

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of  
MARIO M. CASTRACAN and VINCENT F.  
BONELLI, acting Pro Bono Publico,

Petitioners,

Index No.

for an Order, pursuant to Sections  
16-100, 16-102, 16-104, 16-106 and  
16-116 of the Election Law,

-against-

AFFIRMATION  
IN SUPPORT OF  
MOTION TO  
DISMISS

ANTHONY M. COLAVITA, Esq., Chairman,  
WESTCHESTER REPUBLICAN COUNTY COMMITTEE,  
GUY T. PARISI, Esq., DENNIS MEHIEL, Esq., ESQ.  
Chairman, WESTCHESTER DEMOCRATIC COUNTY  
COMMITTEE, RICHARD L. WEINGARTEN, Esq.,  
LOUIS A. BREVETTI, Esq., Hon. FRANCIS A.  
NICOLAI, HOWARD MILLER, Esq., ALBERT J.  
EMANUELLI, Esq., R. WELLS STOUT,  
HELENA DONAHUE, EVELYN AQUILA, Commis-  
sioners constituting the NEW YORK STATE  
BOARD OF ELECTIONS, ANTONIA R. D'APICE,  
MARION B. OLDI, Commissioners constituting  
the WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondents,

for an Order declaring invalid the Certificates  
purporting to designate Respondents Hon FRANCIS A.  
NICOLAI and HOWARD MILLER, Esq. as candidates for  
the office of Justice of the Supreme Court of the  
State of New York, Ninth Judicial District, and  
the Petitioners purporting to designate ALBERT  
J. EMANUELLI, Esq., a candidate for the office  
of Surrogate of Westchester County to be held in  
the general election of November 6, 1990.

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HOWARD MILLER, ESQ., an attorney duly admitted to practice  
in the courts of the State of New York, affirms the following to  
be true under penalties of perjury:

1. I am one of the respondents named in the above-entitled matter and make this affirmation in support of the motion to dismiss this proceeding.

2. Service of Order to Show Cause. On September 28, 1990, the last day for service of a proceeding under Section 16-102 of the Election Law, I was not in my office all day. I am a practicing attorney, and was at a meeting with clients for a substantial portion of the day. At the conclusion of that meeting, I went home, since Yom Kippur began at sundown on that date. Thus I did not physically receive the order to show cause and supporting papers until September 29, 1990, when I went into the office.

3. Failure to Properly Serve Specifications of Objections. Section 6204.1(b) of the Rules and Regulations of the State Board of Elections requires that duplicate copies of specifications of objections be served upon the candidates by personal delivery or by certified or registered mail. I have not been personally served with petitioners' specifications, nor have I received those specifications by certified or registered mail.

4. Failure to State a Cause of Action. In reading the entire petition, I can find no factual allegations being made by petitioners relating to me at all, except for one conclusory statement in which I am described as a "party" and "accessory" to a purported "Plan" which evolved from a Resolution of the Democrat and Republican Parties. I categorically deny that I was either a party or accessory to any such "Plan" or Resolution. The Resolutions themselves do not mention me and do not relate to the

vacancy created by the retirement of the HON. THEODORE A. KELLY. It is election to that seat I am seeking.

5. I have previously sought bi-partisan support, since it has always been my belief that the judicial elections should rest on the qualifications of the candidates, and not upon political motivations. In fact, in 1980, after receiving the Republican nomination for County Judge, I ran in a primary against Terrence Ryan, Esq., the Democrats' nominee. I was successful in that primary by a large plurality and thus became both the Republican and Democrat candidate.

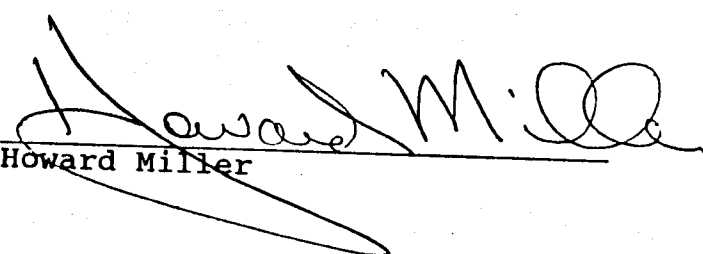
6. This year, after deciding to run for the seat created by Judge Kelly's retirement, I again actively sought bi-partisan support. I was interviewed by the Democrat Party prior to my nomination regarding both my qualifications and background. Fortunately, I received support from both the Republican and Democrat Parties. There is nothing in the Election Law to prohibit cross-endorsement. In fact, the Election Law expressly provides for specific forms of ballots for candidates who receive nominations from more than one party.

7. Failure to Join Indispensable Parties. If this court were to void the nominating certificates of both parties, two other candidates, Hon. Joan Lefkowitz and George H. Roberts, Esq., would also have their nominations voided. However, neither of those candidates has had an opportunity to be heard in this proceeding. It is incomprehensible that the petitioners would institute a proceeding to invalidate a nominating certification and the

judicial convention without naming and notifying two candidates whose nominations are at stake. This defect alone requires dismissal of this proceeding.

WHEREFORE, it is respectfully requested that this proceeding be in all respects dismissed.

Dated: October 11, 1990  
Pearl River, New York

  
Howard Miller