

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,
8th Judicial District, Erie County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Catherine R. Nugent Panepinto, a Justice of the Supreme Court, 8th Judicial District, Erie County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon Respondent the annexed Formal Written Complaint; and that, in accordance with said statute, Respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon her to serve the Commission at its Rochester office, 400 Andrews Street, Suite 700, Rochester, New York 14604, with her verified Answer to the specific paragraphs of the Complaint.

Dated: January 28, 2020
New York, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
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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

**FORMAL
WRITTEN COMPLAINT**

CATHERINE R. NUGENT PANEPINTO,

a Justice of the Supreme Court,
8th Judicial District, Erie County.

1. Article 6, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct (“Commission”), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.

2. The Commission has directed that a Formal Written Complaint be drawn and served upon Catherine R. Nugent Panepinto (“Respondent”), a Justice of the Supreme Court, 8th Judicial District, Erie County.

3. The factual allegations set forth in Charge I state acts of judicial misconduct by Respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (“Rules”).

4. Respondent was admitted to the practice of law in New York in 1998. She has been a Justice of the Supreme Court, 8th Judicial District, Erie County, since 2011. Respondent’s term expires on December 31, 2024.

CHARGE I

5. From in or about January 2018 through in or about March 2018, Respondent publicly supported the Buffalo Teachers Federation (“BTF”) in connection with its pending and impending litigation 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 provided legal information and advice to parents of students at City Honors School;
- 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.

Specifications to Charge I

Background

6. 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 City Honors School (“CHS”).

7. On or about February 13, 2018, while the contempt proceeding with respect to non-instructional duties was still 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.

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

Public participation in social media platforms

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

10. 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

11. 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

12. 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?”

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

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

Advocacy letters

15. 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 to BBOE’s proposed action for *inter alia* having “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.

16. 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,” and 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

17. On or about February 1, 2018, in response to a *Buffalo News* editorial concerning the CHS situation, Respondent posted an online comment that identified her as “Catherine Nugent Panepinto – Works at Elected New York Supreme Court Judge Nov, 2010.”

Comments at public events

18. On or about February 14, 2018, Respondent spoke to more than 100 people at a BBOE meeting at Buffalo City Hall, where she criticized CHS’s plans to transfer teachers. Respondent’s appearance and comments were reported in the *Buffalo News*, which identified her as “a state Supreme Court justice.”

19. On or about February 15, 2018, Respondent spoke to approximately 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

20. 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

21. 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 prior to BTF counsel attending the case conference with the judge presiding.

Providing affidavit filed with BTF motion

22. On or about February 14, 2018, Respondent executed an affidavit in support of BTF’s case that 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:

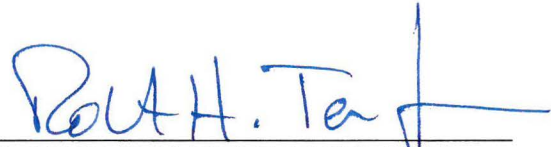
- A. “The scheduled transfer of teachers from CHS will cause my daughter and the entire school irreparable harm.”
- B. “To make matters worse, [my daughter] walks the halls to see aides sitting in chairs napping or on their phones.”
- C. “The students have been left in the dark; only knowing they will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

23. 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; and 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.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: January 28, 2020
New York, New York



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