

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

**BRYAN R. HEDGES,**

A Judge of the Family Court,  
Onondaga County

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Before WILLIAM T. EASTON, Referee

Appearances:

For the Commission:  
ROBERT H. TEBECKJAIN  
Counsel to the Commission  
By JOHN J. POSTEL  
Deputy Administrator  
DAVID M. DUGUAY  
Senior Attorney  
EDWARD LINDNER  
MARY C. FARRINGTON  
On the Brief

For Respondent:  
ROBERT F. JULIAN, P.C.  
By ROBERT F. JULIAN

**PRELIMINARY STATEMENT**

By Order dated May 24, 2012, I was designated as Referee to hear and report to the State Commission on Judicial Conduct with respect to a charge of judicial misconduct against Bryan R. Hedges, retired Judge of Family Court Onondaga County (“Respondent”).

## PLEADINGS

### (a) The Formal Written Complaint

The Formal Written Complaint (“FWC”), dated May 3, 2012, charged Respondent with one act of misconduct: on or about 1972 Respondent engaged in a sexual act with his niece, E [REDACTED], who was approximately five years old at the time. Specifically, the Commission alleged that he had her “participate with her hand” in the manual stroking of his penis while both were guests at a house in Albany, New York (FWC ¶ 6).

The Commission alleged that such conduct constituted a violation of §§ 100.1 and 100.2(A) of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (“Rules”) and Respondent should be disciplined for cause pursuant to Article 6, § 22, subd. (a) of the New York State Constitution and Section 44, subd. 1 of the Judiciary Law (FWC ¶ 13).

### (b) The Verified Answer

On May 23, 2012 Respondent served a verified answer (“Ans”) in which he admitted portions of the Complaint, including that in or about 1972 E [REDACTED] touched his hand while he was stroking his penis. Respondent denied that he had her participate in the masturbation. Respondent denied that his actions violated §§ 100.1 and 100.2(A) of the Rules (Ans ¶ ¶ 2,4, 5).

Respondent also alleged that the Commission did not have jurisdiction over the matter because it predated his service as a Judge by approximately thirteen years (Ans ¶ 6).

**(c) The Amended Formal Written Complaint**

On June 20, 2012 the Commission amended the Complaint by striking the second sentence of ¶ 8 which alleged that E [REDACTED] [REDACTED] and her parents were also overnight guests at the house in Albany when the alleged act took place. Respondent did not object to the amendment (Tr. A1).

**THE EVIDENTIARY HEARING**

An evidentiary hearing was held at Syracuse University College of Law with testimony taken on June 20, 2012 and June 25, 2012. The Commission called two witnesses and entered five items into evidence including a CD audio recording<sup>1</sup>. Respondent called three witnesses and introduced ten documentary items into evidence.<sup>2</sup> Respondent also testified in his own behalf. A transcript (“Tr.”) of the hearing was prepared and neither party objected to its accuracy.

**POST-HEARING SUBMISSIONS**

The Commission submitted a Post-Hearing Memorandum with Proposed Findings of Fact and Conclusions of Law on July 13, 2012. On the same date, Respondent submitted his Proposed Findings of Fact and Conclusions of Law. On July 18, 2012, both

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<sup>1</sup> The CD casing was labeled as being a recording dated March 27, 2012, but the parties amended the exhibit by stipulation to reflect the actual date of the recording to be March 21, 2012. The parties also stipulated that Commission’s Exhibit 2, the transcript of the CD recording, be amended to reflect the accurate date of March 21, 2012 (Tr. 16). One exhibit (a transcript of R [REDACTED] [REDACTED]’s testimony at a prior proceeding) was identified by the Commission but not introduced into evidence.

<sup>2</sup> Three exhibits (including a transcript of Respondent’s testimony at a prior proceeding) were identified by Respondent but not introduced into evidence.

parties submitted Reply Memoranda and Respondent submitted a motion requesting that I not consider portions of the Commission's Post-Hearing Memorandum<sup>3</sup>.

