

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

DETERMINATION

LINDA S. JAMIESON,

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

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine, Melissa DiPalo and David Stromes, Of
Counsel) for the Commission

Richard M. Maltz, PLLC (by Richard M. Maltz, Esq.) for Respondent

Respondent, Linda S. Jamieson, a Justice of the Supreme Court, 9th Judicial
District, Westchester County, was served with a Formal Written Complaint

("Complaint") dated July 22, 2019 containing two charges. Charge I of the Complaint alleged that from 2006 through 2016, respondent filed inaccurate Financial Disclosure Forms ("FDF") with the Ethics Commission for the Unified Court System by failing to disclose a debt owed to her based on a loan she made in August 2005 to Nicholas Natrella ("Natrella"). Charge II alleged that in September 2014, respondent lent the prestige of her judicial office and permitted her extra judicial activities to detract from the dignity of her office when she called Anne Penachio ("Penachio"), an attorney representing Mr. Natrella in bankruptcy proceedings, and suggested that Ms. Penachio's client sign a confession of judgment or exclude the debt he owed respondent from his bankruptcy filing. Respondent filed an answer dated September 12, 2019.

By Order dated October 15, 2020, the Commission designated Hugh H. Mo, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 20 and 21 and March 5, 2021 via videoconference. The referee filed a report dated September 16, 2021 in which he sustained both charges of the Complaint.

The parties submitted briefs to the Commission with respect to the referee's report and the issue of sanction. Commission counsel recommended that the referee's findings and conclusions be confirmed. Respondent recommended that the referee's findings be confirmed in part and disaffirmed in part. Commission counsel recommended the sanction of removal; respondent's counsel argued that a sanction no greater than a private letter of caution be imposed. The Commission heard oral argument on December 9, 2021 and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent has been a Justice of the Supreme Court, 9th Judicial District, Westchester County, since January 1, 2003 and was re-elected to that position in 2016. Her current term expires on December 31, 2030.

2. Respondent was admitted to the practice of law in New York in 1980. She was appointed a Judge of the Westchester County Family Court in 1996, ran for election to that position and lost in the November 1996 election. In 1998, respondent was elected a Judge of the Westchester County Family Court and served in that capacity until 2002.

As to Charge I of the Formal Written Complaint

3. In August 2005, respondent loaned \$50,000 in cash to Nicholas Natrella.

4. Mr. Natrella, who needed funds to start a business servicing heating and cooling systems, did not provide a written business plan. Prior to making the loan to Mr. Natrella, respondent discussed the loan with her significant other, Joseph Rende ("Rende"), who had worked with Mr. Natrella.

5. Respondent did not request or receive collateral from Mr. Natrella for the \$50,000 loan.

6. Mr. Natrella had not requested cash and was surprised that the loan was in cash. Respondent testified that she kept cash in a safe at her home and planned to use cash to buy herself a gold watch.

7. Mr. Natrella and his wife, Maureen Natrella, signed a promissory note dated August 11, 2005 which acknowledged their indebtedness to respondent in the amount of \$50,000, payable on demand, with an annual interest rate of 6%. Mr. Natrella was not given a copy of the promissory note.

8. Mr. Natrella testified that he paid respondent a total of approximately \$11,000 in interest and principal on the loan in the couple years after he received the loan. Respondent testified that shortly after the loan was made, Mr. Natrella gave her \$10,000. Although some repayment was made, Mr. Natrella did not repay the balance of the loan.

9. Under Part 40 of the Rules of the Chief Judge, 22 NYCRR Part 40, every judge is required to file a statement of financial disclosure each year, for the preceding calendar year, with the Ethics Commission for the Unified Court System.

10. Question 18 of the FDFs to be filed in 2006 through 2019 required that respondent do the following:

List below all notes and accounts receivable, other than from goods or services sold, held by the reporting individual at the close of the taxable year last occurring prior to the date of filing and other debts owed to such individual at the close of the taxable year last occurring prior to the date of filing, in EXCESS of \$1,000, including the name of the debtor, type of obligation, date due and the nature of the collateral securing payment of each, if any, excluding securities reported in item 16 herein above. Debts, notes and accounts receivable owed to the individual by a relative shall not be reported.

11. Respondent failed to disclose the debt Mr. Natrella owed to her on the FDFs that she filed with the Ethics Commission for the Unified Court System in 2006 to 2019.

12. On June 15, 2015, respondent amended her 2012 and 2013 FDFs to include retirement accounts and investments. Respondent's amendments to her 2012 and 2013 FDFs did not include the debt Mr. Natrella owed to her.

13. On her 2017 income tax return, respondent claimed a deduction for the debt that Mr. Natrella owed to her.

14. On October 22, 2019, respondent amended the FDFs she had filed for the calendar years 2005 to 2019 to include a "Promissory Note, On Demand" that she held against Mr. Natrella and his wife in the category amount of "\$20,000 to under \$60,000."

15. Respondent testified before the referee that she did not include the debt owed to her by Mr. Natrella on her FDFs because she considered him like family. She acknowledged that Mr. Natrella did not meet the definition of family set forth in the FDF instructions.

16. Respondent also testified that the omission of the debt on her FDFs for many years was a careless mistake which continued because she used the prior year filing to complete the current year filing.

17. When she appeared before us, respondent stated, "[a]nd it was stupid because I really never took those forms that seriously. Now I do."

As to Charge II of the Formal Written Complaint

18. During the summer of 2014, respondent attempted to contact Mr. Natrella directly concerning the debt but he did not return her calls. She also asked Mr. Rende to ask Mr. Natrella to call her.

19. Mr. Rende testified that respondent was frustrated because Mr. Natrella was not paying her back. Mr. Rende called Mr. Natrella and asked him to sign a confession of judgment for the debt. Mr. Natrella responded that he had not received the promissory note and asked for a copy of it. He never received a copy.

20. In late July or early August 2014, respondent told her friend, attorney Philip Shelly, about the debt Mr. Natrella owed to her. Mr. Shelly offered to call Mr. Natrella. Respondent asked Mr. Shelly to ask Mr. Natrella to sign a confession of judgment with respect to the loan.

21. Mr. Shelly called Mr. Natrella and left a message to call him regarding a matter with Linda Jamieson. After receiving the message, Mr. Natrella contacted Anne Penachio, who was his attorney in connection with a planned bankruptcy filing.

22. Ms. Penachio called Mr. Shelly and Mr. Shelly asked Ms. Penachio to have Mr. Natrella sign a confession of judgment for the loan. Mr. Shelly also suggested that the debt did not need to be reported on Mr. Natrella's bankruptcy petition. Ms. Penachio told Mr. Shelly that all liabilities were required to be reported on bankruptcy petitions.

23. After speaking with her client, Ms. Penachio told Mr. Shelly that Mr. Natrella would not sign a confession of judgment.

24. Respondent subsequently learned from Mr. Shelly that he had spoken to Ms. Penachio, that Mr. Natrella was planning to file for bankruptcy and that Ms. Penachio would be representing Mr. Natrella in the planned bankruptcy filing.

25. In September 2014, respondent telephoned Ms. Penachio. Respondent and Ms. Penachio had known each other professionally for approximately 20 years. Respondent was aware that Ms. Penachio knew of her judicial position.

26. In 2013, respondent had decided two motions in *Neilson v. 6D Farms Corp.* in which Ms. Penachio represented a defendant. Respondent's 2013 *Neilson* decisions

were on appeal to the Appellate Division, Second Department. At the time respondent called Ms. Penachio, Ms. Penachio did not have any matters pending before respondent and neither Ms. Penachio nor respondent expected that the *Neilson* matter would come before respondent again.

27. Prior to her September 2014 call, respondent had never telephoned Ms. Penachio before. At the beginning of the conversation, respondent asked Ms. Penachio about the death of a mutual friend.

28. During the conversation, respondent's loan to Mr. Natrella was discussed. Respondent told Ms. Penachio that she wanted a confession a judgment from Mr. Natrella. Respondent also suggested to Ms. Penachio that the loan did not have to be listed on Mr. Natrella's bankruptcy filing. Ms. Penachio replied that the law required all creditors to be listed.

29. Based on respondent's call, Ms. Penachio felt pressured to obtain a confession of judgment from her client because respondent vehemently stated during the call that she wanted her money and a confession of judgment and respondent was a "public official."

30. On December 3, 2014, the Appellate Division, Second Department affirmed respondent's orders in the *Neilson* matter.

31. The parties in *Neilson* subsequently asked respondent to appoint a referee to oversee the production of documents. On January 9, 2015, respondent issued an order appointing a referee.

32. On January 20, 2015, Mr. Natrella filed a Chapter 13 bankruptcy petition

which listed respondent as an unsecured creditor.

33. On January 21, 2015, Ms. Penachio filed a motion seeking respondent's recusal from the *Neilson* matter. In her affirmation in support of the motion, Ms. Penachio described respondent's call to her during which respondent's loan to Mr. Natrella was discussed.

34. On May 12, 2015, while disputing the allegations in the motion, respondent granted Ms. Penachio's recusal motion.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.4(A)(2) and 100.4(I) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

All judges are required to act in a manner to preserve the integrity of the judiciary and to avoid the appearance of impropriety. (Rules §§100.1 and 100.2(A)) Section 100.4(I) of the Rules requires judges to disclose their debts as required by Part 40 of the Rules of the Chief Judge. "Judges must complete their financial disclosure forms with diligence, making every effort to provide complete and accurate information." *Matter of Joseph and Francis Alessandro*, 13 N.Y.3d 238, 249 (2009).¹

¹ Even careless omissions from FDFs can be misconduct warranting discipline. *Matter of Joseph and Francis Alessandro*, *supra*, 13 N.Y.3d at 249.

We find that respondent intentionally failed to report the debt Mr. Natrella owed to her on the FDFs she filed for 13 years.² Respondent has been a judge for more than 23 years and should be fully aware of her ethical obligation to file complete and accurate financial disclosure forms. Respondent is also an experienced attorney. The FDF instructions clearly indicated that debts over \$1,000 owed by a non-relative must be reported on the mandatory financial disclosure forms.³

Moreover, contrary to respondent's claim that the failure to report the debt was a careless mistake, over the years since making the \$50,000 loan to Mr. Natrella, respondent had several reminders of the debt. Nevertheless, she continued to fail to report the debt on her FDFs as required. Initially, the payment Mr. Natrella made to her on the loan should have alerted respondent to the necessity of reporting the debt. In 2014, respondent was fully aware of the debt since she made direct efforts to try to obtain a confession of judgment. That year she also enlisted the help of both Mr. Rende and Mr. Shelly to try to obtain a confession of judgment. Furthermore, in May 2015, respondent granted Ms. Penachio's recusal motion which referenced the loan. Yet, respondent did not report the debt on the FDF she filed in 2015. Shortly after granting the recusal motion, respondent amended her 2012 and 2013 FDFs in June 2015 to include retirement accounts and investments. She did not include in those amendments the debt Mr. Natrella owed to her. Furthermore, on her 2017 income tax return respondent claimed a

² We make no finding that the loan itself was improper.

³ The instructions further made clear that Mr. Natrella did not meet the definition of a relative.

deduction based on the debt but she did not amend her prior FDFs to report the debt. Failing to report the debt despite these several reminders was additional evidence that respondent's failure to disclose the large debt on her mandatory disclosure forms was intentional.

Respondent only amended her FDFs to include the debt in October 2019, three months after receiving the Commission's Formal Written Complaint filed against her. Such amendments did not excuse her misconduct in failing to file accurate FDFs for 13 years. *See, Matter of Miller*, 35 N.Y.3d 484, 491 (2020) (respondent's failure to file local financial disclosure forms and his failure to amend his FDF "until he was under investigation, impedes the purpose of these disclosure forms . . .").

The public has an interest in the timely and accurate disclosure of a judge's financial information on the annual financial disclosure form. The Court of Appeals has held that the information on a judge's financial disclosure form "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, supra*, 13 N.Y.3d at 249. In *Matter of Russell, Jr.*, 2001 NYSCJC Annual Report 121, 122, the Commission stated, "the Legislature and the Chief Judge have determined that financial disclosure by judges serves an important public function" and repeatedly filing untimely FDFs with the Ethics Commission constituted misconduct. Here, over the course of 13 years, respondent repeatedly filed inaccurate financial disclosure forms in violation of her ethical obligations. By this conduct, respondent shielded the debt from public view for 13 years.

It is troubling that an experienced judge and lawyer would not have recognized the

importance of complete and accurate disclosures on her mandatory disclosure forms.

When she appeared before us, respondent commented that in the past she had not taken the FDFs “that seriously.” Respondent has been an attorney for more than 40 years and a judge for more than 23 years. She should have been well aware of the importance of reporting accurate information on the FDFs she was required to file.

In additional misconduct, when respondent called Ms. Penachio, respondent lent the prestige of her judicial office to her effort to obtain a confession of judgment or have the debt omitted from Mr. Natrella’s bankruptcy filing. Section 100.2(C) of the Rules provides, “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge . . .” In circumstances where the judge’s judicial status was known, judges have been disciplined for violating this ethical rule even when they did not specifically invoke their office. *Matter of Lonschein*, 50 N.Y.2d 569, 572-573 (1980); *Matter of Clark*, 2007 NYSCJC Annual Report 93, 96. As the Court of Appeals held in *Matter of Lonschein, supra*, 50 N.Y.2d at 572, “[j]udges must assiduously avoid those contacts which might create even the appearance of impropriety.”

When she made the call to Ms. Penachio, respondent knew that Ms. Penachio was representing Mr. Natrella and knew that Ms. Penachio was aware that respondent was a judge. Respondent was also aware that Mr. Shelly had already spoken with Ms. Penachio about the debt. Significantly, this was the first time respondent had ever telephoned Ms. Penachio.⁴ During her conversation with Ms. Penachio, respondent requested a

⁴ We find that respondent was less than forthright in her testimony regarding her call to Ms. Penachio. It was not credible that shortly after unsuccessful attempts by Mr. Rende and Mr. Shelly to

confession of judgment and suggested that Mr. Natrella not disclose the debt in his bankruptcy filing. These were the same requests that Mr. Shelly had recently made to Ms. Penachio. Respondent's requests in her conversation with Ms. Penachio also followed respondent's significant other's request to Mr. Natrella for a confession of judgment. By repeating these requests directly to Mr. Natrella's attorney, respondent improperly used the prestige of her judicial office in an effort to obtain a different outcome compared to the same requests regarding the debt that had already been made on her behalf. Based on respondent's telephone call to her, Ms. Penachio felt pressured by respondent and compelled to request respondent's recusal in the *Neilson* matter.⁵

We note that respondent has no prior disciplinary history as a judge or as an attorney. We trust that respondent has learned from this experience and will fully comply with all the Rules Governing Judicial Conduct in the future.

By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Ms. Grays, Judge Camacho, Judge Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, and Mr. Seiter concur.

Mr. Belluck, Ms. Corngold, Judge Falk, and Ms. Yeboah dissent as to sanction and vote that removal is the appropriate sanction.

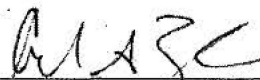
obtain a confession of judgment from Mr. Natrella, as respondent had asked them to do, respondent's first ever call to Mr. Natrella's attorney was wholly unrelated to the loan.

⁵ We note that Ms. Penachio, who was not the complainant in this matter, testified before the referee consistently with the affirmation that she had submitted in 2015 in support of the recusal motion.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on
Judicial Conduct.

Dated: February 11, 2022



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct