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

DANDREA L. RUHLMANN,

a Judge of the Family Court, Monroe
County.

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THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission

Trevett Cristo Salzer & Andolina P.C. (by Lawrence J. Andolina) for the Respondent

The respondent, Dandrea L. Ruhlmann, a Judge of the Family Court, Monroe County, was served with a Formal Written Complaint dated June 24, 2008,

containing four charges. The Formal Written Complaint alleged *inter alia* that respondent required and/or permitted her confidential secretary to perform babysitting services for respondent's children and personal typing duties for respondent's husband during court hours and that, at respondent's direction, her secretary reviewed a confidential court database to obtain information based on an *ex parte* personal request by respondent's husband. Respondent filed a verified answer dated September 9, 2008.

On December 12, 2008, the Administrator of the Commission, 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.

On January 28, 2009, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the Family Court, Monroe County, since January 2004. Her current term of office expires in 2013.

2. Respondent's husband is Raymond Ruhlmann, III. They have two children, a daughter who was eight years old at the time of the incidents herein, and a son who was three years old at the time.

3. Kimberly Keskin and respondent had been very close friends since childhood, and their close friendship continued for 37 years, up to the time of the events herein.

4. Ms. Keskin also had a close relationship with respondent's two children, who called her "Aunt Kimmy." As a consequence of this close relationship, Ms. Keskin had provided uncompensated babysitting services to respondent's children on numerous prior occasions. Prior to respondent's election as a judge, Ms. Keskin had done typing for Mr. Ruhlmann.

5. After assuming office on January 1, 2004, respondent appointed Ms. Keskin as her confidential secretary. Prior thereto, Ms. Keskin was employed as a legal secretary in the Family Court Division of the Monroe County Law Department.

6. In appointing Ms. Keskin as her secretary, respondent wrongly believed that because Ms. Keskin was appointed by and served at the pleasure of respondent, Ms. Keskin's duties included providing respondent with assistance on personal matters. Respondent understood that Ms. Keskin was a governmental employee paid by New York State but wrongly believed that the position of confidential secretary to a judge included being the judge's personal assistant and that such duty was a part of her employment. Respondent was familiar with the Office of Court Administration's job description for Confidential Secretary.

7. As a consequence of her mistaken understanding of Ms. Keskin's duties and responsibilities and the limits on her authority over Ms. Keskin's actions during the work day, respondent wrongly had Ms. Keskin perform a variety of personal assignments for her and her husband Raymond over an eight-month period.

As to Charge I of the Formal Written Complaint:

8. On Monday, January 26, 2004, respondent brought her daughter to her office in the courthouse at about 9:00 AM because she was sick and unable to attend school and respondent was unable to make alternate day care arrangements. Respondent had Ms. Keskin watch and attend to the child in the court office. At about 12:00 PM, respondent had Ms. Keskin take the child to the child's doctor, wait for the child to be examined, drive the child to a pharmacy to obtain medicine and, thereafter, drive the child to the home of respondent's parents. Ms. Keskin spent about four hours, intermittently, including the lunch hour, assisting respondent with her daughter. During that period respondent was attending to court business in chambers or was on the bench.

9. At about 9:00 AM on Friday, January 30, 2004, respondent had Ms. Keskin babysit respondent's son in the court office for more than an hour, and then had her transport and deliver the child to his regular day care provider, which took about 30 minutes. Respondent had intended to transport her son personally to day care that morning, but before she could do so, she was called to the office to complete an adoption proceeding on behalf of another judge who had taken ill.

10. On Friday, April 9, 2004, in the morning, respondent brought her daughter to her office in the courthouse because she was ill and unable to attend school and respondent was unable to make alternate care arrangements. When respondent went on the bench, her daughter remained in chambers, where Ms. Keskin was responsible for watching her intermittently for about two hours. During the time specified in paragraphs

8, 9 and 10, Mr. Ruhlmann was out of town and unavailable.

11. During business hours on two other business days between May and August 2004, respondent had Ms. Keskin watch and attend to respondent's son in the court office for no more than a half hour each day while respondent was on the bench.

12. On Monday, June 7, 2004, respondent was out of town attending a judicial conference. During the afternoon, Ms. Keskin was contacted at her court office by Mr. Ruhlmann, who advised her that respondent's daughter had cartwheeled into a tree and may have broken her hand. Mr. Ruhlmann, who was working as a Monroe County assistant district attorney and was engaged in a jury trial, had Ms. Keskin pick up respondent's daughter at the child's home and drive the child to the doctor for examination and x-rays. Ms. Keskin was out of the office for about three hours attending to the matter.

13. During the afternoons of Tuesday and Wednesday, July 12-13, 2004, for a total of three hours, respondent had Ms. Keskin watch and attend to respondent's daughter and two of her daughter's friends, who were approximately nine and seven years old, in the court office and the courtroom. Respondent did so because she had previously agreed to provide afternoon care on those days to the children as part of an arrangement with the children's mother, who is respondent's friend, to attend and view the workings of the court.

14. Following the lunch hour on Tuesday, August 31, 2004, respondent had Ms. Keskin watch and attend to her daughter in the court office for about three hours

while respondent was presiding on the bench. Mr. Ruhlmann, who was prosecuting a criminal case that morning, had brought the child to court with him. When he realized there would be testimony unsuitable for a child to hear, Mr. Ruhlmann brought the child to respondent's chambers during the lunch break.

15. With regard to all of the above occasions, respondent made no arrangements to compensate Ms. Keskin personally in lieu of her court-paid salary. As Ms. Keskin's supervisor, respondent signed her weekly attendance/leave accrual sheets covering the foregoing dates and times, in effect confirming that Ms. Keskin was entitled to her court salary for periods in which she was performing personal services for respondent.

16. In signing the attendance/leave accrual sheets, respondent considered that Ms. Keskin would occasionally begin work earlier than 9:00 AM and leave work after 5:00 PM and that Ms. Keskin performed some of the personal services during her lunch hour. In signing the attendance/leave accrual sheets, respondent believed that Ms. Keskin's personal services had neither detracted from the performance of her court related work each week nor significantly infringed on the 35-hour work week.

17. Respondent acknowledges that it was improper for her to have used Ms. Keskin repeatedly to perform personal child care services during the business day for her and her husband and on one occasion her friend. Respondent now realizes that from January 2004 to September 2004, she grossly misunderstood the role of a judge's

personally appointed confidential secretary. While respondent did not believe she was taking substantial time away from Ms. Keskin's discharge of her court duties, she now realizes that she created at least the appearance of using public resources for her personal benefit. Respondent apologizes to the Commission and to Ms. Keskin for her conduct.

As to Charge II of the Formal Written Complaint:

18. From February 2004 to May 2004, respondent had Ms. Keskin perform personal typing duties during business hours for Mr. Ruhlmann, limited to the following simple documents:

A. a one-page letter, dated February 27, 2004, submitted to the Office of Court Administration;

B. minor updates to revisions in Mr. Ruhlmann's pre-existing resume;

C. three substantially similar cover letters, all dated March 1, 2004, that Mr. Ruhlmann submitted in connection with an application for employment at Monroe Community College;

D. a short paragraph describing Mr. Ruhlmann's teaching philosophy that he used in connection with his application for employment at Monroe Community College;

E. a short e-mail communication on March 3, 2004, from Mr. Ruhlmann to Bill Reyes regarding Mr. Ruhlmann's application for the Marine Corps award;

F. two pages of the five-page summary of Mr. Ruhlmann's career achievements prepared in connection with his application for a personal award relating to his service as a Colonel in the United States Marines; and

G. three forms listing 16 one-word categories for the compilation of basic personal information arising from Mr. Ruhlmann's duties while a Marine.

19. On March 1, 2004, Ms. Keskin objected to respondent that the work

she was doing in the office for Mr. Ruhlmann was interfering with her ability to complete a specific court work assignment. Respondent told Ms. Keskin that since she was close to completing the task that she was working on for Mr. Ruhlmann that day, she should finish that work first before moving on to her court work assignment.

20. Respondent now realizes it was improper for her to have had Ms. Keskin perform secretarial work for her husband as part of her court duties, let alone put such work ahead of court business, since Mr. Ruhlmann was not a court employee and his typing work was unrelated to court business.

As to Charge III of the Formal Written Complaint:

21. In June 2004, in a conversation in their home, Mr. Ruhlmann asked respondent how to obtain certain Family Court records which might exist relating to a defendant in a pending criminal case. Mr. Ruhlmann, who was a Monroe County assistant district attorney at the time, explained to respondent that he was responsible for prosecuting "JK" on charges of Sexual Abuse in the First Degree and Assault in the Third Degree in the Greece Town Court, and he believed that Mr. K may have had a prior Family Court case that was relevant in the criminal proceeding. Respondent advised Mr. Ruhlmann that pursuant to 22 NYCRR Section 205.5(d)(2), the District Attorney's office was entitled to obtain such records and that they could be obtained either by subpoena or by an *ex parte* request if the criminal case was related to a Family Court matter in which an order of protection had been issued. Mr. Ruhlmann provided respondent with the defendant's name and asked her to check the Family Court database

to determine if there were records available for the defendant so that the District Attorney's office might obtain them by subpoena or request.

22. Respondent agreed to do as her husband asked. She thereafter told Ms. Keskin to check the Family Court database for the defendant's name. Ms. Keskin checked the records and determined that there was no case for the defendant and no order of protection had been issued against him. Respondent thereafter told her husband only that there was no order of protection against "JK." Respondent did not tell Mr. Ruhlmann that there were no records for the defendant. She did say that Mr. Ruhlmann could issue a subpoena if he chose to do so. Mr. Ruhlmann did not issue a subpoena for any Family Court file relating to the defendant.

23. Respondent realizes in retrospect that it was improper for her to access confidential court records as the result of an *ex parte* personal request by her husband. Respondent also realizes that her conduct is not mitigated by the fact that her husband was at the time a public official who, through appropriate channels, could have obtained the information at issue, *ex parte,* from Family Court.

As to Charge IV of the Formal Written Complaint:

24. Prior to September 9, 2004, respondent and Ms. Keskin had an ongoing disagreement over Ms. Keskin's requests to take Fridays off from work during the summer. Respondent denied her requests.

25. On Thursday morning, September 9, 2004, in the court office, respondent provided to Ms. Keskin a handwritten course syllabus prepared by Mr.

Ruhlmann that he intended to use in connection with his new job as a teacher at a local high school. Respondent directed Ms. Keskin to type the syllabus. Ms. Keskin objected and said she was busy with court work. Respondent replied that Ms. Keskin should first prepare the syllabus for Mr. Ruhlmann and then continue with her court work. Ms. Keskin became distressed at this and a short time thereafter left the office because she was distressed. Respondent prepared the syllabus for her husband.

26. On Monday, September 13, 2004, Ms. Keskin met with respondent and renewed her objection to being told to place Mr. Ruhlmann's personal work before her court duties. Ms. Keskin also objected to having to spend time at the office attending to respondent's children. Respondent reiterated that Ms. Keskin was required as part of her job to perform work as instructed by respondent and if told to do so she must give priority to respondent's personal work over her court duties. Ms. Keskin surreptitiously recorded this conversation.

27. Sometime between September 13 and September 20, 2004, Ms. Keskin advised Supreme Court Justice Thomas Van Strydonck, Administrative Judge for the Seventh Judicial District, about the child care and other personal services respondent had her provide and the surreptitious recording she had made of her conversation with respondent. Ms. Keskin advised Judge Van Strydonck that she was considering commencing legal action against respondent.

28. Judge Van Strydonck conferred with other administrative judges about the matter.

29. On Monday, September 20, 2004, respondent conferred with Judge Van Strydonck about Ms. Keskin. Judge Van Strydonck told respondent among other things that she should not have used Ms. Keskin for child care and that it was inappropriate for Ms. Keskin to have surreptitiously recorded the September 13th conversation. Later that day, respondent fired Ms. Keskin, effective immediately, and issued a termination letter to her to that effect.

30. On or about November 5, 2004, Ms. Keskin commenced an action for unspecified money damages in the United States District Court for the Western District of New York against both the Unified Court System and respondent for, *inter alia*, alleged violations of New York Civil Service Law, Section 75-b (retaliatory action by public employers) and New York Labor Law Section 740 (retaliatory personnel action by employers). Respondent's position is that she fired Ms. Keskin for cause related to the surreptitious taping of the September 13th conversation and Ms. Keskin's having accessed respondent's office computer and deleted documents.

31. On or about March 19, 2007, a Stipulation and Order of Discontinuance and Settlement Agreement was filed in the federal court. The Unified Court System reached financial and employment terms with Ms. Keskin. No finding of liability was made with regard to respondent. She paid no damages and the action against her was discontinued.

32. Respondent commits to refrain scrupulously from asking court staff to perform personal work for her, her husband or others.

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(B)(4), 100.3(B)(6) , 100.3(B)(6)(e), 100.3(C)(2) and 100.4(A)(2) 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. Charges I through IV of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

By using her court secretary to provide repeated personal services during court business hours, respondent misused court resources and failed to diligently discharge her administrative responsibilities. "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" (*Matter of Watson*, Public Admonishment by California Commission on Judicial Performance [2006], citing Rothman, California Judicial Conduct Handbook §3.33 [2d ed. 1999]).[1] Respondent's repeated use of her court staff for personal, non-governmental purposes without a compelling reason violated

[1] *See also* Alfini *et al*., *Judicial Conduct and Ethics* §6.06 (4th ed. 2007) ("A judge may not misuse the administrative resources available to the judge. To accomplish a judge's varied administrative responsibilities…a judge has individuals, equipment, and facilities at his or her command. Among a judge's administrative responsibilities is the duty to insure that these resources are utilized primarily in connection with the judge's judicial responsibilities and secondarily in matters related to the judicial function").

her 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]).

Over an eight-month period, respondent repeatedly used her secretary, Kimberly Keskin, to provide child care services during court hours. It is clear from the record that such services were not limited to situations where there were exigent or compelling reasons.

Over the same period, Ms. Keskin frequently did personal typing for respondent's husband during the work day. The repeated nature of these extra-judicial assignments leaves no doubt that these services were not *de minimis*, but were considered by respondent to be a part of her secretary's job. This was a misuse of court resources.

Even when Ms. Keskin told respondent on several occasions that such personal tasks were interfering with her ability to perform her court duties, respondent failed to recognize the impropriety of such behavior. Instead, respondent insisted and reiterated that Ms. Keskin should give respondent's personal tasks priority if told to do so. Respondent has acknowledged that she "grossly misunderstood" the role of a judge's secretary.

It has been stipulated that respondent's actions arose out of her "mistaken" belief that her secretary's duties included providing the judge with assistance on personal matters. Such a "mistaken" view is neither mitigating nor excusable, since judges should know that such conduct is wrong. Each time respondent signed her secretary's time sheets attesting that her employee had worked a 35-hour week and should be paid for

such time from public funds, respondent should have recognized the manifest impropriety that some of that time – in some weeks, several hours – was spent providing purely personal services for the judge and the judge's husband.

Routinely using court staff for extra-judicial purposes is improper regardless of whether the employee consents or performs such tasks without protest. It is disruptive to court administration and sets a poor example for court personnel. It is a breach of the public trust and damages public confidence in the integrity of the judiciary. *See*, Adv. Op. 88-78 (prohibiting a judge from hiring an employee who works under the judge's supervision to do extra-judicial work after court hours since "it would be impossible to avoid completely the possible 'appearance of impropriety'…even if there is no coercion, expectation of benefits, interference with court work, or other actual impropriety").

Repeatedly requiring a court employee to perform personal tasks also changes the nature of the employment relationship, complicates any evaluation of the employee's job performance and has adverse consequences when, as here, the judge decides to discharge the employee. Notwithstanding respondent's position that her decision to terminate Ms. Keskin's employment was based on unrelated grounds, given Ms. Keskin's complaints about being required to perform personal tasks for respondent, there was at least the appearance that her discharge was retaliatory.

Respondent also compromised her office by directing her secretary to check a confidential Family Court database for information about a defendant based on an *ex*

parte, personal request by her husband, an assistant district attorney. Based on the unauthorized search of the database, respondent advised her husband that no order of protection had been issued against the defendant. The District Attorney's office had resources available and protocols to follow for obtaining such information through appropriate channels (22 NYCRR §205.5[d][2]). By short-circuiting this process to assist her husband, respondent again misused court resources for personal purposes.

In determining the sanction, we note that respondent has acknowledged that her conduct was improper and commits to refrain scrupulously in the future from asking court staff to perform personal work for her or her husband. We have also considered that for 37 years predating these events, respondent had a close friendship with Ms. Keskin, which included a close relationship with respondent's children.

Based on the foregoing, it is clear that a severe public sanction is appropriate. We believe that a public censure reflects the seriousness with which we view such misconduct, and we will not hesitate to consider the sanction of removal in the future if such conduct is repeated.

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

Judge Klonick, Mr. Coffey, Mr. Belluck, Mr. Emery, Mr. Harding, Ms. Hubbard, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

CERTIFICATION

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

Dated: February 9, 2009

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