

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

FRANK M. MORA,

A Judge of the Poughkeepsie City Court,
Dutchess County.

**MEMORANDUM BY COUNSEL TO THE COMMISSION IN SUPPORT
OF A RECOMMENDATION TO CONFIRM IN PART AND DISAFFIRM
IN PART THE REFEREE'S REPORT, AND DETERMINE THAT
RESPONDENT COMMITTED JUDICIAL MISCONDUCT AND
SHOULD BE REMOVED FROM OFFICE.**

**ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800**

Of Counsel:

Mark Levine, Esq.
Edward Lindner, Esq.
Denise Buckley, Esq.
David Stromes, Esq.
Melissa DiPalo, Esq.

Dated: May 19, 2026

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	v
PRELIMINARY STATEMENT	1
INTRODUCTION	1
PROCEDURAL HISTORY	
A. The Formal Written Complaint.....	3
B. Respondent’s Answer.....	4
C. The Hearing.....	5
D. The Referee’s Report.....	6
THE FACTS	7
As to Charge I: It is undisputed that Respondent refused to wear a mask in a private medical office and refused to leave the premises despite repeated requests to do so, resulting in the police being called.....	7
A. The Undisputed Facts as to the Events of December 28, 2021	8
The Referee’s Report as to Charge I.....	10
As to Charge II: Respondent filed a defamation suit against Ms. Koch in retaliation for her having filed a complaint against him with the Commission	11
A. Stacey Koch filed a complaint against Respondent with the Commission after Respondent was repeatedly asked to leave a private medical practice and refused.....	11
B. The Commission notified Respondent of Ms. Koch’s complaint and gave him an opportunity to respond.....	11

TABLE OF CONTENTS

	PAGE
C. Respondent sought advice from Michael Sussman, Esq., about suing Ms. Koch.....	13
D. Respondent filed a defamation suit against Ms. Koch seeking \$425,000 in damages.....	15
E. Respondent’s defamation suit was dismissed on the conditions that Respondent agreed to pay Ms. Koch \$20,000 in attorney’s fees and costs, apologize to Ms. Koch, and refrain from future contact with Ms. Koch and Seeta.....	17
F. Respondent’s Hearing Testimony	21
The Referee’s Report as to Charge II	24
ARGUMENT	
POINT I	
RESPONDENT COMMITTED SERIOUS MISCONDUCT WHEN HE IGNORED THE ADVICE OF COUNSEL AND INEXCUSABLY FILED A DEFAMATION LAWSUIT AGAINST STACY KOCH IN RETALIATION FOR HER COMMISSION COMPLAINT.....	26
A. As the Referee found, the “overwhelming” evidence established that Respondent filed a defamation lawsuit against Stacey Koch in retaliation for her Commission complaint	26
B. Respondent’s actions are not excused by claims that he relied on the “advice of counsel.”	29
POINT II	
RESPONDENT’S LAWSUIT HAD SERIOUS IMPLICATIONS FOR THE COMMISSION’S CONSTITUTIONAL MANDATE TO INVESTIGATE AND HEAR COMPLAINTS OF JUDICIAL MISCONDUCT.....	33

TABLE OF CONTENTS

PAGE

- A. Respondent’s lawsuit attempted to circumvent the Commission’s constitutional mandate to investigate complaints against New York State judges.....34
- B. Respondent’s lawsuit created a potential chilling effect on every Commission investigation by discouraging citizens from reporting instances of judicial misconduct for fear of being sued.....36

POINT III

THE REFEREE WAS WRONG TO CONCLUDE THAT
RESPONDENT’S WILLFUL REFUSAL TO COMPLY WITH
REPEATED DIRECTIVES TO LEAVE A PRIVATE MEDICAL
OFFICE DID NOT VIOLATE THE RULES.....38

- A. Respondent refused to leave Seeta despite numerous requests, prompting Ms. Koch to call the police.....39

POINT IV

THE APPROPRIATE SANCTION FOR RESPONDENT’S EGREGIOUS
MISCONDUCT IS REMOVAL.....44

- A. The evidence is overwhelming that Respondent sued Stacey Koch in retaliation for her Commission complaint45
- B. Respondent sought to circumvent the Commission’s constitutional authority to investigate and hear complaints of judicial misconduct.....47
- C. Respondent’s lawsuit created a “chilling effect” that dissuades members of the public from filing complaints with the Commission49
- D. Respondent has failed to acknowledge the seriousness of his misconduct.....50
- E. Respondent should be removed from judicial office51

TABLE OF CONTENTS

PAGE

CONCLUSION.....	55
-----------------	----

TABLE OF AUTHORITIES

PAGE

STATE CASES

<i>Matter of Aldrich</i> , 58 NY2d 279 (1983)	41
<i>Matter of Ayres</i> , 30 NY3d 59 (2017)	50
<i>Matter of Conti</i> , 70 NY2d 416 (1987)	50
<i>Matter of Going</i> , 97 NY2d 121 (2001)	39
<i>Matter of Kuehnel</i> , 49 NY2d 465 (1980)	38, 41
<i>Long Island Gynecological Services, P.C. v Murphy</i> , 298 AD2d 504 (2d Dept 2002)	40
<i>Matter of Lonschein</i> , 50 NY2d 569 (1980)	39
<i>Matter of Mazzei</i> , 81 NY2d 568 (1993)	41
<i>Mora v Koch</i> , 79 Misc3d 434 (Sup Ct Dutchess Co 2023)	37, 49, 54
<i>Matter of Nicholson</i> , 50 NY2d 597 (1980).....	33, 35, 48
<i>Matter of O'Connor</i> , 32 NY3d 121 (2018)	34, 48
<i>Matter of Putorti</i> , 40 NY3d 359 (2023)	30
<i>Matter of Quinn</i> , 54 NY2d 386 (1981)	35, 41, 48
<i>Matter of Senzer</i> , 35 NY3d 216 (2020)	41

TABLE OF AUTHORITIES

PAGE

<i>Rager v McCloskey</i> , 305 NY 75, 79 (1953)	40
<i>Stern v Morgenthau</i> , 62 NY2d 331 (1984)	49

FEDERAL CASES

<i>Mora v NYS Unified Court System</i> , 2023 WL 6126486 (SDNY 2023)	13
<i>Mora v NYS Unified Court System</i> , 2026 WL 860572 (2d Cir 2026)	13

COMMISSION DETERMINATIONS

<i>Matter of Esposito</i> , 2004 Ann Rep of NY Commn on Jud Conduct at 100	29, 46, 52
<i>Matter of Fisher</i> , 2019 Ann Rep of NY Commn on Jud Conduct at 126	42, 43, 44
<i>Matter of Hall</i> , 2024 Ann Rep of NY Commn on Jud Conduct at 102.....	41
<i>Matter of Hart</i> , 2009 Ann Rep of NY Commn on Jud Conduct at 97	29
<i>Matter of Pautz</i> , 2005 Ann Rep of NY Commn on Jud Conduct at 199.....	42
<i>Matter of Persons</i> , 2024 Ann Rep of NY Commn on Jud Conduct at 170.....	41-42
<i>Matter of Stilson</i> , 2023 Ann Rep of NY Commn on Jud Conduct at 290	42
<i>Matter of Tavormina</i> , 1990 Ann Rep of NY Commn on Jud Conduct at 164	52
<i>Matter of Tripp</i> , 2011 Ann Rep of NY Commn on Jud Conduct at 151	28, 29, 46, 51, 52

CONSTITUTIONAL PROVISIONS

NY Civil Rights Law § 76-a	17
----------------------------------	----

TABLE OF AUTHORITIES

	PAGE
NY Const, art VI, § 22	34, 48
NY Judiciary Law, article 2–A	34, 48
NY Judiciary Law § 42	48
NY Judiciary Law § 44	18
NY Judiciary Law § 44(4)	3, 18
NY Judiciary Law § 45	17, 18

STATUTES AND REGULATIONS

10 NYCRR 2.60	4
22 NYCRR 7000.6(h)	18

RULES GOVERNING JUDICIAL CONDUCT

§100.1	6, 25, 29
§100.2(A)	6, 23, 25, 29
§100.4(A)(2)	6, 25, 29

OTHER AUTHORITIES

Advisory Comm on Jud Ethics Op 12-96	23, 32
--	--------

PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct (“Commission Counsel”) in support of a recommendation that the Commission determine that the Honorable Frank M. Mora (“Respondent”) committed judicial misconduct and should be removed from judicial office.

INTRODUCTION

As the Referee found, “If one could come up with only one ironclad rule defining judicial misconduct it would likely be: ‘It is judicial misconduct for a judge to sue a complainant to the Commission, especially for damages, especially in the middle of the Commission proceedings, and especially (but not only) when the lawsuit is meritless.’”

That is precisely what Respondent did here. Angry that Stacey Koch filed a complaint against him with the Commission, Respondent sued her for \$425,000. His baseless lawsuit was dismissed, but the institutional harm it caused remained.

As the Referee found, “the evidence is overwhelming that Respondent's defamation lawsuit was in retaliation for Ms. Koch's confidential Commission complaint” (Rep 31). He was motivated by his anger at Ms. Koch for having filed a complaint against him with the Commission (Rep 24 ¶ 9, 31). He thought that Ms. Koch “deserved to be punished” (Sussman: 247-248) and he wanted to “make her pay” (Rep 24 ¶ 9; Mora: 519-520).

Respondent's conduct is all the more troubling because he brought the suit against the advice of his counsel, who told him, "It doesn't look good for a judge to sue the person who complained about [you]" (Mora: 503). When Ms. Koch and Commission counsel filed motions to dismiss, Respondent rejected his attorney's advice that he should withdraw his lawsuit, which advised, "[i]t's just a bad look for a Judge to sue the person who complains about him, rather than to resolve the issues in the forum intended to resolve the complaint" (Sussman: 256).

As Respondent's own attorney pointed out, he could have and should have contested the merits of Stacey Koch's complaint in this Commission proceeding – the very forum intended to resolve the complaint. By intentionally circumventing the normal course of procedure and suing a complainant in a manner that sent a chilling message to other members of the public who might consider complaining about a judge, Respondent committed serious misconduct warranting his removal.

Although less egregious, Respondent also committed misconduct in connection with the 2021 incident that precipitated Ms. Koch's complaint to the Commission. During the COVID-19 pandemic, Respondent entered the waiting room of the private medical office where Ms. Koch worked, while wearing a face shield rather than a face mask, and he refused Ms. Koch's repeated requests to leave, which led Ms. Koch to call the police.

These salient facts are not in dispute. However, the Referee erred by concluding that Respondent's refusal to comply with Ms. Koch's requests to leave "the first few times" did not constitute judicial misconduct. Respondent's persistent refusal to comply with requests to leave prolonged and escalated the exchange to the point that Ms. Koch called the police. The Commission should affirm the Referee's findings of fact as to Charge I, disaffirm his conclusion of law, and find that Respondent committed additional misconduct when he refused to leave Seeta Eye Care.

PROCEDURAL HISTORY

A. The Formal Written Complaint

Pursuant to Judiciary Law §44(4), the Commission authorized a Formal Written Complaint ("Complaint"), dated January 14, 2025, containing three charges.

Charge I alleged that, on or around December 28, 2021, Respondent engaged in a discourteous verbal confrontation with Stacey Koch, an office manager at Seeta Eye Center ("Seeta"), over Respondent's failure to comply with the office's facemask policy (Complaint ¶¶ 5-11). Respondent refused to comply with Ms. Koch's repeated directives to leave the premises if he would not wear a mask as required, which led Ms. Koch to call the police (Complaint ¶¶ 5, 11-13).

Charge II alleged that, on or around December 29, 2022, Respondent filed a defamation lawsuit against Ms. Koch – *Frank Mora v Stacey Koch* (Index No. 54141/2022) – seeking \$425,000 in alleged compensatory and punitive damages, in what was and/or appeared to be in retaliation for her having filed a complaint against him with the Commission (Complaint ¶¶ 19-34).

Charge III alleged that, on or about May 9, 2024, and on or about July 10, 2024, in response to Commission requests for information reasonably related to its investigation, Respondent withheld and/or redacted material documents, including emails, responsive to the Commission’s requests (Complaint ¶¶ 36-43).¹

B. Respondent’s Answer

Respondent filed a Verified Answer (“Answer”) dated April 11, 2025. As to Charge I, Respondent admitted that he had a “verbal confrontation” with Ms. Koch, but denied that his conduct at Seeta was discourteous or constituted misconduct (Answer ¶¶ 5, 18). He asserted that he was unable to wear a face mask because he was suffering from “severe anxiety, which manifests as object phobia” and that Seeta’s policy requiring a mask was “void, a nullity, and unenforceable” in contravention of 10 NYCRR 2.60 (Answer ¶ 7). Respondent conceded that Ms.

¹ The Referee did not sustain Charge III of the Complaint and Commission Counsel does not challenge the Referee’s findings of fact or conclusions of law as to that charge. As such, facts elicited at the hearing relevant to Charge III are not repeated here. A full recitation of these facts may be found in the Post-Hearing Memorandum to the Referee and Proposed Findings of Fact and Conclusions of Law by Counsel to the Commission, dated January 12, 2026.

Koch demanded that he “put on a face mask or leave” but maintained that Ms. Koch’s demand violated New York State’s mask mandate and was “unlawful” and “discriminatory” (Answer ¶ 11). Respondent also conceded that Ms. Koch called the police (Answer ¶ 14).

As to Charge II, Respondent admitted that he filed a defamation suit against Ms. Koch seeking \$425,000 in alleged damages, that his lawsuit alleged that statements in Ms. Koch’s complaint to the Commission were “false and libelous,” and that his lawsuit was public (Answer ¶¶ 19, 23, 24, 26). Respondent asserted that he relied on the advice of the Advisory Committee on Judicial Ethics and his attorney, Michael Sussman, in initiating the lawsuit against Ms. Koch (Answer ¶¶ 19, 26). He denied that his lawsuit was retaliatory or created an appearance of retaliation against a Commission complainant (Answer ¶¶ 19, 35).

C. The Hearing

By Order dated June 30, 2025, the Commission designated Peter Bienstock, Esq., as Referee to hear and report findings of fact and conclusions of law. The hearing was held in the Commission’s New York City office from October 15 to 17, 2025. Commission Counsel called four witnesses (Jessica Feather, Kristine Monteverdi, Janna Whearty and Stacey Koch) and introduced 36 exhibits into

evidence.² Respondent testified on his own behalf, called two witnesses (Michael Sussman, Esq. and Michael Brown), and introduced eight exhibits into evidence. Unredacted copies of the Complaint and Answer were introduced as Referee's Exhibits.

D. The Referee's Report

In a report dated April 9, 2026, the Referee sustained the factual allegations in Charge II of the Complaint and concluded that the “overwhelming” “objective” evidence established that Respondent violated Sections 100.1, 100.2(A) and 100.4(A)(2) of the Rules, by filing a defamation lawsuit against Stacey Koch in retaliation for her having filed a confidential complaint against him with the Commission (Rep 25 ¶ 15, 31).

The Referee did not sustain Charge I of the Complaint, finding that Respondent and Ms. Koch engaged in an “animated discussion” during which they “raised their voices somewhat” but that Respondent was not “confrontational, berating, discourteous or nasty” (Rep 20 ¶ 6). The Referee further found Respondent's repeated refusal to comply with Ms. Koch's requests to leave “were minor errors of judgment” (Rep 21 ¶ 12).

² Citations to “Comm Ex” and “Resp Ex” are to the Commission's and Respondent's hearing exhibits. Citations to “Rep” are to the Referee's Report, and all other citations are to the transcript of the hearing.

THE FACTS

On December 28, 2021, Respondent entered Seeta wearing a face shield that did not comply with Seeta's COVID masking policy. He refused repeated requests by Stacey Koch, the office manager, that he leave the premises if he was unwilling to put on a mask, which led to Ms. Koch calling the police. Ms. Koch filed a confidential complaint against Respondent based on this encounter. In retaliation for this complaint, Respondent brought a public defamation lawsuit against Ms. Koch seeking \$425,000 in alleged damages, based solely on the statements she made about him in her Commission complaint.

As to Charge I: It is undisputed that Respondent refused to wear a mask in a private medical office and refused to leave the premises despite repeated requests to do so, resulting in the police being called.

As the Referee found, the "critical elements" of the incident at Seeta "can be mostly reconciled, and the remaining differences reduced" (Rep 4). Commission counsel does not dispute the Referee's factual findings or credibility determinations set forth in his Report. Rather, the factual account below is taken from the undisputed facts as reconciled in the Referee's Report and audio recordings of calls to 911 and local police that were admitted into evidence at the hearing.

A. The Undisputed Facts as to the Events of December 28, 2021.

On December 28, 2021, Respondent entered the waiting room of Seeta Eye Center, for an appointment with his [REDACTED] child, wearing a face shield (Rep 5, 11; Feather: 32; Monteverdi: 67; Koch: 153; Brown: 308-309; Mora: 383).

During that time, there was another surge in COVID-19 cases (Rep 19). At the time of this appointment, Respondent knew that masks were required at Seeta (Rep 14; Mora: 465-466) but did not call ahead of the appointment to ask if he could wear a face shield to the appointment (Rep 14, 21 ¶ 12; Feather: 37; Koch: 156; Mora: 465-466). Nor did Respondent alert anyone that he did not intend to wait outside in Seeta's parking lot during the appointment as he had during a prior visit earlier that year with another one of his children (Koch: 168; Mora: 380).

Upon entering Seeta, receptionist Kristine Monteverdi told Respondent that he had to wear a mask (Rep 11; Feather: 32; Monteverdi: 67-68; Mora: 383, 467). The office manager, Stacey Koch, came to the waiting room and told Respondent that he had to put on a mask (Rep 5, 11; Feather: 33; Monteverdi: 69; Koch: 158; Mora: 384). Respondent told Ms. Koch that he "could not medically tolerate a mask" or that he had a "medical condition" that prevented him from wearing a mask (Rep 5, 11; Koch: 158-159; Mora: 384, 467).

Ms. Koch then told Respondent that he had to wear a mask or leave, and if he would not do so, she would call the police (Rep 5, 14; Koch: 158-159; Mora:

388-389, 467-469). She repeatedly directed Respondent to leave the office, but he refused to do so (Rep 5-6, 11, 21 ¶ 12; Koch: 159, 161; Mora: 388, 467-468).

Ms. Koch called the police twice (Rep 5, 11; Koch: 161; Mora: 386, 389; Comm Exs 2, 2A, 3, 3-A, 4, 4-A). The audio recording of Ms. Koch's first call to the police revealed that Ms. Koch stated to the 911 operator, "I'm a private medical practice, and I have a gentleman who is refusing to leave and will not wear a mask, and I have an office full of people. He's wearing a clear plastic face shield that does not cover his mouth" (Rep 6; Comm Ex 2, 0:00:35–0:00:47; Comm Ex 2-A, 1-2; Koch: 162-163). The 911 operator then transferred Ms. Koch's call to the Town of Poughkeepsie Police Department, "for a male causing a disturbance" (Rep 6; Comm Ex 2; Comm Ex 2-A, 0:01:06-0:01:15; Koch: 162-163).

After Ms. Koch provided a Town of Poughkeepsie police official with some background information, the police official asked, "And he's right in front of you, and you said he's refusing to leave, and he's also refusing to put a mask on?" (Comm Ex 3, 0:00:45 – 0:00:49; Comm Ex 3-A, 2). The police official advised Ms. Koch that the police department did not enforce the mask mandate, but if Respondent was refusing to leave, an officer could be sent to Seeta (Comm Ex 3, 0:02:03 – 0:02:15; Comm Ex 3-A, 3). Ms. Koch said, "That's right. That's what I'm requesting" (Comm Ex 3, 0:02:12 – 0:02:21; Comm Ex 3-A, 3-4). The police

official said that he would send an officer as soon as possible (Comm Ex 3, 0:02:24 – 0:02:29; Comm Ex 3-A, 4).

After the first call to the police, Respondent did not leave and Ms. Koch said that the police were coming to the office (Rep 15; Koch: 175-176, 279; Mora: 473-474). Ms. Koch called the police a second time and told the 911 operator, “This is 27 Davis Avenue. I’m having a big problem with a patient who refuses to leave and is making a big ruckus in my waiting room. He’s walking out now” (Rep 8; Comm Ex 4, 0:00:13 – 0:00:19; Comm Ex 4-A, 1; Koch: 176; Respondent: 474).

The Referee’s Report as to Charge I

Notwithstanding these uncontested facts, the Referee did not sustain Charge I of the Complaint (Rep 21-22 ¶ 14). The Referee found that Respondent and Ms. Koch engaged in an “animated discussion” during which they “raised their voices somewhat” and “were steadfast in their opinions,” but that these facts do “not demonstrate that Respondent was confrontational, berating, discourteous or nasty” (Rep 20 ¶ 6). The Referee noted that at the hearing, Respondent conceded that Ms. Koch “directed him a number of times to leave the office” (Rep 12; Mora: 387). He determined, however, that Respondent’s “failure (or forgetting)” to call ahead to Seeta for a face mask accommodation and his “refusal to leave Seeta when asked to do so by [Ms. Koch] the first few times were minor errors in judgment” (Rep 21 ¶ 12, 29). The Referee concluded that, even applying the higher standard

of conduct required of judges, Respondent's conduct at Seeta did not violate the Rules (Rep 21-22 ¶ 14).

As to Charge II: Respondent filed a defamation suit against Ms. Koch in retaliation for her having filed a complaint against him with the Commission.

Here, too, the Referee found that the material facts were “not subject to substantial dispute” because they derived “mostly from documents and the undisputed written statements of the participants” (Rep 22).

A. Stacey Koch filed a complaint against Respondent with the Commission after Respondent was repeatedly asked to leave a private medical practice and refused.

On December 29, 2021, Stacey Koch filed a complaint against Respondent with the Commission (Koch: 190-91). At the time, Ms. Koch had been the General Manager of Seeta Eye Center (“Seeta”) – a private medical ophthalmology practice – for around 20 years (Koch: 143). Ms. Koch's complaint alleged, in part, that one day earlier, on December 28, 2021, Respondent came to an appointment at Seeta with his son and “exhibited unprofessional behavior” by refusing to wear a mask in the waiting room and “creat[ing] a huge scene” (Comm Ex 6). She alleged that she “asked him several times to leave” and he refused (Comm Ex 6).

B. The Commission notified Respondent of Ms. Koch's complaint and gave him an opportunity to respond.

In April 2022, Respondent learned that Ms. Koch had filed a complaint when Commission staff sent him an inquiry letter with a copy of the complaint and

a series of questions asking him to respond (Comm Ex 37; Mora: 366-367).

Respondent submitted a response through his attorney, Chad LaVeglia, Esq., on June 17, 2022, refuting Ms. Koch's allegations (Comm Ex 32).

About one month before he submitted his response to the Commission, Respondent returned to Seeta for an eye examination. At that time, he spoke with Michael Brown, a technician who witnessed a portion of the incident in Seeta's waiting room on December 28, 2021 (Brown: 312, 324, 331-332; Mora: 408, 479, 490). Respondent told Mr. Brown that Ms. Koch had filed a complaint against him with the Commission for refusing to wear a mask (Mora: 490-491). Mr. Brown agreed to write a statement on Respondent's behalf (Brown: 331-332, 334; Mora: 408, 490-491). Respondent drafted a type-written statement dated June 13, 2022, purporting to be an account of what Mr. Brown observed on December 28, 2021, which Mr. Brown signed (Brown: 311-312, 334; Mora: 403-404, 408, 490-491; Resp Ex F). Respondent submitted a copy of Mr. Brown's statement with his June 17th response to the Commission's letter (Comm Ex 32)

During the summer and fall of 2022, Respondent and Mr. Brown communicated several times (Brown: 312, 329; Mora: 409, 495-496). At some point, Mr. Brown told Respondent that he was going to testify before the Commission and spoke with him after his testimony took place, relating to Respondent "certain things that were said" (Mora: 496). According to Respondent,

in September 2022, Mr. Brown told him that Ms. Koch had testified before the Commission and that he had quit his job at Seeta because Ms. Koch is “trying to destroy you” (Mora: 409-10, 495-496).³ Mr. Brown also reported to Respondent that Ms. Koch was “bragging” about trying to get him fired (Mora: 498).

C. Respondent sought advice from Michael Sussman, Esq., about suing Ms. Koch.

In November of 2022, Respondent asked Mr. Sussman to represent him in a lawsuit against Ms. Koch over the statements made in her complaint to the Commission (Sussman: 217-218, 224; Mora: 412-413, 499-500, 503, 514, 518; Comm Ex 20). At the time, Mr. Sussman was representing Respondent in a lawsuit challenging the Office of Court Administration’s denial of his request for an exemption from the COVID-19 vaccination requirement⁴ and had previously represented Respondent’s children in a 2019 lawsuit challenging the legislative revocation of the religious vaccination exemption for school children (Sussman: 217-218; Mora: 365).

Respondent asked Mr. Sussman if he could sue Ms. Koch for “tortious interference of business” based on the statements she made in her complaint to the

³ Mr. Brown did not recall telling Respondent that Ms. Koch testified before the Commission and denied telling Respondent that he testified before the Commission (Brown: 335).

⁴ Respondent’s lawsuit was dismissed by the United States District Court for the Southern District of New York on September 19, 2023. *See Mora v NYS Unified Court System*, 2023 WL 6126486 (SDNY 2023). The dismissal was affirmed by the Second Circuit on March 30, 2026. *See Mora v NYS Unified Court System*, 2026 WL 860572 (2d Cir 2026).

Commission (Mora: 412-413). Mr. Sussman said that “he was not sure about that” but he “possibly” had a case for defamation (Sussman: 250; Mora: 413, 500). Respondent also inquired if he could bring an action against Ms. Koch for violating his rights under HIPPA, and Mr. Sussman advised that there is no private right of action under HIPAA (Sussman: 250-251; Mora: 415-416, 501).

Mr. Sussman described Respondent as being “very angry,” “very upset” and “embarrassed” about “what occurred at Seeta,” and “very angry” that she “was besmirching him, his reputation” (Sussman: 243, 245).⁵ Respondent said that Ms. Koch “deserved to be punished” for the statements in her Commission complaint by “bringing a lawsuit that would get damages” (Sussman: 247-248). Respondent admitted at the hearing that he brought the lawsuit against Ms. Koch because he wanted to “make her pay” (Mora: 519).

In an email to Mr. Sussman, Respondent wrote, “If I thought the [Commission] process was going to be fair, I would not have brought the [defamation] suit” (Comm Ex 25; Respondent: 456-457). He also testified that he did not believe that the Commission’s process would provide him with recourse because, even if the Commission decided to dismiss Ms. Koch’s complaint as

⁵ Mr. Sussman originally made these statements on October 4, 2024, while testifying under oath during the Commission’s investigation. At the hearing, he testified that his October 4th testimony was accurate, but that the statements he attributed to Respondent were made in November 2022, not March. (Sussman: 244-245).

meritless, the Commission's process would not allow for the imposition of monetary damages against Ms. Koch (Mora: 518-520).

Mr. Sussman advised Respondent that while he could sue Ms. Koch for defamation, it "doesn't look good" for a judge to sue the person who complained about him to the Commission (Mora: 503; Sussman: 249-250). According to Respondent, Mr. Sussman "went through a whole diatribe" about "optics" (Mora: 503-504). Respondent rejected Mr. Sussman's advice because "judges aren't really concerned with optics" and he believed he could prevail before a jury (Mora: 503-505). He directed Mr. Sussman to file a defamation suit against Ms. Koch (Respondent: 503).

D. Respondent filed a defamation suit against Ms. Koch seeking \$425,000 in damages.

On December 29, 2022, Respondent filed a defamation suit against Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 54141/2022), in Supreme Court, Dutchess County, seeking \$425,000 in alleged damages (Comm Ex 7; Mora: 519-520). Respondent reviewed and approved the Verified Complaint before it was filed (Mora: 519-520; Sussman: 252).

Respondent's Verified Complaint alleged that five statements that Ms. Koch made in her complaint to the Commission were "false and libelous," and that Ms. Koch "intentionally sought to imperil and jeopardize [Respondent's] ability to practice his profession and has caused [Respondent] substantial emotion [*sic*]

distress and humiliation” (Comm Ex 7, ¶ 24, “Preliminary Statement”). Asked to explain how the allegations in Ms. Koch’s complaint jeopardized his ability to practice his profession, Respondent testified, “[S]he’s trying to get me fired” (Mora: 530).

The allegations in Respondent’s lawsuit were limited to the statements Ms. Koch made in her complaint to the Commission (Comm Ex 7; Mora: 503, 530-531). Respondent’s lawsuit made no claims about statements allegedly made by Ms. Koch to Michael Brown or to anyone other than the Commission (Comm Ex 7; Mora: 503, 530-531).

Respondent sought compensatory and punitive damages in the amount of \$425,000, alleging that Ms. Koch’s statements in her complaint caused him “emotional distress, humiliation, shame and embarrassment and required him to answer her false claims before a state commission designed and empowered to investigate judicial misconduct” (Comm Ex 7, ¶ 27). Mr. Sussman explained that he arrived at that figure, in part, because Respondent “was a known figure in the community and felt that her behavior was intended to harm him” (Sussman: 258-259). Respondent testified that he was satisfied with the amount of \$425,000 based on Mr. Sussman’s “experience,” but conceded that it was also because he “wanted to make Ms. Koch pay” for what he considered were “false statements” in her Commission complaint (Mora: 520).

At the time Respondent filed his defamation lawsuit against Ms. Koch, the Commission was still in the process of investigating the claims Ms. Koch made in her complaint and had yet to formally charge Respondent with misconduct for the incident at Seeta (Ref Ex A; Mora: 371, 398, 401-402, 553). Respondent was represented in the Commission matter by Chad LaVeglia, Esq. (Mora: 511-512). He acknowledged that the Commission afforded him an opportunity to respond to and defend against the allegations in Ms. Koch's complaint, and that he filed a response refuting the allegations in writing through counsel (Mora: 512-513).

The Commission's investigation of Ms. Koch's complaint was confidential, pursuant to Section 45 of the Judiciary Law. Respondent's Verified Complaint, however, was public. Respondent attached a copy of Ms. Koch's complaint to the Commission to his defamation pleading, thereby making her complaint public as well (Comm Ex 7; Mora: 554-556). Respondent made no request to seal or otherwise keep his lawsuit confidential (Mora: 554).

E. Respondent's defamation suit was dismissed on the conditions that Respondent agreed to pay Ms. Koch \$20,000 in attorney's fees and costs, apologize to Ms. Koch, and refrain from future contact with Ms. Koch and Seeta.

On February 2, 2023, Ms. Koch, through counsel, filed a motion to dismiss Respondent's Verified Complaint as barred by New York Civil Rights Law § 76-a, also known as New York State's anti-SLAPP statute, and, additionally, as barred by the doctrine of absolute privilege (Comm Ex 9). On February 6, 2023,

Commission counsel filed a motion to intervene and to dismiss Respondent's lawsuit because the statements in Ms. Koch's complaint were shielded by absolute privilege, making her (and similarly situated Commission complainants and witnesses) immune from defamation suits in connection with confidential information given to the Commission (Comm Ex 10).

The next day, Respondent sent an email to Mr. Sussman, attaching a document with "some of [his] thoughts thus far" (Comm Ex 22). In the attachment, Respondent stated, *inter alia*, "it does not seem right that Koch can use the judicial commission as a sword, then use the SLAPP statute as a shield," asked whether individuals are "allowed to make a false report to the judicial commission with impunity," and stated "I think we should focus on Koch creating the entire scene, then reporting me for the scene that she created" (Comm Ex 22, 2).

On February 8th, Respondent sent an email to Mr. Sussman stating, "Judicial Commission will not turn over transcripts from Koch or Brown" (Comm Ex 23; Mora: 546).⁶ Mr. Sussman replied that "they are plainly working in concert with each other" to which Respondent responded, "The corruption doesn't end!" At the hearing, Respondent explained that he was referring to what he

⁶ Discovery in Commission proceedings is statutory. Respondent's request for transcripts during the Commission's investigation was untimely and contrary to law. Witness statements to the Commission are confidential pursuant to Judiciary Law §45. However, should a matter proceed to a Formal Written Complaint and hearing, a respondent is provided with statements made by any witness Commission Counsel intends to call, as well as any exculpatory material, pursuant to Judiciary Law §44(4) and 22 NYCRR 7000.6(h).

believed was corruption not only on the part of the Commission but also the Office of Court Administration “and others” (Comm Ex 23; Mora: 452-453, 546-549).

Mr. Sussman emailed Respondent on February 13th and recommended that he withdraw his defamation suit against Ms. Koch, stating,

I think you should file a FOIL request for whatever you think pertinent. I can get another week or two if needed. You could also file a response and then withdraw. However, I do think withdrawing is a good idea, regardless of the legal merits of our position. It is just a bad look for a judge to sue the person who complains about him rather than to resolve the issues in the forum intended to resolve the complaint

(Comm Ex 25; Sussman: 256).

Respondent did not agree with Mr. Sussman’s advice that “withdrawing is a good idea” or his assessment that it is a “bad look” for a judge to sue a Commission complainant (Mora: 532-533). He replied to Mr. Sussman’s email later that morning, complementing his draft reply to the motions to dismiss and stating, “If I thought the process was going to be fair, I would not have brought the suit” (Comm Ex 25). Respondent testified at the hearing that he was referring to the Commission’s “process” and that he would not have brought the defamation suit against Ms. Koch if he had thought the Commission’s process would be fair (Comm Ex 25; Mora: 456-457, 513-514).

Respondent rejected Mr. Sussman’s advice that he withdraw the lawsuit. Instead, on March 6, 2023, Respondent filed papers in opposition to Ms. Koch’s

and the Commission's motions to dismiss, arguing, *inter alia*, that Ms. Koch's complaint to the Commission was a "sham" and that the protection of absolute privilege did not apply (Comm Ex 11). Counsel for Ms. Koch and Commission counsel separately filed papers in reply to Respondent's opposition (Comm Exs 12, 13), and oral argument on the motions to dismiss was held before Hon. Maria G. Rosa, Supreme Court, Dutchess County (Comm Ex 14).

By Decision and Order dated April 4, 2023, Judge Rosa granted Ms. Koch's and Commission counsel's motions to dismiss Respondent's Verified Complaint and awarded Ms. Koch mandatory costs and attorney's fees (Comm Ex 15). The Court found, *inter alia*, that Ms. Koch's complaint to the Commission involved public petition and participation, and that her statements therein thus were absolutely privileged (Comm Ex 15).

In making this finding, the Court stated that "there is a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility" (Comm Ex 15, 6). The Court also recognized that "[t]he purpose of keeping the Commission's proceedings confidential is to protect not only the Judge involved but to protect the public by providing a safe forum in which to have complaints addressed" (Comm Ex 15, 6).

On or about May 22, 2023, Respondent and Ms. Koch entered into a settlement agreement wherein Respondent agreed to pay Ms. Koch \$20,000, to send her a signed letter of apology, and to avoid future contact with Ms. Koch and any Seeta location (Comm Ex 16). In his apology letter to Ms. Koch, Respondent apologized for bringing the defamation suit, stating, “I now know that this suit should not have been brought in the first instance, and I apologize for doing so” and “Please forgive me for any angst I have caused you” (Comm Ex 17).

F. Respondent’s Hearing Testimony

Respondent testified that he relied on Mr. Sussman’s advice that he had a viable claim for defamation but conceded that before he sued Ms. Koch, Mr. Sussman also advised him against suing Ms. Koch because “it doesn’t look good for a judge to sue the person who complained about him” (Mora: 503-504). According to Respondent, he rejected Mr. Sussman’s advice because he believed that a jury would rule in his favor and “to this day, I still think I could win if I could get to a jury” (Mora: 504).

Respondent explained that he disregarded Mr. Sussman’s advice that he should withdraw the lawsuit because it was a “bad look” to sue a complainant, testifying, “I thought then, I’ve continued to think, and I still think that a jury would think otherwise. The merits of my case, I still feel I would succeed on them” (Mora: 533). When counsel followed with a question to clarify, Respondent

made the point clear: “If I was allowed to go forward and got to a jury, I still, to this day, believe I would win” (Mora: 533).

Respondent also asserted that his letter apologizing to Ms. Koch for bringing the lawsuit “was true” (Mora: 504), but he conceded that he only wrote the apology letter “in order to settle, they wanted a letter of apology” (Mora: 423). He acknowledged that he owed Ms. Koch an apology “[f]or filing a suit that you shouldn’t have brought,” with the disclaimer that he “got improper advice on” bringing the suit (Mora: 534).

Asked whether he took any responsibility for commencing the defamation action against Ms. Koch, Respondent responded “[O]f course” (Mora: 551). Yet, Respondent answered the next question about whether he should not have brought the lawsuit as follows: “The way it was drafted, that is not allowed – it should not have been brought. I think he gave me improper advice” (Mora 551-552).

Respondent acknowledged that members of the public have a right to file a complaint with the Commission against a judge, that the Commission receives complaints that are not truthful or accurate, and that the Commission is appropriate forum for determining the veracity of those complaints (Mora: 501-502). He further acknowledged that Ms. Koch had the right to file a complaint against him and to make statements in her complaint about his conduct, regardless of whether they were true or false (Mora: 502-503). However, when asked directly if filing

his lawsuit was proper “as a judge who is obligated to [follow] the rules governing judicial conduct,” Respondent replied, “You mean that – because it wasn’t allowed?” (Mora: 507).

Respondent maintained that that it was proper for him to file a defamation lawsuit against a Commission complainant “based on” Advisory Opinion 12-96 (Mora: 507).⁷ He testified that Advisory Opinion 12-96 was “very clear” that “the Rules Governing Judicial Conduct do not preclude a judge from exercising the same rights as any other citizen when appearing as a litigant” (Mora: 508-509). He conceded, however, that Advisory Opinion 12-96 did not discuss a judge filing a lawsuit against a person who filed a complaint against him, but rather advised that a judge may negotiate a reduction or dismissal of a traffic violation (Mora: 509-510).

Respondent further testified, “If I had any questions about misconduct [with respect to the defamation suit], I would have called Laura Smith,” the Chief Counsel to the Advisory Committee on Judicial Ethics (Mora: 508, 512). He conceded, however, that he did not call Ms. Smith or seek an advisory opinion about filing a defamation suit (Mora: 512). He also conceded that he never

⁷ Advisory Opinion 12-96 advises that a judge may negotiate a violation of the Vehicle and Traffic Law with the prosecutor. The opinion states that “[a] judge must always promote public confidence in the judiciary’s integrity and impartiality (*see* 22 NYCRR 100.2[A])” but that the Rules “do not preclude a judge from exercising the same rights as any other citizen when appearing as a litigant” (Resp Ex F).

consulted Mr. LaVeglia, the attorney representing him before the Commission, about whether suing Ms. Koch might violate the Rules (Mora: 512).

The Referee's Report as to Charge II

In sustaining Charge II of the Complaint, the Referee determined that the evidence was “overwhelming” that “Respondent’s defamation lawsuit was in retaliation for Ms. Koch’s confidential Commission complaint” (Rep 31). In support of his determination, the Referee observed that the “only defamatory statements alleged” in Respondent’s lawsuit were those Ms. Koch made in her Commission complaint (Rep 31). He further found that “[i]t cannot be seriously disputed that Respondent’s defamation action was motivated by his anger at Ms. Koch, mainly . . . for her filing of a complaint with the Commission” (Rep 24 ¶ 9). The Referee observed that Respondent’s “anger resulting from that complaint” was “palpable” during his testimony (Rep 31), noting that Respondent testified “more than once, including under oath,” that he wanted “to make her (Ms. Koch) pay” and “did not want to rely on his potential success” before the Commission “because that was not ‘recourse’” (Rep 24 ¶ 9).

The Referee flatly rejected Respondent’s “advice of counsel” defense, finding that it “fail[ed] utterly” because “Respondent took counsel’s advice when he agreed with it, and rejected counsel’s advice (even more often) when he didn’t” (Rep 32). He underscored this conclusion by pointing to Respondent’s testimony

explaining that he rejected his attorney's advice that "it doesn't look good" for a judge to sue a complainant because "judges aren't really concerned with optics" (Rep 32). Beyond that, the Referee determined that Respondent "demonstrated no awareness of, or interest in" the "institutional fact" that citizens will be "dissuade[d]" from filing a complaint with the Commission if a judge is permitted to sue a complainant for damages (Rep 32-33).

The Referee concluded that "[t]he initiation by a judge of a defamation lawsuit against a complainant to the Commission . . . is a serious violation of the Rules Governing Judicial Conduct, sections 100.1, 100.2(A) and 100.4(A)(2)" (Rep 25). He summed up his reasoning as follows: "If one could come up with only one ironclad rule defining judicial misconduct it would likely be: 'It is judicial misconduct for a judge to sue a complainant to the Commission, especially for damages, especially in the middle of the Commission proceedings, and especially (but not only) when the lawsuit is meritless'" (Rep ¶ 31).

ARGUMENT

POINT I

RESPONDENT COMMITTED EGREGIOUS MISCONDUCT WHEN HE IGNORED THE ADVICE OF COUNSEL AND INEXCUSABLY FILED A DEFAMATION LAWSUIT AGAINST STACY KOCH IN RETALIATION FOR HER COMMISSION COMPLAINT.

Respondent committed egregious misconduct when he publicly sued Stacey Koch for statements she made about him in her confidential complaint to the Commission.

As the Referee found, the evidence is overwhelming that Respondent's suit was brought in retaliation for her Commission complaint. And, contrary to his claim that he acted on the advice of counsel, his misconduct is especially inexcusable because he consciously disregarded his counsel's advice that "it doesn't look good" for a judge to sue a Commission complainant.

A. As the Referee found, the "overwhelming" evidence established that Respondent filed a defamation lawsuit against Stacey Koch in retaliation for her Commission complaint.

Angry that office manager Stacey Koch exercised her legitimate right to file a complaint against him with Commission, Respondent willfully and purposefully retaliated against her by filing a defamation lawsuit seeking \$425,000 in damages.

If Respondent's only motivation had been to challenge the veracity of Ms. Koch's complaint he could have – and should have – done that in the ordinary

course of this Commission proceeding. At the time he filed suit, the Commission had not even decided whether to authorize a Formal Written Complaint with respect to the incident at Seeta. Had Respondent promptly acknowledged wrongdoing and shown even a modicum of contrition, it is not inconceivable that the matter might have been resolved out of the public eye with a confidential letter of caution.

But Respondent wanted more than exoneration – he wanted retribution. As the Referee found,

Respondent stated more than once, including under oath, that he wanted “to make her (Ms. Koch) pay,” (Tr. 245, 518-519) and did not want to rely on his potential successful defense at a Commission hearing (i.e., the dismissal of the complaint) because that was not “recourse” (Tr. 519) (Rep 24, ¶ 9).

The hearing evidence makes clear that Respondent was extremely angry about the incident at Seeta and Ms. Koch’s complaint. Mr. Sussman testified that it is not “disputable” that Respondent was “upset and embarrassed and angry” and that he had “more than one conversation” in which Respondent “expressly said that he was angry about what occurred at Seeta” (Sussman: 243). When Respondent sought Mr. Sussman’s advice about suing Ms. Koch, Respondent was “very angry with Ms. Koch and the fact that he felt she was besmirching him, his reputation. He was very angry about it” (Sussman: 245). According to Sussman, Respondent

thought Ms. Koch “deserved to be punished” for filing her Commission complaint (Sussman: 247-248).

Respondent was still angry at the time of the hearing. The Referee found that “Respondent’s anger resulting from that complaint was palpable in the hearing room, and in the facts to which he testified” (Rep 31).

The substantial and un rebutted evidence of Respondent’s anger toward Ms. Koch and his avowal that she “deserved to be punished” can lead to only one conclusion: that Respondent brought the lawsuit to retaliate against Ms. Koch. The Referee agreed, finding that “it cannot seriously be disputed that Respondent’s defamation action was motivated by his anger at Ms. Koch, mainly but not exclusively for her filing of a complaint with the Commission” (Rep 24 ¶ 9).

Moreover, the “evidence is overwhelming that Respondent’s defamation lawsuit was in retaliation for Ms. Koch’s confidential Commission complaint, starting, but not ending with the fact that the only defamatory statements alleged were those Ms. Koch made in the complaint” (Rep 31).

The Commission has explicitly stated that “[r]etaliating against an individual who has complained about a judge’s conduct is especially improper and threatens the integrity of the judicial disciplinary system.” *Matter of Tripp*, 2011 Ann Rep of NY Commn on Jud Conduct at 151, 155. Indeed, judges who engage in even minor retaliation, or who create even the appearance of retaliation, have been

found to have committed misconduct and subject to discipline. *See, e.g., Matter of Hart*, 2009 Ann Rep of NY Commn on Jud Conduct at 97 (judge censured, in part, because grant of lengthy adjournment “created the impression that he was using his judicial office to retaliate” against a bank in a foreclosure matter); *Matter of Esposito*, 2004 Ann Rep of NY Commn on Jud Conduct at 100 (judge censured, in part, for creating the appearance of retaliation by complaining to a tax accessor about a former colleague who had previously made a complaint about him to the Commission); *Matter of Tripp*, 2011 Ann Rep of NY Commn on Jud Conduct at 151 (judge censured, in part, for retaliating against a defendant who complained about the judge to the Commission by denying his extension request).

Here, Respondent’s misconduct went far beyond the misconduct in those cases. The Referee properly determined that “[t]he initiation by a judge of a defamation lawsuit against a complainant to the Commission . . . is a serious violation of” Sections 100.1, 100.2(A) and 100.4(A)(2) of the Rules (Rep 25 ¶ 15). The Commission should affirm those findings and determine that Respondent has committed judicial misconduct in violation of the charged Rules.

B. Respondent’s actions are not excused by claims that he relied on the “advice of counsel.”

The Referee rightfully and explicitly rejected Respondent’s defense that he relied on the advice of counsel in bringing the lawsuit, concluding that it “fails utterly as a factual matter” (Rep 32).

The hearing evidence clearly established that Mr. Sussman did not advise Respondent to bring a lawsuit. To the contrary, he counseled Respondent against it. Respondent admitted that before he sued Ms. Koch, Mr. Sussman told him, “It doesn’t look good for a judge to sue the person who complained about [you]” (Mora: 503). This was not just a passing comment. According to Respondent, Mr. Sussman “went through a whole diatribe” about “optics” (Mora: 503-504). To the extent that Mr. Sussman opined on whether Respondent should sue Ms. Koch, his advice about “optics” and his warning that “it doesn’t look good” should have caused Respondent to consider whether his lawsuit might be improper, or at the very least, might create the appearance of ethical impropriety.

Instead, Respondent rejected Mr. Sussman’s advice because, in his view, “judges aren’t really concerned with optics” (Mora: 505). But the “optics” that Respondent dismisses out of hand are the very essence of the “appearance of impropriety.” Even in cases where there is no actual wrongdoing, “the appearance of such impropriety is no less to be condemned than is the impropriety itself.” *Matter of Putorti*, 40 NY3d 359, 366 (2023).

In rejecting Respondent’s advice of counsel defense, the Referee correctly concluded that “Respondent took counsel’s advice when he agreed with it, and rejected counsel’s advice when he didn’t” (Rep 32). He observed that when deciding to sue Ms. Koch, Respondent took Mr. Sussman’s advice that he had a

viable claim for defamation, but rejected his advice about “optics” and that “it doesn’t look good” for a judge to sue the person who complained about him (Rep 23 ¶¶ 4-5). Although Respondent wanted to bring claims against Ms. Koch for tortious interference and/or a violation of his HIPPA rights, he took Mr. Sussman’s advice that he could not make out a claim for either (Rep 23 ¶ 24).

After Ms. Koch and the Commission filed motions to dismiss Respondent’s suit, Respondent again rejected Mr. Sussman’s advice that he should withdraw his lawsuit because, as Sussman explained, “[i]t’s just a bad look for a Judge to sue the person who complains about him, rather than to resolve the issues in the forum intended to resolve the complaint” (Comm Ex 25; Sussman: 256). Rather than withdrawing the lawsuit as Mr. Sussman advised, Respondent directed him to oppose the motion to dismiss (Comm Ex 11; Rep 23 ¶¶ 4-5).

Whether Respondent had a viable claim for defamation under civil law is not the relevant issue in this case. What is relevant is whether Respondent violated the Rules Governing Judicial Conduct by suing a Commission witness during an ongoing investigation. Respondent’s testimony established that he acted as his own attorney in deciding that issue.

At the time he filed his defamation suit, Respondent was being investigated by the Commission with respect to four different complaints, including the complaint made by Ms. Koch (Mora: 511). He was represented in those

Commission matters by Chad LaVeglia, Esq. (Mora: 511). Yet despite having retained ethics counsel to advise him whether the conduct alleged in these other complaints violated the Rules, he did not ask Mr. LaVeglia for an opinion whether suing Ms. Koch might be misconduct (Mora: 512).

He explained, “If I had any questions about misconduct [with respect to the defamation suit], I would have called Laura Smith,” the Chief Counsel to the Advisory Committee on Judicial Ethics (Mora: 512). He admitted that he did not, however, call Ms. Smith for an opinion on whether suing Ms. Koch might be judicial misconduct (Mora: 512).⁸

Instead, Respondent relied on his own research when considering whether suing Ms. Koch might violate the Rules. He declined to seek an opinion from Mr. LaVeglia or Ms. Smith – two attorneys that he knew had experience in judicial ethics.

Respondent made the decision to move forward with the lawsuit despite his attorney’s advice that “it doesn’t look good,” failed to get advice of ethics counsel as to whether his lawsuit would violate the Rules and relied on his own research

⁸ Respondent testified that instead of calling Ms. Smith, he relied on his own interpretation of an Advisory Opinion she previously provided him in response to his question about suing the Office of Court Administration in federal court (Mora: 508-510). That opinion is plainly irrelevant to the issues in this case. Respondent conceded that Advisory Opinion 12-96 concerns whether a judge could negotiate a plea to dispose of his own vehicle and traffic matter and that it did not address whether a judge could sue a complainant in an active judicial conduct investigation. (Mora: 509-510; Resp Ex G).

and judgment in determining to sue Ms. Koch. His conduct indicates a conscious decision to retaliate against Ms. Koch by filing the defamation action. On these facts, “advice of counsel” is not a defense.

POINT II

RESPONDENT’S LAWSUIT HAD SERIOUS IMPLICATIONS FOR THE COMMISSION’S CONSTITUTIONAL MANDATE TO INVESTIGATE AND HEAR COMPLAINTS OF JUDICIAL MISCONDUCT.

Respondent’s decision to sue Stacey Koch in retaliation for her complaint to the Commission had serious implications that went far beyond Ms. Koch’s personal finances. While it was directed at Ms. Koch, Respondent’s lawsuit against a Commission witness was a simultaneous attack on the Commission’s integrity and its constitutional mandate to investigate, hear and decide complaints of judicial misconduct.

As the Court of Appeals acknowledged long ago, “[t]here is hardly a higher governmental interest than a State’s interest in the quality of its judiciary.” *Matter of Nicholson*, 50 NY2d 597, 607-08 (1980) (internal citations omitted). The Commission is the entity responsible for furthering this interest. When made aware of acts which may constitute judicial misconduct, the Commission “must be free to conduct an investigation to determine whether formal charges are warranted.” *Matter of Nicholson*, 50 NY2d at 608.

More recently, the Court of Appeals has recognized, “If the public trust in the judiciary is to be maintained, as it must, those who don the robe and assume the role of arbiter of what is fair and just must do so with an acute appreciation both of their judicial obligations and of the Commission’s constitutional and statutory duties to investigate allegations of misconduct (see N.Y. Const, art VI, § 22; Judiciary Law, article 2–A).” *Matter of O’Connor*, 32 NY3d 121, 129 (2018).

Here, Respondent’s defamation lawsuit was clearly an attempt to circumvent the ordinary disciplinary process, which would set a harmful precedent for the public and adversely affect the Commission’s obligation to investigate judicial misconduct in the future.

A. Respondent’s lawsuit attempted to circumvent the Commission’s constitutional mandate to investigate complaints against New York State judges.

Respondent has made no effort to conceal his disdain for the Commission. In an email exchange with Mr. Sussman on February 8, 2023, Respondent wrote “The corruption doesn’t end!”, referring to what Respondent believed to be corruption on the part of the Commission, the Office of Court Administration, “and others” (Comm Ex 23; Mora: 452-453, 546-549). At the hearing, he maintained that was still his opinion (Mora: 453). In another email to Mr. Sussman Respondent wrote, “If I thought the [Commission] process was going to be fair, I would not have brought the [defamation] suit,” adding “[t]his is a proverbial witch

hunt” (Comm Ex 25; Mora: 456-457). He later told Sussman, “It is readily apparent that the commission is trying to remove me as judge due to my religious beliefs. Since they seem to have hit a brick wall, they are trying to figure out how to get me out based on my inability to mask” (Comm Ex 28; Mora: 459).

By filing a defamation suit challenging statements made in Ms. Koch’s Commission complaint, Respondent sought findings of fact from a court of law on the truthfulness of allegations that were at the heart of the Commission’s inquiry. Had Supreme Court done so and issued a ruling regarding the veracity of Ms. Koch’s claims, it would have “restrict[ed] unnecessarily the commission’s power to inquire into judicial misconduct” and “render[ed] the Commission ineffective as the instrument through which the integrity of the judiciary is assured.” *Matter of Nicholson*, 50 NY2d at 612.

Respondent’s lawsuit sought a ruling from Supreme Court, Dutchess County, on a factual issue exclusively within the jurisdiction of the Commission. But no court other than the Court of Appeals is vested with the authority to set aside the Commission’s findings of fact. As the Court of Appeals explained in *Matter of Quinn*, 54 NY2d 386 (1981), “in matters involving the conduct and continued fitness of judicial officers the Constitution has conferred upon this court broad plenary power to determine the facts and appropriate sanction in the exercise of its own sound discretion and judgment.” *Id.* at 391.

B. Respondent's lawsuit created a potential chilling effect on every Commission investigation by discouraging citizens from reporting instances of judicial misconduct for fear of being sued.

Ms. Koch's complaint against Respondent was confidential by statute. At the time he filed his lawsuit, the Commission had provided Respondent with a copy of Ms. Koch's confidential complaint and afforded him an opportunity to respond to the allegations in writing, which he did through counsel (Mora: 512-513). In the midst of the Commission's investigation, despite being given the opportunity to be heard, Respondent chose to publicly file his defamation lawsuit and make Ms. Koch's complaint public. As the Referee found, "Respondent knew when he filed his defamation action, to which he attached Ms. Koch's complaint to the Commission, both documents would be promptly available to the public" and "those documents became matters of public record and received media coverage" (Rep 24 ¶ 6; Mora: 528, 554, 556). The lawsuit sent a clear message to other members of the Seeta staff who observed Respondent's interaction with Stacey Koch, and to any members of the larger community who had knowledge relevant to Respondent's fitness for judicial office, that cooperating with a Commission investigation might expose them to lawsuits and severe financial hardship.

But Respondent's lawsuit not only interfered with the Commission's investigation and resolution of this complaint. It created an obvious chilling effect on other members of the public who may come forward with complaints of

misconduct about other judges. The fear that a judge could file a lawsuit seeking hundreds of thousands of dollars in damages for statements made in a confidential complaint is likely to be a strong deterrent to reporting judicial misconduct. As the Dutchess County Supreme Court held in dismissing Respondent's lawsuit, "there is a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility." *Mora v Koch*, 79 Misc3d 434, 442 (Sup Ct Dutchess Co 2023) (Comm Ex 15).

To that end, Supreme Court recognized that statements made in the context of a Commission complaint must "be absolutely privileged so that those discharging a public function may speak freely in doing so, insulated from harassment and fear of financial hazard." *Mora*, 79 Misc3d at 441. By suing for \$425,000, Respondent clearly put Ms. Koch in such "fear of financial hazard," although remarkably he refused to concede that \$425,000 was "a lot of money," cavalierly saying of Ms. Koch: "How do I know she's not a multimillionaire or even a billionaire?" (*Mora*: 521). His public lawsuit created a real risk that Ms. Koch and other potential witnesses might be reluctant to testify fully and freely for fear of being sued for hundreds of thousands of dollars, thereby underscoring the seriousness of his misconduct.

POINT III

THE REFEREE WAS WRONG TO CONCLUDE THAT RESPONDENT'S WILLFUL REFUSAL TO COMPLY WITH REPEATED DIRECTIVES TO LEAVE A PRIVATE MEDICAL OFFICE DID NOT VIOLATE THE RULES.

It is uncontested that Stacey Koch asked Respondent several times to leave the Seeta premises if he was unwilling to wear a mask (Mora: 388). It is also uncontested that Ms. Koch called the police twice as a result of Respondent's refusal to leave (Comm Ex 2; Comm Ex 2-A; Comm Ex 3; Comm Ex 3-A; Comm Ex 4; Comm Ex 4-A; Comm Ex 5; Comm Ex 5-A; Koch: 162-163, 170-171, 173-176). The audio recording of Ms. Koch's call to the police, which is irrefutable, revealed that a police official advised Ms. Koch that if Respondent was refusing to leave Seeta, an officer could be sent to Seeta (Comm Ex 3, 0:02:03 – 0:02:15; Comm Ex 3-A, 3). These uncontested facts, which would establish a claim against Respondent for civil trespass, plainly support the conclusion in this proceeding that he committed judicial misconduct by refusing to comply with repeated lawful requests to leave Seeta.

A. Respondent refused to leave Seeta despite numerous requests, prompting Ms. Koch to call the police.

As the Court of Appeals has held, judges are held to higher standards of conduct than the general public and must "conduct [their] everyday affairs in a manner beyond reproach." *Matter of Kuehnel*, 49 NY2d 465, 469 (1980). Even

“relatively slight improprieties subject the judiciary as a whole to public criticism and rebuke.” *Matter of Going*, 97 NY2d 121, 127 (2001) (citation omitted). For this reason, “members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.” *Matter of Lonschein*, 50 NY2d 569, 572 (1980) (citation omitted).

Respondent admitted that Ms. Koch told him he had to wear a face mask or leave the office (Rep 14; Mora: 467-468). The Referee noted that Respondent “agreed with Ms. Koch’s testimony that she directed him a number of times to leave the office” (Rep 12; Mora: 387). Respondent also conceded, and the Referee found, that he repeatedly refused to leave the premises despite Ms. Koch’s numerous requests (Mora: 387-388; Rep 21 ¶ 12). Respondent testified that after Ms. Koch called the police, “I wasn’t going to leave . . . I didn’t do anything wrong” (Mora: 389). He remained in the waiting room even after Ms. Koch called the police for the first time and he believed that police were responding (Mora: 473-474). Despite this finding, the Referee found that Respondent’s failure to comply with Ms. Koch’s requests to leave “the first few times” was only a “minor” error in judgment that did not amount to misconduct (Rep ¶ 12).

The Referee’s finding also glosses over the fact that by refusing Ms. Koch’s reasonable requests to leave and persisting in remaining in the waiting room, even

after Ms. Koch called the police, Respondent escalated a situation that could have easily been diffused by stepping outside of the office.⁹ In fact, Respondent conceded at the hearing that he should have stepped outside and tried to resolve the situation (Mora: 468). Respondent's defiant behavior in refusing to leave needlessly escalated and prolonged a relatively minor exchange over wearing a mask to the point that Ms. Koch had to call the police.

By refusing Ms. Koch's repeated requests to leave, Respondent committed both misconduct and civil trespass. A person commits civil trespass when he refuses "to leave after permission to remain ha[s] been withdrawn." *Long Island Gynecological Services, P.C. v Murphy*, 298 AD2d 504 (2d Dept 2002) *citing Rager v McCloskey*, 305 NY 75, 79 (1953). That is precisely what happened here. A non-judge who refused to leave the premises would be escorted out by the police, as the Town of Poughkeepsie Police Department was prepared to do on December 28th. Respondent avoided that consequence only by leaving after Ms. Koch said that the police were coming. He cannot avoid the consequences of his actions here.

⁹ Apart from recounting Respondent's testimony, the Referee's Report is silent on the credibility of Respondent's claim that he did not leave Seeta because he was experiencing a panic attack (Mora: 468). Respondent's claim should be discredited, as he was not being treated for panic attacks in December 2021, and he did not seek any form of treatment until months later, after receiving the Commission's inquiry letter. What is more, Respondent did not present any evidence at the hearing, apart from his own testimony, to support his claims relating to anxiety and panic attacks.

In determining that Respondent’s conduct did not violate the Rules, the Referee distinguished several Commission cases from the facts in the instant case (Rep 29-31). He concluded that Respondent’s “one highly contested instance of nonjudicial conduct” was “not even close to comparable for its inappropriateness or venality” than the cases relied on by Commission Counsel (Rep 31).

The Referee’s approach is flawed in at two respects. First, the Referee’s comparison of the “inappropriateness” and “venality” of Respondent’s conduct to others was, in essence, a proportionality review of Respondent’s conduct, which is appropriate in determining sanction – not whether misconduct occurred in the first place. Next, nearly all of those cases that were the subject of comparison were cited for propositions of law, not for their factual similarity to Respondent’s case. *See, e.g., Matter of Aldrich*, 58 NY2d 279 (1983) and *Matter of Kuehnel*, 49 NY2d 465 (1980) (judges are held to the highest standards of personal conduct both on and off the bench); *Matter of Quinn*, 54 NY2d 386 (1981) (judges are required to insure that their off-the-bench conduct does not undermine integrity of judiciary and public confidence); *Matter of Mazzei*, 81 NY2d 568 (1993) (“[W]hat might be acceptable behavior when measured against societal norms could constitute ‘truly egregious’ conduct in the context of a judicial disciplinary proceeding”); *see also, Matter of Senzer*, 35 NY3d 216, 219 (2020) (same); *Matter of Hall*, 2024 Ann Rep of NY Commn on Jud Conduct at 102 (same); *Matter of Persons*, 2024 Ann Rep of

NY Commn on Jud Conduct at 170 (same); *Matter of Stilson*, 2023 Ann Rep of NY Commn on Jud Conduct at 290 (same).

No two cases are truly identical. The Commission, however, has previously imposed public discipline for “personal conduct by a judge unrelated to judicial office” that constitutes “a departure from the exacting standards of personal conduct required of judges.” *Matter of Fisher*, 2019 Ann Rep of NY Commn on Jud Conduct at 126, 133-34 (judge admonished for entering property without permission and taking photos that he posted on Facebook with disparaging comments about the occupant).

The Commission’s determination in *Matter of Pautz*, 2005 Ann Rep of NY Commn on Jud Conduct at 199, is instructive. In *Pautz*, the Commission considered the conduct of a judge who, following a romantic breakup, continued to contact his former partner for a period of several weeks despite her explicit request that he stop doing so. The Commission characterized the conduct as “a series of annoying acts.” *Id.* at 200. Although criminal charges were dismissed and the judge’s attempts to contact his ex-girlfriend were annoying but not threatening, the Commission nonetheless imposed a public admonition, noting that judges are held to higher standards of conduct than the public at large.

Likewise, in *Matter of Fisher*, the Commission concluded that the judge committed misconduct by entering a property, of which his wife was co-executrix,

without the owner's permission, taking photographs of the interior and posting those photographs on social media. In reaching this conclusion, the Commission observed that Respondent had no legal right to enter and photograph the premises. *See Matter of Fisher*, 2019 Ann Rep of NY Commn on Jud Conduct at 134. The Commission concluded that "[a]s a judge for over 20 years who presumably has handled numerous Trespass cases, respondent should have recognized that entering a private property without the owner's permission may constitute a violation under the Penal Law (§140.05)." *Id.*

The Commission's reasoning in those cases applies here. It is important to note, as the Referee did, that the incident at Seeta occurred during

one of the peaks of the national and international Covid 19 pandemic during which, . . . there was understandable fear, uncertainty, confusion and, in some cases, panic as to the proper courses of action, particularly concerning the medical risks attendant to the interaction with professionals and members of the public

(Rep 19-20). Respondent conceded at the hearing that he should have stepped outside and tried to resolve the situation (Mora: 468). By choosing instead to refuse multiple requests to leave, Respondent unnecessarily prolonged a tense interaction at a time when the public at large was experiencing levels of fear and concern about their health. In that context, Respondent's repeated refusal to leave was more than just "annoying" – it provoked anxiety and fear in a public setting.

And as in *Fisher*, Respondent's repeated refusal to leave constituted civil trespass and violated the law. The fact the local police said they would send an officer if Respondent refused to leave demonstrated as much, and should have put him on notice that his conduct was improper.

Respondent's conduct did not conform even to the social norms expected of ordinary citizens in that situation, let alone to the heightened standard expected of judges. For the benefit of the public and the bench, the Commission should reaffirm that judges are expected to observe high standards of conduct at all times and find that Respondent committed misconduct when he refused to leave Seeta.

POINT IV

THE APPROPRIATE SANCTION FOR RESPONDENT'S EGREGIOUS MISCONDUCT IS REMOVAL.

Motivated by anger and a misguided sense of self-righteousness, Respondent sought to circumvent the normal course of Commission proceedings by suing a complainant for \$425,000. As the factual findings of the Referee make clear, he was not just seeking justice, he was seeking retribution. Even years later, his "anger resulting from [Ms. Koch's] complaint was palpable in the hearing room" (Rep 31). Testifying under oath, he repeated that he wanted "to make her pay" (Rep 24, ¶ 9).

The impact of Respondent's lawsuit goes far beyond the significant financial and emotional toll it placed on Stacey Koch and her family. It was a direct assault

on the integrity of this Commission’s constitutional role to investigate and hear complaints of judicial misconduct. Yet, as the Referee found, Respondent still demonstrates “no awareness of, or interest in,” the obvious fact that “suing the complainant for damages will of course dissuade an unknown, but large, number of citizens from bringing meritorious complaints to the Commission” (Rep 31-32).

Respondent’s misconduct threatens the integrity of the judicial disciplinary system and, if allowed to stand without the ultimate disciplinary consequence, would have a chilling effect on complainants and witnesses in every Commission investigation. His continuing attempts to deflect responsibility for his actions exacerbate his misconduct. Removal is the only appropriate sanction.

A. The evidence is overwhelming that Respondent sued Stacey Koch in retaliation for her Commission complaint.

As the Referee found, “the evidence is overwhelming that Respondent’s defamation lawsuit was in retaliation for Ms. Koch’s confidential Commission complaint” (Rep 31). He was motivated by his anger at Ms. Koch for having filed a complaint against him with the Commission (Rep 24 ¶ 9, 31). He thought that Ms. Koch “deserved to be punished” (Sussman: 247-248) and he wanted to “make her pay” (Rep 24 ¶ 9; Mora: 519-520).

Respondent’s conduct is all the more egregious because he brought his lawsuit against the advice of his own attorney. Mr. Sussman advised Respondent that while he could sue Ms. Koch for defamation, it “doesn’t look good” for a

judge to sue the person who complained about him to the Commission (Rep 32; Mora: 503; Sussman: 249-250). According to Respondent, Mr. Sussman “went through a whole diatribe” about “optics” (Mora: 503-504), the very essence of an appearance of impropriety.

When Ms. Koch and the Commission’s Administrator filed motions to dismiss Respondent’s suit, Mr. Sussman’s told him that he should withdraw because, “[i]t’s just a bad look for a Judge to sue the person who complains about him, rather than to resolve the issues in the forum intended to resolve the complaint” (Rep 23; Comm Ex 25; Sussman: 256). Yet Respondent refused to do so.

The Commission has held that it is misconduct for a judge to create even the appearance of retaliation. *See, e.g., Matter of Esposito*, 2004 Ann Rep of NY Commn on Jud Conduct at 100 (judge censured, in part, for creating the appearance of retaliation by complaining to tax accessor about former colleague who had previously made a complaint about him to Commission); *Matter of Tripp*, 2011 Ann Rep of NY Commn on Jud Conduct at 151 (judge censured, in part, for retaliating against defendant who complained about judge to Commission by denying his extension request). Of course, Respondent’s misconduct went well beyond inappropriate appearances. It was direct, intentional, malevolent retaliation against Stacey Koch, warranting the sternest sanction available to the Commission.

B. Respondent sought to circumvent the Commission’s constitutional authority to investigate and hear complaints of judicial misconduct.

Respondent brought his lawsuit in Supreme Court despite the fact that – as his attorney advised – he could have resolved whether Ms. Koch’s complaint had merit in this Commission proceeding (Sussman: 256). Respondent did not do so because he regarded the Commission as “corrupt” (Comm Ex 23; Mora: 452-453, 546-549). He told his attorney that if he “thought the [Commission] process was going to be fair, [he] would not have brought the suit” (Comm Ex 25). He believed that “the commission [was] trying to remove [him] as judge due to [his] religious beliefs” (Comm Ex 28; Mora: 459).

Moreover, Respondent wanted money – he wanted monetary damages that this Commission proceeding could not provide him. According to Mr. Sussman, Respondent “[a]bsolutely” wanted Ms. Koch to pay damages (Sussman: 248).

By filing a defamation suit challenging statements made in Ms. Koch’s Commission complaint, Respondent sought to circumvent this Commission’s constitutional authority to investigate and hear complaints of judicial misconduct. NY Const Art VI, §22; NY Judiciary Law § 42.

Respondent’s lawsuit sought findings of fact from a court of law on the truthfulness of allegations that were at the heart of the Commission’s inquiry. Had the court done so and issued a ruling regarding the veracity of Ms. Koch’s claims,

it would have “restrict[ed] unnecessarily the commission’s power to inquire into judicial misconduct” and “render[ed] the Commission ineffective as the instrument through which the integrity of the judiciary is assured.” *Matter of Nicholson*, 50 NY2d at 612.

No court other than the Court of Appeals is vested with the authority to set aside the Commission’s findings of fact. Indeed, the Court of Appeals has explained that “in matters involving the conduct and continued fitness of judicial officers the Constitution has conferred upon this court broad plenary power to determine the facts and appropriate sanction in the exercise of its own sound discretion and judgment.” *Matter of Quinn*, 54 NY2d at 391.

The Court of Appeals has also recognized, “If the public trust in the judiciary is to be maintained, as it must, those who don the robe . . . must do so with an acute appreciation . . . of the Commission’s constitutional and statutory duties to investigate allegations of misconduct (citations omitted).” *Matter of O’Connor*, 32 NY3d at 146 (removing judge for *inter alia* failing to cooperate with the Commission’s investigation and proceedings). Respondent’s failure to appreciate as much here, and his purposeful attempts to delay and derail the Commission from fulfilling its constitutional responsibilities, warrant removal.

C. Respondent's lawsuit created a "chilling effect" that dissuades members of the public from filing complaints with the Commission.

"Experience teaches that the effective performance of" the Commission's role in preserving public confidence in the courts, "necessarily requires the free flow of information to the Commission." *Stern v Morgenthau*, 62 NY2d 331, 339 (1984). Both Supreme Court and the Referee recognized that Respondent's lawsuit against Stacey Koch jeopardized that "free flow of information to the Commission" here.

As the Dutchess County Supreme Court held, "there is a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility." *Mora*, 79 Misc3d at 442. The Referee reached the same conclusion, finding that "permitting judges who are brought before the Commission to respond by suing the complainant for damages will of course dissuade an unknown, but large, number of citizens from bringing meritorious complaints to the Commission" (Rep 31-32).

Respondent's lawsuit against Ms. Koch was public – he made no request to seal or otherwise keep the suit confidential (*Mora*: 554). The story was printed in the local newspaper (Rep 24 ¶ 6; *Mora*: 528). There is no way to tell if other Seeta employees, patients in the waiting room, or members of the public read that story

and decided not to come forward with relevant information about Respondent or other judges who may have committed misconduct. By publicly suing a Commission complainant for a substantial sum of money, Respondent not only threatened the integrity of this proceeding. His lawsuit threatened to “dissuade an unknown, but large, number of citizens from bringing meritorious complaints to the Commission” about other judges (Rep 31-32). For that misconduct, a serious sanction is required.

D. Respondent has failed to acknowledge the seriousness of his misconduct.

Respondent’s “inability to recognize the seriousness” of his misconduct (*Matter of Ayres*, 30 NY3d 59, 65 [2017]) and his disturbing disregard of the high ethical standards required of judges, “demonstrate[] an unacceptable degree of insensitivity to the demands of judicial ethics” (*Matter of Conti*, 70 NY2d 416, 419 [1987]), which exacerbates his already serious misconduct.

Asked if filing his lawsuit was proper “as a judge who is obligated to [follow] the rules governing judicial conduct,” Respondent replied, “You mean that – because it wasn’t allowed?” (Mora: 507). He repeatedly and astoundingly testified that he still believed that he would prevail before a jury on his defamation action against Stacey Koch (Rep ¶ 25, 14; Mora: 503-505, 533). Respondent attempted to minimize his role in the misconduct, acknowledging that he should not have brought the lawsuit but adding, “I think [Mr. Sussman] gave me improper

advice” (Mora: 551-552). He agreed that he owed Ms. Koch an apology “[f]or filing a suit that [he] shouldn’t have brought” but only because he “got improper advice on” bringing the suit (Mora: 534). And, as the Referee concluded, “Respondent demonstrated no awareness of, or interest in, the institutional fact that permitting judges who are brought before the Commission to respond by suing the complainant for damages will of course dissuade an unknown, but large, number of citizens from bringing meritorious complaints to the Commission” (Rep 31-32).

E. Respondent should be removed from judicial office.

This case turns on a simple principle the Commission has already articulated and from which it cannot retreat. “Retaliating against an individual who has complained about a judge’s conduct is especially improper and threatens the integrity of the judicial disciplinary system.” *Matter of Tripp*, 2011 Ann Rep of NY Commn on Jud Conduct at 151, 155.

Respondent’s decision to retaliate against a Commission complainant by suing her against the advice of counsel was indeed, “especially improper.” It is, in fact, easily the most serious threat to the integrity of the judicial disciplinary system since the Commission’s inception.

Only three prior Commission determinations involve a judge who retaliated against someone who filed a Commission complaint against them. The severity of

the threat of retaliation in those cases is not remotely comparable to what Respondent did here.

In *Matter of Tavormina*, 1990 Ann Rep of NY Commn on Jud Conduct at 164, the Commission admonished a judge who, *inter alia*, confronted an attorney who filed a complaint against him and yelled at her in a hallway outside the courtroom, called her a liar, and threatened to put her in handcuffs.

In *Matter of Esposito*, 2004 Ann Rep of NY Commn on Jud Conduct at 100, the Commission censured a judge, in part, for creating “the appearance that he was retaliating” against a former colleague who had made a complaint against him by complaining to the tax accessor about the assessment on property owned by the former colleague’s spouse.

And in *Matter of Tripp*, 2011 Ann Rep of NY Commn on Jud Conduct at 151, the Commission censured a judge, in part, for retaliating against a defendant who filed a complaint against him by denying his request for a two-week extension to pay a fine.

In each of these cases the Commission properly determined that these acts of retaliation were judicial misconduct. But yelling, verbal threats and denying a request for an extension of time all pale in comparison to filing a frivolous retaliatory lawsuit for \$425,000.

The misconduct in this case is profoundly different in kind and degree than anything the Commission has confronted before. The retaliation in prior cases occurred in circumstances that made it unlikely that the members of the public who were not present would ever learn of it. In contrast, Respondent's Supreme Court lawsuit was open, notorious and reported in the local media (Rep 24 ¶ 6; Mora: 528), raising the possibility that unknown individuals in the community who were considering filing complaints against other judges might be deterred.

Moreover, the constrained nature of the retaliation in prior Commission cases was far less likely to cause another complainant or witness to fear similar threatening treatment. Few potential complainants are likely to be back as a defendant in front of the same judge they complained about. Most complainants are not attorneys who regularly appear in that judge's court. But every potential complainant can imagine that an angry judge might sue them for defamation, exposing them to significant emotional stress and financial hazard.

As the Referee concluded,

If one could come up with only one ironclad rule defining judicial misconduct it would likely be: "It is judicial misconduct for a judge to sue a complainant to the Commission, especially for damages, especially in the middle of the Commission proceedings, and especially (but not only) when the lawsuit is meritless"

(Rep 31).

By doing so here, Respondent committed “a serious violation of the Rules Governing Judicial Conduct” (Rep 25). Any sanction less than removal would diminish public confidence in integrity of the judiciary and the Commission itself, as it would open the door to the “very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility.” *Mora*, 79 Misc3d at 442.

Respondent should be removed from office.

CONCLUSION

Commission Counsel respectfully requests that the Commission adopt the Referee's findings of fact and conclusions of law as to Charge II of the Complaint, adopt the Referee's findings of fact and reject his conclusions of law as to Charge I of the Complaint, find that Charges I and II of the Complaint are sustained, and issue a determination that Respondent be removed from office.

Dated: May 19, 2026
New York, New York

Respectfully submitted,

ROBERT H. TEMBECKJIAN
Administrator and Counsel to the
Commission on Judicial Conduct

By: 
Melissa DiPalo, Esq.
61 Broadway, Suite 1200
New York, New York 10006
646-386-4800

Of Counsel:

Mark Levine, Esq.
Edward Lindner, Esq.
Denise Buckley, Esq.
David Stromes, Esq.