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 WATSON,

a Judge of the Lockport City Court,
Niagara County.

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frederick M. Marshall, Vice Chair[1]
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Lawrence S. Goldman, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Mary Holt Moore
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

Gerald Stern (John J. Postel, Of Counsel) for the Commission
Timothy P. Murphy for Respondent

The respondent, William Watson, a Judge of the Lockport City Court, Niagara County, was served with a Formal Written Complaint dated November 30, 2000,

[1] Judge Marshall died on September 10, 2002. He was not present on May 9, 2002, when oral argument was heard.

containing one charge. Respondent filed an answer dated December 22, 2000.

On January 5, 2001, respondent filed a motion to dismiss the Formal Written Complaint. By affirmation dated January 18, 2001, the administrator opposed the motion. On February 8, 2001, the Commission denied the motion to dismiss.

By order dated January 8, 2001, the Commission designated C. Bruce Lawrence, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on August 17, 2001, in Rochester, New York. The referee filed his report with the Commission on January 10, 2002.

The parties filed briefs and replies with respect to the referee's report. On May 9, 2002, the Commission heard oral argument, at which respondent and his counsel appeared. Thereafter, additional briefs were filed at the Commission's request. The Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a judge of the Lockport City Court, Niagara County since January 2000.

2. In 1999 respondent, who was then a Niagara County Assistant District Attorney, became a candidate for Lockport City Court Judge.

3. Respondent was a candidate in the primary election on September 14, 1999, for the Republican, Democratic, Conservative, Independent and Liberal nominations for Lockport City Court Judge.

4. Respondent's opponents in the primary election were the incumbent Lockport City Court Judges Betsy Hurley and David Wendt.

5. In connection with his announcement of his candidacy in April 1999, respondent issued a statement, published in the Lockport Union-Sun & Journal, which stated, in part:

> We must no longer put up with drug dealers and other violent criminals from Rochester, Buffalo and Niagara Falls, who feel that it is acceptable for them to come into City of Lockport and commit crimes.
>
> * * *
>
> Watson said a city judge can "make it very unattractive for a person to be committing a crime in the City of Lockport," both in setting bail and sentencing. "You have to use those to your best advantage," the prosecutor said.

6. In a campaign letter published in the Lockport Union-Sun & Journal on August 3, 1999, respondent stated, in part:

> Drug crimes are the biggest problem the City of Lockport is currently facing. Fortunately, this being an election year the voters get an opportunity to do something about it.
>
> * * *
>
> . . .vote out of office those people who have contributed to the situation in which we currently find ourselves.
>
> * * *
>
> In fact, under the terms of office of both of my opponents, drug arrests have increased dramatically, in the City of Lockport. According to the US&J (5/7/99), the Lockport Police Department made 30 arrests for criminal possession of

> a controlled substance in 1996. That figure sky rocketed to 149 arrests in 1998. That is an astonishing increase of almost 400 percent and should not be tolerated by the voters. Likewise, this trend is not only limited to drug related arrests. Between 1997 and 1998, trespass arrests jumped up 369 percent, criminal possession of stolen property arrests rose 151 percent, robbery arrests were up 61 percent, and burglary arrests increased 56 percent.
>
> * * *
>
> Currently Lockport is attracting criminals from Rochester, Niagara Falls and Buffalo to come into our city to peddle their drugs and commit their crimes. We, as voters, must bring this to an end. I urge all voters to take a stand on primary day, Sept. 14, 1999. Vote for the candidates who have proven themselves successful in the war against crime. We need to take back our city and elect those people who are part of the solution, not part of the problem!

7. On September 5, 1999, respondent wrote a letter addressed to employees of the Lockport Police Department that stated, in part:

> We are in desperate need of a judge who will work with the police, not against them. We need a judge who will assist our law enforcement officers as they aggressively work toward cleaning up our city streets.

8. In the same letter to the Lockport Police Department employees, respondent asked his readers to vote for him and urged them to get the message to their relatives, friends, neighbors and acquaintances. Respondent concluded the letter by stating in bold capital letters: "PUT A REAL PROSECUTOR ON THE BENCH!" Respondent testified that his intent was to distinguish his prosecutorial experience from that of the incumbent City Court judge, Betsy Hurley, who had previously worked in the

District Attorney's office for 18 years and had been the First Assistant District Attorney.

9. In a letter published in the Lockport Union–Sun & Journal on September 7, 1999, respondent stated, in part:

> Last year arrests skyrocketed in Lockport; burglary up 56 percent, robbery up 61 percent, possession of stolen property up 151 percent and trespass up 369 percent. Astonishingly, drug possession has increased 396 percent over the last two years!

10. In a letter published in the Lockport Union–Sun & Journal on September 9, 1999, respondent stated, in part:

> My opponents have been in office together for the last several years. Arrests have skyrocketed in Lockport recently, even though crime is down countywide, statewide and nationally.

11. In a campaign advertisement also published in the Lockport Union–Sun & Journal on September 9, 1999, respondent stated, in part:

> Are you ready to take back the City of Lockport?
>
> ARRESTS TELL THE STORY
> Burglary up 56%
> Stolen Property Possession up 151%
> Trespass up 369%
> Robbery up 133%
> Drug Possession up 396%

12. In his written response to questions published in the Lockport Union–Sun & Journal on September 13, 1999, respondent stated, in part:

> It is absolutely unacceptable that arrests are skyrocketing in Lockport when crime is going down nationally.

* * *

We must begin to deter criminals before they come into the city.

* * *

. . .criminals from surrounding communities are flocking into Lockport. Once we gain a reputation for being tough, you'd be surprised how many will go elsewhere, making the caseload more manageable.

13. As a result of the primary election on September 14, 1999, respondent received the Republican, Democratic, Conservative and Independent nominations for Lockport City Court.

14. In connection with his campaign during the general election in the fall of 1999 in which he was opposed by incumbent Lockport City Court Judge Betsy Hurley, who was the Liberal candidate, respondent stated, in part, in a campaign advertisement: "In the last two years drug possession has increased 396% in the City of Lockport."

15. Respondent defeated Judge Hurley in the November 1999 election and was elected to the Lockport City Court.

16. The themes of respondent's campaign were that respondent would be a "tough judge who would be tough on crime" and that his campaign opponents were to blame for an increase in crime within the City of Lockport.

17. By advertising his intention to be a "tough judge" who would be tough on crime and by stating repeatedly his intention to make Lockport a city that was "very unattractive" for criminal defendants who resided outside the city, including his statements concerning his intended use of bail against defendants, and by urging police

department employees to "PUT A REAL PROSECUTOR ON THE BENCH!", respondent created the appearance that he would not be impartial as a judge, would not judge cases on an individual basis or upon the merits, and would be biased against criminal defendants.

18. Respondent's focusing his repeated campaign advertisements and statements upon the increase in arrests in five specific crime categories was an intentional attempt to create the impression with the public that his opponents were responsible for an increase in crime in Lockport.

19. Since respondent knew at the time he published his campaign material that arrest statistics change for complex reasons that are most likely to be wholly unrelated to a judge's actions, and since he had no way to determine why the arrest statistics he cited in his campaign material had increased, respondent's conduct in attributing to his campaign opponents the responsibility for the increase in arrests in the five crime categories was intentionally misleading to the public.

20. Further, respondent's campaign material was intentionally misleading to the public in that: (i) respondent included in his campaign material only those arrest statistics published in the Lockport Union–Sun & Journal article on May 7, 1999, that displayed an increase, while knowing that the article also reported significant declines in other serious crime categories, and (ii) the campaign material failed to make reference to the explanations in the article provided by police officials for the increasing arrests.

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), 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.

The campaign activities of judicial candidates are significantly circumscribed. *See Matter of Decker*, 1995 Ann Rep 111, 112 (Commn on Jud Conduct, Jan 27, 1994). 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"; nor may a candidate "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" (Sections 100.5[A][4][d][i] and [ii] of the Rules Governing Judicial Conduct). To do so compromises the impartiality that is essential to a judge's unique role. *See Matter of Birnbaum*, 1998 Ann Rep 73, 74 (Commn on Jud Conduct, Sept 29, 1997). Every judicial candidate should be mindful of the importance of adhering to these standards so that public confidence in the judiciary may be preserved.

Although the U.S. Supreme Court recently held that the First Amendment protects the right of judicial candidates to "announce [their] views on disputed legal or political issues" (*Republican Party of Minnesota v. White*, 536 US ___ [June 27, 2002]), the "announce" rule, held unconstitutional in *White*, is not a part of New York's ethical

code. The existing prohibitions in New York against "pledges or promises" and "statements that commit or appear to commit the candidate" focus precisely on conduct which goes to the heart of judicial neutrality, impartiality and independence; indeed, without these restrictions, campaign speech by judicial candidates might be as unfettered and unapologetically biased as that of partisan, non-judicial office-seekers. These provisions are not within the ambit of the *White* decision. And while the Court of Appeals in *Matter of Shanley*, 98 NY2d 310 (2002), recently held that the phrase "law and order candidate" does not, by itself, suggest a pro-prosecution pledge or compromise judicial impartiality, respondent's entire campaign for City Court in 1999 presented him as a candidate who would bring to the bench a pro-prosecution bias.

Flouting the ethical standards, respondent's campaign literature vowed that he would be a "tough judge" who would use bail and sentencing to make Lockport "unattractive" for outsiders who come there to commit crimes. In campaign advertisements, published letters and public statements, respondent repeatedly urged voters to join him in a "war on crime" and declared his intention to "work with the police" and assist them in "cleaning up our city streets." The unmistakable bias of respondent's campaign theme is exemplified in his letter to police employees, urging them to "PUT A REAL PROSECUTOR ON THE BENCH!". While such pro-prosecutorial rhetoric may be common in non-judicial political campaigns, it is highly inappropriate for judicial candidates and created the appearance that respondent would

not be impartial as a judge. *See Matter of Hafner*, 2001 Ann Rep 113 (Commn on Jud Conduct, Dec 29, 2000).

Particularly offensive were respondent's efforts to link his opponents, the incumbent judges, with an increase in crime. Referring to the increase of arrests for drug crimes, respondent urged voters to "vote out of office those people who have contributed to the situation" and to "elect those people who are part of the solution, not part of the problem!". Respondent selectively cited statistics indicating increasing arrest rates to support his contention that "criminals...are flocking into Lockport" and that if "we gain a reputation for being tough, you'd be surprised how many will go elsewhere." Although respondent has acknowledged in this proceeding that arrest statistics change for complex reasons that are most likely wholly unrelated to a judge's actions, his campaign rhetoric made no such allowances ("ARRESTS TELL THE STORY"). As the referee concluded, respondent's use of arrest statistics was "intentionally misleading" and was an intentional effort to blame the incumbents for an increase in crime in Lockport, contrary to Section 100.5(A)(4)(d)(iii) of the Rules.

As to his letter urging police department employees to "[p]ut a real prosecutor on the bench," respondent explained that it would have been improper to make that appeal to the public but testified that he avoided impropriety by directing his words to police employees. Yet in the same letter to the police employees, he called upon them to get his message out to their friends and relatives. Moreover, the reference to "a real

prosecutor" was intended to distinguish respondent's prosecutorial service with that of the incumbent City Court judge, who, in fact, had far more prosecutorial experience than respondent. Respondent offered the rationale that in his briefer tenure in the District Attorney's office, he had done more to reduce crime than the incumbent had done; indeed, in campaign ads, respondent personally took credit for significant reductions of drug cases in the county. Implicit in respondent's statements was the message that his prosecutorial efforts would give him a pro-prosecutorial bias that would be an asset in the "war on crime" he intended to wage. Such statements may pander to popular views, but they do a disservice to the public and the judiciary.

Respondent's campaign statements, which contributed to his election over two incumbent judges, are far more egregious than those in other cases the Commission has previously considered. *See, e.g., Matter of Hafner*, *supra*; *Matter of Herrick*, 1999 Ann Rep 103 (Commn on Jud Conduct, Feb 6, 1998); *Matter of Polito*, 1999 Ann Rep 129 (Commn on Jud Conduct, Dec 23, 1998); *Matter of Maislin*, 1999 Ann Rep 113 (Commn on Jud Conduct, Aug 7, 1998). As a candidate for judicial office, respondent had as much of an obligation as a sitting judge to know the applicable rules pertaining to elections and to ensure that his campaign statements were consistent with the standards articulated in the rules and in numerous Commission determinations.

In arriving at an appropriate sanction, we have consistently weighed a judge's statements of apology in mitigation of punishment, when the judge is truly

contrite. Accordingly, if a judge genuinely accepts responsibility for his or her acts at the earliest available opportunity we will often pay deference to that confession and ameliorate the sanction. In this case, respondent displayed no honest remorse. Indeed, his appeal to his youth and inexperience rings hollow. Even after formal charges were served and respondent was given a full opportunity to both explain his actions and apologize for them, he failed to do so. Indeed, at the hearing he offered excuses that either were disingenuous or bordered on the ludicrous. It was only later, after he consulted and retained a competent attorney and it was obvious that the charges were serious, that his position softened. Only then, aware for the first time that both his conduct and his outright refusal to acknowledge his malfeasance were a problem, did he come to the conclusion that a contrite heart would serve him better than a defiant tone. It would be inappropriate to reward respondent for arriving so belatedly at the conclusion that not only his conduct but his subsequent refusal to acknowledge wrongdoing were unacceptable.

A judge's election is tarnished when the judge's campaign activity flouts not only the ethical rules, but fundamental standards of honesty and fairness. Respondent's intentionally misleading use of arrest statistics and his intentional effort to blame the incumbents for an increase in crime were inconsistent with those standards and demonstrate that he is unfit to serve as a judge. Moreover, to allow respondent to retain his judgeship would be to reward him for intentional misconduct and might encourage

other judicial candidates, knowing that they may reap the fruits of their misconduct, to ignore the rules applicable to judicial elections. We conclude, therefore, that the sanction of removal is appropriate.

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

Mr. Berger, Judge Ciardullo, Mr. Goldman, Ms. Hernandez, Judge Luciano, Ms. Moore, Mr. Pope and Judge Ruderman concur.

Mr. Coffey and Judge Peters dissent only as to the sanction and vote that the appropriate sanction is censure.

Judge Marshall was not present.

CERTIFICATION

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

Dated: December 26, 2002

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

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In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

WILLIAM WATSON,

a Judge of the Lockport City Court,
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OPINION
CONCURRING IN PART
AND DISSENTING IN PART
BY JUDGE PETERS

I share the concern of the majority regarding the ramifications of permitting respondent to retain his position on the bench. Clearly, each time we impose discipline upon a judge for an election violation, if such discipline falls short of removal, one can conclude that the judge has reaped the benefits of such misconduct. At present, candidates for judicial office may well believe that flouting of the rules is worth the suffering of an admonition or censure when the success of their campaign hangs in the balance. I cannot, however, concur with my colleagues' determination that respondent must be removed from office.

To be sure, the conduct respondent engaged in warrants removal, but two factors compel me to conclude that he should not suffer a greater penalty than censure. First, had respondent considered Commission precedent, he would have discovered that although we have repeatedly decried conduct similar to that he engaged in (*Matter of Hafner*, 2001 Ann Rep 113 [Commn on Jud Conduct, Dec 29, 2000]; *Matter of Polito*,

1999 Ann Rep 129 [Commn on Jud Conduct, Dec 23, 1998]), the violators were merely admonished. In *Polito*, the candidate for Supreme Court exhorted the voters to "pull the lever for Bill Polito, and crack down on crime" and proclaimed that he would not "experiment with alternative sentences [because] criminals belong in jail, not on the street." In *Hafner*, a candidate for County Court stated that he was "tired of seeing career criminals get a 'slap' on the wrist." Obviously, this statement was critical of the incumbent's conduct. Second, I am also mindful of the fact that while respondent was obligated to follow the rules of conduct, he was not a judge when he ran for office and therefore had no need to familiarize himself with such rules or abide by them prior to the commencement of his campaign.

For these reasons, I would censure respondent but note that since sanctions short of removal have not deterred election misconduct, we will not hesitate to impose this ultimate sanction in the future.

Finally, I am compelled to comment upon the need for more timely response to complaints concerning conduct of candidates for judicial office. I am of the opinion that while the Commission's practices and procedures are wholly appropriate to address most complaints concerning judicial conduct, they do not permit prompt resolution of allegations of misconduct during campaigns. For this reason, I suggest consideration of a procedure by which such complaints can be promptly resolved.

Dated: December 26, 2002

Honorable Karen K. Peters, Member
New York State
Commission on Judicial Conduct