STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

RICHARD H. MILLER, II,

a Judge of the Family Court,
Broome County.

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

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in support of the recommendation that the Referee adopt Commission Counsel's proposed findings of fact and conclusions of law and determine that the Honorable Richard H. Miller, II ("Respondent") has committed judicial misconduct.

The hearing evidence demonstrated that Respondent: (1) engaged in a pattern of inappropriate behavior of a sexual and threatening nature toward certain staff members of the Broome County Family Court, (2) importuned chambers staff to perform duties unrelated to their official duties, (3) engaged in the practice of law and/or conveyed the appearance that he was still engaged in the practice of law with respect to two estates and (4) repeatedly failed to file timely and accurate disclosure reports of income from extra-judicial activities to various entities, as required. As set forth more fully herein, Respondent's conduct violated the Rules Governing Judicial Conduct ("Rules").

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint, dated July 9, 2018, containing four charges. Charge I alleged that Respondent engaged in a pattern of inappropriate behavior toward certain staff members of the Broome County Family Court by, *inter alia*, making unwelcome comments of a

sexual nature to and about them, and threatening their physical safety and wellbeing (FWC ¶6).[1]

Charge II alleged that Respondent lent the prestige of judicial office to advance his own private interests and/or the interests of others, and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that, on multiple occasions, he importuned chambers staff to perform services unrelated to their official duties, including prohibited political activity (FWC ¶27).

Charge III alleged that, in connection with the *Estate of Antoinette Saraceno* and the *Estate of Jerry J. Behal, Jr.*, two estates Respondent had represented before he became a Family Court Judge and that were still pending after he became a Family Court Judge, Respondent engaged in the practice of law and/or conveyed the impression that he was engaged in the practice of law as a full-time judge (FWC ¶34).

Charge IV alleged that Respondent failed to file timely and accurate disclosure reports of his income from extra-judicial activities to the Ethics Commission for the Unified Court System, the Internal Revenue Service, the New York State Department of Taxation and Finance and the Clerk of the Broome County Family Court, as required (FWC ¶63).

[1] References to "FWC" are to the Formal Written Complaint. References to "Ans" are to Respondent's Answer. References to "Tr" are to the transcript of the hearing before the Referee. References to "Ex" are to exhibits introduced into evidence at the hearing by the Commission. References to "Resp Ex" are to exhibits introduced into evidence at the hearing by Respondent.

B. Respondent's Answer

Respondent filed a Verified Answer to the Formal Written Complaint, dated August 8, 2018. With respect to Charge I, Respondent denied all of the substantive factual allegations (Ans ¶¶6-26).

With respect to Charge II, Respondent denied nearly all of the substantive factual allegations (Ans ¶¶27-33). He admitted that Donna Filip "volunteered" in his law office (Ans ¶28), that Ms. Gallagher typed Exhibit A to the Formal Written Complaint[2] (Ans ¶29) and that, before becoming a Family Court Judge, he represented the *Estate of Jerry J. Behal* (Ans ¶32).

With respect to Charge III, Respondent admitted the allegations relating to the procedural history of the *Estate of Saraceno* pre-dating his becoming a Family Court Judge but asserted he lacked knowledge and information sufficient to form a belief as to the truth of or denied the substantive factual allegations concerning events occurring thereafter (Ans ¶¶34-45). Respondent admitted that he contacted the Tioga County Surrogate's Court but said he did so to "inquire as to why he was being sent information directed to him as an attorney knowing that he was a Family Court Judge and could not practice law and communicated that there should have been a substitution of attorney filed" (Ans ¶41). Respondent admitted the allegations relating to the procedural history of the *Estate of Behal* pre-dating his becoming a Family Court Judge and admitted that Attorney Artan Serjanej represented the executor, but otherwise denied, or asserted he

[2] In evidence as Exhibit 2V.

lacked knowledge and information sufficient to form a belief as to the truth of, each of the substantive factual allegations concerning events occurring after he became a full-time judge (Ans ¶¶46-62).

With respect to Charge IV:

- Respondent admitted the allegations that, in 2015, he received payments for legal work he performed in the *Estate of Deborah Brigham* and the *Estate of Roger Funk* (Ans ¶¶64-65).

- Respondent asserted that he lacked knowledge and information sufficient to form a belief as to the truth of the allegation that, on his 2015 Annual Statement of Financial Disclosure with the Ethics Commission for the Unified Court System, he failed to disclose the income he received in 2015 for legal work he had previously performed in *Brigham* and *Funk* and other matters, and that he did not amend his 2015 Financial Disclosure Form to include this income until in or about November 2017, after he was notified by the Commission about his failure to do so, and affirmatively stated that he was consulting with his accountant regarding his finances and tax issues prior to receiving notification by the Commission (Ans ¶66).

- Respondent denied the allegation that, in 2015-2017, he received monthly rental payment checks from tenant Louis Micha for rental of an apartment located at 2[redacted] North Street, but admitted that rent payments due his wife were made payable to Respondent (Ans ¶67).

- Respondent denied the allegations that, in 2015 and 2016, he received payments from David English and Michelle Caforio for the rental of the property located at 3[redacted] Oakdale Road, but he admitted collecting rent payments to 394 Main Street LLC (Ans ¶¶68-69).

- Respondent denied the allegations that, on his Federal Income Tax Return and his New York State Income Tax Return for the years 2015 and 2016, he failed to report the income he had received from the prior practice of law and/or rental income he had received in those years (Ans ¶¶70-71).

- Respondent denied the allegation that he amended his 2015 and 2016 Federal and State income tax returns to include omitted income after he was questioned by the Office of the Inspector General for the Unified Court System (Ans ¶72).

- Respondent asserted that he lacked knowledge and information sufficient to form a belief as to the truth of the allegation that he failed to file any report of outside income with the clerk of the court (Ans ¶73).

C. The Hearing

By Order dated September 18, 2018, the Commission designated Robert A. Barrer, Esq. to hear and report proposed findings of fact and conclusions of law. The hearing was held in Binghamton, New York, on January 7, 8, 9, 10, and 11, 2019, and in Albany, New York on February 12, 2019. Counsel for the Commission called nine witnesses and introduced 112 exhibits into evidence. Respondent called 13 witnesses, testified on his own behalf and introduced 16 exhibits into evidence. Six items were marked as exhibits of the Referee.

THE FACTS

Charge I: Over a period of two and half years, Respondent engaged in a pattern of inappropriate behavior toward certain staff members of the Broome County Family Court by, *inter alia*, making unwelcome comments of a sexual nature to and about them, and threatening their physical safety and wellbeing.

From in or about January 2015 until July 2017, Respondent made multiple inappropriate and lewd comments to Broome County Family Court employees, including suggestions that his "sexual needs" should be satisfied by his court secretary. Respondent engaged in graphic conversations about sexual conduct in front of court staff and displayed a nude photograph purported to depict a female court staff member. In addition, Respondent made comments threatening the physical safety of his court attorney and his court secretary.

A. Respondent was acquainted with Rachelle Gallagher and Mark Kachadourian for years before he named them as his personal appointees in the Broome County Family Court.

Prior to becoming a Judge of the Family Court, Broome County, on January 1, 2015, Respondent served as a part-time Justice of the Union Town Court, Broome County, from 1996 to 2014, and the Johnson City Village Court, Broome County, from 2002 to 2014 (FWC ¶4; Ans ¶4; Tr 1301-02).

When Respondent became a Family Court Judge, he appointed Rachelle Gallagher as his court secretary (FWC ¶7; Ans ¶7; Tr 546-47). Respondent was a childhood friend of Ms. Gallagher's husband, Scott Gallagher (Tr 542, 1312). Respondent and Ms. Gallagher first became acquainted in the early 2000s, and in 2002 Respondent performed the Gallaghers' wedding ceremony (Tr 542, 1326). In 2005, Respondent asked Ms. Gallagher to work for him at the Johnson City Village Court where, for almost 10 years, she served under Respondent as the chief court clerk until December 31, 2014, when Respondent appointed her to be his personal secretary in Family Court (Tr 543-45, 546-47, 1303, 1312, 1325-26). Ms. Gallagher was also active in Respondent's campaign for Family Court Judge, with Respondent giving her a role on his campaign committee (Tr 545).

Respondent appointed Mark Kachadourian as his court attorney in Family Court (FWC ¶7; Ans ¶7; Tr 26-27, 1335-36), prior to which Mr. Kachadourian had practiced family law for approximately 25 to 30 years (Tr 22). Respondent and Mr. Kachadourian had been acquainted in their capacities as practicing attorneys in Broome and Tioga Counties for about 10 to 15 years (Tr 23, 1335-36). Mr. Kachadourian assisted

Respondent with his campaign for Family Court Judge by putting up campaign signs, helping him prepare for a debate and attending campaign events (Tr 25, 1336-37). After Respondent won the Family Court election, he asked Mr. Kachadourian to be his court attorney because he believed that Mr. Kachadourian was well qualified to handle the position (Tr 26, 1336).

At the court, Respondent, Mr. Kachadourian and Ms. Gallagher interacted and worked with each other on a daily basis (Tr 30, 33, 548). Respondent's chambers occupied a suite on the first floor of the Broome County Family Court building consisting of his office and Ms. Gallagher's adjoining office (Tr 33-34, 547, 562-63). Although Mr. Kachadourian's office was on the second floor, he primarily conducted his work in Respondent's chambers (Tr 33, 548-49).

Mr. Kachadourian's working relationship with Respondent at the Family Court was initially good, but he noticed that Respondent's behavior began to change for the worse around mid-to-late 2015 (Tr 27-29). Although Ms. Gallagher had good professional and social relationships with Respondent during their 10 years working together at the Johnson City Village Court, she also noticed that his behavior and demeanor drastically changed after he became a Family Court Judge, when he started making increasingly frequent comments of a sexual and threatening nature (Tr 549-50).

B. On multiple occasions between 2015 and 2017, Respondent: (1) told Mr. Kachadourian and Ms. Gallagher that his sexual needs were not being met, at times pointing to his genital area, (2) stated that Ms. Gallagher needed to satisfy his sexual needs and (3) stated that he wanted to fire Ms. Gallagher and hire another secretary who would satisfy his sexual needs.

Soon after becoming a Family Court Judge in January 2015, Respondent began angrily commenting to Ms. Gallagher about his lack of sexual relations with his wife and that he and his wife were like "roommates" (Tr 550-51). Ms. Gallagher testified:

> [h]e always was maybe a little sexual, but when we started in family court, it became that he was demanding sex and he wanted sex, more sex, and everything revolved around sex and his lack of sex (Tr 551).

Respondent would, at times, point to his genitals while stating that people needed to satisfy his needs (Tr 551-52). Respondent's sexual comments became more frequent in 2017 (Tr 552).

On multiple occasions from mid-to-late 2015 to mid-2017, Respondent commented to Mr. Kachadourian that he regretted hiring Ms. Gallagher as his court secretary, rather than Lisa Wojdat, who had been a court clerk while Respondent was a justice at the Union Town Court (Tr 28-29, 553-54). Respondent told Mr. Kachadourian and Ms. Gallagher that he had "sexual needs" and that Ms. Wojdat would satisfy those sexual needs (Tr 29-30, 553-54). Respondent, at times, directed Mr. Kachadourian to speak with Ms. Gallagher about "what real secretaries are supposed to do," which according to Respondent, included satisfying Respondent sexually (Tr 30-31, 554-55).

C. Respondent engaged in graphic sexual discussions about Senior Court Office Assistant D[redacted] L[redacted] in the presence of court staff.

In January 2017, Respondent introduced Senior Court Office Assistant D[redacted] L[redacted] to David Iannone after Ms. L[redacted] told Respondent that she needed some tile work done in her bathroom (Tr 34-35, 264-65, 555, 817). Mr. Iannone was a friend of Respondent and did various odd jobs for him (Tr 32, 266, 269, 816, 1477). Mr. Iannone also assisted Respondent with his Family Court campaign and with managing his properties (Tr 32, 523-24, 818, 832). Respondent put Ms. L[redacted] in touch with Mr. Iannone, who agreed to come to her house and give her a work estimate (Tr 265-66, 555, 1477-78). Soon thereafter, Ms. L[redacted] and Mr. Iannone began an intimate relationship that lasted approximately one year, a fact of which Respondent was aware based on his discussions with Mr. Iannone (Tr 266, 1478-79).

On multiple occasions in chambers in early 2017, Respondent spoke with Mr. Iannone on a telephone, using its speaker function, such that Mr. Kachadourian and Ms. Gallagher heard graphic discussions between Respondent and Mr. Iannone about Mr. Iannone's sexual experiences with Ms. L[redacted] (Tr 36-38, 556-59). Respondent acknowledged that he occasionally called Mr. Iannone from chambers (Tr 818). Both Mr. Kachadourian and Ms. Gallagher heard Mr. Iannone respond to Respondent's questions about Mr. Iannone's sex with Ms. L[redacted] by talking about Ms. L[redacted]'s orgasms, such that she was a "sprayer" and that "the beds were so wet that they had to put towels down so the beds wouldn't get ruined" (Tr 37, 557). Respondent asked Mr. Iannone for pictures or videos of his sexual experiences with Ms. L[redacted] (Tr 557-58)

and asked if he – Respondent – "could get in the lineup or get in the rotation" and "reserve a night a week for himself" with Ms. L[redacted] (Tr 38, 559).

Jerry Penna is and has been a "family friend" of Respondent's since he was "very young" (Tr 818). Mr. Penna also acted as the treasurer of Respondent's Family Court campaign and is his insurance agent (Tr 818). In around March 2017, in chambers, Respondent engaged in a conversation on his cell phone, using its speaker function, with Mr. Penna in which Respondent explicitly described Mr. Iannone's sexual experiences with Ms. L[redacted] (Tr 35-36).

In early 2017, while Mr. Penna was visiting Respondent at chambers, the two men started discussing Ms. L[redacted] and Mr. Iannone's sexual experiences with her (Tr 41-43, 560-61, 563). Respondent then directed Ms. Gallagher to go to Ms. L[redacted]'s office and bring her to chambers (Tr 42, 560-61). Ms. Gallagher escorted Ms. L[redacted] to chambers where Respondent and Mr. Penna engaged Ms. L[redacted] in small talk for a few minutes (Tr 42, 562). Ms. L[redacted] recalled meeting Mr. Penna in Respondent's chambers (Tr 275). After Ms. L[redacted] left chambers, Respondent and Mr. Penna engaged in a conversation about her figure, including the size of her breasts (Tr 42, 563-64). Mr. Kachadourian recalled that a male maintenance worker – who, like Mr. Penna, had fought in the Vietnam War (Tr 42, 922) – was also present for this conversation and that Respondent, Mr. Penna and the maintenance worker also discussed that women from Southeast Asia had no hair on their vaginas (Tr 42-43). Ms. Gallagher recalled a similar conversation between Respondent, Mr. Penna and the maintenance worker about Asian women (Tr 705-06).

On at least one occasion in summer 2017, after Respondent commented about the temperature in the courtroom being hot, Respondent added, "Maybe it's because of D[redacted]" (Tr 309-10).

D. Respondent showed Mr. Kachadourian a photograph purporting to depict the nude torso of Senior Court Office Assistant D[redacted] L[redacted].

In about April 2017, Respondent called Mr. Kachadourian to his chambers, took out his cell phone and showed him a photograph of the front torso of a nude woman (Tr 39). Respondent said that the woman in the photograph was Ms. L[redacted] (Tr 39). Based upon his observation of the woman's build, Mr. Kachadourian recognized her as being Ms. L[redacted] (Tr 39-40). Shocked, Mr. Kachadourian walked away and told Ms. Gallagher what Respondent had shown him (Tr 40).

In late June or early July 2017, Broome County Supreme Court Justice Molly Fitzgerald and a human resources employee notified Ms. L[redacted] of the existence of a photograph purporting to depict her nude torso (Tr 267). At the time, Ms. L[redacted] was unaware of the existence of any such photograph, but Judge Fitzgerald told her that one had come up in relation to sexual harassment allegations about Respondent (Tr 267-68). Not having made sexual harassment allegations against Respondent, Ms. L[redacted] was confused (Tr 267-68).

Knowing that Respondent and Mr. Iannone were friends, Ms. L[redacted] repeatedly asked Mr. Iannone if any such picture existed (Tr 269-70). After denying it repeatedly, Mr. Iannone finally took out his cell phone and showed her a photograph of a person nude from the neck to the belly, wearing a silver elephant pendant necklace

featuring a pink jewel, and told her that it was the photograph that he had shown to Respondent and Mr. Kachadourian (Tr 270-71, 281-82). Although Ms. L[redacted] did not know for sure if the person in the photograph was her, she recognized the person's necklace as one of the seven or eight Avon elephant pendant necklaces that she owned (Tr 270-71, 281-82). Ms. L[redacted] asked Mr. Iannone to delete the photograph (Tr 272).

E. Respondent told Mr. Kachadourian it would be "nice" to have sex with Court Attorney S[redacted] L[redacted] while she was bent over a desk.

On one occasion, in the hallway outside the offices of Mr. Kachadourian and Court Attorney S[redacted] L[redacted], Respondent commented to Mr. Kachadourian, "Wouldn't it be nice to have sex with [Ms. L[redacted]] bent over a desk?" (Tr 43-44). Mr. Kachadourian told Respondent that he should not say such things, especially since Ms. L[redacted] was within earshot and could have heard his comment (Tr 44).

F. Respondent showed Mr. Kachadourian photographs of nude women and to Ms. Gallagher drawings of nude women.

On one occasion in around mid-2015, Respondent showed Mr. Kachadourian photographs of nude women Respondent had on his cell phone (Tr 41). Respondent "giggled" when Mr. Kachadourian objected to viewing the photographs (Tr 41).

In April or May 2017, Respondent handed Ms. Gallagher a folded-up piece of paper depicting pieces of fruit and asked her to pick the "juiciest fruit" (Tr 564). When Ms. Gallagher unfolded the paper at Respondent's instruction, there were drawings of nude women inside (Tr 564, 694). Although Respondent found it hysterical, Ms. Gallagher was embarrassed. She returned the paper to him and walked away (Tr 564).

G. Respondent told Mr. Kachadourian and Ms. Gallagher that he wanted Ms. Gallagher to perform sexual favors for a state senator so that Respondent could have greater access to the senator.

On or about May 18, 2017, Mr. Kachadourian accompanied Respondent to the State Capitol in Albany, New York, to attend the New York State Family Court Association meeting (Tr 44-45). During a break in scheduled meetings with various state legislators, Respondent suggested to Mr. Kachadourian that they try to meet with Fred Akshar, the state senator for Broome and Tioga Counties (Tr 45, 192). Without an appointment, Respondent and Mr. Kachadourian went to Sen. Akshar's office and met with him for a few minutes (Tr 45, 192). At the end of the meeting, Respondent asked Sen. Akshar for his cell phone number and the senator declined, telling Respondent to contact him by calling his office (Tr 45-46).

While driving back to Binghamton from Albany with Mr. Kachadourian, Respondent fumed about Sen. Akshar's refusal to give him his cell phone number and said he would ask Ms. Gallagher to do sexual favors for the senator in order to obtain the senator's cell phone number (Tr 46, 194). Mr. Kachadourian objected to Respondent's idea as being "crazy" (Tr 46, 195).

The next day, Respondent returned to chambers and angrily demanded, while banging on Ms. Gallagher's desk, that she go to Albany to "take one for the team" and "take care of [Sen. Akshar's] needs" (Tr 565-66). Ms. Gallagher understood Respondent to mean that he wanted her to have sex with the senator (Tr 566-67). Ms. Gallagher refused (Tr 565). Ms. Gallagher was very upset and after Respondent left for court she called Mr. Kachadourian and told him what had just happened (Tr 566). Mr.

Kachadourian told Ms. Gallagher about Respondent's comments that he wanted her to perform sexual favors for the senator (Tr 47-48).

At some point thereafter, Ms. Gallagher reported Respondent's remarks about sexually satisfying Senator Akshar to Chief Clerk Debbi Singer (Tr 362, 568).

H. Respondent made unwanted sexual comments to the Chief Clerk of the Broome County Family Court.

Prior to her retirement in June 2018, Debbi Singer was the Chief Clerk of the Broome County Family Court (Tr 356, 819). Ms. Singer worked at the court for a total of 27 years and was the deputy chief clerk before becoming the chief clerk (Tr 356). As chief clerk, Ms. Singer oversaw all of the daily operations of the Family Court and supervised all of the Grade 16 and Grade 12 court assistants (Tr 356-57). She had no supervisory duties over the judges' court attorneys or legal secretaries, such as Mr. Kachadourian and Ms. Gallagher (Tr 357, 359). Respondent described his relationship with Ms. Singer as "professional" and "good," and he described her as "truthful," "honest," "helpful," "classy" and "efficient" (Tr 819, 1476).

In 2016, Respondent told Mr. Kachadourian that he would like to ride Ms. Singer – who owns horses – like a horse (Tr 227-28).

In May 2017, the Family Court held a "dish to pass" luncheon at the courthouse and Ms. Singer and staff members made dishes to share (Tr 366-67). After the luncheon, Respondent stopped by the office of Ms. Singer, whose husband is deceased, and said, "If I knew you could also cook, I would have gone for the widow" (Tr 367). Respondent

knew that Ms. Singer was a widow (Tr 819-20). Ms. Singer was "surprised, shocked, and disgusted" by Respondent's comment (Tr 367).

