

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.

**AGREED
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

("Commission"):

IT IS HEREBY STIPULATED AND AGREED by and between

Robert H. Tembeckjian, Administrator and Counsel to the Commission, and the Honorable Jennifer R. Nunnery ("Respondent"), who is represented in this proceeding by Rodney O. Personius, of Personius Melber LLP, that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

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.

2. Respondent was served with a Formal Written Complaint dated June 24, 2022. She filed an Answer dated July 26, 2022.

As to Charge I

3. 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.

Specifications to Charge I

4. 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.

5. 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.”

6. 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! 😁👉”

A copy of the post is annexed as Exhibit A.

7. 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!!!”

A copy of the post is annexed as Exhibit B.

8. 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).

A copy of the post is annexed as Exhibit C. 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.

9. 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.”

Copies of the comments are annexed as Exhibit D.

10. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article VI, 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 of the Chief Administrator of the Courts Governing Judicial Conduct (“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; 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 they do not detract from the dignity of judicial office and are not incompatible with judicial office, in violation of Sections 100.4(A)(2) and (3) of the Rules.

As to Charge II

11. 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 candidate for election to an area school board.

Specifications to Charge II

12. 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."

13. 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." A copy of the public "like" is included in the annexed Exhibit E.

14. 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

¹ Respondent's middle name is "Rae."

Facebook “Likes” pages above the wording, “Lindsay Bessey for Alexander School Board.” A copy of the public “like” is included in the annexed Exhibit E.

15. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article VI, 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, and lent the prestige of judicial office to advance the private interests of others, in violation of Section 100.2(C) of the Rules; and failed to refrain from inappropriate political activity, in that she engaged in partisan political activity and publicly endorsed another candidate for public office, in violation of Sections 100.5(A)(1)(c) and (e) of the Rules.

Additional Factors

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

17. *Regarding Respondent’s Facebook posts.* 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. 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.

18. *Regarding Respondent's Facebook "likes" of election candidates.*

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.

19. 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.

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

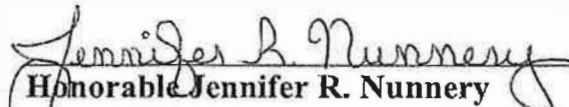
IT IS FURTHER STIPULATED AND AGREED that Respondent withdraws from her Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Censure based upon the judicial misconduct set forth above.

IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not

be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated: 7/17/23


Honorable Jennifer R. Nunnery
Respondent

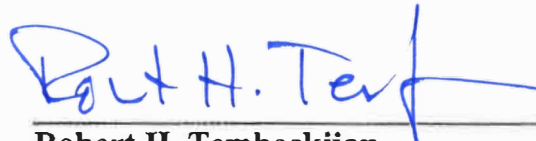
Dated:

July 18,
2023



Rodney O. Personius, Esq.
Personius Melber LLP
Attorney for Respondent

Dated: July 18, 2023



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

10:12 ↗

📶 LTE 🔋



Jennifer Nunnery is with Dalton Rarick. ⋮

3d · 🌐

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 😄 Its been too long! Good to see ya, ya fucking boot! 🤔🤔

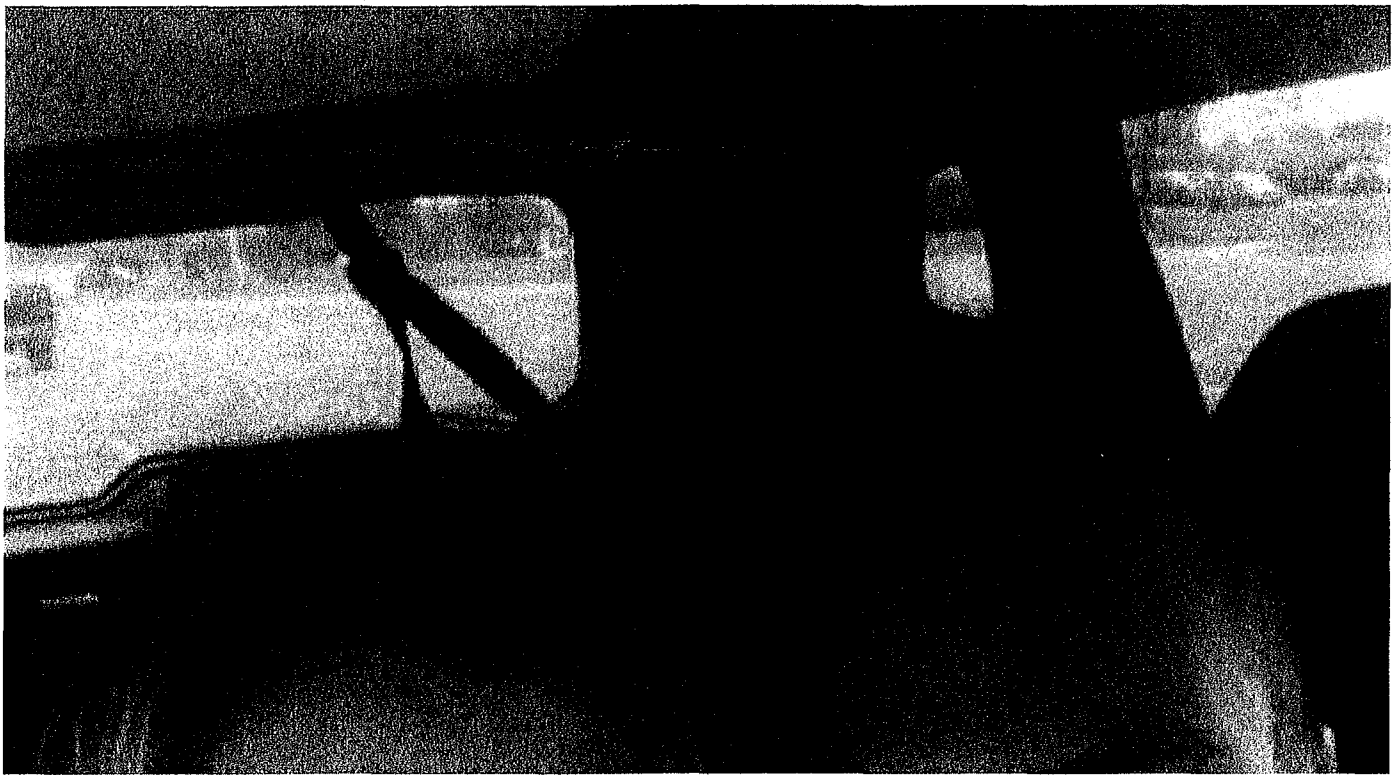


EXHIBIT B



Jennifer Nunnery



December 24, 2020 at 8:59 AM · 🌐

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!!!

👍👍👍 15

12 Comments

👍 Like

➦ Share



Amy Taylor

Jen don't you know attorneys should be available 24/7???? Smh - people are so entitled!

Like · 3w

👍 1



Jennifer Nunnery

I'm waiting for the Christmas day phone calls/voicemails/texts I get every year from parents whose kids are dropped off late wanting me to do something about it on Christmas 🙄🙄

Like · 3w

👍 3



Heidi Sprung DeAngelo

Jennifer Nunnery people are just rude!

Like · 3w

👍 1



Kim Hinkley

Jennifer Nunnery doing well here. I't



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Photos



Life Events



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Jennifer Nunnery is 😁 feeling awesome.



18h • 🌐

I got my groove back!!! 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 BAHHAHAHA!
That is the best I have felt in days and was
way more fun than it should have been! ❤️
❤️ ❤️

   Jenn McPhee and 56 others 31 Comments

 Like

 Share



Jennifer Nunnery



2d • 

Thanks mama (Janet Hephner) for coming
over and hanging with the kids and I. They
loved seeing their Nana. I love you!!! ❤️ ❤️

11:07 ↗



Jennifer's Post



1h Like

1 🤔



Jennifer Nunnery

Omg everyone was so fucking hungover lol

1h Like



Gabriella Isabella

Me and Matt were still drinking on the ride to the airport and then when Matt joked to security that he had drugs on him, and the 85 year old woman next to him goes don't worry me too 🤔

1h Like

2 🤔



Jennifer Nunnery

Gabriella Isabella OMG I forgot about the drug thing LOL

1h Like



Jennifer Nunnery

I remember drawing a dick on his face when he passed out on the plane lol

1h Like

1 🤔



Gabriella Isabella

Jennifer Nunnery thats hilarious! All I remember is getting told we couldn't sit next to each other because we needed to go to sleep

1h Like

1 🤔



EXHIBIT E

Jennifer Rae

Coffee Connoisseur. Fur Momma. Kitten



Jennifer Rae

+ Add Friend

Message



Likes

All Likes

Movies

TV Shows

Artists

Books

Athletes

People



Jana Pauls Ministries



Fishtales Hideaway



Herbalty Cottage



Nancy Rose Ministries



Bistro 93



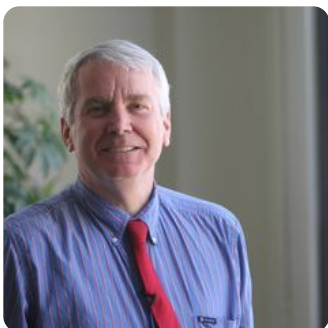
Center for Mindful Practice at Niagara University



Carrie Phillips for Buffalo City Court Judge



Genesee County for CASA Children, Inc



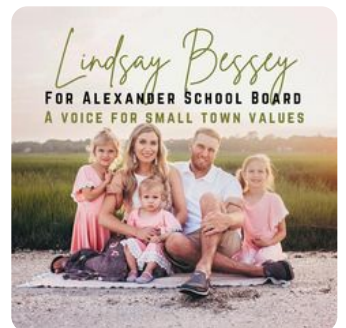
Gary Craig



Yoga with Elena



Thirteen Monkeys



Lindsay Bessey for Alexander School Board

