

**Court of Appeals
of the
State of New York**

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court, Suffolk County,

Petitioner.

RECORD FOR REVIEW

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DETERMINATION, DATED OCTOBER 9, 2019 [1 - 16]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

DETERMINATION

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

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. Mazzaelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Long Tuminello, LLP (by David Besso and Michelle Aulivola) for
respondent

Respondent, Paul H. Senzer, a Justice of the Northport Village Court,
Suffolk County, was served with a Formal Written Complaint dated October 13, 2017,

containing one charge. The Formal Written Complaint alleged that over a four-month period in 2014 and 2015 respondent used racist, sexist, profane and otherwise degrading language in communications with legal clients. Respondent filed a Verified Answer dated December 12, 2017.

On December 11, 2017, respondent's counsel filed a motion for summary determination and/or dismissal of the Formal Written Complaint. Commission counsel opposed the motion on March 1, 2018, and respondent's counsel replied on March 6, 2018. By Decision and Order dated March 16, 2018, the Commission denied respondent's motion in all respects.

By Order dated March 29, 2018, the Commission designated Honorable John P. Collins as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 6 and 7, 2018, in New York City. The referee filed a report dated January 26, 2019, in which he sustained the charge except for respondent's alleged use of a racial epithet.

The parties submitted briefs to the Commission with respect to the referee's report and the issue of sanctions. Both parties recommended that the referee's findings and conclusions be confirmed in part and disaffirmed in part. Commission counsel argued that the charge was sustained in its entirety and recommended the sanction of removal; respondent's counsel argued that respondent's language in private communications with clients did not constitute misconduct but that if misconduct is found, a confidential caution was appropriate. The Commission heard oral argument on

May 30, 2019 and thereafter considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a Justice of the Northport Village Court, Suffolk County, since 1994. His current term expires on March 31, 2022. Since 2013 he has also served as a hearing officer for the Suffolk County Traffic and Parking Violations Agency. Respondent was admitted to the practice of law in New York in 1981.

2. As a part-time judge who is permitted to practice law, respondent has maintained a private law practice. In the course of his law practice, respondent represented Jennifer Coleman in two matters from 2013 to 2015.

3. Respondent has known Ms. Coleman for approximately 30 years. She was his house cleaner for several years and occasionally provided cat-sitting services.

4. In or about 2013, Ms. Coleman retained respondent to represent her in an employment discrimination matter based on her claim against a school district where she had been a part-time custodian. A hearing in the matter was held before an administrative law judge on November 5 and 6, 2014. Ms. Coleman's claim was dismissed.

5. Later in November 2014, Ms. Coleman and her husband Walter Coleman, a maintenance mechanic, retained respondent to represent them in a Family Court matter against their daughter in which they were seeking visitation rights to their grandchild. Prior to being retained, respondent had some discussion with the Colemans

about their problems with their daughter, with whom they had a strained relationship, though he initially declined to represent them in Family Court because he was too busy.

6. Between October 24, 2014, and February 22, 2015, respondent sent nine emails in connection with the Family Court matter to the Colemans at their shared email account in which he:

- Referred to their daughter several times as a “bitch”;
- Stated that their daughter’s “lawyer is a cunt on wheels (sorry for the profanity...and don’t quote me), so be prepared” and, in another email, referred to the lawyer as “eyelashes”;
- After cautioning the Colemans not to contact their grandchild’s school, stated, “You should know by now that people who work in schools are assholes”¹;
- Stated, with respect to a scheduled court appearance, “We will appear entirely calm and reasonable...let your daughter act like the asshole she is”;
- Stated in the subject line of an email, in reference to the daughter and her former husband, “THE TWO SCUMBAGS WERE SERVED”;
- Stated in reference to the Family Court referee, around the time respondent advised the Colemans to withdraw their petition, “[Y]ou may have noticed that the ‘judge’ is an asshole. An ‘asshole’ can issue a warrant for your

¹ It seems likely this was intended as a reference to individuals involved in the events underlying Ms. Coleman’s earlier lawsuit against the school district where she had been employed.

arrest.”

7. In February 2015, the Colemans withdrew their petition for visitation and the matter was discontinued.

8. At the hearing before the referee, Ms. Coleman testified that after the Family Court matter ended, she contacted respondent because she thought she was owed a refund, but she did not hear from him. A few months later, after reading a news article about a lawsuit filed against respondent, she contacted the lawyer in that matter, Christopher Cassar, and gave him copies of respondent’s emails. Mr. Cassar filed a complaint with the Commission. The lawsuit against respondent was dismissed.

9. The referee found that respondent showed “sincere contriteness.” At the hearing, respondent testified that he has “profound and deep regret” for the words he used and that his language in the emails was “atrocious” and “reflect[s] very poorly on me as an attorney and obviously, as a judge.” He stated that it did not occur to him at the time that sending the emails had any connection with his judicial role, but he has “learned the hard way that [it] certainly does.” He testified that in the course of exchanging many emails with clients who were longtime acquaintances, he became “far too conversational and far too familiar” and that using such vulgar language was a “misguided” effort to “empathize with” and “be supportive of” his clients since Ms. Coleman had used similar language to describe her daughter and others. He further testified, “I suspect that what I was doing was pandering or patronizing her in trying to bring myself down to that level,” although he admitted that is “not an excuse.” He acknowledged that his obscene

reference to the daughter's lawyer, which he described as an attempt "to convey to the client that she was up against a very aggressive adversary who could be counted upon to be zealous," was an inexcusable sexual slur. He admitted that using the term showed insensitivity to his client particularly since in the employment matter in which he represented her, her supervisor had used the epithet towards her and other women. He stated that he recognizes that it is inappropriate for an attorney to use any language that denigrates the legal profession, and "I'm sorry to say, I fell down."

10. On February 4, 2002, respondent was previously issued a letter of dismissal and caution by the Commission for making sarcastic, disrespectful comments during a court proceeding.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.4(A)(1), 100.4(A)(2) and 100.4(A)(3) of the Rules Governing Judicial Conduct ("Rules") 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. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions², and respondent's misconduct is established.

² As discussed below, paragraph 7 of the Formal Written Complaint, which alleged that respondent used a racial epithet in reference to the administrative law judge in a conversation with the Colemans during a hearing recess in the employment matter, is not sustained and therefore is dismissed.

The record establishes that in a series of emails to clients whom he was representing in a Family Court matter, respondent, a part-time judge who is permitted to practice law, repeatedly denigrated the participants in the matter – not only the clients’ adversary, but officers of the court – in profane, vulgar and sexist terms. Although off the bench, respondent’s statements were manifestly improper and reflect adversely on the judiciary as a whole, since judges are required “at all times” to abide by “high standards of conduct” that promote “public confidence in the integrity and impartiality of the judiciary.” (Rules, §§100.1, 100.2(A)) Based on the totality of the record before us, including the nature and frequency of respondent’s comments, his repeated use of such language to legal clients, and his earlier caution for making sarcastic and disrespectful comments in court, we conclude that respondent lacks fitness to serve as a judge and, accordingly, that his removal from office is warranted.

Over a period of several months, respondent’s email communications with his clients, his former house cleaner and her husband whom he was representing in a grandparent visitation matter, contained crude and derogatory epithets referring to various individuals involved in their case. In the context of informing and advising them about the case, he referred to the clients’ daughter and her former husband, his clients’ adversaries in the matter, as “the two scumbags,” and referred to the daughter as an “asshole” and a “bitch” (or “that bitch”) on multiple occasions. Cautioning his clients not to contact their grandchild’s school, he used the same profanity referring to the school’s staff (“You should know by now that people who work in schools are assholes”).

Referring to the daughter's lawyer, respondent's language was equally vulgar and sexist ("a cunt on wheels" and "eyelashes"). His profane insults extended even to the court referee ("you may have noticed that the 'judge' is an asshole. An 'asshole' can issue a warrant for your arrest").

The impropriety of such language requires little discussion. Criticism of individuals involved in his clients' case is not the issue here, nor is the use of profanity in communicating with his clients. However, as the Court of Appeals has held, using crude language that reflects bias or otherwise diminishes respect for our system of justice, even off the bench, is inconsistent with a judge's ethical obligations. In *Matter of Assini*, 94 N.Y.2d 26, 29 (1999), which involved a judge who "repeatedly disparaged his judicial colleague in vile terms" in conversations with court employees and a town board member, the Court stated that such behavior was "absolutely indefensible" and "undermined not only the dignity of a fellow Justice, but also the stature and dignity of petitioner's court and the judicial system as a whole." See also, *Matter of Cerbone*, 61 N.Y.2d 93, 95 (1984) (judge used "abusive and profane" language during a confrontation in a bar); Rules, §§100.1, 100.2(A), *supra*, and 100.4(A)(2) (requiring a judge to avoid extra-judicial activity that "detract[s] from the dignity of judicial office"). At a minimum, gender-based slurs, which denigrate a woman's worth and abilities and convey an appearance of gender bias, should have no place in a judge's vocabulary. Significantly, respondent's offensive words were not thoughtless slips. They were included in emails he composed to his clients, where he had an opportunity to consider

his written words before sending messages that could be preserved and shared. Nor were they isolated lapses, as the record reveals.

Like the referee, we reject respondent's argument that his language in emails with clients does not rise to the level of misconduct since the communications were private and unrelated to his role as a judge. As the Court of Appeals stated nearly 40 years ago, a judge's off-the-bench behavior must comport with high ethical standards to ensure the public's respect for the judiciary as a whole since "[w]herever he travels, a Judge carries the mantle of his esteemed office with him." *Matter of Steinberg*, 51 N.Y.2d 74, 81 (1980) Thus,

[A] Judge may not so facilely divorce behavior off the Bench from the judicial function. Standards of conduct on a plane much higher than for those of society as a whole, must be observed by judicial officers so that the integrity and independence of the judiciary will be preserved. A Judge must conduct his everyday affairs in a manner beyond reproach. Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function. . .

Matter of Kuehnel, 49 N.Y.2d 465, 469 (1980) (internal citations omitted); *see also*, *Matter of Mazzei*, 81 N.Y.2d 568, 572 (1993) ("Judges ... are held to higher standards of conduct than the public at large ... and thus what might be acceptable behavior when measured against societal norms could constitute 'truly egregious' conduct in the present context." (internal citations omitted)) Indeed, even private communications in a judge's home can constitute misconduct warranting removal. *Matter of Backal*, 87 N.Y.2d 1 (1995) In *Backal*, the Court specifically rejected the judge's argument that the

wrongfulness of her statements (advising an acquaintance about handling the proceeds from a drug transaction) was mitigated by the fact that the statements were made in her home “where she may have had an expectation of privacy.” *Id.* at 13. The Court emphasized, “Judges are accountable ‘at all times’ for their conduct—including their conversation—both on and off the Bench . . .” *Id.* at 13 (internal citations omitted).

Moreover, in the instant matter, both the context and substance of respondent’s off-the-bench statements were inextricably connected to his judicial role. As the Colemans’ attorney, respondent was communicating with them as an officer of the court, providing counsel and advice while discussing their case, and as a judge himself, he personified the legal system. His crude language disparaging others involved in his clients’ case, including other officers of the court, reflected poorly on himself as a representative of the legal system. By denigrating and insulting their adversary’s lawyer and the court referee in obscene and vulgar terms, he conveyed disrespect and disdain for the legal process itself, which was inconsistent with his role as a judge (*see* Rule 100.4(A)). Accordingly, we reject respondent’s argument that his statements to clients were private communications unrelated to his judicial role.³

We recognize that the attorney-client relationship can promote a level of candor, especially when, as here, clients are longtime acquaintances, and that respondent may well have “had an expectation of privacy” in his communications with the Colemans

³ Indeed, at the hearing before the referee, respondent acknowledged the connection, stating, “It just didn’t dawn on me, I’m sorry to say, that when I was sending emails to clients in connection with legal advice that that somehow had a nexus or a connection to my judicial persona but I’ve learned the hard way that [it] certainly does.”

about their case (*see Matter of Backal, supra*). Nevertheless, the Colemans were members of the public in addition to being respondent's legal clients and, as is evident here, clients can become disgruntled and relationships can fray. Every judge must be mindful of the duty to avoid any conduct or statements, even off the bench, that undermine public confidence in the judiciary or respect for our system of justice as a whole and judges are held to standards of conduct "on a plane much higher" than those for others. *Matter of Kuehnel, supra*, 49 N.Y.2d at 469. *Compare, Matter of Cunningham*, 57 N.Y.2d 270, 275-76 (1982), where the Court of Appeals found that the judge's misconduct (sending letters to another judge conveying the appearance that he would always affirm the other judge's sentencing determinations) was mitigated, though not excused, by the fact that it "was limited to the eyes of one person only" and came to light "from certain bizarre circumstances which could not have been anticipated"

Paragraph 7 of the Formal Written Complaint, which alleged that respondent used a racial epithet regarding the administrative law judge during a conversation with the Colemans, is not sustained and is therefore dismissed. While this allegation, standing alone, would unquestionably require removal if proved, we find no basis in the record for rejecting the conclusion of the referee, who saw and heard the witnesses, that the alleged comment was not proved by a preponderance of the evidence. The Commission may accept or reject a referee's findings, 22 NYCRR §§7000.6[f][1][iii], 7000.6[1]. When the record supports a referee's findings, the Commission accords deference to the referee's findings because he or she is in a position

to evaluate the credibility of witnesses firsthand. *See Matter of Mulroy*, 94 N.Y.2d 652, 656 (2000).

As the referee found and the evidence supports, the Colemans had become dissatisfied with respondent's representation and had unsuccessfully asked him for a refund. After reading a newspaper article which mentioned respondent in connection with a lawsuit against the Suffolk County Traffic and Parking Violations Agency, Ms. Coleman contacted the attorney who had filed the suit and provided him emails from respondent in an apparent effort to assist in that lawsuit against respondent and others. That attorney made the complaint against respondent to the Commission. While it is unclear on the record before us when the Colemans first complained about the alleged racial epithet, it appears it was sometime after the initial complaint by Mr. Cassar. In addition, as the referee found and the evidence supports, the alleged epithet "seems to have occurred out of the blue" and Ms. Coleman herself testified that she had never heard respondent make any similar remark in the many years that she had known him. Furthermore, the Colemans each testified differently about the context of the alleged epithet. On this record, we find no basis to overturn the conclusion of the referee who had the opportunity to directly evaluate the credibility of the witnesses.

Respondent's indefensible use of profane and sexist language is not mitigated in any way by his testimony that it may have been an intuitive effort to show support for his client's views by using the kind of language she used herself. While there is nothing in the record to support his claim about his client's vocabulary, even if that

were true, it would not excuse his inappropriate behavior. Indeed, in such circumstances it would be all the more imperative to set an appropriate tone by acting with dignity and decorum, instead of responding in kind. In any event, whether a judge's patently offensive language constitutes misconduct should not depend on the listener's own vocabulary or reaction to it. It must also be emphasized that the misconduct here is not simply the occasional use of vulgar and sexist language, but a pattern of statements that undermines respect for women and the legal system as a whole.

In view of the multiple, serious derelictions confirmed by the record before us as well as respondent's prior caution, we have concluded that respondent lacks fitness for judicial office and that his behavior has irredeemably damaged public confidence in his ability to continue to serve as a judge.⁴ Accordingly, respondent should not be permitted to remain on the bench.

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

Mr. Belluck, Mr. Harding, Ms. Corngold, Judge Falk, Judge Leach, Judge Mazzairelli, Mr. Raskin and Ms. Yeboah concur, except as follows.

Mr. Belluck, Mr. Harding and Judge Mazzairelli dissent as to the dismissal of paragraph 7 of the Formal Written Complaint.

⁴ Although the referee found that respondent showed "sincere contriteness" for his actions, we are also mindful that at the hearing, instead of simply expressing remorse for his words, he also attempted to rationalize them and offered excuses. In any case, as the Court of Appeals has stated, "[i]n some instances . . . no amount of [contrition] will override inexcusable conduct." See, *Matter of Bauer*, 3 N.Y.3d 158, 165 (2004).


Mr. Belluck files an opinion concurring in part and dissenting in part,
which Judge Mazzaelli joins.

Ms. Grays and Judge Miller were not present.

CERTIFICATION

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

Dated: October 9, 2019



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

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL H. SENZER,


a Justice of the Northport Village Court,
Suffolk County.

OPINION BY MR.
BELLUCK
CONCURRING IN
PART AND
DISSENTING IN
PART, WHICH JUDGE
MAZZARELLI JOINS

I agree with the Determination to the extent it sustains that part of the Charge in the Formal Written Complaint based on respondent's repeated use of foul, intemperate and sexist language to describe his client's adversaries and a court referee and removes him from the bench. However, I disagree with the majority's decision to the extent it fails to sustain that part of the Charge that was based on respondent's use of a shocking racial epithet. The referee found that alleged comment was not proved by a preponderance of the evidence but respondent's liberal use of such profoundly crude and blatantly sexist language to describe his clients' daughter and her female lawyer makes utterly credible the allegation that he used racist language of a similarly extreme nature in reference to the administrative law judge.

Accordingly, I would sustain the entirety of the Charge and remove respondent from the bench on the basis of his use of all of the discriminatory language.

Dated: October 9, 2019



Joseph W. Belluck, Esq., Chair
New York State
Commission on Judicial Conduct

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

----- X

In the Matter of the Proceeding :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to :

PAUL H. SENZER, :

a Justice of the Northport Village Court, :
Suffolk County. :

----- X

ORAL ARGUMENT

Commission Office
61 Broadway, Suite 1200
New York, New York 10006

May 30, 2019
10:45 AM

Before:

- Joseph W. Belluck, Esq., Chair
- Paul B. Harding, Esq., Vice Chair
- Jodie Corngold
- Hon. John A. Falk
- Hon. Leslie G. Leach
- Hon. Angela M. Mazzarelli
- Marvin Ray Raskin, Esq.
- Akosua Garcia Yeboah
- Commission Members
- Jean M. Savanyu, Esq.
- Clerk of the Commission
- Celia A. Zahner, Esq.
- Clerk-Designate

Present:

For the Commission

- Brenda Correa, Esq.
- Mark Levine, Esq.

For the Respondent

- David H. Besso, Esq.
- Michelle Aulivola, Esq.
- Hon. Paul H. Senzer

Also Present:

- Miguel Maisonet, Senior Clerk and FTR Operator

1 MS. SAVANYU: Mr. Belluck and members
2 of the Commission, this is the oral argument in the
3 Matter of Paul Senzer, a Justice of the Northport
4 Village Court. Judge Senzer is appearing with his
5 attorneys, Mr. Besso and Ms. Aulivola. Ms. Levine
6 – Ms. Correa and Mr. Levine are appearing for the
7 Commission.

8 MR. BELLUCK: Thank you. In the Matter of
9 Paul Senzer, this is the oral argument with respect to
10 the referee's report, a determination of whether
11 misconduct has occurred and if so, what the
12 appropriate sanction should be.

13 Counsel will each have 30 minutes for their
14 argument, and counsel for the Commission may
15 reserve a portion of her time for rebuttal. After the
16 initial presentations, the judge may, if he wishes,
17 make a presentation to the Commission not to
18 exceed ten minutes. Counsel for respondent may
19 reserve time to speak after respondent, but prior to
20 the rebuttal. The judge and counsel are subject to
21 questioning by the Commission at any time during
22 their presentation. Counsel is advised that the
23 argument should be confined to the record and that
24 any statements outside the record will be
25 disregarded.

1 I also wanted to advise counsel that all of the
2 Commission members are familiar with the record.
3 We have read the materials and would like to ask
4 that if it is at all necessary for you to refer to the
5 words that are alleged to be said, that you do that
6 very judiciously and if necessary perhaps more
7 appropriate to refer to as the n-word or something
8 like that as opposed to the actual word.

9 There are lights on the bench to indicate your
10 time. The green light means you may speak. A
11 blinking green light means two minutes are left,
12 yellow light means one minute is left, and the red
13 light means stop. Please turn off your cell phones
14 and electronic devices so they don't interfere with
15 the recording of the proceeding. I want to note for
16 the record that one member of the Commission, Ms.
17 Yeboah, is participating in the argument by
18 videoconference. If there's any technical
19 difficulties, we will pause the argument and the time
20 will not be counted against your presentation.

21 Are you prepared to proceed, Ms. Correa?

22 MS. CORREA: Yes.

23 MR. BELLUCK: Okay. Thank you.

24 MS. CORREA: Good morning. I'd like to
25 reserve five minutes for rebuttal.

2.

1 This case strikes at the core of the
2 Commission's function in protecting the integrity and
3 the public confidence in the judiciary, particularly
4 when a judge displays a bias, be it on the basis of race
5 or gender. When respondent uttered the word
6 "nigger" about the Administrative Law Judge, he
7 conveyed to us his very clear bias against African
8 Americans. And when he described his adversary as a
9 "cunt on wheels" he conveyed to us his very clear bias
10 against women. The public cannot have confidence in
11 a judge who displays these kind of biases based on
12 gender and based on race. The Commission should
13 remove respondent from office.

14 As to the n-word, there are two witnesses who
15 came here and testified under oath that they heard
16 respondent utter the n-word about Administrative Law
17 Judge Margaret Jackson. These witnesses have no
18 motivation to fabricate anything. There is no
19 evidence –

20 JUDGE LEACH: – I am sorry, Ms. Correa.
21 The two witnesses, the Colemans, would you think
22 them to be interested witnesses? Obviously, Mr.
23 Senzer is an interested witness. Would you think
24 them to be interested witnesses to the extent that they
25 had reached out to, if I am pronouncing his name

3.

1 properly, Cassar, to indicate to them that they might
2 have something to assist him in his lawsuit against the
3 Suffolk Parking or Traffic Bureau and that they could
4 be helpful to some extent by providing whatever?
5 Would you think that that demonstrates some degree
6 of interest on their part?

7 MS. CORREA: Absolutely not, Judge Leach.
8 They are disinterested witnesses. The mere fact that
9 that was the catalyst for us to get the complaint, that's
10 separate and apart, that in no way, do they have any
11 interest whatsoever in this.

12 JUDGE LEACH: That's not ill motivation to –

13 MS. CORREA: – No.

14 JUDGE LEACH: – see some article in the
15 paper and say there is some litigation involving two
16 parties, I know one of the parties, one of the
17 respondent parties and the like. Let me tell the –
18 his adversary that I may have some ammunition to
19 support his adversary's claims.

20 MS. CORREA: No. I say to you no on that.
21 The Colemans simply – that was a trigger. That was a
22 trigger for them to get in touch with Mr. Cassar based
23 on the information that they had and then they got in
24 touch with Mr. Cassar and he was the vehicle for us
25 getting the complaint. But they had no interest. They

1 have no financial motive. They have nothing to gain
2 from this. They never even sued.

3 MR. HARDING: But they didn't have a duty
4 to do that?

5 MS. CORREA: No.

6 MR. HARDING: I mean, they just sort of
7 decided on their own to make that contact. So, I guess
8 that I hear your position on that but to the extent that
9 maybe a little fallout, maybe a little motivation.
10 Maybe they had something that they weren't thrilled
11 with their outcome of their litigation.

12 MS. CORREA: I think that respectfully, Mr.
13 Harding, they thought they had relevant information.
14 I don't think that means there is any ill motive that
15 you should use against the Colemans, I mean, because
16 they just had information that they thought was
17 relevant. But that doesn't make it untrue in any way.
18 We know that the emails are true and I submit to you,
19 you know the same for the fact that these two
20 witnesses testified about the n-word. They –

21 Yes, Judge?

22 JUDGE MAZZARELLI: Well, didn't they
23 have a desire to get a refund back for certain part of
24 the fee that they paid and they didn't get it?

25 MS. CORREA: So, Ms. Coleman testified

1 about that. All she testified to you was she merely
2 expected a refund but she never filed any kind of
3 lawsuit from legal malpractice or any kind of fee suit.
4 There is no evidence that they were in any way
5 unhappy with the services that he provided. She –
6 there is no evidence that they were mad at him. And
7 respondent didn't testify anything to even suggest
8 that.

9 JUDGE MAZZARELLI: They were
10 unsuccessful in both matters.

11 MS. CORREA: They were. They were. And
12 that happens. But that's not even anywhere near of a
13 motive to come here and testify and make such an
14 outlandish claim that they heard him say the n-word.

15 Yes, Judge?

16 MR. BELLUCK: No. Please, go ahead.

17 JUDGE FALK: So, with respect to the
18 Colemans, when they make the comment and use the
19 word about the judge, Mrs. Coleman uses the context
20 of "Is the judge back?" And when Mr. Coleman talks
21 about that using that word, his statement was, "What
22 do I think of the judge?" Obviously, the arbitrator felt
23 that they were inconsistent, those statements. How do
24 you rectify that when you want us to set aside the
25 arbitrator's decision?

1 MS. CORREA: So, they are not materially
2 different. That is merely their different perspectives.
3 When Mrs. Coleman heard it, she heard it saying, you
4 know what, could you believe this, what do you think
5 of this, sorry. With Mr. Coleman, he viewed it as it
6 being directed at him, so his perspective was
7 somehow that the respondent was asking him whereas
8 Mrs. Coleman viewed it separately really just him just
9 saying the n-word. So, their perspectives are slightly
10 different but I think that actually just rings to the fact
11 that they ring true. They didn't get their story
12 straight. They weren't exactly the same, but the
13 context is the same. They both testified that it
14 happened at a lunch break. They were waiting for
15 Judge Margaret Jackson to return. They were talking
16 about how the case was going. Mrs. Coleman
17 testified that Judge Senzer didn't think it was going
18 particularly well. Judge Jackson was running late.
19 So, I don't think those are materially different. I think
20 that just speaks to their different perspectives. One
21 thought it was being directed at them and one thought
22 the n-word was just being said.

23 JUDGE FALK: So how do you rectify Mr.
24 Coleman indicated that he was appalled by that
25 statement and they went and they talked about it. But

1 if I recall, didn't they go back and hire Mr. Senzer for
2 another legal matter after that?

3 MS. CORREA: That is correct. They talked
4 about it in the car and they said how could we be
5 using this guy in a discrimination case. But I submit
6 to you, these people are, they already paid him
7 \$12,000. They were – he was still their attorney on
8 the discrimination case and they continued to use him
9 even after the c-word was used. So, I think they made
10 a very clear decision, an economic decision to
11 continue to use him because they had already paid
12 him a substantial amount of money. I don't think that
13 speaks to their credibility because we know that we
14 have the c-word in writing. And you know that was
15 said and that was said after that and they still
16 continued to use him.

17 MR. BELLUCK: If we were to uphold the
18 referee's finding, is it the Commission's position that
19 removal would be appropriate just with respect to the
20 conduct that the referee found did occur?

21 MS. CORREA: Absolutely, Mr. Chair. It is
22 removal even based on the c-word and let me tell you
23 why. The Commission has said this is an "obscene"
24 word. The Court of Appeals has called it "vile and
25 reprehensible." And what I ask you to consider is the

1 context in which this word was used. It was used to
2 describe his adversary. His words were, he meant to
3 convey that she was known for sharp lawyering. That
4 she was an aggressive attorney. What does that
5 convey to us? That conveys a very clear bias based
6 on gender. You cannot ignore that. What does that
7 say to the litigants and female attorneys that are going
8 to appear before him, how can they get a fair shake?
9 They will be viewed as not, not passive, compliant,
10 not doing their job, giving him a tough time. Should
11 they be compliant? Because that is the message that
12 that sends. That is the message that saying that she is
13 a "c- on wheels."

14 MR. BELLUCK: I was a little confused by the
15 referee's language in various parts of the
16 recommendation but --

17 MS. CORREA: -- As was I.

18 MR. BELLUCK: In one area he seems to
19 indicate that this was a comment that was made to a
20 member of the public. And then in the area around
21 mitigation, he says that it was in the context of a
22 private relationship with the client. Could you just
23 tell us what the Commission's view is on that?

24 MS. CORREA: Yes. Certainly. I also was
25 confused by that because in one respect he gives a

1 very detailed analysis as to the emails and finds that
2 they were sent. And they were in writing. And then
3 in the later part of his report finds that it's somehow
4 mitigating because he viewed it as private. One, the
5 Commission has said in the Matter of Backal, even
6 where someone has a reasonable expectation of
7 privacy, that does not mitigate the wrongfulness of the
8 misconduct. But also, this is in this, think about
9 where this context happened. This was in the course
10 of a judicial proceeding. He was their representative
11 in this judicial proceeding. All of these emails, there
12 were eight of which were directed at females, a court
13 attorney referee, the litigant's daughter, his adversary.
14 It's significant that eight of the nine were directed of
15 female professionals. This is the Colemans' contact
16 with a member of the justice system, a judge. It's
17 quite significant. And I don't think that the fact that it
18 was in emails in any way mitigates it. Think about it
19 if it was the n-word. I think you would agree that
20 would in no way mitigate the wrongfulness of the
21 misconduct.

22 MR. HARDING: Could you talk about, I
23 mean he's a lawyer, right, he's out there lawyering,
24 he's not on the bench, he's just sort of doing his thing
25 as a lawyer here and, you know, the Committee on

10.

1 Professional Standards versus the Commission on
2 Judicial Conduct. Could you spend a few moments
3 on that?

4 MS. CORREA: Yes. The fact that he was a
5 lawyer, I do think is significant. It's significant in the
6 sense that he was giving them advice but there is no
7 reason for him to have used such vulgarity merely
8 because these women, these people were uneducated.
9 And I think that defense is frankly offensive that
10 somehow he had to communicate in such vulgar terms
11 merely to get his point across. I think if you look at
12 the emails, you will see that doesn't add anything to
13 it. You don't need that vulgarity. These people are
14 perfectly capable of understanding what he was trying
15 to convey to them and he could have – certainly an
16 attorney, certainly a judge could have chosen
17 language that did not convey any kind of prejudice
18 against women. I hope that answers your question.

19 MR. HARDING: Yes. You know, and it does,
20 but again, he is, you know, he is operating as a private
21 attorney at that point, so you know, we always got, the
22 robes are always kind of right behind right him, you
23 know –

24 MS. CORREA: – Exactly. And as the judge
25 has said, and it's in evidence, he knows that. The

11.

1 judge's own words are that he – it's 24/7. There is
2 well established caselaw that the judge's mantle
3 follows him. He's figuratively cloaked in his judicial
4 robes.

5 MR. HARDING: Thank you.

6 JUDGE LEACH: Might I ask, were you able
7 to determine the race of the Colemans?

8 MS. CORREA: They are white.

9 JUDGE LEACH: Thank you.

10 MR. BELLUCK: Go ahead, please.

11 MR. RASKIN: Counsel, you drew an analogy
12 to the Backal case in terms of a public place and
13 privacy. I recall Backal, her secreting the money and
14 or contraband in her apartment for a personal
15 acquaintance rather than having a conversation in a
16 public arena. Can you draw a distinction between
17 those two?

18 MS. CORREA: Well, I think that there's, they
19 are analogous. I think in the Matter of Backal, it's
20 somewhere where she clearly had an expectation of
21 privacy. I think people can argue that in emails you
22 can in this day and age it's hard to imagine that
23 anything is really private once you push the send
24 button and someone receives the email. But if one
25 were to argue that he had a reasonable expectation of

12.

1 privacy in his emails, that I think is an irrelevant
2 factor, as Backal tells us, because it doesn't in any
3 way mitigate the wrongfulness of his misconduct.

4 MR. RASKIN: Thank you.

5 JUDGE LEACH: Some of the cases that we
6 were looking at in terms of sanction, most of them if
7 not all of them related to spoken words, comments
8 made. Are you aware of any case where the profanity
9 and vulgarity was placed in a written document? As
10 we all know with emails, even though you may have
11 intended it only for the recipient of the email, they're
12 written in stone and they can be disseminated in a
13 million different directions. But do you have any
14 cases and do you believe that the fact that it was
15 written is more damning, excuse my French, than if it
16 had merely been spoken amongst two people?

17 MS. CORREA: Absolutely, Judge. I think
18 that to your question most of the cases, they all deal
19 with something that is spoken. Matter of Assini is a
20 removal case, another case with the c-word, where the
21 judge called his co-judge the c-word. There's other
22 cases with the Matter of Cerbone, where he is using
23 racial epithets, verbal. So, I don't have any specific
24 case where it was written. But what I say to your
25 question is that if anything, when you write it's

1 actually – there is actually much more thought process
2 involved rather than when someone merely speaks.
3 That, that, that, I think, is the reverse. He had the
4 opportunity to really consider what he was going to
5 say in an email versus what somebody was spewing in
6 the heat of the moment. So, I think there's – he had
7 the opportunity and I think he should be held
8 accountable for the c-word and the email.

9 In the Matter of Caplicki, if you take a look at
10 that case, you censured the judge for saying that an
11 attorney had a “nice butt.” If we are using that as a
12 standard and in that case the Commission said as far
13 back as 1983, there is no place in the State of New
14 York for words that demean women. So, if we
15 consider the words in that case, surely calling
16 somebody a “c- on wheels” is far worse than Caplicki.
17 And I ask you to consider that when you consider
18 whether or not removal is the appropriate sanction and
19 I ask you to consider the message that is sent to the
20 public or for the future litigants that are going to have
21 to appear before this judge and whether or not they
22 can really consider the judge to be free of this gender
23 bias based on a judge that so freely uses these women
24 – vile words to disparage female professionals simply
25 for doing their job.

1 I ask you also to consider that there is no
2 mitigation here. There is no reason. I think you
3 should disaffirm the report, find that the judge said the
4 n-word but also disaffirm the mitigation. There is
5 nothing to mitigate here. The judge has to admit the
6 emails. They are in writing. He obviously is in a
7 position where he can deny the n-word was said and
8 he is using that opportunity. But there is nothing, not
9 one thing to mitigate his conduct here. He's not,
10 there's no contrition. I ask, I submit to you that at this
11 point he – it's too little too late if he gets here and
12 says anything different to you because there is no
13 basis that you can find anything in the record that will
14 really mitigate the words that he used in his emails.

15 If anyone has any other questions?

16 MR. BELLUCK: Thank you.

17 MS. CORREA: I just want to close. I submit
18 to you that in 2019 women are still fighting to be
19 treated as equals in the workforce and they are still
20 being called cunts and bitches for merely doing their
21 job. Please, I ask you to consider the very serious bias
22 that this judge has used by using the c-word and what
23 message it sends to the public and the duty that you all
24 have to protect the public, to make sure that our
25 judges in the state of New York are free of these

15.

1 gender biases. Thank you.

2 MR. BELLUCK: Thank you very much.

3 Mr. Besso?

4 MR. BESSO: Thank you. Good morning,
5 everybody.

6 MR. BELLUCK: Good morning.

7 MR. BESSO: You know, I have been involved
8 in grievance work and representing judges for a long
9 period of time. I was the Chairman of the Grievance
10 Committee for the Tenth Judicial District. I spent
11 eight years on that committee and I have been
12 involved in these types of proceedings. Listening to
13 the counsel for the Commission present her case it's
14 as if we never had a trial in this case. We never had
15 witnesses testify. We had a distinguished judge who
16 was a referee in this case, who made a decision and
17 was lambasted by counsel for the Commission
18 because she didn't like the decision he made
19 regarding the n-word. And I have a few comments
20 with regard to that. She portrayed him as bewildering
21 as is our confirmation of the judge's decision. She
22 accused the judge of threadbare analysis, that he made
23 no credibility finding, that he ignored independent
24 testimony and that he speculated on matters outside
25 the record. I'm amazed that counsel didn't seek the

1 removal of Judge Collins. Counsel's condemnation of
2 the judge's ability and analysis is dismaying. The
3 judge, just to comment on something that counsel said
4 at the end of her presentation, which wasn't in my
5 prepared remarks, when asked if, she said he wasn't
6 contrite. Judge Collins, an experienced and
7 distinguished jurist who spent many, many days on
8 different cases in high profiles cases in the Bronx,
9 found he had sincere contriteness. So how does
10 counsel make the determination to this Commission
11 that he had no – he wasn't contrite whatsoever and
12 there should be no mitigation? Now we have a
13 process. The process has been set out by the
14 Commission in terms of what happens. We had an
15 EUO here. The judge testified. He was contrite. He
16 was remorseful. We had a trial. At the trial he was
17 remorseful. He testified and he said he regretted the
18 emails and so forth. And now we have argument
19 before the Commission. And the argument says that
20 the judge had an ample opportunity to listen to the
21 witnesses as we all know, we are all involved in
22 litigation, and make a credibility determination that
23 those of you who were not at the trial obviously you
24 weren't there, couldn't make those. You got the bare
25 record, a review, and make a determination on it. But

17.

1 the judge was there. I was there. Mr. Senzer testified
2 as did the other witnesses. So, you have to give some
3 credence to the judge's findings in this case, an
4 experienced jurist. Yet counsel would say that you
5 give no credence whatsoever to the judge's findings.

6 MR. BELLUCK: Okay, so let me, let me ask
7 you this. If we put aside the allegation about the use
8 of the n-word, okay. You just went through with us
9 all of the reasons why we should accept Judge
10 Collins' determination –

11 MR. BESSO: Well, he also gave some reasons
12 as to why you can't accept the Colemans –

13 MR. BELLUCK: – Okay, but putting that all
14 aside –

15 MR. BESSO: – Okay.

16 MR. BELLUCK: He found misconduct with
17 respect to what was in the email and if I understand
18 your position, you do not think there is misconduct
19 there. So, my first question that I'd like for you to
20 answer is why do you think there is not misconduct?
21 And second, if there is misconduct, my understanding
22 is you think that this should be a caution?

23 MR. BESSO: I believe that having been
24 involved in litigation for many, many years, lawyers
25 do things I found and also from my experience in the

1 grievance process, things that they shouldn't do.
2 There is no question about it. They use poor
3 judgment. They use language they shouldn't be used,
4 that shouldn't use in the heat of the litigation. Acting
5 as lawyer and acting as a judge are two different
6 things. I know a judge is supposed to be a judge 24
7 hours a day and so forth. But if you are a part-time
8 judge and you are allowed to practice law, you
9 become the lawyer during the day and the judge at
10 night, in Judge Senzer's case, because he does sit in
11 the evenings. And he has apologized for those
12 remarks. But do we forget the fact that he has served
13 for 26 years as a judge and there's been no complaints
14 made against him whatsoever other than one letter of
15 caution made 20 years ago? Are we to forget the fact
16 that he's practicing as an attorney for 36 years? –

17 JUDGE LEACH: – I'm sorry –

18 MR. BESSO: – Never had a grievance filed
19 against him.

20 JUDGE LEACH: Mr. Besso?

21 MR. BESSO: Judge, I am sorry.

22 JUDGE LEACH: There is total
23 acknowledgment of that which he can't deny because
24 it's set forth in the emails.

25 MR. BESSO: I agree.

1 JUDGE LEACH: But in my questioning to
2 Ms. Correa, I had indicated that my belief that when
3 you write it it's worse and because as she indicated
4 that there is a long thought process there. To think it,
5 make your hands type it. I am sure as an attorney and
6 a judge he must have reread it before he sent it off.
7 And I'm – it boggles my mind, forget about what
8 attorneys do, that someone who is an attorney
9 representing a client, a client who knows that he is a
10 judge, would so denigrate our civil justice, criminal
11 justice, family justice system by telling them that
12 everybody that's their adversary is an asshole or using
13 the c-word or calling even their daughter the – you
14 know, all types of profanity, the b-word. And to
15 reference an adversary attorney in the manner in
16 which he did. How did he come to do that? How did
17 he tend to scribe that and leave that out in the public?
18 He wrote it to the two people. Or he knew both
19 people would read it. How does he –

20 MR. BESSO: – Well, Judge – I'm sorry –

21 JUDGE LEACH: – Is that not more harmful
22 than a spoken term of vulgarity?

23 MR. BESSO: Judge, I don't believe it was a
24 public communication. It was a private
25 communication. Remember who the communication

1 was between. It's between Judge Senzer and his
2 clients.

3 JUDGE LEACH: But it's an email. It's
4 preserved for all –

5 MR. BESSO: – Whether it's an email or a
6 letter, it's a communication between him and his
7 clients.

8 JUDGE LEACH: And did he not turn our civil
9 justice system on its head by telling –

10 MR. BESSO: – (INAUDIBLE) –

11 JUDGE LEACH: – them that anybody that's
12 an adversary or who may rule on it doesn't know what
13 they are doing, is doing it out of some bias or is not
14 competent? That's the signal he sent to his clients.
15 Do you agree with that or no?

16 MR. BESSO: Judge, I don't disagree with you.
17 Would I have done that? No. Would you have done
18 that? No. Judge Senzer has indicated significant
19 remorse and contriteness according to the finding of
20 the referee. He's apologized on many different
21 occasions. He supplied the emails to the Commission.
22 So, he's not trying to hide anything. He did it. He
23 acknowledges he did it. Is it a grounds for removal
24 from the bench which he served on for 26 years
25 without problems whatsoever? And don't forget there

1 was testimony from his character witness that it's
2 completely out of his character to use the terminology
3 such as that or display any, I guess, animus towards
4 any ethnic or religious group or organization. So, it's
5 out of character for him. We have no other record
6 with regard to his conduct over his 26 years on the
7 bench, 36 years as an attorney. No grievances filed
8 against him for similar conduct. Yes, it's
9 reprehensible. We all agree upon that. Does it affect
10 his ability to serve as a judge? No. He made a
11 mistake as a lawyer. We have a process for that. If in
12 fact he came before my grievance committee when I
13 was the chair, he would have probably been given an
14 admonition and told not use that language again. And
15 it's offensive, the language. There is no question
16 about it. We are not making any excuses here. But
17 this Commission has to look at the entire body of
18 work of the individual that comes before it. Not just
19 one email. And it's important because this
20 Commission –

21 JUDGE LEACH: – There's a pattern of emails
22 over the course of almost a half year.

23 MR. BESSO: There is no question about it.
24 But this Commission has never removed a judge for a
25 private communication.

1 JUDGE FALK: So, to follow from Mr.
2 Belluck's question about the dismissal and caution,
3 how can you justify that? You started talking about
4 his record of all the years, but how can you justify it?
5 By him making those statements, he's always a judge.
6 And you can't tell me that his clients don't say well,
7 we have a judge representing us. So, when he's
8 making that statement, he is still a judge and he's still,
9 you agree that he has to uphold the integrity of the
10 bench, right?

11 MR. BESSO: Yes, he does. He has an
12 obligation. There is no question about it.

13 JUDGE FALK: So then, how do we get back
14 to it being a dismissal and caution, if you assume
15 these emails of what he is saying? And I'd assume
16 the emails, there is no question that he sent the emails
17 and these were his words that he thought, typed and
18 hit send.

19 MR. BESSO: Judge, let me just say this. I
20 have represented thousands and thousands of
21 defendants in criminal cases and civil cases and so
22 forth. The very process that you have put this judge
23 through, and I am not saying or making excuses for
24 him, but this process of going before this
25 Commission, getting a complaint, coming before the

1 Commission, having to testify at an EUO, having to
2 go through a trial, having his witnesses come in and
3 testify, having people know that he's been charged
4 with what the allegations and so forth. When I say he
5 wants a caution, a caution he doesn't need to be
6 cautioned by this Commission because he knows he
7 did something wrong. He knows it's terrible and he's
8 suffering as a result of it. And he will probably for
9 the rest of his life. But I don't believe that anything
10 further than that is required because of the fact that he
11 has gone through a process and he knows what's
12 going on. And I think that you have to look at, as I
13 said, you have to look at the person as a whole. This
14 is a man who has an unblemished record. Both as a
15 lawyer and as a judge. So, what do we do with him?
16 I mean, I have sat in your shoes before and made
17 these decisions. What do we do with him at this
18 point? Do you think that his conduct is warranted –
19 warrants a removal? I don't. I don't believe it does. I
20 believe that he is a good judge. He's had over
21 100,000 cases in his court, which is a small court but
22 it's a very busy court. And as a lawyer he's had
23 many, many cases. So, I think that we have outlined
24 our position in our submissions. I think that the
25 characterization by the counsel of the Commission of

1 Judge Collins is appalling. I think that they have
2 insulted him. He's a fine jurist. I know him. And I
3 believe that these are private communications and this
4 Commission has never I think even addressed the
5 issue of private communications. But as far as it is
6 concerned, is a – and the judge has made a finding of
7 the fact that these are private communications, not
8 public communications.

9 MR. RASKIN: Mr. Besso?

10 MR. BESSO: Yes?

11 MR. RASKIN: You asked us to consider a
12 dismissal and caution and you drew a comparison to
13 an admo – admonition, which would of course be
14 private. There would be no public –

15 MR. BESSO: – That is correct.

16 MR. RASKIN: – revelation. Do you think
17 were we to adopt the referee's report and were we to
18 consider a resolution other than removal, do you think
19 that possibly some public censure or admonition
20 would have a chastening effect on the judge? At least
21 let the public know that he has crossed the line rather
22 than sweeping this under the rug? Comments?

23 MR. BESSO: There is no question that a
24 sanction of any sort, whether you are a lawyer or
25 judge, is a chastening moment. And the fact that it's

1 made public certainly I think indicates to the judge
2 that it's a serious matter and that it shouldn't happen
3 again. And of course, it causes collateral damage to
4 him as well with regard to other matters which aren't
5 before this Commission. But an admonition in the
6 grievance term as you described it is private.

7 MR. RASKIN: As is a dismissal and caution
8 for all intents and purposes.

9 MR. BESSO: Yes. A public, a public censure
10 is a public censure. And if the – I feel if the
11 Commission feels that that is appropriate as opposed
12 to removal, I can certainly, you know in all candor,
13 want to do that. But I don't believe that that's the
14 appropriate sanction.

15 JUDGE LEACH: Matter of Backal, 87 NY2d,
16 page 1, provides that even if a judge had some
17 expectation of privacy in connection with the
18 conversation in which he uttered words which amount
19 to misconduct, that that's not a defense. So, we have
20 authorities that would indicate that even if he thought
21 it was in a private email, it is not a defense of those
22 statements. It is still misconduct, irrespective of what
23 his beliefs were with respect to the thread, the
24 publication of the statement –

25 MR. BESSO: – As a judge you may be

1 correct. But let me say this to you, having practiced
2 for almost 47 years, if I send a letter to my client,
3 that's a private communication between myself and
4 my client. And this is what an email is. I mean, just
5 because we are in the technological age now doesn't
6 mean it's changed. And obviously, Judge, you were
7 an attorney before you were a judge and when you
8 communicate with your client we know it's all a
9 privileged communication and so forth, but it's also
10 private conversation between you and your client.
11 Now these clients have --

12 MR. RASKIN: -- Counsel, excuse me. The
13 client has the privilege not the lawyer.

14 MR. BESSO: I understand that.

15 MR. RASKIN: So, if I write a letter to a client
16 and I use derogatory and condescending language
17 which may border on the b-word or the c-word, while
18 my client has a privilege, I don't. I'm the lawyer and
19 I am a member of the public.

20 MR. BESSO: I didn't say in that context.
21 What I said, in terms of privilege is just to show the
22 confidentiality, the confidential nature of the
23 relationship between the client and the lawyer. And
24 so, it is a private communication. I mean, if in fact
25 they talked about the Mets score last night as opposed

1 to the language that he used, there would be no further
2 activity or anything between the client. But you got to
3 remember also that the reason that these became
4 public was because of the Colemans being unhappy
5 with the relationship that they had with Judge Senzer.
6 The fact that they wanted a refund. The fact that they
7 didn't like the outcome of their cases and that was I
8 think, it was shown by the fact that they went to see
9 Mr. Cassar and went to see him only because they
10 read an article where he was bringing an action
11 against the board or the Traffic Board where Judge
12 Senzer works so they could hurt him. That was their
13 purpose. When counsel for the Commission says that
14 there was no reason for them or no motive, that is
15 incorrect. They went to see Mr. Cassar so they could
16 hurt Judge Senzer because they knew he was bringing
17 an action against the Commission, or the Parking
18 Violations Bureau and a few judges on that bureau.
19 That's why they went there and that's why Mr. Cassar
20 came to this Commission and made this complaint.

21 MR. BELLUCK: All right. Is the judge going
22 to address us?

23 MR. BESSO: Yes.

24 MR. BELLUCK: Okay. Because I had a
25 question that I want to address to him which I will

1 wait. I'm a little confused about something. The
2 referee says in his report that the judge acknowledged
3 that his clients were members of the public.

4 MR. BESSO: I don't know why he would say
5 that.

6 MR. BELLUCK: Okay. Well –

7 MR. BESSO: – He did make a finding that –

8 MR. BELLUCK: – The only, you know, I
9 mean, I guess this was the point that I was trying to
10 start with. Is the only thing that this, that the judge
11 has admitted to is what is in the emails? Okay?

12 MR. BESSO: That is correct.

13 MR. BELLUCK: And your first part of your
14 argument was that the referee is such an established
15 jurist that we should believe what the referee said.
16 So, my question to you again is, I am assuming that
17 applies to the entire referee's report. So, all of the
18 findings that the referee made with respect to the
19 conduct that he did find occurred, which was the
20 emails, we could take that with the same weight that
21 you want us to take his finding about the use of the n-
22 word?

23 MR. BESSO: And the fact that he found the
24 communications were private and that he was
25 sincerely contrite.

1 MR. BELLUCK: Okay. Well, I am not sure
2 that he found that the communications were private.

3 But --

4 MR. BESSO: -- But he says that in his
5 decision.

6 MR. BELLUCK: Well, it also says that the
7 judge acknowledged that they were members of the
8 public.

9 MR. BESSO: Well, in my notes, I have his
10 decision right here. And he does say at the end --

11 MR. BELLUCK: -- Right. In terms of
12 mitigation he says that they were made with private
13 clients. But earlier on page 8, he says that the judge
14 acknowledged they were members of the public.

15 MR. BESSO: Well, the clients weren't
16 members of the public.

17 MR. BELLUCK: Okay.

18 JUDGE LEACH: We all are.

19 MR. BELLUCK: Well, Jodie? Ms. Corngold?
20 Sorry.

21 MR. BESSO: Let me just say this to you, Mr.
22 Chairman, who saw these emails? The clients and the
23 judge. Right? How did they get to Mr. Cassar? They
24 gave it to Mr. Cassar because the Colemans decided
25 they wanted to hurt this judge and gave it to them.

1 Otherwise they would have been private
2 communications. They made them public. We didn't
3 make them public. In other words, what Judge Leach
4 said before, we didn't utter these words in public. Or
5 send these emails in public. We didn't publish it in
6 the newspaper. We didn't go on the radio and say
7 anything. We considered these to be private
8 communications. That's what they were --

9 JUDGE FALK: -- But because they are private
10 --

11 MR. BESSO: -- Unfortunately they were
12 improper communications, but they were private
13 communications.

14 I am sorry, Judge?

15 JUDGE FALK: That's my question. Just
16 because they are private, does that mean they are
17 appropriate or --?

18 MR. BESSO: No. There is no question they
19 were inappropriate. We all know that. You know,
20 there's no dancing around here, you know, with
21 semantics.

22 JUDGE LEACH: But these characterizations
23 to his clients have them look at the civil justice system
24 in an inappropriate manner. You know, he just
25 undercut the authority of the people involved in this

1 matter, the other players, the court adversary attorney,
2 the daughter who was an adversary party and he just
3 called them all names rather than to arm his clients
4 with some sense of understanding of the process, the
5 facts and the law. And as I said, this is repeated
6 conduct. The statements are what they are, and he's
7 acknowledged them. Is that an appropriate way to
8 have a client go into a courtroom petitioning for some
9 visitation with a grandchild to tell that client that the
10 people you are going to interface with and who may
11 cross-examine you are all of these names that he
12 used? And as I said before, he turned the criminal, the
13 civil justice system on its head with those comments.
14 What was the intent there? It was totally wrong and
15 there's a pattern of this activity throughout the course
16 of this matter.

17 MR. BESSO: There is a pattern in the course
18 of this matter, Judge, but not in a course of his career,
19 as a judge or as a lawyer. And yes, I agree with you.
20 It's disrespectful to the system and I wouldn't
21 recommend it to anybody. But let me say this to you,
22 having been involved in litigation as many of you
23 have. It's not the first person to comment about his
24 adversary or a witness or another person –

25 JUDGE LEACH: – A lot of what you refer to

1 has to stop.

2 MR. BESSO: Should we, should we try to lift
3 the discourse of our profession? I would say yes. It's
4 certainly not as good as it was when I first started.
5 And if we look at what's going on in the country it's
6 certainly not as good as it was when I first had the
7 right to vote. So, things have changed. It doesn't
8 excuse him. I agree with what you are saying, and I
9 wish we could have a system where everybody was
10 civil and courteous and kind and considerate and
11 professional.

12 MR. BELLUCK: Ms. Corngold, do you have a
13 question?

14 JUDGE MAZZARELLI: This is not an
15 isolated – these are not isolated comments in the heat
16 of battle, sort of speak. This is a pattern of behavior
17 over what, a five-month period. The emails.

18 MR. BESSO: The emails, yes, Judge, there is
19 no excuse as far as the emails are concerned. I agree
20 with you and if in fact we had three complaints from
21 litigants or other people indicating that, or four, that
22 the judge was involved in this, I would say yes, it's a
23 pattern. I have no idea why he used these comments.
24 Obviously, it was poor choice. It was the wrong thing
25 to do and he has fallen on his sword and indicated

1 that. Other than that, there is nothing else I can say.

2 We are all in agreement. There's no dispute here.

3 Anything else?

4 MR. BELLUCK: Thank you very much.

5 MR. BESSO: Thank you.

6 MR. BELLUCK: Judge, do you care to
7 address us?

8 JUDGE SENZER: Yes, sir.

9 MR. BELLUCK: Thank you.

10 JUDGE SENZER: I am heartbroken,
11 humiliated and chastened to be here today. From the
12 safety of a keyboard, I dropped profanity into
13 thoughts offered as advice in private client email and
14 in the process belittled myself. I humbly apologize.
15 My concern now is unintended consequences that re-
16 publication of these words will inexorably wound
17 innocent people. A legal colleague and former
18 adversary, a court attorney, my wife, our adult
19 daughter, my sister who is herself an attorney, my
20 elderly mother, who taught me better, my students.
21 Finally, importantly, I swore before staff, Judge
22 Collins and I reaffirm now that never in my life have I
23 uttered a racially or ethnically charged word or
24 thought anywhere, ever. I am not capable of it. It
25 offends everything I stand for personally, politically

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1 and professionally. And this part of the ordeal has for
2 three years been a grotesque nightmare for me and my
3 wife. I can only ask that you carefully discern the
4 entire record from beginning to end. And I thank you
5 for listening to me today.

6 MR. BELLUCK: Thank you, Judge.

7 JUDGE SENZER: Thank you.

8 MR. BELLUCK: I just want – Mr. Besso, you
9 don't have anything further at this point?

10 MR. BESSO: No.

11 MR. BELLUCK: Okay.

12 MR. BESSO: Thank you, Mr. Chairman.

13 MR. BELLUCK: Thank you.

14 Ms. Correa?

15 MS. CORREA: Yes, I will be brief. As to Mr.
16 Raskin's point to Mr. Besso, I don't think a censure is
17 adequate in this case. This is a gender – it's the
18 essence – the c-word is the essence of a gender-based
19 slur. The message that you would send to the public
20 by merely giving the judge a censure is that you don't
21 take that seriously. That you are not protecting
22 females from being – from appearing before the
23 respondent and I submit to you that it is quite
24 significant. For female professionals, female litigants,
25 the public, they should know that respondent is free of

35.

1 biases and by the eight emails that are directed all at
2 female professionals, the public can have no such
3 confidence. And I disagree that the Colemans are
4 somehow not members of that same public. These are
5 lay people. These are, Mr. Coleman is a custodian.
6 Mrs. Coleman is a sub-custodial person. This is these
7 peoples' contact with the justice system and what are
8 they to think when a judge in conveying the advice
9 uses such vulgar and profane, vile language in
10 conveying his advice about other members of the
11 justice system. I also will remind you that Judge
12 Senzer has a prior dismissal and caution, and Matter
13 of George tells us that that can be a significant
14 aggravating factor here. If you'll take a look at the
15 dismissal and caution, that was also for choice of
16 words that Judge Senzer used on the bench, in which
17 he – the Commission said that he was rude in the
18 statements that he made to a female litigant about
19 threatening to have her mom, threatening to have a
20 police car get her mom and that almost married
21 doesn't count. Judge Senzer continued in this same
22 pattern with these vulgar and profane emails. As to –
23 going back as to the referee's report, I just want to
24 remind you that you are not bound by the referee's
25 report. In Matter of Popeo, as to the credibility

36.

1 finding, you disaffirmed the report because you found
2 that there was no such credibility finding. In the
3 Matter of Marshall, the Court of Appeals said that you
4 are not bound by the referee's report, so I ask that that
5 guide you.

6 MR. BELLUCK: Can you comment on –

7 MS. CORREA: – Yes.

8 MR. BELLUCK: the issue of contriteness,
9 which obviously the referee found in the report?

10 MS. CORREA: Certainly.

11 MR. BELLUCK: What exactly the
12 Commission's position is on that?

13 MS. CORREA: There is zero contriteness.
14 Certainly, we can all point to females in our life that
15 as respondent did, but the greatest evidence of the
16 lack of contrition is his justification defense. It's as if
17 when someone apologizes to you and then they give
18 you all the excuses with their apology. It's the same
19 thing here. If you are look at respondent's papers, his
20 explanation for why he used the words that he used
21 have no bearing here. If he was really contrite, he
22 would just own up to it and explain it to you without
23 justifying why he did it. That he was pandering and
24 patronizing and stooping down to the level of the
25 Colemans. That's not contrition. That because

37.

1 somehow, it's part of their words because it was part
2 of the underlying case in which Mrs. Coleman's
3 supervisor called her a "c." That shows a great
4 insensitivity and it's an illogical justification. So, no,
5 there is no contrition. Someone who is before you,
6 has no reason but to admit that which is in writing.
7 That's not contrition. Those two are very different.

8 And I also want to address the character
9 witnesses. The character witnesses testified before
10 the hearing, before the referee. I submit to you that
11 the referee put unreasonable weight. He admitted
12 evidence which has no basis here. In another venue it
13 would be reversible error. He allowed character
14 witnesses to testify about specific acts. That
15 somehow because these witnesses, some of which
16 would regularly appear before respondent, didn't
17 observe him to be a racist in court or that his priest
18 didn't observe him making these statements in church,
19 that's probative of nothing. And I think you should
20 put zero weight on that. As to the referee's report, it
21 was a sloppy report. This is not a personal attack on
22 the referee. I'm merely addressing the report, the lack
23 of analysis, the rampant speculation and the reliance
24 on impermissible character evidence.

25 What I leave you with is, that this case

38.

1 demands removal. If you don't find the n-word was
2 said, consider the significance of the c-word.
3 Consider the significance of what that was intended to
4 convey even by respondent's own words, that it was
5 meant to convey sharp lawyering, an aggressive
6 female. What kind of confidence will any of the
7 people in Northport have? The females who are
8 appearing before him now? What, if they are not
9 compliant, somehow that that's going to be used
10 against them. There is no confidence there. And you
11 must remove respondent.

12 Thank you.

13 MR. BELLUCK: Thank you. Okay, that
14 concludes the hearing in the Matter of Paul Senzer. I
15 want to thank counsel for the Commission and for the
16 judge for appearing before us. Thank you.

17 MR. BESSO: Thank you.

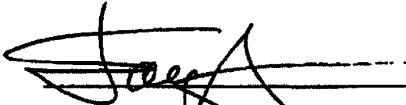
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19 (Whereupon the oral argument was concluded
20 at 11:38 AM.)
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CERTIFICATION

I, JACQUELINE AYALA, an Assistant Administrative Officer of the State Commission on Judicial Conduct, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the proceedings transcribed by me, to the best of my knowledge and belief, in the matter held on May 30, 2019.

Dated: June 17, 2019



JACQUELINE AYALA

COMPLAINT OF CHRISTOPHER CASSAR, ESQ.,
DATED AUGUST 20, 2015 [58 - 63]

SCJC-Legal Email 08/31/2015

Debra Hampson

From: cjcassar@cassarlaw.com
Sent: Thursday, August 20, 2015 9:27 AM
To: C. Randall Hinrichs; Robert Quinlan; Mark Cuthbertson
Subject: Mr. Paul Senzer
Attachments: August 20, 2015 Letter to J Hinrichs Re Paul Senzer.pdf; November 25, 2014 Email from Senzer.pdf; January 22, 2015 Email by Senzer.pdf; February 22, 2015 Email by Senzer.pdf

Dear Judge Hinrichs,

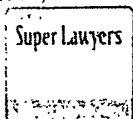
Please find attached a letter and copies of emails written by Mr. Senzer which demonstrate that he is unfit to act as a judicial hearing officer at the Suffolk County Traffic and Parking Violation Agency.

Very truly yours,

Christopher J. Cassar, Esq.
The Law Offices of
CHRISTOPHER J. CASSAR, P.C.

Suffolk County Office
13 East Carver Street
Huntington Village, New York 11743
(631) 271-6596 office phone
(631) 351-0196 office fax

Nassau County Office
626 RXR Plaza, 6th Floor
Uniondale, New York 11556
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Christopher J. Cassar, Esq. ■
Heidi Mia Bernstein, Esq. *

■ ALSO ADMITTED IN US COURT OF APPEALS FOR THE SECOND CIRCUIT
 AND THE NORTHERN, SOUTHERN & EASTERN DISTRICTS OF NEW YORK
 • ALSO ADMITTED IN ARIZONA & CALIFORNIA

Nassau County Office:
 626 RKR Plaza
 Sixth Floor, West Tower
 Uniondale, New York 11556
 Telephone (516) 522-2737

August 20, 2015

rhinrich@nycourts.gov
 Hon. C. Randall Hinrichs
 Administrative Judge
 10th Judicial District, Suffolk County
 400 Carleton Avenue
 P.O. Box 9080
 Central Islip, New York 11722

**RE: Suffolk County Traffic and Parking Violations Agency
 Mr. Paul Senzer**

Dear Judge Hinrichs:

Please be advised that this office represents a number of motorists in connection with VTL violations prosecuted at the Suffolk County Traffic and Parking Violations Agency (SCTPVA). As you know, Mr. Paul Senzer is a judicial hearing officer at the SCTPVA.

A former client of Mr. Senzer contacted this office and provided the attached email communications from Mr. Senzer.

1. A November 25, 2014 email from Mr. Senzer in which he refers to the opposing counsel in a family court proceeding as "a cunt on wheels;"
2. A January 22, 2015 email from Mr. Senzer in which he refers to the adversary parties in a family court proceeding as "Scumbags;" and
3. A February 22, 2015 email from Mr. Senzer in which he refers to the family court judge as "asshole."

The former client informs this office that Mr. Senzer also sent emails referring to Latinos in a racist manner.

Judge Hinrichs
August 20, 2015
Page 2

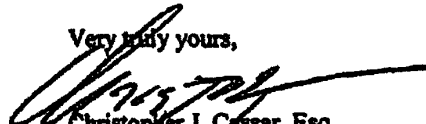
Under the Code of Professional Responsibilities DR 1-103 [1200.4], I am obligated to disclose this information. DR 1-103 [1200.4] Disclosure of Information to Authorities provides that:

A. A lawyer possessing knowledge, (1) not protected as a confidence or secret, or (2) not gained in the lawyer's capacity as a member of a bona fide lawyer assistance or similar program or committee, of a violation of DR 1-102 [1200.3] that raises a substantial question as to another lawyer's honesty, trustworthiness or fitness as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

B. A lawyer possessing knowledge or evidence, not protected as a confidence or secret, concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

Thank you for your time and attention in this matter.

Very truly yours,



Christopher J. Cassar, Esq.

CJC/jd
Encs.

cc: mcuthbertson@cuthbertsonlaw.com
Mark A. Cuthbertson, Esq.
Attorney for Paul Senzer
434 New York Avenue
Huntington, New York 11443

rquinlan@nycourts.gov
Robert F. Quinlan, Esq.
Principal Law Clerk
Hon. C. Randall Hinrichs
Administrative Judge

From: **Paul Senzer** Hide

To:

Re: Jen

November 25, 2014 at 12:51 PM

I don't believe she will give in. And I don't believe she will represent herself once we serve her. Her lawyer is a cunt on wheels (sorry for the profanity...and don't quote me), so be prepared.

From: Paul Senzer Hide

To:

**Fwd: THE TWO
SCUMBAGS WERE
SERVED**

January 22, 2015 at 2:41 PM

-----Original Message-----

From: paulsenzer <paulsenzer@aol.com>

To: paulsenzer <paulsenzer@aol.com>

Sent: Thu, Jan 22, 2015 2:39 pm

Subject: THE TWO SCUMBAGS WERE
SERVED

Just wanted you to know.

From: Paul Senzar paulsenzar@aol.com
Subject: Re: Jen
Date: February 22, 2015 at 2:28 PM
To: "



I agree with you...however, you may have noticed that the "judge" is an asshole. An "asshole" can issue a warrant for your arrest. Just want you to know "worst case scenario."

ADMINISTRATOR'S COMPLAINT, DATED SEPTEMBER 2, 2016**ADMINISTRATOR'S COMPLAINT**

In the Matter of: Paul H. Senzer
Northport Village Justice
Suffolk County

Complaint # 2016/N-0655

Statutory Authorization

This complaint is filed at the direction of the State Commission on Judicial Conduct in compliance with Section 44, subdivision 2, of the Judiciary Law and is intended to serve as the basis for an investigation. In accordance with Section 44, subdivision 3, in the event that the above-named judge is required to appear before the Commission or any of its members or staff, this complaint will be served at the time the judge is notified in writing of the required appearance.

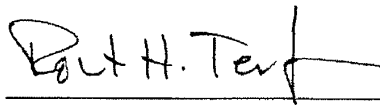
This complaint is not an accusatory instrument. It provides a basis to commence an investigation. Thus, a judge under investigation may be required to reply to other allegations in addition to those set forth below.

Complaint

Based upon information obtained by the Commission during another investigation concerning Judge Senzer, it is alleged that in or about November 2015, in connection with an administrative proceeding in which he was appearing as an attorney, Judge Senzer referred to a New York State Administrative Law Judge as a "fucking nigger" and referred to potential witnesses of Hispanic ethnicity as "spic women."

New York, New York

Date Signed: 9/2/2016



Robert H. Tembeckjian, Administrator

Authorized on August 11, 2016

NOTICE OF FORMAL WRITTEN COMPLAINT AND FORMAL
WRITTEN COMPLAINT, DATED OCTOBER 13, 2017 [65 - 71]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Paul H. Senzer, a Justice of the Northport Village Court, Suffolk County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon Respondent the annexed Formal Written Complaint; and that, in accordance with said statute, Respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon him to serve the Commission at its New York office, 61 Broadway, Suite 1200, New York, New York 10006, with his verified Answer to the specific paragraphs of the Complaint.

Dated: October 13, 2017
New York, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
Suite 1200
New York, New York 10006
(646) 386-4800

To: David H. Besso, Esq.
Attorney for Respondent
Long Tuminello, LLP
Attorneys at Law
120 4th Avenue
Bayshore, New York 11706

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

**FORMAL
WRITTEN COMPLAINT**

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct ("Commission"), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.
2. The Commission has directed that a Formal Written Complaint be drawn and served upon Paul H. Senzer ("Respondent"), a Justice of the Northport Village Court, Suffolk County.
3. The factual allegations set forth in Charge I state acts of judicial misconduct by Respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rules").
4. Respondent was admitted to the practice of law in New York in 1981. He has been a Justice of the Northport Village Court, Suffolk County, since 1994. Respondent's current term expires on March 31, 2018. Respondent is also a District Court Hearing Officer at the Suffolk County Traffic and Parking Violations Agency.

CHARGE I

5. From on or about October 24, 2014, to on or about February 22, 2015, Respondent failed to observe high standards of conduct and otherwise undermined public confidence in the judiciary when, while representing clients in his private law practice, he used racist, sexist, profane and otherwise degrading language.

Specifications to Charge I

6. In or about November 2013, Jennifer Coleman retained Respondent to represent her in an employee discrimination matter.

7. In or about November 2014, Respondent represented Ms. Coleman at a hearing in the matter before an Administrative Law Judge. Ms. Coleman's husband, Walter Coleman, attended the hearing with her. During a recess on the second day of the hearing, Respondent spoke to the Colemans and referred to the Administrative Law Judge, who is African-American, as "that fucking nigger" and/or "that nigger."

8. In or about the fall of 2014, the Colemans retained Respondent to represent them in a Family Court matter in which they sought the right to visit their grandchild, whom they alleged their adult daughter was keeping from them.

9. On or about October 24, 2014, Respondent sent the Colemans an email in which he referred to their daughter as a "bitch." A redacted copy of the email is attached as Exhibit A.

10. On or about November 25, 2014, Respondent sent the Colemans an email in which he stated, "I don't believe she will give in. And I don't believe she will represent

herself once we serve her. Her lawyer is a cunt on wheels (sorry for the profanity...and don't quote me), so be prepared." A redacted copy of the email is attached as Exhibit B.

11. On or about November 25, 2014, Respondent sent the Colemans an email cautioning them not to contact their grandchild's school. He added, "You should know by now that people who work in schools are assholes." A redacted copy of the email is attached as Exhibit C.

12. On or about January 13, 2015, Respondent sent the Colemans an email informing them that an appearance had been scheduled in Family Court for conciliation. Respondent wrote, "We will appear entirely calm and reasonable...let your daughter act like the asshole she is." A redacted copy of the email is attached as Exhibit D.

13. On or about January 22, 2015, Respondent forwarded to the Colemans an email in which he wrote in the subject line, "THE TWO SCUMBAGS WERE SERVED." A redacted copy of the email is attached as Exhibit E.

14. On or about February 10, 2015, Respondent sent the Colemans an email in which he twice described their daughter as a "bitch." A redacted copy of the email is attached as Exhibit F.

15. On or about February 11, 2015, Respondent sent the Colemans an email in which he twice referred to their daughter as "that bitch." A redacted copy of the email is attached as Exhibit G.

16. On or about February 11, 2015, Respondent sent the Colemans an email in which he referred to their daughter's attorney in the Family Court matter as "eyelashes." A redacted copy of the email is attached as Exhibit H.

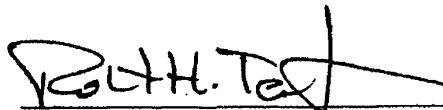
17. On or about February 20, 2015, the Colemans decided to discontinue the Family Court matter and authorized Respondent to withdraw their petition.

18. On or about February 22, 2015, Respondent sent an email to Ms. Coleman regarding her husband's reluctance to appear again in Family Court in which Respondent stated, "I agree with you...however, you may have noticed that the 'judge' is an asshole. An 'asshole' can issue a warrant for your arrest." A redacted copy of the email is attached as Exhibit I.

19. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they would not cast reasonable doubt on his capacity to act impartially as a judge, detract from the dignity of judicial office, and be incompatible with judicial office, in violation of Section 100.4(A)(1), (2) and (3) of the Rules.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: October 13, 2017
New York, New York



ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway
Suite 1200
New York, New York 10006
(646) 386-4800

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

VERIFICATION

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

1. I am the Administrator of the State Commission on Judicial Conduct.
2. I have read the foregoing Formal Written Complaint and, upon information and belief, all matters stated therein are true.
3. The basis for said information and belief is the files and records of the State Commission on Judicial Conduct.



Robert H. Tembeckjian

Sworn to before me this
13th day of October 2017



Notary Public

LATASHA Y. JOHNSON
Notary Public, State of New York
No. 01JO6235578
Qualified in New York County
Commission Expires Feb. 14, 2017

EXHIBIT A TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED OCTOBER 24, 2014

EXHIBIT A

-----Original Message-----

From: paulsenzer [REDACTED]
To: wjcoleman [REDACTED]
Sent: Fri, Oct 24, 2014 11:45 am
Subject: Re: Jen Coleman

This is the reason the Court will appoint an "attorney for the child" (law guardian). This attorney is the judge's "eyes and ears." IF absolutely necessary, the Court "may" speak with [REDACTED] at some point, ultimately. But for now, I think this Family Offense Petition should be dismissed on its face because it is legally insufficient. It doesn't state a recognized "family offense" as against the complainant (i.e., as against that bitch daughter of yours).

-----Original Message-----

From: wjcoleman [REDACTED]
To: paulsenzer [REDACTED]
Sent: Fri, Oct 24, 2014 5:51 am
Subject: Jen Coleman

Can I request the judge talk to my grandson, to see his feelings about his grandparents,
Or is he too young, He will be 8 January 5 th?

Sent from Jennifers iPad

EXHIBIT B TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED NOVEMBER 25, 2014

EXHIBIT B

[REDACTED]

[REDACTED]

-----Original Message-----
From: paulsenzer [REDACTED]
To: wjcoleman [REDACTED]
Sent: Tue, Nov 25, 2014 12:51 pm
Subject: Re: Jen

I don't believe she will give in. And I don't believe she will represent herself once we serve her. Her lawyer is a cunt on wheels (sorry for the profanity...and don't quote me), so be prepared.

-----Original Message-----
From: Jennifer [REDACTED]
To: paulsenzer [REDACTED]
Sent: Tue, Nov 25, 2014 12:33 pm
Subject: Jen

Oh by the way my daughter just happened to get engaged to this Guy when you sent the letter to her and attorney Karen mcquire. My daughter will not pay a attorney
I believe she will give in or represent herself

Sent from my iPhone

EXHIBIT C TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED NOVEMBER 25, 2014

EXHIBIT C

[REDACTED]

[REDACTED]

[REDACTED]

-----Original Message-----

From: paulsenzer [REDACTED]
To: wjcoleman [REDACTED]
Sent: Tue, Nov 25, 2014 10:52 am
Subject: Re: Jen

I need to warn you about calling the school or the counselor. There are NY cases in which grandparents were actually denied visitation because they were too heavy-handed in spying, stalking and contacting schools, strangers and other third parties. You are going to have to moderate this conduct because they will turn it around on you. You should know by now that people who work in schools are assholes.

-----Original Message-----

From: Jennifer [REDACTED]
To: paulsenzer [REDACTED]
Sent: Tue, Nov 25, 2014 10:46 am
Subject: Jen

Will get you the stuff I gave her
She had said they do a video screen
Of the child and ask indirect questions about vacations etc
He has had panic attack in school
Heard through my mom , I called school and spoke to counselor
They couldn't comment. In court my daughter stated this is because of arguments!
we haven't seen him
Only minutes at the fair the only argument was her calling her mom the name
frank called me in front of him on June before that I'd leave the room when she
came over so I didn't have to see her. I hope he hasn't been brainwashed by now

Sent from my iPhone

EXHIBIT D TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED JANUARY 13, 2015

EXHIBIT D

[REDACTED]

[REDACTED]

-----Original Message-----

From: paulsenzer [REDACTED]
To: wjcoleman [REDACTED]
Sent: Tue, Jan 13, 2015 5:35 pm
Subject: Re: Coleman papers

UPDATE:

Went back to Family Court; they regenerated the Orders to Show Cause for each of you against each of them (your daughter and ex-son in law); I picked them up and hand carried them to my process server in Mineola --gave him the complete lowdown. Gave him a check for \$252 for necessary personal service and filing proof of service with Court in CI by 1/31 deadline (he will do it way before that). Please send reimbursement check in that amount to my "new" office address: [REDACTED]. On 2/10, when we are in Family Court, an attempt will be made to "conciliate" this matter first before a junior-judge, a "Court-Attorney-Referee" who works in the court system directly under the Family Court judge. Her name is Colleen Fondulis. We will appear entirely calm and reasonable...let your daughter act like the asshole she is. If "working it out" doesn't work, we ramp up to possible trial, etc.

When the shit hits the fan (i.e., she gets served or her ex hubby does and you happen to hear about it), let me know if they reach out to you.

IF they do, stay calm and cool. Just say: "All we want is to resolve this amicably for [REDACTED]'s best benefit." DON'T say or commit to anything else. Jen --this means you.

love,

PS

-----Original Message-----

From: wjcoleman [REDACTED]
To: paulsenzer [REDACTED]
Sent: Fri, Jan 9, 2015 4:43 pm
Subject: Coleman papers

Thank you for the call we'll keep a look out for the paper work. Walter Coleman
Sent from my iPad

EXHIBIT E TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED JANUARY 22, 2015

EXHIBIT E

[REDACTED]

[REDACTED]

-----Original Message-----
From: paulsenzer [REDACTED]
To: wjcoleman [REDACTED]
Sent: Thu, Jan 22, 2015 2:41 pm
Subject: Fwd: THE TWO SCUMBAGS WERE SERVED

-----Original Message-----
From: paulsenzer [REDACTED]
To: paulsenzer [REDACTED]
Sent: Thu, Jan 22, 2015 2:39 pm
Subject: THE TWO SCUMBAGS WERE SERVED

Just wanted you to know.

PS

-----Original Message-----
From: paulsenzer [REDACTED]
To: wjcoleman [REDACTED]
Sent: Wed, Jan 14, 2015 9:09 am
Subject: Re: Walter Coleman

Thanks, Walter.

-----Original Message-----
From: wjcoleman [REDACTED]
To: paulsenzer [REDACTED]
Sent: Tue, Jan 13, 2015 6:54 pm
Subject: Walter Coleman

Will mail check tomorrow, thank you !

EXHIBIT F TO COMPLAINT -
 REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
 DATED FEBRUARY 10, 2015 [77 - 78]

EXHIBIT F

[REDACTED]

[REDACTED]

-----Original Message-----

From: paulsenzer [REDACTED]
 To: wjcoleman [REDACTED]
 Sent: Tue, Feb 10, 2015 1:40 pm
 Subject: "Standing" and "Reality"

Jen/Walter

OK --I hit the books and this is where we are at the moment.

When things deteriorate and the parent takes a hard line (i.e., no therapy; no discussion; fuck you) everything hardens and you roll into contested trial mode (like here). The trial contest is in two distinct parts --with courts HIGHLY UNLIKELY to ever let you get past phase one unless there is some blockbuster evidence. In other words: Grandparents are NOT allowed to get their foot in the door and even being to talk about the merits of how wonderful they are, with all their witnesses and stories and pictures and say how much the grandchild needs them UNTIL, FIRST:

With clear and convincing evidence they are able to overcome the constitutional presumption that natural parents call ALL the shots. Period --end of story. Even if the grandchild whines and cries about and missing grandma and grandpa. This is what is meant by "Standing."

The hurdle of "Standing" is satisfied under the NYS Domestic Relations Law governing this area ONLY by you showing:

1. One or both of [REDACTED]'s parents are dead. (You can't do that, obviously --and what a shame).
- or-
2. "Truly extraordinary circumstances" exist right now to give the grandparents the right to proceed further (still doesn't mean visitation down the road....just the right to first ask for it in the second trial if you get to that point).

"Truly extraordinary circumstances" has its own definition in NY Law and the definition is not, I am afraid, as you would wish: You only get there if:

1. The natural parent allowed an "extended disruption in custody" --meaning, your daughter voluntarily walked away and gave up care and control of [REDACTED] at some point in the (recent) past to you guys (it happens...some people just break with reality, go bonkers and run off; this bitch did not).

2. And that as a result, she (the natural parent) would had to have been separated from the child for AT LEAST 24 continuous months....

AND

4. The child, as a result, resided exclusively in your household during this 24 month or longer period.

5. Extraordinary circumstances "may" in a tiny minority special cases be stretched to mean the parent essentially abandoned the child by virtue of some extreme situation --such as imprisonment, drug addiction, crazy lifestyle choice, homelessness or severe mental illness. In my judgment, you have an eccentric bitch on your hands, but nothing that rises to the legal requirement set forth in the law.

The burden is entirely on you in this "Standing" trial; your daughter doesn't have to do --or prove-- a thing.

Without getting past the "Standing" obstacle (above) this court will refuse to look at all the nice "touchy-feely"/ best interests of the child stuff we want the court to look at. In other words, the court will NOT put its ears on and we will be out on our asses in short order.

So...UNLESS by some miracle you can develop --and SUPPORT with independent testimony and evidence (not just your word against hers) that this mother is "truly unfit" /diagnosed mentally ill/ drug-addicted or criminal, I am afraid that there is no way to establish legal "Standing" in this case. In other words: in my professional judgment, you are going to lose -- and there is nothing you can do about it. This is probably why the good doctor wouldn't return your calls.

I think we are grasping at straws at this point --and while it certainly is not fair, that is my realistic assessment.

I hate have to be the bearer of shitty news, but I think this is dead in the water. You both deserved a better daughter -- unfortunately, she drives the train wreck now --and is in no mood to turn back or compromise. "IF", for the sake of argument, you were to drop big money in her lap, she probably would come around --because that's all you ever were to her anyway --a piggy bank. But I can't make that decision for you. At the tender age of 8, this little boy is not about to go his own way and buck his mother. Some children start pulling away and calling the shots as they enter adolescence --but that, painfully, remains years away.

I can't give you false hopes.

PS

-----Original Message-----

From: wjcoleman [REDACTED]
To: paulsenzer [REDACTED]
Sent: Mon, Feb 9, 2015 4:27 pm
Subject: Jen

We will be calm and would prefer therapy, so this doesn't happen again. Remember
Though I think this was a thought out plan by my daughter to away with us, and
forget her
Past. That's why she tried to start something and came over with a tape recorder
on June
7 th. Please remember the call you got on September 8 th from her attorney
saying she
Would like to work it out, and you never got answers after that.

Sent from my iPad

EXHIBIT G TO COMPLAINT -
 REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
 DATED FEBRUARY 11, 2015

EXHIBIT G

[REDACTED]

[REDACTED]

-----Original Message-----

From: paulsenzer [REDACTED]
 To: wjcoleman [REDACTED]
 Sent: Wed, Feb 11, 2015 12:46 pm
 Subject: Re: Jen

I am not going to notify anyone, just yet. This can sit a good week and I won't do anything until you authorize it. The civilized way to do it is simply advise that we wish to withdraw the petitions at this time in the child's best interest.

In the meantime, please remember that you should not discuss this or what happened in Court with anyone --because it will get back to your daughter, be misunderstood and invariably blow up in your face. As it always does, it seems.

On a totally different subject: You should make sure that in the event you or Walter pass away, NOTHING is left to that bitch. NOTHING. If you leave anything to [REDACTED] as a minor, I am sorry to tell you it will end up being administered by that Bitch --one way or another-- and who knows what [REDACTED] sees, unless you set up some kind of trust which he couldn't use until age 21, 25, or any adult age you choose. So...you have a problem, here. The odds of both of you leaving the world at the same time are impossibly remote --so it is not really a practical problem. But...lawyers do encounter "simultaneous death" scenarios (car accidents, carbon monoxide, etc.) and stranger things have been known to happen.

Bottom line: If you don't have Wills, Kelly gets everything --which means, I suppose, whatever equity you have in the house, any savings, etc. I can't tell you what to do, but if my daughter pulled this shit on me ...I would cut her out and make it stick.

PS

-----Original Message-----

From: Jennifer [REDACTED]
 To: paulsenzer [REDACTED]
 Sent: Wed, Feb 11, 2015 10:17 am
 Subject: Jen

When and if you do cancel, tell Karen Mcquire we can not fight lies
 And my daughter will have to live with what's she's done to her son(reap what
 you sow)

Sent from my iPhone

EXHIBIT H TO COMPLAINT -
 REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
 DATED FEBRUARY 11, 2015 [80 - 81]

EXHIBIT H

-----Original Message-----

From: paulsenzer [REDACTED]
 To: wjcoleman [REDACTED]
 Sent: Wed, Feb 11, 2015 9:54 am
 Subject: Re: Jen

I recall you talking about CPS reports, etc. involving the paternal grandfather. Since you tell me that "he has never met [REDACTED]", that speaks well of the parents --they are shielding their son from a nut.

