

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

DETERMINATION

ALAN M. SIMON,

a Justice of the Spring Valley Village
Court and the Ramapo Town Court,
Rockland County.

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Pamela Tishman, Of Counsel)
for the Commission

Kantor Davidoff Mandelker Twomey Gallanty & Kesten P.C. (by
Lawrence A. Mandelker) and Joseph A. Maria for the Respondent

The respondent, Alan M. Simon, a Justice of the Spring Valley Village
Court and the Ramapo Town Court, Rockland County, was served with a Formal Written

Complaint dated December 11, 2013, containing four charges. The Formal Written Complaint alleged that respondent: (i) threatened to hold a student working in the Spring Valley court clerk's office and other Village employees in contempt, threatened to arrest the student with no lawful basis and grabbed his arm (Charge I); (ii) imposed monetary sanctions against a legal services agency without basis or authority in law and was discourteous to the agency's attorneys (Charge II); (iii) threatened to hold various individuals in contempt without basis or authority in law for conduct occurring outside the courtroom (Charge III); and (iv) was rude and discourteous to various Village officials and employees (Charge IV). Respondent filed a verified Answer dated January 14, 2014.

Respondent was served with a Second Formal Written Complaint dated October 2, 2014, containing two charges. The Second Formal Written Complaint alleged that respondent engaged in impermissible political activity by permitting a candidate for Rockland County Executive to quote him in a campaign press release (Charge V) and was rude and discourteous to various Village officials and employees (Charge VI). Respondent filed a verified Answer dated October 31, 2014.

By Order dated November 25, 2014, the Commission designated Mark S. Arisohn, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on February 17, 18, 19, 20, 23 and 25, 2015; March 30 and 31, 2015; and April 1, 2015, in New York City. The referee filed a report dated July 14, 2015.

The parties submitted briefs with respect to the referee's report. Counsel to

the Commission recommended the sanction of removal, and respondent's counsel recommended dismissal of the charges or, if misconduct was found, a sanction less than removal.¹ On February 4, 2016, the Commission heard oral argument and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Spring Valley Village Court since 2005 and a Justice of the Ramapo Town Court since 2011. His term in the Spring Valley Village Court expires in 2017, and his term in the Ramapo Town Court expires in 2019. He is an attorney and was admitted to practice law in New York in 1968.

As to Charge I of the Formal Written Complaint:

2. In July 2012 Maxary Joseph, while a student at John Jay College of Criminal Justice, was hired to work in the Spring Valley Village Court clerk's office after meeting with Mayor Noramie Jasmin. When Mr. Joseph began working in the clerk's office, the chief court clerk, Elsie Cheron, advised Mr. Joseph that he would be working with court documents. Mr. Joseph was aware that he was working on closed and sealed cases.

3. Ms. Cheron told all three Spring Valley justices that the mayor had hired Mr. Joseph as a student worker in the court clerk's office. Judges David Fried and

¹ On January 22, 2016, the Commission received a letter from an attorney on respondent's behalf, which respondent's counsel asked the Commission to consider on the issue of sanctions. Commission counsel argued that the letter should not be considered since character evidence should be presented at the hearing and most of the letter's contents would be inadmissible character evidence under New York law. The Commission determined that if misconduct was found, the letter would be reviewed and considered only on the issue of sanctions.

Christine Theodore reacted positively because the office needed help. Respondent told Ms. Cheron that he did not want a student worker in the clerk's office and asked for Mr. Joseph's resume. Ms. Cheron told respondent that she would try to get it.

4. The next day, when Mr. Joseph began working in the court clerk's office, respondent again asked Ms. Cheron for Mr. Joseph's resume, and she responded that she would try to get it but had been busy. Respondent told her that if Mr. Joseph did not leave or if she did not get him out of the office, respondent would physically remove him from the office. Respondent also told Ms. Cheron that he would hold her in contempt if she did not follow his orders. Respondent was angry and screamed at Ms. Cheron, and his voice was loud and threatening.

5. On July 18, 2012, Mr. Joseph's second day of work in the court clerk's office, respondent arrived at the courthouse in the afternoon in order to interview Mr. Joseph and make sure that he understood the confidential nature of court records. Mr. Joseph was working on court files of criminal and traffic cases, getting documents ready for scanning, removing staples and putting files in chronological order. When respondent saw Mr. Joseph, he told Mr. Joseph, in a loud, angry voice, to leave the office and that he did not belong there and was not supposed to be there.

6. Respondent then spoke to Ms. Cheron in the hallway near her office. He stated, "Did I not give you the order for Maxary not to be here? What is he doing here?" Ms. Cheron told respondent that the mayor wanted to speak with him about why he did not want the student worker in the clerk's office. While speaking to Ms. Cheron, respondent was screaming and yelling, and his tone was intimidating.

7. Ms. Cheron told Mr. Joseph that respondent did not want him there and to go to the mayor's office because she did not want any problems. Mr. Joseph left and went to the mayor's office. Mayor Jasmin told Mr. Joseph to return to his desk in the clerk's office. Mr. Joseph returned to the clerk's office and continued doing the work he had been assigned.

8. Thereafter, upon seeing Mr. Joseph in the clerk's office, respondent told Mr. Joseph in an angry and loud voice that he was going to issue a warrant for Mr. Joseph's arrest.

9. Respondent called the Spring Valley Village Police and spoke with a desk sergeant. During the telephone call, which was recorded, respondent stated:

“There's a young man in my office that I just held in contempt. And I'm in the process as soon as they give me the information and I need somebody to take him into custody. Be prepared, the mayor may be next.”

Respondent's statement to the sergeant was inaccurate in that he had not actually held anyone in contempt, although he did threaten it. At the hearing, respondent acknowledged that he gave the inaccurate report to the police in an effort to get them to do what he wanted.

10. Shortly thereafter, respondent went to the Village police office in the municipal building. Respondent, who was holding a commitment order known as a “blue card,” told Lieutenant John Bosworth that he was sentencing a young man to 15 days in jail and needed somebody to bring him into the courtroom. Lieutenant Bosworth told respondent that he was not comfortable with making that decision and bringing the young

man into court and would have to discuss the matter with his chief. Respondent replied that if the police were not going to comply with his order, he would call the Sheriff's Department.

11. Respondent then called Rockland County Sheriff Louis Falco and reported that a young man was going through his records or files, that he wanted Sheriff Falco or someone from the Sheriff's office to come to the court and remove the man and that he wanted to hold the man in contempt and "wanted it investigated." Sheriff Falco believed that respondent wanted the Sheriff's office to arrest Mr. Joseph. He told respondent that he would get back to him and then called Village Police Chief Paul Modica. Sheriff Falco described respondent as "upset."

