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.

REPLY MEMORANDUM TO RESPONDENT'S POST-HEARING SUBMISSION

ROBERT H. TEMBECKJIAN, ESQ.
Counsel to the State
Commission on Judicial Conduct
Corning Tower Suite 2301
Empire State Plaza
Albany, New York 12223
(518) 453-4600

Of Counsel:
Cathleen S. Cenci, Esq.
S. Peter Pedrotty, Esq.
Eteena J. Tadjiogueu, Esq.
Edward Lindner, Esq.

PRELIMINARY STATEMENT

Respondent's attack on the veracity and reputations of Rachelle Gallagher and Mark Kachourian does nothing to counter the overwhelming evidence of his misconduct. Nor does it deflect from the fact that his testimony was repeatedly discredited by four credible, disinterested witnesses. Respondent's attempts to explain away damning record evidence strain credulity, and his claim that Kachadourian and Gallagher falsely accused him because they feared losing their jobs is unworthy of belief.

ARGUMENT

POINT I

RESPONDENT CANNOT REFUTE THE CORROBORATING TESTIMONY OF FOUR CREDIBLE, DISINTERESTED WITNESSES

Throughout much of his brief, Respondent strains to characterize Mr. Kachadourian and Ms. Gallagher as liars and conspirators who engaged in an elaborate hoax to save their jobs (Resp Br 10-39). Respondent would have the Referee believe that the Commission's case amounts to just his word against theirs.

Yet throughout the hearing, Respondent was repeatedly discredited by a number of disinterested and unimpeached witnesses, who contradicted his testimony and independently corroborated Mr. Kachadourian and Ms. Gallagher in significant respects. For Respondent's testimony to have been truthful, each of these four court professionals would have had to have lied. Respondent has provided no explanation or motive for why they would have done so.

A. Debbi Singer

Respondent has conceded that Debbi Singer, the former longtime Broome County Family Court Chief Clerk, is a "truthful," "honest," "classy" and "professional" person (Tr 819, 1476). Yet in his Answer (FWC ¶¶23-24; Ans ¶¶23-24), and again during his direct examination (Tr 1399), he unequivocally denied her testimony that on three different occasions, he subjected her to unwanted sexual comments (Tr 367, 370, 403).

Respondent's brief inexplicably continues this same schizophrenic approach. Apparently now realizing that his absolute denials appear patently false, Respondent misstates the record to assert that in his hearing testimony, he "[admitted he] made one of the comments" and "he had no specific recollection as to the others" (Resp Br 52).[1] He then falsely claims that in his hearing testimony he "apologizes for making such comments" (Resp Br 54, *citing* Tr 1428). Paradoxically, however, he simultaneously argues that Ms. Singer – the <u>victim</u> of the conduct that Respondent now "admits" and supposedly "apologizes" for – is unworthy of belief (Resp Br 50-54).[2]

As the transcript of his testimony makes plain, Respondent did <u>not</u> admit that he made at least one offensive comment, and he did <u>not</u> apologize.

---

[1] Similarly, Respondent's brief misstates the record by asserting that Mr. Kachadourian testified that Jerry Penna made the comment about "cement boots" (Resp Br 35-36), when it is clear from his and Ms. Gallagher's testimony that it was Respondent who made the threat (Tr 54, 571, 710, 776). Ms. Singer also testified that Ms. Gallagher and Mr. Kachadourian reported to her that Respondent "said to them that he had cement boots made in their size and he knew people that could make them disappear where no one would ever find them if they were to report on anything that he's done" (Tr 361).

[2] Respondent's attempt to attack Ms. Singer's credibility by claiming "impossibility" of the "hot flash" comment due to the timing of Ms. Gallagher's vacation (Resp Br 50-51) is unpersuasive. Even if Ms. Singer's recollection about when Respondent *repeated* the comment to Ms. Gallagher was incorrect (Tr 401-02), that does not disprove he made it in the first place.

The Formal Written Complaint alleges in paragraphs 23 and 24 that on various occasions, Respondent told Ms. Singer that if he'd known she could cook, he would have "gone for the widow" (FWC ¶23) and that he said "he was 'glad he had that effect on her' when she said something about having a hot flash, and that she looked 'really hot' in the outfit she was wearing" (FWC ¶24). When asked about those specific allegations on direct examination, he emphatically testified that those incidents "did not" occur (Tr 1399).[3] Respondent's concession now in his brief that he "admittedly made one of the comments" (Resp Br 52) alleged by Ms. Singer is no mere typo – it is a Freudian slip.

Nor is it true that during the hearing, Respondent "averred" that he "apologizes" for his comments to Ms. Singer (Resp Br 54). His actual testimony was that he "would have apologized" if Ms. Singer had told him his comments made her "uncomfortable" (Tr 1428) (emphasis added).

By the time Respondent testified at the hearing, however, he had listened to Ms. Singer's compelling testimony that she was "shocked and disgusted" (Tr 367, 370) by his conduct. Yet despite knowing how deeply his words had offended her, he did not apologize. His attempt to establish mitigation now by making a false claim to the contrary is telling. It acknowledges that an apology was the decent and necessary thing to do. And it serves to highlight the fact that even after hearing Ms. Singer testify, he did not do so.

---

[3] Respondent's brief correctly notes that he did acknowledge that the conduct specified in paragraph 25 of the Formal Written Complaint "occurred" (Resp Br 52, *citing* Tr 1399). Paragraph 25 of the Formal Written Complaint alleges, in relevant part, that Respondent was reassigned from Family Court (FWC ¶ 25).

Respondent's brief goes to such great though ineffectual lengths to deal with Ms. Singer's testimony because it is clear how compellingly she corroborates Mr. Kachadourian and Ms. Gallagher. The fact that Respondent made these offensive remarks directly to Ms. Singer and that he continues, albeit erratically, to deny it, is consistent with the testimony of Mr. Kachadourian and Ms. Gallagher that they heard Respondent make similar sexually offensive comments.

B. Deborah Stone

Deborah Stone, the Chief Clerk of the Tioga County Surrogate's Court, has no ties to Mr. Kachadourian or Ms. Gallagher and is disconnected from any of the activities at Broome County Family Court. Yet, based on Respondent's denials (Resp Br 55, 58; Tr 1448), Ms. Stone, too, apparently lied when she testified that Respondent asked her if the *Saraceno* estate could be closed "by motion" (Tr 425). Respondent's claim that he "did not ask ... that the estate be closed by motion" (Resp Br 58) is particularly incredible, because in order for Respondent's testimony to be true, Ms. Stone must also have fabricated her contemporaneous notes documenting his request (Tr 425; Ex 5A, p 3). Ms. Stone's testimony, and her contemporaneous notes, provide strong corroboration for the testimony of Mr. Kachadourian and Ms. Gallagher that Respondent practiced law after he took the bench.

C. D[redacted] L[redacted]

Although Respondent unequivocally denied showing Mr. Kachadourian a nude photograph of Senior Court Office Assistant D[redacted] L[redacted] (Resp Br 14; Tr 1394-95, 1478-79), he still offers no explanation as to why Ms. L[redacted] would fabricate her

corroborating testimony. Respondent's contention that her testimony creates a discrepancy about where the photograph was displayed (Resp Br 14, 33 n14) further underscores that the Referee should draw a negative inference from Respondent's failure to call Mr. Iannone as a witness (*see* Comm Br 56-59).

D. Rebecca Vroman

Grade 16 Supervising Court Assistant Rebecca Vroman testified that Respondent "yelled at [her] and told [her she] was going too slow [while] being very rude[,] disrespectful[,] condescending[,] demeaning and just very belligerent to [her]" (Tr 327). Respondent denied "loud[ly] and angrily . . . admonish[ing]" her (Tr 1397). That Respondent denied this aspect of the allegation – one of the least serious against him – shows that his automatic response was to deny everything. Respondent's subsequent retaliation against Ms. Vroman (Tr 372-73; Resp Ex V) illustrates the vindictiveness and vengefulness that Mr. Kachadourian and Ms. Gallagher legitimately feared in him (Tr 49-50, 361, 404, 570-71).[4]

[4] Respondent's complaint against Ms. Vroman (Resp Ex V) was investigated by Chief Clerk Debbi Singer, who concluded that Respondent's allegations of wrongdoing were unfounded (Ex 12). Commission counsel notes, however, that in his complaint Respondent blamed Ms. Vroman for not calendaring his physical therapy appointments (Resp Ex V, p 2). In his brief, Respondent now repeatedly blames Ms. Gallagher for this same supposed dereliction and even claims it was one of Ms. Gallagher's primary work-performance problems (Resp Br 6, 28-29, 44, 78-79). As Ms. Singer's investigation made clear, the problem lay not with Ms. Vroman or Ms. Gallagher, but with the court's scheduling software and with Respondent himself – he failed to provide his schedule to Ms. Singer, despite having been directed to do so by Judge Rita Connerton (Ex 12, p 2).

POINT II

RESPONDENT'S ATTEMPTS TO ACCOUNT FOR DAMNING DOCUMENTARY EVIDENCE STRAIN CREDULITY

Where documentation exists and Respondent cannot flatly deny certain allegations or facts, he provided explanations that are contradicted by record evidence or defy credulity.

Respondent's claim that he failed to disclose thousands of dollars in rental income on his FDS forms "on the advice of his accountant in that he did not derive income from the rental properties" (Resp Br 71) is deeply misleading, at best. In response to questioning by the Referee, Respondent's accountant clearly testified that she was never "asked by [Respondent] to assist in the preparation of financial disclosure forms" (Tr 1286), other than one question in the summer of 2018 (Tr 1286-87).

Moreover, Respondent's claim he had a "valid excuse for his inaccurate filings" (Resp Br 71) is all the more incredible because: (A) the FDS form specifically instructs filers to include net rent from each source before taxes (Exs 8A-8D, questions 13); (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 (Exs 9A-9C, 9F-9H); (C) Respondent initially did not even include 2304 North Street as one of the properties on his tax returns (Exs 9A, 9F, Schedules E); and (D) Respondent did not pay the expenses of 2304 North Street in any event (Tr 1031-32) and that property did not therefore run a "deficit" (Tr 829-30; Exs 9C, 9G, Schedules E). With respect to his income from the practice of law, Respondent's brief does not discuss his hearing

testimony that he thought he had received the law practice income in 2016, rather than in 2015 (Tr 1411-12), notwithstanding that he also did not report it on his 2016 FDS form (Ex 8C).

It is significant that Respondent's brief makes no mention of his hearing testimony that Ms. Gallagher "volunteered" to draft a letter to one of his former law clients, Thomas Hayes, and that Ms. Gallagher unilaterally undertook to compose the letter as if Respondent's former law office secretary, Donna Filip, was the author and sender (Tr 1400, 1454-58; Ex 2V). Perhaps recognizing that this argument is preposterous on its face, Respondent's brief apparently abandons that claim and he now contends only that the letter "never went out" (Resp Br 24-25).

Respondent's brief also fails to mention his incredible claim that Mr. Kachadourian sent performance evaluations of himself and Ms. Gallagher from Respondent's court email address, in January 2016 and January 2017, to District Executive Gregory Gates and Judge Robert C. Muley (Resp Ex NN), without Respondent's knowledge or consent (Tr 1367-70). It was notable that Respondent's counsel chose not to confront Kachachourian with this claim on cross-examination, raising it for the first time when Respondent testified over a month later. The fact that Respondent now makes no reference in his brief to what would be powerful evidence in support of his case – if it were at all credible – is a compelling indication that his wild and unsubstantiated claim should be disregarded.

Finally, it is simply not credible that:

- Respondent never saw the emails sent by his childhood friend and former law client, David Behal, to his personal AOL email account, and neither Ms. Filip nor Mr. Behal mentioned them to him (Resp Br 60; Tr 1439; Ex 4III); and
- he was simply ignorant of the requirement to file an annual report of income with the clerk of the court (Resp Br 74), notwithstanding that he was reminded of it by court administrators by email in April 2016 (Ex 18) and by the Commission in November 2017 and May 2018 (Tr 853-54; Exs 10B, 10C).

The record demonstrates that, time and again, Respondent provided dishonest denials and patently incredible explanations to avoid discipline.

POINT III

RESPONDENT'S ARGUMENT THAT MR. KACHADOURIAN AND MS. GALLAGHER FABRICATED THEIR ALLEGATIONS FOR FEAR OF BEING TERMINATED SHOULD BE REJECTED

Just as the Court of Appeals did in *Matter of Shaw* (96 NY2d 7, 9-10 [2001]), the Referee should reject Respondent's argument that Mr. Kachadourian and Ms. Gallagher fabricated allegations against him because they knew "they would be terminated based on their lack of work" (Resp Br 26-33; Tr 1373). Respondent's assertion that his two hand-picked appointees feared for their jobs because they "had work performance issues" (Resp Br 26; Tr 1373) is completely undercut by evidence that, in January 2016 and

January 2017, Respondent gave them both glowing performance evaluations (Resp Ex NN). Furthermore, by Respondent's own account, he claimed that he had never threatened to terminate Ms. Gallagher and that he merely told Mr. Kachadourian that he was "displeased" with certain aspects of her work (Tr 1463).

Even if Ms. Gallagher legitimately feared losing her position due to Respondent's perverse statements that he regretted not hiring Ms. Wojdat because she would have satisfied his "sexual needs" (Tr 29-30, 553-54), it is irrational that Mr. Kachadourian would have jeopardized his prestigious and seemingly secure long-term position to "join forces" with her to concoct these elaborate lies (Resp Br 32-33). Indeed, Respondent never investigated terminating either Mr. Kachadourian or Ms. Gallagher until July 2017, when – not coincidentally – Respondent realized that both Mr. Kachadourian and Ms. Gallagher had already talked with the OCA Inspector General's office (Tr 1358-60, 1370-73).

Moreover, Respondent's argument that Mr. Kachadourian had job-performance issues (Resp Br 30-31) is undercut by his own evidence. Respondent claims that his primary dissatisfaction with Mr. Kachadourian's performance was that he wrote just two decisions between January 2017 and June 2017 (Resp Br 30; Tr 1429). However, Respondent testified that he only "asked Mark to do two" written decisions due to his own preference for making decisions from the bench (Tr 1337, 1429).

Respondent also asserts that Mr. Kachadourian was tardy in drafting these two decisions, "implicat[ing] standards and goals" (Resp Br 30). But the only evidence he submitted in support of this claim is an email Ms. Vroman sent to Mr. Kachadourian –

three weeks prior to the posting of standards and goals – inquiring about the status of a written decision in *Comparetta v Palmer* (Resp Ex LL). And Mr. Kachadourian was not tardy in drafting this decision. On the stand, Respondent admitted that Mr. Kachadourian completed it within the standards and goals deadline (Tr 1339-40), directly contradicting the argument he now makes in his brief that "Mr. Kachadourian failed to follow up on [Ms. Vroman's] email" (Resp Br 31). Noticeably, Respondent submitted no evidence supporting his testimony that Mr. Kachadourian was tardy in drafting the second allegedly delayed decision (*Urrea v Urrea*) (Tr 1337-38, 1345).[5]

Respondent has fabricated, or at least greatly exaggerated, these job performance issues to invent a motive for why Mr. Kachadourian and Ms. Gallagher would make false allegations against him (Resp Br 32-33). But it is much more likely that they raised their concerns about Respondent with Ms. Singer because they were true and because Respondent's conduct had become unbearable.

That is especially so given that it was ultimately Ms. Singer – herself a victim of Respondent's inappropriate conduct – who reported his behavior to the Office of Court Administration, starting the sequence of events that led to an investigation by the Inspector General, his reassignment and, ultimately, this Commission proceeding (Tr 360, 374-75). In fact, though Ms. Gallagher initially told Ms. Singer about Respondent's

[5] The "Term 5" standards and goals report submitted by Respondent as an exhibit (Resp Ex MM) does not support Respondent's claim that Kachadourian failed to meet deadlines. That report shows that Respondent had fewer cases (eight) pending over the standards and goals deadline than any of the other three Broome County Family Court Judges (Resp Ex MM). Furthermore, there is no indication that it was Mr. Kachadourian – and not Respondent himself – who was responsible for the delay with these eight cases.

conduct, she did so merely seeking her guidance and she repeatedly pleaded with Ms. Singer not to report the information to anyone else out of fear of retaliation from Respondent (Tr 404, 569-70).

CONCLUSION

Accordingly, Counsel to the Commission respectfully requests that the Referee adopt the findings of fact and conclusions of law enumerated in Appendix A of his Post-Hearing Memorandum and find that Charges I through IV of the Formal Written Complaint are sustained.

Dated: May 15, 2019
Albany, New York

Respectfully submitted,

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

By: _____

S. Peter Pedrotty, Esq.
Senior Attorney
Corning Tower, Suite 2301
Empire State Plaza
Albany, New York 12223
(518) 453-4600

Of Counsel:
Cathleen S. Cenci, Esq.
Eteena J. Tadjiogueu, Esq.
Edward Lindner, Esq.