STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding Pursuant to Section 44, subdivision 4, of the Judiciary Law in Relation to **JOSEPH F. KASPER,** *Respondent*, a Judge of the New York City Civil Court, Queens County.

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF HON. JOSEPH F. KASPER

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[redacted]

TABLE OF CONTENTS

PAGE NO.

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

PRELIMINARY STATEMENT

The colloquial metaphor for the Staff's arguments in this case is that they have gotten way out over their skis. For the Staff to say that Respondent engaged in "a pattern of misconduct that demonstrated his dishonesty," Comm. Br. at 50, is irresponsible and indefensible. It betrays a disingenuous level of zealousness and lack of judgment that this Commission should not tolerate. The Staff's entire argument rests on painting Respondent as a dishonest, master manipulator of the judicial system. This position is otherworldly for any reasonable person who has read the Agreed Statement of Facts ("ASOF") in this case.

Respondent does not dispute that he has committed misconduct. He never has. He never concealed it and never lied about it. He was never deceitful. Poor judgment, carelessness, misunderstandings of his obligations, and compassion for his former clients led to the improper legal activities which he believed were permissible to wind down his law practice. Moreover, the four-year COVID-19 pandemic, during which many of the significant events reflected in the ASOF took place, created unforeseen delays and thrust the entire legal system into a technological forum that was wholly unfamiliar to Respondent, causing him to rely on Ms. Bar to close out his cases. This was the genesis of his misconduct. By contrast, the Staff's misrepresentation to this Commission of Respondent's actions is outrageous: it is belied by the uncontradicted facts, and it is an affront to this Commission's duty to fairly govern judicial ethics and behavior.

The key to resolving the sanction for the misconduct in this case is the following undisputable realities:

1. **There is no evidence that Respondent engaged in deceit; he never hid or misrepresented that he was an elected judge;**
2. **Respondent did not benefit in any way from his admitted misconduct;**
3. **There is no criticism or complaint about Respondent's actions or behavior on the bench;**
4. **Respondent's misconduct was motivated solely by his good faith commitment to his former clients to resolve their cases;**
5. **Respondent did not use his position as judge for his own or any client's benefit;**
6. **His failure to supervise Ms. Bar was not misconduct as a judge;**
7. **To the extent he did carelessly supervise her and authorize her actions, he takes responsibility for his misconduct.**

ARGUMENT

I. RESPONDENT'S CONDUCT WAS NOT DECEITFUL OR DISHONEST AND DOES NOT WARRANT REMOVAL

A. The Staff Misrepresents Respondent's Conduct

The Staff's recitation of Respondent's conduct is manipulated, misleading, and incomplete. Respondent does not dispute that he mistakenly practiced law while sitting as a full-time judge. Res. Br. at 3-7. But the Staff's characterization that Respondent engaged in "a pattern of misconduct that demonstrated his dishonesty," Comm. Br. at 50, is patently false. The Agreed Statement of Facts—primarily drafted by Staff—eviscerates the Staff's assertions.

The Staff ignores that Respondent *repeatedly* informed several courts, his clients, and opposing counsel that he had been elected as a judge and could not continue representation. ASOF ¶¶ 28, 31, 41, 47. Instead of recognizing the specific circumstances of each representation and Respondent's good faith conduct, the Staff cherry picks Respondent's actions and contorts them into an "insidious" scheme to manipulate the judicial system. Comm. Br. at 42. The correct facts taken from the ASOF are set forth below:

Victor Lopez v. Sharan Puri, et al.

The Staff accuses Respondent of being "dishonest," Comm. Br. at 53, in court for stating that the *Lopez* case had "*essentially* settled," based on Respondent's subsequent negotiation of settlement language. (italics added), Comm. Br. at 33; ASOF ¶¶ 49-51. While Respondent now understands that his work reducing the agreement to boilerplate language constituted improper practice of law, the case **had** "essentially settled"; the parties had resolved the dollar amount of the settlement. This is not "dishonesty"; it is accuracy, informing the court precisely of a correct fact. Yet the Staff labels Respondent "dishonest." It begs the serious question: who is being dishonest?

Respondent also promptly informed both Mr. Puri and the Court about his election to the bench. ASOF ¶¶ 41, 47. Staff omits this. Instead, Staff spins the fact that Mr. Puri sent unsolicited emails to Respondent and Respondent answered as somehow insidious. Comm. Br. at 33; ASOF ¶¶ 46, 52.

Significantly, and directly contradicting Staff's representation, Respondent *was not paid* for work completed after he was appointed as a judge. Respondent accepted $1,000 that was *past due* payment for work completed *prior to* Respondent's appointment, "pursuant to the original retainer" as noted in the Agreed Statement of Facts. ASOF ¶ 58. No precedent or ethical precept forbids a judge from accepting payment on debts due to him.[1]

NYCTL 2019-A Trust et al. v. Columbus Club of South Ozone Park et al.

Respondent believed that seeking adjournments and presenting settlement terms *alongside new counsel* was permissible within the scope of winding down his law practice and as

[1] *See* N.Y. Advisory Comm. on Judicial Ethics, Adv. Op. 22-15(A) (a judge "may be reimbursed for expenses incurred before assuming the bench while handling a matter as an attorney"); *Id.* Adv. Op. 19-148(B) ("A judge may collect fees for legal work done before taking full-time judicial office.").

a *pro se* member of the Columbus Club.[2] As the Staff admits, Respondent disclosed his appointment to the court and repeatedly sought new counsel to represent the Columbus Club. Comm. Br. at 7-8. The Staff accuses Respondent of dishonesty for introducing "phantom" volunteer attorneys to the court, Comm. Br. at 54, while negotiating the terms of a resolution himself. But far from being "phantom", one of the volunteer attorneys appeared alongside Respondent at the June 9, 2022, conference. Moreover, the Staff deliberately and conveniently omits that Respondent presented settlement terms to the court while clearly introducing William Shanahan as the new incoming attorney. ASOF ¶ 37. Shanahan also filed a notice of appearance. *Id.* ¶ 39.

J[redacted] A[redacted] v. K[redacted] S[redacted]

As explained in Respondent's opening brief, Br. at 6, Respondent signed a Notice of Settlement with Proposed Judgment of Divorce which had been drafted as part of an uncontested divorce before Respondent was elected to the bench.[3] Respondent mistakenly believed that he was permissibly winding down his law practice by signing and filing uncontested documents to close the case.

A[redacted] A[redacted] v. V[redacted] S[redacted]

The Staff's recitation of facts in the *A[redacted]* case deliberately and selectively ignores key details as well as misrepresenting others. First, there is no evidence in the Agreed Statement of Facts or exhibits that Respondent "threatened" Ms. A[redacted]. Comm. Br. at 35. Rather, Ms. A[redacted]

[2] *See* 22 NYCRR 100.4(G) ("A full-time judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se…")

[3] The Staff cites an email that Ms. Bar sent to Respondent regarding a deed that was drafted before Respondent took the bench related to a separate case. Comm. Br. at 9. Respondent belatedly realized that the Agreed Statement of Facts is mistaken in stating that this email was related to the A. v. S. matter. ASOF ¶ 60. In fact, and as the exhibit makes clear, *see* Exhibit A1, the email and related deed was sent with respect to the "S[redacted]" matter which was unrelated to the A. v. S. matrimonial matter.

simply paid Respondent the fees she owed for work that he completed *prior to taking the bench.*[4] Second, after receiving the payment, Respondent clearly and in writing stated that Mr. Mossa would complete her divorce. ASOF ¶ 70; Exhibit A55. Mr. Mossa assumed representation thereafter. Instead of taking this communication at face value, the Staff spins it as Respondent insidiously "cover[ing] his bases". Comm. Br. at 35. The Staff urges the Commission to believe that this was all part of Respondent's elaborate scheme to continue representation of Ms. A[redacted]. This is fanciful and misleading. The Staff purposely elides that Mossa identified himself in court as counsel in the case and was present at the conference to supervise Ms. Bar. ASOF ¶ 89. Moreover, Respondent did not take any further action on the *A*[redacted] case.

Citibank v. Christine Waszczenko

The Staff repeatedly states that the *Citibank* case came before Respondent while he was a judge and he remained attorney of record. Comm. Br. at 13; 47. But the matter was adjourned (by the part clerk) both times and Respondent took no action in the case. ASOF ¶¶ 63, 65. Newly appointed judges, no doubt, frequently have cases in which they have appeared come before them. Respondent did what any such judge would do when this happens and cannot be accused of misusing his judicial office because he took no action on the case as a judge. Moreover, Respondent signed a Consent to Change Attorney to transfer the *Citibank* case to Mr. Mossa. ASOF ¶ 64.

B. Respondent's Conduct Does Not Warrant Removal

At all times, Respondent acted out of a good faith misunderstanding and a sense of duty to his former clients. Any honest reading of the facts makes clear that Respondent genuinely believed that he was completing permissible tasks to wind down his law practice. And in fact, the

[4] *See, e.g.*, Adv. Op. 22-15(A); Adv. Op. 19-148(B).

Advisory Committee on Judicial Ethics has issued numerous opinions addressing the complexities faced by judges winding up longstanding law practices after they assume the bench. For example, the Advisory Committee notes:

> *[A] full-time judge may nonetheless complete certain functions after assuming judicial office if those functions are truly ministerial or administrative in nature and necessary to effectuate dissolution of the judge's practice . . . . Such ministerial functions include collecting fees and contingency fees to the extent earned before assuming office, sending periodic bills to former clients, and maintaining an escrow account to process fees earned before assuming office (see Opinions 05-130[A]; 95-12); processing settlement checks from cases settled prior to the beginning of the judge's term of office but received after that time and signing a closing statement in such matters (see Opinion 04-137). . . . Therefore, the inquiring judge may accept and deposit fees, issue checks to clients and the firm and pay expenses as necessary to wind up the law firm's affairs, until the partner recovers or new counsel is hired.*

N.Y. Advisory Comm. on Judicial Ethics, Adv. Op. 15-128.

This is precisely what Respondent sought to do, although he admits that he had a mistaken understanding of what precisely constituted "ministerial" and "administrative" functions. Respondent's situation put him between the proverbial Scylla and Charybdis of unethical conduct as a judge or as a lawyer. He mistakenly chose to abide by his commitments to his clients, where he believed it was proper. He should have chosen to withdraw and abandon his former clients.

Importantly, Respondent *never concealed* that he had been elected a judge and in fact, repeatedly informed courts and opposing counsel about his appointment. ASOF ¶¶ 10, 37, 64, 70, 121, 130. Respondent transferred all but the three cases listed *supra* to Mr. Mossa and Mr. Shanahan. Respondent's free legal work on the remaining cases was based on the misguided belief that closing these cases (*Lopez* which was essentially settled, A. v S. which consisted of two uncontested filings, and *U*[redacted] which consisted of one filing that was signed before Respondent took the bench) was permissible to wind down his law practice.

Most important to this Commission, the Staff does not make *any* accusation against Respondent for his conduct as a judge on the bench. His judicial conduct has been spotless, free of any accusations of dishonesty, discipline, or complaints. While Respondent remained attorney of record on six cases, ASOF ¶¶ 62-66, every case was inactive. Every former client was informed of Respondent's election to the bench and informed to retain other counsel. Indeed, while the Staff baselessly accuses Respondent of "manipulating the very system in which he is a judge for his personal benefit," Comm. Br. at 50, Respondent took *no judicial action* in any of these six cases**. Nor has he obtained any personal benefit** in trying to wind down his law practice.

Indeed, no case supports removal in these circumstances. Oddly, the Staff cites cases where judges were *censured* for practicing law. In these Staff cited cases, judges leveraged their judicial office. *Matter of Ramich*, 2003 NYSCJC Annual Report 154, 158 (censuring a judge who represented family and friends while using court personnel and court facilities and presided over two cases after improper *ex parte* communications); *Matter of Panepinto*, 2021 Ann Rep of NY Comm on Jud Conduct at 239 (censuring a judge for advising parents at a school regarding legal advocacy and invoking prestige of her judicial office in a Facebook comment); *Matter of Edwards*, 2020 Ann Rep of NY Comm on Jud Conduct at 102 (censuring a judge for representing his daughter in three appearances and invoking his judicial office during those representations). Each of these cases is more egregious than this one, and, thus, support Respondent's position for minimal discipline.

The only cases cited by the Staff where judges were *removed* for the practice of law concerned situations in a qualitatively different category of misconduct. For example, the Staff cites *Matter of Intemann*, a case where a former law secretary facilitated the filing and mailing of documents and correspondence. Comm. Br. at 32. The Staff conveniently omits that in *Intemann*, the judge also collected fees for work performed after he took the bench, paid himself a $15,000 fee from an estate without the knowledge of the executrix, actively concealed these facts from both clients and the Commission and, while on the bench, heard *twenty one* matters brought by an attorney with whom he had close personal and professional ties. *Matter of Intemann, Jr*., 1989 NYSCJC Annual Report 89, *accepted*, 73 N.Y. 2d 580 (1989). Properly evaluated and presented, *Intemann* powerfully supports Respondent.

Similarly, in *Matter of McGuire*, cited six times in the Staff's brief, the Commission ordered removal after bringing *thirteen* charges against a judge who abused his summary contempt powers, represented family and friends using his judicial email address, improperly used his court secretary and court resources to prepare legal documents, was discourteous towards court personnel and litigants, and presided over matters where his friend appeared as counsel. 2021 Ann Rep of NY Comm on Jud Conduct at 131. Does this resemble Respondent's conduct?

The Staff asserts that Respondent's conduct constitutes a "pattern of misconduct that demonstrated his dishonesty, his disrespect for the court system in which he presides, and his complete disregard for his ethical obligations as a judge," Comm. Br. at 50. This quoted assertion is a startlingly disingenuous spin on a set of agreed facts. Respondent did not manipulate the judicial system, let alone for his personal gain. He never lied to any court or anyone else. He never leveraged his judicial office to achieve favorable outcomes. He never used court resources or facilities to work on private matters. He never instructed Ms. Bar to deceive his clients, opposing counsel, or any court and, in fact, as explained *infra* Section II, after transferring cases to new counsel, Respondent believed that Ms. Bar was working under the supervision of Mr. Mossa or Mr. Shanahan.

Respondent's conduct is as far from a "fraud upon the courts and public," Comm. Br. at 50, as the Staff's adherence to its duty to the truth. These *ad hominem* exaggerations and distortions should not be tolerated by this Commission as a response to Respondent's good faith, misguided attempt to wind down his practice out of a sense of compassion for his former clients.

C. Respondent's Good Faith Administration of His Escrow Account Does not Warrant Removal

Respondent, as a lawyer, has accounted for and successfully disbursed almost $100,000 in his 30-year old escrow account by poring over decades of bank statements and checks. While Respondent was unable to account for the remaining $7,540, it will be distributed to the Lawyer's Fund for Client Protection, as is appropriate under the Canons. This is far from an "utter disregard for his ethical obligations," Comm. Br. at 55, as the Staff alleges. To the extent this reflects poorly on Respondent, it does so on him as a lawyer and has nothing to do with judicial misconduct. Staff cites no precedent where a judge was disciplined on this basis. It was an all too common accounting error after 30 years of legal practice. To date, no identifiable client has complained about any failure to receive funds or has been prejudiced. That is why the Lawyer's Fund was created. The Staff's implication that Respondent has callously retained funds to the detriment of clients betrays a misguided understanding of the Commission's authority.

II. THERE IS NO PRECEDENT OR BASIS FOR REMOVAL FOR FAILING TO SUPERVISE MS. BAR

A. The Staff Mischaracterizes Respondent's Role in Ms. Bar's Activities

The Staff's characterization that Respondent "expected" Ms. Bar to continue practicing law, "benefitted from her unlawful practice of law," and "affirmatively aided her in the effort," Comm. Br. at 40, is knowingly false. When Respondent instructed Ms. Bar to take certain actions in the *Lopez* and *Columbus Club* cases, he erroneously believed these were ministerial acts to close those cases. In fact, the Advisory Committee *instructs* new judges winding down their law practices to "have someone else, such as a paralegal, send letters explaining the situation and requesting an adjournment," N.Y. Advisory Comm. on Judicial Ethics, Adv. Op. 15-128—precisely what Respondent tasked Ms. Bar to do in many cases. The Staff knows this. It cites this precise opinion in its own brief. Comm. Br. at 46. And yet, the Staff deliberately ignores the Committee's instruction and continues to paint Respondent as aiding and abetting Ms. Bar to practice law, Comm. Br. at 1-2, 37, 41, 51. This is false.

Respondent admits that he did not supervise Ms. Bar. Nor could he as a judge, without violating ethical rules. The Staff seeks to punish Respondent for failing to supervise Ms. Bar, while knowing that doing so would run afoul of the prohibition against legal practice. The Staff seeks to place Respondent in a Catch-22, suggesting that he should have violated additional ethical rules to avoid Commission discipline by supervising Ms. Bar. To the extent he did supervise her, he admits misconduct.

In any event, Ms. Bar's specific conduct under the supervision of substituted attorneys with respect to several of the remaining cases, cannot fairly be attributed to Respondent. Yet, the Staff, reaching even for these cases to establish misconduct, asserts that because Respondent was paying Ms. Bar a weekly salary and continued to lease his old office, authorized the entirety of Ms. Bar's actions. Comm. Br. at 36. This defies logic. Respondent only paid Ms. Bar to complete the ministerial, paralegal tasks required to wind down the practice. And he retained his office, as he is entitled to, to maintain decades of paper client records as required by attorney ethical rules and not prohibited by any judicial requirement.[5]

[5] N.Y. Advisory Comm. on Judicial Ethics, Adv. Op. 23-149.

The Staff relies heavily on Paragraph 15 of the Agreed Statement of Facts, Comm. Br. at 4-6, 12, 15, 32, 35-36, 40, 42. Paragraph 15 states:

> Prior to and after assuming judicial office, Respondent failed to supervise Ms. Bar's actions of e-filing documents on NYSCEF. Ms. Bar was the primary user of Respondent's NYSCEF account, which Respondent never used himself. Respondent pre-approved and/or subsequently authorized every document Ms. Bar filed using Respondent's NYSCEF account.
>
> ASOF ¶ 15.

Respondent admits that, as a lawyer or a judge, he is technically and ethically responsible for Ms. Bar's use of his NYCSEF credentials. Respondent should not have acquiesced to Ms. Bar's use of his name to file materials, even where he believed she had done so to wind down his law practice. Respondent also acknowledges that he should have restricted the use of his NYSCEF credentials, especially where Ms. Bar used his User ID to file materials signed by Mr. Shanahan and Mr. Mossa. But, it is clear that Respondent did not have contemporaneous knowledge of each of Ms. Bar's filings using his NYSCEF account after he assumed the bench. He did not work alongside Ms. Bar to draft documents that were filed using his NYSCEF account. He merely instructed her to wind down his law practice but did not oversee the day-to-day tasks she completed while improperly using his name.

As stated repeatedly, Respondent must take responsibility for several aspects of Ms. Bar's improper actions. However, there is no precedent for removing a judge for the lack of supervision of non-court personnel. In this context, where Respondent believed that his former paralegal was taking ministerial steps to wind down his law practice or working under the supervision of other attorneys, his violation is as a lawyer, not a judge, for failing to supervise.

Moreover, the constraints imposed by the COVID-19 pandemic made it impossible for Respondent to close out his practice in a timely manner without extra support. Court delays and the sudden shift to entirely electronic legal practice made Respondent—who was unfamiliar with technology—dependent on Ms. Bar to complete the tasks necessary to close out his practice. This key context and the specifics of each case are essential to evaluating Respondent's limited misconduct, as described in detail below.

Victoria Lopez v. Saran K. Puri, et al.

Respondent mistakenly believed that Ms. Bar's work in reducing the *Lopez* settlement to writing was ministerial in nature and properly within the scope of her duties as a paralegal. However, Respondent *never* instructed or authorized Ms. Bar to present herself as an attorney in court or to opposing counsel. Nor was Respondent aware that Ms. Bar modified his former law office signature line to present herself as an attorney. *See* Br. at 12. ASOF ¶¶ 115-117, 120, 162, 171.

NYCTL 2019-A Trust et al. v. Columbus Club of South Ozone Park et al.

Respondent, apparently erroneously, believed that Ms. Bar's actions in seeking adjournment—because Respondent had assumed the bench—so that the Columbus Club could secure new counsel, were part of her ministerial duties as a paralegal. ASOF ¶¶ 114, 120, 121, 122; *see also* Adv. Op. 15-128. Again, Respondent *never* instructed Ms. Bar to present herself as an attorney in court or to opposing counsel. Nor did Respondent authorize Ms. Bar's modification of his former law office signature line to present herself as an attorney. *See* Br. at 12.

A[redacted] A[redacted] v. V[redacted] S[redacted]

As the Staff acknowledges, Mr. Mossa assumed representation of Ms. A[redacted] and appeared at the conference on her behalf. ASOF ¶ 89. Respondent never instructed Ms. Bar to present herself as an attorney or to conduct an examination as an attorney. Respondent was not present and reasonably assumed that Mr. Mossa, as counsel on the case who was present for the hearing, was supervising Ms. Bar's conduct.

P[redacted] [redacted]. R[redacted] v. M[redacted] [redacted] R[redacted]

The Staff's depiction of the *R*[redacted] case is dishonest. Respondent did not refer Mr. R[redacted] to Ms. Bar as an attorney, but merely as someone who was "knowledgeable about matrimonial matters," ASOF ¶ 138, and who would work under Mr. Mossa to assist Mr. R[redacted]. Respondent *never* instructed Ms. Bar to represent Mr. R[redacted] herself. Nor was he aware—though he admits responsibility—that she commenced divorce filings using Respondent's NYSCEF User ID, that she presented herself as an attorney, or that she had accepted payment for her work. Respondent takes responsibility for Ms. Bar's impropriety after the fact. The Agreed Statement acknowledges this *post hoc* misconduct on his part. ASOF ¶ 15.

1900 Capital Trust III v. Joann Manck et al.

Once again, the Staff studiously ignores the role of Mr. Mossa who assumed representation in the *Manck* case and subsequent supervision of Ms. Bar. Ms. Bar used Respondent's NYSCEF User ID without his knowledge to file documents signed and authorized *by Mr. Mossa*. Comm. Br. at 22. Ms. Bar's conduct in the *Manck* case cannot fairly be attributed to Respondent at all, since all of her work was under the supervision and signature of Mr. Mossa. ASOF ¶¶ 144-150.

Jose Lema and Lisette Celleri v. Guazhco et al.

Here, again, the Staff mischaracterizes the involvement of Mr. Shanahan, who assumed representation of the *Lema* case and subsequent supervision of Ms. Bar. Ms. Bar informed opposing counsel that Respondent had been elected to the bench and requested an adjournment for Mr. Lema to find new counsel. Comm. Br. at 23. ASOF ¶ 171. That new counsel was Mr.

Shanahan, who signed documents filed by Ms. Bar (using Respondent's NYSCEF User ID without his knowledge) and who supervised Ms. Bar's activities. ASOF ¶¶ 172, 174.

Nationstar Mortgage v. D[redacted] U[redacted], et al.

With respect to the *U*[redacted] case, the Staff makes an accusation of improper law practice **while Respondent was still an attorney**. Comm. Br. at 24. The Staff conveniently omits that the first letter Ms. Bar sent on his letterhead was sent **before Respondent assumed the bench**. It **clearly states that Respondent was elected a judge**, and states that she was tasked with "supervising the closing out, or transfer of his files." ASOF ¶ 180; Exhibit A127. Respondent did not ask Ms. Bar to do anything else. Respondent admits that he neglected to update his letterhead identifying him as "Attorney at Law," which Ms. Bar improperly used in future correspondence. However, the Staff glosses over that Mossa assumed representation of the case thereafter. In fact, Mossa submitted a sworn affirmation that states that he was "substituted for Joseph F. Kasper" following Respondent's election to the bench and was "working to wind up his cases". ASOF ¶ 183; Exhibit A130. Indeed, all subsequent filings using Respondent's NYSCEF bore Mr. Mossa's signature and were filed under Mossa's supervision, as counsel on the case.

T[redacted] S[redacted] v. R[redacted] S[redacted]

To bring home this point, even where a Consent to Change Attorneys was filed and Mr. Mossa assumed representation in S. v. S. , the Staff persists in its fixation on blaming Respondent for Ms. Bar's unauthorized conduct. This took place under Mr. Mossa's direct supervision. Respondent should not be tarred with Ms. Bar's conduct under Mr. Mossa's supervision. ASOF ¶¶ 185-187.

S[redacted] S[redacted] v. L[redacted] S[redacted]

Ms. Bar's actions with respect to the *S*[redacted] case cannot fairly be attributed to Respondent who was unaware until after-the-fact that Ms. Bar was continuing to use his unique NYSCEF User ID and credit card to make filings. The Summons and Complaint filed in the *S*[redacted] case were drafted before Respondent took the bench.[6] ASOF ¶ 126. This is far from a "clear cut" example of Respondent's misconduct, though it is appropriate to hold Respondent accountable for his tolerance of her use of his filing credentials and credit card. Comm. Br. at 31.

Natalia Boiko v. Patrick Khan and Jaikarran Ramdeo

In *Boiko,* Ms. Bar sent emails on Respondent's behalf, while modifying the signature line to present herself as an attorney without Respondent's knowledge. Again, Respondent admits that his failure to prevent this use of his name and resources after he took the bench is misconduct. ASOF ¶¶ 161-165.

HSBC v. Andres Gallo, et al

Ms. Bar continued to use Respondent's NYSCEF User ID to file documents prepared by and under the supervision of Mr. Mossa. *See* Exhibit A107. ASOF ¶¶ 152-156. Respondent's responsibility in this case is minimal, given that Mossa was the attorney supervising Ms. Bar for the matter.

B. There is No Basis to Charge Respondent for Ms. Bar's Misconduct

Failing to find any applicable precedent to remove Respondent for Ms. Bar's misconduct, the Staff takes the extraordinary leap of purporting to charge Respondent with the crime of aiding and abetting the unauthorized practice of law under Penal Law § 20.00. There is simply no precedent for this, and the Staff does not offer any. Comm. Br. at 44. Staff has not referred

[6] Ms. Bar filed a Notice of Appearance on behalf of Mr. Mossa on April 17, 2023 that was dated February 16, 2022. ASOF ¶ 130. A Consent to Change Attorney was filed on November 30, 2024. ASOF ¶ 131.

Respondent to the District Attorney for prosecution as required by Judiciary Law § 44(10)(f). And notably Bar and Mossa invoked the Fifth Amendment during their investigative testimony. *See* Br. at 10, fn. 2.

It is unprecedented for this Commission to enforce criminal sanctions of this sort—failure to supervise—as misconduct. To do so in this context would trigger serious Fifth Amendment issues that Staff apparently now willfully ignores, as defendants in criminal proceedings have a distinct set of due process rights. *See Stern v. Morgenthau*, 62 N.Y. 2d 331 (N.Y. 1984) ("Commission proceedings are not intended to take the place of criminal proceedings."). Bereft of precedent or logic, the Staff resorts to creative persecution.

Reaching in the ether of legal precedent, both cases cited by the Staff concerned criminal prosecutions for unauthorized practice of medicine in situations where doctors hired unlicensed staff. *See People v. Santi*, 3 N.Y. 3d 234, 235 (2004); *People v. Varas*, 110 A.D. 2d 646, 648 (2d Dep't 1985). In those cases, unlicensed personnel practiced medicine including administering anesthesia and issuing prescriptions. By contrast, Respondent tasked former paralegal, Ms. Bar, with doing what she always had done for him, engaging in paralegal responsibilities. Unlike the medical prosecutions, Respondent did not receive money for unauthorized practice, a critical element of any "crime."

Moreover, the Staff ignores the role of other attorneys supervising Ms. Bar in order to unfairly place the blame on Respondent. In describing Ms. Bar's misconduct with respect to seven cases, the Staff ignores Mr. Mossa and Mr. Shanahan's responsibility for supervision. Perhaps most obtuse among the Staff's rhetorical characterizations of Respondent, is its concoction that Respondent was using these attorneys as "fronts" to legitimize Ms. Bar's conduct. Comm. Br. at 43. This hyperbolic assertion is comedic. Respondent cannot be held responsible for Ms. Bar's actions under the supervision of attorneys who took over Respondent's cases. Substituting counsel was the proper course which Respondent took in most of the pending matters.

Instead of acknowledging Respondent's unfamiliarity with NYSCEF and his misunderstanding the need for a specific User ID, which is uncontested on this record—*see* ASOF ¶15—the Staff paints Respondent as a master manipulator enabling Ms. Bar to "masquerade" as an attorney as part of an elaborate scheme to leverage the judicial system for his own gain. Comm. Br. at 50. The use of this language and much of the same ilk simply does not serve the best interests of this Commission. It defies logic and a fair reading of the facts.

III. THE STAFF'S ACCUSATIONS ARE BELIED BY THE RECORD

Faced with a lack of precedent and devoid of facts, the Staff resorts to dishonesty. The Staff attempts to buttress its removal case by piling on lesser charges of non-cooperation and failing to file complete financial disclosure statements to show a "pattern of rule breaking" and "abandon[ment] [of] ethical obligations." Comm. Br. at 51. None of these charges, individually or in concert, withstand scrutiny.

As explained in Respondent's opening brief, Br. at 18, Respondent's untimely financial disclosure statement was due to a misunderstanding of his obligations as a recently elected judge and unforeseen technological errors, not active concealment of his financial circumstances.

The Staff cites *Alessandro* to support removal in these circumstances, Comm. Br. at 56. But this disingenuous citation conveniently omits that the New York Court of Appeals *rejected* this Commission's sanction and reduced it to **admonition** because the judge's incomplete statement reflected "carelessness rather than deliberate concealment of material information" with "no evidence of intent to deceive." *In re Alessandro*, 13 N.Y. 3d 238, 249 (N.Y. 2009). In this case, there is little doubt that the Court of Appeals will invoke this language if this Commission removes Respondent.

Nor is *Miller* on point, where a judge was removed for years-long delay in filing financial disclosure forms, failure to amend his tax returns, prior censures, and refusal to accept responsibility for his misconduct. *Matter of Miller*, 35 N.Y. 3d 484 (N.Y. 2020), Comm. Br. at 49, 56, 57. Here, far from "creat[ing] the appearance that he has something to hide," Comm. Br. at 57, Respondent was unable to timely file the financial disclosure statement due to several health concerns and medical leave from August 2022 into January 2023. Br. at 17-18. When he finally filed, due to a technological error, likely caused by Respondent, the attachment comprising the financial statement did not attach. *Id.* But instead of promptly advising Respondent that the required statement was not received, the Ethics Commission ignored Respondent's email and later charged him with failing to timely submit the statement. ASOF ¶¶ 197-199. Upon being alerted to his error, Respondent promptly submitted the complete statement. *Id.* This is far from conduct evincing "something to hide" and active concealment; it is, rather, a good faith effort that was thwarted by medical and technological issues. ASOF ¶¶ 195, 197-199; Br. at 17-18.

Even more troublesome for Staff, is its accusation of "non cooperation." Respondent made several good faith requests for extensions as a result of serious medical problems. ASOF ¶¶ 203-210; Exhibits A147-148. Notwithstanding these medical issues, Respondent participated in four days of deposition, submitted 300 pages of requested documents and provided over 20 hours of testimony during which he repeatedly and candidly acknowledged his misconduct:

- "I will be the first to acknowledge, it's an appearance of impropriety, and I won't disagree with you." *Dec. 14, 2023 Testimony of Hon. Joseph F. Kasper at 108:23-25*.

- "[I] understand the appearance of impropriety. I acknowledge it. And had I had to do it over again none of this would have happened and I wouldn't be sitting here." *Feb. 15, 2024 Testimony of Hon. Joseph F. Kasper at* 37:6-8.

- "I now understand what I thought was winding-up activities might have the appearance of an impropriety." *Id.* at 27:9-12.

- "I deeply regret the entire situation. And I had -- had I had it to do over again, I might've even declined the nomination had I known it would come to this, because I believe very strongly in the integrity of the judicial process" *Mar. 1, 2024 Testimony of Hon. Joseph F. Kasper at* 129:23-130:2.

- "I apologize to this committee for a substantial amount of time and resources expended in the course of its investigation. I deeply regret any disappointments." *Apr. 23, 2024 Testimony of Hon. Joseph F. Kasper at* 57:16-18.

- "I procrastinated in what I thought initially was the winding up of my practice of thirty-seven years and sustaining the individuals who relied on me. I realize the importance of transparency, prompt compliance, in same, and the duty of the judiciary to police itself." *Apr. 23, 2024 Testimony of Hon. Joseph F. Kasper at* 59:9-13.

The 300 pages of documentary evidence included over 200 pages of his business and personal bank accounts and credit card records.

Respondent's good faith cooperation is in a different universe from the Staff's cited precedent where non-cooperation weighed in favor of removal. *Cf Matter of O'Connor*, 32 N.Y. 3d 121 (N.Y. 2018) (removal warranted where judge failed to appear before the Commission); *Matter of Lenney*, 71 N.Y. 2d 456, 459 (N.Y. 1988) (removal warranted where the judge sent a response to the wrong zip code, but the Commission advised that it received no response and respondent did not cure the submission); *Matter of Cooley*, 53 N.Y. 2d 64 (N.Y. 1981) (removal warranted where respondent failed to submit an answer to the Commission's charges and informed the Commission she would not appear for argument); *Matter of Rathbun*, 2025 Ann Rep of NY Comm on Jud Conduct at 252 (removal warranted where respondent failed to respond to the Complaint or participate in the proceedings or appear for oral argument); *Matter* *of Driscoll*, 1997 Ann Rep of NY Comm on Jud Conduct at 89 (removal warranted where respondent failed to respond to inquiries or appear for testimony).

Here, Respondent has fully participated in the Commission's proceedings through: (1) providing extensive testimony; (2) answering the Complaint; (3) providing over 300 pages of personal, financial, and legal documents; (4) conferring and agreeing to a statement of facts; (5) submitting briefing; and (6) participating in oral argument. And, pointedly, the Staff should be embarrassed to accuse Respondent of not fully participating in the instant investigation, when it was at fault for "jumping the gun" when it issued the initial Complaint almost two weeks *before* the date articulated in its final letter to Respondent by which time he could have responded to the outstanding inquiry. *See* Br. at 19.

The touchstone for removal is dishonesty and deceit. This is because "deception is antithetical to the role of a Judge who is sworn to uphold the law and seek the truth." *Matter of Myers v. State Commission on Judicial Conduct*, 67 NY2d 550, 554 (1986). Such conduct "is not conducive to the efficacy of the judicial process and is destructive of [a judge's] usefulness on the bench." *Matter of Perry*, 53 AD2d 882 (2d Dept. 1976).

But here, no conduct of Respondent evinces dishonesty, deceit, or non-cooperation. While the Staff crudely paints a picture of purported corruption or worse, a fair reading of the record reveals carelessness in an effort to uphold prior professional commitments. This misconduct falls well short of the prerequisites of dishonesty and deceit that removal requires.

CONCLUSION

For the foregoing reasons, the Staff's sanction of removal should be denied. Respondent's misconduct warrants a private admonition or—at most—a public sanction less than removal.

Collaterally, this case cries out for closer supervision of arguments pursued and of charges and sanctions sought by Staff.

Dated: June 5, 2026
New York, New York

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