

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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JUSTICE JAMIESON'S MEMORANDUM OF LAW

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I. PRELIMINARY STATEMENT

A. Procedural Background

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, on her financial disclosure forms submitted to the Ethics Commission of the Unified Court System from 2006 – 2016 (“Disclosure Forms”). 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.

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:

- did not evoke her position as a judge to seek payment of the loan;
- did not threaten Ms. Penachio based upon her position as a judge;
- did not suggest implicitly or directly that she should receive a benefit from Ms. Penachio simply because she is a judge;
- did not have a case before her, for which Ms. Penachio was counsel, at that time of the telephone call. Moreover, neither Justice Jamieson nor Ms. Penachio expected the prior “Neilson Litigation” to come before the Judge in the future. 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 confession of judgment;

- was simply trying to take steps to collect a legitimate and undisputed debt owed by a former friend;
- there was no potential conflict or issue of “optics” because the Judge, after she learned of Ms. Penachio’s role with Mr. Natrella, would have recused herself if the Neilson Litigation had it come before her, and she did recuse herself at the request of Ms. Penachio even though she had no case before the Judge; 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 an unrelated client of Ms. Penachio in order to punish Ms. Penachio for not forcing Mr. Natrella to provide a judgment.

Beyond the undisputed facts, there is no legal authority and it is unprecedented to allege that 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 Referee Hugh H. Mo on January 20, 2021, January 21, 2021, and March 5, 2021. After the conclusion of the hearing, parties submitted post-hearing briefs and Reply Briefs. Referee Mo issued a “Referee’s Report and Proposed Findings of Fact and Conclusions of Law” (“Referee’s Report” or “Report”), dated September 16, 2021, in which he nearly wholesale adopted the Commission Counsel’s conclusions even when unsupported by the facts.

B. Referee’s Report

The Referee’s Report is disturbing, unfair, and inaccurate for many reasons. The Referee made scathing findings about Justice Jamieson and, in many instances, purportedly predicated the finding on credibility. However, in many critical instances, the findings contradicted clear,

indisputable evidence, for which credibility findings had no bearing. In some instances, the Referee ignores contradictory facts or common sense to reach certain conclusions.

There is one erroneous conclusion that must be mentioned immediately, before a full analysis of the case is presented below, because it taints the entire Report and reflects upon the manner in which all the factual conclusions were reached. Specifically, it is the finding that Justice Jamieson did not report the loan she made to her family friend on her Disclosure Forms because she was attempting to hide a political favor to a former politician. This finding is based upon pure innuendo and is unsupported by any direct or circumstantial evidence! There is not one document or any testimony that supports such a finding. In fact, the testimony of a critical witness, and the only witness presented by Commission Counsel regarding this issue, actually contradicts the entire underpinning for this finding. It is disturbing that such a serious finding that colors Justice Jamieson in such a negative light, after a distinguished career of 41 years, is included in the Report without any substantive evidence or balanced analysis. The lack of analysis reflects upon the tenor and approach of the entire Report.

This memorandum will first present the facts and the applicable law. It will then address the many factual and legal infirmities of the Referee's Report and it will conclude with Justice Jamieson's argument for the Commission issuing a Letter of Caution for failing to report the Natrella Loan.

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 had an unblemished record and 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; 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.

As part of her background, Justice Jamieson also presented character evidence, including her work for the bar, bench, and community. (Tr. 388) This type of 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. Her commitment to the Bar and the legal community 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 annually lectures at the New York State Trial Lawyers' Association's "boot camp." She lectured for the Office of Court Administration, and many bar associations, on matrimonial law and commercial law. (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. She is 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 served on the nominating committee for numerous years for 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 the 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 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. 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) 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)

Prior to Justice Jamieson presenting her character witnesses, the parties' counsel submitted letter-briefs regarding the scope of character testimony in a disciplinary proceeding. Over strenuous objection by respondent's counsel, the Referee ruled, in conflict with Commission and Court of Appeals precedent, that the witnesses' testimony would be limited to reputation only. Respondent's counsel argued that the parameters of such testimony in civil and criminal litigation is typically not applied in disciplinary proceedings, in part, because mitigation

is unique to these proceedings. As a result, this Commission does not have the benefit of the complete testimony from these witnesses. This was prejudicial considering the importance placed by the Referee on his credibility findings.

B. The Loan

Joseph Rende has been Justice Jamieson's live-in "significant other" for many years. Mr. Rende had a good friend and work colleague, Nicholas Natrella ("Mr. Natrella" or "Natrella" or "Nicky"). (Tr. 394) Justice Jamieson looked at Nicky "like a brother to Joe." (Tr. 394) They had a close relationship. Mr. Natrella, a Commission Counsel 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 a particularly 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 had left Robison and Mr. Natrella also

wanted to leave and start a business. Mr. Natrella orally described his plan to Mr. Rende and Mr. Rende thought it filled a good niche in the oil industry for their community. (Tr. 279-280) Mr. Rende explained there was no written business plan because Mr. Natrella did not have the background for that type of formality. (Tr. 279-281)

Mr. Rende approached Justice Jamieson in 2005 to see if she would be amenable to loan Mr. Natrella money to start his business. (Tr. 400) 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. Rende testified that he believed that he and Mr. Natrella could benefit from Mr. Natrella's new business and it would help him in his own endeavors. (Tr. 279-281) 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 kitchen 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 dear and close 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.² (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.

² 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. She merely thought it best to correct the forms.

Natrella might come before her. He is 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.

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 appears to be arguing that it was improper to attempt to collect payment for the loan.

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 argued, which was accepted by the Referee, that there was a connection between the loan and Justice Jamieson’s relationship with Nicholas Natrella’s father, Vincent Natrella (“Vincent Natrella”), a local politician and a member of the Conservative Party. This connection was alluded to in one factual allegation (not a specific charge) in the Charges. The allegation in the Charges does not state that the loan to Mr. Natrella was a payment for Vincent Natrella’s support, as Chairman of the Conservative Party, in Justice Jamieson’s election to the Supreme Court in 2002. This suggestion is only by innuendo and is contrary to both simple logic and actually contradicted indisputable evidence from Commission Counsel’s 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) In fact, Vincent Natrella lost his Chairmanship in an election 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 since 2002 by making a loan in 2005.

In short, there is no factual basis whatsoever to allege or find 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) She answered yes, but neither would be applicable to the Natrella Loan because there was no actual or potential 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 consider the procedures applicable to Westchester Supreme Court during this time. Although the members of this Commission, as members of the Judiciary, may very well be familiar with the procedures, it might be helpful to summarize them as it relates to this matter. The testimony of Judith

Shampanier, Esq., Justice Jamieson's Principal Court Attorney, is extremely helpful in summarizing the Court's procedures as applied to 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 has handled 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"). She explained that 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)

Ms. Shampanier testified that 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

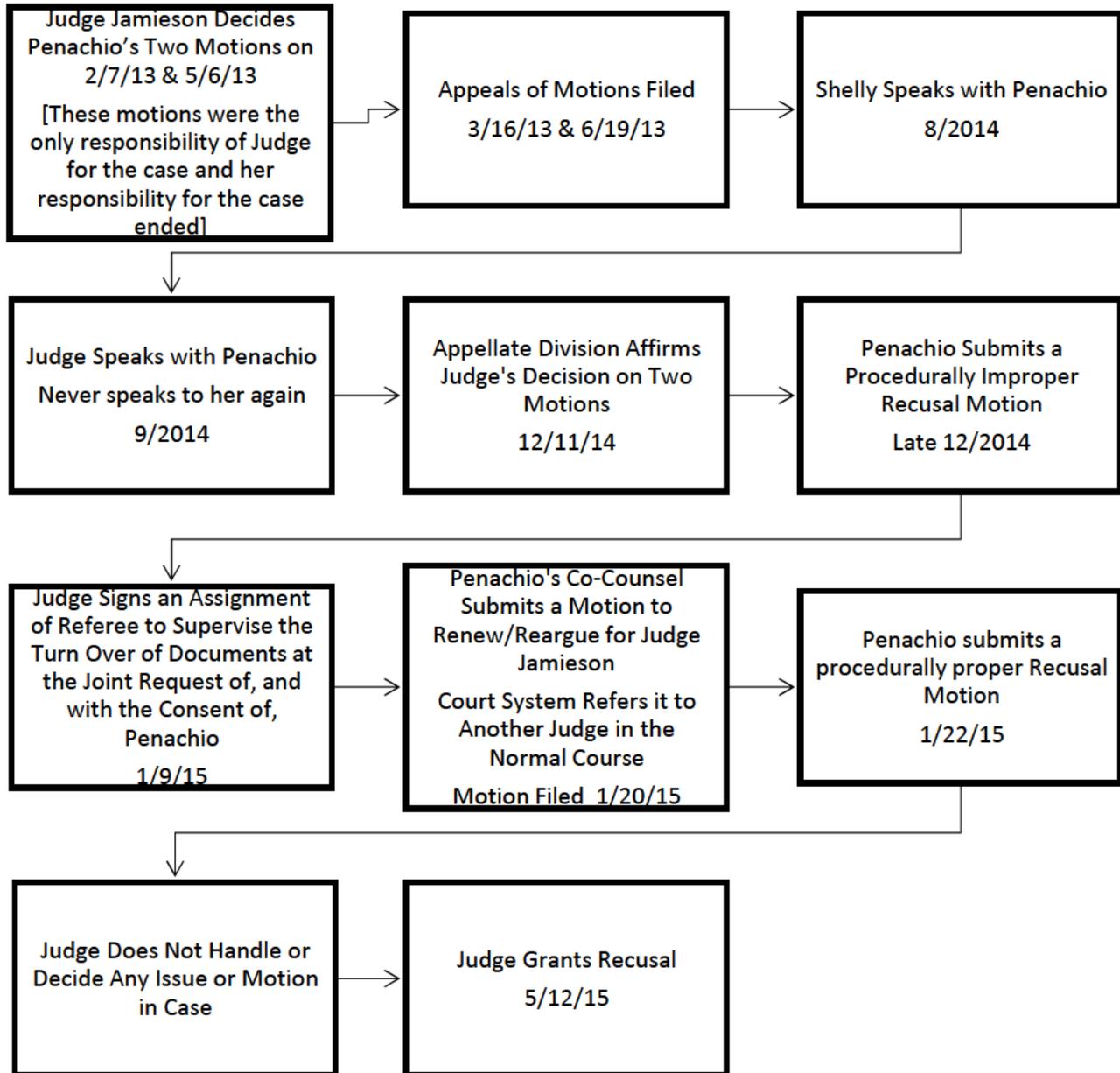
have any role in the appeal process or in how the case gets remanded after the appeal. Neither Justice Jamieson nor Ms. Shampanier would track any of the 1,000 decisions she issued per year. (Tr. 318-319) In short, neither Justice Jamieson nor Ms. Shampanier “tracked” their cases, because according to 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)

(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 and here was absolutely no evidence to the contrary. 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.

A schematic of the timeline that summarizes the witnesses’ testimony is on page 18 of this brief.

Neilson v. 6D Farm Corp.



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

Mr. Shelly's call was simply to help 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 admitted that there was nothing pending before Justice Jamieson in the Neilson Litigation when Mr. Shelly called her. (Tr. 178) She also testified that she had no expectations that the Neilson litigation would come before the Judge again. (Tr. 145, 174, 175, 429)

(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.³ (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 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 Strategis (a/k/a Strategis). (Tr. 291, 425) She was like a "second mom" to Justice Jamieson. (Tr. 425) Justice Jamieson had seen Ms. Strategis about a month before the Penachio Call. (Tr. 426) The Judge was upset because she did not timely hear about Ms. Strategis's death from her family. (Tr. 293, 427) Justice Jamieson called Ms. Penachio in either August or September 2014 to find out what had happened with Ms. Strategis. (Tr. 425) She knew that Ms. Penachio was close to her. On a prior occasion when Justice Jamieson spoke to Ms. Strategis, 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. Strategis 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

³ Justice Jamieson corrected the record in her post-hearing brief to clarify that Ms. Penachio did not attend a Shiva for Justice Jamieson's father (Justice Jamieson is not Jewish). She attended a memorial service at the judge's home. (Tr. 425)

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 recollects 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, Ms. Penachio 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, the Commission should find that the 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, Ms. Penachio alleges that Judge Jamieson created “undue pressure” on her about the Natrella Loan; therefore, it is incredible that she would not remember who raised the issue.

Justice Jamieson remembers mentioning in the Penachio Call, after a discussion of her friend’s death, and after Ms. Penachio raised the subject of Mr. 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 testimony again 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 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 his 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 list Justice Jamieson as a creditor in the bankruptcy. (Tr. 141-2) This is wildly incredible because one would have to believe that Mr. Shelly reported back to the Judge, that Ms. Penachio, a known bankruptcy lawyer, told him a judgment would not work and that Mr. Natrella had to list all creditors under federal law; nonetheless, the Judge ignored this information and she asked Ms. Penachio to

circumvent federal bankruptcy law. Considering Justice Jamieson's background and impeccable record as a judge and lawyer it is absurd to believe she would make such a demand of anyone.

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 or that she attempted to end the call or said she told Justice Jamieson she was uncomfortable. (Tr. 228) In short, after reviewing the content of the testimony, 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 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 motions that had been decided in the prior year, any appeals of the decisions of the motions 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 in the short term.

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 Ms. 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 felt like she had a personal conflict. She was in the middle of a situation involving a colleague and friend of 20 years and a client and his family, who she also represented for many years. Ms. Penachio 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)

Regardless, if Ms. Penachio felt pressure, Ms. Penachio's testimony of her state of mind cannot be the basis of finding misconduct. Certainly, the standard applied by the Commission must be an objective standard and not determined by the whims of any individual's personal perspective, particularly when that purported perspective is undermined by common sense and reason and may have been influenced by litigation strategy in the Neilson Litigation. For instance, Ms. Penachio testified that she felt pressured because Mr. Shelly was incessant and inflexible. On one hand, she claimed that Mr. Shelly acted professionally and, on the other, she felt pressured anyway. She stated, "although my discussions with Mr. Shelly were professional, I felt extreme undue pressured [sic] . . ." (Ex. 43 ¶ 28) This is inconsistent and undermines Ms. Penachio's credibility since she was an experienced bankruptcy litigator who argues about settlements for a living.

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 joint request from the parties (including Ms. Penachio) in the Neilson Litigation, Justice Jamieson was asked to help the parties solely 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 where the application should have been submitted. 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. Ms. Penachio, Justice Jamieson and Ms. Shampanier repeatedly testified that they did not believe that this would happen. 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 this issue.

Ms. Shampanier 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. Shampanier 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 turnover 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 request of 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, mundane 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 when Ms. Penachio’s co-counsel, Patrick Carr, Esq., filed a motion on January 20, 2015 to re-argue Justice Jamieson’s 2013 decision denying him the right to file a late answer in the Neilson Litigation. (Ex. J) Mr. Carr specifically requested in the motion that the matter 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 this during her testimony when she testified 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 and 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. Champanier recalled 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, 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 as directed by the court.⁴ (Ex. 43) Ms. Penachio's adversary opposed the motion. Ms. Penachio's 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) Presumably, the idea was to taint Justice Jamieson with the hope it might taint her earlier adverse decision. The adversary indicated that Ms. Penachio and co-counsel had made many attempts to set aside the decision before the recusal motion. In fact, Ms. Penachio and Mr. Carr's strategy in filing the recusal was made fully transparent when Mr. Carr filed a motion to reargue, at around the same time as the recusal motion, seeking to vacate their default in the Neilson Litigation that was the subject of the motion that Justice Jamieson decided against him in 2013. (Ex. J) Clearly, 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 absolutely nothing before Justice Jamieson that would have created a reason to move for recusal at that time.

Nonetheless, to avoid any appearance of impropriety and to avoid addressing the false and misleading personal attacks against her, the Judge recused herself from the Neilson

⁴ 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. (Ex. 43, ¶ 10)

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 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, the Commission should consider that she filed a recusal motion in January 2015, which appears to have been a litigation strategy. This is evidenced by the fact Mr. Penachio filed a motion to recuse Justice Jamieson on or about January 22, 2015 and Patrick Carr, Esq., her co-counsel, filed a motion in which he specifically requested that his unrelated motion be assigned to Justice Jamieson on January 20, 2015. (Ex. J) In addition, Ms. Penachio requested that Justice Jamieson assign a referee to oversee discovery in January 2015, before the recusal motion. In other words, Mr. Penachio's motion to recuse with its vituperative allegations are contradicted by the simultaneous contradictory actions by her and her co-counsel. This undermines Ms. Penachio's credibility and good faith about the "pressure" she felt that compelled her to file the motion to recuse.

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. (See, Ex. 43 and Ex. F)

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 four times before various judges. (Tr. 159–160; Exs. B, C, D; Ex. 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 evidence. In assessing Ms. Penachio's testimony, the Commission 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 at the hearing that her affirmation was inaccurate 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 for a completely ministerial purpose only because Ms. Penachio and her adversary 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 or have before her 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 the Referee

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 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 in a sworn affirmation that was publicly filed.

Ms. Penachio even went as far as to allege the following in her recusal motion's Reply Affirmation without any factual basis whatsoever:

19. Second, there is a shortage of case law [regarding the type of loan Justice Jamieson made] because Judges do not generally make loans to non-family members. The Court can take judicial notice that for years Judges have had a stagnant salary. In fact, this was the subject of a lawsuit entitled *Kaye v. Silver*. It is rare for Judges to have disposable funds to make a loan at all, let alone a \$50,000 cash loan.

Ex. F, ¶ 19.

Ms. Penachio was asked at Justice Jamieson's hearing how she could make such a broad statement in a submission to a court as if she had global knowledge of such a fact. Her only explanation was that she was a bankruptcy lawyer. (Tr. 200- 202) Obviously this is a non-sequitur. She failed to even consider that every judge has their own personal financial circumstances and that she had no idea of know Justice Jamieson's personal situation. It demonstrates how far she would go to further her own interests by distorting the truth. The fact that she would demean Justice Jamieson and the entire judiciary without any proof reflects strongly upon her credibility.

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, the nefarious motive for the mistake alleged by Commission Staff and echoed by the Referee is unsupported by any evidence. Justice Jamieson respectfully requests that the Commission find with respect to the loan, 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 it was 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 planned, intentional acts.

The Referee was troubled by the fact that Justice Jamieson could not remember all the details of the transaction. However, the transaction occurred 15 years ago and Mr. Natrella could not remember many details either. Mr. Rende was able to fill in some important details that Mr. Natrella did not dispute.

It is also true that there was no hidden agenda for not reporting the loan. If the purpose of the Disclosure Form is to make public any possible conflict or basis for recusal, neither one of these concerns are implicated here. Justice Jamieson explained that Mr. Natrella was not a lawyer and if came before her as a litigant she would have to recuse herself, 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 is 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 the Commission make a similar finding.

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 as to Charge Two.

(i) The Facts Do Not Support 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 indisputably loaned to Mr. Natrella.

From the beginning of the Commission’s investigation, it has been 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 not 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 allegation that should be debunked is the tone and approach of Mr. Shelly's call for which Ms. Penachio felt "pressured." Ms. Penachio testified that Mr. Shelly acted professionally in his call. (Ex.43, page 6) Although Ms. Penachio was a very experienced lawyer, 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 that 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 Mr. Shelly acted improperly. Yet, putting aside the issue of Mr. Shelly's alleged persistence, Justice Jamieson should not be blamed for the conduct of Mr. Shelly when all she told him was try to get a judgment from Mr. Natrella.

As to Justice Jamieson's call, Ms. Penachio also testified 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 knowledge could not be undone. This should not have precluded Justice Jamieson from seeking the repayment of a loan through the debtor's counsel. In fact, she was dealing with an experienced lawyer and a colleague, and she was not trying to take advantage of a layperson or government official.

Ms. Penachio testified that part of the pressure she felt was that Linda Jamieson was a judge and public official. Following this "feeling" to its logical conclusion, a judge or public official could never pursue a claim against a third party or bring a law suit based upon an indisputable debt. There is no precedent supporting such a contention and Commission Counsel has not presented any such precedent. Parenthetically, Ms. Penachio's "feeling" is undermined by the fact that she was a Delegate to the Conservative Party's Judicial Convention. (Tr. 128) Presumably, she extensively interacted with judges due to this role and it is not credible she would be intimidated by judges simply by their position.

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 is critical to remember 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 at issue and 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, 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. Such a 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.

With respect to the allegation that Justice Jamieson lent the prestige of her office for private interest, Charge Two is not clear as to how precisely this prohibition applies here. Regardless of what the theory underlies 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.

(ii) There is No Legal Precedent that Supports Charge Two

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 attempts to use their position to help a third party; and, the second category is when judges flaunt their position to help themselves. 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 others in authority. *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.⁵

The second category involve cases in which judges flaunt their position for his/her own personal interests. A typical example is *Matter of Astacio*, 32 N.Y. 3d 131 (2018) in which the

⁵ 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).

respondent engaged in extensive misconduct, including invoking her judicial office to pressure the police not to process her arrest. The judge attempted to influence a police officer to avoid fulfilling his legal obligation based upon her position. Another example is when 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 attempt 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).

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 a judge trying to influence a government official, a court or law enforcement.

What is also glaringly apparent is that none of the reported cases even closely parallel Justice Jamieson's case - a judge seeking to obtain payment of an indisputable and undisputed debt from a (former) friend through a lawyer, who was also a professional colleague. No such case could be found that was on all fours or even similar in a significant way. Commission Counsel did not present any authority supporting such a charge. The fact that there is no case on point not only suggests there is no authority for the allegation, but it is also unfair to charge a judge without authority that places her on notice that her conduct is improper. A judge should

not be deemed to have engaged in misconduct, if the conduct is not prohibited by a clear public rule, statute or authority. Stated another way, there is a lack of due process when there is no such 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 deceased friend or mutual friend who indisputably owed her money, would be deemed improper.

In short, there is no factual or legal basis to sustain Charge Two

IV. REFEREE'S REPORT

The Referee's Report includes many serious findings against Justice Jamieson. However, many of these findings are not supported by any evidence, ignore conflicting evidence and defy commonsense. The Report goes as far as drawing final conclusions based upon erroneous facts. The facts and analysis presented above address many of the Report's flaws. However, there are four subjects included in the Report that must be specifically addressed: (i) The Referee's use of credibility findings; (ii) the actual reason for Judge Jamieson not reporting the Natrella Loan, particularly with respect to the allegation that she was hiding a political favor; (iii) a lack of evidence to support the finding that Justice Jamieson lent the prestige of her office when she called Ms. Penachio; and, (iv) the Referee's failure to cite to any legal authority for his conclusions as to Charge Two.

(i) Credibility Findings

The Referee repeatedly incorporates in each finding in the Report that the finding is based upon a credibility determination. It is presumed that the Report attempts to tie the findings to credibility because a fact-finder's credibility findings are given deference by a body reviewing a transcript and a record on appeal. *See* Commission Policy Manual, 3.4(B). This is a way to discourage an appellate body from challenging the findings. However, this Commission,

is directed to review this matter *de novo* and make an independent determination of the merits of the case notwithstanding this deference. *See* Commission Policy Manual 3.4(B). will easily be able to determine the credibility of Justice Jamieson and the other witnesses by the content of their testimony. For instance, the Referee makes a point to mention that Justice Jamieson was “equivocal.” (Rep ¶82) However, even from a “cold” transcript, this Commission will be able to determine that there is not one instance for which she was uncertain, wavering or equivocal about her memory.

In fact, the Referee did not, and could not, point to anything specific about the demeanor of Justice Jamieson or the witnesses that would impact upon the content of the testimony. In other words, this Commission is in the same position as the Referee to assess the credibility of the witnesses. In short, the Commission should not blindly defer to the Referee’s “credibility” findings, and instead, it should review the substance of all of the witnesses’ testimony.

In this vein, it is noteworthy that in the Referee’s evaluation of Justice Jamieson’s credibility, he did not mention once in the entire report that she had a 41-year unblemished record or the extensive evidence about her stellar background and her character evidence that would naturally be considered when assessing credibility. (Rep ¶ 30)⁶ In comparison, the Referee mentions that Ms. Penachio was credible because she testified consistent with the affirmation she filed with her frivolous recusal motion. Yet, simply because someone dissembles in an affirmation and then parrots the information in subsequent sworn testimony does not make it truthful or credible. In fact, a strong argument can be made that Ms. Penachio needed to testify consistent with her affirmation or she would be committing perjury at the hearing. In other words, she had to testify consistent with the affirmation even if, in hindsight, she did not believe

⁶ Reference to the Referee’s Report will be noted as “Rep” with the page and/or paragraph noted thereafter.

the accusations she made when she was pursuing a litigation strategy in 2015. Moreover, the Referee ignored that Ms. Penachio lied in an affirmation filed with her recusal motion that the matter was “reassigned” to Justice Jamieson, simply to gain leverage in the Neilson Litigation.

(ii) The Report’s Finding that Justice Jamieson Did Not Disclose the Natrella Loan to Avoid Disclosing a Political Favor

The Referee found that Justice Jamieson did not include the Natrella Loan on her Disclosure Forms to avoid disclosing a “political favor or payback to Natrella’s father.” (Rep. 26) There is literally no evidence supporting this allegation and, indeed, the testimony of the Commission’s own witness, Mr. Natrella, contradicts this contention both explicitly and implicitly.

As a starting point, there is only one vague passing reference to Vincent Natrella in the Charges as relates to Charge One. It does not mention the “political favor” theory that was argued for the first time in Commission Counsel’s post-hearing brief. The Charges state in paragraph 6:

6. On or about August 11, 2005, Respondent loaned \$50,000 to Nicholas Natrella to start a business. Mr. Natrella is the son of Vincent Natrella, **then** the Chairman of the Westchester County Conservative Party. (emphasis added.)

There is one important correction/clarification to this allegation that is undisputed. Vincent Natrella was not the Chairman of his party at the time of the loan. Mr. Natrella testified that Vincent Natrella had not been Chairman since 2002, three years before the loan. (Tr. 51, 94-5) Mr. Natrella testified that his father had been voted out as Chairman in 2002. This fact, alone, strongly undermines the purported “political favor” theory.

At the hearing, there was a glaring omission of any testimony that supports a “political favor” theory. This is most evident from the testimony of Mr. Natrella, Commission Counsel’s

only witness, who was Vincent Natrella's son and the only witness to have spoken and interacted with him. Notwithstanding this relationship with Vincent Natrella, Nicolas Natrella: did not testify that the Natrella Loan was a political or personal favor to his father; did not testify that his father mentioned to him that the 2005 loan was for his support of Justice Jamieson in 2002; did not testify that he had a discussion with Justice Jamieson about the loan being a favor to his father; did not testify that Justice Jamieson asked him to hide the fact that a loan was given; and, did not testify that he attempted to hide the loan. Indeed, there was no evidence that he attempted to hide the loan as reflected by the fact that he listed the loan on his bankruptcy petition. In other words, Commission Counsel elicited no testimony from the only witness who knew and spoke to Vincent Natrella that would establish that the loan was a favor, political or personal. Indeed, the Commission Counsel never asked these questions, and a reasonable conclusion is that they would have gotten the "wrong" answer.

The Referee claims that the "political favor" theory is the only reasonable inference that can be drawn from the evidence. (Rep 20) This conflicts with the extensive testimony of Mr. Natrella that he was like family to Justice Jamieson and her significant other, Joseph Rende. Mr. Natrella testified that his children called Justice Jamieson her "aunt," and he testified that he was the only person in the world to whom Justice Jamieson would give the code to her garage. In contrast, the Referee takes out of context two words from a whole colloquy from Mr. Natrella's testimony, which is the only evidence that purportedly supports his finding. The full colloquy is as follows:

Q. Do you know whether your father was involved at all in Judge Jamieson's campaign for Supreme Court in 2002 ?

A. I would say that my father was **very influential in Linda's** - - do you mind me calling her Linda ?

Ms. DiPalo: I have no objection to that.

A. I don't want to be disrespectful in any way .

He was very involved in her campaign , as my father was very fond of her and believed she was a very good judge and it was - - this is going back in memory and conversations with my father - - that it was her turn and she deserved a shot at becoming a Supreme Court judge.

So , in that sense, I'm sorry that he can't answer that question , but father to son conversation , he was **very fond of Linda and he thought the highest of her.**

Q. Was he part of the Judicial Committee for the Ninth Judicial District that nominated Judge Jamieson on the Conservative Party line for Supreme Court?

A. So , I don't believe that I was. But normally, Westchester County, because they're the largest county in the Ninth District, the Chair is usually the leader or the head of the Judicial Committee. I did sit on the Judicial Committee for years, but not at the time that Linda ran for office.

Q. Mr. Natrella , the question was, was your **father part of the Judicial Committee for the Ninth Judicial District that nominated Judge Jamieson** on the Conservative Party line for Supreme Court? Can you hear me?

A. Yes , you know , you're asking me a question that **I don't have the answer to.** I believe that he was actually - -

Mr. Maltz: Objection.

A. **I don't have the answer to that.**

The Referee: Overruled.

Mr. Maltz: He said he doesn't have the answer.

A. In other words, yes, I would say to you being involved in politics that I believe that he was part of it, **but I do not have the answer to that.** (emphasis added.)

Tr. 55-56

This is the entire testimony about this subject. Mr. Natrella undermined the Referee's finding when he testified that his father helped Justice Jamieson because he was "very fond of her" and he believed she was a "very good judge" and he thought the "highest [sic] of her." (Tr. 55-56) In fact, the Referee noted that Mr. Natrella testified that Vincent Natrella and Respondent were "very close." (Tr. 49-50; Rep. 8) but he fails to explain why this undisputed testimony of Mr. Natrella, Justice Jamieson and Mr. Rende should be ignored. Mr. Natrella's comment that his father was "influential" or that he was "involved" in her campaign read in context of the above testimony suggests that Vincent Natrella supported "Linda" for genuine and straightforward reasons.

Justice Jamieson and Mr. Natrella confirmed that she gave Mr. Natrella the loan in cash. Although keeping money in cash at home is not common, Justice Jamieson explained that she kept cash in her house as an outgrowth of her mother's practice from many years ago due to her distrust of banks, which was not uncommon from experiences from an earlier time. (Tr. 401-402)

In fact, a large portion of the cash came from her mother. (Tr. 401)⁷ Parenthetically, if Justice Jamieson wanted to pay Vincent Natrella for a favor without anyone knowing, she could have more easily paid the cash in 2002 directly to Vincent without anyone knowing, including Nicholas Natrella, his wife, Joe Rende or the lawyer that drafted the note.

Most important, there is no evidence that establishes by a preponderance of the evidence that the loan was for a political favor.

As reflective of the Referee's refusal to consider all the relevant facts on this issue, the Referee does not consider or even mention that the loan was given three years after Justice Jamieson had been elected to the Supreme Court and three years after Vincent Natrella lost his Chairmanship of the Westchester Conservative Party as a result of being voted out in a Conservative Party election. (Tr. 51, 94- 96) There was no evidence that he had any power in his party by 2005. Moreover, the Referee does not address the fact that Justice Jamieson's term was for fourteen years, so she was not beholden to anyone. It is also a matter of public record that, at that time, Justice Jamieson was a Republican and was also nominated by the Republican and Independence parties and the Conservative Party was a dominating party.

In this context, this is one example of the Referee couching his findings in credibility terms, when a reading of the transcript provides ample basis to evaluate the witnesses' explanation. Specifically, the Referee found that Justice Jamieson's explanation about the loan was "implausible." (¶ 72) It is hardly "implausible" that a family friend, who happens to be a judge, would lend money for a startup, based upon the advice of her significant other who had

⁷ The Referee speculates that the fact that Justice Jamieson held cash in her home suggests that she may have intended to violate the law. (Rep. ¶ 77 footnote 4) This is sheer speculation and does not belong in a report in a Commission proceeding without any proof whatsoever. A reflection of the Referee's practice to ignore evidence that may contradict his findings is his failure to mention that Justice Jamieson testified that her practice to keep cash at home stems from a practice of her mother that she continued, even though it is not common practice today.

extensive experience in the field. At the same time, it is implausible that Justice Jamieson would lend money to someone as a favor to a politician not in power at the time of the “favor” and who would not be in power **if** she ran for re-election **eleven years later**.

In support of the finding that Justice Jamieson intended to hide the loan, the Referee found that Justice Jamieson intentionally avoided creating a paper trail to hide it. (Rep ¶ 82) In the first instance, this is not accurate because Justice Jamieson gave a Note to Mr. and Mrs. Natrella that was drafted by a lawyer at Mr. Rende’s request. Although Mr. Natrella claims he did not remember receiving a copy of the Note, Mr. Rende distinctly remembers copying the Note and giving a copy to Maureen Natrella, Mr. Natrella’s wife at the time. (Tr. 285-6) Mr. Rende also remembers Ms. Natrella putting the money and Note in her purse. (Tr. 286) If Justice Jamieson wanted to hide any paper trail, it is doubtful that Mr. Rende would have had a lawyer draft the promissory Note and given it to the Natrellas. (Tr. 283) A classic handshake would have sufficed.

The Referee finds that as part of a scheme to hide the loan, Justice Jamieson did not request “collateral.” (Rep 42) It cannot be said enough that this was, in Mr. Natrella’s view, a “very friendly loan.” (Tr. 105) Consequently, it misses the point in trying to convert a good-hearted gesture to keep things simple into a clandestine act. The Commission should review the loan in context, and from the perspective of everyone at the time. One friend was attempting to help another. The whole point was to avoid rigid requirements that would have been burdensome, and that might have been more appropriate with a full arms-length transaction. Justice Jamieson not asking for collateral was a favor to her friend. Arguably, if Justice Jamieson wanted collateral without a “public” paper trail, she could have asked Mr. Natrella to agree in a confidential side agreement for collateral and kept the document secret.

The Referee also finds that Justice Jamieson sought a “confession of judgment” that would permit her to collect the debt without filing a lawsuit, and this also was to hide the loan. This argument is hard to understand. The Commission must acknowledge that no creditor would ever seek to litigate a debt if the debtor would provide a Confession of Judgment to avoid litigation. Litigation is expensive, slow and would ultimately end up in the exact same place with a judgment that had to be enforced. Moreover, as Justice Jamieson testified, she did not think she could get “blood from a stone.” (Tr. 411) She figured if somehow Mr. Natrella came into some money in the future she could easily proceed with the judgment. (Tr. 408) Justice Jamieson also testified that she would not want to sue a former friend and that is understandable. (Tr. 411-412) Moreover, if Justice Jamieson attempted to enforce a judgment, any legal enforcement would certainly become public.

The Referee also remarks that Justice Jamieson never wrote any letter demanding payment and did not file a lien. Again, this misses the big picture. With the type of relationship the parties had, even after Mr. Natrella was not paying the Judge back, writing a formal demand letter in this context is unrealistic. On the other hand, calling the friend and asking about it, like Mr. Rende and the Judge did, is consistent with the parties’ relationship.

The Referee also indicates that Mr. Natrella was never asked for a “written business plan” for the loan. (Rep ¶ 42) This again attempts to characterize the parties and the loan in a unrealistic way. Mr. Natrella testified he was an oil burner technician and electrician. (Tr. 48) He was setting up a “little service business.” (Tr. 48) He was not a sophisticated businessman who would be accustomed to presenting a formal business plan. Justice Jamieson would not, and did not, ask for a formal proposal because she was relying on Mr. Rende’s advice, since he had been in the oil delivery and service business for many years. (Tr. 277, 282, 397) Mr. Rende

understood exactly what type of business Mr. Natrella intended to set up, how it works and why it was feasible. (Tr. 277) Consequently, the Judge did not need a “plan” in writing. Again, this was not a formal arms-length business transaction between strangers involving huge amounts of money that would have warranted the formality of a written business plan. This clearly was discussed among everyone. Mr. Rende and Justice Jamieson, relying on Mr. Rende, knew exactly what the “plan” was.

The Referee’s conclusion was that Justice Jamieson’s explanations for not reporting the loan were inconsistent. (Rep 69) This is simply not true and this can be easily discerned by the Commission. Justice Jamieson consistently has contended that because the loan was to a friend, who was like family, she did not consider it an arm’s length transaction and was lulled into lazily thinking it was not something to report. She fully acknowledges that Mr. Natrella was not family and it had to be reported and her ignoring this obligation was foolish and an oversight. Justice Jamieson’s contention that she acted foolishly, by mistake and due to an oversight are part and parcel of the same state of mind.

Finally, the Referee also concludes that Justice Jamieson’s failure to report, “raised serious actual or potential conflicts of interest.” (Rep 72) There was no actual conflict of interest because Mr. Natrella was not before Justice Jamieson. Further, there were no potential conflicts because if Mr. Natrella came before the Judge, she would be forced to recuse due to their long-standing relationship. The Referee’s response to this argument was that such a recusal “would cure any actual or potential conflicts of interest which underlie the purpose for the filing of the FDF accurately by a jurist.” (Rep 74) This finding misses the point. Of course, the purpose of the Disclosure Form is to avoid potential conflicts. However, Justice Jamieson’s point is that her intent was not to hide a conflict and not circumvent the purpose of the statute because there was

no actual conflict. No litigant before her was prejudiced or would be prejudiced due to her undisclosed loan. She concedes that she violated the reporting rule, but she did not do so with an intent to hide a conflict.

The Referee's final conclusion on this issue is based solely upon speculation dressed up as evidence. (Rep ¶ 83). He states:

I find 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. (emphasis added.)

The problem with this conclusion is that there is absolutely no evidence that Vincent Natrella purportedly "secured" the nomination let alone the judgeship. It is public knowledge that the Conservative Party is a minor party. Mr. Natrella's testimony is that his father was "influential" and "involved" with her campaign, but this was because his father had respect and affection for the Judge. There was absolutely no testimony or evidence that Vincent "secured" the election for Justice Jamieson. None.

(iii) The Penachio Call

With respect to Charge Two and the telephone call upon which it is based, the Referee compared the testimony of Justice Jamieson and Ms. Penachio because their versions of the call were very different. The Report finds that Ms. Penachio was completely credible, and Justice Jamieson was not. The Referee does not mention, and apparently did not consider when assessing Ms. Penachio's credibility, that Ms. Penachio lied in an affirmation that she submitted to the Court in the Nielson Litigation to gain a strategic advantage when she stated under the penalty of perjury that the Neilson Litigation was reassigned to Justice Jamieson.

When the Referee describes the initial reason for the call, he is confused. The Report states, “At the start of the conversation, Respondent told Penachio that a mutual friend . . . had passed away. Penachio already knew of Strategis’s death.” (Rep 55) Justice Jamieson had not called her to tell her of the death; she called Ms. Penachio to find out about the details of Ms. Strategis’s death because Ms. Penachio was her attorney. The Referee simply misinterprets the testimony.

The Referee then makes a finding that Justice Jamieson called Ms. Penachio to discuss Mr. Natrella’s loan, but used a ruse of calling about the death of their mutual friend to initiate the call. This attempts to suggest that she acted surreptitiously or had something to hide by calling Ms. Penachio and Justice Jamieson was not truthful about the reason for the call.

There is no dispute between the testimony of Justice Jamieson and Ms. Penachio that when Justice Jamieson called Ms. Penachio, that the Judge first raised the issue of their deceased friend. (Stipulation, dated June 15, 2021, ¶ 21; Tr. 124, 226 ; Ex. 43, ¶ 29) The Referee points out that Ms. Penachio and Justice Jamieson had known each other since 1996 and he explained that Ms. Penachio worked on her campaigns, and they socialized at bar functions. Presumably, to undercut the idea that Justice Jamieson would call Ms. Penachio for a personal reason, he adds that they “never had dinner or visited each other’s home.” (Rep 52) However, the Report ignores the testimony that Justice Jamieson knew Ms. Penachio’s brother, father, mother, husband and children and that Ms. Penachio attended the memorial service for Judge Jamieson’s father. (Tr. 425) They called each other “Linda” and “Anne” and Ms. Penachio sent the Judge Christmas cards every year. They were not close friends, but it is reasonable to believe that Justice Jamieson would call Ms. Penachio about a personal matter if the situation warranted it.

Logic would suggest that if Justice Jamieson's call was a ruse, the Judge would have been the one to raise the Natrella issue. However, Ms. Penachio testified that she did not recall who raised the issue. Yet, if Justice Jamieson raised the issue in order to pressure Ms. Penachio, presumably it would be something that Ms. Penachio would have remembered but she never testified to that effect and her affirmation does not allege this fact. In fact, when Ms. Penachio was interviewed by a Commission investigator substantially before charges were filed, her first reaction was that she, Ms. Penachio, raised the issue, but she then quickly changed her story and decided that she could not recall. (Tr. 227-8)

The Referee further found that Justice Jamieson's call was not genuinely in response to Ms. Strategis death because the Judge called Ms. Penachio several weeks after the death. However, both Mr. Rende and Justice Jamieson testified that they were on vacation at the time and they learned of the death when they returned and, in fact, they were upset that Ms. Strategis's family had not reached out. (e.g., Tr. 293) Indeed, a few weeks earlier when Justice Jamieson had visited Ms. Strategis, she called her and Ms. Penachio her "guardian angels." Naturally, this further linked Ms. Penachio to Ms. Strategis. (Tr. 426)

However, this whole theory makes no sense because there was no reason she needed to engage in such a ruse. If Justice Jamieson believed that it was acceptable to inquire about Mr. Natrella and that is why she called, she would not have needed to fabricate a reason for making the call. In short, there was no evidence or rational reason for concluding that Justice Jamieson called Ms. Penachio as a ruse, and Ms. Penachio's testimony and affirmation do not support such a claim.

The Referee also does not discuss the substance of Ms. Penachio's testimony about the telephone call. As discussed above, she testified that Justice Jamieson told her not to represent

Mr. Natrella. However, this made no sense, since he would simply retain another lawyer. Similarly, the Referee does not discuss that Ms. Penachio testified that Justice Jamieson told her that she should make Nicky pay for an attorney, but the Judge would not have known whether Nicky had paid Ms. Penachio and, in fact, he did. (Tr. 434-5) When Ms. Penachio was confronted on cross-examination with this contradiction, she could not explain why Justice Jamieson would make that comment when she had no idea if Ms. Penachio had been paid. There are numerous other inconsistencies by Ms. Penachio that are described above that were ignored by the Referee.

Justice Jamieson adamantly contends that her version of the Penachio Call was accurate. Yet, even if the Commission determines that Ms. Penachio's version is true or partially true, this does not constitute a violation of Justice Jamieson's duty not to lend the prestige of her office to advance her personal gain. The Referee seems to suggest that the mere fact that Ms. Penachio knew that Linda Jamieson was a judge is sufficient to argue that Justice Jamieson used the prestige of her office by calling her about a debt owed by Natrella. Obviously, Justice Jamieson could not change the fact that she is a judge and that the public, including Ms. Penachio, knew she was a judge. However, this Commission should not hold that a sitting judge cannot enforce a claim or debt by the mere fact that an adversary knows the creditor is a judge. Stated another way, under the Referee's analysis, a judge could never enforce a civil claim merely because the person is known to be a judge.

The Referee accepted Ms. Penachio's testimony that during the Penachio Call, Justice Jamieson did not raise her voice, threaten Mr. Penachio or flaunt her position. (Rep ¶ 90) Nonetheless, the Referee concluded that the Judge lent the prestige of her office in her call with Ms. Penachio. To support this finding the Referee made the following statement:

There was also no need for Respondent to threaten Penachio or implicitly request a benefit from Penachio. This is especially true when, at the time of the call, **Respondent was fully aware the Neilson 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.

(Rep ¶ 90)

It would seem that the Referee realized that the Judge merely calling a lawyer, colleague and professional friend about a client's undisputed debt may not be sufficient proof of Charge Two. Consequently, he created an additional finding to suggest leverage that Justice Jamieson could laud over Ms. Penachio. The Referee found that Justice Jamieson, "was fully aware the Neilson case --which Penachio was one of the attorneys or record on--was on appeal." This finding is simply wrong and conflicts with the only evidence on the subject.

Neither Justice Jamieson nor Ms. Shampanier, her Principal Court Attorney, testified that they followed the Judge's cases after they issued a decision, including whether an appeal was taken of a decision. Ms. Shampanier testified that they could not do so because the Judge issued, on average in a given year, a total of 1,000 decisions, approximately 300 written decisions and 600-700 other decisions. (Tr. 312)

Justice Jamieson and Ms. Shampanier both testified they did not know at the time of the phone call that the Neilson motions were on appeal. There was no testimony controverting this fact. Thus, the finding that Justice Jamieson knew the motions were on appeal conflicts with the only available evidence from witnesses with direct personal knowledge. At the hearing, there was substantial evidence on this issue, and the Referee simply ignored it.

The Referee repeats this erroneous reference to the record when he states, "Respondent further violated the Rules when she made a call **knowing that Penachio had a case before her** that on appeal [sic] and may be remanded to Respondent for further proceedings." (emphasis added.) (Rep ¶ 98) This is wrong for two reasons. One, Justice Jamieson did not know of the

appeal. However, ironically, this becomes irrelevant because Justice Jamieson and Ms. Shampanier testified extensively about the DCM system and why the Neilson Litigation “was not a case before her.” The Neilson Litigation was not Justice Jamieson’s case and there was no expectation that the case would come back to her. (Tr. 13- 15) It is startling that the Referee ignored this extensive testimony that is based upon indisputable facts about the court system.

Yet, even more surprising is that the Referee ignored the testimony of Ms. Penachio, who he deemed credible! She testified unequivocally that nothing was before Justice Jamieson at the time of the Penachio Call; and, most important, that she had no expectations that the Neilson Litigation would come before the Judge again. (Tr. 145, 174, 175, 429)

Notwithstanding this extensive unequivocal testimony, the Referee conflates the timeline to justify his conclusions. Ms. Penachio testified that for the first time in December 2014 she became concerned that the case might go before the Judge. She had no such concern at the time of the Penachio Call in August/September 2014. (Rep ¶ 61) In short, the Referee’s finding that Justice Jamieson knew she was putting pressure on Ms. Penachio because they both knew the Neilson Litigation might come back to her is incorrect.

In order to give the impression that Justice Jamieson ignored an actual conflict with Ms. Penachio, the Referee found that:

“Respondent’s conduct would naturally exert undue pressure on Penachio which **precipitated Penachio filing of a recusal** motion in 2015 in the Neilson case. It **was only at that time that Respondent implicitly acknowledged the presence of an actual or potential conflicts of interest** in granting the motion to avoid any appearance of impropriety.”

The Referee erroneously conflates Ms. Penachio’s concern that caused her to file her frivolous recusal motion in January 2015 with purported undue influence she claimed she felt four months earlier during the Penachio Call. These two events must be looked at separately because

they involve two totally different time periods and Ms. Penachio had two different state of mind at each period of time.

The Referee also suggests that Justice Jamieson ignored the potential conflict from the time of the Penachio Call until she decided Ms. Penachio's recusal motion. This ignores the fact that there was nothing before Justice Jamieson that would have required or allowed her to opine, consider or review any purported conflict. It was not until Ms. Penachio filed her recusal motion that was there a procedural posture for which Justice Jamieson could review, comment or rule on any alleged conflict.

The Referee stresses the undue pressure that Ms. Penachio allegedly felt in December 2014 due to the Penachio Call. First, this Commission should not determine whether Justice Jamieson acted improperly based upon Ms. Penachio's subjective state of mind that she felt pressured. This is particularly true when objectively there was no basis for her to feel undue pressure at the time of the call for the many reasons stated above. It is certainly telling that Mr. Penachio alleged many bad things about Justice Jamieson, including her asserting undue pressure, but she never filed a complaint with the Commission. (Tr. 58) It was filed by Patrick Carr, two years after the recusal motion. (Tr. 158) In addition, even if this Commission determines that Ms. Penachio was rightly concerned in January 2015, if the case came before Justice Jamieson due to the Natrella dispute, all Ms. Penachio had to do was file a motion to recuse Eventually she filed her motion and it was granted (even though there was nothing before Justice Jamieson).

(iv) The Referee's Failure to Cite to any Legal Authority for his Conclusions as to Charge Two

The Referee made extensive factual findings as to Charge Two. Yet, he did not cite to one Commission or Court of Appeals case that supports his conclusions or any case with similar facts. This is because there are none, and Commission Counsel did not present any to the

Referee. The Referee does not cite to one case that precludes a judge from attempting to collect an indisputable debt. These facts are very different from when a judge attempts to influence a police officer, judge or other third party to do something that they were not required to, or not legally permitted to do, solely based upon the fact that he or she was a judge. Presented above is a full legal analysis of this issue and why Charge Two must be dismissed as a matter of law.

IV. SANCTION TO BE IMPOSED

Justice Jamieson is respectfully requesting that the Commission sustain Charge One and find that she failed to include the Natrella Loan in her Disclosure Forms, but not confirm the finding that it was not disclosed intentionally to hide a political favor. She is also asking the Commission to dismiss Charge Two. The basis for the Judge's request that the Commission issue a Letter of Caution is broken down by the misconduct the Commission may sustain.

(i) Failing to Disclose Natrella Loan

Justice Jamieson does not dispute that the Commission must find that she did not disclose the Natrella Loan in her Disclosure Forms. Justice Jamieson is asking that the Commission find that this was a mistake and issue a Letter of Caution for this misconduct. There is precedent for this request, but it is based upon comparing the conduct of attorneys whose cases resulted in Admonitions and Justice Jamieson's conduct which was less egregious, thereby compelling a less severe sanction. Since Letters of Caution are not public, this is the only way to establish that a Letter of Caution is fair and just in relation to the Commission's body of decisions.

For example, in *Matter of Eannace*, 2020 WL 6025089, the Commission issued an Admonition to a respondent for failing to timely file Disclosure Forms. Judge Eannace's conduct was more egregious than that of Justice Jamieson in that the respondent was cautioned in 2014 about not filing his disclosure form and, nonetheless, he did not file again in 2018. After the

respondent was directed by the Ethics Commission to cure his 2018 failure and to report within a few weeks he did not file for four months. The conduct in *Eannace* was more egregious because the Judge was warned once and then “thumbed his nose” at the Ethics Commission a second time when he refused to comply with their directive. Although Justice Jamieson’s failure to disclose Natrella’s Loan was wrong, she did not ignore direct warnings and directives by the Ethics Commission.

In *Matter of Francis M. Alessandro* 13 N.Y.3d 238 (2009) the Court of Appeals reversed the sanction issued by the Commission and issued an Admonition for the Judge’s failure to include a number of transactions in his Disclosure Form. The Court stated, “We are not convinced, however, that Francis deliberately omitted required information from his financial disclosure statements.” *Id.* at 248. The Court further found that they were “unable to conclude by a preponderance of the evidence that any of the omissions were intentional.” *Id.* However, Francis Alessandro’s misconduct also included his omission of various assets and liabilities in loan applications. This is actual fraud. It is also relevant that Judge Alessandro omitted a number of arms-length formal transactions with third parties while Justice Jamieson omitted a single loan to a family friend, albeit for many years. Therefore, Judge Alessandro’s conduct was more serious than that of Justice Jamieson and that is why Justice Jamieson contends that issuing her a Letter of Caution is in line with the sanction issued in *Alessandro*.

In *Matter of Dier* 1995 WL 848917 the Judge received a Censure for, among other things, failing to fully disclose income and liabilities on his Disclosure Form. However, he also engaged in additional and more egregious misconduct than Justice Jamieson. Specifically, the Commission found, in unrelated misconduct, that the Judge refused to state his reasons for his decisions in civil cases before him, notwithstanding “repeated and numerous” directives of the

appellate courts who reviewed his decisions. The Commission found that, “even in light of the Appellate Division’s rebukes and its clear explanations of the importance of making such findings and even in the face of an investigation by this Commission, respondent has insisted that he will persist in his refusal to make a proper record.” *Id.* at 3. In addition, the Commission also considered that the respondent had a prior record of misconduct. Nonetheless, the Commission issued a Censure. If Judge Dier’s cumulative misconduct resulted in a Censure, it is fair and reasonable for Justice Jamieson to receive a Letter of Caution.

It is understood that Justice Jamieson failed to disclose the Natrella Loan for ten years. Yet, as explained above, the mistake to disclose the loan was a careless repeat of one mistake not 10 independent, separate mistakes involving multiple different transactions. It is also noteworthy that the Commission and Court of Appeals have held that, “information provided on a judge’s financial disclosure form is ‘available to the public and, among other things, enables lawyer and litigants to determine whether to request a judge’s recusal.’” See, *Matter of Eannace* at 3, citing *Matter of Alessandro*, 13 N.Y. 3d 238, 249 (2009). Although Justice Jamieson fully acknowledges that the Natrella Loan should have been disclosed and it is an important duty as a judge, her failure not to disclose did not result in undermining or circumventing the primary purpose of the disclosure requirement because no lawyer or litigant was prejudiced or could have been prejudiced because she would have recused from any matter relating to Mr. Natrella.

In sum, if the Commission finds that Justice Jamieson carelessly failed to disclose the Natrella Loan, a Letter of Caution is a proper sanction.

(ii) Lending Prestige of a Judicial Office

Justice Jamieson has argued above that neither the facts nor law support a determination that Justice Jamieson lent the prestige of her office to advance her private interest when she

called Ms. Penachio. However, if the Commission disagrees and determines that Justice Jamieson did violate this rule, she is respectfully requesting that the Commission issue one Letter of Caution for this violation and for her failure to disclose the Natrella Loan.

As discussed above, most of the cases that discuss this type of violation involve a Judge seeking “special treatment” from another judge, police officer, or other governmental authority. In most instances, the Judge is flaunting their position as a judge to have someone do something unlawful, influence someone to do something that was improper or convince someone to do something they were not obligated or inclined to do. In most of these cases, the Commission has issued an Admonition.

In *Matter of Forando*, 2019 WL 1468158, the respondent contacted another judge concerning a pending case and thereby attempted to influence a proceeding for persons with whom the respondent had a relationship. The respondent was Admonished. In *Matter of Michels*, 2018 WL 7051567, the respondent got into a small fender-bender with a police van. The respondent was charged with lending the prestige of her office and the Commission admonished him and found:

. . . respondent voluntarily identified herself a judge to the police several times, presented her judicial identification card and made several other references to her judicial status. She also repeatedly questioned the necessity for an accident report and the delay in preparing the report, in an attempt to curtail the investigation and be allowed to leave. She continued to do so even after informed that a report was required since the accident involved a police vehicle.

In *Matter of Ramirez*, 2017 WL 2630071, a judge submitted affirmations in a court proceeding for her son. She also filed a letter invoking her judicial title in support of a third party that was submitted in court. Judge Ramirez was Admonished. In *Matter of Moskos*, 2016 WL

6093228, a respondent brought a gun into a county owned building, three times, evoking his position as a judge even though it was a violation of local law. Judge Moskos was Admonished.

There are many more examples of judges receiving Admonitions for trying to influence a judge by interfering in a court proceeding or trying to influence a police officer from fulfilling his/her legal obligations. All of the examples cited above are much worse than anything Judge Jamieson purportedly did in the Penachio Call. Thus, Justice Jamieson should not be issued the same sanction as judges who engaged in such serious misconduct. Therefore, Justice Jamieson should receive a Letter of Caution for any perceived misconduct.

If the Commission determines to sustain Charges One and Two, it should not be deemed cumulative for sanction purposes because both offenses were unintentional and non-prejudicial to any third party. Moreover, neither violation standing alone warrants a public sanction and the fact there are two such offenses should likewise not result in a public sanction. The Judge's long-standing reputation for integrity should not be besmirched based upon this misconduct.

The Commission should also consider when issuing a sanction all of the mitigating factors: a 41-year unblemished professional record; her active participation in professional activities; her character based upon her character evidence; the lack of prejudice to any third party; her full cooperation with the Commission's investigation; and, her remorse for not disclosing the loan.

It is true that the Referee's Report states that Justice Jamieson intentionally testified falsely, which might ordinarily be deemed a serious aggravating fact. However, this is not accurate and is unsupported by the evidence. The only two issues that Justice Jamieson contested, and that were at issue, is that she did not hide the Natrella Loan as a political favor and the content of her discussion with Ms. Penachio.

Since there is not one iota of evidence supporting the Referee's finding that the Natrella Loan was for a political favor, and there is direct evidence contradicting that finding, (e.g., Natrella's confirmation that it was a loan from a friend) the Commission must find that Justice Jamieson did not lie about the reason she loaned the money to Mr. Natrella.

The only other issue that the Referee suggests that Justice Jamieson lied about was her telephone call with Ms. Penachio. Again, Justice Jamieson firmly believes that her memory about the telephone call, seven years ago, was accurate. A review of the relevant testimony, as described above, strongly supports Justice Jamieson's memory of the call. The Judge contends that her memory of the call is reasonable and more coherent than Ms. Penachio's memory of certain comments that do not ring true. Moreover, just because two people have different memories of a telephone call, particularly when they have different perspectives due to the context of the call, does not mean either is intentionally lying. Therefore, there is no basis to find that Justice Jamieson knowingly and intentionally lied about the call.

V. CONCLUSION

For the reasons stated above, Justice Jamieson respectfully requests that the Commission sustain Charge One, to the extent that Justice Jamieson failed to report a friend's loan on her Disclosure Form but repudiate the Referee's Report finding that her motive not to report the loan was to hide a political favor; and, dismiss Charge Two. Justice Jamieson further requests that the Commission issue a Letter of Caution; or, grant any further or different relief that this Tribunal

deems fair, just or equitable.

Dated: November 3, 2021
New York, NY

Richard M. Maltz | electronically signed

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