

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

MICHELLE A. VANWOEART,

a Justice of the Princetown Town Court,
Schenectady County.

THE COMMISSION:

Joseph W. Belluck, Esq., Chair
Paul B. Harding, Esq., Vice Chair
Jodie Corngold
Honorable John A. Falk
Taa Grays, Esq.
Honorable Leslie G. Leach
Honorable Angela M. Mazzarelli
Honorable Robert J. Miller
Marvin Ray Raskin, Esq.
Akosua Garcia Yeboah

APPEARANCES:

Robert H. Tembeckjian (Cathleen S. Cenci and S. Peter Pedrotty, Of Counsel),
for the Commission

Law Offices of John R. Seebold, PLLC (by John R. Seebold, Esq.) for
respondent

Respondent, Michelle A. VanWoeart, a Justice of the Princetown Town Court,
Schenectady County was served with a Formal Written Complaint dated October 10,

2019, containing one charge. Respondent filed an Answer dated November 7, 2019. The Formal Written Complaint alleged that during her 2018 campaign for election to the Princetown Town Court, respondent failed to maintain the dignity appropriate to judicial office and failed to act in a manner consistent with the impartiality, integrity and independence of the judiciary in that her campaign literature, *inter alia*, created an appearance that, if elected, respondent would consider revenue implications when disposing of cases and, on her campaign's public Facebook page, respondent "liked" or replied to crude posts and comments about her election opponent.

On January 14, 2020, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, 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 January 23, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent initially served as a Justice of the Princetown Town Court, Schenectady County, from January 1, 1997 to December 31, 2013. After being out of office for several years, respondent was elected to a new term as a Justice of the Princetown Town Court, beginning on January 1, 2019 and expiring on December 31, 2022. Respondent is not an attorney.

2. In 2018, respondent ran for election to the Princetown Town Court. Her

election opponent in both the primary and general elections was the incumbent Princetown Town Justice, Norm Miller.

3. On September 13, 2018, the date of the primary election, *The Daily Gazette* published a political advertisement that was produced and paid for by respondent and/or her campaign committee, operating under her supervision. A copy of the advertisement is appended as Exhibit 1 to the Agreed Statement.

4. The September 13, 2018 advertisement included a pie chart comparing the amount of revenue from court proceedings generated for the Town of Princetown by respondent versus then-Judge Miller, during an unidentified four-year term. Surrounding the pie chart were the statements: “PRINCETOWN does not have a TOWN TAX. It does get revenue from the court. Compare Miller/VanWoeart revenue (4-year term). PRINCETOWN CAN’T AFFORD ANOTHER 4 YEARS OF NORM MILLER!”

5. During respondent’s 2018 campaign, respondent and/or her campaign committee, operating under her supervision, produced and distributed a tri-fold campaign brochure that included a pie chart and a bar graph making comparisons between the amount of revenue generated for the Town of Princetown by respondent versus then-Judge Miller during an unidentified four-year term. Below the chart and graph, the brochure included the statement: “Revenues are down 65% since Norm has been Judge!” A copy of the campaign brochure is appended as Exhibit 2 to the Agreed Statement.

6. During respondent’s 2018 general election campaign, respondent and/or her

campaign committee, operating under her supervision, produced and distributed campaign leaflets with slots allowing it to be hung on doors, that included the statements: “Norm Miller’s projected revenues from traffic tickets for 2017 was \$50,000. He failed to reach that by over \$13,500 and he overspent his court budget by over \$10,000. Can Princetown afford to keep Norm Miller as Judge?” A copy of the leaflet is appended as Exhibit 3 to the Agreed Statement.

7. Respondent’s campaign brochure and leaflet requested supporters to visit the Facebook group page named “Friends To Elect Michelle VanWoeart.”

8. Facebook is an internet social networking website that *inter alia* allows users to post and share content on their own Facebook accounts as well as on the Facebook accounts of other users and on Facebook groups.

9. A Facebook account holder can use his or her personal account to create a “Facebook group,” which other Facebook account holders can join. The creator of a Facebook group is typically a group “admin.” An admin manages the group account and *inter alia* has the authority to update the group name and cover photo, select the group’s privacy settings, approve or deny membership requests, remove posts and comments to posts by other members, and remove and block people from the group. At the option of an admin, the content of a Facebook group may be set to “Public,” so that anyone with access to the internet may see what members post, comment and share on the group page, as well as endorse by clicking “Like” to posts on the group page. Any member of the group may post to the group and comment on posts to the group.

10. In September 2018 through November 2018, respondent maintained a Facebook account under the name “Michelle VanWoeart.”

11. In September 2018 through November 2018, respondent was the admin of a Facebook group that she created and named “Friends to Elect Michelle VanWoeart Judge for the Town of Princetown.” As admin, respondent set the group’s privacy settings to “Public.”

12. On September 13, 2018, respondent clicked the “Like” button on a post to the Friends to Elect Michelle VanWoeart group page by another member, stating, “Michelle VanWoeart you won??? YESSSSSSSS congratulations!!!!!! Time to take out the trash!! #amen #outwiththetrash #sorrynotsorry,” which was a reference to then-Judge Miller. Copies of screenshots of this post are appended as Exhibit 4 to the Agreed Statement.

13. On September 14, 2018, respondent published a post on the Friends to Elect Michelle VanWoeart group page about her campaign plans following her victory in the primary election. Respondent replied “Thank you” to a comment to her post by another member stating, “Great job, Princetown!! BUT, Dirt Bag Norm will try to find some obscure line to keep going don’t let your guard down on this SH*T HE*D.” Copies of screenshots of this post are appended as Exhibit 5 to the Agreed Statement.

14. On November 2, 2018, respondent published a post on the Friends to Elect Michelle VanWoeart group page stating, “Yup. Millers [*sic*] flyers sent out packed full of lies.” Respondent clicked the “Like” button on a comment to her post by

another member stating, “I’d like to shove the flyers up Norm’s butt!” Copies of screenshots of this post are appended as Exhibit 6 to the Agreed Statement.

15. On November 6, 2018, the date of the general election, respondent clicked the “Like” button on a post to the Friends to Elect Michelle VanWoeart group page by another member containing a “gif” image of man throwing a bag of trash down a driveway and into a trash can, with the statement, “I knew you had this! Congratulations!! The trash has been taken out!” A copy of a screenshot of this post is appended as Exhibit 7 to the Agreed Statement.

Additional Factors

16. Respondent has been cooperative and contrite with the Commission throughout this inquiry. Following her testimony at the Commission during its investigation of the matters herein, respondent promptly removed the group page and, with it, all the inappropriate comments by other members.

17. Respondent has now studied the Court of Appeals censure decision in *Matter of Watson*, 100 N.Y.2d 290 (2003), and the Commission’s censure determination in *Matter of Kulkin*, 2007 NYSCJC Annual Report 115, both of which involved campaign literature by the disciplined judges that unfairly characterized and/or besmirched the conduct of their incumbent opponents, and both of which imposed censure for violations of the same Rules charged against respondent. As a result, respondent appreciates that her campaign material created the clear and erroneous impression that if elected, rather than decide each case fairly and impartially on its own merits, (A) her role as a judge was to raise revenue for the town, (B) the court’s role was to compensate for the absence of a

town tax and (C) she was committed to finding more people guilty than her incumbent opponent had, and/or fining them in amounts higher than he had, inasmuch as those were the primary ways she could increase court-generated revenues. Respondent further appreciates that such conduct and considerations are inimical to the role of a judge and the role of the court. *See Matter of Herrmann*, 2010 NYSCJC Annual Report 172, and *Matter of Tauscher*, 2008 NYSCJC Annual Report 217.

18. The Administrator notes that, had this matter proceeded to a hearing before a referee, memoranda as to sanction and oral argument before the Commission, he would have cited respondent's prior censure for consideration by the Commission when it decided the appropriate discipline here, pursuant to Commission Policy 3.8,¹ noting that the Court of Appeals has held that a prior censure is "noteworthy regardless of whether it was related to the instant misconduct." *Matter of Doyle*, 23 N.Y.3d 656, 662 (2014).

19. Respondent and the Administrator agree that it cannot be determined whether respondent's campaign literature and social media posts influenced enough voters to have affected the outcome of the primary and general elections. The following are the results of those elections:

- A. In the primaries, respondent defeated Judge Miller by 98 votes to 93 on the Republican Party line, 80 votes to 70 on the Democratic Party line, 15 votes to 9 on the Conservative Party line and 15 votes to 10 on the Independence Party line.
- B. In the general election, respondent aggregated 646 votes on the Republican, Democratic, Conservative and Independence lines, while Judge Miller received 366 votes on the Green Party line.

¹ Available at <http://cjc.ny.gov/Legal.Authorities/NYSCJC.PolicyManual.Dec2017.pdf>.

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)(i) of the Rules Governing Judicial Conduct 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.

Every judge is obligated to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and must "avoid impropriety and the appearance of impropriety." (Rules, §100.2(A)) By publishing a campaign advertisement and distributing campaign materials which gave the impression that revenue generation for the Town of Princetown would be a consideration in her judicial decisions and by liking or replying to crude comments by her supporters about her election opponent, respondent failed to meet the high ethical standards of a judicial candidate. "Judicial candidates are held to higher standards of conduct than candidates for non-judicial office, and the campaign activities of judicial candidates are significantly circumscribed in order to maintain public confidence in the integrity and impartiality of the judicial system." *Matter of Michels*, 2012 NYSCJC Annual Report 130, 136.

Section 100.5(A)(4)(d)(i) of the Rules provides that: "A judge or a non-judge who is a candidate for public election to judicial office: . . shall not: (i) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office." Respondent stipulated that she violated this provision of the Rules in connection with an advertisement her campaign published and with

campaign literature that she and her campaign created and distributed. This material included graphics which showed revenue generated by respondent when she was a judge compared to that of the incumbent judge. One of respondent's campaign brochures included a pie chart and a graph comparing revenue under respondent's prior term with the incumbent. The brochure stated, "Revenues are down 65% since Norm has been Judge!" Respondent's campaign ran an advertisement in a local newspaper which stated, "PRINCETOWN does not have a TOWN TAX It does get revenue from the court." Respondent's advertisement compared revenue generated for the town by respondent and by the incumbent judge. This advertisement urged readers to "Compare Miller/VanWoeart revenue (4-year term). . . . PRINCETOWN CAN'T AFFORD ANOTHER 4 YEARS OF NORM MILLER!" Such statements cast doubt on respondent's impartiality and conveyed the impression that she viewed her role as judge to include generating revenue for Princetown.

The Commission has disciplined judges for campaign literature that conveyed the impression that their impartiality was compromised. In *Matter of Chan*, 2010 NYSCJC Annual Report 124, the judge was admonished for, *inter alia*, distributing campaign literature advertising a planned lecture which stated, "Margaret Chan and Veteran Tenant Attorney Steven DeCastro will show you how to stick up for your rights, beat your landlord, ... and win in court!" *Id.* at 126. The Commission held,

Respondent's campaign literature was clearly inconsistent with these ethical requirements. . . . Respondent has acknowledged that her literature may have given prospective voters the impression that she would favor tenants over

landlords in housing matters, which are often the subject of Civil Court proceedings. By distributing such literature, which appeared to commit herself with respect to issues likely to come before her court, she compromised her impartiality.

Id. at 127 (citations omitted). Similarly, in *Matter of Birnbaum*, 1998 NYSCJC Annual Report 73, the judge was censured for distributing campaign material which identified him as a tenant and included testimonials from tenants who had appeared before him. The Commission held, “Respondent’s campaign literature gave the unmistakable impression that he would favor tenants over landlords in housing matters In doing so, he compromised his impartiality and failed to maintain the dignity expected of a judicial officer.” *Id.* at 74.

Respondent, who is not an attorney, stipulated that she has studied the decision in *Matter of Watson*, 100 N.Y.2d 290 (2003). In that case, the judge was censured for making campaign statements which indicated that he would “work with the police” and that “the city must establish a reputation for zero tolerance” and “deter criminals before they come into the city.” *Id.* at 296-297. The Court found, “petitioner’s campaign effectively promised that, if elected, he would aid law enforcement rather than apply the law neutrally and impartially in criminal cases.” *Id.* at 299.

Judges have also been disciplined for conveying that revenue generation was part of their judicial function. In *Matter of Herrmann*, 2010 NYSCJC Annual Report 172, the judge was censured for, *inter alia*, stating that he wanted a defendant to plead to a certain charge because a fine for that charge would be paid to the village and stating, “someone has to generate money for the Village to support the expensive police department.” *Id.* at

174. The Commission found that, “respondent misused his judicial discretion and impaired the independence of his court, conveying the impression that its primary function is to generate revenue rather than ‘to apply the law in each case in a fair and impartial manner.’” *Id.* at 177 (citation omitted)

Here, respondent’s advertisement and campaign literature gave the impression that revenue generation for the Town of Princetown would be a factor in her judicial decisions and that part of her responsibility as a judge “was to raise revenue for the town. . . to compensate for the absence of a town tax.” By creating and distributing the campaign material and the advertisement that repeatedly conveyed this impression, respondent breached her ethical obligations and violated the Rules.

Respondent also stipulated that she violated Section 100.5(A)(4)(a) of the Rules which provides that: “A judge or a non-judge who is a candidate for public election to judicial office: (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary. . .” Respondent acknowledged it was inappropriate to reply “thank you” to a comment on her campaign Facebook page which described her opponent in the election, the incumbent town justice, as “Dirt Bag Norm” and “this SH*T HE*D”. In addition, respondent admitted that she failed to maintain the dignity appropriate to judicial office when she “liked” a comment on her campaign Facebook page that stated, “I’d like to shove the flyers up Norm’s butt!” Respondent’s conduct was improper and violated the Rules. *See, Matter of Decker*, 1995 NYSCJC Annual Report 111, 112 (“Respondent’s political advertisements, suggesting that his opponent would be biased as a judge and was not

respected in his profession and comparing him to comic characters, lacked the dignity required of judicial candidates.”); *See, Matter of Polito*, 1999 NYSCJC Annual Report 129, 130 (“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 Hafner, Jr.*, 2001 NYSCJC Annual Report 113, 114 (“the mean-spirited attack on his opponent for decisions to dismiss charges in specific cases (the facts of which were described in sensational terms) was unseemly and highly inappropriate. . . . Every judicial candidate should be mindful of the importance of adhering to the ethical standards so that public confidence in the integrity and impartiality of the judiciary may be preserved.”)

As the Commission held in *Matter of Chan*, 2010 NYSCJC Annual Report 124, 128, “Every candidate for judicial office has the obligation to be familiar with the relevant ethical standards and to ensure that his or her campaign literature and practices are consistent with these standards.” Respondent failed to meet this high standard when she responded favorably to crude social media comments about her judicial opponent. By her conduct, respondent undermined the dignity and integrity of the judiciary.

Respondent’s prior censure is an aggravating factor in determining the appropriate sanction for her misconduct. In 2012, the Commission censured respondent because she did not “expeditiously transfer” appearance tickets issued to her and her sons for an animal control violation. *Matter of VanWoeart*, 2013 NYSCJC Annual Report 316, 327. In addition, after she recused herself from the appearance tickets, respondent had *ex parte* communications with the transferee judge. *Id.* at 321-322, 327.

Respondent violated her ethical obligations through her pattern of inappropriate campaign advertising and literature as well as her pattern of favorably commenting in a public way on crude social media posts regarding the incumbent town justice who was her opponent in the election. Given respondent's prior service as a judge and her prior discipline, she should have been fully familiar with the Rules regarding the ethical responsibilities of judicial candidates.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent has admitted that her conduct warrants public discipline. We trust that respondent has learned from this experience and in the future will act in strict accordance with her obligation to abide by all the Rules Governing Judicial Conduct.

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

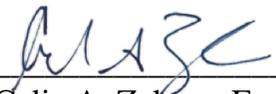
Mr. Harding, Ms. Corngold, Judge Falk, Ms. Grays, Judge Leach, Judge Mazzarelli, Judge Miller, Mr. Raskin, and Ms. Yeboah concur.

Mr. Belluck was not present.

CERTIFICATION

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

Dated: March 31, 2020



Celia A. Zahner, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct