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

DETERMINATION

MARY BRIGANTTI-HUGHES,

a Justice of the Supreme Court, 12th
Judicial District, Bronx County.

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THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Honorable Terry Jane Ruderman, Vice Chair
Honorable Rolando T. Acosta
Joseph W. Belluck, Esq.
Joel Cohen, Esq.
Jodie Corngold
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Richard A. Stoloff, Esq.
Honorable David A. Weinstein

APPEARANCES:

Robert H. Tembeckjian (Pamela Tishman, Of Counsel) for the Commission

Gair, Gair, Conason, Steigman, Mackauf, Bloom & Rubinowitz (by Ben B. Rubinowitz) for the Respondent

The respondent, Mary Brigantti-Hughes, a Justice of the Supreme Court, 12th Judicial District, Bronx County, was served with a Formal Written Complaint dated

June 13, 2013, containing one charge. The Formal Written Complaint alleged that on numerous occasions respondent asked and/or caused her court staff to perform non-work-related personal tasks for her and to participate in religious and secular activities associated with her religion or church.

On November 8, 2013, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument. The Commission had rejected an earlier Agreed Statement.

On December 12, 2013, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Supreme Court, 12th Judicial District, Bronx County, since 2005. She served as a Judge of the New York City Civil Court from 1998 to 2004 and, during a portion of her term as a Civil Court Judge, also served as a Judge of the New York City Criminal Court. Respondent's current term expires on December 31, 2018. Respondent was admitted to the practice of law in New York in 1987.

2. From in or about 2006 to in or about 2011, respondent lent the prestige of judicial office to advance her own and others' private interests and/or failed to conduct her extra-judicial activities so as to minimize the risk of conflict with judicial obligations, in that, during regular business hours, she asked and/or caused court staff (A)

to perform non-work-related personal tasks for her and (B) to participate in religious and secular activities associated with her religion or church, as indicated in the succeeding paragraphs.

3. From in or about 2006 through in or about 2009, on approximately five occasions, respondent asked her secretary, Maria Figueroa, to pick up respondent's young daughter from school. On those occasions, Ms. Figueroa left work early, drove her personal car to the school, picked up the child and then looked after the child at either her own home or respondent's home until the end of the day when someone relieved her.

4. From in or about 2006 through in or about 2011, on multiple occasions during regular business hours in the months of July and August, respondent brought her child to court during the day. In these years respondent's child was between the ages of six and eleven. There is evidence sufficient to establish that on approximately five such occasions, respondent's court staff supervised the child when respondent was on the bench.

5. From in or about January 2010 to in or about February 2011, on approximately four occasions during regular business hours, respondent had her court attorney, Marguerite Wells, pick up respondent's daughter from school. Ms. Wells would leave work, drive respondent's car to the school, park nearby and then go into the school to get the child. She would then bring the child to the courthouse. If respondent was not in chambers, Ms. Wells would watch the child until respondent returned.

6. From in or about 2006 through in or about 2009, on about three

occasions, respondent had her secretary, Maria Figueroa, drive her to a hair salon, wait and then drive respondent home or to the courthouse.

7. From in or about 2006 to in or about 2009, on at least one occasion during regular business hours, respondent had her secretary, Maria Figueroa, drive her to New Jersey so respondent could go shopping.

8. From in or about 2006 through in or about 2011, on as many as nine occasions during regular business hours, respondent had or permitted court staff, such as her secretary Maria Figueroa, her court attorney Marguerite Wells and assistant Supreme Court librarian Yesenia Santiago, to do personal typing, printing and/or copying of religious material, for respondent's personal use.

9. In or about 2010 or early 2011, respondent had her court attorney, Marguerite Wells, accompany her to a Home Depot during regular business hours to help respondent purchase soil and plants for a function at respondent's church. When they returned to chambers, respondent had Ms. Wells assist her in repotting the plants.

10. In or about 2003, respondent obtained permission from the Office of Court Administration for a Bible study/prayer group to meet in the courthouse during the lunch hour. However, from in or about 2006 to in or about 2011, during regular business hours other than the lunch hour, respondent often asked court staff to join her in prayer in chambers.

A. From in or about 2006 to in or about 2009, on about six occasions, respondent asked Maria Figueroa and/or respondent's court attorney, Brenda Torres, to

pray with respondent in chambers. Respondent and her court staff often joined hands during the prayers.

B. From in or about 2010 to in or about 2011, on about seven occasions, respondent asked Marguerite Wells and/or her other court attorney, Yvonne Baez, to pray with respondent in chambers. Respondent and her court staff often joined hands during the prayers.

11. From in or about 2006 to in or about 2011, in the courthouse during regular business hours, respondent occasionally invited members of her court staff, including Maria Figueroa, Marguerite Wells, Yvonne Baez, and Brenda Torres, to attend church and religious events after regular business hours. As a result of respondent's invitations:

A. Ms. Figueroa attended a Friday church service and a Saturday church event;

B. Ms. Torres attended a church fund-raiser at her own expense, one or two church services, a Saturday religion class and an evening prayer group; and

C. Ms. Wells attended a church service, a church event for women and, at her own expense, a weekend retreat in Pennsylvania sponsored by respondent's church.

Additional Factors

12. With regard to respondent's requests that her court staff assist her in some personal tasks not related to their official duties, such as photocopying religious material and assisting with care for respondent's child:

A. Most of the conduct engaged in by respondent predated *Matter of Ruhlmann*, 2010 NYSCJC Annual Report 213 (Feb 9, 2009), in which the Commission censured a judge for having her secretary perform various personal services, such as typing for her husband and child care for her children. Respondent asserts that while she was not previously familiar with the Commission's determination in *Ruhlmann*, she promises to abide by it and acknowledges that it was improper for her to ask her staff to perform non-work-related personal tasks for her, especially during work hours. Respondent asserts that, in making some of these requests of her staff, she was motivated by the belief that she was maximizing her time in the courtroom. While respondent did not believe at the time that her requests took substantial time away from her staff's discharge of their official duties, she now realizes that she created at least the appearance of using public resources for her personal benefit and promises not to do so in the future. As to personal tasks performed during non-working hours, respondent now recognizes that she created the appearance of impropriety, placed her own interests above those of her staff and failed to consider whether her requests were implicitly coercive given her role as judge and employer.

B. The Administrator notes that, as stated in the Preamble to the Rules Governing Judicial Conduct, these are "rules of reason," and it is "not intended...that every transgression will result in disciplinary action." It is not the Administrator's position that, absent aggravating circumstances, occasional acts of personal assistance by a court employee toward a judge should result in discipline. For example, ordinary

professional courtesies and emergencies sometimes result in extra-curricular assistance being provided by subordinates to supervisors and vice versa. In this case, however, respondent called upon her subordinates to perform personal tasks more than occasionally in non-emergency circumstances, requiring public discipline.

C. There is evidence sufficient to establish that respondent requested her staff to assist her with personal tasks on average fewer than five times a year. The Administrator is not aware of any case in which similar conduct of this type and limited number was found to comprise a "scheme constituting a systemic ongoing course of conduct with intent to [ ] defraud the state" in violation of Penal Law Section 195.20 (punctuation omitted), or otherwise found to be a crime.

13. With regard to respondent's invitations to court staff to pray with her in the courthouse and to attend or participate in various meetings or events of a religious nature:

A. The Administrator notes that in 2003, in interpreting applicable First Amendment law, the Office of Court Administration opined that respondent may use "available court facilities during the lunch hour" "to hold bible study and other religiously oriented meetings" so long as "they [did] not interfere with the performance of duties in the workplace" and were not "otherwise ... disturbing to others, including the potential to coerce or intimidate others to join." The Administrator does not suggest any impropriety in respondent's privately and discreetly engaging in personal prayer, at or in the workplace, alone or with others who voluntarily join her.

B. The Administrator and respondent agree, however, that in the workplace, respondent's right to the free exercise of her religious beliefs must be balanced with the right of her subordinates to freely exercise their own religious beliefs and to be free of coercion to engage in the religious practices of others. Federal courts have struggled with this delicate balance. *See, e.g., Venters v. City of Delphi,* 123 F3d 956 (7th Cir 1997); *Brown v. Polk County, Iowa,* 61 F3d 650 (8th Cir 1995).

C. Respondent asserts that she did not intend to coerce any employee into engaging in religious activity and never suggested explicitly or implicitly that any employee would suffer adverse consequences for declining her invitations to pray or to attend religious events. The Commission's investigation did not reveal any evidence to the contrary. Respondent now recognizes, however, that such requests are inherently coercive when made by a judge to her personal appointees or other court employees, and she understands that some staff did feel pressure to participate in prayer or to attend events sponsored by respondent's church.

D. Respondent acknowledges that the Rules prohibit judges from participating in fund-raising activities, even for a religious purpose, and that it was improper for her to invite employees to events requiring them to expend funds for the benefit of her church. She promises not to extend such invitations in the future.

E. Respondent also acknowledges that she should not have invited her staff to attend various religious functions sponsored by her church. While respondent extended these invitations out of her sincere devotion to her religious principles, she now

recognizes that she failed to consider the rights and interests of her staff, including whether her invitations were implicitly coercive given her role as judge and employer. She promises not to extend such invitations in the future.

14. The Administrator notes that suspension from office is not a sanction available to the Commission under the Constitution.

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), 100.4(A)(2), 100.4(A)(3) and 100.4(C)(3)(b)(i) and (iv) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, 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, and respondent's misconduct is established.

On multiple occasions from 2006 to 2011, respondent misused her judicial position by asking and/or causing court staff to perform personal tasks for her and to participate in activities associated with her religion or church.

By repeatedly using her court staff to perform child care and other personal services, respondent misused court resources and engaged in conduct that was implicitly coercive and inconsistent with the ethical rules. As respondent has acknowledged, on numerous occasions she called upon her court staff, including her secretary and court attorney, to pick up respondent's young child from school and look after her until

respondent was available. On other occasions, when respondent brought her child to work during the summer months, her court staff supervised the child when respondent was on the bench. At respondent's behest, members of her staff drove her or otherwise assisted her on personal errands such as shopping trips during business hours, and performed other non-work-related services for her such as typing, printing and/or copying religious material for her personal use. The record before us amply demonstrates that these extra-judicial services were not *de minimis* and went well beyond the professional courtesies or occasional acts of personal assistance that might ordinarily be provided in emergency situations by subordinates to supervisors, or vice versa. Rather, they reflect an egregious misuse of court resources that violated respondent's obligation to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (Rules, §100.2[A]; *Matter of Ruhlmann*, 2010 NYSCJC Annual Report 213 [2009]).

"The public is entitled to expect that judges will conscientiously use resources paid for by the taxpayers only for the purpose for which those resources were intended" (*see Matter of Watson*, Public Admonishment by California Commission on Judicial Performance [2006], citing Rothman, California Judicial Conduct Handbook §3.33 [2d ed. 1999]). Care of a judge's children is a personal responsibility that clearly "falls beyond the scope of duties for which the taxpayers have provided staff to members of the judiciary" (*Matter of Neely*, 364 SE2d 250, 254 [W Va 1987] [disciplining a judge for requiring his secretary to care for the judge's child). As we stated in *Matter of*

Ruhlmann, supra (censuring a judge for requiring her secretary to provide child care services and do personal typing for the judge's husband):

> Such extra-judicial use of court staff is improper regardless of whether the employee objects or feels compelled to perform such personal tasks without protest. It is wrong even if the judge believes it does not interfere with the performance of the court's work. It is disruptive to court administration and sets a poor example for court staff. It is a breach of the public trust and damages public confidence in the integrity of the judiciary.

Requiring a court employee under the judge's supervision to perform personal favors not only is inherently coercive, but complicates any evaluation of the employee's job performance and adversely affects the nature of the employment relationship.

