

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

CATHERINE R. NUGENT PANEPINTO,

a Justice of the Supreme Court,
Eighth Judicial District, Erie County.

**AGREED
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

(“Commission”):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Honorable Catherine R. Nugent Panepinto (“Respondent”), who is represented in this proceeding by Terrence M. Connors, Esq., Connors LLP, that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent was admitted to the practice of law in New York in 1998. She has been a Justice of the Supreme Court, Eighth Judicial District, Erie County, since 2011. Respondent’s term expires on December 31, 2024.
2. Respondent was served with a Formal Written Complaint dated January 28, 2020. She enters into this Agreed Statement of Facts in lieu of filing an Answer.

As to Charge I

3. From in or about January 2018 through in or about March 2018, Respondent publicly supported the teachers at Buffalo City Honors School (“CHS”) in connection with pending and impending litigation by the Buffalo Teachers Federation (“BTF”) against the Buffalo Board of Education (“BBOE”) in the court in which Respondent serves, in that:

- A. Respondent made repeated public comments about issues and individuals involved in the litigation, in person, by email, and on social media platforms in which she was publicly identified as a judge;
- B. Respondent assisted in providing legal information and advice to parents of students at CHS;
- C. Respondent signed advocacy letters;
- D. Respondent spoke about the pending and impending cases with members of BBOE;
- E. Respondent joined BTF counsel in the courthouse and outside the courtroom prior to a case conference; and
- F. Respondent executed an affidavit that was filed in litigation in Erie County Supreme Court.

Background

4. On or about September 5, 2017, BTF filed a contempt motion in Erie County Supreme Court in *Board of Education of the City School District of Buffalo (“Board”) v BTF*. BTF alleged that the Board was not complying with an order and judgment issued on March 9, 2017, by Supreme Court Justice John F. O’Donnell (Erie County), confirming an arbitration award that, *inter alia*, directed the school district to immediately discontinue the practice of assigning supervisory, non-instructional duties to teachers at CHS.

5. On or about February 13, 2018, while that contempt proceeding was pending, BTF filed a separate petition in *BTF v Board of Education of the City School District of the City of Buffalo and City School District of the City of Buffalo* (“*Board et al.*”), seeking an injunction to prevent the transfer of 5.5 teachers from CHS and employment of 16 teachers’ aides to perform non-instructional duties.

6. Respondent’s daughter attended CHS during the 2017-2018 school year.

Public participation in social media platforms

7. In or about January 2018, Respondent joined a Facebook group comprised of CHS parents who publicly supported the CHS teachers’ opposition to the transfer of teachers from CHS. Respondent also communicated with CHS parents in support of the teachers using email and Twitter.

8. In or about January 2018 or February 2018, Respondent posted on Facebook, “We can go to Court appearance. I will find out when it is.”

Legal information and advice

9. In or about January 2018 or February 2018, using email and social media platforms, Respondent provided legal information and advice to CHS parents who were sending letters to BBOE and BTF opposing the transfer of the teachers, as follows:

- A. On Facebook, Respondent posted, “FYI if letter hast [*sic*] gone yet – include phrase ‘irreparable harm’ and/or send seperate [*sic*] letters as that is legal standard to stop teachers transfers at least in short term.”
- B. Using email, Respondent posted, “Has the letter been sent yet? It needs to state there will be irreparable harm to justify Court ordering stay of lay offs set for February 27. If already

sent we can do second one and/or individual ones describing irreparable harm.”

- C. On Twitter, Respondent posted, “Write short letters stating the ‘irreparable harm’ cutting teachers at CHS will cause to your children. Students should write as well. Post on Twitter & send to BPS & BTF!”

Personalized comments and invective

10. Respondent publicly criticized CHS principal William Kresse on Facebook, posting, “Let’s not kid ourselves our beloved IB school hired these aids [*sic*] To punish teachers who won at arbitration & in Court. If Dr. Kresse didn’t hire these aids [*sic*], not a single teacher would be transferred. 100% Kresse decision. Ask him Why?”

11. Respondent publicly criticized the proposed transfer of teachers on Facebook, characterizing the intended conduct as “pure retaliation.”

12. Respondent publicly commented on CHS aides on Facebook stating, “We don’t need aides ... napping in hallway.”

Advocacy letters

13. Respondent allowed her name to be listed as a signatory along with other CHS parents on a letter, dated February 8, 2018, to BBOE members, teachers, BTF, the Buffalo School Superintendent, and the CHS principal. The letter objected that BBOE’s proposed action, *inter alia*, would have “profound and potentially irreparable implications.” The letter was attached as an exhibit to BTF’s motion for injunctive relief that was filed in Supreme Court, Erie County, on or about February 13, 2018.

14. Respondent allowed her name to be listed as a signatory along with other CHS parents on a letter published in a local newspaper, *The Daily Public*, on or about

March 14, 2018. The letter, *inter alia*, “urg[ed] the District to immediately stop the mid-year transfers of 5.5 teachers, and for all the parties to engage in mediation to resolve this protracted contractual issue.” It further opined that “[t]he District and the Board of Education have chosen to disrupt the education of the children they purport to uphold.”

Use of judicial title in public comment

15. On or about February 1, 2018, in response to a Buffalo News editorial concerning the CHS situation, Respondent posted a Facebook comment that identified her as “Catherine Nugent Panepinto - Works at Elected New York Supreme Court Judge Nov, 2010.” Respondent avers that she did not know that Facebook settings would automatically identify her by her judicial title. Respondent concedes that she should have familiarized herself with such Facebook protocols prior to posting the comments at issue.

Comments at public events

16. On or about February 14, 2018, Respondent spoke to a group of more than 100 people at a BBOE meeting at Buffalo City Hall, where she criticized CHS’s plans to transfer teachers. Respondent did not identify herself by her judicial title, but Respondent’s appearance and comments were reported in the Buffalo News, which identified her as “a state Supreme Court justice.”

17. On or about February 15, 2018, Respondent spoke to a group of dozens of CHS parents at a meeting at Asbury Hall in downtown Buffalo, where she commented on the status of the teacher transfer issue.

Communication with BBOE members

18. Respondent spoke directly with several members of BBOE about issues pertinent to the BTF litigation. Respondent posted on Facebook, “FYI I met with Paulette Woods today. She is the Central representative on School Board whose district includes City Honors ... I also had a similar positive conversation with [BBOE representatives] Hope Jay & Sharon Cottman & plan to talk w [BBOE representative] Jennifer M[ecozzi] tomorrow. I think we’re making great progress & looking forward to meeting tomorrow.”

Presence with BTF counsel in courthouse hallway outside courtroom

19. On or about February 15, 2018, at the Supreme Court facility in Buffalo, Respondent stood with BTF counsel and two CHS parents in a hallway outside the courtroom of the justice presiding over the BTF cases, where she was photographed. Immediately thereafter, BTF counsel attended the case conference with the judge presiding. Respondent avers that the photograph was taken without her knowledge.

Providing affidavit filed with BTF motion

20. On or about February 14, 2018, Respondent executed an affidavit in support of BTF’s case, which was attached as an exhibit to an order to show cause filed in Supreme Court, Erie County, by BTF counsel in *BTF v Board et al.* Respondent’s affidavit stated:

- A. “The scheduled transfer of teachers from CHS will cause my daughter and the entire school irreparable harm.”
- B. “To make matters worse, [my daughter] walks the halls to see aides sitting in chairs napping or on their phones.”

- C. “The students have been left in the dark; only knowing they will be in some other bigger class with a teacher who doesn’t know what they’ve been working on.”
- D. “It is respectfully requested that the Buffalo City School District not be permitted to transfer these teachers.”

21. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that she failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; lent the prestige of judicial office to advance her own private interest and the private interests of others, in violation of Section 100.2(C) of the Rules; failed to perform the duties of judicial office impartially and diligently, in that she made public comments about a pending or impending proceeding, in violation of Section 100.3(B)(8) of the Rules; failed to conduct her extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that she failed to conduct her extra-judicial activities so that they do not cast reasonable doubt on her capacity to act impartially as a judge and detract from the dignity of judicial office, in violation of Sections 100.4(A)(1) and (2) of the Rules; and gave legal advice to individuals other than a member of her family, in violation of Section 100.4(G) of the Rules.

Additional Factors

22. Respondent avers, and the Commission Administrator has no evidence to the contrary, that Respondent's conduct in this matter was guided solely by her desire to affect the best interests of her child. Respondent acknowledges that, notwithstanding this intention, the scope of her conduct exceeded ethical limitations placed upon her as a member of the judiciary.

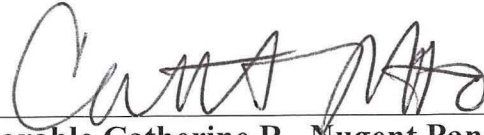
23. Respondent has been cooperative with the Commission throughout its inquiry and regrets her failure to abide by the Rules in this matter. She pledges to conduct herself in accordance with the Rules for the remainder of her tenure as a judge.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Censure based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated:

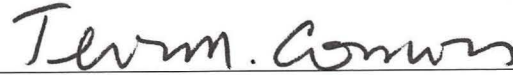
11/18/20



Honorable Catherine R. Nugent Panepinto
Respondent

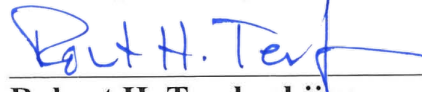
Dated:

11/18/20



Terrence M. Connors, Esq.
Connors LLP
Attorney for Respondent

Dated: November 18, 2020



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(John J. Postel and David M. Duguay, Of Counsel)