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

PATRICK J. McGRATH,

a Justice of the Supreme Court,
Rensselaer County.

DETERMINATION

THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Honorable Jill Konviser
Nina M. Moore
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Thea Hoeth, Of Counsel) for the Commission

Anderson, Moschetti & Taffany, PLLC (by Peter J. Moschetti, Jr.)
for the Respondent

The respondent, Patrick J. McGrath, a Justice of the Supreme Court, Rensselaer County, was served with a Formal Written Complaint dated August 11, 2009,

containing one charge. The Formal Written Complaint alleged that during his campaign for Supreme Court, respondent sent a letter to pistol permit holders which misrepresented his jurisdiction over such permits and which made improper pledges or promises. Respondent filed a verified Answer dated September 4, 2009.

On January 11, 2010, 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 admonished and waiving further submissions and oral argument.

On January 27, 2010, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Supreme Court since January 1, 2009, having previously served as a Judge of the County Court, Rensselaer County, from 1994 through December 31, 2008, and as a Judge of the Troy City Court from 1985 through 1993. Respondent was admitted to the practice of law in New York in 1979.

2. In 2008, respondent was a candidate for Justice of the Supreme Court, Third Judicial District, which includes Rensselaer County.

3. In October 2008, during his campaign for Supreme Court, respondent composed, signed and distributed a campaign letter on "Judge McGrath for Supreme Court" letterhead that was addressed to his "Fellow Pistol Permit Holder."

4. In the letter, respondent stated:

> As your County Judge for the past 14 years, I have been responsible for all pistol permits in Rensselaer County. **My pistol permit is very important to me as I know yours is to you.** I work closely on a daily basis with the pistol permit clerk ... to make sure all permits and amendments are handled in a timely fashion. Since 1994, I have signed more than 20,000 permits and amendments. I also work closely with all of the Rod and Gun clubs.... (Emphasis in original.)

5. In the same letter, respondent stated:

> As Supreme Court Justice... **I will still be responsible for all pistol permits in Rensselaer County.** (Emphasis in original.)

Respondent knew at the time he made this statement that any judge or justice of a court of record with an office in the county may issue a pistol permit and that any judge exercising criminal or family court jurisdiction may revoke such a permit under Sections 265.00[10] and 400.00 of the Penal Law and Section 530.14 of the Criminal Procedure Law.

6. Respondent concluded the letter by stating:

> I ask for your support and vote on November 4th and look forward to serving the Pistol Permit holders for another 14 years.

Respondent signed the letter "Patrick J. McGrath, Rensselaer County Court Judge, Acting Supreme Court Justice."

7. Respondent sent the letter to approximately 7,000 individuals or addresses that had been provided to him by the New York State Rifle and Pistol Association.

8. Respondent's campaign letter misrepresented that, if elected to the Supreme Court, he would "**still be responsible for all pistol permits in Rensselaer**

County" (emphasis in original) and would have exclusive jurisdiction over all such permits in Rensselaer County, and improperly conveyed that he would favorably consider future applications for and amendments to pistol permits.

9. In 2004 the Commission publicly admonished respondent for making public comments about a pending or impending proceeding while he was a candidate for re-election as County Court Judge, in violation of Sections 100.1, 100.2(A) and 100.3(B)(8) of the Rules Governing Judicial Conduct ("Rules").

10. In view of his prior discipline, respondent should have been especially sensitive during his most recent campaign to those rules which govern a judicial candidate's statements. To that end, respondent could have sought an opinion from the Advisory Committee on Judicial Ethics or the Judicial Campaign Ethics Center, regarding the propriety of the language he proposed for his October 2008 campaign letter.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(9)(a), 100.3(B)(9)(b), 100.5(A)(4)(a), 100.5(A)(4)(d)(i), 100.5(A)(4)(d)(ii) and 100.5(A)(4)(d)(iii) of the 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.

The campaign activities of judicial candidates are significantly circumscribed. *Matter of Maney,* 70 NY2d 27 (1987). Among other requirements, a judicial candidate may not "knowingly ... misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent" (Rules, §100.5[A][4][d][iii]). Nor may a candidate make commitments, pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office (Rules, §100.5[A][4][d][i], [ii]; *see also*, §100.3[B][9][a], [b]). To do so compromises the judge's impartiality. *See, Matter of Birnbaum,* 1998 Annual Report 73 (Comm on Judicial Conduct). As the Court of Appeals has stated, even an implied pledge or promise may violate the ethical standards:

> [C]andidates need not preface campaign statements with the phrase "I promise" before their remarks may reasonably be interpreted by the public as a pledge to act or rule in a particular way if elected. A candidate's statements must be reviewed in their totality and in the context of the campaign as a whole to determine whether the candidate has unequivocally articulated a pledge or promise of future conduct or decisionmaking that compromises the faithful and impartial performance of judicial duties.

Matter of Watson, 100 NY2d 290, 298 (2003).

Respondent's letter addressed to his "fellow pistol permit holder[s]," which he sent to 7,000 individuals during his 2008 campaign for Supreme Court, was inconsistent with these ethical standards. Viewed in their entirety, the statements contained in respondent's letter conveyed bias and the appearance of bias in favor of pistol permit holders and implied that as a judge he would favorably consider their

interests. Advising his "fellow pistol permit holder[s]" that he "look[s] forward to serving [them] for another 14 years" reinforces the implied promise, especially after saying that he knows their permits are "very important" to them and telling them how well he has served their interests in the past. In this context, stating that he has "signed more than 20,000 permits and amendments" and will be considering future applications further reinforces the implied promise to view such applications favorably. Respondent has stipulated that his campaign letter "improperly conveyed that he would favorably consider future applications for and amendments to pistol permits" (Agreed Statement, par. 8), contrary to the ethical standards.

A judge's role is to serve the public as a whole, not a specific constituency. "Judges must apply the law faithfully and impartially -- they are not elected to aid particular groups" (*Matter of Watson*, *supra*, 100 NY2d at 302). Campaign statements that single out a particular class of litigants for special treatment are inconsistent with judicial impartiality and the appearance of impartiality, which are essential to the role of a judge.

Moreover, respondent's statement that as a Supreme Court Justice he "will still be responsible for all pistol permits in Rensselaer County" misstated the law and was likewise inconsistent with the Rules. As a matter of law, any judge or justice of a court of record in the county may issue a pistol permit and any judge exercising criminal or family court jurisdiction may revoke such a permit (*see* Penal Law, §§265.00[10], 400.00; CPL §530.14), although administratively the procedures for

handling such permits and amendments vary statewide. Respondent's representation that he had exclusive jurisdiction over such permits not only was legally incorrect, but buttressed the biased message conveyed in his letter.

In imposing discipline, we note that in 2004 respondent was admonished for commenting publicly about a pending case at a time when he was a candidate for re-election. *Matter of McGrath*, 2005 Annual Report 181 (Comm on Judicial Conduct). In view of his previous discipline, respondent should have been especially sensitive to the ethical rules.

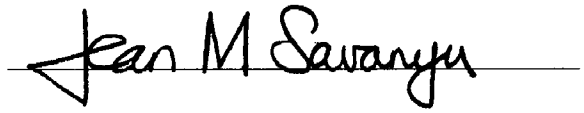
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Judge Klonick, Mr. Coffey, Mr. Belluck, Mr. Emery, Mr. Harding, Ms. Hubbard, Judge Konviser, Ms. Moore, Judge Peters and Judge Ruderman concur.

CERTIFICATION

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

Dated: February 5, 2010



Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct