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 BRIEF

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PRELIMINARY STATEMENT

Respondent's failure to even mention D[redacted] L[redacted]'s testimony about the nude photograph in David Iannone's possession emphasizes how compellingly she corroborated Mark Kachadourian's assertion that Respondent showed him that same photograph.

Respondent's attempt to blame his accountant for his failure to report large sums of extra-judicial income does nothing to counter the overwhelming evidence that his omissions were intentional. Additionally, Respondent's pattern of deflecting responsibility for his own misconduct demonstrates that he has learned nothing in his three proceedings before the Commission.

That Respondent argues for a sanction "no greater than censure" suggests that, at some level, the seriousness of his wrongdoing is apparent, even to him (Resp Br 1).[1]

ARGUMENT

POINT I

RESPONDENT'S BRIEF IGNORES ANY REFERENCE TO D[redacted] L[redacted]'S TESTIMONY ABOUT THE NUDE PHOTOGRAPH BECAUSE IT COMPELLINGLY CORROBORATES MARK KACHADOURIAN.

Noticeably absent from Respondent's brief is any reference to Senior Office Court Assistant D[redacted] L[redacted]'s testimony confirming the existence of the nude photograph of her – testimony which the Referee credited (Rep 18-19). Respondent ignores this critical evidence because it is clear how compellingly her testimony corroborates Mr.

[1] References to "Rep" are to the Referee's Report. References to "Resp Br" are to Respondent's letter brief. References to "Comm Br" are to the Commission counsel's brief. References to "Tr" are to the transcript of the hearing before the Referee. References to "Ex" are to exhibits introduced into evidence by Commission counsel during the hearing before the Referee.

Kachadourian's account that Respondent showed him a nude photograph of Ms. L[redacted]. It also establishes that, despite what the Referee found as to the other allegations and Respondent wants you to believe, there is nothing about this account that is "so fantastic as to defy reason," "demonstrably false," or "crazy" (Resp Br 2; Rep 8 n17, 10-12).

Clearly, Mr. Kachadourian did not fabricate the photograph -- Ms. L[redacted]'s testimony confirmed its existence. She also confirmed that the photograph was on the phone of Respondent's friend and handyman, David Iannone, whom Respondent conspicuously failed to call to support his defense. Ms. L[redacted]'s testimony demonstrated that Mr. Kachadourian's testimony regarding Respondent's display of the photograph was credible and the Commission should so find (*see* Comm Br at 54-68).

POINT II

RESPONDENT INTENTIONALLY AND REPEATEDLY FAILED TO REPORT OVER $30,000 OF EXTRA-JUDICIAL INCOME.

The Commission should reject Respondent's argument that he has a "valid excuse" for failing to report large sums of extra-judicial income because he relied on the advice of his accountant (Resp Br 8-12). Respondent's accountant never advised him not to report tens-of-thousands of dollars of income on his tax returns or financial disclosure statements (FDS). She advised him to timely file his income tax returns with all income reported to the "best of his knowledge" and to amend a return if other income was later "discovered" (Tr 1275).

Respondent did not follow this advice. He admitted that when he filed his 2015 income tax returns and FDS, he had not forgotten that, just months earlier, he had received and deposited checks for over $27,000 in legal fees (Tr 1464). Yet, he did not report it on his 2015 income returns or FDS (Exs 8B, p 4, ¶13, 9A, 9D).

Respondent's claim that he simply had not compiled documentation of this income to timely include it on his 2015 income tax returns and intended to amend it later (Resp Br 9) suffers from a fatal flaw: he also failed to report it a year later on his 2016 income tax returns (Exs 9F, 9I). The timing is clear from the record: he did not amend his 2015 and 2016 tax returns to include over $30,000 of combined income from the practice of law and rents until August 2, 2017 (Ex 10A; Rep 35), *after* being confronted about it by the Inspector General's Office (Tr 814, 1370-71, 1468-69). Significantly, Respondent concedes that before he filed his amended returns, the Inspector General asked him about the $16,000 in outside income he received from the *Brigham* estate – the very same income he concealed when he filed his 2015 and 2016 income tax returns (Tr 1464, 1468-69)

As discussed at the Commission's brief at pp 76-82, Respondent's recurring omissions on his income tax returns and disclosure forms were part of a deliberate and ongoing pattern of deception to conceal income from taxation, conduct which by itself warrants his removal. *See Matter of Francis and Joseph Alessandro*, 13 NY3d 238, 248-49 (2009).

POINT III

RESPONDENT'S ATTEMPTS TO SHIFT THE BLAME AND HIS FAILURE TO TAKE RESPONSIBILITY FOR HIS MISCONDUCT FURTHER DEMONSTRATE HIS UNFITNESS TO RETAIN JUDICIAL OFFICE.

Respondent's brief continues his pattern of deflecting responsibility for his own misconduct onto others. He blames his accountant for his own failures to report large sums of extra-judicial income to four different authorities (Resp Br 8-12). He blames Chief Clerk Debbi Singer for not telling him that she was "uncomfortable" with his "shock[ing] and disgust[ing]" comments to her (Resp Br 6; Tr 367, 370, 1427-28). He also blames his court secretary for his outburst at Supervising Court Assistant Rebecca Vroman, claiming that it was her fault that Ms. Vroman was unaware that Respondent had to leave court early that day to attend a physical therapy appointment (Resp Br 5; Tr 1428), as if this somehow justified his angry tirade that Ms. Vroman was too slow.[2]

Respondent's brief glosses over his misconduct in having his court secretary prepare a deceitful letter to a former client, purporting to be from his former law office secretary, so that she and Respondent could be paid fees, stating merely that "the letter should not have been prepared" (Resp Br 8). Similarly, he makes no mention of his

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[2] Notably, after this incident, Respondent retaliated against Ms. Vroman by making a complaint against *her* (Tr 372-73; Resp Ex V). The complaint was investigated by Chief Clerk Singer, who concluded that Respondent's allegations of wrongdoing were unfounded (Ex 12). In his complaint, Respondent then blamed Ms. Vroman for not calendaring his physical therapy appointments (Resp Ex V, p 2). In his testimony and now in his brief, Respondent now blames Ms. Gallagher for this same supposed dereliction (Resp Br 5; Tr 1428). But Ms. Singer's investigation made clear that 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 Supervising Family Court Judge Rita Connerton (Ex 12, p 2).

conversation with the Chief Clerk of the Tioga County Surrogates Court in which he asked that the court close the *Saraceno* Estate by motion (Resp Br 8).

Respondent now erroneously claims that he "did accept responsibility and apologize for certain of the conduct" at issue (Resp Br 13). In reality, Respondent unequivocally denied under oath making any of the offensive comments toward Ms. Singer (Tr 1399). Nor is it true that Respondent "averred" that he "apologizes" for making such comments (Resp Br 6). His actual testimony was that he "would have apologized" if Ms. Singer had told him his comments made her "uncomfortable" (Tr 1428) (emphasis added). That Respondent needed to be told by those on the receiving end of his harassment that his conduct was offensive reveals an unacceptable level of insensitivity on his part.

Nor did Respondent take responsibility for how he treated Ms. Vroman, as he denied "loud[ly] and angrily . . . admonish[ing]" her (Tr 1397). Ms. Vroman testified that Respondent never apologized to her and, in fact, after the incident in court, he treated her "very cool, very cold" and would "totally ignore" her (Tr 330-31).

Contrary to Respondent's claims, his continued blame-shifting and his mischaracterization of the record to assert that he "accepted responsibility" make clear that he has not "learned invaluable lessons due to these proceedings" (Resp Br 13). Indeed, Respondent submits that his conduct amounts only to "poor judgment at most" (Resp Br 12).

It is telling that, despite his evasions of responsibility, Respondent argues that his misconduct should result in a sanction "no greater than censure" (Resp 1), suggesting that

at some level, he recognizes the seriousness of his wrongdoing warrants removal. Moreover, it bears repeating that this is Respondent's third matter before the Commission. Clearly, he has learned nothing from his prior discipline. Even if Respondent's claims of contrition were genuine, his misconduct as demonstrated in this record has irretrievably damaged his usefulness on the bench. "In some instances contrition may be insincere and in others no amount of it will override inexcusable conduct." *Matter of Bauer,* 3 NY3 158, 165 (2004).

CONCLUSION

By reason of the foregoing, and as more fully explicated in Commission counsel's memorandum, it is respectfully submitted that the Commission should render a determination that Respondent has engaged in judicial misconduct and should be removed from office.

Respectfully submitted,

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