GOODMAN GALLUCCIO & CHESSIN
Adolph J. Galluccio, Esq. (ID No: 217691965
337 Park Avenue
Paterson, NJ 07509
Tel: (973) 942-6500 / Fax: (973) 742-1346
Attorney for Respondent, Bernice Toledo

In the Matter of Surrogate Bernice Toledo

Supreme Court of New Jersey
Advisory Committee on Judicial Conduct
Docket No. A.C.J.C. 2019-189

ANSWER

Bernice Toledo, Respondent in the above matter, in answer to the complaint says;

FACTS

1- Admit

2- Admit

3- Admit

4- Admit

5- Respondent admits Estelle Halchak was the decedent's cousin and she was a New Hampshire resident; however Respondent contends Ms. Halchak learned of decedent's death on February 27, 2017 from a solicitor's letter at an heir-finder's company.

6- Respondent admits Ms. Halchak traveled from New Hampshire to New Jersey, however it was Brian Hurtt who secured the home of the decedent and also arranged for cremation of the decedent. Further, Respondent admits Ms. Halchak contacted the Surrogates' Court and advised of her desire to administer the estate. Respondent leaves Complainant to it's proof as to whether and when Ms. Halchak retained Robert Altshuler.

7- Admit

8- The Surrogate's Court hearing was already on the calendar, based on Mr. Stewart's application, not because Ms. Halchak had also wished to be an administrator.

On March 23, 2017, while Mr. Stewart was the singular applicant for administration, The Surrogate's Court sent notice to Mr. Stewart, and also to the NJ State Attorney General's office and to the NJ State Department of the Treasury. This additional notice allows the State of NJ the opportunity to intervene or be heard, as is required when a non-relative

applies to serve on an estate where the next of kin is unknown: **R.4:80(c) Renunciation by or Notice to Next of Kin and Others.** It was a zero value estate at the time.

9- Respondent believes that paragraph 9 needs a more extensive explanation to best understand what had taken place.

Ms. Halchak's April 2017 application, and by extension, the need for renunciation, was premised by inaccurate statements. Even after the Surrogate's Court added the other 7 heirs at law, Ms. Halchak represented that they all shared an equal degree of consanguinity when in fact, Ms. Halchak and all other heirs were inferior in degree on consanguinity to aunt, Mary H. Smith.

In April 2017 Ms. Halchak withheld the names of the seven (7) other heirs whose names and information she previously knew from having distributed uncle Joseph Halchak's estate to the same set of heirs some years earlier.

At the June 06, 2017 hearing, Respondent appropriately asked about degrees of consanguinity to determine who was first entitled to letters of administration and, therefore, which renunciations would be necessary. **NJSA 3B:10-2** Ms. Halchak did not make any showing of kinship which is required, as opposed to raking representations of kinship in its face. **Simondi v. D'Ippolito,** 8 NJ 271 (1951). Ms. Halchak did not draw a family tree so that Respondent could establish her priority over Mr. Stewart and would be able to assess renunciation requirements among family members.

The Surrogate's Court belatedly learned that Ms. Mary H. Smith, enjoyed the highest degree of consanguinity among the relatives, making her first entitled to appointment and making moot, the need for renunciations from all others of inferior consanguinity or inferior distribution. In Ms. Halchak listing Ms. Smith in the surrogate's application as a cousin (instead of the aunt) and refusing to draw, prove, or explain lineage, she deprived Ms. Smith of her first right to serve without the need for any renunciations or advanced notice to anyone else. **R. 4 :80-1(a).**

Ms. Halchak ran afoul of the Court rule that directs applications for administrations. The court rule requires that applicants supply the names and addresses of heirs, net of kin and other persons, if any, entitled to letters, and their relationships to decedent , and, to the best of the applicant's knowledge and no other heirs and next of kin. **R. 4:80. Application To Surrogate's Court.**

The decedent's other heirs contacted the Surrogate's Court upon their own discovery of their interior in the Estate. It was not through Ms. Halchak's disclosure to the court or through her having contacted them. The heirs to the Halchak estate surfaced in three (3) separate parts.

1. March 27, 2017 Ms. Halchak telephoned the court at the end of business and made an inquiry to a probate clerk. She appeared with Mr. Altshuler two weeks later and made an application to serve. excluding all other heirs at law.

2- April 06, 2017 Mr. Joseph M. Masiuk, Esquire, a cousin and attorney, called and advised the Surrogate's Court that a company (not Ms. Halchak) contacted him about an estate.

He supplied names of the maternal realties who had an interest in the Estate, not previously disclosed by MS. Halchak. They were:

a. Maternal cousin, Joseph M. Masiuk
b. Maternal cousin, Martin D. Masiuk
c. Maternal cousin, Frances Gavas
d. Maternal cousin, John Gavas

3- April 12, 2017 Mr. Altshuler, on behalf of Ms. Halchak, notified the court of the existence of three unamed, paternal, relatives. Ms. Halchak failed to supply these 3 names (and addresses) on the date of her application a week earlier thereby having misled the Court into keeping the original April 20, 2017 hearing date. At 3:43 PM a probate clerk wrote Mr Altschuler to inform that the court discovered that there were 4 undisclosed *maternal* relatives. Ms. Halchak had not previously disclosed either maternal or paternal relatives to the Court. By April 20, 2017, the 4 maternal realties added themselves to the application.

4- On April 21, 2017, at 3:43 PM, Mr. Athschuler finally identified the paternal relatives as:

a. Paternal aunt (misrepresented as cousin) Mary H. Smith
b. Paternal cousin Thomas Lesjak
c. Paternal cousin William J. Lesjak

By Monday, April 24, 2017, at 10:52 AM, the Surrogate's Court added the paternal relatives to the application. It now consisted of 8 persons presenting as relatives.

Ms. Halchak certifies that on 11 AM, May 6, 2017, (Saturday) attorney Mr. Altshuler learned of the adjournment of the May 09 2017 hearing. It was adjourned due to the death of the Respondent's father. On May 09, 2017, Frances Gavas and John Gavas appeared and told court personnel that they were unsure whether they would renounce. They requested a new hearing date. The Gavas cousins' appearance contrasted Ms. Halchak's certified assertion that she had all renunciations and universal agreement, a month earlier, when she applied on April 06, 2017. Her certification regarding her April 06, 2017 possession of renunciations is all inconsistent with the staggered manner that relatives surfaced. There is continued contradiction in Ms. Halchak's certification that at a family meeting of May 06, 2017, both sides of the family, which included the maternal Gavas cousins, were already in complete agreement. She compounded her contradiction by saying that she possessed six "matching" renunciations, so she was already prepared (for her Surrogate's Court hearing). Instead, Frances Gavis', John Gavis' and Martin Masuik's defective renunciations were belatedly filed June 06, 2017. The maternal renunciations were defective as follows:

<u>John Gavas</u>

Defective Renunciation and Request: Seeks joint appointment to both Joseph M, Masiuk and Estelle Halchak. The renunciation was undated. There was a random "12" in handwriting. It was signed by John D. Gavas, when the form and the notary list him differently, as "John Gavas".

Martin D. Masiuk, Sr.
Defective Renunciation and Request: Seeks joint appointment of both Joseph M. Masiuk and Estelle Halchak. The notary's attestation fails to name the person whose identity has been satisfactorily established. There is no docket number to which the form corresponds.

Frances Gavas
Defective Renunciation and Request: Seeks joint appointment of both Joseph M. Masiuk and Estelle Halchak. There is no notary seal. The renunciation was dated May 30, 2017, not by April 6, 2017, as attested to by Ms. Halchak. It belatedly arrived in the mail on June 06, 2017.

Ms. Halchak incorrectly included that she needed nothing more that 6 executed renunciations to secure the appointment as Administratrix. She inaccurately certifies that she presented 100% of the renunciations. She presented only three paternal renunciations. Even if all 6 would have been presented at the June 056, 2017 hearing, however, she was deficient by 2 of the 8 heirs based on her October 02, 2017 attestation of the number of heirs. Or, she would have been deficient by 3 of 9 renunciations, based on her 2018 representation of heirs on the Release and Refunding Bonds that Ms. Halchak executed for insurance release from her security bond.

Mr. Joseph Masuik of the maternal side was absent from the hearing. By July 17, 2017, Mr. Joseph M. Masuik, affirmatively documented his disinterest in an appointment, thereby rendering all previous renunciations invalid. Mr. J. Masuik, who lived in Pennsylvania, the excessive distance to the late Mr. Halchak's home, and demands of his law practice as a bar from serving as an administrator.

10- Admit. Although no voice recording was made of the Hearing, Respondent did take handwritten notes contemporaneous with the Hearing. Those notes were transcribed into type-written notes within a short time after the Hearing.

11- Mr Altshuler did not attend the Hearing. Respondent did not know what Mr. Altshuler believed or did not believe.

12- Respondent admits that prior to the hearing she candidly disclosed that she knew Mr. Stewart outside of the hearing. She candidly disclosed that she knew Mr. Stewart outside of the hearing. She candidly disclosed that she knew Mr. Stewart's sister from grammar school. Respondent added that this would not affect her ability to make a fair and impartial decision and gave them the opportunity to ask questions. Respondent offered both parties an opportunity to object if they felt that her impartiality was affected. She explained that if either party objected, she would instead defer to the NJ State Superior Court who would hear the matter if either party files a complaint and order to show cause. Ms. Halchak was agreeable and emphatic about wishing to proceed. Ms. Halchak voiced no objection during the hearing or even during the months afterword.

13- Respondent contends at the hearing of June 06, 2017 respondent disclosed that she knew Mr. Stewart outside of the hearing. Respondent also disclosed that she knew his sister. Although her interactions with Mr. Stewart were not of such a nature that would give rise

to disqualification, she candidly disclosed out of an abundance of caution to avoid the mere appearance of partiality, She gave Ms. Halchak the opportunity to ask questions. She also gave Ms. Halchak opportunity to object. Ms. Halchak admits that she did not avail herself of these opportunities. Respondent submits that Ms. Halchak was emphatic about proceeding, accompanying her verbal agreement to proceed with enthusiastic nods and a cheerful smile. Ms. Halchak insisted on the Respondent hearing the matter. Months later Ms. Halchak certified that had she entered that hearing, confident that she would "prevail" pursuant to *ex parte* advice by Deputy Joan Marchese.

Respondent asserts that paragraph 13 is a mischaracterization of her interaction with Mr. Stewart. Mr. Stewart and Ms. Toledo were introduced to each other as adults. In the last decade, she ran into him a handful of times. The interaction between Mr. Stewart or his family is limited to occasional uncoordinated presence at the same locations, interrupted often by years-long lapses. One lapse between the Respondent, Mr. Stewart and/or any member of his family lasted close to two decades.

Respondent, an elected official, has close to 4,000 social media, Facebook friends. The term "friend" as it relates Facebook is inaccurate nomenclature. Facebook is a mere list of contact on a social networking website. Facebook is a $94 billion, for-profit, commercial entity. It uses algorithms to incessantly recommend lists of members to other members so to increase promiscuous-friending, the commercial benefit that it creates. Users sometimes accept "friend " requests out of duty to avoid gratuitously offending the requester. The majority of the Respondent's 4,000 Facebook "friends" are mere acquaintances, some of whom, the Respondent has never met. At the time of the hearing, Respondent did not think about Facebook at all, much less than Mr. Stewart's mother was among her thousands of contacts on the social networking website. This is consistent with the research findings authored by R.I.M. Dunbar establishing that social media friends are mostly superficial because "there is a cognitive constraint on the size of social networks that even the communication advantages of online media are unable to overcome".

Respondent denies that Mr. Stewart assisted with Respondent's campaign efforts. Mr. Stewart never contributed to Respondent's campaign In contrast, recent information and belief suggests that Mr. Stewart's partisan affiliation corresponds to the opposite political party. Ms. Toledo's superficial encounters with Mr, Stewart at any function, political or otherwise, have been the result of circumstances that she did not control.

There is no prohibition against the use of personal cellular telephones to accommodate the needs of the Court. In notices to the bar dating back to 2017, signed by by Chief Justice Stewart Rabner, the New Jersey Courts recognized the benefits of prompt, accessible communication. Chief Rabner began relaxing **R. 1:20** and **R. 1:21** to allow business communication with modern communication tools. The NJ Court rules have now been amended to compel attorneys to provide a cellular telephone number for use in business communication by the NJ Courts to its member attorneys. **R. 1:21-01.** The use of cellular telephones is found to be so indispensable, that the rule also compels attorneys to report changes in cellular telephone numbers within a mere 30 days. Like the NJ Courts, the Respondent operates a Surrogate's Court that aims to

offer access to the Court, which may include the making and receiving of alls and message on a personal cellular telephone.

Cellular telephone calls made between the Respondent and Mr. Stewart were limited to permissible issue, administrative in nature, which eluded any facts in dispute, and were and within the perimeters of the judicial canons. **(Judicial Canons, Rule 3.8, Comment 4).**

Respondent candidly testified that she spoke to Mr. Stewart on four (4) occasions. This testimony was made to her best recollection and without the assistance of records needed to refresh her recollections as to the remote happenings of three (3) years ago. The four telephone conversations to which she attested were:

1. A description of the application process for administration.
2. An inquiry to verify whether he wished to withdraw or proceed in light of a relative surfacing.
3. To adjourn the matter.
4. To explain the rights, responsibilities and surety bonding requirements of an administrator.

