

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 :

MICHAEL F. MCGUIRE, :

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

----- X

ORAL ARGUMENT

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

January 23, 2020
10:41 AM

B e f o r e:

Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah
Commission Members
Celia A. Zahner, Esq.
Clerk of the Commission

P r e s e n t:

For the Commission

Mark Levine, Esq.
Edward Lindner, Esq.

For the Respondent

Stephen R. Coffey, Esq.
Hon. Michael F. McGuire

A l s o P r e s e n t:

Miguel Maisonet, Senior Clerk and FTR Operator

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

MS. ZAHNER: Good morning, Mr. Harding and members of the Commission. This is the oral argument in the Matter of Michael F. McGuire, a Judge of the County and Surrogate's Court, an Acting Judge of the Family Court and an Acting Justice of the Supreme Court. Judge McGuire is appearing with his attorney, Mr. Coffey. Mr. Levine is appearing for the Commission.

MR. HARDING: Thank you. In the Matter of Michael McGuire, this is the oral argument with respect to the referee's report, a determination of whether misconduct has occurred and if so, what an appropriate sanction shall be.

Counsel will each have 30 minutes for the argument. Counsel for the Commission may reserve a portion of his time for rebuttal. After the initial presentations, the judge may, if he wishes, make a presentation to the Commission not to exceed ten minutes. Counsel for the respondent may reserve time to speak after respondent, but prior to the rebuttal. The judge and counsel are subject to questioning by the Commission at any time during the presentation.

Counsel is advised that argument should be confined to the record and any statement outside the

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

record will be disregarded.

You will notice that there are lights on the podium to indicate your time. The green light means you may speak. The blinking green light means you got two minutes left and yellow light means one minute, and red, it means that you just finish up your last statement.

I want to remind all the people in the room to please silence your cell phones, electronic devices and place them in airplane mode or disable your Wi-Fi connections to prevent interfering with the recording of this proceeding.

I want to note for the record that a member of the Commission, Ms. Yeboah, you will see her on there, she's in Albany participating by videoconference. If there's any technical difficulties, we will pause the argument and time will not be counted against your presentation.

Mr. Levine, are you ready to proceed?

MR. LEVINE: Yes, Mr. Harding. Thank you. And Commission reserves five minutes for rebuttal, please.

MR. HARDING: Sure.

MR. LEVINE: Thank you. Mr. Harding and members of the Commission, good morning.

1 Judge McGuire engaged in serious and
2 egregious misconduct by repeatedly abusing his
3 summary contempt powers; displaying outrageous and
4 inappropriate demeanor towards litigants and court
5 staff; repeatedly engaging in the unauthorized practice
6 of law; failing to recuse himself from several cases in
7 which his impartiality could reasonably be
8 questioned; using the prestige of his judicial office to
9 assist his wife with a traffic ticket; testifying falsely
10 several times in – before the referee in this
11 proceeding. These actions constitute a serious
12 shocking departure from the highest standards of
13 conduct that we impose upon judges and requires
14 Judge McGuire’s removal from judicial office.

15 As you recently held in Matter of O’Connor,
16 every litigant who enters the courtroom has the right
17 to be treated with dignity, fairness and respect. And I
18 submit to you that in these charges here, which were
19 fully sustained by the referee but for one small, minor
20 point, that did not happen here. Judge McGuire has
21 abused his enormous powers of summary contempt
22 and these were not, almost all of them, were Family
23 Court proceedings involving litigants who were there
24 on custody and visitation cases. They weren’t
25 expected to be hauled into jail. They, these cases,

1 anyone who has ever been in Family Court knows it's
2 an emotional place. People get upset. Sometimes
3 you're going to talk over the judge. Sometimes you
4 are going to be a little bit emotional. But the person
5 who is supposed to keep control is the judge. And in
6 this case, as you can see, the judge not only failed to
7 follow the summary contempt procedures which you
8 have repeatedly disciplined judges for failing to
9 follow, but in fact added insult to injury by mocking
10 comments, sarcastic comments. And as the referee
11 found in his report that oftentimes these – the
12 unlawful contempts were accompanied by angry,
13 abrupt outbursts, some of which can only be described
14 as explosive. When you put two of these things
15 together, you can see how this can undermine public
16 confidence in the judge's court and why it requires
17 removal from judicial office.

18 If you look at some of these particular cases,
19 and you can see where the comments are just
20 gratuitously inappropriate, and especially in these
21 cases where –

22 JUDGE MILLER: – Question.

23 MR. LEVINE: Sure.

24 JUDGE MILLER: It appears as if the charges
25 are related to situations that occurred in, primarily in

1 2014 and maybe 2015, which is five and six years
2 ago. What impact, and then from that point in time
3 the most serious stuff relating to the summary
4 contempt seems to have ended and the judge seems to
5 have had a change of heart with whatever you want to
6 call it. What factor should that – do we take that into
7 account? Does that ameliorate with respect to the
8 removal?

9 MR. LEVINE: Thank you, Judge Miller. I –
10 my answer to the question would be under these
11 particular egregious circumstances as the Court of
12 Appeals has said in Bauer and you recently said in
13 Senzer, sometimes the misconduct is so egregious that
14 no amount of contrition can make up for the
15 seriousness of the misconduct. And if you look at
16 precedent from O'Connor and in Simon, recent cases
17 that involve removal, there's the combination here of
18 terrible demeanor, disrespectful demeanor and the
19 abuse of the contempt power. And I think that part of
20 what you need to see is painting the picture of what
21 happened here.

22 You look at Mr. and Mrs. K [REDACTED], who are
23 grandparents who are in court trying to get, to retain
24 visitation of their son. And they made a comment
25 saying they were upset because they thought the

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

father was abusing the child and said we are going to sue the county and we are going to sue you. The judge went off the handle and started saying, we are taking you in! They had no idea where they were going. Meanwhile, they were handcuffed. This woman was taken through the audience, through the public area into a room, had no idea how long she was going to be sitting there. No one told her. She finally gets back to court, okay, and the judge was saying to her, you know I could have sentenced to you for thirty days. And the grandfather says, please don't do that. And the judge says, I can sentence you for thirty days! This is not the kind of demeanor we expect. You can look at other examples that were in the referee report and in the record where –

JUDGE LEACH: – I'm sorry. Mr. Levine? –

MR. LEVINE: – Where a woman is unjustly handcuffed. –

JUDGE LEACH: – I apologize.

MR. LEVINE: I'm sorry, judge. Go ahead.

JUDGE LEACH: Along the lines of my colleague's question, where, what has Mr. McGuire's status been from 2015 to date –

MR. LEVINE: – When you say his status –

JUDGE LEACH: – In terms of judicial status,

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

has remained the same?

MR. LEVINE: He is in the same courts that he has been in previously.

JUDGE LEACH: The County Court, Acting Supreme –

MR. LEVINE: – It was – my understanding is, and I am sure Mr. Coffey would correct the record if I am wrong, but it’s still in the same courts, County, Family, Acting Supreme, the whole –

JUDGE LEACH: – Any indications of ongoing misconduct akin to the numerous charges that were sustained by the referee here? But any indication that that had continued in the last four years, at all?

MR. LEVINE: Are you talking about with respect to demeanor and contempt?

JUDGE LEACH: Right, you know, the panoply of charges; –

MR. LEVINE: – I would say that –

JUDGE LEACH: – The contempt issue, practicing, demeanor issues, being harsh with litigants and the like.

MR. LEVINE: Well I will tell you that well obviously we are confined to the record with respect to what we have. But when it comes to recent stuff

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

with respect to failing to recuse himself from cases involving a conflict of interest, particularly with Mr. Kelson. It wasn't until 2019 that he issued a directive that no cases should be assigned to him. So, to that extent some of the stuff is recent vintage. The rest of this, as you see what's in the record, we went ahead with it when we found it. Okay. So, I can tell you that what you see before you is what we presented in the hearing and that's what the record is. But I will tell you what it is. And it's not just this. I think it's pretty clear when you lay it out. It's beyond dispute. But the one thing I will tell you that is a matter of concern is that Judge McGuire's explanation for his, all of these contempt cases, all of these threats, even the Third Department indicating in Varner v. Glass, they reversed a determination of custody and said the judge acted with disdain toward a litigant and assigned it to a new judge because they didn't think he could be fair. Okay. So, there's a, there's a lot of evidence here that this happened. But the judge's explanation was I, at the hearing, I didn't, you know, at the time I thought it was okay. But now that essentially, I know that it's not. But was it okay at the time to ridicule these litigants? To ask how are those handcuffs feeling? To, to, to, to make insulting

1 comments to these women litigants who are in court
2 with their children, you know. You have no money.
3 You have no husband or something like that. You are
4 ridiculing their parenting choices. Is that ever okay?
5 And the answer is, it's not. But there's even more.
6 And I think, you know, you can go through all these
7 instances of where there is egregious behavior,
8 inappropriate comments that are indefensible in both
9 the contempts and the threats to hold in contempt.

10 JUDGE LEACH: I'm sorry again. How did
11 the, the, the Commission respond to an argument
12 made by respondent that a, in terms of mitigation, I've
13 cured all of these issues since the last four years. I've
14 presided over multiple courts without any allegations
15 of misconduct whatsoever. Would you just say that
16 that's not really part of our record?

17 MR. LEVINE: I would say that whether you
18 could certainly infer that there's – what you have in
19 the record is what's here. What I would tell you is
20 that if we had just that, that might be a consideration.
21 But we have considerably more. I think this
22 misconduct is so egregious and so inappropriate that
23 by itself it requires removal. But if you disagree,
24 there's more.

25 And, if I can jump ahead to the unauthorized

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

practice of law –

JUDGE MILLER: – Just one more question.

MR. LEVINE: Sure.

JUDGE MILLER: How did the misconduct come to our attention? Again, I, a, five-year, something's it seems 2013 and this is now 2020 and we started the proceeding in 2018, is it?

MR. LEVINE: '17.

JUDGE MILLER: '17.

MR. LEVINE: But I will tell you that what's confined, I can only limit myself to what's in the record, but I can tell you that when the matters came to our attention we took action.

JUDGE MILLER: Okay.

MR. LEVINE: Okay. But I want to jump ahead to something very significant, which is the unauthorized practice of law. As a full-time judge, as you know, Judge McGuire cannot practice law. Yet, at the hearing he testified, his testimony was I absolutely knew that I could not practice law. But yet he did it anyway for his son. He willfully violated the rules governing judicial conduct. That means something. Especially in light of your very recent determination with Matter of Edwards, where in that case arguably the judge didn't know that he couldn't

1 do it. Here we have a judge who knew. He testified
2 he knew he couldn't do it and he did it anyway. He
3 could have had his friend, Mr. Kelson, handle the
4 case, who had made tons of phone calls to the district
5 attorney's office trying to get an ACD in the matter,
6 trying to resolve it. But Judge McGuire knows better.
7 And he handled it himself.

8 He made appearances in court. He used
9 stationery from his old letterhead – from his old law
10 firm, Michael McGuire, Esq; did faxes with McGuire
11 Law on it; made an appearance in court with the DA
12 and the judge even though he was a full-time judge,
13 filed a 28-page motion of which it's essentially a
14 motion to dismiss in the interest of justice and
15 succeeded on the motion. But that wasn't the first
16 time he did this.

17 His wife had a speeding ticket in the town of, I
18 am going to mispronounce it, Wawarsing and it
19 started before he even became a judge. And after he
20 became a judge he wrote a letter to the judge
21 presiding over the case and said look, I am
22 paraphrasing, I am a county court judge now, can't
23 practice law. But you know, we had a plea before we
24 when were there, and can we still have the plea that
25 was offered to me at the time. And that plea was

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

accepted. Now look at the appearance that that shows. Number 1. He's asking for relief. He knew he couldn't do it. It's an admission right there in the letter, okay.

You came close, I know, in the opinion in Edwards saying that it warranted removal. But you didn't do it. I will tell you this is significant misconduct because we not only have the judge knowingly violating the rules in representing his wife and his son when he could have had others do it. No issue about that.

But on top of that he then represented private individuals. And if you look at the referee's report, he represented, for example the case of George Matisko, who was a someone he represented in a personal injury matter before he was a judge. The referee, who saw and heard all the witnesses, found that Judge McGuire's explanation for authorizing his confidential secretary to negotiate a settlement in a personal injury case to be not believable. In fact, the words that he used which were particularly significant, I don't have them in front of me, but he discredited that argument and said it was not supported by the evidence that she was masquerading as the judge. The same thing with Pagan. He didn't

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

believe that, you know, the judge insisted that he didn't practice law, but he did. They are all record-based cites.

So, you have all of that on top of this. Okay, so, we have the unauthorized knowing practice of law. We have the terrible demeanor. We have the, the – Judge Mazzarelli?

JUDGE MAZZARELLI: Am I correct that there's actually an affirmation of actual engagement in the record in which the respondent states that he will be actually engaged in matters over which he's presiding?

MR. LEVINE: That is correct.

JUDGE MAZZARELLI: Was that affirmation requesting an adjournment?

MR. LEVINE: Yes. So, he – what the judge did was rather than disclose that he was presiding over those cases in connection with the W [REDACTED] M [REDACTED] matter which was way over in Oneonta, he had the hubris, in my view, to actually say I have a conflict because I am involved in these cases and he neglected to say that in fact he was the judge. Look there was a bit of a ruse here by using this stationery.

JUDGE MAZZARELLI: Was that on letterhead of the –

1 MR. LEVINE: – It was on Michael McGuire,
2 Esq., different permutations of it. But yes, it was all
3 on the letterhead that was used that also had the, you
4 know, the judgemcguire@ [REDACTED] emails. So,
5 there were, there were all sorts of indications here of
6 him trying to, or actually that might not be correct
7 with respect to that charge, but he definitely used the
8 attorney letterhead that he had. So, we also have the
9 Moores' case, same thing, where he represented them
10 in connection with a closure, the – a foreclosure
11 property and the purchase of that property.

12 So, on top of all of that we then have another
13 case, another situation where his close friend, he
14 admitted a good friend, lunch partner, person he meets
15 all the time, Zachary Kelson, whom he confided in to
16 help him with his son. Whom he referred at least five
17 cases to, which the record evidence shows absolutely
18 that he did that. Yet, presided over numerous cases,
19 eight or nine of them. Some of which in which Mr.
20 Kelson actually appeared in court. Other times he
21 asked for relief. And he never disclosed that conflict
22 of interest which once again shows the inability to
23 understand the significance of his role as a judge.

24 I would also add to you that on top of all of
25 that, another exaggerating – exacerbating factor here

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

that was found in the detailed referee's report was the findings of the lack of candor and –

JUDGE MILLER: – Counselor, the conflict of interest is, so he referred cases to Kelson?

MR. LEVINE: Yes. Well the conflict is, is, multiple, there are multiple different conflicts. One is their close, personal relationship where they shared – so first of all they had lunch together. The judge acknowledged emails, I value our friendship so much. We're close friends. He went to his son's bar mitzvah. He made a campaign contribution to him. He, Kelson and Judge McGuire had numerous detailed conversations about the son's case. So much so where Mr. Kelson made phone calls to the DA trying to resolve the case and was in constant contact.

JUDGE MILLER: The conflict is that when Mr. Kelson appeared based on clients that Mr. Kelson, that the judge didn't either make the disclosure to the parties or alternatively just recuse himself?

MR. LEVINE: Correct. And he did that –

JUDGE MILLER: – He lied about the personal relationship?

MR. LEVINE: Yes. And lied about their close, personal relationship, which isn't, there is no dispute about that in my view. So, that's another level

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

of –

JUDGE MAZZARELLI: – But what –

MR. LEVINE: – Misconduct for which you have disciplined judges. I’m sorry, judge.

JUDGE MAZZARELLI: What was he supposed to disclose there, that they were friends? Or that this lawyer was representing his son? Because I mean many judges have lunch with, with lawyers.

MR. LEVINE: Sure. And it’s more than having lunch. It’s the totality of this that’s laid out in the referee’s report in great detail. That it’s the referral of these cases and when they are referred there’s email –

JUDGE MAZZARELLI: – Referrals of which he referred cases to this lawyer?

MR. LEVINE: Yes, to Mr. Kelson. Uh hum.

JUDGE MAZZARELLI: As assignments or –

MR. LEVINE: – No. Their friends or people that he knew and said, you know. And Mr. Kelson testified at the hearing that this in fact happened and he was the lawyer who had that. That he either got emails or he got direct verbal requests –

JUDGE MAZZARELLI: – They were not court assignments?

MR. LEVINE: – No. No. No. No. No. –

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

JUDGE MAZZARELLI: – Or guardian ad litem or –

MR. LEVINE: No. No. They were not court, they were traffic assignment, traffic cases or closings or things like that. But what they underscore is that they have a personal relationship with each other so much that disclosure should be either, which now what he does is he recuses himself automatically. But, he should have at least disclosed that I have this relationship to give the parties an opportunity to deal with those issues.

MR. RASKIN: Mr. Levine, was there any effort by Judge McGuire at remitter up until the recent time period?

MR. LEVINE: Not that I am aware of. There is no evidence in the record as to that. In fact, he, the testimony was that he became aware of it once the Commission investigation had began with respect to these issues. So, when you put all of this together, you know the, the, the, all the allegations that are here that have been substantiated along with the lack of candor which really you know the inability to tell the truth as a judge just so undermines the public confidence in the judiciary that removal is required.

And if there is nothing further I'll –

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

MR. HARDING: – Mr. Levine, would you just touched upon a number of, I should say, twelve here, with the –

MR. RASKIN: – The NRA.

MR. HARDING: What’s that?

MR. RASKIN: The NRA.

MR. HARDING: Yeah, the NRA, yeah, just doing the, performing these gun permit interviews at various locations requiring staff to be there. Could you comment on that?

MR. LEVINE: Sure. So –

MR. HARDING: – Is that wrong?

MR. LEVINE: Well, if, I would say this, that the while it wasn’t *per se* impermissible to hold the gun permits off site or even off hours –

MR. HARDING: – Right.

MR. LEVINE: But here the referee found that Ms. Weiner, the secretary, was not compensated for her time, was required to bring all these papers there and that the judge also instructed her to have one of these pistol permit application proceedings at the Villa Roma Resort on the same day that there was an NRA show and apparently she was instructed to advise people applying that this would be a good opportunity to go to the NRA dinner.

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

MR. RASKIN: And the location for some of these interviews, if I recall the record correctly, was at the bar in the –

MR. LEVINE: Only one. The rest was at the Elks Club. But the one where the NRA dinner was at in the bar area of the golf club.

MR. HARDING: Thank you.

MR. LEVINE: Yes, judge?

JUDGE MAZZARELLI: I was curious about the allegation that Ms. Weiner was not compensated for her off hour time. Was she a salaried employee? I mean, how –

MR. LEVINE: – My understanding is that she –

JUDGE MAZZARELLI: – How would she be compensated?

MR. LEVINE: Well, she could get comp time. There are other ways that it could have been done. My understanding in the record, what's in the record was that she was not. But the details and the machinations of it I am not sure of. But the testimony that was credited by the referee was that she worked five days plus.

You know, I would say in the scope of everything here, that that's kind of relatively lower on

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

the totem pole than the rest of these.

The other thing I would add is and that I neglected to mention was that when we go back to the demeanor, the sustained portions of the complaints that relate to court staff, the judge getting so frustrated in 2015 with Ms. Weiner that he took a computer jump drive after things were lost and threw it in her direction, making her extremely upset, kicking and throwing papers on the floor which the referee found to be unacceptable and credited Ms. Weiner's testimony. There are also testimonies from court officers, portions of which were sustained that the judge engaged in inappropriate, angry and unnecessary explosive interactions with them.

So, in totality, based on everything that is in this case, these actions were so unconnected with the high standards of conduct that we hold for a judge that removal is required. Thank you so much.

MR. HARDING: Thank you, Mr. Levine. Mr. Coffey?

MR. COFFEY: Yes. Thank you, Mr. Harding. It's a pleasure to be here. Judge McGuire will, in fact, address the, the panel.

The – there's no question there is misconduct in this case. To try and claim otherwise would be to

1 insult your intelligence. What divides us, however, is
2 the issue of the appropriate punishment. Is he to be
3 removed or is he to be censured? Because it's
4 certainly nothing less than a censure. And obviously I
5 will invite any questions that the panel may have
6 because I – this is an astounding record. It's – he
7 testified at the investigative appearance for three days.
8 I don't know of any circumstance, at least that I am
9 aware of, where the – a judge has come in and
10 testified for three days, almost nine-hundred pages of
11 transcript. So, you got a tremendously complex, fast
12 transcript. The hearing itself took a period of over
13 eighteen days. So, it's not surprising that the hearing
14 officer at times would find that his testimony was
15 inconsistent. I would defy anybody who is testifying
16 that long and, in that depth, not to have
17 inconsistencies.

18 MR. RASKIN: Mr. Coffey, the referee, if I
19 understand correctly, did not characterize that Judge
20 McGuire's testimony as inconsistent but referenced
21 the lack of candor and even falsely.

22 MR. COFFEY: Right.

23 MR. RASKIN: And he used that phrase.
24 Which is a fairly strong phrase for a referee to use –

25 MR. COFFEY: – It is. –

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

MR. RASKIN: – In a report. Could you address that?

MR. COFFEY: Yeah. And it is. And it is clear that the hearing officer, again I'd be insulting your intelligence. I didn't represent him at the hearing. I read the transcript and the first thought that came to my mind is the hearing officer doesn't like him. And, for whatever reason, and his findings of the lack of candor – he virtually accepted all of the evidence submitted by the Commission and none by the judge, which he has a right to do. But, for example, he found he had a lack of candor when he talked about Ms. Weiner. Ms. Weiner, just as an example, testified on a hundred and twenty-five occasions I think, that she couldn't remember. That's, that's an astounding number of times to say I couldn't remember for someone who claims they had a clear recollection. And the reason why I mention that is because the hearing officer had got to some level of in his own mind that this judge was simply not telling the truth and that's where the lack of candor comes from. Now, that was his opinion. We respect that opinion. He disagreed. The judge disagrees with him.

And as I said, he testified for three days at an

1 IA. I think if you were to ask Commission counsel
2 how many times have you seen that, not often. And
3 so, you are going to have inconsistencies. And there's
4 going to have times when he testified that he was
5 wrong. For example, his explanation as to what
6 happened with regard to the contempt. Clearly Judge
7 McGuire was out of his depth when he went on the
8 bench. It's pretty clear from this record that he really
9 didn't know what he was doing. And, he came from a
10 small county. I know the judges in that county. In
11 fact, one of the judges has been before you many
12 times before and its, quote, "the way of doing things."
13 Was it right? No, it wasn't right. He had no right to
14 talk to people that way. He had no right to address
15 people that way. But in terms of what he was doing,
16 what he was doing uniformly was what he believed to
17 be, and it is clear in the record, protecting what he
18 thought were the rights of these children. This is
19 something that he felt that the litigants in front of him
20 had not acted properly. Should he have said to
21 someone I'm gonna hold you in contempt because
22 you said something about your son. No. But he
23 didn't know what he was doing. And it was a
24 reflexive action that he spoke in an inappropriate way
25 to people, held them in contempt. By the way, I am

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

not, I wouldn't want to be held in contempt. I wouldn't want to be put in handcuffs for an hour or two hours. But, I think it's important that you understand that nobody spent time in jail as a result of his claim, his anger. There was one person that went to jail –

JUDGE LEACH: – I'm sorry but in a court where the emotions run the highest –

MR. COFFEY: – Right.

JUDGE LEACH: Between family members, mother and child, I was astounded. Forget about the violation of law and not complying with the requirements to hold someone in contempt, but the mean-spirited dialogue, a constant course captured on tape so that you can feel what was going on which was just the most mean-spirited approach to case resolution I have ever seen. He held himself out as a person at issue and whenever anybody said anything that ruffled his feathers, the first thing he would do would say "cuff him." And how do you explain that conduct? And has he had counseling to change that? Has he – it's not just reviewing decisions, I think this is a – he made it personal. He made it about himself and was too quick to deprive these litigants, more often than not unrepresented, from a fair and just

1 resolution of their matter. He would – he would
2 question them and lecture them and lure them into
3 anger that wasn't present, you know, when the inquiry
4 started. So, that type of behavior – they talk about
5 judicial temperament – I don't believe it's one of the
6 codes of conduct, but it is certainly something we
7 look for. And where he has violated the law, I wonder
8 whether or not he's addressed his underlying conduct
9 that resulted in, you know, these egregious
10 circumstances leading to the violation of law. Has he
11 done anything to –

12 MR. COFFEY: – Well I will let him speak to
13 that judge, because –

14 JUDGE LEACH: – Okay. –

15 MR. COFFEY: It's better that he addresses
16 you because I told him this –

17 JUDGE LEACH: Will it relate to some
18 studied course of self-reflection and maybe just how
19 to deal with people or is it, what might he be telling us
20 when he speaks?

21 MR. COFFEY: Well –

22 JUDGE LEACH: – Or do you want me to
23 wait?

24 MR. COFFEY: Well I would rather have him
25 talk about him.

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

JUDGE LEACH: Good. Thank you.

MR. COFFEY: But I will say this, I told him, you, you are not going to get a censure unless you testify in this case. On this record, this panel is going to take you out, make no mistake about it. So, you are going to have to convince this panel as to what you did and your explanation. These, not even allegations, everything you said I would not disagree with. I wouldn't disagree with anything you said. All these acts that were inappropriate was when he first took the bench. Did he have a right to do that? I am not going to keep repeating it. He clearly didn't. They stopped in 2014. He was not advised until 2017 that he was under investigation. So, this wasn't a situation where he got told by the way the Commission is looking at you. You better clean it up. He understood at the time I am wrong. This is a tough court. The Family Court, as you all know, is a very difficult court. It's the most human of all our courts. In the time that he has been on the bench, ten years, and he won't – this is his last year, he won't be running for re-election, he's handled 65,000 cases. These are six cases of misbehavior on the bench in terms of his language with litigants. In five years, there has never been an allegation by anyone, at any time, that he's acted this

1 way. So, if you just take the act and you say well, by
2 virtue of the fact that he held people in contempt and
3 that's enough and then you basically have to ignore
4 what he did, what he's done in the past five years,
5 when there's been no allegations, long before the
6 Commission became involved.

7 He can't come back and right what he did. He
8 can only tell you the basis of what he did and why he
9 did it. He was upset. He lost his temper. He was
10 inappropriate. But he thought that he was acting on
11 behalf of children and he thought the litigants who
12 were in front of him were not acting appropriately.
13 Now, the idea of raising your voice which has been
14 brought by the Commission, I, times have changed.
15 You go back a number of years, it was a normal
16 course of business to go in front of judges. They
17 couldn't speak to you without raising their voice.
18 Now, we have a different concept of how judges
19 should act. I'm not saying it's wrong. I think it's
20 right. If that's the end of the analysis, then the case is
21 over. Because if the idea is well he held them in
22 contempt and I am not going to look at what he has
23 done for the past five years. The fact that he's had a
24 very good record with litigants. Lawyers have not
25 complained about him. And other litigants haven't

1 complained. In Criminal Court, he has not been
2 criticized by the Appellate Courts in his conduct and
3 the Appellate Division on criminal cases.

4 We are asking you, in looking at this, to review
5 what mitigating factors, the aggravating factors and
6 the mitigating factors. The aggravating factors are he
7 acted inappropriately, and he spoke in a way that he
8 should not have. The mitigating factors are that he's
9 always acknowledged this. Now you've had a
10 number of people come before you, judges who've
11 denied conduct which on the record is clear that it's
12 true. He's admitted it. He says he's wrong. He's
13 admitted he's wrong.

14 JUDGE MILLER: Counsel, could we switch
15 gears for just one second? I understand your position
16 with respect to the contempt –

17 MR. COFFEY: – Right. –

18 JUDGE MILLER: – And inappropriate
19 behavior, which admittedly took place many years
20 ago. But what about the conduct relating to the, I
21 think the Commission is alleging unauthorized
22 practice of law (A) and (B) his relationship with this
23 gentleman, an attorney, and not disclosing it or not
24 recusing. Those two things are a different type of
25 misconduct.

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

MR. COFFEY: True. And I am glad you judge, I'm glad you took me off the other subject because what else can we say?

Mr. Kelson – he comes, first of all, he comes from a small county, Sullivan County. It's one of the most rural counties in the State. Everybody knows each other. The litigants know each other. The lawyers know each other. The families are together. They are pressed together. The argument, the first argument by the Commission, well they are friendly, and he didn't disclose it, I can't tell every time I go into a county that I am not from, I'm going to be in Lake George next week in Warren County, I don't know if this judge knows the DA. He might. Do I think he has to tell me, Mr. Coffey, we're friendly, we see each other. I don't think it goes that far. There's never been a claim in terms of practicing law, by the way, and that's important, that anybody ever felt that they got an unfair deal or treated unfairly because of his relationship. So, it's not someone coming in a saying, wait a minute I have rulings against me and I know it's because of his relationship with Kelson.

Kelson represented, he represented his son. You've had – you go back, this Commission, you could find a hundred cases where judges stand up on

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

behalf of their son. And his son had been seriously injured. His – Kelson tried to get a deal in Oneonta. He went to Oneonta. Should he have done it? No. But let’s look at the context of this. Oneonta is three counties away. They don’t even know who he is. He didn’t say I am Judge McGuire, do this for me as a judge. He said, I’m Michael McGuire. I’m his father. Now, should he have done it? No. But he didn’t walk into a court and say, do you know who I am? Do you have any idea who I am? There was none of that.

MR. RASKIN: Mr. Coffey, there was a conference, if I remember correctly listening to the audio tape of – you talking about Judge McGuire’s son’s case?

MR. COFFEY: Correct.

MR. RASKIN: Correct?

MR. COFFEY. Correct.

MR. RASKIN: My recollection is in listening to the tape that the judge called the case in local court. There was a 20-second reference, 20-seconds to the case, it was ACDeD, and he said after speaking with counsel and the DA in chambers. So, is it fair for us to assume that in chambers during the conference that Judge McGuire made aware the fact that he was a judge, especially in light of the prior papers that had

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

been submitted, the affirmation of engagement and the letters on attorney's stationery?

MR. COFFEY: Well –

MR. RASKIN: – Is that a log – can you understand my question? Or –

MR. COFFEY: No, I do. And so, the question is, is it fair? Yes. Is it logical? You could find that. But there's no record of that.

MR. RASKIN: Agreed. It's not on the record.

–
MR. COFFEY: – So, there's a lot of things that could have gone on in chambers. They could have just had a conversation about what's going on. But there's nothing in the record that would support that conclusion other than –

MR. RASKIN: – But he didn't get the ACD with Judge McGuire appearing –

MR. COFFEY: – Right. –

MR. RASKIN: – And didn't get it before that?

MR. COFFEY: Correct. Correct.

MR. RASKIN: Thank you.

MR. COFFEY: He also made a motion on that and I can't, I can't rebut certain possible inferences here. In 900-pages – well by the way I might point this out, they could very easily, the Commission, have

1 called the judge in Oneonta and they called a lot of
2 people and they investigated. I am not denying that.
3 I'm not disputing that they should do it. And then say
4 what happened in chambers. Did McGuire come in
5 and tell you he was a judge to do him a favor? But
6 they didn't, they didn't do that. So, I would say the
7 logic of it doesn't support that conclusion.

8 With the other stuff, Fernandez, and I – these
9 names, there's a lot of names. I didn't handle the
10 hearing. These are local people. And he's calling
11 Kelson, can you take care of it? Is it referring it?
12 You know, I don't know. If a judge tells somebody,
13 call Steve Coffey and, is that a referral if he, if he
14 never calls me? If he doesn't get any money from it?
15 If he doesn't get any benefit from it? I suppose
16 technically it is. You could draw that inference. But
17 you could also draw the inference, I think, that the
18 judge who is making that referral, if you call it that, is
19 saying all I did was call and say would you take care
20 of it.

21 MR. RASKIN: But would you, would you
22 agree, counselor, that when Mr. Kelson appeared
23 before Judge McGuire –

24 MR. COFFEY: – Right.

25 MR. RASKIN: From time to time –

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

MR. COFFEY: – Not adversarial, by the way. There's was nobody – nobody's rights were violated here.

MR. RASKIN: Okay, well I will give you that. But when, when he did appear, would it not be appropriate for remitter, for the judge to explain to whatever litigant or parties were involved, if there was a relationship and do you object, he might say to these folks, to my presiding over this case knowing I know Mr. Kelson?

MR. COFFEY: – Correct.

MR. RASKIN: Would you have suggested maybe that would have been the better practice?

MR. COFFEY: There is no question. But what's interesting is if he had told the litigants I know Mr. Kelson, he's a great friend of mine, we drink, we socialize, which they don't, and we're the best of friends and you are going to get exactly what you are asking for, but would you like to have Mr. Kelson – would you like to have me recuse and get a new judge who may not be friendly? I mean if you take the inverse of that, every person who was represented by Kelson and came into Family Court got precisely what they wanted. And they didn't get what they wanted because of Kelson's influence. These were

1 non-adversarial proceedings. I think they were
2 adoption proceedings. The judge can tell you. They
3 were proceedings where the people came in and
4 orders had already been signed, had already been
5 agreed upon. So, all he did was pass it through. In
6 his mind –

7 JUDGE MILLER: – Counselor, I am trying to
8 understand, you are saying that when Kelson appeared
9 there was really no adversary –

10 MR. COFFEY: – Correct. –

11 JUDGE MILLER: – To Kelson? –

12 MR. COFFEY: – Correct. –

13 JUDGE MILLER: – That it was either an
14 adoption or a matter and therefore who would have
15 even made the disclosure to?

16 MR. COFFEY: He could have made it –

17 JUDGE MILLER: – The parties?

18 MR. COFFEY: – The parties.

19 JUDGE MILLER: Who Kelson represented?

20 MR. COFFEY: Correct. Who were getting
21 exactly what they wanted.

22 JUDGE MILLER: And they would have been
23 out of their mind to say I object, basically?

24 MR. COFFEY: It's like I thought it was wrong
25 in his argument and you said that's enough, Mr.

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

Coffey and I kept going. It maybe, but I think you said enough. He'll tell you that. But in his mind, it wasn't something that he was doing Kelson any favors. He wasn't taking care of Kelson's clients.

MR. RASKIN: It's an appearance aspect. I am not suggesting that Judge McGuire did anything wrong or illegal for Mr. Kelson. It's the appearance that, that appears to be repeating itself a number of times. But, thank you and I am sorry that I interrupted Judge Miller.

MR. COFFEY: No, that's fine. And you are right about that. But these all stop in 2015. Because in 2 – from 2011 to 2018 the funding for judge schools was, was eliminated in the third, in that district, in the Third Judicial District. I think it started again in '18 or '19. He came in in 2011. They had a one week or a couple day seminar. You walk in and said hi. You are now a judge. Congratulations. You are making a lot more money. They don't tell you that. But that's the, that's the thrust of it. And you are going to be in county court or family court, whatever. –

JUDGE MILLER: – So he was admitted in, maybe this is a silly, he was admitted in '02?

MR. COFFEY: Right.

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

JUDGE MILLER: And he became a judge in '11. I thought you needed to be on the bench ten years? For the courts, he was elected to, he didn't need to be on the bench –

MR. COFFEY: – No, I don't think so.

JUDGE MILLER: You need to be a member? Didn't you need to be admitted to the Bar for ten years? –

MR. COFFEY: – I don't know, judge –

JUDGE MILLER: – At least in New York City. Not there?

MR. COFFEY: I can't answer that.

JUDGE MILLER: Okay. Because I was wondering, cause it seems like you hadn't even been admitted for ten years at the time he –

MR. COFFEY: – You know what, it's like those are the questions you are going to guess, a question at an oral argument –

JUDGE MILLER: – Okay. –

MR. COFFEY: – That you never, you won't anticipate. I can't answer that.

JUDGE MILLER: That's fine.

MR. COFFEY: But no one's claiming he shouldn't have been a judge.

JUDGE MILLER: No, no, no. I was just

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

curious. Just –

MR. COFFEY: – So, he gets on the bench and now he's, he's dropped out of the plane and you are now a judge. There's no training. And he goes on for eight years and finally in, I think 2014, '15, he can tell you, he begins to get training. He begins to look at things. People start telling him the way that he should act now. Did he know that he shouldn't act as a lawyer, as a judge? Yeah. He knew he couldn't practice law.

JUDGE FALK: So, Mr. Coffey, with respect to that, when he testified he had reasons for what he did or disagreed with certain testimony but, are there any mitigating factors of why he represented his son? He knew at that point in time that he could not be counsel. He made an appearance. He filed an affidavit. He filed a motion. He sat through a conference. Are there any mitigating factors that you want to consider with respect to him being engaged as a counsel for his son?

MR. COFFEY: Well, I can answer that if you give me two minutes to give you a story. Is that – In 1961, Kennedy got in a fight with the steel barons and he rolled back the prices. And a week later he was at a press conference and they asked him a question.

1 You know, President, you forced the steel company to
2 roll back the prices. Yesterday your father raised the
3 rents of the poor people in Chicago. What do you
4 have to say about that? And he said, what do you
5 want me to say? He's my father. It's his son. He
6 shouldn't have done it. He was wrong. He acted on
7 behalf of his son. He didn't walk in and say, I'm
8 Judge McGuire, take care of my son. How great is
9 that sin? So, analogously that is the mitigating
10 circumstance. It wasn't like he was, every time he
11 had a friend coming in, he was going, you know, on
12 their behalf. There's been a finding on that. He's
13 never denied that. He said he shouldn't have done it.
14 He went too far.

15 Now, that, there may be other issues regarding
16 the – his private secretary, Ms. Weiner. They had a
17 contentious relationship at the end. She claims he
18 threw something at her. I can't tell you he didn't. He
19 says he doesn't believe he did. The hearing officer
20 obviously found on her behalf. I don't think raising
21 your voice to a, an employee is, it may be actionable,
22 but I don't think it's removable. If you were to take
23 all the sexual harassment training, which we've all
24 had, we are told, we are told many times, you cannot
25 sexually, obviously make sexual references to a, an

1 employee. But if you raise your voice and it's not a
2 great workplace, that is not actionable in terms of
3 misconduct. He denies, in fact many of his employees
4 had a very good relationship with him. You do not
5 have serial employees coming in testifying that he
6 treated them badly. In fact, many of these employees
7 said he treated us very well. We liked working with
8 him. He's hard working. What's, what's the
9 mitigating factors? He works 6 till 6. He takes very
10 little time off. He expects attorneys to be prompt. He
11 expects them to be on time. He expects them to be
12 prepared. And he's prepared. This is not a judge
13 walking in telling you or somebody telling you he's
14 lazy, he's inefficient, he, he abuses other people in
15 court, he abuses lawyers. There's none of this. And
16 all this stops in 2015. So, what you are being asked to
17 do is to roll back a five-year period and look at
18 conduct back then and say we are going to remove
19 him even though the record supports the fact that for
20 the past five years, and even in that period of time in
21 many ways, he was an exemplary judge.

22 MR. HARDING: Mr. Coffey, if we got the, if
23 we were sitting in a hearing in 2016 –

24 MR. COFFEY: – Right –

25 MR. HARDING: Do you think it would be a

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

removal case?

MR. COFFEY. Yeah. Yeah, it would be.
Yeah. If you sat in 2015 or '16, yeah it would be.

MR. HARDING: Thank you.

MR. COFFEY: You look at this record and say, you know what, what do we expect? We want people who have sinned, to use that phrase. And they work on their behavior if they've got a bad temper. Judge, as you pointed out. And if he's yelling at people and then stops – you have to look at the whole person. Otherwise, why not just stop the clock? Those last five years, he has been a very, very good judge in Sullivan County and the Commission doesn't dispute that. They simply say go back to that period of time when he wasn't a good judge.

MR. HARDING: You sort of alluded to that fact that he may not, he's going to do his term and not run for re-election?

MR. COFFEY: Yeah. He has to get his nominating petitions out in February and he's not going to do it. So, he's not going to run again. So, why is he fighting this? Because of his name. Because he feels that while he was wrong, he should not be removed.

JUDGE LEACH: Was there any evidence

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

before the referee as to his good conduct over the last five years or are we just saying that there's an absence of complaints?

MR. COFFEY: Judge, in terms of the, the testimony, I'm going to have the judge answer that if I can. Certainly, however, in the absence of any claims to the contrary, in terms of the logic and finding something, you can find that there were no complaints. The Commission, it's a bad expression, you can't have it both ways. But if you take the idea that the Commission did a thorough investigation, which we do, then you have to logically infer, if not presumptively, that they've talked to people in that county for the past five years. What kind of a judge has he been? We know that. They, they talk to virtually every person involved with him who had been involved in his court, co-judges, lawyers, staff. Virtually anybody who touched Judge McGuire, who he touched, you, they spoke to at some point in time in the past couple of years. And this, this was a long investigation. This investigation didn't just go a couple of months. This, they took some time on this. They were concerned. They should have been. They talked to people. Because what they wanted to know is what's going on up there now. Have we got a

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

problem now? Is this the way he's treating people now? Is this, what he's practicing law now? Because I think at that point they would have accelerated their investigation. But they knew it wasn't the case. They knew they had someone who had had a bad history and had corrected it.

With regard to the NRA, he, he held it, if, he either held it during the week. Think about what happens here. If he holds the NRA or the gun applications during the week, then his calendar doesn't get done. It's a classic Catch-22. But if he holds it on the weekends, then he's asking his secretary, who he says will tell you, Ms. Weiner, he gave her Fridays off. I don't know what they're, if the allegation of the Commission in its core is that he was protecting the NRA or acting on behalf of the NRA, which he wasn't. Or he's working the weekends. He wasn't performing a judicial function. He didn't even have to do this stuff. He could have said to people, you know, we'll get to it later. And then in some of your bigger counties, these gun applications, I don't know how many people here have a gun permit, it can go a year, two years because a judge –

JUDGE MAZZARELLI: – But doesn't it trouble you though that the judge's response to the

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

allegation regarding the hearings being held at the NRA dinner wasn't his idea? It was his secretary's idea. She – he does what she tells him?

MR. COFFEY: I don't think judge –

JUDGE MAZZARELLI: – Is that quite, is that what we're supposed to believe? She has this idea that he thinks is wrong, but he does it because it's her idea?

MR. COFFEY: Well, I wouldn't necessarily agree with the a, the premise of your statement. He thought she said why don't we do it over there. He said fine, that's okay. He thought, I've got a choice. If I do it during the week, my calendar is not going to get done cause these take a while, people come in. And everybody, again, in Sullivan County kind of knows each other. So, he handed them off out of the courthouse and people got their gun permits and he, and he talked to them. And no one got abused there. So, would you take, would you remove him for that? I don't think so. And again, I don't, there's no claim that he was touting the NRA. He went to their dinner I think, but again it's –

JUDGE MAZZARELLI: – Well, he said it was Ms. Weiner who organized the dinner?

MR. COFFEY: Well, Ms. Weiner, had a lot of

1 times when Ms. Weiner was asked questions and said,
2 well as I said a hundred and twenty-five times, that's a
3 lot. You go to a trial and you have a witness get on
4 the stand and can say specifically and clearly, A, B, C.
5 But what about D, E and F? Ah gee, you know, that's
6 kind of vague. I'm really not sure about that. Her,
7 she clearly doesn't like him. Her testimony from our
8 perspective was tailored. I'm not claiming she's
9 lying. I am saying her testimony was tailored to fit
10 what her recollection was. I wouldn't call her a liar. I
11 never saw her. But, it's clear that at questions that
12 either annoyed her or distressed her, she reverted to
13 the position of, I can't recall. And that's virtually
14 impossible to overcome that.

15 MR. RASKIN: Does that not tell you, Mr.,
16 counselor, that, Mr. Coffey, that if she was tailoring it
17 she wouldn't, she did a poor job?

18 MR. COFFEY: Well, we are here. So, I
19 wouldn't say that.

20 MR. RASKIN: But, let me ask you –

21 MR. COFFEY: – If she did a really poor job it
22 wouldn't be, you wouldn't be faced with a finding.

23 MR. RASKIN: Let me ask you, you, I take
24 issue with you, you made reference to a comment
25 when you first began that Judge McGuire was out of

1 his league. And in reading some of the cases and
2 listening to some of the audio tape, I found he knew
3 exactly what was going on. I think he spoke to the,
4 some of the litigants dispassionately, intelligently,
5 told them what their rights were. And I am troubled
6 by one of the cases where that occurred. And that was
7 the matter of the R [REDACTED] case. Mr. R [REDACTED] was
8 incarcerated. There appeared to be, from my
9 recollection of the audio tape, a calm explanation by
10 the judge to Mr. R [REDACTED] of his rights and when he
11 denied without prejudice the petition. Mr. R [REDACTED]
12 appeared without counsel. He then said calmly, "Can
13 you recuse yourself from my case please and find
14 another judge? I know your son." And Judge
15 McGuire yells, "Come here. Bring him back here."
16 He says that twice. "You have thirty days judicial
17 contempt on top of whatever you got. Open your
18 mouth again" and then screams, "You're threatening
19 my son. Are you threatening my son?" Mr. R [REDACTED]
20 says, calmly says, "No." And the judge says again,
21 "Officer, this gentleman just threatened my son.
22 You've got thirty days." I had trouble with that
23 because of the absolute calm, deliberate expression
24 and instruction from Judge McGuire before the son
25 reference. I've got kids, so I understand the Kennedy

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

reference.

MR. COFFEY: Right.

MR. RASKIN: So, could you help me out with that?

MR. COFFEY: I hope so. And I am glad you are asking that question, because I asked the judge about that. When you read this record you say what were you thinking? He thought this person was in a gang and he thought there was a subtle message about your son. Now, whether he's right or wrong, who knows. He was wrong to react the way he did because, just because you say your son, I am going to hold you in contempt. But that was his thinking. And as you point out, he was calm and there were other circumstances.

When I say he's out of his depth, I could hand – I could hire an associate who works hard, who tries his or her best, but some days just goes off the rails and you talk to that associate or somebody, say listen, I understand your work is good, but you've got to get control of yourself. You, well, you know, I've never done this kind of work before. This is new for me and it's really frustrating. He was frustrated. Worried he's out of his depth, he never knew enough. He should have talked to someone and say what's going

1 on. And he will tell you he came from a county
2 where, I don't know if this was accepted, but to say
3 it's the norm, I think may be too harsh. But that's the
4 example in which he would tell you that why he said
5 this about the gentleman, thirty days. But he was
6 wrong.

7 MR. RASKIN: Thank you.

8 MR. COFFEY: He was just wrong. I mean,
9 there's no other way to put it.

10 MR. HARDING: Thank you, Mr. Coffey.

11 MR. COFFEY: Thank you.

12 MR. HARDING: Judge?

13 JUDGE MCGUIRE: Good morning. Thank
14 you for hearing me this morning. I spent seventeen
15 years as an educator before going to work in the
16 private sector, going to law school at night while I
17 worked. I practiced law and then ran for judge. To be
18 a county court judge, it's five years, not ten. And I
19 want to primarily respond to the inquiries that you've
20 had to this point.

21 Let me start with Mr. R [REDACTED]. Mr. R [REDACTED] is a
22 ranking member of the Bloods. I know that because I
23 sit in County Court. Mr. R [REDACTED] had been convicted
24 at least four times of criminal contempt. He was in
25 jail at that time for crushing the skull of the mother of

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

his children. There's no doubt in my mind as I sit here today, even at the risk of you not finding me credible, that the message he sent to me was I know your son and we can get to him. There's no doubt about that in my mind. That's the way gangs function. And why do I say that? Because Mr. R [REDACTED] had appeared before me numerous times, never raised that issue. After his case was dismissed and he was being taken back out did he then say I know your son. I responded passionately and improperly. And that by the way of segue.

I took the bench in 2011, committed to trying to make change and committed to children. Sometimes in Family Court, you sit and preside over sixty, seventy, eighty cases in a day. And very often we deal with the same issues. In 2019, nine people who appeared before me as parents of children, multiple children, died of drug overdoses. Sullivan County, one year, one judge, nine. Regrettably ten actually died. The tenth one was the one that went through treatment, got her life together, was in a healthy relationship and she contracted a very aggressive form of cancer and passed away after only knowing about it for about two months. We deal regularly with parents that abandon children; parents

1 that are given visitation and won't show up; parents
2 that allow their children to miss a hundred or more
3 days of school in a year; parents that don't provide
4 children with adequate food shelter and clothing. And
5 when you are dealing with forty, fifty, sixty, seventy
6 cases in a day – I'm human. There were frustrations.
7 And at times those frustrations boiled over and I was
8 wrong.

9 I spent a whole career as a teacher and coach.
10 And after every game I would evaluate our
11 performance. And every day to this day, and as long
12 as you'll allow me, my hope is for the next eleven
13 months, I get off the bench and I evaluate what I did
14 and how I did it. And as I went through the first
15 couple of years, frustrations built, and I didn't
16 recognize it. Then 2012, '13, '14, there were
17 instances of inappropriate conduct. I am not talking
18 about several times a day. We're talking about a time,
19 three or four months, another instance. If you were to
20 speak to those litigants they would tell you I submit
21 that, and they didn't testify it's not part of the record,
22 they would tell you I submit, that they recognize that
23 my focus was on the good of their children. The
24 K█████'s for example, mentioned by Mr. Levine,
25 contacted the court, wanted to come down here.

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

JUDGE LEACH: I am sorry, sir. Do you believe you are suited for an assignment in the Family Court, continuing assignment in the Family Court?

JUDGE MCGUIRE: Judge Leach, I absolutely do, and I will tell you why. You were blocked by the television where I was seated so I didn't get a chance to see you earlier. As I went through and had these experiences and was unhappy with the way I handled things, I sought out counsel. I have undertaken some counseling or have had people, someone that I could talk to. I have attended retreats –

JUDGE LEACH: – Is any of that part of the record before us?

JUDGE MCGUIRE: I believe I testified to that. We didn't really talk a lot about mitigation. But I believe in my testimony that I talked about that. I've gone, I go twice a year to Camp Pinnacle in Voorheesville, New York for a retreat where I get a better handle on myself, on my own emotions, on my own passion. Judge Meddaugh, who is the Fam – elected Family Court judge, he is a member of the committee, Judicial Advisory Committee, Judge Marlow's committee. I speak with him regularly. He testified at trial. He testified at trial that he never had any issues with me, never heard me raise my voice.

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

But I did raise my voice. I do use my voice for inflection, regularly. Not anymore. But I have done a great deal of soul searching, starting really in 2013, '14, '15. The last incident was December of 2014. And that's the last incident. They'll never be another incident. And I have handled the same cases in the same courts and there will never be another incident. I have gotten a better understanding of taking a break. Give myself time to gather when I feel that emotion build up and that's what we've done. And there will never be another incident with – where anybody would question my temperament at all. So much so that in September there was a murder trial that I presided over, and they elected for a bench trial. Both the DA and the defense had to agree to it. Defense had to make the application. Because they know how hard I work. They know about my temperament and they know that I had to address the issues that were represented by six instances.

And I can tell you that I was under a microscope for two years and I didn't even know it. From '15 to '17, I was under a microscope and didn't know it. Commission sent an investigator. There's information that's not on the record because we weren't permitted to call him because his observations

1 didn't relate to any charges. So, we were not
2 permitted to call him. We were not permitted to, we
3 were permitted to call a couple of character witnesses.
4 We called Judge Meddaugh. We called my now
5 former secretary because of my circumstances she's
6 gone to work for another judge. She needs better
7 security. My court attorney, the Chief Clerk of the
8 Family Court, they all testified. They all testified that
9 I start my work day at 3:30 in the morning and I rarely
10 leave the courthouse before 5:30 to 6:00 at night.

11 MS. GRAYS: Judge McGuire?

12 JUDGE MCGUIRE: Yes?

13 MS. GRAYS: I'd like to move on to the next
14 charges –

15 JUDGE MCGUIRE: – Yes. Yes. –

16 MS. GRAYS: – As it relates to your practicing
17 law –

18 JUDGE MCGUIRE: – Yes, ma'am. –

19 MS. GRAYS: – While you are still a judge. –

20 JUDGE MCGUIRE: – Yes. –

21 MS. GRAYS: – Can you please address that
22 and why you did that?

23 JUDGE MCGUIRE: Yeah. Let me take up the
24 issue of my son. So, my son and three of his friends
25 had come back from a soccer game and a university

1 police officer came and found a burning remnant of a
2 marijuana cigarette in the lawn on the Triangle at
3 SUNY Oneonta about twenty yards away from him
4 and they arrested all four of them. My son called me.
5 I said to him, W■, you are entitled under Criminal
6 Procedure Law to an adjournment in contemplation of
7 dismissal. Your record is completely clean. That is
8 absolute law. So, go in there and that's what you ask
9 for. He called me the night of the court appearance
10 and said, well the other three hired a local attorney
11 and they are all pleading guilty because they don't
12 give ACDs. I related that story to Mr. Kelson and just
13 relayed the story to him because I didn't know what to
14 do.

15 And he then on his own initiative, and that's
16 testimony, made a phone call and said to me yeah
17 that's right, they don't, they don't ACD them. To Mr.
18 Raskin's question, when we went into chambers it
19 wasn't ACD'd. It was never ACD'd. The judge up
20 there never followed the law. Ever. He wound up
21 granting a Clayton motion and dismissed it in the
22 interest of justice after I made a motion. It was
23 foolish of me to do that. I testified in the investigation
24 that at that time, and I should have been more careful.
25 You can give legal advice to your family, you can

1 represent yourself. I misread that. That was my,
2 that's where I offered during my investigation. I was
3 wrong. I could not represent my son. I went because
4 the ramifications of a UPM even conviction at that
5 time would be put out of the dormitory. He is in his
6 junior year of college and I was wrong. –

7 MS. GRAYS: – Judge? –

8 JUDGE MCGUIRE: – I never represented that
9 I was a judge. I never even went with ID. I went
10 without a wallet so that I wouldn't show judicial ID. –

11 MS. GRAYS: – Judge McGuire?

12 JUDGE MCGUIRE: Yes?

13 MS. GRAYS: Can we move on to the other
14 cases?

15 JUDGE MCGUIRE: Yes. I'm sorry.

16 MS. GRAYS: The Matisko and Moore and
17 Pagan and –

18 JUDGE MCGUIRE: – Yes. –

19 MS. GRAYS: – And Lockwood?

20 JUDGE MCGUIRE: Yes. Okay. So –

21 MS. GRAYS: – Any explanations for those?

22 JUDGE MCGUIRE: So, Pagan was a case that
23 began while I was still in practice, in 2010. It
24 involved the purchase of a piece of property for
25 \$5,000. There was never a fee. Mr. Pagan is

1 someone in the community that I had known. We –
2 he paid them \$5,000 – it was \$8,000 purchase. He
3 paid \$5,000 to get it out of tax foreclosure. We did a
4 mortgage. He had to come up with the other \$3,000.
5 Closing up the office, this was not a significant case.
6 It just was kind of in a dead file. He called me a year
7 later and said, I've got, and I drafted all of the
8 documents in 2010 because we thought he was going
9 to have the \$3,000, everything was drafted. When he
10 called me and said he had the money, my wife who
11 was my office manager went to the storage unit,
12 pulled out the documents and mailed them to the
13 seller along with the check, to sign. The documents
14 came back. They went to Mr. Pagan. That was
15 Pagan.

16 Moore was no good deed goes unpunished. I
17 don't mean to be cavalier. They're the in-laws of a
18 very close friend of mine. They were buying a home
19 in foreclosure. They didn't want to hire a lawyer.
20 They knew the home. They knew the neighborhood.
21 It was a couple of doors down from where they had
22 lived for forty years. My wife at the time worked for
23 a title company. I said, look it's a foreclosure. You
24 need to review the contract very, very carefully
25 because foreclosure contracts are very tight, and the

1 closing date is usually days not weeks. I said they
2 should get a home inspection. My involvement, my
3 wife handled the title. They asked if my, if I could
4 review the contract. I said I could not. I offered my
5 brother to review the contract, who is a practicing
6 attorney. I hand carried the contracts in a plain brown
7 envelope to my brother and never looked at them. He
8 reviewed them. I dropped them off at their home.
9 They signed them. And I got involved in some emails
10 back and forth as they were trying to get the home
11 inspected. It was wrong. I dipped my toe into a lake
12 that I should not have. And I wound up up to my
13 neck in the thing. In testimony, I was found to lack
14 candor. On the emails, frankly those emails that were
15 sent I had no recollection of having sent them. But as
16 I was presented with evidence, it was clear that I had
17 drafted one or two or more of those emails to the
18 realtor dealing with getting the home de-winterized so
19 that the home inspection can happen. I was wrong.
20 That will never happen again.

21 MS. GRAYS: Are we out of time?

22 MR. HARDING: Yeah. Just about maybe
23 another minute, if you want to address one more
24 minute of questions. Then we are going to have to
25 conclude your portion. Any questions to

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

Commission? Mr. Raskin?

MR. RASKIN: Why didn't you call your brother?

JUDGE MCGUIRE: Okay. I was deathly afraid of this process. I didn't think that my brother was going to be found any more credible than myself or my wife. My wife testified to everything that my brother could have testified to. And my fear was that coming in here to testify, and maybe it's an illogical fear but it's a fear, that somehow some kind of referral of him lacking candor goes to the Grievance Committee and he winds up in trouble. I'm prepared to take whatever sanction it is. My brother, when I closed my office, took on *pro bono* seven or eight clients that I knew couldn't afford to hire an attorney. They're – they owed me over \$10,000 each and I knew that there was no way in the world that they would be able to hire competent counsel. So, my brother agreed to take those cases for free.

MR. RASKIN: Thank you.

JUDGE MCGUIRE: So, that's why I just feared that I didn't want to get him entangled in potential discipline problems.

MR. HARDING: Thank you, Mr. McGuire.

JUDGE MCGUIRE: Anything else?

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

MR. HARDING: No, you are all set.

JUDGE MCGUIRE: Thank you.

MR. HARDING: Thank you. Mr. Levine?

MR. LEVINE: So, thank you. I'd just like to address a couple of these matters. Respectfully, Judge McGuire is still not telling the truth. He testified at the hearing that he absolutely knew in 2013 that he was prohibited from representing his son. –

JUDGE MILLER: – Counsel, can I ask you –

MR. LEVINE: – Yes?

JUDGE MILLER: Can I ask you, if all we had was these instances of the practice of law, what would be the appropriate sanction?

MR. LEVINE: Just the practices of law?

JUDGE MILLER: Yeah. These – we just went over the real estate thing, we went over the three or four that you have in your complaint that you just acknowledged, and he explained.

MR. LEVINE: And with – and as well which we didn't discuss which was him representing his wife and asserting the prestige of judicial office –

JUDGE MILLER: – What would be the sanction?

MR. LEVINE: I would say that based on your recent Edwards decision, if just that, would be

1 between a censure and a removal in light of what you
2 have just ruled. But you throw on top of all that
3 which had just been ignored and I think what Judge
4 McGuire significantly commented upon I think you
5 need to know. Okay. Judge, the referee presiding
6 over this case found lack of candor. Judge McGuire
7 just acknowledged to you, okay, one of the findings of
8 lack of candor was Judge McGuire's testimony was
9 he played no involvement in the Moores' case, except
10 to refer – tell him to get an attorney and to have –

11 JUDGE MILLER: – Which one was the
12 Moores' case?

13 MR. LEVINE: The Moores' case was the
14 purchase of the foreclosure property by the daughters
15 and it involves four of the five findings of lack of
16 candor. He even told you, I sent some emails to the,
17 to the seller. In fact, one of the findings of lack of
18 candor was he testified, Judge McGuire, before the
19 Commission that indeed he sent the 3:47 AM email
20 regarding this matter to the seller, excuse me, to the
21 broker in this case. Just admitted to you that he did it
22 now. Okay? So, –

23 JUDGE MILLER: – But counselor, is that
24 really, I mean, is that, I mean when you, when you
25 practice law in connection with a real estate matter

1 you review the closing –
2 MR. LEVINE: – Oh, there’s more. –
3 JUDGE MILLER: – You review the contract.
4 You attend the closing. I mean, is that really –
5 MR. LEVINE: – Well –
6 JUDGE MILLER: – I mean, clearly, he did
7 something.
8 MR. LEVINE: So, here’s the thing. You
9 know it’s comes up in a cover up –
10 JUDGE MILLER: – Counselor, if you have to
11 review it, I’m just saying that it doesn’t seem like he
12 did all that much. He says he walked – is there any
13 evidence that he reviewed, commented, made notes –
14 MR. LEVINE: – Yes. Here’s the evidence that
15 we have –
16 JUDGE MILLER: – And negotiated – let me
17 ask you the question first.
18 MR. LEVINE: I’m sorry, judge.
19 JUDGE MILLER: Is there any evidence that
20 he negotiated the contract and changes were made
21 based on the negotiation?
22 MR. LEVINE: Here’s the evidence that we
23 have. We have a situation where the sellers testified
24 contrary to, which was credited by the referee who
25 saw and heard the witnesses, that Judge McGuire

1 delivered the contract to their house, explained the
2 contract to them, had them sign it in a particular area
3 and then retrieve the contract. Okay. All of the email
4 addresses involved in this matter were
5 judgemcguire@ [REDACTED]. All of the telephone
6 numbers that were given here supposedly Ken
7 McGuire was involved. I ask you this question to put
8 on your commonsense hats if Ken McGuire was really
9 involved in this case you would have to believe that
10 he would give his own telephone number to someone
11 involved. But it was the judge who gave – these
12 emails gave his own number. It doesn't pass the
13 laugh test. All right. Each and – the same finding
14 with that he didn't refer any cases or give any cases to
15 Zachary Kelson. It's patently not true. Before your
16 referee in 2019, he was not truthful. And to say that
17 there is an allegation of bias that Mr. Coffey alluded
18 to or for all intents and purposes it's just ridiculous.
19 There, there isn't any support for that.

20 I would also go back to say that this argument
21 that this is a small town and that everybody knows
22 each other – in Matter of Young you rejected that
23 argument. Here, just because you are even in a small
24 town, this was more than just hey we know each
25 other. They had lunch all the time. They had detailed

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

conversations –

JUDGE MILLER: – Counsel, is it, is it, is it an accurate statement that all of the matters that this friend came before him were not adversarial in nature? They were not –

MR. LEVINE: – No. And in Matter of Doyle you held that the mere – you reject –

JUDGE MILLER: – Which cases was there an adversary?

MR. LEVINE: There was a case where there was a search warrant had to be signed. There was a case where there was an oral argument. I can give you the names. They're in the record. But here's what you have to understand, Matter of Doyle, the Court of Appeals – you found, and the Court of Appeals as well, that it doesn't matter that if it's a ministerial matter or not. Some of these were before court attorneys. The fact is it's that there is a potential conflict that that has to be disclosed in any way. It doesn't, that was rejected, that it may have been a *de minimis* appearance. The fact is that he didn't disclose it. And he knows he should have disclosed it and –

JUDGE MAZZARELLI: – Well if there's, if there was no adversary –

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

MR. LEVINE: – Oh, there were adversaries.

JUDGE MAZZARELLI: To whom would he disclose?

MR. LEVINE: Well, there were conferences before the court attorney and he didn't direct the court attorney to say, hey, you know, there is this, this is here. There was, there was one instance where a warrant was signed. There was another instance where there was oral argument in an election case. But, as I am telling you, the precedent is clear. –

JUDGE MILLER: – What do you mean a warrant was signed?

MR. LEVINE: There was a – excuse me, a subpoena. Excuse me. A subpoena had to be signed in connection with the matter. But again, remember –

JUDGE MILLER: – It wasn't disclosed to what –

MR. LEVINE: – Right, whoever –

JUDGE MILLER: – Who is the other side?

MR. LEVINE: There, there, there are nine different cases that are involved. Sometimes the county. Other places. Each case had an adversary. All you had to do was disclose it. There were also, there were – he was attorney for the child in numerous cases. Okay. All of those things were ongoing

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

litigation that didn't end in 2015. Okay.

The other thing you should know is that in 2015, the Office of Inspector General, this is in the record, from the testimony from Judge McGuire by his attorney questioned him about the Wendy Weiner incident. Okay. That's in the record. Okay. So, he knew at that time that people were looking into him. Okay. So, just to understand that this is not just something that came out of the blue. All right. That that was there. It was in the record and I submit to you that the totality of these circumstances, okay, didn't just end here. He testified –

JUDGE MILLER: – Counselor, Mr. Coffey made a representation, I forgot exactly, he said that the secretary stated a hundred and twenty-five times or something, some extraordinary number, that she did not recall. Is that an accurate representation?

MR. LEVINE: I think that that's not entirely accurate. A lot of it is based on their attempts to try to introduce testimony –

JUDGE MILLER: – Did she, did she so state that hundred and twenty some odd times?

MR. LEVINE: I don't know the exact number. I will tell you this, in a case with this number of witnesses, the trial which was twelve days here, the

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

referee really saw who testified. And the best thing I could say is that when – you don't have to defer but if there is a case where deference is necessary, here is where it is. He saw her. He heard her. He also saw and heard the judge and could weigh those things. But I will tell you that –

MR. HARDING: – Mr. Levine, I'm going to have to have you wrap it up.

MR. LEVINE: Okay. So, based on the totality of what we have here including the misconduct up to this day and lying to your referee requires the judge to be removed. Thank you.

MR. HARDING: Thank you very much. This concludes the hearing. Thank you.

MR. COFFEY: Thank you very much.

JUDGE MCGUIRE: Thank you.

MR. HARDING: Thank you.

(Whereupon the oral argument was concluded at 11:58 AM.)

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

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 January 23, 2020.

Dated: February 28, 2020



JACQUELINE AYALA