

To be Argued by:  
**LAWRENCE M. MANDELKER**  
Time Requested: 30 Minutes

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# Court of Appeals State of New York

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**JCR 2016-0001**

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

ALAN M. SIMON,

*Petitioner,*

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

- against -

STATE COMMISSION ON JUDICIAL CONDUCT,

*Respondent.*

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## **BRIEF FOR PETITIONER**

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NEW YORK STATE COURT OF APPEALS

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In the Matter of the Review of the Determination  
by the New York State Commission on Judicial  
Conduct Pursuant to Section 44, subdivision 7  
of the Judiciary Law that

ALAN M. SIMON

JCR 2016-0001

be removed from the offices of Justice of the  
Spring Valley Village Court and the Ramapo  
Town Court, Rockland County.

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**Preliminary Statement**

Petitioner Hon. Alan M. Simon (“Petitioner”), then a Justice of the Spring Valley Village Court and the Ramapo Town Court, Rockland County was served with a Formal Written Complaint dated December 13, 2013 containing four charges. Petitioner, then also serving as Acting Justice of the Suffern Village Court was served with a second Formal Written Complaint dated October 2, 2014 containing two additional charges. All of the charges related to his conduct as a Justice of the Spring Valley Village Court. None of the charges related by his conduct as a Justice of the Ramapo Town Court, to which office he had been elected in 2011; and none of the charges related to his conduct as Acting Justice of Suffern Village Court, to which office he had been appointed by the Administrative Judge of the 9<sup>th</sup> Judicial District in 2014 while the first four charges were pending before the Commission.

Petitioner filed verified answers to both complaints. The Commission designated a referee to hear and report proposed findings of fact and conclusions of law. A hearing was held over nine (9) days. As the referee is not empowered to hear and report on the issue of proposed penalty, he did not report on any aspect of Petitioner's judicial service other than Petitioner's conduct alleged in the complaints. Accordingly, the Commission did not have before it proposed findings of facts and conclusions of law concerning Petitioner's unblemished – even – distinguished -- service for most of 2014 and all of 2015 as Justice of the Spring Valley Village Court, as a Justice of the Ramapo Town Court since his election in 2011 and as an Acting Justice of the Suffern Village Court during 2014.

The referee filed a report dated July 14, 2015 that sustained the charges against Petitioner. After briefing by the parties, on February 16, 2016, the Commission heard oral argument at which Petitioner, after generally accepting the referee's proposed findings of fact and conclusions of law and acknowledging that his intemperance to, and abuse of others could never be justified, argued that the appropriate penalty for the misconduct that had been established was censure. It also heard Petitioner's very fulsome statement in which he acknowledged that his conduct was wrong and could never be justified, that he was receiving professional counseling and that he had apologized to his court clerk for the way he had treated her. He also informed the Commission that shortly after the conduct set forth in

Charge I had occurred, he had apologized in writing to Maxary Joseph, the individual identified in Charge I whom Petitioner had verbally abused and threatened to hold in contempt.

On March 29, 2016, the Commission issued its determination and concluded that Petitioner should be removed from his judicial offices. In doing so, the Commission ignored his recognition that his offending conduct was wrong and could never be justified, his contrition for that conduct and that his offending conduct was *sui generis*, having been limited solely to his service as a Justice of the Spring Valley Village Court during a discrete period of time that had ceased and had not been repeated in Spring Valley for at least 18 months before oral argument before the Commission; and that it had never occurred as a Town Justice in Ramapo or an Acting Justice in Suffern. Petitioner seeks review of the Commission's Determination. He concedes his misconduct, but believes that under the totality of circumstances of this case, and the prior decisions of this Court and the Commission, the appropriate punishment should have been censure.

## Statement of Facts

Petitioner was first elected as a Village Justice in the Village of Spring Valley in 2005 (R 1438)<sup>1</sup>. He was re-elected in 2009 and again in 2013, at which time he received 49.6% of the vote in a three-person race<sup>2</sup>. In 2011, Petitioner was elected as a Town Justice in the Town of Ramapo (R 1439). He was re-elected last year with over 99% of the vote<sup>3</sup>. The Town of Ramapo is divided into 109 election districts, numbered 1 to 109 (See Appendix B). Sixteen of those districts (6, 8, 12, 13, 26, 36, 49, 51, 63, 64, 65, 70, 71, 74, 89 and 100 lie within the Village of Spring Valley (See Appendix A). Petitioner asks the Court to take judicial notice that in November 2015, Petitioner received 70% of the vote from within Spring Valley.

In April, 2014, Petitioner was appointed by the Administrative Judge of the Ninth Judicial District as lead acting village justice of the Village of Suffern when the elected incumbent was unable to perform his duties (R 1434). Petitioner's misconduct occurred between December 2011 and mid-2014. During this time, Petitioner suffered from a number of health issues. In July, 2013, Petitioner had hip replacement surgery and then underwent rehabilitation (R 1549). Approximately a

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<sup>1</sup>“(R \_\_\_) refers to page of the Record on review

<sup>2</sup> Petitioner asks the Court to take judicial notice of the result of the November, 2013 general election for Spring Valley Village Justice between Alan N. Simon, Susan M. Smith and Djinsad Desir, as posted on the website of the Rockland County Board of Elections. A copy of the results is appended hereto as Appendix A.

<sup>3</sup> Petitioner asks the Court to take judicial notice of the result of the November, 2015 general election for Ramapo Town Justice in which Alan N. Simon ran unopposed, as posted on the website of the Rockland County Board of Elections. A copy of the results is appended hereto as Appendix B.

year later, Petitioner had surgery to replace a heart valve (R 1500).

The findings of the Commission fall into three categories. In sum, they are that Petitioner:

a) over a thirty-month period, engaged in intemperate behavior, primarily the repeated use of strong language in a raised voice, and the repeated use of the threat (but never the imposition) of contempt of court in dealing with court and village officials, the police, his fellow Village Justice and employees while off the bench in matters relating to the administration of the court, but never related to the disposition of any litigated matter over which he was presiding;

b) chastised and was rude to legal services counsel both on the phone and before him in court for, in his opinion being inattentive to and prejudicing the rights of a litigant before him who had been wrongfully locked out of his apartment and was either living on the streets or in a homeless shelter; relieved and sanctioned the litigant's counsel; assigned Legal Aid as new counsel for the litigant, all for the purpose of, and which resulted in the immediate restoration of the litigant to his apartment; and

c) on one occasion where his information about a candidate for office's conflict of interest was solicited, confirmed the information and subsequently allowed the candidate's opponent to publish the confirmation.

## **Charge I**

This charge was the most serious charge before the Commission. It arose out of the mayor of Spring Valley's attempt to foist on the Village Court an intern she hired for the court without obtaining Petitioner's approval, or even consulting with him. The referee reported and the Commission confirmed that when told that an intern had been hired, Petitioner objected and asked the Clerk of the Court to provide him with a copy of the intern's resume. (R 2440-1).

Petitioner testified that he:

wanted to make sure that there was a clear understanding of the material and the confidential nature of the material that courts deal with, and that there was an understanding on his part of what he had to do with it, or not do with it, and I wanted to have that discussion. I also wanted to get an idea of his background, and what his future had in store.

(R 1535).

By the next day, the Clerk of the Court had not obtained the intern's resume because she claimed she was too busy. (R 2441). On the following day, Petitioner came to the court to interview the intern. Instead, he found the intern already working with confidential court files in the Clerk's office. At that point, Petitioner directed the intern to leave, which he did. (R 2441-2). In defiance of Petitioner's direction, Spring Valley Mayor Jasmin ordered the intern to return, which he also did. (R 2442).

Petitioner told Ms. Cheron that he wanted the intern to leave, but Ms. Cheron did not direct the intern to do so. (R 1540). She took the position that since the Mayor had said that the intern should do the work, she (Ms. Cheron) couldn't get involved because the Mayor runs the court. (R 1644) Petitioner then asked the intern to leave. He refused, stating that "the mayor says I work here." (R1541). Petitioner then went to see Mayor Jasmin; but she refused to speak with him. (R 1541). He then asked the police for assistance. They said they would confer with the Mayor, after which they declined to get involved. (R 1541). At some time during or following these interactions, Petitioner lost his temper.

A period of tremendous disorder and commotion ensued. Petitioner's misconduct included his threat to hold the intern in contempt, his threat to hold the police in contempt and his threat to hold Village Justice Fried in contempt for interfering. After Petitioner either grabbed the intern by the elbow or merely touched him – neither of which were remotely proper -- a semblance of order was restored when the police finally escorted the intern out of the Clerk's office (R 2442-8).

Petitioner yelled that the intern "should not be working in the court clerk's office" and that he "had no say in him being hired." Petitioner also stated that "he wanted [the intern] arrested and held in contempt of court because 'he had no right to be in the clerk's office [and] that there was confidential information there....'"

Petitioner continued that Mayor Jasmin ‘had no [expletive] right to hire anybody’ and assign them to ‘work in the clerk’s office, \*\*\*’ (R 2447-8).

When Petitioner addressed the Commission on February 4, 2016, he was asked if he ever “apologize[d] to any of these folks before this complaint was filed against you?” (R 2735). Petitioner responded that he did write a written apology to Mr. Joseph (R 2736)

“JUDGE KLONICK: When was that?

JUDGE SIMON: That was pretty much as soon after this occurred. And that was a written apology and my then attorney, neither of the gentlemen who are standing beside me today, helped me write and delivered it for me.

JUDGE KLONICK: Was that in the record? Was that in the record of the hearing that you apologized to him?

JUDGE SIMON: I don’t think so.

JUDGE KLONICK: Okay.

JUDGE SIMON: But I did in writing and I forwarded it to him. I am truly sorry. He was an innocent guy and I got carried away with my own preconceived notions in terms of sealed records and I was very offended that he didn’t, nobody listened to me and all of that and I was wrong. I should have found other ways. You are absolutely right.” (R 2736)

## Charge II

On June 26, 2012, Judy Studebaker, Esq, a Legal Services of Hudson Valley (LSHV) staff attorney, met with Mr. Malcolm Curtis. Mr. Curtis had been illegally locked out of his apartment and was sleeping on the street or a homeless shelter. (R 2449).

An LSHV paralegal prepared a *pro se* order to show cause for the Spring Valley Village Court. Mr. Curtis did not have his lease (it was locked in his apartment). He told the LSHV paralegal that his landlord was Cheryl Scott. The paralegal did not independently check that Ms. Scott actually was Mr. Curtis' landlord. Accordingly, her name was placed in the caption as a respondent (R 12-3).

Apparently, it was common practice for LSHV to help pro-se litigants to prepare papers even though it was not providing them with formal legal representation. The order to show cause contained a decretal paragraph permitting Mr. Curtis to proceed as a poor person without paying a filing fee. The papers drafted by LSHV stated: *Form prepared by Legal Services of 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 Hudson Valley.* (R 13).

Initially, Petitioner directed the Clerk not to accept the papers without a filing fee. Eventually, there were telephonic exchanges between Petitioner and

Ms. Studebaker in which he was not courteous and twice hung up the phone on Ms. Studebaker while she was speaking. (R 2450-1).

Nevertheless, despite not having signed the order to show cause, and doubting that Cheryl Scott was Mr. Curtis' landlord (therefore subjecting the proceeding to dismissal and delaying an eventual adjudication on the merits while petitioner continued to languish in the street or a homeless shelter) Petitioner directed the Clerk to ascertain the owner of the property where Mr. Curtis was residing from the Spring Valley building department, which she did (R 2452).

Petitioner changed the caption of the order to show cause to reflect the name of Mr. Curtis' actual landlord as the respondent, signed the order to show cause even though no filing fee had been paid and Mr. Curtis had not been adjudicated as a poor person, advanced the proposed return date from July 5, 2012 to June 28, 2012 and directed Mr. Curtis' actual landlord to appear in court and produce a copy of the signed lease on the return date (R 2452).

On June 28, 2012, the Clerk contacted Ms. Studebaker and advised her that the return date had been advanced to that afternoon and that the landlord had been contacted and directed to appear. (R 2452). That afternoon when the proceeding was heard, Petitioner took testimony from Mr. Curtis about his income and expenses and granted Mr. Curtis' application to proceed as a poor person. (R 2452-3). He then proceeded to question the attorney from LSHV who appeared in place

of Ms. Studebaker about the quality of LSHV's representation of Mr. Curtis. (R 2453).

Petitioner said "It is my opinion that you did not represent this individual who had a very valid and emergency claim, and that it was done in something less than a professional manner." (R 2453). "Petitioner found that LSHV 'failed to meet the minimum standard of representation of Mr. Curtis.'" He relieved LSHV as counsel, and substituted the Legal Aid Society. He sanctioned LSHV \$2,500 and directed that the sanction be paid directly to the Legal Aid Society. (R 2454). As Petitioner explained on cross examination:

Q. And you sanctioned Legal Services of Hudson Valley because they inadequate...in your opinion, you felt they inadequately Mr. Curtis, isn't that true?

A. That is true. I believed, in essence, that they should have represented him, and they did not. They should have taken on the case, and they did not. They should have investigated the case to determine a proper respondent, and they did not. And I believed they failed to do anything, in essence, that met any standard of representation, even to the limited extent of preparing papers only.

(R 1737-8).

He addressed the LSHV attorney who was in court in a disrespectful manner

and didn't give her an opportunity to respond (R 2454). However, Mr. Curtis was back in his apartment that very evening (R 1533), a proposed finding of fact that was not included in the Referee's report.

At the hearing, Petitioner 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 (R 1518-9)<sup>4</sup>. He testified that he reversed the sanctions *sua sponte* because the *dictum* in a dismissed Article 78 proceeding indicated that he was probably in error in imposing the sanction (R 17) in his statement to the Commission, Petitioner discussed this incident and said:

The person, I was gruff to her. And I shouldn't have done that and I apologize for that. But I was very frustrated because I didn't want this guy living on the street. It's not what I am about and I didn't want to do that. And in order to get him back into his house, I had to get somebody to stand up in court to make the application and I pushed it so it was by the end of the day he was back living I his house, apartment and ultimately the case was resolved.

(R 2734)

### **Charge III**

On a number of occasions, Petitioner threatened court and village officials with contempt if they did not follow his directions concerning how the court should be administrated.

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<sup>4</sup> In his personal statement to the Commission, Petitioner stated that he had never seen a legal services firm appear for the preparation of papers only. It wasn't done in his area and he had a real problem with it (R 2733)

## Richard Deere

Richard Deere was hired by the Education and Assistance Corporation to be the case manager for the Rockland County misdemeanor drug court. He had previously been an intern and was a former student of Village Justice Fried. He was not assigned an office for several months and was authorized to use Justice Fried's desk in chambers in the interim. (R 17-18). Based on a direction he received from Supervising Judge Charles Apotheker, Petitioner did not believe that Mr. Deere should be present in Justice Fried's chambers unless Justice Fried was also present (R 1507). Petitioner viewed Mr. Deere as a security threat. Mr. Deere and Court Officer Robert Nesci had had an altercation (R 1507-8) that was broken up by Court Officer Victor Reyes (R 1061-2). On several occasions, Mr. Deere had also inserted paper in the locked door to the court facilities in order to be able to enter without having to use the security code, with which he had not been provided. (R 1065).

In December, 2011, he found Mr. Deere alone in Chambers; and directed him to leave immediately under threat of being held in contempt and being charged with loitering and trespass. Mr. Deere complied and called Justice Fried, who escorted him back to chambers. Petitioner told Justice Fried that Mr. Deere had no right to be present and again threatened to hold Mr. Deere in contempt and charge him with trespass.

Several weeks later, Petitioner directed Court Officer Reyes to proceed to Justice Fried's chambers and escort Mr. Deere – who apparently was there by himself -- from the building and to arrest him if Mr. Deere gave him a hard time. Mr. Deere complied and called Justice Fried who again escorted him back to chambers. The Commission confirmed the referee's finding that Petitioner falsely testified that he had not threatened to hold Mr. Deere in contempt, but that he had mentioned trespass and may have mentioned that he would have Mr. Deere arrested for trespass if he didn't leave.

#### Mayor Jasmin

The Village of Spring Valley pays the expenses of operating the Village Court. Office machinery, such as the copying machine was in disrepair. There was insufficient paper. Court personnel were required to use the rear of sheets that had already been used. The conditions under which court personnel were working were terrible. Petitioner believed that Mayor Jasmin did not care, "and in reference to [his] court particularly, had no interest in our efficiency or our performance." (R 1508).

On May 24, 2012, Petitioner, wearing his robes interrupted a meeting between Mayor Jasmin and two Spring Valley police lieutenants ranted and raved at the top of his lungs that he wanted his own office and would hold the Mayor in contempt if he did not get one. Petitioner denied that on that occasion he

threatened Mayor Jasmin with contempt.<sup>5</sup> On several occasions, Petitioner directed a court officer to summon Mayor Jasmin and lock her up if she refused to come. While Petitioner admitted he had given such directions because conditions in the court office were “a shamble,” the directions were a joke. (R 1508)

#### Village Justice David Fried

In late May or early June, Petitioner threatened to charge Justice Fried with criminal trespass for entering Petitioner’s locked private chambers so he could use the attached bathroom (R 2458). Spring Valley Justices are required to take the bench in a timely manner. Petitioner told Officer Reyes to maintain a log of when the three justices took the bench. When Justice Fried learned about the monitoring, he informed Supervising Judge Apotheker, who wrote to Petitioner that it was inappropriate for him to monitor Justice Fried. Petitioner agreed to end the practice. But apparently he did not (R 25).

One day when Justice Fried was about 20 minutes late, Petitioner told him to “get his fucking ass in the chair.” He was furious that court was starting after 10 am (R 25-6).

Justice Fried may not have been a disinterested witness. On his first day on the bench, he presided over an arraignment. At Justice Fried’s request, he asked Petitioner to observe the proceeding. Toward the end of the proceeding, Petitioner

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<sup>5</sup> The Court may take judicial notice that Mayor Jasmin and her deputy mayor were convicted of, and incarcerated for federal charges arising out of the FBI sting that ensnared former Senate majority leader Malcolm Smith

asked Justice Fried to step off the bench and had a private conversation with him in the hall. He told Justice Fried that his arraignment was “terrible minus ten.” When Justice Fried attempted to justify his performance by saying that he followed the procedures that he learned at OCA’s training course for new judges, Petitioner replied in a firm angry voice that Justice Fried should not “listen to those fucks from Syracuse.” Justice Fried testified that Petitioner’s comments had made him feel “very bad.” (R 22-4)

#### Police Chief Modica

One evening in the spring of 2012 he received a call at home from Petitioner, who told him to bring his toothbrush the next day because Petitioner was throwing him in jail for contempt of court. At the hearing, Petitioner testified that he had over 100 traffic cases on his docket and that no Spring Valley Police Officer had appeared in court. Prior to a traffic case being called, the Officer and the defendant would discuss the ticket and attempt to work out a plea bargain, which would be presented to the court for approval. If the plea bargain was not approved, or if no plea bargain had been reached, the case was set down for trial at a future date (R1511-5) Petitioner spoke to Spring Valley Police Chief Modica because the Spring Valley Police were engaged in a job action in violation of the Taylor law, He said that if Chief Modica was participating in the job action or did not remedy the situation, Petitioner would hold him in contempt. Shortly after the

conversation, Spring Valley police officers started to arrive in court and started doing their jobs. (R 1711-3)

Petitioner testified at the hearing that 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.... Sometimes it’s absolutely necessary” to make such threats to motivate people to do what I thought was the right and proper thing.” (R 21).

#### Elise Cheron

Elise Cheron was and continues to serve as the Chief Clerk of the Spring Valley Village Court. The Commission found that after the incident involving the intern outlined in Charge I, Petitioner “avoided speaking to [Ms. 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.’ [Petitioner] referred to Ms. Cheron as the ‘so-called clerk,’ ‘traitor,’ the ‘mayor’s clerk’ and the ‘mayor’s pet.” (R 22). Petitioner testified that he did not consider calling Ms. Cheron such names either degrading or a violation of the ethical rules. (R 22).

On July 12, 2012, Petitioner directed Ms. Cheron to appear before him in the court room. Although court was not in session, Petitioner was on the bench,

wearing his robe and a stenographer was present. Although Petitioner stated on the record that the appearance was a proceeding, at the hearing, he characterized it as a “meeting.” (R 22). Petitioner told Ms. Cheron that he wanted her to assign only a certain group of court officers to the courtroom. If she failed to follow his order, he would “consider it contemptuous and act and punish accordingly.” (R 22-3).

The Commission determined that Petitioner “also told Ms. Cheron that if she disagreed with his directive, ‘You have 30 days to appeal it in writing.’ [He] again told Ms. Cheron that he would hold her in contempt and she ‘will be out.’ [Petitioner] was screaming, yelling, angry and loud. When Ms. Cheron asked [Petitioner] why he was yelling at her, he stated, ‘That’s the way it’s going to be.’” (R 23).

At the hearing, Petitioner testified that he believes that his statements to Ms. Cheron on July 12, 2012 were not degrading. What he said and did should have left her feeling “empowered.” He believed that it would provide “inspiration” for her “to follow what [he] felt was the proper thing to do [assigning the correct court officers] to have a more safe [sic] surrounding in the court.” (R 23).

On cross examination, Petitioner testified as follows:

Q. So you were hoping that the threat of contempt would inspire someone to follow your orders?

A. To follow what I felt was the proper thing to do to have a more

safe surrounding in the court with people who are capable of dealing with security as opposed to those who are not. (R1668).

At oral argument before the Commission, the following colloquy took place:

JUDGE ACOSTA: The problem is, counsel, that just with respect to Charge IV and some of the conduct of the [Petitioner] that Ms. Cheron was scared about and traumatized about including continuous threats of the court's contempt powers, Judge Simon's position is that she should feel empowered by that, that 'if she has any other feelings I honestly don't understand them.' I mean, to me I have never seen, and these were findings by the referee, I am troubled by the lack of insight about the impact that a threat of contempt would have on a clerk.

MR. MANDELKER: I read that and I tried to figure that out. I am trying to say what could that mean? Why would anybody feel empowered? And let me leave that question for a second because I want to make one other statement. I think there was misconduct. We are not asking the Commission to set aside the referee's findings. What we are arguing to the Commission is what is the appropriate level of discipline that should be imposed. So I just want to say that so we don't get into this business of justification.

JUDGE KLONICK: So you are not justifying – you're not challenging the

referee's findings of fact and conclusions of law?

MR. MANDELKER: The answer is basically no because I think it would have been, would be very difficult to say on this record that the Commission would be justified in setting aside those findings. So we are not doing that and we are not claiming that the misconduct that the referee reports on is justified, I want to say that upfront. We are talking about mitigation now.

Coming back to your question, Judge Acosta. So I tried to understand, what did this mean about this was empowering? And the only thing I could figure out because I understand that Judge Simon believed that there was a battle going on between a corrupt municipal administration and him over the integrity and independence of the court and he felt that Ms. Cheron was loyal to the mayor, and not to the court.... [T]he threat of contempt would empower her to disregard the directives of the mayor. It would allow her to act for the good of the court and not be worried about what the mayor could do or not do (R 2697-9).” Indeed, Petitioner testified that Ms. Cheron believed that Mayor Jasmin run the court (R1644).

On November 29, 2012, Petitioner ordered Ms. Cheron to appear in his courtroom. Petitioner was on the bench in his robe; and the courtroom was filled with lawyers and litigants waiting for their cases to be called. On the record in open court Petitioner started screaming at Ms. Charon that when he called the

clerk's office at 9:00 AM, no one answered the phone. "Consider it a warning," Petitioner told her "that you have not done your job properly today.... You are directed by me that at 9:00 in the morning when the phone rings that somebody should answer it.... If they fail to do that then...I will act accordingly." (R 23-4).

Although Petitioner testified at the hearing that he did not believe his conduct on November 29, 2012 was abusive, he regretted how he handled the issue. "[I]n 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 that the telephones were answered. (R 24).

### **Charge V**

Petitioner made a statement during the 2014 election for Rockland County Executive between the incumbent Edwin Day and Judge Fried. Mr. Day's campaign had learned that during (then) Mr. Fried's 2009 campaign for village justice, he had accepted an in-kind donation of office space from one Joseph Klein, described by the Day campaign as a notorious slumlord. (R 26).

Mr. Day contacted Petitioner to confirm the charge, which Petitioner did<sup>6</sup>. He told Mr. Day that the Klein office space had been offered as campaign offices to (then) Mr. Fried and Petitioner, both of whom were running to fill the two vacancies on the Village Court. When Petitioner realized that Mr. Klein was

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<sup>6</sup> Which perhaps might explain –but not excuse – why Judge Simon sometimes did not display the respect for, and deference owed to a colleague exercising coordinate judicial duties.

involved, he declined to accept the in-kind contribution because Mr. Klein had many matters before the Court. (R 26).

Petitioner allowed himself to be quoted in Mr. Day's subsequent campaign media advisory as follows:

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.

(R 27-8).

## **Charge VI**

### Mayor Delhomme

Mayor Delhomme succeeded Mayor Jasmin. In the spring of 2014, Petitioner told a person who was talking to the mayor not to listen because the mayor was a liar. In September 2014, Petitioner called Mayor Delhomme "a three-dollar bill." (R 34)

### Roxanne Lopez

On December 7, 2013, Spring Valley Police Sergeant Roxanne Lopez was assigned to supervise the department's officers working the 8:00 AM to 4:00 PM shift. She was advised that the department was looking for a suspect in two violent

assaults and was also holding a prisoner for arraignment in Spring Valley. She received a call that Petitioner had arrived in Spring Valley to arraign a defendant. She and a detective escorted the prisoner to the courtroom but found it locked. After 10 minutes, she had the police desk contact Petitioner and advise him that they were waiting for him. Shortly thereafter she was summoned to the courtroom. (R 30-1).

Petitioner angrily complained that he had been waiting a long time for the prisoner to be produced and that he had not received the proper paperwork. Sgt. Lopez said that she had not called Petitioner. Petitioner appeared angry, and would not let Sgt Lopez speak. It turned out hat Petitioner had been called by the Ramapo police but had mistakenly gone to Spring Valley, instead. (R 30-1).

#### Elsie Cheron Redux

In May, 2013, Petitioner asked Ms. Cheron and asked her to write a letter to the Commission stating that he was a good judge who “does his job.” She was shocked by the request and said she would think about it. A few weeks later, Petitioner reiterated his request. This time Ms. Cheron told him that she would not do so. Subsequently, Petitioner refused to talk to her and attempted to have her fired. (R 28-29).

The three village justices, Ms. Cheron and her deputy Gary Roxas were the only individuals who had access to Ms. Charon’s private office. In July, 2013, Ms.

Cheron received a federal subpoena requesting records. The mayor, police chief and Ms Cheron decided to change the locks on the Ms. Cheron's private office so that while the federal matter was pending, only Ms. Cheron and Mr. Roxas had access. As a result, the three village justices no longer had direct access to the office. Only the chief clerk and her deputy retained such access. (R 29).

Shortly, thereafter, Petitioner was presiding at an arraignment. He needed a file from Ms. Cheron's office, but could not gain access. He had a clerk call Ms. Cheron and tell her to "come here and bring her attorney with her." When Ms. Cheron received the message she went to the clerk's office. A clerk told her not to go into the courtroom as Petitioner was "really upset." (R 29).

The foregoing determination makes it appear that Ms. Cheron promptly came to her office, but in fact, she did not arrive until nighttime. (R 2468) No wonder that Petitioner was "really upset" when she arrived.

On September 16, 2013, Petitioner told Ms. Cheron in an angry and loud voice that when the new mayor took office in December, he would make sure that she was not the clerk any more, and that was a promise, not a threat. (R 29-30)

On January 2, 2014, Ms. Cheron and Mr. Roxas were ordered by Petitioner to report to the courtroom. When they entered, Petitioner was on the bench; and court officers, a court clerk and a stenographer were all present. The stenographer made a record of what transpired. Petitioner 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 Village Board was compelled to listen to him and if they did not, he would add other counts to a federal lawsuit he had brought against Spring Valley and Spring Valley employees, including Ms. Cheron. (R 32)<sup>7</sup>

On March 19, 2014, Petitioner 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 of court security to Judge Alan N. Simon.* Neither of the two other village justices signed the order. (R 33)

In April of 2014, Petitioner sent a letter to the State Comptroller's Office Justice Court Fund regarding his March 2014 monthly report of cases and remittances. It 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. Petitioner has referred to Ms. Cheron as part of the "Haitian mafia" and has also called her the "mayor's clerk" and the "pretend clerk."

(R 33-4).

In his statement to the Commission, Petitioner said the following about Ms.

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<sup>7</sup> Apparently, Petitioner had filed an action in federal court *inter alia* challenging Ms. Cheron's appointment as chief clerk because he had not consented. It appears that the action was dismissed for lack of subject matter jurisdiction.

Cheron:

I felt that she was moving on an agenda that could compromise the court as it happened. And much to Elsie's credit, she started to talk to court administration and responded well to their instructions and began to understand the challenges that the court faced in a much better manner and today we work as a team and I believe we work very well together. And I am truly sorry that I made her job so stressful. I overreacted in my efforts to run the court in an independent manner and independent of corruption that was going on around us and I disregarded her personal feelings. And for this I have relayed to her my apologies and I relay it to you.

(R 2732-3).

On April 28, 2016, this Court suspended Petitioner from all his judicial offices with pay pending review of the Commission's determination.

### Argument

#### Point I

**AS THE RECORD DEMONSTRATES, THERE IS A HIGH LEVEL OF ASSURANCE THAT IF PETITIONER WERE PERMITTED TO REMAIN ON THE BENCH, THE MISCONDUCT COMPLAINED OF – THREATS TO COURT STAFF AND OTHERS TO HOLD THEM IN CONTEMPT, RUDENESS AND USE OF ABUSIVE LANGUAGE – WILL NOT BE REPEATED.**

**1. The Commission ignored the theory of the case that was actually submitted to it**

Petitioner's testimony at the hearing attempted to justify the manner in which, on many occasions in the thirty months between December 2011 and June 2014, he intemperately dealt with court staff, one of his co-judges and certain

Village officials by using rude and abusive language and making unrealized threats to hold them in contempt as necessary to protect the integrity and the independence of the Spring Valley Village Court from a corrupt village administration. If his testimony at the hearing represented the entirety of Petitioner's case, the Commission's determination that Petitioner believed that his actions were justified and consistent with the required standards of judicial behavior; and that Petitioner lacked insight into the effects of his own behavior upon the public confidence of his character and judicial temperament, and in the judiciary as a whole might have justified the sanction of removal.

But the case that was actually submitted to the Commission – in effect Petitioner's closing statement -- as well as his personal statement, was far different. Petitioner accepted the referee's findings of fact and made it quite clear that the misconduct about which the referee reported could not be justified. The theory under which Petitioner's case was presented to the Commission *was that judicial temperament is a value in and of itself. Without it, litigants, counsel and the public would have no confidence in the probity and impartiality of the judiciary. That's why judges are required to be patient, dignified and courteous to all with whom the judge deals in an official capacity.* (R 2697)

MR. MANDELKER: And let me leave that question for a second because I want to make one other statement. I think there was misconduct. We are not asking the Commission to set aside the referee's findings. What we are arguing to the Commission is what is the appropriate level of discipline that

should be imposed. So I just want to say that so we don't get into this business of justification.

JUDGE KLONICK: So you are not justifying – you're not challenging the referee's findings of fact and conclusions of law?

MR. MANDELKER: The answer is basically no because I think it would have been, would be very difficult to say on this record that the Commission would be justified in setting aside those findings. So we are not doing that and we are not claiming that the misconduct that the referee reports on is justified, I want to say that upfront. We are talking about mitigation now.

(R 2698-9). When Petitioner addressed the Commission, he stated:

JUDGE SIMON: I truly welcome this opportunity. I am very grateful that I have it to address you on a one-to-one basis, to talk to you about my transgressions and they really were transgressions. And I am extremely embarrassed by them. And also who I am as a judge and as a person.

(R 2720).

As will be discussed in more detail below, the case that was actually argued to the Commission did not attempt to justify Petitioner's conduct and the judgments that led to it. Instead, Petitioner recognized that his conduct and the judgments that led to it were terribly inappropriate and constituted misconduct, for which Petitioner profoundly apologized in his personal statement. Referring to the testimony at the hearing, Petitioner argued that in assessing the level of discipline to be imposed, the Commission should take into account that as misguided as they were, his motives were to protect the independence and integrity of the court from the undue influence of a corrupt mayor and improve its efficiency. Therefore, the Commission should not impose the same penalty it would impose if Petitioner's

misconduct had been motivated by self dealing, bias toward a party, misuse of judicial office for personal gain or arose out of and involved prejudicial ex parte communications, illegal incarceration of individuals, dishonesty, prejudice, sexual misconduct and the like (See Point II, *infra.*).

The Commission ignored both the theory on which Petitioner's case was presented to it, namely that his actions were not and could not be justified as consistent with the required standards of judicial behavior, and that the theory on which Petitioner's case was submitted to the Commission – as confirmed by his personal statement – demonstrated that he understood the effects of his own behavior upon the public confidence of his character and judicial temperament, and in the judiciary as a whole.

**2. The Commission refused to infer from Petitioner's unblemished record as Spring Valley Village Justice for the twenty-one months subsequent to the most recent incident of misconduct, his unblemished record as Ramapo Town Justice and his unblemished record as Acting Suffern Village Justice in 2014 that Petitioner is both capable of discharging his judicial duties without threatening court staff and others with threats of contempt or speaking to them abusively or rudely, would not do so were he to remain on the bench.**

In weighing whether to accept the Commission's determination that Petitioner be removed from the bench because of his intemperance, this Court should consider the following:

Petitioner was first elected as a Village Justice in the Village of Spring Valley in 2005. He was re-elected in 2009 and again in 2013. At the time of his

suspension, he had completed more than ten years on that bench.

His conduct during the thirty months he served as a village justice in Spring Valley from December 2011 through June 2014 were profoundly different from the almost seven years he served in Spring Valley that preceded that period and the twenty-one months that followed until his suspension. The Commission refused to consider the quality of Petitioner's service in Spring Valley from June 2014 through April 2016 as evidence that he had changed his ways and reformed. Instead of affording him the presumption of innocence, it presumed him to be guilty.

JUDGE ACOSTA: So to me it's like, you know, in sanction, one thing we look at is, is this judge redeemable? Is this conduct that would not repeat itself? You say we should be reassured that that's not going to happen again –

MR. MANDELKER: -- Because it hasn't. Because it hasn't.

JUDGE ACOSTA: But there have been charges pending and the whole thing going on –

MR. MANDELKER: --No there are charges pending here. There are no charges pending any place else that we are aware of –

JUDGE KLONICK: -- But, you know, that's a bit like arguing if I'm representing someone who is charged with burglary and I make the argument to the court well, yes, he burglarized houses at 109 and 110 Brown Street, but judge, he didn't go over on the next street, he didn't burglarize any houses over there. He didn't commit any wrongdoing over there. You are saying nothing happened in Suffern, well –

MR. MANDELKER: -- But you are a Commission of Judicial Conduct and if something happened you would have received a complaint about it.

JUDGE KLONICK: Of course.

MR. MANDELKER: But you wouldn't know, but the staff would know. And so for the staff to say well, we don't know if anything happened I think is, I don't want to say ingenuous –

MR. BELLUCK: -- All it means is we didn't get a complaint. It doesn't mean that it didn't happen.

(R 2711-2).

In 2011, Petitioner was elected as a Town Justice in the Town of Ramapo. He was re-elected last year with over 99% of the vote (See Appendix B hereto). None of the misconduct charged in these proceedings relates to his service as a Town Justice in the Town of Ramapo. In 2014, he was appointed by the Administrative Judge of the Ninth Judicial District as interim village justice of the Village of Suffern when the elected incumbent was suspended from office. None of the misconduct charged in these proceedings relates to his service as an interim village justice in the Village of Suffern. His service on both benches overlapped the 30 months between December 2011 and June 2014 during which on a number of occasions he acted inappropriately in Spring Valley.

The Commission believed that Petitioner's "fail[ure] to recognize the inappropriateness of his actions and attitudes,' as demonstrated by his testimony over two days at the hearing, provide[d] scant assurance that similar impropriety will not be repeated." (R 41). But the Commission had before it, virtually 100% assurance that similar improprieties would not be repeated. It was error for the

Commission not to have inferred from the absence of any reported misconduct in Spring Valley subsequent to June 2014, misconduct in Ramapo since the beginning of his judicial service in January 2012 and in Suffern during his judicial service in 2014 that Petitioner's impropriety had been limited in time and venue, had not become a permanent feature of his service as a judge and was unlikely to be repeated<sup>8</sup>.

A member of the Commission sought to discredit the absence of misconduct in connection with Petitioner's service as Ramapo Town Justice by implying that Petitioner, who is white, might have been prejudiced against Spring Valley's court staff and other officials, a position never argued by Commission Counsel.

MR. COHEN: Let me ask you this, Mr. Emery alluded to it before and [Commission Counsel] Levine referred to anger management and in trying to wrestle with what's at stake here and I'm sorry to present it so directly, judge, is there something going on psychologically with respect to this entire pattern of behavior, that –

MR. MANDELKER: -- I think the judge is going to address that in his personal statement.

MR. COHEN: Well let him do that. But what do you think about that?

MR. MANDELKER: I think that the situation in Spring Valley triggered something because it was only in Spring Valley. And I think the judge is taking steps to address it.

MR. BELLUCK: Can I ask you a question? Is there any evidence in the record as to what the demographics are between Spring Valley, Suffern and

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<sup>8</sup> Since the Referee was not authorized to recommend any level of discipline, he had no authority to make such an inference.

Ramapo?

MR. MANDELKER: No.

MR. BELLUCK: Okay. But you understand even though you just said there is no racial component to this that the demographics of those three places are very different.

MR. MANDELKER: No I don't. I will take your word for it, but I don't.  
(R 2709-10).

Mr. Belluck continued this line of questioning when Petitioner personally addressed the Commission.

MR. BELLUCK: Do – you spend time in Ramapo, Spring Valley and Suffern, right?

JUDGE SIMON: Yes.

MR. BELLUCK: Would you agree with me that Spring Valley has the largest population of African American and Caribbean people among those three places.

JUDGE SIMON: Well first the answer is no. And the reason the answer is no is because Spring Valley is part of Ramapo so that the same numbers of people who are African American or Haitian descent are the same number in Ramapo. There is a large number of Spanish and some Haitian and some black people who also happen to live in Suffern. So that the number, the actual raw numbers in the Town is higher. And if this is an indication of a level of prejudice, I don't have any prejudice for anyone, in terms of their background. I have never exercised any prejudice.

(R 2728-9)<sup>9</sup>.

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<sup>9</sup> Petitioner is a Silver Life Member of the NAACP and received the Elected Official of the Year Award from the African American Chamber of Commerce of Westchester and Rockland. (R1441)

Petitioner's was re-elected to the Spring Valley bench in 2013, right in the middle of the thirty-month period between December 2011 and June 2014 period alluded to above. Spring Valley is a small village. If Petitioner had been out of control, with no hope of redemption, and particularly had he been animated by racial prejudice (which of course, he was not), he would not have received almost 50% of the vote in a three-person race (Appendix "A," hereto). Petitioner was re-elected to the Ramapo bench in 2015 with 99% of the vote. (Appendix "B," hereto). He received 70% of the vote in the Spring Valley districts at a time when the charges against him were pending and the testimony of numerous witnesses from Spring Valley was received by the referee. The voters of the jurisdictions from which he was re-elected to judicial office believed that Petitioner was worthy of redemption.

**3. Except for one instance (in which he protected a litigant from what he perceived was his lawyer's inadequate services), Petitioner was not rude or otherwise discourteous to a lawyer who was either present before, or speaking to him in connection with an adjudicatory proceeding in which the rights of a litigant was being determined.**

In a proceeding before him initially captioned *Curtis v. Scott*, the petitioner, Malcolm Curtis had been wrongfully locked out of his apartment and was homeless. Legal Services of Hudson Valley ("LSHV") did not have sufficient staff to represent him. Nevertheless, it prepared an order to show cause and supporting papers for Mr. Curtis to file as a pro-se litigant. The papers included an affidavit

of indigence as well as an endorsement that LSHV's services were limited to preparing the papers; and no attorney-client relationship was to be implied. The order to show cause contained a decretal paragraph waiving the filing fee.

Petitioner initially refused to allow Mr. Curtis to file the order to show cause without paying the filing fee. An LSHV attorney called several times to urge the court to waive the filing fee, on each occasion, Petitioner, refused to do so, spoke rudely to her and hung up the phone while the LSHV attorney was speaking.

Nevertheless, Petitioner accepted the papers for filing without the fee, corrected a fatal defect in the caption (the Order to show Cause named an incorrect person as landlord), advanced the return date, directed the correct landlord to appear and notified LSHV to have an attorney present to represent Mr. Curtis.

On the return date, Petitioner agreed to allow Mr. Curtis to appear as a poor person, castigated the LSHV attorney for the quality of LSHV's services to Mr. Curtis in a rude manner without allowing the attorney to be heard. He then relieved LSHV as Mr. Curtis' lawyer, appointed Legal Aid in its place and, in excess of his authority, sanctioned LSHV. By the end of the day, Mr. Curtis was back in his apartment.

Despite his frustration, Petitioner had a duty to treat counsel, whether before him, or on the phone, with courtesy and patience (22 NYCRR 100.3 (B)(3)). He should have allowed counsel to be heard and responded courteously. For failing to

do so, he was guilty of misconduct in connection with an adjudicatory proceeding in which a litigant's rights were determined. But it was misconduct that was committed in a misguided effort to protect Mr. Curtis' rights and was therefore much different from, and less egregious than the misconduct committed by other jurists in connection with adjudicatory proceedings over which they presided that did not result in their removal.

Referring to his misconduct in the Curtis proceeding, Petitioner told the Commission in his personal statement:

The person, I was gruff to her. And I shouldn't have done that and I apologize for that. But I was very frustrated because I didn't want this guy living on the street. It's not what I am about and I didn't want to do that. And in order to get him back into his house, I had to get somebody to stand up in court to make the application and I pushed it so it was by the end of the day he was back living in his house, apartment and ultimately the case was resolved.

(R 2724)

In Matter of Slavin, 1990 AR 117, the Commission was presented with findings that a judge improperly revoked bail for a criminal defendant for the sole reason that his lawyer did not appear, and ordered him incarcerated. The defendant spent nine days in jail. The judge stated that he did it "to get to the lawyer." The imposed sanction was only an admonition. The next year in response to another complaint the Commission found that *the same judge* improperly threatened to jail a person who had a civil dispute with the judge's son, and *again* imposed only a

sanction of admonition. Matter of Slavin, 1991 AR 76.

In Matter of Sena, 1981 AR 117, the Commission sustained 29 charges of undignified and inconsiderate conduct on the bench in 30 proceedings over more than two years, including threats of contempt to litigants and counsel, and directing the physical removal of a litigant from the courtroom. The Commission censured Judge Sena.

In another proceeding, a jurist was found to have held a litigant in contempt and jailed without basis, and on another occasion, had a person jailed for “disorderly conduct” the judge claimed he witnessed outside of court, even though there was no criminal complaint filed against the incarcerated individual. Nevertheless, the Commission did not direct removal, but imposed a sanction of censure. Matter of Mills, 2005 AR 185.

In Matter of Hart, 2009 AR 97, the Commission was faced with a situation where a judge was found not only to have improperly threatened attorneys before him with contempt, but also to have presided over cases where he had relationships with counsel, denied other counsels’ requests to make a record, stayed an eviction without basis to “punish” a bank, engaged in bullying tactics on the bench, and offered to testify on behalf of an attorney in a disciplinary matter if that attorney would testify in favor of the judge in his matter before the Commission. The Commission only imposed a sanction of censure, not removal, even though the

same judge had *previously been censured by the Commission for wrongfully holding a litigant in summary contempt.* Matter of Hart, 2006 AR 171; 7 N.Y.3d 171 (2007) (Emphasis added).

In Matter of Teresi, 2002 AR 161, the judge in question was found to have improperly: held litigants in contempt in two cases, resulting in imprisonment for 45 days; forced a settlement, and; disparaged attorneys and litigants while on the bench. The Commission did not remove the judge, but imposed a sanction of censure. Three years later, when the same judge was before the Commission having been found to have committed other violations, *again* only a censure, not removal, was imposed.

On two occasions where the Commission found that judges had engaged in impatient and discourteous behavior on the bench that included misuse of the contempt power, neither judge was removed, both were only issued an admonition. Matter of Singer, 2010 AR 228 (threat of contempt if attorney would not reveal client's address); Matter of Van Slyke, 2007 AR 151 (improperly held litigant in contempt, then also improperly held attorney in contempt when he challenged it).

In Matter of Griffin, 2009 AR 90, a judge was found to have repeatedly engaged in misuse of his contempt powers while presiding, but also to have engaged in further serious misconduct. In one proceeding before him, the judge wrongfully ordered a psychiatric evaluation of a litigant, and held the litigant in

contempt when he asked to be heard. In another proceeding he improperly held a litigant in summary contempt resulting in seven days of incarceration. In a third proceeding, he improperly found a 16-year-old girl in summary contempt and had her jailed for seven days. The Commission concluded that the proper sanction was not removal, but censure.

Similarly, in Matter of Uplinger, 2007 AR 145, the judge in question was found not only to have wrongfully threatened to hold a witness in contempt during a proceeding, but also to have engaged in insulting treatment of the crime victim in court. The Commission censured, but did not remove the judge.

In sum, Petitioner's misconduct in the Malcolm Curtis matter, whether alone, or in conjunction with other misconduct does not support the sanction of removal.

## Point II

**WHILE PETITIONER'S INTEMPERATE CONDUCT IN DEALING WITH COURT AND OTHER SPRING VALLEY PERSONNEL CANNOT BE EXCUSED, IT ALWAYS AROSE FROM AN EFFORT – ALBEIT MISGUIDED -- TO IMPROVE THE EFFICIENCY OF THE COURT OR MAINTAIN THE COURT'S INTEGRITY AND INDEPENDENCE FROM A CORRUPT VILLAGE ADMINISTRATION THAT SAW ITS MAYOR AND DEPUTY MAYOR CONVICTED OF FEDERAL CORRUPTION CHARGES**

**1. Each time that Petitioner threatened to hold court personnel or Village officials in contempt, it was in a misguided attempt to either improve the physical conditions in the court, improve the performance of court personnel or protect the integrity and independence of the court from a corrupt mayor.**

During the hearing, Petitioner essentially testified that his actions and conduct were justified because he was either seeking to uphold the integrity and the independence of the Spring Valley village court from the undue influence of an ethically lax, nay even a corrupt village administration, or he was attempting to improve the efficiency of the court. Unfortunately, Petitioner's motive for acting the way he did – to protect the integrity and the independence of the Spring Valley Village Court or to improve its efficiency -- provides an explanation, but certainly not an excuse for the type of misconduct that was charged. Displaying extraordinarily poor judgment, Petitioner believed that the only way he could motivate court and Village officials to act properly was to threaten to either hold them in contempt or have them arrested. Although he neither followed through on

any of these threats, nor ever intended to do so, merely making these threats constituted an abuse of his judicial office warranting discipline. Nevertheless, in determining the level of discipline that should be imposed, Petitioner respectfully requests the Court to compare the circumstances described below under which Petitioner made such threats, including what he was trying to accomplish with the far more egregious circumstances underlying the threats made by the judges who were sanctioned in the proceedings cited below, for which the sanction of removal was not imposed.

Richard Deere

Petitioner viewed Mr. Deere as a security threat and a threat to the good order of the court. Mr. Deere had engaged in a physical altercation with Officer Nesci and, on several occasions, had jammed paper in the door lock preventing it from automatically locking – which it had been designed to do -- in order to prevent unauthorized access to chambers. Petitioner had been told by Supervising Justice Apotheker that no one should be permitted to occupy a desk in a justice's chambers unless the justice was physically present (R 1482-3). He threatened to hold Mr. Deere in contempt or with arrest to force him to vacate the chambers when Justice Fried was not present.

### Police Chief Modica

When Petitioner told Chief Modica to bring his toothbrush into work, he was responding – albeit inappropriately – to an illegal “job action” by the Spring Valley Police Department as a result of which no member of the Spring Valley Police Department appeared in traffic court to conference the at least 100 cases on the calendar. After Petitioner spoke to and impliedly threatened to hold Chief Modica in contempt, the police began to arrive and conference the cases (R 1511)

### Justice David Fried

Petitioner was annoyed that Justice Fried did not take the bench at 9:30 AM. He felt that lawyers and litigants should not have to cool their heels while waiting for Judge Fried to take the bench. That is why he once intemperately told Justice Fried to “get his fucking ass in the chair” and why he inappropriately had court personnel monitor when Justice Fried took the bench.

### Mayor Jasmin

The Village administration was responsible for the physical condition of the courthouse. The Commission determined that Petitioner threatened to hold Mayor Jasmin in contempt and on another occasion (separate from the incident involving the intern Maxary Joseph) threatened to have her arrested. The threat to hold Mayor Jasmin in contempt arose out of Petitioner’s complaint he had no privacy. In chambers because two individuals associated with Justice Fried were using the

conference table. Petitioner was demanding separate chambers of his own. (R 1509). The second incident arose out of Petitioner's attempt to have the Village correct conditions in the courthouse, which were a "shamble." (R 1508)

### Mayor Delhomme

The record reflects two intemperate encounters between Petitioner and Mayor Delhomme, who succeeded Mayor Jasmin. The first encounter took place in the hallway of the municipal building. Petitioner told a third party not to listen to Mayor Delhomme because he's a liar. Petitioner also said that he "did not want to fucking talk to the mayor." On another occasion, as Mayor Delhomme was leaving the municipal building Petitioner called him a "three-dollar bill."

Petitioner testified that his intemperate remarks were in response to Mayor Delhomme's earlier remark.

A. Let's put it this way. There was an incident where I was coming back to the court in the afternoon. I had worked the morning session, [sic] I went to lunch. I was coming back, he was standing in front of the door, and as I walked in, he looked at me and said 'I am never going to do anything for you Jews again.'

Q. And did you respond to that?

A. Yes.

Q. And what did you –

A. – I believe I said to him, 'You're a three-dollar bill,' and I walked through ...I believe there was a Hasidic guy standing at the door also. I wasn't sure whether that remark was addressed to either me or him.

(R1505).

Spring Valley Police Sergeant Roxas

Petitioner believed had been called one evening by the Spring Valley police to come to court and arraign a prisoner being held in Spring Valley. When he arrived, neither the prisoner, nor the required paperwork were in court. Petitioner was annoyed and blamed the Spring Valley Police Department for the delay in intemperate terms. He did not believe Sgt Roxas when she told him that her department had not called Petitioner. Eventually, it was determined that he had been called by the Ramapo Police Department to go to that court, and had gone to Spring Valley by mistake.

The most egregious incidents of Petitioner's misconduct concerned his dealings with Spring Valley Chief Clerk Elsie Cheron and his reaction to the attempt by Mayor Jasmin to install an intern, Maxary Joseph in his chambers, without first obtaining Petitioner's consent or even consulting with him. Underlying both categories of misconduct was Petitioner's belief based on his conversations with the FBI in or about Spring, 2012 that Mayor Jasmin of Spring Valley and her administration were corrupt (R 1447-8). Petitioner went out of his way to prevent what he viewed – with reason – a corrupt Mayor from compromising the court's independence and integrity. Nonetheless, the manner in which he did so constituted judicial misconduct.

## Elsie Cheron

Elsie Cheron was appointed as chief clerk of the court by Mayor Jasmin. Petitioner believed that Ms. Cheron was more loyal to Mayor Jasmin and her corrupt administration than she was to the court (R 2732). In Petitioner's mind, her conduct leading up to the incident with Maxary Joseph confirmed his belief.

Mayor Jasmin hired Mr. Joseph as a student worker in the clerk's office. (R 2440). She neither consulted with Petitioner, nor even told him in advance of the appointment. When Ms. Cheron advised the judges of Mr. Joseph's appointment, Petitioner told her that he did not want an intern in the clerk's office. (R 2440) Apparently, he believed that the intern might become a means by which Mayor Jasmin would attempt to compromise the independence and integrity of the court.

Petitioner asked Ms. Cheron for a copy of Mr. Joseph's resume. She told him that she would try and get it (R 6). The next day – Mr. Joseph's first day of work – Petitioner again asked Ms. Cheron for Mr. Joseph's resume. She told him that she had been too busy to get it. Apparently believing that she had disobeyed him out of loyalty to Mayor Jasmin, Petitioner grew angry and directed Ms. Cheron to get Mr. Joseph out of the office. He threatened to hold Ms. Cheron in contempt if she did not follow his orders (i.e., get Petitioner a copy of Mr. Joseph's resume and get him out of the office). (R 6).

The next day, Petitioner arrived in the afternoon to interview Mr. Joseph and

make sure that he understood the confidential nature of court records. When he arrived at the clerk's office, he found Mr. Joseph at work on confidential sealed files. He directed Mr. Joseph to leave. (R 6). He then spoke to Ms. Cheron: *Did I not give you the order for Maxary not to be here? What is he doing here?* Ms. Cheron's reply was to tell him that the mayor wanted to speak with him about why he did not want a student worker in the clerk's office. (R 6).

Petitioner viewed the foregoing events – including her reply that the Mayor, who ordered the intern back to the office after Petitioner had ordered him to leave wanted to speak with him -- as confirming his belief that Ms. Cheron was loyal to Mayor Jasmin and not to the court. After the incident with Mr. Joseph, Petitioner referred to her as “the so-called clerk,” “traitor” the “mayor's clerk” and the “mayor's pet.” (R 2459).

In Petitioner's view, Ms. Cheron wasn't very good at her job. This only served to reinforce his belief that as a patronage, rather than a civil service appointee, Ms. Cheron's ultimate loyalty was to Mayor Jasmin. Employing extraordinary poor judgment, Petitioner employed verbal abuse and the threats of contempt to try and motivate Ms. Cheron to do better. Among her shortcomings that provoked his misconduct were: a) the assignment of unqualified individuals to serve as court officers in his busy parts; b) the failure to have the phone in the clerk's office manned and answered when the office was open for business; and c)

after the FBI subpoenaed documents stored in Ms. Cheron's private office, her participation with Mayor Jasmin and Chief Modica in a decision to restrict access to her office -- without informing Petitioner or his co-judges -- by changing the lock so that he and his fellow judges would no longer have access (R 2113).

Files needed by the court were stored in Ms. Cheron's office. One day when Petitioner was presiding over an arraignment, he needed a file from Ms. Cheron's office in order to proceed. Neither Ms. Cheron, nor her deputy -- both of whom had access to Ms. Cheron's private office -- were on duty; and no one could obtain access to her office (R 2467). When Petitioner directed that she come to court immediately, she was unreachable and didn't arrive until the evening. Needless to say he was angry that her negligence in failing to make sure that someone was on duty who could provide the court with access to files needed to conduct an arraignment and her unavailability until the evening remedy the situation impeded the operation of the court (R 2468).

Based on the foregoing, Petitioner lost confidence in Ms. Cheron. He said he couldn't work with her and attempted to have her replaced. It is not unfair to say that he made her life miserable, a fact that he himself admitted in his personal statement to the Commission.

I felt that she was moving on an agenda that could compromise the court as it happened. And much to Elsie's credit, she started to talk to court administration and responded well to their instructions and began to understand the challenges that the court faced in a much

better manner and today we work as a team and I believe we work very well together. And I am truly sorry that I made her job so stressful. I overreacted in my efforts to run the court in an independent manner and independent of corruption that was going on around us and I disregarded her personal feelings. And for this I have relayed to her my apologies and I relay it to you.

(R 2732-3)

Maxary Joseph

Petitioner's conduct toward Mr. Joseph was appalling and inexcusable.

Whatever belief Petitioner may have had that Mayor Jasmin may have been trying to plant another one of her loyalists inside the court to compromise its independence and integrity, should not have resulted in Petitioner's treatment of Mr. Joseph, who after all was an innocent party, a status Petitioner subsequently acknowledged. In his personal statement to the Commission, Petitioner stated that he had apologized in writing to Mr. Joseph shortly after the incident.

I am truly sorry. He was an innocent guy and I got carried away with my own preconceived notions in terms of sealed records and I was very offended that he didn't, nobody listened to me and all of that and I was wrong. I should have found other ways. You are absolutely right."

(R 2736)

Petitioner was totally out of control for several hours on July 12, 2012. His conduct toward Mr. Joseph and all of the court and other personnel who attempted to defuse the situation over a two-hour period was inimical to the

conduct that one would expect from a jurist of Petitioner's experience. But he was totally out of control for two hours on only a single day out of ten years of judicial service. When Petitioner addressed the Commission, the following colloquy took place:

MR. COHEN: Judge, your lawyer said that you were going to address the issue of, let's call it, anger management.

JUDGE SIMON: I have – let me talk to you about that in two ways. First I have been seeing a psychologist.

MR. COHEN: As a result of this?

JUDGE SIMON: As a result of this, yes.

MR. COHEN: Okay.

JUDGE SIMON: And my visits with the psychologist have enabled me to better analyze what I did and how I did it. He has shown me and our discussions have disclosed my weaknesses and I am aware of it and we've talked about methods of essentially dealing with my weaknesses so that the situation would not arise again.

In determining the level of discipline to be imposed, this Court should keep in mind that Petitioner's misconduct resulted from a misguided effort to protect the integrity of the court and not from a base motive such as bias, corruption, favoritism, self-dealing and the like.

**2. Although Petitioner threatened to hold court personnel in contempt or have them arrested, unlike other judges who were disciplined for abusing the contempt power, he never held anyone in contempt, no one was ever incarcerated and such threats were never made in connection with a judicial proceeding in which the rights of litigants were being determined**

In Matter of Lawrence, 2006 AR 206, a judge was found to have not only imposed a summary contempt, but also to have a person serve a day in jail before being released on a writ of habeas corpus. Nevertheless, the Commission determined that the appropriate sanction was not removal, but an admonition.

In Matter of Curtis, 2013 AR 115, a judge was found to have improperly issued two orders of contempt that led to arrest. The Commission determined that the appropriate sanction was not removal, but censure. Where, on another occasion, the Commission found that a judge improperly threatened a litigant with contempt by falsely accusing the litigant of leaving the judge a “nasty voice mail,” and also to have engaged in “angry diatribes” in court, once again, the Commission imposed censure on the judge rather than remove him. Matter of Wiater, 2007 AR 154.

### Point III

#### **THE MISCONDUCT OF THE JUDGES WHO HAVE BEEN REMOVED FROM THE BENCH WAS FAR MORE EGREGIOUS THAN PETITIONER'S MISCONDUCT**

In the following cases, the sanction of removal was imposed. The misconduct of each judge was far more egregious than that of Petitioner. In Matter of Restaino, 10 N.Y.3d 577 (2001), while presiding, the judge, after a cell phone rang in his courtroom, revoked bail for all 46 criminal defendants present, had them shackled and taken into custody, and only released them from jail hours later when he was told that the press was inquiring about the incident.

Matter of Roberts, 91 N.Y.2d 93 (1997) involved a judge finding an elderly woman in contempt and sentencing her to 89 days in jail for failing to make an installment payment on a fine arising from failing to pay a \$1.50 cab fare. The judge then remarked, “every woman needs a good pounding every [sic] now and then.” In addition, the judge in Roberts committed other infractions, including failing to inform litigants of bases for recusal.

In Matter of Feeder, 2010 AR 143, the judge: (1) made a “citizen’s arrest” of a motorist whose driving upset him, then spoke to reporters about the case while it was pending; (2) gave a criminal defendant an improper conditional discharge after having an ex parte contact with the defendant’s mother; (3) dismissed charges

against another defendant after engaging in ex parte communications regarding the disposition; and (4) presided over numerous cases involving a “close personal friend” without recusal or disclosure. Despite all of this misconduct, the judge was not removed, only censured. But he was removed three years later for, among other things, improperly sentencing four persons to contempt, having them arrested and jailed for a total of 30 days, and coercing and accepting a guilty plea from an unrepresented, intoxicated and mentally disabled person. Matter of Feeder, 2013 AR 124.

In Matter of Blackburne, 7 N.Y.3d 214 (2006) a judge, while presiding over a criminal case, learned police were seeking to arrest the defendant for another serious crime, and ordered court officers to sneak the defendant out the rear judges’ exit from the court to avoid arrest, facilitating the escape of an accused violent felon. Matter of Gibbons, 98 N.Y.2d 448 (2002) concerned a matter similar to Blackburne (but totally dissimilar to the present case) where a judge, after signing a search warrant, called the suspect’s attorney to tip him off about the impending search, jeopardizing the search and investigation.

Matter of Hart, 7 N.Y.3d 1 (2007) illustrates the difference between the nature of Petitioner’s misconduct and the nature of the misconduct for which judges should be removed from the bench. In Hart, a judge was found to have improperly threatened attorneys before him with contempt, presided over cases

where he had relationships with counsel, denied counsels' requests to make a record, stayed an eviction without basis to "punish" a bank, engaged in bullying tactics on the bench, and offered to testify on behalf of an attorney in a disciplinary matter if that attorney would testify in favor of the judge in his matter before the Commission. For all of this, the Commission in Hart imposed a sanction of censure, not removal, even though Judge Hart had *previously been censured* by the Commission for wrongfully holding a litigant in summary contempt

Matter of Waltemeade, 409 N.Y.S.2d 989 (1975) involved a judge who engaged in persistent abusive conduct on the bench for many years, despite having received many prior admonitions. This contrasts with Petitioner, who has never been the subject of prior complaints or discipline, whose misconduct was limited in time and place, was not repeated in Spring Valley during the twenty-one months of his service preceding his suspension with pay by this Court and never occurred either during his more than four years of service as town justice of Ramapo, or as interim village justice of Suffern in 2014

In Matter of Mayville, 1985 AR 180, a judge was found to have run a private debt collection business out of his judicial office, and to have, on more than 20 occasions, summoned persons allegedly owing money to his collection clients to his court, improperly threatened arrest, contempt, or other serious sanctions for non-payment, and coerced and entered judgments against the debtors. His much

more serious and completely different transgressions from Petitioner's illustrate the type of aggravating circumstances that support imposition of the sanction of removal.

In Matter of Corning, 2001 AR 93, the judge was removed after he was found to have illegally demanded payments from litigants for jury trials, to have refused to recuse himself in a case involving an attorney who brought a disciplinary complaint against him, to have ordered a license suspended "out of personal pique", and to have misused his judicial office for advantage in a private dispute involving his aunt's funeral expenses.

In Matter of Kuchnel, 1980 AR 125, the judge was found to have, while intoxicated, accosted youths outside a bar, called them "niggers" and pressured their families into giving him a release. In Matter of Calderon III, 2011 AR 86, the judge misused his office by communicating with prison officials to advance his personal financial interest in a civil action he had brought against an inmate. He told the officials that he was a judge but did not disclose that he had a lawsuit against the inmate. He also provided testimony directly contradicted by documents. Yet the imposed sanction was not removal, but censure. Matter of Myers, 67 N.Y.2d 550 (1986) was another case where a judge misused his judicial office for personal gain, failing to recuse himself in a case in which his daughter was a party. The case involved an auto accident in which his daughter was driving a car the

judge insured. The judge also unlawfully pressured officials to issue a criminal summons against the other driver.

In Matter of Sims, 61 N.Y.2d 349 (1989), a judge was removed after it was found that she gave the public impression that she and her husband and former law partner “acted as a team” by improperly signing releases for her husband’s clients (and her former clients), improperly issuing an arrest warrant for a person involved in accident with her son, and exhibiting pattern of bias and favoritism over two years. Similar bias and favoritism calling the judiciary’s fairness into disrepute was found in Matter of Robert, 89 N.Y.2d 745 (1997), where a judge presided over cases involving friends and showed favoritism despite prior caution by the Commission, and confronted and threatened a woman who sent critical letter to editor in front of her employer.

Petitioner’s misconduct did not affect the adjudication and determination of criminal cases. In Matter of Jung, 2009 AR 106 (CB94), a judge was found on multiple occasions to have deprived incarcerated persons of the right to counsel, exhibited systematic disregard of basic legal requirements, conducted proceedings in the absence of litigants, and improperly sentenced defendants to jail despite three writs of *habeas corpus*. Similarly, in Matter of Bauer, 3 N.Y.3d 158 (2004), 39 charges of misconduct were sustained showing a long pattern of refusing to inform defendants of right to counsel, convicting defendants without a plea or trial,

jailing defendants in violation of rights, setting excessive bail and imposing excessive sentences. As serious as Petitioner's misconduct was, it pales beside the misconduct found in the foregoing cases.

**1. Removal from office is not imposed for use of inappropriate, intemperate and injudicious language, even when used in open court during a judicial proceeding in which the rights of litigants were being adjudicated.**

In Matter of Mahon, 1997 AR 104, when a mother came to court to pay a fine for her son, the judge, among other things, called the mother a "bitch" and her son a "stupid shit." The judge in question was not removed, but censured. Another judge who, despite being previously cautioned by the Commission, engaged in insulting behavior on the bench including calling a lawyer a "thief" and telling the litigant not to pay him, was not removed, but admonished. Matter of Bradley, 2003 AR 73.

In Matter of McKeivitt, 1997 AR 106, a judge's profane remarks on the bench included calling a sheriff a "fucking asshole." He was not removed, but censured. Two years later the same judge was again before the Commission and found to have engaged in bias toward the prosecution in criminal; cases and to have engaged in calling defendants names such as "smart ass." Once again, the judge was censured, not removed.

Matter of Mertens, 56 A.D.2d 956 (1<sup>st</sup> Dept. 1977) also undermines the Commission's determination that Petitioner be removed. In Mertens the judge was

found to have engaged in serious misconduct for a period of many years while presiding over trials and conferences, including screaming and making threats in court against litigants, attorneys, witnesses, and even jurors, using excessive force to coerce settlements, calling litigants “cheapskate” and “chiseler” in open court, and similar misconduct on the bench. Nonetheless, the judge was not removed, but censured. To suggest that the totality of Petitioner’s misconduct was more serious than the totality of Judge Merten’s misconduct and warrants a higher sanction is not sustainable.

In Matter of Bradley, 2003 AR 145, even though the judge called a lawyer a thief in open court, spoke to the press critically about a settlement in a case over which he presided, made allegations in court that town officials dishonestly changed laws, and called town officials “bald-faced liars,” the Commission only imposed the sanction of admonition.

**2. Removal is excessive when the misconduct amounts solely to poor judgment, even extremely poor judgment.**

This Court has explained that, “removal is excessive when the misconduct amounts solely to poor judgment, even extremely poor judgment.” Matter of Skinner, 91 N.Y.2d 147, 148 (1997). In Skinner, even though the judge was found to have: (1) dismissed a criminal case against a friend without informing the prosecution; (2) engaged in a pattern of not informing defendants of right to counsel; and (3) been disingenuous and evasive in his dealings with the

Commission, this Court rejected the Commission's judgment of removal and instead imposed censure. In so doing the Court noted that, like Petitioner, the respondent in Skinner was the elected choice of voters to hold his office<sup>10</sup>, and also, like Petitioner, there were no prior complaints regarding his judicial service. 91 N.Y.2d at 149.

Examination of those proceedings in which removal was found to be the proper sanction show that the misconduct found therein far exceeds anything even alleged against Petitioner, and, for the most part, involved misconduct while presiding over judicial proceedings adjudicating the rights of litigants, exhibiting bias, prejudice or unfairness in deciding litigated matters, presiding over matters involving personal interest or interest of relatives or friends, or drastically failing or refusing to perform the duties of judicial office. None of this is present in the instant matter, Petitioner is acknowledged to be a long-serving, hard-working jurist who was very concerned with the protection of the court and has not previously been charged with any misconduct.

The following instances of removal underscore the wanting of any similar basis for that drastic sanction here.

- Matter of Aldrich, 58 N.Y.2d 279 (1983): Judge presided over cases while drunk, used profane language and racial epithets in court,

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<sup>10</sup> Except that Petitioner was twice re-elected as a Spring Valley Village Justice, in 2009 and in 2013 with almost 50% of the vote in a three-person race, and re-elected as a Ramapo Town Justice in 2015 with 99% of the vote.

threatened a guard with a knife and racial slurs, all of which the Court described as serious misconduct in public while performing duties on the bench.

- Matter of Shilling, 51 N.Y.2d 397 (1980): Judge who had received prior admonition from Commission sought to have violations issued to party of which he was trustee, threatened issuing agencies that he was a judge and “had friends in high places”, made ex parte approach to judge assigned to adjudicate the violations to have them dropped.
- Matter of McGee, 59 N.Y.2d 870 (1983): Over two years, judge failed to inform defendants of constitutional and statutory rights, discouraged defendants from seeking legal services, found defendants guilty without a plea or trial, coerced guilty pleas with ex parte communications, imposed excessive fines and incarceration, and exhibited total disregard of record-keeping duties.
- Matter of Carbone, 61 N.Y.2d 94 (1984): Judge confronted and struck black patrons in bar, used racial slurs, proclaimed he was a judge and threatened what he would do if black persons came before him in court.
- Matter of Maney, 70 N.Y.2d 27 (1987): Judge who previously had been censured by Commission engaged in campaign to ensure re-

nomination by trying to elect party chairman, unseat another party chairman, participating in party caucuses, holding political meetings in his chambers.

- Matter of Scacchetti, 56 N.Y.2d 980 (1982): Judge solicited bribes from litigants.
- Matter of Reedy, 64 N.Y.2d 299 (1985): Judge fixed tickets for son.
- Matter of Levine, 74 N.Y.2d 294 (1989): Judge promised a politician to end a case, and lied about it to FBI.
- Matter of Benjamin, 77 N.Y.2d 296 (1991): Judge engaged in sexual assault.
- Matter of Heburn, 84 N.Y.2d 168 (1984): Judge submitted nominating petition with false forged signatures.
- Matter of Bloodgood, 1982 AR 69: Judge sent letters with derogatory references to Jews on court letterhead.
- Matter of Molnar, 1989 AR 115: Judge solicited sexual favors.
- Matter of Stiggins, 2001 AR 123: Judge was convicted of abuse of an incompetent person.
- Matter of Westcott, 2004 AR 160: Judge convicted of sexual relations with mentally disabled person.
- Matter of Brownell, 2005 AR 129: Judge issued court check to pay a

judgment after mishandling a case.

- Matter of George, 22 N.Y.3d 323 (2013): Judge who already had been issued caution by Commission for presiding over cases involving conflicts later presided over case of friend and former employer and dismissed violation against him without presence of arresting officer or district attorney, engaged in ex parte communications with prospective claimant and dissuaded claimant from bringing action against Judge's friend by telling claimant there was no merit to case.
- Matter of Cohen, 74 N.Y.2d 272 (1989): Judge for a number of years acted as if his decisions could be influenced by personal gain so removal necessary to revive status of judiciary.
- Matter of Hedges, 2013 AR 151: Judge sexually abused 5-year-old niece.
- Matter of Allesandro, 2010 AR 82: Judge had pattern of making false statements on loan applications and on judicial disclosure forms.
- Matter of Pennington, 2006 AR 224: Judge who had been issued prior censure and two letters of caution made racial slurs while presiding, and brought a young female defendant to his home after arraignment.

- Matter of Lockwood, 2007 AR 123: Judge failed to report and remit court funds, and refused to cooperate in Commission investigation, exhibiting contumacious disregard for responsibilities of judicial office.
- Matter of Abramson, 2011 AR 62: Judge failed to afford right to counsel while presiding in numerous cases and made sexual comments about litigants' clothes.
- Matter of Doyle, 2014 AR 92: Judge failed to disqualify self and presided over cases involving friends, her personal attorney, and her campaign manager.
- Matter of Ellis, 2013 AR 124: Judge mishandled cases, presided over cases despite bias, made slurs about Jews from bench.
- Matter of Halstead, 2012 AR 94: Judge failed to report and remit court funds, filed false reports, used court stationary in connection with traffic charge against her and refused to pay fine.
- Matter of LaBombard, 2009 AR 151: Judge presided over relatives' cases, changed bail upon ex parte request, contacted judge handling case involving her relatives, and threateningly identified self as judge after automobile accident.

- Matter of Marshall, 2008 AR 161, 8 N.Y.3d 741 (2007): Judge dismissed violations based on ex parte contact, testified falsely, and altered judicial records to conceal misconduct.
- Matter of Myles, 2008 AR 189: Judge convicted of felony and two misdemeanors
- Matter of Shilling, 2013 AR 236: Judge fixed ticket for another judge's wife, and accepted special favors as to a ticket issued to herself.
- Matter of Spargo, 2007 AR 127: Judge solicited funds for legal defense fund, bought drinks for bar patrons during campaign, improperly accepted district attorney as client, spoke at political organization's fundraiser.
- Matter of Stoggins, 2001 AR 123: Judge physically abused nursing home patient, and was convicted of two misdemeanors.
- Matter of Tamsen, 2003 AR 167, 100 N.Y.2d 19 (2003): Judge misappropriated client funds, altered records, and was disbarred.
- Matter of Washington, 2003 AR 175: Judge delayed disposing of cases, failed to report delays, refused to respond to Commission.
- Matter of Young, 2012 AR 206, 19 N.Y.3d 621 (2012): Judge presided over cases involving girlfriend's relatives without disclosure.

- Matter of Collazo, 91 N.Y.2d 251 (1998): Judge made sexually suggestive comments to intern, asked her to remove clothes, made false statements to and failed to disclose pending Commission complaint and proceeding to Senate Judiciary Committee considering his appointment.

In sum, the decisions of the Commission and this Court confirm that Petitioner's misconduct falls far short of the demanding threshold for removal.

**3. Although Petitioner was guilty of judicial misconduct by expressing an adverse view about a candidate for elective office and allowing his view to be published, his misconduct, whether considered by itself or in conjunction of with Petitioner's other misconduct does not support the sanction of renewal.**

On one occasion Judge Simon was approached and asked his views about a candidate for non-judicial office. He responded to the request, and subsequently allowed the candidate's opponent to publish them. His misconduct does not support the requested sanction of removal.

The Commission has consistently found that even in situations where judges engaged in more affirmative instead of reactive behavior, or engaged in more involved or prolonged political activity, removal was not warranted. Further, as this Court noted in Matter of Watson, 100 N.Y. 2d 290, 304 (2003), "no judge has been removed for campaign misconduct."

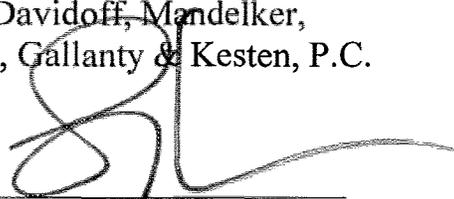
Conclusion

**THE DETERMINATION BELOW SHOULD BE MODIFIED TO SUBSTITUTE A DIRECTION THAT PETITIONER BE CENSURED IN PLACE OF THE DIRECTION THAT PETITIONER BE REMOVED FROM THE JUDICIAL OFFICES HE OCCUPIES AND PETITIONER SHOULD BE RESTORED TO HIS JUDICIAL OFFICES**

Respectfully submitted,

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# **Appendix A**

DISTRICT	BALLOTS CAST - TOTAL	VILLAGE JUSTICE Village of Spring Valley	
		DEM	Susan M. Smith
	BALLOTS CAST		
Clarkstown 21	331	132	
Clarkstown 62	18	8	
Ramapo 6	142	54	
Ramapo 8	324	101	
Ramapo 12	266	78	
Ramapo 13	342	122	
Ramapo 26	176	54	
Ramapo 36	380	69	
Ramapo 49	265	13	
Ramapo 51	327	146	
Ramapo 63	317	160	
Ramapo 64	438	29	
Ramapo 65	427	180	
Ramapo 70	276	116	
Ramapo 71	305	65	
Ramapo 74	352	19	
Ramapo 89	230	79	
Ramapo 100	2	0	
COUNTY TOTALS	4918	1425	

VILLAGE JUSTICE Village of Spring Valley

DEM  
Alan M. Simon  
82  
6  
44  
107  
90  
109  
55  
83  
13  
125  
106  
39  
154  
89  
75  
31  
82  
0  
1290

VILLAGE JUSTICE Village of Spring Valley

REP  
Djinsad Desir  
36  
2  
32  
51  
47  
43  
16  
45  
28  
54  
42  
40  
72  
46  
38  
30  
47  
0  
669

VILLAGE JUSTICE Village of Spring Valley

REP  
Alan M. Simon

13  
1  
17  
19  
7  
13  
10  
29  
25  
26  
13  
34  
35  
27  
10  
16  
10  
0  
305

VILLAGE JUSTICE Village of Spring Valley

CON  
Djinsad Desir

7  
0  
1  
19  
11  
14  
8  
7  
7  
15  
10  
4  
16  
6  
10  
13  
8  
0  
156

VILLAGE JUSTICE Village of Spring Valley  
CON

Alan M. Simon

2  
0  
0  
6  
4  
3  
3  
10  
7  
5  
0  
3  
4  
1  
3  
11  
4  
0  
66

VILLAGE JUSTICE Village of Spring Valley  
WOR

Djinsad Desir

31  
0  
11  
35  
34  
26  
5  
8  
1  
22  
24  
6  
52  
20  
16  
8  
31  
0  
330

VILLAGE JUSTICE Village of Spring Valley

WOR

Alan M. Simon

3  
0  
4  
3  
10  
6  
5  
6  
0  
4  
5  
3  
13  
6  
5  
7  
2  
0  
82

VILLAGE JUSTICE Village of Spring Valley

IND

Djinsad Desir

9  
0  
10  
17  
29  
33  
38  
152  
169  
15  
10  
258  
17  
10  
93  
200  
16  
0  
1076

VILLAGE JUSTICE Village of Spring Valley

IND  
Alan M. Simon

1  
0  
6  
8  
20  
22  
37  
154  
163  
12  
3  
255  
8  
4  
89  
196  
10  
0  
988

VILLAGE JUSTICE Village of Spring Valley

GRE  
Djinsad Desir

62  
2  
2  
26  
19  
61  
10  
34  
22  
22  
36  
32  
27  
9  
23  
29  
11  
2  
429

VILLAGE JUSTICE Village of Spring Valley

GRE

Alan M. Simon

0  
0  
2  
10  
3  
6  
7  
31  
21  
6  
2  
32  
10  
8  
9  
28  
3  
0  
178

VILLAGE JUSTICE Village of Spring Valley

WRITE-IN

1  
0  
0  
3  
0  
2  
0  
0  
2  
0  
0  
1  
0  
3  
2  
0  
2  
0  
0  
16

VILLAGE JUSTICE Village of Spring Valley

VILLAGE JUSTICE Village of Spring Valley

OVER VOTES

0  
0  
0  
0  
0  
0  
0  
2  
0  
0  
2  
0  
2  
0  
0  
2  
0  
0  
2  
0  
0  
8

UNDER VOTES

283  
17  
101  
243  
180  
224  
104  
130  
59  
202  
220  
141  
261  
208  
174  
112  
157  
2  
2818

# Appendix B

DISTRICT	BALLOTS CAST - TOTAL	TOWN JUSTICE Ramapo	TOWN JUSTICE Ramapo
	BALLOTS CAST	DEM	REP
		Alan M. Simon	Alan M. Simon
Ramapo 1	237	74	42
Ramapo 2	358	76	77
Ramapo 3	262	132	28
Ramapo 4	220	32	57
Ramapo 5	164	58	33
Ramapo 6	85	51	3
Ramapo 7	225	62	50
Ramapo 8	135	50	12
Ramapo 9	287	36	44
Ramapo 10	191	86	25
Ramapo 11	215	57	44
Ramapo 12	108	45	0
Ramapo 13	231	137	9
Ramapo 14	278	230	13
Ramapo 15	197	29	47
Ramapo 16	410	124	83
Ramapo 17	541	94	111
Ramapo 18	238	153	38
Ramapo 19	362	70	78
Ramapo 20	210	133	15
Ramapo 21	739	676	5
Ramapo 22	115	19	25
Ramapo 23	129	53	10
Ramapo 24	216	130	28
Ramapo 25	530	450	8
Ramapo 26	115	86	5
Ramapo 27	219	73	46
Ramapo 28	302	235	16
Ramapo 29	302	85	51
Ramapo 30	422	343	5
Ramapo 31	405	96	83
Ramapo 32	108	27	26
Ramapo 33	144	96	14
Ramapo 34	344	126	42
Ramapo 35	610	545	5
Ramapo 36	262	208	20
Ramapo 37	230	78	44
Ramapo 38	325	173	42
Ramapo 39	233	28	54
Ramapo 40	361	303	12
Ramapo 41	189	153	11
Ramapo 42	113	50	8
Ramapo 43	302	87	43
Ramapo 44	259	128	31

Ramapo 45	76	69	0
Ramapo 46	226	28	30
Ramapo 47	206	88	12
Ramapo 48	140	18	47
Ramapo 49*	213	180	5
Ramapo 50	152	52	26
Ramapo 51*	221	111	15
Ramapo 52	168	161	2
Ramapo 53	129	75	9
Ramapo 54	208	70	31
Ramapo 55	696	691	2
Ramapo 56	386	265	22
Ramapo 57	292	80	57
Ramapo 58	577	566	4
Ramapo 59	377	139	47
Ramapo 60	370	251	30
Ramapo 61	222	72	37
Ramapo 62	264	41	40
Ramapo 63*	172	95	4
Ramapo 64*	327	285	13
Ramapo 65*	210	98	15
Ramapo 66	289	90	54
Ramapo 67	263	120	23
Ramapo 68	176	46	26
Ramapo 69	285	73	60
Ramapo 70*	162	77	7
Ramapo 71*	179	129	5
Ramapo 72	39	12	4
Ramapo 73	277	77	53
Ramapo 74*	294	243	9
Ramapo 75	248	42	40
Ramapo 76	308	39	65
Ramapo 77	234	86	48
Ramapo 78	286	44	36
Ramapo 79	343	52	79
Ramapo 80	58	23	1
Ramapo 81	83	19	12
Ramapo 82	167	63	28
Ramapo 83	186	60	36
Ramapo 84	512	380	28
Ramapo 85	337	284	15
Ramapo 86	315	206	24
Ramapo 87	118	41	10
Ramapo 88	360	320	3
Ramapo 89*	82	57	1
Ramapo 90	380	88	81
Ramapo 91	45	18	4

Ramapo 92	188	63	31
Ramapo 93	602	515	6
Ramapo 94	140	78	12
Ramapo 95	471	466	1
Ramapo 96	461	399	7
Ramapo 97	933	864	8
Ramapo 98	734	726	1
Ramapo 99	10	6	0
Ramapo 100	0	0	0
Ramapo 101	61	55	1
Ramapo 102	86	70	3
Ramapo 103	78	41	13
Ramapo 104	7	5	0
Ramapo 105	2	0	0
Ramapo 106	35	14	3
Ramapo 107	2	1	0
Ramapo 108	16	9	0
Ramapo 109	0	0	0
COUNTY TOTALS	27412	15413	2729

TOWN JUSTICE Ramapo CON Alan M. Simon	TOWN JUSTICE Ramapo GRE Alan M. Simon	TOWN JUSTICE Ramapo WOR Alan M. Simon	TOWN JUSTICE Ramapo IND Alan M. Simon
7	1	4	16
5	7	3	12
3	5	1	10
19	6	2	6
2	3	0	12
1	1	2	5
11	5	5	15
3	2	2	7
7	8	5	10
3	0	3	5
6	4	4	14
0	2	1	3
2	0	2	7
4	1	2	1
9	0	1	9
16	5	9	15
14	15	8	26
9	1	0	3
20	8	8	19
10	1	3	9
7	0	1	2
2	4	2	5
2	3	1	3
10	2	0	7
7	1	4	6
0	0	2	2
7	4	0	10
6	1	2	4
5	3	8	9
2	0	1	1
9	7	16	20
3	2	2	4
3	0	1	2
4	10	2	6
4	0	4	4
9	1	0	2
8	1	5	9
10	0	5	4
16	6	5	17
5	0	1	2
2	0	1	2
2	1	3	0
3	13	3	11
6	1	7	4

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6  
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5  
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278

9  
5  
5  
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4  
6  
1  
0  
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1  
0  
0  
2  
0  
0  
0  
732

TOWN JUSTICE Ramapo

TOWN JUSTICE Ramapo

TOWN JUSTICE Ramapo

WRITE-IN

OVER VOTES

UNDER VOTES

0	0	93
0	0	178
1	0	82
0	0	98
0	0	56
0	0	22
2	0	75
1	0	58
1	0	176
0	0	69
1	0	85
0	0	57
0	0	74
1	0	26
0	0	102
2	0	156
2	0	271
1	0	33
1	0	158
1	0	38
0	0	48
0	1	57
0	0	57
1	0	38
6	0	48
0	0	20
0	0	79
1	0	37
3	0	138
0	0	70
4	0	170
1	0	43
0	0	28
0	0	154
0	0	48
0	0	22
1	0	84
5	0	86
2	0	105
0	0	38
1	1	18
0	0	49
1	0	141
2	0	80

0	0	7
2	0	143
2	0	89
0	0	59
2	0	21
3	0	60
0	0	78
0	0	2
1	0	41
0	0	87
0	0	1
0	0	75
1	0	127
0	0	4
5	0	146
1	0	64
0	0	86
8	0	151
0	0	66
0	0	22
0	0	88
0	0	118
1	0	86
0	0	88
4	0	108
1	0	71
0	0	37
0	0	20
1	0	115
4	0	31
0	0	130
0	0	171
0	0	72
3	0	175
1	0	169
0	0	29
0	0	42
0	0	60
2	0	68
0	0	84
0	0	29
1	0	57
0	0	56
2	0	31
0	0	19
2	0	163
0	0	22

1	0	68
2	0	68
0	0	42
0	0	3
2	0	43
0	0	49
0	0	6
0	0	4
0	0	0
0	0	2
0	0	10
0	0	16
0	0	2
0	0	2
0	0	14
0	0	1
0	0	7
0	0	0
94	2	7370