Respondent denies that any text message, to which complainant refers, violated the judicial canons. Respondent leaves Complainant to its proofs of the text messages including their content, date and time.

Notably, Respondent's text messages truncate at a maximum of 160 characters. Just one paragraph may be divided into 10 separate text messages. When special characters are in use, text messages truncate at a mere 70 characters. Finally, every time a person responds with a simple "ok" or similar acknowledgement filler, it adds to the exchange. Without Complainant acknowledge these messaging nuances, the above number of text is unfairly mischaracterized. An appropriate reflection of the volume of text messages is to analyze them as a conversation, by date. Counting each "lol" as its own unit would be as prejudicial as dissecting a conversation into sentences and treating each sentence as its own unit.

14- Respondent admits that she appointed Mr. Stewart pursuant to **N.J.S.A. 3B:10-2 To whom letters of administration granted.** The statute states, in relevant part, that if heirs shall not claim the administration within 40 days after the death of the intestate, the Surrogate's Court may grant letters of administration **to any fit person** applying therefore. She appointed Mr. Stewart after finding that he was fit to serve.

15- Admit

16- Respondent admits Hon. La Conte heard the OTSC application on September 5, 2017. However it must be noted the estate was not valued at $600,000 when Respondent had the Hearing three (3) months prior. Whether Judge La Conte "questioned", Respondent relies on the transcript of that proceeding. Respondent was not "questioned".

17- Respondent relies on the transcript of the Proceeding as to what was said by Judge La Conte. Respondent denies that a dispute ever arose with meaning of **R. 4:82(5).** In the

case cited by Mr. Altshuler, **In the Matter of Albert Stephens, Deceased,** 60 NJ Super. 597 (App. Div. 1961) a dispute arises once any of the parties voices an objection in a hearing of the Surrogate's Court. In fact, during the hearing, the Respondent gave Ms. Halchak three opportunities to voice an objection but Ms. Halchak emphatically insisted on moving forward.

18- Admit

19- Respondent denies and further respondent stands by her sworn testimony as candid, accurate and truthful.

20- Respondent admits the statement but denies it lacked candor and misrepresented a relationship. The statement has to be understood in its context with all oof respondent's testimony.

21- Respondent testified, to her best recollection, that she communicated with him about official business on four (4) occasions in 2017. Respondent's testimony was based on the best of her recollection, with three years having elapsed in between, and without the assistance of records that could refresh her recollection.

Communications with Mr. Stewart was limited to permissible issues, administrative in nature, and within the parameters of the **Judicial Cannons, Rule 3.8 Ex Parte Communications, Comment 4,** indicates that in general settlement discussions, scheduling and emergent issues are not considered *ex parte* communications. They were:

1. An administrative description of the application process, during a time that he was the only applicant.

2. To check whether he wished to withdraw in light of a surfacing relative, which would have settled the matter.

3. An adjournment, after the death of Respondent's father, which was emergent in nature.
4. To explain the rights, responsibilities, and surety bonding requirements of an administrator, which was also administrative in nature.

Additionally, Mr. Stewart was the only applicant until April 06, 2017 which corroborates that the exchange was simply instructional and administrative and from which there was no other party against whom there may have been an advantage. Ms. Halchak did not apply for administration until April 06, 2017.

22- Respondent asserts that the above is consistent with her testimony. She maintains that the speaking and texting was all one communication limited to permissible topics within **Comment 4 of Rule 3.8.** such as orientation status, and scheduling. Text messages for the of recapitulation is part of the same conversation. Respondent requests copies of the texts messages to verify the content, the dates, and the times of said text messages.

Additionally, Respondent's text messages held a maximum of 160 characters so that an average paragraph truncates or has to be divided into 10 separate set messages. When special characters are in use, text messages truncate at only 70 characters. Additionally, every time a person responds with a simple "ok" or similar acknowledgement filler, it adds to the exchange, lending to a mischaracterization.

Count I

23- Respondent repeats the answers contained in the foregoing paragraphs as if each were set forth fully and at length herein.