In early June 2017, while Respondent was in Ms. Singer's office, Ms. Singer began having a hot flash and said, "I apologize, I'm having a hot flash" (Tr 368, 400-03). Respondent replied, "It's nice to know I still have that effect on you" (Tr 403). Ms. Singer later learned that Respondent had gone back to his chambers and told Ms. Gallagher about his comment to Ms. Singer (Tr 403).

On another occasion in June 2017, Ms. Singer was standing in the middle of her office, with the door open, when Respondent walked by, stepped into her office and said, "You look really hot in that outfit. You should always wear that outfit" (Tr 370). Ms. Singer, who was wearing a professional-looking outfit comprised of a skirt that extended to her knees and a matching top with a cowl neck, was "shocked and disgusted" by Respondent's comment (Tr 370).

I. Respondent made disparaging comments to Ms. Gallagher about Supervising Court Assistant Rebecca Vroman's physical appearance and angrily admonished Ms. Vroman after a day of hearing emergency petitions.

After working for two years as a court assistant in the Tompkins County Family Court, Rebecca Vroman became the supervising court assistant (classified as Grade 16) in the Broome County Family Court in August 2016 (Tr 322-23). As such, her duties included, *inter alia*, assisting Respondent in the courtroom by running the court audio recordings, processing paperwork, scheduling Respondent's court appearances, and supervising two lower-level (Grade 12) court assistants (Tr 322-23).

When Ms. Vroman joined the staff as supervising court assistant in Broome County Family Court, Respondent told Ms. Gallagher that Ms. Vroman was "fat and ugly," that he was going to be the "laughing stock" of Broome County and that he intended to get her fired from his team (Tr 591).

On February 6, 2017, Respondent was assigned for the week as the emergency intake judge, to hear petitions in which litigants were seeking emergency relief (Tr 323-24, 1354-55). On this particular date, Respondent was scheduled to hear a full caseload of regular cases during his morning and afternoon court sessions, in addition to any emergency petitions that were filed that day (Tr 325, 1354-55). Although Respondent was scheduled to begin his afternoon session at 1:30 PM and hear seven regular cases, he was late to court because he had physical therapy that morning and did not start afternoon proceedings until after 2:00 PM (Tr 325-26, 1354-55).

Beginning at around 2:30 PM, Ms. Vroman began receiving, via email from the Grade 12 court assistants, a number of emergency petitions that had been filed with the court that afternoon (Tr 324, 326). As soon as she received the petitions, she printed them out and handed them to Respondent for his review (Tr 326). Initially, Respondent accepted the petitions from her without any comment (Tr 326). But between 2:45 PM and shortly after 4:00 PM, Ms. Vroman received six more petitions and, as she was handing them to Respondent, he became increasingly agitated, shaking his head and telling Ms. Vroman that she was going too slow and that she needed to go faster because he had to be somewhere at 4:00 PM (Tr 326-27).

Court proceedings were not supposed to conclude until 4:30 PM, and Respondent had not notified Ms. Vroman that he needed to leave early that day, notwithstanding that Respondent had been scheduled as the emergency intake judge for that week well in advance (Tr 327-29, 1332, 1352).

When the last emergency petition of the day was called, Respondent stood up and, from a distance of three to four feet, yelled at Ms. Vroman that she was not doing her job properly, she was too slow and she needed to move faster (Tr 327-28). Ms. Vroman, who had no control over how many petitions were filed or how long it took for the petitions to get from the courthouse receptionists downstairs to her in the courtroom, was "flabbergasted" by Respondent's conduct toward her (Tr 325, 327).

Very upset by Respondent's behavior, Ms. Vroman reported the incident to her supervisors, Deputy Chief Clerk Margaret Raftis and Chief Clerk Singer, including documenting it in writing (Tr 329-30, 371). Subsequently, Ms. Vroman learned that Respondent discovered she had made a complaint about him (Tr 330).

Indeed, after learning that Ms. Vroman "may have written a letter to [Ms. Singer]" about "certain issues" regarding Respondent, "the contents of which [Respondent was] uncertain," Respondent wrote his own letter, dated March 1, 2017, to Ms. Singer complaining about Ms. Vroman (Resp Ex V). Ms. Singer investigated the various issues raised by Respondent, including his complaint that Ms. Vroman typed too loudly, and as she detailed in a written response, found his complaints to be, with a few fixable exceptions, mostly unfounded (Tr 372-73; Ex 12; Resp Ex V). In response to Respondent's complaint that Ms. Vroman's "lack of proficiency" caused court cases to

run over designated times, Ms. Singer noted that the "more important" reason for such problem was that Respondent "consistently start[ed] the morning and afternoon calendars 30-45 minutes late [which] create[d] a situation that [was] nearly impossible to recover from and it also impact[ed] the rest of our courtrooms" (Ex 12, p 2, ¶5).

Ms. Singer also addressed Respondent's complaint that Ms. Vroman failed to take into consideration his "physical therapy and personal time" when scheduling cases by noting that Supervising Family Court Judge Rita Connerton had already advised him, prior to the date of his letter about Ms. Vroman, to put his scheduling guidelines in writing and give them to Ms. Singer, so she could share them with Ms. Vroman and Respondent's entire team, to allow everyone to know exactly when Respondent had physical therapy appointments and needed personal time (Ex 12, p 2, ¶4). Ms. Singer noted that, to date, she had not received his scheduling guidelines (Ex 12, p 2, ¶4).

Ms. Singer concluded that the real reason Respondent complained about Ms. Vroman was to retaliate against her for her complaint about him (Tr 373). Respondent never apologized to Ms. Vroman for his behavior in the courtroom and his demeanor toward her was "very cold" after the incident (Tr 330).

J. Respondent threatened the physical safety and wellbeing of Mr. Kachadourian and Ms. Gallagher.

In early 2015, on an occasion when he was walking at the Oakdale Mall with James Stilloe, Respondent telephoned Mr. Kachadourian (Tr 49-50, 52-53). Respondent said, "I've got somebody I want you to speak to," and handed the phone to Mr. Stilloe, who told Mr. Kachadourian if either he or Ms. Gallagher crossed Respondent, they would

have to answer to Mr. Stilloe (Tr 49-50, 53). Mr. Kachadourian was speechless and Mr. Stilloe's threat caused him to be concerned for his personal safety (Tr 49-50).

In various conversations with Mr. Kachadourian and Ms. Gallagher, Respondent referred to friends, including Marty Shaw, David English, Frankie Saraceno, Mr. Iannone and James Stilloe, whom Respondent called his "enforcers," and who Respondent said would do anything for him (Tr 50-53, 571-73). Respondent's friendships with these individuals, and his comments about their criminal histories and/or prior bad acts and what they would do for Respondent, caused Mr. Kachadourian and Ms. Gallagher to be concerned for their personal safety (Tr 49-53, 571-73).

Respondent told Mr. Kachadourian that Mr. Shaw was "just out of Attica," a reference to Mr. Shaw's prison sentence on a conviction for two counts of Robbery in the first degree (Tr 52, 910-11, 917-18). Mr. Stilloe was convicted of Falsely Reporting an Incident (Tr 860, 872). Respondent told Ms. Gallagher that Mr. Iannone had a juvenile conviction for threatening to kill a judge (Tr 280, 573, 821). Respondent acknowledged that Mr. English "may" have a criminal record (Tr 821). On one occasion, Mr. Kachadourian overheard a conversation on speaker phone between Respondent and Frankie Saraceno, in which Mr. Saraceno – who Respondent had tasked with collecting a debt owed to Respondent and who then failed to turn over the collection to Respondent – pleaded with Respondent to call off Mr. English, who Respondent had directed to retrieve the debt from Mr. Saraceno (Tr 50-51).

In April or May 2017, in chambers, Respondent engaged in a telephone conversation with Jerry Penna, with the speaker phone function activated, such that Mr.

Kachadourian and Ms. Gallagher heard Respondent say that he had "cement boots" in their shoe sizes and that, if they ever betrayed him, they "would be found at the bottom of the river" (Tr 54, 571).

In March 2018, Broome County Supreme Court Justice Molly Fitzgerald informed Ms. Gallagher that there was credible evidence that David Iannone had received a pistol permit and had threatened to put a bullet through the heads of Ms. Gallagher and Mr. Kachadourian (Tr 589-90). As a result of the threat, a court officer was stationed at the rear exit of the county building, near Ms. Gallagher's office (Tr 590, 1199, 1205).

K. Respondent was reassigned from presiding over Family Court matters to handling foreclosure matters after allegations of his inappropriate behavior were reported to the Office of Court Administration.

Beginning in mid-to-late 2015, Ms. Gallagher began seeking the guidance and assistance of Ms. Singer with respect to Respondent's behavior (Tr 363, 568-71). While her early complaints related to his being overly controlling (Tr 363), around the summer 2016 Ms. Gallagher's complaints about Respondent's conduct alleged sexual harassment and, eventually, a death threat (Tr 360, 363-64). Each and every time Ms. Gallagher came to Ms. Singer about Respondent, she prefaced her remarks by asking Ms. Singer not to say anything for fear of retaliation and concluded their conversations by reiterating, "Please don't say anything" (Tr 404).

Mr. Kachadourian began coming to Ms. Singer to express his concerns about Respondent's conduct sometime later in 2016 (Tr 364). Initially, Ms. Singer advised Ms. Gallagher to retain a lawyer, speak to her union and/or report her complaints up her chain of command (Tr 364-65). In about June 2017, Ms. Singer reported their complaints

about Respondent's sexual harassment and violent threats to her supervisor, District Executive Gregory Gates (Tr 357, 360). On July 11, 2017, after completion of an investigation by the Office of the Inspector General for the Unified Court System, Respondent was locked out of his chambers by court administrators and reassigned from presiding over Family Court matters to handling foreclosure matters in another building (Tr 48-49, 813-14, 1346, 1375, 1418-19).

L. Respondent's Testimony at the Hearing.

Respondent adamantly denied each and every allegation that he made any inappropriate sexual comments to or about Ms. Gallagher, Ms. L[redacted], Ms. Wojdat and Ms. L[redacted] (Tr 1371, 1392-96, 1398, 1463). Respondent maintained that he mentioned Ms. Wojdat to Mr. Kachadourian only in respect to stating she would have been a good secretary (Tr 1463). Respondent acknowledged that Mr. Penna had visited him in chambers but denied speaking with him about Ms. L[redacted] (Tr 1482).

Respondent also denied making any of the inappropriate sexual comments alleged by Ms. Singer, notwithstanding that he considered her to be a "truthful," "honest," "classy" and "professional" person (Tr 819, 1399, 1476). He denied engaging in conversations with Mr. Iannone about Mr. Iannone's sexual experiences with Ms. L[redacted], although he acknowledged having called Mr. Iannone from his office and that he would sometimes use the speakerphone function (Tr 1394-95, 1478-79). Respondent denied that he displayed a photograph purporting to depict Ms. L[redacted]'s nude torso to Mr. Kachadourian (Tr 1394-95, 1480). Respondent denied that he displayed photographs

or drawings of nude females to Mr. Kachadourian or Ms. Gallagher (Tr 1394, 1398, 1480).

Respondent testified that, at Mr. Kachadourian's suggestion, he asked Senator Akshar for his cell phone number but failed to get it during their trip to Albany (Tr 1474). However, he denied he was upset about it and denied stating that he wanted Ms. Gallagher to perform sexual favors for the senator (Tr 1398-99, 1474-76).

Respondent denied calling Ms. Vroman "fat" or "ugly" (Tr 1397) and denied that, on February 6, 2017, he loudly or angrily admonished Ms. Vroman (Tr 1397-98). Respondent denied making any threatening comments to Ms. Gallagher or Mr. Kachadourian (Tr 1392-94, 1396).

Notwithstanding that, as Respondent's personal appointees, Mr. Kachadourian and Ms. Gallagher were dependent upon Respondent for their positions, Respondent claimed that they fabricated these allegations against him because they had "work performance issues" and because they believed that they would be terminated (Tr 1373-74, 1444-45). He conceded, however, that he didn't tell either Mr. Kachadourian or Ms. Gallagher that he wanted to terminate Ms. Gallagher (Tr 1463). The only time that Respondent made any inquiry about terminating Ms. Gallagher and Mr. Kachadourian was on July 10, 2017 – the day before court administrators reassigned him out of Family Court and after the secretary and attorney had already been interviewed by the Inspector General's Office (Tr 1360, 1370-73). Respondent also maintained that Mr. Kachadourian and Ms. Gallagher fabricated the allegations in order to bring a federal lawsuit against him for monetary gain (Tr 1374, 1428-29).

Respondent did not address why Ms. Singer or Ms. Vroman would have fabricated their testimony about Respondent's inappropriate behavior toward them (Tr 1428, 1476). Nor did Respondent offer any testimony as to why Ms. L[redacted] would fabricate her testimony about Mr. Iannone showing her a photograph of a nude woman, wearing an elephant pendant necklace like one Ms. L[redacted] owned, which Mr. Iannone told her he had shown to Respondent.

Although Respondent had an opportunity to select a number of others to appoint as his personal secretary when he was elected to Family Court, Respondent claimed that he chose Ms. Gallagher solely because he "felt sorry for her," notwithstanding that she had served for 10 years as his chief court clerk at Johnson City Village Court and Respondent believed that she had done a "good job" there (Tr 1303, 1312, 1325-27). Respondent acknowledged that when he appointed Ms. Gallagher, he was aware that a hostile workplace claim had been filed against her while at the Johnson City Village Court (Tr 1312, 1325, 1328).[3]

Respondent claimed that he neither drafted nor reviewed performance evaluations of Ms. Gallagher and Mr. Kachadourian, giving them glowing reviews, sent from his court email address, in January 2016 and January 2017, to District Executive Gates and Judge Robert C. Mulvey (Tr 1367-70; Resp Ex NN). Respondent maintained that Mr.

[3] Ms. Gallagher testified that, while at Johnson City Village Court, another employee named Kim Cunningham made a complaint against her, the allegations of which were unknown to Ms. Gallagher (Tr 691-93). To Ms. Gallagher's knowledge, the result of the complaint was that the allegations were unfounded but that she was recommended to attend one session of some sort of counseling, which she did (Tr 693).

Kachadourian sent these evaluations without Respondent's knowledge or consent (Tr 1369-70).

Charge II: Respondent lent the prestige of judicial office to advance his own private interests and/or the interest of others, and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that, on multiple occasions, he importuned chambers staff to perform services unrelated to their official duties, including prohibited political activity.

From in or about November 2015 through May 2017, Respondent importuned his court staff to assist him with tasks related to his private law practice and to engage in political activity for his own judicial campaign and for the campaigns of friends and relatives.

A. Background on Respondent's Prior Legal Practice.

From 1994 to 2014, Respondent maintained a private legal practice located at 2[redacted] North Street in Endwell, New York (Tr 824-25, 1032, 1300-02). After Respondent's election to the Family Court, his former legal assistant, Danuta "Donna" Filip continued to work at the 2[redacted] North Street law office for Artan Serjanej, Esq., who came to occupy the space and took over some of Respondent's files (Tr 60, 595, 812, 825 1035).

One of the files from Respondent's private practice that was still open and pending after January 1, 2015, was the *Estate of Roger Funk* (Tr 824, 832-34).

B. Respondent directed his court secretary to write correspondence to the executor of the *Estate of Roger Funk* to obtain payment for his legal services.

On November 6, 2015, Respondent picked up the mail from his former law office and brought it to chambers (Tr 1488). Later that day, he walked into Ms. Gallagher's office and opened the law office mail, which included an envelope addressed to Mr. Serjanej from Thomas Hayes that contained three unsigned checks (Tr 71-72, 597; Ex 2V, p 2). The three unsigned checks were drawn from the *Estate of Roger Funk* (Ex 2V, p 2). One of the checks was payable to Respondent in the amount of $11,184.60 (Ex 2V, p 2). A second unsigned check was payable to Ms. Filip in the amount of $2,275.00 (Ex 2V, p 2). On both checks, the "For" and signature lines were blank (Ex 2V, p 2).

When he realized that the checks were not signed, Respondent became upset and directed Ms. Gallagher to photocopy the checks and the envelope that they came in, and to write a brief letter returning the three checks to Mr. Hayes for his signature (Tr 71-72, 597). He also told Ms. Gallagher to draft the letter as if Ms. Filip were the author and sender (Tr 598). Respondent explained to Ms. Gallagher that he was receiving payments for legal services he performed "on old files" (Tr 836).

Ms. Gallagher typed the letter at her desk and made a couple of edits at Respondent's direction (Tr 72, 745, 597). She then gave the letter, original checks and photocopies back to Respondent (Tr 598). Respondent received his "unpaid legal fee" in the form of two checks dated December 1, 2015, and signed by Mr. Hayes in the amounts of $5,384.00 and $5,800.60 (Ex 2W).

Respondent's request that Ms. Gallagher type a letter for his private law practice is consistent with his general practice of using court resources for personal benefit. Respondent told Ms. Gallagher to make copies of documents for his personal use "on a daily basis" (Tr 226, 596, 599, 600, 603). He directed Ms. Gallagher to accompany him to 2[redacted] North Street to make copies, and he told his chambers staff to take files from his former law office to be photocopied at an off-site location (Tr 596, 655-656, 738). In April 2016, while in his judicial chambers, Respondent ordered Ms. Gallagher to assist him with his taxes (Tr 554, 739, 770). And on at least one occasion, Mr. Kachadourian expended time and money to collect and photocopy documents and later FedEx the items to Respondent's counsel concerning a private legal matter (Tr 177-78, 234-35).

C. In 2016 and 2017, Respondent asked his personal appointees to engage in political activity for his personal benefit and that of his friends and relatives.

"Pretty much from the beginning" of his Family Court term, Respondent asked Ms. Gallagher and Mr. Kachadourian to engage in political activity (Tr 592-93, 772). Respondent asked Ms. Gallagher to maintain lists of names for future political campaigns (Tr 727, 736), such as lists of Family Court staff and others he met that included their voter registration status (Tr 592). The list-making continued in November 2015 and into 2016 until Ms. Gallagher no longer had time to maintain it (Tr 736). Respondent also asked Mr. Kachadourian to maintain a list of individuals that Respondent believed "would benefit him politically" in "future campaigns" (Tr 57). Mr. Kachadourian did not follow Respondent's directive (Tr 57).

In May 2016, Respondent requested that Ms. Gallagher perform campaign work with Respondent's mother and offered up the services of his chambers staff to George Phillips who ran for political office in 2016 (Tr 772). Respondent spoke to Mr. Phillips on the phone and told him that his "team" would work for his campaign (Tr 772).

In or about August 2016, Respondent told Ms. Gallagher that she needed "to make [her] office a campaign office" (Tr 592, 772). In the spring of 2017, Respondent told Ms. Gallagher that she should run a campaign office in the Broome County Family Court for a prospective judicial campaign by Mr. Serjanej (Tr 593, 764).

In June 2017, Respondent demanded that Ms. Gallagher collect signatures for the designating petition of Richard Balles, Respondent's brother-in-law (Tr 57, 593, 965) who ran for mayor of Johnson City in the fall of 2017 (Tr 57, 593, 823). Ms. Gallagher did not collect the signatures because Mr. Kachadourian told her that they were not permitted to do so (Tr 594). When Respondent returned from a work-related trip, he called Mr. Kachadourian "very upset," causing Mr. Kachadourian to think that someone had been hurt (Tr 57). Instead, Respondent was "very angry" that Ms. Gallagher had not collected any signatures for his brother-in-law (Tr 57, 594). Earlier in the year, Mr. Balles had visited Respondent's judicial chambers to have photographs taken for his mayoral campaign (Tr 593, 772).

D. Respondent asked his court attorney to help him finalize the *Estate of Jerry J. Behal, Jr.*

In early 2017, Respondent told Mr. Kachadourian that the Broome County Surrogate's Court had requested a formal accounting in the *Estate of Jerry J. Behal, Jr.* (Tr 61-63). Respondent did not have the required form and asked Mr. Kachadourian to find an attorney to produce the formal accounting and to obtain the form (Tr 61, 63). During their conversation, Respondent showed Mr. Kachadourian emails that were sent to "Rick," "Donna" and the estate executor "Dave Behal" (Tr 62-64, 67-68; Ex 4III). The email address associated with "Rick" was [redacted]@aol.com, Respondent's personal email address that he used both prior to and after becoming a Family Court judge (Tr 848, 1376). Mr. Kachadourian did not obtain the form or find an attorney to produce the accounting (Tr 63). Eventually, Respondent obtained the forms he needed from a different attorney (Tr 63).

E. Respondent's Testimony at the Hearing.

Regarding the letter to Mr. Hayes, Respondent testified that he went to his former law office and picked up an open letter addressed to Mr. Serjanej (Tr 1490). He did not open the letter until later in the day, after court, when he had returned to his chambers (Tr 1488, 1490). When he opened the envelope and saw the checks inside, he told Ms. Gallagher, "The checks aren't signed" (Tr 1454, 1488). According to Respondent, the two had a "brief discussion" during which Respondent explained that the checks were compensation for work that he did prior to becoming a judge (Tr 1456-57, 1488) and Ms. Gallagher "volunteered" to draft the letter to Mr. Hayes (Tr 1400, 1454-55, 1456-58). Respondent "[didn't] think" that he told Ms. Gallagher to write the letter as if Ms. Filip

were the author and sender (Tr 1455-56). Respondent conceded that it would be improper to direct Ms. Gallagher to type such a letter (Tr 1459). Respondent took the letter to Mr. Serjanej's office because it "had to go out from the law office" (Tr 1401, 1458). He was paid by checks dated December 1, 2015 (Tr 1463-64).

Respondent denied asking Ms. Gallagher or Mr. Kachadourian to engage in any political activity (Tr 1399). He agreed it would be improper to ask his court secretary to keep a list of names for political purposes (Tr 1459) but maintained he did not ask Ms. Gallagher to do so (Tr 1399-1400). Respondent denied asking Mr. Kachadourian or Ms. Gallagher to assist his brother-in-law's campaign (Tr 1400-01) and denied ever telling his chambers staff that he wanted his chambers to be a campaign office (Tr 1401).

Charge III: As a full-time judge, Respondent engaged in the practice of law and/or conveyed the impression that he was still engaged in the practice of law in the *Estate of Antoinette Saraceno* and the *Estate of Jerry J. Behal, Jr.*

Notwithstanding his status as a full-time Family Court judge, Respondent engaged in the impermissible practice of law, or appeared to do so, with respect to two estate files from his former private law practice that remained pending after he took the bench.

A. Transition from Private Practice to Family Court Bench.

After practicing law for two decades, Respondent had accumulated "many files," some of which remained pending after he assumed the Family Court bench (Tr 824). On the advice of Mr. Kachadourian, Respondent met with David Kapur, Esq., and discussed transferring his client files to Mr. Kapur (Tr 823). Mr. Kapur spent $1,000 to run advertisements in local newspapers that informed Respondent's clients that he would be

handling their legal matters (Tr 133-34). Ultimately, however, Respondent gave Mr. Kapur only a dozen of his open files (Tr 133, 824-25), while the majority remained with Mr. Serjanej, who took over Respondent's law office space in the first quarter of 2015 (Tr 133, 823, 825, 1032).

Artan Serjanej has known Respondent since 2001 (Tr 1029). Mr. Serjanej has a solo practice (Tr 1027-28) concentrated in the areas of criminal law, family law and real estate law (Tr 1029, 1034-35). Prior to taking over Respondent's law office, Mr. Serjanej had not practiced trusts and estates law as a solo practitioner (Tr 1102). He currently serves as a "family attorney" for Respondent, and Respondent's wife, mother, and brother-in-law (Tr 1035). Mr. Serjanej pays taxes, utilities and insurance at 2[redacted] North Street in lieu of rent (Tr 825, 1031).

After Respondent's election to Family Court, his former legal assistant Donna Filip continued to work at the 2[redacted] North Street law office for Mr. Serjanej (Tr 60, 595, 812, 1035). After he took the Family Court bench, Respondent continued to speak to Ms. Filip on a near daily basis, sometimes multiple times a day (Tr 595, 752). She also came to Respondent's judicial chambers to bring him files from his former law office on North Street (Tr 595). In his first month in office, Ms. Gallagher heard Respondent "screaming and yelling" at Ms. Filip on the phone about various files (Tr 653).

Even after Respondent transferred his practice to Mr. Serjanej, he went to 2[redacted] North Street on a "constant basis" (Tr 29). During these visits, Respondent worked on legal cases, for at least an hour, with Ms. Filip and/or Mr. Serjanej (Tr 60, 173, 176, 229-30). Once, Mr. Kachadourian told Respondent that by continuing to perform legal work

he was jeopardizing his elected Family Court position, which he likened to signing a $2 million contract (Tr 60-61, 172). Nevertheless, Respondent's visits to his former law office "continued and continued" (Tr 61). On at least 30 occasions, Respondent told Mr. Kachadourian to accompany him to his former law office during lunch, and once there Respondent worked on legal cases (Tr 59-60, 176).

Two of the estates that Respondent worked on after he assumed the bench were the *Estate of Antoinette Saraceno* and the *Estate of Jerry Behal, Jr.* (Tr 61).

B. *Estate of Antoinette Saraceno.*

Antoinette Saraceno died on October 15, 2010, leaving an estate with an approximate value of less than $150,000 (FWC ¶35; Ans ¶35; Ex 5B, p 4, Ex 5H, p 4). In her will, Ms. Saraceno directed that Respondent "be retained to assist" the executor with the administration of her estate (Ex 5D, p 4).

1. Respondent's involvement with the *Estate of Saraceno* prior to being elected to Family Court.

On December 10, 2010, Respondent filed a Petition for Probate in the Tioga County Surrogate's Court in the *Estate of Antoinette Saraceno* (FWC ¶35; Ans ¶35; Exs 5B, 5C). After two of Ms. Saraceno's brothers renounced their nominations, Frank Saraceno, Sr., became the alternate executor (Ex 5F).

In April 2011, John I. Saraceno, Jr., an estate beneficiary, filed a letter with the Tioga County Surrogate's Court alleging, *inter alia,* that Respondent, Frank Saraceno, Sr., and Frank Saraceno, Jr., altered Ms. Saraceno's will (Ex 5P). A hearing was held on April 15, 2011 (Exs 5L, 5N) before Tioga County Surrogate Judge Vincent Sgueglia,

who granted Frank Saraceno, Sr., preliminary letters testamentary "with limitations" (Exs 5Q, 5R, 5S) and gave John Saraceno, Jr., 30 days to file objections (Ex 5Q).

On May 9, 2011, John Saraceno, Jr. filed his objections (FWC ¶36; Ans ¶36; Ex 5T) but he did not serve his objections on Respondent until June (Ex 5AA). On August 26, 2011, Judge Sgueglia granted Respondent's motion for an order dismissing the objections (FWC ¶36; Ans ¶36; Exs 5Y, 5AA), signed a Decree Granting Probate and issued Letters Testamentary to Frank Saraceno, Sr. (Exs 5BB, 5CC).

The following year, on March 1, 2012, the Surrogate's Court advised Respondent that an inventory of assets had not been filed (Ex 5EE). Respondent filed the inventory on March 1, 2012 (FWC ¶37; Ans ¶37; Ex 5FF) and on April 6, 2012, Respondent received his legal fee in the amount of $6,960.00 (FWC ¶38; Ans ¶38; Ex 5UU).

More than a year later, on September 12, 2013, the court directed Respondent to explain why the estate had not been fully distributed or, in the alternative, explain why a final accounting had not been filed (Ex 5HH). Three months later, on December 27, 2013, the court faxed Respondent a letter requesting an inventory (Ex 5II). There was no further correspondence until March 20, 2014, when the chief clerk sent Frank Saraceno, Sr., a Citation directing him to appear in court on May 2, 2014 to explain why his Letters Testamentary should not be suspended or revoked (Ex 5JJ).

Ms. Filip called the court on April 7, 2014 and told Chief Clerk Deborah Stone that the inventory would be filed (Ex 5A, p 5). Nearly four months later, on July 28, 2014, Respondent filed a form with the court in which he requested additional time to

collect "all the receipts, releases and discharges of beneficiaries" (Ex 5LL, p 2). Thereafter, nothing further was filed by Respondent in Surrogate's Court.

2. Respondent's involvement with the *Estate of Saraceno* after being elected to Family Court.

On August 2, 2016, more than a year after Respondent assumed the Family Court bench, Kiyoko "Kiki" Matsuhashi, a clerk in the Surrogate's Court, emailed Respondent a warning letter requesting that he "immediately" file an inventory (Tr 424, 448-49; Exs 5A, p 4, 5MM). Ms. Matsuhashi also mailed the August 2nd letter to Frank Saraceno, Sr. (Tr 449; Ex 5MM).

On August 15, 2016, Ms. Matsuhashi spoke to Barbara Saraceno, the executor's wife (Tr 427-28; Ex 5A, pp 3-4). At the time of the call, Frank Saraceno, Sr., was in a nursing home and Mrs. Saraceno opened mail addressed to her husband (Tr 474-75; Ex 5A, p 4). Mrs. Saraceno recalled that the court called her multiple times because the estate "was not resolved yet" (Tr 475). Mrs. Saraceno told Ms. Matsuhashi that she spoke to Ms. Filip who told her that Respondent had become a judge and was "no longer practicing" (Exs 5A, p 4, 5NN).

On October 10, 2016, Mrs. Saraceno called Respondent on his cellphone or at his prior law office (Tr 477). Respondent made a contemporaneous note in his DayMinder calendar that said "Saraceno" (Tr 852). Mrs. Saraceno told Respondent that she had received a letter from the Surrogate's Court "that things weren't filed" and the estate was not finalized (Tr 477). Respondent told Mrs. Saraceno that everything would be "taken care of and not to worry about it" (Tr 475, 477).

Two days later, on October 12th, Respondent called Ms. Stone at Tioga County Surrogate's Court (Tr 424-25). In his DayMinder, Respondent wrote "Frank Saraceno" and circled it (Tr 852-53). He also made the notation "Donna office" and circled the time of 5:15 (Tr 853).

During the telephone conversation with Ms. Stone, Respondent told her that one beneficiary, Greg Saraceno, would not sign a waiver and asked how to close the estate (Tr 425; Ex 5A, p 3). Ms. Stone told Respondent that if he could not get a beneficiary to cooperate, he may need to file a formal accounting (Tr 425; Ex 5A, p 3).

Respondent requested that Judge Gerald A. Keene close the estate "by motion" (Ex 5A, p 3; Tr 425). Ms. Stone understood Respondent to be making a request that the estate be informally closed because he could not obtain all of the required documents and did not want to file a formal accounting (Tr 425). On October 14, 2016, Ms. Stone called Respondent who "had left a phone number for me to return his call" (Tr 426) and informed him that Judge Keene was requiring a formal accounting (Tr 426; Ex 5A, p 3). Respondent responded "Okay" and the conversation ended (Tr 426). He did not file a formal accounting (Tr 426).

On December 16, 2016, Mrs. Saraceno called the surrogate's court and asked Ms. Stone if Respondent had "filed anything since he told [her] he would finish it up" (Ex 5A, p 3). Ms. Stone told Mrs. Saraceno that a substitution of attorneys "was going to be filed but nothing has been filed yet" (Ex 5A, p 3). On March 28, 2017, Ms. Matsuhashi emailed Respondent a letter "directing" him to "immediately" file a statement pursuant to

Rule 207.42 and any outstanding releases and advising that if he did not do so, the court might revoke the Letters Testamentary and demand a formal accounting (Ex 5PP).

By letter dated January 29, 2018, Artan Serjanej filed a Notice of Appearance in the matter (Exs 5RR, 5SS). Mr. Serjanej finalized the estate on January 4, 2019, just six days before his hearing testimony (Tr 1038). He was not paid for his work in closing out the estate (Tr 1041).

C. ***Estate of Jerry J. Behal, Jr.***

Jerry J. Behal, Jr. died on October 11, 2011, in a motorcycle accident and his brother, David Behal, was appointed to serve as the estate executor (FWC ¶46; Ans ¶46; Ex 4C, p 1; Tr 1116). David Behal and Respondent have been friends since they were four years old and Respondent served as a best man in Mr. Behal's wedding (Tr 847,1116).

1. Respondent's involvement with the *Estate of Jerry Behal* prior to being elected to Family Court.

On October 26, 2011, Respondent filed a petition for probate in the Broome County Surrogate's Court on behalf of Mr. Behal (Ex 4C). There were six beneficiaries of the estate: five of the decedent's nieces and nephews, and a friend of the decedent's (FWC ¶46; Ans ¶46). In November 2011, the decedent's will was admitted to probate (FWC ¶46; Ans ¶46).

In July 2014, Respondent filed a petition on behalf of Mr. Behal for an order authorizing the executor to settle a claim for $100,000 for the wrongful death of the

decedent (FWC ¶47; Ans ¶47). In December 2014, Respondent filed an attorney's affidavit in support of the petition (FWC ¶47; Ans ¶47).

2. Respondent's involvement with the *Estate of Behal* after being elected to Family Court.

By Order dated January 23, 2015 – three weeks after Respondent became a Family Court Judge – Surrogate David Guy approved the settlement (Ex 4Z). The estate received the settlement proceeds on April 20, 2015 (Ex 4PP, p 5). On March 20, 2015, Mr. Behal signed a Consent to Change Attorney, substituting Mr. Serjanej to represent him in connection with the personal injury action (Ex CC). However, Mr. Serjanej did not file a Notice of Appearance with the surrogate's court until November 23, 2015 (Ex 4CC). Mr. Behal selected Mr. Serjanej to take over the estate based on Respondent's recommendation (Tr 1049, 1117).

On October 13, 2015, Donna Ougheltree, one of the beneficiaries, filed a petition requesting a Compulsory Accounting and Judge Guy ordered Mr. Behal to file an Account by March 31, 2016 (Exs 4AA, 4BB, 4EE). On April 29, 2016, Mr. Serjanej requested and received an extension to file the accounting until May 31, 2016 (Exs 4FF, 4GG).

On September 21, 2016, after Mr. Serjanej failed to file the accounting, Surrogate Guy ordered Mr. Behal to file the accounting by October 7, 2016, or he would be removed as executor (Ex 4II). On the same date that Judge Guy issued his order, Robert Wedlake, Esq. filed a Notice of Appearance on behalf of Joshua Behal, a beneficiary (Ex 4HH).

On October 7, 2016, Mr. Serjanej requested another extension due to the pending sale of a piece of real property (Ex 4JJ) and the Surrogate extended the deadline to November 21, 2016 (Ex 4KK).

In October 2016, Respondent called Mr. Wedlake about an unrelated matter (Tr 513), and Mr. Wedlake asked Respondent about the *Behal* estate (Tr 506). Mr. Wedlake was seeking information to help him advise his client (Tr 514), who was concerned because the estate had been open for five years without any distributions (Tr 490, 506). Mr. Wedlake also expressed concern that Mr. Serjanej "was not experienced" in estate matters and struggled with handling the estate (Tr 507, 516). For months, Mr. Wedlake tried unsuccessfully to communicate with Mr. Serjanej about the estate (Tr 504). Instead, whenever he called the law office, Mr. Wedlake spoke to "Donna" (Tr 503-04). Ms. Filip even appeared at an attorney conference (Tr 505). Respondent told Mr. Wedlake that Mr. Behal was a friend who would not steal money from the estate (Tr 507).

Mr. Serjanej did not file an accounting; Surrogate Guy scheduled an attorney conference on December 19, 2016 (Ex 4LL) and subsequently issued an Order directing Mr. Behal to file an accounting by May 19, 2017 or he would be "removed as executor of the estate without further notice" (Ex 4NN).

Between March 2017 and May 9, 2017, Mr. Behal emailed Respondent and Ms. Filip multiple times, sending spreadsheets containing estate accounting records; Mr. Serjanej was not copied on the emails (Tr 848, 1106; Ex 4III). At some point, Respondent showed Mr. Kachadourian the emails from Mr. Behal containing the estate

accounting, and asked Mr. Kachadourian to find an attorney to complete the accounting and to find the proper forms for the account (Tr 61, 63).

On May 10, 2017, Mr. Behal drove from his home in Virginia to Johnson City, NY (Tr 1137). The following day, May 11, 2017, he met with Ms. Filip and Mr. Serjanej at 2[redacted] North Street to go over the estate accounting (Tr 1137).

On May 12th, Mr. Behal went to Respondent's chambers (Tr 63, 178-79, 848, 1138). When Mr. Behal arrived, Respondent was in court (Tr 1138) and Mr. Kachadourian met Mr. Behal at the public entrance and escorted him to Respondent's chambers (Tr 1138-40). On the way back to chambers, the two coincidentally saw Mr. Serjanej in the lobby (Tr 232, 1139). Mr. Behal told Mr. Kachadourian "how dissatisfied he was with [Mr. Serjanej's]" handling of the estate (Tr 232).

When Respondent returned to his chambers, Mr. Kachadourian observed him going over the accounting with Mr. Behal (Tr 63, 185). Mr. Kachadourian overheard Respondent tell Ms. Filip that he wanted "his regular attorney fees" (Tr 64). Respondent and Mr. Serjanej were going to split the fee after assessing what monetary expenses and time Respondent contributed toward the estate versus Mr. Serjanej's contributions (Tr 1152-53).[4]

The accounting filed by Mr. Serjanej on May 26, 2017 was rejected by Judge Guy as insufficient on June 15, 2017 (Exs 4PP, 4QQ). An amended accounting was not

[4] Evidence adduced at the hearing did not support the allegation in ¶59 of the Formal Written Complaint that "[o]n or about May 22, 2017, Respondent worked on the Behal estate accounting at his former law office. Respondent had not yet been paid his legal fee." Commission counsel withdraws that specification.

subsequently filed and Surrogate Julie A. Campbell signed a Citation on October 16, 2017 requiring the parties to appear in court (Ex 4TT). A trial was held in the summer of 2018 and the parties reached a settlement (Tr 512, 1051). Mr. Serjanej was paid $10,950.32 as the entire legal fee; there is no current plan for Respondent to be paid for his portion of the work in the estate (Tr 1104-06; Ex 4HHH).

D. Respondent's Testimony at the Hearing.

Respondent testified that while he was in private practice he accumulated hundreds of files, some of which were pending when Respondent became a Family Court judge (Tr 1432). Respondent testified that Mr. Kachadourian suggested that David Kapur, Esq., take over the files (Tr 1306, 1432). Respondent confirmed that Mr. Kapur ran an advertisement in the newspaper to notify clients that he would be taking over Respondent's files, but ultimately Mr. Kapur only "took certain files" (Tr 1306). Attorney Brett Noonan took "some of the files" and the remainder remained at his law office with Mr. Serjanej (Tr 1306, 1308, 1313).

Respondent acknowledged that Ms. Filip had served as his legal secretary and he conceded that he maintained contact with her after he became a Family Court judge (Tr 1400, 1433). He continued to visit his former law office for "personal legal matters" that Mr. Serjanej handled for Respondent and other members of his family but estimated that he went there no more than 20 times after January 2, 2015 (Tr 1436-37).

Respondent denied engaging in the practice of law and/or conveying the appearance that he was still engaged in the practice of law (Tr 1401), which he knew was prohibited (Tr 1431). He conceded that the Commission previously censured him for

conflicts between his judicial office and his private legal practice (Tr 1433). Respondent acknowledged that he went to his former law office on multiple occasions concerning personal legal matters that Mr. Serjanej was handling (Tr 1436-37). Respondent denied that Mr. Kachadourian told him, in sum or substance, that he was jeopardizing a $2 million contract by practicing law as a full-time judge (Tr 1432-33).

Respondent testified that he did not do any work, receive any payments, or provide any advice on the *Saraceno* estate after January 1, 2015 (Tr 1319-21). Respondent acknowledged that he spoke to Mrs. Saraceno on the telephone after that date, but maintained that the two did "not speak about specifics" concerning the estate (Tr 1453). He testified that he may have told her that *he* would take care of the estate for her, but he meant that Mr. Serjanej would (Tr 1320).

Respondent conceded that he had two telephone conversations with the Tioga County Surrogate's Court concerning *Saraceno* (Tr 1318). The first occurred on October 12, 2016 (Tr 1318-19). Respondent testified that he "may" have given the Tioga County Surrogate's Court "a courtesy call" to inform the court that he was a Family Court judge (Tr 1316), even though he claimed "everyone knows who the judges are in each neighboring county" (Tr 1402, 1447).

Respondent acknowledged that he received "a communique" from the Surrogate's Court, but did not believe he received the letter dated August 2, 2016 (Tr 1402). Respondent stated that he was "perplexed" to have received correspondence from the court because he believed that the estate had been finalized in 2012 (Tr 1318). According to Respondent, he called the court to explain that he could not practice law and that

"another attorney would be handling the case and there's nothing I could do with it" (Tr 1316, 1402-03). Respondent allowed that he "may" have also provided the clerk with "some historical information" about *Saraceno* including that the executor was elderly and that one beneficiary would not accept a gift (Tr 1316, 1403, 1448). He also may have told the clerk that if they needed anything, they could contact him, but he did not ask for "anything to be done" on the estate (Tr 1318, 1403).

Respondent specifically denied that he asked Ms. Stone if the *Saraceno* estate could be closed by motion (Tr 1448). He claimed that he was confused to receive a call from the clerk following their October 12th conversation (Tr 1318, 1403). He conceded that if he asked the court to close the *Saraceno* estate by motion that would be an improper action (Tr 1449).

Respondent has known David Behal since the age of four (Tr 1322). The two grew up across the street from each other, and Respondent described Mr. Behal as his childhood "best friend" (Tr 1322). Respondent admitted that he performed certain legal work on the *Behal* estate through December 2014 (Tr 1405-06). Mr. Behal met with Mr. Serjanej in December 2014 and "chose to have Artan Serjanej handle the case" (Tr 1322). Respondent did not have any knowledge of, or involvement in, legal work performed in the estate after December 2014 (Tr 1406-07).

Respondent testified he met Mr. Behal on multiple occasions in his judicial office for lunch, but they never discussed the "substance of the estate" (Tr 1378, 1407-08, 1438). Respondent maintained that he did not advise or direct Mr. Serjanej in his handling of *Behal* (Tr 1323) and did not speak to Ms. Filip about the estate (Tr 1439). He

claimed that he never saw the emails sent by Mr. Behal to his AOL account, and that neither Ms. Filip nor Mr. Behal mentioned them to him (Tr 1439).

