

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.

**POST-HEARING MEMORANDUM TO THE REFEREE AND
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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PRELIMINARY STATEMENT

This Memorandum is respectfully submitted by Counsel to the Commission on Judicial Conduct (“Commission Counsel”) in support of the recommendation that the Referee adopt the appended proposed findings of fact and conclusions of law and determine that the Honorable Frank M. Mora (“Respondent”) has committed judicial misconduct.

INTRODUCTION

On December 28, 2021, while the COVID-19 pandemic was ongoing, Respondent deliberately caused a confrontation in the waiting room of Seeta Eye Center (“Seeta”), a private medical ophthalmology practice in Poughkeepsie, New York, over his refusal to wear a face mask. Respondent knew that the face shield he was wearing did not satisfy Seeta’s masking policy and he knew that Seeta had previously made an accommodation for his unwillingness to wear a mask. But rather than call Seeta in advance to arrange another accommodation because he was going to accompany his son to his appointment that day, Respondent walked into that office on December 28th intending to directly challenge Seeta’s policy face to face. He did so in a manner that was discourteous and unnecessarily confrontational.

Respondent’s claim that he had a “medical exemption” from the masking requirement was disingenuous, at best. At the time of the confrontation, he had never consulted a medical professional about his alleged condition. When Stacey

Koch, Seeta's manager, asked him for documentation to support his medical claim, he had none. But he continued to insist that he was exempt from the mask requirement, and he refused multiple requests to leave the premises when it became apparent he would not comply. He left only after Ms. Koch called the Town of Poughkeepsie Police Department and they agreed to send an officer.

The day after the incident, Ms. Koch filed a complaint with the New York State Commission on Judicial Conduct regarding Respondent's conduct at Seeta.

Angry that Ms. Koch would complain about his conduct and convinced that the "corrupt" Commission would not offer him sufficient recourse, Respondent ignored the advice of his counsel and sued Ms. Koch for defamation, seeking \$425,000 in alleged damages. Respondent conceded at the hearing that his lawsuit was, at least in part, retaliation for Ms. Koch's complaint, and that by suing a witness in a Commission investigation he created the appearance of impropriety. The suit was so utterly ill-conceived that it was dismissed on a pre-Answer motion. Respondent ultimately entered into a settlement agreement wherein he agreed to pay \$20,000 to cover Ms. Koch's costs and attorney's fees, to send her a signed letter of apology, and to avoid future contact with Ms. Koch and any Seeta location.

In addition, Respondent admitted that during the Commission's investigation, he failed to provide a complete set of emails responsive to the Commission's request for information.

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 about December 28, 2021, Respondent engaged in a discourteous verbal confrontation with Stacey Koch, an office manager at Seeta, over Respondent’s refusal to comply with the office’s facemask policy or leave the premises (Complaint ¶¶5-17). Ms. Koch called the police, which resulted in additional discourtesy by Respondent, who left only after a police official said he would send an officer to Seeta (Complaint ¶¶5, 13-14).

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).¹

¹ Paragraph 23 of the Formal Written Complaint mistakenly alleges December 21, 2022, instead of December 29, 2022, for the filing date of the defamation suit. At paragraph 19 of the Formal Written Complaint, the correct date of December 29, 2022, is alleged.

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).²

B. Respondent’s Answer

Respondent filed a Verified Answer (“Answer”) dated April 11, 2025. As to Charge I, Respondent admitted many of the factual allegations (Answer ¶¶5, 7-9, 11-14),³ but denied that his conduct at Seeta was discourteous or constituted misconduct (Answer ¶¶5, 18). Respondent asserted that he was unable to wear a face mask because he was suffering from “severe anxiety, which manifests as object phobia,” that he had been authorized to use the clear plastic face shield he wore at Seeta by his employer, the New York State Unified Court System, Office of Court Administration (“OCA”), and that Seeta’s policy requiring a mask was “void, a nullity, and unenforceable” in contravention of 10 NYCRR 2.60 (Answer ¶7). Respondent accused Ms. Koch of violating the mask mandate and engaging in unlawful and discriminatory conduct by demanding that he leave the premises solely because he could not wear a mask (Answer ¶11).

² During the hearing, the allegation at ¶43(B) of the Formal Written Complaint was conformed to the evidence that the email was withheld rather than redacted (Respondent: 560-561).

³ References to “¶” here refer to the paragraphs in Respondent’s Answer designated by the phrase “RESPONSE #”.

Respondent also admitted many of the allegations in the specifications under Charge II of the Formal Written Complaint (Answer ¶¶19, 23-29, 34), but he denied that his lawsuit was retaliatory or created an appearance of retaliation against a Commission complainant and denied all allegations and inferences of misconduct in connection with his lawsuit (Answer ¶¶19, 35).

As to Charge III, Respondent admitted that certain documents, including emails, were not turned over to the Commission, “but it was inadvertent and due to human error” (Answer ¶36, 43(B), 43(C), 43(D), 43(E), 43(G), and 43(H)). Respondent also asserted that he had no record of two emails that were allegedly withheld (Answer ¶43(A)). As for the redacted emails, Respondent claimed that one of the allegedly redacted emails was not redacted but instead was mistakenly withheld due to human error (Answer 43(B)). And the remainder of the allegedly redacted emails, he claimed, were emails that “he redacted in good faith” (Answer ¶¶36, 43(F), and 43(I)). Respondent denied that his conduct, in withholding and redacting material documents, constituted misconduct.

Respondent did not advance any affirmative defenses.

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. A hearing was held in the Commission’s New York City office on October 15, 16

and 17, 2025. Commission Counsel called four witnesses (Jessica Feather, Kristine Monteverdi, Janna Whearty, and Stacey Koch). A total of thirty-six exhibits introduced by Commission Counsel were admitted into evidence (Comm Ex 1- Comm Ex 34 and Comm Ex 36 – Comm Ex 37).⁴ Respondent’s Counsel called three witnesses (Respondent, Michael Sussman and Michael Brown). A total of eight exhibits introduced by Respondent’s Counsel were admitted into evidence (Resp Ex A-H). Unredacted copies of the Complaint and Respondent’s Verified Answer were admitted into evidence as Referee’s Exhibits A and B, respectively.

THE HEARING EVIDENCE

Charge I: During the COVID-19 pandemic, Respondent engaged in a discourteous verbal confrontation with the office manager at a private medical ophthalmology office over his refusal to comply with the office’s face mask policy or leave, resulting in the police being called.

On December 28, 2021, while the COVID-19 pandemic was ongoing, Respondent, who was unvaccinated, entered Seeta, a private medical ophthalmology practice, knowing that the face shield he was wearing did not comply with Seeta’s COVID-19 safety protocol. In a waiting room with

⁴ “Comm Ex” refers to the Commission exhibits introduced into evidence and “Resp Ex” refers to the Respondent exhibits introduced into evidence. All other citations are to the transcript of the hearing before the Referee.

approximately 20 patients present, Respondent discourteously confronted Seeta's office manager, Stacey Koch, in an argument over his refusal to put on a mask or leave. Respondent then refused multiple requests to leave the premises, prompting Seeta staff to call for assistance from the local police. Portions of the confrontation were captured in audio recordings of calls to 911 and the Town of Poughkeepsie Police Department. Respondent left only after learning that the Police Department was sending an officer.

The events of December 28, 2021

On December 28, 2021, the COVID-19 pandemic was ongoing, and Seeta had an office policy requiring that all individuals wear a face mask (Feather: 29-30; Monteverdi: 64; Koch: 143-146, 148-149; Respondent: 466-467). Patients were notified of the mask requirement when they received their appointment (Feather: 29-30; Monteverdi: 64; Koch: 148). Signs about the masking requirement were posted on the entrance doors to the building and near the check-in area (Feather: 29-30; Monteverdi: 64; Koch: 148).

Seeta provided masks for anyone who did not have one (Feather: 32; Koch: 169). If given advanced notice that a patient with an upcoming appointment was unable to wear a face mask for a medical reason, staff at Seeta would try to accommodate the patient, such as by meeting the patient in the parking lot and

taking them into the building through a side door (Feather: 31, 34, 37, 57, 59-60; Monteverdi: 77; Koch: 149-150).

Respondent, who was unvaccinated and was accompanying his [REDACTED] child to a routine appointment that day, appeared at the reception desk wearing a clear plastic face shield that was open on the bottom and at the sides (Feather: 32; Monteverdi: 64-65, 67; Koch: 149, 154-155; Respondent: 364, 382, 468; Resp Ex D [photo]). Although he was aware that his face shield did not comply with Seeta's face mask policy (Feather: 32; Monteverdi: 64-65, 67; Koch: 149, 154-155; Respondent: 465), Respondent did not contact Seeta to request an accommodation or to obtain permission to enter the building wearing a face shield instead of a mask (Respondent: 465-466). Nor did Respondent notify Seeta that he would be the one accompanying his child to the appointment that day (Feather: 37; Koch: 156; Respondent: 466).

Kristine Monteverdi and Jessica Feather were working at the reception desk that day (Feather: 31-33; Monteverdi: 65-66, 69). Their duties included ensuring that Seeta's safety protocols, including the face mask requirement, were followed. In the event of an issue, their practice was to ask one of Seeta's managers for assistance (Feather: 30, 33; Monteverdi: 64-65; Koch: 149).

Ms. Monteverdi recognized Respondent because 11 months earlier in January of 2021, while accompanying another son, Respondent had appeared at

Seeta's entrance wearing a face shield and refused her request to put on a mask, causing her to seek the assistance of Danielle Foster, one of the managers (Monteverdi: 63, 65, 67-68, 75; Koch: 168). At that prior appointment, Seeta's safety protocols included having a staff member monitor patients' temperatures before entering the building, a safety measure that no longer was in place on December 28, 2021 (Monteverdi: 65). Ms. Foster spoke with Respondent, who agreed to wait outside in the parking lot while his child – a [REDACTED] who *was* wearing a face mask – entered the building for his appointment (Monteverdi: 68, 77).

When Respondent approached the reception desk on December 28, 2021, Ms. Monteverdi asked him to put on a face mask (Feather: 32; Monteverdi: 67-68; Respondent: 383, 467). Respondent refused and stated in words or substance that he could not wear a mask due to a medical condition, without identifying or providing proof that he actually had such a condition (Monteverdi: 68-69; Feather: 32-33). In fact, Respondent had not consulted a medical professional about his alleged condition and had not been diagnosed with a condition that made him medically unable to tolerate a face mask (Respondent: 478-479).

Ms. Monteverdi repeated her request that Respondent put on a face mask and he again refused to comply (Feather: 32-33; Monteverdi: 69). Ms. Monteverdi

asked Respondent to wait outside while she got a manager (Monteverdi: 69).

Respondent refused Ms. Monteverdi's request to wait outside (Monteverdi: 69).

Jessica Feather called Stacey Koch, another one of the managers, and asked for assistance (Feather: 32-33; Monteverdi: 69; Koch: 151-152). Ms. Koch went to the waiting room and asked Respondent to put on a face mask (Feather: 33; Monteverdi: 69; Koch: 158).

Respondent again refused to put on a mask, stating in words or substance that he had a medical condition, without identifying the alleged medical reason he could not wear a mask (Feather: 34; Monteverdi: 69-70; Koch: 158-159). When Ms. Koch asked Respondent for documentation to support his medical claim, Respondent had none (Feather: 34; Monteverdi: 70; Koch: 158-159).

Ms. Koch asked Respondent to go outside and said that if he was unwilling to do so, she was going to call the police (Feather: 34; Monteverdi: 72; Koch: 159). Respondent refused to step outside and told Ms. Koch, in words or substance, to go ahead and call the police because the police would not come and/or the police were not enforcing the mask mandate (Feather: 35; Monteverdi: 72; Koch: 159).

Ms. Koch repeated her request that Respondent leave the premises several times, and each time Respondent refused (Feather: 34; Koch: 159, 161). That exchange of words between Respondent and Ms. Koch took place in the midst of patients in Seeta's waiting room (Feather: 34; Monteverdi: 66, 71; Koch: 157-158;

Brown: 308; Respondent: 466-468). During the exchange, Ms. Feather, Ms. Monteverdi and Ms. Koch heard the volume of Respondent's voice rise (Feather: 36; Monteverdi: 70; Koch: 159).

Ms. Koch asked Ms. Feather to call the police (Feather: 34-35; Monteverdi: 72; Koch: 161). Ms. Koch spoke with officials from 911 and the Town of Poughkeepsie Police Department ([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). While Ms. Koch was on the phone with police, Respondent continued to confront her ([Comm Ex 3](#), 0:01:10 – 0:01:24, 0:01:43 – 0:02:03; Comm Ex 3-A, 2-3; Koch: 159, 165, 170, 173-175; Respondent: 385-386, 471-472).

Ultimately, the police were called twice. Ms. Koch's two telephone calls with 911 and police were recorded ([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).

At the beginning of the first phone call to the police, 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.”⁵ ([Comm Ex 2](#), 0:00:35 – 0:00:47; Comm Ex 2-A, 1-2; Koch: 162).

The 911 operator then transferred Ms. Koch’s call to the Town of Poughkeepsie Police Department, “for a male causing a disturbance” ([Comm Ex 2](#); Comm Ex 2-A, 0:01:06-0:01:15; Koch: 162-163).

After identifying herself, Ms. Koch stated to the police official on the call, “I have many patients present, and I have a gentleman who is not adhering to the mask that we require in our practice” ([Comm Ex 3](#), 0:00:10 – 0:00:23; Comm Ex 3-A, 1).

Ms. Koch further stated, “So, we’re a medical practice. And he has to wear a mask here” ([Comm Ex 3](#), 0:00:23 – 0:00:27; Comm Ex 3-A, 1).

The police official asked for the name of the male who was refusing to wear a mask. Ms. Koch can be heard on the recording stating, “What is your name, sir?” and then providing the official with Respondent’s name ([Comm Ex 3](#), 0:00:28 – 0:00:45; Comm Ex 3-A, 1-2).

⁵ The transcript of the audio recording incorrectly states, “He wears a clear plastic face shield” instead of “He’s wearing a clear plastic face shield.” [Comm Ex 2](#), 0:00:43 – 0:00:47; Comm Ex 2-A, 1-2.

The police official then stated, “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?”⁶ ([Comm Ex 3](#), 0:00:45 – 0:00:49; Comm Ex 3-A, 2).

Ms. Koch replied, “Yes. And I’m very surprised because I believe he’s a longtime patient. But he says he has a medical explanation, but he has no documentation” ([Comm Ex 3](#),) 0:00:49 – 0:00:57; Comm Ex 3-A, 2). The police official then asked Ms. Koch to stay on the line while the call was placed on hold ([Comm Ex 3](#), 0:00:58 – 0:01:02; Comm Ex 3-A, 2).

Ms. Koch is then heard in the recording stating to a patient in the waiting room, “I understand, ma’am. I’m doing the best I can to protect you” ([Comm Ex 3](#), 0:01:26 – 0:01:30; Comm Ex 3-A, 3; Koch: 170).

At some point, Respondent’s conduct caused Ms. Monteverdi to feel uncomfortable, both because Respondent’s conduct seemed inappropriate and because of the gender difference between him and Ms. Koch (Monteverdi: 71). She felt so uncomfortable that she decided to leave the reception area and go to another part of the building, where she asked a male technician employed at Seeta – Michael Brown – to assist with a problem in the waiting room (Monteverdi: 71; Koch: 172-173; Brown: 307).

⁶ The transcript of the audio recording incorrectly states, “and he also refusing to put a mask on” instead of “and he’s also refusing to put a mask on”. See [Comm Ex 3](#) and Comm Ex 3-A.

Mr. Brown arrived in the waiting room and stood between Respondent and Ms. Koch (Koch: 172; Brown: 308-309). At that time, Mr. Brown observed that Respondent “was about halfway out in the waiting room” where there were patients (Brown: 308, 311). Mr. Brown observed Ms. Koch ask Respondent to leave because he was not wearing a mask, to which Respondent replied, “I’m wearing a mask,” referring to his face shield (Brown: 308-309). Mr. Brown worried about having Respondent leave the building to stop what was going on because he found the exchange between Respondent and Ms. Koch “embarrassing,” and he asked Respondent to leave (Monteverdi: 72; Brown: 309-311).

Ms. Koch is heard in the recording stating to Mr. Brown, “Thank you, Mike (phonetic). I appreciate your presence. I’m on the phone with the police, trying to get somebody to come here ([Comm Ex 3](#), 0:01:30- 0:01:39; Comm Ex 3-A, 3; Koch: 171).

The recording then captured the following exchange of words between Ms. Koch and Respondent:

Ms. Koch: If you just lived through what I lived through, you would know what you’re doing – no, don’t speak because we don’t want your air.

Respondent: Don’t want my air. You go to a restaurant –

Ms. Koch: I do not. I do not.

Respondent: – and everybody --

Ms. Koch: I do not go to a restaurant. I live with someone who had [REDACTED] three times, and I really don't want your germs on me⁷

([Comm Ex 3](#), 0:01:42 – 0:02:03; Comm Ex 3-A, 3; Koch: 159, 170, 173-174).

When Ms. Koch stated that she lived with someone who had [REDACTED] three times, she was referring to her husband (Koch: 174). The police official returned to the call and 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 replied, “That’s right. That’s what I’m requesting” and explained that she had a “room full of people so it’s really creating a problem for me” ([Comm Ex 3](#), 0:02:12 – 0:02:21; Comm Ex 3-A, 3-4).

The official on the phone replied, “Okay. So you have a bunch of people in the waiting room?” to which Ms. Koch replied “Yes” ([Comm Ex 3](#), 0:02:21 – 0:02:24; Comm Ex 3-A, 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).

⁷ The transcript of the audio recording incorrectly lists the quote, “I do not. I do not,” twice. [Comm Ex 3](#), 0:01:03 – 0:00:43; Comm Ex 3-A, 3.

Ms. Koch replied, “How long do you expect?” to which the official replied that he could not give a specific time, but it would be “hopefully, soon” ([Comm Ex 3](#), 0:02:29 – 0:02:40; Comm Ex 3-A, 4).

Ms. Koch thanked the officer and the phone call ended ([Comm Ex 3](#), 0:02:40 – 0:02:44; Comm Ex 3-A, 4-5).

Respondent heard that the police were coming (Respondent: 473-474) and then left the building (Koch: 175; Respondent: 473).

The police were then called a second time and Ms. Koch 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” ([Comm Ex 4](#), 0:00:13 – 0:00:19; Comm Ex 4-A, 1; Feather: 35; Koch: 176; Respondent: 474).

After taking Ms. Koch’s name, the 911 operator clarified with Ms. Koch that she was calling back, Ms. Koch stated, “He just left so – I’m going to hope it’s okay” ([Comm Ex 4](#), 0:00:32 – 0:00:37; Comm Ex 4-A, 1).

The 911 operator transferred Ms. Koch’s call to the Town of Poughkeepsie Police Department and Ms. Koch is heard in the recording stating that Respondent had left but she did “not know what he’s doing next” ([Comm Ex 5](#), 0:00:21 – 0:00:24; Comm Ex 5-A, 1; Koch: 177, 179). When asked to explain, Ms. Koch stated: “I mean, he literally would not leave and was creating a big ruckus in my waiting room

and just finally stepped out, but I don't know if he's left the parking lot. I don't know if he's trying to come back in again. I do know his name, and I can't believe he created such a difficult time in my waiting room in a very tame ophthalmology practice" ([Comm Ex 5](#), 0:00:24 – 0:00:49; Comm Ex 5-A, 1; Koch: 179).

Ms. Koch is later heard in the recording stating that Respondent had left and driven away, to which the official replied, "So if he returns, give us a call back" ([Comm Ex 5](#), 0:01:00-0:01:05; Comm Ex 5-A, 2).

Shortly after leaving Seeta, Respondent called G [REDACTED] M [REDACTED], his long-time friend and a chiropractor who treated him, and asked M [REDACTED] to produce a letter on his behalf (Respondent: 391, 475-476).

That same afternoon, Respondent forwarded to Ms. Koch a letter from the chiropractor that stated, "Due to [Respondent's] current health condition, he is medically unable to wear a mask" (Koch: 180-182; Resp Ex E, 2). The letter did not identify the health condition, nor did it state why the health condition rendered Respondent unable to wear a mask (Koch: 181-182; Resp Ex E, 2).

Ms. Koch then arranged for a doctor to examine Respondent's child that same day and asked Respondent to park in the parking lot, wait there and call the office upon his arrival (Koch: 180). Respondent did as instructed, and a Seeta employee escorted Respondent and his child through a back door at Seeta to an

exam room, after which a doctor performed an eye examination without further incident (Koch: 180).

Statement by Michael Brown dated December 28, 2021

Michael Brown, the technician who was called to the waiting room as the altercation was underway and witnessed a portion of Respondent's confrontation with Ms. Koch, prepared a handwritten note on December 28, 2021, after Respondent left (Koch: 186-187; Brown: 310). The note states:

I was in Exam Rm 3 when, Kristine entered the room asking me to go to the front lobby saying, there was a patient giving Stacey (our office manager) a hard time. When I arrived at the front lobby there was a gentleman with a face shield and no mask refusing to put a mask on, saying he has a doctors excuse not to wear one. Stacy asked this person to speak with his doctor & if there was an exception. This person refused. Stacey offered this pt a mask, he refused. This person then refused to leave the building. Stacy then called the police to have this man removed from the office. Person still refused to leave. I then asked the person to leave before the police came. He then obliged and left

(Comm Ex 29).

Mr. Brown prepared the statement at Ms. Koch's request (Koch: 186-187; Brown: 310). Ms. Koch was not present when he wrote it and she did not have any input into it (Koch: 186-187; Brown: 310). Mr. Brown testified that he was not required to write the statement, but he "felt it was extremely necessary by [his] employer at the time" (Brown: 327). In the statement, Mr. Brown wrote down "exactly what happened, what [he] saw" and nobody told him to leave anything out

before he wrote it (Brown: 310, 320-321). Mr. Brown testified that the statement describes “exactly what happened” and that he “just put down what [he] personally saw and what [he] personally did at the time, and what [Respondent] personally did at the time” (Brown: 321, 336).

Respondent’s Hearing Testimony

Respondent’s account of his earlier visit to Seeta approximately 11 months earlier, which he recalled as occurring in January of 2021, differed from that of Ms. Monteverdi. According to Respondent he entered the building and, Ms. Koch – not Ms. Foster – was the manager who appeared when he raised an issue about wanting to wear a face shield in lieu of a mask (Respondent 378-380). Respondent claimed that Ms. Koch was “abrupt” with him, and “came right into [his] face, within either a foot or two, and started yelling at [him]” (Respondent: 379).

Respondent stated that he agreed to wait outside while his child went in for the appointment because he believed his child – who was [REDACTED] years old at the time – was old enough to enter the building unaccompanied by him (Respondent: 380). Respondent further alleged that he asked Ms. Koch to “please have something in place for when I come back the next time” to which he claimed Ms. Koch replied, “Okay” (Respondent: 380).

Respondent was aware of Seeta’s face mask requirement when he entered the building on December 28, 2021, and he did not dispute that a notice about the

face mask policy was in place at the building's entrance (Respondent: 465).

Respondent believed that Seeta could not require that a mask be worn by anyone who did not medically tolerate a mask (Respondent: 379, 471). Respondent admitted that he did not phone ahead to seek permission to enter the building without a face mask or to seek an accommodation (Respondent: 465-466).

Respondent claimed that when Ms. Koch first entered the waiting room, she “walked straight past” him, went over to where the receptionists sit, and started “berating” him and “yelling” at him, causing him to go into “shock” and “have a panic attack” (Respondent: 384-385). He acknowledged that Ms. Koch told him that if he if he did not put on a face mask, he would have to leave (Respondent: 467). Respondent conceded that he should have stepped outside and tried to resolve the situation, but he did not do so because he “was in shock” and “having a panic attack” (Respondent: 468). According to Respondent, the panic attack caused him to become “frozen in [his] spot,” which is why he did not step outside when he should have (Respondent 385, 468, 481). Respondent did not tell Ms. Koch at any point that he was having a panic attack (Respondent: 468).

Respondent conceded that the level of his voice may have gotten “louder than normal talking” but claimed that if it did, it was not intentional, and it happened only because he was “trying to reason with [Ms. Koch] and explain the situation” (Respondent 390-391).

Respondent admitted saying, “What do you mean? Everyone breathes everyone’s air. People go to restaurants all the time” (Respondent: 386). Respondent denied saying that Ms. Koch went to a restaurant (Respondent: 386). Respondent testified that he was not trying to taunt Ms. Koch, but instead he was trying to explain to her that “[i]t didn’t make any sense what she was saying to me” (Respondent: 386).

Respondent testified that he did not say that the police were not going to come, but instead he said, “Dutchess County isn’t enforcing it. They’re not -- they won’t enforce it,” by which he meant the police were not enforcing the mask mandate (Respondent: 387).

Once the police were called, Respondent did not think he should leave as he believed he had not done anything wrong and he was hoping the police “would reason with” Ms. Koch, “especially since they weren’t enforcing [the mask mandate]” (Respondent: 389).

According to Respondent, Ms. Koch did not ask Respondent for medical documentation until after the first call to the police had finished, before the second call to the police was placed (Respondent: 389). Respondent testified that he left the premises to go get medical documentation because Ms. Koch said that they would allow his child’s appointment to go forward that day if he returned with medical documentation (Respondent: 390). Although Respondent admitted that he

did not leave until after he learned that the police said they were going to send an officer to Seeta, Respondent denied leaving the premises out of fear that the police would come (Respondent: 390, 473-474).

Despite hearing Ms. Koch state that she lived with someone who had [REDACTED] three times and she was concerned about Respondent's germs spreading to her, Respondent did not think he was doing something inappropriate because he believed that he was standing far enough away from her and other people in waiting room so that they would not come into contact with his germs. He believed he was "completely healthy," and he thought that Ms. Koch's concerns about him spreading germs were "illogical, nonsensical, and ridiculous" (Respondent: 472-473, 487).

As of December 28, 2021, Respondent had not been diagnosed with a condition that made him medically unable to tolerate a mask (Respondent: 478-479). He had been experiencing headaches and neck pain for which he was receiving treatment from G [REDACTED] M [REDACTED], a chiropractor and Respondent's long-time friend (Respondent: 476-477). Respondent believed his headaches and neck pain were attributable to wearing a mask (Respondent: 477). According to Respondent, on one occasion when he was in court he experienced a panic attack which he attributed to wearing a mask (Respondent: 385).

After the confrontation with Ms. Koch in Seeta's waiting room, Respondent reached out to Dr. M [REDACTED] and told him, in sum and substance, that he needed a doctor's note for his son to be seen at Seeta (Respondent: 475-476). Dr. M [REDACTED] stopped what he was doing and prepared an email that stated, "[Respondent] is currently under my care. Due to his current health condition, he is medically unable to wear a mask" (Resp Ex E, 2; Respondent: 392). The email did not identify the health condition, nor did it reveal that Dr. M [REDACTED], in fact, had not diagnosed Respondent with a health condition that made him unable to wear a mask (Respondent: 476-477).

Approximately four months after the incident in Seeta's waiting room, after learning that Ms. Koch had filed a complaint with the Commission, Respondent sought treatment from a mental health professional who diagnosed him with a form of "acute anxiety" known as "object phobia" (Respondent: 477, 479). Respondent testified that learning about Ms. Koch's Commission complaint is what "precipitated" his decision to seek a diagnosis and treatment (Respondent: 479). Respondent testified that the diagnosis of anxiety/object phobia is what rendered him unable to medically tolerate wearing a face mask (Respondent: 477).

Testimony of Michael Brown for Respondent

Respondent called Michael Brown as a witness on his behalf. Mr. Brown admitted that he did not witness the entire incident, as he was with a patient in another

part of the building (Brown: 307). Mr. Brown estimated that the portion of the confrontation that he witnessed was “not long at all,” “not even two to five minutes” (Brown: 309).

Mr. Brown testified that, “health-wise,” he believed Respondent was “doing what he’s supposed to do” by wearing a face shield, even though the face shield did not comply with Seeta’s policy (Brown: 309, 328). Mr. Brown described Ms. Koch’s demeanor as “catty-like,” “very hostile,” “firm,” and “very wrong” (Brown: 309). Mr. Brown described Respondent’s demeanor as “defensive” (Brown: 309).

Charge II: Respondent filed a defamation suit against Ms. Koch in what was and/or appeared to be retaliation for her having filed a complaint against him with the Commission.

The day after the incident in Seeta’s waiting room, Ms. Koch filed a complaint with the Commission. Enraged that Ms. Koch would complain about his conduct and convinced that the “corrupt” Commission would not offer him sufficient recourse, Respondent ignored the advice of his counsel and sued Ms. Koch for defamation, seeking \$425,000 in alleged damages. The suit was so utterly ill-conceived that it was dismissed on a pre-Answer motion. Respondent entered into a settlement agreement with Ms. Koch wherein he agreed to pay \$20,000 to cover her costs and attorney’s fees, to send her a signed letter of apology, and to avoid future contact with Ms. Koch and any Seeta location.

Ms. Koch filed a complaint with the Commission on December 29, 2021.

Respondent's conduct was so upsetting to Ms. Koch that, when she found out that he is a judge, she felt compelled to file a complaint with the Commission (Koch: 193). Ms. Koch reached out to Janna Whearty, the Executive Director of the Dutchess County Bar Association ("DCBA") and inquired about bringing a complaint (Whearty: 109-112; Koch: 190; Comm Ex 6, 3). Ms. Whearty provided Ms. Koch with the Commission's contact information (Whearty: 112; Koch: 190; Comm Ex 6, 3).

On December 29, 2021, Ms. Koch utilized the electronic complaint form on the Commission's website to file a confidential complaint against Respondent, alleging misconduct stemming from the confrontation at Seeta on December 28, 2021 (Koch: 190-191; Comm Ex 6). In her complaint, Ms. Koch stated:

Frank Mora exhibited unprofessional behavior in our medical practice 12/28/21. Being a medical practice we require a mask before entry to our practice of Ophthalmology. Mr. Mora created a huge scene in our waiting room and refused to wear a mask. He claimed he had a medical condition that prevented him from wearing a mask. I asked him several times to leave or wear a provided mask which he would not do. I called the police. He taunted me in front of a waiting room of @20 people and my staff stating the police won't come. The police said they would come and he then left once the police were on their way to our practice. He then had a letter created from Chiropractor G [REDACTED] M [REDACTED] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask. When I called the chiropractor for the diagnosis I was given another lecture on why masks are a waste of time and do not help. I am unsure why this health care provider did not simply answer my questions. I then called the Dutchess County Bar Association to find out why an area attorney

would exhibit such unprofessional behavior in a private medical practice that follows both the CDC and Dutchess County Board of Health guidelines. I was shocked to find out this man is a Judge. This man should not be allowed any decision making for others when he can not act professionally in this medical practice. I simply feel our government needs to know this man is abusing his position in Dutchess County. It is important to let you know the reason Mr. Mora was here was to oversee an eye exam for his [REDACTED] year old boy. After receiving the seemingly bogus letter from the chiropractor we escorted Mr. Mora and his son into the practice through a side door and provided an exam for the child and then had them exit again through a side door so as to not expose our patients to Mr. Mora

(Comm Ex 6, 3).

Respondent confronted Ms. Koch by phone and email in March 2022.

In early March 2022, Respondent phoned Ms. Koch to schedule an appointment for his child, making a point of reaching out directly to Ms. Koch because he thought that would “avoid any nonsense” (Resp Ex E; Respondent: 483-484). Ms. Koch suggested that Respondent and his family find another ophthalmology practice or hold off on scheduling another appointment until July in the hope that masks would no longer be required to be worn in the office (Koch: 199; Respondent: 484; Resp Ex E). Respondent became upset and, by his own admission, the phone call became “a little heated” (Koch: 199-200; Respondent: 484-485; Resp Ex E).

Respondent sent Ms. Koch an email a few days later on March 7, 2022 (Resp Ex E; Respondent: 486-487). Although Respondent began the email with an apology for the phone call being “a little heated,” Respondent then berated Ms.

Koch and Seeta's face mask policy (Resp Ex E; Respondent: 486-487). The email read:

Stacey,

I apologize that our phone conversation was a little heated this past Thursday. However, I want you to understand where I am coming from. As you know, I brought my [REDACTED] son] in for an eye exam on January 29, 2021. As I do not medically tolerate a mask, I wore a face shield. You came out in an abrupt manner, and attempted to belittle me in front of the entire waiting room, asking me to leave. As [son's name] was [REDACTED] then, I let him go in by himself, and I waited outside. The funny thing is, when it was time to pay, your office had me come in, still wearing just the face shield, with no problems or questions asked, so I could pay. Funny how that works!

I asked you on January 29, 2021, how you handle those with medical issues regarding not wearing face masks, and you said you only had one other person with this issue. I asked how you resolved it, and you said she chose to go somewhere else. I told you that is not acceptable, and to please have a procedure in place for when I come back the next time. Not only did you not have a procedure in place, when I came with my [REDACTED] son] on December 28, 2021, you came out and went berserk. Although I was at least 10 feet away from you, and at least 15 feet away from anyone else, you again asked me to leave. This time I would not. You said I was making everyone upset. I pointed out that I was no where near anyone. An elderly lady then spoke up and said she was upset. She stated she was upset because she had been waiting for over a half hour, and had not been seen yet. I told her I would be more upset about that also, not someone who is 15 feet away from everyone in the room. Not one person made a comment that they were upset. You then called the police and they said they would send someone over. When I attempted to discuss this with you, you told me to stop talking, as you did not want to get my germs. You then called the police back and told them it was an emergency, as I did not have a mask on and would not stop talking and was spreading germs. Do you realize how illogical, nonsensical, and ridiculous that is? I then left, went home, and contacted my doctor.

As you wanted a doctor's note for my medical intolerance, I sent that over to you. Was that good enough? No, you had the audacity to call my doctor and question him as to my condition and why I couldn't wear a mask. What gives you the right to ask about my medical condition? I called you back after forwarding you the note, and you had [my [REDACTED] son] and I come back the same day on December 28, 2021, at 4:30pm. You had one of your assistants get us from the parking lot and bring us in a back entrance. [My [REDACTED] son] had his appointment with Dr. G [REDACTED], and everything went smoothly then.

[My [REDACTED] son] now needs an exam, and I called you directly to schedule so we can avoid any nonsense. You called me back on Thursday, March 3, 2022, telling me that we are not a good fit for your practice. Instead of dealing with someone who cannot wear a mask, you attempt to get rid of my family. This is blatant and outright discrimination, and I will not stand for it. This is a violation of Americans with Disabilities Act, and I advised you so. You said we should wait until July, and maybe the masks won't be around anymore. From what I can tell of your irrationality, you will require masks even when they are no longer required. You said you would have Dr. Modi call me, and he has not. I am not waiting for July, and I am not going to be intimidated.

Please have someone call me to schedule [my [REDACTED] son]'s exam with Dr. G [REDACTED]. If I do not hear from someone this week, I shall take further action.

Thank you.

Frank Mora

(Resp Ex E; Resp: 379, 382, 486-490).

The Commission notified Respondent of Ms. Koch's complaint on April 12, 2022, prompting Respondent to seek a diagnosis for his issue with wearing a face mask.

Respondent testified that he became aware that Ms. Koch had filed a complaint about him when he received a letter from the Commission on April 12, 2022, which attached a copy of Ms. Koch's complaint and asked him to answer questions about his conduct (Comm Ex 37; Respondent: 366). Before responding to the Commission's letter, Respondent consulted with K [REDACTED] R [REDACTED]-B [REDACTED], LCSW, in late April of 2022, who diagnosed him with a form of "acute anxiety" known as "object phobia" to explain his claimed inability to wear a face mask (Respondent: 479, Comm Ex 32, 74). Up until then, Respondent had not been diagnosed with a condition that made him medically unable to tolerate a mask (Respondent: 478-479).

Respondent met with Michael Brown at Seeta in May of 2022 and prepared a statement for Mr. Brown to sign in June of 2022.

Respondent returned to Seeta for an eye examination on May 20, 2022, during which time he spoke with Michael Brown, the technician who witnessed a portion of the incident in Seeta's waiting room on December 28, 2021 (Brown: 324, 331-332; Respondent: 408, 479, 490). At that time, Respondent told Mr. Brown that Ms. Koch had filed a complaint against him with the Commission (Respondent: 491).

Mr. Brown testified that after learning that Ms. Koch had filed a complaint, he decided to reach out to Respondent to offer his help (Brown: 324, 331-332). Respondent prepared a type-written statement purporting to be an account of what Mr. Brown observed (Brown: 311-312, 334; Respondent: 408, 490-491). Respondent then hand-delivered it to Mr. Brown at Mr. Brown's residence for Mr. Brown to sign (Brown: 311-312, 334; Respondent: 408, 491). The statement is dated June 13, 2022, and states:

I recall that day very vividly as I was asked to come out to the waiting area. Judge Mora was there with his son, who was scheduled for an eye exam. From the moment Stacey addressed Judge Mora, she was very hostile, demanding that he wear a mask. Judge Mora tried to explain that he did not medically tolerate a mask (he was wearing a face shield), but Stacey would not let him speak. She kept cutting him off. Unlike what Stacey wrote in her complaint, Judge Mora did not taunt her. He was calm and a complete gentleman during the entire ordeal. Judge Mora did not create a scene. It was actually Stacey who created a scene. She told Judge Mora that he was upsetting the other patients. An elderly lady actually stood up and said she was upset, but not with Judge Mora, but that she was waiting for over a half hour and had not been seen yet. That comment made me laugh.

What Stacey did not write in her complaint was that she actually called the police a second time. She did this after telling Judge Mora to stop talking, as he was spreading terms on her. I found her statement very bizarre. Judge Mora had a face shield on, and was about 10 feet away from her. After telling Judge Mora to stop talking, she called the police, and told them it was an emergency because Judge Mora was wearing a face shield, would not stop talking, and was spreading germs on her. While still on the phone with the police, Judge Mora said he would leave and try to get medical documentation for her, and she told the police they did not have to come. Judge Mora then left. About an hour later Judge Mora came back with his son and I escorted them into the exam room. There were no other issues

the second time. I'm not sure why Stacey did not handle it this way the first time. Judge Mora has been back twice since December, and both times he wore his face shield, and there were no issues.

(Resp Ex F)

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

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

Mr. Sussman described Respondent as being "very angry," "very upset" and "embarrassed" when Respondent sought his advice about suing Ms. Koch (Sussman: 243, 245). Respondent said that Ms. Koch "deserved to be punished" by "bringing a lawsuit that would get damages" for the statements she made in her complaint (Sussman: 247-248). Respondent did not believe that the Commission's process would provide him with recourse against Ms. Koch for the allegedly false statements because, even if the Commission decided to dismiss Ms. Koch's

complaint as meritless, the Commission’s process would not allow for the imposition of monetary damages against Ms. Koch (Respondent: 518-520; Sussman: 248).

Mr. Sussman advised Respondent that he could sue Ms. Koch for defamation, but told him that it “doesn’t look good” for a judge to sue the person who complained about him to the Commission (Respondent: 503; Sussman: 249-250). According to Respondent, Mr. Sussman “went through a whole diatribe” about “optics” (Respondent: 503-504). Respondent rejected that advice because “judges aren’t really concerned with optics” (Respondent: 503-505). He directed Mr. Sussman to file a defamation suit against Ms. Koch (Respondent: 503).

Respondent filed a defamation suit against Ms. Koch on December 29, 2022.

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

Respondent’s Verified Complaint alleged that the following 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, “Preliminary Statement”):

- (a) “Mr. Mora *created a huge scene* in our waiting room ...”
- (b) “He taunted me in front of a waiting room of @ 20 people ...”
- (c) “[he] stat[ed] the police won’t come. The police said they would come and *he then left once the police were on their way to our practice.*”
- (d) “He *then had a letter created* from Chiropractor G [REDACTED] M [REDACTED] stating that Mr. Mora “has a medical condition” [*sic*] that prevents him from wearing a mask.”
- (e) “This man should not be allowed any decision making for others *when he can not act professionally in this medical practice.*”

(Comm Ex 7, ¶24, emphasis in original).

The allegations in Respondent’s lawsuit were limited to the statements Ms. Koch made in her complaint to the Commission (Comm Ex 7; Respondent: 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; Respondent: 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).

At the time Respondent's lawsuit was filed, 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; Respondent: 371, 398, 401-402, 553). The Commission's investigation was confidential, pursuant to Section 45 of the Judiciary Law.

Respondent's Verified Complaint was public, and he attached a copy of Ms. Koch's complaint to the Commission, thereby making her complaint public as well (Comm Ex 7; Respondent: 554-556). Respondent made no request to seal or otherwise keep his lawsuit confidential (Respondent: 554).

Respondent inappropriately sought information about Ms. Koch's contact with the Dutchess County Bar Association and his tone became angry when the Executive Director refused to provide the information he sought.

In or around late 2022 or early 2023, Respondent telephoned the DCBA's Executive Director, Janna Whearty, and asked whether Ms. Whearty was aware of "this situation that's happening" and if she had provided Ms. Koch – whom he called "this woman" – with the Commission's contact information (Whearty: 112-113).

Ms. Whearty told Respondent that, as he would be aware from previously serving as a member of the DCBA's Executive Board, complaints to the DCBA are confidential and that she could not have the conversation with him (Whearty: 113-

114). Toward the end of the phone call, Respondent's tone was angry (Whearty: 113).⁸

Respondent appeared at Seeta seven days after his defamation suit was served on Ms. Koch.

Respondent's Verified Complaint was served on Ms. Koch on January 3, 2023 (Comm Ex 8; Koch: 200, 202-203; Respondent: 524). On January 10, 2023, Respondent returned to Seeta for an appointment for his child (Comm Ex 8; Koch: 202-204; Respondent: 524, 527).

At the hearing, Respondent testified that he did not know whether Ms. Koch already had been served with his Summons and Complaint when he appeared at Seeta, despite the fact that Mr. Sussman had advised him in an email on December 31, 2022, that Ms. Koch likely would be served on Tuesday, January 3, 2023 (Respondent: 524, 528). Respondent admitted that appearing at Seeta at that time could have appeared intimidating to Ms. Koch (Respondent: 530).

Respondent's defamation suit was dismissed by Decision and Order dated April 4, 2023, and Respondent agreed to pay Ms. Koch \$20,000 in attorney's fees and costs, apologize to Ms. Koch, and agreed to 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,

⁸ Respondent admitted in his Answer that the phone call took place, but Respondent offered no testimony or any other evidence to rebut Ms. Whearty's testimony about what transpired during the phone call (Ref Ex B, ¶29).

also known as New York State’s anti-SLAPP statute, and, additionally, as barred by the doctrine of absolute privilege (Comm Ex 9). That same night, after learning about the motion, Respondent sent an email to Mr. Sussman at 7:41 PM, in which, referring to Ms. Koch, he wrote: “Since she knew almost a year before the confrontation that I did not medically tolerate the mask, I believe she had this all planned” (Comm Ex 21).

On February 6, 2023, the Commission 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).

On February 7th, 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;

(Respondent: 546). Mr. Sussman replied to Respondent's email at 8:20 PM, stating "they are plainly working in concert with each other" Respondent replied by email at 9:34 PM, stating, "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; Respondent: 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 statement that it is a "bad look" for a judge to sue a Commission complainant (Respondent: 532-533).

Respondent sent Mr. Sussman an email later that morning in which he complemented the draft reply to the motions to dismiss and stated, "If I thought the process was going to be fair, I would not have brought the suit" (Comm Ex 25). At the hearing, Respondent clarified 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; Respondent: 456-457, 513-514).

Respondent also stated in his email that he felt he was the victim of “a proverbial witch hunt” and he asked Mr. Sussman to obtain an extension to give him time to “ponder this” (Comm Ex 25).

Respondent did not take Mr. Sussman’s advice that he withdraw the lawsuit. Instead, on March 6, 2023, Respondent – through counsel – 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).

On March 20, 2023, Counsel for Ms. Koch filed papers in reply to Respondent’s opposition (Comm Ex 12). On March 20, 2023, Commission Counsel also filed papers in reply to Respondent’s opposition (Comm Ex 13). On March 27, 2023, oral argument of the motions to dismiss Respondent’s complaint was held before Hon. Maria G. Rosa, Supreme Court, Dutchess County (Comm Ex 14).

By Decision and Order dated April 4, 2023, the Supreme Court, Dutchess County (Rosa, J.), granted Ms. Koch’s and the Commission’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).

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). Under the terms of the “No Contact” clause in the agreement, Respondent agreed that, from the date of the agreement and continuing in perpetuity, he would refrain from (a) communication (whether oral, written, or electronic) with Ms. Koch or any Seeta Eye location; and (b) intentional presence in the vicinity of Ms. Koch or at any Seeta Eye location (Comm Ex 16). Respondent agreed that “a violation of the Contact Ban shall constitute irreparable injury warranting injunctive relief for specific performance” (Comm Ex 16).

In Respondent’s apology letter to Ms. Koch dated May 4, 2023, he 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).

While Respondent admitted during his testimony before the Commission that he should not have brought the lawsuit, he also testified that, “I still think I would win if I could get to a jury” (Respondent: 504, 532-533, 551-552).

Charge III: Respondent withheld and/or redacted emails to which the Commission was entitled.

Respondent admitted that he failed to provide the Commission with a complete set of emails responsive to the Commission’s request for information reasonably related to its investigation into whether Respondent retaliated against Ms. Koch for bringing a Commission complaint. Respondent attributed the deficiency to an honest mistake, either on his part or on the part of his attorney (Respondent: 435-438, 449-457, 460-461, 557).

The Commission requested information reasonably related to its investigation into whether Respondent’s defamation lawsuit against Ms. Koch was initiated in retaliation for her having filed a complaint against him with the Commission.

On April 20, 2023, on its own motion, the Commission authorized an Administrator’s Complaint against Respondent for initiating a defamation lawsuit against Stacey Koch in retaliation for her having filed a complaint against him, as alleged in Charge II (Ref Ex A, Ex 2, 27; Respondent: 539).

By letter dated April 8, 2024, the Commission requested that Respondent provide “copies of any and all emails” between him and his attorney, Michael H. Sussman, Esq., “from December 28, 2021, to present” (*i.e.*, from December 28,

2021, to April 8, 2024), “pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch*, and/or any discussion of defamation or tortious interference” (Comm Ex 18, 1-2; Respondent: 539).

The Commission’s letter noted that, during its investigation, Respondent had testified voluntarily about his communications with his attorney and, having placed those communications at issue, had waived the attorney-client privilege (Comm Ex 18, 2-3; Respondent: 400).

By letter dated May 9, 2024, Respondent replied in relevant part that, while he disagreed the attorney-client privilege had been waived, he was providing “all Koch related emails from December 28, 2021, through the date of filing the Koch lawsuit (12/29/22)” (Comm Ex 19, 7; Respondent: 540). Respondent represented that he had reviewed “all emails from that period, that are being submitted to the Commission (a total of 14), and they are complete and accurate” (Comm Ex 19, 7; Respondent: 540-541). Respondent further stated that some of the emails had been redacted insofar as “they relate to non-Koch matters” (Comm Ex 19, 8; Respondent: 540-541). Respondent produced 14 pages of emails with his May 9, 2024, letter (Comm Ex 19, 7-25; Respondent: 540).

On May 21, 2024, the Commission sent Respondent a letter stating that the information submitted with his May 9th letter was not wholly responsive to its request and required that Respondent fully provide the information requested in the April 8th letter (Comm Ex 19; Respondent: 425-426). By letter dated July 10, 2024, Respondent provided the Commission with 127 pages of the “remaining emails” between him and Mr. Sussman from “December 30, 2022, to present” (Comm Ex 31; Respondent: 540). Respondent again noted that “[s]ome emails have been redacted as they relate to non-Koch matters” (Comm Ex 31; Respondent: 541).

Enclosed with Respondent’s July 10 letter was a “Waiver of Confidential Communications,” signed by Respondent, in which Respondent waived the attorney-client privilege of confidentiality between himself and Mr. Sussman and giving Mr. Sussman permission to provide communications, documents, information and testimony to the Commission responsive to the Commission’s request (Comm Ex 31; Respondent: 465).

Respondent withheld and/or redacted emails responsive to the Commission’s requests, without informing the Commission of all the material withheld and without providing a reasonable basis for having done so.

Respondent’s representation in the July 10th letter that he had provided a complete response to the Commission’s request for emails and had redacted nothing more than “non-Koch matters,” was not accurate (Respondent: 435-438,

449-457, 460-461, 557). During his testimony, Respondent admitted that he withheld numerous emails he should have turned over in response to the Commission's request, as follows:

- A. Respondent admitted that he withheld two emails that he sent to Mr. Sussman on November 23, 2022, stating, in part, "Please let me know if we can proceed against Seeta," and "When looking at it, are we able to just sue Stacey Koch, the manager of Seeta?" (Comm Ex 20; Respondent: 435-438). Respondent claimed that his attorney mistakenly failed to send these emails to the Commission (Respondent: 435-438).
- B. Respondent admitted that he withheld an email that he sent to Mr. Sussman on February 2, 2023, stating, in part, "Since she knew almost a year before the confrontation that I did not medically tolerate the mask, I believe she had this all planned" (Comm Ex 21; Respondent: 560-61). Respondent maintained that he inadvertently "missed" this email exchange (Respondent: 450).
- C. Respondent admitted that he withheld an attachment to an email that he sent to Mr. Sussman on February 7, 2023, with his "thoughts" on a draft response to the motion to dismiss in *Mora v Koch*. In the attachments, Respondent stated, in pertinent part:
 - i) It does not seem right that Koch can use the judicial commission as a sword, then use the SLAPP statute as a shield. Regarding SLAPP, it should be stressed that it was Koch who caused the behavior;
 - ii) I think we should focus on Koch creating the entire scene, then reporting me for the scene that she created. I think the police call recordings are essential. If she acknowledges that she knows I was a judge on the police call, it shows that she was lying about contacting the bar association. We can then show that she had no intention of following the mask regulation, even though she knew well ahead of the Dec visit that I did not tolerate masks;

- iii) Koch was determined not the [*sic*] let anyone in without a mask. She basically stated so when I asked her Jan 29, 2021 what they do for people who do not medically tolerate a mask. She advised that only one other patient could not wear a mask. I asked her how they handled it, and she said that patient decided to leave the practice. When you read between the lines, you see that Koch made her leave the practice.
- iv) This lawsuit was not brought to harass or intimidate Koch from testifying before the commission. It was specifically brought after I found out she testified before the commission, and then bragged to her former co-worker Michael Brown that she told the commission she felt threatened by me, and that she was going to get me removed from the bench.

(Comm Ex 22; Respondent 449-451).

Respondent testified that this email and its attachment was “missed” (Respondent: 451).⁹

- D. Respondent admitted that he withheld two emails that he sent to Mr. Sussman on February 8, 2023, in which he stated that the Commission would not turn over confidential transcripts of testimony taken from Ms. Koch or Michael Brown, and in response to Mr. Sussman, stated, “The corruption doesn’t end!” (Comm Ex 23; Respondent: 452-453, 546). Although Respondent conceded that this comment was critical of the Commission, Respondent testified that he believed there was no reason for him to have withheld this (Respondent: 452-453, 546).
- E. Respondent acknowledged that he withheld an email he sent to Mr. Sussman on February 8, 2023, in which he made the following statement regarding the Commission’s motion to dismiss in *Mora v Koch*: “You are correct. Even now that DiFiore is no longer a judge, they still will not reveal that there was an investigation against her. So, how are they giving all of the details of my investigation? They are not even supposed to

⁹ In the transcript, Respondent’s counsel mistakenly refers to the date of this email as 2/27/2023 instead of 2/7/2023 (Respondent: 449-451).

- acknowledge that I am under investigation” (Comm Ex 24; Respondent: 454-455).
- F. In an email that Respondent sent to Mr. Sussman on February 13, 2023, Respondent redacted the following text: “If I thought the process was going to be fair, I would not have brought the suit. Even though I am stipulating to taking medicine/medical procedures, they still want 12 years of my medical records. They think I am making up homeschooling my children. They think I forged my kids’ doctor’s letter. This is a proverbial witch hunt. They are on a fishing expedition to see if there is anything that will stick to say, ‘look, he doesn’t really believe the stuff he is saying!’” (Comm Ex 25; Respondent: 456). Respondent testified that he redacted this on the advice of his attorney, Mr. LaVeglia, whom, Respondent claims, advised him that this has “nothing to do with Koch” (Respondent: 456-457). Respondent admitted, however, that the statement, “Your draft reply is excellent,” referred to the reply Sussman had prepared to the motion to dismiss the defamation suit (Respondent: 456). When asked to explain what he meant by “If I thought the process was going to be fair, I would not have brought the suit,” Respondent testified that he was referring to the length of time that it took the Commission to complete its investigation into Ms. Koch’s complaint, (Respondent: 456-457).
- G. Respondent withheld an email that he sent to Mr. Sussman on March 6, 2023, in which he stated, “Maybe you can use Tembeckjian’s own words against him at oral argument. When I asked for them to postpone the matter because I had a human rights case pending, they denied me saying their jurisdiction is independent from the division of human rights and the civil courts. See attached letter.” (Comm Ex 26; Respondent: 557). Respondent testified that this email was “missed” and should have been provided to the Commission, as the email referred to oral argument in the defamation suit (Respondent: 557).
- H. Respondent withheld an email that he sent to Mr. Sussman on April 3, 2023, in which he stated, “I find it very interesting that the attorney for the commission, in open court, on the record, stated that I am being investigated for other matters. It is my understanding that this is a violation of their duty to keep it confidential. Judiciary Law Secs 44-46. I understand that I opened the door regarding the proceeding with Koch, but nothing else” (Comm Ex 27; Respondent: 460). Respondent testified

that “this one was missed, and this is another one I would never intentionally leave out” (Respondent: 460). When asked why, Respondent replied, “Because I say it shows the corruption” or “part of the corruption,” which is something for which Respondent made clear he does not “apologize” (Respondent: 461).

ARGUMENT

POINT I

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY ENGAGING IN A DISCOURTEOUS VERBAL CONFRONTATION WITH THE OFFICE MANAGER AT SEETA EYE CENTER AND REPEATEDLY REFUSING TO LEAVE WHEN ASKED TO DO SO.

“Any conduct, on or off the Bench, inconsistent with proper judicial demeanor subjects the judiciary as a whole to disrespect and impairs the usefulness of the individual Judge to carry out his or her constitutionally mandated function.”

[*Matter of Kuehnel*](#), 49 NY2d 465, 469 (1980).

On December 28, 2021, Respondent failed to act in a manner consistent with the dignity of his judicial office. He used his child’s routine eye appointment as an opportunity to challenge a face mask policy with which he did not agree and refused repeated requests to leave until he learned that the police were on the way.

Respondent “failed to show even a modicum of sensitivity or self-control so vital to the demands of his position” ([*Matter of Simon*](#), 2017 Ann Rep of NY Commn on Jud Conduct at 221, 253, 2016 WL 1411487, at *18) and his conduct constituted a clear violation of his obligation as a judge “to insure that his conduct off the Bench

does not undermine the integrity of the judiciary or public confidence in his character and judicial temperament.” [*Quinn v State Commn on Jud. Conduct*](#), 54 NY2d 386, 392 (1981) (citations omitted). Respondent’s subsequent insistence “that his actions were justified by his righteous motives and by the misbehavior of others, show[s] little or no insight into the effects of his own behavior upon public confidence in his character and judicial temperament and in the judiciary as a whole.” [*Matter of Simon*](#), 2017 Ann Rep of NY Commn on Jud Conduct at 221, 259, 2016 WL 1411487, at *20.

A. Respondent knowingly created an unnecessary face-to-face confrontation in Seeta’s waiting room and was discourteous to Stacey Koch.

The testimony established that Respondent knowingly created an entirely unnecessary public confrontation in Seeta’s waiting room that he easily could have avoided. When Respondent arrived at Seeta on December 28, 2021, he knew he would be entering the office wearing a face shield that did not comply with Seeta’s face mask policy (Respondent: 465). Indeed, just 11 months earlier, Respondent faced exactly the same situation: In January of 2021, after Respondent brought his son to Seeta for an eye exam wearing a face shield, refused to put on a mask, and claimed he had a “medical exemption from wearing a mask,” a supervisor intervened and Respondent agreed to wait outside in the parking lot while his [REDACTED]

████ child – who *was* wearing a face mask – underwent his appointment inside the building (Monteverdi: 63, 65, 67-68, 75; Koch: 168; Respondent: 380).

Respondent could have chosen to take that same discreet, non-confrontational approach when he brought his █████ son to Seeta on December 28, 2021. Instead, he chose not to contact anyone at Seeta in advance of his child's appointment to tell them that he would be accompanying his child and to discuss his issue with the mask policy (Feather: 37; Koch: 156; Respondent: 465-466). Had Respondent let anyone at Seeta know in advance that he planned on coming to the office and that he required an accommodation, staff would have met Respondent and his child in the parking lot and guided him through a side entrance (Feather: 31, 34, 37, 57, 59-60; Monteverdi: 77; Koch: 149-150, 167). In fact, that is exactly what ultimately happened later that same day, when Respondent returned with his son and was brought into the doctor's office through the side door (Koch: 180; Respondent: 392-393, 478, 553).

Given his prior experience with Seeta's masking policy, Respondent knew that Seeta's staff would not acquiesce in his demand to enter their office wearing a face shield. But rather than call ahead to discuss the issue, he walked into that office on December 28th intending to directly challenge Seeta's policy face to face. He did so in a manner that was discourteous and unnecessarily confrontational.

Jessica Feather testified that Respondent's "blatant defiance of the practices that everybody else there has to abide by" made her feel "uncomfortable," particularly "because his son was there and it was just -- it seemed inappropriate to act that way in front of anybody, let alone your child" (Feather: 37).

Respondent's conduct caused Ms. Monteverdi to feel so uncomfortable that she left the reception area and asked Michael Brown to come assist with the problem (Monteverdi: 71; Koch: 172-173; Brown: 307). Mr. Brown found the exchange between Respondent and Ms. Koch "embarrassing," and he asked Respondent to leave (Monteverdi: 72; Brown: 309-311).

At least one patient in the waiting room was also concerned. Ms. Koch is heard in the recording telling the patient, "I understand, ma'am. I'm doing the best I can to protect you" ([Comm Ex 3](#), 0:01:18 - 0:01:15; Comm Ex 3-A, 3; Koch: 170).

Throughout his interaction with Ms. Koch, Respondent was contentious and confrontational. When Ms. Koch told Respondent that she would call the police if he would not leave, he told her, in words or substance, to "go ahead" because the police would not come (Feather: 34-35; Monteverdi: 72; Koch: 159). When Ms. Koch told him, "I wish you wouldn't speak if you're not going to wear a mask, okay? Don't talk," Respondent replied, "I'll talk" ([Comm Ex 3](#), 0:01:11 – 0:01:25; Comm Ex 3-A, 2-3; Koch: 165; Respondent: 385-386, 471-472). And when Ms. Koch told Respondent that she didn't want to breathe his "air," he dismissed her

concerns by arguing that people in restaurants breathe each other's air ([Comm Ex 3](#), 0:01:03 – 0:00:43; Comm Ex 3-A, 3; Koch: 159, 170, 173-174; Respondent: 385-386, 472). He explained at the hearing that his restaurant example was his way of telling Ms. Koch that her concerns “didn’t make sense” (Respondent: 386).

Even Ms. Koch’s revelation that she was concerned about germs because she lived with someone who had [REDACTED] three times did not soften Respondent’s confrontational approach. When asked at the hearing whether this information caused him to “think about” whether his refusal to leave was “appropriate,” he responded, “No” (Respondent: 472). Respondent was so intent on arguing that he did not need to wear a mask that he was unable to acknowledge how his conduct might affect vulnerable others.

Respondent’s conduct is all the more distressing because his underlying claim – that he could not wear a mask due to an unspecified “medical condition” – was at best disingenuous, if not an outright fabrication. It is undisputed that Ms. Koch asked Respondent for documentation to support his medical claim, and that Respondent had none (Feather: 34; Monteverdi: 69-70; Koch: 158-159; Respondent 389-90; Comm Ex 3-A). According to Respondent, he told Ms. Koch, “No, not on me. I could

try to get you some” (Respondent: 389), clearly suggesting that medical documentation existed. But Respondent knew at the time that there was no such documentation.¹⁰

Respondent conceded at the hearing that at the time of his confrontation with Ms. Koch, he had never been evaluated by any medical or mental health professional regarding his ability to wear a mask and had not been diagnosed with any medical condition that made him unable to tolerate a mask (Respondent: 478-79). In fact, he did not seek a medical evaluation until late April 2022, after he learned he was being investigated by the Commission (Respondent: 479).

All told, Respondent’s decision to create a public confrontation over his disagreement with Seeta’s masking policy rather than pursue the discreet accommodation that Seeta had previously given him, based on an alleged medical condition about which he had never even consulted a medical professional, was wholly unbecoming of a judge. That misconduct was greatly exacerbated by Respondent’s admittedly improper refusal to leave the premises despite numerous requests that he do so.

¹⁰ It should be noted that Seeta was not legally required to grant Respondent a medical exception to their masking policy, even if he had presented appropriate documentation. As the Second Circuit determined, “[i]n the context of a mask mandate, as in the case of a more intrusive vaccination policy, there is no fundamental right to a medical exemption based exclusively on the recommendation of a plaintiff’s physician.” [*Doe v Franklin Square Union Free Sch. Dist.*](#), 100 F4th 86, 96 (2d Cir.), *cert. denied*, 145 S Ct 570 (2024).

B. Respondent refused to leave Seeta despite numerous requests from management that he do so.

When Respondent refused to leave Seeta after numerous requests, he was being more than just rude. He was arguably committing 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 Respondent did here.

The record evidence clearly establishes that when Respondent refused to put on a mask, Ms. Koch asked him several times to leave and he refused to do so (Feather: 34; Monteverdi: 72; Koch: 159, 161; Respondent: 388-389). Ms. Koch can be heard on the 911 call telling the operator that Respondent was refusing to leave ([Comm Ex 2](#), 0:00:42 – 0:00:30; Comm Ex 2-A, 1-2). Michael Brown also asked Respondent to leave (Monteverdi: 72; Brown: 309-311). And on direct and cross-examination, Respondent acknowledged that “Ms. Koch asked [him] to leave, and [he] refused” (Respondent: 388, 487).

The response of the Town of Poughkeepsie Police Department underscores the significance of Respondent’s misconduct. After Ms. Koch explained the situation, the police official on the call advised her that the police department did not enforce the mask mandate, but if Respondent was refusing to leave, an officer could be sent ([Comm Ex 3](#), 0:00:41 – 0:00:32; Comm Ex 3-A, 3). That is to say, while refusing

to wear a mask is a private policy dispute, refusing to leave the premises is a matter for law enforcement.

At the hearing, Respondent admitted that he was wrong to refuse to leave, testifying, “I said that a few times, and I will continue to say, yes, I should have left” (Respondent: 481). He also maintained that if he had it to do over, he would not have refused to leave, saying “looking back, I would have left” (Respondent: 482). He further testified, “I should have left. I do admit that. I do admit that. If I can go back, I would have” (Respondent: 473). By refusing to leave after he was repeatedly asked to do so, Respondent committed misconduct.

C. Judges are held to higher standards of conduct than the public at large.

At the close of the hearing, the Referee asked Commission counsel to consider a hypothetical in which a non-judge gets into a heated argument with a store owner over the quality of service and to address whether there is “a line for a judge to be treated like a non-judge with respect to this” kind of behavior (Colloquy: 562).

The answer to the Referee’s question is, “No.” For more than 40 years, both the Commission and the Court of Appeals have routinely held that “members of the judiciary are held to higher standards of conduct than members of the public at large and that relatively slight improprieties subject the judiciary as a whole to public criticism and rebuke.” [*Aldrich v State Commn on Judicial Conduct*](#), 58 NY2d 279, 283 (1983). As a result, “what might be acceptable behavior when measured against

societal norms could constitute ‘truly egregious’ conduct” in the context of a judicial disciplinary proceeding. [*Matter of Mazzei*](#), 81 NY2d 568, 572 (1993); *see also*, [*Matter of Senzer*](#), 35 NY3d 216, 219 (2020); [*Matter of Hall*](#), 2024 Ann Rep of NY Commn on Jud Conduct at 102, 2023 WL 9255624, at *7; [*Matter of Persons*](#), 2024 Ann Rep of NY Commn on Jud Conduct at 170, 2023 WL 2930196, at *7; [*Matter of Stilson*](#), 2023 Ann Rep of NY Commn on Jud Conduct at 290, 2022 WL 546664, at *3.

That is not to say every public outburst by a judge requires public discipline. “Judicial misconduct cases are, by their very nature, *sui generis*” ([*Matter of Blackburne*](#), 7 NY3d 213, 219-220 [2006]), and the particular facts of a case may lead to a dismissal or a private letter of caution.¹¹ *See e.g.*, Letters of Dismissal and Caution, [2022 Ann Rep of NY Commn on Jud Conduct at 15](#) (judge confidentially cautioned for yelling at a town board member); [2020 Ann Rep of NY Commn on Jud Conduct at 16](#) and [2018 Ann Rep of NY Commn on Jud Conduct at 16](#) (judges confidentially cautioned for inappropriate comments on Facebook).

“Such fine distinctions are unnecessary here, however, because under any standard,” ([*Mazzei*](#), 81 NY2d at 572), Respondent committed misconduct. His altercation with Ms. Koch that day did not result from a good-faith and unavoidable

¹¹ Pursuant to [Judiciary Law § 45](#), dismissals of Commission complaints are confidential.

disagreement; it resulted from his decision to cause a public confrontation where he could challenge a masking policy with which he did not agree. And by refusing Ms. Koch's repeated requests to leave, Respondent arguably committed civil trespass. 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 by leaving when the police department said they would send an officer. He cannot avoid the consequences of his actions here.

POINT II

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY FILING A DEFAMATION SUIT AGAINST STACEY KOCH IN WHAT WAS AND/OR APPEARED TO BE RETALIATION FOR HER HAVING FILED A CONFIDENTIAL COMPLAINT WITH THE COMMISSION.

Fueled by anger, personal pique, and a deep-seated mistrust of the Commission, Respondent took the inexcusable step of filing a defamation suit against a Commission complainant in retaliation for making the complaint. His decision to do so was a serious ethical transgression. See [*Matter of Raab*](#), 2004 Ann Rep of NY Commn on Jud Conduct at 143, 151, 2003 WL 599401, at *8 (judge committed serious misconduct by, *inter alia*, threatening to retaliate against an attorney out of personal pique); [*Matter of Hanophy*](#), 1997 Ann Rep of NY Commn on Jud Conduct at 135, 138, 1997 WL 178640, at *4 (judge disciplined for

making angry and vituperative comments in open court out of personal pique over critical remarks made about him by members of the public to the media).

A. Respondent was “very angry” with Stacey Koch and wanted to “make her pay.” He sued her for \$425,000 for statements she made about him in her complaint to the Commission.

As Respondent’s attorney testified at the hearing, it is not “disputable” that Respondent was “upset and embarrassed and angry” about the December 28, 2021, incident at Seeta (Sussman: 243). He remained angry for a very long time.

Months later, in March 2022, Respondent called the Seeta office to schedule another appointment for one of his sons (Resp Ex E). Ms. Koch discussed the matter with Dr. Modi, her boss, and they decided that it would be best if Respondent did not return to the practice (Koch: 199). When Ms. Koch called Respondent to give him a list of other ophthalmologists, he became “threatening and volatile” (Koch: 200). Respondent sent a follow-up email a few days later in which he acknowledged that the “conversation got a little heated” (Resp Ex E). He went on in that email to recapitulate his version of the December 28th event, disparaging Ms. Koch personally by claiming she went “berserk” and belittling her fear of COVID contamination as “illogical, nonsensical and ridiculous” (Resp Ex E). He labeled Seeta Eye Center’s suggestion that he go to a different ophthalmologist “blatant and outright discrimination.” He again insulted Ms. Koch, telling her that “[f]rom what I can tell of your irrationality, you will require

masks even when they are no longer required,” and he threatened that if his son was not given an appointment, he would “take further action” (Resp Ex E).

Respondent remained angry with Seeta – and with Ms. Koch in particular – well into autumn 2022. In September 2022, Michael Brown told Respondent that Ms. Koch had testified before the Commission and was allegedly “bragging that she was going to get [Respondent] fired” (Respondent: 495, 498). Mr. Sussman acknowledged that in the period after September 2022, there was “more than one conversation” in which Respondent “expressly said that he was angry about what occurred at Seeta” (Sussman: 243).

In November of 2022, Respondent was still “very angry,” and he specifically 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).¹² Respondent thought that Ms. Koch ““deserved to be punished”” by way of “a lawsuit that would get damages” (Sussman: 248). According to Sussman, Respondent “[a]bsolutely” wanted Ms. Koch to pay damages (Sussman: 248). Respondent acknowledged that he wanted to “make her pay” (Respondent: 519).

¹² 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: 244-45).

Respondent's testimony makes clear that his Supreme Court lawsuit was about more than just establishing that Ms. Koch's allegations against him were false – something he could have done in the Commission's disciplinary proceeding. But when counsel pointed out that the Commission could dismiss Ms. Koch's complaint if it had no merit – thus establishing that he did nothing wrong – he replied:

That's not getting recourse. I can't sleep at night. My whole family is in disarray. I'm spending tens of thousands of dollars defending myself. No, that is not recourse. To say to a judge, "Hey, don't worry about it. You got to go to the Commission. You spent three, four years, eh, we dismiss it now," no, no, that's not recourse.

(Respondent: 518-519). Respondent made clear that he would not be satisfied with a determination that merely established that he had not committed misconduct. He wanted to make Ms. Koch pay him "for the damages" caused by her complaint to the Commission (Respondent: 519). It was personal.¹³

Before the year was out, Respondent sued Ms. Koch for \$425,000 (Comm Ex 7). He grudgingly admitted at the hearing that "one of the reasons" he sued her was "for the statements she made in her complaint to the Commission"

¹³ Respondent's personal antipathy towards Ms. Koch is further demonstrated by his decision to return to Seeta for an appointment with his child on January 10, 2023, just seven days after Ms. Koch had been served with Respondent's defamation suit (Comm Ex 8; Koch: 202-204). Respondent admitted that appearing at Seeta at that time could appear intimidating to Ms. Koch (Respondent: 530).

(Respondent: 516, 518).¹⁴ That admission is dispositive as to the retaliation charge against Respondent herein.

Litigation “may be considered retaliatory if motivated, even partially, by a retaliatory animus.” [*Spencer v International Shoppes, Inc.*](#), 902 F Supp 2d 287, 294 (EDNY 2012); *see also* [*Liebman v Albany Medical Center*](#), __ AD3d __, 2025 WL 3545682 at *3 (3d Dept 2025) (plaintiff may establish New York Human Rights claim by showing her “firing was retaliatory and all or in part based” upon an arrest at political rally); [*Bilitch v New York City Health & Hosps. Corp.*](#), 194 AD3d 999, 1005 (2d Dept 2021) (summary judgment denied in plaintiff’s Human Rights suit where, despite evidence of legitimate reasons for employer’s actions, plaintiff raised triable issue of fact whether conduct was “at least motivated, in part, by a retaliatory motive”).

Respondent’s grudging admission here that he was motivated, at least in part, to sue Ms. Koch because she made statements about him in a Commission complaint is an admission of serious judicial misconduct. It is an admission that he retaliated against Stacey Koch – that he wanted to “punish her” – because she told

¹⁴ Respondent’s claim that an additional reason he sued Ms. Koch for was for her alleged statements to Mr. Brown is not credible. Respondent acknowledged that his lawsuit was limited to statements Ms. Koch made in her Commission complaint and did not include any statements allegedly made to Mr. Brown. Respondent’s repeated claims to be befuddled that the Brown statements were not included in the lawsuit (Respondent: 500, 516-517) are simply not believable. Respondent admitted that he reviewed the contents of his defamation complaint and approved it before it was filed (Respondent: 519). Respondent is a lawyer and at the time he filed his lawsuit, he had been a sitting judge for 14 years (Respondent: 559).

the Commission what happened on December 28, 2021. In doing so, he violated the Rules. See [*Matter of Cerbone*](#), 2004 Ann Rep of NY Commn on Jud Conduct at 81, 2003 WL 22701127, *removal accepted*, 2 NY3d 479 (2004) (judge removed, *inter alia*, for retaliating against a district attorney who made a complaint to the Commission).

B. Even if Respondent did not actually retaliate against Stacey Koch for filing a Commission complaint, his lawsuit gave the appearance that he was doing so, an appearance of impropriety that is “no less to be condemned than is the impropriety itself.”

Although it is clear from the record evidence – and Respondent’s own grudging admission – that he sued Stacey Koch in retaliation for her Commission complaint, it is not necessary to prove actual retaliation in order to sustain Charge II. Regardless of his motive, his lawsuit clearly gave the appearance that he was retaliating against her and sent a chilling message to other potential witnesses in the Commission’s proceeding.

It is well-settled that when determining whether a judge has committed misconduct, “an appearance of . . . impropriety is no less to be condemned than is the impropriety itself.” [*Spector v State Commn on Jud. Conduct*](#), 47 NY2d 462, 466 (1979); [*Matter of Ray*](#), 2000 Ann Rep of NY Commn on Jud Conduct at 149, 151, 1999 WL 304662, at *3 (same); [*Matter of Cohen*](#), 1989 Ann Rep of NY Commn on Jud Conduct at 71, 74, 1988 WL 524383, at *3 (appearance of impropriety no less to be condemned than actual impropriety).

Respondent admitted that before he brought suit, Mr. Sussman told him, “It doesn’t look good for a judge to sue the person who complained about [you]” (Respondent: 503). According to Respondent, Mr. Sussman “went through a whole diatribe” about “optics” (Respondent: 503-504). Respondent rejected that advice because “judges aren’t really concerned with optics” (Respondent: 503-505).

On February 13, 2023, after Ms. Koch and the Commission filed motions to dismiss Respondent’s suit, Mr. Sussman advised Respondent to withdraw his lawsuit, telling him via email, “[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). When asked if he agreed with statement, Respondent replied, “No” (Respondent: 532). Rather than withdrawing the lawsuit as Mr. Sussman advised, Respondent directed him to file 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” (Comm Ex 11).

Respondent’s tortured attempts to deny what his own attorney called “an obvious type of issue” (Sussman: 250) are unpersuasive. Suing a person who is set to testify against you in a disciplinary proceeding is quite clearly a “bad look” (Sussman: 256) that suggests an obvious attempt to punish or silence the witness. Regardless of Respondent’s motivation, his lawsuit unquestionably created at least the appearance that he was retaliating against Ms. Koch for filing her complaint.

And that appearance has serious real-world consequences. As Supreme Court held in dismissing Respondent's suit, "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 (Sup Ct, Dutchess Co 2023) (Comm Ex 15).

At the hearing, Respondent was asked directly if filing his lawsuit against Ms. Koch created the appearance of impropriety: He replied, "Well, based on I was found to have violated a SLAPP lawsuit -- or a SLAPP suit or anti-SLAPP or whatever you say, I would say yes" (Respondent: 507). That admission, and the "bad look" Respondent's lawsuit obviously created, compels a finding that Charge II should be sustained.

C. 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 exclusive, constitutional mandate to investigate, hear and decide complaints of judicial misconduct.

As the Court of Appeals acknowledged long ago, “[t]here could hardly be a higher governmental interest than a State’s interest in the quality of its judiciary.” [*Nicholson v State Commn on Jud Conduct*](#), 72 AD2d 48, 53 (1st Dept 1979). 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.” [*Nicholson v State Commn on Jud Conduct*](#), 50 NY2d 597, 608 (1980). “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).

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; Respondent: 452-453; 546 - 549). At the hearing, he testified that was still his opinion (Respondent: 453). In a separate email to Mr. Sussman he 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; Respondent: 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; Respondent: 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 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.” [*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 [*Quinn v. State Commission on Judicial Conduct*](#), 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.

Moreover, as Supreme Court held when dismissing Respondent’s defamation suit, 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 v Koch*](#), 79 Misc 3d 434, 441 (Sup Ct, Dutchess Co 2023). By suing Stacey Koch for \$425,000, Respondent clearly put her in “fear of financial hazard.”¹⁵ Whether intentional or not, his well-publicized 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. That possibility underscores the seriousness of his misconduct.

D. Respondent cannot excuse his actions by raising an “advice of counsel” defense.

Respondent’s defense that he relied on the advice of counsel (Colloquy: 453) fails on both the facts and the law.

The hearing evidence clearly establishes that Mr. Sussman did not advise Respondent to bring suit. To the contrary, he counseled Respondent against it.

¹⁵ Perhaps recognizing the coercive effect of his suit for substantial money damages, Respondent refused to concede that \$425,000 “was likely to be a lot of money” for Ms. Koch, cavalierly saying, “How do I know she’s not a multimillionaire or even a billionaire?” (Respondent: 521).

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]” (Respondent: 503). This was not just a passing comment. According to Respondent, Mr. Sussman “went through a whole diatribe” about “optics” (Respondent: 503-505). To the extent that Mr. Sussman gave any opinion 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 create the appearance of ethical impropriety. Instead, he rejected Mr. Sussman’s advice, because “judges aren’t really concerned with optics” (Respondent: 503-505).¹⁶

Moreover, the issue of whether Respondent had a viable claim for defamation under civil law, upon which Mr. Sussman also opined, is not the relevant issue in this case. The relevant issue is whether a judge violates the Rules Governing Judicial Conduct when he sues a Commission witness during an ongoing investigation, regardless of whether the suit is viable or not. On that issue, Respondent testified that he acted as his own attorney. At the time he filed

¹⁶ Respondent similarly rejected Mr. Sussman’s advice to withdraw his lawsuit after Ms. Koch and the Commission filed motions to dismiss. Sussman told Respondent in no uncertain terms, “I do think withdrawing is a good idea, regardless of the legal merits of our position,” and reiterated his initial concern that “[i]t 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 disregarded that advice and directed Sussman to oppose the motions (Comm Ex 11).

his defamation suit, Respondent was being investigated by the Commission with respect to four different complaints, including the complaint made by Ms. Koch. He was represented in those Commission matters by Chad LaVeglia, Esq. (Respondent: 511-512). Yet despite having retained 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 (Respondent: 512). He 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 (Respondent: 508, 512). He did not, however, call Ms. Smith (Respondent: 512).¹⁷

Respondent further relied on his own research, rather than any advice of counsel, when considering whether suing Ms. Koch might violate the Rules. He declined to seek an opinion from Mr. LaVeglia or Ms. Smith – two attorneys who he knew to have experience in judicial ethics. As a result, the advice of counsel defense is inapplicable as to the appearance of impropriety alleged in Charge II.

¹⁷ 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 (Respondent: 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 (Respondent: 509-510; Resp Ex G). The opinion is also available online at: nycourts.gov/ipjudicialethicsopinions/12-96.htm

Finally, case law and Commission precedent make clear that the advice of counsel defense is not available as to Charges II and III where the Formal Written Complaint charges the “appearance of impropriety.”¹⁸ The advice of counsel defense is relevant to show that a defendant did not have unlawful intent. *See U.S. v Scully*, 877 F3d 464, 476 (2d Cir 2017). *See also People v Marcus*, 261 NY 268, 299-300 (1933) (advice of counsel defense relevant to whether defendants “intentionally” committed acts).

In this instance, however, Respondent’s intent is immaterial. It is well-settled that an appearance of impropriety constitutes misconduct, regardless of the judge’s actual intent. *See Matter of Smith*, 2014 Ann Rep of NY Comm on Jud Conduct at 208, 2013 WL 3803224 (“regardless of her intent” judge’s conduct created appearance of impropriety); *Matter of Aronian*, 2023 Ann Rep of NY Commn on Jud Conduct at 92, 2022 WL 17170240 (same); *Matter of Ramirez*, 2018 Ann Rep of NY Commn on Jud Conduct at 232, 2017 WL 2704713 (same).

Because Respondent’s actual intent is not relevant to whether his lawsuit created the appearance of impropriety, the advice of counsel defense is not applicable to as the allegation in Charges II and III that his conduct created the appearance of impropriety.

¹⁸ Where a judge acted in good-faith reliance on the advice of counsel, that fact could be relevant to the severity of the sanction imposed.

POINT III

RESPONDENT COMMITTED JUDICIAL MISCONDUCT BY WITHHOLDING AND REDACTING MATERIAL DOCUMENTS RESPONSIVE TO COMMISSION REQUESTS WITHOUT INFORMING THE COMMISSION OF ALL THE MATERIAL WITHHELD AND WITHOUT PROVIDING A REASONABLE BASIS FOR DOING SO.

By his own admission, Respondent failed to fully cooperate with a Commission investigation by withholding numerous emails that were responsive to the Commission's request. Indeed, he withheld or redacted 11 emails and email attachments that he now acknowledges he should have turned over. Further, Respondent's claim that his decision to withhold and/or redact material emails was inadvertent and that the withheld and/or redacted material is "exculpatory" simply is not credible. Given the nature of the content in the emails, some of which are disparaging toward the Commission and some of which evince Respondent's belief that he is the victim of a conspiracy, it strains credulity to suggest that his numerous omissions were simply an honest mistake.

In [*Matter of O'Connor*](#), 32 NY3d 121, 129 (2018), the Court of Appeals removed a judge who *inter alia*, demonstrated an "unwillingness to cooperate fully" with a Commission investigation (emphasis added). As the Court held, a judge's "willingness to cooperate with the Commission's investigations and proceedings is not only required – it is essential." *Id.*

It is undisputed that Respondent failed to “cooperate fully” with the Commission’s investigation when he withheld numerous emails he should have turned over when the Commission requested them. During his testimony, Respondent admitted that each of the following emails was improperly withheld:

- A. Two emails to Mr. Sussman on November 23, 2022, stating, in part, “Please let me know if we can proceed against Seeta,” and “When looking at it, are we able to just sue Stacey Koch, the manager of Seeta?” (Comm Ex 20; Respondent: 435-438). Respondent claimed that his attorney mistakenly failed to send these emails to the Commission (Respondent: 435-438).
- B. An email that he sent to Mr. Sussman on February 2, 2023, stating, in part, “Since she knew almost a year before the confrontation that I did not medically tolerate the mask, I believe she had this all planned” (Comm Ex 21; Respondent: 560-61). Respondent maintained that he inadvertently “missed” this email exchange (Respondent: 450).
- C. An attachment to an email he sent to Mr. Sussman on February 7, 2023, with his “thoughts” on a draft response to the motion to dismiss in *Mora v Koch*. In the attachments, Respondent stated, in pertinent part:
 - i) It does not seem right that Koch can use the judicial commission as a sword, then use the SLAPP statute as a shield. Regarding SLAPP, it should be stressed that it was Koch who caused the behavior.
 - ii) I think we should focus on Koch creating the entire scene, then reporting me for the scene that she created. I think the police call recordings are essential. If she acknowledges that she knows I was a judge on the police call, it shows that she was lying about contacting the bar association. We can then show that she had no intention of following the mask regulation, even though she knew well ahead of the Dec visit that I did not tolerate masks.

- iii) Koch was determined not the [*sic*] let anyone in without a mask. She basically stated so when I asked her Jan 29, 2021 what they do for people who do not medically tolerate a mask. She advised that only one other patient could not wear a mask. I asked her how they handled it, and she said that patient decided to leave the practice. When you read between the lines, you see that Koch made her leave the practice.
- iv) This lawsuit was not brought to harass or intimidate Koch from testifying before the commission. It was specifically brought after I found out she testified before the commission, and then bragged to her former co-worker Michael Brown that she told the commission she felt threatened by me, and that she was going to get me removed from the bench.

(Comm Ex 22; Respondent 449-451).

Respondent testified that this email and its attachment was “missed” (Respondent: 451).¹⁹

- D. Emails he sent to Mr. Sussman on February 8, 2023, in which he stated, “The corruption doesn’t end!” (Comm Ex 23; Respondent: 452-453, 546). Respondent conceded that this comment was a criticism of the Commission and that there was no reason for him withhold these emails (Respondent: 452-453, 546).
- E. An email to Mr. Sussman on February 8, 2023, in which he said “You are correct. Even now that DiFiore is no longer a judge, they still will not reveal that there was an investigation against her. So, how are they giving all of the details of my investigation? They are not even supposed to acknowledge that I am under investigation” (Comm Ex 24; Respondent: 454-455). In response to a question from the Referee, Respondent admitted “this should have been turned over. I missed it. I admit that” (Respondent: 455).
- F. An email to Mr. Sussman on March 6, 2023, in which he stated, “Maybe you can use Tembeckjian’s own words against him at oral argument. When I asked for them to postpone the matter because I had a human rights case pending, they denied me saying their

¹⁹ In the transcript, Respondent’s counsel mistakenly refers to the date of this email as 2/27/2023 instead of 2/7/2023 (Respondent: 449-451).

jurisdiction is independent from the division of human rights and the civil courts. See attached letter.” (Comm Ex 26; Respondent: 557). Respondent testified that this email was “missed” and should have been provided to the Commission (Respondent: 557).

- G. Respondent withheld an email that he sent to Mr. Sussman on April 3, 2023 in which he stated, “I find it very interesting that the attorney for the commission, in open court, on the record, stated that I am being investigated for other matters. It is my understanding that this is a violation of their duty to keep it confidential. Judiciary Law Secs 44-46. I understand that I opened the door regarding the proceeding with Koch, but nothing else” (Comm Ex 27; Respondent: 460). Respondent testified that “this one was missed, and this is another one I would never intentionally leave out” (Respondent: 460). And when asked why, Respondent replied, “Because I say it shows the corruption” and then further explained “part of the corruption”, something for which he does not “apologize” (Respondent: 461).
- H. In an email that Respondent sent to Mr. Sussman on May 12, 2023, Respondent redacted the following text: “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; Respondent: 459). Respondent testified that he redacted this because “it has nothing to do with Koch” or a complaint about his failure to wear a mask in the courthouse (Respondent: 459-460).

By his own admission, Respondent failed to fully cooperate with a Commission investigation by withholding numerous emails that were responsive to the Commission’s request. It is simply not credible that Respondent’s decision to withhold the highly material attachment to his February 7, 2023, email – a document that laid out his suggested strategy for the defamation suit – was merely an innocent mistake. Nor is it believable that he simply “missed” several emails in which he disparaged Ms. Koch or accused the Commission of corruption. “Such

lapses are not excused by negligence or inattention and, even if inadvertent, create the appearance that respondent was intentionally concealing” emails he did not want the Commission to see. [*Matter of Ramich*](#), 2002 Ann Rep of NY Comm on Jud Conduct at 154, 159, 2002 WL 31954075.

CONCLUSION

Commission Counsel respectfully requests that the Referee adopt the proposed findings of fact and conclusions of law enumerated in Appendix A to this Memorandum and find that Charges I, II, and III of the Formal Written Complaint are sustained.

Dated: January 12, 2026
Albany, New York

Respectfully submitted,

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APPENDIX A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent was admitted to the practice of law in New York in 1997. He has been a Judge of the Poughkeepsie City Court, Dutchess County, since 2011. Respondent's current term expires on December 31, 2030 (Complaint ¶4; Answer RESPONSE #4; Respondent: 361-362).

PROPOSED FINDINGS OF FACT AS TO CHARGE I

2. On December 28, 2021, the COVID-19 pandemic was ongoing (Monteverdi: 64; Respondent: 466-467).

3. At that time, Seeta Eye Center ("Seeta"), a private medical and surgical ophthalmology practice in Poughkeepsie, New York, had policies in place to mitigate the risk presented by the COVID-19 pandemic, including a requirement that all individuals – including staff and patients - wear a face mask upon entering the building (Feather: 29-30; Monteverdi: 64; Koch: 143-146, 148-149).

4. Seeta provided masks for anyone who did not have one (Feather: 32; Koch: 169).

5. Patients were notified of the face mask requirement when they received confirmation of an appointment and signs notifying people of the face mask

requirement were posted on the entrance doors to the building and near the check-in area (Feather: 29-30; Monteverdi: 64; Koch: 148; Respondent: 465).

6. If given advanced warning/notice that a patient with an upcoming appointment was unable to wear a face mask for a medical reason, staff at Seeta would try to accommodate the patient, such as by meeting the patient in the parking lot and taking them into the building through a side door instead of entering through the front door that led into the waiting room and reception area (Feather: 31, 34, 37, 57, 59-60; Monteverdi: 77; Koch: 149-150).

7. On December 28, 2021, Respondent entered Seeta to accompany his [REDACTED] child to a routine eye appointment (Respondent: 382, 468).

8. Respondent, who was unvaccinated, entered the waiting room which was full or close to full, with approximately 20 patients present, wearing a clear plastic face shield that was open on the bottom and at the sides, as shown in the picture at Respondent's Exhibit D, instead of a face mask (Feather: 31-34; Monteverdi: 66-67; Koch 153-155; Respondent: 364, 382-383, 466; Resp Ex D).

9. The clear plastic face shield that Respondent was wearing did not comply with the face mask policy that was in place at Seeta at that time (Feather: 32; Monteverdi: 64-65; Koch: 149).

10. Approximately 11 months earlier, Respondent brought his son to Seeta for an exam wearing a face shield that did not comply with Seeta's policy. He refused requests by a receptionist and an office manager, Danielle Foster, to put on a mask. Instead, Respondent agreed to wait outside while his son, who was wearing a face mask, underwent his appointment inside the building (Monteverdi: 63, 65, 67-68, 75; Koch: 168; Respondent: 380).

11. When Respondent entered Seeta's waiting room on December 28, 2021, he knew that Seeta required face masks to be worn and that his face shield did not comply with Seeta's policy (Respondent: 465-466).

12. Respondent did not notify Seeta in advance of his child's appointment that he would be accompanying his child to the appointment that day (Feather: 37; Koch: 156; Respondent: 466).

13. Nor did Respondent contact Seeta in advance of the appointment to request an accommodation or to obtain permission to enter the building wearing a face shield instead of a mask (Feather: 37; Koch: 156; Respondent: 465-466).

14. Respondent did not agree with Seeta's face mask policy and he decided to challenge it at his child's appointment on December 28, 2021 (Respondent: 379, 465-466, 471, 487-488; Resp Ex E).

15. Kristine Monteverdi and Jessica Feather were working at the reception desk on December 28, 2021 (Feather: 31-33; Monteverdi: 65-66, 69).

16. The duties of Ms. Monteverdi and Ms. Feather included making sure that Seeta's safety protocols, including the face mask requirement, were followed. In the event that they encountered an issue, their practice was to ask one of Seeta's managers for assistance (Feather: 30, 33; Monteverdi: 64-65; Koch: 149).

17. Respondent approached the reception desk in the waiting room to check in, at which time Ms. Monteverdi asked him to put on a face mask (Feather: 32; Monteverdi: 67-68; Respondent: 383, 467).

18. Respondent refused Ms. Monteverdi's request and stated, in words or substance, that he could not wear a mask due to a medical condition, without identifying it or providing proof that he actually had such a condition (Monteverdi: 68-69; Feather: 32-33; Respondent: 383).

19. Ms. Monteverdi repeated her request to Respondent to put on a face mask and he again refused to comply (Feather: 32-33; Monteverdi: 69).

20. Ms. Monteverdi asked Respondent to wait outside while one of the managers was asked to come to reception (Feather: 33; Monteverdi: 69).

21. Respondent refused Ms. Monteverdi's request to wait outside (Monteverdi: 69).

22. Jessica Feather called Stacey Koch, one of the managers, and asked Ms. Koch to come to the waiting room to assist with a patient who was refusing to comply with Seeta's face mask policy (Feather: 32-33; Monteverdi: 69; Koch: 151-152).

23. Ms. Koch went to the waiting room and asked Respondent to put on a face mask (Feather: 33; Monteverdi: 69; Koch: 158; Respondent: 384).

24. Respondent again refused to put on a mask, stating in words or substance that he had a medical condition, without identifying the alleged medical reason he could not wear a mask (Feather: 34; Monteverdi: 69-70; Koch: 158-159; Respondent: 384, 467).

25. In fact, Respondent had not consulted a medical professional about his alleged condition and had not been diagnosed with a condition that made him medically unable to tolerate a face mask (Respondent: 478-479).

26. Ms. Koch asked Respondent for documentation to support his claim that he had a medical condition that prevented him from wearing a mask (Feather: 34; Monteverdi: 70; Koch: 158-159).

27. Respondent had nothing to document his claimed condition (Respondent: 478-479).

28. Ms. Koch asked Respondent to put on a face mask or go outside, and said that if he was unwilling to do so, she would call the police (Feather: 34; Monteverdi: 71-72; Koch: 158-59; Respondent: 388-389).

29. Respondent refused to step outside and told Ms. Koch, in words or substance, to go ahead and call the police because the police would not come and/or the police were not enforcing the mask mandate (Feather: 35; Monteverdi: 72; Koch: 159; Respondent: 387-389).

30. As Ms. Koch's discussion with Respondent continued, Ms. Koch more than once repeated her request that Respondent leave the premises, and each time Respondent refused (Feather: 34; Koch: 159, 161; Respondent: 388).

31. The exchange of words between Respondent and Ms. Koch took place in the midst of the patients in Seeta's waiting room (Feather: 34; Monteverdi: 66, 71; Koch: 157-158; Brown: 308; Respondent: 466-468).

32. During the exchange, Ms. Feather, Ms. Monteverdi and Ms. Koch observed the volume of Respondent's voice rise (Feather: 36; Monteverdi: 70; Koch: 159).

33. Ms. Koch asked Ms. Feather to call the police (Feather: 34-35; Monteverdi: 72; Koch: 161; Respondent: 388-389).

34. Ms. Koch spoke with officials from 911 and the Town of Poughkeepsie Police Department (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).

35. While Ms. Koch was on the phone with police, Respondent continued to confront her (Comm Ex 3, 0:01:10 – 0:01:24, 0:01:43 – 0:02:03; Comm Ex 3-A, 2-3; Koch: 159, 165, 170, 173-175; Respondent: 385-386, 471-472).

36. Ultimately, the police were called twice and Ms. Koch's two telephone calls with 911 and police were recorded ([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).

37. At the beginning of the first call, the audio recording captured Ms. Koch stating 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"²⁰ ([Comm Ex 2](#), 0:00:35 – 0:00:47; Comm Ex 2-A, 1-2; Koch: 162).

38. The 911 operator then transferred Ms. Koch's call to the Town of Poughkeepsie Police Department, "for a male causing a disturbance" (Comm Ex 2; Comm Ex 2-A, 0:01:06-0:01:15; Koch: 162-163).

39. Ms. Koch's telephone call with the Town of Poughkeepsie Police Department was recorded ([Comm Ex 3](#); Comm Ex 3-A; Koch: 164-165).

40. After identifying herself, Ms. Koch stated to the police official on the call, "I have many patients present, and I have a gentleman who is not adhering to the mask that we require in our practice" ([Comm Ex 3](#), 0:00:10 – 0:00:23; Comm Ex 3-A, 1).

41. Ms. Koch further stated, "So, we're a medical practice. And he has to wear a mask here" (Comm Ex 3, 0:00:23 – 0:00:27; Comm Ex 3-A, 1).

42. The police official asked for the name of the male who was refusing to wear a mask. Ms. Koch can be heard on the recording stating, "What is your name, sir?" and then providing the official with Respondent's name ([Comm Ex 3](#), 0:00:28 – 0:00:45; Comm Ex 3-A, 1-2).

²⁰ The transcript of the audio recording incorrectly states, "He wears a clear plastic face shield" instead of "He's wearing a clear plastic face shield". Comm Ex 2, 0:00:43 – 0:00:47; Comm Ex 2-A, 1-2.

43. The police official then stated to Ms. Koch, “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?”²¹ ([Comm Ex 3](#), 0:00:45 – 0:00:49; Comm Ex 3-A, 2).

44. Ms. Koch replied, “Yes. And I’m very surprised because I believe he’s a longtime patient. But he says he has a medical explanation, but he has no documentation” ([Comm Ex 3](#), 0:00:49 – 0:00:57; Comm Ex 3-A, 2).

45. The police official then asked Ms. Koch to stay on the line while the call was placed on hold ([Comm Ex 3](#), 0:00:58 – 0:01:02; Comm Ex 3-A, 2).

46. The recording of the telephone call captured Respondent’s voice in the background and parts of his conversation with Ms. Koch , including the following exchange of words between Ms. Koch and Respondent while the call was on hold:

Ms. Koch: I mean, I’m happy to provide a paper mask for you.

Respondent: (Unintelligible).

Ms. Koch: Then you can’t be in our practice. We’re a private practice.²²

Respondent: I can. I can.

Ms. Koch: No, you can’t.

²¹ The transcript of the audio recording incorrectly states, “and he also refusing to put a mask on” instead of “and he’s also refusing to put a mask on”. See Comm Ex 3 and Comm Ex 3-A.

²² The transcript of the audio recording incorrectly states, “But you can’t use our practice without (unintelligible)” instead of “Then you can’t be in our practice. We’re a private practice”. Respondent admitted during his testimony that, while Ms. Koch was on the phone with police, she told Respondent that he could not be in the practice without a mask and Respondent replied with words to the effect that he was allowed to be there (Respondent: 471).

Respondent: (Unintelligible) undocumented --

Ms. Koch: I wish you wouldn't speak if you're not going to wear a mask, okay? Don't talk.

Respondent: I'll talk²³

([Comm Ex 3](#), 0:01:11 – 0:01:25; Comm Ex3-A, 2-3; Koch: 165; Respondent: 385-386, 471-472).

47. Ms. Koch is then heard in the recording stating to a patient in the waiting room, "I understand, ma'am. I'm doing the best I can to protect you"

([Comm Ex 3](#), 0:01:26 - 0:01:30; Comm Ex 3-A, 3; Koch: 170).

48. At some point, Respondent's conduct caused Ms. Monteverdi to feel uncomfortable, both because Respondent's conduct seemed inappropriate but also because of the gender difference between him and Ms. Koch. She felt so uncomfortable that she decided to leave the reception area and went to another part of the building, where she asked a male Technician who worked at Seeta – Michael Brown – to come assist with a problem in the waiting room (Monteverdi: 71; Koch: 172-173; Brown: 307).

49. Mr. Brown arrived in the waiting room and stood between Respondent and Ms. Koch (Koch: 172, Brown: 308-309).

²³ The transcript of the audio recording incorrectly states "Okay" instead of "I'll talk". In the audio recording, Respondent can be heard stating "I'll talk" and, in his Answer to the Formal Written Complaint, Respondent admitted saying "I'll talk" (Answer ¶14). Respondent confirmed during his testimony that he said words to the effect of "I'm going to talk" (Respondent: 385-386, 471-472).

50. At that time, Mr. Brown observed that Respondent “was about halfway out in the waiting room” where there were patients (Brown: 308, 311).

51. Mr. Brown observed Ms. Koch ask Respondent to leave because he was not wearing a mask, to which Respondent replied “I’m wearing a mask,” referring to his face shield (Brown: 308-309).

52. Mr. Brown worried about having Respondent leave the building to stop what was going on because he found the exchange between Respondent and Ms. Koch “embarrassing,” and he asked Respondent to leave (Monteverdi: 72; Brown: 309-311).

53. Ms. Koch is heard in the recording stating to Mr. Brown, “Thank you, Mike (phonetic). I appreciate your presence. I’m on the phone with the police, trying to get somebody to come here ([Comm Ex 3](#), 0:01:30- 0:01:39; Comm Ex 3-A, 3; Koch: 171).

54. The recording then captured the following exchange of words between Ms. Koch and Respondent:

Ms. Koch: If you just lived through what I lived through, you would know what you’re doing -- no, don’t speak because we don’t want your air.

Respondent: Don’t want my air. You go to a restaurant –

Ms. Koch: I do not. I do not.

Respondent: -- and everybody --

Ms. Koch: I do not go to a restaurant. I live with someone who had [REDACTED] three times, and I really don't want your germs on me²⁴

([Comm Ex 3](#), 0:01:42 – 0:02:03; Comm Ex 3-A, 3; Koch: 159, 170, 173-174; Respondent: 385-386, 472).

55. When Ms. Koch stated that she lived with someone who had [REDACTED] three times, she was referring to her husband (Koch: 174).

56. Despite Ms. Koch's stated concerns about coming into contact with his germs because she lived with someone who had [REDACTED] three times, Respondent still refused to leave (Respondent: 472-473, 487).

57. When the police official returned to the call, he 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).

58. Ms. Koch replied, "That's right. That's what I'm requesting" and explained that she had a "room full of people so it's really creating a problem for me" ([Comm Ex 3](#), 0:02:12 – 0:02:21; Comm Ex 3-A, 3-4).

59. The official on the phone replied, "Okay. So you have a bunch of people in the waiting room?" to which Ms. Koch replied "Yes" ([Comm Ex 3](#), 0:02:21 – 0:02:24; Comm Ex 3-A, 4).

²⁴ The transcript of the audio recording incorrectly lists the quote, "I do not. I do not", twice. Comm Ex 3, 0:01:03 – 0:00:43; Comm Ex 3-A, 3.

60. 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).

61. Ms. Koch replied, “How long do you expect?” to which the official replied that he could not give a specific time, but it would be “hopefully, soon” ([Comm Ex 3](#), 0:02:29 – 0:02:40; Comm Ex 3-A, 4).

62. Ms. Koch thanked the officer and the phone call ended ([Comm Ex 3](#), 0:02:40 – 0:02:44; Comm Ex 3-A, 4-5).

63. Respondent heard that the police were coming and then left the building (Respondent: 473-474).

64. The police were called a second time and Ms. Koch 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” ([Comm Ex 4](#), 0:00:13 – 0:00:19; Comm Ex 4-A, 1; Feather: 35; Koch: 176; Respondent: 474).

65. After taking Ms. Koch’s name, the 911 operator clarified with Ms. Koch that she was calling back, Ms. Koch stated, “He just left so -- I’m going to hope it’s okay” (Comm Ex 4, 0:00:32 – 0:00:37; Comm Ex 4-A, 1).

66. The 911 operator transferred Ms. Koch’s call to the Town of Poughkeepsie Police Department (Comm Ex 4, 0:00:21 – 0:00:24; Comm Ex 4-A, 1-2; Koch: 177).

67. Ms. Koch's telephone call with the Town of Poughkeepsie Police Department was recorded ([Comm Ex 5](#); Comm Ex 5-A; Koch: 178-179). Ms. Koch told the police official that Respondent had left but she did "not know what he's doing next" (Comm Ex 5, 0:00:21 – 0:00:24; Comm Ex 5-A, 1; Koch: 179).

68. When asked to explain, Ms. Koch stated: "I mean, he literally would not leave and was creating a big ruckus in my waiting room and just finally stepped out, but I don't know if he's left the parking lot. I don't know if he's trying to come back in again. I do know his name, and I can't believe he created such a difficult time in my waiting room in a very tame ophthalmology practice" (Comm Ex 5, 0:00:24 – 0:00:29; Comm Ex 5-A, 1; Koch: 179).

69. Ms. Koch is later heard in the recording stating that Respondent had left and driven away, to which the official replied, "So if he returns, give us a call back" (Comm Ex 5, 0:01:00 – 0:01:05; Comm Ex 5-A, 2).

70. Shortly after leaving Seeta, Respondent called his chiropractor and long-time friend, G [REDACTED] M [REDACTED], and asked him to produce a letter on his behalf (Respondent: 391, 475-476).

71. That same afternoon, Respondent emailed Ms. Koch a letter from the chiropractor that stated, "Due to [Respondent's] current health condition, he is medically unable to wear a mask" (Koch: 180-182; Respondent: 391, 476).

72. The letter did not identify the health condition, nor did it state why the health condition rendered Respondent unable to wear a mask (Koch: 181-182; Respondent: 476).

73. In fact, Dr. M [REDACTED] had not diagnosed Respondent with a health condition that made Respondent medically unable to wear a mask (Respondent: 476-479).

74. At the time of the incident in Seeta's waiting room, Respondent had not been diagnosed by any medical professional with a health condition that rendered him unable to wear a mask (Respondent: 478-479).

75. Approximately four months after the incident, after learning that Ms. Koch had filed a complaint with the Commission, Respondent sought treatment from a mental health professional who diagnosed him with a form of "acute anxiety" known as "object phobia" (Respondent: 477, 479).

76. After receiving the letter from the chiropractor, Ms. Koch arranged for a doctor to examine Respondent's child that same day and asked Respondent to park in the parking lot, wait there and call the office upon his arrival (Koch: 180; Respondent: 392, 478, 553).

77. Respondent did as instructed, and a Seeta employee escorted Respondent and his child through a back door at Seeta to an exam room, where a

doctor performed the eye examination on the child (Koch: 180; Respondent: 392-393, 553).

78. That same day, after Respondent and his child left Seeta, Michael Brown prepared a handwritten statement at Ms. Koch's request (Koch: 186-187; Brown: 310). Ms. Koch was not present when Mr. Brown wrote the statement and she did not have any input into it (Koch: 186-187; Brown: 310).

79. Mr. Brown's handwritten note states:

I was in Exam Rm 3 when, Kristine entered the room asking me to go to the front lobby saying, there was a patient giving Stacey (our office manager) a hard time. When I arrived at the front lobby there was a gentleman with a face shield and no mask refusing to put a mask on, saying he has a doctors excuse not to wear one. Stacy asked this person to speak with his doctor & if there was an exception. This person refused. Stacey offered this pt a mask, he refused. This person then refused to leave the building. Stacy then called the police to have this man removed from the office. Person still refused to leave. I then asked the person to leave before the police came. He then obliged and left

(Comm Ex 29).

80. Respondent admitted that he was wrong to refuse to leave Seeta and that, in hindsight, he should have left (Respondent: 473, 481-482).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE I

81. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and

independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules Governing Judicial Conduct (“Rules”).

82. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

83. Respondent failed to so conduct his extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extrajudicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

84. Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE II

85. Respondent’s conduct at Seeta was so upsetting to Ms. Koch that, when she found that he is a judge, she felt compelled to file a complaint with the Commission (Koch: 193).

86. Ms. Koch reached out to Janna Whearty, the Executive Director of the Dutchess County Bar Association (“DCBA”) and inquired about bringing a complaint against Respondent (Whearty: 109-112; Koch: 190; Comm Ex 6, 3).

87. Ms. Whearty provided Ms. Koch with contact information for the New York State Commission on Judicial Conduct (Whearty 112; Koch: 190; Comm Ex 6, 3),

88. On December 29, 2021, Ms. Koch utilized the electronic complaint form on the Commission's website to file a confidential complaint against Respondent, alleging misconduct stemming from the confrontation at Seeta on December 28, 2021 (Koch: 190-191; Comm Ex 6).

89. In her complaint, Ms. Koch stated:

Frank Mora exhibited unprofessional behavior in our medical practice 12/28/21. Being a medical practice we require a mask before entry to our practice of Ophthalmology. Mr. Mora created a huge scene in our waiting room and refused to wear a mask. He claimed he had a medical condition that prevented him from wearing a mask. I asked him several times to leave or wear a provided mask which he would not do. I called the police. He taunted me in front of a waiting room of @20 people and my staff stating the police won't come. The police said they would come and he then left once the police were on their way to our practice. He then had a letter created from Chiropractor G [REDACTED] M [REDACTED] stating Mr. Mora has a "medical condition" that prevents him from wearing a mask. When I called the chiropractor for the diagnosis I was given another lecture on why masks are a waste of time and do not help. I am unsure why this health care provider did not simply answer my questions. I then called the Dutchess County Bar Association to find out why an area attorney would exhibit such unprofessional behavior in a private medical practice that follows both the CDC and Dutchess County Board of Health guidelines. I was shocked to find out this man is a Judge. This man should not be allowed any decision making for others when he can not act professionally in this medical practice. I simply feel our government needs to know this man is abusing his position in Dutchess County. It is important to let you know the reason Mr. Mora was here was to oversee an eye exam for his [REDACTED] year old boy. After

receiving the seemingly bogus letter from the chiropractor we escorted Mr. Mora and his son into the practice through a side door and provided an exam for the child and then had them exit again through a side door so as to not expose our patients to Mr. Mora

(Comm Ex 6, 3).

90. In early March of 2022, Respondent spoke with Ms. Koch on the phone, after deciding to reach out to her directly to schedule an appointment for his child (Respondent: 483-484).

91. Ms. Koch suggested that Respondent and his family find another ophthalmology practice or hold off on scheduling another appointment until July in the hope that masks would no longer be required to be worn in the office (Koch: 199; Respondent: 484; Resp Ex E).

92. During the phone call, Respondent became upset and threatened to sue Ms. Koch and/or Seeta (Koch: 199-200; Respondent: 484-485; Resp Ex E).

93. Respondent sent Ms. Koch an email a few days later on March 7, 2022, in which he wrote:

Stacey,

I apologize that our phone conversation was a little heated this past Thursday. However, I want you to understand where I am coming from. As you know, I brought my [REDACTED] son] in for an eye exam on January 29, 2021. As I do not medically tolerate a mask, I wore a face shield. You came out in an abrupt manner, and attempted to belittle me in front of the entire waiting room, asking me to leave. As [son's name] was [REDACTED] then, I let him go in by himself, and I waited outside. The funny thing is, when it was time to pay, your office had

me come in, still wearing just the face shield, with no problems or questions asked, so I could pay. Funny how that works!

I asked you on January 29, 2021, how you handle those with medical issues regarding not wearing face masks, and you said you only had one other person with this issue. I asked how you resolved it, and you said she chose to go somewhere else. I told you that is not acceptable, and to please have a procedure in place for when I come back the next time. Not only did you not have a procedure in place, when I came with my [REDACTED] son] on December 28, 2021, you came out and went berserk. Although I was at least 10 feet away from you, and at least 15 feet away from anyone else, you again asked me to leave. This time I would not. You said I was making everyone upset. I pointed out that I was no where near anyone. An elderly lady then spoke up and said she was upset. She stated she was upset because she had been waiting for over a half hour, and had not been seen yet. I told her I would be more upset about that also, not someone who is 15 feet away from everyone in the room. Not one person made a comment that they were upset. You then called the police and they said they would send someone over. When I attempted to discuss this with you, you told me to stop talking, as you did not want to get my germs. You then called the police back and told them it was an emergency, as I did not have a mask on and would not stop talking and was spreading germs. Do you realize how illogical, nonsensical, and ridiculous that is? I then left, went home, and contacted my doctor.

As you wanted a doctor's note for my medical intolerance, I sent that over to you. Was that good enough? No, you had the audacity to call my doctor and question him as to my condition and why I couldn't wear a mask. What gives you the right to ask about my medical condition? I called you back after forwarding you the note, and you had [my [REDACTED] son] and I come back the same day on December 28, 2021, at 4:30pm. You had one of your assistants get us from the parking lot and bring us in a back entrance. [My [REDACTED] son] had his appointment with Dr. G [REDACTED], and everything went smoothly then.

[My [REDACTED] son] now needs an exam, and I called you directly to schedule so we can avoid any nonsense. You called me back on

Thursday, March 3, 2022, telling me that we are not a good fit for your practice. Instead of dealing with someone who cannot wear a mask, you attempt to get rid of my family. This is blatant and outright discrimination, and I will not stand for it. This is a violation of Americans with Disabilities Act, and I advised you so. You said we should wait until July, and maybe the masks won't be around anymore. From what I can tell of your irrationality, you will require masks even when they are no longer required. You said you would have Dr. Modi call me, and he has not. I am not waiting for July, and I am not going to be intimidated.

Please have someone call me to schedule [my [REDACTED] son]'s exam with Dr. G [REDACTED]. If I do not hear from someone this week, I shall take further action.

Thank you.

Frank Mora

(Resp Ex E; Respondent: 379, 382, 486-490).

94. Respondent became aware that Ms. Koch had filed a complaint about him when he received a letter from the Commission on April 12, 2022, which attached a copy of Ms. Koch's complaint and asked him to answer a number of questions about his conduct (Comm Ex 37; Respondent: 366).

95. Before responding to the Commission's letter, Respondent consulted with K [REDACTED] R [REDACTED]-B [REDACTED], LCSW, in late April of 2022, who diagnosed him with a form of "acute anxiety" known as "object phobia" to explain his claimed inability to wear a face mask (Respondent: 479).

96. Up until late April 2022, Respondent had not been diagnosed with a condition that made him medically unable to tolerate a mask (Respondent: 478-479).

97. Respondent returned to Seeta for an eye examination on May 20, 2022, during which time he spoke with Michael Brown, the technician who witnessed a portion of the incident in Seeta's waiting room on December 28, 2021 (Brown: 324, 331-332; Respondent: 408, 479, 490).

98. At that time, Respondent told Mr. Brown that Ms. Koch had filed a complaint against him with the Commission (Respondent: 491).

99. Mr. Brown offered to help and Respondent asked if he would be willing to sign a statement on Respondent's behalf (Brown: 311-312, 334; Respondent: 408, 491).

100. Respondent prepared a type-written statement dated June 13, 2022, purporting to be a description of what Mr. Brown observed in the waiting room at Seeta on December 28, 2021 (Brown: 311-312, 334; Respondent: 408, 491; Resp Ex F).

101. Respondent then hand-delivered it to Mr. Brown at Mr. Brown's residence for Mr. Brown to sign (Brown: 311-312, 334; Respondent: 408, 491; Resp Ex F).

102. In November of 2022, Respondent reached out to Michael Sussman, Esq., an attorney who was representing him in another lawsuit, and asked if Mr. Sussman would represent him in a lawsuit against Ms. Koch over the statements made in her complaint to the Commission (Sussman: 217-218, 224; Respondent: 499-500, 503, 514, 518; Comm Ex 20).

103. Mr. Sussman described Respondent as “very angry,” “very upset” and “embarrassed” about “what occurred at Seeta” (Sussman: 243, 245). Respondent said that Ms. Koch “deserved to be punished” by “bringing a lawsuit that would get damages” for the statements made in her Commission complaint (Sussman: 247-248).

104. Respondent admitted that he brought the lawsuit against Ms. Koch because he wanted to “make her pay” (Respondent: 519).

105. Respondent 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 meritless, the Commission’s process would not allow for the imposition of monetary damages against Ms. Koch (Respondent: 518-520; Sussman: 248).

106. Mr. Sussman told Respondent that he could sue Ms. Koch for defamation, but advised him against such a course of action, saying that it “does

not look good” for a judge to sue the person who complained about him to the Commission (Respondent: 503).

107. Respondent testified that Mr. Sussman “went through a whole diatribe” about “optics” and that he rejected Mr. Sussman’s advice because “judges aren’t really concerned with optics” (Respondent: 503-505).

108. Respondent went against the advice of his counsel and directed Mr. Sussman to file a defamation suit against Ms. Koch (Respondent: 503).

109. On December 29, 2022, Respondent filed a defamation suit against Ms. Koch, entitled *Frank Mora v Stacey Koch* (Index No. 54141/2022), in Supreme Court, Dutchess County, seeking \$425,000 in alleged damages (Comm Ex 7; Respondent: 519-520).

110. Respondent admitted at the hearing that “one of the reasons” he sued her was “for the statements she made in her complaint to the Commission” (Respondent: 516, 518).

111. Respondent brought the lawsuit against Ms. Koch in retaliation for her filing a complaint against him with the Commission.

112. Respondent reviewed and approved the Verified Complaint before it was filed (Respondent: 519).

113. Respondent’s Verified Complaint was served on Ms. Koch on January 3, 2023 (Comm Ex 8; Koch: 200, 202-203; Respondent: 524).

114. Respondent's Verified Complaint alleged that the following 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, "Preliminary Statement"):

- (a) "Mr. Mora *created a huge scene* in our waiting room ..."
- (b) "He taunted me in front of a waiting room of @ 20 people ..."
- (c) "[he] stat[ed] the police won't come. The police said they would come and *he then left once the police were on their way to our practice.*"
- (d) "He *then had a letter created* from Chiropractor G [REDACTED] M [REDACTED] stating that Mr. Mora "has a medical condition" [*sic*] that prevents him from wearing a mask."
- (e) "This man should not be allowed any decision making for others *when he can not act professionally in this medical practice.*"

(Comm Ex 7, ¶24, emphasis in original).

115. The allegations in Respondent's lawsuit were limited to the statements Ms. Koch made in her complaint to the Commission: 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; Respondent: 503, 530-531).

116. 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¶).

117. At the time Respondent's lawsuit was filed and served on Ms. Koch, the Commission was still in the process of investigating the claims Ms. Koch made in her Commission complaint and the Commission had yet to formally charge Respondent with misconduct for the incident at Seeta (Ref Ex A; Respondent: 371, 398, 401-402, 553).

118. The Commission's investigation was confidential, pursuant to Section 45 of the Judiciary Law.

119. Respondent's Verified Complaint was public, and he attached a copy of Ms. Koch's complaint to the Commission, thereby making it public as well (Comm Ex 7; Respondent: 554-556).

120. Respondent made no request to seal or otherwise keep confidential his lawsuit, which was public (Respondent: 554).

121. At the time he filed his defamation lawsuit against Ms. Koch, Respondent was being investigated by the Commission with respect to four different complaints, including the complaint made by Ms. Koch. He was

represented in those Commission matters by Chad LaVeglia, Esq. (Respondent: 511-512).

122. Respondent did not ask Mr. LaVeglia for an opinion whether suing Ms. Koch might be misconduct (Respondent: 512). Respondent also did not seek the advice of the Advisory Committee on Judicial Ethics as to whether a defamation lawsuit against a Commission complainant would violate the Rules Governing Judicial Conduct (Respondent: 508, 512).

123. In or around late 2022 or early 2023, Respondent telephoned Ms. Whearty of the DCBA and asked whether Ms. Whearty was aware of “this situation that’s happening” and if she had provided Ms. Koch – whom he called “this woman” – with the Commission’s contact information (Whearty: 112-113).

124. In response, Ms. Whearty told Respondent that, as he would be aware from previously serving as a member of the DCBA’s Executive Board, she could not have the conversation with him, as such matters are confidential, and then Ms. Whearty ended the call (Whearty: 113-114).

125. Toward the end of the phone call, Respondent’s tone toward Ms. Whearty was angry (Whearty: 113).

126. On January 10, 2023, Respondent returned to Seeta for an appointment for his child, just seven days after Ms. Koch had been served with

Respondent's defamation suit against her (Comm Ex 8; Koch: 202-204; Respondent: 524, 527).

127. Mr. Sussman had advised Respondent in an email on December 31, 2022, that Ms. Koch likely would be served on Tuesday, January 3, 2023 (Respondent: 524, 528).

128. Respondent admitted that appearing at Seeta at that time could appear intimidating to Ms. Koch (Respondent: 530).

129. 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 ("Strategic Lawsuits Against Public Participation") statute, and, additionally, as barred by the doctrine of absolute privilege (Comm Ex 9).

130. Respondent sent an email to his attorney that same night at 7:41 PM, in which he referred to Ms. Koch and wrote: "Since she knew almost a year before the confrontation that I did not medically tolerate the mask, I believe she had this all planned" (Comm Ex 21).

131. On February 6, 2023, the Commission 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).

132. Respondent sent an email to Mr. Sussman on February 7, 2023, 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).

133. The next day, Respondent sent an email to Mr. Sussman in which he stated, “Judicial Commission will not turn over transcripts from Koch or Brown” (Comm Ex 23). Respondent was referring to the his request for transcripts of Ms. Koch’s and Michael Brown’s testimony before the Commission in connection with its then-pending investigation into the incident at Seeta (Respondent: 546).

134. Mr. Sussman replied to Respondent’s email at 8:20 PM, stating “they are plainly working in concert with each other” Respondent replied by email at 9:34 PM, stating, “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; Respondent: 452-453; 546-549).

135. Mr. Sussman emailed Respondent on February 13, 2023, and recommended that Respondent withdraw his defamation suit against Ms. Koch. Mr. Sussman stated, in part, “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).

136. Respondent did not agree with Mr. Sussman’s statement that it is a “bad look” for a judge to sue a Commission complainant (Respondent: 532-533).

137. Respondent sent an email to Mr. Sussman that same morning, in which he complemented Mr. Sussman’s draft reply to the motions to dismiss and then stated, “If I thought the process was going to be fair, I would not have brought the suit,” meaning 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; Respondent: 456-457, 513-514).

138. Respondent also stated in his email that he felt he was the victim of “a proverbial witch hunt” and he asked Mr. Sussman to obtain an extension to give him time to “ponder this” (Comm Ex 25).

139. Respondent did not take 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).

140. On March 20, 2023, Counsel for Ms. Koch and Commission Counsel filed papers in reply to Respondent's opposition (Comm Exs 12, 13).

141. On March 27, 2023, oral argument on the motions to dismiss Respondent's Verified Complaint was held before Hon. Maria G. Rosa, Supreme Court, Dutchess County (Comm Ex 14).

142. By Decision and Order dated April 4, 2023, the Supreme Court, Dutchess County (Rosa, J.), granted Ms. Koch's and the Commission's motions to dismiss Respondent's Complaint and awarded Ms. Koch mandatory costs and attorney's fees (Comm Ex 15).

143. 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).

144. 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).

145. 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).

146. Under the terms of the “No Contact” clause in the agreement, Respondent agreed that, from the date of the agreement and continuing in perpetuity, he would refrain from (a) communication (whether oral, written, or electronic) with Ms. Koch or any Seeta Eye location; and (b) intentional presence in the vicinity of Ms. Koch or at any Seeta Eye location (Comm Ex 16).

147. Respondent agreed that “a violation of the Contact Ban shall constitute irreparable injury warranting injunctive relief for specific performance” (Comm Ex 16).

148. In Respondent’s apology letter to Ms. Koch dated May 4, 2023, he 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).

149. Respondent admitted during his testimony before the Commission that he should not have brought the lawsuit (Respondent: 532-533, 551-552).

150. Respondent admitted that filing the lawsuit against Ms. Koch created an appearance of impropriety because his lawsuit was “found to have violated a

SLAPP lawsuit -- or a SLAPP suit or anti-SLAPP or whatever you say”

(Respondent: 507).

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE II

151. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules Governing Judicial Conduct (“Rules”).

152. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

153. Respondent failed to so conduct his extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extrajudicial activities so that they do not detract from the dignity of judicial office, in violation of Section 100.4(A)(2) of the Rules.

154. Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

PROPOSED FINDINGS OF FACT AS TO CHARGE III

155. On April 20, 2023, on its own motion, the Commission authorized an Administrator's Complaint against Respondent for initiating a defamation lawsuit against Stacey Koch in retaliation for her having filed a complaint against him, as alleged under Charge II (Ref Ex A, Ex 2, 27).

156. By letter dated April 8, 2024, the Commission requested that Respondent provide "copies of any and all emails" between him and his attorney, Michael H. Sussman, Esq., "from December 28, 2021, to present" (*i.e.*, from December 28, 2021, to April 8, 2024), "pertaining to Stacey Koch, any statements allegedly made by Ms. Koch, *Frank Mora v Stacey Koch* (Index No. 2022-54141), the incident at Seeta Eye Center on December 28, 2021, that is referenced in *Mora v Koch*, and/or any discussion of defamation or tortious interference" (Comm Ex 18, 1-2).

157. The Commission's letter noted that, during its investigation, Respondent had testified voluntarily about his communications with his attorney and, having placed those communications at issue, had waived the attorney-client privilege (Comm Ex 18, 2-3).

158. By letter dated May 9, 2024, Respondent replied in relevant part that, while he disagreed the attorney-client privilege had been waived, he was providing

“all Koch related emails from December 28, 2021, through the date of filing the Koch lawsuit (12/29/22)” (Comm Ex 19, 7).

159. Respondent represented that he had reviewed “all emails from that period, that are being submitted to the Commission (a total of 14), and they are complete and accurate” (Comm Ex 19, 7).

160. Respondent further stated that some of the emails had been redacted insofar as “they relate to non-Koch matters” (Comm Ex 19, 8).

161. Respondent produced 14 pages of emails with his May 9, 2024 letter (Comm Ex 19, 7-25).

162. By letter dated May 21, 2024, the Commission sent Respondent a letter stating that the information submitted with his May 9 letter was not wholly responsive to its request of April 8 and required that Respondent fully provide the information requested in the April 8 letter (Comm Ex 19).

163. By letter dated July 10, 2024, Respondent provided the Commission with 127 pages of the “remaining emails” between him and Mr. Sussman from “December 30, 2022, to present” (Comm Ex 31).

164. Respondent again noted that “[s]ome emails have been redacted as they relate to non-Koch matters” (Comm Ex 31).

165. Enclosed with Respondent's July 10 letter was with a "Waiver of Confidential Communications," signed by Respondent in which Respondent waived the attorney-client privilege of confidentiality between himself and Mr. Sussman and giving Mr. Sussman permission to provide communications, documents, information and testimony to the Commission responsive to the Commission's request (Comm Ex 31; Respondent: 465).

166. Respondent's representation that he had provided a complete response to the Commission's request for emails and had redacted nothing more than "non-Koch matters," was not accurate (Ref Ex A ¶¶36, 43).

167. The Commission's investigation ultimately revealed that Respondent had withheld and/or redacted the following:

- a) Respondent withheld two emails that he sent to Michael H. Sussman, Esq., dated November 23, 2022, at 4:02 PM and 8:09 PM, stating respectively, in part, "Please let me know if we can proceed against Seeta," and "When looking at it, are we able to just sue Stacey Koch, the manager of Seeta?" (Comm Ex 20).
- b) Respondent withheld an email that he sent to Mr. Sussman, dated February 2, 2023, at 7:41 PM, stating, in part, "Since she knew almost a

year before the confrontation that I did not medically tolerate the mask, I believe she had this all planned” (Comm Ex 21; Respondent: 560-61).

c) Respondent withheld an attachment to an email that he sent to Mr.

Sussman, dated February 7, 2023, at 8:55 AM, with his “thoughts” on a draft response to the motion to dismiss in *Mora v Koch*. In the

attachments, Respondent stated, in pertinent part:

- i) It does not seem right that Koch can use the judicial commission as a sword, then use the SLAPP statute as a shield. Regarding SLAPP, it should be stressed that it was Koch who caused the behavior;
- ii) I think we should focus on Koch creating the entire scene, then reporting me for the scene that she created. I think the police call recordings are essential. If she acknowledges that she knows I was a judge on the police call, it shows that she was lying about contacting the bar association. We can then show that she had no intention of following the mask regulation, even though she knew well ahead of the Dec visit that I did not tolerate masks;
- iii) Koch was determined not the [*sic*] let anyone in without a mask. She basically stated so when I asked her Jan 29, 2021 what they do for people who do not medically tolerate a mask. She advised that only one other patient could not wear a mask. I asked her how they handled it, and she said that patient decided to leave the practice. When you read between the lines, you see that Koch made her leave the practice.
- iv) This lawsuit was not brought to harass or intimidate Koch from testifying before the commission. It was specifically brought after I found out she testified before the commission, and then bragged to her former co-worker Michael Brown that she told the commission she felt

threatened by me, and that she was going to get me removed from the bench

(Comm Ex 22)

- d) Respondent withheld emails that he sent to Mr. Sussman, dated February 8, 2023, at 8:49 AM and 9:34 PM, in which he stated that the Commission will not turn over transcripts of testimony taken from Ms. Koch or Michael Brown, and in response to Mr. Sussman, stated, “The corruption doesn’t end!” (Comm Ex 23).
- e) Respondent withheld an email that he sent to Mr. Sussman, dated February 8, 2023, at 9:51 PM, in which he made the following statement regarding the Commission’s motion to dismiss in *Mora v Koch*: “You are correct. Even now that DiFiore is no longer a judge, they still will not reveal that there was an investigation against her. So, how are they giving all of the details of my investigation? They are not even supposed to acknowledge that I am under investigation” (Comm Ex 24).
- f) In an email that Respondent sent to Mr. Sussman, dated February 13, 2023, at 10:10 AM, Respondent redacted the following text: “If I thought the process was going to be fair, I would not have brought the suit. Even though I am stipulating to taking medicine/medical procedures, they still want 12 years of my medical records. They think I am making up

homeschooling my children. They think I forged my kids' doctor's letter. This is a proverbial witch hunt. They are on a fishing expedition to see if there is anything that will stick to say, 'look, he doesn't really believe the stuff he is saying!'" (Comm Ex 25).

- g) Respondent withheld an email that he sent to Mr. Sussman, dated March 6, 2023, at 3:15 PM, in which he stated, "Maybe you can use Tembeckjian's own words against him at oral argument. When I asked for them to postpone the matter because I had a human rights case pending, they denied me saying their jurisdiction is independent from the division of human rights and the civil courts. See attached letter" (Comm Ex 26).
- h) Respondent withheld an email that he sent to Mr. Sussman, dated April 3, 2023, at 10:44 AM, in which he stated, "I find it very interesting that the attorney for the commission, in open court, on the record, stated that I am being investigated for other matters. It is my understanding that this is a violation of their duty to keep it confidential. Judiciary Law Secs 44-46. I understand that I opened the door regarding the proceeding with Koch, but nothing else" (Comm Ex 27).
- i) In an email that Respondent sent to Mr. Sussman, dated May 12, 2023, at 7:14 PM, Respondent redacted the following text: "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).

168. Respondent failed to cooperate fully with the Commission’s investigation when he withheld numerous emails he should have turned over when the Commission requested them.

169. Respondent’s claim that his numerous omissions were attributable to an honest mistake, simply is not credible given the nature of the content in the emails, some of which are disparaging toward the Commission and some of which evince Respondent’s belief that he is the victim of a conspiracy.

PROPOSED CONCLUSIONS OF LAW AS TO CHARGE III

170. Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules.

171. Respondent failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules.

172. Respondent failed to so conduct his extra-judicial activities as to minimize the risk of conflict with judicial obligations, in that he failed to conduct his extrajudicial activities so that they do not detract from the dignity of judicial office and are not incompatible with judicial office, in violation of Section 100.4(A)(2) and (3) of the Rules.

173. Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law.

Dated: January 12, 2026
New York, New York

Respectfully submitted,

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APPENDIX B
AUTHORITIES LINKED TO THE COMMISSION'S
POST-HEARING MEMORANDUM