STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

MICHAEL F. McGUIRE,

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

RESPONDENT'S PROPOSED FINDINGS OF FACT AND POST HEARING SUBMISSION

Dated: October 2, 2019

Respectfully submitted,

Michael F. McGuire, Pro Se
Benjamin Ostrer, of counsel

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CHARGE XII

Penal Law §265(10), §400 (3)(a), §400 (4), §400 (4-a), §400 (5), §400 (12), (13),

Factual Background

1. Judge Michael McGuire was elected November 2010 County Court Judge and Surrogate and assumed the position January 1, 2011 (R. 2188)[1].
2. Judge McGuire was admitted to the New York State Bar in 2002 (R.2180, R. 2183).
3. Prior to taking the bench, Judge McGuire served as an Assistant District Attorney in Sullivan County from 2002[2] until 2004, and was in private practice from 2004 until 2010 (R. 2183, R. 2185). There is no record of discipline during his practice of law.
4. Until assuming his duties as a Judge, he maintained an office at [redacted] (R. 2185). The email address at the law office was Mike-Law@[redacted] and the phone number was [redacted] the fax) (R. 2060 – 2061, R. 2554 - 2056).
5. In response to a complaint, the Inspector General of the Office of Court Administration commenced an investigation concerning Judge McGuire's treatment of Wendy Weiner, his confidential secretary.
6. The Inspector General's issued a report on March 26, 2015 (R. 2429).
7. Judge McGuire became aware that the Inspector General was conducting an investigation into the complaint of Wendy Weiner when he was contacted by an Investigator by telephone (R. 2430).

[1] Judge McGuire currently is assigned approximately 50% of the Sullivan County Family Court case load and a portion of the Sullivan County Supreme Court case load (R. 2201 - 2204).
[2] Judge McGuire began working at the Sullivan County District Attorney's Office in 2001, prior to admission to the New York State Bar, pursuant to a Judicial Practice Order (R. 2183).

8. Judge McGuire provided a statement to Inspector General in White Plains on April 5, 2015 (R. 2429).
9. In April of 2017 Judge McGuire received notification that the Commission had commenced an investigation relating to his judicial conduct. (R. 2300, R. 2698).
10. Judge McGuire appeared before the Commission in June of 2017 (Transcripts of Deposition in evidence).
11. A Notice of Formal Written Complaint and Formal Written Complaint (Complaint hereafter) dated August 27, 2018, was served upon Judge McGuire containing thirteen (13) charges (R. Complaint).
12. The charges in the Complaint cited instances of alleged misconduct conduct during and between 2011 through 2016[3] (R. Complaint).
13. A hearing in this matter was held at the Commission Offices in New York, New York on May 6, 7, 8, 9, 13, 14, 15, 16, 17, 20, 21, and 22 of 2019.

Proposed Findings of Fact as to Charge I

1. The matter of *R[redacted] R[redacted] v. J[redacted] C[redacted] O[redacted]* appeared before Judge McGuire in his Family Court part on December 18, 2013 (R. 1152).
2. Mr. R[redacted] was seeking to modify a prior Order of the Family Court regarding parenting time (R.2300 - 2302), the matter was dismissed on procedural grounds (R. 2302).

[3] Charges I through X, and Charge XII concerns conduct from 2011 through January 14, 2015. Charge XI concerns conduct from 2011 through December of 2016 as to Zachary Kelson only, otherwise the alleged conduct concerns 2011 through 2014. Charge XIII alleges conduct from 2011 through 2015.

3. On December 18, 2013, Mr. R[redacted] was incarcerated in the Sullivan County Jail pending transfer to the New York State Department of Corrections (R. 461, R. 1780 – 1781, R. 2301 - 2305).
4. Mr. R[redacted] had appeared before Judge McGuire in both County and Family Court (R. 2298, R. 2447).
5. Judge McGuire held Mr. R[redacted] in Summary Contempt on December 18, 2013 (R. 2304 - 2305).
6. Judge McGuire imposed a sentence of thirty (30) days (R. 2452), which was served concurrently with his State prison sentence (R. 2451).
7. Judge McGuire improperly issued a contempt finding against Mr. R[redacted]

Proposed Findings of Fact as to Charge II

1. The matter of *People v. M*[redacted] *G*[redacted] appeared before Judge McGuire on August 28, 2013, in Sullivan County Court (R. 907).
2. Ms. G[redacted] appeared on August 28, 2013, for sentencing as a result of a failure to abide by the conditions of a Drug Court agreement, there was an agreed upon sentence of incarceration (R.908).
3. At the time of the appearance the defendant was represented by Jared Hart, Esq., (R. 907).
4. Judge McGuire held Ms. G[redacted] in Summary Contempt (R. 923).
5. A thirty (30) day sentence was imposed (R. 922 - 923). A sentence which was served concurrently with her State prison term (R. 928, R. 2316).
6. Judge McGuire improperly held Ms. G[redacted] in contempt.

Argument/Mitigation as to Charges I - II

Judge McGuire admitted holding Mr. R[redacted] and Ms. G[redacted] in contempt without providing a warning and without affording them an opportunity to purge or apologize (R. 2452 – 2453, R.2462 - 2463). Judge McGuire testified that he does not treat litigants in this same manner as he did – "[…] today I would do it differently. Today I have done it differently many many times." (R. 2464). Judge McGuire further admitted that his conduct during the sentencing of Ms. G[redacted], in 2013, was inappropriate (R. 2467 - 2469) and he has changed his practices and would deal with the situation differently today (R. 2464, R. 2466).

Judge McGuire further testified that his beliefs about his authority under the Judiciary Law had now changed (R. 2464; R. 2514). In response to the Referee's inquiry concerning G[redacted] Judge McGuire testified "[…] as I sit here in 2019 – judicial contempt isn't even part of my repertoire" (R. 2465).

In both matters neither litigant incurred any additional custodial time as a result of the contempt finding as they were each serving other (concurrent) sentences (R. 2316, R. 2451).

Proposed Findings of Fact as to Charge III

1. The matter of *R*[redacted] *Z*[redacted] *v. T*[redacted] *F*[redacted] was assigned to Judge McGuire and appeared before him in Family Court on October 9, 2013 (R. 2316 - 2317).
2. The matter involved a dispute of the father's access to the child (Exhibit III-2A – III-3A).
3. On October 9, 2013, Judge McGuire directed Ms. F[redacted] be removed from the courtroom (R. 2318 - 2319). She was detained before being returned to the Courtroom (R. 2473).
4. Judge McGuire did not make a finding of Judicial Contempt against Ms. F[redacted] (R. 2472).
5. Judge McGuire has admitted his treatment of Ms. F[redacted] was improper.

Proposed Findings of Fact as to Charge IV

1. The child custody matter of *T[redacted] L[redacted] v. G[redacted] C[redacted] and H[redacted] E[redacted]* was assigned to Judge McGuire. The parties appeared before Judge McGuire in Family Court on June 14, 2013 (R. 2483).
2. The child's school progress was an issue addressed during the proceedings (R. 494 – 496, R. 569 – 574, R. 2322 - 2323).
3. In response to discourteous actions, Judge McGuire directed that Ms. L[redacted] be removed from the courtroom. She was detained for a period of time within the court complex, before being returned to the courtroom (R. 497[4], R. 2323 - 2324).
4. Judge McGuire did not make a finding of Judicial Contempt against Ms. L[redacted] (R. 2324, R. 2488).
5. Judge McGuire failed to provide Ms. L[redacted] with a proper warning and improperly directed that she be detained.

Proposed Findings of Fact as to Charge V

1. The matter of *L[redacted] W[redacted] G[redacted] v. Ch[redacted] C[redacted]a* was assigned to Judge McGuire and appeared before him in Family Court on January 17, 2014 (R. 2501).
2. In this child custody and visitation matter the division of parenting time and overnight access was being considered (R. 1050 – 1052, R.500 – 502, R. 2330 – 2333).
3. Judge McGuire had Ms. C[redacted] removed from the courtroom, detained within the court complex, and then returned to the courtroom (R. 509, R. 2503 -2505).

[4] Point in hearing where Exhibit IV-2 was played; IV-2A, p.4-7 (transcript of proceedings).

4. Judge McGuire did not make a finding of Judicial Contempt against Ms. C[redacted] (R. 1054, R. 1102 - 1103).
5. Judge McGuire, failed to provide Ms. C[redacted] with adequate notice concerning her conduct and improperly directed that she be removed from the court.

Proposed Findings of Fact as to Charge VI

1. The matter of *A*[redacted] *F*[redacted] *v. J*[redacted] *k*[redacted] *& N*[redacted] *K*[redacted] was assigned to Judge McGuire and appeared before him in Family Court on December 2, 2014 (R. 2335, R. 2505).
2. In this child custody and visitation matter the Court was considering the issue of parenting time with the child's father (R. 555 – 558, R. 1059 – 1060, R.2335 - 2340).
3. Judge McGuire had Ms. K[redacted] removed from the courtroom, she was detained for a limited period, within the court complex, and then returned to the courtroom (R. 2341, R. 2510 - 2511).
4. Judge McGuire did not make a finding of Judicial Contempt against Ms. K[redacted] (R. 491- 492, R. 567)
5. Judge McGuire admonished Mr. K[redacted] that he could sentence him to thirty (30) days in jail for disrupting the proceedings (R. 2511-2513).
6. Judge McGuire improperly directed the removal of Ms. K[redacted] from the court.

Argument/Mitigation Charges III - VI

Charges III, IV, V, and VI relate to four (4) separate appearances before Judge McGuire in Family Court: one (1) in 2012 (R. 2469), one (1) in 2013 (R. 2483) and two (2) in 2014 (R.

2483, R. 2501). Each charge arises from the removal of a litigant from the courtroom at the direction of the Judge. In each case the litigant was returned to the court prior to adjournment of the case (R. 2318 -2319, R. 2473 (F[redacted]); R. 497, R. 2323 – 2324 (L[redacted]); R. 509, 2503 – 2505 (C[redacted]); R. 491 – 492, R. 2341, R. 2510 – 2511 (K[redacted]); R. 2515). No litigant was detained overnight (R. 2515). The most recent incident occurring on December 2, 2014 (R. 2335, R. 2505). Upon their respective returns to the courtroom no finding of contempt was made (R. 2472 (F[redacted]); R. 2324, R. 2488 (L[redacted]); R. 1054, R. 1102 – 1103 (C[redacted]); and R. 491- 492, R. 567 (K[redacted])).

Judge McGuire testified that he has changed his practice. It is understood that a review of his caseload did not disclose any similar incidents subsequent to December 2, 2014 (R. Complaint). Judge McGuire has conceded that he failed to exercise patience and that his conduct was not dignified and courteous in addressing the litigants (R. 2482, R. 2484, R. 2493, R. 2505). Judge McGuire testified that his comments identified in the complaint were inappropriate "[...] because they [didn't] further any objective." (R. 2494). Judge McGuire has acknowledged that he was not patient, dignified and courteous (R. 2496, R. 2503, R. 2512).

Judge McGuire testified that after an opportunity to participate in training and through his further experience he believes that it was inappropriate to have litigants removed from the courtroom and detained for any period or for any purpose related to Judiciary Law §750 (R. 2294 – R. 2297, R. 2431, R. 2496 – 2499, R. 2514 - 2517). Judge McGuire testified that he has taken steps to educate himself and has changed his practice(s) in dealing with difficult litigants in the courtroom (R. 2497).

Proposed Findings of Fact as to Charge VII

S[redacted] Ro[redacted]

1. The matter of *M[redacted] F[redacted] v. S[redacted] R[redacted] & S[redacted] Ro[redacted]* was assigned to Judge McGuire and appeared before him in Family Court on January 28, 2013 (R. 2343).
2. The matter concerned a child custody and visitation proceeding (R. 512 – 516, R. 1063 – 1065, R. 1110 – 1115, R. 2343 – 2347).
3. On January 28, 2013, the Attorney for the Child (AFC) and child were both present in Court with other family members (R. 513, R. 1065, R. 2345-2346).
4. While exiting the courtroom, the grandmother of the child (S[redacted] Ro[redacted]) addressed the child inappropriately (R. 516 – 517, R. 2347 – R. 2349).
5. Judge McGuire admonished the grandmother to refrain from discussing the case with the child directly (R. 2348, R. 2525).
6. Judge McGuire informed the grandmother that she could face a contempt finding should she fail to comply with the Court's directive (R. 2349-2350, R. 2525 - 2527
7. The grandmother experienced difficulty breathing, Court personnel called for an ambulance, Ms. Ro[redacted] declined treatment (R. 2350 – 2351, R. 1068, R. 517).
8. Ms. Ro[redacted] was not detained nor was her liberty restricted (R. 2350 - 2351).
9. Judge McGuire's warning to Ms. Ro[redacted] was improper and was discourteous.

T[redacted] E[redacted]

10. The matter of the *De[redacted] v. T[redacted] E[redacted] & A[redacted] F[redacted]* was assigned to Judge McGuire and appeared before him in Family Court on November 7, 2014 (R 519, R. 2528).

11. This matter was in Court for trial on a child neglect petition (R. 520).

12. The litigants had been involved in protracted litigation before Judge McGuire during which the parents had exhibited an absence of respect for the Court, law enforcement and caseworkers (R. 2352 – 2353, R. 594 – 595).

13. The Court was aware of their criminal history, history of drug abuse in the presence of the children, the issuance of an Amber Alert and other allegations supporting DFS' application for removal of the children (R. 594 – 596, R. 2352 -2353).

14. During the proceedings on November 7, 2014, Ms. E[redacted] ignored non-verbal cues to cease turning around and speaking with Mr. F[redacted] she was disrupting proceedings (R. 2354 – 2355, R. 2529)

15. Ms. E[redacted] continued to talk to Mr. F[redacted] despite the caution resulting in a verbal warning by the Court that she would be removed if she persisted (R. 2355, R. 2528 – R. 2529).

16. Ms. E[redacted] was not removed from the courtroom nor was she detained, or her liberty restricted (R. 2355).

17. Judge McGuire failed to make an appropriate record of the actions of the litigants and failed to adequately explain in a courteous manner the actions which he found improper.

A[redacted] G[redacted]

18. The matter of *C[redacted] v. A[redacted] G[redacted]* was assigned to Judge McGuire. The matter was scheduled for a custody trial on August 21, 2014 (R. 522, R. 2530).

19. The mother was in material breach of an agreement to relocate with the father and the children (R. 522 – 529, R, 602 – 611, R. 2530 – 2534). The mother had taken steps to

exclude the father from seeing the children after relocating to California (R. 603 – 610, R. 2357 - 2361).

20. The mother was directed by the Court to bring the children to New York to meet with their attorney, prior to trial. The mother came to New York without the children who remained in California (R. 603 – 610, R. 2360)

21. The court granted a directed verdict in favor of the father, which was reversed by the Appellate Division on July 9, 2015 (see *V[redacted] v. G[redacted]*, 130 AD3d 1215 [3rd Dept. 2015]) (R. 522, R. 2356 - 2357, R. 2534).

22. The Appellate Division held that the Judge treated Ms. V[redacted] with disdain and the Court should have conducted a complete hearing (*V[redacted] v. G[redacted]*, 130 AD3d 1215 [3rd Dept. 2015])

23. As set forth in the decision of the Appellate Division, Judge McGuire acted improperly in prematurely determining the application. He was discourteous and acted with disdain toward Ms. V[redacted].

24. Judge McGuire amended his practices in conformity with the Appellate Division decision (R. 2544).

Argument/Mitigation Charge VII

S[redacted] Ro[redacted]

M[redacted] [redacted]P[redacted] and S[redacted] Ro[redacted] appeared before Judge McGuire on January 28, 2013. Facts established that in a custody/visitation matter the maternal grandmother (S[redacted] Ro[redacted]) of the subject child acted inappropriately towards the child in the courtroom of Judge McGuire (R. 2347 – 2349, R. 2525 – 2526). It should be noted that it is unusual for the child to be actually

present during such court proceedings (R. 513, R. 584). Judge McGuire responded by admonishing the grandmother to desist from such inappropriate behavior (R. 2347 – 2349, R. 2525 – 2526). The grandmother experienced breathing problems subsequent to the Court admonishing her (R. 2350 – 2351). Judge McGuire testified, that from his perspective today, he would have approached the situation differently (R. 2527). Miguel Diaz, the court officer present for the appearance testified that he did not recall the volume of the Judge's voice when addressing Ms. Ro[redacted] (R. 1685, 1719)[5]. It is respectfully submitted that Judge McGuire's actions on January 28, 2013, are no longer representative of his practice.

T[redacted] E[redacted]

The facts further established that on November 7, 2014, during a child neglect proceeding ([redacted] *v. T[redacted] E[redacted] and A[redacted] F[redacted]*), a litigant, Ms. E[redacted] was disrupting proceedings (R 519 – 520, R. 2354 - 2355). The Court gave Ms. E[redacted] repeated non-verbal warnings to desist from such behavior (R. 2354-2355). Ms. E[redacted] continued to disrupt proceedings and Judge McGuire admonished her that she would be removed from the courtroom, held in contempt, should the behavior continue (R. 2355, R. 2528). The trial proceeded and concluded, and Ms. E[redacted] was not removed from the courtroom or held in contempt (R. 2355). It is respectfully submitted that Judge McGuire's actions on November 7, 2014, did not violate the Rules of Judicial Conduct.

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[5] In contrast to Officer Diaz's testimony in regard to the appearance in the matter of *N[redacted] H[redacted] v. R[redacted] E[redacted]* on February 25, 2013, when he recalled that Judge McGuire's volume was slightly louder than a conversational level (R. 1676).

A[redacted] G[redacted]

On August 21, 2014, Judge McGuire, issued a decision following trial. Judge McGuire found Ms. G[redacted], in material breach of an agreement to relocate with the father and the children (R. 522 – 529, R. 602 - 611). The decision was reversed by the Appellate Division, which found Judge McGuire incorrectly curtailed the trial and treated Ms. G[redacted] with "disdain". (R. 522, R. 2356 - 2357). Judge McGuire testified that he agrees with the Appellate Division's determination that he treated Ms. G[redacted] with disdain (R. 2544 – 2545). Judge McGuire further testified that he utilized the Appellate Division's decision as an educational opportunity for himself in his evolution (R. 2544 – 2545). The evidence at hearing demonstrates that Judge McGuire has reformed his actions as demonstrated by the absence of complaint since 2015.

Proposed Findings of Fact as to Charge VIII

Wendy Weiner:

1. Wendy Weiner was Judge McGuire's confidential secretary from January 2011 – March 31, 2015 (R. 1440, R. 2362 – 2363).
2. Judge McGuire did not yell at Ms. Weiner or address her frequently in a loud, angry and condescending manner (R. 1330, R. 1334, R. 1895, R. 2001, R. 2002, R. 2003, R. 2363, R. 2365, R. 2673 - 2674).
3. Judge McGuire did not call Ms. Weiner "stupid" (R. 2365, R. 2679).
4. Wendy Weiner alleged an incident occurred prior to the commencement of Court on January 14, 2015, in Judge McGuire's private office (R. 1441).
5. On that date Judge McGuire was scheduled to conduct Criminal and Supreme Court Calendars in the County Courthouse, 414 Broadway, Monticello located "up the hill" from his Family Courtroom and chambers (R. 1441 - 1443).

6. On or about January 14, 2015, Judge McGuire arrived at chambers at just after 7:00 AM and learned that there was a corruption to his database, and he was unable to access notes for the day's calendar (R. 1441 – 1442, R. 2672, R. 2673).
7. At approximately 8:00 AM Judge McGuire, recognized that he would need to collect information for use with his calendar (since he could not access his notes) and requested Wendy Weiner contact Information Technology office and advise of the problem with his database in hopes that they would be able to retrieve all or any of his data (R. 1445, R. 1446; R. 2673-2675).
8. Shortly after 8:00 AM on January 14, 2015, Judge McGuire packed hard copies of documents into his brief case to use in conjunction with his County Court and Supreme Court calendars (R. 2675 – 2677).
9. While packing his briefcase, a file opened, and a few documents fell to the floor landing on top of Judge McGuire's shoe (R. 2675). He bent down, picked up the documents, replaced them into his file continued to pack his briefcase and left chambers to go to the County Courthouse (R. 2675 - 2677).
10. At no time did Judge McGuire utter a disparaging, condescending, intimidating or threatening word to Ms. Weiner, he directed her to use all efforts to recover the data which appeared to have been corrupted (R. 2677 - 2678).
11. At 8:12 AM on January 14, 2015, Wendy Weiner sent an email to Judge McGuire related to chambers business, that email was sent from her workstation in Judge McGuire's chambers (R. 1586 - 1587).
12. After arriving in the County Courthouse, Judge McGuire sent an email to Ms. Weiner.

13. At 8:30 AM Judge McGuire met with Chief Clerk Sarah Katzman who observed that his demeanor was in all respects normal and appropriate (R.984).

14. The allegation that Judge McGuire "created a tornado of documents" or kicked documents was uncorroborated (R. 435 – 441, R. 1331 – 1332; R. 1596 R. 2363, R. 2675).

15. Judge McGuire returned to his chambers at approximately 11:45 AM. Ms. Weiner was on her way out of the building and advised that her son had been injured and she was taking him to a doctor (R. 1614, Transcript of McGuire Deposition).

16. On January 14, 2015, at approximately 12:00 pm, Judge McGuire learned from his Court Attorney, Mary Grace Conneely, that Wendy Weiner had made a formal complaint regarding Judge McGuire's treatment of her earlier in the day (R. 1331, R. 2677).

17. Wendy Weiner did not return to chambers for the balance of the day. On January 15, 2015, Judge McGuire brought Ms. Weiner and Ms. Conneely into his private office and offered an apology for any action on his part which had scared or offended Ms. Weiner the previous day (R. 1333, R. 1456).

18. Judge McGuire continued to communicate professionally with Ms. Weiner after January 14, 2015, until her reassignment in March of 2015 (R. 1318, R. 1319 – 1321, R. 2270, R. 2364, R. 2268, R. 2679 – 2680).

19. An investigation ensued by the Inspector General for the Unified Court System into the events of January 14, 2015 (R. 1460, R. 1531, R. 2681).

20. Judge McGuire learned of the investigation upon contact from the Investigator General on or about March 30, 2015. He provided a statement in White Plains on April 5, 2015 (R. 1460, R. 2429 - 2430).

21. A report of the Inspector General was issued on March 26, 2015. The report was not amended or supplemented to include Judge McGuire's statement (R. 2429).

Andrea Rogers

22. Andrea Rogers is a Court Assistant assigned to Family Court, Sullivan County. She was assigned to work with Judge McGuire in 2011 until 2014 (R. 1133 - 1134).
23. From 1998 to 2011 Ms. Rogers was a Court Assistant to Hon. Burton Ledina (R. 1135).
24. Ms. Rogers took offense to Judge McGuire reviewing her documents she prepared before affixing his signature. Judge Ledina employed a different practice in working with Ms. Rogers. (R. 1180, R. 1191, R. 1194, R.1196, R. 1201 - 1203).
25. Chief Clerk Benson reassigned Rogers to Judge Meddaugh' s part (R. 1165 - 1166).
26. When advised that she would be transferred out of Judge McGuire's part, Ms. Rogers cried and expressed, to Chief Clerk Benson, that she did not want to be transferred (R. 1871-1872).
27. Melinda Sheridan, Stacy Benton, Christina Benson, and Judy Yates each worked and served in Family Court as court assistants at times to Judge McGuire (R. 1877 - 1881).
28. Melinda Sheridan, Christina Benson, and Tara Hirsch[6] each expressed that they have enjoyed working with Judge McGuire, that he has always treated them kindly, courteously, professionally and with dignity (R. 1887 – 1880, R. 2036 – 2038, R. 2235).

Officer Miguel Diaz

29. Miguel Diaz is a court officer who, for a period of time, was assigned to Sullivan County Family Court and interacted with Judge McGuire during his service (R. 1670).

[6] Ms. Hirsch works with Judge McGuire in County Court, clerking for his criminal court calendar (R. 2011, R. 2021, R. 2039)

30. Judge McGuire expressed concerns regarding Officer Diaz' courtroom management skills to Lieutenant McCabe, Sergeant Olivieri, and Chief Clerk Christina Benson (R. 1896, R. 2372).

31. Officer Miguel Diaz used his radio in the courtroom at a volume level which disrupted and or distracted others during proceedings (R.1673, R. 1683).

32. Officer Diaz, during testimony of a sex abuse victim in *DFS v. Nolan* on June 29, 2012, contrary to specific instructions, admitted spectators to the courtroom, for which he was challenged by Judge McGuire (R. 1680).

33. On or about February 25, 2013, Officer Diaz was also assigned to Judge McGuire's part during a heavy arraignment calendar, with in excess of sixty (60) matters scheduled (R, 1672, R.1694, R. 1896, R. 2370).

34. On February 24, 2013, Officer Diaz was tasked with readying cases for appearance. He was unable to maintain an orderly flow of cases (litigants) resulting in delays to the extensive remaining calendar (R. 2372, R. 1674 – 1675).

35. On February 25, 2013, Judge McGuire advised Officer Diaz that he wished to speak to the Sergeant in chambers (R. 116, R. 294, R. 1674)

36. Officer Diaz continues to serve in Judge McGuire's Family Court and County Court Part where they enjoy a mutually respectful relationship (R. 1720-1724).

Sergeant Guillermo Olivieri

37. Guillermo Olivieri was a Sergeant responsible for the Court Officer detail at the Sullivan County Family Court commencing in or about 2009 (R. 94).

38. Sergeant Olivieri has maintained a cordial, courteous and mutually respectful relationship with Judge McGuire throughout his tenue (R. 248-251).

39. On February 25, 2013, Judge McGuire spoke with Sergeant Olivieri in chambers regarding concerns over delays in his part (R.275).

40. There was no physical contact during the interaction at which both Sergeant Olivieri and Judge McGuire performed professionally (R.310-313).

41. Sergeant Olivieri made a report to his Lieutenant regarding Judge McGuire's complaints (R. 130-132).

Officer Brenda Downs

42. Brenda Downs is a Court Officer, assigned to the Supreme, County and Family Court in Sullivan County (R.346).

43. Officer Downs became acquainted with Judge McGuire while he was in private practice and they have enjoyed a warm, friendly and collegial association. (R. 420, R. 423, R. 424, R. 2377).

44. On an unspecified date Officer Downs took offense to the Judge closing the door to his private office when she was in close proximity (R. 364 – 370, R. 2375 - 2377).

45. Judge McGuire was not informed and was not aware that Officer Downs perceived the Judge's actions as offensive (R. 2375 - 2377).

46. At no time did Officer Downs nor anyone else bring the issue to the Judge's attention prior to the filing of the Complaint in this matter (R. 2375 - 2376).

Lieutenant Kevin McCabe

47. Lieutenant Kevin McCabe is the senior ranking Court Officer responsible for court security in Sullivan County (R. 1728-1729).

48. Lieutenant McCabe and Judge McGuire have worked together since the inception of Judge McGuire's term in 2011. (R. 1729; R. 1740 – 1741)).

49. Lieutenant McCabe was aware of only one instance during which Judge McGuire addressed him in an emphatic manner concerning the prompt commencement of calendar at 9:00 a.m. on arraignment days (R. 1730-1735).

50. On an unspecified date (during either 2011 (R. 2378) or 2012 (R. 1741) Judge McGuire spoke with Lieutenant McCabe about commencement of his calendar. (R. 2377 - 2379).

51. Lieutenant McCabe testified that "[t]he overwhelming - - overall characterization of our relationship is professional and pleasant." (R. 1741).

52. Judge McGuire properly sought the assistance of the Court staff to commence his calendar and process the cases in a timely and professional manner.

Argument/Mitigation Charge VIII

Wendy Weiner

Judge McGuire denied ever having referred to Ms. Weiner as stupid (R. 2365; R. 2679). Judge McGuire also denied having addressed Ms. Weiner in an impatient, undignified or discourteous manner. He also denied screaming at her or having observed her crying at any time. (R. 2363). The forgoing allegations were uncorroborated.

On January 14, 2015, Judge McGuire experienced a loss of the electronic database containing all his work product, notes, decisions, pleadings, attorney appearances and dates covering the entire period that he had served on the bench (R. 1934). Judge McGuire relies heavily upon his notes for all cases (R. 1011, R. 1891 – 1892, R. 1933 – 1934, R. 1970, R. 1972, R. 2021- 2023). His notes are contained within his database (R. 2364, R. 2673-2674, R. 2678). In addition to the long-term implications of such a loss, Judge McGuire had a lengthy calendar to conduct which was to commence, that morning, at 8:30 a.m. His inability to access the database

was of great concern as he had less than one (1) hour to recreate nearly twelve (12) hours of preparation for that calendar (R. 2672 – 2674, R. 2678). To the extent that Judge McGuire was upset on the morning of January 14, 2015, his anxiety was never aimed at Ms. Weiner (R. 2673, R. 2674, R. 2677) which was acknowledged by Ms. Weiner (R. 1443).

Ms. Weiner's testimony was replete with inconsistencies, despite her purported specific recall on direct, she claimed no recall in excess of one hundred and five (105) times during cross examination.(citations omitted) When confronted with a transcript of prior testimony or relatively recent messages sent to/from Commission Staff, she was unable to recall that the communication had occurred. When confronted with her prior testimony and electronic message exchanges Ms. Weiner repeatedly testified her recollection had not been refreshed and she simply could not recall (R. 1533, R. 1549, R. 1553, R. 1555, 1566, R. 1568, R. 1570, R. 1571, R. 1575, 1577, 1578, 1579, R. 1585, R. 1589, R. 1606, R. 1611, R 1612, R. 1619, R. 1624, R. 1625, R. 1635, R. 1636, R. 1637, R. 1638, R. 1642).

It is respectfully submitted that Ms. Weiner's testimony should not be credited (see generally *CJI2d [NY] Instructions of General Applicability: Credibility*). Ms. Weiner's testimony is rife with inconsistencies and when confronted with the same, Ms. Weiner, is unable to recall giving previously inconsistent statements. Ms. Weiner was able to clearly and concisely recall events of several years ago upon direct examination and then it is submitted divisively unable to recall, even when documents/transcripts were provided to refresh Ms. Weiner's recollection upon cross-examination. "[T]he appearance, attitude and demeanor of a witness upon being questioned and while before the court are matters to be taken into consideration in testing veracity and in determining the weight to be accorded his or her testimony" *People v.*

Carter, 37 NY2d 234, 239 [1975]. It is respectfully submitted that upon a review of Ms. Weiner's testimony and her demeanor her testimony should be disregarded.

Ms. Weiner's claim that she left chambers on January 14, 2015, out of fear of Judge McGuire, is undermined by her transmission of an email to Judge McGuire minutes later (R. 1586). Further undermining the claim is the observation of Judge McGuire by Chief Clerk Sarah Katzman during her conversation with him at a time which would have been promptly after the alleged incident in chambers (R. 1024). The "tornado" of paper Ms. Weiner described was uncorroborated by anyone who viewed the office within minutes of its alleged occurrence (R. 435-436, R. 438, R. 439 – 441). Judge McGuire picked up the files and took them with him to conduct the morning calendar (R. 2675, R. 2677).

When confronted with the relatively recent communications which, Ms. Weiner had transmitted to the Commission concerning Judge McGuire, she denied any recollection of the transmittal (R. 1635 – 1638). Ms. Weiner also had no recollection of speaking to Ms. Tishman on December 27, 2016, or January 4, 2017, (as documented in the disclosures provided by the Commission) relating to a motor vehicle accident involving the Judge's son in November 2016 (R. 1635 - 1636). Even when provided with a copy of her email message and Commissions notes setting forth the sum and substance of her report, she could not recall her actions. (R. 1636 – 1637). Nor did Ms. Weiner recall contacting the Commission to report that a person named "Sandra" had contacted the Surrogate's office or providing "Sandra's" phone number to the Commission (R. 1637 – 1638). Ms. Weiner denied ever providing testimony, under oath, that Judge McGuire was engaged in a "ticket fixing scheme" in Sullivan County (R. 1638). It is submitted that Judge McGuire did not violate the Rules of Judicial Conduct in his interactions with Ms. Weiner.

Andrea Rogers

It is submitted that Judge McGuire did not violate the Rules of Judicial Conduct in his treatment of Ms. Rogers. At most, there may have been a difference of opinion concerning the way in which Rogers sought information from the Judge during court proceedings (R.1871). Ms. Rogers clerked for Judge McGuire in his Family Court part when he first took the bench (R. 1134). Ms. Rogers previously worked for Judge Ledina (R. 1135). The management styles of Judge McGuire and Judge Ledina differed. (R. 1176, R. 1178, R. 1179, R. 1191, R. 1194, R. 1196, R. 1872). Chief Clerk Christina Benson[7] described Judge McGuire and Judge Ledina as opposites: Judge Ledina was very easy going, softly spoken, and Judge McGuire is very hands on, prepared, involved and direct (R. 1872).

After years of association, Ms. Rogers appears to have been authorized to act on behalf of Judge Ledina and exercise authority in the operation of the court. She did not have similar discretion with Judge McGuire (R 1140, R. 1176, R. 1178 – R. 1180, R. 1194). Ms. Rogers offered that she was comfortable with Judge Ledina and the way he ran his court; whereas Judge McGuire made clear that he would run the court differently from Judge Ledina (R. 1139, R. 1178).

Judge Ledina delegated authority to Ms. Rogers in the operation of the Court and she perceived that Judge McGuire micromanaged her in his court (R. 1179; R. 1194). Ms. Rogers felt slighted when her drafts were modified by Judge McGuire. She described the interaction as condescending on the Judge's part. (R. 1196, R. 1203 – 1204). Ms. Rogers was not comfortable with the manner in which Judge McGuire managed or scheduled cases (R. 1147 – 1148, R.

[7] Ms. Benson has been Chief Clerk of Sullivan County Family Court for ten (10) years (R. 1838).

1227). Both Ms. Rogers and Judge McGuire brought their concerns about working with one another to the Chief Clerk (R.1145, R.1166). Ms. Rogers took offense to Judge McGuire's request that she hold her comments/questions until he was able to process and address that request (R. 1141 - R. 1142, R. 1207, R. 1213, R. 1218). Ms. Rogers further found Judge McGuire holding up his hand, indicating for Ms. Rogers to wait a moment before speaking, to be condescending (R. 2366, R. 2671). Ms. Rogers alleged, without corroboration that she was routinely ridiculed and yelled at by Judge McGuire (R. 1145, R. 1150, R. 1229).

After investigating the matter, speaking to both parties and observing Judge McGuire's part, Chief Clerk Benson observed there to be a personality conflict and made the decision to transfer Ms. Rogers to another part (R. 1871). Ms. Rogers cried upon being informed that she was being transferred, she expressed a desire to remain in Judge McGuire's part (R. 1872).

The Commission called K.C. Garn, Esq., who appeared in Judge McGuire's Family Court part almost daily for eight and half (8.5) years (R. 614), he never witnessed Judge McGuire raise his voice to Ms. Rogers or act in an aggressive or condescending manner towards her (R. 614).

Officer Miguel A. Diaz

Officer Miguel Diaz, testified that despite the Judge's concerns regarding his skills, he and the Judge have enjoyed a generally cordial relationship over many years (R.1723-1724). Officer Diaz testified that but for the single incident on February 25, 2013, he has had no problems with Judge McGuire, he has normal interactions with the Judge offering a friendly greeting when they see one another; he has no concerns about working with Judge McGuire (R. 1723 – 1724).

Judge McGuire had voiced his concerns over Officer Diaz's courtroom management skills with Officer Diaz himself, Sergeant Olivieri, Lieutenant McCabe and Chief Clerk Benson (R. 275, R. 1235, R. 1683). Judge McGuire has never expressed any personal animus toward Officer Diaz (R. 2657), he has voiced his concern only regarding his ability to control a courtroom and move cases in and out of the part (R. 2370, R. 2372, R. 2373, R. 2656, R. 2657, R. 2658). The tape of the interchange between Officer Diaz and Judge McGuire on the morning of February 25, 2013, speaks for itself. It is respectfully submitted Judge McGuire asked Officer Diaz to have the Sergeant meet him in chambers at a time when there were no litigants or attorneys in the courtroom (R. 1675). Officer Diaz testified on direct that when he brings a case into the courtroom, he calls for the next one to be lined up on his door (R. 1672, R. 1686, R. 1690, R. 1692). On the morning of February 23, 2013, he experienced difficulties bringing matters into the part (R. 1672, R. 1686, R. 1690).

In the Nolan case, in June of 2012, Officer Diaz was asked not to allow anyone into the courtroom as the Court was to be receiving testimony of a highly sensitive nature from a sex abuse victim (R. 1679, R. 1692 - 1694). Officer Diaz was unaware that the Court was receiving testimony from a witness (R. 1705 - 1706). Officer Diaz during the hearing was unable to distinguish testimony from calendar practice when presented with a transcript of these proceedings (R 1705 – 1708). Indeed, after listening to the tape of the Nolan matter, Officer Diaz offered, that he did not know what was happening in the part that day because "I usually do not pay attention [...]" (R. 1705). The nature of Family Court proceedings requires the officers inside the Courtroom to be in constant radio communication with those staging cases on the outside (R. 259 – 261, R. 399 – 402, R. 1686 – R. 1694, R. 1698 – R. 1700, R. 1754 - 1759). This communication generally does not create any distraction for the proceedings because the

officers, cognizant of the proceedings are able to move to remote corners of the Courtroom and keep their radios volume down. Officer Diaz testified that he tends to maintain his radio volume louder because he has difficulty hearing (R. 1673). Officer Diaz, on direct, stated that, on at least one occasion, while alone in the courtroom, Judge McGuire expressed his concerns to Officer Diaz that he needed to be able to move cases in and out more expeditiously (R. 1683). It is noted that no-one was directed to relieve Officer Diaz of his post on February 25, 2013, but another officer offered to cover the courtroom (R.407-408). There have been no problems, concerns or issues and their interactions have continued to be pleasant, respectful and courteous; Officer Diaz has no reservations about working with the Judge (R. 1724).

Sergeant Guillermo Olivieri

On February 25, 2013, Judge McGuire, asked to speak to Sergeant Olivieri about his concerns regarding the efficiency of his part, on a heavy arraignment day, and Officer Miguel Diaz's courtroom management skills (R. 275, R. 284, R. 294, R. 310, R. 1675, R. 2370, R. 2372 - 2373). Noting that Judge McGuire, and the Chief Clerk, had repeatedly raised concerns regarding Officer Diaz's performance in his part with both the Sergeant and Lieutenant McCabe (R. 275, R. 1850, R. 1896).

The interaction between Judge McGuire and Sergeant Olivieri arose out of a need to address a lengthy calendar in an orderly manner without resort to overtime (R. 1760). It is evident that the Judge's concerns were addressed as there was no further discussion of the subject (R. 312, R. 2375, R. 1794-1766). Lieutenant McCabe testified that Sergeant Olivieri advised him, he reported the matter to the Chief by email and continued to work with Officer Diaz on his courtroom skills, no further action was taken (R. 1761 – R1766). Lieutenant McCabe described the Sergeant as being unhappy, not shaken, about the exchange with Judge

McGuire (R. 1763). Judge McGuire and Sergeant Olivieri continued to work in Family Court together without any incident (R. 1764 – 1766).

Contrary to the allegations in the complaint, the interchange between Judge McGuire and Sergeant Olivieri, while contentious did not result in any physical contact. They were never closer to one another than a couple of feet (R. 127, R. 337). Sergeant Olivieri made it clear that he did not perceive a physical threat (R. 316)[8].

It is respectfully submitted that Judge McGuire's interaction with Sergeant Olivieri on February 25, 2013, did not violate the Rules of Judicial Conduct.

Officer Brenda Downs

Officer Downs testified that, when Judge McGuire first took the bench, she found that at times Judge McGuire's voice could be heard in the hallway outside his courtroom. She contrasted this to the absence of same during the softer spoken Judge Ledina's tenure (R. 350). Early in the Judge's tenure, the officers would respond when they heard his voice, they would pop their head into the Courtroom, see that everything was in order and observing that what they had heard was merely the normal projection and inflection of Judge McGuire's normal speech pattern (R. 351 – 353).

On an unspecified date in either 2014 or 2015 while the Court was in recess, to permit the Judge to deliberate prior to issuing a decision on a completed trial (R. 416 – R. 417). Officer Downs recounted that she, Andrea Rogers and Wendy Weiner were just outside the Judge's office at which time Ms. Rogers and Ms. Weiner were talking (R.411). Officer Downs observed Ms. Rogers speaking when the Judge got up from his desk, she then perceived that the Judge

[8] Noting that Ms. Weiner offered testimony about the interchange, testifying that Judge McGuire placed both hands on the Sergeant and shoved him (R. 1621). Demonstrating a further example of her bias, incredible testimony.

"[...] grabbed the door and slammed it with as much force as he could" (R.368-369). While this incident clearly upset Officer Downs, Judge McGuire had not intended to cause offense (R. 2375 - 2377) and was unaware that the incident had caused Officer Downs distress (R. 416 – 418, R. 420, R. 425). After the door was shut the group dispersed (R. 369). Officer Downs returned to her post, informed the Sergeant as to what had transpired and was declined to file a formal complaint (R. 369, R.421). It is respectfully submitted that Judge McGuire's actions in regard to closing his door did not violate the Rules of Judicial Conduct.

Lieutenant Kevin C. McCabe

Lieutenant Kevin McCabe testified he had served as a Court Officer and Administrator for twenty-five (25) years. He worked with Judge McGuire for more than twelve (12) years (R. 1728 – 1729). On direct examination Lieutenant McCabe described a single episode during which Judge McGuire had, with emphasis, stated that he expected his 9:00 a.m. calendar to commence at 9:00 a.m. (R. 1730 - 1731). The fact that such a request was notable in any respect is submitted as symptomatic of challenges within the courts in general. Lieutenant McCabe testified that he has always found Judge McGuire to be professional and pleasant (R. 1741, R. 1776, R. 1785 - 1786). Lieutenant McCabe further offered that no litigants or attorneys had ever complained to him about Judge McGuire; no officers have expressed reluctance to work with Judge McGuire (R. 1776, R. 1785 – 1786).

Other Court Employees

Judge McGuire called employees who had not been interviewed by Commission staff during the investigation of this matter. The witnesses provided first-hand accounts of their personal interactions and observations of Judge McGuire.

Melinda Sheridan

Melinda Sheridan worked in Judge McGuire's Family Court part for several years (R. 2225). Ms. Sheridan testified that Judge McGuire treated her well; she did not observe him mistreat anyone or address anyone in a condescending manner (R. 2235). Ms. Sheridan offered that Judge McGuire treated litigants respectfully (R. 2235).

Christina Benson, Chief Clerk of Family Court.

The Sullivan County Family Court calendar is divided equally between Judges McGuire and Judge Mark Meddaugh. Ms. Benson as Chief Clerk of the Family Court worked with the judges on an ongoing basis and was very familiar with their work styles. She found Judge McGuire to be very organized and thorough; describing him as both disciplined and enthusiastic (R.1868). Ms. Benson never found it necessary to bring any concerns about Judge McGuire's performance or conduct to the attention of Judge Meddaugh, the presiding Judge of the Family Court (R. 1874). Chief Clerk Ms. Benson monitored the interaction between Judge McGuire and Ms. Rogers (R. 1871). Ms. Rogers was the only person under her supervision who expressed any concern or issue regarding with the manner in which Judge McGuire conducted himself (R. 1874 – 1880). Chief Clerk Benson testified that she was unaware of any instance of Judge McGuire yelling or uttering a condescending word to or about any employee. (R. 1895).

Mary Grace Conneely

Mary Grace Conneely, Judge McGuire's former law clerk[9], testified unequivocally that she never heard Judge McGuire raise his voice to Ms. Weiner (R. 1330), or any other employee, She also could not recall any occasion in which the Judge spoke to court personnel in a

[9] Ms. Conneely retired at the end of 2016 (R. 1223).

condescending manner or tone (R. 1309; R. 1329; R. 1334). Ms. Conneely testified that during her six (6) year tenure with Judge McGuire she never received any complaints from anyone about his conduct (R. 1312; R. 1313). Ms. Conneely further testified that she would have addressed any such issues with Judge McGuire (R. 1312). Ms. Conneely offered, that she and Ms. Weiner, were friendly when they worked together and have continued that close friendship since her 2016 retirement (R. 1358).

Chief Clerk Sarah Katzman, Supreme and County Court

Chief Clerk Sarah Katzman[10] testified she never received a complaint from a member of staff about being assigned to work with Judge McGuire (R. 1034). Chief Clerk Katzman testified Judge McGuire had always been courteous to her (R, 1034).

Tara Hirsch

Tara Hirsch, a court assistant[11], works regularly with Judge McGuire (R. 975, R. 2011, R. 2036 - 2037). Ms. Hirsch offered that he is very considerate, well prepared, treats her and others well, and likes the way Judge McGuire runs his courtroom (R. 2036 – 2037).

Hannah Prall

Hannah Prall, Esq. testified that while in private practice she appeared before Judge McGuire on numerous occasions before agreeing to serve as his principal court attorney (R. 1943). Ms. Prall testified that as a solo practitioner she appreciated that his part ran on time and that Judge McGuire was well prepared for his calendar. She described him as authoritative on the bench and very pleasant (R. 1967). As a member of his chambers staff, Ms. Prall has

[10] Ms. Katzman is the Chief Clerk of the Sullivan County Supreme and County Court has worked for the Unified Court System for over thirty (30) years (R. 973).
[11] Tara Hirsch has been a Court Assistant since 2008 in Sullivan County Court (R. 2010).

experienced that Judge McGuire is friendly and always appropriate (R. 1967 - 1968). He consistently treats employees well. Ms. Prall testified that she never heard the Judge yell at any employee or address an employee in a derogatory or condescending manner. She also observed that she never heard the Judge make disparaging comments about a litigant (R. 1967 – 1970).

Hon. Mark M. Meddaugh, Family Court Judge

Judge Meddaugh was appointed, by the Administrative Judge of the Third Judicial District to be Judge McGuire's mentor when he came on the bench in 2011 (R. 2002). Judge Meddaugh described Sullivan County as a very diverse community where it is not uncommon for lawyers and litigants to interact in the community (R. 1993 – 1994). Judge Meddaugh's chambers and Judge McGuire's chambers are in close proximity (R. 1995). Judge Meddaugh testified that he has never heard yelling coming from Judge McGuire's courtroom and was not aware of Judge McGuire being other than courteous, respectful and dignified (R. 2001, R. 2002).

The evidence overwhelmingly established that Judge McGuire treats court personnel with appropriate courtesy. The allegations in the complaint relating to treatment of court personnel have been controverted by the testimony of multiple witnesses many of whom have frequently interacted with the Judge.

Proposed Findings of Fact as to Charge IX

1. The matter of *M[redacted] M[redacted] v. R[redacted]. H[redacted]* was a child custody matter assigned to Judge McGuire; the case was before the Court on March 10, 2014 (R. 2379).
2. The parties were also in controversy concerning the division of parenting time (R. 2379 - 2380).

3. The litigants appeared on only one occasion (R. 2379) at which time a settlement was reached (R.2380).
4. Following the allocution by the parties the Court commended them on reaching an agreement in the best interests of their child (R. 2380).
5. Judge McGuire advised that the child's best interest are served by the parents continuing to work together and communicating with one another (2380 – 2381; R. 2546 - 2547).
6. Judge McGuire advised the parties in sum and substance to avoid involving the children in any of the adult conflict (R. 2381).
7. Judge McGuire acknowledged that his cautionary instruction(s) were inappropriate and subject to being construed as a personal observation of the parties. (R. 2548). He has amended his practice and taken steps to be more considered in his manner of addressing litigants in response to the matter being brought to his attention (R. 2381; R. 2550).

Argument/Mitigation Charge IX

In a custody and visitation proceeding Judge McGuire engaged in a discussion with the litigants, after assisting them to settle their case, complementing them upon getting along (R. 2545). Judge McGuire advised them of the pitfalls which often confront reconstituted families, and which create considerable stress and anxiety for their children (R. 2547). He congratulated them on their willingness to work together, applauded them for reaching an amicable resolution of their differences, and cautioned them to continue to focus on the children during the inevitable rough times ahead should they occur (R. 2380).

The Commission has alleged that Judge McGuire failed to be patient, dignified and courteous in suggesting that it would be problematic should either of the parents introduce the child to a drug addict, slut or child abuser. The best evidence in this case is the audio transcript

of the proceedings. Judge McGuire has acknowledged that his cautionary instruction was inappropriate (R. 2548). He has taken steps to improve since March 2014 (R. 2381, R. 2550). It is respectfully submitted, that while Judge McGuire's comments were misguided, they did not raise to a level such that he violated the Rules of Judicial Conduct.

Proposed Findings of Fact as to Charge X

Telephone Number

1. Judge McGuire decided to retain his law office telephone number in order to facilitate his prior client's ability to retrieve their files (R. 2057, R. 2552 – 2553).

People v. W[redacted] M[redacted]e

2. Judge McGuire improperly appeared in the *Matter of People v. M[redacted], W[redacted]*, in the City of Oneonta Court (R. 2395, R. 2560, R. 2563 R. 2568).
3. W[redacted] M[redacted] is Judge McGuire's son (R. 2395).
4. Judge McGuire did not disclose his status as a member of the judiciary at the time of his appearance in the City of Oneonta Court (R 2395, R. 2560).

People v. Corrine McGuire

5. While in private practice in the spring of 2010, Judge McGuire entered an appearance on behalf of his wife in the Town of Wawarsing Court with respect to a traffic ticket (R. 2382).
6. In June of 2010, Judge McGuire appeared in the Town of Wawarsing Court to answer the ticket on behalf of his wife (R. 2382).
7. At the first appearance, the matter was resolved with the town prosecutor, Edward Bruno, Esq, who agreed to dismiss the ticket (R. 2382, R. 2570).

8. In the summer of 2011, after assuming the bench, a letter was received from the Court advising Mrs. McGuire that her license would be suspended for failure to answer the ticket (R. 2382).

9. Judge McGuire thereafter wrote to the Town of Wawarsing Court advising that he believed that the matter had been disposed of (R. 2382 – 2383, R. 2570 - 2571). The Town of Wawarsing Court thereafter rescinded the threatened suspension (R. 2383, R. 2571).

10. Judge McGuire improperly wrote to the Town of Wawarsing Court on behalf of his wife (R. 2383).

George Matisko

11. Prior to taking the bench Judge McGuire represented George Matisko in connection with a traffic matter in the Town of Woodbury (R. 2571).

12. Mr. Matisko was attempting to obtain a settlement for some damage sustained in an accident and asked Judge McGuire, at the time a practicing attorney to write a letter setting forth his demands (R. 2571 - 2572).

13. Judge McGuire had no further involvement in that matter after January 1, 2011, and ultimately Mr. Matisko received a settlement of $1,000 from the insurance company. (R. 2383).

14. Judge McGuire was unaware of the interaction between Wendy Weiner and George Matisko. Ms. Weiner did not inform Judge McGuire concerning her activities on behalf of Mr. Matisko (R. 2384, R. 2574 - 2575).

15. Judge McGuire was unaware that a letter was sent from his former law office in January of 2011, authored by his sister Maryanne Schares, or that she called Progressive Insurance on behalf of Mr. Matisko (R. 2572 – 2573).
16. George Matisko saw Judge McGuire having lunch in a local restaurant and asked if he could notarize a document for him (Transcript of McGuire Deposition from June 23, 2017, P. 411 - 414). Judge McGuire advised that he did not have his notary stamp with him but would be happy to do so if he stopped by chambers (Transcript of McGuire Deposition from June 23, 2017 at page 414).
17. Later that afternoon, when Judge McGuire completed his afternoon calendar, Ms. Weiner advised that Mr. Matisko had come by to have a document notarized which she did for him (Transcript of McGuire Deposition from June 23, 2017 at page 414). Judge McGuire has never seen the document and is unaware if the document was related to the property damage settlement (Transcript of Judge McGuire's Deposition June 23, 2017, p. 409 – 411).
18. Judge McGuire was completely unaware of Ms. Weiner's involvement in the insurance claim being brought on behalf of Mr. Matisko (R. 2384, R. 2574 – 2578).
19. Judge McGuire did not communicate with Mr. Matisko concerning the insurance claim after he took the bench (R. 2383 - 2384).
20. Judge McGuire did not communicate with Progressive Insurance on behalf of Mr. Matisko after he took the bench (R. 2576- 2577).
21. Wendy Weiner, without Judge McGuire's knowledge or involvement communicated with the insurance company, rejecting their initial offer to settle at $500.00 and accepting their offer of $1,000 (R. 2384, R. 2573 – 2578).

22. Wendy Weiner, without Judge McGuire's knowledge undertook all communication, both written and oral, drafted legal documents and submitted same to the insurance company without Judge McGuire knowledge, consent or encouragement (R. 2384, R. 2575 - 2578).
23. Wendy Weiner created a letterhead and an electronic signature to give the appearance that the communications were coming from Michael McGuire. Judge McGuire was unaware of the correspondence and did not sign any of the letters transmitted by Ms. Weiner (R. 2384, R. 1647 - 1648). He was unaware of the letters existence until they were brought to his attention during the instant proceedings. Ms. Weiner did not share the correspondence with Judge McGuire (R. 2383 – 2384, R. 2573 – 2578).

Philip and Eileen Moore

24. Phillip and Eileen Moore are the parents of Heather Depew and the in laws of Christopher Depew, a personal friend of Judge McGuire (R. 677 – 678, R. 693, R.700, R. 2579 - 2580).
25. The Moore's were not clients of Judge McGuire when he was in private practice (R. 695, R. 700).
26. Judge McGuire discussed with the Moore's their plans to purchase house owned by a bank, as a result of a foreclosure proceeding (R. 687 – 688, R. 701 – 702, R. 2384 – 2385, R. 2580).
27. Judge McGuire's brother Ken McGuire, Esq., assisted the Moore's in connection with the proposed transaction. Without charge he reviewed the contract of sale (R. 680, R. 687 - 688, R. 696).

28. Judge McGuire brought the contracts from his brother, Ken McGuire, Esq., to the Moore's residence for signature (R. 681 – 684, R. 688 – 689, R. 702 – 705, R. 2091 – 2092, R. 2583 – 2584).

29. Emails were sent from Judge McGuire's email address (judgemcguire@[redacted]) to the attorney for the bank and the real estate brokers on behalf of the Moore's (R. 1374, R. 1377, R. 1380, R. 1383).

30. Judge McGuire's wife ordered a title search in connection with the transaction (R. 2090, R. 2134, R. 2247 – 2251, R.2385).

31. Judge McGuire denied providing any legal advice with respect to the Moore's transaction (R.687, R.705, R. 2386, R. 2252 – 2256).

Ricky Pagan

32. Ricky Pagan is a friend of Judge McGuire and his wife (R. 465, R. 2086, R. 2391).

33. Judge McGuire represented Ricky Pagan in regard to a real estate purchase in March of 2010 (R. 464 – 465, R. 2388).

34. The real estate at issue was the subject of a tax foreclosure (R. 467, R. 472, R. 2387). Part of the agreement to purchase the property involved Mr. Pagan paying the tax lien with the remaining balance of the price being made when he secured the funds which was contemplated to be in June of 2010 (R. 472).

35. Judge McGuire, prior to taking the bench, drafted a mortgage to protect his client's interests in paying the tax lien and, anticipating the completion of the purchase, drafted the deed and transfer documents (R. 2087 – 2088, R. 2389)

36. The real estate purchase was not completed prior to Judge McGuire taking the bench (R. 468, R. 2086 – 2087, R. 2389 – 2391). At an unknown date after Judge McGuire took the bench the deed and transfer documents were provided to Mr. Pagan and filed with the County Clerk (R. 471, R. 479).

People v. Christopher Lockwood

37. Christopher Lockwood is a friend of Judge McGuire's son (R. 2392).
38. In the Spring of 2010 Christopher Lockwood received a traffic ticket in the Town of Liberty (R. 2392).
39. In June of 2010 Judge McGuire, appeared for Christopher Lockwood in the Town of Liberty Court and entered a plea on the client's behalf (R. 1795, R. 2392).
40. Prior to taking the bench Judge McGuire became aware that Christopher Lockwood's case remained open and worked out a disposition with the Town Attorney, Kenneth Klein, which would require proof of attendance at a course (R. 2393)
41. On or about January 4, 2011, a notice to appear on February 28, 2011, in the Town Court was received at Judge McGuire's former law office (R. 1796, R. 2393).
42. Prior to the appearance on February 28, 2011, Ken McGuire, Esq., mailed the required proof of attendance of Christopher Lockwood at a course to the Town of Liberty Court (R. 1801, R. 1817, R. 2393 – 2394).
43. On February 28, 2011, Connie Van Keuren, Clerk of the Town of Liberty Court contacted Judge McGuire's Chambers to inquire as to the status of the case (R. 1797 – 1800).
44. Clerk Van Keuren spoke to Wendy Weiner when she called Judge McGuire's chambers requesting a return call (R. 1798, R. 1830).

45. Judge McGuire called Clerk Van Keuren and advised that his brother was handling the matter (R. 1800, R. 1827, R. 1830, R. 1834).

46. In August of 2011 the matter was resolved in accordance with the disposition previously proposed in November of 2010 (R. 1818 – 1821, R. 1823, R. 1825, R. 2612).

Argument/Mitigation for Charge X

Telephone Number/Former Law Office

After being elected in November of 2010; the Judge and his wife Corinne McGuire undertook to wind down a very successful law practice and prepare to take office (R. 249 – 251, R. 2276 – 2280). Following Judge McGuire's election, he received no materials or guidance concerning the closing of his practice (R. 2114 – 2115, R. 2194 – 2198).

Judge McGuire and his wife made arrangements to transfer or return hundreds of client files to current and former clients. Files which were not claimed or picked up were packaged for storage (R. 2050-2051, R. 2194-2195). Notices were sent out to clients of the law practice about its closing (R. 2056). Several files were taken over and transferred to Ken McGuire, Esq. To facilitate this transition and assist in former clients retrieving their files it was decided that they would retain the former main office telephone number, re-routed to their home connected only to an answering device where a message could be left (R. 2057, R. 2552 – 2553). The files were stored in the Judge's former law office, the lease running until March of 2011, and then removed to another location (R. 2051)

Once the lease expired at the law office in March of 2011 all mail was forwarded to a separate post office box, accessible only by Corrine McGuire (R.2052-2053, R. 2054). After the closure of the law office Corrine McGuire continued to open mail addressed to the law office, forwarding information or providing documents as needed or requested (or specific documents

contained within a file), (R. 2054-2055, R. 2064-2065). Mrs. McGuire transmitted or arranged for delivery of mail out or arrange for a former client to pick up the same (R. 2054-2055, R. 2064). Law office stationary was utilized in connection with transmittals. The correspondence was authored by Mrs. McGuire, of a ministerial nature or utilized templates that she had used for years: "[o]ver the years I had templates set up for correspondence, so I would have that letter preloaded and just print it out and sign it." (R. 2065) Correspondence was handled by Corinne McGuire with some assistance from Maryann Schares (R.2116 – 2120, R.2293, R. 2572). Although the frequency of requests and correspondence diminished over time it was continuing as of the March 31, 2011, move. Mrs. McGuire continued to process mail and requests as received.

To facilitate orderly communication with former clients the office phone was moved to the McGuire's residence where it was wired to an answering machine equipped with a cassette tape. All inquiries were addressed or responded to by Mrs. McGuire (R. 2057 – 2059, R. 2293). The outgoing message advised that they had reached the "Office" of Michael McGuire as distinguished from the former message which identified the receiving entity as "Law Office". The message further provided in sum and substance that no one was available to take the call and inviting the caller to leave a message (R.2551). The evidence established that the McGuire's used the fax machine infrequently and would plug it in to a phone jack in their home. There was no dedicated fax line after the office was closed (R. 2111, R. 2168, R. 2554). Care was not taken to remove the ribbon which identified the machine as connected to the law office (R.2554). Neither, Judge McGuire or Mrs. McGuire were aware of the ribbon setting until the issue was addressed during the hearing of this matter (R.2112). The "ribbon" also included the old non-working fax number [redacted].

The evidence established that Mrs. McGuire, during the transition process learned that the former office email (Mike-Law@[redacted]) could not be ported. A new email address was created by Mrs. McGuire of judgemcguire@[redacted] (R. 2060, R. 2108). Mrs. McGuire advised her husband's confidential secretary Wendy Weiner that calls coming to chambers from former clients regarding their files should be directed to the office number or the new email (R. 1525 – 1526, R. 2060, R. 2109 - 2110). This step was taken to avoid the need to have either Judge McGuire or chambers staff respond to calls from former clients for information. There is no evidence whatsoever in this case to suggest that this email address was set up in any way to promote or solicit future business or to lend the prestige of Judge McGuire's office to any existing law practice (R.2062). That email was maintained for several years until it was ultimately cancelled (R. 2109).

While in private practice and between 2004 and 2010 the McGuire Law Office advertised exclusively in two different Yellow Pages publications (R. 2066). Prior to being elected Judge McGuire had renewed his adds in the Spring of 2010 for the books which are published in early summer of each year, with subscriptions paid in monthly installments (R. 2069, R. 2075 - 2076). As the Yellow Pages editions were hard copies there was no way to cancel the advertisements after being elected. Judge McGuire's sought to remove any online presence and to terminate the monthly installments accruing after January 1, 2011. Several attempts were made prior to January 1, 2011, and thereafter to delist the law office from the Yellow Pages, and also cancel the monthly installment being billed (R. 2067, R. 2288 - 2289). Corinne McGuire made extensive efforts to resolve issues with the Yellow Pages (R.2069, R. 2074). Letters on the letterhead of the law practice were transmitted to Yellow Book. It was undisputed that correspondence related to former law office business was authored by Corinne McGuire using

the former law practice letterhead. Matters requiring response subsequent to January 1, 2011, which were beyond administrative or ministerial were directed to Ken McGuire, Esq. by Mrs. McGuire.

People v. W[redacted] M[redacted]

Judge McGuire improperly appeared in the City of Oneonta Court in the matter of *People v. W[redacted] M[redacted]* on behalf of his son W[redacted] M[redacted]. Judge McGuire understands, that, his position as a full time Judge in the State of New York prevents him from providing representation to any family member. Judge McGuire did not identify himself as a judge (R. 2395).

People v. Corrine McGuire

The evidence at trial established that in May of 2010, Corinne McGuire received a speeding ticket in the Town of Wawarsing (R. 2382). In June of 2010, Judge McGuire appeared on behalf of his wife in the Town of Wawarsing Court and conferenced the matter with the prosecuting attorney, Edward Bruno, Esq., who agreed to dismiss the ticket (R. 2382). In August of 2011, a letter was received from the Court threatening license suspension for failure to answer the ticket (R. 2382). Judge McGuire responded to the letter, advising that he understood the matter had been disposed of at the June 2010 appearance. He informed the Court that if the matter was not disposed, he would have his wife appear, with counsel. He also advised that he could not appear as he was now a judge (R 2570). Soon thereafter the Court responded with a simple notation that the matter had been resolved upon the terms previously fixed by the Town Prosecutor in June of 2010 (R. 2383).

It is not now disputed that Judge McGuire improperly communicated with the Court in August 2011. It was improper to utilize the stationary from former law practice to correspond

with the Court. It is submitted that impropriety was the result of an inattention to Judge McGuire's obligations as a member of the judiciary. He did not intend to trade upon the prestige of his judicial office (R. 2570). The correspondence improperly referenced his status notwithstanding his attempt at explaining why he could not further appear in the matter.

The evidence establishes that Judge McGuire appeared in the Town Court in June of 2010 and believed the matter was resolved. The agreed upon disposition was not recorded or reflected by the Court. The Court issued a letter to the attorney listed on the court's file. Judge McGuire responded to that inquiry by providing his recollection of the case and advised that if the court's notes differed his wife would appear with another lawyer as he can no longer represent her. There is no reasonable inference from the four corners of this letter that the judge expected to receive a benefit based upon his being a judge since there was no benefit to be received; his wife's case had been dismissed. The Commission appears to concur in the factual recitation provided by Respondent as resort was not made to testimony by Wawarsing court personnel or Town Prosecutor Edward Bruno who were interviewed during the investigation of this matter.

George Matisko

Judge McGuire represented George Matisko, prior to taking the bench on January 1, 2011 (R. 2571). At his Deposition on June 23, 2017, Judge McGuire had no recollection of this matter (Transcript of Deposition, June 23, 2017, P. 402). The letters issued on behalf of Mr. Matisko related to medical authorizations were either issued prior to the closing of the law practice with the exception of a letter in January of 2011 issued by Maryanne Schares as part of her course of helping to close out the practice (R. 2572; Transcript of Judge McGuire deposition testimony, June 23, 2017, P. 409). There is no evidence to establish that Judge McGuire was aware of

Shares letter (R. 2573; transcript of McGuire deposition transcript, June 23, 2017, P. 407 - 408). Beyond Shares letter, Judge McGuire acknowledged that Mr. Matisko approached him in a local restaurant where the Judge was having lunch and asked him to notarize a document for his insurance company (Transcript of Judge McGuire deposition testimony, June 23, 2017, P. 409). The Judge agreed to accommodate him and invited Mr. Matisko to stop by chambers (Transcript of Judge McGuire's deposition, June 23, 2017, P. 403). Later that day, Ms. Weiner advised that Mr. Matisko has stopped by and she notarized a document for him. Ms. Weiner did not disclose to the Judge that she had orchestrated the entire process leading to the document needing to be notarized (Transcript of deposition testimony of Judge McGuire, June 23, 2017, P. 411). Judge McGuire consistently denied knowledge of Ms. Weiner's actions on behalf of Matisko (R. 2574). Judge McGuire did not at any time request or direct Ms. Weiner to take any steps on behalf of Mr. Matisko (R. 2384, R. 2574 - 2575). Judge McGuire denied communication with an adjuster on behalf of Mr. Matisko and believed Mr. Matisko's matter to be concluded before he took the bench (R. 2383, R. 2576 - 2577). Judge McGuire has denied receiving a check on behalf of Mr. Matisko and denies calling concerning a lost or missing check (R. 2384, R. 2578). The check produced at the hearing contained the signature stamp of Judge McGuire. It was undisputed that Ms. Weiner had access to Judge McGuire's stamp (R. 2578).

Ms. Weiner's version of events with respect to the Matisko transaction were not credible. Although Ms. Weiner was able to provide purported details of the transaction during her direct testimony, she displayed an inability to recall related events during questioning by the Referee and during cross examination. During her direct testimony Ms. Weiner offered that the Judge spoke to her about a car accident and paperwork and asked her to settle the case since she was more experienced, and Judge McGuire was unfamiliar with that area of law (R. 1468 - 1469).

Ms. Weiner further testified that she contacted Progressive and accepted an offer to settle the matter at $1,000.00 without speaking to Mr. Matisko. She also stated that Judge McGuire asked her to draft a release (R.1470 – 1472). After preparing the release, Ms. Weiner claimed that she left a note on Judge McGuire's desk with the release advising that Mr. Matisko would be in the next day to sign (R. 1468 – 1475).

In response to questioning by the Referee, Ms. Weiner could not recall why she used the Ferndale PO Box on the Matisko letter she created, without speaking to or sharing it with the Judge (R. 1479). Ms. Weiner could not recall if she had shown Judge McGuire her December 23, 2011 letter to Progressive Insurance. Ms. Weiner also testified that she sent a letter to Progressive requesting a new check after the original check was not received (R. 1480). On cross examination Ms. Weiner denied that she told Ira Saffron from Progressive that the check was lost, which conflicted with the contemporaneous file notes recorded by Progressive Insurance. (R. 1651). On direct Ms. Weiner claimed that she only met Matisko one time when he came to sign the release (R. 1479), but on cross she acknowledged she met him on more than one occasion (R. 1646). On direct Ms. Weiner stated that she had notarized George Matisko's signature on the release (R. 1477). However, on cross examination Ms. Weiner denied being able to recognize Matisko's signature claiming she had only seen it when he endorsed the settlement check (R. 1650). On cross she acknowledged that she wrote a letter to Progressive, on behalf of Mr. Matisko, pretending to be Judge McGuire (R. 1651). On direct she claimed that she realized the settlement check was not received and took the initiative to request a replacement check. On cross Ms. Weiner claimed that Judge McGuire asked her to call to have a new check issued (R. 1651). Evidence of Ms. Weiner's conduct masquerading as Judge McGuire without his knowledge is confirmed by her confirmation that the signature at the

bottom of the letter she sent to Progressive was created by her on Word Perfect and was not Judge McGuire's actual signature (R. 1647). When Ms. Weiner was confronted with why she had not provided the letter to Judge McGuire for review and signature she claimed he was a very busy man (R. 1648).

The Commission took the deposition of George Matisko during the investigation of this matter. It is submitted that Mr. Matisko failed to corroborate Ms. Weiner's account and confirmed that he dealt solely with her. Although he was included on the Commission witness list, he was not called to testify to resolve the conflicts in Ms. Weiner's testimony. The Commission has failed to establish by credible evidence that Judge McGuire undertook to engage in the practice of law in conjunction with the George Matisko matter subsequent to January 1, 2011.

Phillip and Eileen Moore

Judge McGuire became acquainted with Phillip and Eileen Moore through their daughter and son in law (Mr. & Mrs. Christopher DePew) (R. 678 - 679). The Moore's approached Judge McGuire in a social setting and discussed their plans to purchase a house owned by a bank (R. 686 – 687, R. 701 – 702, R. 2384 - 2385, 2580). Judge McGuire informed the Moore's that he could not handle the transaction for them (R. 687, R. 702). Judge McGuire suggested they contact his brother, Ken McGuire (R. 702- 703). Ken McGuire, provided assistance, without fee to Mr. & Mrs. Moore (R. 703). Ken McGuire, Esq., reviewed contracts prepared by the bank (R. 2122). Judge McGuire relayed messages to the Moore's from his brother relating to scheduling.

The evidence established that Corinne McGuire was an experienced paralegal, received the purchase contract and ordered title for the Moore's, and participated in a couple of communications (R. 2090, R. 2135-2136, R. 2248, R.2257). The contracts were sent to Ken

McGuire, Esq., and brought to the Moore's by Michael McGuire (R. 2583). Judge McGuire delivered the contracts on his way home from visiting his brother. Judge McGuire did not give the Moore's legal advice (R. 705). The contract had been pre-marked, the execution of the contract was undertaken with Judge McGuire who advised them where to sign (R. 2584-2585).

Judge McGuire admitted to knowing that the email address judgemcguire@[redacted] was being used in connection with property transaction concerning the Moore's (R. 2593). Judge McGuire admitted his failures in connection with the email account went uncorrected (R. 2593 – 2594). Judge McGuire admitted that he was aware that his wife was assisting the Moore's with the transaction and that there were issues with the transaction (R. 2594).

The title company communicated with Corine McGuire to structure the closing (R. 2249 – 2251). Money was wired directly from the Moore's account to the title company (R. 2252). Documents for transfer was prepared and forwarded from the seller to the title company with no involvement by any attorney on behalf of the purchasers (R. 2252). The title company reviewed those transfer documents received from the bank and issued payment to the seller bank (R. 2252).

The uncontroverted testimony of Steven DeCarlo, the title agent confirmed that Judge McGuire did not communicate with his office in any fashion in connection with the transaction. (R. 2252). Closing of title took place in Mr. DeCarlo's office, Judge McGuire did not attend; there was no fee or reimbursement paid to Judge McGuire as confirmed by the HUD-1 statement issued at closing (R. 2254). Mr. DeCarlo's title company prepared the title, reviewed the title, issued the title insurance policy, recorded the deed and transfer documents, without any contact, communication or involvement of Judge McGuire (R.2256).

Ricky Pagan

Judge McGuire completed all work necessary to conclude Ricky Pagan's real estate matter, while in private practice in 2010. Judge McGuire viewed the remaining process of mailing documents and thereafter filing same as ministerial rather than legal undertaking for which no fee was contemplated (at any point) and no legal advice was to be given or received after December 31, 2010 (R. 2387). It was uncontroverted at trial that in March of 2010 and advised Judge McGuire that he was anxious to purchase a parcel of land that was in danger of being lost by tax foreclosure (R.465, R. 472, R. 2387 – 2388). To safeguard Mr. Pagan's own interest in purchasing this vacant land, adjacent to his home, he contacted the owner, agreed on a price of $8,000 and thereafter went to the County Treasurer and paid the outstanding tax lien of approximately $5,000 owing in back taxes (R. 467 – 468; R. 474, R. 2388 – 2389). Mr. Pagan had not reduced his agreement with the property owner to writing and sought Judge McGuire's guidance to formalize the transaction (R. 472 – 478; R. 465 – 468). Concerned about the potential loss of his $5,000.00 the parties agreed to execute a mortgage in the amount of the tax payment, which would be satisfied upon the payment by Mr. Pagan to the landowner of an additional $3,000.00 at which time the landowner would execute a deed and transfer documents for signature (R. 467 – 469, R. 475, R. 2387 – 2389). The mortgage documents and deed and transfer documents were simultaneously prepared by Judge McGuire (R. 465 – 467, R. 472, R. 474 – 476, R. 478, R.2387 - 2389). Prior to assuming judicial office Judge McGuire contacted Mr. Pagan and advised that all the legal work had been completed that the documents were in the file and that whenever he had the balance of the money, they could mail the documents to Binghamton where the landowner resided. The documents were retained in Mr. Pagan's file. Mr. Pagan did not return for the documents until the spring of 2013 (R. 468, R. 476 – 479). At Mr. Pagan's request Corinne McGuire removed the previously drafted documents from the file,

inserted the current date and enclosed a $3,000.00 check provided by Mr. Pagan and mailed them to the owner in Binghamton (R. 2153). Judge McGuire had no involvement in the transaction subsequent to the initial mortgage and document preparation in 2010. Mr. Pagan provided the check and Ms. McGuire accommodated him by facilitating the transmittal to the landowner. Mr. Pagan personally filed the deed and transfer documents were filed with the Sullivan County Clerk (R. 471, R. 479, R. 2611). The evidence at hearing showed that the legal work associated with this transaction was completed months prior to Judge McGuire taking the bench, that he completed no legal work and provided no legal advice after January 1, 2011 he never received any compensation, at any time for anything associated with this transaction and that Judge McGuire played no role in either retrieving the file from storage, (in 2013) or forwarding the documents to Binghamton for signature.

People v. Christopher Lockwood

Mr. Lockwood's case commenced in June of 2010 (R. 975, R. 2392). A Notice of Appearance was submitted to the Town of Liberty Court by Judge McGuire on or about June 19, 2010 (R. 1795; R. 1813). For unexplained reasons a trial notice was not received in his former office until on or after January 5, 2011, after he had assumed his judicial duties (R. 1796). Prior to closing his law practice on December 31, 2010, Judge McGuire contacted the Town Attorney responsible for prosecution of vehicle and traffic offenses in an attempt to resolve the matter (R. 1812). A tentative resolution was reached which was not immediately implemented (R. 2393). Following the closure of Judge McGuire's law practice the trial notice was received which was directed to Ken McGuire, Esq., who had agreed to assist in closing out the few remaining unresolved matters which remained (R. 1800, R. 2081, R. 2393). The Clerk of the Court, Connie Van Keuren testified that the Court received a letter from Ken McGuire, Esq, dated February 1,

2011, on behalf of Mr. Lockwood, however the case remained unresolved (R. 1801, R. 1817, R. 1823). The matter was scheduled by the court for appearance on February 28, 2011. After neither the defendant or counsel appeared, Ms. Van Keuren, aware that Judge McGuire was no longer in private practice, contacted Judge McGuire's chambers and left a message for Judge McGuire to call her (R. 1798 – 1800). Judge McGuire returned Ms. Van Keuren's call and explained that Ken McGuire, Esq., had taken over that file (R. 1800, R. 1827, R. 1830, R. 1834). The change of counsel was not entered in the Town of Liberty database (R. 1800, R. 1817, R. 1830 - 1831). The case was ultimately resolved upon the submission of an Application to Amend the traffic infraction by Ken McGuire on or about August 5, 2011. The documentation produced during the hearing of this matter confirmed Ken McGuire's signature appears on the August 5, 2011, submission. Comparison between the signatures appearing on the Notice of Appearance signed by Judge McGuire dated June 19, 2010, and the August 5, 2011 confirms their respective authorship (R. 1825). Ms. Van Keuren's uncontradicted testimony showed that during her ten (10) years of service in the Town of Liberty Court as Vehicle and Traffic Clerk, the disposition in the Lockwood case was very common (R. 1792 – 1793, R. 1819). The disposition included assessment of the highest permissible fine for the reduced offense (R.1819 – 1820, R. 1821).

The context of the Lockwood matter shows that Judge McGuire did not trade upon the prestige of his office to gain some benefit for a client or himself. The uncontroverted testimony established that Judge McGuire played no role in the assignment of the case, there is no record of any communication between Judge McGuire and the Town Court subsequent to January 1, 2011, beyond a call-in response to the message left by the Court Clerk (R. 1814, R 1827). The version

of events related by Wendy Weiner should not be credited wherein she alleged the Judge had presented her with Mr. Lockwood's ticket (R. 1485).

Ms. Weiner's credibility is undermined by her claim, that she communicated with Ms. Van Keuren on August 5, 2011. Ms. Van Keuren testified to the contrary (R. 1657, R. 1798, R. 1830). Even the letter transmitted to the Town of Liberty with Ken McGuire's signed Application to Amend to the Town of Liberty bears no indicia of Judge McGuire's knowledge or participation, noting that the letter is not signed by Judge McGuire (R. 1656 – 1657).

Proposed Findings of Fact as to Charge XI

Matters Involving Attorney Zachary Kelson

Associations with Attorney Zachary Kelson

1. Zachery Kelson, Esq is an attorney in good standing with offices located at [redacted] (R.619).
2. Judge McGuire was well acquainted with Mr. Kelson, as a member of the bar. While in private practice they worked on cases as co-counsel and opposed each other as adversaries.
3. Prior to his admission to the bar, Judge McGuire encountered Mr. Kelson who represented the seller's when the McGuire's purchased their residence. (R. 623, R. 812).
4. Judge McGuire was also familiar with Mr. Kelson as the son-in-law of the Hon. Burton Ledina, AJSC, ret. (R. 818).

5. Judge McGuire and Mr. Kelson customarily took lunch at one of the few establishments in the vicinity of the Courthouse and Government Center in the Village of Monticello. With some frequency they would interact during lunch or dine together. Generally, their discussions involved activities of their children (R. 623 – 625, R. 814 – 816).
6. On one or two occasions Judge McGuire and Mr. Kelson scheduled lunch together (R. 625, R. 814 – 816).

W[redacted] M[redacted]

7. On one such occasion Judge McGuire spoke to Mr. Kelson concerning his son's matter in Oneonta. Mr. Kelson who responded that he would call the DA office to confirm the information that Judge McGuire was receiving from his son and to inquire about the District Attorney's policy, if any, with respect to marihuana offenses (R. 632 – 634, R. 825 – 826).
8. Mr. Kelson contacted the District Attorney's Office and advised Judge McGuire concerning the call; Mr. Kelson did not communicate with W[redacted] M[redacted] (R. 637 – 638).
9. In July of 2011 Judge McGuire's son K[redacted] was seriously injured in a house structure fire and was confined at the burn unit at Westchester Medical Center for several weeks (R. 2396).

Tina McTighe

10. Tina McTighe is the childhood friend and lifelong friend of Judge McGuire's wife, Corinne McGuire (R. 833, R. 2154).
11. During the summer of 2012, Ms. McTighe received a traffic ticket in Schoharie County, New York (R.661 R. 2634).

12. Ms. McTighe sought advice concerning her traffic ticket from Corinne McGuire. Mrs. McGuire suggested that Ms. McTighe contact Zach Kelson who previously represented Ms. McTighe's son (R. 2094).

13. Judge McGuire was not involved in the referral of Ms. McTighe to Mr. Kelson (R. 2095 – 2096).

14. Mr. Kelson was contacted and agreed to handle the matter for Ms. McTighe. He sent an email to Judge McGuire and Mrs. McGuire regarding need for documents associated with his handling this matter (R. 2095, R. 2634).

15. Judge McGuire took no action with respect Ms. McTighe's ticket beyond his direction to contact with his wife. (R. 663 – 664, R. 835, R. 2095, R. 835). Mrs. McGuire thereafter communicated with Mr. Kelson (R. 2095).

16. Mr. Kelson handled the matter for Ms. McTighe, Judge McGuire never discussed the matter with Mr. Kelson and never requested or received anything of value in exchange for said representation. Judge McGuire was unaware of the fee charged for the representation by Mr. Kelson (R. 663 – 664, R. 759, R.836 – 837, R. 2095 – 2096).

17. Judge McGuire never sought to be included in any communications by Mr. Kelson related to this matter (R. 856 – 837).

Jerry Fernandez

18. Jerry Fernandez is a friend of Judge McGuire and Mrs. McGuire (R. 843, Transcript of McGuire Deposition June 23, 2017, P. 486).

19. In the summer of 2010, Mr. Fernandez mother passed away leaving no estate but some debt (R. 84, Transcript of McGuire Deposition, June 23, 2017, P. 487).

20. In 2013 Mr. Fernandez contracted an eye infection which required him to be hospitalized first at Orange Regional Medical Center and later at Westchester Medical Center. Mr. Fernandez had no health insurance benefits at the time, as a self-employed restaurant owner (Transcript of McGuire Deposition June 23, 2017, P. 499).
21. In January of 2014 he was served with a complaint alleging that his mother owed money to the County for a debt incurred prior to her death (R. 707; R. 843; Transcript of McGuire Deposition, June 23, 2017, P. 487).
22. Mr. Fernandez, in passing mentioned to Judge McGuire, in a social setting that he had received the papers and was going to contact Mr. Kelson who had represented his family on other matters previously. Judge McGuire provided no legal advice to Mr. Fernandez and offered no suggestion that he contact Mr. Kelson (Transcript of McGuire Deposition, June 23, 2017, P. 487).
23. After several days had passed, Judge McGuire asked his friend if he had contacted Mr. Kelson and Mr. Fernandez said he had but he had not yet gotten him the pleadings so that a response could be entered (Transcript of McGuire Deposition June 23, 2017, P. 499 – 502).
24. Judge McGuire took the pleadings and provided them by email to Mr. Kelson so that an answer could be interposed avoiding a default (Transcript of McGuire Deposition, June 23, 2017, P. 499 – 500; R. 727; R. 2629).
25. Mr. Fernandez had no interest in disputing the claim, was willing to pay the full amount sought but needed to pay over time has he did not have the financial resources at that time to make the approximately $1,000 payment (R. 844 – 845).

26. Mr. Kelson contacted the Plaintiff's attorney and reached a settlement pursuant to which Mr. Fernandez would make monthly payments until the debt was satisfied (R. 847).

27. Mr. Kelson never discussed strategy or legal issue with Judge McGuire in conjunction with this matter. Never provided anything of value for any perceived referral and Judge McGuire took no position with respect to the fee arrangement between Mr. Kelson and Mr. Fernandez. Any communications between Judge McGuire and Mr. Kelson on this matter were strictly gratuitous, not solicited or anticipated by Judge McGuire and were given little to no weight by Judge McGuire (R. 850).

28. On a few occasions, when Mr. Kelson was unable to get a response from Mr. Fernandez regarding missed or late payments, Mr. Kelson would ask Judge McGuire to remind his friend to remit his payment as agreed. Judge McGuire would mention that to Mr. Fernandez and took not further interest nor steps in the matter. At the time of these reminders there was nothing pending in any court and Mr. Kelson's representation had technically ended (R. 849, R. 2630).

Lindsay Amoroso

29. Lindsay Amoroso was a co-worker of K[redacted] M[redacted] who was a guest at K[redacted]'s home on the night of the fire (R. 2396).

30. After escaping the home as the fire was advancing, Ms. Amoroso who had been in a different room, realized that K[redacted] remained inside (R. 2396 – 2397).

31. Ms. Amoroso re-entered the burning building and was able to get K[redacted] who had suffered serious injuries, to safety (R. 2396 - 2397).

32. While K[redacted] was recovering from his injuries at the Westchester Medical Center, Ms. Amoroso received a traffic ticket in Dutchess County while traveling for a hospital visit (R.2397).

33. When she arrived at the hospital, she related to K[redacted] that she had received a ticket. K[redacted] subsequently provided the ticket to Judge McGuire and asked if he could assist her with it (R. 2397).

34. Judge McGuire contacted Mr. Kelson to determine if he knew of a lawyer in Dutchess County who could represent Ms. Amoroso. After speaking to Mr. Kelson, Judge McGuire provided him with Ms. Amoroso's ticket and specially advised that he could charge her his customary fee (R. 2397).

35. Mr. Kelson represented Ms. Amoroso, Judge McGuire never requested any updates or briefing on the progress of the matter, never inquired about any fee arrangement, never sought or received any type of referral fee, his actions were an attempt to reciprocate for Ms. Amoroso's selfless acts which preserved his son's life (R 836 – 838, R. 2397, R. 2630).

36. Mr. Kelson provided gratuitous update on the progress and resolution of the matter and other than a verbal thank you received nothing of value from Judge McGuire (R. 853, R. 855, R. 2630).

Willie Williams

37. Mr. Kelson represented a young man, Willie Williams on a traffic infraction in the Town of Fallsburg (R. 856).

38. Judge McGuire was familiar with Mr. Williams from when he was a student at SUNY Sullivan (R. 856).

39. Judge McGuire was unaware that he had received a traffic infraction and unaware that he was using Mr. Kelson to assist him with that matter (R. 856, R. 2631).

40. After the matter was completed, Mr. Williams sent a thank you note to his attorney and apparently the two had discussed that Mr. Williams was familiar with Judge McGuire from his volunteer involvement with the SUNY Sullivan Athletic Program (R. 858, R. 2631).

41. Mr. Kelson forwarded the email to Judge McGuire with a comment that Mr. Williams was a nice, polite and gracious young man (R. 858 – 859, R. 2631).

42. Judge McGuire previously unaware of any relationship between Kelson and Williams responded that he is a nice man and thanked him for sharing the nice note that Mr. Williams had sent but assigned no significance to the letter (R. 859, R. 2631).

43. Judge McGuire never discussed legal issues associated with this case with anyone, played no role in Mr. Kelson being selected as attorney and received nothing of value from anyone in conjunction with this matter (R. 860).

Lori Shepish

44. Lori Shepish was Corinne McGuire's hair stylist (R. 2096).

45. At some point Lori Shepish decided to relocate to North Carolina and sell her Sullivan County home (R. 2096).

46. During an appointment with Corrine McGuire, Ms. Shepish asked her to recommend and an attorney to represent her in the sale of her home (R. 2096).

47. Mrs. McGuire, without consulting or advising her husband provided several names of local attorneys who handle real estate transactions (R. 861, R. 2096).

48. From the list provided, Ms. Shepish selected Zach Kelson, Esq. who handled the transaction for her (R. 860).

49. Judge McGuire played no role in the selection of Mr. Kelson and never discussed the matter with Mr. Kelson. Judge McGuire was unaware that Ms. Shepish was selling her house, moving to North Carolina or needed an attorney (R. 862, R. 2630).

50. Neither Judge McGuire nor Corrine McGuire solicited or received anything of value in exchange as a result of Mr. Kelson's retention by Ms. Shepish (R. 761 – 762, R. 2630).

51. Mr. Kelson sent a gratuitous note to Judge McGuire following the transaction thanking him for the referral. Judge McGuire thanked Mr. Kelson for his note (R. 761 - 762).

Cases in which Attorney Zachary Kelson Appeared before Judge McGuire

52. Supreme Court cases, in Sullivan County, are assigned to a trial judge and they are managed through the discovery phase through a series of conferences, which generally are conducted by the Judge's Law clerk (R. 862 – 865, R. 1294 – 1297, R. 1953, R. 1955).

53. It is not at all uncommon for the Judge to be unfamiliar with the status of a case at a particular point in time including being aware of the identity of the attorneys for a particular case (R. 997 – 999, R. 1955 – 1957).

54. During the time period encompassed by the complaint (2011-2015) Judge McGuire did not recuse himself on any case involving Mr. Kelson and never disclosed the nature of their relationship (R. 2638).

Election Law Matter

55. Judge McGuire presided over a Supreme Court election law matter in which Mr. Kelson appeared. The matter involved an emergency application and was assigned to Judge McGuire as the duty judge for election day (R. 764 – 768).

56. The case involved the number and location of polling places set up by a Village. Mr. Kelson represented a representative of the Town. The case was dismissed on procedural grounds following oral argument. No testimony was taken. The merits of the petition and Mr. Kelson's client's position were not known or considered (R. 764, R. 865 – 868).

FIA Card Services v. Fishbain

57. The matter of *FIA Card Services v. Fishbain*, was a consumer credit proceeding which Judge McGuire was uninvolved with until a dispositive motion for Summary Judgment was filed, which Mr. Kelson did not appear on (R. 774 – 776).

58. Without regard for the identity of the attorneys Judge McGuire rendered a decision granting Summary Judgment to the plaintiff on the law and the facts. Mr. Kelson did not submit papers and so was not included on the order; Judge McGuire had no idea who was representing the defendant (R. 774 – 776).

59. Summary Judgment was entered in favor of the Plaintiff, Card Services, and the matter was closed without further involvement by the Court, there was never an on the record proceeding in this matter before Judge McGuire (R. 775).

Tax Certiorari Cases

60. Mr. Kelson represented Jeffery Miller on a series of tax certiorari cases which were assigned to Judge McGuire and managed by his Court Attorney, Mary Grace Conneely. Judge McGuire was not aware of how many, if any conferences were held, was not aware

of the disposition of the matters and was not aware of the identity of the attorneys during the time that the cases were pending (R. 779 -782).

61. Judge McGuire would become actively involved following the filing of a Note of Issue and the matter was placed on Judge McGuire's trial calendar. The matters cited in the complaint with which Mr. Kelson was associated were in all instances resolve pre-Note of Issue (R. 1296 – 1297, R. 1299, R. 1340).

Family Court Cases

62. Mr. Kelson appeared in several Family Court matters before Judge McGuire, each involved his appearance as attorney for children in proceedings seeking findings of abuse and/or neglect against those legally responsible for the care of the children (R. 790 – 799).

63. Judge McGuire did not recuse himself nor did he make a record of any special relationship between himself and Mr. Kelson (R. 800).

64. Each of the cases involved allegations of significant abuse or neglect and each resulted in the parents voluntarily surrendering their parental rights clearing the children for adoption (R. 790 – 799).

65. There were no trials conducted in any of the cases and Mr. Kelson's advocacy was limited to insuring that the children receive all of the medical, educational and psychological services necessary to redress the abuse / neglect at the hands of their caregivers. His position was never at odds with either the presenting agency or the caregivers (R. 790 – 799).

66. Each of the children were ultimately cleared for adoption without testimony or trial, voluntarily by the parents/guardians (R. 790 – 799).

67. Judge McGuire has now recused himself from all matters in which Mr. Kelson is involved (R. 2656).

Dean v. Boyes

68. The matter of *Dean v. Boyes* was a Supreme Court matter assigned to Judge McGuire in January of 2013 (R. 1259 – 1262).

69. The case involved an eighty (80) acre parcel of real property that was jointly owned by Mr. Boyes and his uncle, Mr. Dean (R. 1262, R. 1215 – 1216, R. 2398).

70. The parties were embroiled in a dispute and wished to partition the land such that each would own a portion of the property free of the other (R. 1215 - 1216).

71. Judge McGuire and his Court Attorney, Mary Grace Conneely, each had contacts with these parties. Judge McGuire had represented Sean Boyes' mother in the preparation of a deed conveying the subject property from herself to her son. Judge McGuire prepared a Deed and had no further involvement in the matter (R. 1262, R. 2623 – 2624, R. 2398).

72. Mary Grace Conneely contracted with Mr. Boyes' construction company perform renovations on her home prior to 2013. Materials were purchased from Mr. Dean's lumber yard (R. 2398, R. 2623).

73. At the first appearance, with both parties and their attorneys present, Judge McGuire made a disclosure of his involvement and what Ms. Conneely had reported to him as her involvement with the parties. The parties and their counsel respectively expressed their wish to proceed before Judge McGuire and Ms. Conneely's continued work on the matter (R. 2623; Transcript of Disclosure).

74. As there was no dispute as to the title to the land which was the subject of the partition proceeding it was stipulated that the Court's prior knowledge in preparing the deed of

transfer, many years earlier, would not influence his determination of any material issue in the case (R. 2623).

75. Several months after Judge McGuire made his disclosure and the parties stipulated to proceed before the Court, Ms. Conneely entered into a further contract with Mr. Boyes company for additional renovations to her home (R. 1266, R. 1347 – 1349, R. 2624 – 2625).

76. Ms. Conneely did not inform Judge McGuire of her new contract; Judge McGuire was unaware of the new contract (R. 2398 - 2401; R. 2624; R. 1347 – 1349). There is no indication that either Mr. Boyes or his counsel disclosed the new contract with Ms. Conneely to Judge McGuire or to their adversary.

77. Ms. Conneely continued to work on the file. The matter was conferenced before Judge McGuire on several occasions. He also conducted site visit during the pendency of the matter (R. 1351 – 1362).

78. Ms. Conneely did not recognize the existence of a real or potential conflict as a result of her new contract with Boyes and Torrens for construction at her home. She never informed Judge McGuire of the additional contract for work and did not advise him that a subsequent disclosure might be necessary; She continued to work on the file (R. 1342 – 1344).

79. An initial decision was rendered in the matter. Mr. Dean filed a motion to re-argue which raised the conflict and cited the new contract. When confronted with the motion, Ms. Conneely maintained that a further disclosure was unnecessary believing the February

2013 disclosure satisfied her ethical duties; She viewed her continuing work on the file as proper (R. 1276 – 1278, R. 1342 – 1347, R. 1351, R. 1362, R. 2398, R. 2624 – 2625).

80. The motion to re-argue was denied and the matter went up on appeal where it was settled, prior to being reached by the Third Department. (Decision on Motion; R 1276, R. 1280 – 1281, Exhibit XI-40B, Exhibit XI-44).

81. Ms. Conneely retired in 2016 after more than twenty (20) years of service in the Unified Court System. Ms. Conneely served as a Court Attorney for several Supreme Court Justices, including Hon. Anthony Kane during his tenure on the Appellate Division Third Department. (R. 1523, R. 1256, R. 1288 – 1290, R. 2206 - 2207).

82. Judge McGuire relied upon the information provided to him, by his Court Attorney in first making disclosures and thereafter retaining the case (R. 1335, R. 1351, R. 1362, R.2398, R. 2401, R. 2624 – 2625).

Argument/Mitigation Charge XI

Charge XI alleges that between 2011 and 2014 Judge McGuire presided over cases in which impartiality might reasonably be questioned.

Sullivan County is a small and rural county in which approximately one dozen (12) lawyers handle the vast majority of contested litigation (R. 813). The membership in the Sullivan Bar Association is less than the entering class in many law firms. The bench and bar are accustomed to personal friendships (R. 811). Judge McGuire interacted with the majority of the local bar as an assistant district attorney and their families for many years (R. 811 - 813), private practitioner and member of the judiciary.

Zachary Kelson, Esq.

Judge McGuire has admitted that he should have disclosed his relationship with Mr. Kelson on the record (R. 2655). Upon consideration, as of May 1, 2019, Judge McGuire has disqualified himself from all cases in which Mr. Kelson appears (R. 2656).

The evidence at trial established that Mr. Kelson, and Judge McGuire were friends and colleagues dating back to before Judge McGuire was admitted to practice law (R. 2627 – 2628). When his wife and he purchased their home, Mr. Kelson represented the seller (R. 623, R. 812). As a practicing attorney Judge McGuire often relied upon Mr. Kelson's associations for matters pending outside the Hudson Valley (R.806). Mr. Kelson is the son in law of the Hon. Burton Ledina who Judge McGuire was succeeding on the bench (R. 818 – 819). Judge McGuire and Mr. Kelson had a casual association eating lunch together on occasion (R. 623; R. 625; R. 814). Mr. Kelson did not pay for Judge McGuire's meal (R. 815). Judge McGuire and Mr. Kelson did not speak about cases pending before Judge McGuire (R. 816). Out of respect for Judge Ledina and Mr. Kelson, Judge McGuire and his wife attended Mr. Kelson's son's Bar Mitzvah reception, for a very brief period, and provided a modest gift of $100.00 (R.626 – 627). Judge McGuire did not refer matters clients to Mr. Kelson (R. 2122, R. 2626).

W[redacted] M[redacted]

During lunch one day Judge McGuire related to Mr. Kelson his concerns over the handling of his son, W[redacted] M[redacted]'s case, in the City of Oneonta Court (R. 632, R. 825 - R. 826). Mr. Kelson offered to make a phone call to inquire about a policy relating to the prosecution of the case, confirming that the same had accurately been related by Judge McGuire's son (R. 634, R. 637 – 638, R. 643, R. 828). There was no benefit to Judge McGuire in exchange for Mr. Kelson making this inquiry and certainly no quid pro quo expectation (R.

829). Mr. Kelson had no further involvement in the case (R. 654). Mr. Kelson's limited involvement was a call which was to establish the District Attorney's office's policy (R. 830, R. 832).

Tina McTighe

Tina McTighe and Mrs. McGuire have been close friends since childhood (R. 833). The evidence adduced at trial established that when Mrs. McGuire's friend received a traffic ticket in Schoharie County, she asked her who could handle the same. Mrs. McGuire advised her that Zachary Kelson, had a state-wide network of attorneys to handle traffic tickets and he could probably assist her (R. 661; R. 834). Ms. McTighe had hired Mr. Kelson in a prior matter (R. 209, R. 661). Judge McGuire was not part of this conversation and was not even aware that Ms. McTighe had received a traffic ticket (R. 2094 – 2096). Corinne McGuire based upon her experience working in her husband's firm took it upon herself, without conferring with her husband, to prepare a waiver such that an attorney could appear on behalf of Ms. McTighe without her (R. 663 – 664, R. 2095, R. 2122). Thereafter Mr. Kelson contacted Mrs. McGuire about this waiver and copied Judge McGuire on the email, putting the Judge on notice, for the first time, regarding this matter (R. 664, R. 2634). Corinne McGuire testified, that she took care of the waiver and never discussed the matter with her husband (R. 2156). Judge McGuire responded, innocuously to the unsolicited email inquiring about the only disposition that anyone seeks with respect to a speeding ticket, a "0" points infraction (R. 669, R. 853 - 855). Judge McGuire played no other role in this matter and took no position with respect to the client or Mr. Kelson's representation of her any communication between Mr. Kelson and Judge McGuire on this matter was strictly gratuitous and did not contemplate any quid pro quo or other relationship (R. 835 – 836). When the case was complete, for unknown reasons and certainly not based

upon any expectation, Mr. Kelson forwarded a fine notice to both McGuire's asking that it be provided to Ms. McTighe for payment (R. 672, R. 836 – 837, R. 2630).

Jerry Fernandez

Mr. Kelson represented a close friend of Judge McGuire's: Jerry Fernandez, in two collection cases. Mr. Fernandez was not referred to Mr. Kelson by Judge McGuire. Mr. Fernandez and Mr. Kelson had an attorney-client relationship prior to knowing Judge McGuire. (R. 707, R. 843).

The first case in the Town of Liberty involved money that his mother owed to the County of Sullivan for services rendered to her prior to her death (R. 707 – 708, R. 844). Jerry Fernandez had no interest in raising a defense that he was not responsible for him mother's debts, instead he wished to enter into an installment plan (R. 844 - 845). Mr. Kelson facilitated the same in one meeting with the County Attorney (R. 845).

The second case involved money due to an ophthalmologist for services rendered when Mr. Fernandez was hospitalized without health insurance (R. 724, R. 845). Mr. Fernandez needed an installment plan to pay (R. 845). In this case Mr. Kelson was retained by Mr. Fernandez, the matter was resolved without appearances (R. 846). A payment plan was agreed upon, with no involvement from Judge McGuire (R. 847 – 848).

Although Mr. Kelson had never previously communicated with Judge McGuire regarding Mr. Fernandez' matters he sent copies of the settlement, as an unsolicited update (R. 730 – 731, R. 2630). In an email after the entire matter was complete, Judge McGuire graciously thanked Mr. Kelson for taking care of the matter for Mr. Fernandez, suggesting dinner (R. 2636).

Post settlement Mr. Kelson was contacted by the attorneys for the creditors inquiring about late or missed payments (R. 714, R. 849, R. 2635). Mr. Kelson testified he was having

trouble contacting Mr. Fernandez. He was aware Judge McGuire was friendly with him, he asked Judge McGuire to remind his to send in a payment (R. 714, R. 718, R. 720, R. 844, R. 849, R. 851).

Lindsay Amoroso

Judge McGuire's oldest son, K[redacted] was saved from a burning building by Lindsay Amoroso (R. 851 – 852, R. 2099, R. 2396). Ms. Amoroso, while traveling to Westchester to visit Judge McGuire's son in the intensive care burn unit, received a traffic ticket, in Dutchess County (R. 852, R. 2099, R. 2396). K[redacted] took the ticket and asked his father if he could help with it (R. 2397). Judge McGuire turned to Mr. Kelson (R. 741). There was no expectation that Mr. Kelson would take care of the ticket without fee (R. 741). Indeed, the evidence was uncontroverted that Mr. Kelson asked the Judge if he wanted him to do this as a favor, on a pro bono basis, Judge McGuire responded that the fee agreement was between he and his client (R. 741, R. 853). Corinne McGuire provided Mr. Kelson with contact information for Ms. Amoroso (R. 742, R. 745). When the case was complete, Mr. Kelson forwarded a gratuitous email advising Judge McGuire that the matter had been taken care of, Judge stated in sum and substance that he appreciated his efforts (R.748, R.750, R. 2629).

Willie Williams

The evidence at trial established that Mr. Kelson represented Willie Williams, a young man that Judge McGuire was familiar with when he played basketball at SUNY Sullivan, a fact that was apparently disclosed to Mr. Kelson by Mr. Williams (R. 856 - 857). There is nothing in this record to establish that Judge McGuire was aware of such representation until after the matter was concluded (R. 756, R. 857, R. 2629, R. 2631). Mr. Kelson gratuitously forwarded an email to Judge McGuire (R. 757 – 758) demonstrating that the young man was a gentleman,

noting that the email from Williams to Kelson made no reference to Judge McGuire (R. 856, R. 858 – 859, R. 2631). Judge McGuire took no action in regard to this matter, Mr. Kelson's representation was not at the behest of Judge McGuire (R. 857, R. 860).

Lori Shepish

Ms. Lori Shepish was Corinne McGuire's hairdresser (R. 860). Ms. Shepish asked Corinne McGuire which attorneys in the area handle real estate matters, as she was selling her home and relocating out of the area (R. 2096) Corinne McGuire provided the names of several local attorneys who handled real estate matters and never spoke to any attorney on behalf of Ms. Shepish (R. 861, R. 2096, R. 2153). Corinne McGuire never spoke to Judge McGuire about Ms. Shepish' real estate transaction (R. 2154). There was no compensation of any sort paid to either Judge McGuire or Corinne McGuire in conjunction with Mr. Kelson's representation of Ms. Shepish, noting that she paid Mr. Kelson whatever fee he had requested (R. 2096). When the Shepish matter was complete Mr. Kelson sent an unsolicited "thank you" to Judge McGuire for sending Ms. Shepish. Judge McGuire did not recommend Mr. Kelson to Ms. Shepish (R. 761, R. 762, R. 764, R. 2630). Mrs. McGuire testified that she provided the names of several real estate attorneys, of which Mr. Kelson was one, to her hairdresser and never discussed the matter with her husband (R. 2096, R. 2153).

Attorney Zachary Kelson's Appearances Before Judge McGuire

Mr. Kelson's appearances before Judge McGuire during the time period at issue were predominantly limited to the role of Attorney for the Child, in abuse/neglect matters and Supreme Court matters which settled by stipulation without appearance before Judge McGuire. (R. 862 - R. 865, R. 869 – 871, R. 780, R. 782) and an election matter, which was dismissed on jurisdictional grounds (R. 764, R. 765, R. 768, R. 865 – 867, R. 868).

In *FIA Services V. Fishbain,* Mr. Kelson was counsel for Ms. Fishbain however his name did not appear on the judgment rendered by Judge McGuire adverse to Ms. Fishbain as Mr. Kelson did not appear or submit a response to the motion for summary judgment. (R. 897). The resolution of a case adverse to Mr. Kelson's client would not appear to be a basis for concern regarding the independence of the judiciary due to Mr. Kelson's participation. (R. 774 – 775).

In the Family Court case of *D*[redacted] *v. F*[redacted] Mr. Kelson represented a child who had been the victim of severe abuse at the hands of his father (who previously killed another child) (R. 876). The case did not proceed to trial and was resolved with consent of all parties. The Department of Family Services was seeking to remove the child from the parent's care. The child having been injured by the father was in the Pediatric Intensive Care Unit of Westchester Medical Center (R. 786; R. 877). Mr. Kelson on behalf of the child joined the application. There was no cause to believe the resolution was impacted in any way by bias in favor of Mr. Kelson's cause (R. 878). The parents consented to the removal (R. 877 – 878). The parents subsequently voluntarily surrendered their parental rights to facilitate an adoption of the child. (R. 878; R. 879). Judge McGuire discharged his duties and ensured that the parents understood each of their rights and that they reached their decision knowingly, intelligently and voluntarily (R. 879 - 880) and that the child's needs were being properly addressed. (R. 881; R. 883). In this Mr. Kelson as the attorney for the child and the attorney for the Department of Family Services were aligned in interest. (R. 884). As the parents consented to the surrender of parental rights no issue concerning a bias on the part of the Court was implicated.

The matter of *D*[redacted] *v. C*[redacted] involved a very young child who had watched his mother and uncle inject heroin leading to the death of the uncle in the child's presence (R. 795; R. 885). Mr. Kelson again served as attorney for the child. Both respondents,

C[redacted] and P[redacted] were represented by counsel throughout the proceedings. There was no adversarial relationship between the Department of Family Services and the attorney for the child. The Petitioner and Mr. Kelson advocated for placement. (R. 885). The mother, represented by counsel, acknowledged that she had not provided a safe and nurturing environment for the child and was not in a position, at that time to do so. The child's father was drug addicted and suffered as the result of a traumatic brain injury. He was also represented by counsel and acknowledged that he was incapable of caring for his child and offered no objection to the child being removed from the mother's care and placed in foster care (R. 885). The court's only role was to ratify the decision reached by the parties, each of whom were represented by counsel.

In response to the guidance received subsequent to the filing of the complaint in this matter Judge McGuire has placed Mr. Kelson on his recusal list. In a small, close-knit community with a small bar, the extent of the interactions warranted disclosure but did not warrant recusal. The cases cited by the Commission were either non contested or resolved by settlement or procedurally. In response to the guidance received subsequent to the filing of the complaint in this matter Judge McGuire has placed Mr. Kelson on his recusal list.

Dean v. Boyes

The evidence established that the matter of *Dean v. Boyes* was assigned to Judge McGuire in 2013 and it involved an action by Mr. Dean seeking to partition a parcel of real property owned jointly between himself and his nephew Sean Boyes. There was evidence in the that both Judge McGuire and his Court Attorney Mary Grace Conneely had history with litigants in this case (R. 2624). Judge McGuire, in 2007, while in private practice had undertaken to draft a deed of transfer for a parcel of real property from Sean Boyes' mother, Mary Lou Boyes to her

son, Sean Boyes (R. 2616). While that transaction involved the same parcel of real property as that at issue in the Supreme Court litigation, that fact is of no moment in this case (or the Supreme Court case), as the, deed transfer had occurred five and a half (5.5) years earlier (R. 2616). There had been no contact with either Ms. Boyes or her son since that time and ownership was not an issue to be determined in the Supreme Court litigation (R. 2621). There could be no partition action brought without unity of title, as Tenants in Common (R. 2623). The only way that Michael Dean could know to name his nephew rather than his sister (MaryLou Boyes) would be to have been aware of the aforementioned deed (R. 2618). The only issue for the court to determine was how a partition can be achieved given the characteristics of the property and whatever local zoning ordinances may affect such a sub-division, that is the only issue before the court in a partition action (R. 2623). Therefore, the existence of a prior Attorney-Client relationship with Ms. Boyes, notably not Sean Boyes but his mother, certainly merited disclosure in this matter.

Mary Grace Conneely also had a history with Mr. Boyes' construction company as they did some renovations to her home (R. 1262 – 1263). At the outset of the case, during the parties' first appearance Judge McGuire made full disclosure of what he was aware of regarding these relationships. He disclosed that he had drafted a deed of transfer for Ms. Boyes several years earlier and that Boyes and Torrens construction had completed some renovations at Ms. Conneely's home about a year earlier (R. 2623 - 2624; Transcript of Proceedings February 13, 2013).

After making the disclosure regarding both Judge McGuire's relationship as well as Ms. Conneely's relationship on February 13, 2013, counsel for both parties, with their clients present in the courtroom, stated unequivocally that they had no issue with Judge McGuire or Mary Grace

Conneely continuing to preside over and manage this case (R. 2398, Transcript of Proceedings February 13, 2013). The issues, therefore in this case, to be determined by the fact finder is whether or not facts existed after February 13, 2013, which would have required Judge McGuire to make additional disclosures or recuse himself or his attorney from further involvement in this case.

During her testimony, Ms. Conneely offered that she had been employed by the Unified Court System working for various judges, including Hon. Anthony Kane during his tenure on the Appellate Division, for over twenty (20) years, having commenced her career in 1996 and retired as the end of December in 2016 (R. 1223, R. 1256). During her direct testimony Ms. Conneely set forth that Boyes and Torrens had done work for her on and off for several years and that during the pendency of the Supreme Court case, she did not recall if they were doing work, but they probably were. (R. 1264). Ms. Conneely she was confronted with some documents, by Ms. Tishman including checks made payable to Boyes and Torrens drawn after February 13, 2013 (R. 1264); A contract for a kitchen renovation dated, July 2013. These documents confirmed an ongoing business relationship well after Judge McGuire's February 2013 disclosure (R. 1266).

Ms. Conneely's version of the facts was that she spoke to Judge McGuire about work being done and specifically told him that work was ongoing during the Boyes litigation. (R. 1267). She retreated from her assertion by limiting the notice she had allegedly provided. First, she offered that she spoke to the Judge about the new work, only to retract that by setting forth that they did not discuss this matter everyday unless something new came up that required discussion, like a new contract in July of 2013 (R. 1344 – 1350). Ms. Conneely testified that Judge McGuire advised her that he would disclose however as Ms. Conneely was conducting all

of the conferences in 2013 and 2014, she would have fallen upon her to make that disclosure, she did not do so (R. 1268). Despite her level of experience and independent obligation to disclose her conflict pursuant to the Rules of Professional Responsibility governing attorney conduct Ms. Conneely continued to work on the case without making further disclosure. Ms. Connelly held countless conferences and made site visits and never drafted a memo for Judge McGuire. Conspicuous by its' absence is any writing addressing the continuing relationship (R. 1271).

Judge McGuire learned for the first time at the hearing of this matter in May of 2019, that Boyes and Torrens were still doing work at her home in April of 2014 at the same time as the final decision and order were drafted in this case (R. 1272). When confronted with the transcript of Judge McGuire's February 13, 2013, disclosure to the parties in this case and asked if Judge McGuire disclosed that they were still doing work for her, Ms. Conneely responded; "I believe so…yes" (R. 1275). According to the documents, though they were not doing work for her in February of 2013, other than as Judge McGuire disclosed some minor touch up work previously contracted, completed and paid for, the additional work, according to the contract, in evidence, did not commence until five (5) Months later in July of 2013 (R. 1275).

Moreover, after denying a motion to recuse based, specifically on the conflict created by her association with the construction company, she prepared the draft of a final decision in which she ignored the truth of her association in denying recusal. She later drafted a second decision on the motion to reargue denying it yet again. (Exhibit XI-40b). When asked, on direct if she had discussed the issue at that time with Judge McGuire she responded: "I am sure that we did" (R. 1276). Yet Ms. Conneely still drafted the decision and made no formal record of this inherent conflict. When asked to describe the conversation with Judge McGuire on this topic her reply was; "I don't recall!" (R. 1277). During the hearing, Ms. Conneely was confronted with her

deposition testimony, in response to whether or not she advised the judge of this new conflict in July of 2013, her response was, "I probably did speak with him, I am sure I did." (R. 1278). When asked how the Judge responded to this claimed disclosure she responded: "I can't remember!" (R. 1276 – 1277)

Conneely's responses become progressively more incredible. Ms. Conneely asserted that despite her non-disclosure at conferences she conducted and decisions she had drafted she described being "horrified" when accused of impropriety by Mr. Dean (R. 1344). Even with the benefit of hindsight Ms. Conneely claimed in her testimony that there was no impropriety in her continuing to work on the case. Even as work was ongoing by one of the litigants at her home (R. 1344). In response to questioning by the Referee Ms. Conneely maintained that there was no conflict and therefor no impropriety in her continuing to work on this case. On cross-examination Ms. Conneely acknowledged that she was unaware of any disclosure subsequent to February 13, 2013 (R. 1347). On cross-examination Ms. Conneely acknowledged that she never shared the existence of the new contract with the Judge (R. 1349). Ms. Conneely claimed that the Grievance committee reviewed her actions in this case and allegedly found no impropriety by her (R. 1349 - 1350). Ms. Conneely stated that she holds herself to a very high standard of ethical conduct (R. 1351). However, she never advised Judge McGuire that chambers should be recused (R. 1351).

Judge McGuire properly relied upon his court attorney to be forthcoming with respect to her interaction with litigants appearing before him. In this case Ms. Conneely's omissions deprived Judge McGuire of the ability to act *sua sponte* or to bring the contractual relationship to the attention of the litigant (R. 1362). Where the only person with knowledge of a potential

conflict was his court attorney and a mute litigant, Judge McGuire was without basis to re-visit the conflict previously addressed by the Court.

Ms. Conneely and Ms. Prall testified consistent with one another that neither had ever advised/counseled Judge McGuire on the need to recuse himself when he overruled their advice and continued to preside over a case (R. 1335, R. 1950 – 1952, R. 1954 - 1955). Alternatively, if, as claimed by Ms. Conneely the matter was investigated by the Attorney Grievance committee without critical comment, the matter should be viewed as adjudicated (R. 1350).

Proposed Findings of Fact as to Charge XII

1. As County Court Judge, one of Judge McGuire's duties is to review applications for handgun licenses (R. 2405, R, 2415)
2. The process of review is unrelated to Court operations, it is a function of the Executive Branch of Government and coordinated by the County Clerk in conjunction with the County Sheriff (R. 1488, 1540, R. 1907 – 1908, R. 2017).
3. There are no court records or documents created or maintained in conjunction with the permit process. (R. 1907 – 1908, R. 2107).
4. Interviews are not conducted on the record nor are they required to take place in a courtroom. (R. 1910, R. 2405 – 2406, R. 2410)
5. Prior to 2013, Judge McGuire had Ms. Weiner schedule pistol permit interviews (R. 1488).
6. There was in an increase in pistol permit applications following the adoption of the SAFE Act (2013/2014) (R. 2411 - 2412).
7. There was considerable difficulty in scheduling the increased volume of permit interviews (R. 2405 – 2410).

8. Judge McGuire was amenable to conducting the interviews outside of business hours at a suitable public location. (R. 2405, R. 2410, R. 2681 – 2683)
9. Ms. Weiner arranged for the pistol permit interviews to take place at the Monticello Elks Lodge (R. 2405, R. 2407, R. 2410).
10. Ms. Weiner volunteered to assist with the pistol permit interviews outside of regular business hours (R. 2682).
11. Interviews were conducted at the Monticello Elks Lodge (R. 2407 – 2409, R. 2412 – 2413, R. 2682).
12. Ms. Weiner, as Judge McGuire's secretary was charged with scheduling the interviews of the applicants. (R. 1488, R 2405 – 2406).
13. Judge McGuire did not require Ms. Weiner to be present at the pistol permit interviews held outside of regular court hours (R. 2682 – 2683, R. 2688 - 2689).
14. Hon Thomas Breslin, administrative Judge for the 3rd Judicial District was aware of the program and never directed Judge McGuire to cease, stating only that he would prefer if we could complete them within normal operating hours of the Court (R. 2690).
15. Before agreeing to move interviews off site, Judge McGuire directed Ms. Weiner to speak with Chief Clerk Benson, in an attempt to carve out some time during the month when the judge would have no calendar and interviews could be scheduled. Ms. Weiner thereafter scheduled off site interviews (R. 2406).
16. In August of 2014, Ms. Weiner asked the Judge if he would be willing to conduct hand gun permit interviews at the Villa Roma Resort on the day of an annual NRA Dinner (R. 2420, R. 2684).

17. Judge McGuire agreed to conduct the interviews at the Villa Roma provided they be conducted several hours prior to the start of the function. (R. 2684 – 2685).
18. The interviews were conducted in a remote area of the golf clubhouse, separate from the ballroom used for the NRA dinner. The interviews were completed well before the dinner commenced. (R. 2420 – 2422, R. 2684 – 2685).
19. Ms. Weiner was not involved in those interviews because she was busy setting up and decorating for the dinner as a member of the dinner committee. (R. 2685 – 2686).
20. Since April of 2014, all interviews have been conducted within the court complex, although not in a courtroom or on the record. The Judge McGuire's confidential Secretary, Ms. Benton, coordinates times each month with the Chief Clerk of the Family Court to allow for the efficient scheduling of interviews (R. 1907).
21. Ms. Benton does not attend the interviews (R. 1905 – 1909).
22. The interviews are not proceedings which are mandated to take place in a court room. (R. 1907 – 1908).
23. Judge McGuire has never required any employee to work beyond the normal scope of their week for any purpose (R. 2210 – 2211, R, 2688).

Argument/Mitigation Charge XII

Judge McGuire has not disputed that he willingly conducted interviews of permit applicants outside of his court and chambers. Based upon the volume of interviews he was unable to address the backlog in sufficient numbers during the lunch break or after 4:30p.m. (R. 1885, R. 2405). The demands placed upon him as a result of his calendar(s) in Family, Surrogate, County and Supreme courts left little time to conduct interviews during scheduled court hours (R. 1847). The increase demand for handgun licenses compounded the demands

placed upon him as a result of medical leave taken by the other Sullivan County Court Judge. (R. (R. 1885, R. 2405, R. 2412). In 2013 Judge McGuire was called upon to address between 100 -150 applications per month, in addition to his other responsibilities. (R. 1492, R. 1847, R. 2411). To keep pace with the demand a decision was made to conduct interviews off site during "off hours". Judge McGuire considered several options and elected to use the Elks Lodge, in Monticello. The Elks Lodge was viewed as apolitical, it was located in proximity to the courthouse (approximately two (2) blocks away), there was ample free parking and it was available at no cost. (R. 1491, R. 2405). The location was utilized after Wendy Weiner was unable to meet with the Chief Clerk of Family Court (Christina Benson), as requested by Judge McGuire, to determine if a time block could be found during business hours, at the courthouse. There was insufficient available time for interviews during the business hours of the court.

The evidence established that the use of a conference room in the county attorney's office proved insufficient to relieve the backlog as it was often in use by others during the business day, it was difficult to schedule in advance and only extended the day by about thirty (30) minutes as that facility closed by 5:00p.m. Ultimately Wendy Weiner suggested that the Elks Lodge might provide an opportunity to conduct the interviews, in the evening or a Saturday (R. 2405, R. 2409). Ms. Weiner, with Judge McGuire's approval, made the arrangements (R. 2409, R. 2681 - 2682).

The Elks Lodge was utilized on average every six (6) weeks either in an evening or on a Saturday morning for about two (2) hours (R. 2412, R. 2686 - 2687). The evidence established that the program was very successful in helping to clear the back log of demand for handgun licenses (R. 2406, 2412) The public response was favorable as was the feedback received from

the County Clerk. It is submitted that the offsite effort did not impair the public's perception of the judiciary.

The County Court Judge is given the responsibility of reviewing applications for handgun licenses, but the process is not a court function. Records are not maintained in the courthouse; the court clerks do not oversee the process (R. 1498). There are no case numbers or dockets maintained by the unified court system and there is no case designation, through the court for handgun license applications (R. 1908, R. 2017). Rather the process is overseen and managed under the auspices of the County Clerk's Office (R.1488, R. 1534, R. 1540, R. 1907). There is no requirement that all or any portion of the review process be conducted in a courtroom or that any type of Court record be maintained (R. 1907, R. 2017).

The evidence established that Judge Thomas Breslin, Administrative Judge for the Third Judicial District met with Judge McGuire, in 2015, after Ms. Weiner had been transferred out of chambers and although he suggested that Judge McGuire should be able to coordinate schedules such that time can be allocated, during business hours to conduct interviews, he did not direct or admonish Judge McGuire for having undertaken the initiative that he did in order to accommodate the public demand at the time (R. 2410, R. 2690 – 2691). Judge McGuire was not directed to cease the offsite interviews. Judge Breslin expressed a preference that interviews be conducted in house (R. 2691). The interviews conducted on premises rarely take place in the courtroom, typically they are conducted in chambers or in conference room in the government center (R. 1542). The files are not court files (R. 2017) they are County Clerk files (R. 1498, R. 1907).

Hand gun licensing is regulated as an executive function. The ultimate determination is assigned to a "licensing officer". Licensing Officers vary depending upon the jurisdiction [Penal

Law §265(10)]. In Sullivan County the County Court Judges are the statutorily designated licensing officers. The mandated background investigations are conducted by the County Sheriff [Penal Law §400 (4)] and submitted to the Licensing Officer [Penal law §265 (10)] [Penal Law §400 (3)(a)]. Upon approval the license application is sent to the elected County Clerk, (except in the City of New York, Nassau and Suffolk Counties where they are filed with a police agency). [Penal Law §400 (5)]. Fees collected and costs related to records and applications are a charge to the County [Penal Law §400 (12), (13)].

Licensing files and records are not maintained by the court (R. 1498). There are no case numbers or dockets maintained by the unified court system and there is no case designation, for handgun license applications (R. 1908). The license process is ultimately a function of County government (R.1488, R. 1534, R. 1540, R. 1907).

The allegations in the complaint are grounded upon the premise that the hand gun licensing process is a Court function. The off-site facilities were utilized in an effort serve the people of Sullivan County and did not constitute a breach of conduct or impair the integrity and independence of the Judiciary. The actions complained of can be compared with the frequent participation of members of the judiciary in solemnizing marriages at off-site locations. 2409). The evidence established that Ms. Weiner's involvement in the interview process was limited and voluntary (R. 2682 - 2683). Ms. Weiner is actively involved in shooting sports and a member of the executive committee of the Friends of the NRA. She took a personal interest in the interview process (R. 2688, R. 2690). Ms. Weiner played no role in the (R. 1511, R. 2688). Ms. Weiner was not directed to be present (R. 2688, R. 2690). Since her departure from chambers (April 2015) Judge McGuire has continued to conduct interviews without an assistant (R. 1907 – 1909, R. 2685). Ms. Weiner sat in on the interviews because she chose to, she had

an interest in the process and Judge McGuire saw no reason to prohibit her from being present, but she was not required to be there and played no vital role in the process (R. 1909, R. 2690). Ms. Weiner's participation was purely voluntary (R. 2682 – 2683, R. 2690).

Ms. Conneely confirmed in her testimony that Ms. Weiner voiced discontent with attending on Saturday morning (R. 1326). Neither Ms. Conneely nor Ms. Weiner ever raised that issue with Judge McGuire (R. 2407). Her duties were limited to transporting files and limited review for disqualifying factors evident on the face of the application (R. 2688). Weiner testified to an absence of knowledge regarding the County Clerk's function in the application process however during her direct examination she acknowledged that when scheduling appointments, she communicated only with the County Clerk's office and not with Court System personnel (R. 1498, R. 1540).

After meeting with Judge Breslin and Ms. Weiner's reassignment in or about April of 2015, Judge McGuire changed the interview scheduling process (R. 2690 – 2691). Working collaboratively with Chief Clerk, Christina Benson, (a task avoided by Ms. Weiner) (R. 2406) time was reserved in the weekly calendar to conduct interviews in the Family Court facility, during court hours (R. 1905, R. 1907). The pre-interview processing continued to follow the choreography employed during Ms. Weiner's tenure. The confidential secretary reviews the application for disqualifying issues and then contacts eligible candidates to schedule an interview with the Judge (R. 1905 - 1906). Interviews are generally scheduled to occur within 2 – 3 weeks after the application is received from the Sheriff's office following completion of the law enforcement background investigation. Files are provided to the Judge along with a schedule for the interviews and the final action on the application (R. 1907 - R. 1909). Following the

interview, the files are returned to the County Clerk for processing and storage (R. 1908 – 1909). The use of offsite interview locations was, as noted above, abandoned.

In August of 2013 Judge McGuire was asked by Ms. Weiner if he would be willing to conduct interviews at the Villa Roma on the date of a Friends of the NRA annual event which Judge McGuire was scheduled to attend. She explained that there were several applicants who were not able to appear during normal business hours. Ms. Weiner was actively involved in the committee planning this event and later served as co-chair of subsequent events (R. 2420). Curiously, Ms. Weiner was unable to recall when she became co-chair of the dinner (R.1542). The event has been held annually and is must attend for local politicians and officials, with a high demand for tickets (R. 2429). Most tickets are obtained in advance of the event (R. 2419). Judge McGuire agreed to conduct the interviews at that facility provided that no promotion of the event would be made to the interviews (R. 2420 – 2421, R, 2685).

On September 7, 2013, Judge McGuire conducted interviews at the Villa Roma Resort, in Callicoon New York, located at the far western end of Sullivan County (R. 1514 – 1516). The interviews were scheduled in response to a need to expedite the interview process. An application must be acted upon by the licensing officer within six months of the date of filing of the application [Penal Law §400 (4-a)]. Judge McGuire was responding to a need and conducted the interviews in a manner which upheld the integrity and independence of the Judiciary by facilitating access and expediting the process. This initiative may be likened to ongoing efforts by state appellate courts to convene sessions in alternative locations, thereby exposing the operations to a broader section of the population served.

Wendy Weiner's testimony cannot be credited. At various times, as she has attempted to mold her own testimony to comport with her contrived narrative. She has stated that the

interviews occurred at 1:30p.m. (R. 1554), 2:00 p.m. (R. 1554), 4:00 p.m. (R.1518) and 4:30 p.m. (R. 1520). On Cross she could not even recall her testimony on direct when she offered that the interviews were conducted at 4:30 p.m. (R.1555). Ultimately acknowledging that she did not recall what time the interviews took place (R. 1556). Judge McGuire offered clearly and without deviation that the interviews took place at 3:00 p.m. on September 7, 2013 (R. 2421). The NRA event was scheduled to start at 6:00p.m. (R. 1518). Despite her denial that she was part of the committee in 2013 she was able to recall minor details about the planning and management of the event when she provided her deposition to the Commission. However, at hearing when confronted with her prior sworn testimony she could not recall having provided the cost, structure and yield from the event, in 2013 (R. 1553). Likewise, she could not recall referring to Sullivan County as a "Redneck County" (R. 1546 - 1547). In light of her testimony that she played a vital and essential role in the interviews and was mandated to participate, it is notable that she did not participate at all in the interviews (R. 2685) and could not recall State Senator John Bonacic's appearance and denied knowing of him (R. 1545, R. 1910). Ms. Weiner did not recall referring to the event as "our dinner" when she testified before the Commission in 2015, after being shown a transcript of her sworn testimony (R. 1546). Ms. Weiner did not return the files to chambers after the event, Judge McGuire had them in his possession the entire time and returned them to chambers following the event (R. 2686). She received no flex time for the Villa Roma event because she played no role in the interviews that day and was a member of the committee organizing and conducting the silent auction (R. 2686) and as a member of the set-up crew (R. 2686).

Conducting interviews off site both at the Elks Lodge and the Villa Roma helped expedite the backlog of permit applications and represented a positive outreach in predominantly

rural Sullivan County. It demonstrated the willingness of the Judge to accommodate people who could not appear during their work day. Although fault was found by the Commission in asserting the charge no authority has been cited for the proposition that the off-site interviews constituted a violation of any statute, rule or regulation. There is no authority for the premise that the proceedings be conducted in a courtroom or that a record of the proceedings be maintained. It is undisputed that handgun license applications and records are prepared and maintained by the County Clerk's office. There are no records maintained by court personnel other than the scheduling interviews.

There is no basis upon which it can be concluded that Judge McGuire in conducting these interviews during off hours and off site that he failed to uphold the integrity and independence of the Judiciary. He was serving the Sullivan County constituents. Judge McGuire serves as a licensing officer in a rural community in which a cross section of appointed and elected officials including the district attorney actively support permit applications. He acted in accordance with his duty to complete the processing of application within the six months allowed by statute. [Penal Law §400 (4-a)]. Judge McGuire accommodated the people of Sullivan. In so doing he did not fail to maintain high standard of conduct or undermine the integrity and independence of the judiciary as alleged in the complaint. Judge McGuire in conducting the interviews did not unreasonably impose unreasonably long periods on his staff (Wendy Weiner) without compensation.

The allegations set forth in Charge XII should not be sustained.

Proposed Findings of Fact as to Charge XIII

1. After closing his law office, Judge McGuire had to change his personal email address because of a change in the status of his account with [redacted] (R. 2060 – 2062; R. 2108).
2. Judge McGuire has not disputed that he maintained the email address of: judgemcguire@[redacted] while in judicial office (R. 2402 - 2403).
3. Judge McGuire stopped using judgemcguire@[redacted] in 2015 or early 2016 (R. 2109; R. 2402).

Argument/Mitigation Charge XIII

Judge McGuire has not disputed that he maintained the email address of judgemcguire@[redacted] (R. 2402 – 2403). The evidence at hearing established that in connection with the closing of his private practice the email account was established to facilitate communication with former clients. Corinne McGuire selected the title for the email account. (R. 2062). Mrs. McGuire advised the Judge's confidential secretary that former clients, who it is submitted had been informed of Judge McGuire's judicial position should be directed to contact her via the email account. (R. 2060, R. 2062)

The email account was closed in response to notice that it was viewed as improper.

CONCLUSION

To the extent the charges contained in the complaint have been admitted or sustained upon the evidence, it is submitted that Judge Michael McGuire should be censured for his conduct. He has taken actions confirming both his recognition of his objectionable behavior. His actions both prior to the filing of the complaint in this matter and subsequent thereto have demonstrated an acceptance of responsibility and an ability to improve. He has addressed the sources of the issues raised in the complaint and improved his performance and modified his manner.

Dated: October 2, 2019

Respectfully submitted,

Michael McGuire, Pro Se

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