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

MICHAEL F. MCGUIRE,

A Judge of the County and Surrogate's Courts,
an Acting Judge of the Family Court and an
Acting Justice of the Supreme Court,
Sullivan County.

DETERMINATION

– –

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine, Of Counsel) for the Commission

O'Connell and Aronowitz (by Stephen R. Coffey) for respondent

Respondent, Michael F. McGuire, a Judge of the County and Surrogate's Courts, an Acting Judge of the Family Court and an Acting Justice of the Supreme Court, Sullivan County, was served with a Formal Written Complaint dated August 27, 2018,

containing thirteen charges. Charges I to VI of the Formal Written Complaint alleged that in 2012, 2013 and 2014, respondent improperly and without cause ordered litigants, some of whom were not represented by counsel, to be taken into custody in handcuffs on six occasions. Charge VII alleged that respondent threatened to order litigants into custody on three other occasions. Charge VIII alleged that respondent was discourteous to court personnel. Charge IX alleged that respondent failed to be courteous toward litigants in a child custody matter. Charge X alleged that respondent practiced law while a full-time judge. Charge XI alleged that respondent presided over matters in which his impartiality could reasonably be questioned. Charge XII alleged that respondent conducted gun permit interviews at inappropriate locations and required his court secretary to work on certain Saturdays without compensation. Charge XIII alleged that respondent used his judicial title in his personal email. Respondent filed a Verified Answer dated October 11, 2018.

By Order dated November 15, 2018, the Commission designated Mark S. Arisohn, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on May 6-9, 13-17 and 20-22, 2019 in New York City. The referee filed a report dated November 5, 2019 in which he sustained all thirteen charges except for a portion of Charge VIII.

Counsel for the Commission submitted a brief to the Commission with respect to the referee's report and the issue of sanctions. Counsel for the Commission recommended that the referee's findings and conclusions be confirmed and the sanction of removal. Respondent's counsel relied on briefs submitted to the referee and argued

that a censure would be the appropriate sanction. The Commission heard oral argument on January 23, 2020 and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Judge of the County and Surrogate's Courts and an Acting Judge of the Family Court, Sullivan County, since 2011. Since January 2013, he has been an Acting Justice of the Supreme Court, Sullivan County. Respondent's current term expires on December 31, 2020. He was admitted to practice law in New York in 2002.

2. Respondent served as an Assistant District Attorney in Sullivan County and then was in private practice with an office in Ferndale, New York from 2004 through 2010.

As to Charge I of the Formal Written Complaint

3. On December 18, 2013, respondent presided in Family Court over *R.R.R. v. I.C.O.*, a child custody and visitation matter. Mr. R was incarcerated on a criminal matter at the time of his appearance and was not represented by counsel. Respondent dismissed Mr. R's petition for visitation without prejudice.

4. At the conclusion of the proceeding, Mr. R stated, "I know your son, so can you recuse yourself from my case, please, and assign me another judge?" Respondent asked that Mr. R be brought "back here" and yelled: "You got 30 days judicial contempt … [t]acked on top of whatever you got."

5. When respondent asked Mr. R if he was "making a threat against my son," Mr. R responded, "I just asked you to recuse –" When respondent asked again if Mr. R

was threatening his son, Mr. R responded, "No, I'm not." Respondent then said, "Officer, this gentleman just threatened my son" and Mr. R responded, "I just asked him to recuse himself (unintelligible) I need a record."

6. The audio recording of the interaction between respondent and Mr. R reflected that respondent yelled at Mr. R. Two witnesses testified that respondent was red faced and stood up when he yelled at Mr. R.

7. Respondent did not warn Mr. R that his behavior was contemptuous, nor did he give him an opportunity to be heard or an opportunity to purge the contempt before sentencing him to 30 days in jail. Respondent did not find an attorney to represent Mr. R and did not prepare any document memorializing the particular circumstances of the offense.

8. Respondent testified at the hearing before the referee that he interpreted Mr. R's comment about knowing his son as a threat and that Mr. R, whom respondent described as a gang member, "could get to my son."

9. After the *R.R.R.* proceeding ended, Lieutenant Kevin McCabe was told that respondent felt that Mr. R had made a threat. After listening to the audio recording of the proceeding and speaking with respondent, Lieutenant McCabe concluded that Mr. R had asked respondent to recuse himself and had not made a threat.

10. On December 24, 2013, respondent signed an Order sentencing Mr. R "to an additional thirty (30) days incarceration in the Sullivan County Jail to be added on to the term he is currently serving." The Order did not state the facts that allegedly constituted the offense.

11. Respondent admitted that he "improperly issued a contempt finding against Mr. R."

As to Charge II of the Formal Written Complaint

12. On August 28, 2013, respondent presided in County Court over *People v. N.G.* Ms. G, who had been charged with, *inter alia*, a felony, had entered into a plea agreement pursuant to which she agreed to participate in a drug program with the understanding that if she completed the program she would be sentenced for a misdemeanor and a three-year term of probation. If she failed the program, she agreed to be sentenced to a state prison term of one and one-third to four years. Ms. G failed to complete the program and appeared before respondent on August 28, 2013 for sentencing.

13. During the sentencing proceeding, respondent repeatedly spoke disparagingly about Ms. G's parenting. The following colloquy occurred:

> THE COURT: Think how your children feel, if they even know who you are.
>
> THE DEFENDANT: They absolutely do. I was a good mother to my daughter.
>
> THE COURT: What's that?
>
> THE DEFENDANT: My children know who I am.
>
> THE COURT: Really?
>
> THE DEFENDANT: Absolutely.
>
> THE COURT: Do they know what a mother is?
>
> THE DEFENDANT: Absolutely.

THE COURT: How do they know that, from your mother?

THE DEFENDANT: 'Cause I was a good mom until I relapsed.

THE COURT: When were you clean?

THE DEFENDANT: When I gave birth to my daughter.

THE COURT: The one that was born with marijuana in her system or was that your son?

THE DEFENDANT: That was my son.

THE COURT: So you were not a good mother to your son. (The defendant shakes head negatively).

14. Ms. G's attorney testified that respondent was "very condescending" to Ms. G and she teared up and became red in the face.

15. Respondent made the following comments to Ms. G:

> You know, this may be one of the saddest cases there are -- not for you, 'cause you've chosen to throw your life away, that's your decision to do. Frankly it would be my desire to sentence you to life without parole because you really have demonstrated you have no desire or intention to ever be a productive member of society, to ever be a parent, to ever be anything that resembles a mother. You merely gave birth to the children but then you -- you have emotionally abandoned them.

16. Respondent further criticized Ms. G's parenting skills stating, "This is a conscious decision on your part to abandon your children to be totally self absorbed in your own world." Ms. G asked respondent to stop criticizing her and to sentence her to the term set by her plea agreement. The following colloquy occurred:

> THE DEFENDANT: . . . Can we just get this over with? I'm not going to sit here and listen to this man shoot me down. I do this to myself every day and I don't need you –
>
> THE COURT: Yes, you are.
>
> THE DEFENDANT: -- to tell me anything but sentence me so I can get out of this fucking courtroom.
>
> DEFENSE COUNSEL: Don't do that.
>
> THE DEFENDANT: I don't care. He's not going to sit here and tell me nothing. My kids –
>
> THE COURT: I tell you what I'm going to do. I'm going to sentence you to 30 days for judicial contempt and we'll come back here in about three weeks and we'll continue with sentencing. Okay. 30 days judicial contempt. Take her. Let's get another date for sentencing.

17. Respondent did not warn Ms. G that her behavior was contemptuous and he did not give her or her attorney an opportunity to be heard or an opportunity to purge the contempt before directing that she be sentenced to 30 days. He did not prepare a document memorializing the particular circumstances of the offense.

18. Ms. G was incarcerated from August 28, 2013 to September 24, 2013 on the summary contempt. When sentencing took place on September 24, 2013, respondent sentenced her to one and one-third to four years in prison pursuant to the plea agreement.

19. Respondent admitted that his conduct toward Ms. G was inappropriate and testified that he would "do it differently today."

<u>As to Charge III of the Formal Written Complaint</u>

20. On October 3, 2012, respondent presided in Family Court over *R.L.Z. v.*

T.M.F., a child custody and visitation matter. Neither of the litigants was represented by counsel.

21. During the proceeding, respondent adjusted visitation to permit the father to spend more time with the child. Ms. F, the child's mother, had concerns about the ruling and the following colloquy occurred:

> MS. F: If my daughter does not want to go with her father, I am not sending her. That's all I have to say.
>
> ….
>
> JUDGE MCGUIRE: All right. Here's the deal, Ms. F, if I learn that your daughter is not –
>
> MS. F: He's going to go to the school, or pick her up, and she's going to hear, "R Z here to"—
>
> JUDGE MCGUIRE: Take her into custody.
>
> MS. F: -- "Is here to pick up E Z" –
>
> JUDGE MCGUIRE: Take her into custody. Take her into custody.
>
> MS. F: Okay. I'm sorry. I'll try –
>
> JUDGE MCGUIRE: Judicial contempt.
>
> MS. F: I'm sorry. I –
>
> JUDGE MCGUIRE: Judicial contempt. Take her into custody. You 're disrupting the proceedings repeatedly.
>
> (SOUND OF HANDCUFFS)

22. While the audio recording of the proceeding reflected that Ms. F interrupted respondent, she told respondent that she was sorry twice after he ordered that she be taken into custody. Nonetheless, without warning Ms. F that her behavior was

contemptuous, or giving her an opportunity to be heard or an opportunity to purge the contempt, respondent loudly directed that she be taken into custody. At no time did respondent find an attorney to represent Ms. F.

23. Ms. F was placed in handcuffs, removed from the courtroom and detained in the courthouse for nearly two hours.

24. When Ms. F was returned to the courtroom, the following exchange took place:

> JUDGE MCGUIRE: All right, Ms. F, how's handcuffs feeling?
>
> MS. F: They hurt my wrist. I'm sorry.
>
> JUDGE MCGUIRE: You're not going to come into this courtroom or any other courtroom in this county and behave like this.
>
> MS. F: I know. I apologize.
>
> JUDGE MCGUIRE: This is not The Jerry Springer Show.
>
> MS. F: I know. I'm sorry.

25. Respondent did not prepare a mandate of commitment or any other document memorializing that Ms. F had been held in custody, the particular circumstances of the offense or the specific punishment imposed.

26. Respondent admitted that his conduct towards Ms. F was improper.

<u>As to Charge IV of the Formal Written Complaint</u>

27. On June 14, 2013, respondent presided in Family Court over *T.L. v. G.C. and H.B.*, a child custody and visitation matter. Ms. L, the child's mother, was not represented by counsel during the proceeding.

28. Respondent asked whether Ms. L had obtained a math tutor for her child and why the mother had participated in a school meeting by telephone. The following is reflected in the transcript:

> JUDGE MCGUIRE: Was there a transportation issue that prevented you from being present at the IEP meeting?
>
> MS. L: Yes, there is. I do not have a vehicle.
>
> JUDGE MCGUIRE: Did you speak to Mr. Jones about that?
>
> MS. L: We set up a conference meeting with the school, so I could have the conference phone.
>
> JUDGE MCGUIRE: Mr. Jones did?
>
> MS. L: Mr. Jones, myself, the school district.
>
> JUDGE MCGUIRE: Did you speak to Mr. Jones about assisting you with transportation to get you to that meeting?
>
> MS. L: I don't believe transportation was available at that time to go to that meeting.
>
> JUDGE MCGUIRE: Did you speak to Mr.—
>
> MS. L: I do not remember, sir.
>
> JUDGE MCGUIRE: You know what? Take her into custody.
>
> COURT OFFICER: Stand up, place your hands behind your back, please.
>
> JUDGE MCGUIRE: Second call.
>
> (SOUND OF HANDCUFFS)
>
> JUDGE MCGUIRE: Second call. Get these people out of my courtroom.

29. The audio recording of the proceeding reflected that Ms. L's tone was disrespectful when she stated, "I do not remember sir."

30. Respondent did not warn Ms. L that her behavior was contemptuous, nor did he give her an opportunity to be heard or an opportunity to purge the contempt before directing that she be taken into custody. Respondent did not find an attorney to represent Ms. L.

31. Ms. L was placed in handcuffs, removed from the courtroom and detained in the courthouse for over an hour. While she was in custody, she complained of chest pain and shortness of breath. Paramedics were called to the courthouse. After receiving assistance, Ms. L declined to be transferred to a hospital.

32. When Ms. L was returned to the courtroom over an hour later, respondent stated the following to her:

> Men and women spill blood every day for the freedoms that we enjoy in this court. There are countries in this world where people don't have that opportunity and they don't have an opportunity to go before a judge. They just take your children away and you disappear in some countries in the world…. So, I don't need to be draconian, there's no reason to put you into the Sullivan County Jail for 30 days, but you need to think carefully before you address the court with disrespect.

33. Respondent did not prepare a mandate of commitment or any other documentation memorializing that Ms. L had been held in custody, the particular circumstances of the offense or the specific punishment imposed.

34. Respondent admitted that he "failed to provide Ms. L with a proper warning and improperly directed that she be detained."

As to Charge V of the Formal Written Complaint

35. On January 17, 2014, respondent presided in Family Court over *L.W.G. v.*

C.C., a child visitation and custody matter. Both parties were represented by counsel.

36. During the proceeding, respondent questioned whether Ms. C could provide appropriate sleeping arrangements for the child if she were to be granted overnight visitation. She had previously purchased a "Pack 'n Play" portable crib that was then in the father's possession. Ms. C became upset when respondent stated that a condition for overnight visitation was that she purchase or obtain another portable crib or the equivalent. The following colloquy then occurred:

> JUDGE MCGUIRE: Okay. You're way ahead of the game. All right, so, here's your option, Ms. C. You can have a 24-hour period with your daughter, which will require that you buy or obtain a Pack 'n Play --
>
> MS. C: That's --
>
> JUDGE MCGUIRE: -- or a crib or someplace appropriate for her to sleep, or you can continue to have day visits.
>
> MS. C: -- That's a crock of shit to me, honestly.
>
> JUDGE MCGUIRE: I'll tell you what, take her into custody now.
>
> COURT OFFICER: Miss, stand up, please.
>
> JUDGE MCGUIRE: I told you this was not going well for you.
>
> COURT OFFICER: Miss, Miss, stand up.
>
> MS. C: Well, this isn't fair, you know what I'm saying? All -- her stroller, everything is mine, I paid for all that stuff, so why should I have to go out and shovel --
>
> JUDGE MCGUIRE: -- You need to put your hands behind your back.
>
> MS. C: Oh my God, this is so crazy right now.

(SOUND OF HANDCUFFS)

….

MS. C: This is bullshit. You know, I'm having another baby …. And I have to sit here and fight for this shit. Like, this is crazy, real fucking crazy.

….

JUDGE MCGUIRE: Yeah, we'll let her cool – calm down a little bit.

37. The audio recording of the proceedings showed that Ms. C spoke over respondent when he was addressing her and that respondent raised his voice and used an angry tone when he ordered that she be taken into custody,

38. Respondent did not warn Ms. C that her behavior was contemptuous, nor did he give her or her attorney an opportunity to be heard or an opportunity to purge the contempt before directing that she be taken into custody.

39. Ms. C was handcuffed behind her back in the courtroom and then brought to a locked conference room in the courthouse.

40. Ms. C's attorney went to the locked conference room where she was being held. He testified that she was crying and "extremely upset."

41. Ms. C was brought back to the courtroom in handcuffs approximately 15-20 minutes later. Her attorney made a statement on her behalf explaining her difficult circumstances and advised respondent that she was two months pregnant.

42. Respondent then addressed Ms. C and made the following statements to her:

The court didn't bring the child into the world, you did, and now you're going to bring another child into the world. And that's your decision to do that at a time where you don't have

> a home, don't have any money, don't have a job, but that's your decision --

Ms. C cried while respondent addressed her. Respondent admitted that his comments were not respectful to Ms. C.

43. Respondent did not prepare a mandate of commitment or any other document memorializing that Ms. C had been held in custody, the particular circumstances of the offense or the specific punishment imposed.

44. Respondent acknowledged that he "failed to provide Ms. C with adequate notice concerning her conduct and improperly directed that she be removed from the court."

As to Charge VI of the Formal Written Complaint

45. On December 2, 2014, respondent presided in Family Court over *A.S.C.F v. J.C.K. and N.K.*, a child custody and visitation matter. Mr. F is the child's father and Mr. K and Mrs. K are the child's maternal grandparents. The grandparents were not represented during the proceeding.

46. The child had been living with the grandparents for the prior year and the grandfather transported the child to the father. At the end of the proceeding, the grandfather asked if there was any way that he did not have to bring the child to the father "or am I forced?" Respondent then ordered that the child be immediately turned over to the father.

47. The following colloquy occurred:

> JUDGE MCGUIRE: See you January 15th. Turn the child over to the father right now.

MR. K: How are you going to turn the baby over to him right now, sir? Look at the paperwork.

JUDGE MCGUIRE: Turn the child over to the father right now.

MR. K: Oh, my God.

MRS. K: If anything happens to my son -- my grandson, Your Honor, I will sue the county, and I will sue you.

MR. K: That's for sure.

JUDGE MCGUIRE: Take her into custody. You want to threaten the judge? Take her into custody.

MRS. K: I'm just -- I'm not threatening you.

JUDGE MCGUIRE: Take her into custody. You want to threaten the judge? Take her into custody.

MR. K: Sir, is there anything you can do with this, about the -- the threats that he did to her?

MRS. K: Take a look, the abuse, what he did. He kicked her --

JUDGE MCGUIRE: Get her out of here.

MRS. K: -- He kicked --

JUDGE MCGUIRE: Get her out of here.

MR. K: Ma'am, Ma'am?

MRS. K: Pray God, pray God, my grandson's life.

(SOUND OF HANDCUFFS)

48. The audio recording of the proceeding reflected that respondent addressed

the parties in an angry, loud voice when he ordered the court officers to "get her out of here."

49. Respondent did not warn Mrs. K that her behavior was contemptuous, nor did he give her an opportunity to be heard or an opportunity to purge the contempt before directing that she be taken into custody. Respondent did not provide an attorney for Mrs. K prior to ordering that she be placed in custody.

50. Mrs. K was placed in handcuffs in the courtroom and detained for more than an hour in the courthouse.

51. In his testimony during Commission's investigation, respondent testified that Mrs. K "was disrespectful to the court" and that he took her statement about suing him "as a statement of a threat … to the authority of the Court…." Subsequently, respondent admitted that he was discourteous to Mrs. K and that he "improperly directed the removal of Ms. K from the court."

52. When Mrs. K was brought back into the courtroom over an hour later, there was a discussion about an attorney she wanted to represent her. Respondent stated, ". . . but this is a -- this is a judicial contempt proceeding. It's called a summary proceeding. If I say that you disrupted the proceedings, I can put you in jail for 30 days and that's it."

53. Mr. K pleaded with respondent not to put his wife in jail for 30 days stating, "Please don't do that, sir. I'm sorry." Respondent then stated, "You want me to put you in for 30 days?" Mr. K replied, "No. I'm sorry."

54. Mrs. K then stated, "I'm sorry, Your Honor. That baby is my life."

Respondent stated, ". . . I'm going to release you this time. I'm not going to pursue judicial contempt against you, I'm not going to put you in jail, all right?"

55. Respondent did not prepare a mandate of commitment or any other documentation memorializing that Mrs. K had been held in custody for over an hour, the particular circumstances of the offense or the specific punishment imposed.

56. Respondent acknowledged that he did not follow the provision in Section 755 of the Judiciary Law which requires that in summary contempt matters the judge issue an order stating the facts of the offense.

As to Charge VII of the Formal Written Complaint

(a) M.A.P. v. S.R. and S.Ro.

57. On January 28, 2013, respondent presided in Family Court over *M.A.P. v. S.R. and S.Ro.*, a child custody and visitation matter. Mr. P is the child's father. Ms. Ro is the child's maternal grandmother. The child, who was approximately eleven years old at the time, was present in court and was represented by counsel.

58. Respondent issued a temporary order granting Mr. P visitation every other weekend which Ms. Ro, the grandmother, opposed. Respondent then adjourned the proceeding.

59. After the case was concluded and while the parties and child were still in the courtroom, Ms. Ro said something to her granddaughter. Both the father's attorney and the attorney for the grandmother testified that respondent got angry and was "yelling" and "screaming" at Ms. Ro. The grandmother's attorney testified that respondent said something about putting his client in handcuffs and that, "the judge was

screaming at her, and she was having trouble breathing and she was very upset. She was shaking." After respondent yelled at her, the grandmother cried.

60. Ms. Ro complained of having difficulty breathing and was in "great distress." Paramedics were called. She was treated at the courthouse.

61. Respondent admitted that his "warning to Ms. Ro was improper and was discourteous."

(b) Department of Family Services v. T.E. and A.F.

62. On November 7, 2014, respondent presided in Family Court over *Department of Family Services v. T.E and A.F.*, a child custody and visitation matter.

63. While a witness was testifying, respondent yelled, "Ms. E, you are about three seconds from getting yourself put in handcuffs and taken out of here."

64. Prior to making this statement, respondent did not indicate what behavior he found to be inappropriate. Nothing in transcript of this proceeding indicated that Ms. E had done anything to disrupt the proceeding or otherwise engaged in any inappropriate conduct.

65. Respondent admitted that he "failed to make an appropriate record of the actions of the litigants and failed to adequately explain in a courteous manner the actions which he found improper."

(c) Curtis R. Varner v. Amanda N. Glass

66. On August 21, 2014, respondent presided in Family Court over *Curtis R. Varner v. Amanda N. Glass*, a child custody and visitation matter. In 2013, the parties agreed to move to California with the understanding that Ms. Glass would move with the

children and Mr. Varner would follow later. Before Mr. Varner moved to California, there was a relationship breakdown and Mr. Varner filed a custody petition which was before respondent.

67. Without any evidentiary basis, respondent made comments regarding Ms. Glass having a boyfriend in California. Respondent stated, "I mean, you're sure her boyfriend isn't here to testify?" Respondent also stated, "Clearly, the mother went out there [California] because she wanted out of this marriage. Clearly, she want—she's out there and she gets involved in another relationship, and clearly, that's her interest."

68. Ms. Glass' attorney testified that there was no testimony or discussion about Ms. Glass having a boyfriend. Respondent acknowledged there was no such testimony.

69. In addition, without indicating what she had done, respondent loudly stated to Ms. Glass' mother who was sitting in the back of the courtroom:

> I'm going to throw you out and put you in handcuffs in about 30 seconds, all right? So you can either walk out or get thrown out if I have to look at another outrageous expression from you. Clear? Because if I have to tell you again, I'm just going to ask the officer to put you in handcuffs, and then you'll – you'll experience the Sullivan County Jail.

70. After hearing only Ms. Glass' direct testimony, respondent granted full custody to Mr. Varner and made no provision for Ms. Glass to have any contact with the children.

71. In its July 2015 decision in *Varner v. Glass*, 130 A.D.3d 1215 (3d Dept.

2015), the Appellate Division reversed respondent finding that "[t]he record evidence here was patently insufficient" to support respondent's decision. In its decision, the Court found that respondent "treated the mother with apparent disdain, such that we cannot be assured that further proceedings will be conducted in an impartial manner" and ordered that further proceedings be before a different judge. *Id.* at 1217.

72. During the hearing before the referee, respondent admitted that he treated Ms. Glass with disdain.

As to Charge VIII of the Formal Written Complaint

(a) Wendy Weiner

73. Wendy Weiner was respondent's confidential secretary from January 2011 until March 2015. She subsequently became the Deputy Chief Clerk of the Sullivan County Surrogate's Court.

74. On January 14, 2015, around 7:50 a.m., respondent told Ms. Weiner that there was a problem with his computer. Respondent was "very upset and agitated" and shouted that he needed access to his notes and someone to fix the problem.

75. When Ms. Weiner told respondent that no one was available in the IT Department at that hour, respondent became even more agitated. Respondent took a computer jump drive and threw it across the desk toward Ms. Weiner. Respondent shouted and Ms. Weiner was scared.

76. Respondent also took the files that Ms. Weiner had brought into his office and threw them across the desk and onto the floor. Ms. Weiner was "shaking," "scared," and "very upset."

77. That morning, a court officer, a sergeant and respondent's law secretary observed that Ms. Weiner was visibly upset.

78. In March 2015, Ms. Weiner was transferred to work in the Sullivan County law library.

79. Respondent became aware that Ms. Weiner made a complaint about his conduct to the Inspector General of the Office of Court Administration and he was interviewed by the Inspector General's office on April 5, 2015.

(b) Court Officer Miguel Diaz

80. Court officer Miguel Diaz, a court officer since approximately 2004, was assigned to respondent's court part on June 29, 2012, when *Department of Family Services v. T.N.* was on the calendar. After most of the parties had entered the courtroom, Officer Diaz received a radio transmission that someone else for that matter was walking to the courtroom. Officer Diaz then opened the door in anticipation of the individual arriving.

81. The audio recording of the proceeding established that respondent angrily shouted at Officer Diaz: "Keep 'em out. Keep 'em out. Close the door." When Officer Diaz tried to tell the lieutenant what was happening, respondent yelled, "They're—they're staying out. Close the door. Jesus" and "Get off the radio."

(c) Sergeant Guillermo Olivieri

82. Sergeant Guillermo Olivieri, who was assigned to Sullivan County Family Court in 2009, was in respondent's court part on February 25, 2013, when the *H. v. E.* matter was on the calendar.

83. When all the parties for the *E* matter were not ready to come into the courtroom, respondent in a somewhat loud and angry tone, said: "Miguel, please get cases lined up on the door." He then directed Officer Diaz to tell Sergeant Olivieri to meet him in his chambers.

84. On February 25, 2013, Officer Diaz told Sergeant Olivieri that respondent wanted to see him in his chambers. Sergeant Olivieri testified that as he approached respondent's chambers, the door to the courtroom opened and respondent, who was still in his judicial robe, came "towards me in a very aggressive manner, red in the face and he was pointing in my direction." Respondent's court assistant and secretary at the time testified that respondent walked rapidly and aggressively toward Sergeant Olivieri.

85. Respondent approached him yelling, "I want another officer now, now, I want another officer now" and that he "need[ed] to move a calendar." In response, Sergeant Olivieri, who was "in shock", got into a "bladed stance" because he was unsure what was going to happen. Sergeant Olivieri explained that he was trained that when you are "having an encounter with" someone, you should angle your body so your firearm is furthest away from the person.

86. The sergeant told respondent that he would assign another officer to the courtroom and that he should not talk to him "in that tone."

(d) Court Officer Brenda Downs

87. Court officer Brenda Downs became a court officer in approximately 2006. She was assigned to the Sullivan County Family Court.

88. In or about 2014, Officer Downs was assigned to respondent's courtroom.

At the conclusion of a proceeding, respondent called a short recess and went into chambers to work on a decision. Officer Downs, a court assistant and respondent's secretary, were outside of respondent's chambers talking. Respondent was in his office with the door open. He then walked to the door and, without saying anything, slammed the door closed. At that time, Officer Downs was standing four or five inches away from the door.

As to Charge IX of the Formal Written Complaint

89. On March 10, 2014, respondent presided in Family Court over *M.A.M. v. R.R.H.,* a child custody and visitation matter. The parties appeared for court approval of an informal custody and visitation agreement. Neither party was represented by counsel.

90. During the proceeding, respondent stated that the parties should use "good judgment" before they introduced their daughter to someone whom they were dating. Respondent stated that if the parties' daughter "has to endure anyone that Mr. H dates is a drug addict, a slut, whatever, or anyone that Ms. M dates is a drug addict, a slut, a child abuser, whatever, then she is going to have a very difficult time of this." There was no evidence or allegation that either party had a history of dating such individuals, had introduced their child to such individuals, or was dating at all.

91. Respondent admitted that his comments were inappropriate and undignified.

As to Charge X of the Formal Written Complaint

92. Prior to assuming judicial office in January 2011, respondent had a private

law practice with an office in Ferndale, New York. He had law office letterhead, maintained a telephone and answering machine for law office business purposes and used a facsimile machine with the heading "McGuire Law."[1]

93. For a few years after becoming a full-time judge, respondent occasionally utilized the same letterhead, facsimile machine and telephone number that he had used while practicing law prior to January 2011.

94. Respondent admitted that a full-time judge's name cannot be linked to a law firm. He further admitted that he violated the Rules when he used his former law office letterhead and facsimile machine after he became a full-time judge.

95. After closing his law office, respondent had his mail forwarded to PO Box [redacted], Ferndale, New York.

96. Respondent had a close personal relationship with Sullivan County attorney Zachary D. Kelson ("Kelson"). Respondent acknowledged that Mr. Kelson was a "good friend." They have had lunch together. Respondent attended Mr. Kelson's son's Bar Mitzvah in 2015. Mr. Kelson also made a monetary contribution to respondent's judicial campaign in 2010.

(a) People v. W.M.

97. On or about September 20, 2012, respondent's son was arrested in Oneonta, New York for Unlawful Possession of Marihuana.

[1] The answering machine message for the telephone number indicated, "You've reached the office of Michael McGuire, there's no one available to take your call right now . . ."

98. Respondent told his friend attorney Kelson about the arrest and Mr. Kelson offered to contact the District Attorney's office to determine if an Adjournment in Contemplation of Dismissal ("ACD") would be offered. Mr. Kelson spoke with the District Attorney's office and informed respondent that an ACD would not be offered.

99. On December 2, 2012, using letterhead from his former law office, respondent sent two letters on behalf of his son to the Chief Clerk of the Oneonta City Court. In one December 2nd letter, respondent enclosed his Notice of Appearance stating that he "appears as counsel for the defendant." Respondent included an Affirmation of Actual Engagement for December 5, 2012, the date of his son's next court appearance. In this Affirmation, which was made under penalty of perjury, respondent identified three County Court and three Family Court cases in which he would be engaged on December 5, 2012. All the cases respondent identified were cases in which he was presiding as the judge.

100. Respondent identified himself on both December 2nd letters, the Notice of Appearance and the Affirmation of Actual Engagement, as "MICHAEL F. McGUIRE, ESQ." The letters were sent by facsimile and contained a facsimile stamp reading "MCGUIRE LAW."

101. On February 26, 2013, respondent appeared in court to represent his son and conferenced the case with the prosecutor and the judge.

102. On April 8, 2013, respondent sent a letter on his former law office letterhead enclosing a motion seeking various relief which he signed as "Michael F. McGuire, Esq."

103. On August 6, 2013, the judge issued a decision in respondent's son's case which decision identified respondent as the attorney for the defendant. The charges were dismissed in the interest of justice.

104. Respondent admitted that he "absolutely" knew in 2013 that he was prohibited from representing his son but did so anyway. Respondent admitted this was improper.

(b) People v. Corinne McGuire

105. On May 17, 2010, respondent's wife, Corinne G. McGuire, received a speeding ticket in Wawarsing, New York. Respondent, who was not a judge at that time, represented his wife in that matter. Respondent believed the matter was resolved in 2010.

106. On July 22, 2011, the Wawarsing Town Court sent a letter advising that respondent's wife's license would be suspended if she failed to respond.

107. On July 25, 2011, respondent, then a judge, sent a letter on his former law office letterhead on behalf of his wife to the Wawarsing Town Court Justice. Respondent's letter included a statement that he was now a County Court Judge and was "not permitted to represent this or any other client." He asked the court to "accept the previously submitted plea" that he had discussed with the prosecutor. After respondent sent the letter, the ticket was dismissed.

108. Respondent admitted that he "improperly communicated with the Court" and that it was improper to use his former law office letterhead.

(c) George Matisko

109. Prior to becoming a full-time judge, respondent represented George

Matisko in connection with a personal injury matter.

110. On January 20, 2011, after respondent became a full-time judge, a representative for Progressive Casualty Insurance Company ("Progressive") requested a signed medical information release form for Mr. Matisko. The same day, by letter on respondent's former law office letterhead, Mary Ann Schares, respondent's sister who had worked in his former law office, sent Progressive the form. The letter was signed "Michael F. McGuire/mas."

111. Between January and October 2011, Progressive sent three letters to respondent at the address of his former law practice regarding Mr. Matisko's claim.

112. Respondent's confidential secretary, Ms. Weiner, had previously worked at a personal injury law firm. Respondent asked her to call Progressive and negotiate a settlement for Mr. Matisko.

113. On October 31, 2011, Ms. Weiner received an offer from Progressive to settle the matter for $1,000 which respondent told her to accept and to draft a release. Ms. Weiner drafted a release and sent it to Progressive from her office email account on November 30, 2011.

114. Mr. Matisko came to respondent's chambers during business hours on December 23, 2011 and signed the release. Ms. Weiner notarized it. Respondent was present when Mr. Matisko came to chambers.

115. On "Michael F. McGuire, Esq." letterhead with respondent's PO Box number, Ms. Weiner prepared and signed a December 23, 2011 letter forwarding the signed release to the adjuster. She used the PO Box address because it was the address

used "for most of the stuff that was personal coming through our office as opposed to official court business."

116. In January 2012, respondent asked Ms. Weiner to arrange for Progressive to issue a new check. On January 25, 2012, Ms. Weiner prepared a letter on "Michael F. McGuire, Esq." letterhead with the PO Box address requesting a replacement check. She electronically signed the letter "Michael F. McGuire" over the typed line "Michael F. McGuire, Esq." Respondent knew that Ms. Weiner was sending the letter.

117. On January 26, 2012, Progressive issued a $1,000 check payable to "GEORGE MATISKO ADULT MALE & MICHAEL MCGUIRE, ESQS., AS ATTORNEY." The check was sent to the PO Box in Ferndale, New York which respondent used after he closed his law office. Respondent and Mr. Matisko endorsed the check.

118. Respondent claimed Ms. Weiner acted on her own regarding the *Matisko* matter and that she was "masquerading as Judge McGuire without his knowledge." The referee found that his claim was not credible.

(d) Ellen and Phillip Moore

119. Respondent was a friend of Christopher DePew and his wife Heather. In 2014, Heather's parents, Eileen and Phillip Moore, were selling their house and Heather was interested in a foreclosure property as a replacement house for her parents. Edward Jeffrey Dolfinger was the listing broker for the house for the foreclosure company.

120. The Moores knew respondent and told him that they wanted to purchase the

foreclosure property without using an attorney. Respondent told them that they needed to have the home inspected, get a survey and have a title company do a search of the property. He also suggested that the Moores have an attorney look at the contract because it was a foreclosure.

121. Respondent's brother, Ken McGuire, is also an attorney. While respondent and the Moores discussed Ken McGuire's involvement in the transaction, the Moores each testified that they never met or spoke to Ken McGuire.

122. On July 28, 2014, Mary Ann Schultz, a paralegal with the law firm representing the foreclosure company, sent an email to obieinky@[redacted], an email address used by respondent's wife. The email was addressed "Good Morning Mr. McGuire" and stated, "[k]indly copy and have your client sign four (4) copies of the contract and return" them with a check or money order.

123. Respondent subsequently went to the Moore home with the contract for the purchase of the property. Eileen and Phillip Moore each testified that, while at their home, respondent explained the contract to them and showed them where to sign it. On the contract, Ken McGuire's name was listed as the attorney for the purchasers and respondent's cellular telephone number and business PO Box were listed as contact information. The Moores signed the contract in respondent's presence and he took the documents with him.

124. On August 12, 2014, Ms. Schultz sent two emails to respondent's wife's "obieinky" email. The emails were addressed to "Mr. McGuire" and attached to one was the "the fully executed contract" and attached to the other was a closing extension.

125. On August 25, 2014 at 2:19 p.m., Ms. Schultz, the paralegal, sent an email to the broker, copying the "obieinky" email address. In this email, the paralegal attached an extension addendum and asked the broker if the "obieinky" email address was the correct email for the buyer's attorney.

126. Later that day, at 8:09 p.m., an email was sent from "Mr MICHAEL MCGUIRE <judgemcguire@[redacted]>" to Ms. Shultz regarding addendums and the home inspection. The email was signed "Ken McGuire, Esq" but gave a contact number of [redacted]-8568. This telephone number is respondent's cellular telephone number.

127. On August 26, 2014 at 5:16 a.m. an email was sent from the "judgemcguire" email address to Ms. Schultz and signed "Ken McGuire." This email again provided respondent's cellular telephone number as the contact telephone number.

128. On August 26, 2014 at 8:48 a.m. an email was sent to Ms. Schultz from the "judgemcguire" email address signed by "Ken" which indicated that a telephone conversation had taken place between them. The email stated: "To clear up the confusion I am handling this matter but Mike is my brother, also an attorney but not practicing full time right now, and so you may from time to time speak with him as well. Sorry for the confusion."

129. On August 25 and 26, 2014, there were several emails between Mr. Dolfinger, the broker for the property, and respondent's email address. Some of the emails from the "judgemcguire" email address were signed "Ken" or "Ken McGuire." One of the August 26 emails from the "judgemcguire" email address was sent at 3:47

a.m. and did not have a signature. Respondent testified that he began his work day between 3:00 and 3:30 a.m.

130. On August 25, 2014 at 8:55 p.m., an email regarding a home inspection was sent to the broker from the "judgemcguire" email address and was signed "Ken McGuire." Mr. Dolfinger had never received an email from this email address before; all other correspondence had been with the "obieinky" email address. When he received the email, the broker was not sure who he was dealing with since the email address said Michael McGuire, but it was signed Ken McGuire.

131. Respondent testified that it was not him but his brother Ken who represented the Moores in connection with the real estate transaction and that it was Ken who used respondent's "judgemcguire" email address to communicate about the Moore real estate transaction. The referee found this testimony not credible.

132. The broker never received an email with an email address identified as one belonging to Ken McGuire nor did he ever speak to Ken McGuire.

133. On September 3, 2014, Ms. Schultz received an email from the "judgemcguire" email address regarding the home inspection and closing. The email was signed "Ken McGuire" and stated, "I am on vacation from September 16–24."
A September 9, 2014 email from the "judgemcguire" email, signed Ken McGuire, stated "I am out of town from the 15th (Monday) through the 24th."

134. Although respondent denied that he was on vacation during that period, an

August 5, 2014 email from respondent's court secretary to other court personnel indicated that respondent would be away from September 16 through September 23, 2014.

135. An email to the real estate paralegal on September 17, 2014 from the "judgemcguire" email address and signed "Ken," stated, "I am down in Florida."

136. On January 7, 2015, Eileen Moore called respondent's chambers and spoke with Ms. Weiner. In an email, Ms. Weiner asked respondent to call Ms. Moore and stated, "[t]here is concern on a bill where penalties are accruing as a check has never been received." Respondent admitted that he received this email and that he probably called the Moore's daughter or son-in-law back in response.

(e) Ricky Pagan

137. In 2010, before he became a judge, respondent represented Ricky Pagan in connection with his purchase of property in foreclosure. Mr. Pagan had paid $5,000 in back taxes on the property but had no agreement with the property owner. In order to protect Mr. Pagan's interest, in 2010 respondent prepared and filed a mortgage.

138. After respondent became a full-time judge, he received a call from the owner of the property and he returned the call. The owner indicated that she had received another foreclosure notice. Respondent then told Mr. Pagan to go to the treasurer's office because the property was going to be foreclosed.

139. In 2013, Mr. Pagan spoke to respondent about "how to go about finishing the deal" and respondent helped him finish the purchase of the property. Mr. Pagan brought respondent a check for the balance of the purchase price and respondent sent it to

the seller along with relevant documents. Respondent asked the seller to return the documents to him.

140. On November 14, 2013, the deed transferring the property to Mr. Pagan was filed with the Sullivan County clerk's office. The clerk's Recording Page stated that the deed was received from "MCGUIRE" and the last page of the deed directed that it should be returned to Michael F. McGuire at the PO Box where respondent was receiving his business mail after he became a full-time judge.

(f) Christopher Lockwood

141. Before becoming a judge, respondent represented Christopher Lockwood regarding a June 6, 2010 speeding ticket issued in Liberty, New York.

142. After respondent became a full-time judge, the Liberty Town Court sent a letter dated January 4, 2011 to respondent at the address of his former law office, informing him of an appearance date in the *Lockwood* matter.

143. When the parties did not appear on the return date, the Liberty Town Court clerk called respondent's chambers and left a message for him to call her about the *Lockwood* matter. Respondent returned the call and informed her that his brother, Ken McGuire, would be handling the matter.

144. On February 1, 2011, a letter on respondent's former law office letterhead and signed "Kenneth J. McGuire, Esq." was sent to the Liberty prosecutor enclosing a completed application to amend a traffic infraction and Mr. Lockwood's driving record abstract. During this time, respondent was aware that letters were being sent using his former law office letterhead.

145. Respondent showed Ms. Weiner the Lockwood traffic ticket and application and told her to fill in the missing information on the application. Ms. Weiner told respondent that she did not know how to fill out the application and that she needed his help.

146. On August 5, 2011, after respondent completed the application, Ms. Weiner drafted and sent a letter to the Liberty Town Court which included a "properly executed" application. The letter was signed using respondent's computer-generated signature and the letterhead had his PO Box which he used after becoming a full-time judge. Respondent knew that Ms. Weiner sent the letter and application to the Liberty Town Court.

147. On September 12, 2011, the Liberty Court sent a letter to respondent and Mr. Lockwood informing them that the "court has accepted your guilty plea for the charge(s)." The letter was sent to respondent at his former law firm address.

148. The Liberty Town Court clerk never received Ken McGuire's contact information, she never spoke to Ken McGuire and he never appeared in court on the matter.

As to Charge XI of the Formal Written Complaint [2]

[2] The first paragraph of Charge XI in the Formal Written Complaint referenced the period from "January 2011 through in or about 2014" but the specifications in the complaint alleged that the conduct occurred from January 2011 through 2016. The evidence at the hearing established that the conduct in this charge continued through 2016. The Commission asked the referee to deem the complaint amended to conform to the specifications and the proof at the hearing. The referee found that respondent did not oppose the request and recommended that the request be granted. The request to amend the first paragraph of Charge XI in the complaint is granted.

Matters Involving Attorney Zachary Kelson

149. During the time that respondent was a judge, respondent's friend, Sullivan County attorney Kelson, assisted respondent in connection with respondent's son's arrest for possession of marihuana. While respondent was a judge, at respondent's request, Mr. Kelson also represented individuals respondent knew, sometimes for no fee. While Mr. Kelson was providing this representation and subsequently, respondent presided over matters in which his friend, Mr. Kelson, appeared as counsel.

a. *People v. W.M.*

150. As described above, ¶98, Mr. Kelson contacted the prosecutor regarding a possible ACD for respondent's son and informed respondent in an email that an ACD would not be offered. Respondent and Mr. Kelson also exchanged emails about legal issues in the case.

151. On November 20, 2012, Mr. Kelson sent the Oneonta prosecutor an email, which he blind copied to respondent. Respondent replied to Mr. Kelson, "Thank you let me know if you hear anything back . . ." and opined on the merits of the case against his son.

152. Further emails between Mr. Kelson and the prosecutor and Mr. Kelson and respondent between November 21, 2012 and December 3, 2012 established Mr. Kelson's continued involvement with the Oneonta prosecutor on behalf of respondent's son. Respondent thanked Mr. Kelson for his efforts.

153. After Mr. Kelson advised respondent that his efforts to obtain an ACD or

dismissal had failed, respondent emailed him on December 3, 2012 at 3:53 a.m. and again thanked him for helping with his son's case.

154. Mr. Kelson replied thanking respondent for his "kind words" and stated, *inter alia*, "I just feel as if I failed you because I couldn't get the case resolved without involving you or your brother." Later that day, respondent replied, "[D]on't worry you did not fail me at all, we will handle it you are great and a wonderful friend. Missed you at Brother Bruno's today." Brother Bruno's is a restaurant where Mr. Kelson and respondent have had lunch together.

b. *People v. Tina McTighe*

155. From approximately July 2012 through November 2012, Mr. Kelson represented Tina McTighe, a close friend of respondent's wife, in connection with a speeding ticket. Respondent told Mr. Kelson that Ms. McTighe had received a speeding ticket. Mr. Kelson represented McTighe for no fee.

156. Emails between Mr. Kelson and respondent established that Mr. Kelson kept respondent informed regarding his representation of Ms. McTighe and discussed an appropriate disposition.

157. When the matter was resolved and the payment of a fine was required, Mr. Kelson sent respondent a copy of the court document and asked respondent to arrange for Ms. McTighe to pay the fine. Respondent replied to Mr. Kelson's email, "Absolutely, I will take care of that thank you Mike."

c. *County of Sullivan v. Estate of Lydia Fernandez*

158. According to respondent, Jerry Fernandez is "probably my closest friend."

Respondent asked Mr. Kelson to represent Mr. Fernandez in *County of Sullivan v. Estate of Lydia Fernandez*, a case involving Mr. Fernandez's deceased mother's debts. Mr. Kelson had previously represented Mr. Fernandez. Respondent forwarded documents regarding the case, including the summons, to Mr. Kelson and Mr. Kelson represented Mr. Fernandez.

159. On April 19, 2012, Mr. Kelson emailed respondent a copy of the settlement in that matter together with a copy of his letter to Mr. Fernandez in which he explained the terms and advised "[t]here is no charge for my services rendered." Respondent replied, "Thank you very much, I cannot tell you how much I appreciate your friendship, our lunch breaks are great therapy for me. Mike."

160. When Mr. Fernandez failed to make payments in compliance with the settlement, Mr. Kelson emailed respondent. Respondent replied to a January 21, 2014 email from Mr. Kelson stating that he would contact Mr. Fernandez and stated, "Thanks for staying on top of that for me. Mike."

d. *Eye Physicians of Orange County, PC v. Gerardo Fernandez*

161. Respondent also asked Mr. Kelson to represent Mr. Fernandez in *Eye Physicians of Orange County, PC v. Gerardo Fernandez* which related to a debt Mr. Fernandez owed. On October 27, 2014, respondent emailed Mr. Kelson a copy of the summons in that matter which was returnable the next day, October 28, 2014.

162. The next day, on October 28, 2014, Mr. Kelson sent a letter to the judge presiding over the *Fernandez* matter and requested an adjournment because "I will be actually engaged before the Hon. Michael F. McGuire, Sullivan County Family Court

Judge, in the Sullivan County Family Court this afternoon in a proceeding entitled "In the Matter of Sullivan County DFS vs. 'C.'" Mr. Kelson sent a copy of this letter to respondent.

163. Respondent did not disclose this to the parties in that matter and he did not recuse himself.

164. Mr. Kelson informed respondent by email when he settled the *Fernandez* matter and asked respondent to "let Jerry know it's settled." Respondent and Mr. Kelson discussed having dinner at Mr. Fernandez's restaurant so respondent could thank Mr. Kelson for his work on the *Fernandez* matter. The dinner did not happen.

165. Respondent admitted that it was improper for him to have tried to arrange such a dinner while Mr. Kelson was appearing before him.

e. *People v. Lindsay Amoroso*

166. On July 26, 2011, Lindsay Amoroso received a speeding ticket in the Town of Plattekill. While respondent and attorney Kelson were having lunch, respondent asked him if he knew an attorney who could represent Ms. Amoroso in Plattekill. Respondent told Mr. Kelson that Ms. Amoroso was a close friend of one of his sons.

167. Mr. Kelson told respondent that he would handle the case and respondent gave him a copy of the speeding ticket. Respondent told Mr. Kelson that he could do whatever he wanted regarding a fee. Mr. Kelson decided to charge no fee.

168. Emails between Mr. Kelson and respondent established that Mr. Kelson kept respondent informed on the progress of the case. Respondent provided a signed waiver form for use in connection with the case. When Mr. Kelson informed respondent

via email that the case was resolved, respondent replied, "Great thank you very much. Mike."

f. *People v. Willie Williams*

169. In 2013, respondent asked Mr. Kelson to represent Willie Williams in connection with two speeding tickets. Respondent told Mr. Kelson that he knew Mr. Williams from when respondent had worked at Sullivan County Community College. Mr. Kelson did not charge Mr. Williams a fee for his legal services.

170. After Mr. Kelson resolved the matters for Mr. Williams, he forwarded a copy of his communication with Mr. Williams to respondent. Respondent thanked Mr. Kelson for his work on behalf of Mr. Williams.

g. *Lori Shepish*

171. In 2015, Mr. Kelson represented Lori Shepish, whom respondent referred to him, in connection with a real estate closing. Ms. Shepish was respondent's wife's hairdresser. Mr. Kelson received a fee of $750 from Ms. Shepish for his legal services.

172. On March 12, 2015, Mr. Kelson blind copied respondent on an email he sent to Ms. Shepish about his fee and requesting certain information related to the closing.

173. On May 28, 2015, Mr. Kelson sent an email to respondent thanking him for referring Ms. Shepish to him.

174. During the same period that attorney Kelson represented the various individuals connected to respondent referred to above, he regularly appeared before respondent in Family Court where he was law guardian for the child. Respondent did

not disclose his relationship with Mr. Kelson in any of the cases in which Mr. Kelson appeared and did not recuse himself on such matters until 2019.

175. Mr. Kelson also appeared before respondent in Supreme Court on various matters during this same time period. Respondent admitted that he never made a record of his relationship with Mr. Kelson or disqualified himself in any of the cases in which Mr. Kelson appeared before him.

176. During the period in which Mr. Kelson represented litigants connected to respondent, attorney Kelson, who was also respondent's friend, appeared as counsel in the following matters before respondent:

a. *Rochelle Massey v. Sullivan County Board of Elections* in Supreme Court (January 2014);

b. *FIA Cards Services v. Sandra Fishbain* in Supreme Court (April 2014 to August 2016);

c. *Jeffrey H. Miller v. Town of Liberty Assessor* in Supreme Court (July 2013 to September 2013 and July 2014 to December 2016);

d. *Two Sullivan Street Trust v. Town of Liberty Assessor* in Supreme Court (July 2013 to September 2013);

e. *Sam's Towing & Recovery, Inc. v. Town of Liberty Assessor* in Supreme Court (July 2013 to September 2013);

f. *Matter of P* in Family Court (December 2013 to May 2016); and

g. *Matter of C* in Family Court (April 2013 to October 2015).

177. Respondent admitted that in connection with these matters he did not

disclose his relationship with Mr. Kelson nor did he disqualify himself.

178. Respondent acknowledged that it was inappropriate for him to have failed to disclose his relationship with Mr. Kelson in these matters.

179. As of May 1, 2019, shortly before the hearing before the referee began, respondent disqualified himself from all cases in which Mr. Kelson appears.

Dean v. Boyes Matter

180. In or about January 2013, respondent was assigned to preside in Supreme Court over *Michael and Joann Dean v. Sean and Dawn Boyes,* which involved the partition of property jointly owned by the parties.

181. In 2007, when respondent was in private practice, he represented Sean Boyes' mother in the transfer of the same property at issue in the pending litigation.

182. On January 24, 2013, the attorney for the Deans wrote a letter to the chief clerk stating that respondent had previously represented one of the parties and "would probably recuse himself." A copy of the deed respondent had prepared was included with this letter. On February 5, 2013, the attorney for the Deans wrote another letter to the chief clerk which indicated that "Judge McGuire may be conflicted out of this case by my prior correspondence to you."

183. Respondent testified that he did not know that he had represented Sean Boyes' mother regarding the same property at issue in the matter pending before him. He admitted that he did not make any effort to determine if it was the same property.

184. On February 13, 2013, respondent presided over the case and stated the following on the record:

> There was an application, a letter that was sent by Mr. Shawn asking the Court to consider recusing themselves on this matter because there had been a prior relationship with Mr. Boyes. I searched the records of my firm and learned that I had been involved in a real estate transaction representing Mr. Boyes' mother, not Mr. Boyes. It was a unique real estate transaction in that they came to the office, and it was a conveyance of her to her and him. They came to the office, they said what they wanted to do, and came back a couple hours later, a deed was prepared, a TP and an RP were prepared, and that was the extent of the relationship that went on. There were no discussions beyond that, and I don't see where that causes the Court to be disqualified at all.

185. Sean Boyes, one of the defendants in the matter, had a construction company, Boyes & Torrens. According to respondent, approximately a year before the February 13, 2013 court appearance, Boyes & Torrens had done work at the home of his law clerk, Mary Grace Conneely.

186. During the February 13, 2013 appearance in the *Dean v. Boyes* matter, respondent made the following statement:

> There is also an issue potentially, but I want to get the record out so we can be completely up front, that Mr. Boyes, I guess he has a construction company and he has done some work for my law clerk in her home. We, again, don't see that as -- we live in a small community where those things happen. She paid him what he was asking for. There was no issue with us having the case. This is work that was done more than a year ago. Ms. Conneely doesn't recall the exact dates, but I imagine a bid or estimate was given, the work was done. It took longer than she expected, which anyone who has done construction in their homes knows that does happen, and presumptively the construction company was paid what they were asked. There was certainly nothing untoward in that relationship, because we obviously at that time weren't even handling Supreme Court matters. And this matter was filed in 2009, so at that time it was in front of either Judge Ledina or

> Judge Melkonian, and the work was done in 2011, maybe 2012, and Judge Melkonian had it at that time.

Respondent stated that if any of the parties, "feels very strongly the Court should reconsider our position on that, we can deal with that, but I want to get on to the matters at hand. If anyone needs to make a record, make a record now." The attorneys did not object.

187. After the February 13, 2013 appearance, respondent's law clerk, Ms. Conneely, and her husband hired Boyes & Torrens to do work on their home. Ms. Conneely issued a check dated April 29, 2013 to Boyes & Torrens.

188. While respondent was presiding over *Dean v. Boyes*, Boyes & Torrens provided two proposals, dated July 13, 2013 and August 20, 2013, for work on Ms. Conneely's home. Between April 29, 2013 and June 25, 2014, while the *Dean v. Boyes* case was pending before respondent, Ms. Conneely and her husband issued six checks to Boyes & Torrens totaling approximately $50,000 for work on their home.

189. When asked if she told respondent about the work being done at her home, Ms. Conneely testified, "Yes. And in fact, I brought in material that I was using for my kitchen and I had it out in my office at that time and we were commenting on how good the tile looked with the stone I was picking for my countertop."

190. Respondent testified that he knew that Boyes & Torrens was "doing some touch-up work, replacing a cabinet door" at Ms. Conneely's home which he believed related to an old contract with Boyes & Torrens. Respondent did not disclose

this work to the parties. He testified that he did not know about a new contract Ms. Conneely had with Boyes & Torrens.

191. Ms. Conneely told respondent that she believed that the work performed at her home was "something that should be addressed to them" and respondent told her that he would disclose the information to the parties. Respondent told her that he had advised the parties that Boyes & Torrens were working on her home during the pendency of the case.

192. Respondent did not inform the parties after the February 13, 2013 appearance that Mr. Boyes's construction firm continued to work on Ms. Conneely's home.

193. Respondent and Ms. Conneely asked a floating law clerk to draft the decision in the case so "there would be no hint of impropriety." Respondent issued the decision on April 24, 2014.

194. After the April 24, 2014 decision, the attorney for the Deans called Ms. Conneely and stated that he had learned that Boyes & Torrens was working at her house. Ms. Conneely told the attorney that respondent "is sitting right here and the judge was aware of the work situation and my relationship -- my work relationship with them doing construction." Ms. Conneely believed that she put the call on speaker. Ms. Conneely testified that during the conversation respondent nodded as if to agree that he had told the parties about the work at her home.

195. In August 2014, the attorney for the Deans filed a motion seeking leave to

reargue/ renew and/or vacate the April 24, 2014 decision and either disqualify respondent or have him recused based on the appearance of impropriety. The disqualification and recusal part of the motion was based on Ms. Conneely's business relationship with Mr. Boyes.

196. On October 23, 2014, respondent issued a decision denying the motion in its entirety. Ms. Conneely drafted the decision.

As to Charge XII of the Formal Written Complaint

197. On nine occasions in 2013 and six occasions in 2014, respondent conducted interviews with applicants for gun permits on various Saturdays at the Monticello Elks Lodge. At the start of his term, pistol permit interviews were conducted in the library in the Family Court complex. In 2013, respondent decided to hold interviews at the Elks Lodge on Saturdays. Respondent introduced Ms. Weiner to a representative of the Elks Lodge who could be contacted for scheduling.

198. Respondent required Ms. Weiner to help with the Saturday interviews. On the day of the Saturday interviews, Ms. Weiner went to chambers to retrieve the pistol permit files and brought them to the Elks Lodge. She was present during the interview process. After the interviews were completed, Ms. Weiner transported the files back to chambers.

199. Ms. Weiner did not receive any financial or time compensation for her Saturday work. When Ms. Weiner attended the interviews on Saturdays she also worked her regular Monday to Friday schedule. Ms. Weiner complained to Ms. Conneely about having to work on Saturdays in connection with the pistol permit interviews.

200. On Saturday, September 7, 2013, respondent held pistol permit interviews at the Villa Roma Resort in Callicoon, New York. Respondent told Ms. Weiner that "he had an idea" about conducting the interviews on the same day and location as the Sullivan County Friends of the NRA dinner which was occurring that night. Respondent told her that "people might enjoy coming to the dinner and supporting the dinner, since they were getting pistol permits."

201. Respondent instructed Ms. Weiner that when scheduling the interviews she should inform the applicants that "the reason we were holding [the interviews] out there was because of the [Friends of the NRA] dinner and that they were more than welcome to partake if they were interested."

202. Respondent required Ms. Weiner to work on the day the interviews were being conducted at the Villa Roma. The interviews were held before the dinner in the bar area of the resort. While the interviews were being held, patrons of the resort walked through the bar area.

203. Ms. Weiner did not receive any financial or time compensation for the time she worked at the Villa Roma. Ms. Weiner worked her regular Monday to Friday schedule the week before and after the Villa Roma event.

204. When asked whether Ms. Weiner's time sheets would show that she took time off in connection with the Saturday work as he alleged, respondent, who approved Ms. Weiner's time sheets, replied, "probably not."

205. In 2015, the Administrative Judge for the Third Judicial District spoke

with respondent and told him that the pistol permit interviews should be conducted in the courthouse during regular business hours. Respondent testified that he complied.

As to Charge XIII of the Formal Written Complaint

206. After respondent was elected a judge, his wife changed his email address from "mike-law@[redacted]" to judgemcguire@[redacted]. She informed him about the new email and he used it until 2015.

207. On February 22, 2011, respondent's wife sent the following email to Ms. Weiner:

> if anyone calls for mikes [sic] personal email or old clients looking for him or old acquaintances, or attorneys, please let them know his new email is: judgemcguire@[redacted] (the mike-law@[redacted] is no longer working)

208. Respondent used the "judgemcguire" email address for his personal correspondence, to respond to clients who tried to contact him, to contact attorney Kelson regarding his son as well as Mr. Kelson's representation of respondent's acquaintances. He also used the "judgemcguire" email address to correspond with the paralegal representing the seller and with the broker in connection with the Moore real estate transaction.

209. Respondent admitted that it was improper for him to use his judicial title in his personal email address.

Respondent's Lack of Candor

210. The evidence supported the referee's finding that respondent lacked

candor and testified falsely at the hearing before the referee. The referee found that respondent "falsely testified" at the hearing that he did not send an email from his "judgemcguire" email on August 26, 2014 at 3:47 a.m. to the real estate broker in the *Moore* matter. Respondent's 3:47 a.m. email, which replied to an email the broker sent on August 25, 2014 at 10:18 p.m. to the "judgemcguire" email, included the statement, "It is quite simple, get the house ready for an inspection and stay out of the legal end of this transaction that will be accomplished by the attorneys, I am directing that you cease and desist from making any of your crude comments to my clients . . .."

211. During the Commission's investigation, when asked about this email, respondent testified, ". . . but I'll take responsibility for that because, given the time – and I probably had seen the other email come in."

212. During the hearing before the referee, respondent denied sending the 3:47 a.m. email. When he was shown his prior testimony in which he took responsibility for that email, respondent testified, "I have learned, since then, that I was incorrect two years ago."

213. When he appeared before us, respondent, who stated that his work day began at 3:30 a.m., acknowledged that ". . . as I was presented with evidence, it was clear that I had drafted one or two or more of those emails to the realtor dealing with getting the home de-winterized so that the home inspection can happen. I was wrong."

214. The evidence also supported the referee's finding that respondent

lacked candor when he testified that his only involvement in the Moore purchase was advising them to hire an attorney and providing them the name of a home inspector. Contrary to respondent's testimony, the referee found that the evidence established that:

(a) At least twelve emails were sent to the seller's paralegal and/or the real estate broker from respondent's "judgemcguire" email address;

(b) In two of the emails from the "judgemcguire" email address, respondent's cellular telephone number was provided as the only contact number if any questions should arise; and

(c) Eileen and Phillip Moore both testified that when respondent visited them at their home, he brought them the Contract of Sale, explained its terms and instructed them where to sign the document.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(1), (2), (3) and (6), 100.3(C)(1) and (2), 100.3(E)(1), 100.4(A)(2) and 100.4(G) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I through XIII of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

The evidence established that in six cases respondent disregarded the rule of law, abused his summary contempt powers and failed to follow basic due process safeguards before he deprived six litigants of their liberty.[3] In two matters, *R.R.R.* and *N.G.*,

[3] In *Pronti v. Allen*, 13 A.D.3d 1034, 1035 (3d Dept. 2004), the Court described the procedures to be followed in summary contempt matters as follows:

respondent sentenced the individuals to 30 days in jail without complying with mandatory procedural safeguards. In four other matters, *T.M.F., T.L, C.C. and J.C.K.*, respondent ordered Family Court litigants to be placed in handcuffs and detained at the courthouse for between 15 minutes and nearly two hours. Respondent admitted that in none of these cases did he give the individual a warning that his or her conduct could result in a contempt finding. Nor did he give any of the individuals the opportunity to stop the conduct or to make a statement on their behalf before he ordered them taken into custody. Furthermore, respondent acknowledged that in these matters he did not issue an order "stating the facts which constitute the offense and which bring the case within the provisions of this section" as Judiciary Law §755 required before ordering the individuals into custody.[4] In each of these six matters, respondent failed to "be faithful to the law",

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> The proper protocol that courts should follow when a person's conduct is contemptuous in the presence of the court is to first warn the person that if the proscribed conduct continues, the court will find the person in contempt; when the conduct continues, offer the person an opportunity to explain his or her conduct before entering a finding of contempt; if no explanation is offered or the explanation is insufficient, enter a finding of contempt; if appropriate under the circumstances, offer the person an opportunity to purge the contempt by apologizing for the conduct or performing the act required; if purging is inappropriate or not acceptable, impose a punishment for contempt; and finally, prepare an order known as a mandate of commitment. These steps must be reflected in the mandate of commitment, as they constitute the "particular circumstances of [the] offense" leading to the contempt finding (*Judiciary Law § 752*), as well as the "facts which constitute the offense and which bring the case within the provisions" for summary contempt (*Judiciary Law § 755*)…

[4] Judiciary Law §755 requires the following in order to summarily punish contempt when "the offense is committed in the immediate view and presence of the court":

> an order must be made by the court, judge, or referee, stating the facts which constitute the offense and which bring the case within the

failed to be "patient, dignified and courteous to litigants", and failed to "accord to every person who has a legal interest in a proceeding . . . the right to be heard according to law." Rules, §§100.3(B)(1), (3) and (6).

It is well-settled that the abuse of summary contempt power is serious judicial misconduct. In *Matter of Feeder,* 2013 NYSCJC Annual Report 124, the judge was removed for, *inter alia*, holding four defendants in contempt without warning them, offering them the opportunity to apologize or to make a statement on their behalf. The Commission held,

> The exercise of the enormous power of summary contempt requires strict compliance with mandated safeguards, including giving the accused a warning that the conduct can result in contempt and providing an opportunity to desist from the contumacious conduct and to make a statement before a contempt adjudication.

Id. at 141 (citations omitted). In *Matter of Recant*, 2002 NYSCJC Annual Report 139, the judge "temporarily remanded" two defendants including ordering that one "sit on the bench inside of the well to 'teach [him] a little lesson for showing 'disrespect' to the court.'" *Id.* at 142. The Commission held,

> While a judge has broad discretion in the exercise of the contempt power (see Judiciary Law §§750, 751), such power must be exercised in accordance with proper legal procedure, which generally requires giving the individual a warning and an opportunity to desist from the contumacious conduct as well as "a reasonable opportunity to make a statement in his defense or in extenuation of his conduct" (see Sections

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provisions of this section, and plainly and specifically prescribing the punishment to be inflicted therefor.

> 604.2[c] and 604.2[a][3] of the Special Rules Concerning Court Decorum).

Id. at 144.[5] Similarly, in *Matter of Popeo*, 2016 NYSCJC Annual Report 160, the judge was censured for, *inter alia*, holding a defendant in contempt five separate times in one court appearance and imposing five consecutive 30 day sentences without warning the defendant, giving him an opportunity to be heard or to apologize. The Commission found,

> The exercise of the contempt power requires compliance with procedural safeguards, including giving the accused an appropriate warning and opportunity to desist from the contumacious conduct. . . . Implicit in the law is that strict adherence to these procedures is necessary to ensure that summary contempt be imposed only in "exceptional and necessitous circumstances . . .

Id. at 170 (citations omitted).

Here, without complying with any of the required safeguards, respondent summarily sentenced two litigants to 30 days incarceration. In four additional matters,

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[5] 22 NYCRR §604.2(a)(1) (Special Rules Concerning Court Decorum) provides that summary contempt power is to be used "only in exceptional and necessitous circumstances." Section 604.2(c) provides the following:

> Except in the case of the most flagrant and offensive misbehavior which in the court's discretion requires an immediate adjudication of contempt to preserve order and decorum, the court should warn and admonish the person engaged in alleged contumacious conduct that his conduct is deemed contumacious and give the person an opportunity to desist before adjudicating him in contempt. Where a person so warned desists from further offensive conduct, there is ordinarily no occasion for an adjudication of contempt.

Section 604.2(a)(3) provides: "Before summary adjudication of contempt the accused shall be given a reasonable opportunity to make a statement in his defense or in extenuation of his conduct."

respondent ordered that three mothers and a grandmother, who were appearing in child custody and visitation matters in Family Court, be held in custody without any basis in law. They were each handcuffed and held at the courthouse for varying amounts of time. In each of these six matters, respondent violated the Rules and abused his authority in an especially egregious way when he deprived the individuals of their liberty.

In the *R.R.R.* and *N.G.* matters, respondent sentenced the individuals to 30 days in the Sullivan County Jail without following any of the required safeguards. The evidence established that Mr. R asked respondent to recuse himself. In response, respondent had a startling outburst in which he sentenced Mr. R to 30 days incarceration. In the *N.G.* matter, while the record reflected that Ms. G used a curse word after respondent berated her, respondent did not follow any of the procedures required for summary contempt. As the Commission has held, "Even if provoked by a perceived lack of respect for the court, respondent's conduct cannot be excused. As the Court of Appeals stated, 'respect for the judiciary is better fostered by temperate conduct [than] by hot headed reactions to goading remarks.'" *Matter of Wiater*, 2007 NYSCJC Annual Report 155, 158 (citation omitted). Similarly, in *Matter of Griffin*, 2009 NYSCJC Annual Report 90, the Commission held that,

> Regardless of whether the parties' initial behavior provided sufficient basis for a contempt holding, it was respondent's obligation to warn them explicitly that the conduct could result in a summary citation for criminal contempt resulting in incarceration and to give an opportunity to desist from the conduct. . . .
>
> While the litigants in these cases may have been contentious to varying degrees, it is clear that respondent abused the

> contempt power by failing to observe these mandated procedures, which resulted in the litigants' incarceration.

Id. at 96.

In the *C.C.* matter, without any due process, respondent ordered a mother handcuffed and held in a locked conference room at the courthouse after she objected to having to purchase another Pack 'n Play crib for her infant daughter. After Ms. C was brought back to the courtroom in handcuffs crying, respondent, after being made aware that she was pregnant, proceeded to inappropriately criticize her for having another child.

In the *T.M.F.* matter, respondent ordered that Ms. F, who was not represented by counsel and was appearing in Family Court regarding the emotionally charged issue of the custody and visitation of her daughter, be placed in handcuffs and detained. Without following any of the required procedures, respondent directed that Ms. F be held in custody for nearly two hours. Before he ordered that she be placed in custody, Ms. F had apologized to respondent twice regarding her conduct which involved objecting to her daughter's visitation with the father. Given the overall circumstances, particularly Ms. F's two apologies, there were no apparent exceptional circumstances which warranted summary contempt. *Pronti v. Allen*, *supra*, 13 A.D.3d at 1035. Nevertheless, without complying with any required safeguards, respondent ordered that Ms. F be detained. Respondent did not prepare any order setting forth the grounds for such detention at the courthouse. Moreover, respondent was later discourteous when, after he had Ms. F returned to the courtroom two hours later, he asked her "How's handcuffs feeling?"

In addition to depriving six Family Court litigants of their liberty, respondent also threatened two additional Family Court litigants and the mother of a litigant with putting them in handcuffs and detaining them. In the *S.Ro.* matter, two attorneys present testified before the referee that respondent screamed and yelled at the child's grandmother after she made a comment to her granddaughter when the proceeding was over.

Demonstrating the terrifying impact respondent's serious misconduct and angry outbursts had on Family Court litigants, in two matters, *T.L.* and *S.Ro.*, paramedics had to be called to the courthouse. The mother and grandmother in those matters had each appeared in court for a sensitive custody and visitation proceeding involving a child in her family. As a result of respondent's misconduct, which in Ms. L's case caused her to be handcuffed and detained for more than an hour at the courthouse, each litigant became so distraught that she required medical attention.

Pursuant to Section 100.4(G) of the Rules, full-time judges are prohibited from practicing law. On six separate occasions, respondent, an experienced full-time judge, ignored this clear prohibition and represented his son, his wife, his friend's in-laws and three clients of his former law practice. "Such conduct is strictly prohibited . . . even if the judge accepts no fee for the legal services . . . or performs legal services for a relative." *Matter of Ramich*, 2003 NYSCJC Annual Report 154, 158 (citations omitted). In *Matter of Ramich*, a full-time judge was censured for, *inter alia*, representing two relatives and a friend in real estate transactions. In that matter, the Commission held, "Although he received no fee in these cases, respondent's activities, including reviewing legal documents, corresponding with the opposing attorneys and appearing with his

clients at the closings, flouted the prohibition against the practice of law." *Id.* at 159. In *Matter of Edwards,* a full-time judge was censured for representing his daughter during three appearances in Family Court and invoking his judicial office.[6]

During the time he represented his son in Oneonta City Court between December 2012 and August 2013, respondent "absolutely" knew that, as a full-time judge, he was prohibited from representing anyone, including family members. Nevertheless, he purposefully ignored his ethical obligations under the Rules and represented his son. He filed a notice of appearance, sent letters using the letterhead from his former law office, filed motions and appeared in court as his son's attorney to conference the case with the judge and prosecutor. Respondent also filed a notice of actual engagement in which he averred that on a particular date he would be engaged in several matters over which he was presiding as a judge. Respondent's conduct was strictly prohibited and he knew it was inappropriate.

The evidence further established that respondent improperly practiced law when he represented the Moores, who were the in-laws of his friend, in connection with their real estate transaction. Although respondent denied practicing law in connection with that real estate purchase, both Eileen and Philip Moore testified that respondent came to their home with the purchase contract and explained the contract to them.

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[6] http://cjc.ny.gov/Determinations/E/Edwards.William.2019.12.20.DET.pdf

Respondent's claim that his brother, Ken McGuire, who was also an attorney, handled the real estate transaction for the Moores was belied by the evidence.[7] The Moores never met or spoke with Ken McGuire regarding the purchase of the house. The emails relating to the real estate transaction with the paralegal for the seller and with the broker for the property, which were signed "Ken" or "Ken McGuire", were sent from respondent's personal "judgemcguire" email address**.** Furthermore, two of those emails included respondent's personal cellular telephone number as a contact. No other telephone contact was provided.

Although respondent claimed it was not him, but his brother Ken, using the "judgemcguire" email address to communicate about the Moore real estate transaction, respondent failed to call his brother as a witness. Based on respondent's testimony, Ken McGuire had knowledge of a material issue, was available to respondent, would be expected to give favorable testimony to respondent, and such testimony would have been non-cumulative.[8] Accordingly, an adverse inference that Ken McGuire did not perform legal work for the Moores and that he did not send the emails from the "judgemcguire" email address that were signed "Ken" or "Ken McGuire" is appropriate.

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[7] The evidence supported the referee's finding that respondent lacked candor when he testified about Moore matter.

[8] A negative inference may be drawn against a party when (1) the uncalled witness has knowledge about a material issue; (2) the witness is available to the non-calling party to testify; (3) the witness is under the "control" of the non-calling party, such that the witness would be expected to give testimony favorable to that party; and (4) the witness is expected to give noncumulative testimony. *People v. Savinon*, 100 N.Y.2d 192, 197 (2003); *People v. Gonzalez*, 68 N.Y.2d 424, 427 (1986).

Respondent also engaged in the prohibited practice of law when he sent a letter on his former law office letterhead to the Wawarsing Town Court on behalf of his wife. In this letter, respondent referenced his judicial office stating that he was a full-time judge and could not represent any client. He then asked that a prior plea discussed with the prosecutor be accepted. In addition to showing that respondent improperly practiced law while a full-time judge, the letter also demonstrated that respondent referenced his judicial office in an apparent effort to further his personal interests. This was also inappropriate and violated Section 100.2(C) of the Rules which provides, "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . .."

Furthermore, respondent ignored his ethical obligations when he had his court secretary speak to an insurance company on behalf of respondent's client, Mr. Matisko, and prepare documents in connection with his claim. Respondent's client came to chambers to sign a release and the settlement check was issued to Mr. Matisko and respondent. Respondent endorsed this check. In addition to improperly practicing law while a full-time judge, respondent also improperly lent the prestige of his office to advance his private interests when he had his court secretary prepare documents and speak with the insurance company during work hours. In addition, respondent improperly asked his court secretary to prepare a letter to the court for his client in the *Lockwood* matter. *See, Matter of Ruhlmann*, 2010 NYSCJC Annual Report 213, 220 ("Routinely using court staff for extra-judicial purposes is improper regardless of whether the employee consents or performs such tasks without protest."); *See, Matter of Brigantti-*

Hughes, 2014 NYSCJC Annual Report 78, 88 ("Tasks of a personal nature remain a judge's personal responsibilities and should not be discharged using public resources.").

In addition to his other serious misconduct, respondent failed to disqualify himself in several matters where his impartiality could reasonably be questioned in violation of Section 100.3(E)(1) of the Rules. Respondent presided over matters in both Family Court and Supreme Court in which his friend appeared as counsel. Respondent and Mr. Kelson had a close relationship which was apparent when Mr. Kelson assisted respondent after respondent's son was arrested in Oneonta. In addition, Mr. Kelson represented other individuals at respondent's request. Respondent also socialized with Mr. Kelson. Nevertheless, when Mr. Kelson appeared before him, respondent did not disclose his relationship with Mr. Kelson nor did he disqualify himself from such matters. On May 1, 2019, shortly before the hearing before the referee began, respondent disqualified himself from matters in which Mr. Kelson appeared.

Respondent breached his ethical obligations and undermined confidence in the judiciary when he failed to notify the parties and recuse himself from matters in which his friend appeared. In *Matter of Thwaits*, 2003 NYSCJC Annual Report 171, the Commission censured a Town Justice who presided over matters involving relatives and an acquaintance. The Commission held,

> Disqualification is also required when the judge's impartiality can reasonably be questioned . . .
>
> We recognize that, in small communities, local justices may frequently be presented with matters in which they have some personal relationship with the parties. Although disqualification may occasion some inconvenience and delay,

> every judge must be mindful of the importance of adhering to the ethical standards so that public confidence in the impartiality of the judiciary may be preserved.

Id. at 173-174 (citations omitted); *Matter of Young*, 2012 NYSCJC Annual Report 206, 219 *aff'd*, 19 N.Y.3d 621 (2012) ("There can be no substitute for making full disclosure on the record in order to ensure that the parties are fully aware of the pertinent facts and have an opportunity to consider whether to seek the judge's recusal."); *Matter of Robert*, 1997 NYSCJC Annual Report 127, 130 ("Judges have been sanctioned for presiding in cases involving friends or others with close associations, even when there is no evidence of favoritism." (citations omitted)).

Respondent also undermined confidence in the integrity and impartiality of the judiciary when he did not disclose that a construction company affiliated with one of the parties in the *Dean v. Boyes* matter was performing work at respondent's law secretary's home while the matter was pending before respondent. In *Matter of Gumo*, 2015 NYSCJC Annual Report 98, the Commission held,

> Disclosure permits the parties to address the issue and bring to a judge's attention information or concerns that might influence the judge's decision on disqualification. In a small town, where, as the prosecutor stated, "there was an assumption everybody knew everybody", it was especially important to bring the issue into the open by addressing it in court, in order to dispel any appearance of impropriety and reaffirm the integrity and impartiality of the court.

Id. at 115.

Furthermore, the evidence established that respondent was repeatedly discourteous and impatient toward court personnel as well as litigants. This conduct violated the Rules

which require all judges to "act at all times in a manner that promotes public confidence in the judiciary" and to be "patient, dignified and courteous to litigants . . . and others with whom the judge deals in an official capacity." (Rules §§100.2(A) and 100.3(B)(3)) The evidence established that respondent yelled at Ms. Weiner when there was a problem with his computer. After respondent's outburst toward her, Ms. Weiner was frightened and cried at her desk. The audio recording of the June 29, 2012 proceeding established that respondent screamed at Officer Diaz to close the courtroom door. In another incident, respondent angrily and aggressively approached Sergeant Olivieri and yelled at him. Respondent slammed a door inches away from where Officer Downs was standing. Respondent's pattern of intemperate and abusive behavior was improper and brought reproach upon the judiciary.

In addition to being impatient and discourteous toward court personnel, respondent was also repeatedly discourteous toward litigants. In the *R.R.R.* matter, respondent screamed at Mr. R after he requested that respondent recuse himself. In *Varner v. Glass,* in overturning respondent's decision, the Third Department found that respondent had treated the mother in that proceeding with "disdain" and ordered that on remand the matter be heard by a different judge. *Varner v. Glass,* 130 A.D.3d 1215, 1217 (3d Dept. 2015). In the *M.A.M. v. R.R.H.* matter, without any evidentiary basis, respondent admonished the parties not to date "a drug addict, a slut." Respondent acknowledged that his comments in that matter and several others were improper.

Such repeated discourteous behavior severely undermines confidence in the judiciary. In *Matter of Mertens,* 56 A.D.2d 456 (1st Dept. 1977), the judge was

disciplined for, *inter alia*, being discourteous to litigants and attorneys.[9] The Court found that, "respondent suddenly exploded in angry shouting sometimes described as yelling and screaming at lawyers and witnesses." *Id.* at 468. The Court held that:

> Self-evidently, breaches of judicial temperament are of the utmost gravity.
>
> As a matter of humanity and democratic government, the seriousness of a Judge, in his position of power and authority, being rude and abusive to persons under his authority--litigants, witnesses, lawyers--needs no elaboration.
>
> It impairs the public's image of the dignity and impartiality of courts, which is essential to their fulfilling the court's role in society.

Id. at 470. In *Matter of Uplinger*, 2007 NYSCJC Annual Report 145, the judge was censured for, *inter alia*, being rude and demeaning to two witnesses, including threatening to hold the witnesses in contempt when they took a lunch break after the prosecutor told them they could. The Commission found that the judge improperly "threatened to hold the witnesses in contempt, ordered the witnesses to be confined in a witness room until they testified, and forbade them from using the bathroom facilities without her permission." *Id.* at 149 In *Matter of Pines*, 2009 NYSCJC Annual Report 154, the Commission held,

> A judge must also act at all times in such a manner that 'the public can perceive and continue to rely upon the impartiality of those who have been chosen to pass judgment on legal matters involving their lives, liberty and property' . . . Respondent's conduct in Family Court, 'where matters of the utmost sensitivity are often litigated by those who are unrepresented and unaware of their rights' . . . did not comport with these standards.

[9] This judicial disciplinary matter was initiated prior to the creation of the Commission.

Id. at 158 (citations omitted). Respondent repeatedly failed to meet these high standards for judicial conduct.

The evidence also established that respondent, a full-time judge, improperly used his judicial title in his personal email address which he used for personal matters. He used this email when he communicated with the seller's paralegal and the broker in connection with the Moore real estate transaction. He admitted that it was improper to use his judicial title in his personal email address for personal matters. By using the email address in this way, respondent gave the appearance of invoking his judicial status for his personal benefit. Such conduct violated Section 100.2(C) of the Rules.

In addition, respondent required his court secretary to work on several Saturdays in connection with pistol permit interviews and she was not given financial compensation or other time off to compensate for that work. On the date of the pistol permit interviews at the Villa Roma, the Sullivan County Friends of the NRA dinner was being held at the same location. When he told his court secretary to inform pistol permit interviewees about that dinner, respondent lent the prestige of judicial office in an attempt to support that organization in violation of Section 100.2(C) of the Rules. In addition, by requiring his court secretary to work on Saturdays without any time or financial compensation, respondent failed to "maintain professional competence in judicial administration" in violation of Section 100.3(C)(1) of the Rules.

The Commission accords deference to the referee's credibility findings because he or she is in the best position to evaluate witnesses firsthand. *See, Matter of Mulroy*, 94

N.Y.2d 652, 656 (2000). Here, the evidence fully supported the experienced referee's detailed findings that respondent lacked candor in several respects.

Although respondent argued that his conduct has changed since the events that are the subject of the thirteen charges against him, the record reflected that respondent's behavior seems to have changed only after he became aware of an investigation into his conduct. Respondent learned that his court secretary had complained about his abusive conduct when he was interviewed by the Inspector General's office in April 2015. Moreover, although in August 2018 respondent received the Commission complaint which contained a charge that he presided over matters involving his friend, respondent did not put Mr. Kelson on his recusal list until May 2019 shortly before the hearing before the referee began. Furthermore, respondent's pattern of various types of serious misconduct, together with his lack of candor when appearing before the referee, indicate that a severe sanction is warranted.

It is most troubling that respondent, who lectured litigants about freedoms available in the United States, violated those very freedoms when he ordered six litigants to be detained without any basic due process let alone strict compliance with the mandatory procedural safeguards in summary contempt matters. Furthermore, although respondent purported to be concerned with decorum in his courtroom and respect toward his judicial office, the record is replete with instances of respondent's angry outbursts toward both litigants and court personnel. In *Matter of Restaino*, 2008 NYSCJC Annual Report 191, which also involved summarily committing individuals into custody with no basis, the Commission held,

> It is sad and ironic that even as respondent was scolding the defendants for their behavior, in a court where trust and personal accountability were of paramount importance, respondent's own irresponsible behavior provided a poor example of such attributes. His conduct was injurious not only to the defendants themselves, but to the public as a whole, who expect every judge to act in a manner that reflects respect for the law the judge is duty-bound to administer.

Id. at 197. Here, respondent repeatedly engaged in misconduct when he improperly detained individuals who came to Family Court to address emotionally fraught matters involving child custody and visitation.

Respondent's lack of candor is a significant aggravating factor. *Matter of Calderon*, 2011 NYSCJC Annual Report 86, 91 ("This record of evasiveness . . . is an aggravating factor that elevates the required sanction."); *Matter of Conti*, 1988 NYSCJC Annual Report 145, 149 ("Respondent compounded his misconduct by testifying falsely in this proceeding. . .."); *Matter of Mason*, 2003 NYSCJC Annual Report 227, 248 ("Respondent further exacerbated his misconduct by his repeated lack of candor throughout this proceeding. . . . Such deception is antithetical to the role of a judge, who is sworn to uphold the law and seek the truth. . . . The giving of false testimony is inexcusable and destructive of a judge's usefulness on the bench." (citations omitted))

Given the seriousness and breadth of respondent's misconduct as well as his lack of candor, we believe that respondent should be removed from the bench. Respondent's misconduct, particularly his repeated abuse of the summary contempt power and his representation of his son and others while a full-time judge, meets the standard of "truly

egregious" conduct for which his removal is warranted. *Matter of Mazzei*, 81 N.Y.2d 568, 572 (1993) (citations omitted)

The Court of Appeals has held that, "the purpose of judicial disciplinary proceedings is 'not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents'." *Matter of Reeves,* 63 N.Y.2d 105, 111 (1984) (citations omitted) Respondent's pattern of serious misconduct and disregard for his ethical responsibilities demonstrate that he is unfit for judicial office.

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

Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin, and Ms. Yeboah concur.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: March 18, 2020

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