The attorney yesterday spoke of "touching" --as in inappropriate touching or attempts at same. It wasn't a charge against you directly; it was couched as your having caused some kind of false or anonymous report involving [REDACTED] and touching. Does this mean CPS got involved and closed a case as unfounded? I don't know. All I do know is that your adversary is pointing the finger in your direction --and in your complete frustration with Kelly, I don't know if you ever pulled this trigger.

Let me try a different angle here. If we roll into a standing trial on March 3rd and lose (we surely will unless there is something strong I can sink my teeth into), then Kelly and eyelashes get to cluck their tongues and you go on record as having "lost". Period. End of story. Over.

On the other hand --if you simply withdraw this thing now; then there is no adjudication on the merits of anything. You don't go on record as losers-- and maybe; just maybe, there is a way to repair things. Maybe we can suggest that we "don't want to put [REDACTED] through all of this" right now --in the hope the door may remain open to a civilized --non-court-- way to repair this family.

And on that subject: Let's say you made it past "standing" and got to the second trial. You would lose that one. Wanna know why? Because your relationship with Kelly is total poison, with no communication and real hatred on both sides. Judges are highly reluctant to sign onto visitation when "no one can get along" (to quote [REDACTED]).

-----Original Message-----

From: Jennifer [REDACTED]
 To: paulsenzer [REDACTED]
 Sent: Wed, Feb 11, 2015 9:41 am
 Subject: Re: Jen

We never said anything about the father touching him (what does that Mean?) abusing, touching? That was of course a lie brought on by that freak show attorney, I know we never interfered with my x son - in- law, his father had a dozen cps reports from other people, he has never met [REDACTED], and really has no interest. We only helped him ! I was just stating you saying before we went in unless we were completely unfit we could have something. I want to wait until the last minute if we have to cancel this march 3 rd I might with gods help be able to come up with something. So just let me know how long I have to give notice of canceling
 That's all

Sent from my iPhone

On Feb 11, 2015, at 9:21 AM, [REDACTED] <[REDACTED]> wrote:

I have read all of your email and will try to respond in as clear a manner as possible.

The hurdle of having to prove "standing" in this case --given the facts on the ground as I now know them-- is legally insurmountable. No one is going to appoint a law guardian; listen to [REDACTED] or take testimony as to your commendable grandparenting skills/activities since the boy's birth UNLESS and UNTIL you first clear the hurdle of proving "standing". In other words, proving "standing" allows you to earn the right to be heard on all those "best interests of the child" issues we have discussed and you desperately want to share with the world.

I will remind you that your strong assessment of your daughter --when we started this action-- was that she would fold, not hire a lawyer, and ultimately fall into line (the way many normal people do), consenting to the appointment of a law guardian, possible therapy and maybe a way to conciliate this mess. You were wrong. You underestimated your daughter. You didn't think she would engage counsel --she did. And we heard from that counsel, loud and clear, that all they are going to do is FIGHT, FIGHT, FIGHT. And smear you and Walter, both.

I outlined what the statute (the written law) generally requires in NY to establish standing (see yesterday's email). A child has no constitutional rights. Natural parents do. Grandparents don't. And the mountain grandparents have to climb to get past "standing" and out of the starting gate is severe and steep.

The factors you mentioned in yesterday's response about Kelly's peculiar personality and life history make her a positively awful person and perhaps not the best mother in the world. But they do not rise the extraordinary, exceptional circumstances that are akin to physical abandonment of her role as a mother. That is what you would have to establish here to credibly establish standing.

Moreover, in your response yesterday and responses today, you said nothing about a rather dramatic shoe that dropped in court yesterday (and I told you from the start that something wasn't making sense in this matter). It is this: You heard an allegation that someone (you or someone you directed) may have reported to authorities that [REDACTED] was or perhaps could be inappropriately touched by someone.

This is the kind of can of worms that gets opened when people --you-- sometimes in desperation, resort to "self help". If this was possibly related to your concern that relatives on the father's side have an unsavory past or reputation involving loose habits or a criminal past, "dropping a dime" with the police --even anonymously-- was the wrong way to deal with it. The moment anyone breathes the slightest word about a little boy being "touched", the person who utters those words will have his/her motivations questioned --and questioned and questioned.

Now...for the sake of argument, "IF" you had CONCRETE evidence that there was a real, specific person (with a name) who was allowed regular access to [REDACTED], by his mother, in the face of solid evidence that this person was a pervert (i.e., on the sex offender registry; with a felony record, etc.) taking steps to harm the child --THEN you might be onto a truly extraordinary "exceptional circumstance" not in the statute that "May" rise to give you the possibility of standing. And all "standing" does --once established-- is let you live to fight another day (i.e., you get the shot to talk about grandparenting skills; a law guardian is appointed; maybe a psychologist is appointed and maybe through that vehicle the court gets to "hear" [REDACTED]'s side of the story).

When anyone suggests a child is being "touched", well....them's fighting words. And I fear this once utterance alone will come back to bite you --very hard. Because you have no real way to prove any of that...do you?

-----Original Message-----

From: wjcoleman [REDACTED]
 To: paulsenzer [REDACTED]
 Sent: Wed, Feb 11, 2015 5:43 am
 Subject: Jen

EXHIBIT I TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED FEBRUARY 22, 2015

EXHIBIT I

[REDACTED]

[REDACTED]

-----Original Message-----

From: paulsenzer [REDACTED]
To: wjcoleman [REDACTED]
Sent: Sun, Feb 22, 2015 2:28 pm
Subject: Re: Jen

I agree with you...however, you may have noticed that the "judge" is an asshole. An "asshole" can issue a warrant for your arrest. Just want you to know "worst case scenario."

-----Original Message-----

From: wjcoleman [REDACTED]
To: paulsenzer [REDACTED]
Sent: Sun, Feb 22, 2015 11:37 am
Subject: Jen

Walter said we just won't go and that will be a default on our part, and we would be losers
What would that mean as far as this is concerned for the future? You actually want us
To stand alone before our daughter and that thing attorney, please come up with something!!!!

Sent from my iPad

RESPONDENT'S VERIFIED ANSWER TO FORMAL WRITTEN COMPLAINT,
DATED DECEMBER 12, 2017 [83 - 86]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X
In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
Of the Judiciary Law in Relation to

**RESPONDENT'S VERIFIED
ANSWER TO FORMAL
WRITTEN COMPLAINT**

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.
-----X

PAUL H. SENZER, by and through Long Tuminello, LLP, his attorneys, answers the
Formal Written Complaint ("Complaint") herein as follows:

1. With respect to paragraphs designated "1", "2" and "3" of the Complaint, Paul H. Senzer ("Respondent") submits that same do not contain factual allegations to which a response from him is required. To the extent that such paragraphs are deemed to contain factual allegations, Respondent denies same.

2. Respondent admits the allegations contained in paragraph designated "4" of the Complaint.

AS AND FOR AN ANSWER TO CHARGE I

3. Respondent denies the conclusions stated in paragraph "5" of the Complaint and responds to the individual specifications to Charge I as stated herein.

Specifications To Charge I

4. Respondent admits the allegations contained in paragraph designated "6" of the Complaint.

5. With respect to the allegations contained in paragraph designated "7" of the Complaint, Respondent admits that in or about November 2014 he represented Ms. Coleman at a hearing in her employee discrimination matter before an Administrative Law Judge. Respondent

further admits that during a recess, Respondent spoke with Mr. and Mrs. Coleman regarding the case. However, Respondent adamantly denies all other allegations contained in paragraph "7" of the Complaint, and specifically denies having used the vulgar and offensive language cited therein.

6. Respondent admits the allegations contained in paragraphs designated "8", "9", "10", "11", "12", "13", "14", "15", "16", "17" and "18" of the Complaint.

7. Respondent denies each and every allegation and conclusion contained in paragraph designated "19" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

8. The Complaint fails to allege facts which, if proven, would demonstrate a violation of the Rules of Judicial Conduct by Respondent.

AS AND FOR A FIRST MITIGATING DEFENSE

9. The actions complained of in the Complaint, to the extent admitted by the Respondent, occurred solely while Respondent was acting in his role as a private attorney rather than in his capacity as a judge.

AS AND FOR A SECOND MITIGATING DEFENSE

10. The actions complained of in the Complaint, to the extent admitted by the Respondent, occurred in the context of private email communications with a single husband-and-wife client relative to Respondent dispensing legal advice and tactical guidance in a litigated matter.

AS AND FOR A THIRD MITIGATING DEFENSE

11. Throughout the past thirty-six (36) years during which Respondent has been an attorney admitted to practice law within the State of New York, he has had no disciplinary history in such role.


AS AND FOR A FOURTH MITIGATING DEFENSE

12. Respondent has served as a Justice for the Village of Northport since 1994 and as a District Court Hearing Officer at the Suffolk County Traffic and Parking Violations Agency since 2013. Throughout that time, Respondent has heard in excess of 100,000 cases, of which approximately 7,000 related to criminal matters, has conducted more than 1,000 hearings and trials and has issued more than 300 written decisions. He is highly respected as a fair and impartial judge.

WHEREFORE, Respondent respectfully requests the dismissal of the Formal Written Complaint in its entirety, together with such other and further relief as may be just and proper,

DATED: Bay Shore, New York
December 12, 2017

Yours, etc.,



MICHELLE AULIVOLA, ESQ.
LONG TUMINELLO, LLP
Attorneys for Respondent
120 Fourth Avenue
Bay Shore, NY 11706
(631) 666-5766

**NOTICE OF MOTION TO DISMISS AND/OR FOR SUMMARY DETERMINATION
OF THE FORMAL WRITTEN COMPLAINT, DATED DECEMBER 11, 2017 [87 - 88]**

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
Of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

**NOTICE OF MOTION
TO DISMISS AND/OR FOR
SUMMARY DETERMINATION
OF THE FORMAL WRITTEN
COMPLAINT IN FAVOR OF
RESPONDENT**

-----X

PLEASE TAKE NOTICE, that upon the annexed Affirmation of MICHELLE AULIVOLA, dated the ___ day of December, 2017, the exhibits annexed thereto, the Memorandum of Law in Support of the and upon all of the pleadings and prior proceedings heretofore had herein, the undersigned will move the New York State Commission on Judicial Conduct, at 61 Broadway, Suite 1200, New York, New York on the ____ day of _____, 2018, at 9:30 in the forenoon of that day or as soon thereafter as counsel can be heard for an order granting the following relief:

- (a) Pursuant to 22 NYCRR 7000.6(f)(ii), dismissing the Formal Written Complaint herein in its entirety; or, in the alternative
- (b) Pursuant to 22 NYCRR 7000.6(f)(i) summarily determining this matter in favor of Respondent and dismissing the Charge stated in the Formal Written Complaint;
and
- (c) Granting such other and further relief as this Court deems just and proper.

Dated: Bay Shore, New York
December 11, 2017

LONG TUMINELLO, LLP

By: 

MICHELLE AULIVOLA

Attorneys for Respondent
120 Fourth Avenue
Bay Shore, New York 11706
(631) 666-5766

**AFFIRMATION OF MICHELLE AULIVOLA, FOR RESPONDENT, IN SUPPORT OF MOTION
TO DISMISS AND/OR FOR SUMMARY DETERMINATION OF THE FORMAL WRITTEN
COMPLAINT, DATED DECEMBER 13, 2017 [89 - 90]**

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
-----X

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
Of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

**AFFIRMATION IN SUPPORT
OF RESPONDENT'S MOTION
TO DISMISS AND/OR FOR
SUMMARY DETERMINATION
OF THE FORMAL WRITTEN
COMPLAINT IN FAVOR OF
RESPONDENT**

-----X

MICHELLE AULIVOLA, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms, under the penalties of perjury, the truth of the following:

1. That your affirmant is a member of the firm of LONG TUMINELLO, LLP, attorneys for Respondent PAUL H. SENZER, and as such, I am fully familiar with the facts and circumstances of this action.

2. I annex the following documents in support of Respondent's Motion seeking dismissal and/or summary determination of the Formal Written Complaint in Respondent's favor:

Exhibit "A"- Notice of Formal Written Complaint and Formal Written Complaint, dated October 13, 2017

Exhibit "B"- Verified Answer to Formal Written Complaint, dated December 13, 2017

Exhibit "C"- Transcript of the Examination Under Oath of Respondent Paul H. Senzer, taken on November 16, 2016, together with Commission Exhibits 1-8

WHEREFORE, your affirmant prays for an Order of Dismissal or Summary Determination in Respondent's favor dismissing the Formal Written Complaint in its entirety, together with such other and further relief as is deemed just and proper.

Dated: Bay Shore, New York
December 13, 2017



MICHELLE AULIVOLA

**EXHIBIT A TO AULIVOLA AFFIRMATION -
NOTICE OF FORMAL WRITTEN COMPLAINT AND FORMAL WRITTEN COMPLAINT,
DATED OCTOBER 13, 2017
(REPRODUCED HEREIN AT PP. 65–71)**

**EXHIBIT A TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED OCTOBER 24, 2014
(REPRODUCED HEREIN AT P. 72)**

**EXHIBIT B TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED NOVEMBER 25, 2014
(REPRODUCED HEREIN AT P. 73)**

**EXHIBIT C TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED NOVEMBER 25, 2014
(REPRODUCED HEREIN AT P. 74)**

**EXHIBIT D TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED JANUARY 13, 2015
(REPRODUCED HEREIN AT P. 75)**

**EXHIBIT E TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED JANUARY 22, 2015
(REPRODUCED HEREIN AT P. 76)**

**EXHIBIT F TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED FEBRUARY 10, 2015
(REPRODUCED HEREIN AT PP. 77–78)**

**EXHIBIT G TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED FEBRUARY 11, 2015
(REPRODUCED HEREIN AT P. 79)**

**EXHIBIT H TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED FEBRUARY 11, 2015
(REPRODUCED HEREIN AT P. 80)**

**EXHIBIT I TO COMPLAINT -
REDACTED EMAIL FROM PAUL H. SENZER TO WALTER COLEMAN,
DATED FEBRUARY 22, 2015
(REPRODUCED HEREIN AT P. 82)**

**EXHIBIT B TO AULIVOLA AFFIRMATION -
RESPONDENT'S VERIFIED ANSWER TO FORMAL WRITTEN COMPLAINT,
DATED DECEMBER 12, 2017
(REPRODUCED HEREIN AT PP. 83–86)**

EXHIBIT C TO AULIVOLA AFFIRMATION -
TRANSCRIPT OF EXAMINATION UNDER OATH OF PAUL H. SENZER,
DATED NOVEMBER 16, 2016 [92 - 154]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

----- X

In the Matter of an Investigation :
Pursuant to Section 44, subdivision 3,
of the Judiciary Law, in Relation to :

PAUL H. SENZER,

a Justice of the Northport Village :
Court, Suffolk County.

----- X

Commission Offices
61 Broadway, Suite 1200
New York, New York 10006

November 16, 2016
10:30 A.M.

Before:

WILLIAM ARONWALD, ESQ.
Referee

Present:

ROGER SCHWARZ, ESQ.
Senior Attorney

CHRISTINA PARTIDA
Investigator

HONORABLE PAUL H. SENZER
Witness

Also Present:

DAVID BESSO, ESQ.
MICHELLE AULIVOLA
Attorneys for Witness
120 4th Avenue
Bayshore, New York 11706

MIGUEL MAISONET
Senior Clerk and FTR Operator

SCANNED
MAR 06 2017

(Hon. Paul H. Senzer)

1 MR. SCHWARZ: Mr. Maisonet?

2 MR. BESSO: Can Mr. Senzer make an opening statement
3 before we start?

4 MR. FRIEDBERG: We're going to give him an opportunity

5 MR. SCHWARZ: We're going to give him an opportunity.
6 We just need to get on the record.

7 MR. BESSO: Yeah. I'm just asking informally.

8 MR. FRIEDBERG: We'll read some of the procedures, but
9 before anything gets going, he'll have the opportunity to do that.

10 Okay.

11 MR. MAISONET: Okay. We are on the record.

12 MR. ARONWALD: Hi, my name is William Aronwald and
13 I've been designated by the Commission as a referee to hear the
14 testimony of Judge Senzer today. Today's date is November 16, 2016
15 and it is now 10:30 A.M. I note that Judge Senzer is represented by
16 counsel. Will counsel and Commission counsel please give your
17 appearances for the record?

18 MR. BESSO: David Besso, 120 4th Avenue, Bayshore, New
19 York for the Judge Senzer.

20 MS. AULIVOLA: Michelle Aulivola, same address, also
21 for Judge Senzer.

22 MR. SCHWARZ: Roger J. Schwarz, Senior Attorney for
23 the Commission.

24 MR. FRIEDBERG: Alan Friedberg, Special Counsel.

25 MS. PARTIDA: Christina Partida, Investigator with the

1.

STATE COMMISSION ON JUDICIAL CONDUCT
61 Broadway, Suite 1200
New York, New York 10006

(Hon. Paul H. Senzer)

1 Commission.

2 MR. ARONWALD: These proceedings are being digitally
3 recorded. The recording will be transcribed by Commission
4 administrative staff who are not present. Therefore, in order to
5 facilitate a clear and accurate record, please speak slowly, clearly, and
6 directly into the microphone. Refrain from moving away from the
7 microphone and talking over other speakers. Please refrain from
8 responding until a question is completed and answer each question
9 with words, not a nod or a gesture. Please refrain from creating
10 excessive background noise as it becomes amplified on the recording.
11 Please turn off cell phones, and any other electronic equipment.
12 During the course of this proceeding, the judge may consult with his
13 attorneys. I will entertain requests for private conferences. Counsel
14 may make objections to questions posed to the judge. However, in
15 making objections, counsel should take into an account that this is an
16 investigation and not a trial and the rules of evidence do not apply.
17 Counsel will have the opportunity to question the judge at the
18 conclusion of questioning by the Commission's attorney. This is
19 subject to further questioning by the attorney for the Commission. The
20 judge and the judge's attorneys may make initial and closing oral
21 statements today and within seven days of receipt of the transcript,
22 may submit a statement in writing. Any other written materials may
23 also be submitted at this appearance or within seven days of receipt of
24 the transcript. Judge Senzer, will you please raise your right? Do you
25 swear or affirm under the penalties of perjury that the testimony that

2.

STATE COMMISSION ON JUDICIAL CONDUCT
61 Broadway, Suite 1200
New York, New York 10006

(Hon. Paul H. Senzer)

1 you're about to give is the truth, the whole truth, and nothing but the
2 truth?

3 JUDGE SENZER: I do.

4 HONORABLE PAUL A. SENZER,

5 Having been duly sworn was examined and testified as
6 follows:

7 BY MR. SCHWARZ:

8 Q. Would you be kind enough judge to state your full name for the
9 record?

10 A. Paul H. Senzer.

11 Q. And did you receive a copy of Commission Exhibit 1 which is a letter
12 dated September 23, 2016, scheduling your appearance before the
13 Commission for 10/26/16?

14 A. Yes sir.

15 Q. And at your lawyer's request we adjourned until today, correct?

16 A. Yes sir.

17 Q. Did you read the Commission Exhibit 1 and the complaints attached
18 to it?

19 A. I did.

20 Q. And what county do you reside in sir?

21 A. Suffolk County.

22 Q. And when were you admitted to the New York Bar?

23 A. 1981.

24 Q. In which department?

25 A. Second.

3.

STATE COMMISSION ON JUDICIAL CONDUCT
61 Broadway, Suite 1200
New York, New York 10006

(Hon. Paul H. Senzer)

1 Q. And you are presently a sitting judge?

2 A. Yes sir.

3 Q. Over what court do you preside?

4 A. I'm not the Northport Village Justice. —

5 Q. When were you first appointed or elected to that position?

6 A. I was elected on March 15, 1994.

7 Q. And do you recall sir when you actually assumed that office?

8 A. April 1, 1994.

9 Q. Do you currently practice law?

10 A. I am an admitted attorney to the practice of law, but I no longer
11 practice law actively.

12 Q. When did you cease practicing law actively?

13 A. In early 2015.

14 Q. And can you tell us why?

15 A. Yes, my village judgeship is a part-time judgeship and I sit on
16 Monday evenings and in April of 2013, I accepted an appointment to
17 become a district court hearing officer at the Suffolk County Traffic
18 and Parking Violations agency, which was a newly formed agency in
19 Suffolk County which took over the adjudication of traffic cases from
20 what was the New York State Traffic Violations Bureau. The District
21 Administrative Judge in Suffolk County appointed me to that position
22 which started in April of '13 strictly as a part-time position,
23 approximately maybe two days a week. And as 2013 rolled into 2014,
24 my time was extended and ultimately I ended up working there
25 essentially full-time and that's my full-time day job now. So, it

(Hon. Paul H. Senzer)

1 became impractical to continue to run a law office and I wound the
2 law office down.

3 Q. And what is your current salary sir as a Village Justice in Northport?

4 A. It's \$10,000 a year.

5 Q. And what salary or compensation do you receive for being an
6 adjudicator in the parking violations bureau in Suffolk County?

7 A. I think the County of Suffolk regards me as a vendor, and I get paid
8 \$50.00 an hour.

9 Q. And where did you practice law before you ceased doing so?

10 A. I maintained a law office at 224 7th Street in Garden City which is
11 Nassau County.

12 Q. And in what fields did you practice sir?

13 A. Essentially criminal defense, some appellate work and a modest
14 amount of civil litigation, a little bit in family court as well.

15 Q. What address have you given as the one in which you are registered
16 with the New York Courts at the present time?

17 A. That transferred over to my residence, which is 135 Scutter Avenue,
18 Northport, 11768.

19 Q. And is that in the --

20 MR. FRIEDBERG: Could I ask you for the transcript, when
21 you mention a name like Scutter that hasn't been used before, just
22 spell it the first time?

23 THE WITNESS: Yeah, I'm happy to do so. S-C-U-D-D-E-
24 R Avenue.

25 MR. FRIEDBURG: Thank you.

5.

STATE COMMISSION ON JUDICIAL CONDUCT
61 Broadway, Suite 1200
New York, New York 10006

(Hon. Paul H. Senzer)

1 BY MR. SCHWARZ:

2 Q. And this is a home office of some sort?

3 A. Yes sir.

4 Q. Alright. And you've just told us that you hold some other professional
5 positions, correct?

6 A. Yes, I did.

7 Q. Who appointed you to the Suffolk County position?

8 A. Well, I was qualified by C. Randall Hinrichs, who is the District
9 Administrative judge in Suffolk County and I was placed on a list of
10 qualified judges to hear traffic cases and that's my understanding as to
11 how it is that I am where I am right now.

12 Q. And do you recall when that happened?

13 A. Yes, that happened in April of 2013 or maybe just prior to April of
14 2013.

15 Q. Is there such a thing as a term with that particular agency or...

16 A. There isn't insofar as I know. I believe that the District Administrative
17 judge on a yearly basis may renew or may requalify hearing officers
18 at the agency. And there's a letter that's sent to the hearing officers
19 that's countersigned by the judge and I think that's how it works.

20 Q. And when does your current term as a Village Justice in Northport
21 expire?

22 A. It expires March 31, 2018.

23 Q. In addition to what you've already told us, would you tell us a little
24 about your legal experience and background since you were admitted
25 to the New York Bar?

(Hon. Paul H. Senzer)

1 A. I'd like to do that. May I deliver an opening at this point which covers
2 some of that or do you want to ask questions first before I proceed?

3 Q. I think you'll have an opportunity to do that when we get through
4 some of my questions first.

5 A. Very well. Alright. I'm happy to do that.

6 MR. BESSO: Mr. Aronwald, I'd like to before he gets into
7 substantive questioning, have the judge make an opening statement,
8 which I think he's permitted to under the rules. Am I correct Roger?

9 MR. SCHWARZ: Yes.

10 MR. FRIEDBERG: It's fine.

11 MR. SCHWARZ: It's fine.

12 MR. FRIEDBERG: Just one more preliminary question.

13 MR. BESSO: Sure.

14 MR. ARONWALD: Yeah. I was waiting for him to finish
15 the preliminary questions.

16 MR. FRIEDBERG: Right, before we do the body, he can
17 do that right now. Just a preliminary question, you said it was \$50.00
18 an hour?

19 THE WITNESS: Correct.

20 MR. FRIEDBERG: What does that come to on an annual
21 basis? Maybe last year or what it's about to be this year?

22 THE WITNESS: Yeah, I think --

23 MR. FRIEDBERG: Just a guesstimate.

24 THE WITNESS: I think it may come out to about \$70,000
25 a year.

7.

(Hon. Paul H. Senzer)

1 MR. FRIEDBERG: Thank you.

2 THE WITNESS: Alright thank you. By way of an opening,
3 I've been an attorney admitted to practice in New York for 35 years.
4 In that time, there's been no career discipline as an attorney. I've been
5 a Village Justice in Northport since 1994. Northport Village Court is
6 one of the busiest, if not the busiest village court in the county. As I
7 indicated, I'm a District Court Hearing Officer at the Suffolk County
8 Traffic and Parking Violations Agency, and that's since 2013.
9 Additionally, I'm an adjunct instructor at Farmingdale State College
10 in the Criminal Justice department. I've been teaching at Farmingdale
11 since 2011. I'm currently the Vice President of the Suffolk County
12 Magistrate's Association and since about 1996, I've been involved in
13 OCA Town and Village Education and Training. Since 1994, I've
14 heard approximately 100,000 cases, 7,000 of which are criminal. I've
15 conducted more than 1,000 hearings and trials. Some of them jury
16 trials. I've issued more than 300 written decisions. I regard the
17 courtroom as a sacred space. I regard my role as a judge as a sacred
18 trust. My demeanor on the bench is one of utmost respect in which I
19 strive to provide courtesy to all whether they be lawyers or members
20 of the public. I'm extremely sensitive to my temperament in this
21 public role. I'm equally sensitive to gender and diversity issues. I do
22 understand and know that words matter. I comport myself in the
23 community with utmost care, wherever it is that I may be, whether
24 I'm teaching or anywhere and I'm quite cognizant that my judicial
25 persona extends to everything I do 24/7. I'm current in all of my

8.

STATE COMMISSION ON JUDICIAL CONDUCT
61 Broadway, Suite 1200
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(Hon. Paul H. Senzer)

1 judicial education. I am acutely aware of some of the outrageous
2 things that judges have done and said over years to warrant
3 Commission discipline. There have been three complaints that I know
4 of filed against me in the last 22 years as a judge. The last being in
5 2006. None involved the inappropriate spector of racist or
6 discrimination. Two of them, I believe were dismissed with letters of
7 caution. I want you to know that I have learned from those
8 experiences and I believe they made me a better judge. As to the three
9 client e-mails here. I would like at this time to re-affirm the written
10 response that I sent to the Commission in March. I want you to know
11 that I feel just awful about it and I should never have said those
12 things. Never would I use the language in those three e-mails publicly,
13 whether as a judge or an attorney or otherwise. As a lawyer servicing
14 a needy client and frustrated in the midst of litigation, I succumbed in
15 back and forth e-mail messaging and resorted to crude language. I
16 realize there's no place for it anywhere, certainly not for a lawyer let
17 alone a judge. My client was demanding, emotionally overwrought,
18 always on her iPhone. There was a great volume of back and forth and
19 email messaging. Both from my end were three exchanges where the
20 client sought reassurance and guidance. My intention was to plainly
21 warn what the client was up against. I assumed confidentiality. I was
22 locked into the persona of a lawyer in battle if you will. In hindsight I
23 know that I fell down, because there was a disconnect from my
24 judicial role and to my horror now, I see how those three e-mails have
25 exposed me to what is the unimaginable. The racist slurs that are

9.

STATE COMMISSION ON JUDICIAL CONDUCT
61 Broadway, Suite 1200
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(Hon. Paul H. Senzer)

1 contained in the Administrator's Complaint, well those are the worst
2 words that anyone could say about anyone, whether they are said by a
3 lawyer or a judge or anyone in society. They are deplorable. I never
4 uttered them. I couldn't think of uttering them. I think someone would
5 have to be mentally ill to utter them. Those words are not in my head.
6 They are not in my lexicon. They are not in my values. They are not
7 who I am. I can only and do apologize for the behavior I am
8 responsible for, but I emphatically deny the disgusting racist slurs that
9 have been added just as a note and an aside, the Administrator's
10 Complaint indicates that those racial slurs occurred in November of
11 2015. I had no interaction with a client in November of 2015. The
12 interaction was in November of 2014. I presume it's a typographical
13 error. So, I'm here today to answer all questions concerning this
14 matter relevant to the investigation. As indicated in my March letter to
15 the Commission I do want to be as open and candid as possible. I
16 understand my obligation to be completely forthcoming in any
17 questions that you may put forth and I intend to be. Thank you.

18 **BY MR. SCHWARZ:**

19 Q. How old are you sir?

20 A. I'm 60.

21 Q. And in addition to the two positions you already told us about, have
22 you ever sought any other judicial office?

23 A. Yes. I was nominated by a political party in I think the middle of
24 2014. And I was on the ballot as seeking the position of Suffolk
25 County Third District Court Judge and that was the November 4, 2014

10.

(Hon. Paul H. Senzer)

1 ballot.

2 Q. And I gather that you did not prevail in that election.

3 A. That's correct.

4 Q. Do you know Jennifer and Walter Coleman?

5 A. Yes, I do.

6 Q. Tell us how you know them.

7 A. Jennifer Coleman used to clean my house in Northport. I met her, I
8 believe in the 1990's. She might have been recommended by
9 neighbors. I don't entirely recall, but she did -- she was a house
10 cleaner and she cleaned our house for some years. She would
11 occasionally pet sit. We have cats. We would go away and ultimately
12 we discontinued her services and frankly I lost touch with her for
13 quite some time. When we became reacquainted I met her husband.
14 We would meet occasionally in public at street fairs. We had some
15 friends in common in Northport Village. She called me early, I
16 believe 2013, with a problem that she had a part-time custodian at
17 Cold Spring Harbor High School which is also in Suffolk County. Her
18 husband is a full-time custodian in that school district. She indicated
19 that she was seeking full-time promotion at the district and she was
20 prevented from being promoted because she complained of an
21 immediate supervisor who she accused of gender discrimination and
22 she had -- I met with her and she disclosed a fairly lengthy history
23 going back to I think maybe 2009 of not being given the time to
24 which she thought she was entitled as a part-time cleaner. She thought
25 she was being passed over. Specifically by men. She complained

11.

(Hon. Paul H. Senzer)

1 specifically about her immediate supervisor whose name was Frank
2 Channing and then she relayed a rather alarming story about how Mr.
3 Channing would secretly videotape her in the school, photograph her,
4 set her up for failure, assign her tasks that no one could have possibly
5 performed. And that he would in the presence of other male
6 employees, custodians at the school, would mock her using extremely
7 vulgar derisive words in connection with women. On her behalf --

8 MR. ARONWALD: The question was how do you know
9 her, right?

10 THE WITNESS: That's how I knew her.

11 MR. ARONWALD: That was the question.

12 THE WITNESS: And obviously I met her husband in
13 connection with Human Rights petition that I brought for her in 2013.

14 BY MR. SCHWARZ:

15 Q. Now, when you met them for the first time, did they know that you
16 were a sitting judge?

17 A. Yes, they did.

18 Q. And how would you characterize your relationship with them?

19 A. Casual acquaintances. I can't say that they were personal friends.
20 They weren't, but they were casual acquaintances. Jennifer, I presume
21 because she lives reasonably close to where I live, knew that I was a
22 sitting judge, but called me in my capacity as a practicing attorney.
23 And she called me at my office.

24 Q. And did there come a time where Jennifer Coleman or Walter
25 Coleman or both of them ever engaged you to represent them or her in

12.

(Hon. Paul H. Senzer)

1 a legal matter?

2 A. Yes. Actually they engaged me twice. There was a separate matter,
3 but yes with respect to the Division of Human Rights complaint and
4 the gender discrimination action that they wanted to commence. They
5 did engage my services in 2013.

6 Q. And can you describe the nature of the matter that they engaged you
7 for in 2013?

8 A. Yes. It was, the complaint she had against the Cold Spring Harbor
9 Central School District for failing to promote her and to provide the
10 full time employment that she sought three times over with respect to
11 three separate applications that she filed with the district, and the
12 allegation was not merely that Mr. Channing, her immediate
13 supervisor discriminated against her in vulgar terms, but that her
14 complaints to the district in that regard, fell on deaf ears over a very
15 prolonged period of time and that in sum and substance the school's
16 superintendent and the administration at the district were not
17 regarding her complaints with the seriousness to which they were
18 entitled and because she had filed many Freedom of Information Law
19 requests against the district, she was regarded frankly as somewhat of
20 a pest and her -- the serious issues that she brought to light were never
21 genuinely addressed. I suggested to her that it would be a good idea to
22 file a complaint against the school district with the New York State
23 Division of Human Rights. We did so alleging the gender
24 discrimination and the vulgarity that was used by her supervisor. An
25 investigation was commenced. I assisted Mrs. Coleman in preparing

13.

(Hon. Paul H. Senzer)

1 materials for that investigation and in the course of time, the Division
2 of Human Rights came back with a probable cause determination in
3 which they determined that there was probable cause to believe that
4 gender discrimination existed and then the matter continued from
5 there. Ultimately to a hearing in November of 2014.

6 Q. We'll come back to this matter in a moment, but I want to ask you
7 some questions about the other matter in which you represented the
8 Colemans.

9 A. Yes sir. Right.

10 Q. You were engaged at some point and time to represent the Colemans
11 in a family court matter where I believe they were seeking custody. Is
12 that correct?

13 A. Not entirely. So, I'd like to explain that.

14 Q. Would you please?

15 A. In the course of the human rights representation, Jennifer mentioned
16 to me that there was another problem that was looming in their lives
17 that would ultimately need legal attention and she indicated to me that
18 she and her husband had an eight or nine year old grandson whose
19 name was [REDACTED]. They have one daughter and I have not known
20 any of this frankly. She indicated that her daughter had a very very
21 difficult upbringing and had drug addiction issues, and ultimately her
22 daughter had a fiancée who became her husband who ended up living
23 with the Colemans, in the Coleman's home in Huntington. And that
24 the daughter had a baby as a result of that union, and that the baby
25 was essentially raised in the grandparent's home until maybe six or

14.

(Hon. Paul H. Senzer)

- 1 seven years old. They outlined a situation in which they suggested
2 that they were extraordinarily close to the grandson, that they were
3 more or less surrogate parents to the grandson. They helped their
4 daughter with commutation to and from daycare, childcare, school
5 and so forth. And they presented themselves as absolutely model
6 grandparents. Against that backdrop they indicated that their daughter
7 had suddenly and with no particular warning decided to curtail any
8 contact that they might have with their grandson. The daughter had
9 moved out of the home a year or so earlier with her husband who
10 ultimately she divorced. And while there was some back and forth and
11 visitation with the grandson, it wasn't enough to their liking but then
12 the daughter simply cut off any and all contact abruptly with the
13 grandson and seemingly for no particular reason. They were very
14 concerned about this and they engaged my services to pursue whether
15 or not there could be grandparent visitation. Not custody, but simply
16 meaningful grandparent visitation which basically came to a grinding
17 halt and they were very troubled about that.
- 18 Q. Did you charge the Coleman's a fee for representing them in the
19 family court matter?
- 20 A. I did.
- 21 Q. Do you recall what the fee was??
- 22 A. I believe it was \$5,000.
- 23 Q. And do you recall whether they paid you the fee?
- 24 A. They did.
- 25 Q. And do you recall the form, whether it was a check or if it was cash?

15.

(Hon. Paul H. Senzer)

1 A. It was absolutely a check.

2 Q. Alright. And in connection with family court matter, did you have a
3 written retainer agreement or letter of engagement with them?

4 A. I don't think there was a written letter, but there may have been a
5 shorthanded receipt that I gave them on a letterhead.

6 Q. How did you communicate with Mrs. Coleman and Mr. Coleman
7 while the cases were pending when you weren't speaking with her or
8 with them face to face?

9 A. The principal means of communication was e-mail. Mrs. Coleman and
10 Mr. Coleman shared an e-mail account, which I think was under the
11 husband's name, but it was Ms. Coleman who was a prolific
12 messenger and e-mailer and she was constantly e-mailing me and I
13 was trying to be as attentive to her as possible and I was e-mailing her
14 back. There would be phone calls, but it was largely e-mail.

15 Q. And did you typically use e-mail in communicating with your clients
16 at that time?

17 A. No. I can tell you the answer to that is no. I don't have a twitter
18 account. I very rarely would e-mail with clients in any particular great
19 volume. She was different. She was emotionally overwrought and she
20 was quite needy and she was very active in trying to press her cause
21 and she had many questions and many concerns and I tried to respond
22 to all of them in real time and many of her e-mails, you know
23 indicated in the caption that they came from an iPhone. I never used
24 an iPhone or a smart phone so my e-mails would have been generated
25 from a computer.

16.

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- 1 Q. Do you know what e-mail account you sent your e-mails from?
- 2 A. Well, yeah there would only be one and it's my personal e-mail
- 3 account. It's an AOL account.
- 4 Q. This is in no sense an official court account or something?
- 5 A. Absolutely not. Absolutely not. It's my personal e-mail account. It's
- 6 [REDACTED]@aol.com.
- 7 Q. Alright, and you began to tell us that you had some familiarity with
- 8 Mr. and Mrs. Coleman's e-mail address. Do you recall what that was
- 9 sir?
- 10 A. Oh, offhand I can't. I mean it could be [REDACTED]@optonline.net or
- 11 something similar to that, but I know that it was a combination of W
- 12 for Walter and J for Jennifer and their last name was Coleman and it
- 13 was their personal e-mail address that was jointly used.
- 14 Q. And can you tell us sir, and you've indicated that to some extent
- 15 already, how often you would send the Colemans e-mails about her
- 16 family court case?
- 17 A. Oh, I would if not daily, every few days or so. This was almost a
- 18 stream of consciousness kind of relationship that existed in which
- 19 Jennifer was always hammering away with questions and queries and
- 20 concerns and when I was able to field them I fielded them and I shot
- 21 back responses. There was a great volume of e-mail communication
- 22 back and forth.
- 23 Q. Do you recall sir, that on March 18, 2016, you addressed a letter to the
- 24 Commission?
- 25 A. Yes sir.

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- 1 Q. And among other things, you indicated that you believe the e-mail
2 communications to have been privileged and confidential. Correct?
- 3 A. Well, I believe they were. I now believe that I had no such claim or
4 entitlement to any such privilege and I don't want to make a legalistic
5 argument here. I own this and don't think there was any such privilege
6 at the end of the day, but at the time when I was communicating with
7 my client as a private attorney, I had assumed that this was private
8 communication, work related and that it would never see the light of
9 day. So, if that's a privilege or a confidence, I suppose I presumed as
10 much, but I'm not going to make a legalistic argument because I don't
11 think that's a good argument.
- 12 Q. Have you used e-mail to communicate with any other clients at any
13 other time?
- 14 A. I have to say "Yes." But hardly ever. In the abstract, perhaps yes, but
15 nothing like this.
- 16 Q. And when you say "hardly ever" can you give us a sense of how often
17 you may have done that?
- 18 A. It's really difficult for me to give you that sense because I didn't
19 really have a high volume legal practice to begin with but very
20 sporadically.
- 21 Q. And have you ever used crude or inappropriate language in any of the
22 e-mails that you may have exchanged with other clients?
- 23 A. Absolutely not.
- 24 Q. And why do you believe that you did so with the Colemans?
- 25 A. Well, a lot of it was born out of frustration. Not just the client's

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1 frustration, but my frustration and frankly the three e-mails, the three
2 crude e-mails were single and separate incidents. There was, with
3 respect to the family court matter, trouble that my process server was
4 having in serving her daughter and her ex-son in law who knew that a
5 process server was looking for them and they were -- I think dodging
6 service. So, there was a frustration level that we were going to miss a
7 date that was set by a judge and an order to show cause and Mrs.
8 Coleman especially was anxious to know whether or not they finally
9 were served. Were they served? Were they served? Were they served?
10 And ultimately I heard from a process server that I engaged that they
11 were. And so in response to her need to know whether or not they
12 were served, I said "Yes, they were served." And I didn't say the two
13 adversaries were served. I said the "Two scumbags were served."
14 Which is obviously a crude and inappropriate way to refer to
15 adversary parties. This was my way of empathizing with clients who
16 are not college educated and I'm not particularly proud of the
17 language that was used and -- but that explains at least that particular
18 remark. The most offensive remark is a remark that I used to
19 characterize an attorney who Mrs. Coleman's daughter ultimately
20 engaged. Mrs. Coleman suggested that her daughter once served,
21 would probably never hire a lawyer and that she would probably be
22 more than happy to conciliate a visitation arrangement perhaps with
23 therapy and I didn't entirely agree with Mrs. Coleman. Based on what
24 I think I knew about her daughter, I suspected that her daughter would
25 engage counsel and I wanted both clients to be prepared for the

19.

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1 possibility of litigating the case in family court with a competent
2 lawyer on the other side.

3 Q. If possible, Judge, I'd like to stay with one e-mail at a time.

4 A. Okay that's fine. Yes sir.

5 MR. FRIEDBERG: Can I just go back and ask for some
6 clarification?

7 THE WITNESS: Yes. Sure.

8 MR. FRIEDBERG: You said, "scumbags" were a reference
9 to adversaries. To who were you referring when you said that?

10 THE WITNESS: The actual e-mail said, "The two
11 scumbags were served" and those individuals were the Coleman's
12 daughter, who was a respondent, and the daughter's ex-husband, who
13 by operation of law had to be a respondent, so the daughter was Kelly
14 Coleman Martino and the ex-husband is Christopher Martino.

15 MR. FRIEDBERG: Just to be clear, you're referring to the
16 client's daughter as one of the two scumbags?

17 THE WITNESS: That's correct.

18 MR. FRIEDBERG: Thank you.

19 BY MR. SCHWARZ:

20 Q. And in connection with this particular e-mail which I'm going to
21 share with your counsel and with you, and with the referee, you
22 indicated that those were references to Kelly Marie Martino and
23 Christopher Martino. Correct?

24 A. Correct.

25 Q. And I believe you indicated that they were the daughter and son-in-

20.

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1 law of the Coleman's --

2 A. The daughter and ex son-in-law, correct.

3 Q. Right. And they were adverse parties in the case, correct?

4 A. Yes sir.

5 Q. And in your March 18th letter, do you recall what you said about why
6 you may have become frustrated and used the language that you did in
7 this particular e-mail?

8 A. Well, I don't have the letter right in front of me, but with respect to
9 the frustration, it would've been backed up, we had a perception that
10 they were dodging a process server and there was an order to show
11 cause that set a service deadline and the concern was that we weren't
12 going to meet that deadline, and the clients were very anxious to know
13 whether or not the daughter was served. Was she served? Was she
14 served? Was she served? And the text of the e-mail that I sent on that
15 particular day, the text was, "Just wanted you to know." And the title
16 was, well, "The two scumbags were served." In the Commission
17 Exhibit 5 that you placed in front me, for whatever it's worth, the
18 individual who provided a copy of the e-mail found it necessary to
19 enlarge the text to an extremely large size. This is not what it looked
20 like, but the text was "Just wanted you to know," and that was a
21 lawyer communicating to a client, that the process server did his job.
22 Unfortunately the title that I used was crude and frankly vulgar, and
23 inappropriate.

24 Q. And do you know why you did that?

25 A. I did not in some false sense of empathy with the clients who felt put

21.

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1 upon and done dirty by the daughter and the ex son-in-law and that
2 was my way in some misguided way of trying to empathize with
3 clients or perhaps even trying to impress my clients that I had
4 empathy for them.

5 Q. Let me show you what's been marked as Commission Exhibit 2,
6 which is your letter to the Commission, again a copy for counsel, a
7 copy for you. And I'd appreciate that once we're done with a
8 Commission exhibit that you would return them to us please.

9 A. Yes sir.

10 MR. ARONWALD: I have two copies here.

11 MR. FRIEDBERG: We'll take one back. Did you say you
12 had an extra copy? Oh. Thanks. And we'll provide any copies that
13 you need of anything, when you need it.

14 MR. ARONWALD: He will probably have them.

15 BY MR. SCHWARZ:

16 Q. You indicate at page two in the second full paragraph that "I might
17 have referred to them as the "Two enemies."

18 A. Well, what I should've said in that letter is "I should have referred to
19 them as the two enemies" or I might have meant -- what I meant to
20 convey was, your enemies, your adversaries have been served. Instead
21 of using the word enemy or the adversaries or your daughter, I used
22 an inappropriate word instead. The thought I meant to convey was the
23 respondents were served. Your adversaries were served, or Kelly and
24 Christopher were served. Instead, I resorted to offensive language.

25 Q. And I'm trying to understand why you resorted to the offensive

22.

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1 language.

2 A. Yeah, well I've been trying to psychoanalyze that question for some
3 time myself. The only explanation or excuse I have is, I was being
4 empathetic to my clients who felt as if they were tremendously hurt
5 by the daughter and the ex-son-in-law for no just reason or cause that
6 there were accusations made by the daughter, specifically in which
7 she referred to her father in the presence of the child as a "fucking
8 asshole." She used the word C-U-N-T, referring to her mother. This
9 was information that was related to me by Jennifer Coleman. There
10 was an acrimonious relationship that developed between the daughter
11 and the mother specifically and these were two very upset clients who
12 missed their grandson and desperately wanted to see them. So, I was
13 providing empathy if anything by denigrating our adversaries with an
14 inappropriate word and beyond that I don't know what else I could
15 add.

16 Q. Let me just back it up for a moment and make clear, in your March
17 18, 2016 letter, in response to a Commission inquiry, you conceded
18 that you sent these e-mails, correct?

19 A. Yes sir.

20 Q. There is no question that you sent them and that you sent them in the
21 form, although perhaps not in the size that they appear in the way I've
22 just shown you, two of them, correct?

23 A. That's correct. Yes.

24 Q. Alright. Let's talk about --

25 MR. FRIEDBERG: Well, can I just ask one question?

23.

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1 MR. SCHWARZ: Go ahead.

2 MR. FRIEDBERG: When you wrote the e-mail that you
3 used the word "scumbags" did you consider that this -- one of the two
4 scumbags that to who you were referring -- the word scumbags that
5 you had used, was their daughter?

6 THE WITNESS: Well, I certainly knew that one of the
7 respondents was the daughter. And this was the daughter who,
8 according to my clients, hurt them profoundly and for no particularly
9 good reason. They were tremendously upset with her and that's the
10 only thing that I suppose I considered, but the clients were themselves
11 very upset that this had to get to a point where they needed to bring a
12 petition in family court to see their grandson who's -- who was
13 withheld from them, at least they said, for absolutely no reason. They
14 presented this to me as a complete mystery and it didn't seem to make
15 sense to me honestly. And I suspect I didn't have the whole story.

16 MR. FRIEDBERG: Thank you.

17 BY MR. SCHWARZ:

18 Q. Let me refer you now to what's been marked as Commission Exhibit
19 4 and begin by asking you, who is your opposing counsel in the
20 family court visitation matter?

21 A. Yes, her name is Karen McGuire.

22 Q. And there's no question that you wrote this particular email, correct?

23 A. Yes sir.

24 Q. In which you refer to Ms. McGuire as a "Cunt on wheels," correct?

25 A. I'm sad to say, "Yes." That's correct.

24.

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1 Q. Alright. Now, do you still have your letter in front of you there?

2 A. I do.

3 Q. In your letter, did you refer to her in that manner because she was
4 aggressive and know for sharp lawyering?

5 A. I -- I did. My clients, specifically Mrs. Coleman wanted to know
6 what we were up against. What kind of adversary there might be in
7 this case, and I indicated that I thought that the lawyer that her
8 daughter engaged was probably the worst possible lawyer for our
9 purposes because this was an individual who declined to converse
10 with me, conciliate this matter in any way, shape, or form and appear
11 to be more than willing to litigate this as oppose to settle it. My client
12 Mrs. Coleman especially was under the impression that all it would
13 take would be the filing of a petition and then with or without a
14 lawyer there'd be some way to obtain visitation, conciliation, joint
15 family therapy and that this never would have to be litigated. Once I
16 determined that the lawyer was in fact Ms. McGuire based upon what
17 I knew, I had to revise my client that I didn't think that her daughter
18 would ever give in given what I knew and the client had said to me, in
19 the e-mail that prompted this one, that she thought the daughter was
20 simply going to show up in court and represent herself without a
21 lawyer. I suggested no, I didn't think so, that once the daughter was
22 served and the ex son-in-law was served, one or both of them would
23 engage lawyers. And then when I found out who the lawyer was, Mrs.
24 Coleman wanted to know "What did I know about that lawyer?" She
25 was very interested in knowing what's the lawyer's reputation and I in

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1 very crude terms indicated that I thought there was going to be
 2 difficulty down the road. Also, while it's not an excuse, and it is an
 3 irony, that word, is one of the words that Mrs. Coleman's supervisor
 4 used against her in the presence of others at the school and there were
 5 other epithets involving women, and that was part of our gender
 6 discrimination action. So, unfortunately that word, according to Mrs.
 7 Coleman was used by her daughter against her in the presence of the
 8 child. So, it's not as if that word was a foreign word or a word that
 9 wasn't in our lawyer/client lexicon but please don't misunderstand
 10 me. That doesn't excuse me in any way shape or form from resorting
 11 to that vulgarity and I apologize for it.

12 Q. Your March 18th letter, you also indicated that Mrs. McGuire was
 13 known for sharp lawyering.

14 MR. ARONWALD: What paragraph is that Mr. Schwarz?

15 MR. SCHWARZ: That is a phrase that we --

16 THE WITNESS: I think that's in paragraph five, at the top
 17 of page two.

18 BY MR. SCHWARZ:

19 Q. Correct, what did you mean by "sharp lawyering" sir?

20 A. I just mean that general reputation for being aggressive. Take no
 21 prisoners, litigate everything, fight to the finish and obstinate. And I
 22 thought my clients deserved to know what they might be up against.
 23 And I thought I was giving them advice in that regard. The word
 24 choice was inappropriate, but that's what I meant to convey.

25 Q. And did you also indicate in your March 18th letter that you were

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- 1 frustrated?
- 2 A. I was frustrated. Ms. McGuire, who I do know was not responding to
3 letters that I wrote to her, trying to elicit a response or at least a
4 conversation. And I was ultimately very frustrated. Once we wound
5 up in court, but that happened thereafter, but I did say in my letter that
6 I thought Ms. McGuire was a worst nightmare in terms of the lawyer
7 that the daughter could've engaged. I mean there are lawyers who I
8 think are readily able to resolve matters without litigation and perhaps
9 look at the best interest of a child, and given all I thought I knew
10 about the grandson and about the grandparents, it seemed natural that
11 most lawyers would try to disengage from litigation and attempt to
12 resolve this in some, well, more civilized manner. That wasn't
13 ultimately what we encountered here.
- 14 Q. And I'm going to show you the original of the March 18th letter that
15 you addressed to the Commission and ask you whether you placed
16 any attachments on that particular letter?
- 17 A. I did.
- 18 Q. And going to a page beyond the text of your letter, did you attach a
19 color photograph of Karen McGuire which also contained her bio?
- 20 A. Yes, I simply printed something from her website in which she talks
21 about her background and her -- the matter in which he represents
22 clients and happened to have included her photograph.
- 23 Q. Let me show you the particular page that I'm referring to. And it's
24 unfortunately not in color on the copies that are -- that have been pre-
25 marked.

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1 A. Okay.

2 Q. And ask you what your purpose was in attaching that to your letter?

3 A. This is Ms. McGuire's website and she indicates that she provides
4 zealous representation to litigants in the area of matrimonial and
5 family law. It indicates her background and she talks about her
6 reputation as a skilled divorce litigator and that her clients include
7 attorneys, judges, and other professionals, and she talks about how
8 she's a natural leader -- a national leader, pardon me. And I believe
9 the attachment supports my supposition that she is or was an
10 aggressive adversary and perhaps a flamboyant aggressive adversary
11 but that's who we were facing and that's what I tried to convey to my
12 clients in an inappropriate way.

13 Q. And can you tell us judge how you would referred to a male adversary
14 who in your view was aggressive or contentious and unrelenting in
15 pursuing a certain strategy or position?

16 A. Well, if I wanted to resort to epithet it wouldn't be unrelenting. It
17 could've been any number of mala props or words. "Asshole" perhaps
18 would be the first that would come to mind, "prick" again I don't
19 want to invent a scenario here. But, yes, If I thought we were up
20 against an obstinate aggressive male lawyer and I wanted to convey to
21 my client that, "Boy your adversary has picked one doozy of a lawyer.
22 I probably wouldn't have used the word "doozy". If my client was
23 pumping me for information, "Well who is this lawyer, what do you
24 know about this lawyer? What should we expect to encounter in
25 connection with this lawyer representing her adversary?" If I thought

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1 the lawyer was a worst nightmare for us, I would've probably used
2 some blue language.

3 Q. And is the kind of language that you just told us about something
4 that's part of your regular, if not, daily language?

5 A. Well, certainly it isn't part of my daily language, and it's never part of
6 my language in any public place or space. Ever. And perhaps if I was
7 confiding information to a friend or to someone who I assumed was a
8 client or a friend, I might let my hair down and let slip some blue
9 language, but I can't say that this is in my daily lexicon, in fact I'm
10 telling you it isn't.

11 Q. You didn't deem it appropriate at the time or in retrospect now, that
12 this was the appropriate language to use in communicating with a
13 client, did you?

14 A. It's wholly inappropriate language to use frankly, in any setting And
15 in retrospect, there's no -- there's just no question about that. If I
16 could have done it differently, I would have, and it's no excuse that
17 that was the word that Frank Channing, the supervisor used against
18 my own client in another setting. I suppose what I meant to convey is
19 if Mrs. Coleman was regarded by people of her school as being a pain
20 in the ass, to use another term, then this lawyer was an even greater
21 pain in the ass. That's all I meant to convey in plain English to a client
22 who is a plain spoken client.

23 Q. But you didn't refer to her as a pain in the ass?

24 A. I certainly didn't, and I sure wish I did, but I can't walk that back and
25 I own that and I'm profoundly sorry about it

29.

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1 MR. FRIEDBERG: Did you consider that, as you just said,
2 that this word had come up as a word her supervisor had allegedly
3 used in the human rights division case and had also come up in the
4 same custody dispute or visitation dispute?

5 MR. ARONWALD: Wait for the question.

6 THE WITNESS: I'm sorry.

7 MR. FRIEDBERG: Would you consider the fact that it had
8 come up in these two contexts that maybe using it in an e-mail to this
9 client might be especially hurtful?

10 THE WITNESS: I didn't -- I suppose in an ironic way I did
11 consider it, but I didn't consider that it would be hurtful at all to the
12 client because these words were words that were already words --
13 these were words that we discussed at great length in formulating the
14 complaint that we filed with the human rights division. There was also
15 another word, twat, T-W-A-T, which was what Mr. Channing referred
16 to Mrs. Coleman as. And this was front and center in our human rights
17 complaint. And the C-U-N-T word was also front and center because
18 Mrs. Coleman told me that her daughter let slip those words in the
19 presence of her son on the street, in public. So, I didn't think they
20 would be hurtful to my client. In an odd way, I suspect I used the
21 word because my client was quite familiar with it and it was in our
22 vocabulary. Had it been a different client where that word was not in
23 our vocabulary, I could assure you the word would never have been
24 used and it's never been used before with another client or frankly in
25 any setting because that's not how I speak, honestly. But because it

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1 was part of our vocabulary, that's why it found itself placed on paper.

2 MR. FRIEDBERG: Same question that I asked you. Did
3 you consider that? And I'll ask you from today's view point, just from
4 today's perspective, do you consider that it might have been
5 especially hurtful given the fact that it had arisen in these other
6 contexts?

7 THE WITNESS: Oh absolutely. Absolutely. It's quite clear
8 to me that it would be like rubbing salt in a wound and I will regret it
9 til' my dying day.

10 MR. FRIEDBERG: Thank you.

11 BY MR. SCHWARZ:

12 Q. I'd like to talk to you about the third e-mail that is the subject of the
13 first complaint which you received copies of in the past and ask you,
14 if you would, whether you can see that you refer to the presiding
15 judge or the presiding court attorney referee as an "asshole."

16 A. I did.

17 Q. Alright. There's no question in your mind that you did that and this is
18 an email that you created? Correct?

19 A. That's correct.

20 Q. And this is an e-mail that you generated to the Colemans?

21 A. That's correct.

22 Q. Alright. And the judge as you refer to her in your e-mail as I just
23 suggested was actually court attorney referee, Colleen Fondulis.
24 That's F-O-N-like Nancy, D-U-L-I-S. Is that correct?

25 A. Yes sir.

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- 1 Q. And what did you mean in your email when you indicated that the
2 judge is an asshole?
- 3 A. Well the other part of the conversation that provoked this remark that
4 I made, which was the email that Mrs. Coleman sent to me was an e-
5 mail in which he said that her husband Walter absolutely refused to
6 come back to Family Court and she referred to him as "Poor Walter" I
7 believe. And she indicated that they just weren't going to come back
8 to court and I attempted to convey to them the advice or the
9 possibility that if they didn't come back to court, the court attorney
10 referee might issue a warrant for them which was something I thought
11 we needed to avoid at all costs. In terms of "asshole." When we
12 appeared the one time before the court attorney referee, the court
13 attorney referee was extremely brusque. Essentially wanted to throw
14 out the case without any discussion because it was her feeling that the
15 Coleman's had no standing -- legal standing to even bring an order to
16 show cause in family court. I found this strange because a family
17 court judge signed an order to show cause and that's what put in
18 family court, but the court attorney referee was quite adamant that she
19 didn't even know why she was more or less wasting her time with a
20 case like this in which there was no standing and I think she was
21 going to summarily dismiss the case without further discussion. Ms.
22 McGuire, the adversary attorney unfortunately found it necessary to
23 try to make a record in front of the court of attorney referee about
24 Walter Coleman and an allegation that he had been sexually
25 inappropriate with the 9 year old grandson. I frankly thought that that

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1 had no place in the proceedings and we were shut down by the court
2 attorney referee very quickly in a short order, and I more or less had
3 to beg her for an opportunity to keep the case open to allow us to
4 come back to court and at least address the merits of the matter. And it
5 was always my hope and I know it was the hope of my clients that we
6 would somehow be able to put our foot in the door and encourage
7 counsel to perhaps beseech her client to allow for some kind of
8 counseling or supervised visitation or anything frankly. My clients
9 being so desperate at that point to see their grandson. Any kind of
10 attempt to see the kid -- we were hoping that that could be negotiated.
11 Ms. McGuire was not interested in negotiation whatsoever and
12 frankly there was nothing that court attorney referee did that day that
13 would've encouraged that kind of negotiation. So, we were shut down
14 and the Colemans were extremely upset and we were treated to a
15 hallway or a stairwell and I had to try yet again to explain to them the
16 notion of standing. Constitutional standing. I had explained at great
17 length in other e-mails to Mrs. Coleman about what standing is and
18 what standing isn't. In fact, before the Coleman's engaged me in the
19 grandparent visitation case they engaged another lawyer in
20 Huntington whose name is Karen Casey. And they spent money on
21 Karen Casey who's a fine lawyer who I frankly told them, I felt we
22 could've done business with her and I had hoped that they would've
23 stayed with Karen Casey, but they didn't stay with her because Mrs.
24 Casey thought that there was no standing in this case for them to
25 proceed. And so the Coleman's basically begged me to proceed and

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1 they said that they would be happy to pay me and they didn't quite
2 understand what standing meant. Well the court attorney referee did
3 and she was about to toss the case. So, I didn't want the clients, once
4 they decided to withdraw the petitions I didn't want the clients to face
5 further turmoil if God forbid court personnel issued a warrant for a
6 non-appearance. And ultimately they didn't appear. They said "We're
7 not going back. We're just not walking into that building ever again.
8 You handle it. Can you come up with something?" So, I said "Yes,
9 I'll come up with something. What I'll come up with is, I'm going to
10 write a civilized letter to the court attorney referee and I'm going to
11 copy it to Ms. McGuire and I'm going to couch it in accommodating
12 terms and in words of conciliation in which we hope that at some
13 point we can one day open this door again for [REDACTED]'s best benefit.
14 [REDACTED] is the name of the grandson. In the hope that the relationship
15 can be preserved. And I just tried to keep the door open a crack. And
16 that's how the action was discontinued ultimately. There was no
17 warrant issued. But I wanted them in court. I wanted them to come to
18 court. And they just weren't coming to court. They were not going to
19 come to court.

20 Q. In your March 18th letter at some point in connection with this
21 particular e-mail, you make reference to the word "Autocrat" do you
22 recall that?

23 A. I do.

24 Q. And you indicated that at least as I understood it, and correct me if
25 I'm wrong, one of the reasons that you didn't use the word autocrat in

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- 1 referring to the court attorney referee was because you felt that that
2 was not in your client's vocabulary or lexicon I suppose.
- 3 A. I did say that.
- 4 Q. What caused you to have that belief?
- 5 A. That the court attorney referee was an autocrat or that it wasn't in my
6 client's lexicon?
- 7 Q. If autocrat wasn't in your client's lexicon.
- 8 A. Without putting too fine a point on it. These are blue collar people.
9 They are not college educated. They are both custodians. They are
10 plain spoken people and I don't think fancy words are what they're
11 about. If they were professional people, I would've used the word
12 autocrat or something like the word autocrat. I wanted to inspire my
13 clients to get themselves to court and to avoid a negative situation in
14 which process was issued for their arrest. I've seen family court
15 judges do things over the years which I wouldn't do as a judge and I
16 didn't want that to happen here. You know, as far as autocrat is
17 concerned, every judge and every court attorney referee and every
18 hearing officer has a different bedside manner is when I'm on the
19 bench and I bend over backwards to be decent -- as decent as I
20 possibly can be to everyone, I've found this to be a different kind of
21 an experience and that's how I summed it up. And I was frustrated I
22 have to admit.
- 23 Q. Did you become involved in any sort of a fee dispute with the
24 Colemans after the matter was concluded?
- 25 A. Only insofar as Jennifer Coleman called me after we received the final

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1 decision of the Division of Human Rights hearing officer, essentially
 2 dismissing the human rights petition, Mrs. Coleman called me and she
 3 wanted a refund of legal fee. And there were two bad results. The
 4 human rights complaint was dismissed and obviously the grandparent
 5 visitation case fell. It was discontinued. So, she wanted money back
 6 and I essentially said, "Well, I've earned my fee and that's not how it
 7 works and I'm sorry." And she didn't get money back, so I think she
 8 was more than disgruntled,

9 Q. In your March 18th letter --

10 MR. FRIEDBERG: By the way, just to throw in some
 11 details. You mention what the fee was for the grandparent visitation
 12 case, you never mentioned I think, maybe we didn't ask, the human
 13 rights fee was.

14 THE WITNESS: I didn't. I think in 2013 that was another
 15 \$5,000.

16 MR. FRIEDBERG: Thank you.

17 THE WITNESS: And so this was a lot of money for these
 18 people. But I spent quite a lot of time on it.

19 BY MR. SCHWARZ:

20 Q. Did that complete your answer sir?

21 A. Yes, to that question it did.

22 Q. Alright. You indicate in your March 18th letter to the Commission that
 23 your conduct as a judge was not consistent with the Rules Governing
 24 Judicial Conduct with respect to these three emails.

25 A. I think what I meant to indicate is that I certainly can see and

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- 1 understand how the use of these three emails is not consistent with the
2 high standards and the aspirations that have for all judges to comport
3 themselves at all times in a matter which inspires confidence in the
4 judiciary, so in candor I more or less acknowledge that. Yes.
- 5 Q. And did you suggest anything else about what may have caused you
6 to send these three emails to any client or clients?
- 7 A. I'm not sure I understand the question. When you mean "anything
8 else" other than me being generally frustrated or trying to warn them
9 of consequences as a lawyer, I don't exactly understand what you
10 mean.
- 11 Q. Well, did you write in your March 18th letter that the lure of instant
12 communication case to fall through the cracks here.
- 13 A. I absolutely said that and I absolutely believe that. There was no time
14 for reflection. I wish I had some time to reflect. Certainly nowadays
15 as the world knows, people communicating with each other
16 electronically opens up all kinds of hazards and I fell prey to that.
- 17 Q. Has anything of this kind, sending e-mails to clients that contain
18 inappropriate language, has that ever happened to you before or since?
- 19 A. No.
- 20 Q. And in your view sir, how is your conduct in composing and
21 descending these three emails, not consistent with the rules?
- 22 A. Well, I know and I've been taught that a judge is a judge 24/7 no
23 matter where the judge is. So, it's no excuse for a judge to be at a
24 restaurant or a tavern or a bar or in public and be drunk. It's well
25 settled law and it's the jurisprudence of the Commission that judicial

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1 conduct is absolutely not limited to the things that happen in an open
2 court room. Now I know that. Where I fell down is, I assumed that
3 because this wasn't a public utterance, it wasn't anything that
4 could've been overheard by the public, that I was holding myself out
5 only to private clients in what I thought was a confidential
6 communication. It's a quick blast. It's an e-mail. It's almost as if
7 you're whispering to somebody or whispering in someone's ear
8 without any reasonable expectation that it's going to be overheard, let
9 alone intercepted and sent on it's way to the public or ever be found in
10 the public space. So, but I said in my letter, to the extent the Colemans
11 knew that I was a village justice, and they certainly did, and also I
12 didn't say this in the letter, but the Colemans supported me in my
13 district court election in 2015, they were supporters. They planted
14 signs for me. They encouraged me. They attended a reception that was
15 held on my behalf.

16 MR. FRIEDBERG: I thought you said before you said it
17 was 2014.

18 THE WITNESS: 2014, I'm sorry.

19 MR. FRIEDBERG: You just said 2015.

20 THE WITNESS: Then I misspoke, and thank you for
21 correcting me. Yes, that was 2014.

22 BY MR. SCHWARZ:

23 Q. And other than being crude and undignified, do you discern any other
24 issues in a lawyer/judge referring to an opposing lawyer as a "Cunt on
25 wheels?"

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- 1 A. I think it's particularly -- it's a particular lack of decorum. It's
2 particularly undignified to characterize any participant in the justice
3 system this way, I think it denigrates all of us. And it's beyond
4 sloppy. It's just an extremely poor taste and it's not who I happen to
5 be. So, the Coleman's are members of the public. I mean, yes, they
6 were clients of mine at that particular point in time but they are
7 members of the public. If they are overhearing someone who's a
8 judge refer to someone else who's involved in the justice system with
9 foul language, then those words can travel. That's nothing I thought
10 about when I sent those emails but on reflection that's something I
11 certainly do think about a lot. While I once had a lawyer, who a few
12 years ago actually said this about a court attorney referee or said that
13 about an attorney admitted to practice law in the state, how do you
14 like that? Well that's inappropriate for any lawyer frankly and it's
15 even more inappropriate I think for a judge. So, I'm held to a higher
16 standard. I sure know that. So, this is a lapse and I'm quite
17 embarrassed.
- 18 Q. Do you on reflection understand that a lawyer using language of this
19 sort that we've just spoke about -- the law -- your adversary being a
20 "Cunt on wheels" may suggest that you harbor a bias against women
21 or women lawyers?
- 22 A. I certainly do which is why this is so hurtful to me, because this is
23 anything but who I am. I am exquisitely sensitive to gender
24 discrimination, to bias issues generally. I'm a member of the
25 Women's Bar Association of the State of New York and the Suffolk

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1 County Women's Bar Association. I associate professionally with
2 colleagues, judicial colleagues who happen to be women and are very
3 close friends of mine, as well as counsel. And so I certainly do
4 appreciate the sensitivities and this vulgarity.

5 Q. Alright, Mr. Referee would this be a reasonable time to take a short
6 break?

7 MR. ARONWALD: Sure.

8 MR. FRIEDBERG: You have been talking the whole time.
9 Do we take a break?

10 MR. SCHWARZ: Yes.

11 THE WITNESS: Whatever you suggest.

12 MR. SCHWARZ: How long sir?

13 MR. ARONWALD: Well, how long -- how much time
14 would you suggest?

15 MR. SCHWARZ: Ten minutes?

16 MR. BESSO: Whatever you suggest. I don't care.

17 MR. ARONWALD: Let's do -- Let's make it 12 o'clock.
18 We'll come back at 12 o'clock.

19 MR. FRIEDBERG: Okay. You could use the other room or
20 we can leave you here in this room, but either case you can confer
21 privately with your client. Would you like to stay here or go into the
22 other room?

23 MR. BESSO: We can stay here.

24 MR. ARONWALD: Thank you.

25 MR. SCHWARZ: Do me a favor, hand back all the exhibits

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1 that --

2 (OFF THE RECORD)

3 MR. MAISONET: We are on the record.

4 BY MR. SCHWARZ:

5 Q. Judge, let's move on to the New York state gender discrimination
6 case. In what forum did you bring Ms. Coleman's gender bias claim?

7 A. The New York State Division of Human Rights.

8 Q. And do you remember where the office was located?

9 A. Well, the hearing occurred on Fulton Avenue in Hempstead.

10 Q. And I gather you filed a written complaint.

11 A. I did, which I think went to their office in Hauppauge. And ultimately

12 I think personnel in Albany was looking at it, but it was assigned to
13 the hearing in Hempstead.

14 Q. And as I understand, your earlier testimony to be that Mrs. Coleman
15 paid you a fee of \$5,000 to represent her in connection with the
16 gender discrimination case?

17 A. As I recall.

18 Q. Alright. Did you provide her with a written retainer agreement or a
19 letter of engagement in connection with that matter?

20 A. There was -- I'm almost certain, a receipt, which was hand written on
21 office letterhead indicating an hourly rate, but it wasn't a formal
22 retainer letter.

23 Q. Alright. And did the case proceed to a hearing?

24 A. It did.

25 Q. Do you recall when sir?

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1 A. Yes, November 5, 6, and 7, 2014.

2 Q. And do you recall who the administrative law judge who presided
3 over the hearing?

4 A. Yes, her name was Margaret Jackson.

5 Q. And did you have occasion to observe whether she appeared to be
6 Afro American?

7 A. I did and she was.

8 Q. And during the hearing were there breaks or recesses in the
9 proceedings?

10 A. There were.

11 Q. And did Mr. Coleman accompany his wife to the hearing?

12 A. He did.

13 Q. During any break or recess in the hearing, did you ever make any
14 comment of any kind about the administrative law judge who was
15 hearing your case?

16 A. I did.

17 Q. You did?

18 A. During the break?

19 Q. Yes.

20 A. I did.

21 Q. And what did you say to the Colemans?

22 A. When the case began, as we were setting up the room, Mr. Coleman
23 wheeled in on a hand truck a number of boxes which contained lots of
24 exhibits which my client photocopied and our intention was to have
25 Mr. Coleman sit behind us, to help us in staging those exhibits and

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- 1 Mrs. Coleman also wanted him there for moral support. Before the
2 proceedings began, the judge came out and observed Mr. Coleman
3 with his boxes and just generally asked, "Who's he?" and I stood up
4 and I said, "Your Honor, this is Mr. Coleman. Jennifer Coleman's
5 husband. I'd request an opportunity to allow him to sit behind us with
6 exhibits that we may be introducing," and she just said, "Absolutely
7 not." She pointed to the door and he left. Mrs. Coleman was
8 extremely upset and I -- and things were about to begin and I said,
9 "Look we'll just deal with this," and we went on the record and the
10 trial commenced. Mr. Coleman was not allowed in the courtroom or
11 in the hearing room for the entirety of the hearing, it was three days
12 and he remained outside in the hallway. He didn't seem to have any
13 problem with that. Mrs. Coleman, when we took our first break and I
14 and the husband retreated downstairs, I think to a parking garage just
15 to talk and she was absolutely apoplectic and she said, "How could
16 she do this? How could she exclude Walter?" And I said, "She's the
17 judge. It's her courtroom. She can do whatever she wants."
18 Q. Excuse me Judge. I'm sorry.
19 A. It's fine. Let me know when to continue.
20 Q. No. No. Go ahead. Continue.
21 A. And then Mrs. Coleman said, "That's not fair. That's not fair." I said,
22 "Well, whether it's fair or whether it's not fair, she makes the rules
23 and we'll deal with it and we need to get back upstairs." And then
24 Mrs. Coleman persisted, "Well, what would you have done? What
25 would you have done if you were the judge?" I said, "what I would've

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1 done is entirely irrelevant here. She did what she did. We're unhappy,
2 but we'll deal with it. Let's get back upstairs. And that's how I
3 characterized the hearing judge.

4 Q. Did you make any comments or remarks to either of the Coleman's
5 about the pace of the hearing?

6 A. I don't believe so.

7 Q. Did you make any comments to the Colemans or any remarks about
8 the competency of the administrative law judge?

9 A. Only insofar as it being her forum. It was an administrative hearing
10 and it wasn't a trial courtroom which would have allowed members
11 from the public to attend and observe, but beyond that, no.

12 Q. And did you make any remarks or comments about her being
13 punctual, returning from recesses or breaks in the proceedings?

14 A. No. I don't recall that.

15 Q. Alright. And did you ever utter the words attributed to you in the
16 Administrator's Complaint, which you indicated you have seen, to
17 refer to the administrative law judge Margaret Jackson?

18 A. Absolutely not.

19 Q. And you didn't say anything, you didn't use the "F" word when you
20 spoke to Mr. and Mrs. Coleman?

21 A. No.

22 Q. You didn't use the "N" word?

23 A. Absolutely not.

24 Q. And you didn't prevail in the sex discrimination case that you brought
25 on behalf of Mrs. Coleman. Did you?

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- 1 A. Ultimately she did not prevail.
- 2 Q. Right. And before the hearing began, did Mrs. Coleman provide you
3 with the names of any potential witnesses that she thought might aid
4 her in her case?
- 5 A. She did. We met on a number of occasions and we conversed and we
6 also e-mailed. Again, liberally on a number of occasions about
7 individuals who she thought would support her claim and I canvased
8 many if not all of them. I subpoenaed many faculty members from the
9 high school, as well as administrators because my client requested it.
10 Some I indicated to her would probably never need to be called, but
11 they were merely remaining on call. Others I promised I would
12 scrutinize on her behalf and I'd like to talk about at least one of them,
13 but I'm sure you have a question you're going to ask me about it.
- 14 Q. Well, no. Go ahead. Tell me what you'd like to tell me.
- 15 A. Alright. Well, in my March letter in which I acknowledged the three
16 e-mails, at the end of that letter, I felt it necessary to respond to a final
17 allegation that was made in the initial complaint. And the initial
18 complaint was some open ended reference to, "Oh and by the way,
19 Mr. Senzer may have made derogatory or derisive or racist remarks
20 concerning Hispanics" or there may have been other e-mails in that
21 regard in connection with Hispanics. And at that point, when I saw
22 that, I knew that that wasn't true. I knew that didn't happen. And so I
23 then went back to every single e-mail that I ever received from
24 Jennifer Coleman and that I ever sent to Jennifer Coleman. And there
25 were lots of them, hundreds of them and what I found was, an e-mail

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1 that I sent to her on November 3, 2014 at 4:26 P.M. which was a
2 response to her email that she sent to me the same day, November 3,
3 2014 at 4:03 P.M. in which Mrs. Coleman outlined a number of
4 witnesses who we subpoenaed who she had thought should be
5 presented in order to support her claim. Now, it was the school
6 district's defense in large measure, and they prevailed that they had a
7 legitimate pretext for not promoting Mrs. Coleman, legitimate pretext
8 and witness after witness after witness proved this, was that she
9 wasn't particularly good at her job. She was not a good cleaner. That
10 she left classrooms in disarray. That she left paper towels and
11 cleaning supplies on the floors of bathrooms. That toilets weren't
12 properly cleaned and there were actually photographs that were
13 presented. So, I knew going into this hearing that that was how the
14 district was going to try to defend itself. So, with respect to one of the
15 witnesses who we subpoenaed -- Mrs. --

16 Q. -- And you remember who that was?

17 A. I do. Mrs. Coleman and I had a conversation. It was Senora Maria
18 Segura.

19 Q. Can you spell it?

20 A. Maria. M-A-R-I-A. Segura. S-E-G-U-R-A. Senora Segura was the
21 Spanish teacher at the high school. And I promised Mrs. Coleman that
22 I would speak to her personally, because I was very interested in
23 determining whether or not Mrs. Segura could validate my client's
24 competence. In fact, my client said to me that she would and my client
25 also said to me that she would be able to provide additional

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1 information buttressing the gender discrimination claim. That she
2 could've provided -- that she could've borne witness to Frank
3 Channing having an anti-female attitude. So, my e-mail to the client is
4 as follows: I'll speak to her. Now, I did speak to her and Mrs.
5 Coleman suggested that the Spanish teacher had a thick accent. And I
6 said, that's fine. I'll talk to her. She did have a thick accent. She was
7 an absolutely lovely woman. I had a lengthy conversation with her,
8 and she said, "Mr. Senzer. In all honesty, Jennifer really didn't clean
9 the room particularly well. I can't say that she did." But then I was
10 more concerned about whether or not she could say anything about
11 overhearing any kind of scuttlebutt in the school district about anti-
12 woman remarks being made with respect to Jennifer Coleman. She
13 couldn't. She was unable to do that. So the letter I sent before I spoke
14 Mrs. Segura -- Senora Segura was, "I will speak with Maria Segura
15 later. I don't need her to validate your work. I thought that she once
16 had a complaint about Channing or beefed about him being anti-
17 woman. Is that true?" And then I said to my client, "If not, we don't
18 need her. Thick accent and all." That's what I said, "Thick accent and
19 all" where a lawyer is telling a client that she couldn't help us on
20 substance and in terms of her ability to communicate, well, she had a
21 thick accent. That has been morphed into "spic women" and that's the
22 only thing that happened here. And I didn't say "spic women," spic
23 women, I never used the word spic and in my response in March, I
24 indicated one of the reasons why. I have relatives who are Hispanic. I
25 don't --

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1 MR. FRIEDBERG: Can we get a copy of that email that
2 you read from?

3 THE WITNESS: I'll be happy to give it to you.

4 MR. FRIEDBERG: Thank you.

5 MR. ARONWALD: You want a copy of which e-mail?

6 MR. SCHWARZ: The e-mail that he's reading from right
7 now.

8 MR. FRIEDBERG: He just read from an e-mail.

9 MR. ARONWALD: Okay.

10 MR. FRIEDBERG: That I don't believe we have a copy of.

11 THE WITNESS: No. You've never received a copy it and
12 I'll provide it to you.

13 MR. FRIEDBERG: Thank you.

14 BY MR. SCHWARZ:

15 ---

16 Q. Did you after spoke with Ms. Segura, were there any other witnesses
17 that you recall interviewing or screening as potential witnesses at the
18 hearing?

19 A. There were many. I don't have their names entirely pressed into my
20 mind but one of them was Randy Scott, Steve Lucrow, Kevin
21 McGlenn, Mark Lomodue, Chris Homer.

22 Q. Was there an Annette DiPietro? And that is phonetic.

23 A. There was a Mrs. DiPietro. I don't believe that I ever spoke to Mrs.
24 DiPietro or if I did it might have only been after she was subpoenaed
25 and I asked her simply to remain on call.

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1 MR. FRIEDBERG: D-E-P-I-E-T-R-O?

2 MR SCHWARZ: D-I-P-I-E-T-R-O I believe.

3 RESPONDENT: Right. My client indicated to me there was
 4 a Mrs. DiPietro at the school who was horrified about having seen my
 5 client be forced to push a lot desks and chairs on a cart. All of which
 6 was too heavy for her to push and my client's allegation was that her
 7 supervisor set her up to have that cart fall down or to have her injure
 8 herself. And so that's what she said Mrs. DiPietro might be able to
 9 support. I don't believe that we ever called Mrs. DiPietro. I don't
 10 believe that she was able to support that. My client indicated that a lot
 11 of people at the school would be able to bear witness to her claims
 12 and to be honest with you most weren't. There were two male janitors
 13 who were able to confirm that they overheard Frank Channing use the
 14 word C-U-N-T and T-W-A-T and also the "F" word. In reviewing
 15 video tape, surreptitious video tape that Frank Channing made of
 16 Jennifer Coleman in that work environment. And so that, when I
 17 developed those witness, that's what lead to the probable cause -- I
 18 believe led to the probable cause determination that propelled us into
 19 the hearing which we ultimately lost.

20 BY MR. SCHWARZ:

21 Q. These words that you've just uttered. Are they part of your
 22 vocabulary?

23 A. Absolutely not. They are not.

24 Q. Did you have any discussions with Mrs. Coleman or Mr. Coleman
 25 about whether to call these two women and now I'm talking about

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1 Mrs. Segura and Mrs. Pietro as witnesses on her case?

2 A. Well, there was that e-mail in which I indicated that while we would
3 subpoena Mrs -- Senora Segura, Mrs. Segura, I would make a call after
4 interviewing her as to whether or not I thought she'd be a worthy
5 witness and I indicated to her that I didn't think she would be a worthy
6 witness and she simply remained on call and she never came in
7 because her testimony wasn't needed and that was a judgment call that
8 I made as a lawyer and I explained to the client or the clients as to just
9 why. That she supported the school district's defense that her cleaning
10 skills weren't up to par and that she wasn't particularly a witness to
11 anything Channing did or said. And that was the determination.

12 Q. And did you become involved in a fee dispute with Mrs. Coleman
13 arising out of your representation of her in the New York State
14 administrative proceeding?

15 A. Um, I don't -- well, I can tell you there was no fee dispute.

16 Q. And I don't mean a formal fee dispute or arbitration. I mean any
17 disagreement about the fee.

18 A. I think generally after Mrs. Coleman received the Human Right
19 Division decision, which denied her claim, I think she was upset and
20 disgruntled and I think she was looking for money back as to one or
21 both matters that I handled on her behalf. I don't know that they were
22 segmented or separated one from the other, to be honest with you. You
23 know at another point she e-mailed me and she said you earned your
24 fee," or "you more than earned your fee. And this wasn't in connection
25 with a fee dispute. This was just in connection with things she wanted

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1 me to do because I was working awfully hard for her and I was
2 expending many hours on her cases.

3 Q. And was this at the same time that you were campaigning for a
4 position on the district court?

5 A. Are you asking me whether my representation of her overlapped with
6 when I was campaigning for district court?

7 Q. Yes.

8 A. It did. Certainly with the human rights case, it did.

9 Q. Yes, that's what I'm referring to.

10 A. It did, because the human rights case began in I believe late 2013 and
11 the human rights case continued into, well the hearing ended
12 November 7, 2014. So, there was an overlap.

13 Q. And continued beyond. Not the hearing, the proceeding.

14 A. That's correct. Well, the proceeding continued beyond because there
15 were briefs that the hearing officer had to review and then she
16 ultimately wrote a decision which I don't think she generated for
17 months beyond that. I think that came maybe in April '15. I think
18 that's probably accurate. But yes, during this time they knew that I was
19 a candidate and they ingratiated themselves with me and my family. I
20 believe they wanted to. They were very supportive of me. They
21 attended a reception on my behalf as I indicated earlier. They posted
22 photographs. They brought neighbors of them with them. They were
23 hanging signs for me. They were very effusive. You know we were
24 hugging each other and photographs and you know, so they weren't
25 close personal friends but they were certainly friendly and supportive

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1 and I was trying to be as friendly and supportive and professional as I
2 could be as a lawyer in advancing their legal concerns. We did have
3 results that they were not happy with.

4 Q. Right. Just a few more questions, judge.

5 MR. FRIEDBERG: Can I ask you a few questions about
6 this last?

7 THE WITNESS: Please, yes.

8 MR. SCHWARZ: Sure.

9 MR. FRIEDBERG: I just want to make certain that we
10 cover this area totally. The hearing officer at the Division of Human
11 Rights was black?

12 THE WITNESS: She was a black woman.

13 MR. FRIEDBERG: In any discussions with your clients,
14 Mr. and Mrs. Coleman, and I'll use both even though Mrs. Coleman
15 was technically your client --

16 THE WITNESS: -- right.

17 MR. FRIEDBERG: -- her and her husband, did you ever
18 use the word "Nigger?"

19 THE WITNESS: Never. And I will tell you that I have
20 never used that word, ever in my life. Never, not ever. It's not in my
21 brain. It's not who I am. And it is appalling to me, and I've been sick
22 over this since I first heard about it.

23 MR. FRIEDBERG: Did you use any other term referring to
24 the fact that the hearing officer was Black?

25 THE WITNESS: Absolutely not.

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1 MR. FRIEDBERG: What about the adjective "Fucking?"
2 Did you use that in connection with any conversation with the
3 Coleman's about the hearing officer?

4 THE WITNESS: I don't believe so.

5 MR. FRIEDBERG: Did you make any comment at all that
6 was negative in nature about the hearing officer to Mr. and Mrs.
7 Coleman?

8 THE WITNESS: Well, I've been straining to try and
9 understand all of this. As you might imagine, and the only thing I
10 guess that might be perceived that way is when Mrs. Coleman asked
11 me how this can happen, how the husband can be excluded and what I
12 would've done and I would've said. "She is a hearing officer. She
13 works for a department of the state. This is her purview. This is her
14 ball park. It may not be what I would've done, but she's not me. I'm
15 not her. This -- if this were a courtroom there'd be a mandate to allow
16 members of the public into the courtroom. That would include your
17 husband. But, I'm not going to fight with her. This was her
18 determination and let's move on."

19 MR. FRIEDBERG: But, as far as you can recall, you didn't
20 use any negative adjectives to the Colemans in describing the hearing
21 officer?

22 THE WITNESS: I don't know why I would need to do
23 that? I frankly found the hearing officer who was extremely competent
24 and good at what she did and she ran her courtroom well, and her
25 decision was well-reasoned.

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1 MR. FRIEDBERG: You saying you wouldn't have needed
2 to -- my question is did you?

3 THE WITNESS: No.

4 MR. FRIEDBERG: Thank you.

5 THE WITNESS: You're welcome.

6 BY MR. SCHWARZ:

7 Q. Alright. Just to cover it, very briefly, let me show you what's been
8 marked as Commission Exhibit 7.

9 A. Thank you.

10 Q. And rather consistent with your earlier answers. This is an
11 Administrator's Complaint dated September 2, 2016.

12 A. Yes sir.

13 Q. Maybe you and complaint number 2016/N-0655 you did not make or
14 suggest in any way, shape, or form, that the administrative law judge
15 was a "nigger?" You did not use the word "fucking," in reference to
16 her in any way, shape, way or form, is that your testimony sir?

17 A. That is -- That is correct.

18 Q. Alright and with respect to potential witnesses that Mrs. Coleman may
19 have called, you do agree that some of them were Hispanic, and as you
20 indicated I believe one of them had, at least one of them had a rather
21 heavy Hispanic accent, correct?

22 A. Only one of them in so far as I knew was Hispanic and that would've
23 been Senora Segura. I had no idea whether or not Mrs. DiPietro was
24 Hispanic or it's nothing that was even present to my mind.

25 Q. And did you speak about the woman with the heavy accent in any

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(Hon. Paul H. Senzer)

1 derisive, ethnically inappropriate or improper way whatsoever?

2 A. No sir. I didn't. I commented that she has a thick accent.

3 Q. Did you describe the accent?

4 A. Only insofar as I used the word, "thick" and nothing beyond that, no.

5 Q. Alright you can let me have the exhibit back please.

6 A. Thank you.

7 Q. A few more questions. You understand, do you not, the confidentiality
8 rules apply to the client and that that is not something that belongs to
9 you as counsel, correct?

10 A. Yes, I do.

11 Q. Alright. And why when you were using Jennifer Coleman's services as
12 a house cleaner or a pet sitter, did you stop using her in that capacity?

13 A. My wife could probably be better in that regard, but Jennifer Coleman
14 didn't do a good job and my wife didn't want her cleaning our house
15 and she was a very heavy smoker and she left cigarette butts all over
16 the place and the house reeked of smoke and my wife didn't want her
17 in our house, as a cleaner at least and that's why she was let go. That's
18 not what we told Mrs. Coleman at the time, but that is in fact why Mrs.
19 Coleman was let go.

20 MR. FRIEDBERG: What did you tell her?

21 THE WITNESS: My wife said, "You know what? Jennifer
22 thanks so very much. I'm going to clean the house myself and, you
23 know, goodbye and good luck."

24 BY MR. SCHWARZ:

25 Q. Now, you indicated earlier, I believe that one of the principal areas of

55.

(Hon. Paul H. Senzer)

1 practice that you pursued when you were still in practice was criminal
2 defense, correct?

3 A. Correct yes.

4 Q. Were there any other kinds of matters that you handled on a regular
5 basis.

6 A. I can't say on a regular basis. I mean it was a general practice and so
7 from time to time there'd be a probate matter here or there and
8 occasionally, you know, civil litigation, and very little personal injury
9 work as the years went on and maybe less than five percent of the
10 practice was that. A lot of vehicle and traffic matters, which I guess is
11 part of the defense field.

12 Q. And do you know sir how the Colemans acquired your e-mail address?

13 A. That's a good question. I'm certain I gave it to them to use. I suggested
14 that it would be convenient perhaps for them to use it, they certainly
15 had my phone numbers and I was simply being forthcoming with
16 them. They had my home address. They've been to my home. I've
17 been to their home. Professionally. I've met with them around their
18 dining room table to discuss exhibits and witnesses and facts about the
19 case and so, it was not a particular secret.

20 Q. Are you able to provide to the Commission within the next week or
21 two, copies of all e-mails between you and the Colemans? Do they still
22 exist?

23 A. I can certainly pull up whatever I can pull up. I'll do my best. So, the
24 answer is yes.

25 Q. Alright, I'll discuss with your counsel a date by which we'd like that

56.

(Hon. Paul H. Senzer)

- 1 done if possible.
- 2 A. Okay.
- 3 Q. Alright. Now, I want to talk to you very briefly. You indicated earlier,
4 if I understood you correctly that you had received two letters of
5 dismissal and caution from the Commission?
- 6 A. As best as I can recall. I believe that there were three complaints over
7 the years. The last being in '06. I believe that two of them were
8 dismissed with caution and one was simply dismissed.
- 9 Q. Outright?
- 10 A. I believe so. The one in '06. I'm more or less confident that that was
11 the last one.
- 12 Q. Alright. Let me distribute Exhibit 8. Copies of the letter of dismissal
13 and caution that you received on February 4, 2002 or it's dated
14 February 4, 2002. On the first page, third paragraph does the letter of
15 dismissal and caution indicate in part you're cautioned to adhere to
16 Section 100.3(b)(3) of Rules Governing Judicial Conduct requires a
17 judge to be patient, dignified and courteous to litigants and others with
18 whom the judge deals in an official capacity and Sections 100.1 and
19 100.2(A) of the Rules which require a judge to observe and maintain
20 high stands of conduct and to act at all times in a manner that promotes
21 public confidence in the integrity and impartiality of the judiciary.
- 22 A. Yes, I recall receiving that.
- 23 Q. And did you read that at the time sir?
- 24 A. I did.
- 25 Q. And did any of these prohibitions or reminders depending on word,

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(Hon. Paul H. Senzer)

1 you choose to accept, come to mind in your dealings with the
2 Colemans? Dealing with their adversaries? Dealing with adverse
3 parties? Dealing with the judge you referred to as an "asshole" at the
4 time you generated these e-mails?

5 A. Well, when you say, in terms of "dealing with" the judge or another
6 judge or dealing with an adversary or dealing with an adversary
7 counsel. The answer is, "Yes." All of that was brought to bear and was
8 present in my mind and I can tell you that in my dealings with the
9 judge, the judges both of them, the Hearing Officer Jackson and the
10 Court Attorney Referee Fondulis. My dealings with them were nothing
11 but professional and extremely respectful. At all times and I will tell
12 you that my dealings with Karen McGuire was nothing but
13 professional and respectful at all times and frankly remains so to this
14 day, so the way I comport myself in a courtroom or in the public or in
15 any sphere that's in the public, the answer is, "Yes." Because I know
16 that I'm a judge 24/7 regardless of what I'm doing. And if I'm a
17 lawyer acting in my capacity as a lawyer, I know that I'm still a judge.

18 Q. But did these particular sections of the Rules come to mind at the point
19 that you generated and sent or deployed these three e-mails that we've
20 been talking about today?

21 A. Well, that's a different question.

22 Q. Yes, it is.

23 A. So, generating the e-mails, I was acting as lawyer combatant if you
24 will. What was at the time my full-time profession and I wasn't
25 circumspect or certainly, circumspect the way I would want to be now

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(Hon. Paul H. Senzer)

1 with respect to the full implications of having what I thought was a
2 private e-mail communication. So, I fell down. This wasn't present to
3 my mind as it should have been. And that's in all honesty something
4 that I have been living with for a long time and I certainly understand
5 the implications.

6 Q. Alright. At this time the Commission has no further questions.

7 MR. BESSO: I have no questions judge.

8 MR. ARONWALD: So, then the matter will be --

9 MR. FRIEDBERG: Well, they have the opportunity, either
10 the client or the lawyer to make a closing statement if you'd like. Not
11 necessary.

12 MR. BESSO: I don't believe that Mr. Senzer wants to make
13 a closing statement. I think his testimony indicates his remorse for the
14 comments that he made and that he'll rest on the record which I think
15 supports his position that he's contrite and realizes the impact and the
16 implications of the e-mails that he sent he is stead fastly denied
17 making any racist comments or anti-Spanish comments and so forth
18 and there's no record to indicate that he did.

19 MR. ARONWALD: It's not a closing statement. It's just a
20 comment.

21 MR. SCHWARZ: I understand.

22 MR. ARONWALD: So then the matter will be deemed
23 closed. This portion of it, the proceeding anyway.
24
25

59.

(Hon. Paul H. Senzer)

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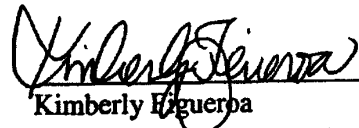
MR. SCHWARZ: Yes. Yes. Off the record.
(Whereupon, the examination of Paul H. Senzer was
concluded at 12:41 P.M. on November 16, 2016.)

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CERTIFICATION

I, KIMBERLY FIGUEROA, a Secretary of the State Commission on Judicial Conduct, do hereby certify that the foregoing is a true and accurate transcript of the tape recording of the proceedings transcribed by me, to the best of my knowledge and belief, in the matter held on November 16, 2016.

Dated: February 27, 2017



Kimberly Figueroa

COMMISSION EXHIBITS

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	<u>Description</u>	<u>Ident.</u>
	1 Commission letter dated 9/23/16, scheduling IA appearance for 10/26/16	3
	2 Judge's letter to Commission dated 3/18/16	21
	4 E-mail from Judge Senzer letter dated 11/25/14 "Cunt on Wheels"	24
	5 E-mail from Judge Senzer dated 1/22/15 "The Two Scumbags Were Served"	21
	7 Commission's Administrator's Complaint dated 9/2/16	54
	8 Copies of letter of dismissal and caution dated 2/4/02	57

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS
THE FORMAL WRITTEN COMPLAINT AND/OR FOR SUMMARY DETERMINATION
OF THE CHARGE STATED THEREIN IN FAVOR OF RESPONDENT,
DATED DECEMBER 12, 2017 [155 - 164]**

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
-----X

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
Of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

-----X

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S
MOTION TO DISMISS THE FORMAL WRITTEN COMPLAINT
AND/OR FOR SUMMARY DETERMINATION OF THE CHARGE
STATED THEREIN IN FAVOR OF RESPONDENT**

Respectfully submitted,

LONG TUMINELLO, LLP
Attorneys for Respondent
120 Fourth Avenue
Bay Shore, New York 11706
(631) 666-5766

PRELIMINARY STATEMENT

This Memorandum of Law, together with the exhibits annexed thereto, is respectfully submitted in support of the instant motion by Respondent for an Order 1) pursuant to 22 NYCRR 7000.6(f)(ii), dismissing the Formal Written Complaint herein in its entirety; or, in the alternative, 2) pursuant to 22 NYCRR 7000.6(f)(i) summarily determining this matter in favor of Respondent and dismissing the Charge stated in the Formal Written Complaint.

In the Formal Written Complaint, dated October 13, 2017, (“Complaint”) the New York State Commission on Judicial Conduct (“Commission”) states a single Charge against Respondent, alleging that he failed to observe high standards of conduct and otherwise undermined public confidence in the judiciary. **Exhibit “A”**. Although no allegations are made against Respondent relative to his actions taken while acting in the role of a judge, it is purported that, while representing clients in his private law practice, Respondent used racist, sexist, profane and otherwise degrading language.

By his Answer to the Complaint, Respondent admitted to having used profanity in email correspondence with his then-clients, Jennifer and Walter Coleman, but denied having ever spoken racist comments to them at any time. **Exhibit “B”**.

It is submitted that Respondent is entitled to the dismissal of the Complaint and/or summary determination dismissing the single charge of judicial misconduct asserted against him in the Complaint.

STATEMENT OF FACTS

By way of a brief background with respect to Respondent’s legal and judicial career, Respondent has been an attorney admitted to practice law within the State of New York for more than thirty-five years, having been admitted in 1981. **Exhibit “A”, ¶ 4; Exhibit “B”, ¶ 2;**

Exhibit “C”, p. 3. Throughout that time, Respondent has had no career discipline as an attorney. **Exhibit “C”**, p. 8.

Respondent has served as a part-time Northport Village Justice since having been elected to that position on March 15, 1994. **Exhibit “C”**, p. 4. During the course of the intervening twenty-three (23) years, Respondent has heard approximately 100,000 cases, 7,000 of which were criminal matters, has conducted more than 1,000 hearings and trials and has issued more than 300 written decisions. *Id.* at p. 8. Since 1996, Respondent has been a member of the Suffolk County Magistrate’s Association and currently serves as its Vice President. He has likewise been involved in Town and Village education and training through the Office of Court Administration. *Id.*

In addition to his private practice of law and his judicial role, since 2011, Respondent has worked as an adjunct instructor at State University of New York at Farmingdale in the criminal justice department. *Id.*

In 2013, Respondent was appointed as a District Court Hearing Officer at the Suffolk County Traffic and Parking Violations Agency (“TPVA”) which began as a part-time position but increased in hours throughout 2014 and 2015. As a result of the increased demand upon his time resulting from his judicial and teaching positions, Respondent voluntarily wound down his private practice of law in early 2015. *Id.* at pp. 4-5.

In connection with his private practice of law, Respondent was retained by Jennifer Coleman, in or about November 2013, to represent her before the New York State Division of Human Rights in a gender discrimination action against the Cold Spring Harbor Central School District where she worked as a part-time custodian. **Exhibit “C”**, at Comm. Exhibit 2. Thereafter, in or about the fall of 2014, Respondent was retained by both Mr. and Ms. Coleman

to commence a Family Court proceeding in which they sought to secure grandparent visitation rights relative to their grandson who, they informed Respondent, they been like surrogate parents to and who was being kept from them by their daughter. **Exhibit "A"**, ¶ 8; **Exhibit "B"**, ¶ 6; **Exhibit "C"**, pp. 14-15.

Prior to his retention by the Colemans, Respondent had been acquainted with them for approximately ten (10) years, as Ms. Coleman had cleaned Respondent's home and cared for his pets from time to time, and their families had socialized at street fairs and community events throughout the years. **Exhibit "C"**, at Comm. Exhibit 2.

Throughout the course of Respondent's representation of the Colemans in connection with the gender discrimination matter, and later the Family Court proceedings, the Colemans elected to use email as their principal means of communication with Respondent, a practice that was rarely used by Respondent with his other clients. As Respondent has stated, due to the frequency of Ms. Coleman's emails, he often shot back responses in what he termed as "almost a stream of consciousness kind of relationship". **Exhibit "C"**, pp. 17-18. Furthermore, as those emails were private communications between Respondent and his clients, at the time he considered them to have been privileged and confidential and, certainly, did not contemplate that they would be viewed by the general public, and in fact, they have not. *Id.*

Respondent has admitted those allegations contained in the Complaint which relate to his use of profanity in emails which he drafted to the Colemans. **Exhibit "A"**, ¶¶ 8-18; **Exhibit "B"**, ¶ 6. However, Respondent testified emphatically that he has never used crude or inappropriate language in any emails he exchanged with clients other than the Colemans, and that it is not his practice to use profanity in his communications, whether with clients or in his personal life. **Exhibit "C"**, p. 18, 29, 30-31.

However, such words had been discussed at great length between Respondent and the Colemans when communicating about the terms used by Ms. Coleman's supervisor to describe her, which would be the subject of the human rights complaint, and terms the Colemans' daughter had used in the presence of their grandson, which would be raised in connection with their Family Court Petition. **Exhibit "C"**, pp. 30-31. Thus, Respondent explained that he used such words as a result of the fact that they had been in his vocabulary with these particular clients and that, had he been communicating with a different client, with whom such words had not been discussed at length, he would never have used those terms. *Id.*

The Complaint, at paragraph 7 thereof, alleges that in or about November 2014, during a recess on the second day of the hearing in Ms. Coleman's gender discrimination matter, Respondent used a racial slur to refer to the Administrative Law Judge when speaking with Mr. and Ms. Coleman. **Exhibit "A"**, ¶ 7. Respondent has vociferously denied that allegation and it is submitted that no proof of such allegation exists. **Exhibit "B"**, ¶ 5; **Exhibit "C"**, pp. 9-10, 42-44. While the remainder of the allegations contained in the Complaint stem from documented email exchanges between Respondent and Mr. and Ms. Coleman, the single allegation relating to Respondent's purported use of a racial epithet stems from an Administrator's Complaint based upon information purportedly provided to the Commission by an unnamed source during the course of its investigation. It is submitted that this allegation is completely unsupported and has been included within the Complaint to bolster the remaining allegations which do not rise to the level of a breach of the Rules of Judicial Conduct.

It is submitted that the allegations contained in the Complaint which can be proven by the Commission, and which have been candidly admitted by Respondent, do not rise to the level of a

breach of the Rules Governing Judicial Conduct and therefore, the Complaint must be dismissed in Respondent's favor.

ARGUMENT

THE ALLEGATIONS STATED IN THE COMPLAINT FAIL TO RISE TO THE LEVEL OF A BREACH OF THE RULES GOVERNING JUDICIAL CONDUCT

The Preamble to the Rules Governing Judicial Conduct provide:

"The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system."

Guided by those principles it is submitted that disciplinary action is not appropriate in the context of this matter, which is limited to the use by Respondent of profane or arguably offensive terms in a handful of private communications with a single husband-and-wife client, with whom Respondent had been acquainted in his personal life for many years, and with whom similar terms had been discussed at length in connection with the allegations asserted in the litigation in which he represented them.

The Complaint alleges that by engaging in the actions complained of, Respondent has failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to conduct his extra-judicial activities so as to

minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they would not cast reasonable doubt on his capacity to act impartially as a judge, detract from the dignity of judicial office, and be incompatible with judicial office in violation of Section 100.4(A)(1), (2) and (3) of the Rules.

Both the Commission's own determinations made in the context of Judiciary Law Section 44 proceedings and the Court of Appeals' published decisions relating to "extra-judicial" behavior and speech demonstrate that a judge can be judicially sanctioned under appropriately onerous circumstances for actions undertaken while off the bench. However, no Commission determination or Court of Appeals decision found by your affirmant has ever punished even arguably distasteful speech, conducted in private communications, between a part-time judge, while acting in the role as an attorney, and a private client of his law practice.

Specifically, the Commission has disciplined judges in cases where they have been found to have engaged in the use of profane language in a variety of circumstances while off the bench. In *Matter of John F. Mahon*, (Aug. 8, 1996), a judge was censured after he was found to have engaged in gratuitous and unprovoked slurs and profanity in the presence of court personnel and civilians within the courthouse, causing the object of those comments to become so upset and shaken that she could not drive safely. In *Matter of Charles Pennington*, (Nov. 3, 2003), a judge was censured when it was demonstrated that he used profane language to a New York State Park Police Sergeant who had questioned him about engaging in illegal behavior and who had lent the prestige of his judicial status in an attempt to advance his own and his son's interests. Likewise, in *Matter of Kenneth Kremenick*, (Jun. 28, 1985), the Commission issued an admonition to a judge who, while being arrested for Driving While Intoxicated, repeatedly informed the arresting

officer that he was a judge, and that he would have the officer's job, and used abusive and profane language with the officer at police barracks.

Likewise, the Court of Appeals has frequently disciplined judges for extra-judicial behavior. In *Matter of Kuehnel*, 49 N.Y.2d 465, 403 N.Y.S.2d 461 (1980), a judge was removed from office after it was proven that, as he was leaving a tavern, he detained four youths whom he suspected of breaking glass in an adjacent parking lot. The judge struck one of the youths, age 13, causing him to fall forward with such force that his head struck a bulletin board or door frame. At the police station house, the judge used vulgar and derogatory language toward the youths, acted in a taunting and hostile manner, made demeaning comments concerning an identifiable ethnic group and struck another youth in the mouth causing his nose to bleed. In *Matter of Cerbone*, 61 N.Y.2d 93, 472 N.Y.S.2d 76 (1983) a judge was removed from the bench after it was proven that, while he was present in a bar owned by his private law practice client, he had a confrontation with several black men during which he "loudly proclaimed that he was a judge and announced what he would do if any of the black patrons appeared before him in court", uttered racial epithets and pushed one of the customers.

In no matter uncovered by your affirmant has it been determined that discipline was warranted against a judge based strictly upon the use of profane language in private communications with a client of that judge's private law practice.


CONCLUSION

Based upon the foregoing, it is submitted that the Complaint fails to allege facts which, even if proven, rise to the level of a violation of the Rules Governing Judicial Conduct and therefore dismissal of the Complaint in its entirety is warranted and appropriate.

Dated: Bay Shore, New York
December 12, 2017

Respectfully submitted,

LONG TUMINELLO, LLP

By: 
MICHILLE AULIVOLA

Attorneys for Respondent
120 Fourth Avenue
Bay Shore, New York 11706
(631) 666-5766

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, Subdivision 4
of the Judiciary Law in Relation to

PAUL H. SENZER

A Justice of the Hempden Village Court
Suffolk County

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS
THE FORMAL WRITTEN COMPLAINT AND/OR FOR SUMMARY DETERMINATION
OF THE CHARGE STATED THEREIN IN FAVOR OF RESPONDENT**

LONG TUMINELLO LLP

Attorneys for Respondent
130 Fourth Avenue
Bay Shore, New York 11706
(631) 666-5766

Pursuant to 22 NYCRR 130-1.39, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that upon information and belief and reasonable inquiry, the allegations contained in the annexed documents are not frivolous.

Dated: Bay Shore, New York

LONG TUMINELLO LLP

BY: MICHELLE AULIVOLA

Service of a copy of the within

is hereby admitted

Dated:

By
Attorney For

PLEASE TAKE NOTICE

() that the within is a (certified copy of) entered in the office of the clerk of the
Name of Court on
Entry
() that an order of which the within is a true copy will be
Notice of presented for settlement to one of the Judges of the within Court on
Settlement at p.m.

Dated:

LONG TUMINELLO LLP
BY: MICHELLE AULIVOLA
Attorneys for Respondent
130 Fourth Avenue
Bay Shore, New York 11706
(631) 666-5766

LETTER TO COUNSEL FROM THE CLERK OF THE COMMISSION,
DATED DECEMBER 18, 2017 [165 - 166]



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

JOSEPH W. BELLUCK, CHAIR
PAUL B. HARDING, VICE CHAIR
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61 BROADWAY, SUITE 1200
NEW YORK, NEW YORK 10006

646-386-4800 646-458-0037
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www.cjc.ny.gov

JEAN M. SAVANYU
CLERK

CONFIDENTIAL

December 18, 2017

Michelle Aulivola, Esq.
Long Tuminello, LLP
120 Fourth Avenue
Bay Shore, New York 11706

and

Robert H. Tembeckjian, Esq.
Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006

Re: Matter of Paul H. Senzer

Counsellors:

I am in receipt of respondent's motion to dismiss and/or for summary determination in the above-entitled matter.

Such motions are not argued orally. Commission counsel's response to the motion must be filed and served by January 16, 2018. Any reply thereto must be filed and served no later than January 23, 2018. All papers must be received by the specified dates and may be filed and served by email transmission; in addition, kindly send an original, signed copy to my office. My email address is: [REDACTED]@cjc.ny.gov.

*Michelle Aulivola, Esq.
Robert H. Tembeckjian, Esq.
December 18, 2017
Page 2*

If you have any questions about procedures, I am available to answer them.

Very truly yours,


Jean M. Savanyu

cc: Mark Levine, Esq.

BY CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

LETTER TO THE CLERK OF THE COMMISSION FROM COUNSEL
TO THE COMMISSION, DATED JANUARY 2, 2018 [167 - 168]



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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CONFIDENTIAL

January 2, 2018

Via Hand-Delivery & Email: [REDACTED]@cjc.ny.gov
Jean Savanyu, Esq.
Clerk
New York State Commission on Judicial Conduct
61 Broadway
New York, New York 1006

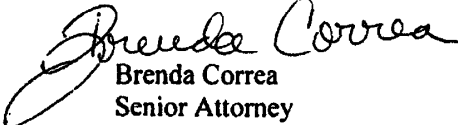
Re: Matter of Paul H. Senzer

Dear Ms. Savanyu:

We are in receipt of your letter dated December 18, 2017 setting the briefing schedule for Respondent's Motion to Dismiss in the above-referenced matter.

On the consent of Respondent's counsel, we respectfully request that the Motion to Dismiss be held in abeyance while the parties explore a stipulated disposition in this case.

Very truly yours,


Brenda Correa
Senior Attorney

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

Jean S. Savanyu, Esq.

January 2, 2018

Page 2

Via Email: [REDACTED]
Michelle Aulivola, Esq.
Long Tuminello, LLP
120 Fourth Avenue
Bay Shore, New York 11706

LETTER TO THE CLERK OF THE COMMISSION FROM COUNSEL TO
THE COMMISSION, DATED FEBRUARY 14, 2018 [169 - 170]



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

ROBERT H. TEMBECKJIAN
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DANIEL W. DAVIS
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ALAN W. FRIEDBERG
MELISSA DIPALÒ
SPECIAL COUNSEL

CONFIDENTIAL

February 14, 2018

Via Hand-Delivery & Email: [REDACTED]@cjc.ny.gov

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006

Re: Matter of Paul H. Senzer

Dear Ms. Savanyu:

On January 4, 2018, the Commission held Respondent's motion to dismiss in abeyance pending a possible resolution of this matter. The parties, however, have been unable to reach an agreed upon disposition.

Accordingly, Commission Counsel requests the setting of a new briefing schedule with respect to Respondent's motion to dismiss. Upon receipt of the Commission's briefing schedule, Commission Counsel will submit papers in opposition to Respondent's motion, respectfully arguing that his motion should be denied in its entirety as wholly without merit, and requesting that the matter be assigned to a Referee for a hearing.

Please be advised that, while Respondent's current term of office expires on March 31, 2018, it is our understanding that Respondent is running unopposed in the upcoming election on March 20, 2018.

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT


Jean S. Savary, Esq.

February 14, 2018

Page 2

Thank you for your continuing attention to this matter.

Very truly yours.


Brenda Correa
Senior Attorney

cc: Michelle Aulivola, Esq.
Long Tuminello, LLP
120 Fourth Avenue
Bay Shore, New York 11706
Via Email [REDACTED]

LETTER TO COUNSEL FROM THE CLERK OF THE COMMISSION,
DATED FEBRUARY 15, 2018 [171 - 172]



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

JOSEPH W. BELLUCK, CHAIR
PAUL B. HARDING, VICE CHAIR
JOEL COHEN
JODIE CORNGOLD
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HON. LESLIE G. LEACH
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RICHARD A. STOLOFF
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MEMBERS

61 BROADWAY, SUITE 1200
NEW YORK, NEW YORK 10006

646-386-4800 646-458-0037
TELEPHONE FACSIMILE
www.cjc.ny.gov

JEAN M. SAVANYU
CLERK

CONFIDENTIAL

February 15, 2018

Michelle Aulivola, Esq.
Long Tuminello, LLP
120 Fourth Avenue
Bay Shore, New York 11706
(by certified mail, return receipt requested,
and by email to: [REDACTED])

and

Brenda Correa, Esq.
Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(by hand and by email to: [REDACTED])

Re: Matter of Paul H. Senzer

Counsellors:

I am in receipt of Ms. Correa's letter dated February 14, 2018,
concerning the above-entitled matter.

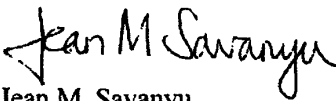
Respondent's motion to dismiss and/or for summary determination,
which had been held in abeyance, will be considered by the Commission. Commission
counsel's response to the motion must be filed and served by 5:00 PM on March 1,
2018. Any reply thereto must be filed and served no later than 5:00 PM on March 7,

Michelle Aulivola, Esq.
Brenda Correa, Esq.
February 15, 2018
Page 2

2018. All papers must be **received** by the specified dates and may be filed and served by email transmission; in addition, please send an original, signed copy to my office. My email address is: [REDACTED].

If you have any questions about procedures, I am available to answer them.

Very truly yours,


Jean M. Savanyu

**MEMORANDUM BY COUNSEL TO THE COMMISSION IN OPPOSITION
TO RESPONDENT'S MOTION TO DISMISS AND/OR FOR A SUMMARY
DETERMINATION, DATED MARCH 1, 2018 [173 - 184]**

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

**MEMORANDUM BY COUNSEL TO THE COMMISSION
IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS
AND/OR FOR A SUMMARY DETERMINATION**

ROBERT H. TEMBECKJIAN, ESQ.
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, 12th floor
New York, New York 10006
(646) 386-4800

Of Counsel:

Brenda Correa, Esq.
Mark Levine, Esq.
Edward Lindner, Esq.
Mary C. Farrington, Esq.

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted to the State Commission on Judicial Conduct (“Commission”) in opposition to Respondent’s Motion to Dismiss the Formal Written Complaint and/or for a Summary Determination.

Respondent is charged in the Formal Written Complaint (“Complaint”) with committing misconduct when, in his capacity as a private attorney, he used racist, sexist, profane and otherwise degrading language while communicating with his clients, Jennifer and Walter Coleman. Respondent provided legal representation to the Colemans in a Family Court matter and to Ms. Coleman in an employment discrimination matter. As Respondent acknowledges in his Answer to the Complaint, he sent the Colemans email correspondence in which he: (1) referred to opposing counsel as a “cunt on wheels;” (2) described the judge in the Family Court matter as an “asshole,” adding that “an asshole can issue a warrant for your arrest”; (3) advised the Colemans that service of process had been effectuated in one of the matters by writing that the “two scumbags were served”; (4) referred to the Colemans’ daughter in multiple emails as a “bitch” and an “asshole”; (6) noted to the Colemans that the “people who work in schools are assholes”; and (7) made a derogatory remark about the physical appearance of opposing counsel by referring to her as “eyelashes.”

It is also alleged that Respondent, in the presence of the Colemans, referred to the Administrative Law Judge presiding over the employment discrimination matter either as “that fucking nigger” and/or “that nigger.”

The law is well-settled that whether on or off the bench, judges are obliged to abide by the high standards of conduct, honor and propriety embodied by the Rules Governing Judicial Conduct. As such, the Commission has repeatedly disciplined judges for wholly personal conduct as well as conduct in their capacity as private attorneys. Judges have also been routinely disciplined for off-the-bench use of racist, profane, sexist and otherwise degrading language. Moreover, the Commission and the New York Court of Appeals have held that it is no defense to a charge of judicial misconduct that the judge may have believed he had an expectation of privacy at the time he or she engaged in the conduct.

The conduct alleged in the Complaint is wholly at odds with the high standard of conduct that judges are obliged to observe “at all times,” whether on or off the bench, and is inconsistent with a judge’s obligation to “avoid impropriety and the appearance of impropriety in all of the judge’s activities.” *See* Rules 100.1, 100.2. The alleged conduct also violates the Rule that a judge “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” *See* Rule 100.2(a).

Finally, to the extent that Respondent denies making the racist remark at issue and/or disputes his intent in uttering any of the charged remarks, these are issues to be resolved at a hearing before a referee. Thus, Respondent’s motion should be denied on its face.

PROCEDURAL HISTORY

Respondent has been a part-time justice of the Northport Village Court since 1994. His current term expires on March 31, 2018. Respondent is also a district hearing officer at the Suffolk County Traffic and Parking Violations Agency.

At the Commission's direction, Respondent was served with the Complaint dated October 13, 2017, containing a single charge. The Complaint alleges that from on or about October 24, 2014 to on or about February 22, 2015, Respondent "failed to observe high standards of conduct and otherwise undermined public confidence in the judiciary when, while representing clients in his private law practice, he used racist, sexist, profane and otherwise degrading language" (Complaint ¶5). The Complaint sets forth each of the specific instances in which Respondent is alleged to have used "racist, sexist, profane and otherwise degrading language" while interacting with his private legal clients, Jennifer and Walter Coleman.

- In or about November 2014, during a recess on the second day of a hearing before an Administrative Law Judge, Respondent spoke to the Colemans and referred to the Administrative Law Judge, who was African-American, as "that fucking nigger" and/or "that nigger" (Complaint ¶7).
- On or about October 24, 2014, after Respondent agreed to represent the Colemans in a Family Court matter in which they sought to obtain visitation of their grandchild from their daughter, Respondent referred to their daughter in an email as a "bitch" (Complaint ¶9).
- On or about November 25, 2014, Respondent wrote an email to the Colemans regarding their daughter's attorney in the Family Court matter and referred to the attorney as a "cunt on wheels" (Complaint ¶10).
- On or about November 25, 2014, Respondent sent an email to the Colemans advising them not to contact their grandchild's school and noting, "[y]ou should know by now that people who work in schools are assholes" (Complaint ¶11).

- On or about January 13, 2015, Respondent sent an email to the Colemans advising them about an upcoming appearance in Family Court and noted, “We will appear entirely calm and reasonable . . . let your daughter act like the asshole she is” (Complaint ¶12).
- On or about January 22, 2015, Respondent forwarded an email to the Colemans in which the subject line stated: “THE TWO SCUMBAGS WERE SERVED” (Complaint ¶13).
- On or about February 11, 2015, Respondent sent the Colemans an email in which he twice described their daughter as a “bitch” (Complaint ¶¶14, 15).
- On or about February 11, 2015, Respondent sent the Colemans an email in which he referred to their daughter’s attorney as “eyelashes” (Complaint ¶16).
- On or about February 22, 2015, Respondent sent an email to Mrs. Coleman regarding her husband’s reluctance to appear again in Family Court in which Respondent wrote: “I agree with you . . . however, you may have noticed that the ‘judge’ is an asshole. An ‘asshole’ can issue a warrant for your arrest” (Complaint ¶18).

Respondent simultaneously filed an Answer to the Complaint as well as a Motion to the Dismiss the Complaint and/or for a Summary Determination. With respect to Respondent’s Answer, he denies the allegation that he referred to the Administrative Law Judge as “that fucking nigger” and/or “that nigger” (Answer ¶5). He admits, however, that he sent all of the emails to the Colemans that are set forth in the Complaint. Respondent asserts as an affirmative defense that the “Complaint fails to allege facts, which, if proven, would demonstrate a violation of the Rules Governing Judicial Conduct” (Answer ¶8). In addition, he raises four “mitigating defenses” with respect to the emails that he acknowledges sending to the Colemans: (1) “The actions complained of . . . occurred solely while Respondent was acting in his role as a private attorney rather than in his capacity as a judge” (Answer ¶9); (2) “The actions complained of . . .

occurred in the context of private email communications with a single husband-and-wife client relative to Respondent dispensing legal advice and tactical guidance in a litigated matter” (Answer ¶10); (3) that Respondent has been an attorney for 36 years and has no disciplinary history (Answer ¶11); and (4) that Respondent has served as a “fair and impartial judge” since 1994, has heard in excess of 100,000 cases, presided over 1,000 hearings and trials, and has issued more than 300 written decisions (Answer ¶12).

In his Motion to Dismiss and/or for a Summary Determination, Respondent asserts that the allegation in the Complaint that he referred to the Administrative Law Judge as “that fucking nigger” and/or “that nigger” should be dismissed because he denies making such remarks and there is insufficient evidence to support the charge. Respondent additionally claims the emails that he sent the Colemans cannot constitute judicial misconduct because they were transmitted in the context of his representation of private legal clients.

As set forth below, the motion should be denied and the matter should proceed to a hearing.

ARGUMENT

POINT I

THE CONDUCT ALLEGED IN THE COMPLAINT, ALMOST ALL OF WHICH RESPONDENT HAS ADMITTED, VIOLATES THE RULES GOVERNING JUDICIAL CONDUCT, AND ANY DEFENSES RAISED IN RESPONDENT’S ANSWER AND MOTION ARE MATTERS TO BE RESOLVED AT A HEARING.

The Complaint sets forth specific allegations of judicial misconduct based on numerous emails that Respondent admits he sent to his clients and which contained

vulgar, sexist and degrading remarks. In addition, it is alleged that Respondent used a racial epithet when speaking to his clients about the Administrative Law Judge handling their case. The law is clear that such conduct violates the Rules. A judge cannot shield himself from misconduct because the communications were made in what he believed was a private setting.

A. Respondent's Conduct Violates the Rules Governing Judicial Conduct

Respondent's statements constitute a violation of the Rules Governing Judicial Conduct in that Respondent failed to abide by the "high standards of conduct" that promote "at all times... public confidence in the integrity and impartiality of the judiciary." See Rules, §§100.1, 100.2(A). Furthermore, Respondent's use of the terms "nigger" and "cunt on wheels" cast doubt on his impartiality and create at least the perception of bias based on race and gender. His other profane statements further detract from the dignity of judicial office. See Rules §100.4 (A)(2).

Respondent's current argument that his various statements "fail to rise to the level of a breach of the Rules Governing Judicial Conduct" (Resp Mem at 5) is inconsistent with the testimony he gave during the investigation. Respondent admitted that he sent the three emails in which he referred to his adversary as a "cunt on wheels," referred to the parties served as "scumbags," and stated that judge presiding over the Family Court matter was an "asshole" and that "an asshole can issue a warrant for your arrest"¹ (see Respondent's Motion to Dismiss, Ex. "C", p. 20, 24, 32). He conceded under oath that

¹ Respondent claimed that he was referring to the court attorney referee and not the Family Court Judge (See Respondent's Motion to Dismiss, Exhibit "C", p. 32).

his conduct with respect to these emails was “not consistent with the Rules” and explicitly stated:

I can certainly see and understand how the use of these three emails is not consistent with the high standards and aspirations that have for all judges to comport themselves at all times in a matter which inspires confidence in the judiciary, so in candor I more or less acknowledge that. Yes.

(Respondent’s Motion to Dismiss, Ex. “C”, p. 36-37).

Respondent’s argument is also at odds with clear Commission and Court of Appeals precedents. See *Matter of Cerbone*, 1984 Ann Rep 76 (Comm on Jud Conduct, August 5, 1983), *removal accepted*, 61 NY2d 93, 95 (1984) (removing judge who used “abusive and profane language,” including “racial slurs” “nigger” and “black bastard” in a barroom incident); *Matter of Merrill*, 2008 Ann Rep 181 (Comm on Jud Conduct, May 14, 2007) (judge made disparaging off-the-bench comments, calling individuals “hot heads” and saying that they “don’t have brains enough to pour piss out of a boot with instructions on the heel and a hole in the toe”); *Matter of Romano*, 1999 Ann Rep 133 (Comm on Jud Conduct, August 7, 1998), *removal accepted* 93 NY2d 161 (1999) (judge *inter alia* made off-the-bench references to certain individuals as “scumbag” and “asshole”).

The Commission has made clear that “[r]acial epithets, indefensible when uttered by a private citizen, are especially offensive when uttered by a judge.” *Matter of Agresta*, 1985 Ann Rep 109, 111 (Comm on Jud Conduct, July 5, 1984), *censure accepted* 64 NY2d 327 (1985); *Matter of Kuehnel*, 1980 Ann Rep 125 (Comm on Jud Conduct, September 6, 1979); *removal accepted*, 49 NY2d 465 (1980) (arriving at police

station and calling four detained “black hoodlums” and “niggers”); *see also Matter of Mulroy*, 2000 Ann Rep 125, 128 (Comm’n on Jud Conduct, August 12, 1999), removal accepted 94 NY2d 652 (2000); *Matter of Fabrizio*, 1985 Ann Rep 127, 133 (Comm’n on Jud Conduct, December 26, 1984), removal accepted, 65 NY2d 275 (1985).

B. The “Private” Nature of the Respondent’s Off-the-Bench Conduct Does Not Shield His Misconduct

The Court of Appeals has stated that, “whenever he travels, a Judge carries the mantle of his esteemed office with him....” *See Matter of Steinberg*, 51 NY2d 74, 80 (1980). Both on and off the bench, judges are “cloaked figuratively” with the robes of judicial office. *Matter of Kuehnel v. Comm on Judicial Conduct*, 49 NY2d 465, 469 (1980). “[E]ven off the bench, judges are required to avoid conduct that casts doubt on the judge’s impartiality, interferes with the proper performance of judicial duties or detracts from the dignity of judicial office.” *Matter of Feeder* 2010 Ann Rep 143, 148 (Comm’n on Jud Conduct, November 18, 2009) citing Rule 100.4[A].

Respondent’s claim that his comments do not rise to the level of misconduct because he considered them a “private” communication with his clients is not a defense. Indeed, as the evidence adduced at a hearing would show, Respondent’s client was offended by his language, which led her to question whether he could be impartial in his role as a judge. And as the Court of Appeals has found,

[t]he facts that [Respondent’s] misconduct occurred ... where [he] may have had an expectation of privacy and that [his] statements were made to a person [he] considered to be a close associate do not mitigate the wrongfulness of [his]conduct Our ethical codes and precedent set forth with no equivocation

that Judges are accountable “at all times” for their conduct--including their conversation--both on and off the Bench

Matter of Backal, 87 NY2d 1, 8 (1995) (citation omitted).

The Commission has repeatedly disciplined judges for “personal conduct ... unrelated to the judicial office.” See *Matter of Pautz*, 2005 Ann Rep 199, 200 (Commn on Jud Conduct, March 30, 2004); quoting *Matter of Miller*, 1997 Ann Rep 108 (Commn on Jud Conduct, August 14, 1996) (judge sent anonymous, harassing mailings, concerning an individual with whom she had a personal relationship); *Matter of Cipolla*, 2003 Ann Rep 84 (Commn on Jud Conduct, October 1, 2002) (judge wrote a letter under false pretenses seeking information about a woman he was dating); *Matter of Roepe*, 2002 Ann Rep 153 (Commn on Jud Conduct, June 27, 2001) (judge threatened his wife with a knife during an angry confrontation).

POINT II

THE SUFFICIENCY OF THE EVIDENCE THAT RESPONDENT USED A RACIAL EPITHET MUST BE DETERMINED AT A HEARING.

The use of racist language, standing alone, is serious misconduct. See *Matter of Fabrizio*, 1985 Ann Rep 127, removal accepted 65 NY2d 275 (1985). In his Answer, Respondent denies that he used the word “nigger” when speaking to the Colemans. In his motion, Respondent claims that, given his denial, “no proof of such allegation exists” (Resp’s Mem at 4). But, in fact, Respondent’s denial that he made the statement illustrates precisely why a hearing is necessary to establish the proof of this serious allegation in the Complaint against Respondent. Commission Counsel will present evidence in support of the charge.

Here, Respondent simply disputes the Commission's proof. That does not entitle him either to dismissal or a summary determination. A summary determination is only a remedy when there is no genuine issue as to any material fact. 22 NYCRR §7000.6(c). Respondent will have the opportunity to test the proof against him at a hearing, and the sufficiency of the evidence will initially be judged by the referee and ultimately be determined by the Commission.


The Complaint specifically identifies the particular racist remarks that Respondent made, the approximate date they were made, the location where they were made and in whose presence they were made. This evidence is legally sufficient for pleading purposes to support the charge against Respondent. Moreover, after the matter is assigned to a referee, a discovery schedule will be set and Respondent will be provided with the names of the witnesses who will testify that they heard Respondent make these racist remarks. To the extent Respondent may dispute the veracity of their testimony, credibility issues will be resolved by the referee and the Commission after a full and complete record is made at the hearing.

CONCLUSION

Respondent's motion to dismiss and/or for summary determination should be denied and the matter referred to a referee for a hearing.

Dated: March 1, 2018
New York, New York

ROBERT H. TEMBECKJIAN, ESQ.
Administrator and Counsel
State Commission on Judicial Conduct

By: 
Brenda Correa
Senior Attorney
Commission on Judicial Conduct
61 Broadway, 12th floor
New York, New York 10006
(646) 386-4800

Of Counsel:
Mark Levine, Esq.
Edward Lindner, Esq.
Mary C. Farrington, Esq.

RESPONDENT'S REPLY MEMORANDUM OF LAW,
DATED MARCH 6, 2018 [185 - 190]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
-----X

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
Of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

-----X

RESPONDENT'S REPLY MEMORANDUM OF LAW

Respectfully submitted,

LONG TUMINELLO, LLP
DAVID H. BESSO, ESQ.
MICHELLE AULIVOLA, ESQ.
Attorneys for Respondent
120 Fourth Avenue
Bay Shore, New York 11706
(631) 666-5766

-----X

This Reply Memorandum of Law is respectfully submitted in further support of the Respondent's motion 1) pursuant to 22 NYCRR 7000.6(f)(ii), dismissing the Formal Written Complaint herein in its entirety; or, in the alternative, 2) pursuant to 22 NYCRR 7000.6(f)(i), summarily determining these proceedings in favor of Respondent and dismissing the Charge stated therein.

It is submitted that Petitioner has failed to demonstrate that the allegations contained in the Complaint, even if proven, rise to the level of a breach of the Rules Governing Judicial Conduct, and therefore the Complaint must be dismissed in its entirety.

ARGUMENT

PETITIONER HAS FAILED TO DEMONSTRATE THAT RESPONDENT'S ALLEGED CONDUCT RISES TO THE LEVEL OF A VIOLATION OF THE RULES GOVERNING JUDICIAL CONDUCT

Notwithstanding Petitioner's insistence that there exists "clear Commission and Court of Appeals precedents" in support of the instant proceedings, it has failed to cite a single instance in which either the Commission or the Court of Appeals has exerted jurisdiction over or punished a judge for engaging in arguably distasteful speech, conducted in private communications between the judge, while acting solely in his role as an attorney, and a private client of his law practice.

Simply put, the decisions cited by Petitioner in opposition to the relief sought by Respondent are wholly inapposite to the charge presently before the Commission and therefore do not support the continuation of these proceedings.

Specifically, while Petitioner cites *Matter of Cerbone*, 1984 Ann Rep 76 (Comm on Jud Conduct, August 5, 1983), *removal accepted*, 61 NY2d 93, 95 (1984) as supporting discipline here, such reliance is misplaced, as *Cerbone* involved the removal of a judge from the bench after it was proven that, while present in a bar owned by his private client, he initiated a

confrontation with several black men during which he asserted his judicial influence before the public there gathered, “loudly proclaimed that he was a judge and announced what he would do if any of the black patrons appeared before him in court”, uttering racial epithets heard by all present and actually assaulted one of the bar’s patrons.

Likewise, while Petitioner attempts to convince the Commission that in *Matter of Merrill*, 2008 Ann Rep 181 (Comm on Jud Conduct, May 14, 2007) a judge was censured for having called individuals “hot heads” who “don’t have brains enough to pour piss out of a boot with instructions on the heel and a hole in the toe”, the charges there went far beyond the judge’s cited utterances. Rather, the outcome of those proceedings turned on the judge’s prohibited *ex parte* communications and biased statements regarding parties to proceedings in which he was actually, as judge, presiding- a direct factual nexus to his judicial vocation. No such nexus is even remotely alleged here.

Matter of Romano, 1999 Ann Rep 133 (Comm on Jud Conduct, August 7, 1998), *removal accepted* 93 NY2d 161 (1999) likewise involved allegations substantially diverse from those alleged in the instant matter. The *Romano* respondent was alleged to have engaged in an entire course of conduct which included frequent colloquy both on and off the bench demonstrating a clear bias against women in domestic violence cases, and notably from the bench actually stating “You need to keep these women in line now and again.” Additionally, *Romano* was further alleged to have used his position as a judge in an attempt to influence law enforcement personnel regarding matters pending before him and/or for his own personal gain.

Matter of Agresta, 1985 Ann Rep 109, 111 (Comm on Jud Conduct, July 5, 1984), *censure accepted* 64 NY2d 327 (1985) was commenced based upon a judge’s use of racial

epithets, again from the bench during proceedings in a pending criminal matter before him involving two black defendants.

Matter of Kuehehnel, 1980, Ann Rep 125 (Common Jud Conduct, September 6, 1979), *removal accepted*, 49 NY2d 465 (1980), cited in Petitioner's moving papers, involved a judge who detained four youths on a public street, struck two of them, causing injury, used vulgar and derogatory language toward the youths while acting in a taunting and hostile manner, and capped off the night by making demeaning comments against an identifiable ethnic group.

In *Matter of Mulroy*, 2000 Ann Rep 125 (Comm on Jud Conduct, August 12, 1999), *removal accepted* 94 NY2d 652 (2000) the Commission proffered charges against a judge based upon his attempts to subvert the proper administration of justice in order to suit his personal convenience by pressuring a prosecutor to offer a deal to a criminal defendant so that the judge would not miss "men's night out" as a result of the jury's continued deliberations. The respondent was further alleged to have given false or misleading testimony publicly in court and notably, from the bench, in his judicial capacity, repeatedly used language charged with racial and ethnic hatred, including using such language to describe the victim in a criminal matter pending before him. Such allegations go far beyond private communications between an attorney and his or her client.

In *Matter of Fabrizio*, 1985 Ann Rep 127 (Comm on Jud Conduct, December 26, 1984) *removal accepted*, 65 NY2d 275 (1985), formal charges were brought against a judge who, on two occasions, intervened in matters pending before other courts to obtain special consideration for defendants with whom he was friendly, presided over a case in which his dentist of long standing was a defendant without disclosing such relationship, made comments from the bench which were discourteous to a foreign-born defendant and created the appearance that he was

basing his bail decision upon his biased views of the defendant's national origin, as well as frustrating the efforts of the Commission to investigate his conduct.

The above cases, cited by Petitioner purportedly in support of its position that the allegations in the Formal Written Complaint, regarding Respondent's private communication with a client in the course of dispensing advice during litigation rise to the level of a breach of the Rules of Judicial Conduct, simply in logic cannot by extension support such a finding in this forum, even conceding reprehensible word choice.

In fact, the Court of Appeals has long held that the attorney-client privilege fosters open dialogue between lawyer and client that is deemed essential to effective representation. *Spectrum Sys. Intern. Corp. v Chem. Bank*, 78 NY2d 371, 377–78 (1991); see also *Matter of Vanderbilt [Rosner—Hickey]*, 57 N.Y.2d 66, 76, 453 N.Y.S.2d 662 (2006); *Matter of Priest v. Hennessy*, 51 N.Y.2d 62, 67–68, 431 N.Y.S.2d 511 (1980).

Although typically arising in the context of a client's communication to an attorney, the privilege extends as well to communications from attorney to client where such communications are made “for the purpose of facilitating the rendition of legal advice or services, in the course of a professional relationship.” *Rossi v. Blue Cross & Blue Shield*, 73 N.Y.2d 588, 593, 542 N.Y.S.2d 508, 540 N.E.2d 703 (1st Dept. 1989). See also *Upjohn Co. v. United States*, 449 U.S., 383, 101 S.Ct. 677 (1981).

As a part-time judge, Respondent is explicitly permitted to simultaneously maintain a law practice, in the course of which he must engage in private communications with clients wherein he must be able to speak frankly, in terms to which the client can relate, to express, for instance, the seriousness of the charges they face, the actions that may be taken against them by a judge,

support magistrate, or court attorney and the aggressiveness and/or unbending ways of opposing counsel.

Simply put, there does not appear to exist any Commission or court jurisprudence migrating into the realm of attorney discipline involving a part-time judge's use of coarse language in private communications with a client of his law practice made solely in the course of dispensing legal counsel and advice.

CONCLUSION

Accordingly, it is submitted that the Complaint herein fails to allege facts which rise to the level of a violation of the Rules Governing Judicial Conduct and therefore must be dismissed in its entirety.

Dated: Bay Shore, New York
March 6, 2018

Respectfully submitted,

LONG TUMINELLO LLP

By: 

MICHELLE AULIVOLA
DAVID H. BESSO

Attorneys for Respondent
120 Fourth Avenue
Bay Shore, New York 11706
(631) 666-5766

DECISION AND ORDER, DATED MARCH 16, 2018 [191 - 192]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

DECISION
AND ORDER

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

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

Long Tuminello, LLP (by Michelle Aulivola and David H. Besso) for the
respondent

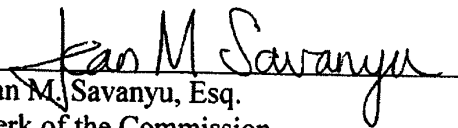
The matter having come before the Commission on March 15, 2018; and
the Commission having before it the Notice and Formal Written Complaint dated October

13, 2017, and the Verified Answer to Formal Written Complaint dated December 13, 2017; and respondent, by notice of motion and affirmation dated December 11, 2017, having moved for dismissal of the Formal Witten Complaint pursuant to 22 NYCRR §§7000.6(f)(ii) and/or for summary determination pursuant to 7000.6(f)(i); and counsel to the Commission having opposed the motion by memorandum dated March 1, 2018; and respondent having replied by memorandum dated March 6, 2018; and due deliberation having been had thereupon; now, therefore, the Commission

DETERMINES that respondent's motion is denied in all respects; and it is, therefore

ORDERED that the Formal Written Complaint is referred to a referee, to be designated, for a hearing.

Dated: March 16, 2018


Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct

ORDER DESIGNATING THE REFEREE, DATED MARCH 29, 2018

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL H. SENZER,

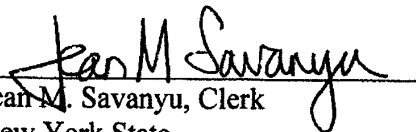
ORDER

a Justice of the Northport Village Court,
Suffolk County.

In pursuance of Article VI, Section 22, of the Constitution of the State of New York and Section 43, subdivision 2, of the Judiciary Law of the State of New York, it is hereby

ORDERED that Honorable John P. Collins is designated as referee to hear and report to the State Commission on Judicial Conduct with respect to the above-entitled proceeding, in accordance with the provisions of Section 44 of the Judiciary Law of the State of New York and Section 7000.6 of the Operating Procedures and Rules of the State Commission on Judicial Conduct (22 NYCRR 7000.6).

Dated: March 29, 2018


Jean M. Savanyu, Clerk
New York State
Commission on Judicial Conduct

**STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT**

-----X

In the Matter of the Proceeding Pursuant :
to Section 44, subdivision 4, of the
Judiciary Law in Relation to :

PAUL H. SENZER :

a Justice of the Northport Village Court, :
Suffolk County

-----X

Commission Offices
61 Broadway, Suite 1200
New York, New York 10006

August 6, 2018
10:07 AM

Before:

HONORABLE JOHN COLLINS
Referee

Present:

For the Commission

BRENDA CORREA, ESQ.
Senior Attorney

MARK LEVINE, ESQ.
Deputy Administrator

For the Respondent

DAVID BESSO, ESQ.
MICHELLE AULIVOLA, ESQ.
Attorneys for Respondent
120 Fourth Avenue
Bay Shore, NY 11706

Also Present:

HON. PAUL H. SENZER
Respondent

ANDREW ZAGAMI
Investigator

MIGUEL MAISONET
Senior Clerk & FTR Operator

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For the Commission

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Jennifer Coleman	4	48		
Walter Coleman	59	68	74	

For the Respondent

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
(No witnesses)				

(Matter of Paul H. Senzer -- Colloquy)

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FTR OPERATOR: We are on the record.

THE REFEREE: All right, this is a hearing in the matter of Paul Senzer, a Justice of the Northport Village Court, Suffolk County, pursuant to Section 44, Subdivision 4 of the Judiciary Law. My name is John Collins and I have been appointed by the Commission on Judicial Conduct as a Referee to hear and report proposed findings of facts and conclusions of law. We will now take the appearances of counsel.

MS. CORREA: Brenda Correa for Commission Counsel.

MR. LEVINE: Mark Levine on behalf of the Commission.

MR. BESSO: David Besso for Judge Senzer.

MS. AULIVOLA: And Michelle Aulivola, also for Judge Senzer.

THE REFEREE: These proceedings are being digitally recorded by the recorder present who will go on the record and off the record at my direction. The recording will be transcribed. In order to facilitate a clear and accurate record please, speak slowly, clearly, and directly into the microphone. Refrain from moving away from the microphone and talking over other speakers. Please refrain from creating excessive background noise as it becomes amplified on the recording. Please now turn off all cell

1.

(Matter of Paul H. Senzer -- Colloquy)

1 phones and other electronic equipment. The investigator
2 who is present will keep a running list of the exhibits,
3 which will be provided to the transcriber for inclusion in
4 the appendix to the transcript. Commission Counsel will
5 use numbers. The Respondent's exhibits will be marked
6 with letters. It is my function to indicate clearly for the
7 record whether or not each exhibit has been received into
8 evidence. The investigator will mark the stickers on the
9 exhibits with a notation indicating the exhibit was
10 received in evidence. At the conclusion of the hearing,
11 the original exhibits will be forwarded to the Clerk of the
12 Commission and the audio recording will be provided to
13 the administrative staff for transcribing. When the
14 transcripts are prepared they will be distributed with
15 copies of the admitted exhibits to counsel for the
16 Respondent, Commission Counsel, and myself. At the
17 end of the hearing we will discuss a schedule for
18 submitting briefs with proposed findings of fact and
19 conclusions of law. The Rules of Evidence applicable to a
20 nonjury trial will apply. I will administer the oath to each
21 witness. Are there any preliminary matters that we need
22 to discuss before we begin?

23 MS. CORREA: No.

24 MR. BESSO: No, Your Honor.

25 THE REFEREE: Does either side wish to make an

2.

(Matter of Paul H. Senzer -- Colloquy)

1 opening statement? For the Commission?

2 MS. CORREA: No, that's fine.

3 THE REFEREE: For the Respondent?

4 MR. BESSO: Just, Your Honor, briefly. This
5 matter does not involve Judge Senzer's judicial activities.
6 The Commission has decided to bring these charges
7 against him for comments he allegedly made in the
8 practice of law, which normally are handled by the
9 Grievance Committee of the State of New York. But they
10 believe that they affect his judicial duties and that's why
11 we're here. I think that after the Court hears all the
12 testimony of the witnesses, including the witnesses that
13 the -- that will testify on behalf of the Judge, the Court
14 will make a determination that the charges are unfounded
15 and that Judge Senzer, obviously, should remain on the
16 bench.

17 THE REFEREE: Is the first witness available?

18 MS. CORREA: Yes, Judge. Commission Counsel
19 calls Jennifer Coleman to the stand.

20 THE REFEREE: Okay, all right. Try this way.
21 Yeah.

22 FTR OPERATOR: Use the center to be safe. You
23 push the center button.

24 THE REFEREE: Oh, you push the center button?

25 FTR OPERATOR: Center.

3.

(Jennifer Coleman - Direct)

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MR. ZAGAMI: Witness entering.

THE REFEREE: Good morning, ma'am.

MS. COLEMAN: Good morning.

THE REFEREE: All right, these proceedings, ma'am, are being digitally recorded. The recording will be transcribed in order to facilitate a clear and accurate record. Please speak slowly, clearly, and directly into the microphone. Please refrain from moving away from the microphone and talking over other speakers. Please refrain from responding until a question is completed and answer each question with words and not a nod and not a gesture. Please refrain from creating excessive background noise as it becomes amplified on the recording. If you have any cell phone or other electronic equipment please see that it's turned off now. And please raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony you're about to give is the truth, the whole truth, and nothing but the truth?

MS. COLEMAN: Yes.

JENNIFER COLEMAN,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CORREA:

4.

(Jennifer Coleman - Direct)

1 Q. Good morning.

2 A. Good morning.

3 Q. Ms. Coleman, can you please state what is your county of residence?

4 A. Suffolk County.

5 Q. And what do you do for a living?

6 A. Housecleaning.

7 Q. And where do you primarily do that?

8 A. Huntington, Lloyd Harbor, Northport.

9 Q. Are you self-employed?

10 A. Yes.

11 Q. And do you know Judge Paul Senzer?

12 A. Yes.

13 Q. How did you come to know Judge Paul Senzer?

14 A. I cleaned his house.

15 MR. BESSO: Judge, can we ask the witness to
16 speak up a little bit --

17 THE REFEREE: Yes, please.

18 MR. BESSO: Speak into the microphone please.

19 THE REFEREE: I'm having trouble too.

20 MS. COLEMAN: Sorry, can I -- can I push this
21 closer?

22 THE REFEREE: Yes, certainly, yes.

23 MS. COLEMAN: Okay.

24 THE REFEREE: And I neglected to ask you your
25 name on the record. Just so that the -- the record is clear.

5.

(Jennifer Coleman - Direct)

1 MS. COLEMAN: Okay.

2 THE REFEREE: Do you want to give your name
3 please?

4 MS. COLEMAN: Jennifer Coleman.

5 THE REFEREE: All right. Go ahead please.

6 Q. And if you can -- there's no amplification for the microphone so if
7 you can just make sure to speak up so it can both record it and the
8 witnesses -- the defense counsel and the Judge can -- everyone can
9 hear you please.

10 A. Okay.

11 Q. And how did you come to know Judge Paul Senzer?

12 A. I had worked for a Mary Andrews (phonetic). It was my vet's
13 mother-in-law and he was a neighbor.

14 Q. He was a neighbor of whom?

15 A. This old -- older lady that I cleaned for. So it was more or less a
16 referral for cleaning.

17 Q. And then did you come to work for -- for Judge Senzer?

18 A. Yes.

19 Q. About what point in time did you work for Judge Senzer?

20 A. It was like maybe 1989, 1990, '91, something like that.

21 Q. And what kind of work did you do for Judge Senzer's family?

22 A. I cleaned their house, house cleaning.

23 THE REFEREE: What did you do, ma'am?

24 MS. COLEMAN: Cleaned his house.

25 Q. So starting approximately what year?

6.

(Jennifer Coleman - Direct)

1 A. I would say '89.

2 Q. '89?

3 A. Yeah.

4 Q. And until what year did, you --

5 A. For five years.

6 Q. For five years?

7 A. Yeah.

8 Q. And what was the reason for leaving that employment?

9 A. They had just purchased a house in Shelter Island and they said they
10 couldn't afford me anymore, so.

11 Q. And did there come a point that -- when did you have further contact
12 with Judge Senzer?

13 A. After that I think I took care of their cats a couple of times and then,
14 you know, years went past and maybe you'd see him in the Village
15 and he'd -- he'd wave. That was about it.

16 Q. And you said you took care of their cats. Is that another part of your
17 employment? Do you do cat sitting?

18 A. Sometimes for the people I work for I'll do a favor and do that, you
19 know.

20 Q. Were you paid for those services for the cat services for Judge
21 Senzer?

22 A. I believe so, yes.

23 Q. And after the cat sitting services, when did you see Judge Senzer
24 next?

25 A. Oh gosh. Well, like I said, I saw him in the Village passing by, he'd

7.

(Jennifer Coleman - Direct)

1 wave, but no communication like 20 years.

2 Q. Do you live in the same town?

3 A. No, I live in the Township but I live in Huntington and this is
4 Northport.

5 Q. And so you would see him occasionally in Northport or in
6 Huntington you're saying?

7 A. Maybe, you know, maybe two times in the whole 20 years, you
8 know, not too often.

9 Q. And when did you -- other than the occasional "hi," when's the next
10 time that you had a substantive conversation with Judge Senzer?

11 A. When I went to hire him for my discrimination case.

12 Q. When was that?

13 A. 2013.

14 Q. Okay, can you tell us about that? Why did you go hire Judge
15 Senzer for that?

16 A. Well, I went to a lot of attorneys and they were really very
17 expensive and I just let it go. I was trying to find like *pro bono* stuff
18 and I didn't think he handled this. And I was researching, Googling,
19 and he popped up. So, I figured I'd give him a call and he listened to
20 me. And I -- I didn't hire him right away because it -- to me it was a
21 lot of money still and I waited about two weeks. I really thought
22 about it and then I called him and I said, you know, I'm going to go
23 with it.

24 Q. And what kind of case was it that you were seeking to hire him for?

25 A. Discrimination.

8.

(Jennifer Coleman - Direct)

1 Q. Can you tell us a little bit more about that? What kind of
2 discrimination case?

3 A. Well, besides the housecleaning, I did like part-time work. I wasn't
4 hired for the school but they had -- it was like a sub custodial if a
5 custodian was out then they called me in. So, I had been there 16
6 years and they got new people in and they weren't calling me and I
7 didn't get called for four jobs. And the head custodian, you know,
8 kind of pulled this stunt when I complained, called me in and then he
9 videotaped it and called me really vile names so --

10 Q. And then you said in 2013 you got in contact with Judge Senzer?

11 A. Well, that's when we met at his office and I decided to pay him and
12 hire him. It was like a week before Halloween so it was, you know,
13 it was going into the next year pretty much.

14 Q. And the next year being 2014?

15 A. Mm-hm.

16 Q. Did you, excuse me, did you hire him in 2013 or 2014, would you
17 say?

18 A. 2013.

19 Q. 2013. And did he file an action on your behalf, Judge Senzer?

20 A. Yes.

21 Q. What kind of action did he file?

22 A. With the Human Rights, a discrimination case.

23 Q. And what -- did there come a point that you had to testify in that
24 case?

25 A. Yes.

9.

(Jennifer Coleman - Direct)

- 1 Q. Okay. And where was that trial held?
- 2 A. On Fulton Street in Hempstead.
- 3 Q. Okay. And do you know if you filed the -- when did you -- do you
- 4 approximately recall when would the lawsuit have been filed or
- 5 when would the action have been filed?
- 6 A. Well, I hired him in 2013 so he -- he started putting the proceedings
- 7 together but --
- 8 Q. In 2013?
- 9 A. Yeah, but the actual hearing didn't come until, you know, 2014.
- 10 Q. Okay, so the action started in 2013 but the actual hearing --
- 11 A. Right.
- 12 Q. -- 2014? Okay.
- 13 A. Right.
- 14 Q. And what was -- what were the dates of the hearing?
- 15 A. November 5th and 6th, 2014.
- 16 Q. And what was the main way that you communicated with Judge
- 17 Senzer on the -- the employment discrimination case?
- 18 A. Well, actually when I hired him, that was October. I didn't speak or
- 19 anything really. It was a couple of emails, nothing until March.
- 20 And I had really called him to find out what's going on with this.
- 21 So, it was basically emails. Like in the beginning he wanted, you
- 22 know, a list of people that were involved and that was about it.
- 23 Q. So your -- your communication with him was mainly through email?
- 24 A. Yes.
- 25 Q. What's your email that you used?

10.

(Jennifer Coleman - Direct)

1 A. [REDACTED].

2 THE REFEREE: Don't drop your voice, ma'am
3 now. Please speak as loud as you can.

4 MS. COLEMAN: Okay.

5 Q. And do you share that email with anyone else?

6 A. Yes, my husband.

7 Q. Okay. And what's your husband's name?

8 A. Walter Coleman.

9 Q. So that email was your main source of communication between you
10 and Judge Senzer?

11 A. Yes.

12 Q. Were you the main contact person or was Walter also involved in
13 contacting Judge Senzer?

14 A. No, I was, mm-hm.

15 Q. And during the course of when you were Judge Senzer's client, do
16 you know was he running for public office at that point -- at any
17 point during that representation?

18 A. When I first started working for him?

19 Q. No, when you were a client of his.

20 A. Oh, yes.

21 Q. Okay. Did you do any work on his campaign?

22 A. Yeah, we had put his signs around and kept putting them around
23 because they kept disappearing so --

24 Q. And did you give any contributions to his campaign?

25 A. Yes.

11.

(Jennifer Coleman - Direct)

- 1 Q. How much?
- 2 A. I believe it was \$200.
- 3 Q. Okay. Did you attend any fundraisers on his behalf?
- 4 A. Yeah, when we gave the -- it was an Elks Club or something in
- 5 Northport and that's when we gave the contribution.
- 6 Q. Okay. The \$200?
- 7 A. Mm-hm.
- 8 Q. And did Judge Senzer represent you on any other matters other than
- 9 the employment discrimination case?
- 10 A. Yes.
- 11 Q. Okay. What other matters did he represent you on?
- 12 A. I hired him later on for grandparent visitation rights.
- 13 Q. Grandparent visitation rights?
- 14 A. Yes.
- 15 Q. Okay. And can you tell us a little bit about that?
- 16 A. My daughter stopped my husband and I from seeing my grandson
- 17 and we thought there were, you know, rights but there evidently
- 18 aren't.
- 19 Q. At the time you hired him you thought there were rights?
- 20 A. Mm-hm.
- 21 Q. What rights are you speaking of exactly?
- 22 A. The ability to see my grandson if my daughter says, you know, like
- 23 if people were divorced the father gets to see the child. We wanted
- 24 to see our grandson.
- 25 Q. And how many children do you have?

12.

(Jennifer Coleman - Direct)

1 A. One.

2 Q. Okay. And what -- what is your daughter's name?

3 A. Kelly Martino.

4 Q. And at that time what was your relationship like with your daughter?

5 A. Estranged.

6 Q. And so you weren't able to see your grandchild?

7 A. No.

8 Q. And did you have discussions with Judge Senzer about seeking any
9 legal action about that?

10 A. Yes.

11 Q. Okay. When did you first start talking to Judge Senzer about
12 representing you in the Family Court case?

13 A. It was during the discrimination case. It was probably in the
14 summer of 2014.

15 Q. And how many actions were there in the Family Court case? How
16 many matters were there?

17 A. I don't understand.

18 Q. Did you hire Judge Senzer just for one matter in the Family Court?

19 A. Yes.

20 Q. Okay. Prior to hiring Judge Senzer did you hire any other attorneys?

21 A. Yes.

22 Q. Okay. Can you tell us about that? How you came to hire an
23 attorney before Judge Senzer?

24 A. Well, my daughter put an order of protection against myself for
25 sending my grandson a Halloween card. And I had gone to Judge

13.

(Jennifer Coleman - Direct)

1 Senzer, but because he was running for the District Court Judge he
2 couldn't take on -- he could handle my old case but he couldn't take
3 on a new one. So I hired a Karen Casey just for that like one time in
4 court.

5 Q. When was that?

6 A. That was in -- it was a week before the discrimination so October of
7 2014.

8 Q. And what ended up happening with the order of protection case?

9 A. It got dismissed.

10 Q. And was Karen Casey your attorney when it got dismissed?

11 A. I was looking to go forward with her and she just was -- she wanted
12 this whole procedure, you know, to start sending my grandson cards
13 and everything and, you know, I had anxiety, but I wanted to see
14 him. So, then Judge Senzer didn't get his seat in office so then he
15 could take on the case so.

16 Q. So, then did there come a point you actually retained him also --

17 A. Yes.

18 Q. -- in the Family Court matter?

19 A. Yes.

20 Q. Okay. And that was to seek -- just to clarify, it was to seek what
21 exactly?

22 A. Visitation rights for my grandson.

23 Q. Okay. When would you say you officially retained Judge Senzer on
24 the Family Court case for grandparent visitation?

25 A. Maybe December, January then it turned into, you know, like 2015.

14.

(Jennifer Coleman - Direct)

1 Q. December, January -- December 2014?

2 A. Right.

3 Q. And in January 2015?

4 A. Right, yeah.

5 Q. And was he representing both you and Walter in that Family Court
6 matter?

7 A. Yes.

8 Q. And to clarify, in the employment discrimination matter were you
9 just the client in that case?

10 A. Yes.

11 MS. CORREA: Judge, if I may approach the
12 witness to show her Commission Exhibit 1 for
13 identification?

14 (Commission Exhibit 1 marked for identification)

15 Q. Mrs. Coleman, I just are -- showing you what's been pre-marked as
16 Commission Exhibit 1 for identification. Do you recognize it?

17 A. Yes.

18 Q. What is it?

19 A. It's just a conversation with Paul Senzer about providing a, you
20 know, a guardian for my grandson to speak for him and -- and
21 maybe to have visitation rights.

22 Q. If you could please continue to speak up just so they're -- they're on
23 the other side so it's difficult. I can hear you --

24 A. Okay, all right.

25 Q. -- but it's difficult to hear on the other side. So, when you said

15.

(Jennifer Coleman - Direct)

1 communication, what kind of communication is this?

2 A. From what I believe, a guardian represents the child and the child's
3 needs and what would be good, you know, for the -- the grandchild.

4 Q. Is this an email correspondence between you and Judge Senzer?

5 A. Yes.

6 Q. Okay. And the bottom part of Exhibit 1 it's -- there's an email that
7 purports to be from "[REDACTED]" to
8 "[REDACTED]", dated Friday, October 24, 2014, at 5:51 a.m.,
9 subject, Jen Coleman." Did you write that email?

10 A. Yes.

11 Q. Okay. And on the document that purports to be on the top of it, it
12 says, from, "Paul Senzer to [REDACTED]" on Friday,
13 October 24th, 2014, at 11:45 a.m., subject, Jen Coleman." Did you
14 receive that responding email?

15 A. Yes.

16 Q. Okay. And does that email fairly and accurately reflect the emails
17 that you sent and that you received?

18 A. Yes.

19 MS. CORREA: Okay. At this time, I would like
20 to offer Commission Exhibit 1 into evidence?

21 THE REFEREE: Any objection?

22 MR. BESSO: No objection.

23 THE REFEREE: All right, received.

24 (Commission Exhibit 1 received into evidence)

25 Q. Mrs. Coleman, going to Commission Exhibit 1, on the bottom just

16.

(Jennifer Coleman - Direct)

1 reading it into the record it says, "Can I" -- this is your email. "Can I
2 request the Judge talk to my grandson to see his feelings about his
3 grandparents or is he too young? He will be eight, January 5th."

4 Why did you write that email?

5 A. I felt if the Judge could see how much my grandson loved my
6 husband and I, it would make an impact on a decision to let him visit
7 us.

8 Q. And did you get a response to that email?

9 A. Um --

10 Q. Is the response right above in the same document in Exhibit 1?

11 A. Yes.

12 Q. Okay. And is the response by your attorney, Judge Senzer?

13 A. Yes.

14 Q. And also, to clarify the timing, was Judge Senzer your attorney at
15 this point or was he not your attorney? It's on -- the date is October
16 24th, 2014.

17 A. I'm not sure.

18 Q. The reason I ask is you had mentioned about the Judge after the
19 election that he could then take your case. Was this --

20 MR. BESSO: Judge, I object to the narrative by
21 Ms. Correa in bolstering her witness's testimony and also
22 suggesting her testimony.

23 THE REFEREE: Overruled.

24 Q. I just want to clarify your -- was this before you retained him?

25 A. I get the -- I mean, because, you know, the years were so close like

17.

(Jennifer Coleman - Direct)

1 November, this is October.

2 Q. When was the election?

3 A. November 2014.

4 MR. BESSO: Judge, she's trying to impeach her
5 own witness. Her witness already testified to when she
6 retained the Judge now she's tried to impeach her
7 testimony by asking her, if in fact, she was mistaken by
8 her testimony and by doing that, that's improper.

9 THE REFEREE: Overruled, go ahead. What's the
10 question?

11 Q. My question is just was Judge Senzer your attorney at the time or
12 not?

13 A. Yes.

14 Q. Okay. So, at this point in October 24, 2014, he, Judge Senzer, was
15 your attorney and not Ms. Casey?

16 A. He was my attorney for the discrimination case not -- I don't think
17 that this was for -- I think he didn't -- the election was in November
18 so if I can remember he -- he was still running for the District Court
19 Judge at this time.

20 Q. Okay. Let me clarify my question then.

21 THE REFEREE: Hold -- hold one second. The
22 question was when there was this exchange of emails,
23 Exhibit 1, was the respondent, Judge Senzer, your attorney
24 at that time or not?

25 MS. CORREA: And also, Judge, if I can maybe

18.

(Jennifer Coleman - Direct)

1 qualify that, was he was your attorney on the Family
2 Court matter or not?

3 THE REFEREE: So qualified.

4 MS. COLEMAN: Okay. 2013, I would say no.

5 MS. CORREA: Okay.

6 THE REFEREE: He was not?

7 Q. Thank you. And Exhibit 1, your question about your grandson, is
8 that pertaining to the Family Court matter?

9 A. Yes.

10 Q. Okay. And so, on this date when Judge Senzer is answering your
11 question he wasn't your attorney at that point is that what you're
12 saying?

13 A. Yes.

14 MR. BESSO: It's asked and answered, Your
15 Honor.

16 Q. Okay. Now reading --

17 THE REFEREE: Overruled.

18 Q: -- the top part of it, it says,

19 "This is the reason the Court will appoint an
20 attorney for the child, law guardian. This attorney is the
21 Judge's eyes and ears. If absolutely necessary, the Court
22 may speak with [REDACTED] at some point ultimately. But
23 for now, I think this family offense petition should be
24 dismissed on its face because it is legally insufficient. It
25 doesn't state a recognized family offense as against the

19.

(Jennifer Coleman - Direct)

1 Complainant, i.e., as against that bitch daughter of yours."

2 Who is the word bitch referring to?

3 A. My daughter.

4 Q. Up to this point, the date being October 24th, 2014, had Judge
5 Senzer ever referred to your daughter as a bitch?

6 A. Maybe in another email. He did refer to her several times.

7 Q. As of this point, though, October 24th, 2014?

8 A. I'm not sure.

9 Q. And moving onto the next one. I'll take that back from you. Thank
10 you. Showing you what's been pre-marked as the Commission
11 Exhibit 2 for identification.

12 (Commission Exhibit 2 marked for identification)

13 Q. Ms. Coleman, I've just handed you up what's been marked as
14 Commission Exhibit 2 for identification. Do you recognize it?

15 A. Yes.

16 Q. Okay. What do you recognize this document to be?

17 A. An email between Paul Senzer and myself.

18 Q. Okay. And on the bottom part of this document there's an email that
19 purports to be from Jennifer and the email is,

20 "████████████████████ to ████████████████████ sent Tuesday,
21 November 25th, 2014, at 12:33 p.m., subject, Jen." Is that an email
22 that you wrote and sent to Paul Senzer?

23 A. Yes.

24 Q. Okay. And on the top of that document is a document that is an
25 email that purports to be from, "████████████████████ to

20.

(Jennifer Coleman - Direct)

1 [REDACTED], Tuesday, November 25th, 2014, at 12:51
2 p.m., subject, Jen." Did you receive that top email from Judge
3 Senzer?

4 A. Yes.

5 MS. CORREA: At this time, I'd like to move
6 Commission Exhibit 2 into evidence.

7 THE REFEREE: Any objection?

8 MR. BESSO: No objection.

9 THE REFEREE: I have received it.

10 (Commission Exhibit 2 received into evidence)

11 MS. CORREA: Thank you.

12 Q. Mrs. Coleman, reading from the bottom part of this document it
13 says -- your email it says,

14 "Oh, by the way, my daughter just happened to get
15 engaged to this guy when you sent the letter to her and her
16 -- and her attorney, Karen McGuire. My daughter will not
17 pay an attorney. I believe she will give in or represent
18 herself."

19 What -- what was your point in sending this email?

20 A. That I think that, you know, that it was a good chance that by her
21 representing herself that, you know, maybe we could work things
22 out or --

23 Q. You make reference to an attorney, Karen McGuire. Had your
24 daughter already hired an attorney?

25 A. Yes, but with the -- the order of protection, she -- my daughter

21.

(Jennifer Coleman - Direct)

1 represented herself so that led me to believe that, you know, maybe
2 she just, you know, got advice from this person. I didn't think, you
3 know, she would spend the money for an attorney.

4 Q. And was the order of protection already dismissed at this point?

5 A. I believe so.

6 Q. And in the top part of the Exhibit 2, Judge Senzer's response states,
7 "I don't believe she will give in and I don't believe she will represent
8 herself once we serve her. Her lawyer is a cunt on wheels. Sorry,
9 for the profanity and don't quote me so be prepared."

10 Who is the cunt on wheels referring to?

11 A. Karen McGuire.

12 Q. Other than stating that the attorney is a cunt on wheels, did the Judge
13 elaborate to you what he meant by that?

14 A. He was talking about her in a bad way so I just don't think he cared
15 for her too much.

16 Q. And, at this point in time, November 25th, were you -- did you
17 officially retain Judge Senzer as your attorney on the Family Court
18 case? Were you a client of his in this Family Court case at this time?

19 A. I believe so, yes.

20 Q. As the client, what was your impression of Judge Senzer using the
21 word cunt in an email to you?

22 A. I was surprised because that was one of the things that I hired him
23 for to represent people that had called me that. That's what was
24 upsetting to me with the discrimination case.

25 Q. And when you said that was used, in what context to you?

22.

(Jennifer Coleman - Direct)

1 A. As far as the discrimination case?

2 Q. Yes.

3 A. The head custodian filmed me. He had me come in and do a
4 ridiculous task and I had to move over 200 desks by myself and they
5 videotaped it and he played it and ordered pizza and called me that
6 name.

7 Q. And what name was that?

8 A. Cunt.

9 Q. Had Judge Senzer ever used the word cunt in -- in a context other
10 than what you just described?

11 MR. BESSO: Objection, leading.

12 Q. Did you ever hear Judge --

13 THE REFEREE: Overruled.

14 Q. Has -- did Judge Senzer ever use the word cunt in a context other
15 than what you just described to us?

16 A. Just in my case because I had to, you know, we had to tell him what
17 happened to me so he could represent me so I don't know if he
18 actually said it, but he knew that word was used to degrade me.

19 Q. Does that word make you uncomfortable?

20 A. Yes.

21 Q. Why does it make you uncomfortable?

22 MR. BESSO: Objection, Judge.

23 THE REFEREE: Sustained.

24 MS. CORREA: I'll move on.

25 Q. Ms. Coleman, I'm showing you what's been marked as Commission

23.

(Jennifer Coleman - Direct)

1 Exhibit 3.

2 (Commission Exhibit 3 marked for identification)

3 Q. Ms. Coleman, I've just handed you up what's been pre-marked as
4 Commission Exhibit 3. Do you recognize that document?

5 A. Yes.

6 Q. What do you recognize the document to be?

7 A. An email between Paul Senzer and myself.

8 Q. And going from the bottom part of Commission Exhibit 3 it purports
9 to be an email from you, it's Jennifer, "[REDACTED] to
10 [REDACTED] sent Tuesday, November 25th, 2014, at 10:46
11 a.m., subject, Jen." And on top of it -- did you write that bottom
12 email?

13 A. Yes.

14 Q. Okay. And did you receive a response to your email?

15 A. Yes.

16 Q. Okay. And on the top of the document in Exhibit 3 it's from
17 "[REDACTED] to [REDACTED], dated Tuesday,
18 November 25th, 2014, at 10:52 a.m., subject, Jen." And you
19 received that email, is that correct?

20 A. Yes.

21 MS. CORREA: At this point I'd like to move
22 Commission Exhibit 3 into evidence.

23 THE REFEREE: Any objection?

24 MR. BESSO: No objection.

25 THE REFEREE: Received.

24.

(Jennifer Coleman - Direct)

1 (Commission Exhibit 3 received into evidence)

2 MS. CORREA: Thank you.

3 Q. Mrs. Coleman, reading the bottom portion of the email in
4 Commission Exhibit 3 it says,

5 "We'll get you the stuff I gave her. She said they
6 do video screen of the child and ask indirect questions
7 about vacations, et cetera. He has had a panic attack in
8 school. Heard through my mom. I called the school and
9 spoke to counselor. They couldn't comment. In court, my
10 daughter stated this is because of arguments. We haven't
11 seen him. Only minutes at the fair and the only argument
12 was her calling her mom the name Frank called me in
13 front of him on June -- before that. I'd leave the room
14 when she came over so I didn't have to see her. I hope he
15 hasn't brainwashed her by now."

16 What was the point of sending this email to Judge Senzer?

17 A. I just wanted to let him know that, you know, I heard an upsetting
18 thing about my grandson and I had called the school. And I wanted
19 to, you know, make sure that the social worker and the people at the
20 school knew that we were loving grandparents and, you know.

21 Q. And at the -- the part of -- the bottom part of your email when you
22 say, "only minutes at the fair the only argument was her calling her
23 mom the name Frank called me." When you say her mom, who are
24 you talking about?

25 A. Myself.

25.

(Jennifer Coleman - Direct)

1 Q. Okay. And her is who?

2 A. My daughter.

3 Q. Okay. Being -- what is her name?

4 A. Kelly Martino.

5 Q. Okay. And then, "the name Frank called me," the "me" is who?

6 A. Myself.

7 Q. And who is Frank?

8 A. Frank is the head custodian that I brought the discrimination charge
9 against.

10 Q. And it says, "in front of him on June." What is that a reference to?

11 MR. BESSO: Objection, Judge. I think that we
12 have these emails. They speak for themselves.

13 THE REFEREE: Overruled.

14 Q. What is that a reference to, "in front of him on June?"

15 A. Oh, the name my daughter call -- it's the Frank thing. The same
16 word Frank used to me, my daughter used to me --

17 Q. What word?

18 A. -- in front of -- the -- the C-U-N-T word.

19 Q. Okay. And why didn't you write that C-U-N-T word?

20 MR. BESSO: Objection.

21 THE REFEREE: Sustained.

22 Q. In the top portion of Judge Senzer's response starting with the last
23 sentence, it says -- well, actually let me just read the top of it. It
24 says,

25 "I need to warn you about calling the school or the

26.

(Jennifer Coleman - Direct)

1 counselor. There are newer cases in which grandparents
2 were actually denied visitation because they were too
3 heavy-handed in spying, stalking, and contacting schools,
4 strangers, and other third parties. You're going to have to
5 moderate this conduct because it will turn it around on
6 you. You should know by now that people who work in
7 schools are assholes."

8 A. What did you understand the "assholes" to be referring to?

9 MR. BESSO: Objection, Judge.

10 THE REFEREE: Sustained.

11 Q. What -- the people who work in schools, what's your connection to
12 the people that work in schools?

13 A. What's my connection? My husband is one of them. I was one of
14 them. I worked with, you know, the other teachers, custodians.

15 Q. Were you suing any part of the school district?

16 A. Yes.

17 Q. Okay. And which school district was that?

18 A. Cold Spring Harbor.

19 Q. And at this point, November 25th, were you a client for both the
20 employment discrimination and the Family Court matter?

21 A. Yes.

22 Q. Okay. All right, thank you. I'm showing you Commission Exhibit 4
23 for identification.

24 (Commission Exhibit 4 marked for identification)

25 Q. Ms. Aulivola just -- oh, I'm sorry. Mrs. Coleman, I've just handed

27.

(Jennifer Coleman - Direct)

1 you what's been marked as Commission Exhibit 4 for identification.

2 Do you recognize it?

3 A. Yes, yes.

4 Q. What do you -- what do you recognize it to be?

5 A. An email from Paul Senzer and myself.

6 Q. And the bottom email is from, "[REDACTED] to

7 [REDACTED] dated Friday, January 2015, at 4:43 p.m." Did
8 you send that email?

9 A. I believe my husband sent that.

10 Q. Okay. And what makes you say that?

11 A. Because it says Walter Coleman.

12 Q. Okay. Did -- did he -- you think that he sent this email?

13 A. Paul Senzer?

14 Q. No, do you think that Walter sent this email?

15 A. Yes.

16 Q. Okay. And did you receive it at any point?

17 A. Yes.

18 Q. Okay. When did you receive it? When did you see this email?

19 A. I don't know if I saw it on the phone or the computer but we have
20 shared emails. We have shared everything, my husband and I. So
21 he might have just replied to this and then, you know.

22 Q. Okay. And did you get the response?

23 A. Yes.

24 Q. Okay. And was the response dated January 19 -- January 13th,
25 2015, at 5:35 p.m.?

28.

(Jennifer Coleman - Direct)

1 A. Yes.

2 Q. From Paul Senzer?

3 A. Yes.

4 Q. Okay. And, "Subject, Coleman papers." And it was sent to,

5 [REDACTED]?"

6 A. Yes.

7 MS. CORREA: At this time, I'd like to offer
8 Commission Exhibit 4 into evidence.

9 MR. BESSO: No objection.

10 THE REFEREE: I have received.

11 (Commission Exhibit 4 received into evidence)

12 Q. Just reading a limited portion starting in mid-top of Judge Senzer's
13 email to you.

14 "On February 10th when we are in Family Court an
15 attempt will be made to conciliate this matter before a
16 junior judge or court attorney referee who works in the
17 court system directly under the Family Court judge. Her
18 name is Colleen Fondulis. We will appear entirely calm
19 and reasonable. Let your daughter act like the asshole she
20 is. If working it out doesn't work, we can ramp up
21 possible trial."

22 Can you tell us what was happening at that time in the Family Court
23 matter?

24 A. Well, we had made a court date to try to, you know, get a
25 grandparent visitation.

29.

(Jennifer Coleman - Direct)

1 Q. And so had there been any court appearances up -- up to that point?

2 A. No.

3 Q. Okay. And so the next court date, then, was the upcoming one on
4 February 10th?

5 A. Correct, yes.

6 Q. And to clarify, "asshole" is a reference to who?

7 A. My daughter.

8 Q. I'll take that back from you. Sorry. I want to show you one thing.
9 Can I just show you that one more time? Just before it gets to the
10 middle part it says, "When shit hits the fan, i.e., she gets served or
11 her ex-hubby does and you happen to hear about it, let me know if
12 they reach out to you." Had he ever cursed using language like
13 "shit" in -- in front of you before?

14 MR. BESSO: Objection.

15 THE REFEREE: Sustained.

16 MS. CORREA: I'll take that back. I'm handing her
17 what's been pre-marked as Commission Exhibit 5.

18 (Commission Exhibit 5 marked for identification)

19 Q. Mrs. Coleman, handing -- just handed you up Commission Exhibit 5
20 for identification. Do you recognize it?

21 A. Yes.

22 Q. What do you recognize it to be?

23 A. Emails between Paul Senzer and myself.

24 Q. Okay. And the document in Exhibit 5 appears to be a series of
25 emails from the bottom, "[REDACTED]" to

30.

(Jennifer Coleman - Direct)

1 [REDACTED], Tuesday, January 13th, 2015, at 6:54 p.m.,
2 subject, Walter." And then there's another one, a response by what
3 purports to be, [REDACTED], [REDACTED],
4 sent Wednesday, January 14th, 215 (sic) at 9:00 a.m., subject,
5 Walter Coleman." Going through those two emails so far, the one
6 on January 13th, 2015, did you send that email and did you receive
7 that response?

8 A. Where it says, "will mail the check tomorrow?"

9 Q. Yes.

10 A. Yes, I sent that.

11 Q. Okay. And then did you receive the email that says, "Thanks,
12 Walter?"

13 A. Yes.

14 Q. Okay. And then the email right above that it's from,
15 [REDACTED] to -- it says to Paul Senzer and then Thursday,
16 January 22, 2015, at 2:39 p.m. the scumbags were served." I'm
17 assuming you did not receive that since you're not listed in that?

18 A. No, I remember that.

19 Q. Okay. And then maybe clarifying it to go up the email before that
20 is, "Paul Senzer to [REDACTED], Thursday, January
21 22nd, 2015, at 2:41 p.m., subject, the two scumbags were served."
22 Did you get that email?

23 A. Yes.

24 Q. Okay. And that contained that bottom portion email where it was
25 from Judge Senzer to Judge Senzer, is that correct?

31.

(Jennifer Coleman - Direct)

1 A. Yes.

2 MS. CORREA: Okay. At this point I'd like to
3 offer Commission Exhibit 5 into evidence.

4 THE REFEREE: Any objection?

5 MR. BESSO: No objection, Judge, but I'd ask that
6 the -- Ms. Correa first put the matter into evidence before
7 reading from it and asking questions about it.

8 THE REFEREE: Yes, please.

9 MS. CORREA: That's fine.

10 THE REFEREE: Please do that.

11 (Commission Exhibit 5 received into evidence)

12 MS. CORREA: Also, for the record, my
13 understanding is all of our exhibits have been stipulated
14 to. I just want to clarify that as well.

15 Q. Okay. So, now reading from Commission Exhibit 5 where it says,
16 "The two scumbags were served." Do you know who "the two
17 scumbags" was referring to?

18 A. I believe it was referring to my daughter and her ex-husband.

19 Q. And what was happening in the Family Court matter at that time?

20 A. We wanted them to come to court to, you know, we weren't getting
21 any -- nobody was getting together with this so we -- I was going to
22 court with it and they had to be served to appear in court.

23 Q. And when you say "they," who are you referring to?

24 A. My daughter and her ex-husband.

25 Q. Thank you. I'll take Commission Exhibit 5 from you. I'm handing

32.

(Jennifer Coleman - Direct)

1 you up what's been pre-marked as Commission Exhibit 6.

2 (Commission Exhibit 6 marked for identification)

3 Q. Mrs. Coleman, I just handed you what's been marked as
4 Commission Exhibit 6. Do you recognize this document?

5 A. Yes.

6 Q. Okay. And what do you recognize this document to be?

7 A. Paul Senzer's telling me what standing is. Standing, you know,
8 means you have to have grounds and there are none, there are no
9 grandparent rights.

10 Q. Before we get into the substance of the email, can you just -- going
11 from the bottom portion of the document, did you write that email on
12 the bottom portion of the document that's dated February 9, 2015, at
13 4:27 p.m. from, "[REDACTED] to
14 [REDACTED]?"

15 A. Yes.

16 Q. And did you receive the email on top of that from Paul Senzer to
17 "[REDACTED] on Tuesday, February 10, 2015, 1:40
18 p.m.?" Did you receive that email?

19 A. Yes.

20 MS. CORREA: At this point I'd like to move
21 Commission Exhibit 6 into evidence.

22 THE REFEREE: Any objection?

23 MR. BESSO: No objection.

24 THE REFEREE: I have received.

25 (Commission Exhibit 6 received into evidence)

33.

(Jennifer Coleman - Direct)

1 MS. CORREA: Thank you.

2 Q. Going into your email that's at the bottom of Commission Exhibit 6,
3 what's happening at the -- on the -- on the Family Court matter at
4 this point? Can you describe that for us?

5 A. I think he's telling us to withdraw. We don't have a chance.

6 Q. Okay. Are you -- is that a reference to the Judge Senzer's email or is
7 that a reference to something else?

8 A. No, to his email.

9 Q. Okay. So going to -- had Judge Senzer described standing to you
10 before this email dated February 10, 2015?

11 A. No.

12 MR. BESSO: Objection, Judge, this --

13 THE REFEREE: Sustained.

14 Q. In this email where it says, the second "truly extraordinary
15 circumstances," where it says,

16 "Truly extraordinary circumstances has its own
17 definition in New York law and the definition is not, I'm
18 afraid, as you wish. You can only get there if," then,
19 "one," it says, "a natural parent allowed an extended
20 disruption in custody meaning your daughter voluntarily
21 walked away and gave up care and control of [REDACTED] at
22 some point in the recent past, to you guys -- it happens
23 some people just break with reality and go bonkers and
24 run off, this bitch did not."

25 Who is "bitch" a reference to?

34.

(Jennifer Coleman - Direct)

1 A. My daughter.

2 Q. And in -- what's enumerated number five, it says,

3 "Extraordinary circumstances may in a tiny
4 minority of special cases be stretched to mean the parent
5 essentially abandoned the child by virtue of some extreme
6 situation such as imprisonment, drug addiction, crazy
7 lifestyle choice, homelessness or severe mental illness. In
8 my judgment, you have an eccentric bitch on your hands
9 but nothing rises to the legal requirements of set forth in
10 the law."

11 Who is the "bitch" a reference to?

12 A. My daughter.

13 Q. Did you ever say anything to Judge Senzer that you -- one way or
14 the other whether or not you objected to him calling your daughter a
15 bitch?

16 MR. BESSO: Objection.

17 THE REFEREE: Sustained.

18 Q. As the client, what was your impression of the Judge calling your
19 daughter a bitch?

20 MR. BESSO: Objection.

21 THE REFEREE: Sustained.

22 MS. CORREA: Moving on to 7.

23 (Commission Exhibit 7 marked for identification)

24 Q. Mrs. Coleman, I just handed you up what's been pre-marked as
25 Commission Exhibit 7. Do you recognize it?

35.

(Jennifer Coleman - Direct)

1 A. Yes.

2 Q. What do you recognize it to be?

3 A. It's an email the day after we had gone to the court, the Family
4 Court, between Paul Senzer and myself.

5 Q. And going from the bottom part of the document in Commission

6 Exhibit 7, the email is from, "[REDACTED]" to

7 [REDACTED], date is Wednesday, February 11th, 2015, at
8 10:17 a.m., subject, Jen." Did you write that email?

9 A. Yes.

10 Q. And going to the top part of the email it says, "[REDACTED]"

11 to [REDACTED], Wednesday, February 11th, 2015,

12 12:46 p.m., subject, Jen." Did you receive that email?

13 A. Yes.

14 MS. CORREA: At this point I'd like to offer
15 Commission Exhibit 7 into evidence.

16 THE REFEREE: Any objection?

17 MR. BESSO: No objection.

18 THE REFEREE: I have received.

19 MS. CORREA: Thank you.

20 (Commission Exhibit 7 received into evidence)

21 Q. Reading from your email it says, "When and if you do cancel tell
22 Karen McGuire we cannot fight lies and my daughter will have to
23 live with what she's done to her son. Reap what you sow." This is
24 dated Wednesday, February 11th, 2015. What was happening in the
25 Family Court matter of this case at this time?

36.

(Jennifer Coleman - Direct)

1 A. We were advised to withdraw because there are no grandparent
2 rights. The mother has the constitutional right.

3 Q. And you received the top part of the email, was that a response to
4 your email? Is that --

5 A. Yes.

6 Q. And going to the third paragraph, it says on a totally different
7 subject, "You should make sure in the event you or Walter pass
8 nothing is left to that bitch." Who is "that bitch" referring to?

9 A. My daughter.

10 Q. And in the sentence, the next sentence it says, "If you leave anything
11 to ██████████ as a minor, I'm sorry to tell you it will end up being
12 administered by that bitch." Who is "that bitch" referring to?

13 A. My daughter.

14 Q. Thank you. I'll take that from you. I'm handing you what's been
15 pre-marked as Commission Exhibit 8.

16 (Commission Exhibit 8 marked for identification)

17 Q. Mrs. Coleman, I just handed you up what's been marked, pre-
18 marked as Commission Exhibit 8. Do you recognize this document?

19 A. Yes.

20 Q. Okay. Starting from the bottom of the first page of the document,
21 it's to -- what does this document purport to be?

22 A. It's an email between Paul Senzer and myself.

23 Q. The bottom part of it -- of the email is from,

24 "██████████ to ██████████, Wednesday,
25 February 11th, 2015, at 9:41 a.m." Did you write that email?

37.

(Jennifer Coleman - Direct)

1 A. Yes.

2 Q. Okay. And going to the top part of the document purports to be
3 from -- email from, "██████████" to
4 ██████████, Wednesday, February 11th, 2015 at 9:54
5 a.m." Did you receive that email?

6 A. Yes.

7 MS. CORREA: At this time, I'd like to offer
8 Commission and move Commission Exhibit 8 into
9 evidence.

10 THE REFEREE: Any objection?

11 MR. BESSO: No objection.

12 THE REFEREE: Received.

13 (Commission Exhibit 8 received into evidence)

14 Q. Going right to the top part of the email where it says,

15 "Let me try a different angle here. If we roll into a
16 standing trial on March 3rd and lose, we will -- we surely
17 will unless there's something strong I can sink my teeth
18 into, then Kelly and the eyelashes get to cluck their
19 tongues and you go on record as having lost, period, end
20 of story, over."

21 Who is "eyelashes" a reference to?

22 A. My daughter's attorney, Karen McGuire.

23 Q. How did you know that?

24 A. She's got long eyelashes. She's just -- she looks a little different than
25 the regular attorney would look.

38.

(Jennifer Coleman - Direct)

1 Q. What does that mean?

2 A. Do you want me to give a description?

3 Q. Sure.

4 A. Well, she came to the court with a patent leather mini-skirt and tall
5 leather boots and she had long eyelashes and she just didn't look
6 very professional.

7 Q. And what's her name -- what was her name?

8 A. Karen McGuire.

9 Q. Thank you. I'm handing you up what's been marked as Commission
10 Exhibit 9.

11 (Commission Exhibit 9 marked for identification)

12 Q. Mrs. Coleman, I just handed you up what's been pre-marked as
13 Commission Exhibit 9. Do you recognize this document?

14 A. Yes.

15 Q. What do you recognize it to be?

16 A. It's an email between Paul Senzer and myself.

17 Q. Going to the bottom part of the document purports to be an email
18 from, "[REDACTED] to [REDACTED], February
19 22nd, 2015, 11:37 a.m." Did you write that email?

20 A. Yes.

21 Q. And did you receive a response?

22 A. Yes.

23 Q. Okay. On the top part of Commission Exhibit 9, it's an email
24 from -- purports to be an email from, "[REDACTED] to
25 [REDACTED], dated February 22nd, 2015, at 2:28 p.m."

39.

(Jennifer Coleman - Direct)

1 Did you receive that email?

2 A. Yes.

3 MS. CORREA: At this time, I'd like to move
4 Commission Exhibit 9 into evidence.

5 THE REFEREE: Any objection?

6 MR. BESSO: No objection.

7 (Commission Exhibit 9 received into evidence)

8 Q. Reading from the bottom email where it says,

9 "Walter said we just won't go and that will be a
10 default on our part and we will be losers. What would that
11 mean as far as this is concerned for the future? You
12 actually want us to stand alone before our daughter and
13 that thing attorney. Please come up with something."

14 What was happening at that time in the Family Court case?

15 A. We were advised to withdraw and we hired an attorney to do the
16 whole thing so if we were going to withdraw I expected him to do it
17 and he said he was too busy. He was a Traffic Judge in Hauppauge
18 and he couldn't go. So I said, well, we just won't do it. And then
19 that's when he said we would go to jail.

20 Q. And so reading from the top part it says, "I agree with you, however,
21 you may have noticed that the Judge," and the Judge is in quotation
22 marks, "is an asshole. An asshole can issue a warrant for your arrest.
23 Just want you to know the worst-case scenario." Who is the
24 "asshole" a reference to in that email?

25 A. The Judge in -- in the family law case.

40.

(Jennifer Coleman - Direct)

1 Q. Did you know who the Judge was at that time?

2 A. Yeah.

3 Q. Who was it?

4 A. Because we -- we had gone there February 10th. Oh, I don't
5 remember her name -- something with an F, Fercilles (phonetic),
6 something like that. Ferella (phonetic), something like that.

7 Q. And when you said -- just to clarify, was it a judge or was it a court
8 attorney referee if you know, if you don't know --

9 A. I would assume it was a judge.

10 Q. Thank you. I'm going to take that back from you. And just to
11 complete the narrative, how did the Family Court case end?

12 A. Well --

13 MR. BESSO: Objection, Your Honor.

14 THE REFEREE: Overruled.

15 Q. How did the Family Court case end?

16 A. I was very upset because I, you know, I didn't want to go and face
17 my daughter and her attorney.

18 MR. BESSO: Objection, that's not responsive.

19 THE REFEREE: Sustained. Just answer the
20 question that the attorney has put to you. If you know,
21 how did the litigation end?

22 MS. COLEMAN: We withdrew.

23 MS. CORREA: Thank you.

24 Q. Now going to a different point in time at the point of your
25 employment discrimination trial, can you tell us what was the date of

41.

(Jennifer Coleman - Direct)

1 your employment discrimination trial?

2 A. It was November 5th. It was two days, November 5th and 6th,
3 2014.

4 Q. And what was the exact location of the trial?

5 A. Hempstead, New York.

6 Q. Do you recall what floor it was on?

7 A. I think the third floor, third or fourth.

8 Q. And when you went to the trial on both days how did you go? Did
9 -- did you go in the elevator or stairs or something else?

10 A. The stairs.

11 THE REFEREE: How did you go, ma'am?

12 MS. COLEMAN: Stairs.

13 THE REFEREE: Okay.

14 Q. And can you describe where was the trial held in that building in
15 Hempstead? What kind of room was it?

16 A. It was just like a conference room. It was -- it was a little small.

17 Q. And who represented you at the hearing?

18 A. Paul Senzer.

19 Q. Do you recall who else was present at the hearing? Do you recall
20 who else was present at the hearing?

21 A. There were a lot of people. My witnesses, the school's witnesses,
22 the Judge, the school's attorney.

23 Q. And how many witnesses did you call?

24 A. I think 10 or 12. Yeah, 10 because two didn't show up.

25 Q. And do you recall the name of the Judge that presided over the case?

42.

(Jennifer Coleman - Direct)

- 1 A. Yes, it was Margaret Jackson.
- 2 Q. Had she been assigned the case from the beginning?
- 3 A. No.
- 4 Q. It had been assigned to a different Judge?
- 5 A. Yes.
- 6 Q. Who was that Judge?
- 7 A. Judge Vasaful (phonetic).
- 8 Q. Have you ever appeared before Judge Vasaful?
- 9 A. No.
- 10 Q. And how did you know it was Judge Vasaful before then?
- 11 A. I got the notice that that's who it would be.
- 12 Q. Oh, and was it then reassigned?
- 13 A. Four days before the hearing.
- 14 Q. And other than yourself was -- and your adversaries -- was Walter,
- 15 your husband, at the hearing?
- 16 A. Yes.
- 17 Q. Okay. Was he in the audience of the hearing?
- 18 A. Yes.
- 19 Q. Did he remain in the audience both days?
- 20 A. Yes.
- 21 Q. And throughout the time of the hearing did you take any kind of
- 22 recesses?
- 23 A. Yes.
- 24 Q. Did you take a recess for lunch breaks both days?
- 25 A. Yes.

43.

(Jennifer Coleman - Direct)

1 Q. Okay. And when you had a lunch break did you stay and eat there
2 or did you leave the hearing room?

3 A. We left the hearing room.

4 Q. Did you have on the -- directing your attention to the second date of
5 trial, did you have lunch with Judge Senzer or did you have lunch
6 with someone else?

7 A. My husband.

8 Q. And again, for the record, your husband's name is what?

9 A. Walter Coleman.

10 Q. And so directing your attention to the second day, November 6th,
11 2000 -- what year was it?

12 A. 2014.

13 Q. 2014. Do you know approximately what time you broke for lunch
14 that day?

15 A. It was two different times each day. The first day I think it was
16 around 12 o'clock and the second day it was about 11.

17 Q. And when you came back on the second day of trial on November
18 6th, 2014, how did you return into the building that day? Into the
19 courtroom, I should say?

20 A. Oh, into -- I took the stairs.

21 Q. And did you meet Judge Senzer at any point in -- while you were
22 waiting for the recess?

23 A. Yes.

24 Q. Okay. What -- where did you meet Judge Senzer?

25 A. He came off the elevator.

44.

(Jennifer Coleman - Direct)

1 Q. What time were you -- did you approximately return from the lunch
2 recess?

3 A. The second day?

4 Q. The second day.

5 A. I think it was about 12:15.

6 Q. So, you broke at 11 and you think you returned at 12:15?

7 A. We didn't go, you mean, go resume the court?

8 Q. No, just physically back to where you were describing the elevator
9 bank.

10 A. Oh, we got there early about a quarter to 12.

11 Q. You got there at a quarter to 12?

12 A. Uh-huh.

13 Q. And when did you see Judge Senzer about?

14 A. Closer to 12.

15 Q. And where were you waiting?

16 A. In front of the elevator.

17 Q. Were there chairs or were you standing?

18 A. No, we were standing.

19 Q. Was there anyone else there?

20 A. Not with us, but there were other people, you know, on the other
21 side of the hallway and everything.

22 Q. And what happened when Judge Senzer came off the elevator?

23 A. We just said hello. We were just talking about the weather, you
24 know, what he thought how everything was going. That's about it.

25 Q. And what did he say? How did he think things were going?

45.

(Jennifer Coleman - Direct)

1 A. He didn't think they were going too well.

2 Q. And did he say why?

3 MR. BESSO: Objection.

4 THE REFEREE: Overruled.

5 Q. Did he say why?

6 A. Just, you know, it was a repetitive thing with the school, with their
7 witnesses, just the same. He didn't think it looked good.

8 Q. And what if anything happened next?

9 A. The Judge was a little late so he was -- we were waiting for the
10 Judge to return.

11 Q. Judge Jackson?

12 A. Mm-hm.

13 Q. Okay. And what if anything did -- did you hear Judge Senzer say if
14 at all?

15 A. He -- he didn't make a very nice remark.

16 Q. What did he say?

17 A. Can I spell it or no?

18 Q. No.

19 THE REFEREE: I can't hear you, ma'am. Keep
20 your voice up.

21 A. He said, "Is that f'ing nigger back yet?"

22 THE REFEREE: What did he say?

23 MS. COLEMAN: "Is that f'ing nigger back yet?"

24 Q. And what was that -- who was he referring to?

25 A. I assumed Margaret Jackson.

46.

(Jennifer Coleman - Direct)

1 Q. Why did you assume that?

2 MR. BESSO: Objection.

3 THE REFEREE: Overruled.

4 A. She was the only black person there.

5 Q. Did you say anything in response to this?

6 A. I was -- I was just taken back by it and I just I looked at my husband
7 and then she walked around the corner and I didn't know if she heard
8 that. I was almost sure she heard it.

9 Q. Was she present when Judge Senzer said it?

10 A. No.

11 Q. And when you said Judge Jackson came by after the comment,
12 which direction did Judge Jackson come from?

13 A. To the right of us on the side of the elevator where the stairs came
14 up.

15 Q. Okay. Is that the same way you came up?

16 A. Yes.

17 Q. And did Judge Jackson walk past you?

18 A. Yes.

19 Q. And when did you resume the hearing room? When did you resume
20 the hearing after that?

21 A. Right -- everybody went in after she walked in.

22 Q. Other than you and Walter was anyone else present when Judge
23 Senzer said the "nigger" word?

24 A. No.

25 MS. CORREA: One second. I don't have

47.

(Jennifer Coleman - Cross)

1 anything further.

2 THE REFEREE: I'm sorry?

3 MS. CORREA: I don't have anything further.

4 THE REFEREE: Want a short recess before your
5 cross?

6 MR. BESSO: I'll start, Judge.

7 THE REFEREE: Okay.

8 **CROSS EXAMINATION**

9 **BY MR. BESSO:**

10 Q. Good morning, Mrs. Coleman.

11 A. Good morning.

12 Q. Mrs. Coleman, you indicated that you knew Judge Senzer for, what,
13 about 30 years or so?

14 A. About.

15 Q. Okay. And you cleaned his house for a period of five years?

16 A. Yes.

17 Q. And then you worked on his campaign for District Court?

18 A. We put his signs around.

19 Q. Okay. You put signs up and you made a contribution to his
20 campaign?

21 A. Right.

22 Q. And what year was that?

23 A. 2014.

24 Q. And how -- and 2014 was about 25 years after you first met him,
25 correct?

48.

(Jennifer Coleman - Cross)

1 A. Yes.

2 Q. Okay. And during that 25-year period did you ever hear Judge
3 Senzer, in any capacity, issue any derogatory terms about any ethnic
4 group of any sort?

5 A. I had no communication with -- with him.

6 Q. Well, didn't you see him in the five years you were cleaning his
7 house?

8 A. I mostly dealt with his wife but I did see him.

9 Q. And did you talk to him during his campaign?

10 A. Yes.

11 Q. Okay. So, your answer is you did not hear anything during that
12 25-year period?

13 A. No.

14 Q. The time that you did talk to him, is that correct?

15 A. Right.

16 Q. After you heard the words that Judge Senzer used with regards to
17 Judge Jackson, excuse me, did you make any complaints to anybody
18 about him using that terminology?

19 A. Official complaints?

20 Q. Did you make any complaints to anybody about him using that
21 terminology?

22 A. Yes.

23 Q. Who did you complain to?

24 A. My cousin.

25 Q. Okay. And who's that?

49.

(Jennifer Coleman - Cross)

1 A. Bridget Bianco (phonetic).

2 Q. Is she here today to testify?

3 A. No.

4 Q. Did you make a complaint to anybody else?

5 A. I told people.

6 Q. You knew Judge -- you knew your lawyer was a judge, correct?

7 A. Yes.

8 Q. Did you write to the Commission on Judicial Conduct indicating
9 that you were offended by his language?

10 A. No.

11 Q. Did you call the Grievance Committee of the State of New York and
12 make any complaint about the fact that your lawyer used that
13 terminology?

14 A. No.

15 Q. With regard to the complaints that you made about the conduct or
16 the language in the emails, did you make any official complaint to
17 the Commission on Judicial Conduct about those emails when they
18 were made?

19 A. No.

20 Q. Did you make any complaints to the Commission -- to the Grievance
21 Committee for the State of New York?

22 A. No.

23 Q. Did you make any complaints to the Court?

24 A. No.

25 Q. Did you make any complaints to Judge Fondulis?

50.

(Jennifer Coleman - Cross)

1 A. No.

2 Q. Now the discrimination case was decided against you, was it not?

3 A. Yes.

4 Q. And that was because of the fact that what you claimed wasn't true,
5 isn't that correct?

6 A. No, my evidence was not put in.

7 Q. Well, didn't you claim that you weren't getting jobs, which were as
8 much as the other sub custodians were getting?

9 A. I wasn't getting work. I had applied for four jobs that I did not get.

10 Q. And didn't the Judge determine that you were getting more jobs than
11 any of the other sub custodians?

12 A. No.

13 Q. No?

14 A. I don't understand.

15 Q. Yes. Your complaint was that other custodians were getting jobs
16 that you should have gotten, the subs?

17 A. Right.

18 Q. And didn't the Judge find that you were getting more than any of the
19 other subs were getting and that you were not being discriminated
20 against?

21 A. That was the findings of the case, yes.

22 Q. Yes. Now how long passed -- how much time passed before you
23 decided to make a complaint to the Commission on Judicial
24 Conduct?

25 MS. CORREA: Objection.

51.

(Jennifer Coleman - Cross)

- 1 THE REFEREE: Overruled.
- 2 A. I didn't make a complaint.
- 3 THE REFEREE: I didn't hear the answer, ma'am.
- 4 MS. COLEMAN: I didn't make a complaint to --
- 5 Q. You didn't make a complaint to the Commission on Judicial
- 6 Conduct?
- 7 A. I saw an article in the newspaper and I wanted to help an attorney,
- 8 you know, with the emails that I had. I didn't officially make a
- 9 complaint or I'm not understanding what you --
- 10 Q. After the two matters were completed --
- 11 A. My cases?
- 12 Q. Yes.
- 13 A. Okay.
- 14 Q. Okay. Did you make a complaint to anybody about Judge Senzer's
- 15 conduct?
- 16 A. No.
- 17 Q. Okay. Okay, how much time passed before you read this article in
- 18 the newspaper?
- 19 A. Eight -- eight months, I think.
- 20 Q. Okay.
- 21 THE REFEREE: How long?
- 22 MS. COLEMAN: Eight months.
- 23 Q. And the article was about Judge Senzer?
- 24 A. Correct.
- 25 Q. And you decided to help that person who was representing or who

52.

(Jennifer Coleman - Cross)

1 was said to have been representing the interest of those persons in
2 the article?

3 A. Yes.

4 Q. And what did you do?

5 A. I contacted the lawyer in the newspaper.

6 Q. Okay. And what was the purpose of your contacting that person?

7 A. Because I realized that they weren't just words. They turned into
8 actions against people and I wanted to help him if I could with my
9 emails.

10 Q. And did you have any personal knowledge about any of the
11 information in that article?

12 A. No.

13 Q. So, you didn't know if the -- the allegations in that article were true
14 or false?

15 A. No.

16 Q. And, at that time, you contacted the attorney. His name is Chris
17 Cassar, is that correct?

18 A. Yes.

19 Q. And did you meet with Mr. Cassar?

20 A. Yes.

21 Q. And how many times did you meet with Mr. Cassar?

22 A. Once.

23 Q. And what did you tell Mr. Cassar at that -- withdrawn. Did you tell
24 Mr. Cassar that you had emails from Judge Senzer?

25 A. Yes.

53.

(Jennifer Coleman - Cross)

1 Q. Okay. And what was the purpose of telling him that?

2 A. It -- it validated what was in the newspaper, what he was -- what
3 Judge Senzer was doing against people. My emails, I felt could help
4 him, because he was the person that, you know.

5 Q. In your mind?

6 A. Well, obviously not. There was a charge against him in the
7 newspaper.

8 Q. Well, did you know that that lawsuit was dismissed?

9 A. No, I did not.

10 Q. And, if in fact, the lawsuit was dismissed by a Federal Judge, would
11 that have changed your opinion as to whether Mr. Cassar's claim was
12 true or not?

13 A. At the --

14 MS. CORREA: Objection.

15 THE REFEREE: Overruled.

16 A. At the time it was not dismissed when I contacted Mr. Cassar. It
17 wasn't dismissed at that point.

18 Q. Well, you didn't know at the time whether the allegations against
19 Mr. Senzer in the article were true or false. Is that correct?

20 A. Right.

21 Q. You just assumed that they were true?

22 A. Because of my experience with him.

23 Q. You just assumed that they were true?

24 A. Yes, I did.

25 Q. Okay. And you told Mr. Cassar you would help him?

54.

(Jennifer Coleman - Cross)

1 A. I just gave him the emails. I -- that was all I did.

2 Q. Okay. And how did you retrieve those emails?

3 A. From my computer, a printer.

4 Q. You did it yourself?

5 A. No, I can't do that. My husband did it.

6 Q. Your husband did it?

7 A. Yeah, print them out.

8 Q. I thought that you had testified previously that Mr. Cassar sent
9 somebody over to retrieve them?

10 A. Oh, yeah, when I first met Chris Cassar I brought down printed
11 emails. I couldn't retrieve a couple and we tried and I put the Cloud
12 or whatever the heck it is, took them. So Mr. Cassar sent a computer
13 guy over, yes.

14 Q. Okay. And did you know that a complaint was made to the
15 Commission on Judicial Conduct based on your allegations?

16 A. No.

17 Q. When did you find out about that?

18 A. Oh, a while later. Because this man kept calling me and asking me
19 questions. And I didn't know who the heck he was. And then I
20 found out it was the Judicial Committee.

21 Q. Did you find out how that complaint had been made?

22 A. No.

23 Q. You never found out?

24 A. No.

25 Q. So a -- a complaint was made based on information that you

55.

(Jennifer Coleman - Cross)

1 complained of, but you don't know how it got here?

2 MS. CORREA: Objection.

3 THE REFEREE: Overruled.

4 A. No, I didn't -- I didn't know if there were other complaints against
5 him or whatever. I know I handed my emails to Chris Cassar. I
6 didn't know if Chris Cassar had handed them -- somebody handed
7 my emails in so.

8 Q. Well, did you give Mr. Cassar permission to give those emails to
9 anybody else?

10 A. Anybody he wanted to.

11 Q. You did?

12 A. I gave it to him to do whatever he wanted to do with them. I -- I
13 gave them to help him.

14 Q. You had him -- to help him do what?

15 A. Validate his case.

16 Q. And did you notify Judge Senzer that you were giving those emails
17 out?

18 A. No.

19 Q. Okay. After your case in the Family Court, did you have any further
20 contact with Judge Senzer?

21 A. I did. I thought I was owed a refund and I never heard a thing from
22 him again.

23 Q. Okay. And wasn't the Family Court case withdrawn because there
24 were allegations made against your husband for inappropriate
25 touching of his grandson?

56.

(Jennifer Coleman - Cross)

1 MS. CORREA: Objection.

2 A. No, you're wrong.

3 MS. CORREA: Objection.

4 THE REFEREE: It's been asked and answered.

5 Overruled.

6 Q. Okay. So did you give Judge -- did you give Chris Cassar
7 permission to bring your case to the Commission on Judicial
8 Conduct?

9 A. Sure, he can do anything he wanted.

10 Q. Okay.

11 A. I gave him the emails.

12 Q. And did he tell you he was going to do that?

13 A. No.

14 Q. And what did -- what did you expect this Commission to do as far as
15 Judge Senzer is concerned?

16 MS. CORREA: Objection.

17 THE REFEREE: Overruled.

18 A. I don't know. Whatever they do, whatever their job is to do, you
19 know.

20 Q. Well, did you have any further complaints that you haven't made
21 here today against Judge Senzer?

22 MS. CORREA: Objection.

23 THE REFEREE: Overruled.

24 A. No.

25 Q. Other than the -- your daughter and you were estranged at the time?

57.

(Jennifer Coleman - Cross)

1 A. Yes.

2 Q. Okay. And what was the nature of that estrangement?

3 MS. CORREA: Objection.

4 THE REFEREE: Sustained.

5 MR. BESSO: Judge, she testified that on direct
6 testimony she was estranged from her daughter. I just
7 want to know what nature it was.

8 MS. CORREA: It's irrelevant.

9 THE REFEREE: I believe it is irrelevant.

10 MR. BESSO: Can she answer?

11 THE REFEREE: No, I said I believe it is
12 irrelevant.

13 MR. BESSO: Oh, irrelevant, okay.

14 Q. How long did the estrangement last?

15 A. It's still going on.

16 Q. You and your daughter are still not getting along?

17 A. We communicate as far as my parents are very ill so we're
18 communicating as far as for my parents.

19 Q. Okay.

20 MR. BESSO: I have no further questions. Do I --
21 may I have a moment?

22 THE REFEREE: Certainly.

23 MR. BESSO: No further questions

24 THE REFEREE: Any re-direct?

25 MS. CORREA: I have no re-direct.

58.

(Walter Coleman - Direct)

1 THE REFEREE: Thank you, ma'am. You may
2 step down.
3 MS. COLEMAN: Thank you.
4 THE REFEREE: Will there be another witness?
5 MS. CORREA: Yes, we have Walter Coleman.
6 THE REFEREE: You want a short recess before?
7 MS. CORREA: That would be great. Thank you.
8 THE REFEREE: Okay.
9 MS. CORREA: Just about five minutes is all.
10 THE REFEREE: Yeah, let me know when you're
11 ready.
12 [OFF THE RECORD]
13 [ON THE RECORD]
14 FTR OPERATOR: We are on the record.
15 THE REFEREE: All right, please call the next
16 witness.
17 MS. CORREA: Thank you, Judge. Commission
18 Counsel calls Walter Coleman to the stand.
19 THE REFEREE: Sure.
20 MR. ZAGAMI: Witness entering.
21 THE REFEREE: Please be seated. All right, Mr.
22 Coleman, these proceedings are being digitally recorded.
23 The recording will be transcribed and in order to facilitate
24 a clear and accurate record, please speak slowly, clearly,
25 and directly into the microphone. Please refrain from

59.

(Walter Coleman - Direct)

1 moving away from the microphone and talking over other
 2 speakers. Please refrain from responding until a question
 3 is completed and answer each question with words not a
 4 nod or a gesture. Please refrain from creating excessive
 5 background noise as it becomes amplified on the
 6 recording. If you have a cell phone or other device, please
 7 make sure it's turned off now. Please raise your right
 8 hand. Do you swear or affirm, under the penalties of
 9 perjury that the testimony you are about to give is the
 10 truth, the whole truth, and nothing but the truth?

11 MR. COLEMAN: Yes, sir.

12 THE REFEREE: Please state your name.

13 MR. COLEMAN: Walter R. Coleman, Jr.

14 THE REFEREE: Go ahead, ma'am.

15 MS. CORREA: Thank you.

16
 17 **WALTER R. COLEMAN, JR.**

18 having been duly sworn, was examined and testified as follows:

19
 20 **DIRECT EXAMINATION**

21 **BY MS. CORREA:**

22 Q. Mr. Coleman, what county do you live in?

23 A. Suffolk.

24 Q. And what do you do for a living?

25 A. I'm a maintenance mechanic for a school district.

60.

(Walter Coleman - Direct)

- 1 Q. Which school district?
2 A. Cold Spring Harbor.
3 Q. How long have you been a maintenance mechanic for --
4 A. Twenty years.
5 Q. And you work full time?
6 A. Yes, sir -- yes, ma'am.
7 Q. How did -- do you know Judge Senzer?
8 A. Yes, I do.
9 Q. How did you come to know Judge Senzer?
10 A. Through my wife.
11 Q. And your wife's name for the record?
12 A. Jennifer Coleman.
13 Q. And how did -- if you know, how did your wife know him?
14 A. She worked for him.
15 Q. And did there come a point that your wife hired Judge Senzer?
16 A. Yes.
17 Q. Okay. Were you involved in that decision-making?
18 A. Yeah. Yes, I would say so.
19 Q. And what kind of case was it that your wife hired him for?
20 A. A discrimination case with the school district.
21 Q. And was it the same school district that you worked for?
22 A. Yes.
23 Q. And again, the name of that school district was?
24 A. Cold Spring Harbor.
25 Q. And did Judge Senzer represent you and your wife on any other

61.

(Walter Coleman - Direct)

1 matter other than the employment discrimination matter?

2 A. No.

3 Q. Did he --

4 A. Oh, yes -- yes, he did.

5 Q. Okay, what was that?

6 A. My daughter's case for withholding my grandson visitation.

7 Q. And whose decision was it to hire Judge Senzer on that Family
8 Court matter?

9 A. Again, I guess it would be the both of us, yes.

10 Q. Now did you attend the trial in your wife's employment
11 discrimination case?

12 A. Yes.

13 Q. How many days was it?

14 A. I believe two. I think two.

15 Q. Okay. And did you attend both days?

16 A. Yes.

17 Q. And were you able to sit in the audience both days?

18 A. I wasn't in for the full time. At first, she went in and there was some
19 changes made and then they pulled me in and I was sat in later on, a
20 little bit later on.

21 Q. You sat in as a -- as an audience member?

22 A. Yes. Yeah, I was supposed to help with files, but I got thrown into
23 it and I didn't know what I was doing so --

24 Q. You were thrown into in holding the files?

25 A. I think I at first I was supposed to be a witness and then they pulled

62.

(Walter Coleman - Direct)

1 me from being a witness because I would have been better assisting
2 as handing files, sorting through the paperwork.

3 Q. Helping them at trial?

4 A. Yeah.

5 Q. And did you do that both days?

6 A. I'm not too sure, not too sure.

7 Q. Do you -- would this -- do you remember the dates of the
8 employment discrimination case?

9 A. No.

10 Q. Okay. And was it two days or one day did you say?

11 A. I -- I believe it was two.

12 Q. Okay. And do you know the year that this was?

13 A. Three or four years ago -- three or four years ago.

14 Q. Okay. And what season was it?

15 A. It was in the fall.

16 Q. In the fall.

17 A. In the fall.

18 Q. Okay. And was it two days back to back or two days not back to
19 back?

20 A. Two days right next to each other, I believe, yeah.

21 Q. And do you remember where was the trial held?

22 A. Hempstead, Hempstead Court.

23 Q. And do you remember what -- what floor the courtroom was on?

24 A. No, it was on an upper floor though. I don't remember the exact
25 floor.

63.

(Walter Coleman - Direct)

1 Q. And how did you get there?

2 A. I drove her there.

3 Q. Sorry, how did you get to the actual hearing room? Did you have to
4 take the stairs or the elevator?

5 A. Oh, we usually took the stairs because my wife doesn't like to be in
6 the elevators.

7 Q. And were there -- do you remember the judge's name that presided
8 over it?

9 A. No.

10 Q. And was it -- the hearing, was it in a -- what type of room was it?
11 Can you describe it for us?

12 A. Well, you had a little waiting room outside with like seats along like
13 a little hallway. Then you went into like a little desk area and then
14 you went into the courtroom. It was -- it wasn't as big as this. It was
15 a smaller courtroom.

16 Q. And was there a judge that was presiding over it?

17 A. Yes.

18 Q. Okay. What was the race of the Judge if you can recall?

19 A. I don't -- see when you say race I think of where they came from.

20 I -- I don't know where she came from but she was a darker colored
21 skin than I was, yes.

22 Q. Okay. Was she black or white or something else?

23 A. I would say more towards black.

24 Q. And directing your attention to the second day of trial, did you take
25 a lunch break that day?

64.

(Walter Coleman - Direct)

1 A. Yes.

2 Q. And where -- did you leave the building to go for lunch or did you
3 have lunch in the building?

4 A. I think we went across the street that day. We went across the street
5 to a place.

6 Q. And was it just you and your wife or did you --

7 A. No, there were two other people with us.

8 Q. Okay. Who else was with you?

9 A. Stephen Lucarelli (phonetic) and Randy Scott (phonetic).

10 Q. Okay. And who are those people?

11 A. They worked at the school district with my wife.

12 Q. Okay. Did you all have lunch together?

13 A. Yeah, yes.

14 Q. Did Judge Senzer go with you?

15 A. No.

16 Q. And when you came back, do you remember approximately what
17 time you came back? When you came back the second day, did you
18 take the stairs again or did you take the elevator?

19 A. Probably the stairs again. I --

20 Q. All right. And where did you wait before you entered the hearing
21 area?

22 A. We were standing in the hallway just around from the elevators by
23 the bathrooms.

24 Q. Okay.

25 A. By the bathroom. I believe it was one bathroom there.

65.

(Walter Coleman - Direct)

1 Q. Okay. And what were you doing waiting there?

2 A. Just waiting for the Judge to come back.

3 Q. And that was the Judge that was presiding over the case?

4 A. Yes.

5 Q. Okay. What happened, if anything, while you were waiting?

6 A. We were talking about the case, you know, how it was going and
7 everything. I was being asked how it was going and --

8 Q. Who was there?

9 A. My wife, myself and Judge Senzer.

10 Q. Okay. And who was asking how it was going?

11 A. Paul Senzer.

12 Q. He was asking you how it was going?

13 A. Yeah, how I thought it was going.

14 Q. Okay. And what did -- what did you say?

15 A. I said I thought it was going okay, you know.

16 Q. And what, if anything, happened?

17 A. He was talking to me and he made a comment about the Judge and
18 at that moment the Judge walked around the corner. And --

19 Q. What comment did he make about the Judge?

20 A. About her ethnicity.

21 Q. What -- what did --

22 THE REFEREE: What exactly what was said as
23 best to your --

24 MR. COLEMAN: He was asking what I thought
25 of this fucking nigger.

66.

(Walter Coleman - Direct)

1 Q. And who was he referring to?

2 A. The Judge.

3 Q. Okay. And that was the Judge presiding over your employment
4 matter?

5 A. Yes.

6 Q. Okay. When --

7 A. My wife's employment matter.

8 Q. -- when Judge Senzer said the "nigger" word in front of you, who
9 was present at that moment?

10 A. My wife, myself. I don't know. There were people around the
11 corner sitting around this side and the Judge came this way around
12 the other corner. It was like the end of a hallway there sort of.

13 Q. Okay. Was the Judge in the employment discrimination case there
14 when the n-word was said? Was she physically there or was that
15 after?

16 A. No, I believe she was around the corner and -- and right after he said
17 it, that's when she made the turn.

18 Q. Okay. So when the "nigger" word was said who was present?

19 A. My wife, myself, and Judge Senzer.

20 Q. Okay. The three of you?

21 A. Yeah.

22 Q. Okay. And was this a private conversation between the three of
23 you?

24 A. I don't know if you could call it private. We were standing in the
25 hallway and we were just talking back and forth.

67.

(Walter Coleman - Cross)

1 Q. And how did you react to Judge Senzer saying the "nigger" word?

2 A. I was startled.

3 Q. Why?

4 MR. BESSO: Objection.

5 THE REFEREE: Overruled.

6 A. I just didn't expect it.

7 Q. Why?

8 MR. BESSO: Objection.

9 THE REFEREE: Overruled.

10 A. Because of where we were, what was going on, who he was. I -- I
11 just didn't expect it.

12 Q. What do you mean by what "who he was"?

13 A. Who he is, he's -- he's a lawyer. He's a judge.

14 MS. CORREA: Thank you. I have nothing
15 further.

16 THE REFEREE: Cross?

17 **CROSS EXAMINATION**

18 **BY MR. BESSO:**

19 Q. Good morning, Mr. Coleman.

20 A. Morning.

21 Q. Mr. Coleman, subsequent to that hearing, when did you first think
22 about the words that you claim that -- that the Judge uttered that
23 day?

24 A. What do you mean?

25 Q. Yes, after the hearing --

68.

(Walter Coleman - Cross)

1 A. Okay.

2 Q. Okay. You claimed the Judge made -- made those comments,
3 correct?

4 A. Yes.

5 Q. So, after that, between then and now, when is the first time that you
6 remembered that happening?

7 A. Right after it.

8 Q. Right. And then some time later somebody asked you about it. Was
9 it your wife who first asked you if you remembered what the Judge
10 said?

11 A. I believe we were just discussing what was going on in the hallway
12 there and we were talking about it. That --

13 THE REFEREE: When was this that you had this
14 discussion with your wife?

15 MR. COLEMAN: On the way home, I believe.

16 Q. And after you -- after that you went about your business, correct?
17 You went to work at Cold Spring Harbor and did other things,
18 correct? So subsequent to that when is the first time this
19 conversation came up between you and anybody else?

20 A. Again, you mean when did it come up again?

21 Q. Yeah.

22 A. I believe we talked about it a couple of times at the house and then I
23 don't think we said anything more about it until there was something
24 in the paper my wife had read and she was talking to me about it
25 then again with that so that -- that was the next time I would believe.

69.

(Walter Coleman - Cross)

1 I don't know the time how far away it was.

2 Q. So she's -- she basically refreshed your recollection as what the
3 conversation was after the newspaper?

4 MS. CORREA: Objection.

5 THE REFEREE: Overruled.

6 Q. Is that correct?

7 A. No, she was the one who showed me the newspaper and said this is,
8 you know, look at this.

9 THE REFEREE: Going back for a moment to the
10 conversation you had with your wife in the car coming
11 home, what did you talk about?

12 MR. COLEMAN: Really, we -- we just spoke
13 about that.

14 THE REFEREE: You talked about nothing else?

15 MR. COLEMAN: Well, we felt we'd lost the case.

16 THE REFEREE: What --

17 MR. COLEMAN: The discrimination case.

18 THE REFEREE: What was said? What did you
19 say and what did she say in the car?

20 MR. COLEMAN: Well, really, I was -- I said how
21 can we be using this guy for a discrimination case when
22 this is how he is, you know, so -- and that -- that was
23 about it, that was all.

24 THE REFEREE: And that was the total extent of
25 the conversation?

70.

(Walter Coleman - Cross)

1 MR. COLEMAN: Yeah, basically, yeah as far as I
2 remember, that's -- that's what I remember.

3 Q. Then you hired him to represent you again, correct?

4 A. He was already hired to represent us for that.

5 Q. Did you fire him?

6 A. No, at that point we were in and we figured we would just going to
7 --

8 Q. Well, you had another attorney who represented you previously in
9 that proceeding, didn't you?

10 A. Yes, and she couldn't -- she couldn't handle the job. She couldn't do
11 it at the time because she had some other prior engagement.

12 Q. Okay. So you decided to hire -- it was way after he made that
13 comment that you hired him. He made the comment. If you say that
14 it happened during the time of the trial, which was the 5th and 6th of
15 November of 2014, that's when it happened, correct?

16 A. I -- I don't remember the exact date.

17 Q. And you hired him in late November after his District Court election
18 to handle the Family Court matter, is that correct?

19 A. He was for our Family Court matter, yes.

20 Q. Yes. And you hired him despite the fact that he had said those
21 things that you claim he said, is that correct?

22 A. Yes, sir.

23 Q. Okay. And you hired him in spite of that. Is that what you're telling
24 me?

25 A. I believe we had him at the same time, the same amount, you know,

71.

(Walter Coleman - Cross)

1 we were using him for both cases at that time.

2 Q. Did you have any discussions with your wife as to when you hired
3 him to handle the Family Court matter?

4 A. No.

5 Q. Okay. Do you remember whether it was after he became a District
6 Court Judge because he wasn't allowed to, or rather after he ran for
7 District Court Judge because he wasn't allowed to represent you
8 during that period of time?

9 A. He wasn't allowed to represent us at that time?

10 Q. Or wasn't able?

11 A. He was there --

12 Q. Did you hire him after he ran and lost the District Court Judge
13 election?

14 A. Oh, yes, yeah.

15 Q. Okay.

16 A. We had -- we had him through that. As a matter of fact, we were
17 putting up election signs for him at the time.

18 Q. That I know. Did you hire him to handle the District Court -- the
19 Family Court case after his election?

20 A. No, I don't -- I don't believe so. I believe it was all at about the same
21 time as far as I can remember.

22 Q. You don't remember?

23 A. Not really.

24 Q. Okay.

25 A. No.

72.

(Walter Coleman - Cross)

1 Q. Did you fire him at any time during the Family Court proceeding?

2 A. No.

3 Q. Okay. Did you ever make a complaint to anybody, any official
4 agency, Grievance Committee, this Commission or anything else
5 about his comments?

6 A. I -- I was here and made a statement about his comment.

7 Q. Well, you were called here to make a statement, correct? You didn't
8 come here voluntarily. Didn't they call you to come in here and
9 make a statement? Do you remember how you got here?

10 A. Yeah, I remember how I got here. My wife and I came in and --

11 Q. At whose request?

12 A. We were with Christopher Cassar.

13 Q. Chris Cassar brought you in here?

14 A. Yes.

15 Q. He was the same lawyer that was make -- that brought that federal
16 lawsuit, was he not?

17 A. Yes, he was.

18 Q. Okay. Did he tell you what to say?

19 A. No.

20 Q. And he brought you here to talk to whom?

21 A. To this Court.

22 Q. Well, you didn't talk to the Court. You spoke to the representatives
23 of the Commission, correct?

24 A. Yes, I believe so.

25 Q. And they asked you questions?

73.

(Walter Coleman - Redirect)

1 A. Yes.

2 Q. Okay. And you came in because Mr. Cassar brought you here?

3 A. Yes.

4 MR. BESSO: Okay. I have no further questions.

5 THE REFEREE: Anything further?

6 MS. CORREA: One moment.

7 **REDIRECT EXAMINATION**

8 **BY MS. CORREA:**

9 Q. Mr. Coleman, did you get contacted by one of the attorneys from our
10 office about the emails before you testified here the first time?

11 A. You mean recently or --

12 Q. No, several years ago.

13 MR. BESSO: Judge, is that proper redirect?

14 THE REFEREE: I'll allow it.

15 A. Several years ago, there was a fellow who came to our house and
16 went over our computer to try and get the emails out of it. As far as
17 I know, what was there was what he got. There was a lot missing.

18 Q. No, let me clarify my question. I'm -- I'm asking more specifically
19 from my office. I'm an attorney here for the Commission on Judicial
20 Conduct. Did another attorney ever contact you by phone other than
21 myself?

22 A. Not that I remember. Not that I recall.

23 Q. Okay.

24 A. No, and it would have been a phone call?

25 Q. No, I'm asking if you remember.

74.

(Walter Coleman - Redirect)

1 MR. BESSO: Objection, Your Honor.

2 Q. If you don't remember, you don't remember.

3 THE REFEREE: Overruled.

4 A. Okay.

5 Q. Do you know if another attorney from my office called your wife?

6 And again, if you know, if you don't know, you don't know.

7 MR. BESSO: Objection.

8 THE REFEREE: Overruled.

9 A. Don't know.

10 Q. And when you came here were you asked questions by an attorney

11 other than myself when you came here to testify before your

12 testimony today?

13 A. No, I wasn't asked anything.

14 Q. Okay. Did you testify before you testified here today? Were you --

15 did you testify at another time?

16 A. For this matter?

17 Q. Yes.

18 A. No.

19 Q. Were you asked -- were you ever asked questions?

20 A. I was interviewed, I believe, and they had the microphone on and

21 everything and I spoke into a microphone.

22 Q. Okay. And was there another attorney from the Commission there

23 that day?

24 A. Yeah, I believe there -- yeah.

25 MS. CORREA: One second. I have nothing

75.

(Matter of Paul H. Senzer - Colloquy)

1 further. Thank you.

2 MR. BESSO: Nothing further, Your Honor.

3 THE REFEREE: Thank you, sir. You may step
4 down.

5 MR. COLEMAN: Thank you.

6 THE REFEREE: Yes, ma'am?

7 MS. CORREA: We have no further witnesses. At
8 this time, I'd like to move in the rest of our exhibits into
9 evidence.

10 MR. BESSO: I'm sorry, Brenda, I didn't hear you.

11 MS. CORREA: At this time, we have no further
12 witnesses. I'd like to move in the rest of our exhibits that
13 have been stipulated to, Commission Exhibits 10 through
14 14. And that's 14 -- and then also 14A through 14L.

15 These are all admissions that -- it's my understanding that
16 they have been stipulated to with counsel.

17 (Commission Exhibits 10 through 14 were marked and
18 identified)

19 MR. BESSO: I stipulated --

20 MS. CORREA: I spoke to Ms. Aulivola and she
21 stipulated.

22 MR. BESSO: Just kidding, yes.

23 THE REFEREE: Any objection?

24 MR. BESSO: I have no objection.

25 THE REFEREE: Okay.

76.

(Matter of Paul H. Senzer - Colloquy)

1 MS. CORREA: If you'd like, Judge --

2 THE REFEREE: Received. Yes, ma'am?

3 (Commission Exhibits 10 through 14 were received into
4 evidence)

5 MS. CORREA: If you'd like, I can read them
6 individually into the record.

7 THE REFEREE: That might be a good idea.

8 MS. CORREA: Okay. Commission Exhibit 10
9 that we are offering into evidence is a letter dated March
10 18, 2016, by Paul Senzer. It includes portions of
11 respondent's inquiry letter response as to numbers 1, 4, 5,
12 6, 7, 9 and 10. At this point, I'd like to move that into
13 evidence.

14 THE REFEREE: Received.

15 MS. CORREA: The next one is Commission
16 Exhibit 11. This is portions of Commission Counsel's
17 inquiry letter dated March 9th, 2016. And this
18 corresponds with the prior exhibit in Exhibit 10.
19 Similarly, it's limited to numbers 1, 4, 5, 6, 7, 9 and 10.
20 I'd like to move that into evidence.

21 THE REFEREE: I've -- I've received them all
22 without objections. You can just --

23 MS. CORREA: Great.

24 THE REFEREE: -- tell what each exhibit is.

25 MS. CORREA: Excellent, thank you, Judge.

77.

(Matter of Paul H. Senzer - Colloquy)

1 Exhibit 12 is portions of Respondent's inquiry letter
2 response dated April 10th, 2017, limited to questions 1, 2,
3 3, 4, 5, 6, 7, 8, 9 and 10. Next one is Commission Exhibit
4 13, portions of Commission Counsel's inquiry --oh, sorry,
5 and the last -- the last one also includes number 11.
6 Thank you. The next one is Commission Exhibit 13 is
7 portions of Commission Counsel's inquiry letter dated
8 March 23rd, 2017, numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, and 11.
9 Next one is -- oh, that's -- oh, that's part -- yeah, and just
10 so that the record is clear, in the prior exhibit, Exhibit 13,
11 it includes Exhibits A through F. The next one is Exhibit
12 14. They're admissions based on prior testimony. Exhibit
13 14 is a cover page of the transcript based on the
14 Respondent's prior testimony before the Commission on
15 November 16. 14A is page 17, lines 2 through 3; 5
16 through 6. Next one is 14B, page 18, lines 3 through 11.
17 Next one is 14C, page 18, line 23, 25; page 19, line 1
18 through 25; page 20, line 1 through 2, 10 through 14, 17
19 and line 5 through 7 for context. This also corresponds to
20 the questions to both of those admissions and the same for
21 the ones thereafter. 14D is page 22, line -- lines 18
22 through 24 and 5 through 14 for context. The next one is
23 14E, page 23, lines 2 through 5. 14F is page 24, line 21,
24 23, 25. Next one is 14G, page 13, lines 10 through 25.
25 Page 31 is lines 1, 7 through 9. 14H is page 31, line 16,

78.

(Matter of Paul H. Senzer - Colloquy)

1 19, 21, 25. Next one is 14I, page 36, line 25; page 37,
2 lines 1 through 4. Next one is 14J, page 37, lines 22
3 through 25; page 38, line 1 through 15. 14K is page 39,
4 lines 1 through 17, 22 through 25, and the last one is 14L
5 is a certification page of Respondent's prior testimony
6 before the Commission on November 16, 2016. And
7 that's it.

8 THE REFEREE: Very well. They are received
9 into evidence.

10 MS. CORREA: Thank you, Judge.

11 THE REFEREE: And that completes your
12 evidence.

13 MS. CORREA: That concludes.

14 THE REFEREE: All right. Will the lawyers step
15 up, please, a moment? I want ask you something.

16 MS. CORREA: Yes.

17 THE REFEREE: Off the record.

18 [OFF THE RECORD]

19 [ON THE RECORD]

20 FTR OPERATOR: On the record.

21 MS. CORREA: Thank you, Judge Collins. Judge
22 Collins, we just had a discussion at the bench in terms of
23 there is some testimony about Mr. Cassar and there is a
24 stipulation by counsel that the Complainant in this case
25 was Mr. Cassar. And the information that he gained was

79.

(Matter of Paul H. Senzer - Colloquy)

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from the Colemans and he filed a complaint to the
Commission on Judicial Conduct.

MR. BESSO: That's my understanding, Your
Honor.

THE REFEREE: Very well. All right. We will
recess until tomorrow morning at 10 o'clock.

MR. BESSO: Thanks, Judge.

MS. CORREA: Thank you, Judge.

MS. AULIVOLA: Thank you, Judge.

[OFF THE RECORD]

(WHEREUPON the examination in the *Matter of Paul
H. Senzer* was adjourned at 12:13 PM on August 6,
2018.)

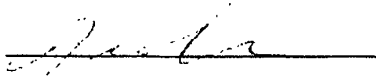
EXHIBITS

		<u>Ident.</u>	<u>Rec.</u>
1			
2	1	Email from Senzer to Coleman 10/24/14	15 16
3	2	Email from Senzer to Coleman 11/25/14	20 21
4	3	Email from Senzer to Coleman 11/25/14	24 25
5	4	Email from Senzer to Coleman 01/13/15	27 29
6	5	Email from Senzer to Coleman 01/22/15	30 32
7	6	Email from Senzer to Coleman 02/10/15	33 33
8	7	Email from Senzer to Coleman 02/11/15	35 36
9	8	Email from Senzer to Coleman 02/11/15	37 38
10	9	Email from Senzer to Coleman 02/22/15	39 40
11	10	Letter 3/18/16 from Senzer	76 77
12	11	Portion of Commission Counsel Inquiry Letter	
13		03/09/16	76 77
14	12	Portion of Respondent's Inquiry Letter	
15		Response 04/10/17	76 77
16	13	Portion of Commission Counsel Inquiry	
17		Letter 03/23/17	76 77
18	14	Transcript Based on Respondent's Prior Testimony	
19		14(a) - 14(l)	76 77
20			
21			
22			
23			
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ii.

CERTIFICATION

1
2
3 I, J ADICKES a proofer for ANP Transcriptions, do hereby
4 certify that the foregoing is a true and accurate transcript of the audio
5 recording of the proceedings proofed by me, to the best of my ability, in
6 the matter held on August 6, 2018.

7
8
9 Signature: 

10 Date: 11/8/2018

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X

In the Matter of an Investigation :
Pursuant to Section 44, subdivision 4,
of the Judiciary Law, in Relation to :

PAUL H. SENZER :

a Judge of the Northport Village Court, :
Suffolk County.

-----X

Commission Offices
61 Broadway, Suite 1200
New York, New York 10006

August 7, 2018
10:45 AM

Before:
HONORABLE JOHN COLLINS
Referee

Present:
For the Commission
BRENDA CORREA, ESQ.
Principal Attorney

MARK LEVINE, ESQ.
Deputy Administrator

For the Respondent
DAVID BESSO, ESQ.
MICHELLE AULIVOLA, ESQ.
Attorney for Respondent
120 Fourth Avenue
Bay Shore, NY 11706

Also Present:
HON. PAUL H. SENZER
Respondent

ANDREW ZAGAMI
Investigator
MIGUEL MAISONET
Senior Clerk & FTR Operator

INDEX OF WITNESSES

1	<u>For the Commission</u>				
2		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
3	(None)				
4					
5	<u>For the Respondent</u>				
6		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
7	William Reynolds	81	86	87	101
8	Deborah Monastero	90	97		
9	Debra Urbano-DiSalvo	103	111		
10	Monsignor Ellsworth Walden	114	117		
11	Paul Senzer	120	130		
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i.

(William Reynolds - Direct)

1 THE REFEREE: Mr. Besso, you want to call your
2 first witness?
3 MR. BESSO: (Unintelligible).
4 THE REFEREE: Oh, I'm sorry.
5 MR. BESSO: Sorry, Judge, Ms. Aulivola is going
6 to --
7 THE REFEREE: Hold one second, we -- okay.
8 Go ahead.
9 MR. BESSO: Ms. Aulivola is going to examine
10 the next four witnesses.
11 THE REFEREE: Okay.
12 MS. AULIVOLA: Thank you, Judge.
13 THE REFEREE: Good morning, ma'am.
14 MS. AULIVOLA: Judge, our first witness will be
15 William Reynolds.
16 THE REFEREE: Okay.
17 MS. AULIVOLA: I'll just run out and grab him.
18 MR. BESSO: Want me to get him, Michelle?
19 MR ZAGAMI: Witness entering.
20 THE REFEREE: Okay.
21 MR. REYNOLDS: Good morning.
22 THE REFEREE: Good morning. Please be seated.
23 MR. REYNOLDS: Thank you.
24 THE REFEREE: Mr. Reynolds, these proceedings
25 are being digitally recorded. The recording will be

81.

(William Reynolds - Direct)

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transcribed, and in order to facilitate a clear and accurate record please speak slowly, clearly, and distinctly into the microphone. Refrain from any moving away from the microphone and talking over other speakers. Please refrain from responding until a question is completed and answer each question with words, not a nod or a gesture. Please refrain from creating excessive background noise as it becomes amplified on the recording. If you have a cell phone or other electronic device please make sure that it's turned off now. Please raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony that you're about to give is the truth, the whole truth, and nothing but the truth?

MR. REYNOLDS: I do.

THE REFEREE: Thank you. Go ahead.

MS. AULIVOLA: Thank you, Your Honor.

MR. REYNOLDS. Good morning.

WILLIAM REYNOLDS,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. AULIVOLA:

Q. Good morning, Mr. Reynolds. Can you tell us what you do for a living presently?

(William Reynolds - Direct)

1 A. I'm an Assistant District Attorney at Suffolk County.

2 Q. And when were you admitted to the practice of law?

3 A. 1998.

4 Q. And in what jurisdictions are you admitted?

5 A. Second Department.

6 Q. And can you give -- give us a brief history of your professional
7 career before you became an attorney?

8 A. Yes. I was a banker for 45 years. I started in banking in 1960 and
9 worked for several major commercial banks, retired in 2006 from
10 Citibank as a Branch Manager. Additionally, I was a teacher at the
11 American Institute of Banking and taught courses in basic banking
12 and accounting. When I was admitted to the bar I was still working
13 for a bank, so I opened a private practice, just advertised in my local
14 church bulletin and did wills and closings, but I wanted to be a
15 prosecutor and finally got accepted in 2006.

16 Q. So how long were you in private practice?

17 A. About eight years. It was just a part-time practice though.

18 Q. And what type of law did you practice?

19 A. I just did wills and closings in real estate, that -- that was it.

20 Q. Okay. And then you joined the District Attorney's Office of Suffolk
21 County?

22 A. That's correct.

23 Q. And what year was that?

24 A. 2006.

25 Q. And what bureaus have you worked in since then?

83.

(William Reynolds - Direct)

1 A. I worked in the District Court Bureau for about 10 and a half
2 months. They then asked me if I would go to Asset Forfeiture
3 because of my banking background. I was in Asset Forfeiture for
4 four and a half years. And then I got a call in 2011 and was asked if
5 I would like to do the outlying courts, which are basically held in the
6 evening and sometimes on weekends. And I gladly jumped at that
7 chance. I've been doing that for the last seven years.

8 Q. How many outlying courts do you appear in?

9 A. I cover approximately 15 courts.

10 Q. And are those the courts that you appear in all -- all of the time now,
11 the outlying courts?

12 A. Yes.

13 Q. Okay. And -- and what types of cases do you handle in those
14 outlying courts?

15 A. All misdemeanors and vehicle and traffic offenses.

16 Q. And is there a particular court to which you're primarily assigned or
17 you're -- you're spread among all of those courts?

18 A. I have -- the schedule is pretty -- pretty routine in that I'm at the
19 Northport Court every Monday evening, I'm in Amityville every
20 Tuesday evening and it then it varies for Thursday -- Wednesdays
21 and Thursdays. I also do the Ocean Beach Court on Saturdays in
22 Fire Island.

23 Q. Okay. So how -- how -- so Northport Village Court, you appear in
24 once per week?

25 A. That's correct.

84.

(William Reynolds - Direct)

1 Q. Okay. And are you familiar with Judge Paul Senzer?

2 A. Yes, I am.

3 Q. How long have you known him?

4 A. Well, I met Judge Senzer in 2006. I was at that court twice. I
5 remember when I was at the District Court Bureau and then from
6 2011 until today. For the last seven years I've been in Judge Senzer's
7 Court.

8 Q. Once per week?

9 A. Once per week.

10 Q. Okay. And what observations have you made --

11 MS. CORREA: Objection, Your Honor, character
12 evidence is limited to reputational evidence.

13 THE REFEREE: I'll allow it.

14 Q. What observations have you made with respect to the way Judge
15 Senzer conducts his courtroom?

16 A. I believe him to be a fair judge. He treats defendants fairly. He -- I
17 believe he has a good knowledge of the law.

18 MR. LEVINE: Your Honor, I'm just going to
19 object one more time in the sense that it's limited to
20 reputational evidence and not opinion. And it has to be
21 for a character trait that's related to this particular
22 proceeding. And we will request that we follow the law
23 with respect to character evidence.

24 THE REFEREE: That is true.

25 Q. What has your observation been with respect to Judge Senzer's -- the

85.

(William Reynolds - Cross)

1 way he speaks to litigants that appear before him?

2 MS. CORREA: Objection.

3 THE REFEREE: Sustained.

4 A. I believe he --

5 THE REFEREE: No, there's been an objection.

6 It's been sustained.

7 MR. REYNOLDS: I'm sorry.

8 Q. What is -- in your experience what have you seen Judge Senzer's
9 reputation to be as a judge?

10 MS. CORREA: Objection.

11 THE REFEREE: Overruled.

12 A. Impeccable.

13 MS. AULIVOLA: Okay. I have nothing further.

14 THE REFEREE: Cross?

15 **CROSS EXAMINATION**

16 **BY MS. CORREA:**

17 Q. Good morning, Mr. Reynolds.

18 A. Good morning.

19 Q. You've been an ADA in Suffolk County since 2006, is that correct?

20 A. That's correct.

21 Q. Okay. And you are still assigned to the Northport Village Court, is
22 that correct?

23 A. That's correct.

24 Q. Okay. And Judge Senzer is the Justice in the Northport Village
25 Court?

86.

(William Reynolds - Cross)

1 A. That's correct. Q. Okay. And you testified that you appear there
2 every Monday?

3 A. That's correct.

4 Q. Okay. And do you appear there any other days or just Mondays?

5 A. Just Mondays.

6 Q. Okay. And I take it, then, Judge Senzer is the judge that's presiding
7 over the People's cases in that courtroom, is that right?

8 A. That's correct.

9 Q. Okay. And he's presiding over matters that you present to him, is
10 that right?

11 A. Yes.

12 Q. And this is your continuing assignment in the future? You'll still be
13 assigned to Northport after you testify here today?

14 A. I would hope so.

15 Q. Okay. And you'll still be appearing before Judge Senzer after you
16 leave here today?

17 A. That's correct.

18 Q. Okay. And he'll still be the judge over the cases that you present to
19 him in the future?

20 A. I would believe so, yes.

21 MS. CORREA: Thank you. Nothing further.

22 MR. BESSO: May we have a moment, Judge?

23 THE REFEREE: Yes.

24 MR. BESSO: Thanks, Judge.

25 THE REFEREE: Sure.

87.

(William Reynolds - Redirect)

1 **REDIRECT**

2 **BY MS. AULIVOLA:**

3 Q. Mr. Reynolds --

4 THE REFEREE: Go ahead.

5 MS. AULIVOLA: I'm sorry, Judge.

6 Q. What type of litigants appear in Judge Senzer's courtroom in
7 Northport?

8 A. We have individuals charged with misdemeanors and various
9 vehicle and traffic infractions.

10 Q. And are they from various different ethnic backgrounds?

11 MR. LEVINE: Objection.

12 THE REFEREE: Overruled.

13 A. Yes.

14 Q. And has -- have you had the opportunity to determine Judge Senzer's
15 reputation within the community?

16 THE REFEREE: Sustained as to form.

17 Q. Are you -- are you familiar with Judge Senzer's reputation?

18 MR. LEVINE: Objection.

19 THE REFEREE: Sustained as to form.

20 Q. Have you had conversations with other individuals regarding Judge
21 Senzer's operation of his courtroom?

22 MR. LEVINE: Objection.

23 THE REFEREE: Sustained.

24 Q. Do you have an opinion regarding how Judge Senzer operates with
25 respect to his courtroom as far as fairness and impartiality?

88.

(William Reynolds - Redirect)

1 MR. LEVINE: Objection, it's reputational.

2 THE REFEREE: Sustained.

3 MS. AULIVOLA: One moment, Judge.

4 THE REFEREE: Sure. You want a short recess or
5 -- okay.

6 **BY MR. BESSO:**

7 Q. Mr. Reynolds, does Judge Senzer have a reputation in the
8 community for fairness and equity in the way he treat --

9 MR. LEVINE: Objection, leading.

10 THE REFEREE: Overruled.

11 Q. -- the way he treats litigants?

12 A. I believe so, yes.

13 Q. And what is that reputation?

14 A. I believe the -- his reputation is he's a fair judge.

15 MR. BESSO: Okay, thank you. Nothing further.

16 THE REFEREE: Anything further?

17 MS. CORREA: No, nothing further.

18 THE REFEREE: Thank you, sir. You may step
19 down.

20 MR. REYNOLDS: Thank you.

21 THE REFEREE: Your next witness, ma'am?

22 MR. BESSO: I'll get her.

23 MR. ZAGAMI: Witness entering.

24 THE REFEREE: Ma'am, these proceedings are
25 being digitally recorded. The recording will be

89.

(William Reynolds - Redirect)

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transcribed in order to facilitate a clear and accurate record, we ask that you please speak slowly, clearly, and distinctly into the microphone. Please refrain from moving away from the microphone and talking over other speakers. Please refrain from responding until a question is completed and answer each question with words not a nod, not a gesture. Please also refrain from creating excessive background noise as it becomes amplified on the recording. If you have a cell phone or other electronic device, please make sure it's turned off now. And be good enough to raise your right hand. Do you swear or affirm under the penalties of perjury that the testimony that you are about to offer is the truth, the whole truth, and nothing but the truth?

MRS. MONASTERO: Yes, I do.

THE REFEREE: Okay. Proceed.

DEBORAH MONASTERO

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. AULIVOLA:

MS. AULIVOLA: Judge, you would like to put her name on the record?

THE REFEREE: Yes, please.

(Deborah Monastero - Direct)

1 MRS. MONASTERO: Deborah Monastero.

2 Q. Okay. Thank you. Ms. Monastero, what do you do for a living
3 presently?

4 A. I am an attorney.

5 Q. And how long have you been admitted?

6 A. I was admitted January of 2004.

7 Q. Where are you admitted to practice law?

8 A. New York.

9 Q. And where are you presently employed?

10 A. I am employed with Laurette Mulry's office, which is the Legal Aid
11 Society of Suffolk County.

12 Q. And was that your first job out of law school?

13 A. It was my first job for an entity. I did practice on my own until my
14 kids were a little bit older and then I wanted full-time employment.

15 Q. Was that a solo practice?

16 A. Yes.

17 Q. And what type of law did you -- did you do in your solo practice?

18 A. A lot of real estate.

19 Q. For how long did you -- did you do that?

20 A. From 2004 until 2007 when I began working for Suffolk County
21 Legal Aid.

22 THE REFEREE: Please don't drop your voice
23 now. Keep your voice up.

24 MRS. MONASTERO: Yes.

25 Q. What type of matters do you handle with Suffolk County Legal Aid?

91.

(Deborah Monastero - Direct)

1 A. I handle criminal matters for the most part, felony criminal matters.

2 Q. And where are you primarily assigned?

3 A. I am assigned in Central Islip to the felony part, which handles, for
4 the most part, pre-indictment felonies. And then I also work with
5 the -- my counterparts out in County Court when we've scheduled,
6 for example, plea deals that involve an SCI that will be taken out in
7 County Court. So, I will work with the attorneys out there
8 discussing what plea deal I've worked out.

9 Q. Do you also appear in any of the outlying courts in Suffolk County?

10 A. Yes, I do.

11 Q. Which courts are those?

12 A. I have appeared in the Northport Village Court.

13 Q. How frequently do you appear in Northport Village Court?

14 A. At least once if not twice a month. And it would depend upon my
15 colleagues who are covering, but I would say at least once if not
16 twice a month and sometimes more if my colleagues are on vacation
17 or, et cetera.

18 Q. And has that been the case since 2007?

19 A. Yes, it has.

20 Q. When you appear in Northport Village Court, do you appear in the
21 courtroom of Judge Paul Senzer?

22 A. Yes, I do.

23 Q. How frequently?

24 A. Monday nights and it's usually one to two times a month I would
25 appear before Judge Senzer.

92.

(Deborah Monastero - Direct)

1 Q. And how much time on an average Monday night do you spend
2 within Judge Senzer's courtroom?

3 A. Well, it would depend upon how many cases I have on, whether or
4 not my client is in custody. It can range anywhere from, you know,
5 an hour and a half to three hours sometimes even more, sometimes a
6 little less. There's no set time. It just depends upon what cases I
7 have and how involved they are and whether or not I have clients
8 that are in custody.

9 Q. What have your experiences been with respect to how you are
10 treated as an attorney appearing before Judge Senzer?

11 MR. LEVINE: Objection.

12 MS. CORREA: Objection.

13 THE REFEREE: Sustained.

14 Q. Have you had an opportunity to observe Judge Senzer in the conduct
15 of his courtroom?

16 MS. CORREA: Objection.

17 MR. LEVINE: Objection.

18 THE REFEREE: Overruled.

19 A. As I said before I -- I am an attorney and I have been appearing in
20 that -- in Northport Village Court since 2007. I have observed Judge
21 Senzer since that time. Primarily, he's the judge that's in there when
22 I'm there and I have never --

23 MR. LEVINE: Objection.

24 THE REFEREE: Sustained.

25 Q. Does Judge Senzer have a reputation within the community that you

93.

(Deborah Monastero - Direct)

1 know of?

2 A. I can only speak about my experience while I'm in there. I -- I cover
3 that courtroom with a few other of my colleagues and we --

4 MS. CORREA: Objection.

5 MR. LEVINE: Objection.

6 A. I --

7 THE REFEREE: Sustained -- sustained.

8 A. I have never had any --

9 MS. CORREA: Objection.

10 MR. LEVINE: Objection.

11 THE REFEREE: Sustained.

12 A. I have never had --

13 MR. LEVINE: Objection.

14 THE REFEREE: Sustained. Wait for the
15 question.

16 MRS. MONASTERO: I -- I'm just trying to
17 answer the question.

18 MR. LEVINE: I would move that the witness be
19 stricken. She's said she's unaware of what the reputational
20 evidence is, in which case this would be her own opinion
21 and then inadmissible.

22 THE REFEREE: Overruled. Proceed.

23 Q. Are you aware of Judge Senzer's reputation as a judge?

24 A. My --

25 MR. LEVINE: Objection.

94.

(Deborah Monastero - Direct)

1 THE REFEREE: Sustained. Would the witness
2 just step outside for a moment?

3 MRS. MONASTERO: Certainly.

4 THE REFEREE: Okay. Off the record.
5 (Unintelligible) step inside.

6 [OFF THE RECORD]

7 FTR OPERATOR: On the record.

8 [ON THE RECORD]

9 THE REFEREE: All right, please ask the witness
10 to come back.

11 MR. BESSO: Deb, want to come back?

12 MR. ZAGAMI: Witness entering.

13 THE REFEREE: All right, go ahead, Mr. Besso.

14 **BY MR. BESSO:**

15 Q. Ms. Monastero, is it Ms. or Mrs.?

16 A. Mrs.

17 Q. Mrs. So, on a yearly basis you would appear before Judge Senzer,
18 26, 27 times, somewhere in that neighborhood?

19 A. On average, yes.

20 Q. Yes, since 2007?

21 A. Correct.

22 Q. And Legal Aid Society represents indigent people, correct?

23 A. That is correct.

24 Q. Okay. Minorities and --

25 MR. LEVINE: Objection to the leading.

95.

(Deborah Monastero - Direct)

1 THE REFEREE: Overruled.

2 Q. -- minorities and so forth?

3 A. Yes.

4 Q. Okay. Have you ever experienced in -- in your period of time since
5 2007 the Judge make any disparaging remarks to any litigant of any
6 race or ethnic background?

7 A. Not --

8 MR. LEVINE: Objection.

9 THE REFEREE: Overruled.

10 A. -- not at all.

11 Q. Okay.

12 MR. LEVINE: I'd like to make a record after this,
13 Your Honor.

14 THE REFEREE: Sure.

15 Q. And you talk to other members of the legal community regarding
16 different judges and so forth as we all do?

17 A. Yes.

18 Q. And is there a reputation in the legal community of -- with regarding
19 Judge Senzer's truthfulness and honesty?

20 A. Yes.

21 Q. And what is that reputation?

22 A. I've never heard anything unkind about him or anything disparaging
23 or in any way that he is, in any form, but fair with the people that
24 stand
25 before him with respect to attorneys, with respect to defendants.

96.

(Deborah Monastero - Direct)

1 And from my perspective as I've sat in -- MR. LEVINE: Objection.

2 A. -- that courtroom --

3 THE REFEREE: Overruled.

4 A. -- since 2007, he has never been disrespectful to me or my clients
5 and I have represented during that period of time some characters, I
6 mean, along the way. And I have always been treated as a professional
7 and my clients have always been treated with respect.

8 MR. BESSO: Thank you. I have no further
9 questions.

10 THE REFEREE: Cross?

11 **CROSS EXAMINATION**

12 **BY MS. CORREA:**

13 Q. Good morning, Ms. Monastero.

14 A. Good morning.

15 Q. You've been practicing before Judge Senzer since, is it 2007?

16 A. Correct.

17 Q. Okay. And you appear before Judge Senzer once or two times a
18 month, is that right?

19 A. It depends upon the rotation, how many Mondays are in a month,
20 how many of my colleagues may be on vacation, but at least once if
21 not twice a month.

22 Q. And going forward is -- is that rotation going to stay? The once or
23 twice a month, do you think?

24 A. I would assume it will. I haven't been told otherwise.

25 Q. And you handle criminal cases before Judge Senzer, is that right?

97.

(Deborah Monastero - Cross)

1 A. That is correct.

2 Q. Okay. And some of those defendants are in custody, you -- you
3 testified?

4 A. From time to time, yes.

5 Q. And are there -- are you in a position to make bail applications
6 before Judge Senzer?

7 A. I do make bail applications.

8 Q. And Judge Senzer rules on your bail applications?

9 A. Correct.

10 Q. Okay. And have you had to do any trials before Judge Senzer?

11 A. I have not.

12 Q. And do you handle -- have you done any preliminary hearings
13 before Judge Senzer?

14 A. We have not, no.

15 Q. Have you done any kind of Mapp/Dunaway hearings, any other kind
16 of hearings before Judge Senzer?

17 A. No, I personally have not.

18 Q. And have you done case dispositions before Judge Senzer?

19 A. Yes.

20 Q. Has Judge Senzer made recommendations about sentencing on any
21 of your cases?

22 A. Certainly.

23 Q. And going forward that's going to be the case after you leave here
24 today, is that right?

25 A. Yes.

98.

(Deborah Monastero - Cross)

1 Q. Okay. For all intents and purposes, Judge Senzer is going to be the
2 judge who you appear before in Northport?

3 A. Correct.

4 MS. CORREA: Thank you. Nothing further.

5 THE REFEREE: Anything further?

6 MR. BESSO: No redirect, Your Honor.

7 THE REFEREE: You may step down. Thank you,
8 ma'am.

9 MRS. MONASTERO: Thank you.

10 MR. BESSO: Michelle? Oh, you want to say
11 something, Mark, on the record?

12 MR. LEVINE: I just wanted to note for the record
13 that as part as your preliminary statement, Judge, you
14 indicated the Rules of Evidence that apply in civil
15 proceedings are here. The Court of Appeals has held, as
16 early as 1973 in *People v Kuss* and *People v Bouton* that
17 witness testimony in this regard is not -- it's not
18 permissible to talk about specific acts of a party and it's
19 limited to reputation. The reason being that, otherwise, it
20 becomes pure opinion evidence. "What I've seen." It
21 swallows the whole rule and it opens the door. That's why
22 character evidence is so limited. I wanted to put that on
23 the record to make it clear because I believe that not only,
24 you know, if we're going to follow the Rules of Evidence,
25 we should follow them here and which is that you're

99.

(Deborah Monastero - Cross)

1 limited to reputational evidence and not personal
2 observations and opinions, which is consistent with well-
3 established law.

4 MR. BESSO: Judge, I think that as Ms. Coleman
5 testified yesterday as to what she overheard Judge Senzer
6 say allegedly or what -- what she alleges he said to her,
7 these are fact witnesses who appear in his court and
8 testifying as to what they observe. It's not reputation and
9 so forth. They've also testified to his reputation of
10 truthfulness and honestly. But I think it's important for
11 the Court if, in fact, the Commission wants to give the
12 respondent a fair trial, that we get all the information in
13 and that we be allowed to continue with this examination
14 the way we have done with the past witness.

15 THE REFEREE: All right. Call the next witness.

16 MR. BESSO: We're going to recall ADA
17 Reynolds, Your Honor.

18 MR. LEVINE: Objection.

19 THE REFEREE: Overruled.

20 MR. LEVINE: On what basis?

21 THE REFEREE: Overruled.

22 MR. BESSO: On the basis --

23 THE REFEREE: I haven't heard what the question
24 is yet.

25 MR. LEVINE: Well, can we get an offer of proof

100.

(William Reynolds - Redirect)

1 if we bring him back?

2 MR. BESSO: In light of the Judge's ruling, we
3 want to ask him some more questions.

4 MR. LEVINE: All right, note our objection.

5 THE REFEREE: Okay. Just overruled. Call the
6 witness.

7 MR. BESSO: I'll get him. Will you want to come
8 back in?

9 MR. ZAGAMI: Witness entering.

10 THE REFEREE: Be seated.

11 MR. REYNOLDS: Thank you.

12 THE REFEREE: Go ahead.

13 MS. AULIVOLA: Thank you, Your Honor.

14

15 **WILLIAM REYNOLDS,**

16 having been previously sworn, was examined and testified as
17 follows:

18

19 **REDIRECT EXAMINATION**

20 **BY: MS. AULIVOLA:**

21 Q. Mr. Reynolds, we just have a couple of additional questions for you.

22 A. Sure.

23 Q. In your representation of clients in Judge Senzer's courtroom, do you
24 represent individuals of different ethnic and racial backgrounds?

25 A. Yes, I do.

101.

(William Reynolds - Recross)

1 Q. And --

2 A. Well, I'm sorry, I don't represent.

3 Q. I'm -- I'm sorry.

4 A. I'm sorry.

5 Q. Do you -- do you -- are you involved in cases that involve litigants
6 of different ethnic and -- and racial backgrounds?

7 A. Yes.

8 Q. Okay. And during your appearances on those cases in Judge
9 Senzer's part, have you ever heard Judge Senzer make any
10 disparaging remarks or ethnically charged remarks about any of
11 those litigants or anyone else appearing in the courtroom?

12 A. Never.

13 Q. Have you spoken with other attorneys regarding various judges at
14 any point?

15 A. Could you clarify that please?

16 Q. Do you have conversations with other attorneys about the judges
17 that you appear before?

18 A. I try not to.

19 Q. Have you engaged in any conversations with other attorneys about
20 Judge Senzer that would enable you to determine his reputation
21 within the community?

22 A. Any conversations I would have with any other attorneys are
23 basically regarding the calendar and the cases -- and cases they were
24 involved in representing.

25 Q. Are you -- I'm sorry, are you aware of Judge Senzer's reputation

102.

(Hon. Debra Urbano-Disalvo - Direct)

1 within the legal community?

2 A. Yes.

3 Q. And what is that reputation?

4 A. That he's a fine judge.

5 Q. Does he have a reputation as far as fairness and impartiality?

6 A. Yes.

7 Q. What is that reputation?

8 A. He's very fair and he's impartial. I've not seen him impartial -- show
9 any partiality against any defendant at -- in any of my cases.

10 MS. AULIVOLA: Thank you. I have nothing
11 further.

12 MR. REYNOLDS: Thank you.

13 MS. CORREA: I have no redirect.

14 THE REFEREE: Fine. Thank you, sir.

15 MR. REYNOLDS: Thank you.

16 THE REFEREE: Next witness?

17 MR. BESSO: To the left of Michelle.

18 HON. URBANO-DISALVO: Okay.

19 MR. ZAGAMI: Okay, witness entering.

20 HON. URBANO-DISALVO: Good morning.

21 THE REFEREE: Good morning, ma'am. Please

22 be seated. The proceedings here are being digitally

23 recorded and the recording will be transcribed and in order

24 to facilitate a clear and accurate record we ask that you

25 speak slowly, clearly, and distinctly. Please refrain from

103.

(Hon. Debra Urbano-DiSalvo - Direct)

1 moving away from the microphone and talking over other
 2 speakers. Please refrain from responding until a question
 3 is completed and answer each question please with words,
 4 not gestures, not nodding. Please refrain from creating
 5 excessive background noise as it becomes amplified in the
 6 recording. If you have a cell phone, please see that it is
 7 turned off now. And if you'd be good enough now to raise
 8 your right hand? Do you swear or affirm under the
 9 penalties of perjury that the testimony that you are about
 10 to give is the truth, the whole truth, and nothing but the
 11 truth?

12 HON. URBANO-DISALVO: Yes, I do.

13 THE REFEREE: Please state your name.

14 HON. URBANO-DISALVO: Debra Urbano-
 15 DiSalvo.

16 THE REFEREE: Okay. Go ahead, ma'am.

17 MS. AULIVOLA: Thank you, Judge.

18
 19 **DEBRA URBANO-DISALVO**

20 having been duly sworn, was examined and testified as follows:

21
 22 **DIRECT EXAMINATION**

23 **BY MS. AULIVOLA:**

24 Q. Ms. DiSalvo, what do you do for a living?

25 A. Several things. I'm the full-time Village Attorney for the Village of

104.

(Hon. Debra Urbano-Disalvo - Cross)

1 Hempstead. I'm the elected judge in the Village of Amityville. I'm
2 also an Administrative Law Judge for the Suffolk County Traffic
3 Violations Bureau. On Thursday nights, I do their Thursday night
4 trials and I maintain a small practice.

5 Q. What type of law do you practice in your private practice?

6 A. Mostly real estate closings, estate, some corporate but, you know, a
7 mixed bag. I have a lot of experience in different areas of law so
8 oftentimes I'm consulted by other attorneys to either assist them in
9 appellate writing, motion writing, or just general topics of law
10 because of my varied expertise.

11 Q. When were you admitted to practice?

12 A. February of 1986, Second Department.

13 Q. And how long have you maintained that private practice?

14 A. When I left the Suffolk County Attorney's office in 1988 when I
15 started working for the Town of Huntington as the Assistant Town
16 Attorney I could have a private practice. So, I started right around
17 then. Prior to that, I was in government practice that prohibited
18 private practice.

19 Q. Was that at the Suffolk County Attorney's Office?

20 A. No, Town Attorney --

21 Q. Oh, town --

22 A. -- for one, I could have a part time practice as well as being an
23 Assistant Town Attorney. I worked under Magistrate, now
24 Magistrate Arlene Rosario who was then the Town Attorney.

25 Q. And how long have you been a full-time Village Attorney for

105.

(Hon. Debra Urbano-Disalvo - Cross)

1 Hempstead?

2 A. Since -- well, I started there in 2006 as the Assistant Village
3 Attorney, in -- August 26, 2006. Became the Village Attorney in
4 June of 2007.

5 Q. What type of practice do you do with the Village of Hempstead?

6 A. Everything related to municipalities, contracts, defense of 1983
7 actions, negligence actions, personnel matters. The Village of
8 Hempstead is a 400-plus employee, 135 police officers. Our own
9 water and sewer systems. It's like running a city so it would be the
10 equivalent of like a Corporation Counsel.

11 Q. Okay. And, as a judge in Amityville how -- how long have you
12 been -- been a judge in Amityville?

13 A. 2002, I was appointed as the acting judge. Ran in 2003, 2005, 2009,
14 2013, and again in 2017 and my term is currently underway.

15 Q. What types of cases do you hear as a judge in Amityville?

16 A. Any type of criminal matters up to misdemeanor jurisdiction. On
17 weekends a Village Court Judge sits and can issue family order of
18 protections that expire on that Monday. So, once in a while I may
19 have a Family Court order of protection, but the bulk of my calendar
20 is misdemeanor complaints, motor vehicle, VTL matters, and
21 Amityville Village Code, and the New York State Building Code,
22 Fire Code cases.

23 Q. How many cases approximately a year do you hear in that court?

24 A. Well, I usually have a calendar of 200 a night. So, I sit twice a
25 month, that's 400, 400 a month times 12.

106.

(Hon. Debra Urbano-Disalvo - Cross)

1 Q. Okay.

2 MR. BESSO: Forty-eight hundred.

3 A. Forty-eight hundred give or take.

4 Q. And what is your role with the Suffolk County Traffic Violations
5 Bureau?

6 A. I do their Thursday night trials. The Suffolk County Police
7 Department personnel that works the overnight tour instead of the
8 county paying them overtime to come in to do a day trial, they've
9 designated a night trial for Thursday night. And I, basically, either
10 do pleas that have been negotiated already or trials. VTL, vehicle
11 and traffic.

12 Q. How long have you been in that position?

13 A. Since the inception of the agency. so, I -- the agency -- I have to do
14 -- my husband deceased in 2012, so it was the following May. So,
15 May of 2013. That's how I remember it. Because it was right after.

16 Q. And are you familiar with Judge Paul Senzer?

17 A. Yes. I've known Judge Senzer since my appointment as the acting
18 Village Justice in Amityville in 2002.

19 Q. And in what context did you come to know him through that
20 position?

21 A. A variety of manners. I first met Paul, they used to have a Suffolk
22 County Magistrate Association regular meeting on Thursday nights.
23 That was -- that was set up by Judge Smith (phonetic) from
24 Riverhead and Paul was an active member of that court. I believe he
25 might have been either the Vice President at that time or one of the

107.

(Hon. Debra Urbano-Disalvo - Cross)

1 officers. So, I met Paul the first time then. And then we -- at that
2 time, your judicial training was in person. It wasn't online like they
3 do it now. So, twice a year we would all get together in a more
4 formal setting for judicial training. And Paul was the initial
5 instructor that was a liaison between the Office of Court
6 administration and the Town and Village Judges. So, he would set
7 up all the speakers and so on and so forth. So, in that role, I got to
8 know Paul even greater because I started doing some of the
9 programs as well as eventually Paul and I both shared it together in
10 terms of setting up the programs and the speakers and running
11 everything. Then, when I started working the Traffic Violations
12 Bureau, in the beginning, I didn't -- they didn't have a night court.
13 So, for that first year I took off vacation days to work in the Traffic
14 Violations Bureau. So, I'd work maybe once or twice a month, not
15 more than that. But being in a political job as a Village Attorney,
16 you never know what's going to happen with the administration. So,
17 I wanted to have the backup job that I could slide into in the event
18 that I was discharged as the Village Attorney. So, I would -- I
19 worked, I think, the year '13, '14 I was working with Paul during the
20 day there of some days that I would work and then when they started
21 the night court -- they actually did the night court on a Thursday
22 night to accommodate me. Part of the reason they could have done
23 it on a Tuesday night, but that's my night court in Amityville, so
24 they made it Thursday. So, I could be the Thursday night judge.
25 And then Paul and I regularly worked together on those Thursday

108.

(Hon. Debra Urbano-Disalvo - Cross)

1 nights.

2 Q. And when you say you worked together, you're both judges within
3 that Traffic Violations Bureau?

4 A. Yes.

5 Q. Okay. And what type of litigants appear in Traffic Violations
6 Bureau?

7 A. The same ones that appear in the Amityville Village Court as well as
8 the ones that appear on -- before me as a Prosecutor when I'm
9 working in my role as a Village Attorney in Hempstead. Matter of
10 fact, it's ironic. At one time I actually had a defendant that I saw
11 Tuesday night in Amityville and Wednesday night in Hempstead and
12 Thursday night in Hauppauge and he thought it was that Twilight
13 Zone episode where they kept on coming back to same town because
14 you couldn't believe it was the same person every single time that
15 they saw. But it's the -- it's your regular run-of-the-mill. It's every
16 demographic, every age, every sex, race, religion. Same -- I hate to
17 say it, unfortunately, a lot of times it's the same people.

18 Q. And have you throughout that time knowing Paul, have you -- are
19 you aware of what his reputation is as a judge?

20 A. Yes.

21 Q. What is that reputation?

22 A. Fair, honest, forthright. One of the things I like about Paul is that
23 once a year we meet with whoever the administrative judge is for
24 Suffolk County. And they -- they ask us questions about what's
25 going on in the Traffic Violations Bureau. And a lot of the judges

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(Hon. Debra Urbano-Disalvo - Cross)

1 are hesitant to say anything negative because they're afraid that their
2 hours may be cut. And Paul, like myself, are the ones that are vocal
3 and say we need Westlaw. Don't ask us to write decisions without a
4 computer. Don't ask us to do research doing a knee jerk reaction
5 from the bench. We need to have access to Westlaw and things of
6 that nature. He's one of the few people that actually will confront
7 the truth.

8 Q. Does he have a reputation in the community with respect to how he
9 treats litigants and attorneys that appear before him?

10 A. His reputation, as far as I know, is similar to just about everyone that
11 I sit with. We do so fairly and justly.

12 Q. Have you ever heard Judge Senzer make any disparaging remarks
13 about anyone whether it be a litigant or an attorney appearing in his
14 court?

15 A. In -- in Traffic Violations Bureau?

16 Q. In any context?

17 A. Not, never. I mean, quite honestly, we might say, "that guy was a
18 pain in the neck," but aside from that type of thing when you've had
19 a trial and you come back. "How'd the trial go?" "Oh, that guy
20 wouldn't shut up," something like that. That would pretty much be
21 it, but we all -- we all talk that way in terms of after a trial is over
22 with. If we're there for like a half hour or an hour when it should
23 have been 15 minutes.

24 Q. Does Judge Senzer have a reputation within the community with
25 respect to truthfulness and honesty?

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(Hon. Debra Urbano-Disalvo - Cross)

1 A. I've always found him to be truthful and honest.

2 MS. AULIVOLA: Thank you. I have no further
3 questions.

4 HON. URBANO-DISALVO: Okay, thank you.

5 THE REFEREE: Step up please, both the lawyers.

6 (PROCEEDINGS AT THE BENCH)

7 (PROCEEDINGS RETURN TO OPEN COURT)

8 Q. And, Ms. DiSalvo, you're here today pursuant to a subpoena that
9 was served upon you by my office, correct?

10 A. Yes, I am pursuant to subpoena.

11 MS. AULIVOLA: Okay. Thank you. I have
12 nothing further.

13 THE REFEREE: Cross, when you're ready.

14 **CROSS EXAMINATION**

15 **BY MS. CORREA:**

16 Q. Good morning, Judge.

17 A. Good morning.

18 Q. Judge DiSalvo, when was the last time you had an opportunity to
19 discuss Judge Senzer's reputation in the community?

20 A. Well, the Traffic Violations Bureau, when we're all sitting around in
21 -- in the judge's chambers it's not uncommon when the schedule
22 comes out to see who's working what month that they all -- that the
23 judges amongst themselves say, "Why do you think so and so got this
24 many days or that person got that many days?" And well oftentimes
25 it goes to the merits of their activity as -- as a judge. So-and-so got a

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(Hon. Debra Urbano-DiSalvo - Cross)

1 lot of time because he does trials quickly and effectively. So, I
2 would say on a monthly basis, as you're sitting there everybody
3 pretty much rehashes whose schedule and why they got it.

4 THE REFEREE: The question was when did you
5 last --

6 HON. URBANO-DISALVO: Probably last week.
7 I worked traffic violations last week and the August
8 schedule came out.

9 Q. And what specifically though did you discuss about Judge Senzer's
10 reputation in the community, his reputation.

11 A. "Is Paul working?" That's how it starts. "Yeah, he's working." "Oh,
12 he's working with me?" "No, he's not working with you." "Oh, I
13 like working with Paul because I know he's a good judge and I know
14 that we'll get out of here early because the -- the cases will move
15 effectively and efficiently."

16 Q. And when you were discussing his reputation last week, did you tell
17 the other members who you were speaking with that you're testifying
18 in his disciplinary matter?

19 A. No. It was only one other judge there. It was Judge Kay. We were
20 the only two working Thursday night. Because usually Judge -- it's
21 Judge Senzer would be the -- would move down some of the
22 Thursday nights. Sometimes it would be three of us. Sometimes
23 there would be two of us and that's when I looked at -- wanted to
24 know what the schedule, who that I -- who would I be working with
25 because I'm the steady Thursday night.

112.

(Hon. Debra Urbano-DiSalvo - Cross)

1 Q. At any point have you discussed with any members of the legal
2 community that you would be testifying here in Judge Senzer's
3 disciplinary matter?

4 A. The attorney who called me from their office went over the
5 testimony with me, told me I would testify. Aside from that --

6 Q. You're --

7 THE REFEREE: That would indicate that was Mr.
8 Besso?

9 HON. URBANO-DISALVO: Mr. Besso's office.
10 Yeah, they told me I would be testifying here.

11 Q. Other than the Judge's attorneys, have you discussed with any
12 members of the legal community when you were discussing Judge
13 Senzer's reputation that you would be testifying in his disciplinary
14 matter?

15 A. No.

16 Q. And have you heard when you were talking to members of the legal
17 community that Judge Senzer was charged with making any kind of
18 racist statements by the Commission on Judicial Conduct?

19 A. No one has said that to me.

20 Q. And you have not seen a formal written complaint in this case, is
21 that right?

22 A. No.

23 MS. CORREA: Okay, thank you. I have nothing
24 further.

25 THE REFEREE: Anything further?

113.

(Monsignor Ellsworth Walden - Direct)

1 MS. AULIVOLA: I have nothing further.

2 THE REFEREE: Thank you, Judge. You may step
3 down.

4 HON. URBANO-DISALVO: Thank you.

5 MR. ZAGAMI: Witness entering.

6 THE REFEREE: Please be seated. The
7 proceedings that are taking place here are being digitally
8 recorded. These recordings will be transcribed. In order
9 to facilitate a clear and an accurate record, we ask that you
10 speak clearly, distinctly, and directly into the microphone.
11 Please refrain from moving away from the microphone
12 and from talking over any other speaker. Please refrain
13 from responding until the question is completed and
14 please answer each question with words not a nod or a
15 gesture. Please refrain from creating excessive
16 background noise as it's amplified in the recording. If you
17 have a cell phone with you, please see that it's turned off
18 now. And if you'd be good enough to raise your right
19 hand? Do you swear or affirm under the penalties of
20 perjury that the testimony you're about to give is the truth,
21 the whole truth, and nothing but the truth?

22 MONSIGNOR WALDEN: I do.

23 THE REFEREE: All right. Please state your
24 name.

25 MONSIGNOR WALDEN: Monsignor Ellsworth

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(Monsignor Ellsworth Walden - Direct)

1 R. Walden.

2 THE REFEREE: Okay, Monsignor. Go ahead,
3 ma'am.

4

5 **MSGR. ELLSWORTH WALDEN**

6 having been duly sworn, was examined and testified as follows:

7

8 **DIRECT EXAMINATION**

9 **BY MS. AULIVOLA:**

10 Q. Thank you, Monsignor. Could you just give us a brief background
11 of your professional career?

12 A. Okay. I'm a Priest 47 years. I've been in five parishes in Suffolk
13 County. I was Pastor for 14 years in St. Thomas in Hauppauge. I'm
14 currently the Pastor for 15 years now at St. Patrick's in Smithtown.

15 Q. And -- and what is your position with that church?

16 A. I'm the Pastor.

17 Q. Okay.

18 A. I'm the Pastor.

19 Q. And through your role with that church, have you come to know
20 Judge Paul Senzer?

21 A. I have.

22 Q. And when did you first meet him?

23 A. About a year and a half ago.

24 Q. In what context?

25 A. He decided to go -- convert from the Jewish religion to the Catholic

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(Monsignor Ellsworth Walden - Direct)

1 religion. It was a long journey that he took over 10 years and he
2 decided that we had the program that he wanted to go to and
3 wonderfully seeing that he came. He was -- I actually baptized him
4 at the Easter vigil and then I had conversations with him about the
5 church, about his profession, and very impressed by him. A good
6 man.

7 Q. And what has his involvement with the church been since you've
8 met him a year and a half ago?

9 A. Well, he came to class every week and every week when he was
10 preparing to come into the church. We have the RCIA program,
11 which is a program that goes from September to the Easter vigil
12 that's -- and they meet every week and then at Easter vigil they come
13 into the church. And then, since that time he's come to Mass every
14 week. Sometimes a couple of times he'll come on Sunday. He's
15 become a lector in our church, just a wonderful member of our
16 parish.

17 Q. And -- and throughout that time have you had an opportunity to
18 interact with him when he's in the church and at these various
19 events?

20 A. I have. I've had a few conversations with him, yes.

21 Q. And what is -- what is his reputation within the parish community?

22 A. A wonderful man who came into our parish. He's a delight. He's
23 become a lector in the church. He's poured of a lot of enthusiasm into
24 the parish.

25 Q. In what way?

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(Monsignor Ellsworth Walden - Cross)

1 A. Well, he converted from Judaism to Catholicism and the journey
2 wasn't just he learned things. He got excited about it and reminding
3 us once again what it means to be a believer, what it means to be a
4 Catholic, what it means to be a follower, living our faith in today's
5 world and he brought that enthusiasm to us. It's a gift that converts
6 bring.

7 Q. And what reputation does he have within the parish with regard to
8 honesty and trustworthiness?

9 A. Oh, complete honesty and trustworthy as far as we can see, --
10 yes.

11 MS. AULIVOLA: Okay. Thank you. I have
12 nothing further.

13 MONSIGNOR WALDEN: Okay.

14 THE REFEREE: Cross?

15 **CROSS EXAMINATION**

16 **BY: MS. CORREA:**

17 Q. Good morning, Monsignor.

18 A. Good morning.

19 Q. Monsignor, have -- when was the last time that you had an
20 opportunity to talk about Judge Senzer's reputation with members of
21 the parish?

22 A. I'm not -- I'm confused.

23 Q. Have you ever spoken to other members of the parish about Judge
24 Senzer's reputation?

25 A. As a judge? Yes, we've -- we've talked about -- I've talked about our

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(Monsignor Ellsworth Walden - Cross)

1 conversations, a couple of conversations I've had with him. I don't
2 know much about the law, but I'm very impressed in the way he
3 presented, how he acts a judge, how he's concerned about the people.

4 Q. Let me rephrase it. I think the way I phrased it was probably
5 confusing. Have you had an opportunity to talk to other members of
6 your parish about Judge Senzer's reputation for honesty?

7 A. That specific virtue?

8 Q. Yeah, that specific virtue?

9 A. No.

10 Q. So you never talked about that with any of the members of your
11 parish?

12 A. No.

13 Q. Okay. And did you ever talk about his trustworthiness with any of
14 the members of your parish?

15 A. Not specifically.

16 Q. Thank you.

17 A. Okay.

18 MS. CORREA: I have nothing further.

19 THE REFEREE: Anything further?

20 MR. BESSO: No.

21 THE REFEREE: Okay, thank you, Monsignor,
22 you may step down.

23 MONSIGNOR WALDEN: Thank you.

24 MR. BESSO: May we have five minutes, Judge?

25 THE REFEREE: Sure.

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(Paul H. Senzer - Direct)

1 MR. BESSO: Thank you.
2 MS. AULIVOLA: Thank you, Monsignor.
3 MONSIGNOR WALDEN: Thank you.
4 [OFF THE RECORD]
5 THE REFEREE: The next witness?
6 FTR OPERATOR: On the record.
7 [ON THE RECORD]
8 THE REFEREE: Good point. Okay.
9 MR. BESSO: Judge Senzer?
10 JUDGE SENZER: Judge, may I bring this
11 forward?
12 THE REFEREE: Yes.
13 JUDGE SENZER: Thank you.
14 THE REFEREE: Please be seated, Judge.
15 JUDGE SENZER: Thank you.
16 THE REFEREE: Please raise your right hand. Do
17 you swear or affirm under the penalties of perjury that the
18 testimony you're about to give is the truth, the whole truth,
19 and nothing but the truth?
20 JUDGE SENZER: I do.
21 THE REFEREE: You want to place your name on
22 the record, please?
23 JUDGE SENZER: Paul H. Senzer.
24 THE REFEREE: Okay. Go ahead, Mr. Besso.
25 MR. BESSO: Thank you, Judge.

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(Paul H. Senzer - Direct)

PAUL H. SENZER

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY: MR. BESSO:

Q. Good morning, Judge Senzer.

A. Good morning.

Q. Would you briefly tell me your family and educational background?

A. Well, I was raised in Nassau County. I moved to Suffolk County in 1983. I went to the University of Rhode Island. I graduated there in 1977. I went to Hofstra Law School. I graduated from there in 1980 and I'm an attorney admitted in the Second Department of the State of New York since then.

Q. And when -- when were you admitted?

A. 1981, June of '81.

Q. And since that time -- well, withdrawn. What is your family situation?

A. I'm married. My -- my wife is Cheryl. She's an audiologist. I have three children who are adults now. Allison is 31. She's getting married in a couple of weeks. My son Michael is 26. He's a newly admitted attorney in the First Department, and my son James is 25. He's an artist and he lives in Brooklyn.

Q. Okay. And since 1981, just tell us your professional background?

A. I initially associated with a firm in Mineola. It was originally

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(Paul H. Senzer - Direct)

1 Meyer, English, Cianciulli and Peirez. It became Suozzi, English,
2 Cianciulli, and Peirez. I worked for a criminal defense attorney
3 whose name was and still is Stephen P. Scaring. In 1984, I went out
4 on my own and I established my own solo practice and I've had
5 offices in Mineola and Garden City for upwards of three decades
6 until the very tail end of 2014.

7 Q. And what was the nature of your practice?

8 A. It was largely criminal defense and appeals. There were some civil
9 litigation as well. Not very much personal injury work, just a little
10 bit. Family Court work, some probate work, occasional real estate
11 work but, essentially, it was a small volume solo practice.

12 Q. And when did you become a judge?

13 A. I was elected to the bench in Northport on March 15th, 1994. I
14 became the Northport Village Justice. I was sworn in on I believe it
15 was April 1st, 1994.

16 Q. And is that the -- what's the jurisdiction of the Northport Court?

17 A. The Northport Village Court is one of the larger local criminal
18 courts in Suffolk County, Amityville being the other. It's a high-
19 volume court in which there's preliminary jurisdiction over all
20 felonies. General trial -- just jurisdiction over everything else,
21 misdemeanors, local ordinance violations and traffic infractions.
22 Cases are prosecuted there by the Suffolk County District Attorney's
23 Office and then the Village itself has a prosecuting attorney for -- for
24 code matters.

25 Q. And you conduct trials at that court?

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(Paul H. Senzer - Direct)

1 A. Yes, bench and jury trials.

2 Q. And during the time that you have been the Village Justice, how --
3 how many trials would you say you have conducted?

4 A. Since 1994, I estimated -- well, I've -- I've heard over 100,000 cases,
5 7,000 of them being criminal. I've conducted approximately 1,000
6 hearings and/or trials over -- we're going now over 25 years.

7 Q. Okay. And do you have any other employment?

8 A. Yes. I'm a part time Judicial Hearing Officer for the Suffolk County
9 Parking and Traffic Violations Agency, which is a hybrid tribunal
10 that was formed on April 1st, 2013, in Suffolk County. It took the
11 place of what was and what people still call TVB, the Traffic
12 Violations Bureau, which is an administrative agency of the State.
13 Suffolk County used to have a traffic violations bureau very much,
14 actually identical to the operation that exists now in -- in New York
15 City. It was essentially state administered. Suffolk County took that
16 operation back from the State. There was legislation in Albany,
17 which permitted it and a new entity was formed in April of 2013.
18 So, instead of having administrative law judges there, which existed
19 in the State bureaucracy, there are now judicial hearing officers who
20 are -- who sit by designation of the District Administrative Judge in
21 our county.

22 Q. Okay. We've heard testimony today about outlying courts. Just for
23 the edification of the record and -- and for the Court, just describe
24 the judicial system in Suffolk County on the misdemeanor and, you
25 know, felony intake level?

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1 A. Well, it's a -- it's a big county. There are -- there are 10 towns in
2 Suffolk County. There are five in the west and five in the east. And
3 the western part of the county is known as a District Court area.
4 There are two district courts in New York State, one in Nassau
5 County and one which has jurisdiction over half of Suffolk County.
6 So Northport Village Court is in what's known as a District Court
7 area and the same Suffolk County District Attorney who prosecutes
8 in -- in the large District Court in Central Islip prosecutes in all of
9 the what we call outlying courts, which would be at the various
10 Village Courts sprinkled around the county. And in the eastern part
11 of the county there are still Town Courts. There are no Town Courts
12 in the -- in the western jurisdiction. That's been supplanted by the
13 District Court itself.

14 Q. Okay. And do you have any employment as an educator?

15 A. I -- I do. Since 2011, I've been employed at Farmingdale State
16 College as an adjunct instructor in the Criminal Justice Department
17 and in any given semester I'm teaching one and sometimes two
18 classes.

19 Q. And how long has that been going on?

20 A. Since 2011.

21 Q. And what is the -- the frequency of your teaching jobs?

22 A. It's usually one or two evenings a week. It's usually a Tuesday
23 evening and sometimes a Tuesday and a Wednesday evening. Some
24 years ago I was teaching during the day. When I had my own
25 private law practice, I was essentially self-employed and I was able

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(Paul H. Senzer - Direct)

1 to make my own hours and so I had daytime availability and they
2 were happy to get me during the days. I wound down my private
3 practice essentially end of 2014, beginning of 2015, because the
4 Traffic Agency asked me to work for them essentially on a full-time
5 basis. It really wasn't a full-time job because I'm not an employee. I
6 -- I get paid per diem, really hourly, so I was working at one point
7 four and a half days a week at the Traffic Agency. I am now
8 working fewer days at the Traffic Agency. I'd say maybe two to
9 three days per week. There are more people who want to be JHOs.
10 When we began, there was a smaller group of us. There's -- there --
11 there are more people who are sitting in judicial positions there and
12 so my time there has -- has -- has been somewhat reduced.

13 Q. And as your -- as a Village Justice you said you handled 70,000
14 criminal cases since you've been elected?

15 A. I'd say 7 -- 7,000.

16 Q. Seven thousand total since 1994?

17 A. I -- I -- I'd say I would think so. I know -- I know -- I know that I've
18 written approximately 350 decisions with respect to those cases, but
19 most of -- most of the jurisdiction would be vehicle and traffic, local
20 ordinance, so if there have been 100,000 cases since 1994, I would
21 estimate 7,000 of them to be criminal.

22 Q. When you say criminal you're not including like DWIs or anything
23 like that?

24 A. No, actually I am. What I'm not including would be felonies. I
25 mean I have preliminary jurisdiction over felonies, so all I do in a

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(Paul H. Senzer - Direct)

1 felony case is set bail and perform an arraignment and there -- and
2 there might be a felony hearing but then I'd lose jurisdiction over
3 those cases so I'm talking about misdemeanor cases that have -- that
4 have been -- been tried or disposed of.

5 Q. And in your court do people appear with attorneys and without
6 attorneys?

7 A. Yes.

8 Q. And would you tell the Court what your procedure is with regard to
9 both?

10 A. Well, with respect to individuals who are self-represented, they're
11 advised that if they are unable to afford counsel, counsel will be
12 appointed for them either through the Legal Aid Society of Suffolk
13 County or through the 18B Panel. Most of the time people who are
14 charged with -- with crimes are -- are represented by attorneys one
15 way or another. Very few of those individuals choose to represent
16 themselves ultimately. Although, it's their right to do, it's a very,
17 very small number.

18 Q. And I assume that the Northport Court is a Court of Record?

19 A. Well, that's a very interesting construct. It depends who you ask.
20 Court of -- a Court of Record is a special term of art and we're now
21 getting deep in the weeds of the State Constitution and what that
22 might mean. I do have a full-time stenographer when I'm on the
23 bench who is a woman who works in the District Court by day and
24 she has for 35 years and then she comes to Northport and does
25 stenographic transcription for us in the evening. However, when I

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(Paul H. Senzer - Direct)

1 sit between Mondays, which I will do when there's an arraignment
2 situation or an arrest on a weekend and I don't have a court
3 stenographer, the office of Court of Administration provides laptop
4 equipment. Which is actually recording equipment that we are
5 required to use so that we are maintaining some kind of a preserved
6 record of our proceedings. But there -- I think there are many people
7 across the State in the legal community who would not regard our
8 Village Court as being necessarily a quote, unquote, "Court of
9 Record," but yet there are records maintained.

10 Q. But there is a stenographer there on a Monday night when you're
11 dealing with the public?

12 A. Always.

13 Q. And in your court, I assume that you have every representative of
14 every race and ethnic background?

15 A. Yes, sir.

16 Q. Okay. Have you ever made any disparaging remarks to any of those
17 litigants at any time that would be recorded by your court reporter?

18 A. No, sir, never.

19 Q. Now you were sitting here yesterday when the Colemans testified.
20 Is that correct?

21 A. Correct.

22 Q. And there was a time in 2000, in, I guess it was '04 that you
23 represent -- first represented or 2014 that you first represented the
24 Colemans?

25 A. Well, that's correct. Really 2013, was when I was engaged by

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(Paul H. Senzer - Direct)

1 Jennifer Coleman to assist her in connection with a gender
2 discrimination action that she asked me to file on her behalf.

3 Q. You represented her in two matters, is that correct?

4 A. Ultimately, I represented her and her husband in a grandparent
5 visitation petition that I was asked to bring in Suffolk County Family
6 Court.

7 Q. And how long had you known Jennifer Coleman?

8 A. I met Jennifer Coleman in the mid-90's. She was at that time a
9 house cleaner who was referred to us by a neighbor. Our kids, our
10 three kids were smaller. They were little kids in those days and my
11 wife is employed full time as -- as I am and we needed some help
12 keeping after the house, so we employed Jennifer to clean for us and
13 she did so for a few years initially and, thereafter, occasionally when
14 we would go away. Like if we would go to Disney World with our
15 kids, Jennifer would look after our cats.

16 Q. Okay. And you had an opportunity to look at the exhibits that were
17 proffered by the petitioner in this case, the emails?

18 A. Yes.

19 Q. Okay. And you created some of those emails?

20 A. I did.

21 Q. Okay. And some of those emails contained improper language,
22 obscenities, and other derogatory terms?

23 A. There was -- I'm sorry to say, I fell down and I used profane
24 language in email communication with my client, which I assumed
25 was private communication. I'm not claiming any privilege because

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(Paul H. Senzer - Direct)

1 I know there is none legally. But I think it's safe to say that I was --
2 as an attorney, unprofessional in -- in resorting to the use of -- of
3 profane and blue language in trying to drive a point home to my
4 client or my clients or trying to convince them to go one way or
5 another or -- or to follow certain pieces of legal advice.

6 Q. And how would you characterize the language that you used with
7 regard to the practice of law?

8 A. Well, I don't think it's appropriate for any attorney to denigrate -- to
9 denigrate him or herself or the profession in any way, shape, or form
10 by using language that reflects poorly on the profession. The lure of
11 instant communication, I guess in pressing a button and using email
12 is -- is dangerous business. My clients, but in particular Mrs.
13 Coleman, well, this was a very, very needy individual. A demanding
14 client who lived on her iPhone, on her laptop, on her computer and
15 this was an expedient way for us to communicate. And there was an
16 awful lot of email communication and there was an awful lot of back
17 and forth and it became very conversational and anecdotal and
18 almost chatty. But in trying to couch legal advice I -- I became far
19 too conversational and far too familiar in resorting to particular
20 words that I think reflect very poorly on me as an attorney and
21 obviously, as a judge.

22 Q. And on the profession?

23 A. Well, for certain.

24 Q. And you've expressed to the Commission on a number of occasions
25 your regret for that using that terminology, is that correct?

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(Paul H. Senzer - Direct)

1 A. I have a profound and deep regret for using the words that -- that
2 were deployed in those emails because, quite frankly, that's not who
3 I am. That's not how I was brought up. That's not how I conduct
4 myself as an attorney in public and certainly never as a judge in
5 public. I realize that as a judge my obligation is a -- is a 24/7
6 obligation. I'm always a judge wherever I am and in whatever I do.
7 It just didn't dawn on me, I'm sorry to say, that when I was sending
8 emails to clients in connection with legal advice that that somehow
9 had a nexus or a connection to my judicial persona but I've learned
10 the hard way that is certainly does.

11 Q. Now you also heard their testimony yesterday from Mr. and Mrs.
12 Coleman concerning the discrimination case in Hempstead, is that
13 correct?

14 A. Yes, sir.

15 Q. And they both testified that there was a conversation after the lunch
16 break with you and concerning Judge Jackson, is that correct?

17 A. I heard that, that's correct.

18 Q. And they claim that you called you her a "fucking nigger," is that
19 correct?

20 A. That's their claim.

21 Q. Did you ever make that comment?

22 A. No, sir, never.

23 MR. BESSO: I have no further questions.

24 THE REFEREE: Cross? Do you need a couple of
25 minutes before you --

129.

(Paul H. Senzer - Cross)

1 MS. CORREA: No, I'm good.

2 THE REFEREE: Okay.

3 **CROSS EXAMINATION**

4 **BY MS. CORREA:**

5 Q. Good morning, Judge.

6 A. Good morning.

7 Q. Judge, you just testified that you used profane and blue language.

8 What did you mean by blue language, in particular?

9 MR. BESSO: Judge, I can't hear the question. I'm
10 sorry. Could you talk into the microphone please,
11 Brenda?

12 MS. CORREA: Yeah -- yeah, sure.

13 Q. Judge, you just testified that you used profane and blue language.

14 What did you use -- mean by blue language?

15 A. I think anything that could be construed as being a curse word is -- is
16 blue language and they're in -- it's in the exhibits. From the get-go,
17 I've never denied being the author of -- of that language. In fact, I
18 supplied much of this material to the Commission and never -- I've
19 always admitted authorship.

20 Q. I just want to clarify the "blue" though. Is that -- are you suggesting
21 it's somehow related to blue-collar workers?

22 A. Oh, gosh no. When I say blue I'm just using a colloquial term. To
23 me, blue language means to have a potty mouth, to curse, to cuss. I
24 could give you examples if you would like me to.

25 Q. No, I have your emails. No, thank you.

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(Paul H. Senzer - Cross)

1 A. Right.

2 Q. You've read the Formal Written Complaint. Is that right?

3 A. Yes.

4 Q. Okay. You reviewed the nine emails that you were contained in the
5 formal, written complaint, right?

6 A. I did.

7 Q. Okay. And these were private conversations you were having with
8 your client, right?

9 A. I -- I assumed they were strictly private conversations that would go
10 no further than my client. That is correct.

11 Q. And you were the attorney at that time?

12 A. Yes, I was acting in the -- in my role and in the persona of an
13 attorney.

14 Q. And the Colemans were your clients at the time?

15 A. Yes.

16 Q. They paid you money to represent them?

17 A. They did.

18 Q. Okay. How much did they pay you?

19 MR. BESSO: Objection, Judge, that's not relevant.

20 THE REFEREE: Overruled.

21 A. I think that in connection with the employment discrimination
22 matter starting in 2013, there was an initial retainer of \$7,500.

23 Ultimately, when it went to trial there was a supplemental
24 engagement fee, which I'm pretty sure was \$5,000 dollars. The
25 grandparent visitation matter I'm pretty sure involved a fee of

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(Paul H. Senzer - Cross)

1 \$4,500.

2 Q. And these email communications that are in Exhibits 1 through 9,
3 you're giving them legal advice, is that fair to say?

4 A. It's not just fair to say, it's -- it's 100 percent accurate to say that's
5 what I was intending to do. I was intending to convey legal advice
6 and to do what lawyers do in counseling clients who are confronting
7 difficult situations which they -- they certainly were.

8 MS. CORREA: Judge, if I may approach the
9 witness with the exhibits.

10 THE REFEREE: Sure.

11 JUDGE SENZER: Thanks.

12 Q. Judge, I just handed you up what's in evidence as Commission
13 Exhibits 1 through 9. They're all the emails. If you can take a look
14 at the first email, Exhibit 1. Judge, on the bottom is it fair to say
15 Jennifer Coleman is basically asking your legal advice as to whether
16 or not she can ask to talk to the grandson?

17 A. No, she's actually asking if she could get a Family Court judge to
18 talk to her grandson.

19 MR. BESSO: Judge, I'm going to object to this
20 line of questioning. This is appropriate perhaps for a
21 grievance matter and so forth. The Judge is here because,
22 as an attorney, he's alleged to have made certain
23 comments, which were offensive as far as the Commission
24 was concerned in the emails. He's indicated that he did
25 make those comments. We have emails in -- in evidence,

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(Paul H. Senzer - Cross)

1 which come from Judge Senzer. Asking him about his
2 legal contact with his clients as well as what he did in
3 terms of representation really has no bearing on these
4 issues.

5 THE REFEREE: Overruled.

6 MS. CORREA: Judge --

7 THE REFEREE: Overruled.

8 MS. CORREA: Thank you.

9 Q. If you can continue with your answer.

10 A. Well, I think you -- you asked a question and I -- I answered it. She
11 was interested in knowing whether or not she could get a Family
12 Court judge to have a personal conversation with her eight or nine-
13 year-old grandson.

14 Q. And at this point, on October 24th, were you her attorney at that
15 point?

16 A. Well, I was her attorney for sure and because the employment
17 discrimination case began in -- well, at least my representation began
18 in 2013 and it continued to the end of '14 so I certainly was her
19 lawyer.

20 Q. And were you her lawyer on the Family Court matter at that point?

21 A. I -- I can't honestly tell you whether or not the separate retention
22 occurred before or after October 24th, 2014. But I can tell you that
23 there was always discussion. She would always, and so would her
24 husband, Mr. Coleman, bring up the separate issue of the problems
25 they were having with respect to their daughter and access to their

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(Paul H. Senzer - Cross)

1 grandson. And they had actually, at one point, engaged another
2 attorney. So, I -- I don't know whether or not I was officially their
3 attorney with respect to the Family Court petition at that point in
4 time. But they were picking my brain, if you will, and they were
5 asking me for some advice with respect to Family Court matters
6 generally and what happens with children.

7 Q. The Colemans are not lawyers, is that right?

8 A. That's correct.

9 Q. Right. They didn't go to college?

10 A. As far as I know, probably not.

11 Q. And you do answer Mrs. Coleman's question, is that right?

12 A. I tried -- I tried every time I was contacted by her to be responsive.
13 So, the answer is yes.

14 Q. Yes. And you basically in your email you're giving her legal
15 analysis of -- to answer her question?

16 A. I -- yeah, I think that's fair to say, I gave her -- I gave her an opinion.

17 Q. And that last part of it where it's in parenthesis, " i.e., as against that
18 bitch daughter of yours." That doesn't fall into the category of legal
19 analysis, is that fair to say?

20 A. Well, that's a perfect example of blue language, at least my depiction
21 of what blue language is. I mean, that is -- that is surplusage that is
22 thrown in, I suppose, in a vain attempt to commiserate with -- with
23 my client who had complained about the conduct of her daughter
24 generally.

25 Q. There is no actual legal analysis in that clause though, is that right?

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(Paul H. Senzer - Cross)

- 1 MR. BESSO: Objection, Your Honor.
- 2 THE REFEREE: Overruled.
- 3 MR. BESSO: We're getting very far afield --
- 4 THE REFEREE: Yeah.
- 5 MR. BESSO: -- of the issues.
- 6 THE REFEREE: Step up please -- step up please,
- 7 both sides.
- 8 [PROCEEDINGS AT BENCH]
- 9 [PROCEEDINGS RETURN TO OPEN COURT]
- 10 Q. Judge, is it fair to say that in Exhibit 1 that last clause, "As against
- 11 that bitch daughter of yours," doesn't add to your legal analysis?
- 12 A. I think that's fair to say.
- 13 Q. Thank you. Going to Exhibit 2. Judge, drawing your attention to
- 14 the part of your email where you say, "Her lawyer is a cunt on
- 15 wheels, sorry, for the profanity and don't quote me, so be prepared."
- 16 There's many other things that you could have said other than calling
- 17 your adversary --
- 18 MR. BESSO: Objection.
- 19 Q. -- a cunt --
- 20 THE REFEREE: Well, let me hear the question
- 21 please.
- 22 Q. -- to convey that she was aggressive, is that right?
- 23 MR. BESSO: Objection. She's calling for
- 24 speculation, Your Honor.
- 25 THE REFEREE: I'll allow it.

135.

(Paul H. Senzer - Cross)

1 Q. Would you agree that calling someone a cunt is sexist?

2 A. I've spent a lot of time and I've -- I've had a lot of interior
3 conversation as to why I used that word on that particular occasion
4 and in this particular email. I could you tell you that even though it's
5 not an excuse the very genesis of my relationship with Mrs.
6 Coleman involved her immediate custodial supervisor who used that
7 very word against her as well as other epithets against women. And
8 then chose to videotape her and then would laugh at her in the
9 presence of other employees quoting and re quoting that word. And
10 the -- my work product for her in connection with the Human Rights
11 Division actually highlighted someone else using that word and
12 other words against my client. That was the centerpiece of -- of the
13 petition that I drafted for her to sign, which she did sign and which
14 was presented to the Division. Division investigators found
15 probable cause to believe that she was the subject of gender
16 discrimination because those words were used along with other
17 kinds of conduct against her. That was part of our vocabulary, I'm
18 sorry to say, in the long course of my representation of this
19 individual. At another juncture, she indicated that her own daughter
20 called her that very word in front of the eight-year-old son, so it was
21 part of our lexicon. Is that an excuse? No, that's not an excuse.
22 Have I ever used that word before or since, professionally or
23 otherwise? No, I haven't. I was trying to convey to the client that
24 she was up against a very aggressive adversary who could be
25 counted upon to be zealous in representing a client. And I thought

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(Paul H. Senzer - Cross)

1 that the lawyer was, frankly, not the kind of individual who would
2 conciliate the Family Court case, which is what my client wanted
3 ultimately anyway. And I could have used any number of other
4 words, flamboyant, aggressive, persistent. No, it's atrocious to use
5 this language. I -- I have no defense that I can bring to bear in the
6 use of this language other than it was a call back to the use of this
7 word ironically in -- in -- in a case that I prosecuted on her behalf.

8 Q. That doesn't answer my question. My question is, is it a sexist
9 word?

10 A. Well, could one say that it's a sexist -- yes, to the -- to the extent that
11 it objectifies a human being, well, yes, obviously.

12 Q. Do you think it's a sexist word?

13 A. I do.

14 Q. And are you saying because Mrs. Coleman was called a "cunt" by
15 her supervisor that that made it okay for you to use the "cunt" word
16 in the email?

17 MR. BESSO: Objection, Your Honor.

18 THE REFEREE: No, sustained.

19 Q. Do you think it showed a lack of sensitivity on your part to use the
20 same word that Mrs. Coleman was used by her supervisor?

21 MR. BESSO: Objection, Your Honor.

22 THE REFEREE: Overruled.

23 A. Absolutely.

24 THE REFEREE: Strike it.

25 MS. CORREA: Strike it? I'm sorry.

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(Paul H. Senzer - Cross)

1 THE REFEREE: Right. Let the answer stand.

2 MS. CORREA: Thank you.

3 Q. In the emails you called Mrs. Coleman's daughter various different
4 obscenities, a bitch and an asshole. Did you consider that that also
5 showed a lack of decorum that you're calling her daughter these
6 obscenities?

7 A. Are you asking me whether at the time that I hit the key and sent the
8 emails whether I considered that?

9 Q. Yes, or since?

10 A. I can tell you that no particular thought process went into composing
11 that language and since the time the send key was depressed I have
12 regretted the use of that language more times than I can -- I can -- I
13 can recall.

14 Q. And in your testimony, you, on direct, you said that you had a needy
15 client. Is that right?

16 A. Correct.

17 Q. And by that needy client are you talking about Jennifer Coleman or
18 Walter Coleman or both?

19 A. I'd say principally Mrs. Coleman was the -- the -- the needier of -- of
20 the two clients.

21 THE REFEREE: What do you mean by "needy"?

22 JUDGE SENZER: She was constantly seeking
23 advice, support, consolation. She was always on a
24 computer. She was constantly resorting to self-help and
25 looking up articles and trying to do her own research and

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(Paul H. Senzer - Cross)

1 she was always in need of knowing what the next step
2 might be, wanting to understand who our adversaries
3 were, what would be around the corner, strategy. She
4 was, I don't -- I don't want to say high maintenance but
5 there are some clients who let well enough alone and you
6 don't hear from them very often. She was the opposite. I
7 heard from her all the time, daily, if not multiple times on
8 a daily basis. She needed constant hand holding so -- and
9 that's what I meant by needy.

10 Q. But she didn't use any of this profanity in her emails to you. Is that
11 right?

12 A. I don't think that that's correct. I mean, I -- I know that I turned over
13 to the Commission --

14 Q. Can you look at the emails in evidence and point to me where you
15 see her using the profanity that you used?

16 THE REFEREE: Judge, can he have an
17 opportunity to answer the question?

18 THE REFEREE: Yes, but let the witness answer
19 please.

20 A. I know that I turned over to the Commission an incredible volume of
21 back and forth email between Mrs. Coleman and myself. I know
22 that she definitely did use blue and/or profane language in much -- in
23 much of her email, which may not be represented here in terms of
24 these exhibits, which I think are cherry-picked exhibits. I -- I haven't
25 looked at all of these exhibits but if you tell me that she's not

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(Paul H. Senzer - Cross)

1 reflected as using these words in them I'll believe you. But it's not as
2 if she did not use certain words that could be regarded as offensive
3 or profane. She -- she did in describing her daughter, in describing
4 her ex-son-in-law, in describing people with whom she worked.
5 This -- she -- she was not a hothouse flower. She was a plain-spoken
6 individual who spoke in -- in common language the way many
7 people do. And I suspect that what I was doing was pandering or
8 patronizing her in trying to bring myself down to that level.

9 Q. So, are you saying because you are taking the position of that Mrs.
10 Coleman used what you refer to as blue language that it was okay for
11 you to use that blue language?

12 A. Well, I don't think it was okay. I said earlier that I thought it was
13 unprofessional. But if I have to go back and try to reconstruct
14 psychologically why it was that I said what I said when I sent an
15 email, I suspect I was trying to relate to her in plain English, to
16 commiserate with her, to empathize with her, to be supportive of her
17 and, obviously, that was misguided.

18 Q. Wouldn't there be actual ways of showing actual empathy rather
19 than using profanity?

20 MR. BESSO: Objection, Your Honor.

21 THE REFEREE: I'll allow it. You can answer.

22 A. Well, that's a hypothetical question but, of course, in hindsight,
23 certainly.

24 Q. You could have said, "I'm so sorry that you're going through this"?

25 MR. BESSO: Objection, Your Honor.

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(Paul H. Senzer - Cross)

1 THE REFEREE: Sustained. It's been answered.

2 MS. CORREA: Thank you.

3 Q. Judge, is it fair to say that you do not use these obscenities in your
4 court?

5 A. Yes.

6 Q. All right. You'd never say the word "bitch" on the bench, right?

7 A. Never.

8 Q. You'd never say the word "asshole" on the bench?

9 A. Let me put it to you this way. If I have a criminal complaint in front
10 of me and there's a supporting deposition attached to it and I'm in
11 the midst of an arraignment and I have to read it in the course of
12 performing an arraignment, I professionally have had to utter words
13 that are not from my mouth but in which I'm quoting others. But I
14 think the gist of your question is would I originate those words as --
15 as the author as a judge in court from the bench, the answer is no.

16 Q. And the same thing for, "scumbag", you would never author those
17 words from the bench?

18 A. Correct.

19 Q. And you would never ever say the word "cunt" on the bench?

20 A. That's correct.

21 Q. Okay. And you would never make the remark about someone's
22 eyelashes or a physical feature of a female attorney, is that correct?

23 A. That's correct.

24 Q. Okay. You would never have said the word "cunt" to Ms.

25 McGuire's face, is that correct?

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(Paul H. Senzer - Cross)

1 A. That's correct.

2 Q. And this profanity, that would show a disrespect to the litigants, isn't
3 that correct?

4 MR. BESSO: Objection, Judge. I -- I don't
5 understand the nature of this questioning. The Judge has
6 already admitted he made these comments. Are we
7 psychologically looking for some kind of answers here?
8 Is Ms. Correa indicating that -- that she's a psychiatrist and
9 try to figure out what he would do and what he wouldn't
10 do? I don't understand nature of questioning. I don't think
11 it's relevant to these proceedings and she's going far afield
12 of what the charges are here delving into his -- his psyche
13 or whatever it may be.

14 THE REFEREE: Let me hear the question again.

15 MS. CORREA: Sure. This profane language, you
16 would agree, as a judge, if you were to use this in court
17 that would show a lack of respect to the litigants?

18 MR. BESSO: Asked and answered.

19 THE REFEREE: I'll allow it.

20 A. If a judge were to use profane language in open court with respect to
21 a litigant, would that show disrespect to the litigant?

22 Q. Yes.

23 A. That's -- it's a hypothetical question but I certainly would agree with
24 that proposition.

25 Q. Wouldn't that also be true that you would show a lack of disrespect

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(Paul H. Senzer - Cross)

1 to your clients by speaking in such terms as their attorney?

2 A. It's -- it's really difficult for me to answer that question. Certainly, at
3 no point in time was any disrespect intended with vis-à-vis my
4 client. In fact, just the opposite. What I think I was trying to do in a
5 very misguided way was to bolster them, support them, and actually
6 ironically, yes, even respect them. I was taking their side. I was -- I
7 was in combat. I was in the midst of litigation not as a judge but as
8 an attorney, but as a litigator. We were fighting. We were fighting
9 two distinct battles in two different venues, which were emotional
10 for my clients and I was taking their side. So far from ever intending
11 to disrespect them, and especially Mrs. Coleman, I was actually
12 trying to, in a funny way, embrace her, embrace her position and let
13 her know that I -- I took her side as her advocate.

14 Q. Having had the benefit of time, do you now see how this shows a
15 lack of respect to your clients?

16 A. Well, I certainly know how hurtful --

17 Q. Yes or no?

18 A. The answer would have to be yes.

19 Q. Thank you. Now in addition to "cunt" being a sexist term, would
20 you also say it's a derogatory term?

21 A. Yes.

22 Q. It's a derogatory term used specifically against women?

23 A. Well, I -- I think it objectifies a human being. So, of course, yes.

24 Q. A woman?

25 A. That's correct.

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(Paul H. Senzer - Cross)

1 Q. And did you personally know Karen McGuire?

2 A. I -- I only knew Ms. McGuire professionally.

3 Q. Had you had cases with her?

4 A. Occasionally.

5 Q. How many --

6 A. From -- not many -- fewer than five I would say over maybe 30
7 years.

8 Q. But in that -- rather than talking about the experience that you had
9 with her you just chose to use a derogatory word, is that right?

10 A. Listen --

11 Q. Yes or no?

12 A. -- if I could have used the word "obstreperous" I would have but I --
13 I used a word that I should have not used and that was
14 unprofessional.

15 Q. And you said it behind her back?

16 MR. BESSO: Objection, Your Honor.

17 THE REFEREE: All right. Sustained.

18 Q. Would you agree that "nigger" is the worst word that someone can
19 call a black person?

20 A. Absolutely.

21 Q. Thank you. One second. The Colemans have never filed any kind
22 of fee suit against you, is that right?

23 MR. BESSO: Objection.

24 THE REFEREE: About what?

25 MS. CORREA: Any kind of lawsuit for fees.

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(Paul H. Senzer - Cross)

1 MR. BESSO: Objection, Your Honor. Not
2 relevant. May we approach for a moment?

3 MS. CORREA: Oh, absolutely it's relevant.

4 MR. BESSO: May we approach for a moment,
5 Judge?

6 THE REFEREE: Step up.

7 [PROCEEDINGS AT BENCH]

8 [PROCEEDINGS RETURN TO OPEN COURT]

9 THE REFEREE: All right, what's your question?

10 Q. Judge Senzer, did the Colemans ever file a legal action against you
11 for legal fees?

12 A. No.

13 MS. CORREA: Thank you. I have nothing
14 further.

15 MR. BESSO: No redirect, Your Honor.

16 THE REFEREE: Thank you, Judge, you may
17 step down.

18 JUDGE SENZER: Thank you. Judge, should I
19 leave the exhibits here?

20 MS. CORREA: Oh, I can take them from you.

21 JUDGE SENZER: All right.

22 MR. BESSO: No further witnesses, Your Honor.

23 THE REFEREE: Off the record. Lawyers, step up
24 please.

25 [OFF THE RECORD]

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(Matter of Paul H. Senzer - Colloquy)

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FTR OPERATOR: On the record.

[ON THE RECORD]

THE REFEREE: All right. After discussing the matter with attorneys, I've set October the 12th as the date for the receipt of the memorandum from both sides. If that needs -- that date needs to be adjusted the lawyers can contact each other and inform me.

MR. LEVINE: I'm sorry and what will be the date for the reply papers?

THE REFEREE: I thought they'd both --

MS. CORREA: Do you want to do it like 10 days or two weeks after that?

MR. BESSO: Say it again, I didn't hear you.

MR. LEVINE: For the dates of the reply. In other words, we respond and we have a right to reply to each other.

MS. CORREA: That's our initial submission date is the 12th so if you want to set the reply two weeks from then?

THE REFEREE: All right. If there's a reply, by the 26th of October.

MS. CORREA: Okay.

MR. BESSO: Great, thank you.

MS. CORREA: Thank you, Judge.

THE REFEREE: Okay. All right. That concludes

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(Matter of Paul H. Senzer - Colloquy)

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these proceedings.

MR. BESSO: Thanks, Judge.

MS. CORREA: Thank you, Judge.

MR. LEVINE: Thank you.

(WHEREUPON, the examination in the *Matter of Paul H. Senzer* was adjourned at 12:33 PM on August 7, 2018.)

EXHIBITS

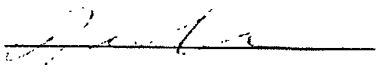
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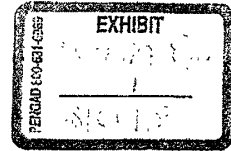
CERTIFICATION

I, J ADICKES, a proofer for ANP Transcriptions, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the proceedings proofed by me, to the best of my ability, in the matter held on August 7, 2018.

Signature: 

Date: 11/8/2018

COMMISSION EXHIBIT 1 -
REDACTED EMAIL, DATED NOVEMBER 17, 2016



[REDACTED]

From: [REDACTED]
Sent: Thursday, November 17, 2016 8:31 PM
To: [REDACTED]
Subject: Fwd: Jen Coleman

-----Original Message-----

From: paulsenzer [REDACTED] >
To: wjcoleman [REDACTED] <t>
Sent: Fri, Oct 24, 2014 11:45 am
Subject: Re: Jen Coleman

This is the reason the Court will appoint an "attorney for the child" (law guardian). This attorney is the judge's "eyes and ears." IF absolutely necessary, the Court "may" speak with [REDACTED] at some point, ultimately. But for now, I think this Family Offense Petition should be dismissed on its face because it is legally insufficient. It doesn't state a recognized "family offense" as against the complainant (i.e., as against that bitch daughter of yours).

-----Original Message-----

From: wjcoleman <[REDACTED]>
To: paulsenzer <[REDACTED]>
Sent: Fri, Oct 24, 2014 5:51 am
Subject: Jen Coleman

Can I request the judge talk to my grandson, to see his feelings about his grandparents,
or is he too young, He will be 8 January 5 th?

Sent from Jennifer's iPad

COMMISSION EXHIBIT 2 -
REDACTED EMAIL, DATED NOVEMBER 28, 2016



[REDACTED]

From: [REDACTED]
Sent: Monday, November 28, 2016 9:58 AM
To: [REDACTED]
Subject: Fwd: Jen

-----Original Message-----
From: paulsenzer <[REDACTED]>
To: wjcoleman <[REDACTED]>
Sent: Tue, Nov 25, 2014 12:51 pm
Subject: Re: Jen

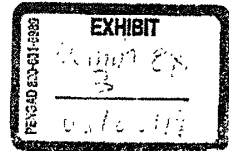
I don't believe she will give in. And I don't believe she will represent herself once we serve her. Her lawyer is a cunt on wheels (sorry for the profanity...and don't quote me), so be prepared.

-----Original Message-----
From: Jennifer <[REDACTED]>
To: paulsenzer <[REDACTED]>
Sent: Tue, Nov 25, 2014 12:33 pm
Subject: Jen

Oh by the way my daughter just happened to get engaged to this Guy when you sent the letter to her and attorney Karen mcquire. My daughter will not pay a attorney
I believe she will give in or represent herself

Sent from my iPhone

COMMISSION EXHIBIT 3 -
 REDACTED EMAIL, DATED NOVEMBER 28, 2016



From: [REDACTED]
 Sent: Monday, November 28, 2016 9:59 AM
 To: [REDACTED]
 Subject: Fwd: Jen

-----Original Message-----

From: paulsenzer <[REDACTED]>
 To: wjcoleman <[REDACTED]>
 Sent: Tue, Nov 25, 2014 10:52 am
 Subject: Re: Jen

I need to warn you about calling the school or the counselor. There are NY cases in which grandparents were actually denied visitation because they were too heavy-handed in spying, stalking and contacting schools, strangers and other third parties. You are going to have to moderate this conduct because they will turn it around on you. You should know by now that people who work in schools are assholes.

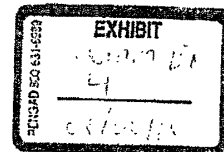
-----Original Message-----

From: Jennifer <[REDACTED]>
 To: paulsenzer <[REDACTED]>
 Sent: Tue, Nov 25, 2014 10:46 am
 Subject: Jen

Will get you the stuff I gave her
 She had said they do a video screen
 Of the child and ask indirect questions about vacations etc
 He has had panic attack in school
 Heard through my mom, I called school and spoke to counselor
 They couldn't comment. In court my daughter stated this is because of arguments.
 we haven't seen him
 Only minutes at the fair the only argument was her calling her mom the name
 frank called me in front of him on June before that I'd leave the room when she
 came over so I didn't have to see her. I hope he hasn't been brainwashed by now

Sent from my iPhone

COMMISSION EXHIBIT 4 -
REDACTED EMAIL, DATED NOVEMBER 28, 2016



[REDACTED]
From: [REDACTED]
Sent: Monday, November 28, 2016 9:44 AM
To: [REDACTED]
Subject: Fwd: Coleman papers

-----Original Message-----

From: paulsenzer <[REDACTED]>
To: wjcoleman <[REDACTED]@net>
Sent: Tue, Jan 13, 2015 5:35 pm
Subject: Re: Coleman papers

UPDATE:

Went back to Family Court; they regenerated the Orders to Show Cause for each of you against each of them (your daughter and ex-son in law); I picked them up and hand carried them to my process server in Mineola --gave him the complete lowdown. Gave him a check for \$252 for necessary personal service and filing proof of service with Court in CI by 1/31 deadline (he will do it way before that). Please send reimbursement check in that amount to my "new" office address: [REDACTED] On 2/10, when we are in Family Court, an attempt will be made to "conciliate" this matter first before a junior-judge, a "Court-Attorney-Referee" who works in the court system directly under the Family Court judge. Her name is Colleen Fondulis. We will appear entirely calm and reasonable...let your daughter act like the asshole she is. If "working it out" doesn't work, we ramp up to possible trial, etc.

When the shit hits the fan (i.e., she gets served or her ex hubby does and you happen to hear about it), let me know if they reach out to you.

IF they do, stay calm and cool. Just say: "All we want is to resolve this amicably for [REDACTED]'s best benefit." DON'T say or commit to anything else. Jen --this means you.

love,

PS

-----Original Message-----

From: wjcoleman <[REDACTED]>
To: paulsenzer <[REDACTED]>
Sent: Fri, Jan 9, 2015 4:43 pm
Subject: Coleman papers

Thank you for the call we'll keep a look out for the paper work. Walter Coleman
Sent from my iPad

COMMISSION EXHIBIT 5 -
REDACTED EMAIL, DATED NOVEMBER 28, 2016



[REDACTED]
From: [REDACTED]
Sent: Monday, November 28, 2016 9:42 AM
To: [REDACTED]
Subject: Fwd: THE TWO SCUMBAGS WERE SERVED

-----Original Message-----
From: paulsenzer <[REDACTED]>
To: wjcoleman <[REDACTED]>
Sent: Thu, Jan 22, 2015 2:41 pm
Subject: Fwd: THE TWO SCUMBAGS WERE SERVED

-----Original Message-----
From: paulsenzer <[REDACTED]>
To: paulsenzer <[REDACTED]>
Sent: Thu, Jan 22, 2015 2:39 pm
Subject: THE TWO SCUMBAGS WERE SERVED

Just wanted you to know.

PS

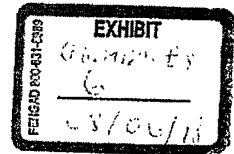
-----Original Message-----
From: paulsenzer <[REDACTED]>
To: wjcoleman <[REDACTED].net>
Sent: Wed, Jan 14, 2015 9:09 am
Subject: Re: Walter Coleman

Thanks, Walter.

-----Original Message-----
From: wjcoleman <[REDACTED]>
To: paulsenzer <[REDACTED]>
Sent: Tue, Jan 13, 2015 6:54 pm
Subject: Walter Coleman

Will mail check tomorrow, thank you !

COMMISSION EXHIBIT 6 -
 REDACTED EMAIL, DATED NOVEMBER 28, 2016 [354 - 355]



[REDACTED]

From: [REDACTED]
Sent: Monday, November 28, 2016 9:37 AM
To: [REDACTED]
Subject: Fwd: "Standing" and "Reality"

-----Original Message-----

From: paulsenzer <[REDACTED]>
To: wjcoleman <[REDACTED]>
Sent: Tue, Feb 10, 2015 1:40 pm
Subject: "Standing" and "Reality"

Jen/Walter

OK --I hit the books and this is where we are at the moment.

When things deteriorate and the parent takes a hard line (i.e., no therapy; no discussion, fuck you) everything hardens and you roll into contested trial mode (like here). The trial contest is in two distinct parts --with courts HIGHLY UNLIKELY to ever let you get past phase one unless there is some blockbuster evidence. In other words: Grandparents are NOT allowed to get their foot in the door and even being to talk about the merits of how wonderful they are, with all their witnesses and stories and pictures and say how much the grandchild needs them UNTIL, FIRST:

With clear and convincing evidence they are able to overcome the constitutional presumption that natural parents call ALL the shots. Period --end of story. Even if the grandchild whines and cries about and missing grandma and grandpa. This is what is meant by "Standing."

The hurdle of "Standing" is satisfied under the NYS Domestic Relations Law governing this area ONLY by you showing:

1. One or both of of [REDACTED]'s parents are dead. (You can't do that, obviously --and what a shame).
- or-
2. "Truly extraordinary circumstances" exist right now to give the grandparents the right to proceed further (still doesn't mean visitation down the road....just the right to first ask for it in the second trial if you get to that point).

"Truly extraordinary circumstances" has its own definition in NY Law and the definition is not, I am afraid, as you would wish: You only get there if:

1. The natural parent allowed an "extended disruption in custody" --meaning, your daughter voluntarily walked away and gave up care and control of [REDACTED] at some point in the (recent) past to you guys (it happens...some people just break with reality, go bonkers and run off; this bitch did not).
 2. And that as a result, she (the natural parent) would had to have been separated from the child for AT LEAST 24 continuous months....
- AND

4. The child, as a result, resided exclusively in your household during this 24 month or longer period.

5. Extraordinary circumstances "may" in a tiny minority special cases be stretched to mean the parent essentially abandoned the child by virtue of some extreme situation --such as imprisonment, drug addiction, crazy lifestyle choice, homelessness or severe mental illness. In my judgment, you have an eccentric bitch on your hands, but nothing that rises to the legal requirement set forth in the law.

The burden is entirely on you in this "Standing" trial; your daughter doesn't have to do --or prove-- a thing.

Without getting past the "Standing" obstacle (above) this court will refuse to look at all the nice "touchy-feely"/ best interests of the child stuff we want the court to look at. In other words, the court will NOT put its ears on and we will be out on our asses in short order.

So...UNLESS by some miracle you can develop --and SUPPORT with independent testimony and evidence (not just your word against hers) that this mother is "truly unfit" /diagnosed mentally ill/ drug-addicted or criminal, I am afraid that there is no way to establish legal "Standing" in this case. In other words: in my professional judgment, you are going to lose -- and there is nothing you can do about it. This is probably why the good doctor wouldn't return your calls.

I think we are grasping at straws at this point --and while it certainly is not fair, that is my realistic assessment.

I hate have to be the bearer of shitty news, but I think this is dead in the water. You both deserved a better daughter -- unfortunately, she drives the train wreck now --and is in no mood to turn back or compromise. "IF", for the sake of argument, you were to drop big money in her lap, she probably would come around --because that's all you ever were to her anyway --a piggy bank. But I can't make that decision for you. At the tender age of 8, this little boy is not about to go his own way and buck his mother. Some children start pulling away and calling the shots as they enter adolescence --but that, painfully, remains years away.

I can't give you false hopes.

PS

-----Original Message-----

From: wjcoleman <[REDACTED]>
 To: paulsenzer <[REDACTED]>
 Sent: Mon, Feb 9, 2015 4:27 pm
 Subject: Jen

We will be calm and would prefer therapy, so this doesn't happen again. Remember though I think this was a thought out plan by my daughter to away with us, and forget her
 Past. That's why she tried to start something and came over with a tape recorder on June 7 th. Please remember the call you got on September 8 th from her attorney saying she would like to work it out, and you never got answers after that.

Sent from my iPad

COMMISSION EXHIBIT 7 -
 REDACTED EMAIL, DATED NOVEMBER 28, 2016



From: [REDACTED]
 Sent: Monday, November 28, 2016 9:21 AM
 To: [REDACTED]
 Subject: fwd: Jen

-----Original Message-----

From: paulsenzer <[REDACTED]>
 To: wjcoleman <[REDACTED]>
 Sent: Wed, Feb 11, 2015 12:46 pm
 Subject: Re: Jen

I am not going to notify anyone, just yet. This can sit a good week and I won't do anything until you authorize it. The civilized way to do it is simply advise that we wish to withdraw the petitions at this time in the child's best interest.

In the meantime please remember that you should not discuss this or what happened in Court with anyone --because it will get back to your daughter, be misunderstood and invariably blow up in your face. As it always does. it seems.

On a totally different subject. You should make sure that in the event you or Walter pass away, NOTHING is left to that bitch. NOTHING. If you leave anything to [REDACTED] as a minor, I am sorry to tell you it will end up being administered by that Bitch --one way or another-- and who knows what [REDACTED] sees, unless you set up some kind of trust which he couldn't use until age 21, 25, or any adult age you choose. So, you have a problem, here. The odds of both of you leaving the world at the same time are impossibly remote --so it is not really a practical problem. But ...lawyers do encounter "simultaneous death" scenarios (car accidents, carbon monoxide, etc.) and stranger things have been known to happen.

Bottom line: If you don't have Wills, Kelly gets everything --which means, I suppose, whatever equity you have in the house, any savings, etc. I can't tell you what to do, but if my daughter pulled this shit on me .. I would cut her out and make it stick

PS

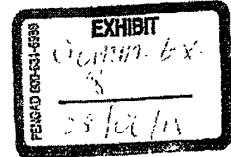
-----Original Message-----

From: Jennifer [REDACTED]
 To: paulsenzer [REDACTED]
 Sent: Wed, Feb 11, 2015 10:17 am
 Subject: Jen

When any if you do cancel, Tell Karen Mcquire we can not fight lies and my daughter will have to live with what's she's done to her son(reap what you sow)

Sent from my iPhone

COMMISSION EXHIBIT 8 -
 REDACTED EMAIL, DATED NOVEMBER 28, 2016 [357 - 358]



From: [REDACTED]
 Sent: Monday, November 28, 2016 9:21 AM
 To: [REDACTED]
 Subject: Fwd: Jen

-----Original Message-----

From: paulsenzer <[REDACTED]>
 To: wjcoleman <[REDACTED]>
 Sent: Wed, Feb 11, 2015 9:54 am
 Subject: Re: Jen

I recall you talking about CPS reports, etc. involving the paternal grandfather. Since you tell me that "he has never met [REDACTED]", that speaks well of the parents --they are shielding their son from a nut

The attorney yesterday spoke of "touching" --as in inappropriate touching or attempts at same. It wasn't a charge against you directly; it was couched as your having caused some kind of false or anonymous report involving [REDACTED] and touching. Does this mean CPS got involved and closed a case as unfounded? I don't know. All I do know is that your adversary is pointing the finger in your direction --and in your complete frustration with Kelly, I don't know if you ever pulled this trigger.

Let me try a different angle here. If we roll into a standing trial on March 3rd and lose (we surely will unless there is something strong I can sink my teeth into), then Kelly and eyelashes get to cluck their tongues and you go on record as having "lost". Period. End of story. Over.

On the other hand --if you simply withdraw this thing now; then there is no adjudication on the merits of anything. You don't go on record as losers-- and maybe; just maybe, there is a way to repair things. Maybe we can suggest that we "don't want to put [REDACTED] through all of this" right now --in the hope the door may remain open to a civilized --non-court-- way to repair this family.

And on that subject: Let's say you made it past "standing" and got to the second trial. You would lose that one. Wanna know why? Because your relationship with Kelly is total poison, with no communication and real hatred on both sides. Judges are highly reluctant to sign onto visitation when "no one can get along" (to quote [REDACTED]).

-----Original Message-----

From: Jennifer <[REDACTED]>
 To: paulsenzer <[REDACTED]>
 Sent: Wed, Feb 11, 2015 9:41 am
 Subject: Re: Jen

We never said anything about the father touching him (what does that Mean?) abusing, touching? That was of course a lie brought on by that freak show attorney, I know we never interfered with my x son - in- law, his father had a dozen cps reports from other people, he has never met [REDACTED], and really has no interest. We only helped him ! I was just stating you saying before we went in unless we were completely unfit we could have something. I want to wait until the last minute if we have to cancel this march 3 rd I might with gods help be able to come up with something. So just let me know how long I have to give notice of canceling That's all

Sent from my iPhone

On Feb 11, 2015, at 9:21 AM, "[REDACTED]" <[REDACTED]> wrote:

I have read all of your email and will try to respond in as clear a manner as possible.

The hurdle of having to prove "standing" in this case—given the facts on the ground as I now know them—is legally insurmountable. No one is going to appoint a law guardian; listen to [REDACTED] or take testimony as to your commendable grandparenting skills/activities since the boy's birth UNLESS and UNTIL you first clear the hurdle of proving "standing". In other words, proving "standing" allows you to earn the right to be heard on all those "best interests of the child" issues we have discussed and you desperately want to share with the world.

I will remind you that your strong assessment of your daughter—when we started this action—was that she would fold, not hire a lawyer, and ultimately fall into line (the way many normal people do), consenting to the appointment of a law guardian, possible therapy and maybe a way to conciliate this mess. You were wrong. You underestimated your daughter. You didn't think she would engage counsel—she did. And we heard from that counsel, loud and clear, that all they are going to do is FIGHT, FIGHT, FIGHT. And smear you and Walter, both.

I outlined what the statute (the written law) generally requires in NY to establish standing (see yesterday's email). A child has no constitutional rights. Natural parents do. Grandparents don't. And the mountain grandparents have to climb to get past "standing" and out of the starting gate is severe and steep.

The factors you mentioned in yesterday's response about Kelly's peculiar personality and life history make her a positively awful person and perhaps not the best mother in the world. But they do not rise the extraordinary, exceptional circumstances that are akin to physical abandonment of her role as a mother. That is what you would have to establish here to credibly establish standing.

Moreover, in your response yesterday and responses today, you said nothing about a rather dramatic shoe that dropped in court yesterday (and I told you from the start that something wasn't making sense in this matter). It is this: You heard an allegation that someone (you or someone you directed) may have reported to authorities that [REDACTED] was or perhaps could be inappropriately touched by someone.

This is the kind of can of worms that gets opened when people—you—sometimes in desperation, resort to "self help". If this was possibly related to your concern that relatives on the father's side have an unsavory past or reputation involving loose habits or a criminal past, "dropping a dime" with the police—even anonymously—was the wrong way to deal with it. The moment anyone breathes the slightest word about a little boy being "touched", the person who utters those words will have his/her motivations questioned—and questioned and questioned.

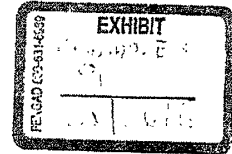
Now...for the sake of argument, "IF" you had CONCRETE evidence that there was a real, specific person (with a name) who was allowed regular access to [REDACTED], by his mother, in the face of solid evidence that this person was a pervert (i.e., on the sex offender registry; with a felony record, etc.) taking steps to harm the child—THEN you might be onto a truly extraordinary "exceptional circumstance" not in the statute that "May" rise to give you the possibility of standing. And all "standing" does—once established—is let you live to fight another day (i.e., you get the shot to talk about grandparenting skills; a law guardian is appointed; maybe a psychologist is appointed and maybe through that vehicle the court gets to "hear" [REDACTED] side of the story).

When anyone suggests a child is being "touched", well....them's fighting words. And I fear this once utterance alone will come back to bite you—very hard. Because you have no real way to prove any of that...do you?

—Original Message—

From: wjcoleman <[REDACTED]@nsf>
 To: paulsenzer <[REDACTED]>
 Sent: Wed, Feb 11, 2015 5:43 am
 Subject: Jen

COMMISSION EXHIBIT 9 -
REDACTED EMAIL, DATED NOVEMBER 28, 2016



[REDACTED]

From: [REDACTED]
Sent: Monday, November 28, 2016 9:12 AM
To: [REDACTED]
Subject: Fwd: Jen

-----Original Message-----

From: paulsenzer <[REDACTED]>
To: wjcoleman <[REDACTED]>
Sent: Sun, Feb 22, 2015 2:28 pm
Subject: Re: Jen

I agree with you.. however, you may have noticed that the "judge" is an asshole. An "asshole" can issue a warrant for your arrest. Just want you to know "worst case scenario."

-----Original Message-----

From: wjcoleman <[REDACTED]>
To: paulsenzer <[REDACTED]>
Sent: Sun, Feb 22, 2015 11:37 am
Subject: Jen

Waiver said we just won't go and that will be a default on our part, and we would be losers
What would that mean as far as this is concerned for the future? You actually want us
To stand alone before our daughter and that thing attorney, please come up with something!!!!

Sent from my iPad

5.

[REDACTED]
[REDACTED] Karen McGuire is an aggressive matrimonial practitioner in Suffolk County, known for sharp lawyering (see, fn 2, above). Flamboyant in style (see, attached), she was, from my perspective, a "worst nightmare" for the Colemans and their grandson.
[REDACTED]

6. The Coleman's adult daughter (mother of grandson, [REDACTED]) is Kelly Marie (Coleman) Martino. Ms. Martino's ex-husband (father of [REDACTED]) is Christopher Martino.
[REDACTED]

[REDACTED] I have no valid explanation to justify using an epithet to describe Mr. and Mrs. Martino; I might have referred to them as "*the two enemies*".
[REDACTED]

7. It changes nothing, but the "judge" (quotation marks used in the e-mail) was a court attorney-referee, Colleen Fondulis,
[REDACTED]

[REDACTED] I sympathized, but cautioned that a "judge" this autocratic could well issue compulsory process --a warrant-- if she wanted, retaining discretion to require that withdrawals be placed on a record, in person and under oath. The word "autocrat" is probably not in the Colemans' lexicon and I resorted to a common slur instead.
[REDACTED]

[REDACTED] Even in a coarsening culture, there is and can be no

excuse or justification to use these epithets ever, on any level. The age of instant communication is perilous and I am embarrassed to admit that no great thinking occurred on my part before striking the "send" key.

8. [REDACTED]

9. I fell short, because "at all times" isn't restricted to those moments a part-time judge is on the bench --regardless of full-time profession. My clients --even if I thought they were friends-- remain part of the public. To the extent they knew I was a village justice --and they did-- the use of crude language to depict others in the justice system (an adversary lawyer; parties respondent; a referee) coarsens and potentially denigrates everyone. This is especially dangerous in an internet age. I knew better. I am embarrassed to have learned the hard way that no "attorney-client" privilege exists to communicate this way. Words have meaning and when someone is a judge nothing is ever truly private --*nothing*-- except, perhaps, one's own thoughts.

10. Insofar as the Coleman emails are concerned, my conduct clearly was not consistent with the letter or spirit of the Section. I no longer practice law, but when I was first elected in 1994, I made it my business to conduct my affairs as an attorney and in all walks of life in a manner that reflected only the best of what a judge should be. This applied to everything I did, 24/7, the moment I walked out the door; every place I went; every public activity and utterance. What fell through the cracks here, via the lure of instant communication, was the common sense I thought I had to act with greater discernment, especially since judges are under intense scrutiny, now more than ever. I

[REDACTED]

[REDACTED]

Respectfully,



PAUL H. SENZER

enclosures

www.karenmccuire.com

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1000 10th Avenue

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New York, NY 10018
Tel: 311-710-1010
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Karen A. McGuire

Karen A. McGuire

1000 10th Avenue
New York, NY 10018
Tel: 311-710-1010
Fax: 311-710-1011

Karen McGuire, the founding member of the firm, has been practicing law in the State of New York since 1986, devoting her entire professional career to the zealous representation of litigants in the area of matrimonial and family law. She is a long-standing member of the Suffolk County Bar Association having been past chair of the Family Law Committee, past president of the Suffolk County Matrimonial Bar Association and present board member. She is also a current member of the Judicial Screening Committee which screens possible candidates for judicial nomination. This select committee is responsible for interviewing prospective judicial candidates to determine whether they are, indeed, qualified to hold office.

Most significantly, Ms. McGuire was appointed by former New York State Chief Justice, Judith Kaye, to serve on the statewide Matrimonial Law Commission. In February 2006, this Commission rendered its statewide report and was responsible for effectuating pivotal changes in the no-fault and maintenance laws. She is also one of the select few who have been certified by the Office of Court Administration as a Divorce Mediator. In 2011, she was selected to sit on the county-wide task force by the Administrative Law Judge of Suffolk County to review current court policies and prepare recommendations and/or modifications to existing procedures which will be implemented shortly.

Ms. McGuire has lectured extensively in the area of matrimonial and family law and is recognized as an expert in her field. Her reputation, among both the bench and the Suffolk, Nassau and New York State Bar, as a skilled divorce litigator is very high and her clients include attorneys, judges, accountants and professional men and women. Ms. McGuire has been recognized as a national leader in matrimonial law and has been featured in *New York Magazine* as a headline lawyer in the area of family law.

Additionally, Ms. McGuire is a co-founder of Every Child's Dream, a non-profit organization which provides

PAUL H. SENZER
ATTORNEY AT LAW



February 20, 2015

Hon. Colleen Fondulis
Court Attorney Referee
Suffolk Co. Family Court – Part 24
400 Carleton Avenue
Central Islip, NY 11722

Re: Coleman v. Coleman-Martino & Martino
Docket #: V-20318, 20319, 20321, 20322-14
File #: 129700

Dear Referee Fondulis:

After due consideration, my clients Walter and Jennifer Coleman, hereby authorize that their petitions (against each respondent above) for grandparent visitation, currently returnable before you on March 3, 2015 at 11:00 am be withdrawn. They discontinue this matter in the interest of leaving all doors open to re-establishing a constructive relationship with their daughter as might serve the best interests of their young grandson, [REDACTED], in the future. Accordingly, kindly mark these matters off your calendar as withdrawn.

Respectfully,

A handwritten signature in black ink, appearing to read "P. Senzer".

PAUL H. SENZER

cc:
Karen McGuire, Esq.
Attorney for Respondent Kelly Coleman-Martino

Christopher Martino, Respondent pro-se

Walter Coleman / Jennifer Coleman, Petitioners

COMMISSION EXHIBIT 11 -
 REDACTED CORRESPONDENCE, DATED MARCH 9, 2016 [365 - 372]



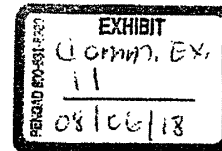
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CONFIDENTIAL

March 9, 2016



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 ERICA K. SPARKLER
 DANIEL W. DAVIS
 STAFF ATTORNEYS
 ALAN W. FRIEDBERG
 SPECIAL COUNSEL

Hon. Paul H. Senzer
 Justice of the Northport Village Court
 Village Hall
 224 Main Street
 Northport, New York 11768-1734

Re: File No. 2015/N-0676

Dear Judge Senzer:

Pursuant to Article 2-A of the Judiciary Law, the Commission on Judicial Conduct is investigating a complaint alleging that you sent crude and otherwise inappropriate emails to a former client of your law practice.

Enclosed is a copy of the complaint, which includes copies of emails that you allegedly sent to a former client. For your reference, the Rules Governing Judicial Conduct, the Commission's Operating Procedures and Rules, the Commission's Policy Manual and other documents are available on the Commission's website.¹

The Commission requests your written response to the allegations. In your letter, please include answers to the questions below and number your responses to correspond to the questions. Please note that, pursuant to Section 2.6(D)(3) of the Commission's Policy Manual, if your written reply is submitted by counsel, you

¹ <http://www.cjc.ny.gov/Legal.Authorities/legal.authorities.htm>

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

*Hon. Paul H. Senzer**March 9, 2016**Page 2*

must co-sign or submit a separate statement indicating that you have read and adopt it.

1. Please state whether you composed and sent the three e-mails that are attached to the complaint? If so, please answer the following additional questions.
2. Please specify the name, address and telephone number of each email recipient.
3. [REDACTED]
4. Please indicate the date when each email was sent.
5. Please identify the unnamed lawyer referred to as "a cunt on wheels" in your email of November 24, 2014, and explain why you used that term to describe the lawyer.
6. Please identify the individuals whom you describe in your email of January 22, 2015, as "the two scumbags [who] were served," and explain why you used that term to describe them.
7. Please identify the unnamed judge referred to an "asshole" in your email of February 22, 2015, and explain why you used that term to describe the judge.
8. [REDACTED]
9. Do you consider that your conduct was consistent with Sections 100.1 and 100.2(A) of the Rules Governing Judicial Conduct (the "Rules"), which require a judge to observe high standards of conduct and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary?
10. Do you consider that your conduct was consistent with Section 100.4(A) of the Rules, which requires that a judge shall conduct all of his extra-judicial activities so that they do not cast reasonable doubt on the judge's

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

Hon. Paul H. Senzer

March 9, 2016

Page 3


impartiality, detract from the dignity of judicial office or interfere with the proper performance of judicial duties, and are not incompatible with judicial office?

Please feel free to include any relevant information or material that you wish the Commission to consider in connection with this matter.

Please respond in writing to this inquiry by March 23, 2016.

Thank you for your prompt attention to this matter.

Very truly yours,



Mark Levine
Deputy Administrator

Enclosure

cc: Roger Schwarz, Senior Attorney

Via Certified Mail RRR: Article#: 70133020000187819875
USPS#: 9590940308785223994693

SCJC-Legal Email 08/31/2015

From: [REDACTED]
 Sent: Thursday, August 20, 2015 9:27 AM
 To: C. Randall Hinrichs; Robert Quirian; Mark Cuthbertson
 Subject: Mr. Paul Senzer
 Attachments: August 20, 2015 Letter to J. Hinrichs Re Paul Senzer.pdf; November 25, 2014 Email from Senzer.pdf; January 22, 2015 Email by Senzer.pdf; February 22, 2015 Email by Senzer.pdf

Dear Judge Hinrichs:

Please find attached a letter and copies of emails written by Mr. Senzer which demonstrate that he is unfit to act as a judicial hearing officer at the Suffolk County Traffic and Parking Violation Agency.

Very truly yours,

Christopher J. Cassar, Esq.
The Law Offices of
CHRISTOPHER J. CASSAR, P.C.

Suffolk County Office
 13 East Carver Street
 Huntington Village, New York 11743
 (631) 271-6596 office phone
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 Uniondale, New York 11556
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The Law Offices of
Christopher J. Cassar, P.C.
 15 East Carver Street
 Huntington Village, New York 11743
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Christopher J. Cassar, Esq. ■
Heidi Ma Bernstein, Esq. ■

■ ALSO ADMITTED IN US COURT OF APPEALS FOR THE SECOND CIRCUIT
 AND THE NORTHERN, SOUTHERN & EASTERN DISTRICTS OF NEW YORK
 ■ ALSO ADMITTED IN ARIZONA & CALIFORNIA

Nassau County Office:
 636 RKR Plaza
 Sixth Floor, West Tower
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 Telephone (516) 522-2737

August 20, 2015

██████████
 Hon. C. Randall Hinrichs
 Administrative Judge
 10th Judicial District, Suffolk County
 400 Carleton Avenue
 P.O. Box 9080
 Central Islip, New York 11722

RE: Suffolk County Traffic and Parking Violations Agency
 Mr. Paul Senzer

Dear Judge Hinrichs:

Please be advised that this office represents a number of motorists in connection with VTL violations prosecuted at the Suffolk County Traffic and Parking Violations Agency (SCTPVA). As you know, Mr. Paul Senzer is a judicial hearing officer at the SCTPVA.

A former client of Mr. Senzer contacted this office and provided the attached email communications from Mr. Senzer.

1. A November 25, 2014 email from Mr. Senzer in which he refers to the opposing counsel in a family court proceeding as "a cunt on wheels;"
2. A January 22, 2015 email from Mr. Senzer in which he refers to the adversary parties in a family court proceeding as "Scumbags;" and
3. A February 22, 2015 email from Mr. Senzer in which he refers to the family court judge as "asshole."

The former client informs this office that Mr. Senzer also sent emails referring to Latinos in a racist manner.

From: Paul Senzer Hide

To:

**Fwd: THE TWO
SCUMBAGS WERE
SERVED**

January 22, 2015 at 2:41 PM

-----Original Message-----

From: paulsenzer [REDACTED] >

To: paulsenzer <[REDACTED]>

Sent: Thu, Jan 22, 2015 2:39 pm

Subject: THE TWO SCUMBAGS WERE
SERVED

Just wanted you to know.

From: **Paul Senzer** Hide

To:

Re: Jen

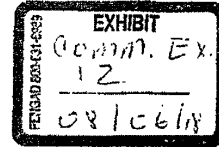
November 25, 2014 at 12:51 PM

I don't believe she will give in. And I don't believe she will represent herself once we serve her. Her lawyer is a cunt on wheels (sorry for the profanity...and don't quote me), so be prepared.

From: Paul Stearns [REDACTED]
Subject: Fitz Jan
Date: February 22, 2015 at 2:28 PM
To: [REDACTED]

I agree with you...however, you may have noticed that the "judge" is an asshole. An "asshole" can issue a warrant for your arrest. Just want you to know "worst case scenario."

COMMISSION EXHIBIT 12 -
 REDACTED LETTER FROM PAUL H. SENZER TO MARK LEVINE,
 DATED APRIL 10, 2017 [373 - 376]



PAUL H. SENZER
 [REDACTED]
 [REDACTED]

April 10, 2017

Mark Levine, Esq.
 Deputy Administrator
 New York State Commission
 on Judicial Conduct
 61 Broadway – Suite 1200
 New York, NY 10006

Re: File Nos. 2015/N-0676 & 2016/N-0655

Dear Mr. Levine:

In reply to your letter of March 23, 2017:

1. I composed Exhibits A-F. The sent date for each is captioned in the “original message” header.

2. The recipients were former clients Jennifer and Walter Coleman. [REDACTED]
 [REDACTED]

3. [REDACTED]
 [REDACTED]

. The Colemans and I had a friendly, professional relationship.

4. Sent dates: Exhibits A & B – February 11, 2015; Exhibit C –February 10, 2015; Exhibit D –January 13, 2015; Exhibit E –November 25, 2014; Exhibit F –October 24, 2014.

5. [REDACTED]
 [REDACTED]

To commiserate with and placate this aggrieved client, I took Jennifer’s side in the e-mail, repeating the common slur “bitch” as a put-down for the client’s daughter. In my judgment as counsel, Kelly invented a cynical fiction to destroy not just her father, but permanently end a positive relationship between an innocent child and two loving grandparents. Sadly, she succeeded.

6.

[REDACTED]

At 9:54 am, in the body of my e-mail response, I gratuitously parroted the client's "eyelashes" tag. Regrettably, no particular thought or deliberation occurred on my end in tossing this term into the larger message. On reflection, I suppose I was pandering; trying to humor a needy client with unnecessarily cute vernacular at her level, but the intent was to warn plainly in light of what transpired that a formal hearing on "standing" was going to fail as a matter of law with so obstinate an adversary.

[REDACTED]

7.

[REDACTED]

Again, the e-mail is an attempt to reduce an arcane principle --lack of standing-- as plainly as possible in language persons untutored in the law might grasp. In this context, I modified the word "bitch" with "eccentric" to convey a cautionary judgment that while Kelly might be an ungrateful, terrible or merely "eccentric" daughter, it would be hard to prove --and even then, not enough to defeat a mother's constitutional right as parent to order the life of her young son (even if that meant completely withdrawing contact with the grandparents). At any rate, without isolating any specific word, that was the overall conclusion I meant to convey --not as a judge-- but, candidly, in my role as zealous legal advocate: *"In my judgment, you have an eccentric bitch on your hands, but nothing that rises to the legal requirement set forth in the law."*

8. Another feeble attempt to assuage an aggrieved client. It was classless, if not undisciplined, for an attorney to use such language. Whatever the motivation, I didn't consider that e-mail to a client who entrusted me twice to be her advocate would ever be disseminated outside the attorney-client relationship, much less linked to my judicial role.

[REDACTED]. In composing the e-mail, it wasn't present to my mind that communication intended as private, touched upon my separate, sacrosanct calling as a judge or could even reflect on me as such. I now know otherwise.

9.

[REDACTED]

[REDACTED]

10. [REDACTED]

11. It is classless for a lawyer to have a potty mouth or use crude words, "bitch", "asshole", etc. in any context -even if the communication with a client is assumed to be private. It is no doubt inappropriate also for a lawyer to be cute in parroting a client's insulting name ("eyelashes") denigrating an adversary's lawyer. As concluded in my written response to 2015/N-0676 and testimony last year, it shames me to realize upon hard reflection that I fell short in my larger obligation as a judge to conduct myself at a higher level, even when not acting in my role as a judge. Sending these e-mails is not consistent with Sections 100.1 and 100.2(A).

12. [REDACTED]

13. - 17. [REDACTED]

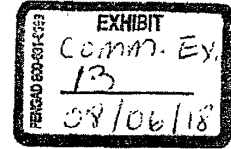
Respectfully,



PAUL H. SENZER

cc:
David H. Besso, Esq.
Michelle Aulivola, Esq.

COMMISSION EXHIBIT 13 -
 REDACTED LETTER FROM MARK LEVINE TO DAVID H. BESSO, ESQ., AND
 MICHELLE AULIVOLA, ESQ., DATED MARCH 23, 2017 [377 - 379]



NEW YORK STATE
 COMMISSION ON JUDICIAL CONDUCT

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61 BROADWAY, SUITE 1200
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646-386-4800 646-458-0038
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CONFIDENTIAL

March 23, 2017

ROBERT H. TEMBECKJIAN
 ADMINISTRATOR & COUNSEL
 MARK LEVINE
 DEPUTY ADMINISTRATOR
 PAMELA TISHMAN
 PRINCIPAL ATTORNEY
 ROGER J. SCHWARZ
 BRENDA CORREA
 SENIOR ATTORNEYS
 KELVIN S. DAVIS
 ERICA K. SPARKLER
 DANIEL W. DAVIS
 STAFF ATTORNEYS
 ALAN W. FRIEDBERG
 SPECIAL COUNSEL

David H. Besso, Esq. and
 Michelle Aulivola, Esq.
 Long Tuminello, LLP
 120 Fourth Avenue
 Bay Shore, New York 11706

Re: 2015/N-0676 and 2016/N-0655

Dear Mr. Besso & Ms. Aulivola:

In connection with the investigation of the above-referenced complaints against your client, Judge Senzer, the Commission requests certain additional information. In your letter, please include answers to the questions below and number your responses to correspond to the questions. Please note that, pursuant to Section 2.6(D)(3) of the Commission's Policy Manual, if the written reply is submitted by counsel, Judge Senzer must co-sign or submit a separate statement indicating that he has read and adopted the response.

1. Please state whether Judge Senzer composed and sent the six emails that are attached to this letter (*see* Exhibits A-F). If so, please answer the following additional questions.
2. Please specify the name, address and telephone number of each email recipient.
3. Please describe in detail Judge Senzer's relationship to each email recipient (e.g., social, professional, attorney-client, etc.).

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

David H. Besso, Esq.
Michelle Aulivola, Esq.
March 23, 2017
Page 2

4. Please indicate the date when each email was sent.
5. Please identify the individual to whom Judge Senzer refers in the email dated February 11, 2015 at 12:46 p.m. (*see* Exhibit A) as "that Bitch," and explain why he used that term to describe that person.
6. Please identify the individual to whom Judge Senzer refers in the email dated February 11, 2015 at 9:54 a.m. (*see* Exhibit B) as "eyelashes," and explain why he used that term to describe that person.
7. Please identify the individual to whom Judge Senzer twice refers in the email dated February 10, 2015 at 1:40 p.m. (*see* Exhibit C) as a "bitch," and explain why he used that term to describe that person.
8. Please identify the individual to whom Judge Senzer refers in the email dated January 13, 2015 at 5:35 p.m. (*see* Exhibit D) when he writes "let your daughter act like the asshole she is," and explain why he used that term to describe that person.
9. Please comment on the email dated November 25, 2014 at 10:52 a.m. (*see* Exhibit E) in which Judge Senzer states, "You should know by now that people who work in schools are 'assholes,'" and explain why Judge Senzer used that term and what he meant by it.

10. [REDACTED]

11. Does Judge Senzer consider that his conduct in sending these emails was consistent with Sections 100.1 and 100.2(A) of the Rules Governing Judicial Conduct, which require a judge to observe high standards of conduct and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary?

12. [REDACTED]

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

David H. Besso, Esq.
Michelle Aulivola, Esq.
March 23, 2017
Page 3

[REDACTED]

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

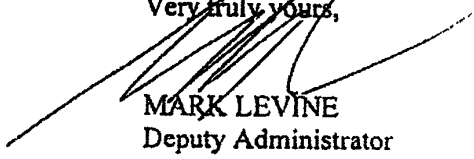
[REDACTED]

[REDACTED]

Please feel free to include any relevant information or material that you wish the Commission to consider in connection with this matter.

Please respond in writing to this inquiry by April 14, 2017. Thank you for your prompt attention to this matter.

Very truly yours,



MARK LEVINE
Deputy Administrator

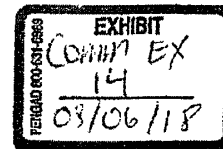
Enclosures

cc: Brenda Correa, Senior Attorney

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7015 1730 0000 8792 8145
9590 9403 0878 5223 9945 56

Vertical text on the right margin, likely a scanning artifact or page number.

COMMISSION EXHIBIT 14 -
EXCERPT OF TRANSCRIPT COVER PAGE, DATED NOVEMBER 16, 2016



STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X

In the Matter of an Investigation :
Pursuant to Section 44, subdivision 3,
of the Judiciary Law, in Relation to :

PAUL H. SENZER,

a Justice of the Northport Village :
Court, Suffolk County.

-----X

Commission Offices
61 Broadway, Suite 1200
New York, New York 10006

November 16, 2016
10:30 A.M.

Before:

WILLIAM ARONWALD, ESQ.
Referee

Present:

ROGER SCHWARZ, ESQ.
Senior Attorney

CHRISTINA PARTIDA
Investigator

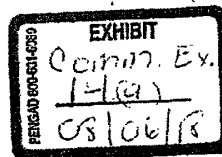
HONORABLE PAUL H. SENZER
Witness

Also Present:

DAVID BESSO, ESQ.
MICHELLE AULIVOLA
Attorneys for Witness
120 4th Avenue
Bayshore, New York 11706

MIGUEL MAISONET
Senior Clerk and FTR Operator

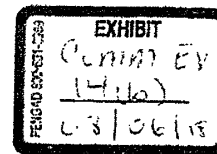
COMMISSION EXHIBIT 14A -
EXCERPT OF TRANSCRIPT, DATED NOVEMBER 16, 2016



(Hon. Paul H. Senzer)

- 1 Q. Do you know what e-mail account you sent your e-mails from?
- 2 A. Well, yeah there would only be one and it's my personal e-mail
- 3 account. It's an AOL account.
- 4 Q. This is in no sense an official court account or something?
- 5 A. Absolutely not. Absolutely not. It's my personal e-mail account. It's
- 6 [REDACTED]
- 7 Q.
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- 10 A.
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- 14 Q.
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- 17 A.
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- 23 Q.
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- 25 A.

COMMISSION EXHIBIT 14B -
EXCERPT OF TRANSCRIPT, DATED NOVEMBER 16, 2016

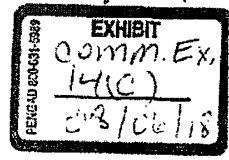


(Hon. Paul H. Senzer)

1 Q. And among other things, you indicated that you believe the e-mail
2 communications to have been privileged and confidential. Correct?
3 A. Well, I believe they were. I now believe that I had no such claim or
4 entitlement to any such privilege and I don't want to make a legalistic
5 argument here. I own this and don't think there was any such privilege
6 at the end of the day, but at the time when I was communicating with
7 my client as a private attorney, I had assumed that this was private
8 communication, work related and that it would never see the light of
9 day. So, if that's a privilege or a confidence, I suppose I presumed as
10 much, but I'm not going to make a legalistic argument because I don't
11 think that's a good argument.

12 Q.
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14 A.
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16 Q.
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18 A.
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21 Q.
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23 A.
24 Q.
25 A.

COMMISSION EXHIBIT 14C -
EXCERPTS OF TRANSCRIPT, DATED NOVEMBER 16, 2016 [383 - 385]



(Hon. Paul H. Senzcr)

1 Q.
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3 A.
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12 Q.
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14 A.
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16 Q.
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18 A.
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21 Q. And have you ever used crude or inappropriate language in any of the
22 e-mails that you may have exchanged with other clients?
23 A. Absolutely not.
24 Q. And why do you believe that you did so with the Colemans?
25 A. Well, a lot of it was born out of frustration. Not just the client's

18.

(Hon. Paul H. Senzer)

1 frustration, but my frustration and frankly the three e-mails, the three
2 crude e-mails were single and separate incidents. There was, with
3 respect to the family court matter, trouble that my process server was
4 having in serving her daughter and her ex-son in law who knew that a
5 process server was looking for them and they were -- I think dodging
6 service. So, there was a frustration level that we were going to miss a
7 date that was set by a judge ~~and~~ an order to show cause and Mrs.
8 Coleman especially was anxious to know whether or not they finally
9 were served. Were they served? Were they served? Were they served?
10 And ultimately I heard from a process server that I engaged that they
11 were. And so in response to her need to know whether or not they
12 were served, I said "Yes, they were served." And I didn't say the two
13 adversaries were served. I said the "Two scumbags were served."
14 Which is obviously a crude and inappropriate way to refer to
15 adversary parties. This was my way of empathizing with clients who
16 are not college educated and I'm not particularly proud of the
17 language that was used and -- but that explains at least that particular
18 remark. The most offensive remark is a remark that I used to
19 characterize an attorney who Mrs. Coleman's daughter ultimately
20 engaged. Mrs. Coleman suggested that her daughter once served,
21 would probably never hire a lawyer and that she would probably be
22 more than happy to conciliate a visitation arrangement perhaps with
23 therapy and I didn't entirely agree with Mrs. Coleman. Based on what
24 I think I knew about her daughter, I suspected that her daughter would
25 engage counsel and I wanted both clients to be prepared for the

19.

STATE COMMISSION ON JUDICIAL CONDUCT
61 Broadway, Suite 1200
New York, New York 10006

(Hon. Paul H. Senzer)

1 possibility of litigating the case in family court with a competent
2 lawyer on the other side.

3 Q. If possible, Judge, I'd like to stay with one e-mail at a time.

4 A. Okay that's fine. Yes sir.

5 MR. FRIEDBERG: Can I just go back and ask for some
6 clarification?

7 THE WITNESS: Yes. Sure.

8 MR. FRIEDBERG: You said, "scumbags" were a reference
9 to adversaries. To who were you referring when you said that?

10 THE WITNESS: The actual e-mail said, "The two
11 scumbags were served" and those individuals were the Coleman's
12 daughter, who was a respondent, and the daughter's ex-husband, who
13 by operation of law had to be a respondent, so the daughter was Kelly
14 Coleman Martino and the ex-husband is Christopher Martino.

15 MR. FRIEDBERG: Just to be clear, you're referring to the
16 client's daughter as one of the two scumbags?

17 THE WITNESS: That's correct.

18

19 BY MR. SCHWARZ:

20 Q.

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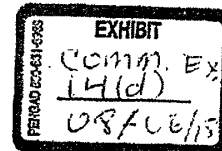
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24 A.

25 Q.

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COMMISSION EXHIBIT 14D -
EXCERPT OF TRANSCRIPT, DATED NOVEMBER 16, 2016

(Hon. Paul H. Senzer)

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5 Q. Let me show you what's been marked as Commission Exhibit 2,
6 which is your letter to the Commission, again a copy for counsel, a
7 copy for you. And I'd appreciate that once we're done with a
8 Commission exhibit that you would return them to us please.

9 A. Yes sir.

10 MR. ARONWALD: I have two copies here.

11 MR. FRIEDBERG: We'll take one back. Did you say you
12 had an extra copy? Oh. Thanks. And we'll provide any copies that
13 you need of anything, when you need it.

14 MR. ARONWALD: He will probably have them.

15 BY MR. SCHWARZ:

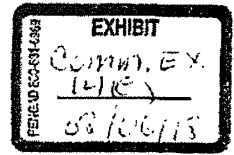
16 Q. You indicate at page two in the second full paragraph that "I might
17 have referred to them as the "Two enemies."

18 A. Well, what I should've said in that letter is "I should have referred to
19 them as the two enemies" or I might have meant -- what I meant to
20 convey was, your enemies, your adversaries have been served. Instead
21 of using the word enemy or the adversaries or your daughter, I used
22 an inappropriate word instead. The thought I meant to convey was the
23 respondents were served. Your adversaries were served, or Kelly and
24 Christopher were served. Instead, I resorted to offensive language.

25 Q. [REDACTED]

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COMMISSION EXHIBIT 14E -
EXCERPTS OF TRANSCRIPT, DATED NOVEMBER 16, 2016 [387 - 388]



(Hon. Paul H. Senzer)

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Q.

A.

BY MR. SCHWARZ:

Q.

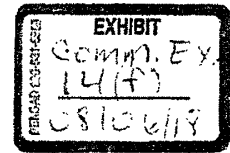
A.

Q. And I'm trying to understand why you resorted to the offensive

(Hon. Paul H. Senzer)

1 language.
2 A. Yeah, well I've been trying to psychoanalyze that question for some
3 time myself. The only explanation or excuse I have is, I was being
4 empathetic to my clients who felt as if they were tremendously hurt
5 by the daughter and the ex-son-in-law for no just reason or cause that
6 there were accusations made by the daughter, specifically in which
7 she referred to her father in the presence of the child as a "fucking
8 asshole." She used the word C-U-N-T, referring to her mother. This
9 was information that was related to me by Jennifer Coleman. There
10 was an acrimonious relationship that developed between the daughter
11 and the mother specifically and these were two very upset clients who
12 missed their grandson and desperately wanted to see them. So, I was
13 providing empathy if anything by denigrating our adversaries with an
14 inappropriate word and beyond that I don't know what else I could
15 add.
16 Q.
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19 A.
20 Q.
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23 A.
24 Q.
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COMMISSION EXHIBIT 14F -
EXCERPT OF TRANSCRIPT, DATED NOVEMBER 16, 2016



(Hon. Paul H. Senzer)

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BY MR. SCHWARZ:

Q. Let me refer you now to what's been marked as Commission Exhibit 4 and begin by asking you, who is your opposing counsel in the family court visitation matter?

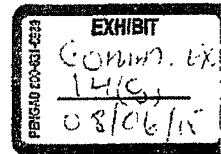
A. Yes, her name is Karen McGuire.

Q. And there's no question that you wrote this particular email, correct?

A. Yes sir.

Q. In which you refer to Ms. McGuire as a "Cunt on wheels," correct?

A. I'm sad to say, "Yes." That's correct.

COMMISSION EXHIBIT 14G -
EXCERPTS OF TRANSCRIPT, DATED NOVEMBER 16, 2016 [390 - 391]

(Hon. Paul H. Senzer)

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MR. FRIEDBERG: Would you consider the fact that it had come up in these two contexts that maybe using it in an e-mail to this client might be especially hurtful?

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THE WITNESS: I didn't -- I suppose in an ironic way I did consider it, but I didn't consider that it would be hurtful at all to the client because these words were words that were already words -- these were words that we discussed at great length in formulating the complaint that we filed with the human rights division. There was also another word, twat, T-W-A-T, which was what Mr. Channing referred to Mrs. Coleman as. And this was front and center in our human rights complaint. And the C-U-N-T word was also front and center because Mrs. Coleman told me that her daughter let slip those words in the presence of her son on the street, in public. So, I didn't think they would be hurtful to my client. In an odd way, I suspect I used the word because my client was quite familiar with it and it was in our vocabulary. Had it been a different client where that word was not in our vocabulary, I could assure you the word would never have been used and it's never been used before with another client or frankly in any setting because that's not how I speak, honestly. But because it

30.

(Hon. Paul H. Senzer)

1 was part of our vocabulary. that's why it found itself placed on paper.

2 MR. FRIEDBERG: Same question that I asked you. Did
3 you consider that? And I'll ask you from today's view point, just from
4 today's perspective, do you consider that it might have been
5 especially hurtful given the fact that it had arisen in these other
6 contexts?

7 THE WITNESS: Oh absolutely. Absolutely. It's quite clear
8 to me that it would be like rubbing salt in a wound and I will regret it
9 til' my dying day.

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Q.

A.

Q.

A.

Q.

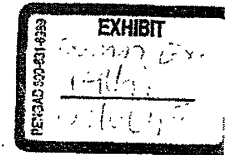
A.

Q.

A.

31.

COMMISSION EXHIBIT 14H -
EXCERPT OF TRANSCRIPT, DATED NOVEMBER 16, 2016



(Hon. Paul H. Senzer)

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BY MR. SCHWARZ:

Q. I'd like to talk to you about the third e-mail that is the subject of the first complaint which you received copies of in the past and ask you, if you would, whether you can see that you refer to the presiding judge or the presiding court attorney referee as an "asshole."

A. I did.

Q. Alright. There's no question in your mind that you did that and this is an email that you created? Correct?

A. That's correct.

Q. And this is an e-mail that you generated to the Colemans?

A. That's correct.

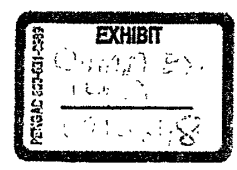
Q. Alright. And the judge as you refer to her in your e-mail as I just suggested was actually court attorney referee, Colleen Fondulis.

That's F-O-N-like Nancy, D-U-L-I-S. Is that correct?

A. Yes sir.

31.

COMMISSION EXHIBIT 14I -
EXCERPTS OF TRANSCRIPT, DATED NOVEMBER 16, 2016 [393 - 394]



(Hon. Paul H. Senzer)

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Q.

BY MR. SCHWARZ:

Q.

A.

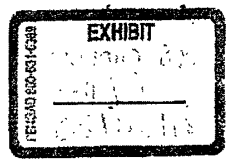
Q. Alright. You indicate in your March 18th letter to the Commission that your conduct as a judge was not consistent with the Rules Governing Judicial Conduct with respect to these three emails.

A. I think what I meant to indicate is that I certainly can see and

(Hon. Paul H. Senzer)

1 understand how the use of these three emails is not consistent with the
2 high standards and the aspirations that have for all judges to comport
3 themselves at all times in a matter which inspires confidence in the
4 judiciary, so in candor I more or less acknowledge that. Yes.
5 Q.
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7 A.
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11 Q.
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13 A.
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17 Q.
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19 A.
20 Q.
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22 A.
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COMMISSION EXHIBIT 14J -
EXCERPTS OF TRANSCRIPT, DATED NOVEMBER 16, 2016 [395 - 396]



(Hon. Paul H. Senzer)

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Q.

A.

Q.

A.

Q.

A.

Q. And in your view sir, how is your conduct in composing and descending these three emails, not consistent with the rules?

A. Well, I know and I've been taught that a judge is a judge 24/7 no matter where the judge is. So, it's no excuse for a judge to be at a restaurant or a tavern or a bar or in public and be drunk. It's well settled law and it's the jurisprudence of the Commission that judicial

(Hon. Paul H. Senzer)

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conduct is absolutely not limited to the things that happen in an open court room. Now I know that. Where I fell down is, I assumed that because this wasn't a public utterance, it wasn't anything that could've been overheard by the public, that I was holding myself out only to private clients in what I thought was a confidential communication. It's a quick blast. It's an e-mail. It's almost as if you're whispering to somebody or whispering in someone's ear without any reasonable expectation that it's going to be overheard, let alone intercepted and sent on it's way to the public or ever be found in the public space. So, but I said in my letter, to the extent the Colemans knew that I was a village justice, and they certainly did, and also I didn't say this in the letter, but the Colemans supported me in my district court election in 2015, they were supporters. They planted signs for me. They encouraged me. They attended a reception that was held on my behalf.

Q.

COMMISSION EXHIBIT 14K -
EXCERPTS OF TRANSCRIPT, DATED NOVEMBER 16, 2016 [397 - 398]



(Hon. Paul H. Senzer)

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BY MR. SCHWARZ:

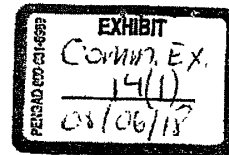
Q. And other than being crude and undignified, do you discern any other issues in a lawyer/judge referring to an opposing lawyer as a "Cunt on wheels?"

(Hon. Paul H. Senzer)

- 1 A. I think it's particularly -- it's a particular lack of decorum. It's
 2 particularly undignified to characterize any participant in the justice
 3 system this way, I think it denigrates all of us. And it's beyond
 4 sloppy. It's just an extremely poor taste and it's not who I happen to
 5 be. So, the Coleman's are members of the public. I mean, yes, they
 6 were clients of mine at that particular point in time but they are
 7 members of the public. If they are overhearing someone who's a
 8 judge refer to someone else who's involved in the justice system with
 9 foul language, then those words can travel. That's nothing I thought
 10 about when I sent those emails but on reflection that's something I
 11 certainly do think about a lot. While I once had a lawyer, who a few
 12 years ago actually said this about a court attorney referee or said that
 13 about an attorney admitted to practice law in the state, how do you
 14 like that? Well that's inappropriate for any lawyer frankly and it's
 15 even more inappropriate I think for a judge. So, I'm held to a higher
 16 standard. I sure know that. So, this is a lapse and I'm quite
 17 embarrassed.
- 18 Q. Do you on reflection understand that a lawyer using language of this
 19 sort that we've just spoke about -- the law -- your adversary being a
 20 "Cunt on wheels" may suggest that you harbor a bias against women
 21 or women lawyers?
- 22 A. I certainly do which is why this is so hurtful to me, because this is
 23 anything but who I am. I am exquisitely sensitive to gender
 24 discrimination, to bias issues generally. I'm a member of the
 25 Women's Bar Association of the State of New York and the Suffolk

39.

COMMISSION EXHIBIT 14L -
CERTIFICATION PAGE OF TRANSCRIPT, DATED NOVEMBER 16, 2016

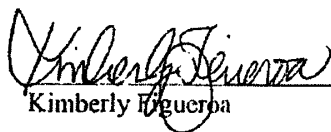


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CERTIFICATION

I, KIMBERLY FIGUEROA, a Secretary of the State
Commission on Judicial Conduct, do hereby certify that the foregoing is a
true and accurate transcript of the tape recording of the proceedings
transcribed by me, to the best of my knowledge and belief, in the matter
held on November 16, 2016.

Dated: February 27, 2017



Kimberly Figueroa

RESPONDENT'S POST-HEARING BRIEF, DATED JANUARY 1, 2019
[400 - 417]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
-----X

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
Of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

-----X

RESPONDENT'S POST-HEARING BRIEF

Respectfully submitted,

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(631) 666-5766

PRELIMINARY STATEMENT

The Honorable Paul H. Senzer (“Respondent”) submits this Post-Hearing Brief in support of a finding that the acts complained herein of do not rise to the level of a violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (“Rules”).

It is submitted that Respondent’s private email communications with a client of his law practice which contained profane language, although acknowledged by Respondent to be inappropriate, do not demonstrate judicial misconduct.

It is further submitted that the Commission on Judicial Conduct (“Commission”) has failed to prove, by a preponderance of the evidence presented at the hearing, that Respondent spoke a racially derogatory term in discussing the Administrative Law Judge presiding over his client’s employment discrimination matter.

PROCEDURAL HISTORY

This proceeding was commenced by the Commission on Judicial Conduct (“Commission”) pursuant to Section 44, subdivision 4, of the Judiciary Law by the filing of a Notice of Formal Written Complaint and Formal Written Complaint (“Complaint”), dated October 13, 2017, which Complaint stated a single charge of professional misconduct against Respondent alleging that he failed to observe high standards of conduct and otherwise undermined public confidence in the judiciary. Ct. Ex. A¹. Although no allegations are made against Respondent relative to his actions taken while acting in the role of a judge, it is purported that, while representing clients in connection with his private law practice, Respondent used racist, sexist, profane and otherwise degrading language.

¹ References to the Court Exhibits from the hearing held in these proceedings on August 6 and August 7, 2018 will be reflected as “Ct. Ex. ____”.

Respondent, by his attorneys, Long Tuminello, LLP, filed and served Respondent's Verified Answer to Formal Written Complaint ("Answer"), dated December 12, 2017, responding to the factual allegations contained in the Complaint and setting forth four (4) mitigating defenses to the charges of professional misconduct. Ct. Ex. 2. While Respondent admitted to having used profanity in email correspondence with his then-clients, Jennifer and Walter Coleman, he has adamantly denied having ever made the racist comment alleged.

A hearing was conducted at the Commission offices before the Hon. John Collins on August 6, 2018 and August 7, 2018, at which the Commission appeared by Brenda Correa, Esq. and Mark Levine, Esq., and Respondent appeared by David H. Besso, Esq. and Michelle Aulivola, Esq.

The Commission's case consisted of Exhibits 1-14 and 14 (a) through (l)², as well as the testimony of Jennifer Coleman and Walter Coleman.

Respondent testified on his own behalf and presented character testimony of William Reynolds, Esq, Deborah Monastero, Esq., Hon. Deborah Urbano-DiSalvo, and Monsignor Ellsworth Walden.

EVIDENCE ADDUCED AT THE HEARING

A. Respondent's Professional Background

Respondent has been an attorney admitted to practice law within the State of New York for more than thirty-five years, having been admitted in 1981. TR. p. 120, lines 9-16³. Following his admission to the Bar, Respondent was employed by a private law firm as an

² References to the Petitioner's Exhibits entered into evidence at the hearing held in these proceedings on August 6 and August 7, 2018 will be reflected as "Pet. Ex. ____".

³ References to the Hearing Transcript taken in these proceedings on August 6 and August 7, 2018 will be reflected as "TR. p. ____".

associate attorney through 1984, at which time he opened his solo practice of law which he continuously operated through 2014. TR. p. 120, line 25 – p. 121, line 6. Throughout his career as a private attorney, Respondent practiced primarily in the areas of criminal defense and appeals and, to a lesser extent, civil litigation, family court, probate and real estate. TR. p. 121, lines 7-11.

Respondent has served as a part-time Northport Village Justice since having been elected to that position on March 15, 1994. TR. p. 121, lines 12-15. During the course of the intervening twenty-four (24) years, Respondent has heard approximately 100,000 cases, 7,000 of which were criminal matters, has conducted more than 1,000 hearings and trials and has written approximately 350 decisions. TR. p. 121, line 25 – p. 122, line 6; p. 124, lines 13-21. Appearing before him at the Northport Village Justice Court are members of nearly every racial and ethnic background. TR p. 126, lines 13-15. All proceedings held in the Northport Village Justice Court are recorded, whether stenographically or electronically, and such recordings would demonstrate that Respondent has never made a disparaging remark to any of those litigants at any time. TR. p. 125, line 18 – p. 126, line 18.

In addition to his private practice of law and his judicial role, since 2011, Respondent has worked as an adjunct instructor in the Criminal Justice Department at State University of New York at Farmingdale, teaching one to two classes per semester. TR p. 123, line 14 - p. 124, line 2.

In 2013, Respondent was appointed as a District Court Hearing Officer at the Suffolk County Traffic and Parking Violations Agency (“TPVA”) which began as a part-time position but increased in hours throughout 2014 and 2015. Tr. p. 122, lines 7-21; p. 124, lines 2 – 12. As a result of the increased demand upon his time, resulting from his judicial and teaching positions,

Respondent voluntarily wound down his private practice of law in early 2015. TR. p. 124, lines 2-7.

B. Respondent's Representation of the Colemans

Beginning in or about the early to mid-1990's, and continuing for a period of approximately five (5) years, Jennifer Coleman performed house cleaning services for Respondent and his family. TR p. 6-7; 127. Ms. Coleman left such employment on friendly terms when Respondent could no longer afford her services. However, Ms. Coleman continued to cat-sit for Respondent's family intermittently thereafter. TR p. 7; 127.

In or about November 2013, prior to the wind down of Respondent's private law practice, he was retained by Jennifer Coleman to represent her before the New York State Division of Human Rights in a gender discrimination action against the Cold Spring Harbor Central School District where she worked as a part-time custodian. TR p. 126, line 22 – p. 127, line 2; p. 8-9.

Thereafter, in or about the fall of 2014, Respondent was retained by both Mr. and Ms. Coleman to commence a Family Court proceeding seeking to secure grandparent visitation on their behalf relative to their grandson who they had been like surrogate parents to and who was being kept from them by their daughter. TR. p. 127, lines 3-6; p. 12-13.

Throughout Respondent's representation of the Colemans, they maintained a friendly relationship beyond the ordinary attorney-client relationship. During Respondent's run for public office the Colemans offered their support by attending fundraising events held on his behalf and volunteering to erect promotional signs around town multiple times, as they were continually being removed. TR. p. 11, line 15 – p. 12, line 7.

1. Respondent's Email Communications with the Colemans

Throughout the course of Respondent's representation of the Colemans in connection with the gender discrimination matter, and later the Family Court proceedings, the Colemans elected to use a shared email account as their principal means of communication with Respondent, a practice that was rarely used by Respondent with his other clients. TR. p. 10, line 16 – p. 11, line 14. Respondent has admitted to having used profanity in emails which he drafted to the Colemans. TR. p. 127, line 16 – p. 128, line 5; Pet. Ex. 1-9; 10; 12⁴.

As Respondent has stated, due to the frequency of Ms. Coleman's emails, he often shot back responses in what he termed as a "very conversational and anecdotal and almost chatty way" in which he "became far too conversational and far too familiar in resorting to particular words that I think reflect poorly on me as an attorney and obviously, as a judge." TR. p. 128, lines 8-21. Furthermore, as those emails were private communications between Respondent and his clients, at the time they were written, he considered them to have been private and confidential and, certainly, did not contemplate that they would be viewed by the general public, and in fact, they have not. TR. p. 127, line 16 – p. 128, line 5; p. 131, lines 4-13.

Respondent testified that he has never used crude or inappropriate language in any emails he exchanged with clients other than the Colemans, and that it is not his practice to use profanity in his communications, whether with clients or in his personal life. TR. p. 128, line 24 – p. 129, line 10; Exhibit 14(c), p. 18, lines 21-23. He further testified that he has never used such language in carrying out his role as a judge. Id.

As Respondent has explained, such words had been discussed at great length between Respondent and the Colemans when communicating about the terms used by Ms. Coleman's

⁴ References to the Petitioner's Exhibits entered into evidence at the hearing held in these proceedings on August 6 and August 7, 2018 will be reflected as "Pet. Ex. ___".

supervisor to describe her, which would be the subject of the human rights complaint, and terms the Colemans' daughter had used in the presence of their grandson, which would be raised in connection with their Family Court Petition. Petitioner Exhibit 14(g), pp. 30-31; p. 136-137. Thus, Respondent has stated repeatedly throughout these proceedings that he used such words as a result of the fact that they had been frequently discussed with these particular clients in the context of his representation of them and that had he been communicating with a different client, with whom such words had not been discussed at length, he would never have used those terms. Id.; Petitioner Exhibit 12.

Throughout these proceedings, Respondent has demonstrated his deep regret for employing the language used in the emails and his recognition that the use of such language poorly reflects upon the profession.

“I have a profound and deep regret for using the words that – that were deployed in those emails because, quite frankly, that’s not who I am. That’s not how I was brought up. That’s not how I conduct myself as an attorney in public and certainly never as a judge in public. I realize that as a judge my obligation is a – is a 24/7 obligation. I’m always a judge wherever I am and in whatever I do. It just didn’t dawn on me, I’m sorry to say, that when I was sending emails to clients in connection with legal advice that that somehow had a nexus or a connection to my judicial persona but I’ve learned the hard way that [it] certainly does.” TR. p. 128, line 24 – p. 129, line 10.

As will be discussed at length below, while admittedly inappropriate, the Respondent’s use of such language does not rise to the level of a violation of the Rules.

2. Respondent’s Alleged Use of a Racist Remark

Although Respondent has candidly acknowledged his use of profane language in email communications with the Colemans, he has vociferously denied having ever made a racially derogatory comment to them and it is submitted that the Commission has failed to prove otherwise by a preponderance of the evidence. TR p. 129, lines 11 – 22.

The Complaint, at paragraph 7 thereof, alleges that in or about November 2014, during a recess on the second day of the hearing in Ms. Coleman's gender discrimination matter, Respondent used a racial slur to refer to the Administrative Law Judge when speaking with Mr. and Ms. Coleman. Ex. "A", ¶ 7. Specifically, the Complaint alleges that Respondent referred to Administrative Law Judge Margaret Jackson ("ALJ Jackson") as "that fucking nigger" and/or "that nigger". Id.

While the remainder of the allegations contained in the Complaint stem from documented email exchanges between Respondent and the Colemans, the only evidence presented in support of the single allegation relating to Respondent's purported use of a racial epithet was the contradictory testimony of Mr. and Ms. Coleman.

Specifically, while both Mr. and Ms. Coleman testified that during their conversation with Respondent at the end of a lunch break during the second day of trial in Ms. Coleman's discrimination case Respondent uttered the phrase "fucking nigger" in reference to ALJ Jackson, a review of their testimony evidences that they each allege that the comment was made in a very different context. Specifically, Ms. Coleman testified that she, Mr. Coleman and Respondent were waiting outside of the hearing room after the lunch break, and that "The Judge was a little late." TR. p. 45 – 46. She further testified that Respondent asked "Is that F'ing nigger back yet". TR p. 46, lines 16-23. To the contrary, Mr. Coleman testified about the same conversation stating that Respondent "was asking what I thought of this fucking nigger." TR. p. 66, lines 22 – 25. Although the two utilized the same phrase during their testimony, the very different contexts in which they testified the phrase was used undermines the credibility of such testimony. Neither Mr. nor Ms. Coleman testified that the term "fucking nigger" was used more than once and they both claimed to have been present during the same conversation with Respondent, yet the

contradiction in their testimony as to the context in which the phrase was purportedly used cannot be ignored.

Ms. Coleman further admitted on cross examination that aside from the single racially-charged comment allegedly made by Respondent regarding ALJ Jackson, she had never, throughout the twenty-five years that she knew Respondent, heard him make any derogatory remark about any ethnic group. TR p. 48, line 12 – p. 49, line 15.

Mr. and Ms. Coleman both acknowledged that notwithstanding the comment allegedly made on November 6, 2014, and the fact that they had utilized the legal services of another attorney at or about that time in connection with a family court proceeding involving grandparent visitation, they nonetheless re-retained Respondent in December 2014 or January 2015 to represent them in those proceedings. TR. p. 12 – 15; p. 14, line 16 – p. 15, line 10; TR. p. 71, lines 8-22. Thus, although the Colemans had ample opportunity to secure representation by another attorney in the family court proceedings after Respondent purportedly made the racially charged comment, tellingly, they did not do so.

It is also important to note that notwithstanding their allegation that Respondent made the very offensive comment about ALJ Jackson in early November 2014, neither Mr. nor Ms. Coleman made a formal complaint about Respondent's purported use of the comment to the Commission, the Attorney Grievance Committee, the Bar Association or any other entity charged with oversight of the conduct of judges or attorneys. TR. p. 50, line 6 – p. 51, line 1; TR p. 73, line 3 – p. 74, line 3.

Ms. Coleman had lost her discrimination case after it was found that, notwithstanding her allegations that she was receiving less substitute custodian assignments than others, she was in fact receiving more assignments than her co-workers and therefore she was not being

discriminated against and she and Mr. Coleman were also forced to withdraw their grandparent visitation petition. TR. p. 51, lines 2 – 21; 41. Ms. Coleman further believed that she was entitled to a refund of the fees she had paid to Respondent in connection with the family court matter. TR. p. 56, lines 19-22.

Under that backdrop, approximately eight (8) months after the comment about ALJ Jackson was allegedly made by Respondent, Ms. Coleman read a newspaper article discussing allegations being made by Christopher Cassar, Esq. about alleged disparate treatment of litigants of different ethnic backgrounds appearing at the TPVA. TR. p. 52-53. Feeling compelled to help him “validate his case”, Ms. Coleman reached out to Mr. Cassar to “help an attorney, you know, with the emails I had.” TR p. 56, lines 8-15; TR. p. 51, lines 2 – 21; p. 52, lines 5 – 20. Assuming that the allegations were true, Ms. Coleman contacted Mr. Cassar “Because I realized that they weren’t just words. They turned into actions against people and I wanted to help him if I could with my emails.” TR p.53, lines 4-9. Notably, notwithstanding that the focus of the article was on purported racially and/or ethnically discriminatory practices, by her own testimony, Ms. Coleman did not reach out to Mr. Cassar in an effort to advise him of the racially derogatory comment Respondent purportedly made to the Colemans, but rather only to provide emails containing profanity. TR p. 52 – 56.

After Ms. Coleman made contact with Mr. Cassar, he forwarded correspondence to the Hon C. Randall Hinrichs, dated August 20, 2015, in which he reported the existence of email communications from Respondent to the Colemans which contained profanity and further alleged “The former client informs this office that Mr. Senzer also sent emails referring to Latinos in a racist manner.” Pet. Ex. 11, p. 5. Yet notwithstanding such allegation, Mr. Cassar, the attorney involved in prosecuting a federal civil rights case against the TVPA and its judges,

including Respondent, which matter has since been dismissed, has never produced any such email notwithstanding that he had a technology expert scour Ms. Coleman's computer and email account in search of same. TR. p. 55, lines 2 – 13.

Throughout her cross examination relating to her contacts with Mr. Cassar, Ms. Coleman repeatedly made reference to the emails, and her efforts to assist with the prosecution of the federal case by providing those emails to Mr. Cassar. However, very tellingly, Ms. Coleman did not make a single reference throughout such testimony to the comment purportedly made to her by Respondent about ALJ Jackson or any efforts on her part to report such comment to Mr. Cassar. TR p. 52 – 56.

It is submitted that the reason for such failure is that the purported comment was fabricated during Ms. Coleman's contacts with Mr. Cassar, the Complainant in this matter, who was intent upon obtaining evidence to support allegations of racial and ethnic discrimination within the TPVA. TR p. 79, line 21 – p. 80, line 4.

It is submitted that the allegation that Respondent used a racial slur was included in the complaint to the commission to bolster the remaining allegations and in an attempt to advance Mr. Cassar's efforts to prove racial and ethnic discrimination within the TVPA, allegations which have since been dismissed by the federal court. It is further submitted that the Commission has failed to prove, by a preponderance of the evidence, that Respondent uttered the words alleged.

C. Mitigating Evidence

The Court of Appeals has held that a judge's reputation for honesty, integrity and judicial demeanor in the legal community are properly considered as mitigation evidence in the context of judicial conduct proceedings. *Shilling v State Commn. on Jud. Conduct*, 51 NY2d

397, 399 (1980). The attorneys who appear in the Respondent's courtroom, whether as prosecutors or defense attorneys, and the judges who serve alongside him are certainly in the best position to attest to Respondent's reputation for honesty, integrity and judicial demeanor.

William Reynolds, Esq. appeared at the hearing to present testimony on behalf of Respondent. Since 1960, Mr. Reynolds worked in the banking industry for several major banks, and teaching basic banking and accounting for the American Institute of Banking. Mr. Reynolds simultaneously attended and graduated from law school, and was thereafter admitted to practice law in the State of New York in 1998. Following his admission, Mr. Reynolds operated a part-time private practice while continuing his banking employment until 2006 when he retired from Citibank as a branch manager to accept employment with the Suffolk County District Attorney's Office. Since 2011, Mr. Reynolds has been assigned to prosecute cases in the outlying courts, which include Northport Village Court, over which Respondent presides. TR. p. 82-84. As he testified, for the past seven (7) years, he has appeared as a prosecutor in Respondent's courtroom one night each week. TR. p. 84-85.

He testified that the litigants appearing in Respondent's courtroom represent various different racial and ethnic backgrounds. TR. p. 102. He further testified that during all of his appearances in Respondent's courtroom he has never heard Respondent make any disparaging or ethnically charged remarks. Id., lines 8-12. He described Respondent is a "fine judge" with "a good knowledge of the law" who "treats defendants fairly" and further stated that he has a reputation within the legal community as being "very fair and impartial." TR p. 85; 102 – 103. When asked to describe Respondent's reputation within the community he described such reputation as "impeccable". TR p. 86, lines 8-12.

Also appearing to present testimony on Respondent's behalf was Deborah Monastero, Esq. Ms. Monastero is an attorney admitted to practice law in the State of New York since 2004. After having worked in private practice for three years, Ms. Monastero took employment with the Suffolk County Legal Aid Society. TR p. 90 – 92. In connection with such employment, since 2007, Ms. Monastero has appeared in Northport Village Court approximately once or twice per month. Id. Ms. Monastero testified that she has never known of Respondent to have made a disparaging remark to any litigant of any race or ethnic background. TR p. 96. Regarding Respondent's reputation within the legal community, Ms. Monastero testified:

“I've never heard anything unkind about him or anything disparaging or in any way that he is, in any form, but fair with the people that stand before him with respect to attorneys, with respect to defendants.... Since 2007, he has never been disrespectful to me or my clients and I have represented during that period of time some characters, I mean, along the way. And I have always been treated as a professional and my clients have always been treated with respect.” TR. p. 96, line 21 – p. 97, line 7.

The Hon. Debra Urbano-Disalvo appeared to present testimony on Respondent's behalf. Judge Urbano-DiSalvo is a full-time Village Attorney for the Village of Hempstead since 2002, is the elected judge in the Village of Amityville and is an Administrative Law Judge for the TVPA, while also maintaining a private practice of law. Having been admitted to practice law in the State of New York in 1986, she has also previously worked as an attorney for the Suffolk County Attorney's Office and as an Assistant Town Attorney for the Town of Huntington. TR p. 104 – 105.

Judge Urbano-Disalvo has been acquainted with Respondent since 2002 in a variety of capacities and has worked with him at TVPA since its inception. TR p. 107-109. She testified that TVPA involves litigants of “every demographic, every age, every sex, race religion.” TR p. 109, lines 5-17. She described Respondent's reputation within

the legal community as “[f]air, honest, forthright.” TR p. 109, lines 21 – 22. She further testified that his reputation regarding his treatment of litigants and attorneys appearing before him is “fair and just” and that she has never heard of him making disparaging remarks about anyone. TR. p. 110, lines 8 – 23.

Finally, appearing to provide testimony on behalf of Respondent was Monsignor Ellsworth Walden, a priest at various parishes for the past forty-seven (47) years. TR. p. 115. Monsignor Walden, who has been acquainted with Respondent for a period of approximately a year and a half, described Respondent’s ten year journey of converting from the Jewish religion to the Catholic religion. TR. p. 115-116. He testified that he has been impressed by Respondent, who attends mass weekly and who participates as a lector in the church. He described Respondent as a “wonderful man”, a “delight”, who has “poured a lot of enthusiasm into the parish” and who shows “complete honesty and trustworth[iness]”. TR p. 116-117.

Specifically, as it relates to the allegation in these proceedings that Respondent made a racially disparaging remark about ALJ Jackson, the reputation testimony presented at the hearing strongly refutes such allegation, as those familiar with his reputation and who work with him regularly indicated that he is not known to have ever made such a statement in any other context.

ARGUMENT

THE ALLEGATIONS STATED IN THE COMPLAINT FAIL TO RISE TO THE LEVEL OF A BREACH OF THE RULES GOVERNING JUDICIAL CONDUCT

The Preamble to the Rules Governing Judicial Conduct provide:

“The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is not intended, however,

that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.”

Guided by those principles it is submitted that Respondent’s limited use of profane or arguably offensive terms in a handful of private communications with a single husband-and-wife client, with whom Respondent had been acquainted in his personal life for many years, and with whom similar terms had been discussed at length in connection with the allegations asserted in the litigation in which he represented them does not rise to the level of judicial misconduct.

The Complaint alleges that by engaging in the actions complained of, Respondent has failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they would not cast reasonable doubt on his capacity to act impartially as a judge, detract from the dignity of judicial office, and be incompatible with judicial office in violation of Section 100.4(A)(1), (2) and (3) of the Rules.

Both the Commission’s own determinations made in the context of Judiciary Law Section 44 proceedings and the Court of Appeals’ published decisions relating to “extra-judicial” behavior and speech demonstrate that a judge can be judicially sanctioned under appropriately onerous circumstances for actions undertaken while off the bench. However, no Commission

determination or Court of Appeals decision uncovered by the undersigned has ever punished even arguably distasteful speech, conducted in private communications, between a part-time judge, while acting in the role as an attorney, and a private client of his law practice.

Specifically, the Commission has disciplined judges in cases where they have been found to have engaged in the use of profane language in a variety of circumstances while off the bench. In *Matter of John F. Mahon*, (Aug. 8, 1996), a judge was censured after he was found to have engaged in gratuitous and unprovoked slurs and profanity in the presence of court personnel and civilians within the courthouse, causing the object of those comments to become so upset and shaken that she could not drive safely. In *Matter of Charles Pennington*, (Nov. 3, 2003), a judge was censured when it was demonstrated that he used profane language to a New York State Park Police Sergeant who had questioned him about engaging in illegal behavior and who had lent the prestige of his judicial status in an attempt to advance his own and his son's interests. Likewise, in *Matter of Kenneth Kremenick*, (Jun. 28, 1985), the Commission issued an admonition to a judge who, while being arrested for Driving While Intoxicated, repeatedly informed the arresting officer that he was a judge, and that he would have the officer's job, and used abusive and profane language with the officer at police barracks.

Likewise, the Court of Appeals has frequently disciplined judges for extra-judicial behavior. In *Matter of Kuehnel*, 49 N.Y.2d 465, 403 N.Y.S.2d 461 (1980), a judge was removed from office after it was proven that, as he was leaving a tavern, he detained four youths whom he suspected of breaking glass in an adjacent parking lot. The judge struck one of the youths, age 13, causing him to fall forward with such force that his head struck a bulletin board or door frame. At the police station house, the judge used vulgar and derogatory language toward the youths, acted in a taunting and hostile manner, made demeaning comments concerning an

identifiable ethnic group and struck another youth in the mouth causing his nose to bleed. In *Matter of Cerbone*, 61 N.Y.2d 93, 472 N.Y.S.2d 76 (1983) a judge was removed from the bench after it was proven that, while he was present in a bar owned by his private law practice client, he had a confrontation with several black men during which he “loudly proclaimed that he was a judge and announced what he would do if any of the black patrons appeared before him in court”, uttered racial epithets and pushed one of the customers.

Yet, in no matter uncovered by the undersigned has there been a finding of judicial misconduct against a judge based strictly upon the use of profane language in private communications with a client of that judge’s private law practice.

CONCLUSION

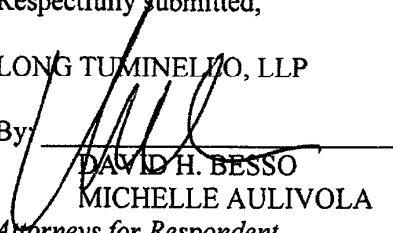
Based upon the foregoing, it is submitted that the preponderance of the credible evidence adduced at the hearing of this matter fails demonstrate actions on Respondent’s part which rise to the level of a violation of the Rules Governing Judicial Conduct. Accordingly, it is submitted that dismissal of the single charge alleged in the Complaint is warranted and appropriate.

Dated: Bay Shore, New York
January 1, 2019

Respectfully submitted,

LONG TUMINELLO, LLP

By



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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X
In the Matter of the Proceeding
Pursuant to Section 44, Subdivision 4,
of the Judiciary Law in Relation to

**AFFIDAVIT
OF SERVICE**

PAUL H. SENZER.

a Justice of the Northport Village Court,
Suffolk County.

-----X
MEGHAN STONE, being duly sworn, deposes and says:

FIRST: That I am not a party to the action and I am over 18 years of age and reside in Bay Shore, New York.

SECOND: That on January 3, 2019, I served the within **RESPONDENT'S POST-HEARING MEMORANDUM OF LAW** by depositing true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the United Parcel Service Overnight Delivery within New York State and via e-mail, addressed to each of the following persons at the last known address after each name:

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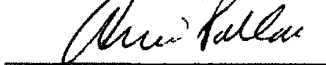
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MEGHAN STONE

Sworn to before me this
3rd day of January, 2019



Notary Public

ALICE POLLARI
Notary Public, State of New York
No. 01PO4798463
Qualified in Suffolk County
Commission Expires Jan. 31, 2018
2022

POST-HEARING MEMORANDUM TO THE REFEREE AND PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW BY COUNSEL TO THE COMMISSION,
DATED JANUARY 2, 2019 [418 - 441]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

**POST-HEARING MEMORANDUM TO THE
REFEREE AND PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW**

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Dated: January 2, 2019

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct (“Commission”) in support of the recommendation that the Referee adopt Commission Counsel’s proposed findings of fact and conclusions of law and determine that the Honorable Paul H. Senzer (“Respondent”) has committed judicial misconduct.

Respondent committed judicial misconduct when, in his capacity as a private attorney representing Jennifer and Walter Coleman in a Family Court matter, he sent his clients emails using racist, sexist, profane and otherwise degrading language about the court attorney referee presiding over the case, his opposing counsel, the Coleman’s daughter and others.

Respondent committed additional judicial misconduct when, in the presence of the Colemans, he referred to the Administrative Law Judge presiding over an unrelated employment discrimination matter as “that fucking nigger” and/or “that nigger.”

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law § 44(4), the Commission authorized a Formal Written Complaint, dated October 13, 2017, containing one charge. The Formal Written Complaint (“Complaint”) alleges that from October 24, 2014 to on or about February 22, 2015, Respondent undermined the public confidence in the judiciary when, while representing clients, he used racist, sexist, profane and otherwise degrading language.

(FWC ¶5).¹ In or about November 2013, Jennifer Coleman retained Respondent to represent her in an employee discrimination matter (FWC ¶6). In or about November 2014, Respondent represented Ms. Coleman at a hearing in the matter before an Administrative Law Judge (ALJ) and during a recess Respondent referred to the ALJ, who is African-American, as “that fucking nigger” and/or “that nigger.” (FWC ¶7).

In the fall of 2014, the Colemans retained Respondent to represent them in a Family Court matter in which they sought the right to visit their grandchild (FWC ¶8). Between October 24, 2014 and February 22, 2015, Respondent communicated with his clients via emails in which he referred to: (1) the Coleman’s daughter as a “bitch” on three different occasions (FWC ¶¶9, 14-15); (2) their daughter’s attorney as a “cunt on wheels” (FWC ¶10); (3) people who work in schools as “assholes” (FWC ¶11); (4) the Coleman’s daughter as an “asshole” (FWC ¶12); (5) the Coleman’s daughter and her ex-husband as “scumbags” (FWC ¶13); (6) their daughter’s attorney as “eyelashes” (FWC ¶16), and (7) the “judge” presiding over the Family Court matter as an “asshole” (FWC ¶18).

B. Respondent’s Answer

Respondent filed an Answer dated December 12, 2017. Respondent admitted that, in or about November 2013 he was retained by Jennifer Coleman to represent her in an employee discrimination matter (FWC ¶6; Ans ¶4) and that that in or about November

¹ “FWC” refers to the Formal Written Complaint, and “Ans” refers to Respondent’s Answer to the Complaint.

2014 he represented her at a hearing before an Administrative Law Judge (FWC ¶7; Ans ¶5). Respondent admitted that he spoke with Mr. and Ms. Coleman about the case during a recess, but denied the allegations that he called the Administrative Law Judge that “fucking nigger” and/or “that nigger.” (FWC ¶7; Ans ¶5).

Respondent admitted that in or about the fall of 2014, the Colemans retained him to represent them in a Family Court matter in which they sought the right to visit their grandchild (FWC ¶8; Ans ¶6). Respondent admitted that he sent all the emails contained in the Formal Written Complaint in Exhibits A-I. (FWC ¶¶9, 10, 11, 12, 13, 14, 15, 16, 18; Ans ¶7).

C. The Hearing

On March 29, 2018, the Commission designated Judge John Collins as Referee to hear and report proposed findings of fact and conclusions of law. A hearing was held in New York City on August 6 and 7, 2018. Commission Counsel called two witnesses and introduced fourteen exhibits (Exs 1-14). Respondent testified on his own behalf and called four character witnesses

THE FACTS

Jennifer Coleman met Respondent in or about 1989, when a client of her cleaning service referred her (Tr 5). Ms. Coleman cleaned Respondent’s home for approximately 5 years and occasionally took care of Respondent’s cats (Tr 7). In 2013, Ms. Coleman retained Respondent to represent her in an employment discrimination case before the Division of Human Rights against the Cold Spring Harbor School District (Tr 9-10, 27).

A. Employment Discrimination matter

Ms. Coleman worked part-time as a substitute custodian of the school district for sixteen years (Tr 9). At some point the district hired new workers and Ms. Coleman believed that she was getting less sub-custodial work than in previous years and had missed out on four jobs (Tr 9, 27). When she complained to the head custodian, he required her to move 200 desks by herself, videotaped the incident, and later played the video and called her a “cunt” (Tr 9, 23). Ms. Coleman retained Respondent to represent her in a discrimination case and Respondent filed an action on her behalf with the Division of Human Rights (Tr 9, 27).

The employment discrimination matter proceeded to a two-day hearing in Hempstead, New York, on November 5-6, 2014 (Tr 10). Ms. Coleman called 10 witnesses on her behalf (Tr 42).

The Administrative Law Judge presiding over the employment matter was Judge Margaret Jackson (Tr 43). On the second day of the hearing, Ms. Coleman and her husband returned from lunch and Respondent met the Colemans in front of the elevator (Tr 45, 66). They discussed how her case was going and how the witnesses had testified (Tr 45-46, 66). Judge Jackson was a little late so they were waiting for the judge to return (Tr 46). Respondent then said to Ms. Coleman, “Is that f’ing nigger back yet?” referring to Margaret Jackson, who was the only black person there (Tr 46-47).

Mr. Coleman similarly testified that when he and his wife returned from lunch that they were waiting by the elevators for Respondent to return. According to Mr. Coleman, he and his wife were speaking with Respondent about the case and how it was going (Tr.

65-55). Mr. Coleman testified that during this conversation he recalled Respondent “asking what [he] thought of this fucking nigger” (Tr 66).

The Colemans were the only persons present when Respondent asked about Judge Jackson and referred to her as a “nigger” (Tr 66). Mr. Coleman was also startled by Respondent using the word “nigger” (Tr 66). Mr. Coleman “didn’t expect it” because Respondent was a lawyer and a judge (Tr 68).

Mr. Coleman and his wife discussed the “nigger” comment in the car on their way home that day and questioned “how can we be using this guy for a discrimination case when this is how he is, you know...” (Tr 70). The Colemans also discussed it a couple of times at their house (Tr 69).

B. Family Court matter

During the course of the employment discrimination matter, the Colemans asked Respondent to handle a Family Court matter in which their daughter, Kelly Martino, sought an order of protection to limit contact with their grandson (Tr 13). Respondent was unable to take on a new matter because he was running for District Court judge,² so Ms. Coleman hired another attorney to handle the matter and the order of protection was vacated (Tr 13-14). By late November 2014, the Colemans had retained Respondent to represent them on a new Family Court petition seeking visitation with their grandson, [REDACTED] (Tr 22, 62; Ex. 2).

² The Colemans supported Respondent’s campaign by putting up signs, attending a fundraiser and contributing \$200 (Tr 12).

The main form of communication between the Colemans and Respondent was by email (Tr 10). From October 24, 2014 through February 22, 2015, Respondent sent the Colemans emails containing the following language:

- In an email on October 24, 2014, Respondent referred to Kelly Martino, the Coleman's daughter, as a **"bitch"** (Tr 20; Ex. 1).
- In an email on November 25, 2014, Respondent referred to Karen McGuire, the daughter's attorney as a **"cunt on wheels"** (Tr 21; Ex. 2).
- In another email on November 25, 2014, Respondent referred to the people who work in schools as **"assholes."** (Tr 27; Ex. 3).
- In an email on January 13, 2015, Respondent referred to the Kelly Martino as an **"asshole."** (Tr 29; Ex. 4).
- In an email on January 22, 2015, Respondent referred to Kelly Martino and her ex-husband as **"scumbags."** (Tr 32; Ex. 5).
- In an email on February 10, 2015, Respondent again referred to Kelly Martino as a **"bitch"** (Tr 34; Ex. 6).
- In an email on February 11, 2015, Respondent again referred to Kelly Martino as a **"bitch"** (Tr 36; Ex. 7).
- In a second email on February 11, 2015, Respondent referred to the Coleman's daughter's attorney as **"eyelashes"** instead of using her name. (Tr 38; Ex. 8).

- In an email on February 22, 2015, Respondent referred to the “judge” in the Family Court matter as an “asshole” (Tr 40, Ex. 9).³

C. Respondent’s Written Responses to the Commission

In his written response to the Commission’s inquiry letters, Respondent admitted that his email address is [REDACTED] and that he sent all the above emails to the Colemans (Ex. 12-13, 14[a]-[l]). He said that he described Karen McGuire as a “cunt on wheels” because she was an “aggressive matrimonial practitioner” in Suffolk County, “known for sharp lawyering” (Ex. 10, p. 2; Ex 11, p. 2). He conceded that he has “no valid explanation to justify using [the] epithet” “scumbags” to describe the Coleman’s daughter and her ex-husband (Ex. 10, p. 2; Ex 11, p. 2).

Respondent acknowledged that his crude language depicting others in the justice system, including an adversary lawyer, a party respondent, and a referee, “coarsens and potentially denigrates everyone” (Ex. 10, p. 3; Ex 11, p. 2) and that his conduct violated the Rules (Ex. 14[i]).

D. Respondent’s Hearing Testimony

Following his admission to the practice of law in 1981, Respondent began work at a local firm doing criminal defense (Tr 120). In 1984 he opened his own private practice and maintained that practice doing criminal defense, appeals and some civil litigation until the end 2014, beginning of 2015 when he wound down his practice (Tr 120, 124).

³ In his written response to the Commission’s inquiry letter, Respondent explained that the “judge” in the matter was a court attorney-referee Colleen Fondulis (Ex. 10).

Respondent was elected in 1994 to Northport Village Court (Tr 121). He is also a part-time judicial hearing officer for the Suffolk County Parking Traffic and Violations Agency and teaches at Farmingdale State College (Tr 122-123).

Respondent has known Ms. Coleman since the mid-1990's, when she worked as a housecleaner for his family for a few years and occasionally would also look after their cats (Tr 127).

In 2013, Respondent was retained by Ms. Coleman to assist her in connection with her employment discrimination action and she paid him an initial retainer of \$7,500 (Tr 131). The employment discrimination matter ultimately went to trial and she paid another \$5,000 (Tr 131). The Colemans paid Respondent \$4,500 for his representation on the grandparent visitation petition in Family Court (Tr 127).

Respondent described Ms. Coleman as a "needy" client who "lived on her iPhone, on her laptop, on her computer" and email was an expedient way for them to communicate (Tr 128). He testified that he had a lot of email communication with Ms. Coleman and acknowledged that his tone became "too conversational" and "far too familiar" (Tr 128).

Respondent admitted that he used profane language in email communications with his client (Tr 127) and that it was unprofessional to do so (Tr 128). He testified that it is not "appropriate for any attorney to ... denigrate himself or herself or the profession" in any way "by using language that reflects poorly on the profession" (Tr 128).

Respondent acknowledged that the word "cunt" is sexist (Tr 137) and that it is a derogatory term used specifically against women (Tr 143). Respondent admitted that he

would have never said the word to Ms. McGuire's face (Tr 141-42). Respondent also conceded that it was insensitive to use the word "cunt" in an email to Ms. Coleman since that word was the "centerpiece" of her petition in the discrimination matter – it was the same word used by Ms. Coleman's supervisor, who "would laugh at her in the presence of other employees quoting and re quoting that word" (Tr 136-37).

Respondent testified that at the time it "didn't dawn on him" that sending these emails to his client "somehow had a nexus or a connection to his judicial persona," but he had "learned the hard way that it certainly does" (Tr 129). The profanity used in his emails are words he would never use in court and using such profanity would show a disrespect for the litigants (Tr 141-142). Respondent acknowledges that similarly this language showed a lack of respect to clients (Tr 143).

Respondent denied ever calling the administrative law judge a "fucking nigger" (Tr 129). He agreed that "nigger" is the worst word someone can call a black person (Tr 144).

ARGUMENT

POINT I

RESPONDENT COMMITTED JUDICIAL MISCONDUCT WHEN HE REPEATEDLY USED SEXIST, PROFANE, AND DEGRADING LANGUAGE IN EMAIL COMMUNICATIONS WITH HIS CLIENTS

"[E]ven off the bench, judges are required to avoid conduct that ... detracts from the dignity of judicial office." *Matter of Feeder* 2010 Ann Rep 143, 148 (Commn on Jud Conduct, November 18, 2009) citing Rule 100.4(A). As the Court of Appeals has stated,

“whenever he travels, a Judge carries the mantle of his esteemed office with him.”

Matter of Steinberg, 51 NY2d 74, 80 (1980). Both on and off the bench, judges are “cloaked figuratively” with the robes of judicial office. *Matter of Kuehnel v. Comm on Judicial Conduct*, 49 NY2d 465, 469 (1980).

It is well-settled that “[e]ven off the bench, angry and profane language by a judge is inappropriate.” *Matter of Mahon*, 1997 Ann Rep 104, 105 (Commn on Jud Conduct, August 8, 1996). Here, Respondent concedes that he repeatedly used profane language during email exchanges with his clients. Respondent:

- Referred to his adversary as a “cunt on wheels” and “eyelashes” (Tr 21, 38; Exs. 2, 8);
- Referred to the Coleman’s daughter as a “bitch” on three separate occasions (Tr 20, 34, 36; Ex. 1, 6, 7) and as an “asshole” (Tr 29; Ex. 4). He also referred to the daughter and her ex-husband as “scumbags” (Tr 32; Ex. 5);
- Referred to the court attorney-referee in their Family Court matter as an “asshole” (Tr 40; Ex. 9, 10);
- Referred to the people who work in schools as “assholes” (Tr 27; Ex. 3);

The Commission has specifically held that use of the phrase “cunt” is “profane, obscene and vulgar,” and “vulgar and unbecoming of a judge.” *Matter of Aldrich*, 1983 Annual Rep 75, 77 (Commn on Jud Conduct, Sept 17, 1982); *Matter of Assini*, 2000 Ann Rep 95, 97, 99 (Commn on Jud Conduct, March 4, 1999). In this matter, the use of the word “cunt” in an email to Ms. Coleman was especially insensitive in light of Respondent’s testimony that her supervisor in the school discrimination case “used that

very word against her” and “would laugh at her in the presence of other employees quoting and re quoting that word” (Tr 136).

Respondent concedes that the profane statements in his emails constitute a violation of the Sections 100.1, 100.2(A) and 100.4(A) of the Rules (Ex. 10, p. 3; Ex 11, p. 2), which require a judge to observe “high standards of conduct” that promote “at all times... public confidence in the integrity and impartiality of the judiciary” and to conduct extra-judicial activities to that they do not “detract from the dignity of judicial office.” See Rules, §§100.1, 100.2(A), 100.4(A). He admits that his profane language was unprofessional (Tr 128) and showed a lack of respect for his clients (Tr 145).

Respondent also concedes that a “judge is a judge 24/7 no matter where the judge is” and that “it’s well settled law and it’s the jurisprudence of the Commission that judicial conduct is absolutely not limited to the things that happen in an open courtroom.” (Ex. 14(j)). Indeed, the Commission has repeatedly disciplined judges for “personal conduct ... unrelated to the judicial office.” See *Matter of Pautz*, 2005 Ann Rep 199, 200 (Commn on Jud Conduct, March 30, 2004) (judge engaged in “series of annoying acts” directed at former paramour); *Matter of Cipolla*, 2003 Ann Rep 84 (Commn on Jud Conduct, October 1, 2002) (judge wrote a letter under false pretenses seeking information about a woman he was dating); *Matter of Roepe*, 2002 Ann Rep 153 (Commn on Jud Conduct, June 27, 2001) (judge threatened his wife with a knife during an angry confrontation); *Matter of Miller*, 1997 Ann Rep 108 (Commn on Jud Conduct, August 14, 1996) (judge sent anonymous, harassing mailings, concerning an individual with whom she had a personal relationship).

As Respondent acknowledged in his response to the Commission's inquiry letter, "words have meaning and when someone is a judge nothing is ever truly private – *nothing*-- except, perhaps, one's own thoughts." (Ex. 10, p. 3). Respondent's profane emails detract from the dignity of judicial office and violate the Rules. *See* Rules §§100.1, 100.2(A), 100.4 (A)(1), (2) and (3).

POINT II

RESPONDENT VIOLATED THE RULES WHEN HE REFERRED TO THE ADMINISTRATIVE LAW JUDGE AS A "NIGGER"

A judge's racist and sexist remarks "diminish[] the esteem of the court and the dignity of judicial office." *Matter of Aldrich*, 1983 Ann Rep 75, 78 (Comm'n on Jud Conduct, September 17, 1982), removal accepted 58 NY2d 279 (1983). The word "nigger" is "a hateful racial epithet" that should have "no place in a judge's lexicon." *Matter of Mulroy*, 2000 Ann Rep 125, 128 (Comm'n on Jud Conduct, August 12, 1999).

Both Mr. and Ms. Coleman testified that Respondent called Margaret Jackson, the Administrative Law Judge presiding over Ms. Coleman's employment discrimination trial matter, an "f-ing" or "fucking" "nigger" (Tr 46, 66). Both witnesses clearly recalled that Respondent made the "nigger" statement about Judge Jackson while they were by the elevator, waiting for Judge Jackson to return, waiting for the hearing to resume and discussing with Respondent how the case was going (Tr 45-47, 65-67). Similarly, both described that right after Respondent made the racial slur, Judge Jackson turned the corner and then they resumed the hearing (Tr 47, 66).

The Commission has made clear that “[r]acial epithets, indefensible when uttered by a private citizen, are especially offensive when uttered by a judge.” *Matter of Agresta*, 1985 Ann Rep 109, 111 (Comm’n on Jud Conduct, July 5, 1984), *censure accepted* 64 NY2d 327 (1985); *Matter of Kuehnel*, 1980 Ann Rep 125 (Comm’n on Jud Conduct, September 6, 1979); *removal accepted*, 49 NY2d 465 (1980) (arriving at police station and calling four detained “black hoodlums” and “niggers”); *see also Matter of Mulroy*, 2000 Ann Rep 125, 128 (Comm’n on Jud Conduct, August 12, 1999), *removal accepted* 94 NY2d 652 (2000); *Matter of Fabrizio*, 1985 Ann Rep 127, 133 (Comm’n on Jud Conduct, December 26, 1984), *removal accepted*, 65 NY2d 275 (1985).

While Respondent denied making these statements, there was no credible evidence adduced at the hearing for why Jennifer and Walter Coleman would fabricate their testimony that Respondent called Judge Jackson a “nigger” in their presence.

Respondent committed serious misconduct when he referred to Judge Jackson as a “nigger,” a hateful slur he concedes is the worst word one could call a black person (Tr 144). As the Commission made clear in *Matter of Cerbone*, 1984 Ann Rep 76, 78 (Comm’n on Jud Conduct, August 5, 1983), *removal accepted* 61 NY2d 93 (1984),

racist conduct by a member of the judiciary will not be tolerated. . . . No citizen should be required to appear before a judge who publicly uses terms such as “niggers.”

By using that term in his conversation with the Colemans, Respondent violated the Rules.

CONCLUSION


Counsel to the Commission respectfully requests that the Referee adopt the proposed findings of fact and conclusions of law enumerated in Appendix A to this

Memorandum, and find that Charges I and II of the Formal Written Complaint are sustained.

Dated: January 2, 2019
New York, New York

Respectfully submitted,

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Edward Lindner, Esq.

APPENDIX A**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent was admitted to the practice of law in New York in 1981 (Tr 120). Respondent was elected in 1994 to Northport Village Court (Tr 121). He is also a part-time judicial hearing officer for the Suffolk County Parking Traffic and Violations Agency and teaches at Farmingdale State College (Tr 122-123).

PROPOSED FINDINGS OF FACTS AS TO CHARGE I

2. In 2013, Jennifer Coleman retained Respondent to represent her in an employment discrimination case before the Division of Human Rights against the Cold Spring Harbor School District (Tr 9-10, 27). Ms. Coleman worked part-time as a substitute custodian of the school district for sixteen years (Tr 9). At some point the district hired new workers and Ms. Coleman believed that she was getting less sub-custodial work than in previous years and had missed out on four jobs (Tr 9, 27). When she complained to the head custodian, he required her to move 200 desks by herself, videotaped the incident, and later played the video and called her a "cunt" (Tr 9, 23).

3. The employment discrimination matter proceeded to a two-day hearing in Hempstead, New York, on November 5-6, 2014 (Tr 10). Ms. Coleman called 10 witnesses on her behalf (Tr 42).

4. The Administrative Law Judge presiding over the employment matter was Judge Margaret Jackson (Tr 43). On the second day of the hearing, Ms. Coleman and her husband returned from lunch and Respondent met the Colemans in front of the elevator

(Tr 45, 66). They discussed how her case was going and how the witnesses had testified (Tr 45-46, 66).

5. Judge Jackson was a little late so they were waiting for her to return (Tr 46). Respondent then said to Ms. Coleman, "Is that f'ing nigger back yet?" referring to Judge Margaret Jackson, who was the only black person there (Tr 46-47).

6. Mr. Coleman similarly testified that when he and his wife returned from lunch that they were waiting by the elevators for Respondent to return. According to Mr. Coleman, he and his wife were speaking with Respondent about the case and how it was going (Tr. 65-55). Mr. Coleman testified that during this conversation he recalled Respondent "asking what [he] thought of this fucking nigger" (Tr 66).

7. The Colemans were the only persons present when Respondent asked about Judge Jackson and referred to her as a "nigger" (Tr 66). Mr. Coleman was also startled by Respondent using the word "nigger" (Tr 66). Mr. Coleman "didn't expect it" because Respondent was a lawyer and a judge (Tr 68).

8. Mr. Coleman and his wife discussed the "nigger" comment in the car on their way home that day and questioned "how can we be using this guy for a discrimination case when this is how he is, you know..." (Tr 70). The Colemans also discussed it a couple of times at their house (Tr 69).

9. During the course of the employment discrimination matter, the Colemans asked Respondent to handle a Family Court matter in which their daughter, Kelly Martino, sought an order of protection to limit contact with their grandson (Tr 13). Respondent was

unable to take on a new matter because he was running for District Court judge¹, so Ms. Coleman hired another attorney to handle the matter and the order of protection was vacated (Tr 13-14).

10. By late November 2014, the Colemans had retained Respondent to represent them on a Family Court petition seeking visitation with their grandson, [REDACTED] (Tr 22, 62; Ex. 2).

11. The main form of communication between the Colemans and Respondent was by email (Tr 10). From October 24, 2014 through February 22, 2015, Respondent sent the Colemans emails containing the following language:

- A. In an email on October 24, 2014, Respondent referred to Kelly Martino, the Coleman's daughter, as a "bitch" (Tr 20; Ex. 1).
- B. In an email on November 25, 2014, Respondent referred to Karen McGuire, the daughter's attorney, as a "cunt on wheels" (Tr 21; Ex. 2).
- C. In another email on November 25, 2014, Respondent referred to the people who work in schools as "assholes." (Tr 27; Ex. 3).
- D. In an email on January 13, 2015, Respondent referred to the Kelly Martino as an "asshole." (Tr 29; Ex. 4).
- E. In an email on January 22, 2015, Respondent referred to Kelly Martino and her ex-husband as "scumbags." (Tr 32; Ex. 5).

¹ The Colemans supported Respondent's campaign by putting up signs, attending a fundraiser and contributing \$200 (Tr 12).

- F. In an email on February 10, 2015, Respondent again referred to Kelly Martino as a “**bitch**” (Tr 34; Ex. 6).
- G. In an email on February 11, 2015, Respondent again referred to Kelly Martino as a “**bitch**” (Tr 36; Ex. 7).
- H. In a second email on February 11, 2015, Respondent referred to the Coleman’s daughter’s attorney as “**eyelashes**” instead of using her name. (Tr 38; Ex. 8).
- I. In an email on February 22, 2015, Respondent referred to the “judge” in the Family Court matter as an “**asshole**” (Tr 40, Ex. 9).²

12. Respondent acknowledges that his email address is paulsenzer@aol.com and that he sent all the above emails to the Colemans (Ex. 12-13, 14[a]-[1]).

13. Respondent testified that he described Karen McGuire as a “cunt on wheels” because she was an “aggressive matrimonial practitioner” in Suffolk County, “known for sharp lawyering” (Ex. 10, p. 2; Ex 11, p. 2). Respondent conceded that “cunt” is a sexist term (Tr 137). Respondent further conceded that “cunt” is a derogatory term used specifically against women (Tr 143).

14. Respondent acknowledges that he has “no valid explanation to justify using [the] epithet” “scumbags” to describe the Coleman’s daughter and her ex-husband (Ex. 10, p. 2; Ex 11, p. 2).

² In his written response to the Commission’s inquiry letter, Respondent explained that the “judge” in the matter was a court attorney-referee Colleen Fondulis (Ex. 10).

15. Respondent further acknowledges that his crude language depicting others in the justice system, including a lawyer, a party respondent, and a referee, “coarsens and potentially denigrates everyone” (Ex. 10, p. 3; Ex 11, p. 2) and that his conduct violated the Rules (Ex. 14[i]).

16. The Colemans ultimately withdrew their Family Court visitation petition (Tr 41).

17. There is a stipulation between Commission Counsel and Respondent that the complainant in this matter was Christopher Cassar, that Mr. Cassar filed a complaint against Respondent with the Commission on Judicial Conduct and that the information included in Mr. Cassar’s complaint was obtained from the Colemans (Tr. 79).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE I

18. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

19. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

20. Respondent failed to conduct his extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that he cast reasonable doubt on his ability to act impartially as a judge, in violation of Section 100.4(A)(1) of the Rules.

21. Respondent detracted from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

22. Respondent's conduct is not compatible with judicial office, in violation of Section 100.4(A)(3) of the Rules.

REPLY MEMORANDUM BY COUNSEL TO THE COMMISSION,
DATED JANUARY 16, 2019 [442 - 451]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

**REPLY MEMORANDUM BY
COUNSEL TO THE COMMISSION**

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Administrator and Counsel to the
Commission on Judicial Conduct
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Of Counsel:
Brenda Correa, Esq.
Mark Levine, Esq.
Edward Lindner, Esq.

Dated: January 16, 2019

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted in reply to Respondent's submission to the Referee. Respondent's argument that his sexist, vulgar, degrading and profane comments, while "inappropriate" and "distasteful," did not amount to judicial misconduct because they were made during private conversations, is without merit and contrary to well-established Court of Appeals' precedent.

While Respondent denies that he called an African-American Administrative Law Judge a "nigger" and/or a "fucking nigger" during a conversation with the Colemans, he provides no plausible motive why the Colemans would fabricate such an explosive allegation.

ARGUMENT

POINT I

RESPONDENT'S SEXIST, VULGAR, & PROFANE LANGUAGE IN HIS EMAILS WITHOUT QUESTION CONSTITUTES MISCONDUCT

- 1. Respondent's sexist and vulgar language demeans the judiciary and creates an appearance of gender bias for referring to his female adversary as a "cunt on wheels."**

It is telling that Respondent's brief fails to specifically address the use of the word "cunt" – a term that is specifically degrading to women. Instead, he generally minimizes his language as merely "inappropriate" (Resp Mem p. 1, 5-6).

The term "cunt" is more than just inappropriate – it is "profane, obscene and vulgar" language, *Matter of Aldrich*, 1983 Annual Rep 75, 77 (Comm'n on Jud Conduct,

Sept 17, 1982). As Respondent conceded on cross-examination, the term is a sexist (Tr 137), derogatory word that is specifically used against women (Tr 143).

Rather than drawn upon his experience with Karen McGuire and cite to articulable facts to demonstrate that he believed her to be a formidable adversary, he chose instead to use a term that is specifically derogatory towards women. In doing so, he used language that is “vulgar and unbecoming of a judge.” *Matter of Assini*, 2000 Ann Rep 95, 99 (Comm on Jud Conduct, March 4, 1999) and created an appearance of gender-bias that is inconsistent with his role as a judge.

2. Respondent’s claim that his conduct does not violate the Rules because of the private nature of the communications is without merit and contrary to his prior statements.

Respondent’s argument that his conduct does not violate the Rules because the Commission has not previously disciplined a judge “based strictly on the use of profane language in private communications” (Resp Mem p. 16) suffers from multiple infirmities. To begin, the Court of Appeals rejected this very in argument in *Matter of Blackburne*, 7 NY3d 213 (2006), finding no merit in a judge’s argument that removal would be unprecedented because the judge’s “conduct was unprecedented.” *Id.* at 220 (emphasis in original). The fact that the Commission has not previously encountered misconduct identical to Respondent’s conduct here does nothing to exonerate him.

Moreover, Respondent’s claim that he did not violate the Rules is directly contradicted by his prior admissions in response to the Commission’s inquiry letter, in which he stated that “my conduct clearly was not consistent with the letter or the spirit of the Section” referring to Section 100.4(A) of the Rules and that “sending these emails is

not consistent with Sections 100.1 and 100.2(A).” (Ex. 10, p. 3, #10, Ex. 11, p. 2, #10, Ex. 12, p. 4, #11). In Respondent’s own words, “My clients – even if I thought they were friends – remain part of the public. To the extent they knew I was a village justice -- and they did -- the use of ‘crude’ language to depict others in the justice system (an adversary lawyer; parties respondent; a referee) coarsens and potentially denigrates everyone.” (Ex. 10, p. 3, #9).

Finally, Respondent’s claim in his brief that his comments do not rise “rise to the level of a breach of the Rules Governing Judicial Conduct” because of the private nature of the communication (Resp Mem p. 13-15) fails to acknowledge Court of Appeals’ precedent. As the Court wrote in *Matter of Backal*, 87 NY2d 1, 8 (1995),

[t]he facts that [Respondent’s] misconduct occurred ... where [he] may have had an expectation of privacy and that [his] statements were made to a person [he] considered to be a close associate do not mitigate the wrongfulness of [his]conduct Our ethical codes and precedent set forth with no equivocation that Judges are accountable “at all times” for their conduct – including their conversation – both on and off the Bench

Id. at 8 (citations omitted).

3. Respondent’s defense that he used the word “cunt” because a former supervisor’s use of the same word to describe Ms. Coleman was part of her gender discrimination complaint is illogical and without merit.

Respondent’s defense that he used the term “cunt on wheels” in an email to Ms. Coleman because that vulgar language was previously part of her human rights complaint and had been used by her daughter in the presence of their grandson (Resp Mem p. 5-6) is deeply troubling. Mrs. Coleman testified that the word “cunt” was “used to degrade her” in her former workplace and that the word makes her uncomfortable (Tr 23). During the

Commission's investigation, Respondent admitted in sworn testimony that given that history, his decision to use the term might have been especially hurtful to Ms. Coleman and was like "rubbing salt in a wound" (14 (g), p. 31).

There is simply no logical reason for Respondent to believe that because both Mrs. Coleman's supervisor and Mrs. Coleman's daughter both called her a "cunt" that she would somehow be more comfortable with the word as a result. The fact that he continues to make this argument serves only to underscore that he fails to accept responsibility for his conduct.

POINT II

THERE IS NO EVIDENCE TO SUPPORT THE ALLEGATION THAT THE COLEMANS EACH FABRICATED THEIR TESTIMONY AT TRIAL

There is no credible evidence to support Respondent's claim that both Jennifer and Walter Coleman fabricated their allegation that Respondent used an offensive racial slur and thereby committed perjury when they testified that he called an Administrative Law Judge (ALJ) a "nigger" (Resp Mem p. 5-6).

1. Mr. & Mrs. Coleman testified consistently as to the context in which Respondent called the ALJ a "nigger."

Respondent's argument that the Coleman's testimony should be disbelieved because their accounts of the incident were slightly different (Resp Mem p. 5-6) is contrary to logic. If the Coleman's had actually fabricated such an explosive allegation against the Respondent, it would not have been difficult to conform their testimony with each other or to fabricate additional allegations to support their claim. As the hearing testimony showed, both Jennifer and Walter Coleman clearly recalled that Respondent

called the ALJ a “nigger” (Tr 45, 66). Contrary to Respondent’s claim, the minor inconsistencies in their recollection of Respondent’s vile comment is evidence that both witnesses testified truthfully to the best of their recollection, rather than shape their testimony to be consistent on every point.

Significantly, Mr. and Mrs. Coleman testified consistently as to context in which Respondent used the word “nigger” to describe Administrative Law Judge Margaret Jackson. Mr. and Mrs. Coleman both testified that on the second day of trial, they returned from lunch (Tr 44, 64-65), took the stairs (Tr 44, 65), were standing near the elevator, and waited for the judge to return (Tr 46, 66). The Colemans each testified that when Respondent arrived they discussed with him how the trial was going (Tr 45, 66).

Mr. and Mrs. Coleman each understood that Respondent was referring to Judge Jackson when he said “nigger” (Tr 46-47, 66-67). They testified that they were “taken back” (Tr 47) and/or “startled (Tr 68) by it. Each testified that although Judge Jackson was not present when Respondent made the racial slur, that right after the comment Judge Jackson walked around the corner (Tr 47, 67).

Thus, as the Court of Appeals held in *People v Brown*, 98 NY2d 226, 235 (2002), [d]espite some minor discrepancies in their testimony ... their essential rendition of the facts remained unshaken.” The Referee should credit the testimony of Mr. and Mrs. Coleman and find that Respondent uttered the offensive racial slur.

2. Respondent advances no credible argument why Mr. and Mrs. Coleman would lie.

Respondent's half-hearted attempts to suggest a motive for Mr. or Mrs. Coleman to lie about his racial epithet (Resp Mem p. 9-6) are unconvincing and unsupported by record evidence.

Respondent's suggestion that Mrs. Coleman might harbor some animus toward Respondent because she "believed she was entitled to a refund of the fees she had paid to Respondent" (Resp Mem p. 9) ignores the undisputed fact that the Coleman's never made a complaint to the Attorney Grievance Committee or the Commission (Tr 50) and never filed a legal action seeking to recoup their legal fees (Tr 145). Surely if the Colemans were upset about their legal fees, these direct methods of complaint make far more sense than the suggestion that they took out their frustration by fabricating evidence for an unrelated federal lawsuit or this disciplinary proceeding.

With respect to the lawsuit, Respondent offers no explanation why Mrs. Coleman would fabricate such a serious charge merely because of an article she read in the paper involving a complete stranger to her, Christopher Cassar, Esq. (Resp Mem p. 9-10). There was no evidence adduced at the hearing that the Colemans could have achieved any personal or financial gain in connection with their allegation that Respondent called Judge Jackson a "nigger."

CONCLUSION

Counsel to the commission respectfully requests that the Referee adopt the proposed findings of fact and conclusions of law enumerated in Appendix A to our January 2, 2019, Memorandum and find that Charge I of the Formal Written Complaint is sustained.

Dated: January 16, 2019
New York, New York

Respectfully submitted,

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RESPONDENT'S REPLY BRIEF, DATED JANUARY 16, 2019
[452 - 461]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
Of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

-----X

RESPONDENT'S REPLY BRIEF

Respectfully submitted,

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PRELIMINARY STATEMENT

This Reply Brief is respectfully submitted on behalf of the Honorable Paul H. Senzer (“Respondent”) in support of the recommendation that the Referee conclude that the Commission on Judicial Conduct (“Commission”) has failed to prove by a preponderance of the evidence that Respondent engaged in judicial misconduct.

The authorities cited by the Commission in support of its request for a finding that Respondent has engaged in judicial misconduct, fail to support the premise that Respondent’s statements, made in private email communications with a client of his law practice, have had the effect of detracting from the dignity of judicial office or from public confidence in the integrity and impartiality of judicial office.

Further, as detailed in Respondent’s Post-Hearing Brief, the Commission has failed to prove, by a preponderance of the evidence presented at the hearing, that Respondent spoke a racially derogatory term in discussing the Administrative Law Judge presiding over his client’s employment discrimination matter.

Accordingly, request is hereby made for a finding that Respondent has not engaged in behavior which violates the Rules Governing Judicial Conduct (“Rules”).

ARGUMENT

POINT I

**THE COMMISSION HAS FAILED TO PROVE BY A PREPONDERANCE
OF THE EVIDENCE THAT RESPONDENT’S STATEMENTS IN
PRIVATE EMAIL COMMUNICATIONS WITH CLIENTS OF HIS LAW
FIRM RISE TO THE LEVEL OF A VIOLATION OF THE RULES
GOVERNING JUDICIAL CONDUCT**

Conduct which occurs off the bench and/or outside of a judge’s judicial duties may nonetheless degrade the dignity of judicial office and detract from public confidence in the

integrity and impartiality of judicial office. However, a clear distinction must be drawn between actions undertaken by a judge in the public sphere versus those undertaken in private. While the former have frequently resulted in discipline, none of the cases cited by the Commission support a finding that such discipline is warranted for private actions and/or speech.

A review of the cases cited by the Commission demonstrates only that offensive and improper action by a judge undertaken in the *public sphere*, whether or not they are undertaken on the bench or in the course of carrying out judicial duties, may amount to judicial misconduct. However, it does not support the premise that strictly *private* communications between a judge, acting in the role as a private attorney, and his clients, rise to the level of judicial misconduct.

Specifically, a review of the Commission's cited cases demonstrates the following:

A. Commission's Cited Cases Involving Improper Conduct by a Judge While on the Bench

There can be no doubt that improper conduct by a judge while on the bench likely warrants discipline. *Matter of Agresta*, 1985 Ann Rep 109 (Commn on Jud Conduct, September 17, 1982)(imposing a censure upon a judge who made a remark with racial connotations during the sentencing of a defendant); *Matter of Aldrich*, 1983 Ann Rep 75 (Commn on Jud Conduct, September 17, 1982)(removing a judge who appeared on the bench to conduct judicial proceedings while under the influence of alcohol and used profane, improper and menacing language, made inappropriate racial references and otherwise behaved in an inappropriate and degrading manner); *Matter of Mahon*, 1997 Ann Rep 104 (Commn on Jud Conduct, August 8, 1996)(censuring judge for making profane and disparaging remarks to the mother of a defendant appearing before him); *Matter of Mulroy*, 2000 Ann Rep 125 (Commn on Jud Conduct, August 12, 1999)(removing judge who, while attempting to influence the disposition of a matter pending before him, made derogatory racial remarks about a crime victim; displayed intemperate

behavior and pressed a prosecutor to offer a plea for his own personal convenience; made disparaging remarks; failed to disclose his relationship with a witness appearing before him; and testified at a hearing with reckless disregard for the truth).

There is no allegation in the instant proceedings that Respondent engaged in misconduct while on the bench in his judicial capacity.

B. Commission's Cited Cases Involving Improper Conduct by a Judge Off the Bench But Otherwise in the Course of Judicial Duties

Likewise, a judge's actions while off the bench but nonetheless within the course of judicial duties may warrant discipline. *Matter of Assini*, 2000 Ann Rep 95 (Commn on Jud Conduct, March 4, 1999)(removing judge who permitted an attorney with whom he shared office space, business telephone and mailing address to appear before him on multiple occasions without disclosing their relationship; refusing to deal with more than 100 cases over the course of 8 months and making inappropriate, obscene and sexist remarks about his fellow Town Justice in the course of his judicial duties); *Matter of Fabrizio*, 1985 Ann Rep 127 (Commn on Jud Conduct December 26, 1984)(removing judge who demonstrated a persistent and varied pattern of misconduct by sitting on a case involving his long standing dentist without disclosing their relationship; intervening in two cases in other courts to obtain special consideration for defendants at their request and being discourteous to a foreign-born defendant, repeatedly using racist language while performing his judicial duties); *Matter of Feeder*, 2010 Ann Rep 143 (Commn on Jud Conduct, November 18, 2009)(censuring judge who compromised his impartiality by undertaking law enforcement duties when he pursued a motorist for a perceived traffic violation, displayed a badge and identified himself as a judge to the motorist, and filed a complaint against the motorist in the court where he is a judge); *Matter of Miller*, 1997 Ann Rep 108 (Commn on Jud Conduct, August 14, 1996)(censuring judge who, during the course of a

trial, failed to advise counsel of a note received from the jury and accepted a bargained guilty plea from defendant knowing that he was not aware of the note, and engaging in malicious harassment of her ex-boyfriend and his wife)

Likewise, the Commission's cited determinations demonstrate that judges have frequently been disciplined for using the prestige and authority of their judicial office for personal gain. *Matter of Cipolla*, 2003 Ann Rep 84 (Comm'n on Jud Conduct, October 1, 2002)(censuring judge who, during an altercation at a comedy club, refused to return vehicle keys to their rightful owner, identified himself as a judge and made the untrue statement that he was the owner of the vehicle, making false representations to a federal agency and attempting to fix a traffic ticket for a friend); *Matter of Steinberg*, 1980 Ann Rep 75 (Comm'n on Jud Conduct, March 21, 1980)(removing judge who used the prestige and authority of his office to persuade lenders and borrowers to enter into transactions from which he personally profited).

There is no allegation in the instant proceedings that Respondent engaged in misconduct while off the bench but nonetheless acting in a judicial capacity.

C. Commission's Cited Cases Involving Improper Conduct by a Judge While Acting in the Public Sphere, Unrelated to Judicial Duties

Finally, a judge's actions undertaken in the public sphere which are wholly unrelated to judicial duties may likewise rise to the level of judicial misconduct warranting discipline. *Matter of Kuehnel*, 1980 Ann Rep 125 (Comm'n on Jud Conduct, September 6, 1979)(removing judge who had engaged in overt physical violence with several youths and repeated outbursts involving outrageous verbal abuse and virulent racism); *Matter of Cerbone*, 1984 Ann Rep 76 (Comm'n on Jud Conduct, August 5, 1983)(removing judge who, while in a bar, engaged in an altercation with several bar patrons, loudly proclaiming that he was a judge and announcing what he would do if any of the black patrons appeared in front of him in court, embellishing his threats with

racial epithets and striking or pushing one of the patrons); *Matter of Pautz*, 2005 Ann Rep 199 (Commn on Jud Conduct, March 30, 2004)(issuing an admonition against a judge upon determining that he had engaged in a series of annoying acts toward his ex-girlfriend notwithstanding her letter directing him to desist from further contact with her, resulting in the filing of criminal charges against him); *Matter of Roepe*, 2002 Ann Rep 153 (Commn on Jud Conduct, June 27, 2001)(censuring judge who engaged in the criminal act of menacing his wife while under the influence of alcohol).

Similarly, in a determination made only weeks ago, the Commission admonished a judge who was involved in a minor accident with a police vehicle and repeatedly, publicly and gratuitously invoked her judicial status on a public street with multiple police officers on scene. *Matter of Michels* (Commn on Jud Conduct, December 27, 2018). In reaching that determination, the Commission again reiterated the longstanding jurisprudence defining sanctionable extrajudicial conduct as any action, on or off the bench, undertaken in the public sphere to the end that public perception of the integrity of the judiciary be preserved.

No allegation has been made that Respondent engaged in conduct which affected the public perception of the integrity of the judiciary and therefore his actions do not amount to misconduct under the Rules.

D. Commission's Cited Cases Involving Improper Conduct by a Judge During Private Communications Unrelated to Judicial Duties

Noticeably absent from the Commission's Post-Hearing submission is reference to even a single prior Commission determination in which a judge was disciplined for purely private communication wholly unrelated to his judicial duties. It is submitted that there is simply no support or precedent for a finding that Respondent's use of profanity in private email communications with clients of his law practice, wherein he attempted to persuade, dissuade,

counsel and caution them with regard to their legal matters rises to the level of a violation of the Rules and therefore the Charge contained in the Formal Written Complaint must be dismissed.

POINT II

**THE COMMISSION HAS FAILED TO PROVE BY A PREPONDERANCE
OF THE EVIDENCE THAT RESPONDENT UTTERED A RACIALLY
DEROGATORY TERM**

It cannot be ignored that the most insidious of allegations asserted against Respondent, that he used a racially disparaging term when discussing ALJ Jackson, has not been proven by a preponderance of the credible evidence.

The Commission asserts that there was no credible evidence adduced at the hearing to explain why Jennifer and Walter Coleman would fabricate their testimony that Respondent called ALJ Jackson a “nigger” in their presence. Initially, it is not Respondent’s burden to demonstrate the motivation behind the witnesses’ testimony. Nevertheless, ample evidence of such motivation was demonstrated and is discussed at length in Respondent’s Post-Hearing Brief.

Mr. and Mrs. Coleman were unhappy with the loss of her discrimination case as well as their lack of success in securing grandparent visitation. They believed that as a result, they were entitled to a return of their fees paid to Respondent notwithstanding the substantial services which he provided on their behalf. TR. p. 51, lines 2 – 21, 41; 56, lines 19-22.

Thereafter, having read an article about litigation pending against the TPVA and its employees alleging discrimination, Ms. Coleman reached out to Christopher Cassar, Esq., the attorney prosecuting the case, in an effort to provide him with her emails with Respondent. TR p. 51-56. According to Ms. Coleman’s testimony, after reading the allegations of racial discrimination against the TVPA, she “wanted to help him if I could with my emails.” TR p.53,

lines 4-9. It was not until long after Mr. Cassar had an expert search Ms. Coleman's emails and fail to discover any that would support his case of ethnic/racial bias on Respondent's part that the allegation that he had made a racially derogatory remark about ALJ Jackson first arose in the context of Mr. Cassar's complaint to the Commission.

Throughout cross examination, Ms. Coleman repeatedly made reference to the emails, and her efforts to assist with the prosecution of the federal case by providing those emails to Mr. Cassar. Yet, very tellingly, Ms. Coleman did not make a single reference throughout such testimony to the comment purportedly made to her by Respondent about ALJ Jackson or any efforts on her part to report such comment to Mr. Cassar. TR p. 52 – 56.

Furthermore, the Commission ignores the significant disparity in testimony adduced from Jennifer and Walter Coleman with respect to the context in which the purported remark was made. While Ms. Coleman testified that Respondent made the remark in the context of asking them generally if ALJ Jackson was "back yet" from lunch, Mr. Coleman testified that Respondent had made the comment directly to him, asking for Mr. Coleman's opinion of her. TR p. 45-46, 66. This significant disparity in context cannot be ignored and undermines the credibility of the testimony.

Accordingly, the Commission has failed to prove by a preponderance of the credible evidence that Respondent uttered a racially derogatory term.

CONCLUSION

Based upon the foregoing, it is submitted that the preponderance of the credible evidence adduced at the hearing of this matter fails to demonstrate that Respondent has violated the Rules Governing Judicial Conduct. Accordingly, dismissal of the single charge alleged in the Complaint is warranted and appropriate.

Dated: Bay Shore, New York
January 16, 2019

Respectfully submitted,

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STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X
In the Matter of the Proceeding
Pursuant to Section 44, Subdivision 4,
of the Judiciary Law in Relation to

**AFFIDAVIT
OF SERVICE**

PAUL H. SENZER.

a Justice of the Northport Village Court,
Suffolk County.

-----X
MEGHAN STONE, being duly sworn, deposes and says:

FIRST: That I am not a party to the action and I am over 18 years of age and reside in Bay Shore, New York.

SECOND: That on January 17, 2019, I served the within **RESPONDENT'S REPLY BRIEF** by depositing true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the United Parcel Service Overnight Delivery within New York State and via e-mail to Mark Levine and Brenda Correa and via First Class Mail and email to Hon. John P. Collins addressed to each of the following persons at the last known address after each name:

Mark Levine, Deputy Administrator
New York State
Commission On Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
levine@cjc.ny.gov

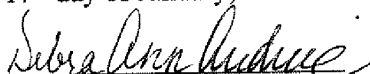
Hon. John P. Collins
5834 Liebig Avenue
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correa@cjc.ny.gov



MEGHAN STONE

Sworn to before me this
17th day of January, 2019


Notary Public, State of New York
No. 01AN6214207
Qualified in Suffolk County
Commission Expires Nov. 30, 20

In the course of that law practice, he represented Jenifer and Walter Coleman.

Sensor knew Jenifer Coleman for thirty years. She was his housecleaner for five years. She and her husband contributed to his political campaign for Village Justice. In 2013 and 2014, the Colemans monetarily retained him for representation in two matters.

The Colemans are grandparents who at the time had a strained relationship with their daughter. In Family Court, the Colemans were seeking visitation rights to see their grandson. Ultimately the Colemans discontinued the Family Court matter on the advice of Senzer.

Mr. Senzer also represented Jenifer Coleman in an Administrative Agency matter relative to employment discrimination. She claimed discrimination as she was not receiving her "entitled share" of substitute custodial work in the local school district. After a trial, Coleman was not successful.

The Commission on Judicial Conduct has filed a single charge against Paul Senzer -alleging that he, a Judge - failed to observe the high standards of conduct and otherwise undermined public confidence in the judiciary, while representing these clients.

The Colemans did not initiate a complaint with the Judicial Commission. Instead, the matter was brought to the Commission's attention by attorney Christopher Cassar. He was representing clients in Federal Court, in an action against Judge Senzer and the Suffolk County Parking Violation Agency. A report of that action appeared in the local newspaper and was observed by Mrs. Coleman. She telephoned Mr. Cassar and offered to help him mentioning her prior legal representation by Judge Senzer. Cassar, in turn, sent a technician to the Coleman house to help recover certain e-mails. These e-mails contained conversations between Coleman and Senzer and are now the subject matter before the Commission.

The Federal case against Senzer was subsequently dismissed,

Specifically, the Commission alleges that between October 24, 2014 and

February 22, 2015 and during the pendency of the Family Court case, Senzer

sent the Colemans various emails. In them, he made reference to their

daughter, on a number of occasions, as a "bitch" and an "asshole". He made

reference to the daughter's lawyer as a "cunt" and wrote that people who work in

schools are "assholes". Further, he stated that the respondents in the Family

Court matter were "scumbags" and described the daughter's lawyer as

"eyelashes." He referred to the Family Court Judge (or Referee) as an "asshole."

With reference to the employment discrimination case, the Commission alleges

that Senzer, in a brief court hallway meeting with Mr. and Mrs. Coleman, referred

to Administrative Hearing Judge Margaret Jackson as "that fucking nigger" or

"that nigger." The Administrative Hearing Judge is an African American.

As to the emails containing the objectionable language, Judge Senzer admits those allegations as they are stated in the Complaint.

He denies ever referring to the African American Hearing Judge as that "nigger", or that "fucking nigger".

Pursuant to an Order of the Commission dated March 29, 2018, the matter has been referred here for a hearing and report.

A preliminary conference was held on May 18, 2018. Hearings were held August 6th and 7th, 2018.

Afterwards the parties were given an opportunity to submit briefs and did so.

The following seven witnesses testified at the hearing:

Jenifer Coleman

Walter Coleman

Suffolk Co. Assistant D.A. William Driscoll

Deborah Monestaro, Esq.

District Court Judge Deborah Urbano-DiSalvo

Monsignor Ellsworth Walden

Judge Paul Senzer

The usual tests of credibility were applied in evaluating the testimony of each witness.

For purposes of clarity, I have separated the single Commission Charge into two parts and denominated each as follows:

I-A concerns the allegations relating to the respondent's use of objectionable language in the e-mails.

I-B concerns the allegation of a racial epithet uttered about Administrative Hearing Judge Margaret Jackson.

IA

Although a substantial portion of the hearing concerned the e-mails, in light of the respondent's admissions, little further discussion is required.

Observing Judge Senzer testify and listening to the totality of his testimony, it is difficult to believe that he used such coarse and vulgar language- but he did. He admits it and is totally contrite. The words were not written in isolation but in the context of emphasis, counsel and advice being given privately to clients who were not professionally educated. Mrs. Coleman was a substitute school

custodian and Mr. Coleman was a school maintenance mechanic. The words were used in responding to a "demanding client," a "difficult client," who lived on her "iPhone" and called Senzer "multiple times a day." Senzer maintained that such language was not foreign to Jenifer Coleman as she used it on the telephone. Nevertheless this does not excuse the Judge's actions and he admits that the language was improper. The Judge has acknowledged-in his response to the Commission inquiry letter- that his clients were members of the public and his conduct was not consistent with the letter or spirit of Section 100.4 (A). He admitted that the sending of the e-mails was not consistent with Section 100.1 and 100.2 (A).

Finding

I find that the respondent made the various e-mail statements detailed above,

As to I-A, I find that the Commission has sustained its burden as to Specifications

9,10,11,12,13,14,15,16 and 18.

1B

Turning now to I-B, the issue is- Did the respondent or did he not, in a conversation with his clients, on or about November, 2014 refer to the Administrative Hearing Judge as "that nigger" or "that fucking nigger?"

Of all the allegations against Judge Senzer, this is the most serious but also the one with the least proof. We have a typical "she says, he says" situation. The hallway conversation, as described, was very short and seems to have occurred out of the blue. Jenifer Coleman says that she "was shocked" by the comment. Yet, she made no complaint to Senzer, the Bar or this Commission and she continued to keep Senzer as her lawyer. When she first uttered a complaint is unknown.

Before the complaint reached the Commission, there were intervenors. Exactly what role they played, if any, is unknown to this hearing. What conversations Jenifer Coleman might have had, if any, with Attorney Cassar and his technician

are also unknown. At the time Cassar appears to have been gathering evidence for his Federal lawsuit against Senzer and the Parking Violation Agency. This was the lawsuit which was later dismissed.

No doubt by the time Jenifer Lopez telephoned Cassar, she was upset with Senzer. She had paid him legal fees for two cases and both resulted in defeats for her. She expected to get a refund, which she never got.

We balance all this with the strong, vibrant testimony of four witnesses for the Respondent. These witnesses are familiar with Judge Senzer either in the workplace or the community. Each testified as to the Judge's reputation for truthfulness and honesty. Clearly he has an excellent reputation for truthfulness and honesty. None ever heard him use any language embracing racial epithets. Added to this is Jenifer Coleman's testimony that never before, over a thirty year period had she heard Judge Senzer make a derogatory remark regarding an ethnic group.

Finding

On Charge 1-B, I find that the Commission has not sustained its burden, by a preponderance of the evidence, as to paragraph 7, of the Complaint.

Conclusions of Law

In the course of a representation in Family Court, Paul Senser- to his clients in e-mails- repeatedly used profane, obscene and vulgar language. It is of no consequence that Paul Senser was not sitting on the bench at the time. He was still a Judge, but serving as an officer of the Court, in his law practice.

In these circumstances, the use of such vulgar language and a reference of a sexual character diminish the esteem of the judiciary and the dignity of judicial office. As the Court of Appeals stated in *People v. Backal*, 87 NY2d 1,8 (1995), "Our codes and precedent set forth with no equivocation that Judges are accountable at all times for their conduct, including their conversation-both on and off the Bench."

• **Such conduct, by a Judge, reflects adversely on his appreciation of the role and responsibility of a Judge, whether full time or part time.**

Respondent contends that there is no Court of Appeals or Commission determination relative to such speech by a part time Judge acting as attorney with a private client of his law practice.

That may be so, but there are numerous adverse Commission determinations relative to a Judge's conduct off the bench concerning angry and profane language and determined to be misconduct by a Judge.

"...wherever he travels, a Judge carries the mantle of his esteemed office with him." (see Matter of Steinberg, 51 NY2d 74,80 (1980).

There was a failure, by Judge Senzer, to maintain the high standards of conduct and preserve the integrity of the judiciary in violation of Court Rule 100.1. This conduct fails to promote public confidence in the integrity of the judiciary in violation of Court Rule 100.2(A). Involved in permitted extra-judicial activity (representation of clients in a law practice), Paul Senser's conduct cast doubt on

his capacity to act impartially as a Judge in violation of Court Rule 100.4(1). His actions distracted from the dignity of judicial office and were violative of Court Rule 100.1 (2)

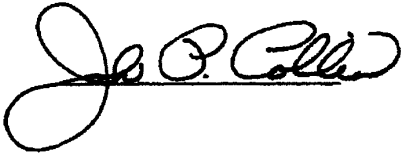
Paul Senzer's conduct here, while off the bench, was prejudicial to the administration of justice in violation of Judiciary Law, section 44, subdivision 1.

Mitigation

The e-mails which were the subject of this proceeding involved language used by Judge Senzer- with private clients rather than in the public forum.

Judge Senzer has exhibited sincere contriteness for his actions.

Respectfully submitted,



John P. Collins

Referee

Dated January 26, 2019

LETTER TO COUNSEL FROM THE CLERK OF THE COMMISSION,
DATED JANUARY 30, 2019 [475 - 476]



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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JEAN M. SAVANYU
CLERK

CONFIDENTIAL

January 30, 2019

Michelle Aulivola, Esq.
Long Tuminello, LLP
120 Fourth Avenue
Bay Shore, New York 11706

and

Robert H. Tembeckjian, Esq.
Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006

Re: Matter of Paul H. Senzer

Counsellors:

Pursuant to the Commission's Operating Procedures and Rules, 22 NYCRR 7000.6(1), I am enclosing a copy of the referee's report in the above-entitled matter.

Each party may submit a brief with respect to the report; these papers will serve as motions to the Commission to confirm or disaffirm the findings and conclusions of the referee. Briefs must be filed and received by the parties on or before March 11, 2018; replies, if any, must be filed and received at this office no later than March 22, 2019. Later submissions will be rejected as untimely.

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

Michelle Aulivola, Esq.
Robert H. Tembeckjian, Esq.
January 30, 2019

Oral argument before the Commission in this matter is scheduled for 10:30 AM on Wednesday, April 24, 2019, at the Commission's New York City address, 61 Broadway, 12th floor. Please notify me as soon as possible whether you intend to appear.

I am also writing to advise you of the procedures relevant to this stage of the proceeding concerning the manner in which prior discipline, a letter of dismissal and caution and a letter of caution, if any, against a judge may be raised in a pending matter.

As to any prior discipline of the respondent judge (*i.e.*, admonition or censure), the Commission's policy is that Commission counsel and respondent may address such discipline in their briefs to the Commission and at oral argument for purposes of sanction only. Any prior discipline used in such a manner would become part of the record of the present proceeding.

As to any prior letter of dismissal and caution or letter of caution to the respondent judge that is not already in the record of the present proceeding, the procedure is similar. Commission counsel and respondent may address such letter in their briefs to the Commission and at oral argument for purposes of sanction only, and any prior letter used in such a manner would become part of the record of the present proceeding. (*See* Section 7000.4[b] of the Commission's Operating Procedures and Rules.)

If you have any questions about procedures, I am available to answer them. I can be reached by telephone [REDACTED] or by email ([REDACTED]).

Very truly yours,



Jean M. Savanyu

cc: Brenda Correa, Esq.

BY UPS NEXT DAY AIR

LETTER TO COUNSEL FROM THE CLERK OF THE COMMISSION,
DATED FEBRUARY 5, 2019 [477 - 478]



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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February 5, 2019

Brenda Correa, Esq.
Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006

and

Michelle Aulivola, Esq.
Long Tuminello, LLP
120 Fourth Avenue
Bay Shore, New York 11706

Re: Matter of Paul H. Senzer

Counsellors:

I am in receipt of Ms. Correa's letter requesting an adjournment of the oral argument in the above-entitled matter scheduled for April 24, 2019.

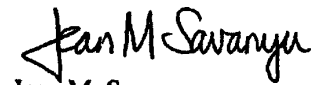
The request is granted. The oral argument is adjourned and will be held on May 30, 2019, at 10:30 AM in the Commission's New York City office located at 61 Broadway, 12th floor. **Please confirm as soon as possible that you intend to appear on that date.**

*Brenda Correa, Esq.
Michelle Aulivola, Esq.
February 5, 2019*

Pursuant to the adjournment, the briefing schedule has been modified. Briefs must be filed and received by the parties on or before April 26, 2019; replies, if any, must be filed and received no later than May 10, 2019. Papers may be served and filed by email transmission, and the original should be sent to my office.

If you have any questions about procedures, I am available to answer them. I can be reached by telephone ([REDACTED]) or by email ([REDACTED]).

Very truly yours,


Jean M. Savanyu

BY EMAIL TRANSMISSION
AND BY CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

cc: David Besso, Esq. (by first-class mail)
Robert H. Tembeckjian (by hand)

**RESPONDENT'S MEMORANDUM IN SUPPORT OF HIS REQUEST THAT
THE COMMISSION CONFIRM IN PART AND DISAFFIRM IN PART THE
REFEREE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW,
DATED APRIL 23, 2019 [479 - 509]**

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
Of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

-----X

**RESPONDENT'S MEMORANDUM IN SUPPORT OF HIS REQUEST THAT
THE COMMISSION CONFIRM IN PART AND DISAFFIRM IN PART THE
REFEREE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Respectfully submitted,

LONG TUMINELLO, LLP
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MICHELLE AULIVOLA, ESQ.
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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted on behalf of the Honorable Paul H. Senzer ("Respondent") in support of the recommendation that the Commission on Judicial Conduct ("Commission") disaffirm, in part, and confirm, in part, the Report of Referee John P. Collins.

Specifically, it is submitted that the Referee's findings of fact and conclusions of law regarding the portion of the Charge which the Referee designated as "1-A" should be disaffirmed, as it is submitted that Respondent's private email communications with a client of his law practice, which contained profane language, although acknowledged by Respondent to be inappropriate, do not rise to the level of judicial misconduct. Therefore, the Commission is urged to disaffirm the Referee's conclusions of law that Respondent violated the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rules"), Rules 100.1, 100.2(A), and 100.4(A)(1) and (2).

It is further submitted that the Referee's findings of fact and conclusions of law regarding the portion of the Charge which he designated as "1-B", which alleges that Respondent spoke a racially derogatory term in discussing the Administrative Law Judge presiding over his client's employment discrimination matter, should be confirmed. The Referee properly found that in this "she says - he says" situation, Counsel for the Commission failed to prove the allegation by a preponderance of the evidence.

Respondent urges the Commission to disaffirm the Referee's findings with respect to Charge "1-A", confirm the findings with respect to Charge "1-B" and to conclude that the Respondent did not commit judicial misconduct and therefore no discipline is warranted. Alternatively, should the Commission determine that the Respondent did, in fact, commit

judicial misconduct, the Commission is urged to impose a discipline no more severe than a confidential letter of caution.

PROCEDURAL HISTORY

A. Formal Written Complaint

This proceeding was commenced by the Commission pursuant to Section 44, subdivision 4, of the Judiciary Law by the filing of a Notice of Formal Written Complaint and Formal Written Complaint ("Complaint"), dated October 13, 2017, which Complaint stated a single charge of professional misconduct against Respondent alleging that he failed to observe high standards of conduct and otherwise undermined public confidence in the judiciary. Ct. Ex. A¹. Although no allegations are made against Respondent relative to his actions taken while acting in the role of a judge, it is purported that, while engaging in private email communications with Mr. and Mrs. Coleman, husband and wife clients of his private law practice who shared an email account, Respondent used racist, sexist, profane and otherwise degrading language.

The Complaint alleged that, by reason of the allegations set forth therein, the respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct ("Rules"); and failed to conduct his extrajudicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extrajudicial activities so that they would not cast reasonable doubt on his capacity to act impartially as a

¹ References to the Court Exhibits from the hearing held in these proceedings on August 6 and August 7, 2018 will be reflected as "Ct. Ex. ____".

judge, detract from the dignity of judicial office, and be incompatible with judicial office, in violation of Section 100.4(A)(1), (2) and (3) of the Rules.

B. Respondent's Answer

Respondent, by his attorneys, Long Tuminello, LLP, filed and served Respondent's Verified Answer to Formal Written Complaint ("Answer"), dated December 12, 2017, responding to the factual allegations contained in the Complaint and setting forth four (4) mitigating defenses to the charges of professional misconduct. Ct. Ex. B. While Respondent admitted to having used profanity in email correspondence with his then-clients, Jennifer and Walter Coleman, he has adamantly denied having ever made the racist comment alleged.

C. The Hearing

A hearing was conducted at the Commission offices before the Hon. John Collins on August 6, 2018 and August 7, 2018, at which the Commission appeared by Brenda Correa, Esq. and Mark Levine, Esq., and Respondent appeared by David H. Besso, Esq. and Michelle Aulivola, Esq.

The Commission's case consisted of Exhibits 1-14 and 14 (a) through (l)², as well as the testimony of Jennifer Coleman and Walter Coleman.

Respondent testified on his own behalf and presented character testimony of William Reynolds, Esq, Deborah Monastero, Esq., Hon. Deborah Urbano-DiSalvo, and Monsignor Ellsworth Walden.

² References to the Petitioner's Exhibits entered into evidence at the hearing held in these proceedings on August 6 and August 7, 2018 will be reflected as "Pet. Ex. ____".

D. The Referee's Report

The Referee issued a report³ dated January 26, 2019 ("Referee's Report"), whereby he separated the single charge in the Complaint into two parts, designating same as Charge "1-A", relating to Respondent's email communications, and Charge "1-B", alleging a racial comment purportedly made by Respondent.

Based upon his findings of fact, including the Respondent's admissions, the Referee concluded that Respondent made the various email statements detailed in Charge 1-A of the Complaint and that therefore the Commission had sustained its burden as to paragraphs 9, 10, 11, 12, 13, 14, 15, 16 and 18 of the Complaint. Rep. p. 7-8.

Regarding Charge "1-B", the Referee properly concluded that Counsel for the Commission failed to meet their burden of proving the allegations. Rep. p. 11. He found that Jennifer Coleman made no complaint to Respondent, the Bar Association of the Commission after Respondent purportedly made a racially charged comment to her about the Administrative Law Judge presiding over Ms. Coleman's employment discrimination matter. Rep. p. 9. He properly found that at the time the complaint was made by attorney Christopher Cassar, he was prosecuting and gathering evidence to support a federal action against Respondent and the Suffolk County Parking Violation Agency, which complaint was subsequently dismissed. Rep. p. 3-4, 9-10. He also properly found that Ms. Coleman was upset with Respondent as a result of the fact that she had paid him legal fees for two cases, both of which resulted in defeats, and expected a refund of those fees, which she did not receive. Rep. 10. In balancing the evidence adduced at the hearing in support of Charge "1-B", the Referee properly weighed such evidence against the testimony of Jennifer Coleman, who stated that never before, over a thirty year period

³ References to the Referee's Report will be reflected as "Rep. p. ____".

had she heard Respondent make a derogatory remark regarding any ethnic group, as well as the testimony of four witnesses for Respondent, who testified as to the Respondent's reputation for truthfulness and honesty and who also testified that they have never heard him use any language embracing racial epithets. Rep. p. 10. Based upon the foregoing, the Referee properly concluded that Counsel for the Commission failed to sustain its burden, by a preponderance of the evidence, as to paragraph 7 of the Complaint. Rep. p. 11.

Based upon the above findings, the Referee concluded that the Respondent failed to maintain the high standards of conduct and preserve the integrity of the judiciary in violation of Rule 100.1; failed to promote public confidence in the integrity of the judiciary in violation of Rule 100.2(A); cast doubt on his capacity to act impartially as a judge in violation of Rule 100.4(A)(1); and distracted from the dignity of judicial office in violation of Rule 100.4(A)(2)⁴. Rep. p. 12-13.

The Referee did not conclude that the Respondent's actions interfered with the proper performance of judicial duties and were incompatible with judicial office in violation of Rule 100.4(A)(3). Rep. p. 12-13.

In mitigation of the Charge, the Referee noted that the emails which are the subject of these proceedings involved language used by Respondent with private clients rather than in the public forum and that he exhibited sincere contrition for his actions. Rep. 7. He further noted that the words used by Respondent were not written in isolation, but rather in the context of emphasis, counsel and advice to private clients who were not professionally educated. Rep. p. 7. The Referee further noted the "strong, vibrant testimony" of four witnesses for Respondent who are familiar with him either in the workplace or the community. Each testified as to the

⁴ Although the Referee incorrectly referenced "Court Rule 100.1(2)".

Respondent's reputation for truthfulness and honesty. "Clearly he has an excellent reputation for truthfulness and honesty." Rep. p. 10.

EVIDENCE ADDUCED AT THE HEARING

A. Respondent's Professional Background

Respondent has been an attorney admitted to practice law within the State of New York for more than thirty-five years, having been admitted in 1981. TR. p. 120, lines 9-16⁵; Rep. p. 1. Following his admission to the Bar, Respondent was employed by a private law firm as an associate attorney through 1984, at which time he opened his solo practice of law which he continuously operated through 2014. TR. p. 120, line 25 – p. 121, line 6. Throughout his career as a private attorney, Respondent practiced primarily in the areas of criminal defense and appeals and, to a lesser extent, civil litigation, family court, probate and real estate. TR. p. 121, lines 7-11.

Respondent has served as a part-time Northport Village Justice since having been elected to that position on March 15, 1994. TR. p. 121, lines 12-15; Rep. p. 1. During the course of the intervening twenty-four (24) years, Respondent has heard approximately 100,000 cases, 7,000 of which were criminal matters, has conducted more than 1,000 hearings and trials and has written approximately 350 decisions. TR. p. 121, line 25 – p. 122, line 6; p. 124, lines 13-21. Appearing before him at the Northport Village Justice Court are members of nearly every racial and ethnic background. TR. p. 126, lines 13-15. All proceedings held in the Northport Village Justice Court are recorded, whether stenographically or electronically, and such recordings would demonstrate

⁵ References to the Hearing Transcript taken in these proceedings on August 6 and August 7, 2018 will be reflected as "TR. p. ____".

that Respondent has never made a disparaging remark to any of those litigants at any time. TR. p. 125, line 18 – p. 126, line 18.

In addition to his private practice of law and his judicial role, since 2011, Respondent has worked as an adjunct instructor in the Criminal Justice Department at State University of New York at Farmingdale, teaching one to two classes per semester. TR p. 123, line 14 - p. 124, line 2.

In 2013, Respondent was appointed as a District Court Hearing Officer at the Suffolk County Traffic and Parking Violations Agency (“TPVA”) which began as a part-time position but increased in hours throughout 2014 and 2015. Tr. p. 122, lines 7-21; p. 124, lines 2 – 12; Rep. p. 1. As a result of the increased demand upon his time, resulting from his judicial and teaching positions, Respondent voluntarily wound down his private practice of law in early 2015. TR. p. 124, lines 2-7.

B. Respondent’s Representation of the Colemans

Beginning in or about early to mid-1990, and continuing for a period of approximately five (5) years, Jennifer Coleman performed house cleaning services for Respondent and his family. TR p. 6-7; 127. Ms. Coleman left such employment on friendly terms when Respondent could no longer afford her services. However, Ms. Coleman continued to cat-sit for Respondent’s family intermittently thereafter. TR p. 7; 127; Rep p. 2...

In or about November 2013, prior to the wind down of Respondent’s private law practice, he was retained by Jennifer Coleman to represent her before the New York State Division of Human Rights in a gender discrimination action against the Cold Spring Harbor Central School District where she worked as a part-time custodian. TR p. 126, line 22 – p. 127, line 2; p. 8-9;

Rep. p. 2. After trial, Ms. Coleman was not successful in her gender discrimination claims. Rep. p. 2.

Thereafter, in or about the fall of 2014, Respondent was retained by both Mr. and Ms. Coleman to commence a Family Court proceeding seeking to secure grandparent visitation on their behalf relative to their grandson who they had been like surrogate parents to and who was being kept from them by their daughter. TR. p. 127, lines 3-6; p. 12-13; Rep. p. 2.

Throughout Respondent's representation of the Colemans, they maintained a friendly relationship beyond the ordinary attorney-client relationship. During Respondent's run for public office the Colemans offered their support by attending fundraising events held on his behalf and volunteering to erect promotional signs around town multiple times, as they were continually being removed. TR. p. 11, line 15 – p. 12, line 7.

C. Respondent's Email Communications with the Colemans

Throughout the course of Respondent's representation of the Colemans in connection with the gender discrimination matter, and later the Family Court proceedings, the Colemans elected to use a shared email account as their principal means of communication with Respondent, a practice that was rarely used by Respondent with his other clients. TR. p. 10, line 16 – p. 11, line 14. Respondent has admitted to having used profanity in emails which he drafted to the Colemans. TR. p. 127, line 16 – p. 128, line 5; Pet. Ex. 1-9; 10; 12⁶.

As Respondent has stated, due to the frequency of Ms. Coleman's emails, he often shot back responses in what he termed as a "very conversational and anecdotal and almost chatty way" in which he "became far too conversational and far too familiar in resorting to particular

⁶ References to the Petitioner's Exhibits entered into evidence at the hearing held in these proceedings on August 6 and August 7, 2018 will be reflected as "Pet. Ex. ___".

words that I think reflect poorly on me as an attorney and obviously, as a judge.” TR. p. 128, lines 8-21. See also, Rep. p. 8. Furthermore, as those emails were private communications between Respondent and his clients, at the time they were written, he considered them to have been private and confidential and, certainly, did not contemplate that they would be viewed by the general public, and in fact, they have not. TR. p. 127, line 16 – p. 128, line 5; p. 131, lines 4-13.

Respondent testified that he has never used crude or inappropriate language in any emails he exchanged with clients other than the Colemans, and that it is not his practice to use profanity in his communications, whether with clients or in his personal life. TR. p. 128, line 24 – p. 129, line 10; Exhibit 14(c), p. 18, lines 21-23. He further testified that he has never used such language in carrying out his role as a judge. *Id.*

As Respondent has explained, such words had been discussed at great length between Respondent and the Colemans when communicating about the terms used by Ms. Coleman’s supervisor to describe her, which would be the subject of the human rights complaint, and terms the Colemans’ daughter had used in the presence of their grandson, which would be raised in connection with their Family Court Petition. Petitioner Exhibit 14(g), pp. 30-31; p. 136-137. Thus, Respondent has stated repeatedly throughout these proceedings that he used such words as a result of the fact that they had been frequently discussed with these particular clients in the context of his representation of them and that had he been communicating with a different client, with whom such words had not been discussed at length, he would never have used those terms. *Id.*; Petitioner Exhibit 12; Rep. p. 8.

Throughout these proceedings, Respondent has demonstrated his deep regret for employing the language used in the emails and his recognition that the use of such language poorly reflects upon the profession.

“I have a profound and deep regret for using the words that – that were deployed in those emails because, quite frankly, that’s not who I am. That’s not how I was brought up. That’s not how I conduct myself as an attorney in public and certainly never as a judge in public. I realize that as a judge my obligation is a – is a 24/7 obligation. I’m always a judge wherever I am and in whatever I do. It just didn’t dawn on me, I’m sorry to say, that when I was sending emails to clients in connection with legal advice that that somehow had a nexus or a connection to my judicial persona but I’ve learned the hard way that [it] certainly does.” TR. p. 128, line 24 – p. 129, line 10. See also, Rep. p. 7.

As will be discussed at length below, while admittedly inappropriate, the Respondent’s use of such language does not rise to the level of a violation of the Rules. Accordingly, Respondent submits that the Report of the Referee relating to Charge “1-A” should be disaffirmed.

D. Respondent’s Alleged Use of a Racist Remark

Although Respondent has candidly acknowledged his use of profane language in email communications with the Colemans, he has vociferously denied having ever made a racially derogatory comment to them and it is submitted that the Referee properly concluded that the Commission has failed to prove this allegation by a preponderance of the evidence. TR p. 129, lines 11 – 22; Rep. p. 9-11.

The Complaint, at paragraph 7 thereof, alleges that in or about November 2014, during a recess on the second day of the hearing in Ms. Coleman’s gender discrimination matter, Respondent used a racial slur to refer to the Administrative Law Judge when speaking with Mr. and Ms. Coleman. Ex. “A”, ¶ 7. Specifically, the Complaint alleges that Respondent referred to

Administrative Law Judge Margaret Jackson (“ALJ Jackson”) as “that fucking nigger” and/or “that nigger”. Id.

While the remainder of the allegations contained in the Complaint stem from documented email exchanges between Respondent and the Colemans, the only evidence presented in support of the single allegation relating to Respondent’s purported use of a racial epithet was the contradictory testimony of Mr. and Ms. Coleman.

Specifically, while both Mr. and Ms. Coleman testified that during their conversation with Respondent at the end of a lunch break during the second day of trial in Ms. Coleman’s discrimination case Respondent uttered the phrase “fucking nigger” in reference to ALJ Jackson, a review of their testimony evidences that they each allege that the comment was made in a very different context. Specifically, Ms. Coleman testified that she, Mr. Coleman and Respondent were waiting outside of the hearing room after the lunch break, and that “The Judge was a little late.” TR. p. 45 – 46. She further testified that Respondent asked “Is that F’ing nigger back yet”. TR p. 46, lines 16-23. To the contrary, Mr. Coleman testified about the same conversation stating that Respondent “was asking what I thought of this fucking nigger.” TR. p. 66, lines 22 – 25. Although the two utilized the same phrase during their testimony, the very different contexts in which they testified the phrase was used undermines the credibility of such testimony. Neither Mr. nor Ms. Coleman testified that the term “fucking nigger” was used more than once and they both claimed to have been present during the same conversation with Respondent, yet the contradiction in their testimony as to the context in which the phrase was purportedly used cannot be ignored.

Ms. Coleman further admitted on cross examination that aside from the single racially-charged comment allegedly made by Respondent regarding ALJ Jackson, she had never,

throughout the twenty-five years that she knew Respondent, heard him make any derogatory remark about any ethnic group. TR p. 48, line 12 – p. 49, line 15; Rep. p. 10.

Mr. and Ms. Coleman both acknowledged that notwithstanding the comment allegedly made on November 6, 2014, and the fact that they had utilized the legal services of another attorney at or about that time in connection with a family court proceeding involving grandparent visitation, they nonetheless re-retained Respondent in December 2014 or January 2015 to represent them in those proceedings. TR. p. 12 – 15; p. 14, line 16 – p. 15, line 10; TR. p. 71, lines 8-22. Thus, although the Colemans had ample opportunity to secure representation by another attorney in the family court proceedings after Respondent purportedly made the racially charged comment, tellingly, they did not do so.

It is also important to note that notwithstanding their allegation that Respondent made the very offensive comment about ALJ Jackson in early November 2014, neither Mr. nor Ms. Coleman made a formal complaint about Respondent's purported use of the comment to the Commission, the Attorney Grievance Committee, the Bar Association or any other entity charged with oversight of the conduct of judges or attorneys. TR. p. 50, line 6 – p. 51, line 1; TR p. 73, line 3 – p. 74, line 3; Rep. p. 9.

Ms. Coleman had lost her discrimination case after it was found that, notwithstanding her allegations that she was receiving less substitute custodian assignments than others, she was in fact receiving more assignments than her co-workers and therefore she was not being discriminated against and she and Mr. Coleman were also forced to withdraw their grandparent visitation petition. TR. p. 51, lines 2 – 21; 41. Rep. p. 2, 10. Ms. Coleman further believed that she was entitled to a refund of the fees she had paid to Respondent in connection with the family court matter. TR. p. 56, lines 19-22; Rep. p. 10.

Under that backdrop, approximately eight (8) months after the comment about ALJ Jackson was allegedly made by Respondent, Ms. Coleman read a newspaper article discussing allegations being made by Christopher Cassar, Esq. about alleged disparate treatment of litigants of different ethnic backgrounds appearing at the TPVA. TR. p. 52-53; Rep. p. 3. Feeling compelled to help him “validate his case”, Ms. Coleman reached out to Mr. Cassar to “help an attorney, you know, with the emails I had.” TR p. 56, lines 8-15; TR. p. 51, lines 2 – 21; p. 52, lines 5 – 20. Assuming that the allegations in the newspaper report were true, Ms. Coleman contacted Mr. Cassar “Because I realized that they weren’t just words. They turned into actions against people and I wanted to help him if I could with my emails.” TR p.53, lines 4-9. Notably, notwithstanding that the focus of the article was on purported racially and/or ethnically discriminatory practices, by her own testimony, Ms. Coleman did not reach out to Mr. Cassar in an effort to advise him of the racially derogatory comment Respondent purportedly made to the Colemans, but rather only to provide emails containing profanity. TR p. 52 – 56.

After Ms. Coleman made contact with Mr. Cassar, he forwarded correspondence to the Hon C. Randall Hinrichs, dated August 20, 2015, in which he reported the existence of email communications from Respondent to the Colemans which contained profanity and further alleged “The former client informs this office that Mr. Senzer also sent emails referring to Latinos in a racist manner.” Pet. Ex. 11, p. 5. Yet notwithstanding such allegation, Mr. Cassar, the attorney involved in prosecuting a federal civil rights case against the TPVA and its judges, including Respondent, which matter has since been dismissed, has never produced any such email notwithstanding that he had a technology expert scour Ms. Coleman’s computer and email account in search of same. TR. p. 55, lines 2 – 13; Rep. p. 3.

Throughout her cross examination relating to her contacts with Mr. Cassar, Ms. Coleman repeatedly made reference to the emails, and her efforts to assist with the prosecution of the federal case by providing those emails to Mr. Cassar. However, very tellingly, Ms. Coleman did not make a single reference throughout such testimony to the comment purportedly made to her by Respondent about ALJ Jackson or any efforts on her part to report such comment to Mr. Cassar. TR p. 52 – 56.

It is submitted that the reason for such failure is that the purported comment was fabricated during Ms. Coleman's contacts with Mr. Cassar, the Complainant in this matter, who was intent upon obtaining evidence to support allegations of racial and ethnic discrimination within the TPVA. TR p. 79, line 21 – p. 80, line 4.

It is Respondent's belief that the allegation that Respondent used a racial slur was included in the complaint to the commission to bolster the remaining allegations and in an attempt to advance Mr. Cassar's efforts to prove racial and ethnic discrimination within the TPVA, allegations which have since been dismissed by the federal court. Rep. p. 4. It is further submitted that the Referee properly concluded that the Commission has failed to prove, by a preponderance of the evidence, that Respondent uttered the words alleged.

E. Mitigating Evidence

The Court of Appeals has held that a judge's reputation for honesty, integrity and judicial demeanor in the legal community are properly considered as mitigation evidence in the context of judicial conduct proceedings. *Shilling v State Commn. on Jud. Conduct*, 51 NY2d 397, 399 (1980). The attorneys who appear in the Respondent's courtroom, whether as prosecutors or defense attorneys, and the judges who serve alongside him are certainly in the best position to attest to Respondent's reputation for honesty, integrity and judicial demeanor.

William Reynolds, Esq. appeared at the hearing to present testimony on behalf of Respondent. Since 1960, Mr. Reynolds worked in the banking industry for several major banks, and teaching basic banking and accounting for the American Institute of Banking. Mr. Reynolds simultaneously attended and graduated from law school, and was thereafter admitted to practice law in the State of New York in 1998. Following his admission, Mr. Reynolds operated a part-time private practice while continuing his banking employment until 2006 when he retired from Citibank as a branch manager to accept employment with the Suffolk County District Attorney's Office. Since 2011, Mr. Reynolds has been assigned to prosecute cases in the outlying courts, which include Northport Village Court, over which Respondent presides. TR. p. 82-84. As he testified, for the past seven (7) years, he has appeared as a prosecutor in Respondent's courtroom one night each week. TR. p. 84-85.

He testified that the litigants appearing in Respondent's courtroom represent various different racial and ethnic backgrounds. TR. p. 102. He further testified that during all of his appearances in Respondent's courtroom he has never heard Respondent make any disparaging or ethnically charged remarks. *Id.*, lines 8-12. He described Respondent as a "fine judge" with "a good knowledge of the law" who "treats defendants fairly" and further stated that he has a reputation within the legal community as being "very fair and impartial." TR p. 85; 102 – 103. When asked to describe Respondent's reputation within the community he described such reputation as "impeccable". TR p. 86, lines 8-12.

Also appearing to present testimony on Respondent's behalf was Deborah Monastero, Esq. Ms. Monastero is an attorney admitted to practice law in the State of New York since 2004. After having worked in private practice for three years, Ms. Monastero took employment with the Suffolk County Legal Aid Society. TR p. 90 – 92. In connection with such employment,

since 2007, Ms. Monastero has appeared in Northport Village Court approximately once or twice per month. *Id.* Ms. Monastero testified that she has never known of Respondent to have made a disparaging remark to any litigant of any race or ethnic background. TR p. 96. Regarding Respondent's reputation within the legal community, Ms. Monastero testified:

"I've never heard anything unkind about him or anything disparaging or in any way that he is, in any form, but fair with the people that stand before him with respect to attorneys, with respect to defendants.... Since 2007, he has never been disrespectful to me or my clients and I have represented during that period of time some characters, I mean, along the way. And I have always been treated as a professional and my clients have always been treated with respect." TR. p. 96, line 21 – p. 97, line 7.

The Hon. Debra Urbano-Disalvo appeared to present testimony on Respondent's behalf. Judge Urbano-DiSalvo is a full-time Village Attorney for the Village of Hempstead since 2002, is the elected judge in the Village of Amityville and is an Administrative Law Judge for the TPVA, while also maintaining a private practice of law. Having been admitted to practice law in the State of New York in 1986, she has also previously worked as an attorney for the Suffolk County Attorney's Office and as an Assistant Town Attorney for the Town of Huntington. TR p. 104 – 105.

Judge Urbano-Disalvo has been acquainted with Respondent since 2002 in a variety of capacities and has worked with him at TPVA since its inception. TR p. 107-109. She testified that TPVA involves litigants of "every demographic, every age, every sex, race religion." TR p. 109, lines 5-17. She described Respondent's reputation within the legal community as "[f]air, honest, forthright." TR p. 109, lines 21 – 22. She further testified that his reputation regarding his treatment of litigants and attorneys appearing before him is "fair and just" and that she has never heard of him making disparaging remarks about anyone. TR. p. 110, lines 8 – 23.

Finally, appearing to provide testimony on behalf of Respondent was Monsignor Ellsworth Walden, a priest at various parishes for the past forty-seven (47) years. TR. p. 115. Monsignor Walden, who has been acquainted with Respondent for a period of approximately a year and a half, described Respondent's ten year journey of converting from the Jewish religion to the Catholic religion. TR. p. 115-116. He testified that he has been impressed by Respondent, who attends mass weekly and who participates as a lector in the church. He described Respondent as a "wonderful man", a "delight", who has "poured a lot of enthusiasm into the parish" and who shows "complete honesty and trustworth[iness]". TR p. 116-117.

Specifically, as it relates to the allegation in these proceedings that Respondent made a racially disparaging remark about ALJ Jackson, the reputation testimony presented at the hearing strongly refutes such allegation, as those familiar with his reputation and who work with him regularly indicated that he is not known to have ever made such a statement in any other context.

ARGUMENT

POINT I

THE COMMISSION HAS FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT RESPONDENT'S STATEMENTS IN PRIVATE EMAIL COMMUNICATIONS WITH CLIENTS OF HIS LAW FIRM RISE TO THE LEVEL OF A VIOLATION OF THE RULES GOVERNING JUDICIAL CONDUCT

The Preamble to the Rules provide:

"The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system."

Guided by those principles it is submitted that Respondent's limited use of profane or arguably offensive terms in a handful of private communications with a single husband-and-wife client, with whom Respondent had been acquainted in his personal life for many years, and with whom similar terms had been discussed at length in connection with the allegations asserted in the litigation in which he represented them does not rise to the level of judicial misconduct.

The Complaint alleges that by engaging in the actions complained of, Respondent has failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to conduct his extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extra-judicial activities so that they would not cast reasonable doubt on his capacity to act impartially as a judge, detract from the dignity of judicial office, and be incompatible with judicial office in violation of Section 100.4(A)(1), (2) and (3) of the Rules.

Both the Commission's own determinations made in the context of Judiciary Law Section 44 proceedings and the Court of Appeals' published decisions relating to "extra-judicial" behavior and speech demonstrate that a judge can be judicially sanctioned under appropriately onerous circumstances for actions undertaken while off the bench, as conduct which occurs off the bench and/or outside of a judge's judicial duties may nonetheless degrade the dignity of judicial office and detract from public confidence in the integrity and impartiality of judicial office.

However, a clear distinction must be drawn between actions undertaken by a judge in the “public sphere” versus those undertaken in private. While the former have frequently resulted in discipline, no Commission determination or Court of Appeals decision uncovered by the undersigned has ever punished even arguably distasteful speech, conducted in private communications. This concept of “public sphere” is repeated over and over in the Commission’s jurisprudence as its touchstone to decide if “personal conduct” rises to the level of “judicial misconduct”. These many cases turn on different facts, but the common thread overall is that something was said or an action was taken in a “public sphere”, i.e., a public place, in the community, on the street, in the open, in front of witnesses, etc.

A review of the controlling cases demonstrates only that offensive and improper action by a judge undertaken in the “public sphere”, regardless of whether they are undertaken on the bench, in the course of carrying out judicial duties, or otherwise, may amount to judicial misconduct. However, they do not support the premise that strictly *private* communications between a judge, acting in the role as a private attorney, and his client, rise to the level of judicial misconduct.

A. Improper Conduct by a Judge While on the Bench

There can be no doubt that improper conduct by a judge while on the bench likely warrants discipline. *Matter of Agresta*, 1985 Ann Rep 109 (Commn on Jud Conduct, Sept. 17, 1982) (imposing a censure upon a judge who made a remark with racial connotations during the sentencing of a defendant); *Matter of Aldrich*, 1983 Ann Rep 75 (Commn on Jud Conduct, Sept. 17, 1982)(removing a judge who appeared on the bench to conduct judicial proceedings while under the influence of alcohol and used profane, improper and menacing language, made inappropriate racial references and otherwise behaved in an inappropriate and degrading

manner); *Matter of Mahon*, 1997 Ann Rep 104 (Commn on Jud Conduct, Aug. 8, 1996)(censuring judge for making profane and disparaging remarks to the mother of a defendant appearing before him); *Matter of Mulroy*, 2000 Ann Rep 125 (Commn on Jud Conduct, Aug. 12, 1999)(removing judge who, while attempting to influence the disposition of a matter pending before him, made derogatory racial remarks about a crime victim; displayed intemperate behavior and pressed a prosecutor to offer a plea for his own personal convenience; made disparaging remarks; failed to disclose his relationship with a witness appearing before him; and testified at a hearing with reckless disregard for the truth).

There is no allegation in the instant proceedings that Respondent engaged in misconduct while on the bench in his judicial capacity.

B. Improper Conduct by a Judge Off the Bench But Otherwise in the Course of Judicial Duties

Likewise, a judge's actions while off the bench but nonetheless within the course of judicial duties may warrant discipline. *Matter of Assini*, 2000 Ann Rep 95 (Commn on Jud Conduct, Mar. 4, 1999)(removing judge who permitted an attorney with whom he shared office space, business telephone and mailing address to appear before him on multiple occasions without disclosing their relationship; refusing to deal with more than 100 cases over the course of 8 months and making inappropriate, obscene and sexist remarks about his fellow Town Justice in the course of his judicial duties); *Matter of Fabrizio*, 1985 Ann Rep 127 (Commn on Jud Conduct Dec. 26, 1984)(removing judge who demonstrated a persistent and varied pattern of misconduct by sitting on a case involving his long standing dentist without disclosing their relationship; intervening in two cases in other courts to obtain special consideration for defendants at their request and being discourteous to a foreign-born defendant, repeatedly using

racist language while performing his judicial duties); *Matter of Feeder*, 2010 Ann Rep 143 (Commn on Jud Conduct, Nov. 18, 2009)(censuring judge who compromised his impartiality by undertaking law enforcement duties when he pursued a motorist for a perceived traffic violation, displayed a badge and identified himself as a judge to the motorist, and filed a complaint against the motorist in the court where he is a judge); *Matter of Miller*, 1997 Ann Rep 108 (Commn on Jud Conduct, Aug. 14, 1996)(censuring judge who, during the course of a trial, failed to advise counsel of a note received from the jury and accepted a bargained guilty plea from defendant knowing that he was not aware of the note, and engaging in malicious harassment of her ex-boyfriend and his wife)

Likewise, the Commission's cited determinations demonstrate that judges have frequently been disciplined for using the prestige and authority of their judicial office for personal gain. *Matter of Cipolla*, 2003 Ann Rep 84 (Commn on Jud Conduct, Oct. 1, 2002)(censuring judge who, during an altercation at a comedy club, refused to return vehicle keys to their rightful owner, identified himself as a judge and made the untrue statement that he was the owner of the vehicle, making false representations to a federal agency and attempting to fix a traffic ticket for a friend); *Matter of Steinberg*, 1980 Ann Rep 75 (Commn on Jud Conduct, Mar. 21, 1980)(removing judge who used the prestige and authority of his office to persuade lenders and borrowers to enter into transactions from which he personally profited).

There is no allegation in the instant proceedings that Respondent engaged in misconduct while off the bench but nonetheless acting in a judicial capacity.

C. Improper Conduct by a Judge While Acting in the Public Sphere, Unrelated to Judicial Duties

Finally, a judge's actions undertaken in the public sphere which are wholly unrelated to judicial duties may likewise rise to the level of judicial misconduct warranting discipline. *Matter of Kuehnel*, 1980 Ann Rep 125 (Commn on Jud Conduct, Sept. 6, 1979)(removing judge who had engaged in overt physical violence toward several youths and repeated outbursts involving outrageous verbal abuse and virulent racism); *Matter of Cerbone*, 1984 Ann Rep 76 (Commn on Jud Conduct, Aug. 5, 1983)(removing judge who, while in a bar, engaged in an altercation with several bar patrons, loudly proclaiming that he was a judge and announcing what he would do if any of the black patrons appeared in front of him in court, embellishing his threats with racial epithets and striking or pushing one of the patrons); *Matter of Pautz*, 2005 Ann Rep 199 (Commn on Jud Conduct, Mar. 30, 2004)(issuing an admonition against a judge upon determining that he had engaged in a series of annoying acts toward his ex-girlfriend notwithstanding her letter directing him to desist from further contact with her, resulting in the filing of criminal charges against him); *Matter of Roepe*, 2002 Ann Rep 153 (Commn on Jud Conduct, Jun. 27, 2001)(censuring judge who engaged in the criminal act of menacing his wife while under the influence of alcohol); *Matter of Pennington*, 2004 Ann Rep 139 (Commn on Jud Conduct, Nov. 3, 2003)(issuing a censure to a judge when it was demonstrated that he used profane language to a New York State park Police Sergeant who had questioned him about engaging in illegal behavior and who lent the prestige of his judicial status in an attempt to advance his own and his son's interests); *Matter of Kremenick*, 1986 Ann Rep 133 (Commn on Jud Conduct, Jun. 28, 1985)(issuing an admonition to a judge who, while being arrested for Driving While Intoxicated, repeatedly informed the arresting officer that he was a judge, and that

he would have the officer's job, and used abusive and profane language with the officer at police barracks).

Similarly, in a determination made only months ago, the Commission admonished a judge who was involved in a minor accident with a police vehicle and repeatedly, publicly and gratuitously invoked her judicial status on a public street with multiple police officers on scene. *Matter of Michels* (Comm'n on Jud Conduct, Dec. 27, 2018). In reaching that determination, the Commission again reiterated the longstanding jurisprudence defining sanctionable extrajudicial conduct as any action, on or off the bench, undertaken *in the public sphere* to the end that public perception of the integrity of the judiciary be preserved.

No allegation has been made that Respondent engaged in conduct which affected the public perception of the integrity of the judiciary and therefore his actions do not amount to misconduct under the Rules.

D. Improper Conduct by a Judge During Private Communications Unrelated to Judicial Duties

Noticeably absent from the Commission's prior determinations is even a single matter in which a judge was disciplined for purely private communication wholly unrelated to his judicial duties. It is submitted that there is simply no support or precedent for a finding that Respondent's use of profanity in private email communications, wherein he attempted to persuade, dissuade, counsel and caution them with regard to their legal matters rises to the level of a violation of the Rules and therefore the Charge contained in the Formal Written Complaint must be dismissed.

The poor choices Respondent made in email language here were, by definition, confined to a distinctly "private sphere" – the confidential attorney-client relationship. While Respondent claims no legal "privilege", the fact remains that the poorly chosen words were couched in

otherwise legitimate efforts to persuade, counsel, convince, advise and warn private clients in the heat of litigation about the pitfalls and risks they confronted- in other words, the things attorneys zealously (and sometimes overzealously) do when trying to drive home a point to a client.

Accordingly, the Referee's conclusion that Respondent's private email communications with a client of his law practice rises to the level of a violation of the Rules must be disaffirmed.

POINT II

THE COMMISSION FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT RESPONDENT UTTERED A RACIALLY DEROGATORY TERM TO HIS CLIENTS IN DESCRIBING AN ADMINISTRATIVE LAW JUDGE

The Special Referee properly found that the Commission failed to prove by a preponderance of the evidence the most insidious of allegations asserted against Respondent, to wit: that he used a racially disparaging term when discussing ALJ Jackson. Therefore, said finding must be confirmed by the Commission.

Although it is not Respondent's burden to demonstrate the motivation that the Commission Counsel's witnesses may have to fabricate allegations against Respondent, ample evidence of such motivation was demonstrated at the hearing and is discussed at length herein above.

Mr. and Mrs. Coleman were unhappy with the loss of her discrimination case as well as their lack of success in securing grandparent visitation. They believed that as a result, they were entitled to a return of their fees paid to Respondent notwithstanding the substantial services which he provided on their behalf. TR. p. 51, lines 2 – 21, 41; 56, lines 19-22; Rep. 10-11.

Thereafter, having read an article about litigation pending against the TPVA and its employees alleging discrimination, Ms. Coleman reached out to Christopher Cassar, Esq., the

attorney prosecuting the case, in an effort to provide him with her emails with Respondent. TR p. 51-56; Rep. p. 3. According to Ms. Coleman's testimony, after reading the allegations of racial discrimination against the TPVA, she "wanted to help him if I could with my emails." TR p.53, lines 4-9. It was not until long after Mr. Cassar had an expert search Ms. Coleman's emails and fail to discover any that would support his case of ethnic/racial bias on Respondent's part that the allegation that he had made a racially derogatory remark about ALJ Jackson first arose in the context of Mr. Cassar's complaint to the Commission.

Throughout cross examination, Ms. Coleman repeatedly made reference to the emails, and her efforts to assist with the prosecution of the federal case by providing those emails to Mr. Cassar. Yet, very tellingly, Ms. Coleman did not make a single reference throughout such testimony to the comment purportedly made to her by Respondent about ALJ Jackson or any efforts on her part to report such comment to Mr. Cassar. TR p. 52 -- 56.

The significant disparity in testimony adduced from Jennifer and Walter Coleman with respect to the context in which the purported remark was made simply cannot be ignored. While Ms. Coleman testified that Respondent made the remark in the context of asking them generally if ALJ Jackson was "back yet" from lunch, Mr. Coleman testified that Respondent had made the comment directly to him, asking for Mr. Coleman's opinion of her. TR p. 45-46, 66. This conflicting testimony cannot be ignored and undermines the credibility of the testimony.

Furthermore, this testimony stands in stark contrast to the testimony of the Respondent's witnesses, all of whom have known Respondent for many years both personally and professionally and all of whom testified that they have never heard him use any language embracing racial epithets. Rep. 10.

Accordingly, the Referee properly concluded that Commission Counsel has failed to prove by a preponderance of the credible evidence that Respondent uttered a racially derogatory term and such conclusion must be confirmed.

CONCLUSION

Based upon the foregoing, it is submitted that the preponderance of the credible evidence adduced at the hearing of this matter fell short of demonstrating actions on Respondent's part which rise to the level of a violation of the Rules Governing Judicial Conduct. Accordingly, it is submitted that dismissal of the single charge alleged in the Complaint is warranted and appropriate.

Alternatively, should the Commission determine that a violation of the Rules has occurred due to the private email communications at issue herein, the Commission it urged to issue a discipline no more severe than a private letter of caution, as permitted by 22 NYCRR 7000.7(d).

Dated: Bay Shore, New York
April 23, 2019

Respectfully submitted,

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**MEMORANDUM BY COUNSEL TO THE COMMISSION IN SUPPORT OF
RECOMMENDATION TO CONFIRM IN PART AND DISAFFIRM IN PART THE
REFEREE'S REPORT AND TO ISSUE A DETERMINATION THAT RESPONDENT
BE REMOVED FROM OFFICE, DATED APRIL 25, 2019 [510 - 553]**

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

**MEMORANDUM BY COUNSEL TO THE COMMISSION IN SUPPORT OF
RECOMMENDATION TO CONFIRM IN PART AND DISAFFIRM IN PART
THE REFEREE'S REPORT AND TO ISSUE A DETERMINATION THAT
RESPONDENT BE REMOVED FROM OFFICE**

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Dated: April 25, 2019

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct ("Commission") in support of the recommendation that the Commission confirm in part and disaffirm in part Referee John P. Collins's Report and render a determination that Honorable Paul Senzer ("Respondent") has committed judicial misconduct and should be removed from office.

The Commission should affirm the Referee's findings that Respondent, while acting as an attorney, repeatedly used obscene and vulgar language – including gender-specific slurs – in emails to his clients. Respondent's emails (1) described his female opposing counsel as a "cunt on wheels" and "eyelashes," (2) referred to the female court attorney referee as an "asshole," (3) referred to his clients' daughter as a "bitch", "asshole" and "scumbag" and (4) referred to people who work in schools as "assholes." The Commission should also affirm the Referee's findings that Respondent's use of such vulgar language in the context of a judicial proceeding violates the Rules, in that it diminishes the dignity of the judicial office and undermines public confidence in Respondent's integrity and impartiality.

The Commission should disaffirm the Referee's bewildering finding that the specification alleging Respondent's reference to an Administrative Law Judge as a "nigger" was not sustained. The Referee's threadbare analysis (1) makes no credibility findings, (2) totally ignores the independent testimony of Walter Coleman that Respondent uttered the racist slur and (3) speculates on matters outside the record and relies on inadmissible and unpersuasive testimony from character witnesses who had no

direct knowledge of the issues set forth in the Formal Written Complaint. The Commission should credit the testimony of Mr. and Mrs. Coleman, who have no interest in this proceeding, and find that that they heard, and Respondent did indeed, refer to an ALJ as a “nigger.”

There is no place on the bench for a judge who utters such deeply offensive language. The gratuitous use of either “nigger” or “cunt” in the context of a judicial proceeding is removable conduct. A judge who uses such a racial or gender slur irredeemably impairs public confidence in his ability to treat and appear to treat the women or people of color who appear before him professionally or fairly. Respondent’s conduct clearly “undermined ... the stature and dignity of ... the judicial system as a whole.” *Matter of Assini*, 94 NY2d 26, 29 (1999). He should be removed from office.

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law § 44(4), the Commission authorized a Formal Written Complaint, dated October 13, 2017, containing one charge. The Formal Written Complaint (“Complaint”) alleges that from October 24, 2014 to on or about February 22, 2015, Respondent undermined the public confidence in the judiciary when, while representing clients, he used racist, sexist, profane and otherwise degrading language. (FWC ¶5).¹

¹ “FWC” refers to the Formal Written Complaint, and “Ans” refers to Respondent’s Answer to the Complaint.

In or about November 2013, Jennifer Coleman retained Respondent to represent her in an employee discrimination matter (FWC ¶6). In or about November 2014, Respondent represented Ms. Coleman at a hearing in the matter before an Administrative Law Judge (ALJ) and during a recess Respondent referred to the ALJ, who is African-American, as “that fucking nigger” and/or “that nigger” (FWC ¶7).

In the fall of 2014, the Colemans retained Respondent to represent them in a Family Court matter in which they sought the right to visit their grandchild (FWC ¶8). Between October 24, 2014 and February 22, 2015, Respondent communicated with his clients via emails in which he referred to: (1) the Coleman’s daughter as a “bitch” on three different occasions (FWC ¶¶9, 14-15); (2) their daughter’s attorney as a “cunt on wheels” (FWC ¶10); (3) people who work in schools as “assholes” (FWC ¶11); (4) the Coleman’s daughter as an “asshole” (FWC ¶12); (5) the Coleman’s daughter and her ex-husband as “scumbags” (FWC ¶13); (6) their daughter’s attorney as “eyelashes” (FWC ¶16), and (7) the “judge” presiding over the Family Court matter as an “asshole” (FWC ¶18).

B. Respondent’s Answer & Motion to Dismiss

Respondent filed an Answer dated December 12, 2017. Respondent admitted that, in or about November 2013 he was retained by Jennifer Coleman to represent her in an employee discrimination matter (FWC ¶6; Ans ¶4) and that in or about November 2014 he represented her at a hearing before an Administrative Law Judge (FWC ¶7; Ans ¶5). Respondent admitted that he spoke with Mr. and Ms. Coleman about the case during a

recess, but denied the allegations that he called the Administrative Law Judge that “fucking nigger” and/or “that nigger.” (FWC ¶7; Ans ¶5).

Respondent admitted that in or about the fall of 2014, the Colemans retained him to represent them in a Family Court matter in which they sought the right to visit their grandchild (FWC ¶8; Ans ¶6). Respondent admitted that he sent all the emails contained in the Formal Written Complaint in Exhibits A-I. (FWC ¶¶9, 10, 11, 12, 13, 14, 15, 16, 18; Ans ¶7).

At the time he filed his Answer, Respondent also filed a Motion to Dismiss and/or Motion for Summary Determination arguing, *inter alia*, that the Formal Written Complaint should be dismissed because the statements were made while he was acting as an attorney and was in private communications with his clients. By Decision and Order dated March 16, 2018, the Commission denied Respondent’s motion in all respects.

C. The Hearing

On March 29, 2018, the Commission designated Judge John Collins as Referee to hear and report proposed findings of fact and conclusions of law. A hearing was held in New York City on August 6 and 7, 2018. Commission Counsel called two witnesses and introduced fourteen exhibits (Exs 1-14). Respondent testified on his own behalf and called four-character witnesses.

D. The Referee’s Report

On January 26, 2019, the Referee issued a report separating the Commission’s single charge of misconduct into two parts “1A” & “1B.”

In part "1A," the Referee sustained the allegations that Respondent used profane, obscene and vulgar language such as "cunt," "bitch," "asshole," "scumbags," and "eyelashes" in emails to Mr. and Mrs. Coleman and concluded that Respondent violated the Rules Governing Judicial Conduct (Rep 12).

In part "1B," the Referee did not sustain the allegation that Respondent referred to Administrative Law Judge Margaret Jackson as "that fucking nigger" and/or that "nigger" (Rep 9).

In making his findings, the Referee did not include citations to pages of the hearing transcript or to any of the exhibits introduced into evidence. And he made no reference whatsoever to the testimony of the second witness who heard Respondent call Judge Jackson a "nigger."

Section 1A: Findings as to Respondent's use of the words, "cunt," "bitch," "asshole," "scumbags," and "eyelashes."

The Referee found that Respondent made the various email statements referenced in the Formal Written Complaint (Rep 8) and that "in light of Respondent's admissions" regarding the emails, "little further discussion [was] required" (Rep 7). The Referee noted that in "[o]bserving [the Respondent] testify and listening to the totality of his testimony," the Referee found it "difficult to believe that he used such coarse and vulgar language – but he did" (Rep 7).

The Referee found that these "words were not written in isolation," but "in the context of emphasis, counsel and advice" given to "clients who were not professionally educated" (Rep 7). The Referee observed that Jennifer Coleman was a substitute school

custodian and that Walter Coleman was a school maintenance mechanic (Rep 7-8). He also noted that “[Respondent] maintained that such language was not foreign to Jennifer Coleman” but found that “this does not excuse [Respondent’s] actions (Rep 8).

Section 1B: Findings as to Respondent’s use of the word “nigger.”

The Referee described the allegation that Respondent referred to ALJ Margaret Jackson as a “nigger” as a typical “she says, he says” situation (Rep 9). The Referee made no reference to Walter Coleman’s independent corroborating testimony about the incident.

The Referee noted that Mrs. Coleman did not make a complaint to the Bar or the Commission and continued to keep Respondent as her lawyer (Rep 9).

According to the Referee, before the underlying complaint reached the Commission there were “intervenor” and “exactly what role they played, if any, is unknown,” (Rep 9). The report noted that these allegations were brought to the Commission’s attention by attorney Christopher Cassar, who learned of them when Jennifer Coleman contacted him after reading that he was suing Respondent and the Suffolk County Parking Violation Agency in federal court (Rep 3).

The Referee opined that “[w]hat conversations Jennifer Coleman might have had, if any” with “Attorney Cassar” and his “technician” are also unknown. The Referee stated that “no doubt by the time Jennifer Lopez (sic) telephoned Cassar, she was upset with [Respondent]” because she had paid Respondent legal fees for two [unsuccessful] cases” and “expected” to get a refund that she never got (Rep 10).

The Referee balanced this against Respondent's four-character witnesses who, as discussed below, were permitted to testify on extrinsic matters well beyond the parameters of the rules of evidence, on which the Referee then improperly relied (Rep 10).

Referee's Conclusions of Law

The Referee found that "judges are accountable at all times for their conduct, including their conversation both on and off the Bench," and that Respondent's "use of such vulgar language and a reference of a sexual character diminish (sic) the esteem of the judiciary and the dignity of judicial office" (Rep 11). The Referee concluded that Respondent's conduct, "reflects adversely on his appreciation of the role and responsibility of a judge, whether full-time or part-time" (Rep 12).

The Referee found that Respondent violated §§100.1, 100.1(2)², 100.2(A), and 100.4(1)³ of the Rules and that his conduct was prejudicial to the administration of justice in violation of Judiciary Law §44 (Rep 12-13).

With respect to mitigation, the Referee found that Respondent's emails involved language used "with private clients, rather than in a public forum" and that Respondent exhibited "sincere contriteness" (Rep 13).

² There is no Section 100.1(2) of the Rules.

³ There is also no Section 100.4(1) of the Rules. The Referee was likely referring to Section 100.4(A)(1) of the Rules Governing Judicial Conduct, which was charged in the FWC at ¶19.

THE FACTS

Jennifer Coleman met Respondent in or about 1989, when a client of her cleaning service referred her (Tr 5). Ms. Coleman cleaned Respondent's home for approximately 5 years and later occasionally took care of Respondent's cats (Tr 7). Her only other contact through the years was seeing him on occasion in the Village and waving to him (Tr 7). After the cat-sitting job ended, Mrs. Coleman had no substantive conversations with Respondent until 2013, when she retained him to represent her in an employment discrimination case before the Division of Human Rights against the Cold Spring Harbor School District (Tr 9-10, 27).

A. Employment Discrimination Matter

Ms. Coleman worked part-time as a substitute custodian of the school district for sixteen years (Tr 9). At some point the district hired new workers and Ms. Coleman believed that she was getting less sub-custodial work than in previous years and had missed out on four jobs (Tr 9, 27). When she complained to the head custodian, he required her to move 200 desks by herself, videotaped the incident, and later played the video and called her a "cunt" (Tr 9, 23). Ms. Coleman retained Respondent to represent her in a discrimination case and Respondent filed an action on her behalf with the Division of Human Rights (Tr 9, 27).

The employment discrimination matter proceeded to a two-day hearing in Hempstead, New York, on November 5-6, 2014 (Tr 10). Ms. Coleman called 10 witnesses on her behalf (Tr 42).

The Administrative Law Judge presiding over the employment matter was Judge Margaret Jackson (Tr 43). On the second day of the hearing, Ms. Coleman and her husband, Walter Coleman, returned from lunch and Respondent met them in front of the elevator (Tr 45, 66). They discussed how her case was going and how the witnesses had testified (Tr 45-46, 66). Judge Jackson was a little late and they were waiting for the judge to return (Tr 46). Respondent then said, "Is that f'ing nigger back yet?" referring to Margaret Jackson, who was the only African-American person there (Tr 46-47).

Mr. Coleman similarly testified that when he and his wife returned from lunch that they were waiting by the elevators for Respondent to return. According to Mr. Coleman, he and his wife were speaking with Respondent about the case and how it was going (Tr. 65-55). Mr. Coleman testified that during this conversation he recalled Respondent "asking what [he] thought of this fucking nigger" (Tr 66).

The Colemans were the only persons present when Respondent asked about Judge Jackson and referred to her as a "nigger" (Tr 66). Mr. Coleman was also startled by Respondent using the word "nigger" (Tr 66). Mr. Coleman "didn't expect it" because Respondent was a lawyer and a judge (Tr 68).

Mr. Coleman and his wife discussed the "nigger" comment in the car on their way home that day and questioned "how can we be using this guy for a discrimination case when this is how he is, you know..." (Tr 70). The Colemans also discussed it a couple of times at their house (Tr 69).

B. Family Court Matter

During the course of the employment discrimination matter, the Colemans asked Respondent to handle a Family Court matter in which their daughter, Kelly Martino, sought an order of protection to limit contact with their grandson (Tr 13). Respondent was unable to take on a new matter because he was running for District Court judge,⁴ so Ms. Coleman hired another attorney to handle the matter and the order of protection was vacated (Tr 13-14). By late November 2014, the Colemans had retained Respondent to represent them on a new Family Court petition seeking visitation with their grandson, [REDACTED] (Tr 22, 62; Ex. 2).

The main form of communication between the Colemans and Respondent was by email (Tr 10). From October 24, 2014 through February 22, 2015, Respondent sent the Colemans emails containing the following language:

- In an email on October 24, 2014, Respondent referred to Kelly Martino, the Coleman's daughter, as a "bitch" (Tr 20; Ex. 1).
- In an email on November 25, 2014, Respondent referred to Karen McGuire, the daughter's attorney as a "cunt on wheels" (Tr 21; Ex. 2).
- In another email on November 25, 2014, Respondent referred to the people who work in schools as "assholes." (Tr 27; Ex. 3).
- In an email on January 13, 2015, Respondent referred to the Kelly Martino as an "asshole." (Tr 29; Ex. 4).
- In an email on January 22, 2015, Respondent referred to Kelly Martino and her ex-husband as "scumbags." (Tr 32; Ex. 5).
- In an email on February 10, 2015, Respondent again referred to Kelly Martino as a "bitch" (Tr 34; Ex. 6).

⁴ The Colemans supported Respondent's campaign by putting up signs, attending a fundraiser and contributing \$200 (Tr 12).

- In an email on February 11, 2015, Respondent again referred to Kelly Martino as a “bitch” (Tr 36; Ex. 7).
- In a second email on February 11, 2015, Respondent referred to the Coleman’s daughter’s attorney as “eyelashes” instead of using her name. (Tr 38; Ex. 8).
- In an email on February 22, 2015, Respondent referred to the “judge” – court attorney-referee Colleen Fondulis – in the Family Court matter as an “asshole” (Tr 40, Ex. 9).⁵

C. Respondent’s Written Responses to the Commission

During the Commission’s investigation of the matters herein, Respondent readily admitted that his email address is [REDACTED] and that he sent all of the above emails to the Colemans (Ex. 12-13, 14[a]-[1]). He said he described Karen McGuire as a “cunt on wheels” because she was an “aggressive matrimonial practitioner” in Suffolk County, “known for sharp lawyering” (Ex. 10, p. 2; Ex 11, p. 2). He conceded having “no valid explanation to justify using [the] epithet” “scumbags” to describe the Coleman’s daughter and her ex-husband (Ex. 10, p. 2; Ex 11, p. 2).

Respondent acknowledged that his crude language depicting others in the justice system, including an adversary lawyer, a party respondent, and a referee, “coarsens and potentially denigrates everyone” (Ex. 10, p. 3; Ex 11, p. 2) and that his conduct violated the Rules (Ex. 14[i]).

⁵ Respondent explained that the “judge” in the matter was court attorney-referee Colleen Fondulis (Ex. 10).

D. Respondent's Hearing Testimony

Following his admission to the practice of law in 1981, Respondent began work at a local firm doing criminal defense (Tr 120). In 1984 he opened his own private practice and maintained that practice doing criminal defense, appeals and some civil litigation until the end of 2014, beginning of 2015 when he wound down his practice (Tr 120, 124). Respondent was elected in 1994 to Northport Village Court (Tr 121). He is also a part-time judicial hearing officer for the Suffolk County Parking Traffic and Violations Agency and teaches at Farmingdale State College (Tr 122-123).

Respondent has known Ms. Coleman since the mid-1990's, when she worked as a housecleaner for his family for a few years and occasionally would also look after their cats (Tr 127).

In 2013, Respondent was retained by Ms. Coleman to assist her in connection with her employment discrimination action and she paid him an initial retainer of \$7,500 (Tr 131). The employment discrimination matter ultimately went to trial and she paid another \$5,000 (Tr 131). The Colemans paid Respondent \$4,500 for his representation on the grandparent visitation petition in Family Court (Tr 127).

Respondent described Ms. Coleman as a "needy" client who "lived on her iPhone, on her laptop, on her computer" and email was an expedient way for them to communicate (Tr 128). He testified that he had a lot of email communication with Ms. Coleman and acknowledged that his tone became "too conversational" and "far too familiar" (Tr 128).

Respondent admitted that he used profane language in email communications with his client (Tr 127) and that it was unprofessional to do so (Tr 128). He testified that it is not “appropriate for any attorney to ... denigrate himself or herself or the profession” in any way “by using language that reflects poorly on the profession” (Tr 128).

Respondent acknowledged that the word “cunt” is sexist (Tr 137) and that it is a derogatory term used specifically against women (Tr 143). Respondent admitted that he would have never said the word to Ms. McGuire’s face (Tr 141-142). Respondent also conceded that it “showed a lack of sensitivity” for him to use the word “cunt” in an email to Ms. Coleman since that word was the “centerpiece” of her petition in the discrimination matter – it was the same word used by Ms. Coleman’s supervisor, who “would laugh at her in the presence of other employees quoting and re quoting that word” (Tr 136-137).

Respondent testified that at the time it “didn’t dawn on him” that sending these emails to his client “somehow had a nexus or a connection to his judicial persona,” but he had “learned the hard way that it certainly does” (Tr 129). The profanity used in his emails are words he would never use in court and using such profanity would show a disrespect for the litigants (Tr 141-142). Respondent acknowledges that similarly this language showed a lack of respect to clients (Tr 143).

Respondent denied ever calling the administrative law judge a “fucking nigger” (Tr 129). He agreed that “nigger” is the worst word someone can call a black person (Tr 144).

E. Respondent's Character Witnesses

Suffolk County Assistant District Attorney ("ADA") William Reynolds testified as a character witness on Respondent's behalf (Tr 83-84) and stated that he has a reputation as a "fair" judge (Tr 89). ADA Reynolds appears in Northport Village Court every Monday evening (Tr 84) and he conceded that he would continue to appear before [Respondent] after the hearing (Tr 87). ADA Reynolds was not asked and did not testify whether he had ever heard Respondent utter a sexist, racist or vulgar word (Tr 82-89).

Deborah Monastero, a Legal Aid attorney from Suffolk County, also appears in Northport Village Court (Tr 92) and like ADA Reynolds, she acknowledged that she will continue to appear on cases before Respondent in the future (Tr 98-99). Ms. Monastero also acknowledged that Respondent is in a position to make recommendations on sentencing and rulings on her bail applications (Tr 98). When Ms. Monastero was initially asked whether she was aware of Respondent's reputation in the community, she testified that she could "only talk about [her] experience" while she was in the courtroom (Tr 94). The Referee denied Commission counsel's motion to strike the witness's testimony on the ground that character witnesses may only testify as to reputation in the community (Tr 94).

Thereafter the Referee asked the witness to leave the hearing room and there was a discussion off the record (Tr 95). When the witness returned, she testified that she was aware of Respondent reputation in the community and that he had a reputation for being "fair" (Tr 96). Over the objection of Commission counsel, Ms. Monastero was permitted

to testify that she had never heard Respondent make “disparaging remarks to any litigant of any race or ethnic background” (Tr 95-96).

Over the objection of Commission counsel, Respondent’s attorney then called ADA Reynolds (Tr 101), who testified that he had never heard Respondent make any “ethnically charged remarks” (Tr 102).

Judge Debra Urbano-DiSalvo knows Respondent because they are both Administrative Law Judges at the Suffolk County Traffic Violations Bureau (Tr 105, 109). She testified as a character witness that Respondent had a reputation for being “fair” and “honest,” (Tr 109) and specifically, that she had never heard Respondent make a “disparaging remark” about anyone (Tr 110). On cross-examination, Judge DiSalvo conceded that in her discussion of Respondent’s reputation with members of the legal community, she did not discuss Respondent’s present disciplinary matter or disclose that Respondent was charged with making racist statements by the Commission on Judicial Conduct (Tr 113).

Finally, Monsignor Ellsworth Walden appeared as a character witness and testified that he first met Respondent about a year and half earlier when Respondent converted from Judaism to Catholicism (Tr 115, 117). He testified that Respondent has a reputation for “complete honesty and trustworthiness” in the parish (Tr 117). On cross-examination, however, he conceded that he has never spoken to members of his parish about Respondent’s reputation for honesty or trustworthiness (Tr 118).

ARGUMENT**POINT I****THE COMMISSION SHOULD AFFIRM THE REFEREE'S FINDING THAT RESPONDENT VIOLATED THE RULES WHEN HE USED THE WORDS "CUNT," "BITCH," "ASSHOLE," "SCUMBAGS," AND "EYELASHES" IN REFERRING TO A FEMALE ATTORNEY, A FEMALE LITIGANT AND THE FEMALE COURT REFEREE WHILE ACTING AS AN ATTORNEY IN A JUDICIAL PROCEEDING**

The Commission should affirm the Referee's finding that Respondent committed judicial misconduct when, acting as an attorney in a judicial proceeding, he repeatedly made sexist and vulgar remarks to his clients about a female attorney, a female litigant and the female court referee.

A. The Commission should affirm the Referee's finding of misconduct as to Respondent's sexist, vulgar and profane language in email communications with his clients.

It is well-settled that "[e]ven off the bench, angry and profane language by a judge is inappropriate." *Matter of Mahon*, 1997 Ann Rep 104, 105 (Comm'n on Jud Conduct, August 8, 1996). As the Court of Appeals has stated, "whenever he travels, a Judge carries the mantle of his esteemed office with him." *Matter of Steinberg*, 51 NY2d 74, 80 (1980). Both on and off-the-bench, judges are "cloaked figuratively" with the robes of judicial office. *Matter of Kuehnel v. Comm on Judicial Conduct*, 49 NY2d 465, 469 (1980).

Here, Respondent concedes that he repeatedly used profane language during email exchanges with his clients. Respondent:

- Referred to his female adversary as a "cunt on wheels" and "eyelashes" (Tr 21, 38; Exs. 2, 8);

- Referred to the Coleman's daughter as a "bitch" on three separate occasions (Tr 20, 34, 36; Ex. 1, 6, 7) and as an "asshole" (Tr 29; Ex. 4). He also referred to the daughter and her ex-husband as "scumbags" (Tr 32; Ex. 5);
- Referred to the female court attorney-referee in their Family Court matter as an "asshole" (Tr 40; Ex. 9, 10); and
- Referred to the people who work in schools as "assholes" (Tr 27; Ex. 3).

The Commission has specifically held that use of the phrase "cunt" is "profane, obscene and vulgar," and "vulgar and unbecoming of a judge." *Matter of Aldrich*, 1983 Ann Rep 75, 77 (Commn on Jud Conduct, September 17, 1982); *Matter of Assini*, 2000 Ann Rep 95, 97, 99 (Commn on Jud Conduct, March 4, 1999). The Court of Appeals has called the phrase "vile" and "reprehensible." *Matter of Assini*, 94 NY2d 26, 29 (1999).

In this matter, Respondent concedes that his use of the word "cunt" in an email to Ms. Coleman was especially insensitive in light of Respondent's testimony that her supervisor in the school discrimination case "used that very word against her" and "would laugh at her in the presence of other employees quoting and re quoting that word" (Tr 136-137).

B. The Referee had no basis to find any mitigating circumstances surrounding the vulgar and sexist language used by Respondent.

The Referee's attempt to minimize Respondent's use of these vulgar and sexist terms because they were "not written in isolation but in the context of emphasis, counsel and advice being given privately to clients who were not professionally educated" (Rep 7) is particularly offensive. Judges are required to observe high standards of conduct at all times and in all circumstances. There is no lesser standard of civility or respect when dealing with those "who were not professionally educated."

The Referee's further suggestion, again apparently in an attempt at mitigation, that "[Respondent] maintained that such language was not foreign to Jennifer Coleman" and that "she used it on the phone" (Rep 8) grossly mischaracterizes the record. Contrary to the Referee's suggestion that Ms. Coleman was accustomed to such language, she testified that she found the word "upsetting" and that it made her "uncomfortable" (Tr 22-23). Respondent conceded on cross-examination that his use of the word "cunt" was particularly insensitive because Ms. Coleman's supervisor in the school discrimination case "used that very word against her" and "would laugh at her in the presence of other employees quoting and re quoting that word" (Tr 136-137).

Nor does it matter that Respondent used this "vile" and "reprehensible" language in the course of "private" conversation. It is well-settled that "[e]ven off the bench, angry and profane language by a judge is inappropriate." *Matter of Mahon*, 1997 Ann Rep 104, 105 (Comm'n on Jud Conduct, August 8, 1996). "[E]ven off the bench, judges are required to avoid conduct that ... detracts from the dignity of judicial office." *Matter of Feeder* 2010 Ann Rep 143, 148 (Comm'n on Jud Conduct, November 18, 2009) citing Rule 100.4(A). Both on and off the bench, judges are "cloaked figuratively" with the robes of judicial office. *Matter of Kuehnel*, 49 NY2d 465, 469 (1980).

The Commission should affirm that Referee's finding that Respondent's conduct "reflects adversely on his appreciation of the role and responsibility of a judge, whether full-time or part-time" (Rep 12). The Commission should also credit the Referee's finding that Respondent's reference to a "sexual character diminishes the esteem of the judiciary and the dignity of judicial office" in violation of §§ 100.1, 100.2(A), and 100.4

of the Rules and that his conduct was prejudicial to the administration of justice in violation of Judiciary Law §44 (Rep 11-13). Lastly, the Commission should not find any mitigating circumstances surrounding Respondent's sexist, demeaning, and vulgar language as none can exist to justify it.

POINT II

THE COMMISSION SHOULD DISAFFIRM THE REFEREE'S FINDING THAT RESPONDENT'S ALLEGED DESCRIPTION OF AN ADMINISTRATIVE LAW JUDGE AS A "NIGGER" WAS NOT SUSTAINED BY A PREPONDERANCE OF THE EVIDENCE

The Commission should disaffirm the Referee's finding that there was not a preponderance of hearing evidence to sustain the charge that Respondent called an African-American ALJ a "nigger" (Rep 11).

The Referee's utterly threadbare analysis: (1) makes no credibility findings and (2) completely ignores the independent testimony of a second witness, Walter Coleman, who heard Respondent utter the racist slur and (3) speculates on matters outside the record and relies on inadmissible and unpersuasive testimony from character witnesses who had no direct knowledge of the issues set forth in the Formal Written Complaint.

A. The Commission is not Bound by the Referee's findings.

The Referee's report contains "proposed" findings which the Commission is empowered to accept or reject. See §§ 22 NYCRR 7000.6(f)(1)(iii), 7000.6(l). "Neither the Commission nor [the] Court [of Appeals] is bound to accept the Referee's findings." *Matter of Marshall*, 8 NY3d 741, 743 (2007). See also *Matter of Popeo*, 2016 Ann Rep 160, 175 (Comm'n on Jud Conduct, February 12, 2015).

B. The Referee made no credibility finding and ignored critical testimony.

“There is no question that misconduct need only be established by a preponderance of the evidence” and no “doubt that the Commission may meet its burden of proof with either circumstantial or direct evidence ... or that findings may rest on credibility determinations.” *Matter of Mogil*, 88 NY2d 749, 752-753 (1996).

Because the Referee failed to make any credibility findings,⁶ it is unclear whether he did not sustain the charge that Respondent called Judge Jackson a “nigger” because he thought Jennifer Coleman lied, or because he believed her testimony was insufficient to meet the “preponderance of the evidence” standard in what he described as “a typical ‘she says, he says’ situation” (Rep 9-11). As in *Matter of Marshall*, 2008 Ann Rep 161 (Comm’n on Jud Conduct, February 7, 2007), the Commission should reject the Referee’s conclusion that this portion of the charge was not established where “the referee’s views are somewhat unclear.” *Id.* at 66.

Even more troubling is the Referee’s failure to even consider the testimony of Walter Coleman. Contrary to the Referee’s characterization of the evidence as a typical “she says, he says” situation (Rep 9), the hearing evidence clearly established that two witnesses heard Respondent make this highly offensive remark – a situation more accurately described “he said, *they* said.”

⁶ Although the report states that the “usual tests of credibly (sic) were applied in evaluating the testimony of each witness” (Rep 6), the Referee did not say whether he thought Jennifer Coleman was telling the truth and he made no mention of the testimony of Walter Coleman (Rep 9-10).

Notwithstanding that Walter Coleman testified that he was present when the Respondent referred to Judge Jackson as a “nigger,” and that he heard Respondent use that phrase (Tr 66-67), the Referee makes absolutely no reference to Mr. Coleman’s testimony in his analysis. Again, it is impossible to ascertain whether the Referee failed to address Mr. Coleman’s testimony because he found it irrelevant – a difficult supposition given that Mr. Coleman was one of only three witnesses who were present – or whether the Referee simply forgot about this testimony while making his recommended findings. In either event, the Referee’s conclusion that there was insufficient evidence to establish that Respondent uttered this racist slur cannot be credited based on a such a glaringly incomplete analysis. The Commission should reject the Referee’s proposed finding, which he made “without making any credibility findings” and “without setting forth any reasoning as to how he reached his conclusion,” *see Matter of Popeo*, 2016 Ann Rep 160, 175 (Comm’n on Jud Conduct, February 12, 2015). Based on the hearing record, the Commission should find that Respondent made the racist statement charged in the Formal Written Complaint.

C. The Referee improperly speculated about matters outside the record and relied on inadmissible and unpersuasive character evidence.

The Commission should also disaffirm the Referee’s failure to sustain the charge that Respondent uttered a racist slur because, in addition to his failure to make credibility findings and to consider critical testimony, the Referee improperly speculated about facts outside the record and gave considerable weight to inadmissible and unpersuasive character evidence.

The Referee’s ominous and gratuitous reference to “intervenors” and his speculation as to “what role they played, if any” (Rep 9) is deeply troubling and extremely problematic. By placing this commentary in the midst of his analysis as to whether it was established that Respondent called ALJ Jackson a “nigger,” the Referee suggests – intentionally or not – that Mr. Cassar induced Jennifer and Walter Coleman to lie. But the Referee did not, and cannot, point to a single line of hearing testimony to support such outrageous speculation (Rep 9-10). Cassar did not testify, and nothing said by any other witness supports the Referee’s bewildering detour from the record.⁷

Indeed, to the extent that the hearing record addresses this issue at all, it is clear that Mr. Cassar’s involvement was not the genesis of the charge that Respondent used the racist phrase. To the contrary, Mr. Cassar’s original complaint to Administrative Judge C. Randall Hinrichs, which became the basis of the Commission’s investigation (Tr 79-80; Ex. 11), includes copies of Respondent’s sexist and profane emails, but does not mention the racist language (Ex. 11, pp. 4-8). Thus, as the Commission held in *Matter of Aluzzi*, 2018 Ann Rep 61 (Comm’n on Jud Conduct, June 26, 2017), the Referee’s proposed conclusion that Respondent did not make the racist remark based on speculation about possible “intervenors” is not entitled to deference where there is “little evidence in the record to support this particular finding.” *Id.* at 72. Here, there is less than “little evidence” – there is none.

⁷ Commission counsel did not call Mr. Cassar to the stand because he did not witness any of the incidents charged in the Formal Written Complaint (Tr 66), and any testimony he could have offered about the Colemans’ prior consistent statements in support of the Commission’s case would have been hearsay and inadmissible bolstering. See e.g., *People v Smith*, 22 NY3d 462, (2013) (“bolstering” describes hearsay evidence of a prior consistent statement that is inadmissible absent hearsay exception).

Finally, the Referee committed reversible error when he improperly permitted Respondent's character witnesses to testify, over Commission counsel's repeated objections (Tr 85, 93, 94, 96, 97, 99-100, 101), that they never heard him utter a racist remark. The Referee greatly compounded that error when he relied on this supposedly "vibrant" testimony in his analysis whether Respondent called Judge Jackson a "nigger" (Rep 10).

The Commission's operating rules provide that "[t]he rules of evidence applicable to nonjury trials shall be followed" in Commission hearings. 22 NYCRR § 7000.6(i)(2). In that context, "[i]t is well settled that '[c]haracter evidence is strictly limited to testimony concerning the [party's] reputation in the community ..., and thus a character witness may not testify to specific acts in order to establish' a particular character trait." *People v Kennard*, 160 AD3d 1378, 1380 (4th Dept 2018). See also *People v Miller*, 39 NY2d 841, 847 (1976) ("character and reputation may not be proved by reference to specific acts"). See also *People v Kuss*, 32 NY2d 436, 443 (1973); *People v Jimmeson*, 101 AD3d 1678 (4th Dept. 2012).

Here, the Referee clearly erred when he relied on clearly inadmissible character testimony that none of the character witnesses "ever heard [Respondent] use any language embracing racial epithets" (Rep 10) and the Commission should disaffirm his proposed finding on that basis alone. See e.g. *People v Mancini*, 213 AD2d 1038, 1039 (4th Dept 1995) ("reversal is required" where trial court permitted character witness to testify about specific acts).

Testimony that these character witnesses never heard Respondent use racially offensive language is “the type of propensity evidence that lacks probative value concerning any material factual issue, and has the potential to induce the [finder of fact] to decide the case based on evidence of defendant’s character.” *Mazella v Beals*, 27 NY3d 694, 710 (2016). Even if that testimony is accepted as true, it hardly refutes the Colemans’ testimony that Respondent used such language on another occasion when these witnesses were not present. Indeed, it would have been quite shocking if Mr. Reynolds or Ms. Monastero had heard Respondent utter a racial insult, given that they testified that they only interact with Respondent in court (Tr 85, 92-93). It would be even more shocking if he used such language in front of Monsignor Walden, who testified that his contact with Respondent occurred in church, or in religion classes related to Respondent’s conversion from Judaism to Catholicism (Tr 115-16). As the Referee wrote, after “[o]bserving [Respondent] testify ... it is difficult to believe that he used such coarse and vulgar language – but he did” (Rep 7). A similar analysis applies to the charge that Respondent called Judge Jackson a “nigger.”

What is puzzling here is that the Referee went out of his way to express his disbelief that Respondent repeatedly used vulgar language denigrating women. Of course, he had no choice but to sustain the charge. Respondent, after all, admitted it, and it was in writing. As to the racist language, however, there were no admissions or pesky emails containing the word. But there were *two* witnesses who clearly heard it and contemporaneously discussed their shock. The Referee simply ignored or forgot about

the testimony of Walter Coleman and found the charge was not sustained based on rank speculation and inadmissible testimony.

The Referee's shortcomings do not hamstring the Commission. There is ample and persuasive record evidence for the Commission to reject the Referee's finding as to the racist language and to find that Respondent did in fact call ALJ Jackson a "nigger."

D. The hearing record evidence supports a finding that Respondent committed misconduct.

It is beyond dispute that in his emails to Jennifer and Walter Coleman, Respondent felt comfortable using extremely vulgar, profane and sexist language. The Colemans' testimony that Respondent used a racial slur is entirely consistent with that practice.

Both Mr. and Ms. Coleman testified that Respondent called Margaret Jackson, the Administrative Law Judge presiding over Ms. Coleman's employment discrimination trial matter, an "f'ing" or "fucking" "nigger" (Tr 46, 66). Both witnesses clearly recalled that Respondent made the "nigger" statement about Judge Jackson while they were by the elevator, waiting for Judge Jackson to return, waiting for the hearing to resume and discussing with Respondent how the case was going (Tr 45-47, 65-67). Similarly, both described that right after Respondent made the racial slur, Judge Jackson turned the corner and then they resumed the hearing (Tr 47, 66).

No credible evidence was adduced at the hearing suggesting that Jennifer and Walter Coleman had a motive to fabricate their explosive testimony. The Referee's speculation that "Jennifer Lopez" (presumably Coleman), was "[n]o doubt" "upset" with

Respondent (Rep 10) has no support in the record.⁸ Neither Jennifer Coleman nor Walter Coleman testified that Ms. Coleman was “upset” or angry.⁹

More importantly, Respondent himself did not testify that Ms. Coleman was angry or upset. The striking absence of such testimony from a witness who would be expected to advance that claim as a defense is compelling evidence that it was simply not true.

The Commission should disaffirm the Referee’s finding as to “IB” and credit the testimony of the Colemans and find that Respondent made the racial slur.

POINT III

RESPONDENT SHOULD BE REMOVED FROM OFFICE, EITHER FOR HIS RACIST LANGUAGE, OR SEXIST LANGAUGE, OR BOTH

If the Commission finds that Respondent called an administrative law judge “nigger” – a charge Respondent denies but the evidence supports – removal from office is the only appropriate sanction. Yet even if the Commission finds Respondent did not make that racist remark, removal from office is nonetheless the appropriate sanction for admitted denigration of various women in a judicial proceeding using the terms “cunt,” “asshole,” “bitch” and “eyelashes.”

⁸ The reference to “Jennifer Lopez” is inexplicable. There is no one named “Lopez” in this proceeding, and the name does not appear anywhere in the transcript.

⁹ While it is true that Mrs. Coleman testified that she “thought” she was owed a refund (Tr 56) of some of her legal fees, Respondent offered no testimony that Ms. Coleman asked for such a refund or that she was angry about the fee. On cross-examination, Respondent conceded that the Colemans never brought an action for legal fees against Respondent (Tr 145).

A. Respondent should be removed for calling an administrative law judge “nigger.”

As set forth above, the Commission should disaffirm Part 1B of the Referee’s report and find that Respondent called Administrative Law Judge Margaret Jackson a “nigger.” Based on that finding, Respondent should be removed from judicial office.

“No citizen should be required to appear before a judge who publicly uses terms such as niggers and black bastards.” *Matter of Cerbone*, 1984 Ann Rep 76, 78 (Commn on Jud Conduct, August 5, 1983), removal accepted 61 NY2d 93 (1984). The Court of Appeals held that a judge’s remark that it was safe for women to walk the streets “before the blacks and Puerto Ricans moved here” “casts doubt on [a judge’s] ability to fairly judge all cases before him.” *Matter of Schiff*, 83 NY2d 689, 692-693 (1994).

Such conduct, “even on the part of a member of the public would have been, at a bare minimum, a flagrant breach of accepted norms. When performed by a Judge, a person required to observe ‘high standards of conduct so that the integrity ... of the judiciary may be preserved,’ ... such conduct is inexcusable” *Kuehnel* 49 NY2d at 469 (citation to the Rules omitted).

The word “nigger” is “a hateful racial epithet” that should have “no place in a judge’s lexicon.” *Matter of Mulroy*, 2000 Ann Rep 125, 128 (Commn on Jud Conduct, August 12, 1999), removal accepted 94 NY2d 652 (2000); *Matter of Fabrizio*, 1985 Ann Rep 127, 133 (Commn on Jud Conduct, December 26, 1984), removal accepted, 65 NY2d 275 (1985). “A judge’s use of such language indicates an unacceptable bias and

insensitivity that has no place on the bench and warrants the severest possible sanction.”

Id.

The Commission should find that Respondent called ALJ Jackson a “nigger,” and he should be removed from his judicial office.

B. Respondent should be removed for using the “vile” and “reprehensible” term “cunt” to refer to opposing counsel and for directing other sexist vulgarities at female participants in a legal proceeding.

Certain language manifests “an impermissible bias that threatens public confidence in the judiciary.” *Matter of Mulroy*, 94 NY 2d 652, 657 (2000). In this matter, Respondent’s repeated use of crude, vulgar and sexist language to refer to various female participants in a legal proceeding demonstrated an unacceptable level of gender bias and warrants his removal.

“‘Cunt,’ referring to a woman’s vagina, is the essence of a gender-specific slur.” *Reeves v CH Robinson Worldwide, Inc.*, 594 F3d 798, 812 (11th Cir 2010). In a removal case, the Commission has described the terms “fucking cunt” and “fucking bitch” as “vulgar and unbecoming of a judge.” *Matter of Assini*, 2000 Ann Rep 95, 99 (Comm’n on Jud Conduct, March 4, 1999). In accepting the removal, the Court of Appeals found those same terms “obscene and sexist,” “vulgar and offensive,” “vile” and “reprehensible.” *Matter of Assini*, 94 NY2d 26, 29 (1999). “[T]he sexual epithets ... ‘curb side cunt,’ and ‘bitch’ ‘have been identified as intensely degrading to women.’” *Dyke v McCleave*, 79 F Supp2d 98, 106 (NDNY 2000) *citing Winsor v Hinckley Dodge, Inc.*, 79 F3d 996, 1000 (10th Cir.1996).

Respondent admits that he used the word “cunt” to convey that his female adversary was “aggressive” and “persistent” and known for her “sharp lawyering” (Tr 137, Ex. 10 p. 2). He concedes that “cunt” is a “derogatory term used specifically against women” (Tr 143). He also admitted that “cunt” is a sexist word and that it was “atrocious to use this language” (Tr 137).¹⁰

“As far back as 1983, the Commission held that remarks which serve to demean female attorneys because of their gender have no place in the courts of this state.” *Matter of Caplicki*, 2008 Ann Rep 103, 106 (Commn on Jud Conduct, September 26, 2007). See e.g. *Matter of Jordan* 1984 Ann Rep 104 (Commn on Jud Conduct, January 26, 1983) (judge referred to a female attorney a “little girl”); *Matter of Doolittle*, 1986 Ann Rep 87 (Commn on Jud Conduct, June 13, 1985) (judge commented about physical attributes of female attorneys appearing before him); *Matter of Blangiardo*, 1988 Ann Rep 129, (Commn on Jud Conduct, July 23, 1987) (judge swatted female attorney’s hand and stated that he “liked to hit girls because they were soft”); *Matter of Duckman*, 1998 Ann Rep 83, 84 (Commn on Jud Conduct, October 24, 1997) (judge, *inter alia*, told female ADA that she was “too sexy to wear flats”).

Respondent’s reference to a female attorney as a “cunt on wheels” (Tr 21; Ex. 2) in the context of a judicial proceeding is bad enough to warrant removal, but it was not the only slur he directed at female participants in the Family Court matter. Respondent

¹⁰ In a 2008 study looking at the perceived offensiveness of various obscenities used on television, respondents rated “cunt” the “most offensive” term, whether used on broadcast TV, cable, or premium channels. *Rating Offensive Words in Three Television Program Contexts*, *Mass Communication & Society*, January 2011, available online at <https://www.researchgate.net/publication/233088543>

called the female court referee an “asshole” (Tr 40, Ex. 9).¹¹ He repeatedly referred to the Coleman’s daughter – a litigant in the Family Court proceeding – as a “bitch” (Tr 20; Ex. 1; Tr 34; Ex. 6; Tr 36; Ex. 7). And in a separate email, Respondent referred to the same female attorney as “eyelashes” instead of using her name. (Tr 38; Ex. 8). Such behavior is unbecoming a judge.

It is important to note that Respondent did not use these terms in casual conversation; he used all of them in the course of representing a client in a judicial proceeding. In *Assini*, the judge called his co-judge a “fucking cunt” after an administrative meeting with a Town Board member about a poorly performing court employee and again when he stopped by the court to speak with the clerk. *Matter of Assini*, 2000 Ann Rep at 97. Notwithstanding that neither of these instances involved the judge’s adjudicative responsibilities, both the Commission and the Court of Appeals noted that his language was especially offensive because he used it “in connection with his judicial duties.” *Assini*, 2000 Ann Rep at 99. *See also, Matter of Assini*, 94 NY2d 26, 29 (1999) (“comments uttered in the course of his official duties”). The fact that the Respondent in this matter used these offensive terms while acting as attorney to describe other participants in a judicial proceeding “undermined ... the stature and dignity of ... the judicial system as a whole.” *Id.*

It is notable that in *Caplicki*, the Commission censured a judge who repeated a defendant’s comment that his female attorney was “cute” and had a “nice butt.” The

¹¹ In his written response to the Commission’s inquiry letter, Respondent explained that the “judge” in the matter was a court attorney-referee Colleen Fondulis (Ex. 10).

more serious sanction of removal is warranted here for the pattern of “vulgar,” “offensive,” “vile,” “reprehensible,” “intensely degrading,” “gender-specific” slurs directed at female participants in a judicial proceeding.

POINT IV

RESPONDENT WAS PREVIOUSLY CAUTIONED FOR MAKING RUDE AND INAPPROPRIATE REMARKS TO A LITIGANT

In accordance with Section 7000.4 (2) (b) of the Commission’s Rules and Procedures, the Commission may consider a prior letter of dismissal and caution sent to the respondent judge when determining the appropriate sanction. The Court of Appeals has held that a failure to abide by a prior Commission caution is a “significant aggravating factor.” *Matter of George*, 22 NY3d 323, 329 (2013). *See also Matter of Assini*, 94 NY2d 26, 30-31 (1999).

In 2002, Respondent was cautioned for making “several sarcastic, rude and otherwise inappropriate remarks” to a female defendant and her mother (see the attached “Exhibit A”). When Respondent learned that the defendant’s mother was not in court, he said he would “direct the clerk to call [her] mother and direct her to appear here tonight. *She has no choice in the matter. Or I’ll send a police car to get her.*” (Exhibit A, p. 2). At the time, Respondent told the Commission that he was “deeply ashamed” of having made this “ill-mannered wisecrack.” *Id.*

In addition, Respondent was cautioned for having said “almost married doesn’t count,” in the presence of the defendant’s mother, when he learned that the man the defendant called her “stepfather” was in fact the fiancé of the defendant’s mother. *Id.* With respect to

those remarks, Respondent told the Commission that he "winced a little" when he spoke those words and realized that his words unintentionally conveyed a "deeper, moralistic message about the mother's marital status." *Id.*

The Commission cautioned Respondent to be patient, dignified and courteous to litigants and to observe and maintain high standards of conduct at all times that promotes public confidence in the integrity and impartiality of the judiciary. *See* Rule 100.1, 100.2(A) and 100.3(B)(3). Obviously, he did not get the message.

The Commission should consider Respondent's failure to adhere to the prior caution as a "significant aggravating factor" when, in this case, it considers the appropriate sanction for his having made racist, sexist, and otherwise inappropriate comments.

Respondent should be removed from judicial office.

CONCLUSION

By reason of the foregoing, it is respectfully submitted that the Commission should confirm the Referee's findings of fact and conclusions of law in part and disaffirm in part as set forth above, and render a determination that Respondent engaged in judicial misconduct and should be removed from office.

Dated: April 25, 2019
New York, New York

Respectfully submitted,

ROBERT H. TEMBECKJIAN
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February 4, 2002

CONFIDENTIAL

Honorable Paul F. Senzer
Northport Village Court Justice
135 Scudder Avenue
Northport, New York 11768

LETTER OF DISMISSAL AND CAUTION

Dear Judge Senzer:

The Commission on Judicial Conduct has completed its investigation into allegations that on June 4, 2001, while presiding over *People v. Amy Kowalewski*, in which the defendant was charged with Unlawful Possession of Marijuana in violation of Penal Law §221.05, you made several sarcastic, rude and otherwise inappropriate remarks to the defendant and the defendant's mother. After considering your response to the allegations, the Commission has determined not to institute formal charges.

In accordance with Section 7000.3(c) of the Commission's Operating Procedures and Rules, the Commission has dismissed the complaint with this letter of dismissal and caution.

You are cautioned to adhere to Section 100.3(B)(3) of the Rules Governing Judicial Conduct, which requires a judge to be patient, dignified and courteous to litigants and others with whom the judge deals in an official capacity, and Sections 100.1 and 100.2(A) of the Rules, which require a judge to observe and maintain high standards of conduct and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

You did not comply with those standards when you made an admittedly sarcastic remark off the record to the defendant about forcing her mother to appear. The

stenographer's original notes indicate that you said the following, and that you directed the italicized words to be stricken from the record:

All right, have a seat. I'm going to direct the clerk to call your mother and direct her to appear here tonight. *She has no choice in the matter. Or I'll send a police car to get her.*

The Commission notes that, according to your letter of August 20, 2001, you are "deeply ashamed" of having made this "ill-mannered wisecrack."

Nor did you comply with those standards when you went off the record to say "almost married doesn't count," in the presence of the defendant's mother, when you learned that the man the defendant called her "stepfather" was in fact the fiancé of the defendant's mother. The Commission notes that, according to your letter of August 31, 2001, you "wincing a little" when you spoke those words, realized that your words unintentionally conveyed a "deeper, moralistic message about the mother's marital status," and that you "said nothing more on the subject, in the hope that it would slip unnoticed in the courtroom as an off-hand remark."

Not only were you repeatedly sarcastic and disrespectful throughout the proceeding, but your recurrent detours off the record to make such remarks suggest that you were well aware of what you were doing at the time and were being careful not to leave a transcribed record of your snide comments. Striking words from the record does not ameliorate their harshness. Moreover, since transcripts may be ordered and relied upon by the parties or others, including court officials and the Commission, your editing the transcript from the bench results in an inaccurate record of what actually transpired. Not only may this compromise the rights of litigants, it diminishes the integrity of the proceedings before you. Furthermore, it may prevent appropriate review of judicial error or impropriety. The parties, who do not have the power to declare something off the record, are particularly disadvantaged when they are unaware that the judge is silently signaling the stenographer to go off the record. The integrity of the transcript should not be compromised by having nasty or embarrassing remarks by the judge declared "off the record" either before or after the words are uttered.

Notwithstanding your laudable goal of having parents accompany teenaged defendants to court, it was unnecessary and contrary to the Rules for you to be rude to Ms. Kowalewski and her mother. Under the circumstances, even your expressed intention to explain the potential incarceration provisions of CPL §420.10 could

reasonably be taken as a threat to jail the defendant for 15 days if she failed to pay her \$165 fine immediately.

You stated to the Commission that one of the reasons for insisting upon payment of the entire fine that evening, while permitting others to pay their fines later, was the defendant's reference to her mother's fiancé as her "stepfather." With respect to that reference by the 17-year-old, it is puzzling that you would regard it as a factor in determining her credibility or that you would use that to compel payment of the fine that evening. How a 17-year-old views her mother's fiancé might well depend on familial circumstances that are beyond the knowledge and judgment of a judge presiding over a young woman's case. A judge should accept that a child's reasons for doing so are entirely personal to her. In any event, her calling him her stepfather is no basis for requiring her to pay her entire fine immediately.

In accordance with the Commission's policy, you may either accept this letter of dismissal and caution or request a formal disciplinary hearing. If you choose to accept this letter of dismissal and caution, no further action will be taken. If you request a hearing, the Commission may authorize a Formal Written Complaint against you pursuant to Judiciary Law Section 44(4) and designate a referee to hear and report findings of fact and conclusions of law. If a hearing is held, the Commission may then decide to dismiss the complaint, issue a letter of caution to you, or file a determination pursuant to Judiciary Law Section 44(7) that you be publicly admonished, publicly censured, or removed from office.

The letter of dismissal and caution is a confidential disposition of the current complaint but may be used in a future disciplinary proceeding based on a failure to adhere to the terms of the letter. The Commission may also consider the letter of dismissal and caution in determining sanction in any future disciplinary proceeding, in the event formal charges are sustained and misconduct is established.

Please advise the Commission in writing no later than 10 days after receipt of this letter if you choose not to accept this letter of dismissal and caution and wish to have a hearing on formal charges. If we do not hear from you requesting a formal hearing with 10 days, the letter shall be final.

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

Honorable Paul F. Senzer

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A copy of the Commission's rules is enclosed for your information.

Very truly yours,

COMMISSION ON JUDICIAL CONDUCT

By: ~~Henry T. Berger~~
Henry T. Berger, Esq.
Chair

Enclosure

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RESPONDENT'S REPLY MEMORANDUM IN SUPPORT OF HIS REQUEST THAT THE COMMISSION CONFIRM IN PART AND DISAFFIRM IN PART THE REFEREE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW, DATED MAY 8, 2019 [554 - 573]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT
-----X

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
Of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

-----X

RESPONDENT'S REPLY MEMORANDUM IN SUPPORT OF HIS REQUEST THAT THE COMMISSION CONFIRM IN PART AND DISAFFIRM IN PART THE REFEREE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respectfully submitted,

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PRELIMINARY STATEMENT

This Reply Memorandum is respectfully submitted on behalf of the Honorable Paul H. Senzer ("Respondent") in further support of the recommendation that the Commission on Judicial Conduct ("Commission") disaffirm, in part, and confirm, in part, the Report of Referee John P. Collins and determine that Commission Counsel has failed to prove by a preponderance of the credible evidence that Respondent has engaged in judicial misconduct.

It is submitted that the authorities cited by Commission Counsel in support of the request for a finding that Respondent has engaged in judicial misconduct and directing his removal from the bench, fail to support the premise that Respondent's statements, made in private email communications with a client of his law practice, have had the effect of detracting from the dignity of judicial office or from public confidence in the integrity and impartiality of judicial office.

Further, as detailed in Respondent's Memorandum in Support, dated April 23, 2019, ("Respondent's Memorandum"), Commission Counsel has failed to prove, by a preponderance of the evidence presented at the hearing, that Respondent spoke a racially derogatory term in discussing the Administrative Law Judge presiding over his client's employment discrimination matter.

Accordingly, request is hereby made for a finding that Respondent has not engaged in behavior which violates the Rules Governing Judicial Conduct ("Rules").

ARGUMENT**POINT I****COMMISSION COUNSEL HAS FAILED TO PROVE BY A
PREPONDERANCE OF THE EVIDENCE THAT RESPONDENT'S
STATEMENTS IN PRIVATE EMAIL COMMUNICATIONS WITH
CLIENTS OF HIS LAW FIRM RISE TO THE LEVEL OF A VIOLATION
OF THE RULES GOVERNING JUDICIAL CONDUCT**

The Commission should disaffirm the Referee's finding that the evidence presented at the hearing of this matter proved, by a preponderance of the evidence, that Respondent engaged in judicial misconduct based upon his statements made in private email communications with husband and wife clients of his law firm.

A. There Exists No Published Precedent Wherein Judicial Misconduct Was Found To Have Occurred Based Upon Statements Made By A Judge In Private Communications

There can be no doubt that conduct which occurs off the bench and/or outside of a judge's judicial duties may nonetheless degrade the dignity of judicial office and detract from public confidence in the integrity and impartiality of judicial office. However, a clear distinction must be drawn between actions undertaken by a judge in the public sphere as opposed to those undertaken in private communications. While the former have frequently resulted in discipline, no case cited by Commission Counsel or uncovered by Respondent's counsel supports a finding that such discipline is warranted for private actions and/or speech.

A review of the cases cited by the Commission demonstrates that offensive and improper action by a judge undertaken in the *public sphere*, whether or not they are undertaken on the bench or in the course of carrying out judicial duties, may amount to judicial misconduct. However, it does not support the premise that strictly *private* communications between a judge, acting in the role as a private attorney, and his clients, rise to the level of judicial misconduct.

As detailed at length in Respondent's Memorandum, the Commission's own determinations made in the context of Judiciary Law Section 44 proceedings and the Court of Appeals' published decisions relating to a judge's behavior and speech fall into one of several categories, to wit:

1) Cases involving improper conduct by a judge while on the bench (*See Matter of Agresta*, 1985 Ann Rep 109 (Comm'n on Jud Conduct, September 17, 1982) (imposing a censure upon a judge who made a remark with racial connotations during the sentencing of a defendant); *Matter of Aldrich*, 1983 Ann Rep 75 (Comm'n on Jud Conduct, September 17, 1982)(removing a judge who appeared on the bench to conduct judicial proceedings while under the influence of alcohol and used profane, improper and menacing language, made inappropriate racial references and otherwise behaved in an inappropriate and degrading manner); *Matter of Mahon*, 1997 Ann Rep 104 (Comm'n on Jud Conduct, August 8, 1996)(censuring judge for making profane and disparaging remarks to the mother of a defendant appearing before him); *Matter of Mulroy*, 2000 Ann Rep 125 (Comm'n on Jud Conduct, August 12, 1999)(removing judge who, while attempting to influence the disposition of a matter pending before him, made derogatory racial remarks about a crime victim; displayed intemperate behavior and pressed a prosecutor to offer a plea for his own personal convenience; made disparaging remarks; failed to disclose his relationship with a witness appearing before him; and testified at a hearing with reckless disregard for the truth);

2) Cases involving improper conduct by a judge off the bench but nonetheless while in the course of judicial duties (*See Matter of Assini*, 2000 Ann Rep 95 (Comm'n on Jud Conduct, March 4, 1999)(removing judge who permitted an attorney with whom he shared office space, business telephone and mailing address to appear before him on multiple occasions without disclosing their relationship; refusing to deal with more than 100 cases over the course of 8 months and making

inappropriate, obscene and sexist remarks about his fellow Town Justice in the course of his judicial duties); *Matter of Fabrizio*, 1985 Ann Rep 127 (Commn on Jud Conduct December 26, 1984)(removing judge who demonstrated a persistent and varied pattern of misconduct by sitting on a case involving his long standing dentist without disclosing their relationship; intervening in two cases in other courts to obtain special consideration for defendants at their request and being discourteous to a foreign-born defendant, repeatedly using racist language while performing his judicial duties); *Matter of Feeder*, 2010 Ann Rep 143 (Commn on Jud Conduct, November 18, 2009)(censuring judge who compromised his impartiality by undertaking law enforcement duties when he pursued a motorist for a perceived traffic violation, displayed a badge and identified himself as a judge to the motorist, and filed a complaint against the motorist in the court where he is a judge); *Matter of Miller*, 1997 Ann Rep 108 (Commn on Jud Conduct, August 14, 1996)(censuring judge who, during the course of a trial, failed to advise counsel of a note received from the jury and accepted a bargained guilty plea from defendant knowing that he was not aware of the note, and engaging in malicious harassment of her ex-boyfriend and his wife); *Matter of Cipolla*, 2003 Ann Rep 84 (Commn on Jud Conduct, October 1, 2002)(censuring judge who, during an altercation at a comedy club, refused to return vehicle keys to their rightful owner, identified himself as a judge and made the untrue statement that he was the owner of the vehicle, making false representations to a federal agency and attempting to fix a traffic ticket for a friend); *Matter of Steinberg*, 1980 Ann Rep 75 (Commn on Jud Conduct, March 21, 1980)(removing judge who used the prestige and authority of his office to persuade lenders and borrowers to enter into transactions from which he personally profited); and

3) Cases involving improper conduct by a judge while acting in the public sphere, unrelated to judicial duties (See *Matter of Kuehnel*, 1980 Ann Rep 125 (Commn on Jud Conduct, September

6, 1979)(removing judge who had engaged in overt physical violence with several youths and repeated outbursts involving outrageous verbal abuse and virulent racism); *Matter of Cerbone*, 1984 Ann Rep 76 (Commn on Jud Conduct, August 5, 1083)(removing judge who, while in a bar, engaged in an altercation with several bar patrons, loudly proclaiming that he was a judge and announcing what he would do if any of the black patrons appeared in front of him in court, embellishing his threats with racial epithets and striking or pushing one of the patrons); *Matter of Pautz*, 2005 Ann Rep 199 (Commn on Jud Conduct, March 30, 2004)(issuing an admonition against a judge upon determining that he had engaged in a series of annoying acts toward his ex-girlfriend notwithstanding her letter directing him to desist from further contact with her, resulting in the filing of criminal charges against him); *Matter of Roepe*, 2002 Ann Rep 153 (Commn on Jud Conduct, June 27, 2001)(censuring judge who engaged in the criminal act of menacing his wife while under the influence of alcohol); *Matter of Michels* (Commn on Jud Conduct, December 27, 2018)(admonishing a judge involved in a minor accident with a police vehicle who repeatedly, publicly and gratuitously invoked her judicial status on a public street with multiple police officers on scene.).

Not a single published decision found that a judge had engaged in professional misconduct based upon vulgar or offensive language used by a judge in private communications. Thus, one must conclude that any such case that has previously been heard by the Commission resulted in either a determination that same did not rise to the level of judicial misconduct or that such misconduct did not rise to the level of warranting a public sanction. The same result is appropriate herein.

**B. There Exists No Basis Upon Which to Ignore the Mitigating Factors Present
in this Matter**

The Court of Appeals has held that a judge's reputation for honesty, integrity and judicial demeanor in the legal community are properly considered as mitigating evidence in the context of judicial conduct proceedings. *Shilling v. State Commn. On Jud. Conduct*, 51 NY2d 397, 399 (1980).

Since 2011, William Reynolds, Esq. has appeared weekly in Respondent's courtroom to prosecute cases, during which time he has had the opportunity to observe Respondent's courtroom demeanor in matters involving litigants of various different racial and ethnic backgrounds. TR. p. 82-84, 102. During all of his appearances in Respondent's courtroom he has never heard Respondent make any disparaging or ethnically charged remarks. *Id.* He described Respondent is a "fine judge" with "a good knowledge of the law" who "treats defendants fairly" and further stated that he has an "impeccable" reputation within the legal community as a "very fair and impartial" judge. TR p. 85, 86, 102 – 103.

Deborah Monastero, Esq., an attorney since 2004 has appeared in Northport Village Court approximately once or twice per month since 2007 as an attorney for the Suffolk County Legal Aid Society. TR p. 90 – 92. She has never known of Respondent to have made a disparaging remark to any litigant of any race or ethnic background. TR p. 96. Further, she has never heard anything unkind or disparaging about him or anything that would indicate to her that he is anything but fair and respectful to the litigants and attorneys appearing before him. TR. p. 96-97.

The Hon. Debra Urbano-Disalvo, who has worked as a full-time Village Attorney for the Village of Hempstead since 2002, is the elected judge in the Village of Amityville, is an Administrative Law Judge for the TPVA, and also maintained a private practice of law, has known Respondent since 2002 in a variety of capacities and has worked with him at TPVA since its

inception. TR p. 104-105, 107-109. She described Respondent's reputation within the legal community as "[f]air, honest, forthright." TR p. 109, lines 21 – 22. She further testified that his treatment of litigants and attorneys appearing before, which include individuals of "every demographic, every age, every sex, race religion" is "fair and just" and she has never heard of him making disparaging remarks about anyone. TR p. 109-110.

Monsignor Ellsworth Walden, a priest for the past forty-seven (47) years, has been acquainted with Respondent for a period of approximately a year and a half, testified that he has been impressed by Respondent, who attends mass weekly and who participates as a lector in the church. He described Respondent as a "wonderful man", a "delight", who has "poured a lot of enthusiasm into the parish" and who shows "complete honesty and trustworth[iness]". TR p. 109, 115-117.

The Commission has further considered as a mitigating factor the judge's expressed remorse, an acknowledgement that the judge exercised poor judgment with respect to the matters at issue, and the judge's stated commitment to ensuring that his future conduct is consistent with the ethical standards. *Matter of Feeder, supra*. Respondent has expressed his regret for the language he chose to use in the emails with the Colemans throughout these proceedings. At the hearing he reiterated that sentiment stating,

"I have a profound and deep regret for using the words that - - that were deployed in those emails because, quite frankly, that's not who I am. That's not how I was brought up. That's not how I conduct myself as an attorney in public and certainly never as a judge in public. I realize that as a judge my obligation is a - is 24/7 obligation. I'm always a judge wherever I am and in whatever I do. It just didn't dawn on me, I'm sorry to say, that when I was sending emails to clients in connection with legal advice that that somehow had a nexus or a connection to my judicial persona but I've learned the hard way that is (sic) certainly does." Tr. p. 129, lines 1-10.

Respondent has acknowledged his lapse in judgment, repeatedly stated his regret for same, and has certainly learned from his mistakes.

Additionally, the Commission has held that the “totality of the judge’s conduct” must be considered in mitigation. *See Matter of Gilpatric*, 2006 Ann Rep 160 (Comm’n on Jud Conduct, Dec. 14, 2005); *Matter of Aldrich, supra*. Thus, the Referee’s findings with respect to the context in which the email communications were sent, which findings were made based upon his credibility assessment, are particularly material and relevant to these proceedings. As he testified, Respondent resorted to profane and blue language in trying to drive a point home to [his] client or [his] clients or trying to convince them to go one way or another or - - or to follow certain pieces of legal advice.” Tr. p. 1278. He further included “blue language” in the emails, which he described as having a “potty mouth, to curse, to cuss”, as “surplusage that is thrown in, I suppose, in a vain attempt to commiserate with - - with my client who had complained of the conduct of her daughter generally, and which complaints led to the Family Court litigation seeking grandparent visitation rights. TR p. 130, 134. Thus, the Referee properly found that the words used by Respondent in an effort to communicate in layman’s terms and/or commiserate with his clients were “not written in isolation but in the context of emphasis, counsel and advice being given privately to clients who were not professionally educated”. Rep. 7.

Furthermore, while there is no denying that the poor word choice in the client email described third persons unprofessionally, the words were generated in the context of advice --not anger. They were never intended to confront or hurt the people referenced in the email. They were never intended to reach the eyes of anyone outside this lawyer-client relationship. The lawyer's attempt at advocacy was surely misguided, but it was intended for a private audience of two people only; the clients. As such, the offensive words in the email stand at a remove from

those deployed in other cases, where foul language is weaponized in direct conflict against a specific target.

The above should properly be considered by the Commission in mitigation of the Respondent's actions herein.

Based upon the foregoing, the Commission should disaffirm the Referee's finding that Respondent's conduct as it relates to his email communications rises to the level of judicial misconduct.

POINT II

THE COMMISSION SHOULD CONFIRM THE REFEREE'S FINDING THAT COMMISSION COUNSEL FAILED TO PROVE THAT RESPONDENT UTTERED A RACIALLY DEROGATORY TERM

The Commission should confirm the Referee's finding that Commission Counsel failed to prove by a preponderance of the evidence that Respondent used a racial epithet when referring to ALJ Jackson.

Respondent has candidly acknowledged his use of profane language in email communications with the Colemans from the outset of the Commission's investigation through the hearing of this matter. However, he has always vociferously denied having ever made a racially derogatory comment to the Colemans when speaking of the ALJ. TR p. 129, lines 11 – 22; Rep. p. 9-11.

As Commission Counsel points out, findings relating to judicial misconduct may rest on credibility determinations. As the Referee pointed out, the issues relating to the alleged racial comment came down to "a typical 'she says, he says' situation". Rep. 9-11. Any such situation, where no other evidence exists, a credibility determination must ultimately be made. Clearly the Referee, who is in the best position to determine such credibility after having watched the live

testimony, made credibility determinations in concluding that the Commission Counsel failed to meet their burden.

Notwithstanding that Commission Counsel appears to argue that two witnesses are better than one and therefore the testimony of both of the Colemans should have been enough to prove that the purported racial comment was made, that argument ignores the discrepancies in the Colemans' testimony with respect to the context in which the comment was purportedly made. While both Mr. and Ms. Coleman testified that during their conversation with Respondent at the end of a lunch break during the second day of trial in Ms. Coleman's discrimination case Respondent uttered the phrase "fucking nigger" in reference to ALJ Jackson, they each allege that the comment was made in a very different context. While, Ms. Coleman testified that Respondent asked "Is that F'ing nigger back yet" (TR p. 46, lines 16-23), to the contrary, Mr. Coleman testified about the same conversation stating that Respondent "was asking what I thought of this fucking nigger." TR. p. 66, lines 22 – 25. Neither Mr. nor Ms. Coleman testified that the term "fucking nigger" was used more than once and they both claimed to have been present during the same conversation with Respondent, yet the contradiction in their testimony as to the context in which the phrase was purportedly used cannot be ignored. Although the two utilized the same phrase during their testimony, the very different contexts in which they testified the phrase was used undermines the credibility of such testimony, a point which the Referee clearly picked up on.

Notwithstanding their allegation that Respondent made the very offensive comment about ALJ Jackson in early November 2014, neither Mr. nor Ms. Coleman made a formal complaint about Respondent's purported use of the comment to the Commission, the Attorney Grievance Committee, the Bar Association or any other entity charged with oversight of the conduct of judges or attorneys. TR. p. 50, line 6 – p. 51, line 1; TR p. 73, line 3 – p. 74, line 3; Rep. p. 9.

In fact, it was not until eight (8) months later, after Ms. Coleman had lost her discrimination and she and Mr. Coleman were also forced to withdraw their grandparent visitation petition, leading Ms. Coleman to believe that she was entitled to a refund of the fees she had paid to Respondent in connection with the family court matter, that Ms. Coleman reached out to attorney Christopher Cassar, Esq. after reading a newspaper article alleged disparate treatment of litigants of different ethnic backgrounds appearing at the TPVA.. TR. p. 41, 51-53, 56; Rep. p. 2, 3, 10.

As detailed at length in Respondent's Memorandum, at that time, Ms. Coleman reached out to Mr. Cassar, not to inform him of the racially derogatory term Respondent allegedly used months earlier, but rather to share her email communications with him. TR p. 51-56. Throughout her cross examination relating to her contacts with Mr. Cassar, Ms. Coleman repeatedly made reference to the emails, and her efforts to assist with the prosecution of the federal case by providing those emails to Mr. Cassar. Very tellingly, she did not make a single reference throughout such testimony to the comment purportedly made to her by Respondent about ALJ Jackson or any efforts on her part to report such comment to Mr. Cassar. TR p. 52 – 56.

It cannot be ignored that the most insidious of allegations asserted against Respondent, that he used a racially disparaging term when discussing ALJ Jackson, was not supported by the testimony of either Mr. or Mrs. Coleman.

Accordingly, it is submitted that the Referee properly concluded that the allegation that Respondent uttered a racially derogatory comment was not proven by a preponderance of the credible evidence adduced at the hearing and must be dismissed.

POINT III

**SHOULD THE COMMISSION DETERMINE THAT JUDICIAL
MISCONDUCT HAS BEEN DEMONSTRATED, A DISCIPLINE NO
MORE SEVERE THAN A PRIVATE LETTER OF CAUTION IS
WARRANTED**

Removal is an extreme sanction that should be imposed only in truly egregious circumstances; it should not be ordered “for conduct that amounts only to poor judgment, or even extremely poor judgment.” *Matter of Cunningham*, 57 NY2d 270, 275 (1982). See also *Matter of Steinberg*, 51 NY2d 74, 83 (1980).

The Court of Appeals and the Commission has declined to impose such a severe sanction in matters far more egregious than the matter presently before it.

For example, in *Matter of Mahon, supra*, a judge was censured for making profane and disparaging remarks from the bench to the mother of a defendant appearing before him. In *Matter of Merrill*, 2008 Ann Rep 181 (Comm’n on Jud Conduct, May 14, 2007), a judge was censured after it was determined that he had engaged in prohibited *ex parte* communications regarding two matters involving individuals who were scheduled to appear in his court in an attempt to affect the outcome of those matters, made biased statements about those parties notwithstanding a prior discipline for similar conduct, and improperly failed to disqualify himself from a matter where a conflict existed and failed to disclose his relationship with an attorney appearing before him. In *Matter of McKeivitt*, 1997 Ann Rep 106 (Comm’n on Jud Conduct, Aug. 8, 1996), a judge was censured for remarking from the bench following an 11:30pm arraignment that he was denying the defendant’s request to be released on his own recognizance because he had to get out of bed for the arraignment and later, in the presence of defendant and his father, referred to the Saratoga County Sheriff as a “fucking asshole” when speaking with the deputy sheriff who was transporting defendant. In *Matter of Pennington*, 2004 Ann Rep 139 (Comm’n on Jun Conduct, Nov. 3, 2003)

a judge asserting his judicial office in a vulgar tirade toward a park official when stilled and charged with infractions was issued a censure. In *Matter of Agresta*, 64 NY2d 327, a judge was censured for remarking from the bench, "I know there is another nigger in the woodpile," in a proceeding involving two black defendants and in reference to a particular black person.

Likewise, in additional matters also distinguishable from the matter presently before the Commission by reason of the fact that they involved a judge's behavior in the public sphere, the Commission has issued the less severe sanction of admonition.

In *Matter of Kremenick*, 1986 Ann Rep 133 (Comm'n on Jud Conduct, Aug. 19, 1985), a judge was admonished upon a determination that after having been arrested for Driving While Intoxicated, he repeatedly stated "I'm the judge. You can't do this to me" and "I'll have your job", while at the police barracks refused to produce a driver's license and identification, refused to submit to a breathalyzer test, and used abusive and profane language with the arresting officer. In *Matter of Stevens*, 1999 Ann Rep 153 (Comm'n on Jud Conduct, Dec. 3, 1998), a judge was admonished after it was found that he improperly used the prestige of his office to interfere with a police investigation of a dispute involving his son and demanded that his son's antagonist be arrested, angrily shouted to the officer that he was "crazy" and a "son of a bitch".

Based upon the foregoing precedent, should the Commission determine that judicial misconduct has been demonstrated, a sanction no more severe than a private caution is warranted.

POINT IV**RESPONDENT HAS, AT ALL TIMES, ABIDED BY THE
COMMISSION'S DISMISSAL WITH CAUTION ISSUED NEARLY TWO
DECADES AGO**

In 2002, Respondent was issued a letter of dismissal and caution when it was determined that, while presiding over a criminal proceeding, he made sarcastic, rude and otherwise inappropriate remarks to the defendant and defendant's mother. Accordingly, Respondent was cautioned "to adhere to Section 100.3(B)(3) of the Rules Governing Judicial Conduct, which requires a judge to be patient, dignified and courteous to litigants and others with whom the judge deals in an official capacity". He was further cautioned generally of the requirement that a judge observe and maintain high standards of conduct and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The prior letter of dismissal and caution specifically addressed the Respondent's actions and comments made from the bench while in the course of carrying out his judicial duties and his practice of going off the record at various times throughout the proceedings. They are inapposite to the matters presently before the Commission which involve private communications with clients of his law firm which were wholly unrelated to his role as a judge. As such, although the Commission can certainly consider the prior letter of dismissal and caution in accordance with Section 7000.4(2)(b) of the Commission's Rules and Procedures, there has been no violation of the prior caution letter to be considered in aggravation of the current matter.

CONCLUSION

Based upon the foregoing, it is submitted that the preponderance of the credible evidence adduced at the hearing of this matter fails to demonstrate that Respondent has violated the Rules

Governing Judicial Conduct. Accordingly, dismissal of the single charge alleged in the Complaint is warranted and appropriate.

However, should the Commission conclude that Respondent has engaged in judicial misconduct, it is submitted that a discipline no more severe than a private letter of caution is warranted under the circumstances of this matter.

Dated: Bay Shore, New York
May 8, 2019

Respectfully submitted,

LONG TUMINELLO/LLP

By: 

DAVID H. BESSO
MICHELLE AULIVOLA

Attorneys for Respondent

120 Fourth Avenue
Bay Shore, New York 11706
(631) 666-5766

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

-----X
In the Matter of the Proceeding
Pursuant to Section 44, Subdivision 4,
of the Judiciary Law in Relation to

**AFFIDAVIT
OF SERVICE**

PAUL H. SENZER.

a Justice of the Northport Village Court,
Suffolk County.

-----X
MEGHAN STONE, being duly sworn, deposes and says:

FIRST: That I am not a party to the action and I am over 18 years of age and reside in Bay Shore, New York.

SECOND: That on May 9, 2019, I served the within **RESPONDENT'S REPLY MEMORANDUM IN SUPPORT OF HIS REQUEST THAT THE COMMISSION CONFIRM IN PART AND DISAFFIRM IN PART THE REFEREE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the United Parcel Service Overnight Delivery to Mark Levine and Brenda Correa addressed to each of the following persons at the last known address after each name:

Mark Levine, Deputy Administrator
New York State
Commission On Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
levine@cjc.ny.gov

Brenda Correa, Senior Attorney
New York State
Commission On Judicial Conduct
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Sworn to before me this
9th day of May, 2019

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2022

REPLY MEMORANDUM BY COUNSEL TO THE COMMISSION,
DATED MAY 10, 2019 [574 - 586]

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

PAUL H. SENZER,

a Justice of the Northport Village Court,
Suffolk County.

REPLY MEMORANDUM BY COUNSEL
TO THE COMMISSION

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Dated: May 10, 2019

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PRELIMINARY STATEMENT

This memorandum is respectfully submitted by Counsel to the Commission in reply to Respondent's memorandum.

Although Respondent previously conceded that his gender-based statements violated the Rules, he inconsistently argues now, without merit, that it was not improper to use profane, vulgar and extremely sexist language in his emails to clients. His suggestion that he would not have used such language with a "different client," but that he did so with Ms. Coleman because he was trying to "persuade" her and her husband "about the pitfalls and risks they confronted," is insulting to the Colemans, does not minimize his conduct and is not a defense. Indeed, Respondent conceded at the hearing that he "could have used any number of other words," that his use of the word "cunt" was "atrocious," and that he had "no defense." Moreover, it is telling that Respondent's brief avoids any acknowledgement that his use of the extremely vulgar gender-based slur "cunt," and his use of derogatory language directed toward various female participants in the legal proceeding, create at the very least the appearance of gender bias.

Respondent's brief does not effectively rebut the argument in Commission Counsel's brief that the hearing record established the charge that Respondent called an Administrative Law Judge a "nigger" and that the Referee's finding to the contrary should be disaffirmed.

As set forth in Commission Counsel's main brief, Respondent's use of *either* the admitted gender slurs or the disputed racial slur should result in his removal from office.

POINT I**RESPONDENT'S CLAIM THAT HIS "PRIVATE"
PROFANITY DOES NOT RISE TO THE LEVEL OF
JUDICIAL MISCONDUCT IS WITHOUT MERIT**

During the Commission's investigation, Respondent conceded that his emails to Jennifer Coleman describing a female lawyer as a "cunt" and a female judge as "an asshole" were "clearly...not consistent with the letter or spirit" of Rule 100.4(A), which requires judges to conduct their extra-judicial activities so as not to cast doubt on their impartiality or detract from the dignity of judicial office. (Ex. 10, p. 3; Ex. 11, pp. 2-3). He also admitted that such conduct "fell short" of Rules 100.1 and 100.2(A), which require a judge to maintain high standards of conduct "at all times" to promote public confidence in the integrity and impartiality of the judiciary (Ex. 10, p. 3; Ex. 11, p. 2).

Given those admissions, it is surprising Respondent now argues his "private" vulgar and sexist emails do "not rise to the level of judicial misconduct" (Resp Mem p. 18). But as the Court of Appeals held in *Matter of Steinberg*, 51 NY2d 74, 81 (1980), "a [j]udge cannot simply cordon off his public role from his private life." Respondent's vulgar and sexist emails, made in the context of representing clients in a judicial proceeding, undermined public confidence in the judiciary and displayed an impermissible appearance of gender bias.

1. Respondent's vulgar language undermined public confidence in the judiciary.

Respondent makes the meritless argument that his vulgar, profane and sexist emails to the Colemans do not constitute judicial misconduct because they did not happen

in the “public sphere” (Resp Mem p. 19). A judge using vulgar language undermines the public confidence in the integrity of the judiciary *See Matter of Mahar*, 1983 Ann Rep 141 (Comm’n on Jud Conduct, June 10, 1982). “His angry, rude and vulgar manner ... was unbecoming of a judge. *Matter of Stevens*, 1999 Ann Rep 153, 154 (Comm’n on Jud Conduct, December 23, 1998).

Contrary to Respondent’s claim that his conduct was limited to the “private sphere” (Resp Mem p.23), his conduct occurred while he was representing clients in connection with a judicial proceeding. In the context of those proceedings, Respondent degraded several persons involved in the litigation by referring to his female adversary as a “cunt on wheels,” the female court attorney referee as an “asshole,” a female litigant as a “bitch” and “scumbag,” and to people who work in schools as “assholes” (Exs. 1, 2, 5, 9; Tr 20, 21, 32, 40). As Respondent conceded in a written statement to the Commission, “[t]o the extent [the Colemans] knew I was a village justice – and they did – the use of crude language to depict others in the justice system (an adversary lawyer; parties respondent; a referee) coarsens and potentially denigrates everyone.” (Ex. 10, p. 3).

Moreover, as the Court of Appeals definitively held more than 20 years ago, even assuming, *arguendo*, that Respondent’s demonstrated misconduct occurred in the purely “private sphere,” that is not a defense. As the Court found,

[t]he facts that [Respondent’s] misconduct occurred ... where [he] may have had an expectation of privacy and that [his] statements were made to a person [he] considered to be a close associate do not mitigate the wrongfulness of [his]conduct Our ethical codes and precedent set forth with no equivocation that Judges are accountable “at all times” for their conduct – **including their conversation** – both on and off the Bench.

Matter of Backal, 87 NY2d 1, 8 (1995) (citation omitted) (emphasis added).

Here, Respondent's emails are directly analogous to the private conversation in *Backal*. The fact that his misconduct occurred in circumstances where "he may have had an expectation of privacy" does not "mitigate the wrongfulness of [his] conduct."

Finally, Respondent makes the absurd suggestion that his conduct should be excused because it occurred during "efforts to persuade, counsel, convince, advise and warn private clients in the heat of litigation" (Resp Mem pp. 23-24). It is self-evident that it is not necessary to use vulgar and sexist language to make a persuasive point. Moreover, as officers of the court, attorneys are required "to act in accordance with the high standards imposed upon members of the bar." *Matter of Greenberg*, 94 AD3d 152, 155 (1st Dept 2012). The Appellate Divisions have not hesitated to discipline attorneys for using vulgar or sexist language in the course of legal representation, even when such conduct did not occur in the courtroom. *See e.g., Matter of Johnson*, 149 AD3d 124 (4th Dept 2017) (attorney disciplined for sending "vulgar and profane" emails to attorney adversary); *Matter of Brecker*, 309 AD2d 77 (2d Dept 2003) (attorney disciplined for *inter alia* leaving "vulgar and profane" messages on his client's answering machine); *Matter of Schiff*, 190 AD2d 293 (1st Dept 1993) (attorney disciplined for making "vulgar, obscene, and sexist epithets" directed at female adversary's "anatomy and gender" in deposition).

2. Respondent fails to address the gender-bias created by his vulgar and sexist language directed at women.

Entirely absent in Respondent's memorandum is any recognition that his vulgar, profane, and inappropriate language created an unmistakable appearance of gender bias.

By Respondent's own admission, the "cunt on wheels" reference was intended to convey that his female adversary was "very aggressive" and known for her "sharp lawyering" (Tr 136; Exs. 2, 10). Rather than focus on his adversary's actual abilities, or even use her name, he belittled Ms. McGuire by referring to her as "eyelashes" and saying that she and her client would "cluck their tongues" if Ms. Coleman lost the case (Ex. 8). At the hearing, Respondent conceded that his language was "sexist" (Tr 137) and that he

could have used any number of other words, flamboyant, aggressive, persistent. No, it's atrocious to use this language. I – I have no defense that I can bring to bear in the use of this language (Tr 137).

Respondent also referred to the female court attorney referee as an "asshole" (Ex. 9). And he made repeated derogatory remarks in these emails about the Colemans' daughter, referring to her repeatedly as a "bitch" (Exs. 1, 6, 7) and at other times as an "asshole" (Ex. 4) and "scumbag" (Ex. 5).

Notwithstanding the obvious gender-bias issues raised by such derogatory language towards women, Respondent's brief fails to address the perception that such language could be interpreted as conveying bias. That there is not one reference in Respondent's brief to the word "cunt," or to his adversary Karen McGuire, suggests that

Respondent still does not appreciate the serious appearance of gender bias created by his words.

POINT II

**RESPONDENT'S ATTEMPT TO JUSTIFY HIS
VULGAR LANGUAGE BY CLAIMING IT WAS
FAMILIAR TO THE COLEMANS IS UNSUPPORTED
BY THE RECORD AND IS NOT A DEFENSE**

Respondent's attempt to blame Jennifer Coleman for his use of the terms "cunt," "bitch" and "asshole" is unsupported by the record and is not a defense. The Commission should reject his perplexing and offensive argument that while "he would never have used those terms" with "a different client," it was permissible to do so with the Colemans because "such words" were allegedly "frequently discussed with these particular clients in the context of his representation of them" (Resp Mem p. 9).

To begin, the hearing evidence does not support that the Colemans themselves communicated to Respondent in such vulgar terms. The Referee did not find that the Colemans used such profanity. Instead, the Referee noted that "[Respondent] maintained that such language was not foreign to Jenifer (sic) Coleman" (Rep. 8) (emphasis added).

During the hearing, Respondent claimed on cross-examination that Ms. Coleman "definitely did use blue and/or profane language ... in much of her email" and that Commission counsel "cherry picked" the emails entered into evidence (Tr 139). It is telling, however, that Respondent never sought to introduce any of the alleged "blue" emails into evidence to back up his claim. As to the nine emails that are in the hearing record, there is zero evidence of any profanity used by the Colemans (Exs 1-9).

In any event, even if it were true that Jennifer Coleman had used the word “cunt,” it does not excuse Respondent’s use of that term when referring to a female attorney. Respondent acknowledged at the hearing that Ms. Coleman’s supervisor in the school discrimination case “used that very word against her” and “would laugh at her in the presence of other employees quoting and re quoting that word” (Tr 136), and he conceded it was “absolutely” insensitive for him to use the same word her supervisor had used against her (Tr 137). As the Referee found, Respondent’s claim that Ms. Coleman used “blue language,” “does not excuse” his actions. (Rep. 8).

Respondent cannot have it both ways – he cannot acknowledge in his hearing testimony that his use of the “derogatory” and “hurtful” word “cunt” showed a “lack of respect to [his] clients” (Tr 143), and then argue in his brief that his conduct is somehow less egregious because Ms. Coleman was familiar with her supervisor’s use of the term (Resp Mem p. 9). That argument, like his hearing testimony that he used the word because he “was pandering or patronizing [Ms. Coleman] in trying to bring myself down to that level” (Tr 140), is insulting and demeaning to his client, and clear evidence that Respondent does not truly accept responsibility for his conduct.

POINT III

THE COMMISSION SHOULD FIND THAT RESPONDENT REFERRED TO THE FEMALE ADMINISTRATIVE LAW JUDGE AS A “NIGGER”

For the reasons set forth in Commission Counsel’s main brief (pp. 19 – 26), the Commission should disaffirm the Referee’s finding that the charge that Respondent called an African-American ALJ a “nigger” was not sustained by a preponderance of

hearing evidence (Rep. 11). Several points in Respondent's brief merit a further response.

First, contrary to Respondent's claim that there is "ample evidence" that the Colemans had a motivation to fabricate (Resp Mem p. 24), his entire argument rests on a single line of inapposite testimony, volunteered by Ms. Coleman, that she once reached out to Respondent about her legal fee (Tr 56, line 21). It's hardly unusual that a client who paid thousands of dollars in legal fees might question her bill, but it is by no stretch of the imagination evidence that she lied on the stand about Respondent's racial vulgarity.

Significantly, Ms. Coleman did not testify that she was angry or unhappy about the legal fee, and she was not asked about that on cross-examination. Moreover, Respondent himself never testified that Ms. Coleman was dissatisfied, angry or unhappy regarding his legal fees or the quality of his legal representation. The fact that Respondent would not make this claim in his own testimony, while now belatedly claiming it is relevant, is the best evidence that it simply isn't true.¹

Second, for the reasons set forth in Commission Counsel's main brief (pp. 23-24), the Commission should disregard Respondent's reliance on the inadmissible factual testimony of his character witnesses (Resp Mem p. 25). That these witnesses never heard

¹ On cross-examination, Respondent conceded that the Colemans did not take any legal action to recoup their legal fees paid (Tr 145). In that context, he made no claim that she was angry or unhappy and counsel did not address this issue on re-direct. Commission Counsel also notes that Respondent did testify that Ms. Coleman was a "needy individual" and "demanding client" (Tr 128), making the absence of his testimony that Ms. Coleman was angry or unhappy all the more significant.

Respondent use a racial epithet in court or in church sheds little light on whether he used the slur during a conversation with the Colemans, any more than his not saying "cunt" in any email to his character witnesses would have refuted the email in evidence that proves he used that word with the Colemans.

Finally, Respondent makes the demonstrably untrue claim "that the allegation that [Respondent] had made a racially derogatory remark about ALJ Jackson first arose in the context of Mr. Cassar's complaint to the Commission" (Resp Mem p. 25). Mr. Cassar's original complaint to Administrative Judge C. Randall Hinrichs, which became the basis of the Commission's investigation (Tr 79-80; Ex. 11), includes copies of Respondent's sexist and profane emails, but does not mention the racist language (Ex. 11, pp. 4-8). The record is completely devoid of any testimony or evidence as to whether Ms. Coleman told Mr. Cassar about the racist remark. If Respondent wanted to establish the conspiracy theory he now hints at in his brief, he could have done so at the hearing by asking Ms. Coleman directly.² If he wanted to suggest there were discrepancies in Ms. Coleman's testimony, he could have subpoenaed Mr. Cassar and questioned him under oath.³ Having failed to do so, he cannot now substitute innuendo for record evidence he utterly failed to introduce.

² Respondent's argument that it is "telling" that Ms. Coleman did not testify she told Cassar about the remark (Resp Mem p. 25) is extremely disingenuous. As the transcript clearly shows, Ms. Coleman answered the questions counsel put to her about Respondent's emails. Counsel chose not to ask whether she told Mr. Cassar that Respondent called ALJ Jackson a "nigger" (Tr 52-56).

³ Commission counsel had no basis to call Cassar, who was not a witness to any of the allegations set forth in the Formal Written Complaint. He could not have been called to corroborate the testimony of the Colemans, as it would have been improper bolstering.

CONCLUSION

By reason of the foregoing, it is respectfully submitted that the Commission should confirm the Referee's findings of fact and conclusions of law in part and disaffirm in part as set forth in our April 25, 2019, Memorandum, and render a determination that Respondent engaged in judicial misconduct and should be removed from office.

Dated: May 10, 2019
New York, New York

Respectfully submitted,

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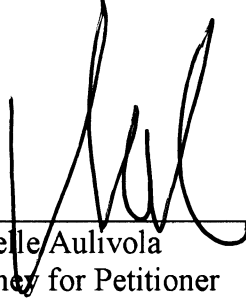
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CERTIFICATION PURSUANT TO CPLR 2105

CERTIFICATION PURSUANT TO CPLR § 2105

I, Michelle Aulivola, an attorney for the Petitioner, hereby certify pursuant to Section 2105 of the CPLR that the foregoing papers constituting the Record on Review have been personally compared by me with the originals filed herein and have been found to be true and complete copies of said originals and the whole thereof, all of which are now on file with the State of New York Commission on Judicial Conduct.

Dated: December 13, 2019



Michelle Aulivola
Attorney for Petitioner