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

LETICIA M. RAMIREZ,

a Judge of the Civil Court of the City of
New York and an Acting Justice of the
Supreme Court, 1st Judicial District,
New York County.

DETERMINATION

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THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Honorable Rolando T. Acosta
Joel Cohen, Esq.
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Richard A. Stoloff, Esq.
Honorable David A. Weinstein
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Mark Levine and Daniel W. Davis, Of Counsel)
for the Commission

Scalise & Hamilton, LLP (by Deborah A. Scalise, Esq.) for Respondent

Respondent, Leticia M. Ramirez, a Judge of the Civil Court of the City of New York and an Acting Justice of the Supreme Court, 1st Judicial District, New York

County, was served with a Formal Written Complaint dated January 11, 2017, containing two charges. The Formal Written Complaint alleged that respondent lent the prestige of her judicial office to advance the private interests of another by invoking her judicial title and position in a letter she wrote on behalf of her childhood babysitter to be filed in connection with a motion to vacate her conviction (Charge I) and in two affirmations she wrote on behalf of her son to be filed in the Appellate Division in connection with his criminal case (Charge II).

On April 10, 2017, 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 admonished and waiving further submissions and oral argument.

On April 27, 2017, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Judge of the Civil Court of the City of New York since 2011 and an Acting Justice of the Supreme Court, 1st Judicial District, New York County, since 2015, having also served as an Acting Judge of the Family Court, Kings County, from 2011 to 2015. Her term expires on December 31, 2020. She was admitted to the practice of law in New York in 2000.

2. Prior to becoming a judge, respondent worked in the court system in various capacities. She was a court officer and attended law school while so employed.

Upon graduating from law school in 1998, she became a court assistant and a court attorney (*i.e.* law clerk) to a judge. She was never employed or engaged in the private practice of law and never represented clients, except for the one occasion addressed herein where she attempted, but was ruled ineligible, to represent her son in a criminal matter.

As to Charge I of the Formal Written Complaint:

3. As set forth below, in late May or early June 2013 respondent lent the prestige of her judicial office to advance the private interests of another by invoking her judicial title and judicial position in a letter she wrote on behalf of her childhood babysitter, L. S., to be filed in a court other than her own in connection with an application for relief that Ms. S. was making in that other court.

4. L. S. had been respondent's babysitter when respondent was a child. They remained close after respondent became an adult.

5. Ms. S. was convicted in the Criminal Court of the City of New York in 2004 on a charge of promoting gambling in the second degree, a class A misdemeanor.

6. On May 17, 2013, Ms. S.'s attorney, Lisa Napoli, Esq., asked respondent to write a letter on Ms. S.'s behalf in support of a motion to vacate the 2004 conviction.

7. On May 29, 2013, respondent drafted an undated letter on her judicial stationery on behalf of Ms. S., which is attached as Exhibit 1 to the Agreed Statement of Facts. Respondent addressed the letter to "Your Honor," did not name the

judge for whom the letter was intended, and identified herself as a judge. Respondent described her relationship with Ms. S. in the letter, noting, *inter alia*, that she considered Ms. S. to be "part of [her] family."

8. In late May or early June 2013 respondent gave the signed letter to Ms. Napoli, who submitted it to the Criminal Court of the City of New York as an exhibit to Ms. S.'s motion to vacate her conviction.

As to Charge II of the Formal Written Complaint:

9. In the fall of 2014, as set forth below, respondent lent the prestige of her judicial office to advance the private interests of another by invoking her judicial title and judicial position in affirmations she wrote on behalf of her son, Michael Tineo, to be filed in the Appellate Division in connection with his criminal case.

10. Michael Tineo is respondent's adult son.

11. On November 26, 2004, Mr. Tineo was arrested in Suffolk County. He was subsequently charged with serious crimes.

12. Respondent was deeply upset by the situation as a parent.

13. At the time of Mr. Tineo's arrest, respondent was employed as a court attorney for a judge of the Civil Court of the City of New York. She telephoned the Suffolk County Police Department in Yaphank and identified herself as an attorney, with the intent of representing Mr. Tineo. At a subsequent suppression hearing in 2005 in County Court, Suffolk County, the court held that respondent was not eligible to represent Mr. Tineo because of her employment status as a court attorney.

14. In January 2006 Mr. Tineo was convicted and sentenced to a term of imprisonment.

15. In the fall of 2014 Mr. Tineo, who remained incarcerated but at the time was not represented by counsel, asked respondent to write an affirmation in support of a petition for a writ of habeas corpus that he planned to file. Respondent wrote an "Affirmation in Support Writ of Habeas Corpus" of Mr. Tineo, to be filed with the Appellate Division.

A. In the affirmation, which is attached as Exhibit 2 to the Agreed Statement of Facts, respondent *inter alia* identified herself as a judge, set forth a series of facts regarding her attempt to represent her son at the time of his arrest and asked the Court to "grant the relief sought." Although she did not specify the "relief sought" in the body of her affirmation, it is evident from the affirmation's title, and respondent hereby acknowledges, that by "relief sought" she meant the court should grant her son's petition for habeas corpus.

B. Although Mr. Tineo's case was a Second Department matter, respondent's affirmation was mistakenly captioned "APPELLATE DIVISION FIRST DEPARTMENT."

C. Respondent gave her affirmation to Mr. Tineo, who filed it with his *pro se* petition for a writ of habeas corpus to the Appellate Division, First Department. The First Department transferred these papers to the Appellate Division, Second Department, where they were received on February 9, 2015.

16. On or about the same date in the fall of 2014, respondent also wrote an

"Affirmation of Jurisdiction" to be filed with the Appellate Division with the "Affirmation in Support Writ of Habeas Corpus."

A. In the affirmation, which is attached as Exhibit 3 to the Agreed Statement of Facts, respondent asked that her son's petition not be heard in the Second Department because she was sitting in Family Court in Kings County and had cases on appeal to the Appellate Division in that Department.

B. Although Mr. Tineo's case was a Second Department matter, respondent's affirmation was mistakenly captioned "APPELLATE DIVISION FIRST DEPARTMENT."

C. Respondent gave her affirmation to Mr. Tineo, who filed it with his *pro se* petition for a writ of habeas corpus to the Appellate Division, First Department. The First Department transferred these papers to the Appellate Division, Second Department, where they were received on February 9, 2015.

17. Mr. Tineo's petition for a writ of habeas corpus was denied by the Appellate Division, Second Department, on March 9, 2015. *See Ex rel Tineo v Capra*, 2015 NY Slip Op 66326(U) (AD 2d Dept 2015).

Additional Factors

18. Respondent has been cooperative and contrite throughout the Commission's inquiry and has had an otherwise unblemished career as a judge.

19. As to the *S.* matter, respondent testified under oath during the Commission's investigation that she believed, in error, that it was permissible for her to write the letter on behalf of Ms. S. because the letter, *inter alia*, (i) did not request

specific relief on behalf of Ms. S., (ii) gave an accurate description as to respondent's past and present contacts with Ms. S., (iii) was typed by respondent herself, not by a member of her court staff, and (iv) provided respondent's home telephone number instead of her chambers number. Respondent now acknowledges that she should have been aware that the Rules Governing Judicial Conduct, pertinent disciplinary determinations of the Commission and applicable opinions of the Advisory Committee on Judicial Ethics prohibited her from writing to another judge on Ms. S.'s behalf. She pledges that she will refrain from such conduct in the future.

20. Respondent took no other action on behalf of Ms. S. Respondent did not appear at Ms. S.'s court hearing, nor did respondent have further communication with the judge handling Ms. S.'s case. At the time she wrote the letter, she did not know the identity of the judge who would be assigned to the matter.

21. As to the *Tineo* matter, respondent avers that she submitted the "Affirmation in Support Writ of Habeas Corpus" to provide the court with factual information about her son's case as a witness, based on her personal involvement in the matter before she took the bench.

22. Respondent avers that she submitted the "Affirmation of Jurisdiction" in an attempt to notify the court about a potential conflict in her son's petition being heard by the Appellate Division, Second Department, given that respondent was, at that time, a judge whose decisions were subject to review by that court. Although it was not her intention, she realizes now that her conduct gave rise to the appearance that she was practicing law, even though Mr. Tineo's papers made it clear that he was acting *pro se.*

23. Respondent further testified that the language in the prayer for relief in the closing paragraph of both affirmations, *i.e.* the "wherefore" clause, was adopted from papers that had come before her as an employee of the court system. Respondent avers that her lack of experience in practicing law contributed to her mistaken belief that she needed to include such language in her affirmations.

24. Respondent acknowledges and regrets that her affirmations created the appearance that she was lending the prestige of judicial office to advance the private interests of her son. She pledges to refrain from such conduct in the future.

25. Respondent has now familiarized herself with Commission determinations in which judges were publicly reprimanded for lending the prestige of judicial office to advance private interests, such as *Matter of Larry D. Martin*, in which a Supreme Court Justice was admonished for writing two letters on judicial stationery to other judges, seeking favorable sentencing dispositions on behalf of two criminal defendants who were the sons of his long-time family friends, and *Matter of Nancy E. Smith*, in which an Appellate Division Justice was admonished for writing a letter on her judicial stationery to the New York State Division of Parole, at a third party's request, expressing support for an inmate whom the judge had never met. Respondent now more fully appreciates her obligation to refrain from lending or even appearing to lend the prestige of her judicial office, intentionally or unintentionally, to advance the private interests of herself and others, including family members. In accepting the stipulated sanction of admonition, we note that respondent pledges to abide faithfully to this obligation in the future.

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) and 100.2(C) 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. Charges I and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

On two occasions respondent lent the prestige of her judicial office to advance the private interests of another by invoking her judicial title and position, first in a letter on behalf of a family friend to be filed in connection with a motion to vacate the friend's conviction, and subsequently in two affirmations on behalf of her son to be filed in connection with his petition for a writ of habeas corpus. Such conduct is inconsistent with well-established ethical standards (Rules, §100.2[C]), even in the absence of a specific request for favorable treatment or special consideration (*Matter of Edwards*, 67 NY2d 153, 155 [1986]). As the Court of Appeals has stated:

> [N]o judge should ever allow personal relationships to color his conduct or lend the prestige of his office to advance the private interests of others.... Members of the judiciary should be acutely aware that any action they take, 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.... There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. Thus, any communication from a judge to an outside agency on behalf of another, may be perceived as one backed by the power and prestige of judicial office. [Citations omitted.]

Matter of Lonschein, 50 NY2d 569, 571-72 (1980). Regardless of a judge's intent, communications of this type convey the appearance of using the prestige of judicial office to advance private interests, which is also inconsistent with a judge's obligation to avoid even the appearance of impropriety at all times, both on and off the bench (Rules, §100.2). When a litigant is the beneficiary of influential support from a judge based on personal connections, it creates two systems of justice, one for the average person and one for those with "right" connections, and undermines public confidence in the impartial administration of justice and in the integrity of the judiciary as a whole.

Respondent's letter on judicial stationery in support of her friend and former caregiver, which was filed in connection with the friend's motion to vacate a nine-year old misdemeanor conviction, is a classic "character letter," providing unqualified support for her friend bolstered by the clout of her judicial status. Describing her friend as "part of my family," referring to her presence at family functions and in family photos, and providing details of their close relationship over several decades and their past and present contacts, respondent's letter makes no reference to the pending motion, her friend's conviction or the facts underlying her case, but its purpose is crystal clear: to influence the judge who would consider the motion to give it favorable consideration. When asked by the friend's lawyer to provide such a letter, respondent should have considered that she was likely asked to write, at least in part, because the prestige of her office would give particular clout to a letter of support, and it could be inferred that she cooperated in that effort by using her judicial stationery and by making gratuitous references in the letter to her judicial status (*e.g.*, noting that her friend had been invited

to but could not attend her swearing-in ceremony). As the record indicates, respondent wrote the letter nearly two weeks after being asked to do so by her friend's lawyer, giving her ample time to consider the request, research the subject and consider the ethical implications.

As a judge for more than two years at the time and as a court attorney for more than a decade before that, respondent should have been familiar with the restrictions imposed by Rule 100.2(C) in view of her ethics training as a judge, the Commission's determination in *Matter of Martin* and other cases (*infra* at pp 13-14) and numerous opinions of the Advisory Committee on Judicial Ethics addressing the subject. Although respondent has explained that in writing the letter she typed it herself, did not use court staff and provided her home (not court) telephone number, suggesting that she made some attempt to avoid misusing her judicial position, her use of judicial stationery and overt references to her judicial status in communicating with another court on a friend's behalf cannot be condoned.[1] Using her judicial prestige to bolster support for her friend's application was an implicit request for special consideration constituting favoritism, which "is wrong, and always has been wrong" (*Matter of Byrne*, 47 NY2d [b], 420 NYS2d 70, 71 [Ct on the Jud 1979]). While a judge may respond to an official request for his or her input in connection with a pending matter, which is akin to responding to a subpoena, unsolicited communications of support are strictly prohibited.

[1] Nor did respondent's letter specify that her comments were "personal and unofficial." While that language would not have negated the impropriety (*Matter of Nesbitt,* 2003 NYSCJC Annual Report 152), it would have emphasized the personal nature of her communication.

Here, there would be no proper reason for a judge presiding on such a case to ask respondent or anyone else to submit a character reference, so it was especially improper for respondent to accede to a request by the defendant's counsel.

A year later, respondent again lent the prestige of her judicial office to advance private interests when she invoked her judicial title and position in two affirmations filed in connection with her son's petition for a writ of habeas corpus. One affirmation describes her unsuccessful attempt ten years earlier to represent her son after he was arrested; the second requests that the matter not be heard by the Appellate Division Second Department "in order to avoid an appearance of impropriety" because of respondent's position as a judge in Kings County. Both affirmations contain several references to her judicial status: both refer to her judicial position in the opening paragraph, which sets forth her qualifications to affirm under penalty of perjury, a reference that is unnecessary since her status as "an attorney admitted to practice in the courts of the state" qualifies her to affirm, with no further explanation required (*see* CPLR 2106); and, below the signature line, both affirmations use "Hon." preceding her name and repeat her judicial title.

In addition, both of respondent's affirmations end with a "wherefore" clause asking the court to "grant the relief sought herein," which not only makes an explicit request that the court act favorably in the matter but conveys the appearance that respondent was practicing law and representing her son in the matter, something that she was prohibited from doing as a full-time judge (Rules, §100.4[G]). (It is stipulated that her son's papers "made it clear that he was acting *pro se*" [Agreed Statement, par 25]).

Although respondent has suggested that she used the "wherefore" clause language without comprehending its meaning, averring "that her lack of experience in practicing law contributed to her mistaken belief that she needed to include such language in her affirmations" (*Id.* at par 26), she should have recognized that including such language would convey the appearance that a sitting judge was making the applications on her son's behalf. Even without that clause, her affirmations, attached as exhibits to her son's petition, unmistakably conveyed her support for the relief requested.

When asked to provide a letter or similar communication on behalf of a family member, friend or acquaintance, every judge must be mindful of the importance of adhering to the ethical standards intended to curtail the inappropriate use of the prestige of judicial office (Rules, §100.2[C]). Difficult as it may be to refuse such requests, the understandable desire to provide assistance and support must be constrained by a judge's ethical responsibilities, including the duty to act "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Rules, §100.2[A]). Strict adherence to these important principles is essential to ensure public confidence in our system of justice, which is based on equal treatment for all and decisions that are based on the merits, not the result of special influence.

Violations of Rule 100.2(C) have been found in a broad spectrum of cases, including where judges have contacted other judges, law enforcement officials or other persons in a position of authority in order to advance private interests. *See*, e.g., *Matter of Smith*, 2014 NYSCJC Annual Report 208 (judge sent an unsolicited letter on judicial stationery on behalf of an inmate seeking parole, whose mother was a friend of the

judge's relative)[2]; *Matter of Pennington*, 2004 NYSCJC Annual Report 139 (judge met with DA to object to the police investigation of his son); *Matter of Nesbitt*, 2003 NYSCJC Annual Report 152 (judge sent a letter on judicial stationery to his son's school challenging an administrative determination regarding his son and the legal sufficiency of the school's procedures); *Matter of Martin*, 2003 NYSCJC Annual Report 216 (judge sent two unsolicited letters on judicial stationery to judges in other courts on behalf of defendants, the sons of long-time friends, who were awaiting sentencing); *Matter of Wright*, 1989 NYSCJC Annual Report 147 (judge wrote two letters on judicial stationery and two affirmations to advance the private interests of a former litigant in his court). While respondent's judgment may have been clouded by a "sincere, albeit misguided, desire" to help her son and friend, that does "not justify a departure from the standards expected of the judiciary" since her communications could be perceived as backed by her judicial power and prestige (*Matter of Lonschein, supra*, 50 NY2d at 573; *Matter of Edwards, supra*, 67 NY2d at 155).

In accepting the stipulated sanction of admonition, we are mindful that respondent has acknowledged her misconduct and, it is stipulated, "now more fully appreciates her obligation to refrain from lending or even appearing to lend the prestige of her judicial office, intentionally or unintentionally, to advance the private interests of herself and others" and has pledged to abide by these standards in the future (Agreed Statement, par 28).

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[2] The Commission's determination in *Smith* was issued about a month after respondent's letter in support of her friend, and a year before her actions in her son's case.

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

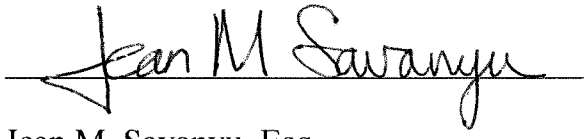
Mr. Belluck, Mr. Harding, Judge Acosta, Mr. Cohen, Ms. Corngold, Judge Falk, Judge Leach, Mr. Stoloff, Judge Weinstein and Ms. Yeboah concur.

Ms. Grays was not present.

CERTIFICATION

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

Dated: May 4, 2017



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