

**State of New York**  
**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

JOHN R. LA CAVA,

a Judge of the County Court, Westchester County.\*

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**Determination**

THE COMMISSION:

Henry T. Berger, Esq., Chair  
Jeremy Ann Brown  
Stephen R. Coffey, Esq.  
Lawrence S. Goldman, Esq.  
Christina Hernandez, M. S. W.  
Honorable Daniel W. Joy  
Honorable Daniel F. Luciano  
Honorable Frederick M. Marshall  
Honorable Juanita Bing Newton  
Alan J. Pope, Esq.  
Honorable Eugene W. Salisbury

APPEARANCES:

Gerald Stern for the Commission

Mancuso, Rubin & Fufidio (By Andrew A. Rubin) for Respondent

The respondent, John R. La Cava, a justice of the Supreme Court, 9<sup>th</sup>

Judicial District, was served with a Formal Written Complaint dated January 13, 1999,

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\* Respondent was a judge of the County Court from 1988 to 1998; he was elected a justice of the Supreme Court, 9<sup>th</sup> Judicial District, in 1998.

alleging that he made improper campaign statements. Respondent filed an answer on February 12, 1999.

On May 26, 1999, the administrator of the Commission, respondent and respondent's counsel, entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), 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 June 3, 1999, the Commission approved the agreed statement and made the following determination.

1. Respondent was a judge of the Westchester County Court from 1988 to 1998. He was elected a justice of the Supreme Court, 9<sup>th</sup> Judicial District, in 1998.

2. In connection with his candidacy for Supreme Court in September 1998, respondent drafted and sent to members of the Right-to-Life Party a letter seeking their support. Among other things, respondent asserted his "commitment to the sanctity of life from the moment of conception," his "strong moral opposition to the scourge of abortion and the termination of the lives of millions of human beings in the womb" and his "outrage[ ] by the continuation of the murderous and barbaric partial birth abortion procedure in this state."

3. In an interview with a reporter on October 5, 1998, respondent stated with respect to abortion, “I think it’s murder,” and, “I’m a public official, and I think the public has a right to know.” The remarks were published in the Gannett Suburban Newspapers on October 5, 1998.

4. Respondent contends that he meant his remarks to the newspaper reporter to be limited to the partial-birth-abortion procedure and that he does not believe that any woman who obtains a legal abortion is guilty of a crime. He now recognizes, however, that his remarks and the letter to the Right-to-Life Party were improper.

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

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 may not “make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office” or “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.”

(Rules Governing Judicial Conduct, 22 NYCRR 100.5[A][4][d][i] and 100.5[A][4][d][ii]; see, Matter of Polito, 1999 Ann Report of NY Commn on Jud Conduct, at 129; Matter of Birnbaum, 1998 Ann Report of NY Commn on Jud Conduct, at 73).

Respondent violated these standards in his letter to Right-to-Life Party members and in his statement to the newspaper. He took positions on controversial issues of public policy and law that might become the source of litigation and would reflect adversely on his impartiality should such matters come before him. His published statement, "I think it's murder," when discussing the issue of abortion created the appearance that he might not follow constitutional and statutory law if called upon to do so.

In mitigation, respondent has acknowledged his wrongdoing and has been cooperative and contrite in this proceeding. (See, Matter of Rath, 1990 Ann Report of NY Commn on Jud Conduct, at 150, 152).

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

Mr. Berger, Ms. Brown, Mr. Coffey, Mr. Goldman, Ms. Hernandez, Judge Joy, Judge Newton and Mr. Pope concur.

Judge Luciano, Judge Marshall and Judge Salisbury 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: September 16, 1999

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