

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

PETER M. KULKIN,

a Judge of the Newburgh City Court,
Orange County.

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Alan J. Pope, Esq., Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Thomas A. Klonick
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Melissa R. DiPalo, Of Counsel) for the
Commission

Briccetti, Calhoun & Lawrence, LLP (by Kerry A. Lawrence) for the
Respondent

The respondent, Peter M. Kulkin, a judge of the Newburgh City Court, Orange County, was served with a Formal Written Complaint dated October 12, 2005, containing one charge. Respondent filed an answer dated November 30, 2005.

On February 28, 2006, 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 March 9, 2006, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a judge of the Newburgh City Court, Orange County since January 1, 2005. Respondent has been an attorney since 1986. In 2004, he was an attorney with the Legal Aid Society of Orange County.
2. In May 2004 respondent became a candidate for Newburgh City Court Judge. The general election was scheduled for November 2, 2004.
3. In the general election, respondent was the nominee of the Democratic Party, the Independence Party and the Working Families Party.
4. Respondent's opponent in the general election was the incumbent Newburgh City Court Judge, Jeanne M. Patsalos. Judge Patsalos had been appointed a part-time judge of the Newburgh City Court in January 1998, and in January 2002 she became one of the two full-time judges of the Newburgh City Court.

5. Beginning in the early 1990s, before Judge Patsalos was a judge, the Newburgh City Court stopped hearing parking ticket cases due to an increase in the volume of criminal cases. After she became a full-time judge in January 2002, Judge Patsalos, at the time unknown to respondent, initiated talks with the Newburgh City Manager to arrange for the Newburgh City Court to resume hearing parking ticket cases. Judge Patsalos began hearing such cases on September 29, 2004. Judge Patsalos never refused to hear parking ticket cases during her tenure as a Newburgh City Court Judge.

6. In May 2004 respondent and Judge Patsalos attended a meeting of the Newburgh Democratic Committee at which candidates were questioned in connection with the committee's intention to endorse candidates. In response to a question by a committee member about the status of parking tickets in the City of Newburgh, Judge Patsalos stated that she was not required to handle parking tickets cases but had volunteered to do so when she became a full-time judge in January 2002.

7. In October 2004, approximately two weeks before the general election, respondent prepared, published and distributed to voters a piece of campaign literature entitled "The Truth about Jeanne Patsalos. It's time for a change in Newburgh City Court." Below the title were two columns with the headings "The Patsalos Claim" and "The Record." A copy of the literature is attached to the Agreed Statement of Facts as Exhibit 1.

8. Beneath the heading "The Patsalos Claim," respondent's literature

states: “Patsalos claims that she is not ‘required to handle parking ticket cases[.]’” In a footnote, respondent’s literature states that Judge Patsalos made the quoted statement at an appearance before the Newburgh Democratic Committee.

9. Beneath the heading “The Record,” respondent’s literature states: “Patsalos’ refusal to handle parking ticket cases has resulted in over \$400,000 in delinquent parking tickets from 1999 and 2000 alone.” In a footnote, respondent’s literature attributes the information to an edition of the *Mid Hudson Times* and the City of Newburgh 2005 Budget.

10. Neither the *Mid Hudson Times* nor the City of Newburgh Budget stated that Judge Patsalos had caused the \$400,000 delinquency by refusing to handle parking tickets cases. An article published in the October 20-26, 2004 edition of the *Mid Hudson Times* reported that the City of Newburgh “anticipate[d] more than \$400,000 from the collection of delinquent parking tickets from 1999 and 2000,” but the article did not attribute the delinquency to Judge Patsalos.

11. In his campaign literature, respondent misrepresented the facts of Judge Patsalos’ conduct and wrongfully implied that Judge Patsalos was responsible for more than \$400,000 in revenue owed to the City of Newburgh for delinquent parking tickets, in that: (a) respondent made out-of-context use of Judge Patsalos’ remark that she was not required to handle parking tickets; (b) respondent created the false impression that Judge Patsalos had refused to handle parking tickets and that such refusal had resulted in \$400,000 in delinquent parking tickets; and (c) respondent omitted facts

relevant to an accurate portrayal of her conduct as it related to parking tickets, such as the fact that the Newburgh City Court stopped hearing parking ticket matters before Judge Patsalos was a judge, and the fact that Judge Patsalos had begun hearing parking ticket matters as of September 29, 2004.

12. In the November 2004 general election, respondent defeated Judge Patsalos by 3,351 to 2,364 votes, a margin of 59 to 41 percent, and was elected a Newburgh City Court Judge.

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)(a) and 100.5(A)(4)(d)(iii) 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.

Judicial candidates are held to higher standards of conduct than candidates for non-judicial office. Among other requirements, a judicial candidate is prohibited from knowingly misrepresenting facts about the candidate’s opponent (Rules, §100.5[A][4][d][iii]). This requirement not only helps ensure that judicial campaigns comport with fundamental standards of honesty and fairness, but enables voters to choose judges based upon information that is fairly and accurately presented.

Respondent has acknowledged that he failed to comply with those standards

when, two weeks before the election for City Court, he prepared and distributed to voters campaign literature that misrepresented facts about his opponent, the incumbent City Court judge, whom respondent went on to defeat in the election. Statements in the brochure wrongfully implied that the incumbent, Judge Patsalos, had refused to handle parking tickets and that such refusal had resulted in \$400,000 in delinquent parking tickets. The brochure, which respondent himself had prepared, made out-of-context use of a remark by Judge Patsalos and omitted certain relevant facts, contributing to the false impression that the incumbent's conduct had deprived the City of \$400,000 in revenue.

In fact, the decision not to handle parking tickets, brought on by an increase in the volume of criminal cases, was made before Judge Patsalos took office. Moreover, as Judge Patsalos had stated in respondent's presence, she had volunteered to handle the parking tickets. The omission of those facts totally distorted her conduct.

Distortions and misrepresentations have no place in campaigns for judicial office. Judicial candidates for judicial office are expected to be, and must be, above such tactics. It is especially important for judicial candidates to be truthful because judges are called upon to administer oaths and are "sworn to uphold the law and seek the truth."

Matter of Myers, 67 NY2d 550 (1986).

Although it cannot be ascertained whether these distortions played a significant role in respondent's successful campaign, this judge's election is tarnished by his campaign statements which violated the ethical rules. *See, Matter of Watson*, 100 NY2d 290 (2003); *Matter of Hafner*, 2001 Annual Report 113 (Comm. on Judicial

Conduct). As a candidate, respondent was obliged to be familiar with the relevant ethical standards. Respondent's misconduct during the campaign diminishes his credibility and makes it difficult for the public to trust his statements.

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

Mr. Goldman, Mr. Pope, Mr. Coffey, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Klonick, Judge Peters and Judge Ruderman concur.

Ms. DiPirro and Judge Luciano were not present.

CERTIFICATION

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

Dated: March 23, 2006

A handwritten signature in cursive script, appearing to read "Lawrence S. Goldman", is written over a horizontal line.

Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct