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.

REPLY MEMORANDUM BY COUNSEL TO THE COMMISSION

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TABLE OF CONTENTS

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

STATE CASES

COMMISSION DETERMINATIONS

STATUTES AND REGULATIONS

OPINIONS OF THE ADVISORY COMMITTEE ON JUDUCIAL ETHICS

PRELIMINARY STATEMENT

Commission counsel files this brief in reply to Respondent's of May 19, 2026. Contrary to Respondent's contentions, the Referee's findings should be affirmed in their entirety as to Charge II of the Formal Written Complaint and Respondent should be removed.

INTRODUCTION

Respondent entirely fails to acknowledge the ethical implications of his decision to file a defamation lawsuit against a Commission complainant.

His principal argument – that he did not commit misconduct because he relied on his attorney's advice that he had a viable defamation claim – ignores the point that an otherwise permissible lawsuit violates the Rules when it is brought in retaliation for a Commission complaint. Now, belatedly recognizing that his attorney's advice about "optics" and his warning that "it doesn't look good" for a judge to sue a Commission complainant should have caused him to consider whether his lawsuit created the appearance of impropriety, Respondent offers a tortured argument that those warnings were merely "practical" advice that he was free to disregard without consequence.

Respondent's argument that Supreme Court Justice Maria G. Rosa incorrectly decided his defamation case is barred by collateral estoppel. Even if that were not the case, his argument is simply wrong. Respondent misapprehends the nature of the absolute privilege afforded complaints to disciplinary bodies and the important public policy concerns that shield those complaints from defamation suits.

Notwithstanding the Referee's forceful finding against him, Respondent has persistently and to date refused to recognize that suing Stacey Koch for her Commission complaint was ethically wrong, or to appreciate the broader implications of his conduct on the public. His plain, purposeful and vindictive use of a defamation lawsuit to retaliate against a Commission complainant is egregious misconduct which, exacerbated by his continued insistence that he did nothing wrong, renders him unfit for judicial office.

ARGUMENT

POINT I

RESPONDENT'S INSISTENCE THAT HE DID NOT COMMIT MISCONDUCT BECAUSE HE RELIED ON THE ADVICE OF COUNSEL IS FACTUALLY AND LOGICALLY INCORRECT.

Respondent devotes much of his argument to the claim that he did not commit misconduct by suing Stacey Koch because he "commenced the defamation action in good faith on the advice of counsel" that he had a viable claim for defamation (Resp Br 6-12). His argument completely misses the mark.

The issue is not whether Respondent had a viable civil claim against Stacey Koch for defamation. Rather, the issue is whether Respondent's conduct in bringing the lawsuit against Ms. Koch in retaliation for her Commission complaint violates the Rules. On that score, Respondent's attorney made it clear that his lawsuit created an appearance of impropriety when he advised him that "it doesn't look good for a judge to sue the person who complained about him" to the Commission.

Moreover, Respondent acted as his own attorney and did his own research on the critical issue of whether his lawsuit against a complainant would violate the Rules. He did not seek advice from the judicial ethics lawyer he hired to represent him in this proceeding. He did not seek the advice of the Advisory Committee on Judicial Ethics. Instead, he relied on his own erroneous interpretation of an Advisory Opinion that did not apply.

Because Respondent ignored the advice of his defamation counsel, failed to seek readily available guidance from attorneys he knew had expertise in judicial ethics, and relied instead on his own faulty research, his "advice of counsel" defense fails.

A. The relevant issue is whether a judge violates the Rules Governing Judicial Conduct when he sues a Commission complainant during an ongoing investigation, regardless of whether the suit is viable or not.

Respondent's principal defense is that he relied in good faith on his attorney's "incorrect" advice that he had a viable claim for defamation in suing Ms. Koch (Resp Br 6-12). The problems with this position are obvious. First, whether Respondent had a viable claim for defamation is distinct and separate from whether bringing an otherwise viable lawsuit against a Commission complainant is a violation of ethical rules.

Second, Respondent's "advice of counsel" defense glosses over a crucial fact: Mr. Sussman did not advise Respondent to bring suit – to the contrary, he counseled Respondent against it. Prior to bringing the defamation suit, Mr. Sussman went through a "whole diatribe" about "optics" and advised him that "[i]t doesn't look good for a judge to sue the person who complained about [you]" (Mora: 503-505). That advice directly addresses the appearance of ethical impropriety that is at the heart of Charge II of the Formal Written Complaint.

Most importantly, even if it were true that Respondent could lawfully sue Ms. Koch for defamation, his decision to do so in retaliation for her complaint to the Commission is nonetheless misconduct.

The Commission's retaliation cases are illustrative. In each case, a judge engaged in an otherwise permissible act that the Commission determined was misconduct because it was done in retaliation or created an appearance of retaliation. *See, e.g.*, *Matter of Hart,* 2009 Ann Rep of NY Commn on Jud Conduct at 97 (granting of a lengthy adjournment "created the impression that he was using his judicial office to retaliate" against a bank); *Matter of Esposito*, 2004 Ann Rep of NY Commn on Jud Conduct at 100 (complaining to tax accessor about former colleague who filed a complaint against him with the Commission created the appearance of retaliation); *Matter of Tripp*, 2011 Ann Rep of NY Commn on Jud Conduct at 151 (denying a defendant's extension request in retaliation for complaint about the judge to the Commission).

Here, even if Respondent had a viable defamation claim, he committed judicial misconduct because "[t]he evidence is overwhelming that Respondent's defamation lawsuit was in retaliation for Ms. Koch's confidential Commission complaint" (Rep 31).

Respondent's claim that the Referee improperly rejected his advice of counsel defense because Mr. Sussman's advice that "it doesn't look good" to sue a Commission complainant did not occur until <u>after</u> the commencement of the lawsuit (Resp Br 13), is contradicted by the record. The record shows that Mr. Sussman gave Respondent this advice both before he commenced the lawsuit and while it was pending, and that Respondent rejected it both times. Respondent admitted that <u>before</u> he filed the lawsuit, Mr. Sussman advised him, "It doesn't look good for a judge to sue the person who complained about him" (Mora: 503). After Ms. Koch and Commission Counsel filed motions to dismiss, Respondent again rejected his attorney's advice that he should withdraw his lawsuit because "[i]t's just a bad look for a Judge to sue the person who complains about him, rather than to resolve the issues in the forum intended to resolve the complaint" (Sussman: 256).[1]

With his advice-of-counsel defense correctly rejected by the Referee, Respondent now creates a spurious distinction between "legal" and "practical" advice (Resp Br 13-14). This alleged distinction is both irrelevant and flawed. It is irrelevant because the legal advice upon which Respondent claims he relied – that he had a viable civil suit for defamation – does not address the relevant legal issue in this proceeding – whether a judge violates the Rules when he brings a viable lawsuit in retaliation for a Commission complaint. It is flawed and telling that Respondent is unable to cite a single legal authority in support of his argument that there is a distinction between a lawyer's "legal" and "practical" advice. This is not surprising, since Respondent's claim is at odds with the New York Rules of

[1] In view of this testimony, Respondent's claim that "[t]he ONLY time [he] did not follow Attorney Sussman's advice was regarding the appeal" (Resp Br 12) is demonstrably untrue. Likewise, Respondent's claim that there "was no testimony or any evidence" to support the Referee's finding that Mr. Sussman advised him that he could withdraw his lawsuit upon learning of the Judge Rosa's "hostility toward the defamation case" (Resp Br 13) is obviously wrong. Mr. Sussman testified that he gave the advice that "withdrawing is a good idea" during "a moment in time when he and I discussed how to deal with the Supreme Court Judge's obvious disdain for the lawsuit" (Sussman: 253).

Professional Conduct, which state: "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. *In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, psychological, and political factors, that may be relevant to the client's situation*" 22 NYCRR 1200.0, Rule 2.1 (emphasis supplied).

Mr. Sussman's warning that "it doesn't look good" for a judge to sue a Commission complainant was exactly the kind of "moral" advice contemplated by the Rules of Professional Conduct. Because Respondent ignored that advice there is no merit to his "advice of counsel" defense.

B. After disregarding his attorney's advice, Respondent acted as his own attorney in deciding to sue Ms. Koch in retaliation for her Commission complaint.

Rather than relying on his attorney's advice regarding the "optics" of the lawsuit or seeking the advice of ethics counsel, Respondent acted as his own attorney in determining whether suing Ms. Koch might violate the Rules. He willingly turned a blind eye to any possible ethical violation because he wanted "to make [Ms. Koch] pay" (Mora: 519-520).

Respondent was represented by attorney Chad LaVeglia during the Commission's investigation of Ms. Koch's complaint and four other complaints (Mora: 511-512). Yet despite having retained ethics counsel to advise him whether the conduct alleged in these complaints violated the Rules, Respondent did not ask

Mr. LaVeglia for an opinion about whether suing Ms. Koch might be misconduct (Mora: 512). Respondent also did not seek the advice of the Advisory Committee on Judicial Ethics, despite bragging that he had Laura Smith, the Committee's Chief Counsel, on the "Batphone" because "I'm on the phone very often with her" (Mora: 509).

Instead of calling two attorneys whom he knew to have experience in judicial ethics, he relied on his own erroneous interpretation of an Advisory Opinion he previously received in response to a question about an unrelated suit in federal court against the Office of Court Administration (Mora: 508-510). Respondent testified that on September 26, 2022, he spoke to Ms. Smith about whether he could sue OCA for denying him a religious exemption from the court system's vaccine mandate (Mora: 509; Sussman: 218-219). While Ms. Smith told him judges have the same right to file lawsuits as any citizen and provided him with Advisory Opinion 12-96 (Mora: 509), that comment is entirely irrelevant to the issue in this case.[2]

As Respondent conceded, Advisory Opinion 12-96 does not discuss whether a judge can file a lawsuit against a person who filed a complaint against him to the

[2] Respondent continues to insist that "[t]he fact that [he] is a judge does not prohibit him from commencing a lawsuit" based on Advisory Opinion 12-96 (Resp Br 30). Significantly, the advisory opinion starts with a caution that "[a] judge must always promote public confidence in the judiciary's integrity and impartiality (*see* 22 NYCRR 100.2[A])" (Resp Ex G).

Commission (Mora: 509-510). He did not call Ms. Smith for advice on whether Advisory Opinion 12-96 applied or whether his defamation suit might violate the Rules (Mora: 510-511). Because Respondent relied on his own research regarding whether suing Ms. Koch might create at least the appearance of impropriety, "advice of counsel" is not a defense.

C. Respondent's testimony and the allegations in his lawsuit conclusively establish that he brought his lawsuit against Ms. Koch in retaliation for her complaint.

Respondent tries but cannot discredit the Referee's decisive factual conclusion that "the evidence is overwhelming that Respondent's defamation lawsuit was in retaliation for Ms. Koch's confidential Commission complaint" (Rep 31). In erroneously claiming the Referee held that "the mere commencement of the action automatically makes it retaliatory" (Resp Br 28-30), Respondent ignores the critical supporting facts found by the Referee: that the suit was retaliatory (A) because the "only defamatory statements alleged" in Respondent's lawsuit were those Ms. Koch made in her complaint to the Commission (Rep 31), (B) because "Respondent's anger resulting from that complaint was palpable in the hearing room" (Rep 31), and (C) based on Respondent's testimony that he "did not want to rely on his potential success" before the Commission "because that was not 'recourse'" (Rep 24 ¶ 9).

Respondent's contention that "there is no proof" he sued Ms. Koch for defamation because of the complaint she filed against him (Resp Br 30-31) is undermined by his own admissions, the record evidence, and his own attorney's testimony. Respondent grudgingly admitted at the hearing that "one of the reasons" he sued Ms. Koch was "for the statements she made in her complaint to the Commission" (Mora: 516, 518). He also admitted that he brought the lawsuit because wanted to "make her pay" and wanted "recourse" for what he considered were "false statements" in her Commission complaint (Mora: 519-520).[3]

His argument that he only filed the lawsuit against Ms. Koch as a result of his conversation with Michael Brown fares no better (Resp Br 29-30). Respondent's lawsuit made no claims about statements allegedly made by Ms. Koch to Michael Brown or to anyone other than the Commission (Comm Ex 7; Mora: 503, 530-531). Respondent's argument that he decided to sue Ms. Koch because she "misstated the events in [her] complaint" and was "trying to destroy

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[3] His claim that the eight months that elapsed between the time he learned of Ms. Koch's complaint to the commencement of his lawsuit is not sufficiently temporally proximate to establish retaliation (Resp Br 29) is unavailing. "The absence of temporal proximity will not defeat the claim, where . . . there are other facts supporting causation." *Harrington v City of New York*, 157 AD3d 582, 586 (1st Dept 2018) (finding that the fact that the alleged retaliation may have commenced a substantial period of time after the protected activity occurred is not alone sufficient to defeat a claim of retaliation). Indeed, the lawsuit itself and Respondent's admissions prove that Ms. Koch's complaint was the motivating factor for his defamation lawsuit.

[him]" (Resp Br 29), only serves to reinforce the fact Respondent retaliated against Ms. Koch for her complaint to the Commission.

Respondent's contention that the Referee erred in inferring retaliatory intent from his anger (Resp Br 30) is also unpersuasive. Retaliation, by definition, is "the act of hurting someone or doing something harmful to someone because they have done or said something harmful to you."[4] In the simplest terms, Respondent was angry that Ms. Koch hurt him by filing a complaint against him with the Commission and he decided to harm her by suing her for $425,000. It is literally the dictionary definition of "retaliation."

The credible evidence establishes that the Respondent's anger towards Ms. Koch played a major role in his decision to sue her in retaliation for her complaint. 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 which would get damages" for the statements made in her Commission complaint (Sussman: 247-248). Respondent admitted that he brought the lawsuit against Ms. Koch because he wanted to "make her pay" (Mora: 519). As the Referee found, "Respondent's anger resulting from [Ms. Koch's] complaint was palpable in the hearing room, and to the facts to which he testified" (Rep 31). In the face of these

[4] *See* Cambridge Dictionary. https://dictionary.cambridge.org/us/dictionary/english/retaliation.

established facts, there is no question that the Referee rightfully determined that Respondent's lawsuit resulted from his anger at and retaliatory intention toward Ms. Koch.[5]

Finally, Respondent's suggestion that he had a right to sue Ms. Koch "to defend himself" and that "[t]o suggest otherwise is absurd" (Resp Br 31), conveniently ignores the fact that the appropriate and available avenue to "defend himself" was this Commission proceeding. As discussed more fully in Point II of Commission counsel's main brief (Comm Br 33-35), Respondent's defamation lawsuit was clearly an attempt to circumvent the Commission's disciplinary process. In fact, Respondent stated as much in an email to his attorney: "If I thought the [Commission] process was going to be fair, I would not have brought the suit" (Comm Ex 25; Mora: 465-457, 513-514).

[5] The substance and tone of Respondent's brief demonstrates that, even now, he continues to harbor genuine anger and antipathy toward Ms. Koch and lacks any remorse for bringing the lawsuit. Even after losing his defamation lawsuit, he continues to maintain that Ms. Koch "slandered" and "libeled" him (Resp Br 31). Even though she is not a judge, Respondent repeatedly and erroneously accuses Ms. Koch of "misconduct" for breaching confidentiality and "intentionally and knowingly" violating Judiciary Law § 45 (Resp Br 20-21, 25). He misstates the Referee's findings to support his inaccurate characterization of Ms. Koch's testimony regarding the incident at Seeta as "baseless or, at best, a gross exaggeration" (Resp Br 30). And he describes Ms. Koch as "aggressive during her testimony" (Resp Br 32), notwithstanding that the Referee did not make any such finding and his description is unsupported by the record.

POINT II

RESPONDENT'S ATTEMPT TO RE-LITIGATE HIS DEFAMATION LAWSUIT BEFORE THE COMMISSION SHOULD BE REJECTED.

Having chosen not to appeal Judge Rosa's ruling that Ms. Koch's Commission complaint is absolutely privileged and immune from a defamation lawsuit, Respondent is barred by collateral estoppel from relitigating that issue before the Commission. In any event, Respondent's argument misapprehends the nature of the absolute privilege afforded to Ms. Koch's Commission complaint.

A. Respondent is collaterally estopped from challenging the Supreme Court's decision in this proceeding.

The Referee properly determined that Respondent's "claim that Ms. Koch did not have absolute privilege, or somehow waived that privilege would necessarily involve a re-litigation of the dismissal of his lawsuit, which is barred by the law of the case or collateral estoppel, or in any event, by Justice Rosa's decision, which was never appealed…." (Rep 32).

"Collateral estoppel, or issue preclusion, 'precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party . . . whether or not the tribunals or causes of action are the same.'" *Parker v Blauvelt Volunteer Fire Co., Inc.*, 93 NY2d 343, 349 (1999). *See, e.g., Matter of Donziger*, 163 AD3d 123 (1st Dept 2018) (applying collateral estoppel in lawyer disciplinary proceeding); *Matter of Mac Truong*, 2 AD3d 27 (1st Dept 2003) (same).

Despite his contentions to the contrary (Resp Br 18-20), Respondent could have raised the waiver argument before Judge Rosa and he chose not to do so. Both the Commission and Respondent were parties to his defamation suit, and all parties had a full and fair opportunity to be heard. Indeed, Respondent concedes in his brief that he "was aware that Koch had revealed the contents of the complaint to Michael Brown prior to the commencement of the defamation action" (Resp Br 24). Respondent's counsel argued at the hearing that Respondent knew in the fall of 2022 – before he filed his defamation suit – that Ms. Koch shared her actual Commission complaint with Michael Brown (Tr: 21-22). In fact, Respondent put that fact in the statement he prepared for Brown to sign (Resp Ex F; Mora: 408, 491-493). Having chosen not to make his waiver argument before Judge Rosa, Respondent cannot make it here. And since Respondent chose not to appeal, Judge Rosa's decision that Ms. Koch's Commission complaint was absolutely privileged is final and binding.

B. Respondent confuses absolute privilege and evidentiary privilege, and the applicability of Judiciary Law § 45.

In addition to being precluded by collateral estoppel, Respondent's waiver argument fails because it confuses absolute privilege with a broader evidentiary privilege (Resp Br 21-23). The cases cited by Respondent all involve an evidentiary privilege, personal to the individual, that shields one from having to disclose attorney-client communications or other confidential information in discovery. That kind of privilege can be waived if the individual chooses to disclose the same information to third parties.

That is not the kind of privilege recognized in *Wiener v Weintraub*, 22 NY2d 330 (1968), which Supreme Court Justice Maria G. Rosa relied on in deeming Ms. Koch's Commission complaint "absolutely privileged" and dismissing Respondent's lawsuit (Comm Ex 15, 4-5). Judge Rosa explained, "[i]n the context of a defamation action, '[a] privileged communication is one which, but for the occasion on which it is uttered, would be defamatory and actionable'" (Comm Ex 15 at 4, *citing Park Knoll Assoc. v Schmidt,* 59 NY2d 205, 208 [1983]). It is not a privilege against disclosure of a communication; it is a privilege that protects an individual from being sued for defamation as a result of the communication. And unlike the evidentiary privileges available in civil discovery, the *Weintraub* definition of privilege makes clear that the privilege against a defamation suit confers immunity that serves "overriding public interests" (Comm Ex 15 at 4) – protecting not only the speaker, but the public at large. As the *Weintraub* court held,

> Assuredly, it is in the public interest to encourage those who have knowledge of dishonest or unethical conduct … to impart that

> knowledge to … some … designated body for investigation. If a complainant were to be subject to a libel action by the accused …, the effect in many instances might well be to deter the filing of legitimate charges.
>
> …
>
> [T]he necessity of maintaining the high standards … -- indeed, the proper administration of justice -- requires that there be a forum in which clients or other persons, unlearned in the law, may state their complaints, have them examined and, if necessary, judicially determined.

Weintraub, 22 NY2d 330, 332 (1968).

Finally, Respondent's claim that "it was Ms. Koch, not [him], who violated Judiciary Law § 45(1)" by making the fact of her Commission complaint and its allegations public (Resp Br 25-28) is puzzling. The Formal Written Complaint does not allege that Respondent violated Judiciary Law § 45. In any event, while Judiciary Law § 46 provides a procedure for punishing any staff member, employee or agent of the Commission who breaches confidentiality, there is no such procedure relating to a breach by a Commission complainant. The plain language of these statutes does not require a person who files a complaint against a judge with the Commission to keep the complaint confidential.

C. Respondent's unprofessional and ad hominen attacks against Commission counsel are factually baseless.

Respondents' vindictive attacks on Commission counsel's integrity (Resp Br 26-27, 32-23) are baseless and refuted by the record. For example, Respondent accuses Commission Counsel of "fail[ing] to advise the Referee or Respondent" that Ms. Koch had disclosed her complaint and its contents to the Mayor and others, and "affirmatively proceeded at the hearing as if they were unaware of that fact" (Resp Br 26-27, 32-33).[6] This startling accusation is plainly refuted by Respondent's own attorney and the transcribed record of the hearing.

Indeed, Respondent's attorney conclusively refuted this claim during his own opening statement, when he said: "Now, what you haven't heard – in fact, this is pretty interesting. ***The Commission never knew this***. . . . [W]e subpoenaed the records from Seeta. We found out that . . . within two days of this encounter [at Seeta], Ms. Koch wrote a long and lengthy letter to the Mayor of Poughkeepsie publicly criticizing Judge Mora for his conduct there" (Tr: 19-20) (emphasis supplied). Respondent's attorney continued: "And the Commission – I'm not blaming them. . . . ***They never knew about this letter because this week***, apparently, had a discussion – we said, 'We've got the Seeta records, and guess what we found out?" (Tr. 19) (emphasis supplied).

And contrary to Respondent's claim that Commission Counsel "affirmatively proceeded at the hearing as if they were unaware" of the letter,

[6] Respondent directly accuses "the prosecution" of violating Rule 3.3(a) of the New York Rules of Professional Conduct (22 NYCRR 1200.0, Rule 3.3[a]), which states that "[a] lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; and (3) offer or use evidence that the lawyer knows to be false" (Resp Br 27).

Commission Counsel elicited from Ms. Koch that she had sent a letter to the Mayor on her direct examination (Koch: 190), prior to Respondent's testimony.

Similarly, Respondent misrepresents the record to support his assertion that Commission Counsel falsely stated that he "made Koch's private statements about him public" during her opening statement and on cross-examination, despite knowing about Ms. Koch's letter to the Mayor (Resp Br 26-27, 31-32). A review of the record shows that Commission Counsel's opening remarks and questions on cross were framed in terms of <u>Respondent's knowledge at the time that he filed his lawsuit against Ms. Koch</u>. Commission Counsel stated during her opening that "at the time he filed his lawsuit," he knew Ms. Koch's complaint "was confidential by law and that it had not been made public," and that Respondent himself "made Koch's private statements about him public" by attaching a copy of her complaint to his publicly filed lawsuit (Tr. 19). Similarly, the questions posed to Respondent by Commission Counsel – that he now deems "shocking" – related to whether he knew that he made Ms. Koch's complaint to the Commission public "at the time [he] filed [his] lawsuit" (Mora: 553-556).

There is absolutely nothing in the record to demonstrate that any of Commission Counsel's statements were false, let alone knowingly false. Respondent's accusations should be discredited as they selectively omit material information and merely are part of his continuing attempt to portray himself as the innocent victim of a "corrupt" Commission (Mora: 452-453, 460-461, 546-549).

D. Respondent minimizes the possible chilling effect of his defamation lawsuit.

Respondent continues to show a complete lack of insight into the potential consequences of his defamation lawsuit as evinced by his argument that it could "not create [ ] a chilling effect" because Ms. Koch disclosed her complaint to family members, friends and co-workers (Resp Br 31-33).

Respondent's astonishingly callous claim that Ms. Koch was "not chilled by the defamation action" because she "was very animated and aggressive during her testimony, bragging about how many people she told" (Resp Br 32) ignores the obvious. At the time Ms. Koch testified before the Referee in this proceeding, Respondent's defamation suit had been dismissed and he had paid $20,000 in attorney fees to her lawyers to settle it.

It is beyond obvious that the threat of facing a $425,000 lawsuit for filing a complaint about a judge's conduct is a severe consequence that would chill the average person from voicing criticism of a judge. That is to say, as Judge Rosa did in her forthright decision against Respondent, "there is a very real fear that others may be deterred from bringing legitimate and serious complaints before the Commission if retribution in the form of a lawsuit is a viable possibility" (Comm Ex 15, 6) .

The Referee specifically concluded, "Respondent demonstrated no awareness of, or interest in, the institutional fact that permitting judges who are brought before the Commission to respond by suing the complainant for damages will of course dissuade an unknown, but large, number of citizens from bringing meritorious complaints to the Commission" (Rep 31-32). As his brief makes clear, Respondent continues to demonstrate no appreciation for the impact of his lawsuit on anybody but himself.

POINT III

THE ONLY APPROPRIATE SANCTION IS REMOVAL.

Respondent's decision to sue a Commission complainant, against the advice of counsel and as an act of retaliation, is egregious misconduct. It is an affront to the judicial disciplinary system, for which he is remarkably unapologetic.

Respondent's misconduct is aggravated by his continued refusal to acknowledge or accept that his conduct in filing the defamation lawsuit was ethically improper. Although this is a judicial misconduct proceeding, Respondent's brief does not cite a single Rule or Commission determination. Instead, he repeatedly attempts to shift responsibility for his own actions and casts himself as a victim of Stacey Koch, his own attorney, and the Commission and its attorneys. Notwithstanding that his lawsuit was dismissed, Respondent continues to insist that he had a right to file it against a Commission complainant to "defend himself." His evasion of responsibility and refusal to acknowledge his misconduct, even at this late date, is a "significant aggravating factor" that further justifies his removal. *Matter of Ayres*, 30 NY3d 59, 64 (2017).

For all of the reasons Commission Counsel previously set forth (Comm Br, Point IV), Respondent should be removed from office.

CONCLUSION

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

Dated: June 2, 2026
New York, New York

Respectfully submitted,

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