

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 REPLY MEMORANDUM OF LAW

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I. PRELIMINARY STATEMENT

This Reply Memorandum is being submitted on behalf of Justice Linda Jamieson in response to the Memorandum of Law submitted by Commission Counsel (“Counsel”), dated November 4, 2021 (“Counsel Memorandum”). Justice Jamieson will not burden this Commission by addressing arguments regarding Justice Jamieson’s conduct presented in Counsel’s Memorandum, with a few minor exceptions, because these arguments have been thoroughly addressed and fully refuted in Justice Jamieson’s previous memorandum. This Reply Memorandum will primarily focus on the sanction recommendation by Counsel that is unjust; kowtows to a Referee’s Report that is insupportable as to the facts and law; and is contrary to Commission and Court of Appeals precedent.

As a preliminary observation, we contend that the Report of Referee Hugh H. Mo (“Report”) reads like a prosecutor’s adversarial brief and not a neutral, unbiased report. A Referee’s Report would ordinarily make judicious findings after considering and objectively evaluating all the evidence, fully and reasonably addressing contradictions in the evidence and recognizing when there is no evidence supporting a party’s argument. In light of the Referee’s approach, it is important to emphasize that the Commission is not bound to accept the Referee’s findings. The Court of Appeals made this very clear in *Matter of Jean Marshall*, 8 N.Y.3d 741 (2007) when it stated that, “Neither the Commission nor this Court is bound to accept the Referee’s findings (*see Matter of Reeves*, 63 NY2d 105 [1984]; 22 NYCRR 7000.6 [f] [1] [iii]).”

This is critically important as to Charge One. The Report plays connect the dots, straining to interpret bits and pieces of unrelated and innocuous facts to construct a theory of the Natrella Loan to find that the loan was a political favor where such a theory contradicts common sense, logic and the only actual evidence presented in the case. The Referee’s factual findings for

Charge One are based upon a theory that first fully blossomed in Counsel's Post-Hearing Brief and not at the hearing. The emphasis placed on this political favor theory must be viewed in this procedural context. It was never a Charge or an allegation in the Charges. It was purportedly presented to explain the Judge's motive for hiding the loan. Although it was presented for this limited purpose, it is placed front and center in Counsel's sanction recommendation.

Moreover, it is not unfair to question why Counsel did not fully and directly address the issue of political pay back at the hearing with their own witness or Justice Jamieson. The obvious reason is that the evidence from their own witness would not have supported such a theory. Moreover, Counsel wanted to avoid giving Justice Jamieson an opportunity to give a full-throated denial or explain why her prior relationship with Vincent Natrella was the actual reason for his support. At the same time, it is not speculative to assume that Counsel would not be recommending removal without this theory.

As to Charge Two, the Report agrees with a legal theory posed by Counsel that one telephone call to a lawyer regarding an indisputable debt owed her by the lawyer's client is the same as intimidating a police officer or trying to influence a judicial colleague, which has historically been the underpinning for such a charge. There is absolutely no precedent equating these two very different types of conduct or finding that Justice Jamieson's conduct, in context, was improper.

These factual and legal shortcomings and unprecedented theories are actually driving the draconian suggestion of removal. Justice Jamieson believes Counsel's punitive sanction recommendation is retribution for her refusal to admit that the loan to her friend, Nick Natrella, was for a political favor to his father, which is patently false; or, that as a matter of law, her telephone call with Anne Penachio violated the Rules. The Commission should not be misled

and should understand that regardless of the Referee and Counsel's hyperbole surrounding Charge Two, regardless of the version of the facts that is ultimately accepted by the Commission, it is dependent upon a question of law. Justice Jamieson's refusal to accept Counsel's legal theory, for which there is no legal precedent, should not be a basis to remove her.

Justice Jamieson is respectfully requesting that the Commission issue a Letter of Caution based upon her actual misconduct, which is not reporting a loan to the Ethics Commission for a number of years, with no prejudice to a litigant, party, attorney or case before her and which did not implicate an actual or potential conflict.

II. ARGUMENT

A. The Report's Misleading Conclusions

Before addressing Counsel's sanction recommendation, there are a few substantive arguments posed in Counsel's brief that must be again refuted.

First and foremost, the Referee and Counsel argued that Vincent Natrella "**secured**" Justice Jamieson's election, thereby justifying a "payoff" three years later. (*See*, Counsel's Memorandum, p.1) "Secured" is the precise word used by both. However, there is not one piece of evidence that establishes directly, or circumstantially, that Vincent Natrella "secured" the Judge's election. In fact, the Commission can take judicial notice that Justice Jamieson was nominated by the Conservative Party that included five counties, five chairman and multiple judicial delegates. Vincent Natrella was hardly in position to "secure" the nomination of the Conservative Party. Moreover, with the Democratic and Republican parties, the Conservative Party was only one of three parties that could affect the Judge's election. Stated another way, the only evidence at the hearing was that Vincent Natrella was involved and influential with a minor party, but this hardly counts as evidence of "securing" the election to justify a payoff.

Counsel's unsupported speculation, contradicted by the actual evidence, appears to be the underlying basis for Counsel's removal recommendation. If this argument fails, as it must, the Commission's recommendation must be denied.

As to Charge Two, Counsel argues in their memorandum that Justice Jamieson lent the prestige of her office to gain leverage with Ms. Penachio, "even if she did not subjectively intend to leverage her judicial office." (Counsel Memorandum, p. 32) In other words, according to Counsel, the mere call to Ms. Penachio was a violation of the rule. However, the cases cited by Counsel for this proposition do not support their legal argument. For instance, Counsel cites to *Matter of Sims*, 61 N.Y.2d 349, 351 (1984), but in *Sims*: the Judge signed an arrest warrant for a person who had an accident with the Judge's son; the Judge signed an order releasing a criminal defendant who was the Judge's former client and her spouse's client; and, in nine other instances the Judge signed release orders for clients represented by her spouse. These were acts in the Judge's official capacity in which she used the judicial powers for the benefit of her spouse and her clients. This conduct is very different from Justice Jamieson's conduct in that the appearance of impropriety in that case is clear on its face. Although judges always has to be cognizant of the appearance of their actions, even off the bench, a review of the conduct with 20-20 hindsight cannot be completely divorced of context and intent.

Counsel also cites to *Matter of Lonschein*, 50 N.Y.2d 569 (1980), in which the Judge requested that the deputy counsel of the Taxi and Limousine Commission expedite the processing of a friend's license application. The Court found that the petitioner was aware that his judicial position would affect the subsequent conduct of the deputy counsel. Again, this is very different from Justice Jamieson's conduct. In *Lonschein*, it was a Judge influencing a government official to do something they were not authorized to do. The Court reduced a

Censure to an Admonishment for this conduct. Interestingly, the Court commented that they were not saying that “Judges must cloister themselves from the day-to-day problems of family and friends.” *Id.* at 572. Presumably, this would apply to a judge’s own problems. Similarly, Counsel’s other citations are also inapposite. *See also Matter of Sullivan*, 2015 WL 4518640 (N.Y. Com. Jud. Cond.) (in two conversations with law enforcement officials respondent lent the prestige of judicial office to advance the private interests of his son), *Matter of Whelan*, 2001 WL 1717307 (N.Y. Com. Jud. Cond.) (the Judge interjected into his spouse’s dispute and gave legal advice to a lay person flaunting his knowledge as a judge with respect to a disputed claim).

Counsel also argues that Justice Jamieson should not have called herself for her own undisputed claim. Although Justice Jamieson adamantly denies this was the reason for the Penachio Call, even assuming *arguendo* that Counsel’s speculation about the reason for the call was true, this distinction makes no sense. Counsel’s argument seems to suggest that it was acceptable for the Judge to have a friend, who was an attorney, call on her behalf, but that she could not call that same person directly. When Mr. Shelly contacted Ms. Penachio, Ms. Penachio and the entire local legal community knew that Linda Jamieson was a judge. Consequently, there is no real difference whether a judge calls regarding a personal civil claim or someone on a judge’s behalf calls, if the recipient of the call knows that the person on the other side of the dispute is a judge. Applying Counsel’s argument to its logical conclusion, a judge with a civil dispute must never personally attempt to resolve the dispute. There is no authority, and none has been cited, for such an extreme position. Such a holding is a dangerous constraint on members of the judiciary who occasionally have civil disputes.

A different point raised by the Referee and reiterated by Counsel (Counsel Memorandum, p. 21) is that Justice Jamieson did not remember at her hearing in 2021 the details

about the Natrella loan in 2005 and that is why she was not credible. This is indicative of many findings by the Referee that are baffling. The fact that Justice Jamieson may not have remembered details about a friendly, informal loan, finalized at her kitchen table 15 years ago, does not reflect on her credibility. It is simply a reasonable failure to remember an event that at the time was not memorable. In fact, Nick Natrella, the Commission's witness, did not have a strong memory of finalizing the loan and there was no comment by the Referee about his credibility.

More specifically, the purported critical detail that the Referee pointed to was the question of who drafted the Note. (Counsel Memorandum, p. 40) It is true that the Judge did not remember who drafted the Note, and there was good reason for that. It is because Joseph Rende, who facilitated and orchestrated the loan, arranged for a lawyer to draft the Note. Mr. Rende explained this at the hearing. (Tr.283) More to the point, the Referee fails to mention why this detail or any other detail that Justice Jamieson purportedly could not remember about a night 15 years ago was material to the issues in the Charges. The Referee was simply trying to justify his credibility finding by an immaterial and unsubstantiated contention. This is simply another red herring to reach a pre-destined final conclusion.

Yet, the Referee's ultimate manipulation of the facts to support his theory that Linda Jamieson is a corrupt person is his discussion of her practice, that had been her parent's practice for many years, of keeping cash in her house. (Report, p. 19, footnote 4) The Referee concludes that simply because she kept money in her house, this is a reflection that she intended to violate the law. This conclusion is a complete fabrication, is without any evidentiary basis and ignores and fails to even comment upon the fact that Justice Jamieson provided an explanation for having the cash in her house. (Tr. 401) It reflects a complete lack of objectivity. The length to

which the Referee went to discredit Justice Jamieson includes his suggestion that if Justice Jamieson was going to use the money to purchase jewelry, she was responsible for a merchant potentially not paying sales tax. In the Referee's myopic view of the evidence, he fails to even consider that certain merchants do not want to take personal checks and prefer that a customer not use a credit card to avoid high credit card charges. This is not unusual or out of the ordinary. The Referee's inclination to draw the worst possible conclusion about Justice Jamieson, by wild speculation, in order to justify his findings undermines the veracity of the entire Report.

B. The Sanction of Removal is Draconian Under The Facts of This Case

1. Charge One- Failing to Disclose the Natrella Loan to the Ethics Commission

Justice Jamieson contends that the only misconduct for which she should be disciplined is her failure to report the Natrella loan under Charge One. Counsel was forced to acknowledge that the Court of Appeals held that "careless omissions from a financial disclosure statement are not the type of 'truly egregious' conduct that warrants removal from judicial office." *See, Matter of Alessandro*, 13 N.Y.3d 238, 249. (Counsel Memorandum, p. 36) Counsel has not cited to any authority that suggests that removal is appropriate for a careless mistake in reporting the loan. Thus, Justice Jamieson's request of a Letter of Caution is reasonable under the totality of the circumstances.

However, Counsel argues that the Court of Appeals has also removed judges who file deceptive financial disclosure forms or other financial reporting documents. Yet, in support of this theory, Counsel cites to significantly more egregious conduct (i.e., criminal conduct or tax fraud) that has no relevance to the instant case (Counsel Memorandum, p. 36). For example:

- *Matter of Miller*- the judge failed to report thousands of dollars of extra-judicial income on tax forms [*a crime*] and on

his disclosure forms; and he failed to give an adequate explanation for his conduct.

- *Matter of Moynihan*- the judge did not report extra judicial income and affirmatively altered checks to commit a fraud on the Commission by hiding the income from the Commission; and,
- *Matter of Boulanger*- the judge failed to give an explanation for failing to file a gift tax return.

Justice Jamieson's failure to report the Natrella Loan solely to the Ethics Commission is a serious matter and she is remorseful for this mistake. However, this is a completely different type of misconduct than committing fraud on the taxing authorities. Justice Jamieson, in her previous memorandum, provides the cases involving a judge's careless failure to disclose information in a financial disclosure form, none of which resulted in removal. In this matter removal is likewise not appropriate.

2. Charge Two- Lending the Prestige of a Judicial Office

Judge Jamieson has strenuously argued that her telephone call with Ms. Penachio was not improper as a question of fact or as a matter of law. This argument is based upon her explanation of the call and her contention that her explanation is substantively more credible than that of Ms. Penachio. Yet, even if the Commission finds that Ms. Penachio's explanation, in part or in whole, is credible, Justice Jamieson contends that she did not lend the prestige of her office for personal gain as a matter of law. This has been fully argued in the Judge's previous memorandum. Nonetheless, if the Commission sustains Charge Two, removal is not appropriate.

Counsel cites to cases in their memorandum in which judges were admonished or censured for more egregious misconduct than alleged by Counsel with respect to this type of offense. (Counsel Memorandum, p. 38) For instance, in *Matter of Sullivan, supra*, the Judge was censured when he acted as his son's advocate with law enforcement. In *Matter of Clark*,

2007 Ann Rep at 96-97, the Judge was censured because he accompanied a girlfriend to file a criminal complaint at a sheriff's office. *See also Matter of Whelan*, 2002 Ann Rep at 171 (admonishment for interfering in a private family member's dispute by lauding his knowledge of the law to a lay person). Most important, Counsel does not cite to one case in which removal was ordered for an offense of this type even where the facts involve judges attempting to influence government agencies, law enforcement or other judges. Thus, there is no support for seeking removal under the facts of this case.

3. Justice Jamieson's Testimony Is Not an Aggravating Factor

Justice Jamieson does not disagree that lying to a tribunal is an aggravating factor in a disciplinary proceeding as argued by Counsel. However, Justice Jamieson has demonstrated that her testimony was credible, logical and consistent with commonsense. Yet, regardless if the parties disagree about the facts, authority provided by Counsel undermines their position that the Judge's testimony was an aggravating factor and places into perspective the exaggerated, misleading and repetitive contention of the Referee that Justice Jamieson's testimony was false. In *Matter of Marshall*, 8 N.Y.3d 741 (2007) the Court of Appeals explained that false testimony may be considered "where the Judge who was to be sanctioned gave **patently false** explanations to the Commission despite contrary **objective proof**." (emphasis added.) In *Marshall* the judge testified that she did not adjourn certain cases but the court records definitively documented and established the adjournments. This is objective proof, unlike the allegations here! If this were not the standard, a judge could be chilled from giving their perspective of an event for fear they will be labeled a liar simply because they disagree with the prosecution's witnesses.

In Justice Jamieson's case, she explained the reason why she did not report the Natrella Loan. The Referee claimed this was a lie, but he made this serious finding with no "objective

proof” or, indeed, any proof that Justice Jamieson was not being truthful. Therefore, the Referee’s finding that this was false testimony must be disregarded in all respects.

Similarly, there was a disagreement between Justice Jamieson and Ms. Penachio with respect to what was said during their call. The Referee found that he believed Ms. Penachio. Justice Jamieson has extensively explained in her prior memorandum why the Referee was wrong in deeming Ms. Penachio a credible witness; why she had a self-interest in her version of the facts; and why her version of the call should not be credited. Nonetheless, the fact that two witnesses disagree about a conversation is not a basis for alleging that one witness intentionally lied. Again, there was no objective proof that Justice Jamieson lied and her asserting her right to give her explanation should not be deemed an aggravating factor.

Therefore, this Commission should not should consider the Referee’s findings about Justice Jamieson’s testimony in its determination as to sanction.

III. CONCLUSION

For the reasons stated above, and in Justice Jamieson’s previous memorandum of law, she respectfully requests that the Commission sustain Charge One and issue a Letter of Caution for failing to report the Natrella Loan on her Ethics Commission disclosure form. She further

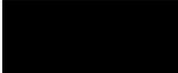
requests that the Commission dismiss Charge Two.

Dated: November 22, 2021
New York, NY

RICHARD M. MALTZ/electronically signed

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