of files. We were a computerized court, but
17 I wanted to keep files on each one, each case. I wanted to see the
18 petitions and I wanted to see the last governing order.

19 Q. You mean physical files?

20 A. Physical files because--

21 Q. --Printed files?

22 A. Yes, because when I appeared in family court as a practitioner, the
23 worst thing I thought as a judge was them looking down as opposed to
24 the people coming in. I wanted to look at them when I spoke to them.
25 I wanted to make eye contact with them. I wanted to convey the

1330.

(Miller - Direct)

1 message that their matters are important to me and that I'm giving my
2 attention to it and they can physically see that. I learned to do that my
3 whole life and I feel that's important. So, I would do the research and
4 the background on these files so when they came in, I already knew
5 what was in them and I wanted to hear it from them. So, that is
6 something I wanted. I kept those files because I was the one that was
7 handling those cases and I wanted to assess their demeanor, how they
8 responded, their eye contact. And those are clues and cues I've used
9 my whole life as a judge and a practitioner. The other one was
10 opening mail, messages, orders that I would ask to be issued, orders of
11 transport orders, review of vouchers and also attorney files and
12 requests.

13 Q. Did you review your email?

14 A. Yes, they-- both Mark and Rachelle. I was not good with my email.
15 I'm-- I was not good with it whatsoever. Both of them had my
16 passwords. Both of them had access to my court email, which is
17 rmiller@[REDACTED].

18 Q. Did she work-- Did Ms. Gallagher work in court or in chambers?

19 A. She worked in chambers. She was very rarely in the courtroom.

20 Q. Were you both in chambers together at times?

21 A. Usually at the start of the day I was in there, briefly. I'd leave, I was
22 in court. I'd come back down at lunchtime, leave, come back, I'm
23 back upstairs in court, come down at the end of the day, literally a few
24 minutes and gone. I did not spend a lot of time with her in chambers.

25 Q. Your Honor, just-- If you could just put a timeframe as to make the

1331.

(Miller - Direct)

1 timeframe of like when you started, when you went to lunch, and
2 when you completed the day.

3 A. Yes. If we started our-- If we started the morning calendar, and I
4 used the same calendar as my mentor judge, which is Judge Spero
5 Pines who has been in that court for 23 years. I was on the same
6 calendar schedule he was. 9:30 start, then we'd break 12:00, and then
7 we'd start a 1:30 start and then we would go to 4:30. Those are the
8 times that I was in the courtroom. Prior to that, I'd be in my office
9 and then-- Usually everyday for lunch I was gone. I didn't eat lunch
10 there, I left. I would like to get out of the building. I liked to get
11 some fresh air so it was my course of conduct. I don't remember even
12 really staying there for lunch. I would leave the building.

13 Q. How did you assign work to Rachelle Gallagher?

14 A. Specifically we talked about-- The number one issue I needed her
15 there for was my schedule. So, she would relay that information to the
16 court clerk and the court part. If I had anything going on in my
17 personal schedule, they would know about it, so they would work on
18 the calendaring. Any messages that came in she would interact with
19 that. Also, my-- the files. Most important stuff that I needed. I
20 needed registry checks done because I'd have to do a registry check on
21 each person. Any orders of protection, any issues that they may have
22 had, we have to disclose that. Beginning any proceeding, I have to
23 ask them those questions to make sure I knew this person. Other
24 issues I assess a credibility by that. "Did you have an order of
25 protection? No, I didn't. Well, here's the name, it matched. Do you

1332.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 recall this location? Oh yeah, I do recall that.” Extremely important
2 to what we were doing. And I wanted those case files. As I said, I
3 wanted to make eye contact with those people that were coming in
4 there. The worst thing I thought as a family court judge is the judge
5 staring at the screen and not looking at the people. We’re dealing with
6 the most precious things of their lives, their children. So, anyone I
7 dealt with, it’s extremely important why those litigants are there and I
8 was very tuned into that.

9 Q. Were you satisfied with her work?

10 A. I was not. There were problems with me getting messages. There was
11 problems with information that was relayed, telling people that I’m
12 too busy. I wanted-- When I came in family court, I wanted to run
13 efficiently. I wanted to make sure any phone call I got that day was
14 returned. There was no need for it to be passed on because as a
15 practitioner I wanted to make sure those were addressed. I wanted to
16 make sure we dealt with our mail immediately. Main issue was
17 standards and goals. I’d been dealing with standards and goals for 20
18 years prior to in the town and village courts. I wanted those standard
19 and goals to be zero. When the judgeship was created, we had a
20 backlog, a huge backlog of cases, hundreds of cases. So, I was
21 picking up cases from the prior judge that was-- cases were two years
22 old. Parties were just looking for some resolution on the thing. They
23 were upset when they came in. They were-- They didn’t have judicial
24 action on these cases and they were suffering. A lot of times they
25 would thank us just for taking the time to do that. I needed my

1333.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 calendar to run smooth. I had issues with my back. I've had four
2 back surgeries. I had a spinal fusion on my L4-L5 back in '13. I had
3 a laminectomy done in '14. So, prior to coming in, I actually did
4 physical therapy right before I was sworn in to take family court,
5 through June to October '15, I had to probably go through 25 or 26
6 sessions of physical therapy. I had a court clerk, Marie Lawrence,
7 who was working with me. Taught me how to use the computer. She
8 was excellent. She'd been working in family court for 20-plus years.
9 She was an excellent court clerk. And then each judge was supposed
10 to be assigned three staff people. I'm starting out as a new judge, I
11 only had two. So, not only was I new, I had two people and I'm
12 dealing with the backlog of cases from the prior judge from two years.
13 So, it was extremely challenging. I needed my office staff to do the
14 same, meaning Mark Kachadourian, the court attorney, and the
15 secretary, Rachelle. Because Rachelle used to be a court clerk in the
16 town and village courts.

17 Q. So, did you have-- Did any issues come up in 2015 with the level of
18 Rachelle Gallagher's work?

19 A. Yes, and there was an issue specifically with Marie Lawrence. There
20 was an issue of complaints where she said that Marie had bullied her.
21 This was like going back to all the problems in Johnson City,
22 resurrecting all over again. And this was in 2015. And I had to speak
23 to Deb Singer about it. I wasn't there--

24 THE REFEREE: --Was Marie Lawrence in family
25 court? What was her position?

1334.

(Miller - Direct)

1 THE RESPONDENT: Yeah, she would have been
2 described as a 16. She was the court clerk that was in the
3 courtroom with me every day. She was the one who would
4 be doing the registry checks, the calendaring and there was
5 another court clerk, Wendy Quarella. She was a 12. So, the
6 two of them were doing the work of three people.

7 THE REFEREE: Okay.

8 BY MS. SCALISE:

9 Q. So, what happened with respect to that issue of bullying?

10 A. Initially, and I didn't take Rachelle's side on it, I listened to what had
11 transpired and she said Marie had sworn at her. Well, I had no
12 understanding or reason why Marie would swear at her, so, I don't
13 even know what occurred between Rachelle and Marie, but I was
14 hearing it second hand. And it sounded awfully like the prior problem
15 that we just went through with Kim Cunningham in Johnson City, and
16 I did not take her side on it. Apparently, they, Mark and Rachelle,
17 went to Debbi Singer. I did not want Marie moved. And in the
18 process what happened is they moved Marie and they actually she
19 transferred me in a less experienced clerk. So, not only am I new, not
20 only am I in my first year, I go from an experienced clerk with two
21 people to a less experienced clerk because of whatever issue was
22 going on with Rachelle and Mark.

23 Q. Now, turning to Mark Kachadourian. He worked for you?

24 A. He did.

25 Q. When did he start?

1335.

(Miller - Direct)

1 A. January 2nd of 2015.

2 Q. Did you know him prior to his work for you?

3 A. I knew him as an attorney that practiced in Tioga County Family
4 Court. But he sold my wife and I a car, a van. It was in late 19-- late
5 '90s, in 2001. He sold us a Dodge Caravan.

6 Q. Does he have another business?

7 A. To my knowledge, he was-- what I was informed, he was selling cars.
8 His brother-in-law had a big business in Canada and they were
9 bringing cars through the auctions and he was working selling cars.
10 So, through-- I guess they had a car business-- big car business in
11 Canada and they would send vehicles down to him. So, our car was
12 originally like a Canadian car, that's what it was, that Dodge Caravan.

13 Q. So, how did you come to hire Mark Kachadourian?

14 A. At the time of the election, there were different people that were
15 interested in the job. I had to deal with-- I had an opportunity to deal
16 with Mark when he was in Tioga Family Court, and he used to
17 represent or do the conflicts in Tioga County, so I felt he was versed
18 to do the job. That he did some similar type of work in Tioga County
19 and that's why I brought him on.

20 Q. Did he work on your campaign?

21 A. He did. He volunteered and helped out.

22 Q. What was his position there?

23 A. A lot of times he just put up signs, that was his position. He was not
24 in any type of management role, decision-making role.

25 Q. Did he attend any appearances with you?

1336.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 A. He may have gone with me-- We went to a few football games. He
2 may have gone with me to a debate. He did not write speeches for me.
3 I spoke on the topics. I knew what the jobs were and I could speak
4 about that.

5 Q. Now, what were Mr. Kachadourian's duties as court attorney?

6 A. Mark was supposed to write decisions for me and Mark was supposed
7 to-- if I needed synopsis of an issue, prepare those, maybe a summary
8 on my case files. I did all of my own case file preparation. I did most
9 all my decisions. I think I asked Mark to do two. He could have done
10 more. There were two that I can recall of written decisions. The last
11 decision would have been March 20 of 2017. *Urrea* was the case and
12 I know the case name and I know the parties, both professors at
13 SUNY Broome. And it was a custody case that was brought about
14 and they had one child together and I actually, I could have wrote the
15 decision but I asked him to do it. I was-- The issues of standards and
16 goals was something I wanted to stay on top of. I wanted my
17 standards and goals to be zero and actually Rebecca Vroman sent a
18 memo over to us and there were two cases that, you know, S and Gs
19 are running on it. So, I spoke to Mark about both of those cases. He
20 already had clearly knew how I wanted to decide a case before he
21 even had sat down to write it.

22 MS. SCALISE: Can we mark this for identification?

23 We know what number-- letter we're up to?

24 THE REFEREE: --I think you are--

25 MR. FITZPATRICK: --LL.

1337.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 MS. SCALISE: May I approach the witness?

2 THE REFEREE: Sure.

3 BY MS. SCALISE:

4 Q. Judge, directing your attention to what's been marked as Respondent's
5 LL for identification. Do you recognize it?

6 A. I do.

7 Q. What do you recognize it to be?

8 A. This was a memo to Mark from Rebecca Vroman and the *Comparetta*
9 *v Palmer* case and stating that the trial had concluded in November 7th
10 of 2016, and it was now standards and goals were up on February 14th
11 of 2017. This memo was dated January 23, 2017.

12 Q. And so what does that mean?

13 A. That means that the court attorney is not doing his job. The court
14 attorney should know when these timeframes were up. You shouldn't
15 need a court clerk to tell you when the standards and goals timeframes
16 are being run and any attorney would know that.

17 Q. So, is that the other case you're speaking about that he had to write a
18 decision on?

19 A. Correct.

20 Q. Aside from *Urrea*?

21 A. Correct.

22 Q. I now ask that that--

23 MS. CENCI: --Excuse me, are you offering this?

24 THE REFEREE: I haven't heard her do it yet.

25 MS. CENCI: Well, then I move to strike because

1338.

(Miller - Voir Dire)

1 he's already read into the record from a document that's not
2 in evidence.

3 THE REFEREE: Well, you didn't object. Are you
4 offering it?

5 MS. SCALISE: I am offering it.

6 THE REFEREE: Okay, do you object?

7 MS. CENCI: May I have a *voir dire*?

8 THE REFEREE: Yes. Can I see that please?

9 THE RESPONDENT: Yes.

10 VOIR DIRE BY

11 MS. CENCI:

12 Q. Judge, this is an email, correct? This document, Respondent's LL? Is
13 that an email?

14 A. It appears to be an email, correct.

15 Q. And it's from Rebecca Vroman to Mark Kachadourian?

16 A. Correct.

17 Q. Did you have access to Mr. Kachadourian's email account?

18 A. I did not.

19 Q. Where did you get this?

20 A. From Rebecca Vroman.

21 Q. And when did you obtain it?

22 A. Within that timeframe because I spoke to Mark about, you know, why
23 is she-- why is she contacting you regarding standards and goals?

24 Q. So, standards and goals are up on February 14th, which hadn't
25 occurred at the time of this memo, is that correct? Just yes or no.

1339.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 A. Correct.

2 Q. Thank you. I have no objection.

3 THE REFEREE: Received.

4 BY MS. SCALISE:

5 Q. Do you know if Mr. Kachadourian completed the matter of
6 *Comparetta v Palmer* within the standard and goals time period?

7 A. He did. We had a discussion about it and I asked him about this
8 particular document that came through and I said, "Mark, we're
9 attorneys. Why would you have to-- Why wouldn't you be following
10 up on this?" I asked him that question because standards and goals
11 were being promoted right from the chief judge all the way down.
12 They wanted our standards and goals to be not good but excellent and
13 there was no reason that my court could not operate on zero standards
14 and goals meaning I addressed everything within those timeframes.

15 MS. SCALISE: I now ask that this be marked as
16 Respondent's MM for identification. I provided a copy.

17 THE REFEREE: Okay, that's fine.

18 MS. SCALISE: May I approach?

19 THE REFEREE: Yes.

20 BY MS. SCALISE:

21 Q. Your Honor, taking a look at what's been marked as Respondent's
22 MM for identification, do you recognize that?

23 A. I do.

24 Q. What do you recognize it to be?

25 A. That is our term 5 report, which would be for the-- up until the June

1340.

(Miller - Direct)

1 timeframe of 2017 of our standards and goals for every judge within
2 our judicial district, including myself, Broome Family Court, and all
3 the 10 counties.

4 Q. So, if you could just explain for the record, how many terms do you
5 get these reports?

6 A. Usually it runs out every month. So, they'll say the term. A term is
7 usually run in a month timeframe, so I--

8 Q. --Okay, so that would be the term-- When it says cumulative--

9 A. --Correct--

10 Q. --how many months would that cover?

11 A. So, that's covering my timeframe from, you know, from the beginning
12 of the year up until the June timeframe.

13 Q. So, a six-month time period would be fair to say?

14 A. Correct, and anything that may have come over prior to that. It would
15 be your running total to that month of anything that you have.

16 Q. And this is for all judges in your district?

17 A. Correct.

18 Q. That would be the Sixth Judicial District?

19 A. The Sixth Judicial District and including also-- that's included in
20 there are the support magistrates also. So, it's all the judges and all
21 the support magistrates in the 10 counties.

22 Q. And you're listed along with the other judges?

23 A. I am.

24 Q. Okay. And so, as of June of 2017, taking a look-- I'm sorry. So, is
25 this document in the same condition as you've seen it before?

1341.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 A. Yes, it is.

2 MS. SCALISE: I'd ask this be moved in as
3 Respondent's MM for identification.

4 THE REFEREE: Any objection?

5 MS. CENCI: It's irrelevant, Your Honor.

6 THE REFEREE: No, I'll receive it.

7 MS. SCALISE: Thank you.

8 BY MS. SCALISE:

9 Q. Turning your attention to the page that is your-- that lists your name.
10 It doesn't have a page number but I believe it's the fourth page in?

11 A. Correct.

12 Q. Can you just explain the numbers on this form so we could understand
13 them?

14 A. Yes. It's marked new, dispositions, DISP, pending and standards and
15 goals.

16 Q. And that would be in the third column on this page for family court?

17 A. Yes. It says-- It'll say county, civil, criminal, and family at the top it
18 lists-- and supreme would be the fourth column and it's listed right on
19 the top of each page.

20 Q. So, new would mean what? It lists 570. What does that mean?

21 A. So, my total-- If you look for my total because I was in four counties.
22 So, I had to travel to Chenango County, which would be Norwich,
23 Cortland, actually the City of Cortland, Madison, which is way up
24 north, east of Syracuse, and Broome County. The total of new cases
25 that I had was 581.

1342.

(Miller - Direct)

- 1 Q. And that's for those four counties, correct?
- 2 A. Correct.
- 3 Q. And then there's something that says, DISP. What does that mean?
- 4 A. How many cases I disposed of.
- 5 Q. And then 619 for the--
- 6 A. --Correct, which would carry over from the prior terms.
- 7 Q. And then there's 300 pending? I'm sorry, 306 pending?
- 8 A. 306 pending, correct.
- 9 Q. And then S and G? It says 8.
- 10 A. That means we're over standards and goals.
- 11 Q. So, when you go over standards and goals, what does that mean?
- 12 A. It means I have not resolved that case within the set timeframes of the
- 13 guidelines that the court system has set up.
- 14 Q. And is that a problem for the court system?
- 15 A. It's a problem for litigants and for people. That means-- That's eight
- 16 cases-- Eight-- Take it-- Eight-- So, we'll multiply that by 2-plus
- 17 children of their files that aren't being resolved within a reasonable
- 18 timeframe.
- 19 Q. Now, how many other judges sit in family court in Broome County?
- 20 A. There's four of us that sit there. Judge Rita Connerton, Judge Spero
- 21 Pines, Judge Mark Young, and myself.
- 22 Q. And you were the new kid on the block at this time?
- 23 A. Yes, I am. Yes.
- 24 Q. And so how did your cases get assigned to you? You said something
- 25 about you inherited some cases in 2015?

1343.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 A. It's all done through the chief clerk, through Deb Singer and OCA.
2 We don't have any control of that. They just assign cases to our term
3 or our part.

4 Q. And, if you know, as a total for the four judges in Broome County,
5 how many cases come in and out each year?

6 A. Oh, thousands.

7 Q. So, comparatively speaking to when you were in Johnson City Court
8 to family court, okay, what's the case load like?

9 A. It's the intensity, the level, the case and the preparation involved. So,
10 it's busier in family court because there's more moving parts. You
11 have a lot of documentation, petitions. In the town and village courts,
12 you had a traffic information and you would assess things. There's a
13 lot more research, there's a lot more tension that you need in family
14 court. It's busy.

15 Q. Now, turning your attention back to Mark Kachadourian, did you
16 check references before you hired him?

17 A. I did not.

18 Q. What did he do? What were his duties as your court attorney?

19 A. Number one, he was supposed to write decisions. The other, number
20 two, was to do pre-trial conferences, review orders and draft orders,
21 advise me on the law, look at adoption paperwork, also review some
22 of the decisions if they came over from the support magistrates. So, if
23 there are any objections to decisions they made, he'd review those
24 also. Again, review orders, mail review and review drafting orders.

25 Q. Okay, so taking them one by one, as to decisions, how many did he

1344.

(Miller - Direct)

1 draft in the time period from January 1st of 2015 to June-- excuse me,
2 July of 2017?

3 A. Two that I know of.

4 Q. And what-- Do you know what the names of those cases were?

5 A. One was *Comparetta, Palmer*, and the other one was *Urrea*. *Urrea v*
6 *Urrea*, and the day I finished the trial would have been March 20th of
7 2017.

8 Q. And directing your attention to the pre-trials, okay, what does that
9 mean? How many do you see a day and what did you do and what did
10 he do with respect to those?

11 A. From the pre-trial aspect, from the initial appearance, anything after
12 that would be considered pre-trial. So, initially I'd have an initial
13 appearance, the parties would come in, whatever their petitions are,
14 whatever their requests were. If it wasn't something we could resolve,
15 we would schedule it for a pre-trial conference. Every court attorney
16 in family court was doing their lion's share of pre-trial conferences,
17 helping the judge, because we were either doing trials and we were
18 doing the initial appearances. In my case, which I was not aware of at
19 the time, and how I found out about this was the week of July 3rd to
20 July 11th, when I was working with Rebecca Vroman--

21 Q. --Can you put a year on that?

22 A. 2017. She indicated to me, "Judge, you do most all your pre-trial
23 conferences, so--"

24 MS. CENCI: --Objection. Hearsay.

25 THE REFEREE: Sustained.

1345.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 A. What I came to find out--

2 THE REFEREE: --Ask another question.

3 BY MS. SCALISE:

4 Q. Okay. How did you learn about you doing more pre-trial conferences
5 without giving us the substance of the conversation?

6 A. I came to find out that Mark Kachadourian was doing pre-trial
7 conferences for me on Thursday afternoons, every Thursday, from
8 1:30 until 3:30. He did one pre-trial conference every half hour. So,
9 he did four pre-trial conferences for the afternoon.

10 Q. Comparatively speaking, how many pre-trial conferences would you
11 have on during a week? Any given week?

12 A. We would have anywhere from--

13 MS. CENCI: --Can we have a-- Excuse me.

14 Excuse me. Are we talking about in July of 2017?

15 THE REFEREE: Well--

16 MS. CENCI: --Can we have a context for this?

17 THE REFEREE: Sure. Just timeframe.

18 BY MS. SCALISE:

19 Q. Okay. Let me put a time period. Okay, from January 1st of 2015, to
20 July of 2017, okay? What date-- Let me ask this, when were you
21 transferred out of family court?

22 A. July 11th of 2017.

23 Q. So, strike the first question but I want to put the timeframe on again.
24 In January 1st of 2000 and-- January 2nd of 2015 to July 11th of 2017,
25 can you give us a ballpark estimate of how many pre-trials were done

1346.

(Miller - Direct)

1 each day in your court part?

2 A. Anywhere it would be from 14 to 30 to 40 cases we have.

3 Q. And who was handling most of the pre-trials?

4 A. I was.

5 Q. And in addition to that, on any given day, what else were you
6 handling?

7 A. Any of-- Well, we had parts where we were handling emergencies.
8 Each one of us would have a week that we would handle any
9 emergency petitions that came in. We were each scheduled for a
10 week. So, in addition to whatever cases I had calendared of pre-trials,
11 I would have additional emergency petitions that were being filed on
12 top of it. Those would vary in the range anywhere from-- again, it
13 could be four, it could be up to 20 of emergencies on top of your
14 initial schedule.

15 Q. And with respect to those emergencies, how did they come to you?
16 How was the intake done on the emergencies?

17 A. The intake was there was a intake team that would take it and then it
18 was supposed to come to my court attorney and secretary and they
19 were supposed to review those petitions and then it's communicated,
20 emailed up to the court clerk and then I have aspect-- I can see it as
21 well as the court clerk can see it too. We can call it up online.
22 They're supposed to review those, triage those, look at those prior to
23 me actually receiving them.

24 Q. So, did Mr. Kachadourian and/or Ms. Gallagher review those prior to
25 you receiving them?

1347.

(Miller - Direct)

1 A. Not always. Mr. Kachadourian reviewed them probably about 40
2 percent of the time. I was reviewing them myself.

3 Q. Now, you also mentioned adoption paperwork?

4 A. Correct.

5 Q. What-- How much-- You know, comparatively speaking, from
6 January 1st of 2000-- I'm sorry, January 2nd of 2015 through July 11th
7 of 2017, can you give us a ballpark figure of how many adoptions you
8 handled each week?

9 A. I would say about yearly or within that timeframe, probably six
10 adoptions I did in the two and a half years.

11 Q. And he handled those?

12 A. Yes. No, what happened is the court clerk-- There was a court clerk
13 that was assigned, I think it was the deputy chief that would pretty
14 much go-- have all the paperwork prepared and then they would
15 review it with the court attorney. So, they had all the documents,
16 everything was marked. As an attorney, what you had to go through--
17 like the attorney going for the closing. It's a checklist. Everything's
18 there. Someone already prepared all that. You just go through the
19 checklist.

20 Q. Now, you said there were support magistrate decisions?

21 A. Correct.

22 Q. On that same time period, January 2nd of 2015 through July 11th of
23 2017, ballpark figure, how many of those did you deal with on a
24 weekly basis in your court part?

25 MS. CENCI: Your Honor, at this point I have an

1348.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 objection to this line of questioning. It's irrelevant. He's
2 the family court judge. He's obviously got work to do.
3 Where we going with this?

4 THE REFEREE: Well, what I think they're trying to
5 establish is criticism of Mr. Kachadourian's work.

6 MS. CENCI: Well, then can we get to that because
7 we really haven't heard anything about that.

8 THE REFEREE: Well, we've just heard about
9 limited work that he did on pre-trials and we've heard about
10 limited work--

11 MS. CENCI: --Which he found out about after the
12 fact, in July of 2017, so--

13 THE REFEREE: --We've heard about limited
14 drafting of decisions. We did hear about that, so--

15 MS. CENCI: --But so far we haven't heard any
16 criticism of Mr. Kachadouian by Respondent, so--

17 MS. SCALISE: --I'm building a foundation.

18 THE REFEREE: Yeah, continue.

19 MS. SCALISE: Thank you.

20 THE REFEREE: Please.

21 BY MS. SCALISE:

22 Q. So, the last question was about the support magistrate decisions.
23 Ballpark estimate, same time period, January 1st-- I'm sorry, January
24 2nd of 2015 through June-- I'm sorry, July 11th of 2017. Ballpark
25 figure, how many a week would you handle in your court part?

1349.

(Miller - Direct)

- 1 A. I could estimate over that-- the year time span, anywhere maybe from
2 five to 15.
- 3 Q. And did Mr. Kachadourian assist with those?
- 4 A. He was supposed to, correct.
- 5 Q. But did he?
- 6 A. He did.
- 7 Q. So, if you had to describe how the cases evolved in any given day in
8 your court part, how much time was allotted for each case?
- 9 A. There was 15 minutes allotted for each case that would come in. So,
10 in every 15-minute segment, we would call in another case.
- 11 Q. And that's for conference purposes.
- 12 A. It would be for initial appearances, for pre-trial conferences, unless we
13 needed trial time and then we would set trial time aside. So, the
14 reason for the pre-trials was to free us up so we could do trial time and
15 so that any of those backlogged cases would get through and people
16 would have their opportunity to finally be heard in a court that they'd
17 been waiting for years.
- 18 Q. So, if you had to give us a ballpark figure of how many cases you
19 heard per day, okay, and give us a total for a week, during that same
20 time period, January 1st-- January 2nd of 2015 through July 11th of
21 2017, what was your caseload like?
- 22 A. Anywhere daily it could go from 14 to 30 to even up to 40, daily.
- 23 Q. And during this time period, you were in court?
- 24 A. Correct, 95 percent of my time I'm in court.
- 25 Q. Did you see Mr. Kachadourian during the day?

1350.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

- 1 A. Maybe briefly in the morning. Lunchtime, I would take him to lunch.
2 I took him to lunch every day and paid for his lunch just about every
3 day.
4 Q. So, after the morning schedule you would see him for lunch?
5 A. Yes.
6 Q. Where would you see him if you saw him during the day, not in the
7 court part?
8 A. Unless he came into the courtroom, I wouldn't see him.
9 Q. Would you see him in your chambers?
10 A. I would see him in the chambers, correct, when I came down for
11 lunch.
12 Q. Where is his office located in comparison with your chambers?
13 A. His office was located upstairs, the whole level above me upstairs in
14 an office area with other court clerks. My office was located
15 downstairs and at the other end of the hallway. The chambers is
16 located downstairs.
17 Q. So, were you the only judge on the first floor?
18 A. Correct, and I would be located with all the other OCA, the staff
19 workers. We're all on the first floor and I was on the first floor with
20 them.
21 Q. So, excuse me, let me strike that. Did Mr. Kachadourian work from
22 your chambers as far as you know?
23 A. I came to find out.
24 Q. By the way, there was some reference that you started court late on
25 occasion or left early? What was that with respect to?

1351.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

- 1 A. I was receiving physical therapy and I'll tell you the timeframe for
2 2017. January 30th to March 3rd, I had a whole scheduled physical
3 therapy sessions that I had to do. I came to find out that the court
4 secretary stated it was my obligation to notify the court clerk that I had
5 physical therapy sessions. What was handling-- happening is when
6 I'd do physical therapy, I'd come in, they were scheduling cases at the
7 time that I was supposed to do my physical therapy. So, I had to-- In
8 fact, I had to cut back my physical therapy or I would have to come
9 back in like a t-shirt, put the robe on, then I'd have to at lunchtime go
10 take a shower, and this went on from end of January until the
11 beginning of March.
- 12 Q. Now you said court ended at 4:30?
- 13 A. Correct.
- 14 Q. What time would you leave for the day?
- 15 A. Usually I'd stay late, so I would leave probably 5:00, 5:30, 6:00, I've
16 always stayed late.
- 17 Q. What about Mr. Kachadourian?
- 18 A. No, he'd leave at the time, 4:30. He'd leave at 4:30.
- 19 Q. Did he work from 8:30 to 4:30?
- 20 A. When we were on those hours, correct.
- 21 Q. Judge, did you work from home after hours?
- 22 A. I did.
- 23 Q. If you know, did Mr. Kachadourian work from home after hours?
- 24 A. No, he did not.
- 25 Q. Now, if you were on trial, you said that you would clear time for that.

1352.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

- 1 When did you usually do the trial work?
- 2 A. We would set days. We'd have the morning, the whole morning
3 calendar and then the whole afternoon calendar, depending on the case
4 and how much time they needed.
- 5 Q. Was Mr. Kachadourian with you if you were on trial?
- 6 A. Sometimes. He wouldn't sit in court with me. The court-- All the
7 court clerks-- the secretaries and the court attorneys had access. They
8 could listen to any of the proceedings live. Anyone could tune in and
9 listen to any courtroom at the time.
- 10 Q. Now, there was also emergency intakes, you said one week out of the
11 month?
- 12 A. We would actually-- Correct. There were four of us, so each one took
13 a week.
- 14 Q. How many emergency intakes did you take on average from the same
15 time period, January 2nd of 2015, through July 11th of 2017?
- 16 A. Again on emergencies, it could go anywhere from four to 20. It could
17 go from two to 20, it really depended on what was coming in for the
18 day.
- 19 Q. Did Mr. Kachadourian assist with that?
- 20 A. He was supposed to. That was one of his main functions was to triage
21 those cases.
- 22 Q. Did he give you a memo?
- 23 A. He did not.
- 24 Q. Did you have any input at all from Mr. Kachadourian on those
25 emergency petitions?

1353.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 A. He would sometimes say, "See this case." So, I would get messages
2 to call this case. All the details, being a town and village judge for all
3 those years, I had to read the informations. I had to read the
4 supporting depositions. I had to read all the paperwork that was filed.
5 So, when I had my regular caseload, I was reading all that intake stuff
6 coming in. I had to take the time, read it, and bring those cases in.

7 Q. And if he said, "See this case," do you mean it was a case that he
8 researched to assist you with your case?

9 A. To be honest, I think it meant that these people needed some
10 immediate attention or could you-- or could you listen to this case. It
11 wasn't a recommendation to me saying, "Judge, here's the issue, here
12 are the facts." I did not receive that.

13 Q. And did he research any case law or a statute or anything that would
14 be applicable to one of these emergency petitions?

15 A. Rarely.

16 Q. Now, directing your attention to February 6 of 2017, do you recall that
17 date?

18 A. I do.

19 Q. Did anything unusual occur?

20 A. Yes. I had physical therapy that day. I was on the emergency intake
21 so meaning all those emergency cases were coming in to me. I had a
22 full calendar schedule set for the morning and one for the afternoon.
23 As I stated, I was to have physical therapy so by the time I was done
24 for physical therapy, there may have been some lag when I had to get
25 into court. And on one of the-- It would be the initial case, and I'd

1354.

(Miller - Direct)

1 indicate that I was on physical therapy. I thought the court clerk had
2 received all that information because in the past the court clerk had
3 when I went through the sessions back in '15. Apparently, I came to
4 find out that did not happen, so, I had a full calendar that ran from
5 morning start to lunch break. In addition to that were all the
6 emergencies that came in. On that day I had-- There were a number I
7 had in the morning and then in the afternoon, I think there were nine,
8 in addition to the seven cases that I had-- or the seven cases that I had
9 scheduled in the afternoon on that.

10 Q. Who was there to assist you?

11 A. It might be myself and the court clerk, Rebecca Vroman.

12 Q. Where was Mr. Kachadourian?

13 A. I was looking for him. In fact, I contacted-- I asked Rebecca to
14 contact Rachelle. "Where's Mark?" "Well, I don't know, he had to go
15 to the bank." Well, usually either of those employees, if they had to
16 leave, they'd have to check with me and tell me. He wasn't there that
17 afternoon. Not at all. So, we had nine cases that I had to review and I
18 probably saw the lion's share of them. I probably saw six or seven of
19 those cases out of the nine, in addition to everything else that was
20 moving on a 15-minute increment. So, I had to move the calendar
21 along and it's stressful because you have to get them in. We have to
22 be out of there by 4:30 because the security staff have to leave. So,
23 what I had to monitor all the time, not only these cases are moving,
24 make sure these officers weren't in our courtrooms and that was
25 coming from the administrative judge all the way down through. If

1355.

(Miller - Direct)

1 we ran over that, I had to get permission from the administrative judge
2 to run over. So, we had to conclude things and I wanted everything
3 concluded, you know, at or before 4:30 that day.

4 Q. Now, directing your attention to June 5th or 9th of 2017, anything
5 unusual occur on that day?

6 THE REFEREE: What date?

7 BY MS. SCALISE:

8 Q. June 5th to-- the week of June 5th through the 9th of 2017, anything
9 unusual occur during that week?

10 A. Yes. My-- The week prior to, we had a funeral for my uncle. He
11 was-- The funeral was on the Friday so it would have been on the
12 2nd. The viewing was on the Thursday. I had a full court day on
13 Thursday and then we went to the calling hours on Thursday. That
14 was the last brother that was alive on my father's side of the family, so
15 it was like going through my father's funeral all over again. Show up
16 to work Monday morning. The table, Judge, the size of the table
17 that's in front of you, maybe four feet by six feet, would have been
18 Rachelle's desk. Every week I'd have a stack of five files for each
19 day of the week. On top of that would be a registry check. I walked
20 into Ms. Gallagher's office. She was going to be gone that week. She
21 sent a memo out on the 23rd of May telling all the court personnel how
22 she's going to be gone, so that meant to whatever assistance the judge
23 may have needed to get him that assistance. I come into the office, the
24 desk is totally empty. There wasn't a sheet of paper on it, and I had a
25 full calendar for Monday, Tuesday, Wednesday, Thursday and Friday.

1356.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 And here I just went off and I can tell you, Rachelle's ex-husband
2 used to work for my cousins, the sons of my uncle that passed away,
3 she was well aware I had the funeral. Her and Mark were working
4 together that week that I wasn't there, which would have been on
5 Friday and they knew Thursday what was going on. Judge Rose, as a
6 matter of fact, was having a retirement party that I would have been at
7 and I sent him a memo thanking him for his years of service and he
8 knew my father and he knew my uncle and the rest of the family. So,
9 I can remember vividly because it was like going through my father's
10 funeral all over again.

11 Q. So, did you get assistance from Mr. Kachadourian?

12 A. Mark Kachadourian-- I asked him, "Mark, what occurred?" The
13 phone's ringing. We weren't able to get to the phone. I said, "I need
14 to get access. Who's calling us?" We couldn't get into the phone.
15 Locked out of the phone. Computers. I said, "Can you get into the
16 computer?" Mark doesn't say anything. He's standing there. He's
17 not saying a word through all this. I go, "Mark, what's going on?
18 Why didn't someone tell me that these files weren't prepared?" If I
19 knew that was the case, I would have come in over the weekend to
20 make sure that I had everything ready to go from Monday, Tuesday,
21 Wednesday, and Thursday. No one communicated it to me. Didn't
22 say a word to me. So, what I had to do, being a former private
23 practitioner and a judge in two busy local courts, I had to reconstruct
24 those files, so I started printing. I started printing the petitions. I
25 started printing the orders for each one of them. So, who actually

1357.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 helped me do most of that was Rebecca and I.

2 Q. And you did that in the courtroom?

3 A. I did it prior to in chambers and then we did the rest in the courtroom,
4 so I was trying to pull out those files and recreate them so I had them.

5 THE REFEREE: This is probably a good time to
6 take a short break?

7 MS. SCALISE: Yes, thank you.

8 THE REFEREE: Let's go off the record.

9 (OFF THE RECORD)

10 THE REFEREE: All right, thank you. We're back
11 on the record. Counsel for the Commission is present.
12 Counsel for the Respondent is present. The Respondent is
13 present as well. Judge, you're still under oath. Let's
14 proceed.

15 THE RESPONDENT: Thank you.

16 MS. SCALISE: Thank you.

17 BY MS. SCALISE:

18 Q. Directing your attention to July 3rd through July 11th of 2017, anything
19 unusual occur during that week?

20 A. Yes. Again--

21 THE REFEREE: --I'm sorry, of what year?

22 MS. SCALISE: 2017.

23 THE REFEREE: '17, thank you.

24 A. Again, came in to work on July 3rd. There were no files prepared for
25 that entire week. And the following week that information was

1358.

(Miller - Direct)

1 concealed from me. I did not have it. No one told me. I did not hear
2 from either the court attorney or the court clerk that they wouldn't be
3 in. I, in fact, I was actually trying to find them where they were within
4 the building. The chief clerk of the court, asked her where they were,
5 didn't get an answer. Asked the court clerk that was assigned to me,
6 didn't get an answer. I think I even checked with Judge Connerton, I
7 don't think I got an answer on that, where they were. Nor did I have
8 any files. I had a whole full calendared week. I had one day on
9 Thursday I had to travel to Chenango County on a case that'd been a
10 very difficult case. And I had to reconstruct and put together those
11 files to have court the rest of that week and into the following Monday
12 and Tuesday of July 10th and July 11th of 2017.

13 Q. Who assisted you with the work during that week?

14 A. Rebecca Vroman, and Rebecca and I actually went through all the
15 mail. I reviewed all the orders. She was preparing orders, I was
16 reviewing them and we-- then we got into the discussions we had
17 about pre-trials, about work and she said to me, "Judge, I didn't
18 realize you could do everything."

19 Q. Now, directing your attention to where Ms. Gallagher and Mr.
20 Kachadourian were on those dates. Did you get a call to your office
21 that they would be out?

22 A. No, I did not. I received no notification. Even I had asked their
23 family members to look into it. One was Garo Kachadourian that I
24 contacted. I said, "Can you get a hold of Mark or Rachelle? Do you
25 know where they are?" And I know he was trying to locate them.

1359.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 Q. So, did you take any administrative steps to locate them?

2 A. I did, I was-- I tried to find-- I actually called the district office and
3 this would have been July 10th. And at that time I was taking steps, I
4 was asking them about termination of both of them.

5 Q. By the way, was there-- Were you in your office at all during that
6 time period, that week of July-- I'm sorry--

7 THE REFEREE: 3 to 11?

8 BY MS. SCALISE:

9 Q. 3 to 11, of 2017? Were you in and out of your chambers at that time
10 period?

11 A. Yes.

12 Q. Did you have any personal property that was located in the office?

13 A. I had two boxes where I kept my personal records. So, my tax
14 records, information that I needed, insurance documents, my medical
15 information, retirement information. It would-- I would consider it, if
16 you carry a purse, my boxes would be assimilated to my purse. I had--
17 These are-- Those are my documents that I kept right underneath my
18 desk. They--

19 Q. --Why were you assembling those documents in your office?

20 A. I was assembling tax information for the accountant, that was one.
21 So, that's where I would keep the documents that I needed to file my
22 tax returns. I had-- I had to-- My wife had to file in April due to her
23 business. She had to file the taxes on April 15th. I was usually lagged
24 and I did it in my practice before and I got extentions before. And the
25 accountant was well aware of I didn't have all my information and

1360.

(Miller - Direct)

1 that we'd be filing an amended return after I filed my 2016 return, so
2 that would have been April of '17.

3 Q. So, you said the boxes were missing?

4 A. Both of the boxes were missing and I was inquiring, "Where are my
5 boxes?" because they sit right underneath my desk.

6 Q. Who did you inquire of?

7 A. I inquired of chief clerk. Inquired of the court clerk.

8 Q. And just names, for purposes of the record?

9 A. Debbi Singer and Rebecca Vroman.

10 Q. And did anybody else have access to the office when you weren't
11 there?

12 A. Mark Kachadourian and Rachelle Gallagher.

13 Q. Was the office door closed if you were not-- I mean, locked if you
14 were not there at the end of the day?

15 A. No. No, it was open.

16 Q. And your chambers were located in-- Let me rephrase this. Were
17 your chambers accessible to the public?

18 A. No.

19 Q. Was there a public hallway?

20 A. There is a public hallway and I can assimilate in the room we're in.
21 The size of the room we're in, 25-by-20--

22 Q. --Meaning that--

23 A. --If we cut this room in half, half would have been my chambers and
24 the other half would have been the secretary's office.

25 Q. But alongside your office, if you can just describe for us, if you don't

1361.

(Miller - Direct)

- 1 mind, is there a hallway that other court personnel have access to?
- 2 A. Yes. Everyone enters the building, literally it would be-- If we were
- 3 in this room, the door to my left, which is three feet away, four feet
- 4 away, the people enter this door. Where the judge is sitting, four feet
- 5 away is the entrance door to my actual chambers. Two, three feet
- 6 down is the entrance door to the court secretary's office and then you
- 7 go down a long hallway and up a flight of stairs to get upstairs and
- 8 access to all the other offices. So, literally, the people-- Everyone
- 9 enters the building through that door, the door that I described to my
- 10 left, which is about three or four feet away, and everyone walks past
- 11 my chambers.
- 12 Q. When-- Do you have a door that's accessible from chambers straight
- 13 out to the hallway?
- 14 A. Yes.
- 15 Q. Is that door locked?
- 16 A. I keep it locked, correct.
- 17 Q. Now, if someone wants to come to your chambers, how would they
- 18 get there?
- 19 A. They enter through the court secretary's office and then there's a door
- 20 leading into my separate chambers.
- 21 Q. And the boxes were kept under your desk?
- 22 A. Under my desk.
- 23 Q. So, they weren't readily viewable to the general public?
- 24 A. No one could see those boxes. I kept those boxes tucked underneath
- 25 my desk. You'd have to physically come in, move my chair, crawl

1362.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 under my desk to gain access to those boxes.

2 THE REFEREE: Did cleaning staff have access to
3 your office at night?

4 THE RESPONDENT: If they would come in and
5 clean, yeah, cleaning staff did.

6 THE REFEREE: All right.

7 BY MS. SCALISE:

8 Q. So, if someone were to sit at your desk and work at your desk, they'd
9 know those boxes were there?

10 A. Correct.

11 Q. Now, directing your attention to the administrative steps you said that
12 you were going to take. What did the administrative office advise
13 you? I'm sorry, the district office?

14 A. When I called them it was like a pregnant pause. It was a delay of
15 maybe two or three minutes until they got someone on the phone.
16 And that's what I got. Let me see, you know-- I was trying to talk to
17 the person in charge of personnel and then inquire as to them what
18 steps I needed to take and they advised me, you know, of some of
19 those steps at that time.

20 Q. Now, I want to take you through three years for each-- Mr.
21 Kachadourian and Ms. Gallagher. From January 2nd of 2015 through
22 December 31st of 2015, did you voice any dissatisfaction with Ms.
23 Gallagher about her work?

24 A. Yes, I did and I did-- addressed with her directly and I also addressed
25 with Mark Kachadourian. It was keeping up with the workload.

1363.

(Miller - Direct)

- 1 Keeping up-- It was a busy court. Keeping up with everything.
2 Those messages are important. If I needed a message or someone was
3 calling me, it wasn't just to tell me it was a nice day. These-- Ninety-
4 some percent of those calls are work related calls that we need to
5 address, whether it be a pending file or anything going on within the
6 court system itself. I also spoke to her about the record keeping, the
7 files. I needed those files. I tracked those files, that's how I rendered
8 my decisions. I'd go back, whatever notes I kept, I kept them within
9 that file. So, I could go back-- I'd know the date, the time, and I'd
10 write down significant issues. We were dealing with children. I
11 would find out if the child-- what grade the child was in, what sports
12 they were in, what activities they may have done. So, depending on if
13 I had to deal with JDs or PINS, I'd have clues down for me to discuss
14 with them. "How are things going? I know you had an issue in math
15 class." I'd want to be most specific as I could with them, so that they
16 understood that I was concerned about what was going on in their life.
17 That I wanted them to succeed and that's what I used that platform
18 from as being a judge, to encourage them to resolve these issues.
- 19 Q. But going back to Ms. Gallagher, you've discussed those issues with
20 her?
- 21 A. I-- I-- There were-- I discussed those issues with her a number of
22 times.
- 23 Q. If you had to-- Do you know how many times you discussed, in the
24 time period from January 2nd of 2014 through December 31st of 2015,
25 if you could put a date of approximately when it started and how many

1364.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 times, that would be helpful for the record.

2 A. There was a startup period through '15, so I understood it's going to
3 take time to adjust. When we started to run into the issues with Marie
4 Lawrence is when really everything started to occur. So, by that time
5 the learning curve-- you'd have the learning curve. You'd have
6 everything addressed. You should be keeping up to things. So, those
7 conversations would have started already in '15, '16, '17.

8 Q. So, directing your attention to January 2nd of 2016 through December
9 31st of 2016, did you have those similar discussions with Ms.
10 Gallagher?

11 A. I did. And more so in the time period from January of '17 to March of
12 '17, specifically when I was going through all my physical therapy.
13 And I'm asking her, "How is the calendar getting backed up this
14 way?" So, this was like a daily event that I'm having the same
15 conversation every day. I said to her, "I gave you all my physical
16 therapy appointments, how am I getting scheduled?" There was an
17 issue of me getting double-booked, that the court clerk was double-
18 booking me, so I had time periods where I have two cases scheduled
19 at the same time. There's no way humanly possible you're going to
20 see, you know, two sets of attorneys and you know, at minimum, four
21 to six litigants at the same time.

22 Q. Now, going back to January 2nd of 2015 through December 31st of
23 2015, same question for Mr. Kachadourian. Did you voice any
24 displeasure or dissatisfaction with his role as your court attorney?

25 A. His was more gradual because I didn't-- I was not really aware-- I

1365.

(Miller - Direct)

1 was so busy with what I was doing, I wasn't really aware of the
2 extent, other than the specific things that I needed, of what they were
3 doing. I wasn't there to monitor them all day. I was in the courtroom.
4 I was extremely busy reviewing the petitions, doing the work,
5 listening to the evidence and paying attention to the responsibilities
6 that I had. I had a full plate and as professionals I was expecting them
7 and through my issues of trust, that they were doing the job that we
8 discussed as a team.

9 Q. Again, January 2nd of 2016 through December 31st of 2016, did you
10 have any discussions with Mr. Kachadourian about your
11 dissatisfaction with his work level?

12 A. Yeah, I told him-- The big issue I had was about standards and goals.
13 I wanted them at zero. There's no reason that that shouldn't be--
14 They shouldn't be at zero with all three of us working there. Mark
15 had been an experienced attorney for almost 30-some years and I had
16 20-plus years of experience. There was no reason I felt that we should
17 be having issues other than a zero at every month for standards and
18 goals. And that's what the goal was and they knew that from the get-
19 go when I started because I had to deal with standards and goals
20 always.

21 Q. Same question, January 2nd of 2017 through July 11th of 2017, did you
22 have any discussions with Mr. Kachadourian about your displeasure
23 with his work level?

24 A. I did, more specifically with these two cases that came up with these
25 decisions and I'm asking Mark, "Why are we getting memos from the

1366.

(Miller - Direct)

1 court clerk about standards and goals time when you should know
2 when you have that case, specific what the standards and goals are,
3 these are basic things that every attorney that practices law has to deal
4 with issues of standards and goals.”

5 MS. SCALISE: Can you mark this for identification,
6 Respondent's NN? Thank you.

7 BY MS. SCALISE:

8 Q. Your Honor, can you take a look at what's been marked as
9 Respondent's NN for identification?

10 A. Yes.

11 Q. Do you recognize it?

12 A. I recognize what's in front of me, correct.

13 Q. What do you recognize it to be?

14 A. It appears to be an evaluation on employees addressed from me to the
15 administrative judge.

16 Q. And what time of day was it-- What date and what time of day was it
17 sent?

18 A. It was sent at 1:06 PM on January 20th of 2016.

19 THE REFEREE: All set.

20 MS. SCALISE: Okay.

21 BY MS. SCALISE:

22 Q. Did you send this to Judge Robert C. Mulvey?

23 A. No, I did not.

24 Q. How did you come to be in possession of this document?

25 A. It was presented to me-- It was either through the IG or the

1367.

(Miller - Direct)

1 Commission.

2 MS. SCALISE: I'd now like to offer this as

3 Respondent's NN in evidence.

4 THE REFEREE: Any objection?

5 MS. CENCI: No objection.

6 THE REFEREE: Received.

7 MS. SCALISE: Thank you.

8 BY MS. SCALISE:

9 Q. Taking a look at this document, you said that you did not send it?

10 A. That's correct.

11 Q. It comes from under your heading though, correct?

12 A. I see that.

13 Q. So, how do you know that you did not send this-- By the way, what is
14 this document?

15 A. It's supposed to be an evaluation on how the court attorney and the
16 secretary are performing and there were three levels. Apparently, they
17 had of how they're performing their work.

18 Q. So, how do you know this isn't a document that you authored?

19 A. If you look at the bottom where it--

20 THE REFEREE: --I'm sorry, did you say that you
21 did not author?

22 MS. SCALISE: Correct.

23 A. Correct. If you look at the bottom of it, it says, "Richard H. Miller."
24 I've never signed an order, "Richard H. Miller." It's, "Richard H.
25 Miller, II." I write it-- I handwrite it in. I write it in on every order

1368.

(Miller - Direct)

1 and if I reviewed something and signed it, it would say, "Richard H.
2 Miller, II." I would never send it out, "Richard H. Miller."

3 Q. And directing your attention to the paragraph that speaks about
4 Rachelle Gallagher, okay? It says, "Part of joining my staff of family
5 court, Rachelle worked for me for 10 years in criminal court." Is that
6 accurate?

7 A. She worked in the Village of Johnson City.

8 Q. In criminal court?

9 A. Well, no. It was-- It would have been-- No. It would have-- It
10 should have said village court. It wouldn't have said criminal court,
11 correct. It would say Village of Johnson City Court.

12 Q. And by the way, there's a standardized goal that rates both of them
13 with the highest-- with three being the highest at a rate of three, is
14 that correct?

15 A. Correct.

16 Q. And given the issues that you had had with Ms. Gallagher in January
17 of 2016-- I'm sorry, in 2015, would you have given her a rating of
18 three on January 20th of 2016?

19 A. No, I would not. I just went through that issue with Marie Lawrence
20 and the court clerks changing.

21 Q. Do you have any knowledge about how this came to come-- I'm
22 sorry, about how this email went from your email address to Judge
23 Mulvey and Gregory Gates?

24 A. Mr. Kachadourian sent that out.

25 Q. Did he ever admit to you that he had sent this out?

1369.

(Miller - Direct)

1 A. Looking at the language of how it's written, that's the style of Mark's
2 writing.

3 Q. How do you know?

4 A. How-- The phrases that he would use when he'd discuss things with
5 me and how he would speak.

6 Q. For instance, is there a phrase in here that you could attribute to him?

7 A. "The knowledge and wealth of experience," that's not something that
8 I would use especially when I was evaluating the secretary at that
9 point. "Has served me well." I wouldn't have used that phrase.
10 That's not a phrase I would use.

11 THE REFEREE: Who is Gates? That's the district
12 executive?

13 THE RESPONDENT: Correct.

14 THE REFEREE: All right. Thank you.

15 BY MS. SCALISE:

16 Q. Now, turning your attention to the inspector general's investigation.
17 How did you learn about the inspector general's investigation? Let
18 me just for the record say the OCA inspector general's investigation.

19 A. July 11th, I was contacted by Judge Fitzgerald to come over to her
20 chambers at the end-- towards the end of the day. It was later in the
21 afternoon. Judge Connerton, my immediate supervisor and then the
22 supervising judge, Judge Molly Reynolds Fitzgerald and Gregory
23 Gates, the district executive, were in Judge Fitzgerald's chambers.
24 She indicated to me that there was a complaint. I asked them of the
25 specificity. They said they have no knowledge of that and if I would

1370.

(Miller - Direct)

1 meet with the inspector general on Friday the 14th of July in
2 Binghamton. She also indicated to me, "Would you be willing to take
3 some time off?" And she stated to me if you weren't willing to take
4 some time off that she would get an order from Judge Coccoma to
5 have me, I guess not be in my office and removed. So, I indicated to
6 her that I needed to go get my briefcase that I had because I left my
7 chambers, came over to the supreme court building, I needed to get
8 that. Again, I asked if they knew anything about it, they said they had
9 no knowledge it. No knowledge of any specificity whatsoever and if I
10 would meet with one of the inspector generals on Friday scheduled in
11 Binghamton and I did.

12 Q. So, you met the inspector general's office. Did you have an attorney
13 there?

14 A. I did. Attorney DerOhannesian.

15 Q. What did you learn about the complaint?

16 A. There were issues raised of harassment of sexual nature and that's
17 what I learned.

18 Q. Did you ever make any statements of a sexual nature to either Ms.
19 Gallagher or Mr. Kachadourian?

20 A. No, I did not.

21 Q. Did you learn of any of the specifics as to what the statements were
22 during the inspector general's investigation?

23 A. They asked questions about a number of different things. So, I heard
24 the question. The things did not occur. They were not true and I
25 responded to them.

1371.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 Q. And did you respond truthfully and accurately to them, to all their
2 questions?

3 A. I did.

4 Q. Turning your attention to the charges in this case by the Judicial
5 Conduct Commission. There is a Formal Written Complaint, you've
6 seen that, right, Judge?

7 A. Yes, I have.

8 Q. Why do you think Ms. Gallagher and Mr. Kachadourian filed
9 complaints with the IG and the Judicial Conduct Commission?

10 MS. CENCI: Objection. No foundation. There's no
11 evidence that they ever filed a complaint with anyone.

12 THE REFEREE: Well, they certainly talked to the
13 court clerk.

14 MS. CENCI: That wasn't the question, Your Honor.

15 THE REFEREE: No, I'm-- You said to anybody, so
16 they did to the court clerk. There's no foundation that they
17 filed a complaint.

18 MS. SCALISE: I'll go back and I'll redo it, okay.

19 BY MS. SCALISE:

20 Q. Did you come to learn, when Mr. Kachadourian and Ms. Gallagher
21 were not present in chambers or in court that week of July-- that
22 ended in July 11th. Did you come to learn where they were?

23 A. Yes, I did.

24 Q. To your knowledge, where were they?

25 A. They were in the district office.

1372.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 Q. Did you learn whether they had met with the inspector general's
2 office?

3 A. Yes, I did.

4 Q. Did they meet with them?

5 A. Yes, they did. They came to Albany to meet with them.

6 Q. Did you learn whether they had met with the Judicial Conduct
7 Commission?

8 A. Yes, I did.

9 Q. How did you learn that?

10 A. Also, that was in the disclosure that was received.

11 Q. So, you learned that they had had meetings with both-- They had filed
12 complaints in the-- Strike that. Okay, now, directing your attention
13 again to the charges in this case, why do you think Mr.-- Ms.
14 Gallagher and Mr. Kachadourian filed them?

15 MS. CENCI: Objection.

16 THE REFEREE: You know what? It's semantics.

17 BY MS. SCALISE:

18 Q. Okay, why do you think they made allegations against you? Withdraw
19 that question. Why do you think they made allegations against you
20 that formed the basis for this case?

21 A. Both of them had work performance issues that were a problem and I
22 think they had the knowledge that they would be terminated based on
23 their lack of work. The other--

24 Q. --Were you looking to fire them before these cases-- the inspector
25 general's investigation and the Judicial Conduct Commission's

1373.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 investigation?

2 A. I inquired as to that because they weren't there. They weren't telling
3 me where they were. I had the other week where I had no
4 documentation. That was the second time that had happened. I had
5 no case files. So, at that point I was-- I wanted and I was thinking at
6 that point that I wanted to terminate them due to lack of performance.
7 The other issue that I knew is they had financial problems. Both of
8 them had financial problems. And then I came to find out that they
9 filed the federal lawsuits for money. So, the allegations they made
10 against me were not truthful. They were not true and I know that and
11 I know that to be a fact.

12 Q. Now, directing your attention to email access, okay? Does anybody
13 have access to your personal passwords when you were working in the
14 law office before you became a full-time judge in family court?

15 A. Yes.

16 Q. Who would that be?

17 A. It would have been whoever my secretary was at the time would have
18 access to my mail. My email address.

19 Q. Why was that?

20 A. I was not good with email. I was not following or tracking up on that.
21 That's what I had-- That's one of the things I had my secretary do to
22 make sure I was getting communications on the email and reviewing
23 them.

24 Q. And likewise, did anybody have access to your email passwords and
25 your computer in your chambers when you were in family court from

1374.

(Miller - Direct)

1 January 2nd of 2015 through July 11th of 2017?

2 A. Yes, both Rachelle and Mark had access to them.

3 Q. Today, as you work, you do-- Let me ask you, what are you doing
4 now since July of 2017?

5 A. I've been assigned to do and review foreclosure paperwork, so all the
6 orders, the orders of reference and the orders of sale. I-- I'd have to
7 go through all of the details. It'd be like a court attorney.

8 Q. Are you located in your chambers?

9 A. No, I'm located on the 15th floor of the state office building in a
10 probably 4-by-8 cubicle.

11 Q. Does anybody have access to your email there?

12 A. No. I've since changed it.

13 Q. How did you learn-- Strike that. Did you ever hear from anybody that
14 Mr. Kachadourian used your computer for personal purposes?

15 A. Yes.

16 Q. Who would that be?

17 A. Mr. Behal.

18 Q. What did-- Okay, do you recall--

19 THE REFEREE: --Is this Dave Behal?

20 THE RESPONDENT: David Behal.

21 BY MS. SCALISE:

22 Q. Do you recall when that was?

23 A. It would have been I think when this proceeding was actually going
24 on. When I actually had the complaint filed.

25 Q. And had you ever given Mr. Kachadourian permission to use your

1375.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 computer or your email access for personal purposes?

2 MS. CENCI: Objection. Are we talking about the
3 court computer?

4 MS. SCALISE: Yes.

5 MS. CENCI: It doesn't belong to the judge to my
6 knowledge.

7 MS. SCALISE: Well, it's his email address.

8 THE REFEREE: It's his account.

9 MS. SCALISE: It's his account. But I could
10 rephrase it.

11 THE REFEREE: That's all right. It's his account
12 within the court system and we all know that the email
13 belongs to the court system, so, with that understanding, I
14 think if you understand the question, Judge, you can
15 answer.

16 A. I do. I have a separate personal [REDACTED] account, rhm2law@[REDACTED].
17 So, I have an email account with the court system,
18 rmiller@[REDACTED] and rhm2law@[REDACTED]. Personal is the [REDACTED]
19 account.

20 Q. And to your knowledge, was Mr. Kachadourian-- did Mr.
21 Kachadourian have access to both email accounts?

22 A. No, he did not have access to my [REDACTED] account.

23 Q. Do you know how he got access to your [REDACTED] account?

24 MS. CENCI: Objection.

25

1376.

(Miller - Direct)

1 BY MS. SCALISE:

2 Q. --If you know.

3 THE REFEREE: You know what--

4 BY MS. SCALISE:

5 Q. I'm sorry, did you give him permission-- Let me take it back. Okay.

6 THE REFEREE: No, the reason that counsel is
7 objecting, and I'm unclear as well. I thought he just said
8 that Kachadourian did not have access to his personal email
9 account. And then you just-- And then you asked him how
10 did he gain access. So, he already just said he didn't have
11 access.

12 BY MS. SCALISE:

13 Q. Okay, so let me-- Let me take you back. What did you learn from Mr.
14 Behal about how-- I'll strike that because it's hearsay but Mr. Behal
15 testified to it. Just trying to-- Give me one second. Judge, when you
16 were at your computer at any time period from-- in court, okay, from
17 January 1st-- of January 2nd of 2015 to July 11th of 2017, did you ever
18 enter your AOL account into your court computer?

19 A. Yes, I did.

20 Q. And when you did that, was Mr. Kachadourian ever present and did he
21 observe you do that?

22 A. Yes, he was.

23 Q. Was it on more than one occasion?

24 A. Yes, he was actually typing it in.

25 Q. Thank you.

1377.

(Miller - Direct)

1 A. And I was standing over his shoulder.

2 Q. So, go-- directing your attention back to the day, the day Behal was in
3 your office, okay, with Mr. Kachadourian, correct?

4 A. Correct.

5 Q. Did you walk in and observe them on that day?

6 MS. CENCI: Objection. He hasn't said there was
7 ever an occasion when that occurred.

8 MS. SCALISE: That's my-- Okay, I can take him
9 back.

10 THE REFEREE: Go ahead and lay the foundation.

11 MS. SCALISE: Okay.

12 THE REFEREE: I think you can do it.

13 BY MS. SCALISE:

14 Q. Was there ever an occasion where Mr. Behal met you for lunch at your
15 office?

16 A. Yes.

17 Q. Was it more than one occasion?

18 A. Yes.

19 Q. Okay. Directing your attention to-- I'm trying to think of the date,
20 one second. Directing your attention to May 2017, did Mr. Behal
21 come to meet you for lunch at your office?

22 A. Yes, he did.

23 Q. Were you in your office when he arrived?

24 A. No, I was not. I was in the courtroom.

25 Q. So, did there come a time you entered your office and you saw Mr.

1378.

(Miller - Direct)

1 Behal there?

2 A. Yes, I did.

3 Q. Who was he with?

4 A. Mark Kachadourian.

5 Q. And where were they?

6 A. They were in Rachelle's-- the secretary's office.

7 Q. Was Rachelle there?

8 A. I don't recall Rachelle being there, no.

9 Q. Where were they sitting?

10 A. They were sitting-- Mark might have been sitting at Rachelle's desk
11 and Dave might have been sitting in a chair that was there.

12 Q. Was there a computer at Rachelle's desk?

13 A. Yes, there was a computer there.

14 Q. And was Mark sitting in front of the computer?

15 A. The computer was right in front of him.

16 Q. Was he working on the computer at that point?

17 A. I didn't-- I don't know if the screen was up, no, so I can't say that.

18 Q. So, you later came to learn that Mr. Kachadourian accessed email
19 through a computer in your chambers, correct?

20 MS. CENCI: Objection.

21 A. Correct.

22 MS. CENCI: Calls for hearsay, Your Honor.

23 THE REFEREE: I think it does.

24 MS. SCALISE: Okay, strike that.

25

1379.

(Miller - Direct)

1 BY MS. SCALISE:

2 Q. Did you ever endorse Mr. Kachadourian's use of your AOL account
3 when you were not present?

4 A. I would never endorse it when I was not present. I was present any
5 time we logged onto that computer on my AOL account.

6 Q. Now, directing your attention to your financial disclosure forms and
7 your local clerk filings, are you aware of your obligations as a judge
8 with respect to those?

9 A. I am.

10 Q. What are your obligations?

11 A. Every year we need to file the financial disclosure form to the Ethics
12 Commission, so I have to put that documentation together. As to the
13 local filing, I was not and I acknowledged that I wasn't aware that we
14 had to do the yearly filing on that.

15 Q. Now, with respect to the financial disclosure forms, did you have any
16 assistance in reviewing them and in inputting the information to the
17 financial disclosure forms?

18 A. Not initially, but I filled the forms out to the best of my ability and
19 then I reviewed them with my accountant thereafter and filed amended
20 forms.

21 Q. And when you reviewed them--

22 THE REFEREE: --In order to just clarify--

23 MS. SCALISE: --Sure--

24 THE REFEREE: --we're talking about two different
25 forms.

1380.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 MS. SCALISE: Yes.

2 THE REFEREE: One is the yearly Unified Court
3 System form that goes to Manhattan?

4 MS. SCALISE: Correct. For the Ethics
5 Commission.

6 THE REFEREE: And then-- Correct. And then the
7 second one is local. So, you're talking now about the UCS
8 form?

9 MS. SCALISE: I'm just-- Just the UCS form. All
10 right, thank you.

11 BY MS. SCALISE:

12 Q. When is the F-- I'm going to call it the FDF, on that one so we'll
13 know as compared to the local one. When is the FDF due?

14 A. May.

15 Q. And you said that there was a time that you took them to your
16 accountant for review. Why?

17 A. Correct. We were going through-- There was income that I had
18 received. I thought the income came in in '16. We were preparing my
19 '16s and '17 and I was going to submit it within the amended return
20 and I came to find out that the money should have actually been
21 credited in '15, so we had to amend '15 and then address the issues in
22 '16.

23 Q. Okay, so when you say you had to amend '15 and '16, did you just
24 have to amend the financial disclosure forms or did you have to
25 amend something else?

1381.

(Miller - Direct)

1 A. I-- Well, no, I had to amend the disclosure form, I amended also.
2 What happened is I put it in in income because it was in a bank
3 account. I thought I had it listed in the account but then I became
4 aware that I had to list it within the form specifically.

5 Q. Okay, but did you--

6 THE REFEREE: --I'm sorry. I'm confused. You
7 amended your financial disclosure form. Did you also
8 amend your income tax form?

9 THE RESPONDENT: Yes, I did, both of those.

10 THE REFEREE: All right, that's not clear.

11 MS. SCALISE: That's what I was trying to get at
12 without leading.

13 THE REFEREE: That's okay. I was just-- We all
14 know the forms were amended--

15 MS. SCALISE: --Yes, yes--

16 THE REFEREE: --so, you can lead him here.

17 BY MS. SCALISE:

18 Q. So, there was a specific-- some specific questions you had for your
19 accountant, is that correct?

20 A. That's correct.

21 Q. And who is your accountant?

22 A. Robin Dean, Sal Peretore's office.

23 Q. Okay, so you went to Ms. Dean because you had some questions.

24 A. Correct.

25 Q. What were the questions you had?

1382.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 A. She-- I actually cashed income in '16. She stated it came in-- from
2 the calendar it should be credited for the calendar year of 2015, so I
3 had to go back and amend the returns the show that the outside-- or
4 the income from the prior practice needed to be filed in '15 and not in
5 '16.

6 Q. And did you have to do the same thing with respect to your financial
7 disclosure forms?

8 A. I did.

9 Q. And what specifically was incorrect about the financial disclosure
10 forms and the tax returns that had to be amended?

11 A. The financial disclosure form, I had to put in one line of prior law
12 office income and put it in one line. So, I adjusted it.

13 Q. And was there anything in respect to rents that you may have
14 received?

15 A. With the financial disclosure forms, they said to take the information
16 off the tax returns. Each of my tax returns, with the rents included,
17 and all the expenses, I run at a deficit. So, they said if it runs at a
18 deficit, you don't put it in there because it's not income that you have
19 coming in. It's running at a deficit.

20 Q. So, was it your understanding that you did not have to include income
21 if it was a deficit because technically it wasn't income?

22 A. Correct. That was within my Ethics Commission financial disclosure
23 form.

24 Q. So, did you amend those forms with respect to the rents that you
25 received? The financial disclosure forms?

1383.

(Miller - Direct)

- 1 A. As-- We-- They were the same. I need to add those in. If you want
2 me to add them in-- In fact, I think it was a suggestion from counsel
3 that I put it in and add it in the form as an asterisk, but there's not a
4 spot that I know of to do that, so I'm going to have to find out how to
5 do that, even though the form didn't ask for it.
- 6 Q. Did you make any inquiry to the office of ethics about how to
7 correctly categorize the loss that you took?
- 8 A. Yes. The amended forms, I actually spoke to the administrator. She
9 had to go in and open up my accounts to address the income that had
10 to come in for '15, so she had to gain access to it, and I spoke to her
11 on the phone at the time.
- 12 Q. So, without telling us what you-- what she said to you, what did you
13 do with respect to your forms after speaking to the administrator?
- 14 A. I added the line of prior law office income.
- 15 Q. Did you discuss any other income that you may have received with the
16 administrator from the ethics office?
- 17 A. I did and she said take it off the tax returns if you're showing income
18 coming in then you're report it.
- 19 Q. So, if there was income from weddings, did you discuss that with her?
- 20 A. I discussed income, any income.
- 21 Q. Just generally income?
- 22 A. Right.
- 23 Q. Now, with respect to weddings, you did do some weddings in 2015
24 and 2016 and 2017, correct?
- 25 A. I did.

1384.

(Miller - Direct)

- 1 Q. How did you treat those on your financial disclosure forms?
- 2 A. I did not take them as any type of either-- like a gift, if I gave it to the
- 3 church. What I would do is I take the money, I give the money to the
- 4 church. That's what I did. I didn't show it as income, spoke to the
- 5 accountant about that and I didn't take it as any type of gift, that I was
- 6 giving a gift out.
- 7 Q. Or a deduction?
- 8 A. Or deduction.
- 9 Q. And that was on advice of your accountant?
- 10 A. Correct, and all those amounts did not exceed \$150, so my-- I think
- 11 the limit-- Anything above \$150 I got to disclose it. None of those
- 12 were ever above \$150.
- 13 Q. So, having the benefit of these proceedings, do you do it differently
- 14 now?
- 15 A. Yes, I have.
- 16 Q. What's your procedure now?
- 17 A. Well, you've instilled in me and I want to-- anything I can consult I
- 18 consult with my counsel about-- with attorney Scalise about. What
- 19 I've done is I've reviewed those with the accountant and I've looked
- 20 at it-- I've familiarized myself with the forms, and I want to do things
- 21 the right way and that was my intent, to do it the right way, not do
- 22 anything in a wrong way or be here in any way.
- 23 Q. Now, directing your attention to 22 NYCRR 100.4(H)(2), are you
- 24 familiar with that?
- 25 A. I'm well aware of it now, yes.

1385.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 Q. What is it?

2 A. It is the local filing that we're supposed to do with the chief clerk of
3 family court.

4 MS. SCALISE: Can we mark that as OO? Thank
5 you. And I'm going to mark a second one, too, just to make
6 it easier since we're on the same topic. Can we mark that as
7 PP? May I approach?

8 THE REFEREE: Yes, at any time. No need to ask.

9 THE RESPONDENT: Thank you.

10 THE REFEREE: Start with OO.

11 BY MS. SCALISE:

12 Q. Looking at Respondent's OO for identification--

13 A. --Yes--

14 Q. --do you recognize that?

15 A. I do.

16 Q. What do you recognize it to be?

17 A. It was an email sent to me on Friday, January 11th, our last day of
18 testimony in Binghamton, from Jane Sbarra, who is the court secretary
19 to Judge Rita Connerton, regarding extra-judicial income, and it was a
20 memo that Judge Connerton had just filled out her extra-judicial
21 income letter with the court reminding everyone to file one.

22 MS. SCALISE: I now ask that be moved into
23 evidence as Respondent's OO.

24 THE REFEREE: Any objection?

25 MS. CENCI: No objection.

1386.

(Miller - Direct)

1 THE REFEREE: I'm sorry?

2 MS. CENCI: No objection.

3 THE REFEREE: Received.

4 BY MS. SCALISE:

5 Q. That was emailed to you right, Judge?

6 A. Correct.

7 Q. Now, directing your attention to what's been marked as Respondent's
8 PP for identification, do you recognize that?

9 A. Yes, I do.

10 Q. What do you recognize it to be?

11 A. That is the extra-judicial financial disclosure form that I sent to
12 Broome County Family Court to the chief clerk.

13 Q. And what years does that encompass?

14 A. 2015 through 2018.

15 Q. How did you come up with this form?

16 A. I read the statute. I didn't receive a form. There was never a form
17 relayed to me, so I read the statute and I put it down in the columns
18 that the statute had relayed it.

19 MS. SCALISE: I now ask that this be marked into
20 evidence as Respondent's PP.

21 THE REFEREE: Any objection?

22 MS. CENCI: No, just can we stipulate it was filed
23 on January 31, 2019?

24 MS. SCALISE: Yes.

25 THE REFEREE: Yes, it has a date stamp,

1387.

(Miller - Direct)

1 "Received, Broome County Family Court, January 31,
2 2019."

3 MS. CENCI: No objection.

4 THE REFEREE: Received.

5 BY MS. SCALISE:

6 Q. So, is this the report that you're now aware of that you have to file
7 under 22 NYCRR 100.4(H)(2)?

8 A. Yes, it is.

9 Q. How did you learn that you had to file a report of this nature?

10 A. When this proceeding was going on.

11 Q. And when was that?

12 A. At the time the complaint was filed.

13 Q. Did you make in excess of \$150 in the years 2015 through 2018,
14 which would require this report to be filed?

15 A. I did.

16 Q. Did anyone tell you about a local filing with respect to this report?

17 A. No.

18 Q. Did you check your emails from 2000-- from January of 2015
19 through-- I'm sorry, to the present, with respect to any administrative
20 directives you might have gotten in that time period?

21 A. Since now I have.

22 Q. Since now meaning?

23 A. Since now meaning '18, 2018.

24 Q. Okay, so when you learned about this investigation?

25 A. Right.

1388.

(Miller - Direct)

1 Q. Did you receive any training at judge's school or at the district office
2 with respect to this form?

3 A. No.

4 Q. Did you receive any training at all at judge's school or the district
5 office with respect to any of your administrative duties?

6 A. From the district office, we start-- we went to judicial school the first
7 week, that would have been in January of 2015. They scheduled us in
8 for a meeting in the district office. We had a full calendar in the
9 morning, scheduled us in from, I think it was 12:30 to 1:30, or through
10 the afternoon. We came in, had a lunch. At the time that they were
11 going to start making all these presentations they had somebody from
12 HR, someone that did-- that handled all the insurance. I was
13 scheduled-- and Mark Young and I, both the two new judges that
14 needed to be at this meeting, had to go back to family court because
15 OCA had us scheduled for a full calendar. So, I had some issues and I
16 discussed-- I think I discussed it with the chief clerk about that, that
17 in the past, I wish they would review some of that information or have
18 the courtesy to review it with us judges if we needed to be somewhere.
19 They handle all the scheduling so I don't handle any of my scheduling
20 and just imagine as an attorney someone else setting your schedule
21 when you know what you need to do as an attorney and the
22 timeframes. No different than a judge. That's not something they do.

23 Q. Where did you get the information-- Where did you derive the
24 information from to file the local report?

25 A. After our discussions on it and after the complaint was filed and then I

1389.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 saw there was a thread back that was sent another email from before,
2 but a lot-- my email information I was relying on my-- the court
3 attorney or the court secretary to relay any type of emails.

4 Q. So, directing your attention to what is actually in the reports, what was
5 the source of the information for the income that you reported in those
6 reports?

7 A. It was the-- my rental income and the income I received from the
8 prior practice of law.

9 Q. And what did you look at to determine what the rental income and the
10 prior practice of law income was?

11 A. I looked at any of the records that I had, either the bank statements or
12 my prior returns or receipts that I may have had.

13 Q. Now, going back to those two boxes that were taken from your office,
14 okay, would that information have been in those boxes?

15 A. Yes, in fact the information on two of the checks that I received on the
16 *Estate of Funk*, were in that box.

17 Q. So, when you got that box back, was that when you could file your
18 amended returns and FDF forms?

19 A. Yes. I was asking about my financial forms, and Greg Gates made it a
20 point to tell me they were with Judicial Conduct and I said I needed
21 those boxes. I contacted him, told him I needed those.

22 Q. When did you get those back?

23 A. Shortly before I filed my amended returns.

24 Q. And when was that?

25 A. It would have probably been July timeframe of 2017.

1390.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 Q. '17 or '18?

2 A. I don't know specifically when I actually got the boxes back from
3 Judicial Conduct. I can't tell you the specific date but I need--

4 Q. --So would it have been-- Would it have been when you were
5 transferred immediately-- I'm trying to help you here, when you
6 immediately transferred to your new position or was it sometime after
7 that?

8 A. It was sometime after that. What I had to go back and do was get
9 records from the bank. I had to go get records from attorney Serjanej
10 to file my amended returns because that's what I had in there and
11 that's what my accountant needed and I relayed my information. So,
12 they didn't give me my stuff back right away. I had to go back and
13 reconstruct that to file my amended returns. And I reiterated that I
14 needed my records.

15 Q. So, directing your attention to the Formal Written Complaint in this
16 case, Judge. I want to--

17 THE REFEREE: --Before you-- Before you--

18 MS. SCALISE: --Okay, sure.

19 THE REFEREE: Did you ever find out who took the
20 boxes?

21 THE RESPONDENT: OCA-- or Judicial Conduct.

22 THE REFEREE: Okay, how did you find that out?

23 THE RESPONDENT: Greg Gates made it a point to
24 tell me, "These boxes went to Judicial Conduct."

25 THE REFEREE: Okay, thank you.

1391.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 THE RESPONDENT: And then he returned--
2 Apparently, they came back to him and then he had me
3 come over and returned those to me.

4 THE REFEREE: All right, thank you. Go ahead.

5 BY MS. SCALISE:

6 Q. Thank you. So, directing your attention to the Formal Written
7 Complaint in this matter, as to Charge I, it states at paragraph 6:
8 "From in or about January 2015, when he became a family court
9 judge, to in or about July 2017, when he was reassigned by the Office
10 of Court Administration from presiding over family court matters to
11 handle foreclosure matters in a different building, Respondent
12 engaged in a pattern of inappropriate behavior towards certain staff
13 members of the Broome County Family Court, *inter alia* making
14 unwelcome comments of a sexual nature to and about them and
15 threatening their physical safety and wellbeing." Did you do that?

16 A. It is not true. I did not do that.

17 Q. As to the specification to Charge I, at paragraph 7: "At all times
18 pertinent to the charges herein, Rachelle Gallagher and Mark
19 Kachadourian were employed in the Broome County Family Court as
20 appointees of Respondent's - Ms. Gallagher as his court secretary and
21 Mr. Kachadourian as your court attorney." Is that true? "At all times
22 pertinent to the charges herein." Were they-- Did they work for you?

23 A. They did. Yes.

24 Q. "Beginning in 2015, Respondent commented on various occasions to
25 Ms. Gallagher and Mr. Kachadourian that his sexual needs were not

1392.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 being met and that Ms. Gallagher needed to satisfy his needs in this
2 respect. Respondent would at times point to his genital area as he
3 made such comments.”

4 A. Absolutely not.

5 Q. I didn't ask the question, but did you do that?

6 A. No.

7 THE REFEREE: You know what, I'm going to just
8 have the complaint here, so he can read along with you,
9 because I think otherwise it will be a little awkward.

10 MS. SCALISE: Okay, sure. That's perfect, thank
11 you.

12 THE REFEREE: What paragraph you up to?

13 MS. SCALISE: Paragraph 9.

14 BY MS. SCALISE:

15 Q. “In or about early 2015, on an occasion when he was away from the
16 courthouse, Respondent, using his cell phone, telephoned Mr.
17 Kachadourian. Respondent, who at the time was with James Stilloe,
18 gave the phone to Mr. Stilloe, who then stated to Mr. Kachadourian
19 that he or Ms. Gallagher were ever to betray Respondent, they would
20 have to answer to Mr. Stilloe.” Did that happen?

21 A. Absolutely not.

22 Q. At paragraph 10: “Beginning in or about early 2015, in various
23 conversations with Ms. Gallagher and Mr. Kachadourian, Respondent
24 repeatedly referred to David English, Marty Shaw, David Iannone,
25 and James Stilloe, all of whom have criminal records, and said these

1393.

(Miller - Direct)

1 friends would do whatever Respondent told them to do.” Did that
2 occur?

3 A. Absolutely not.

4 Q. “Beginning in early 2015, Respondent told Mr. Kachadourian on
5 various occasions that he should tell Ms. Gallagher to do her job and
6 satisfy Respondent’s sexual needs and that Respondent wanted to fire
7 her and hire another secretary who would satisfy those needs.” Is any
8 of that true?

9 A. The portion that goes from satisfy Respondent’s sexual needs and the
10 Respondent wanted to fire her and hire another secretary who would
11 satisfy those needs, absolutely not. I did not say that. The other
12 portion about telling her she wasn’t doing her job, yes, I did tell him.
13 That is truthful.

14 Q. As to paragraph 12: “In or about late 2015 or early 2016, in
15 chambers, Respondent displayed or attempted to display to court
16 attorney Mark Kachadourian photos of nude females Respondent had
17 on his cell phone, notwithstanding that Mr. Kachadourian objected.”
18 Did that occur?

19 A. Absolutely not.

20 Q. “In or about early 2017,” this is paragraph 13: “in chambers,
21 Respondent took out his cell phone and displayed to Mr.
22 Kachadourian a photograph on it depicting the torso of a nude female
23 stating that it was a photograph of Senior Court Office Assistant
24 D [REDACTED] L [REDACTED] and that he objected to the photo,” excuse me, “that
25 he had obtained the photo from Mr. David Iannone, to whom

1394.

(Miller - Direct)

1 Respondent had previously introduced to Ms. L [REDACTED].” Did that
2 occur?

3 A. Absolutely not.

4 Q. Paragraph 14: “On various occasions in chambers in 2017,
5 Respondent spoke to with Mr. Iannone on a telephone with the
6 speaker function activated such that Ms. L [REDACTED] and Mr.
7 Kachadourian heard graphic discussions--” Is that-- That’s a typo. It
8 should be-- Right. I’m sorry.

9 MS. CENCI: Thank you.

10 BY MS. SCALISE:

11 Q. “--such that Ms. Gallagher and Mr. Kachadourian heard graphic
12 discussions between Respondent and Mr. Iannone about Mr.
13 Iannone’s sexual experience with Ms. L [REDACTED]. Ms. Gallagher
14 and/or--” excuse me. “Ms. Gallagher and/or Mr. Kachadourian *inter*
15 *alia* heard Respondent ask Mr. Iannone for pictures and videos and
16 Ms. L [REDACTED], heard Mr. Iannone refer to Ms. L [REDACTED] as a quote,
17 unquote, ‘Squirter,’ who would get so wet they could have to use--
18 they would have to use towels and heard Respondent ask Mr. Iannone
19 if he could ‘get in on the rotation,’ in quotes, with sex with Ms.
20 L [REDACTED].”

21 A. Absolutely not.

22 Q. Did any of that occur?

23 A. Absolutely not.

24 Q. Paragraph 15: “In or about March or April 2017 in chambers,
25 Respondent engaged in a loud conversation with his friend, Jerry

1395.

(Miller - Direct)

1 Penna such that Ms. Gallagher and Mr. Kachadourian heard them
2 discuss sex, women and the large size of Ms. L [REDACTED]'s breasts."
3 Did that ever occur?

4 A. Absolutely not.

5 THE REFEREE: Ms. Scalise, I'm not going to stop
6 you--

7 MS. SCALISE: --Sure--

8 THE REFEREE: --but I have a suggestion--

9 MS. SCALISE: --Sure--

10 THE REFEREE: --which is perhaps ask him just to
11 read it to himself--

12 MS. SCALISE: --Sure--

13 THE REFEREE: --because it's in the record.

14 MS. SCALISE: Sure.

15 THE REFEREE: I mean, if you want to read it you
16 can. I just think it might be easier because we all have it.

17 MS. SCALISE: Sure. Okay. That's fine. It'll
18 probably save time.

19 THE REFEREE: I think it will but that's up to you.

20 MS. SCALISE: Okay. Okay. Okay, that's--

21 THE REFEREE: --It's just a suggestion.

22 MS. SCALISE: I mean--

23 THE REFEREE: --It's a good one, but it's up to
24 you.

25 MS. SCALISE: Okay, I'll take your suggestion.

1396.

(Miller - Direct)

THE REFEREE: All right.

BY MS. SCALISE:

Q. Your Honor, taking a look at paragraph 16 in the complaint, okay, can you read that and can you tell us if that occurred?

A. Absolutely not.

Q. Taking a look at paragraph 17, can you tell us-- Can you read that and can you tell us whether you made any of those statements or whether those incidents actually occurred?

A. Absolutely not.

Q. At paragraph 18, can you take a look at that and can you tell us whether that occurred?

A. Not the way it's phrased.

Q. Can you explain what was different about it?

A. Yes. It was that extremely busy day that I had physical therapy, February 6th. Apparently, and we came to find out that Ms. Gallagher didn't tell Ms. Vroman that I had physical therapy, that she said it was my responsibility to let her know that. I was the emergency intake judge that week. We had 14 regular cases scheduled. In the afternoon, we had seven cases. We had an additional nine emergencies that came in. Mark Kachadourian was nowhere to be found. I didn't hear any information from Ms. Gallagher. It was getting late in the day. I think after 4:00 we actually got the last two petitions. We had to be out of that courtroom by 4:30 and there was a court officer in the courtroom with us, too. I did not, loud and angrily, admonish Ms. Vroman. What I did is asked her if she could move

1397.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 along because we had to get them done before 4:30, meaning some of
2 the typing and input could be done afterwards as opposed to being
3 done immediately right when we were in the courtroom. And that's
4 what occurred with that.

5 Q. By the way, what time did you leave that day, Your Honor?

6 A. We left at 4:30.

7 Q. So, that's the same time you leave every day?

8 A. Correct. I cleared the courtroom, otherwise I have to get permission
9 from the administrative judge if we have to run over. It was an
10 extremely busy, stressful court day for both she and I, because both of
11 us were doing-- were really doing the work. In hindsight, I can look
12 at it. Where two other people were supposed to assist the two of us,
13 she and I had to do it and in no way did I mean it to say anything to
14 her in any way to demean her. She was a hardworking person.

15 Q. Paragraph 19, can you take a look at that and tell us whether that
16 occurred?

17 A. Absolutely not.

18 Q. Paragraph 20, "In or about--" can you take a look at that and tell us
19 whether that occurred?

20 A. Absolutely not.

21 Q. By the way, who is S [REDACTED] L [REDACTED]?

22 A. She is the court attorney for Judge Young, for Mark Young. She used
23 to be a town and village judge. Our children go to school together.
24 I've known her for a number of years.

25 Q. Likewise, paragraph 21, can you take a look at that and tell us what

1398.

(Miller - Direct)

- 1 you know about that?
- 2 A. Absolutely not.
- 3 Q. By the way, where were you on May 18th of 2017?
- 4 A. I was in Broome County Family Court hearing cases.
- 5 Q. Take a look at paragraph 22. Did that occur?
- 6 A. Absolutely not.
- 7 Q. Paragraph 23, did that occur?
- 8 A. No, it did not.
- 9 Q. How about paragraph 24?
- 10 A. No, it did not.
- 11 Q. Paragraph 25? Did that occur?
- 12 A. Yes, that occurred.
- 13 Q. And paragraph 26? Can you read that and tell us whether you agree?
- 14 A. I do not agree.
- 15 Q. Now, directing your attention as to Charge II, paragraph 27, do you
- 16 agree with that paragraph?
- 17 A. No, I do not agree.
- 18 Q. And by the way, Judge, it specifically states that you asked them to
- 19 perform-- meaning, "Rachelle Gallagher and his court attorney, Mark
- 20 Kachadourian, to perform services unrelated to their official duties,
- 21 including prohibited political activity." Was there any activity of a
- 22 political nature that you directed them to do in chambers?
- 23 A. No, I did not.
- 24 Q. Did you ask Ms. Gallagher to keep a list of any sort of political
- 25 affiliations with people that you would need for later, you know,

1399.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

- 1 elections?
- 2 A. No, I did not.
- 3 Q. Did you ask her or Mr. Kachadourian to do anything with respect to
- 4 your brother-in-law's run for office?
- 5 A. No, I did not.
- 6 Q. And by the way, your brother-in-law's name?
- 7 A. Richard Balles.
- 8 Q. And what office does he hold?
- 9 A. Broome County legislator.
- 10 Q. How long has he held that office?
- 11 A. He was sworn in January of '19. He just started that. He was a
- 12 village trustee in the Village of Johnson City prior to that and he just
- 13 was sworn in as county legislator.
- 14 Q. How long was he a trustee in the Village of Johnson City?
- 15 A. It's got to be 16 to 18 years.
- 16 Q. Thank you. Now, directing your attention to paragraph 28, is that
- 17 correct?
- 18 A. Correct.
- 19 Q. And directing your attention to paragraph 29, did that occur?
- 20 A. The portion of that specific number 29 is Ms. Gallagher volunteered
- 21 to do a letter when I realized I had unsigned checks from work that I
- 22 did prior to becoming a judge on that estate file.
- 23 Q. By the way, do you know if that letter was ever sent out to the-- to
- 24 Mr. Hayes?
- 25 A. No, it was not.

1400.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

- 1 Q. How do you know that?
- 2 A. I took that letter, and I returned it back to the law office. The letter
- 3 had to go out from the law office.
- 4 Q. Now, paragraph 30, is that correct?
- 5 A. Absolutely not.
- 6 Q. Paragraph 31, did that occur?
- 7 A. No, it did not.
- 8 Q. Paragraph 32, did that occur?
- 9 A. No, it did not.
- 10 Q. By the way, to your knowledge, did Mr. Kachadourian have any prior
- 11 experience doing trust and estates work such that he could assist in
- 12 filing an accounting?
- 13 A. No, he had no background at all in any type of proceedings with
- 14 surrogate's court.
- 15 Q. On paragraph 33, do you agree with that?
- 16 A. No, I do not.
- 17 Q. Paragraph 34, can you tell us whether that occurred?
- 18 A. No, it did not.
- 19 Q. Okay, and that includes with respect to subsections A and B of that
- 20 same paragraph?
- 21 A. No, they did not as to A and B.
- 22 Q. Paragraph 35, is that correct?
- 23 A. That's absolutely correct.
- 24 Q. With respect to paragraph 36, is that correct?
- 25 A. That is correct.

1401.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

- 1 Q. Paragraph 37, is that correct?
- 2 A. That is correct.
- 3 Q. Paragraph 38, is that correct?
- 4 A. That is correct.
- 5 Q. Paragraph 39, is that correct?
- 6 A. I do not remember that, making that request.
- 7 Q. From paragraphs 35 through 39, were you still in private practice at
- 8 that time period?
- 9 A. Yes, I was in private practice.
- 10 Q. Paragraph 40, is that correct?
- 11 A. I received a communique from the Tioga Surrogate's Court, but I
- 12 don't think I received number-- what's in Exhibit 40 [sic].
- 13 Q. You mean the August 2nd of 2014 [sic] communique?
- 14 A. Correct.
- 15 Q. You're not sure if that was the letter you received?
- 16 A. Correct.
- 17 Q. Do you recall on or about the date you learned from Tioga County
- 18 Court that there was a problem with the *Saraceno* estate?
- 19 A. Yes, it would have been the end of October of 2016.
- 20 Q. Now, going to paragraph 41, is that correct?
- 21 A. I had a conversation with a clerk from Tioga County Surrogate's
- 22 Court stating that I was a family court judge, I thought they were
- 23 aware of it. We're a-- It's a small town we border. Everyone knows
- 24 who the judges are in each neighboring county. That I-- I'm not an
- 25 attorney that is practicing law because I can't practice law and that

1402.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 another attorney would be handling the case and that they were
2 longtime clients or-- and that they were elderly. I know I relayed that
3 information over. As to the other portions, no, I didn't ask anything to
4 be done.

5 Q. As to paragraph 42, do you recall whether that occurred?

6 A. I received a return call from the clerk I was-- Well, actually surprised
7 and a little perplexed by that because I don't know why I was
8 receiving a call back, but I received a call from one of the clerks from
9 Tioga Surrogate's Court.

10 Q. Why were you perplexed by the October 14, 2016, call?

11 A. I didn't expect to receive any call. I gave a courtesy call to tell them
12 that I wasn't the attorney that would be handling or closing this case.
13 I was a family court judge and that another attorney would be
14 submitting a notice of appearance on it and concluding the case.

15 Q. So, paragraph 43, is that correct?

16 A. I spoke to Mrs. Saraceno, and I told her that Mr. Serajanej would be
17 handling the case and to speak to him.

18 Q. So, did you ever tell Mrs. Saraceno that you would be finishing up the
19 estate?

20 A. I did not tell her that I would be finishing up the estate. I told her that
21 she would have to contact attorney Artan Serjanej and that he would
22 conclude matters for her.

23 Q. Now earlier when you testified, you told her-- you testified that you
24 said you would take care of it. What did you mean by that? Did you
25 mean that you would be finishing up the estate?

1403.

(Miller - Direct)

1 A. No, not that I would be finishing up the estate. Actually, I told her
2 that-- to contact attorney Serjanej and attorney Serjanej would be
3 finishing up the estate.

4 Q. What did you mean by take care of it? Do you remember that
5 testimony?

6 A. That attorney Serjanej would file whatever paperwork needed to be
7 filed on behalf of the executor of that estate to make sure it was
8 concluded.

9 Q. Okay, but again, it's a very specific term, you would take care of it.
10 Did you have any involvement in what Mr. Serjanej did with respect
11 to the *Saraceno* estate?

12 A. No. When attorney Serjanej had the case, he decided what needed to
13 be done. It was up to his judgment.

14 THE REFEREE: Did you tell Mrs. Saraceno that
15 you would take care of it? Did you use that phrase?

16 THE RESPONDENT: No, I-- The phrase I think I
17 actually used was, "It would be taken care of."

18 THE REFEREE: Okay, thank you.

19 THE RESPONDENT: Not that I would do it. She
20 understood that I was a judge. In fact, they helped me get
21 elected. They knew I was a judge and they knew I couldn't
22 be involved.

23 BY MS. SCALISE:

24 Q. At paragraph 44, do you know anything about that?

25 A. No.

1404.

(Miller - Direct)

- 1 Q. Did you ever see the letter dated January 22nd of 2018, addressed to
2 Frank Saraceno?
- 3 A. No, I did not.
- 4 Q. Paragraph 45, do you agree with that?
- 5 A. I don't have knowledge on that.
- 6 Q. Do you have any basis to know that Mr. Serjanej filed a notice of
7 appearance in January of 2018?
- 8 A. No.
- 9 Q. Were you aware of the order dated February 5th of 2018 by Surrogate
10 Gerald Keene?
- 11 A. No, I did not.
- 12 Q. And did you have any involvement in the April 2018 court notification
13 of Mr. Serjanej that a two-year report was due?
- 14 A. No, I did not.
- 15 Q. Or that Mr. Serjanej requested and received a 60-day extension?
- 16 A. No, I did not.
- 17 Q. Now, directing your attention to the *Estate of Jerry Behal*, which is
18 the subject of the next number of paragraphs. Paragraph 46, can you
19 take a look at that and tell us whether that's correct?
- 20 A. That is correct.
- 21 Q. Paragraph 47, is that correct?
- 22 A. That is correct.
- 23 Q. Paragraph-- By the way, 46 and 47, that was during the time period
24 where you were still a practicing attorney before you became a family
25 court judge?

1405.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

- 1 A. That is correct.
- 2 Q. Paragraph 48, can you tell us whether that is correct?
- 3 A. No. I have no-- I was not a part of that.
- 4 Q. So, that's-- There was an order dated January 23rd of 2015 by Broome
5 County Surrogate David Guy that allowed the settlement on the
6 personal injury matter. Do you-- Did you have any involvement in
7 that?
- 8 A. I'm the one who submitted all the paperwork into the court and I
9 submitted that back probably in-- I don't know if it was November of
10 '14?
- 11 Q. And these-- And the estate received settlement proceeds in April of
12 2015. Did you have any involvement in that?
- 13 A. No, I did not.
- 14 Q. Paragraph 49?
- 15 A. No.
- 16 Q. Do you have anything-- knowledge of why it took until November of
17 2015 for Mr. Serjanej to file his notice of appearance?
- 18 A. No, I do not.
- 19 Q. Paragraph 50, do you have any knowledge about that?
- 20 A. No, I do not.
- 21 Q. Paragraph 51, do you have any knowledge about that?
- 22 A. No, I do not.
- 23 Q. Did you assist Mr. Serjanej or Mr. Behal in any way with respect to
24 paragraphs 49, 50 or 51?
- 25 A. No, I did not.

1406.

(Miller - Direct)

- 1 Q. Paragraph 52, oh and specifically, it was an-- I'm sorry, never mind.
2 Okay. Paragraph 52, do you have any knowledge about that?
- 3 A. No, I do not.
- 4 Q. Did you ever speak to Mr. Wedlake about his appearance on behalf of
5 Joshua Behal?
- 6 A. He spoke to me on a personal matter regarding my real estate and he
7 brought up a question on David Behal, who was the executor and
8 Artan Serjanej handling the estate.
- 9 Q. So, that's how you learned that Mr. Wedlake was in that matter?
- 10 A. Correct.
- 11 Q. And appeared in that matter?
- 12 A. Correct.
- 13 Q. Paragraph 53, do you have any knowledge about that?
- 14 A. No, I do not.
- 15 Q. Paragraph 54, do you have any knowledge about that?
- 16 A. No, I do not.
- 17 Q. Paragraph 55, do you have any knowledge about that?
- 18 A. No, I do not.
- 19 Q. Paragraph 56, do you have any knowledge about that?
- 20 A. No, I do not.
- 21 Q. Paragraph 57, is that accurate?
- 22 A. Mr. Behal and I, anytime we met, was to go to lunch. We never went
23 over his legal matters since I became a family court judge. He was
24 represented by counsel.
- 25 Q. How about paragraph 58?

1407.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

- 1 A. No, I did not.
- 2 Q. Paragraph 59, is that accurate?
- 3 A. No, it did not.
- 4 Q. Paragraph 60?
- 5 A. No, it did not.
- 6 Q. I'm sorry, paragraph 60, were you involved with the petition to
- 7 account?
- 8 A. No.
- 9 Q. Do you have any knowledge as to why it was rejected by the
- 10 surrogate's court as insufficient?
- 11 A. No, I do not.
- 12 Q. Paragraph 61, do you have any knowledge about that?
- 13 A. No, I do not.
- 14 Q. With respect to paragraphs 48 through 61, did you have any
- 15 involvement in the *Behal* matter whatsoever?
- 16 A. No, I did not.
- 17 Q. As to paragraph 62, do you agree with that?
- 18 A. No, I do not.
- 19 Q. Charge IV, can you take a look at paragraph 63? Do you agree with
- 20 that paragraph?
- 21 A. I did not file the finance-- or the disclosure with the clerk of the
- 22 Broome County Family Court. I did file the Ethics Commission ones,
- 23 and they were amended when I amended my tax returns.
- 24 Q. So, the question they ask is that did you file timely and accurate
- 25 disclosure reports. Were the reports timely?

1408.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

- 1 A. Yes, they were for the financial disclosure form to the Ethics
2 Commission.
- 3 Q. And were your tax returns timely?
- 4 A. The initial ones we filed them timely, correct. Yes.
- 5 Q. And with respect to the accuracy of the reports, were they accurate?
- 6 A. I had to amend the one to-- for '15 to include the extra-judicial
7 income in that report for the Ethics Commission and I recently filed
8 all the financial disclosures with the Broome County Family Court
9 clerk.
- 10 Q. Taking a look at paragraph 64, do you agree with that?
- 11 A. Yes.
- 12 Q. Okay, how about paragraph 65?
- 13 A. Yes.
- 14 Q. Paragraph 66?
- 15 A. No, I was working on that prior to any of these things going on, so I
16 disagree with that.
- 17 Q. Okay, so but technically speaking, you didn't do the amendments until
18 November of 2017, correct?
- 19 A. Correct.
- 20 Q. Why was that?
- 21 A. Part of it was I-- We didn't have the taxes done until-- They were
22 done in August but I had to get administrative permission to go in to
23 make the changes from the Ethics Commission. So, I actually spoke
24 to somebody in November when I filed those and they had to go into
25 the system and did it all with me while I talked on the phone and on

1409.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 the computer.

2 Q. But did you have the information that allowed you between the time
3 you learned about the investigation from the Commission, so
4 November of 2017, to timely file these forms or to amend your
5 returns? I'm sorry, to amend the 2015 returns or to make any
6 amendments whatsoever?

7 A. Based on the information when I spoke to my accountant about once
8 we submitted the returns, I made-- I amended the forms.

9 Q. And when did you first speak to your accountant about the issues and
10 amending your returns?

11 A. She knew it prior to me filing in April. So, while we were filing our
12 April return in '17 for '16, she knew and we spoke to her about it.
13 She said, "Just get me the rest of the information and we'll file an
14 amendment." My wife had to get the K1s in for her-- it's due to her
15 business. It's got to be done. She's got to pay quarterly taxes on it.

16 Q. When you say K1s, she has to pay estimated taxes, correct?

17 A. Correct. She has to pay estimated taxes.

18 Q. And that determines what she'll have to pay in the year following,
19 correct?

20 A. Correct, and I did not have to do that and I wasn't as good on my
21 records as I should have been.

22 Q. How about paragraph 67, is that correct?

23 A. I did receive the rental income, so that'd be correct. I don't know who
24 actually--

25 Q. --Paragraph 68, likewise?

1410.

(Miller - Direct)

- 1 A. That's correct.
- 2 Q. And paragraph 69?
- 3 A. Correct. Actually, Ms. Caforio is the one who paid.
- 4 Q. Excuse me?
- 5 A. Ms. Caforio is the one who paid.
- 6 Q. How about paragraph 70, is that correct?
- 7 A. When we originally filed the return in '17 for '16, I had the-- I had
- 8 to-- I had everything to put together to submit to the accountant. I
- 9 didn't have it in April and I did afterwards. We went through and I
- 10 thought the income from '15 actually came in in '16 and that's when--
- 11 afterwards we filed the amended return.
- 12 Q. Paragraph 71, excuse me, is that correct?
- 13 A. The accountant was aware of it. You know, it's when I provided the
- 14 information that there's-- aware that there was rental income she
- 15 factored into my amended tax returns. All the real estate that we have
- 16 was running at a deficit and it had been for a number of years. Even
- 17 with all those rents included in there, the expenses and improvements
- 18 onto properties exceeded any type of income that was coming in.
- 19 Q. But were you aware prior to that date that this had occurred? So, for
- 20 instance, were you aware, you know, prior to 2016 that there were
- 21 problems with 2016?
- 22 A. No.
- 23 Q. So, how did you become aware that the prior years, mainly 2015 and
- 24 2016, were a problem?
- 25 A. When I sat down with my accountant, we went through and she said

1411.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 any of the income that came in is the year that you need to report it in.
2 It didn't matter that you cashed the checks in '16, it's got to be
3 reported for '15. So I had to amend '15 and then we had to adjust '16.

4 Q. At paragraph 72, is that correct?

5 A. No. I had been working with my accountant prior to that time.

6 Q. And paragraph 73, including A, B, and C, is that correct?

7 A. That is correct.

8 Q. As-- But as of January 31st of 2018, you have since filed those
9 returns?

10 A. Yes, I have.

11 Q. I'm sorry, those reports?

12 A. Yes, I have filed the reports as of--

13 MS. CENCI: --That was '18 or '19?

14 THE RESPONDENT: Of '19. '19.

15 MS. SCALISE: I'm sorry, '19, excuse me.

16 BY MS. SCALISE:

17 Q. At paragraph 74, do you agree with that?

18 A. I do not. I did fail to file the report with the chief clerk of the court. I
19 acknowledge that. And now, I have since done so.

20 Q. I have a bit more to go, do we want to break for lunch and then--

21 THE REFEREE: --Yeah, I think that's a good time
22 for lunch.

23 MS. SCALISE: Okay.

24 THE REFEREE: All right, let's go off the record.

25 (OFF THE RECORD)

1412.

(Miller - Direct)

1 THE REFEREE: We're on the record. Counsel for
2 the Commission is present. Counsel for Respondent is
3 present. The Respondent is here and you're still under oath,
4 so with that, Ms. Scalise?

5 BY MS. SCALISE:

6 Q. Your Honor, before we go to the next topic, I just wanted to clear up
7 something. When did you actually speak to your accountant about the
8 discrepancies in prior tax returns or financial disclosure forms? Can
9 you give us a date?

10 A. It would have been in April of 2017.

11 Q. And when did you start collecting the documents with respect to
12 making corrections to the IRS returns and the financial disclosure
13 forms?

14 A. Afterwards, it would have been May and June.

15 Q. And when did you discover that the boxes from your office that
16 contained those documents were no longer there?

17 A. July 3rd.

18 Q. When, if you remember at all, did you get the boxes back with the
19 information you needed?

20 A. It was weeks afterward.

21 Q. Okay.

22 A. I can't remember the specific date that they actually came back but I
23 know we had requested them and I had to go back and pull
24 information, so I had to go retrieve information.

25 THE REFEREE: You know, I have a question. Not

1413.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 for the judge, but Exhibits 8A through 8D are the financial
2 disclosure forms. I haven't looked at them, but do you
3 know if they include the instructions that accompany them
4 each year? I'm very familiar with the forms because each
5 question has an explanation, but I know that there's also a
6 very comprehensive set of instructions that are sent each
7 year to everyone who needs to fill out the forms.

8 MS. CENCI: Is that-- Do you want me to answer
9 that?

10 THE REFEREE: Anybody.

11 MS. CENCI: Well, yes, there are instructions.

12 THE REFEREE: But are those part of the exhibits?

13 MS. CENCI: Yes, however--

14 MS. SCALISE: --The instructions are not part of the
15 exhibits. They-- Each question has their own--

16 THE REFEREE: --Each question has--

17 MS. SCALISE: --but there is a form--

18 THE REFEREE: --Yes--

19 MS. SCALISE: --that goes along with it that says
20 here's how you, you know.

21 THE REFEREE: Yes, there's a very comprehensive
22 set of instructions that accompanies each form that goes out
23 to people who need to fill them out. Is that-- That's
24 probably a matter of public record.

25 MS. CENCI: It's not part of this record. I will say

1414.

(Miller - Direct)

1 though that the exhibits in evidence, there's a switch in the
2 format. The first one that is here, 8A, is completed by hand.

3 THE REFEREE: Right.

4 MS. CENCI: And the following two are
5 electronically completed.

6 THE REFEREE: Okay.

7 MS. CENCI: So, there's a difference in the format.
8 But I think that's correct and I think also with respect to the
9 electronic version, you can-- the person that's completing
10 the form can access the information.

11 THE REFEREE: Right. The reason that I ask is I
12 know that one of the issues that we'll have to resolve is
13 whether the forms were properly completed or not, and I'm
14 hearing that there may be some question about what was or
15 wasn't understood. So, I'm just asking because I know that
16 instructions exist.

17 MS. SCALISE: Well, we'd be willing to get
18 together with counsel and figure out what instructions went
19 out in which years. I know some of them may be online and
20 some of them, you know, may have gone out, you know--
21 They go out uniformly because the forms are blank so you
22 get the instructions with the forms when you get your
23 notice.

24 THE REFEREE: I think the easiest thing to do is
25 just to request that you addressed that in your post-hearing

1415.

(Miller - Direct)

1 briefing.

2 MS. CENCI: It's my position that forms speak for
3 themselves, particularly in reference to what was included
4 by the Respondent in the prior year and what was not
5 included in the subsequent years, but--

6 THE REFEREE: --No, that may well be so, but I
7 just--

8 MS. CENCI: --Sure--

9 THE REFEREE: --You should make a note to think
10 about that. All right, sorry to interrupt.

11 MS. SCALISE: No problem.

12 BY MS. SCALISE:

13 Q. One more clean-up question. Your Honor, with respect to the
14 wedding monies that you did not disclose, did you discuss those with
15 your accountant?

16 A. I did.

17 Q. And what advice, if any, did she give you with respect to the wedding
18 monies?

19 A. She said I'm not taking it as income. I'm not taking it as a deduction.

20 Q. So, was there any reference to how that or whether that should be
21 disclosed on the financial disclosure forms?

22 A. She did not, other than she said they were under-- they were under
23 \$150.

24 Q. And with respect to the more recent filings, are you going to include
25 them?

1416.

(Miller - Direct)

- 1 A. Anything that's above \$150 is required by the clerk-- the chief clerk,
2 unless the--
- 3 Q. --And what do you generally get when you officiate at a wedding?
- 4 A. It could be \$25, it could be \$50, it could be \$100, but it's not more
5 than \$150.
- 6 Q. So, it's from any source, \$150 or more?
- 7 A. Correct.
- 8 Q. That's what you have to report to your understanding?
- 9 A. Correct. Correct.
- 10 Q. Not an in total \$150 or more?
- 11 A. Correct.
- 12 Q. Now, Judge, with respect to the Rules of Judicial Conduct and
13 financial filings, have you read them?
- 14 A. I have.
- 15 Q. And do you acknowledge that you missed something in them? Is that
16 correct?
- 17 A. Yes.
- 18 Q. And just to be specific, what was it that you missed that you had to do
19 and you were obligated to do?
- 20 A. Filing with the chief clerk of the family court, any extra-judicial
21 income.
- 22 Q. And you're charged with repetitive violations of filings on the
23 financial disclosure forms, correct?
- 24 A. I've had-- Yes.
- 25 Q. So, did you intentionally make those, or-- excuse me, let me strike

1417.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 that. Did you intentionally omit any information from the financial
2 disclosure forms?

3 A. No, I did not.

4 Q. Did you intentionally omit any information from your tax returns?

5 A. No, I did not.

6 Q. Your Honor, what would you do differently now with respect to each
7 of those things that you didn't do before so these issues don't recur?

8 A. I will make sure that I review them carefully. I'll actually go through
9 with my accountant again and make sure they're correct, and I'll ask
10 either yourself and attorney DerOhannesian to look them over before I
11 submit them.

12 Q. What are you assigned to do now?

13 A. I'm actually doing-- I review foreclosure paperwork. Make sure the
14 order is prepared for one of the acting supreme court judges on any
15 orders of reference or judgments on sale.

16 Q. Isn't that usually done by law secretary?

17 A. Correct.

18 Q. And how often do you do these?

19 A. Every day. I've been doing them every day since July 21st of 2017.

20 Q. And approximately how many have you done since July 21, 2017, to
21 present date?

22 A. Hundreds.

23 Q. Excuse me?

24 A. Hundreds.

25 Q. And you're located in a different building than the family court

1418.

(Miller - Direct)

1 building?

2 A. I am. I'm located on the 15th floor of the state office building. It's the
3 offices where the Office of Court Administration used to be, so it's
4 almost like a vacant quarter of the state office building. There's
5 myself and then the captain for the-- Our court system has an office
6 two over.

7 Q. And who's occupying your chambers now?

8 A. I have no idea. No knowledge.

9 Q. Were you able to go back to your chambers to retrieve your personal
10 belongings?

11 A. No.

12 Q. So, since July 11th of 2017 you haven't been back to your chambers?

13 A. Probably got locked out and I have not been back.

14 Q. Is there anything about your family court job that you miss?

15 A. I do. I miss-- The part I miss most is working with the families and
16 working with the kids. And I always wanted to get involved in
17 education. That's what I was going to pursue, being a teacher. And
18 the aspect-- It was heartening to hear positive things from the
19 practitioners and the court officers because that's an objective thing
20 that they see. To find out that I was doing a good job. You know, I
21 guess we all have certain feelings within our profession if we feel
22 we're doing a good job of what we're doing, but it really felt like I
23 was making a difference in a positive way for people, giving them
24 hope when they came into that system when they were dealing with
25 the most important issues in their lives. When dealing with anyone's

1419.

(Miller - Direct)

1 children is probably the most important issue that all of us deal with
2 universally. We worry about those things day and night. We worry
3 about the future of our children. We worry if they're going to be in a
4 safe place, who they're with. When I was in that courtroom, I wanted
5 to take that time, and my experience over the years with working in
6 town and village court, I had to deal with so many people over time, I
7 was listening to that and I could see that my background and my
8 training was working, useful for them to try to reach resolutions.
9 We're not there with them all the time, so the issues they have to deal
10 with are things, the dreams and hopes that they have for their children,
11 and how can I facilitate and help them achieve that, but direct them in
12 that direction. So, the part that I miss too, I miss the people that
13 were, in fact, when I saw in the paper. Probably five different cases
14 because I'll remember them, that they passed on from drugs. We were
15 working-- We were working with them in court. I was seeing them
16 on a regular basis. They were working with their kids. Now, in this
17 case, there's four or five moms that I'm seeing that aren't going to be
18 able to raise their children and through the hope of them trying to be
19 parents, they were keeping themselves clean. The young people, the
20 people that were on PINS and JDs, just to see that they didn't have
21 guidance in their life or to have someone there as a mentor or role
22 model. I was extremely fortunate as a young man growing up in a
23 household, two parents. I learned through hard work. My father was
24 the first one to get a college education in his family. I was the first
25 attorney in the family. Those things matter. What was going on in

1420.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 those people's lives, I wanted to make sure I was listening to those
2 details and I was trying to pay attention to that, be respectful to the
3 attorneys coming in, be respectful to the litigants, the officers, and our
4 staff and work together. It's a job where you need multiple people
5 involved to be successful at and in no way would I want to offend
6 anyone within that system because they all need to be part of it. But
7 what happens in that environment is it gets to be almost like
8 backbiting and it shouldn't, you know. I would try to come in with the
9 positive attitude. I tried to greet people when they came into court. I
10 welcomed them to come in. I would say those things to them and I
11 would also instruct the officers when they were in there, I said, "Let
12 them talk," because maybe a lot of times they haven't talked for a long
13 time until they actually got into that courtroom, so I miss that aspect of
14 it because it's important. I mean, those people need to have their
15 cases litigated and right now they've been short with myself not being
16 there, which I imagine is creating a backlog.

17 Q. Did you-- Were you certified to do drug court dispositions?

18 A. I was not asked to but my background prior to, I would have been
19 happy to do that.

20 Q. Because you mentioned some people passed on from drug abuse.

21 A. They would come in and we would know they were going through
22 counseling and there were issues where they were trying to terminate
23 their parental rights. So, anyone should deserve that opportunity in
24 life, to try to make themselves better, you know, to be there for their
25 children. To each one of those children, no matter what the stead was

1421.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 of that individual's parents, where they were in life, that's still their
2 parent. They still love that person. They respect that person and I just
3 wanted them to have the opportunity coming in there that wasn't
4 falling-- As I saw it as a litigator, I wanted to move things along for
5 people.

6 Q. Do you do any volunteer activities in your spare time?

7 A. I do. I'm involved with the Knights of Columbus. I'm involved with
8 the Sons of the American Legion. I'm involved with Masons. I'm
9 involved with the United Way. I'm involved with the American
10 Cancer Society. I have myself and my children, we volunteer at the
11 soup kitchen at St. Ambrose in Endicott, and I've done it since I've
12 not been in my chambers.

13 Q. Anything through your church?

14 A. St. James Church, I actually was a lector in church. I haven't been
15 doing that as much now, but we do volunteer to, you know, to do--
16 We did food drive. We did clothing drive. We did packages that--
17 for Christmas time for families that were in need. So, we-- I
18 constantly do that.

19 Q. Now, you said you're married.

20 A. I am married.

21 Q. How long?

22 A. Twenty-five beautiful years.

23 Q. Have any children?

24 A. I do. I do.

25 Q. Do you need a moment?

1422.