As to respondent's assertion that in making such requests of her staff, she was motivated by the belief that she "was maximizing her time in the courtroom" (Agreed Statement, par 14A), such a belief is neither mitigating nor acceptable. Tasks of a personal nature remain a judge's personal responsibilities and should not be discharged using public resources. Nor is it mitigating that, as stipulated, most of the conduct engaged in by respondent predated *Matter of Ruhlmann* or that respondent was not previously familiar with that decision, which was issued in February 2009. Every judge should know that routinely performing personal tasks and favors for the judge is not part of a court employee's duties.[1]

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[1] Reflecting the seriousness of such conduct, we note that in some circumstances the misuse of government resources can constitute a crime (*see* Penal Law §195.20). In issuing this determination, we make no conclusion as to whether respondent's conduct might subject her to civil or criminal liability since such matters are properly determined in a court of appropriate jurisdiction.

Over the same six-year period, respondent also asked members of her court staff to pray with her in chambers on multiple occasions. She and her staff often held hands as they prayed during such sessions, which took place during business hours. Respondent also invited some members of her court staff to attend religious services and other events associated with respondent's church, as a result of which her secretary and two court attorneys attended several such events on evenings and weekends.

We note that in 2003 the Office of Court Administration had advised respondent that using "available court facilities during the lunch hour" for "bible study and other religiously oriented meetings" was permissible so long as such meetings "[did] not interfere with the performance of duties in the workplace" and were not "otherwise ... disturbing to others, including the potential to coerce or intimidate others to join" (Agreed Statement, par 11, 15A). The prayer sessions to which respondent invited her staff, as described in this record, clearly went beyond the parameters of OCA's advice in that: (i) they took place at times other than the lunch hour and (ii) respondent did not simply attend, but held the meetings in her chambers and asked court staff to attend. Under such circumstances, repeatedly asking her staff to join her in such sessions misused the prestige of her judicial position, added an element of implicit coercion and crossed the line into impropriety (Rules, §100.2[C]). Moreover, inviting members of her court staff to attend church-related events after court hours clearly went beyond the permission afforded by administrative authorities and was also implicitly coercive, as respondent has acknowledged. Inevitably, some staff felt pressure to participate in prayer and attend

events at respondent's invitation. Belatedly, respondent now recognizes that such requests are inherently coercive when made by a judge to her appointees and other court employees. In addition, since some of the after-hours events required the employee to expend funds for the benefit of respondent's church, making such invitations involved respondent in fund-raising, which is strictly prohibited by the ethical rules (Rules, §100.4[C][3][b][i], [iv]).

Although we recognize that respondent extended these invitations "out of her sincere devotion to her religious principles" (Agreed Statement, par 15E), it is clear that she should have been more sensitive to the serious potential for impropriety in injecting her religious practices into the workplace in such a manner. As stated in the stipulated facts, "in the workplace, respondent's right to the free exercise of her religious beliefs must be balanced with the right of her subordinates to freely exercise their own religious beliefs and to be free of coercion to engage in the religious practices of others" (Agreed Statement, par 15B). By creating an environment in which some staff felt pressure to engage in religious activities, her actions impinged on the important separation between church and state, one of the most basic tenets of the federal and state constitutions.

While it is clear from the foregoing that a severe public sanction is appropriate, there are several factors in mitigation. In particular, we note that the advice respondent received from administrative authorities about engaging in religious practices on court premises gave support to prayer meetings at "available court facilities during the

lunch hour." Although we find that respondent's conduct went beyond the letter and spirit of that advice, she may have believed that her religious activities in the workplace were consistent with the advice she received and with her First Amendment right to exercise her religious beliefs. We also note that respondent has acknowledged that her conduct was improper, both as to her use of court staff to perform personal tasks and her religious activities in the workplace, and has promised to refrain from such activity in the future. Based on the foregoing, we believe that the sanction of public censure is appropriate.

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

Judge Klonick, Judge Ruderman, Judge Acosta, Mr. Belluck, Mr. Cohen, Ms. Corngold, Mr. Harding, Mr. Stoloff and Judge Weinstein concur.

Mr. Emery did not participate.

CERTIFICATION

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

Dated: December 17, 2013

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct