

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

MARK J. GRISANTI,

A Justice of the Court of Claims and
an Acting Justice of the Supreme Court,
Erie County.

**POST-HEARING MEMORANDUM TO THE REFEREE AND
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct
400 Andrews Street, Suite 700
Rochester, New York 14604
(585) 784-4141

Of Counsel:

John J. Postel, Esq.
Edward Lindner, Esq.
Denise Buckley, Esq.
David P. Stromes, Esq.
David M. Duguay, Esq.

Dated: January 31, 2022

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	vi
PRELIMINARY STATEMENT	1
INTRODUCTION	1
PROCEDURAL HISTORY	
A. The Formal Written Complaint	4
B. Respondent’s Answer	5
C. The Hearing	7
THE HEARING EVIDENCE.....	8
Charge I: Respondent initiated a confrontation with a neighbor, which developed into a loud, public, profanity-laced and violent street brawl. Respondent physically shoved a police officer who responded to the scene, made threats and profane comments to police personnel, invoked personal relationships with members of the Buffalo Police Department and the Mayor of Buffalo, and lied to three officers and detectives about his role in the altercation.....	8
A. Respondent called 911 and falsely reported that two vehicles belonging to the Meles were blocking his driveway, even though neither vehicle was actually blocking his driveway or parked on his property.	10
B. Respondent led his wife across the street and onto the Meles’ driveway.	11
C. Respondent escalated a verbal argument with Joe Mele and engaged in a physical confrontation that devolved into a street brawl.	12
D. When Buffalo Police Department officers arrived on the scene, Ms. Grisanti interfered with their duties, forcing them to restrain her.	15

TABLE OF CONTENTS

PAGE

E. Respondent pushed and threatened a BPD officer, and then repeatedly asserted personal relationships with BPD personnel and the Mayor of Buffalo.....	18
F. Respondent falsely told the police a version of the altercation in which the Meles began the fight and he tried to play peacemaker, then continued to tout his personal relationships with BPD officers and the Mayor of Buffalo.	20
G. Respondent resumed his demands that his wife be released, attempted to justify pushing Officer Gehr, and was taken into custody.....	22
H. Respondent falsely told two BPD detectives that he was on his side of the street when the fight broke out, and he told one of them that he had apologized to Officer Gehr.....	24
I. Respondent’s Hearing Testimony	27
i. Prior to June 22, 2020, Respondent knew the Meles to be inconsiderate, provocative and physically threatening.....	27
ii. On June 22, 2020, Respondent felt provoked, called 911, and crossed the street to fight Mr. Mele	28
iii. Respondent admitted pushing a uniformed officer, loudly requesting that his wife be unhandcuffed, and mentioning his personal relationships with Buffalo Police Department personnel and the Mayor of Buffalo	30
iv. Respondent admitted that he repeatedly misled Buffalo Police Department personnel regarding the start of the altercation....	33

TABLE OF CONTENTS

	PAGE
Charge II: Respondent presided over eight cases involving attorney Matthew Lazroe, notwithstanding – and without disclosing to the parties – that he had an ongoing financial relationship with Mr. Lazroe.	34
A. While Mr. Lazroe was sending Respondent monthly payments in connection with his purchase of Respondent’s law practice, Respondent presided over five cases in which Mr. Lazroe represented one of the parties and made no disclosure about their financial relationship	35
B. Mr. Lazroe concluded his monthly payments for Respondent’s law practice in June 2019. Over the next seven months, Respondent presided over three cases in which Mr. Lazroe represented one of the parties and made no disclosure about their financial relationship	38
C. Respondent’s Hearing Testimony	39
Charge III: Respondent filed a Financial Disclosure Statement with the Ethics Commission for the State of New York Unified Court System in which he inaccurately reported the income he received for the purchase of his private law practice, and he failed for five years to report his extra-judicial income to the clerks of the Court of Claims and Erie County Supreme Court.	43
A. Respondent did not accurately disclose the \$15,000 down payment he received from the sale of his law practice on the 2015 Financial Disclosure Statement he filed with the Ethics Commission for the New York State Unified Court System	44
B. Respondent failed to report income from the sale of his law office to the clerks of the Court of Claims and Erie County Supreme Court for the first five years of his judicial service	46
C. Respondent’s Hearing Testimony	47

TABLE OF CONTENTS

PAGE

ARGUMENT

POINT I

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY ENGAGING IN A STREET BRAWL WITH HIS NEIGHBORS, ESCALATING THE ALTERCATION WHEN HE COULD AND SHOULD HAVE DISENGAGED, THREATENING AND PHYSICALLY SHOVING A POLICE OFFICER WHO RESPONDED TO THE SCENE, SEEKING PREFERENTIAL TREATMENT FROM THE POLICE BASED ON HIS FAMILIAL AND POLITICAL CONNECTIONS, AND REPEATEDLY PROVIDING FALSE INFORMATION ABOUT THE ALTERCATION TO LAW ENFORCEMENT PERSONNEL51

A. Respondent committed misconduct when he shouted profanities at the Meles and engaged Joe Mele in a public street brawl, and he exacerbated that misconduct by repeatedly choosing to escalate the matter instead of retreating.....53

B. Respondent committed misconduct by physically shoving and verbally threatening police personnel who responded to the neighborhood fight.55

C. Respondent committed misconduct by seeking and/or appearing to seek special treatment in repeatedly invoking personal relationships with BPD officers and the Mayor of Buffalo.....58

D. Respondent committed misconduct by making a false report to a 911 operator, lying to law enforcement personnel about his role during the altercation, and by attempting to minimize his involvement by falsely claiming that he was not present when the altercation began.....62

TABLE OF CONTENTS

PAGE

POINT II

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY
PRESIDING OVER EIGHT CASES DESPITE HAVING A BUSINESS
RELATIONSHIP WITH ONE OF THE ATTORNEYS THAT HE DID
NOT DISCLOSE.....66

POINT III

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY
FAILING TO PROPERLY REPORT \$15,000 IN INCOME ON
AN ETHICS COMMISSION FINANCIAL DISCLOSURE
STATEMENT, AS WELL AS OVER \$43,000 IN INCOME TO
THE CLERKS OF THE COURT OF CLAIMS AND
ERIE COUNTY SUPREME COURT.....72

- A. Respondent committed misconduct when he filed an inaccurate
and misleading FDS form in 2015.72
- B. Respondent committed misconduct by failing to report any
income from the sale of his law practice to the clerks of his
courts, as required by Rule 100.4(H)(2).....76

CONCLUSION.....78

APPENDIX A:
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW A-1

TABLE OF AUTHORITIES

PAGE

CASES

<i>Matter of Alessandro</i> 13 NY3d 238 (2009).....	63, 72, 73
<i>Matter of Backal</i> , 87 NY2d 1 (1995).....	53, 54, 58
<i>Matter of Blackburne</i> , 7 NY3d 213 (2006).....	n56
<i>Matter of Cohen</i> , 74 NY2d 272 (1989).....	59
<i>Matter of Doyle</i> , 23 NY3d 656 (2014)	68
<i>Matter of Esworthy</i> , 77 NY2d 280 (1991).....	59
<i>Matter of Kuehnel</i> , 49 NY2d 445 (1980).....	52, 55
<i>Matter of Miller</i> , 35 NY3d 484 (2020).....	72, 73, 75, 76, 77
<i>Matter of Myers</i> , 67 NY2d 550 (1986).....	63
<i>Matter of Steinberg</i> , 51 NY2d 74 (1980).....	53, 54
<i>Matter of VonderHeide</i> , 72 NY2d 658 (1988).....	77

COMMISSION DETERMINATIONS

<i>Matter of Alessandro</i> , 2010 Ann Rep 82 (Commn on Jud Conduct Feb 11, 2009), <i>removal accepted</i> 13 NY3d 238 (2009).....	63, 66
<i>Matter of Anderson</i> , 2013 Ann Rep 75 (Commn on Jud Conduct Oct 14, 2012)	73
<i>Matter of Dier</i> , 1996 Ann Rep 79 (Commn on Jud Conduct Oct 2, 1995)	73, 75
<i>Matter of Dixon</i> , 2017 Ann Rep 100 (Commn on Jud Conduct May 26, 2016).....	59
<i>Matter of Eannace</i> , 2021 Ann Rep 93 (Commn on Jud Conduct Nov 16, 2020)	73
<i>Matter of Miller</i> , 2021 Ann Rep 197 (Commn on Jud Conduct Feb 14, 2020), <i>aff'd</i> 35 NY3d at 484	73
<i>Matter of Mogil</i> , 1997 Ann Rep 116 (Commn on Jud Conduct Feb 13, 1996)	62, 65
<i>Matter of Pulver</i> , 2005 Ann Rep 203 (Commn on Jud Conduct May 18, 2004).....	68

TABLE OF AUTHORITIES

PAGE

COMMISSION DETERMINATIONS - CONT'D

Matter of Ramich, 2003 Ann Rep 154
(Commn on Jud Conduct Dec. 27, 2002)..... 73, 76

Matter of Ramirez, 2018 Ann Rep 232
(Commn on Jud Conduct May 4, 2017).....59

Matter of Schilling, 2013 Ann Rep 286
(Commn on Jud Conduct May 8, 2012).....60

Matter of Slavin, 1991 Ann Rep 76
(Commn on Jud Conduct, Feb 28, 1990) 53, 54

Matter of Torraca, 2001 Ann Rep 125
(Commn on Jud Conduct Nov 7, 2000) 68, 69

Matter of Wiater, 2007 Ann Rep 115
(Commn on Jud Conduct, June 29, 2006)..... 53, 54

STATUTES AND REGULATIONS

22 NYCRR § 40.2(a)72

Judiciary Law § 44(4) 4, 6

RULES GOVERNING JUDICIAL CONDUCT

100.1 55, 58, 62, 67

100.2 62, 67

100.2(A)58

100.3(E)(1)(c)67

100.4(A)(2)55, 58, 62

100.4(D)(1)(a)67

100.4(D)(1)(c)67

100.4(H)(2) *passim*

100.4(I).....72

TABLE OF AUTHORITIES

PAGE

OTHER AUTHORITIES

Advisory Committee on Judicial Ethics Opinion 05-130(B)	69, 70
Advisory Committee on Judicial Ethics Opinion 06-62.....	69, 70

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct (“Commission”) in support of the recommendation that the Referee adopt the appended proposed findings of fact and conclusions of law and determine that the Honorable Mark J. Grisanti (“Respondent”) has committed judicial misconduct.

INTRODUCTION

On the evening of June 22, 2020, Respondent initiated and repeatedly escalated an altercation with two neighbors over a parking spot on their street. Before the incident was over, in conduct wholly unbecoming a Judge of the Court of Claims and Acting Justice of the Supreme Court, Respondent had brawled with a neighbor on a public street, paraded around the block shirtless and screaming profanities, physically shoved and verbally threatened a responding police officer, attempted to curry favor with the police by gratuitously dropping names of police personnel and local officials he knew, and repeatedly lied to various officers and detectives about his role in the altercation.

The incident began when Respondent came home that evening to find a truck and an SUV that he believed belonged to his neighbors, Mr. and Mrs. Mele, parked near the edge of his driveway. Respondent called 911 and falsely reported that the vehicles were blocking his driveway. Then, after gratuitously volunteering

that his children worked for the police and fire departments, he asked that the vehicles be ticketed or towed.

Rather than wait for the police to arrive and settle the matter, Respondent and his wife engaged in an expletive-laden verbal exchange with the Meles, then walked across the street toward the Meles' home, still exchanging insults and obscenities with their neighbors. Respondent and Mr. Mele challenged one another to a fight and ultimately wound up wrestling in the street. During the brawl, Respondent's shirt was torn off his body, and Mr. Mele fell on his face injuring his eye.

While Mr. Mele and Respondent were briefly separated, another neighbor implored Respondent to stop and reminded him that the police were on the way. Instead of disengaging, Respondent further escalated the conflict, continuing to goad Mr. Mele, "You want to go again, tough fucking guy," and threatening, "I'll fucking flatten your face again." Half-naked in the street, Respondent continued to yell profanities at his neighbors until the police arrived.

While the responding officers attempted to speak with the parties, Respondent's wife approached the Meles' driveway and yelled profanities toward the Meles and an officer. When an officer responded by attempting to handcuff Ms. Grisanti, Respondent approached him, laid his hands on the officer's shoulder, and shoved him. Respondent then began threatening the officers even as one of

them physically restrained him, telling them they had better let his wife go and would be sorry.

When that did not work, Respondent volunteered that his children were Buffalo police officers, threatened to call them and their lieutenants, falsely asserted that he was the cousin of the Deputy Police Commissioner, and added that he was “good friends” with the Mayor of Buffalo. Respondent stopped dropping names only after an officer berated him for seeking special treatment and placed him in handcuffs.

Finally, Respondent gave his account of the altercation with the Meles to at least three different officers and detectives that evening, lying each time about his role and participation in the fight. Respondent repeatedly asserted that his wife went across the street to confront the Meles while he was still inside his house, falsely claiming that he rushed across the street afterwards to protect his wife only after the Meles began assaulting her. Indeed, video recovered from the Meles’ home security camera clearly shows Respondent leading his wife across the street before the fighting began.

The June 2020 brawl aside, Respondent engaged in additional misconduct stemming from the 2015 sale of his law firm. Specifically, Respondent permitted the attorney who bought his practice to appear before him on a repeated basis. Several times, Respondent assigned the attorney to cases before him and awarded

the attorney thousands of dollars in fees, all while the attorney was remitting monthly payments to Respondent in connection with the sale or in the two years thereafter. Additionally, on his annual Financial Disclosure Statement for 2015, Respondent underreported the amount of money he made from the sale of his law practice, and from 2015 through 2019, he failed entirely to report his earnings from the sale to the clerks of his courts, contrary to Rule 100.4(H)(2).

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint (“Complaint”), dated August 30, 2021, containing three charges. Charge I alleged that, on or about June 22, 2020, Respondent engaged in a public, profanity-laced physical confrontation with two of his neighbors and subsequently (A) physically confronted a responding police officer, (B) made threatening comments to police personnel, (C) invoked his family ties to members of the Buffalo Police Department and relationship with the Mayor of Buffalo, and (D) was handcuffed, placed in the back of a patrol vehicle and transported to a police station (Complaint ¶5).

Charge II alleged that, from in or about January 2018 through in or about December 2020, Respondent took judicial action in eight cases involving an attorney notwithstanding and without disclosing that (A) he had an ongoing

financial relationship with the attorney while five matters were pending, and (B) that his financial relationship with the attorney had ended within seven months of the other three matters (Complaint ¶15).

Charge III alleged that, (A) in or about 2016, Respondent inaccurately reported in a financial statement he filed with the Ethics Commission for the New York State Unified Court System the income he received from the 2015 sale of his private law practice, and (B) in 2015 until in or about 2019, as a Court of Claims Judge and Acting Supreme Court Justice, he failed to make timely and accurate reports of his extra-judicial income to the clerks of the Court of Claims and Erie County Supreme Court as required (Complaint ¶44).

B. Respondent's Answer

Respondent filed an Answer dated November 17, 2021. As to Charge I, he admitted that he was in a confrontation with neighbors and that during the course of the confrontation he made physical contact with a Buffalo police officer and was transported to a police station in handcuffs. Respondent denied that he made threats to police officers or attempted to invoke his familial ties to obtain preferential treatment (Answer ¶ RESPONSE #5).

As to Charge II, Respondent asserted that he was unaware of the need to disclose his financial relationship with the attorney during the pendency of the

actions. Respondent denied other allegations and inferences of misconduct (Answer ¶ RESPONSE #15).

As to Charge III, Respondent asserted that he “inadvertently clicked the incorrect box” when reporting the income he received for the purchase of his private law practice, and that he corrected the error for 2015 through 2017.

Respondent denied other allegations and inferences of misconduct (Answer ¶ RESPONSE #44).

Respondent also asserted three affirmative defenses. Respondent first alleged that he “exercised physical force to the extent he reasonably believed was necessary to defend himself and his wife pursuant to the laws of the State of New York” (Answer ¶52).

Respondent alleged as a second affirmative defense that “the provisions of the Judiciary Law, which the complaint alleges that the Respondent violated are void for vagueness, and therefore unconstitutional, under the constitutions of the United States and New York State” (Answer ¶53).

Respondent alleged as a third affirmative defense that “[f]ailing to conduct this proceeding in person violates Respondent’s right under Judiciary Law § 44[4] to call and cross-examine witnesses and present evidentiary data and material relevant to the complaint, and, therefore, violates Respondent’s right to Due

Process under the constitutions of the United States and New York State” (Answer ¶54).

C. The Hearing

On January 7, 2022, the Commission designated William T. Easton, Esq., as Referee to hear and report findings of fact and conclusions of law. An in-person hearing was held on June 13-15, 21, 27-28, and July 6-7, 11, 2022. Commission Counsel called four witnesses and introduced 45 exhibits into evidence. Respondent testified on his own behalf, called 14 witnesses, and introduced 38 exhibits into evidence.

THE HEARING EVIDENCE

Charge I: Respondent initiated a confrontation with a neighbor, which developed into a loud, public, profanity-laced and violent street brawl. Respondent physically shoved a police officer who responded to the scene, made threats and profane comments to police personnel, invoked personal relationships with members of the Buffalo Police Department and the Mayor of Buffalo, and lied to three officers and detectives about his role in the altercation.

In June 2020, Respondent – a Judge of the Court of Claims and Acting Justice of the Supreme Court – lived at 21 [REDACTED] Avenue in Buffalo with his wife, Maria Grisanti (Grisanti: 962; Respondent: 1105, 1138).¹ Joe and Gina Mele lived across the street at 16 [REDACTED] Avenue (Mele: 39). Although the Grisantis and the Meles had been neighbors for 16 years, they did not get along. Several other neighbors – including Joseph Contino, Jeanne Contino, and Linda Chwalinski – reported a long history of strife on [REDACTED] Avenue between the Meles and their neighbors (Jo.Contino: 368, 397; Je.Contino: 431, 433, 446; Chwalinski: 483, 489-91; Grisanti: 966-70, 980; Respondent: 1166-67, 1175-76).

¹ References to “Ex” are to exhibits introduced into evidence at the hearing by the Commission. References to “Resp Ex” are to exhibits introduced into evidence at the hearing by Respondent. All other citations, unless noted, are to the hearing transcript. Citations to “Grisanti” are to Maria Grisanti’s testimony, and citations to “Respondent” are to Judge Grisanti’s testimony.

Exhibits 2, 30 and 41 – video recordings from Mele home security devices – do not depict the correct date or times; also, the videos at times appear choppy and recorded audio does not align with the video. The time-date inaccuracies and audio-visual discrepancy are due to the replacement of an original system component with a component from a different manufacturer that occurred prior to June 22, 2020 (Mele: 75-76).

Linda Chwalinski testified that Gina Mele once “physically assaulted” her “from behind and . . . threatened to kill [her] . . . in front of about eight to ten small children.” Ms. Chwalinski averred that she “feared for [her] life” every time she went on her front lawn and that “every neighbor” had incidents with the Meles (Chwalinski: 483, 489, 491). According to the Continos, the Meles had “a history of just being extremely, extremely mean and threatening” (Jo.Contino: 368, 397; Je.Contino: 433, 446).

Respondent himself knew of the Meles’ reputed propensity for confrontation. In 2014, after Respondent expanded his driveway, the Meles began parking their cars in a manner that Respondent believed encroached on his driveway to “provoke and harass” him (Respondent: 1170). According to Respondent, when he asked the Meles to stop, they would give him “the finger, or . . . spit at” him in return (Respondent: 1169). Respondent testified that at other times, Mr. Mele would ask Respondent, “Do you want a shot at the title,” which Respondent “took it to mean that he wanted to have some sort of an altercation” like a fist fight (Respondent: 1171-72, 1345-46). Respondent acknowledged that he knew Mr. Mele to be “an instigator” who “liked to start trouble” (Respondent: 1347, 1371).

A. Respondent called 911 and falsely reported that two vehicles belonging to the Meles were blocking his driveway, even though neither vehicle was actually blocking his driveway or parked on his property.

On the evening of June 22, 2020, Respondent returned home to find two vehicles that did not belong to him parked on opposite sides of his driveway: a truck and an SUV, both of which he believed belonged to the Meles. Neither vehicle blocked the entrance to his driveway, though both were parked within a few feet of the edge. Respondent was able to pull straight into his driveway and park without issue (Ex 41 at 07:00:53 – 07:01:30). Nevertheless, Respondent and Ms. Grisanti were disturbed by how the vehicles were parked (Grisanti:1032; Respondent: 1334).

After unloading the car, Respondent called 911 to report that “an idiot neighbor across the street” had four cars parked on Respondent’s side of the street. He told the operator, “two of them are blocking my driveway,” and “when I came in, I almost hit ‘em” (Exs 1; 1-A, p 1; Respondent: 1163, 1344). Respondent volunteered that he had “daughters, and sons, and son-in-law that are police, that are the fire department,” and that “[w]hatever it’s worth, the mayor’s not doing things right with you guys.” He then told the operator, referring to the vehicles parked near his driveway, “I want a ticket . . . on it, or I want it towed” (Exs 1; 1-A, pp 1-2). Respondent did not hear yelling from the Meles’ side of the street during his 911 call (Respondent: 1344).

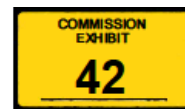
B. Respondent led his wife across the street and onto the Meles' driveway.

Ms. Grisanti walked over to the truck and put her foot out toward it to measure where it was parked in relation to the Grisanti driveway (Grisanti: 1032-33). Respondent heard the Meles begin to yell as Ms. Grisanti walked behind the truck (Respondent: 1344). Respondent and his wife began pointing and gesturing toward the Meles' house (Ex 2 at 07:14:00 – 07:14:22). The Grisantis argued with Gina Mele – who was outside on her porch – and yelled at her, “move the fucking truck,” as Joe Mele joined his wife outside (Mele: 46). Respondent shouted at the Meles that he had “already called the cops,” and Ms. Mele and Ms. Grisanti exchanged vulgarities. Respondent, still yelling across the street, threatened to park his cars so that they encroached on the Meles' driveway “every fucking . . . Thursday” (Ex 2-A, pp 1-3).²

With the Meles still standing on their porch, Respondent walked off his property, stepped into the street, and headed toward the Meles' driveway, with his wife a step or two behind him (Exs 2 at 07:14:28 – 07:14:33; 42). At the hearing, Respondent acknowledged that Commission Exhibit 42 clearly shows him preceding his wife as they walked across the street (Respondent: 1352-53). That

² Alternate-side parking on the Meles' side of the street began on Thursday evenings (Chwalinski: 498-99; Grisanti: 969-70; Respondent: 1327).

exhibit also shows the location of the Meles' truck in relation to Respondent's driveway. Plainly, the Meles' truck was not blocking the Grisantis' driveway.



C. Respondent escalated a verbal argument with Joe Mele and engaged in a physical confrontation that devolved into a street brawl.

As the video from the Meles' camera shows, Mr. Mele stepped off his porch as the Grisantis approached and met them at the edge of his driveway (Ex 2 at 07:14:34 – 07:14:35). Mr. Mele said to Respondent, “Come on, you cocksucker,” and Respondent replied, “Come on . . . come on . . . come on” (Ex 2-A, p 3). Mr. Mele responded, “Let’s see . . . what you’ve got, tough guy,” and “Take your fucking shot.” In answer, Respondent said, “What do you got,” and Mr. Mele told

Respondent to “Get the fuck out of here” (Ex 2-A, pp 3-4). Respondent declined, instead calling Mr. Mele a “Fucking asshole.” Mr. Mele replied in kind, “Come on, motherfucker . . . I’ll fucking . . . knock you out” (Ex 2-A, p 4).

Around this time, Ms. Grisanti stepped between Respondent and Mr. Mele, and Ms. Mele and Theresa Dantonio – Gina Mele’s sister – joined the fray (Grisanti: 998; Respondent: 1193-96). The three women began wrestling, and Ms. Grisanti ended up in a chokehold. When Mr. Mele entered that scrum, Ms. Grisanti bit his arm (Exs 2 at 07:14:39 – 07:14:54; 2-A, p 4; 6; 13-A, pp 24-25; Grisanti: 999-1000; Respondent: 1196-97).

Respondent, now no longer separated from Joe Mele, said to him, “Come on . . . you think we’re done . . . Come on” (Ex 2-A, p 5). As the Meles’ camera continued to record the scene, Respondent and Mr. Mele grabbed one another and grappled in the street. Respondent pushed Mr. Mele toward Respondent’s own driveway, and as the men continued to wrestle, Mr. Mele pulled off Respondent’s shirt and dropped it on the ground, leaving Respondent standing in the street in a white tank-top undershirt (Ex 2 at 07:14:55 – 07:15:20). Respondent stopped fighting long enough to pick up his shirt, then grabbed ahold of Mr. Mele again. After the two grappled for five or six seconds, Mr. Mele fell to the ground near the edge of Respondent’s driveway (Ex 2 at 07:15:21 – 07:15:37). As Mr. Mele lay on the ground, Respondent called him a “[f]ucker” (Ex 2-A, p 6).

At around the same time, Linda Chwalinski – who lived at 15 [REDACTED] Avenue with her husband Gerald – came outside and told her husband, “Call 911” (Ex 2-A, p 5; Chwalinski: 456, 458-59, 505). Charlie Adamo – who lived down the block at 37 [REDACTED] Avenue – came up to Respondent pleading, “Mark, come on. Come on, please . . . [t]he cops are going to be here” (Exs 2-A, p 7; Respondent: 1203). Respondent continued taunting Mr. Mele anyway, saying “You want to go again, tough fucking guy . . . Tough guy, yeah . . . I’ll fucking flatten your face again” (Ex 2-A, p 9).

Ignoring Respondent’s taunt, Joe Mele – whose eyeglasses had been pushed into his face causing visible damage near his eye – stood up, backed into the street, and ultimately walked with his wife back to his own driveway (Exs 2 at 07:16:09 – 07:17:00; 7; 8; Respondent: 1202). However, after a few moments of continued arguing, Respondent, his wife, and the Meles re-entered the street and began brawling again (Ex 2 at 07:17:10 – 07:17:16). When the grappling ended a few moments later, Respondent was left bare-chested, his tank top ripped and hanging from his waist (Ex 2 at 07:17:27). The Meles and Grisantis continued shouting expletives from their respective driveways, with Respondent calling Mr. Mele a “fucking asshole,” saying “Fuck you” twice, and yelling, “Nobody . . . fucking likes you guys . . . you piece of shit” (Ex 2-A, pp 13, 15-16).

D. When Buffalo Police Department officers arrived on the scene, Ms. Grisanti interfered with their duties, forcing them to restrain her.

At approximately 8:45 p.m., Buffalo Police Department (“BPD”) Officer Ryan Gehr and his partner, Officer Larry Muhammad, arrived together at 21 [REDACTED] Avenue in response to a call about a fight to find Respondent standing shirtless in the street (Gehr: 162-163, 186; Muhammad: 249).³ Ms. Grisanti went up to their car, pointed toward the Meles, and screamed, “They’re a bunch of fucking assholes” (Exs 11 at 00:00:25 – 00:00:27; 11-A, p 1).

Ms. Grisanti walked directly to the Mele driveway and began screaming into Ms. Dantonio’s face from mere inches away. Officer Gehr told Ms. Grisanti, “We’re . . . not doing this,” and Officer Muhammad shepherded her and Respondent across the street so that he could speak with them on the Grisanti property while Gehr spoke with the Meles in their driveway (Exs 11 at 00:00:28 – 00:00:42; 11-A, p 2). However, while Officer Gehr was speaking with the Meles and Ms. Dantonio, Ms. Grisanti marched across the street toward them and yelled toward Gehr, “You fucking walked over there” (Exs 11 at 00:00:49 – 00:00:50; 11-A, p 2). Gehr told Ms. Grisanti, “You’re going to step back,” and Muhammad again walked her back across the street to her own driveway (Exs 11 at 00:00:49 – 00:00:52; 11-A, p 2).

³ Both officers were wearing body cameras (Gehr: 163-64; Muhammad: 249-50), footage from which is cited herein as Exs 11 and 12.

Despite Officer Muhammad's attempts to speak with the Grisantis, Ms. Grisanti resumed yelling profanities across the street at the Meles, including, "fucking . . . rotten, no-good bastards," and "fucking rotten neighbors" (Exs 11 at 00:01:00 – 00:01:06; 11-A, p 3; 12 at 00:00:23 – 00:00:31; 12-A, p 1). Officer Gehr announced he would not listen to yelling and asked the Meles to speak with him farther down their driveway (Exs 11 at 00:01:07 – 00:01:10; 11-A, pp 3-4). In response to an inquiry from Ms. Dantonio, Gehr confirmed that the truck and SUV about which Respondent had complained were not blocking Respondent's driveway (Exs 11 at 00:01:12 – 00:01:16; 11-A, p 4).⁴

Back across the street, Respondent told Officer Muhammad that the altercation began when Ms. Grisanti crossed the street on her own, then the "[t]hree of them push[ed] her . . . [s]o, I come across . . . the street" (Exs 12 at 00:01:03 – 00:01:06; 12-A, p 3). Around the same time, Ms. Grisanti interrupted Officer Gehr's conversation with the Meles by screaming across the street, "Wait 'til my son hears what you did" (Exs 11 at 00:01:32 – 00:01:37; 11-A, p 5; 12 at 00:00:57 – 00:01:01; 12-A, p 2; Grisanti: 1087). Officer Gehr responded to Ms. Grisanti's interference by telling her, "Ma'am, if you don't stop yelling, this is going to be a problem for you" (Exs 11 at 00:01:37 – 00:01:40; 11-A, p 6; 12 at 00:01:01 – 00:01:04; 12-A, p 3). Ms. Grisanti replied, "I don't care . . . You're not

⁴ Neither the truck nor the SUV were ticketed (Mele: 45; Gehr: 171).

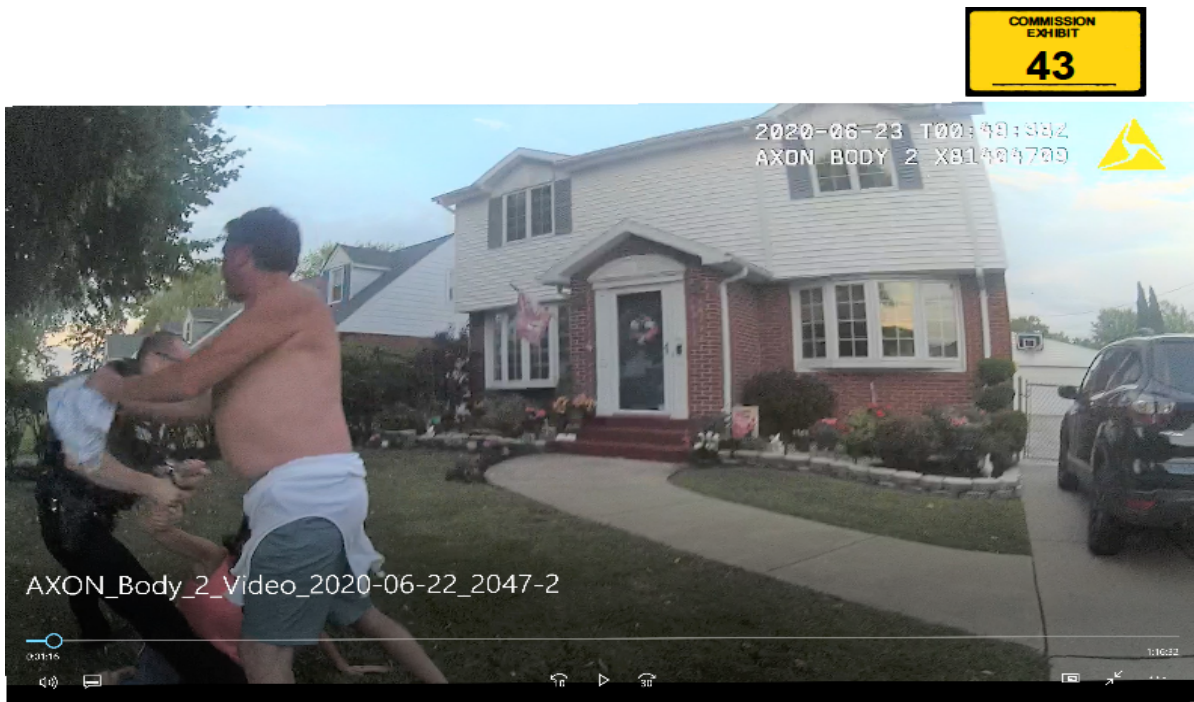
going to arrest me” (Exs 11 at 00:01:41 – 00:01:44; 11-A, p 6; 12 at 00:01:04 – 00:01:08; 12-A, p 3).

Determining that the de-escalation techniques in which he had been trained were not working, Officer Gehr walked briskly across the street to the Grisanti’s driveway and reached for Ms. Grisanti’s arm, attempting to handcuff her (Exs 11 at 00:01:43 – 00:01:46; 12 at 00:01:09 – 00:01:11; Gehr: 167, 203, 229-32; Grisanti: 1016). Ms. Grisanti yelled, “[d]on’t fucking arrest me,” as she flailed her arms and twisted her body away from Gehr (Exs 11 at 00:01:46 – 00:01:49; 11-A, p 6; 12 at 00:01:09 – 00:01:13; 12-A, p 4). Officer Gehr replied, “We are not doing this right now,” and continued to try to place her in handcuffs (Exs 11 at 00:01:49 – 00:01:52; 11-A, p 6; 12 at 00:01:13 – 00:01:16; 12-A, p 4). At that point, Respondent walked up behind Gehr and yelled “hey,” three times (Exs 11 at 00:01:48 – 00:01:52; 11-A, p 6; 12 at 00:01:12 – 00:01:15; 12-A, p 4). Ms. Grisanti continued to resist Gehr, which prompted him to grab her right wrist, turn her body with both his hands, and bring her to the ground on her left side, with her left hand and arm bracing her fall – a lawful takedown procedure in which he had been trained (Exs 11 at 00:01:50 – 00:01:52; 12 at 00:01:10 – 00:01:16; Gehr: 167; Muhammad: 280-81).⁵

⁵ After landing on the ground, Ms. Grisanti immediately said, “No. It’s okay,” and did not complain of any pain or injury (Exs 11 at 00:01:52 - 00:01:53; 11-A, p 6).

E. Respondent pushed and threatened a BPD officer, and then repeatedly asserted personal relationships with BPD personnel and the Mayor of Buffalo.

While Officer Gehr was handcuffing Ms. Grisanti, Respondent walked up to Gehr, placed both of his hands on Gehr’s upper body, and shoved Gehr backward (Exs 11 at 00:01:52 – 00:01:54; 12 at 00:01:14 – 00:01:17; 43). The following still image captured from Muhammad’s body camera shows that shove in full detail.



Officer Muhammad immediately admonished Respondent, “no, no, no, no” (Exs 11 at 00:01:53; 11-A, p 6; 12 at 00:01:15 – 00:01:17; 12-A, p 4). Ignoring him, Respondent yelled, “Dude, dude” at Officer Gehr, which prompted Muhammad to place Respondent in a bear hug and tell him, “Keep your hands off

a cop” (Exs 12 at 00:01:18 – 00:01:20; 12-A, p 4). Undeterred, Respondent told Gehr, “You better get off my fucking wife” and continued calling him “Dude” as Muhammad maintained his grip on Respondent and said, “Do not fight a police officer” (Exs 11 at 00:01:53 – 00:01:59; 11-A, p 7; 12 at 00:01:14 – 00:01:26; 12-A, pp 4-5; Muhammad: 253-55). When Gehr finally succeeded in handcuffing Ms. Grisanti, Respondent yelled, “[y]ou arrest my fucking wife . . . you’re going to be sorry,” and then volunteered, “My son . . . and my daughter are . . . both police officers.” When Gehr did not release Ms. Grisanti, Respondent exclaimed, “Oh my God, are you fucking kidding me, dude?” (Exs 11 at 00:02:10 – 00:02:16; 11-A, pp 7-8; 12 at 00:01:35 – 00:01:45; 12-A, p 5). Respondent continued, “Listen . . . If you don’t get the cuffs off her right now . . . you’re going to have a problem.” Recognizing that to be a threat, Muhammad responded, “We’re not doing that; we’re not threatening that.” Bare-chested and pointing at Gehr, Respondent persisted, “He needs to get the cuffs off her” (Exs 12 at 00:02:00 – 00:02:16; 12-A, pp 6-7; 44).

Officer Muhammad told Respondent that the police were not going to let Respondent’s “demand[s]” dictate their actions, and he asked Respondent to “let us just work this through” (Exs 12 at 00:02:16 – 00:02:23; 12-A, p 7). Respondent continued his obstinance and again volunteered his familial connections with the

BPD, stating, “No. Watch . . . I’m going to need to call my son and my daughter and their Lieutenants right now” (Exs 12 at 00:02:24 – 00:02:28; 12-A, p 7).

F. Respondent falsely told the police a version of the altercation in which the Meles began the fight and he tried to play peacemaker, then continued to tout his personal relationships with BPD officers and the Mayor of Buffalo.

After Officer Gehr placed Ms. Grisanti into a police car, Gehr and Officer Muhammad – along with Officer Richard Hy, who had just arrived on the scene – told Respondent that the officers wanted to hear his side of the story. Respondent began by stating that his daughter works “in B District,” volunteering “My son’s . . . in C District,” and falsely stating that “Gramaglia’s my cousin”⁶ (Exs 11 at 00:06:23 – 00:06:43; 11-A, p 18; 12 at 00:05:48 – 00:06:07; 12-A, pp 14-15).

Respondent told the officers a version of the altercation in which the Meles attacked his wife, and he went across the street to give her aid. Specifically, Respondent stated that he initially called the police to ask them to knock on the Meles’ door and tell them to move the truck, but that he did not want the truck ticketed (Exs 11 at 00:06:54 – 00:07:32; 11-A, pp 19-20; 12 at 00:06:18 – 00:06:56; 12-A, pp 15-16). Respondent then told the officers that his wife went across the street on her own while he was in the house, and she was on her own

⁶ “B District” and “C District” are divisions within the BPD (Grisanti: 1030). Joseph Gramaglia was the BPD Deputy Police Commissioner on June 22, 2020, who was not in fact related to Respondent (Muhammad: 256; Respondent: 1225, 1405).

when confronted by “the two girls and Joe [Mele]” (Exs at 11 00:07:33 – 00:07:45; 11-A, p 20).⁷

Respondent continued his narrative, stating that when he crossed the street after his wife, Joe Mele said, “Oh, you want to go? You want to go, tough guy?” Respondent claimed to have replied, “No, Joe,” and said that he sought only to “bring[] Maria back” (Exs 11 at 00:07:46 – 00:07:51; 11-A, p 20). At that point, Respondent claimed, Joe Mele “whack[ed]” him and “pushe[d]” him backward, which prompted Respondent to reply, “Dude, you need to, like, calm down” (Exs 11 at 00:07:51 – 00:08:00; 11-A, p 20). None of those words appear on the audio recording of the altercation itself (*see* Exs 2; 2-A).

Respondent stopped and re-started his story several times, repeating that his wife walked over to the Meles’ property on her own while he was in the house, and that by the time he realized what was happening, “[t]hey frigging bolt from the porch. The girl’s got her frigging hand on my wife’s throat, and that’s when I walked over there” (Exs 11 at 00:08:52 – 00:09:04; 11-A, p 21). He later reiterated, “I mean, I walked over to grab Maria and he goes, ‘Oh, you want to go, tough guy?’ I’m like, ‘No, Joe, I’m taking her away.’ Boom and push” (Exs 11 at 00:10:01 – 00:10:08; 11-A, p 23). At one point, Respondent asserted that the

⁷ Respondent told a similar story to his daughter, BPD officer Ashlee Amoia, when he called her from his cellphone immediately before giving this account to the officers on the scene (Exs 11 at 00:06:04 - 00:06:13; 11-A, p 17; 12 at 00:05:29 - 00:05:37; 12-A, p 14).

Meles were looking “to start problems” and then volunteered out of the blue, “I’m good friends with [Buffalo Mayor] Byron Brown. He’s like, ‘It’s always something. Mark, just freaking ignore them.’” (Exs 11 at 00:09:22 – 00:09:30; 11-A, p 22).

G. Respondent resumed his demands that his wife be released, attempted to justify pushing Officer Gehr, and was taken into custody.

After finishing his account of the Mele altercation, Respondent said to Officer Gehr, “Do me a favor . . . Get her out of the car and I’ll bring her inside.” He added, “I didn’t mean to tackle you, but, I mean, you kind of threw my wife down on the ground pretty hard and I don’t appreciate that” (Exs 11 at 00:10:26 – 00:10:32; 11-A, pp 23-24). When Gehr tried to respond, Respondent interrupted him to remind him that Respondent’s daughter and son-in-law were police officers, then added “I know what you guys are going through right now” (Exs 11 at 00:10:39 – 00:10:49; 11-A, p 24). Gehr attempted to explain why he acted as he did, but Respondent raised his voice, told Gehr that his conduct “was not necessary,” and said, “you need to chill out” (Exs 11 at 00:10:50– 00:10:56; 11-A, pp 24-25). Gehr noted that his conduct was documented on his body camera, and Respondent interrupted – again in a raised voice – to say, “I don’t care about your

camera, just giving you a little constructive criticism, dude” (Exs 11 at 00:10:57 – 00:11:02; 11-A, p 25).⁸

At that juncture, Officer Hy – who had been standing next to Respondent and Officer Gehr – interjected and told Respondent, “Let me give you some constructive criticism. You want to drop another copper’s name? You want to scream about you know Gramaglia or the Mayor?” (Exs 11 at 00:11:02 – 00:11:07; 11-A, p 25). Hy handcuffed Respondent and said:

You want to be difficult? You want to . . . say, ‘I know all these coppers, I know all these things . . .’ You want to make us look dirty, is that what you want to do . . . Shut, shut up and let me talk to you . . . since you had so much to say, and you touched a cop . . . let me talk to you . . . Quiet . . . let’s be quiet . . . You’re saying everybody’s fucking name and dropping everybody’s name with a badge, and you’re expecting special treatment. How does that look to everybody in this . . . environment right now . . .

(Exs 11 at 00:11:13 – 00:11:41; 11-A, pp 25-27; 12 at 00:10:52 – 00:11:19; 12-A, pp 21-22) (emphasis added). While walking Respondent to a squad car, Hy continued, “And then you touched a fucking cop . . . then you drop your daughter’s name . . . Sit down” (Exs 12 at 00:11:33 – 00:11:39; 12-A, p 23). Respondent was placed in the back of a cruiser in handcuffs (Exs 12 at 00:11:33 – 00:11:41; 12-A, p 23).

⁸ Neither Respondent nor his wife filed a complaint against Officer Gehr or brought a lawsuit based on Gehr’s actions that evening (Grisanti: 1099; Respondent: 1219, 1409-10).

H. Respondent falsely told two BPD detectives that he was on his side of the street when the fight broke out, and he told one of them that he had apologized to Officer Gehr.

Respondent and his wife remained in separate police cars on [REDACTED] Avenue while additional BPD personnel, including Lieutenant Karen Turello and Detective William Moretti, arrived to assist in the investigation (Gehr: 173). At one point, Turello gave Respondent her personal cell phone through Officer Muhammad so that he could speak with BPD Detective Mark Costantino – a courtesy that Officer Muhammad had never before seen extended to an arrestee (Muhammad: 257-58).⁹

Respondent described the beginning of the Mele fight to Detective Costantino just as he had to the other officers, falsely claiming that he was in or near his own house when the Meles attacked his wife: “No sooner am I taking the dog in the house . . . And when I come out, back out of the house, [Maria]’s engaged with the two . . . And [Maria] was in a freaking chokehold. So, I ran over there to break it up” (Exs 12 at 00:43:10 – 00:43:36; 12-B, p 4). When Costantino asked Respondent about his having pushed an officer, Respondent said that “[w]hen the two girls were on Maria, he was dragging Maria across the street” and took her down on the front lawn. Respondent acknowledged having pushed Officer Gehr and claimed that he “apologized to him . . . right after that” (Exs 12 at 00:40:13 – 00:40:38; 12-B, pp 1-2). Respondent then asserted, “I never mentioned

⁹ Detective Costantino is a relative of Respondent (Respondent: 1448).

Byron Brown's name" (Exs 12 at 00:40:47 – 00:40:49; 12-B, p 2). Before the call ended, Respondent told Costantino:

For me, it doesn't look bad and, you know, I shouldn't have pushed the police officer. And when I did, I backed up and said, "Listen, I'm really sorry, but you don't have to tackle her," you know . . . "I'm a hundred percent for you guys."

(Exs 12 at 00:45:01 – 00:45:18; 12-B, p 6).

Later, at the stationhouse, Respondent spoke with Detective William Moretti (Exs 13; 13-A). Recounting the start of the altercation, Respondent said that Ms. Grisanti "started walking . . . across the street" without him as he was "trying to get the dog . . . towards the back of the yard" (Exs 13; 13-A, p 9). Respondent continued:

[T]hey came to the apron of the driveway. My wife was walking over to them and saying, "Why don't you move the truck?" I go over about three quarters the way across the street. I'm grabbing her arm. They move into the street, closest to their side, and the girls start fighting . . . And I'm trying to pull her away.

(Exs 13; 13-A, p 20). After commenting that his wife and Gina Mele were "Italian girls" who had said nasty things to one another (Exs 13; 13-A, p 24), Respondent claimed that he went across the street and "grabb[ed] [his] wife by the arm, saying, 'Come on, let's go.'" At that point, Respondent contended that Ms. Mele and Ms. Dantonio grabbed Ms. Grisanti around the neck while Mr. Mele egged them on by

“yelling, ‘Girl . . . fight’” (Exs 13; 13-A, pp 9-10) – words that, again, do not appear on the audio recording of the fight (*see* Exs 2; 2-A).

Respondent also discussed with Detective Moretti the fact that he pushed Officer Gehr. According to Respondent, Ms. Grisanti was screaming when the police arrived and did not stop when the police asked. Respondent stated that Gehr then:

. . . went over to my wife; she’s not stopping. He grabs her, and he, and he pulls her over to our side, from the middle of the street, . . . like, to trip her, to, like, to, to put cuffs on her . . . So, he’s behind her . . . I put my arm out on his -- And I shouldn’t have done this, but I put my arm out, like on his shoulder, like holding him back as I’m grabbing her by the arm, saying, “I got her. She can come with me” . . . I said, ‘. . . This is improper.’ And . . . I’m pushing him . . . And I’m trying to get her.

(Exs 13; 13-A, p 14). Respondent said that he had “apologized to . . . you know, kind of stopping the officer from doing what he had to do, but, you know, I saw him trying to sweep the legs of her, and she’s had problems with her neck and back” (Exs 13; 13-A, p 31). Moretti told Respondent that his actions “can be viewed as obstruction. We’re there to . . . perform our duties, and when someone tries to stop us from doing that . . .”. Respondent replied, “Yup . . . I get it. That’s why I apologized to him and let him do what he had to do” (Exs 13; 13-A, pp 31-32).

I. Respondent's Hearing Testimony

After becoming a judge in 2015, Respondent attended judicial trainings at the Judicial Institute. He knew on June 22, 2020, that the Rules Governing Judicial Conduct applied to him off the bench as well as on (Respondent: 1373).

- i. Prior to June 22, 2020, Respondent knew the Meles to be inconsiderate, provocative and physically threatening.

Respondent moved to 21 [REDACTED] Avenue in 2004 and got along with the Meles for a few years. However, that changed in 2014 after Ms. Grisanti witnessed Ms. Mele threatening another neighbor, Linda Chwalinski, and learned that Mr. Mele had threatened the Chwalinskis' daughter (Respondent: 1105, 1170, 1174, 1180).

That same year, after Respondent expanded his driveway, the Meles began parking their vehicles in a manner that encroached on his driveway to "provoke and harass" him (Respondent: 1170). The Meles also would park their cars across the street along the middle of the curb between driveways (Respondent: 1166-67). Respondent understood that such parking was legal, but he was disturbed by what he considered their lack of consideration (Respondent: 1330). Respondent had never contacted the police about the Meles prior to June 22, 2020 (Respondent: 1180, 1332). Instead, Respondent had asked the Meles many times not to park in that manner. In return, the Meles gave him "the finger, . . . spit at" him, or threatened to fight him (Respondent: 1169, 1171-72, 1345-46).

- ii. On June 22, 2020, Respondent felt provoked, called 911, and crossed the street to fight Mr. Mele.

On the evening of June 22, 2020, Respondent and his wife returned home from dinner and shopping to find a truck parked “a couple of feet from the curb” and “on top of the apron” of Respondent’s driveway (Respondent: 1159-63). That made Respondent “frustrated,” as he believed “it was there like that . . . to provoke [him]” (Respondent: 1434). Respondent had to “maneuver” to get into his driveway and was not able to pull in straight (Respondent: 1163, 1338, 1344). He called 911 and – knowing as a judge that it was important to be truthful and accurate when making a report to the police – “tried to be as accurate as possible” when he reported that a truck and an SUV were blocking his driveway (Respondent: 1334-35).

After the argument began outside, Respondent tried to explain his frustration to the Meles and “started moving from [his] driveway to get closer.” But when the Meles started shouting, Respondent “shout[ed] louder” (Respondent: 1189). Respondent “figured that when [he] mentioned [he] called the police that they would just, you know, be quiet, or . . . go and get the keys and move the truck” (Respondent: 1436).

Respondent walked across the street while “screaming” about extra space in front of the truck “to tell them to move the vehicle,” and he “tr[ie]d to have a conversation” with Mr. Mele to “get this resolved once and for all” (Respondent:

1190-91). Respondent understood that Mr. Mele was challenging him to engage in a physical altercation, but he did not consider turning back. Instead, he decided “at that point . . . to . . . call his bluff” (Respondent: 1358, 1360). Respondent knew that a fight “was a possibility” (Respondent: 1358-59). In the moment, Respondent “wasn’t thinking about what [he] did for a living,” but “was thinking [that] this has to end at some point” (Respondent: 1362).

When Mr. Mele said, “Come on, motherfucker,” Respondent interpreted it to mean, “the guy wants to fight” (Respondent: 1191-92). When Mr. Mele stated, “Come on, you cocksucker,” Respondent replied by stating, “Come on,” because “if this guy wants to fight, I’m going to call him on it” (Respondent: 1191-93). Mr. Mele then said, “Take your fucking shot,” but Respondent did not retreat to his property because “nothing was happening” (Respondent: 1363-64). When Mr. Mele pushed Respondent and threatened to knock him out, Respondent called Mr. Mele a “fucking asshole” in response (Respondent: 1195).

Respondent did not extricate himself from the situation at that point because he “still [was] . . . thinking, all right, he pushed me,” and he wanted to “see if he was going to do it again” (Respondent: 1364). Even after wrestling with Mr. Mele in the street and then disengaging to pick up his shirt, Respondent still did not walk away – knowing full well that the police were coming – because he “thought they were going to stop” (Respondent: 1368).

At that point, a neighbor asked Respondent to stop. Instead, Respondent told Mr. Mele, “You want to go again, tough fucking guy,” because he thought Mr. Mele was “being mouthy” (Respondent: 1203-04). Respondent then told Mr. Mele, “I’ll fucking flatten your face again,” then twice repeated, “I just did,” referring to the fall Mr. Mele had just sustained. Respondent did not consider those words to be threats and thought that Mr. Mele understood that Respondent was “just going to back up, and [Mr. Mele was] going to fall on [his] face again” (Respondent: 1204, 1370-71). Respondent acknowledged that he wrestled with Mr. Mele multiple times during the altercation (Respondent: 1365).

Respondent told the Meles three times to “[g]o inside,” and then called Mr. Mele a “piece of shit.” Respondent said, “I don’t talk like that . . . I got down to his level. And if he’s swearing at me, I was going to swear back at him” (Respondent: 1209). Similarly, Respondent acknowledged that he called Mr. Mele a “[f]ucker” and “fucking asshole” because Mr. Mele had called him similar names, and Respondent “stooped down to his level” (Respondent: 1371).

- iii. Respondent admitted pushing a uniformed officer, loudly requesting that his wife be unhandcuffed, and mentioning his personal relationships with Buffalo Police Department personnel and the Mayor of Buffalo.

Respondent acknowledged that as Officer Gehr attempted to handcuff Ms. Grisanti, Respondent yelled at him, took a number of steps toward him, and pushed him “so [he] could get to [her]” (Respondent: 1381, 1385, 1390). Respondent told

Gehr to get off her “because [he] wanted to see if she was okay,” and “[he] didn’t know if she was hurt or not”, even though he neither went to the police car to check on Ms. Grisanti after she was detained, nor asked any officers to do so (Respondent: 1216, 1402, 1444). Respondent believed that Gehr had acted improperly and with excessive force, but he did not file any kind of complaint with the BPD or civil suit against Gehr, the BPD or the city of Buffalo (Respondent: 1216, 1409-10). Respondent did not consider his pushing Gehr as an attempt to interfere with police authority because the push “was not something that prevented him from putting cuffs on Maria” (Respondent: 1390). According to Respondent, Gehr should have been paying attention to the Meles instead of his wife (Respondent: 1216-17). Respondent “pushed” Officer Gehr “because it was not proper what [Officer Gehr] did” (Respondent: 1216).

In telling Officer Gehr, “You better get off my fucking wife,” Respondent did not consider the word “better” to “having any meaning” (Respondent: 1392). According to Respondent, when he told Gehr he was going to be “sorry” if he arrested Ms. Grisanti, he meant that when Gehr “talk[ed] to the neighbors,” he would “realize that [he was] incorrect” (Respondent: 1393). When Respondent told Gehr he was “going to have a problem” if he did not immediately remove the handcuffs from Ms. Grisanti, he claimed that he meant that Gehr had not “talked to anybody in the neighborhood, and that once he [did], . . . he’s going to feel the

same way” (Respondent: 1393). In Respondent’s mind, his tone when he pointed at Gehr and stated, “He needs to get the cuffs off her,” was in the nature of “a loud . . . request,” not a “demand” (Ex 44; Respondent: 1397).

Respondent acknowledged that the police never asked Respondent if he had relatives in the BPD or fire department, but claimed that he broached those topics as a means of letting them know, “I understand what you guys go through” or was simply “making conversation” (Respondent: 1225, 1403, 1405). Respondent agreed that no one asked if he was friends with Buffalo Mayor Byron Brown, but again he claimed to have been “just having conversation” in saying that “even Byron Brown knows what goes on around here” (Respondent: 1223, 1406). Respondent explained that he brought up the mayor’s name to “let[] them know that we’re just not making stuff up” (Respondent: 1223).

Respondent called his daughter after Ms. Grisanti was placed in handcuffs “to ask her if she could talk to her lieutenant” (Respondent: 1404). Respondent knew Joseph Gramaglia, the Deputy Commissioner of the Buffalo Police Department, because “Joe . . . was [his] daughter’s lieutenant” (Respondent: 1224). Respondent acknowledged that, despite what he represented to the officers at the scene, Deputy Commissioner Gramaglia was not his cousin (Respondent: 1225, 1405).

- iv. Respondent admitted that he repeatedly misled Buffalo Police Department personnel regarding the start of the altercation.

Respondent admitted that he gave Detective Costantino information about the altercation that was “not correct” when he spoke with Costantino on Lieutenant Turello’s cellphone from the police car (Respondent: 1349). Specifically, Respondent was untruthful in his assertion that he came out of his house after Ms. Mele and Ms. Dantonio had his wife in a chokehold, and when he told Costantino that he “ran over there to break it up” (Respondent: 1348-49). Indeed, the video captured by the Meles’ home security camera showed unequivocally that Respondent led his wife across the street at the beginning of the confrontation (Exs 2 at 07:14:28 – 07:14:32; 42).

Respondent also admitted that, shortly after the incident when Officer Gehr asked him to tell his side of the story, Respondent falsely told him, “My wife was still outside. She walked over and she goes, ‘yeah, move the truck.’ They frigging bolt from the porch. The girl’s got her frigging hand on my wife’s throat, and that’s when I walked over there” (Respondent: 1350). Again, the video demonstrates that Respondent walked over with his wife and was in front of the Meles’ driveway when the fight began (Ex 2 at 07:14:33 – 07:14:54).

Finally, Respondent admitted that he was not accurate when he explained to Detective Costantino why he pushed Officer Gehr: he falsely told Costantino that

the “two girls were on Maria, he was dragging Maria across the street”

(Respondent: 1389).¹⁰

Charge II: Respondent presided over eight cases involving attorney Matthew Lazroe, notwithstanding – and without disclosing to the parties – that he had an ongoing financial relationship with Mr. Lazroe.

On May 18, 2015, Respondent signed an agreement to sell his private law practice for \$50,000 to two attorneys: Peter J. Pecoraro, Esq. and Matthew A. Lazroe, Esq. (Ex 14; Lazroe: 292-94). In accordance with the terms of the agreement, Mr. Lazroe paid a down payment of \$10,000 to Respondent in May of 2015, and his remaining balance via monthly payments of \$365 through June of 2019 (Ex 15; Lazroe: 293-95). Mr. Pecoraro paid Respondent a down payment of \$5,000 in May of 2015 and made monthly payments of \$365 until he passed away in 2018 (Respondent: 1234-35, 1310).

¹⁰ In addition to testifying on his own behalf, Respondent called three therapists who treated him following the June 2020 incident to testify as to their observations of his mental state, as well as three judges and three attorneys to testify as to Respondent’s reputation concerning his work ethic and judicial temperament within the legal community.

A. While Mr. Lazroe was sending Respondent monthly payments in connection with his purchase of Respondent's law practice, Respondent presided over five cases in which Mr. Lazroe represented one of the parties and made no disclosure about their financial relationship.

Bayview Loan Servicing, LLC v Mary Lee Fornes et al.

After a Request for Judicial Intervention (“RJI”) in *Bayview Loan Servicing, LLC v Mary Lee Fornes et al.* was filed in December 2017, Mr. Lazroe came to represent the defendant in that mortgage foreclosure matter (Ex 16, pp 4-5; Lazroe: 296). His status as the defendant’s attorney was documented by, *inter alia*, his printed name and signature on four conference status forms in January, March, April and August of 2018 (Ex 16, pp 9-12).

Respondent signed an order to discontinue the foreclosure action against Mr. Lazroe’s client on December 5, 2018 (Ex 16, pp 13-14; Lazroe: 328). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 296).

Buffalo Seminary v Stephanie Satterwhite

In a commercial case initiated by Peter J. Pecoraro, Esq., *Buffalo Seminary v Stephanie Satterwhite*, Mr. Lazroe was added as attorney of record for the plaintiff in September 2017 (Ex 29, p 19; Lazroe: 297). The following month, Mr. Lazroe executed an affidavit in support of a default judgment on behalf of his client and filed an RJI in December 2017 (Ex 29, pp 1-3, 6-7; Lazroe: 298).

In June 2018, Respondent signed an order upon Mr. Lazroe's affidavit, awarding his client judgment for nearly \$14,000 plus interest. A statement for judgment for over \$18,000, inclusive of interest costs and fees, was filed with the County Clerk in November 2018 (Ex 29, pp 39-40). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 298).

Matter of Application of M [REDACTED] F [REDACTED]

In February 2018, Respondent signed an order in *Matter of Application of M [REDACTED] F [REDACTED]*, appointing Mr. Lazroe as court evaluator to explain the proceeding to an allegedly incapacitated person and investigate claims made in the petition. (Ex 17, pp 8-9). In April 2018, after evaluating the case, Mr. Lazroe appeared before Respondent to present his findings (Ex 17, p 51; Lazroe: 305).

In June 2018, Respondent signed an order directing that Mr. Lazroe be paid more than \$2,000 for his services (Ex 17, pp 44-45; Lazroe: 300). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 300).

Trifera, LLC v Morrison, Unknown Heirs

In October 2018, Respondent signed an order in *Trifera, LLC v Morrison, Unknown Heirs*,¹¹ designating Mr. Lazroe guardian *ad litem* and military attorney on behalf of potential parties with property interests in the mortgage foreclosure matter (Ex 18, pp 9, 12). Respondent's order required the plaintiff to pay Mr. Lazroe \$250 for his services (Ex 18, pp 9-10; Lazroe: 301). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 301).

Federal National Mortgage Association v Anderson, et al.

In May 2019, Respondent signed an order in *Federal National Mortgage Association v Anderson, et al.*, designating Mr. Lazroe guardian *ad litem* and military attorney on behalf of potential parties with property interests in the mortgage foreclosure matter (Ex 19, pp 4, 7).

Respondent's order required the plaintiff to pay Mr. Lazroe \$250 for his services (Ex 19, p 5). Respondent signed an additional order in February 2020 providing that Mr. Lazroe be paid another \$350 for additional services (Ex 19, p 16). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 301).

¹¹ By Order in May 2018, the named plaintiff was substituted with "Laelia, LLC" (Ex 18, p 2).

B. Mr. Lazroe concluded his monthly payments for Respondent’s law practice in June 2019. Over the next seven months, Respondent presided over three cases in which Mr. Lazroe represented one of the parties and made no disclosure about their financial relationship.

Greater Woodlawn Federal Credit Union v Charles Pachuki et al.

In August 2019, Respondent signed an order in *Greater Woodlawn Federal Credit Union v Charles Pachuki et al.*, appointing Mr. Lazroe as referee in the mortgage foreclosure matter (Ex 20, pp 12-14).

Respondent’s order provided that Mr. Lazroe be paid a statutory fee of \$50 and, in the discretion of the court, an additional \$100 fee for the filing of his report (Ex 20, pp 12-13; Lazroe: 302). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 302).

Matter of the Application of W [REDACTED] L [REDACTED]

In November 2019, Respondent signed an order in the special proceeding *Matter of the Application of W [REDACTED] L [REDACTED]*, appointing Mr. Lazroe as court evaluator to explain the proceeding to an allegedly incapacitated person and investigate petition claims (Ex 21, pp 9, 11; Lazroe: 303). Mr. Lazroe made two appearances before Respondent, “one at the beginning and then one where [he] gave [his] evaluation” (Lazroe: 306).

In April 2020, Respondent signed an order requiring that Mr. Lazroe be paid over \$5,000 for his services as court evaluator (Ex 21, pp 31, 33; Lazroe: 304).

Respondent signed another order in December 2020 providing that Mr. Lazroe be paid another \$192.50 for additional services rendered (Ex 21, pp 70-71).

Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 304).

Rasheena Jones v Jerry Gradl Motors, Inc.

In January 2020, Respondent signed a trial scheduling order in *Rasheena Jones v Jerry Gradl Motors, Inc.*, a Niagara County commercial case in which Mr. Lazroe represented the plaintiff. The order set discovery time requirements for jury selection, trial, and a telephonic pretrial conference (Ex 22, p 21). Six case conferences were scheduled and reported as held in March, May, June, August, September and October of 2020 (Ex 22, p 2). Mr. Lazroe “recall[ed] having a couple conferences” with Respondent in this matter (Lazroe: 348).

Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 305).

C. Respondent’s Hearing Testimony

Respondent knew attorney Peter Pecoraro for approximately 45 years and shared office space with him before becoming a judge (Respondent: 1233).

Respondent met Matthew Lazroe through Mr. Pecoraro (Respondent: 1233).

Respondent knew that Mr. Lazroe was an attorney and understood that “his practice was real estate and foreclosures and bankruptcy” (Respondent: 1303).

Shortly before he became a judge, Respondent sold his law practice to Mr. Pecoraro and Mr. Lazroe for \$50,000. At the time the sale agreement was signed, Mr. Pecoraro and Mr. Lazroe paid Respondent \$15,000. The remaining \$35,000 was to be paid in monthly installments of \$730, split evenly between the two purchasing attorneys, with each paying Respondent \$365 through June of 2019 (Respondent: 1234).

Upon becoming a judge, Respondent put Mr. Pecoraro on his recusal list, but not Mr. Lazroe (Respondent 1238-39). Respondent understood that “[t]he purpose of a recusal list is to make sure there is no . . . appearance of any sort of impartiality” and to keep attorneys and other people with conflicts from appearing before him (Respondent: 1312). Recusal “was brought up in the judge’s school” and Respondent had a discussion with his Administrative Judge or the District Executive “on who needs to be on that recusal list” (Respondent: 1310).

One of Respondent’s responsibilities as a judge was to appoint attorneys as court evaluators, guardians, and attorneys for children (Respondent: 1243-44). From the time he took the bench in 2015, Respondent signed “probably 150 to 300” Part 36 attorney appointment orders (Respondent: 1245). Respondent signed the orders appointing Mr. Lazroe in *Matter of Application of M █████ F █████*, *Trifera, LLC v Morrison, Unknown Heirs, Federal National Mortgage Association*

v Anderson, et al., Greater Woodlawn Federal Credit Union v Charles Pachuki et al., and Matter of the Application of W███████. L███████. (Respondent: 1244).

Respondent delegated to his Law Clerk, Doug Curella, Jr., the duty of making assignments in Part 36 cases and “told him that that is his responsibility” (Respondent: 1244-45). However, although Mr. Curella had the authority to put attorney names on appointment forms, he did not have the authority to sign orders appointing attorneys; Respondent signed the orders appointing attorneys personally (Respondent: 1316). Respondent understood that, notwithstanding who Mr. Curella might choose for a given appointment, Respondent was responsible for the appointment (Respondent: 1317).

Respondent had conversations with Mr. Curella about which attorneys to appoint, and he “saw the list” of prospective attorneys for appointment “probably in 2015, ’16” (Respondent: 1314-15). Respondent has signed appointment orders “before somebody is actually appointed” and without knowing who is going to be appointed (Respondent: 1316). Respondent does not read every document that he signs (Respondent: 1318).¹²

¹² Mr. Curella, who served as Respondent’s Confidential Law Clerk from May of 2015 until December 31, 2021, was not aware that Mr. Lazroe had purchased Respondent’s law practice until he read about it in one of the articles written about Respondent’s incident with the Meles (Curella: 546-47, 554). Respondent never gave him any instruction about Mr. Lazroe concerning attorney assignments (Curella: 556).

As to the eight cases identified by the Commission, Mr. Lazroe appeared before Respondent in some of the proceedings, and “[t]he ones that he didn’t, I didn’t have any knowledge that he was in front of me or that he was actually on the case” (Respondent: 1423). Respondent did not disclose the 2015 sale of his law practice to Mr. Lazroe, or Mr. Lazroe’s payments to him, in any of the five cases he presided over prior to Mr. Lazroe’s last payment, or any of the three cases he presided over within two years of Mr. Lazroe’s final payment to him (Respondent: 1235, 1240).¹³ Respondent made no disclosures because he “didn’t know that under the Judicial Rules” that he “was required to disclose a contractual obligation . . . with monthly payments” (Answer ¶ RESPONSE #15; Respondent: 1237, 1239).

Although Respondent had taken various classes on ethics and recusals at the Judicial Institute, and he understood that he had to recuse himself from cases in which participating individuals had given money to his 2010 senate campaign, he “was not aware that that type of contractual arrangement of \$300 plus a month was something that needed to be reported” (Respondent: 1239-40, 1322).

Respondent became aware that he was required by the Rules to disclose the financial relationship with Mr. Lazroe when he “researched it, and . . . obtained an

¹³ Mr. Pecoraro stopped paying Respondent on the sales agreement in the beginning of 2018 after being diagnosed with brain cancer, and he passed away later that year (Respondent: 1235). Mr. Lazroe fulfilled the terms of the agreement making monthly payments through June 2019 (Respondent: 1235).

opinion on it” (Respondent: 1239). In January 2021, Respondent spoke with Laura Smith, Esq., Chief Counsel for the New York State Advisory Committee on Judicial Ethics, and Judge Walsh from the Advisory Committee, about his financial relationship with Mr. Lazroe. Ms. Smith and Judge Walsh told Respondent that he was required to recuse himself from cases involving Mr. Lazroe for two years beyond June 2019 (Ex 20, pp 19-20; Respondent: 1241-42). Respondent subsequently transferred *Greater Woodlawn Federal Credit Union v Charles Pachuki et al.*, in which he had appointed Mr. Lazroe as a referee, to a non-conflicted judge (Ex 20, p 20; Respondent: 1242-43).

Charge III: Respondent filed a Financial Disclosure Statement with the Ethics Commission for the State of New York Unified Court System in which he inaccurately reported the income he received for the purchase of his private law practice, and he failed for five years to report his extra-judicial income to the clerks of the Court of Claims and Erie County Supreme Court.

In May 2015, Respondent sold his law practice pursuant to an “Agreement” he negotiated with Peter J. Pecoraro, Esq. and Matthew A. Lazroe, Esq. The financial terms as set forth in the document specified that “the payment for this Agreement is a total sum of \$50,000.00,” which was “to be made with a payment of \$15,000.00 down and monthly payments beginning July 1, 2015, at a rate of \$730.00 per month until said balance is paid in full” (Ex 14, p 2). In accordance with the agreement, Mr. Pecoraro and Mr. Lazroe paid Respondent \$15,000 in

May 2015; Mr. Lazroe paid \$10,000, and Mr. Pecoraro paid \$5,000 (Exs 14, 15; Respondent: 1234).

A. Respondent did not accurately disclose the \$15,000 down payment he received from the sale of his law practice on the 2015 Financial Disclosure Statement he filed with the Ethics Commission for the New York State Unified Court System.

In 2016, Respondent filed a verified annual statement of financial disclosure (“FDS”) for the 2015 calendar year with the Ethics Commission for the New York State Unified Court System (Ex 23; Respondent: 1250). In his FDS, Respondent provided information about the terms of the agreement for the sale of his law practice in his responses to three different questions: 12(a), 12(b) and 13.

Question 12(a) stated in part, “Describe the terms of, and the parties to, any contract” Respondent wrote, “I sold . . . [law] firm to individuals . . . for \$730.00 a month for 4 years.” Respondent did not report the \$10,000 down payment he had received from Mr. Lazroe or the \$5,000 down payment that he had received from Mr. Pecoraro (Ex 23).

Question 12(b) stated in part, “Describe the parties to and the terms of any agreement . . . in EXCESS of \$1,000” Respondent wrote, “I sold my law practice to 2 attorneys . . . Terms are \$730 a month for 4 years. It will end june of 2019.” Respondent did not report the \$10,000 down payment he received from Mr. Lazroe or the \$5,000 down payment that he had received from Mr. Pecoraro (Ex 23).

Question 13 stated in part, “List below the nature and amount of any income in EXCESS of \$1,000 from EACH SOURCE . . . Nature of income includes, but is not limited to, all income . . . from . . . contractual arrangements” Respondent listed two different entries for his law office. In his first entry, Respondent wrote the following:

SOURCE: “law office Closed May 2015”;

NATURE: “clients”;

CATEGORY OF AMOUNT: “C: \$20,000 to under \$60,000.”

(Ex 23). In his second entry, Respondent wrote the following:

SOURCE: “peter pecoraro esq and matthew lazaro esq”;

NATURE: “sale of law office Started May 2015 730.00 a month for 4 years”;

CATEGORY OF AMOUNT: “A: under \$5,000”

(Ex 23).

Respondent’s 2015 FDS also included information about the sale of his law firm in question 18, which required him to list information about “notes and accounts receivable” (Ex 23). Respondent listed Peter Pecoraro, Esq, and Mathew Lazroe, Esq. as debtors, described the obligation information as “Sale of law firm . . . in May 2015 \$730 a month payable on the 1st for 4 years,” and entered under category of amount, “A: under \$5,000” (Ex 23).

B. Respondent failed to report income from the sale of his law office to the clerks of the Court of Claims and Erie County Supreme Court for the first five years of his judicial service.

Between 2015 and 2019, Respondent received the following payments from Mr. Lazroe and Mr. Pecoraro in connection with the sale of his law firm:

- In 2015, Mr. Lazroe and Mr. Pecoraro paid Respondent a total of \$19,380;
- In 2016, Mr. Lazroe and Mr. Pecoraro paid Respondent a total of \$8,760;
- In 2017, Mr. Lazroe and Mr. Pecoraro paid Respondent a total of \$8,760;
- In 2018, Mr. Lazroe paid Respondent a total of \$4,380;
- In 2019, Mr. Lazroe paid Respondent a total of \$2,190.

(Answer ¶ RESPONSE #45; Respondent: 1234-35).

On May 20, 2021, Administrative Judge, Paula Feroletto sent an email to all judges in the 8th Judicial District, including Respondent (Resp Ex Q). The email provided the text of 22 NYCRR 100.4(H)(2) pertaining to each judge’s obligation to report compensation (Resp Ex Q). The email recounted that the District Executive “sends a reminder to file this report around every year.” The email also listed types of compensation or income that fell under the purview of the reporting requirement, including “income due from practice that has been wrapped up but money still owed” (Resp Ex Q).

From in or about May 2015 through June 2019, Respondent filed no reports of the income he received from the sale of his law practice with the office of the Clerk of the Court of Claims or with the office of the Clerk of the Erie County Supreme Court (Respondent: 1263, 1304).

C. Respondent's Hearing Testimony

Respondent was familiar with the Ethics Commission FDS form, as he filled out the same form from 2010 through 2014, when he served as a senator (Respondent: 1249, 1295). When he became a judge, Respondent received an email reminder to complete his first FDS (Respondent: 1295). He knew that he was required to fill out the form accurately, and that the form covered all matters during the calendar year 2015, both before and after he became judge (Respondent: 1296).

While completing his FDS for 2015, Respondent provided information about the sale of his law practice to questions 12(a) and (b), which asked about the “terms” of any contract or any agreement, respectively. His answer to both questions identified that he sold his law practice for “\$730 a month for 4 years.” He did not indicate in either question that, as a term of the sales agreement, he had received a down payment of \$15,000. Respondent acknowledged that “in 12(b), it should have been in there that there was a down payment of \$15,000” (Respondent: 1252-53). Respondent did not disclose the down payment in his

responses to questions 12(a) or (b) because “in [his] mind,” the form was “going forward,” and he was “not a Judge” when he received the down payment (Respondent: 1254).¹⁴

In answering question 13 of his 2015 FDS, which asked for income for the “taxable year last occurring prior to the date of filing,” Respondent identified two “self” sources of income in excess of \$1,000 – one for his law office “clients,” and one for the “sale of law office Started May 2015” (Ex 23; Respondent: 1255). Respondent put “clients” because he “didn’t know what to put there, so I just put clients” (Respondent: 1255).

Respondent also provided information about his law firm sale in answering question 18 on his 2015 FDS. He listed Mr. Pecoraro and Mr. Lazroe as debtors and identified the obligation as “Sale of law firm . . . in May of 2015 \$730 a month payable on the 1st for 4 years.” For the amount category, Respondent indicated “under \$5,000” (Ex 23).

After he received an inquiry from the Commission, Respondent looked at his answer to question 13 in his 2015 FDS and saw, “It’s an error, and it needs to be corrected” (Respondent: 1259). In April of 2021, Respondent sent a responsive letter to Commission staff that stated, “For the years 2015 through 2017, I should

¹⁴ This response differed from Respondent’s Answer to paragraph 46 of Formal Written Complaint. There, Respondent “denie[d] knowledge and information sufficient to form a belief” and did not provide any information or explanation regarding whether or how he disclosed the \$15,000.00 down payment in his 2015 FDS (Answer ¶ RESPONSE #46).

have marked Category B for the ‘Category of Amount’ on questions 13 and 18 regarding the income from Mr. Pecoraro and Mr. Lazroe,” and he admitted, “I erred by checking the wrong box regarding the category amount on questions 13 and 18” (Respondent: 1293-94).

In early 2021, Respondent spoke with the Executive Director of the New York State Ethics Commission, Elizabeth Hooks, after which he sent her a letter and “made the corrections on the 2020 filings” (Respondent: 1255, 1260). In his undated June 2021 letter to Ms. Hooks, Respondent explained his “error in listing, or hitting the wrong ‘Category of Amount’ box on [his] Financial Disclosure form for the years 2015, 2016 and 2017, as it pertains to Question #13 and Question #18.” Respondent wrote that the proper category amount should be B (\$5,000 - \$20,000) rather than A (under \$5,000) (Resp Ex S). Respondent also explained that he erred in answering both parts of question 12 in his 2015-2017 FDS forms, and that “with proper addition,” the \$730 monthly payments also have been listed under Category B. In concluding his letter, Respondent apologized for “clicking the wrong box” (Resp Ex S; Respondent: 1262).

As to his responsibility to file with the clerks of his courts under 22 NYCRR 100.4(H)(2), Respondent “did not receive a reminder to file a report in prior years” but could not explain why Judge Feroletto would have remarked in her May 20, 2021, email that judges receive reminders every year, if that were untrue

(Respondent: 1307-08). Respondent claimed that he “wasn’t familiar with that Rule” regarding reporting his compensation and that from 2015 through 2019, and he never reported the income he received from the sale of his law practice to the office of the Clerk of the Court of Claims or to office of the Clerk of the Erie County Supreme Court (Respondent: 1263, 1303-04).

Respondent understands that the Rules Governing Judicial Conduct apply to him but does not believe that 22 NYCRR 100.4(H)(2) applies to him (Respondent: 1308). Respondent “did the research in 2021” for the first time and “looked at opinions,” after which he determined, “in my estimation, it didn’t apply to me” (Respondent: 1264, 1308-09). Specifically, Respondent claimed, “[a]n Opinion from 2014, and . . . another opinion from 2022” said “basically” that income “from a law practice is not something that . . . is required to file with the Clerk of the Courts” (Respondent: 1265), but he did not specify any opinions or otherwise cite authority for that proposition. Respondent “figured because [he was] filing the Financial Disclosure Statements, that that -- it’s public record, that that’s sufficient” (Respondent: 1266).

ARGUMENT

POINT I

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY ENGAGING IN A STREET BRAWL WITH HIS NEIGHBORS, ESCALATING THE ALTERCATION WHEN HE COULD AND SHOULD HAVE DISENGAGED, THREATENING AND PHYSICALLY SHOVING A POLICE OFFICER WHO RESPONDED TO THE SCENE, SEEKING PREFERENTIAL TREATMENT FROM THE POLICE BASED ON HIS FAMILIAL AND POLITICAL CONNECTIONS, AND REPEATEDLY PROVIDING FALSE INFORMATION ABOUT THE ALTERCATION TO LAW ENFORCEMENT PERSONNEL.

Respondent's egregious, violent, and very public misconduct on June 22, 2020, indelibly tarnished his reputation as a judge and undermined the public's perception of the dignity and integrity of the New York State judiciary as a whole. Respondent demonstrated a shocking lack of judgment when he took the first steps across [REDACTED] Avenue to confront Joe Mele over a parking disagreement, knowing all the while that the police were on their way and a violent confrontation likely awaited him. Matters only got worse from there, as Respondent goaded his neighbor with a barrage of obscenities, enthusiastically engaged in a street brawl that left him fighting and wrestling while shirtless and chose to escalate matters by twice resuming the fighting after the combatants had disengaged, when he could have walked away and returned to his home.

Respondent committed additional egregious misconduct when the responding police officers arrived on the scene. First, when an officer tried to

arrest Respondent's unruly wife for interfering in their investigation, Respondent physically shoved the officer, then repeatedly threatened that the officers would be "sorry" if they did not release his wife and had "better" accede to his demands. Respondent repeatedly dropped names, telling the officers that his children were BPD officers, that he was going to call their lieutenants, that he was a cousin of BPD Deputy Commissioner Gramaglia, and that he was "good friends" with the Mayor of Buffalo. Finally, when Respondent described the Mele altercation to the police, he blatantly lied about his role in the fight – on three separate occasions – only to have the lie exposed by the video recording of the brawl. In fact, Respondent consistently demonstrated a lack of honesty in dealing with law enforcement personnel throughout the evening, starting with his false report to a 911 operator that two vehicles were blocking his driveway.

Respondent's actions constituted a clear violation of the Rules Governing Judicial Conduct. As the Court of Appeals has held, every judge, even off the bench, must observe "standards of conduct on a plane much higher than those of society as a whole . . . so that the integrity and independence of the judiciary will be preserved," and, "[a] Judge must conduct his everyday affairs in a manner beyond reproach." *Matter of Kuehnel*, 49 NY2d 445, 469 (1980). Respondent, who has acknowledged that he failed to consider his obligations as a judge during

his violent public altercation with Joe Mele, grossly failed to meet his required standards of conduct.

A. Respondent committed misconduct when he shouted profanities at the Meles and engaged Joe Mele in a public street brawl, and he exacerbated that misconduct by repeatedly choosing to escalate the matter instead of retreating.

Judges who engage in threatening verbal conduct outside of the courtroom have long been subject to public discipline, as “ethical codes and precedent set forth with no equivocation that Judges are accountable at ‘at all times’ for their conduct – including their conversation – both on and off the Bench.” *Matter of Backal*, 87 NY2d 1, 8 (1995) (internal citation omitted); *see, e.g., Matter of Wiater*, 2007 Ann Rep 115 (Comm’n on Jud Conduct, June 29, 2006) (threatening phone call to a defendant); *Matter of Slavin*, 1991 Ann Rep 76 (Comm’n on Jud Conduct, Feb 28, 1990) (verbal threats in connection with a dispute between judge’s son and a third party); *see generally Matter of Steinberg*, 51 NY2d 74, 81 (1980) (a judge “cannot simply cordon off his public role from his private life and assume safely that the former will have no impact upon the latter”).

Here, Respondent obliterated that precedent by participating in a public brawl with his neighbor, fighting and wrestling bare-chested in the street for all the world to see. Video footage of the brawl and its aftermath shows Respondent in a violent, physical altercation with his neighbor Joe Mele on a public street,

wrestling him to the ground, and walking around with this torn shirt hanging down around his waist. The accompanying audio recording features Respondent calling Mr. Mele a “fucking asshole,” a “fucker,” and a “piece of shit” as well as yelling, “I’ll fucking flatten your face” (Exs 2, 2-A). That conduct goes far beyond the verbal threats at issue in *Wiater* and *Slavin*, and undeniably violates the teachings of *Backal* and *Steinberg*. Put simply, the public can have no confidence in judges who behave in that manner, in any circumstance.

Making matters worse, Respondent himself repeatedly escalated the situation at several junctures when he could have disengaged and retreated. After calling 911 about the initial parking dispute, Respondent could have waited in his house, or at least on his own property, for the police to arrive. He chose instead to shout profanities at his neighbors from his driveway, and then to lead his wife across the street to the Mele’s property, which led to the physical confrontation (Exs 2 at 07:14:28 – 07:14:33; 42). Notably, Respondent made that choice with eyes wide open – he acknowledged during his testimony that he knew Meles to seek out violent confrontations and that there was every possibility that walking across the street could lead to a physical fight (Respondent: 1358). Once in that position, when Mr. Mele made his own intentions crystal clear by telling Respondent, “Let’s see . . . what you’ve got, tough guy . . . [t]ake your fucking

shot,” Respondent – rather than walk away – replied in kind, saying “Come on” and “What do you got” (Ex 2-A, pp 3-4).

There were two brief lulls in the brawl, and in each instance, Respondent could have chosen to walk away. Instead, he upped the ante by goading Mr. Mele: “Come on . . . you think we’re done . . . come on,” and “You want to go again, tough fucking guy” (Ex 2-A, pp 5, 9). Worse still, after knocking Mr. Mele to the ground, Respondent became even more aggressive, shouting “I’ll fucking flatten your face again” (Ex 2-A, p 9). By any measure, Respondent’s public brawling and escalation of avoidable violence is utterly inconsistent with his duty to uphold the integrity of the judiciary (Rule 100.1), conduct his extrajudicial activities so that they do not detract from the dignity of judicial office (Rule 100.4[A][2]), and “conduct his everyday affairs in a manner beyond reproach.” *Kuehnel*, 49 NY2d at 469.

B. Respondent committed misconduct by physically shoving and verbally threatening police personnel who responded to the neighborhood fight.

When a pair of police officers arrived on [REDACTED] Avenue in response to calls about the fight, Respondent – far from coming to his senses and cooperating with the police investigation – redirected his threatening and physically aggressive behavior toward the officers. After Officer Gehr decided to take Ms. Grisanti into custody for interfering with the investigation, Respondent took it upon himself to

intervene. As Gehr attempted to place Ms. Grisanti in handcuffs, Respondent took several steps toward Gehr, then reached out and pushed him on the shoulder with both hands (Exs 11 at 00:01:50 – 00:01:52; 12 at 00:01:14 – 00:01:17; 43).

Recognizing this physical threat for what it was, Gehr immediately ordered Respondent not to “push” him, while Officer Muhammad restrained Respondent in a bear hug and told him, “Keep your hands off a cop . . . Do not fight a police officer” and “you are not going to fight a cop” (Exs 11 at 00:01:53 – 00:01:55; 11-A, pp 6-7; 12 at 00:01:18 – 00:01:33; 12-A, pp 4-5).

There is no specific precedent to cite for the proposition, “a judge commits misconduct when he physically shoves a police officer to prevent the officer from effectuating an arrest.”¹⁵ That is not surprising, as the proposition is far from controversial, and this factual scenario is one that never should have come to pass. But Respondent, through his own deliberate actions, created a situation in which the Commission unfortunately must make that remarkable pronouncement.

One would think that, after shoving an officer and finding himself physically restrained for it, Respondent would submit to the officers’ authority and show contrition and restraint. Instead, Respondent doubled down with a bout of verbal aggression, angrily pointing and yelling at the police while threatening that the

¹⁵ There *is* precedent, however, for disciplining a judge who *nonviolently* thwarts an officer from effectuating an arrest. *Matter of Blackburne*, 7 NY3d 213 (2006).

officers would “be sorry” and “have a problem” if they arrested his wife and did not uncuff her, and that they “better get off [his] fucking wife” (Exs 11 at 00:02:10 – 00:02:13; 11-A, p 7; 12 at 00:01:34 – 00:02:16; 12-A, pp 5-6). This both exacerbated his prior misconduct and constituted misconduct in its own right.

Respondent’s tortured attempt to explain away those comments by testifying that he meant that the officers would feel sorry upon reflecting and realizing they were in the wrong is belied by the aggressive tone and tenor of Respondent’s voice as heard on the audio recording. Moreover, when asked to explain what he meant by “You better get off my fucking wife,” Respondent inexplicably said that he did not consider the word “better” to “have any meaning” – a clear indication that he knew that statement was indefensible (Respondent: 1392). At best, the officers might have understood those words to mean that Respondent meant to take some sort of official action against them, but at worst, they might have feared political or departmental reprisal given Respondent’s status as a judge and his connections to the mayor and high-ranking BPD officials (*see infra*). Either way, a judge plainly violates the Rules and undermines public trust and confidence in the judiciary by telling officers that they would “be sorry” for arresting the judge’s wife and had “better” accede to the judge’s demands to back off.

Finally, at the hearing, Respondent made the startling confession that, at no point during the police encounter did it occur to him that a judge should not push

an officer or tell the police they would “be sorry” for carrying out their official responsibilities (Respondent: 1376). Respondent thereby demonstrated a serious lack of appreciation for the fundamental obligation of a judge to promote respect for the law. Rule 100.2(A).

All told, Respondent’s angry, threatening, intimidating and physically aggressive conduct toward the officers violated his duty to conduct his “extrajudicial activities so that they do not detract from the dignity of judicial office.” Rules 100.1, 100.2(A), 100.4(A)(2). Further, Respondent’s actions were contrary to the obligation required of his judicial office which requires that “as a member of the State’s judiciary governed by exacting standards of honor and propriety” Respondent was “obligated to conduct h[im]self at all times in a manner that reflected . . . personal respect for the letter and spirit of the law.” *Matter of Backal*, 87 NY2d 1, 7 (1995).

C. Respondent committed misconduct by seeking and/or appearing to seek special treatment in repeatedly invoking personal relationships with BPD officers and the Mayor of Buffalo.

After shoving an officer proved counterproductive, and when promising the officers that they “would be sorry” did not convince them to unhandcuff his wife, Respondent changed tactics and started dropping names. Specifically, he told the officers that his son and daughter were both BPD officers, adding, “I’m going to need to call my son and my daughter and their Lieutenants right now” (Ex 12-A,

p 7). Respondent also asserted – falsely – that “Gramaglia” (a BPD deputy commissioner) was his cousin, and that he was “good friends with Byron Brown,” Buffalo’s mayor (Exs 11-A, pp 18, 22; 12-A, p 15). As it turned out, that was not the first time Respondent had dropped names that day to try to get what he wanted. Indeed, when he called 911 to try to get the Meles’ cars ticketed or towed, he gratuitously told the operator that his children were police and in the fire department. Such unwarranted references to Respondent’s personal and political connections were highly improper.

Every judge has “a duty to conduct himself in such a manner as to inspire public confidence in the integrity, fair-mindedness and impartiality of the judiciary.” *Matter of Esworthy*, 77 NY2d 280, 282 (1991). *See Matter of Cohen*, 74 NY2d 272, 278 (1989). A judge who makes repeated representations to law enforcement that he has personal relationships with people of special influence – particularly at a time when he is under investigation – violates that duty. Indeed, Respondent’s conduct suggests that he believes “there are ‘two systems of justice, one for the average citizen and another for people with influence,’ and that those who have the right ‘connections’ can manipulate the system for their personal benefit.” *Matter of Dixon*, 2017 Ann Rep 100, 113 (Comm’n on Jud Conduct May 26, 2016); *see also Matter of Ramirez*, 2018 Ann Rep 232, 241 (Comm’n on Jud

Conduct May 4, 2017); *Matter of Schilling*, 2013 Ann Rep 286, 299 (Comm on Jud Conduct May 8, 2012).

Respondent demonstrated his misguided sense of entitlement by repeatedly attempting and/or appearing to attempt to curry favor with law enforcement officers by gratuitously mentioning his familial connections to various BPD officers, inventing a familial relationship to the deputy commissioner, and noting that he was friends with the Mayor of Buffalo.

From the very first, in his call to 911, Respondent offered the operator extraneous information about his “daughters, and sons, and son-in-law that are police,” creating at least the impression that he was trying to get special treatment from the police with respect to a truck he wanted ticketed (Exs 1; 1-A, p 1-2). Indeed, that Respondent volunteered his family ties to the BPD and fire department, just before unjustifiably asking the police to “ticket” the Mele vehicle, exacerbated his misconduct, inasmuch as those relationships were wholly irrelevant to the parking issue about which he was complaining and lying.

Later, after Officers Gehr and Muhammad refused to release Respondent’s wife on his demand, Respondent tried the same ploy, saying his daughter and son were BPD officers and that he was “going to call [. . . them] and their Lieutenants now” (Ex 12-A, p 7). The clear import of his reference was that the officers on the scene should heed Respondent’s wishes because of his personal connections,

including to superior officers. Respondent then reinforced that impression with the bald-faced lie that the Buffalo Police Department's Deputy Police Commissioner, "Gramaglia," was his cousin (Exs 11-A, p 18; 12-A, p 15). That he raised the stakes by inventing a familial tie to a deputy commissioner, after dropping the names of rank-and-file officers had accomplished nothing, dramatically illustrates Respondent's intent to curry special treatment. When that, too, did not work, Respondent tried a last-gasp attempt to wield political clout, telling the officers, "listen, I'm good friends with Byron Brown," the Mayor of Buffalo (Ex 11-A, p 22).

By blatantly dropping names while trying desperately to convince the officers to accede to his demands and do him a "favor" (Ex 11-A, p 23), Respondent consciously attempted to secure special treatment – a conclusion that is inescapable, notwithstanding his utterly unpersuasive testimony that he was simply "making conversation" and telling the officers that he empathized with their work (Respondent: 1225, 1403). First, the timing and context of the name drops – right after his threats had failed and his wife was being put in the police car, and then when asking for her release from the back of the police car – undermine Respondent's explanations. Second, the substance of Respondent's remarks – his threat to call police lieutenants, his fabrication of a familial relationship with the BPD Deputy Commissioner, and his announcement that he was "good friends"

with the mayor – could not reasonably be construed as benign conversation during such a high-stress moment. Indeed, Officer Hy recognized these statements for what they were, saying that when he took Respondent into custody, Respondent was “dropping everybody’s name with a badge,” “expecting special treatment,” and making the police “look dirty” (Exs 11-A, p 26; 12-A, p 22). Clearly, Respondent failed to “avoid impropriety and the appearance of impropriety in all of the judge’s activities,” contrary to Rule 100.2.

D. Respondent committed misconduct by making a false report to a 911 operator, lying to law enforcement personnel about his role during the altercation, and by attempting to minimize his involvement by falsely claiming that he was not present when the altercation began.

The Rules require that a judge uphold the integrity of the judiciary (Rule 100.1), avoid impropriety and the appearance of impropriety (Rule 100.2), and conduct his extrajudicial activities in a manner that does not detract from the dignity of judicial office (Rule 100.4[A][2]), and they demand that judges exercise honesty in all of their dealings, particularly when interacting with the public and with law enforcement personnel. *Matter of Mogil*, 1997 Ann Rep 116, 125 (Comm’n on Jud Conduct Feb 13, 1996) (“respondent’s false report to a police official and the series of elaborate untruths that he advanced during the investigation of this matter constitute serious misconduct. Such deception is antithetical to the role of a Judge who is sworn to uphold the law and seek the

truth”) (citing *Matter of Myers*, 67 NY2d 550 [1986]) (quotation marks omitted). Respondent violated those standards when he lied to a 911 operator about parked cars, and repeatedly lied to the police about his role during the Mele altercation.

First, Respondent falsely told a 911 operator that “two of [his neighbor’s vehicles were] blocking [his] driveway,” and “when [he] came in, [he] almost hit ’em” (Exs 1; 1-A, p 1). But video footage from that evening unmistakably demonstrates that there were no automobiles blocking Respondent’s driveway and that he was able to pull into the driveway and park without issue, in a single, smooth movement (Ex 41 at 07:00:53 – 07:01:10; *see also* Ex 40). Thus, Respondent’s statements to the 911 operator were plainly untruthful.

Despite this clear video evidence, Respondent doubled down at the hearing, testifying that he was unable to pull in “straight,” and instead had to “maneuver” his car “to get into the driveway” and “pull[] in . . . at an angle” (Respondent: 1338). That testimony was, at best, “misleading and evasive” and “cannot be viewed as acceptable conduct by one holding judicial office.” *Matter of Alessandro*, 2010 Ann Rep 82, 95 (Comm’n on Jud Conduct Feb 11, 2009), *removal accepted* 13 NY3d 238 (2009).

Second, when Respondent recounted the altercation for Officers Gehr and Muhammad, he told them specifically his wife went across the street on her own while he was “in the house,” and he “c[a]me out” to find her already in a

confrontation with “the two girls and Joe [Mele]” (Ex 11-A, p 20). Respondent claimed that only then did he “walk[] across the street,” at which point he declined Mr. Mele’s invitation, “You want to go, tough guy” by stating, “No, Joe . . . I’m bringing Maria back” (*id.*). Yet the video and audio recordings of the fight put the lie to those statements.

Indeed, the video shows that Respondent not only accompanied but led his wife across the street right before the fighting began, walking in front of her as he moved from his own property to the street (Ex 42; Respondent: 1352-53). Thus, the notion that he was in the house when she walked over is utterly false.

Moreover, at no point does the audio recording of the brawl reveal that Respondent tried to de-escalate the situation or remove his wife from danger, let alone contain the words “I’m bringing Maria back.” Rather, the audio recording irrefutably demonstrates that when Mr. Mele called Respondent “tough guy” and asked if he wanted to fight, Respondent replied “What do you got” – an escalation, or at least reciprocal posturing. And, as the video makes clear, at the time Ms. Grisanti began fighting with Ms. Mele and Ms. Dantonio, Respondent had already engaged with Joe Mele.

Respondent repeated his fictionalized account of the fight twice more that evening: when he spoke with Detective Costantino via cellphone from the back of the patrol car; and at the stationhouse when he spoke with Detective Moretti.

When he described the altercation for Costantino, he said, “No sooner am I taking the dog in the house . . . And when I come out, back out of the house, [Maria]’s engaged with the two . . . And [Maria] was in a freaking chokehold. So, I ran over there to break it up” (Exs 12 at 00:43:10 – 00:43:36; 12-B, p 4). Then, when recounting the fight for Moretti, Respondent similarly explained that his wife “started walking . . . across the street” without him as he was “trying to get the dog . . . towards the back of the yard” (Exs 13; 13-A, p 9), and by the time he made it to the Meles’ driveway, his wife “and the girls start fighting . . . And I’m trying to pull her away . . . saying, ‘Come on, let’s go’” (Exs 13; 13-A, pp 9-10, 20). Of course, as demonstrated above, none of that is true. Respondent conceded as much at the hearing, admitting – faced with the irrefutable video – that the version of the altercation he gave to Costantino and Gehr was “not correct” (Respondent: 1227-28, 1349-50).

All told, Respondent lied to a 911 operator, and then lied to the police about the brawl on three separate occasions that evening in order to deflect blame from himself, only to be caught in his lies by photographs and video recordings. Respondent’s initial “false report” and the “series of elaborate untruths that he advanced during the [police] investigation of this matter constitute serious misconduct.” *Mogil*, 1997 Ann Rep at 125 (internal citation and quotation marks omitted). That misconduct was exacerbated by Respondent’s “misleading and

evasive” hearing testimony that “cannot be viewed as acceptable conduct by one holding judicial office.” *Alessandro*, 2010 Ann Rep at 95.

In sum, Respondent violated a host of Rules in connection with the street brawl he instigated and escalated on June 22, 2020, as well as his violent and dishonest interactions with responding police officers in the aftermath of the fighting.

* * *

POINT II

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY PRESIDING OVER EIGHT CASES DESPITE HAVING A BUSINESS RELATIONSHIP WITH ONE OF THE ATTORNEYS THAT HE DID NOT DISCLOSE.

In 2015, attorney Matthew Lazroe entered into an agreement with Respondent to purchase Respondent’s law practice, paying him \$10,000 down and then \$365 per month for the next four years. However, Respondent neither put Mr. Lazroe on his recusal list nor directed his clerk to keep Mr. Lazroe off his cases, and he presided over eight cases in which Mr. Lazroe represented one of the parties. Five of those cases occurred while Mr. Lazroe was still making monthly payments to Respondent, and the other three fell within two years of the final payment. At no point did Respondent disclose his financial relationship with Mr. Lazroe to any of the parties in those eight cases. Over the course of the eight

cases, Respondent awarded \$14,000 to one of Mr. Lazroe's clients, as well as over \$8,000 in fees to Mr. Lazroe himself.

Respondent committed judicial misconduct by failing to disclose his financial arrangement with Mr. Lazroe, while at the same time issuing favorable rulings for Lazroe's clients and signing orders that paid Lazroe thousands of dollars. Because "[a]n independent and honorable judiciary is indispensable to justice in our society," all judges must observe high standards of conduct "so that the integrity and independence of the judiciary will be preserved" (Rule 100.1) and must "avoid impropriety and the appearance of impropriety in all of the judge's activities" (Rule 100.2). To those ends, a judge – subject to disclosure and remittal – must "disqualify himself . . . in a proceeding in which the judge's impartiality might reasonably be questioned," including where "the judge knows that he . . . has an economic interest . . . in a party to the proceeding or has any other interest that could be substantially affected by the proceeding." Rules 100.3(E)(1)(c). A judge must also minimize the risk of conflict between his judicial obligations and extrajudicial duties by refraining from engaging in financial and business dealings that may be reasonably perceived to exploit his judicial position, as well as refraining from involving himself in a continuing business relationship with a lawyer likely to come before the court on which the judge serves. Rules 100.4(D)(1)(a), 100.4(D)(1)(c).

The Court of Appeals and the Commission have repeatedly disciplined judges for violating these Rules. *See, e.g., Matter of Doyle*, 23 NY3d 656 (2014) (judge repeatedly presided over cases in which a close personal friend and the judge’s personal attorney appeared as counsel for one of the parties, without making any disclosures); *Matter of Pulver*, 2005 Ann Rep 203, 208 (Comm’n on Jud Conduct May 18, 2004) (“It was improper for respondent to engage in continuing business and financial dealings with an attorney appearing in respondent’s court and, correspondingly, to permit the attorney and his law firm to appear before him at a time when respondent and the attorney were business partners”); *Matter of Torraca*, 2001 Ann Rep 125, 126 (Comm’n on Jud Conduct Nov 7, 2000) (disciplining judge for presiding over cases involving an attorney who was making payments to the judge in connection with a business agreement).

Here, as in *Torraca*, Respondent presided over Mr. Lazroe’s cases “[d]uring a time when [the] attorney . . . was making payments to [R]espondent” in connection with a “business dealing[],” and without making a “disclosure to any of the opposing parties.” *Torraca*, 2001 Ann Rep at 126. Specifically, while Mr. Lazroe was paying Respondent \$365 per month, Respondent presided over:

- *Bayview Loan Servicing, LLC v Mary Lee Fornes et al.*, in which Respondent signed an order discontinuing the case against Mr. Lazroe’s client after Mr. Lazroe’s name had appeared as the defendant’s attorney on several case documents (Ex 16, pp 9-11, 13-14; Lazroe: 296);

- *Buffalo Seminary v Stephanie Satterwhite*, in which Respondent signed an order upon Mr. Lazroe's affidavit, awarding his client nearly \$14,000 (Ex 29, p 39);
- *Matter of Application of M [REDACTED] F [REDACTED]*, in which Respondent signed an order appointing Mr. Lazroe as a court evaluator, presided over a proceeding in which Mr. Lazroe appeared to present his findings to Respondent, and directed that Mr. Lazroe be paid more than \$2,000 (Ex 17, pp 8-9, 44-45, 51; Lazroe: 305);
- *Trifera, LLC v Morrison, Unknown Heirs*, in which Respondent signed an order appointing Mr. Lazroe as guardian *ad litem* and directing that he be paid \$250 (Ex 18, pp 9-10, 12); and
- *Federal National Mortgage Association v Anderson, et al.*, in which Respondent signed an order appointing Mr. Lazroe as guardian *ad litem* in a mortgage foreclosure case; that order and a later order provided that Mr. Lazroe be paid \$600 (Ex 19, pp 4-5, 7, 16, 22).

As in *Torraca*, "Such conduct is contrary to the ethical rules which prohibit a judge from engaging in business dealings that cast reasonable doubt on the judge's capacity to act impartially and that involve the judge in frequent transactions or continuous business relationships with lawyers or others likely to come before the judge's court." *Torraca*, 2001 Ann Rep at 126.

Additionally, for two years following the final payment, Respondent was required to at least disclose his relationship with Mr. Lazroe in any case that Mr. Lazroe had before Respondent. Advisory Opinions 05-130(B), 06-62.

Nonetheless, Respondent presided over the following cases without making any disclosures:

- *Greater Woodlawn Federal Credit Union v Charles Pachuki et al*, in which Respondent signed an order appointing Mr. Lazroe as referee and setting his fee at \$150 (Ex 20, pp 11-14);
- *Matter of the Application of W███████. L███████* in which Respondent signed an order appointing Mr. Lazroe as court evaluator, presided over multiple proceedings at which Mr. Lazroe appeared before Respondent, and directing that Mr. Lazroe be paid over \$5,000 (Ex 21, pp 9, 11, 31, 33, 70-71, 31; Lazroe: 306); and
- *Rasheena Jones v Jerry Gradl Motors, Inc.*, in which Mr. Lazroe represented the plaintiff and had several conferences with Respondent (Ex 22, p 2; Lazroe: 348).

That conduct, too, violated the Rules. *See* Advisory Opinions 05-130(B), 06-62.

At best, the fact that Respondent presided over these eight cases despite the obvious conflict owing to his financial relationship with Mr. Lazroe demonstrates gross negligence on Respondent’s part. Indeed, Respondent testified that he knew the importance of a recusal list from his education at the judicial institute and through discussion with his Administrative Judge and/or the District Executive (Respondent: 1310-12), and he was cognizant enough to place on his recusal list “a lot of individuals” who had given him political contributions, as well as Mr. Pecoraro (Respondent: 1238-40).¹⁶ Further, Respondent saw the list of prospective attorneys for appointment within approximately a year of taking the bench, and he

¹⁶ In fact, Respondent discussed with attorneys Mr. Pecoraro and Mr. Lazroe, at the time they signed the agreement for the purchase of Respondent’s law practice, that Respondent was not allowed to involve Mr. Pecoraro in any assignments for two years (Lazroe: 343).

discussed attorney assignments with his law clerk, Doug Curella (Respondent: 1314-15).

Had Respondent's failure to put Lazroe on his recusal list been inadvertent, or had one or two of his assignments to Lazroe been unwitting – as he testified, Respondent did not always read documents before signing them (Respondent: 1318) and he sometimes signed blank appointment orders that would have attorney names added after the fact (Respondent: 1316) – his conduct would still have been entirely inexcusable. Signing official documents and orders without reading them is misconduct in and of itself. But the fact that Respondent presided over as many as eight matters involving Lazroe, repeatedly permitted Lazroe to appear before him, and facilitated remuneration to Lazroe and his clients despite a relationship in which Lazroe was financially indebted to Respondent, is beyond astounding. It reveals Respondent's utter disregard for his ethical obligations and gives rise to the inevitable appearance that he was using the powers of his office to put money in the hands of a lawyer who then or recently owed him money.

* * *

POINT III

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY FAILING TO PROPERLY REPORT \$15,000 IN INCOME ON AN ETHICS COMMISSION FINANCIAL DISCLOSURE STATEMENT, AS WELL AS OVER \$43,000 IN INCOME TO THE CLERKS OF THE COURT OF CLAIMS AND ERIE COUNTY SUPREME COURT.

As a judge of a court of record, Respondent is required each year to file a financial disclosure statement (“FDS”) with the Ethics Commission for the New York State Unified Court System. *See* 22 NYCRR § 40.2(a); Rule 100.4(I). Additionally, Respondent is also required each year to report to the clerk of each court on which he serves the date, place and nature of any activity for which he received compensation in excess of \$150, along with the name of the payor and the amount of the compensation. Rule 100.4(H)(2). Respondent violated those rules by failing to report \$15,000 in income from the sale of his law firm on his 2015 FDS, and by failing to report over \$43,000 in income to the clerks of his courts from 2015 through 2019.

A. Respondent committed misconduct when he filed an inaccurate and misleading FDS form in 2015.

The information provided by a judge on his financial disclosure forms “is available to the public and, among other things, enables lawyers and litigants to determine whether to request a judge’s recusal.” *Matter of Alessandro*, 13 NY3d 238, 249 (2009); *see also Matter of Miller*, 35 NY3d 484, 491 (2020).

Accordingly, “[judges must complete their financial disclosure forms with diligence, making every effort to provide complete and accurate information.” *Alessandro*, 13 NY3d at 249; *see also Matter of Eannace*, 2021 Ann Rep 93, 97 (Commn on Jud Conduct Nov 16, 2020); *Matter of Miller*, 2021 Ann Rep 197, 213 (Commn on Jud Conduct Feb 14, 2020) *aff’d* 35 NY3d at 484.

The Court of Appeals and the Commission have consistently held that a judge’s failure to file accurate and complete financial disclosure forms constitutes misconduct.” *Miller*, 35 NY3d at 491; *see also Alessandro*, 13 NY3d at 249; *Matter of Anderson*, 2013 Ann Rep 75, 89-90 (Commn on Jud Conduct Oct 14, 2012); *Matter of Dier*, 1996 Ann Rep 79, 80-81 (Commn on Jud Conduct Oct 2, 1995). That an inaccurate filing may have resulted from a mistake does not mitigate or excuse the misconduct, because “even if inadvertent, [faulty filings] create the appearance that [the judge] was intentionally concealing his extra-judicial activity.” *Matter of Ramich*, 2003 Ann Rep 154, 159 (Commn on Jud Conduct Dec. 27, 2002). Thus, even “careless” or negligent omissions from a judge’s FDS constitute disciplinable misconduct. *See Alessandro*, 13 NY3d at 248-49 (in consolidated cases, admonishing a judge who made “careless” omissions from his financial disclosure statements).

Here, the FDS form Respondent filed for 2015 contained incomplete and inaccurate information relating to monies he received for the sale of his law

practice by Mr. Lazroe and Mr. Pecoraro. In accordance with the terms of the sales agreement, the attorneys paid Respondent a total of \$15,000 as a down payment in May of 2015, and then \$4,380 in installment payments through December of 2015 (Exs 14; 15; Respondent: 1234-35). Although Respondent reported the \$4,380 in installment payments, he failed to report the \$15,000 down payment in his responses to questions 12(a), 12(b), 13 and 18 (Ex 23).

Respondent acknowledged at the hearing that the \$15,000 down payment was missing from his 2015 FDS but claimed that he did not include it because “at the time I got the down payment, I was not a Judge” (Respondent: 1254). But that is simply untrue: Respondent signed an oath card and became a Court of Claims Judge on May 14, 2015, then signed the law practice sales agreement on May 18, 2015, and then received the down payment money from Mr. Lazroe on May 20, 2015 (Exs 14; 15; Respondent: 1138).¹⁷ Ultimately, Respondent agreed that “it should have been in there that there was a down payment of \$15,000” (Respondent: 1253).

As to question 13, where Respondent identified attorneys Pecoraro and Lazroe as the source of income for the “sale of law office” but indicated that he received “under \$5,000” (Ex 23), Respondent rationalized that he disclosed the

¹⁷ It is also irrelevant. Given that the purpose of an FDS filing is to alert the public to potential conflicts of interest, the fact that a person paid a judge thousands of dollars shortly before the judge took the bench, and within the same reporting year, falls squarely within the reporting requirement.

down payment in another question 13 entry, where he wrote that he received between \$20,000 and \$60,000 from “law office closed May 2015, clients” (Ex 23; Respondent: 1255). But that answer makes no sense, both because \$15,000 is not between \$20,000 and \$60,000, and because he received the down payment from the purchasing attorneys, not from his “clients” or from the mere closure of the office. Finally, as to question 18, where Respondent listed attorneys Pecoraro and Lazroe as debtors for the “sale of law firm” but listed the amount received as “under \$5,000.00” (Ex 23), Respondent acknowledged that he should have selected the “category of amount” that reflected \$5,000 to \$20,000 (Respondent: 1294).

To be sure, Respondent amended his 2015 FDS in June 2021 (Resp Exs S, U, W, Y; Respondent: 1262). However, Respondent’s amended filings do not excuse the impropriety of his failing to make accurate filings in the first place, particularly where he filed the amended form only after learning of the Commission’s investigation. *See Miller*, 35 NY3d at 491 (failure to amend tax returns until under investigation by the Commission “impedes the purpose of these disclosure forms” and constitutes misconduct); *Dier*, 1996 Ann Rep at 80-81 (sustaining charge of failure to report rental property income notwithstanding that petitioner subsequently filed an amended document). Thus, Respondent’s failure to disclose the \$15,000 down payment on his 2015 FDS constitutes misconduct.

B. Respondent committed misconduct by failing to report any income from the sale of his law practice to the clerks of his courts, as required by Rule 100.4(H)(2).

In 2015, Respondent was appointed to the Court of Claims and the Erie County Supreme Court. From May 2015 through June 2019, in connection with the agreement for the sale of his law practice, Respondent received over \$27,000 from Mr. Lazroe and nearly \$16,000 from Mr. Pecoraro, between the portion of the down payment and the monthly installment payments remitted by each of them (Exs 14; 15; Respondent: 1234-35). Rule 100.4(H)(2) required Respondent to report that income on an annual basis to the Clerk of the Court of Claims and the Clerk of the Erie County Supreme Court, as it constituted extrajudicial income in excess of \$150. His failure to do so from 2015 through 2019 – which he admitted at the hearing (Respondent: 1263, 1303-04) – constitutes misconduct. *Miller*, 35 NY3d at 488, 491 (disciplining judge for *inter alia* failing to report extrajudicial income to clerk of court); *Matter of Ramich*, 2003 Ann Rep at 155, 159 (same).

Respondent sought to excuse this filing lapse by claiming that he “wasn’t familiar with that Rule” (Respondent: 1263, 1303-04). But that assertion is hard to believe, given that Respondent’s Administrative Judge, Paula Feroletto, sent an email in 2021 to all the judges in Respondent’s judicial district reminding them of the 22 NYCRR 100.4(H)(2) reporting requirement, and noting that the District Executive had sent a similar reminder on a yearly basis. Though Respondent

acknowledged receipt of that email from Judge Feroletto but denied ever getting a reminder from the District Executive, he could not explain why Judge Feroletto would have noted the existence of the annual reminders if they had not truly been sent (Respondent: 1308). The more likely scenario is that Respondent indeed got annual reminders from the District Executive, but either disregarded or ignored them.

In any event, Respondent's professed ignorance as to the annual reporting requirement is unavailing, as ignorance and lack of competence do not excuse violations of ethical standards. *Miller*, 35 NY3d at 488, 491 (disciplining judge for failure to file annual reports with the clerk of his court, notwithstanding the judge's claim "that he was not aware of the requirement"); *see generally Matter of VonderHeide*, 72 NY2d 658 (1988). And, although Respondent testified to his belief that because he filed FDS forms, "that's sufficient . . . and . . . 100.4(H)(2) does not apply to [him]" (Respondent 1266), the Court of Appeals rejected that very claim in *Miller*, imposing discipline for a 100.4(H)(2) violation where the judge "believed his obligations were satisfied by the Ethics Commission FD[S]." *Miller*, 35 NY3d at 488, 491. Accordingly, Respondent's failure to annually report extrajudicial income with the clerks of his courts constitutes misconduct.

In sum, Respondent committed judicial misconduct by filing an inaccurate and misleading FDS form in 2015, and by failing to file annual reports of

extrajudicial income with the clerks of his courts in accordance with Rule 100.4(H)(2).

* * *

CONCLUSION

Counsel to the Commission respectfully requests that the Referee adopt the proposed findings of fact and conclusions of law enumerated in Appendix A to this Memorandum and find that Charges I, II and III of the Formal Written Complaint are sustained.

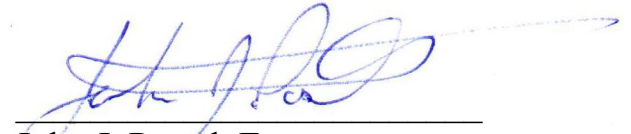
Dated: January 31, 2023
Rochester, New York

Respectfully submitted,

ROBERT H. TEMBECKJIAN

Administrator and Counsel to the
Commission on Judicial Conduct

By:



John J. Postel, Esq.
Deputy Administrator
400 Andrews Street, Suite 700
Rochester, New York 14604
(585) 784-4141

Of Counsel:

Edward Lindner, Esq.
Denise Buckley, Esq.
David P. Stomes, Esq.
David M. Duguay, Esq.

APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent was admitted to the practice of law in New York in 1993. He has been a Judge of the Court of Claims and an Acting Justice of the Supreme Court, Erie County, since 2015. Respondent's term expires on July 31, 2023 (FWC ¶4; Answer ¶ RESPONSE #4).

PROPOSED FINDINGS OF FACT AS TO CHARGE I

2. In June 2020, Respondent – a Judge of the Court of Claims and Acting Justice of the Supreme Court – lived at 21 [REDACTED] Avenue in Buffalo with his wife, Maria Grisanti (Grisanti: 962; Respondent: 1105, 1138). Joe and Gina Mele lived across the street at 16 [REDACTED] Avenue (Mele: 39). Although the Grisantis and the Meles had been neighbors for 16 years, they did not get along.

3. Several of Respondent's neighbors – including Joseph Contino, Jeanne Contino, and Linda Chwalinski – reported a long history of strife on [REDACTED] Avenue between the Meles and their neighbors (Jo.Contino: 368, 397; Je.Contino: 431, 433, 446; Chwalinski: 483, 489-91; Grisanti: 966-70, 980; Respondent: 1166-67, 1175-76). Linda Chwalinski testified that Gina Mele once “physically assaulted” her “from behind and . . . threatened to kill [her] . . . in front of about eight to ten small children.” Ms. Chwalinski averred that she “feared for [her] life” every time she went on her front lawn and that “every neighbor” had incidents with

the Meles (Chwalinski: 483, 489, 491). According to the Continos, the Meles had “a history of just being extremely, extremely mean and threatening” (Jo.Contino: 368, 397; Je.Contino: 433, 446).

4. Respondent knew of the Meles’ reputed propensity for confrontation. In 2014, after Respondent expanded his driveway, the Meles began parking their cars in a manner that Respondent believed encroached on his driveway to “provoke and harass” him (Respondent: 1170). According to Respondent, when he asked the Meles to stop, they would give him “the finger, or . . . spit at” him in return (Respondent: 1169).

5. Respondent testified that at times, Mr. Mele would ask Respondent, “Do you want a shot at the title,” which Respondent “took it to mean that he wanted to have some sort of an altercation” like a fist fight (Respondent: 1171-72, 1345-46). Respondent acknowledged that he knew Mr. Mele to be “an instigator” who “liked to start trouble” (Respondent: 1347, 1371).

6. On the evening of June 22, 2020, Respondent returned home to find two vehicles that did not belong to him parked on opposite sides of his driveway: a truck and an SUV, both of which he believed belonged to the Meles. Neither vehicle blocked the entrance to his driveway, though both were parked within a few feet of the edge. Respondent was able to pull straight into his driveway and park without issue (Ex 41 at 07:00:53 – 07:01:30). Nevertheless, Respondent and

Ms. Grisanti were disturbed by how the vehicles were parked (Grisanti:1032; Respondent: 1334).

7. After unloading the car, Respondent called 911 to report that “an idiot neighbor across the street” had four cars parked on Respondent’s side of the street. He told the operator, “two of them are blocking my driveway,” and “when I came in, I almost hit ‘em” (Exs 1; 1-A, p 1; Respondent: 1163, 1344).

8. Respondent volunteered to the 911 operator that he had “daughters, and sons, and son-in-law that are police, that are the fire department,” and that “[w]hatever it’s worth, the mayor’s not doing things right with you guys.” He then told the operator, referring to the vehicles parked near his driveway, “I want a ticket . . . on it, or I want it towed” (Exs 1; 1-A, pp 1-2). Respondent did not hear yelling from the Meles’ side of the street during his 911 call (Respondent: 1344).

9. Ms. Grisanti walked over to the truck and put her foot out toward it to measure where it was parked in relation to the Grisanti driveway (Grisanti: 1032-33). Respondent heard the Meles begin to yell as Ms. Grisanti walked behind the truck (Respondent: 1344). Respondent and his wife began pointing and gesturing toward the Meles’ house (Ex 2 at 07:14:00 – 07:14:22).

10. The Grisantis argued with Gina Mele – who was outside on her porch – and yelled at her, “move the fucking truck,” as Joe Mele joined his wife outside (Mele: 46). Respondent shouted at the Meles that he had “already called the cops,”

and Ms. Mele and Ms. Grisanti exchanged vulgarities. Respondent, still yelling across the street, threatened to park his cars so that they encroached on the Meles' driveway "every fucking . . . Thursday" (Ex 2-A, pp 1-3). Alternate-side parking on the Meles' side of the street began on Thursday evenings (Chwalinski: 498-99; Grisanti: 969-70; Respondent: 1327).

11. With the Meles standing on their porch, Respondent walked off his property, stepped into the street, and headed toward the Meles' driveway, with his wife a step or two behind him (Exs 2 at 07:14:28 – 07:14:33; 42). At the hearing, Respondent acknowledged that Commission Exhibit 42 clearly shows him preceding his wife as they walked across the street (Respondent: 1352-53). That exhibit also shows the location of the Meles' truck in relation to Respondent's driveway. Plainly, the Meles' truck was not blocking the Grisantis' driveway.

12. As the video from the Meles' camera shows, Mr. Mele stepped off his porch as the Grisantis approached and met them at the edge of his driveway (Ex 2 at 07:14:34 – 07:14:35). Mr. Mele said to Respondent, "Come on, you cocksucker," and Respondent replied, "Come on . . . come on . . . come on" (Ex 2-A, p 3). Mr. Mele responded, "Let's see . . . what you've got, tough guy," and "Take your fucking shot." In answer, Respondent said, "What do you got," and Mr. Mele told Respondent to "Get the fuck out of here" (Ex 2-A, pp 3-4). Respondent declined, instead calling Mr. Mele a "Fucking asshole." Mr. Mele

replied in kind, “Come on, motherfucker . . . I’ll fucking . . . knock you out” (Ex 2-A, p 4).

13. Around this time, Ms. Grisanti stepped between Respondent and Mr. Mele, and Ms. Mele and Theresa Dantonio – Gina Mele’s sister – joined the fray (Grisanti: 998; Respondent: 1193-96). The three women began wrestling, and Ms. Grisanti ended up in a chokehold. When Mr. Mele entered that scrum, Ms. Grisanti bit his arm (Exs 2 at 07:14:39 – 07:14:54; 2-A, p 4; 6; 13-A, pp 24-25; Grisanti: 999-1000; Respondent: 1196-97).

14. Respondent, no longer separated from Joe Mele, said to him, “Come on . . . you think we’re done . . . Come on” (Ex 2-A, p 5). As the Meles’ camera continued to record the scene, Respondent and Mr. Mele grabbed one another and grappled in the street.

15. Respondent pushed Mr. Mele toward Respondent’s own driveway, and as the men continued to wrestle, Mr. Mele pulled off Respondent’s shirt and dropped it on the ground, leaving Respondent standing in the street in a white tank-top undershirt (Ex 2 at 07:14:55 – 07:15:20). Respondent stopped fighting long enough to pick up his shirt, then grabbed ahold of Mr. Mele again. After the two grappled for five or six seconds, Mr. Mele fell to the ground near the edge of Respondent’s driveway (Ex 2 at 07:15:21 – 07:15:37). As Mr. Mele lay on the ground, Respondent called him a “[f]ucker” (Ex 2-A, p 6).

16. Linda Chwalinski – who lived at 15 [REDACTED] Avenue with her husband Gerald – came outside and told her husband, “Call 911” (Ex 2-A, p 5; Chwalinski: 456, 458-59, 505).

17. Charlie Adamo – who lived down the block at 37 [REDACTED] Avenue – came up to Respondent pleading, “Mark, come on. Come on, please . . . [t]he cops are going to be here” (Ex 2-A, p 7; Respondent: 1203). Respondent continued taunting Mr. Mele anyway, saying “You want to go again, tough fucking guy . . . Tough guy, yeah . . . I’ll fucking flatten your face again” (Ex 2-A, p 9).

18. Ignoring Respondent’s taunt, Joe Mele – whose eyeglasses had been pushed into his face causing visible damage near his eye – stood up, backed into the street, and ultimately walked with his wife back to his own driveway (Exs 2 at 07:16:09 – 07:17:00; 7; 8; Respondent: 1202).

19. However, after a few moments of continued arguing, Respondent, his wife, and the Meles re-entered the street and began brawling again (Ex 2 at 07:17:10 – 07:17:16). When the grappling ended a few moments later, Respondent was left bare-chested, his tank top ripped and hanging from his waist (Ex 2 at 07:17:27).

20. The Meles and Grisantis continued shouting expletives from their respective driveways, with Respondent calling Mr. Mele a “fucking asshole,”

saying “Fuck you” twice, and yelling, “Nobody . . . fucking likes you guys . . . you piece of shit” (Ex 2-A, pp 13, 15-16).

21. At approximately 8:45 p.m., Buffalo Police Department (“BPD”) Officer Ryan Gehr and his partner, Officer Larry Muhammad, arrived together at 21 [REDACTED] Avenue in response to a call about a fight to find Respondent standing shirtless in the street (Gehr: 162-63, 186; Muhammad: 249). Both officers were wearing body cameras (Gehr: 163-64; Muhammad: 249-50).

22. Ms. Grisanti went up to the BPD officers’ car, pointed toward the Meles, and screamed, “They’re a bunch of fucking assholes” (Exs 11 at 00:00:25 – 00:00:27; 11-A, p 1).

23. Ms. Grisanti walked directly to the Mele driveway and began screaming into Ms. Dantonio’s face from mere inches away. Officer Gehr told Ms. Grisanti, “We’re . . . not doing this,” and Officer Muhammad shepherded her and Respondent across the street so that he could speak with them on the Grisanti property while Gehr spoke with the Meles in their driveway (Exs 11 at 00:00:28 – 00:00:42; 11-A, p 2).

24. While Officer Gehr was speaking with the Meles and Ms. Dantonio, Ms. Grisanti marched across the street toward them and yelled toward Gehr, “You fucking walked over there” (Exs 11 at 00:00:49 – 00:00:50; 11-A, p 2). Gehr told

Ms. Grisanti, “You’re going to step back,” and Muhammad again walked her back across the street to her own driveway (Exs 11 at 00:00:49 – 00:00:52; 11-A, p 2).

25. Despite Officer Muhammad’s attempts to speak with the Grisantis, Ms. Grisanti resumed yelling profanities across the street at the Meles, including, “fucking . . . rotten, no-good bastards,” and “fucking rotten neighbors” (Exs 11 at 00:01:00 – 00:01:06; 11-A, p 3; 12 at 00:00:23 – 00:00:31; 12-A, p 1). Officer Gehr announced he would not listen to yelling and asked the Meles to speak with him farther down their driveway (Exs 11 at 00:01:07 – 00:01:10; 11-A, pp 3-4).

26. In response to an inquiry from Ms. Dantonio, Gehr confirmed that the truck and SUV about which Respondent had complained were not blocking Respondent’s driveway (Exs 11 at 00:01:12 – 00:01:16; 11-A, p 4). Neither the truck nor the SUV were ticketed (Mele: 45; Gehr: 171).

27. Respondent told Officer Muhammad that the altercation began when Ms. Grisanti crossed the street on her own, then the “[t]hree of them push[ed] her . . . [s]o, I come across . . . the street” (Exs 12 at 00:01:03 – 00:01:06; 12-A, p 3).

28. Ms. Grisanti interrupted Officer Gehr’s conversation with the Meles by screaming across the street, “Wait ‘til my son hears what you did” (Exs 11 at 00:01:32 – 00:01:37; 11-A, p 5; 12 at 00:00:57 – 00:01:01; 12-A, p 2; Grisanti: 1087). Officer Gehr responded to Ms. Grisanti’s interference by telling her, “Ma’am, if you don’t stop yelling, this is going to be a problem for you” (Exs 11 at

00:01:37 – 00:01:40; 11-A, p 6; 12 at 00:01:01 – 00:01:04; 12-A, p 3). Ms. Grisanti replied, “I don’t care . . . You’re not going to arrest me” (Exs 11 at 00:01:41 – 00:01:44; 11-A, p 6; 12 at 00:01:04 – 00:01:08; 12-A, p 3).

29. Determining that the de-escalation techniques in which he had been trained were not working, Officer Gehr walked briskly across the street to the Grisantis’ driveway and reached for Ms. Grisanti’s arm, attempting to handcuff her (Exs 11 at 00:01:43 – 00:01:46; 12 at 00:01:09 – 00:01:11; Gehr: 167, 203, 229-32; Grisanti: 1016). Ms. Grisanti yelled, “[d]on’t fucking arrest me,” as she flailed her arms and twisted her body away from Gehr (Exs 11 at 00:01:46 – 00:01:49; 11-A, p 6; 12 at 00:01:09 – 00:01:13; 12-A, p 4). Officer Gehr replied, “We are not doing this right now,” and continued to try to place her in handcuffs (Exs 11 at 00:01:49 – 00:01:52; 11-A, p 6; 12 at 00:01:13 – 00:01:16; 12-A, p 4). At that point, Respondent walked up behind Gehr and yelled “hey,” three times (Exs 11 at 00:01:48 – 00:01:52; 11-A, p 6; 12 at 00:01:12 – 00:01:15; 12-A, p 4).

30. Ms. Grisanti continued to resist Gehr, which prompted him to grab her right wrist, turn her body with both his hands, and bring her to the ground on her left side, with her left hand and arm bracing her fall – a lawful takedown procedure in which he had been trained (Exs 11 at 00:01:50 – 00:01:52; 12 at 00:01:10 – 00:01:16; Gehr: 167; Muhammad: 280-81). After landing on the ground, Ms.

Grisanti immediately said, “No. It’s okay,” and did not complain of any pain or injury (Exs 11 at 00:01:52 - 00:01:53; 11-A, p 6).

31. While Officer Gehr was handcuffing Ms. Grisanti, Respondent walked up to Gehr, placed both of his hands on Gehr’s upper body, and shoved Gehr backward (Exs 11 at 00:01:52 – 00:01:54; 12 at 00:01:14 – 00:01:17; 43). The still image captured from Muhammad’s body camera as Commission Exhibit 43 shows that shove in full detail.

32. Officer Muhammad immediately admonished Respondent, “no, no, no, no” (Exs 11 at 00:01:53; 11-A, p 6; 12 at 00:01:15 – 00:01:17; 12-A, p 4). Ignoring him, Respondent yelled, “Dude, dude” at Officer Gehr, which prompted Muhammad to place Respondent in a bear hug and tell him, “Keep your hands off a cop” (Exs 12 at 00:01:18 – 00:01:20; 12-A, p 4). Undeterred, Respondent told Gehr, “You better get off my fucking wife” and continued calling him “Dude” as Muhammad maintained his grip on Respondent and said, “Do not fight a police officer” (Exs 11 at 00:01:53 – 00:01:59; 11-A, p 7; 12 at 00:01:14 – 00:01:26; 12-A, pp 4-5; Muhammad: 253-55).

33. When Gehr finally succeeded in handcuffing Ms. Grisanti, Respondent yelled, “[y]ou arrest my fucking wife . . . you’re going to be sorry,” and then volunteered, “My son . . . and my daughter are . . . both police officers.”

34. When Gehr did not release Ms. Grisanti, Respondent exclaimed, “Oh my God, are you fucking kidding me, dude?” (Exs 11 at 00:02:10 – 00:02:16; 11-A, pp 7-8; 12 at 00:01:35 – 00:01:45; 12-A, p 5). Respondent continued, “Listen . . . If you don’t get the cuffs off her right now . . . you’re going to have a problem.” Recognizing that to be a threat, Muhammad responded, “We’re not doing that; we’re not threatening that.”

35. Bare-chested and pointing at Gehr, Respondent persisted, “He needs to get the cuffs off her” (Exs 12 at 00:02:00 – 00:02:16; 12-A, pp 6-7; 44). Officer Muhammad told Respondent that the police were not going to let Respondent’s “demand[s]” dictate their actions, and he asked Respondent to “let us just work this through” (Exs 12 at 00:02:16 – 00:02:23; 12-A, p 7). Respondent continued his obstinance and again volunteered his familial connections with the BPD, stating, “No. Watch . . . I’m going to need to call my son and my daughter and their Lieutenants right now” (Exs 12 at 00:02:24 – 00:02:28; 12-A, p 7).

36. After Officer Gehr placed Ms. Grisanti into a police car, Gehr and Officer Muhammad – along with Officer Richard Hy, who had just arrived on the scene – told Respondent that the officers wanted to hear his side of the story. Respondent began by stating that his daughter works “in B District,” volunteering “My son’s . . . in C District,” and falsely stating that “Gramaglia’s my cousin” (Exs 11 at 00:06:23 – 00:06:43; 11-A, p 18; 12 at 00:05:48 – 00:06:07; 12-A, pp 14-15).

“B District” and “C District” are divisions within the BPD (Grisanti: 1030).

Joseph Gramaglia was the BPD Deputy Police Commissioner on June 22, 2020, who was not in fact related to Respondent (Muhammad: 256; Respondent: 1225, 1405).

37. Respondent told the officers a version of the altercation in which the Meles attacked his wife, and he went across the street to give her aid. Specifically, Respondent stated that he initially called the police to ask them to knock on the Meles’ door and tell them to move the truck, but that he did not want the truck ticketed (Exs 11 at 00:06:54 – 00:07:32; 11-A, pp 19-20; 12 at 00:06:18 – 00:06:56; 12-A, pp 15-16).

38. Respondent told the officers that his wife went across the street on her own while he was in the house, and she was on her own when confronted by “the two girls and Joe [Mele]” (Exs 11 at 00:07:33 – 00:07:45; 11-A, p 20). Respondent told a similar story to his daughter, BPD officer Ashlee Amoia, when he called her from his cellphone immediately before giving this account to the officers on the scene (Exs 11 at 00:06:04 - 00:06:13; 11-A, p 17; 12 at 00:05:29 – 00:05:37; 12-A, p 14).

39. Respondent continued his narrative, stating that when he crossed the street after his wife, Joe Mele said, “Oh, you want to go? You want to go, tough guy?” Respondent claimed to have replied, “No, Joe,” and said that he sought only

to “bring[] Maria back” (Exs 11 at 00:07:46 – 00:07:51; 11-A, p 20). At that point, Respondent claimed, Joe Mele “whack[ed]” him and “pushe[d]” him backward, which prompted Respondent to reply, “Dude, you need to, like, calm down” (Exs 11 at 00:07:51 – 00:08:00; 11-A, p 20). None of those words appear on the audio recording of the altercation itself (*see* Exs 2; 2-A).

40. Respondent stopped and re-started his story several times, repeating that his wife walked over to the Meles’ property on her own while he was in the house, and that by the time he realized what was happening, “[t]hey frigging bolt from the porch. The girl’s got her frigging hand on my wife’s throat, and that’s when I walked over there” (Exs 11 at 00:08:52 – 00:09:04; 11-A, p 21). He later reiterated, “I mean, I walked over to grab Maria and he goes, ‘Oh, you want to go, tough guy?’ I’m like, ‘No, Joe, I’m taking her away.’ Boom and push” (Exs 11 at 00:10:01 – 00:10:08; 11-A, p 23).

41. At one point, Respondent asserted that the Meles were looking “to start problems” and then volunteered out of the blue, “I’m good friends with [Buffalo Mayor] Byron Brown. He’s like, ‘It’s always something. Mark, just freaking ignore them.’” (Exs 11 at 00:09:22 – 00:09:30; 11-A, p 22).

42. After finishing his account of the Mele altercation, Respondent said to Officer Gehr, “Do me a favor . . . Get her out of the car and I’ll bring her inside.” He added, “I didn’t mean to tackle you, but, I mean, you kind of threw my wife

down on the ground pretty hard and I don't appreciate that" (Exs 11 at 00:10:26 – 00:10:32; 11-A, pp 23-24). When Gehr tried to respond, Respondent interrupted him to remind him that Respondent's daughter and son-in-law were police officers, then added "I know what you guys are going through right now" (Exs 11 at 00:10:39 – 00:10:49; 11-A, p 24).

43. Officer Gehr attempted to explain why he acted as he did, but Respondent raised his voice, told Gehr that his conduct "was not necessary," and said, "you need to chill out" (Exs 11 at 00:10:50– 00:10:56; 11-A, pp 24-25).

44. Neither Respondent nor his wife filed a complaint against Officer Gehr or brought a lawsuit based on Gehr's actions that evening (Grisanti: 1099; Respondent: 1219, 1409-10).

45. Gehr noted that his conduct was documented on his body camera, and Respondent interrupted – again in a raised voice – to say, "I don't care about your camera, just giving you a little constructive criticism, dude" (Exs 11 at 00:10:57 – 00:11:02; 11-A, p 25).

46. Officer Hy – who had been standing next to Respondent and Officer Gehr – interjected and told Respondent, "Let me give you some constructive criticism. You want to drop another copper's name? You want to scream about you know Gramaglia or the Mayor?" (Exs 11 at 00:11:02 – 00:11:07; 11-A, p 25). Hy handcuffed Respondent and said:

You want to be difficult? You want to . . . say, ‘I know all these coppers, I know all these things . . .’ You want to make us look dirty, is that what you want to do . . . Shut, shut up and let me talk to you . . . since you had so much to say, and you touched a cop . . . let me talk to you . . . Quiet . . . let’s be quiet . . . You’re saying everybody’s fucking name and dropping everybody’s name with a badge, and you’re expecting special treatment. How does that look to everybody in this . . . environment right now . . .

(Exs 11 at 00:11:13 – 00:11:41; 11-A, pp 25-27; 12 at 00:10:52 – 00:11:19; 12-A, pp 21-22).

47. While walking Respondent to a squad car, Hy continued, “And then you touched a fucking cop . . . then you drop your daughter’s name . . . Sit down”

(Exs 12 at 00:11:33 – 00:11:39; 12-A, p 23). Respondent was placed in the back of a cruiser in handcuffs (Exs 12 at 00:11:33 – 00:11:41; 12-A, p 23).

48. Respondent and his wife remained in separate police cars on [REDACTED] Avenue while additional BPD personnel, including Lieutenant Karen Turello and Detective William Moretti, arrived to assist in the investigation (Gehr: 173). At one point, Turello gave Respondent her personal cell phone through Officer Muhammad so that he could speak with BPD Detective Mark Costantino – a courtesy that Officer Muhammad had never before seen extended to an arrestee (Muhammad: 257-58). Detective Costantino is a relative of Respondent (Respondent: 1448).

49. Respondent described the beginning of the Mele fight to Detective Costantino just as he had to the other officers, falsely claiming that he was in or near his own house when the Meles attacked his wife: “No sooner am I taking the dog in the house . . . And when I come out, back out of the house, [Maria]’s engaged with the two . . . And [Maria] was in a freaking chokehold. So, I ran over there to break it up” (Exs 12 at 00:43:10 – 00:43:36; 12-B, p 4).

50. When Detective Costantino asked Respondent about his having pushed an officer, Respondent said that “[w]hen the two girls were on Maria, he was dragging Maria across the street” and took her down on the front lawn. Respondent acknowledged having pushed Officer Gehr and claimed that he “apologized to him . . . right after that” (Exs 12 at 00:40:13 – 00:40:38; 12-B, pp 1-2).

51. Respondent asserted to Detective Costantino, “I never mentioned Byron Brown’s name” (Exs 12 at 00:40:47 – 00:40:49; 12-B, p 2). Before the call ended, Respondent told Costantino:

For me, it doesn’t look bad and, you know, I shouldn’t have pushed the police officer. And when I did, I backed up and said, “Listen, I’m really sorry, but you don’t have to tackle her,” you know . . . “I’m a hundred percent for you guys.”

(Exs 12 at 00:45:01 – 00:45:18; 12-B, p 6).

52. At the stationhouse, Respondent spoke with Detective William Moretti (Exs 13; 13-A). Recounting the start of the altercation, Respondent said that Ms. Grisanti “started walking . . . across the street” without him as he was “trying to get the dog . . . towards the back of the yard” (Exs 13; 13-A, p 9).

Respondent continued:

[T]hey came to the apron of the driveway. My wife was walking over to them and saying, “Why don’t you move the truck?” I go over about three quarters the way across the street. I’m grabbing her arm. They move into the street, closest to their side, and the girls start fighting . . . And I’m trying to pull her away.

(Exs 13; 13-A, p 20).

53. After commenting that his wife and Gina Mele were “Italian girls” who had said nasty things to one another (Exs 13; 13-A, p 24), Respondent claimed that he went across the street and “grabb[ed] [his] wife by the arm, saying, ‘Come on, let’s go.’” At that point, Respondent contended that Ms. Mele and Ms. Dantonio grabbed Ms. Grisanti around the neck while Mr. Mele egged them on by “yelling, ‘Girl . . . fight’” (Exs 13; 13-A, pp 9-10) – words that do not appear on the audio recording of the fight (*see* Exs 2; 2-A).

54. Respondent discussed with Detective Moretti the fact that he pushed Officer Gehr. According to Respondent, Ms. Grisanti was screaming when the police arrived and did not stop when the police asked. Respondent stated that Gehr then:

. . . went over to my wife; she's not stopping. He grabs her, and he, and he pulls her over to our side, from the middle of the street, . . . like, to trip her, to, like, to, to put cuffs on her . . . So, he's behind her . . . I put my arm out on his -- And I shouldn't have done this, but I put my arm out, like on his shoulder, like holding him back as I'm grabbing her by the arm, saying, "I got her. She can come with me" . . . I said, '. . . This is improper.' And . . . I'm pushing him . . . And I'm trying to get her.

(Exs 13; 13-A, p 14).

55. Respondent said that he had "apologized to . . . you know, kind of stopping the officer from doing what he had to do, but, you know, I saw him trying to sweep the legs of her, and she's had problems with her neck and back" (Exs 13; 13-A, p 31). Moretti told Respondent that his actions "can be viewed as obstruction. We're there to . . . perform our duties, and when someone tries to stop us from doing that . . .". Respondent replied, "Yup . . . I get it. That's why I apologized to him and let him do what he had to do" (Exs 13; 13-A, pp 31-32).

Respondent's Testimony as to Charge I

56. After becoming a judge in 2015, Respondent attended judicial trainings at the Judicial Institute. He knew on June 22, 2020, that the Rules Governing Judicial Conduct applied to him off the bench as well as on (Respondent: 1373).

57. Respondent admitted that he gave Detective Costantino information about the altercation that was "not correct" when he spoke with Costantino on

Lieutenant Turello's cellphone from the police car (Respondent: 1349).

Specifically, Respondent was untruthful in his assertion that he came out of his house after Ms. Mele and Ms. Dantonio had his wife in a chokehold, and when he told Costantino that he "ran over there to break it up" (Respondent: 1348-49).

Indeed, the video captured by the Meles' home security camera showed unequivocally that Respondent led his wife across the street at the beginning of the confrontation (Exs 2 at 07:14:28 – 07:14:32; 42).

58. Respondent admitted that, shortly after the incident when Officer Gehr asked him to tell his side of the story, Respondent falsely told him, "My wife was still outside. She walked over and she goes, 'yeah, move the truck.' They frigging bolt from the porch. The girl's got her frigging hand on my wife's throat, and that's when I walked over there" (Respondent: 1350). Again, the video demonstrates that Respondent walked over with his wife and was in front of the Meles' driveway when the fight began (Ex 2 at 07:14:33 – 07:14:54).

59. Respondent admitted that he was not accurate when he explained to Detective Costantino why he pushed Officer Gehr: he falsely told Costantino that the "two girls were on Maria, he was dragging Maria across the street" (Respondent: 1389).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE I

60. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules Governing Judicial Conduct (“Rules”).

61. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

62. Respondent failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they do not cast reasonable doubt on his capacity to act impartially as a judge, in violation of Section 100.4(A)(1) of the Rules.

63. Respondent failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

64. Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE II

65. On May 18, 2015, Respondent signed an agreement to sell his private law practice for \$50,000 to two attorneys: Peter J. Pecoraro, Esq. and Matthew A. Lazroe, Esq. (Ex 14; Lazroe: 292-94). In accordance with the terms of the agreement, Mr. Lazroe paid a down payment of \$10,000 to Respondent in May of 2015, and his remaining balance via monthly payments of \$365 through June of 2019 (Ex 15; Lazroe: 293-95). Mr. Pecoraro paid Respondent a down payment of \$5,000 in May of 2015 and made monthly payments of \$365 until he passed away in 2018 (Respondent: 1234-35, 1310).

Bayview Loan Servicing, LLC v Mary Lee Fornes et al.

66. After a Request for Judicial Intervention (“RJI”) in *Bayview Loan Servicing, LLC v Mary Lee Fornes et al.* was filed in December 2017, Mr. Lazroe came to represent the defendant in that mortgage foreclosure matter (Ex 16, pp 4-5; Lazroe: 296). His status as the defendant’s attorney was documented by, *inter alia*, his printed name and signature on four conference status forms in January, March, April and August of 2018 (Ex 16, pp 9-12).

67. Respondent signed an order to discontinue the foreclosure action against Mr. Lazroe’s client on December 5, 2018 (Ex 16, pp 13-14; Lazroe: 328). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 296).

Buffalo Seminary v Stephanie Satterwhite

68. In a commercial case initiated by Peter J. Pecoraro, Esq., *Buffalo Seminary v Stephanie Satterwhite*, Mr. Lazroe was added as attorney of record for the plaintiff in September 2017 (Ex 29, p 19; Lazroe: 297). The following month, Mr. Lazroe executed an affidavit in support of a default judgment on behalf of his client and filed an RJI in December 2017 (Ex 29, pp 1-3, 6-7; Lazroe: 298).

69. In June 2018, Respondent signed an order upon Mr. Lazroe's affidavit, awarding his client judgment for nearly \$14,000 plus interest. A statement for judgment for over \$18,000, inclusive of interest costs and fees, was filed with the County Clerk in November 2018 (Ex 29, pp 39-40). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 298).

Matter of Application of M [REDACTED] F [REDACTED]

70. In February 2018, Respondent signed an order in *Matter of Application of M [REDACTED] F [REDACTED]*, appointing Mr. Lazroe as court evaluator to explain the proceeding to an allegedly incapacitated person and investigate claims made in the petition. (Ex 17, pp 8-9). In April 2018, after evaluating the case, Mr. Lazroe appeared before Respondent to present his findings (Ex 17, p 51; Lazroe: 305).

71. In June 2018, Respondent signed an order directing that Mr. Lazroe be paid more than \$2,000 for his services (Ex 17, pp 44-45; Lazroe: 300).

Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 300).

Trifera, LLC v Morrison, Unknown Heirs

72. In October 2018, Respondent signed an order in *Trifera, LLC v Morrison, Unknown Heirs* (by Order in May 2018, the named plaintiff was substituted with ‘Laelia, LLC’ [Ex 18, p 2]), designating Mr. Lazroe guardian *ad litem* and military attorney on behalf of potential parties with property interests in the mortgage foreclosure matter (Ex 18, pp 9, 12). Respondent’s order required the plaintiff to pay Mr. Lazroe \$250 for his services (Ex 18, pp 9-10; Lazroe: 301). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 301).

Federal National Mortgage Association v Anderson, et al.

73. In May 2019, Respondent signed an order in *Federal National Mortgage Association v Anderson, et al.*, designating Mr. Lazroe guardian *ad litem* and military attorney on behalf of potential parties with property interests in the mortgage foreclosure matter (Ex 19, pp 4, 7).

74. Respondent’s order required the plaintiff to pay Mr. Lazroe \$250 for his services (Ex 19, p 5). Respondent signed an additional order in February 2020 providing that Mr. Lazroe be paid another \$350 for additional services (Ex 19,

p 16). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 301).

Greater Woodlawn Federal Credit Union v Charles Pachuki et al.

75. In August 2019, Respondent signed an order in *Greater Woodlawn Federal Credit Union v Charles Pachuki et al.*, appointing Mr. Lazroe as referee in the mortgage foreclosure matter (Ex 20, pp 12-14).

76. Respondent's order provided that Mr. Lazroe be paid a statutory fee of \$50 and, in the discretion of the court, an additional \$100 fee for the filing of his report (Ex 20, pp 12-13; Lazroe: 302). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 302).

Matter of the Application of W [REDACTED] . L [REDACTED]

77. In November 2019, Respondent signed an order in the special proceeding *Matter of the Application of W [REDACTED] . L [REDACTED]*, appointing Mr. Lazroe as court evaluator to explain the proceeding to an allegedly incapacitated person and investigate petition claims (Ex 21, pp 9, 11; Lazroe: 303). Mr. Lazroe made two appearances before Respondent, "one at the beginning and then one where [he] gave [his] evaluation" (Lazroe: 306).

78. In April 2020, Respondent signed an order requiring that Mr. Lazroe be paid over \$5,000 for his services as court evaluator (Ex 21, pp 31, 33; Lazroe:

304). Respondent signed another order in December 2020 providing that Mr. Lazroe be paid another \$192.50 for additional services rendered (Ex 21, pp 70-71). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 304).

Rasheena Jones v Jerry Gradl Motors, Inc.

79. In January 2020, Respondent signed a trial scheduling order in *Rasheena Jones v Jerry Gradl Motors, Inc.*, a Niagara County commercial case in which Mr. Lazroe represented the plaintiff. The order set discovery time requirements for jury selection, trial, and a telephonic pretrial conference (Ex 22, p 21). Six case conferences were scheduled and reported as held in March, May, June, August, September and October of 2020 (Ex 22, p 2). Mr. Lazroe “recall[ed] having a couple conferences” with Respondent in this matter (Lazroe: 348). Respondent never disclosed his financial relationship with Mr. Lazroe to any of the parties or counsel while sitting on the matter (Lazroe: 305).

Respondent’s Testimony as to Charge II

80. Respondent knew that Matthew Lazroe was an attorney and understood that “his practice was real estate and foreclosures and bankruptcy” (Respondent: 1303).

81. Respondent understood that “[t]he purpose of a recusal list is to make sure there is no . . . appearance of any sort of impartiality” and to keep attorneys

and other people with conflicts from appearing before him (Respondent: 1312). Recusal “was brought up in the judge’s school” and Respondent had a discussion with his Administrative Judge or the District Executive “on who needs to be on that recusal list” (Respondent: 1310).

82. Respondent signed the orders appointing Mr. Lazroe in *Matter of Application of M█████ F█████, Trifera, LLC v Morrison, Unknown Heirs, Federal National Mortgage Association v Anderson, et al., Greater Woodlawn Federal Credit Union v Charles Pachuki et al., and Matter of the Application of W█████ ██████ L█████* (Respondent: 1244).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE II

83. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules Governing Judicial Conduct (“Rules”).

84. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

85. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to disqualify himself in a proceeding in which his

impartiality might reasonably be questioned, in violation of Section 100.3(E)(1) of the Rules.

86. Respondent failed to conduct his extra-judicial activities so as to minimize the risk of conflict with his judicial obligations, in that he engaged in financial and business dealings that may reasonably be perceived to exploit his judicial position, in violation of section 100.4(D)(1)(a) of the Rules.

87. Respondent failed to conduct his extra-judicial activities so as to minimize the risk of conflict with his judicial obligations, in that he engaged in financial and business dealings that involved him in frequent transactions or continuing business relationships with lawyers likely to come before the court on which the judge serves, in violation of section 100.4(D)(1)(c) of the Rules.

88. Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE III

89. In May 2015, Respondent sold his law practice pursuant to an “Agreement” he negotiated with Peter J. Pecoraro, Esq. and Matthew A. Lazroe, Esq. The financial terms as set forth in the document specified that “the payment for this Agreement is a total sum of \$50,000.00,” which was “to be made with a

payment of \$15,000.00 down and monthly payments beginning July 1, 2015, at a rate of \$730.00 per month until said balance is paid in full” (Ex 14, p 2).

90. In accordance with the agreement, Mr. Pecoraro and Mr. Lazroe paid Respondent \$15,000 in May 2015; Mr. Lazroe paid \$10,000, and Mr. Pecoraro paid \$5,000 (Exs 14; 15; Respondent: 1234).

91. In 2016, Respondent filed a verified annual statement of financial disclosure (“FDS”) for the 2015 calendar year with the Ethics Commission for the New York State Unified Court System (Ex 23; Respondent: 1250). In his FDS, Respondent provided information about the terms of the agreement for the sale of his law practice in his responses to three different questions: 12(a), 12(b) and 13.

92. Question 12(a) stated in part, “Describe the terms of, and the parties to, any contract” Respondent wrote, “I sold . . . [law] firm to individuals . . . for \$730.00 a month for 4 years.” Respondent did not report the \$10,000 down payment he had received from Mr. Lazroe or the \$5,000 down payment that he had received from Mr. Pecoraro (Ex 23).

93. Question 12(b) stated in part, “Describe the parties to and the terms of any agreement . . . in EXCESS of \$1,000” Respondent wrote, “I sold my law practice to 2 attorneys . . . Terms are \$730 a month for 4 years. It will end june of 2019.” Respondent did not report the \$10,000 down payment he received from

Mr. Lazroe or the \$5,000 down payment that he had received from Mr. Pecoraro (Ex 23).

94. Question 13 stated in part, “List below the nature and amount of any income in EXCESS of \$1,000 from EACH SOURCE . . . Nature of income includes, but is not limited to, all income . . . from . . . contractual arrangements” Respondent listed two different entries for his law office. In his first entry, Respondent wrote the following:

SOURCE: “law office Closed May 2015”;
NATURE: “clients”;
CATEGORY OF AMOUNT: “C: \$20,000 to under \$60,000.”

(Ex 23).

In his second entry, Respondent wrote the following:

SOURCE: “peter pecoraro esq and matthew lazaro esq”;
NATURE: “sale of law office Started May 2015 730.00 a month for 4 years”;
CATEGORY OF AMOUNT: “A: under \$5,000”

(Ex 23).

95. Respondent’s 2015 FDS also included information about the sale of his law firm in question 18, which required him to list information about “notes and accounts receivable” (Ex 23). Respondent listed Peter Pecoraro, Esq, and Mathew Lazroe, Esq. as debtors, described the obligation information as “Sale of law firm . . . in May 2015 \$730 a month payable on the 1st for 4 years,” and entered under category of amount, “A: under \$5,000” (Ex 23).

96. Between 2015 and 2019, Respondent received the following payments from Mr. Lazroe and Mr. Pecoraro in connection with the sale of his law firm:

- In 2015, Mr. Lazroe and Mr. Pecoraro paid Respondent a total of \$19,380;
- In 2016, Mr. Lazroe and Mr. Pecoraro paid Respondent a total of \$8,760;
- In 2017, Mr. Lazroe and Mr. Pecoraro paid Respondent a total of \$8,760;
- In 2018, Mr. Lazroe paid Respondent a total of \$4,380;
- In 2019, Mr. Lazroe paid Respondent a total of \$2,190.

(Answer ¶ RESPONSE #45; Respondent: 1234-35).

97. On May 20, 2021, Administrative Judge, Paula Feroletto sent an email to all judges in the 8th Judicial District, including Respondent (Resp Ex Q). The email provided the text of 22 NYCRR 100.4(H)(2) pertaining to each judge's obligation to report compensation (Resp Ex Q). The email recounted that the District Executive "sends a reminder to file this report around every year." The email also listed types of compensation or income that fell under the purview of the reporting requirement, including "income due from practice that has been wrapped up but money still owed" (Resp Ex Q).

98. From in or about May 2015 through June 2019, Respondent filed no reports of the income he received from the sale of his law practice with the office

of the Clerk of the Court of Claims or with the office of the Clerk of the Erie County Supreme Court (Respondent: 1263, 1304).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE III

99. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules Governing Judicial Conduct (“Rules”).

100. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

101. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to diligently discharge his administrative duties, failed to maintain professional competence in judicial administration, and failed to cooperate with court officials in the administration of court business, in violation of Section 100.3(C)(1) of the Rules.

102. Respondent failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed more than once to file with the clerk of his court, or other office designated by law, annual public reports of the date, place and nature of any activity for which he received

compensation in excess of \$150, the name of the payor and the amount of compensation so received, in violation of Section 100.4(H)(2) of the Rules.

103. Respondent failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to disclose income on his financial disclosure forms as required by 22 NYCRR Part 40, in violation of Section 100.4(I) of the Rules.

104. Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.