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QUESTION ONE:

The two most important qualifications that a Civil Court judge must possess are (1) knowledge of the law, and (2) the right temperament. I humbly submit that my extensive and well-rounded legal career coupled with my background make me the perfect candidate to be elected to the Civil Court.

Since 2002, I have been admitted to practice law in the State of New York. Throughout my work as a litigator in my family's firm in the South Bronx, I focused on helping people in historically low income neighborhoods in the Bronx, Brooklyn, and Manhattan. Because the issues which people face in these economically disenfranchised neighborhoods are so varied, I have had the opportunity to appear in nearly every type of court within the New York court system. I have represented clients in Family Court, Housing Court (both residential and commercial matters), Civil Court, and State Supreme Court. I have handled matters in the Appellate Division. I have represented clients in Criminal Court. I have drafted pleadings, appeared at preliminary conferences, drafted motions, argued motions, appeared at compliance conferences, and picked juries. I have tried cases to jury verdict in Civil court and Supreme Court. I have represented plaintiffs as well as defendants.

This broad based, expansive, nearly two decades worth of experience in guiding clients through the State's legal system is extremely important for any judicial candidate to possess. In sports, the reason why the best managers come from being former players is because one needs to play the game for years before one can fully understand how to manage the game.

In 2014, I was appointed as an Administrative Law Judge in New York City's parking violation's bureau. Shortly after, I was appointed as a Hearing Officer in New York City's Office of Administrative Trials and Hearings (OATH). At OATH, I adjudicated cases involving alleged violations of the City's Taxi and Limousine Commission Rules as well as alleged violations of the Administrative Code of the City of New York (including summonses issued for drinking alcohol in public, public urination summonses and summonses issued for smoking marijuana in public). In this position, I gained a deep appreciation for the work judges do, and also discovered that I have a deep rooted passion for public service. I learned first hand how to overcome the challenges associated with adjudicating cases regarding a wide variety of issues, and will take the years of knowledge and experience I gained at OATH with me to the Civil Court. Integrity, and showing respect for litigants who appear before for a court are universal concepts regardless of the specific forum a controversy is decided in. Because of the part time nature of these appointments, I was able to continue to practice law as a private attorney.

In 2020, I was appointed judge to the US Immigration Court, and presided over cases at 26 Federal Plaza in Manhattan. During my time with the immigration court, I further refined my skills as a judge, and conducted trials which dealt with issues such as asylum, removal, and international conventions against torture. Immigration cases touch upon many local areas of law, such as whether a criminal conviction obtained in a New York court can be used in a Federal action to remove someone from the United States, and whether a child can adjust their status after being judged a Special Immigrant Juvenile by a judge in Family Court. As an immigration judge, my “outside” review of local criminal and civil judicial decisions only strengthened my knowledge of New York State law, and further enhanced my universal optic as to how the Civil Court can operate. I bring these years of knowledge and experience with me as well, which would be invaluable, as an elected Civil Court judge will almost inevitably be first assigned to either Family Court or Criminal Court.

When acting is either a judicial capacity, or as an advocate for a private client, my temperament has always been to guide people through the court system in a way that respects who they are, and upholds the principles of the legal system. Although the role of advocate is different than the role of judge, both share a common value of integrity and respect for humanity. As a judge in immigration court, I have been known to pass out coloring books to children who have come with their parents, as well as make a balloon animal for a crying child who is uncomfortable in the courtroom environment. It is important to always remember that the everyday experiences for those who work in the court system may differ dramatically to those who appear in court. I have personally witnessed the fear and anxiety that some people experience when they enter a court room for the first time, and I constantly seek to alleviate those feelings of dread.

In all the time that I served as an immigration judge at 26 Federal Plaza, no case which I personally heard resulted in an order of removal being issued against a Respondent. And no case which I heard resulted in the government appealing my decision. I am incredibly proud of this fact, and I believe my temperament played an enormous role in that outcome.

Temperament is largely dependent on personal observation. I welcome any additional questions or chances to meet in person.

## QUESTION TWO:

There are two areas where a Civil Court judge can seek to reform the judicial system for the betterment of the participants. First, a judge may try and propose amendments to the New York Codes, Rules and Regulations in the judiciary volumes (which are State administrative Rules). Secondly, a judge can create fair and reasonable “Part” rules which govern the ways work flow is regulated within their courtroom.

Matters heard in Civil Court run the gamut from personal injury claims and other torts, to contract disputes commercial actions. With such a wide variety of cases, the only thing constant is that Civil Court remains the court closest to the people, and therefore draws in the most number of unrepresented litigants.

Because of this, I will first seek to create court forms and instructions in easy to

read, plain non “legalese” language, so that unrepresented litigants will have a complete understanding of the proceeding and what the next steps in the process are. Not only does this simple act help to safeguard the Due Process rights of the unrepresented, it also helps to efficiently resolve matters, as the parties can come to a well informed decision faster.

I will also focus on linking unrepresented litigants with additional City resources which they might be in need of. From mental health help, to educational opportunities, to job placement, many court actions involving an unrepresented litigant with one or more of these issues could potentially be resolved once that litigant is given help with the right outside resources. The court system can act as a conduit between those who need help, and the resources which can help them.

Additionally, a mechanism can be created by which the parties can opt for a court supervised mediation before the pre-trial conference stage of litigation. Mediating matters in the early stages of the litigation process can help the parties define the issues in controversy, and also potentially resolve their case in an extremely expeditious manner.

As a U.S. Immigration judge, during COVID I created “Part” rules which allowed parties to appear by remote means without the need for a motion. Other immigration judges required a motion to be made by either of the parties with an indication as to the specific reason as to why the motion should be granted. I believe one of the most meaningful reforms (or advancements) is for the system to adapt to evolving technologies and ways of resolving cases. The manner in which the parties appear is less consequential to me than coming to the right resolution under the law.

### QUESTION THREE:

A:

A judge is vested with powers under law, as well as powers under the concept of equity. In the overwhelming majority of cases, there is an answer under the law which a judge should use to resolve an issue. However, in a small number of cases, universal concepts of fairness and equity demand that a judge intercede and render a decision in the interests of justice. A judge should be wary of using equitable power frequently, as doing so creates the risk of an ad-hoc judicial system where the result to a controversy will change depending on which judge decides the matter. However, when there is an extraordinary circumstance, or a where a party will suffer an unconscionable result that would shock the conscience of an average person if that result were not changed, a judge should absolutely use their equitable powers to render justice.

B:

The ability to sanction is the one power judges should contemplate the most before perusing. Sanctions should be used as a remedy of last resort, and are most justly reserved for repeated conduct that undermines the court system's legitimacy. Specifically in terms of frivolous actions, the court should analyze the issue of frivolousness on a case by case basis, and should most often refrain deeming something frivolous and dismissing an action sua sponte (on the court's own motion) without any input from the parties. Further, a judge should be mindful not to superimpose their own sense of what is

frivolous over what the parties feel is frivolous. However, under limited circumstances sanctions should be ordered. For example, if a litigant loses a case, and then repeatedly commences new actions against the same party, alleging the same facts and law, then sanctions may be warranted. This is because the party who is repeatedly hauled in to court after they have previously won their case continues to suffer expense though the controversy has already been decided in their favor. In other situations, perhaps the award of costs for making a summary judgment motion might be the appropriate remedy.

C:

The law always favors a resolution on the merits, and discretionary powers to correct technical issues should be used freely when appropriate so that each party can have their day in court. This principle is alluded to in CPLR 2001, CPLR 2004. However, this discretionary power to correct technicalities or irregularities is not without limitation. There are certain issues which do not lend themselves to correction, such as a statute of limitation issue, or when the courts or the legislature specifically contemplated and forbid such correction. In such instances of “fatal flaws”, the role of the judge is to explain their decision clearly and succinctly in a manner consistent with respect for the party who suffers the burden of the loss. Any analysis as to whether a technical correction can occur must be done of a case by case basis. Unless specifically forbidden, leave to correct technical defects should be freely given, as it does not prejudice the party opponent in relation to the merits of their claim or defense. Court pleadings absent signatures, a motion which lists the wrong address to the courthouse, or even a motion erroneously submitted without a needed affidavit (depending on the specific circumstance), would be ripe for an exercise of the discretionary power to allow correction, as the law clearly favors resolution of controversies on the merits.

QUESTION FOUR:

Adjournments should be freely given if it avoids prejudice to a party or unless there is a compelling reason not to grant the adjournment. The need for a full and fair resolution on the merits generally outweighs the need for an expeditious resolution. However, a judge should be mindful that some adjournment requests are used as a delay tactic. Before granting any adjournment, a judge should get input from the opposing party as to whether they consent to such an adjournment, and if not, the reasons why they do not consent to such adjournment.

I am happy to answer any and all follow up questions which you may have.

Very Respectfully submitted,

David Alan Fraiden