STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

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

JILL S. POLK,

a Judge of the Family Court and an Acting
Justice of the Supreme Court,
Schenectady County.

DETERMINATION

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THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Taa Grays, Esq., Vice Chair
Honorable Fernando M. Camacho
Jodie Corngold
Honorable John A. Falk
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Ronald J. Rosenberg, Esq.
Graham B. Seiter, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine, Of Counsel) for the Commission

O'Connell and Aronowitz (by Stephen R. Coffey and Cristina D. Commisso) for respondent

Respondent, Jill S. Polk, a Judge of the Family Court and an Acting Justice of the

Supreme Court, Schenectady County, was served with a Formal Written Complaint ("Complaint") dated September 11, 2019 containing one charge. The Complaint alleged that from approximately 2015 to 2017, respondent lent the prestige of judicial office to advance her private interests and failed to conduct her extra-judicial activities so as to minimize the risk of conflict with her judicial obligations by 1) asking and/or permitting her confidential secretary, Chana Ritter ("Ritter") to perform non-work related personal tasks for the judge and her family and 2) allowing her young daughter to walk through the courthouse unsupervised and to sit with court officers at a security checkpoint which interfered with the court officers' duties and was a security risk. Respondent filed an answer dated October 23, 2019.

By Order dated December 20, 2019, the Commission designated Michael J. Hutter, Esq. as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on November 9, 10, 12 and 13, 2020 via videoconference. The referee filed a report dated June 17, 2021 in which he sustained Charge I of the Complaint.

The parties submitted briefs to the Commission with respect to the referee's report and the issue of sanction. Commission counsel recommended that the referee's findings and conclusions be confirmed. Respondent recommended that the referee's findings and conclusions be disaffirmed. Commission counsel recommended the sanction of removal; respondent's counsel argued that, if the Complaint was not dismissed, a sanction no greater than admonition be imposed. The Commission heard oral argument on October

28, 2021 and thereafter considered the record of the proceedings and made the following findings of fact.

1. Respondent has been a Judge of the Family Court, Schenectady County since January 2015 and an Acting Justice of the Supreme Court since 2017. Her current term expires on December 31, 2024. Respondent was admitted to the practice of law in New York in 1988.

2. Prior to being elected as a Judge of the Family Court, respondent worked as a senior staff attorney in the Commission's Albany office from January 31, 2008 through December 31, 2014.

3. During respondent's employment with the Commission, two pertinent Commission determinations, *Matter of Ruhlmann* and *Matter of Brigantti-Hughes*, were issued in February 2009 and December 2013 respectively. Both determinations held that a judge cannot routinely use court staff for personal purposes.

4. After her election as a Family Court Judge, respondent attended a program in January 2015 presented by the New York State Judicial Institute for newly elected judges. At this program, the *Matter of Brigantti-Hughes* and *Matter of Ruhlmann* determinations were covered.

5. Upon being sworn in as Family Court Judge in January 2015, respondent was assigned chambers in the Schenectady County Office Building which had court facilities on two floors. She hired Nancy Stroud ("Stroud") to work as her court attorney and Ms. Ritter as her secretary. Respondent had been friends with Ms. Stroud for about twenty years. Ms. Ritter was hired after she interviewed with respondent and Ms. Stroud.

Ms. Ritter had been previously employed as a receptionist at the Jewish Federation and had taught Ms. Stroud's nieces at Hebrew School.

6. The workday in respondent's chambers included an hour-long break for lunch each day during which respondent, Ms. Ritter and Ms. Stroud usually ate lunch together. The lunch break would begin whenever respondent got off the bench, which was sometime between 12:00 pm and 1:00 pm, and would end an hour later.[1]

7. Respondent has a daughter who was twelve in 2015 when respondent became a Family Court Judge. Respondent planned to have a Bat Mitzvah for her daughter in the spring of 2016.

8. Planning for the Bat Mitzvah started in the fall of 2015. At that time, respondent was living with her partner and they were involved together in the planning. However, the relationship deteriorated and the partner moved out. Respondent asked her sister for assistance with the Bat Mitzvah planning, but her sister, who lived in Buffalo, was unable to provide sufficient help.

