

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

MICHAEL L. HANUSZCZAK,

STIPULATION

a Judge of the Family Court, and an
Acting Justice of the Supreme Court,
Onondaga County.

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct, and the Honorable Michael L. Hanuszcak (“Respondent”), who is represented in these proceedings by Robert F. Julian, Esq., as follows:

1. Respondent has been a Judge of the Family Court, Onondaga County, since January 1, 2001, and an Acting Justice of the Supreme Court, Onondaga County, since 2004. His current term expires December 31, 2020.
2. Respondent was served with a Formal Written Complaint dated March 8, 2019, containing one charge alleging that, from in or about 2011 through on or about January 3, 2017, Respondent engaged in a pattern of improper, inappropriate and unwelcome personal interactions with female court staff.
3. The Formal Written Complaint is appended as Exhibit A.
4. Respondent filed an Answer dated May 24, 2019, which is appended as Exhibit B.

5. By Order dated August 6, 2019, the Commission designated Linda J. Clark, Esq., as Referee to hear and report findings of fact and conclusions of law. The hearing was held in Syracuse on November 19 and 21, 2019.

6. The Referee submitted her Report dated August 10, 2020, which is appended as Exhibit C. The Commission set a schedule for briefs and oral argument on October 29, 2020.

7. Respondent tendered his letter of resignation, dated September 16, 2020, a copy of which is appended as Exhibit D. Respondent affirms that he will vacate judicial office on September 21, 2020.

8. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.

9. Respondent affirms that, after vacating his judicial office, he will neither seek nor accept any New York judicial office at any time in the future.

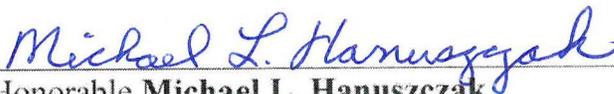
10. Respondent understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time, the present proceedings will be revived and the matter will proceed before the Commission.

11. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

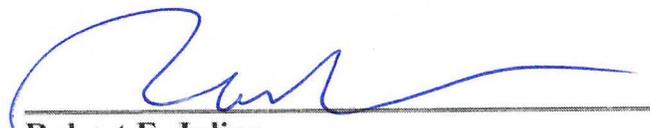
12. Respondent waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being

signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: September 11, 2020


Honorable **Michael L. Hanuszczyk**
Respondent

Dated: Sept 11, 2020


Robert F. Julian
Robert F. Julian, P.C.
Attorney for Respondent

Dated: September 11, 2020


Robert H. Tembeckjian
Administrator and Counsel to the Commission
(John J. Postel and David M. Duguay,
Of Counsel)

EXHIBIT A

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

MICHAEL L. HANUSZCZAK,

a Judge of the Family Court, and an
Acting Justice of the Supreme Court,
Onondaga County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Michael L. Hanuszcak, a Judge of the Family Court, and an Acting Justice of the Supreme Court, Onondaga 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 Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with his verified Answer to the specific paragraphs of the Complaint.

Dated: March 8, 2019
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: Robert F. Julian, Esq.
Attorney for Respondent
2037 Genesee Street
Utica, New York 13501

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

MICHAEL L. HANUSZCZAK,

a Judge of the Family Court, and an
Acting Justice of the Supreme Court,
Onondaga County.

**FORMAL
WRITTEN COMPLAINT**

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 Michael L. Hanuszczyk (“Respondent”), a Judge of the Family Court, and an Acting Justice of the Supreme Court, Onondaga 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 1985. He has been a Judge of the Family Court, Onondaga County, since 2001, and an Acting Justice of the Supreme Court, Onondaga County, since 2004. Respondent’s current term expires on December 31, 2020.

CHARGE I

5. From in or about 2011 through on or about January 3, 2017, Respondent engaged in a pattern of improper, inappropriate and unwelcome personal interactions with female court staff.

Specifications to Charge I

As to [Name 1]

6. [Name 1] is a [Job Title 1] who was assigned to Respondent's court between January of 2014 and January of 2017.

7. In or about June and July of 2016, Respondent repeatedly requested [Name 1] to assist him in his campaign for Onondaga County Surrogate. [Name 1] did not wish to do so and did not do so. On or about July 26, 2016, Respondent asked [Name 1] to meet him at Café Kubal, a local restaurant, to discuss his campaign. [Name 1] reluctantly agreed, having felt pressured to do so, but feigned illness later that day to avoid meeting Respondent.

8. On or about August 15, 2016, Respondent asked [Name 1] if her husband was out of town, and upon learning that he was, asked [Name 1] to join him for dinner to discuss his campaign. [Name 1] informed Respondent that she was busy and declined.

9. In the fall of 2016, on multiple occasions while in court, Respondent talked to [Name 1] about his dating life, telling her about his individual dates with "lady friends."

10. On or about December 6, 2016, as **Name 1** attempted to set up equipment for a teleconference call in the courtroom, Respondent, while watching her and laughing, asked whether she “kn[e]w how to do a three-way.”

11. On or about January 3, 2017, **Name 1** was transferred out of Respondent’s court part. Before she left, Respondent asked that she come to his chambers. When she appeared with **Name 2**, her friend and the **Job Title 2** **██████████** for the Onondaga County Family Court’s Treatment Court part, Respondent asked **Name 2** to leave his office and shut the door. Thereafter:

- A. Respondent placed his hands on **Name 1**’s shoulders, leaned in toward her and kissed her on the cheek without her consent;
- B. Respondent told **Name 1** in words or substance that “no one knows me like you do, not even my wife ... you anticipate my every need;” and
- C. Respondent stopped **Name 1** as she was attempting to leave, handed her an orchid plant that he had purchased for her, grabbed her by the shoulder, and kissed her again, near her mouth, without her consent.

As to **Name 2**

12. **Name 2** has served as the **Job Title 2** **██████████** for the Onondaga County Family Court’s Treatment Court part since 2004, and has worked closely with Respondent during those periods in which he presided in that part.

13. On different occasions in or about 2011, Respondent engaged in the conduct below.

A. Respondent called [Name 2] into a court office, thanked her for providing information and a referral that helped him with a personal matter, and then kissed [Name 2] on the cheek without her consent.

B. Respondent overheard [Name 2] speaking to his secretary, Leanne Hamilton, about [Name 2]'s engagement to be married.

Respondent walked out of his adjoining office, approached [Name 2] and asked her to come into his office. After [Name 2] entered his office, Respondent told her that, had he known she was not married, he would have been interested in dating her.

14. In or about the fall of 2015, during a workday while they were driving to a meeting at one of the treatment facilities the Family Court uses, Respondent told [Name 2] that he remained interested in dating her, asked if she would be interested in dating him and cautioned that any relationship would need to be discreet and require his disqualification from Family Treatment Court part proceedings.

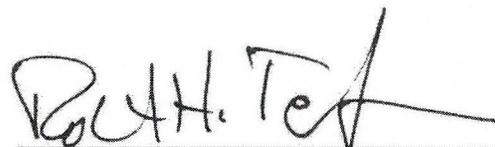
15. In or around July of 2016, the day after [Name 2] advised Respondent that her father was ill with cancer, Respondent entered [Name 2]'s office, presented [Name 2] with an orchid, leaned in toward her and kissed her on the cheek without consent.

16. 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 lent the prestige of judicial office to advance his private interests, in violation of Section 100.2(C) of the Rules; failed to perform the duties of judicial office impartially and diligently, in that he failed to be dignified and courteous with individuals with whom he deals in an official capacity, in violation of Section 100.3(B)(3) 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 do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) 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: March 8, 2019
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

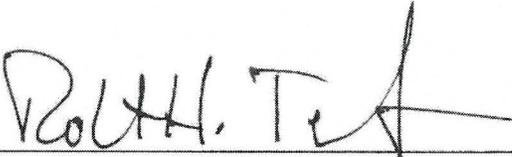
MICHAEL L. HANUSZCZAK,

a Judge of the Family Court, and an
Acting Justice of the Supreme Court,
Onondaga County.

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

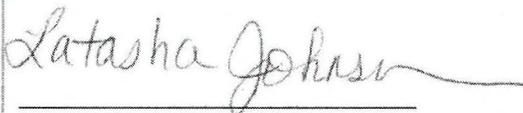
ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

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
8th day of March 2019



Notary Public

LATASHA Y. JOHNSON
Notary Public, State of New York
No. 01JO6235579
Qualified in New York County
Commission Expires Feb. 14, 2023

EXHIBIT B

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
Of the Judicate law in Relation to

**ANSWER TO THE
FORMAL WRITTEN
COMPLAINT**

MICHAEL L. HANUSZCZAK,

A Judge of the Family Court, and an
Acting Justice of the Supreme Court,
Onondaga County.

Complaint #: 2017/R-0159

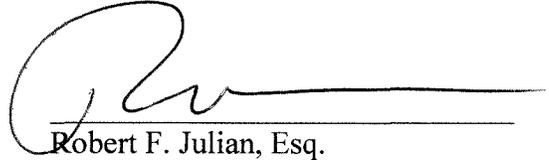
The Respondent as and for an answer to the formal written complaint alleges and states:

- 1) The Respondent admits to Paragraph 1.
- 2) The Respondent admits to Paragraph 2.
- 3) The Respondent denies based upon a lack of knowledge or information sufficient to form a belief regarding Paragraph 3.
- 4) The Respondent admits to Paragraph 4.
- 5) The Respondent denies based upon a lack of knowledge or information sufficient to form a belief regarding Paragraph 5.
- 6) The Respondent admits to Paragraph 6.
- 7) The Respondent denies that he repeatedly requested **Name 1** to assist in his campaign but acknowledges that he discussed her participating in his campaign for Onondaga County Surrogate several times. While initially she appeared to be considering participating, she ultimately did not participate. The Respondent did ask **Name 1** to discuss her participation in the campaign at an outside location, but that meeting did not occur because **Name 1** cancelled.
- 8) The Respondent denies he asked **Name 1** if her husband was out of town. **Name 1** did offer that information in the course of a conversation and the Respondent asked her if that would be a convenient time to meet after work to discuss the campaign. Dinner was mentioned by the Respondent as an option to discuss the campaign outside of work.

- 9) It was common to have discussions between cases among all of the courtroom personnel including the Respondent regarding a broad range of subjects. There were frequently times when many minutes would elapse while courtroom personnel would wait for the next case to be brought into the courtroom. The discussions would sometimes involve personal matters such as social events, vacations, celebrations and other topics. In this context the Respondent may well have mentioned in general dating as he was separated from his wife, but does not recall specific persons or incidents being discussed.
- 10) The Respondent does not recall whether or not he made the statement alleged, but believes that a third person made the comment.
- 11) A) The respondent admits that when **Name 1** was leaving Respondents office, he gave her an orchid and kissed her on the cheek without asking her if he could do so. The remainder of the paragraph is denied.
- B) The Respondent acknowledges complimenting **Name 1** for anticipating his requirements to perform his judicial duties. The Respondent does not recall speaking the alleged words on January 3, 2017 and therefore denies that allegation.
- C) As **Name 1** was leaving his office, the Respondent did give her an orchid. He did kiss her on the cheek as referenced in 11 (A) above.
- 12) The Respondent admits Paragraph 12.
- 13) A) The Respondent admits that he thanked **Name 2** for her assistance. He does not recall kissing her on the cheek at that time.
- B) The Respondent denies knowledge or information sufficient to form a belief about this discussion but acknowledges on more than one occasion he did discuss the general topic of dating **Name 2**.
- 14) The Respondent denies knowledge or information of the exact date but admits that he did have a discussion with **Name 2** about not dating in or around September of 2013.
- 15) Respondent is not certain of the precise date but upon reflection, the Respondent does now recall giving **Name 2** an orchid and kissing her on the cheek based on either her father's health issue or demise. He acknowledges that he did not ask her if he could kiss her on the cheek.
- 16) The Respondent, neither admits nor denies the allegations in this Paragraph of the Complaint given the complex and summary nature of the allegations but rather refers the

Commission to his answers regarding the specific allegations as set forth above.

Dated: May 24, 2019

A handwritten signature in black ink, appearing to read 'R Julian', is written over a horizontal line.

Robert F. Julian, Esq.

ROBERT F. JULIAN, P.C.

Attorney(s) for the Respondent

2037 Genesee Street

Utica, New York 13501

315-797-5610

VERIFICATION

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

MICHAEL L. HANUSZCZAK, being duly sworn, deposes and says that deponent is the Respondent in the within action; that deponent has read the foregoing Answer to the Formal Written Complaint and knows the contents thereof; that the same is true to deponents own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponents believe it to be true.

Michael L. Hanuszczak

MICHAEL L. HANUSZCZAK

Sworn to before me, this 27 day
of May, 2019.

[Signature]

Notary Public/State of New York

ONONDAGA COUNTY

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

MICHAEL L. HANUSZCZAK,

a Judge of the Family Court, and an
Acting Justice of the Supreme Court,
Onondaga County.

MANDATORY: Judge's Home Address

In the event that a determination of the Commission on Judicial Conduct is made in the above matter requiring transmittal to the Chief Judge and service upon the judge in accordance with Judiciary Law § 44, subd. 7, the Court of Appeals has asked the Commission to provide the judge's home address.

Judge's Home Address

OPTIONAL: Request and Authorization to Notify Judge's Attorney of Determination

In the event that a determination of the Commission on Judicial Conduct is made in the above matter requiring transmittal to the Chief Judge and service upon me in accordance with Judiciary Law § 44, subd. 7, the undersigned judge or justice:

(1) requests and authorizes the Chief Judge to cause a copy of my notification letter from her and a copy of the determination to be sent to my attorney(s) by mail:

ROBERT F JULIAN 2037 GENESSEE ST WITIA NY 13501 315 797 9610
Attorney's Name, Address, Telephone

(2) requests and authorizes the Clerk of the Commission to transmit this request to the Chief Judge together with the other required papers.

This request and authorization shall remain in force unless and until a revocation in writing by the undersigned judge or justice is received by the Commission.

Dated: 05/24/2019

Michael L. Hanuszcak
Signature of Judge or Justice

Acknowledgment:

[Signature]
Signature of Attorney for Judge or Justice

SEND TO: Clerk of the Commission
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006

EXHIBIT C

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

MICHAEL L. HANUSZCZAK,

a Judge of the Family Court, and an
Acting Justice of the Supreme Court,
Onondaga County.

REFEREE'S REPORT

Before: Linda J. Clark, Referee

Appearances:

For the Commission:
Commission on Judicial Conduct
By: David M. Duguay, ESQ.
Staff Attorney

For the Respondent:
Robert F. Julian, ESQ.
2037 Genesee St., Suite 2
Utica, NY 13501

PRELIMINARY STATEMENT

By order dated August 6, 2019, I was designated as referee to hear and report proposed Findings of Fact and Conclusions of Law to the Commission with regard to the charges of misconduct against Respondent, Honorable Michael L. Hanuszczak.

The hearing was held before me on November 19 and 21, 2019 in Syracuse, New York. The Commission called two (2) witnesses. Respondent called no witnesses other than himself. Both parties offered exhibits, Exhibit 1 of the Commission and Exhibits B-E and G of the Respondent, which were accepted into evidence with no objection by either party.

Counsel to the Commission and counsel for Respondent both submitted post-hearing memoranda, together with proposed findings of fact and conclusions of law.

COMPLAINT AND ANSWER

In its Formal Written Complaint (“FWC”),¹ the Commission alleges (and Respondent does not deny) that Respondent serves as a judge of the Family Court since 2001, and Acting Supreme Court Justice for the County of Onondaga, New York since 2004. His current term expires on December 31, 2020. Respondent is an attorney.

Respondent was served pursuant to Judiciary Law Section 44 subsection 4 with a Formal Complaint dated March 8, 2019, setting forth one charge. Charge 1, as to [Job Title 1] [Name 1], alleged that Respondent (1) requested that she assist with his campaign for Onondaga County Surrogate and proposed meeting at a local restaurant (Complaint ¶7); (2) discussed with [Name 1] his dating life and described his dates with “lady friends” on multiple occasions (Complaint ¶9); (3) made inappropriate comments with sexual overtones to [Name 1], and (Complaint ¶10); (4) upon her transfer out of Respondent’s court part, Respondent requested [Name 1] come to his chambers where he proceeded to place his hands on her shoulders and kissed her on the cheek without her consent, stated to her that “no one knows me like you do, not even my wife ... you anticipate my every need”, and further grabbed her by the shoulder and kissed her again without her consent as she attempted to leave chambers (Complaint ¶11).

Charge 1, as to [Job Title 2] for the Onondaga Family Court’s Treatment Court, [Name 2], further alleged that Respondent (1) kissed [Name 2] on the cheek without her

¹ References to “FWC” and “Ans” are the Formal Written Complaint and Respondent’s Answer, respectively. References to “Tr” are the transcript of the hearing before the Referee. “RB” refers to Respondent’s Post-Hearing Memorandum. “CB” refers to Commission’s Brief, “Ex” refers to the exhibits introduced into evidence by counsel for the Commission, and “Resp Ex” refers to the Exhibits introduced into evidence by Respondent.

consent on more than one occasion (Complaint ¶¶13 & 15); (2) upon hearing that **Name 2** became engaged, asked to meet with her in his office, at which time he told her that, had he known she was not married, he would have been interested in dating her (Complaint ¶13B), and; (3) reiterated his interested in dating her and asked if she would be interested in dating him, cautioning her that any relationship would have to be discreet and require his disqualification from Family Treatment Court part proceedings (Complaint ¶14).

In his Verified Answer to the Complaint dated May 24, 2019, Respondent acknowledges that he did ask her to participate in his campaign on several occasions, and did do so at an outside location. This meeting did not occur because **Name 1** cancelled (Ans ¶7). Respondent also denies asking **Name 1** if her husband was out of town, but instead states that **Name 1** offered this information in the course of a conversation, at which time Respondent asked if it would be a convenient time to meet after work to discuss the campaign, and proposed dinner as an option to discuss the campaign outside of work (Ans ¶8). Respondent indicated that it was common to have discussions between cases on a broad range of subjects, and may well have mentioned dating as he was separated from his wife (Ans ¶9). Respondent admits kissing **Name 1** on the cheek without asking to do so when she was leaving his office and further acknowledges complimenting **Name 1** for anticipating his requirements to perform his judicial duties (Ans ¶10 & 11).

With regard to Charge 1 relating to **Name 2**, Respondent states in his verified Answer that he does not recall kissing **Name 2** on the cheek (Ans ¶13A), but does acknowledge discussing the general topic of dating with **Name 2** on more than one occasion (Ans ¶13B). Respondent does acknowledge having a conversation with **Name 2** about not dating in or about

September of 2013 (Ans ¶14). Respondent further recalls giving **Name 2** a kiss on the cheek without her consent upon learning of her father's declining health or demise (Ans ¶15).

OPINION

At the outset it is noted that through his briefs, the Respondent has limited his arguments to a challenge of the factual characterization of the misconduct that he admits occurred. *See*, Respondent's brief, P.1 ("we acknowledge that the judge has committed judicial misconduct, but asked the referee to not adopt certain findings propounded by Commission counsel..."). Accordingly, this report will be limited to fact-finding with respect to the disputed allegations of the Complaint. Based upon Respondent's briefs, these disputed paragraphs include primarily paragraphs 10, 11, 11 A, 11 C and 13 A of the Complaint.

CHARGE 1

Allegations as to Interactions With **Name 1**

This aspect of the Complaint alleges, in sum and substance, that Respondent had inappropriate communications with **Name 1** on several occasions starting in or about June or July 2016, and extending through January 3, 2017, when **Name 1** was transferred out of Respondent's court part. The disputed allegations of paragraphs 9, 10 and 11 relate to the specific conduct and actions of Respondent during these interactions. For example, Respondent denies that he ever made statements about his dating life and individual dates with lady friends, while **Name 1** described these events in some detail. In Respondent's Memorandum of Law, these discrepancies are characterized as delineating a measurable or material difference between misconduct that is inappropriate on the one hand, and more egregious conduct that could be characterized as sexual harassment. Respondent, however, does not offer authority to support this delineation in the context of this proceeding and the conceded charges of judicial impropriety.

As addressed herein, this referee found the testimony of both witnesses truthful, compelling and internally consistent as to detail such as time, place, etc. The Respondent's denials pertained primarily to disputed inferences regarding the existence of a subjective intention to harass. While this report will focus upon an evaluation of the disputed material facts marshaled by the Commission's case as weighed against the Respondent's testimony and other evidence, it will not address or analyze referenced standards or concepts of civil liability, such as sexual harassment, that do not pertain directly to the allegations of the Complaint as such determinations are not directly relevant to the very specific claims of judicial misconduct at the heart of this proceeding that are largely conceded. To the extent, however, factual findings support the conceded charges may be relevant to the Commission's determination of what sanction is appropriate under the circumstances and may have other collateral consequences, they are addresses herein.

The specific allegations of the Complaint, which are generally conceded by Respondent, establish that Respondent's behavior violated standards of judicial conduct in 5 specific ways:

1. Violation of Section 100.1 of the rules (failure to avoid impropriety and the appearance of impropriety);
2. Violation of Section 100.2 (A) of the rules (Respondent failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary);
3. Violation of Section 100.2(C) (Respondent length the prestige judicial office to advance his private interests;
4. Violation of Section 100.3 (B)(3) (failure to conduct extrajudicial activities so as to minimize the risk of conflict with judicial obligations), and;
5. Violation of Section 100.4(A)(2) (failure to conduct extrajudicial activities so they do not detract from the dignity of judicial office).

FINDINGS OF FACT

The Standard of Review

Pursuant to 22 NYCRR section 7000.6, (i) (1) the attorney for the Commission has the

burden of proving, by a preponderance of the evidence, the facts justifying a finding of misconduct. It is, however, the referee's province to evaluate credibility against this evidentiary backdrop to determine facts. With this standard in mind, the following are the findings of fact and conclusions of law determined by this referee:

Respondent's Judicial History

Respondent has been a Judge of the Family Court, Onondaga County, since 2001, and an acting Justice of the Supreme Court, Onondaga County, since 2004 (FWC ¶4; Ans ¶4; Tr 125, 183-85). He served in the Family Treatment Court ("FTC"), from approximately 2006 to approximately 2008, and then from approximately 2011 to 2019 (Tr 126, 187-88). Respondent served in the Integrated Domestic Violence Court from approximately 2008 to 2011, leaving due to a personal conflict with a family member (Tr 126, 261-62).

Respondent began campaigning in 2016 to become the Republican Party nominee for Onondaga County Surrogate Judge in 2017 (Tr 206-07). In his efforts to obtain the endorsement, he formed a committee including his law clerk and his secretary (Tr 270). Respondent failed to win the necessary votes for the Republican nomination for Surrogate Court (Tr 206-07).

PROPOSED FINDINGS OF FACT AS TO CHARGE I

Name 1 Incidents

1. **Name 1** has been employed by the Unified Court System since May 2004, and began working as the **Job Title 1** in Respondent's court in January 2014 (Tr 6). **Name 1** described her relationship with Respondent over the first year and a half as "fine" (Tr 8). **Name 1** became more comfortable working with Respondent and they became more professionally friendly, although they did not socialize outside of the courthouse (Tr 11).

2. In or about July 2016, Respondent told **Name 1** that he wanted her to work on his campaign for Surrogate (Tr 30-31). Respondent had approximately ten conversations with her about his campaign that month in the courtroom and his office (Tr 31-32).

3. Respondent acknowledged that it was common to have political conversations in the courtroom in between cases regarding personal and political matters. He and **Name 1** did participate in these general discussions, as well as other courtroom staff. Examples of this type of banter included discussions about political campaigns, including the 2016 presidential race and **Name 1** discussing her son's participation as an employee of the New York State Senate Democratic campaign committee, as well as her negative view of Donald Trump (R211, 212). It was in this context and environment that overtures regarding **Name 1**'s participation in Respondent's campaign occurred.

4. While **Name 1** was initially nervous about overtly declining her boss' requests for her political assistance, she made it clear by late August 2016 that she would not be assisting Respondent in his campaign (Tr 97, 106). Undeterred, however, Respondent persisted in his political overtures and continued seeking her help through September (Tr 111).

5. When **Name 1** became concerned that the Respondent's requests for campaign support did not abate, she went to other people in the chain of command about the issue (Tr 112) between July and September (Tr 112-13) to seek assistance with respect to Respondent's political overtures. Despite **Name 1**'s declinations of assistance, Respondent, in October 2016, asked her again to consider working on his campaign after the national election was over (Tr 110). For example, in December 2016, Respondent came into **Name 1**'s office and asked for her home email address so that he could send her a list of the Republican Committee members for the Town of Lysander (Tr 109-10).

6. These pursuits of campaign assistance occurred in and out of the workplace. For example, on more than one occasion in 2016, Respondent asked [Name 1] to meet him for coffee after work at the Café Kubal, approximately half a mile from the courthouse, to work on his campaign (Tr 35). He did so for the first time on July 26th (Tr 36-37), claiming that it was more appropriate to do so away from work given his judicial status (R210-212). During the week of August 15th, Respondent “asked [Name 1] if [her] husband was out of town ... and said he would like to meet for dinner to discuss the campaign” (Tr 38). [Name 1] “had no desire to meet [Respondent] outside of work or to discuss the campaign”, but she did not tell Respondent directly due to fear of retaliation (TR27).

7. Respondent admitted that at the time he asked [Name 1] to have dinner with him to discuss his campaign, he knew his conduct violated the rules (Tr 213). He further acknowledged it was improper for him to ask [Name 1] to assist his campaign in or outside the courthouse (R208-209).

8. [Name 1] knew that Respondent “was in the process of divorcing” because he had called her into his office in December 2015, and divulged private information about his marriage, which made [Name 1] uncomfortable (Tr 38-43).

9. In August 2016, [Name 1] told Respondent that she would not have dinner with him as she was married for “[t]hirty plus years” (Tr 5) and “did not think it was appropriate to be having dinner with someone, a man” (Tr 38).

Inappropriate Courtroom Discussions

10. On December 6, 2016, [Name 1] was experiencing difficulty setting up Polycom conference call equipment to include three people in a telephone call (Tr 44-45). She sent an email to her supervisor, Chief Clerk David Primo, at 9:17 A.M., with the subject title,

“Conference call on polycom,” asking “if our system is able to have 3 parties conferenced in on the in-court polycom?” (Ex 2; Tr 46, 102).

11. Respondent was sitting “ten feet away” and was the only other person in the courtroom (Tr 45) when **Name 1** told Respondent about the problem and told him she “didn't know how to do a three-way”. [Respondent] joked about her response, intimating his reference to a sexual act (Tr 46). **Name 1** spoke with **Name 2** the same day of the incident (Tr 103). **Name 2** corroborated this report and testified that **Name 1** told her at the time that Respondent was “laughing and giggling” and said “oh, come on **Name 1** you don't know what a three-way is' or 'how to do a three-way or something like that' and that “[s]he was very clear that he made [a sexual comment]” (Tr 153). **Name 2** observed that **Name 1** was “shocked” and “very upset” about the incident (Tr 172-173).

12. While the evidence confirms that Respondent’s comments were misguided and ill-advised, and that **Name 1** was deeply offended by the reference (which she took to mean as a reference to a sexual encounter,) the evidence of such intentional innuendo or inference was not preponderant, leaving a record open to the potential for a misunderstanding between Judge and **Name 1** (Tr 46). Even if unintended, however, the comments demonstrated an insensitivity and lack of concern or self-awareness regarding courtroom demeanor that is telling and relevant in the context of this case.

January 3, 2017 Departure Incident

13. On January 3, 2017, there were empty banker's boxes stacked outside **Name 1**'s office door when she arrived at work (Tr 48-49), signaling her unexpected transfer that was later confirmed by Chief Clerk David Primo (Tr 49).

14. Around 9:00 A.M. or 9:30 A.M., Respondent called **Name 1** from his cell phone (Tr 50). Respondent was upset about the transfer of **Name 1** from his court, stating that “I can't believe they're moving you. I can't believe I'm losing you” (Tr 50-51).

15. Later that day, **Name 2** informed **Name 1** over lunch that Respondent had been trying to reach her and offered to go with her to Respondent’s Chambers.

16. When they arrived at Respondent's office, Respondent told **Name 2** “to leave and shut the door because he wanted privacy” (Tr 53). Notwithstanding her reservations, **Name 2** left and shut Respondent's office door (Tr 55).

17. **Name 1** described in some detail what happened to her, without her consent, immediately afterward:

We were standing near the door. He was right in front of me ... He put his hands on my shoulders and pulled me toward him and then came in toward my face ... (Tr 55).

He leaned his head into my space like he was leaning in to kiss me. So I turned my head and he got my cheek area right next to my lip ... He put his lips on me ... It was his lips on me with his hands pulling me toward him ... I was angry. I was disgusted. I pushed him away (Tr 56).

18. After **Name 1** told Respondent that he would be fine with the new **Job Title 1**, Respondent stated, “Nobody knows me like you do. Not even my wife. You anticipate my every need” (Tr 58).

19. When **Name 1** stood up to leave, Respondent came around his desk, opened the door, and Respondent's secretary handed **Name 1** an orchid plant (Tr 59). Respondent shut the door and **Name 1** put down the plant to read the attached thank you card (Tr 60). When **Name 1** picked up the plant to leave, Respondent put both of his hands on her shoulders “to pull [her] in toward him” and “[h]e kissed me again ... [o]n the cheek right near my lip ... I

turned my head again, and that's what he got" (Tr 60-61). **Name 1** had not consented to Respondent's kiss (Tr 60). **Name 1** immediately left Respondent's office (Tr 61). **Name 2** asked, "What did he do to you," and **Name 1** said, "He kissed me twice" (Tr 61). **Name 2** reported the episode to her supervisor, Chief Clerk Primo, the next day, on January 4, 2017 (Tr 104-05).

20. **Name 1**'s testimony was coherent, corroborated and detailed, and is credited in all respects when weighed against the Respondent's suggestion of bias or over-sensitivity. Respondent's claim of a an over-emotional, but sincere response to an emotional situation; allegedly not intended to be an improper advance, is not convincing against this corroborated factual backdrop. Respondent's subjective failure to apply any objective measure or modicum of self- awareness or personal restraint to his court room and workplace conduct renders his defense on the question of intent nearly irrelevant to the charges of judicial misconduct. Whether intentional or reckless, the Respondent's behavior was a severe departure from acceptable judicial standards that supports the charges of misconduct contained in the Complaint.

Name 2 Incident(s)

21. **Name 2**'s first professional contact with Respondent occurred in 2001, when she appeared in Onondaga Family Court while working for a juvenile probation program (Tr 125). On September 13, 2001, she became employed by the New York State Unified Court System (Tr 123) as a case manager for Syracuse Community Treatment Court (Tr 124).

22. In approximately March or April 2004, **Name 2** became **Job Title 2** of the Family Treatment Court ("FTC") (Tr 124). Respondent was assigned to FTC in the summer

of 2004 (Tr 125), but did not become the full-time FTC judge until sometime around 2005 or 2006 (Tr 126).

23. Respondent left FTC around 2008 for about 3 years (Tr 128) to preside in Integrated Domestic Violence Court, and then returned to FTC around the end of 2011 or beginning of 2012 (Tr 126).

2011 Romantic Interest Incident

24. On or about the end of August 2011, **Name 2** went to Respondent's chambers to have his secretary notarize a document (Tr 128-32). **Name 2** was telling the secretary about her plans to get married when Respondent came out of his office and asked **Name 2** to come into chambers (Tr 130-31).

25. In chambers, Respondent “said something about, 'Oh, I didn't know you weren't married' and ‘I would have been interested in dating you’” (Tr 132). **Name 2** was “dumbfounded” (Tr 132). When she told Respondent that she did not think his wife would like that, Respondent said something about getting a divorce (Tr 132). Respondent testified that he began divorce proceedings four years later in October 2015 (Tr 280).

26. **Name 2** had never previously expressed any interest in dating Respondent and did not express any interest then (Tr 132). **Name 2** “was flabbergasted and ... didn't quite know what to say ... he's a judge and that [made] me feel awkward and embarrassed” (Tr 132).

First Kissing Incident

27. Sometime after Respondent initially expressed interest in dating **Name 2** (Tr 135), he called her into his office and directed her to shut the door (Tr 134). **Name 2** had

given Respondent a referral for a family health matter (Tr 134). Respondent did not seek her consent before kissing her (Tr 135).

2014 Romantic Interest Incident

28. Respondent again expressed his continuing romantic interest in **Name 2** in approximately 2014 (Tr 135-36) while they were driving to an out-of-court meeting on a work-related matter (Tr 135, 137, 139). “[O]ut of the blue” (Tr 137), Respondent made romantic overtures, stating in words or substance that:

I'm sure you know I'm still attracted to you. If you have any interest in dating me, that's something we can discuss. We would have to be quiet about it because we wouldn't want, you know ... we would have to be quiet or private about it.

(Tr 136).

29. **Name 2** “wasn't sure what ... I was supposed to say ... and I was embarrassed because ... we weren't talking about dating or anything like that. We were just driving to this meeting, about to have a meeting to talk about treatment options, and it just kind of like came out of the blue” (Tr 137).

30. When **Name 2** was non-responsive to the unexpected and unwanted overture, he persisted and stated “Well, you can just think about it, and let me know if that's what you want to do” (Tr 138). **Name 2** did not respond “[b]ecause it's just awkward and certainly once he said the thing about you have to be private and we have to keep it to ourselves, then it made me feel like it was dirty and there was something wrong with that” (Tr 138).

31. Respondent testified that he had indeed initiated a romantic discussion with **Name 2** about dating her while she was driving them to an FTC meeting at a treatment facility (Tr 239). He acknowledged that it was “a discussion a judge should not have with a court employee” (Tr 240) as it was not appropriate and not consistent with ethical rules (Tr 239). Respondent

testified that he understood at the time that he was engaging in conduct “below the standards set by the Rules” (Tr 243).

2016 Kissing Incident

32. In July 2016, **Name 2** learned that her father had been diagnosed with cancer. **Name 2** was very upset and, after informing Respondent about the diagnosis, she left work for the day (Tr 141).

33. Respondent came to **Name 2**'s office, holding an orchid plant (Tr 143). He entered the office, approached **Name 2**, and kissed her on the cheek (Tr 143-44). **Name 2** took the plant and Respondent took hold of her arms with both of his hands and gave her another kiss (Tr 143-44). **Name 2** put the orchid on her desk and Respondent kissed her a third time as she walked him out of the office (Tr 144). Respondent's kisses were unwelcome (Tr 142). **Name 2**

Name 2 testified:

I felt that it was weird. I guess if it was just one kiss on the cheek, I would feel less weird, but because it was three, I thought that was over the top, and I guess I was a little concerned that he thought it was more than just expressing his concern ...

I thought it was a little off ... I felt it was a little bit more than just being compassionate ... I guess I felt like it was being a little romantic or something. Like a little bit more than what you would just do to somebody like if you're in line at a funeral parlor or something and you gave somebody a kiss on the cheek, it felt different than that ...
(Tr 144-45).

34. **Name 2** had never expressed to Respondent that she had any romantic interest in him (Tr 145). Her testimony was cogent, detailed and was not materially or convincingly refuted by evidence produced by Respondent and is fully credited.

Respondent's Admission of Untruthful Testimony

35. Respondent engaged in the following exchange with his counsel concerning testimony that he provided to the Commission on October 23, 2018:

Q. Now, on page 11 of your deposition, you were asked a question at line 19: 'Okay, Judge, did there ever come a time when you expressed an interest in dating or having a romantic relationship with **Name 2**?' And you answered, 'No'. Was that a candid answer?

A. No, it was not.

(Tr 235) (emphasis added).

36. Notwithstanding that he understood he had an obligation to be truthful under oath (Tr 273) and to be honest and truthful with the Commission (Tr 286), Respondent admitted that he provided sworn testimony during the Commission's investigation that was not "candid" (Tr 235, 242, 273). It should be noted that Respondent's admitted deceit during an investigation undermined his credibility and account of the factual incidents supporting the charges, allowing inferences against his account of events where factual nuances were in dispute.

CONCLUSIONS OF LAW AS TO CHARGE I

37. 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.

38. 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.

39. Respondent failed to avoid impropriety and the appearance of impropriety in that he lent the prestige of judicial office to advance his private interests, in violation of Section 100.2(C) of the Rules.

40. Respondent failed to perform the duties of judicial office impartially and diligently, in that he failed to be dignified and courteous with individuals with whom he deals in an official capacity, in violation of Section 100.3(B)(3) of the Rules.

41. Respondent 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 do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

42. 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.

DATED: Albany, New York
August 10, 2020


Linda J. Clark, Referee

Family Court Chambers

EXHIBIT D

Michael L. Hanuszcak
Judge



Margaret N. Johnson, Esq.
Court Attorney

County of Onondaga
(315) 671-2010 Fax (315) 671-1166

September 16, 2020

Honorable Lawrence K. Marks
Chief Administrative Judge of the Courts
NYS Unified Court System Office of Court Administration
25 Beaver Street
New York, NY 10004

Re: Resignation Letter

Dear Justice Marks:

I am resigning the Office of Family Court Judge of Onondaga County effective September 21, 2020.

Respectfully,

A handwritten signature in cursive script that reads "Michael L. Hanuszcak".

Michael Hanuszcak

cc: Honorable James P. Murphy
Administrative Judge- 5th Judicial District