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.

Before WILLIAM T. EASTON, Referee

Appearances:

For the Commission:
ROBERT H. TEMBECKJIAN, esq.
Administrator and Counsel to the Commission
By JOHN J. POSTEL, esq.
Deputy Administrator
DAVID M. DUGAY, esq.
Senior Attorney

For Respondent:
TERRENCE M. CONNORS, esq.
VINCENT E. DOYLE, esq.
TYLER GATELY, esq.

PRELIMINARY STATEMENT

By Order dated January 7, 2022, I was designated as Referee to hear and report to the State Commission on Judicial Conduct ("Commission") with respect to three charges of judicial misconduct against Mark J. Grisanti, a Justice of the Court of Claims and an Acting Justice of the Supreme Court of Erie County ("Respondent").

PLEADINGS

A. THE FORMAL WRITTEN COMPLAINT

The Formal Written Complaint ("FWC"), dated August 30, 2021, charged Respondent with three acts of misconduct, outlined below:

CHARGE I: That on or about June 22, 2020, "Respondent engaged in a loud, public, profanity-laced and physical confrontation with two of his neighbors, after which, while shirtless, he (A) engaged in a physical confrontation with a Buffalo police officer, (B) made threats and profane comments to police personnel, (C) invoked family ties to members of the Buffalo Police Department ("BPD") and his relationship with the Mayor of Buffalo, and (D) was handcuffed, placed in the back of a patrol vehicle, and transported to a police station" (FWC, p.2). The Commission alleged that this conduct constituted violations of Sections 100.1, 100.2(A), 100.4(A)(1), and 100.4(A)(2) of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rules") (FWC, p.5).

CHARGE II: That from "in or about January 2018 through in or about December 2020, Respondent was assigned to and took judicial action in eight cases involving attorney Matthew A. Lazroe, notwithstanding and without disclosing that (A) he had an ongoing financial relationship with Mr. Lazroe while five of the matters were pending, and (B) that his financial relationship with Mr. Lazroe had ended within seven months of three of the matters" (FWC, p.5). The Commission contended that the conduct alleged in Charge II violated Sections 100.1, 100.2(A), 100.3(E)(1), 100.4(D)(1)(a), and 100.4(D)(1)(c) of the Rules (FWC, p.11).

CHARGE III: That "[i]n or about 2016, Respondent filed a Financial Disclosure Statement ("FDS") with the Ethics Commission for the New York State Unified Court System in which he inaccurately reported the income he received from the sale of his private

law practice in 2015. As a Court of Claims Judge and an Acting Supreme Court Justice in 2015 until in or about 2019, Respondent 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" (FWC, p.11-12). The Commission asserted that this alleged conduct violated Sections 100.1, 100.2(A), 100.3(C)(1), 100.4(H)(2), and 100.4(I) of the Rules (FWC, p.13).

B. THE VERIFIED ANSWER

On November 22, 2021, Respondent served a Verified Answer ("Ans") to the Commission's FWC. In his Answer, Respondent admitted portions of the Complaint for Charge I, Charge II, and Charge III. Respondent's Answer contended 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 (Ans., p.21).

CHARGE I: Respndent admitted "that a physical confrontation took place" (Ans., p.4) between Respondent and Joseph and Gina Mele, and that Respondent "did make physical contact with a Buffalo police officer, and was transported to a police station while in handcuffs" (Ans., p.2-3). Respondent denied that "he made threats to police officers or attempted to invoke his judicial office or familial ties to obtain preferential treatment" (Ans., p.3). Respondent also denied "that he attempted to 'invoke' his family ties or relationship with Byron Brown to obtain preferential treatment" (Ans., p.6). With respect to Charge I, Respondent denied that his actions constituted a violation of Sections 100.1, 100.2(A), 100.4(A)(1), and 100.4(A)(2) of the Rules (Ans., p.7) as charged by the Commission.

CHARGE II: Respondent admitted that "[o]n or about May 18, 2015, he entered into an agreement to sell his law practice to Peter J. Pecoraro and Matthew A. Lazroe. The agreement provided for the transfer of all of the "goodwill" of Respondent's law practice,

which included all files, wills, telephone number, copier/fax number, and furnishings, with two listed exceptions. The financial terms provided for the payment of a total sum of $50,000, with a payment of $15,000 down and monthly payments of $730, beginning July 1, 2015, and extending until the balance was paid in full" (Ans., p.8). Respondent also admitted that he "was unaware of the need to disclose his financial relationship during the pendency of the action" in several cases involving attorney Matthew A. Lazroe (Ans., p.8, 11, 12, 13, 14, 16, 17). With respect to Charge II, Respondent denied that his actions constituted a violation of Sections 100.1, 100.2(A), 100.3(E)(1), 100.4(D)(1)(a), and 100.4(D)(1)(c) of the Rules (Ans., p.18) as charged by the Commission.

CHARGE III: In response to Charge III, Respondent admitted that he "clicked the incorrect box when reporting the income he received for the purchase of his private law practice in 2015" (Ans., p.18), but noted that "he has since corrected this inadvertent error for 2015, 2016, and 2017" (Ans., p.18). With respect to Charge III, Respondent denied that his actions violated Sections 100.1, 100.2(A), 100.3(C)(1), 100.4(H)(2), and 100.4(I) of the Rules as charged by the Commission (Ans., p.20-21).

THE EVIDENTIARY HEARING

An evidentiary hearing was held at the Erie County Family Court Building with nine days of testimony taken on June 13, June 14, June 15, June 21, June 27, June 28, July 6, July 7, and July 11 of 2022. The Commission called four witnesses and entered forty-five items into evidence. Respondent called fourteen witnesses and introduced thirty-eight items into evidence. Respondent also testified on his own behalf. A transcript ("Tr.") of the hearing was prepared and neither party objected to its accuracy.

POST-HEARING SUBMISSIONS

The Commission submitted a Post-Hearing Memorandum to the Referee with Proposed Findings of Fact and Conclusions of Law ("CPF") dated January 31, 2023. On the same date, Respondent submitted his Proposed Findings of Fact and Conclusions of Law "RPF"). On February 21, 2023, both parties submitted Reply Memoranda.

The Commission asserted in its CPF that 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" (CPF, p.51).

The Commission further asserted that Respondent "committed judicial misconduct by presiding over eight cases despite having a business relationship with one of the attorneys that he did not disclose" (CPF, p.66), and that "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" (CPF, p.72). The Commission argued in its CPF that 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" (CPF, p.A-20),
- "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" (CPF, p.A-20),
- "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" (CPF, p.A-

20),

- "conduct his extra-judicial activities so that they do not detract from the dignity of judicial office" (CPF, p.A-20),
- "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" (CPF, p.A-26),
- "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" (CPF, p.A-26),
- "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" (CPF, p.A-27),
- "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" (CPF, p.A-31),
- "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" (CPF, p.A-31, A-32), and 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" (CPF, p.A-32).

In his post-hearing submissions, Respondent conceded that his conduct regarding Charge I violated the Rules. Respondent admitted in his RPF "[a]s a Judge of the New York State Court of Claims, and Acting Justice of the Supreme Court," that "his behavior was not appropriate on June 22, 2020" (RPF, p.161; *see also* Tr., p.1107). Respondent acknowledged that he "did not maintain the high standard of conduct required of a Judge of the Court of Claims, or an Acting Justice of the Supreme Court" (RPF, p.162; *see also* Tr., p.1107) on June 22, 2020. Respondent acknowledged that "he did not act in a manner that promotes public confidence in the judiciary on June 22, 2020" (RPF, p.162; *see also* Tr., p.1107).

Respondent argued that judicial discipline was not warranted under Charge II on the grounds that "no statute or rule mandated disqualification" (RPF, p.28) in cases where attorney Matthew A. Lazroe was involved in a case that was pending before Respondent during the ongoing financial relationship that existed between Mr. Lazroe and Respondent. It was further argued in the RPF that "Judge Grisanti's judgment that disqualification was not necessary was a reasonable exercise of discretion" (RPF, p.24). Indeed, Respondent testified at the evidentiary hearing that he did not believe that disclosure to the parties or disqualification from the cases was either mandatory or appropriate (Tr., p.1321-1322).

Respondent further contested the Commission's Charge III. Charge III alleged that in or about 2016, Respondent "inaccurately reported the income he received for the purchase of his private law practice in 2015" on his FDS and that "Respondent failed to make timely and accurate reports of his extra-judicial income" for the years 2015 to 2019 (FWC, p.11). In his post-hearing submissions, Respondent argues that the Commission did not prove by a preponderance of the evidence at the hearing that Respondent "willfully failed to report income in his" FDS (RPF, p.40). Respondent also testified that he did not intentionally fail to disclose the down payment that he received for the sale of his law practice (Tr., p.1254). Respondent cited several mitigating factors for consideration by the Commission, which will be addressed in following pages of this Report.

OPINION AS TO CHARGE I

I find that the Commission has established by a preponderance of the evidence that Respondent violated Sections 100.1, 100.2(A), 100.4(A)(1), and 100.4(A)(2) of the Rules by: (1) his excessive use of profanity during his public interaction with the Meles and members of BPD; (2) his initiation of physical contact with a BPD officer; and (3) his invocation of familial connections with members of the BPD and Mayor Byron Brown.

This conduct violated Respondent's obligation to comport himself in a manner that promotes the integrity and impartiality of the judiciary and further violated Respondent's obligation to conduct himself in a manner that does not detract from the "dignity of judicial office." His conduct thus constituted a violation of the above-noted sections of the Rules.

