

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

SAMUEL MAISLIN,

a Justice of the Amherst Town Court,
Erie County.

Determination

THE COMMISSION:

Henry T. Berger, Esq., Chair
Jeremy Ann Brown
Stephen R. Coffey, Esq.
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

Albrecht, Maguire, Heffern & Gregg, P.C. (By Charles H. Dougherty) for
Respondent

The respondent, Sam Maislin, a justice of the Amherst Town Court, Erie
County, was served with a Formal Written Complaint dated December 30, 1997, alleging
three charges of misconduct. Respondent filed an answer dated January 23, 1998.

On June 10, 1998, 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 submissions and oral argument.

On June 18, 1998, the Commission approved the agreed statement and made the following determination.

As to Charge I of the Formal Written Complaint:

1. Respondent has been a justice of the Amherst Town Court since January 1, 1992.
2. On July 30, 1995, respondent spoke with a reporter for the Buffalo News about two criminal cases that were pending in his court, People v Lawrence Gates and People v Troy Gilchrist. Respondent discussed the basis for his rulings in these cases, which had been reversed and remanded to him by Erie County Court Judge John Rogowski. Respondent indicated that he continued to believe that his original decisions in the cases were correct and that he disagreed with the appellate ruling. "I stand firmly by my ruling," respondent said.

As to Charge II of the Formal Written Complaint:

3. On September 24, 1995, respondent spoke with a reporter for the Buffalo News about a criminal case, People v Mark Stevens, which was pending in his court. Respondent indicated that he believed that the defendant was a danger to the community and that the \$20,000 bail that he had set was probably not high enough to keep the defendant in jail.

As to Charge III of the Formal Written Complaint:

4. During his campaign for re-election in 1995, respondent ran advertisements which:

a) stated that respondent had “refused to let the Wal-Mart armed robbers, the Berk murderer, the Amherst rapist or the Summer Stalker out on low bail;”

b) implied that he had presided over cases of the “Berk murderer” and the “Amherst rapist;”

c) stated that he “convicted 88% of those charged with alcohol-related offenses” and depicted drawings of jail cell windows and bars;

d) implied that he would take harsh action against “thieves, burglars, stick-up artists, spouse beaters and repeat drunk drivers” and stated that he “has a special place” for them “called jail”; and,

e) used as a campaign slogan, “Do The Crime - Do The Time.”

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated the Rules Governing Judicial Conduct then in effect, 22 NYCRR 100.1, 100.2(a) and 100.3(a)(6)*, and Canons 1, 2A, 3A(6), 7B(1)(a) and 7B(1)(c) of the Code of Judicial Conduct. Charges I, II and III of the Formal Written Complaint are sustained, and respondent's misconduct is established.

Respondent's comments to newspaper reporters on two occasions concerning cases before him conveyed the appearance of pre-judgment. It is wrong for a judge "to make any public comment, no matter how minor, to a newspaper reporter or to any one else, about a case pending before him." (Matter of Fromer, 1985 Ann Report of NY Commn on Jud Conduct, at 135, 137) (emphasis in original). Respondent's remarks were not minor. After two cases had been remanded to him on appeal, he publicly insisted that his original rulings had been correct and that the appellate court was wrong. A trial judge must accede to the directives of appellate courts (Matter of Dier, 1996 Ann Report of NY Commn Jud Conduct, at 79, 81) and should not create the appearance that he intends to do otherwise. On a second occasion, respondent remarked that a defendant that he had arraigned was a danger to the community and should be kept in jail, implying that he presumed him guilty.

* Now Section 100.3(B)(8)

Respondent's 1995 campaign advertisements also portrayed him as a judge who is biased against criminal defendants. In them, respondent implied that he would jail all those charged with crime, rather than judge the merits of individual cases. Moreover, he misrepresented the extent of his involvement in certain cases of notoriety.

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..." and should not "misrepresent his identity, qualifications, present position, or other fact." (Canon 7B[1][c] of the Code of Judicial Conduct; see, Matter of Herrick, unreported, NY Commn on Jud Conduct, Feb. 6, 1998). 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 reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

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

Mr. Coffey and Mr. Pope 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: August 7, 1998

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