THE VILLAGE REFORM DEMOCRATIC CLUB

Dear 2022 Surrogate Judge Candidates:

The Village Reform Democratic Club is interested in your qualifications and plans for the office of NY County Surrogate Judge. We have prepared these questions to help us know you better as we decide on our Club's endorsements.

Please provide your name, website and/or social media (if any), and contact information in case any of our members wish additional information or clarification.

My contact information is as follows:

Verley A. Brown

550 W. 45th Street, Apt. 2711

New York, New York 10036

(646) 388-2246

verley@verleyforsurrogate.com

linkedin.com/in/verley-brown-8364ba41

1) What are your qualifications to be NY County Surrogate Judge?

As a Jamaican-born, former Marine, LGBTQ father of three children (a son and two daughters), I bring a diverse background and perspective to the judiciary. I have lived in Harlem, Washington Heights, Chelsea and now live in Hell's Kitchen, which has further broadened my appreciation for the diversity of New York City and the need for representation of that diversity in the city's court system.

I have been a practicing attorney for over 13 years, all of which have been focused in the area of Trusts & Estates. I began my career in September of 2008 at the law firm of Cullen and Dykman, LLP, where I worked for six years before moving on to McLaughlin & Stern, LLP in January of 2015. I have been at my current firm, Meltzer, Lippe, Goldstein & Breitstone, LLP, since June of 2021 in the firm's Trusts & Estates Litigation practice group, where I counsel fiduciaries, beneficiaries and distributees in a variety of contested and uncontested proceedings in Surrogate's Court throughout New York State, including probate and administration proceedings, estate and trust accounting proceedings, will and trust construction proceedings, proceedings against fiduciaries, discovery and turnover proceedings, and other trust and estate

related matters. Prior to attending law school, I worked for seven years in the NYS Unified Court System, the last three years as a Senior Surrogate's Court Clerk in the Accounting and Miscellaneous Department of the Bronx County Surrogate's Court.

2) What programs would you initiate to protect the interests of the parties who require guardians?

Guardianship in Surrogate's Court under Article 17-A of the Surrogate's Court Procedure Act is much more restrictive, yet less supervised, than guardianship in Supreme Court under Article 81 of the Mental Hygiene Law, and there are less procedures in place to protect the rights of the person subject to an Article 17-A proceeding. For example, Article 81 guardians are required to file a report 90 days after appointment and annually thereafter, while Article 17-A guardians have no duty to file any report; Article 81 requires the appointment of an independent court evaluator to investigate and make recommendations to the court while the appointment of a guardian ad litem to perform similar function is discretionary in Article 17-A; almost all Article 17-A proceedings are determined by reference to medical certifications by treating physicians who are not subject to cross-examination; Article 81 requires proof by clear and convincing evidence, while Article 17-A is silent as to the burden of proof. I would initiate the following policies and procedures to protect the interests of persons subject to an Article 17-A guardianship: mandate the appointment of a guardian ad litem to represent the interest of the party for whom guardianship is sought and to assist the court in assessing the party's functional capacity in order to determine if an Article 17-A guardian is the least restrictive alternative of if an Article 81 guardianship is more appropriate, or if the party possesses sufficient functional capabilities to execute advance directives such as a health care proxy and power of attorney so their parent or concerned relative can assist in making medical or financial decisions without court intervention to preserve their rights and autonomy; to the extent the appointment of an Article 17-A guardian is appropriate, I would require periodic reporting similar to the reporting requirements of Article 81 guardians to ensure that the assets of the ward are protected. The goal of these initiatives would be to ensure that guardians are appointed only when necessary, encourage more collaboration between the court and guardianship stakeholders, and address the need for greater support and monitoring to protect the safety, well-being and individual rights of the individuals subject to the appointment of a guardian.

3) What issues, if any, do you feel must be addressed by the Surrogate regarding the Administration for Children's Services?

The Administration for Children's Services ("ACS") often fails to protect children in its custody from neglect and abuse, and historically fails to provide these children with permanent homes within a reasonable time. The longer a child remains in the foster care system, the more likely he or she is to become a victim of neglect and/or abuse. As such, it should be incumbent upon every Surrogate in a proceeding to adopt a child who is in ACS custody to thoroughly, but expeditiously, process the case to ensure the prompt and

safe placement of the child in a permanent home. To do so, I would give calendar priority to adoption cases, ensure that my staff receives regular training in adoption procedures involving ACS, and prioritize the review of the required documents (the "adoption packet") to enable the court to promptly address and resolve any concerns therein to move toward a final determination.

4) If elected, what reforms, if any, would you make in Surrogate Court's rules and/or procedures?

   I believe that Surrogate's Court should be a "yes" court, not a "no" court, i.e. provide greater access to the public by encourage liberal policies to the acceptance of filings, particularly with respect to parties who are not represented by counsel. As such, I would institute policies that would require my staff liberally accept papers when filed rather than reject papers for ministerial defects. Clerks are not the adversaries; therefore, it should be left up to the actual adversaries to challenge the sufficiency of a party's filings.

5) In certain circumstances the law gives judges:
   a. the discretion to act in the interest of justice to achieve an outcome which would otherwise not happen: Kinship hearings are generally referred to as friendly hearings, i.e. non-adversarial. The admissibility of oral testimony offered as proof of any aspect of family relationship is subject to two severe limitations; the Dead Man's Statute and the hearsay rule. The Dead Man's Statute provides that a party or person interested in an event cannot testify concerning any personal transaction or communication with the decedent. However, oftentimes in kinship hearings, particularly in the case of unrepresented parties, the most significant evidence a claimant has is precluded by the Dead Man's Statute. I would exercise discretion in appropriate cases to allow the introduction of evidence that may ordinarily be excluded under the Dead Man's Statute, in the interest of justice, to properly establish kinship and pass property to the rightful heirs of the decedent rather than exclude testimony that may prevent assets of the decedent from passing to the State.
   b. the power to sanction parties for frivolous conduct – I would exercise this power sparingly because I would not want the threat of sanctions to chill the fervent advocacy of attorneys on behalf of their clients. There are situations where sanctions are appropriate, but the threat of sanctions should not be used as a weapon to stymie an attorney's zealous representation of a client's interest.
   c. the discretion to correct technical defects – in the interest of promoting increased access to all litigants, whether represented by the best attorneys or pro se, I would exercise my discretion to require that papers with ministerial defects be accepted for filing and that litigants be liberally permitted to amend their pleadings as they go along, allowing matters to proceed and be more readily resolved on the pleadings.

Do you believe that these powers should be exercised often or sparingly, and can you give examples of some circumstances in which you anticipate using any or all of these powers?

I believe that these powers should be exercised when the circumstances warrant their exercise to promote judicial efficiency, access, and fairness. I would address each scenario as outlined above.

6) Some judges are more lenient than others when it comes to granting adjournments. What do you expect your policy to be with respect to granting adjournments?

As a practicing attorney I am well aware of the need to request adjournments to account for unexpected personal issues, conflicting calendar schedules, other court-related deadlines, etc. Typically, adjournments are agreed to by stipulation of the parties and their attorneys, and in those instances, I believe the court should be accommodating. However, I am also aware that some practitioners use adjournments as a litigation tactic, seeking to delay and frustrate the prompt adjudication and resolution of matters. Crowded dockets are a common problem in Surrogate's Court throughout the State, and as Surrogate my policy would be to balance the need for judicial efficiency with the need for some flexibility for attorneys and their clients, while preventing abuse by practitioners who seek to manipulate the judicial system for their tactical gain. I would also be flexible to the needs of unrepresented litigants who are often unfamiliar with the legal process and require more leniency.