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

LINDA S. JAMIESON

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

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REFEREE'S REPORT AND PROPOSED FINDINGS OF FACT AND CONLUSIONS OF LAW

APPEARANCES:

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Special Referee

OF COUNSEL:

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PRELIMINARY STATEMENT

This proceeding is before me pursuant to the Order of the Commission dated October 16, 2020, designating the undersigned to hear and report proposed findings of fact and conclusions of law. By Formal Written Complaint ("Complaint") dated July 22, 2019, the Commission charged Respondent with two charges of misconduct as follows:

Charge I alleges that from 2006 to 2016, Respondent failed to file accurate financial disclosure forms ("FDF") with the Ethics Commission of the Unified Court System in disclosing a $50,000 loan she made in 2005 to Nicholas Natrella ("Natrella"), the son of the former

Westchester County Conservative Party ("WCCP") Chairman, Vincent Natrella, who helped Respondent secure her Supreme Court seat in 2002.

Charge II alleges that, in or around September 2014, Respondent lent the prestige of her judicial office to advance her own private interest. Specifically, Respondent called Natrella's bankruptcy attorney, Anne Penachio ("Penachio"), to request that Natrella: (1) payback the $50,000 loan, (2) sign a confession of judgment and/or (3) exclude the debt from Natrella's bankruptcy filing.

Virtual hearings were held on January 21-22 and March 5, 2021. The Commission called two witnesses and introduced sixty-eight exhibits. Respondent called six witnesses, testified on her own behalf, and introduced three exhibits. Two exhibits were marked as Ref Exs. A and B.[1]

The Commission and Respondent were represented by counsel. Respondent was present throughout the Hearing and testified on her own behalf. Transcripts of the Hearing were prepared and post-hearing submissions (Original and Reply) were received.[2] In accordance with Commission Rule 7006.6 (1), this Report constitutes my proposed findings of fact and conclusions of law for consideration by the Commission.

[1] Citations of Exhibits introduced at the Hearing preceded by "Ref Ex." are Exhibits of the Referee, "Comm Ex." are Exhibits of the Commission, and "Resp Ex." are Exhibits of Respondent. All other citations, unless noted, are to the Hearing Transcript.

[2] Commission's Post-Hearing Memorandum to the Referee and Proposed Findings of Fact and Conclusions of Law dated June 11, 2021, Commission's Reply Memorandum by Counsel to the Commission dated July 1, 2021, Respondent's Post-Hearing Memorandum of Law dated June 10, 2021 and Respondent's Reply Memorandum of Law dated July 1, 2021.

THE PLEADINGS

Pursuant to a Post-Hearing Joint Stipulation of Undisputed Facts, dated June 15, 2021, the parties entered into a Stipulation based on the record of the Hearing, as follows:

1. This Joint Stipulation of Undisputed Facts is respectfully submitted to the Referee, Hugh H. Mo, Esq., based on the record of the hearing in this matter that was held virtually on January 21-22 and March 5, 2021. The parties are not stipulating to the relevance or weight of the facts stipulated below.
2. Respondent was admitted to the practice of law in New York in 1980 (Jamieson: 383; Ref Exs. A, B). She was appointed a Judge of the Westchester Family Court in 1996, ran for election to Westchester Family Court, and lost in the general election in November 1996 (Jamieson: 385-86). Respondent was then elected a Judge of the Westchester Family Court in 1998 and served in that position until 2002 (Jamieson: 386; Ref Exs. A, B).
3. In 2002, Respondent was a candidate for Justice of the Supreme Court, 9th Judicial District, Westchester County (Jamieson: 387).
4. Respondent has been a Justice of the Supreme Court, 9th Judicial District, Westchester County, since January 1, 2003. She was re-elected to that position in 2016, and her current term expires on December 31, 2030 (Jamieson: 387; Ref Exs. A, B).
5. Respondent was served with a Formal Written Complaint dated July 22, 2019 (Ref Ex. A). She filed an Answer dated September 12, 2019 (Ref Ex. B).

As to Charge I

6. In August 2005, Respondent loaned $50,000 in cash to Natrella (Natrella: 64-65, 104; Rende: 282, 284; Jamieson: 399, 401, 477-478). Respondent did not request or receive collateral from Natrella for the loan (Natrella: 102; Rende: 283; Jamieson; 399, 517.)

7. A promissory note dated August 11, 2005, was signed by Nicholas and Maureen Natrella, which acknowledged their indebtedness to Respondent in the amount of $50,000, payable on demand, with an annual interest rate of 6% (Ex. 2).

8. Natrella did not repay the balance of the loan (Natrella: 72-73; Jamieson: 402-03, 484, 516-17).

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 ("FDF") each year, for the preceding calendar year, with the Ethics Commission for the Unified Court System (Ex. 1).

10. Question 18 of the FDFs to be filed in 2006 to 2019 required the following of Respondent:

> 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. (Exs. 1, 9-18).

11. Respondent failed to disclose the debt owed to her by Natrella on FDFs that she filed with the Ethics Commission for the United Court System from 2006 to 2019 (Exs. 1, 8-19).

