

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

WILLIAM POLITO,

a Justice of the Supreme Court, 7th Judicial District,
Monroe County.

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

Richard F. Anderson and Davidson & O'Mara, P.C. (By John F. O'Mara)
for Respondent

The respondent, William Polito, a justice of the Supreme Court, 7th Judicial
District, was served with a Formal Written Complaint dated October 9, 1997, alleging

*The vote in this matter was on October 1, 1998. Judge Thompson resigned on October 6, 1998, and was succeeded by the Honorable Daniel W. Joy.

improper political activity. Respondent filed an answer dated November 4, 1997.

By Motion and Affirmation dated November 12, 1997, respondent moved to dismiss the Formal Written Complaint. The administrator of the Commission opposed the motion by Affirmation and Memorandum dated December 3, 1997. Respondent replied by letter dated December 5, 1997. The administrator replied by letter dated December 9, 1997. By Determination and Order dated December 17, 1997, the Commission denied respondent's motion in all respects.

On September 11, 1998, the administrator, 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 October 1, 1998, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Supreme Court since January 1, 1997.
2. Respondent ran for Supreme Court in the fall of 1996.
3. Respondent ran television advertisements that stated, "Violent crimes in our streets," and portrayed a masked man with a gun attacking a woman outside her car.

“The menace of drugs. Sexual predators terrorize our lives.” One ad noted respondent’s endorsement by several local sheriffs and concluded, “November 5, pull the lever for Bill Polito, and crack down on crime,” as a jail door was slammed shut.

4. A second television ad proclaimed, “Many violent criminals and sexual predators have already visited our criminal justice system. Bill Polito will stick his foot in the revolving door of justice. Bill Polito won’t experiment with alternative sentences or send convicted child molesters home for the weekend... Criminals belong in jail, not on the street.”

5. Respondent also ran print advertisements, bearing the legend, “Crack Down On Crime,” and promising that he would “not experiment with ‘alternative sentencing.’”

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)(a) and 100.5(A)(4)(d)(ii). Charge I of the Formal Written Complaint is sustained, and respondent’s misconduct is established.

The campaign activities of a judicial candidate are significantly circumscribed. (See, Matter of Decker, 1995 Ann Report of NY Commn on Jud Conduct, at 111, 112). A judicial candidate relinquishes the First Amendment right to participate as

others in the political process. (Matter of Maney, 1987 Ann Report of NY Commn on Jud Conduct, at 109, 112; accepted, 70 NY2d 27). The candidate must “maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary...” (Rules Governing Judicial Conduct, 22 NYCRR 100.5[A][4][a]) and must 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, 1998 Ann Report of NY Commn on Jud Conduct, at 73, 74).

Respondent’s graphic and sensational advertisements lacked the dignity appropriate to judicial office and portrayed him as a judge who is biased against criminal defendants. (See, Matter of Maislin, unreported, NY Commn on Jud Conduct, Aug. 7, 1998). By repeated statements disparaging “alternative sentences,” he appeared to commit himself to imposing jail sentences in every case and to rejecting other lawful criminal dispositions.

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

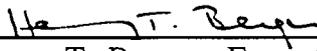
Mr. Berger, Ms. Brown, Mr. Goldman, Judge Marshall, Judge Newton, Mr. Pope, Judge Salisbury and Judge Thompson concur.

Mr. Coffey and Judge Luciano 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: December 23, 1998



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