Much of the factual basis and the legal conclusion of this finding is not disputed. Respondent himself acknowledged that his conduct violated several sections of the Rules as charged by the Commission. What is in dispute, however, are certain facts that are ancillary to the finding of the above violation. These facts consist of:

1. The nature and extent of the provocation of the altercation;
2. The expansion of the charges levied by the Commission to include lying to members of the BPD and a 911 operator;
3. Whether Respondent "threatened" those members of the BPD;
4. The inclusion of a charge that the act of being detained and placed in a police car constituted a basis of a violation.

(1) To the extent relevant to my finding, I find that the provocation was extreme, especially regarding the bellicose conduct of Joseph Mele[1]. The altercation between the

[1]Respondent argues that the finder of fact should apply an adverse inference against the Commission for failing to call Joseph Mele as a witness. Mr. Mele, who was central to the narrative of the nature of the altercation, was on the Commission's witness list. The Commission proffered no reason at the hearing, or in its submissions, regarding its failure to call him as a witness other than the bare assertion that his testimony would be "cumulative." Notably, the Commission advanced no other reason, which could have

Meles and the Grisantis escalated rapidly to a chaotic street brawl, due at least in part to a long-simmering dispute that the Meles had with the Grisantis and other neighbors.

The nature and extent of the provocation, however, does not in any appreciable manner diminish Respondent's obligation, as a judge, to conduct himself in restrained and dignified manner. In fact, the provocation may even increase this obligation. Respondent was well aware of the proclivities of the Meles to engage in aggressive behavior when he embarked on a course of conduct that contributed to the tumultuous eruption that ensued.

(2) The expansion of the charges alleged in the complaint to include "lying" to the 911 operator and to police officers at the scene on June 22, 2020 is unwarranted and violates Respondent's right to notice. Thus, I do not consider these acts as an independent basis for finding a violation. Moreover, I do not find that the Commission established that these accounts, even if inaccurate, were deliberately false and not merely indicative of Respondent's perception of the event.

(3) I do not find that Respondent "threatened" BPD members with his comments regarding the detention of his wife. These remarks consisted of declarations to the police officers that, "[y]ou arrest my fucking wife, you're going to be sorry" (CJC Ex.11, at 00:02:11 - 00.02:14; *see also* CJC Ex.11-A, p.7). Respondent also stated, "[y]ou don't get the cuffs off my wife, you're going to have a problem" (CJC Ex.11-A, p.8-9), among other

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included such issues as Joseph Mele's unavailability, medical concerns, privilege issues, or a multitude of other factors. The Commission cites *People v. Smith*, 33 NY 3d 454 (2019) for its reliance on the "cumulative" nature of Mr. Mele's testimony. However, *Smith* held the opposite and reversed a conviction for failure to give such a charge regarding a witness to an assault. Critically, the *Smith* court emphasized that the proponent of the invocation of the inference bore no burden to show that the testimony would be non-cumulative, but rather the party who argued that such testimony would be "cumulative," shouldered the burden to demonstrate this. I find that the Commission has not met its burden. Accordingly, I invoke the adverse inference as it applies to Joseph Mele and Theresa Dantonio. I do not find that the doctrine would apply to the failure to call BPD Officer Hy, whose testimony in light of his limited role would be cumulative.

similar remarks throughout the altercation with members of BPD. These remarks, however crudely stated, did not threaten the police officers, and neither recipient of these remarks testified that he was intimidated or threatened by these comments. Rather, such remarks conveyed Respondent's ardent belief that his wife was improperly detained and further detention would lead to controversy. This is not to say, however, that these remarks were proper when considered within the context of his invocation of familial ties to members of BPD and to Buffalo Mayor Byron Brown. In that sense, they were a continuation of the improper and unseemly attempt to obtain preferential treatment by familial and political connections, even if this preferential treatment was not the result of Respondent's status as a sitting judge.

(4) Respondent denies that the specific charge in the Commission's FWC, that Respondent was "handcuffed in the back of a police vehicle and transported to a police station" constitutes a basis to find a violation of the Rules. I agree. The fact that Respondent was arrested, or at least detained, and transported to a police station does not constitute a basis for a finding of misconduct. This conduct is based on the independent actions of the police, in this case BPD Officer Hy, and is not based on the volitional conduct of Respondent in participating in such action.

In sum, the hearing regarding Charge I involved the conduct of eight people who played central roles in the escalation of this neighborhood dispute into a chaotic, disruptive, and violent incident. Those people were Joseph and Gina Mele, Dr. Theresa Dantonio, Maria Grisanti, Respondent, and responding members of the BPD, namely, Officer Ryan Gehr, Lt. Larry Muhammad, and Officer Richard Hy. The evidence at the hearing showed that Lt. Muhammad alone conducted himself in an exemplary restrained manner in an effort to defuse the situation. The other seven participants did not adhere to such a standard. Only one of those people, however, was a sitting judge. His conduct is measured against an entirely different standard not applicable to the other participants. Respondent failed to meet this standard, even by his own estimation. Thus, Respondent violated the Rules.

MITIGATING FACTORS

Respondent proffered mitigating evidence at the hearing in addition to evidence of extreme provocation (which I have found did not diminish his obligation to comport himself with judicial restraint). I do not assess the mitigating effect, if any, that these facts have on the issue of sanction. Such a finding is beyond my role. Rather, I note that I find that the factors included below were established as fact at the hearing:

- Respondent's father in law passed away six months prior to June 2020. His Aunt passed away prior to June 2020 (RPF, p.200; *see also* Tr., p.1229-1230).
- Respondent had suffered the loss of several friends and other members of his family just prior to June 2020 (RPF, p.200; *see also* Tr., p.1230).
- Respondent's dog was ill in June 2020, and passed away on June 27, 2020 (RPF, p.200; *see also* Tr., p.1230).
- Respondent's mother was ill in June of 2020 (RPF, p.199; *see also* Tr., p.199).
- Respondent's mother passed away on July 13, 2020 (RPF, p.201; *see also* Tr., p1230).
- Respondent voluntarily contacted Judicial Wellness Coordinator Dan Lukasik to seek counseling after the incident on June 22, 2020 (RPF, p.212; *see also* Tr., p.1268).
- Respondent sought counseling from licensed clinical social worker Zachary Shaiman in order to better understand his actions on June 22, 2020 in an effort to prevent them from occurring again (RPF, p.213, 214; *see also* Tr., p.1269, 1270).
- Respondent was referred by Zachary Shaiman to Jakob Smidt, a licenced clinical social worker. Respondent worked with Smidt on coping skills, anger management, and other issues to help Respondent better understand his feelings (RPF, p.215).

FINDINGS OF FACT AS TO CHARGE I

1. Respondent, Mark Grisanti, 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 (FWC, p.1).
2. Respondent was living at [redacted] on June 22, 2020 (Tr., p.1105-1106).
3. Joseph and Gina Mele lived across the street at [redacted] (Tr., p.39).
4. The Grisantis and the Meles had been neighbors for approximately 16 years on June 22, 2020 (CPF, p.A-1).
5. 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 (Tr., p.368, 397, 431, 433, 446, 483, 489-91, 966-70, 980, 1166-67, 1175-1176). 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 out on her front lawn and that "every neighbor" had incidents with the Meles (Tr., p.483, 489, 491). According to the Continos, the Meles had "a history of just being extremely, extremely mean and threatening" (Tr., p.368, 397, 433, 446).
6. 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 (Tr., p.1170). According to Respondent, when he asked the Meles to stop, they would give him "the finger, or... spit at" him in return (Tr., p.1169).
7. Respondent testified that at times, Mr. Mele would ask Respondent, "[d]o you want a shot at the title," which Respondent "took it to mean that he wanted to have some sort of an altercation" (Tr., p.1171-1172, 1345-46). Respondent knew Mr. Mele to be "an instigator" who "liked to start trouble" (Tr., p.1347, 1371).

8. On June 22, 2020, Respondent was actively involved in an incident with Gina Mele, Joseph Mele, Gina Mele's sister, Dr. Theresa Dantonio, and Respondent's wife, Maria Grisanti (RPF, p.161). On the evening of June 22, 2020, Respondent arrived at his home to find two vehicles that did not belong to him parked on opposite sides of his driveway, both of which he believed to belong to the Meles (CPF, p.A-2). Respondent was disturbed by the location of the parked vehicles and made a 911 call requesting that the cars be ticketed or towed if not moved prior to the arrival of law enforcement (CPF, p.A-3).

9. Respondent and his spouse, Maria Grisanti, thereafter exchanged words with Joseph and Gina Mele across ████ Avenue regarding the two vehicles parked on either side of the Grisanti driveway (CJC Ex.2).

10. With the Meles on their own property, Respondent walked off of his property, stepped into the street, and headed toward the Mele driveway, his wife a step or two behind him (CJC Ex.2, at 07:14:28 - 07:14:33). Respondent acknowledged at the hearing that Commission Exhibit 42 clearly shows that Respondent preceded his wife as the pair walked across ████ Avenue (Tr., p.1352-1353).

11. Mele driveway camera footage (CJC Ex.2) shows that a physical confrontation ensued between the Grisantis and the Meles on the evening of June 22, 2020.

12. Said physical confrontation occurred in daylight hours, in full view of neighbors and the public (CJC Ex.2), several of whom testified at the hearing.

13. During the course of said physical confrontation with the Meles, Respondent loudly and repeatedly directed profane language at the Meles, including but not limited to the following phrases: "Every fucking Thursday," "fucking asshole," "fucker," "you want to go again, tough fucking guy," "I'll fucking flatten your face again," "get the fuck out of here," "get the fuck out of my driveway," "you fucking asshole," "fuck you," "nobody fucking likes you guys," and "you piece of shit" (CJC Ex.2a, p.3, 4, 6, 9, 12, 13, 15, 16).

14. At approximately 8:45 pm, BPD Officer Ryan Gehr and his partner, Lt. Larry Muhammad, arrived at [redacted] in response to a call about a fight to find Respondent standing in the street (Tr., p.162-63, 186; Tr., p.249). Both officers were wearing body cameras (Tr., p.163-164; Tr., p.249-250).

15. Shortly after arrival of Officer Gehr and Lt. Muhammad, Ms. Grisanti returned to the Mele driveway and verbally re-engaged with Dr. Dantonio. Officer Gehr stated "we're not doing this" to Ms. Grisanti. Lt. Muhammad thereafter guided Ms. Grisanti and Respondent to the Grisanti side of [redacted] Avenue. At this time, Officer Gehr was attempting to take a statement from the Meles (CJC Ex.11, at 00:00:28 - 00:00:42; CJC Ex.11-A, p.2).

16. Ms. Grisanti, exclaiming profanities, again approached the Mele side of [redacted] Avenue while Officer Gehr was speaking with the Meles (CPF, p.A-7).

17. In response to Ms. Grisanti's renewed approach, Officer Gehr said "[y]ou're going to step back" to Ms. Grisanti, and Lt. Muhammad again walked her back across [redacted] Avenue to the Grisanti driveway (CJC Ex.11, at 00:00:49 - 00:00:52).

18. Despite Lt. Muhammad's efforts, Ms. Grisanti persisted in yelling profanities across the street at the Meles. Officer Gehr announced that he would not listen to yelling and asked the Meles to speak with him farther down their driveway (CJC Ex. 11, at 00:01:07 - 00:01:10). Ms. Grisanti continued yelling profanities across the street at the Meles (CJC Ex.11, at 00:01:32 - 00:01:37). Officer Gehr said to Ms. Grisanti, "Ma'am, if you don't stop yelling, this is going to be a problem for you" (CJC Ex. 11, at 00:01:37 - 00:01:40). Ms. Grisanti replied, "I don't care... You're not going to arrest me" (CJC Ex.11, at 00:01:41 - 00:01:44). Officer Gehr crossed [redacted] Avenue to the Grisanti side of the street and replied, "I sure fucking am" (Tr., p.209).

19. As Officer Gehr approached Maria Grisanti, Lt. Muhammad said, "She's good" three times (Tr., p.209), implying that Lt. Muhammad had the situation with Ms. Grisanti under control (Tr., p.210).

20. Officer Gehr reached for Ms. Grisanti's arm, attempting to handcuff her (CJC Ex.11, at 00:01:43 - 00:01:46). Ms. Grisanti yelled, "[d]on't fucking arrest me" as she attempted to twist away from Gehr (CJC Ex.11, at 00:01:46 - 00:01:49). Officer Gehr continued his attempts to handcuff Ms. Grisanti (CJC Ex.11, at 00:01:49 - 00:01:52). Respondent walked up behind Gehr and yelled "hey," three times (CJC Ex.11, at 00:01:48 - 00:01:52).

21. Ms. Grisanti continued to resist Officer 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 - a lawful takedown procedure in which he had been trained (CJC Ex.11 at 00:01:50 - 00:01:52; *see also* Tr., p.167, 280-281).

22. While Officer Gehr was handcuffing Ms. Grisanti, Respondent approached Officer Gehr, placed both of his hands on Gehr's upper body, and shoved Officer Gehr (CJC Ex.11, at 00:01:52 - 00:01:54; *see also* CJC Ex.12, at 00:01:14 - 00:01:17).

23. An image taken from Lt. Muhammad's body camera shows Respondent making contact with Officer Gehr as Gehr attempts to handcuff Ms. Grisanti (CJC Ex.43).

24. Lt. Muhammad promptly intervened and placed Respondent in a bear hug, saying, "keep your hands off a cop" (CJC Ex.12, at 00:01:18 - 00:01:20). Respondent thereafter told Officer Gehr, "you better get off my fucking wife" (CJC Ex.11, at 00:01:53 - 00:01:59). Gehr completed the handcuffing of Ms. Grisanti. Respondent yelled, "you arrest my fucking wife... you're going to be sorry," before offering that his "son... and" his "daughter are... both police officers" (CPF, p.A-10).

25. When Officer Gehr did not release Ms. Grisanti, Respondent continued, "[l]isten... if you don't get the cuffs off her right now... you're going to have a problem" (CPF, p. A-11). Respondent then said to the police officers, "No. Watch... I'm going to need to call my son and daughter and their Lieutenants right now" (CJC Ex.12, at 00:02:24 - 00:02:28).

26. After Ms. Grisanti was placed in a police vehicle, Officer Gehr, Lt. Muhammad, and

Officer Richard Hy, who had since arrived at the scene, heard Respondent's side of the story. Respondent began by stating that his daughter works "in B District," and volunteered that his "son's... in C District" (CJC Ex.11, at 00:06:23 - 00:06:43).

27. "B District" and "C District" are divisions within the BPD (Tr., p.1030).

28. As the conversation progressed, Respondent asserted that the Meles were looking "to start problems" and then volunteered, "I'm good friends with Byron Brown. He's like, 'It's always something. Mark, just freaking ignore them'" (CJC Ex.11, at 00:09:22 - 00:09:30; *see also* CJC Ex.11-A, p.22).

29. Byron Brown was the Mayor of Buffalo at the time (FWC, p.4).

30. Continuing his conversation with Officer Gehr, Lt. Muhammad, and Officer Hy, Respondent eventually told Gehr that Gehr's conduct "was not necessary," and that Gehr needed "to chill out" (CJC Ex.11, at 00:10:50 - 00:10:56; *see also* CJC Ex.11-A, p.24-25). Respondent then stated that he was "just giving [Gehr] a little constructive criticism" (CJC Ex.11, at 00:10:57 - 00:11:02; *see also* CJC Ex.11-A, p.25).

31. Officer Hy interjected and admonished Respondent, "[l]et 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?" (CJC Ex.11, at 00:11:02 - 00:11:07; *see also* CJC Ex.11-A, p.25). Hy then handcuffed Respondent and placed him in the back of a police vehicle (CJC Ex.12, at 00:11:33 - 00:11:41; *see also* CJC Ex.12-A, p.23).

32. Prior to being removed from the scene, Respondent stated that he should not have pushed Officer Gehr (Tr., p.276).

33. Respondent was transported to a BPD station house and spoke with BPD Detective William Moretti (CJC Ex.13; *see also* CJC Ex.13-A).

CONCLUSIONS OF LAW AS TO CHARGE I

Respondent violated Section 100.1 of the Rules in that he 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.

Respondent violated Section 100.2(A) of the Rules in that he 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.

Respondent violated Sections 100.4(A)(1) and 100.4(A)(2) of the Rules in that he 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 and detract from the dignity of judicial office.

OPINION AS TO CHARGE II

On or about May 18, 2015, Respondent sold his law practice to two lawyers, Peter J. Pecoraro and Matthew A. Lazroe. The purchase was in the amount of $50,000 and provided for a $15,000 down payment and monthly payments of $730 until the balance was paid off.

As conceded by Respondent, during his tenure as a judge from 2015 to 2019, he presided over eight cases where Mr. Lazroe was either a lawyer for a party or he was appointed to serve as court appointed referee or guardian. Five of these cases were pending while Respondent was receiving monthly payments from Mr. Lazroe. In the other three cases, judicial action was taken by Respondent within two years of Mr. Lazroe's final payment.

Respondent did not provide notice of his financial relationship with Mr. Lazroe to the parties or lawyers in any of these eight cases. Respondent testified that "he didn't know that [he] needed to recuse from any cases" involving Mr. Lazroe. Respondent contended that he was unaware that Mr. Lazroe even represented one of the parties in several of the cases (Tr.,

p.1237-1241, 1322, 1423). Respondent also testified that he learned of the disclosure and recusal requirements after he "researched it and ... obtained an [advisory] opinion (Tr., p.1239). Respondent was obligated, at a minimum, to provide the litigants and attorneys notice of his continuing receipt of payments from Mr. Lazroe. Such receipt certainly raised the question of the appearance of impartiality and the parties were entitled to this notice. Whether such a nexus may be a ground for automatic recusal is an issue that need not be addressed in this proceeding, as the question is simply one of notice. See *Matter of Torraca* 2001 Ann Rep 125, 126 (2000), where continued receipt of payments from the sale of a building where the Judge's former law practice had been based "cast a reasonable doubt on the judge's capacity to act impartially and required at a minimum disclosure to opposing parties pursuant to Mr. Kossover's cases and did not make disclosure to any of the opposing parties (Judiciary Law §§ 100.4(A)(1) and 104.4(D)(1)(c)).

Respondent contended that he did not know of his obligation to inform the parties of Mr. Lazroe's connection with him. He also contended that Mr. Lazroe was an experienced attorney and that the cash amounts received by Mr. Lazroe as the result of his involvement in the various matters that came before Respondent were relatively modest. Respondent asserted that he did not exert any favoritism towards Mr. Lazroe. All true, and all irrelevant as to whether he was obligated to give notice. Respondent was required to give notice of his financial relationship with Mr. Lazroe whether the amount of Lazroe's earning on a case was great or small, whether favoritism was alleged or not. The parties to the eight cases were at the very least entitled to notice in order to make their decisions regarding recusal.

Respondent's conduct as it relates to Charge II levied by the Commission reveals a lack of sensitivity to the ethical standards for judges and warrants public discipline.

FINDINGS OF FACT AS TO CHARGE II

34. Respondent's term as a Justice of the Court of Claims and as an Acting Justice of the Supreme Court, Erie County, began on May 14, 2015 (CJC Ex.37).

35. On or about May 18, 2015, Respondent entered into an agreement to sell his law practice to attorneys Peter J. Pecoraro and Matthew A. Lazroe (Ans., p.8).

36. The agreement provided for the sale of the "goodwill of Respondent's law practice, which entailed all files, wills, telephone number, copier/fax number, and furnishings, with two listed exceptions. The financial terms provided for the payment of a total sum of $50,000, with a payment of $15,000 down and monthly payments of $730, beginning July 1, 2015, and extending until the balance was paid in full" (Ans., p.8).

37. Commission Exhibit 14 depicts the sale agreement between Respondent and attorneys Peter J. Pecoraro and Matthew A. Lazroe (CJC Ex.14).

38. Respondent knew that Mr. Lazroe was an attorney and understood that "his practice was real estate and foreclosures and bankruptcy" (Tr., p.1303).

39. 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" (Tr., p.1310).

40. 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 (Tr., p.1312).

41. Upon becoming a judge, Respondent did not put Mr. Lazroe on his recusal list (Tr., p.1238-1239).

42. Respondent does not read every document that he signs (Tr., p.1318).

43. Respondent has signed appointment orders "before somebody is actually appointed" and without knowing who is going to be appointed (Tr., p.1316).

44. In his Answer, Respondent admitted that "[i]n or about May 2015, Mr. Lazroe paid Respondent approximately $10,000 on the agreement; he paid six additional monthly

installments in or about 2015, totaling approximately $2,190. In or about 2016, Mr. Lazroe paid Respondent 12 monthly installments, totaling approximately $4,745; in or about 2017, he paid Respondent 11 monthly installments, totaling approximately $4,025; in or about 2018, he paid Respondent 12 monthly installments, totaling approximately $4,380; in or about 2019, he paid Respondent six monthly installments, totaling approximately $2,190, including a final installment of $365 in or about June 2019" (Ans., p.9).

45. In his Answer, Respondent admitted to taking judicial action in five cases involving Mr. Lazroe while Mr. Lazroe and Respondent were engaged in an ongoing financial relationship: *Bayview Loan Servicing, LLC v Mary Lee Fornes et al.; Buffalo Seminary v Stephanie Satterwhite; Matter of the Application of* [redacted]; *Trifera, LLC v Morrison, Unknown Heirs;* and *Federal National Mortgage Association v Anderson et al.* (Ans., p.10, 11, 12, 13, 14).

46. In his Answer, Respondent admitted to taking judicial action in three cases involving Mr. Lazroe within seven months of the ending of the financial relationship between Mr. Lazroe and Respondent: *Greater Woodlawn Federal Credit Union v Charles Pachucki et al.; Matter of the Application of* [redacted], and *Rasheena Jones v Jerry Gradl Motors, Inc.* (Ans., p. 14, 15, 16).

47. Respondent did not disclose the 2015 sale of his law practice to Mr. Lazroe or Mr. Lazroe's ongoing payments to him in any of the five cases he presided over prior to Mr. Lazroe's last payment. Respondent did not disclose the 2015 sale or the ongoing financial relationship with Mr. Lazroe in any of the three cases he presided over within two years of Mr. Lazroe's final payment to him (Tr., p.1235, 1240; *see also* Tr., p.296, 298, 300, 301, 302, 304, 305).

CONCLUSIONS OF LAW AS TO CHARGE II

Respondent violated Section 100.1 of the Rules, in that he 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.

Respondent violated Section 100.2(A) of the Rules, in that he 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.

Respondent violated Section 100.3(E)(1) of the Rules, in that he 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.

Respondent violated Sections 100.4(D)(1)(a) and 100.4(D)(1)(c) of the Rules, in that he 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, and in that he involved himself in frequent transactions or continuing business relationships with lawyers likely to come before the court on which the judge serves.

OPINION AS TO CHARGE III

I find that the Commission has established by a preponderance of the evidence that Respondent violated Sections 100.1, 100.2(A), 100.3(C)(1), and 100.4(I) of the Rules. My finding is based primarily on Respondent's own admissions in his Answer to the Commission's FWC, Respondent's hearing testimony, and arguments made by Respondent in his RPF. In his post-hearing submissions, Respondent repeatedly contends that judicial discipline is unwarranted under Charge III on the basis that the Commission failed to prove that Respondent "willfully failed to report income" in his FDS (RPF, p.40). Respondent testified at the hearing that he did not intentionally fail to disclose the down payment that he

received for the sale of his law practice in 2015 (RPF, p.43; *see also* Tr., p.1254). Interestingly, Respondent immediately pivots in his post-hearing submission from his prior assertion to the argument that "[h]e did not explicitly mention the down payment because it was received while he was still a lawyer, and not yet a judge" (RPF, p.43).

Whether Respondent's failure to accurately report the income he received for the sale of his law practice was negligent, willful, or somewhere in between, the fact remains that his FDS was inaccurate when filed. The Commission has not charged that Respondent "willfully" filed an inaccurate FDS; the charge is simply that the FDS was inaccurate. Respondent repeatedly concedes that the FDS in question was inaccurate. As such, I find that Respondent's inaccurate reporting of the income he received from the sale of his law practice in 2015 on his FDS supports a finding under Charge III that Respondent violated the Rules.

Respondent did file and disclose the ongoing monthly payments that resulted from his sale agreement with Mr. Lazroe, which lends credence to Respondent's narrative of an inadvertent failure to accurately report his income.

Respondent relies on the *Matter of Alessandro,* 13 N.Y.3d 238, 249 (2009) as it relates to instances where the Commission seeks to discipline a judge for an issue related to financial disclosure (RPF, p.44). The *Alessandro* court rejected the sanction of removal for a judge charged with omitting financial information from disclosure statements on the basis that the Court was "unable to conclude by a preponderance of the evidence that any of the omissions" were intentional (RPF, p.45). While making any finding or recommendation as to appropriate sanction is beyond the scope of my role in this proceeding, I do find by a preponderance of the evidence that Respondent's failure to accurately report his income in his financial disclosure statements was inadvertent.

Notwithstanding the inadvertent nature of his reporting inaccuracies, the simple fact remains that Respondent's reports were, at their core, inaccurate. A judge's accurate reporting of their income is required by statute in no uncertain terms.

FINDINGS OF FACT AS TO CHARGE III

48. Respondent's term as a Justice of the Court of Claims and as an Acting Justice of the Supreme Court, Erie County, began on May 14, 2015 (CJC Ex.37).

49. In his Answer, Respondent admitted that "[o]n or about May 18, 2015, Respondent entered into an agreement to sell his law practice to Peter J. Pecoraro and Matthew A. Lazroe. The agreement provided for the transfer of the "goodwill" of Respondent's law practice, which entailed all files, wills, telephone number, copier/fax number, and furnishings, with two listed exceptions. The financial terms provided for the payment of a total sum of $50,000, with a payment of $15,000 down and monthly payments of $730, beginning July 1, 2015, and extending until the balance was paid in full" (Ans., p.8; *see also* CJC Ex.14).

50. In his Answer, Respondent admitted that "[i]n or about 2015, in connection with the agreement for the sale of his law practice, Respondent received approximately $12,190 from Mr. Lazroe and approximately $7,190 from Mr. Pecoraro. In his verified 2015 Financial Disclosure Statement ("FDS") filed with the Ethics Commission for the New York State Unified Court System, Respondent reported the amount of income he received from Mr. Lazroe and Mr. Pecoraro for the sale of his law practice as under $5,000" (Ans., p.18-19).

51. Respondent admitted in his Answer that "[f]rom in or about May 2015 through in or about June 2019, in connection with the agreement for the sale of his law practice, Respondent received approximately $27,530 from Mr. Lazroe. From in or about May 2015 through in or about December 2017, Respondent received approximately $15,950 from Mr. Pecoraro" (Ans., p.19).

52. Respondent admitted in his Answer that he "clicked the incorrect box when reporting the income he received for the purchase of his private law practice in 2015" and acknowledged that he corrected the "error for 2015, 2016, and 2017" (Ans., p.18).

53. Respondent made no mention of the $15,000 down payment that he received for the sale of his law practice in his responses to questions 12(a), 12(b), 13, and 18 on his 2015 FDS (CJC Ex.23).

54. At the hearing, Respondent explained his omission of the $15,000 down payment from his 2015 FDS by stating that "at the time [he] got the down payment, [he] was not a Judge" (Tr., p.1254).

55. Upon being made aware of the missing $15,000 entry, Respondent wrote a letter to the Executive Director of the New York State Ethics Commission acknowledging his incorrect FDS reporting "for the years 2015, 2016, 2017" (Resp. Ex.S).

56. Respondent thereafter submitted an amended 2015 FDS, changing his response to Question 13 to reflect that the amount of income received for the sale of his law office from "under $5,000," to "between $5,000 - $20,000" (Resp. Ex.U).

CONCLUSIONS OF LAW: CHARGE III

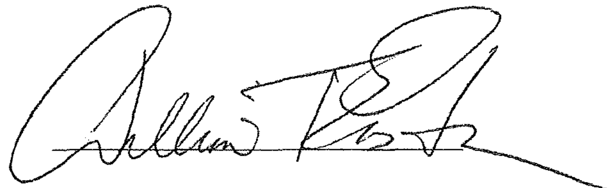
Respondent violated Section 100.1 of the Rules, in that he failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved.

Respondent violated Section 100.2(A) of the Rules, in that he 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.

Respondent violated Section 100.3(C)(1) of the Rules, in that he 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.

Respondent violated Section 100.4(I) of the Rules, in that he failed to disclose income on his financial disclosure forms as required by 22 NYCRR Part 40.

Dated: 5/24/23



Rochester, New York

William T. Easton, Referee