

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,

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

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POST-HEARING MEMORANDUM OF LAW

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I. PRELIMINARY STATEMENT

Justice Linda S. Jamieson was charged in a Formal Written Complaint, dated July 22, 2019, with two charges. Charge One alleges that Justice Jamieson did not disclose a loan she made in 2005 to Nicholas Natrella, who was a family friend (“loan”), on her financial disclosure forms submitted to the Ethics Commission of the Unified Court System from 2006 – 2016 (“Disclosure Forms”). The charges do not allege that the loan was improper, illegal or unethical. Charge Two alleges that Justice Jamieson lent the prestige of her judicial office for a private interest during one telephone call with Anne Penachio, Mr. Natrella’s attorney, when she called Ms. Penachio in 2014 due to the death of a mutual friend and they discussed Mr. Natrella.

Justice Jamieson filed a Verified Answer, dated September 12, 2019. With respect to Charge One, the Judge admitted that she did not include the loan on her Disclosure Forms, but she explained that this was because the loan was to someone who was, at the time, like “family” and she did not think about it as an arms-length transaction. She explained that she had no reason to hide the loan and the failure to disclose was careless, but not intentional. With respect to Charge Two, Justice Jamieson denies that she engaged in any misconduct during the one telephone call with Ms. Penachio because the Judge:

- made the call for a personal reason unrelated to the loan;
- did not raise the subject of the loan;
- did not evoke her position as a judge to seek payment of the loan;
- did not threaten Ms. Penachio based upon her position;
- did not suggest implicitly or directly that she should receive a benefit from Ms. Penachio simply because she is a judge;

- was a friendly colleague of Ms. Penachio for twenty years and she did not believe a personal conversation about the death of a mutual friend would be a problem and did not know that the conversation would turn to the subject of Mr. Natrella;
- did not have a case before her, at that time of the telephone call, for which Ms. Penachio was counsel. Consequently, when they spoke on the telephone there was no basis for Ms. Penachio to conclude that Justice Jamieson was attempting to use her position as a Judge to pressure Ms. Penachio to force Mr. Natrella to provide a judgment;
- was simply trying to take steps to collect a legitimate and undisputed debt owed by a former friend; and,
- never said or did anything at any time that would have created the impression to Ms. Penachio that the Judge would intentionally and maliciously punish a client of Ms. Penachio if she came before her in the future in order to punish Ms. Penachio for not forcing Mr. Natrella to provide a judgment.

Beyond the facts, there is no legal authority and it is unprecedented to allege a Judge lent the prestige of her office for a private interest by simply requesting payment of an undisputable debt from a lawyer for the debtor.

A hearing was held before this Tribunal (Referee Hugh H. Mo), on January 20, 2021, January 21, 2021, and March 5, 2021. At the conclusion of the hearing, the matter was adjourned to allow the parties to submit post-hearing briefs.

Justice Jamieson does not dispute that this Tribunal should sustain Charge One because of her careless oversight, but we respectfully request that the Tribunal's decision include the full context in which the loan was given and her state of mind about the loan. As to Charge Two, Justice Jamieson is requesting that this Tribunal dismiss the charge as a matter of law and fact, as this charge is supported neither by any evidence nor any legal precedent.

II. FACTS

A. Personal Background

Linda S. Jamieson is 66 years old. (Tr. 383)¹ In 1980 she was admitted to the New York State Bar. (Tr. 383) Ms. Jamieson began with a small law firm located in Mount Vernon handling various types of matters. (Tr. 384) She left the firm and started her own firm. (Tr. 384) She practiced, in total, approximately 18 years as a lawyer and she was never disciplined by a Grievance Committee. (Tr. 385)

In 1996, Ms. Jamieson was appointed to fill a judicial vacancy in Family Court where she sat for a short time. She then ran for election and lost. (Tr. 386) She ran again for Family Court in 1998 and was elected to the bench. (Tr. 386) In 2002, she ran for Supreme Court in the Ninth Judicial District and won the election. (Tr. 387) The term of a Supreme Court Judge is 14 years; therefore, Justice Jamieson's term ended in 2016. (Tr. 387) She ran in 2016 and was re-elected to the Supreme Court. During her entire time on the bench, until now, she was never disciplined by the Judicial Conduct Commission. (Tr. 388) In other words, after practicing law as an attorney and in her position as a Judge, she has a **41-year unblemished record** other than this matter.

Character evidence is always relevant to a disciplinary proceeding, both as mitigation and corroboration of a respondent's credibility. Justice Jamieson's character evidence was consistently impeccable. As part of her character evidence and mitigation she also described her commitment to the Bar and the legal community, which is extensive and impressive. (Tr. 388) Her record unquestionably establishes her as a distinguished member of the bar and bench.

¹ The transcripts for hearings held on January 20, January 21 and March 5, 2021 are paginated sequentially and therefore the transcript will be referenced by page without noting the date.

Specifically, Justice Jamieson has been active with the New York State Bar, the Westchester County Bar, the Women's Bar, the Columbian Lawyer's Bar, and the Justice Brandeis Bar Association. She is a contributing author for *Commercial Litigation in the New York State Courts*, a treatise that is published annually. She lectures at the New York State Trial Lawyers' Association's "boot camp" annually. She lectured for the Office of Court Administration, and many bar associations, on matrimonial law, commercial law and ethics. (Tr. 390)

Justice Jamieson has also been an honoree of the Women's Bar Association, Rockland Chapter. She is a Member of the Board of Visitors of the Elisabeth Haub School of Law at Pace University; and a Past Board Member for the Gagliardi Award for Excellence and the Women Judge's Association. She is also a Board Member of the Women's Bar Association of the State of New York (Westchester Chapter), where she is Chairperson for the Judiciary Committee and Past Chairperson of the Legal Referral and Family Law Committees. She is also a Board Member of the American College of Business Court Judges and a member of the National Association for Women Judges. (Tr. 388) Justice Jamieson is also a New York State Bar Association House Delegate for 2021. (Tr. 390)

Justice Jamieson was also awarded the Above the Bar Award, which is awarded by the Westchester County Business Journal. She is a former Member of the Appellate Division's Law Guardian Panel for which she supervised attorneys applying to be on the Panel. She currently sits on the Family Court Attorney for the Children Advisory Committee, Appellate Division, Second Department, Ninth Judicial District. She is a past President of the Westchester County Law Guardians Association and Past President of the White Plains Bar Association. She is also immediate Past President of the Westchester County Bar Association and served on its Board for

many years. She is a former member of the Estate Council Panel and past Member of the Advisory Board of Yonkers's Family Court Children's Center and past Board Member and past vice president of the Law Education Project.

She is a former Board Member of the Association of Family Court Judges and former member of the National Council of Juvenile and Family Court Judges. She was also a Board Member of the Westchester Children's Association. She was also on the Westchester County Task Force on Educational Neglect. She was a Task Force Committee Member of the Mental Health Association for Family Abuse and Services Advisory Committee. She is a mock trial judge for high school students annually and a moot court judge for a local law school. (Tr. 388 *et seq.*) We have left out some of her background, but one thing is clear: Justice Jamieson has dedicated herself to the law, to helping people and to contributing to the legal system.

Justice Jamieson also presented character testimony from members of the judiciary and bar at the hearing.² Federal District Court Judge Philip M. Halpern (Tr. 255), Justice Lewis J. Lubell (Tr. 263), Joan Salwen, Esq. (Tr. 362) and Pat Kitson, Esq. (Tr. 373) all testified. They explained that Justice Jamieson's reputation for honesty and integrity is exemplary. Her reputation was described as "impeccable," "caring," "effective," and held in the "highest regard." (Tr. 376) Justice Lubell testified that her reputation in the legal community is "outstanding," "exceptional" and "stellar." (Tr. 265-266)

B. The Loan

Joseph Rende has been Justice Jamieson's "significant other" for many years. Mr. Rende had a good friend and work colleague, Nicholas Natrella ("Mr. Natrella" or "Nicky"). (Tr. 394)

² Over strenuous objection by counsel, this Tribunal drastically limited the testimony of the character witnesses and that is the reason that their testimony was brief and not more explanatory or personal.

Justice Jamieson looked at Nicky “like a brother to Joe.” (Tr. 394) They had a close relationship. Mr. Natrella, a Commission Counsel’s witness, explained that, “Judge Jamieson is a longtime friend, our families are very, very close” and she and Mr. Rende were like an aunt and uncle to his children. (Tr. 49–50, 395) They socialized as friends, “just like families do.” (Tr. 51) Mr. Natrella testified, “I felt like family,” “Joe and I were very close” and “our relationship goes way before politics.” (Tr. 50 - 55). Mr. Natrella watched their dog when they went on vacation and he testified that, “I was probably one of the only people on earth that actually had her [Judge Jamieson’s] code to her garage door.” (Tr. 50) Mr. Natrella was particularly a good friend of Mr. Rende. They socialized and “share[d] a lot of fun and had a lot of good times.” (Tr. 58)

Mr. Natrella further explained his affection for Mr. Rende, even now, when he testified that, “If Joe got a flat tire right now and I [sic] called me, I would go there and help him change his tire.” (Tr. 58) Even though they had not spoken for a long time, Mr. Natrella emphasized that he considers him a friend and he “consider[s] him family, just like I told you the same about Linda.” (Tr. 59)

Mr. Rende and Mr. Natrella worked for Robison Oil together, where Mr. Rende was Mr. Natrella’s boss. There came a time when Mr. Rende left Robison and Mr. Natrella also wanted to leave and start a business. Mr. Rende approached Justice Jamieson in 2005 to see if she would be amenable to loan Mr. Natrella money to start his business. He explained that he thought Mr. Natrella would fill a good niche in the oil business (Tr. 277) and they could complement each other, and this would be good for Mr. Rende too. (Tr. 278, 281, 397) Mr. Rende told Justice Jamieson that he thought Mr. Natrella would do well. (Tr. 397) Justice Jamieson believed Mr. Rende really knew the oil business, in which he had worked for many years, so she had faith in

Mr. Rende's opinion. (Tr. 282) Justice Jamieson thought of the money that she was going to give to Nicky as an investment not a loan and she thought Mr. Rende would benefit too. (Tr. 398) Mr. Natrella called it a "very friendly loan." (Tr. 105)

Mr. Rende arranged the actual loan process. He arranged for a lawyer to draft the loan note. (Tr. 283) He had Mr. Natrella and his then-wife come over to Justice Jamieson and Mr. Rende's home to complete the loan. (Tr. 398-9) In or about August 2005, the four of them sat at a table and Justice Jamieson gave Mr. Natrella \$50,000. Mr. Natrella and his wife signed a Note. (Tr. 399) Justice Jamieson did not ask for collateral and Mr. Natrella, Mr. Rende and the Judge all testified that Justice Jamieson charged a very reasonable interest rate. (Tr. 103, 283-4, 400)

Justice Jamieson wanted to help Nicky because he told her that he had gone to someone else, and that lender was going to offer very unfavorable terms. (Tr. 400) Mr. Natrella testified that Mr. Rende and Justice Jamieson "were not comfortable with [me] using that lending company, that they're like a third-party whatever shotty [sic] lending company." (Tr. 61, 102) They "didn't want me to engaging [sic] in a bad situation. (Tr. 61) In other words, Justice Jamieson and Mr. Rende were concerned about their friend. Mr. Natrella believed that Mr. Rende was looking out for him. (Tr. 101-103) Justice Jamieson did not believe then, and does not believe now, that it is improper for a judge to lend money to a family friend. (Tr. 401) Mr. Natrella returned \$10,000 of the \$50,000 shortly after the loan was completed. (Tr. 402) It is Justice Jamieson's recollection that he made no further payments, although Mr. Natrella believed that he made a few small payments. (Tr. 403) This difference in recollection is not important to this proceeding because it is undisputed that Mr. Natrella owed the Judge all or most of the \$40,000 balance.

At some point, Mr. Rende began to ask Mr. Natrella to act in good faith and address the loan. (Tr. 288, et seq.) Mr. Natrella was not responsive.

C. Failure to Report the Loan in Disclosure Forms (Charge One)

Justice Jamieson did not report the Natrella loan in her Disclosure Forms from 2006 to 2016 or any time before the Commission's investigation had begun.³ (Tr. 403) She acknowledged that she should have reported the loan and it was "careless" and a "foolish mistake" not to report it. (Tr. 403) She "didn't think . . . that it needed to be put down there at the time" because she thought of it as a "family loan." (Tr. 403) Once she did not report it the first year, she did not think about it again because she was on autopilot simply using the prior year's form without giving any thought to the loan. There was no potential conflict that would have reminded the Judge to think about it. Specifically, she did not give any thought that Mr. Natrella might come before her. He was not a lawyer and if he had a case as a party that happened to come before her, she would have recused herself because he was like "family." (Tr. 405) The loan was out of sight and out of mind once she had erroneously filed the form the first time.

The compelling credible evidence is that Justice Jamieson had no hidden agenda in not reporting the loan due to any conflict. She had nothing to hide. (Tr. 405) The Charges do not allege that there was any impropriety in Justice Jamieson making a loan to a close family friend or that it was improper to try to collect on the loan. However, Commission Counsel seems to be arguing that it was improper to attempt to collect payment of the loan, which will be discussed below.

³ Justice Jamieson testified that during the Commission's investigation that she filed amended financial disclosure forms. She did not file them to create a defense or even mitigation. It did not affect in any way the stipulation signed by counsel that she had not filed forms for the entire period charged. She merely wanted to correct the forms.

In an attempt to make Justice Jamieson's careless mistake appear nefarious and distort the Judge's intent for not including the loan, Commission Counsel attempts to draw a connection between the loan and Justice Jamieson's relationship with Nicholas Natrella's father, Vincent Natrella, a local politician and a member of the Conservative Party. This connection was suggested through Commission Counsel's questions and a factual allegation in the Charges, which insinuates a hidden agenda by Justice Jamieson. Presented in vague terms, this allegation was that the loan to Mr. Natrella was some type of reimbursement for Vincent Natrella's support, as Chairman of the Conservative Party, in Justice Jamieson's election to the Supreme Court in 2002. However, Commission Counsel's suggestion is contrary to both simple logic and contradicted by indisputable evidence from their own witness. (Tr. 50).

Specifically, Mr. Natrella testified that his father, Vincent Natrella, had been the Chair of the Conservative Party in Westchester. He testified that his father had known Justice Jamieson for a long time and that he was very fond of her. Mr. Natrella further testified that his father thought that she was a "very good judge" and "he thought the highest of her." (Tr. 56) Justice Jamieson adamantly denies that she gave the loan to Mr. Natrella as some type of favor to Vincent Natrella. In fact, Vincent Natrella lost his Chairmanship in 2002, three years before Justice Jamieson's loan to his son. (Tr. 51, 94 -96) Moreover, Justice Jamieson won a judgeship that had a fourteen-year term, and she would not have to run again until 2016. (Tr. 94) Thus, there was no reason for her to ingratiate herself with a politician out of power in 2002.

In short, there is no factual basis whatsoever to allege that Justice Jamieson hid her loan to a dear friend because he was the son of a waning politician. Commission Counsel asked the Judge whether the purpose of the Disclosure Form is to disclose conflicts and/or disclose a basis for recusal. (Tr. 499) Neither would be applicable to the Natrella loan because there was no

conflict. Indeed, if Mr. Natrella had come before the Judge in a litigation, she testified she would immediately recuse herself regardless of the loan simply based upon their close personal relationship. (Tr. 405)

D. Pursuing the Loan (Charge Two)

(i) Overview of the Court System in 2013-2014

Justice Jamieson was assigned two motions in a case captioned, *Neilson v. 6D Farm Corp, et al.* (“Neilson Litigation”). Justice Jamieson’s limited and sole responsibility in the Neilson Litigation was to decide these two motions in 2013. Anne Penachio was co-counsel representing the executor and the defendant in the Neilson Litigation. To understand the irrelevance of the Neilson Litigation to the telephone call between Ms. Penachio and Justice Jamieson in 2014, which is central to the Commission’s case, it is critical to understand the procedures applicable to Westchester Supreme during this time.

The testimony of Judith Shampanier, Esq., Justice Jamieson’s Principal Court Attorney, is extremely helpful in understanding the procedures applicable to the Neilson Litigation. Ms. Shampanier makes it absolutely clear that when Justice Jamieson had her call with Ms. Penachio in 2014, Ms. Penachio had no matters or motions before the Judge. Ms. Shampanier testified that Ms. Penachio could not have had a reasonable belief the Neilson Litigation would come back to the Judge. The fact that there was no expectation by Ms. Penachio or Justice Jamieson that the Neilson Litigation would be assigned to Justice Jamieson after the motions were decided in 2013 undercuts the whole theory underlining Charge Two that Ms. Penachio felt pressured during a 2014 telephone call with the Judge because of the Neilson Litigation.

Ms. Shampanier testified that she graduated from Columbia Law School in 1993 and first worked in the private sector at a large law firm. (Tr. 309) She began working as a Principal Court Attorney (a/k/a Law Secretary) in 2007 for Justice Jamieson. She handles all aspects of the Judge's cases. (Tr. 310) When Justice Jamieson was sitting in Westchester Supreme Court from 2013–2015, Ms. Shampanier was her Principal Court Attorney. During that time, Judge Jamieson issued, on average in a given year, a total of 1,000 decisions, approximately 300 written decisions and 600-700 other decisions. (Tr. 312)

Ms. Shampanier explained that in Westchester County Supreme Court non-specialized judges are NOT assigned cases. (Tr. 313) It is not a classic Individual Assignment Part System (“IAS”), in which a judge is responsible for a case from the beginning to the end. Instead, it is, and was, a Differentiated Case Management system (“DCM”). In a DCM system, each individual judge is only assigned motions or a specific task in a case unless the judge is assigned to preside at a special part (e.g., Settlement Conference Part, Compliance Part, etc.) In a DCM system no supreme court judge “presides” over a case from beginning to end in a non-Commercial Division case. Justice Jamieson was assigned cases from the Commercial Division, but the Neilson Litigation was not a Commercial Division case. (Tr. 314) After a motion is decided by a judge under the DCM system the case would next appear before the appropriate procedural part. (Tr. 316) More specifically, once Judge Jamieson decided a motion in a non-Commercial Division case, the Judge would have no responsibility for the case and would have no control over it. (Tr. 317, 443-4)

In the DCM system, if a party appeals a motion that had been decided by a judge that judge would not have any role in the appeal process or in how the case gets remanded after the appeal. Neither Justice Jamieson nor Ms. Shampanier would track any of the 1,000 decisions she

issued per year. (Tr. 318-319) In short, neither Justice Jamieson nor Ms. Shampanier “tracked” their cases, because according to Ms. Shampanier, it would be “impossible.” (Tr. 319) If a motion was decided by Justice Jamieson and it was remanded back to the Westchester Supreme Court after an appeal, the case would be sent to the appropriate procedural part. (Tr. 319)

A schematic of the time line that summarizes the witnesses’ testimony is on page 15 of this brief.

(ii) Neilson Decisions and Appeal

Judge Jamieson was assigned two motions in the Neilson Litigation and she issued decisions on both motions. (Tr. 323) First, Justice Jamieson denied a motion to allow a late answer to be filed by Ms. Penachio and her co-counsel. In a second motion, she denied a motion for contempt against Ms. Penachio, her co-counsel and their client. The decisions were issued on **January 24, 2013 and May 16, 2013**, respectively. (Tr. 323-4; Exhibit 39, 40) Neither Justice Jamieson nor Ms. Shampanier tracked what happened to the motions or the Neilson Litigation after the decisions. (Tr. 324) They did not even know that Ms. Penachio’s client had taken an appeal of the decisions. To be clear, after May 16, 2013, Justice Jamieson had no involvement with the Neilson Litigation and no responsibility for the case. (Tr. 327) Her only responsibility for the case was the discrete time in which she had the two motions before her.

(iii) Initial Contact by Phillip Shelly

Prior to 2014, Justice Jamieson did not pursue payment of the Natrella loan. (Tr. 408) She expected Mr. Rende to keep track of Mr. Natrella’s business and she thought it was doing well in the beginning. In or about 2014, she heard Mr. Natrella was not doing well financially. He was going through a divorce, not paying child support and had previously closed his business. (Tr. 411, et seq.) She decided to attempt to protect her interest with respect to the

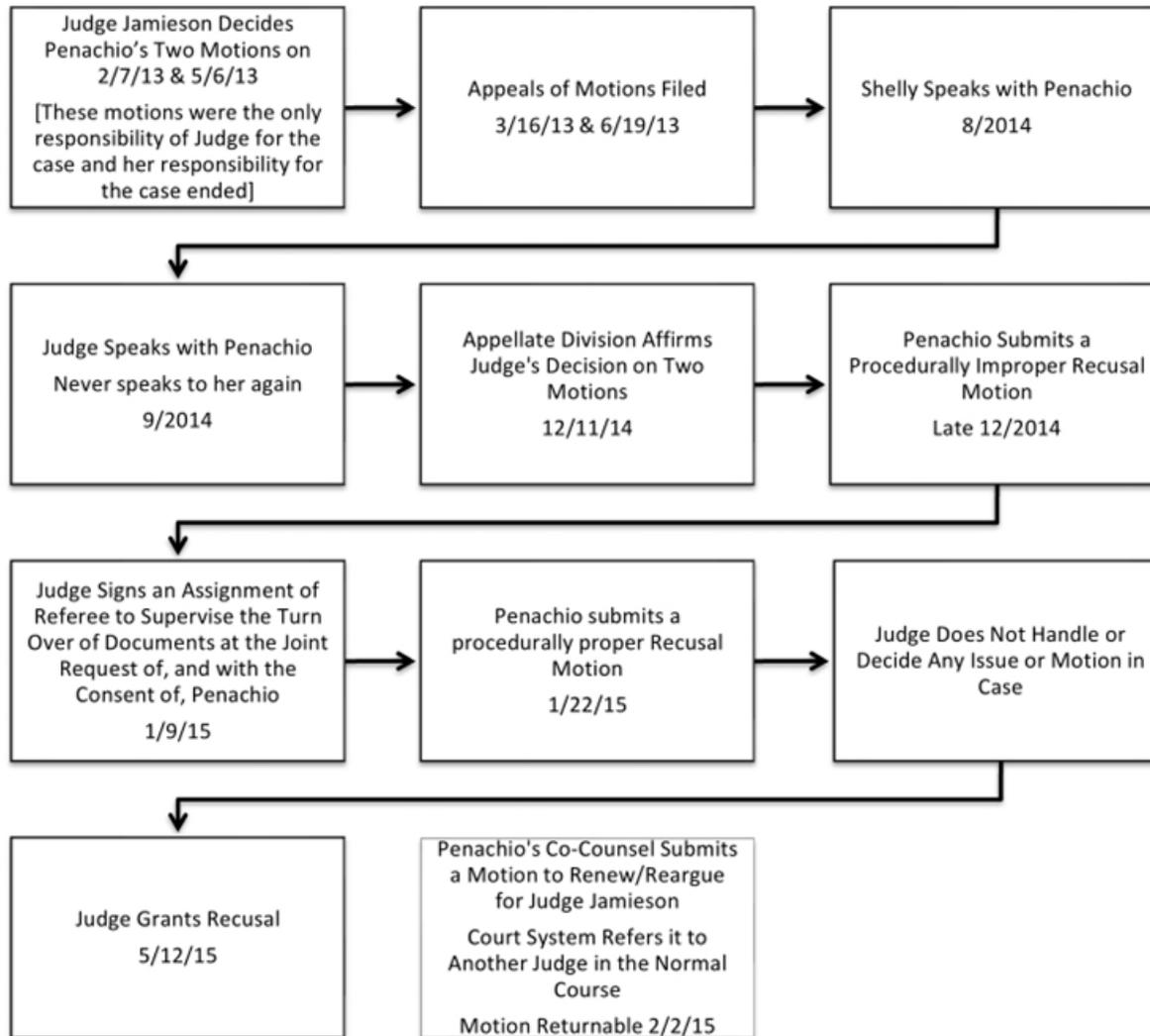
loan. (Tr. 408) In the summer of 2014, she called Mr. Natrella and he did not answer or respond to her call. (Tr. 409)

Shortly thereafter, Phillip Shelly, Esq., Justice Jamieson's friend, was in her chambers for a personal visit and she casually mentioned that Mr. Natrella would not call her back. He volunteered to call Mr. Natrella as a favor. (Tr. 411) Justice Jamieson never formally retained Mr. Shelly for any purpose; he only offered to make a call as a friend. (Tr. 411) Justice Jamieson only asked Mr. Shelly to attempt to get a judgment. (Tr. 139) When Justice Jamieson spoke to Mr. Shelly, she did not know Mr. Natrella was in the process of filing for bankruptcy. (Tr. 412) She did not tell Mr. Shelly, who was not a bankruptcy lawyer, to ask Mr. Natrella not to list her on his bankruptcy petition. She could not have told him that because she did not know that Mr. Natrella was in the process of filing for bankruptcy. The Judge testified that she never intended to sue Mr. Natrella because she thought she could not, "get blood from a stone." (Tr. 412)

Mr. Shelly called Mr. Natrella and left a message. (Tr. 134) He received a call from Ms. Penachio, who he learned was Mr. Natrella's attorney. During the call, Mr. Shelly asked Ms. Penachio for a judgment, but Ms. Penachio told him that obtaining a judgment made no sense. (Tr. 136-8) According to Ms. Penachio, Mr. Shelly asked that Mr. Natrella not list Justice Jamieson on the bankruptcy petition as a creditor, but Ms. Penachio told him the law had been changed and it required the listing of all debtors. (Tr. 138)

After the first call Ms. Penachio confirmed with her client that he did not want to provide Justice Jamieson a judgment. Sometime thereafter Mr. Shelly and Ms. Penachio had a short second call, in which Ms. Penachio confirmed her client did not want to execute a judgment. After these two calls, Mr. Shelly never followed up and never reached out to Ms.

Neilson v. 6D Farm Corp.



Penachio again. As a result of the telephone calls, Mr. Shelly was not successful in obtaining a judgment for Justice Jamieson. (Tr. 423)

As argued below, Mr. Shelly's call was not improper. He was simply helping a friend by seeking a judgment for an undisputed debt owed by Mr. Natrella. Ms. Penachio did not allege that Mr. Shelly yelled at or threatened her. He never flaunted the fact that he represented a judge or that Linda Jamieson should be given special treatment because she is a judge. Thus, this call was legally irrelevant with respect to the charges. Ms. Penachio acknowledged that there was nothing pending before Justice Jamieson in the Neilson Litigation when Mr. Shelly called her. (Tr. 178)

(iv) The Telephone Call between Justice Jamieson and Anne Penachio

Charge Two is, for the most part, predicated on one short telephone call between Justice Jamieson and Anne Penachio that occurred in either August or September 2014 ("Penachio Call"). The circumstances of this call cannot support a finding of misconduct by Justice Jamieson as a matter of law or fact.

There is no dispute that Justice Jamieson knew Ms. Penachio as a friend and colleague for many years before the Penachio Call. Ms. Penachio testified they knew each other since 1996. (Tr., 127, 424) They were close enough that Ms. Penachio went to the Judge's mother's Shiva.⁴ (Tr. 129) They knew each other through the legal community and bar association functions. Justice Jamieson knew Ms. Penachio's brother, father, mother, husband and children. (Tr. 425) They called each other "Linda" and "Anne" and Ms. Penachio sent the Judge

⁴ Although not in the record, the record should be corrected, admittedly on a non-material issue. Ms. Penachio did not attend a Shiva for Justice Jamieson's mother (Justice Jamieson is not Jewish). She attended a memorial service.

Christmas cards every year. (Tr. 424) They traveled in the same circles and it was a “nice relationship.” (Tr. 425)

The genesis of the Penachio Call was when the Judge’s friend told her, upon the Judge’s return from vacation, about the death of a friend of hers and Mr. Rende, Anna Stratis (a/k/a Strategis). (Tr. 291, 425) She was like a “second mom” to Justice Jamieson. (Tr. 425) Justice Jamieson had seen Ms. Stratis about a month before the Penachio Call. (Tr. 426) The Judge was upset because she did not timely hear about Ms. Stratis’s death. (Tr. 293, 427) Justice Jamieson called Ms. Penachio in either August or September 2014 to find out what had happened with Ms. Stratis. (Tr. 425) She knew that Ms. Penachio was close to her. On a prior occasion when Justice Jamieson spoke to Ms. Stratis, she told Justice Jamieson that, “Anne [Penachio] and you are my guardian angels.” (Tr. 428) Ms. Penachio does not dispute that Justice Jamieson called about their mutual friend. (Tr. 140) It was natural that Justice Jamieson would call Ms. Penachio about Ms. Stratis because they were all friends. Justice Jamieson did not call Ms. Penachio to discuss Mr. Natrella's loan. (Tr. 428)

Justice Jamieson thought there was no reason that she could not call Ms. Penachio because she was a colleague and a friend for almost 20 years. (Tr. 428) Fatal to Charge Two is the indisputable fact that **at that time of the call Ms. Penachio was not representing anyone before Justice Jamieson.** Ms. Penachio admitted at the hearing that there was nothing before the Judge in the Neilson Litigation and she did not think the case would go back to the Judge after the appeal. (Tr. 145, 174, 175, 429)

At some point during the Penachio Call, Ms. Penachio raised the subject of “Nicky.” Judge Jamieson specifically recalls that it was Ms. Penachio who first mentioned Mr. Natrella’s name. (Tr. 429) Ms. Penachio in a prior statement to Commission Counsel initially

said she raised the issue of Mr. Natrella and then modified her statement and indicated she did not recall. At the hearing, she again claimed that she did not recall who raised the subject. (Tr. 140) In consideration of Justice Jamieson's specific recollection that Ms. Penachio raised the subject of Mr. Natrella and Ms. Penachio's spontaneous statement that she raised the subject and subsequent lack of memory, this Tribunal must find that the credible evidence supports the determination that Ms. Penachio raised the subject. Ms. Penachio raising the subject makes sense in light of the fact that she was emotionally conflicted by being thrust between a friend/colleague and a long-standing client. This is relevant to the extent that the purpose of the call was not the Natrella loan. Parenthetically, regardless of who raised the subject of Mr. Natrella, it does not change the fact that there was nothing wrong with Justice Jamieson discussing a mutual friend with Ms. Penachio.

Justice Jamieson remembers mentioning in the Penachio Call, after a discussion of her friend's death, and after Ms. Penachio raised the subject of Ms. Natrella, that the Judge was disappointed in Nicky; and, he was doing things that Ms. Penachio probably didn't know (e.g., not paying child support, fathering a child out of wedlock). Ms. Penachio testified that the Judge said, if he is eating three meals a day, he should pay me. However, the Judge testified what she actually said was that if he is eating three meals a day, he should pay child support. (Tr. 431) Ms. Penachio's version suggests that the Judge is a spiteful and malicious person. The Judge's version reflects a person who is upset that her friend Nicky is not taking care of his children, who called her "aunt."

Ms. Penachio also testified that Justice Jamieson told her not to represent Mr. Natrella. (Tr. 433) Justice Jamieson denies making such a statement. Indeed, Ms. Penachio's testimony makes no sense because Mr. Natrella could simply retain another bankruptcy lawyer. Ms.

Penachio also testified that the Judge told her that she should make Nicky pay for an attorney. (Tr. 434) Ms. Penachio's version of the call contradicts logic and common sense because the Judge would not have known whether Nicky had paid Ms. Penachio. (Tr. 434-5) When confronted at the Hearing on cross-examination about this contradiction Ms. Penachio had no answer. (Tr. 234) Justice Jamieson remembers telling Ms. Penachio, as a friend, to make sure that she got paid because of Mr. Natrella's current financial situation. (Tr. 433-4) This makes a lot more sense than Justice Jamieson guessing Nicky had not paid Ms. Penachio. Indeed, Justice Jamieson's concern was well founded because Mr. Natrella did not make his payments under his bankruptcy plan and he was not bankruptcy was not completed. (Tr. 236)

Another incredible description of the call by Ms. Penachio was when she indicated that Justice Jamieson demanded a judgment and that Mr. Natrella not be listed as a creditor in the bankruptcy. (Tr. 141-2) One would have to believe that after Mr. Shelly reported back to the Judge that Ms. Penachio, a known bankruptcy lawyer, told him a judgment would not work and she had to list all creditors under federal law that the Judge would ignore this information. Again, this does not ring true.

Justice Jamieson testified that the Penachio Call was friendly. (Tr. 432) Ms. Penachio never told Justice Jamieson that she was uncomfortable talking to her or talking about Mr. Natrella because Ms. Jamieson was a judge. (Tr. 433) To the contrary, Ms. Penachio testified that Justice Jamieson never threatened her directly or implicitly. (Tr. 228) In short, the credible evidence demonstrates that Justice Jamieson reminded Ms. Penachio, as a friend, to protect herself against a mutual friend who was having financial problems.

Notwithstanding the disputes about the Penachio Call, there are a number of facts about the conversation that are not in dispute:

- The Judge called about the death of a mutual friend;
- The Judge did not state in any way that she was a judge so that Ms. Penachio must do something on her behalf regarding Mr. Natrella;
- There was no discussion of the Neilson Litigation, including the motion that had been decided in the prior year or that the Judge would preside over the case in the future;
- The Judge did not threaten Ms. Penachio;
- The Judge did not raise her voice;
- Ms. Penachio never said during the conversation that she was uncomfortable about the conversation and/or that it should be stopped; and,
- The Judge did not act uncivilly.

The call ended in a friendly manner and **Justice Jamieson never called Ms. Penachio again.** (Tr. 436) The following year, when Mr. Natrella filed for bankruptcy, Justice Jamieson did not file a claim with the Bankruptcy Court because she believed that she would not recover anything. (Tr. 436) This is consistent with her explanation that she asked Mr. Shelly to seek a judgment to protect her and nothing more; she did not expect to be paid.

At the time of the Penachio Call, Justice Jamieson did not believe that the call was improper. (Tr. 437) Looking back on the telephone call, Justice Jamieson cannot think of anything that she said that would have made Ms. Penachio feel uncomfortable or that she was asserting her authority as a judge to gain an advantage in the Natrella dispute. (Tr. 437, 445)

It would appear that Commission Counsel is trying to make Ms. Penachio's alleged discomfort about the Penachio Call, as alleged in Mr. Penachio's subsequent recusal motion, as a basis for arguing that Justice Jamieson lent the prestige of her office to make her feel uncomfortable. If Ms. Penachio's testimony is carefully scrutinized, it appears obvious that Ms. Penachio had a personal conflict from being in the middle of a situation involving a colleague

and friend of 20 years and a client and his family, who she also represented. She testified that she told Justice Jamieson, “I wish I never got involved with this [Natrella bankruptcy].” (Tr. 142) She also felt pressured because a possible issue could arise between Mr. Carr (her client and co-counsel in the Neilson Litigation) and Mr. Natrella. (Tr. 147) Ms. Penachio further explained the quandary she felt she was in:

Well, you know, I had to -- I was concerned -- I knew that I -- if I really didn't want to -- I didn't really want to represent him after this whole -- this whole business left a very bad taste in my mouth and I spoke to him about it. And he said, "I want you to represent me," you know, and I expressed concerns and he said, "I don't care. You've been my lawyer before." I represented his sister, his brother and his father and probably other family members that I can't think of right now.

(Tr. 147-8)

Ms. Penachio also acknowledged that the pressure was from being in the middle of a dispute between two friends. She testified that,

Q. You felt pressured because you thought you were in a quagmire between two friends, is that really the pressure you felt?

A. I felt pressure and that —you know

(Tr. 224-5)

E. Justice Jamieson’s Referee Referral in the Neilson Litigation

In January 2015, four or five months after the Penachio Call, and pursuant to an unexpected request from the parties (including Ms. Penachio) in the Neilson Litigation, Justice Jamieson was asked to help the parties by assigning a referee for their discovery dispute. Justice Jamieson agreed to help the parties for this extremely limited and mundane purpose rather than

sending the case to the Compliance Part. This courtesy was to accommodate the parties and for judicial efficiency.

Commission Counsel and Ms. Penachio have attempted to conflate this event with the Penachio Call to make it seem like Justice Jamieson and Ms. Penachio both thought that the Neilson Litigation could or would be returned to Justice Jamieson. Nothing could be further from the truth. It is extremely telling that Ms. Penachio contradicted herself numerous times on this issue and knowingly or unknowingly made a misrepresentation in the sworn affirmation she submitted with the recusal motion. Justice Jamieson's approach to the parties' request was practical, fair and accommodating but it is now being used against her. Nonetheless, an accurate explanation of the facts can easily dispel any confusion about the limited return of the case to the Judge.

Ms. Champanier testified about why Ms. Penachio's explanation is inaccurate. In December 2014, the Appellate Division affirmed Justice Jamieson's two decisions on the motions in the Neilson Litigation. (Ex. 41) Ms. Champanier believed that she learned of the affirmance after Justice Jamieson's Chambers received a letter from the plaintiff in the Neilson Litigation. In short, the letter was submitted to Justice Jamieson because the parties were jointly asking the Judge to sign a Proposed Order assigning a referee. (Tr. 335) Ms. Penachio confirmed that the parties were jointly seeking such an Order for the Judge's signature. (Tr. 330)

The case was not remanded to Justice Jamieson or assigned to Justice Jamieson by the court system, as explained above—it was not her case. (Tr. 338, *et seq.*) It was simply the parties asking on their own for the Judge's help with the assignment of a referee to supervise the turn over of documents by Ms. Penachio's client. It is absolutely clear that it was a joint request

because it states this specifically in the Order, as explained by Ms. Shampanier. (Tr. 335; Ex. 43) Ms. Penachio did not object to the Order. (Tr. 336)

As to why Judge Jamieson signed the joint Proposed Order, Ms. Shampanier explained it was an accommodation and a practical solution to a minor request by the parties. Specifically, the joint request should have been filed with the Compliance Part not Justice Jamieson. However, the Judge decided to be practical since the only relief requested was the assignment of a referee. (Tr. 337, *et seq.*) This does not mean that the Neilson Litigation was “before” Justice Jamieson or that the Judge could have anticipated the parties’ joint request. Ms. Shampanier testified that if there was no request for a referee by the parties, Justice Jamieson would never have seen the case again. (Tr. 342)

Ms. Shampanier’s view on this issue was confirmed by the fact that Ms. Penachio’s co-counsel filed another motion in the Neilson Litigation on January 20, 2015. Ms. Penachio’s co-counsel noted on the motion the matter should be “assigned” to Justice Jamieson. (Ex. J) Nonetheless, in accordance with procedures described above, it was not assigned to Justice Jamieson. The court system assigned the motion to Justice Lefkowitz. (Tr. 342, Ex. A) As Ms. Shampanier testified, “Hence my point, it wasn’t re-assigned to us because it was not our [Justice Jamieson’s] case.” (Tr. 342)

Justice Jamieson’s lack of involvement with the Neilson Litigation when the Penachio Call took place was stressed by Ms. Shampanier when she was asked whether there was anything before Justice Jamieson regarding the Neilson Litigation in August/September 2014 (the time of the Penachio Call). She testified, “On this matter [Neilson Litigation], No. . . . Absolutely not, no, No [sic].” (Tr. 343) Ms. Penachio corroborated that she did not believe the Neilson Litigation would come back to Justice Jamieson. (Tr.174 - 178)

F. The Procedural Context of Ms. Penachio's Recusal Motion

Charge Two attempts to connect a recusal motion filed by Ms. Penachio and received by the Court on January 22, 2015 in the Neilson Litigation, to the Penachio Call in September 2014. (Ex. 43) Ms. Penachio claims in her affirmation supporting the recusal motion that she felt "pressured" and "uncomfortable" in talking to the Judge and Mr. Shelly in August/September 2014 and this was the reason, in part, why recusal should be granted. It would appear that Charge Two attempts to springboard from this allegation to support the idea that in the Penachio Call Justice Jamieson lent the prestige of her office to a private interest because Ms. Penachio felt uncomfortable. This theory is not supported by the facts, including Ms. Penachio's testimony at the Hearing. In short, the allegations in Ms. Penachio's Affirmation in support of the recusal motion contradicts her later sworn testimony and are legally irrelevant to the Penachio Call that had occurred 5-6 months earlier.

By way of background, Ms. Penachio filed an order to recuse Justice Jamieson in late December 2014 or early January 2015. (Tr. 333-4) Ms. Shampanier recalls that the order was procedurally improper because it was not an Order to Show Cause ("OSC) but simply a Proposed Order that had been filed *ex parte*. (Tr. 333) It was rejected because it was not on notice, as admitted by Ms. Penachio in her second motion to recuse. (Ex. 43, para. 55, p. 14) Parenthetically, when Ms. Penachio testified before this Tribunal she conveniently forgot that a lack of notice was the reason the first "order" was not signed. (Tr. 191) This was to create the impression that Justice Jamieson did not want to recuse. However, the actual reason for the Judge's refusal to grant recusal on the first *ex parte* Proposed Order was because it was procedurally incorrect and Justice Jamieson would not recuse herself without notice to the other side so they could be heard. (Tr. 334)

Ms. Penachio subsequently filed, on January 22, 2015, a formal motion to recuse Justice Jamieson, this time on notice to her adversary.⁵ (Ex. 43) Ms. Penachio's adversary opposed the motion. The adversary argued that the recusal motion was filed as a litigation strategy with the goal of creating a basis to set aside Justice Jamieson's prior Order, affirmed by the Appellate Division, which denied permission for Ms. Penachio and her co-counsel to file a late answer. (Ex. A) The adversary indicated that Ms. Penachio and co-counsel had made many attempts to set aside the decision before the recusal motion. Presumably, it was important to set aside Justice Jamieson's decision for Ms. Penachio and her co-counsel in order to avoid potential liability to counsel and prejudice to their client.

However, when the recusal motion was filed there was **nothing before Justice Jamieson** involving the Neilson Litigation. The joint application for assigning a referee for the parties' discovery dispute had been signed on January 9, 2015. (Ex. 42) There was nothing to recuse Justice Jamieson from.

Nonetheless, to avoid any appearance of impropriety and to avoid addressing the false and misleading personal attacks against Justice Jamieson, the Judge recused herself from the Neilson Litigation in an Order, dated May 12, 2015 (Ex. 44). The Judge even expanded the Order to include a related case that Ms. Penachio was involved in and that was not part of the motion. (Tr. 344-7; Ex. 44)

Justice Jamieson's recusal decision indicates that the recusal motion was "baseless and distorted" and this phrase was included in the decision because many of the facts and allegations were fabricated, speculative and created a false appearance of impropriety. (Tr. 442) The fact

⁵ Reflective of Ms. Penachio's litigation strategy, she attempted to file the recusal motion with the Administrative Judge and do an end run around Justice Jamieson, even though the law requires a recusal motion to be submitted to the judge that the litigant is seeking to recuse.

that the recusal motion was filed months after the Penachio Call provides no support for the argument that the Penachio Call was improper or there was a basis for Ms. Penachio to feel “pressured”.

In assessing Ms. Penachio’s credibility, this Tribunal should consider that she filed a defective OSC to recuse Justice Jamieson and then a formal recusal motion in late December 2014 and January 2015, respectively. During this exact same time period, Ms. Penachio joined with her adversary to have Justice Jamieson sign a referral order; and her co-counsel filed a motion that he attempted to bring before Justice Jamieson. (Ex. J) Since Ms. Penachio and her co-counsel had no problem appearing before Justice Jamieson, Ms. Penachio’s motion to recuse must be deemed disingenuous and confirms that the motion was filed for a strategic purpose.

G. Anne Penachio’s Testimony and Affirmation in Support of the Motion to Recuse

Ms. Penachio’s affirmation in support of the recusal motion must be addressed because it is filled with distortions, inaccuracies and lies and includes extensive gratuitous *ad hominem* attacks against the Judge. (Ex. 43) These attacks were disturbing to Justice Jamieson because Justice Jamieson and Ms. Penachio had been friendly, respectful longtime colleagues and the gratuitous attacks were unnecessary for the motion. Since the motion was based on the fact that Ms. Penachio represented an adverse party and debtor of Justice Jamieson in an unrelated matter, it could have been conveyed in a few simple paragraphs. Instead, Ms. Penachio decided to attempt to humiliate the Judge in her affirmation and reply affirmation submitted with her motion to create a record that presumably she was seeking to use in another context, potentially for the re-argument of the prior decision denying her permission to file a late answer.

As a backdrop to the recusal motion of Justice Jamieson, and possible insight to Ms. Penachio’s trial strategy, Ms. Penachio and/or her co-counsel moved for recusal for times before

various judges. (Tr. 159–160; Exs. B, C, D, 43) This suggests that Ms. Penachio and her co-counsel used recusal as a litigation strategy, including the motion before Justice Jamieson.

At the heart of Ms. Penachio’s recusal motion is that she felt pressured or uncomfortable with the Penachio Call, in part, because Justice Jamieson was a judge or a public figure. This underlies Commission Counsel’s argument that Justice Jamieson lent the prestige of her office on the Penachio Call. Ms. Penachio’s allegation is contrary to the credible evidence. In assessing Ms. Penachio’s credibility this Tribunal should consider the critical lie that Ms. Penachio tells in her affirmation:

9. No matters have been pending before this Court for some time (since about July 2013) ... the Appellate Division affirmed a ruling by Justice Jamieson and the matter was, in essence, **remanded to this Court and reassigned to her.** (emphasis added.)

(Exhibit 43, para 9, p. 3)

The Appellate Division did not remand the Neilson Litigation to Justice Jamieson and a plain reading of the court’s decision makes that absolutely clear. (Ex. 41) Ms. Penachio was forced to admit that her affirmation was false when she testified, “It may not have been directly sent bank [sic] to her, but in essence it ended up before her.” (Tr. 181) It ended up before the Judge only because Ms. Penachio jointly requested help from the Judge. (Tr. 186) Ms. Penachio was forced to admit that no court ordered the matter to be before Justice Jamieson. (Tr. 182)

Ms. Penachio also admitted when she testified that from the time of Justice Jamieson’s signature on the joint referee order, on January 9, 2015 until the motion to recuse was granted, Justice Jamieson did not handle any aspect of the Neilson Litigation. (Tr. 196) Thus, Justice Jamieson did not handle anything on the Neilson Litigation while the motion to recuse was pending and, therefore, Justice Jamieson did not engage in any conflict or create an appearance that there was a conflict.

More disturbing than Ms. Penachio's allegations based upon inaccurate procedural arguments, Ms. Penachio also made gratuitous, irrelevant remarks against Justice Jamieson in her affirmation. Most shocking was the allegation that there would be a perception that Justice Jamieson would punish Ms. Penachio's client in the Neilson Litigation, who was completely unrelated to Mr. Natrella, to get back at Ms. Penachio for not giving the Judge a confession of judgment from Mr. Natrella. (Ex. 43, para 14 p. 4) The fact that Justice Jamieson would ultimately recuse herself does not detract from the insidious allegation that the Judge would engage in such retribution.

Ms. Penachio also described the Natrella loan in her affirmation in a way that made it seem underhanded. For instance, Ms. Penachio goes out of her way to state that Mr. Natrella did not have a lawyer for the loan and "[she] was surprised that a sitting Judge would extend a loan of this nature." (Ex. 43, para 21, p. 5) Yet, Ms. Penachio testified under oath before this Tribunal that: (i) she did not speak to Mr. Natrella about the loan; (ii) did not speak to Justice Jamieson about the loan; (iii) she did not know the reason for the loan; and, (iv) she did not know Mr. Natrella's relationship with the Judge. (Tr. 216- 218) She also admitted that she did not know that the loan was provided with favorable terms and as a favor to a close family friend. (Tr. 216) In essence, Ms. Penachio knew nothing about the loan, but she did not hesitate to falsely denigrate the Judge about it in a public filing.

III. ARGUMENT

A. Charge One - Financial Disclosure

As stated above, Justice Jamieson does not deny that she did not include the Natrella loan on her Financial Disclosure forms from 2006 to 2016. However, we would request that this

Tribunal include in its findings the full context for this mistake because that could impact upon the ultimate decision issued by the Commission.

Specifically, we respectfully request that findings for Charge One include a recognition that Justice Jamieson acted carelessly and foolishly and that her state of mind was driven by the fact that the loan was to someone who was a close family friend and not an arms-length transaction. It also should be considered that once Justice Jamieson filed the Disclosure Form without the loan, she took a cut-and-paste approach to the future forms and did not think about it again. It was one mistake that was repeated without thinking rather than ten independent intentional acts.

It is also true that there was no hidden agenda for not reporting it. If the purpose of the form is to make public any possible conflict or basis for recusal neither one of these concerns are implicated here. Mr. Natrella was not a lawyer and if he came before her as a party, Justice Jamieson explained that she would have to recuse regardless of the loan because of their relationship.

The Court of Appeals accepted the fact that failing to disclose a financial transaction on a Disclosure Form may not be deliberate, particularly when there was no motive to do so. *See, Matter of Alessandro*, 13 N.Y. 3d 238, 249 (2009). In *Alessandro* there were a number of transactions in which the judge had incurred debt and did not report it. In its decision, the Court accepted the fact that the conduct was “careless” and there was a lack of intentional conduct. *Id.* In short, the Court found that a lack of “intent to deceive” was supported by the evidence. The judge’s failure to report the transactions in *Alessandro* was significantly more egregious because it involved multiple arms-length transactions, yet the Court decided there was no intent. Justice Jamieson requests that this Tribunal make a similar finding.

Justice Jamieson accepts responsibility for this mistake. She only asks that it be presented with a proper context so that she may seek an appropriate decision by the Commission based upon all the facts.

B. Charge Two: Justice Jamieson Did not Lend the Prestige of her Office in her Dispute with Nicholas Natrella

As you will see below, there is no evidence supporting this Charge and there is no precedent or basis in law that supports Counsel's theory of Charge Two.

Charge Two is summed up in paragraph 12 of the Charges:

12. In or about September 2014, Respondent lent the prestige of her judicial office and /or permitted her extra extra-judicial activities to detract from the dignity of her office when she communicated with a bankruptcy attorney, Anne Penachio, and suggested that Ms. Penachio's client sign a confession of judgment and/or exclude the debt that he owed the judge from his bankruptcy filing.

There are two red herrings that must be disregarded at the outset. One, there was nothing wrong with Justice Jamieson lending money to a close family friend. Two, there is nothing wrong with Justice Jamieson, or any judge in this state, asserting their rights in furtherance of a civil claim against another party; in this case, recovering the money she had loaned to Nicholas Natrella.

It is difficult to discern Commission Counsel's theory for Charge Two. It was not undignified for Justice Jamieson to have an attorney call on her behalf to seek a judgment or to gain protection against a debtor. If this were true, no judge would ever be able to pursue a civil claim, with counsel, against a third party simply because they are a member of the Judiciary. This is untenable and not the law. It was not undignified for a judge to discuss a mutual friend who owed her a debt with another mutual friend, simply because she is a judge. This too is

unsupportable as a matter of law. Although judges must avoid creating situations that create a conflict, a loan to a good friend hardly falls within this category.

Another question that should be debunked is the tone and approach of Mr. Shelly's call for which Ms. Penachio felt "pressured." She stated that Mr. Shelly acted professionally in his call. (Exhibit 43, page 6) However, she felt pressured by Mr. Shelly because he said, "Come on, I need it [judgment]. You got to get it for me." (Tr. 223) She also felt pressured because he would not mediate and was an inflexible negotiator. (Tr. 224) Ms. Penachio did not allege that Mr. Shelly yelled or threatened her. He never flaunted the fact that he represented a Judge or Linda Jamieson should be given special treatment because she is a judge. In short, Ms. Penachio had no good answer for why she felt pressured by Mr. Shelly. (Tr. 224) She even admitted when she testified that she recognized he was only doing his job as an attorney. Ms. Penachio's subjective feeling of undue pressure, which Justice Jamieson claims is incredible and unreasonable, should not be a basis to find the Judge or her lawyer acted improperly. Yet, putting aside the issue of Mr. Shelly's alleged persistence, Justice Jamieson should not be blamed for the conduct of her lawyer when all she told him was try to get a judgment from Mr. Natrella.

As to Justice Jamieson's call, Ms. Penachio also declared that Justice Jamieson acted professionally. (Exhibit 43, p. 6) Ms. Penachio also testified that Justice Jamieson never yelled, threatened or flaunted her position as a judge. Obviously, Ms. Penachio knew before the call that Linda Jamieson was a judge. That fact could not be undone. This should not preclude Justice Jamieson from obtaining the repayment of a loan through the debtor's counsel.

Justice Jamieson contends that she never asked Ms. Penachio about a judgment from Mr. Natrella. Regardless, as long as the Judge does not attempt to use her position as a judge to

pressure a third party, she cannot be accused of using the prestige of her office. In fact, she was dealing with an experienced lawyer and a colleague and she was not trying to take advantage of a layperson, government official or litigant.

Ms. Penachio testified that part of the pressure she felt was that Linda Jamieson was a judge and public official. Following this contention to its logical conclusion, a judge or public official could not never pursue a claim against a third party. There is no precedent supporting such a contention.

Charge Two alleges that Justice Jamieson: failed to preserve her independence, avoid an appearance of impropriety, lent the prestige of her office for private interests and failed to minimize the risk of a conflict. It must be remembered that Justice Jamieson recused herself when Ms. Penachio came before her after they both understood that Ms. Penachio was representing Mr. Natrella. Thus, there was never a time when the Judge's independence was not preserved. Moreover, there was never an appearance of impropriety for the same reason: Justice Jamieson did not decide any disputed issue in the Neilson Litigation after she decided the two motions affirmed by the Appellate Division.

It is easy, with 20-20 hindsight, to suggest that had Justice Jamieson not given a loan to a family friend there would be no issue. Yet, it is inconceivable that the Judge could have imagined that 10 years after she gave the loan to Mr. Natrella that he would retain counsel who would have had a matter before her. This cannot be deemed a failure to minimize the risk of a conflict. This theory is also undermined by the fact that had Mr. Natrella been before Justice Jamieson as a litigant she would have recused herself because he was a family friend. There was no chance of a conflict with respect to her duties as a judge. If Commission Counsel is

suggesting that a judge under no circumstances may loan money to a friend because it may entail pursuing the borrower, such a theory is not supported by any precedent.

With respect to the allegation that Justice Jamieson lent the prestige of her office for private interest, Charge Two is not clear precisely how this prohibition applies here. No matter what the theory is for Charge Two, there is no precedent from the Court of Appeals (“Court”) or the Commission that supports the contention that under the circumstances of this case Justice Jamieson improperly lent the prestige of her office for a private interest.

The precedent from the Court and Commission on this subject can be broken down into two broad categories for cases in which judges used their positions to advance private interests. The first category is conduct in which a judge attempted to use his or her position to help a third party; and, the second category was when a judge flaunted their position to help the judge personally. In both categories, the cases find that the judges proactively announced their position to the person they were trying to influence. None of the cases involved parties who already knew each other and where the judge’s status was already known. A large majority of cases relate to the situation in which a judge attempts to help a family member or friend by flaunting their position with a government agency, police department, other justices or a school. *See, e.g., Matter of Ramirez*, 2017 WL 2630071 (N.Y. Jud. Cond.) The Commission in *Ramirez* explained:

Violations of Rule 100.2(C) have been found in **a broad spectrum of cases, including where judges have contacted other judges, law enforcement officials or other persons in a position of authority in order to advance private interests.** *See, e.g., Matter of Smith*, 2014 NYSCJC Annual Report 208 (judge sent an unsolicited letter on judicial stationery on behalf of an inmate seeking parole, whose mother was a friend of the judge's relative); *Matter of Pennington*, 2004 NYSCJC Annual Report 139 (judge met with DA to object to the police investigation of his son); *Matter of Nesbitt*, 2003 NYSCJC Annual Report 152 (judge sent a letter on judicial stationery to his son's school challenging an administrative determination regarding his son and the legal

sufficiency of the school's procedures); *Matter of Martin*, 2003 NYSCJC Annual Report 216 (judge sent two unsolicited letters on judicial stationery to judges in other courts on behalf of defendants, the sons of long-time friends, who were awaiting sentencing); *Matter of Wright*, 1989 NYSCJC Annual Report 147 (judge wrote two letters on judicial stationery and two affirmations to advance the private interests of a former litigant in his court). While respondent's judgment may have been clouded by a "sincere, albeit misguided, desire" to help her son and friend, that does "not justify a departure from the standards expected of the judiciary" since her communications could be perceived as backed by her judicial power and **prestige** (*Matter of Lonschein*, supra, 50 NY2d at 573; *Matter of Edwards*, supra, 67 NY2d at 155). (Emphasis added.)

There are many more cases that fall under this category but none are factually similar to the facts of this case.⁶

The second category is cases in which a judge flaunts his or her position for his/her own personal interests. A typical example is *Matter of Astacio*, 32 N.Y. 3d 131 (2018) in which the respondent engaged in extensive misconduct, including invoking her judicial office to pressure the police not to process her arrest. Similar to the situations noted above, the judge attempted to influence a police officer based upon her position. Another example is a decision of the

⁶ See, *Matter of Forando*, 2019 WL 1468158, fnt 3. (N.Y. Com. Jud. Cond.) See, e.g., *Matter of LaBombard*, 11 NY3d 294 (2008) (judge contacted the judge handling his relative's case and asked about the date of the next court appearance, told the judge that his relative was a "good kid," and made remarks that gave the impression that others were more culpable); *Matter of Dixon*, 2017 NYSCJC Annual Report 100 (judge called the chambers of the judge handling her lawsuit against an insurance company and spoke to him about her concerns regarding her case, then faxed and mailed him a letter that included details about her alleged injuries); *Matter of Horowitz*, 2006 NYSCJC Annual Report 183 (judge interceded on behalf of friends in two pending cases, including advising a judge, a court attorney and a court clerk that the litigants were her friends and were "nice people"); *Matter of DeJoseph*, 2006 NYSCJC Annual Report 127 (on behalf of a friend whose son had been arrested, judge called a judge who was on call for after-hours arraignments and applications, introduced the defendant's father and handed the phone to the father, who asked for the defendant's release); *Matter of LaClair*, 2006 NYSCJC Annual Report 199 (judge contacted the judge handling his wife's traffic case and identified himself as a judge and the defendant as his spouse, which prompted the other judge to say he would "see what he could do"; in a second case, he telephoned the judge handling the traffic case of an acquaintance and said he would appreciate anything that could be done for the defendant, who was "a nice, elderly gentleman"); *Matter of Bowers*, 2005 NYSCJC Annual Report 125 (judge wrote a letter on judicial stationery to another judge on behalf of a defendant charged with speeding, asking for "help" in connection with the ticket, stating that the defendant "needs to avoid any points," and falsely identifying the defendant as "my relative"); *Matter of Williams*, 2003 NYSCJC Annual Report 200 (judge called a judge who had issued an order of protection against an individual charged with assaulting his wife, told the judge that the couple were his friends and asked the judge to vacate the order; when the judge replied that he could not do so without hearing from the prosecution, Williams said that he himself had vacated orders of protection without notice to the district attorney).

Commission in which a judge identified herself as a judge to the police and attempted to stop a report from being filed. *See, Matter of Michels*, 2018 WL 7051567 (N.Y. Com. Jud. Cond.)

There are many other cases in which judges attempted to use their offices for their own benefit. *See, Matter of Moskos*, 2016 WL 6093228 (N.Y.Com. Jud. Cond.) (Judge used his position to illegally bring a gun into a government building); *Matter of Landicino*, 2015 WL 9680319 (N.Y.Com. Jud. Cond.) (Judge was stopped for a DWI and repeatedly referred to his judicial status); *Matter of Dixon*, 2016 WL 3226259 (N.Y.Com. Jud. Cond.) (Judge/respondent contacted a judge who was presiding over the respondent's civil case); *and, Matter of Burke*, 2014 WL 2434659 (N.Y.Com. Jud. Cond.) (judge touted his position as a judge to market his law firm to the public).

What is glaringly apparent is that none of these cases involve a judge simply attempting to collect a debt that the judge was indisputably owed or pursuing any type of valid civil claim. All of these cases involve a judge proactively touting his or her judicial position, to a person(s) who did not otherwise know the respondent was a judge, for the purpose of avoiding the law or compelling the person to engage in conduct against the law. Most of these cases involve trying to influence government, a court or law enforcement.

What is also glaringly apparent is that none of the reported cases even closely parallel Justice Jamieson's case. We were unable to find one case on all fours and if Commission Counsel locates a case that is factually similar, we will address it in our Reply Brief.

The fact that there is no case on point also implicates a notice or due process issue. A judge should be deemed to have engaged in misconduct if the conduct is not prohibited by a clear public rule, statute or authority. In this instance, unlike the conduct in the above-cited cases, Justice Jamieson could not have known that speaking to Ms. Penachio about their friend

would be deemed improper. Moreover, this Tribunal should not review the conduct in Charge Two with 20-20 hindsight. In short, there is not factual or legal basis for this Tribunal to sustain Charge Two.

IV. CONCLUSION

For the reasons stated above, Justice Jamieson respectfully requests that this Tribunal sustain Charge One, with findings that reflect the context discussed above and dismiss Charge Two or grant any further or different relief this Tribunal deems fair, just or equitable.

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Richard M. Maltz/electronically signed

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