24- **THERE WAS NO ACTUAL PARTIALITY:**

The Respondent denies that there was actual partiality because there was no requirement to disqualify. Respondent's superficial acquaintance with Mr. Stewart does not give rise to disqualification within the meaning of **Canon 3, Rule 3:17(B).** On the contrary, **Rule 3.17(A)** directs Judges to hear and decide *all* assigned matters unless disqualification is required by this rule or other law. The Judicial Canons preface the disqualification rule by commanding that judges decide all matters that come before them. **Rule 3.17(A), Rule 3.17(A) Comment 1.** The The default standard is in favor of hearing cases. If a judge has a personal bias or a prejudice toward a party or a party's lawyer, or if the judge has personal knowledge of disputed evidentiary facts in the proceeding, then, naturally, a disqualification is required. **Rule 3.17 (B0(1).** That was not the case here. Respondent bore no bias or prejudice of any kind. She took time to elicit testimony, gather facts, and gave each opportunity to object, present, and speak. **Rule 3.17 (3) (a-d)** contemplates the relationships that compel disqualification. The relationships requiring disqualification are limited itemized to the following close ones:

> *judge's spouse, civil union or domestic partner, a first cousin or more closely related relative to either of them, or a spouse of such a relative, the lawyer to such a relative, one of these that are likely to be called as a witness, or if **to the judge's knowledge,** a second cousin or relative related to either of them, a financial interest, and prior professional relationships.
> *the rule includes *only* those social relationship that are ***"of such a nature"*** that would give rise to actual or the appearance of partiality. **Rule 3.17(3)(d).**

It is undisputed that there are no familial, financial, or professional relationships in this Halchak matter. The relationship with Mr. Stewart was an attenuated, twice removed, acquaintance that does not meet the standard of a disqualifying social relationship. **Rule 3.17kB(3)(d).** contemplates non-blood, non-legal, relationships and negates a judge's duty of disqualification unless the relationship between the parties meets two (2) requirements:

1. The relationship must be "social" as a preliminary matter.
2. The quality of the social relationship must be, at a minimum "of such a nature".

A social relationship is one that includes relationships between family members, friends, neighbors, coworkers, and other associates. Notably, the experts in behavioral medicine

deliberately exclude social *contacts* as being separate and distinguishable from social *relationships*. Social contacts are characterized as being incidental. These incidental contacts are subjectively perceived by the participant as having limited significance. **Encyclopedia of Behavioral Medicine.**

Oxford Reference defines "incidental" as accompanying, but not a major part of. Incidental events are likely to happen as a collateral consequence of a primary activity. Mr. Stewart was certainly incidental. He was the figurative + 1, of someone else, who was the +1 of the invitee. His appearance at a same venue as the Respondent, is consistent with the definition of "incidental". The encounters were an ancillary consequence of Respondent being a public figure who attends and hosts a multitude of events, thereby making Respondent and Mr. Stewart, mere social contacts who would run into incidentally.

The other patent difference when comparing a social relationship to a social contact is the "significance" by which the participant weighs the interaction. Significance is defined as having the quality of being worthy of attention. It means that, from the subjective experience of the participant, it is important. Synonyms of "significance" include "intention" and "substance", both of which were absent from the Respondent's interaction with Mr. Stewart. Respondent neither invited nor coordinated social encounters with Mr. Stewart, thereby lacking intention. Respondent's interactions consisted of pleasantries, lacking in substance as well.

The social relationships is a set of interactions where the respective participants (within the interaction) subjectively feel affected, causing them to bind together. Their interactions were far too peripheral to cause a bind between the parties. Respondent did not interact with Mr. Stewart in such a way that she would categorize him as anything other than a mere social contact.

The language "*of such a nature)* in **Rule 3.17 (3)(d0)** tempers the disqualification requirement otherwise attenuated relationships would be manipulated as a tool to engage in prohibited "judge shopping". For example, the intent of the rule is not to cause a judge to disqualify upon the bowling-judge's pleasantries to another bowler, on another team, during a season where thy both happen to see each other at the alley. The rule appropriately contemplated the *quality* of the interaction with the party or his lawyer with party, or a lawyer of a party must be of "*of a nature*" that would give rise to the actual, or appearance of partiality.

If even consanguinity between the parties does bot always trigger compulsory disqualification for actual or apparent partiality, then certainly relationships that fail to be "of such a nature" cannot trigger compulsory disqualification, either. **Rule 3.17B** a first cousin's child, a second cousin, or a grandniece in litigation triggers disqualification. The trigger, however, is tempered by the judges actual knowledge . **Rule 3.17N Comment 3.** So, if the trigger to a disqualification based on a blood relatives is tempered by the judge's actual knowledge, then it occurring to one, at the time of the hearing, that there is a relative of the litigant who uses Facebook, and is among 4,000 contacts, then that must be tempered too.

In this age where social media connect us to people whom we have never even met, the rule may not be permitted to compel disqualification every time there is a Facebook friend, otherwise, the work of the courts would come to a screeching halt.

There are other instances that temper disqualification. In fact, even the existence of a lawyer-relative does not render the judge disqualified from hearing all markers involving the law firm which the relative is affiliated. **See Judicial Canon, Rule 3.17, Comment 4.** The judge must consider nuances before jumping to disqualification. **(Rule 3.17 Comment 4 1-10)** These nuances include the degree of relationship between the judge and the relative affiliated with the firm, the closeness of the relationship between the judge and the relative, and even whether the judge knows whether the law firm is providing its services *pro bono*. The same rationale can be applied to Mr. Stewart and, by extension, a member of his family. As a seminal matter, the Respondent's degree of closeness to Mr. Stewart or any member of his family is not of a great degree of closeness.

To be clear, no one disputes that Respondent disclosed the contact with the *pro se* Mr. Stewart or the attorney Mr. Altshuler. The question is whether it was a social relationship at all, and if so, "of a nature" that warranted disqualification. Respondent replies "no" to both.

THERE WAS NO APPEARANCE OF PARTIALITY

Respondent took measures to avoid the appearance of partiality as well. **Judicial Canons, Rule 3.17(C).** This rule requires the judge to disclose to the parties the circumstances that are not deemed by the judge to require disqualification but might be regarded by the parties as affecting the judge's impartiality. The Respondent submits that her behavior comported with the rule. The standard is whether a reasonable, fully informed person would have doubt about the judge's impartiality. DeNike v. Cupo, **196 N.J 502 Comment (2) to Rule 3.17 (C).**

The reasonable, fully informed person would note that Respondent went to great lengths to avoid the appearance of impropriety. Respondent made the disclosure, even when no one was looking outside of Ms. Halchak and Mr. Stewart. Respondent disclosed that she knew Mr. Stewart outside of the hearing. Respondent disclosed that she knew Mr. Stewart's sister outside of the hearing. Indeed, Respondent specified that they had attended the same school. A reasonable, informed person would note that Respondent made this disclosure at the inception of the hearing before she or either party heard the other's testimony. Respondent patiently encouraged both parties to ask questions. A reasonable, fully informed person would note that Ms. Halchak's responses demonstrated a high level of sophistication. She had no questions about Respondent's knowledge of Mr. Stewart outside of the hearing. Respondent gave an opportunity to object. Respondent offered the NJ Superior Court as an alternate forum in which the request for appointment the Halchak estate could be considered. Respondent encouraged Ms. Halchak to invite attorney Mr. Altshuler before proceeding. Out of a continued abundance of caution, and because she owed a duty of disclosure to both parties, not just Ms. Halchak, Respondent disclosed that she knew Mr. Altshuler outside of the hearing

as well. A reasonable, informed person would have observed Ms. Halchak's emphatic gesticulations signaling her wish for Respondent to hear the matter.

Respondent recognizes that disqualification is not subject to a waiver. This is a safeguard to avoid the possibility that a party will feel coerced into consent. **Comment (10) to Rule 3.17.** In her certification, Ms. Halchak was clear that she did not feel pressure or coercion to consent. In fact, Ms. Halchak admits that she felt sure that she would have the appointment based on an *ex parte* conversation with Deputy Joan Marchese. She admits her unilateral decision to arrive unprepared for the hearing because she was confident that she could circumvent the hearing all together.

Rule 3.7 of the Judicial Canons indicates that a judge shall accord to every person who is legally interested in a proceeding, or to that person's lawyer, the right to be heard according to law or court rule. Absent objection from the parties, Respondent owed a duty the the heirs to hear the party's testimony and determine the appointment on the facts specific to the case. **Comment (1) to Rule 3.17** cautions that unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficulty.

Judges may make reasonable accommodations for *pro se* litigants **(Rule 3.7, comment).** Respondent's extensive opportunities to object and her detailed explanation was to avoid the appearance of partiality and in recognition that the parties were each *pro se* litigants.

Due regard for the rights of the parties to be heard, affirmatively requires judges to resolve matters without unnecessary cost and delay. **(Judicial Canon, Rule 3.9 Diligence and attending comment).** Surrogate's Court hearings offer exactly that, quick pro se, access to the courts for a modest court fee. The estate, which consisted mostly of a vacant house, would benefit from a quick resolution as it had been sitting idle for nearly a half year. Ms. Halchak wished to contain costs, as was articulated by both Mr Altshuler and her. Ms. Halchak was attracted to the $10 per person cost of a hearing in the Surrogates Court, as opposed to the several $1,000s in costs that are generally incurred to appoint an administrator via the Superior Court. Ms. Halchak understood that, no matter who would be appointed, the outcome was that she and all family members' right to their rightful share remained legally whole. Additionally, she was satisfied that her inheritance was protected since the Respondent appropriately directed the estate to be protected with a surety bond.

Ms. Halchak was satisfied with the appointment of Keith Stewart. In fact, after his June 06, 2017 appointment. but before his June 22, 2017 qualification, she made no effort to remove him. Ms. Halchak understood that irrespective of the Respondent's appointment at this modestly priced hearing, her right to seek remedy was preserved, without prejudice, through the Superior Court if circumstances changed.

Indeed, circumstances changed. It was subsequently discovered that the late Mr. Halchak left over $600,000 in a mutual fund. On September 05, 2017, three months after Respondent concluded her direct involvement with the case, Ms. Halchak was heard at an Order to Show Cause. Ms. Halchak was ultimately seeking that the court appoint Brian Hurtt, an in-state family friend to serve with her, as she lives in New Hampshire. After the September 05, 2017 hearing, Mr. Stewart remained as administrator and the court directed him to protect the assets of the estate, pay utilities, taxes, and address only emergent matters. The assets were frozen, however, until the Superior Court could hear the matter on its merits.

In October, 2017, when the matter returned before the Superior Court, Mr. Stewart withdrew from the litigation by consent. The court appointed Ms. Halchak and, on her request, Mr. Hurtt. Mr. Hurtt was the lifetime friend who misrepresented that Mr. Halchak had no relatives when he incinerated Mr. Halchak without having the authority to do so. Mr Hurtt presented an admitted, posthumously dated, unsigned, draft Will, that favored his family and him. Mr. Hurtt accepted from Ms. Halchak, $66,000 in cash and property that rightly belonged to the heirs, and if they disclaimed, to their heirs. Mr. Hurtt's 2012 bankruptcy made him unbondable, except upon written assurances that in his joint appointment with Ms. Halchak, he could neither supervise or handle any funds.

Most notably, if Respondent had recused herself in June 2017, it would have produced a substantially similar result. If Respondent disqualified, Ms. Halchak would have had to file a Complaint and an Order to Show Cause with the Superior Court to seek appointment. She ultimately filed the Complaint and Order to Show Cause, but it was after the Surrogate's hearing. The latter effectively assured that Ms. Halchak enjoyed (2) bites of the apple. Given the totality of the above, a reasonable, fully informed person would not have found that there was an appearance of partiality.

Count II

25- Respondent repeats the answers contained in the foregoing paragraphs as if each were set forth fully and at length herein.

26- Respondent denies that Mr. Stewart was a friend. Respondent appointed Mr. Stewart pursuant to **N.J.S.A. 3B10-2 To whom letters of administration granted.** It states, in relevant part that the Surrogate's Court may grant letters of administration to any fit person applying, if after 40 days, the heirs have failed to come forward. Ms. Halchak status as a relative diminished making her equal to that of a non-relative.

1. When applied belatedly, after 68 days.
2. When she offered no evidence of her first right of appointment. The first right of appointment belonged to Mary H. Smith.
3. When she offered no proof of kinship.

This reduced the appointment standard to that of "any fit person" as directed in the statute **3B:10-2.** When determining fitness, hers was reduced by her contradictory testimony, her manifested intent to disregard the law. There is further support for Respondent's position that Mr. Stewart was preferred over Ms. Halchak.

Ms. Halchak's distribution of the estate, concluding in October 2018, corroborates Respondent's assertions about Ms. Halchak. A cursory review of the records demonstrates that the value of the estate at $1, 091,338.49. There are irregularities that corroborate the Respondent's notes from the June 06, 2017 hearing. Ms. Halchak did not file an accounting as is required of fiduciaries. Ms. Halchak distributed $761,994. Ms. Halchak leaves $329,344.49 unaccounted for.

House	$ 386,000.00
Truck	$ 22,000.00
Furnishings	$ 1,000.00
Edward Jones Fund	$ 652,338.49
Guns and cabinet	$ 30,000.00
TOTAL	**$1,091,338.49**

Of the distribution that is accounted for, there is close to $100,000 whose distributions were inconsistent with the laws of intestacy. It is as follows:
$30,000 more to herself, Ms. Halchak than to Aunt Mary Smith.
$16,553 in cash lot Brian Hurtt, a non-heir.
$22,000 in 2015 GMC truck to Brian Hurtt.
$30,000 in guns, and firearm cabinet to Brian Hurtt.
Ms. Halchak, in her fiduciary capacity, was supposed to distribute according to the laws of intestate succession. Corroborated Respondent's 2017 record of her testimony, Ms. Halchak violated the laws of intestate succession. Ms. Halchak actually deprived the heirs of their full inheritance. In the instance of the $55,000 in the truck and guns, she admits that she gave it away. The heirs could only accept their inheritance or disclaim. Even if they disclaimed, the effect would be as if the disclaimer pre-deceased and the the asset would pass to the disclaimers own heirs. In no instance is it given away as this is contrary to tax and intestacy laws. Respondent had the foresight to identify these issues and determine that Ms. Halchak was unfit to serve.

Mr. Halchak's other relatives also failed to avail themselves of the first right to appointment by failing to make a timely application within 40 days proscribed by the statute. Until December 2015, Mr. Martin D. Masuik saw Mr. Halchak every hunting season. In October 2016, cousin Mr. Martin D. Masuik notified another cousin, Mr. Joseph Masuik, that the decent was in the end stages of his life. January 28, 2017, Mr. Halchak died **(P1).** February 28, 2017 Ms.Halchak learned of Mr. Halchak's death. There was no family to claim his body although the relatives were on actual or constructive notice of his impending death due to the years-long deterioration of Mr. Halchak's brain and spinal cord.

At the June 06, 2017 hearing, no relatives, not even the objecting Gavas cousins appeared. This left only Ms. Halchak. Ms. Halchak failed to make a showing that she was related, thereby reducing her to the same "fitness to serve" standard as Mr. Stewart. **N.J.S.A. 3B:10-2.** Ms. Halchak's vacillating testimony lacked credibility. Ms. Halchak testified that she intended to make illegal distributions, in violation of the laws of intestate succession, and, in fact, she subsequently did. Ms. Halchak testified that she intended to treat a non-related friend as an heir, thereby depriving the rightful heirs of their inheritance, and, in fact, she did. Ms. Halchak failed to make a showing that she was first titled to appointment, and it was later discovered that she was not.

Ms. Halchak enjoyed a net worth of $1.5 million dollars before the distribution of Mr. Mark Halchak's estate. **(Ins. Bond 6).** She testified that she had not paid his ashes in full. Between February 28, 2017 and June 06, 2017. she made two payments of $500 toward his ashes. Ms. Halchak, a millionaire, later certified that both of the $500 payments were the result of a family-wide collection. Ms. Halchak never interred the decedent's ashes, despite her testimony that she would.

Mr. Stewart testified that Mr. Halchak disliked his family so much that after a hunting trip in Pennsylvania, Mr. Halchak castrated a deer's testicles and left them in his Pennsylvania-family's mailbox. Mr. Stewart testified that the decedent spoke poorly of his family as a general matter. Mr. Stewart testified that on Mr. Halchak's encouragement he qualified as a gun instructor. Mr. Stewart's firearms qualification would assist in safely securing, handling, pricing and selling Mr. Halchak's vast inventory of firearms. Mr. Stewart demonstrated proper concern for Mr. Halchak's remains.

Pursuant to the Court rule, Mr. Stewart, a New Jersey resident was appropriately preferred to Ms. Halchak, who was a non-resident, making no showing of kinship, had no meaningful relationship with the decedent, demonstrated credibility problems, and applying after 40 days of death. **R 4:80-5. Residents Preferred over Nonresidents, N.J.S.A. 3B:10-2 To whom letters of administration granted.**

Count III

27- Respondent repeats the answers obtained in the foregoing paragraphs as if each were set forth fully and at length herein.

28- Respondent denies making any misrepresentation to A.C.J.C. investigators regarding any of her testimony including the nature and extent of her relationship with Mr. Stewart. Respondent contends she did not lack candor and again stands by all of her answers.

Narrative

During the fifteen years I have practiced law my main focus has been to serve in the public domain, first as a deputy Attorney General wherein I believe I served honorably and with distinction. For the last nine yers I have served in the elected position of Surrogate.

In these two capacities I have always been mindful I am a public servant who has the obligation to serve honorably and to faithfully discharge my duties. I have never veered from that calling and I did not do so in the matter now before the Court.

I welcome the opportunity to answer for all I said and did in this matter. I was open and honest with all. I have never and would never compromise my integrity in the discharge of my duties as Surrogate.

CERTIFICATION OF ANSWER

I, Bernice Toledo, am the respondent in the within disciplinary action and hereby certify as follows:

1. I have read every paragraph of the foregoing Answer to the Complaint and certify that the statements therein are true and based on my personal knowledge.
2. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 14, 2020

Bernice Toledo