(Miller - Direct)

- 1 A. If I could have a tissue, please?
- 2 Q. Sure. So, Judge, this is where you get bragging rights about your kids.
- 3 How many children do you have?
- 4 A. I have four children.
- 5 Q. Can you tell us about them?
- 6 A. I can. My oldest son, Ricky, this is-- He is in his second year of law
- 7 school at Syracuse. He's doing well. He's on law review. He's doing
- 8 extremely well in school. My next child is my daughter Lauren,
- 9 excuse me. She's a senior at Villanova, honors also and they're both--
- 10 both of the kids are involved in charitable work. She's going to be
- 11 going-- She wants to go into hospital administration, so she's applied
- 12 to grad programs. Now, I know she got into Albany already, she got
- 13 into Binghamton. The next two children live at home with my wife
- 14 and I. My daughter J [REDACTED], she's in 11th grade. She's probably the
- 15 brightest one of all them, doing well. She's a tennis player, very good
- 16 tennis player and she's done well with that. She did varsity
- 17 cheerleading but she'd involved with like swing choir, both J [REDACTED]
- 18 and my son, J [REDACTED]. The younger ones are in plays and they play
- 19 sports and know they're involved with a lot of charitable work. They
- 20 go to Seton Catholic Central High School, so it's, you know, they
- 21 attend masses. They have mass functions. There's a class that they
- 22 have on religion and-- they're expected to be involved in community
- 23 activities and they participate with my wife and I.
- 24 Q. What grade is J [REDACTED] in?
- 25 A. J [REDACTED]'s in 9th grade and J [REDACTED]'s honors in academics. He's been--

1423.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 He plays on the-- He was on the varsity golf team, actually lettered on
2 it. Actually they did well, won their sectionals. And he's also on the
3 JV basketball team and he was on the JV baseball team. He's an
4 actor. He'll sing, a great voice, he's talented but he's been getting
5 bullied at school. And my kids through social media and my wife--
6 all this has been brought up in the public numerous times. There's
7 nothing confidential. We had a confidential meeting with Judge
8 Marks in December of 2017. Mr. Gallagher had one of his reporters
9 there. The only people that knew about the meeting were judges,
10 secretaries, and court attorneys. There was no media invited. Judge
11 Marks came in. We had all the judges. We had five court officers and
12 there was a reporter there. The day after they testified here, the next
13 day I'm getting calls from the media. August 9th, and then before
14 Christmas was the federal lawsuit. There's been nothing confidential
15 in any of this.

16 Q. Now, Judge, we're still talking about your volunteer activities. Have
17 you curbed them since all of this information has come out in public?

18 A. Only the lecturing part in church. I've continued to be involved in
19 that stuff and I will be my entire life.

20 Q. At one point, you discussed-- or somebody discussed, that you were
21 part of the family court association?

22 A. Yes.

23 Q. What do you do with respect to that?

24 A. I got involved in that immediately when I became a family court
25 judge. And then there was a group on the legislative committee where

1424.

(Miller - Direct)

1 we would come to Albany and I came up initially with the judges,
2 there were probably six of us from our association, they let me come
3 up as a freshman my first year, in 2015. So, we went around and we
4 would lobby all the senators, assembly people. We had to meet with a
5 Marc Bloustein from OCA and they-- and we'd set up and we'd go
6 around and just meet with the kind of-- the senators and the assembly
7 people. The second year, I was asked to chair the committee. So, the
8 president, our state president of the association had me chair that
9 committee. So, I made the arrangements and set that up with Marc
10 Bloustein and this-- the last year, 2017, we went also with the-- some
11 of the city court judges. So, it was the city court judges and us, the
12 family court judges. And basically what we worked on, what we
13 achieved and were supportive of was raise the age and they also
14 increased the salaries for the family court judges. Things that they'd
15 been working on for years. And I was actually able to see quite a few
16 of the senate people and the assembly people. A lot of them served on
17 when my father served, so it was-- it just was very heartwarming to
18 be able to do that and to see some positive things happening for the
19 association. It was-- We were well received each time we went in
20 and it was nice to do that with those legislators because I lived with
21 one for 10 years, and to go in and say thank you, you know, to the
22 assemblywoman who chaired it for--

23 Q. --So, did you do anything in the last year and a half since you've been
24 reassigned with respect to the family court association?

25 A. No, they had someone else handle the stuff.

1425.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 Q. Do you coach any of your kid's teams?

2 A. Yes, I did quite a bit of coaching, Little League, Pee Wee football. I
3 did a lot of basketball coaching with my daughter Lauren. Actually,
4 Mr. Gallagher and I did a travel team, an AAU team for a number of
5 years where we coached the girls. Softball, as I said, Little League,
6 Pee Wee football. Actually, we worked together to start the program
7 again. There was a flag football and then we went from flag football
8 to youth football. So, a lot of the sporting activities I've always been
9 involved with, those supportive of, you know, Pony League baseball
10 and helpful, anywhere they needed to have outlets or activities for the
11 kids.

12 Q. Just a moment. Your Honor, what, if anything, do you have to add for
13 the Referee and the Commission in considering what the findings of
14 this case should be?

15 THE RESPONDENT: I prepared a statement that I
16 wanted to give if I could give it?

17 THE REFEREE: I have no objection. That's fine.

18 MS. SCALISE: Okay.

19 THE RESPONDENT: If I could read it, I'd rather
20 read it.

21 THE REFEREE: That's fine.

22 MS. SCALISE: Okay.

23 THE REFEREE: Go ahead. Take your time.

24 A. I would like to make this personal statement. Referee Barrer, thank
25 you for the time you spent on this matter. I appreciate the fair and

1426.

(Miller - Direct)

1 thoughtful way that you've handled this matter. You certainly have
2 the toughest job in this room. I hope that you will continue to be fair
3 as you think about the process and in some ways, you more than
4 anyone understands the seriousness of being the person who
5 determines someone's future. Although most of the testimony has
6 been about allegations that are surreal, I hope that you can separate the
7 information from the testimony about the type of judge that I am when
8 I sit in family court. My reassignment since July 2017 to review
9 foreclosure motions has been difficult because it's not good for
10 litigants who could use my services in a positive way that I was
11 elected for. I love being a family court judge. I take my job seriously
12 because my decisions impact the lives of people who in most cases
13 have nowhere to turn. They very often have serious issues and little
14 access to resources, so I do my best to hear them and to render
15 decisions in a fair and respectful manner. I am not perfect and can be
16 frustrated on occasion, but even Ms. Vroman agreed that we are busy.
17 And we work hard to get a lot done despite the constraints of having
18 to end our day by 4:30. We often do a lot with very little support. In
19 my case, we were short a clerk for more than a year. When I am
20 frustrated, I ask that we push to get things done. I thought that the
21 issue that occurred on February 6, 2017, was past us because Ms.
22 Vroman and I worked together for a long time after the incident.
23 Adjustments were made as to at least a number of the concerns that I
24 voiced in my letter to Ms. Singer. I am troubled and sorry that Ms.
25 Vroman is still upset by it and if I'm allowed to return I will be

1427.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 mindful of my tone and fully explain why I need to leave if I have
2 physical therapy or any other commitment which would require a
3 timely finish to the court date. As to my temperament and lateness, I
4 had back trouble but my chambers staff was aware of it and I assumed
5 that my court part staff was aware of it also. Later I learned that
6 chambers, Mrs. Gallagher, never informed Rebecca Vroman of my
7 physical therapy appointments. Something which was innocent was
8 presented out of context. Likewise, my complaints about certain
9 employees' work ethic and demands were limited to getting the work
10 done. Likewise, I am troubled that Ms. Singer believes that I made
11 demeaning comments to her. I do not have any specific memory of
12 the comments. All she or Ms. Vroman or anyone for that matter had
13 to say was, "Judge, I'm uncomfortable with your manner or the
14 statement you made." I can assure you that I would have apologized
15 and changed my behavior. It does me no good to have my co-workers
16 dislike me. In fact, I try to kid around at times to put at ease-- to put
17 them at ease. This experience has taught me that I must choose
18 carefully not only the words I use but how I deal with others as well as
19 who I can appoint to work closely with me. I know now that all my
20 choices and words or how I treat people must be respectful for them
21 and for my position, so I cannot and will not say anything in jest. As
22 to the allegations of sexual harassment, they are simply untrue. I am
23 so disheartened by Ms. Gallagher and Mr. Kachadourian's testimony,
24 much of which is untrue, incredible and surreal. I repeatedly voiced
25 my displeasure with both because they were not providing the work

1428.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 and support needed to get the job done. It was initially a problem
2 because Ms. Gallagher was not doing the secretarial work, including
3 preparing case files, failing to take and convey messages, failing to
4 monitor my emails and deadlines, failing to prepare vouchers and
5 providing my scheduling information to the court clerks that I needed
6 done. She had worked well at her prior task but the volume and
7 challenge in family court was different. We all had to work harder
8 than ever before. As to Mark Kachadourian, it took longer for me to
9 realize that he was not as supportive and was not doing his job. You
10 see, most of our cases could be resolved by me from the bench. He
11 failed at the basic of his responsibilities, drafting judicial decisions. In
12 two and a half years, he produced two decisions. Certainly, Mark
13 Kachadourian was not productive and not performing his job. This
14 reflects his lack of devotion to the job. I came to learn that my
15 kindness, my patience, and reliance on them was a mistake. If I can
16 continue, I will certainly use a different process in deciding who to
17 hire. I was not as attentive as I should have been in hindsight because
18 I was busy doing the pretrial conferences, trials, and emergency
19 applications and ensuring that the work of family court was done. I
20 emphatically deny the disgusting and offensive statements and
21 behavior attributed to me by Ms. Gallagher and Mr. Kachadourian. I
22 was in family court every day. Such behavior, which did not happen,
23 would have been inappropriate and disrespectful on so many levels.
24 I'm not only a judge but I'm a family man married for 25 years and
25 the father of four children, two boys and two girls. I was raised in a

1429.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Direct)

1 household of women, grandmother, mother, two sisters. Why would I
2 do anything so foolish to dishonor my family? Also, I'm named after
3 my father. I love him. He has passed but he remains beloved and
4 respected in our community. I would never act so egregiously which
5 would certainly dishonor him, my mother, my wife, my children, my
6 sisters. As to the mistakes that I made, I recognize that whether I
7 knew my obligations as to the FDF and the local report to the clerk, I
8 should have known. I note that the FDF, I should have been more
9 careful with the details. Likewise, my taxes should have been more
10 carefully filled out and more inclusive of all the information so as to
11 not confuse anyone who may review them. I was unaware of the local
12 reporting requirement or that it existed independently of the financial
13 disclosure form filed with the Ethics Commission. I believed that
14 filing a yearly financial disclosure form with the Ethics Commission
15 fulfilled these obligations with respect to all financial disclosures. I
16 did my best to comply with the rules but now realize that I should
17 have done better, to learn and comply with the Rules Governing
18 Judicial Conduct. In hindsight, I recognize and sincerely apologize
19 for any errors or oversights. I have re-familiarized myself with the
20 rules and consulted and will continue to consult with Ms. Scalise and
21 Mr. DerOhannesian to ensure that going forward I do not repeat them.
22 I thank you for your time and hope that you will keep an open mind
23 when you render your report in this matter, which will surely impact
24 my career as well as my reputation. Thank you.

25 THE REFEREE: Anything further?

1430.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 MS. SCALISE: Nothing further.

2 THE REFEREE: All right, why don't we take a
3 couple minutes? Let's go off the record.

4 (OFF THE RECORD)

5 MR. FITZPATRICK: We are on the record.

6 THE REFEREE: All right, we're back on. Counsel
7 for the Commission is present. Counsel for the Respondent
8 is present. Respondent is here. You're still under oath and
9 Ms. Cenci, whenever you're ready.

10 MS. CENCI: Thank you.

11 CROSS-EXAMINATION

12 BY MS. CENCI:

13 Q. Judge Miller, you were a town and village justice for many years, is
14 that correct?

15 A. That's correct.

16 Q. You went to judicial training over the period of time that you were a
17 town and village justice?

18 A. Yes.

19 Q. And were you familiar with the Rules Governing Judicial Conduct?

20 A. Yes.

21 Q. You knew, did you not, that the rules prohibited a full-time judge from
22 practicing law?

23 A. Correct.

24 Q. You knew that. And you had been in private practice for many many
25 years before you became a family court judge, is that correct?

1431.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 A. Yes.

2 Q. And you had, is it fair to say, a relatively brief period of time to close
3 down your practice between the time that the new judicial position
4 was announced and the time that you actually became a family court
5 judge?

6 A. Yes.

7 Q. So, over approximately 20-some years of private practice, is it fair to
8 say you had hundreds of files in your law office?

9 A. I think that's fair to say.

10 Q. And some of those matters were still pending when you were sworn in
11 as family court judge, is that correct?

12 A. Correct.

13 Q. Did you discuss with Mark Kachadourian what to do with the pending
14 files?

15 A. Prior to taking the family court judgeship, yes.

16 Q. Yes, you did? Did he give you advice in that respect?

17 A. He made suggestions and one was to--

18 Q. --Just yes or no, did he?

19 A. Yes.

20 Q. And did there come a time when you heard him say, in words or
21 substance, that for you to continue to practice or to work on files as a
22 full-time judge was endangering your \$2 million contract with the
23 state?

24 A. No.

25 Q. He never said that?

1432.

(Miller - Cross)

- 1 A. No.
- 2 Q. Judge, you have previously been censured by the Commission on
- 3 Judicial Conduct, is that correct?
- 4 A. It is correct.
- 5 Q. And that was for, among other things, conflicts between your judicial
- 6 office and the practice of law, correct?
- 7 A. Correct.
- 8 Q. Did the prior censure heighten your sensitivity to your ethical
- 9 obligations, particularly with regard to the practice of law as a full-
- 10 time judge?
- 11 A. It did.
- 12 Q. Now, did you stay in contact with Donna Filip after you took the
- 13 family court bench?
- 14 A. Not that much. I did-- I was in contact with her but not that much,
- 15 other than when I stopped in.
- 16 Q. The answer is yes, you stayed in contact with her?
- 17 A. I had contact with her.
- 18 Q. Did she do any work for you after you were sworn in as family court
- 19 judge?
- 20 A. No.
- 21 Q. She did collect Mr. Micha's checks for you though, did she not?
- 22 A. He would just drop them there because he didn't want to mail them
- 23 out, put a stamp on it and mail it out.
- 24 Q. Did she collect them for you?
- 25 A. I don't know who actually collected them all the time.

1433.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 Q. Well, you've seen the documents in evidence, have you not?

2 A. I have.

3 Q. And is it fair to say that they're receipted by Donna Filip?

4 A. Yes.

5 Q. So, she was collecting that money and she was doing that for you, is
6 that right?

7 MS. SCALISE: Objection.

8 THE REFEREE: What's your objection?

9 MS. SCALISE: How does he know what she was
10 doing? There's an assumption here that she was collecting
11 and she was doing something. We have documents in
12 evidence. You make whatever inference, but he wasn't
13 there every day to know what she was doing.

14 THE REFEREE: I thought your objection was going
15 to be that the wife owned the building.

16 MS. SCALISE: Excuse me?

17 THE REFEREE: I thought your objection was going
18 to be that the wife owned the building--

19 MS. SCALISE: --That could be another one, but
20 yes. I mean, this, you know. How does he know what she
21 was doing?

22 THE REFEREE: I will sustain the objection as to
23 that-- in that form.

24 MS. CENCI: May I show the witness an exhibit in
25 evidence, Your Honor?

1434.

(Miller - Cross)

1 THE REFEREE: Yes.

2 BY MS. CENCI:

3 Q. Judge, would you look at Exhibit 7C in evidence? You've seen those
4 before, have you not?

5 A. I have.

6 Q. And do some of those copies say "Rick's copy" in the top right hand
7 corner?

8 A. They do.

9 Q. So, wasn't Donna Filip making copies of Mr. Micha's checks and the
10 receipts that she wrote for him to provide to you?

11 A. This--

12 MS. SCALISE: --Objection.

13 THE REFEREE: What's the objection?

14 MS. SCALISE: Same objection. What Donna Filip
15 did-- The document first of all speaks for itself. Secondly,
16 what Donna Filip did or what she was directed to do, she's
17 not here as a witness.

18 THE REFEREE: No, I'll overrule it because the
19 question referred to Rick's copy, so I think that's a fair
20 question. So, overruled.

21 A. If you could repeat the question, please?

22 Q. Was Donna Filip providing you with not only the checks from Mr.
23 Micha but a copy of the receipt that she gave to him?

24 A. Yes, did I receive a copy of it? Yes.

25 Q. She was doing that for you, correct?

1435.

(Miller - Cross)

1 A. I needed them for taxes. Right, I had a copy of them.

2 Q. And you knew she was doing that for you, did you not?

3 MS. SCALISE: Objection.

4 THE REFEREE: No, overruled.

5 A. Did I know I was getting a copy of them? Yeah, I would've had to
6 ask someone to make a copy for me. I didn't have a copier.

7 Q. Did you continue to go to the law office at 2304 North Street after you
8 became a family court judge?

9 A. I had personal legal matters that Artan Serjanej handled for me, yes.

10 Q. Yes. The answer is yes? How frequently did you have occasion to do
11 that?

12 A. Not that frequent.

13 Q. How many times?

14 THE REFEREE: From what time period? Say from
15 January 2nd of '15 to how-- just--

16 BY MS. CENCI:

17 Q. Fair enough. From January 2, 2015, until mid-June 2017, how many
18 times would you say you had occasion to visit that law office?

19 A. If I had to-- If I stopped and picked up a check or if I had-- which I
20 had my own legal matters, my mother had legal matters there--

21 Q. --Judge, just number of times, if you could?

22 A. I couldn't give you a specific amount of times I was there.

23 Q. More than 10?

24 A. I'd say more than 10.

25 Q. More than 20?

1436.

(Miller - Cross)

1 A. No, I wouldn't say more than 20.

2 Q. So, not more than 20 over a period of two and a half years?

3 A. Correct.

4 Q. Did you ever take Mark Kachadourian with you to 2304 North Street?

5 A. Yes, he went with me sometimes.

6 Q. Did he, to your knowledge, have any business purpose for being
7 there?

8 A. No, it was on lunch time, so I would-- If I had to stop by to either get
9 legal work done for myself, I would take him with me.

10 Q. And you say Mr. Serjanej was doing legal work for you?

11 A. Correct, and for my mother and for my sister and brother-in-law.

12 Q. What was the nature of the legal work that he was doing for you?

13 A. I had real estate issues I had going on. He provided other information
14 that I had to prepare to give to another attorney. We had some
15 corporate stuff we were dealing with. So, he handled both estate
16 matters. He was dealing with the estate matters of my mother. He
17 was dealing with real estate for my sibling, my brother-in-law, my
18 sister.

19 Q. Well, I didn't ask you about your mother or your brother-in-law and
20 your sister. I asked you what he was doing for you.

21 THE REFEREE: And he-- No, that--

22 MS. SCALISE: --Objection.

23 THE REFEREE: Sustained. That was a fair answer
24 to your question. I think it's completely responsive.

25

1437.

(Miller - Cross)

1 BY MS. CENCI:

2 Q. The *Behal* estate, that was still pending when you took the family
3 court bench, is that right?

4 A. It was.

5 Q. And you knew that, that it was still pending. It was not completed,
6 correct?

7 A. Yes, I did.

8 Q. And Dave Behal is one of your very best friends in the world?

9 A. Yes, he is.

10 Q. He lives down in Virginia?

11 A. He lives in Virginia.

12 Q. Did you keep in contact with him?

13 A. I did.

14 Q. And he did visit you in chambers in May of 2017, is that correct?

15 A. He did. We went to lunch.

16 Q. But you claim you never discussed any aspect of the pending estate of
17 his brother--

18 A. --Correct--

19 Q. --ever at any time after you became a family court judge?

20 A. No. We wouldn't talk about the specifics of the estate.

21 Q. Had you recommended to Dave Behal that he work with Mr. Serjanej
22 to complete that estate?

23 A. No, he actually came to know Mr. Serjanej before I took the bench.
24 He actually met him and he-- I also-- He had the choice to choose
25 whatever attorney he want. He met Artan and he wanted Artan to

1438.

(Miller - Cross)

1 represent him on the estate. So, that happened before I became a
2 judge, actually.

3 Q. So, you never recommended to him that he use Mr. Serjanej?

4 A. No.

5 Q. Did he ever express any-- He being Mr. Behal, any displeasure or
6 frustration with Mr. Serjanej to you?

7 A. No, he was pleased with Serjanej's representation.

8 Q. Okay, now, did you talk to or otherwise communicate with Donna
9 Filip about the *Behal* estate?

10 A. No.

11 Q. No? Nothing with reference to the accounting?

12 A. No.

13 Q. And you claim you never saw the email chain that Mr. Behal sent
14 between her, Donna, and Mr. Behal on which you were copied?

15 A. Correct.

16 Q. You never saw that before?

17 A. Correct.

18 Q. And Donna Filip never mentioned it to you?

19 A. Correct.

20 Q. And Mr. Behal never mentioned it to you?

21 A. Correct.

22 Q. So, and-- But your claim is though that Mr. Serjanej was handling the
23 estate at that time although he was not copied on that email chain?

24 A. Mr. Serjanej was the attorney before I became a family court judge
25 that was taking over that case.

1439.

(Miller - Cross)

1 Q. But he's not in the email chain, is that correct? Exhibit 4III. Would
2 you like to see it?

3 A. I-- You're asking me a question. If you have the exhibit, I don't
4 know what's on it.

5 Q. Oh, you're not familiar with the exhibit?

6 MS. SCALISE: It's a bit argumentative.

7 THE REFEREE: It is. I mean the--

8 MS. CENCI: --No, I'm asking him, is he not
9 familiar with--

10 MS. SCALISE: --It's argumentative.

11 THE REFEREE: It's okay. Let's show him the
12 exhibit. I think he's already answered the question anyway,
13 but let's show him.

14 BY MS. CENCI:

15 Q. Showing you 4III.

16 A. Do you want this other one?

17 Q. You can leave it there. Can we agree that Mr. Serjanej is not copied
18 on those communications?

19 A. I guess that it appears that.

20 Q. And rhm2@[REDACTED], that is an email account that belongs to you, is
21 that correct?

22 A. Correct.

23 Q. That was the one that you used when you were in private practice?

24 A. Correct.

25 Q. Is there any particular reason why as of May 2017, you still had an

1440.

(Miller - Cross)

1 email account entitled rhm2@[REDACTED]?

2 A. It was a private email account that I kept that was my name. So, I
3 guess it was my domain, it's my name.

4 Q. And you say that Mark Kachadourian-- withdrawn. You never asked
5 Mark for any assistance with respect to the *Behal* accounting, is that
6 right?

7 A. No, I've never asked him for any assistance.

8 Q. And you never showed any part of that Exhibit 4III to him?

9 A. No, I did not.

10 Q. I think you said earlier in your direct that you also never did provide
11 Mr. Kachadourian with the password for that account, is that right?

12 A. He would be at the computer--

13 Q. --Sorry, did you give him the password to your account or not?

14 MS. SCALISE: No. Objection.

15 THE REFEREE: He already answered this
16 question--

17 MS. CENCI: --No--

18 THE REFEREE: --and he was really specific, he
19 said Kachadourian was right over his shoulder as he did it--

20 MS. CENCI: --Did what? May I ask him that?

21 THE REFEREE: Yes, absolutely. I think it's been--
22 go ahead. Ask the question.

23 BY MS. CENCI:

24 Q. Okay, my question is did you, sir, ever provide to Mr. Kachadourian
25 the password for that email account?

1441.

(Miller - Cross)

1 A. No. What I did was he was typing at the computer--

2 Q. --Okay, you've answered. Thank you--

3 A. --and I told him what the password was to enter into the account--

4 Q. --Move to strike, Your Honor.

5 MS. SCALISE: Objection.

6 MS. CENCI: This is cross-examination. It was a
7 yes or no.

8 MS. SCALISE: He gets to finish his answer.

9 THE REFEREE: Just a minute. Just a minute. Let
10 Ms. Cenci speak.

11 MS. CENCI: It was a yes or no and not a narrative
12 and now I have another question.

13 THE REFEREE: Okay, motion to strike is denied.

14 MS. SCALISE: Thank you.

15 BY MS. CENCI:

16 Q. So, he-- He's leaning over your shoulder as you're doing what?

17 A. He's typing on the computer and I'm telling him what to type in my
18 password, to get into my AOL account that was with me when I had to
19 send something out.

20 Q. For what purpose?

21 A. When I had to send something out personally. I had to send
22 something to my attorney.

23 Q. What was it?

24 A. A communication.

25 Q. Do you have a copy of it?

1442.

(Miller - Cross)

1 A. I do not.

2 Q. So, your theory is that he somehow surreptitiously wrote down your
3 password as he watched you type it in?

4 MS. SCALISE: Objection.

5 THE REFEREE: Sustained, as to form. You can
6 ask--

7 BY MS. CENCI:

8 Q. --Is that what you want the Commission to believe, Judge?

9 MS. SCALISE: Objection.

10 THE REFEREE: I don't think your question follows
11 from his answer.

12 MS. SCALISE: Which was, by the way, sustained.

13 THE REFEREE: No, no. But the question was that
14 he may have surreptitiously written it down, which
15 presupposes he didn't just remember it.

16 MS. SCALISE: And there was also an implication
17 of a theory?

18 THE REFEREE: I ignore that but he told him what
19 the password was and then you said-- you asked well, do
20 you think he wrote it down? He didn't-- Maybe he didn't
21 write it and just remembered it.

22 BY MS. CENCI:

23 Q. I'm sorry. Did you tell-- I thought you said you did not give the
24 password to Mr. Kachadourian?

25 A. I told him what the password was to enter into the account. He typed

1443.

(Miller - Cross)

1 it in.

2 Q. What's the password?

3 A. I've changed it since.

4 Q. What was it?

5 A. It was Lincoln Kia, my two cars.

6 Q. All right.

7 A. Lincoln Kia.

8 Q. Are you trying to imply, Judge, that Mr. Kachadourian later on or at
9 some other date went back into your personal email account and did
10 something?

11 MS. SCALISE: Objection.

12 THE REFEREE: Overruled.

13 A. Yes.

14 Q. And he was your personal appointee, is that right?

15 A. Yes.

16 Q. Dependent upon you for his position, correct?

17 A. By law-- That's not what he testified to but by law, yes.

18 Q. And same with Ms. Gallagher. She was your personal appointee,
19 correct?

20 A. Yes.

21 Q. Dependent upon you for her position, correct?

22 A. That's what I thought.

23 Q. And they're making up all these allegations, is that right?

24 MS. SCALISE: Objection.

25 THE REFEREE: Overruled.

1444.

(Miller - Cross)

1 MS. SCALISE: Is there a reference to a specific
2 allegation? All these allegations?

3 THE REFEREE: I understand the question to be all
4 the negative things in the--

5 MS. CENCI: --All the allegations about which--

6 THE REFEREE: --in the CJC complaint. Is that
7 your question?

8 MS. CENCI: Yes, and about which your counsel
9 asked you.

10 A. The negative ones, yes.

11 Q. Now, Judge, you originally expected to get a fee in the *Behal* matter,
12 is that right?

13 A. No, I did not.

14 Q. Didn't you have an agreement with Mr. Behal that you were going to
15 take a percentage of the estate?

16 A. I did because that's required by law.

17 Q. It's required by law?

18 A. I had a fee arrangement with him.

19 Q. You were going to take what percent?

20 A. It would be a sliding scale but I think that was on that-- the retainer.

21 Q. With respect to the *Saraceno* matter, you took your fee from that-- for
22 that estate in April of 2012, is that right?

23 A. Correct.

24 Q. Also a percentage of the estate?

25 A. Correct.

1445.

(Miller - Cross)

1 Q. About six percent?

2 A. No, it was--

3 MS. SCALISE: --On which estate, I'm sorry?

4 THE REFEREE: *Saraceno*.

5 MS. CENCI: *Saraceno*.

6 A. No, it was a sliding scale. It was less than that. It wouldn't have
7 exceeded five.

8 Q. Well, there's a check in evidence for \$6,000-and-something but I'll let
9 that speak for itself.

10 A. Oh, I thought you said six percent, counsel. I misunderstood what you
11 said. I thought you said six percent of it. It wasn't six.

12 Q. We'll let the record speak for themselves in that regard. You claim
13 that this estate was finished or you believe that it was closed?

14 THE REFEREE: You're talking about *Saraceno*?

15 MS. CENCI: Correct.

16 A. Yes. Everything had been distributed and the documents that were
17 asked for are ones that I prepared before.

18 Q. Well, had everything been distributed? I thought that there was
19 someone in California who was not accepting some property from the
20 estate.

21 A. No, in fact the person in California had died.

22 Q. When you-- The last thing that you filed in this matter was a request
23 of the court for additional time to collect the receipts and releases. Do
24 you recall that?

25 A. No. It must have come out of my office at the time of the election.

1446.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 Q. 5LL?

2 MS. CENCI: May I show the witness Exhibit 5LL in
3 evidence?

4 THE REFEREE: Absolutely. You don't have to
5 have to ask, just go right ahead and do it.

6 A. Thank you.

7 Q. Did you file that, Judge?

8 A. It's under my signature stamp, so it would have come out of my
9 office.

10 Q. What's the date on that document?

11 A. July 23rd, '14, during the election. This is when all the election was
12 going on for family court.

13 Q. So, you knew the estate was not completed at that time, did you not?

14 A. To the extent of my knowledge, what I can tell you is that this
15 document came out of my office. I can tell you that.

16 Q. And this estate was in a different county, Tioga County, is that right?

17 A. Yes, the neighboring county.

18 Q. And you claim that everyone over in Tioga County Surrogate's Court
19 knew that you were a full-time judge?

20 A. Everyone in OCA gets a communication we have-- We're all
21 connected in the system and it goes out to all the 10 counties. We all
22 get the same information. It's universal information. We all know
23 who the judges are. We all aware of who-- personnel that's hired in
24 all the different counties. It's something that's-- we're all versed on
25 it as employees within the system. And it's something that's shared

1447.

(Miller - Cross)

- 1 with everyone, too.
- 2 Q. Did you know Deborah Stone, the chief clerk?
- 3 A. Yes, in fact, I used to appear in Tioga County as a lawyer there.
- 4 Q. And did you ever file any document with the Tioga Surrogate's Court
- 5 saying that you were no longer going to be acting as the attorney in the
- 6 estate?
- 7 A. No, I don't think I did.
- 8 Q. When you spoke with Tioga County Surrogate's Court in October of
- 9 2016, was that with Deborah Stone?
- 10 A. It was one of the clerks. I don't know who it was.
- 11 Q. Did you tell her that there would be a substitution of attorneys filed?
- 12 A. I told her that there'd be another attorney handling the file.
- 13 Q. Did you tell her there'd be a substitution of attorneys filed?
- 14 A. I told her another attorney would be handling the file.
- 15 Q. Did you also tell her that there was a nephew who would not accept a
- 16 piano?
- 17 A. There was a question about--
- 18 Q. --Yes or no? Did you tell her that information?
- 19 A. Some historical information, correct, I may-- Yes, I did.
- 20 Q. Did you request that the estate be closed by motion instead of a formal
- 21 accounting?
- 22 A. No, I did not.
- 23 Q. Did you incidentally make any contemporaneous notes of this phone
- 24 conversation that you had in October of 2016 with the surrogate's
- 25 court?

1448.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 A. Notes, no.

2 Q. Have you seen the contemporaneous notes in evidence that Ms. Stone
3 testified she made of your conversation with her?

4 A. I have since seen those.

5 Q. Would you consider, Judge, that if you had requested of the Tioga
6 County's Surrogate's Court that the *Saraceno* estate be closed by
7 motion instead of a formal accounting, would you consider that that
8 would be an inappropriate request for you, as a full-time judge, to be
9 making at that time?

10 A. I didn't do that.

11 THE REFEREE: That's not what she asked. If you
12 had done that, would it have been inappropriate?

13 A. I think it would. I would question it, yeah.

14 Q. Judge, in the Commission's prior Determination censuring you, do
15 you recall this statement at page 5, "Although Respondent did not
16 physically appear in the court in connection with the case, his actions
17 violated the ethical prohibitions and constituted an impermissible
18 intermingling of his roles as a lawyer and a judge." Do you remember
19 that language in the Commission's Determination?

20 A. I do.

21 Q. You do? I'm sorry.

22 A. I do.

23 Q. You do. Was that language in your mind at the time that you were
24 speaking with Ms. Stone or whoever it is you recall speaking to at the
25 Tioga Surrogate's Court?

1449.

(Miller - Cross)

1 MS. SCALISE: Objection.

2 THE REFEREE: What's the basis of your
3 objection?

4 MS. SCALISE: Does he carry the decision around
5 with him and memorize it? I mean, you know, is it
6 something that you check before you make a phone call on
7 an old case? I mean, there's probably about 10,000
8 objections on possibilities, but--

9 THE REFEREE: --You know what? The question
10 is the question. I think I know what the answer's going to
11 be, but-- Overruled. Do you understand the question?

12 A. I don't but if she could repeat it, I'd appreciate it.

13 Q. Was the language that I just read you of the Commission's
14 Determination, in your mind at all when you spoke to surrogate's
15 court about the *Saraceno* matter?

16 A. It's not something that I carry with me every day.

17 Q. Judge, did you meet with Donna Filip at the office on October 12,
18 2016, relative to the *Saraceno* matter?

19 THE REFEREE: At the law office, right?

20 MS. CENCI: At the law office.

21 THE REFEREE: I'm sorry.

22 A. Not that I recall.

23 Q. You recall that you wrote in your day planner for that date, "Donna -
24 Office at 5:15?"

25 A. I may have wrote that in there. I treated that as a dayminder. I didn't

1450.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 necessarily follow what was in there.

2 Q. And that was the same day you spoke with surrogate's court, is that
3 right?

4 A. October--

5 Q. --October 12, 2016.

6 A. It is.

7 Q. And Mr. Serjanej did not come into the *Saraceno* case until January of
8 2018. Are you aware of that?

9 A. No.

10 MS. SCALISE: Objection.

11 THE REFEREE: Well, he denied it anyway.

12 MS. SCALISE: But just to be clear, the notice of
13 appearance, there's testimony in this case from both Mr.
14 Serjanej and Ms. Saraceno, okay, and the notice of
15 appearance. So, if we're going to call it what it is, we
16 should characterize things correctly as they are in the
17 record.

18 THE REFEREE: I get it. I'm way ahead of you.

19 MS. SCALISE: Thank you.

20 BY MS. CENCI:

21 Q. Who hired Mr. Serjanej to complete the *Saraceno* estate? Was it you?

22 A. Not I.

23 Q. But you're the person who received the legal fee, is that right?

24 A. For the work that I did in 2012.

25 Q. With respect to Barbara Saraceno, did she call you and complain

1451.

(Miller - Cross)

1 about anything?

2 A. No.

3 Q. Wasn't she upset that the estate was not closed and she had already
4 paid you your legal fee?

5 A. She was upset that her husband was ill.

6 Q. That wasn't the question I asked you.

7 THE REFEREE: No, she testified about that. Do
8 you remember what she said?

9 THE RESPONDENT: About the legal fee, she said
10 I took less than what it would've been.

11 BY MS. CENCI:

12 Q. Judge, in or about October to December of 2016, did you have a
13 telephone conversation with Barbara Saraceno?

14 A. I spoke to Mrs. Saraceno.

15 Q. On the telephone?

16 A. On the telephone.

17 Q. Did she call you?

18 A. She may have.

19 Q. What's your recollection? Did she call you?

20 A. She may have called me.

21 Q. Did she tell you that surrogate's court was sending letters?

22 A. No, she didn't get into any details.

23 Q. Did she say to you, "I thought this estate was completed?"

24 A. No, she didn't say that to me.

25 Q. Did she say to you that she was being told by surrogate's court that

1452.

(Miller - Cross)

1 additional action had to be taken on the estate?

2 A. We did not speak about specifics.

3 Q. She expressed to you some concern over the estate, is that correct?

4 A. She expressed the concern about her husband, that's what she
5 expressed the concern over.

6 Q. Judge, please, if you don't understand my question, would you tell
7 me?

8 A. Yes.

9 Q. Did she express to you--

10 MS. SCALISE: --Objection.

11 THE REFEREE: Overruled.

12 BY MS. CENCI:

13 Q. --concern about the *Estate of Antoinette Saraceno*?

14 A. She expressed--

15 THE REFEREE: --It's yes or no.

16 A. Okay, no.

17 Q. Did you tell her that you were going to do something with respect to
18 the estate?

19 A. I told her that attorney Serjanej would.

20 Q. How did you know that?

21 A. Because she expressed that she had been contacted by the court.

22 Q. Well, how did you know Mr. Serjanej was going to do something on
23 the estate?

24 A. They had some type of conversation-- They had a conversation.

25 Q. Then why was she calling you?

1453.

(Miller - Cross)

1 A. Because I had been the attorney that handled it in the past and I was
2 friends with their family and her husband was ill.

3 Q. Judge, isn't it a fact that when you spoke with Barbara Saraceno, Mr.
4 Serjanej had nothing at that point to do with the estate?

5 A. I don't know what Mr. Serjanej had to do at that point, other than what
6 I relayed yesterday-- I relayed and I told you.

7 Q. You just said you told Mrs. Saraceno that Mr. Serjanej was going to
8 do something on the estate.

9 A. I did.

10 Q. Didn't you just testify to that?

11 A. Yes, I said that to you.

12 Q. And had you spoken with Mr. Serjanej about doing something on the
13 estate?

14 A. Yes.

15 Q. And you say that he had already been hired at that point?

16 A. I don't know when they actually specifically spoke.

17 Q. Judge, the *Funk* estate. This was another estate that supposedly was
18 taken over by Artan Serjanej as well, is that correct?

19 A. Correct.

20 Q. With respect to the letter that you say Rachelle Gallagher volunteered
21 to type, that's Exhibit 2V.

22 THE REFEREE: V.

23 MS. SCALISE: 2V as in voice?

24 MS. CENCI: Voice.

25

1454.

(Miller - Cross)

1 BY MS. CENCI:

2 Q. Did you have some reason why you wanted to keep this information
3 from Mr. Serjanej?

4 A. Nope. I was not trying to keep any-- I took the information back to
5 Mr. Serjanej.

6 Q. Was this letter composed in your presence?

7 A. I may-- She might have been in her office and I was in my office.

8 Q. Ms. Gallagher?

9 A. Yes.

10 Q. Your office and her office at family court?

11 A. At family court.

12 Q. Is that a yes?

13 A. Yes.

14 Q. So, is your testimony that Ms. Gallagher volunteered to type this letter
15 for you, is that right?

16 A. Yes.

17 Q. And did she have the checks that were attached to the letter?

18 A. She did.

19 Q. You gave her those checks, did you not?

20 A. I went to pick them up. I had an envelope. I opened it and they were
21 inside and I said, "The checks aren't signed."

22 Q. And--

23 A. --So, she volunteered to do the letter for me.

24 Q. You knew that Donna Filip was out of the state at that time, is that
25 right?

1455.

(Miller - Cross)

- 1 A. Yes.
- 2 Q. She was away.
- 3 A. Yes.
- 4 Q. Did you tell Rachelle Gallagher to make the letter from Donna Filip?
- 5 A. I don't think I did.
- 6 Q. So, what about the language of the letter? Did you dictate that to her
- 7 at all?
- 8 A. No.
- 9 Q. So, she just on her own said, "Here, let me just type up this letter and
- 10 I'll make it from Donna Filip." Is that your testimony, Judge?
- 11 A. No. What my testimony is is that these three checks were unsigned
- 12 and that they would have to be sent back for signature.
- 13 Q. So, you must have had a discussion with Ms. Gallagher about that.
- 14 A. A brief discussion.
- 15 Q. And what did you say to her? "I need these checks to go back to Mr.
- 16 Hayes in California?"
- 17 A. No, I said, "These checks need to go back to the executor."
- 18 Q. And then what? She said, "Oh, let me do that for you?"
- 19 A. Yes, that's exactly what she said.
- 20 Q. And she, on her own, composed the language of the letter?
- 21 A. She did.
- 22 Q. And she, on her own, made the letter come-- appear to come from
- 23 Donna Filip's home address, is that right?
- 24 A. It appears so, correct.
- 25 Q. And she being, Rachelle Gallagher, on her own, came up with the

1456.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 language that said, "Please return-- sign and return the checks to
2 myself?"

3 A. I don't understand your question.

4 Q. You see the part at the end? "Please sign the enclosed checks and
5 return to myself." You see that line?

6 A. Correct.

7 Q. Are you saying that Rachelle Gallagher came up with that language
8 herself?

9 MS. SCALISE: Asked and answered.

10 THE REFEREE: Three times.

11 MS. CENCI: Did we get an answer?

12 MS. SCALISE: Yes.

13 THE REFEREE: Yes. He said three times, yes.

14 BY MS. CENCI:

15 Q. Do you know where Rachelle Gallagher got Mr. Hayes' address from
16 to put on this letter, Judge?

17 A. It was on the envelope.

18 Q. The envelope?

19 A. There was an envelope that the checks came in. It was on the
20 envelope.

21 Q. Did you have a discussion with Rachelle as to who Mr. Hayes was and
22 what these checks were for?

23 A. I told her that I was receiving a fee on an estate, of work that I did
24 prior to, when I was an attorney.

25 Q. And then she just offered to compose the letter?

1457.

(Miller - Cross)

1 A. She did.

2 Q. And you said you didn't let her mail the letter?

3 A. No, I returned the letter back to the law offices of Artan Serjanej.

4 Q. Why did you do that?

5 A. Because it wouldn't go out that way. Should go out from the law
6 office.

7 Q. So, why didn't you have the law office do the letter?

8 A. I did. I took it back to them and they sent it out. I never sent this out.

9 THE REFEREE: No, that was not her question.

10 How come you didn't have the law office type the letter?

11 A. The day I opened them up it was at the end of the day in court and
12 then I took it back to the law office and they sent a letter out. Donna
13 was out of town.

14 Q. Judge, would you agree that if in fact, you asked or directed your
15 personal secretary in chambers to type that letter, that that would be
16 improper?

17 MS. SCALISE: Is there a time of day we're
18 speaking about or just generally?

19 THE REFEREE: No, no. This specific letter.

20 MS. SCALISE: Okay, but--

21 THE REFEREE: --No, I understand the question. I
22 think-- Overruled. It's a very specific question.

23 THE RESPONDENT: To have someone sign the
24 check?

25 THE REFEREE: No, no. That's not the question.

1458.

(Miller - Cross)

1 If you-- Ask again, please?

2 BY MS. CENCI:

3 Q. If in fact you, as a family court judge, asked or directed your personal
4 secretary in chambers to type that letter, that that would be improper
5 on your part?

6 A. If the letter was coming from me, yes.

7 Q. That letter.

8 THE REFEREE: In this form. Exhibit 2V, this
9 letter, if you asked or directed her to do that, would that be
10 improper? That's the question.

11 A. Yeah, I wouldn't have sent it out. Yes. I would say yes. I wouldn't
12 have asked her to do it, so yes, I would-- I would-- The answer
13 would be yes to the question.

14 Q. And would you also agree if in fact you did ask Rachelle Gallagher to
15 keep lists of potential political contacts, that that would also be
16 improper?

17 A. If it was asked to do that, you're asking me hypothetically. Yes, I
18 would not-- It would be wrong and I did not ask her to do that.

19 Q. Because you were aware as a full-time judge, you're not permitted by
20 the rules to engage in political activity, correct?

21 A. Correct.

22 Q. And were you also aware that court staff have similar restrictions
23 upon their ability to engage in political activity?

24 A. Yes.

25 Q. Judge, incidentally, do you recall-- How many vacations did you take

1459.

(Miller - Cross)

1 between January 2015 and before you were removed from your
2 position?

3 MS. SCALISE: That would be July of 2017?

4 MS. CENCI: Right.

5 THE REFEREE: Yep.

6 BY MS. CENCI:

7 Q. How many vacations did you take?

8 THE REFEREE: Vacation days or periods of
9 vacation? Because I think it matters.

10 THE RESPONDENT: Days?

11 MS. CENCI: Yes, it's-- you're right, Your Honor.

12 Vacations? Periods of vacation?

13 A. We were allowed, I think, four weeks, so I would--

14 THE REFEREE: But now, the question was
15 different. A vacation could be a single day or multiple
16 days.

17 BY MS. CENCI:

18 Q. Did you take any vacation as a family court judge?

19 A. I did.

20 Q. And how many periods of time were you away for more than a day?

21 A. We would go in the summertime, we'd usually go with our family for
22 a week. So, it'd be a couple of weeks in the summertime and then
23 during the year, depending on what was going on, we would take
24 some time.

25 Q. So, you took some vacations, correct?

1460.

(Miller - Cross)

1 A. Yes.

2 Q. Rachelle Gallagher took one vacation, the week of June 5 of 2017, is
3 that correct?

4 A. I--

5 MS. SCALISE: Objection.

6 THE REFEREE: What's your objection?

7 MS. SCALISE: She took a vacation. We don't
8 know about a whole time period. I mean, one vacation, a
9 characterization? How about--

10 THE REFEREE: --Nah-- You know what, I-- The
11 question is-- Overruled. You can answer if you can.

12 BY MS. CENCI:

13 Q. She took one week off, is that right?

14 MS. SCALISE: In what time period?

15 MS. CENCI: In the whole time.

16 THE REFEREE: Oh, that's a different question.

17 MS. SCALISE: Well, see, that's a different
18 question. I don't, you know.

19 THE REFEREE: Do you know?

20 THE RESPONDENT: No, I don't.

21 THE REFEREE: All right.

22 BY MS. CENCI:

23 Q. You don't know what time your secretary took off while you were a
24 family court judge?

25 A. No, I don't know what time she took off. She had time that was

1461.

(Miller - Cross)

1 entitled to her, vacation. She'd take her time.

2 Q. Did you hear her testify that she took her first week of vacation that
3 week in June of 2017. Were you here for that testimony?

4 A. I was.

5 Q. And that was the time that you became upset because no one had
6 prepared paper files for you?

7 A. What I became upset about is none of the documentation was there for
8 me to be able to perform my job that week and I buried my uncle on
9 that Friday.

10 Q. But you knew well before that week that Rachelle was going to be
11 gone that week, did you not?

12 A. She notified everyone on, I think, May 23rd that she's going to be
13 gone. Sent a universal email out to everybody.

14 Q. The answer to my question then is yes.

15 A. Yes.

16 Q. Thank you. But that was one of the things that you were dissatisfied
17 about with respect to Rachelle's job performance?

18 A. There were numerous things.

19 Q. Was that one of the things?

20 THE REFEREE: When you say that, what--

21 BY MS. CENCI:

22 Q. --That lack of paper files being prepared.

23 A. That was one of the--

24 Q. --Had you told Rachelle Gallagher that you wanted to terminate her?

25 A. I was telling Rachelle Gallagher to improve on doing her job.

1462.

(Miller - Cross)

- 1 Q. Judge, do you understand my question? Did you tell Rachelle
2 Gallagher that you wanted to fire her? Terminate her?
3 A. No, I did not say that to her.
4 Q. Did you tell that to Mark Kachadourian, that you wanted to fire
5 Rachelle?
6 A. I told him I was displeased with the work.
7 Q. Did you tell him you wanted to fire her?
8 A. No. I told him I was displeased with her work.
9 Q. Did you tell Mark Kachadourian that you wished you had brought Lisa
10 Wojdat on as your secretary?
11 A. No, I did not.
12 Q. You never said that to him?
13 A. I told him I was displeased with what Rachelle was doing and I did
14 not have issues with the other clerks.
15 Q. Did you mention ever to Mark Kachadourian, Lisa Wojdat?
16 A. Did I ever mention Lisa Wojdat? Yes.
17 Q. Did you mention her to Mr. Kachadourian in the context of wishing
18 that she was your secretary?
19 A. She--
20 Q. --Yes or no?
21 A. I told him that she would have been a good secretary.
22 Q. Because she would fulfill your sexual needs, whereas Rachelle did
23 not?
24 A. No, and I take offense to that.
25 Q. Judge, ultimately you did get your legal fee paid to you by Mr. Hayes.

1463.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

- 1 A. Yes.
- 2 Q. The checks were dated December 1, 2015?
- 3 A. Yes.
- 4 Q. And you received those checks, is that correct?
- 5 A. I did.
- 6 Q. And you cashed those checks?
- 7 A. I did.
- 8 Q. And that was over \$11,000?
- 9 A. Yes.
- 10 Q. And then you also got a legal fee from the *Brigham* estate in late
- 11 2015, is that also correct?
- 12 A. It is.
- 13 Q. Approximately how much was that legal fee, do you recall?
- 14 A. \$15-- \$16,000.
- 15 Q. And you cashed those checks, is that right?
- 16 A. I did.
- 17 Q. Did you forget about that almost \$30,000 in legal fees when it was
- 18 time for you to file your financial disclosure form?
- 19 A. I thought I actually cashed them in '16, so it would have been in my
- 20 '16 disclosure in '17.
- 21 Q. The question is did you forget that you had received that money?
- 22 A. No, did I forget I received it? No.
- 23 Q. You knew how to report on your financial disclosure form with the
- 24 Ethics Commission the income from the practice of law, is that right?
- 25 A. Yes.

1464.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 Q. Because you actually filed initially in the year of 2015 for the prior
2 year 2014 and you--

3 A. --Yes--

4 Q. --you wrote, "Private law practice. Income from private law practice."

5 A. Correct.

6 Q. So, you knew that was required to be reported when you went to
7 report in 2016, correct?

8 A. Yes.

9 Q. Did you look at your prior year's form, when you filled out the form
10 for calendar year 2015?

11 A. No.

12 THE REFEREE: I think you misspoke.

13 MS. CENCI: It's for the prior year, Your Honor.

14 THE REFEREE: No, no. I understand that but I
15 think you misspoke. All right. Go on.

16 BY MS. CENCI:

17 Q. Do you understand the question, Judge?

18 A. I do.

19 Q. So, when you filed in 2016 for calendar year 2015, did you look at the
20 prior year's financial disclosure form?

21 A. When I filed-- Could you repeat that again?

22 THE REFEREE: You filed in '16--

23 THE RESPONDENT: --'16--

24 THE REFEREE: --Did you pull out the '15 form
25 and look at it in order to help you prepare the '16 form?

1465.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 A. Yes. Yes, I did.

2 Q. And you saw there that you had reported income from the practice of
3 law?

4 A. No. I reported it the year before that.

5 THE REFEREE: No, that wasn't the question.

6 When you filed-- When you prepared the '16 form--

7 THE RESPONDENT: --Mm-hmm--

8 MS. CENCI: --I think we're getting mixed up with
9 the years, Your Honor. The date of the form is for the prior
10 year, you understand what I'm saying, Judge, don't you?

11 A. I do.

12 Q. So, you filed in 2015, reporting income that you had received in 2014,
13 correct?

14 A. Correct.

15 Q. And on that form, you reported income from the practice of law,
16 correct?

17 A. Correct.

18 Q. Do you want to see the document? We have it in evidence.

19 A. No, correct.

20 Q. Did you look at that form when you filed the next year?

21 A. No, because we were filing jointly, so I had to redo everything.

22 Q. No, I'm talking about your personal financial disclosure form to the
23 Ethics Commission. That form.

24 A. Yes and I told you, because we filed jointly with my wife, so I had to
25 include a lot more.

1466.

(Miller - Cross)

1 THE REFEREE: You're not giving the answer.
2 When you did the form that was due in '16, reporting '15
3 income--

4 THE RESPONDENT: --Yes--

5 THE REFEREE: --did you pull out the '15 form that
6 showed the '14 income to look at it, to help you prepare the
7 next year's form?

8 THE RESPONDENT: No, because that was
9 handwritten. I don't think I did. I didn't have a copy of
10 that form.

11 BY MS. CENCI:

12 Q. You didn't have a copy of it?

13 A. I don't think my handwritten one.

14 Q. And you also failed to report thousands of dollars of rental income, is
15 that right, when you initially filed?

16 A. Which form?

17 Q. Good question. Let's take the financial disclosure forms first.

18 A. Okay.

19 Q. You didn't report all that-- the \$500 a month from Mr. Micha.

20 A. It stated if my taxes ran at a deficit, that I'm not to report that.

21 THE REFEREE: That's not what she asked. You
22 didn't list.

23 A. Yes, I didn't list it.

24 Q. You didn't list it. And you didn't list the rental income from Ms.
25 Caforio and Mr. English either, did you?

1467.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

- 1 A. No.
- 2 Q. All right. Now, let's talk about the income tax returns, okay? You're
- 3 familiar with the Schedule E, is that right?
- 4 A. I am.
- 5 Q. And on the Schedule E you list properties, is that correct?
- 6 A. Correct.
- 7 Q. And there's a place to list the rents received.
- 8 A. Correct.
- 9 Q. Yet you took the deductions for some of these properties but you
- 10 didn't list any income, is that right?
- 11 A. The deductions always exceeded incomes. We were always running
- 12 at a deficit.
- 13 Q. That's not the question, Judge. You can't get there, can you, until you
- 14 compare the deductions to the income? Don't you have to list the
- 15 income first and then take the deductions against the rental income?
- 16 A. You have to list it all, correct.
- 17 Q. And you didn't do that.
- 18 A. That's what I was working on with my accountant.
- 19 Q. Is it fair to say, Judge, that you amended your tax returns in August of
- 20 2017 after you were questioned about income that you received by the
- 21 IG's office?
- 22 A. No, I was working on them from April of '17, May of '17, June of
- 23 '17, with my accountant.
- 24 Q. You amended them in August 2017, is that right?
- 25 A. That's when they were actually filed.

1468.

(Miller - Cross)

1 Q. And prior to that time, you had been asked by the IG about income
2 you received, specifically with reference to the *Brigham* matter, do
3 you recall that?

4 A. Yes.

5 Q. And you didn't amend your financial disclosure forms to the Ethics
6 Commission until after the Commission on Judicial Conduct notified
7 you that it was investigating your failure to disclose income, is that
8 also correct?

9 A. I amended it when I could get into the Ethics form.

10 Q. That was in November of 2017?

11 A. November.

12 Q. You also appeared here in this room in November of 2017 for
13 testimony, correct?

14 A. Yeah, I'm not sure what date it was.

15 Q. And you never filed a report of extra-judicial income with the clerk of
16 the family court until January of this year, 2019, is that correct?

17 A. That's correct.

18 Q. And that was notwithstanding that you were asked about your failure
19 to file that by the Commission on Judicial Conduct?

20 A. Yes, you asked about it.

21 Q. And, Judge, you alluded to some emails about this that you said you
22 hadn't seen? May I have this marked please?

23 THE REFEREE: What number are we up to?

24 MR. FITZPATRICK: 18.

25 THE REFEREE: 18.

1469.

(Miller - Cross)

1 MS. SCALISE: Oh, I'm sorry, this is yours? I'm
2 sorry.

3 MS. CENCI: I didn't know if you were finished.

4 MR. DEROHANNESIAN: What number? What
5 number is it?

6 MS. CENCI This is 18-- 18.
7

8 BY MS. CENCI:

9 Q. I'm showing you Commission Exhibit 18.

10 A. Thank you.

11 Q. Have you seen that before?

12 A. No, I have not.

13 Q. Can we agree that it's dated April of 2016?

14 A. April 13th '16, is what it's dated.

15 Q. From whom?

16 THE REFEREE: April 13, 2016?

17 THE RESPONDENT: Yeah.

18 BY MS. CENCI:

19 Q. Who does it appear to be from?

20 A. Gregory A. Gates.

21 MS. SCALISE: That's in evidence already? Is that
22 document in evidence already?

23 MR. DEROHANNESIAN: No.

24 MS. CENCI: No.

25 MS. SCALISE: Oh, okay, because the marking on it

1470.

(Miller - Cross)

1 says "EV". Can I have--

2 MS. CENCI: --No, he'll mark that-- Ryan will mark
3 that.

4 MS. SCALISE: No, it says, "ID" and "EV," that's
5 why I'm a little--

6 MS. CENCI: --He'll check it if it does go into
7 evidence.

8 MS. SCALISE: I understand but it's-- I'm just
9 asking.

10 THE REFEREE: That's okay.

11 MS. CENCI: No. He writes that on all the exhibits.

12 MS. SCALISE: Okay.

13 THE REFEREE: That's all right.

14 MS. SCALISE: Okay.

15 THE REFEREE: It's for identification. 18 for
16 identification. I don't think there's a pending question.

17 BY MS. CENCI:

18 Q. Judge, who's Mr. Gates?

19 A. The district executive.

20 Q. And who does the email appear to be directed to?

21 A. To judges in our district.

22 THE REFEREE: You mean in the Sixth Judicial
23 District?

24 A. Sixth Judicial District and cc secretary, court attorneys, they're all
25 cc'd.

1471.

(Miller - Voir Dire)

1 Q. Generally speaking, are you included in those kinds of emails that are
2 sent to the district judges?

3 A. I am.

4 Q. And-- But you say you never saw this at the time it was sent?

5 A. No. And I was not good with my email whatsoever and I used to ask
6 Mark and Rachelle to check it for me on a regular basis, so if I didn't I
7 missed it.

8 Q. Do you have any doubt that it was in fact sent to you?

9 A. I don't have any doubt that it wasn't sent, no.

10 Q. I'm going to move it into evidence, Your Honor.

11 THE REFEREE: Any objection?

12 MS. SCALISE: Just a moment. Can I see the
13 document one more time, please? Can I ask one question
14 on *voir dire*, if you don't mind?

15 THE REFEREE: Yes.

16 MS. SCALISE: Actually two, I'm sorry.

17 VOIR DIRE BY

18 MS. SCALISE:

19 Q. Judge, in looking at this document, you know, number 18 for
20 identification, if you don't mind?

21 A. Thank you.

22 Q. There are two groups that it's identified as sent to, one is a cc. So, the
23 first group, can you state who that-- Do you know who is included in
24 that group?

25 A. For the secretaries?

1472.

(Miller - Cross)

1 Q. No, the first group would be to the judges.

2 A. Yeah, I don't--

3 THE REFEREE: The to, so...

4 BY MS. SCALISE:

5 Q. Do you have any--

6 A. --I-- No, do I know who that specific group is? No, other than what it
7 says.

8 Q. Do you have any idea of who the names would be who are in that
9 group?

10 A. I'm speculating it's the judges, I don't know.

11 Q. So, you didn't create that group?

12 A. No.

13 Q. Likewise, with the secretaries?

14 A. Correct, I did not.

15 Q. You didn't create that group.

16 A. Correct.

17 MS. SCALISE: Okay, I object to this going in.

18 THE REFEREE: Overruled.

19 BY MS. CENCI:

20 Q. Judge, you and Mark Kachadourian did travel to Albany in May of
21 2017 and during that trip you stopped in to see Sen. Akshar, is that
22 correct?

23 A. I scheduled an appointment to see Sen. Akshar.

24 Q. Was Mark with you?

25 A. Yeah, Mark came.

1473.

(Miller - Cross)

- 1 Q. Did you obtain Sen. Akshar's cell phone number?
- 2 A. I may have already had his cell phone number. I made arrangements
- 3 to meet him. I'm the one who scheduled it and he met with us.
- 4 Q. Did you, during that trip, obtain the senator's cell phone number?
- 5 A. No, I did not.
- 6 Q. Did you want it?
- 7 A. No, I did not.
- 8 Q. Did you ask the senator for his cell phone number?
- 9 A. Mark asked me to ask him.
- 10 Q. Did you ask the senator for his cell phone number?
- 11 A. Mark was there and said, "Judge, did you ask the senator?" So I asked
- 12 him for his cell phone number.
- 13 Q. And did the senator refuse to give it to you?
- 14 A. No, he did not.
- 15 Q. But he did not give it to you, is that right?
- 16 A. No, he said, "Speak to my staff and they'll give it to you."
- 17 Q. But you didn't get the cell phone number during that trip?
- 18 A. We had a short amount of time for lunch. No, he didn't give me the
- 19 cell phone number.
- 20 Q. Were you angry or upset about that?
- 21 A. Not at all. I think I already had his cell phone number. I had about
- 22 four numbers for him. I don't know what his specific cell phone
- 23 number is. I had four numbers for him and I reached him and I
- 24 scheduled the appointment.
- 25 Q. So, is it your testimony that you never said to Mark Kachadourian that

1474.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 you wanted Rachelle to do sexual favors for the senator?

2 A. Absolutely not.

3 Q. Did you discuss the senator with Mark in the car on the way back from
4 that trip?

5 A. No. Other than that he was a gentleman and that he saw us and I
6 asked him when we were coming up there if he could meet with us for
7 a brief amount of time and he made himself available. He was very
8 busy and he came over to talk to us and I told him that's what a
9 representative does. That's what my father did for years and I said
10 that he's working hard at his job. That's what I did say.

11 Q. But you weren't miffed about the cell phone?

12 A. I've known the senator when he was a sheriff's deputy. I've known
13 him the entire time he did his job and his career. I dealt with him
14 when he'd have to call me on search warrants, arraignments. I knew
15 the senator before he became a senator. He was in the sheriff's
16 department and then he was a detective in the sheriff's department.
17 So, I probably had those numbers in my phone. It's not something I
18 would access all the time. If I needed to get a hold of him, I'd contact
19 his office. I arranged the meeting with him.

20 Q. Yeah, and isn't that what he said to you when you asked for his cell
21 phone number, "Call my office if you need to get in touch with me."

22 A. No. No, there was someone in the reception room. If you were in this
23 room and walked into the other room, he said, "You can ask them,
24 they'll give you my cell phone number." I didn't ask for it.

25 Q. Do you have it today?

1475.

(Miller - Cross)

1 A. I probably-- It's probably in the original numbers I have. I didn't go
2 through and scan all of his phone numbers that I had.

3 Q. In your cell phone number, is that what you're talking about? In your
4 personal cell phone?

5 A. I had four different phone numbers for him.

6 Q. Judge, do you have Sen. Akshar's cell phone number?

7 THE REFEREE: He's already answered you twice.
8 He's answered you twice. He's got four numbers and he
9 doesn't know which is which.

10 BY MS. CENCI:

11 Q. So, do you also deny saying to Rachelle directly that she needed to go
12 service Sen. Akshar?

13 A. Absolutely.

14 Q. Now, Debbi Singer, Judge, you consider her to be an honest person?

15 A. I characterize it as that, correct.

16 Q. I think you described her as classy in your prior testimony?

17 A. Through our interactions together, yeah.

18 Q. So, did you ever tell her that she looked hot in an outfit?

19 A. Not to my recollection.

20 Q. And did you ever say to her that you would have gone for the widow
21 if you knew she could cook?

22 A. Not to my recollection.

23 Q. Did you ever tell Mark Kachadourian something to the effect that you
24 wanted to ride Debbi Singer like a horse?

25 A. Absolutely not.

1476.

(Miller - Cross)

1 Q. Did you know whether she rode horses?

2 A. I don't know.

3 Q. You don't know that. Now, D [REDACTED] L [REDACTED], let's talk about D [REDACTED]
4 L [REDACTED]. You didn't mention her in your direct testimony. You
5 know D [REDACTED] L [REDACTED]?

6 A. She was one of the clerks that was assigned to my team.

7 Q. And you know Dave Iannone, correct?

8 A. Yes, I do.

9 Q. He's a friend of yours?

10 A. He's an acquaintance of mine.

11 Q. He's a handyman? Does things for you from time to time?

12 A. Yes.

13 Q. And you introduced David Iannone and D [REDACTED] L [REDACTED] to each
14 other, did you not?

15 A. D [REDACTED] was looking to have work done, tile work, and I suggested a
16 person that does that work and Dave Iannone works with someone
17 that does tile work.

18 Q. You put Ms. L [REDACTED] in touch with Mr. Iannone, is that correct?

19 A. I gave her the option to contact him. She said Judge Connerton had
20 roofing people do roof work. She hired them in the past. She asked
21 me if I knew anyone who did tile work and I gave her a number to
22 contact him.

23 Q. Judge, did you put Ms. L [REDACTED] and Dave Iannone into contact with
24 each other?

25 MS. SCALISE: Objection. Asked and answered.

1477.

(Miller - Cross)

1 THE REFEREE: I think it is but Judge, do you
2 understand the question? The answer is yes but it's okay.

3 MS. CENCI: But it'd be good if the witness would
4 say it, Your Honor.

5 THE REFEREE: But he already said it but just say
6 yes.

7 THE RESPONDENT: Yes.

8 THE REFEREE: There you go.

9 BY MS. CENCI:

10 Q. And that interaction occurred initially in your chambers, is that right?

11 A. That I gave her the information? In Rachelle's office.

12 Q. You called Mr. Iannone up on your cell phone, didn't you?

13 A. I don't think I called Mr. Iannone up on my cell phone. I think I gave
14 her a number to contact him.

15 Q. So, you didn't hand the phone to Ms. L [REDACTED] and say, "Here, talk to
16 this guy?"

17 A. I don't recall that.

18 Q. But you did come to learn that they commenced a personal
19 relationship, is that correct?

20 A. Later on, correct.

21 Q. And you knew that because Mr. Iannone told you, didn't he?

22 A. They both did.

23 Q. Mr. Iannone told you about the nature of their relationship, did he?

24 A. I don't understand your question.

25 Q. Did he tell you that they had sex?

1478.

(Miller - Cross)

- 1 A. We didn't talk about his sexual relationship with Ms. L [REDACTED].
- 2 Q. He never told you that they had had sex?
- 3 A. No, he didn't talk about that.
- 4 Q. You knew that they were dating, is that right? Seeing each other in a
- 5 romantic relationship, let's say?
- 6 A. They were dating. I knew they were dating.
- 7 Q. And you knew that because Mr. Iannone told you that, is that right?
- 8 A. I knew that because both of them told me that.
- 9 Q. How often did you talk to D [REDACTED] L [REDACTED] about her personal life?
- 10 A. I didn't.
- 11 Q. But you did talk frequently with Mr. Iannone, is that right?
- 12 A. No.
- 13 Q. Did you ever talk to him while you were in chambers?
- 14 A. I may have called him from my office.
- 15 Q. And did you ever, at any time in any phone call with anyone, have
- 16 your phone on speaker?
- 17 A. Did I ever use my speaker phone? In chambers, if I had to do
- 18 something, I would-- If I was writing or doing a memo on something,
- 19 yeah, I would use the speaker option but I didn't utilize it that often.
- 20 Q. So, did Mr. Iannone ever send you any photographs?
- 21 A. No.
- 22 Q. Never any photograph of anything?
- 23 A. No.
- 24 Q. At any time?
- 25 A. No.

1479.

(Miller - Cross)

- 1 Q. Did he have your cell phone number?
- 2 A. He did.
- 3 Q. And did you text message with him?
- 4 A. No.
- 5 Q. Never.
- 6 A. No, we wouldn't text.
- 7 Q. He never texted you either?
- 8 A. I wouldn't text him.
- 9 Q. I'm sorry, the question now is did he ever text you?
- 10 A. Not that I can really recall.
- 11 Q. So, did you ever show a photograph to Mark Kachadourian of a naked
- 12 woman?
- 13 A. Absolutely not.
- 14 Q. So, when he says that you showed him a photograph of a naked
- 15 woman and said it was D [REDACTED] L [REDACTED], that would not be true?
- 16 A. That is not true.
- 17 Q. When was the last time you talked with Mr. Iannone?
- 18 A. It's been some time.
- 19 Q. When was the last time?
- 20 A. Wow. Last year.
- 21 Q. In fact, didn't you talk with Mr. Iannone on his way back from Albany
- 22 when he testified here during the Commission's investigation?
- 23 A. Not that I recall.
- 24 Q. So, he didn't call you on his cell phone to tell you how the testimony
- 25 went?

1480.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

- 1 A. Not that I recall.
- 2 Q. Did you know that he was appearing before the Commission?
- 3 A. I had some discussions with my attorney, but--
- 4 Q. --No, during the Commission's investigation--
- 5 A. --Mm-hmm--
- 6 Q. --did you know that Mr. Iannone had been subpoenaed to Albany to
- 7 testify about these matters involving the photograph?
- 8 A. I spoke to my attorney about it.
- 9 Q. And you spoke to Mr. Iannone about it too, didn't you?
- 10 A. I spoke to my attorney about it.
- 11 Q. Did Mr. Iannone speak to you about the fact that he was being
- 12 subpoenaed to Albany to testify?
- 13 A. He may have stated to me that he was.
- 14 Q. In fact, did you arrange for Harvey Shapiro to represent him before the
- 15 Commission?
- 16 A. Absolutely not. Absolutely not.
- 17 Q. Did you arrange for Mr. Shapiro to represent Ms. L [REDACTED] when she
- 18 initially appeared before the Commission?
- 19 A. No.
- 20 Q. Did you know that Mr. Shapiro was representing those two
- 21 individuals?
- 22 A. No.
- 23 Q. Did you talk with Mr. Shapiro about it?
- 24 A. No.
- 25 Q. Jerry Penna has visited you in chambers, has he not?

1481.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

- 1 A. He has.
- 2 Q. And did there come a time when he and D [REDACTED] L [REDACTED] were
3 together with you in your chambers?
- 4 A. Not that I recall.
- 5 Q. So, did you ever ask Rachelle Gallagher to go get D [REDACTED] L [REDACTED]
6 and bring her to chambers on an occasion when Mr. Penna was there?
- 7 A. No.
- 8 Q. You recall that distinctly?
- 9 A. You said do I recall asking them? No.
- 10 Q. So, it might have happened?
- 11 A. No.
- 12 Q. That's what I'm saying. Do you recall distinctly you never asked to
13 have D [REDACTED] L [REDACTED] brought into chambers?
- 14 A. When Mr. Penna came to see me, we had-- we would either speak
15 about my insurance. He would come in at times so I could sign
16 paperwork. He's my insurance agent as well as our family's.
- 17 Q. Did you talk with Mr. Penna about D [REDACTED] L [REDACTED]?
- 18 A. No.
- 19 Q. Did you talk with Mr. Penna about women?
- 20 A. No.
- 21 Q. Did you know that Mr. Penna had been in Vietnam as a young man?
- 22 A. He's a Vietnam veteran.
- 23 Q. Is the answer yes, you knew that?
- 24 A. Yes, he's a veteran.
- 25 Q. Judge, you talked about a period of time, I think you said beginning in

1482.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

- 1 February of 2017, when you were receiving physical therapy?
- 2 A. End of January to the beginning of March.
- 3 Q. And you said you had given that schedule to Rachelle Gallagher?
- 4 A. I had.
- 5 Q. Was that in writing?
- 6 A. I handed her-- she-- When I got the appointments, I would give her
- 7 the appointments. I went through in '15, from June to October, I went
- 8 through probably 20-some, almost 30--
- 9 Q. --I'm not asking you about that. I'm asking you about February.
- 10 A. Yes, I gave her the schedule. It's extremely important because the
- 11 appointments--
- 12 Q. --You gave her the schedule--
- 13 A. --The place closes at 4:00. The place closes at 4:00.
- 14 Q. Excuse me. Excuse me, Judge.
- 15 A. Okay, I'm sorry.
- 16 Q. You gave her the schedule in writing, is that right?
- 17 A. Yeah, I got notes from them with the schedule, when I have--
- 18 Q. --Do you have that?
- 19 A. No, she would have had it. She would have all that stuff. I'd give her
- 20 the schedule.
- 21 Q. And this was a schedule for how far out in the future?
- 22 A. From-- I had it from January until March.
- 23 Q. Incidentally Judge, did you file an insurance claim stating that you
- 24 were injured at work in January of 2017?
- 25 A. No. What happened was they were inquiring me if I was injured, if

1483.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Cross)

1 there was like a separate claim going on, a comp claim. And I actually
2 put a wrong date on there. It was a week after and I actually contacted
3 them regarding it and they didn't ask for any other documentation.

4 Q. So, you filed a statement saying that you were injured on January 20,
5 2017, at work, is that correct?

6 A. No, it was to see if I had a comp claim and I didn't have a comp claim.
7 They wanted to know-- They were asking when the injury was but I
8 put the wrong--

9 Q. --That's my question.

10 A. Yeah.

11 Q. Did you say that you were injured on January 20th of 2017?

12 A. Yes, I put in the wrong date and I told them I made that error. I
13 wasn't even in town on that day. That's the day we were at the
14 inauguration.

15 Q. On January 20, 2017, you were at President Trump's inauguration in
16 Washington, D.C.--

17 A. --Correct--

18 Q. --and not at work, is that correct?

19 A. Correct. And I erred on the wrong date that I put in there and I
20 contacted them and they didn't submit any other paperwork because
21 they said, "Well, it's not a comp." They thought it was a comp-related
22 claim.

23 Q. Well, what was the date that you claim to have been injured at work?

24 A. It was the following week.

25 Q. I'm showing you Exhibit 19 for identification. Is that the document

1484.

(Miller - Cross)

1 you filed--

2 A. --It is--

3 Q. --stating under penalties of law that you were injured at work on
4 January 20, 2017?

5 A. This is the document that I signed the first time. It is. And I contacted
6 them and they didn't submit anything else. I told them I erred in the
7 date. This was submitted in--

8 Q. --Okay, you've answered, thank you--

9 A. --in February 28th of '17.

10 Q. Yes. What's the date you signed that?

11 A. February 28th of '17.

12 Q. And that was just a mistake that you made, is that right?

13 A. Correct.

14 Q. Like the mistake that you made in failing to report income?

15 MS. SCALISE: Objection.

16 THE REFEREE: Sustained.

17 MS. CENCI: May I have a moment, Your Honor?

18 THE REFEREE: Yes.

19 MS. CENCI: No further questions.

20 THE REFEREE: Redirect?

21 MS. SCALISE: Can I have just a moment, please?

22 THE REFEREE: Sure, take your time. Want to take
23 a little break?

24 MR. DEROHANNESIAN: Yeah, that's great.

25 MS. SCALISE: That would be great.

1485.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Miller - Redirect)

1 THE REFEREE: Let's do that.

2 THE RESPONDENT: Thank you.

3 (OFF THE RECORD)

4 THE REFEREE: Okay, back on. Counsel for the
5 Commission is present. Counsel for Respondent is present.
6 Respondent is here who is still under oath. Ms. Cenci, did
7 you have something?

8 MS. CENCI: Yes, thank you, Your Honor. I'd like
9 to offer Exhibit 19 into evidence.

10 MS. SCALISE: No objection.

11 THE REFEREE: Received.

12 MS. CENCI: Thank you.

13 MS. SCALISE: Okay, may I have that?

14 REDIRECT EXAMINATION

15 BY MS. SCALISE:

16 Q. Judge, I'm going to give you back these exhibits and taking a look at
17 Exhibit, first, 19, did you call someone for them-- or an agency for
18 that form to be sent to you, or that letter to be sent to you?

19 A. No, it was sent to my home.

20 Q. And that would be with regard to insurance coverage?

21 A. If there were workers comp or no-fault insurance.

22 Q. So, who would generate that letter?

23 A. Blue Cross Blue Shield to see if it was related to comp or no-fault.

24 Q. And when did you fill that out?

25 A. February 28th of 2017.

1486.

(Miller - Redirect)

- 1 Q. And that would be about a month after you hurt your back?
- 2 A. Yeah.
- 3 Q. Were you asserting in there that you hurt your back because of job
- 4 related duties?
- 5 A. No.
- 6 Q. What was the statement you made about your back?
- 7 A. I just said bending down at work, I tweaked my back.
- 8 Q. Thank you. Okay, Judge, now taking a look at Commission Exhibit
- 9 18 in evidence. Do you recall receiving that exhibit?
- 10 A. No.
- 11 Q. Do you recall whether Rachelle Gallagher or Mark Kachadourian ever
- 12 informed you of receiving that email?
- 13 A. No, they did not.
- 14 Q. In the two and a half year period that Rachelle worked for you, did she
- 15 ever inform you that there was a requirement that a local filing had to
- 16 be made?
- 17 A. No.
- 18 Q. In the two and a half year period that Mark Kachadourian worked for
- 19 you, did he ever inform you that a local filing had to be made?
- 20 A. No.
- 21 Q. Now, with respect to Exhibit 2V, if you don't mind, thank you. That
- 22 is a letter plus three checks, correct?
- 23 A. Correct.
- 24 Q. You mentioned that you received those three checks in the mail,
- 25 correct?

1487.

(Miller - Redirect)

- 1 A. I actually picked them up from the office.
- 2 Q. Okay, so what time of day did you pick them up at the office?
- 3 A. Lunchtime.
- 4 Q. Did you recall whether you opened up your mail at lunchtime?
- 5 A. No, I just put it in my lapel because I had court, I just came back.
- 6 Went back to court.
- 7 Q. So, you went back to court, it was in your lapel?
- 8 A. Correct.
- 9 Q. What time of day did you actually open up the letter and see that the
- 10 checks had not been signed?
- 11 A. End of the day, when I was done with court.
- 12 Q. Okay, so that would be after 4:30?
- 13 A. No, it was probably-- could be 4:15, that timeframe.
- 14 Q. At the end of the day.
- 15 A. At the end of the day.
- 16 Q. And when you opened them up, were you in your chambers or were
- 17 you standing in Rachelle Gallagher's office?
- 18 A. I actually hang my coat up on the door. It's in between the offices, so
- 19 I'm right-- I'm in between like Rachelle and my office. I'm right
- 20 there.
- 21 Q. So, did you state anything out loud about these checks?
- 22 A. Yes, I said the checks aren't signed.
- 23 Q. And did you state anything with respect to what needed to be done?
- 24 A. Yeah, they needed to be signed by that person.
- 25 Q. And did you state anything with respect to where Donna Filip was

1488.

(Miller - Recross)

1 during that week?

2 A. She was gone.

3 Q. And did Rachelle Gallagher overhear that?

4 A. She did.

5 Q. Lastly Judge, you said you had retainers on *Behal*--

6 A. --Yes--

7 Q. --and *Saraceno*?

8 A. Yes.

9 Q. And on *Behal* you would've had more than one retainer because there
10 was the wrongful death action as well as the estate action?

11 A. Correct, but I just kept it as under the estate.

12 Q. Is there anything that you know of in the law, Judge, that says after
13 you've signed a retainer with a client, you're not allowed to waive
14 your fee?

15 A. No, there's nothing in the law that says that. You can waive your fee.

16 Q. Thank you, very much. I have no further questions.

17 THE REFEREE: Recross.

18 RECROSS-EXAMINATION

19 BY MS. CENCI:

20 Q. Judge, Exhibit 2V, you have in front of you, you said you went to the
21 law office at lunchtime and picked up an envelope containing the
22 checks, is that right?

23 A. Correct.

24 Q. To whom was the envelope addressed?

25 A. I think the law offices of Artan Serjanej.

1489.

(Miller - by the Referee)

1 Q. So, you took correspondence that was addressed to Mr. Serjanej?

2 A. No, it was opened and I was-- I picked it up.

3 Q. So, it was open?

4 A. Yes.

5 Q. But you didn't look inside it until you got back to your chambers?

6 A. Correct.

7 Q. When did you decide to waive your fee in the *Behal* matter? Was it
8 after these proceedings began?

9 A. No, it was early on. He's my best friend and his brothers were like
10 brothers to me. I was-- I had no intent of charging him a dime.

11 MS. CENCI: Nothing further.

12 MS. SCALISE: Nothing further.

13 THE REFEREE: I may have a few questions, I'd
14 just like to go through my notes. Judge, when was the
15 building where your former law office was located, when
16 was that put in your wife's name?

17 THE RESPONDENT: 2002.

18 THE REFEREE: Why did you take Mark
19 Kachadourian to lunch on a regular basis?

20 THE RESPONDENT: He'd ask to go with me and
21 I-- Due to his financial situation, I was buying him lunch
22 every day.

23 THE REFEREE: What was his financial situation?

24 THE RESPONDENT: He was making less than he
25 did prior to in the job that he had out in Tioga County and

1490.

(Hon. Richard H. Miller, II)

1 he was having some financial problems.

2 THE REFEREE: At any time before you were taken
3 out of family court, did you prepare evaluations of either
4 Mr. Kachadourian or Ms. Gallagher?

5 THE RESPONDENT: I did not.

6 THE REFEREE: That's all I have. Based on those
7 questions, anything further?

8 MS. SCALISE: Nothing further.

9 THE REFEREE: Anything further?

10 MS. CENCI: Nothing further.

11 THE REFEREE: All right. Judge, thank you. That--
12 Any rebuttal?

13 MS. CENCI: No rebuttal.

14 THE REFEREE: All right. Commission has rested
15 its case?

16 MS. CENCI: Yes.

17 THE REFEREE: Yes. And no further evidence.
18 All right, thank you, Judge.

19 MS. CENCI: Well actually, Your Honor--

20 THE REFEREE: Oh, wait.

21 MS. CENCI: Mr. Pedrotty-- There were some
22 exhibits that you reserved on, I think?

23 THE REFEREE: Oh, all right. Why don't we go
24 through those.

25 MR. PEDROTTY: There was just two letters

1491.

1 between Respondent and Debbi Singer about Rebecca
2 Vroman. You reserved decision after Respondent testified.
3 And I believe within Respondent's written statement, he
4 actually referred to his letter to Debbi Singer--

5 THE REFEREE: --Which exhibits were they?

6 MR. PEDROTTY: One is Exhibit 12, that's the
7 March 10, 2017, letter from Debbi Singer to Respondent.
8 And then one is a letter dated March 1, 2017, from
9 Respondent to Debbi Singer, and that's a Respondent's
10 exhibit. I actually don't have that in front of me. I believe
11 they should have a copy of it marked within their files.

12 THE REFEREE: Ms. Scalise, do you know what
13 exhibit number that is or letter?

14 MS. SCALISE: I--

15 MR. DEROHANNESIAN: --V? Was it V?

16 THE REFEREE: It was-- This was the letter to
17 Debbi Singer and her response.

18 MS. SCALISE: Exhibit 12 and Exhibit-- on March
19 1st of 2017?

20 THE REFEREE: Yes.

21 MR. PEDROTTY: Yeah, Respondent's Exhibit V.

22 MS. SCALISE: V as in-- V as in Victor.

23 THE REFEREE: V? V as in Victor?

24 MR. PEDROTTY: Yes.

25 THE REFEREE: Do you have that?

(Hon. Richard H. Miller, II)

1 MS. SCALISE: Could possibly be. Let me take
2 my--

3 THE REFEREE: --I think you do.

4 MR. DEROHANNESIAN: I have a copy of it.

5 THE REFEREE: That's-- Can I see copy?

6 MS. SCALISE: Hold on. Articles-- Witnesses--
7 They're notes. I'm taking a look right now.

8 THE REFEREE: And then can I see 12?

9 MR. DEROHANNESIAN: I gave it to you.

10 MS. SCALISE: I'm taking a look right now.

11 MS. CENCI: We have another copy of it but it's got
12 a different exhibit sticker on it.

13 THE REFEREE: We can fix it.

14 MS. SCALISE: You gave it to me as one that was
15 marked? Think it could be these in the back, any of these,
16 hold on.

17 MR. DEROHANNESIAN: --Is this the March 1
18 letter?

19 MR. PEDROTTY: Yes, correct.

20 MS. SCALISE: Yes.

21 MR. DEROHANNESIAN: Is that what you want a
22 copy of?

23 THE REFEREE: Yes. Let me just take a look at
24 that.

25 MR. PEDROTTY: Is that the one?

1493.

(Hon. Richard H. Miller, II)

1 MS. SCALISE: But it has a different exhibit--

2 MR. DEROHANNESIAN: --That's all right, it just
3 has different markings on it.

4 THE REFEREE: That's all right. We'll fix that.

5 MS. SCALISE: I'm going through this mess.

6 THE REFEREE: All right. So, we have an offer of
7 Exhibit V and Exhibit 12. The Commission offers those?

8 MR. PEDROTTY: Correct.

9 THE REFEREE: Do you have an objection--

10 MS. SCALISE: --Can I see Commission 12 again?
11 I'm sorry. Can I just have a few minutes? I want to review
12 something just briefly. In the meantime we can talk about
13 scheduling?

14 THE REFEREE: All right. Let's talk scheduling.
15 We've received the transcripts from the January sessions,
16 and so all we'll need is the transcript from today's session.
17 My suggestion is that we follow procedure and when I
18 receive the last transcript, I will send an email to counsel
19 and designate 30 days for the submission of each side's
20 simultaneous service of a post-hearing submission. And
21 those can just come by email to me. Then I will send--
22 When I receive those, I'll acknowledge them and I'll give
23 you two weeks for a simultaneous submission of a rebuttal
24 and then when I get that I will let you know, I will
25 acknowledge that, and then I will provide my report within

1494.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

(Hon. Richard H. Miller, II)

1 30 days. When we do that, if anybody has anything that's
2 pressing, trial, hearing, something, that needs to adjust the
3 schedule, please let me know that immediately and we'll
4 make the submissions due at 5:00 on whatever the deadline
5 is. So, no midnight submission. I read a great case the
6 other day--

7 MS. SCALISE: --Do people only work until 5:00, is
8 that why, like--

9 THE REFEREE: --No, the help desk closes at 5:00.
10 I read a great case that said, "Those who file at the last
11 minute are playing with fire."

12 MS. CENCI: The admins don't but--

13 MS. SCALISE: --Was that Judge Scheinkman's
14 case, I think?

15 THE REFEREE: No, it's--

16 MS. SCALISE: --Yeah, he had ones that--

17 THE REFEREE: --I have a few issues that I wanted
18 to mention to everybody that I would like to see you cover
19 in the post-hearing submissions.

20 MS. CENCI: Okay.

21 THE REFEREE: In no particular order, all right,
22 first: Can a court attorney and a judicial secretary collect
23 signatures on election petitions outside of the office on their
24 own time? Can a judge respond to questions by an attorney
25 who takes over the judge's--

1495.

(Hon. Richard H. Miller, II)

1 MS. SCALISE: --Wait, wait. You're going too fast.

2 THE REFEREE: I'm sorry. Can a judge respond to
3 questions by an attorney who takes over the judge's cases
4 about the work performed by the judge before assuming the
5 bench? Okay? Next, can a judge be paid for work
6 performed before assuming the bench for full-time judicial
7 position even if the payment comes after the judge assumes
8 the bench? Okay?

9 MS. SCALISE: So, it's for work performed before
10 taking the bench even though the receipt of the funds is
11 after?

12 THE REFEREE: Comes afterwards. Okay? Next,
13 the Commission has charged that the Respondent practiced
14 law after he assumed the bench on a full-time basis. What
15 is the definition of the practice of law? And then the last
16 one is, if a judge corrects omissions in reports that the judge
17 is obligated to file, does the filing of the corrected reports
18 eliminate the violation?

19 MS. SCALISE: Can I ask a question about that last
20 one in particular?

21 THE REFEREE: Yes.

22 MS. SCALISE: Hypothetically speaking, if
23 Commission counsel or Respondent's counsel are aware of
24 matters where that may or may not have occurred, can we
25 do that in redacted version to advise you of what those

1496.

(Hon. Richard H. Miller, II)

1 dispositions may have been?

2 THE REFEREE: Are you-- Hypothetically--

3 MS. SCALISE: --Because they would be non-public
4 dispositions, so hypothetically speaking, let's say someone
5 has to file a financial disclosure report, okay? They miss
6 the deadline and then they file it, okay? There's a
7 disposition by the Commission which is non-public, is that
8 something you'd be interested in knowing about?

9 THE REFEREE: Well, my question-- Honestly, I
10 hadn't thought about it in that context, my--

11 MS. SCALISE: --Because it's anecdotal and it
12 maybe in-- it actually may be in an annual report, but it's
13 usually done in such a way that it is, you know, a
14 descriptive paragraph, this is what happened in these
15 amount of cases, not with a particular number of cases and
16 you would have to go through-- So, I guess what I'm
17 asking is if there's something that, you know, bears out
18 what you're asking and it's not of a public nature, how do
19 you want us to let you know that?

20 MS. CENCI: Well, you're talking, I think, about
21 sanction, not about eliminating the violation.

22 THE REFEREE: Well, if--

23 MS. SCALISE: --It's sort of like a *nunc pro tunc*
24 filing, you know, so.

25 THE REFEREE: No, I understand. My question

1497.

(Hon. Richard H. Miller, II)

1 really-- You're correct, Ms. Cenci. I'm talking about the
2 violation because penalty I have nothing to do with. So, I
3 need to make a finding about whether there was a violation
4 of the cited rules. And so my question is simply, if
5 somebody is charged with failing to file or a wrong filing
6 and they fix it, does that negate the violation?

7 MS. CENCI: I think the answer is no, but if-- We
8 certainly can brief it for you.

9 THE REFEREE: Exactly, I'd like you to brief that.
10 Now, if the Commission has looked at that and said, "Well,
11 it was, you know, it was corrected so therefore we're only
12 going to do X," that's not for me. I'm looking--

13 MS. CENCI: --It would still would be a violation of
14 the rule.

15 THE REFEREE: Yes, I'm looking for whether it
16 violates the rule. I mean, I don't know the answer to that
17 and I think you probably do or you can brief it.

18 MS. CENCI: Right.

19 THE REFEREE: But to the extent it goes to penalty,
20 that has nothing to do with it. The end of my report is going
21 to say, penalty not for me. So, I don't get involved in that.
22 So, we still need you to tell me--

23 MS. SCALISE: --Yes--

24 THE REFEREE: --whether you--

25 MS. SCALISE; --Sorry, we sort of got caught up in

1498.

(Hon. Richard H. Miller, II)

1 this.

2 THE REFEREE: It's all right.

3 MS. SCALISE: I think that the witnesses have
4 testified adequately as to what the substance of this was.
5 They were able to be probed as to the information that was
6 in each of these documents so that if either side wanted to
7 move them into evidence it should have been done and it's
8 unnecessary bolstering.

9 THE REFEREE: Overruled, I'll receive them.
10 Okay. Let me just go through now what I believe are the
11 exhibits that have been omitted.

12 MS. SCALISE: Did they come with-- Do you want
13 to join us?

14 THE REFEREE: We had an email exchange last
15 week, so the only question is what exhibits were received
16 today, and I have Respondent's LL, MM, NN, OO, PP, and
17 V. And then from the Commission I had exhibits 18, 19
18 and 12, okay. And that'll be in the transcript if anybody
19 feels differently. In fact, I'll send a new email and just ask
20 you to confirm that and with that, unless anybody has
21 anything else, we'll go off the record and terminate.
22 Nothing? Okay, let's go off the record. Oh, actually,
23 before we go off the record, I just want to repeat again
24 something that I said earlier about how incredibly well
25 prepared, competent, professional, all counsel have been.

1499.

(Hon. Richard H. Miller, II)

1 The Commission has been really well served. Judge,
2 you've been really well served. The lawyers here have been
3 excellent and it's been a pleasure. So, thank you.

4 MS. CENCI: Thank you.

5 MS. SCALISE: Thank you.

6 MR. PEDROTTY: Thank you.

7 THE REFEREE: Let's go off the record.

8 (OFF THE RECORD)

9

10 (Whereupon, the proceeding was concluded at 4:02 PM on
11 February 12, 2019.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1500.

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

COMMISSION

		<u>Ident.</u>	<u>In Evid.</u>
1A	Certificate of Disposition and Local Court Criminal Disposition Report, Vestal Town Court, <i>People v David J. Iannone</i> , Forgery, 3 rd Degree, (2 pages).	14	---
1B	Certificate of Disposition, Union Town Court, <i>People v David J. Iannone</i> , Harassment, 2 nd Degree, (15 pages).	14	---
1C	Order of Hon. Christopher P. Baker, revoking Iannone Pistol Permit, dated June 4, 2018, (3 pages).	14	---
1D	Certificate of Disposition, Johnson City Village Court, <i>People v David Jon English</i> , Petit Larceny, 1991.	14	---
1E	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2000.	14	---
1F	Certificate of Disposition, Johnson City Village Court, <i>People v David English</i> , Petit Larceny, 2004.	14	---

i.

1	1G	Certificate of Conviction, Steuben County	14	---
2		Court, <i>People v David English</i> , Criminal		
3		Possession of Forged Instrument, two counts.		
4	1H	Certificate of Conviction, Binghamton City	14	---
5		Court, <i>People v David English</i> , Petit Larceny.		
6	1I	Certificate of Conviction, Broome County	14	---
7		Court, <i>People v David English</i> , Attempted		
8		Criminal Sale of a Controlled Substance, 3 rd		
9		Degree, (2 pages).		
10	1J	Certificate of Conviction, Broome County	14	---
11		Court, <i>People v David J. English</i> , Attempted		
12		Arson, 3 rd Degree, (9 pages).		
13	1K	Certificate of Conviction, Binghamton City	14	---
14		Court, <i>People v James Stilloe</i> , Falsely		
15		Reporting an Incident, with Certificate of		
16		Conviction, (6 pages).		
17	1L	District Attorney/Superior Court Disposition	14	---
18		Report, Broome County Court, <i>People v</i>		
19		Martin Shaw, Robbery, 1 st Degree and		
20		Attempted Robbery, 1 st Degree.		
21				
22		<u>Estate of Roger Funk</u>		
23	2A	Surrogate's Court Record History,	16	---
24		(2 pages).		
25				

ii.

1	2B	Petition for Probate, filed May 2, 2014,	16	---
2		(5 pages).		
3	2C	Last Will and Testament of Roger L. Funk	16	---
4		with Affidavits, filed May 2, 2014, (7 pages).		
5	2D	Affidavit of Assets and Debts, filed May 2,	16	---
6		2014, (2 pages).		
7	2E	Coleman & Daniels Funeral Home expenses	16	---
8		for Jean Funk, filed May 2, 2014.		
9	2F	Family Tree of Roger L. Funk, filed May 2,	16	---
10		2014, (2 pages).		
11	2G	Application for Preliminary Letters	16	---
12		Testamentary, filed May 20, 2014, (2 pages).		
13	2H	Affidavit of Domicile, filed May 20, 2014.	16	---
14	2I	Affidavit of Donna Filip, filed May 29, 2014.	16	---
15	2J	Waiver of Process, Consent to Probate, filed	16	---
16		May 29, 2014.		
17	2K	Letter to Fiduciary Thomas M. Hayes from	16	---
18		Rebecca A. Malmquist, Chief Clerk, dated		
19		May 30, 2014.		
20	2L	Decree Granting Probate, dated May 30,	16	---
21		2014.		
22	2M	Grant of Letters Testamentary, dated May 30,	16	---
23		2014.		
24	2N	Letter to Thomas M. Hayes from Rebecca A.	16	---
25		Malmquist dated October 7, 2015.		

iii.

1	2O	Letter to Thomas M. Hayes from Rebecca A.	16	---
2		Malmquist, dated July 20, 2017.		
3	2P	Citation to Thomas M. Hayes, dated April 27,	16	---
4		2018.		
5	2Q	Order for Service of Process, dated April 27,	16	---
6		2018.		
7	2R	Affidavit for By Mail, dated April 27, 2018.	16	---
8	2S	Affidavit Concerning Deliverability of	16	---
9		Process Served by Mail, sworn to June 4,		
10		2018.		
11	2T	Order Revoking Letters, dated June 5, 2018.	16	---
12	2U	Consent to Change Attorney, dated March 6,	16	---
13		2015 (not filed with court).		
14	2V	Letter addressed to Thomas Hayes from	16	599
15		“Donna Filip,” dated November 6, 2015, with		
16		attached copies of checks, (Exhibit A to the		
17		Formal Written Complaint), (2 pages).		
18	2W	Checks dated December 1, 2015 (Exhibit D to	16	602
19		the Formal Written Complaint).		
20	2X	Certified Records of Citizens Bank,	16	---
21		(68 pages).		
22		<u>Estate of Jerry J. Behal, Jr.</u>		
23	4A	Document and Info Sheet, (2 pages).	517	---
24				
25				

1	4B	Records of filings of Probate Petition,	499	---
2		Wrongful Death Petition, Compel Fiduciary		
3		to Account Petition and Judicial Settlement of		
4		Final Account, (4 pages).		
5	4C	Petition for Probate, filed October 26, 2011,	491	492
6		(6 pages).		
7	4D	Last Will and Testament of Jerry J. Behal, Jr.,	499	---
8		filed October 26, 2011, (4 pages).		
9	4E	Affidavit of Subscribing Witnesses, filed	499	---
10		October 26, 2011.		
11	4F	Waiver of Process, Consent to Probate, filed	499	---
12		October 26, 2011.		
13	4G	Family Tree, filed October 26, 2011,	499	---
14		(2 pages).		
15	4H	Affidavit of Assets and Debts, filed October	499	---
16		26, 2011, (3 pages).		
17	4I	Affidavit of Sole Heirship filed November 1,	499	---
18		2011.		
19	4J	Notice of Probate, with Affidavit of Mailing,	499	---
20		filed November 2, 2011, (2 pages).		
21	4K	Certificate of Disqualification of David H.	499	---
22		Guy, filed November 2, 2011.		
23	4L	Order of Assignment, filed November 2,	499	---
24		2011.		
25				

1	4M	Decree Granting Probate With Limitations,	499	---
2		filed November 2, 2011, (2 pages).		
3	4N	Letters Testamentary, filed November 2,	499	---
4		2011.		
5	4O	Letter to David J. Behal from Rebecca A.	499	---
6		Malmquist, dated November 3, 2011.		
7	4P	Letter to David J. Behal from Rebecca A.	499	---
8		Malmquist, dated June 8, 2012.		
9	4Q	Letter to David J. Behal from Rebecca A.	499	---
10		Malmquist, dated August 7, 2012.		
11	4R	List of Assets/Inventory, filed September 19,	499	---
12		2012, (4 pages).		
13	4S	Petition of David J. Behal, dated December	499	---
14		28, 2013, filed July 11, 2014, (5 pages).		
15	4T	Waiver and Consent of Jennifer Behal, filed	499	---
16		July 11, 2014, (2 pages).		
17	4U	Waiver and Consent of Joseph Behal, filed	499	---
18		July 11, 2014, (2 pages).		
19	4V	Waiver and Consent of Karen Behal, filed	499	---
20		July 11, 2014, (2 pages).		
21	4W	Waiver and Consent of Donna Ougheltree,	499	---
22		filed July 11, 2014, (2 pages).		
23	4X	Waiver and Consent of Sylvia Behal, filed	499	---
24		July 11, 2014, (2 pages).		
25				

1	4Y	Attorney's Affidavit of Richard H. Miller,	499	501
2		filed December 12, 2014, (2 pages).		
3	4Z	Order and Decree, filed January 23, 2015,	499	501
4		(3 pages).		
5	4AA	Petition for A Compulsory Accounting and	499	501
6		Related Relief, filed October 13, 2015,		
7		(3 pages).		
8	4BB	Compulsory Accounting Citation, dated	499	501
9		October 14, 2015.		
10	4CC	Notice of Appearance of Artan Serjanej, Esq.,	499	501
11		filed November 23, 2015.		
12	4DD	Order of David Guy, filed January 14, 2016.	499	501
13	4EE	Amended Order Filed March 1, 2016.	499	501
14	4FF	Letter to Judge Guy from Artan Serjanej,	499	501
15		dated April 29, 2016, filed May 2, 2016.		
16	4GG	Order of David Guy, filed May 2, 2016.	499	501
17	4HH	Notice of Appearance of Robert H. Wedlake,	499	501
18		Esq., filed September 21, 2016.		
19	4II	Order of David H. Guy, filed September 21,	499	501
20		2016.		
21	4JJ	Letter to Hon. David H. Guy from Artan	499	501
22		Serjanej, dated October 7, 2016.		
23	4KK	Order of David H. Guy, filed October 20,	499	501
24		2016.		
25				

1	4LL	Order of David H. Guy, filed December 1,	499	501
2		2016.		
3	4MM	Order of David H. Guy, filed April 6, 2017.	499	501
4	4NN	Amended Order of David H. Guy, filed May	499	501
5		8, 2017.		
6	4OO	Petition for Judicial Settlement of Account,	499	501
7		filed May 26, 2017, (6 pages).		
8	4PP	Accounting by Executor, filed May 26, 2017,	499	501
9		(25 pages).		
10	4QQ	Letter from Hon. David H. Guy to Artan	499	501
11		Serjanej, Esq., dated June 15, 2017.		
12	4RR	Certificate of Disqualification of David H.	499	501
13		Guy, dated September 15, 2017.		
14	4SS	Order of Assignment of Hon. Molly Reynolds	499	501
15		Fitzgerald, dated September 18, 2017.		
16	4TT	Accounting Citation filed October 16, 2017.	499	501
17	4UU	Affidavits of Service of Accounting Citation,	499	501
18		sworn to in November 2017, (8 pages).		
19	4VV	Order of Hon. Julie A. Campbell, filed	499	501
20		November 20, 2017.		
21	4WW	Supplemental and Amended Supplemental	499	501
22		Citation, dated November 20 and November		
23		30, 2017, (2 pages).		
24	4XX	Objections to Accounting, filed December 4,	499	501
25		2017, (4 pages).		

1	4YY	Affidavits of Service of Amended	499	501
2		Supplemental Citation, filed January 19,		
3		2018, (2 pages).		
4	4ZZ	Letter to Hon. Molly R. Fitzgerald from Hon.	499	501
5		Julie A. Campbell, dated January 24, 2018.		
6	4AAA	Order of Re-Assignment by Hon. Molly	499	501
7		Fitzgerald, dated January 25, 2018.		
8	4BBB	Affirmation of Artan Serjanej in Reply to	499	501
9		Objections, with attached Schedules		
10		(27 pages).		
11	4CCC	Order of Hon. Gerald Keene, filed February 9,	499	501
12		2018.		
13	4DDD	Amended Order of Hon. Keene, dated March	499	501
14		9, 2018.		
15	4EEE	Order of Hon. Keene, dated April 6, 2018.	499	501
16	4FFF	Order of Hon. Keene, dated April 19, 2018.	499	501
17	4GGG	Affidavit of Robert H. Wedlake, filed August	499	501
18		6, 2018, (2 pages).		
19	4HHH	Decree of Judicial Settlement, filed August	499	501
20		15, 2018, (3 pages).		
21	4III	Emails between Dave Behal, Donna Filip and	62	70
22		Richard Miller, dated March 1, 2017 to May		
23		9, 2017 (Exhibit B to the Formal Written		
24		Complaint), (8 pages).		
25				

1	4KKK	Letter from Robert Wedlake to Artan Serjanej	509	---
2		dated June 5, 2017.		
3		<u>Estate of Antoinette Saraceno</u>		
4	5A	Sticky Notes, (8 pages).	411	420
5	5B	Petition for Probate, filed December 10, 2010,	411	416
6		(5 pages).		
7	5C	Family Tree, filed December 10, 2010,	411	416
8		(2 pages).		
9	5D	Last will and Testament of Antoinette A.	411	416
10		Saraceno, with affidavits of subscribing		
11		witnesses, (7 pages).		
12	5E	Notices of Probate with Affidavits of	411	416
13		Services, filed December 10, 2011,		
14		(16 pages).		
15	5F	Renunciations of Nominated Executor and/or	411	416
16		Trustee, filed December 10, 2010, (4 pages).		
17	5G	Letter from Richard H. Miller, II (by "DF"),	411	416
18		to Tioga County Surrogate's Court Clerk,		
19		dated February 16, 2011.		
20	5H	Amended Petition for Probate, filed February	411	416
21		17, 2011, (6 pages).		
22	5I	Amended Family Tree, filed February 17,	411	416
23		2011, (2 pages).		
24	5J	Waivers of Process: Consent to Probate, filed	411	416
25		February 17, 2011, (6 pages).		

1	5K	Notice of Probate with Affidavit of Service,	411	416
2		filed February 17, 2011, (3 pages).		
3	5L	Probate Citation to John I. Saraceno, dated	411	416
4		February 28, 2011.		
5	5M	Memorandum to Richard H. Miller, II, Esq.,	411	416
6		from Deborah A. Stone, dated February 28,		
7		2011.		
8	5N	Court Appearance Notice dated April 7, 2011.	411	416
9	5O	Affidavit for Service of Process By Mail by	411	416
10		Donna Filip, Affidavit Concerning		
11		Deliverability of Process Served by Mail of		
12		Richard H. Miller, II, and certified mail		
13		receipts, filed April 8, 2011, (5 pages).		
14	5P	Letter to Surrogate's Court from John I.	411	416
15		Saraceno, filed April 8, 2011, with enclosures		
16		(21 pages).		
17	5Q	File Minutes from April 15, 2011.	411	416
18	5R	Order Granting Preliminary Letters with	411	416
19		Limitations, dated April 15, 2011.		
20	5S	Preliminary Letters Testamentary, dated April	411	416
21		15, 2011.		
22	5T	Letter to Surrogate's Court from John	411	416
23		Saraceno, filed May 9, 2011, with enclosures		
24		(6 pages).		
25				

1	5U	Letter to John I. Saraceno, Jr., from Deborah	411	416
2		A. Stone, dated May 17, 2011, with enclosed		
3		affidavit of service form (2 pages).		
4	5V	Completed Affidavit of Service of Objections,	411	416
5		filed June 27, 2011, (2 pages).		
6	5W	Letter to Hon. Vincent Sgueglia signed by	411	416
7		Frank Saraceno, Sr., and Sam Saraceno, filed		
8		June 29, 2011.		
9	5X	Letter to Frank Saraceno, Sr., and Sam	411	416
10		Saraceno, from Deborah A. Stone, dated July		
11		13, 2011, copied to Richard H. Miller, II, Esq.		
12	5Y	Letter to Judge Sgueglia from Richard H.	411	416
13		Miller, II, with enclosed Notice of Motion to		
14		Dismiss Objections, Affidavit of Executor		
15		and Attorney's Affirmation, filed July 18,		
16		2011, (7 pages).		
17	5Z	Letter to Chief Clerk from Richard H. Miller,	411	416
18		II, with Affidavit of Service by Donna Filip,		
19		filed August 18, 2011, (3 pages).		
20	5AA	Order dismissing objections, dated August 26,	411	416
21		2011, (2 pages).		
22	5BB	Decree Granting Probate, dated August 26,	411	416
23		2011.		
24	5CC	Letters Testamentary, dated August 26, 2011.	411	416
25				

1	5DD	Letter to Frank Saraceno, Sr., from Deborah	411	416
2		A. Stone, dated August 26, 2011.		
3	5EE	Letter to Richard H. Miller, II, Esq., from	411	416
4		Camelia M. Daniels, dated March 1, 2012.		
5	5FF	Letter to Tioga County Surrogate's Court	411	416
6		Clerk from Richard H. Miller, II, dated March		
7		1, 2012, with Enclosed Inventory of Assets,		
8		received March 15, 2012, (5 pages).		
9	5GG	Note dated March 20, 2012, on Letters	411	416
10		Testamentary from RH Miller, II, requesting		
11		new letter for real estate transfer, received		
12		March 20, 2012.		
13	5HH	Letter from Carmela M. Daniels to Richard H.	411	416
14		Miller, II, Esq., dated September 12, 2013,		
15		with enclosed form (2 pages).		
16	5II	Letter from Camela M. Daniels to Richard H.	411	416
17		Miller, Esq., dated December 27, 2013, with		
18		enclosed form (2 pages).		
19	5JJ	Citation to Frank Saraceno, Sr., dated March	411	416
20		20, 2014.		
21	5KK	Order of Hon. Gerald A. Keene, Surrogate,	411	416
22		dated March, 24, 2014.		

1	5LL	Letter to Deborah A. Stone, Chief Clerk, from	411	416
2		Richard H. Miller, II, dated July 23, 2014,		
3		enclosing Original Report of fiduciary,		
4		requesting additional time to collect receipts,		
5		releases and discharges from beneficiaries,		
6		received July 28, 2014 (2 pages).		
7	5MM	Letter to Richard H. Miller, Esq., from	411	416
8		Deborah Stone, dated August 2, 2016, with		
9		enclosed form (2 pages).		
10	5NN	Letter to Frank Saraceno from Kiyoko	411	416
11		Matsuhashi, dated August 16, 2016, with		
12		enclosed sample of substitution of attorneys		
13		form (2 pages).		
14	5OO	Letter to Frank Saraceno from Kiyoko	411	416
15		Matsyhashi, dated December 9, 2016.		
16	5PP	Letter to Richard H. Miller, Esq., from	411	416
17		Deborah A. Stone, dated March 28, 2017,		
18		with enclosed form (2 pages).		
19	5QQ	Letter to Frank Saraceno, Sr., from Deborah	411	416
20		A. Stone, dated January 22, 2018.		
21	5RR	Letter to Surrogate's Court Chief Clerk from	411	416
22		Artan Serjanej, dated January 29, 2018,		
23		enclosing Notice of Appearance, received		
24		February 2, 2018 (2 pages).		
25				

1	5SS	Order of Hon. Gerald A. Keene, dated	411	416
2		February 5, 2018.		
3	5TT	Letter to Deborah A. Stone from Artan	411	416
4		Serjanej, dated April 18, 2018, with		
5		enclosures, (52 pages).		
6	5UU	Checks dated April 4, 2012.	473	474
7	5VV	Memorandum of interview of Deborah Stone	459	462
8		dated December 12, 2017, with notes,		
9		(2 pages).		
10	<u>Estate of Deborah Brigham</u>			
11	6Q	Checks from Beverly Brigham payable to	602	604
12		Respondent, dated November 24, 2015,		
13		(Exhibit C to the Formal Written Complaint)		
14		(3 pages).		
15	<u>Checks</u>			
16	7C	Copies of checks from Louis Micha to	525	528
17		Richard H. Miller, dated from December 9,		
18		2014 to March 22, 2018, and Receipts		
19		(Exhibit E to the Formal Written Complaint),		
20		(46 pages).		
21				
22				
23				
24				
25				

Financial Disclosure Forms

8A	Annual Statements of Financial Disclosure filed by Richard H. Miller, II, with the Ethics Commission for the Unified Court System for reporting year 2014 (13 pages).	794	794
8B	Annual Statements of Financial Disclosure filed by Richard H. Miller, II, with the Ethics Commission for the Unified Court System for reporting year 2015 (6 pages).	794	794
8C	Annual Statements of Financial Disclosure filed by Richard H. Miller, II, with the Ethics Commission for the Unified Court System for reporting year 2016 (6 pages).	794	794
8D	Annual Statement of Financial Disclosure for reporting year 2015, as amended by Richard H. Miller on November 16, 2017 (6 pages).	794	794

Income Tax Returns

9A	2015 U.S. Individual Income Tax Return (Bates Nos.: 101-001 to 101-025).	794	795
9B	2015 Amended U.S. Individual Tax Return (Bates Nos.: 102-001 to 102-006).	794	795
9C	2015 U.S. Individual Income Tax Return (Amended) (Bates Nos.: 103-001 to 103-017).	794	795

1	9D	2015 New York Resident Income Tax Return	794	795
2		(Bates Nos.: 104-001 to 104-008).		
3	9E	2015 New York Amended Resident Income	794	795
4		Tax Return (Bates Nos.: 105-001 to 105-007).		
5	9F	2016 U.S. Individual Tax Income Tax Return	794	795
6		(Bates Nos.: 201-001 to 201-029).		
7	9G	2016 Amended U.S. Individual Income Tax	794	795
8		Return (Bates Nos.: 202-001 to 202-006).		
9	9H	2016 U.S. Individual Income Tax Return	794	795
10		(Amended) (Bates Nos.: 203-001 to 203-027).		
11	9I	2016 New York Resident Income Tax Return	794	795
12		(Bates Nos.: 204-001 to 204-011).		
13	9J	2016 New York Amended Resident Income	794	795
14		Tax Return (Bates Nos.: 205-001 to 205-009).		
15	<u>Correspondence</u>			
16	10A	Letter to Cathleen S. Cenci from Paul	795	796
17		DerOhannesian, II, dated April 16, 2018.		
18	10B	Letter to Hon. Richard H. Miller, II, c/o Paul	795	796
19		DerOhannesian, II, with enclosure, dated May		
20		7, 2018, (5 pages).		
21	10C	Letter to Cathleen S. Cenci from Paul	796	796
22		DerOhannesian, with enclosure, dated May		
23		30, 2018, (7 pages).		
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Additional Exhibits

11	Schedule of Commission Exhibits.	13	---
12	Letter from Debbi Singer to Judge Miller dated March 10, 2017 (3 pages).	407	1499
13	Rachelle Gallagher's notes.	769	---
14	Transcript of Jerry Penna's testimony	953	---
15	Letter from Cathleen Cenci to Lisa Wojdat dated October 2, 2017.	1091	1113
16	Memorandum of interview of David Behal dated August 15, 2017.	1167	---
17	Letter from Cathleen Cenci to David Behal dated August 4, 2017.	1181	1184
18	Email from Gregory Gates dated April 13, 2016, to Sixth Judicial District Judges with attached memorandum from Hon. Michael V. Coccoma (3 pages).	1469	1473
19	Insurance claim document dated February 18, 2017 (2 pages).	1484	1486

EXHIBITS

RESPONDENT

		<u>Ident.</u>	<u>In Evid.</u>
1			
2			
3			
4			
5	A	Subpoena for John McConnell.	688 ---
6	F	Subpoena.	82 ---
7	I	Transcript of Mark Kachadourian's	86 ---
8		Testimony.	
9	J	Mark Kachadourian's Notes.	91 ---
10	K	Noramar Enterprises documents.	109 ---
11	L	Nomination for appointment of attorneys.	111 114
12	M	Arbitration decision.	116 ---
13	N	Federal complaint.	158 ---
14	O	Supplemental declaration of Mark	217 ---
15		Kachadourian.	
16	P	Memorandum of phone call of January 3,	168 ---
17		2018.	
18	Q	Rebecca Vroman's letter.	349 ---
19	R	Memorandum of phone call of April 20,	169 ---
20		2018.	
21	S	Summary of inspector general interview of	377 ---
22		Debbi Singer.	
23	T	Work Safe document.	385 ---
24	U	Debbi Singer's notes.	387 ---
25	V	Letter from Judge Miller to Debbi Singer	394 1499
		dated March 1, 2017 (3 pages).	

1	W	Memorandum of interview of Deborah Stone	453	---
2		on December 6, 2017.		
3	X	Updated records for <i>Estate of Antoinette</i>	537	537
4		<i>Saraceno</i> , (74 pages).		
5	Y	Transcript of Rachelle Gallagher's	609	---
6		testimony.		
7	Z	Calendar.	724	---
8	AA	Photograph of Richard Balles and Mark	973	975
9		Kachadourian.		
10	BB	Photograph of Richard Balles, Judge Miller,	973	975
11		Mark Kachadourian and others.		
12	CC	Consent to change attorney signed by Artan	1044	1049
13		Serjanej and David Behal dated March 20,		
14		2015.		
15	DD	Consent to change attorney signed by Artan	1062	1066
16		Serjanej and Thomas Hayes dated March 5,		
17		2015.		
18	EE	Emails with Surrogate's Court and Artan	1067	---
19		Serjanej.		
20	FF	Emails of October and November 2015	1119	1120
21		(3 pages).		
22	GG	Emails of March, April and May 2017	1122	1125
23		(3 pages).		
24	HH	Email from Jolene to David Behal dated May	1135	1136
25		15, 2013.		

xx.

1	II	IRS forms and publications printout.	1143	1144
2	JJ	Email between Sgt. Krebs and captain.	1197	---
3	KK	Email.	1207	---
4	LL	Email from Rebecca Vroman to Mark	1337	1340
5		Kachadourian dated January 23, 2017.		
6	MM	Standards and goals statistics (7 pages).	1340	1342
7	NN	Employee evaluation email to Judge Mulvey	1367	1368
8		dated January 20, 2016 (2 pages).		
9	OO	Email from Jane Sbarra dated	1386	1387
10		January 11, 2019.		
11	PP	Financial disclosure forms sent from	1387	1388
12		Respondent to Chief Clerk on January 31,		
13		2019 (5 pages).		
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

REFEREE

		<u>Ident.</u>	<u>In Evid.</u>
1	Email from Cathleen Cenci to the Referee, Paul DerOhannesian and Deborah Scalise dated January 4, 2019.	258	258
2	Email from Deborah Scalise to the Referee, Cathleen Cenci and Paul DerOhannesian dated January 6, 2019 (4 pages).	258	258
3	Subpoena for Mayor Greg Deemie dated January 4, 2019.	689	689
4	Letter from Shawn Kerby to the Referee dated January 9, 2019, (6 pages).	732	732
5	Letter from Edward Lindner to the Referee dated January 10, 2019, (66 pages).	893	893
6	Letter from Shawn Kerby to the Referee dated January 11, 2019, (2 pages).	1186	1188

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Dated: March 1, 2019

Letitia Walsh
Letitia Walsh

STATE COMMISSION ON JUDICIAL CONDUCT
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223