Respondent denied working on the Behal accounting at his former law office (Tr 1408). Respondent never intended to take a legal fee from his best friend and did not receive any payment for any legal work he performed (Tr 1323-24, 1445, 1490).

Charge IV: Respondent failed to file timely and accurate disclosure reports of his income from extra-judicial activities with the Ethics Commission for the Unified Court System, the Internal Revenue Service, the New York State Department of Taxation and Finance and the Clerk of the Broome County Family Court as required.

From January 2015 through the date of the Formal Written Complaint, Respondent failed to properly report legal fees and rental income he received after taking the bench on his state and federal income tax returns and his Ethics Commission Financial Disclosure Form. Respondent also failed to file a report disclosing that income with the Clerk of the Broome County Family Court.

A. Respondent received at least $27,387 in 2015 for legal work he had performed in *Estate of Deborah Brigham, Estate of Roger Funk* and on behalf of clients Jeff Jump and Alysa Durkee, which he failed to disclose when he filed his 2015 Annual Statement of Financial Disclosure with the Ethics Commission for the Unified Court System in May 2016.

Respondent was paid a total of $16,203.60 as his legal fee for his handling of the *Estate of Deborah Brigham* by three separate checks dated November 24, 2015 (FWC ¶64; Ans ¶64; Tr 841, 843-44; Ex 6Q;). According to Respondent, the estate was "pretty well done" before he took the Family Court bench, but he conceded he was still listed

with the Broome County Surrogate's Court as the estate attorney in October 2015 (Tr 842-43).

By checks dated December 1, 2015, Respondent received payment of $11,184 as his legal fee for work he had performed as the estate attorney in *Estate of Roger Funk*, which was also still pending when Respondent assumed judicial office (FWC ¶65; Ans ¶65; Tr 833-34, 839-40; Ex 2W). Respondent also received legal fees from clients Jeff Jump and Alysa Durkee, for a total amount of $27,387.60 in legal fees received by Respondent in 2015 (Ex 10C, p 1).

Respondent filed his Annual Statement of Financial Disclosure (FDS) with the Ethics Commission for the Unified Court System for calendar year 2015 on May 13, 2016 at 5:05 PM (Ex 8B, p 1). Respondent failed to disclose any of the more than $27,000 in income he had received in 2015 from legal work (Ex 8B, p 4, ¶13).

B. Respondent did not amend his 2015 Statement of Financial Disclosure to include income from the practice of law until November 2017, after he was notified by the Commission about his failure to do so.

On November 16, 2017, twelve days before his scheduled appearance before the Commission for testimony, Respondent amended his 2015 Annual Statement of Financial Disclosure to include "Income" from "former private law practice" in the Category Amount of $20,000 to under $60,000 (Ex 8D, p 4, ¶13; Tr 810, 828-29).

C. Respondent failed to report thousands of dollars of income he received from the practice of law and from rents on his Federal and State Income Tax Returns for 2015 and 2016.

Respondent failed to report tens of thousands of dollars of outside income on his 2015 and 2016 state and federal income tax returns.

1. Respondent received a total of $6,000 per year in 2015, 2016 and 2017 from the rental of the apartment at 2[redacted] North Street, Endicott.

In addition to the more than $27,000 Respondent received in 2015 for legal work in the *Funk* and *Brigham* estates, Respondent also received a check for $500 each month ($6,000 per year) from tenant Louis Micha, for the rental of the apartment upstairs from the law office at 2[redacted] North Street (Tr 523; Ex 7C). Respondent's wife is the owner of the building (Tr 828). Mr. Micha, who had been Respondent's legal client, moved into the apartment in November 2013, after his divorce (Tr 522-23). There was no lease and the rent did not include utilities (Tr 524). Dave Iannone, the "super," showed Mr. Micha the apartment and was the person he would call if there were any issues with the apartment (Tr 523-24, 832).

Mr. Micha always paid his rent by check payable to Respondent at the end of the month before the month it was due, and gave each check to Donna Filip, the legal secretary in the law office downstairs (Tr 524-25; Ex 7C). Ms. Filip would give Mr. Micha a receipt and make a copy of the check and receipt (Tr 526; Ex 7C).

Respondent told Mr. Micha to leave the rent checks with the law office (Tr 828). Respondent cashed all the checks (Tr 528).

2. Respondent received $1,400 in rent in 2015 and $9,600 in rent in 2016 from tenants David English and Michelle Caforio, for property at 3[redacted] Oakdale Road, Johnson City.

Respondent and his mother have an LLC which owns property at 394 Main Street and 3[redacted] Oakdale Road in Johnson City (Tr 830-32). Respondent had intended to turn the building at 394 Main Street into his law office but it is unoccupied (Tr 831; Ex 10C, pp 1-2). 3[redacted] Oakdale Road is a one-family residential property rented by David English and Michelle Caforio (Tr 831). Respondent received rental payments from Ms. Caforio and Mr. English totaling $1,400 in 2015 and $9,600 in 2016 (Ex 10C, pp 1, 3).

3. Respondent failed to report any of the income he received from the practice of law or his rental properties on his 2015 and 2016 Federal and State Income Tax return, notwithstanding that Respondent claimed expenses for the rental property at 3[redacted] Oakdale Road in both years.

Respondent and his wife filed joint federal and New York state income tax returns for 2015 and 2016 (Ex 9A, 9D, 9F, 9I). On his federal return, Respondent's judicial salary was reported on Form 1040, line 1 and his wife's income from partnerships was reported on line 17 and Schedule E, Part II (Ex 9A, 9F). Respondent did not report any additional income in either year, *i.e.*, none of the income from the practice of law was reported on Form 1040, line 21 (Exs 9A, 9F).

On his New York state income tax returns for 2015 and 2016, Respondent similarly reported his judicial salary and his wife's partnership income but did not report his additional income from the practice of law (Exs 9D, 9I).

For 2015, Respondent claimed expenses totaling $11,236 for 394 Main Street and 3[redacted] Oakdale Road on his federal return, but he did not report any amount of income or

rents received for these properties (Ex 9A, Schedule E). Respondent failed to list the rental property at 2[redacted] North Street (Ex 9A, Schedule E). Respondent's New York state income tax return carried over these same omissions (Ex 9D, line 11).

For 2016, Respondent took expenses totaling $5,978 for 394 Main Street and $1,107 for 3[redacted] Oakdale Road but did not list any income for Oakdale Road (Ex 9F, Schedule E). Respondent failed to list the rental property at 2[redacted] North Street (Ex 9F, Schedule E). Respondent's New York state income tax return carried over these same omissions (Ex 9I, line 11).[5]

D. Respondent did not amend his 2015 and 2016 tax returns to include the income he had previously omitted until in or about August 2017, after he was questioned by the Inspector General for the Unified Court System about the checks he had received for work he had performed in *Estate of Deborah Brigham*, and after he became aware that the Commission had subpoenaed boxes containing his financial records.

On July 11, 2017, Respondent met with his administrative judge, his supervising judge and the district administrator, who told him a complaint had been made and asked him to take some time off (Tr 813). Later that day, he learned he was locked out of the Family Court building (Tr 813-14).

[5] Commission counsel notes that although Respondent reported the value of the rental properties as assets on his Ethics Commission financial disclosure forms for years 2015 and 2016 (Exs 8B, ¶17, 8C, ¶17), he did not report his rental income from those properties on either his original (Exs 8B ¶13, 8C ¶13) or amended (Ex 8D, ¶13) financial disclosure forms. Respondent asserted that overall, his rental properties operated at a loss when the rents were reduced by expenses (Tr 829-30). However, the instruction on paragraph 13 of the disclosure form states that "Income from ... real estate rents shall be reported with the source identified by the building address ... **with the aggregate net income before taxes for each building**" (emphasis added) (Exs 8A-8D). As indicated in Respondent's amended income tax returns, 2[redacted] North Street had a net income in excess of $1,000 for both 2015 and 2106 (Exs 9C, Schedule E, 9G, Schedule E).

During the meeting, Respondent was also told that he must meet with the Inspector General's office and on July 14, 2017, he was interviewed by someone from that office (Tr 814, 1370-71). During the Inspector General's investigation, Respondent was asked about income he received for his work on the *Estate of Deborah Brigham* (Tr 1468-69).

Respondent subsequently filed amended federal and state tax returns for 2015 and 2016 on August 2, 2017 (Ex 10A).

The 2015 amended returns resulted in an increased tax liability of $9,590 and $1,925 to the IRS and New York State, respectively, (Exs 9B, 9E). For 2016, Respondent's federal tax amount remained the same after the amendment due to an increase in claimed expenses for the rental properties (Ex 9F, Schedule E). Respondent's 2016 New York state tax bill increased by $725 (Exs 9G, Schedule E, 9J).

E. Since becoming a full-time judge in January 2015, until January 31, 2019, Respondent failed to file a report of outside income with the clerk of his court, notwithstanding that the requirement was brought to his attention by the Office of Court Administration in April 2016 and by the Commission in November 2017 and May 2018.

Section 100.4(H)(2) of the Rules requires a judge to "report the date, place and nature of any activity for which the judge received compensation in excess of $150, and the name of the payor and the amount of compensation so received" and to file the report "in the office of the clerk of the court on which the judge serves." Notwithstanding that he received legal fees and/or rental income in 2015, 2016 and 2017, Respondent failed to file a report of outside income until January 31, 2019 (Tr 1387; Resp Ex PP).

On April 23, 2016, District Executive Gregory A. Gates emailed all the Sixth Judicial District judges and their secretaries a memo from Deputy Chief Administrative Judge Michael V. Coccoma, reminding them of the requirement in §100.4(H)(2) of the Rules that full-time judges must file an annual report of extra-judicial income with the chief clerk of the court on which the judge serves (Ex 18). The email was addressed to all the 6th Judicial District judges and court attorneys (Tr 1471). Respondent did not dispute that it was sent to him (Tr 1472).

Chief Clerk Debbi Singer was aware that each of the four Broome County Family Court judges was required to file an annual report of extra-judicial income with her as clerk of the court (Tr 375). Respondent did not file such a report with Ms. Singer from the time he assumed the bench in January 2015 until Ms. Singer's retirement in June 2018 (Tr. 375-76).

On November 28, 2017, when Respondent appeared for testimony before the Commission during the investigation, he was asked about his failure to file any reports with the clerk of the court; Respondent said he was not aware of the requirement (Tr 853-54). By letter dated May 30, 2018, Respondent also responded to a written inquiry from the Commission, dated May 7, 2018, concerning his failure to file any annual disclosure reports with the clerk (Exs 10B, 10C). Respondent wrote that he had not filed with the clerk because he was unaware of the requirement and believed that his Ethics Commission filing fulfilled all his obligations with respect to financial disclosure; he acknowledged he did not comply with the Rule (Ex 10C, pp 5-6).

Respondent did not file a report with the chief clerk of the Family Court until January 31, 2019, when he produced the report as an exhibit at the final day of the hearing before the Referee on the Formal Written Complaint (Resp Ex PP).

F. Respondent's Testimony at the Hearing.

Respondent acknowledged that he received and cashed the checks for his legal fees for work on the *Funk* and *Brigham* estates and that he knew how to report income from the practice of law on his Ethics Commission financial disclosure statement (FDS), having done so in 2015 for the prior calendar year of 2014 (Tr 1464). Respondent claimed that he thought he had received the funds in 2016, not 2015 (Tr 1411-12), notwithstanding that he also failed to report the income on his 2016 FDS form, which he filed on May 10, 2017 (Ex 8C).

Respondent acknowledged that he did not report the rental income he received on his FDS, but claimed he failed to so because all the properties ran a deficit as compared to the income; the deductions "always exceeded incomes" (Tr 1383, 1467).

Respondent claimed he was working with his accountant to amend his 2015 and 2016 income tax returns in April, May and June 2017, notwithstanding that they were not filed until August 2017 (Tr 1411-12, 1413, 1468). Respondent knew that the Commission was in possession of his tax records and other financial records, including the *Funk* checks, which had been in boxes taken from his chambers in July 2017 (Tr 1360-61, 1390-91). Respondent needed those records to amend his returns and got them back in July shortly before the amended returns were filed (Tr 1390). Respondent had

also been questioned by the Inspector General in July about his receipt of the *Brigham* checks (Tr 1468-69).

Respondent claimed he amended his FDS forms "when I could get into the Ethics form" and not as a result of the Commission's investigation into his failure to disclose income on the forms (Tr 1469).

As for his failure to file the annual disclosure forms with the clerk of the court, Respondent claimed he never saw the email from the district executive Gregory Gates in April 2016 (Ex 18; Tr 1470). He acknowledged that he failed to file any such disclosure until January 2019, although he had been asked by the Commission about his failure to do so back in November 2017 (Tr 1469).

ARGUMENT

POINT I

RESPONDENT ENGAGED IN A PATTERN OF INAPPROPRIATE BEHAVIOR TOWARD CERTAIN STAFF MEMBERS OF THE BROOME COUNTY FAMILY COURT BY, *INTER ALIA*, MAKING UNWELCOME COMMENTS OF A SEXUAL NATURE TO AND ABOUT THEM AND THREATENING THEIR PHYSICAL SAFETY AND WELLBEING.

Judges are required to be patient, dignified and courteous to court staff. Rule 100.3(B)(3). "Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect." *Matter of Kuehnel*, 49 NY2d 465, 469 (1980); *see also Matter of Dye*, 1999 Ann Rep 93, 94 (Commn on Jud Conduct, February 6, 1998).[6]

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

The Court of Appeals and the Commission have repeatedly sanctioned judges who subjected court staff to offensive, undignified and sexually harassing conduct. *See Matter of Shaw*, 96 NY2d 7, 9-10 (2001) (judge, *inter alia*, made inappropriate sexual remarks to his secretary); *Matter of Collazo*, 91 NY2d 251, 253 (1998) (judge, *inter alia*, passed "ribald note" and made "indelicate suggestion" about appearance of female intern); *Matter of Magill*, 2005 Ann Rep 177, 179-80 (Commn on Jud Conduct, October 6, 2004) (judge, *inter alia*, made injudicious comments about a pornographic movie); *Matter of Dye*, 1999 Ann Rep 93, 94 (judge made inappropriate sexual remarks to his secretary); *Matter of LoRusso*, 1994 Ann Rep 73, 77 (Commn on Jud Conduct, June 8, 1993) (judge engaged in course of sexual harassment including "crude and suggestive comments"). The Court and Commission have also sanctioned judges who engaged in threatening and intimidating behavior toward court staff. *See e.g. Matter of Simon*, 2017 Ann Rep 221, 252-53 (Commn on Jud Conduct, March 29, 2016), *removal accepted* 28 NY3d 35 (2016) (judge, *inter alia*, threatened and intimidated court staff).

A. Respondent engaged in a course of conduct in which he repeatedly made unwelcome comments of a highly sexual nature to and about certain Family Court staff members.

The record reflects that Respondent committed judicial misconduct by repeatedly subjecting members of Family Court staff to extremely offensive sexual comments and behavior.

On multiple occasions in 2017, Respondent made highly offensive and undignified remarks about Ms. L[redacted], one of his court assistants, often in the presence of his personal appointees, in that he:

- engaged in telephone conversations in chambers, using speaker phone, with Mr. Iannone, such that Mr. Kachadourian and Ms. Gallagher heard the two men discuss explicit and graphic details about Mr. Iannone's sexual experiences with Ms. L[redacted] (Tr 36-38, 556-59);

- asked Mr. Iannone for pictures or videos of his sexual experiences with Ms. L[redacted] and asked if he – Respondent – "could get in the lineup or get in the rotation" and "reserve a night a week for himself" with Ms. L[redacted] (Tr 38, 559);

- engaged in a telephone conversation, using speaker phone, with Mr. Penna, such that Mr. Kachadourian heard Respondent describe Mr. Iannone's sexual experiences with Ms. L[redacted] (Tr 35-36);

- had an in-chambers conversation with Mr. Penna about Ms. L[redacted]'s figure, including the size of her breasts, after which Respondent directed Ms. Gallagher to bring Ms. L[redacted] to his chambers to meet Mr. Penna, and about hairless vaginas of women from Southeast Asia (Tr 41-43, 560-64); and

- told Ms. L[redacted], after commenting that it was hot in the courtroom, that "Maybe it's because of D[redacted]" (Tr 309-10).

Perhaps most disturbingly, in chambers, Respondent showed a photograph on his cell phone to Mr. Kachadourian of the nude front torso of a woman, whom Respondent said was Ms. L[redacted] (Tr 39-40). Mr. Kachadourian recognized the woman's build as belonging to Ms. L[redacted] (Tr 39-40). Ms. L[redacted] recognized that the woman in the photograph was wearing a necklace identical to one that she owned, when her then-boyfriend Mr. Iannone showed it to her on his cellphone, identifying it as the photo he had shown to Respondent (Tr 270-71, 281-82). Whether or not the photograph actually depicted Ms. L[redacted], it was highly inappropriate for Respondent, with no legitimate purpose, to show his court attorney a photograph that Respondent said depicted a female member of the Family Court staff. Such conduct is humiliating, embarrassing and

demeaning to Ms. L[redacted], was also distressing to Mr. Kachadourian (Tr 40) and utterly unbefitting a judge.

Respondent also engaged in a pattern of other offensive, undignified and harassing conduct toward his personal appointees and Family Court staff members in that he:

- repeatedly made unwelcome personal comments to Ms. Gallagher about his lack of sexual relations with his wife and the fact that he wanted to have more sex (Tr 550-51);

- told Ms. Gallagher that people needed to satisfy his needs while, at times, pointing to his genital area (Tr 551-52);

- repeatedly commented to Mr. Kachadourian that he regretted hiring Ms. Gallagher as his secretary instead of Ms. Wojdat because Respondent had "sexual needs" and Ms. Wojdat would have satisfied those needs (Tr 29-30, 553-54);

- told Mr. Kachadourian to speak with Ms. Gallagher about "what real secretaries are supposed to do," such as satisfying Respondent sexually (Tr 30-31, 551-52, 554-55);

- said to Mr. Kachadourian, "Wouldn't it be nice to have sex with [Court Attorney L[redacted]] bent over a desk?" (Tr 43-44);

- told Mr. Kachadourian and Ms. Gallagher that he wanted Ms. Gallagher to perform sexual favors for a state senator (Tr 45-46, 565-66);

- attempted to display to Mr. Kachadourian photographs of nude women on Respondent's cell phone (Tr 41);

- gave Ms. Gallagher a folded up piece of paper containing drawings of fruit, told her to pick the "juiciest" one and then directed her to unfold the paper, revealing drawings of nude women inside (Tr 564, 694);

- told Mr. Kachadourian that he would like to ride Ms. Singer like a horse (Tr 227-28);

- told Ms. Singer that if he had known she could cook, he would have "gone for the widow" (Tr 367);

- stated to Ms. Singer, "It's nice to know I still have that effect on you," after she apologized for having a hot flash (Tr 368, 400-03) and, on another occasion, said to her, "You look really hot in that outfit" (Tr 370); and

- told Ms. Gallagher that Ms. Vroman was "fat and ugly" and that, as a result, he would be the "laughing stock" of Broome County (Tr 591).

Respondent should have known that his sexualized remarks and behavior were grossly inappropriate, especially in a professional setting, and created a hostile and uncomfortable work environment for Ms. L[redacted], Ms. Gallagher, Mr. Kachadourian, Ms. Singer, Ms. Vroman and Ms. L[redacted] alike. "Remarks of a personal and sexual nature to a subordinate are especially egregious, even if the [subordinate] does not protest and even if the judge makes no explicit threats concerning job security." *Matter of Dye*, 1999 Ann Rep at 94, citing *Matter of LoRusso*, 1994 Ann Rep at 77.

B. Respondent committed misconduct by threatening Mr. Kachadourian and Ms. Gallagher's physical safety and wellbeing.

Respondent demonstrated a pattern of injudicious behavior by threatening the physical safety and wellbeing of Mr. Kachadourian and Ms. Gallagher in that he:

- said, during a speaker phone conversation in chambers with Mr. Penna, such that Mr. Kachadourian and Ms. Gallagher could hear, that Respondent had "cement boots" made in their shoe sizes so that, if they ever betrayed him, "they would be found at the bottom of the river" (Tr 54, 571);

- told Mr. Kachadourian to speak on the phone with Mr. Stilloe, who then told Mr. Kachadourian that if either he or Ms. Gallagher crossed Respondent, they would answer to Mr. Stilloe (Tr 49-50, 53); and

- repeatedly referred to his friends, whom he called his "enforcers," and their criminal histories, while commenting to Mr. Kachadourian and Ms. Gallagher that they would do anything for him (Tr 49-53, 571-73).

Respondent's threatening and intimidating conduct was a means of maintaining power and control over his subordinate personal appointees and to intimidate them against reporting his highly inappropriate misconduct. Indeed, Respondent's conduct caused Mr. Kachadourian and Ms. Gallagher to legitimately fear for their personal safety (Tr 49-53, 571-73) and aggravated the already toxic work environment that they were forced to endure under Respondent.

C. Ms. Gallagher, Mr. Kachadourian, Ms. Singer, Ms. L[redacted] and Ms. Vroman Credibly Testified About Respondent's Offensive Behavior.

Respondent's categorical denials that he engaged in any inappropriate behavior toward members of court staff are at odds with the compelling credible testimony of Ms. Gallagher, Mr. Kachadourian, Ms. Singer, Ms. L[redacted] and Ms. Vroman.

Respondent's claim that Ms. Gallagher and Mr. Kachadourian fabricated all of these allegations out of fear that they would be terminated (Tr 1373-74, 1444-45) makes no sense. As Respondent's personal appointees, Ms. Gallagher and Mr. Kachadourian were reliant upon Respondent for their positions (Tr 1444-45). Thus, if Respondent were to lose his judgeship for judicial misconduct, then they, too, would likely lose their positions.

Furthermore, no matter how fervently Respondent attacks the reputations and credibility of Ms. Gallagher and Mr. Kachadourian, he cannot overcome the credible and corroborating testimony of Ms. Singer, whom Respondent characterized as an "honest" and "truthful" person, and the compelling testimony of Ms. L[redacted] and Ms. Vroman,

who described their personal experiences as recipients of Respondent's inappropriate and offensive comments.

Respondent failed to offer any explanation as to why Ms. L[redacted] would fabricate testimony corroborating Mr. Kachadourian's assertion that Respondent showed him a photograph purporting to depict Ms. L[redacted] in the nude. Indeed, it is highly unlikely that Ms. L[redacted] would have falsely testified about such a humiliating personal experience. Additionally, although Respondent has also alleged that his court appointees fabricated their allegations in order to file a civil lawsuit against him, Ms. Singer, Ms. L[redacted] and Ms. Vroman are not plaintiffs in that suit and in no way stand to benefit from it.

Accordingly, in light of the compelling testimony by numerous members of the Family Court staff about Respondent's inappropriate behavior, the Referee should reject Respondent's absolute denials as lacking in credibility.

D. The Referee Should Draw an Unfavorable Inference Against Respondent for His Failure to Call Mr. Iannone as a Witness.

The Referee should draw an "unfavorable inference" against Respondent for his failure to call Mr. Iannone as a witness. *See People v Savinon*, 100 NY2d 192, 196 (2003). As required, Commission counsel notified the Referee, on the record, that they intended to invoke the "missing witness" charge if Respondent failed to call Mr. Iannone on the adjourned date (Tr 1289-93). *See People v Gonzalez*, 68 NY2d 424, 427-28 (1986); Prince, Richardson §3-140, at 89 (11th ed.) Respondent then had a full month

before the adjourned date to either call Mr. Iannone, explain his absence or show that the inference was inappropriate. Respondent did none of the above.

An unfavorable inference from a party's failure to call a witness is warranted where it is shown:

> [1] that the uncalled witness is knowledgeable about a material issue upon which evidence is already in the case;
>
> [2] that the witness would naturally be expected to provide noncumulative testimony favorable to the party who has not called him; and
>
> [3] that the witness is available to such party.

People v Gonzalez, 68 NY2d at 427.

Here, all three requirements are met. Mr. Iannone is knowledgeable about material issues raised in the proceeding. Among the central issues in this proceeding are whether Respondent engaged in telephone conversations with Mr. Iannone about the latter's sexual experiences with Ms. L[redacted] and whether Respondent showed Mr. Kachadourian a nude photograph purporting to be Ms. L[redacted]. Certainly Mr. Iannone was in a position to know whether or not he engaged in lewd telephone conversations with Respondent about Ms. L[redacted]. Additionally, if Respondent possessed a nude photograph of Ms. L[redacted], he likely received it from his friend and Ms. L[redacted]'s then-boyfriend: Mr. Iannone. Indeed, Ms. L[redacted] provided *unrebutted* testimony that Mr. Iannone showed her a photograph, like the one described by Mr. Kachadourian, and told her that it was the photograph that he had shown Respondent (Tr 270-71, 281-82).

Mr. Iannone also had a friendly relationship with Respondent, such that he would be expected to testify favorably to him. *See Gonzalez*, 68 NY2d at 431. The record established that Respondent and Mr. Iannone were friends and would speak with each other on the telephone (Tr 32, 266, 269, 816, 818). Respondent acknowledged that he had even called Mr. Iannone from chambers (Tr 818). Mr. Iannone also did various odd jobs for Respondent, including helping Respondent manage his properties and assisting him in his campaign for Family Court (Tr 523-24, 818, 832, 1477). Although during cross examination Respondent attempted to downplay Mr. Iannone as a mere "acquaintance," the two men had a close enough relationship that Respondent invited Mr. Iannone to his mother's house for a New Year's Eve party (Tr 278). These facts establish that Mr. Iannone, by virtue of his friendship with Respondent, is under the "control" of Respondent such that he would naturally be expected to testify favorably to him and adversely to the Commission's case. *See Gonzalez*, *supra* at 431.

Mr. Iannone's testimony would not have been cumulative. For example, Respondent denied that he displayed a photograph purporting to depict Ms. L[redacted]'s nude torso to Mr. Kachadourian (Tr 1394-95, 1480) and denied that Mr. Iannone ever sent him any photograph (Tr 1479). Ms. L[redacted] testified, however, that after she repeatedly asked Mr. Iannone if any such picture existed (Tr 269-70), he took out his cell phone and showed her a photograph of a person nude from the neck to the belly, wearing a silver elephant pendant necklace featuring a pink jewel (Tr 270-71, 281-82). Against that backdrop, Mr. Iannone's testimony would have shed light on whether the photograph existed, the circumstances in which it was taken, who and what precisely it depicted,

whether Mr. Iannone shared it with Respondent and whether it was the same photograph that Ms. L[redacted] testified Mr. Iannone showed to her.

Finally, Mr. Iannone was available to Respondent. Indeed, Respondent included Mr. Iannone on his witness list and had the ability to subpoena him, if necessary, just as he subpoenaed numerous other witnesses and entities in this proceeding (Tr 1290). Moreover, in response to the Commission's notification that it intended to invoke the "missing witness charge," Respondent's counsel did not argue that Mr. Iannone was unavailable to Respondent; instead, he argued that Mr. Iannone was "equally available" to Respondent and the Commission (Tr 1290). But Respondent's "assertion that both parties had the physical ability to call [Mr. Iannone] is [not] sufficient to defeat the charge because, as [the Court of Appeals has] explained, when the witness is under the control of one party, such witness is in a pragmatic sense unavailable to the opposing party." *Gonzalez, supra* at 431; *see also People v Hall*, 18 NY3d 122, 131 (2011); *People v Keen*, 94 NY2d 533 (2000).

Accordingly, the Referee should infer from Respondent's failure to call Mr. Iannone that he would not have supported or corroborated Respondent's denials of the allegations concerning his conduct involving Ms. L[redacted]. *See People v Paylor*, 70 NY2d 146, 149 (1987).

POINT II

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY IMPORTUNING CHAMBERS STAFF TO PERFORM SERVICES UNRELATED TO THEIR OFFICIAL DUTIES, INCLUDING PROHIBITED POLITICAL ACTIVITIES.

From the moment Respondent assumed the bench on January 2, 2015, he directed his personal appointees to perform services that were unrelated to their official duties, and often of personal benefit to the judge, his friends and relatives. Respondent's requests that his chambers staff perform "extra-judicial" projects – whether composing a letter so Respondent could get paid legal fees or maintaining a list of names for future political campaigns – were "inconsistent with the ethical rules." *Matter of Brigantti-Hughes,* 2014 Ann Rep 78, 86 (Commn on Jud Conduct, December 17, 2013). Respondent testified that his personal appointees were responsible for providing him with administrative and legal assistance such as scheduling, processing mail, drafting decisions and orders, and conducting pre-trial conferences (Tr 1330-1331). Yet, on multiple occasions, he directed Ms. Gallagher and Mr. Kachadourian to complete tasks, during work hours, that served no judicial purpose. In so doing, Respondent breached the public trust and committed judicial misconduct. *See Matter of Ruhlmann,* 2010 Ann Rep 213, 220 (Commn on Jud Conduct, February 9, 2009).

A. Respondent engaged in misconduct when he directed Ms. Gallagher to write a letter to the executor of a pending estate so that Respondent could receive payment for his legal work on the estate.

The Rules Governing Judicial Conduct require a judge to avoid impropriety and act at all times in a manner that upholds the integrity of the judiciary. *See* Rule 100.2(A). The public expects that government officials and employees will use "resources paid for

by the taxpayers only for the purposes for which those resources were intended." *Matter of Brigantti-Hughes,* 2014 Ann Rep at 87. Respondent violated these ethical precepts when, on November 6, 2015, from his judicial chambers, he asked Ms. Gallagher to write a letter to Mr. Hayes, the *Funk* estate executor, so that he could receive payment for his legal services in the amount of $11,184.60. Respondent himself testified that it would be improper to direct his chambers staff to type correspondence to help him secure compensation for a private non-judicial matter (Tr 1459), yet that is exactly what he did.

Respondent frequently and improperly involved his chambers staff in his private affairs. He directed Ms. Gallagher to assist him with his taxes (Tr 554, 739) and he repeatedly requested that Ms. Gallagher make photocopies of client files, checks and other items for Respondent's personal use (Tr 226, 596, 599-601, 603, 738). Respondent also directed Ms. Gallagher to take files from 2[redacted] North Street and photocopy the documents at an off-site printer (Tr 596, 655-56, 738). And Mr. Kachadourian testified that he spent time and money to photocopy and FedEx documents to an attorney concerning a personal legal matter of Respondent's (Tr 177-78, 234-35).

Commission precedent is very clear – it is misconduct for a judge to ask, or cause, court staff to routinely perform non-work related personal tasks. *See Matter of Brigantti-Hughes,* 2014 Ann Rep at 79-80; *Matter of Ruhlmann,* 2010 Ann Rep at 219. Even small requests, performed without protest, can constitute misconduct. *See Matter of Ruhlmann,* at 220. Standing alone, Respondent's direction to his court secretary to write a letter so that Respondent could be paid a legal fee was improper. The fact that Respondent had

Ms. Gallagher feign that the letter came from Ms. Filip, at Ms. Filip's home address, was dishonest and smacks of concealment on Respondent's part.

B. Respondent committed misconduct when he asked his chambers staff to engage in political activity on his, his friends' and relative's behalf.

Judges are prohibited from personally engaging in partisan political activity (*see* Rule 100.5[A]), and are required to "prohibit" their personal appointees from engaging in prohibited political acts. *See* Rule 100.5(C); *see also* 22 NYCRR §50.2 (political appointees may not engage in political activities described in section 100.5[C] of the Rules).[7] Respondent "violated both the letter and spirit of the rules forbidding political activity by judges" when he asked Ms. Gallagher and Mr. Kachadourian to perform political tasks in order to benefit himself, his brother-in-law and his friends. *Matter of Maney,* 70 NY2d 27, 30 (1987).

"Pretty much right from the beginning" of his Family Court term, Respondent became involved in prohibited partisan political activity (Tr 592-93). He explicitly told his staff to treat chambers like a "campaign office" (Tr 592-93, 772). He asked Ms. Gallagher to turn his chambers into a campaign office for his friend and family attorney, Artan Serjanej (Tr 593, 764). He offered the services of his "team" to George Phillips, a Republican candidate for the U.S. House of Representatives during the June 2016

[7] Section 50.1 of the Rules of the Chief Judge prohibit court staff from engaging "in political activity during scheduled work hours or at the workplace." The Advisory Committee on Judicial Ethics has interpreted this provision to permit court staff to engage in political activity, including circulating petitions for non-judicial office, outside of the courthouse, chambers and normal working hours. *See* Advisory Opinion 07-11 (April 19, 2007), Advisory Opinion 03-111 (August 13, 2004), Advisory Opinion 16-64 (May 5, 2016). Although it would have been permissible for Ms. Gallagher and Mr. Kachadourian to voluntarily engage in such political activities, Respondent's request that they do so was "implicitly coercive" and violated the Rules. *See e.g. Matter of Brigantti-Hughes,* 2014 Ann Rep 78, 89-90 (Commn on Jud Conduct, December 17, 2013) (judge's invitation to court staff to attend chuch-related events "after court hours" was "implicitly coercive").

primary election. *See Fatata v Phillips,* 140 AD3d 1295 (3rd Dept 2016). He required Ms. Gallagher and Mr. Kachadourian to create and maintain lists of names of individuals for "future campaigns," which would "benefit him politically" (Tr 57, 727, 736). Ms. Gallagher kept such a list in her desk drawer, while Mr. Kachadourian refused (Tr 57, 727-28, 736). When Ms. Gallagher failed to collect signatures for Richard Balles, Respondent's brother-in-law, Respondent became "upset" and angry that she did not complete the political task he had assigned her (Tr 57, 594).

Respondent had been subject to the Rules for 18 years as a part-time town and village justice (Tr 1301-02). He knew he could not engage in partisan political activity and that Ms. Gallagher and Mr. Kachadourian were similarly prohibited from engaging in political activity (Tr 1459).

Time and time again, Respondent brought his personal affairs into the workplace and, most egregiously, directed his chambers staff to perform tasks that were unrelated to their official positions (Tr 26, 1330-32, 1336, 1344, 1353). Respondent's requests were "implicitly coercive given [his] role as judge and employer." *Matter of Brigantti-Hughes,* 2014 Ann Rep at 83. Mr. Kachadourian and Ms. Gallagher naturally felt obligated to assent to their boss's requests since they were dependent on Respondent for their jobs (Tr 1444-45) and wanted to maintain a cordial working relationship. In the one instance when Ms. Gallagher dared to not perform a non-work-related task, Respondent reacted with anger (Tr 57, 594). Respondent used his position of power to obtain personal services from his chambers staff that went "well beyond the professional courtesies and occasional acts of personal assistance that might ordinarily be provided in

emergency situations by subordinates to supervisors, or vice versa." *Id.* at 87. He misused public resources, engendered disharmony with his personal appointees and committed judicial misconduct.

POINT III

IN CONNECTION WITH THE *ESTATE OF ANTOINETTE SARACENO* AND THE *ESTATE OF JERRY J. BEHAL, JR.*, RESPONDENT ENGAGED IN THE PRACTICE OF LAW AND/OR CONVEYED THE IMPRESSION THAT HE WAS STILL ENGAGED IN THE PRACTICE OF LAW AS A FULL-TIME JUDGE.

A full-time judge shall not engage in the "practice of law." Rule 100.4(G). The practice of law is much broader than personally appearing in court before a judge concerning a legal action. *See In re Perez,* 327 B.R. 94, 97 (Bankr. EDNY 2005), *citing People v Alfani,* 227 NY 334 (1919). Practicing law also includes "the rendering of legal advice," and "holding oneself out to be a lawyer." *El Gemayel v Seaman,* 72 NY2d 701 (1988); *see also* Jud Law §478. The practice of law "embraces the preparation of pleadings and other papers" and "the management of such actions and proceedings on behalf of clients." *In re Perez,* at 97, citing *Alfani.* The practice of law further includes "all advice to clients and all action taken for them in matters connected with law." *Erbacci, Cerone and Moriarty, Ltd. v U.S.,* 923 F Supp 482, 485 (SDNY 1996), citing *Matter of Schwerzmann,* 408 NYS 2d 187, 188 (Ct. on the Judiciary 1978).

Here, in two separate matters, Respondent engaged in the practice of law when he took action in estates on behalf of former clients by, *inter alia,* requesting that a Surrogate's Court judge close an estate "by motion," and meeting with an estate executor to review a court-ordered accounting.

A. In the *Estate of Antoinette Saraceno*, Respondent committed misconduct by requesting that the Tioga County Surrogate's Court close the estate "by motion" and telling the executor's wife that he would "handle" the estate.

In the *Estate of Saraceno,* Respondent explicitly and implicitly engaged in the practice of law. On October 12, 2016, Respondent called the Tioga County Surrogate's Court and requested that Judge Gerald Keene close *Saraceno* "by motion" (Ex 5A, p 3; Tr 425). Respondent's request was on behalf of a (former) client concerning a pending legal proceeding. At the time of his call, Respondent had not submitted a substitution of attorney and remained the attorney of record on the estate although he had started his Family Court term on January 2, 2015 (Ex 4A, p 3). Four years prior, Respondent was paid "good money" by the estate executor, in the amount of $6,960, and yet the estate remained open (Tr 474; Ex 5UU).

Respondent knew or should have known when he took the Family Court bench that the matter was not concluded, as the last thing he did in the estate was to file a request for an extension of time to file releases (Ex 5LL). After Mrs. Saraceno called Respondent regarding the letters and phone calls she had received from the court, and further informed him that her husband was sick and in the nursing home, Respondent called the court and requested that the estate be closed without a formal accounting (Tr 425-26). Mrs. Saraceno contacted the Surrogate's Court and spoke with the court clerks about the estate (Tr 475), but as a lay person she would not have been able to request that the Surrogate close the estate "by motion." Only an attorney could make such a specific request. And contrary to Respondent's assertion (Tr 1402, 1447), it was not well-known

by the Tioga County Surrogate's Court staff that he was a full-time judge and could no longer practice law (Tr 424).

Respondent also conveyed the appearance that he was engaged in the practice of law when he spoke to Mrs. Saraceno, on October 10, 2016, and told her not to worry about the estate, that he would take care of the estate and "finish it up" (Tr 475, 1320, 1403; Ex 4A, p 3). Mrs. Saraceno relied on these statements and subsequently called the Surrogate's Court on December 16, 2016, to inquire if Respondent had closed the estate as he told her he would. As the Commission previously found in censuring Respondent while he was a Town Justice for improperly practicing law in his own court, Respondent has shown "insensitivity and inattention to his ethical responsibilities" and engaged in "an impermissible intermingling of his roles as lawyer and judge." *Matter of Miller,* 2003 Ann Rep 140, 142 (Commn on Jud Conduct, December 30, 2002).

B. In the *Estate of Jerry J. Behal, Jr.,* Respondent improperly reviewed the estate's accounting and asked his court attorney to assist in completing the estate accounting.

Without stepping foot in a courtroom, Respondent impermissibly engaged in the practice of law when he worked on the estate accounting with David Behal, his best-friend and the estate executor. *See Matter of Miller*, at 142 (Respondent did not physically appear in court, but his actions were still impermissible). Although Mr. Serjanej filed a notice of appearance in 2015 (Ex 4CC), Respondent continued to work on

the estate and advise his best-friend behind the scenes.[8] Indeed, Respondent undertook several actions on behalf of Mr. Behal in connection with the estate.

Respondent knew that Mr. Serjanej, who was not well-versed in estate practice, had failed to file an accounting as requested by Judge David Guy and, further, that Mr. Behal was at risk of being removed as executor (Tr 61-63). Respondent subsequently requested that Mr. Kachadourian assist him with finalizing the estate accounting: he asked Mr. Kachadourian to find an attorney to perform the accounting and to locate the required forms (Tr 61, 63). Throughout March, April and May 2017, Mr. Behal sent e-mails containing estate expenses to "Rick" and "Donna" and not to Mr. Serjanej (Ex 4III). Respondent also communicated with Ms. Filip about the estate (Tr 64).[9] Finally, on May 12, 2017, Respondent invited Mr. Behal to his chambers to review estate records – that the executor had previously e-mailed to Respondent – in the week prior to when the formal accounting was due (Tr 63, 178-79, 848, 1138; Ex 4NN). Respondent's motivation to intervene was not entirely altruistic. He had not yet received his standard legal fee for his services (Tr 64, 850, 1152-53).

Even assuming, *arguendo,* that Respondent's activities in the *Saraceno* and *Behal* estates while a full-time judge did not meet the literal definition of the "practice of law,"

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[8] Mr. Kachadourian testified that on at least 30 occasions, he accompanied Respondent to 2[redacted] North Street and observed Respondent working on legal cases with his former legal secretary and/or Mr. Serjanej (Tr 59-60, 1104).

[9] It is not misconduct for a full-time judge "to make information available" to a successor lawyer; the judge may discuss the facts of a case with the attorney who took over his case(s) but may not give legal or tactical advice. Advisory Opinion 95-20 (January 19, 1995); *see also* Advisory Opinion 17-161 (December 7, 2017).

they clearly conveyed that impression. As the Court of Appeals has stated, an appearance of impropriety is no less to be condemned than impropriety itself. *See e.g. Matter of Ayres*, 30 NY3d 59, 63 (2017); *Matter of Lonschein*, 50 NY2d 569, 572 (1980); *Spector v State Comm on Jud Conduct*, 47 NY2d 462 (1979).

POINT IV

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY FAILING TO FILE TIMELY AND ACCURATE DISCLOSURE REPORTS OF HIS INCOME FROM EXTRA-JUDICIAL ACTIVITIES WITH THE ETHICS COMMISSION FOR THE UNIFIED COURT SYSTEM, FEDERAL AND STATE INCOME TAX AUTHORITIES AND THE CLERK OF THE BROOME COUNTY FAMILY COURT AS REQUIRED.

By failing to properly disclose thousands of dollars in income from the practice of law and from rents as required by law, Respondent violated his ethical responsibilities and cast doubt on the integrity of the judiciary.

A. Respondent's failure to disclose over $27,000 in income from the practice of law on his 2015 Financial Disclosure to the Ethics Commission for the Unified Court System violated his ethical obligations under the Rules of the Chief Judge and the Rules Governing Judicial Conduct.

State paid judges are required to file an annual financial disclosure report with the Ethics Commission of the Unified Court System with respect to the preceding calendar year. *See* 22 NYCRR §40.2(a); Rule 100.4(I). Paragraph 13 of the disclosure statement required of Respondent as follows:

> List below the nature and amount of any income In EXCESS of $1,000 from EACH SOURCE for the reporting Individual and such Individual's spouse for the taxable year last occurring prior to the date of filing. Nature of income includes, but is not limited to, all income EARNED BY YOU AND YOUR SPOUSE (other than that received by you from the employment listed under Item 2 above) from **compensated employment whether public or private**, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees,

> bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange or real or other property. **Income from a business or profession and real estate rents** shall be reported with the source identified by the building address in case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt or maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

(Ex 8B) (Capitalized emphasis in original; bold emphasis supplied).[10]

Respondent clearly knew how and where on the form to report income from his practice of law, since he had done so for calendar year 2014 (Ex 8A, addendum to ¶13). Yet Respondent failed to list any of the over $27,000 he had received from the estates of Roger Funk and Deborah Brigham when he filed his 2015 FDS in May 2016. Moreover, Respondent has never amended his FDS to include the many thousands of dollars he received in rents. Respondent's failure to disclose this income was misconduct. *See Matter of Dier,* 1996 Ann Rep 79 (Commn on Jud Conduct, July 14, 1995); *Matter of Francis and Joseph Alessandro*, 13 NY3d 238 (2009). Even filing accurate but untimely disclosure forms is improper and can subject a judge to discipline. *See Matter of Russell*, 2001 Ann Rep 121 (Commn on Jud Conduct, October 31, 2000); *Matter of Elliot*, 2003 Ann Rep 107 (Commn on Jud Conduct, November 18, 2002); *Matter of McAndrews*, 2014 Ann Rep 157 (Commn on Jud Conduct, June 18, 2013).

[10] In addition to the instructions provided with respect to each question of the FDS (Exs 8A-8D), the Ethics Commission of the Unified Court System publishes a detailed set of filing instructions, which are available online at: https://www.nycourts.gov/IP/ethics/FilinginstructionsPart40.pdf

B. Respondent's failure to disclose thousands of dollars in income from the practice of law and from rents on his state and federal income tax returns violated the law and his ethical obligations under the Rules.

Every judge is required to "respect and comply with the law" and to conduct all of his extra-judicial activities so that they do not detract from the dignity of judicial office. Rules 100.2(A) and 100.4(A)(2). Respondent's failure to report his income from the practice of law, and from rents for two rental properties on his state and federal income tax returns, violated these precepts. In an apparent effort to shield income from taxation, Respondent failed to list over $27,000 in income from the prior practice of law on his 2015 Federal and State Income Tax Returns when he filed initially in 2016. Respondent acknowledged that he had not forgotten about the receipt of the checks from the *Funk* and *Brigham* estates just months earlier (Tr 1464). Instead, he claimed he thought he received that income in 2016 (Tr 1464). However, he also failed to report the income when he filed his 2016 returns (Exs 9F, 9I).[11]

Moreover, Respondent failed to report to federal and state tax authorities any income from his rental properties at 2[redacted] North Street and 3[redacted] Oakdale Road in two successive years, notwithstanding that he claimed deductions for Oakdale Road when he filed for 2015 and 2016 (*see* Exs 9A, 9F, Schedules E). Respondent acknowledged that he was active in the management of the rental properties (Tr 832). Given his frequent presence at the law office at 2[redacted] North Street and the monthly rent checks which were

[11] It was not misconduct for Respondent to receive payment for legal work performed prior to assuming the full-time judicial position. *See* Advisory Opinion 11-21 (March 9-10, 2011); Advisory Opinion 05-130(A) (December 8, 2005); Advisory Opinion 00-03 (January 27, 2000); Advisory Opinion 95-12 (March 9, 1995). He committed misconduct, however, when he failed to report that income on his FDS and tax returns.

payable to Respondent, collected for him by his former law office secretary and cashed by him (Tr 524-25; Ex 7C), it is inconceivable that Respondent simply forgot to advise his accountant about the thousands of dollars he had received in rental income from the apartment over the law office (Tr 1264). In addition, Respondent would have had to have advised his accountants of the amount and nature of the deductions which were taken for the Oakdale Road property; it is obvious that he did not simply overlook that he had also received rental income, which must be listed for each property first, before deductions may be subtracted (*see* Ex 9A, Schedule E). Rather, it appears he deliberately failed to report the receipt of this income in an attempt to shield it from taxation.

C. Respondent's failure for over four years to file any report of extra-judicial income with the clerk of the Family Court, even after he was notified of his obligation to do so, was misconduct.

As a full-time judge, Respondent was required to report the date, place and nature of any activity for which he received compensation in excess of $150, and the name of the payor and the amount of the compensation so received; such report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves. *See* Rule 100.4(H)(2). Respondent persistently failed to file any report of extra-judicial income with the clerk of the Family Court as required, even after he was notified by the Commission of the requirement.

Even if, as he claimed, he was unaware of the April 2016 email from the district executive to all the judges in the district, enclosing a reminder of the filing requirement from the deputy chief administrative judge, the Commission notified Respondent of the requirement in 2017, and again in 2018 (Tr 853-54; Ex 10B). Still, Respondent failed to

file any report with the clerk of the court until January 31, 2019, well after service of the Formal Written Complaint and several days after the hearing before the Referee had begun (Resp Ex PP). Respondent's failure to file was misconduct. *See Matter of Moynihan*, 1993 Ann Rep 85, 98 (Commn on Jud Conduct, April 3, 1992), *determination accepted* 80 NY2d 322 (1992) (judge, *inter alia*, failed to file reports of income from extrajudicial activities).

D. Respondent's belated attempts to amend his previously filed disclosure and tax forms were insufficient and do not negate his misconduct.

Respondent's belated amendment to his FDS filing, made only after he was notified by the Commission of his failure to include income from the practice of law, does not mitigate the appearance of impropriety in his initial failure to properly disclose this income in the first instance. *See Matter of Dier*, 1996 Ann Rep 79 (Commn on Jud Conduct, July 14, 1995) (sustaining Charge III for failure to report rental property income, notwithstanding that Respondent subsequently filed an amended FDS). Moreover, Respondent has *never* disclosed his rental income on the FDS forms, and he failed for years to file any report with the clerk of the court, despite many reminders.

Respondent's misconduct in failing to disclose income to the IRS and state taxation authorities was particularly egregious and was not cured by the subsequent filing of amended returns. It is apparent that Respondent knew by the time he amended his returns that the Commission and/or the Inspector General was in possession of his financial records showing that he had received unreported income, and that the Inspector General was inquiring about his receipt of funds from the practice of law. In analogous

circumstances, the Commission found it was misconduct for a judge to fail to report income on his tax return, notwithstanding that an "amended return was filed by respondent prior to the issuance of the Formal Written Complaint issued by the Commission, but following the initiation of an investigation by the Commission." *Matter of Ramich,* 2003 Ann Rep 154, 155 (Commn on Jud Conduct, December 27, 2002).

As the Commission held in *Ramich*, Respondent's

> misconduct was exacerbated by his failure to report the fee he received to the chief clerk of the court, as required by the ethical rules, or on his 1998 income tax returns. Such lapses are not excused by negligence or inattention and, even if inadvertent, create the appearance that respondent was intentionally concealing his extrajudicial activity.

Id. at 159.

E. Respondent's shifting explanations and excuses for his failures to disclose income lack the ring of truth and should be rejected as lacking in credibility.

Respondent initially testified that he believed he had disclosed his income from the practice of law on his 2015 FDS form where he listed his bank account holdings (Tr 840, 844). Yet he had reported income from the practice of law in the appropriate section of his 2014 form, so he clearly knew how to report it properly (Ex 8A). At the hearing before the Referee, he changed his excuse, now claiming that he thought he had received the income not in 2015, but in 2016 (Tr 1411-12). However, he hadn't reported it on his 2016 FDS form either (Ex 8C).

Respondent's explanation that he believed he had received the over $27,000 in income from the practice of law in 2016 was further belied by his failure to report it on his income tax returns for 2016 (Exs 9F, 9I). His explanation for failing to disclose

thousands of dollars in rental income on his FDS forms and tax returns – that the properties ran a deficit overall – strains credulity, since: (A) the FDS form specifically instructs filers to include net rent from each source before taxes; (B) the IRS form (Schedule E) requires the listing of rents received for each property *before* the listing of expenses which may then be subtracted from the rent; (C) Respondent initially did not even include 2[redacted] North Street as one of the properties on his tax returns; and (D) Respondent did not pay the expenses of 2[redacted] North Street in any event, and that property did not therefore run a "deficit."[12]

Respondent repeatedly professed ignorance as to the requirement to file an annual report with the clerk of the court, yet he was reminded by court administrators by email in April 2016 (which he claimed not to have read) and by the Commission in November 2017 and May 2018. Moreover, ignorance and lack of competence do not excuse violations of ethical standards. *See Matter of VonderHeide,* 72 NY2d 658 (1988).

Judges are obliged to be candid in Commission proceedings. *See Matter of Doyle,* 2008 Ann Rep 111 (Commn on Jud Conduct, February 26, 2007). Respondent's excuses and explanations should be rejected by the referee as lacking in credibility.

[12] Respondent's amended federal income tax returns show that 2[redacted] North Street had a net profit of $1,174 in 2015 (Ex 9C, Schedule E) and $2,185 in 2016 (Ex 9G, Schedule E).

CONCLUSION

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

Dated: May 1, 2019
Albany, New York

Respectfully submitted,

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APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent was admitted to the practice of law in New York in 1994. He has been a Judge of the Family Court, Broome County, since January 1, 2015, having previously served as a Justice of the Union Town Court, Broome County, from 1996 to 2014, and the Johnson City Village Court, Broome County, from 2002 to 2014. Respondent's current term expires on December 31, 2024 (FWC ¶4; Ans ¶4; Tr 1301-02).

PROPOSED FINDINGS OF FACT AS TO CHARGE I

2. When Respondent became a Family Court Judge, he appointed Rachelle Gallagher as his court secretary (FWC ¶7; Ans ¶7; Tr 546-47). Respondent was a childhood friend of Ms. Gallagher's husband, Scott Gallagher (Tr 542, 1312). Respondent and Ms. Gallagher first became acquainted in the early 2000s and, in 2002, Respondent performed the Gallaghers' wedding ceremony (Tr 542, 1326). In 2005, Respondent asked Ms. Gallagher to work for him at the Johnson City Village Court where, for almost 10 years, she served under Respondent as the chief court clerk until December 31, 2014, when Respondent appointed her to be his personal secretary in Family Court (Tr 543-45, 546-47, 1303, 1312, 1325-26). Ms. Gallagher was also active in Respondent's campaign for Family Court Judge, with Respondent giving her a role on his campaign committee (Tr 545).

3. Respondent appointed Mark Kachadourian as his court attorney in Family Court (FWC ¶7; Ans ¶7; Tr 26-27, 1335-36), prior to which Mr. Kachadourian had

practiced family law for approximately 25 to 30 years (Tr 22). Respondent and Mr. Kachadourian had been acquainted in their capacities as practicing attorneys in Broome and Tioga Counties for about 10 to 15 years (Tr 23, 1335-36). Mr. Kachadourian assisted Respondent with his campaign for Family Court Judge by putting up campaign signs, helping him prepare for a debate and attending campaign events (Tr 25, 1336-37). After Respondent won the Family Court election, he asked Mr. Kachadourian to be his court attorney because he believed that Mr. Kachadourian was well qualified to handle the position (Tr 26, 1336).

4. As Respondent's personal appointees, Mr. Kachadourian and Ms. Gallagher were dependent upon Respondent for their positions (Tr 1444).

5. At the court, Respondent, Mr. Kachadourian and Ms. Gallagher interacted and worked with each other on a daily basis (Tr 30, 33, 548). Respondent's chambers occupied a suite on the first floor of the Broome County Family Court building consisting of his office and Ms. Gallagher's adjoining office (Tr 33-34, 547, 562-63). Although Mr. Kachadourian's office was on the second floor, he primarily conducted his work in Respondent's chambers (Tr 33, 548-49).

6. Mr. Kachadourian's working relationship with Respondent at the Family Court was initially good, but he noticed that Respondent's behavior began to change for the worse around mid-to-late 2015 (Tr 27-29).

7. Although Ms. Gallagher had good professional and social relationships with Respondent during their 10 years working together at the Johnson City Village Court, she also noticed that his behavior and demeanor drastically changed after he became a Family

Court Judge, when he started making increasingly frequent comments of a sexual and threatening nature (Tr 549-50).

8. Soon after becoming a Family Court Judge in January 2015, Respondent began angrily commenting to Ms. Gallagher about his lack of sexual relations with his wife and that he and his wife were like "roommates" (Tr 550-51). Ms. Gallagher testified,

> [h]e always was maybe a little sexual, but when we started in family court, it became that he was demanding sex and he wanted sex, more sex, and everything revolved around sex and his lack of sex (Tr 551).

9. Respondent would, at times, point to his genitals while stating that people needed to satisfy his needs (Tr 551-52). Respondent's sexual comments became more frequent in 2017 (Tr 552).

10. On multiple occasions from mid-to-late 2015 to mid-2017, Respondent commented to Mr. Kachadourian that he regretted hiring Ms. Gallagher as his court secretary, rather than Lisa Wojdat, who had been a court clerk while Respondent was a justice at the Union Town Court (Tr 28-29, 553-54). Respondent told Mr. Kachadourian and Ms. Gallagher that he had "sexual needs" and that Ms. Wojdat would satisfy those sexual needs (Tr 29-30, 553-54).

11. Respondent, at times, directed Mr. Kachadourian to speak with Ms. Gallagher about "what real secretaries are supposed to do," which according to Respondent, included satisfying Respondent sexually (Tr 30-31, 554-55).

12. In January 2017, Respondent introduced Senior Court Office Assistant D[redacted] L[redacted] to David Iannone after Ms. L[redacted] told Respondent that she needed some tile work done in her bathroom (Tr 34-35, 264-65, 555, 817). Mr. Iannone was a friend of Respondent and did various odd jobs for him (Tr 32, 266, 269, 816, 1477). Mr. Iannone also assisted Respondent with his Family Court campaign and with managing his properties (Tr 32, 523-24, 818, 832).

13. Respondent put Ms. L[redacted] in touch with Mr. Iannone, who agreed to come to her house and give her a work estimate (Tr 265-66, 555, 1477-78). Soon thereafter, Ms. L[redacted] and Mr. Iannone began an intimate relationship that lasted approximately one year, a fact of which Respondent was aware based on his discussions with Mr. Iannone (Tr 266, 1478-79).

14. On multiple occasions in chambers in early 2017, Respondent spoke with Mr. Iannone on a telephone, using its speaker function, such that Mr. Kachadourian and Ms. Gallagher heard graphic discussions between Respondent and Mr. Iannone about Mr. Iannone's sexual experiences with Ms. L[redacted] (Tr 36-38, 556-59). Respondent acknowledged that he occasionally called Mr. Iannone from chambers (Tr 818).

15. Both Mr. Kachadourian and Ms. Gallagher heard Mr. Iannone respond to Respondent's questions about Mr. Iannone's sex with Ms. L[redacted] by talking about Ms. L[redacted]'s orgasms, such that she was a "sprayer" and that "the beds were so wet that they had to put towels down so the beds wouldn't get ruined" (Tr 37, 557).

16. Respondent asked Mr. Iannone for pictures or videos of his sexual experiences with Ms. L[redacted] (Tr 557-58) and asked if he – Respondent – "could get in

the lineup or get in the rotation" and "reserve a night a week for himself" with Ms. L[redacted] (Tr 38, 559).

17. Jerry Penna is and has been a "family friend" of Respondent's since he was "very young" (Tr 818). Mr. Penna also acted as the treasurer of Respondent's Family Court campaign and is his insurance agent (Tr 818).

18. In around March 2017, in chambers, Respondent engaged in a conversation on his cell phone, using its speaker function, with Mr. Penna in which Respondent explicitly described Mr. Iannone's sexual experiences with Ms. L[redacted] (Tr 35-36).

19. In early 2017, while Mr. Penna was visiting Respondent at chambers, the two men started discussing Ms. L[redacted] and Mr. Iannone's sexual experiences with her (Tr 41-43, 560-61, 563). Respondent then directed Ms. Gallagher to go to Ms. L[redacted]'s office and bring her to chambers (Tr 42, 560-61). Ms. Gallagher escorted Ms. L[redacted] to chambers where Respondent and Mr. Penna engaged Ms. L[redacted] in small talk for a few minutes (Tr 42, 562). Ms. L[redacted] recalled meeting Mr. Penna in Respondent's chambers (Tr 275). After Ms. L[redacted] left chambers, Respondent and Mr. Penna engaged in a conversation about her figure, including the size of her breasts (Tr 42, 563-64).

20. Mr. Kachadourian recalled that a male maintenance worker – who, like Mr. Penna, had fought in the Vietnam War (Tr 42, 922) – was also present for this conversation and that Respondent, Mr. Penna and the maintenance worker also discussed that women from Southeast Asia had no hair on their vaginas (Tr 42-43). Ms. Gallagher

recalled a similar conversation between Respondent, Mr. Penna and the maintenance worker about Asian women (Tr 705-06).

21. In April 2017, Respondent called Mr. Kachadourian to his chambers, took out his cell phone and showed Mr. Kachadourian a photograph of the front torso of a nude woman (Tr 39). Respondent said that the woman in the photograph was Ms. L[redacted] (Tr 39).

22. Based upon his observation of the woman's build, Mr. Kachadourian recognized her as being Ms. L[redacted] (Tr 39-40). Shocked, Mr. Kachadourian walked away and told Ms. Gallagher what Respondent had shown him (Tr 40).

23. In late June or early July 2017, Broome County Supreme Court Justice Molly Fitzgerald and a human resources employee notified Ms. L[redacted] of the existence of a photograph purporting to depict her nude torso (Tr 267). At the time, Ms. L[redacted] was unaware of the existence of any such photograph, but Judge Fitzgerald told her that one had come up in relation to sexual harassment allegations about Respondent (Tr 267-68). Not having made sexual harassment allegations against Respondent, Ms. L[redacted] was confused (Tr 267-68).

24. Knowing that Respondent and Mr. Iannone were friends, Ms. L[redacted] repeatedly asked Mr. Iannone if any such picture existed (Tr 269-70). After denying it repeatedly, Mr. Iannone finally took out his cell phone and showed her a photograph of a person nude from the neck to the belly, wearing a silver elephant pendant necklace featuring a pink jewel, and told her that it was the photograph that he had shown to Respondent and Mr. Kachadourian (Tr 270-71, 281-82).

25. Although Ms. L did not know for sure if the person in the photograph was her, she recognized the person's necklace as one of the seven or eight Avon elephant pendant necklaces that she owned (Tr 270-71, 281-82). Ms. L asked Mr. Iannone to delete the photograph (Tr 272).

26. A negative inference is drawn from Respondent's failure to call Mr. Iannone as a witness at the hearing, since he is knowledgeable about material issues in this proceeding, was available to be called by Respondent and, due to Respondent's friendship with Mr. Iannone, would naturally be expected to provide noncumulative testimony favorable to Respondent. An inference is thereby drawn that Mr. Iannone, if called to testify, would not have corroborated or supported Respondent's testimony that he did not show a photograph purporting to depict Ms. L 's nude torso to Mr. Kachadourian or Respondent's testimony that he did not engage in telephone conversations with Mr. Iannone about Mr. Iannone's sexual experiences with Ms. L .

27. On one occasion, in the hallway outside the offices of Mr. Kachadourian and Court Attorney S L , Respondent commented to Mr. Kachadourian, "Wouldn't it be nice to have sex with [Ms. L] bent over a desk?" (Tr 43-44). Mr. Kachadourian told Respondent that he should not say such things, especially since Ms. L was within earshot and could have heard his comment (Tr 44).

28. On one occasion in around mid-2015, Respondent showed Mr. Kachadourian photographs of nude women Respondent had on his cell phone (Tr 41).

Respondent "giggled" when Mr. Kachadourian objected to viewing the photographs (Tr 41).

29. In April or May 2017, Respondent handed Ms. Gallagher a folded-up piece of paper depicting pieces of fruit and asked her to pick the "juiciest fruit" (Tr 564). When Ms. Gallagher unfolded the paper at Respondent's instruction, there were drawings of nude women inside (Tr 564, 694). Although Respondent found it hysterical, Ms. Gallagher was embarrassed. She returned the paper to him and walked away (Tr 564).

30. On May 18, 2017, Mr. Kachadourian accompanied Respondent to the State Capitol in Albany, New York, to attend the New York State Family Court Association meeting (Tr 44-45). During a break in scheduled meetings with various state legislators, Respondent suggested to Mr. Kachadourian that they try to meet with Fred Akshar, the state senator for Broome and Tioga Counties (Tr 45, 192). Without an appointment, Respondent and Mr. Kachadourian went to Sen. Akshar's office and met with him for a few minutes (Tr 45, 192). At the end of the meeting, Respondent asked Sen. Akshar for his cell phone number and the senator declined, telling Respondent to contact him by calling his office (Tr 45-46).

31. While driving back to Binghamton from Albany with Mr. Kachadourian, Respondent fumed about Sen. Akshar's refusal to give him his cell phone number, and said he would ask Ms. Gallagher to do sexual favors for the senator in order to obtain the senator's cell phone number (Tr 46, 194). Mr. Kachadourian objected to Respondent's idea as being "crazy" (Tr 46, 195).

32. The next day, Respondent returned to chambers and angrily demanded, while banging on Ms. Gallagher's desk, that she go to Albany to "take one for the team" and "take care of [Sen. Akshar's] needs" (Tr 565-66). Ms. Gallagher understood Respondent to mean that he wanted her to have sex with the senator (Tr 566-67). Ms. Gallagher refused (Tr 565).

33. Ms. Gallagher was very upset and after Respondent left for court she called Mr. Kachadourian and told him what had just happened (Tr 566). Mr. Kachadourian told Ms. Gallagher about Respondent's comments that he wanted her to perform sexual favors for the senator (Tr 47-48).

34. At some point thereafter, Ms. Gallagher reported Respondent's remarks about sexually satisfying Senator Akshar to Chief Clerk Debbi Singer (Tr 362, 568).

35. Prior to her retirement in June 2018, Debbi Singer was the Chief Clerk of the Broome County Family Court (Tr 356, 819). Ms. Singer worked at the court for a total of 27 years and was the deputy chief clerk before becoming the chief clerk (Tr 356). As chief clerk, Ms. Singer oversaw all of the daily operations of the Family Court and supervised all of the Grade 16 and Grade 12 court assistants (Tr 356-57).

36. Ms. Singer had no supervisory duties over the judges' court attorneys or legal secretaries, such as Mr. Kachadourian and Ms. Gallagher (Tr 357, 359).

37. Respondent described his relationship with Ms. Singer as "professional" and "good," and he described her as "truthful," "honest," "helpful," "classy" and "efficient" (Tr 819, 1476).

38. In May 2017, the Family Court held a "dish to pass" luncheon at the courthouse and Ms. Singer and staff members made dishes to share (Tr 366-67). After the luncheon, Respondent stopped by the office of Ms. Singer, whose husband is deceased, and said, "If I knew you could also cook, I would have gone for the widow" (Tr 367). Respondent knew that Ms. Singer was a widow (Tr 819-20). Ms. Singer was "surprised, shocked, and disgusted" by Respondent's comment (Tr 367).

39. In early June 2017, while Respondent was in Ms. Singer's office, Ms. Singer began having a hot flash and said, "I apologize, I'm having a hot flash" (Tr 368, 400-03). Respondent replied, "It's nice to know I still have that effect on you" (Tr 403). Ms. Singer later learned that Respondent had gone back to his chambers and told Ms. Gallagher about his comment to Ms. Singer (Tr 403).

40. On another occasion in June 2017, Ms. Singer was standing in the middle of her office, with the door open, when Respondent walked by, stepped into her office and said, "You look really hot in that outfit. You should always wear that outfit" (Tr 370). Ms. Singer, who was wearing a professional-looking outfit comprised of a skirt that extended to her knees and a matching top with a cowl neck, was "shocked and disgusted" by Respondent's comment (Tr 370).

41. After working for two years as a court assistant in the Tompkins County Family Court, Rebecca Vroman became the supervising court assistant (classified as Grade 16) in the Broome County Family Court in August 2016 (Tr 322-23). As such, her duties included, inter alia, assisting Respondent in the courtroom by running the court

audio recordings, processing paperwork, scheduling Respondent's court appearances, and supervising two lower-level (Grade 12) court assistants (Tr 322-23).

42. When Ms. Vroman joined the staff as supervising court assistant in Broome County Family Court, Respondent told Ms. Gallagher that Ms. Vroman was "fat and ugly," that he was going to be the "laughing stock" of Broome County and that he intended to get her fired from his team (Tr 591).

43. On February 6, 2017, Respondent was assigned for the week as the emergency intake judge, to hear petitions in which litigants were seeking emergency relief (Tr 323-24, 1354-55). On this particular date, Respondent was scheduled to hear a full caseload of regular cases during his morning and afternoon court sessions, in addition to any emergency petitions that were filed that day (Tr 325, 1354-55). Although Respondent was scheduled to begin his afternoon session at 1:30 PM and hear seven regular cases, he was late to court because he had physical therapy that morning and did not start afternoon proceedings until after 2:00 PM (Tr 325-26, 1354-55). Respondent regularly started the morning and afternoon calendars late (Ex 12, p 2, ¶5).

44. Beginning at around 2:30 PM, Ms. Vroman began receiving, via email from the Grade 12 court assistants, a number of emergency petitions that had been filed with the court that afternoon (Tr 324, 326). As soon as she received the petitions, she printed them out and handed them to Respondent for his review (Tr 326).

45. Initially, Respondent accepted the petitions from her without any comment (Tr 326). But between 2:45 PM and shortly after 4:00 PM, Ms. Vroman received six more petitions and, as she was handing them to Respondent, he became increasingly

agitated, shaking his head and telling Ms. Vroman that she was going too slow and that she needed to go faster because he had to be somewhere at 4:00 PM (Tr 326-27).

46. Court proceedings were not supposed to conclude until 4:30 PM, and Respondent had not notified Ms. Vroman that he needed to leave early that day, notwithstanding that Respondent had been scheduled as the emergency intake judge for that week well in advance (Tr 327-29, 1332, 1352).

47. When the last emergency petition of the day was called, Respondent stood up and, from a distance of three to four feet, yelled at Ms. Vroman that she was not doing her job properly, she was too slow and she needed to move faster (Tr 327-28).

48. Ms. Vroman, who had no control over how many petitions were filed or how long it took for the petitions to get from the courthouse receptionists downstairs to her in the courtroom, was "flabbergasted" by Respondent's conduct toward her (Tr 325, 327).

49. Very upset by Respondent's behavior, Ms. Vroman reported the incident to her supervisors, Deputy Chief Clerk Margaret Raftis and Chief Clerk Singer, including documenting it in writing (Tr 329-30, 371). After Respondent learned of Ms. Vroman's complaint, he wrote his own complaint about her to Ms. Singer, who investigated it and determined most of his allegations to be largely unfounded and concluded that Respondent made the complaint in retaliation for Ms. Vroman's complaint (Tr 372-73; Ex 12; Resp Ex V).

50. Respondent never apologized to Ms. Vroman for his behavior in the courtroom and his demeanor toward her was "very cold" after the incident (Tr 330).

51. In early 2015, on an occasion when he was walking at the Oakdale Mall with James Stilloe, Respondent telephoned Mr. Kachadourian (Tr 49-50, 52-53). Respondent said, "I've got somebody I want you to speak to," and handed the phone to Mr. Stilloe, who told Mr. Kachadourian if either he or Ms. Gallagher crossed Respondent, they would have to answer to Mr. Stilloe (Tr 49-50, 53). Mr. Kachadourian was speechless and Mr. Stilloe's threat caused him to be concerned for his personal safety (Tr 49-50).

52. In various conversations with Mr. Kachadourian and Ms. Gallagher, Respondent referred to friends, including Marty Shaw, David English, Frankie Saraceno, Mr. Iannone and James Stilloe, whom Respondent called his "enforcers," and who Respondent said would do anything for him (Tr 50-53, 571-73).

53. Respondent's friendships with these individuals, and his comments about their criminal histories and/or prior bad acts and what they would do for Respondent, caused Mr. Kachadourian and Ms. Gallagher to be concerned for their personal safety (Tr 49-53, 571-73).

54. Respondent told Mr. Kachadourian that Mr. Shaw was "just out of Attica," a reference to Mr. Shaw's prison sentence on a conviction for two counts of Robbery in the first degree (Tr 52, 910-11, 917-18).

55. Mr. Stilloe was convicted of Falsely Reporting an Incident (Tr 860, 872).

56. Respondent told Ms. Gallagher that Mr. Iannone had a juvenile conviction for threatening to kill a judge (Tr 280, 573, 821).

57. Respondent acknowledged that Mr. English "may" have a criminal record (Tr 821).

58. On one occasion, Mr. Kachadourian overheard a conversation on speaker phone between Respondent and Frankie Saraceno, in which Mr. Saraceno – who Respondent had tasked with collecting a debt owed to Respondent and who then failed to turn over the collection to Respondent – pleaded with Respondent to call off Mr. English, who Respondent had directed to retrieve the debt from Mr. Saraceno (Tr 50-51).

59. In April or May 2017, in chambers, Respondent engaged in a telephone conversation with Jerry Penna, with the speaker phone function activated, such that Mr. Kachadourian and Ms. Gallagher heard Respondent say that he had "cement boots" in their shoe sizes and that, if they ever betrayed him, they "would be found at the bottom of the river" (Tr 54, 571).

60. In March 2018, Broome County Supreme Court Justice Molly Fitzgerald informed Ms. Gallagher that there was credible evidence that David Iannone had received a pistol permit and had threatened to put a bullet through the heads of Ms. Gallagher and Mr. Kachadourian (Tr 589-90). As a result of the threat, a court officer was stationed at the rear exit of the county building, near Ms. Gallagher's office (Tr 590, 1199, 1205).

61. Beginning in mid-to-late 2015, Ms. Gallagher began seeking the guidance and assistance of Ms. Singer with respect to Respondent's behavior (Tr 363, 568-71). While her early complaints related to his being overly controlling (Tr 363), around the summer 2016 Ms. Gallagher's complaints about Respondent's conduct alleged sexual harassment and, eventually, a death threat (Tr 360, 363-64).

62. Each and every time Ms. Gallagher came to Ms. Singer about Respondent, she prefaced her remarks by asking Ms. Singer not to say anything for fear of retaliation

and concluded their conversations by reiterating, "Please don't say anything" (Tr 404). Initially, Ms. Singer advised Ms. Gallagher to retain a lawyer, speak to her union and/or report her complaints up her chain of command (Tr 364-65).

63. Mr. Kachadourian began coming to Ms. Singer to express his concerns about Respondent's conduct sometime later in 2016 (Tr 364).

64. In about June 2017, Ms. Singer reported Ms. Gallagher and Mr. Kachadourian's complaints about Respondent's sexual harassment and violent threats to her supervisor, District Executive Gregory Gates (Tr 357, 360). On July 11, 2017, after completion of an investigation by the Office of the Inspector General for the Unified Court System, Respondent was locked out of his chambers by court administrators and reassigned from presiding over Family Court matters to handling foreclosure matters in another building (Tr 48-49, 813-14, 1346, 1375, 1418-19).

65. In light of the credible testimony of Ms. Gallagher, Mr. Kachadourian, Ms. Singer, Ms. L[redacted] and Ms. Vroman about Respondent's pattern of inappropriate conduct toward them, Respondent's denials of such conduct are rejected.

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE I

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

67. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that

promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

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

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

70. Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE II

71. From 1994 to 2004, Respondent maintained a private legal practice located at 2[redacted] North Street in Endwell, New York (Tr 824-25, 1032, 1300-02).

72. After Respondent's election to the Family Court, his former legal assistant, Danuta "Donna" Filip continued to work at the 2[redacted] North Street law office for Artan Serjanej, Esq., who came to occupy the space and took over some of Respondent's files (Tr 60, 595, 812, 825, 1035).

73. One of the files from Respondent's private practice that was still open and pending after January 1, 2015, was the *Estate of Roger Funk* (Tr 824, 832-34).

74. On November 6, 2015, Respondent picked up the mail from his former law office and brought it to chambers (Tr 1488). Later that day, he walked into Ms. Gallagher's office and opened the law office mail, which included an envelope addressed to Mr. Serjanej from Thomas Hayes that contained three unsigned checks (Tr 71-72, 597; Ex 2V, p 2). The three unsigned checks were drawn from the *Estate of Roger Funk* (Ex 2V, p 2). One of the checks was payable to Respondent in the amount of $11,184.60, representing his legal fee (Ex 2V, p 2). A second unsigned check was payable to Ms. Filip in the amount of $2,275.00 (Ex 2V, p 2). On both checks, the "For" and signature lines were blank (Ex 2V, p 2).

75. When he realized that the checks were not signed, Respondent became upset and directed Ms. Gallagher to photocopy the checks and the envelope that they came in, and to write a brief letter returning the three checks to Mr. Hayes for his signature (Tr 71-72, 597). He also told Ms. Gallagher to draft the letter as if Ms. Filip were the author and sender (Tr 598). Respondent explained to Ms. Gallagher that he was receiving payments for legal services he performed "on old files" (Tr 836).

76. Respondent's testimony that Ms. Gallagher "volunteered" to draft the letter to Mr. Hayes (Tr 1400, 1454-55, 1456-58) and his denial that he asked Ms. Gallagher to write the letter as if Ms. Filip were the author and sender (Tr 1455-56) are rejected as lacking in credibility.

77. Ms. Gallagher typed the letter at her desk and made a couple of edits at Respondent's direction (Tr 72, 745, 597). She then gave the letter, original checks and photocopies back to Respondent (Tr 598, 838). Respondent later received his "unpaid

legal fee" in the form of two checks dated December 1, 2015, and signed by Mr. Hayes in the amounts of $5,384.00 and $5,800.60 (Ex 2W).

78. Respondent's request that Ms. Gallagher type a letter for his private law practice is consistent with his general practice of using court resources for personal benefit. Respondent told Ms. Gallagher to make copies of documents for his personal use "on a daily basis," (Tr 226, 596, 599, 600, 603). He directed Ms. Gallagher to accompany him to 2[redacted] North Street to make copies, and told his chambers staff to take files from his former law office to be photocopied at an off-site location (Tr 596, 655-656, 738). In April 2016, while in his judicial chambers, Respondent ordered Ms. Gallagher to assist him with his taxes (Tr 554, 739, 770). And on at least one occasion, Mr. Kachadourian expended time and money to collect and photocopy documents and later FedEx the items to Respondent's counsel concerning a private legal matter (Tr 177-78, 234-35).

79. "Pretty much from the beginning" of his Family Court term, Respondent asked Ms. Gallagher and Mr. Kachadourian to engage in political activity (Tr 592-93, 772). Respondent asked Ms. Gallagher to maintain lists of names for future political campaigns (Tr 727, 736), such as lists of Family Court staff and others he met that included their voter registration status (Tr 592). The list-making continued in November 2015 and into 2016 until Ms. Gallagher no longer had time to maintain it (Tr 736). Respondent also asked Mr. Kachadourian to maintain a list of individuals that Respondent believed "would benefit him politically" in "future campaigns" (Tr 57). Mr. Kachadourian did not follow Respondent's directive (Tr 57).

80. In May 2016, Respondent requested that Ms. Gallagher perform campaign work with Respondent's mother and offered up the services of his chambers staff to George Phillips who ran for political office in 2016 (Tr 772). Respondent spoke to Mr. Phillips on the phone and told him that his "team" would work for his campaign (Tr 772).

81. In or about August 2016, Respondent told Ms. Gallagher that she needed "to make [her] office a campaign office" (Tr 592, 772). In the spring of 2017, Respondent told Ms. Gallagher that she should run a campaign office in the Broome County Family Court for a prospective judicial campaign by Mr. Serjanej (Tr 593, 764).

82. In June 2017, Respondent demanded that Ms. Gallagher collect signatures for the designating petition of Richard Balles, Respondent's brother-in-law (Tr 57, 593, 965) who ran for mayor of Johnson City in the fall of 2017 (Tr 57, 593, 823). Ms. Gallagher did not collect the signatures because Mr. Kachadourian told her that they were not permitted to do so (Tr 594). When Respondent returned from a work-related trip, he called Mr. Kachadourian "very upset," causing Mr. Kachadourian to think that someone had been hurt (Tr 57). Instead, Respondent was "very angry" that Ms. Gallagher had not collected any signatures for his brother-in-law (Tr 57, 594). Earlier in the year, Mr. Balles had visited Respondent's judicial chambers to have photographs taken for his mayoral campaign (Tr 593, 772).

83. In early 2017, Respondent told Mr. Kachadourian that the Broome County Surrogate's Court had requested a formal accounting in the *Estate of Jerry J. Behal, Jr.* (Tr 61-63). Respondent did not have the required form and asked Mr. Kachadourian to find an attorney to produce the formal accounting and to obtain the form (Tr 61, 63).

During their conversation, Respondent showed Mr. Kachadourian emails that were sent to "Rick," "Donna" and the estate executor "Dave Behal" (Tr 62-64, 67-68; Ex 4III). The email address associated with "Rick" was [redacted]@aol.com; Respondent's personal email address that he used both prior to and after becoming a Family Court judge (Tr 848, 1376). Eventually, Respondent obtained the forms he needed from a different attorney (Tr 63).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE II

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

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

86. Respondent failed to avoid impropriety and the appearance of impropriety, in that he lent the prestige of judicial office to advance his own private interests and the private interest of another, in violation of Section 100.2(C) of the Rules.

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

88. Respondent failed to refrain from inappropriate political activity, in that he failed to refrain from directly or indirectly engaging in political activity, in violation of Section 100.5(A)(1) of the Rules.

89. Respondent failed to refrain from inappropriate political activity, in that he failed to require that his personal appointees refrain from engaging in prohibited political activity, in violation of Section 100.5(C)(4) of the Rules.

90. Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE III

91. After practicing law for two decades, Respondent had accumulated "many files," some of which remained pending after he assumed the Family Court bench (Tr 824).

92. On the advice of Mr. Kachadourian, Respondent met with David Kapur, Esq., and discussed transferring his client files to Mr. Kapur (Tr 823). Mr. Kapur spent $1,000 to run advertisements in local newspapers that informed Respondent's clients that he would be handling their legal matters (Tr 133-34). Ultimately, however, Respondent gave Mr. Kapur only a dozen files of his open files (Tr 133, 824-25), while the majority remained with Mr. Serjanej, who took over Respondent's law office space in the first quarter of 2015 (Tr 133, 823, 825, 1032).

93. Artan Serjanej has known Respondent since 2001 (Tr 1029). Mr. Serjanej has a solo practice (Tr 1027-28) concentrated in the areas of criminal law, family law and

real estate law (Tr 1029, 1034-35). Prior to taking over Respondent's law office, Mr. Serjanej had not practiced trusts and estates law as a solo practitioner (Tr 1102). He currently serves as a "family attorney" for Respondent, and Respondent's wife, mother, and brother-in-law (Tr 1035). Mr. Serjanej pays taxes, utilities and insurance at 2[redacted] North Street in lieu of rent (Tr 825, 1031).

94. After Respondent's election to Family Court, his former legal assistant Donna Filip continued to work at the 2[redacted] North Street law office for Mr. Serjanej (Tr 60, 595, 812, 1035). After he took the Family Court bench, Respondent continued to speak to Ms. Filip on a near daily basis, sometimes multiple times a day (Tr 595, 752). She also came to Respondent's judicial chambers to bring him files from his former law office on North Street (Tr 595). In his first month in office, Ms. Gallagher heard Respondent "screaming and yelling" at Ms. Filip on the phone about various files (Tr 653).

95. Even after Respondent transferred his practice to Mr. Serjanej, he went to 2[redacted] North Street on a "constant basis" (Tr 29). During these visits, Respondent worked on legal cases, for at least an hour, with Ms. Filip and/or Mr. Serjanej (Tr 60, 173, 176, 229-30). Once, Mr. Kachadourian told Respondent that by continuing to perform legal work he was jeopardizing his elected Family Court position, which he likened to signing a $2 million contract (Tr 60-61, 172). Nevertheless, Respondent's visits to his former law office "continued and continued" (Tr 61). On at least 30 occasions, Respondent told Mr. Kachadourian to accompany him to his former law office during lunch, and once there Respondent worked on legal cases (Tr 59-60, 176).

96. Two of the estates that Respondent worked on after he assumed the bench were the *Estate of Antoinette Saraceno* and the *Estate of Jerry Behal, Jr.* (Tr 61).

Estate of Antoinette Saraceno.

97. Antoinette Saraceno died on October 15, 2010, leaving an estate with an approximate value of less than $150,000 (FWC ¶35; Ans ¶35; Ex 5B, p 4, Ex 5H, p 4). In her will, Ms. Saraceno directed that Respondent "be retained to assist" the executor with the administration of her estate (Ex 5D, p 4).

98. On December 10, 2010, Respondent filed a Petition for Probate in the Tioga County Surrogate's Court in the *Estate of Antoinette Saraceno* (FWC ¶35; Ans ¶35; Ex 5B, 5C). After two of Ms. Saraceno's brothers renounced their nominations, Frank Saraceno, Sr. became the alternate executor (Ex 5F).

99. In April 2011, John I. Saraceno, Jr., an estate beneficiary, filed a letter with the Tioga County Surrogate's Court alleging, *inter alia,* that Respondent, Frank Saraceno, Sr. and Frank Saraceno, Jr. altered Ms. Saraceno's will (Ex 5P). A hearing was held on April 15, 2011 (Exs 5L, 5N) before Tioga County Surrogate Judge Vincent Sgueglia, who granted Frank Saraceno, Sr. preliminary letters testamentary "with limitations" (Exs 5Q, 5R, 5S) and gave John Saraceno, Jr. 30 days to file objections (Ex 5Q).

100. On May 9, 2011, John Saraceno, Jr. filed his objections (FWC ¶36; Ans ¶36; Ex 5T) but he did not serve his objections on Respondent until June (Ex 5AA). On August 26, 2011, Judge Sgueglia granted Respondent's motion for an order dismissing

the objections (FWC ¶36; Ans ¶36; Exs 5Y, 5AA), signed a Decree Granting Probate and issued Letters Testamentary to Frank Saraceno, Sr. (Exs 5BB, 5CC).

101. The following year, on March 1, 2012, the Surrogate's Court advised Respondent that an inventory of assets had not been filed (Ex 5EE). Respondent filed the inventory on March 1, 2012 (FWC ¶37; Ans ¶37; Ex 5FF) and on April 6, 2012, Respondent received his legal fee in the amount of $6,960.00 (FWC ¶38; Ans ¶38; Ex 5UU).

102. More than a year later, on September 12, 2013, the court directed Respondent to explain why the estate had not been fully distributed or, in the alternative, explain why a final accounting had not been filed (Ex 5HH). Three months later, on December 27, 2013, the court faxed Respondent a letter requesting an inventory (Ex 5II). There was no further correspondence until March 20, 2014, when the chief clerk sent Frank Saraceno, Sr. a Citation directing him to appear in court on May 2, 2014 to explain why his Letters Testamentary should not be suspended or revoked (Ex 5JJ).

103. Ms. Filip called the court on April 7, 2014 and told Chief Clerk Deborah Stone that the inventory would be filed (Ex 5A, p 5). Nearly four months later, on July 28, 2014, Respondent filed a form with the court in which he requested additional time to collect "all the receipts, releases and discharges of beneficiaries" (Ex 5LL, p 2). Thereafter, nothing further was filed by Respondent in the Surrogate's Court.

104. On August 2, 2016, more than a year after Respondent assumed the Family Court bench, Kiyoko "Kiki" Matsuhashi, a clerk in the Surrogate's Court, emailed Respondent a warning letter requesting that he "immediately" file an inventory (Tr 424,

448-49; Exs 5A, p 4, 5MM). Ms. Matsuhashi also mailed the August 2nd letter to Frank Saraceno, Sr. (Tr 449; Ex 5MM).

105. On August 15, 2016, Ms. Matsuhashi spoke to Barbara Saraceno, the executor's wife (Tr 427-28; Ex 5A pp 3-4). At the time of the call, Frank Saraceno, Sr. was in a nursing home and Mrs. Saraceno opened mail addressed to her husband (Tr 474-75; Ex 5A, p 4). Mrs. Saraceno recalled that the court called her multiple times because the estate "was not resolved yet" (Tr 475). Mrs. Saraceno told Ms. Matsuhashi that she spoke to Ms. Filip who told her that Respondent had become a judge and was "no longer practicing" (Exs 5A, p 4, 5NN).

106. On October 10, 2016, Mrs. Saraceno called Respondent on his cellphone or at his prior law office (Tr 477). Respondent made a contemporaneous note in his DayMinder calendar that said "Saraceno" (Tr 852). Mrs. Saraceno told Respondent that she had received a letter from the Surrogate's Court "that things weren't filed" and the estate was not finalized (Tr 477). Respondent told Mrs. Saraceno not to worry about the estate, that he would take care of the estate and "finish it up" (Tr 475, 1320, 1403; Ex 5A, p 3).

107. Two days later, on October 12th, Respondent called Ms. Stone at Tioga County Surrogate's Court (Tr 424-25). In his DayMinder, Respondent wrote "Frank Saraceno" and circled it (Tr 852-53). He also made the notation "Donna office" and circled the time of 5:15 (Tr 853).

108. During the telephone conversation with Ms. Stone, Respondent told her that one beneficiary, Greg Saraceno, would not sign a waiver and asked how to close the

estate (Tr 425; Ex 5A, p 3). Ms. Stone told Respondent that if he could not get a beneficiary to cooperate, he may need to file a formal accounting (Tr 425; Ex 5A, p 3).

109. Respondent requested that Judge Gerald A. Keene close the estate "by motion" (Tr 425; Ex 5A, p 3). Ms. Stone understood Respondent to be making a request that the estate be informally closed because he could not obtain all of the required documents and did not want to file a formal accounting (Tr 425). On October 14, 2016, Ms. Stone called Respondent who "had left a phone number for me to return his call" (Tr 426) and informed him that Judge Keene was requiring a formal accounting (Tr 426; Ex 5A, p 3). Respondent responded "Okay" and the conversation ended (Tr 426). He did not file a formal accounting (Tr 426).

110. In light of Ms. Stone's credible testimony and contemporaneous notes documenting her telephone conversation with Respondent (Tr 425; Ex 5A, p 3), Respondent's absolute denial that he requested that Judge Keene close the estate "by motion" (Tr 1448) is rejected as lacking in credibility.

111. On December 16, 2016, Mrs. Saraceno called the surrogate's court and asked Ms. Stone if Respondent had "filed anything since he told [her] he would finish it up" (Ex 5A, p 3). Ms. Stone told Mrs. Saraceno that a substitution of attorneys "was going to be filed but nothing has been filed yet" (Ex 5A, p 3). On March 28, 2017, Ms. Matsuhashi emailed Respondent a letter "directing" him to "immediately" file a statement pursuant to Rule 207.42 and any outstanding releases and advising that if he did not do so, the court might revoke the Letters Testamentary and demand a formal accounting (Ex 5PP).

112. By letter dated January 29, 2018, Artan Serjanej filed a Notice of Appearance in the matter (Exs 5RR, 5SS). Mr. Serjanej finalized the estate on January 4, 2019, just six days before his hearing testimony (Tr 1038). He was not paid for his work in closing out the estate (Tr 1041).

Estate of Jerry J. Behal, Jr.

113. Jerry J. Behal, Jr. died on October 11, 2011, in a motorcycle accident and his brother, David Behal, was appointed to serve as the estate executor (FWC ¶46; Ans ¶46; Tr 1116; Ex 4C, p 1). David Behal and Respondent have been friends since they were four years old and Respondent served as a best man in Mr. Behal's wedding (Tr 847,1116).

114. On October 26, 2011, Respondent filed a petition for probate in the Broome County Surrogate's Court on behalf of Mr. Behal (Ex 4C). There were six beneficiaries of the estate: five of the decedent's nieces and nephews, and a friend of the decedent's (FWC ¶46; Ans ¶46). In November 2011, the decedent's will was admitted to probate (FWC ¶46; Ans ¶46).

115. In July 2014, Respondent filed a petition on behalf of Mr. Behal for an order authorizing the executor to settle a claim for $100,000 for the wrongful death of the decedent (FWC ¶47; Ans ¶47). In December 2014, Respondent filed an attorney's affidavit in support of the petition (FWC ¶47; Ans ¶47).

116. By Order dated January 23, 2015 – three weeks after Respondent became a Family Court Judge – Surrogate David Guy approved the settlement (Ex 4Z). The estate received the settlement proceeds on April 20, 2015 (Ex 4PP, p 5). On March 20, 2015,

Mr. Behal signed a Consent to Change Attorney, substituting Mr. Serjanej to represent him in connection with the personal injury action (Ex CC). However, Mr. Serjanej did not file a Notice of Appearance with the surrogate's court until November 23, 2015 (Ex 4CC). Mr. Behal selected Mr. Serjanej to take over the estate based on Respondent's recommendation (Tr 1049, 1117).

117. On October 13, 2015, Donna Ougheltree, one of the beneficiaries, filed a petition requesting a Compulsory Accounting and Judge Guy ordered Mr. Behal to file an Account by March 31, 2016 (Exs 4AA, 4BB, 4EE). On April 29, 2016, Mr. Serjanej requested and received an extension to file the accounting until May 31, 2016 (Exs 4FF, 4GG).

118. On September 21, 2016, after Mr. Serjanej failed to file the accounting, Surrogate Guy ordered Mr. Behal to file the accounting by October 7, 2016, or he would be removed as executor (Ex 4II). On the same date that Judge Guy issued his order, Robert Wedlake, Esq. filed a Notice of Appearance on behalf of Joshua Behal, a beneficiary (Ex 4HH).

119. On October 7, 2016, Mr. Serjanej requested another extension due to the pending sale of a piece of real property (Ex 4JJ) and the Surrogate extended the deadline to November 21, 2016 (Ex 4KK).

120. In October 2016, Respondent called Mr. Wedlake about an unrelated matter (Tr 513), and Mr. Wedlake asked Respondent about the *Behal* estate (Tr 506). Mr. Wedlake was seeking information to help him advise his client (Tr 514), who was concerned because the estate had been open for five years without any distributions (Tr

490, 506). Mr. Wedlake also expressed concern that Mr. Serjanej "was not experienced" in estate matters and struggled with handling the estate (Tr 507, 516). For months, Mr. Wedlake tried unsuccessfully to communicate with Mr. Serjanej about the estate (Tr 504). Instead, whenever he called the law office, Mr. Wedlake spoke to "Donna" (Tr 503-04). Ms. Filip even appeared at an attorney conference (Tr 505). Respondent told Mr. Wedlake that Mr. Behal was a friend who would not steal money from the estate (Tr 507).

121. Mr. Serjanej did not file an accounting; Surrogate Guy scheduled an attorney conference on December 19, 2016 (Ex 4LL) and subsequently issued an Order directing Mr. Behal to file an accounting by May 19, 2017 or he would be "removed as executor of the estate without further notice" (Ex 4NN).

122. Between March 2017 and May 9, 2017, Mr. Behal emailed Respondent at Respondent's AOL account and Ms. Filip multiple times, sending spreadsheets containing estate accounting records; Mr. Serjanej was not copied on the emails (Ex 4III; Tr 848, 1106). At some point, Respondent showed Mr. Kachadourian the emails from Mr. Behal containing the estate accounting, and asked Mr. Kachadourian to find an attorney to complete the accounting and to find the proper forms for the account (Tr 61, 63).

123. Respondent's testimony that he never saw the emails sent by Mr. Behal to his AOL account, and that neither Ms. Filip nor Mr. Behal mentioned them to him (Tr 1439; Ex 4III) is rejected as lacking credibility.

124. On May 10, 2017, Mr. Behal drove from his home in Virginia to Johnson City, NY (Tr 1137). The following day, May 11, 2017, he met with Ms. Filip and Mr. Serjanej at 2[redacted] North Street to go over the estate accounting (Tr 1137).

125. On May 12th, Mr. Behal went to Respondent's chambers (Tr 63, 178-79, 848, 1138). When Mr. Behal arrived, Respondent was in court (Tr 1138) and Mr. Kachadourian met Mr. Behal at the public entrance and escorted him to Respondent's chambers (Tr 1138-40). On the way back to chambers, the two coincidentally saw Mr. Serjanej in the lobby (Tr 232, 1139). Mr. Behal told Mr. Kachadourian "how dissatisfied he was with [Mr. Serjanej's]" handling of the estate (Tr 232).

126. When Respondent returned to his chambers, Mr. Kachadourian observed him going over the accounting with Mr. Behal (Tr 63, 185). Mr. Kachadourian overheard Respondent tell Ms. Filip that he wanted "his regular attorney fees" (Tr 64). Respondent and Mr. Serjanej were going to split the fee after assessing what monetary expenses and time Respondent contributed toward the estate versus Mr. Serjanej's contributions (Tr 1152-53).

127. The accounting filed by Mr. Serjanej on May 26, 2017 was rejected by Judge Guy as insufficient on June 15, 2017 (Exs 4PP, 4QQ). An amended accounting was not subsequently filed and Surrogate Julie A. Campbell signed a Citation on October 16, 2017 requiring the parties to appear in court (Ex 4TT). A trial was held in the summer of 2018 and the parties reached a settlement (Tr 512, 1051). Mr. Serjanej was paid $10,950.32 as the entire legal fee; there is no current plan for Respondent to be paid for his portion of the work in the estate (Tr 1104-06; Ex 4HHH).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE III

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

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

130. Respondent failed to avoid impropriety and the appearance of impropriety, in that he lent the prestige of judicial office to advance his own private interests and the private interest of another, in violation of Section 100.2(C) of the Rules.

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

132. Respondent failed to conduct the judge's extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they are not incompatible with judicial office, in violation of Section 100.4(A)(3) of the Rules.

133. Respondent failed to conduct the judge's extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he engaged in the practice of law as a full-time judge, in violation of Section 100.4(G) of the Rules.

134. Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE IV

135. Respondent was paid a total of $16,203.60 as his legal fee for his handling of the *Estate of Deborah Brigham* by three separate checks dated November 24, 2015 (FWC ¶64; Ans ¶64; Tr 841, 843-44; Ex 6Q). According to Respondent, the estate was "pretty well done" before he took the Family Court bench, but he conceded he was still listed with the Broome County Surrogate's Court as the estate attorney in October 2015 (Tr 842-43).

136. By checks dated December 1, 2015, Respondent received payment of $11,184 as his legal fee for work he had performed as the estate attorney in *Estate of Roger Funk*, which was also still pending when Respondent assumed judicial office (FWC ¶65; Ans ¶65; Tr 833-34, 839-40; Ex 2W). Respondent also received legal fees from clients Jeff Jump and Alysa Durkee, for a total amount of $27,387.60 in legal fees received by Respondent in 2015 (Ex 10C, p 1).

137. Respondent filed his Annual Statement of Financial Disclosure (FDS) with the Ethics Commission for the Unified Court System for calendar year 2015 on May 13, 2016 at 5:05 PM (Ex 8B, p 1). Respondent failed to disclose any of the more than $27,000 in income he had received in 2015 from legal work (Ex 8B, p 4, ¶13).

138. On November 16, 2017, twelve days before his scheduled appearance before the Commission for testimony, Respondent amended his 2015 Annual Statement

of Financial Disclosure to include "Income" from "former private law practice" in the Category Amount of $20,000 to under $60,000 (Tr 810, 828-29; Ex 8D, p 4, ¶13).

139. Respondent's initial testimony during the Commission's investigation that he believed he had disclosed his income from the practice of law on his 2015 FDS form where he listed his bank account holdings (Tr 840, 844) is rejected as lacking credibility because he clearly knew how to properly report it, inasmuch as he had previously reported income from the practice of law in the appropriate section of his 2014 form (Ex 8A).

140. Moreover, Respondent's different explanation at the hearing that he thought he had received the law practice income not in 2015, but in 2016 (Tr 1411-12), is also rejected as lacking credibility because he had not reported it on his 2016 FDS form, either (Ex 8C).

141. Respondent failed to report tens of thousands of dollars of outside income on his 2015 and 2016 state and federal income tax returns.

142. In addition to the more than $27,000 Respondent received in 2015 for legal work in the *Funk* and *Brigham* estates, Respondent also received a check for $500 each month ($6,000 per year) from tenant Louis Micha, for the rental of the apartment upstairs from the law office at 2[redacted] North Street (Tr 523; Ex 7C). Respondent's wife is the owner of the building (Tr 828). Mr. Micha, who had been Respondent's legal client, moved into the apartment in November 2013, after his divorce (Tr 522-23). There was no lease and the rent did not include utilities (Tr 524). Dave Iannone, the "super,"

showed Mr. Micha the apartment and was the person he would call if there were any issues with the apartment (Tr 523-24, 832).

143. Mr. Micha always paid his rent by check payable to Respondent at the end of the month before the month it was due, and gave each check to Donna Filip, the legal secretary in the law office downstairs (Tr 524-25; Ex 7C). Ms. Filip would give Mr. Micha a receipt and make a copy of the check and receipt (Tr 526; Ex 7C).

144. Respondent told Mr. Micha to leave the rent checks with the law office (Tr 828). Respondent cashed all the checks (Tr 528).

145. Respondent and his mother have an LLC which owns property at 394 Main Street and 3[redacted] Oakdale Road in Johnson City (Tr 830-32). Respondent had intended to turn the building at 394 Main Street into his law office but it is unoccupied (Tr 831; Ex 10C, pp 1-2). 3[redacted] Oakdale Road is a one-family residential property rented by David English and Michelle Caforio (Tr 831). Respondent received rental payments from Ms. Caforio and Mr. English totaling $1,400 in 2015 and $9,600 in 2016 (Ex 10C, pp 1, 3).

146. Respondent and his wife filed joint federal and New York state income tax returns for 2015 and 2016 (Exs 9A, 9D, 9F, 9I). On his federal return, Respondent's judicial salary was reported on Form 1040, line 1 and his wife's income from partnerships was reported on line 17 and Schedule E, Part II (Exs 9A, 9F). Respondent did not report any additional income in either year, *i.e.*, none of the income from the practice of law was reported on Form 1040, line 21 (Exs 9A, 9F).

147. On his New York state income tax returns for 2015 and 2016, Respondent similarly reported his judicial salary and his wife's partnership income but did not report his additional income from the practice of law (Exs 9D, 9I).

148. For 2015, Respondent claimed expenses totaling $11,236 for 394 Main Street and 3[redacted] Oakdale Road on his federal return, but he did not report any amount of income or rents received for these properties (Ex 9A, Schedule E). Respondent failed to list the rental property at 2[redacted] North Street (Ex 9A, Schedule E). Respondent's New York state income tax return carried over these same omissions (Ex 9D, line 11).

149. For 2016, Respondent took expenses totaling $5,978 for 394 Main Street and $1,107 for 3[redacted] Oakdale Road but did not list any income for Oakdale Road (Ex 9F, Schedule E). Respondent failed to list the rental property at 2[redacted] North Street (Ex 9F, Schedule E). Respondent's New York state income tax return carried over these same omissions (Ex 9I, line 11).

150. On July 11, 2017, Respondent met with his administrative judge, his supervising judge and the district administrator, who told him a complaint had been made and asked him to take some time off (Tr 813). Later that day, he learned he was locked out of the Family Court building (Tr 813-14).

151. During the meeting, Respondent was also told that he must meet with the Inspector General's office and on July 14, 2017, he was interviewed by someone from that office (Tr 814, 1370-71). During the Inspector General's investigation, Respondent was asked about income he received for his work on the *Estate of Deborah Brigham* (Tr 1468-69).

152. Respondent subsequently filed amended federal and state tax returns for 2015 and 2016 on August 2, 2017 (Ex 10A).

153. The 2015 amended returns resulted in an increased tax liability of $9,590 and $1,925 to the IRS and New York State, respectively, (Exs 9B, 9E). For 2016, Respondent's federal tax amount remained the same after the amendment due to an increase in claimed expenses for the rental properties (Ex 9F, Schedule E). Respondent's 2016 New York state tax bill increased by $725 (Exs 9G, Schedule E, 9J).

154. Respondent's explanation for failing to disclose thousands of dollars in rental income on his FDS forms and tax returns – that the properties ran a deficit overall – is rejected as lacking credibility, since: (A) the FDS form specifically instructs filers to include net rent from each source before taxes; (B) the IRS form (Schedule E) requires the listing of rents received for each property *before* the listing of expenses which may then be subtracted from the rent; (C) Respondent initially did not even include 2[redacted] North Street as one of the properties on his tax returns; and (D) Respondent did not pay the expenses of 2[redacted] North Street in any event and that property did not therefore run a "deficit."

155. On April 23, 2016, District Executive Gregory A. Gates emailed all the Sixth Judicial District judges and their secretaries a memo from Deputy Chief Administrative Judge Michael V. Coccoma, reminding them of the requirement in §100.4(H)(2) of the Rules that full-time judges must file an annual report of extra-judicial income with the chief clerk of the court on which the judge serves (Ex 18). The email

was addressed to all the 6th Judicial District judges and court attorneys (Tr 1471). Respondent did not dispute that it was sent to him (Tr 1472).

156. Chief Clerk Debbi Singer was aware that each of the four Broome County Family Court judges was required to file an annual report of extra-judicial income with her as clerk of the court (Tr 375). Respondent did not file such a report with Ms. Singer from the time he assumed the bench in January 2015 until Ms. Singer's retirement in June 2018 (Tr. 375-76).

157. On November 28, 2017, when Respondent appeared for testimony before the Commission during the investigation, he was asked about his failure to file any reports with the clerk of the court; Respondent said he was not aware of the requirement (Tr 853-54). By letter dated May 30, 2018, Respondent also responded to a written inquiry from the Commission, dated May 7, 2018, concerning his failure to file any annual disclosure reports with the clerk (Exs 10B, 10C). Respondent wrote that he had not filed with the clerk because he was unaware of the requirement and believed that his Ethics Commission filing fulfilled all his obligations with respect to financial disclosure; he acknowledged he did not comply with the Rule (Ex 10C, pp 5-6).

158. Respondent's repeated professed ignorance as to the requirement to file an annual report with the clerk of the court is rejected as lacking credibility in light of the facts that he was reminded of it by court administrators by email in April 2016 and by the Commission in November 2017 and May 2018.

159. Respondent did not file a report with the chief clerk of the Family Court until January 31, 2019, when he produced the report as an exhibit at the final day of the hearing before the Referee on the Formal Written Complaint (Resp Ex PP).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE IV

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

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

162. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to diligently discharge his administrative duties, in violation of Section 100.3(C)(1) of the Rules.

163. Respondent failed to conduct the judge's extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to annually report the date, place and nature of any activity for which the judge received compensation in excess of $150, and the name of the payor and the amount of compensation so received, in violation of Section 100.4(H)(2) of the Rules.

164. Respondent failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to disclose income on his

financial disclosure forms as required by 22 NYCRR Part 40, in violation of Section 100.4(I) of the Rules.

165. Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.