

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

ELIZABETH A. SHANLEY,

a Justice of the Esopus Town Court,
Ulster County.

DETERMINATION

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (Cathleen S. Cenci, Of Counsel) for the Commission

Joseph R. Pisani for Respondent

The respondent, Elizabeth A. Shanley, a justice of the Esopus Town Court,
Ulster County, was served with a Formal Written Complaint dated July 20, 2000.

Respondent filed an answer dated August 7, 2000.

By Order dated November 6, 2000, the Commission designated Jay C. Carlisle, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on January 5, 2001, and the referee filed his report dated June 8, 2001, with the Commission.

The parties submitted briefs with respect to the referee's report. Oral argument was waived. On November 8, 2001, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Esopus Town Court since January 2000. Prior to her election to that position in the fall of 1999, respondent had been a court clerk in the Kingston City Court and the Esopus Town Court for 14 years. Respondent is not an attorney.

2. During her 1999 campaign for judicial office, respondent personally distributed a campaign brochure in which she is identified as "Elizabeth 'Betty' Shanley - Law and Order Candidate" and "GRADUATE Albany Law School, Judicial Law Course; St. Lawrence Univ., Judicial Law Course; Columbia/Green C.C./ Judicial Law Course." The brochure was prepared and printed by Ira Weiner, Chairman of the Esopus Republican Party. Respondent provided the information for the brochure to Mr. Weiner, the campaign chairman.

3. During the 1999 election, the town Republican Chairman distributed

to voters a brochure containing information about Republican candidates in the town, including respondent. In this brochure, respondent is described as “a graduate of Albany Law School – Judicial Law Course, St. Lawrence – Judicial Law Course, Columbia/Green C.C. – Judicial Law Course.” In preparing the brochure, the Party Chairman used information respondent had provided to him.

4. Respondent is not a graduate of Albany Law School, St. Lawrence University or Columbia/Green Community College. As a court clerk, respondent had attended three sessions of the Court Clerk Continuing Legal Education program sponsored by the Office of Court Administration. These courses were held at the foregoing educational institutions, but were not sponsored by those institutions or affiliated with them.

5. When respondent saw the brochure described in paragraph 2, she was uncomfortable with the use of the term “graduate” but did not ask Mr. Weiner to change or reprint the brochure. The cost of printing the brochure was \$25.00. When the original supply of 2,500 brochures ran out, respondent had more brochures printed on her own.

6. As used in the campaign brochures described above, the term “graduate” was misleading since respondent neither attended nor graduated from the educational institutions cited, and the courses she completed at those institutions were court clerk training programs sponsored by the Office of Court Administration. Although

respondent believed that the term “graduate” was misleading, she distributed the campaign brochures containing that language despite her misgivings.

7. The term “law and order candidate,” as used in respondent’s campaign brochure, is commonly understood to suggest strong pro-prosecution and anti-defendant positions.

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)(d)(i), 100.5(A)(4)(d)(ii) and 100.5(A)(4)(d)(iii) of the Rules Governing Judicial Conduct. Charge I of the Formal Written Complaint is sustained, and respondent’s misconduct is established.

Respondent’s campaign literature during her 1999 campaign for judicial office was misleading as to her qualifications and conveyed the impression of prosecutorial bias.

By describing her as a “graduate” of the “Judicial Law Course” at Albany Law School, St. Lawrence University and Columbia-Green Community College, respondent’s brochures, which respondent tacitly approved and personally distributed, conveyed the false impression that respondent was a graduate of those educational institutions. In fact, respondent had attended three sessions of a continuing legal education program for court clerks at those locations, sponsored by the Office of Court

Administration. A person who attends such a course is not a “graduate.” By using the term “graduate” in connection with those educational institutions, respondent enhanced and misrepresented her credentials as a judicial candidate, in violation of Section 100.5(A)(4)(d)(iii) of the Rules Governing Judicial Conduct. See Matter of Fiore, 1999 Ann Report of NY Commn on Jud Conduct 101. An individual might reasonably conclude from that representation that respondent was a graduate of a community college, a four-year university and a prestigious law school. Despite recognizing that the characterization was misleading when she saw the brochure, respondent did not ask that the brochures be reprinted, notwithstanding that the cost would have been minimal.

It was also improper for respondent’s campaign literature to use the phrase “law and order candidate” to describe her. Because of the widely held perception that the term implies a pro-prosecutorial position favoring harsh treatment of defendants, it should not be used in judicial campaigns to describe a candidate’s views. The ethical standards prohibit a judicial candidate from making statements that commit the candidate with respect to issues that are likely to come before the court or statements that may reflect on his or her impartiality (Sections 100.5[A][4][d][i] and [ii] of the Rules).

A judicial candidate’s inexperience or reliance on the advice of campaign officials does not excuse misconduct during a political campaign. A judicial candidate must be familiar with the relevant ethical standards and bears ultimate responsibility for the content of his or her campaign literature.

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

Mr. Berger, Judge Marshall, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Peters, Mr. Pope and Judge Ruderman concur as to the disposition.

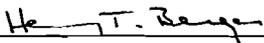
Mr. Coffey, Ms. Hernandez and Judge Peters dissent only as to the conclusion that the use of the term "law and order candidate" was improper.

Judge Luciano was not present.

CERTIFICATION

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

Dated: December 27, 2001



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