9. When her sister was unable to assist to the extent necessary, respondent intended to hire a party planner to help with the Bat Mitzvah.

10. Respondent's daughter's upcoming Bat Mitzvah came up in conversation during lunch in chambers among respondent, Ms. Ritter and Ms. Stroud in the fall of 2015. Ms. Ritter expressed a special interest in respondent's daughter's Bat Mitzvah and told respondent she could help with the planning.

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[1] In this determination, non-lunch hours are defined as between 9:00 am and 12:00 pm and 2:00 pm and 5:00 pm.

11. At some point after Ms. Ritter offered to assist with planning the Bat Mitzvah, respondent accepted her secretary's offer.

12. From the fall of 2015 to May 2016 when the Bat Mitzvah took place, Ms. Ritter provided assistance on a regular basis in the planning of respondent's daughter's Bat Mitzvah. Using her New York State Unified Court System email address, Ms. Ritter sent numerous Bat Mitzvah related emails to various Bat Mitzvah vendors and to respondent.[2] Many of Ms. Ritter's emails to vendors identified Ms. Ritter at the end of the email as "Secretary to Honorable Jill S. Polk" and included the address of the Schenectady County Family Court. Ms. Ritter sent most of the Bat Mitzvah related emails during non-lunch hours on weekdays. In addition, respondent and some of the Bat Mitzvah vendors sent Ms. Ritter emails regarding the Bat Mitzvah, most of which were sent only to Ms. Ritter.

13. From January 2015 through the early part of 2017, respondent also permitted Ms. Ritter to perform various other personal tasks for respondent. There were several emails in Ms. Ritter's court system email account that showed her involvement in personal tasks for respondent that were unrelated to the Bat Mitzvah.[3]

14. When respondent was asked whether there was any limitation on the

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[2] The emails Ms. Ritter sent involved various aspects of respondent's daughter's Bat Mitzvah including discussing menu options with caterers; discussing venue set up issues; gathering information and ideas for centerpieces; creating and updating a spreadsheet for guest RSVPs; and contacting a hotel regarding room reservation rates for guests and a hotel booking issue.

[3] Ms. Ritter sent emails to obtain price quotes from a landscaper for respondent's home; obtain options for vacation rentals; determine service options for respondent's car; make appointments for respondent with doctors, a dentist and a hair salon; and make appointments for respondent's daughter.

personal work Ms. Ritter could do for her, respondent testified, "We're friends and we're family and so that's our relationship. And so we have a relationship that is outside of our professional relationship."

15. Beginning in 2015 and through part of 2017, respondent's daughter was regularly at the courthouse during work hours. She was in the courthouse two or three times a week, and at least once a week for an approximate total of fifty to one hundred times during this period.

16. Court officers regularly saw respondent's daughter at the magnetometer station at the Family Court security checkpoint where potential weapons were confiscated. The court officers manning the magnetometer checkpoint were also responsible for monitoring the security of the adjacent waiting area where Family Court litigants waited for their cases to be called. The court officers' responsibilities included preventing or de-escalating confrontations between Family Court litigants.

17. Respondent's daughter frequently approached the court officers on duty at the magnetometer station and spoke with them about her life and interests. On some days, respondent's daughter came to the magnetometer station multiple times. On occasion, she went up to the magnetometer's X-ray screen and asked the court officers about the objects being scanned.

18. Respondent's daughter's presence at the magnetometer station created a complication for the court officers which was the concern that respondent's child would be injured if there was an altercation among litigants in that area. At times, respondent's daughter's presence at the magnetometer impeded the security work of the court officers.

19. The court officers did not bring their concerns about respondent's daughter being in the magnetometer area directly to respondent's attention because they felt uncomfortable doing so. The court officers did raise the issue with their superiors, including Court Officer Captain Wayne Luce.

20. Captain Luce, who had responsibilities at multiple courthouses in three counties, spoke to respondent about the matter as he believed only the court officers should be at the security station, foreseeing security issues with respect to the litigants in the waiting area. Respondent told Captain Luce that she understood his concern and would speak with her daughter about the issue.

21. While respondent's daughter stopped being present at the security checkpoint with the court officers after Captain Luce spoke with respondent, that stoppage lasted for a week or two. After that, respondent's child's presence at the security checkpoint continued.

22. When her daughter was at the courthouse during work hours, respondent wanted her to remain in her chambers. She could not, however, recall if she so instructed her daughter.

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(B), 100.2(C), 100.3(C)(2) and 100.4(A)(2) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State 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.

All judges are required to act in a manner to preserve the integrity of the judiciary and to avoid the appearance of impropriety. (Rules §§100.1 and 100.2(A)) Section 100.2(C) of the Rules provides, "[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . .." Judges are also required to ensure that their staff observe the same standards of conduct that apply to the judge. (Rules 100.3(C)(2)) In violation of the Rules, respondent allowed her secretary to help plan respondent's daughter's Bat Mitzvah and perform other personal tasks for respondent and permitted her daughter to frequent the security checkpoint at Schenectady Family Court which interfered with the duties of the court officers.[4]

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[4] We reject respondent's claim that the Complaint should be dismissed in the interest of justice because the hearing was held nearly six years after some of the conduct at issue, the memory of some witnesses had allegedly faded and some unnamed witnesses had become unavailable. These vague assertions do not amount to the substantial actual prejudice which a respondent must establish to demonstrate dismissal is warranted. *See, Diaz Chemical Corp v. NYS Division of Human Rights*, 91 N.Y.2d 932, 933 (1998) ("the party protesting the delay must show substantial actual prejudice."); *Matter of Anonymous v. NYS Department of Health*, 85 A.D.3d 468 (1st Dept. 2011) ("[c]onclusory allegations that the passage of time has dulled witnesses' memories do not demonstrate actual prejudice.").

We also reject respondent's claim that the procedures for the hearing before the referee were unfair and her claim that statements by unnamed witnesses were not provided to her as the Commission's Operating Procedures and Rules required. Respondent waived these arguments when she failed to make a motion to the referee or object to the Commission prior to the hearing. According to Commission Counsel, pursuant to Section 7000.6(h)(1) of the Commission's Operating Procedures and Rules, all required pre-hearing discovery was provided to respondent. In any event, the Commission's Operating Procedures and Rules provide that, "[t]he failure of the commission to furnish timely any documents, statements and/or exculpatory evidentiary data and material provided for herein shall not affect the validity of any proceedings before the commission, provided that such failure is not substantially prejudicial to the judge." 22 NYCRR §7000.6(h)(1). Respondent did not identify any witness whose statement was allegedly not produced let alone establish that there was substantial prejudice to her.

The frequency and content of Ms. Ritter's emails that related to respondent's daughter's Bat Mitzvah, as well as additional evidence in the record, established that Ms. Ritter was involved in the planning of respondent's daughter's Bat Mitzvah. Many of the emails she sent to vendors identified Ms. Ritter as "Secretary to Honorable Jill S. Polk" with the address for the court. These emails from Ms. Ritter's "@nycourts.gov" email address lent the prestige of judicial office for respondent's personal benefit and gave at least the appearance that court resources were being used for respondent's personal purposes. All judges must be mindful that court resources are to be used for court purposes and that any appearance that they are not undermines public confidence in the judiciary.

Commission precedent prohibits a judge from allowing court employees to repeatedly perform personal work for the judge. *Matter of Ruhlmann,* 2010 NYSCJC Annual Report 213; *Matter of Brigantti-Hughes,* 2014 NYSCJC Annual Report 78. Respondent should have been aware of this precedent as she was employed at the Commission for several years during which time both the *Ruhlmann* and *Brigantti* determinations were issued and both cases were covered in her judicial training. Here, Ms. Ritter's personal work for respondent was "not limited to situations where there were exigent or compelling reasons." *Matter of Ruhlmann*, 2010 NYSCJC Annual Report at 219.

That respondent and Ms. Ritter developed a friendship after Ms. Ritter was hired in January 2015, did not excuse respondent's use of a court employee to regularly perform the judge's personal tasks. Ms. Ritter's involvement in the planning of

respondent's daughter's Bat Mitzvah was not "professional courtesies or occasional acts of personal assistance that might ordinarily be provided in emergency situations by subordinates to supervisors, or vice versa." *Matter of Brigantti,* 2014 NYSCJC Annual Report at 87.

We note that there was no indication that Ms. Ritter was coerced into performing the personal tasks for respondent or that she was unable to perform her court-related duties. In that regard, this matter is distinguishable from *Ruhlmann* in which the judge was censured for personal work her secretary performed for the judge. In *Ruhlmann*, the judge told her secretary to give priority to the personal tasks for the judge over the secretary's court work even after the secretary complained to the judge several times that the personal tasks were interfering with her ability to perform her work for the court. *Matter of Ruhlmann,* 2010 NYSCJC Annual Report at 219. Moreover, in *Ruhlmann*, the judge also engaged in additional misconduct when she directed her secretary to review a confidential court database to obtain information for respondent's husband based upon an *ex parte* request by the husband. *Id.* at 217.[5]

It was also improper for respondent's daughter to regularly be present at the Family Court security checkpoint with the court officers who were responsible for

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[5] This matter is also distinguishable from *Brigantti* where, in addition to having her staff perform personal work for her, the judge invited her staff to attend prayer sessions in her chambers under circumstances that went beyond guidance on the issue from the Office of Court Administration and also invited her court staff to attend church related events after work hours. The Commission found ". . . such requests are inherently coercive when made by a judge to her appointees and other court employees." *Brigantti,* 2014 NYSCJC Annual Report at 90.

courthouse safety.[6] As three court officers testified, respondent's child's presence was a distraction and a complication to the performance of their duties. The magnetometer area was not an appropriate place for respondent's daughter who was 12 and 13 at the time, particularly since the Family Court security checkpoint was a location where court officers were responsible for confiscating potential weapons and preventing or responding to disputes between Family Court litigants in the nearby waiting area.

We note that this was not a situation where respondent's child came to respondent's chambers in the event of an emergency or other unforeseen situation. Here, there were no extenuating circumstances and respondent's daughter was frequently present at a security checkpoint in the courthouse which impacted the work of the court officers assigned to the checkpoint. The regular presence of respondent's child at the security checkpoint was inappropriate and a further instance of respondent using the prestige of her office for her personal benefit.

The evidence established that respondent used the prestige of her office to further her personal interests and her conduct gave at least the appearance of impropriety which undermined confidence in the integrity of the judiciary. As the Court of Appeals held in

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[6] We reject respondent's claims that the evidence did not support the referee's finding that respondent's daughter was at the magnetometer area at least once a week and approximately fifty to one hundred times during the relevant time period and his finding that respondent's daughter continued to be present at the security checkpoint even after a court officer captain, who had responsibilities at several courthouses, informed respondent that her daughter should not be at the checkpoint. On these points, the referee, who heard the testimony and observed the witnesses, credited the testimony of court officers assigned to the Schenectady Family Court. While the Commission may accept or reject a referee's findings, when the record supports a referee's findings, we accord deference to the findings since the referee heard all the testimony. *See*, *Matter of Mulroy*, 94 N.Y.2d 652, 656 (2000). We see no basis to set aside the referee's findings in this regard.

Matter of Lonschein, 50 N.Y.2d 569, 572 (1980), "[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."

While respondent violated the Rules, we have taken into consideration that she has no prior disciplinary history with the Commission and was a new judge at the time of her misconduct. 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 admonition.

Mr. Belluck, Ms. Grays, Judge Camacho, Ms. Corngold, Judge Falk, Judge Mazzarelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, Mr. Seiter and Ms. Yeboah concur.

CERTIFICATION

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

Dated: January 24, 2022

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