12. Spring Valley Police Lieutenants Bosworth and Kleinertz saw respondent in the police break room while he was on the telephone with the Sheriff's office. When respondent finished his conversation, the lieutenants told him that they would not bring Mr. Joseph into the courtroom until they spoke with the mayor and the village attorney. Respondent said that he would give them a reasonable amount of time and otherwise he would hold the police department in contempt. The lieutenants reported the conversation to Chief Modica.

13. Meanwhile, Sheriff Falco called Chief Modica and told him that he had just received a phone call from respondent requesting the Sheriff to send deputies to Spring Valley to arrest two police lieutenants and an individual whom respondent was holding in contempt of court. Chief Modica assured Sheriff Falco that he could handle the matter and that it was not necessary to send anyone to Spring Valley.

14. Deputy court clerk Gary Roxas, who was at his desk in the clerk's office, received a telephone call from respondent asking him to come to the courtroom to help him set up the laptop that operates the courtroom audio recorder. Mr. Roxas went to the courtroom, where respondent, who was on the bench, told Mr. Roxas that he was going to hold Mr. Joseph in contempt. Judge Fried saw respondent in the courtroom, holding a securing order or "blue card," the document that a judge would use to transfer custody of an arrestee to the Sheriff.

15. In the clerk's office, Judge Fried told Mr. Joseph that he would "take care of it" and to keep doing his job, and that if Mr. Joseph had any issues, he should speak to the court clerk and/or the mayor.

16. Respondent called court officer Simeon Naemit, who was off duty that day. Respondent, who has a personal friendship with Officer Naemit, asked him to come to the court as respondent needed assistance. As a result of the call, Mr. Naemit, who was not in uniform, went to the court.

17. Respondent told Officer Naemit to arrest Mr. Joseph and take him into custody and that he was finding Mr. Joseph in contempt and sentencing him to 15 days. Judge Fried told Officer Naemit not to follow respondent's instruction because it was an illegal order and that Judge Fried would hold Naemit accountable if he seized Mr. Joseph. Respondent told Judge Fried to "stay out of it" and that it was not his business. Respondent was red in the face and enraged; his voice was loud, angry and very aggressive, and his arms were flailing.

18. Respondent then left the courtroom, said that he would do it himself

and walked towards the court clerk's office. When Judge Fried pleaded with respondent not to do it, respondent cursed and told Judge Fried to "have a stroke and die."

19. Respondent entered the clerk's office and, in a loud and angry voice, ordered Mr. Joseph to go to the courtroom. As he approached Mr. Joseph's desk, respondent started arraigning Mr. Joseph, telling him that he had a right to remain silent and that he was being found in contempt and sentenced to a period of incarceration of 15 days. Respondent stood next to the chair where Mr. Joseph was sitting and grabbed Mr. Joseph's right forearm, trying to pull him out of the chair. Respondent, who was in a rage, was pulling Mr. Joseph, screaming and yelling, "Get out! You're not supposed to be here!" Respondent grabbed Mr. Joseph's right forearm a second time with such force that Mr. Joseph's chair began to slide towards respondent. Mr. Joseph never touched respondent.

20. Judge Fried told Mr. Roxas to call the police and told respondent that he was committing a crime. In response, respondent said that he was holding Judge Fried in contempt and sentencing him to 15 days. At this time, the court clerk's office was in chaos, and the clerks were screaming and telling respondent, "No, no! Don't do that! Stop!"

21. While these events were transpiring, Chief Modica and Lieutenants Bosworth and Kleinertz, who were in Mayor Jasmin's office describing what had occurred between respondent and the police, heard screaming and yelling coming from the court clerk's area. The officers went to the court clerk's office, where respondent was screaming and yelling at the top of his lungs at Mr. Joseph.

22. Respondent told Mr. Joseph, “Get out of here, you don’t belong here,” and yelled that he had held him in contempt of court and was sentencing him to 15 days in jail. Lieutenant Bosworth saw Mr. Joseph stand up, raise his hands in the air and say, “Judge, don’t touch me.” Officer Naemit tried to calm respondent, to keep him away from Mr. Joseph, and to get him to stop screaming. Judge Fried told the police to arrest respondent because he had assaulted Mr. Joseph.

23. Lieutenant Kleinertz escorted Mr. Joseph out of the court clerk’s office. Chief Modica and Lieutenant Bosworth asked respondent to go into the hallway with them. In the hallway, respondent was still yelling and screaming that Mr. Joseph should not be working in the clerk’s office and that he had had no say in Mr. Joseph’s hiring. Respondent said, “If the kid is in the office tomorrow there’s going to be a fucking problem.” Respondent also stated that he wanted Mr. Joseph arrested and held in contempt of court because he had no right to be in the clerk’s office since there was confidential information there. Respondent also said that Mayor Jasmin had “no fucking right” to hire anyone and assign them to the clerk’s office.

24. Chief Modica, the village attorney and Officer Naemit, who were in the hallway with respondent, tried to calm the situation. It was suggested that if there was a question about a hiring in the court, respondent should have taken it up with the mayor, to which respondent replied, “She’s a fucking bitch. Why would I even talk to her?” He added that he was contemplating holding Mayor Jasmin in contempt. During the conversation respondent was agitated, yelling and visibly upset.

25. Ms. Cheron testified that “it was a scary day,” and Mr. Roxas

described the incident as “shocking” and “upsetting.”

26. Respondent falsely testified at the hearing that he “never grabbed Max’s arm” but only “touched him on his elbow. He pulled away. That’s the only time I touched him.” Previously respondent had testified, “I held his right arm to lead him out. As soon as I touched his right arm, he pulled away from me and that was the end of my contact with him.”

27. At the hearing respondent testified, with respect to his actions on July 18, 2012, that he was motivated by concern that Mr. Joseph was handling confidential documents and that he believed he acted appropriately. He added, “On second thought, I probably could’ve acted better, but I do believe I acted appropriately.” He also testified, “From today’s vantage point, I see that there are things that maybe I could’ve done better,” but he believes that his behavior on that date was consistent with the ethical rules and with the dignity and prestige associated with being a judge.

As to Charge II of the Formal Written Complaint:

28. On June 26, 2012, Judy Studebaker, a staff attorney with Legal Services of the Hudson Valley (“LSHV”) since 1976 who specializes in housing related matters, met with Malcolm Curtis at the LSHV office in White Plains. Mr. Curtis claimed that he had been illegally locked out of his apartment and had been sleeping on the street or in a homeless shelter.

29. E’Schonda McClendon, an LSHV paralegal, prepared a pro se order to show cause for Mr. Curtis to file in the Spring Valley Village Court. Mr. Curtis, who

did not have his lease because he had no access to his apartment, told Ms. McClendon and Ms. Studebaker that his landlord was Cheryl Scott, so Ms. McClendon captioned the order to show cause “Malcolm Curtis v. Cheryl Scott.” Ms. Studebaker reviewed the papers with Mr. Curtis and, after ascertaining that he was unable to afford the \$20 court filing fee, told him that the order to show cause contained an order permitting him to proceed as a poor person without paying a filing fee. Mr. Curtis filled out the petition attached to the order in which he stated that he was unable to pay the filing fee because he had minimal assets and his only income was \$780 a month from SSI. The pro se petition was signed by Mr. Curtis and notarized.

30. It was common practice for LSHV to help pro se petitioners complete paperwork even though LSHV was not providing them with formal legal representation at the time of such assistance. The paperwork prepared by LSHV states: “Form prepared by Legal Services of the Hudson Valley as a courtesy to pro se tenants. No attorney/client relationship exists and none is to be inferred between ‘Tenant’ and Legal Services of the Hudson Valley.”

31. When respondent saw the papers shortly thereafter, he directed Ms. Cheron not to accept the order to show cause until Mr. Curtis paid the court fee. On June 27, 2012, after Mr. Curtis contacted LSHV, Ms. Studebaker called Ms. Cheron, who told her that “it was the procedure of the court, that everyone had to pay a filing fee” even if they were poor.

32. Later that day respondent called Ms. Studebaker and said that he wanted to know “how in the world [LSHV] had sent Mr. Curtis to his court without the

filing fee.” Ms. Studebaker told respondent that Mr. Curtis was proceeding as a poor person and that respondent should sign the order to show cause so Mr. Curtis could get repossession of his apartment. When respondent insisted that the filing fee had to be paid, Ms. Studebaker again explained that Mr. Curtis could not afford the fee and had attached an affidavit to his petition in support of his request to proceed as a poor person. Respondent interrupted her, shouting and repeating that the filing fee had to be paid. Respondent’s voice, which Ms. Studebaker described at the hearing as “rude and nasty,” got increasingly louder, and while she was in mid-sentence respondent slammed the phone down.

33. Ms. Studebaker contacted Supervising Judge Charles Apotheker’s office and was advised to call the court clerk and tell her that if respondent did not want to sign the order for poor person’s relief, he should write “denied” on the order so an appeal could be taken. Ms. Studebaker spoke to Ms. Cheron, explained what Judge Apotheker had said, and requested that respondent write “denied” on the order to show cause. Ms. Cheron indicated that respondent would not do that.

34. Judge Apotheker’s office called Ms. Cheron and told her that the court can waive fees for people who are indigent, and Ms. Cheron reported that to respondent. Respondent refused to allow Mr. Curtis to file as a poor person in part based on “rumors” that Mr. Curtis had dealt drugs.

35. After learning that respondent wanted Mr. Curtis to provide a copy of his lease, Ms. Studebaker called Ms. Cheron and explained that Mr. Curtis had no access to his lease because he was locked out of his apartment. Respondent, who was

listening in on the call, began shouting that nothing was going to be done until Mr. Curtis paid the filing fee. Ms. Studebaker told respondent that the CPLR allowed Mr. Curtis to proceed as a poor person and that the filing fee should be waived. Respondent interrupted her and shouted loudly that the fee had to be paid. Respondent again slammed down the telephone while Ms. Studebaker was in the middle of a sentence.

36. Respondent directed Ms. Cheron to go to the Spring Valley Building Department and check a landlord registry to determine the owner of the property where Mr. Curtis resided. Ms. Cheron did so and reported to respondent that the landlord was Holland Management. Respondent crossed out the portion of the proposed order that permitted Mr. Curtis to proceed as a poor person, changed the name of the respondent-landlord from Cheryl Scott to “Holland Mgt Co” and added, “Landlord Must Present to this Court a signed copy of this Lease.”

37. On June 28, 2012, Ms. Studebaker was contacted by the Spring Valley court clerk and told that the return date for the order to show cause, originally scheduled for July 5, 2012, had been advanced to that afternoon. Ms. Studebaker also learned during that telephone call that respondent had done an investigation to determine who the landlord was, had contacted the landlord and had directed the landlord to appear.

38. Later that day, because Ms. Studebaker was on trial, LSHV attorney Marianne Henry appeared before respondent on behalf of Mr. Curtis. Also present were representatives of Holland Management and an attorney with the Legal Aid Society of Rockland County. After questioning Mr. Curtis under oath about his income and expenses, respondent granted Mr. Curtis’s application to proceed as a poor person.

39. Respondent asked Ms. Henry about the papers that LSHV had prepared on behalf of Mr. Curtis. Ms. Henry explained that she did not prepare the papers and that she had only been assigned to the case that day. Respondent then asked Ms. Henry how the identity of the landlord was determined, and she replied that she believed that Mr. Curtis had a signed lease agreement with Cheryl Scott. Respondent stated that that was not correct and asked Ms. Henry whether her office did any independent investigation to determine the identity of the landlord. Ms. Henry replied that LSHV ordinarily asks a tenant for a copy of their lease but that Mr. Curtis had no access to his lease because he had been unlawfully locked out of his apartment. Respondent then questioned Ms. Henry about the source of LSHV's funding and whether she believed that the action on behalf of Mr. Curtis had been filed in a timely and proper manner. Ms. Henry stated, "Your Honor, that I can't say because I wasn't the attorney that did it. We sometimes have a lot of people call us and we do the best we can."

40. Respondent then stated, "It is my sense of it, is if you're doing the best you can, you should be put out of business. It is my opinion that you did not represent this individual who had a very valid and an emergency claim, and that it was done in something less than a professional capacity." Respondent ignored Ms. Henry's attempts to respond and, without giving her an opportunity to speak, found that LSHV "failed to meet the minimum standard of the representation of Mr. Curtis" and "undertook to represent him in a poor and terrible manner."

41. Without consulting Mr. Curtis, respondent relieved LSHV as counsel and appointed the Legal Aid Society to represent Mr. Curtis. Then, without

authority in law, respondent imposed sanctions on LSHV in the amount of \$2,500 and directed LSHV to pay the sanction directly to the Legal Aid Society.

42. Respondent then put on the record the independent research he had conducted in order to determine the identity of Mr. Curtis's landlord:

“[T]he court conducted an investigation to determine the owner of the property. The owner of the property we found out, based upon looking at the property list, which by the way anybody can find on a computer, is Holland Management Company.”

43. Respondent reversed the sanction against LSHV in December 2013, after an Article 78 proceeding brought by LSHV was dismissed and after the Commission had questioned him about it.

44. At the hearing before the referee, respondent testified that he did not consider that his statements to Ms. Henry might be disrespectful and that even in retrospect he believes that he acted appropriately. He testified that he believed LSHV had acted improperly in sending a homeless, indigent tenant who had a valid and emergency claim to court without proper representation and with papers that named the wrong party. He testified that he reversed the sanction *sua sponte* because the decision in the Article 78 proceeding indicated that he was “probably in error” in imposing the sanction.

As to Charge III of the Formal Written Complaint:

45. In November 2011 Richard Deere was hired by the Education and Assistance Corporation to be the case manager for the Rockland County misdemeanor drug court. Mr. Deere, who had previously worked in the Spring Valley Village Court as

an intern, was a former student of Judge Fried, who was assigned to oversee the drug court. Mr. Deere was not assigned an office by the Village of Spring Valley until January 2012.

46. Judge Fried obtained approval from Mayor Jasmin for Mr. Deere to use Judge Fried's desk in chambers until he was given an office. Between November and January, Mr. Deere worked at Judge Fried's desk in the chambers assigned to Judges Fried and Theodore. Respondent's chambers were immediately in front of and attached to the chambers that were shared by Judges Fried and Theodore.

47. In December 2011 respondent came into the back chambers where Mr. Deere was sitting and told Mr. Deere to leave the premises immediately or he would be held in contempt and charged with loitering or trespassing. Respondent was angry and yelling. Mr. Deere left and telephoned Judge Fried from the parking lot. Judge Fried went to the municipal building and walked Mr. Deere back into chambers.

48. Respondent, in a very angry, loud voice, told Judge Fried that Mr. Deere had no right to be present and threatened to hold Mr. Deere in contempt and to charge him with trespassing.

49. A week or two later, respondent asked court officer Victor Reyes to escort Mr. Deere out of the municipal building and told Officer Reyes that if Mr. Deere gave him a hard time, he should arrest him. Officer Reyes went to Judge Fried's chambers, where Mr. Deere was reviewing drug court materials, and told Mr. Deere to leave the building or he would be arrested. Mr. Deere gathered his belongings and Officer Reyes escorted him out of the building. Mr. Deere telephoned Judge Fried, who

again escorted Mr. Deere back to Judge Fried's chambers.

50. At the hearing, respondent testified that his actions toward Mr. Deere were motivated by his concerns about court security, and he maintained that Mr. Deere was not authorized to be in the judges' chambers unless a judge was present.

51. Respondent falsely testified that he did not threaten to hold Mr. Deere in contempt. He acknowledged that he did mention trespass and "may have mentioned" that he would arrest Mr. Deere for trespass if he refused to leave.

52. On May 24, 2012, when Spring Valley Police Lieutenants Bosworth and Oleszczuk were in Mayor Jasmin's office for a briefing, respondent appeared, wearing his robe. Speaking to the mayor in a rude and discourteous manner, respondent ranted and raved at top of his lungs that he wanted his own office and would hold the mayor in contempt if he did not get his own office. He also stated, "This is the David Fried show. I'm out of here." Mayor Jasmin told respondent that she was in a meeting and asked respondent to leave several times. At the hearing, respondent denied that he threatened the mayor with contempt but admits that he went to her office to complain that he wanted a private office.

53. In 2012 respondent told Officer Reyes several times to arrest Mayor Jasmin. On one occasion, he told Officer Reyes to tell Mayor Jasmin that respondent wanted to speak to her, to bring her to the courtroom and to lock her up if she did not accompany him to the courtroom. When Officer Reyes conveyed respondent's message, Mayor Jasmin stated that if respondent wanted to speak to her, he should come to her office. On another occasion, during the summer of 2012, when Officer Reyes went to

Mayor Jasmin's office on respondent's order, the mayor was in a meeting with Lieutenants Bosworth and Oleszczuk, and when Officer Reyes reported that to respondent, respondent became upset and told Reyes to lock her up and lock up the two lieutenants. On a Monday night in 2012, when respondent was on the bench and about to start traffic court, he told Officer Reyes that he wanted to speak to Mayor Jasmin, Chief Modica and the village attorney, directed Officer Reyes to ask these officials to come to his courtroom and instructed him that if they refused to come Officer Reyes should arrest them. Respondent's voice was very loud. Instead of doing as respondent directed, Officer Reyes, who did not think he had authority to arrest those individuals, left the courtroom and smoked a cigarette. Neither Mayor Jasmin, Chief Modica nor the village attorney had a case on the court's calendar that night.

54. Chief Modica testified that respondent told him in 2012, "I may be calling on you later to arrest Jasmin.... I'm holding her in contempt."

55. At the hearing, respondent admitted that he told Officer Reyes on multiple occasions to arrest the mayor. He testified that he did so because conditions in the court office were "a shamble," but that it "was a joke."

56. In the spring of 2012, respondent moved his chambers to the jury room. When Mayor Jasmin asked Judge Fried if he had any objections to the move, Judge Fried said he did not but added that when he presided over court, he wanted to use the staff bathroom in the jury room, at the back of respondent's new chambers, in order to avoid using the public restroom because of safety concerns and the chance that ex parte communications might occur.

57. In late May or early June 2012, while Judge Fried was presiding over a morning calendar, he got the key to respondent's chambers so he could use the staff bathroom. The same or next day, respondent told Judge Fried that he was not happy that he had used the restroom attached to respondent's chambers. Judge Fried told respondent that when court was in session he was concerned about safety and ethics and would use the staff restroom. Respondent threatened to charge Judge Fried with criminal trespass. At the hearing, respondent denied that he threatened his co-judge with arrest.

58. Police Chief Modica testified that one evening in the spring of 2012, he received a call at his home on his cell phone from respondent, who told Chief Modica to bring his toothbrush the next day because he "was throwing [Chief Modica] in jail for contempt of court." When Chief Modica asked what he had done, respondent did not tell him why he was being held in contempt, but repeated, "Bring your toothbrush, you're going to jail in the morning." At the hearing, respondent testified that he threatened Chief Modica with contempt because the police had not come to court that night because of "a job action."

59. Respondent testified at the hearing that he believes it was appropriate to threaten Spring Valley employees with contempt "so that you can get a level of performance from them in accordance with our obligations to the court, to our ethics obligations and to what they are supposed to do." He testified that "[s]ometimes it's absolutely necessary" to threaten village employees with contempt to "motivate people to do what I thought was the right and proper thing."

As to Charge IV of the Formal Written Complaint:

60. After the incident involving Maxary Joseph described in Charge I, respondent avoided speaking to chief court clerk Elsie Cheron, treated her badly, bullied and harassed her. He would not acknowledge her as the chief clerk, talked down to her and would only communicate with deputy court clerk Gary Roxas, who found it difficult to be placed “in the middle.” Respondent referred to Ms. Cheron as “the so-called clerk,” “traitor,” the “mayor’s clerk” and the “mayor’s pet.” Ms. Cheron testified that he treated her “like an animal,” a “nobody,” that “It’s been hell for me, for two years and three months,” that she is “stressed every day” she goes to work, and that when she hears respondent approaching she is “scared” and has “palpitations.”

61. Respondent testified that he does not consider calling Ms. Cheron such names degrading or that referring to her by these names violates the ethical rules.

62. On July 12, 2012, a week before the incident involving Maxary Joseph, respondent ordered Ms. Cheron into his courtroom. Court was not in session but respondent was on the bench wearing his robe and a stenographer was present. Respondent stated on the record that the appearance was “a proceeding,” although at the hearing respondent maintained that this session with Ms. Cheron was not a court proceeding but merely a “meeting.”

63. Respondent spoke to Ms. Cheron about the court officers assigned to the court. He had divided the court officers into two groups and wanted Ms. Cheron to assign only group “A” officers, not “B” officers, to the courtroom. Respondent stated on the record that if Ms. Cheron failed to follow his order, he would “consider it

contemptuous and act and punish accordingly.”

64. Respondent also told Ms. Cheron that if she did not agree with his directive, “You have 30 days to appeal it in writing.” Respondent again told Ms. Cheron that he would hold her in contempt and she “will be out.” Respondent was screaming, yelling, angry and loud. When Ms. Cheron asked respondent why he was yelling at her, he stated, “That’s the way it’s going to be.” The following colloquy then ensued:

“THE COURT: I heard you. Get an attorney, I’m considering holding you in contempt. Get your attorney and we will have a hearing this afternoon.

MS. CHERON: You can put me in jail.

THE COURT: I will.”

65. After this exchange, Ms. Cheron was “scared” and did not know whether she needed to hire an attorney, and she found the experience “traumatizing.”

66. At the hearing, respondent testified that he believes that his statements to Ms. Cheron on July 12, 2012, were not degrading to her, but rather that what he said and did on that occasion should have left Ms. Cheron feeling “empowered.” In respondent’s words: “if she has any other feeling, I honestly don’t understand it.” He believed that threatening Ms. Cheron with contempt would provide “inspiration” for her “to follow what [he] felt was the proper thing to do to have a more safe surrounding in the court.”

67. On November 29, 2012, respondent again ordered Ms. Cheron to appear in the courtroom. He was on the bench in his robe, and the courtroom was filled with attorneys and individuals waiting for their cases to be called. On the record in open

court, respondent started screaming at Ms. Cheron that when he had called the court clerk's office at 9:00 AM, no one answered the telephone.

68. During the proceeding, respondent said, "Consider it a warning that you have not done your job properly today." He continued, "You're directed by me that at 9:00 in the morning when the phone rings that somebody should answer it" and "If they fail to do that then ... I will act accordingly." Ms. Cheron understood this to mean that respondent would hold her in contempt. Respondent dismissed Ms. Cheron by stating, "You may leave the Court room now. You're not needed here. Go sit by the phone and answer it."

69. At the hearing, Ms. Cheron testified that during this incident, respondent was "screaming" at her "in open court, in front of everybody, like [she was] a criminal, telling [her] to explain to him why [she] did not answer the phone when he called." Ms. Cheron testified that "this was the most humiliating day for me" and that the exchange "scared" her.

70. At the hearing, respondent testified that he did not believe that his conduct as reflected in the transcript on November 29, 2012, was abusive. He also stated that he regretted how he handled the issue and that "in all due honesty, [it] probably was demeaning to everybody, including me, to be part of it," but "I felt I had really no choice in the matter because I felt I had an obligation" to make sure the telephones were answered.

71. In early December 2009, on Judge Fried's first day on the bench, he presided over an arraignment. Towards the end of the arraignment respondent, who was

present in the courtroom, asked Judge Fried to step off the bench. Respondent spoke to Judge Fried in the hallway and told him that his arraignment was “terrible minus ten.” When Judge Fried said that he had followed the procedures that he had learned in training given by the Office of Court Administration in Syracuse, respondent replied in a firm, angry voice that Judge Fried should not “listen to those fucks from Syracuse.” At the hearing, Judge Fried testified that respondent’s comments had made him feel “very bad.” Respondent testified that his comments to his co-judge in “a private conversation” were made without animus and were “meant to be motivating and educational” since Judge Fried, who had asked him to observe the arraignment, had handled the proceeding in a manner that was overly formal and lacked “a level of humanity and flexibility.”

72. At a meeting in January 2012 Supervising Judge Apotheker told the Spring Valley judges that they were required to take the bench in a timely manner. After the meeting, respondent told Officer Reyes to keep a log of when the three judges took the bench, and Reyes complied. When Judge Fried learned about the monitoring he informed Judge Apotheker. In a letter dated February 22, 2012, to respondent, Judge Apotheker wrote that it was “inappropriate for any justice to monitor another justice i[n] any way and this practice should end immediately.” Respondent replied that he would immediately end the practice.

73. After Judge Apotheker’s letter, respondent continued to monitor Judge Fried. On a day when Judge Fried was about 20 minutes late to court because he was reviewing a search warrant, respondent told Judge Fried to get his “fucking ass in the chair.” According to Judge Fried, respondent was “furious” that court was starting after

10:00 AM, used a loud voice and “scream[ed]” at Judge Fried. On another occasion, Judge Fried heard respondent instruct Mr. Roxas and Ms. Cheron to report to him when Judge Fried took the bench.

74. Respondent testified that he did not consider it demeaning to the other judges to have a court officer monitor them and that he had misunderstood his Supervising Judge’s directive with respect to the importance of taking the bench on time.

As to Charge V of the Second Formal Written Complaint:

75. In the fall of 2013 Edwin Day and David Fried were candidates for the position of Rockland County Executive. In mid-September 2013 Mr. Day’s campaign learned that during Mr. Fried’s 2009 campaign for Spring Valley Village Justice, he had received a donation of office space from Joseph Klein, whom Mr. Day described as a “slumlord.” Mr. Day’s campaign issued a media advisory stating that Mr. Fried had accepted an “in-kind donation from a notorious slumlord.” Shortly thereafter, Mr. Day was told that respondent had information regarding the donation of office space.

76. Mr. Day called respondent and asked him if he had any information about the donation. Respondent told Mr. Day that Mr. Fried had contacted him during the 2009 campaign about a donation of campaign office space and that after visiting the space and recognizing that the location was owned by Empire Management, of which Joseph Klein was principal, respondent told Mr. Fried that he would not accept the space because Mr. Klein had many cases before the Spring Valley Justice Court.

77. Mr. Day asked respondent if he had any objection “if we cited you

as an authority and used this information publicly,” and respondent said he had no objection.

78. After that telephone conversation, Mr. Day wrote a statement that reflected what he and respondent had discussed. That same day, he called respondent again and read him the statement. Respondent confirmed that it accurately reflected what he had told Mr. Day. Mr. Day again confirmed with respondent that respondent had no objection to having his statement used publicly in “a press release, or whatever.”

79. The Day campaign issued a media advisory entitled “Judge Alan Simon: David Fried Knew of Slumlord Donation before 2009 election.” The media advisory stated in pertinent part:

“In response to the aforementioned additional inquiries by our campaign, we had the occasion to speak to Mr. Fried’s 2009 running mate, Justice Court of Spring Valley the Hon. Alan M. Simon. He had the following statement, transcribed word for word with his approval, and informed us that there was at least one witness to the conversation he describes:

‘During our campaign in 2009, I received a call from David Fried telling me that somebody had donated office space. He asked me if I wanted to share the space with him. Even though I really did not need the space, I initially accepted as it would provide some convenience during the campaign.

Subsequently I met Mr. Fried at the office space that was being used and I immediately recognized the space as being part of Joseph Klein’s firm, Empire Management.

I informed David that I was not going to be part of this arrangement and told him directly that accepting this office space would be highly improper, as not only was Mr. Klein and Empire Management one of the biggest housing violators in Spring Valley, but also that there are many cases involving

Mr. Klein that are before the Spring Valley Court. With that I separated myself from the matter.””

80. The quotation attributed to respondent in the media advisory is the one Mr. Day had read to respondent during their second telephone conversation, in which respondent told Mr. Day that it was permissible for him to use that quotation in the media advisory and to attribute the quotation to respondent.

81. The media advisory was sent to various local media outlets. The press release was covered by the news media.

82. At the time of his conversation with Mr. Day, respondent, who was then a candidate for re-election as Spring Valley Village Justice, knew that the ethical rules prohibited judges from being involved in political activity aside from their own campaign. At the hearing, respondent testified that he believed his conduct was in compliance with the ethical rules because he only provided factual information concerning his own actions and observations. He further testified that the statement that was disseminated did not accurately reflect the comments he had made to Mr. Day.

As to Charge VI of the Second Formal Written Complaint:

83. In May 2013 respondent called chief court clerk Elsie Cheron into his chambers and asked her to write a letter to the Commission stating that he was a good judge who “does his job.” Ms. Cheron was shocked by the request and told respondent she would think about it. A couple of weeks later respondent asked Ms. Cheron whether she would write the letter, and Ms. Cheron told him she would not do so. After Ms. Cheron refused to write the letter, respondent refused to talk to her. Respondent

attempted to have her fired from her position.

84. Each employee in Spring Valley had a code that permitted him or her to enter certain areas of the municipal building. Only Ms. Cheron, Mr. Roxas and the judges were given access to Ms. Cheron's private office. In July 2013 Ms. Cheron received a federal subpoena requesting records. After receipt of the subpoena Ms. Cheron, Mayor Jasmin and Chief Modica decided that while the federal matter was pending, access to Ms. Cheron's office would be limited to Ms. Cheron and Mr. Roxas.

85. Shortly thereafter, while respondent was presiding at traffic court and a file needed for an arraignment could not be found, respondent left the bench and tried unsuccessfully to open the door to Ms. Cheron's office. Respondent then directed a court clerk to telephone Ms. Cheron and tell her "to come here and bring her attorney with her." Respondent voice was loud and he "wasn't happy."

86. When Ms. Cheron received the message that respondent needed access to her office, she went to the clerk's office. When she arrived, a court clerk advised her not to go into the courtroom, telling her that respondent was "really upset."

87. On September 16, 2013, Ms. Cheron told respondent that she had filed a police report because the door to her office had been left open all weekend. Respondent told Ms. Cheron that he had ordered that her office door remain open and that if the police want to secure her office, an officer should be posted at the door. Respondent also told Ms. Cheron that in December when the new mayor took office, he

would make sure she was not the clerk anymore.² Ms. Cheron asked, “Is that a threat?” and respondent replied, “No. This is not a threat. This is a promise.” During this encounter respondent was angry, yelling and loud.

88. On Saturday, December 7, 2013, Spring Valley Police Sergeant Roxanne Lopez was assigned to oversee the officers working the 8:00 AM to 4:00 PM shift. When Sergeant Lopez arrived for her shift, she was informed that the department was looking for a man who had allegedly assaulted his girlfriend in the Town of Ramapo and then had either pistol whipped or threatened to pistol whip a taxi driver in Spring Valley. Sergeant Lopez was also told that a prisoner was being held in Spring Valley for arraignment. Sergeant Lopez decided not to call for a judge to come to the Spring Valley court to arraign the prisoner in case the suspect in the other case was captured. Sergeant Lopez did not want to inconvenience a judge by asking the judge to come to Spring Valley more than once.

89. While Sergeant Lopez was in the field, she received a phone call from the dispatcher advising her that respondent had arrived in Spring Valley to arraign a defendant. Sergeant Lopez was surprised because she had not called respondent or authorized anyone else to call him. Sergeant Lopez immediately drove back to the police station and got the prisoner to be arraigned, and she and Detective Claussen walked the

² By law, a village court clerk is appointed by the mayor “only upon the advice and consent of the village justice or justices” (Village Law §4-400[1][c][ii]), and the mayor has sole authority to discharge a court clerk (*see Bishopp v Spring Valley*, 213 AD2d 441 [2d Dept 1995]). The record reflects that in the fall of 2013 respondent informed the mayor-elect that he would not consent to Ms. Cheron’s reappointment and that she continued in the position as a holdover.

prisoner to the courtroom, which they found locked. After waiting about ten minutes, Sergeant Lopez called the police desk and asked if they could contact respondent and inform him that they were waiting for him. After a few more minutes, Sergeant Lopez left the prisoner with Detective Claussen. A short time later, Detective Claussen told Sergeant Lopez that respondent wanted to see her. When she entered the courtroom, respondent complained that he had not received the proper paperwork and that he had been waiting a long time for the police to bring the prisoner. Sergeant Lopez responded that she had not called respondent. Respondent interrupted Sergeant Lopez, raised his hands in the air and said in a very loud, agitated voice, "You know that I have problems with your chief of police and members of this police department." Sergeant Lopez said that she had no knowledge of any problems between respondent and the police department and reiterated that the Spring Valley police had not called respondent. Respondent stated that he was "starting to have a problem" with Sergeant Lopez and continued to insist that he had been called by the Spring Valley police to arraign a defendant. Respondent appeared very angry and agitated and spoke with his hands raised in the air, and he cut off Sergeant Lopez and would not permit her to speak.

90. Ramapo Police Detective Margaret Braddock arrived and told respondent that the Ramapo Police Department had been waiting for him to appear because they needed him to review a search warrant. It was the Ramapo Police Department that had called respondent but he had mistakenly gone to Spring Valley instead.

91. On January 2, 2014, Ms. Cheron and Mr. Roxas were told that

respondent ordered them to report to the courtroom. Ms. Cheron was afraid to enter the courtroom because respondent had previously told her that he was going to hold her in contempt, but she obeyed respondent's order because she was concerned that if she did not, respondent would get angrier. She testified at the hearing that every time she was called into the courtroom by respondent she was "scared" and did not know if she was "going to walk out or be in handcuffs," but she felt she had no choice.

92. When Ms. Cheron and Mr. Roxas entered the courtroom, respondent was on the bench. Court officers, a court clerk and the court stenographer were also present, and the court stenographer made a record of what transpired. Respondent stated that he was uncomfortable working with Ms. Cheron, would not work with her and would not consent to her reappointment as chief clerk. He stated that the Spring Valley Village Board was compelled to listen to him and if they did not listen to him, he would "add other counts" to a federal lawsuit he had brought against Spring Valley and Spring Valley employees, including Ms. Cheron. Respondent told Mr. Roxas that he was going to receive a lot more responsibility and that it "may come quicker" than Mr. Roxas anticipated.

93. Respondent testified that he does not see how his conduct on January 2, 2014, as reflected in the transcript of the incident, was inappropriate or might be degrading or intimidating to court employees.

94. In May 2013 Ms. Cheron spoke to Spring Valley Village Justice Susan Smith about the fact that court officers were staying after court was over in order to be paid for additional hours. Judge Smith told Ms. Cheron to distribute a

memorandum informing the court officers that once court was over, they should finish everything, turn off the lights, and go home. On May 29, 2013, Ms. Cheron wrote a memo to the court officers and copied the judges. Ms. Cheron showed the memo to the judges, including respondent, who told Ms. Cheron that he had no problem with it.

95. About a month later, on June 27, 2013, respondent returned the memo to Ms. Cheron with the following handwritten statement: “Please refrain from any and all edicts or policy statements without first discussing with the judges.” It was signed by respondent and copied to the other judges.

96. On March 19, 2014, respondent signed an order stating *inter alia* that:

“Elsie Cheron is suspended from any administrative duties in reference to the court and directed to cease any operations and to refer them to the judge sitting at the time and to refer all matters regarding court security to Judge Alan M. Simon.”

The order had signature lines for Spring Valley Village Justices Theodore and Desir. As of February 2015, neither of the other two judges had signed the order.

97. In April 2014 respondent sent a letter to the State Comptroller’s Office Justice Court Fund, regarding his March 2014 monthly report of cases and remittances. The letter stated:

“The undersigned justice has not personally audited the proceeds and makes no representative [sic] on this regard. Also this court has no legally appointed Chief Clerk. I have no confidence in the person pretending to be Chief Clerk who’s [sic] appointment I have not approved and has not been appointed to serve.”

98. Respondent has referred to Ms. Cheron as part of the “Haitian

mafia.” He also has called Ms. Cheron “the mayor’s clerk” and “the pretend clerk.”

99. In the spring of 2014, when Mayor Demeza Delhomme was in the hallway of the municipal building with another man, respondent told the man not to listen to the mayor because he was a liar. Respondent was yelling at the time. Respondent also stated that he did not “want to fucking talk to” the mayor.

100. In September 2014 respondent met Mayor Delhomme as the mayor was walking out of the municipal building with another man. In a loud voice, respondent called the mayor “a three dollar bill.” The mayor said he would call the police, and respondent told him to call them if he wanted to.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(1), 100.3(B)(3), 100.3(B)(6), 100.3(C)(1) and 100.5(A)(1)(c) and (d) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through IV of the Formal Written Complaint and Charges V and VI of the Second Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent’s misconduct is established.

On repeated occasions over several years, respondent abused his judicial position in order to bully, harass, threaten and intimidate his court staff, his co-judge and other village officials and employees with whom he dealt in an official capacity. Without

lawful basis, he repeatedly threatened such individuals with contempt or arrest over routine personnel or administrative issues in his court. On a frequent basis, he also subjected them to demeaning treatment, insults and angry diatribes in response to perceived disrespect or shortcomings in the performance of their duties and, in one instance, exhibited a shocking display of physical aggression in the court clerk's office. Such "a pattern of injudicious behavior and inappropriate actions...cannot be viewed as acceptable conduct by one holding judicial office" (*Matter of VonderHeide*, 72 NY2d 658, 660 [1988]) and warrants his removal from judicial office.

Epitomizing respondent's misconduct is his response to the hiring of a college student to work in the court clerk's office in the summer of 2012. In an incident that escalated into a melee, respondent, who was displeased because the student, Maxary Joseph, had been hired by the mayor without respondent's input or approval, acted in a manner that failed to show "even a modicum of sensitivity or self-control so vital to the demands of his position" (*Matter of Kuehnel*, 49 NY2d 465, 469 [1980]) as he attempted to have the student removed from the premises, threatened him with arrest and contempt, and made similar threats against others who attempted to thwart respondent's efforts to effectuate the arrest.

Initially, after ordering Mr. Joseph to leave the office and threatening him with arrest when he returned at the mayor's direction, respondent called the police and told them he had held an individual in contempt (a statement respondent later admitted was untrue) and that he wanted him arrested for trespassing; he also told the police "the mayor may be next." Then, with a commitment order in hand, he went to the police

office in the municipal building, announced that he was sentencing an individual to jail for 15 days, and said he would hold the police in contempt unless they assisted him. He called the sheriff's office and said he wanted the matter investigated, summoned an off-duty court officer to the court for assistance, and directed a court clerk to set up the recording equipment in the courtroom. When his co-judge attempted to intervene, respondent threatened him with contempt and told him to "have a stroke and die." Respondent also ignored the pleas of court clerks, who were shocked and frightened by respondent's evident rage as he screamed at Mr. Joseph and, while standing next to the student's desk, ordered him into the courtroom and began to advise him of his rights. In an alarming display of injudicious temperament, respondent grabbed Mr. Joseph's arm and attempted to pull him out of his chair, yanking him with such force that the chair began to slide toward respondent. When police, who had rushed to the clerk's office after hearing screaming and yelling, tried to calm the situation and suggested that respondent discuss his concerns about hiring with the mayor, he responded by referring to the mayor in profane, vulgar terms and added that he was contemplating holding her in contempt.

Respondent's judicial position gave him enormous power over Mr. Joseph, who was at great risk of severe consequences if he reciprocated with physical aggression. It is noteworthy that throughout this entire excruciating incident, which unfolded over some two hours, the young man remained calm and respectful while the behavior of respondent, whose judicial position required him to observe the highest standards of conduct and to treat others with appropriate respect (Rules, §§100.1, 100.2[A],

100.3[B][3]), lacked any semblance of dignity or restraint. Although respondent had ample opportunity as these events occurred to reflect on the circumstances and consider the consequences of his actions, he ignored the most basic principles of appropriate professional behavior and was evidently unwilling or unable to control himself.

At the hearing, even while admitting most of the particulars regarding the incident (except that he denied grabbing Mr. Joseph's arm and maintained he only "touched him on the elbow," testimony that the referee concluded was false), respondent defended his actions, claiming that he was motivated by concern that Mr. Joseph was handling confidential materials without having been screened by him. Even on reflection, nearly three years after the event, he merely conceded, "On second thought, I probably could've acted better, but I do believe I acted appropriately." Whatever the merits of respondent's objections to the student's hiring or his professed concern about confidentiality, his response to the situation far exceeded any rational boundaries of permissible behavior. Nor is it any excuse that, as respondent argued, the events must be viewed in the context of his ongoing political conflict with a mayor who treated him with hostility and disrespect. Notwithstanding any such considerations, Mr. Joseph was entirely blameless and deserved to be treated with respect, as respondent sadly failed to recognize.

It is beyond dispute that any physical confrontation or aggressive, unwanted physical contact initiated by a judge in the workplace would be highly inappropriate. *See Matter of Allman*, 2006 NYSCJC Annual Report 83 (after berating an attorney, judge left the bench, walked into the well of the courtroom and "firmly

grabbed” the lawyer by both arms while continuing to yell at him). Where, as here, a physical confrontation is coupled with multiple threats of arrest and contempt, a two-hour display of unrelenting rage and aggression, and a stream of invective and vitriol, public confidence in respondent’s fitness to serve as a judge is irredeemably damaged.

The record before us demonstrates that such behavior by respondent was not an isolated occurrence. He not only regularly treated certain village employees and officials, including the chief court clerk, his co-judge and the mayor, in a demeaning and discourteous manner and referred to them in disparaging terms, but abused his judicial power on other occasions by threatening to hold those individuals and others in contempt of court or to have them arrested with no lawful or reasonable basis. In one instance, for example, after summoning the chief court clerk into the courtroom so he could berate her on the record with respect to the assignment of court officers, respondent warned that he would hold her in contempt unless she complied with his order and told her to “get an attorney” and that she had “30 days to appeal.” Incredibly, even after the clerk had testified that this incident was “traumatizing,” respondent maintained that his actions on that occasion were not only appropriate but should have left the clerk feeling “empowered,” and that “if she has any other feeling, I honestly don’t understand it.”

Among numerous other incidents, he also screamed at the mayor that he would hold her in contempt unless he got his own office; repeatedly told a court officer (who properly ignored respondent’s directives) to arrest the mayor or bring her to the courtroom, and gave the officer similar instructions with respect to the police chief and village attorney; threatened to have his co-judge arrested for trespass for walking through respondent’s

office in order to use a staff restroom; and threatened a newly-hired drug court case manager, who had permission to use the judges' chambers as a temporary office, with contempt or arrest when he attempted to do so. Such baseless threats were patently impermissible and inconsistent with the proper exercise of a judge's summary contempt power, which is appropriate "only in exceptional and necessitous circumstances" in order to restore order and decorum in the courtroom (*see, e.g., Matter of Hart*, 7 NY3d 1, 7 [2006]; *Matter of Singer*, 2010 NYSCJC Annual Report 228; 22 NYCRR §701.2[a][1]; *see also* Jud Law §755). Viewed in their totality, these incidents present a disturbing picture of respondent's "intolerant, near-obsessive reaction" to numerous individuals with whom he had a contentious relationship and his complete disregard of his ethical obligations, which require a judge to observe high standards of conduct, both on and off the bench, and to be "patient, dignified and courteous" to those with whom the judge deals in an official capacity (*Matter of Waltemade*, 37 NY2d [nn], [iii] [Ct on Jud 1975]; Rules, §§100.1, 100.2[A], 100.3[B][3]; *see also Matter of Assini*, 94 NY2d 26, 29 [1999] [in the course of his official duties, judge repeatedly disparaged his co-judge and referred to her in vulgar and offensive terms, which was "absolutely indefensible conduct"]).

It is no defense that respondent – according to his testimony – never intended to follow through on his threats, never held anyone in contempt in his judicial career, and only made such threats in an effort to "motivate people to do what I thought was the right and proper thing." Using his judicial position to make baseless threats of contempt in order to intimidate and browbeat, even if the threats were never carried out, is improper since it is inconsistent with the standards of dignity and courtesy required of

a judge (*see* Rule 100.3[B][3]; *Matter of Waltemade, supra* [judge's threats of "sanctions" and contempt against attorneys and witnesses were improper notwithstanding that none were followed by a contempt citation or other disciplinary action]; *Matter of Hart*, 2009 NYSCJC Annual Report 97; *Matter of Shkane*, 2009 NYSCJC Annual Report 170). Moreover, the recipients of such threats, which were usually delivered with explosive anger, could only assume that respondent, who had the power to act on them, intended to do so (and in the incident involving Maxary Joseph, he clearly did attempt to do so).

Respondent's rude and discourteous manner also extended to attorneys when he was acting in an adjudicative capacity. In a case involving an indigent tenant who had been illegally locked out of his apartment, respondent mistreated two attorneys from a legal services agency that had assisted the tenant in preparing an order to show cause. In two telephone conversations, he shouted at one attorney while repeatedly insisting that the tenant had to pay a \$20 filing fee and twice hung up the phone in mid-sentence as she spoke; later, in court, he excoriated another lawyer because of an error in papers the agency had prepared, using language that was disproportionate to a simple mistake that was easily corrected (*e.g.*, "If you're doing the best you can, you should be put out of business"). Ignoring the limits of his legal authority, he then imposed a sanction of \$2,500 against the agency without lawful basis (as a town justice, he lacked authority to impose a monetary sanction [22 NYCRR Rule 130-1.1(a)]) and removed the agency from representing the tenant without consulting with their client or giving the agency an opportunity to be heard.

The record also establishes that respondent engaged in impermissible political activity in 2013 when his former co-judge David Fried was a candidate for county executive. By providing information to Fried's opponent that he knew might be damaging to Mr. Fried's campaign and permitting such information to be used publicly and attributed to him, respondent injected himself into that campaign, engaged in partisan political activity and used the prestige of his office to advance the private interests of another, conduct that is specifically barred by the ethical rules (Rules, §§100.2[C], 100.5[A][1][c], [d]).

Compounding these multiple instances of impropriety is respondent's continued insistence at the hearing that his actions were appropriate under the circumstances and consistent with the required standards of judicial behavior. With the exception of one or two grudging concessions that "maybe I could've done better," he repeatedly insisted that his actions were justified by his righteous motives and by the misbehavior of others, showing little or no insight into the effects of his own behavior "upon public confidence in his character and judicial temperament" and in the judiciary as a whole (*Matter of Aldrich*, 58 NY2d 279, 283 [1983]). His "fail[ure] to recognize the inappropriateness of his actions or attitudes," as evidenced by his testimony over two days at the hearing, provides scant assurance that similar impropriety will not be repeated in the future (*Id.*; *Matter of Reeves*, 63 NY2d 105, 110-11 [1984]).

We thus conclude that the record before us, in its totality, demonstrates that respondent lacks fitness to serve as a judge and, accordingly, that the sanction of removal is appropriate.

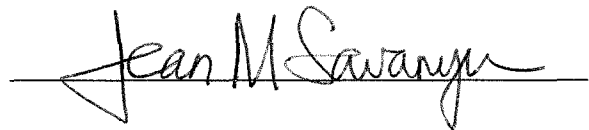
By reason of the foregoing, the Commission determines that the appropriate disposition is removal.

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Emery, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: March 29, 2016

A handwritten signature in black ink, reading "Jean M. Savanyu", is written over a horizontal line.

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct