

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

JENNIFER R. NUNNERY,

a Justice of the Darien Town Court,
Genesee County.

DETERMINATION

THE COMMISSION:

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

APPEARANCES:

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

Personius Melber LLP (by Rodney O. Personius) for respondent

Respondent, Jennifer R. Nunnery, a Justice of the Darien Town Court,

Genesee County, was served with a Formal Written Complaint (“Complaint”) dated June 24, 2022 containing two charges. Charge I of the Complaint alleged from December 2020 through April 2021, in comments and posts on her Facebook account, respondent used profane, demeaning and otherwise inappropriate language, and revealed having engaged in offensive and otherwise inappropriate behavior, both on matters related and unrelated to her role in the legal system. Charge II alleged that from July 2021 through October 2021, through her Facebook account, respondent improperly endorsed two candidates running for elective office: a candidate for elective judicial office and a candidate for election to an area school board. Respondent filed an Answer dated July 26, 2022.

On July 18, 2023, the Administrator, respondent’s counsel and respondent entered into an Agreed Statement of Facts (“Agreed Statement”) 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 July 20, 2023, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 2015. She has been a Justice of the Darien Town Court, Genesee County, since January 2020. Respondent’s term expires December 31, 2023.

As to Charge I of the Formal Written Complaint

2. Facebook is an internet social networking website and platform that *inter alia* allows users to post and share content on their own Facebook pages, and to “like” content posted by other users. Facebook users are responsible for managing the privacy settings associated with their accounts. At the option of the account holder, the content of one’s Facebook page – including photographs, textual posts, and “likes” – may be viewable online by the general public or restricted to one’s Facebook “Friends.” If the account holder’s privacy settings allow, “friends” may thereafter share the account holder’s posts with other permitted Facebook users, ad infinitum.

3. In November 2007, respondent created a Facebook account. From December 2020 through April 2021, respondent’s Facebook account profile included a photograph of respondent’s face and listed her name as “Jennifer Nunnery.”

4. On an unknown date after respondent became a judge, she posted to her Facebook page the following:

“Driving down the mean streets of Batavia after tanning and thought I recognized the ass of one of my favorite marines walking through the Tops parking lot lol 😏 It’s been too long! Good to see ya, ya fucking boot! 😊👊”

5. In December 2020, respondent posted to her Facebook page the following:

“Fuck No the first incoming call from a client on my first day of vacation just came in at 8:56am. Seriously people I have enough work shit to catch up on during my time off, I’m not answering the phones!!!”

6. In March 2021, respondent posted to her Facebook page the following:

“...You know what’s more therapeutic than shopping? Cross examining someone and being absolutely FUCKING AWESOME at ripping them apart on the stand like the baddest bitch there is!!!! #ladyboss #bossbitch BAHAAAAHA!...” (emphasis in original).

This post garnered 57 reactions and 31 comments from Facebook users before respondent removed it in April 2021, after her supervising judge spoke to her about it.

7. In March 2021, respondent posted the following comments on a re-shared Facebook page post, originally posted seven years earlier:

A. “Omg everyone was so fucking hungover lol;” and

B. “I remember drawing a dick on his face when he passed out on the plane lol.”

As to Charge II of the Formal Written Complaint

8. In 2021, Respondent’s Facebook account profile included a

photograph of respondent's face and listed her name as "Jennifer Rae"¹ and/or "Jennifer Nunnery."

9. In July 2021, respondent "liked" a Facebook page for a candidate running for elective judicial office for Buffalo City Court. As a result, a photograph of the candidate appeared on respondent's Facebook "Likes" section above the wording, "Carrie Phillips for Buffalo City Court Judge."

10. In July 2021, respondent "liked" a Facebook page for a candidate running for an Alexander Central School District Board of Education position. As a result, a campaign advertisement for the candidate appeared on respondent's Facebook "Likes" pages above the wording, "Lindsay Bessey for Alexander School Board."

Additional Factors

11. Respondent has been contrite and cooperative with the Commission throughout this inquiry.

12. Respondent avers that she was unaware between December 2020 and April 2021 that there were separate privacy settings associated with each Facebook post. In April 2021, Supervising Judge Mark A. Montour advised respondent of the issues associated with the posted Facebook content referenced herein as to Charge I. Respondent immediately removed that content from her Facebook page.

¹ Respondent's middle name is "Rae."

Respondent further asserts, and the Administrator has no basis to contest, that since April 2021, she has been checking the privacy settings as to each of her individual Facebook posts, so as to remain in compliance with the Rules.

13. Respondent avers, and the Administrator has no basis to contest, that at the time she “liked” one of the Facebook pages in question, it was contained within a friend’s post, she did not recognize that it involved a judicial candidacy, and she was unaware that her Facebook “likes” were visible to the public, particularly since this particular “like” assertedly did not appear on her own Facebook “wall.” Upon being informed of the ethical issues raised when a judge “likes” candidates running for office, respondent immediately removed the content from her Facebook page.

14. Respondent now appreciates that the integrity of the judiciary is undermined when a judge publicly posts puerile and explicit content such as she did to Facebook and other social media. Respondent also now appreciates that her publicly “liking” the social media posts or pages of political candidates at least appeared to convey that she was endorsing such candidates, which the Rules prohibit.

15. Respondent commits to be especially mindful of her ethical obligations in any future use of social media.

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), 100.4(A)(2) and (3) and 100.5(A)(1)(c) and (e) 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. Charges I and II of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent’s misconduct is established.

The Rules require judges to maintain high standards of conduct and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Rules, §§100.1, 100.2(A)) The Rules also prohibit judges from engaging in extra-judicial activities which “detract from the dignity of judicial office.” (Rules §100.4(A)(2)) Respondent violated these Rules when she made inappropriate and undignified public posts and comments on Facebook, some of which referenced her role as an attorney in the legal system. For example, in a public Facebook post, respondent wrote: “. . . You know what’s more therapeutic than shopping? Cross examining someone and being absolutely FUCKING AWESOME at ripping them apart on the stand like the baddest bitch there is!!!! . . .”

It is well-settled that judges are held to a higher standard of conduct than the general public. “The ethical standards require a judge to avoid extra-judicial conduct that casts doubt on the judge’s impartiality. . . or detracts from the dignity of judicial office. . . . Upon assuming the bench, a judge surrenders certain rights and must refrain from certain conduct that may be permissible for others.” *Matter of Barringer*, 2006 Ann Rep of NY Commn on Jud Conduct at 97, 100 (citation omitted); *Matter of Lonschein*, 50 NY2d 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.” (citation omitted)); *Matter of Fisher*, 2019 Ann Rep of NY Commn on Jud Conduct at 126, 135 (“[e]very 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.”) Respondent’s improper social media posts and comments undermined public confidence in the integrity of the judiciary.

In addition, the Rules require that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. . .” (Rules §100.2(C)) Judges are also required to refrain from “engaging in any partisan political activity” (other than in connection with his or her own campaign) and

from “publicly endorsing or publicly opposing (other than by running against) another candidate for public office.” Sections 100.5(A)(1)(c) and (e) of the Rules; *Matter of Rumenapp*, 2017 Ann Rep of NY Commn on Jud Conduct at 192, 197; *Matter of King, Sr.*, 2008 Ann Rep of NY Commn on Jud Conduct at 145, 147. Here, respondent “liked” Facebook pages for a candidate for elective judicial office and for a candidate in a school board election. As a result, campaign material for those candidates appeared on respondent’s Facebook “likes” section. By this conduct, respondent engaged in prohibited political activity and lent the prestige of her judicial office for the benefit of others.

Given their role in legal system, judges must be careful to ensure that any social media activity they choose to engage in does not run afoul of the Rules and breach their ethical obligations. In the past, including in its 2019, 2022 and 2023 Annual Reports, the Commission has cautioned that judges must be particularly circumspect in their use of social media.² The 2023 Annual Report stated, “[t]he Commission strongly encourages judges to remember that social media posts are fraught with potential ethical concerns.” 2023 Ann Rep of NY Commn on Jud Conduct at 23. In *Matter of Whitmarsh*, 2017 Ann Rep of NY Commn on Jud Conduct at 266, 274-275, the Commission wrote,

We also take this opportunity to remind judges that the

² 2019 Ann Rep of NY Commn on Jud Conduct at 24-25; 2022 Ann Rep of NY Commn on Jud Conduct at 18-20; 2023 Ann Rep of NY Commn on Jud Conduct at 21-23.

Rules Governing Judicial Conduct apply in cyberspace as well as to more traditional forms of communications and that in using technology, every judge must consider how such activity may impact the judge's ethical responsibilities. . . .

The Advisory Committee on Judicial Ethics has cautioned judges about the public nature and potential perils of social networks and has advised that judges who use such forums must exercise "an appropriate level of prudence, discretion and decorum" so as to ensure that their conduct is consistent with their ethical responsibilities (Adv Op 08-176).

Respondent's public social media posts and comments violated the Rules in several ways. She made inappropriate comments regarding her role as an attorney as well as other undignified public remarks.³ Respondent also engaged in prohibited political activity. Her conduct brought reproach upon the judiciary.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has acknowledged that her conduct was improper and warrants public discipline, that she was a relatively new judge at the time of the misconduct, that she promptly removed the content upon being informed of the issues surrounding her posts and comments and that she has committed to being circumspect in her use of social media. We trust that respondent has learned from this experience and in the future will act in strict

³ For example, respondent made public posts stating: "I remember drawing a dick on his face when he passed out on the plane lol." and ". . . thought I recognized the ass of one of my favorite marines . . . Good to see ya, ya fucking boot! . . ."

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, Judge Camacho, Judge Falk, Judge Miller, Mr. Raskin, Mr. Seiter, Judge Singh and Ms. Yeboah concur.

Ms. Grays and Mr. Rosenberg were not present.

CERTIFICATION

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

Dated: August 9, 2023



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