

To Be Argued By
Edward Lindner, Esq.
Time Requested: 15 Minutes

**Court of Appeals
of the
State of New York**

In the Matter of the Request of
ALAN M. SIMON,
a Justice of the Spring Valley Village Court and the Ramapo Town Court,
Rockland County,

Petitioner,

For Review of a Determination of the
NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT,

Respondent.

**BRIEF FOR RESPONDENT STATE
COMMISSION ON JUDICIAL CONDUCT**

ROBERT H. TEMBECKJIAN
*Counsel for Respondent State
Commission on Judicial Conduct*
Corning Tower, 23rd Floor
Empire State Plaza
Albany, New York 12223
518-453-4613

Of Counsel:

Edward Lindner, Esq.
Mary C. Farrington, Esq.
Mark Levine, Esq.
Pamela Tishman, Esq.

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PRELIMINARY STATEMENT

This brief is respectfully submitted by Counsel to the Commission on Judicial Conduct (“Commission”) in support of the Determination, dated March 29, 2016, that Judge Alan Simon (“Petitioner”) violated the Rules Governing Judicial Conduct (“Rules”) and should be removed from judicial office.

Standing alone, Petitioner’s egregious misconduct in July 2012 – when he grabbed a student worker and tempestuously threatened to hold numerous public servants in contempt – warrants his removal. His additional egregious acts of misconduct, combined with his false testimony and failure to comprehend the nature of his wrongdoing, further demonstrate that he is unfit for judicial office.

As Petitioner now concedes, he “was totally out of control for several hours on July 1[8], 2012” (Pet Br 48). He screamed in a “loud” and “angry” voice at various court employees and public officials because he was infuriated that a student had been hired to work in the clerk’s office. Without legal authority, he threatened to hold Maxary Joseph, the student worker, Chief Court Clerk Elsie Cheron, Mayor Noramie Jasmin, Judge David Fried and the Spring Valley Police Department in contempt. When the police did not obey his order to take Mr. Joseph into custody, Petitioner grabbed Mr. Joseph himself and attempted to physically remove him from the clerk’s office. Both the Commission and the

hearing Referee determined that Petitioner's testimony about the physical altercation was false.

Petitioner committed additional misconduct when he shouted at and hung up the phone on an attorney with Legal Services of the Hudson Valley (LSHV). He later removed LSHV as tenant's counsel, without consulting the tenant or giving LSHV an opportunity to be heard and, without authority in law, imposed a \$2,500 sanction and ordered LSHV to pay the sanction directly to the Legal Aid Society.

In 2011 and 2012, Petitioner, without legal authority: (1) threatened to hold Drug Court Case Manager Richard Deere, Mayor Noramie Jasmin and Police Chief Paul Modica in contempt; (2) threatened to arrest the Mayor, Chief Modica and the Spring Valley Village Attorney; and (3) threatened to charge Judge Fried with trespass for using the bathroom in his chambers.

Petitioner repeatedly spoke to various individuals in a loud, angry voice, called Chief Court Clerk Elsie Cheron names and otherwise spoke to her in a demeaning manner. He twice put her on the record and, without authority in law, threatened to hold her in contempt for allegedly poor work performance.

Finally, Petitioner engaged in impermissible political activity by providing a candidate for Rockland County Executive with disparaging information about another candidate and by giving permission to quote him in a campaign press release.

STATEMENT OF JURISDICTION AND STANDARD OF REVIEW

This Court has jurisdiction to review a Commission determination pursuant to NY Constitution article VI, § 22(d) and Judiciary Law §§ 44(9) and 47, which empower the Court to review the findings of fact and conclusions of law and to accept the sanction of removal or to impose a lesser sanction.

While the Commission's determination is afforded due deference, *Matter of Sims*, 61 NY2d 349, 353 (1984), the Court's review is plenary. *Matter of Watson*, 100 NY2d 290, 298 (2003).

PROCEDURAL HISTORY

Pursuant to Judiciary Law § 44(4), the Commission authorized two Formal Written Complaints, dated December 11, 2013 and October 2, 2014, containing six charges (R43-81).¹ Petitioner filed Answers dated January 14, 2014 and October 31, 2014, in which he denied almost all the allegations (R82-89).

A hearing was held in the Commission's New York City office before Referee Mark S. Arisohn on February 17–20, 23 and 25, March 30-31, and April 1, 2015 (R91-1761). Commission Counsel called 14 witnesses and introduced 22 exhibits. Petitioner called 23 witnesses and introduced four exhibits.

On October 12, 2015, the Referee issued a report sustaining all of the allegations set forth in Charges I through VI (R2439-79).

¹ Citations preceded by "R" refer to pages of the Record for Review.

THE FACTS

Charge I: In or about July 2012, upon learning that a student had been hired to work in the clerk's office, Petitioner: (1) threatened to hold various village employees, including his co-judge, in contempt, without basis in law; (2) threatened to have the student arrested and attempted to effectuate the arrest himself; and (3) otherwise acted in a rude, discourteous, and uncooperative manner toward village employees.

In July 2012 Petitioner became enraged when he learned that Maxary Joseph had been hired to work as a student intern in the clerk's office. Petitioner threatened to hold the student and the Chief Clerk in contempt if Mr. Joseph did not leave the clerk's office immediately. He went to the police department, demanded that someone arrest Mr. Joseph and threatened to hold the police department in contempt if an officer did not respond. Petitioner then took matters into his own hands and went into the clerk's office, yelling and screaming, and grabbed Mr. Joseph in an effort to effectuate the arrest himself. When his co-judge tried to intervene, Petitioner told him "to have a stroke and die" (R830-31), held him in contempt and sentenced him to 15 days (R837).

A. In July 2012, Maxary Joseph was hired by the Village of Spring Valley to work in the court clerk's office.

In July 2012, Mayor Jasmin hired Maxary Joseph as a student worker in the court clerk's office (R440-41, 460-62). Mr. Joseph was assigned to file papers, answer the phone and help with "whatever's needed in the office" (R151, 241,

311). Mr. Joseph's job responsibilities were the same as student workers who had been assigned to the court clerk's office in past years (R151).

Ms. Cheron told all three Spring Valley judges that the mayor had hired Mr. Joseph (R152). While Judges David Fried and Christine Theodore told Ms. Cheron that they were "pleased," Petitioner did not want a student in the clerk's office and asked for Mr. Joseph's resume (R153, 154, 245, 259, 823). Ms. Cheron said that she would attempt to obtain a copy (R154, 244-45).

The next day Ms. Cheron told Petitioner that she had not yet received Mr. Joseph's resume (R154-55, 246, 257). Petitioner told Ms. Cheron that if Mr. Joseph "doesn't leave," he would "physically remove him" and that he would hold her in contempt if she did not follow his orders (R155-56). Petitioner was screaming and using a "threatening voice" (R156).

B. On July 18, 2012, Petitioner threatened employees and officials with contempt and arrest unless Mr. Joseph left the clerk's office.

On July 18, 2012, Mr. Joseph was working in the clerk's office, removing staples (R155-56, 167, 258-59, 311, 580, 621), shredding documents and organizing files (R444, 447). Deputy Court Clerk Gary Roxas and Court Clerk Dorothe Casimir gave Mr. Joseph criminal files and traffic tickets and asked him to remove the staples so the documents could be scanned (R310-11, 580, 621).

That afternoon Petitioner arrived at the courthouse (R163-64, 169, 174), even though Judge Fried was presiding that day (R156, 823-24). Petitioner went to

the clerk's office and told Mr. Joseph he was "not supposed to be here" and that he should leave (R176, 299, 448, 469, 620, 631). Petitioner "sounded angry and loud" (R449).

Petitioner told Ms. Cheron, "Did I not give you the order for Maxary not to be here? What is he doing here?" (R164-65). Petitioner was screaming, yelling and speaking in an "intimidating" manner (R165). Ms. Cheron reminded Petitioner that student workers had previously worked in the clerk's office and told Petitioner to talk to Mayor Jasmin (R164-65, 265).

Ms. Cheron told Mr. Joseph that Petitioner didn't want him working there and advised him to speak to Mayor Jasmin (R166, 264, 273, 449, 469). When he did so, Mayor Jasmin told him to return to his desk (R449-50).

Petitioner went into the clerk's office (R167-68, 450) and told Mr. Joseph in an "angry" and "loud" voice that he was "going to issue a warrant for [his] arrest" (R450-51).

Thereafter, the Spring Valley Police Department received a telephone call from Petitioner (R928-29). Lieutenant John Bosworth listened to a recording of the call (R929), in which Petitioner stated:

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

(R930-32, 2000-02; Ex 12).

Shortly after the call, Petitioner arrived at the police desk, holding a “blue card” commitment order (R933, 951, 956). A commitment order is “what [a] judge uses when he’s sentencing somebody to the county jail” (R933).

Petitioner told Lieutenant Bosworth that he was sentencing a “young man” to 15 days in jail and needed somebody to bring him into the courtroom (R933). Lieutenant Bosworth said that he would discuss the matter with the Chief of Police (R934). Petitioner replied that if the police did not comply with his order, he would call the Sheriff (R934).

Petitioner then called Rockland County Sheriff Louis Falco. Petitioner reported that a “young man” was going through Petitioner’s files, that “he was going to hold a young man in contempt” and he asked the Sheriff to send deputies to Spring Valley (R662-63). Sheriff Falco “believe[d]” that Petitioner wanted the Sheriff’s office to arrest Mr. Joseph (R663). Sheriff Falco told Petitioner he would get back to him (R664, 667). Sheriff Falco described Petitioner as “upset” (R664).

Lieutenants Bosworth and Kleinertz saw Petitioner in the police break room while he was on the telephone with the Sheriff’s office (R935-36, 952). When Petitioner finished his conversation, the lieutenants told him that they would not bring Mr. Joseph into the courtroom until they spoke with the Mayor and Village Attorney (R936, 953). Bosworth testified that he did not want to bring Mr. Joseph into the courtroom because he was concerned that Petitioner “could actually

sentence this young man to jail inappropriately” (R953). Petitioner told the officers that he would give them a “reasonable amount of time, otherwise he would hold the police department in contempt” (R937, 957). The lieutenants reported the conversation to Chief Modica (R937).

Sheriff Falco called Chief Modica (R664, 975) and told him that Petitioner requested that Sheriff Falco send deputies to arrest “two [Spring Valley] lieutenants” and “somebody that [Petitioner] was holding in contempt of court” (R975). Chief Modica assured Sheriff Falco that he could handle the matter (R665-66, 976).

Meanwhile, Petitioner telephoned Deputy Clerk Gary Roxas (R580-81) and asked him to set up the courtroom audio (R167, 292, 580-82). When Mr. Roxas arrived, Petitioner was sitting on the bench and court was not in session (R582, 590). Petitioner said that he wished to hold Mr. Joseph in contempt (R582).

At about the same time, Judge Fried entered the clerk’s office and told Mr. Joseph to continue his work (R479, 825-26). Judge Fried walked into the hallway where he saw Court Officer Sam Naemit (R826), who was not in uniform (R170, 826, 979, 1208, 1214, 1217) and was not assigned to work that day (R170, 826, 1217). Judge Fried also saw Petitioner, holding a “blue card” (R826-27, 829). Petitioner told Officer Naemit to arrest Mr. Joseph, that he was “finding him in

contempt and sentencing him” to 15 days, and that Officer Naemit² should take Mr. Joseph into custody (R827-28).³

Judge Fried told Officer Naemit that “he was not to follow the instruction” because it “was an illegal order” and that he would “hold [Officer Naemit] accountable if he seized” Mr. Joseph (R828). Petitioner’s face reddened, he became “enraged,” his voice was “loud” and “very angry, very aggressive,” and his arms were flailing (R830).

Petitioner then stated that “he would do it himself” (R829) and walked towards the court clerk’s office (R830). When Judge Fried “begged” Petitioner to desist, Petitioner cursed and told Judge Fried “to have a stroke and die” (R830-31).

C. Petitioner tried to forcibly remove Mr. Joseph from the clerk’s office.

Petitioner entered the clerk’s office and “ordered” Mr. Joseph to go inside the courtroom (R452). Petitioner began to arraign Mr. Joseph, telling him he was being found in contempt and sentenced to 15 days (R832). Petitioner then came

² Petitioner testified that he occasionally has dinner with Officer Naemit, stops at Naemit’s gas station to share a cup of coffee on his way to the courthouse, and that Naemit has attended Passover dinners hosted by Petitioner (R1674-75).

³ Officer Naemit, who was called as a witness by Petitioner, testified that he could not recall whether Petitioner told him to arrest Mr. Joseph (R1217). When confronted with the prior testimony that he gave before the Commission in which he testified that Petitioner “told me to arrest the intern,” Naemit was still unable to recall whether Petitioner told him to arrest Mr. Joseph (R1219).

between the desks, stood next to the chair where Mr. Joseph was sitting (R174-75, 452, 587-88) and “grabbed” Mr. Joseph’s right forearm (R173-74, 453, 588).

Judge Fried testified that Petitioner reached across Mr. Joseph’s desk and grabbed his arm with a “pulling motion” so that Mr. Joseph “should come up out of his chair” (R833-34). Mr. Joseph felt as if Petitioner was “trying to pull [him] out of the chair” (R453). Ms. Cheron observed Petitioner “pulling [Mr. Joseph] in a rage,” “screaming, yelling ‘Get out! You’re not supposed to be here!’” (R176). Petitioner grabbed Mr. Joseph’s right forearm a second time (R173, 454-55, 836) with such “force that it allowed [Mr. Joseph’s] chair to slide towards” Petitioner (R173, 455). At no time did Mr. Joseph touch Petitioner (R177, 457).

Judge Fried told Petitioner that he was “was committing a crime” and threatened to call the police (R837). In response, Petitioner told Judge Fried that he was in contempt of court and sentenced him to 15 days (R837-38).

The court clerk’s office was in “total chaos” (R173). All the clerks were screaming and telling Petitioner, “No, no, Judge! Don’t do that! Stop! No” (R173).

While this was occurring, Chief Modica and Lieutenants Bosworth and Kleinertz were in Mayor Jasmin’s office and heard “loud screaming” coming from the court clerk’s area (R938, 957, 976-78, 1001-03), including Petitioner’s voice which was “loud, screaming, yelling” (R938, 958, 977).

The officers went to the clerk's office where Petitioner was "yelling at the top of his lungs" (R177, 274, 302, 590-91, 625, 838, 939-40, 958-59, 978). Petitioner was yelling at Mr. Joseph, "[G]et out of here, you don't belong here" (R940, 962, 997). "He was screaming" that Mr. Joseph was "in contempt of court" and that he was "sentencing him to 15 days in jail" (R979-80). Lieutenant Bosworth saw Mr. Joseph stand up, "[raise] his hands" in the air and say, "Judge don't touch me. Judge don't touch me, Judge" (R939-40). Court Officer Naemit tried to "calm" Petitioner, to "keep the judge away" from Mr. Joseph (R455-56, 940, 959, 979), and "get him to stop screaming at the kid" (R979).

Lieutenant Kleinertz escorted Mr. Joseph out of the court clerk's office (R177, 275, 456, 591, 838, 895, 940, 981). Chief Modica and Lieutenant Bosworth asked Petitioner to go into the hallway with them (R177, 274-75, 838, 895, 940-41, 963, 981).

While in the hallway, Petitioner was "still yelling and screaming" that Mr. Joseph should not be working in the clerk's office and that Petitioner "had no say in him being hired" (R982, 1005). Petitioner said, "If the kid is in the office tomorrow there's going to be a fucking problem" (R1005). Petitioner stated that he wanted Mr. Joseph arrested because "he had no right to be in the clerk's office, that there was confidential information there" (R941, 983-84). Petitioner

continued that Mayor Jasmin “had no fucking right to hire anybody” and assign them to “work in the clerk’s office, she’s a fucking bitch” (R983).

Chief Modica, the Village Attorney and Court Officer Naemit were in the hallway with Petitioner “just trying to calm down the situation” (R981-82, 984, 1004). It was suggested that “if there was a question about a hiring in the court [Petitioner] should have taken it up with [Mayor Jasmin],” to which Petitioner replied, “[S]he’s a fucking bitch. Why would I even talk to her?” (R984). He added that he was “contemplating holding Mayor Jasmin in contempt” (R984). During the conversation Petitioner was “agitated,” yelling, and “visibly upset” (R941-42, 984).

From beginning to end, Petitioner’s involvement in the incident with Mr. Joseph lasted approximately two hours (R274). Ms. Cheron stated that “it was a scary day” (R267), and Mr. Roxas said it was “shocking” and “upsetting. You know, seeing things happen in the office like that” (R593).

Petitioner admitted nearly all the significant details described by witnesses to his encounter with Mr. Joseph,⁴ with the exception of his physical interaction with the student worker. Contrary to the testimony of Mr. Joseph, Elsie Cheron,

⁴ Because Petitioner concedes all the factual findings of the Referee (Pet Br 19-20), the Commission will not set forth in detail the many factual admissions made by Petitioner at the hearing. A detailed account of those admissions can be found in Commission Counsel’s brief to the Commission (R2514-16, 2522-24, 2529-30, 2532-37, 2541, 2550-52).

Judge Fried and Gary Roxas, Petitioner maintained that he merely “reached out” to Mr. Joseph, who was already standing, and “touched him on his elbow” (R1545, 1680-81). He conceded that Mr. Joseph did not initiate physical contact (R1681).

Petitioner acknowledged that instead of threatening Mr. Joseph with contempt and arrest he could have told Mr. Joseph not to work with files until Petitioner interviewed and/or administered an oath (R1641-42, 1680). He testified that he “threatened contempt to a number of people, including employees who tend to forget that they are required to listen to directives and do the work, and that the judges run the court, not the employees” (R1653). He “believe[d]” his conduct was “appropriate under the circumstances” (R1683).

Charge II: In or about June 2012, while presiding over *Malcolm Curtis v Cheryl Scott*, Petitioner imposed monetary sanctions against Legal Services of the Hudson Valley (“LSHV”) without basis in law and without first providing the attorney from LSHV an opportunity to be heard. Petitioner also raised his voice and otherwise acted in a rude, discourteous and uncooperative manner.

On June 28, 2012, Petitioner illegally imposed a \$2,500 sanction against LSHV without giving the attorney an opportunity to be heard and improperly directed LSHV to pay the sanction to the Legal Aid Society. Prior to the court appearance, Petitioner was “loud,” “rude” and “nasty” during his telephone conversations with LSHV attorney Judy Studebaker.

A. Petitioner's interaction with LSHV attorney Judy Studebaker

Judy Studebaker has been an LSHV staff attorney for almost 38 years (R701-02). On June 26, 2012, Malcolm Curtis came to the LSHV office because he had been illegally locked out of his apartment (R702-03).

Paralegal E'Schondra McClendon prepared a *pro se* order to show cause for Mr. Curtis to file in Petitioner's court (R704-07, 1960; Ex 6A). Mr. Curtis did not have his lease because it was locked in the apartment, but he told Ms. McClendon and Ms. Studebaker that his landlord was Cheryl Scott (R708-09). Ms. McClendon captioned the document *Malcolm Curtis v Cheryl Scott* (R1960; Ex 6A).

Ms. Studebaker reviewed the papers with Mr. Curtis and, after ascertaining that he was unable to afford the \$20 court filing fee, told him that the order to show cause included relief "permitting him to proceed as a poor person without paying a filing fee" (R707, 713). Mr. Curtis filled out the petition that was attached to the order in which he stated, *inter alia*, that he was unable to pay the filing fee because his only income was \$780 a month from SSI and he had only minimal assets (R707, 1961). Ms. Studebaker testified that it was common practice for LSHV to help *pro se* litigants complete paperwork even though LSHV was unable to provide them with formal legal representation in court (R710).

Ms. Studebaker later learned that Petitioner denied Mr. Curtis permission to proceed as a poor person, changed the name of the landlord from Cheryl Scott to “Holland Mgt Co” and made the order to show cause returnable on July 5, 2012 (R707-08, 1960; Ex 6A). Petitioner directed Ms. Cheron not to accept the order to show cause until Mr. Curtis paid the court fee (R141). Petitioner testified that he denied Mr. Curtis poor person relief based on “rumors that ... Mr. Curtis dealt drugs” (R1731).

The next day Ms. Studebaker called the Spring Valley court clerk who said “that it was the procedure of the court, that everyone had to pay a filing fee” even if they were a poor person (R713). Petitioner called Ms. Studebaker and said that he “wanted to know how in the world [LSHV] had sent Mr. Curtis to his court without the filing fee” (R714). Ms. Studebaker told Petitioner that Mr. Curtis was proceeding as a poor person (R714). When Petitioner insisted that the filing fee had to be paid, Ms. Studebaker again explained that Mr. Curtis could not afford the fee and that he had filed a request to proceed as a poor person (R714-15).

Petitioner interrupted and, “shouting very loudly,” repeated “that the filing fee had to be paid” (R715). Petitioner’s “voice got increasingly louder and rude and nasty” and while Ms. Studebaker “was in mid-sentence” Petitioner “slammed the phone down” (R715).

Ms. Studebaker contacted Administrative Judge Charles Apotheker's office (R715). She was advised to call Elsie Cheron and tell her that if Petitioner didn't wish to grant poor person's relief, he should write "denied" on the order so an appeal could be taken (R715).

Ms. Studebaker called the clerk's office, "explained to [Ms. Cheron] what Judge Apotheker had said," and requested that Petitioner write the word "denied" on the order to show cause (R716). Ms. Cheron indicated that "the judge was not going to do that" (R716).⁵

When Ms. Studebaker learned that Petitioner wanted Mr. Curtis to provide a copy of his lease, she called Ms. Cheron and "explained that Mr. Curtis did not have his lease, he had no access to his lease because it was locked in the apartment and he did not have the key and had not been given possession yet" (R716-17).

While she was speaking with Ms. Cheron, Ms. Studebaker realized that Petitioner "was listening in on the conversation" (R717). Petitioner "spoke up and was shouting again, saying that he had to have the filing fee" and that "nothing was going to be done until Mr. Curtis paid the filing fee" (R717). As Ms. Studebaker was telling Petitioner that the CPLR allowed Mr. Curtis to proceed as a poor person, Petitioner interrupted her and began speaking in "a loud shouting voice"

⁵ Ms. Cheron testified that at some point, someone from Judge Apotheker's office called and told her that when people are "indigent" the "court can waive fees for them." Ms. Cheron reported this to Petitioner (R141-42).

that the “filing fee had to be paid” (R717-18). Petitioner again “slammed down the telephone” while Ms. Studebaker “was in the middle of a sentence” (R717-18).

On June 28, 2012, Ms. Studebaker was contacted by the Spring Valley Court and told that the July 5th return date had been advanced to that afternoon (R143, 145-46, 719). Ms. Studebaker was also told that Petitioner “had done his own investigation as to who the respondent-landlord was in this matter” and that he had “directed that landlord to appear” (R719).

B. Petitioner relieved LSHV as Mr. Curtis’s counsel, imposed a \$2,500 sanction against LSHV and directed that LSHV pay the sanction to the Legal Aid Society.

On June 28, 2012, LSHV attorney Marianne Henry appeared on behalf of Mr. Curtis because Ms. Studebaker was on trial (R719, 1789-1809; Ex 5).⁶ Petitioner briefly questioned Mr. Curtis under oath about his income and expenses and then granted his application to proceed as a poor person (R1790-91).

Petitioner asked Ms. Henry about the papers that LSHV prepared and how the identity of the landlord was determined (R1792). Ms. Henry explained that she didn’t prepare the papers and had only been assigned to the case that day, but that she believed that Mr. Curtis had a signed lease agreement “with Cheryl Scott who

⁶ Petitioner called Mary Ellen Natale, an attorney with Legal Aid of Rockland County (Legal Aid), who testified that on the morning of June 28, 2012, Petitioner telephoned her and asked if she would be in court that day. Petitioner informed her that he had a case where the papers were filled out improperly (R1267-68). Ms. Natale thought that Legal Aid might be assigned the case that day (R1268).

is the landlord” (R1792). Petitioner stated that that was incorrect and asked whether LSHV did “any independent investigation” to determine the identity of the landlord. Ms. Henry replied that LSHV ordinarily asks for the lease, but that Mr. Curtis had been unlawfully locked out and had no access to his papers (R1793-94).

Petitioner then questioned Ms. Henry, *inter alia*, about the source of LSHV’s funding, why the petition was filed and whether she believed it had been filed in a proper manner. Ms. Henry stated, “Your Honor, that I can’t say because I wasn’t the attorney that did it. We sometimes have a lot of people call us and we do the best we can” (R1796).

Petitioner answered, “It is my sense of it, is if you’re doing the best you can, you should be put out of business. It is my opinion that you did not represent this individual who had a very valid and an emergency claim, and that it was done in something less than a professional capacity” (R1796).

Petitioner ignored Ms. Henry’s attempts to respond and, without giving her an opportunity to speak, found that LSHV “failed to meet the minimum standard of the representation of Mr. Curtis” (R1796). Without consulting Mr. Curtis, Petitioner relieved LSHV as counsel, imposed sanctions on LSHV in the amount of \$2,500 and directed LSHV to pay the sanction directly to Legal Aid (R1797-98).⁷

⁷ In a subsequent Article 78 proceeding, Rockland County Supreme Court found that Petitioner had not given LSHV an opportunity to be heard in connection with the sanction (R1530, 1746).

At the hearing, Petitioner conceded that he had no authority to sanction LSHV or to order them to pay the sanction to Legal Aid (R1742-43).

Charge III: From in or about December 2011 through 2012, without authority in law, Petitioner threatened to arrest and/or hold various persons in contempt for conduct occurring outside the courtroom.

On a number of occasions in 2011 and 2012, Petitioner threatened to arrest various persons, or to hold them in contempt, for conduct that occurred outside the courtroom. Petitioner: (1) twice threatened to hold Richard Deere in contempt of court for sitting at Judge Fried's desk; (2) threatened to arrest Mayor Jasmin for conduct unrelated to any court proceeding; (3) threatened to charge Judge Fried with trespass for using the staff bathroom attached to Petitioner's chambers; and (4) called Chief Modica at home and, without explanation, said he would hold Modica in contempt of court the next day.

A. In December 2011, Petitioner threatened to hold Richard Deere in contempt of court and arrest him for trespass.

In November 2011, Richard Deere was hired as case manager for the Rockland County drug court (R754, 772-73, 795, 798). Mr. Deere was not given an office until January 2012 (R755).

Judge Fried, who was assigned to oversee the drug court (R755-56, 795), got approval from the Mayor for Mr. Deere to use Judge Fried's desk until he was given an office (R801). Between November and January, Mr. Deere worked at Judge Fried's desk (R756, 773, 800-01). Petitioner's chambers were immediately

in front of and attached to the chambers that were shared by Judges Fried and Theodore, where Mr. Deere sat (R756-57, 787-88).

In December 2011, Petitioner told Mr. Deere to “remove [him]self from the premises immediately or [he would] be held in contempt and charged with ... trespassing” (R759). Petitioner was “angry,” and “yelling” (R759). Mr. Deere left the building and telephoned Judge Fried from the parking lot (R759, 761, 803). Judge Fried arrived and walked Mr. Deere back to his desk (R761-62, 803-04).

Judge Fried closed the door that separated his chambers from Petitioner’s chambers and had a conversation with Petitioner (R804). Petitioner told Judge Fried that Mr. Deere “had no right to be present” and “threatened” to “hold [Mr. Deere] in contempt” and to charge Mr. Deere with trespassing (R804). Petitioner used a “very angry,” “very loud” voice while talking to Judge Fried (R805).

A week or two later (R764), Petitioner asked Court Officer Victor Reyes to escort Mr. Deere out of the building and told Reyes that if Mr. Deere gave him a “hard time,” he should “arrest” him (R1045). Petitioner appeared “upset” when he gave the order (R1045). Mr. Deere was reviewing drug court materials when Officer Reyes came into chambers and told Mr. Deere to leave the building or he would be arrested (R762, 764, 1046). Mr. Deere gathered his belongings and Officer Reyes escorted him out of the building (R763, 1046). Mr. Deere telephoned Judge Fried who again escorted Mr. Deere back to his desk (R764).

B. In 2012, Petitioner threatened to hold Mayor Jasmin in contempt, ordered a court officer to bring the Mayor to court so Petitioner could hold her in contempt and ordered the court officer to arrest the Police Chief, Mayor and Village Attorney.

On May 24, 2012, Lieutenants Bosworth and Oleszczuk were in Mayor Jasmin's office for a briefing (R944). Petitioner appeared, wearing his robe and "rant[ing] and rav[ing]" at the "top of his lungs" that he wanted his own office (R944-45). He stated, "This is the David Fried show. I'm out of here" (R945). Petitioner told the Mayor he would hold her in contempt if he did not get his own office (R945). The Mayor calmly told Petitioner that she was in a meeting and asked Petitioner to leave several times (R945).

Court Officer Reyes testified that, on a Monday night in 2012, when the Village Board was meeting, Petitioner, who was on the bench and about to start traffic court, said that he wanted to speak to Mayor Jasmin, Chief Modica and the Village Attorney (R1033-34, 1035). Petitioner directed Officer Reyes to ask these officials to come to his courtroom and instructed the officer that if they refused to come he should "arrest them" (R1033-34). Petitioner's voice was "very loud" (R1035).

Instead of doing as Petitioner directed, Officer Reyes went and smoked a cigarette because he "didn't think [he] had the authority to arrest them" (R1036). Neither Mayor Jasmin, Chief Modica nor the Village Attorney had a case on the court's calendar that night (R1035).

On another date in 2012, Petitioner asked Officer Reyes to tell Mayor Jasmin that Petitioner wanted to speak to her and directed Officer Reyes to “lock up” the Mayor if she did not accompany him to the courtroom (R1037-38). When Officer Reyes conveyed Petitioner’s message, Mayor Jasmin stated that if Petitioner wanted to speak to her, he should come to her office (R1037).

In 2012, Petitioner told Officer Reyes, two to three times, “maybe more,” to arrest Mayor Jasmin or hold her in contempt (R1038-39). During the summer of 2012, Petitioner sent Officer Reyes to Mayor Jasmin’s office. When Officer Reyes told Petitioner that the Mayor was in a meeting with Lieutenants Bosworth and Oleszcuk, Petitioner became “upset” and told Reyes to “lock her up and lock up the two lieutenants” (R1041).

Chief Modica testified that, in 2012 Petitioner told him, “I may be calling on you later to arrest Jasmin[]. I’m holding her in contempt” (R990).

C. In 2012, Petitioner threatened to have Judge Fried arrested.

Judge David Fried testified that, in the spring of 2012, Petitioner moved his chambers to the jury room (R817). At the back of Petitioner’s new chambers was a staff restroom (R818). When Mayor Jasmin asked Judge Fried if he had any objections to the move, Judge Fried said he didn’t, so long as when he presided over court he could use the staff bathroom rather than the public restroom because of concerns about safety and the chance of *ex parte* communications (R819).

In May or June 2012, while Judge Fried was presiding over a morning calendar, he got the key to Petitioner's chambers so he could use the staff bathroom (R820). The same or next day, Petitioner told Judge Fried that he was not happy that he had used the restroom (R821). Judge Fried said that when court was in session he was "concerned" about "safety and ethics" and that he would use the staff restroom and then "come immediately out" (R822). In reply, Petitioner threatened to charge Judge Fried with criminal trespass (R821-22).

D. In spring 2012, Petitioner telephoned Police Chief Paul Modica at his home and said that he was going to arrest him for contempt of court.

Police Chief Modica testified that in the spring of 2012 he received a call at home from Petitioner (R986, 988). Petitioner told him to bring his toothbrush the next day "because he was throwing [Chief Modica] in jail for contempt of court" (R986-87, 988). Chief Modica responded, "Judge. I'm standing in my bedroom in my pajamas. What did I do?" (R988). Petitioner didn't tell him why he was being held in contempt, but repeated, "Bring your toothbrush, you're going to jail in the morning" (R988).

Charge IV: From in or about December 2009 through 2012, Petitioner repeatedly shouted, yelled or raised his voice at various village officials and employees, threatened to hold them in contempt without basis in law, and otherwise acted in a rude, discourteous and uncooperative manner.

At various times Petitioner spoke to Chief Court Clerk Cheron, Mayor Jasmin and Judge Fried in a rude, discourteous and demeaning manner. Among

other things, Petitioner yelled at Ms. Cheron, refused to acknowledge her as the chief court clerk, called her names such as “traitor” and the “so-called clerk,” said she was part of the “Haitian mafia” and threatened to hold her in contempt if she did not follow his directives.

A. In or about 2012, Petitioner chastised Elsie Cheron, speaking to her in a raised voice and referring to her in a disparaging manner.

Prior to the incident with Mr. Joseph, Petitioner and Ms. Cheron had a good working relationship (R178). After the incident, Petitioner avoided speaking to Ms. Cheron, would not acknowledge her as the chief clerk (R178) and “treated [her] really, really bad” (R178, 430, 593, 1156, 1404). Petitioner would only communicate with Deputy Court Clerk Gary Roxas (R179, 430, 594), who found it “difficult” to be placed in the “middle of everything” (R595).

Petitioner called Ms. Cheron “all kind of names” (R178), including “the so-called clerk” (R178, 202, 596, 1404-05), “traitor” (R178, 202, 420), the “mayor’s clerk” and the “mayor’s pet” (R202, 211, 420). Ms. Cheron testified that she was “bullied ... harassed ... called names” and “treated ... like an animal,” and that “It’s been hell for me, for two years and three months” (R216, 218). Ms. Cheron stated that she is “stressed every day [she] go[es] to work” (R218).

Petitioner acknowledged that he referred to Ms. Cheron as part of the “Haitian mafia” and that he called her the “mayor’s clerk” and the “pretend clerk”

(R1697, 1699, 1707), but maintained that these names were not degrading to her (R1707-08).

B. On July 12, 2012 and November 29, 2012, Petitioner directed Ms. Cheron to come to the courtroom, chastised her on the record about her job performance and threatened to hold her in contempt.

On July 12, 2012, Petitioner told Ms. Cheron to appear in his courtroom (R180). Although court was not in session, Petitioner was on the bench wearing his robe and a stenographer was present (R180-81). Petitioner began by describing the appearance as “a proceeding” (R1768; Ex 2).

Petitioner had divided the court officers into two groups (R182, 336, 337) and told Ms. Cheron that he wanted her to assign only “A” group officers to the courtroom (R181-82, 318, 1171,1769). Petitioner stated that if Ms. Cheron failed to follow his order, he would “consider it contemptuous and act and punish accordingly” (R1770).

Petitioner also told Ms. Cheron that if she did not agree with Petitioner’s directive she could “appeal it,” saying, “You have 30 days to appeal it in writing” (R1769, 1777). Petitioner again told Ms. Cheron that he would hold her in contempt (R1777), and that she “will be out” (R1778). Petitioner was “screaming,” “yelling,” “angry” and “loud” (R183, 186, 348, 355, 1158). When Ms. Cheron asked Petitioner why he was yelling at her, he stated, “That’s the way it’s going to be” (R1778). The following colloquy then ensued:

The Court: I heard you. Get an attorney, I'm considering holding you in contempt. Get your attorney and we will have a hearing this afternoon.

Ms. Cheron: You can put me in jail.

The Court: I will.

(R1778-79).

Ms. Cheron was "scared" and found the experience "traumatizing" (R187, 346). She did not know whether there was going to be a hearing or whether she needed an attorney (R187).

Petitioner acknowledged that he put Ms. Cheron on the record, threatened to hold her in contempt (R1585, 1770) and told her to return that afternoon with a lawyer for a hearing (R1581, 1779). He maintained, however, that he "didn't expect" Ms. Cheron to actually hire an attorney and come back for a hearing that day (R1583-84). He testified that "sometimes" threats of contempt are "absolutely necessary to get the required level of performance" (R1709-10).

On November 29, 2012, Petitioner again ordered Ms. Cheron to appear in the courtroom (R187-88). Petitioner was on the bench in his robe (R188), and the courtroom was filled with attorneys, court officers and individuals waiting for their cases to be called (R188). On the record in open court, Petitioner "started screaming" at Ms. Cheron because when he called the court clerk's office at 9:00 AM, no one answered the telephone (R189, 1781-82).

During the proceeding, Petitioner said, “Consider it a warning that you have not done your job properly today” (R1782). Petitioner continued, “You’re directed by me that at nine o’clock in the morning when the phone rings that somebody should answer it” and “If they fail to do that then ... I will act accordingly” (R1783). Ms. Cheron understood Petitioner to mean that he would hold her in contempt (R192). Petitioner dismissed Ms. Cheron by stating, “You may leave the Court room now. You’re not needed here. Go sit by the phone and answer it” (R1784).

Ms. Cheron testified that during the incident, Petitioner “kept screaming at [her] in open court, in front of everybody, like [she was] a criminal, telling [her] to explain to him why [she] did not answer the phone when he called” (R189). Ms. Cheron said “this was the most humiliating day for me” (R189) and that the exchange scared her (R192).

Petitioner testified that it was not his “prime concern” whether his conduct was degrading to Ms. Cheron (R1598). He said that he threatened employees with contempt because he “had no other choice to motivate people to do what [he] thought was the right and proper thing” (R1711).

C. In December 2009 and January 2012, Petitioner spoke to Judge David Fried in a discourteous, disrespectful and demeaning tone.

Judge Fried testified that on his first day on the bench in early December 2009, he presided over an arraignment (R792). Towards the end of the

arraignment Petitioner asked Judge Fried to step off the bench and told him that he was “terrible minus ten” (R792-93, 863). When Judge Fried said that he used the procedure that he learned in a course given by the Office of Court Administration, Petitioner told him he should not “listen to those fucks from Syracuse” (R792, 794).

Petitioner admitted that he told Judge Fried that his performance was “terrible minus ten” and not to follow the “bullshit from judge school” (R1480, 1717-18). He thought his comments were “instructive” and were “meant to be motivating and educational” (R1718).

At a meeting in January 2012, Administrative Judge Apotheker told the Spring Valley judges that they should take the bench in a timely manner (R805-06, 803, 873-74). After the meeting, Petitioner told Court Officer Reyes to take notes regarding when the three judges took the bench (R808-09, 1047-48, 1055, 1998; Ex 10). Judge Fried learned about the monitoring and informed Judge Apotheker (R808, 810).

In a February 22, 2012, letter to Petitioner, Judge Apotheker wrote that it was “inappropriate for any justice to monitor another justice i[n] any way and this practice should end immediately” (R810, 2014; Ex 16). Petitioner agreed to end the practice (R811-12, 2015; Ex 17).

Petitioner, however, continued to monitor Judge Fried (R812). One day, when Judge Fried was 20 minutes late to court because he was reviewing a search warrant (R812), Petitioner told Judge Fried to get his “fucking ass in the chair” (R813-14). Petitioner was “furious” that court was starting after 10:00 AM and used a “loud” voice and was “screaming” at Judge Fried (R813-14).

On another occasion after Judge Apotheker’s letter, Judge Fried heard Petitioner instruct Mr. Roxas and Ms. Cheron to report to Petitioner when Judge Fried took the bench (R138, 140, 814-15). Petitioner was “giving them very stern instructions” and appeared “very angry” (R815). Judge Fried told Mr. Roxas and Ms. Cheron that they did not have permission to tell Petitioner when he took the bench (R139, 815).

D. On May 24, 2012, Petitioner spoke to Mayor Jasmin in a discourteous, disrespectful and demeaning tone.

As described above in connection with Charge III, on May 24, 2012, Petitioner spoke to Mayor Jasmin in a rude and discourteous manner. While Lieutenants Bosworth and Oleszczuk were in the Mayor’s office for a morning briefing, Petitioner appeared, “rant[ing] and rav[ing]” and shouted “at ... [the] top of his lungs” that he wanted his own office (R944-45).

Charge V: In or about September 2013, Petitioner participated in political activity on behalf of a candidate for Rockland County Executive, and lent the prestige of judicial office to advance the private interests of another, by permitting the candidate to quote him in a campaign press release.

In September 2013 Petitioner spoke with County Executive candidate Edwin Day, provided him with a statement that was detrimental to the campaign of David Fried,⁸ and gave him permission to use his statement in a campaign press release.

A. Edwin Day's 2013 campaign for Rockland County Executive

Edwin Day was elected Rockland County Executive on November 5, 2013 (R487). One of Mr. Day's opponents in his 2013 race was David Fried (R489). Mr. Day testified that in September 2013, Mr. Fried held a press conference regarding how he would address the issue of illegal housing (R490).

One of Mr. Day's volunteers learned that during Mr. Fried's 2009 campaign for Spring Valley Justice Court, he received an "in-kind donation" of office space from Joseph Klein, whom Mr. Day described as a "notorious slumlord" (R490-91). Mr. Day's campaign issued a media advisory stating that Mr. Fried had accepted an "in-kind donation from a notorious slumlord" (R491-92).

B. Mr. Day's telephone conversations with Petitioner

Shortly thereafter, Mr. Day learned that Petitioner had information regarding the alleged in-kind donation (R492). Mr. Day called Petitioner, who said that Mr.

⁸ Since David Fried was no longer a judge in September 2013, he will be referred to as Mr. Fried.

Fried had contacted him during the 2009 campaign about a donation of campaign office space (R493-94).⁹ Petitioner alleged that he recognized the “location as a location that was owned by Empire Management, [of] which Mr. Joseph Klein was principal” (R494). Petitioner claimed that he told Mr. Fried that he would not accept the space because Joseph Klein had many cases before the Spring Valley Justice Court (R494).

Mr. Day testified that this was important information because “we now had first-hand knowledge that Mr. Fried was informed that the gentleman giving him in-kind donations was someone who: (a) was a slumlord; and (b) had cases going before the Spring Valley Justice Court which Mr. Fried was running for” (R494). Mr. Day asked Petitioner if he had any objection “if we cited you as an authority and used this information publicly?” (R495). Petitioner said that “he had no problem with it” (R495).

After the conversation, Mr. Day wrote out a “cohesive” statement that was “a reflection of what we had talked about” (R495). He then called Petitioner and read him the statement (R495). Petitioner agreed that the statement accurately

⁹ In 2009, Petitioner and Mr. Fried were “very friendly” (R789, 841). Mr. Fried considered Petitioner to be “a mentor in many ways” and it was Petitioner who encouraged Mr. Fried to run for village court (R789-90). To the extent possible under the Rules, Petitioner and Mr. Fried “did ... things together” during the campaign (R841).

reflected their earlier conversation and confirmed that he had no objection to having his statement used “publicly, ... a press release, or whatever” (R496).

Based on these conversations, Day issued a media advisory entitled “Judge Alan Simon: David Fried Knew of Slumlord Donation before 2009 election” (R1999; Ex 11). The media advisory stated in pertinent part:

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

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

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

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

(R1999) (emphasis in original).

Mr. Day testified that the quote attributed to Petitioner in the media advisory is the one that he read to Petitioner during their second telephone conversation

(R497). The media advisory was sent to the *Journal News*, the *Rockland County Times* and other local media outlets and “was in the newspaper” (R498).

Charge VI: From about January 2013 through about April 2014, Petitioner lent the prestige of judicial office to advance his own private interest, and repeatedly acted in a rude, discourteous and uncooperative manner toward various village officials and employees.

After Petitioner became aware that the Commission was investigating his conduct, he asked Ms. Cheron to write to the Commission on his behalf. When she refused, Petitioner treated her in a rude and demeaning manner and threatened to “make sure” that she would lose her position as chief clerk. Petitioner was also rude and discourteous to Mayor Demeza Delhomme and to a sergeant with the Spring Valley Police Department.

A. In May 2013 Petitioner requested that Ms. Cheron write a letter in support of Petitioner to the Commission.

In May 2013, Petitioner called Ms. Cheron into his chambers and asked her to write a letter to the Commission stating that he was a “good judge” who “does his job” (R200). Ms. Cheron was “shocked” (R200) and told Petitioner that she would think about it (R201). A couple of weeks later Petitioner asked Ms. Cheron whether she would write the letter, and Ms. Cheron told him that she would not (R201).

After Ms. Cheron refused to write the letter, her relationship with Petitioner deteriorated (R201-02). Petitioner refused to talk to Ms. Cheron and would only

talk to her deputy court clerk (R202). Petitioner opposed everything Ms. Cheron did and attempted to have her fired from her position (R202).

Petitioner initially testified that he did “not exactly” ask Ms. Cheron to write a letter to the Commission, although he conceded he told her that “we worked very well together” and that “[m]aybe it would be good if you can write that down” (R1486-87). On cross-examination he flatly asserted that he “did not” ask Ms. Cheron to write to the Commission, but conceded that when he testified under oath during the Commission’s investigation, he was asked whether he requested “Ms. Cheron to write a letter on [his] behalf to the Commission,” and he answered “yes” (R1690-91, 2098-99).

B. Petitioner demanded that Ms. Cheron appear in court with an attorney after Petitioner could not gain access to her office.

Only Ms. Cheron, Mr. Roxas and the judges were given access to Ms. Cheron’s private office (R205). In July 2013, Ms. Cheron received a federal subpoena requesting records (R206-07). After the receipt of the subpoena Ms. Cheron, Mayor Jasmin and Chief Modica decided that, while the federal matter was pending, access to Ms. Cheron’s office would be limited to Ms. Cheron and Mr. Roxas (R207, 387, 402-03).

Shortly thereafter, a file was needed for an arraignment (R207, 392, 402, 512-13). When Court Clerk Dorothe Casimir could not find the file (R208, 514-15), Petitioner gave her his code to open Ms. Cheron’s office (R515). After Ms.

Casimir was unable to open the door, Petitioner left the bench and tried unsuccessfully to open the door himself (R516-17).

Petitioner returned to the bench and, in open court, directed Ms. Casimir to telephone Ms. Cheron and tell her “to come here and bring her attorney with her” (R517). Petitioner used a “loud” tone and “wasn’t happy” (R518). Ms. Casimir called Ms. Cheron and spoke to her husband (R518).

When Ms. Cheron arrived home that night her husband told her that she should call the court because Petitioner needed access to her office (R208, 400). Ms. Cheron went to the office and Ms. Casimir told her that Petitioner had asked that Ms. Cheron appear with her attorney (R208, 520). Ms. Casimir also advised Ms. Cheron not to go into the courtroom (R520), telling her “Judge Simon is really upset . . . [d]on’t let Judge Simon see you” (R208, 521).

C. Petitioner threatened to ensure that Ms. Cheron would be fired from her position as Chief Court Clerk.

On September 16, 2013, Ms. Cheron encountered Petitioner in the hallway and told him that she had filed a police report because the door to her office had been left open all weekend (R210). Petitioner told Ms. Cheron that he had ordered that her office door remain open and that if the police want to secure her office, an officer should be posted at the door (R210). Petitioner also told Ms. Cheron that in December when the new mayor took office, Petitioner was “going to make sure you’re not the clerk anymore” (R211). Ms. Cheron asked, “Is that a threat?” and

Petitioner replied, “No. This is not a threat. This is a promise” (R211, 599).

Petitioner was angry, yelling and loud during this encounter (R211).¹⁰

D. On December 7, 2013, Petitioner spoke to Sergeant Roxanne Lopez in a discourteous manner.

On December 7, 2013, Spring Valley Police Sergeant Roxanne Lopez was assigned to oversee the 8:00 AM to 4:00 PM shift (R904). When Sergeant Lopez arrived, she was informed that the department was looking for a man who had allegedly sexually assaulted his girlfriend in the Town of Ramapo and then had either pistol whipped or threatened to pistol whip a taxi driver in Spring Valley (R905). Sergeant Lopez was also told that a prisoner was being held in Spring Valley for arraignment (R906). Sergeant Lopez decided not to call a judge out for the prisoner in Spring Valley, in case the suspect in the other case was captured (R906). Sergeant Lopez did not want to “inconvenience” a judge by asking the judge to come to Spring Valley more than once (R906).

While Sergeant Lopez was in the field, she received a phone call from the dispatcher advising her that Petitioner had arrived in Spring Valley to arraign a defendant (R906, 908). Sergeant Lopez was “surprised” that Petitioner was at the station because she had not authorized anyone to call him (R908-09).

¹⁰ Court Clerk O’Brien testified that in the fall of 2013, she heard Petitioner tell Ms. Cheron in a loud voice that once there was a new mayor Ms. Cheron would be out of a job (R1405-06).

Sergeant Lopez drove back to the police station and immediately went to get the prisoner because she did not want to keep Petitioner waiting (R909). Sergeant Lopez and Detective Claussen walked the prisoner to the courtroom (R909), which they found locked (R910). After waiting about ten minutes, Sergeant Lopez called the police desk and asked if they could contact Petitioner and inform him that they were waiting (R910-11). After a few more minutes, Sergeant Lopez left the prisoner with Detective Claussen (R911).

A short time later, Detective Claussen told Sergeant Lopez that Petitioner wanted to see her (R911-12). When she entered the courtroom Petitioner complained that he had been waiting a long time for the police to bring up the prisoner (R912-13). Sergeant Lopez responded that she had not called Petitioner (R913). Petitioner interrupted Sergeant Lopez, raised his hands in the air and said in a "very loud," "agitated" voice, "You know that I have problems with your chief of police and members of this police department" (R913). Sergeant Lopez said that she had no knowledge of problems between Petitioner and the police and reiterated that the Spring Valley police had not called Petitioner (R913). Petitioner stated that he was "starting to have a problem with" Sergeant Lopez (R914). Petitioner continued to insist that he had been called by the Spring Valley police to arraign a defendant. Sergeant Lopez testified:

I continued to try to explain to him that I didn't call him out. And he said, "Yes you did," and it just went back and

forth, like "Yes you did, and I said, "No I didn't," and he got even louder and the more I would say, I didn't, he was adamant that I did.

(R914).

Petitioner was "very angry," "seemed aggravated or agitated" and spoke with his hands raised in the air (R914). He "cut [Sergeant Lopez] off" and would not permit her to speak (R914).

Petitioner continued to insist that the Spring Valley Police Department had called him until there was "a knock on the door," and Ramapo Police Detective Margaret Braddock entered the courtroom (R914-15). Detective Braddock told Petitioner that the Ramapo Police Department had been waiting for him to appear for "quite a while now" (R915, 918-19). Petitioner had not realized that it was the Ramapo Police Department that had called him and had mistakenly gone to Spring Valley (R1493).

E. Petitioner ordered Ms. Cheron and Mr. Roxas to appear in court and placed them on the record to announce that he did not want Ms. Cheron to remain the Chief Clerk.

On January 2, 2014, Ms. Cheron and Mr. Roxas were told that Petitioner wished them to report to the courtroom (R211, 600). Ms. Cheron was afraid because Petitioner had previously told her that he was going to hold her in contempt (R211-12), but she appeared because she was concerned if she did not go Petitioner would "get angrier" (R211-12, 600).

When Ms. Cheron and Mr. Roxas entered the courtroom, Petitioner was on the bench (R212, 601). Court officers, a court clerk and the court stenographer were present (R212, 601-02). Ms. Cheron testified that she was “scared” and did not know if she was “going to walk out or be in handcuffs” (R213).

On the record, Petitioner announced that he was “uncomfortable” working with Ms. Cheron and would not consent to her reappointment as Chief Clerk (R213, 1786). Petitioner stated that the Spring Valley Village Board was “compelled” to listen to Petitioner and if they did not listen to Petitioner he would “add other counts” to the federal lawsuit he had brought against Spring Valley and Spring Valley employees (R213, 1786-87).¹¹ Petitioner then told Mr. Roxas that he is going to receive “a lot more responsibility” and that it “may come quicker than [Roxas] anticipated” (R602, 1787).

F. Petitioner referred to Ms. Cheron in written documents in a discourteous and rude manner.

In May 2013, Ms. Cheron advised Spring Valley Village Justice Susan Smith that court officers were staying after court in order to be paid for additional

¹¹ Counsel’s assertion that Petitioner’s federal lawsuit challenged Ms. Cheron’s appointment (Pet Br 25 n7) is incorrect. Petitioner brought a §1983 action against the Village, Mayor Jasmin, Chief Modica and Judge Fried alleging, *inter alia*, damages for false arrest and malicious prosecution after criminal charges lodged against Petitioner with respect to the Maxary Joseph incident were dismissed. The pleadings in Petitioner’s lawsuit are filed in the Southern District of New York, Docket No. 13CV7226 and may be judicially noticed as public records by the Court. *See Affronti v Crosson*, 95 NY2d 713 (2001).

hours (R202-03). Judge Smith told Ms. Cheron to distribute a memorandum informing the officers that once court is over, they should “turn off the light, finish everything, and go home” (R203). On May 29, 2013, Ms. Cheron wrote a memo to the court officers and copied the judges (R203, 1996). Ms. Cheron showed the memo to the judges, including Petitioner, who told Ms. Cheron that it was “fine” and he “had no problem” with the memorandum (R203).

A month later, on June 27, 2013, Petitioner returned the May memo to Ms. Cheron with a handwritten statement, copied to the other judges, which read:

Please refrain from any and all edicts or policy statements without first discussing with the Judges.

(R203, 1996).

On March 19, 2014, Petitioner wrote an order stating that:

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

(R214-15, 1997). The order was signed by Petitioner and had places for the other judges to sign; as of February 2015, neither of the other judges had signed the order (R215-16).

In April 2014, Petitioner sent a letter to the State Comptroller’s Justice Court Fund regarding his March 2014 “monthly report” (R577-78, 1765-66). The letter stated:

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

(R1766).

G. In spring and September 2014 Petitioner spoke to Mayor Demeza Delhomme in a disrespectful manner.

In spring 2014, Mayor Delhomme was in the municipal building with another man when he saw Petitioner (R651). Petitioner started yelling and told the man not to listen to the Mayor because he was a liar (R651-52). Mayor Delhomme "believed" that Petitioner also stated that he did not want "to fucking talk to" Mayor Delhomme (R652, 654). The Mayor said that Petitioner "usually" used curse words (R638) and yelled when he wanted something (R654).

In September 2014, while the Mayor was walking out of the municipal building with another man, he met Petitioner (R652). Petitioner called the Mayor a "three dollar bill" (R656, 679). Petitioner was yelling (R654). The Mayor told Petitioner that if he continued, the Mayor would call the police to which Petitioner stated, "call them if [you] want to" (R656-57). The Mayor then turned around and went back to his office (R653, 656).

THE COMMISSION'S DETERMINATION

The Commission sustained all six charges, finding that:

On repeated occasions over several years, [Petitioner] abused his judicial position in order to bully, harass, threaten and intimidate his court staff, his co-judge and other village officials and employees with whom he dealt in an official capacity. Without lawful basis, he repeatedly threatened such individuals with contempt or arrest over routine personnel or administrative issues in his court. On a frequent basis, he also subjected them to demeaning treatment, insults and angry diatribes in response to perceived disrespect or shortcomings in the performance of their duties and, in one instance, exhibited a shocking display of physical aggression in the court clerk's office. Such "a pattern of injudicious behavior and inappropriate actions ... cannot be viewed as acceptable conduct by one holding judicial office" (*Matter of VonderHeide*, 72 NY2d 658, 660 [1988]) and warrants his removal from judicial office.

(R34-35).

The Commission found that Petitioner's treatment of Maxary Joseph, the college student assigned to work in the clerk's office, "epitomiz[ed]" Petitioner's misconduct. Petitioner "failed to show 'even a modicum of sensitivity or self-control so vital to the demands of his position' (*Matter of Kuehnel*, 49 NY 465, 469 [1980])" (R35). The Commission stated:

It is noteworthy that throughout this entire excruciating incident, which unfolded over some two hours, the young man remained calm and respectful while the behavior of [Petitioner], whose judicial position required him to observe the highest standards of conduct and to treat others with appropriate respect ..., lacked any semblance of dignity or restraint. Although [Petitioner] had ample opportunity as these events occurred to reflect on the circumstances and consider the consequences of his actions, he ignored the most basic principles of appropriate professional behavior and was evidently unwilling or unable to control himself.

(R36-37).

The Commission further found that Petitioner “abused his judicial power on other occasions” by threatening to hold individuals in contempt or to have them arrested. The Commission observed:

Viewed in their totality, these incidents present a disturbing picture of [Petitioner]’s “intolerant, near-obsessive reaction” to numerous individuals with whom he had a contentious relationship and his complete disregard of his ethical obligations, which require a judge to observe high standards of conduct, both on and off the bench, and to be “patient, dignified and courteous” to those with whom the judge deals in an official capacity.

(R39).

The Commission determined that Petitioner was rude and discourteous to attorneys from LSHV and ignored the limits of his authority by imposing sanctions against the agency and relieving them as counsel (R40). And the Commission concluded that Petitioner violated the Rules by engaging in impermissible political activity (R41).

In finding that removal was the appropriate sanction, the Commission noted not only the “multiple instances of impropriety,” but also Petitioner’s “continued insistence at the hearing that his actions were appropriate,” which provided “scant assurance” that such conduct would not be repeated in the future (R41).

ARGUMENT

POINT I

PETITIONER SHOULD BE REMOVED FROM JUDICIAL OFFICE.

Standing alone, Petitioner's conduct with respect to Maxary Joseph warrants his removal. As the Commission found:

It is beyond dispute that any physical confrontation or aggressive, unwanted physical contact initiated by a judge in the workplace would be highly inappropriate. . . . Where, as here, a physical confrontation is coupled with multiple threats of arrest and contempt, a two-hour display of unrelenting rage and aggression, and a stream of invective and vitriol, public confidence in [Petitioner]'s fitness to serve as a judge is irredeemably damaged.

(R37-38).

Petitioner's misconduct in dealing with Mr. Joseph did not, however, stand alone. Over a period of years, Petitioner failed to be patient, dignified and courteous, in that he threatened to arrest and hold various Spring Valley public servants in contempt, and addressed employees, government officials and attorneys in a loud, rude and demeaning manner. He committed misconduct when he improperly relieved LSHV as a tenant's counsel, without providing an opportunity to be heard, and imposed sanctions not permitted by law. And he violated the Rules when he permitted a candidate for elective office to quote him in support of a political attack on the candidate's opponent.

Finally, as the Commission found, Petitioner failed throughout the hearing to recognize any impropriety in his outrageous conduct (R41) and, in two

instances, testified falsely about his conduct (R12, 19). All these factors taken together compel Petitioner's removal.

A. Standing alone, Petitioner's actions during the events surrounding Maxary Joseph's removal from the court clerk's office warrant his removal.

As Petitioner now concedes, he "was totally out of control for several hours" on July 12, 2012 and his "conduct toward Mr. Joseph was appalling and inexcusable" (Pet Br 48).¹² During a two-hour tantrum, Petitioner was "angry and loud" (R449), screaming, yelling and speaking in an "intimidating" manner to Ms. Cheron, Mr. Joseph and Judge Fried (R6, 9-10, 11, 156, 165, 176, 274, 450, 457, 830, 938-40, 958-59, 977-78, 982-84, 1003, 1005). He used obscene language when he referred to the mayor (R11, 983, 984).

Petitioner loudly ordered Mr. Joseph to leave the clerk's office and threatened to issue a warrant for his arrest (R6-7, 448, 450-51, 620, 631). When Mr. Joseph did not leave, Petitioner called the Spring Valley police, asked them to take the student into custody and threatened that "the mayor may be next" (R7, 930-33, 2000-01). When no officer arrived, he went to the police department holding a commitment order and told Lieutenant Bosworth that he was sentencing a "young man" to 15 days in jail and needed somebody to bring Mr. Joseph into

¹² Although Petitioner's brief references "July 12, 2012" as the date of the Maxary Joseph incident (Pet Br 48-49), it occurred on July 18, 2012 (R6).

the courtroom (R933, 951, 956). When the police did not comply, Petitioner called the Rockland County Sheriff and requested that he send deputies to arrest Mr. Joseph and the police officers (R662-63, 975).

Throughout this protracted tirade Petitioner threatened numerous people with contempt – first Mr. Joseph and then, seriatim, Mayor Jasmin, Ms. Cheron, the Spring Valley Police Department and Judge Fried. His directives that Mr. Joseph and others be taken into custody were so self-evidently improper that neither the Spring Valley Police, the Rockland County Sheriff nor Court Officer Naemit were willing to enforce his orders (R7-9).

When Petitioner realized that none of these officers was going to remove Mr. Joseph, he decided to do it himself (R9-10, 829-30), grabbing Mr. Joseph's arm and pulling him with such force that Mr. Joseph's chair rolled forward (R10, 173-74, 453, 455).

Petitioner's behavior created "total chaos," with the clerks screaming, "No, no, Judge! Don't do that! (R10, 173). The incident was "scary," "shocking" and "upsetting" (R11-12, 267, 593). The screaming was so loud that it could be heard in the Mayor's office and caused the Police Chief and two lieutenants to rush to the clerk's office (R10, 938, 958-59, 977-78, 1003).

Petitioner's extended display of intemperate and immature behavior and gross abuse of the contempt power renders him unfit to serve in a position that

requires equanimity and dignity. His overreaction to a “minuscule matter” “paint[s] a picture of an individual who ... does not measure or control his conduct,” *Matter of Roberts*, 91 NY2d 93, 95-96 (1977), “exceeded all measure of acceptable judicial conduct,” *Matter of Blackburne*, 7 NY3d 213, 221 (2006), and “resulted in [an] irretrievable loss of public confidence in his ability to properly carry out his judicial responsibilities.” *Matter of Aldrich*, 58 NY2d 279, 283 (1983), citing *Matter of Quinn*, 54 NY2d 386 (1981). He “exhibited insensitivity, indifference and a callousness so reproachable that his continued presence on the bench cannot be tolerated.” *Matter of Restaino*, 10 NY3d 577, 590 (2008).

B. In numerous additional instances over a period of years, Petitioner improperly threatened to hold people in contempt and addressed them in a rude and demeaning manner.

Petitioner’s behavior on July 18, 2012, was consistent with a pattern of misconduct that extended over years. From 2011 through 2013, Petitioner threatened to hold many individuals in contempt for behavior that had nothing to do with a case before him. In numerous instances he spoke to individuals in a rude and demeaning manner that violated his duty to be patient, dignified and courteous. *See* Rule 100.3(A) (3).

1. Petitioner egregiously abused the contempt power.

This Court has repeatedly found that the misuse of the contempt power warrants serious discipline. *See Matter of Jung*, 11 NY3d 365 (2008) (judge

removed, *inter alia*, for misuse of summary contempt); *Matter of Hamel*, 88 NY2d 317 (1996) (same); *Matter of Hart*, 7 NY3d 1, 7 (2006) (judge censured for retributive use of summary contempt). *See also Matter of Waltemade*, 37 NY2d (nn), 409 NYS2d 989 (Ct on the Judiciary 1975) (judge censured for numerous instances of poor judicial temperament, including misuse of contempt power).

Here, in addition to the July 18, 2012, incident, Petitioner improperly threatened to arrest or hold in contempt: (1) case manager Deere for sitting at Judge Fried's desk (R18-19, 756-57, 759, 762, 764, 804, 1046-47); (2) the Mayor if she did not give Petitioner his own office (R19, 945); (3) the Mayor, Village Attorney and Police Chief if they failed to come to the courtroom immediately (R19-20, 1033-34, 1038, 1039); (4) Judge Fried for using a bathroom attached to Petitioner's chambers (R21, 821-22); and (5) Chief Modica for undisclosed behavior (R21, 986-88).

Incredibly, Petitioner testified that it was "necessary" to threaten people with contempt "to get the required level of performance" and to "motivate" people to do the "right and proper thing" (R21, 1653, 1693, 1710-11). Petitioner believed that by threatening Ms. Cheron with contempt, he would "inspire[e]" her to follow his orders (R23, 1668).

Completely baseless threats to hold individuals in contempt are misconduct, even when a judge does not actually send anyone to jail. *See Matter of Waltemade*,

supra (judge censured for poor judicial temperament, even though “angry threats of ‘sanctions’” were not followed by contempt proceedings). *See also Matter of Hart*, 2009 Ann Rep 97 (Comm’n on Jud Conduct, March 7, 2008) (threat of contempt was misconduct, even when judge did not act on threat); *Matter of Shkane*, 2009 Ann Rep 170 (Comm’n on Jud Conduct, December 29, 2008) (same).

Petitioner’s defense that “no one was ever incarcerated” as a result of his threats of contempt (Pet Br 50) conveniently ignores the fact this is only true because police and court officers sensibly refused to follow his orders. The reason Lieutenant Bosworth did not obey Petitioner’s order to bring Mr. Joseph into the courtroom was because he was concerned that Petitioner “could actually sentence this young man to jail inappropriately” (R953). When Petitioner directed Court Officer Reyes to arrest Mayor Jasmin, Chief Modica and the Village Attorney if they refused to come to his courtroom, Officer Reyes went and smoked a cigarette because he “didn’t think [he] had the authority to arrest them” (R1036).

That police and court personnel ignored Petitioner’s unlawful directives to take individuals into custody does not inure to his benefit. On the contrary, it underscores compellingly the disrepute he brought upon the judiciary.

2. Petitioner was rude and disrespectful to court employees and others.

This Court has condemned the use of rude, demeaning or profane language on or off the bench. *See Matter of Assini*, 94 NY2d 26, 29 (1999) (judge removed

for offensive language); *Matter of Duckman*, 92 NY2d 141, 154-55 (1998) (judge removed for, *inter alia*, insulting prosecutors); *Matter of Kuehnel*, 49 NY2d 465, 469 (1980) (judge removed for, *inter alia*, “outrageous verbal abuse”).

Here, Petitioner repeatedly used derogatory terms when referring to his Chief Court Clerk, calling her part of the “Haitian mafia” (R33-34, 1707, 2104), “the so-called clerk” (R22, 178, 202, 596, 1404-05), “traitor” (R22, 178, 202, 420), the “mayor’s clerk,” and the “mayor’s pet” (R22, 202, 211, 420, 1697). Petitioner put Ms. Cheron on the record in open court and berated her about her job performance (R22-24, 180-81, 187-89, 1767-79, 1780-84). Ms. Cheron felt she was being “treated ... like an animal,” a “nobody” (R22, 216, 218) and felt “stressed every day [she] go[es] to work” (R22, 218).

In addition, Petitioner told Judge Fried not to “listen to those fucks from Syracuse” (R24-25, 793-94, 863), to get his “fucking ass in the chair” (R813-14) and “to have a stroke and die” (R830-31). He shouted at Mayor Jasmin “at ... the top of his lungs” (R19, 944-45), used profanities when addressing Mayor Delhomme (R34, 638) and was rude to Police Sergeant Lopez (R30-31, 912-13).

Petitioner was also rude and discourteous when, on two separate occasions, he spoke to LSHV attorney Ms. Studebaker in a loud and nasty manner and angrily hung up the phone while she was talking (R13-15, 715, 717-18).

C. Petitioner committed additional serious misconduct when he failed to follow the law in *Curtis v Scott*, engaged in political activity and pressured Ms. Cheron to write a letter in his defense.

Petitioner committed serious misconduct in *Malcolm Curtis v Cheryl Scott* when he relieved Mr. Curtis's counsel without consulting him, imposed a monetary sanction without legal authority, ordered that the sanction be paid to the new attorney instead of the Lawyers' Fund for Client Protection and continuously interrupted the LSHV attorney, depriving her of a chance to be heard (R16-17, 1789-809). The Commission has publicly sanctioned judges for similar conduct. *See Matter of Jung*, 11 NY3d 365 (2008) (judge removed for denying litigants right to be heard); *Matter of McCall*, 2004 Ann Rep 135 (Comm'n on Jud Conduct, March 28, 2003) (judge censured for improperly awarding attorney's fees and failing to give litigant opportunity to be heard).

Petitioner engaged in impermissible political activity when he gave a candidate for Rockland County Executive permission to quote him by name in a press release attacking an opponent (R26-28, 493-96, 1558, 1727). As this Court noted in *Matter of Raab*, 100 NY2d 305, 315 (2003), "the rules restrict ancillary political activity, such as participating in other candidates' campaigns ... or publicly opposing any candidate." *See also Matter of Maney*, 70 NY2d 27 (1987) (judge removed for partisan political activity).

Finally, Petitioner committed judicial misconduct when he asked Ms. Cheron if she would write a letter to the Commission on his behalf, “telling them that he was a good judge” (R28, 200). When she declined to do so, Petitioner “refused to talk to her” and “attempted to have her fired from her position” (R28-29, 202). His blatant misuse of the prestige of his judicial office is serious misconduct. *See Matter of LaBombard*, 11 NY3d 294 (2008) (judge removed for, *inter alia*, using prestige of office to intimidate motorist).

D. Petitioner exacerbated his misconduct by testifying falsely during the hearing and failing to recognize his misconduct.

Petitioner significantly exacerbated his misconduct by testifying falsely at the hearing and by failing to acknowledge the seriousness of his misconduct.

1. Petitioner falsely testified during the hearing.

This Court has found that a judge’s “marked lack of candor” in disciplinary proceedings can be an aggravating factor that elevates the required sanction. *Matter of Mason*, 100 NY2d 56, 60 (2003) (judge’s misconduct “significantly compounded” by lack of candor); *see also Matter of Marshall*, 8 NY3d 741, 743 (2007) (lack of candor warrants removal where judge gave “patently false explanations”); *Matter of Kuehnel*, 49 NY2d 465, 469 (1980) (citing “gross lack of candor” as factor warranting removal).

Here, the Commission determined that Petitioner “falsely testified” when he said he never grabbed Mr. Joseph’s arm (R12) and had not threatened to hold

Richard Deere in contempt (R19). Those findings, based on the Referee's assessment of the credibility of multiple witnesses,¹³ are well-supported by the hearing record.

2. Petitioner failed to acknowledge he did anything wrong.

A judge's "fail[ure] to recognize the inappropriateness of his actions' ... is a significant aggravating factor on the issue of sanctions." *Matter of Hart*, 7 NY3d at 7-8, quoting *Matter of Aldrich*, 58 NY2d 279, 283 (1983); see *Matter of Duckman*, 92 NY2d at 154-56; *Matter of Sims*, 61 NY2d at 356.

Petitioner concedes that over the course of a nine-day hearing, his "testimony ... attempted to justify the manner in which, on many occasions ... 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" (Pet Br 26-27). Belatedly recognizing that this obstinate refusal to concede wrongdoing would exacerbate his misconduct, Petitioner sought to express remorse during oral argument before the Commission.

Contrary to Petitioner's claim (Pet Br 26-29), however, the Commission did not ignore this eleventh-hour epiphany. It simply found Petitioner's

¹³ The Referee also found that Petitioner's testimony that he did not ask Ms. Cheron to write to the Commission on his behalf was "totally inconsistent" with his prior sworn statement that he had asked her to do so (R1691-92).

“continued insistence *at the hearing* that his actions were appropriate” and “justified by his righteous motives” (R41) (emphasis added) to be more probative.

As this Court held in *Matter of Bauer*, “some instances of contrition may be insincere, and in others no amount of it will override inexcusable conduct.” *Matter of Bauer*, 3 NY3d 158, 165 (2004). Here, Petitioner’s sworn insistence on the stand that he did nothing wrong undermines the sincerity of his supposed contrition at oral argument. As illustrated in an exchange at that oral argument, Petitioner’s last-minute contrition was less due to a change of heart than to a change of counsel (R2712-14).

The Commission’s reliance on Petitioner’s hearing testimony rather than his unsworn statement at oral argument is well-founded. At the time of Petitioner’s hearing nearly three years had passed since the events described in the charges. Petitioner had testified during the Commission’s investigation, been served with two Formal Written Complaints and been provided with copies of the sworn statements of Mr. Joseph and Ms. Cheron prior to the hearing (R247-48, 471).¹⁴ By the time Petitioner was called as a witness, he had listened to Mr. Joseph, Ms. Cheron and numerous others testify about the effect his conduct had on them. Yet Petitioner testified that he acted properly as to every charge in the Formal Written

¹⁴ Pursuant to Judiciary Law § 44 (4) and 22 NYCRR § 7000.6 (h), a judge who is the subject of a Commission hearing is provided with discovery, including witness lists and statements, copies of documents to be introduced into evidence and any exculpatory material.

Complaint (R12, 17, 21, 23-24, 26, 28, 32) and his initial brief to the Commission repeated those claims (R2587-2610). It was only after Petitioner retained new counsel that he suddenly expressed regret.

Commission members had the opportunity to hear and evaluate firsthand the credibility of Petitioner's claim that he now acknowledges error and would not repeat his mistakes. That credibility determination is entitled to deference.¹⁵ See *Matter of Going*, 97 NY2d 121, 124 (2001); *Matter of Collazo*, 91 NY2d 251, 253 (1998). Even if that were not the case, the gravity of his misconduct is such that "no amount of [contrition] will override [his] inexcusable misconduct," *Matter of Bauer*, *supra* at 165.

3. Petitioner's remaining arguments are without merit.

The Commission properly "refused to infer" (Pet Br 29-34) that Petitioner is fit for judicial office because he has not been publicly disciplined for misconduct in the Town of Ramapo. Even if it were true¹⁶ that his conduct in Ramapo was

¹⁵ Petitioner's claims that he wrote a letter of apology to Mr. Joseph (Pet Br 2-4, 8) and apologized to Elsie Cheron (Pet Br 2, 26) are particularly troubling. Petitioner concedes that there is no mention of the alleged letter to Mr. Joseph in the hearing record, but offers no explanation why he failed to introduce this seemingly important fact before the Referee (Pet Br 8). Had he done so, of course, Commission counsel could have recalled Mr. Joseph to testify as to the veracity of Petitioner's claim. Similarly, Petitioner never mentioned his alleged apology to Ms. Cheron during his hearing testimony (R1431-1761), depriving Commission counsel of an opportunity to present evidence in rebuttal.

¹⁶ Pursuant to Judiciary Law § 45, all Commission proceedings are strictly confidential unless confidentiality is waived by the judge or until the Commission transmits a finding of misconduct to this Court. As a result, any complaints that may have resulted in private letters of caution, or are still pending, cannot be made public.

exemplary, the fact that he engaged in conduct that was “appalling and inexcusable” and displayed “extraordinarily poor judgment” (Pet Br 40, 46, 48) in only one of the two towns in which he served is hardly cause for exoneration. A “[j]udge whose conduct ... demonstrates a blatant lack not only of judgment but also of judicial temperament ... should be removed from office notwithstanding that his reputation for honesty integrity and judicial demeanor ... has been excellent.” *Matter of Shilling*, 51 NY2d 397, 399 (1980).

Nor is it a defense, even if true, that Petitioner was motivated by a desire to “maintain the court’s integrity” (Pet Br 40-49). *See Matter of Blackburne*, 7 NY3d at 219 (removing judge who argued she was “motivated by a desire to protect the integrity of the ... court”).

Contrary to Petitioner’s claim, it is simply untrue that he was “out of control ... on only a single day out of ten years” (Pet Br 48-49). As Petitioner concedes, he was angry, rude and intemperate – a synonym for “out of control” – on “many occasions ... between December 2011 and June 2014” (Pet Br 26-27). In any event, this Court has previously removed judges who were “totally out of control” on “only a single day.” *See Matter of Restaino, supra; Matter of Blackburne, supra; Matter of Gibbons*, 98 NY2d 448 (2002).

Petitioner’s repeated claim that he acted quickly in *Curtis v Scott* to get the tenant “back in his apartment that very evening” because he “didn’t want this guy

living on the street” (Pet Br 12, 35, 36) rests on a remarkably selective version of the facts. If Petitioner truly cared about Mr. Curtis’s fate, he would not have repeatedly and improperly refused to grant poor person relief based on “rumors that ... Mr. Curtis dealt drugs” (R1731) and would not have initially set a return date more than week after the papers were filed (R1960). His sudden interest in expediting the case and exposing LSHV’s alleged lack of professionalism came only after he learned LHSV had called the Administrative Judge and Judge Apotheker’s office called his court (R141-42).

Finally, Petitioner’s citation to numerous cases imposing a lesser sanction than removal (Pet Br 56-63) is unavailing. “Judicial misconduct cases are, by their very nature, *sui generis*.” *Matter of Blackburne*, 7 NY3d at 219-20. None of the cases relied on by Petitioner involved both the quantity and severity of misconduct established here. The totality of Petitioner’s misconduct warrants his removal.

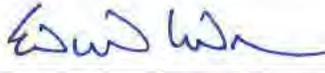
CONCLUSION

It is respectfully submitted that this Court should accept the Commission’s determination that Petitioner has engaged in judicial misconduct that renders him unfit to hold judicial office, and that the appropriate sanction is removal.

Dated: July 13, 2016
New York, New York

Respectfully submitted,

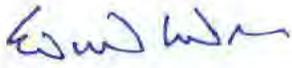
ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct

By: 
Edward Lindner
Deputy Administrator
Corning Tower, 23rd Floor
Empire State Plaza
Albany, New York 12223
(518)453-4613

Of Counsel:
Mark Levine, Esq.
Pamela Tishman, Esq.
Mary C. Farrington, Esq.

CERTIFICATION PURSUANT TO RULE 500.13 (C) (1)

I certify that this brief was prepared using Microsoft Word 2013 and that the total word count for the body of the brief is 13,864 words.


Edward Lindner