

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

ROBERT H. SCHMIDT,

a Justice of the Brunswick Town Court,
Rensselaer County.

THE COMMISSION:

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

APPEARANCES:

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

Honorable Robert H. Schmidt *pro se*

Respondent, Robert H. Schmidt, a Justice of the Brunswick Town Court,

Rensselaer County, was served with a Formal Written Complaint dated August 24, 2020, containing two charges. Respondent filed an Answer dated September 25, 2020. Charge I of the Formal Written Complaint alleged that beginning on August 10, 2019, and during the “Window Period”¹ of his 2019 campaign for election to the Brunswick Town Court, respondent failed to maintain the dignity appropriate to judicial office, failed to act in a manner consistent with the impartiality, integrity and independence of the judiciary and engaged in inappropriate political activity, in that he posted items to his personal Facebook page, which were visible to the public, that: made disrespectful and undignified comments about laws he would be sworn to uphold as a sitting judge, propounded conspiracy theories, and endorsed a candidate for the Brunswick Town Council. Charge II of the Formal Written Complaint alleged that from January 4, 2020 to April 23, 2020, while a sitting judge, respondent posted items to his personal Facebook page, which were visible to the public, that constituted prohibited public comments about pending or impending proceedings in his court and other courts within the United States and cast doubt on his ability to act impartially.

On October 20, 2020, the Administrator and respondent entered into an Agreed Statement of Facts pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating

¹ “Window Period,” as defined by the Rules of the Chief Administrator of the Courts at 22 NYCRR 100.0(Q), “denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge’s or non-judge’s candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, six months after the date of the primary election, convention, caucus or meeting.”

that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On October 29, 2020, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent initially served as a Justice of the Brunswick Town Court, Rensselaer County, from January 1, 2000 to December 31, 2015. On January 1, 2020, after being out of office for several years, respondent began a new term as a Justice of the Brunswick Town Court. His current term expires on December 31, 2023. Respondent is not an attorney.

As to Charge I of the Formal Written Complaint

2. Facebook is an internet social networking website and platform that *inter alia* allows users to post and share content on their own Facebook pages as well as on the Facebook pages of other users and on Facebook groups. Facebook users are responsible for managing the privacy settings associated with their accounts. At the option of the account holder, the content of one's Facebook account may be viewable online by the public or restricted to one's Facebook "Friends."

3. At all times relevant to this Charge, respondent maintained a Facebook account under the name "Bob Schmidt."

4. In March 2019, respondent announced his candidacy for election to the Brunswick Town Court. On April 1, 2019, respondent secured the nomination of the Republican Party.

5. On August 10, 2019, respondent posted to his Facebook page a meme that implied that former President Bill Clinton had killed Jeffrey Epstein. Copies of screenshots of this post are appended as Exhibit A to the Agreed Statement of Facts.

6. On August 16, 2019, respondent posted to his Facebook page a link to the Facebook page for the campaign of Brunswick Town Council candidate Mark Cipperly. Respondent “liked” a comment to the post by another Facebook user that read, “Cip is a good man.” Copies of screenshots of this post are appended as Exhibit B to the Agreed Statement of Facts.

7. On August 27, 2019, respondent posted to his Facebook page a meme depicting a witch trial hanging that read, “JUST A REMINDER...SALEM, MASSACHUSETTS HAD ‘RED FLAG’ LAWS, TOO.” A copy of a screenshot of this post is appended as Exhibit C to the Agreed Statement of Facts.

8. On August 31, 2019, respondent posted to his Facebook page a meme that read, in part, “WHAT DOES THE SHEEP SAY? WE NEED COMMON SENSE GUN CONTROL.” Copies of screenshots of this post are appended as Exhibit D to the Agreed Statement of Facts.

9. On August 31, 2019, respondent posted to his Facebook page a meme that displayed a photograph of a Nazi book burning with the text, “BOOK BURNINGS DON’T JUST LOOK LIKE THIS,” above a second image showing a social media platform warning that posts in violation of the platforms’ guidelines will be removed, with the text, “THEY ALSO LOOK LIKE THIS.” Copies of screenshots of this post are appended as Exhibit E to the Agreed Statement of Facts.

10. All of the above-described posts were viewable by the public and remained viewable until April 23, 2020, when respondent removed the posts after receiving a letter from the Commission regarding their propriety.

As to Charge II of the Formal Written Complaint

11. At all times relevant to this Charge, respondent maintained a Facebook account under the name “Bob Schmidt.” The biographical information on respondent’s Facebook page listed one of his occupations as “Judge – March 15, 1999 to Present – Brunswick, New York” and “Local Criminal Court Judge.” A copy of a screenshot of respondent’s Facebook page identifying him as a judge is appended as Exhibit F to the Agreed Statement of Facts.

12. Respondent was elected to the position of Brunswick Town Justice in the November 2019 election and took office on January 1, 2020.

13. On January 4, 2020, respondent posted to his Facebook page a statement in which he announced he had performed the first nighttime arraignment of his new judicial term and wrote, “Feel like a judge again.” Another Facebook user commented on respondent’s post and asked if the defendant had been released before the judge got “back in bed,” to which respondent replied, “of course. This is NY 2020.” Copies of screenshots of this post are appended as Exhibit G to the Agreed Statement of Facts.

14. On January 30, 2020, respondent posted to his Facebook page a link to a *New York Post* article entitled, “Fatal DWI suspect bragged about bail reform: ‘I’ll be out tomorrow.’” Respondent wrote above the post, “Sign of the time,” and another Facebook user commented, “I predict vigilante mentality will soon return.” The article reported on

the pending Suffolk County Court case of *People v. Jordan Randolph*, in which the defendant had been indicted for vehicular manslaughter and other charges. A copy of a screenshot of this post and a copy of the article are appended as Exhibit H to the Agreed Statement of Facts.

15. On February 2, 2020, respondent posted to his Facebook page a link to a *New York Post* article entitled, “Suspect in brutal mugging of elderly woman caught on video released under new bail law.” The linked article reported on the pending case of *People v. Dana White*, in which the defendant had been charged with robbery. Another Facebook user commented on respondent’s post, “Is this true?, [*sic*] disgusting!” A copy of a screenshot of this post and a copy of the article are appended as Exhibit I to the Agreed Statement of Facts.

16. All of the above-described posts were viewable by the public and remained viewable until April 23, 2020, when respondent removed the posts after receiving a letter from the Commission regarding their propriety.

Additional Factors

17. Respondent has been cooperative and contrite with the Commission throughout this inquiry. In addition to promptly removing all Facebook posts after receiving the Commission’s letter regarding their propriety, respondent expressed remorse for his actions in both his initial response to the Commission’s inquiry and in his Answer to the Formal Written Complaint. In the latter, respondent wrote, “I cringe as I review the [posts] presented and have no explanation as to why I felt that it would be appropriate to put them on my Facebook page as a candidate for judicial office.”

Respondent further acknowledged that, though the posts were not reflective of him as a town justice, his conduct was nevertheless “beneath anyone who is privileged to wear a robe and is trusted with representing our judicial system to the public.”

18. Respondent commits to being more circumspect in his use of social media in the future and to ensure that none of his postings convey the appearance of impropriety, comment upon pending or impending proceedings, propound conspiracy theories, endorse other candidates for public office or detract from the dignity and impartiality of the judiciary.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.3(B)(8), 100.5(A)(1)(c), 100.5(A)(1)(e), and 100.5(A)(4)(a) of the Rules Governing Judicial Conduct (“Rules”) and should be disciplined for cause pursuant to Article 6, Section 22, subdivision (a) of the Constitution and Section 44, subdivision 1 of the Judiciary Law. Charges I and II of the Formal Written Complaint are 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.” (Rules, §100.2(A)) Section 100.5(A)(4)(a) of the Rules provides that judicial candidates “shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary. . .” *See, Matter of Michels*, 2012 NYSCJC Annual Report 130, 136 (“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.”) Candidates for judicial office are also required to refrain from engaging in political activity (other than in connection with his or her own campaign) including “engaging in any partisan political activity” and “publicly endorsing or publicly opposing (other than by running against) another candidate for public office.” Sections 100.5(A)(1)(c) and (e) of the Rules; *Matter of Rumennapp*, 2017 NYSCJC Annual Report 192; *Matter of King, Sr.*, 2008 NYSCJC Annual Report 145.

Respondent acknowledged that, while a candidate for judicial office, he violated these Rules when he made Facebook posts and links which contained various undignified and disrespectful statements including regarding laws that he would be required to uphold as a judge. Respondent also improperly endorsed a candidate for Brunswick Town Council. By his conduct, respondent undermined public confidence in the integrity and impartiality of the judiciary.

It is well-settled that judges are strictly prohibited from commenting on any pending cases. Section 100.3(B)(8) of the Rules provides that “[a] judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories.” As the Rule makes clear, this prohibition is not limited to cases in the judge’s own court. The Commission has held “this ethical prohibition ‘is clear and unequivocal,’ and, consequently, ‘[i]t is wrong for a judge ‘to make any public comment, no matter how minor, to a newspaper reporter or to anyone else, about a case pending before him.’” *Matter of Piampiano*, 2018 NYSCJC Annual Report 208, 219 (citations omitted). Respondent admittedly violated this Rule and undermined confidence in the impartiality and independence of the judiciary when he commented on

Facebook regarding an arraignment he had conducted and the release of the defendant in that matter and when he provided links to articles which were critical of bail decisions in other cases and commented on one of those cases.

In the past, including in its 2019 Annual Report, the Commission has cautioned that judges must be particularly circumspect in the use of social media. In *Matter of Whitmarsh*, 2017 NYSCJC Annual Report 266, 274-275, the Commission wrote,

We also take this opportunity to remind judges that the Rules Governing Judicial Conduct apply in cyberspace as well as to more traditional forms of communications and that in using technology, every judge must consider how such activity may impact the judge's ethical responsibilities. . . .

The Advisory Committee on Judicial Ethics has cautioned judges about the public nature and potential perils of social networks and has advised that judges who use such forums must exercise "an appropriate level of prudence, discretion and decorum" so as to ensure that their conduct is consistent with their ethical responsibilities (Adv Op 08-176).

In accepting the jointly recommended sanction of admonition, we have taken into consideration that respondent has no prior discipline, he has admitted that his conduct warrants public discipline, and that he has committed to being more circumspect in his use of social media. We expect that respondent has learned from this experience and in the future will act in full compliance with all the Rules Governing Judicial Conduct.

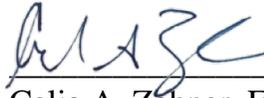
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

Mr. Belluck, Ms. Grays, Ms. Corngold, Judge Falk, Mr. Harding, Judge Leach, Judge Mazzairelli, Judge Miller, Mr. Raskin, Mr. Rosenberg, and Ms. Yeboah concur.

CERTIFICATION

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

Dated: November 3, 2020



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