

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

DETERMINATION

CATHERINE R. NUGENT PANEPINTO,

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

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Paul B. Harding, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Akosua Garcia Yeboah

APPEARANCES:

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

Connors LLP (by Terrence M. Connors) for respondent

Respondent, Catherine R. Nugent Panepinto, a Justice of the Supreme Court,
Eighth Judicial District, Erie County, was served with a Formal Written Complaint dated

January 28, 2020, containing one charge. The Formal Written Complaint alleged that 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.

On November 18, 2020, the Administrator, respondent’s counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On December 3, 2020, the Commission accepted the Agreed Statement and made the following determination:

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. 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.

3. 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.

4. Respondent's daughter attended CHS during the 2017-2018 school year.

Public participation in social media platforms

5. 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.

6. 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

7. 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

8. 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?”

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

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

Advocacy letters

11. 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.

12. 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

13. 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

14. 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."

15. 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

16. 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

17. 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

18. 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."

Additional Factors

19. 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.

20. 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.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C), 100.3(B)(8), 100.4(A)(1)

and (2) and 100.4(G) of the Rules Governing Judicial Conduct (“Rules”) and 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. Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the above findings and conclusions and respondent’s misconduct is established.

Each judge is obligated to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” and must observe high standards of conduct “so that the integrity and independence of the judiciary will be preserved.” (Rules, §§100.1 and 100.2(A)) Section 100.3(B)(8) of the Rules strictly prohibits a judge from commenting on a pending or impending case in any court in the United States unless “the judge is a litigant in a personal capacity” in the proceeding. The Commission has held that, “[a]s the language of the rule makes clear, the prohibition is not limited to comments about cases in the judge’s own court.” *Matter of Whitmarsh*, 2017 NYSCJC Annual Report 266, 272 (citation omitted). *See, Matter of McKeon*, 1999 NYSCJC Annual Report 117, 120 (“[i]t was also improper for respondent to make public comments on cases pending before his and other courts”); *Matter of Fiechter*, 2003 NYSCJC Annual Report 110, 113 (“[j]udges are held to higher standards of conduct than the public at large” and it was improper for the judge to make extensive public comments on a lawsuit filed by another judge).

Respondent, who was not a litigant in either case the union for the teachers filed, violated the Rules when she commented about those cases. For example, respondent posted on Facebook, “We can go to Court appearance. I will find out when it is.” In

addition, respondent spoke to Board of Education representatives about issues regarding the litigation and then made a public statement about her meetings. Particularly troubling was respondent's decision to stand with counsel for the union and two CHS parents in the Buffalo Supreme Court facility where respondent presides. Respondent stood with them in a hallway outside the courtroom of the judge presiding over the union's case immediately before a case conference was held. By standing with union counsel in the courthouse where she serves, respondent, who spoke repeatedly and publicly in favor of the CHS teachers, undermined confidence in the impartiality of the judiciary.

“Every judge must understand that a judge's right to speak publicly is limited because of the important responsibilities a judge has in dispensing justice, maintaining impartiality and acting at all times in a manner that promotes public confidence in the judge's integrity.” *Matter of Fisher*, 2019 NYSCJC Annual Report 126, 135. In *Matter of Barringer*, 2006 NYSCJC Annual Report 97, the Commission held,

[u]pon assuming the bench, a judge surrenders certain rights and must refrain from certain conduct that may be permissible for others. Even otherwise laudable conduct must be avoided if it creates the appearance that a judge is lending the prestige of judicial office to advance private interests or impairs public confidence in judicial impartiality and independence.

Id. at 100-101. As respondent acknowledged, her extra-judicial conduct violated the Rules. Rather than being circumspect and focusing narrowly on her direct personal interest in her daughter's education, respondent generally advocated for and supported the CHS teachers. She attended meetings and spoke critically of the school's plan to transfer teachers. In addition, respondent was publicly critical of the CHS principal and

described the transfer of teachers as “pure retaliation” which detracted from the dignity of her judicial office.

Furthermore, respondent admittedly violated the Rule which prohibits a full-time judge from practicing law. (Rules, §100.4(G)) In that regard, respondent improperly and repeatedly advised other CHS parents as to the specific language to include in letters in order to meet the legal standard for injunctive relief.

In addition, it was stipulated that respondent invoked the prestige of her office in violation of Section 100.2(C) of the Rules when her Facebook comment in response to an editorial regarding CHS identified her as a Supreme Court judge. As respondent acknowledged, before making this comment, she should have known that, based on the settings for her account, she would be identified as a judge. As the Court of Appeals has held, “[m]embers of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved.” *Matter of Lonschein*, 50 N.Y.2d 569, 572 (1980) (citation omitted).

Respondent’s numerous violations of the Rules during the relevant three-month period undermined public confidence in the integrity and impartiality of the judiciary. The totality of evidence demonstrated that respondent’s extra-judicial conduct was improper and went beyond appropriate action specifically concerning her personal interest in her daughter’s education.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has admitted that her conduct warrants public discipline

and that she has averred that her sole motivation was to protect the interests of her daughter. We trust that respondent has learned from this experience and in the future will act in strict accordance with her obligation to abide by all the Rules Governing Judicial Conduct.

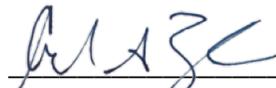
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

Mr. Belluck, Ms. Grays, Ms. Corngold, Judge Falk, Mr. Harding, Judge Leach, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg and Ms. Yeboah concur.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct.

Dated: December 9, 2020



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct