

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

STEPHEN W. HERRICK,

a Judge of the Albany City Court, Albany County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
Stephen R. Coffey, Esq.
Mary Ann Crotty
Lawrence S. Goldman, Esq.
Honorable Daniel F. Luciano
Honorable Frederick M. Marshall
Honorable Juanita Bing Newton
Alan J. Pope, Esq.
Honorable Eugene W. Salisbury
Honorable William C. Thompson

APPEARANCES:

Gerald Stern for the Commission

Dreyer Boyajian, L.L.P. (By William J. Dreyer) for Respondent

The respondent, Stephen W. Herrick, a judge of the Albany City Court, Albany County, was served with a Formal Written Complaint dated May 28, 1997, alleging improper political activity. Respondent did not answer the charge.

On November 24, 1997, 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), stipulating that the Commission make its determination based on the agreed upon facts, jointly recommending that respondent be admonished and waiving further proceedings and oral argument.

On December 11, 1997, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Albany City Court since January 1995.

2. In the fall of 1996, respondent was a candidate for Supreme Court. During the campaign, he ran televised advertisements in which he referred to defendants charged with violations of Orders of Protection. In the advertisements, respondent stated:

You can't elevate somebody or elect somebody to a high judicial position without knowing what they're going to be like when they put the robe on. You need to know that. It's too important a position....

They [defendants] know they violated the Order of Protection. I'll ask them: "You know what's going to happen, don't you?" And they say, "Yes, judge, I'm going to jail." And they do.

3. Respondent now acknowledges that the advertisements implied what would occur at an arraignment by him of a defendant charged with violating an Order of Protection.

4. Had respondent been elected to Supreme Court, such matters would rarely have come before him.

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), 100.5(A)(4)(d)(i) and 100.5(A)(4)(d)(ii). Charge I of the Formal Written Complaint is sustained insofar as it is consistent with the findings herein, 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," (Rules Governing Judicial Conduct, 22 NYCRR 100.5[A][4][d][i]) and may not "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," (22 NYCRR 100.5[A][4][d][ii]). To do so compromises the judge's impartiality. (See, Matter of Birnbaum, NYLJ, Oct. 17, 1997, p. 13, col. 1 [NY Commn on Jud Conduct, Sept. 29, 1997]).

By his campaign statements, respondent promised that he would jail every defendant who came before him charged with a violation of an Order of Protection, rather than judging the merits of individual cases.

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

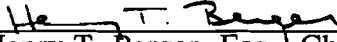
Mr. Berger, Ms. Brown, Mr. Coffey, Ms. Crotty, Mr. Goldman, Judge Luciano, Judge Marshall, Judge Newton and Judge Thompson concur.

Mr. Pope and Judge Salisbury were 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: February 6, 1998


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