

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

DICCIA T. PINEDA-KIRWAN,

a Justice of the Supreme Court,
11th Judicial District, Queens County.¹

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 (Mark Levine, Of Counsel), for the Commission

Bracewell, LLP (by Paul Shechtman) for respondent

Respondent, Diccia T. Pineda-Kirwan, currently a Justice of the Supreme Court,

¹ Although respondent is presently sitting in the 10th Judicial District (Nassau County), she was sitting in the 11th Judicial District (Queens County) when this proceeding commenced.

Nassau County, was served with a Formal Written Complaint dated August 8, 2019, containing three charges. Charge I of the Formal Written Complaint alleged that from in or about 2010 through March 2017, respondent acted in a rude, impatient, undignified and discourteous manner when she repeatedly and without basis shouted, yelled or otherwise raised her voice at staff members of the Queens County Supreme Court and at attorneys appearing before her. Charge II of the Formal Written Complaint alleged that respondent engaged in the conduct described in Charge I despite having received a confidential Letter of Dismissal and Caution dated February 14, 2006 in which the Commission cautioned her to be patient, dignified and courteous to those with whom she dealt in an official capacity, and for threatening to adjourn a discovery motion repeatedly unless the attorneys reached a stipulation on the motion. Charge III of the Formal Written Complaint alleged that from approximately October 2012 to June 2016, respondent filed quarterly reports pursuant to Section 4.1 of the Rules of the Chief Judge that omitted certain matters that were pending decision more than 60 days after final submission.

On July 20, 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 August 6, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent has been a Justice of the Supreme Court, 10th Judicial District, Nassau County, since January 2019, having previously served as Justice of the Supreme Court, 11th Judicial District, Queens County, from 2010 to 2018, and Judge of the New York City Civil Court, Queens County from 2003 to 2009. Respondent's current term expires December 31, 2024. She was admitted to the practice of law in New York in 1988.

As to Charge I of the Formal Written Complaint

2. At all times pertinent to the matters herein, Jeremy Weinstein was the Administrative Judge of Supreme Court, Civil Term, Queens County.

Maria Bradley, Principal Law Clerk to Administrative Judge Jeremy Weinstein

3. On September 21, 2010, Administrative Judge Jeremy Weinstein sent an email to the Supreme Court justices who were sitting in Queens County, Civil Term, advising them that uncontested divorce matters should not be dismissed for minor technical defects and that, when possible, the judges should attempt to have the defects remedied without dismissal.

4. In February 2011, Maria Bradley began working as Principal Law Clerk to Administrative Judge Weinstein.

5. In February 2011, upon receiving a letter from an attorney complaining that respondent had dismissed an uncontested divorce petition in *Christine Telesco v. Michele Weinfeld* for, *inter alia*, the parties' failure to submit certain papers, Administrative Judge Weinstein directed Ms. Bradley to speak to respondent's law clerk at the time about the matter.

6. On March 2, 2011, Ms. Bradley sent an email to respondent's law clerk requesting that respondent clarify her position on uncontested matrimonial matters in view of Judge Weinstein's 2010 email message advising that uncontested matrimonial cases should not be dismissed for minor technical reasons.

7. On March 3, 2011, respondent called and spoke to Ms. Bradley via the speakerphone in respondent's chambers in the presence of her law clerk. Respondent yelled at Ms. Bradley and vehemently stated (A) that she would not do a clerk's job, (B) that no one, including Judge Weinstein, could tell her how to decide a case, (C) that it would violate her oath and (D) that Ms. Bradley should not be giving her or her staff directives from Judge Weinstein. Ms. Bradley was shaken by the conversation and felt demeaned by respondent.

8. On April 20, 2016, respondent was assigned to hear a motion to reargue a summary judgment motion in *Morgan Goulet v. James P. Anastacio, et al.* The case had previously been assigned to Supreme Court Justice Valerie Brathwaite Nelson, who had denied the original motion for summary judgment and thereafter was appointed to the Appellate Division, Second Department.

9. On April 22, 2016, respondent referred the motion to reargue in *Goulet* to Judge Brathwaite Nelson, notwithstanding that the latter had been elevated to the Appellate Division and was no longer hearing lower-court matters. After learning that respondent had done so, Ms. Bradley conferred with Administrative Judge Weinstein and then told respondent's law clerk at the time that the motion could not be returned to Judge Brathwaite Nelson and that respondent should decide it. Ms. Bradley returned the motion

papers to respondent with a note reiterating that the motion could not be decided by Judge Brathwaite Nelson.

10. On May 10, 2016, respondent and her law clerk called and spoke to Ms. Bradley via the speakerphone in respondent's chambers. Respondent was irate and told Ms. Bradley that she would not decide the motion in *Goulet* and insisted that it should be decided by Judge Brathwaite Nelson. When Ms. Bradley explained that all of Judge Brathwaite Nelson's pending motions had been randomly reassigned to other judges, respondent stated, in words or substance, "I'm not any other justice. I'm Diccia Pineda-Kirwan, Supreme Court Justice."

11. During the May 10th telephone call, respondent raised her voice, accused Ms. Bradley of asking her to do something "illegal" by deciding a motion to reargue another judge's decision, and told Ms. Bradley not to speak to her until she did her research and learned the law. When Ms. Bradley explained that she was acting at Administrative Judge Weinstein's direction, respondent demanded a written directive from Judge Weinstein to decide the motion. Respondent then told Ms. Bradley in an angry voice that she had changed her mind and that she planned to raise the issue with the Counsel to the Advisory Committee on Judicial Ethics, because she felt she was being asked to do something unethical.

Mark Finkelstein, Facility Supervisor of the Long Island City Courthouse

12. In 2015, Mark Finkelstein was the Facility Supervisor at the Long Island City courthouse of the Supreme Court, Queens County.

13. On March 30, 2015, respondent became angry when Mr. Finkelstein asked her to return a folding table that he had loaned her for her courtroom. The table was Mr. Finkelstein's personal property. When Mr. Finkelstein told respondent that he had promised the table to a new judge, respondent said, in words or substance, "How can you do that? I have more seniority than he does." Respondent became visibly upset and repeatedly screamed at Mr. Finkelstein, "You treat me like shit."

Tamara Kersh, Chief Clerk, Queens County Supreme Court, Civil Term

14. In 2014, Tamara Kersh was the Acting Chief Clerk of Supreme Court, Civil Term, Queens County.

15. On January 26, 2014, after noticing that furniture and/or office equipment was missing from the former chambers and courtroom of retired Supreme Court Justice James Golia, Mr. Finkelstein viewed security video that showed members of respondent's court staff removing furniture and/or equipment from Judge Golia's courtroom and chambers.

16. On January 27, 2014, Mr. Finkelstein confronted members of respondent's court staff, who admitted taking the missing items.

17. On January 27, 2014, respondent called Acting Chief Clerk Kersh and demanded a copy of any report in which Mr. Finkelstein accused her staff of stealing. When Ms. Kersh stated that no report had been filed, respondent became upset and said in a raised voice, "I'm a senior judge. I should have what I want." Respondent then rejected Ms. Kersh's suggestion that she speak to Judge Weinstein about obtaining new office equipment, stating that Judge Weinstein did not care for her and treated her

unfairly.

Sharon Davidson, Respondent's Former Confidential Secretary

18. Sharon Davidson served as respondent's confidential secretary from January 2010 through December 2010.

19. In 2010, on multiple occasions, respondent chastised Ms. Davidson, yelled at her, spoke to her in a condescending tone and threatened to terminate her employment.

20. In 2010, respondent required Ms. Davidson to call her at home each work day at 9:00 AM and frequently yelled at Ms. Davidson if she called after 9:00 AM. Respondent also yelled at Ms. Davidson frequently for not calling her at home to report on certain events that occurred in court in respondent's absence, about which respondent learned after the fact.

21. In 2010, on at least one occasion, when Ms. Davidson told respondent not to speak to her in a discourteous manner, respondent stated, in words or substance, "I'll talk to you the way I want. If you weren't so incompetent I wouldn't talk to you like that."

Michael Cheung, Technical Manager of the Queens County Supreme Court

22. In 2017, Michael Cheung was the Technical Manager for the Queens County Supreme Court.

23. In February 2017, Mr. Cheung requisitioned a new laptop computer for respondent.

24. On February 17, 2017, respondent accepted delivery of the new laptop but refused to relinquish her old laptop.

25. On February 18, 2017, Mr. Cheung sent respondent an email (A) explaining that it was the policy of the Office of Court Administration (“OCA”) to require judges to return their old laptops upon receiving new laptops and (B) requesting to schedule a pickup of her old laptop. Respondent did not respond to Mr. Cheung’s email.

26. In late February 2017 or early March 2017, Mr. Cheung and his colleague Kevin Young called and spoke to respondent via the speakerphone in Mr. Cheung’s office, to arrange to pick up respondent’s old laptop on March 3, 2017. Respondent yelled at Mr. Cheung and Mr. Young, said that she did not want to return the old laptop and said she had been told she could keep it, although she did not tell Mr. Cheung or Mr. Young who told her that.

27. On March 2, 2017, at the direction of his supervisor, Mr. Cheung sent respondent an email asking her to return the old laptop, reiterating OCA’s policy concerning the return of old laptops and stating that failure to return the old laptop could be considered “unauthorized use of court computer equipment.”

28. After Mr. Cheung sent the email, respondent telephoned him and left a voicemail message accusing him of threatening her and stating that she was a “Supreme Court Justice” and that he should not speak that way to someone of authority. Respondent also told Mr. Cheung that she had drafted a letter in response to his email and that she would save and send it “if necessary” to Lawrence Marks, Chief Administrative

Judge of the Unified Court System. Respondent ended the message by stating that if Mr. Cheung threatened her again she would call the police.

Lauren Quondamatteo, Administrative Aide to Judge Weinstein

29. In 2016, Lauren Quondamatteo was the Administrative Aide to Administrative Judge Jeremy Weinstein.

30. In the summer of 2016, at Judge Weinstein's direction, Ms. Quondamatteo called respondent to discuss errors in her quarterly report of pending matters for the period of April-June 2016. Respondent became angry and was "ranting and raving" at Ms. Quondamatteo. Respondent put the call on speakerphone and, in a condescending tone, yelled that she was "not a clerk," that her chambers were "not a clerk's office" and that she should not have to "keep track of these things." Respondent told Ms. Quondamatteo that she would not file a corrected report.

Counsel in Juan Maria Solorzano v. Skanska USA Building, Inc.

31. On January 30, 2014, respondent ordered the parties in *Juan Maria Solorzano v. Skanska USA Building, Inc.*, to appear at 10:00 AM on March 20, 2014, for a settlement conference and final disposition of a motion to reargue respondent's order denying the defendant's motion for an extension of time to file a summary judgment motion.

32. On March 20, 2014, attorneys Dennis Pak and James Neville appeared, respectively, for the defendant and plaintiff.

33. In a conference with respondent's law clerk, Mr. Pak requested an adjournment and advised that he could not settle the case because his client's insurance

adjuster was unavailable. The clerk told the attorneys that they needed to stipulate to “something.”

34. The two attorneys then appeared before respondent. When Mr. Pak repeated his request for an adjournment of the settlement conference, respondent stated that there were no adjournments in her part and that the case would be conferenced.

35. Before the lunch break, respondent conducted an off-the-record conference with the two attorneys during which she suggested that they stipulate to give the defendant an extension of time to file a summary judgment motion. When the attorneys could not stipulate, respondent told them to return that afternoon.

36. After a recess, at around 2:00 PM, attorney Charles Wisell appeared for the plaintiff because Mr. Neville had another engagement. At two separate conferences, each of respondent’s law clerks asked Mr. Pak and Mr. Wisell to stipulate to extend the defendant’s time to make a summary judgment motion. Mr. Wisell informed each clerk he did not have permission from his client to stipulate and that his client wanted a “decision on the merits.”

37. At around 4:00 PM, respondent approached Mr. Wisell and Mr. Pak, who were sitting at a table in the well of the courtroom and stated, in words or substance, that they should “Work out a stip.” When Mr. Wisell responded that there was nothing to which he could stipulate, respondent replied, “Well, stipulate to something.” Mr. Wisell reiterated that he could not stipulate, and respondent became angry and yelled, “Get out of my courtroom. Get out. Get out.”

38. Respondent continued to yell at Mr. Wisell as he gathered his belongings and left the courtroom.

Counsel in Beverly Leslie v. Audrey H. Anderson

39. On December 6, 2013, respondent ordered the parties in *Beverly Leslie v. Audrey H. Anderson* to appear at 10:00 AM on January 23, 2014, for a settlement conference and for final disposition of the defendant's motion for summary judgment.

40. On January 23, 2014, attorneys Alexander Blishteyn and Gene Stith appeared, respectively, for the defendant and the plaintiff.

41. Although the case was on for final disposition of the summary judgment motion, Mr. Stith handed up opposition papers. Mr. Blishteyn objected to the late filing of such papers. When respondent indicated she would accept Mr. Stith's papers and said Mr. Blishteyn could file responsive papers later that day, Mr. Blishteyn asked for more time. During the course of their discussion, respondent yelled at Mr. Blishteyn.

42. At one point during the discussion, respondent stated, "Off the record. It's over." When Mr. Blishteyn asked to "keep the record on," respondent angrily said, "No. Call security. Okay. That's enough." Mr. Blishteyn then asked respondent to recuse herself from the matter, after which she said, "I want security here and I want to . . . make a record of this now that he doesn't want to just step away from the bench."

Counsel in Carol Ann Giancola v. Reny R. Johnny

43. In July 2013, the plaintiff in *Carol Ann Giancola v. Reny R. Johnny*, filed a motion for summary judgment on the issue of the defendant's liability for a motor vehicle

accident in which the defendant rear-ended the plaintiff's stopped vehicle. The defendant's attorney, Gregory Newman, did not oppose the motion.

44. On September 11, 2013, respondent ordered the parties to appear at 10:00 AM on October 24, 2013, for a settlement conference and for final disposition of the plaintiff's summary judgment motion.

45. On October 24, 2013, the plaintiff's attorney, the defendant's insurance adjuster and a *per diem* attorney hired by Mr. Newman appeared in respondent's part at around 10:00 AM. Mr. Newman arrived at court at approximately 11:00 AM.

46. Before the lunch recess, respondent's two law clerks conducted separate conferences with the attorneys and encouraged them to settle. At each conference, Mr. Newman acknowledged that his client had no defense to the summary judgment motion on the issue of liability. He advised the clerks, however, that the defendant's insurer would not make a monetary offer to settle because there was an issue of fact as to whether the plaintiff met the "serious injury" threshold under New York's "No-Fault" Insurance Law. The parties were directed to return to the courtroom after lunch.

47. Thereafter, from about 2:00 PM to about 4:00 PM, the parties waited in the courtroom, but the case was not conferenced.

48. At around 4:15 PM, respondent entered the courtroom and yelled at Mr. Newman and the other attorneys in the courtroom, stating, in words or substance, that they were wasting her time and that the court was very busy. They were then told to leave.

As to Charge II of the Formal Written Complaint

49. Respondent engaged in the conduct set forth regarding Charge I above, notwithstanding having been issued a confidential Letter of Dismissal and Caution dated February 14, 2006, in which the Commission cautioned her to be patient, dignified and courteous to those with whom she dealt in an official capacity, and for threatening to adjourn a discovery motion repeatedly unless the attorneys reached a stipulation on the motion. The caution letter also advised respondent that she had created the appearance that she was “denying the attorneys the right to have their motion promptly heard and adjudicated by the court.” A copy of the letter is attached as Exhibit A to the Agreed Statement.

As to Charge III of the Formal Written Complaint

50. The charge is not sustained and is, therefore, dismissed.

Additional Factors

51. Respondent has cooperated with the Commission during its inquiry into this matter.

52. Respondent regrets and apologizes for her impatient and otherwise discourteous behavior toward attorneys, court staff and colleagues, and she has endeavored to avoid such conduct in the future.

53. In January 2019, respondent was transferred to Supreme Court, Nassau County. The Commission has not been directly or indirectly apprised of any complaints about her demeanor since her transfer.

Upon the foregoing findings of fact, the Commission concludes as a matter of law

that respondent violated Sections 100.1, 100.2(A), 100.3(B)(3) and 100.3(C)(1) 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 insofar as they are 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 to “be patient, dignified and courteous to . . . lawyers and others with whom the judge deals in an official capacity.” (Rules §§100.2(A) and 100.3(B)(3)) Respondent acknowledged that on more than ten separate occasions she was discourteous to court personnel and to attorneys who appeared before her.

Respondent admitted that she repeatedly yelled at court personnel. She demeaned court employees including her confidential secretary, a principal law clerk and an administrative aide. In one instance, she repeatedly screamed at a courthouse facility supervisor, “You treat me like shit.” Respondent admitted that she frequently yelled at her former confidential secretary and treated her in a condescending and discourteous manner.

Respondent also failed to “cooperate with other judges and court officials in the administration of court business” as §100.3(C)(1) of the Rules required. In contravention of OCA policy, she refused to return her old laptop after receiving a new one and yelled at the court’s technical manager who tried to arrange for the return of the

old laptop. In another instance, after a motion that she had inappropriately referred to another judge was returned to her, respondent insisted to the administrative judge's law clerk in a raised voice that she would not decide the motion.

In addition to her inappropriate conduct toward court personnel, respondent also admitted that on three occasions she yelled at counsel who were appearing before her. In one instance, respondent told the parties to enter into a stipulation and when one attorney indicated that there was nothing to which he could stipulate, she yelled at him, "Get out of my courtroom. Get out. Get out." Respondent acknowledged that she continued to yell at the attorney while he gathered his things and left the courtroom. Such conduct was unbecoming a judge.

Respondent's pattern of intemperate and abusive behavior was improper and severely undermined confidence in the judiciary. In *Matter of Mertens*, 56 A.D.2d 456 (1st Dept. 1977), the judge was disciplined for, *inter alia*, being discourteous to litigants and attorneys.² In that matter, "respondent suddenly exploded in angry shouting sometimes described as yelling and screaming at lawyers and witnesses." *Id.* at 468. The Court held that:

Self-evidently, breaches of judicial temperament are of the utmost gravity.

As a matter of humanity and democratic government, the seriousness of a Judge, in his position of power and authority, being rude and abusive to persons under his authority-- litigants, witnesses, lawyers--needs no elaboration.

It impairs the public's image of the dignity and impartiality of

² This judicial disciplinary matter was initiated prior to the creation of the Commission.

courts, which is essential to their fulfilling the court's role in society.

Id. at 470. In *Matter of Tavormina*, 1990 NYSCJC Annual Report 164, the judge was admonished for being discourteous in four matters including yelling at an attorney in a public hallway and loudly telling a law school graduate permitted to practice law that, “You’re nothing” and describing her as “a new attorney who didn’t know what she was doing.” *Id.* at 165-166.

Respondent’s current misconduct is troubling since in 2006 the Commission cautioned her for threatening to adjourn a motion repeatedly unless the parties reached a stipulation which created the appearance that she was “denying the attorneys the right to have their motion promptly heard and adjudicated by the court.” The Commission’s 2006 letter specifically cautioned respondent to be patient and courteous. Despite this caution, respondent continued to act in a discourteous manner to several court employees and to attorneys in three different matters.

Respondent’s prior caution is an aggravating factor in determining the appropriate sanction. *Matter of Assini*, 94 N.Y.2d 26, 30-31 (1999) (judge found to have “deliberately evaded and violated his ethical responsibilities” when “[r]ather than scrupulously following the letter and spirit of the Commission’s caution”, the judge continued the conduct for which he had been cautioned). As a result of her 2006 letter of dismissal and caution, respondent should have been fully aware of the Rules and her obligation to be patient and courteous to those she dealt with in her official capacity.

In accepting the jointly recommended sanction of censure, we have taken into

consideration that respondent has admitted that her conduct warrants public discipline. We expect 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.

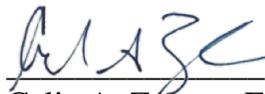
By reason of the foregoing, the Commission determines that the appropriate disposition is censure.

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: August 12, 2020



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