

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

Richard H. Miller, II, :

a Judge of the Family Court, :
Broome County. :

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ORAL ARGUMENT

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

October 17, 2019
10:44 AM

B e f o r e:

- Joseph W. Belluck, Esq., Chair
- Paul B. Harding, Esq., Vice Chair
- Jodie Corngold
- Honorable John A. Falk
- Taa Grays, Esq.
- Honorable Leslie G. Leach
- Honorable Angela M. Mazzaelli
- Honorable Robert J. Miller
- Akosua Garcia Yeboah
- Commission Members
- Celia A. Zahner, Esq.
- Clerk of the Commission

P r e s e n t:

For the Commission

- Cathleen S. Cenci, Esq.
- S. Peter Pedrotty, Esq.

For the Respondent

- Paul DerOhannesian, II, Esq.
- Deborah A. Scalise, Esq.
- Hon. Richard H. Miller, II

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

- Miguel Maisonet, Senior Clerk and FTR Operator

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MS. ZAHNER: Good morning, Mr. Belluck and members of the Commission. This is the oral argument in the Matter of Richard Miller, II, a Judge of the Family Court. Judge Miller is appearing with his attorneys, Mr. DerOhannesian and Ms. Scalise. Ms. Cenci and Mr. Pedrotty are appearing for the Commission.

MR. BELLUCK: Good morning. In the Matter of Richard H. Miller, this is the oral argument with respect to the referee's report, a determination of whether misconduct has occurred and if so, what an appropriate sanction shall be.

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

I want to underscore to counsel that the argument should be confined to the record. We do not want you providing us with information that's

1 outside the record and any statements outside the
2 record will be disregarded. I also want to remind
3 counsel that objections and those things are not
4 permitted during this proceeding.

5 You will notice that there are lights on the
6 podium to indicate your time. The green light means
7 you may speak. A blinking green light means there
8 are two minutes left. The yellow light means there's
9 one-minute left, and the red light means you should
10 stop.

11 I want to remind everyone in the room to
12 please silence your cell phones, electronic devices
13 and computers, place them in airplane mode and
14 disable your Wi-Fi connection to prevent interfering
15 with the recording of the proceeding.

16 I also want to note for the record that two
17 members of the Commission, Ms. Yeboah and
18 myself, are both participating from Albany in the
19 argument by videoconference. If there are any
20 technical difficulties, we will pause the argument if
21 appropriate and the time will not be accounted –
22 counted against your presentation. Are you ready to
23 proceed, Ms. Cenci?

24 MS. CENCI: Yes, I am, Mr. Belluck. Thank
25 you.

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MR. DEROHANNESIAN: Excuse me. Ms. Scalise has a housekeeping matter she wanted to address.

MS. SCALISE: If I may?

MR. BELLUCK: Go ahead. Go ahead.

MS. SCALISE: I am sorry. I'd like to, like, stand at the podium so you can see me. Okay. So, the issue of concern is that the argument has been videotaped. And under the confidentiality policies of the Commission as well as the Rules under Section – Judiciary Law Section 45, we have a concern that if it's requested, the argument is requested, there is a civil proceeding that is collateral to this and there have been many requests in discovery. So, our concern, and we ask that you address this, is would this argument and portions of it be available if it was subpoenaed or if there was some other requests made once the proceedings are complete?

MR. BELLUCK: I am going to ask Mr. Lindner to address that. I think he may be the best person to appease, if he's comfortable doing that.

MR. LINDNER: Thank you, Chairman Belluck. As the Commission members know, all Commission proceedings are confidential pursuant to Judiciary Law Section 45 and with only limited

1 exceptions of matters that appear before you may be
2 disclosed. If there is a public determination in this
3 case, what is available to the public is the record upon
4 which the Commission's determination is made. That
5 transmission is made to the Court of Appeals pursuant
6 to statute and is available to anyone. It will include a
7 transcript of today's oral argument, which is made
8 public in every case. We have never sent copies of
9 the videotaped arguments to the Court and we do not
10 consider them to be part of the public record.

11 MR. BELLUCK: Ms. Scalise, does that satisfy
12 your concern?

13 MS. SCALISE: May I have just a moment?
14 Yes. Thank you very much.

15 MR. BELLUCK: Okay. Ms. Cenci, can you
16 now proceed, please?

17 MS. CENCI: Thank you. I would like to
18 reserve five minutes of my time for rebuttal.

19 MR. BELLUCK: Okay.

20 MS. CENCI: Members of the Commission,
21 based upon the referee's findings and respondent's
22 prior disciplinary record, he should be removed from
23 office. Respondent has concealed tens of thousands
24 of dollars in extra judicial income from federal and
25 state tax authorities and on his public financial

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disclosures. –

JUDGE MILLER: – I have a question. I just wanted some clarification. I just want to make certain I am correct. This proceeding got started because of the complaints of, I may butcher the names, Ms. Gallagher and Ms. Kar – Mr. Kachadourian, correct?

MS. CENCI: Incorrect, Judge. They were not complainants to the Commission.

JUDGE MILLER: So, it got started because of the complaints they made to some authority, to OCA or to the Inspection General? I guess my question is it originated because of the alleged improprieties that they allegedly witnessed or experienced, correct?

MS. CENCI: Well, that was, that was one complaint that initiated one of the investigations that there were improper remarks made to those individuals by the judge. –

JUDGE MILLER: – But what else started – at the initial stage there was another complaint? Was the, was the failure to report in the tax returns part of the initial complaint?

MS. CENCI: Yes. That is not in the record before you. But, the answer is yes.

JUDGE MILLER: Okay. Because one of my concerns is it appears as if the referee made a finding

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that neither of these people were credible. And, that you are not disputing that finding. So, a good part, and I read the entire transcript, a good part of these hearings related to rather salacious testimony by these two folks and the rebuttal. The referee said he found neither of them credible and the Commission apparently agrees because it's not disputing that. It's not asking us to charge this judge with that. So, if we, I am trying to think of the number of days of hearings related to those charges and that's now out of the picture, correct?

MS. CENCI: It's not out of the picture. You have –

JUDGE MILLER: – Cause you are not trying to change – you agree with the referee's finding that those two witnesses are not credible, correct?

MS. CENCI: We disagree with the referee. We continue to believe that the witnesses were credible; that they corroborated each other and were corroborated by other witnesses. –

JUDGE MILLER: – Alright, then I don't – but you are not asking, you are not asking us to overturn that finding?

MS. CENCI: We recognize that deference is ordinarily accorded to the referee on credibility

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determinations. –

JUDGE MILLER: – So if –

MS. CENCI: – You have the ability yourselves to make your own –

JUDGE MILLER: – Right. –

MS. CENCI: – Credibility determinations and you are not bound by the referee –

JUDGE MILLER: – I know that –

MS. CENCI: – In that respect. –

JUDGE MILLER: – But what I guess my related question is, is the primary witness, can I, Mr. K. I am going to call him, relating to the picture, so if he's been found to be not credible, if you are not disputing that main finding, but yet you are seeking discipline with respect to his alleged credibility with respect to the picture. Do I understand that correctly?

MS. CENCI: Yes.

JUDGE MILLER: Okay.

MS. CENCI: That is the only area of credibility that we are asking you to disaffirm the referee on. And that is because unlike the other allegations, Mr. Kachadourian was corroborated by another witness, a completely disinterested witness, Ms. L [REDACTED], the person depicted in the photograph. And the referee apparently credited her testimony.

1 She established that there was in fact such a
2 photograph. Mr. Kachadourian did not fabricate the
3 existence of that photograph. And the other reason
4 we are asking you to disaffirm the referee in that
5 respect is because he made a clear error of law in
6 failing to apply the missing witness charge to
7 respondent for his failure to call Mr. Iannone, the
8 source of the photograph, in his defense.

9 JUDGE MILLER: I was curious, why didn't
10 the Commission call Mr. Iannone?

11 MS. CENCI: We did not believe that he would
12 testify truthfully.

13 JUDGE MILLER: And that's based upon the
14 – you took his deposition – so you didn't call him
15 because he would, he would “tell the truth” and the
16 truth would be adverse to your position? But you
17 thought that he would be lying when he “told the
18 truth?” That's why you didn't call him?

19 MS. CENCI: We did not believe him to be a
20 credible witness. –

21 JUDGE MILLER: – Okay.

22 MS. CENCI. That is why we did not call him.
23 And that's actually the inference that you can take
24 against respondent –

25 JUDGE MILLER: – Okay. –

1 MS. CENCI: – Is that Mr. Iannone could not
2 honestly support respondent’s position in this case and
3 that is the case law as the Court of Appeals has
4 articulated it with respect to the missing witness
5 charge.

6 JUDGE MILLER: Okay.

7 MS. CENCI: So, yes, we are asking that you
8 disaffirm the referee in that regard. That you find that
9 that allegation was sustained. If you find respondent
10 did that, committed that misconduct, you must remove
11 him from office. There is no question about that.
12 However, even if you don’t sustain that allegation, the
13 other misconduct as shown in this record and as found
14 by the referee supports his removal.

15 JUDGE MILLER: Could I ask a – I apologize
16 for asking so much questions. The case intrigued me
17 as I read the record is if a judge asks his secretary to
18 send a note inquiring about the health of his uncle in
19 Florida, is that a violation of judicial ethics?

20 MS. CENCI: It may be. That’s not what we
21 have here.

22 JUDGE MILLER: No, I am just – any, any
23 personal chore that a judge’s personal secretary does
24 is potentially a violation of judicial ethics?

25 MS. CENCI: Well, I think it’s a question of

1 degree. But the Commission has said, in matter of
2 Brigantti-Hughes, you know, this is not the proper use
3 of judicial personnel. They are not supposed to be –

4 JUDGE MILLER: – Because here we have a
5 judge who's apparently owed money from his prior
6 practice. For whatever reason he doesn't have his
7 former secretary write the letter. I think he
8 acknowledged that he asked her, or I think he may
9 have said that she volunteered and then she sends the
10 letter making inquiry about money that's owed and –

11 MS. CENCI: – It's not a letter making inquiry.
12 It's a bogus letter purporting to come from someone
13 who isn't there. It's a letter purporting to come from
14 respondent's former law office secretary. And, in the
15 letter respondent had his chamber secretary prepare,
16 he has her do it as though it's coming from the former
17 law office secretary, Dear Mr. Estate Fiduciary –

18 JUDGE MILLER: – So is, is –

19 MS. CENCI: – Please sign these checks so I
20 can get paid.

21 JUDGE MILLER: Right. So, is the violation
22 that she sent the letter or is the violation that she wrote
23 the letter as if she was his former secretary?

24 MS. CENCI: The violation is that respondent
25 impermissibly had his chamber secretary assist him in

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collecting a legal fee –

JUDGE MILLER: – Okay.

MS. CENCI: And, you know what, respondent was previously censured for similar conflicts between his judicial role and his private practice of law. He didn't get the message. They're asking you to censure him again. He didn't get it the first time. He did it again in this sense.

In addition, respondent sexually harassed the Chief Clerk of the Family Court. And, he has shown an appalling lack of insight into his own conduct in this respect. She said she was disgusted by his comments. He testified, well if only she had said something I would have apologized. In addition, respondent telephoned a neighboring county Surrogate's Court to request that an estate that he had not completed while he was still in private practice be closed by motion instead of by an accounting.

JUDGE MILLER: – What was wrong –

MS. CENCI: – Respondent was a full-time judge –

JUDGE MILLER: – Counsel, what was wrong with that call?

MS. CENCI: He should have had nothing whatsoever to do with that estate. He is a full-time

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judge, almost two years on the bench at that point.

JUDGE MILLER: Right.

MS. CENCI: He should have had nothing to do with it. –

JUDGE MILLER: – I think the circumstances were, it had been sitting for a while and there hadn't been a substitution of counsel at that point because for whatever reason.

MS. CENCI: He didn't finish the estate –

JUDGE MILLER: – Right. –

MS. CENCI: – Proceedings before he went on the bench. Took his fee years earlier, but never completed the estate proceedings in the Surrogate's Court. Now the Surrogate's Court is writing letters –

JUDGE MILLER: – But he is not being, he's not being charged with his conduct as a lawyer, whether he did a good job or not. He is being charged with his alleged improper behavior while he is a judge, correct?

MS. CENCI: Correct.

JUDGE MILLER: Okay.

MS. CENCI: He contacted another court –

JUDGE MILLER: – But what's wrong with the call – I worked on the estate and it should have been closed. Apparently, the problem was not

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everybody return those statements executed and he makes the call, he gets an answer – no. And then the matter, I believe someone else then finishes it up.

MS. CENCI: Even if –

JUDGE MILLER: – The call itself is what’s wrong? –

MS. CENCI: – It sounds like he’s practicing law. I mean, he was the attorney of record on that estate. Now he’s calling up and he’s saying, can we conclude this estate by motion instead of an accounting.

JUDGE MILLER: Okay.

MS. CENCI: He’s making a request. That request went to the Surrogate for decision and he decided it and he said no, it has to be done by an accounting.

JUDGE LEACH: Was there a formal decision rendered by the Surrogate based upon that request or was it just a telephone inquiry? If one were to think of a respondent gathering information to assist him in maybe being in a position to hand the matter off to successor counsel, might that not be a permissible inquiry? “What’s the status of it? Can it, does it, does it need an accounting or motion? I haven’t touched it for two years” because, isn’t it true that he

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did not initiate the call on his own? It was in response to an inquiry by the spouse of somebody, if I am, have the right estate?

MS. CENCI: The spouse, the spouse of the fiduciary –

JUDGE LEACH: – So somebody had reached out to him and said this thing is not going anywhere so I could view the call as an inquiry to be made based upon the call he had received to determine status. Not practicing law but just to –

MS. CENCI: – But he did more than that, Judge. He made a request. He said, can this be closed by motion instead of an accounting? He wanted the problem to go away. He had taken his fee on this estate years earlier. He didn't finish it. Now the wife of the fiduciary, the fiduciary being in the hospital, is getting letters from the Court saying this estate's not, you know, what's, what's happening here? You have to account. You have to close this out. She's upset because she – they've already paid him, and he didn't finish it. So, she gets on the phone with the Court and with respondent. And that's when he makes the call to the Court and asks for relief. Now, if you don't think that's practice of law it's still improper. He should have had nothing whatsoever to do with that

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estate. Get another lawyer to handle it. That's exactly what he should have done. And, you know –

JUDGE LEACH: – I am trying to envision a judge –

MS. CENCI: – He was on notice from the prior censure –

JUDGE LEACH: – A judge who has handed off a number of files being in a position to pass them along to successor counsel with some insight into where the matter is pending, what the status of it is, if motions have been filed that were not decided? And if paperwork had been filed, is it ready to go by motion, does it need an accounting? But, but he never really, he made inquiry as to the status, never did work which would constitute billable hours beyond a status call. Or do you believe that he went beyond that?

MS. CENCI: He did. And because –

JUDGE LEACH: – And that the status, I am claiming it as a status call, that it constitutes a practice of law?

MS. CENCI: But he, but he never passed the estate along to another attorney. That's the problem. That's what he should have done. Ultimately –

JUDGE LEACH: – But that's a different

1 charge. He didn't practice for the entirety of the time
2 he was a judge for those two years until someone
3 reached out to him and he made an inquiry as to
4 status.

5 MS. CENCI: Well –

6 JUDGE LEACH: – He's not charged with not
7 doing the work.

8 MS. CENCI: He should not have made that
9 inquiry as to the status because that clerk did not
10 know who he was. He was the attorney of record at
11 this. Still in that estate at that point, it sounds like it's
12 still –

13 JUDGE MILLER: – Did he represent himself
14 as a judge in that call? I don't believe he did.

15 MS. CENCI: He didn't represent himself as a
16 judge, no.

17 JUDGE MILLER: Okay.

18 MS. CENCI: But it was improper whether or
19 not you, you believe it rises to the level of the practice
20 of law. He's basically making a request of another
21 judge for relief with respect to an estate.

22 MR. HARDING: Ms. Cenci, the strongest
23 argument the evidence supports – that it would
24 support that his amendment to those tax returns and to
25 his federal disclosures were made because he knew

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trouble was coming.

MS. CENCI: Oh, he was caught. He was caught red-handed.

MR. HARDING: Could you go through this –

MS. CENCI: – Yes. –

MR. HARDING: – What supports that argument?

MS. CENCI: Yes. So, what happened was when the sexual impropriety allegations came to light, the Inspector General was looking into this as well as into the possibility that respondent was still practicing law. And respondent on July 14, 2017 was presented with the Brigham checks. Copies of the Brigham checks that he had received for that \$16,000 of extra judicial income. He knew. They were looking at it then. He knew shortly thereafter that the Commission came into possession of his financial records, including his tax returns and these checks for the estate work and the rents that he had not reported on his tax returns. It was after that time that he amended. And that's why he amended because he was caught. You know, his explanations –

MR. HARDING: – The referee doesn't agree with that.

MS. CENCI: Well, he is wrong about the, he's

1 wrong about the timeline. The dates and the
2 timeframes are clear in the record. He is just wrong
3 about that.

4 JUDGE LEACH: With respect to Ms.
5 Gallagher's credibility, witnesses testified that she
6 didn't have a reputation for truthfulness in their
7 community. Were there any such witnesses for Mr.
8 Kachadourian? Did – was his credibility found to be
9 untruthful based upon any direct testimony from
10 character witnesses?

11 MS. CENCI: No, I don't believe so.

12 JUDGE LEACH: Do you have an idea of what
13 the referee relied upon in concluding that he was not
14 credible?

15 MS. CENCI: He seemed –

16 JUDGE LEACH: – You know, his decision
17 isn't as clear as one would like on that particular
18 issue.

19 MS. CENCI: Yeah. He, he, in my opinion, he
20 seemed to pick on some kind of odd, extraneous
21 things like the fact that Mr. Kachadourian testified
22 that he didn't want to go with respondent to the
23 President's Inauguration. But then, you know, he was
24 photographed smiling at the Inauguration. And he
25 said, the referee said that that tended to undermine his

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credibility.

JUDGE MILLER: Well counsel, wasn't it also on cross that at one-point Mr. Kachadourian, Mr. K. says, I am going to refuse to answer that question? He got very defensive during cross-examination. I think the referee had a – whether he directed him or then he just corrected himself. There was also testimony that he was more than a willing participant in this trip – trip to the Trump thing. I think through his testimony – did he get the tickets?

MS. CENCI: Yeah, he – well no, he acknowledged –

JUDGE MILLER: – He supplied the tickets but –

MS. CENCI: – His sister got the tickets, but he didn't want to go with respondent.

JUDGE MILLER: No, but he testified that he didn't want to go but then when you got into what actually happened on trip it became clear that he was more than happy to be there. I mean this –

MS. CENCI: – Because he was smiling in a picture? I mean –

JUDGE MILLER: – Well I don't think that was, I think that –

MS. CENCI: – This is what the referee relied

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on.

JUDGE MILLER: Okay.

MS. CENCI: I thought, I thought it was a stretch myself. But we recognized the referee has, you know, he's given deference with respect to credibility determinations and, you know, you can make your own – you can make your own conclusions.

JUDGE MILLER: Right. But the referee also focused on the rather gross testimony about the sexual peccadillos of the woman and the –

MS. CENCI: – Yes –

JUDGE MILLER: – Description of it –

MS. CENCI: – Yes –

JUDGE MILLER: – Description of it in two or three different ways that just seem so beyond belief –

MS. CENCI: – No. Look, here is – excuse me for interrupting, Judge. But, but here –

JUDGE MILLER: – Yes. –

MS. CENCI: – Is where the referee kind of reversed himself because in one respect he was saying, well these witnesses aren't, you know, corroborated but, well here I am going to attack their credibility because they both said the same thing. You know, they corroborate each other. So, I am

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going to find that they rehearsed their testimony. I mean, that's the kind of reasoning –

JUDGE MILLER: – All right. –

MS. CENCI: – That he used. You can determine for yourselves whether you believe that that's a sufficient foundation for his credibility determinations. But I just – I wanted to get back for a moment to respondent's explanations for his failure to disclose income. They were completely disingenuous. Initially he said that he didn't disclose the receipt of the almost \$30,000 of income from the practice of law on his financial disclosure form because well he thought he sort of did because it was in a bank account and he reported the value of the bank account. Nonsense. For the year prior, he had properly disclosed his income from the practice of law under paragraph 13 – Income. And that's where it belongs. And he knew how to report it. When he got to the hearing before the referee, he changed his story. Then he said, oh I thought I got the income not in 2015, but in 2016. Well guess what? He didn't report it in 2016 either. So, this is highly dishonest conduct.

MR. HARDING: The record, is there anything in the record that addresses what the IRS is doing, if anything, about this? Was there a fine paid? Is there

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any momentum in that regard?

MS. CENCI: There's no evidence that they know anything about it. So, you know, ultimately what you have –

JUDGE MILLER: – Counsel, is there a date, is there a date in the record when he was notified of the investigation? What was that specific date when he was first advised that he was under investigation?

MS. CENCI: By the Commission?

JUDGE MILLER: Yes.

MS. CENCI: I am not certain that that date is in the record.

JUDGE MILLER: Okay.

MS. CENCI: He testified that –

JUDGE MILLER: – And prior to that he was notified of – he was investigated because of the complaints made by his two employees?

MS. CENCI: They didn't complain. They are not the complainants.

JUDGE MILLER: No. No. But somebody complained to the Inspector General, that's how the inquiry started?

MS. CENCI: Somebody, the Chief Clerk, the one the referee found respondent did sexually harass. Debbi Singer was hearing about these allegations all

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along from Ms. Gallagher, respondent's secretary.

JUDGE MILLER: Right.

MS. CENCI: She finally went to the District Executive in, I believe, May or June of 2017. –

JUDGE MILLER: – I guess what I was trying to find out is, is when, when did he get first notice of the Commission's investigation as that relates to when these amendments were filed? What's that date because you said the record is clear. So, I was just curious.

MS. CENCI: He knew – he knew before he filed. And by the way, we don't know exactly when he did file the amendments. He says, we don't have a date on them, he says it was August 2, 2017. He knew at that time and he admits that he knew at that time that the Commission had his financial records, including his tax returns as they were originally filed and these other records showing that he hadn't reported the income.

JUDGE MILLER: Okay.

MS. CENCI: He knew at that time.

So, respondent has engaged in lewd, dishonest and self-dealing conduct which is unacceptable especially for a Family Court judge. Family Court is the place where litigants come to have some of their

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most sensitive matters heard by the Court. The public can have no confidence in a judge who has engaged in this kind of conduct. Do not censure him again. He was already censured. He was also cautioned by the Commission for falsely implying in his campaign materials for Family Court that he was a, an incumbent Family Court judge. And there is a sort of a thread of dishonesty and deceit that runs throughout his conduct. Removal is the appropriate sanction. Thank you.

MR. DEROHANNESIAN: Thank you. The respondent would like to reserve ten minutes for rebuttal.

MR. BELLUCK: Okay. Thank you.

MR. DEROHANNESIAN: We have a referee that spent six days looking and hearing witnesses. And the role of that referee in assessing what was at times bizarre and creepy testimony by Mark Kachadourian and Rachelle Gallagher, can't be overlooked. And while the Commission in their briefs states that they do accept the referee's finding, in their footnote, they seem to overturn not only factual findings such as there was no practice of law, they also seek to make findings that the referee never made, such as Judge Miller intentionally did not file

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his returns. One issue relates to the tax returns.

And its undisputed testimony from Judge Miller's accountant that soon after April of 2017, he was addressing issues and concerns concerning his rental income and office income. And the dates and references are in page 9 of our opening letter. This is important because no matter when he was notified of the Commission's inquiry, which is not until months earlier at the earliest, even if you assume their date of July 17th as the first date, months before that accountant Robin Dean testified without question, without any challenge whatsoever that Judge Miller knew that he had a problem and was addressing it. And he was delayed in making those amendments because they took his records. As Judge Miller testified, the records that he needed were in a box under his desk, seized. Accountant Dean said that was one of the problems that she had in amending the returns, is that the information wasn't there. Remember there is two issues. Checks that came in, when to report it and what year as well as his rental income. He is addressing this and her advice in April was file now and amend later. That is competent advice. And even if it wasn't, even in a criminal case you can rely on the advice of your accountant if you

1 file something. And the reason the IRS isn't going to
2 be concerned about this case is because he did amend
3 it. He did amend it properly when he could, and he
4 paid any necessary interest or fine that may have been
5 levied by that delay. And in fact, in one case there
6 was no income from rental property so there wasn't an
7 issue whether there was income to report. It is so
8 important to realize that he went to accountant Dean,
9 according to her --

10 JUDGE MILLER: -- Counsel, how was there
11 an issue about the reporting of the income that he
12 received from his practice, wouldn't that be a
13 relatively simple matter? He had to know what year
14 he got it and that should be included in his tax returns,
15 correct?

16 MR. DEROHANNESIAN: That's right. But it
17 turned out that maybe some of those should have been
18 filed the year before. In other words, when the check
19 was written versus when it was deposited. And that's
20 why there had to be an amendment to the earlier year.
21 There were two -- there was two amended returns for
22 '15 and '16. That's exactly what they were
23 addressing. He realizes there is an issue and the
24 accountant says, let's look at everything now and then
25 file amended returns. And that's what they did for the

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two years.

JUDGE MAZZARELLI: What about his failure to file the financial disclosure form accurately and the annual reports with the Clerk of the Family Court where he presided?

MR. DEROHANNESIAN: Yes. The financial disclosure forms were not accurate because this relates to the tax return information. If his tax returns were not accurate nor was his financial disclosure form. They got amended when the returns were. He did not – he was not aware, as he should have been, of the filing in local Court. He admits that is wrong and incorrect and that should have been done.

JUDGE MAZZARELLI: Well, it's apparently conceded that one year he did file the financial disclosure form correctly. He listed the income from his law practice. But then the next year he didn't know how to do it?

MR. DEROHANNESIAN: Because he didn't believe he had income that year. He thought it was for 2016, the income. And the accountant said, no, no, that should have been reported even if it came in towards the end of the year. It was written back then in December or November. You should report it for the year earlier. You should make it part of the 2015

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return.

JUDGE MILLER: Is there proof that that check in '15 was actually deposited in '16?

MR. DEROHANNESIAN: I don't believe the record is clear on that, no. That, that was not addressed. The accountant wasn't asked about why she did the 2015 amended return.

JUDGE MILLER: But sometimes lawyers get checks in towards the end of the year and depending upon their income –

MR. DEROHANNESIAN: – Yes. –

JUDGE MILLER: – They want to defer it to the following year, so they wait –

MR. DEROHANNESIAN: – Exactly.

JUDGE MILLER: – Sometimes –

MR. DEROHANNESIAN: – And that was –

JUDGE MILLER: – But is there evidence –

MR. DEROHANNESIAN: – That was –

JUDGE MILLER: – That that's what happened?

MR. DEROHANNESIAN: That was what he was struggling – that was one of the issues that he was struggling with –

JUDGE MILLER: – Okay. –

MR. DEROHANNESIAN: With respect to his

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– from – remember he takes the bench that year. So, he still has some leftover income. In short, there was no intent. It was just the opposite. There was an intent –

JUDGE MAZZARELLI: – He took the bench in which year? I thought, I thought the first year that he was a judge he filed it correctly?

MR. DEROHANNESIAN: January 2015.

JUDGE MAZZARELLI: Yes. And what is the year that he was struggling with? What form was he struggling with?

MR. DEROHANNESIAN: He realizes in '17 that he had income that he was going to put on the '16 return but maybe the accountant says, no, no, no. I think that should have been on the '15 return. It's part of that crossover year. So, let's, let's amend 2015. He filed, yes, he did file a financial disclosure based on what he believed his income was in 2015. As I said, the intent –

JUDGE MAZZARELLI: – But, counsel, opposing counsel said he raised a defense that it was in his bank account and he thought that was sufficient disclosure?

MR. DEROHANNESIAN: He also thought that. He also thought if, if I'm giving you my bank

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account, that also suffices as disclosure. That is incorrect.

JUDGE MAZZARELLI: How could the bank account suffice as anything?

MR. DEROHANNESIAN: Well, that's his asset. He believes that's disclosing my assets and my bank account, that's where the money is. That is not correct though. --

JUDGE MAZZARELLI: -- Well was there any explanation on the financial disclosure form as to where the assets came from?

MR. DEROHANNESIAN: No. No. So, the intent before any inquiry is to correct his tax returns and that triggers the financial disclosures and as accountant Dean said, she had issues with Judge Miller because of his inability to produce the paperwork necessary particularly for the income from properties and also because they had just begun filing jointly and before they had filed separately, he and his wife, and therefore there was a pressure to file something in April.

JUDGE MILLER: Could you address the issue of the letter and the direction to the secretary and the practice of law question?

MR. DEROHANNESIAN: Yes. There was no

1 order, command to do a letter. The testimony at its
2 worse is that Judge Miller asked. His testimony and
3 recollection was he had the envelope and the secretary
4 agreed to type this four-sentence letter. And, in fact
5 she said she made corrections herself to the letter a
6 couple of times. And there's – it's a bizarre letter
7 because it has the address of the secretary. Who
8 would put that as a address for a lawyer? But
9 anyway, that's what she did. I think that speaks to the
10 fact that she did draft that letter. It was never sent.
11 This is the only instance in a 20-year career that we
12 can find that Judge Miller ever had anything, any
13 request made to any person in his office to do
14 something of a personal nature.

15 JUDGE MILLER: I am sorry counsel, you just
16 said something that I – did I hear it correctly, you are
17 claiming the letter was typed but never sent?

18 MR. DEROHANNESIAN: Right. Judge
19 Miller testified that it was prepared but never sent.
20 That was his testimony. That he took it back and took
21 it back to the law office and had it sent from there.
22 But not that letter. I believe it was a different letter
23 that was sent.

24 JUDGE MILLER: And did the secretary –

25 MR. DEROHANNESIAN: – And the

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Commission doesn't claim that it was sent. There is no allegation that it was sent.

JUDGE MILLER: This is bizarre.

MR. DEROHANNESIAN: The allegation was that it was typed on office time. I believe that's the impropriety.

JUDGE FALK: There's no question that's an impropriety though, right?

MR. DEROHANNESIAN: Pardon?

JUDGE FALK: There's no question that's an impropriety because –

MR. DEROHANNESIAN: – There is no question that staff should not do anything of a personal nature and Judge Miller has acknowledged that. And it should not have occurred.

JUDGE LEACH: What about the photograph that was, I think the position of respondent is that it was shown to Mr. Kachadourian by Mr. Iannone. Is that correct, Iannone?

MR. DEROHANNESIAN: There is a disconnect between the formal written complaint and the actual testimony. So, the complaint charge is that something happened in chambers. There is no proof that anything happened in chambers other than Kachadourian, if you credit his testimony, which I

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would like to address separately to follow up on the questions about Kachadourian. L [REDACTED] says that she finds out later that she saw a photo and at first, she is not even sure it is her. And then Kachadourian in some really creepy testimony says, "Oh I know her breasts. I know her body. And that was her breast and body in the photo that I saw." L [REDACTED] even was not sure if that her photo or not. And then on re-direct, that could be because there is a perhaps a piece of jewelry that she owned. No one ever produces a photograph. They could have gotten his phone. They were taking his bank records. Why didn't they just seize his phone? That would be the clearest way. They have a burden of proof. Beyond a preponderance of evidence is the burden of proof. They didn't even try to show that any picture actually existed. Now Ms. L [REDACTED] said that in her relationship there were multiple photographs and sexual videos taken. So, there is no question about the fact that in that relationship as they are allowed to do, they did that and her only knowledge from Iannone was something happened outside of Court and Judge Miller had nothing to do with it. That was the testimony of L [REDACTED] who also note testified that as Clerk of that Court, that Judge Miller was a fair,

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impartial judge who treated staff, the clerks well.
That's L [REDACTED]'s testimony. Their star witness was
actually a character witness for Judge Miller.

MR. BELLUCK: Could I ask, could I ask you
a question?

MR. DEROHANNESIAN: Yes.

MR. BELLUCK: Just so I have some clarity
on this.

MR. DEROHANNESIAN: Uh hum.

MR. BELLUCK: Of, of the four charges,
which charges or elements of them are you
acknowledging there was misconduct?

MR. DEROHANNESIAN: We acknowledge
the letter should not have been written. We
acknowledge that, to use the words of the referee, that
Judge Miller used unprofessional language in
speaking to Ms. Vroman and Ms. Singer. We
acknowledge that the financial disclosure reports
should have been filed in a timely fashion and were
not. And that the report, that he should have been
aware of the Clerk's requirement to file a disclosure
with the Clerk.

MR. BELLUCK: Okay. Thank you.

MR. DEROHANNESIAN: It is important to
note that, again this testimony from L [REDACTED] did not

1 follow the complaint at all. So, there was no notice
2 that we are supposed to be defending something that
3 happened outside where Judge Miller is not even, you
4 know, present. And I think that's why – whether that
5 happened or not, that's not the charge. That's not the
6 charge at all. The charge was something else that was
7 not proven by a preponderance of the evidence and
8 that's what the referee –

9 JUDGE MILLER: – Counsel, I apologize.
10 Where, where in the charge are you saying it was
11 charged one way and then proved another? Would it
12 – this has to do with the photograph? Where is that in
13 the, in the formal written complaint?

14 MR. DEROHANNESIAN: Yes, the formal
15 written complaint –

16 JUDGE MILLER: – Is it paragraph 13, page
17 3?

18 MR. DEROHANNESIAN: Exactly.

19 JUDGE MILLER: In or about early –

20 MR. DEROHANNESIAN: – Exactly.

21 JUDGE MILLER: Okay. Thank you, sir.

22 MR. DEROHANNESIAN: Exactly, Judge
23 Miller. Exactly, Judge Miller.

24 And when we talk about this allegation, there's
25 another part of this record that is unrebutted besides

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the accountant. –

JUDGE MILLER: – So you are saying there was no testimony that this ever occurred in “chambers?”

MR. DEROHANNESIAN: No credible testimony. Mr. Kachadourian gave testimony which was part of his helter skelter, rambling, bizarre testimony. An individual who a panel of arbitrators found acted in bad faith when he took the name of Dale Earnhardt and appropriated it for his own use. So, the arbitrator, I mean the referee had many other aspects of Mr. Kachadourian to evaluate his credibility besides the fact that he gave the impression that Judge Miller was forcing him to do things and go places when it turned out once he was confronted with proof that he got tickets for the inauguration, he volunteered to go with Judge Miller and there are photos of him engaging in joyful behavior at that inauguration.

So, the judge – the referee felt he was being misled and duped by Mr. Kachadourian, which he was. He is a used car salesman. That’s what he does. He’s a used car salesman that wrote two opinions and the referee, who is a former federal law clerk, was shocked and asks Mr. Kach, that was your job,

1 though, to write opinions for the judge. And they
2 could only come up with two. That's why there were
3 performance issues with Mr. Kachadourian. He knew
4 he was on the way out. You can't do two decisions
5 for a judge in a couple of years and say you are doing
6 your job. He was too nice and let him stay too long.
7 That's what was going on with Mr. Kachadourian.

8 And, the way he answered questions – Judge
9 Miller pointed out the content where he just outright
10 refused many times, either, "I don't have to answer
11 that question" or "I refuse." But I am telling you, the
12 referee saw this guy in operation and he came across
13 just as the referee said, "I am not going to believe
14 him." And he looked the referee in the eye and said,
15 "Trust me and believe me." He's not even here to
16 look you in the eye. You don't have the benefit of
17 what the referee did. But you do have the benefit at
18 least of his answers and his conduct and why the
19 referee made that finding, an experienced referee
20 chosen by this Commission. He's done other work.
21 There is just no reason that they even suggest to you
22 that he can be accepted.

23 And, going back to the photograph,
24 Kachadourian is also contradicted by witnesses such
25 as Stilloe and others who said, "I never said these

1 things that you are attributing to me on the phone.”
2 That was another way the referee had of assessing his
3 credibility. They didn’t even take the time to
4 interview these people and find out just like they
5 didn’t interview his accountant. No, it became his job
6 and burden to conduct an investigation of himself
7 essentially to show what had not occurred. But there
8 was testimony of his reputation for doing something
9 like this and it began with Jolene Payne, who is a
10 police officer now who had worked for him. This is
11 not the type of person he is. And how would she
12 know that? How would these character witnesses
13 know about his temperament and reputation for sexual
14 propriety? Because probably more than any other
15 case this Commission has seen, this has been a public
16 case. There is no confidentiality here because
17 Gallagher and Kachadourian were going to the news
18 media where her husband worked, it’s in the record,
19 and broadcasting literally allegations against Judge
20 Miller and then filing a federal lawsuit weeks before
21 his hearing. But what that did, that lawsuit, is
22 witnesses, our character witnesses said there was a
23 discussion in the community. Because ordinarily
24 when do witnesses discuss sexual propriety? It’s not
25 something we do. But in this case because of the fact

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that they blasted this over the airwaves, police officers, as Jolene Payne said discussed it, the most, one of the most senior Family Court practitioner –

JUDGE LEACH: – I am sorry. What about the comments that were sustained that I believe you acknowledged. –

MR. DEROHANNESIAN: – Yes. –

JUDGE LEACH: – The comments made to Ms. Singer on two separate occasions. Correct?

MR. DEROHANNESIAN: On two occasions, yes.

JUDGE LEACH: Such as inappropriate sexist remarks?

MR. DEROHANNESIAN: Inappropriate remarks, I think –

JUDGE LEACH: – I said sexist remarks.

MR. DEROHANNESIAN: The referee did not find that they were sexist. He found there was no intent to harm. I be – I have no dispute that –

JUDGE LEACH: – Is it, is it, is it respondent's position that to make such a statement about how hot one looks, and you should wear that all the time and with respect to cook, I should have gone for the widow, I should have made it the choice, these are appropriate? They were not made with intent?

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MR. DEROHANNESIAN: What the referee –

JUDGE LEACH: – And is intent, is intent important if the listener might find the comments to be totally inappropriate?

MR. DEROHANNESIAN: You are correct. But –

JUDGE LEACH: – So, he concedes that? You concede that?

MR. DEROHANNESIAN: Well, yes. But –

JUDGE LEACH: – Is that not indicative of the type of behavior that could potentially be expanded to, for one to conclude, or us to conclude, that maybe he had engaged in some other inappropriate behavior? –

MR. DEROHANNESIAN: – I tell you one thing –

JUDGE LEACH: – I see hear that, you know, that unprofessional conduct towards female court assistant in open public, denigration of a female. That's sexist to me. These not indicative of some personality trait that one could attribute to your client that's inappropriate and inconsistent with being a judicial officer?

MR. DEROHANNESIAN: I don't believe you could make the leap from those –

JUDGE LEACH: – Too great a leap?

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MR. DEROHANNESIAN: I'll tell you, and I will tell you why. First of all, even the referee's findings was –

JUDGE LEACH: – I am not interested in the referee's findings. I need you to tell me why that's too great a leap.

MR. DEROHANNESIAN: Because you have too many people who have worked with Judge Miller who testified over a twenty-year period. Court officials from court clerks in the local court, from D█████ L█████ to the security supervisor in his courtroom to the dean of matrimonial attorneys in Broome County. And if all these people have had discussions, that's what reputation is, it's not just their opinion, from other people, it would have come out because people worked in his court who now work in the law firm where the matrimonial attorney is. There is a discussion. And there would have been at least once, one time, that we would have heard not just from these witnesses, the Commission would have found something in his past and there wasn't. That un rebutted testimony of his reputation for judicial temperament and sexual propriety is why you have to look at those comments as being not indicative and isolated comments. Thank you.

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JUDGE R.H. MILLER: May I proceed?

Thank you to the Commission members for your hard work. Please indulge me in allowing me to read this. I'm quite nervous and I don't want to leave anything out. I hope that you can be fair and impartial. I always want to thank referee Barrer for the fair, impartial and professional treatment he afforded me.

This case was one of drastic extremes. It was surreal because there are two very different claims as to what I purportedly did and the person who I am. I took a long, hard look at the transcripts, the referee's findings and reasoning, as well as the briefs in this matter. I've reflected on all of that. It was bittersweet that I was disheartened at the violent crude accusations my former employees, who still have jobs and continue to malign me. They did it in the OCA, the Inspector General and in these proceedings, in a civil suit. Each time they appeared in any forum, something was leaked and reported to the press. It was and remains disheartening that they could do so without any thought and what havoc it caused my family, my wife, my mother, our children and our friends in a community that adored my now deceased father, who was revered due to his commitment to public service and for whom I am named. But I was

1 heartened to know that there are many more people
2 with good character who support me and know that I
3 am a productive judge with a reputation over many
4 years for good judicial temperament.

5 I want to address Commission counsel's reply
6 which states my request for sanction no greater than a
7 censure suggest that at some level the seriousness of
8 my wrongdoing isn't apparent even to him. I wanted
9 to state to all of you, I have repeatedly accepted
10 responsibility when I was wrong and always
11 cooperate with the Commission's investigations. I did
12 so in 2002, an agreed upon disposition that led to my
13 censure as a part-time judge on the bench. I did so
14 when I received the Dismissal and Caution. And,
15 most importantly I have done so in this proceeding.
16 Even though I had to fight the scurrilous and
17 unfounded allegations that my former employees
18 leveled against me, I am grateful that referee Barrer
19 found them to be incredible.

20 As to the charges that were sustained, I have
21 accepted referee Barrer's findings. I would like to
22 reiterate my apologies to Ms. Vroman and Ms. Singer.
23 They are professionals. I will be mindful of their
24 feelings when I deal with them. I can assure you that
25 it will never happen again.

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As to my financial filings, I apologize and recognize that they should have been timely. And that they should have reflected what I earned outside my salary as a judge. I was disorganized. I was recuperating. And, I had a spinal fusion, I have a cage, rods and screws in my back and I was going through some medical issues. But I never intended to mislead anyone. There was no need to. It was not worth it given the amounts involved. I was not a good business person. But before any inquiry I relied on the advice of my accountant and filed tax returns in April 2017, even though I had incomplete records and I did not have all the relevant documents I needed to do so. In fact, shortly after the April 2017 filings and well before any inquiry by anyone, my accountant and I discussed amended tax returns. I was delayed in my filings because the records I assembled were in personal boxes under my desk in chambers and they were taken by the Commission. However, I am now, with the assistance of my accountant and my attorneys, better organized and cognizant of my duties as well as the deadlines. I sincerely apologize to you, my colleagues on the bench and the legal profession for my actions that will never happen again. I take my duties as judge seriously. I hope that you allow

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me to return to them.

I want to address the reasons why I'd like to remain on the bench. Based on my experience, many cases were heard more quickly and were immediately addressed, and we were able to deal with those family problems. I enjoy working in Family Court and have been successful in dealing with litigants who have nowhere else to turn and need to be heard. There was a backlog of cases before I took the bench in Family Court. My productivity helped reduce that wait time because so many litigants had a long time to wait to get their cases heard. Unfortunately, again, there is a backlog in Family Court without me there to serve. Based on the feedback from litigants I learned I had a positive impact on their families. I took the time to listen to their problems and helped them reach a fair resolution. People have approached me unsolicited and thanked me for the respectful way they were treated in Court.

During this proceeding, I was gratified to hear that I have a reputation for good judicial temperament. I listen. I am just, impartial, hardworking. I'm timely, conscientious, fair in addressing all issues that come before Family Court. I am honest, calm, patient, open-minded and now as well using my

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experience to serve the people of the State of New York.

I brought many years of experience to the job, close to 20 years, as a town and village judge. I was a town judge in town of Union one of the – sixteenth largest town in the State of New York. And the village of Johnson City, full-time police force and I have been a practicing attorney for 25 years. Nonetheless, there is a big learning curve to be a productive and effective Family Court judge. I put much time and effort into learning the job, often sacrificing personal time to be a productive judge. While carrying a full caseload in Broome County Family Court, I was assigned to work in five other counties as a Family Court judge, so I was able to see how other courts functions and these other counties as well as in Broome County. None of my Family Court decisions were appealed or overturned. No complaints were ever filed against me by litigants. I was able to take my experience as a private practitioner and judge to triage cases and find the resources needed to help the parties successfully parent their children.

I would like to get back to my work with the Family Court Judges Association. I was the

1 chairperson of the Family Court Judges Association,
2 Legislative Committee, that met with the Senate and
3 Assembly members in Albany. And I was proud that
4 we were able to positively support Raise the Age
5 legislation that was passed. I would like to continue
6 interacting with local programs. The Children's
7 Home in Wyoming Conference, SOS Shelter; Crime
8 Victim Assistance Center, working mothers, people
9 with disabilities, services for the mentally ill, dealing
10 with the drug and alcohol rehabilitation and
11 counseling and domestic violence victims. I would
12 also like to do more to involve the elderly and retired
13 teachers, using them as role models to help families
14 by creating mentoring programs with them. My work
15 with these programs and the role I play as a judge
16 presents a tremendous opportunity to work with and
17 give back to our community.

18 Lastly, I wanted to let you know who I am; a
19 husband, father, son, brother, uncle, great uncle,
20 teacher, coach, mentor, colleague, friend, volunteer,
21 lector at St. James Church, Fourth Degree Knights of
22 Columbus, Master Mason, member of the Elks Club
23 Rotarian. I've coached girls AAU basketball, softball,
24 tennis. I coach boys AAU basketball, little league
25 baseball, peewee football, golf little league. I have

1 chaperoned many field trips in choir competitions. I
2 visit the Veterans Home at Oxford in Greene, New
3 York and local nursing homes. I serve food at a local
4 soup kitchen.

5 Most importantly, I am a loyal husband and
6 father of four children. My oldest son is in his third
7 year of law school at Syracuse. My daughter, Lauren,
8 is in grad school at Columbia seeking a Master's in
9 Public Health. I have a senior in high school,
10 Julianna, honor student. A son Joseph, tenth grade,
11 honor student, both athletes, both involved in the
12 community. Our family supports a child through
13 Unbound, an organization to help needy children in
14 South America. The child we sponsor is a six-year
15 old boy named Gene from Honduras.

16 I again thank you for your time. I fervently
17 wish that you will let me continue so that I can –

18 MR. BELLUCK: – Judge, we are getting close
19 to the end of your time and I know you wanted to
20 conclude your statement, but I have a question for
21 you. There are many judges in the state that this
22 Commission doesn't deal with on – once. And, this is
23 now the third time that you are before us and your
24 attorney acknowledged, and you've acknowledged
25 three separate instances where misconduct occurred,

1 and I don't understand why we are here again with
2 you given everything you just said to us. If I were in
3 the position you were in where I received prior
4 discipline and a prior Dismissal and Caution, I would
5 have done every single thing possible. I would have
6 over acted to avoid coming before this Commission.
7 So, I would like you to answer the question for me,
8 why are we here with you again?

9 JUDGE R.H. MILLER: Well, the initial
10 censure was from 2002. It started I think in 2001. I
11 was new as a judge at that time. And I accepted an
12 agreed upon disposition with my counsel at that time
13 to that. I hadn't had any other issues until I ran for
14 Family Court judge. It was over a campaign sign.
15 We all used the campaign signs, four of us, all ran for
16 the same job. There was a sign that listed all of us the
17 same way. Twelve other judges used the campaign
18 sign. One batch of fifty campaign signs got ordered.
19 All my other campaign stuff was fine. And then these
20 charges being leveled against me which are totally
21 untrue. –

22 MR. BELLUCK: – They are not untrue. You
23 have acknowledged three of them and I am sure that
24 the instance from 2002 wasn't a pleasant one for you.
25 So, the fact that when you're formulating the

1 inappropriate comments that you made, and you are
2 asking someone to write a letter that was misconduct,
3 and you are not filing your financial disclosure form,
4 the fact doesn't, doesn't occur to you at the time, I am
5 going to be back before the Commission if I do
6 something wrong. Putting aside that you should not
7 do something wrong just for the sake of not doing
8 something wrong, but the fact that your prior
9 experience here doesn't trigger within you some,
10 some lightbulb to not behave that way, is very
11 concerning when you are asking us to, to basically do
12 a censure and not a removal. And I am trying to
13 understand from you when you're – if you continue
14 on the bench, what, what is going to stop you from
15 doing something wrong again?

16 JUDGE R.H. MILLER: Well, I can tell you
17 based on the specific items that are here in front of
18 you, the financial disclosure forms, I now file
19 separately from my wife. I did so prior to me taking
20 the bench. My wife has her own business and has to
21 file K-1s so she has to file in April. I didn't have all
22 my information together for the accountant like I did,
23 and I thought that income that actually came in in '15
24 was cashed in '16. So, I had to go back, and I
25 amended both my returns. I did both of those so that

1 the Commission knows that. I did file those amended
2 returns, the federal returns in August of 2017. I filed
3 my amended financial disclosures. I was not aware of
4 the filing with the clerk, with our Clerk of the Court.
5 And I have done so since. And I am well aware of
6 that. I wasn't aware of it at the time. And I have
7 admitted to that.

8 As to any – the issue with the letter, you want
9 to know specifically about that. Coming in from
10 Court at the end of the day, I had checks I picked up
11 from lunch, came in, had checks, I saw them. They
12 weren't signed. I did say it in front of my secretary. I
13 will not bring up any, any issues, any private issues
14 before a secretary again. So, I ask the Commission to
15 consider that because at that point, you know, I just
16 was conversing. I came back down. I was speaking
17 out loud in front of my – the court staff, which would
18 have been the attorney and the court secretary. In the
19 future I won't do that. I won't bring up any personal
20 issues of my finances or anything else because I had
21 to complete my financial forms. It was part of my job
22 for Family Court and I was doing that there.

23 As to the phone call that was made to Tioga
24 County, a letter came in to my old office. As a
25 courtesy phone call, I called them to let them know

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that I was a judge, that I wasn't going to be on the case. As we got into this issue, I had motions that I did prior to when I worked on that file and the conversation that I shared with her I did – there were motions, there were two, there was someone in California, and I told them. I had to do it by motion. So, I can only speak as to what I did. I've had it from other judges that have taken the bench and they have been listed as attorneys of record that came before me, courtesy phone call or not. I told the staff that the person is a judge, they can't hear this case. So, within our own staff, we are in small counties, it's hard to believe that our neighboring county after we've had advertising the campaigns, that they didn't know. You know. Each clerk gets a listing of all of our judges. We have a monthly report that goes out to every Chief Clerk of the Courts. My productivity and I think it's one of the Exhibits, my productivity was excellent. I was doing my job. But that information is shared with all the clerks. So, I was trying to contact them to say, I'm not able to – I'm not an attorney. I stopped practicing law and became a judge. That's the reason why the call was made. Not to be deceitful. And the other issues that were made about how I spoke or what words I chose. It was a

1 mistake that was made. That's not how my behavior
2 is all the time. It's not. I am family man. I have been
3 that my whole life. That's how I got elected to these
4 jobs. I worked in Family Court. I worked with the
5 officers. I worked with court personnel. No judge
6 would be good without that support staff. A true
7 judge needs support staff to help them to be
8 successful. And any real judge knows that. You can't
9 function by treating anyone – not treating someone
10 well that you work with. That would be unacceptable.
11 And if that were the case, where are the list of
12 employees that would have come in and said that I
13 was not fair to them. That I didn't treat them well.
14 My office was downstairs with the employees. All
15 the other judges are on a different floor. So, I was
16 down with the employees. I'd have to walk in and say
17 hello to them every day. They weren't used to that.
18 They said, 'the judges rarely even talk to us as support
19 staff.'

20 I have been involved in our community. I have
21 been involved in the church. I am involved with my
22 children. And this has been a public –

23 MR. BELLUCK: – Judge, thank you. We
24 appreciate your time very much.

25 JUDGE R.H. MILLER: Thank you. Thank

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you.

MS. SCALISE: Rebuttal?

MR. BELLUCK: Ms. Cenci, do you have any rebuttal?

MS. SCALISE: Don't I go first? I'm sorry, I always get confused about this.

MS. CENCI: I don't know, we are splitting it up with two attorneys so, who? She goes next?

MS. SCALISE: I go first, right? And she gets the last word? Okay.

MR. BELLUCK: Was time reserved for –

MS. SCALISE: – Yes, we reserved ten minutes. Mr. DerOhannesian reserved ten minutes. I'm sorry?

MR. BELLUCK: My understanding was you reserved time – you indicated the judge was going to speak for ten minutes. Maybe I misheard.

JUDGE MILLER: Each side reserved for rebuttal. Counsel reserved and counsel for the Commission reserved.

MR. BELLUCK: Okay. Go ahead.

MS. SCALISE: May I proceed? Thank you. This is a very hard case and it's obvious that all of you have read this record in its entirety. The unfortunate part is whether you call them

1 complainants or not. The people who brought things
2 to the Commission's attention made things snowball
3 into things that may not have even occurred. So, what
4 do I mean by that? Okay. If you take a look at our
5 papers in the reply in particular, the financial
6 disclosure forms, okay, normally, and it's in the
7 Commission's reports, a judge is allowed to correct
8 things. But here because it was so many things going
9 on at once, he was never given that opportunity. And,
10 in addition to that, the Commission subpoenaed his
11 files that he was amassing so that he could make the
12 corrections to his tax returns, his financial disclosure
13 statements and also later to the report he learned he
14 had to do to the Clerk of the Family Court. So, we
15 start off with the proposition of two witnesses with
16 incredibly scurrilous allegations. And you heard Ms.
17 Cenci say he was here before and now he's back.
18 Now I want to mention a case to you that actually is
19 not in the record. But I think it's important to note,
20 Matter of Teresi, okay, there were two cases with
21 Judge Teresi. I am sure you are familiar with them.
22 Both of them were agreed statements of facts and both
23 of them Teresi got a censure from this Commission,
24 okay, within three years of each other. We've listed
25 many other cases of similar conduct and one of the

1 things I want to note is that in Section 44 of the Rules,
2 it specifically states, repeated or habitual
3 intemperance with harm to litigants. In this case there
4 is not one allegation of harm to litigants. In this case
5 we heard repeatedly from litigants' attorneys and from
6 people who worked in the court, court officers, Ms.
7 L [REDACTED], even Ms. Vroman, who they had a bad
8 day, said after that they worked really well together
9 for months. Some days working alone because
10 someone like Mr. Kachadourian found it fit during
11 court time to go to the bank. That was the testimony.
12 So, here we have a very big contrast of who this judge
13 is and who's portraying it and sort of a runaway train
14 of what happened. But what was sustained? And
15 what has he accepted? Okay. And you've heard what
16 he's accepted. And there's repeated, repeated cases
17 where people have gotten, have had a history, some of
18 it much more egregious than this judge. A lot of it
19 involving litigants. Teresi threw somebody in jail for
20 contempt when he showed up *pro se* and yet he was
21 given a second chance in agreement with counsel for
22 the Commission. Our judge does not get the benefit
23 of that because of the runaway train. Because of these
24 people –

25 MR. BELLUCK: – You are not, you are not,

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you're not suggesting to us that the public doesn't have an interest in the issues that –

MS. SCALISE: – No. I am not suggesting that –

MR. BELLUCK: – That the judge and – and you as his counselor have acknowledged?

MS. SCALISE: No. I am not suggesting that at all.

MR. BELLUCK: Right? There's a public interest in proper financial disclosure –

MS. SCALISE: – Absolutely.

MR. BELLUCK: There's a proper interest in not having a judge who made harassing comments. There's a public interest in not having staff paid for by taxpayers doing private work. So –

MS. SCALISE: – I agree with everything you say, and the judge agrees with it as well. Okay. What I am saying is a lot of it came to light where they might have been an opportunity to correct some of the things, including the financial disclosure –

MR. BELLUCK: – Yes, but, but, you know –

MS. SCALISE: – That's the only comment I was making.

MR. BELLUCK: You keep saying that the judge acknowledges what he did.

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MS. SCALISE: Yes.

MR. BELLUCK: And he seemed to suggest that too.

MS. SCALISE: Yes.

MR. BELLUCK: But, but, you know, he also characterizes it as mistakes because he was distracted, and it is not what he usually does. And he should have, you know, he had something wrong with his back and to me that's not a true acknowledgement. He started in his answer to me when I asked, why are we here again, by saying the allegations here are not true. And that's, that's absolutely false. He's acknowledged, and you've acknowledged that he committed three separate instances of misconduct here and for him to start his response to me by saying, look at these other two people who worked for me and the outrageous false comments they made. What I did is not true. It doesn't suggest to me that he still really gets it.

MS. SCALISE: Okay. May I address that?

MR. BELLUCK: You sho – yes, I think you should because –

MS. SCALISE: Thank you, Mr. Belluck.

MR. BELLUCK: You know, my impression is, is that he's been here before and if we leave him on

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the bench, he's going to be back for a fourth time.

MS. SCALISE: Mr. Belluck, this case as you know is six, was six days, twenty some odd witnesses, it was hard fought because it's a reputation case. This judge's reputation in the community is what is at stake. We acknowledge the mistakes he made. We don't say that he should not be punished for it. But we do say it should fit the punishment, okay. I'd like to quote the case of Edward J. Williams, which I do in my reply. Because what this Commission has said and what the Court of Appeals has repeatedly said is that the misconduct, although serious, does not rise to level of truly egregious misbehavior requiring the sanction of removal. Removal is the, an extreme sanction that should be imposed only in the event of truly egregious circumstances. While we don't disagree that there was misconduct in this case, the misconduct, part of it could have been corrected. I give you the fact that you don't accept that his back problem and everything else had happened. But at the end of the day what are we looking at? In addition, the comments that were made were characterized by the referee as unprofessional. He did – he specifically said that he did not attribute it to the scurrilous and I forget what the wording was in his report and I ask

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you to read it, but he in particular said he did not attribute it to the same ilk of the comments that were repeatedly made and alleged by Ms. Gallagher and Mr. Kachadourian. So yes, Judge Miller understands that whatever his intent was, and he told you that, it will not happen again. It is a perception thing where you have somebody that you are speaking to, okay? So, having said that, I am a woman and I do understand how somebody could perceive something wrong, okay. And Judge Miller gets it now, too. He has spent an extraordinary amount of time trying to redeem his reputation. As Mr. DerOhannesian said, he spent an extraordinary amount of time investigating things, so he could prove his reputation to you. Some of the witnesses were the Commission's witnesses who proved his reputation and the good works he does in the Court. I think that, well what I think is irrelevant. What you need to think, okay, what you need to find is is this judge worthy? Is this judge someone we want on our bench? Has he learned his lesson? Absolutely. Will he ever be here again? He hopes not. This is not the end of the road for him, as you know, because there is a civil litigation, okay. So, there is still things out there. He has – he is a family man and yet his family

1 has to hear every time something happens in the IG's
2 Office, in the Commission. You know, they filed this
3 case just weeks before and that had actually benefitted
4 the judge. You want to know why? Because people
5 came forward and said they want to tell you the good
6 things about this judge. We want to tell you who he
7 is; what he does on the bench; why we appreciate him.
8 And so, what we are saying is let him redeem himself.
9 Let him be the judge he can be and –

10 MR. BELLUCK: – And, just, just so I am
11 clear, okay, as a woman, and you started your part of
12 your argument with that –

13 MS. SCALISE: – Yes.

14 MR. BELLUCK: You think if a person who is
15 supervising you says, you look really hot in that outfit,
16 you should always wear that outfit, that that's a
17 mistake? That –

18 MS. SCALISE: – I think –

19 MR. BELLUCK: – Someone else would,
20 someone else would interpret that differently?

21 MS. SCALISE: No. I think it's inappropriate.
22 I also have the benefit of practicing for 32 years and
23 I've had that comment made to me. The difference
24 being I open my mouth because I happen to be a very
25 vocal person. But that doesn't mean she had to, okay.

1 And he acknowledges that he shouldn't have made
2 that statement. He acknowledges that it was a bad day
3 with judge – with Ms. Vroman. But I want you to
4 look at the record and see what else they say about
5 Judge Miller. How his calendar was. How his work
6 got done. The amount of work that did get done. Is
7 there some balance that you can come to that we
8 could all live with? We hope that you can because the
9 people of Broome County elected him to Family
10 Court. He did his job. People were satisfied when
11 they appeared. It was not his words that you heard
12 when he was quoting what the actual testimony of
13 witness after witness who came in and testified for
14 him, including a court officer who was there on a
15 daily basis with him, about how professional he was.
16 So, we thank you very much for your time. We hope
17 you see it our way and that you impose no greater
18 than a censure. Thank you.

19 MR. BELLUCK: Thank you very much. Ms.
20 Cenci, do you have any rebuttal?

21 MS. CENCI: Just very briefly. You know
22 respondent would have you believe that he apologized
23 for his sexual harassment of the Chief Clerk. He
24 never did. Similarly, he never apologized to the other
25 clerk that he berated in the court because she was too

1 slow on an occasion when he wanted to leave work
2 early. That's just not true. It's also not true that he
3 couldn't properly file his financial disclosure forms
4 and tax returns because the Commission had
5 possession of his records. Not the case at all.

6 JUDGE MILLER: Counsel, do you know
7 what one of my concerns is? If I could just express it,
8 is, and I read the entire transcript, this was largely a
9 trial that was held relating to the allegations of these
10 two employees, his personal employees. Almost the
11 whole trial was spent on that. A lot of it was trying to
12 malign the Judge as to some of his friends being
13 Italian and having criminal backgrounds. I mean
14 some of the stuff that even the Commission put in was
15 frankly shocking. And so, that's really the heart of
16 this case. And now related issues of misconduct have
17 come up. But if those allegations never would have
18 occurred, none of this stuff would have ever gotten to
19 us. —

20 MS. CENCI: — I don't think you can, I don't
21 think you can —

22 JUDGE MILLER: — And that's what troubles
23 me here.

24 MS. CENCI: I don't think you can make that
25 assumption, Judge Miller.

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JUDGE MILLER: Okay. I'm just –

MS. CENCI: – You just can't.

JUDGE MILLER: Well if you read –

MS. CENCI: – I'm sorry. –

JUDGE MILLER: – That's what this trial was about. And that's –

MS. CENCI: – No. These allegations, the formal written complaint was always in the form in which you see it. –

JUDGE MILLER: – But how many days were devoted to that, these alle – I don't want to argue with you. I am just saying from that nightmare and to me I found the testimony largely incredible and loaded with lies, frankly and then the related attempts to basically, he had a friend who got convicted of a crime twenty some odd years ago and that was an attempt to malign him. Somebody else was Italian. That was an attempt to malign. That testimony and now all of a sudden, alright, he screwed up on his tax returns and we should remove him. I am having trouble making the jump because there was a basic failure to prove the main charges. Yes, he's acknowledged the other charges. So –

MS. CENCI: – We proved the photograph.
We proved the photograph. –

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JUDGE MILLER: – Why didn't you subpoena his phone? Why wasn't – you took everything else. Why wasn't the phone subpoenaed? –

MS. CENCI: – The IG asked him about the allegation. –

JUDGE MILLER: – Okay.

MS. CENCI: Do you think that photograph was still on his phone?

JUDGE MILLER: I have no idea.

MS. CENCI: Well. Besides, you'd have to know the application that was used to send the photograph.

JUDGE MILLER: Okay.

MS. CENCI: There's so many inst – there's, there's applications which send photographs and they instantly disappear –

JUDGE MILLER: – All right. –

MS. CENCI: – After seconds. I mean, come on, that's just –

JUDGE MILLER: – Well the charge, the charge was made –

MS. CENCI: – That's just, that's just an enormous standard of proof.

JUDGE MILLER: Counsel, the charge in the complaint is that that was done in chambers. That

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was not –

MS. CENCI: – Absolutely.

JUDGE MILLER: Established on the record.

MS. CENCI: It was established –

JUDGE MILLER: – Okay. –

MS. CENCI: – Through Mr. Kachadourian, who was not fabricating because D [REDACTED] L [REDACTED] established that there was a photograph.

JUDGE MILLER: All right.

MS. CENCI: You know what, when she was, when she was told about this allegation by the – that there was allegation that came up in connection with sexual harassment allegations against respondent, that there was a picture of her naked that was circulating. D [REDACTED] L [REDACTED] knew she hadn't made any such allegations. Where did she go? She went to David Iannone, respondent's friend and associate who had introduced her. Respondent had introduced her to this man and he – I mean that was the source of the photograph.

JUDGE MILLER: Okay.

MS. CENCI: She corroborated it. That together with the referee's error –

JUDGE MILLER: – She didn't corroborate that it was shown by the Judge –

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MS. CENCI: – Well there are only two people in chambers.

JUDGE MILLER: – Okay. But that was not, respectfully, that was not corroborated.

MS. CENCI: Okay.

JUDGE MILLER: She knew there was a photograph because she consented to photographs, counsel.

MS. CENCI: We thought, we believed it was corroborated in that the referee made an error of law.

JUDGE MILLER: Okay.

MS. CENCI: The other thing, the other thing is about this letter that he had his secretary prepare. You know, he claims the secretary volunteered to draft this letter. She said, no, he told me to do it. Now one of those two people is telling the truth and one is not. And the referee didn't resolve that issue. And you should resolve it against respondent because that's just ridiculous. It's ridiculous that his secretary would have just offered to draft a letter and oh by the way let me just make it come from some third party who is not even here.

He will be back again if you don't remove him from office. The conduct is just too serious to leave him on the bench.

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MR. BELLUCK: Thank you all very much.
That concludes the hearing in the Matter of Miller.
We stand adjourned.

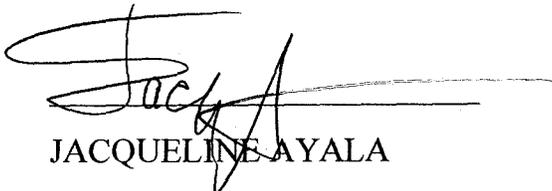
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at 12:07 PM.)

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CERTIFICATION

I, JACQUELINE AYALA, an Assistant Administrative Officer of the State Commission on Judicial Conduct, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the proceedings transcribed by me, to the best of my knowledge and belief, in the matter held on October 17, 2019.

Dated: November 15, 2019


JACQUELINE AYALA