In its submission the Commission asserted that Respondent had engaged in a sexual act with his five-year-old niece, who was deaf, by having her participate in his stroking of his penis while he masturbated. Further, he took no action to inform his niece's parents of this act and did not disclose to her parents anything regarding the act until he was contacted by the niece's father approximately ten years later. The Commission argued that this conduct reflects adversely on Respondent's qualifications and fitness to perform his duties as a judge, that he failed to maintain high standards of conduct necessary to the integrity of the judiciary, that he failed to respect and comply with the law, and that he failed to act in a manner that promotes public confidence in the integrity of the judiciary.

In his submission, Respondent attacked the credibility of E [REDACTED] [REDACTED] [REDACTED]<sup>4</sup> regarding the details of what occurred in 1972. He acknowledged, however, that sometime in 1972 his five-year-old niece touched his hand with her hand while he masturbated on a bed at his mother-in-law's house in Albany. He stated that the act was only for a matter of seconds and denied that he encouraged her to either approach him or

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<sup>3</sup> I denied Respondent's motion by letter decision dated July 23, 2012. I found that the disputed portions of the Commission's submission were legal arguments, not proposed findings of fact or law, and were either responses or anticipated responses to Respondent's arguments. It should also be noted that none of these portions of the Commission's Post-hearing Memorandum have been adopted as findings of fact or conclusions of law in my decision.

<sup>4</sup> E [REDACTED] married A [REDACTED] twenty three years ago and assumed her husband's last name (Tr. 23).

participate in his masturbation. Respondent also asserted that seconds after discovering her participation, he rolled away and ended the incident. Respondent acknowledged that he did not inform his niece's parents of this incident until the father confronted him regarding it approximately ten years later. Respondent argued that this conduct does not constitute grounds for discipline by the Commission.

### OPINION

Most of the factual basis of the Formal Complaint is not disputed. Respondent acknowledges that he was engaged in an act of masturbation while at his mother-in-law's house in or about 1972 (Ans ¶¶ 2, 4, Tr. 328). Respondent acknowledges that his niece, E [REDACTED], who had been profoundly deaf since birth, was approximately five years old at the time. Respondent acknowledges that at this time he was aware of his niece's inability to communicate verbally or in sign language other than making "attention getting sounds" (Tr. 344-345).

Respondent acknowledges that his niece entered the bedroom in the morning while he was alone in bed masturbating (Tr. 322-23, 328, 337-39). Respondent acknowledges that she climbed into his bed and was partially kneeling next to him (Tr. 324). Respondent acknowledges that his niece participated in his masturbation by having her hand upon his hand while he stroked his penis for a short period of time (Tr. 330, 368). Respondent acknowledges that he did not inform anyone regarding this incident until he was confronted by his niece's father, R [REDACTED], approximately ten years later (Tr. 374-75). At that time, Respondent acknowledges that he told [REDACTED] that his

niece, at a very young age, had walked into the bedroom while he was masturbating at his mother-in-law's home (Tr. 266-67, 376-780).

Respondent testified that he failed to inform E [REDACTED] [REDACTED]'s parents of what happened because he believed the event would not "remain in [his niece's] mind" because "she was so young" and had "nothing to relate it to" (Tr. 338). Although "horrified" (Tr. 376) both by this "abhorrent" (Tr. 337) event and his own failure to inform Ms. [REDACTED]'s parents of what happened (Tr. 394), Respondent acknowledges that he has never sought counseling regarding his conduct<sup>5</sup> (Tr. 395).

Beyond these undisputed facts, there were essentially three factual issues contested at the hearing. The first was whether Respondent had invited his niece into bed with him while he masturbated. Ms. [REDACTED] testified that Respondent had directed her into his bed by motion of his hand and eye contact (Tr. 38, 64, 114). Respondent testified that he was unaware of his niece's presence until she was already kneeling next to him and he did not wave her into the room (T. 322, 323-24).

I find by a preponderance of evidence that Respondent motioned his niece into bed. This finding is based on the relative credibility of both witnesses, E [REDACTED] [REDACTED]'s attention to visual cues because of her deafness and lack of language ability, and the

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<sup>5</sup> In a conversation with M [REDACTED] [REDACTED] (E [REDACTED] [REDACTED]'s mother) which was surreptitiously recorded on March 21, 2012, Respondent told her that he had spoken to a psychiatrist with the Veteran's Administration in the "late 70's or early 80's" or "maybe '73'" because his own concern that his behavior was abhorrent and "somehow connected" to his service but that the psychiatrist was not concerned because "it did not go to PTSD" (Com. Exhibit 2, 17-19). This statement of course was unsworn, and Respondent did not testify to any counseling in either direct or cross-examination. Upon direct questioning from me, Respondent testified that he had not confided in anyone about this incident prior to 1985 and had never sought counseling regarding this (Tr. 395).

unlikelihood that at such young age with her disability she would have climbed into bed with an adult male without invitation. Furthermore, it is also unlikely that Ms. [REDACTED] could have entered the room, and climbed into bed with Respondent without his awareness of her presence while he was masturbating during the morning at his mother-in-law's home.

Second, Ms. [REDACTED] testified that Respondent guided her hand to touch his penis while he masturbated (Tr. 39-41, 114). Respondent testified that she had placed her hand on his hand without his knowledge and that she never touched his penis (Tr. 323-24). He also testified that he continued to masturbate with her hand on his hand for only a matter of seconds and then turned away (Tr. 323). On this issue I find that by a preponderance of evidence that Respondent guided Ms. [REDACTED]'s hand to his penis and that he continued to masturbate for a short period of time. This finding is based on the relative credibility of Ms. [REDACTED] and Respondent.

This finding is also based on Respondent's failure to tell E [REDACTED]'s parents of the encounter immediately after the incident or during the following two years before E [REDACTED] gained the use of language or for additional years after that. If this event were one of inadvertent contact, it seems likely that Respondent would have informed E [REDACTED]'s parents of this accidental, albeit embarrassing, encounter. Respondent, like any responsible adult, would have recognized that the embarrassment to himself would be far outweighed by the harmful consequences to his niece from keeping her parents

completely unaware of this accidental encounter---an encounter Respondent knew that E [REDACTED], given lack of her language ability, would never be able to communicate to them.

Furthermore, Respondent's recorded statements to M [REDACTED] [REDACTED] (Ms. [REDACTED]'s mother) on March 21, 2012 suggest that the encounter was far more than an incidental contact. In this conversation Respondent stated to Ms. [REDACTED] that he had assumed an investigation into the incident had already commenced because his niece had sought counseling and the counselor may be a mandated reporter. Respondent stated to Ms. [REDACTED] that the results of the investigation would be dependent on whether the incident could be characterized as "intentional" abuse or not (Com. Exhibit 2. 20-21). Given his acknowledged and substantial self-interest in avoiding such a "intentional" characterization, his version which casts the encounter as "non-intentional" is called into question by his self-acknowledged motive.

Equally persuasive on this point, Respondent acknowledged to Ms. [REDACTED] in this recorded conversation the abhorrent nature of his actions, that he was "horrified" by his actions which were "not defensible" and "so bad" and "wrong"(Com. Exhibit 2. 12), that he did "not discourage" his niece's participation, and that he has engaged in a "constant reassessment process" of what he did (Com. Exhibit 2. 23). If, in fact, the encounter were one that involved minimal, if any, awareness on his part, it is unlikely he would have used such harsh and judgmental language to characterize his own conduct to Ms. [REDACTED] in a conversation he did not know was recorded.

Finally, the parties dispute whether Respondent ejaculated during the encounter. Respondent denies that he ejaculated and that he turned away from his niece after soon after she placed his hand on his hand while he masturbated (Tr. 24). Although Ms. [REDACTED] did not testify to seeing Respondent ejaculate, she testified that she remembers “white stuff” that she “guess[ed]” came from Respondent’s penis but was unable to recall any other detail (Tr. 44). As a threshold finding, I find this issue irrelevant and immaterial to any determination at this proceeding. To the extent it has any bearing on any other material fact at issue, I find that it was not proven to a preponderance of the evidence that Respondent ejaculated. This finding is based on Ms. [REDACTED]’s failure to recall details regarding Respondent’s ejaculation, her failure to mention ejaculation when she first gave an account of the event (which was after she had learned of the concept of ejaculation), and the passage of time before she first mentioned ejaculation.

On the basis of the facts proven, I find that the Commission has established that Respondent violated §§ 100.1 and 100.2(A) of the Rules by failing to maintain high standards of conduct preserving the integrity and independence of the judiciary, by failing to respect and comply with the law and by failing to act in a manner promoting public confidence in the integrity and impartiality of the judiciary.

I acknowledge Respondent’s actions occurred approximately forty years ago, while he was a law student, and nearly thirteen years before he became a judge<sup>6</sup>. I

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<sup>6</sup> A judge may be disciplined “for cause” regarding conduct that occurred “prior to the taking of judicial office.” *Matter of Sarisohn*, 26 AD2d 388, 390 (2d Dept 1966); see *Matter of Tamsen*, 2003 Ann Rep 167 (Comm on Jud Conduct July 2, 2002), *removal accepted*, 100 NY2d 19 (2003).

acknowledge that there is no evidence of any violation of the Rules occurring while Respondent was on the bench for twenty six years or any evidence of incidents involving other children or other misconduct.

Against this backdrop, it would be a rare singular act of misconduct that would violate the rules of judicial fitness. The egregiousness of such an act must be beyond dispute, and the effect on the integrity and public confidence in the judiciary equally without question. With such a rigorous standard in mind, I find Respondent's misconduct falls squarely within the boundaries of this small set.

This act of misconduct involves sexual contact with a five-year-old child. Such misconduct is egregious. Our judicial system has come to recognize that sexual offenses involving children are of a uniquely pernicious nature. Such offenses require more extensive monitoring, including extended probation and life-time registration, than other offenses. Thus, a sexual offense involving a child, even occurring forty years ago, can supply a sufficient basis for a violation of judicial fitness.

In this case there are additional aggravating factors. As a five-year-old child, E ■■■■■ was profoundly deaf and without the ability to communicate. Encased in silence, E ■■■■■ struggled to understand a world largely based on the spoken word. Until she learned to communicate, E ■■■■■'s questions would go unanswered and her fears unaddressed by those who loved and cared for her. With such vulnerability, she was owed the highest degree of protection from those who came in contact with her, especially her family. Respondent violated this duty, not just by his

actions--the dimensions of which he disputes--but by his failure to inform her parents of his own version of what happened--a fact he acknowledges. Respondent's misconduct in this regard was not momentary, but continued over days, weeks and years.

Respondent testified that he chose not to tell his niece's parents of what happened because "... she was so young, she'd have nothing to relate it to, ...that there would be no impact, she'd forget it, and we'd go on and it would never be anything that ever would occur to her again." (Tr. 338, see also Tr. 396).

Such a professed rationale of his hiding his account of the encounter from E■■■■'s parents, when he knew she was unable to inform them of *any* account, deeply implicates Respondent. First, it suggests that his version of the encounter is not accurate; otherwise he would have immediately informed her parents. Second, this rationale reveals a disturbing minimization of the effects of this encounter on a five year old child—a minimization that denies the realities of childhood impressionability that all adults know or should know. Finally, that Respondent would even proffer such a rationale reveals a disabling self-absorption regarding this act. A five-year-old deaf girl who even inadvertently participates in her uncle's masturbation is not going to forget it, and her inability to communicate this event to her parents is going to compound greatly the harm to her. This elemental human reality is something that Respondent denied to himself forty years ago, and based upon his testimony at the evidentiary hearing, is something that he still fails to fully acknowledge.

## **FINDINGS OF FACT**

### Respondent's Background

1. Respondent was a Judge of the Onondaga County Family Court from January 1, 1985 until April 24, 2012 (FWC ¶ 5, Ans ¶ 1, Tr 378).
2. Respondent was born in Syracuse, New York on March 16, 1947 (Tr 313).
3. Respondent was drafted into the U.S. Army and began military service in June 1969 after his first year of studies at the Syracuse University College of Law (Tr 315). Respondent was discharged in February 1971 (Tr 320).
4. Respondent completed his final two years of law school at the Syracuse University College of Law after he returned from his service in Vietnam (Tr 379).
5. Respondent married Elizabeth [REDACTED] in August 1971 (Tr 320).
6. Respondent worked as an Assistant District Attorney in the Onondaga County District Attorney's Office for four years from 1975 to 1979 (Tr 378-379).

### [REDACTED]'s Early Childhood

7. [REDACTED] was born in Indiana, Pennsylvania (Tr 228, 258) on June 5, 1967 (Tr 24).
8. Ms. [REDACTED]'s mother is M [REDACTED] (Tr 23) and her father is R [REDACTED] [REDACTED] (Tr 24).
9. R [REDACTED] is the older brother of respondent's wife, Elizabeth (nee [REDACTED]) Hedges (Tr 26, 234).

10. The [REDACTED] family house, where R [REDACTED] and Elizabeth were raised, is located at [REDACTED] Street, Albany, New York (Tr 234-235, 259).
11. In 1972, Ms. [REDACTED]'s family lived on South Allen Street, Albany, New York (Tr 27).
12. Ms. [REDACTED] is the goddaughter of respondent's wife, Elizabeth Hedges (Tr 29, 83, 143).
13. Soon after birth, Ms. [REDACTED] was diagnosed as having Cytomegalovirus Inclusion Body Disease (CIBD) after contracting Cytomegalovirus (CMV), a serious viral infection, while *in utero* (Tr 25, 228, 258).
14. During her early childhood years, Ms. [REDACTED]'s family was concerned that the disease had impaired her cognitive abilities (Tr 25, 258).
15. Ms. [REDACTED] was diagnosed at Johns Hopkins Hospital as being profoundly deaf when she was approximately three years old (Tr 231, 252, 259).
16. Ms. [REDACTED] had a 95 to 105 decibel loss in one ear, and the other ear essentially could not register any sound (Tr 231).
17. When Ms. [REDACTED] was five years old, she had an extremely limited vocabulary of some basic nouns (Tr 232, 246). She could respond to the facial expressions and physical gestures of others and could communicate, "but not necessarily with words" (Tr 251).
18. Respondent was aware when Ms. [REDACTED] was five years old that she was

deaf and could not enunciate words and had limited abilities to communicate (Tr 344-345).

19. Ms. [REDACTED] did not begin to vocalize words and learn to speak until she was approximately seven years old (Tr 31, 233).
20. Ms. [REDACTED] was not able to carry on a conversation and could not “communicate what her needs” or “her feelings were” until she was between seven and nine years old (Tr 233, 248).
21. Ms. [REDACTED] began the process of learning American Sign Language when Ms. [REDACTED] took her to Gallaudet College when Ms. [REDACTED] was approximately seven and a half to eight years old (Tr 233).
22. Ms. [REDACTED] learned sign language along with Ms. [REDACTED] (Tr 233). R [REDACTED] [REDACTED] has never learned sign language (Tr 282).
23. M [REDACTED] [REDACTED] and R [REDACTED] [REDACTED] had a second daughter, Ann, who is two years younger than Ms. [REDACTED] (Tr 23, 27-28, 232).
24. Ms. [REDACTED] and R [REDACTED] [REDACTED] separated in March of 1973 (Tr. 136, 237) and divorced over two years later (Tr 24, 136, 261).
25. Ms. [REDACTED] and Ann grew up living in Ms. [REDACTED]'s household, and Ms. [REDACTED] was Ms. [REDACTED]'s primary caretaker (Tr 232 136, 156, 232, 280).
26. Prior to March of 1973, Ms. [REDACTED] and R [REDACTED] [REDACTED] visited

frequently at the [REDACTED] family house on [REDACTED] Street in Albany, particularly when other [REDACTED] relatives came to Albany to visit (Tr 27-28, 234, 236, 259).

27. Ms. [REDACTED] did not visit the [REDACTED] family house after her separation from her husband R [REDACTED] in March of 1973 (Tr 237).

#### Respondent's Sexual Encounter with his Niece

28. In 1972, during a visit to her grandmother [REDACTED]'s house when Ms. [REDACTED] was approximately five years old, she wandered around the house "just curious and trying to find something to do" and eventually walked up the stairs and through the open door to the third-floor bedroom (Tr 34).
29. Ms. [REDACTED] saw respondent in the room lying on the bed (Tr 41, 66, 322, 356, 364).
30. There was a window on the wall across from the doorway (Tr 35, 243) near the foot of the bed (Tr 244) looking out into the backyard of the house (Tr 50).
31. It was bright in the room (Tr 51).
32. Ms. [REDACTED] walked to the bed as Respondent motioned her over with a wave (Tr 38, 64, 114).
33. Ms. [REDACTED] got onto the bed next to Respondent (Tr 38, 51, 54, 114, 172, 175, 212, 324, 367, 368-369, 373).
34. Ms. [REDACTED] partially kneeled next to respondent's hip (Tr 55, 114).

35. Respondent was lying on the bed with a sheet rolled down (Tr 41, 54, 113).
36. Respondent was lying on his back and was bare chested (Tr 41, 113).
37. Respondent's penis was bare and erect (Tr 41, 175, 364).
38. Respondent took Ms. [REDACTED]'s hand and guided it to his penis (Tr 39-41, 114).

#### Initial Disclosure of the Sexual Encounter

39. When Ms. [REDACTED] was 12 or 13 years old, she learned about process of human sexuality, including male ejaculation, from a book her mother had given to her (Tr 43).
40. While Ms. [REDACTED] was reading the book, she felt dirty, ashamed and embarrassed (Tr 43).
41. Ms. [REDACTED] decided when she was 15 years old to tell her mother about what happened with Respondent because she could no longer contain her emotions about the incident (Tr 53).
42. Ms. [REDACTED] disclosed information about the incident with Respondent to Ms. [REDACTED] while they were in their home in East Greenbush, New York (Tr 56, 131, 156).
43. At 15 years old, Ms. [REDACTED] had deficient language skills, very poor grammar and was not proficient at writing in long hand (Tr 66).
44. Ms. [REDACTED] communicated with Ms. [REDACTED] about the incident with Respondent by sign and verbally (130-131, 156).

45. Ms. [REDACTED] was very uncomfortable making the disclosure (Tr 156).
46. Ms. [REDACTED] disclosed that Respondent was naked (Tr 74, 156).  
Ms. [REDACTED] disclosed that Respondent asked her to touch his penis (Tr 156).
47. Ms. [REDACTED] does not recall all of the words she used with Ms. [REDACTED] to describe the incident with respondent but she remembered that she used the word “touch” and told Ms. [REDACTED] that she had touched Respondent’s penis (Tr 57, 62, 64-65, 70).
48. Ms. [REDACTED] understood from Ms. [REDACTED]’s description that Ms. [REDACTED] had touched Respondent’s penis (Tr 198-199).
49. Ms. [REDACTED] gave Ms. [REDACTED] a superficial account of what occurred and did not go into detail with Ms. [REDACTED] about the incident or the manner in which she touched Respondent’s penis because she was embarrassed and ashamed about what happened (Tr 67, 69) and wanted to protect her family members from being hurt and upset (Tr 56, 61, 65, 67, 69-70).
50. Ms. [REDACTED] did not question Ms. [REDACTED] about the incident (Tr 67).
51. Ms. [REDACTED] recognized the difficulty Ms. [REDACTED] had in communicating about the incident, and she did not ask her daughter for details about the incident (Tr 158).

53. At the time, Ms. [REDACTED]'s language skill lagged behind her hearing peers and she did not have the vocabulary to describe fully the incident with respondent (Tr 57).
54. After she made her disclosure, Ms. [REDACTED] asked Ms. [REDACTED] to call her father, R [REDACTED] [REDACTED] (Tr 67-68).
55. Ms. [REDACTED] telephoned Mr. [REDACTED] and told him what Ms. [REDACTED] had told her about Ms. [REDACTED] seeing respondent naked and respondent asking her to touch his penis (Tr 157-158, 238).
56. R [REDACTED] [REDACTED] did not contact his daughter about the incident with Respondent after learning about it from M [REDACTED] [REDACTED] (Tr 282).
57. At the time of Ms. [REDACTED]'s disclosure, R [REDACTED] [REDACTED] lived on South Allen Street in Albany which was approximately a half hour car ride from where Ms. [REDACTED] lived in East Greenbush (Tr 280).
58. Ms. [REDACTED] asked R [REDACTED] [REDACTED] to call and confront Respondent, and to make sure that Elizabeth Hedges knew about Ms. [REDACTED]'s disclosure for the safety of respondent's two young daughters (Tr 157).
59. Mr. [REDACTED] had a conversation with respondent about Ms. [REDACTED]'s disclosure and respondent acknowledged that Ms. [REDACTED] had walked into the third-floor bedroom of the [REDACTED] family house when she was very young and Respondent was masturbating (Tr 266-267, 376-378).
60. Mr. [REDACTED] did not ask respondent for how long he had masturbated in

front of Ms. [REDACTED] (Tr 287).

61. During the conversation, respondent did not disclose to Mr. [REDACTED] that Ms. [REDACTED] had participated or touched him in any way during the incident (Tr 378, 385-386).
62. Mr. [REDACTED] told Ms. [REDACTED] that the matter was “being taken care of” and not to worry about it (Tr 158).
62. Respondent, upon learning of Ms. [REDACTED]’s disclosure to her mother, did not contact either Ms. [REDACTED] or Ms. [REDACTED] to address the matter in any manner (Tr 383-384).
63. At the time of the incident, Respondent did not seek out his wife, Elizabeth Hedges, R [REDACTED] [REDACTED], or M [REDACTED] [REDACTED] to advise them about the incident in the bedroom (Tr 374-375, 395).
64. Neither M [REDACTED] [REDACTED] nor R [REDACTED] [REDACTED] ever obtained counseling for Their daughter concerning the incident with Respondent (Exh. C), and Ms. [REDACTED] was “not able to talk to anyone about this for 40 years” (Ex J, p 1) until her first counseling appointment regarding the incident in January 2012 (Tr 119, 193, 216).
65. On two or more occasions between Ms. [REDACTED]’s first disclosure of the incident with Respondent and December 2011, she told M [REDACTED] [REDACTED] that she was troubled about what had happened with Respondent and that she could not forget about it (152-153, 160-161). Ms. [REDACTED] did not

disclose any additional information concerning the incident on those occasions (Tr 161).

Further Disclosure of Respondent's Sexual Encounter with Ms. [REDACTED]

66. M [REDACTED] [REDACTED] had moved to Boulder, Colorado in 1998 (Tr 23, 151).
67. In December 2011, Ms. [REDACTED] emailed Ms. [REDACTED] and informed her that the incident with Respondent was disturbing her (Tr 152).
68. In a series of electronic "chat" exchanges, Ms. [REDACTED] revealed to Ms. [REDACTED] the details about what had transpired with respondent in the bedroom in her grandmother's house when she was five years old (Tr 152).
69. On December 4, 2011, Ms. [REDACTED] sent an email to Respondent asking him for sponsorship for his son's soccer team (Tr. 77-78, Resp. Exh H.)
70. On March 20, 2012, after speaking to a counselor from the Advocate Services for Abused Deaf Victims, Ms. [REDACTED] spoke to Onondaga County District Attorney William J. Fitzpatrick ("Fitzpatrick"), who informed the Commission of the allegations by letter dated March 28, 2012 (Respondent Exhibit B).
71. On that same date, Fitzpatrick spoke by telephone to Ms. [REDACTED]'s mother, M [REDACTED] [REDACTED], who was in Boulder Colorado at the time. Ms. [REDACTED] informed Fitzpatrick that she was scheduled to have lunch with Respondent on March 21, 2012 in Boulder to discuss the incident and her daughter's recent revelations (Respondent Exhibit B).

72. Fitzpatrick, with Ms. [REDACTED]'s consent and the assistance of law enforcement agents in Boulder, arranged to have the conversation recorded by means of having a recording device placed on Ms. [REDACTED] (Respondent Exhibit B, Com. Exhibits 1, 2).
73. Respondent met with Ms. [REDACTED] in Boulder on March 21, 2012 and spoke about the encounter with his niece that had occurred approximately forty years earlier. (Respondent Exhibit B, Com. Exhibits 1, 2).

Effect of Respondent's Act on Ms. [REDACTED]

74. Ms. [REDACTED] cannot forget the incident with Respondent (Tr 101) as what happened in that room "sticks to her" and the picture is "always there" in her mind (Tr 112).
75. "The trauma still continues" for Ms. [REDACTED] even though she is "trying to get rid of the memories" (Tr 75).
76. Ms. [REDACTED] realized the trauma and emotions from the incident were still with her when she married A [REDACTED] [REDACTED] 23 years ago (Tr 23, 75, 123).
77. The trauma has adversely impacted Ms. [REDACTED]'s sexual relationship with her husband as she has had, on occasion, to stop and walk out while having sexual relations with her husband because she has flashbacks of the incident with Respondent (Tr 117).

Respondent's Acknowledgement of Sexual Encounter with Ms. [REDACTED]

78. In the recorded and transcribed conversation between Respondent and

M [REDACTED] held on March 21, 2012 which was admitted into evidence without objection (Tr 15-15-16, 325, Ex 2), Respondent acknowledged that:

- a) Ms. [REDACTED]'s parents were in his mother-in-law's house at the time of the incident (Ex 2, p 19).
- b) E [REDACTED] was "very young" when she came into the upstairs bedroom where respondent was in bed masturbating (Ex 2, pp 9-10).
- c) He "was aware of her" and he "didn't stop and cover up, I just kept going" (Ex 2, p10).
- d) He "was stroking and [E [REDACTED]] was, too, on top of my hands" (Ex 2, p10).
- e) His "behavior was abhorrent" (Ex 2, p 17).
- f) His behavior was "very, very, very bad" (Ex 2, p 29).
- g) His behavior was not "in any way defensible" (Ex 2, p 12).
- h) He did "need to apologize" and he "should have done it years ago" (Ex 2, p 4).
- i) He had assumed an investigation into the incident had already commenced because his niece had sought counseling and the counselor may be a mandated reporter. (Com. Exhibit 2. 20-21).
- j) Respondent stated that the results of the investigation would be dependent on whether the incident could be characterized as "intentional" abuse or not (Com. Exhibit 2. 20-21).

79. In respondent's hearing testimony, he acknowledged that:
- a) He was masturbating in bed with his penis exposed with the bedroom door open in his mother-in-law's house (Tr 328, 337-338, 358).
  - b) He "continued" and "kept going" after he saw E ■■■ had entered the room and he "didn't think [he] responded quickly enough" (Tr 322-323, 339).
  - c) He did not discourage his five-year-old niece from approaching him and reaching towards his bare and erect penis that he was stroking (Tr 367).
  - d) His eyes were open as E ■■■ touched him (Tr 322, 368-369, 374).
  - e) He did not lose his erection when he saw E ■■■ and felt her hand touch him while he was stroking his penis (Tr 369).
  - f) He did not immediately recoil but testified "I wish I had" (Tr 368).
  - g) He was not immediately shocked by the fact that a five-year-old girl's hand was resting on his hand as he slowly stroked his erect penis (Tr 370).
  - h) With the child's hand resting on his own hand, he continued to stroke his penis "two, three, maybe three times, four, maybe the fourth started" before he "effectuated a response" (Tr 330, 368).
  - i) After the sexual contact, he did not seek out his wife or E ■■■'s parents and advise them about what had transpired with E ■■■ in the bedroom (Tr 374-375, 395).

- j) He did not believe the incident would remain in E [REDACTED]'s mind because "she was so young," and "she would have nothing to relate it to" (Tr 338, 396).
- k) He thought "there would be no impact" and that E [REDACTED] would "forget it, and we'd go on" (Tr 338, 396).
- l) He was concerned about public exposure of the incident when respondent learned of Ms. [REDACTED]'s first disclosure of the event to her mother approximately ten years after the incident. (Tr 380).
- m) He never discussed the incident directly with M [REDACTED] [REDACTED] until he received an email from her in December 2011 (Tr 384-385, 387, Ex G).
- n) He has never discussed the incident directly with Ms. [REDACTED] (Tr 383-384).
- o) He did not disclose to R [REDACTED] [REDACTED] during their initial telephone conversation about the incident in the mid-1980s, or during an additional conversation in 2012, that Ms. [REDACTED] had participated in his masturbation (Tr 378, 385-387). In withholding this information from E [REDACTED]'s father on multiple occasions, respondent testified, "I don't know that it was a relevant fact" (Tr 378).
- p) Respondent has never sought any counseling regarding the incident with his niece (Tr 395).

### CONCLUSIONS OF LAW

80. Respondent engaged in conduct that reflects adversely on his qualifications and fitness to perform the duties of a judge and is prejudicial to the administration of justice.
81. 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.
82. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law in violation of Section 100.2(A) of the Rules.
83. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to 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

Dated: July 23, 2012  
Rochester, New York

  
William T. Easton, Referee