

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

GEORGE D. DECKER,

a Justice of the Concord Town Court,
Erie County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Myriam J. Altman*
Helaine M. Barnett, Esq.
Herbert L. Bellamy, Sr.
Honorable Carmen Beauchamp Ciparick*
E. Garrett Cleary, Esq.
Dolores Del Bello
Lawrence S. Goldman, Esq.
Honorable Eugene W. Salisbury
John J. Sheehy, Esq.
Honorable William C. Thompson

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel)
for the Commission

Albrecht, Maguire, Heffern & Gregg, P.C.
(By John M. Curran) for Respondent

The respondent, George D. Decker, a justice of the Concord Town Court, Erie County, was served with a Formal Written Complaint dated October 8, 1992, alleging that he engaged in improper political activity. Respondent filed an answer dated December 2, 1992.

*Judge Altman and Judge Ciparick resigned effective December 31, 1993. The vote in this matter was on December 9, 1993.

On September 29, 1993, the administrator of the Commission, respondent and respondent's counsel entered into an agreed statement of facts pursuant to Judiciary Law §44(5), waiving the hearing provided by Judiciary Law §44(4) and stipulating that the Commission make its determination based on the pleadings and the agreed upon facts. The Commission approved the agreed statement by letter dated October 22, 1993. Oral argument was waived.

On December 9, 1993, the Commission considered the record of the proceeding and made the following determination.

1. Respondent has been a justice of the Concord Town Court since 1972. He ran for re-election in 1991 and was opposed by William Cranston.

2. Respondent's daughter, Kim, acted as his campaign manager. Ms. Decker worked as superintendent of parks, a position to which she had been appointed by Erie County Executive Dennis Gorski, who was also running for re-election in 1991. Mr. Gorski was opposed by Buffalo Mayor James Griffin.

3. Respondent's daughter prepared and respondent approved and signed a letter to Democratic voters in the Town of Concord in which he referred to Mr. Cranston and Mayor Griffin as "black sheep", criticized Mayor Griffin and urged the election of Mr. Gorski and himself. Ms. Decker mailed the letter from the offices of the Committee to Reelect Dennis Gorski.

4. On October 28 and November 4, 1991, respondent caused to be published four political advertisements in local newspapers which referred to Mr. Cranston as follows:

a) "Why would a crime fighter leave a profession if he were truly respected?";

b) "Why would a crime fighter have a property dispute with his neighbor?";

c) "Why would a crime fighter want to tell a coach how to handle his team?";

d) "A real crime fighter should know that you would not post political signs on public utility poles";

e) "Batman is a crime fighter and so is Superman, and now we have B.C. If you want a judge Re-elect George Decker"; and,

f) "If you were stopped for speeding and you know you were innocent, who do you think an ex-police officer would believe?".

5. The advertisements were respondent's reaction to Mr. Cranston's campaign statements in which he identified himself as a "Respected Crime Fighter" and criticized respondent for spending time in Florida and referred to respondent as "a political hack."

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct, 22 NYCRR 100.1, 100.2(a) and 100.7(c), and Canons 1, 2A, 7A(1)(b) and 7B(1)(a) of the Code of Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

Upon taking the bench, a judge relinquishes the First Amendment right to participate as others in the political process. (Matter of Maney, 1987 Ann Report of NY Commn on Jud Conduct, at 109, 112; accepted, 70 NY2d 27). Judges may engage in political activity only on their own behalf for a prescribed period; at no time is a judge permitted to support other candidates. (Matter of Gloss, 1989 Ann Report of NY Commn on Jud Conduct, at 81, 83). Respondent's public support of Mr. Gorski's re-election as county executive and his criticism of Mr. Gorski's opponent were improper.

Even in his or her own campaign, a judge faces constraints. A judicial candidate must "maintain the dignity appropriate to judicial office." (Canon 7B[1][a] of the Code of Judicial Conduct). Even in the face of provocation by an opponent, a judge must adhere to this standard. Respondent's political advertisements, suggesting that his opponent would be biased as a judge and was not respected in his profession and comparing him to comic characters, lacked the dignity required of judicial candidates.

As a judge for 20 years, respondent should have been aware of the limitations on political activity. Even a non-lawyer judge has a responsibility to learn about and obey ethical rules. (Matter of Vonder Heide v State Commission on Judicial Conduct, 72 NY2d 658, 660).

Standing alone, respondent's undignified campaign remarks would not warrant public sanction. However, his public support of another candidate's campaign merits public sanction.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mr. Berger, Judge Altman, Ms. Barnett, Mr. Bellamy, Judge Ciparick, Mrs. Del Bello, Mr. Goldman, Judge Salisbury, Mr. Sheehy and Judge Thompson concur.

Mr. Cleary was not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: January 27, 1994

Henry T. Berger
Henry T. Berger, Esq., Chair
New York State
Commission on Judicial Conduct