12. On June 15, 2015, Respondent amended her 2012 and 2013 FDFs to include retirement accounts and investments (Jamieson: 464-66; Exs. 20, 21). Respondent's amendments to

her 2012 and 2013 FDFs did not include the debt owed to her by Natrella (Jamieson: 467, 548; Exs. 20, 21).

13. On October 22, 2019, Respondent amended the FDFs she filed for the calendar years 2005 to 2019 FDFs to include a "Promissory Note, on Demand" that she held against Natrella and Maureen Natrella in the category amount of $20,000 to under $60,000 (Jamieson: 405-06, Ex. 71).

As to Charge II

14. During the summer of 2014, Respondent attempted to contact Natrella concerning the debt and also asked Joseph Rende to have Natrella call her (Jamieson: 409-10).

15. In late July or early August 2014, Respondent told her friend, attorney Philip Shelly, about the debt owed to her by Natrella and Shelly offered to call Natrella (Jamieson: 411-12, 416, 466).

16. Respondent subsequently learned from Shelly that he spoke to Attorney Anne Penachio and that Natrella was planning to file for bankruptcy, and that Penachio would be representing Natrella in the eventual bankruptcy filing (Jamieson: 415, 422, 466-467, 482-84).

17. Shelly did not obtain a confession of judgment from Natrella (Natrella: 79; Penachio: 138-39).

18. In September 2014, Respondent telephoned Penachio (Penachio: 140, 226; Jamieson: 423, 425, 482).

19. At the time, Respondent and Penachio had known each other for approximately 20 years through bar association functions (Penachio: 127-28; Jamieson: 423-24). Respondent was aware that Penachio knew of her judicial position (Jamieson: 482).

20. In January 2013 and May 2013, Respondent had decided two motions in *Neilson v. 6D Farms Corp.*, a matter in which Penachio represented a defendant (Penachio: 143-44, 151-52, 172-73; Jamieson: 484; Exs. 39, 40). Respondent's January 2013 and May 2013 decisions were on appeal to the Appellate Division, Second Department (Penachio: 145-46). Ms. Penachio did not have any matters pending before Respondent at the time of the telephone call. Neither Penachio nor Respondent expected that the *Neilson* matter would come before Respondent again (Penachio: 145, 147, 174, 176-77, 226; Jamieson: 429).
21. At the start of the telephone call, Respondent asked about the death of a mutual friend. (Penachio: 140, 226-27; Jamieson: 425).
22. On December 3, 2014, the Appellate Division, Second Department affirmed Respondent's orders in *Neilson* (Ex. 41).
23. Sometime thereafter, the parties requested that Respondent appoint a Referee to oversee the turnover of documents (Penachio: 146-47, 186; Shampanier: 335-36; Ex. 42).
24. On January 9, 2015, Respondent issued an order appointing a Referee in *Neilson* pursuant to the parties' request (Penachio: 150; Jamieson: 485; Ex. 42). For judicial efficiency, Respondent signed the order (Shampanier: 337).
25. On January 21, 2015, Penachio filed a motion, on notice, seeking Respondent's recusal from *Neilson* (Penachio: 152, 193-94; Ex. 43). Respondent granted the recusal motion on May 22, 2015 (Penachio: 153, 195; Ex. 44). Respondent did not decide any matter involving *Neilson* from the time the motion was filed until it was granted (Penachio: 196).
26. Natrella filed a Chapter 13 bankruptcy petition that listed Respondent as an unsecure creditor on January 20, 2015 (Natrella: 80-81; Penachio: 153; Exs. 3, 5, 7).

APPLICABLE RULES OF JUDICIAL CONDUCT

27. The Commission charges Respondent under Charge I for her conduct in violation of Part 40 of the Rules of the Chief Judge (22 NYCRR Part 40), that every judge is required to file a statement of financial disclosure ("FDF") each year, for the preceding calendar year, with the Ethics Commission for the Unified Court System (Ex. 1).

28. Question 18 of the FDFs to be filed in 2006 to 2019 required the following of Respondent:

> 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. (Exs. 1, 9-18).

29. The Commission charges Respondent under Charge II for her conduct in violation of Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in 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, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that she 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, and lent the prestige of judicial office to advance her own private interest, in violation of Section 100.2(C) of the Rules; and failed to conduct her extrajudicial activities so as to minimize the risk of conflict with judicial obligations, in that she failed to conduct

her 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.

PROPOSED FINDINGS OF FACT[3]

BACKGROUND

30. Respondent was admitted to the practice of law in New York in 1980. She has been a Justice of the Supreme Court, 9th Judicial District, Westchester County, since 2003, having previously served as a Judge of the Family Court. Westchester County, from 1996 to 2002. Respondent's current term expires on December 31, 2030 (Ref Exs. A, B).

AS TO CHARGE I

31. In 2005, Natrella was friends with Joseph Rende ("Rende") and Respondent. Natrella met Rende when the two worked together at an oil company. Rende was Respondent's significant other. Natrella subsequently met Respondent through his former co-worker Rende. (Natrella: 49-50; see Rende: 272, 275-76; Jamieson: 394-95). Natrella also knew Respondent through his father, Vincent Natrella, with whom Respondent was "very close" with (Natrella: 49-50).

32. Natrella's father, Vincent Natrella, served as the WCCP Chairman from the mid-1980s to 2003, including in 2002 when it nominated Respondent as its candidate for Supreme Court Justice (Natrella: 50-51, 92-93; Penachio: 129-30; Jamieson: 476-77). Vincent Natrella was "very influential" and "very involved" in Respondent's 2002 campaign (Natrella: 55-56).

[3] I have incorporated the Commission's Appendix "A" Proposed Findings of Fact and Conclusions of Law attached to its Post-Hearing Memorandum to the Referee, with some minor revisions, which I adopt as my proposed findings of fact and conclusions of law subject to my analysis in my report.

33. In the summer of 2005, Natrella approached Rende about obtaining a loan to start his own heating and cooling business (Natrella: 57-60, 94-95, 101-01; Rende: 279-80). Natrella said that he needed $50,000 to start his business and Rende agreed to “look into it” (Natrella: 60, 63). Rende ultimately told Natrella that he and Respondent felt "uncomfortable” with Natrella taking a loan from a “shady lending company”, and Respondent had agreed to lend him $50,000 to start his business (Natrella: 60-61, 63-64, 101-03; Rende: 281; Jamieson: 400). Natrella did not envision working with Rende or consider him as a “business partner” (Natrella: 96-99).

34. In August 2005, Respondent loaned $50,000 in cash to Natrella (Natrella: 64-65, 104; Rende: 284; Jamieson: 399, 478). The cash surprised Natrella, as he did not request a cash loan (Natrella: 104). Respondent did not ask Natrella for collateral to secure the loan, nor did Natrella submit a written business plan to Respondent or Rende. (Natrella: 95, 102; Rende: 280, 283: Jamieson: 397, 399, 517).

35. Natrella and his wife Maureen signed a promissory note, in which they promised to pay Respondent $50,000, plus 6% interest annually, on demand (Natrella: 65, 67-69; Ex. 2). The Natrellas were not provided with a copy of the promissory note (Natrella: 71, 104-05; Penachio: 134).

36. Natrella started his business with the $50,000 loan, which stopped operating in October 2011 and closed sometime in 2012 (Natrella: 71-72, 106). At that point, he had paid Respondent around $6,000 in interest and $5,000 toward the principal of the $50,000 loan (Natrella: 73).

37. From 2006 to 2019, Respondent filed annual FDFs with the Ethics Commission (Exs. 1, 8-19). Each year, Question 18 of the FDF requires Respondent to report all debts and notes

owed to her in excess of $1,000 during the previous calendar year, except those owed by a relative. As to each debt, Respondent was required to report the name of the debtor, the type of obligation, the date due, and the nature of any collateral securing payment (Exs. 1,8-19).

38. Respondent failed to disclose the $50,000 debt owed to her by Natrella, along with the promissory note evidencing that debt, on each PDF she filed from 2006 to 2019 (Exs. 1,8-19; Jamieson: 472).

39. In 2014, Respondent asked her attorney to obtain a confession of judgment from Natrella with respect to the $50,000 loan (Jamieson: 466-67, 548). A year later, in June 2015, Respondent amended her 2012 and 2013 FDFs to include retirement plans and investments that previously had been unreported (Exs. 12, 13, 20, 21; Jamieson: 463-66). She did not amend her answer to Question 18 on those FDFs to reflect the Natrella debt (Exs. 20, 21).

40. On July 22, 2019, the Commission served Respondent with formal charges alleging that she had violated the Rules by failing to disclose the Natrella debt on her FDFs (Jamieson: 518-20; Ref Ex. A). Approximately three months later, on October 22, 2019, Respondent amended her FDFs covering the calendar years from 2005 to 2019 to include the promissory note that she held against the Natrellas (Jamieson: 515, 535-36; Ex. 71).

Respondent's Testimony as to Charge I

41. Respondent testified that she gave the $50,000 in cash to Natrella and that the Natrellas alone signed the promissory note (Jamieson: 401, 473, 477-78). Respondent testified that she loaned Natrella $50,000 in cash because she "had it available," having received $25,000 from her mother and saved another $25,000 by cashing several years' worth of tax return checks (Jamieson: 401-02, 478). Respondent asserted that she kept the cash in a safe

at her home instead of a bank because she had planned to buy herself a gold watch and "didn't [think it] ma[d]e sense putting it into the bank just to take it out again" (Jamieson: 402, 478-79).

42. Respondent testified that Natrella never provided a written business plan for the $50,000 loan and that she never asked for collateral to secure the loan (Jamieson: 397, 399, 517).

43. Respondent acknowledged that as a judge, she is responsible for "providing complete and accurate information on [her FDFs]" (Jamieson: 468).

44. Respondent testified that she did not report the Natrella debt on her FDFs because Question 18 excluded debts owed by a relative, and she considered the loan "as to a family and to a relative" and an "investment" to both Natrella and Rende (Jamieson: 403, 472-73, 494). She conceded, however, that neither Natrella nor Rende were related to her as defined by the instructions accompanying the FDFs, and that she never consulted the instructions for the definition of a relative (Jamieson: 473-76; Exs. 23-36).

45. Respondent claimed a deduction for the Natrella debt on her 2017 income tax return because she considered the debt "non-existent" (Jamieson: 490, 521-22, 546). Respondent testified that her 2017 tax return listed Natrella as the debtor and specified the amount of the debt, and she conceded that, unlike her FDFs, her tax returns are not available for public inspection (Jamieson: 522-23).

46. Respondent testified that she amended her FDFs covering calendar years 2005 to 2019 after appearing before the Commission for testimony in December 2018 because it, "was the right thing to do" (Jamieson; 405-06, 453, 519-20). At the same time, she stated that she did not amend her FDFs until October 2019, three months after she had been served

with the Complaint, and that she amended her FDFs to include the Natrella debt only, "out of an abundance of caution" (Jamieson: 519-21).

AS TO CHARGE II

47. Sometime before August of 2014, Rende called Natrella on Respondent's behalf and asked him to sign a confession of judgment with respect to the $50,000 loan. Natrella responded that he had never received the promissory note and asked for a copy (Natrella: 78-79, 113-14).

48. In August of 2014, Natrella received a voicemail message from Philip Shelly ("Shelly"), stating that he was calling "to settle a matter with Linda Jamieson" (Natrella: 74-75; Penachio: 218). Immediately after receiving the message, Natrella contacted his bankruptcy attorney, Penachio (Natrella: 76-77; Penachio: 132-33). At the time, Penachio represented Natrella in connection with a Chapter 13 bankruptcy proceeding and had collected information regarding his assets, liabilities, income, and expenses (Natrella: 76; Penachio: 131-32).

49. Later that day, Natrella met with Penachio, told her that he had borrowed $50,000 from Respondent, and relayed the phone message from Shelly (Natrella: 77; Penachio: 133-34). Natrella had not previously disclosed this debt to Penachio (Penachio: 133).

50. Penachio called Shelly and identified herself as Natrella's attorney (Penachio: 135-36). Shelly said that he wanted Natrella to execute a confession of judgment as to the $50,000 loan (Penachio: 136, 219). Penachio advised Shelly that a confession of judgment "didn't make sense" because Natrella had no collateral and was filing for bankruptcy, which meant that a confession of judgment could be set aside during the bankruptcy process (Penachio: 124-26, 135-37). Shelly proposed that Penachio could omit the $50,000 debt from

Natrella's bankruptcy petition, but Penachio responded that bankruptcy debtors are required to list all liabilities (Penachio: 137-38, 232).

51. Penachio consulted with Natrella, who was "adamantly opposed" to signing a confession of judgment (Penachio: 138). Penachio advised Shelly that her client would not sign a confession of judgment and that the statute of limitations on an action to enforce the promissory note had expired. Penachio suggested mediation but Shelly declined, stating that he had "marching orders" to get a judgment, or words to that effect (Penachio: 139).

52. Penachio and Respondent first met in 1996, when Penachio volunteered to work on Respondent's campaign for Westchester Family Court, and they became acquainted through a bar association and other organizations (Penachio: 127-28; Jamieson: 423-24). Penachio also supported Respondent during her 2002 campaign for Supreme Court Justice (Penachio: 128-29). Penachio and Respondent did not socialize with one another and had never had dinner or visited each other's homes (Penachio: 127, 129-30).

53. In September 2014, several weeks after the conversations between Penachio and Shelly, Respondent called Penachio directly (Penachio: 140, 226; Jamieson: 425, 482).

54. Before this telephone call, Penachio and Respondent had never spoken over the telephone (Penachio: 140).

55. At the start of the conversation. Respondent told Penachio that a mutual friend, Anna Strategis ("Strategis"), had passed away (Penachio: 140, 226-27; Jamieson: 425). Penachio already knew of Strategis's death, as she had passed several weeks earlier (Penachio: 140, 227; see Jamieson: 427).

56. At some point during the conversation, the subject of the Natrella loan "came up" (Penachio; 140, 227-29). Penachio recalls Respondent stated that she wanted her money

(Penachio: 141, 240-41). Penachio explained that Natrella had no money, but Respondent remained "very adamant" that she wanted her money back (Penachio: 141).

57. Respondent told Penachio, "I want [a] confession of judgment" (Penachio: 141, 229, 241). Penachio explained that Natrella had no collateral and was filing for bankruptcy, such that the debt "would be discharged." Respondent replied that Penachio "did not have to list her as a creditor" in the bankruptcy filing (Penachio: 141- 42, 231). Penachio "said the same thing [she] said to Mr. Shelly": that all creditors had to be listed on a bankruptcy petition. Respondent insisted that Penachio was "wrong" about that and seemed to be lecturing Penachio about the law (Penachio: 142, 231-32).

58. Penachio indicated to Respondent that she wished she, "never got involved with this," and Respondent said, "I don't want you to represent [Natrella]," and that Natrella should have to "go out and pay for a lawyer" (Penachio: 142-43, 232-33).

59. As a result of the conversations with Respondent and her attorney, Penachio felt pressured to secure a confession of judgment from Natrella (Penachio: 222-23, 239). Penachio felt pressured by Shelly's refusal to "take no for an answer" after she advised him that a judgment would not help Respondent, and the fact that Respondent was a judge "put more pressure on the situation" (Penachio: 223-25). Penachio also felt pressured by Respondent herself, both by the "vehemence" with which she stated that she wanted her money and wanted a confession of judgment and because of Respondent's position as a "public official" (Penachio: 240-41).

60. Prior to her September 2014 telephone conversation with Respondent, Penachio had represented a party in *Neilson v 6D Farm Corp., et al*, a civil case before Respondent (Penachio: 143-44, 151-52, 172-73; Jamieson: 484; Exs. 40, 41). Penachio did not have

any matters pending before Respondent at the time of their conversation. but the *Neilson* matter was on appeal before the Appellate Division, Second Department (Penachio; 145-46, 226).

61. On December 3, 2014, the Second Department affirmed two orders Respondent had issued in *Neilson* (Penachio: 145-47, 173; Jamieson: 438-39; Ex. 41). Sometime thereafter, the parties requested that Respondent appoint a Referee to oversee the turnover of documents as directed by one of those affirmed orders (Penachio: 146- 47, 186; Shampanier: 335-36; see Ex. 42).

62. At that point, Penachio became "very concerned" that her refusal to get Respondent the confession of judgment would place her "in a difficult spot" should the *Neilson* case be returned to Respondent for any judicial proceeding (Penachio: 147-48, 173-74, 176-77).

63. On January 21, 2015, Penachio moved for Respondent's recusal in the *Neilson* case (Penachio: 149, 177; Ex. 43). The recusal motion specifically cited Penachio's "fail[ure] to comply" with Respondent's requests that she attempt to secure a confession of judgment and omit the loan from Natrella's bankruptcy filing (Ex 43). Respondent granted the recusal motion on May 22, 2015, stating that she, "decided to recuse herself to avoid any appearance of impropriety" (Penachio: 153, 195; Ex. 44).

64. Natrella ultimately filed a Chapter 13 bankruptcy petition that listed Respondent as an unsecured creditor (Natrella: 80-81; Penachio: 153; Exs. 3, 5, 7). Although Respondent received the notice of claim, she did not submit a proof of claim (Penachio; 153; Jamieson: 436, 547).

65. Respondent never filed a lien against Natrella, never sent a letter to Natrella demanding payment on the debt, and never commenced a lawsuit against Natrella to collect the debt (Jamieson: 422, 436, 517-18).

Respondent's Testimony as to Charge II

66. Respondent testified that in the summer of 2014, her friend, attorney Shelly, stopped by her chambers to "say hello" (Jamieson: 411,416, 480, 488). During his visit, Respondent "came across the [promissory] note" and told Shelly that she could not get Natrella to call her back (Jamieson: 411). Respondent testified that Shelly offered to call Natrella, and she told Shelly to ask Natrella for a confession of judgment (Jamieson: 411-12, 414, 466, 548).
67. Sometime afterward, Respondent learned from Shelly that he had spoken to Penachio, Natrella was filing for bankruptcy, and Penachio was representing Natrella in bankruptcy proceedings (Jamieson: 415, 422, 466-67, 482-83).
68. Respondent testified that in September 2014, after speaking with Shelly, she called Penachio directly (Jamieson: 423, 425, 482). Respondent claimed that she called Penachio to get information about a mutual friend Strategis's passing, notwithstanding that Respondent considered Strategis as a "second mom", visited her in a nursing home weeks before her death and Rende kept in touch with Strategis's children (Jamieson: 425-28, 436, 482; Rende: 293).

ANALYSIS OF PROPOSED FINDINGS OF FACT

AS TO CHARGE I

69. From the outset, Respondent admits that in 2005 she made a $50,000 cash loan to Natrella, a close friend of her significant other, Rende, and failed to disclose the loan in her annual FDFs for over a decade. Respondent also testified that she failed to disclose this loan because she considered Natrella to be family or a relative and that it was an investment to both Natrella and Rende. During her hearing testimony and as well in her post-hearing submissions, she also advanced various other reasons for her over a decade-long nondisclosure, including but not limited to, the following: (1) the loan was not "an arms-length transaction"; (2) it was a "careless oversight" and "foolish mistake" in 2005; (4) repeated for over a decade because of her "state-of-mind about the loan to a close family friend"; (3) continued nondisclosure over the years was due to "auto-pilot" and "a cut-and-paste approach" to the FDFs; and, (4) she "did not think about it again."

70. I find Respondent's numerous competing and inconsistent explanations and excuses for her nondisclosure to be absurd, implausible, nonsensical, and simply not credible. As a veteran attorney for over forty years and a seasoned jurist for over twenty years, who acknowledged her obligation to provide complete and accurate FDFs, such failure to do so was inexcusable and her explanations, along with excuses, were simply contrived and not truthful.

71. In her post-hearing submissions, Respondent claimed that her nondisclosure of the loan was innocent, with no "hidden agenda," she had "nothing to hide," and there was no "impropriety" in making a loan to a family friend. Respondent objects to the Commission's allegation of a "hidden agenda" in that the loan was a political favor or a political payback

to Natrella's father, WCCP Chairman in 2002, who supported Respondent's election to the Supreme Court in that same year. I find Respondent's various reasons and excuses for her nondisclosure of the Natrella cash loan to be incoherent, inconsistent, illogical, and defies common sense and life experience in the context of the entire narrative of this case.

72. Respondent's claim that there was nothing nefarious nor improper for her loan of $50,000 cash to Natrella and her nondisclosure was simply a mistake are at odds with her efforts to hide the cash loan, not to disclose it on her annual FDFs, and to blatantly fabricate various explanations and excuses for her conduct that are totally implausible and not believable. The only conclusion that I could draw is that Respondent was fully cognizant that her cash loan to Natrella was improper, had the appearance of impropriety, and raised serious actual or potential conflicts of interest.

73. Respondent claims that she did not review FDF Question 18, which requires disclosure of all debts and notes in excess of one thousand dollars during the previous calendar year, except those owed by a relative. Respondent also claims she did not review the FDF instructions that define relative, and yet acknowledged that neither Natrella nor Rende were related to her. As a veteran attorney for over forty years and a seasoned jurist, Respondent's failure was inexcusable and her explanations are unacceptable.

74. Respondent further argued in her post-hearing memo that because Natrella was neither a potential litigant nor a lawyer, her cash loan did not pose any conflict and was unlikely to trigger a recusal motion. However, none of the reasons advanced by Respondent are persuasive or legally viable to cure any actual or potential conflicts of interest which underlie the purpose for the filing of FDF accurately by a jurist.

75. In her testimony, Respondent claimed that she and Rende decided to lend the money to Natrella because they felt "uncomfortable" with Natrella taking a loan from an unidentified "shady lending company." She also claimed that the loan was an investment to Natrella and Rende's business, which was rebutted by Natrella who did not envision Rende as a business partner or ever working with him on this business. Respondent also acknowledged that she did not ask for collateral to secure the loan and was also not provided with a written business plan.

76. Respondent testified that upon giving Natrella the cash loan in 2005, Rende also gave Natrella a promissory note to sign. Yet Respondent also claimed that she did not know who prepared the promissory note but that only Natrella alone signed the promissory note. Natrella testified that he and his wife Maureen both signed the promissory note and did not receive a copy from Respondent. The lack of certain critical details in Respondent's account of the loan transaction is inexplicable and raises serious questions regarding her candor and credibility.

77. Respondent also admitted that the loan was made in cash, despite the fact that Natrella did not ask for cash and was in fact surprised by it. Respondent explained that she had the cash "available" in her home safe, $25,000 that she received from her mother, and $25,000 she had saved by cashing several years' worth of tax return checks. She kept the money in the safe instead of a bank because she planned on buying herself a gold watch and, "didn't think it made sense putting it into the bank just to take it out again."[4] I reject Respondent's

[4] Respondent's explanation of keeping $50,000 cash in her home safe, instead of a bank, because she planned to buy herself a gold watch with the cash is troubling and raises an unintended implication that she may have sought to violate the law. A purchase of a gold watch, in excess of $10,000 in cash, instead of by credit card or check, is most unusual unless one is trying to avoid the payment of sales tax or to obtain a substantial discount in a cash transaction with a watch dealer.

explanation for the cash loan to be absurd and not credible on its face. The only reasonable inference that could be drawn was that Respondent intended to hide the loan due to a concern of potential conflict or the appearance of a conflict in making a cash loan of $50,000 to Natrella, which may appear to be a political favor or a political payback to Natrella's father, Vincent, the former Chairman of the WCCP who supported her Supreme Court WCCP nomination in 2002.

78. Respondent claims that her initial failure to disclose the loan in her 2005 FDF was a simple, innocent mistake and was repeated for thirteen successive more years because she went on "auto-pilot" and "cut-and-paste" in subsequent filings. Her further claims that she did not give "any thought to a loan" that was "out of sight and out of mind" is preposterous. Indeed, the cash loan was very much on her mind in 2014 when she initiated collection efforts, and, again, in May 2015, when she granted Penachio's recusal motion based on the existence of the debt, and, in June 2015, when she amended her 2012 and 2013 FDFs to include investments and retirement accounts that she had not previously reported, and there is certainly no plausible excuse for Respondent not to report Natrella's debt during those years in question other than an intent to conceal the loan.

79. In 2017, Respondent wrote off Natrella's debt on her income tax return because she claimed the debt was "non-existent," but she did not amend her FDF because she claimed that she did not have to report it. This is inexplicable. Respondent's disclosure of Natrella's debt on her 2017 tax return does not obviate her obligation to amend her FDFs to disclose this debt, since her tax return is not available for public inspection. In fact, Respondent's failure to amend her FDF in 2017 is further evidence of her intentional omission of the debt on her FDFs.

80. Respondent's belated amendment of her FDFs in October 2019, for the period 2005 through 2019, is unavailing and does not mitigate her misconduct. Respondent had a number of opportunities to amend, namely, 2014, 2015, 2016, 2017, as well as after December 2018 when she appeared before the Commission for an investigative hearing. Her belated amendment three months *after* she was served with the Commission's Formal Written Complaint in July 2019 was clearly deliberate and a litigation tactic to mitigate her misconduct.

81. Respondent's 2014 collection efforts further support a finding of her intentional failure to disclose the cash loan to Natrella. Respondent claims that her attorney friend, Shelly, volunteered to call Natrella as a favor, and she asked Shelly to obtain a confession of judgment and nothing more. However, after Shelly failed to reach Natrella, he then spoke to Penachio by telephone twice. During the first call, Shelly asked Penachio for a confession of judgment from Natrella and not to list the loan on Natrella's bankruptcy petition, despite debtors are required to list all liabilities. During the second call, Penachio advised Shelly that Natrella adamantly refused to sign a confession of judgment as Respondent requested.

82. The fact that Respondent wanted a confession of judgment to collect the debt from Natrella demonstrates her desire to avoid litigation, a paper trail, lien filing, or any formal written demand. The parties stipulated that Respondent subsequently learned from Shelly that he spoke to Penachio and learned that Natrella was planning to file for bankruptcy, with Penachio representing him, and that Natrella refused to give a confession of judgment.

83. Based on the entire factual narrative of the loan by Natrella and Penachio, for the most part substantially corroborated by Rende and Respondent, which I deemed wholly credible, I

find that the weight of the evidence, direct and circumstantial, overwhelmingly supports a finding of a 13-year intentional effort by Respondent to conceal and not disclose her cash loan to the son of a political ally who helped Respondent secure her Supreme Court judgeship in 2002. The various reasons and excuses asserted by Respondent for her nondisclosure are not only illogical, preposterous, and strains credulity, but further lends support to my conclusion that her failure to disclose was not an innocent mistake, oversight, or misunderstanding, but a deliberate and an intentional act to conceal a $50,000 cash loan to the son of a political ally. The credible evidence adduced during the hearing of Respondent's cash loan to Natrella has all the earmarks of an under-the-table transaction that was purposely structured with no meaningful paper trail and with no intention for it to be disclosed to the public. In fact, Respondent's numerous and continuing acts of concealment and nondisclosure of the loan support an inescapable inference of nefarious and improper conduct and that the cash loan was made as a political favor or payback to Natrella's father.

AS TO CHARGE II

84. At the hearing, Respondent testified that in September 2014 she called Penachio to discuss the passing of a mutual friend, Strategis, and not the Natrella cash loan, despite never calling Penachio ever over their 20 years of professional acquaintanceship. She claimed that during the call it was Penachio who broached the subject of the Natrella loan, and then she responded that she was "very disappointed" in Natrella because he was not paying his "obligations" and "child support." Respondent denied ever demanding a confession of judgment or for Penachio omitting the debt from Natrella's bankruptcy petition. Respondent insisted that during the call with Penachio, "we did not discuss the bankruptcy."

She further denied that she ever told Penachio not to represent Natrella, but merely warned Penachio to make sure Natrella paid her legal fees.

85. Penachio testified that, during the call with Respondent, the Natrella cash loan came up. Penachio recalled that Respondent made a series of demands, including that she wanted her $50,000 returned, a confession of judgment from Natrella, omission of the debt in Natrella's bankruptcy petition because not all creditors need to be listed on a bankruptcy petition, that Natrella should "go out and pay for a lawyer", and that Penachio should not continue representing him in the bankruptcy matter. Penachio further testified that she felt "pressured" by Respondent since she had a case before her that was on appeal, that she could not satisfy Respondent's various demands, and that Respondent was vehement in her efforts to collect the debt from Natrella.

86. In stark contrast, Respondent testified that her call to Penachio was merely prompted by the death of a mutual friend Strategis and not about the Natrella cash loan whatsoever, simply strains credulity. There is no dispute that Respondent's call to Penachio was made following her requests to Rende and Shelly to obtain a confession of judgment from Natrella. Before calling Penachio, Respondent was aware that Shelly's attempts to obtain a confession of judgment and to dissuade Penachio to omit the debt from Natrella's bankruptcy petition were unsuccessful.

87. I am troubled by Respondent's testimony regarding her call to Penachio, and, in particular, her complete denial of even mentioning the Natrella loan over the call. It is completely at odds with the credible evidence and is unreasonable, illogical, and inconsistent with her collection efforts of the debt, with the assistance of Rende and Shelly. I observed Respondent's demeanor throughout her testimony and noted that she was equivocal,

inconsistent, contrived, and simply not convincing. Respondent's intentional avoidance during questioning of the confession of judgment and Natrella's bankruptcy petition in her account of the call with Penachio, when both subject matters are intrinsically tied to her collection efforts, raises a serious issue of Respondent intentionally testifying falsely on material issues under oath.

88. I evaluated Penachio's testimony in the context of the entire body of the evidence presented and find her to be more credible in both her demeanor and in the substance of her testimony— that was consistent, reasonable, and logical throughout —in the context of the other credible evidence. She testified on what she could recall of her calls with Shelly and Respondent, with specificity and credibility, and noted when she was uncertain, for example, as to who brought up the subject of the Natrella loan during her call with Respondent. Penachio did not overstate or seek to exaggerate and simply recounted her conversations, matter-of-fact, with Shelly, Natrella, and Respondent, with fluidity, clarity, and sincerity. Furthermore, Penachio's testimony was wholly coherent, relevant, reasonable, and has all the force and flavor of truthfulness. There is also no credible evidence adduced that Penachio has any motive to lie, when in fact she expressed her deep misgivings and personal distaste to be involved with the Respondent and the Natrella loan. Moreover, her testimony was corroborated by the testimony of Natrella and her own affirmation in support of her 2015 motion to recuse Respondent in the *Nielson* case, which predates the 2017 Commission investigation and subsequent filing of charges against Respondent.

89. There is no question based on the evidence presented that Respondent lent the prestige of her judicial office to advance her private interest while attempting to collect on the Natrella

debt. Respondent's call to Penachio, who was Natrella's bankruptcy lawyer, and made various demands, such as, she wants her money, she demanded a confession of judgment, she wanted the debt to be omitted from Natrella's bankruptcy petition, and Penachio not representing Natrella, is improper, an abuse of her position as a judge and in violation of the Rules.

90. There was no need during the call to Penachio for Respondent to invoke her position as a judge to collect the cash loan. Respondent's conduct during this call as described by Penachio demonstrates that Respondent lent the prestige of her judicial office and make demands to advance her own private interests. There was also no need for Respondent to threaten Penachio or implicitly or explicitly request a benefit from Penachio. This is especially true when, at the time of the call, Respondent was fully aware that the *Neilsen* case – which Penachio was one of the attorneys of record on – was on appeal and could have been remanded back to Respondent for further proceedings. Respondent's conduct would naturally exert undue pressure on Penachio which precipitated Penachio's filing of a recusal motion in 2015 in the *Nielson* case. It was only at that time that Respondent implicitly acknowledged the presence of actual or potential conflicts of interest in granting the motion to avoid any appearance of impropriety.[5]

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE II[6]

91. Respondent failed to maintain high standards of conduct, and to personally observe those standards, so that the integrity and independence of the judiciary will be preserved, in violation of Section 100.1 of the Rules Governing Judicial Conduct ("Rules").

[5] Comm Ex. 44.
[6] See footnote 4.

92. Respondent failed to avoid impropriety and the appearance of impropriety and to act at all times 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.

93. Respondent lent the prestige of judicial office to advance her own private interests, in violation of Section 100.2(C) of the Rules.

94. Respondent conducted her extra-judicial activities in a manner that detracted from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

ANALYSIS OF PROPOSED CONCLUSIONS OF LAW

AS TO CHARGE I

95. Respondent concedes her conduct underlying Charge I over her failure to report her $50,000 loan to Natrella in her annual FDFs for over ten years, which is in violation of 22 NYCRRR Part 40, constitutes judicial misconduct.

96. Respondent's claim of her failure due to carelessness initially and for the next decade due to "auto-pilot" does not mitigate her misconduct. The entire body of evidence at the hearing does not support her omissions were careless. I find the evidence supports intentional efforts to conceal a substantial cash loan to the son of a political ally, which, at a minimum, raises serious issues of actual or potential conflicts of interest or, at worst, was a political favor or payback to Natrella's father.

AS TO CHARGE II

97. Respondent disputes that calling Penachio violates the Rules, because Charge II did not allege Respondent was not permitted to attempt to collect the undisputed debt from a friend and maintains that the call to Penachio was intended to inquire about a deceased mutual

friend and not a guise to talk about Natrella's debt. Respondent argued that even if Penachio's version of her call is credited as true, her conduct did not violate the Rules because she is permitted to collect a debt even when Penachio knows that she is a judge.

98. Since I credit and accept Penachio's testimony of the call from Respondent, there is no question Respondent violated the Rules in making requests about the debt, requesting a confession of judgment along with demanding that the debt be omitted from Natrella's bankruptcy petition, and that Penachio not represent Natrella. Respondent further violated the Rules when she made a call knowing that Penachio had a case before her that was on appeal and may be remanded to Respondent for further judicial proceedings.

99. Respondent's personal collection effort of calling Penachio directly and implicitly asserting the prestige of judicial office to advance her own private interest and her actions were inherently coercive and abused the power and prestige of judicial office, in violation of Rules 100.1, 100.2(A), 100.2(C), and 100.4(A)(2).

CONCLUSION

The evidence adduced at the hearing establishes by a preponderance of the evidence that Respondent has engaged in conduct amounting to violations of the Rules Governing Judicial Conduct. Charges I and II are sustained. The evidence also establishes that Respondent intentionally testified falsely under oath on a number of material issues at the hearing.

Dated: September 16, 2021

Respectfully submitted,

Hugh H. Mo
Special Referee