

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

**DICCIA T. PINEDA-KIRWAN,**

a Justice of the Supreme Court,  
11<sup>th</sup> Judicial District, Queens County.<sup>1</sup>

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**AGREED  
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

(“Commission”):

**IT IS HEREBY STIPULATED AND AGREED** by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Honorable Diccia T. Pineda-Kirwan (“Respondent”), who is represented in this proceeding by Paul Shechtman, Esq. of Bracewell, LLP that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent was admitted to the practice of law in New York in 1988. She has been a Justice of the Supreme Court, 10<sup>th</sup> Judicial District, Nassau County, since January 2019, having previously served as Justice of the Supreme Court, 11<sup>th</sup> Judicial District, Queens County, from 2010 to 2018, and Judge of the New York City Civil Court, Queens County from 2003 to 2009. Respondent’s current term expires December 31, 2024.

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<sup>1</sup> Although Respondent is presently sitting in the 10<sup>th</sup> Judicial District (Nassau County), she was sitting in the 11<sup>th</sup> Judicial District (Queens County) when this proceeding commenced.

2. Respondent was served with a Formal Written Complaint dated August 8, 2019. She enters into this Agreed Statement of Facts in lieu of filing an Answer.

3. At all times pertinent to the matters herein, Jeremy Weinstein was the Administrative Judge of Supreme Court, Civil Term, Queens County.

**As to Charge I**

*Maria Bradley, Principal Law Clerk to Administrative Judge Jeremy Weinstein*

4. On September 21, 2010, Administrative Judge Jeremy Weinstein sent an email to the Supreme Court justices who were sitting in Queens County, Civil Term, advising them that uncontested divorce matters should not be dismissed for minor technical defects and that, when possible, the judges should attempt to have the defects remedied without dismissal.

5. In February 2011, Maria Bradley began working as Principal Law Clerk to Administrative Judge Weinstein.

6. In February 2011, upon receiving a letter from an attorney complaining that Respondent had dismissed an uncontested divorce petition in *Christine Telesco v Michele Weinfeld* for, *inter alia*, the parties' failure to submit certain papers, Administrative Judge Weinstein directed Ms. Bradley to speak to Respondent's law clerk at the time about the matter.

7. On March 2, 2011, Ms. Bradley sent an email to Respondent's law clerk requesting that Respondent clarify her position on uncontested matrimonial matters in view of Judge Weinstein's 2010 email message advising that uncontested matrimonial cases should not be dismissed for minor technical reasons.

8. On March 3, 2011, Respondent called and spoke to Ms. Bradley via the speakerphone in Respondent's chambers in the presence of her law clerk. Respondent yelled at Ms. Bradley and vehemently stated (A) that she would not do a clerk's job, (B) that no one, including Judge Weinstein, could tell her how to decide a case, (C) that it would violate her oath and (D) that Ms. Bradley should not be giving her or her staff directives from Judge Weinstein. Ms. Bradley was shaken by the conversation and felt demeaned by Respondent.

9. On April 20, 2016, Respondent was assigned to hear a motion to reargue a summary judgment motion in *Morgan Goulet v James P. Anastacio, et al.* The case had previously been assigned to Supreme Court Justice Valerie Braithwaite Nelson, who had denied the original motion for summary judgment and thereafter was appointed to the Appellate Division, Second Department.

10. On April 22, 2016, Respondent referred the motion to reargue in *Goulet* to Judge Braithwaite Nelson, notwithstanding that the latter had been elevated to the Appellate Division and was no longer hearing lower-court matters. After learning that Respondent had done so, Ms. Bradley conferred with Administrative Judge Weinstein and then told Respondent's law clerk at the time that the motion could not be returned to Judge Braithwaite Nelson and that Respondent should decide it. Ms. Bradley returned the motion papers to Respondent with a note reiterating that the motion could not be decided by Judge Braithwaite Nelson.

11. On May 10, 2016, Respondent and her law clerk called and spoke to Ms. Bradley via the speakerphone in Respondent's chambers. Respondent was irate and told

Ms. Bradley that she would not decide the motion in *Goulet* and insisted that it should be decided by Judge Brathwaite Nelson. When Ms. Bradley explained that all of Judge Brathwaite Nelson's pending motions had been randomly reassigned to other judges, Respondent stated, in words or substance, "I'm not any other justice. I'm Diccia Pineda-Kirwan, Supreme Court Justice."

12. During the May 10<sup>th</sup> telephone call, Respondent raised her voice, accused Ms. Bradley of asking her to do something "illegal" by deciding a motion to reargue another judge's decision, and told Ms. Bradley not to speak to her until she did her research and learned the law. When Ms. Bradley explained that she was acting at Administrative Judge Weinstein's direction, Respondent demanded a written directive from Judge Weinstein to decide the motion. Respondent then told Ms. Bradley in an angry voice that she had changed her mind and that she planned to raise the issue with the Counsel to the Advisory Committee on Judicial Ethics, because she felt she was being asked to do something unethical.

Mark Finkelstein, Facility Supervisor of the Long Island City Courthouse

13. In 2015, Mark Finkelstein was the Facility Supervisor at the Long Island City courthouse of the Supreme Court, Queens County.

14. On March 30, 2015, Respondent became angry when Mr. Finkelstein asked her to return a folding table that he had loaned her for her courtroom. The table was Mr. Finkelstein's personal property. When Mr. Finkelstein told Respondent that he had promised the table to a new judge, Respondent said, in words or substance, "How can

you do that? I have more seniority than he does.” Respondent became visibly upset and repeatedly screamed at Mr. Finkelstein, “You treat me like shit.”

Tamara Kersh, Chief Clerk, Queens County Supreme Court, Civil Term

15. In 2014, Tamara Kersh was the Acting Chief Clerk of Supreme Court, Civil Term, Queens County.

16. On January 26, 2014, after noticing that furniture and/or office equipment was missing from the former chambers and courtroom of retired Supreme Court Justice James Golia, Mr. Finkelstein viewed security video that showed members of Respondent’s court staff removing furniture and/or equipment from Judge Golia’s courtroom and chambers.

17. On January 27, 2014, Mr. Finkelstein confronted members of Respondent’s court staff, who admitted taking the missing items.

18. On January 27, 2014, Respondent called Acting Chief Clerk Kersh and demanded a copy of any report in which Mr. Finkelstein accused her staff of stealing. When Ms. Kersh stated that no report had been filed, Respondent became upset and said in a raised voice, “I’m a senior judge. I should have what I want.” Respondent then rejected Ms. Kersh’s suggestion that she speak to Judge Weinstein about obtaining new office equipment, stating that Judge Weinstein did not care for her and treated her unfairly.

Sharon Davidson, Respondent’s Former Confidential Secretary

19. Sharon Davidson served as Respondent’s confidential secretary from January 2010 through December 2010.

20. In 2010, on multiple occasions, Respondent chastised Ms. Davidson, yelled at her, spoke to her in a condescending tone and threatened to terminate her employment.

21. In 2010, Respondent required Ms. Davidson to call her at home each work day at 9:00 AM and frequently yelled at Ms. Davidson if she called after 9:00 AM. Respondent also yelled at Ms. Davidson frequently for not calling her at home to report on certain events that occurred in court in Respondent's absence, about which Respondent learned after the fact.

22. In 2010, on at least one occasion, when Ms. Davidson told Respondent not to speak to her in a discourteous manner, Respondent stated, in words or substance, "I'll talk to you the way I want. If you weren't so incompetent I wouldn't talk to you like that."

Michael Cheung, Technical Manager of the Queens County Supreme Court

23. In 2017, Michael Cheung was the Technical Manager for the Queens County Supreme Court.

24. In February 2017, Mr. Cheung requisitioned a new laptop computer for Respondent.

25. On February 17, 2017, Respondent accepted delivery of the new laptop but refused to relinquish her old laptop.

26. On February 18, 2017, Mr. Cheung sent Respondent an email (A) explaining that it was the policy of the Office of Court Administration ("OCA") to require judges to return their old laptops upon receiving new laptops and (B) requesting

to schedule a pickup of her old laptop. Respondent did not respond to Mr. Cheung's email.

27. In late February 2017 or early March 2017, Mr. Cheung and his colleague Kevin Young called and spoke to Respondent via the speakerphone in Mr. Cheung's office, to arrange to pick up Respondent's old laptop on March 3, 2017. Respondent yelled at Mr. Cheung and Mr. Young, said that she did not want to return the old laptop and said she had been told she could keep it, although she did not tell Mr. Cheung or Mr. Young who told her that.

28. On March 2, 2017, at the direction of his supervisor, Mr. Cheung sent Respondent an email asking her to return the old laptop, reiterating OCA's policy concerning the return of old laptops and stating that failure to return the old laptop could be considered "unauthorized use of court computer equipment."

29. After Mr. Cheung sent the email, Respondent telephoned him and left a voicemail message accusing him of threatening her and stating that she was a "Supreme Court Justice" and that he should not speak that way to someone of authority. Respondent also told Mr. Cheung that she had drafted a letter in response to his email and that she would save and send it "if necessary" to Lawrence Marks, Chief Administrative Judge of the Unified Court System. Respondent ended the message by stating that if Mr. Cheung threatened her again she would call the police.

*Lauren Quondamatteo, Administrative Aide to Judge Weinstein*

30. In 2016, Lauren Quondamatteo was the Administrative Aide to Administrative Judge Jeremy Weinstein.

31. In the summer of 2016, at Judge Weinstein's direction, Ms. Quondamatteo called Respondent to discuss errors in her quarterly report of pending matters for the period of April-June 2016. Respondent became angry and was "ranting and raving" at Ms. Quondamatteo. Respondent put the call on speakerphone and, in a condescending tone, yelled that she was "not a clerk," that her chambers were "not a clerk's office" and that she should not have to "keep track of these things." Respondent told Ms. Quondamatteo that she would not file a corrected report.

*Counsel in Juan Maria Solorzano v Skanska USA Building, Inc.*

32. On January 30, 2014, Respondent ordered the parties in *Juan Maria Solorzano v Skanska USA Building, Inc.*, to appear at 10:00 AM on March 20, 2014, for a settlement conference and final disposition of a motion to reargue Respondent's order denying the defendant's motion for an extension of time to file a summary judgment motion.

33. On March 20, 2014, attorneys Dennis Pak and James Neville appeared, respectively, for the defendant and plaintiff.

34. In a conference with Respondent's law clerk, Mr. Pak requested an adjournment and advised that he could not settle the case because his client's insurance adjuster was unavailable. The clerk told the attorneys that they needed to stipulate to "something."

35. The two attorneys then appeared before Respondent. When Mr. Pak repeated his request for an adjournment of the settlement conference, Respondent stated that there were no adjournments in her part and that the case would be conferenced.

36. Before the lunch break, Respondent conducted an off-the-record conference with the two attorneys during which she suggested that they stipulate to give the defendant an extension of time to file a summary judgment motion. When the attorneys could not stipulate, Respondent told them to return that afternoon.

37. After a recess, at around 2:00 PM, attorney Charles Wisell appeared for the plaintiff because Mr. Neville had another engagement. At two separate conferences, each of Respondent's law clerks asked Mr. Pak and Mr. Wisell to stipulate to extend the defendant's time to make a summary judgment motion. Mr. Wisell informed each clerk he did not have permission from his client to stipulate and that his client wanted a "decision on the merits."

38. At around 4:00 PM, Respondent approached Mr. Wisell and Mr. Pak, who were sitting at a table in the well of the courtroom and stated, in words or substance, that they should "Work out a stip." When Mr. Wisell responded that there was nothing to which he could stipulate, Respondent replied, "Well, stipulate to something." Mr. Wisell reiterated that he could not stipulate, and Respondent became angry and yelled, "Get out of my courtroom. Get out. Get out."

39. Respondent continued to yell at Mr. Wisell as he gathered his belongings and left the courtroom.

*Counsel in Beverly Leslie v Audrey H. Anderson*

40. On December 6, 2013, Respondent ordered the parties in *Beverly Leslie v Audrey H Anderson* to appear at 10:00 AM on January 23, 2014, for a settlement conference and for final disposition of the defendant's motion for summary judgment.

41. On January 23, 2014, attorneys Alexander Blishteyn and Gene Stith appeared, respectively, for the defendant and the plaintiff.

42. Although the case was on for final disposition of the summary judgment motion, Mr. Stith handed up opposition papers. Mr. Blishteyn objected to the late filing of such papers. When Respondent indicated she would accept Mr. Stith's papers and said Mr. Blishteyn could file responsive papers later that day, Mr. Blishteyn asked for more time. During the course of their discussion, Respondent yelled at Mr. Blishteyn.

43. At one point during the discussion, Respondent stated, "Off the record. It's over." When Mr. Blishteyn asked to "keep the record on," Respondent angrily said, "No. Call security. Okay. That's enough." Mr. Blishteyn then asked Respondent to recuse herself from the matter, after which she said, "I want security here and I want to . . . make a record of this now that he doesn't want to just step away from the bench."

*Counsel in Carol Ann Giancola v Reny R. Johnny*

44. In July 2013, the plaintiff in *Carol Ann Giancola v Reny R. Johnny*, filed a motion for summary judgment on the issue of the defendant's liability for a motor vehicle accident in which the defendant rear-ended the plaintiff's stopped vehicle. The defendant's attorney, Gregory Newman, did not oppose the motion.

45. On September 11, 2013, Respondent ordered the parties to appear at 10:00 AM on October 24, 2013, for a settlement conference and for final disposition of the plaintiff's summary judgment motion.

46. On October 24, 2013, the plaintiff's attorney, the defendant's insurance adjuster and a *per diem* attorney hired by Mr. Newman appeared in Respondent's part at around 10:00 AM. Mr. Newman arrived at court at approximately 11:00 AM.

47. Before the lunch recess, Respondent's two law clerks conducted separate conferences with the attorneys and encouraged them to settle. At each conference, Mr. Newman acknowledged that his client had no defense to the summary judgment motion on the issue of liability. He advised the clerks, however, that the defendant's insurer would not make a monetary offer to settle because there was an issue of fact as to whether the plaintiff met the "serious injury" threshold under New York's "No-Fault" Insurance Law. The parties were directed to return to the courtroom after lunch.

48. Thereafter, from about 2:00 PM to about 4:00 PM, the parties waited in the courtroom, but the case was not conferenced.

49. At around 4:15 PM, Respondent entered the courtroom and yelled at Mr. Newman and the other attorneys in the courtroom, stating, in words or substance, that they were wasting her time and that the court was very busy. They were then told to leave.

50. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that

she failed to respect and comply with the law and failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that she failed to be patient, dignified and courteous to all with whom she deals in an official capacity, in violation of Section 100.3(B)(3) of the Rules, and failed to diligently discharge her administrative responsibilities and maintain professional competence in judicial administration, and failed to cooperate with court officials in the administration of court business, in violation of Section 100.3(C)(1) of the Rules.

**As to Charge II**

51. Respondent engaged in the conduct set forth in Charge I above, notwithstanding having been issued a confidential Letter of Dismissal and Caution dated February 14, 2006, in which the Commission cautioned her to be patient, dignified and courteous to those with whom she dealt in an official capacity, and for threatening to adjourn a discovery motion repeatedly unless the attorneys reached a stipulation on the motion. The caution letter also advised Respondent that she had created the appearance that she was “denying the attorneys the right to have their motion promptly heard and adjudicated by the court.” A copy of the letter is appended as Exhibit A.

52. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the

integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; and failed to avoid impropriety and the appearance of impropriety, in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

### **As to Charge III**

53. The parties bring to the Commission's attention a memorandum dated June 21, 2016, from then-Administrative Judge Jeremy S. Weinstein, thenceforth requiring judges to report as pending any case in which a "conference order" was issued as to an undecided motion. A copy of the memorandum is appended as Exhibit B. Prior to Judge Weinstein's memorandum, Respondent's practice of omitting such cases from her Reports of Undecided Matters was consistent with prevailing policy.

54. The seven unreported cases set forth in Charge III of the Formal Written Complaint predated Judge Weinstein's memorandum.

55. In view of the foregoing, Charge III of the Formal Written Complaint should be dismissed.

### **Additional Factors**

56. Respondent has cooperated with the Commission during its inquiry into this matter.

57. Respondent regrets and apologizes for her impatient and otherwise discourteous behavior toward attorneys, court staff and colleagues, and she has endeavored to avoid such conduct in the future.

58. In January 2019, Respondent was transferred to Supreme Court, Nassau County. The Commission has not been directly or indirectly apprised of any complaints about her demeanor since her transfer.

**IT IS FURTHER STIPULATED AND AGREED** that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Censure based upon the judicial misconduct set forth above.

**IT IS FURTHER STIPULATED AND AGREED** that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

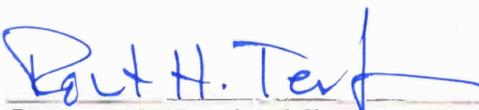
Dated: 7/15/20

  
\_\_\_\_\_  
**Honorable Diccia T. Pineda-Kirwan**  
Respondent

Dated: 7/17/20

  
\_\_\_\_\_  
**Paul Shechtman, Esq.**  
Bracewell, LLP

Dated: July 20, 2020

  
\_\_\_\_\_  
**Robert H. Tembeckjian**  
Administrator & Counsel to the Commission  
(Mark Levine, Of Counsel)



NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT  
61 BROADWAY  
NEW YORK, NEW YORK 10006

EXHIBIT A

212-809-0566 212-809-3664  
TELEPHONE FACSIMILE

[www.scjc.state.ny.us](http://www.scjc.state.ny.us)

LAWRENCE S. GOLDMAN, *CHAIR*

ALAN J. POPE, *VICE CHAIR*

STEPHEN R. COFFEY

COLLEEN C. DIPIRRO

RICHARD D. EMERY

RAOUL LIONEL FELDER

CHRISTINA HERNANDEZ

HON. THOMAS A. KLONICK

HON. DANIEL F. LUCIANO

HON. KAREN K. PETERS

HON. TERRY JANE RUDERMAN

*MEMBERS*

JEAN M. SAVANYU

*CLERK*

February 14, 2006

CONFIDENTIAL

Honorable Diccia T. Pineda-Kirwan  
Judge of the Civil Court of the  
City of New York



LETTER OF DISMISSAL AND CAUTION

Dear Judge Pineda-Kirwan:

The Commission on Judicial Conduct has completed its investigation into allegations concerning your conduct while presiding over *Joyce Hecht v. 83-84 116<sup>th</sup> Street Owners Corp., Metro Management Development, Inc., and Cadle Company* on December 2, 2004. After considering your response to the allegations, the Commission has determined not to institute formal charges.

In accordance with Section 7000.3(c) of the Commission's Operating Procedures and Rules, the Commission has dismissed the complaint with this letter of dismissal and caution.

You are cautioned to adhere to Section 100.1 of the Rules Governing Judicial Conduct ("Rules"), which requires a judge to observe high standards of conduct so that the integrity and independence of the judiciary will be preserved; Section 100.2(A) of the Rules, which requires a judge to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary; Section 100.3(B)(3) of the Rules, which requires a judge to be patient, dignified and courteous to litigants, lawyers and others with whom the judge

deals in an official capacity; and Section 100.3(B)(6) of the Rules, which requires a judge to accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

You did not comply with those standards when you told the attorneys in the *Hecht* case that if they did not reach a stipulation on their discovery motions, you would repeatedly adjourn the motions until they did so. Although you indicated that you did not have a specific recollection of the *Hecht* case or of any other case on your calendar on December 2, 2004, three witnesses unequivocally stated that you made the comment. Such comment created the appearance that you were denying the attorneys the right to have their motion promptly heard and adjudicated by the court.

In accordance with the Commission's policy, you may either accept this letter of dismissal and caution or request a formal disciplinary hearing. If you choose to accept this letter of dismissal and caution, no further action will be taken. If you request a hearing, the Commission may authorize a Formal Written Complaint against you pursuant to Judiciary Law Section 44(4) and designate a referee to hear and report findings of fact and conclusions of law. If a hearing is held, the Commission may then decide to dismiss the complaint, issue a letter of caution to you, or file a determination pursuant to Judiciary Law Section 44(7) that you be publicly admonished, publicly censured, or removed from office.

The letter of dismissal and caution is a confidential disposition of the current complaint but may be used in a future disciplinary proceeding based on a failure to adhere to the terms of the letter. The Commission may also consider the letter of dismissal and caution in determining sanction in any future disciplinary proceeding, in the event formal charges are sustained and misconduct is established.

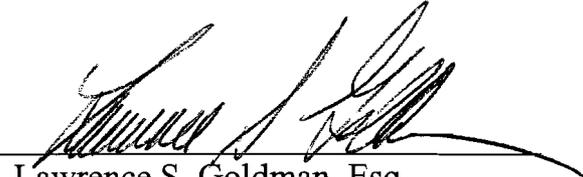
Please advise the Commission in writing no later than 10 days after receipt of this letter if you choose not to accept this letter of dismissal and caution and wish to have a hearing on formal charges. If we do not hear from you requesting a formal hearing within 10 days, the letter shall be final.

A copy of the Commission's rules is enclosed for your information.

Very truly yours,

COMMISSION ON JUDICIAL CONDUCT

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Lawrence S. Goldman", written over a horizontal line.

Lawrence S. Goldman, Esq.  
Chair

Enclosure

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

cc: Paul T. Gentile, Esq.



STATE OF NEW YORK  
UNIFIED COURT SYSTEM  
ELEVENTH JUDICIAL DISTRICT, SUPREME COURT  
(OFFICE OF COURT ADMINISTRATION)  
88-11 SUTPHIN BOULEVARD  
JAMAICA, NEW YORK 11435  
(718) 298-1100

**EXHIBIT B**

**LAWRENCE K. MARKS**  
Chief Administrative Judge

**FERN A. FISHER**  
Deputy Chief Administrative Judge  
New York City Courts

**JEREMY S. WEINSTEIN**  
Administrative Judge  
Civil Term  
Eleventh Judicial District  
Supreme Court

**MEMORANDUM**

TO: All Civil Term Justices  
Supreme Court, Queens County

FROM: Jeremy S. Weinstein  
Administrative Judge

RE: Decisions Directing Conferences on Motions

DATE: Tuesday, June 21, 2016

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Pursuant to consultation with the Office of Court Administration, please be advised that motions that are determined by Orders that schedule the motion for a conference will no longer be considered "decided" for purposes of the Report of Undecided Matters. (See, Rules of the Chief Judge § 4.1). Those motions, wherein an Order was issued directing that a conference be held on the motion, are marked in CCIS as "conference ordered" and no longer dispose of the motion for purposes of the 60-day decision requirement.

Accordingly, all motions in which a "conference order" has been issued are to be included in all future quarterly Reports of Undecided Matters where the underlying motion was not decided within 60 days of submission.

cc: Tamara Kersh, Chief Clerk,  
Queens County Supreme Court, Civil Term