

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

WALTER W. HAFNER, JR.,

DETERMINATION

a Judge of the County Court, Oswego County.

THE COMMISSION:

Honorable Eugene W. Salisbury, Chair
Henry T. Berger, Esq.
Jeremy Ann Brown, C.A.S.A.C.
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

Emil M. Rossi for Respondent

The respondent, Walter W. Hafner, Jr., a judge of the County Court,
Oswego County, was served with a Formal Written Complaint dated May 12, 2000,
alleging that respondent engaged in improper political activity during his campaign for

election as a County Court judge in 1998. Respondent filed an answer dated May 30, 2000.

On October 7, 2000, the Administrator of the Commission, respondent and respondent's counsel 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, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On October 23, 2000, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the County Court since January 1, 1999. In 1998, Respondent was a candidate for election to County Court.
2. During his 1998 campaign for County Court, respondent ran a print advertisement that stated: "Are you tired of seeing career criminals get a 'slap' on the wrist? So am I..."
3. In 1998, during his campaign for County Court, respondent reviewed and approved for distribution campaign literature issued by Conservative Party Chairman Stephen Miller that attacked respondent's opponent's record in dismissing cases and stated: "Soft judges make hard criminals!"

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

of law that respondent violated Sections 100.1, 100.2(A), 100.5(A)(4)(d)(i) and 100.5(A)(4)(d)(ii) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

The campaign activities of judicial candidates are significantly circumscribed. (See Matter of Decker, 1995 Ann Report of NY Commn on Jud Conduct, at 111, 112.) A judicial candidate may not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office"; nor may a candidate "make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court" (Sections 100.5[A][4][d][i] and [ii] of the Rules Governing Judicial Conduct). To do so compromises the judge's impartiality. (See Matter of Birnbaum, 1998 Ann Report of NY Commn on Jud Conduct, at 73, 74.)

Respondent's 1998 campaign advertisement and the Conservative Party literature, which respondent had approved, conveyed the clear message that, if elected, respondent would treat criminal defendants more harshly than his opponent, the incumbent County Court judge, had done. By stating that he was "tired of seeing career criminals get a 'slap' on the wrist," respondent implied that he would deal harshly with all such defendants, rather than judge the merits of individual cases. (See Matter of Maislin, 1999 Ann Report of NY Commn on Jud Conduct, at 113, 114.)

Moreover, the mean-spirited attack on his opponent for decisions to dismiss charges in specific cases (the facts of which were described in sensational terms) was unseemly and highly inappropriate. Such attacks may pander to popular sentiment that all defendants charged with heinous crimes should be convicted and that judges who dismiss such charges are “soft,” but they do a disservice to the judiciary and to the public.

While it cannot be determined whether these statements played a significant role in respondent’s successful campaign, a judge’s election is tarnished when the judge’s campaign activity violates the ethical rules. Every judicial candidate should be mindful of the importance of adhering to the ethical standards so that public confidence in the integrity and impartiality of the judiciary may be preserved.

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

Judge Salisbury, Mr. Berger, Ms. Hernandez, Judge Luciano, Judge Marshall, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Goldman votes to reject the agreed statement of facts on the basis that the proposed sanction is too lenient.

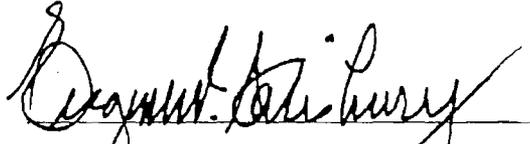
Ms. Brown and Mr. Coffey and were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State

Commission on Judicial Conduct.

Dated: December 29, 2000

A handwritten signature in black ink, appearing to read "Eugene W. Salisbury", written over a horizontal line.

Hon. Eugene W. Salisbury, Chair
New York State
Commission on Judicial Conduct