STATE OF RHODE ISLAND
COMMISSION ON JUDICIAL TENURE & DISCIPLINE

In re: The Honorable Rafael A. Ovalles, :
District Court Judge, Respondent : File No. 15-001

REPORT AND RECOMMENDATION OF THE COMMISSION ON JUDICIAL TENURE AND DISCIPLINE TO THE RHODE ISLAND SUPREME COURT

August, 2017

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This proceeding is before the Commission on Judicial Tenure and Discipline (Commission) pursuant to Chapter 16 of Title 8 of the Rhode Island General Laws of 1956. The Commission is tasked with making findings of fact and a recommendation to the Rhode Island Supreme Court regarding what, if any, violations of the Canons of Judicial Ethics occurred and the appropriate sanctions for any such violations that should be imposed upon The Honorable Rafael A. Ovalles, District Court Judge (Judge Ovalles).

After receiving two complaints—one from a court clerk, File No. 14-19, and one from an attorney, File No. 14-21—the Commission conducted a preliminary investigation into alleged misconduct by Judge Ovalles in the execution of his duties as a judge. On December 7, 2015, the Commission instituted formal proceedings against Judge Ovalles by issuing a Notice of Investigation, Nature of Charges, and Public Hearing Pursuant to § 8-16-4(c) (Notice). The Commission thereby notified Judge Ovalles of its conclusion that substantial evidence supported the charges that he had violated the Canons of Judicial Ethics and that he had engaged in conduct bringing his judicial office into serious disrepute, in violation of § 8-16-4(b). See Notice 1; see also Rule 15 of the Rules of Judicial Tenure and Discipline. Judge Ovalles answered the Notice on January 25, 2016. He denied all allegations contained therein and denied that he had violated the Code of Judicial Conduct.

In accordance with § 8-16-4(c) and Rule 21 of the Rules of Judicial Tenure and Discipline, the Commission held a public hearing—requested by Judge Ovalles—beginning on January 23, 2017.[1] At the hearing, the Commission was represented by counsel, Marc DeSisto. Over the course of eighteen days, the Commission heard from fifty-five witnesses, including Judge Ovalles himself and twenty-one others called by him.[2] The hearing closed on March 1, 2017. Counsel for both the Commission and Judge Ovalles submitted post-hearing memoranda. The Commission held seventeen meetings to deliberate.

It is at this juncture that the Commission is called upon to determine whether the charges against Judge Ovalles should be dismissed or sustained. See § 8-16-4(e). Charges brought before or by the Commission must be established by a preponderance of the evidence. Rule 8 of the Rules of Judicial Tenure and Discipline; see also Parker v. Parker, 103 R.I. 435, 442, 238 A.2d 57, 61 (1968) ("If we could erect a graduated scale which measured the comparative degrees of proof, the 'preponderance' burden would be at the lowest extreme of our scale . . . . [P]roof by a 'preponderance of the evidence' means that a jury must believe that the facts asserted by the proponent are more probably true than false . . . ."). If they are so proved, the Commission may recommend to the Supreme Court that one or more of the following sanctions be imposed: public reprimand, censure, suspension, removal, or retirement.[3] Rule 2 of the Rules of Judicial Tenure and Discipline; see also § 8-16-4(e).

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[1] Beginning on February 6, the hearing was videotaped.

[2] The testimony of two such witnesses for Judge Ovalles came via deposition.

[3] Rule 28 of the Rules on Judicial Tenure and Discipline provides: "If at least nine (9) members of the Commission who were present throughout the hearing find that the charges have been sustained by a preponderance of the evidence, the Commission shall report that finding to the Supreme Court and shall recommend the reprimand, censure, suspension, removal, or retirement of the respondent." From the outset, two Commissioners on the sixteen-member Commission were recused. The Commission notes that two of its remaining fourteen members were not present throughout the entirety of the hearing: one Commissioner missed four days of the hearing

I

Presentation of Evidence

The Commission now issues its recommendation based on the following testimony and evidence.

A

Assignments and Counseling

Judge Ovalles was born the ninth out of eleven children in the Dominican Republic. Judge Ovalles came to the United States in 1974 at the age of ten. When he entered school in the United States, Judge Ovalles could not speak English. He excelled as a student and was accepted to Classical High School, where he graduated with honors. After high school, Judge Ovalles was

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and was late two others; the other Commissioner missed seven days. The Rules of Judicial Tenure and Discipline contemplate that the Commissioners should hear the evidence, review the credibility of the witnesses, participate in deliberations, and reach their own conclusions. To those ends, the two Commissioners viewed the videotape and/or read the transcript of the proceedings for any time missed. Cf. In re R.I. Comm'n for Human Rights, 472 A.2d 1211, 1213-14 (R.I. 1984) (Under the G.L. 1956 § 28-5-10 decision-making process of the Commission for Human Rights, "[t]he 'commission' is to consider the evidence and state its conclusions. A quorum of the five commissioners must be present to examine the facts and reach a conclusion, but the facts may be gathered by less than a quorum of the commission . . . ." (emphasis added)). Accordingly, the Commissioners believe that the intent of Rule 28 has been satisfied. Cf. id. at 1214 (adopting in the APA context "a rule, routinely recognized by federal courts . . . that it is not necessary for a commissioner to hear in order to decide" and "find[ing] that procedural fairness exists when a quorum of the commission reaches its decision after having access to a transcript of the hearing and also the evidence" (citing Normile v. McFague, 685 F.2d 9, 12 (1st Cir. 1982)). There was never envisioned such a lengthy, time-consuming hearing or such extensive, thorough deliberations. The hearing consisted of long hours, multiple days per week, for over one month; deliberations occurred for many months. This required an extraordinary commitment from all members of the Commission. In particular, those Commissioners who are private attorneys left their practices before 2 p.m. for the eighteen days of the hearing stretching from January to March, and those who are judges maintained full-time dockets. All Commissioners were cooperative in adjusting their schedules to attend the hearing as well as the seventeen deliberation sessions, totaling upwards of sixty hours, beginning in March and continuing into August. This is a case like no other the Commission has ever faced. The entire Commission has dedicated countless hours to fulfilling its role. In that regard, all Commissioners have voted. All but one agreed on the recommended sanction.

accepted into the Talent Development Program at the University of Rhode Island. He completed his undergraduate degree magna cum laude in three years before attending Boston University School of Law. While there, Judge Ovalles was president of the Latino Spanish American Law Students Association. Upon graduating from law school in 1990, Judge Ovalles returned to Rhode Island, where he practiced law until his appointment to the Rhode Island District Court in July of 2005.

In the summer of 2005, before he took his oath, Judge Ovalles read the Canons and Commentaries as well as a series of cases involving the Code of Judicial Conduct. Tr. 1271:23-1272:2. Judge Ovalles recognized that it is an "enormous responsibility" and "great privilege" to be a judge. Id. at 1274:15-16. He believed that transparency about work and accountability enveloped the concept of maintaining high standards of conduct. Id. at 1373:5-15.

Judge Jeanne LaFazia was sworn in as Chief Judge of the District Court in April of 2010. One of her first orders of business was to remove Judge Ovalles from the civil calendar and assign him as an assisting judge.[4] Beforehand, Judge Ovalles had been assigned solely to the civil calendar. Chief Judge LaFazia felt as though Judge Ovalles had been on the civil calendar for too long. Chief Judge LaFazia's predecessor, Chief Judge DeRobbio, had made her aware of issues between Judge Ovalles and certain staff and attorneys. Nonetheless, Chief Judge LaFazia informed Judge Ovalles that "this is a new date, a new day, a new slate, and I need you to be a good Judge." Id. at 1697:11-12. She had a pleasant and positive conversation with Judge

[4] Chief Judge LaFazia described the role of an assisting judge as twofold. First of all, an assisting judge is a "floater," who can cover for another judge who is out of work for whatever reason. Tr. 1693:24-1694:5. When an assisting judge is not covering a calendar, he or she has office days and is available to help with overflow or referral of cases; more importantly, that judge is the first on call for search and arrest warrants that come in from police departments, ability-to-pay-cost warrants, and administrative matters. Id. at 1694:6-1695:7.

Ovalles: "This court needs you to be able to do all of these things. So that's what we're going to work on and hopefully that's where we're going to go." Id. at 1697:14-16.

As an assisting judge, Judge Ovalles had an opportunity to handle a variety of criminal and civil calendars in all four counties. Chief Judge LaFazia testified, however, that she never assigned Judge Ovalles to certain calendars. These included the Providence County and Kent County District Court arraignment calendars and state calendars which heard bail and violation hearings. In fact, Chief Judge LaFazia testified, "Occasionally I would pull somebody off of their regular calendar, put him on their calendar and send somebody else into a state calendar. Something I'm loathed to do but it has happened." Id. at 1695:25-1696:3.

In September 2010, Chief Judge LaFazia assigned Judge Ovalles to his first full-time criminal calendar, which included pretrial conferences and trials, in Courtroom 4G in Providence County District Court. The Chief suggested to Judge Ovalles that if he had any questions regarding the criminal calendar, he should ask her or his other colleagues. Id. at 1696:24-1697:4. By the end of January 2011, however, a number of issues arose with Judge Ovalles on that calendar.[5] As a result, she returned him to assisting judge status.

In 2013, Judge Ovalles was assigned to Kent County District Court, where his responsibilities were divided between civil and criminal calendars. He remained in Kent County until September 2015. At that time, Chief Judge LaFazia assigned Judge Ovalles to Providence County as an assisting judge. Judge Ovalles remained there until Chief Judge LaFazia relieved him of his duties in December of 2015, pending resolution of the instant proceeding.

Before the Commission, Chief Judge LaFazia testified to a number of incidents in which she had to address issues with Judge Ovalles and regarding which she counseled him

[5] These issues will be discussed infra.

accordingly.[6] The first such incident occurred shortly after she became Chief Judge and assigned Judge Ovalles to be an assisting judge. While Judge Ovalles was sitting in Washington County, Chief Judge LaFazia received a call from an attorney "regarding a serious concern on a 46(g)[,] which is a bail violation[,] and a new DUI charge." Id. at 1697:25-1698:2. The Chief testified that she was faced with "balancing the sanctity, if you will, of judicial autonomy with an incredibly frightening public safety issue . . . ." Id. at 1698:17-18. For Chief Judge LaFazia, "It was a very difficult situation." Id. at 1698:4. She explained that Judge Ovalles was presiding over an arraignment of a defendant charged with a second-offense DUI. The defendant was also being presented as a 46(g) bail violator because of a pending second-offense DUI charge in Newport County. Id. at 1693:23-1694:2. The Attorney General asked that the defendant be held without bail. However, Judge Ovalles would not do so. He reasoned that the defendant had not been convicted of the DUI in Newport County. Id. at 1702:22-24.

The Chief secured a recording of the presentment and listened to it. After listening to the recording, Chief Judge LaFazia was concerned that Judge Ovalles's decision to release the defendant was a serious public safety issue. Id. at 1703:6-13. She immediately traveled to Wakefield to speak with Judge Ovalles. Id. at 1702:5-13. The Chief expressed her concerns to Judge Ovalles and urged him to listen to the tape and reconsider. Id. at 1703:15-1704:5. The defendant had a "substantial history of DUIs"—as many as five on his record. Id. at 1703:6-13.

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[6] Chief Judge LaFazia employed the term "counseling" in referring to the discussions she had with Judge Ovalles in response to complaints she received about him. See, e.g., Tr. 1664:17; 1764:9; 1772:2; 1797:15; 1827:24; 1841:21; 1875:14; 1893:22; 1895:14; 1895:18; 1896:12; 1906:17; 1915:12; 1916:7; 1916:9. She brought her "counseling notes" to the hearing and occasionally refreshed her recollection with them. They were introduced into evidence. See Exs. 39, 41, 42, 43.

The Commission has organized these incidents and corresponding counseling sessions chronologically. Those incidents which by their gravity warrant their own sections or which better fit within an overarching section herein will be indicated and set forth accordingly.

Eventually, Judge Ovalles had the defendant brought up and vacated his earlier decision. Id. at 1704:8-10. Chief Judge LaFazia viewed the incident as a misunderstanding on Judge Ovalles's part as to whether he could hold the defendant without bail. Id. at 1698:19-20.

The next incident occurred in October or November of 2010, shortly after Chief Judge LaFazia assigned Judge Ovalles to his first full-time criminal calendar in Courtroom 4G in Providence County District Court. Angela Pingitore, the clerk assigned to that courtroom, went to the Chief's office "visibly upset." Id. at 1708:25. Pingitore complained that she had never been treated so rudely and that Judge Ovalles yelled at her; the sheriff in the courtroom accompanied Pingitore and echoed her complaint. Id. at 1709:1-8. Chief Judge LaFazia indicated she would listen to the tape. However, she did not hear anything on the tape to confirm Pingitore's allegations. Id. at 1710:1-9.

When Chief Judge LaFazia approached Judge Ovalles to discuss the complaint, he responded, "'It didn't happen. I didn't do it. Where is the tape? It didn't happen.'" Id. at 1710:20-21. Chief Judge LaFazia said to him, "I listened to the tape and, quite honestly, I can't hear it on there, but I'm still concerned because I have two very credible people that I consider to be credible coming to me with this complaint, and it wasn't the first time that I had had this complaint." Id. at 1710:21-1711:1. She counseled that "you need to think about what you are doing because people are feeling that you are not treating them well in the courtroom. It's not the first time. So please watch your behavior, watch what you say, [and] watch how you say it." Id. at 1711:4-8. Thereafter, Pingitore explained to the Chief that Judge Ovalles would cover the microphone and go off the record. Id. at 1712:2-3. Chief Judge LaFazia testified that "it was the first time but certainly not the last time" she heard such an accusation. Id. at 1712:1-2.

Another noteworthy incident took place in December 2010. It involved an attorney named John Brien. Mr. Brien went to Chief Judge LaFazia and complained, "'I'm not allowed to approach the bench on anything. I am at the kids table.'" Id. at 1716:17-18. Apparently something occurred that prevented his participation in sidebar conferences. This concerned Chief Judge LaFazia for many reasons:

> "The reasons are that the sidebar which I, by the way, do on the record, most of the time, not all of the time but most of the time, but the sidebar is an important opportunity for attorneys to be able to discuss certain issues at the sidebar as opposed to in open court. I've always considered it an important part of the process. As I said, I usually do it on the record unless there's something being discussed of a sensitive nature, mental health, substance, some kind of health issue. If an attorney requests it, I will usually grant it, and then I will still sometimes go back and put something on the record. But it's an important part of the process, and if somebody is shut out of that, then they are forced to be doing their job in an open court on something that they might need, they might have needed to address to the court." Id. at 1716:23-1717:13.

Mr. Brien also complained that Judge Ovalles once held him until 4:20 p.m. to start a trial. Id. at 1718:25-1719:3. In addition, as a prosecutor, he often felt pressured by Judge Ovalles to resolve cases by means such as recharging. Id. at 1719:4-9. Chief Judge LaFazia met with Judge Ovalles to discuss these issues. When she approached him with what Mr. Brien had said, "His response was always, 'Show me a tape. It didn't happen. If it's not on the tape, it didn't happen. They don't like me because I am strict. It didn't happen. And they don't like me because I am Hispanic. It didn't happen.'" Id. at 1720:11-15. In fact, Chief Judge LaFazia clarified and reiterated that "those were said on almost, if not every conversation that I had with him, and there were many conversations." Id. at 1720:15-17. She counseled Judge Ovalles, "Don't be an activist; don't play attorney, sometimes [it is] necessary for if there's an injustice, but you're not an advocate[.]" Id. at 1717:25-1718:2.

At the end of January 2011, Judge Ovalles was removed from Courtroom 4G and reassigned as an assisting judge. Although Chief Judge LaFazia does not usually make changes at that time of year, she felt it necessary based upon the volume of complaints she was receiving about Judge Ovalles in Courtroom 4G. Id. at 1692:17-1693:2.

The reason cited by the Chief for the reassignment of Judge Ovalles in January 2011 was a letter she received from Attorney Stephen Archambault. Id. at 1720:21-1721:18; see also Ex. 20. The incident set forth therein, more specifically described infra, piqued Chief Judge LaFazia's interest: "I do remember being surprised because he talked about a filing with a fine. And that was notable to me only because a filing is not a sentence and there are things that happen with a filing by statute, but a fine by definition creates a conviction." Tr. 1723:13-17. Also concerning was the sidebar issue again being raised. Id. at 1723:19-22. Chief Judge LaFazia testified that she left a copy of the letter on Judge Ovalles's chair. Id. at 1726:10-1727:1. Judge Ovalles denies receiving a copy of the letter. Id. at 1573:5-6. The Chief later addressed the issue directly with Judge Ovalles. Id. at 1727:2-21. She counseled him that "you need to think about what you're doing. This is somebody who likes you, and he has complained." Id. at 1727:23-25. Judge Ovalles responded that it didn't happen that way. Id. at 1728:1-5.

On March 29, 2011, Chief Judge LaFazia received a complaint from Isel Gonzalez, a court clerk in Kent County. See Ex. 4. Chief Judge LaFazia described Gonzalez as a "very conscientious, very good clerk." Tr. 1730:1-2. Gonzalez was upset and crying as she explained to the Chief an incident that occurred in the courtroom with Judge Ovalles, to be further described infra. Chief Judge LaFazia assured Gonzalez, "It's difficult for me to take a formal position as to pulling somebody away from working, but I am telling you right now, Isel, you

will not have to work again with Judge Ovalles. I do not want you to be sick over this." Id. at 1732:14-18.

Chief Judge LaFazia had two conversations with Judge Ovalles about this. The first conversation was brief. She asked Judge Ovalles, "How could you make Isel cry?" Id. at 1734:12-13. He responded, "'I didn't make her cry.'" Id. at 1734:16-17. During the second conversation, Chief Judge LaFazia advised Judge Ovalles that he needed to rethink how he addressed the staff: "You can't keep doing this. There are complaints and complaints, and you are doing something wrong and you need to address it." Id. at 1734:24-1735:1. Judge Ovalles responded that Gonzalez would not perform certain functions in the courtroom that he requested. Id. at 1752:19-21. The Chief then informed Judge Ovalles that Gonzalez would be removed as his clerk. Id. at 1754:21-23.

On April 13, 2011, Chief Judge LaFazia received an email from a civil practitioner concerning Judge Ovalles. See Ex. 18. She did not give it to Judge Ovalles because she had a concern of retribution. Tr. 1763:13-18. She felt the letter was in support of Gonzalez and provided no additional information to address with Judge Ovalles. Id. at 1763:22-1764:2. Thereafter, Chief Judge LaFazia had several additional counseling sessions with Judge Ovalles throughout 2011. Id. at 1764:5-11.

In the late spring of 2011, Chief Judge LaFazia summoned Judge Ovalles to her office. Id. at 1764:11-24. It was the first time she had done so, as their prior discussions had occurred in his office and been shorter in nature. Id. The counseling session was called in response to the many complaints the Chief continued to receive from widespread sources—sheriffs, staff, attorneys, even the president of the Bar. Chief Judge LaFazia testified:

> "I remember saying to him a couple of times in the conversation, 'Raff, I do not – I don't want to be harsh with you. I don't want to

> be hurtful with you. I have to tell you these things because it's my job as the Chief, and we need to make this better. We need you – we, as a court, need you to be able to do what you need to do, to be able to do your job, to be able to handle the calendars.' Again, that wasn't the first time I had had that conversation." Id. at 1766:7-16.

Chief Judge LaFazia explained that she needed Judge Ovalles to carry his own weight. Id. at 1769:3-4. She counseled that maybe some complaints had no merit or maybe he allowed himself to become a magnet, but the number of complaints was a problem and they could not be ignored. Id. at 1769:4-7. She testified that he became defensive. Id. Again, Judge Ovalles responded by challenging her to produce a recording—if she didn't have the tape, it didn't happen. Id. at 1766:19-20. And again, he blamed the complaints on his strictness and the fact that he is Hispanic. Id. at 1766:20-23.

Chief Judge LaFazia relayed to Judge Ovalles that there was another District Court judge who was strict and meticulous in the courtroom, yet she had never received a complaint about that judge. Id. at 1766:24-1767:3. She explained to Judge Ovalles that there is a difference between a temperament or personality issue and what he was doing on the bench, and given the sheer volume of complaints, he could not continue to deny what he was doing. Id. at 1767:13-18. They discussed judicial autonomy and how Judge Ovalles had the right to control his courtroom, but not the right to interfere with the staff and attorneys' ability to do their jobs. During her testimony, Chief Judge LaFazia read from her counseling notes that she had discussed with Judge Ovalles the following complaints from staff and attorneys: "'harsh, abrasive, throws files, tone demanding and rude and goes off the record.'" Id. at 1769:16-17. It was around that time that Chief Judge LaFazia was beginning to hear allegations that Judge Ovalles was going off the record. Id. at 1769:17-22. He denied that. Id. at 1769:22-23. The Chief testified to the end of their conversation as follows:

> "At the end of this long conversation, which was difficult for me, but I was being brutally honest but saying things like, 'I do not want to be hurtful,' and at the end of the conversation, I remember him saying, 'Well, Chief, don't you have anything good to say about me? Aren't I honest? Don't I come to work every day? Aren't I hard working? Don't you have anything good to say?' And I said, 'Well, Raff, you are here every day. You certainly don't abuse sick time. You're here every day. I know that you want to do a good job and you want to be seen as being a good Judge.' I did not comment on the hard work for other reasons. But I said, 'I certainly have no reason to think that you're not honest. I would expect that you were honest, but all of those things, and you're here, you're here all day, you don't leave early.' I said and, 'All of that is appreciated, but all of that is expected,' and when I finished saying that, he said to me, 'Well, I think that's a good report card. I'll take that. I'm honest, and I'm here every day,' and I remember being surprised by the response that he thought that was a good report card after 40-some minutes of talking about problems, and that was a concern to me." Id. at 1767:18-1768:15.

Once more, Chief Judge LaFazia conveyed to Judge Ovalles that she knew it was important to him to do a good job but that he was not being perceived as doing so. Id. at 1770:2-4. According to Judge Ovalles, at this meeting, "Chief Judge LaFazia stated to my face, 'You are not qualified. You should not have been appointed. You're not qualified to be a judge.'" Id. at 1327:23-25.

Nevertheless, around the same time as this last counseling session, Judge Ovalles sent Chief Judge LaFazia a letter dated May 26, 2011. See Ex. 36. It stemmed from a discussion they had had when he approached her and conveyed his interest in applying for a Superior Court vacancy. Tr. 1783:25-1784:4. Judge Ovalles asked the Chief if she would support him in that endeavor. Id. at 1784:7-9. The ensuing conversation centered on the fact that Chief Judge LaFazia had received, and continued to receive, many complaints about Judge Ovalles from lawyers and court employees. Id. at 1784:11-14. Therefore, she suggested that he gauge the support of those who had supported him in obtaining his District Court judgeship, as well as

speak to the Presiding Justice of the Superior Court out of courtesy and to gain insight regarding the application process. Id. at 1784:14-23. Chief Judge LaFazia indicated that she would emotionally support Judge Ovalles and that she would not go out of her way to hurt him. However, she had a lot of concerns and would be forthright in discussing them when she was undoubtedly asked questions. Id. at 1785:2-10. Moreover, the Chief testified that she has a general rule that she does not write letters or testify in support of nominations. Thus, for a multitude of reasons, she informed Judge Ovalles that she could not and would not proactively support him. Id. at 1785:17-23. Notwithstanding her response, in the letter Chief Judge LaFazia received from Judge Ovalles, he wrote, "'I am profoundly grateful to you for your encouragement and support.'" Ex. 36; see also Tr. 1786:11-12. She testified to the following reaction upon receiving the letter:

> "My reaction is that it was somewhat delusional, that it absolutely took nothing into effect of the comments and meetings and discussions and full conferences that had occurred. It was, however, consistent with what I found to be his response to all of those meetings and discussions and conferences and that was to act as if they never happened. So I found this to be consistent but somewhat surprising." Tr. at 1786:14-21.

Judge Ovalles testified that it was a standard letter he sent to approximately one hundred people who had supported him and that he included the Chief out of courtesy. Id. at 1499:6-14.

Still another complaint which required a counseling session came a short time later. Around October of 2011, Chief Judge LaFazia received a copy of a transcript dated March 28, 2011, via mail from a Superior Court judge. See Ex. 21; see also Tr. 1771:6-11. That judge had nothing to do with the case but had obtained a copy of the transcript from an attorney as a result of a courthouse conversation. Tr. 1771:11-14. Chief Judge LaFazia testified, "I was extremely concerned when I read it." Id. at 1772:1. Thus, she again asked Judge Ovalles to come to her

office. Judge Ovalles began the conversation by expressing his desire to do more work on the criminal calendar and be a part of Chief Judge LaFazia's leadership team, "a go-to person." Id. at 1773:7-8. Chief Judge LaFazia replied that she continued to receive complaints pertaining to his understanding and analysis of substantive legal issues. Id. at 1773:8-13. She then raised two separate points in the transcript that were of utmost concern to her. The transcript stemmed from a DUI case based upon the officer's observations, rather than blood alcohol level readings. Id. at 1774:9-10. In that sense, the Chief's first issue was with Judge Ovalles's focus on the defendant's blood alcohol content. Id. at 1773:25-1774:3. She explained that "it doesn't matter for purposes of guilt, and it doesn't matter for purposes of sentencing, it's just not part of the case. The issue is, was he impaired in operating under the influence and that would be based on evidence." Id. at 1774:20-24. Judge Ovalles did not argue; it appeared to Chief Judge LaFazia that he just had not understood the distinction or given it any thought. Id. at 1775:1-5.

Chief Judge LaFazia's greatest concern in reading the transcript was Judge Ovalles's definition of "beyond a reasonable doubt." To define that concept, Judge Ovalles incorrectly used examples of circumstantial evidence and reasonable inferences:

> "What is beyond a reasonable doubt? It's defined, sort of the falling snow explanation, which Judge Cresto explained in 1986, which is that if you go to bed tonight and even though there is no snow and let's say it's October. You wake up the next day. You see snow on the ground. You can reasonably conclude that there was snowing the previous night. Living in a modern society as we do, I would add to that; how can you make sure that there was not a snow making machine in that area? If there isn't, and you look far enough and you see snow in other areas again, you can see – you can conclude there was snow, even if you didn't see it yourself. Another judge, Judge Fortunato, has defined beyond a reasonable doubt where one is fairly certain that the – that the alleged incident took place. One is fairly certain that it took place." Ex. 21 at 20:17-21:11.

Chief Judge LaFazia testified that "[i]t is not anything to do with beyond a reasonable doubt." Tr. at 1775:11-12. She further professed, "He had gone off the rails, if you will, when he started talking about the snow-making machine . . . ." Id. at 1775:16-18.

This entire session lasted approximately one hour and ten minutes; there was substantial discussion of these issues. Id. at 1777:2-8. According to Chief Judge LaFazia,

> "this conversation was really more about the thought process breaking down for what he was – what was coming out of his mouth. And I said – I said to him, 'I'm going to try to think outside the box for you. I don't think this is a public speaking issue, but maybe if we could,' and he was receptive to my concerns. He was quiet, but it was a two-way conversation to some extent. And I said to – and he was reassuring me that he knew, and he didn't know why he said this, and I said, 'I don't think this is public speaking, but I will try to think outside the box. We need you – we need you to be able to do this. What would you think if there was somebody, and I don't know if that somebody even exists, but what if there's somebody who can help you train or develop your thought process and then communicate it in the way that you mean to communicate it,' and he liked that thought, and we pursued a conversation based on that thought." Id. at 1777:14-1778:6.

Judge Ovalles, however, testified that Chief Judge LaFazia said she wanted him to take English lessons. Id. at 1326:23-25. Such testimony was elicited in response to questioning as to whether Judge Ovalles endured detrimental comments about his race and Hispanic origin. Id. at 1325:23-1326:8. In rebuttal, Chief Judge LaFazia was asked if she ever mentioned English lessons: "Absolutely not. Never." Id. at 1778:13-15. In fact, in follow-up to their discussion, the Chief asked Judge Ovalles if he would be interested in getting help with better communicating his thought processes and, if so, indicated he could speak directly with Holly Hitchcock, who was in charge of judicial education. Months later, Chief Judge LaFazia received from Hitchcock an email which began, "'Dear Chief, per our discussion and my conversation with Judge Ovalles, I am forwarding a name to you for possible contract employment for the judicial education project

proposed by Judge Ovalles.'" Ex. 35 (emphases added); see also Tr. 1780:10-14. Chief Judge LaFazia testified that she had never used the term "judicial education project" and that either Hitchcock or Judge Ovalles must have coined it given how the two of them had conversed separately, and the email indicated it was "proposed by Judge Ovalles." Tr. 1780:16-1781:5. There was no mention therein of English lessons.

The next complaint necessitating Chief Judge LaFazia having a discussion with Judge Ovalles was made in 2012. The Chief was informed that Judge Ovalles had prevented a disabled litigant from passing the bar of the courtroom because the man's cane was a potential weapon. Id. at 1788:13-16. She said to him, "Raff, if you told somebody who uses a cane that they are not allowed to use the cane, then you need to be – you can't do that, and you need to be concerned about violating the ADA, the American Disabilities Act." Id. at 1788:17-21. Chief Judge LaFazia testified, "His response was, 'I would never violate . . . the ADA. I helped write it.'" Id. at 1788:23-24. She simply replied, "Don't do it." Id. at 1789:5. Judge Ovalles did not remember this incident or conversation, although he did reason that "[s]ometimes people use canes just for decoration, as fashion." Id. at 1499:23-1500:3; 1500:14-15.

Also in 2012, Chief Judge LaFazia received a complaint involving Judge Ovalles's treatment of a young female attorney, discussed infra. The Chief counseled Judge Ovalles. She advised him that she did not understand why he was critical of the young attorney being in the courtroom. Id. at 1791:3-6. Chief Judge LaFazia recalled asking Judge Ovalles what he had been thinking when he spoke to the attorney as he had. Id. at 1791:13-16. Judge Ovalles responded that he thought the attorney was there to criticize him. Id. at 1791:18-19. Chief Judge LaFazia reminded him that she could be there for that purpose—"We are an open court." Id. at 1791:21. She knew that Judge Ovalles felt badly. Id. at 1792:9-10.

While at Kent County, Judge Ovalles had an issue with Clerk Megan Degnan. He refused to work with Degnan; therefore, there was a change in her assignment. Chief Judge LaFazia counseled that he was not allowed to do that. Degnan was "an excellent clerk, . . . top notch." Id. at 1796:12-13. Judge Ovalles was advised that going forward, he was to address all issues with clerks directly with the Chief. Id. at 1796:16-20.

In October 2013, Chief Judge LaFazia had many conversations with Attorney Stephen Peltier about Judge Ovalles. Id. at 1797:22-25. Mr. Peltier relayed that he felt he was being punished by Judge Ovalles. Id. at 1798:20-1799:14. This complaint was addressed with Judge Ovalles in a counseling session. His response was another denial and challenge to "'[s]how me a tape where I have done these things . . . .'" Id. at 1800:20-21. In addition, Mr. Peltier complained that he had been closed out of the courtroom. Id. at 1799:11-14; 1801:9-12. Chief Judge LaFazia counseled Judge Ovalles that there was an appearance that Mr. Peltier was being punished. Id. at 1802:4-7. She reminded Judge Ovalles that "[w]e are an open court" and instructed him to stop that behavior. Id. at 1802:12-1803:1. When asked for Judge Ovalles's response, Chief Judge LaFazia answered, "He denied. He denied. He denied. He denied." Id. at 1803:3.

In November 2013, Chief Judge LaFazia discussed with Judge Ovalles whether a prosecutor for a municipality could also act as a criminal defense attorney involving another municipality on the same day. See infra. This issue was raised with Chief Judge LaFazia by Mr. Peltier as well as other attorneys. At this time, Chief Judge LaFazia also indicated that it still appeared as though Judge Ovalles was punishing Mr. Peltier. Id. at 1809:14-15. With respect to the prosecutor/defense counsel conflict, Chief Judge LaFazia testified that she did not necessarily disagree with Judge Ovalles raising the issue, but she did counsel him about taking a blanket

approach. Id. at 1810:14-17. In fact, Chief Judge LaFazia warned Judge Ovalles, "You're going to get yourself in trouble. Think about what you're doing. You're going to get yourself in trouble." Id. at 1814:15-17.

One of the underlying complaints which initiated this Commission's investigation and hearing was File No. 14-19, filed by Clerk Karen Kanelos in September 2014. See infra. On August 18, 2014, Chief Judge LaFazia received an email from Kanelos which was an extensive complaint regarding Judge Ovalles's behavior towards her and included an allegation that she had seen him with his pants unbuttoned and open. See Ex. CC. Chief Judge LaFazia directed Kevin Spina, Administrator of the District Court, and Stephen Waluk, Chief Clerk of the District Court, to conduct an investigation into the merits of Kanelos's complaint given that it now rose to the level of sexual harassment.

In approximately the third week of September, following Kanelos's filing of her complaint with the Commission, Chief Judge LaFazia held a meeting with Judge Ovalles and Judge Bucci. The meeting was long; in it, the Chief addressed issues of Judge Ovalles's mistreatment of attorneys and staff, his napping at work, his competency on the mental health calendar, and Kanelos's August 18, 2014 email complaint. According to Chief Judge LaFazia, when she confronted Judge Ovalles with the email, "he absolutely denied it. He said, and he pointed to the letter, 'This didn't happen. It just didn't happen.' And he said – he denied it. He said that [Kanelos] was a liar." Tr. 1834:10-14.

By this time, the mentoring relationship between Chief Judge LaFazia and Judge Ovalles had deteriorated. The conversations became more hostile. Id. at 1837:1-6. Judge Ovalles said to Chief Judge LaFazia, "'You always believe – you always believe these other people. You don't believe me.'" Id. at 1837:9-10. The Chief responded that the complaints were so voluminous

that it was not a matter of if she believed them but that she had to accept some of them. Id. at 1837:10-14. She indicated to him that because the matter would be going to the Commission, she was not intending to take any further action. Id. at 1838:16-20. Nevertheless, toward the end of the meeting, Chief Judge LaFazia offered Judge Ovalles three pieces of advice: (1) he should not sleep at work, but if he felt he needed to take a nap, he should close the door; (2) if he felt he had to disrobe at work, he should close and lock the door; and (3) because the issues with female staff had been ongoing for quite some time, if he were to have women in his office, he should leave the door open. Id. at 1839:3-19. When asked if he remembered receiving such pointers, Judge Ovalles responded, "I do not." Id. at 1502:14-15. However, when asked later what Chief Judge LaFazia had said to him regarding Kanelos's complaint, Judge Ovalles responded,

> "And she did say that if – that I should be more careful in how I – when I use the chambers, if I was going to take a nap, that I was to close the door and not to see personnel with the door closed, and so on. She did. She did inform me of that." Id. at 1630:4-8.

According to Chief Judge LaFazia, the meeting concluded as follows:

> "I did say to him at that point that I was – I had reached a level of frustration that I could not even begin to describe because now at this point, at this point, it had been four plus years of my addressing some – many of these issues, time and time and time again, and two days later it was like we never had the conversation, it didn't happen, and the responses were the same, time and time and time again, and I said to him, 'You don't believe anything I say, you hear me, and it's immediately minimized, you just don't – you don't listen to it,' and I talked to him about my frustration level, and that I didn't know what else to do, but I wasn't doing anything else.
>
> "I told him that I had stopped sitting with him despite the fact that there were some ongoing complaints, that I had stopped sitting with him for that reason because I had a sense that he always felt that he knew better than me, that he was better than me, that he did his job better than me or anybody else who was criticizing him, and that was very frustrating for me. And, as a

result of that, I was no longer looking to continue to counsel him." Id. at 1840:25-1841:21.

B

Workplace Conduct

1

Treatment of Court Employees

Sheriffs bid on their courtroom assignments in order of seniority on a day-to-day basis. Id. at 274:17-21; 2183:10-20. As the least senior sheriff in Kent County District Court, Jason Kloc was consistently assigned to Courtroom 2D, in which Judge Ovalles presided, from October 2013 to July 2014. Id. at 274:25-275:10. On the other hand, Sheriff John Sullivan testified that he would bid on Judge Ovalles despite the availability of other assignments. Id. at 2183:10-2184:2. Sheriff Sullivan worked with Judge Ovalles in Courtroom 2D from mid-2014 through the end of 2015. Id. at 2183:5-9.

Judge Ovalles considered eye contact with the sheriffs a matter of great importance. Id. at 1543:24-1544:7. Sheriff Kloc testified that Judge Ovalles "was on the bench, court was in session, and I think he wanted to give me a paper, a piece of paper, and he told me he needed to make more eye contact with me." Id. at 276:5-7. Thereafter, Sheriff Kloc maintained eye contact with Judge Ovalles the rest of the morning. Id. at 276:11-12; 276:17-19. In response to Sheriff Kloc's testimony, Judge Ovalles stated, "I didn't tell him I want you to look at me in that fashion. If you listen to the recording, you will hear me say, 'Jason, could you please make more eye contact with me, please.'" Id. at 1361:8-11. To Judge Ovalles, maintaining eye contact was essential: "I mean, otherwise there's continuous conversation and questions being made all the time, and I think with eye contact it's quicker, it's more efficient, and you have a cleaner record that's maintained." Id. at 1545:11-15. According to Sheriff Kloc, Judge Ovalles raised this issue

with him again. Id. at 277:12-13. Sheriff Sullivan also testified that on occasion Judge Ovalles would ask him to maintain eye contact. Id. at 2187:13-2188:6. However, Sheriff Sullivan found it to be an appropriate request that helped him maintain control of the courtroom. Id. at 2188:7-13.

Clerks assigned to Judge Ovalles's courtroom also testified about his procedures and practices. Judge Ovalles asked clerks to perform functions that may not have been asked by other judges. For instance, clerks were asked to call the calendar and swear in witnesses. Id. at 1541:19-1542:16. Judge Ovalles testified that he received complaints from the clerks, and he therefore stopped the practice. Id. at 1542:17-1543:12.

Clerk Nicholas Cote worked in Kent County District Court from 2012 to 2014. Within Cote's first eight months there, Judge Ovalles covered the courtroom to which Cote was assigned for a period of one to two weeks. On the first day of the assignment period, Judge Ovalles summoned Cote:

> "He called me into his chamber in the morning. It was probably about 8:30. He said he wanted to speak with me because we hadn't worked together before. I went in. He shut the door. We sat at a little table in the office. He began by telling me that some of the judges that he works with, he feels that he does things differently than they do, and that he does them right. I don't know if it was that exact language, but it was along the – and he got into a speech about kings and judges and how, you know, back in the day they were the same, and I kind of lost track after a few minutes. Then he followed up by telling me that, 'When we go out there, I don't want you to ask me any questions. I don't want you to embarrass me. If you don't embarrass me, I won't embarrass you.' That caught . . . me off guard because I had to ask him questions, but I said, 'Okay, whatever you want.'" Id. at 688:3-18.

At the first recess, Judge Ovalles had further instructions. Judge Ovalles told Cote that he was blocking the Judge's view of an attorney. As a result, he asked Cote to "time" himself. In the event Cote needed to get something, he was asked to get it before Judge Ovalles began his

conversation with the attorney. Id. at 1337:15-25. Cote testified that because of his movements, he was confined to a two-foot-by-two-foot area next to the bench. He was told by Judge Ovalles to "hand me the files as you call them and look me in the eye when you call the names . . . ." Id. at 689:9-10. This restriction continued every day that Cote clerked for Judge Ovalles. Cote testified that it prevented him from doing his job; he could not even sit down or reach his computer. Id. at 689:13-690:13. Judge Ovalles disputed this and testified that the notion he confined Cote to such an area is "ludicrous" and "not truthful." Id. at 1337:4-11. Rather, Judge Ovalles suggested that Cote was simply blocking his view during a conversation, and he asked Cote to step aside. Id. at 1337:15-1338:9. Furthermore, Judge Ovalles suggested to the Commission, "The tape was running. The recording was running." Id. at 1338:17-18. It was also recommended that the Commission "should be able to hear that. There should be a recording of that day." Id. at 1338:17-19.

Other court clerks also experienced issues with Judge Ovalles. Clerk Karen Kanelos and Judge Ovalles had a verbal exchange in open court in Courtroom 2D on Monday, July 28, 2014. Kanelos received a motion pertaining to the Craddy case from another clerk, Sherri Rossi. Rossi explained to Kanelos that she had received the paperwork on Friday, July 25, but she could not locate the court file and did not know when the case was being heard or in which courtroom. Accordingly, although Kanelos did not get the motion from Rossi until around 10:00 or 10:30 on that Monday morning, it was date stamped July 25, 2014—when Rossi received it.[7] Id. at

[7] "The date stamp is in the Clerk's Office. It's a little machine that when paperwork comes in, people filing paperwork, we had to date stamp it so we know when we receive that paperwork." Tr. 876:5-8. Our Supreme Court has instructed that "the date-stamp merely stamps the time, month, day, and year a document is filed in the clerk's office." Abbatematteo v. State, 694 A.2d 738, 740 (R.I. 1997) (emphasis added). However, Judge Ovalles carried his own personal date-stamp as well. See Tr. at 1364:15-24; 1555:9-11; 1555:17-18. In fact, he has used his own date-stamp to indicate when he received a document in addition to the Clerk's Office date-stamp that

875:19-876:17; see also Obj. to Def.'s Mot. To Dismiss (attached to Ovalles's Answer to Kanelos's Compl., File No. 14-19).

However, Kanelos testified that court was in session at the time she received the motion from Rossi, and Judge Ovalles did not like to be interrupted. Kanelos put the paperwork aside and assured Rossi that she would get it to Judge Ovalles when he took a recess. Id. at 876:18-22. When a recess was taken, the prosecutor who had submitted the motion asked Kanelos if she got it, and she replied that she had it right there. The issue began when Kanelos asked Sheriff Kloc to bring the file to Judge Ovalles's chambers. Id. at 286:18-21. Sheriff Kloc brought the file to Judge Ovalles, who instructed him to bring it back to Kanelos because the file was date-stamped the previous Friday. The instruction to Kanelos was to date-stamp it Monday. Id. at 286:24-287:8. Kanelos told Sheriff Kloc she could not do that and asked that it be brought back to Judge Ovalles. Sheriff Kloc complied and returned to the Judge's chambers. Id. at 287:15-18. Judge Ovalles again directed Sheriff Kloc to bring the file to Kanelos with the instruction to change the date. Kanelos refused:

> "And a few minutes later, he came back and he says, 'The Judge told me to come back here and tell you to change the date. He wants today's date on this paperwork.' So I said to him, 'I can't do that. It's date stamped from the Clerk's Office. I'm not changing the date.' I said, 'Tell him no.' So he went back and the Judge refused the paperwork, and he came back, and he said, 'The Judge won't take the paperwork.' So I took it, and I put it aside, and [the prosecutor] looked at me, and I said, 'The Judge wants me to change the date on it. I'm not. I'm keeping the paperwork aside.'" Id. at 877:13-23.

Thereafter, Judge Ovalles came back on the bench.

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shows when the Court received it. See Ex. 40 (letter from Attorney Christopher Millea to Judge Ovalles showing a June 10, 2014 Clerk's Office date-stamp and a June 11, 2014 Judge Ovalles date-stamp); see also Tr. 1364:15-24; 1554:19-1555:18.

When the Craddy matter was heard, the following colloquy took place between the prosecutor and Judge Ovalles:

> "JUDGE OVALLES: . . . Did you file a motion?
> "[PROSECUTOR]: Yes, Your Honor, I filed a motion on Friday in-hand with the clerk's office. I also gave them an additional judge's copy and asked them to bring it to you directly.
> "JUDGE OVALLES: Never got it.
> "[PROSECUTOR]: I filed two copies, Your Honor, one for the court and then one for yourself.
> "JUDGE OVALLES: Counselor, I'm not doubting what you said. The second portion of that is that it was not given to me.
> "[PROSECUTOR]: Yes, sir.
> "JUDGE OVALLES: So you are aware, for future reference you might want to, you know, CC the judge directly or have the file pulled and forwarded to the office. Any way you want to handle it, just to make sure the judge gets it, but I didn't get it, so here they are now." Ex. 1 at 187-88 (emphases added).

Judge Ovalles testified that shortly thereafter, at the conclusion of the next formal matter, "Ms. Kanelos was making expressions with her face, she was going shoulder to shoulder, what I interpreted to be disapproval at what I had just done and making sounds with her mouth . . . ." Tr. 1613:20-23. According to Kanelos, Judge Ovalles then "slid his chair over, and he went like this, so my understanding is he muted his microphone that picks up his voice, and he looked at me, and he said, 'Do you have something to say to me?'" Id. at 879:17-20. As Judge Ovalles called the next case, Kanelos proclaimed in open court:

> "[KANELOS]: You know, Your Honor, for the record I'd like to state on that Craddy matter that we were trying to give the judge paperwork on the Craddy matter.
> "JUDGE OVALLES: Oh, my goodness.
> "[KANELOS]: And he wanted me to change the date on this to today's date and it was date-stamped for Friday.
> "JUDGE OVALLES: Let's take a recess, please." Ex. 1 at 191.

After Judge Ovalles left the bench, Kanelos remained at her computer to finish her work.

A little while later, her supervisor, Clerk Dawn Bellamy, came into the courtroom and told Kanelos that Judge Ovalles refused to work with her. Tr. 880:15-21. Kanelos has not worked with Judge Ovalles since then. Kanelos testified that she had been in the process of filing a complaint with the Commission. Id. at 881:13. The July 28, 2014 incident was her breaking point. About one week after the incident, Judge Ovalles approached Sheriff Kloc and discussed the incident. Id. at 288:11-19. Sheriff Kloc believed that Judge Ovalles wanted him to remember the Judge's version of the incident. Id. at 289:9-10.

Kanelos was not the only clerk to have a conflict with Judge Ovalles over the use of a date-stamp. Clerk Isel Gonzalez was distressed about treatment she experienced when she clerked for Judge Ovalles in Courtroom 2D. On March 29, 2011, Judge Ovalles was assisting in Kent County. Gonzalez received a document in court:

> "I date stamped the document, and I gave it to the Judge. And the Judge said, 'No, I want the court stamp,' and I said, 'I'm sorry, Judge, the court stamp is in the Clerk's Office.' He said, 'I want it,' and I said, 'I'm sorry, Judge, the court stamp is an electric stamp and that belongs in the Clerk's Office.' I don't remember if I said it two or three times because he insisted on having the court stamp, and he got off the bench and went into chambers." Tr. 800:17-801:1.

Thereafter, Gonzalez testified that:

> "I waited a few minutes, and I felt that I needed to explain to him my reasoning why I could not give him the court stamp because it's an electronic one. So when I went into the chambers, the chamber's door, they were open, I knocked, and I said, 'Judge, may I see you?' I said, 'I just want to explain to you my reasoning why I cannot,' but he didn't let me finish. He turned around, he was taking his robe off, and he is pointing with his finger to my face, and he said, you know, 'You just sit there, you don't do your job, you don't help me in the courtroom, and you always fight me.' So I was – I was very upset that he said that to me, and I left – I left the chambers." Id. at 801:7-19.

Conversely, Judge Ovalles testified regarding the incident as follows:

> "Well, my issue was, as you call it, is that when I work with anyone, I like to have a date stamp in the courtroom wherever I'm assigned. And it's not an electric stamp, it's a manual stamp that we have that is manually calibrated every morning to put the exact date on it. At some point I felt, just stop asking about it, why don't you buy your own and get your own date stamp, and I did. I got a date stamp, one of those little smaller ones, and on the right-hand side of documents, you'll see a date stamp. That's me, date stamp.
>
> "That particular morning, the day she came up where somebody was handing me some documents, not me, I think it was the sheriff, and I said, 'Could you please date stamp that,' and there was no stamp. That was pretty much the end of it at that moment inside the courtroom. And then later we took the break after we finished with the morning portion of the calendar, and then she indicated--she came to see me. And she persisted and reminded me, Judge, we do not have an electric stamp. I said, 'Isel, I'm not asking for the electric stamp. I'm asking for the manual stamp.' I know full well we can't get the electric stamp in there, and then she claims that I said that you don't help me, you fight me all the time.
>
> "My recollection was, again, I didn't know about this until recently so, you know. I told her, 'You don't call the calendar. You don't swear in the witnesses. You don't mark the exhibits. I mean, you concentrate on your data, good for you, but I could use a little more help in there.'" Id. at 1364:15-1365:18 (emphases added).

Judge Ovalles denied pointing his finger at Gonzalez. Id. at 1365:24-25. He testified that he did not recall telling Gonzalez that she does not do her job. Id. at 1366:1-3.

On her way back to the Clerk's Office, Gonzalez saw Judge Jabour: "She saw clearly that I was very upset. I was crying because I was very hurt that I was treated that way." Id. at 802:3-4. Judge Jabour called Gonzalez's supervisor, Clerk Maureen Palazzo, into her chambers. Gonzalez explained to Palazzo what had happened, at which point Palazzo went to speak with Judge Ovalles. Judge Ovalles does not recall what he said to Palazzo. Id. at 1366:13-15. His idea was to work it out. Id. at 1366:18-19. When Palazzo returned, she informed Gonzalez that Judge Ovalles was told another clerk would be assigned to the courtroom. Judge Ovalles responded, "[N]o, no, I don't want another clerk. You send her right back to me because I don't

want her to think she won this war." Id. at 802:24-803:1. Judge Ovalles denied saying this. Id. at 1367:23-25. Gonzalez did not go back to the courtroom. She then notified Chief Judge LaFazia in writing of the incident. See Ex. 4.

At the time of the incident with Gonzalez, State Senator Frank Ciccone was the president of the Court Employees Union, which includes District Court clerks. Senator Ciccone received a copy of the letter which Gonzalez had sent to Chief Judge LaFazia. See id.; see also Tr. 754:12-755:8. In response, on April 5, 2011, he too wrote a letter to Chief Judge LaFazia. See Ex. 3; see also Tr. 756:15-757:2. His purpose in writing the letter "was to have the Chief Judge talk to Judge Ovalles and bring to the attention the problems that he was having or creating with the female clerks which I had addressed . . . in previous years with him." Tr. 757:19-23.

In the letter, Senator Ciccone indicated, "Knowing full well that I received several complaints similar to the [Gonzalez letter], I brokered a meeting with another elected official and a relative of the Judge to discuss his condescending manner towards female employees that are my members." Ex. 3; see also Tr. 758:1-5. The meeting Senator Ciccone referred to had taken place at Hemenway's Restaurant among himself, Senator Juan Pichardo, and Angel Taveras—Judge Ovalles's nephew. Id. at 759:11-23. Senator Pichardo had mentioned that Judge Ovalles was interested in filling a Superior Court vacancy. Senator Ciccone disagreed with this suggestion because several members of the union had complained about Judge Ovalles: "I told them that I had received complaints about the way that the Judge was talking to the females, the attitude that he had with them, and the fact that I heard complaints that in his chambers he would remove his trousers . . . ." Id. at 760:19-23. The meeting concluded with Mr. Taveras saying he would talk to Judge Ovalles.

Senator Ciccone testified that a second meeting took place at Hemenway's with the same individuals along with Judge Ovalles. Id. at 761:3-12; see also Ex. 3. There, according to Senator Ciccone, he reiterated his belief that Judge Ovalles should not apply for a Superior Court judgeship based on what was occurring in District Court:

> "I told him that the female clerks were complaining about the way he mistreated them, the way he spoke to them, and that if there was a problem with any of the clerks, that he should bring it to the attention of the Administrator or the Chief Clerk, and it would be handled in accordance with the Collective Bargaining Agreement, and that in the event that he did take off his pants in chambers, that, you know, he should lock the door and not allow anyone in until he put his trousers back on." Tr. 761:24-762:7.

Senator Ciccone testified that at the conclusion of this meeting, Judge Ovalles thanked him for bringing such information to his attention. He did not deny taking off his pants in chambers. Id. at 762:8-14. Judge Ovalles was apologetic in tone. Ex. 3; see also Tr. 762:15-16. Senator Ciccone closed his letter to Chief Judge LaFazia by requesting that she speak with Judge Ovalles "to discuss his judicial temperament and demeanor with female employees that are employed within your Honorable Court." Ex. 3; see also Tr. 762:24-763:1.

Mr. Taveras, the former mayor of the City of Providence, and Senator Pichardo, the first Latino state senator in Rhode Island, also testified with respect to these meetings.[8] Mr. Taveras testified that only one meeting took place. He produced a print-out from his electronic calendar referencing the meeting with Senators Ciccone and Pichardo on June 19, 2008 from 1:30 to 2:30

[8] Mr. Taveras also served as legal counsel for Judge Ovalles at the hearing. The firm for which Attorneys Berthiaume and Taveras work was retained to represent Judge Ovalles nearly a year before it was disclosed that Senator Ciccone would be testifying regarding the Hemenway's meetings. As such, Mr. Taveras was not able beforehand to alleviate the conflict between his materiality as a witness and his representation of Judge Ovalles as counsel. The Commission notes that Mr. Taveras served on the Supreme Court Disciplinary Board for six years and is familiar with the Rules of Professional Conduct. Mr. Taveras was not lead counsel, and he did not address the Commission as an advocate throughout the hearing. Judge Ovalles waived any conflict and agreed to have Mr. Taveras testify. See generally Tr. 742-751.

p.m. See Ex. CCC; see also Tr. 2060:24-2063:5. There were no other entries in Mr. Taveras' calendar related to both senators. Tr. 2064:5-7. Mr. Taveras recalled one topic discussed at the meeting was Senator Ciccone's concern over Judge Ovalles's tough protocol and strict procedures with the clerks. Id. at 2064:24-2065:14. Senator Pichardo confirmed that the meeting was just generally about Judge Ovalles's strict formalities in the courtroom. Id. at 2095:5-9. Both Mr. Taveras and Senator Pichardo testified that Senator Ciccone did not offer any specific examples and that Senator Ciccone made no mention of Judge Ovalles removing his pants. Id. at 2065:25-2066:10; 2095:10-19. Mr. Taveras recounted that the only mention of women was Senator Ciccone's statement that "[t]he clerks are mostly women and you know how women are, if they continue to complain, I'm going to have to do something about it." Id. at 2066:20-2067:15. Mr. Taveras firmly testified that "[t]here was no other meeting with Senator Pichardo, Senator Ciccone and Judge Ovalles. So I want to be clear, when I say I don't recall, it's not that I don't recall. I'm saying there was no other meeting with Senator Ciccone and Judge Ovalles." Id. at 2067:16-23. According to Mr. Taveras, there was only one meeting. Id. at 2067:24-2068:1. Senator Pichardo did not recall a second meeting involving Judge Ovalles either. Id. at 2096:15-21.

Many clerks testified regarding Judge Ovalles's tendency to storm off the bench and throw files. Kanelos testified to Judge Ovalles "storming off the bench" in the middle of handling a case. Id. at 857:8. Rossi testified that "frequently" Judge Ovalles would "jump up and storm out of the courtroom." Id. at 639:15-20. When asked what would cause Judge Ovalles to do so, Rossi observed that "he was either frustrated with an attorney or a plaintiff or a defendant or overwhelmed with the volume of the caseload." Id. at 639:24-640:1. Clerk James Plante testified to the same observation: "Basically, we'd be sitting in the courtroom and, all of a

sudden, he would just get up and walk away." Id. at 2014:19-20. According to Plante, this happened approximately a dozen times between 2007 and 2010. Id. at 2014:21-22. Judge Ovalles admitted that he got up and left the bench once without saying anything. Id. at 1339:19-1340:10. Otherwise, he denied ever storming off the bench. Id. at 1341:6-9. When confronted with the testimony of the clerks and attorneys who testified to the contrary, Judge Ovalles proclaimed, "I disagree with that testimony, and I think you will find dozens of witnesses who can come and testify that I announce the recess." Id. at 1341:10-16.

Angela Pingitore and Donna Avella worked as clerks for Judge Ovalles at the Mental Health Court. Pingitore testified that Judge Ovalles would abruptly "just get up and walk away" from the bench unannounced and that this manner of leaving the bench was inconsistent with how other judges recessed. Id. at 838:15-22. Avella also recalled an occasion when Judge Ovalles said "good morning" to a patient three times. Id. at 717:23-718:1. When Judge Ovalles did not receive a reply, he got off the bench and went back into chambers. Id. at 718:2-6. As it turned out, the patient was mute. Id. at 718:15-16.

Pingitore further testified that Judge Ovalles would "throw" files at her in court and that although she found this behavior offensive, she never discussed it with him. Id. at 836:20-838:1. She indicated that no other judges at the Mental Health Court gave her files in that manner; they would usually just hand them to her. Judge Ovalles testified that he never threw files at Pingitore and that he was "disappointed" in her testimony, which was "untruthful." Id. at 1321:10-11, 1322:18-21. Judge Ovalles also attributed Pingitore's allegations to his race:

> "I try my best to understand why a person may or may not react a certain way, and after I run out of sort of my list of variables, I end up with only one variable. And that's where race comes in. You have to talk about race. Our society doesn't want to talk about it, but we need to talk about it. Because especially when you end up with a minority person who is in a supervisory position telling

> somebody else what to do, and most of the time in our society, I haven't sat down to do the statistics, but most people in our society are not accustomed to a minority person telling them what to do, when to do it, and how to do it.
>
> "So, I'm sorry, that is a factor that's in all of this." Id. at 1324:9-22.

Nevertheless, Kanelos, too, said that Judge Ovalles would "toss the files over to me," with the files sometimes landing on the floor; no other judge conveyed files to her in such a manner. Id. at 855:22-856:13. Attorney Christopher Millea had occasion to observe the interactions between Kanelos and Judge Ovalles in Kent County. He testified that Judge Ovalles was disrespectful in

> "[h]is mannerisms, how he spoke to her. You could see it in his body action. The one specific incident that I can recall, and this was every week, but one specific incident is I remember him throwing a file in her direction or at her. I remember that because it caught me off guard. It was almost like a [F]risbee-type situation[.]" Id. at 1129:13-19.

File-throwing incidents also occurred in Providence County District Court. Caroline Simon testified that she clerked for Judge Ovalles. Simon noted that Judge Ovalles was different from most judges in that he had the clerks call the calendar, then hand him each file. Id. at 792:22-793:6. This eventually led to her developing shoulder pain, and her doctor provided a note that directed she should not be extending her arm repeatedly to pass files. Thereafter, Judge Ovalles had to call the calendar. He did not appreciate this fact:

> "I don't know exactly how long it lasted, but I'm thinking a week or two maybe, he would start to call the calendar, but you could tell that he really didn't want to because he would get all agitated and then at a certain whatever point that he hit his limit, he would sort of throw the files back at me and say, 'here, you finish.'" Id. at 793:20-794:1.

Judge Ovalles denied that he threw or flung files at the clerks. Id. at 1321:3-5.

Simon further testified that she was present in Newport County for an incident involving a sheriff and the opening prayer. Simon recalled as follows:

> "[Judge Ovalles] had indicated that he wanted to – he was ready to start. The sheriff brought him out and just announced, 'District Court is now in session. The Honorable Rafael Ovalles presiding,' and he kind of looked quick at the sheriff and said, you know, like he sort of muttered something to him. I couldn't quite hear what he said, but it was something about where's the greeting or something like that. And the sheriff was, like, you know, what do you mean? I, you know, like I just put you, and then he finally – the sheriff finally – he just kept glaring at him, and he finally said, 'You mean the prayer?' And he got all upset, and said, 'Call your sergeant,' and he just stormed right back off the bench and went into his office. The sheriff followed him in, and then he came back out and said, um, like, he'll come out when he's ready or something and, um, the courtroom was absolutely jammed packed with people. There were people all across the back standing up, and he didn't come back out for 45 minutes." Id. at 791:4-22.

Judge Ovalles refuted that he was off the bench for forty-five minutes; rather, only fifteen—"you can listen to the tape." Id. at 1343:17-18. He admitted that people were standing "shoulder to shoulder." Id. at 1343:23-25; 1345:13-17. However, Judge Ovalles rationalized that: "I was going to be running that court not the sheriff, and I had given him a specific instruction to the staff there and that wasn't carried through." Id. at 1344:7-9.

Other court employees testified in support of Judge Ovalles's courtroom procedures and treatment of the staff. For instance, former Sheriff Kristen Benedetti[9] and Clerk Nancy Zapata Faella recounted that they had gone to lunch with Judge Ovalles, and they did not view the invitations as inappropriate whatsoever. Id. at 2119:19-25, 2038:3-24. Faella further attested that she never observed him be disrespectful towards any court staff and that "I do have a lot of respect for him, and I believe that what I saw in court, . . . he was more to the book." Id. at 2123:12-14. In that regard, Sheriff Mark Mastin noted that Judge Ovalles started court promptly

[9] At the time she was a sheriff, Kristen Benedetti's last name was Fox. Tr. 2039:5-10

at 9:00 a.m. and that "I think he took his job very seriously. He expected . . . the staff and the people in the courtroom to act professional." Id. at 2214:12-14. Clerk Alido Baldera concurred that Judge Ovalles ran his courtroom in a "[v]ery professional" manner, taking the bench at 9:00 a.m. each day. Id. at 2158:4-7. Judge Ovalles was strict about formalities in his courtroom, but that did not bother Baldera. Id. at 2158:8-12. Along those same lines, Denise Pagliarini, a thirty-seven-year veteran clerk, testified that Judge Ovalles was particular in the way he wanted things done. Id. at 2133:23-2134:22. She did not have an issue with his idiosyncrasies. Id. Clerk Ana Medina agreed and added that it was her observation Judge Ovalles was respectful to attorneys, litigants, and court staff. Id. at 2147:22-2148:9; 2148:15-2149:6. Finally, Clerk Julie Noonan never observed Judge Ovalles act disrespectfully toward staff or litigants. Id. at 2141:3-9.

Pretrial Services Investigator Stephen Pina would disagree. Between 2008 and 2010, Pina's office was on the sixth floor of the Garrahy Judicial Complex, which houses the Providence County District Court. During that period of time, Judge Ovalles's office was also located on that floor, directly across from the men's restroom. As Pina was entering the restroom, he said hello to Judge Ovalles. Pina testified that he then leaned into the bathroom, holding the door open, and applied chapstick in front of the mirror. Id. at 810:15-811:2. Judge Ovalles did not approve:

> "At that point in time, Judge Ovalles got very upset, said that he 'shouldn't have to look at something like that. Please close the door. That's unacceptable.' So I thought he might have been joking, so I said, yeah, no problem, and I leaned in, shut the door for half a second, and then opened it, and he was still very, very upset and later on he called me to his office." Id. at 811:4-11.

When he sat down upon being summoned, Pina testified that Judge Ovalles "continued to tell me that what I had done was totally unacceptable, and that he should not have to see someone do

something like that." Id. at 812:21-23. Judge Ovalles testified that Pina "was not being truthful." Id. at 1347:2.

2

Observations by Court Employees

a

Napping

Judge Ovalles would on occasion nap during lunchtime. Id. at 1348:2-3. He testified that he never napped after 2:00 p.m., except during the fifteen-minute break between 3:00 and 3:15 p.m. Id. at 1354:21-23; 1355:21-24. He would sit on his desk, put his arm on his desk, or lie on his desk. Id. at 1350:13-23. Judge Ovalles maintained that no clerk ever saw him lie on his desk while napping. Id. at 1350:24-1351:4; 1352:9-12. Furthermore, he would try to avoid allowing people to see him like that, although he would not go so far as to say it would be undignified because people in other cultures nap in order to reenergize and work effectively. Id. at 1351:5-1352:8.

Contrary to Judge Ovalles's testimony, Clerk Cote testified with respect to an incident that occurred when he returned from lunch one afternoon. On his way back into the courthouse, a prosecutor announced to Cote that a prisoner had been brought to court before the afternoon session; Cote informed the prosecutor he should bring the defendant to Courtroom 2C.[10] Shortly thereafter, around 2:00 p.m., the following exchange occurred between Cote and Judge Ovalles in the hallway behind Courtroom 2E:

[10] When a defendant is arrested on a warrant and brought to court in the afternoon, the "lockup" is presented in Courtroom 2C in Kent County District Court. This procedure occurs because the other courtrooms are essentially shut down in the afternoon after their calendars are done—the sheriffs get sent back to the cellblock or other courtrooms, and the Public Defenders leave for the day. Meanwhile, Courtroom 2C remains equipped with the requisite court personnel. Tr. 691:17-24; 693:2-9.

> "[Judge Ovalles] walked all the way down, it's a long hallway, and he said, 'Nick – Mr. Clerk Cote, what do we have,' and I said, 'Well, there's a lockup but going to 2C. We're done for the day. I'm going to finish my data.' And he got a little upset, and he said, 'Well, the taxpayers are paying us till 4:30. Don't you think we should work?' I said, 'I'm going to work.' I had a lot of work to do, and he turned and he said, 'I'm going to go back in my chamber. I want you to wake me when they're ready.'" Id. at 692:3-12.

Cote went back into Courtroom 2E and finished the data and paperwork he had to do, while the lockup was brought to Courtroom 2C:

> "So I finished – I don't know what time, guessing it was around 3, 3:30, because I had finished all my data, all my files, all my paper, had them in my bin. I was walking out of 2E, the back hallway, and he came aggressively walking towards me. He was very upset walking towards me from his office or his chamber, and he said, 'Clerk Cote,' you know, 'I told you to get me. Where is that warrant? I told you to get me.' I said, 'We did it in 2C, Judge' – I don't, and he got very upset. He was very aggressive, and I believe my response back was, 'It's not my job to wake you.'" Id. at 693:12-22.

Judge Ovalles responded by calling Cote "insubordinate." Id. at 693:24. Judge Ovalles did not deny that he may have said "wake me." Id. at 1353:1-12.

Other court employees also had occasion to witness Judge Ovalles napping. In a similar situation, around 2:05 p.m., Clerk Avella knocked on Judge Ovalles's chambers door to inform him of afternoon criminal matters. When Judge Ovalles told Avella to come in, she testified that "he was sitting in front of the desk with a handkerchief over his face and his feet up on a chair with his shoes off." Id. at 719:18-20. He emerged from his chambers five minutes later. Id. at 719:22-25. Palazzo had a similar encounter: "I knocked on the door, and he said, 'Come in,' and I went in, and there's a couch, like a flat couch, and he was laying on the couch with his shoes off and his hankie over his face." Id. at 822:1-4. Judge Ovalles did not get up; he simply removed the handkerchief from his face and started talking. Id. at 822:5-9. Kanelos described

an occasion when a 2:00 p.m. trial was scheduled. She, the sheriff, and both attorneys were present in the courtroom at that time. Id. at 862:8-9. About fifteen minutes later, the sheriff indicated that he did not think Judge Ovalles was back from lunch yet. Id. at 862:9-10. Kanelos testified as follows:

> "His chamber door was closed. So 2:30 came, 20 minutes of 3, and the counsel, one of the counselors asked me, 'Can you check and see if Judge Ovalles is back?' So I proceeded to go to his chambers. His door was closed so I knocked on the door, and I heard 'come in.' I opened – the clerks have access to get in the Judge's chambers with their passes. So I used my pass. I opened the door. When I walked in, he was laying flat on his desk with a handkerchief over his face. So I asked him, I said, 'Your Honor, you had a 2:00 trial for civil set.' I said, 'It's 20 minutes of 3 and everybody is ready.' So he took the handkerchief off his face, and he said, 'I guess I'm not going to get my afternoon nap in,' and I said, 'I guess not,' and I walked out." Id. at 862:13-863:2.

Judge Ovalles testified that he could not say whether Kanelos's testimony was true. Id. at 1355:7-13. According to Kanelos, Judge Ovalles eventually came out for the trial "[a] little while after." Id. at 864:1.

Former Chief Clerk of District Court Jerome Smith remembered one time when he entered Judge Ovalles's chambers, the lights were out, and "I knew he was napping," so "I said, 'I'm sorry to disturb you, Judge.'" Id. at 1244:10-14. Smith conversed with Judge Ovalles about napping:

> "He had come into my office, and I had just come back from lunch, and I guess I had, I don't know something heavy, because I got tired, and I fell asleep, and he came in my office, and he excused himself when he saw that I had fallen asleep. He said, you know, 'That's good for you. You should take a nap.' And I said, 'I'm sorry, Judge, I just dozed off,' and he said, 'Well, I take naps,' and I said, 'Yeah, I know you do.'" Id. at 1247:6-13.

When asked how he knew, Smith testified that he had seen Judge Ovalles napping on four or five occasions. Id. at 1247:16-18. Smith knew when Judge Ovalles was napping because the blinds

would be closed and his head back; Smith thought it was almost exclusively at lunchtime. Id. at 1247:21-25. Clerk Melvin Enright similarly recalled, "Sometimes he would nap at lunch, and one time I . . . knocked on the door, . . . and he let me in, and he had said that he was napping on his desk, that he occasionally takes naps on his desk." Id. at 776:7-10.

Judge Ovalles felt that naps provided "the state [with] a better employee because when I came back, I was more rested, I was more productive, and I did a lot more work than if I didn't take the nap." Id. at 1348:9-12. Eventually, he began to feel uncomfortable about napping. Everyone would ask him how his nap was. Thus, as an alternative, he started walking outside during lunch. Id. at 1348:23-1349:12.

b

Attire

Judge Ovalles testified that he has a medical condition concerning digestive issues. As a result, he would sometimes unbutton his trousers in chambers. Id. at 1294:2-6. Judge Ovalles knew that it would be inappropriate to have his trousers unbuttoned in the view of anybody. Id. at 1295:8-13. When he unbuttoned his trousers, he would lock his door. Id. at 1294:15-17.

Court clerks testified that they made observations with respect to Judge Ovalles's clothing and footwear. Cote and Palazzo testified that they had seen Judge Ovalles wearing slippers. Id. at 696:7-13; 821:9-13. Enright testified that he too saw Judge Ovalles in slippers on one occasion, as well as wearing what appeared to be a bathrobe over his clothes on another—although Enright admitted it could have been a long coat. Id. at 775:5-776:1; 787:17-25. Judge Ovalles admitted that he would wear slippers in chambers: "At the end of the day my feet would get swollen, and I'd put on slippers." Id. at 1356:24-25. He also would wear them during lunch

breaks, and he acknowledged that people had seen him in them. Id. at 1357:11-18. Judge Ovalles denied ever wearing a bathrobe in chambers. Id. at 1358:4-9.

Furthermore, Rossi and Kanelos both recalled occasions when they observed Judge Ovalles with his pants open in his chambers. Kanelos testified that on the first occasion, around February or March of 2014, she entered his chambers with permission and found him sitting at his desk with his pants unzipped:

> "So at one point I brought the files to his chambers, the door was closed. I knocked on the door. He said, 'Come in.' I used my pass – my card. I walked into the chambers, and I said, 'I found the files,' and I went . . . to put the files on the desk. As I turned around, he was sitting in the chair with his back towards the door, leaning back with his pants unzippered, folded over and his hands up to his knuckles in his underwear."[11] Id. at 864:9-18 (emphasis added).

Judge Ovalles said this never happened. Id. at 1294:1. Judge Ovalles did admit that he would unbutton his pants if he felt bloated due to a stomach issue. Id. at 1294:2-6. Kanelos stated that it looked as if Judge Ovalles was holding his stomach, and "I thought I heard him when I was leaving say that his stomach bothered him." Id. at 892:8-9. Upon leaving chambers, Kanelos testified that she alerted her supervisor, Dawn Bellamy, to the incident.

Approximately two weeks later, Kanelos again knocked on Judge Ovalles's door to bring him some files after the lunch period. He told her to come in, and she found him sitting in his chair facing the door with his pants unzipped: "His desk was about a foot in front. He was back a little bit. He was sitting back, same situation, pants unzippered, flaps folded over, hands in the underwear." Id. at 867:17-19. Again, Kanelos testified that she notified Bellamy, and Bellamy told Kanelos she would address the situation. Bellamy, however, does not recall receiving any

[11] We acknowledge that Kanelos's testimony has changed from the time of her Complaint, in which she claimed that Judge Ovalles had "his pants unbuttoned and his zipper pulled down"—no mention of his hands in his underwear. See File No. 14-19.

complaint concerning either of these incidents. Bellamy Dep. 103:7-20, 117:5-18. Additionally, then-Chief Clerk Waluk and former Administrator Spina were not made aware of such allegations until they received an email from Kanelos on August 18, 2014. Tr. 2111:13-17; Spina Dep. 61:5-15; see Ex. CC. This was despite the fact that they had met with Kanelos on July 29 in response to her open-court exchange with Judge Ovalles regarding the date-stamp in the Craddy case.

Rossi also had occasion to observe Judge Ovalles in chambers with his pants unzipped in Providence District Court:

> "[Rossi]: He had his pants unbuttoned and unzipped.
> "[DeSisto]: All right. And where was he – where was he seated?
> "[Rossi]: He was sitting behind his desk, kind of leaning back.
> "[DeSisto]: And you say he had his pants unbuttoned and unzipped. How do you know that?
> "[Rossi]: You could tell the difference between the light colored shirt and the dark pants and that's what brought your attention to it." Tr. at 646:21-647:3.

Rossi testified that she did not take offense to Judge Ovalles's pants being undone: "It was lunchtime. I just assumed he ate too much and unzipped his pants." Id. at 647:20-21. Judge Ovalles said this incident did not occur. Id. at 1295:14-20. On a second occasion, Rossi went into chambers and saw Judge Ovalles sitting in his chair with his pants undone again, "[t]he same thing, pants undone, leaning back in his chair." Id. at 648:20. Again, she was not offended by this incident: "As I said, I figured he ate too much at lunch and I've seen men do this before, and I'm not easily offended, so." Id. at 649:14-15. Judge Ovalles testified that Ms. Rossi's testimony was "untrue." Id. at 1296:7.

Smith, too, testified to an incident in Kent County in which he entered chambers with permission and observed that Judge Ovalles was not wearing pants:

> "[Smith]: I knocked on the door, he said, 'Come in.' I came in. He had his feet up on the desk. I believe he was taking a nap. I don't know that for sure, but I believe he was only because of subsequent interaction with him, I knew that he did nap in between the morning session and the afternoon.
>
> When I came in, he took his feet off the desk. He sat down – he was sitting actually. He just put his feet on the floor, and I had some interaction with him and that was it.
> "[DeSisto]: Did you have a clear view of his attire?
> "[Smith]: Yes, I did.
> "[DeSisto]: Was he wearing pants?
> "[Smith]: No.
> "[DeSisto]: Okay. And what – can you describe his underwear?
> "[Smith]: Boxers." Id. at 1240:7-22.

Smith had no reaction and was not uncomfortable because he "understood what [Judge Ovalles] was doing" in that Judge Ovalles did not want to crease his pants. Id. at 1241:13-17; 1242:5-19. A similar incident occurred again in Providence County, but for the same reason Smith was not uncomfortable then either. Id. at 1243:20-1244:5; 1245:25-1246:7. According to Judge Ovalles, Smith's testimony was "[a]bsolutely" untrue: "He was lying when he said that." Id. at 1359:15-16.

Other than former Chief Clerk Smith, no other witness testified to seeing Judge Ovalles with his pants off or in any state of undress. To the contrary, multiple staff members testified that they never saw Judge Ovalles without pants or in any state of undress. They included: Benedetti, Faella, Clerk Elaine Virgilio, Sheriff Haye, Sheriff Mastin, Sheriff Sullivan, and Noonan. See id. at 2035:21-2036:6; 2121:9-15; 2127:16-24; 2140:14-18; 2190:18-22; 2115:16-20; 2280:10-11.

C

Public Defenders

The Office of the Public Defender represents defendants who are deemed to be financially eligible. Tr. 102:23-24. The clients are, by definition, indigent. The Office of the

Public Defender has the largest number of cases on the criminal calendars in District Court: the arraignment calendar, the pretrial/trial calendar, and the state calendar. At arraignment, a defendant is brought before the court, a police officer from the arresting agency gives a brief statement of facts, and bail is set. Id. at 103:20-104:3. The defendant is then given a pretrial date in order to determine whether his or her case can be resolved without a trial. The case is often resolved; however, in the event it is not, the case is continued for another pretrial date or reassigned for trial. The state calendar includes bail and violation hearings in addition to any pretrial or trial matters involving the Rhode Island State Police.

1

Rebecca Aitchison

Attorney Rebecca Aitchison began working at the Public Defender's Office in January of 2012. She began on the pretrial/trial calendar in Providence County District Court, Courtroom 4G. It was her experience that she did not always receive discovery prior to pretrial conferences, and it was not always possible to speak with her clients beforehand on the phone. Furthermore, cases sometimes required multiple pretrial dates for investigation, additional discovery, or some type of mitigation. Thus, in District Court, the normal course of procedure for the pretrial calendar included speaking with the prosecutors and her clients in the hallway and anterooms, going in and out of the courtroom until her cases were ready to be called. "So a typical day would involve coming into court and sort of balancing all of those things. So balancing speaking with clients with speaking with the prosecutor and sort of going back and forth until the case was ready to be handled for that day one way or the other." Tr. 106:24-107:4. Such juggling would normally occur after the calendar call and during recesses in court.

Ms. Aitchison was assigned to Kent County District Court, Courtroom 2D, in which Judge Ovalles presided over the pretrial/trial calendar, from September 2013 to June 2014. She testified that Judge Ovalles had a different practice than all other judges before whom she appeared. In her experience, all judges presiding over the pretrial calendar would call the calendar, take a recess, and then call the formal matters.[12] Based on her experience practicing before other judges, she developed the following practice:

> "Well, my personal practice was to separate sort of my files on the desk, and I would have a formal pile. When the judge looked at me and asked what matters were formal, I would call those cases, and then there usually reached a point where the judge would ask, 'Is anything else formal at this time,' and I would just say 'no,' and the judge would take a recess." Id. at 110:7-13.

After concluding the formal matters, Ms. Aitchison would continue to work on the remaining pretrials until they too became formal. This procedure allowed counsel to continue to resolve cases throughout the day.

Judge Ovalles's courtroom practice was contrary to that which Ms. Aitchison experienced with other judges. Following the initial recess, Judge Ovalles did not move to the formal matters. Rather, his practice was to order and consider the cases alphabetically. Ms. Aitchison felt that her performance was hindered by this procedure as it did not allow her an opportunity to conference the non-formal matters with her clients. She stated:

> "When Judge Ovalles would call a name, I would ask to hold it. He would call up the client anyway and attempt to have some sort of . . . discussion on the record; essentially, has discovery been provided[,] is there an offer[,] does your client want to take it? Sometimes he would simply just continue the case and say two weeks and send the client to the clerk to get a new court date." Id. at 112:18-25.

[12] Formal matters are those with agreed-upon dispositions, including continuances.

Ms. Aitchison indicated that Judge Ovalles's procedure resulted in unwanted continuances. For instance, Ms. Aitchison objected to a continuance in one case because "I just want an opportunity to speak with [my client]. . . . [I haven't] conference[d] the matters with Warwick yet so I haven't had an opportunity to speak with any clients. . . . Almost 30 pretrials . . . ." Ex. 1 at 110:19-24. Judge Ovalles responded that Ms. Aitchison would not face such an issue "if they come to your office and consult the day before. . . . [T]he matter is going to be reassigned. It can be pretried right here . . . . I'm not going to let you run my courtroom, okay?" Id. at 111:1-7.

This procedure would affect Ms. Aitchison's indigent clients because it required them to take additional time out of work and spend additional money on transportation to return to court on matters that could have been resolved at earlier court dates, but for Judge Ovalles's procedure. She explained:

> "I have clients who often times take time out from work, have child custody issues, some of our clients especially in Kent County have to take three buses to get here because of the bus schedule, and I wanted an opportunity to be able to speak to them rather than simply tell them they had to come back because their time is important. And often times I felt it was something that could be resolved if I was simply just given a little bit more time." Tr. 113:9-17.

In one case, the prosecutor presented an offer, but Ms. Aitchison had not yet had an opportunity to discuss it with her client. See Ex. 1 at 119:15-120:4. Judge Ovalles immediately continued the case: "Two weeks so he can think about it." Id. at 120:5-6. Judge Ovalles explained his reasoning as follows:

> "The context is this is the second call. There was already a time frame where this individual was there at first call, and my general instruction would have been could you please speak to the people who are here first call. In the backdrop, I have another five trials on that particular day, and I'm thinking about, let's finish up the

> calendar, if this is the offer that's being made to him for the first time, let him consider it, let him go home, let him talk to his family so he can make up his mind, and then in two weeks we can have an agreement or put it through if that's what this person decides to do because I want to finish the calendar so we can get to the trials." Tr. 1313:1-13.

Ms. Aitchison characterized Judge Ovalles's tendency not to allow her more time to conference with her clients as "inconsistent." Id. at 114:5-6.

This inconsistent practice caused frustration for her clients that impacted her relationships with them. Moreover, Judge Ovalles would blame Ms. Aitchison for the continuances. He would accuse her of being unprepared. He said it was her choice not to conference the cases. For example, in the aforementioned case, when Ms. Aitchison asked that her objection to Judge Ovalles summarily continuing her case be put on the record, he responded by publicly admonishing her in open court:

> "[Judge Ovalles]: That you aren't prepared, that you've had a chance to conference this and you haven't done so? Yes, let it be noted." Ex. 1 at 120:15-17.

During his testimony, Judge Ovalles admitted he was disappointed in that comment, and "[i]n retrospect, I wish I'd handled that differently." Tr. 1314:11.

Judge Ovalles indicated multiple times in open court that Ms. Aitchison was incompetent. Id. at 136:21-137:4. Kanelos testified that Judge Ovalles was "very aggressive towards [Ms. Aitchison]" and that "[h]e would berate her. It would make it seem like she was incapable of handling her job."[13] Id. at 857:20; 859:2-4. Ms. Aitchison testified that her clients had less faith

[13] Ms. Aitchison testified that Kanelos—unsolicited—"brought me multiple discs" storing recordings of Judge Ovalles's conduct, typically following "[a] rough day in court." See Tr. 164:1-167:20. In turn, Ms. Aitchison would listen to the discs and pass them along to her boss, John Lovoy. Id. at 167:21-168:8. Kanelos testified that she requested CDs of hearings involving Ms. Aitchison "[a]t least a half dozen" times because "I was keeping notes in reference to matters and issues that went on in the courtroom, and . . . eventually I had planned on filing a

in her as their attorney because of Judge Ovalles's treatment of her in public.[14] Id. at 125:15-17. Judge Ovalles recognized that his behavior to Ms. Aitchison in this regard was neither kind nor gentle. He admitted that it was not courteous under the Canons of Judicial Ethics. Further, he stated that if he could go back in time, "there are many things that I would have done differently." Id. at 1314:19-20.

Judge Ovalles's treatment of Ms. Aitchison worsened. Judge Ovalles instituted a rule—applicable only to Ms. Aitchison—that she had to remain in the courtroom and could not leave without putting the court on notice. See, e.g., Ex. 1 at 107:21-24; Tr. 135:3-22. Judge Ovalles testified that this was "untrue" and that he did not "confine" Ms. Aitchison to the courtroom, but "I would say that she was certainly needed. Essentially needed." Tr. 1314:23-1315:15. Nonetheless, Ms. Aitchison's testimony was corroborated by Attorneys Stephen Peltier and Robert Sgroi, prosecutors for the Cities of Cranston and Warwick, respectively, in Courtroom 2D. See id. at 1064:5-11; 1080:18-19. Likewise, Kloc, who was assigned to Courtroom 2D at that time, testified that he was instructed by Judge Ovalles to bring Ms. Aitchison back into the courtroom when she was speaking with her clients in the hallway, even when it seemed as though she was not needed. Id. at 279:1-280:1. Judge Ovalles took note of the number of times he sent the sheriff to retrieve Ms. Aitchison. Id. at 132:20-133:1.

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complaint." Id. at 859:8-22. According to Kanelos, she initially would keep the discs at her desk, and then she provided them to Ms. Aitchison after the third incident that Kanelos felt needed to be addressed. Id. at 860:10-23. Thereafter, though, Kanelos said that Ms. Aitchison began asking for the recordings and that "when Ms. Aitchison requested these tapes, I ended up giving her my copies and never asked for copies for myself because I figured she would have them on her person." Id. at 860:24-861:4. For purposes of this proceeding, the discs were not located and thus not produced to the Commission. See id. at 168:9-24; 860:24-861:4.

[14] We note that Public Defenders already have to endure the misconceptions that they do not care about their clients' cases and that they are not "real lawyers." See Tr. 137:9-11.

This rule evolved to the point where Judge Ovalles confined Ms. Aitchison to her seat. Id. at 133:1-5. Judge Ovalles testified, "I challenge anybody to produce a tape that will show that I confined her to her seat." Id. at 1317:10-11. However, Kloc and Kanelos confirmed that there were "numerous times" when Ms. Aitchison was not allowed to leave her seat. Id. at 280:2-7; 858:3-4. In fact, Ms. Aitchison twice had to stand up and ask Judge Ovalles in open court for permission to use the bathroom. Id. at 134:8-11. Again, Judge Ovalles "challenge[d] anyone to produce a tape" evidencing that Ms. Aitchison had to ask him for permission to go to the bathroom and claimed it "was certainly untrue." Id. at 1318:1-11. Ms. Aitchison testified that these restrictions impacted her ability to fulfill her responsibilities to her clients, as she was unable to discuss their cases with them, convey any offers to them, or answer any of their questions—essentially, "I wasn't able to carry out my job." Id. at 136:1-4.

In addition to the procedural and courtroom limitations that affected Ms. Aitchison's representation, she also testified to substantive legal issues which negatively impacted her clients. Ms. Aitchison had numerous conversations with Judge Ovalles regarding what constituted a conviction and, specifically, whether probation after a plea of nolo contendere amounted to a conviction under Rhode Island law. Id. at 144:23-145:22. In the context of shoplifting, Judge Ovalles believed that a nolo plea followed by probation was a conviction, and therefore, a fine was mandatory under the shoplifting statute.[15] Id. at 145:22-146:10. As she did

[15] The shoplifting statute mandates:

> "Any person convicted of the crime of shoplifting shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars ($50.00) or two times the full retail value of the merchandise, whichever is greater, but not more than five hundred dollars ($500), or by imprisonment for not more than one year, or both[.]" G.L. 1956 § 11-41-20(d) (emphases added).

not believe his statement of law to be accurate,[16] Ms. Aitchison began requesting that any fines Judge Ovalles imposed be converted to contributions to the Violent Crime Indemnity Fund (VCIF)[17] because she knew that, unlike a fine, a contribution to the VCIF does not amount to a conviction. According to Ms. Aitchison, Judge Ovalles maintained—incorrectly—that a fine did not amount to a conviction, and therefore, Ms. Aitchison need not worry.[18] Id. at 147:20-148:4. However, Judge Ovalles was inconsistent; sometimes he understood the distinction. Id. at 148:9-12.

The procedural hurdles Judge Ovalles instituted and his issues with substantive legal concepts also evidenced themselves in his handling of misdemeanor charges that triggered

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[16] The effect of a plea of nolo contendere followed by probation is as follows:

> "Whenever any person shall be arraigned before the district court or superior court and shall plead nolo contendere, and the court places the person on probation pursuant to § 12-18-1, then upon the completion of the probationary period, and absent a violation of the terms of the probation, the plea and probation shall not constitute a conviction for any purpose." G.L. 1956 § 12-18-3(a) (emphasis added).

[17] Section 12-19-36 provides as follows:

> "Whenever any person pleads nolo contendere to either a felony or misdemeanor, the court accepting the plea may, in lieu of imposing the fine authorized by statute for the offense, order the person to pay an amount not to exceed the maximum fine permitted by statute to the violent crimes indemnity fund established by chapter 25 of this title. The obligation to make a payment to the fund shall be considered a civil penalty and shall not constitute a sentence in the criminal case." Sec. 12-19-36 (emphasis added).

[18] See Korsak v. Prudential Prop. & Cas. Ins. Co., 441 A.2d 832, 835 (R.I. 1982) ("[W]e emphasize that a nolo plea followed by a sentence (fine or imprisonment, whether or not suspended) constitutes a conviction . . . .").

Superior Court violations.[19] In this regard, Judge Ovalles adopted a blanket policy with respect to Ms. Aitchison's clients in the District Court. In instances when a misdemeanor arrest triggered a Superior Court violation, Judge Ovalles would insist on a jail disposition of the triggering District Court offense. Ms. Aitchison's clients were negatively impacted by this policy. She testified that her clients would often continue to be held without bail on the Superior Court violation rather than obtain a swift resolution. Id. at 150:19-151:22. In addition, this blanket policy would prevent the attorneys from disposing of the matter on the factual circumstances specific to the case.

Furthermore, Ms. Aitchison was not allowed to participate in pretrial conferences even though she represented the defendants on their new misdemeanor charges. Id. at 152:15-153:4. Judge Ovalles instead required the Public Defender representing the defendant on the Superior Court violation, as well as the prosecuting Attorney General, to conference the misdemeanor with him. Ms. Aitchison was prohibited from participating in that discussion despite the fact that she represented the defendant on the District Court charge. Id. at 153:5-23.

In sum, Ms. Aitchison professed her belief that Judge Ovalles did not respect her as an attorney:

> "My opinion is that the Judge did not respect me, that the Judge was very, in my opinion, abusive toward me, specifically, verbally and in his actions, and that I was treated as though I was not an attorney like everyone else in the room." Id. at 156:24-157:3.

[19] If a defendant were on Superior Court probation or a suspended sentence when he or she is charged with a new misdemeanor, the defendant would have a violation hearing in the Superior Court and could be sentenced to serve all or part of the original sentence in addition to facing the new misdemeanor charge in District Court. Id. at 149:8-13. The violation and the misdemeanor are often resolved in conjunction with each other; the District Court attorney would present to the District Court judge the offer the defendant had received in the Superior Court. Id. at 149:14-150:18.

Her opinion was largely based on the treatment she received from Judge Ovalles compared to the manner in which she was treated by every other judge before whom she appeared. In response to questions regarding his treatment of Ms. Aitchison, Judge Ovalles explained:

> "In my mind, there was only going to be one person running the courtroom, and it was going to be me, the Madam Clerk assigned to me at that time and the sheriff. It was not going to be the Public Defender's Office. So we had some disagreements, Ms. Aitchison and I, but I always continued to treat her with respect, and if you – she was working the Public Defender's calendar for almost nine months, and if one listens, there are many other tapes, many, many other tapes, and you'll hear me on those many other tapes, including the one that was played here, where I address her as 'Ms. Aitchison. Ms. Aitchison. Yes, ma'am. Yes, ma'am.'
>
> "As a matter of fact, on the very same recording, subsequent to when it was ending, she's asking me to bring a case back in the afternoon, and I say, 'Of course, ma'am, we'll bring it back.'
>
> "So to your question, could I have handled this a little more diplomatically? I mean, I suppose I could have talked to her, talked to her supervisor, and let her know what my expectations were in how we were going to manage the courtroom, but beyond that, no, respectfully, no, I'm sorry, but I did not." Id. at 1290:25-1291:22.

2

Megan Jackson

From 2013 to 2014, Megan Jackson was the supervising Public Defender in Kent County. During that time, she was charged with supervising all Public Defenders in Kent County, including Ms. Aitchison. In or about April of 2014, Judge Ovalles initiated a meeting in his chambers with Ms. Jackson and Mr. Sgroi, the Warwick prosecutor, to discuss Ms. Aitchison's performance in the courtroom. Id. at 209:18-210:10. At this meeting, Judge Ovalles stated that he was not satisfied with Ms. Aitchison's performance. Id. at 210:11-14. The first grievance he brought up was that Ms. Aitchison spoke and conveyed offers to her clients during the court day. Ms. Jackson explained that the Public Defenders would attempt to contact their clients before

court dates; however, these efforts were often unsuccessful because "sometimes we have clients who have disconnected phone numbers or have moved addresses, and we just can't get ahold of them . . . ." Id. at 211:6-8. She further clarified to Judge Ovalles that the Public Defenders generally do not receive offers or have the opportunity to negotiate with prosecutors until they are in court. Thereafter, their clients want to be made aware of the offers immediately rather than continuing their cases to later dates and meeting with their attorneys out of court. Id. at 211:8-16. In fact, Attorney Christopher Millea testified that the Cranston prosecutors with whom Ms. Aitchison worked in Courtroom 2D did not themselves pick up the files from the police station until the afternoon or night before the calendar. Id. at 1116:18-20.

After only about fifteen minutes, Mr. Sgroi offered his opinion as to Ms. Aitchsion's competence:

> "And I remember being asked what I thought of Ms. Aitchison and quite honestly, I said, 'I think she's the best, most intelligent, hardest working Public Defender I've dealt with.' She seemed to be very conscientious, very intelligent. In fact, I even said to the Judge, and I said it to Ms. Aitchison, 'Let me know if you ever get tired of working for the Public Defender because I'd certainly recommend you to come into my firm.'" Id. at 1081:13-21.

Judge Ovalles's response was to dismiss Mr. Sgroi from the meeting. Id. at 211:22-212:12; 1081:21-22. Judge Ovalles further complained to Ms. Jackson that Ms. Aitchison did not make sufficient eye contact with him in court. Id. at 213:14-19. They also discussed Ms. Aitchison's insistence on using only interpreters from the Public Defender's Office. It was explained to Judge Ovalles that confidentiality concerns and duties necessitate the use of in-house Public Defender interpreters. This practice frustrated Judge Ovalles because he had to wait for the interpreter to arrive. Judge Ovalles thought they could simply use a different interpreter over the phone. Id. at 212:18-213:1.

Additionally, Ms. Jackson was assigned to the Superior Court calendar in Kent County. Her assignment was impacted by Judge Ovalles's insistence that the Superior Court Public Defender conference with him those District Court misdemeanors that were the triggering offenses to Superior Court violations. Ms. Jackson testified that this procedure had not been implemented by any other judge in her experience. Id. at 214:22-215:4.

Ms. Jackson would receive what seemed to be almost daily complaints from Ms. Aitchison about her treatment by Judge Ovalles. Ms. Jackson testified that she would commiserate with Ms. Aitchison about her prior experience appearing before Judge Ovalles. Id. at 215:5-13; 215:18-216:7. In 2007, Judge Ovalles had instituted a rule that none of Ms. Jackson's cases could be handled until the rest of the criminal calendar was resolved and that he would address the private attorneys first. Id. at 216:8-19. Judge Ovalles said he was going to consider holding Ms. Jackson in contempt for objecting to his procedure in open court. Id. at 216:20-217:13. Judge Ovalles then called Ms. Jackson up to sidebar and stated that he would not hold her in contempt only because she was a new attorney. Id. at 217:24-218:3. Judge Ovalles denies threatening to hold Ms. Jackson in contempt. Id. at 1392:23-1393:4.

3

John Lovoy

Complaints about Judge Ovalles's treatment of Public Defenders, specifically Ms. Aitchison, made their way up the Office's chain of command to John Lovoy, Chief of the Trial Division. Such complaints prompted him to travel to Kent County District Court and observe Judge Ovalles's courtroom on a busy morning. He confirmed what was reported to him: Ms. Aitchison was not allowed to leave the courtroom despite many clients being present. Id. at 232:9-15. Thereafter, he initiated a meeting with Judge Ovalles, whom he had known since

1986, to discuss the backlog and inefficiency caused by Judge Ovalles's procedure and restrictions on Ms. Aitchison. Id. at 244:1-14. Mr. Lovoy testified that they were not getting anywhere, so "at the end of my conversation with Judge Ovalles, I said to him, 'Judge, I have to admit that I didn't come here thinking that Becky was the problem,' and his whole demeanor and his face – he just looked shocked, like he couldn't understand that I actually felt that way." Id. at 244:21-245:1. Judge Ovalles then indicated that he would provide Mr. Lovoy with a list of twenty problems he had with Ms. Aitchison, but Mr. Lovoy never received the list nor had any further contact with Judge Ovalles. Id. at 245:1-10.

As a result of his observation, in May of 2014, a meeting among Mr. Lovoy, Public Defender Mary McElroy, and Deputy Public Defender Matt Toro took place to determine whether Ms. Aitchison should be removed from her assignment in Judge Ovalles's courtroom. Id. at 229:3-19. Mr. Lovoy testified that at the meeting, he said, "I don't believe that we should have a female attorney replace Becky. I think we would be better off having a male attorney there." Id. at 232:3-5. Although relocations within the Office were normally made in August, a collective decision was made to move Ms. Aitchison at that time and replace her with a male Public Defender. Id. at 229:20-230:15; 231:3-232:1.

4

Andrew McElroy

Public Defender Andrew McElroy was selected to replace Ms. Aitchison in Courtroom 2D. Id. at 232:19-20. He appeared before Judge Ovalles from June 2014 to October 2014. Mr. McElroy did not have any personal issues with Judge Ovalles, and the Judge did not institute any rules specific to Mr. McElroy. Mr. McElroy was free to come in and out of the courtroom as he needed when Judge Ovalles was not on the bench. Id. at 265:9-16.

Although Mr. McElroy did not endure movement restrictions like those of Ms. Aitchison, he did have similar concerns regarding how Judge Ovalles called the calendar alphabetically. "[I]t greatly affected the entire process. It slowed down the entire judicial process and could extremely adversely affect my clients." Id. at 263:9-11. If Mr. McElroy asked Judge Ovalles to hold a matter, Judge Ovalles would refuse and automatically issue a two-week continuance. Judge Ovalles would call Mr. McElroy's cases and address his clients despite the fact that the clients had not had an opportunity to converse with their attorney. Many times the clients were unaware of what was happening. Id. at 263:12-264:13. This practice created a significant backlog, and Mr. McElroy explained the negative impact on his clients as follows:

> "[I]f it was a case that after a pretrial conference that the solicitors could potentially dismiss that day, my client is now on bail and is under the auspices of the courts for bail and any bail supervision and any possible ramifications of that for an additional two weeks where if we had an opportunity to actually properly pre-try the case, he may not be on bail. Additionally, many of my clients have to take [Rhode Island Public Transit Authority] to get to and from the courthouse, and to get to the Kent County courthouse, it can be very difficult for some of my clients coming from the state. Usually they had to take multiple buses, one to Kennedy Plaza [in Providence] then a bus from Kennedy Plaza to the courthouse, which can be very difficult, and my clients who are fortunate enough to actually have a job then they have to take an additional day out of work when that matter could have been resolved that day if we had an opportunity to actually work through it throughout the day." Id. at 264:16-265:8.

In one particular case on July 28, 2014, Mr. McElroy's client appeared for a first pretrial conference. Mr. McElroy and his client did not wish to accept a plea at that time. Mr. McElroy was simply seeking a two-day continuance so that his client could appear on the same day as the co-defendant; both were planning to invoke their rights against self-incrimination, resulting in a dismissal for Mr. McElroy's client. Judge Ovalles refused to grant the two-day continuance. In this regard, the following colloquy took place:

> "[MR. MCELROY]: Yes, sir, we aren't looking to take a plea today. We just want a two-day continuance so we can have both my client as well as the cross-defendant on Wednesday.
> "JUDGE OVALLES: It's ready for trial assignment. If you make a recommendation, if you aren't willing to accept it, put it on for trial date.
> "[MR. MCELROY]: Your Honor, this is the first pretrial I have today. I do believe that on Wednesday, most likely both parties will be asserting the Fifth Amendment rights against self-incrimination and will be dispositive of both of these matters with just a simple two-day continuance.
> "JUDGE OVALLES: August 20th for trial, at 10:30.
> "[MR. MCELROY]: Just for the record, Your Honor, I'd like to say that I am objecting to August 20th for trial.
> "JUDGE OVALLES: Do you really think you need to say that?
> "[MR. MCELROY]: Yes, Your Honor, I believe I do need to place that on the record.
> "JUDGE OVALLES: You have no grounds. Overruled." Ex. 1 at 190:6-191:7.

In addition to his stringent method of calling cases and his impatience regarding conferencing during the court day, Mr. McElroy testified that Judge Ovalles was prone to leaving the bench at any time:

> "So sometimes during the course of the day, if he became frustrated, he would often pop up out of his chair and kind of storm off the bench. It wouldn't just be a normal, him rise, the sheriff then tells everyone to rise, in the orderly, normal fashion. He would just kind of pop up and be gone usually before the sheriff could say anything or before anyone could even stand up." Tr. 266:18-24.

During those abrupt recesses, Mr. McElroy was able to confer with his clients who remained. However, if only formal matters remained, Mr. McElroy, his clients, other lawyers, and court personnel would just sit and wait for Judge Ovalles's return. Id. at 267:13-18.

5

Angela Yingling

Angela Yingling, also from the Office of the Public Defender, testified that she appeared before Judge Ovalles for a total of eight weeks in 2010. She had issues with Judge Ovalles regarding his insistence on attaching fines to filings. Ms. Yingling first explained the concept of a filing: if a defendant pled nolo contendere and received a filing, the case would be sealed and the arrest would be removed from the defendant's record after one year of good behavior, as long as the defendant completed all attendant conditions, including payment of court costs. She testified that if a case is considered appropriate for a filing, it is inconsistent to the sentencing to also impose a fine.

In addition to the sentencing issue, Ms. Yingling also testified concerning an incident that occurred on July 15, 2010. Judge Ovalles asked Ms. Yingling to approach the bench. There, she was told that she had poor eye contact and that she blinked too much. Id. at 250:24-251:2. Judge Ovalles conceded, "I don't remember saying it, but I could have said it." Id. at 1360:21-22. He explained that Ms. Yingling "had a file in her hand, and she was blinking at it, looking at it, and at some point I asked her to come up, and I said, 'Look, I know you have a file. We're going to get to it. Take it easy. We're going to get to it.'" Id. at 1360:17-20. Ms. Yingling promptly emailed her supervisor detailing Judge Ovalles's comments.

Ms. Yingling also testified with respect to cases that were scheduled for trial over her objections. One such case concerned a defendant charged with a DUI involving blood tests. The blood results had not been received from the lab as of the first pretrial date. Without the readings, neither Ms. Yingling nor the prosecutor wanted to make an informed decision regarding the results of the case. Ms. Yingling requested another pretrial conference. Over her

objection, Judge Ovalles scheduled the case for trial. Id. at 251:16-252:3. The other two cases scheduled for trial involved an interpreter who refused to enter Judge Ovalles's courtroom for the pretrial conferences. Id. at 252:17-25.

6

Kara Hoopis Manosh

Former Public Defender Kara Hoopis Manosh testified as a witness for Judge Ovalles. Ms. Hoopis Manosh worked for the Public Defender's Office from January 2007 to October 2014. She appeared before Judge Ovalles approximately fifteen times between January and August 2007 in Providence County District Court. From August 2007 to August 2008, Ms. Hoopis Manosh appeared before him once a week on the daily criminal calendar to which she was assigned in Kent County District Court. She did not appear before Judge Ovalles again until July 2011 to June 2013 in Newport County District Court.

Ms. Hoopis Manosh testified that Judge Ovalles was always courteous, professional, and considerate, both to her and to litigants. Id. at 2265:6-17. She described an incident when she was the supervising Public Defender in Newport County. A woman was directly threatening and screaming racial slurs at Judge Ovalles while she was being arraigned. Id. at 2266:4-12. Ms. Hoopis Manosh was called to the courtroom out of concern for the woman's competence. Ms. Hoopis Manosh described how Judge Ovalles handled the situation as follows:

> "[Hoopis Manosh]: He was very calm. I think once he realized that this was a question of competence and not just a rude individual, he just calmly requested the sheriffs return this individual to the cellblock. He asked for a representative from the Attorney General's Office, Public Defender's Office and the Sheriff's Department to meet him in conference to determine the best way to proceed. That conference took place in chambers, and he was looking for suggestions about how to proceed with a proposed arraignment of this individual.
> "[Berthiaume]: And you participated in that meeting?

> "[Hoopis Manosh]: I did. It was my suggestion that I be given an opportunity to speak to her alone in the cellblock, and if I felt she was not competent to proceed, I would be happy to request a waiver of her presence in the courtroom, to request a continuance of the arraignment for a competency evaluation. That is exactly what ended up happening." Id. at 2266:22-2267:14.

Moreover, Ms. Hoopis Manosh testified with respect to how Judge Ovalles treated litigants with less financial means:

> "As an Assistant Public Defender, I only represented indigent defendants, so he would speak the way he treated all of my clients which was respectful and courteous and considerate. I actually always felt he went out of his way to listen to what they had to say particularly in situations of setting bail or deciding what to do about violations.
>
> "He always treated my clients as people, in a way that maybe not everybody does in the system. I was always happy to appear before him because I knew my clients would be looked at as people." Id. at 2269:25-2270:10.

7

Kensley Barrett

Finally, former Public Defender Kensley Barrett was also called as a witness for Judge Ovalles. Beginning in January 2014, Mr. Barrett appeared in Kent County at least once a week. While he was technically assigned to the courtroom next to that of Judge Ovalles, he appeared in Courtroom 2D to assist Ms. Aitchison. In September 2014, Mr. Barrett was permanently assigned to Judge Ovalles's courtroom. He reiterated the testimony of other Public Defenders with respect to how Judge Ovalles handled private attorneys' matters first, then called the calendar alphabetically, took a recess, and called it alphabetically again. Id. at 2242:10-2243:15. Mr. Barrett, however, testified that if during the second call or thereafter he needed to leave, he was not required to ask permission of Judge Ovalles: "If I had a client that needed to speak to me, I would excuse myself to go speak with that client." Id. at 2244:2-3.

In contrast to the treatment he experienced, Mr. Barrett testified that "I know [Ms. Aitchison] was asked at least once or told not to leave the courtroom . . . . I don't believe that I was ever told that I wasn't able to leave the courtroom." Id. at 2245:1-3. He also remembered Judge Ovalles saying, "'Ms. Aitchison, I thought I told you not to leave the courtroom.'" Id. at 2245:17-18. Mr. Barrett testified that the "[m]ajority of the times [Judge Ovalles] was respectful to me." Id. at 2250:23-24. When asked if he ever saw Judge Ovalles engage in abusive or demeaning conduct, Mr. Barrett replied as follows: "I guess being in the courtroom with Judge Ovalles every Wednesday, every week, everything was – it became like a normal to me so I didn't see anything out of the ordinary because I saw all that stuff in the courtroom so everything became normal." Id. at 2251:10-15. Mr. Barrett's testimony concluded with the observation that "in front of Judge Ovalles, it was always an adventure . . . . I just never knew what type of mood [he] would be in that day." Id. at 2252:1-8.

D

Mental Health Court

The Mental Health Court is a unique calendar which concerns itself with litigants requiring medical and psychological care. Id. at 1449:24-1450:9. The Mental Health Court is held once a week, usually on Fridays, and presided over by a judge of the District Court. Its location alternates between Butler Hospital and Eleanor Slater Hospital. District Court judges are assigned to the mental health calendar on an alternating basis for a duration of four weeks. They are vested with the authority of Superior Court judges while presiding over the calendar. It is the presiding judge's role to render a decision on the petitions that are presented before the court. Scheduling matters on the calendar take into consideration the schedules of doctors as well as the accommodation of patients. Judge Ovalles recognized these calendar management

issues particular to this Court. Id. at 1450:10-1451:6. Judge Ovalles did not, however, realize that the Mental Health Court has equity jurisdiction. See id. at 1422:14-1425:9.

There are two types of petitions that are filed in the Mental Health Court: a Petition for Civil Court Certification and a Petition for Instructions. A Petition for Civil Court Certification seeks to involuntarily commit patients to receive treatment in a locked psychiatric unit in a hospital, or in a group home or community health center depending on the needed level of care. Id. at 346:21-347:6. A Petition for Instructions is filed when a doctor has determined that his or her patient, who does not have a substitute decision maker or a power of attorney, is not capable of providing or withholding informed consent to the recommended course of treatment. Id. at 347:7-17. This petition asks the Court to substitute its judgment for that of the patient and approve the recommended treatment. Id. at 347:14-17.

The Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH) is a state department that runs Eleanor Slater Hospital and provides services to those members of the public suffering from developmental disabilities, mental illness, and substance abuse. BHDDH represents petitioning doctors before the Mental Health Court. Id. at 350:10-21. Patients with developmental disabilities are represented by the Disability Law Center, and patients with mental health issues are represented by the Office of the Mental Health Advocate. Id. at 358:25-359:4. The role of the Mental Health Advocate is to advocate for the desires of the patients as opposed to what is in the patient's best interest. Id. at 352:24-353:14.

Attorney Kate Breslin Harden is an attorney for BHDDH. As such, Ms. Harden generates a list of cases that will be heard on the mental health calendar. Because proceedings in the Mental Health Court are confidential, only court staff and the parties to the instant matter are allowed in the courtroom. Id. at 353:23-354:2. Therefore, it is necessary to schedule each case

at a specific time in order to accommodate doctors and to minimize the amount of time patients are left in the waiting area together. Id. at 354:25-355:13; 356:3-12. This scheduling is essential for security, health, and safety concerns. See id. at 1450:20-1451:5.

Since beginning to work for BHDDH, Ms. Harden has appeared before thirteen District Court judges, including Judge Ovalles, at the Mental Health Court. Ms. Harden testified regarding five specific cases that caused her to question the competency of Judge Ovalles to sit on the mental health calendar.

In the first case, a Director of BHDDH filed a Petition for Instructions regarding a developmentally disabled man, Mr. A,[20] who had a condition requiring surgical intervention. Ms. Harden and the attorney from the Disability Law Center were in agreement as to the risks and benefits of the procedure and in agreement that the surgery was necessary. On September 10, 2014, the attorneys deposed Mr. A's board certified surgeon and recorded it:

> "That is a process that we have agreed upon between our two agencies to try to accommodate getting medical procedures done that are needed for these patients. We agree to accommodate the doctors by going out to them in their office, at their convenience, which often times is at night, and taking their deposition and presenting the tape to the court. We have always stipulated with regard to the details of the deposition, I'll ask the doctor about the patient's condition, what he's recommending, what alternatives there are and the risks and benefits of doing the procedure, and the Disability Law Center attorney often has questions of the doctor on behalf of their client as well. So by the time we leave the deposition, we consult, and if we are in agreement that there really is no issue with regard to whether or not the patient requires this procedure, we will stipulate to that and present the tape to the court so that the court can hear it if they would like to." Id. at 359:6-23.

[20] We employ acronyms for the Mental Health Court patients to protect the patients' confidentiality. By agreement of the parties, the hearing room was closed to the public during the presentation of evidence regarding the Mental Health Court patients.

This practice is necessary because BHDDH does not have the funds to hire stenographers. Id. at 359:24-360:2. Ms. Harden testified that BHDDH had utilized audiotape depositions in fifty-four previous cases in the Mental Health Court, and no judge had ever rejected one. Id. at 360:3-21.

Thus, on September 12, 2014, Ms. Harden presented Judge Ovalles with an audio recording of the deposition of Mr. A's board certified surgeon. Ms. Harden administered the oath. The surgeon testified that Mr. A required surgical intervention and that based on his expert medical opinion, the benefits outweighed the risks; Mr. A faced the potential risk of death without the recommended surgery. Ex. 1 at 4-5. Judge Ovalles would not accept the tape of the deposition because there was not a licensed public stenographer who attended the deposition. He explained to the attorneys:

> "I would need a transcript, an actual written transcript so I can read it. That would be the best way to do it, and one that can be properly authenticated and then marked and submitted as an exhibit. Because if anything – should be any type of mishap, God forbid, there needs to be a proper record established here, and a tape which can succumb to any type of damage is not something I'm willing to rely on." Id. at 6.

Judge Ovalles testified that he felt uncomfortable accepting counsels' stipulation to the risks and benefits of the procedure and placing the tape in evidence. Tr. 1508:20-1509:17.

Judge Ovalles's first requested solution was for the surgeon to come to court and testify in spite of the surgeon's busy schedule. Ms. Harden explained to him that the process of recording depositions is an accommodation the attorneys make for the doctors. Ex. 1 at 7. Judge Ovalles then suggested that Ms. Harden redepose the surgeon with an independent stenographer who would attach certain medical records to the deposition, and "then the original copy, the original deposition would be open here in court with the exhibits attached thereto, not before once it's sealed by the stenographer, to maintain the chain of title on the deposition." Id. at 11.

However, BHDDH could not obtain a stenographer due to financial limitations. Tr. 361:10-12. The next week, Judge Ovalles told Ms. Harden that he would allow her to transcribe the deposition herself but that she, the Disability Law Center attorney, and the doctor would be required to certify the transcription as accurate and have their signatures notarized. Id. at 361:12-21.

Once all this was accomplished, Ms. Harden and the attorney from the Disability Law Center brought the transcript to Judge Ovalles in Kent County on October 1, 2014. When Judge Ovalles called the attorneys up to the bench, they presented the signed and notarized transcript of the surgeon's deposition. Judge Ovalles immediately signed the order authorizing the surgery. Ms. Harden testified that she believed Judge Ovalles's request was needless because the parties were in agreement that the surgery was necessary. Additionally, the surgery should have been performed as soon as possible. Id. at 365:22-366:12. Ms. Harden further expressed her frustration in that it took her hours to type the eleven-page transcript: "I felt like it took a lot of my time to have me transcribe it when it appeared, in the end, that he did not even read it."[21] Id. at 366:13-15.

In the second case, Ms. Harden and an attorney from the Disability Law Center presented a DNR/DNI (do not resuscitate, do not intubate) order in the form of a Petition for Instructions. It was the first instance this issue was brought to a judge. The elderly patient, Ms. B, suffered from severe Alzheimer's and was non-verbal, immobile, and no longer taking in solid food. BHDDH requested the DNR/DNI order so that the patient could receive hospice services. Because this was a case of first impression and because of the gravity of the request, Ms. Harden and the Disability Law Center attorney decided to give Judge Ovalles a copy of the order on

[21] It is apparent from the time-stamped audio recording from the bench that the entire conversation took no longer than five minutes. See Ex. 1 at 12-15.

December 16, 2013, two days before the hearing date. Id. at 370:2-15. Judge Ovalles signed the order that day. The case was heard on Wednesday, December 18, in order to put everything on the record. Id. at 370:15-18.

At the hearing, Judge Ovalles expressed his desire to visit Ms. B. He wanted to observe her condition and determine whether to keep the December 16th order in effect. Judge Ovalles preferred to go the next day or that coming Sunday. He and the Disability Law Center attorney exchanged phone numbers to further coordinate. See Ex. 1 at 25-26. Arrangements were made at the patient's group home to have the weekday staff there on Saturday from 2:00 to 4:00 p.m. Attorneys from BHDDH and the Disability Law Center were present as well. However, Judge Ovalles did not appear that day. No evidence was presented establishing the fact that Judge Ovalles knew of the date and time of the arrangements despite the exchange of phone numbers.

On December 24, Ms. Harden received a phone call from the group home staff alerting her that Judge Ovalles had visited Ms. B alone, unannounced, and without any attorneys present. The judge reportedly sat next to the patient's bed and said a prayer. Tr. 459:25-460:3. Ms. Harden expressed her concern because, at the scheduled time, "all the attorneys involved in the case were going to be present, and then he went and met with a patient who was represented by counsel without them." Id. at 460:9-12.

In the third case, Ms. C was a schizophrenic patient with a chronic history of grand mal seizures who did not believe she suffered from any mental illness or medical condition. Ms. C's psychiatrist attributed her lack of insight and refusal to continue with treatment to her mental illness. Ex. 1 at 31. The patient was nearing the end of her Medicare coverage, so her medical provider requested that she apply for Medicaid. Ms. C refused to fill out the application or sign any papers. Her psychiatrist again testified before the Mental Health Court that this refusal

stemmed from her schizophrenia. Id. at 33-34. He explained the consequences of her failure to sign the paperwork as follows:

> "[I]f she does not have any sort of health insurance, we would find it very difficult to find appropriate resources for her in the community or even in general with the other hospitals. She may need a long-term placement and we would, we will be unable to establish that if she does not have any health insurance." Id. at 33.

Accordingly, Ms. Harden scheduled a hearing in an attempt to have the judge persuade the patient to execute the Medicaid application. Tr. 376:8-23. At the hearing, on December 18, 2013, Judge Ovalles presided and found that the patient could not provide informed consent and authorized treatment for her. Ex. 1 at 43-44. However, Ms. Harden had not prepared an order related to the Petition for Instructions as it was anticipated that Judge Ovalles would convince the patient to sign the application. Id. at 44; Tr. 375:20-376:7; 376:24-25. Ms. Harden provided Judge Ovalles the necessary Medicaid forms. He stated that he would rather wait for the proposed order before executing them:

> "[Judge Ovalles]: Okay. This can wait then. May I hand this? We'll leave them in the file for [the clerk, Ms. Pingitore] to hold on to, and as soon as the order is provided—I want to see the language that you're going to put my name on. I don't know what the necessary language is. And so I can only imagine by looking up the statute what the exact words usually follow, to authorize the additional signature.
>
> "And then I can sign it. As soon as I sign the order, as soon as you have it, just provide it to the clerk, and Ms. [Pingitore] will contact me so that I can make myself available to sign it right away." Ex. 1 at 46.

Ms. Harden testified before the Commission that she emailed Judge Ovalles the order on January 7, 2014. Tr. 378:11-380:2. When she did not receive a copy of the signed order, Ms. Harden re-sent the order via email on January 30. Id. at 380:3-18. As he was no longer assigned to the Mental Health Court, Judge Ovalles responded on February 3 that the judge sitting on the

calendar should sign the order. Id. at 380:19-25. Ms. Harden later discovered that Judge Ovalles actually had signed the order on January 8, one day after it was first sent to him. Id. at 381:23-382:4. She did not recall having checked the file of the mental health calendar clerk regarding the status of the order, and she did not know whether treatment for the patient had been delayed as a result.

In the fourth case, on November 26, 2013, Judge Ovalles presided over a recertification hearing[22] of a long-term patient at Eleanor Slater Hospital, a routine hearing. Id. at 383:20-384:16. The patient, Ms. D, was diagnosed with chronic schizophrenia and delusions. Testimony was presented at the hearing from the patient's treating psychiatrist who recommended that Ms. D remain hospitalized. Judge Ovalles allowed Ms. D to speak at the hearing and engaged in conversation with her about her brother, who was her legal guardian. Ms. D seemed to believe that her brother would be willing to take her home with him. However, the psychiatrist, Ms. Harden, and Attorney Bruce Todesco from the Office of the Mental Health Advocate, who represented the patient, knew that Ms. D's brother was unable to provide appropriate in-home care for her. Id. at 385:2-17; 385:24-25; 531:19-23; 532:24-533:6; see also Ex. 1 at 52-53, 60-61.

Nevertheless, Judge Ovalles offered to meet with Ms. D's brother and discuss that possibility:

> "[Judge Ovalles]: So now I'd like to further consider your thoughts, and in order to do that, I would like to listen to [your brother]. So when you see him again, talk to him and say, look the judge would like to see you; come with me to court so you can talk to the judge, all right? I can do that for you." Ex. 1 at 65-66.

[22] Court orders for treatment and commitment of a patient are for a six-month duration. If a doctor intends to keep the patient hospitalized, he or she must file a new set of paperwork prior to the expiration of the existing order, and the matter is heard at a renewal hearing to obtain a new six-month order.

At the conclusion of the hearing, Judge Ovalles approved the recertification request. Ms. Harden testified that she felt Judge Ovalles was fostering Ms. D's delusions:

> "And my biggest concern with what transpired here was that [the doctor] has testified that she has a mental illness, she suffers from delusions, and that Judge Ovalles really, in my opinion, played into those by saying, well, bring your brother here, and, you know, he can tell us that he wants to take her home, and he'll take you, and do you have a room there? And that was never going to be a reality for her." Tr. 385:18-25.

Mr. Todesco also testified that Judge Ovalles was giving Ms. D a sense of false hope:

> "From just a human standpoint to suggest to this woman, after testimony that said this cannot happen, this won't happen, she thinks her brother wants her to come home but, you know, she can't, to say, well, let's have your brother come in and tell the Court this, I think it sets up a situation where, honestly her brother would have to come in and break her heart, and say, Judge, no, she's wrong, I can't do it. She thinks that I can, and I don't know. Maybe he would say to her, yeah, [Ms. D] at some point, we can make this happen. Why even open that possibility up for her? Why do that to her?" Id. at 533:22-534:7.

In the fifth and final case, a critically ill patient, Ms. E, suffered from schizophrenia, dementia, and HIV. Ms. E was the subject of a Petition for Instructions for both psychiatric and HIV medications before Judge Ovalles on December 13, 2013. The psychiatrist filed the Petition for Instructions in consultation with the patient's medical doctors. The testifying psychiatrist had determined that Ms. E was unable to provide informed consent to her medications, and she would no longer accept her HIV medications because she did not believe she was actually suffering from HIV. Therefore, the purpose of the Petition for Instructions was to get Ms. E stable on her psychiatric medications before treating her with the HIV medications. Ex. 1 at 85, 89-90; Tr. 399:10-16. The doctor testified that he was not an expert in the HIV medications and could not testify as to whether the benefits of those medications outweighed the risks. Ex. 1 at

84, 90. As a result, Ms. Harden voluntarily removed the HIV medications from the Petition for Instructions. Judge Ovalles approved the order for the psychiatric medications. He was concerned about the patient's HIV treatment. Id. at 85. Ms. Harden and Mr. Todesco agreed to continue the matter so that they could obtain medical testimony from a medical doctor with regard to the benefits and risks of the HIV medications. The hearing was eventually continued to January 16, 2014 for that purpose. Judge Ovalles stated that if the attorneys could get him a brief one-paragraph medical note, it would be enough for him to act on the Petition for Instructions before the hearing.

Ms. Harden could not obtain any medical testimony to the effect that the benefit of the HIV medications outweighed the risks, and she determined that the three HIV medications should not be put back into the order. As a result of her conferences with the patient's doctors, Ms. Harden sent Judge Ovalles and Mr. Todesco the following email on January 15:

> "Dear Judge Ovalles-
>
> "Attached to this e-mail, please find a notice of intent to withdraw from the PFI request certain medications and a request to cancel the hearing scheduled before Your Honor for 1-16-14 at 3:00 PM.
>
> "Attorney Todesco and I have had a number of conference calls with Ms. [E's] treating doctors, including her psychiatric and medical doctors, and it is their combined and individual expert medical opinions that the benefits of the three remaining medications do not outweigh the risks to Ms. [E].
>
> "Should that opinion change in the future, they will renew their request for medications.
>
> "Since we will not be proceeding on this matter, I would respectfully request that the hearing scheduled for 1-16-14 be cancelled and counsel not be required to appear in District Court.
>
> "Attorney Todesco, counsel for Ms. [E], is in agreement with this course of action.

"Thank you for your attention to this matter.

"Sincerely,

"Kate Harden, Esq." Ex. C; see also Tr. 403:25-405:10.

Although there is no record of a reply email from Judge Ovalles, Ms. Harden testified that she received a phone call from Judge Ovalles relaying that "[i]f I did not go forward on the hearing, . . . he would vacate the entire PFI." Tr. 406:16-18.

As a result of this phone call, Ms. Harden emailed the two doctors with whom she had spoken and Mr. Todesco: "Drs. Ready and Rosenzweig- Could one of you quickly (and IMMEDIATELY) draft a letter on ESH letterhead re: the [Ms. E] issue? Judge Ovalles is requiring a letter. If he does not have a letter from ESH doctors he has indicated he will vacate the entire PFI." Ex. 17; see also Tr. 406:22-408:7. Thereafter, Ms. Harden was able to obtain a letter containing medical testimony that the benefits of the HIV medications did not outweigh the risks to the patient. Ms. Harden and Mr. Todesco hand-delivered the letter to Judge Ovalles; the PFI order remained in place, and treatment was never withheld from Ms. E. Ms. Harden testified that she was critical of the way Judge Ovalles handled this matter because

> "[o]ne, I think that this was another example of exerting a lot of time and effort that simply, in my opinion, may not have been necessary but, more significantly, I was concerned with the threat of him vacating the PFI that the doctors did say was needed to treat [Ms. E] in order to compel some action on our part." Tr. 409:22-410:3.

At some point, Ms. Harden met with Chief Judge LaFazia of the District Court. Id. at 410:4-13. There they discussed Judge Ovalles's conduct while presiding over the Mental Health Court. Ms. Harden testified that she told the Chief Judge that practicing before Judge Ovalles was difficult because he was inconsistent in his rulings and his mood fluctuated, which would affect his judgments. Ultimately, Ms. Harden opined that Judge Ovalles was not competent to

handle the mental health calendar: "I believe that I told [Chief Judge LaFazia] that I did not think that he was competent to preside over cases, as I felt that he had made legal rulings that had no basis in law or fact." Id. at 411:23-25. Ms. Harden acknowledged that Judge Ovalles always expressed concern for the patients, and he would even follow up when he hadn't received updates.

Mr. Todesco has been an attorney for the Office of the Mental Health Advocate since 2007. He represents the patients at the Mental Health Court who are being subjected to the proceedings for the purpose of being involuntarily hospitalized or treated for their mental illnesses. Mr. Todesco has appeared before approximately twenty judges on the mental health calendar, and he has appeared before Judge Ovalles between seven and ten times on such. He, too, met with Chief Judge LaFazia sometime between June 2012 and April 2013 to discuss Judge Ovalles's performance on the mental health calendar. Mr. Todesco testified that he told the Chief that "generally I felt he did not display a command of the subject matter and, as a consequence, could be really unpredictable, and that was, you know, kind of an overarching and ongoing concern." Id. at 523:24-524:2.

Mr. Todesco further testified with respect to an in-court exchange between Judge Ovalles and Attorney Megan Clingham, the current Mental Health Advocate. Mr. Todesco heard Judge Ovalles tell Ms. Clingham, "'I afford you the respect that I afford all female attorneys.'" Id. at 543:24-544:1. Mr. Todesco also observed that when Judge Ovalles appeared stressed, he would be more "snappish" and "curt and demanding" of female attorneys, as opposed to the way Mr. Todesco himself was treated. Id. at 549:8-10. Again, though, Mr. Todesco noted that Judge Ovalles always expressed concern for the patients and was caring.

Ms. Clingham was appointed as the Mental Health Advocate in June of 2012. Prior to that position, she served as legal counsel for BHDDH (then known as the Department of Mental Health, Retardation and Hospitals) from 2008 to 2009, and she became an Assistant Child Advocate in 2009. While Ms. Clingham worked at BHDDH, she organized and scheduled the mental health calendar in accordance with the various doctor and patient schedules, and she would provide a list to the clerk of the Mental Health Court either the day before or the morning of the Friday calendar. She testified that although most judges were receptive to such a list, Judge Ovalles was not: "He became angry and irate that – I believe he felt that I was trying to run his calendar and he, from the bench, was angry that somebody else had scheduled the cases, and he said it was his calendar to call not the lawyer's." Id. at 597:22-598:1. Judge Ovalles testified that Ms. Clingham was mistaken in her testimony. Id. at 1451:20-21. Furthermore, he testified that "she wasn't prepared, and . . . the number of cases we have, we need to keep moving the calendar." Id. at 1451:23-25.

Ms. Clingham testified to the same incident that Mr. Todesco had described. It occurred when Judge Ovalles refused to call the calendar in the order which Ms. Clingham had set forth in her list. Ms. Clingham explained the necessity of the order of the calendar to Judge Ovalles. There was concern for the scheduling of the doctors as well as having psychiatric patients in a waiting room together for long periods of time. Ms. Clingham, Mr. Todesco, and Judge Ovalles discussed the matter in chambers. Ms. Clingham testified that she attempted to explain her reasoning to Judge Ovalles, but he responded by yelling at her, saying, "'Ms. Clingham, when I'm sitting on this calendar, I am a judge of the Superior Court, and I expect you to treat me with respect. I treat you like I treat any other female attorney, and I expect you to treat me like [you] treat any other Judge of the Superior Court.'" Id. at 600:22-601:2; see also id. at 602:10-15.

Apparently in disbelief, Ms. Clingham asked Judge Ovalles to repeat what he had said, which he did. Id. at 601:4-13. When Judge Ovalles then denied referring to Ms. Clingham as a "female attorney," Mr. Todesco proffered that Judge Ovalles had, in fact, done so—twice. Id. at 601:10-13.

Thereafter, Judge Ovalles took a break of about an hour, backing up the proceedings without regard for the doctors waiting in the hallway. Id. at 601:17-602:2. This break was in line with how Ms. Clingham observed Judge Ovalles would normally recess: "Sometimes it would be a regular recess, but sometimes often he appeared to become confused or overwhelmed, kind of put his head in his hands and stormed off the bench without notice." Id. at 603:19-22. Judge Ovalles never said when he would be returning to the bench, and there were times when he did not say anything before "storming off." Id. at 603:23-604:4. During these abrupt breaks, Ms. Clingham testified as follows:

> "I went out and talked to the witnesses who were waiting and the mental health workers and the patients who were waiting and just try to tell everyone, you know, all right, just having a short break, we don't know how long it's going to be, trying to keep everyone together, trying to keep the doctors from leaving, and trying to keep the patients from getting overly upset by the situation." Id. at 604:9-16.

According to Ms. Clingham, Judge Ovalles's "storming off the bench" was not an unusual occurrence. Id. at 604:17-19.

Once Ms. Clingham was appointed Mental Health Advocate, she had a meeting with Chief Judge LaFazia. They discussed the Mental Health Court generally and Judge Ovalles's competency to sit on the calendar specifically. Ms. Clingham testified, "I said [to Chief Judge LaFazia] that it concerned me that sometimes [Judge Ovalles] seemed not to understand what was going on or he seemed to become confused or overwhelmed." Id. at 605:18-20. Ms.

Clingham ultimately opined that it was not appropriate for Judge Ovalles to handle the mental health calendar. Id. at 615:4-5.

Pretrial Services Investigator Stephanie Grecco testified to another incident, although not occurring at the Mental Health Court, which raised the issue of Judge Ovalles's competence to handle cases involving sensitive mental health matters. During a sentencing in March of 2015, Judge Ovalles summoned Grecco to his courtroom to provide additional information regarding the defendant's mental health treatment. Id. at 701:7-9. When Judge Ovalles requested the defendant's diagnosis on the record, Grecco asked to approach the bench. She was denied that request. Grecco then advised Judge Ovalles on the record that mental health diagnoses are protected by HIPAA (Health Insurance Portability and Accountability Act) and cannot be disclosed in open court. Id. at 701:23-702:4. Grecco testified that Judge Ovalles responded as follows: "I think he smiled and maybe laughed a bit and said, 'Well, have the defendant sign a release . . . for the Court.'" Id. at 702:8-10. Grecco received the requested information from the mental health agency and provided it to the Court in the form of a typed report. She did not inform Judge Ovalles orally in order "to preserve the client's right to privacy of his mental health diagnosis as much as possible." Id. at 704:8-10.

E

Treatment of Women

1

Court Employees

Court employees, particularly court clerks, testified with respect to Judge Ovalles's treatment of women. During the hearing before the Commission, Judge Ovalles testified that he is familiar with the Code of Judicial Conduct and the Commentary that a judge must refrain from

speech, gestures, or conduct that could reasonably be perceived as sexual harassment. Id. at 1275:16-22.

Megan Degnan clerked for Judge Ovalles approximately a dozen times while he was sitting in Kent County Courtroom 2D. Degnan testified that she was not comfortable going into Judge Ovalles's chambers alone. On one occasion, she asked a sheriff to go with her for the following reason:

> "[Degnan]: I just – I felt uncomfortable going by myself with [Judge Ovalles].
> "[DeSisto]: Why?
> "[Degnan]: Just, you know, I've caught him a few times, he will look you up and down and just makes you feel uncomfortable.
> "[DeSisto]: What do you mean by look me up and down?
> "[Degnan]: Like go from your head to your toes, look you straight up and down.
> "[DeSisto]: And did you take offense at that?
> "[Degnan]: Yes.
> "[DeSisto]: Why?
> "[Degnan]: Because it just makes you very uncomfortable." Id. at 728:22-729:7.

With the sheriff accompanying her, Degnan knocked on Judge Ovalles's door and asked if she could come in. He replied, "'You can come in and watch me suck on my lollipop.'" Id. at 727:17-18. Degnan was offended by this comment: "I mean, I took it in a sexual way. I don't know how else you would take that." Id. at 727:24-25. When she entered, Judge Ovalles was, in fact, sucking a lollipop. Id. at 731:3-5. Judge Ovalles does not recall this interaction with Degnan. Id. at 1289:3-8. In response to questioning by Mr. DeSisto, Judge Ovalles admitted that he could have said it. Id. at 1289:10-12. However, he explained that he meant no sexual connotation by the remark. Id.

Clerk Cote testified that he had escorted Degnan and Gonzalez to Judge Ovalles's chambers:

> "I had a few – several occasions where a female would say, you know, 'Judge Ovalles is calling me into his chamber, would you mind coming with me? I don't feel comfortable.' I would say, 'Okay.' Generally I would walk down with them, and I would stand against the wall, kind of near the door, where I could be there. And they would go in and, you know, I don't know if he saw me or not, but I would stand there with them." Id. at 694:19-695:1.

He described one such occasion in particular:

> "There was one time where a female clerk had asked me to go in with her because she was not comfortable, and I said okay. I don't know what made me go all the way in the office that day, but I walked into the office with her. He was sitting at his table or in a chair, and he asked – he turned, and he said something, 'Like what are you doing here,' and I said, 'She's not comfortable, Your Honor,' and he threw his hand up, and he said, 'leave,' or 'get out' or something like that. We both left." Id. at 695:21-696:4.

However, Ms. Gonzalez testified that she felt comfortable going into Judge Ovalles's chambers and speaking to him alone there. Id. at 807:17-23.

Degnan was not alone in how Judge Ovalles made her feel. Pretrial Services Investigator Toni Schmeider similarly testified that

> "[t]here's been times where if I was just in his courtroom just for other reasons not to see him but just to speak to one of the attorneys and so forth, he was – he made me uncomfortable. He would look me up and down. I was uncomfortable in regards to that. It's basically out in the elevator, not comfortable again, just gut feelings . . . [.]" Id. at 1207:12-18.

Judge Ovalles testified that this testimony was not true. Id. at 1277:25-1278:2. Likewise, Clerk Karen Kanelos recalled one specific incident as follows: "When I walked into chambers that day, I noticed him staring at me from head to toe up and down and he was like, ha ha ha, 'I guess I'll have to keep my sexual comments to myself.'" Id. at 870:24-871:3. Kanelos expressed that she found that comment offensive because "I'm at work. I'm not here to be complimented on how I look or how I look to someone, and it's inappropriate to me." Id. at 871:18-20. Judge Ovalles

testified that he did not say that to Kanelos. Id. at 1281:17-18. Then-Chief Clerk Waluk and former Administrator Spina testified that they were not alerted to this comment until they received an email from Kanelos on August 29, 2014, despite their having earlier discussions with her in person. Id. at 2111:8-12; Spina Dep. 61:5-15; see Ex. CC. Nor does Bellamy, Kanelos's supervisor at the time, recall Kanelos reporting such remark to her. Bellamy Dep. 118:12-18. Clerk Rossi also acknowledged that Judge Ovalles looked her up and down "numerous times over the years[,]" but she was not offended by it:

> "[Rossi]: He would frequently look you up and down and say, 'Looking good, Ms. Rossi.'
> "[DeSisto]: When you say, 'look you up and down,' what does that mean?
> "[Rossi]: He would look at you, basically trying to compliment the way you were dressed if you had a skirt on and high heels, and like a man would look at a woman.
> "[DeSisto]: Did you take offense at that?
> "[Rossi]: No." Tr. 645:9-17.

Rossi did, however, testify to another incident when Judge Ovalles made her feel uncomfortable. Rossi and Judge Ovalles both attended a retirement party for a judge sometime in 2015. At the party, Judge Ovalles told Rossi that he wanted to buy her a drink, but when he realized that she already one, he said he would buy her next drink. Sometime later, Rossi received a second drink from a fellow partygoer, making Judge Ovalles upset. Rossi testified that:

> "[S]omebody else gave me a drink, and he came up to me and was upset that I had another drink and that I didn't let him buy it. And I said, 'I'm all set. I appreciate it but, you know, I've had two. I have to drive back to North Providence where I live, and I don't want to be, you know, stopped for drunk driving or anything.' And he was upset. So I told him that he needed a spanking when he was young because he doesn't know how to take no for an answer which was probably not appropriate on my part, but he wasn't taking no for an answer." Id. at 656:24-657:8.

Court clerks also testified with respect to inappropriate comments made by Judge Ovalles concerning gender and sexuality. Clerk Audrey DeCesare worked in Judge Ovalles's courtroom in 2014. DeCesare testified that the first time she went into the courtroom, Judge Ovalles instructed her, "'I'm the man just listen to me, and we'll be okay.'" Id. at 707:10. DeCesare further recounted that after her fellow clerk's complaint against Judge Ovalles became public, Judge Ovalles made a comment regarding that clerk's sexual orientation. Judge Ovalles wondered to DeCesare, "[H]ow could he be accused of [sexually harassing that clerk], . . . she was a lesbian. 'Why would I want to sexually harass her[?]'" Id. at 709:5-10; see also id. at 715:16-20. This comment caused DeCesare to feel uncomfortable and leave. Id. at 709:16-17. Judge Ovalles remembered only saying, "'I have no reason to harass anyone.'" Id. at 1482:12-15. Rossi also heard Judge Ovalles speak about the clerk's sexual orientation sometime in 2015. On one occasion when Judge Ovalles called Rossi into chambers, the following conversation transpired:

> "He said, 'You know that I'm being investigated.' I said, 'Yes, Your Honor. I had heard that,' and then he said, um, 'You know, we've always gotten along, and I would appreciate any support you can give me in this matter,' and he said to me, 'Why would I – why would I make any comments to [the clerk] like that because she's a lesbian.'" Id. at 655:13-18.

Rossi testified that she felt "stunned" by Judge Ovalles's comments. Id. at 655:25-656:2. Judge Ovalles did not recall saying this to Rossi. Id. at 1481:21-24.

2

Attorneys and Litigants

Various attorneys also testified to their observations of how Judge Ovalles treated women appearing before him. Ms. Clingham recalled an incident that occurred at a reception on the fifth

floor of the Licht Judicial Complex in Providence. As she got off the elevator and stepped into line, Ms. Clingham realized she may have accidentally cut in front of Judge Ovalles. Ms. Clingham said, "Excuse me, Judge, I'm sorry. Did I cut in front of you? Let me get to the back of the line." Id. at 616:15-16. She testified that Judge Ovalles "looked me up and down and said, 'No, that's okay, Ms. Clingham. I'm enjoying the view from back here.'" Id. at 616:18-20. She described Judge Ovalles's demeanor as follows: "He was standing behind me, he looked at me from head to toe and back up again and said with kind of a leering voice, 'I'm enjoying the view from back here.'" Id. at 616:23-25. Clingham stated that she felt uncomfortable after this exchange:

> "[Clingham]: I turned around and just waited in line. I felt very uncomfortable and embarrassed, and if I could just clarify. It was, I would say, a lascivious smile on his face if that's better than creepy.
> "[DeSisto]: Why did you feel uncomfortable and embarrassed?
> "[Clingham]: Because there was someone behind me who had just indicated that he was looking at my rear end, and I had to stand in line for the rest of the time with him standing behind me presumably looking at me." Id. at 617:14-22.

Judge Ovalles had no memory of the event but agreed that the statement would be inappropriate if there were a sexual connotation. Tr. 1278:10-24.

As mentioned previously in this Report and Recommendation, Ms. Clingham testified about another incident in which Judge Ovalles made her feel uncomfortable because of her gender. The exchange occurred when Judge Ovalles was presiding over the Mental Health Court, and Mr. Todesco witnessed the "very tense situation." Id. at 544:10. Judge Ovalles said to Ms. Clingham: "I treat you like I treat any other female attorney . . . ." Id. at 600:25-601:1. Judge Ovalles does not remember saying the word "female." Id. at 1280:7-10.

Regarding Judge Ovalles's treatment of Ms. Aitchison, Mr. Sgroi said, "Ms. Aitchison was with the Public Defender's Office, and she seemed to be singled – singled out, I should say, for different treatment than other attorneys were." Id. at 1080:13-17. He observed that "Judge Ovalles refused to allow her to leave the courtroom without first getting his permission. She was repeatedly chastised by the Judge, just general, for lack of a better word, general mistreatment." Id. at 1080:18-22. When asked whether he had the same restrictions on his movement as Ms. Aitchison, Mr. Sgroi responded, "No, I didn't." Id. at 1080:25. Attorney Stephen Peltier also witnessed Judge Ovalles's disrespect towards Ms. Aitchison:

> "I've seen it. In fact, I've seen him – I remember when Rebecca Aitchison was in front, she was sitting at counsel table. She was told to sit in her chair. Well, he asked if anything was ready, and she said no. He says, well, go get, make sure the cases are ready. When she got up to leave, she was told to get back in and sit down, and that happened on a number of occasions." Id. at 1064:5-11.

Ms. Aitchison was repeatedly treated differently than her male counterparts during the nine-month span she was assigned to Kent County Courtroom 2D. While male attorneys were freely allowed ingress and egress from the courtroom throughout the day, Aitchison was confined to her seat at times. When Mr. McElroy was chosen—because he was a male—to replace Ms. Aitchison in Judge Ovalles's courtroom, unlike Ms. Aitchison, he was not confined to his seat. Id. at 265:12-16. Mr. Barrett testified to the same effect, stating that Judge Ovalles treated Ms. Aitchison differently than he treated Mr. Barrett. Id. at 2244:23-2245:3. Judge Ovalles denied this treatment toward Ms. Aitchison. Id. at 1291:4-22; 1315:16-22; 1317:8-20.

Judge Ovalles occasionally singled out female litigants in the courtroom as well. Clerk Palazzo testified with respect to a comment Judge Ovalles made to one woman who appeared before him. Judge Ovalles asked a woman whom he assumed to be pregnant, "'Did you enjoy the holidays too much?'" Id. at 826:2. Ms. Hoopis Manosh was the woman's Public Defender.

Ms. Hoopis Manosh also testified with respect to this incident, but with a different perception of it:

> "[Hoopis Manosh]: My client appeared in court. She had an outstanding warrant so she came into the courtroom a little distressed. This was over – it was right after the holidays. It was early January. She was upset. She was crying. She was not pregnant come to find out. She was a – I don't want to say a heavier woman. She appeared to be pregnant. She looked pregnant. I thought she was as well.
>
> We appeared before the Judge, and he asked something along the lines of, 'Ma'am, are you with child or maybe just enjoyed the holidays too much?' I think everyone was expecting her to just laugh and say ha ha I'm pregnant. She didn't. She said, 'Actually, I'm not pregnant,' and it was just an uncomfortable, very human moment where he said the wrong thing.
>
> "[Berthiaume]: When you say it was an uncomfortable human moment where he said the wrong thing, did Judge Ovalles react any further after that comment?
>
> "[Hoopis Manosh]: He was apologetic. He – he waived the warrant fee. She expressed gratitude on the record. It really wasn't a big deal. It wasn't –
>
> "[Berthiaume]: Did you consider his comment to be in any way disrespectful to your client?
>
> "[Hoopis Manosh]: At the time I thought he was going to make a show of saying let me waive the warrant fee for you, let me help you, you're obviously pregnant, and it ended up being an uncomfortable moment because she wasn't pregnant but, no, it was nothing disrespectful about it. It was – it was an open mouth insert foot, just a human moment." Id. at 2268:12-2269:15 (emphasis added).

On cross-examination, Ms. Hoopis Manosh made clear that "I personally believe that any comment on the size of a woman's stomach should never be asked or commented on." Id. at 2275:21-22. She repeated, however, that "I did not interpret the Judge's intent to be disrespectful nor did I interpret my client's reaction as disrespected." Id. at 2275:25-2276:2.

F

Other Attorneys

A number of attorneys testified at the public hearing regarding their experiences appearing before Judge Ovalles.

1

Young Attorney

On or about April 11, 2011, a first-year associate[23] from a Providence law firm went to Providence County District Court to monitor a motion at the request of her firm. The attorney sat in the jury box and took out her notebook, as her role was not to participate in any argument; she simply intended to write down the outcome of the motion and leave. During the course of the proceedings, Judge Ovalles motioned to her, "so I rose and just said, 'Your Honor, I don't have a motion before the court today. I'm just monitoring a matter,' and I sat down." Tr. 321:16-18. Once the motion of interest was addressed, the young attorney waited for a recess before gathering her coat to leave. As she was exiting the courtroom, "the sheriff yelled, 'Counsel. Counsel,' after me to get my attention, so I turned around and he said, 'The Judge would like to speak with you.'" Id. at 322:20-23.

The sheriff led the young attorney into Judge Ovalles's chambers. She testified to the following interaction:

> "The Judge was sitting behind his desk, and he introduced himself. I introduced myself. He asked me to take a seat. His clerk and sheriff were standing over my shoulder, and he just said, 'I thought you were monitoring me and taking notes and that you're a lawyer,' and I said, 'Well, I am a lawyer, and I was monitoring a case for my firm. I'm sorry. I wasn't monitoring the court itself just the particular motion,' and he said, 'Oh, okay. That's fine, you can be there, but next time you need to tell somebody what

[23] The attorney in question testified at the hearing on February 25, 2017.

> you're doing in the courtroom,' and I said, 'I'm sorry, Your Honor. I didn't know that that was the protocol. Next time I will certainly do that.' And he said, 'Well, I don't like being monitored, and how would you like it if someone came to your work and took notes and monitored you while you were working?' And I, again, apologized, said I would follow the correct procedure next time, but at that point I started getting upset." Id. at 323:14-324:6.

She described Judge Ovalles's demeanor as "irritated. He kept repeating over and over again that I hadn't followed the correct procedure, and he was condescending." Id. at 324:9-11.

The attorney became visibly upset in chambers, and Judge Ovalles quickly changed his tone: "Well, he said, 'I see you're getting upset. I don't want you to get upset,' and I don't remember anything that happened after that. I just remember getting up and leaving." Id. at 324:18-21. She began to cry once she exited chambers and re-entered the courtroom, and she continued to be visibly upset throughout her walk back to her office and once inside her office. Plante, a courtroom clerk, witnessed the exchange between the young attorney and Judge Ovalles in chambers. He testified that after the attorney left chambers, "[s]he was basically bawling her eyes out in the courtroom as she was proceeding to leave the courtroom to go to the main hallway." Id. at 2016:16-18.

When she returned to her law firm, the first-year associate told her superior about the incident, and he contacted Chief Judge LaFazia. Chief Judge LaFazia addressed the issue with Judge Ovalles in the following manner:

> "I said to him, 'She was in the courtroom observing for some reason, what I can't understand what you did to want to make her cry. I don't understand why you were critical with her.' The thing I most remember about the conversation arose out of the language of after he brought her back to the office, 'How would you like it if I followed you back to your office and watched you? I don't like to be watched. How would you like it if I followed you?'
>
> "And I said that to him once or twice, and I remember saying to him, 'Raff, what were you even thinking? Please tell me what you were thinking when those words came out of your mouth

> because I couldn't imagine them, quite frankly,' and he was very, very quiet. And I waited for him because I needed an answer to this. So I waited, and he was very quiet, and I waited, and he said, 'Well, I thought she was there to criticize me.' And I said to him, 'She could have been there for the sole purpose of criticizing you. We are an open court. We've talked about the fact that we are an open court. How could you shut somebody down because they are there for any reason?'" Id. at 1791:3-24.

Chief Judge LaFazia indicated that Judge Ovalles felt badly about the incident:

> "He felt badly, and then he said to me that he felt badly that he made her cry. He said . . . that he liked to bring particularly young attorneys back into chambers because he thought it was a casual, friendly way to make them comfortable and start communication with them. And I said to him, 'Raff, that's not working for you. And so you really need to not do it, and my suggestion to you is don't have chamber conferences. Keep what you do on the record. And keep it in the courtroom. Don't go back and do these things because, once again, you are just going to get yourself in trouble. Please think about not just what you do, but what you say and how you say it before you let those words come out of your mouth.'" Id. at 1792:9-22.

Judge Ovalles testified that he sought to apologize to the young attorney: "Not long after this incident, the Chief did speak to me about it, and I wanted to reach out to her and apologize to her because I found out later that she became upset to the point that she cried, and I felt terrible about that . . . ." Id. at 1307:6-9. According to Judge Ovalles, Chief Judge LaFazia instructed him not to reach out to the attorney: "She instructed me or said to me, 'Don't reach out to her. You shouldn't reach out . . . to her.' And I left it at that." Id. at 1310:21-23. Chief Judge LaFazia testified that Judge Ovalles did not tell her he wanted to reach out to the young attorney. Id. at 1792:25-1793:5. When asked if she directed Judge Ovalles not to apologize, Chief Judge LaFazia responded as follows:

> "Absolutely not. And let me just be clear. He felt badly. I won't say – I have no recollection of him saying anything beyond that. I will say absolutely that I never instructed him to not reach out, and I will say I would not have recommended it. This young woman

had been traumatized, and I wouldn't have recommended it, but I certainly would never have prohibited him." Id. at 1793:7-13.

2

Stephen Archambault

Attorney Stephen Archambault has been a member of the Rhode Island Bar since 2001. Mr. Archambault testified to an incident occurring during a pretrial conference in Courtroom 4G in Providence County District Court on January 11, 2011. He appeared before Judge Ovalles in connection with his representation of a client on a DUI charge. Mr. Archambault and Attorney Lynn Dolan, on her first day prosecuting for the Town of Smithfield, agreed to resolve the criminal matter. The prosecution sought to amend the DUI charge to one of reckless driving. Ex. 1 at 162:11-13. Judge Ovalles granted the motion to amend. Id. at 162:14-15. The recommended disposition after a plea of nolo contendere was a 30-day retroactive loss of license and a $500 contribution to the VCIF. Id. However, Judge Ovalles told the attorneys, "I'm not able to include the contribution. I'll approve it as a fine but not a contribution under our law, if it's reduced to reckless driving." Id. at 162:20-23. This in-court exchange resulted in a bench conference.

Mr. Archambault notified Judge Ovalles that his client would not accept the plea. Id. at 164:7-9. Mr. Archambault explained that, unlike with a DUI, a plea to a reckless driving charge did not statutorily require a fine; thus, a VCIF contribution, which would not result in a conviction, was possible. Tr. 995:17-23. Judge Ovalles then asserted that if he were to agree to a VCIF contribution in lieu of a fine, Mr. Archambault's client must agree to a 90-day loss of license as part of the disposition. Id. at 996:8-9. Despite his disagreement with Judge Ovalles, Mr. Archambault described their back-and-forth as "[d]iplomatic. He was being very polite, and

I'm advocating for my client." Id. at 997:1-2. However, according to Mr. Archambault, the discussion reached a point where

> "Judge Ovalles was saying, no, I'm not going to do that, and finally, I said, 'Well, Judge, would you consider,' and he slammed the file shut, like that, and slid his chair back, and said, 'Fine. You go to trial and then see what you get.' And he said it with a tone that was up." Id. at 997:3-8.

Mr. Archambault testified that Judge Ovalles's demeanor changed during this conversation: "he's being polite, and then slammed the file shut, and you couldn't approach. You couldn't ask anymore. It was lightning quick. Everybody was on eggshells." Id. at 1001:24-1002:2. Judge Ovalles testified that "we discussed the plea disposition, and we couldn't come to an agreement. I said, 'I'm sorry. I can't approve it.' And then he became, you know, he – I don't want to say hostile, but that kind of ended the cordial discussion that was going on . . . ." Id. at 1569:11-16. Judge Ovalles further denied Mr. Archambault's recounting of the sidebar as follows:

> "What he said that I slammed the file, that's untrue. And the tone of the connotation that's implied by, 'you take it to trial and you see what you get,' is also untrue. I said, 'Take it to trial and then you'll see what you get.' All that means is, as many judges told me many times, 'Look, Raf, if you want to take it to trial, take it to trial; take your chances; you can win; you can lose; or you may even get an agreement between now and the trial date.' That is all I meant." Id. at 1379:10-19.

Although Mr. Archambault described Judge Ovalles's tone as being "up," based on a recording of the extensive discussion at the bench, Judge Ovalles's tone appears to be calm.[24]

Once back on the record, Mr. Archambault indicated his client could no longer enter the plea. Ex. 1 at 164:7-9. Although Judge Ovalles had already amended the count to reckless

[24] An extensive sidebar had taken place, lasting about eight minutes. The Commission struggled to hear the District Court recording and concluded the voices do not seem raised or angry.

driving, Judge Ovalles stated, "The matter goes back to driving under the influence." Id. at 164:20-21. Neither party had asked for this. Judge Ovalles then asked the prosecutor, "Do you withdraw your motion [to amend]?" She agreed. Id. at 164:21-23.

Mr. Archambault sought to create a record of what transpired during the bench conference. He testified that "I don't see Your Honor as being objective in this case to do the trial or to handle the matters and I'm going to ask that in the future you be recused from handling this case . . . ." Id. at 167:8-11. Judge Ovalles warned, "You may not put that on the record. If you do, be on notice that you will not be called to conference cases in the future." Id. at 165:10-12. When asked if this statement meant Mr. Archambault had lost his privileges to attend sidebar conferences, Judge Ovalles said it did not. Tr. 1377:5-22. Nonetheless, Mr. Archambault testified that "I was not allowed to come to anymore sidebars after this." Id. at 999:23-24. After Judge Ovalles proceeded to put his version of the sidebar on the record, Mr. Archambault again attempted to do so, and Judge Ovalles again tried to prevent him: "If you're going to repeat the same thing, I ask that you not do that." Ex. 1 at 171:7-8. Judge Ovalles felt that conversations at sidebar remained at sidebar. Id. at 1375:1-5. However, when he reviewed the transcript, he realized that it was "perfectly fine" to put the issue discussed on the record. Id. at 1375:6-8.

After this incident, Mr. Archambault approached Chief Judge LaFazia, who was presiding in a courtroom nearby. She indicated they would talk later. Chief Judge LaFazia and Mr. Archambault met. He told her what had happened in court that day. He stated that he wanted to memorialize the incident by informing her in person and in writing. Id. at 1003:15-20; see also Ex. 20. He did not send a copy of the letter to Judge Ovalles and never spoke about the

incident again with Judge Ovalles. Mr. Archambault did not request a transcript or a recording of the hearing at issue.

In 2012, Mr. Archambault appeared before Judge Ovalles in Kent County District Court Courtroom 2E as a prosecuting attorney for the Town of North Smithfield. The calendar that day included two other towns. Mr. Archambault testified that when he stood up with the case files which he wanted to discuss with Judge Ovalles at the bench, Judge Ovalles refused to acknowledge him. Tr. at 1007:20-1008:1. As a consequence, Mr. Archambault was the last attorney in the courtroom. He remained there with the many cases he had left to address. After the last case was finished, Judge Ovalles said to him, "Well, you know, Mr. Archambault, things have a way of happening sometimes. They don't always work out the way we want them to." Id. at 1008:6-8. Mr. Archambault believed that Judge Ovalles was punishing him by keeping him in court all morning. Id. at 1008:14-15.

Mr. Archambault also witnessed Judge Ovalles act rudely to an older female litigant with a suspended license. The woman was palpably nervous, not understanding what to do, and "Judge Ovalles was rough on her, very rough on her. So – and when I say rough, I mean, coming back at her with her lack of understanding to the point where the woman was almost in tears." Id. at 1009:16-19. Mr. Archambault attempted to intervene on the woman's behalf. Judge Ovalles asked Mr. Archambault if he was doing so as a prosecutor or a defense attorney, to which Mr. Archambault replied, "I'm here for justice, Your Honor." Id. at 1010:4-5.

3

Stephen Peltier

Attorney Stephen Peltier has been a member of the Rhode Island Bar since 1988. Mr. Peltier was an Assistant City Solicitor for the City of Cranston for approximately ten to twelve

years. He appeared before Judge Ovalles in that capacity on Mondays for two years. One Wednesday, Mr. Peltier was filling in for another Cranston prosecutor, Christopher Millea. As a result, he had to pick up the files from the police station that morning. Mr. Peltier knew he would arrive at court a few minutes late, so he called and left a message for Judge Ovalles. Judge Ovalles stated that he does not check his answering machine in the morning. Id. at 1055:10-12.

When Mr. Peltier arrived at 9:02 a.m., he was told by a sheriff that he could not enter the courtroom. Id. at 1054:1-10. Judge Ovalles testified that he did not specifically keep Mr. Peltier out of the courtroom; rather, he kept everyone from coming in the door. Id. at 1393:9-1394:13. However, Sheriff Kloc testified that Judge Ovalles told him, "'When the Cranston prosecutor gets here, have him wait outside.'" Id. at 284:11-12. Sheriff Kloc prevented Mr. Peltier from entering: "I just believe that I told him he couldn't come in. I had the door secure to that effect." Id. at 281:7-8. While Mr. Peltier waited, others were allowed in and out of the courtroom. Id. at 1054:11-13. He was allowed to enter at approximately 9:20 a.m. Id. at 1054:19-20. At that time, the calendar had already been called. Mr. Peltier did not know which witnesses were there relating to his cases. He also did not know which cases were ready or not, and he had to figure it out as the day went on. Judge Ovalles testified that Mr. Peltier's testimony was untruthful. Id. at 1394:14-18.

Subsequently, on March 17, 2014, Mr. Peltier attended a meeting organized by Judge Ovalles with the solicitors of Cranston and Warwick. Judge Ovalles used the courtroom during the day in order to conduct this meeting, which lasted about ten minutes. Id. at 1057:3-9. In fact, Judge Ovalles twice had Sheriff Kloc ask Ms. Aitchison to leave. Although she initially refused and pronounced her right to be present, she eventually relented when Judge Ovalles

indicated it was his intention "to chastise the prosecutors . . . ." Id. at 143:20-25. Thereafter, Judge Ovalles instructed the solicitors that he did not want them to defend private criminal clients on days that they were prosecuting because "it didn't look good." Id. at 1058:5. Judge Ovalles told the attorneys that as long as they notified him when such a situation would be presenting itself, "it would be fine." Id. at 1058:15-16. On one occasion, Mr. Peltier called Judge Ovalles to inform him that he was going to represent a client on a restraining order in a landlord-tenant matter. Judge Ovalles continued the case to the next day. Id. at 1058:19-1059:2.

Mr. Peltier believed Judge Ovalles treated him differently than other attorneys. Mr. Peltier recalled that Judge Ovalles dismissed a number of his cases because the secretary who signed the eviction notices was not in court to testify. He further stated that he was not allowed to ask leading questions in uncontested cases, while other attorneys were allowed to do so:

> "[Peltier]: It was a young attorney, . . . he did a T&E, all leading questions. And then when I started, next thing you know, no, you can't ask leading questions. It just didn't make a lot of sense, but that was the way I was treated throughout."
> "[DeSisto]: Do you know why?
> "[Peltier]: I don't know why. I can tell you that he did say to me on a couple of occasions that I try to make him look bad, and I don't. I've never had any disrespect for any member of the bar or the Court." Id. at 1063:2-12.

Mr. Peltier was also admonished by Judge Ovalles for making legal arguments:

> "There was an incident one day where a young attorney, I offered a filing on a case. He asked for a 364 day filing, and I objected because the statute says it's for one year, and I complained that, you know, I voiced my opinion that if this guy goes out and does something to his wife or girlfriend again, we can't even violate him because the sentence is illegal. And that erupted into a whole – I got reprimanded from the bench for that." Id. at 1063:17-25.

Overall, Mr. Peltier believed that Judge Ovalles was disrespectful to him. Id. at 1062:12-14. Judge Ovalles did not like Mr. Peltier being in his chambers unless a sheriff was present. Id.

at 1062:2-7. Mr. Peltier was not allowed to approach the bench, even though other attorneys were permitted to do so. Id. at 1060:23-1061:11. When asked if he ever inquired as to why Judge Ovalles treated him this way, Mr. Peltier testified as follows:

> "I just – you got to get a sense of how things were with me. I don't know if I was singled out or not. I can tell you that I had a criminal defendant one day say to me in the courtroom that he dislikes you more than he dislikes us. I can tell you that there were things, I'm not stupid, I did not want to cause a problem where I didn't have to cause a problem. And I knew that if I insisted or I pushed the issue, it would certainly be an issue with me." Id. at 1061:14-22.

4

Robert Sgroi

Attorney Robert Sgroi was admitted to the Rhode Island Bar in 1980. As a prosecutor for the City of Warwick, Mr. Sgroi appeared before Judge Ovalles in Kent County District Court once a week for eighteen months, between 2013 and 2014. As indicated earlier, Mr. Sgroi first testified regarding his above-described observations of the "strained relationship" between Judge Ovalles and Ms. Aitchison, in which Ms. Aitchison was "singled out" and not allowed to leave the courtroom without Judge Ovalles's permission. Id. at 1080:14-17; 1081:8-10. At a meeting in Judge Ovalles's chambers, Mr. Sgroi offered his opinion that Ms. Aitchison was "the best, most intelligent, hardest working Public Defender I've dealt with. She seemed to be very conscientious, very intelligent." Id. at 1081:14-17. In fact, Mr. Sgroi told Judge Ovalles—and had previously told Ms. Aitchison—that he would hire her if she ever decided to leave the Public Defender's Office. Id. at 1081:17-21. Judge Ovalles's response was to dismiss Mr. Sgroi from the meeting. Id. at 1081:21-22.

Mr. Sgroi also testified concerning Judge Ovalles's comprehension of legal matters. They had a disagreement regarding Rule 48(a).[25] As a city solicitor, it was Mr. Sgroi's understanding that he was able to voluntarily dismiss a complaint prior to trial, as set out in the language of the rule itself. However, he and Judge Ovalles differed as to when "trial" begins. Mr. Sgroi maintained that a trial begins when the first witness is sworn, while Judge Ovalles averred that it begins once the case is assigned to the trial calendar. Judge Ovalles testified that "[w]hen the matter has been set for trial and there's been several continuances, at that time I am of the opinion that the prosecut[or] . . . is not at liberty to just file a 48(a) dismissal and then to bring it back and . . . re-file the charge again." Id. at 1414:17-22. As a result, Judge Ovalles "[o]n a couple of occasions" would not allow Mr. Sgroi to dismiss cases because they were in a trial posture. Id. at 1083:19-20. Instead, Judge Ovalles testified that he would dismiss the cases under Rule 48(b), "which would then require . . . an appeal to the Superior [C]ourt to get a reversal [of] that order."[26] Id. at 1415:24-1416:1. Mr. Sgroi admitted he has had disagreements with other judges over the years. Id. at 1083:1-4.

Mr. Sgroi spoke of other behavior on the part of Judge Ovalles. Such behavior included clearing the courtroom to have the sheriffs rearrange it to mirror the Superior Court:

> "There was one instance, I don't recall the specific day, of course, but it was about 10:45, and the Judge abruptly slapped, put his hand down on the table, slapped, and abruptly left the bench. I wasn't quite sure why, figured maybe he just needed a break or needed to make a phone call. I really didn't know why. And the sheriff came out and said that we had to clear the courtroom, and I asked why, and he said because the Judge didn't like the way the

[25] Rule 48(a) of the Rhode Island District Court Rules of Criminal Procedure provides as follows: "The attorney for the State may file a dismissal of a complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant."

[26] Rule 48(b) of the Rhode Island District Court Rules of Criminal Procedure provides that "[i]f there is unnecessary delay in bringing a defendant to trial, the court may dismiss the complaint."

> furniture was arranged, he wanted it to look more like Superior Court. So for 35 minutes we waited for the furniture to be rearranged." Id. at 1083:23-1084:8.

To the contrary, Ms. Hoopis Manosh, the Public Defender assigned to the courtroom that day, testified with respect to the same incident as follows:

> "At the calendar call that morning, the clerk that was assigned to the courtroom was – was moving more slowly than normal. The defendants, as they were being called, they always had to check in with the clerk after their case was called to find out if they had outstanding fines or anything like that, so – or they had to sign for their new court dates.
>
> "So the defendants would approach the clerk and that was backing up as the calendar went on. So there were defendants lined up into the well of the courtroom.
>
> "The way the District Court is set up is the Sheriff's standing on the other side of the defendants, and the defendants were actually lining up, particularly up against the bench where the Judge was sitting.
>
> "It was – there was clearly something going on. The clerk was irritated that day. She was being very short with the Judge. The Judge was trying to get people to move, but it was just – it was a little bit chaotic, and the Judge just very politely asked if everyone would leave the courtroom, which normally the Judge just gets up and leaves, so there was something a little bit different about that. So everybody left not knowing what was going on or what was going to happen, and when we came back into the courtroom about maybe 15 minutes later, the courtroom was rearranged. And the defendants weren't up against the bench, and they weren't backing up anymore." Id. at 2271:19-2272:20.

Mr. Sgroi also witnessed disagreements between Judge Ovalles and whichever clerk was assigned to his courtroom at the time: "I know there's been some discussion about . . . he maybe threw a file at a clerk. I never really saw that. I know that he had – I could see him having words with the clerk often, disagreements going back and forth, but I never saw him throw a file . . . ." Id. at 1084:19-23.

Mr. Sgroi testified that he did not know what to expect when appearing before Judge Ovalles: "When I did District Court work, it used to be a welcome relief because I was in Family

Court everyday. So I looked forward to Wednesdays. But after awhile it became very difficult to look forward to Wednesday. It was like walking on egg shells. I didn't know what to expect." Id. at 1085:2-6. Despite this courtroom atmosphere, Mr. Sgroi testified that punctuality and preparation were important to Judge Ovalles. Sometime after receiving the Notice from the Commission, Judge Ovalles called Attorney Sgroi into his chamber: "He said that he felt that he was being ganged up on and that he was looking forward to having his day in court." Id. at 1086:6-8.

5

Christopher Millea

Attorney Christopher Millea was admitted to the Rhode Island Bar in 1997. Mr. Millea regularly appeared before Judge Ovalles in 2013. Judge Ovalles testified to Mr. Millea's cavalier, often disrespectful attitude in the courtroom:

> "I know I wasn't happy with Mr. Millea because I've asked him in the past, 'please turn off your phone,' and he would use it in the courtroom. I mean, he would go as far to take phone calls and then start walking out after he would take the call. He would be playing with the buttons in the courtroom with the phone, excuse me. And, I mean, I heard his testimony, I do not remember being angry or hostile with him. I mean, I wasn't pleased with him, but kind of felt Chris – Chris, Mr. Millea, excuse me, he's going to do what he's going to do. This is part of how he operates[.]
> . . . .
> "He wouldn't listen. No matter how many times you told him to turn off his cell phone, his computer, and so on, he still did it . . . ." Id. at 1550:24-1551:18.

Mr. Millea was aware of Judge Ovalles's practice to start court sessions promptly at 9:00 a.m.; however, it was Mr. Millea's practice to arrive late. Judge Ovalles testified concerning Mr. Millea's demeanor in the courtroom:

> "Mr. Millea had a habit of, and some often times quite a few attorneys, as long as you agree with them, everything is going

> great. The minute you disagree, people's faces change, the expressions change, eyes roll here or there, and then things change. I mean, that mutual respect only goes so far as long as you agree but when, as it happened with Mr. Archambault, the minute I said, I'm sorry, I can't approve it, I can't do it, his behavior completely changed." Id. at 1572:16-24.

In the spring of 2011, Mr. Millea appeared before Judge Ovalles in Courtroom 4G in Providence County District Court. Mr. Millea's cell phone rang during the court session. Mr. Millea apologized. Notwithstanding, Judge Ovalles instructed a sheriff to seize the cell phone. When Mr. Millea was leaving court for the day, he asked the sheriff for his cell phone. Judge Ovalles had it. Judge Ovalles then took a recess with the cell phone still in his possession. Mr. Millea asked the sheriff if he could speak to Judge Ovalles. Mr. Millea went back into chambers. Judge Ovalles instructed him to sit down. Mr. Millea responded that he was in a rush and had to be somewhere. Mr. Millea testified that Judge Ovalles said, "You're no gentleman. I asked you to come in here and talk about it. You're no gentleman. Get out of my chambers." Id. at 1125:22-24.

Sheriff Haye was not present when Mr. Millea's cell phone was taken from him; however, he did observe Mr. Millea's demeanor and attitude after the cell phone was confiscated:

> "He was sitting in the chair. His arms were crossed. He – he was visibly upset. He made a gesture. I don't know to whom. He made a gesture, like this.
>
> "(Witness slapped his hand)
>
> "Probably saying he got spanked. I don't know. But he made a gesture, like this, looking towards somebody and then periodically he would cross his legs one direction and then cross his leg the other, and continually position himself differently in the chair that he was sitting in." Id. at 2282:14-23.

Sheriff Haye was present for the subsequent discussion in chambers. He confirmed that Mr. Millea initially refused to sit down. He kept talking over Judge Ovalles. When Mr. Millea

finally took a seat, Judge Ovalles asked him if they could discuss the situation like gentlemen. Mr. Millea told Judge Ovalles that he did not know why it was such a big deal. Sheriff Haye testified to the remainder of the conversation as follows:

> "Judge Ovalles . . . raised his voice, and he said, 'You keep flapping your arms and posturing and stomping your feet, and all this other posturing. I should have you arrested for interfering with the business of the court, interfering with the business of the state. As a matter of fact, we're going to go back on the record because right now you are not worthy of this courtesy. Get out.' And he did." Id. at 2284:10-17.

Sheriff Haye did not consider Judge Ovalles's conduct or statements in chambers to be inappropriate. Id. at 2284:22-25.

When Judge Ovalles retook the bench, Sheriff Haye stated that Mr. Millea's posture and behavior in court were disrespectful to Judge Ovalles. Id. at 2285:10-16. He testified that

> "Judge Ovalles said to Attorney Millea, 'You're looking at me very violently and very angrily. I suggest you have a seat and collect yourself and we'll re-discuss this.' And Attorney Millea refused. He said, 'Yeah, Judge, I am upset.' And then Judge Ovalles again said, 'I suggest you have a seat, and we'll discuss this again.' And Attorney Millea spoke again, and Judge Ovalles said, 'You are about to go to jail. I suggest you have a seat.'" Id. at 2286:5-13.

Judge Ovalles then called Mr. Millea up to sidebar. Mr. Millea testified to the following exchange:

> "He took the bench, and he then took me to sidebar off to the right-hand side where there's no record, and he said that I have anger in my eyes, something to that effect, and I said, 'Judge, I don't have anger. I just need to be somewhere, and I'm trying to explain to you.' I said, 'I'm not angry,' and I said something to the effect of, 'Judge, everyone knows what we're talking about but we're at sidebar because everyone in the courtroom saw you take my phone,' at which point he demanded that I leave his courtroom. And I said, 'Judge, why should I leave,' or something to that effect, and he said, 'Get out.' So I did." Id. at 1126:3-14.

Judge Ovalles testified, "I do not remember being angry or hostile with him." Id. at 1551:6-7. Sheriff Haye witnessed this exchange as well. He testified to a different version of events:

> "Then about five or ten minutes later they had another conversation at the bench which I was called to witness. And Judge Ovalles asked him, he said, 'Do you believe I should be respected?' And Attorney Millea said, 'Yes, you should be respected even more so as a judge.' And Attorney Millea said, 'Judge, I'm just trying to get my phone. My client's [sic] calling me. I need to talk to him.' And they spoke some more. I didn't hear what they said. I just remember Attorney Millea say, 'Well, then I apologize for – I apologize for the way I acted. I apologize for that.' And Judge Ovalles allowed him to retrieve his phone, and then he left, and that was the end of it." Id. at 2286:15-2287:2.

According to Mr. Millea, after Judge Ovalles asked him to leave, he went to see Chief Judge LaFazia. Mr. Millea relayed to her that Judge Ovalles was holding his cell phone "hostage." Id. at 1127:1-2. Chief Judge LaFazia told Mr. Millea there was nothing she could do about it; she suggested he simply apologize to Judge Ovalles. Mr. Millea returned to Courtroom 4G. After a few minutes, Judge Ovalles had Mr. Millea come back up to sidebar. There, Judge Ovalles changed his tone, saying he knew what it was like to be busy. Judge Ovalles then asked Mr. Millea to stand before the court and apologize for his cell phone going off. After he did so, Mr. Millea regained possession of his cell phone. Id. at 1128:9-13. Following the cell phone incident, Mr. Millea testified that he was no longer allowed to approach the bench. Id. at 1128:14-22.

On April 23, 2015, Investigative Reporter Parker Gavigan of WJAR, Channel 10 ran a story relating to the complaints against Judge Ovalles.[27] He had three sources, one of whom was

[27] The Commission is aware of another pending lawsuit brought by Judge Ovalles against Channel 10. The Commission was concerned about the possibility of Judge Ovalles attempting to litigate said case at the hearing. See Tr. 1042. As such, only that testimony regarding Gavigan which is pertinent to assessing the credibility of witnesses will be discussed herein.

Mr. Millea.[28] When cross-examined with respect to his communications with Gavigan, Mr. Millea did not offer any specifics. Mr. Millea could not remember how many times he spoke with Gavigan over the phone; the true number of calls was eleven. See Ex. FFF. Mr. Millea could not recall if he met with Gavigan in person more than once; they met face-to-face twice. See Tr. 2225. The two also exchanged many text messages. See Ex. FF.

One such text message from Mr. Millea to Gavigan followed the publication of the Notice. Mr. Millea proclaimed that the charges brought by the Commission against Judge Ovalles "[s]hould be the beginning of his end." See Ex. FF; see also Tr. 1178:8-12. Asked why he had felt that way, Mr. Millea testified,

> "I may not be proud of it, sir, but I was extremely upset at him and how I was treated. Looking back on it, it's probably not the best language I probably should have used, but I wasn't proud of it, and I'm not proud of it, but I was very angry, yes." Tr. 1178:16-20.

6

Kerry Rafanelli

Attorney Kerry Rafanelli was admitted to the Rhode Island Bar in 1983. Since 1988, Mr. Rafanelli has prosecuted for the City of Warwick one day per week. He has appeared before most District Court judges. Mr. Rafanelli appeared before Judge Ovalles consistently for a one-year period between 2013 and 2014.

On Wednesday, August 20, 2014, Mr. Rafanelli was filling in for Mr. Sgroi as the prosecutor for Warwick; Mr. Rafanelli normally prosecuted on Mondays. He arrived at Courtroom 2D in Kent County at approximately 9:10 a.m. Attorney Christopher Millea, the prosecutor for Cranston, also arrived at the same time; he had called Judge Ovalles that morning

[28] The other two sources were Mr. Archambault and Ms. Kanelos.

to let him know that he would be a few minutes late.[29] When Judge Ovalles asked for "just cause" why he should not impose sanctions on Mr. Rafanelli for being late, Mr. Rafanelli responded as follows:

> "Your Honor, I apologize for the delay. I had an unexpected delay getting to my office and to court. I was running late. . . . Just cause would be that it's my custom and practice to be on time, to have respect for the court and to prosecute for the city to my best abilities. So for those reasons, I'd ask the court's indulgence as to today's delay." Ex. 1 at 196.

Judge Ovalles held both Mr. Rafanelli and Mr. Millea in contempt, imposing a $250 fine on each of them.[30] Id. at 195, 197; Tr. 1194:23-24. This contempt finding for tardiness was despite the fact that the sheriffs do not get out of their roll call until about 9:05 a.m. and thereafter still have to open the courtrooms. See Tr. 309:7-8. Judge Ovalles then left the bench for two hours. Id. at 1191:12-15. When he returned, Mr. Rafanelli resolved the remaining cases with Judge Ovalles. Thereafter, Judge Ovalles cleared the courtroom with the exceptions of Mr. Millea, Mr. Rafanelli, anyone from the Public Defender's office, and anyone involved in the Craddy case, of which Mr. Rafanelli was unaware.[31] Id. at 1192:24-1193:3; Ex. 1 at 198. At that point, Judge Ovalles gave Attorneys Rafanelli and Millea an opportunity to explain why he should vacate the order imposing sanctions. Ex. 1 at 198. Mr. Rafanelli promptly expressed his apologies and did not make excuses for his tardiness, other than blaming himself. See id. at 198-99. He also recognized that timeliness was important to Judge Ovalles. Id. at 199.

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[29] Mr. Millea said he left a message for Judge Ovalles at 8:55 a.m. for a 9:00 a.m. calendar call. Ex. 1 at 194.

[30] The Commission notes that Mr. Millea has previously been found in contempt by Judge Vogel of the Superior Court for "willfully violating a court order." Tr. 1161:20-1162:2.

[31] It appears from the transcript that Judge Ovalles may have mistakenly referred to the Craddy case when he actually intended to allow anyone involved in the Arnold case to remain in the courtroom. See Ex. 1 at 205.

At the conclusion of the closed session, which the Commission believes constituted a contempt show cause hearing, Judge Ovalles expressed his appreciation for the sincerity of both attorneys and remitted the sanctions imposed on them: "I hear by [sic] reconsider the assessment of the fine and the fine is hereby remitted." Id. at 205. Although Judge Ovalles remitted the fine, he did not address the issue of contempt, which was important to have on the record for both attorneys. Mr. Rafanelli stated that he did not want the courtroom to be closed during the show cause hearing: "I have the benefit of hindsight now because I was embarrassed in front of over a hundred people. I thought if the right result was going to occur, which it eventually did, it should have been in front of just as many as people at 11:20 as it was at 9:20." Tr. 1195:6-10. When asked his opinion on how Judge Ovalles handled the contempt situation, Mr. Rafanelli testified as follows:

> "I thought it could have been done better. I thought it could have been done differently. I arrived at 9:10, 9:11. The Judge customarily takes the bench at 9:05. I've been practicing law 33 years. It's not the first time I've been late, but it's the first time that an action has been taken against me in such a manner. I thought that could have been done better based upon my prior professionalism with Judge Ovalles in the court, my candor that day at court and the explanations that I offered." Id. at 1194:5-14.

Judge Ovalles testified that he wished he had asked the attorneys to come back at 2:00 or 3:00 p.m. to address the sanction issue. Id. at 1398:9-13. When asked if he treated the attorneys fairly, Judge Ovalles stated that he regretted it: "That was not the best I could have done. And given the chance, I wouldn't do it that way again." Id. at 1399:6-8.

7

Lisa Pinsonneault

Attorney Lisa Pinsonneault was admitted to the Rhode Island Bar in 1998. Ms. Pinsonneault has worked for the Department of Attorney General since January of 2011. In that

capacity, she appeared before Judge Ovalles only once. In her previous position from 2004 to 2011, however, Ms. Pinsonneault appeared before Judge Ovalles "numerous times." Id. at 1218:14-16.

On Friday, March 13, 2015, Ms. Pinsonneault received a phone call from Judge Ovalles. The call lasted one minute. The following Monday, Ms. Pinsonneault emailed her boss, Rebecca Partington, Chief of the Civil Division at the Attorney General's Office. The email relayed as follows:

> "Becky,
>
> "I wanted to let you know that I received a phone on Friday about 4:00 p.m. from Judge Ovalles. He said people have been complaining that he is 'rough and bias.' He mentioned that I appeared before him many times (which is true, but I have not been before him or seen him in over 5 years). He said he thought he always treated me fairly. He said I may be receiving a phone call (I do not know from who) and he said he hopes that I will convey my positive impression of him. I spoke to Mike [Field, her immediate supervisor] about this and he told me to send an email to you. I will certainly let you know if and when I receive a phone call, but I think he is putting me in a very uncomfortable position. Thank you, Lisa" Ex. 23.

Ms. Pinsonneault testified that:

> "I remember being surprised because, like I said, I didn't expect the call, and it's always a little unnerving when a judge calls you directly. I remember him saying something to the effect – it was over two years ago, but that, I don't know if you've heard, but there's been some allegations about me, and then I know he did reference rough and bias. He indicated that I appeared before him numerous times, and that on occasion we butted heads, but that we treated each other with mutual respect, I believe is the word he used, and I believe he asked me if I agreed with that statement, and I said I did." Tr. 1219:8-18.

Ms. Pinsonneault did not tell Judge Ovalles whether she would indeed speak positively of him if and when she received the call; she simply thanked him for warning her that she may be

contacted. Id. at 1220:10-19. Ms. Pinsonneault testified that the phone call made her feel uncomfortable because:

> "[H]e is the subject of accusations, and any time I think someone is the subject of accusations of whatever, civil or criminal misconduct, and somebody calls you directly, it's certainly not to encourage you to speak poorly about them. So it was just uncomfortable in the sense that it was implying that he was calling me for that reason, and coupled with the fact that, as I indicated before, it hasn't happened often. I have received a few phone calls from judges but lawyers are here and Judges are higher up." Id. at 1221:10-19.

Judge Ovalles conceded that a lawyer may be uncomfortable getting a phone call from a judge. Id. at 1480:18-21. Nonetheless, Judge Ovalles explained his reasoning for contacting Ms. Pinsonneault as follows:

> "I spoke to Ms. Pinsonneault because [she] had appeared before me on the civil calendar in Providence County 4B for a period of almost three, three to four years, and I admire her. I know she's a very capable attorney, and I thought she would have a pretty good insight into how I work and could relate that to anyone who would ask in how I treat litigants and how I treat women and men attorneys and so on. So that's the reason why I suggested to the attorneys that Ms. Pinsonneault could be . . . a witness as a reference person." Id. at 1479:10-20.

8

Other Defense Witnesses

Judge Ovalles called other attorneys to testify on his behalf.

a

Nancy Davis

Attorney Nancy Davis has been practicing in Rhode Island since 1999, working primarily in the area of real estate and landlord/tenant law. From 2005 to 2015, Ms. Davis appeared before Judge Ovalles one to three times per week. Ms. Davis testified that as an attorney, "I think he

treated me fine. As I saw with anybody else in front of us, I didn't feel that I was singled out for anything good or bad . . . ." Id. at 2170:1-3. Moreover, Ms. Davis noted that Judge Ovalles treated her respectfully and no different from the men who appeared before him. Id. at 2171:3-6. She testified that on the occasions when she did appear before him, he understood the law and applied it correctly. Id. at 2171:21-25.

When Judge Ovalles first took the bench, he invited lawyers to attend meetings at which he set forth his procedures and expectations. Id. at 2172:10-20. The attorneys were given the opportunity to ask questions. Id. Judge Ovalles was receptive to Ms. Davis' suggestions. See id. at 2175:6-2177:7. Ms. Davis testified that Judge Ovalles

> "made a pretty big emphasis on the fact that he wanted honesty, transparency, fairness, expected that from us and he, in turn, said that would be his way of operating the courtroom. He wanted everything on the record, out in the open.
>
> "I never recall seeing any or being involved in any sidebar or meeting with him outside to talk about something. Everything was on the record. He was pretty much by the book with that." Id. at 2173:10-18.

Additionally, Ms. Davis recalled a rule that Judge Ovalles instituted with respect to where he wanted the attorneys' coats. He asked attorneys to leave their coats in an unsecured area outside the courtroom. Id. at 2174:18-2175:5.

b

Frank Orabona

Attorney Frank Orabona has been practicing law in Rhode Island for sixteen years. Mr. Orabona has appeared before Judge Ovalles numerous times in both civil and criminal cases. He testified that Judge Ovalles was professional, consistent, and fair, and further, that Judge Ovalles always treated him and other attorneys respectfully. In Mr. Orabona's experience, Judge Ovalles

never had any difficulty grasping legal concepts, including fines, contributions, and what constitutes a conviction in a criminal case. Id. at 2258:9-2259:13.

In fact, Mr. Orabona testified with respect to one particular case. The matter involved multiple domestic charges. The potential disposition would have had immigration consequences for his client. According to Mr. Orabona, "the Judge was actually very helpful in fostering a resolution to the case that was fair." Id. at 2260:9-11. That fair resolution saw the defendant accepting an immigration-friendly plea while ultimately being punished. Id. at 2261:4-11.

G

The Arnold Case

One of the underlying complaints which initiated this Commission's investigation and hearing was File No. 14-21, filed by Attorney Christopher Millea in October 2014. The complaint concerns Judge Ovalles's actions in the case of Warwick v. Arnold. Judge Ovalles raised the issue of whether a prosecutor for one municipality could serve as a criminal defense attorney for another municipality in the same District Court Division.

Mr. Millea is a criminal defense lawyer who practices in many Rhode Island courts. Id. at 1106:20-1107:4. He has appeared before most of the judges sitting in Rhode Island, including Judge Ovalles. Id. at 1107:7-9. In addition to his private criminal defense practice, Mr. Millea has held the position of Assistant City Solicitor for the City of Cranston since 2012. Id. at 1106:11-19. As Solicitor, he is assigned to prosecute misdemeanor complaints. Id.

Prosecutions for the City of Cranston and the City of Warwick are scheduled each Wednesday in Courtroom 2D of Kent County District Court. Judge Ovalles was assigned to Courtroom 2D from the fall of 2013 through 2014.

In late May 2014, Mr. Millea was retained by Brian Arnold to represent him on a criminal complaint brought by the City of Warwick (Case No. 31-2014-3521). Id. at 1109:9-11, 1460:11-12. Mr. Millea entered his appearance on May 13, 2014 and appeared in court with his client on May 28, 2014 for a scheduled hearing. After Mr. Millea completed the Cranston calendar, he asked to approach Judge Ovalles regarding the Warwick matter. Judge Ovalles responded, "'No thank you.'" Id. at 1110:11-2. Mr. Millea indicated that the Warwick matter was ready for a conference.

Later in the day, Judge Ovalles directed that Mr. Millea's case was formal. At that point, Judge Ovalles raised an issue sua sponte. Id. at 1459:13-15. The specific issue raised by Judge Ovalles was whether Mr. Millea, as a prosecutor for the City of Cranston, could represent a defendant being prosecuted by the City of Warwick when the Warwick case is scheduled for the same day as the Cranston prosecutions.

Judge Ovalles had considered this to be an issue as early as 2013:

> "If my memory serves me correctly, the first time I remember that issue coming up was around November of 2013 with Mr. Peltier as a prosecutor for Cranston. I believe he informed me, and I thank him for that, that he informed me that he was going to be entering on a matter charged by Warwick and to just give him a different date when he wasn't prosecuting, and of course I did that, and that's when it first came up." Id. at 1453:2-14; see also id. at 1458:23-1459:9.

Judge Ovalles's position was brought to the attention of Chief Judge LaFazia. She testified as follows:

> "I had the first discussions back in November, and it was – it had raised its head, again, it had to do with Steve Peltier, so it was a follow-up on Steve Peltier. And I asked [Judge Ovalles], I said to him, 'I understand that you are not allowing him to prosecute and defend on the same day.' Steve was a prosecutor for Cranston but he did defense work. And it was always my understanding that they might – that the issue came out of what they were doing on

the same day. It was never a matter of defending a case for the town that they prosecuted for. It was the two jurisdictions in there. And I had a couple of different topics in the conversation with him.

"One, was that, again, it appeared to be punishing as to Steve Peltier. At this point it was only about Steve Peltier. And, again, he did not feel that it was punishing. He didn't like the practice. And I said to him, honestly, I don't know that it's the best practice in the world, I mean, I'm not here to argue that it is. But I said to him, 'We are a small state and practitioners in our state have a statewide practice,' meaning that they, you know, they handle different things in different counties on the same day and they have things with different jurisdictions on the same day, and I said, 'If you do this, you are going to have an effect on their ability to practice law. I think there are other ways you can handle it, if that's your concern,' and he discussed his concerns, and he said that he thought it was a bad appearance in the courtroom for somebody to be addressing cases as a prosecutor and then stand up within minutes or an hour, on the same calendar, and have people see that he had a case that he was resolving as a defendant, and he was particularly concerned as to the appearance of a case getting dismissed for a defense counsel when he was prosecuting, and was there any reciprocity in that process. Legitimate question to discuss. I don't disagree with that initial thought process.

"What I disagreed with, and what I cautioned him on was that if he took a blanket approach, then he was affecting a lot of attorneys' right to make a living and practice law, and he needed to think about that. I said to him at that point, 'What is your basis for saying it can't be done? I understand your concerns. There are other ways around that. What is your basis for claiming it can't be done?' And he said to me, at that point, that he thought it was a violation of the canons. And I think he said to me that it was also something in a prosecutor's handbook. And I said to him, although we didn't follow-up until much later in the spring, I said to him, 'I don't think so, but why don't you tell me what you're relying on because you are now, again, I did not want to interfere with judicial autonomy on how you run your courtroom and what you do, but I don't think you can interfere with attorneys' livelihood. So, please, think about what you're doing.' That was the end of that conversation." Id. at 1809:2-1811:7.

As a result, Judge Ovalles began to research the issue.

On April 15, 2014, Chief Judge LaFazia had emailed Judge Ovalles to ask for documentation of his "position that a City or Town Solicitor cannot represent a defendant who is

being prosecuted by a town other than the town that the solicitor represents[.]" Ex. 34; see also Tr. 1456:6-12. Judge Ovalles acknowledged the email; however, he testified that Chief Judge LaFazia's statement to him in the email exchange regarding his conclusion was inaccurate. Tr. 1456:14-16; 1457:10-12. Judge Ovalles testified that in the spring of 2014, he had not yet reached a firm conclusion regarding the issue. As of April 2014,

> "I was leaning more on the side of I don't see how a prosecutor who is hired by Cranston right here in the same court can just hop across and go to the podium in the front of everybody and defend a defendant charged by Warwick." Id. at 1457:14-18.

After emails in April and May of 2014, Chief Judge LaFazia was urging Judge Ovalles for a resolution of the matter and suggesting that it be discussed with the entire court. In fact, she spoke with David Curtin, Disciplinary Counsel for lawyers, who agreed there was no ethical violation. Id. at 1813:6-9. Judge Ovalles sent a legal memorandum to the Chief on May 30, 2014. See Ex. VV. It establishes that Chief Judge LaFazia had been discussing the issue with Judge Ovalles since December 2013.

During the court session on May 28, 2014, Judge Ovalles asked Mr. Millea how much time he needed to write a memorandum addressing the issue of an attendant conflict. Mr. Millea admitted that he was curt with his answer: "I'm not going to write a memo." Tr. at 1111:3-4. The case, including the sua sponte motion, was continued for two weeks. On June 4, 2014, Judge Ovalles filed a written "Sua Sponte Motion," questioning the representation. See Ex. 40.

When the matter was next before Judge Ovalles on June 11, 2014, Mr. Millea presented him with a copy of a 1993-1994 Ethics Advisory Opinion that he claimed addressed the specific issue. Mr. Millea testified that Judge Ovalles responded as follows:

> "Judge Ovalles said something to the effect of, 'What is this?' And I said, 'It's an Ethics advisory opinion on point,' and he said, 'It's not on letterhead,' and I said, 'Well, it's an Ethics advisory

> opinion. It has a number.' He said, 'Anyone could have typed this up,' and I said 'Well, Judge, it's an advisory opinion on point. I'd ask you to read it,' something to the effect, I said, 'but I will be seeking my own.'" Tr. 1111:15-22.

Mr. Millea testified that the sua sponte motion as well as the substantive criminal matters were continued a number of times. During this time, Mr. Millea requested an opinion from the Ethics Advisory Panel. In June 2014, the Ethics Advisory Panel found that Mr. Millea could represent a municipality and a defendant in another town.[32] Mr. Millea delivered a copy of the ensuing Ethics Advisory Opinion to Judge Ovalles soon thereafter. Id. at 1113:10-16. Judge Ovalles then informed Mr. Millea that he was not bound by the opinion and that it was his intention to render a decision resolving the issue raised in his sua sponte motion. Id. at 1113:23-1114:1. No further action was taken on the case for several months.

Mr. Millea testified that between May 2014 and September 8, 2014, the matter remained pending awaiting a decision from Judge Ovalles. Id. at 1115:11-16. During the pendency of the matter, Judge Ovalles received a waiver of conflict of interest from the City of Warwick, the City of Cranston, and Mr. Arnold. Id. at 1114:3-10. Furthermore, Mr. Arnold advised Judge Ovalles that it was his desire to have Mr. Millea represent him in this matter. Id. at 1114:10-14.

Judge Ovalles delivered his decision with respect to the sua sponte motion on September 8, 2014 (hereinafter, Original Version). The Original Version was filed in the District Court file. See Ex. 40. The Original Version is identifiable by misnumbered paragraphs on the first page, which had been corrected by handwriting. On the same day, Judge Ovalles also entered a Judgment, which did not adjudicate the issues remaining in the case but reaffirmed his decision. See id. In sum, the Original Version contained in the District Court file passed the sua sponte motion to disqualify.

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[32] This Opinion is found in Exhibit 32.

On October 14, 2014, Mr. Millea filed a complaint with the Commission against Judge Ovalles. See Ex. 32. Mr. Millea alleged in the complaint that Judge Ovalles's actions in the Warwick criminal case were sanctionable. See id. Mr. Millea testified that he was critical of the manner in which Judge Ovalles handled the matter. First, he criticized Judge Ovalles for interfering with Mr. Millea's representation of his client. Tr. 1115:20-25. Second, he questioned the unreasonable length of time it took to resolve the underlying criminal case. Id. at 1116:8-9. Judge Ovalles filed an answer to Mr. Millea's complaint on October 25, 2014. See Ex. 32. Attached to his answer was a copy of a September 8, 2014 decision. See id. The decision Judge Ovalles submitted to the Commission is not identical to the Original Version in the District Court file. In this version (hereinafter, Version Two), the handwritten changes had been corrected and incorporated into a new reprinting. See id. The altered Version Two was not filed with the District Court clerk, see Ex. 40, nor was it distributed to counsel. See Tr. 1644-46.

When the Commission's Notice was issued, it referenced the sua sponte motion in the Arnold case at length. See Notice ¶¶ 39-44. During the course of the hearing before the Commission, Mr. DeSisto questioned Judge Ovalles concerning his delay in rendering the decision. Judge Ovalles was asked:

> "Q. And it's your testimony that even though you worked on this case in April, and it came to light – excuse me, even though you worked on the issue in April and this Arnold case came in in May, you think it was reasonable to render a decision on this issue, September 8, is that your testimony?
> "A. No, it's not, respectfully. I have in detail explained a number of factors that indicate that there were other things that I needed to attend to, including continuances for Mr. Peltier and Mr. Millea."
> Tr. 1471:10-19.

Many factors resulted in the delay from May 28, 2014 to September 8, 2014. Judge Ovalles referred to the docket sheet which indicated reasons, including accommodations to attorneys. Id.

at 1467:24-1468:5. Judge Ovalles did not believe that it was unfair to the defendant based upon "the rate that our judiciary moves." Id. at 1468:11. Judge Ovalles testified that he completed the decision "as fast and as expeditiously" as possible. Id. at 1469:6-7.

In rebuttal to the delay issue raised by Mr. DeSisto, Mr. Berthiaume produced and introduced Exhibit HH. Exhibit HH was represented to the Commission as a true copy of the District Court file in the Warwick v. Arnold case:

> "Q. And during the course of your examination by Mr. DeSisto, he was asking you about this delay, as he described it, from May until September at which point a decision was rendered. Do you recall that?
> "A. Yes.
> "Q. Now, I'd like to show you actually a copy of the court file in the Arnold case.
> "MR. BERTHIAUME: I'd like to have it marked as the next exhibit. I've got another one for the witness, and I thought I had one for the clerk.
> "THE CLERK: Respondent's Exhibit HH for identification.
> "(EXHIBIT MARKED RESPONDENT'S HH FOR I.D.)
> "THE CLERK: Handing the witness Exhibit HH for identification.
> "MR. BERTHIAUME: I move its admission in full.
> "MR. DESISTO: I don't think I'll have an objection. I just want to see it. No objection.
> "THE CHAIRPERSON: This exhibit is full. I forgot the number.
> "THE CLERK: Respondent's Exhibit HH is full.
> "(EXHIBIT MARKED RESPONDENT'S HH FULL)" Id. at 1552:17-1553:13 (emphasis added).

Although Exhibit HH was represented as a copy of the Court file, it was not. Included in Exhibit HH are photocopies of the docket, the Ethics Advisory Opinion dated July 30, 2014, and a September 10, 2014 decision rendered by Judge Ovalles. See id. at 1553-56, 1558-59. The September 10 version (hereinafter, Version Three) is different from the Original Version and Version Two contained in Exhibit 32. Version Three contains yet different language; of

particular importance is footnote 1 on page 3. During the same examination by his own attorney, Judge Ovalles identified Version Three contained in Exhibit HH as the decision he prepared to render to the attorneys on September 8.[33] Id. at 1558:18-1560:14.

Judge Ovalles was meticulously examined by his attorney with respect to the contents of Exhibit HH. Mr. Berthiaume questioned Judge Ovalles regarding the docket entries contained therein, allowing Judge Ovalles an opportunity to explain the reasons behind the many delays in rendering his decision. The examination of Judge Ovalles culminated in the following exchange:

> "Q. So I'd like to direct your attention to that decision, and it's at the very end of the exhibit. It's actually the last 13 pages of the exhibit.[34] And, first of all, there's the judgment that's entered, 'The Court's motion to disqualify is hereby passed and the defense counsel's motion to waive the conflict of interest is hereby granted in this case only.' Entered as an order on September 8, correct?
> "A. Yes.
> "Q. And go to the next page. So this is the first page of the decision that supported that judgment, correct?
> "A. Yes.
> "Q. And was this decision prepared to be rendered prior to September 8?
> "A. Yes.
> "Q. When were you prepared to render this decision?
> "A. As early as August 20 I was ready to recite the decision.
> "Q. And I'm not going to read through the entire 11-page decision, but if we can just scroll to the conclusion. If I may just read that, 'After considering Rule 1.7(a) sections (1) and (2), Canon 2, and the case law that has addressed the issues of concurrent conflict of interest and apparent conflict of interest and the appearance of impropriety, it is my considered opinion that a city part-time prosecutor in each of the aforementioned scenarios should be prospectively proscribed from defending any criminal defendant in

[33] In discussing the September 10 decision contained in Exhibit HH, Judge Ovalles was directed by his attorney to "the very end of the exhibit. It's actually the last 13 pages of the exhibit." Tr. 1558:25. The Commission points out that, in fact, two of those thirteen pages are missing—pages 9 and 11 of the September 10 decision are not found in Exhibit HH.

[34] In reviewing Exhibit HH, the Commission concludes that the last thirteen pages are the version of the decision dated September 10 and containing a notation in the footnote on page 3 added on or after October 27, 2014, well after the original decision was already filed with the Court. To be clear, this particular version is not in the District Court file.

> the same county where the part-time prosecutor prosecutes. Since the Supreme Court has not addressed the second issue presented and the parties especially Mr. Arnold having been admonished of the potential conflict of interest and his unequivocal desire to have Mr. Millea represent him, and each interested party having signed a waiver, the motion to disqualify is passed and the requested waiver of the conflict of interest in Warwick v. Arnold only is hereby waived?' And, as I said, the decision is part of the record. It's part of Exhibit HH for the commission's review. After that decision was rendered, did you hear anything else in connection with this issue from Mr. Millea or anyone else?
> "A. No, I did not." Id. at 1558:23-1560:14 (emphases added).

Judge Ovalles testified that the decision that he was reviewing with Mr. Berthiaume was the Original Version that was rendered in the Warwick criminal matter. Id. He prepared the decision prior to the date it was rendered. Id.

Upon reexamination, Mr. DeSisto questioned Judge Ovalles regarding the versions of the decision he presented to the Commission in Exhibits 32 and HH—Versions Two and Three, respectively. First, Judge Ovalles confirmed that he submitted a copy of his September 8, 2014 decision to the Commission, attached to his answer to Mr. Millea's complaint filed with this Commission. See Ex. 32. Version Two altered the Original Version of the decision rendered on September 8, 2014. See id. Judge Ovalles admitted that he amended page 3 of the Original Version to correct a typographical error after the decision was filed. Tr. 1640:23-1642:13; 1644:11-17. Judge Ovalles confirmed that a copy of Version Two was not given to the attorneys.[35] Judge Ovalles testified that he "may have" put Version Two in the Court file. Id. at 1642:14-17.

Mr. DeSisto next examined Judge Ovalles with respect to differences between the Original Version and Version Three contained in Exhibit HH. See id. at 1642:18-1651:4. It is beyond dispute that there are two decisions contained in Exhibit HH. One decision is dated

[35] The decision was not labeled "amended."

September 8, 2014. The other decision is dated September 10, 2014. The September 8, 2014 decision—the Original Version—did not contain the changes that were included in the decision attached to Judge Ovalles's answer to Mr. Millea's complaint filed with this Commission (Exhibit 32). The September 10, 2014 decision—Version Three—contained twenty alterations of the Original Version. See Ex. HH.

The most significant changes were to the footnote on page 3 and the conclusion. In the footnote, Judge Ovalles added the following notation: "[On September 17, 2014, Mr. Sgroi dismissed this complaint pursuant to Rule 48(a). Notation added on October 27, 2014.]" See id. When questioned by Mr. DeSisto about how this could possibly be in Version Three, Judge Ovalles could not provide an explanation:

> "Q. If we go back to the September 10th decision and that footnote on page 3 which I'll call up in a minute, do you see that footnote?
> "A. Yes.
> "Q. You added on September 17, 2014, 'Mr. Sgroi dismissed this complaint pursuant to Rule 48(a). Notation added on October 27, 2014.' That wasn't in the original September 8 decision. It was added to the September 10th decision, you agree?
> "A. It appears that way.
> "Q. Okay. Which means that you made these additions after October 27, 2014, right?
> "A. No, not necessarily.
> "Q. Well, how would you know that notation added on October 27, 2014 before October 27, 2014?
> "A. Well, I do not know. I'm looking at exhibit – in response to your question, Exhibit 32, and I see to the Commission it appears that I sent the decision that was dated September the 8, 2014.
> "Q. I'm not looking at that. I'm saying in this one on September 10, Exhibit HH, there's a notation in the footnote that's different from September 8 and it makes reference to, 'notation added on October 27, 2014.' That means you entered that addition after October 27, 2014?
> "A. I do not know, Mr. DeSisto.
> "Q. Well, how – are you saying you think there's a possibility that you put 'notation added on October 27, 2014' before October 27, 2014?
> "A. I could have made a mistake. I do not know.

"Q. A mistake with what?
"A. With the dates.
"Q. You received Mr. Millea's complaint on October 22, 2014. Look at the face sheet of Exhibit 32. Do you see the face sheet of Exhibit 32? It says mailed to Judge 10-22-14.
"A. I see it, yes.
"Q. You got his complaint, you investigated the Arnold case, and then you went in and changed the memo to put in that addition about Mr. Sgroi dismissing the case; isn't that what you did?
"A. I agree that I got Mr. Millea's complaint shortly after the 22nd of October. As to the changes, I can't say – I can't explain it to myself how I – how the notation has the September 17.
"Q. Your Honor, you went back into that memo, your decision, and you changed it once you got Mr. Millea's complaint because you wanted it to reflect that Mr. Sgroi had dismissed the case; isn't that fair?
"A. Mr. DeSisto, it's fair, I admitted that. I just do not remember. I can't explain it to myself or to the Commission, I'm sorry.
"Q. Is that what you did after you got his complaint, you said I better go back and look at the decision and change it to add that in to the footnote? Is that what you did?
"A. No, I can't agree with that because I'm not certain, respectfully.
"Q. You're not certain?
"A. No, sir." Tr. 1657:17-1659:24.

Additionally, Judge Ovalles changed a word in the conclusion. The Original Version concluded that "the motion to disqualify is passed and, the requested waiver of the conflict of interest in Warwick v. Arnold only, is hereby allowed." See Ex. HH. Version Three changed "allowed" to "waived." See id.; see also Tr. 1644:20-1645:4.

Judge Ovalles testified that he made these changes between September 8 and September 10, within forty-eight hours. Tr. 1645:5-8; 1646:7-10. He did so because he was not satisfied with the Original Version. Id. at 1646:11-13. Judge Ovalles claimed to have immediately filed Version Three with the Court file, although clearly it is not contained therein. Id. at 1648:20-23; see Ex. 40. He was unsure if he notified the attorneys or asked the clerk to notify them. Tr. 1648:24-1649:13. Nonetheless, Judge Ovalles insisted he put the altered Version Three in the

Court file. Id. at 1643:13-16; 1648:22-23; 1649:20-22. The District Court docket sheet references, and the Court file contains, only one Decision—the Original Version. See Ex. 40. In the District Court at this time, judges routinely made their own docket entries.

Through the series of redirect and recross-examinations of Judge Ovalles during the hearing, as well as through statements of Judge Ovalles's counsel on February 27, 2017—see Tr. 2030-2031—and March 1, 2017—see id. at 2300—it was established that Exhibit HH is not a true copy of the District Court file. This discrepancy was confirmed when the original District Court file was introduced to the Commission as Exhibit 40 during Chief Judge LaFazia's testimony on February 15, 2017. Exhibit HH incorporated documents that were not included in the original Court file and were supplied by Judge Ovalles to his counsel. Moreover, one of the documents not included in the original Court file was Version Three of the decision, dated September 10, 2014. On examination, Judge Ovalles acknowledged as well that Version Two was different from the Original Version filed in Exhibit 40.

During the course of the hearing, the Commission Chairperson questioned Judge Ovalles. This was the only time during the entire formal hearing when any Commissioner asked a substantive question. The Chairperson noted that there were three versions of the decision and asked Judge Ovalles for an explanation. In response to the Chairperson's questions, Judge Ovalles responded as follows:

> "THE CHAIRPERSON: The Commission has a question; actually, I have a question. Certainly the Commission helped, and I thought it best to ask it now before you begin your examination so each of you has an opportunity to follow up with my questions. Do you have the decision?
> "[JUDGE OVALLES]: I think it's here, Judge.
> "THE CHAIRPERSON: So at the end of that full exhibit, which is the court file, you have in front of you Exhibit HH, and at the back of that is a copy of a decision. If you want to put it up on the board, you can, but I'm going to ask you about page 3.

. . . .

"THE CHAIRPERSON: . . . It would help the Commission if somebody could put this on the board. So this is HH. Right there. Okay. Do you see that on page 3, there's a footnote and there's a yellow highlighted part which reads, 'On September 17, 2014, Mr. Sgroi dismissed the complaint pursuant to Rule 48(a). Notation added on October 27, 2014.' Now, my confusion is that this is filed September 10, 2014. Can you tell me how the language in the brackets got there?

"[JUDGE OVALLES]: One moment, please. The notation of would have been made by me, Your Honor.

"THE CHAIRPERSON: Okay. So we have a decision which is dated about September 8, I don't have the other one. This one is dated September 10, but you have a document that is referencing something that occurred in October – sorry, September 17. So there [are] actually three decisions then, right?

"[JUDGE OVALLES]: I don't believe so, Your Honor. I think I made the changes on this one, the one on September 10.

"THE CHAIRPERSON: How could you know what was going to happen on September 17?

"[JUDGE OVALLES]: I do not know, Judge.

"THE CHAIRPERSON: So if you look at the docket page on the front –

"[JUDGE OVALLES]: Yes.

"THE CHAIRPERSON: – does that help refresh your recollection or would that help assist anybody in looking at the docket as to when these decisions were filed?

"[JUDGE OVALLES]: I mean, I would have liked to have seen the actual paper file, the court file.

"THE CHAIRPERSON: So it doesn't refresh your recollection – it wouldn't help you determine when those decisions were filed?

"[JUDGE OVALLES]: I thought I filed the first one – the first one on September the 8th. As I testified earlier, at some point I made changes. And then I thought I filed it. I – I know I kept following the cases myself to see what happened with those cases." Id. at 1651:22-1653:24. (Emphasis added.)

Despite repeated questioning by Mr. DeSisto and by the Chairperson, Judge Ovalles failed to provide an adequate explanation as to why he prepared the revisions to the Original Version. He did not have an answer.

Judge Ovalles completed his testimony on February 14, 2017. At the end of the evening, the Commission asked counsel to request that Chief Judge Lafazia provide the original District

Court file to the Commission. She did so, and Exhibit 40 was provided to the Commission on February 15. See Tr. 1750:6-1751:6.

The actual District Court file contains only one Decision—the Original Version. See Ex. 40. The Original Version has several handwritten corrections. It did not have any of the alterations made to either the September 8 version found in Exhibit 32—Version Two—or the September 10 version found in Exhibit HH—Version Three. Moreover, there were no docket entries in the actual Court file indicating that anything had been filed after the Original Version.

As the case closed, the Commission indicated its continuing concern regarding the numerous versions of the Arnold decision and why different versions were represented to be the actual decision rendered by Judge Ovalles on September 8, 2014. Specifically, after each of the parties rested but before final arguments, the Commission Chairperson noted:

> "One more thing that the Commission asked me to raise this to you. We have seen three different decisions in various places in regards to State v. Arnold, the State v. Arnold decision. Exhibit HH has one copy. Another decision is in the official court file which we requested which is now Exhibit 40. If anyone would care to clarify that, the commission would welcome it. We may even open up the record if you desire to do so." Tr. 2294:17-24.

On March 1, 2017, Mr. Berthiaume addressed the Commission prior to closing argument in an attempt to provide an explanation about the contents of the purported court file introduced by Judge Ovalles. When compared to the actual District Court file, see Ex. 40, Exhibit HH contained an additional document: Version Three. Mr. Berthiaume explained that the documents were collected from Judge Ovalles and Bates-stamped 0331-0391.[36] This was Exhibit HH. Mr. Berthiaume then stated, "When we prepared for trial, this document was taken from the set without a Bates stamp. It was taken electronically off our system." Id. at 2299:13-16. Mr.

[36] Mr. Berthiaume previously had declared—incorrectly—that Exhibit HH had come from the Commission itself. See Tr. 1643:20-22.

Berthiaume believed it was the District Court file. Id. at 2299:16. These documents were marked and introduced to the Commission as Exhibit KKK. Mr. Berthiaume acknowledged the three versions of the Arnold decision. Id. at 2300:13-14. Mr. Berthiaume's explanation was treated as testimony. See id. at 2301:17-25.

II

Credibility

It is the task of this Commission to weigh the credibility of the witnesses who testified before us. See Bogosian v. Bederman, 823 A.2d 1117, 1120 (R.I. 2003) (quoting State v. Sparks, 667 A.2d 1250, 1251 (R.I. 1995)) ("'The task of determining the credibility of witnesses is peculiarly the function of the trial justice when sitting without a jury.'"). This is our function because, like the non-jury trial judge, we "'[have] actually observed the human drama that is part and parcel of every [hearing] and . . . [have] had an opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record.'" D'Ellena v. Town of East Greenwich, 21 A.3d 389, 392 (R.I. 2011) (quoting B.S. Int'l Ltd. v. JMAM, LLC, 13 A.3d 1057, 1062 (R.I. 2011)). Judge Ovalles's credibility is a significant factor in determining whether the Commission's charges have been proven by a preponderance of the evidence. See Hall v. Pryor, 108 R.I. 711, 713, 279 A.2d 435, 436 (1971) (emphasis added) (affirming a non-jury trial justice's decision for the plaintiff on the basis of credibility because "plaintiff had by a fair preponderance of the credible evidence proved the essential allegations of his complaint").

An objective review of the facts by the Commission reveals that Judge Ovalles's position on events that occurred over the course of his judicial tenure is markedly different from that of others who observed and participated in those same events. While the Commission notes

specific instances of credibility throughout its Findings, infra, we pause here to examine the testimony of Chief Judge LaFazia and Judge Ovalles—testimony so diametrically opposed in every respect that the resultant large disparity compels us to address their credibility in its own section.

Chief Judge LaFazia was clearly troubled in testifying at a disciplinary proceeding for a member of her Court. She bluntly testified, "The last thing I wanted ever was to be sitting here in this chair with this awful hearing going on." Tr. 1875:20-21. Nevertheless, she was cognizant of her duty to do so, understanding of the Commission's role, and graceful in her presentation of testimony. Chief Judge LaFazia appeared well-spoken, tempered, and thoughtful in her testimony. She was fair and respectful to each attorney who examined her. Her testimony was not only consistent throughout, but it was also in accord with the testimony of attorneys and clerks who had previously testified. She was highly credible.

Chief Judge LaFazia, in her own words, "counseled" Judge Ovalles numerous times over the years. Her predecessor, Chief Judge DeRobbio, had made her aware of issues involving Judge Ovalles. Nevertheless, Chief Judge LaFazia made Judge Ovalles's success a priority from the very beginning. See id. at 1691:9-17; 1696:17-1697:19. Thereafter, whenever she would bring to his attention one of the many complaints she received from attorneys and staff alike, "His response was always, 'Show me a tape. It didn't happen. If it's not on the tape, it didn't happen. They don't like me because I am strict. It didn't happen. And they don't like me because I am Hispanic. It didn't happen.'" Id. at 1720:10-15; see also id. at 1766:19-23; 1800:19-22. Her ability to oblige and listen to the recordings was hindered by Judge Ovalles apparently covering the microphone and going off the record—an accusation relayed to her

many times. Id. at 1712:1-3. Chief Judge LaFazia also recalled that always, "He denied. He denied. He denied. He denied." Id. at 1803:3.

Not only did Judge Ovalles deny all complaints regarding which Chief Judge LaFazia counseled him, but there were also glaring discrepancies in their testimony at the hearing before the Commission.[37] For example, the Chief testified that she left a letter on Judge Ovalles's chair on one occasion; he testified that he never received it. Id. at 1573:5-6; 1726:10-1727:2. In addition, Chief Judge LaFazia testified to the contents of one counseling session during which she did her best to convey a positive message to Judge Ovalles, specifically stating:

> "'Well, Raff, you are here every day. You certainly don't abuse sick time. You're here every day. I know that you want to do a good job and you want to be seen as being a good Judge.' I did not comment on the hard work for other reasons. But I said, 'I certainly have no reason to think that you're not honest. I would expect that you were honest, but all of those things, and you're here, you're here all day, you don't leave early.' I said and, 'All of that is appreciated, but all of that is expected[.]'" Id. at 1767:25-1768:9.

Judge Ovalles, on the other hand, claimed that the Chief told him he was not qualified to be a judge and never should have been appointed. Id. at 1327:23-25.

Still another example of their divergent testimony concerned their discussion of the transcript evidencing Judge Ovalles's confusion articulating the standard of "beyond a reasonable doubt." Chief Judge LaFazia raised the idea of Judge Ovalles getting help with better communicating his thought processes. Id. at 1777:14-1778:6; see also Ex. 35 (email between the Chief and Holly Hitchcock regarding a "judicial education project" for Judge Ovalles). On the contrary, Judge Ovalles testified that she told him to take English lessons. Tr. 1326:23-25.

[37] Judge Ovalles indicated that he would sometimes take notes detailing his meetings with Chief Judge LaFazia. Tr. 1502:16-1503:1. However, no such notes were produced to the Commission.

When asked if this directive were true, the Chief responded: "Absolutely not. Never." Id. at 1778:13-15.

Finally, when Chief Judge LaFazia received Kanelos's initial August 18, 2014 email complaint, Judge Ovalles denied everything contained therein and called Kanelos a liar.[38] Id. at 1834:10-14. Because Kanelos's complaint was going to the Commission, the Chief indicated she would not take any further action. Id. at 1838:16-20. Still, she offered him three pieces of parting advice. Id. at 1839:3-19. Judge Ovalles testified that he did not remember receiving such advice. Id. at 1502:14-15. However, later in his testimony, Judge Ovalles admitted he remembered getting one of the instructions, contradicting his earlier assertion. See id. at 1630:4-8.

These were not the only inconsistencies in Judge Ovalles's testimony, and the nonconformity with other evidence was troubling to the Commission. While respectful and polite to all attorneys and the Commission, Judge Ovalles was unwilling to testify about several matters—including the contents of Exhibit HH—for which he appeared unprepared. The Commission was divided as far as how to characterize Judge Ovalles's disinclination to testify about the multiple versions of the Arnold decision. Some members felt that Judge Ovalles's production of Exhibit HH was an intentional misrepresentation, and he was caught off-guard when the altered decisions were uncovered; other members thought he was merely confused during his testimony. Such testimony was at best incomplete and at worst intentionally misleading and disingenuous. It certainly was not credible.

[38] During the course of his testimony, Judge Ovalles referred to the following twenty-one witnesses as liars or claimed they were "misrepresenting the truth": Clingham, Kanelos, Rossi, Degnan, Ciccone, Aitchison, Pingatore, Cote, Sgroi, Simon, Pina, Smith, Gonzalez, Archambault, Jackson, Kloc, Palazzo, Schmeider, Rafanelli, DeCesare, and LaFazia

Judge Ovalles's testimony was riddled with inconsistencies. Conversely, Chief Judge LaFazia's testimony was buttressed or substantiated by that of the other witnesses. After objectively reviewing all the testimony and evidence before us, the Commission is left with but one conclusion: we believe Chief Judge LaFazia, and we do not believe Judge Ovalles. She was credible, and he was not.

III

Findings Of Fact

ASSIGNMENTS AND COUNSELING

1. Judge Rafael Ovalles is a duly appointed judge of the Rhode Island District Court having been appointed in July 2005.
2. Before he took his oath, Judge Ovalles read the Canons and Commentaries as well as a series of cases involving the Code of Judicial Conduct.
3. Judge Ovalles was assigned to manage civil calendars for much of his judicial service, from 2001 through 2010. In April 2010, Judge LaFazia, newly appointed as Chief Judge of the District Court, assigned Judge Ovalles to assist on the civil and criminal calendars as a "floater" to be available to cover courtrooms when the regularly assigned judge was absent. In September 2010, Judge Ovalles was assigned to a criminal pretrial and trial calendar in courtroom 4G in Providence. In January 2011, Judge Ovalles was reassigned to be a "floater." This assignment continued until September 2013 when he was assigned to a calendar in courtroom 2D in Kent County, which had a combination of civil and criminal cases. From September 2015 to December 2015, Judge Ovalles was assigned to be a "floater."
4. Before Chief Judge LaFazia assumed her new position, she had been made aware by Chief Judge DeRobbio of ongoing issues between Judge Ovalles and staff and attorneys.
5. Chief Judge LaFazia would not assign Judge Ovalles to Providence or Kent County arraignment calendars or state calendars, which heard bail and violation hearings.
6. Judge Ovalles was removed from his first full-time criminal calendar, in courtroom 4G in Providence, because of the multitude of complaints Chief Judge LaFazia had received about his handling of that calendar.
7. In 2010, Chief Judge LaFazia and Judge Ovalles had a positive conversation when she assigned him to assist on criminal calendars. She said to him, "I need you to be able to do all of these things."
8. In 2010, Chief Judge LaFazia contacted Judge Ovalles to review his decision to set bail on a defendant who had been charged with a DUI, while he was already out on bail on

another DUI. Judge Ovalles changed his original decision and decided to hold the defendant without bail. The defendant had prior DUI convictions on his record.

9. In the fall of 2010, Chief Judge LaFazia saw court clerk Pingitore visibly upset. Ms. Pingitore complained to the Chief Judge that she was rudely treated and yelled at by Judge Ovalles. The Chief Judge then counseled Judge Ovalles, "you need to think about what you are doing because people are feeling that you are not treating them well in the courtroom. It's not the first time."
10. Beginning in 2010, the Chief Judge received accusations that Judge Ovalles was sometimes covering the microphone in the courtroom.
11. Chief Judge LaFazia received complaints regarding Judge Ovalles's understanding and analysis of substantive legal issues.
12. In September 2010, Chief Judge LaFazia told Judge Ovalles to ask his colleagues if he had questions regarding the criminal calendar.
13. In December 2010, Chief Judge LaFazia received a complaint that Judge Ovalles was excluding an attorney from bench conferences, and that same attorney indicated that he was held waiting to start a trial until 4:20 p.m.
14. Judge Ovalles's routine and continued responses to the Chief Judge's concerns were: "Show me a tape. If it's not on the tape, it didn't happen" and "They don't like me because I am strict. It didn't happen. And they don't like me because I am Hispanic. It didn't happen."
15. The Chief Judge counseled and discussed her concerns with Judge Ovalles on many occasions, including
    a. Denying attorneys' requests for bench conferences;
    b. Disposing of cases by filings while assessing fines;
    c. Bringing court clerks to tears by his chastising them;
    d. Treating employees rudely;
    e. Covering the microphone while going off the record;
    f. Failing to be courteous to staff;
    g. Preventing a disabled litigant with a cane from passing the courtroom bar;
    h. Chiding an attorney who was monitoring a motion;
    i. Refusing to work with a clerk;
    j. Precluding an attorney from entering the courtroom; and
    k. Deciding whether to bar prosecutors from defending clients in a different town.
16. In late spring of 2011, the Chief Judge had an extensive counseling session with Judge Ovalles (about 40 minutes) wherein she described more complaints about him and his need to improve. He blamed the complaints on his strictness and ethnicity. He denied going off the record and became defensive. When the Chief Judge agreed that he came to work every day and did not leave early, he indicated to her that that was a good report card.

17. Although the Chief Judge told Judge Ovalles she would not proactively support his application for a Superior Court judgeship, he sent her a form letter thanking her for support.
18. In October 2011, the Chief Judge counseled Judge Ovalles extensively again, raising concerns about a definition of reasonable doubt which he gave and his focus on blood alcohol content in a DUI case based upon observations. She offered to assist in finding someone to assist him in developing his thought process and communications skills.
19. The Chief Judge did not suggest or say that Judge Ovalles needed English lessons.
20. In September 2014, the Chief Judge met with Judge Ovalles and Administrative Judge Bucci regarding new complaints against Judge Ovalles. These issues included having his pants unbuttoned and open in front of staff, napping, mistreatment of attorneys and staff, and his competency on the mental health calendar. He denied the accusations.
21. The Chief Judge advised Judge Ovalles not to sleep at work, and if he feels the need to take a nap, to close the door and lock the door. She advised that he should not disrobe at work, but if he does so, he should close his door and lock his door.
22. In December 2015, Chief Judge LaFazia relieved Judge Ovalles from duty on all calendars.

WORKPLACE CONDUCT

1. Judge Ovalles informed his sheriffs to make more eye contact with him.
2. Judge Ovalles instructed clerk Cote to stand and hand him the files while making eye contact.
3. Clerk Kanelos disagreed with Judge Ovalles openly in the courtroom concerning date-stamping the Craddy file.
4. Judge Ovalles instructed clerk Gonzalez to re stamp a document using the official court stamp. When she tried to explain why that was not possible, she was chastised by him.
5. When Judge Ovalles was told clerk Gonzalez would be replaced with a new clerk, he refused as he did not want her to "think she won this war."
6. Senator Ciccone, the president of the Court Employees Union, brokered a meeting with Senator Juan Pichardo and Angel Taveras, Judge Ovalles's nephew. There they discussed the complaints Senator Ciccone had been receiving from female clerks about the way Judge Ovalles spoke to them, the attitude he had with them, and that he removed his trousers in chambers. Senator Ciccone indicated that he did not think Judge Ovalles should apply for a Superior Court judgeship based on the prevalence of complaints by female clerks regarding Judge Ovalles's mistreatment of them.
7. In 2011, in response to the aforementioned incident with Gonzalez, Senator Ciccone wrote to Chief Judge LaFazia and relayed his previous efforts to address issues reported by female clerks with Judge Ovalles.

8. Judge Ovalles would frequently leave the bench in the middle of handling cases and leave the staff and litigants without any idea of when he would return. He would do this in the courthouse and at the mental health calendar.
9. Judge Ovalles tossed files to clerks.
10. Pretrial Services Investigator Pina was strongly chastised by Judge Ovalles when Mr. Pina leaned into the restroom across from Judge Ovalles's office, looked at the mirror with the door open, and applied chapstick to his lips.
11. Judge Ovalles napped during lunchtime and afternoon breaks. He would occasionally remain asleep after 2:00 p.m.
12. Judge Ovalles napped in chambers, delaying a scheduled trial.
13. Court staff observed Judge Ovalles napping. Sometimes staff would knock on his door, and he would invite them in while still lying down with a handkerchief on his face.
14. Judge Ovalles would occasionally wear slippers in chambers, visible to staff.
15. Court clerks observed Judge Ovalles in chambers with his trousers unbuttoned.
16. Judge Ovalles was not seen by staff with his pants removed.

PUBLIC DEFENDER

1. Public Defenders represent the majority of the defendants on the District Court criminal calendars, including those which have been presided over by Judge Ovalles. Their clients are indigent.
2. The normal procedure for District Court criminal calendars is to allow the defense attorneys to meet with their clients after the first calendar call and to continue to work on resolving cases during the day when their attendance is not required in the courtroom. After the initial calendar calls, cases ready to be resolved are usually reached first while other attorneys continue to work toward resolution of their remaining cases.
3. Judge Ovalles would always call his first morning calendar alphabetically. He would then handle cases called "formal," and then recess. Later in the morning, he would call the calendar again, alphabetically.
4. When cases were not ready to be resolved by the second morning calendar call, Judge Ovalles would occasionally continue them out for another two weeks. This was usually done without the consent of counsel and without counsel requesting these continuations. At times, Judge Ovalles would continue the cases for a trial in two weeks, sometimes over the objection of counsel.
5. When Rebecca Aitchison, a Public Defender, was assigned to Judge Ovalles's courtroom, he would often publicly demean and admonish her in open court, particularly when she asked for more time to resolve her cases.
6. At some point, Judge Ovalles required that Ms. Aitchison stay in the courtroom during numerous sessions, even when her clients were not involved in the case being heard by the court.

7. Judge Ovalles later required that Ms. Aitchison stay in her seat during all sessions. Twice she asked for court permission to use the bathroom.
8. Judge Ovalles's actions sometimes prevented Ms. Aitchison from discussing cases with her clients and with prosecutors during the day, preventing her from resolving cases expeditiously and reasonably.
9. Judge Ovalles was inconsistent in his position that a disposition would not be a conviction, even if it required payment of a fine.
10. When a defendant represented by Ms. Aitchison was represented by another Public Defender on a Superior Court violation, Judge Ovalles insisted that the Superior Court Public Defender conference with him on those District Court misdemeanors which were triggering offenses to the Superior Court violations and would not allow Ms. Aitchinson to participate in the District Court pretrial conferences.
11. Judge Ovalles was insolent to Ms. Aitchison and routinely treated her with egregious disrespect.
12. Judge Ovalles sometimes would continue criminal pretrials on his own without giving the defendant and his attorney sufficient time to review the proposed plea offer on that particular day.
13. When Public Defenders were asking that their cases be held, Judge Ovalles routinely continued the cases for two weeks, over the objections of counsel.
14. Judge Ovalles sometimes continued pretrial cases on days that he also had numerous trials scheduled. These continuances resulted in the defendants having to return to court on another day and to continue to be under the bail conditions that were previously imposed.
15. By his own practices, Judge Ovalles increased the likelihood that defendants were being pressured into resolving their cases, thereby impacting the defendants' ability to thoughtfully, knowingly, intelligently and voluntarily agree to dispositions.
16. Judge Ovalles warned Megan Jackson, a Public Defender, that he was going to consider holding her in contempt when she complained that private attorneys had their formal matters heard before the Public Defender had their formal matters heard. Later in the day, the Judge called Megan Jackson to the bench and told her that since she was a new attorney, he decided not to hold her in contempt for her remarks.
17. Ms. Jackson was the supervising Public Defender in Kent County from 2013 to 2014. She would receive almost daily complaints from Ms. Aitchison regarding the treatment she endured from Judge Ovalles.
18. Those complaints reached John Lovoy, Chief of the Trial Division for the Office of the Public Defender. Mr. Lovoy traveled to Kent County to observe for himself. He confirmed that Ms. Aitchison was not being allowed to leave the courtroom to confer with her clients. In May 2014, a meeting was held between Mr. Lovoy, Public Defender Mary McElroy, and Deputy Public Defender Matt Toro to determine whether Ms. Aitchison should be removed from her assignment in Judge Ovalles's courtroom. At the

meeting, it was concluded that it would be better to have a male Public Defender assigned to that courtroom.

19. Andrew McElroy replaced Ms. Aitchison as Public Defender in Judge Ovalles's courtroom. He was free to come in and out of the courtroom when the Judge was on the bench.
20. In July 2014, when Mr. McElroy represented a defendant at a first pretrial, he requested a two-day continuance, to the date the co-defendant was scheduled to appear. Mr. McElroy felt such a continuance would have been dispositive since both defendants planned to plead the Fifth. Instead, Judge Ovalles continued the case for a trial in two weeks.
21. In 2010, Judge Ovalles called Angela Yingling, a Public Defender, to the bench to tell her that she should maintain her eye contact with the court, and that she blinked too much.
22. In 2010, when Ms. Yingling was representing defendants, Judge Ovalles would schedule cases for trial over her objections. On one occasion, Judge Ovalles did so even though the blood results had not been received in a DUI case.

MENTAL HEALTH COURT

1. The Mental Health Court is held weekly by alternating District Court judges, each judge presiding for approximately one month, and its sessions take place at one of two hospitals. It has jurisdiction over involuntary commitments and treatment of persons with a mental disability.
2. Mr. A resides at a group home and is developmentally disabled. BHDDH petitioned the court for him to undergo significant surgery with general anesthesia. Only an untranscribed, sworn, recorded deposition of a doctor was presented to Judge Ovalles—as was customary. Judge Ovalles would not accept the deposition because it was not transcribed or notarized. BHDDH does not have the requisite funds to hire stenographers. Kate Breslin Harden, the attorney for BHDDH, spent much time transcribing the deposition herself. When Judge Ovalles received the typed deposition, he signed the Order that was requested by BHDDH but did not read the entire typed deposition. There was no delay in the surgery as a result of Judge Ovalles's request to have a typed deposition support his order.
3. Ms. B resides at a group home, has dementia, and is nonverbal. BHDDH petitioned the court for a DNR/DNI order, which Judge Ovalles promptly approved and reapproved after a full hearing. Judge Ovalles asked to see the patient. He did not appear at a meeting which the attorneys arranged with the home, but it was not shown that he was notified of the meeting. Judge Ovalles later visited the patient on his own, without advance notice to counsel.
4. Ms. C is a psychiatric patient with grand mal seizures. She denies having seizures. BHDDH scheduled a hearing to have the court encourage her to sign a Medicaid application. The Court, Judge Ovalles presiding, found she could not give informed

consent, authorized treatment and agreed to sign on her behalf where necessary. The Judge signed the order promptly. It was not shown that any treatment was delayed.

5. Ms. D is a long-term psychiatric patient at a state hospital. At a recertification hearing, she asked to go home. The attorneys knew this was not a possibility because her brother, who was her legal guardian, could not provide appropriate in-home care. Nevertheless, Judge Ovalles offered to meet with Ms. D's brother if she arranged for him to come to court. Counsel felt it was inappropriate to give Ms. D false hope. Her recertification was granted.
6. Ms. E is a long-term psychiatric patient with schizophrenia, dementia, and HIV. BHDDH requested permission to continue her medications, but the testifying psychiatrist admitted to his lack of knowledge as to the HIV medications. Judge Ovalles approved the psychiatric medications and asked for more support for the HIV treatment. When the department did not send supporting information for the HIV medications and attempted to withdraw its request, the court refused to accede to BHDDH's requests to continue or withdraw the request. BHDDH perceived this as a threat to withdraw the psychiatric medications he had previously approved. A doctor's note was promptly produced and psychiatric treatment was never withheld or discontinued.
7. Judge Ovalles recognized that the Mental Health Court is a unique calendar. Scheduling cases involves taking into account the schedules of doctors and needs of patients. Nevertheless, Judge Ovalles indicated that he should order the cases rather than accept the schedule prepared by BHDDH. Other judges used the established order and did not object to it.
8. At times, Judge Ovalles would abruptly leave the bench at the Mental Health Court. With physicians, patients, attorneys, and clerks waiting, he did not indicate why or how long he would be gone.
9. Judge Ovalles, in conferring with Mental Health Advocate Megan Clingham, stated that "I treat you like I treat any other female attorney." He then immediately denied phrasing it as he did. Attorney Bruce Todesco was present and corroborated that Judge Ovalles had, in fact, referred to Ms. Clingham as a "female attorney."
10. Several of the attorneys who handled Mental Health Court matters informed Chief Judge LaFazia that Judge Ovalles did not display a command of the subject matter and that he was moody, inconsistent, and demanding.
11. Judge Ovalles did not recognize that the court had equity jurisdiction when he was presiding over the mental health calendar.
12. In a criminal case, Judge Ovalles asked Ms. Grecco, a Pretrial Services Investigator, to disclose a defendant's mental health diagnosis on the record. When she asked to protect the defendant's statutory privacy rights, Judge Ovalles told her to obtain a release from the defendant.

TREATMENT OF WOMEN

Court Employees

1. Judge Ovalles frequently looked "up and down" at some female clerks.
2. Judge Ovalles commented on the attire of the women. After studying Ms. Rossi he stated, "Looking good, Ms. Rossi." Ms. Rossi did not take offense to this comment.
3. When Ms. Degnan asked to speak to Judge Ovalles one day, she knocked at his door and asked if she could open it. Judge Ovalles replied, "You can come in and watch me suck on my lollipop." He was eating a lollipop. She found this sexually offensive.
4. Several female clerks asked males to accompany them when they needed to go to Judge Ovalles's chamber because they were uncomfortable going alone. Judge Ovalles once asked Mr. Cote to leave the room when Cote accompanied a female clerk.
5. After looking one clerk "up and down," Judge Ovalles said, "I guess I'll have to keep my sexual comments to myself." The clerk found this to be inappropriate.
6. At a retirement party, Judge Ovalles insisted that he buy a clerk a drink. She refused as others had delivered drinks to her. Judge Ovalles became upset at her.
7. Judge Ovalles said to Audrey DeCesare, on her first day clerking with him, "I'm the man just listen to me, and we'll be okay."
8. In a conversation with a clerk about a pending complaint against him, Judge Ovalles referred to the complainant as a lesbian and asked, "Why would I want to sexually harass her?" In a conversation about the same complainant with another clerk, Judge Ovalles reiterated, "Why would I make any comments to [the clerk] like that because she's a lesbian?"

Attorneys

1. After she apologized for accidently cutting in front of Judge Ovalles in a receiving line, Judge Ovalles said to Attorney Clingham, "No, that's okay, Ms. Clingham. I'm enjoying the view from back here." This remark made her uncomfortable and embarrassed.
2. Public Defender Rebecca Aitchison was treated differently than the male Public Defenders in appearances before Judge Ovalles. Ms. Aitchison was sometimes prevented from leaving the courtroom when Judge Ovalles was on the bench. She was later confined to her seat at such times.
3. When Judge Ovalles thought a defendant was pregnant, he asked her, "Are you with child or maybe just enjoyed the holidays too much?"

OTHER ATTORNEYS

1. A new attorney attended Judge Ovalles's court session to observe a motion being heard and took notes. She did not participate in the hearing. Judge Ovalles took her into chambers and told her he did not like to be monitored. He was very condescending to her, and she left the chambers in tears.
2. Attorney Archambault, defending a client, came to an agreement with a prosecutor on a disposition for a driving under the influence case.
    a. At hearing, Judge Ovalles granted the motion to amend to a reckless driving charge, but disagreed with the disposition. Judge Ovalles wanted a fine instead of a contribution to the VCIF and a longer loss of license, making the plea a conviction.
    b. Counsel then requested a sidebar, but no accord was reached. Judge Ovalles said, "Fine. You go to trial and then see what you get." He then ended the conference. Returning to the record, the defendant refused the plea offer. The Court then amended the charge back to DUI with prosecution approval.
    c. Attorney Archambault then asked to place something on the record. Judge Ovalles refused and threatened that Mr. Archambault may not be allowed to conference cases in the future.
3. Over a year later, when Judge Ovalles was substituting for another judge and Mr. Archambault was serving as a prosecutor, the judge refused to recognize Mr. Archambault for a significant time, preventing his cases from being resolved until all other cases on the calendar were handled.
4. Acting at Judge Ovalles's direction, a sheriff prevented Attorney Peltier from entering the courtroom. Mr. Peltier arrived before 9:05 a.m., and others were allowed to enter the room. Mr. Peltier was serving as prosecutor and missed the first calendar call. As a result, Mr. Peltier did not know the status of his city's cases.
5. On a separate day, Judge Ovalles continued a hearing on a civil restraining order brought by Mr. Peltier when Mr. Peltier informed him he was scheduled to prosecute criminal cases on the same day.
6. Judge Ovalles was disrespectful to Mr. Peltier and reprimanded him for raising a statutory requirement on a criminal filing
7. Mr. Peltier was reprimanded by Judge Ovalles for objecting to what Mr. Peltier believed was an illegal sentence.
8. At a meeting with Judge Ovalles, Public Defender Jackson, and prosecutor Sgroi, Mr. Sgroi was promptly asked to leave the meeting by Judge Ovalles after Mr. Sgroi complimented the work of Ms. Aitchison.
9. Judge Ovalles maintained that a trial began when it was assigned to the trial calendar. He prohibited Mr. Sgroi, a prosecutor, from dismissing cases pursuant to District Court Rule of Criminal Procedure 48(a) after the pretrial and before witnesses were called, and instead dismissed the cases under Rule 48(b).

10. Judge Ovalles stopped a calendar and cleared the courtroom one day so that the furniture in the courtroom could be rearranged to alleviate congestion forming at the clerk's desk, which had grown to a line that was extending to the front of the judge's bench.
11. Attorney Millea constantly used his cellphone during court sessions. Judge Ovalles instructed him to stop doing so. In the spring of 2011, Judge Ovalles instructed a sheriff to take Mr. Millea's cellphone after it rang during a court session. The cellphone was retained for two hours.
12. Mr. Millea, a city prosecutor, was not allowed to have bench conferences with Judge Ovalles.
13. Mr. Millea met with Parker Gavigan three times and sent him incendiary text messages to update the reporter on Commission on Judicial Tenure and Discipline complaints against Judge Ovalles and the issuance of the Notice of Investigation. Mr. Millea texted Gavigan, "Should be the beginning of his end."
14. In 2014, Attorneys Millea and Rafanelli, two prosecutors, were each held in contempt when they arrived at 9:10 a.m. for a 9:00 a.m. court session. Mr. Rafanelli immediately apologized. Judge Ovalles promptly fined each of them and then recessed the court session for over 90 minutes. Later in the day, Judge Ovalles cleared the courtroom of all attorneys and litigants other than Attorneys Millea and Rafanelli. Each of the attorneys apologized and Judge Ovalles "remitted" the fines.
15. Judge Ovalles made a telephone call to Attorney Pinsonneault, who had appeared before him many times while she was in private practice, and the Judge wanted to know whether or not she could convey a positive impression about him.
16. Attorney Nancy Davis testified that Judge Ovalles treated her respectfully and that he did not treat her any differently than the men that appeared before him. She also said that in a ten-year period when she appeared before him on Civil Landlord/Tenant matters, that he understood the law and applied it correctly. Attorney Frank Orabona also testified that he never observed Judge Ovalles treat female attorneys differently from male attorneys.
17. Judge Ovalles instituted a rule requiring attorneys to leave their coats outside the courtroom, unsecured.
18. From the bench, in a decision, Judge Ovalles incorrectly defined the standard of "beyond a reasonable doubt" by comparing it to an unseen snowfall—an example of circumstantial evidence.

WARWICK V. ARNOLD

1. Judge Ovalles raised the issue of whether the prosecutor for a municipality may serve as a defense attorney for a criminal case in another municipality in the same District Court division.
2. Since November 2013, Chief Judge LaFazia knew that Judge Ovalles had been weighing this issue of representation. She asked Judge Ovalles for the legal basis of his concern and suggested he discuss it with other members of the court.

3. Judge Ovalles raised the same representation issue in Warwick v. Arnold, case number 31-2014-3521, wherein Mr. Millea, a Cranston prosecutor, was representing a defendant in a Warwick case.
4. Judge Ovalles did not decide this issue from May 28, 2014 until September 8, 2014, and during this period of time, the case was continued to different dates by mutual agreement.
5. Judge Ovalles continued to press this issue even after all attorneys and the defendant had waived any conflict.
6. The Ethics Advisory Panel (for attorneys) advised Mr. Millea that he could represent Mr. Arnold in an opinion given to Mr. Millea, who in turn provided it to Judge Ovalles, in July 2014. The opinion set forth conditions which the inquiring attorney must satisfy before undertaking such representations.
7. Judge Ovalles testified that he was ready to issue a decision on August 20, 2014.
8. The original court file for the Warwick v. Arnold case contains only one Decision. It is dated and filed on September 8, 2014 and contains handwritten markups on it.
9. The original court file for the Warwick v. Arnold case contains a "Judgment," dated and filed on September 8, 2014.
10. The docket of the original court file for the Warwick v. Arnold case indicates that only one decision was filed, and it was filed on September 8, 2014.
11. On October 14, 2014, Mr. Millea filed a complaint with the Commission on Judicial Tenure and Discipline regarding Judge Ovalles's decision in the Warwick v. Arnold case. Judge Ovalles received the complaint on October 22, 2014.
12. Judge Ovalles's attorney (Mark Berthiaume) represented that Exhibit HH was a copy of the original court file. This representation was inaccurate. Exhibit HH contained two decisions: one dated September 10, which was not in the court file, and one dated September 8, which was.
13. The September 10 version was never filed or docketed in the official court file, nor was it issued by the Court. The original District Court file is Commission's Exhibit 40.
14. Mr. Berthiaume stated at hearing that the documents in Exhibit HH were obtained from the Commission. This statement was inaccurate; they were not.
15. Mr. Berthiaume questioned Judge Ovalles regarding the September 10 version. The September 10 version contains a footnote which states in part: "On September 17, 2014, Mr. Sgroi dismissed this complaint pursuant to Rule 48(a). Notation added on October 27, 2014." The footnote was added on or after October 27, 2014.
16. At the time this footnote was added, Judge Ovalles knew the Commission had received a complaint from Mr. Millea regarding his handling of the Arnold case.
17. The footnote was added by Judge Ovalles, for reasons which were self-serving to him.
18. Judge Ovalles testified on two occasions that he filed the amended decisions. He did not. This was untrue.
19. Judge Ovalles did not provide counsel with copies of his altered decisions.

20. Judge Ovalles was asked many times why he prepared amended versions of the Warwick v. Arnold decision. He did not provide any explanation.
21. During the course of deliberations, the videotape was reviewed by the Commission. (It is available to the Supreme Court.)
22. Judge Ovalles was under oath when he provided the above testimony.
23. Judge Ovalles lacked credibility during his testimony while discussing the Warwick v. Arnold decision and the different versions of the decision.
24. Mr. Berthiaume later confirmed that the purported decisions he had introduced were given to him by Judge Ovalles.

IV

Canons

The Commission has charged that Judge Ovalles violated the below Canons of Judicial Ethics.

Canon 2(A)

"A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

The Commentary to Canon 2(A) states:

> "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.
>
> "The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

"Restrictions on the personal conduct of judges cannot, however, be so onerous as to deprive them of all fundamental freedoms enjoyed by other citizens. Care must be taken to achieve a balance between the need to maintain the integrity and dignity of the judiciary and the right of judges to conduct their personal lives in accordance with the dictates of their individual consciences.

"In striking this balance the following factors should be considered:

"(a) the degree to which the personal conduct is public or private;

"(b) the degree to which the personal conduct is a protected individual right;

"(c) the potential for the personal conduct to directly harm or offend others;

"(d) the degree to which the personal conduct is indicative of bias or prejudice on the part of the judge;

"(e) the degree to which the personal conduct is indicative of the judge's lack of respect for the public or the judicial/legal system."

Canon 3(B)(2)

"A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism."

Canon 3(B)(4)

"A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control. During trials and hearings, a judge should act so that the judge's attitude, manner or tone toward counsel or witnesses will not prevent the proper presentation of the cause or the ascertainment of the truth. A judge may properly intervene if the judge considers it necessary to clarify a point or expedite the proceedings."

Canon 3(B)(6)

"A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so."

The Commentary to Canon 3(B)(6) states:

> "A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.
>
> "A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial."

Canon 3(B)(8)

"A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding[.]"

The Commentary to Canon 3(B)(8) states:

> "The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.
>
> "To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

"Whenever presence of a party or notice to a party is required by Section 3(B)(8), it is the party's lawyer, or if the party is unrepresented, the party who is to be present or to whom notice is given.

"Any appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

"Certain ex parte communication is approved by Section 3(B)(8) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3(B)(8) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3(B)(8)(a) and 3(B)(8)(b) regarding a proceeding pending or impending before the judge.

"A judge must not independently investigate facts in a case and must consider only the evidence presented.

"A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

"Under this subsection, a judge should not accept any trial briefs that are not exchanged with adversary parties unless all parties agree otherwise in advance of submission of the briefs.

"A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3(B)(8) is not violated through law clerks or other personnel on the judge's staff.

"If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties."

Canon 3(B)(9)

"A judge shall dispose of all judicial matters promptly, efficiently and fairly."

The Commentary to Canon 3(B)(9) states:

"In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and

> unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.
>
> "Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end."

Canon 3(B)(13)

"A judge shall cooperate with other judges as members of a common judicial system to promote the satisfactory administration of justice."

V

Allegations

The Commission has alleged that the following conduct by Judge Ovalles amounts to violations of the Code of Judicial Conduct: sexual harassment/unfair treatment of females; incompetent handling of the mental health calendar; abusive treatment; failure to maintain professional dignity; odd actions raising concern over judicial fitness; denying or inhibiting public access to the courtroom; failure to understand basic legal concepts; impairment of fair representation; and interference with the Commission's investigation.

The Notice informed Judge Ovalles of the charges brought against him by the Commission. The Notice set forth conduct, general and specific, that counsel for the Commission believed to be violations of the Canons of Judicial Ethics. Between the time the Notice was issued and the time the hearing took place—over one year—the parties conducted vast discovery, which included multiple days of depositions. Although each particular instance of potential misconduct was not set forth in the Notice, Judge Ovalles was given ample opportunity to be heard through cross-examining witnesses and presenting an extensive defense. Judge Ovalles knew or should have known the nature and extent of the allegations. Nothing

contained in this Report and Recommendation can be construed as unforeseen. In that regard, no additional charges were lodged against Judge Ovalles. Nonetheless, it is the Commission's prerogative to find violations of the charged Canons based upon and emanating from the evidence presented at the hearing, whether or not the evidence was explicitly referenced in the Notice. See Rules of Judicial Tenure and Discipline 5 ("A complaint shall contain a statement of facts, circumstances or other matter upon which the complaining party relies for his or her charge . . . A complaint shall not be rejected solely because it fails to conform to ordinary rules of pleading and shall be construed so as to do substantial justice.") See also Haley v. Town of Lincoln, 611 A.2d 845, 848 (R.I. 1992) ("All that is required is that the complaint give the opposing party fair and adequate notice of the type of claim being asserted.").

VI

Analysis of Alleged Violations

The Commission will address the alleged violations by Canon.

A

The Arnold Case

Judge Ovalles's handling of the case of Warwick v. Arnold rose to significance during the public hearing. The discussion of the evidence, particularly Judge Ovalles's testimony, became a subject of prominence during the Commission's deliberations. As the case is reflective of Judge Ovalles's conduct and temperament, and contains issues which permeate much of this analysis, the Commission will discuss these issues separately to underscore their significance.

The Notice alleged that Judge Ovalles impaired litigants' right of fair representation when he raised a "Sua Sponte Motion to Disqualify" in Warwick v. Arnold and that he delayed in making that determination. See Notice ¶ 39,42. These were the original issues brought before

the Commission; however, additional issues were raised during the course of Judge Ovalles's testimony.

The impairment of rights occurred when Judge Ovalles prohibited part-time solicitors from defending private clients in criminal cases because of a perceived conflict of interest. See id. Judge Ovalles orally raised the issue sua sponte on May 28, 2014. The judge subsequently filed his Sua Sponte Motion on June 4, 2014. All parties in the case waived any conflict of interest by filing the waivers with the court in June 2014. The decision in the Arnold case was ultimately rendered on September 8, 2014. Under questioning at the hearing, regarding the delay in rendering the decision, the Judge explained that he was waiting for attorneys' vacations to end, and that he was awaiting an opinion from the Ethics Advisory Panel (which he would later find was not binding on him). He maintained throughout that the decision was ready for release on August 20. Tr. 1559:10-14. However, Mr. Arnold's case continued without resolution. Judge Ovalles's delay in ruling on an issue paralyzed Mr. Arnold's underlying case for over three months. The effect of this delay was significant. The part-time prosecutors in Judge Ovalles's courtroom were reluctant to take new private criminal defense cases during that period. In addition, and just as significantly, Mr. Arnold remained, through no action of his own, on bail conditions and under the specter of a criminal prosecution. Mr. Arnold was released on personal recognizance.

During the hearing before the Commission, as Mr. DeSisto questioned Judge Ovalles regarding the appropriateness of the delay, the hearing took an odd turn. Three different versions of Judge Ovalles's Decision were presented to the Commission, with the representation that each Decision was filed in the District Court record. Judge Ovalles's testimony as to what he had done with this Decision (which was clearly important to him), became murkier and murkier.

Eventually, the testimony became contradictory. At the conclusion of his examination, the Commission was left with a host of misstatements by Judge Ovalles including:

1. That Judge Ovalles filed an amended decision on September 10, 2014.
2. That each decision which Judge Ovalles testified on (Exhibit HH) was filed with the District Court.
3. That the revised decisions were delivered to counsel of record.
4. That Judge Ovalles received the decision he testified about (Exhibit HH) from the Commission.
5. That a footnote in a third version of the decision was not added because Judge Ovalles received the Millea complaint.
6. That the footnote, dated October 27, may have been added in early September.

These contradictory facts introduced through Judge Ovalles's testimony, as well as his exhibits to the Commission, compelled the Commission's further analysis of the facts. Failing to do so would leave this Report and Recommendation incomplete.

Confronted with these contradictions, the Commissions' inquiry into the Warwick v. Arnold case became far deeper than whether the trial judge should have forayed into the case to question whether a prosecutor could serve as a defense attorney in a separate case. It is disturbing, to say the least, that the judge raised the issue by a sua sponte motion, challenging a practice that had not been questioned by any party. Judge Ovalles expressed concern with this issue even before this case arose, discussing the issue with Chief Judge LaFazia in 2013. [39] Indeed, judges are correct in questioning practices in their courtroom which appear inappropriate. Judge Ovalles's concern was heightened when prosecutors were serving as defense attorneys in the same courtroom and on the same day that they were prosecuting. This was clearly an issue which Judge Ovalles found to be important. He studied the issue and continued to do so well after he ruled upon it.

[39] To establish a new policy for the Court, Judge Ovalles could have discussed the issue with his fellow judges and proposed a new rule.

The manner in which the issue was addressed by Judge Ovalles and the subsequent issuance of several versions of the Decision are of concern to the Commission. First, the issue was raised in the Warwick v. Arnold case by the Court itself in a sua sponte motion. This curious creature was filed by Judge Ovalles himself on June 5, 2014, and then sent to the attorneys with Judge Ovalles signing the certification indicating it was sent to counsel. Rather than seeking to establish a new District Court rule, requesting that the Chief Judge of the Court work on a new policy or working toward any court-wide approach, Judge Ovalles pressed on with his motion. Even Chief Judge LaFazia, during a counseling meeting with Judge Ovalles and in emails which followed, questioned Judge Ovalles's insistence to use this method to challenge the practice. It is reasonable to infer that Judge Ovalles continued his sua sponte motion because of his animosity toward Cranston Solicitor Millea. Mr. Millea was retained to represent Mr. Arnold. By now, Mr. Millea and Judge Ovalles were at odds with one another. As Judge Ovalles described Mr. Millea at hearing:

> "Mr. Millea has done enormous things to upset me, to get under my skin from picking up the phone right in the courtroom and talking to people. You know, having discussions where his voice becomes – overcomes the voice of myself and the clerk, if I'm speaking to the clerk, and I've said to him, to Mr. Millea, I've said, 'Look, Chris, you and I, we need to set the example. We need to set the example here for the public.' I spoke to him many, many times. He wouldn't listen. So when his phone or other behavior that he engaged in, it is not personal. That is who Chris Millea is. I disagree with him, respectfully, but the next case comes up, we take it right up, and we take it right up on the record." Tr. 1470:8-20.

In the spring of 2011, during a conference in chambers, Judge Ovalles had informed Mr. Millea that he should leave as he was "not a gentleman." By August 2014, while the Arnold case lingered, Judge Ovalles had held Attorney Millea in contempt, as discussed at pages 96 and 97 supra. Clearly, the relationship with Mr. Millea was troubled.

Compounding the uniqueness of the District Court travel of the Arnold case was the introduction of Exhibit HH to the Commission by Judge Ovalles's counsel. As noted, Exhibit HH was presented to the Commission with the representation that it was a copy of the Court file. Id. at 1552. It was not. Exhibit HH was a compound document. It contained the one decision that was actually recorded in the official court file (Original Version), but it also included a separate, altered decision which was prepared by Judge Ovalles at a later time with a purported date of issuance of September 10 (Version Three). Each of these Decisions was introduced into the record by Judge Ovalles and was represented to the Commission as a copy of the official District Court file. Moreover, under examination by his own counsel, Judge Ovalles was directed to answer questions focusing on Version 3. Id. at 1558. Judge Ovalles testified that Version Three was the Decision which was issued and was part of the official District Court file. Id. at 1559. This testimony was untruthful. The Commission later discovered, through its own request to Chief Judge LaFazia to produce the official District Court file, that Version Three was never part of the official District Court file (Exhibit 40). At the time of Judge Ovalles's testimony, the Commission accepted his testimony and was initially misled[40] into believing Version Three was the true decision. Id. at 1652:4.

On the next day of testimony, after having an opportunity to review the two decisions, Mr. DeSisto asked Judge Ovalles why there was a different version of the decision. Mr. DeSisto placed the two decisions on the overhead projector next to one another for comparison. Surprisingly, Judge Ovalles testified that although he had prepared a new version of the decision,

[40] The prosecutor was also misled into believing both decisions were in the court file. See Tr. 1643.

he was unsure if he had provided the attorneys with copies.[41] Id. at 1640. Even though the attorneys did not have written copies of Version Three, Judge Ovalles insists that he changed the decision at counsels' request. He testified:

> "Well, the first one, that is the one I put in the court file. And subsequently, I ran out of time, and they [the attorneys] wanted me to do it, and so I just wrote it in, and then later when I had time, I did make the correction, yes." Id. at 1642:10-13.

The prosecutor then asked:

> "[DeSisto]: And then you put that in the court file?
> "[Judge Ovalles]: I may have. I can't answer specifically." Id. at 1642:16-17.

Within moments, Judge Ovalles then added: "If I did correct it, then I must have filed – If I did correct a decision, I would have filed a correct one with the court file." Id. at 1643:14-16. In one moment, he didn't recall if he filed the amendment; the next moment, he claims he would have. These answers are directly contradictory. At best Judge Ovalles, under oath, was guessing. At worst, he was again intentionally misleading the Commission. As there is only one Decision in the actual court file, he misstated the facts. His testimony on the issue was simply, "I filed it with the Court file." Id. at 1645:13-14. He repeats this again. Id. at 1648:11-23. The wavering of the testimony to some, lessened his credibility. He was not testifying from his knowledge; he was reaching to invent a further response. Frankness would require that his responses be straightforward and truthful. His varied and contradictory responses to this question reflect a lack of forthrightness before the Commission. Again, as the official District Court file (Exhibit 40) contains one Decision, the Original Version, the Commission is left to conclude that Judge Ovalles has misrepresented the truth and lied under oath.

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[41] Judge Ovalles later testified that he did not know how Attorney Millea received a copy of the Decision. Id. at 1648.

Clearly, Judge Ovalles was under substantial pressure during this testimony.[42] He testified on his own behalf, with the threat of sanction to his judicial office at risk. The prosecutor continued to ask him the same question: why he changed the Decision and when he changed it. Those questions were never directly answered by Judge Ovalles. Instead, Judge Ovalles's unresponsive reply was "Respectfully, there's no difference in the body of the decision." Id. at 1644:11-12. A careful review of the four corners of the revised decisions show this statement to be false. Two significant changes between the two decisions which Judge Ovalles was comparing at the time are evident in Exhibit HH. There is new language in the footnote of Version Three (which oddly references something that happened well after the purported date of the Version Three Decision), and the last word of the Version Three Decision is changed from "allowed" to "waived." These are substantial differences not contained in the Original Version. It is uncontradicted that Judge Ovalles drafted each version of these decisions. It is a case that was very important to him, a case which he "kept following." Id. at 1652. It is a case cited in the Notice, which led to this hearing, and in the first complaint which led to the Commission's prehearing investigation. If he was guessing, he did not indicate it. If he did not know the answer, he did not say. Rather, he continued to mislead, even attempting to blame his clerks. Id. at 1649:8-13. Many Commissioners concluded that Judge Ovalles initially misled them with respect to which Version of the Decision was in the official Court file. He clearly was not frank and forthcoming in his testimony regarding the several versions of the Decisions and did not meet his obligation to ensure that his Decision was made of record.

[42] Although this Report and Recommendation sets forth extensive quotations from the testimony (at 105-108 herein), we encourage our high court to review Judge Ovalles's videotaped testimony, which will be submitted with the record. See Videotape: Recording of Public Hearing (Feb. 14, 2017) (on file with the record) (Exhibit 49 on Feb. 14, 2017 at 1:36:28-2:15:51).

These appropriate but challenging questions required a truthful and forthright response. Judge Ovalles failed to respond in that manner. In some instances, he disregarded the truth on the stand or refused to admit that his memory of the issue or knowledge was limited. The Commission refuses to conclude that he cannot appreciate the truth, but must conclude that his misstatements were either intentional or reckless. The importance of the circumstance (his testimony under oath before the Commission) and his familiarity with the topic (a case he considered carefully over months, writing and changing decisions and deliberating extensively) lead the Commission to conclude that his misstatements or misrepresentations were not mere negligence. Judge Ovalles either intended to deceive in some instances or recklessly provided (contradictory) answers in an effort to excise himself from the continuing questions. Neither alternative is acceptable.

One of the most challenging tasks for a judge or juror is to determine, from contradictory testimony, who is telling the truth. It is appropriate to consider the appearance of a witness on the stand, his or her manner of testifying, apparent frankness, interest in the outcome of the case, if any, and apparent intelligence or lack thereof. There is no doubt that Judge Ovalles is of high intelligence, demonstrated by his significant educational and professional achievements. He has a significant interest in the outcome of the case—he has the most to risk and indeed the case will impact his legal and judicial career. His appearance on the witness stand was neither recalcitrant nor reluctant. He continued to carefully study the documents to apprise himself of the facts, though he rarely answered Mr. DeSisto's questions directly. While he appeared to be frank, he was not. The Commission now knows that there are three versions of the Decision, that he did not file all versions, and that he submitted odd versions to his attorney and the Commission. The

Commission concludes that Judge Ovalles lacked credibility and was recklessly or intentionally misleading the Commission.

The conclusion that he recklessly or intentionally misled the Commission—without seeking to correct himself at any point during his three days on the stand or thereafter—is itself revealing. If Judge Ovalles avoided a difficult situation by misrepresenting the truth when he testified, surely he fails to appreciate the importance of formal judicial proceedings. When presiding, he stormed off the bench when he disliked what had happened, even when a sheriff gave a shortened prayer. He insisted on accuracy, even carrying his own small date stamp with him, and stamping many of the documents presented to him. He insisted on calling calendars alphabetically, even though litigants would miss time at work and bus routes. He was continually concerned about attorneys being in attendance on time, rather than moving attorneys and litigants through when they reached an accord. He was concerned about dress, why attorneys were in his courtroom, and why they did not follow his requirements of behavior. He insisted on control and refused to be controlled. He was defiant to clerks, staff in the courthouse, attorneys, litigants, and even his Chief Judge. A judge must play an independent role and has judicial independence in his decisions, but Judge Ovalles went beyond this. He created obstacles, left attorneys unnecessarily shell-shocked, left court clerks refusing to work with him, and regarded only his own schedule as important.

Independent of Judge Ovalles's testimony, the Commission expresses its concern regarding the introduction of the exhibits. As indicated, Judge Ovalles's attorney introduced Exhibit HH, but he did so indicating that the exhibit was "actually a copy of the court file." Id. at 1552:22-25. This was untrue as there was only one Decision in the Court file. After seeing two decisions and attempting to distinguish them, the Commission inquired itself. In Exhibit

HH, one of the decisions is dated September 10, 2014 but contains a footnote on page three referencing a "Notation added on October 27, 2014"—six weeks later. Judge Ovalles seemed totally unfamiliar with this change and how it got there, but acknowledged adding the language to the footnote. Id. at 1652:20-21. This decision was not filed, but was presented to the Commission as a filed decision, and the Commission was led to believe it was filed. Oddly, Judge Ovalles denied making the changes after October 27. Id. at 1658.

The confusion concerning the different versions of the decisions persisted. While Judge Ovalles's counsel claimed that the various versions of the decisions were sent to him by the Commission, the prosecutor denied it. The Commission, not convinced of what was in the original Court file, asked the Chief Judge to submit the original to the Commission on February 14. She presented it at the next hearing day, and the Commission marked it as Exhibit 40. There is only one Decision in the official file, and only one Decision noted as being filed on the Court docket.

With the Commission now cognizant that only one Decision had been filed, Judge Ovalles's testimony was complete, and he was not recalled by either attorney. The obvious question of why only one Decision was in the file was left unanswered. The prosecution rested, the defense case presented 18 separate witnesses, and each of the parties rested on February 28, 2017. The Commission, still left without an explanation as to where the unfiled, revised decisions came from, asked both attorneys for an explanation and offered to reopen the record for the clarification. Id. at 2294-95. Prior to final arguments, Judge Ovalles's attorney acknowledged that he received the new version of the decision and exhibit HH from Judge Ovalles, not from the Commission, and offered that explanation as if it were testimony. Id. at 2300-01.

It is clear that Judge Ovalles filed one Decision with handwritten markups on it on September 8, 2014 and made a docket entry. No other decision was docketed or filed. Oddly, Judge Ovalles continued to correct and modify the decision. When Judge Ovalles received the Millea complaint in October, he responded to it by filing a decision that had not been filed with the Court or given to counsel. Exhibit 32.

Of the three or more versions of the decision, one (Version Three) was dated September 10, 2014 and is contained in Exhibit HH. It was never filed, docketed or given to counsel. It was submitted to the Commission as part of the Court file; that is, as a filed and docketed decision. It was not. While counsel may attempt to deflect blame, it is clear that this decision was prepared and produced by Judge Ovalles. He testified indicating that it was the actual decision. Version Three has several important changes, including a footnote which claims to be added on October 27. Judge Ovalles never explained that date. The Millea complaint to this Commission was filed in October. Judge Ovalles had already received the Kanelos complaint. The Millea complaint, received by Judge Ovalles, obviously was a matter of deep concern. He received the Millea complaint from the Commission on October 24, 2014. Version Three says the new footnote was added on October 27. The Commission infers that he changed the decision because of the Commission's complaints. Keeping the September 10 date on it was odd.

Submitting it to either his attorney or to the Commission as if it were filed is flat out wrong. If it was not intended to deceive the fourteen seated Commissioners and our Supreme Court, it was at least gross recklessness at a most peculiar time.

These issues developed before the Commission by Judge Ovalles's own doing. Therefore, it was appropriate to inquire of him when he wrote it, and why. Though Judge Ovalles found this case very important and followed it, he did not answer this question – a

question he was asked five times. Tr. 1642-46. Instead, each time he was asked, he deflected and avoided. He never clarified, even when the Commission itself inquired.

This misrepresentation is more than a lack of frankness; it is an issue that cuts to his credibility as a witness, contributes to the Commission's finding violations of Canons 2(A), 3(B)(2), and 3(B)(9) for this section, and is relevant to the factors to be considered in determining the recommended sanctions below.

A chronology of different events is helpful. On September 8, 2014, Judge Ovalles issued his Decision in the Warwick v. Arnold case. On September 15, 2014, Karen Kanelos filed a complaint with the Commission against Judge Ovalles. On October 14, 2014, Attorney Millea filed his complaint. The Millea case focused on the Warwick v. Arnold case. Judge Ovalles received the Millea complaint on or about October 24, 2014. The footnote in the purported September 10 decision provides, in part, "[On September 17, 2014, Mr. Sgroi dismissed this complaint pursuant to Rule 48(a). Notation added on October 27, 2014]." If changed on October 27, the amendment would have been done three days after his receiving the Millea complaint.

Judge Ovalles's handling of the Arnold matter was troublesome. From his peculiar sua sponte motion that was submitted despite having obtained conflict waivers from both parties, to the delay caused to Mr. Arnold in having his case resolved, Judge Ovalles's actions were improper and violative of the Canons of Judicial Ethics. His testimony on this issue at the public hearing is even more worrisome. During the course of his testimony, Judge Ovalles made upwards of six misstatements to this Commission, the most pervasive of which include: (1) that Version Three in Ex. HH was the version given to counsel of record in the Arnold case; (2) that Version Three was filed in the official court file; and (3) that he received Ex. HH from the

Commission. The unequivocal truth is that Version Three was never filed in the official Court file or given to counsel and was given to Judge Ovalles's counsel by the Judge himself. Judge Ovalles's testimony was intentionally untruthful, or, at the very least, given with reckless disregard for the truth and the oath he took upon testifying. Similarly, submitting an altered decision to this Commission was done out of intentional deception or, at a minimum, with gross recklessness.

While Judge Ovalles's handling of the Arnold case constituted a violation of Canon 3(B)(2) as alleged, his testimony concerning the travel of the case raised far-reaching concerns for the Commissioners. The Commission was left to consider whether Judge Ovalles was credible in his testimony and questioned what was actually in the Court file. The Commisson found violations of Canons 2(A) and 3(B)(9) and believes the evidence presented here provided a unique insight into Judge Ovalles's character and handling of judicial issues.

B

Canon 3(B)(2)

Perfection is not a quality required of one who wears a robe. Judges are human and make mistakes. It would constitute an injustice to sanction a judge "for not being infallible while making hundreds of decisions often under pressure." Cynthia Gray, The Line Between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability 32 Hofstra L. Rev. 1245, 1247 (2004). Even the most esteemed judges make errors:

> "To safeguard the independence of our judiciary, we take this opportunity to recognize that at times judges err; whether with respect to substantive law, procedural issues, or abuses of discretion, judges make legal mistakes. Every trial judge will from time to time commit legal errors in decisions later reversed on appeal, but judicial discipline would be in order in almost none of those cases. Legal error may amount to judicial misconduct if it is repeated, motivated by bad faith, accompanied by intemperate or

> abusive conduct, or irremediable by appeal. In the absence of a finding of bad faith or bias or willful disregard for fundamental rights, a judicial officer who is attempting to faithfully and impartially discharge his or her judicial responsibilities should not be faced with a charge of ethical misconduct for legal error. We are equally confident that the commission appreciates and respects this principle." In re Comm'n on Judicial Tenure and Discipline, 916 A.2d 746, 754 (R.I. 2007) (internal quotation marks and citations omitted).

Therefore, the law recognizes that in the area of judicial discipline, "not every error of law, even an error that a reasonable and competent judge would avoid making, automatically deserves discipline." Id. (quoting Matter of Benoit, 487 A.2d 1158, 1163 (Me. 1985))

A judge will only be sanctioned under Canon 3(B)(2) for "[s]omething more than committing a good faith legal error . . . ." Gormley v. Judicial Conduct Comm'n, 332 S.W.3d 717, 727 (Ky. 2010). It is established that "'[l]egal error may amount to judicial misconduct if it is repeated, motivated by bad faith, accompanied by intemperate or abusive conduct, or irremediable by appeal.'" In re Comm'n on Judicial Tenure and Discipline, 916 A.2d at 754 (quoting In re Curda, 49 P.3d 255, 258 (Alaska 2002)). A boundary exists between decisions that are erroneous requiring appellate review and those decisions that require disciplinary action. Clearly, appellate review corrects a past prejudice. Judicial discipline, meanwhile, "'seeks to prevent potential prejudice to future litigants and the judiciary in general.'" Gray, supra, at 1248 (quoting Matter of Laster, 274 N.W.2d 742, 745 (Mich. 1979)).

In that sense, "where willful abuse of judicial power or inability to follow the law has been found, [courts have] not hesitated to impose the harshest of sanctions and [have] removed a sitting jurist on the basis of incompetence and unfitness for judicial office." In re DiLeo, 83 A.3d 11, 23 (N.J. 2014) (citing In re Yengo, 371 A.2d 41 (N.J. 1977)). While our Supreme Court has not adopted a specific standard to determine a violation of Canon 3(B)(2), one court

defined incompetence as "'a lack of the knowledge and judgment necessary for the proper administration of justice.'" Charles Gardner Geyh et al., Judicial Conduct and Ethics § 3.06 (5th ed. 2013) (quoting In re Field, 576 P.2d 348, 354 (Or. 1978)). Another court recognized that the test for incompetence was "'whether the conduct at issue establishes that the [judge] lacks the requisite ability, knowledge, judgment, or diligence to consistently and capably discharge the duties of the office he or she holds.'" Id. (alteration in original) (quoting In re Baber, 847 S.W.2d 800, 803 (Mo. 1993)).

Moreover, courts have disciplined judges for disregard of the law in a way that has a detrimental effect on public perception of the integrity and impartiality of the judiciary. See In re DiLeo, 83 A.3d at 24 ("[T]he overriding concern is the capacity of judicial behavior, objectively viewed, to undermine public confidence in the judicial system. Judicial conduct, including conduct in the form of legal error, that has the capacity to undermine public confidence in the integrity and impartiality of the judicial process can be the basis for charges of judicial misconduct and can lead to the imposition of discipline."). However, judicial discipline based on legal error is reserved for "the type of legal error that, singly, if egregious enough, or in a pattern or practice of legal error, has the capacity, objectively viewed, to undermine the public's perception of and impugn the integrity and impartiality of the judicial process as a whole." Id. at 28.

Although courts have not expressly defined what constitutes a "pattern" or "repeated error," one court held that a judge's commission of three serious acts of misconduct within approximately fifteen months was a pattern of misconduct supporting the imposition of discipline. See Gormley, 332 S.W.3d at 727. At the same time, the court retreated from the

traditional "pattern of misconduct" standard and held that committing even one egregious or bad faith error could expose a judge to discipline:

> "[W]e refuse to continue to adhere to an inflexible rule that a judge must have engaged in a pattern of misconduct before being subjected to sanctions. Instead, although a judge may properly be sanctioned for engaging in a pattern of misconduct, we now affirmatively hold that even one egregious or bad faith incident of judicial misconduct may properly subject a judge to discipline." Id.

Accordingly, in the absence of a pattern or repeated errors, a judge may be disciplined for "'a legal ruling or action made contrary to clear and determined law about which there is no confusion or question as to its interpretation'"—in other words, "if the judge committed at least one serious, obvious, egregious legal error that is clearly contrary to settled law." Id. at 728 (quoting In re Quirk, 705 So.2d 172, 180-81 (La. 1997)).

Courts have attempted to quantify that "[i]ncompetency is demonstrated by a pattern of inappropriate conduct over a period of time. It need not be shown that the judge's performance is substandard all of the time, or even most of the time." In re Baber, 847 S.W.2d at 804 (internal citation omitted). In In re Baber, the court looked at a judge's conduct over a span of years:

> "We do not reach our conclusion in this case based on any one incident or charge, but rather on a recurrent pattern of mistaken rulings over a period of years. A competency determination must remain focused on the judge's ability to consistently follow and apply the law over time. This is not a matter of incidental or isolated mistakes." Id. at 805 (internal citation omitted).

After a review of the case law, it therefore appears that judicial discipline for sanctioned legal error occurs in three instances: (1) commission of egregious legal error; (2) the commission of a continuing pattern of legal error; or (3) the commission of legal error which is founded on bad faith. See In re Barr, 13 S.W.3d 525, 544 (Tex. 1998). It was alleged in the Notice and at

the public hearing that Judge Ovalles demonstrated a lack of competence across multiple areas of law.

1

Sanctionable Legal Error

The Commission finds that Judge Ovalles violated Canon 3(B)(2) based on sanctionable legal error in the following instances: (1) his failure to understand and articulate the concept of "beyond a reasonable doubt"; (2) his imposing contempt for an unworthy reason and without following the correct procedure; (3) his inability to identify when a trial starts for purposes of the distinction between Rules 48(a) and 48(b); (4) his visiting a Mental Health Court patient without counsel; and (5) his handling of the Arnold case.

a

Beyond a Reasonable Doubt

Judge Ovalles exhibited a lack of fundamental legal understanding when he articulated the burden of proof of "beyond a reasonable doubt in a criminal trial."[43] Chief Judge LaFazia testified that she received a copy of a transcript in that criminal matter. Within the decision, Judge Ovalles incorrectly stated the definition and application of "beyond a reasonable doubt." See Ex. 21. A review of the transcript clearly demonstrates that Judge Ovalles lacked the requisite knowledge of the burden of proof. For instance, he used a snowfall metaphor (commonly used as an example of circumstantial evidence and reasonable inference but

[43] "Reasonable doubt" has been defined as follows: "The doubt that prevents one from being firmly convinced of a defendant's guilt, or the belief that there is a real possibility that a defendant is not guilty." BLACK'S LAW DICTIONARY (10th ed. 2014). Our Supreme Court has indicated that "[i]f we could erect a graduated scale which measured the comparative degrees of proof, . . . 'beyond a reasonable doubt' would be situated at the highest point[.] . . . [P]roof 'beyond a reasonable doubt' means the facts asserted by the prosecution are almost certainly true . . . ." Parker v. Parker, 103 R.I. 435, 442, 238 A.2d 57, 61 (1968).

misstated by the Judge) to define "beyond a reasonable doubt." See supra at 13-14; see also Ex. 21 at 20:17-21:11. Judge Ovalles admitted during his testimony before the Commission that he was unprepared to be rendering his decision. Tr. 1490:17-21. Further, he conceded that "this was not my best work . . . ." Id. at 1410:2-3.

Although it is recognized that judges err from time to time, the definition for "beyond a reasonable doubt" does not comprise an unsettled area of law. In fact, the law is clear. "'[T]here is no confusion or question as to its interpretation [and meaning].'" Gormley, 332 S.W.3d at 728 (quoting In re Quirk, 705 So.2d at 180-81). This incident occurred in March 2011, after Judge Ovalles had been on the bench for nearly six years. Not only should Judge Ovalles have recognized his error while pronouncing from the bench, but he also should have stopped when he became challenged by the example of the snow-making machine. Confusing "beyond a reasonable doubt" with "reasonable inferences" demonstrates a startling lack of competence in a most important area of substantive law which Judge Ovalles is expected to faithfully apply on the bench every day. "[T]he conduct at issue establishes that [Judge Ovalles] lacks the requisite ability, knowledge, judgment, or diligence to consistently and capably discharge the duties of the office he . . . holds." In re Baber, 847 S.W.2d at 803. In addition to constituting a sanctionable legal error, misapplying such a fundamental principle is undeniably the type of error that objectively viewed "undermine[s] public confidence in the judicial system." In re DiLeo, 83 A.3d at 24. The Commission thus finds by a preponderance of the evidence that Judge Ovalles violated Canon 3(B)(2) when he failed to understand and enunciate the concept of "beyond a reasonable doubt."

b

Contempt

Judge Ovalles also showed difficulty understanding the correct procedure and underlying purpose for imposing contempt. In this instance, Attorneys Rafanelli and Millea both arrived to court on August 20, 2014 at approximately 9:10 in the morning. In the presence of a full audience, Judge Ovalles promptly asked the attorneys to explain why they were late. After Mr. Rafanelli and Mr. Millea apologized for their respective tardiness, Judge Ovalles held both in contempt and imposed a $250 fine on each. Mr. Rafanelli described the event as "the most stunning thing" that ever happened to him during his legal career. Tr. 1198:22-23. Judge Ovalles then left the bench for two hours. During the two-hour recess, no court business was conducted. Id. at 1198:23-25. Later, the courtroom was cleared by Judge Ovalles. Although Judge Ovalles testified that he closed the courtroom as a courtesy to the lawyers, actually Mr. Rafanelli testified that he did not find anything courteous about that day. Id. at 1200:19. In the empty courtroom, each attorney was again given an opportunity to explain why he was late. Mr. Rafanelli credibly testified that he offered no excuse. He discussed his prior performance with the Court. He apologized. He was simply late. While Mr. Rafanelli was cross-examined concerning his failure to request that the courtroom be open, he shed light on the procedure in Judge Ovalles's courtroom: "I stood before that podium attempting to get undone what had been done to me." Id. at 1202:1-3. Judge Ovalles eventually "remitted" the fine imposed. Ex. 1 at 205. Notably, he did not address the issue of whether the contempt had been purged.

"'Contempt is the willful disobedience toward, or open disrespect for, the rules or orders of a court.'" Gormley, 332 S.W.3d at 725 (quoting Commonwealth v. Burge, 947 S.W.2d 805, 808 (Ky. 1996)). Specifically,

> "Civil contempt is when someone fails to follow a court order to do something. That something is usually for the benefit of a party litigant (e.g., pay child support, allow visitation, fix something by a certain date, move a driveway, clean up a spill, close a business by a certain hour, provide discovery, etc.). A judge may incarcerate someone for civil contempt in order to motivate the person to obey the court order, but the contemptuous one is entitled to be released upon compliance with the court's order. Criminal contempt, on the other hand, is when a person disobeys a court order out of disrespect for the rules or orders of court. A contemptuous person can be incarcerated for criminal contempt; but unlike civil contempt, the primary purpose of criminal contempt is to punish the contemptuous conduct." Id. at 725-26.

It is well settled that "contempt powers of the court should be used cautiously and sparingly." Case v. State, 709 P.2d 670, 672 (N.M. 1985).

Judge Ovalles displayed an absence of legal knowledge, skill, thoroughness, and preparation in the implementation of the contempt proceedings. There was a clear lack of understanding of the correct procedure. As an initial matter, it is unclear exactly what order of the Court Mr. Millea and Mr. Rafanelli violated when they appeared in court at approximately 9:10 a.m. on August 20, 2014. According to Judge Ovalles, "Notice was given on October 15, 2013 when I explained to them and said, look, . . . between 9 and 9:05, we're going to start the court."[44] Tr. 1419:18-21. His assessment was incorrect. While the Judge may have forewarned counsel of his new requirement, Judge Ovalles failed to provide the attorneys with further notice and an opportunity to be heard before sanctioning them. Neither attorney was afforded an opportunity to present evidence or obtain representation. See Wood v. Geisenhemer-Shaulis, 827 A.2d 1204, 1209 (Pa. 2003) ("[T]he trial court erred in finding [an attorney] in civil contempt without an evidentiary hearing."); see generally State v. Lead Paint Indus., Assn. Inc.,

[44] Judge Ovalles also cited two possible statutes—either § 8-8-4 or § 8-8-14—for the directive that the calendar call in the District Court shall commence at 9:00 a.m. See Tr. 1420:9-12. However, there is no such mandate contained in either section.

951 A.2d 428 (R.I. 2008) Nor did Judge Ovalles purge the contempt properly. "A civil contempt order must contain a specific purge provision that adequately informs the contemnor what he or she must do to purge the contempt." Lanza v. Lanza, 804 So.2d 408, 409 (Fla. 2001); see also Town of Coventry v. Baird Props., LLC, 13 A.3d 614, 621 (R.I. 2011) ("Thus, the hallmark of civil contempt is 'the ability to purge the contempt at will' by compliance with the court's orders."). These procedural deficiencies amount to an "egregious legal error that is clearly contrary to settled law." Gormley, 332 S.W.3d at 728.

In addition, a judge must exercise contempt powers "cautiously and sparingly." Case, 709 P.2d at 672. Holding Mr. Rafanelli, an otherwise extremely respected, courteous, and punctual attorney, in contempt of court for arriving approximately ten minutes late appears unreasonable, unwarranted, and abusive. An examination of the objective record reveals that the imposition of contempt here was based on bad faith legal error. See infra § VI.A.3. The Commission found the conduct particularly troubling because, by this time in his judicial career, Judge Ovalles was frustrated with the behavior of the usually late and constantly disruptive Attorney Millea. By all evidence presented, Attorney Rafanelli was caught in that crossfire. Timely, efficient, and effective, Mr. Rafanelli was uncharacteristically late, immediately apologized, and was punished. This resulted in public ridicule (presumably in front of peers as well as several of the defendants whom Mr. Rafanelli was to prosecute) and a fine. There was no attempt made by Judge Ovalles to distinguish between the two attorneys' past conduct and promptness. Nor did the Judge explain his actions further before this Commission, commenting only that "it was not my best work." Tr. 1421:5-6. Still, he rationalized that "[m]any times I wish I had the luxury of, you know, . . . having time, setting time aside. It moves very quickly in the District Court." Id. at 1421:19-21. A busy caseload and fast-paced courtroom is no excuse,

however. Exercising the Court's contempt powers for a relatively minor, isolated incident of tardiness and doing so in a crowded courtroom is clearly the kind of conduct that serves to "undermine the public's perception of and impugn the integrity and impartiality of the judicial process as a whole." In re DiLeo, 83 A.3d at 28. Accordingly, the Commission finds by a preponderance of the evidence that Judge Ovalles violated Canon 3(B)(2) when he held Mr. Millea and Mr. Rafanelli in contempt and fined them.

c

Rule 48(a)

Yet another example of Judge Ovalles's misunderstanding and misapplication of the law is found in his erroneous interpretation of District Court Rule of Criminal Procedure 48(a). Mr. Sgroi credibly testified about Judge Ovalles's refusal to allow him to exercise his prosecutorial discretion and voluntarily dismiss a complaint under Rule 48(a). Although Judge Ovalles explained his interpretation of the rule as allowing court discretion in this area, his application is incorrect. Specifically, Judge Ovalles testified that once a case is assigned to the trial calendar, a defendant must consent to a dismissal under Rule 48(a); otherwise, the Court must approve the dismissal pursuant to Rule 48(b). This erroneous interpretation is "'contrary to clear and determined law about which there is no confusion or question as to its interpretation.'" Gormley, 332 S.W.3d at 728 (quoting In re Quirk, 705 So.2d at 180-81). Rule 48(a) allows a prosecutor to voluntarily dismiss a complaint prior to trial—which, in a non-jury trial as in District Court, begins when the first witness is sworn. See State v. Francis, 719 A.2d 858, 859 (R.I. 1998). Understanding when a trial begins is a basic legal principle. This misunderstanding further demonstrates that Judge Ovalles "lacks the requisite ability, knowledge, judgment, or diligence to consistently and capably discharge the duties of the office he . . . holds." In re Baber, 847

S.W.2d at 803. Therefore, the Commission finds by a preponderance of the evidence that Judge Ovalles violated Canon 3(B)(2).

d

The Patient Visit

Judge Ovalles displayed a further lack of competence with respect to a matter before him on the mental health calendar on December 16, 2013. Presented with a patient who suffered from severe Alzheimer's and was non-verbal, immobile, and no longer taking in solid foods, BHDDH sought an order that the patient not be resuscitated (commonly referred to as a "DNR/DNI" order). Two days prior to the scheduled hearing, Judge Ovalles signed the DNR/DNI order. Tr. 370:15-18. A hearing was held two days later, at which time Judge Ovalles indicated to the attorneys that he wanted to personally visit the patient at the group home. Judge Ovalles acknowledged that he would need to notify the staff and attorneys before visiting the patient. See Ex. 1 at 24:24-25:6. In order to facilitate the necessary arrangements, Judge Ovalles and the attorney from the Disability Law Center exchanged phone numbers and discussed possible dates. See id. at 25:7-26:8. The testimony did not establish whether firm arrangements were ever made, but the attorneys were clearly attempting to be present at any visit by Judge Ovalles.

Regardless, on December 24, 2013, Judge Ovalles arrived unannounced at the group home without any attorneys notified or present. Judge Ovalles visited the patient and, according to Ms. Harden, prayed at her side. Tr. 460:1-3. While the Commission believes that Judge Ovalles acted out of his overriding concern and compassion for the patient and the serious nature of a DNR/DNI order, he nevertheless displayed a lack of competence in deciding to visit the patient without counsel. It is well settled that a judge's speaking with a litigant in a pending case

without his or her counsel present is patently erroneous. See Canon 3(B)(8); see also Matter of Disciplinary Proceedings Against Aulik, 429 N.W.2d 759, 766 (Wis. 1988) (finding that judge's ex parte communications "violated one of the fundamental principles upon which our judicial system is based: the fair treatment of those seeking to resolve their disputes by recourse to our courts"). In addition to demonstrating Judge Ovalles's pattern of incompetence on the mental health calendar, discussed infra, his conduct in meeting with the patient therefore also constitutes a sanctionable legal error.[45] See In re DiLeo, 83 A.3d at 28. As such, the Commission finds by a preponderance of the evidence that Judge Ovalles violated Canon 3(B)(2) in this instance.

e

The Arnold Case

The Commission alleged that Judge Ovalles's handling of the Warwick v. Arnold matter violated Canon 3(B)(2). In this instance, Judge Ovalles challenged a solicitor's right to represent private criminal clients on the same day and in the same courtroom as prosecuting for the municipality. Although the initial issue is on solid ground, the Commission finds fault with the manner with which Judge Ovalles handled the Arnold case in three instances: (1) raising a sua sponte motion on which to rule; (2) causing a delay in issuing a decision on the motion; and (3) revising the Original Version of the Decision without filing an "Amended" copy in the Court file.

As discussed supra, Judge Ovalles revised his original September 8, 2014 Decision multiple times without providing notice to the attorneys or filing it in the Court file. There can

[45] Judge Ovalles's conduct not only violated Canon 3(B)(2), but also Canon 3(B)(8), which prohibits private interviews or communications designed to influence a judge's judicial action. See infra.

be no doubt that a judge amending his or her previously-rendered decision without notifying the parties or placing the revised version in the Court file "undermine[s] public confidence in the integrity and impartiality of the judicial process." In re DiLeo, 83 A.3d at 24. Moreover, such conduct unquestionably amounts to an "egregious legal error that is clearly contrary to settled law." Gormley, 332 S.W.3d at 728.

Judge Ovalles originally raised a legitimate concern. However, his method of doing so and his continued mishandling of the file materials bring the judicial office into disrepute and further undermine public confidence in the judiciary. See In re Brown, 527 S.E.2d 651, 657 (N.C. 2000) (alteration and omission in original) (internal quotation marks omitted) (quoting In re Edens, 226 S.E.2d 5, 9 (N.C. 1976)) (defining "[c]onduct prejudicial to the administration of justice that brings the judicial office into disrepute . . . as conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office"). The Commission believes that Judge Ovalles's raising a motion sua sponte and ruling on his own motion creates an appearance of partiality that, objectively viewed, would "undermine the public's perception of and impugn the integrity and impartiality of the judicial process as a whole." In re Dileo, 83 A.3d at 28.

Most importantly, Judge Ovalles inhibited the rights of Mr. Arnold by delaying his case. The attorneys, who had procured waivers of all potential conflicts, were stymied in their ability to prosecute or defend the case from May 2014 until September 2014. During this timeframe, Judge Ovalles himself had filed and was pursuing a sua sponte motion. The Commission does not believe a four-month delay alone warrants the imposition of sanctions. While we recognize that judges may—and should—take adequate time to render a thorough and thoughtful decision,

the attorneys had procured waivers of any potential conflict of interest from their employer-municipalities and Mr. Arnold himself. The Commission finds that the sole reason for the delay in this matter, which left Mr. Arnold under an uncertain criminal prosecution and subject to the restrictions of bail, was Judge Ovalles's own issue with the representation of Mr. Arnold by Mr. Millea. Furthermore, Judge Ovalles began to take issue with city and town prosecutors defending clients being prosecuted by another city or town in the same courtroom as early as 2013. Thus, he could have established a procedure for dealing with these instances prior to the Arnold case.

As such, the Commission finds by a preponderance of the evidence that Judge Ovalles violated Canon 3(B)(2) through his handling of the Arnold case.

f

Other Allegations

The Commission failed to establish by a preponderance of the evidence other allegations concerning this Canon. It was alleged that Judge Ovalles did not know what types of sentences amounted to convictions. However, the evidence shows that Judge Ovalles was inconsistent in this regard and sometimes understood. Moreover, no witness pointed to any specific case or affected defendant. Judge Ovalles varied in his understanding of the legal consequences of a fine and of probation. While this is concerning, the Commission cannot find that he committed an egregious legal error, rising to the level of sanctionable misconduct, on any particular occasion. Therefore, this alleged violation of Canon 3(B)(2) was not sustained.

It was also alleged that Judge Ovalles violated Canon 3(B)(2) when he granted bail to a 46(g) bail violator who had been arrested on his fifth DUI. This was a serious public safety issue, and Chief Judge LaFazia counseled Judge Ovalles accordingly. He ultimately

reconsidered and vacated his earlier decision, holding the defendant without bail. The Commission recognizes that judicial autonomy is indispensable to a well-functioning judiciary. This incident happened shortly after Chief Judge LaFazia assigned Judge Ovalles as an assisting judge. He had not previously presided over criminal matters. While Judge Ovalles initially made a poor decision—one that ignored the interests of the public at large—he heeded the advice of Chief Judge LaFazia and reconsidered. Accordingly, this alleged violation of Canon 3(B)(2) was not sustained either.

In sum, the Commission finds by a preponderance of the evidence that Judge Ovalles committed five sanctionable legal errors in violation of Canon 3(B)(2).

2

Continuing Pattern of Legal Error

Clearly the five sanctionable legal errors set forth above constitute "a pattern or practice of legal error [that] has the capacity, objectively viewed, to undermine the public's perception of and impugn the integrity and impartiality of the judicial process as a whole." See In re DiLeo, 83 A.3d at 28. Our Supreme Court has explained that "'[l]egal error may amount to judicial misconduct if it is repeated . . . .'" In re Comm'n on Judicial Tenure and Discipline, 916 A.2d at 754 (quoting In re Curda, 49 P.3d at 258). Here, Judge Ovalles's commission of a continuing pattern of legal error from 2010 until 2015 evidences his failure to "be faithful to the law and maintain professional competence in it." Canon 3(B)(2). Such incompetence violated Canon 3(B)(2) and supports the imposition of judicial discipline. See In re Barr, 13 S.W.3d at 544.

Although there are five concrete occurrences of sanctionable legal error, these cases are not isolated instances. The objective record before the Commission reveals many other instances of error that alone are not egregious; however, the totality of which unveil a mosaic. That

mosaic resulted in an administrative nightmare for Chief Judge LaFazia. Judge Ovalles's lack of competence caused her to manipulate judicial assignments in order to prevent him from handling certain calendars. While she attempted to provide him with additional responsibilities, it was clear that he did not have the ability to fulfill them. For the good of attorneys, litigants, and staff, he was reassigned. The image we are ultimately left with is all too apparent: Judge Ovalles could not perform the functions required of, and vitally needed from, a judge.

One particular area of concern for the Commission was Judge Ovalles's handling of the mental health calendar. The Mental Health Court involves the most vulnerable members of our society. Judge Ovalles recognized that reality. Judge Ovalles did not recognize, though, that the jurisdiction of the Mental Health Court is both statutory and equitable. See Tr. 1422:14-1425:9.

The Commission alleged that Judge Ovalles was not competent in his handling of the mental health calendar. The competent evidence on this record demonstrates that Judge Ovalles displayed a lack of judgment as well as a rigid and combative demeanor. He failed or refused to appreciate the unique and critical nature of the calendar. The evidence presented establishes that because of the nature of the Mental Health Court, advance scheduling by BHDDH to accommodate testifying doctors was required. Furthermore, specific accommodations were necessary for the individual patients. In many instances, these patients were unable to sit in a waiting room for hours due to their mental and physical needs. Notwithstanding this situation, Judge Ovalles insisted on calling the calendar in his preferred order.

Megan Clingham, an experienced Mental Health Advocate and former legal counsel for BHDDH, credibly testified that she organized and scheduled the mental health calendar in accordance with the doctor and patient schedules, and she would provide a list to the clerk the day before or the morning of the Friday calendar. Ms. Clingham further testified that in a

chambers conference with Judge Ovalles and Attorney Bruce Todesco (who at the time was a Mental Health Advocate), Judge Ovalles "became angry and irate" that "somebody else had scheduled the cases, and he said that it was his calendar to call not the lawyer's." Tr. 597:21-598:1. Judge Ovalles, on the other hand, testified that "she wasn't prepared, and . . . the number of cases we have, we need to keep moving the calendar." Id. at 1451:23-25. When Ms. Clingham attempted to explain her reasoning to Judge Ovalles, he responded by yelling at her, saying, "Ms. Clingham, when I'm sitting on this calendar, I am a judge of the Superior Court, and I expect you to treat me with respect. I treat you like I treat any other female attorney, and I expect you to treat me like [you] treat any other Judge of the Superior Court." Id. at 600:22-601:2; see also id. at 602:10-15. Judge Ovalles then proceeded to take a break of about an hour, without regard for the doctors and patients waiting in the hospital hallway. Ms. Clingham testified as follows:

> "I went out and talked to the witnesses who were waiting and the mental health workers and the patients who were waiting and just try to tell everyone, you know, all right, just having a short break, we don't know how long it's going to be, trying to keep everyone together, trying to keep the doctors from leaving, and trying to keep the patients from getting overly upset by the situation." Id. at 604:9-16.

The Commission views Ms. Clingham as a credible witness and accepts her testimony that Judge Ovalles was prone to "storming off the bench" when he became "confused or overwhelmed" as true. Id. at 603:19-22.

In addition to his seeming inability or refusal to adjust to the scheduling needs of the mental health calendar, Judge Ovalles displayed an inability to competently adjudicate the substantive and procedural challenges of sitting on the mental health calendar. Mr. Todesco with the Office of the Mental Health Advocate since 2007, testified that he has appeared before

approximately twenty judges on the mental health calendar, including Judge Ovalles. After appearing before Judge Ovalles, he met with Chief Judge LaFazia in 2012 or 2013 and expressed his concern that Judge Ovalles "did not display a command of the subject matter, and as a consequence could be really unpredictable . . . ." Id. at 523:24-524:2.

The Commission finds by a preponderance of the evidence that Judge Ovalles lacked competence, demonstrated by a pattern of misconduct, in his handling of the scheduling of the mental health calendar and in his demeanor in storming off the bench when confused or overwhelmed. Furthermore, the Commission carefully considered the alleged violations of Canon 3(B)(2) regarding Judge Ovalles's handling of specific cases on the mental health calendar (Patients Mr. A, Ms. B, Ms. C, Ms. D, and Ms. E, discussed on pages 58-68, supra). Such specific incidents support the finding that Judge Ovalles's handling of these cases is evidence of a pattern of a lack of competence.

Judge Ovalles's pattern of incompetence was displayed by his visiting a patient without the attorneys present, as found to be a sanctionable legal error above. Another example of Judge Ovalles's lack of competence on the mental health calendar occurred in connection with a December 13, 2013 hearing regarding a critically ill patient suffering from schizophrenia, dementia, and HIV. Ms. Harden presented a Petition for Instructions requesting that physicians be allowed to administer both psychiatric and HIV medications. During the hearing, it became clear that the testifying psychiatrist was not competent to proffer testimony regarding the need for the HIV medication. As a result, Judge Ovalles entered an order allowing administration of only the psychiatric medication and continued the matter for further testimony on the need for the HIV medication. After consulting with the doctors, Ms. Harden sent Judge Ovalles an e-mail on January 15, 2014 advising him that the treating physicians had concluded that the benefits of

the HIV medications did not outweigh the risks at that time and that there was no need for a further hearing with respect to the HIV medication. Ex. C; see also Tr. 403:25-405:10. Refusing to accept her representations, Judge Ovalles called Ms. Harden and told her that unless she went forward with the hearing and produced the medical expert testimony on the need for HIV medication, he would vacate the order approving the psychiatric medication. In response to what she reasonably perceived as a threat by Judge Ovalles to vacate the existing order, Ms. Harden immediately secured a letter signed by the doctors, which she hand-delivered to Judge Ovalles. The Commission believes that the suggestion that he would vacate the order for the necessary psychiatric medication demonstrated intemperate conduct and displayed a lack of competence, in violation of Canon 3(B)(2) that had potentially put the patient at risk.[46]

Judge Ovalles's pattern of incompetence as it relates to handling cases involving sensitive mental health matters was also on display on the criminal calendar. Investigator Grecco from Pretrial Services was summoned to Judge Ovalles's courtroom during a sentencing. There, Judge Ovalles requested that she provide more information about the defendant's mental health treatment. Grecco credibly testified that Judge Ovalles asked her to provide such sensitive material on the public record—a clear violation of HIPAA. Grecco asked to approach the bench. She was denied that request. She proceeded to advise Judge Ovalles on the record that mental health diagnoses are protected by HIPAA and cannot be disclosed in open court. Judge Ovalles demanded the defendant execute a release. The defendant did not want to sign. Surely, the purpose behind Judge Ovalles's demanding a release was to thwart the defendant's exercise of his privacy rights; here is yet another example of vindictive behavior, as is sprinkled throughout Judge Ovalles's tenure on the bench.

[46] There was a division in the Commission regarding this issue. Some Commissioners thought the credible evidence indicated a threat. See Ex. 17.

There was no testimony relating to whether Judge Ovalles was aware of HIPAA and disregarded it or simply was incompetent in that area of law. Regardless, the distinction is immaterial. Judge Ovalles knew or should have known better than to demand that a defendant's personal, sensitive mental health information be put on the public record. Surely such conduct is of the type contemplated in In re DiLeo, which "has the capacity to undermine public confidence in the integrity and impartiality of the judicial process." 83 A.3d at 24; see also id. at 28 (reserving judicial discipline based on legal error for "the type of legal error that, singly, if egregious enough, . . . has the capacity, objectively viewed, to undermine the public's perception of and impugn the integrity and impartiality of the judicial process as a whole"). Judge Ovalles was either unfaithful to the law or failed to maintain professional competence in it, as required by Canon 3(B)(2). Accordingly, the Commission finds a violation of such by a preponderance of the evidence.

3

Bad Faith

Judge Ovalles committed legal error based upon bad faith. See In re Barr, 13 S.W.3d at 544. One Wednesday, Judge Ovalles prevented Attorney Peltier from entering the courtroom in his capacity as the solicitor for the City of Cranston. Judge Ovalles knew that Mr. Millea normally appeared before him on Wednesdays in that same capacity. Judge Ovalles may not have known that Mr. Peltier was filling in for Mr. Millea that Wednesday; it was a last-minute arrangement. Sheriff Kloc credibly testified that Judge Ovalles told him, "'When the Cranston prosecutor gets here, have him wait outside.'" Tr. 284:11-12. It is reasonable to infer that Judge Ovalles did not specify that it was Mr. Peltier who should be kept waiting outside. Judge Ovalles was expecting that the Cranston prosecutor would be Mr. Millea. Judge Ovalles testified

that Mr. Millea was routinely disruptive and disrespectful in his courtroom. The antagonism permeating their relationship was readily apparent to the Commission. The Commission believes the credible evidence shows that Judge Ovalles actually intended to bar Mr. Millea from the courtroom. No matter who the prosecutor was, it was erroneous for Judge Ovalles to inhibit his entry into the courtroom. See State v. Torres, 844 A.2d 155, 162 (R.I. 2004) ("We hold that the defendant's Sixth Amendment right to a public trial was violated when members of his family were removed from the courtroom during the jury-selection process."); see also Press-Enterprise Co. v. Superior Court of Cal. for Riverside Cty., 478 U.S. 1, 7 (1986) ("The right to an open public trial is a shared right of the accused and the public, the common concern being the assurance of fairness."); United States v. Smith, 426 F.3d 567, 571 (2nd Cir. 2005) ("First, although cases involving the right to a public trial commonly arise in the context of courts entering formal closure orders, we believe that measures that limit the public's access to federal buildings with courtrooms where public trials may be occurring implicate Sixth Amendment concerns."). Chief Judge LaFazia even counseled Judge Ovalles on numerous occasions that the courtroom is, and must remain, open to the public. The fact that such legal error was founded upon bad faith—namely, Judge Ovalles's dislike for Mr. Millea—renders Judge Ovalles's misconduct sanctionable as a violation of Canon 3(B)(2). See In re Barr, 13 S.W.3d at 544.

The Commission further finds that bad faith led Judge Ovalles to hold Attorney Rafanelli in contempt. As previously discussed, Judge Ovalles committed egregious legal error when he did so. The Commission believes this misconduct, too, was predicated upon Judge Ovalles's personal vendetta against Mr. Millea. Mr. Rafanelli, like Mr. Peltier, was merely an unintended target of Judge Ovalles's punitive treatment aimed at Mr. Millea.

Conclusion

Based on the foregoing, the Commission finds multiple violations of Canon 3(B)(2) by a preponderance of the evidence. These violations include: (1) his failure to understand and articulate the concept of "beyond a reasonable doubt"; (2) his imposing contempt for an unworthy reason and without following the correct procedure; (3) his inability to identify when a trial starts for purposes of the distinction between Rules 48(a) and 48(b); (4) his visiting a Mental Health Court patient without counsel; and (5) his handling of the Arnold case by raising his own motion upon which to rule, delaying the case while formulating his ruling, entering a non-dispositive judgment against non-parties; (6) his displaying a pattern of incompetence while he presided over the mental health calendar; (7) his barring Attorney Peltier from the courtroom based on the bad faith belief that Mr. Millea would actually be prosecuting for Cranston that day; and (8) his holding Mr. Rafanelli in contempt based upon a personal vendetta against Mr. Millea.

C

Canon 3(B)(4)

Canon 3(B)(4) requires that a judge be patient, dignified, and courteous to litigants, jurors, witnesses, and lawyers so that the cause may be properly presented and the truth ascertained. Judges have been disciplined in the past for engaging in discourteous conduct that can be categorized as follows: (1) impatient; (2) vindictive; (3) undignified; and (4) sarcastic. In re Barr, 13 S.W.3d at 539 (citing Jeffrey M. Shaman et al., Judicial Conduct and Ethics, § 3.03 (2d ed. 1995)). The severity of such discourteous conduct is often magnified when it becomes a pattern:

> "Respondent's actions were not random, isolated incidents but instead reflect a pattern of discourteous, impatient, and undignified

> behavior that not only poisoned the immediate environment but extended far beyond as well. . . . Respondent's conduct in the courtroom certainly had the same deleterious effect on the attorneys, law enforcement officers, and other individuals indispensable to the administration of justice." Disciplinary Counsel v. O'Neill, 815 N.E.2d 286, 294-95 (Ohio 2004).

Discourteous conduct on the part of a judge is especially significant because it undermines the integrity of the entire judiciary:

> "Although discourtesy does not constitute an error or violation of law in the decision-making process, such conduct on the part of a judge is particularly egregious because it undermines respect for the law in a most insidious manner. Our appellate process effectively corrects judicial error and the mere occurrence of such error does not usually inflict lasting damage upon our system of laws. On the other hand, a litigant who is subjected to rude and insensitive treatment is left without recourse. Whether the litigant wins or loses, the end result is an irreparable loss of respect for the system that tolerates such behavior." Id. at 295.

One court found that a judge committed serious misconduct by "demonstrating impatience and intolerance, even at times ordering prosecutors who disagreed with him out of the courtroom." Matter of Duckman, 699 N.E.2d 872, 877 (N.Y. 1998). The judge in that case argued that his harsh treatment of young prosecutors was a result of his efforts to educate them. Id. at 879. The court found his argument unavailing: "[T]eaching need not involve angry screaming and humiliating invective and is not effective when the lesson is that a judge may abandon the law and abuse judicial authority." Id.

The Commission understands that different judges have different judicial styles which encompass their respective personalities and life experiences. In addition, the Commission acknowledges that everyone is human and has a bad day. Judicial discipline is typically not warranted in such an instance. Judicial style and demeanor cover the spectrum. Although judges

have wide latitude in the arena of courtroom protocol, it has been observed that there are certain minimum standards which must be observed. For example,

> "Differences in style and personality do not of themselves suggest misconduct. To the end that a courtroom may truly be a temple of justice and not the personal domain of the woman or man who happens to be presiding, any differences in style must always result in justice administered according to law and must be in accord with minimum standards of propriety." In re Barr, 13 S.W.3d at 539; see also O'Neill, 815 N.E.2d at 295 (alteration in original) (quoting In re O'Dea, 622 A.2d 507, 516 (Vt. 1993)) ("We recognize that judges differ in both style and personality and that these qualities, in and of themselves, are not matters for discipline. But whatever a judge's style, '[p]atience, dignity and common courtesy are essential parts of judging, whatever the personality of the judge,' and 'a pattern of judicial discourtesy represents a profound threat to the institution of the law and requires a strong response.'").

Witness after witness credibly testified about Judge Ovalles's style and demeanor on the bench. Judge Ovalles maintained that the complaints were because he was strict and disliked. The crux of the issue is not as Judge Ovalles perceives it. Rather, the objective record reveals the issue to be the impatient, undignified, and disrespectful manner in which he treated litigants, attorneys, and staff. The evidence further indicates that Judge Ovalles frequently became overwhelmed by the matters before him, causing his judgment to become clouded on the bench.

1

Public Defenders

In 2013, Public Defender Aitchison was assigned to Judge Ovalles's courtroom in the Kent County District Court. During her tenure before Judge Ovalles, she credibly testified that he developed a personal animus toward her that impacted her relationship with her clients. Her perception of his attitude is supported by the persuasive evidence on the record. The credible testimony of Robert Sgroi, John Lovoy, Stephen Peltier, and Megan Jackson crystalizes into

concrete Judge Ovalles's vindictive interactions with Ms. Aitchison in the courtroom. Those who testified of their relative observations of Judge Ovalles were highly credible and confirmed his toxic treatment of Ms. Aitchison.

Ms. Aitchison very credibly testified that she was not able to conference cases with the prosecutor because Judge Ovalles required her to remain in the courtroom. She testified that because of the restrictions placed on her by Judge Ovalles, she was unable to adequately represent her clients. At times she passed notes to them to convey offers from the prosecution. Her cases were often passed for trial over her objections. Rather than allowing her to work with counsel toward a resolution of cases, Judge Ovalles further exacerbated the issue by requiring Ms. Aitchison to remain in the courtroom and eventually requiring her to remain in her seat. Ms. Aitchison's powerful testimony included an attestation that twice she had to stand up in open court and request to be excused to use the restroom. These demeaning rules implemented against Ms. Aitchison were not imposed on any other attorney. While inflicting these rules of mandatory courtroom attendance on Ms. Aitchison, Judge Ovalles frequently chastised her in open court for being unprepared to conference cases. An example is the following colloquy:

> "[AITCHISON]: May I note my objection just for the record?
> "[OVALLES]: That you aren't prepared, that you've had a chance to conference this and you haven't done so? Yes, let it be noted."
> Ex. 1 at 120.

In addition to the day-to-day rules that were applied to her, Ms. Aitchison also credibly testified about Judge Ovalles's procedural requirements in situations when a misdemeanor arrest triggered a Superior Court violation. In these instances, she was not allowed to participate in the pretrial conferences in the District Court despite her representation of the defendants on their new misdemeanor charges. Rather, Judge Ovalles required the Public Defender representing the

defendant on the Superior Court violation, as well as the prosecuting Attorney General, to conference with him.

In sum, Ms. Aitchison was led to conclude that Judge Ovalles neither respected her nor treated her as an attorney should be treated. To the contrary, Judge Ovalles maintained that a review of the tapes would reveal a calm, polite tone when he spoke to Ms. Aitchison in the courtroom. The Commission finds more credible the testimony of Ms. Aitchison and others who observed his behavior towards her. He was intolerant and belittling if there was an objection to his decision. Intolerance and harsh treatment do not require loud voices or angry screaming.

Judge Ovalles's misconduct toward Ms. Aitchison and her clients over a nine-month period oftentimes interfered with her clients' rights and access to justice. In that regard, one court explained:

> "'[A] judgeship is a position of trust, not a fiefdom. Litigants and attorneys should not be made to feel that the disparity of power between themselves and the judge jeopardizes their right to justice.'" In re Sloop, 946 So.2d 1046, 1055 (Fla. 2006) (alteration in original) (emphasis added) (quoting In re Graham, 620 So.2d 1273, 1277 (Fla. 1993)).

To the contrary, Judge Ovalles equated judges with kings. See Tr. 688:7-13.

The conduct exhibited by Judge Ovalles toward Ms. Aitchison did not lend itself to the honorable administration of justice expected by the litigants and attorneys. There is ample evidence in the record, and described at length above, to support a finding of severe misconduct with respect to Judge Ovalles's treatment of Ms. Aitchison. His utter disrespect towards her as an attorney was palpable to the point that it undermined her relationship with her clients and was evident to other respected members of the bar. To say that Judge Ovalles was simply discourteous to Ms. Aitchison would be to trivialize a nine-month span of abuse. Not only did Judge Ovalles chastise Ms. Aitchison in open court on numerous occasions, but he also publicly

humiliated her by confining her to her seat to the point where she had to stand up in open court to use the bathroom. He paralyzed her ability to represent her clients effectively. These procedural requirements negatively affected her indigent clients, impairing her ability to provide fair and adequate representation to them.

The abuse of Ms. Aitchison over the nine-month period that she was assigned to his courtroom is not in accord with the minimum standards of civility expected of a member of the judiciary. The Commission has demonstrated by a preponderance of the evidence that Judge Ovalles violated Canon 3(B)(4).[47] See O'Neil, 815 N.E.2d at 295.

In 2007, Public Defender Jackson, a new attorney, appeared regularly in front of Judge Ovalles. Ms. Jackson objected to certain procedures that Judge Ovalles employed in the courtroom with respect to the order in which he heard cases. In response to Ms. Jackson's objection, Judge Ovalles called her up to the bench and threatened her with contempt. While the Commission again notes that it is the prerogative of a judge, as a general rule, to determine the order of cases, the threat of contempt to an attorney who lodges an objection is clearly a demonstration of intolerance and a violation of Canon 3(B)(4). Under the circumstances presented here, his threat of contempt constituted the use of judicial power to intimidate. It is obvious and settled that "[l]itigants and attorneys should not be made to feel that the disparity of power between themselves and the judge jeopardizes their right to justice." In re Sloop, 946 So.2d at 1055. Further, judges should conduct themselves in a dignified manner even when becoming frustrated with attorneys or litigants—"whatever a judge's style, '[p]atience, dignity

[47] Oddly, Judge Ovalles's behavior while presiding was in sharp contrast to his courteous response to inquiry before the Commission. While not always responsive to the question, he continually sought to be respectful and polite during his testimony. His behavior before us was completely dissimilar to his malevolent demeanor in his court. It is disconcerting to the Commission that one who knew how to be a gentleman was unable to or chose not to curtail his vindictiveness on the bench.

and common courtesy are essential parts of judging, whatever the personality of the judge.'" O'Neill, 815 N.E.2d at 295 (quoting In re O'Dea, 622 A.2d at 516).

2

Mental Health Court

The Commission alleged that while assigned to the Mental Health Court, Judge Ovalles violated Canon 3(B)(4). The mental health calendar is a unique calendar. It is customary for the attorneys from BHDDH to organize the cases in a certain order to accommodate doctors' schedules and to ensure that psychiatric patients are not kept in the waiting room for long periods of time. Most judges are receptive to receiving the list of scheduled cases arranged by BHDDH. Ms. Clingham credibly testified that Judge Ovalles would become irate when she presented the calendar to him in a certain order and that she believed he thought she was trying to run his courtroom. Judge Ovalles abruptly left the bench without indicating when he intended to return and remained off the bench for at least forty-five minutes. During this time, Judge Ovalles chastised Ms. Clingham in chambers, stating, "Ms. Clingham, when I'm sitting on this calendar, I am a judge of the Superior Court, and I expect you to treat me with respect. I treat you like I treat any other female attorney, and I expect you to treat me like [you] treat any other Judge of the Superior Court." Tr. 600:23-601:2.

It is true that, "[d]ifferences in style and personality do not of themselves suggest misconduct." In re Barr, 13 S.W.3d at 539. It was absolutely Judge Ovalles's prerogative to handle the calendar in an order he deemed fit. His reluctance to call the calendar as organized by BHDDH may have been due to his unfamiliarity with the traditional course of procedure at the Mental Health Court. However, the conduct that ensued after this dispute was inexcusable. Leaving the bench unannounced for at least forty-five minutes was both undignified and

discourteous to the patients, doctors, and attorneys who were left waiting. Judge Ovalles exhibited an overall inconsideration for the schedules of doctors and other mental health providers who were responsible for the patients in attendance and a disregard for established procedures on the mental health calendar. Regardless of how Judge Ovalles had wished to call the calendar, he was still bound by certain minimum standards of conduct. See O'Neill, 815 N.E.2d at 295.

Judge Ovalles's conduct toward Ms. Clingham as a result of their differences of opinion did not meet such minimum standards. In fact, it was unbecoming of the judicial office he held. Other commissions have admonished judges for addressing female attorneys as "little girl" and "young lady." Geyh, supra, at § 3.04[2] (citing In re Jordan, Unreported Determination (N.Y. Comm'n, Jan. 26, 1983); In re Cieslik, Unreported Determination (Ill. Courts Comm'n, July 30, 1987)). One commission held that although the judge may have meant the phrase "little girl" as a term of endearment, "expressions such as these are insulting, belittling, and inappropriate in an exchange between judge and lawyer and . . . they diminish the dignity of the court." See Geyh, supra, at § 3.04[2]. Whether or not Judge Ovalles intended to insult Ms. Clingham, objectively viewed, his behavior and his comments were undignified. Accordingly, the Commission finds a violation of Canon 3(B)(4) by a preponderance of the evidence in this instance.

3

Treatment of Women

The Commission has also addressed Judge Ovalles's treatment of women in the context of Canon 3(B)(6), infra. In addition, and without being repetitive, the Commission pauses to examine whether such conduct also violated Canon 3(B)(4). This is necessary because the objective record demonstrates that Judge Ovalles's comments and gestures toward female court

employees and attorneys were discourteous and unbecoming of a judge. Five women credibly testified against Judge Ovalles concerning his undignified behavior. In addition, Senator Ciccone, President of the Court Employees Union, had received several complaints over the years regarding Judge Ovalles's mistreatment of female clerks. See Ex. 3; see also Tr. 758:1-5. Senator Ciccone attempted to address with Judge Ovalles and others the condescending attitude with which Judge Ovalles spoke to and treated specifically female court employees. See Tr. 760:19-23; 761:24-762:7. Senator Ciccone also wrote a letter to Chief Judge LaFazia to "bring to [her] attention the problems that [Judge Ovalles] was having or creating with the female clerks which I had addressed . . . in previous years with him." Id. at 757:19-23. Chief Judge LaFazia was left to figure out how to solve the predicament she faced as a result of Judge Ovalles's inability to respectfully work with female clerks. Judge Ovalles caused Chief Judge LaFazia great difficulty in administering the District Court.

a

Court Employees

Discourteous conduct brings the judicial office into disrepute even when done in chambers. See In re Lokuta, 964 A.2d 988, 1062 (Penn. 2008) ("Respondent's discourteous conduct as being such that brings the judicial office into disrepute is applicable to her conduct in chambers."). Clerk Degnan testified that she was not comfortable entering Judge Ovalles's chambers alone. As a result, she often would ask a male coworker or sheriff to accompany her there. On one occasion, she asked Judge Ovalles if she could enter chambers. He replied, "You can come in and watch me suck on my lollipop." Tr. 727:17-18. The connotation cannot be denied. This comment was rude and distasteful. It clearly minimized the dignity of the judiciary

as it was, at best, both discourteous and undignified. Therefore, the Commission finds by a preponderance of the evidence that such a comment violated Canon 3(B)(4).

Judge Ovalles's undignified and discourteous conduct and comments created a tense atmosphere for court employees, specifically female employees. The conduct was addressed with him by Chief Judge LaFazia. This was not new behavior; it had transpired since his appointment to the bench. A number of witnesses with whom Judge Ovalles interacted on a daily basis, including attorneys and staff, credibly testified that Judge Ovalles had a tendency to "look them up and down." Consequently, these witnesses felt uncomfortable in the workplace. On one occasion, Kanelos testified that Judge Ovalles looked her up and down in chambers. He then stated that he would have to keep his sexual comments to himself. Other clerks, including Rossi, testified that while she wasn't offended, Judge Ovalles would indeed look her up and down. Although there was testimony indicating that in doing so the Judge's intent was as a compliment, the result was to create a "tense and stressful atmosphere in [his chambers] and had a serious negative effect on the ability of [members of his staff] to properly perform their duties." In re Lokuta, 964 A.2d at 1008. The Commission finds by a preponderance of the evidence that such inappropriate conduct violated Canon 3(B)(4).

Judge Ovalles also commented on a clerk's sexual orientation. In response to allegations contained within a complaint filed with the Commission, Judge Ovalles told two separate clerks that he would have no reason to sexually harass the clerk "because she's a lesbian." Discussion of a staff's sexual orientation in such a derogatory manner is inappropriate, undignified, discourteous, and unbecoming of a judge. Judges are held to a higher standard of conduct and should not engage in such discussion of sexual orientation, especially with staff in the workplace (where the issue of sexual orientation is clearly irrelevant). See Geiler v. Comm'n on Judicial

Qualifications, 515 P.2d 1, 8 (Cal. 1973) ("The ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office. It is immaterial that the conduct concerned was probably lawful, albeit unjudicial, or that petitioner may have perceived his offensive and harassing conduct as low-humored horseplay."). The Commission thus finds by a preponderance of the evidence that Judge Ovalles's comments regarding the clerk's sexual orientation constituted a clear violation of Canon 3(B)(4).

b

Attorneys and Litigants

The most flagrant example of Judge Ovalles's undignified and discourteous treatment of female attorneys was his behavior toward Ms. Aitchison. The evidence contained in this record was persuasive and credible. It established that Judge Ovalles consistently chastised Ms. Aitchison in open court, in the presence of other attorneys, litigants, and her own clients. Judge Ovalles publicly humiliated Ms. Aitchison by confining her to the courtroom, and eventually to her seat. On two occasions she was required to ask for permission to use the restroom. Based on the transcripts and evidence, the Commission concludes that Judge Ovalles's behavior toward Ms. Aitchison was unwarranted and egregious.

Judge Ovalles's treatment of Ms. Aitchison is striking for two reasons. First, Judge Ovalles's persistent and pervasive verbal abuse of Ms. Aitchison is certainly undignified and discourteous behavior. Second, Judge Ovalles treated Ms. Aitchison differently than he treated her male counterparts.[48] Attorneys Sgroi, McElroy, and Barrett all testified similarly that they were not treated the same way as Ms. Aitchison and were never confined to the courtroom or their seats. Further, a conscious decision was made within the Office of the Public Defender to

[48] This disparity will be further discussed infra.

replace Ms. Aitchison with a male instead of another female Public Defender. Judge Ovalles's treatment of Ms. Aitchison was neither dignified nor courteous, and accordingly, the Commission finds a violation of Canon 3(B)(4) by a preponderance of the evidence.

Judge Ovalles also exhibited undignified and discourteous behavior off the bench. While waiting in a greeting line at a convocation held in the Licht Judicial Complex, Judge Ovalles interacted with Ms. Clingham. When Ms. Clingham apologized for taking a position in front of him in line, Judge Ovalles declared that he was "enjoying the view from back here." Tr. 616:18-20. Ms. Clingham credibly testified that he did so with a lascivious smile. Statements and demeanor such as these are clearly at odds with the spirit of Canon 3(B)(4). The Commission therefore finds a violation of Canon 3(B)(4) by a preponderance of the evidence.

c

Other Allegations

Judge Ovalles was alleged to have committed two other violations of Canon 3(B)(4) through his treatment of women, neither of which the Commission established by a preponderance of the evidence. The first such allegation concerned his insisting on buying a clerk, Rossi, a drink at a retirement party. While the Commission finds that this event did indeed occur, there was no violation. Second, it was alleged that Judge Ovalles was discourteous when he asked an apparently pregnant litigant—she wasn't pregnant—if she "enjoy[ed] the holidays too much[.]" Tr. 826:2. The woman's attorney, Ms. Hoopis Manosh, described the interaction as "an uncomfortable, very human moment where he said the wrong thing." Id. at 2268:25-2269:1. The Commission believes that Judge Ovalles was actually trying to initiate a friendly exchange with the woman. Accordingly, it was not an instance of undignified or discourteous conduct.

4

Other Attorneys

It was alleged that Judge Ovalles was impatient, undignified, and discourteous to lawyers with whom he dealt in an official capacity, in violation of Canon 3(B)(4). Judges are expected to maintain certain decorum on the bench, even in the face of frustrating circumstances. After all, "The robe a judge wears as he sits upon the bench is not a license to excoriate lawyers or anyone else." Geyh, supra, at § 3.02[1]. Moreover, impatient, undignified, and discourteous conduct on the part of the judge is even more severe when it is directed towards an attorney practicing in that judge's courtroom: "[W]hen the target of a judge's unjustified polemic is a lawyer practicing in the judge's court—the harm to civility may be even more serious. This is for the reason that the judge, speaking from a privileged sanctuary, is acting the bully and dishonoring the robe." Hon. Louis H. Pollak, Professional Attitude, A.B.A. J., 66-67 (Aug. 1998).

Perhaps the most egregious violation of Canon 3(B)(4) with respect to Judge Ovalles's treatment of attorneys occurred when Judge Ovalles held Attorneys Millea and Rafanelli in contempt. Mr. Rafanelli had never experienced any issues appearing before Judge Ovalles prior to being held in contempt. Mr. Millea, on the other hand, had a historically contentious relationship with Judge Ovalles. The Commission believes that Judge Ovalles intended to punish Mr. Millea, and Mr. Rafanelli unfortunately happened to be in the same predicament on the same day. Nevertheless, a judge should avoid expressing a personal animus against any single attorney. Judges have been disciplined for failing to exercise restraint in dealing with attorneys and manifesting animosity against particular attorneys. See In re Seitz, 495 N.W.2d 559, 601 (Mich. 1993). The manner in which Judge Ovalles publicly admonished both attorneys in front of a full courtroom was unnecessary, rude, undignified, and unprofessional.

Commencing contempt proceedings in this instance is another example of "'conduct that include[s] abusive verbal outbursts . . . . and berating or humiliating persons in the presence of others.'" See Disciplinary Counsel v. Squire, 876 N.E.2d 933, 951 (Ohio 2007) (quoting O'Neill, 815 N.E.2d at 294). Judge Ovalles's behavior towards Attorneys Millea and Rafanelli was not patient, dignified, or courteous. Therefore, the Commission finds by a preponderance of the evidence that Judge Ovalles violated Canon 3(B)(4) with his handling of the contempt proceeding.

There were other violations involving attorneys as well. On one occasion, a young attorney appeared in court to observe the status of a motion. As she exited the courtroom at the conclusion of the hearing, a sheriff called out to her. She was advised that Judge Ovalles wished to see her in his chambers. While therein, Judge Ovalles reprimanded the young attorney for attending court for the purpose of observation. Judge Ovalles informed her that he did not like being watched and asked her how she would like it if he came to her workplace and monitored her all day. The young attorney became visibly upset by the comments and elevated tone. While the Commission heard testimony from Judge Ovalles that his purpose of bringing her into chambers was to introduce her to staff, the record does not support such a conclusion. Judge Ovalles expressed remorse for his behavior. The credible evidence before the Commission established that the purpose for his conversation with the attorney was not introduction. The purpose was to determine why she was monitoring him. See Tr. 1305. Judge Ovalles's actions were mean-spirited or vindictive, in violation of Canon 3(B)(4).

In another instance, Judge Ovalles and Attorney Archambault had a dispute during a sidebar conference. It was alleged by Mr. Archambault that based on their disagreement, Judge

Ovalles slammed the case file shut and said, "Fine. You go to trial and then see what you get." Id. at 997:7-8.

The Commission is troubled by what occurred after the sidebar. When Attorney Archambault began to put his objection on the record, Judge Ovalles attempted to prevent him from objecting or creating a record for appeal. In Matter of Duckman, a judge was removed from the bench for his abusive and intemperate behavior, which included preventing attorneys from stating their objections on the record:

> "What is significant for present purposes is both that petitioner dismissed these cases in knowing disregard of requirements of the law, and the abusive, intemperate behavior he manifested in dismissing those cases, at times not permitting the attorney to make a record of an objection either to the disposition or in response to the accusations." Matter of Duckman, 699 N.E.2d at 874.

Creating a record is fundamental and crucial to the vigorous representation of a client. Forbidding an attorney from recording the contents of a disagreement at sidebar—and thereby preventing the attorney from effectively representing his or her client—is vindictive. Moreover, such conduct undermines the judiciary in the eyes of attorneys or litigants and dilutes the fairness of proceedings before the court. Accordingly, the Commission finds by a preponderance of the evidence that Judge Ovalles violated Canon 3(B)(4) in this instance.

Another example of vindictive behavior occurred when Judge Ovalles instructed his sheriff to bar the Cranston prosecutor from the courtroom. Unbeknownst to Judge Ovalles, Mr. Peltier was covering for Mr. Millea that morning—a last-minute substitution. Mr. Peltier arrived approximately two minutes after the 9:00 a.m. court start time and was not allowed into the courtroom even though others were free to enter and exit the courtroom. Mr. Peltier was

eventually allowed into the courtroom at approximately 9:20 a.m. He had missed the first call of the calendar and therefore did not know which of his cases were ready that morning.

Of significance is the fact that Judge Ovalles knew Mr. Millea prosecuted on Wednesdays. Therefore, the Commission finds that Judge Ovalles instructed the sheriff to prevent the Cranston prosecutor from entering the courtroom based on the assumption that Mr. Millea would be that prosecutor, per usual. This is clearly vindictive behavior. Furthermore, it is a well-settled principle "that the public has a right of access to judicial proceedings. Courtrooms are presumptively open to the public[.]" In re Judicial Qualifications Comm'n Formal Advisory Opinion No. 239, 794 S.E.2d 631, 639 n.18 (Ga. 2016). Judges have been disciplined for violating this general principle and failing to keep their courtrooms open to the public. See, e.g., In re Inquiry Concerning Holien, 612 N.W.2d 789, 792 (Iowa 2000). Additionally, unjustified expulsions from the courtroom are sanctionable. See Squire, 876 N.E.2d at 951; Torres, 844 A.2d at 162. Not only were Judge Ovalles's actions towards Attorney Peltier impatient, undignified, and discourteous, but they are also of the type that undermines public confidence in the judicial system. See In re DiLeo, 83 A.3d at 24. Accordingly, the Commission by a preponderance of the evidence finds that such conduct was in violation of Canon 3(B)(4).

Finally, Judge Ovalles was alleged to have committed two other violations of Canon 3(B)(4) through his interactions with attorneys, both of which concerned his treatment of Mr. Millea. First, it was alleged that Judge Ovalles punished Mr. Millea by not allowing him to approach the bench to sidebar as a blanket policy. The Commission found Judge Ovalles's testimony regarding Mr. Millea to be credible. Based on the blatant disrespect Mr. Millea had shown in the past—both to Judge Ovalles and to the sanctity of the court—the Commission finds

that Judge Ovalles was justified in not permitting Mr. Millea to sidebar and requiring that all communications between himself and Mr. Millea be done on the record. Furthermore, there is not an absolute right to sidebar; rather, it is in the judge's discretion whether to permit sidebar conferences. See People v. Fudge, 875 P.2d 36, 55 (Cal. 1994) ("There is, of course, no right to approach the bench to argue points of law."). Second, it was alleged that Judge Ovalles violated Canon 3(B)(4) by holding Mr. Millea's cellphone after the phone rang in court. Mr. Millea testified that Judge Ovalles kept the cellphone in his possession for an extended period of time and that the Judge raised his voice when talking to Mr. Millea in chambers. Judge Ovalles and Sheriff Haye both testified that Mr. Millea's demeanor in chambers was disrespectful. Judge Ovalles also testified that Mr. Millea used his cellphone in court on multiple occasions despite being asked not to do so. While the Commission does not endorse the confiscation of property, the Commission finds that Judge Ovalles was justified in holding Mr. Millea's phone. Judges have the right to institute courtroom policies and procedures, which may include the regulation of the use of cell phones. Therefore, the Commission has not sustained its burden of proving either of these violations by a preponderance of the evidence.

5

Workplace Conduct

Chief Judge LaFazia experienced difficulty in managing the relations between Judge Ovalles and court staff. Whether regarding his mistreatment of employees or their observations of his apparent misconduct, Chief Judge LaFazia was called upon to address many complaints about Judge Ovalles. Her role as Chief Judge was occupied by counseling Judge Ovalles. When she gave him opportunites, she came to change her mind. She assigned him to his first full-time criminal calendar, and mere months later needed to remove him given the volume of complaints.

She refused to put him on certain calendars out of fear that he—a judge—could not effectively preside over them. She was required to reassign judges to accomplish this. Chief Judge LaFazia inherited administrative chaos in the form of Judge Ovalles.

a

Treatment of Court Employees

Judge Ovalles's treatment of court employees was disrespectful. "A judge also violates Canon 3 for being rude or discourteous toward other justice system personnel with whom the judge deals in his official capacity." Charles Gardner Geyh, Judicial Conduct and Ethics, § 3.02[5] (5th ed. 2013). Judge Ovalles exhibited undignified conduct on the bench on a number of occasions, thereby affecting the ability of court employees to perform their jobs.

Many clerks testified that Judge Ovalles had a tendency to leave the bench abruptly. Rossi stated that Judge Ovalles "stormed" off the bench when he was frustrated with an attorney or litigant or overwhelmed by the caseload. Tr. 639:24-640:1. Plante observed Judge Ovalles suddenly leave the bench approximately a dozen times between 2007 and 2010. Id. at 2014:21-22. During one particular incident in Newport County, Judge Ovalles abruptly left the bench upon becoming upset. When Judge Ovalles took the bench, the sheriff did not recite the opening prayer in a way that was satisfactory to Judge Ovalles. Judge Ovalles muttered something to the sheriff, but the sheriff did not understand why he was so visibly upset. When the sheriff then asked Judge Ovalles if he wanted him to recite the prayer, Judge Ovalles told him to call his sergeant and left the bench unannounced for approximately forty-five minutes. Id. at 791:4-22. The courtroom was particularly congested that day and people were standing "shoulder to shoulder." Id. at 1343:14-25; 1345:13-17.

When Judge Ovalles abruptly left the bench for extended periods of time, he did not inform anyone in the courtroom when he would return. The manner in which Judge Ovalles left the bench was not patient, dignified, or courteous, as required by Canon 3(B)(4). Of course a judge has the autonomy to leave the bench if need be; however, Judge Ovalles did not compose himself quickly or signal how long the recess would last, which tended to leave everyone in the courtroom waiting for an extended period of time. The manner in which Judge Ovalles left the bench was both impatient and undignified. See O'Neill, 815 N.E.2d at 295; In re Barr, 13 S.W.3d at 539. Accordingly, the Commission finds by a preponderance of the evidence that the manner in which Judge Ovalles abruptly left the bench violated Canon 3(B)(4).

It was also alleged that Judge Ovalles displayed impatient, undignified, and discourteous conduct when it came to his interactions with clerks regarding their use of the date-stamp. One such situation manifested itself in the Craddy case with Judge Ovalles's exchange with Kanelos concerning the date-stamp. Rossi had received a motion pertaining to the Craddy matter during the afternoon of Friday, July 25, 2014. She date-stamped the document accordingly. However, she could not locate the court file. Rossi therefore gave the motion to Kanelos on the following Monday morning, the day that the matter was scheduled to be heard. Once Judge Ovalles took a recess, Kanelos asked Sheriff Kloc to bring the motion to Judge Ovalles. Judge Ovalles told Sheriff Kloc to instruct Kanelos to date-stamp the document Monday, July 28, 2014. Kanelos advised that she could not do that. Judge Ovalles again sent the document back to Kanelos with the instruction to stamp it with Monday's date. Once he retook the bench, Judge Ovalles told the prosecutor that he never received the motion. Kanelos began making disapproving expressions with her face. Judge Ovalles asked her, "Do you have something to say to me?" Tr. 879:17-20. After a few moments, Kanelos stood in open court and stated:

> "[KANELOS]: You know, Your Honor, for the record I'd like to state on that Craddy matter that we were trying to give the judge paperwork on the Craddy matter.
> "JUDGE OVALLES: Oh, my goodness.
> "[KANELOS]: And he wanted me to change the date on this to today's date and it was date-stamped for Friday.
> "JUDGE OVALLES: Let's take a recess, please." Ex. 1 at 191.

Judge Ovalles then left the bench, and Kanelos did not work for him anytime thereafter.

While the Commission acknowledges that deliberately backdating a document is judicial misconduct, it believes that Judge Ovalles may have simply been confused as to why he was receiving the document a few moments before the matter was to be heard. See Wenger v. Comm'n on Judicial Performance, 630 P.2d 954, 970 (Cal. 1981) ("We agree with the master that petitioner's motivation for backdating the affidavit is not clear. It was, though, done deliberately . . . . We infer that whatever petitioner's purpose it was not the faithful discharge of judicial duties. Backdating the affidavit was willful misconduct."). It is unclear whether Judge Ovalles's intentional objective was to forge the date of the document or if he simply thought the motion should reflect Monday's date because that was when he received it. Although this exchange certainly caused waves throughout the Kent County Clerks' Department and necessitated internal reorganization, the Commission cannot conclude that Judge Ovalles was at fault in this instance. On the contrary, the Commission finds that Kanelos's conduct in open court was extremely inappropriate. The Commission does not find that this incident involving the date-stamp amounted to a violation of Canon 3(B)(4).

That was not, however, the only alleged violation stemming from Judge Ovalles's desired use of a date-stamp. On one occasion, Gonzalez was assigned to Judge Ovalles. When Gonzalez dated a document, Judge Ovalles requested the court stamp. Gonzalez tried to explain that the court stamp is an electronic stamp that belongs in the Clerk's Office, but Judge Ovalles

did not accept that explanation and got off the bench. Gonzalez went to chambers to further explain why she was unable to obtain the court stamp, and Judge Ovalles responded by yelling at Gonzalez until she was brought to tears:

> "So when I went into the chambers, the chamber's door, they were open, I knocked, and I said, 'Judge, may I see you?' I said, 'I just want to explain to you my reasoning why I cannot,' but he didn't let me finish. He turned around, he was taking his robe off, and he is pointing with his finger to my face, and he said, you know, 'You just sit there, you don't do your job, you don't help me in the courtroom, and you always fight me.' So I was – I was very upset that he said that to me, and I left – I left the chambers." Tr. at 801:9-19.

Gonzalez was too upset to return to the courtroom, and another clerk was assigned to work with Judge Ovalles as a result of this exchange. Judges have been disciplined for abusive conduct toward court employees that "effectively denied the right to function in the office." Geyh, supra, at § 3.02[5]. In In re Inquiry Concerning a Judge re Graziano, the Supreme Court of Florida removed a judge for, among other things, using insulting or threatening language to court employees. 696 So.2d 744, 747 (Fla. 1997). Judge Ovalles's treatment of Gonzalez interfered with her ability to effectively complete her tasks as a court clerk. Gonzalez could not continue to work with Judge Ovalles after this incident, and a reassignment of other clerks was required. Judge Ovalles's behavior affected the efficiency of the District Court. The District Court is a busy court, and the effect of his behavior was to sever the artery of the judiciary. As a result, the Commission finds by a preponderance of the evidence that Judge Ovalles's mistreatment of Gonzalez violated Canon 3(B)(4).

b

Observations of Court Employees

i

Napping

Judge Ovalles's behavior off the bench was equally undignified. Judge Ovalles admitted that he occasionally napped in his chambers during lunchtime. Although he maintained that no one ever witnessed him napping, many court employees credibly testified to the contrary. Avella, Cote, Palazzo, Kanelos, Smith, and Enright all observed Judge Ovalles lying either on his desk or on a chair with his feet propped up on his desk. The Commission finds no issue with Judge Ovalles's napping in the privacy of his chambers during lunchtime. It is a judge's prerogative how to use the lunch break. However, the Commission is troubled by Cote's testimony that Judge Ovalles asked to be awakened when a certain matter was ready. This incident took place after 2:00 p.m.—after the lunch break. It is certainly not any court employee's duty to wake a sitting judge from a nap. When Cote did not, in fact, wake Judge Ovalles, he admonished him, stating, "I told you to get me." Tr. 693:12-22. Sleeping during normal working hours, as witnessed in the workplace by court employees, is undoubtedly undignified behavior prohibited by Canon 3(B)(4).

In addition, Judge Ovalles napped in his chambers while he was scheduled to be on the bench at 2:00 p.m. for a trial. The court staff and attorneys waited in the courtroom for approximately forty minutes for Judge Ovalles to arrive, but he failed to appear. At the request of the attorneys, Kanelos went to Judge Ovalles's chambers where she credibly testified that she observed him lying on his desk with a handkerchief over his face. After being told that the attorneys had been waiting for him, Judge Ovalles stated, "I guess I'm not going to get my

afternoon nap in." Id. at 862:13-863:2. This conduct creates an image of aloofness and utter disregard for the duties of the judiciary. It was extremely discourteous to the attorneys, litigants, and staff. Furthermore, this was not an isolated incident; rather, it was common knowledge that this was Judge Ovalles's day-to-day activity. See In re Shea, 759 So.2d 631,638 (Fla. 2000) ("The totality of the proof in the record supports the conclusion that [the judge's] conduct in too many instances was not to the standard required of a member of the judiciary."). This clearly corrodes the dignity of the judiciary. Such conduct "seriously undermined public trust in the judicial office." Id. Accordingly, the Commission finds by a preponderance of the evidence that Judge Ovalles's napping during working hours, to the knowledge of others, was a violation of Canon 3(B)(4).

ii

Attire

Judge Ovalles admitted that he wore slippers in chambers and that others had seen him in such. Cote and Palazzo testified to that effect. Additionally, Enright testified he too saw Judge Ovalles wearing slippers, as well as what may have been a bathrobe on one occasion. Tr. 775:5-776:1. There is clearly no issue with Judge Ovalles wearing slippers or other comfortable footwear in chambers. Although this may be uncharacteristic judicial behavior, it clearly does not rise to the level of a violation of Canon 3(B)(4).

The Commission is more alarmed by the fact that on multiple occasions, court staff observed Judge Ovalles in chambers with his pants unbuttoned and unzipped. Kanelos testified that she twice observed Judge Ovalles with his pants unzipped in chambers. In both instances, Kanelos first knocked on Judge Ovalles's door, was instructed to enter, and found Judge Ovalles sitting at his desk with his pants undone. Id. at 864:9-19; 891:21-22. In addition, Rossi also

witnessed Judge Ovalles with his pants unbuttoned in chambers two times. Id. at 647:21-22. Judge Ovalles addressed this issue by denial and with the contradicting medical evidence indicating digestive issues. Regardless of Judge Ovalles's medical issues, it is totally improper to allow court employees or anyone that Judge Ovalles has contact with in the workplace to view him in a partial state of undress. This behavior undermines the public perception of the judiciary and the dignity of judicial office. See In re Shea, 759 So.2d at 638. Accordingly, the Commission finds by a preponderance of the evidence that Judge Ovalles violated Canon 3(B)(4) by allowing court staff to enter his chambers and observe him with his pants unbuttoned and unzipped.

Mr. DeSisto further alleged that Judge Ovalles removed his pants in chambers. On April 23, 2015, Parker Gavigan published his investigative report containing the lurid details of Judge Ovalles's removing his pants in chambers. Gavigan testified before the Commission that he had received such details from Kanelos. Tr. 2222:12-2223:14. Kanelos, however, testified that she never said anything to Gavigan about Judge Ovalles removing his pants in chambers "because I never saw him with his pants off." Id. at 974:2-3. Also according to Gavigan, Attorney Stephen Archambault confirmed to him that court employees had seen Judge Ovalles in his chambers with no pants on. Id. at 2225:4-13. Archambault, on the other hand, did not think he would have said that to Gavigan given Archambault had no basis for such knowledge. Id. at 1039:13-1040:20.

Regardless, in its Notice, the Commission alleged that Judge Ovalles removed his pants in chambers. Notice ¶ 13(e). Jerome Smith, the former Chief Clerk of District Court, testified that on two occasions—once in Kent County and once in Providence County—he entered Judge Ovalles's chambers and found him with his pants off, wearing only boxers. Tr. 1240:7-22;

1243:20-1244:5. Judge Ovalles denied ever having his pants completely removed in chambers and testified that Smith's testimony was untrue. Id. at 1359:8-16. Judge Ovalles explained as follows:

> "When this matter – when we were informed of Mr. Smith was going to be a witness in this matter after January 20 or so, one thing I started thinking about this gentleman, and I said I never had any interactions with this guy. It never got to his level. Anything that had to do with the clerks was Ms. Lorraine Alfonso who took care of it, excuse me. He testified that he came down to Kent to see me. This fellow not once ever came down to Kent to see me. You got to picture him another ten years younger, the way he's dressed, debonair dress, he didn't have much time for, you know, newly admitted judge like myself. He did not come down to chambers in Kent, and he did not deliver phone messages for Ms. Tetreault to my chambers during the lunch hour to see me in Providence. No, it's a lie." Id. at 1359:19-1360:8.

The Commission has difficulty with the means by which Smith came to testify at the hearing on February 7, 2017. Smith testified that he attended a political fundraiser on January 18, 2017. Id. at 1266:25-1267:5. There, Senator Ciccone asked Smith if he had been subpoenaed as part of the investigation into Judge Ovalles's alleged misconduct. Id. at 1263:15-23. At that point, Smith had no reason to believe he would be a witness at the hearing and did not know why Ciccone was asking him about that possibility. Id. at 1263:24-1264:6. Meanwhile, Senator Ciccone expressed his surprise that Smith had not already been subpoenaed. Id. at 1264:7-15. After leaving the fundraiser, Smith was informed that Mr. DeSisto wished to speak with him as part of the Commission's investigation. Id. at 1265:15-20. Thereafter, Smith noticed that he had missed a call and received a message from Mr. DeSisto while Smith was at the fundraiser. Id. at 1265:17-1266:2. The next day, Smith returned Mr. DeSisto's call. Id. at 1266:3-5.

The Commission issued its Notice to Judge Ovalles on December 7, 2015. Over one year passed before Smith was contacted by Mr. DeSisto. Mere weeks later, Smith was testifying before the Commission. His testimony was the only evidence presented to the Commission concerning Judge Ovalles's removing his pants in chambers. At the same time, Judge Ovalles was steadfast and firm in his denial of doing so and in his repudiation of Smith's testimony. Without reaching the issue of Smith's credibility, the Commission finds credible Judge Ovalles's testimony on this issue. Therefore, the Commission has not sustained its burden of proving by a preponderance of the evidence that Judge Ovalles removed his pants in chambers.

6

Conclusion

In every aspect of his work environment, Judge Ovalles was disrespectful. The mosaic created by his entire judicial career depicts "a pattern of discourteous, impatient, and undignified behavior that not only poisoned the immediate environment but extended far beyond as well. . . . [His] conduct in the courtroom certainly had the same deleterious effect on the attorneys, law enforcement officers, and other individuals indispensable to the administration of justice." O'Neill, 815 N.E.2d at 294-95. The Commission notes that—despite the many violations of Canon 3(B)(4) proven by a preponderance of the evidence—there were allegations that, while factual, can be categorized as nothing more than simply odd behavior. These include: tossing files to clerks; telling sheriffs to maintain eye contact; instructing clerks to look him in the eye while calling cases and handing him files; chastising a court employee for applying chapstick in front of him; and preventing a disabled litigant from crossing the bar in the courtroom out of fear the litigant's cane was a weapon. Such conduct is consequential when considered that it

occurred consistently throughout Judge Ovalles's judicial tenure. As the Florida Supreme Court explained:

> "We do point out that conduct unbecoming a member of the judiciary may be shown by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary." As the hearing panel's findings and the record demonstrate, [the judge] engaged in a pattern of conduct in which he acted with hostility towards attorneys, court personnel, and fellow judges. The totality of the proof in the record supports the conclusion that [the judge's] conduct in too many instances was not to the standard required of a member of the judiciary." [The judge's] lack of respect and temperament in dealing with others with whom he had contact while he served as a judge seriously undermined public trust in the judicial office. In re Shea, 759 So. 2d at 638 (citing In re Kelly, 238 So.2d 565, 566 (Fla. 1970); In re Graham, 620 So.2d 1273 (Fla. 1993)).

D

Canon 3(B)(6)

Judicial officers are held to a higher standard and although certain behavior may not rise to the level of a Title VII claim of sexual harassment, that same behavior may indeed be violative of the Code of Judicial Conduct. See Matter of Seaman, 627 A.2d 106, 110 (N.J. 1993) ("We must state, prefatorily, that the inquiry before the Court is not whether respondent's behavior constituted sexual harassment as such. Although undoubtedly all forms of behavior that cross the legal threshold of sexual harassment would constitute judicial misconduct, many forms of offensive interpersonal behavior that would violate the Code of Judicial Conduct would not meet the legal definition of sexual harassment."). Sexual harassment by definition need not be sexual in nature; it can include offensive remarks about a person's sex. See Williams v. Gen. Motors Corp., 187 F.3d 553, 564-65 (6th Cir. 1999). While it may become unlawful when it is so frequent or severe as to create a hostile work environment, the Commission is not tasked to

determine whether the conduct carried civil or criminal liability; rather, it must determine whether it met the standard required of a Rhode Island judge. See Matter of Seaman, 627 A.2d at 110.

Members of the judiciary are not immune from the legal and societal ramifications that emanate from improper interactions that reflect a bias or prejudice based upon gender.[49] Any misconduct by a judge, gender-based in nature, is treated with solemnity, "sexual harassment by a judge 'debilitates its victims and has, as its ultimate effect, the . . . subordination of women.'" In re Subryan, 900 A.2d 809, 820 (N.J. 2006) (quoting Matter of Seaman, 627 A.2d at 123). The commentary to Canon 3(B)(6) suggests that violations of this Canon should be analyzed under an objective standard, "A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment." A judge's subjective intent is not the measure of determining whether there has been a violation of Canon 3(B)(6); rather, the Commission views a judge's conduct based on an objective standard.

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[49] Canon 3(B)(6) mirrors ABA Model Rule 2.3(B). Comments 2-3 on Rule 2.3 provide further clarification as to what constitutes bias or prejudice:

> "[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.
>
> "[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation."

"[P]ublic confidence in judges is essential to maintaining the legal system." Matter of Seaman, 627 A.2d at 121. As a result, "misconduct by a judge brings the office into disrepute and thereby prejudices the administration of justice." Id. Judicial conduct constituting sex discrimination in the workplace is particularly troubling because of the intrinsically authoritative position of a judge. See In re Subryan, 900 A.2d at 819 ("[T]he judge's conduct is unacceptable in any workplace setting, and that it is particularly troubling in the context of the judge-law clerk relationship because of the inequality inherent in that relationship."). Sexual harassment in the judiciary is considered the gravest form of gender discrimination. Matter of Seaman, 627 A.2d at 122 ("Clearly, respondent has engaged in a most serious form of misconduct. That misconduct involves not only the mistreatment of a person in his employ, but flagrant disregard for the law. Canon 3A(4) directs explicitly that [a] judge . . . should not discriminate because of . . . sex. Sexual harassment of women by men is among the most pervasive, serious, and debilitating forms of gender discrimination.").

Sex discrimination towards attorneys is a severe violation of the Canons of Judicial Ethics as it demeans the reputation of the entire judiciary. One Supreme Court condemned the actions of a District Court Judge who repeatedly made lewd comments to female attorneys and court employees alike, stating

"A judge who sexually harasses female attorneys and staff members, who uses his judicial office to harm the law practice of an attorney with whom the judge disagrees on moral issues, and who uses his judicial office for personal gain . . . has fallen well short of those high standards. Such improprieties are precisely the type of misconduct that can undermine the public's confidence in

the judiciary." In re Henderson, 343 P.3d 518, 529 (Kan. 2015).[50]There, the court noted that respondent's conduct would not be tolerated in the private sector either: "[t]he Respondent's conduct in making repeated inappropriate and offensive comments to female staff members and to female attorneys appearing in his court is particularly troubling. Even in the private sector, the law would not tolerate such a hostile work environment." Id. at 529. Judges are held to a greater standard than private citizens in their dealings with members of the bar. See id. ("But we have set the bar higher for the courts, declaring that '[h]eightened sensitivity to respectful relationships in the Kansas judicial workplace is mandatory.'" (quoting In re Alvord, 847 P.2d 1310-1314 (Kan. 1993))).

Judge Ovalles's treatment of women was discussed at length in the discussion of Canon 3(B)(4), supra at 163 et seq.; notwithstanding that conclusion, the Commission deliberated and found additional violations of Canon 3(B)(6), which will be discussed infra. Five women, including female attorneys and court employees, credibly testified that Judge Ovalles engaged in conduct that amounted to a pattern of sexually harassing behavior. The testimony presented to this Commission included credible testimony from Clingham, Kanelos, Rossi, Schmeider and Degnan, all of whom stated that Judge Ovalles looked them up and down in such a way that made them feel uncomfortable. In some instances, there was corroboration of these events by

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[50] In In re Henderson, the Supreme Court of Kansas ordered the respondent to a ninety-day unpaid suspension for his improper conduct towards female attorneys. 343 P.3d at 528. A female attorney alleged that the respondent made an inappropriate comment to her in which he stated that after his wife gave birth, the doctor asked him if he wanted an extra stitch in his wife for the respondent's "pleasure." Id. at 520. Other inappropriate comments included: (1) remarking on the alleged sexual tension between a female and a male attorney; (2) claiming that a female attorney liked to "have a lot of sex"; and (3) stating that a court employee was experiencing back pain because she had been with her boyfriend for the weekend. Id. at 521. The court cited the "high[e]r standard" applicable to judges rather than those in the private sector, and the respondent's failure to appreciate the impropriety of his conduct as factors in its decision to impose a ninety-day unpaid suspension and educational requirement as sanctions. Id. at 529.

other court employees. For example, Cote credibly testified that female clerks would ask him to accompany them to Judge Ovalles's chamber: "a female would say, you know, 'Judge Ovalles is calling me into his chamber, would you mind coming with me? I don't feel comfortable.'" Tr. 694:20-22. Judge Ovalles's responses were often glib. He testified that he did not look any women up and down in the manner to which they testified, "I do not because I did not look at them, any single one of them up and down." Tr. 1276:16-17. Regardless of Judge Ovalles's testimony, the standard under which the Commission is tasked with finding a violation under Canon 3(B)(6) is an objective one. The Commission finds that female attorneys or court employees reasonably perceived Judge Ovalles's looks as sexual in nature. See Canon 3(B)(6) Commentary. Accordingly, the Commission finds a violation of Canon 3(B)(6) by a preponderance of the evidence.

On one occasion, Judge Ovalles told Clingham that he was "enjoying the view" while standing behind her in line. Clingham was offended by this exchange. Courts disdain sexual harassment. Indeed, courts scorn the fact that "women in the courts in any capacity may find themselves subjected to inappropriate, overly familiar, and demeaning forms of address; comments on their appearance, their clothing, and their bodies; sexist remarks and jokes; and unwelcome verbal and physical advances." Geyh, supra, at §3.04[2]. A judge commenting on the physical attributes of an attorney, even while outside the courtroom, is never appropriate. Judges have been disciplined in the past for making remarks about the physical appearance of female attorneys. See id. (citing In re Doolittle, Unreported Determination (N.Y. Comm'n, June 13, 1985) ("The New York commission found that a judge violated Canons 1, 2, and 3(A)(3) by making numerous improper comments to female attorneys, referring to their appearance and physical attributes.")). Although Judge Ovalles's comment in this instance may not rise to the

level of sexual harassment, the Commission finds that this behavior violates Canon 3(B)(6) by a preponderance of the evidence. See Matter of Seaman, 627 A.2d at 110.

Clingham testified to another exchange with Judge Ovalles. In this instance the Judge referred to her as a female attorney in a manner which she perceived as derogatory. Judge Ovalles stated, "Ms. Clingham, when I'm sitting on this calendar, I am a judge of the Superior Court, and I expect you to treat me with respect. I treat you like I treat any other female attorney, and I expect you to treat me like [you] treat any other Judge of the Superior Court." Tr. 600:22-601:2. This statement is an outright and absolute insult to all women. It runs contrary to the role of the judiciary which is to administer justice fairly and equally without regard to race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status...." Insinuating that female attorneys should be accorded a different level of respect than male attorneys is an absolute violation of Canon 3(B)(6).

This most serious form of judicial misconduct not only undermines the courtesy and dignity of the court, but also "undermine[s] an attorney's role in a courtroom by indicating that she is not to be taken seriously and may hinder her from properly representing her client." See In re Blangiardo, Unreported Determination at 3 (N.Y. Comm'n, July 23, 1987). A statement such as this "is among the most pervasive, serious, and debilitating forms of gender discrimination." Matter of Seaman, 627 A.2d at 122. This exchange in chambers demonstrates a clear sexual bias towards Clingham because of her gender. Accordingly, the Commission finds a violation of Canon 3(B)(6) by a preponderance of the evidence in this instance.

Another example of a completely inappropriate statement was credibly testified to by Degnan. Degnan testified at the public hearing concerning an incident that occurred after she knocked on Judge Ovalles's chamber door to which he replied, "'You can come in and watch me

suck on my lollipop'" Tr. 727:17-18. Degnan testified that she perceived this comment to be made in a sexual context and that she was offended by it. Conversely, Judge Ovalles testified, "I do not remember saying that." Id. at 1289:8. He also stated, "if the person is genuinely enjoying a candy, lollipop, and it's a fact of the circumstance, I think different - - different mindset can follow subsequent to a statement like that." Id. at 1290:6-9. Judge Ovalles may have actually been eating a lollipop at that time and may not have had a sexual intent when making this comment; however, Judge Ovalles's subjective intent is of no moment here. Judge Ovalles should have known that such a comment is highly offensive and vulgar. The Commission, bound to rely on the objective record, concludes that Judge Ovalles made the improper statement and that it was highly offensive. As previously stated, Canon 3(B)(6) is violated when someone reasonably and objectively perceives the Judge's conduct to be indicative of sexual harassment. See Matter of Seaman, 627 A.2d at 122. Accordingly, the Commission finds a violation of Canon 3(B)(6) by a preponderance of the evidence in this instance.

On another occasion, Judge Ovalles commented on the sexual orientation of a clerk to two other clerks in the workplace. Judge Ovalles commented that he would have no reason to sexually harass this particular clerk "because she's a lesbian." Although Judge Ovalles did not make this comment in open court, judges have been disciplined for inappropriate conduct occurring off the bench and "judicial duties" are not limited to those duties carried out from the bench. See Matter of Deming, 736 P.2d 639, 657 (Wash. 1987). The court in Matter of Deming found that the judge's comments were particularly serious because, "the victims of Judge Deming's inappropriate actions were women who had to appear in his courtroom or were under his supervision and control." Id. Commenting on the sexual orientation of a subordinate court employee to other employees may not meet the legal definition of sexual harassment; however,

meeting this definition is not required under Canon 3(B)(6). One Supreme Court ruled that a judge's offensive comments to court staff did not have to meet the legal definition of sexual harassment in order to constitute an ethics violation; "Rather the issue is whether such a continuing pattern of offensive comments constitutes willful misconduct in office and conduct prejudicial to the administration of justice." See Mississippi Comm'n on Judicial Performance v. Spencer, 725 So.2d 171, 181 (Miss. 1998). The text of Canon 3(B)(6) clearly reads that "A judge shall not . . . . manifest bias or prejudice . . . based upon . . . sexual orientation." Here, Judge Ovalles commented on the sexual orientation of a court employee in an inappropriate manner to other court employees who testified that they were offended by his comment. Moreover, this instance is just another example of inappropriate and offensive behavior in the workplace. Accordingly, the Commission finds a violation of Canon 3(B)(6) by a preponderance of the evidence.

It was also alleged that Judge Ovalles violated Canon 3(B)(6) by making a comment to court clerk DeCesare, stating, "I'm the man, just listen to me, and we'll be okay." Tr. at 707:10. Although this comment may have been offensive to DeCesare, understandably so, the Commission does not believe that this rises to the level of "bias or prejudice" based upon sex. Similarly, it was alleged that Judge Ovalles violated Canon 3(B)(6) when he would say, "Looking good Ms. Rossi" to court clerk Rossi. Rossi testified that she was not offended by this, and Judge Ovalles himself testified that this comment was usually in response to Rossi complimenting his clothes. The Commission finds no violation of Canon 3(B)(6) by a preponderance of the evidence in either instance.

E

Canon 3(B)(8)

Canon 3(B)(8) prohibits a judge from initiating, permitting, or considering communications with litigants outside the presence of their counsel. A judicial officer's communications with litigants without the presence of their counsel are troubling:

> "Although some judges may believe in good faith that they can personalize or demystify the judicial system through direct contact with the parties, the more common result is some form of prejudgment or other unfair advantage." Geyh, supra, at § 5.03.

Canon 3(B)(8)(f) provides, "A judge should not permit private interviews, arguments or communications designed to influence his or her judicial action, and ordinarily all communications of counsel to the judge should be made known to opposing counsel." The commentary to Canon 3(B)(8) provides further clarification, "A judge must not independently investigate facts in a case and must consider only the evidence presented.

Judges have been disciplined for communications with litigants when the communication influences the judge's decision and is outside the presence of counsel. See e.g., In re LaBombard, 11 N.Y.2d 294 (2008); Mississippi Comm'n on Judicial Performance v. Gunn, 614 So.2d 387 (Miss. 1993); In re Rabren, Unreported Judgment, Ala. Ct. of the Judiciary (COJ-18 1986); Matter of Yengo, 371 A.2d 41 (N.J. 1977).

It is alleged that Judge Ovalles violated Canon 3(B)(8) when he visited a patient for which he signed a DNR/DNI order. While presiding over the mental health calendar, Judge Ovalles was presented with the first DNR order given to any Judge for consideration. The gravity of this case was recognized by the parties. A hearing was held on December 18, 2013. Judge Ovalles indicated that he wanted to visit the patient. At the hearing, he exchanged telephone information with counsel, and a meeting was to be arranged so that he could visit the

patient in the presence of counsel. A lengthy exchange took place on the record regarding the scheduling of the meeting at the group home. Counsel stated that they made arrangements to be at the nursing home over the weekend, but there is no evidence that Judge Ovalles was made aware of these plans, and he was not present at the home that weekend.

While there was never testimony concerning a meeting that Judge Ovalles missed, the Commission is more troubled by the fact that Judge Ovalles went to the nursing home unannounced and unaccompanied the following week and sat by the patient's bed. There was no notice to the counsel of this meeting. Even without knowing the nature of the communication between Judge Ovalles and the patient, a purpose of the visit was to consider whether or not to uphold the DNR/DNI order—thus to influence his decision, and as such, it is a clear violation of Canon 3(B)(8) and 3(B)(8)(f). While Judge Ovalles may have visited the patient out of concern and compassion, such communications, and the independent investigation of facts in a case, are prohibited under the Canon. Accordingly, the Commission finds that Judge Ovalles violated Canon 3(B)(8) when he visited the patient without providing notice to the patient's counsel.

F

Canon 3(B)(9)

Canon 3(B)(9) requires a judge to dispose of judicial matters promptly, efficiently and fairly. The commentary to this canon emphasizes the need to have issues resolved "without unnecessary cost or delay." The Commission acknowledges that continuances are an acceptable aspect of civil and criminal litigation. Furthermore, the promptness of a disposition depends on the matter before the court. In addition, judges are granted leeway in how they decide to oversee matters in their courtroom. Any differences in style, however, "must always result in justice administered according to law and must be in accord with minimum standards of propriety." In

re Barr, 13 S.W.3d at 539. When a judge does not dispose of judicial matters as promptly as the matter requires, a shadow of injustice is cast upon the entire judicial system: "In addition to depriving quick and certain justice to the litigants in those cases, a judge reinforces the negative images of the judicial system reflected in such aphorisms as 'justice delayed is justice denied.'" Geyh, supra, at § 6.02.

While the State's interest in resolving cases promptly ensures just and prompt punishment for violations of the law, a criminal defendant's interest in having his or her case resolved with due process of law is paramount. See, e.g., Cooper v. Oklahoma, 517 U.S. 348, 367 (1996) ("While important state interests are unquestionably at stake, in these latter cases the defendant's fundamental right to be tried only while competent outweighs the State's interest in the efficient operation of its criminal justice system."). For many defendants, continuances result in collateral consequences. For instance, a continuance may result in another day out of work, completing the difficult task of getting to the courthouse by public transportation, or finding another caregiver for someone who is dependent on them. On many occasions, such continuances were needless, obvious, and unfair.

Unnecessary continuances may place criminal defendants' cases under the greater specter of the court and subject them to the limitations and conditions of their bail for a longer period of time. It could also affect their ability to obtain housing, gain employment, or be accepted to a school among other psychological harms. See Doggett v. United States, 505 U.S. 647, 654 (1992) ("We have observed in prior cases that unreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including oppressive pretrial incarceration, anxiety and concern of the accused, and the possibility that the [accused's] defense will be impaired by dimming memories and loss of exculpatory evidence.") (quoting

Barker v. Wingo, 407 U.S. 514, 532 (1972)) (internal quotation marks omitted). Here, the most exposed members of our society, the indigent and mentally ill, suffered the consequences of Judge Ovalles's unconventional courtroom procedures.

1

District Court

The Commission alleges that Judge Ovalles inhibited the rights of attorneys and litigants in his courtroom and unduly delayed the resolution of matters before him through the implementation of unreasonable courtroom procedures. This is particularly true in the areas affecting the most vulnerable. Rebecca Aitchison credibly testified on this point. There is no dispute that Judge Ovalles's interest was to open his courtroom at 9:00 a.m. Efficiency and productivity were his daily goals, which are clearly expected from a court handling 67,000 new filings a year. See Tr. 1675:7. Judge Ovalles meticulously focused on the arrangement and beseeching nature of his daily calendar. Notwithstanding, the pretrial and trial procedures employed by Judge Ovalles lacked fairness as he focused on efficiency as the sole measure of productivity.

Sanctionable misconduct in connection with case dispositions for dismissing cases without notice or an opportunity for the prosecution to be heard has been warranted in other jurisdictions. Matter of Duckman, 699 N.E.2d at 874. In one case, the Court of Appeals of New York found the judge's courtroom demeanor most compelling:

> "What is significant for present purposes is both that petitioner dismissed these cases in knowing disregard of requirements of the law, and the abusive, intemperate behavior he manifested in dismissing those cases, at times not permitting the attorney to make a record of an objection either to the disposition or in response to the accusations." Id.

A heavy caseload does not excuse misconduct on the part of a sitting judge: "each Judge individually must abide by the ethical standards required of judges in the unified court system, and neither calendar congestion nor a judge's frustration excuses or mitigates the pattern of misconduct[.]" Id. at 873 (internal quotation marks omitted).

While it is recognized that the criminal and civil rules of procedure focus on swift and cost effective litigation, promptness and efficiency must be balanced with procedural safeguards afforded to all parties. To that end, one commentator stated:

> "Criminal defendants and civil litigants alike anticipate that they will be able to tell their story to an unbiased judge; will be treated in a dignified way and on equal footing with opposing parties; will receive a timely decision that substantially accords with the relevant facts and applicable law; and will receive a thoughtful and reasoned explanation for that decision." Hon. William G. Young, Bench Presence: Toward a More Complete Model of Federal District Court Productivity, 118 Penn St. L. Rev. 55, 67 (2003).

The commentary to Canon 3(B)(9) states, "parties should not feel coerced into surrendering the right to have their controversy resolved by the courts." Accepting a plea offer must be done knowingly, intelligently, and voluntarily:

> "That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized. Central to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment. He thus stands as a witness against himself and he is shielded by the Fifth Amendment from being compelled to do so—hence the minimum requirement that his plea be the voluntary expression of his own choice. But the plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial—a waiver of his right to trial before a jury or a judge. Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." Brady v. United States, 397 U.S. 742, 748 (1970).

Although Judge Ovalles testified that moving a calendar at the expense of rights would not make sense, the procedures that he employed to complete his calendar certainly had a direct negative impact on the defendants that appeared before him on a daily basis. Tr. 1431. It is inherent in the power of a court to control its docket. See Lentz v. Young, 536 N.W.2d 451, 455 (Wisc. Ct. App. 1995). The authority to control judicial business is within the sound discretion of the court. Id. The Commission does not dispute Judge Ovalles's right to control his docket; rather, the issue is that the way he controlled his docket impaired the rights of litigants. There is ample credible evidence on this record to conclude that Judge Ovalles routinely continued cases for two weeks if the matter was not ready for disposition by the second alphabetical calendar call without regard to whether Ms. Aitchison or Mr. McElroy had an opportunity to speak to their client.

Administering the first call of the daily criminal calendar alphabetically was both logical and efficient in order to determine whether parties were represented by counsel, whether defendants were present, and whether certain cases could be resolved quickly or continued. More troubling was Judge Ovalles's practice of attending to matters without regard for their ready status caused delay to cases ready to be resolved. Furthermore, other attorneys were pressed by Judge Ovalles to resolve matters that they had not yet conferenced on with each other. The credible evidence demonstrates that attorneys were not given an opportunity to discuss cases with one another or with some of their clients. This procedure was impracticable and unnecessarily harsh. Rebecca Aitchison credibly testified that when she would ask Judge Ovalles to hold a matter, he would call her client to the podium and begin a discussion with the client on the record. Tr. 112:19-21. Ms. Aitchison objected to this practice because she would not have had the opportunity to talk with her client about the case. Many times she would object

and ask for more time to talk to her client that day. Judge Ovalles was inconsistent with his responses. Id. at 114:5-6.

Judge Ovalles's treatment of Ms. Aitchison attributed to the delay in resolving criminal trial and pretrial matters. Ms. Aitchison represented the largest number of clients on the calendar, approximately seventy percent, and was required to move a large volume of cases without the opportunity to discuss possible resolutions with many of her clients. Litigants, specifically those represented by the Public Defender, suffered the greatest negative impact from Judge Ovalles's practice because their cases were delayed, necessitating another subsequent appearance in court, oftentimes taking more time off of work and navigating through public transportation. Ms. Aitchison testified credibly on this point:

> "Well, there were several issues. Generally speaking, this would be after the first recess, and it would most often be between 10 and 11 in the morning, and what I would - - I would articulate my objection because, you know, I have clients who often times take time out from work, have child custody issues, some of our clients especially in Kent County have to take three buses to get here because of the bus schedule, and I wanted an opportunity to be able to speak to them rather than simply tell them they had to come back because their time is important. And often times I felt it was something that could be resolved if I was simply just given a little bit more time." Id. at 113:5-17.

There is evidence in the record to show that Judge Ovalles consistently continued a matter if a defendant was not ready to accept a plea without being afforded meaningful consideration. Ms. Aitchison testified:

> "So generally when Judge Ovalles would call a name, I would ask to hold it. He would call up the client anyway and attempt to have some sort of--either have some sort of discussion on the record; essentially, has discovery been provided; is there an offer; does your client want to take it? Sometimes he would simply just continue the case and say two weeks and send the client to the clerk to get a new court date." Id. at 112:18-25.

Despite Ms. Aitchison's testimony and the objective evidence in Exhibit 1, Judge Ovalles suggested that he did not coerce anyone into a resolution, "Well, to suggest that I try my best to coerce, there's a certain degree that I did, in fact, coerce. I did not coerce anybody into coming to any kind of resolution." Id. at 1429:25-1430:2. Judge Ovalles's daily concerns of docket efficiency overshadowed the procedural rights of a defendant:

> "[DESISTO]: Okay. Now, you agree that you can't rush a defendant into making a determination regarding a plea offer, that wouldn't be right, correct?
> "[OVALLES]: As an absolute, it depends on the circumstances somewhat. There may be an occasion where one needs to remind the parties, we need to get this going and the person may see that as a rush. In my mind, I may be thinking about the calendar that I need to continue to work on, and if the person doesn't want to accept it, perhaps it's time to put it on for hearing." Id. at 1430:16-25.

Judge Ovalles later conceded that his emphasis on efficiency resulted in cases being continued when, in fact, they could have been resolved later in the day after the parties met and discussed the plea offer:

> "[DESISTO]: So here it's about 10:19 and an offer is given to the defendant, it's 10:19 and you continue it for two weeks, didn't you?
> "[OVALLES]: I did.
> "[DESISTO]: You didn't give the defendant in that case three hours, two hours, one hour to decide on the plea, you just continued it for two weeks, didn't you?
> "[OVALLES]: I did. But at the same time defendant could have had five hours and come back in the afternoon if the defendant wanted to. I also had four or five trials on the calendar that I had every intention that we were going to get to it." Id. at 1437:8-19.

In addition to the resulting delay, when Ms. Aitchison attempted to put her objection to a two-week continuance on the record she was chastised:

> "[AITCHISON]: May I note my objection just for the record?

> "[OVALLES]: That you aren't prepared, that you've had a chance to conference this and you haven't done so? Yes, let it be noted." Ex. 1 at 120.

Although Judge Ovalles's primary concern was efficiency, his procedure actually created additional and unnecessary problematic delay in the District Court. Judge Ovalles's practice of administering a second calendar call without providing attorneys with adequate time to conference matters resulted in an unnecessary backlog of cases. This practice did not coincide with the spirit of Canon 3(B)(9) and oftentimes prompted the coercion of criminal defendants to take a plea deal:

> "[MCELROY]: By calling a case just alphabetically, without asking what the attorneys, and hadn't had an opportunity to discuss, that client then gets pulled up in front of the judge, possibly without ever having spoken with me that morning and doesn't know what's going to happen, and at that point if I told Judge Ovalles we weren't ready on this one, if we could please hold it so we can continue with the pretrial conference process, he would immediately just say, 'No, two-week continuance,' and normally I would just have to object to that because it would adversely affect my client possibly that day and it slows down the calendar and it creates backlog as well." Tr. 264:1-13 (emphasis added).

Judge Ovalles's restrictions on the Public Defender resulted in her inability to conference cases that were on the daily criminal calendar. This resulted in those cases being continued over the objection of the Public Defender. Judge Ovalles expected the Public Defender to speak to their clients before the day they were due to be in court:

> "[AITCHISON]: Judge, I'd object to the continuance at this stage. I just want an opportunity to speak with him. (Inaudible) conferencing the matters with Warwick yet so I haven't had an opportunity to speak with any clients. (Inaudible). Almost 30 pretrials (inaudible).
>
> "[JUDGE OVALLES]: Not if they come to your office and consult the day before. I don't want to get into that. I'm not even going to get into that, okay. What I am going to get into is the matter is

> going to be reassigned. It can be pretried right here (inaudible). I'm not going to let you run my calendar, okay?" Ex. 1 at 110-11.

This expectation was clearly unreasonable based upon the credible evidence on the record before the Commission. Ms. Aitchison testified, "I was told that I should be meeting with all of my clients the day before in my office. If the individual had been held at the prison, that I should have gone on the weekend." To this point, Megan Jackson explained that the public defenders are not always able to get in touch with their clients:

> "[S]ometimes we have clients who have disconnected phone numbers or have moved addresses, and we just can't get ahold of them, but I also said that we generally don't get the offer on the case or the opportunity to negotiate an offer with the prosecutor until the day in court and that after the offer is conveyed rather than continue the case and meet with the client separately to convey the offer, often times the clients want to hear the offer as soon as available, so we convey the offer during the court day so they know what their offers are as soon as possible." Tr. 211:3-16.

Judge Ovalles also expected the Public Defender and the prosecutor to talk ahead of time. Generally, City and Town prosecutors only prosecute on one day a week while maintaining other busy private practices. Mr. Millea testified that prosecutors usually don't receive the large volumes of files until the day before their assigned prosecution day:

> "Wednesday was my day and Steve Peltier handled Mondays. I would get the files from the police station and review them the night before, the afternoon before. The prior evening I had my files, again, 40, 50, 60 files, I'm not sure of the number, and I sat on the couch and I read them." Id. at 1116:17-22.

Mr. Sgroi testified similarly, "I have a very busy private practice so the majority of what I did took place on Wednesdays, sometimes Tuesday evenings when I prepared for the cases, but the majority of what I did transpired on Wednesdays." Id. at 1089:13-17.

Judge Ovalles's expectations were unrealistic and unfeasible. Not only did his practices stifle the performance of the Public Defender, but also criminal defendants were not afforded a

meaningful opportunity to consider possible resolutions. Accordingly, the Commission finds that Judge Ovalles violated Canon 3(B)(9) in this regard.

2

Mental Health Court

The credible evidence also demonstrated that Judge Ovalles implemented unfair procedures on the mental health calendar. Several attorneys, Ms. Clingham, Ms. Harden and Mr. Todesco credibly testified with respect to Judge Ovalles's refusal to accept counsel's proposed calendar outlining the schedule and order of cases to be called. The mental health calendar had been scheduled, with the continuing rotation of judges, in an order which would accommodate physicians' schedules, the transportation of patients, and minimize wait time for patients in the waiting room. This consistent, predictable arrangement was beneficial to patients, physicians, attorneys, and the sitting judge. In addition to making it difficult for attorneys to schedule matters on the calendar and placing an unnecessary burden on physicians, Judge Ovalles occasionally left the bench on a whim when he became frustrated. Judge Ovalles's sudden leaving of the bench without notice—failing to return at a predictable or reasonable amount of time and keeping doctors, attorneys, and patients waiting for his return—conflicts with the spirit of Canon 3(B)(9) and created avoidable delays and unnecessary costs. The Commission finds that Judge Ovalles violated Canon 3(B)(9) by leaving the bench at whim and resisting the advanced scheduling of the calendar.

a

Other Allegations

Not all allegations concerning Judge Ovalles's handling of the mental health calendar were sustained. For example, it was alleged that Judge Ovalles violated Canon 3(B)(9) by

refusing to accept an untranscribed audio recording of the deposition of a physician. He stated that he required a deposition in the presence of an independent notary transcribed by a stenographer. When counsel informed Judge Ovalles that their department did not have the resources for this, he informed counsel that he would accept a transcribed copy of the deposition prepared by counsel herself, which he received nineteen days after the initial hearing. Ms. Harden stated that it was commonplace in the Mental Health Court to accept untranscribed audio depositions without the presence of an independent notary; however, this practice is not routine in most other court settings. Counsel failed to bring to Judge Ovalles's attention Super. R. Civ. P. 30(b), which allows for sound recorded depositions without an officer present when preapproved by the court. Although it is alleged that the patient at the subject of this case needed emergency surgery for a prolapsed bowel and suffered as a result of Judge Ovalles's refusal of the audio deposition, it was not established in the record that the surgery was delayed due to the actions of Judge Ovalles. In fact, the surgery was not performed until four weeks after Judge Ovalles had signed the order approving the surgery. The Commission does not find that Judge Ovalles caused undue delay in this case or that he acted out of malice; rather, he simply wanted to create a complete and acceptable record under the rules before approving invasive surgery. Thus the Commission finds no violation of Canon 3(B)(9) in this particular instance.

In another case, it was alleged that Judge Ovalles created undue delay by refusing to sign an order requiring a patient to apply for Medicaid coverage approximately a month after it was first emailed to him. In reality, Judge Ovalles signed the order the day after it was emailed to him, and counsel for BHDDH simply did not realize that the order had already been signed when she again requested him to sign the order once his rotation on the mental health calendar was already over. Any delay in this case was not due to any action on the part of Judge Ovalles and

was due only to counsel's own error. Accordingly, the Commission finds that Judge Ovalles did not violate Canon 3(B)(9) in this particular instance.

Finally, it is alleged that Judge Ovalles violated Canon 3(B)(9) by threatening to vacate an entire PFI, including both psychiatric and HIV medications, in the absence of additional expert medical testimony that the HIV medications should be removed from the PFI. Upon counsel's determination, based on conversations with physicians to voluntarily withdraw the HIV medications from the PFI and thus alleviate the need for a hearing, Judge Ovalles threatened counsel that he would vacate the entire PFI if he did not receive a letter from a physician. There is not conclusive evidence in the record to support the allegation that Judge Ovalles threatened Ms. Harden that he would vacate the entire PFI. Any evidence of an actual threat is based on a phone conversation with Judge Ovalles, which prompted Ms. Harden to email two doctors seeking a prompt letter out of fear that this patient would cease to receive psychiatric medications. Eventually, counsel hand delivered an expert medical letter to the Judge, and the PFI remained in place.

A threat of any nature made to an attorney and carrying the consequence of harm to a patient is deemed inappropriate. Even if Judge Ovalles did not intend for his comments to Ms. Harden to constitute a threat, he should have foreseen the possibility that she would reasonably perceive his comments as a threat. The Commission does not dispute the notion that Judge Ovalles's action was done out of concern for the patient. Furthermore, it was not unreasonable for Judge Ovalles to request additional expert testimony on the issue of the HIV medications in light of the doctor's inconclusive testimony at the hearing. Although the Commission finds that Judge Ovalles's threatening communication is particularly problematic, there is no evidence in

the record that Judge Ovalles caused any additional delay to the patient receiving her medication. Accordingly, Canon 3(B)(9) is not violated by a preponderance of the evidence in this instance.

G

Canon 3(B)(13)

Judge Ovalles was alleged to have violated Canon 3(B)(13), which provides that "[a] judge shall cooperate with other judges as members of a common judicial system to promote the satisfactory administration of justice." Although on its face, Canon 3(B)(13) reads simply that a judge shall cooperate with other judges, the term "cooperate" is undefined. Reviewing courts and commissions have imposed discipline on judges who fail to "cooperate" with their presiding judge or other court officials.

For example, the State of California Commission on Judicial Performance found that a judge failed to cooperate with his presiding judge by failing to take direction on how to resolve delayed matters. See Inquiry Concerning Spitzer, 49 Cal. 4th CJP Supp. 254, 263-64 (Cal. Comm. Jud. Perform. (2007) ("Judge Spitzer failed to cooperate with his presiding judge's repeated inquiries regarding the status of the cases and directives to resolve all outstanding matters.").[51] The Commission in Spitzer treated the judge's delays particularly seriously because of his failure to cooperate with his presiding judge:

> "[T]he delays in this and subsequent counts were aggravated by Judge Spitzer's failure to cooperate with his presiding judge. Judges have a duty to 'cooperate with other judges and court officials in the administration of court business' . . . Rather than cooperating with his presiding judge, who made repeated attempts to get Judge Spitzer to resolve delayed matters, Judge Spitzer resented being 'micro-managed.' As a result, in the words of the masters, 'Judge Spitzer became passive-aggressive and actually

[51] See also Inquiry Concerning Murphy, in which the commission found that a judge failed to cooperate with his presiding judge when he lied about an illness in order to falsely obtain sick leave. 48 Cal. 4th CJP Supp. 179, 199 (Cal. Comm. Jud. Perform. 2001).

> ignored some of the directions he received from [the presiding judge']." Id. at 264.

Finally, that Commission stated, "[t]he failure to cooperate with the presiding judge was foolish and unhelpful, since the presiding judge was seeking to assist him." Id. As a result, in Spitzer, the judge's failure to heed the presiding judge's advice on how to promptly resolve matters, that Commission found a violation of their Canon 3(C)(1). Id.

Not only is failing to cooperate with a presiding judge "foolish" and "unhelpful," but it also violates judicial canons when it "interferes with court functioning." Matter of Halverson, 169 P.3d 1161, 1181 (Nev. 2007). A judge is properly subject to discipline when "a judge's failure to cooperate with court administration rises to the level that court functioning is adversely impacted[.]" Id.

In the present case, the record demonstrates that Chief Judge LaFazia received complaints from attorneys and court staff regarding Judge Ovalles's competency and demeanor both on and off the bench. Chief Judge LaFazia received numerous complaints regarding Judge Ovalles within four years. The Chief addressed each complaint with Judge Ovalles in what she referred to as "counseling sessions." Over the course of four years, Chief Judge LaFazia met with Judge Ovalles approximately fourteen times regarding these complaints. The meetings became more hostile as the number of complaints grew. Chief Judge LaFazia hoped that Judge Ovalles would heed her advice and improve the way he carried out his judicial duties in order to carry his weight. However, with the exception of two instances, Judge Ovalles denied the allegations behind any complaint the Chief received, rendering the Chief's efforts futile. Tr. 1710:20-21; 1720:11-15; 1728:2-6; 1734:16-17; 1766:19-23; 1803:3; 1834:10-14. Although we find Chief Judge LaFazia's testimony on these points highly credible and that Judge Ovalles failed to appreciate her efforts to remediate his performance, the Commission cannot find that

this conduct rises to the level of interference with court functioning, while it may be "foolish." See Matter of Halverson, 169 P.3d at 1181. Accordingly, we find that Canon 3(B)(13) has not been violated in this case.

H

Canon 2(A)

Canon 2A governs two general admonitions: (1) a judge has an obligation to respect and comply with the law; and (2) a judge must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judicial system. Because these two clauses are independent of one another, a violation of one of these clauses will result in a violation of Canon 2A. See In re Conduct of Roth, 645 P.2d 1064, 1069 (Or. 1982). At a minimum, Judge Ovalles's violation of other provisions of the Code of Judicial Conduct amounts to a violation of Canon 2A. See Matter of Benoit, 523 A.2d 1381, 1382 (Me. 1987) ("A judge who fails to conform his conduct to the minimum standards of other Canons of the Code, is, by definition, in violation of the general requirements of Canon[] . . . 2(A).").

At the same time, Judge Ovalles violated Canon 2(A) by not "act[ing] at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." This portion of Canon 2(A) can be the sole basis for allegations of unethical behavior; it can also supplement a more explicit Code section. Leslie W. Abramson, Canon 2 of the Code of Judicial Conduct, 79 Marq. L. Rev. 949, 963 (1996). The Supreme Court of Pennsylvania has opined:

> "'The place of justice is a hallowed place; and therefore not only the bench but the foot-pace and precincts, and purpose thereof ought to be preserved without scandal and corruption. . . .' So spoke Sir Francis Bacon in the 16th Century. For generations before and since it has been taught that a judge must possess the confidence of the community; that he must not only be independent and honest, but, equally important, believed by all men to be independent and honest. A cloud of witnesses testify

> that 'justice must not only be done, it must be seen to be done.' Without the appearance as well as the fact of justice, respect for the law vanishes in a democracy." In re Greenberg, 280 A.2d 370, 372 (Pa. 1971) (internal footnote omitted).

In that sense, "Judges must conduct themselves in a decent and dispassionate manner. On the bench, they must be attentive to the proceedings, treat attorneys and litigants with dignity and respect, remain neutral and unbiased, and follow the applicable law." Abramson, supra, at 963.

Public confidence in the judiciary is undermined when judges treat court personnel poorly. Unwelcome sexual advances toward court employees are not only repugnant to the dignity of the court, they have been found to violate Canon 2(A). See, e.g., Inquiry Relating to Alvord, 847 P.2d 1310, 1312-13 (Kan. 1993) (judge's patting a young, female court clerk on the butt established a violation by clear and convincing evidence). While Judge Ovalles's conduct did not constitute sexual advances, his demeaning comments and other actions are deserving of scrutiny here. Judge Ovalles undermined public confidence in the judiciary through his sustained mistreatment of Ms. Aitchison of the Public Defender's Office; his ridiculing and embarrassing of Attorneys Millea and Rafanelli in a crowded courtroom; and his bullying, intimidation, and harassment of the young attorney who was simply observing a court proceeding for her firm. See In re Conduct of Schenck, 870 P.2d 185, 200 (Or. 1994), cert. denied, Schenck v. Comm'n. on Judicial Fitness and , 513 U.S. 871 (1994) (imposing suspension, in part because judge violated Canon 2A by writing letter to editor of local newspaper and a guest editorial in which the judge criticized the local prosecutor for incompetence, inexperience, lack of professional demeanor, and immaturity). At the end of the day,

> "No matter how tired or vexed, . . . judges should not allow their language to sink below a minimally-acceptable level. Judges, like other members of society, will occasionally have a 'bad day.'

Even on such days, however, a judge must conduct court proceedings in a manner that will maintain public confidence in the integrity and impartiality of the judiciary." Matter of Sadofski, 487 A.2d 700, 705 (N.J. 1985).

VII

Violations Established by the Commission[52]

Judicial Canon 3(B)(2)

A. Sanctionable Legal Error

1. Did Judge Ovalles violate Canon 3(B)(2) by his instruction of reasonable doubt?
   Violation found by Commission
2. Did Judge Ovalles violate Canon 3 (B)(2) by his imposition of contempt?
   Violation found by Commission
3. Did Judge Ovalles violate Canon 3 (B)(2) by his ruling defining when a trial starts for Rule 48 dismissals?
   Violation found by Commission
4. Whether Judge Ovalles violated Canon 3 (B)(2) by his ex parte visit to a mental health patient?
   Violation found by Commission
5. Whether Judge Ovalles violated Canon 3 (B)(2) by his handling of the Arnold case?
   Violation found by Commission

B. Continuing Pattern of Legal Error

1. Was Judge Ovalles's resistance to follow the established scheduling procedure on the mental health calendar and his subsequent comment to Ms. Clingham, whether that is all part of a pattern of legal error?
   Violation found by Commission
2. Was Judge Ovalles's tendency to leave the bench abruptly upon becoming "confused or overwhelmed" part of a pattern of legal error?
   Violation found by Commission
3. Was Judge Ovalles's refusal to accept an audio recorded deposition from Ms. Harden part of a pattern of legal error?
   Violation not found by Commission
4. Whether Judge Ovalles's ex parte visit to a mental health patient part of a pattern of legal error?

[52] The Commission deliberated extensively on each question. A minimum of nine Commission votes in the affirmative was required to establish a violation. See Judicial Tenure and Discipline Rule 28.

Violation found by Commission

5. Was Judge Ovalles's manifestations, which left Ms. Harden with the impression that he was going to vacate the entire PFI for a mental health patient suffering from HIV, schizophrenia and dementia part of a pattern of legal error?

Violation found by Commission

6. Was Judge Ovalles's asking of Ms. Grecco to provide sensitive mental health information on the record in open court a clear violation of HIPAA and part of a pattern of legal error?

Violation found by Commission

7. Was Judge Ovalles's handling of the DUI bail issue in Washington County part of a pattern of legal error?

Violation found by Commission

8. Was Judge Ovalles's inconsistent handling of fines with filings part of a pattern of legal error?

Violation found by Commission

9. Did the culmination of these errors previously voted establish a continuing pattern of legal error, which thereby results in a violation of Canon 3(B)(2)?

Violation found by Commission

C. Bad Faith

1. Did Judge Ovalles violate Canon 3(B)(2) by barring Attorney Peltier from the courtroom?

Violation found by Commission

2. Did Judge Ovalles violate Canon 3(B)(2) by holding and retaining Attorney Rafanelli in contempt?

Violation found by Commission

Judicial Canon 3(B)(4)

A. Public Defenders

1. Did Judge Ovalles violate Canon 3(B)(4) by treating Attorney Aitchison disrespectfully over an extended period of time?

Violation found by Commission

2. Was Judge Ovalles's action in calling Megan Jackson up to the bench and warning her of contempt a violation of Canon 3(B)(4)?

Violation found by Commission

B. Mental Health

1. Did Judge Ovalles violate Canon 3(B)(4) after rejecting Ms. Clingham's proposed schedule, leaving the bench for forty-five minutes and referring to her as a "female attorney" in a derogatory manner in chambers?

Violation found by Commission

C. Treatment of Women

1. Did Judge Ovalles violate Canon 3(B)(4) by commenting to Ms. Degnan that she could come into chambers and watch him "suck his lollipop"?

Violation found by Commission

2. Did Judge Ovalles violate Canon 3(B)(4) by looking at women "up and down" in a manner that made them feel uncomfortable, and telling a clerk that he needed to keep his sexual comments to himself on one occasion?

Violation found by Commission

3. Did Judge Ovalles violate Canon 3(B)(4) by referring to a court employee as a "lesbian"?

Violation found by Commission

4. Did Judge Ovalles violate Canon 3(B)(4) by offering to purchase a drink for Ms. Rossi at a party?

Violation not found by Commission

5. Did Judge Ovalles violate Canon 3(B)(4) by his comment to Attorney Clingham that he was "enjoying the view from back here," at the induction ceremony?

Violation found by Commission

6. Did Judge Ovalles violate Canon 3(B)(4) by asking a litigant if she enjoyed the holidays too much?

Violation not found by Commission

D. Other Attorneys

1. Did Judge Ovalles violate Canon 3(B)(4) by scolding a young attorney for monitoring a motion?

Violation found by Commission

2. Did Judge Ovalles violate Canon 3(B)(4) by slamming a file shut and saying, "You go to trial and see what you get" at a sidebar conference?

Violation not found by Commission

3. Did Judge Ovalles violate Canon 3(B)(4) by attempting to prevent Attorney Archambault from objecting on the record?

Violation found by Commission

4. Did Judge Ovalles violate Canon 3(B)(4) by preventing Attorney Peltier from entering the courtroom?

Violation found by Commission

5. Did Judge Ovalles violate Canon 3(B)(4) by his handling of the contempt proceeding involving Attorneys Millea and Rafanelli?

Violation found by Commission

6. Did Judge Ovalles violate Canon 3(B)(4) by preventing Attorney Millea from conferencing at the bench?

Violation not found by Commission

7. Did Judge Ovalles violate Canon 3(B)(4) by confiscating Attorney Millea's telephone?

Violation not found by Commission

8. Did Judge Ovalles violate Canon 3(B)(4) by preventing a disabled litigant from crossing the bar?

Violation not found by Commission

E. Workplace Conduct

1. Did Judge Ovalles violate Canon 3(B)(4) by yelling at Ms. Gonzalez for not being able to provide him with the court stamp from the Clerk's Office?

Violation found by Commission

2. Did Judge Ovalles violate Canon 3(B)(4) by his exchanges with Kanelos regarding the stamped document?

Violation not found by Commission

3. Did Judge Ovalles violate Canon 3(B)(4) by his alleged tossing of files at court clerks?

Violation not found by Commission

4. Did Judge Ovalles violate Canon 3(B)(4) by insisting Sheriff Kloc maintain eye contact with him in the courtroom?

Violation not found by Commission

5. Did Judge Ovalles violate Canon 3(B)(4) by instructing Mr. Cote to stand and hand him files?

Violation not found by Commission

6. Did Judge Ovalles violate Canon 3(B)(4) by his conduct towards Mr. Pina involving the chapstick incident?

Violation not found by Commission

7. Did Judge Ovalles violate Canon 3(B)(4) by leaving the bench abruptly for extended periods of time without indicating when he would return?

Violation found by Commission

8. Did Judge Ovalles violate Canon 3(B)(4) by allowing court staff to observe him napping during work hours?

Violation found by Commission

9. Did Judge Ovalles violate Canon 3(B)(4) by wearing slippers in chambers?

Violation not found by Commission

10. Did Judge Ovalles violate Canon 3(B)(4) by having his pants unzipped in the presence of others?

Violation found by Commission

11. Did Judge Ovalles violate Canon 3(B)(4) by having his pants off in chambers in the presence of others?

Violation not found by Commission

<u>Judicial Canon 3(B)(6)</u>

A. Bias towards Women

1. Did Judge Ovalles violate Canon 3(B)(6) by looking at women up and down in a manner that made them uncomfortable?

Violation found by Commission

2. Did Judge Ovalles violate Canon 3(B)(6) by his comment to Attorney Clingham that he was "enjoying the view from back here" at the induction ceremony?

Violation found by Commission

3. Did Judge Ovalles violate Canon 3(B)(6) by his comment to Ms. Clingham, "I treat you the same as any female attorney"?

Violation found by Commission

4. Did Judge Ovalles violate Canon 3(B)(6) by commenting to Ms. Degnan that she could come into his chambers and watch him "suck his lollipop"?

Violation found by Commission

5. Did Judge Ovalles violate Canon 3(B)(6) by his comments referring to a court employee as a "lesbian"?

Violation found by Commission

6. Did Judge Ovalles violate Canon 3(B)(6) by telling DeCesare, "I'm the man just listen to me, and we'll be okay?"

Violation not found by Commission

7. Did Judge Ovalles violate Canon 3(B)(6) by stating to Rossi, "Looking good, Ms. Rossi"?

Violation not found by Commission

Judicial Canon 3(B)(8)

A. The Patient Visit

1. Did Judge Ovalles violate Canon 3(B)(8) by visiting Ms. B, a mental health patient, at her nursing home outside of the presence of counsel?

Violation found by Commission

Judicial Canon 3(B)(9)

A. District Court

1. Did Judge Ovalles violate Canon 3(B)(9) by insisting that both the first and second call of the daily criminal calendar be called alphabetically without regard to which matters were "Ready" or "Ready formal" status?

Violation not found by Commission

2. Did Judge Ovalles violate Canon 3(B)(9) by routinely continuing cases for two weeks if they were not ready by the second calendar call, notwithstanding the fact that neither Ms. Aitchison nor Mr. McElroy had an opportunity to speak to their clients?

Violation found by Commission

3. Did Judge Ovalles violate Canon 3(B)(9) by coercing defendants into accepting plea deals?

Violation found by Commission

4. Did Judge Ovalles violate Canon 3(B)(9) by storming off the bench?

Violation found by Commission

B. The Mental Health Calendar

1. Did Judge Ovalles violate Canon 3(B)(9) by leaving the bench at whim and on one occasion, resisting the advanced scheduling of the mental health calendar?

Violation found by Commission

2. Did Judge Ovalles violate Canon 3(B)(9) by refusing to accept an audio recording of a deposition and insisting on a transcription?

Violation not found by Commission

3. Did Judge Ovalles violate Canon 3(B)(9) by refusing to sign an order allowing a patient to apply for Medicaid coverage?

Violation not found by Commission

4. Did Judge Ovalles violate Canon 3(B)(9) by leaving Ms. Harden with the impression that he was going to vacate the entire PFI for a mental health patient suffering from HIV, schizophrenia and dementia?

Violation not found by Commission

Judicial Canon 3(B)(13)

A. Cooperation with Chief Judge LaFazia

1. Did Judge Ovalles violate Canon 3(B)(13) by failing to cooperate with Chief Judge LaFazia and heed her advice?

Violation not found by Commission

Judicial Canon 2

A. Automatic Violation of Canon 2(A)

1. Did Judge Ovalles violate Canon 2(A) through his violations of the other Canons, referenced previously?

Violation found by Commission

VIII

Sanctions

While this report may seem overly analytical, the case is multifaceted and intricate. A detailed and extensive report is necessary. Moreover, we recognize that serious accusations were

made against a sitting member of the Rhode Island judiciary. Each Commissioner has approached this case with deep consideration of its import, and with a heavy heart. The importance of ensuring fairness and confidence in all parts of our judicial institutions cannot be overstated. The Commission is struck by the sobering obligations that accompany our task, and we are mindful that the most challenging of these obligations is to recommend an appropriate sanction. Each Commissioner has carefully considered the facts, the violations, Judge Ovalles, and his or her role. The Commission's role is to recommend an appropriate sanction to our high court, and we accept that charge most seriously and ever mindful of its import.

The purpose of judicial discipline is not punishment, but rather "the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system." Fletcher v. Comm'n on Judicial Performance, 968 P.2d 958, 989 (Cal. 1998); see also Matter of Duckman, 699 N.E.2d at 878 ("[T]he purpose of judicial disciplinary proceedings is not punishment but the imposition of sanctions where necessary to safeguard the Bench from unfit incumbents.") (internal quotation marks omitted). In accordance with this principle,

> "The discipline we impose must be designed to announce publicly our recognition that there has been misconduct; it must be sufficient to deter respondent from engaging in such conduct; and it must discourage others from engaging in similar conduct in the future. Thus, we discipline a judge not for purposes of vengeance or retribution, but to instruct the public and all judges . . . of the importance of the function performed by judges in a free society. We discipline a judge to reassure the public that judicial misconduct is neither permitted nor condoned." In re Rose, 144 S.W.3d, 661, 732 (2004).

A

The Brown Factors

Courts have adopted a multi-factor test to aid in the challenging task of determining the appropriate sanctions in a judicial discipline case. For our analysis, we will consider these seven factors:

> "(1) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct; (2) misconduct on the bench is usually more serious than the same misconduct off the bench; (3) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety; (4) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does; (5) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated; (6) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery; (7) misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship." In re Brown, 625 N.W.2d 744, 745 (Mich. 2000).

1

The Severity of a Pattern of Misconduct

The first principle to be considered is that "misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct[.]" In re Brown, 625 N.W.2d at 745. This Commission does not review any single incident of misconduct in a vacuum. We scrupulously reviewed the montage of Judge Ovalles's misconduct and are particularly struck by the pattern woven throughout his judicial career. Aside from egregious and bad faith legal errors, which the Commission has found under Canon 3(B)(2) supra, Judge Ovalles has

committed a pattern of legal misconduct, which the Commission finds particularly severe. Judge Ovalles's legal errors include: (1) not being able to define "beyond a reasonable doubt"; (2) conducting an unwarranted contempt proceeding; (3) erroneously interpreting Rule 48(a); (4) visiting a mental health patient without the patient's counsel present; (5) the handling of the Arnold case; (6) the handling of the mental health calendar; and (7) violating HIPAA on the record.

The Commission finds that Judge Ovalles's mistreatment of those with whom he interacted with daily culminates into a pattern of misconduct under Canon 3(B)(4). Between the countless disputes with court personnel, as discussed supra, and his mistreatment of Ms. Aitchison over a nine-month period, also discussed supra, Judge Ovalles has exhibited a pattern of undignified and discourteous behavior over the course of his career. Judge Ovalles adopted blanket policies applicable to only certain attorneys. For example, neither Mr. Peltier nor Mr. Archambault were allowed to conference at sidebar. Only Ms. Aitchison, not her male counterparts, was prohibited from leaving the courtroom even when her presence was not required. Although Mr. Rafanelli and the young attorney whom Judge Ovalles berated in chambers were subject to Judge Ovalles's ill-treatment on only one occasion, Judge Ovalles's behavior on these occasions was remarkable and undisputed—and reflective of how he routinely treated others in the courtroom.

Judge Ovalles's deportment toward court employees is equally troubling to this Commission. The existence of complaints from court employees regarding Judge Ovalles's behavior predated Chief Judge LaFazia's tenure as Chief Justice of the District Court. As Chief Judge, Judge LaFazia continued to receive a barrage of complaints against Judge Ovalles from

court staff and attorneys. On multiple occasions, she was left to deal with court clerks crying in her chambers due to Judge Ovalles's conduct.

In particular, Judge Ovalles's treatment of both female court employees and female attorneys was poor. He treated Ms. Aitchison with flagrant disrespect and in a manner distinct from that of her male counterparts. His remarks to Ms. Clingham regarding her physical appearance were equally repugnant. Numerous court employees testified with respect to Judge Ovalles's habit of looking them up and down in such a way as to make them feel uncomfortable. Judge Ovalles also made lewd and inappropriate remarks to court employees in the workplace on multiple occasions, including comments regarding the sexual orientation of a fellow court employee. Such conduct is distasteful and inappropriate for a member of the judiciary. There has been a pattern of conflict and issues surrounding Judge Ovalles's treatment of others since he began his career as a judicial officer. The number of incidents (at least that the Commission is aware of) is overwhelming.

2

The Severity of Misconduct on the Bench

Logically, "misconduct on the bench is usually more serious than the same misconduct off the bench." In re Brown, 625 N.W.2d at 745. Much of the misconduct by Judge Ovalles occurred on the bench. Judicial misconduct on the bench is more severe because it "has the capacity, objectively viewed, to undermine the public's perception of and impugn the integrity and impartiality of the judicial process as a whole." In re DiLeo, 83 A.3d at 28. Unfortunately, Judge Ovalles did not temper his behavior while on the bench. Much, if not all, of the legal error and incompetence that the Judge displayed occurred while he was handling matters on the bench;

whether it be during the mental health calendar, the criminal calendar, or while assisting in different counties.

Judge Ovalles berated Ms. Aitchison and other attorneys in open court without regard to the effects his actions may have had on the public's perception of the integrity of the judicial process. He did not conceal his personal animus toward Ms. Aitchison, Mr. Archambault, Mr. Peltier, or Mr. Millea. His disparaging treatment toward these attorneys rose to a level that stunned even their clients. Judge Ovalles's mistreatment of court staff was equally degrading and patently visible to the public. The record reflects that Judge Ovalles had disagreements with his staff while on the bench and in full view of the attorneys and those having business before the court. Judge Ovalles committed numerous instances of misconduct on the bench, and attorneys, colleagues, and litigants were witness to this behavior on numerous occasions. Judge Ovalles undermined the public's perception of the integrity and impartiality of the judicial process.

3 & 4

Misconduct That Is Prejudicial or Does Not Implicate the Actual Administration of Justice

The court in In re Brown held: "(3) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety; (4) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does[.]" In re Brown, 625 N.W.2d at 745. Judges should aim to fairly administer justice in their everyday practices; however, Judge Ovalles actually inhibited the fair administration of justice through his lack of competence and behavioral misconduct. Judge Ovalles allowed his personal animus toward some attorneys to affect the way he ran his courtroom resulting in courtroom delay and backlog of his calendars.

In addition to infringing on the rights of litigants through his paralyzing courtroom procedures, his incompetence consumed much of Chief Judge LaFazia's time. As a result of Judge Ovalles's courtroom procedures and behavior, much of her time was spent counseling Judge Ovalles or screening complaints from attorneys and court staff. She met with Judge Ovalles on numerous occasions to counsel and advise him that some of his behavior needed to change. Judge Ovalles refused her recommendations and consistently denied all allegations which she brought to him in private. The Chief Judge and supervisory clerks had to frequently reassign employees because they could not and did not want to work with Judge Ovalles due to his scornful temperament. Chief Judge LaFazia reassigned Judge Ovalles on multiple occasions due to complaints that she received about his practice on certain calendars. Judge Ovalles rejected the opportunity offered by the Chief Judge to change his behavior toward staff and attorneys and to make changes that would effectuate the actual administration of justice for attorneys and litigants in his courtroom. Judge Ovalles continued the same behaviors, and his conduct continued to be prejudicial to the actual administration of justice.

5

Premeditated or Deliberated Misconduct

It was held that "misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated." In re Brown, 625 N.W.2d at 745. It is a difficult task to place ourselves in the mind of Judge Ovalles and discern his intent on certain occasions. Although the Commission is not clairvoyant, certain actions on the part of Judge Ovalles confirm that his misconduct was premeditated or deliberated. Judge Ovalles developed a personal animus toward specific attorneys and acted on this animus on numerous occasions.

For example, Judge Ovalles specifically singled out Ms. Aitchison for the application of unreasonable courtroom rules. This was both premeditated and deliberate. Judge Ovalles's barring Mr. Peltier from the courtroom was a premeditated and deliberate act predicated on the mistaken belief that Mr. Millea would actually be prosecuting for the City of Cranston on that day. In fact, Judge Ovalles's disdain for Mr. Millea caused Mr. Rafanelli also to be held in contempt because of Judge Ovalles's desire to discipline Mr. Millea. Similarly, as Judge Ovalles's relationship with Mr. Millea deteriorated, Judge Ovalles prevented Mr. Peltier from entering the courtroom for a calendar call. Apart from those occasional individuals who happened to be caught in the crossfire, Judge Ovalles consistently intensified his mistreatment of attorneys he disliked. Judge Ovalles's vindictive behavior was on display in his courtroom for the public to see on a regular basis. These repeated and deliberate actions impugned the integrity of the court and the judicial process as a whole.

6

Misconduct That Undermines the Ability of the Justice System to Discover the Truth

We turn next to the principle that "misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery." In re Brown, 625 N.W.2d at 745.

Judge Ovalles's handling of Warwick v. Arnold, by filing a sua sponte motion questioning the attorneys' ability to represent clients in certain cases and continuing to press his motion after conflict issues were waived, led us to question if bias was a motivating factor. Judge Ovalles's explanation made matters worse. The Commission concludes that Judge Ovalles was recklessly or intentionally misleading the Commission during the public hearing

through his misrepresentations of the Warwick v. Arnold Decision. Although Judge Ovalles's credibility was discussed at length supra, the Commission believes that Judge Ovalles's misstatements and misrepresentations regarding Arnold and Exhibit HH are of the kind that "undermine[ ] the ability of the justice system to discover the truth of what occurred in a legal controversy[.]" Id.

Judge Ovalles was untruthful when he testified: (1) with respect to what was actually in the Arnold court file; (2) whether he filed an amended decision; (3) that the revised decisions were delivered to counsel of record; (4) that the decision contained in Exhibit HH was given to him by this Commission; (5) and with respect to the footnote contained in the third version.

As a result of Judge Ovalles's testimony, he placed his credibility into question. In the face of significant documentary evidence, we find his inconsistent and evasive answers on important issues to be startling. We believe that Judge Ovalles, as a sworn judicial officer, appreciates the importance of the proceeding and the oaths he has taken. Combined with far-reaching and repetitive violations, Judge Ovalles's misconduct must be deemed to be quite severe. Whether Judge Ovalles's misstatements were unintentional or deliberate—the Commission is inclined to believe the latter—what occurred at the public hearing was misconduct that hindered this Commission's ability to discover the truth surrounding Judge Ovalles's handling of the Arnold matter.

7

Misconduct Based on Considerations of Race, Color, Ethnic Background, Gender or Religion

Misconduct based on considerations of immutable characteristics is reflected in our own Canon 3(B)(4) and in the case law:

> "Misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship." In re Brown, 625 N.W.2d at 745.

Judge Ovalles's treatment of women constitutes sanctionable judicial misconduct. His treatment of Ms. Aitchison in relation to her male peers was unfavorable and disparate. From his overall tone and demeanor toward Ms. Aitchison to his blanket policy that she was not allowed to leave the courtroom without first receiving his permission, Judge Ovalles singled her out from the male attorneys practicing alongside her. This treatment affected Ms. Aitchison's ability to do her job and to work with clients. Judge Ovalles patently used gender as a basis for insult when he referred in a derogatory manner to Ms. Clingham as a "female attorney." Judge Ovalles repeatedly made comments that made women feel uncomfortable. In the workplace, he made lewd, inappropriate comments to female clerks and attorneys and on many occasions noticeably looked women up and down in the workplace.

Female clerks did not want to work with him, and female attorneys disliked appearing before him. Judge Ovalles's treatment of Ms. Aitchison involved the unequal application of justice especially when it affected her client's outcomes. Furthermore, his treatment of women negatively impacted the entire workplace and in some instances interfered with the actual administration of justice.

B

Other Factors to Consider

Courts also weigh other factors such as the number of acts of misconduct, the existence of prior discipline, the judge's appreciation of his or her having committed misconduct, the judge's integrity, the likelihood of future misconduct, and the impact of the misconduct on the

judicial system. See Inquiry Concerning Ross, 49 Cal. 4th CJP Supp. 79, *138 (Cal. Comm. Jud. Perform. 2005). Based on the voluminous record and the number of credible testifying witnesses at the public hearing, the tally of Judge Ovalles's acts of misconduct is extensive. Had there been a single or even a small number of acts of misconduct, the Commission would not be considering such a severe sanction; however, the number and quality of acts of misconduct committed by Judge Ovalles throughout his judicial career gives us pause to consider severe sanctions.

This is not Judge Ovalles's first proceeding before the Commission. His prior conduct leads us to believe that his conduct is unlikely to be reformed. We minimized our discussion of his acts of maltreatment toward clerks and counsel, including his refusal to allow coats to be brought into his Garrahy Complex courtroom during the winter months (which we continue to find as unacceptable and perplexing). We were led to believe that he would change at that time. He has not.

Judge Ovalles demonstrated that he failed to appreciate the severity and impropriety of his behavior. This is concerning because "[a] judge's failure to appreciate or admit to the impropriety of his or her acts indicates a lack of capacity to reform." Id. (quoting Inquiry Concerning Platt, 48 Cal.4th CJP Supp. 227 (Cal. Comm. Jud. Perform. 2003)) (internal quotation marks omitted). When he was confronted by his presiding judge, Chief Judge LaFazia indicated his response was always, "'Show me a tape. It didn't happen. If it's not on the tape, it didn't happen. They don't like me because I am strict. It didn't happen. And they don't like me because I am Hispanic. It didn't happen.'" Tr. 1720:11-15. His responses to the Chief Judge and his testimony before the Commission demonstrate not only a lack of capacity to reform, but also the inability to accept responsibility for his own actions. It is unfathomable, as Judge

Ovalles asserts, that almost every witness testifying for the Commission at the public hearing fabricated each instance of Judge Ovalles's misconduct.[53] Not only did Judge Ovalles fail to appreciate the nature of his actions, he was untruthful in his testimony to the Commission regarding the instances of his misconduct. Honesty is a "minimum qualification expected of every judge," and "[a] person cannot be a judge if he or she is not honest; other positive qualities cannot redeem or compensate for the missing fundamental." See Inquiry Concerning Ross, 49 Cal. 4th CJP Supp. 79, *138.

Judge Ovalles demonstrated no appreciation whatsoever for the fact that he committed misconduct. To the contrary, he questioned the truthfulness of nearly every witness. Such a failure to recognize, appreciate or admit impropriety with regard to any of his actions further demonstrates a lack of capacity to reform. As such, the Commission has no reasonable basis to conclude that he will modify his behavior, or even accept that what he did was improper. There is too much to risk to allow this conduct to continue when he will not reform or even demonstrate remorse.

We note that most sanctions available to the Commission would return Judge Ovalles to the District Court at some point. While not the decisive factor in our recommendation, we recognize it would be unjust to return a judge, known to be vindictive and with little ability to

[53] Judge Ovalles, in his testimony, questioned the veracity of almost every witness who testified against him. He claimed that witnesses were untrue or their testimony was wrong (re Clingham, 1277:13, 1451:21; re Kanelos, 1281:18, 1294:1, 1296:9, 1611:23; re Rossi, 1295:20, 1296:7; re Degnan, 1277:24; re Schmeider 1278:2, 1372:18-20; re Ciccone, 1298:7-8, 1301:15-18; re Aitchison, 1315:22-24, 1317-20, 1318:10-11; re Pingitore, 1321:21-23; re Cote, 1337:10-12; re Sgroi, 1342:3-4; re Simon, 1345:15-17; re Pina, 1347:2; re Smith, 1359:16; re Archambault, 1379:9-10, 1380:15-18, 1388:15; re Peltier 1389:11-12, 1393:25, 1394:17-18; re Jackson, 1391:9; re Harden, 1452:22-24, 1505:17, 1532:3-5; re DeCesare, 1482:1, 1482:19-22, 1484:16; re LaFazia, 1490:13-17). He claimed that a person who did not testify was untruthful in a letter. (re Hitchcock 1493:9, 1495:1).

reform, to the same court staff and attorneys who testified before the Commission under subpoena.

In determining the appropriateness of sanctioning a judge, one court focused on the judge's inability to fulfill his duties and the improbability of correction: "when it is shown that one of our judges has grown unable to effectively discharge the duties of his or her office, and that there is no reasonable hope that the judge may regain that ability, we are compelled to act to preserve the public's confidence in our courts." In re Baber, 847 S.W.2d at 805. (emphasis added). Based upon his repeated and knowing pattern of misconduct and his failure to appreciate or admit the impropriety of his actions, there is a substantial likelihood that Judge Ovalles will continue the same behavior if he continues on the bench. Judge Ovalles was previously issued a letter of concern by this Commission, which proved to be no deterrent to his continued misconduct. Many attorneys and court personnel forwarded complaints to Chief Judge LaFazia regarding Judge Ovalles. The Chief unsuccessfully attempted to modify Judge Ovalles's behavior on at least fourteen occasions. She provided him with notice of behaviors that needed to change. She provided counseling and opportunity for additional training. All of her efforts were rebuked by Judge Ovalles, who, again, refused to appreciate the severity or impropriety of his actions. Judge Ovalles's pattern of misconduct continued up until he was relieved of his judicial duties by the Chief Judge in December of 2015. This is particularly troubling because, "[r]epeat misconduct . . . indicates an inability to reform. Implicit in the lack of reform is the risk of yet further violations in the future." Inquiry Concerning Ross, 49 Cal. 4th CJP Supp. 79, *142. [54]

[54] In our review of disciplinary actions of other states, we note that disciplinary bodies report the violations and occasionally impose more temporary sanctions. Here, as our State provides for the appointment of judges, we cannot limit our sanction until the next judicial election. Our state has placed great confidence in our judicial officers to foster judicial independence in decisions, and in this Commission to recommend just discipline.

The integrity of the Rhode Island judicial system is paramount. Criminal defendants, victims, witnesses, civil litigants, the state, and attorneys should not be left to question whether they receive fair treatment at the hands of a judicial officer. The public has been witness to Judge Ovalles's uneven temperament, his lack of competence, and his vindictiveness. His conduct thus far has undermined public confidence in and perception of the judiciary. It has been said that a public office is a public trust. While judges cannot always act in accord with the wants of the populace at any time, they should act with decency, respect, and in accordance with the Canons of Judicial Ethics. They should preserve the soundness of our judicial system. We are dismayed by Judge Ovalles's conduct in and out of the courtroom. Finding there is "no reasonable hope" that Judge Ovalles can reform his behavior to be a competent sitting judge, we are compelled to make a recommendation which is warranted and will preserve the public's confidence in our judiciary. In re Baber, 847 S.W.2d at 805. Accordingly, it is with great solemnity that the Commission reaches its recommendation.

IX

Recommendation

Based upon the findings and conclusions set forth above, the Commission recommends to the Rhode Island Supreme Court that Judge Rafael Ovalles be removed as an Associate Judge of the Rhode Island District Court.[55]

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[55] The Commission voted 13-1 for removal. Judge Ricci did not vote for removal but suggested that Judge Ovalles "be immediately suspended without pay and benefits for a period of no less than six months, during which time at his own expense attend and successfully matriculate in the appropriate classes at the National Judicial College in Reno, Nevada. Furthermore, again at his own expense, receive anger management and sexual harassment therapy by an individual or entity approved by the Supreme Court. Only after successfully completing the aforementioned requirements shall he be eligible to petition the Supreme Court for consideration to be reinstated. The time expended during the suspension shall not be factored into his retirement benefits."

Respectfully submitted,

The Honorable Jeffrey A. Lanphear
Chairperson

The Honorable Sarah Taft-Carter
Commissioner

The Honorable John E. McCann, III
Commissioner

The Honorable Madeline Quirk
Commissioner

The Honorable Hugo L. Ricci, Jr.
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The Honorable William T. Noonan
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