

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

LINDA S. JAMIESON,

VERIFIED ANSWER

a Justice of the Supreme Court,
9th Judicial District, Westchester County

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Respondent, Linda S. Jamieson, by her undersigned attorney, hereby alleges as her
Verified Answer to the Formal Written Complaint of the State Commission on Judicial Conduct:

1. Paragraph 1 is a legal conclusion, but respondent does not deny it accurately states the law.
2. Respondent denies knowledge or information sufficient to form a belief as to paragraph 2.
3. Paragraph 3 is a legal conclusion and respondent admits in part, and denies in part, paragraph 3's legal conclusion.
4. Admits paragraph 4.

CHARGE 1

5. Respondent admits paragraph 5 to the extent that she filed financial disclosure forms that did not include a loan to Vincent Natrella, a friend and potential business partner of her "significant other" who she lived with, Joseph Rende. Mr. Natrella, was not then, and is not now, an attorney or a litigant before her.

Specifications as to Charge 1

6. Respondent admits paragraph 6, but the loan was given not because Mr. Natrella was the son of the Chairman of the Westchester County Conservative Party, which is wholly irrelevant to this investigation. The loan was given to Mr. Natrella because he was a potential business partner of Mr. Rende and a friend of hers through Mr. Rende.

7. Respondent admits paragraph 7 and the \$10,000 was returned shortly after the loan was made.

8. Paragraph 8 is a legal conclusion but respondent does not dispute the description of the law.

9. Respondent admits paragraph 9.

10. Respondent admits paragraph 10, but she denies she had any intent to hide the loan from the Ethics Commission because she had nothing to hide. The loan was not to or from a lawyer who had business before her, as Mr. Natrella is not now and has never been a lawyer. Similarly, the loan was not to or from a litigant before her; Mr. Natrella was never a litigant before her. The loan was not an “arm’s length” loan. The loan was to a friend of her significant other.

11. Respondent admits paragraph 11 to the extent she violated the court rule by not listing the loan on her financial disclosure forms. However, respondent denies that: her conduct failed to uphold the integrity and independence of the judiciary; that she intentionally engaged in impropriety; and that her conduct, in context, would fail to promote public confidence in the integrity and impartiality of the judiciary. Further, she denies that she failed to conduct her extra-judicial activities so as to create a risk of conflict with her judicial obligations.

CHARGE II

12. Respondent denies the facts alleged in paragraph 12 and denies that her conduct with respect to Ann Penachio, lent the prestige of her judicial office for any non-judicial purpose and did not permit her extra-judicial activities to detract from the dignity of her office.

Specifications to Charge II

13. Respondent admits paragraph 13 but denies that the fact that Vincent Natrella, formerly Chairman of the Westchester County Conservative party and the father of Vincent Natrella, had any impact upon, or relevance to, the loan.

14. As to paragraph 14, respondent denies knowledge or information sufficient to form a belief as to what occurred between Mr. Natrella and Mr. Shelly or what occurred between Mr. Natrella and Ms. Penachio, but does not dispute that Mr. Shelly left a message for Mr. Natrella.

15. As to paragraph 15, respondent denies knowledge or information sufficient to form a belief as to what occurred between Ms. Penachio and Mr. Shelly.

16. As to paragraph 16, respondent denies knowledge or information sufficient to form a belief as to what occurred between Ms. Penachio and Mr. Shelly.

17. Respondent admits paragraph 17 to the extent there was a conversation about the death of a mutual friend. Respondent does not recall discussing a confession of judgment but never discussed not listing Mr. Natrella's debt on his bankruptcy petition. Respondent has no memory of specifically asking for her money back, but she does recollect telling Mr. Penachio that she was disappointed and hurt by Mr. Natrella ignoring her and her debt, since she thought of him as a friend.

18. Respondent admits paragraph 18.

19. Respondent admits paragraph 19, but the decisions were issued the year BEFORE any interaction between respondent, Mr. Shelly and Ms. Penachio. Respondent adamantly contends that those decisions were properly decided on the merits. This is confirmed by the Appellate Division affirming the decisions.

20. Respondent admits paragraph 20.

21. Respondent admits paragraph 21 but denies the validity of the arguments submitted by Ms. Penachio in support of her motion to recuse.

22. Paragraph 22 are legal conclusions and are not facts which respondent can admit or deny but, as a matter of law, she disputes the legal conclusions.

AFFIRMATIVE DEFENSES AND MITIGATION

(i) The Natrella Loan

23. Justice Jamieson admits she did not include her loan to Vincent Natrella, made in August 2005 (“Loan”), on her financial disclosure form with the Ethics Commission. However, this omission was a mistake. It was not intentional, venal or with some illicit or dishonest motive.

24. This loan was not an arms-length transaction. Justice Jamieson had known Mr. Natrella for more than twenty years. Justice Jamieson's longtime (live-in) significant other, Joseph Rende, worked with Mr. Natrella at the same company for many years and Mr. Rende was close to Natrella's father. Mr. Rende was like an older brother to Mr. Natrella.

25. Sometime in 2005, Mr. Rende approached Justice Jamieson and asked if she would loan \$50,000 to Natrella because he was interested in opening his own heating and air conditioning business. The Loan was going to be seed money for his business. Justice Jamieson believed that Mr. Rende might eventually join Natrella in the business, so the Loan was

potentially for his future too.

26. The Loan was confirmed in a simple note ("Note"). The Note was signed at Justice Jamieson's house. Mr. Rende, Mr. Natrella, Mr. Natrella's wife and Justice Jamieson were present. The Note was a Demand Note that charged 6% interest. In other words, there was no set term and no proscribed payment schedule. Mr. Natrella and his then-wife both signed the Note for \$50,000. Shortly after Mr. Natrella was given the money, he returned \$10,000 and told Justice Jamieson he did not need the entire amount.

27. It is true that Justice Jamieson's failure to disclose the Loan occurred on disclosure forms from 2006-2016. However, once Justice Jamieson had failed to focus on and recognize that this type of "friendly" loan had to be disclosed she never focused upon it again. Thus, the initial mistake in 2006 was just repeated without any thought. Consequently, the fact that there was no disclosure for ten years does not reflect that Justice Jamieson willfully and intentionally planned not to disclose each year.

28. Moreover, there was no hidden benefit or an illicit motive not to disclose. Mr. Natrella was not an attorney, so he could never appear before her. He was not at the time of the loan, or any time, a litigant before her. In fact, Justice Jamieson believes that had by chance any civil litigation involving Mr. Natrella been assigned to her that she would have had to recuse herself, due to her relationship with him and Mr. Rende and the outstanding Loan.

29. In short, the failure to disclose the loan must be viewed in context and with consideration of Justice Jamieson's state of mind.

(ii) Ms. Penachio's Allegation

30. At some point in 2014, Justice Jamieson heard that Mr. Natrella might be going out of business. Justice Jamieson attempted to contact him, but he would not return her

telephone calls. She asked her friend Philip Shelly, Esq. to contact Mr. Natrella. Mr. Shelly contacted Mr. Natrella and learned that he was represented by Anne Penachio, Esq.

31. Justice Jamieson was a professional colleague and friendly with Anne J. Penachio, Esq. for many years. They worked in the same building, socialized at bar meetings, they occasional saw each other at social events and Ms. Penachio sent the Judge Christmas cards over the years. The Judge was also friendly with Ms. Penachio's father and attended one of her father's birthday parties.

32. Mr. Shelly reached out to Ms. Penachio. Justice Jamieson did not believe there was anything wrong with her asking Mr. Shelly to try to work out payment of a personal loan with Mr. Natrella.

33. When Mr. Shelly contacted Ms. Penachio to see if he could work out a plan for Mr. Natrella to pay Justice Jamieson, he learned for the first time that Mr. Natrella intended to, but had not yet, filed for bankruptcy. Mr. Shelly wanted to work out a way for payment of the loan, notwithstanding the future bankruptcy filing, because Justice Jamieson had lent Mr. Natrella money as a friend and she was extremely accommodating about not demanding payment for a very long time.

34. Mr. Shelly requested that Mr. Natrella sign a Confession of Judgment. He believed that there was nothing wrong with requesting a Confession of Judgment before a bankruptcy was filed. When disclosed to the Bankruptcy Court, the Court would determine whether it was enforceable or a preferential transaction (which could be set aside). Upon information and belief, Ms. Penachio asked her client about it and he refused.

35. At around the time Mr. Shelly made his inquiry, Justice Jamieson called Ms. Penachio about the death of the Judge's former client who was subsequently represented by Ms.

Penachio. During that conversation, Ms. Penachio mentioned Mr. Natrella's debt and that she was initially unaware of the Loan. Justice Jamieson remembers telling Ms. Penachio, as a colleague and friend, in sum and substance, to make sure she got paid if she is doing legal work for Mr. Natrella. She made this comment because the Judge had learned that Mr. Natrella had not paid another attorney for legal work, who was a friend of the Judge, and he was not paying child support and other debts. This was a friendly, casual, protective comment.

36. Justice Jamieson denies Ms. Penachio's allegation that in this conversation she mentioned a Confession of Judgment or made any type of demands about the Loan.

37. Justice Jamieson neither in this conversation or at any time threatened Ms. Penachio directly or implicitly, by virtue of her position as a Justice, with respect to Ms. Penachio's representation in the Neilson Litigation.

38. In 2015, approximately four months after this conversation, Ms. Penachio filed a motion to recuse Justice Jamieson in the Neilson Litigation. Instead of a straightforward motion simply describing the relationships involved and her contention as to why this created a conflict or an appearance of a conflict, she included in a public filing irrelevant, inaccurate, unnecessary and gratuitous *ad hominin* attacks against Justice Jamieson. Although Justice Jamieson believed there was no basis for the motion, she granted the motion to avoid even an appearance of impropriety.

39. Ms. Penachio never filed a complaint with the Commission. Two years after the recusal motion, Ms. Penachio's client, Patrick Carr, Esq., filed a complaint with the Commission, which included a conspiracy theory that alleged that Justice Joan B. Lefkowitz and Justice William J. Giacomo engaged in retaliatory action against him at the behest of Justice Jamieson. In addition, Ms. Penachio also requested that retired Appellate Division Justice

Robert Spolzino not be permitted to act as Referee in the case and, in response, Justice Spolzino asserted that the recusal request was unsupported by any pertinent facts that he could discern. There was also another recusal motion against Justice Orazio R. Bellantoni, although the basis is unknown. Justice Charles Wood was assigned the Neilson Litigation after Justice Jamieson and he also recused himself.

40. One hypothesis for why Ms. Penachio sought a recusal of Justice Jamieson on behalf of her client, was posited by M. Breeze McMennamin, Esq., Mr. Carr's adversary in the Neilson Litigation. In his submission opposing Justice Jamieson's recusal, Mr. McMennamin argued that Mr. Carr was moving for recusal to create a basis, albeit frivolous basis, to invalidate a prior order by Justice Jamieson in the Neilson Litigation that was extremely detrimental to Mr. Carr.

41. Critical to the analysis of Justice Jamieson's conduct was her state of the mind at the time of the events. In comparison, Mr. Penachio's explanation of her statement of mind is not credible considering the speculative nature of what Justice Jamieson would do to her through her client in the Neilson Litigation (who was unconnected in any way to Mr. Natrella), for Ms. Penachio not somehow forcing her client, Mr. Natrella, to pay his debt.

42. Ms. Penachio claims that she "felt extreme undue pressured [sic] . . ." from Mr. Shelly and Justice Jamieson's contact. Although allegedly she may have personally felt pressured, she has admitted that neither Mr. Shelly and Justice Jamieson acted professionally and never threatened her or suggested either directly or implicitly that Justice Jamieson would be influenced in the Neilson litigation by her defense of Natrella. The pressure she felt was self-imposed and not anything said by Mr. Shelly or Justice Jamieson.

43. In fact, Ms. Penachio alleged that she was a "friend" of the Judge, as described

above. This supports Justice Jamieson's contention that she never imagined Ms. Penachio would feel threatened by any conversation about Mr. Natrella. In fact, Justice Jamieson's belief that she did not even consider that Ms. Penachio would feel threatened is strongly supported by a Ms. Penachio's speculative and far-fetched allegation.

44. Specifically, Justice Jamieson would have had to determine that Ms. Penachio believed that the Judge would punish an innocent party in the Neilson litigation, who had no connection to Mr. Natrella, in order to punish Ms. Penachio, for being unable to "force" Mr. Natrella to acquiesce to pay the Judge. This attenuated conjecture is why it is credible that Justice Jamieson did not realize or suspect at the time she spoke to Ms. Penachio that Ms. Penachio felt pressured because this potential "threat" was inconsistent with their relationship and who she knew the Judge to be. Needless to say, Ms. Penachio's subjective feeling of "pressure" is not the objective standard that the Commission should apply when considering whether a Judge lent the prestige of her office to advance her own private gain.

45. To the degree that there was any type of appearance of a conflict, when Ms. Penachio file a motion to recuse, Justice Jamieson recused herself on that basis.

WHEREFORE, Justice Jamieson respectfully requests that all charges against her be dismissed or that the Commission issue any Order deemed fair, just or equitable.

Dated: September 12, 2019
New York, NY


RICHARD M. MALTZ

VERIFICATION

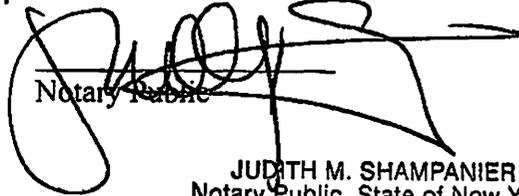
STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

I, Linda S. Jamieson, being duly sworn, says:

1. I am the respondent in the within matter.
2. I have read the annexed Answer and know the contents thereof.
3. The same is true to my knowledge, except as to the matters stated to be alleged on information and belief, and as to those matters I believe them to be true.


Linda S. Jamieson

Sworn to before me this
^{12th} day of September, 2019


Notary Public

JUDITH M. SHAMPANIER
Notary Public, State of New York
No. 02SH6154229
Qualified in Westchester County
Commission Expires 12/10/2022