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

IRA J. RAAB,

a Justice of the Supreme Court, Nassau
County.

- -

THE COMMISSION:

Henry T. Berger, Esq., Chair
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 (Robert H. Tembeckjian, Of Counsel) for the Commission

Emery Cuti Brinckerhoff & Abady PC (By Richard D. Emery and John R. Cuti) for Respondent

The respondent, Ira J. Raab, a Justice of the Supreme Court, Nassau County, was served with a Formal Written Complaint dated November 15, 2001,

containing five charges. Respondent filed an answer dated January 9, 2002.

On August 7, 2002, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, stipulating that the Commission make its determination based upon the agreed facts. The Commission approved the agreed statement on September 19, 2002. Each side submitted memoranda as to sanction.

On December 12, 2002, the Commission heard oral argument, at which respondent and his counsel appeared, and thereafter considered the record of the proceeding and made the following determination.

1. Respondent was admitted to the practice of law in the State of New York in 1958. He was elected a Nassau County District Court Judge in November 1996 and assumed office in January 1997. He was elected as the Presiding Judge of the District Court in November 1999 and assumed office in January 2000. He was elected a Justice of the Supreme Court in November 2000 and assumed office in January 2001.

2. In each of his campaigns for judicial office, respondent financed his campaign with his own personal funds in order to avoid potential conflicts of interest. Neither he nor any committee on his behalf solicited or accepted campaign funds from lawyers, law firms or other individuals or groups, although respondent notes that the solicitation of funds from campaign committees was and continues to be an accepted practice for judicial candidates on Long Island and elsewhere. Respondent filed reports of his campaign expenditures with the State Board of Elections as required.

3. Respondent maintains that he is a conscientious, efficient and productive judge and that, during his years of service in the District Court and in the Supreme Court, respondent has initiated many novel procedures – including ordering oral argument on all motions and encouraging lawyers to participate in telephone conferences (often during the lunch recess or in the evening) to resolve motions and other aspects of pending cases – that dramatically reduced the number of resource-wasting adjournments and significantly decreased the court's docket.

As to Charge I of the Formal Written Complaint:

4. From 1990 through 1994, the Nassau County law firm of Russ & Russ represented Jay Schadoff in matters that were not before respondent. In 1995, Russ & Russ commenced an action against Mr. Schadoff entitled *Russ & Russ PC v. Jay Schadoff* to recover legal fees that Mr. Schadoff had not paid for services rendered from 1990 through 1994.

5. In November 1995, after trial, Mr. Schadoff signed a confession of judgment for $81,332.55 in legal fees and disbursements that he owed to Russ & Russ, exclusive of interest, for the period from 1990 through 1994.

6. From November 1995 to April 2001, notwithstanding the confession of judgment, Mr. Schadoff did not pay the debt owing to Russ & Russ.

7. In November 1996, Mr. Schadoff commenced a professional malpractice suit against Russ & Russ, which was finally dismissed by the Appellate Division, Second Department, in December 2000. Russ & Russ had not sought to

execute the confession of judgment pending final disposition of the malpractice action.

8. Mr. Schadoff and his ex-wife Carole Schadoff owned a parcel of vacant land in Nassau County. Pursuant to a real property execution brought on by Russ & Russ after the Appellate Division's dismissal of Mr. Schadoff's malpractice suit, the Sheriff of Nassau County scheduled a sale of Mr. Schadoff's interest in the real estate for May 2, 2001.

9. In January 2001, respondent was assigned to hear matrimonial cases in Nassau County. One of the cases assigned to respondent was *Jay Schadoff v. Carole Schadoff*, in which a judgment of divorce had previously been granted and in which the parties were litigating equitable property distribution issues.

10. By order to show cause dated April 3, 2001, in connection with the *Schadoff v. Schadoff* matrimonial action, a case in which Russ & Russ was not involved, Mr. Schadoff moved to stay the Sheriff's sale which was pending in connection with the *Russ & Russ v. Schadoff* debt collection case. The order to show cause contained an *ex parte* temporary restraining order (TRO) staying the sale pending a hearing and determination on the motion.

11. Respondent granted the TRO on April 3, 2001. Notwithstanding some concern by respondent and his law secretary that he may not have jurisdiction over Russ & Russ, they concluded that it was appropriate to issue the TRO.

12. On April 9, 2001, Kenneth Lauri, an attorney in the Russ & Russ firm, appeared before Appellate Division Justice Sandra J. Feuerstein pursuant to CPLR 5704

to seek review of respondent's *ex parte* TRO. Attorneys for both Jay Schadoff and Carole Schadoff were present. After hearing argument, Justice Feuerstein struck the TRO.

13. Justice Feuerstein's law secretary instructed Mr. Lauri to serve Justice Feuerstein's order on respondent promptly. Mr. Lauri immediately proceeded to respondent's courtroom.

14. When Mr. Lauri arrived in respondent's courtroom in the late afternoon of April 9, 2001, there were no cases remaining on respondent's calendar for the day. Respondent was engaged in a telephone conference at the bench. The only other person present was respondent's law secretary, Jennifer Feingold. The courtroom is relatively small.

15. Ms. Feingold was fully familiar with the *Schadoff* matrimonial case. She and respondent had worked diligently in the preceding months to effectuate a settlement of the outstanding equitable property distribution issues between Jay Schadoff and Carole Schadoff. Ms. Feingold and respondent believed they had effected such a settlement, which depended in part on a private sale of the parcel of land in Nassau County, which Carole and Jay Schadoff had indicated that she had negotiated with a potential buyer.

16. Respondent and Ms. Feingold believed that the settlement in the *Schadoff v. Schadoff* matrimonial action would be thwarted if the parcel of land were sold at a Sheriff's sale, which they believed would result in a lower sale price than what

Carole Schadoff had said she had privately arranged.

17. When he came into respondent's courtroom on April 9, 2001, Mr. Lauri spoke first with Ms. Feingold, informing her that Appellate Division Justice Feuerstein had vacated respondent's TRO. Ms. Feingold was upset with the potential consequences of the appellate order and conveyed her views to Mr. Lauri, explaining in exasperated tones that vacating the TRO would not advance the interests of any party in either of the underlying litigations. Ms. Feingold, in essence, was trying to persuade Mr. Lauri not to proceed with the Sheriff's sale of the Schadoff property.

18. Respondent was on the telephone, but noticed that Mr. Lauri and Ms. Feingold were conversing and that Ms. Feingold was upset. When respondent got off the telephone, Mr. Lauri and Ms. Feingold approached the bench. Respondent asked Ms. Feingold what was going on, and Ms. Feingold told respondent she was upset.

19. After respondent attempted to defuse the tension by making a facetious remark, Ms. Feingold told him that Justice Feuerstein had vacated his TRO as to the *Schadoff* property sale, and that the settlement respondent had worked so hard at effecting would be jeopardized.

20. Respondent told Mr. Lauri that Ms. Feingold was right about the negative effect a Sheriff's sale would have on the *Schadoff* case.

21. Mr. Lauri indicated that his firm intended to proceed with the sale now that the TRO had been vacated.

22. Respondent then said he would be on the bench for 11 more years,

that he had a "long memory," that he would "remember" what Mr. Lauri's firm had done should it appear before him on other matters, and that it was a "good thing" the firm did not practice matrimonial law.

23. Respondent states that although he did not intend to threaten or intimidate Mr. Lauri, on reflection, respondent realizes that his comments were inappropriate and intimidating and could be construed as a threat. Respondent states that when he said it was a "good thing" the *Russ* firm did not practice matrimonial law, he meant that the firm would not do well in such cases because it did not seem to understand the intricacies of matrimonial litigation, and that Mr. Schadoff would be in a position to pay his full debt, including interest, to the law firm from the proceeds of the property sale that was part of the matrimonial settlement respondent had worked out. Respondent now realizes that his comment could reasonably be construed to mean that he would be biased against the firm should it appear before him in matrimonial cases.

24. Subsequently, on plaintiff's motion, respondent disqualified himself from *Russ & Russ v. Jay Schadoff.* Thereafter, Jay Schadoff apparently satisfied the judgment against him with proceeds from the sale of a property other than the parcel of land at issue in the TRO. The Nassau County Sheriff did not conduct a sale of the disputed property, which had not been sold privately or otherwise as of the date of the Formal Written Complaint against respondent in this proceeding, *i.e.* November 15, 2001.

As to Charge II of the Formal Written Complaint:

25. In the spring of 2000, respondent, who was then a District Court

judge, announced that he was a candidate for the Democratic nomination for Supreme Court.

26. The judicial nominating convention for selecting Democratic Party candidates for Supreme Court was scheduled for mid-September 2000. The general election was scheduled for November 2000.

27. Respondent, who had been endorsed by the Working Families Party (WFP) in prior years when he was a Democratic candidate for judicial office, planned on seeking that party's support in his Supreme Court campaign in 2000.

28. On June 3, 2000, the WFP held a screening meeting in Nassau County at which candidates for various judicial and non-judicial offices were questioned in connection with the party's intention to endorse candidates. Respondent was not scheduled to be interviewed on that date.

29. Respondent nevertheless attended the screening meeting on June 3, 2000. He does not recall who invited him to attend.

30. When he arrived, respondent sat at a table with members of the WFP who would be questioning the various candidates scheduled to appear for interviews. Respondent advised the party members that it would be inappropriate to ask a judicial candidate to express substantive views on particular issues.

31. Respondent remained at the meeting for the interviews of at least the following five candidates: State Senate candidates Michael Balboni and Charles Fuscillo, and judicial candidates Denise Sher, Francis Rucigliano and William O'Brien.

Respondent asked each of these five candidates at least one question: whether they would publicize the WFP endorsement on their campaign literature, should they in fact be endorsed. Respondent believed that such a commitment would both publicize the party and benefit his own campaign should he be endorsed by the WFP later in the year for Supreme Court.

32. Respondent did not participate in the WFP's deliberations or decisions on the endorsement of candidates.

33. Respondent's motive in attending and participating in this WFP meeting was to generate good will within the party for his own candidacy and to enhance his chances of being endorsed by the party later in the year for Supreme Court. Respondent maintains he was so motivated in light of the political realities of Nassau County, where from around 1963 to 1996 virtually all elections for full-time judicial office were won by candidates who were on the Republican and/or Conservative ballot lines. Respondent never ran on either of these ballot lines.

34. Respondent now realizes that his mere attendance at, let alone participation in, a meeting in which a political party was screening candidates for endorsement purposes constituted improper participation in partisan party politics and the political campaigns of others, notwithstanding that he was himself a candidate for judicial office at the time. Respondent regrets and apologizes for having attended this meeting and having participated in the screening interviews of other candidates.

35. Respondent was nominated for Supreme Court by the Democratic

Party in September 2000, was endorsed by the WFP and appeared on their ballot line (as well as being endorsed by and on the ballot line of the Independence, Right to Life, and Liberal parties, and receiving the endorsement of the Green and Libertarian parties), and was elected to Supreme Court in November 2000. He assumed his new office in January 2001.

As to Charge III of the Formal Written Complaint:

36. In March 2000, during a special election to fill a vacancy in the Nassau County Legislature, the Working Families Party (WFP) operated a "phone bank" on behalf of Democratic candidate Craig Johnson, who also had the endorsement of the WFP. The purpose of the phone bank was to telephone registered voters and encourage them to vote for Mr. Johnson in the special election.

37. On one evening in March 2000, respondent, who was then a District Court judge, attended and participated in the WFP phone bank, at an office in Nassau County. He does not recall who invited him to attend.

38. For approximately one hour, respondent made telephone calls to prospective voters on behalf of Craig Johnson. In making such phone calls, respondent did not mention his own name or identify himself as a judge.

39. Respondent's motive in attending and participating in the WFP phone bank was to generate good will within the party for his own candidacy and to enhance his chances of being endorsed by the party later in the year for Supreme Court.

40. Respondent now realizes that his mere attendance at, let alone

participation in, a political party phone bank for a candidate other than himself, constituted improper participation in partisan party politics and the political campaign of another, notwithstanding that he was himself a candidate for judicial office at the time. Respondent regrets and apologizes for having attended and participated in the WFP phone bank on behalf of another candidate.

As to Charge IV of the Formal Written Complaint:

41. The charge is not sustained and is, therefore, dismissed.

As to Charge V of the Formal Written Complaint:

42. In the spring of 1995, respondent, who was not a judge at the time, announced that he was a candidate for the Democratic nomination for Supreme Court.

43. The judicial nominating convention for selecting Democratic Party candidates for Supreme Court was scheduled for mid-September 1995. The general election was scheduled for November 1995.

44. During the spring and summer of 1995, respondent met several times with other prospective Democratic judicial candidates and with the party's then-chair, Steve Sabbeth, to discuss and coordinate certain joint campaign activities and expenses of the judicial slate of candidates. It was agreed that respondent's share of such joint expenses would be about $10,000; respondent maintains that other candidates for judicial office also agreed to pay round figure sums.

45. During the spring and summer of 1995, respondent participated with

the other Democratic judicial candidates in active campaigning.

46. Pursuant to Section 100.5 of the Rules and Opinions of the Advisory Committee on Judicial Ethics, *e.g.* Opinion 91 of 1994, a judicial candidate may reimburse actual expenses incurred by a political organization on the judicial candidate's behalf.

47. On September 21, 1995, after winning the Democratic nomination for one of several available Supreme Court Justice positions, respondent paid $10,000 by personal check to the Nassau County Democratic Committee.

48. The $10,000 payment was in part to cover expenditures already made by the party's judicial campaign committee – at a time when respondent was not yet the party's official nominee – to promote in a general way the election of the entire slate of Democratic judicial candidates that would be on the ballot in November 1995.

49. The $10,000 payment was also in part to cover expenditures the party intended to make over the next six weeks on behalf of respondent's candidacy.

50. At the time respondent made the $10,000 payment, he did not seek or have an itemized accounting from the party as to its actual expenses on behalf of his own campaign, and he took no steps to assure that his payment was used strictly to reimburse the party for reasonable and actual expenses incurred on his behalf.

51. Respondent, who was defeated in the November 1995 general election, reported the $10,000 payment in a timely manner to the State Board of Elections.

52. Although the foregoing practice may not have seemed unusual at the time, respondent now realizes that it is improper for a judicial candidate to make a lump sum retroactive payment to a political party to offset general, non-itemized expenditures previously made on behalf of a slate or individual candidates before the judicial candidate is an actual nominee of the party. Respondent also now realizes that it is improper for a judicial candidate to make a lump sum advance payment to a political party for non-itemized expenditures not yet made on his behalf.

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)(3), 100.3(B)(4), 100.5(A)(1) and 100.5(A)(1)(c), (d), (e), (f), (g) and (h) of the Rules Governing Judicial Conduct and Section 700.5(e) of the Rules of the Appellate Division, Second Department. Charges I, II, III and V of the Formal Written Complaint are sustained insofar as they are consistent with the above facts, and respondent's misconduct is established. Charge IV of the Formal Written Complaint is not sustained and is therefore dismissed.

Respondent's threatening, intimidating statements to an attorney and his partisan political activity violated well-established ethical standards and represent a significant departure from the proper role of a judge.

It was undeniably intimidating and inappropriate for respondent to tell an attorney, who had sought appellate relief from respondent's order, that respondent had a "long memory" and "would remember" the attorney's conduct and that it was a "good

thing" the attorney's firm did not practice matrimonial law. (At the time, respondent was assigned to hear matrimonial cases.) Respondent's words could only be construed as a threat that, if the opportunity arose, he would show his displeasure by using his judicial authority to retaliate against the attorney and his firm. Even the suggestion of using judicial power as a weapon of retaliation is a serious distortion of a judge's proper role as a neutral, unbiased arbiter. Such comments erode public confidence in the fair administration of justice and violate ethical standards requiring a judge to avoid bias and the appearance of bias and to be dignified and courteous in performing judicial duties (Rules Governing Judicial Conduct §§100.2[A], 100.3[B][3] and 100.3[B][4]; Rules of the Appellate Division, 2nd Dept §700.5[e]).

No attorney should be subjected to such intimidation, especially one who had not engaged in any impropriety but merely acted as an advocate by voicing a legitimate legal argument. Under such circumstances, a threat of retaliation has a chilling effect on an attorney's duty to represent a client "zealously...through reasonably available means permitted by law" (Code of Professional Responsibility DR 7-101[A][1]).

Respondent's political transgressions – first as a candidate and later as a judge seeking to enhance his candidacy for higher judicial office – demonstrated a blatant disregard for the applicable ethical standards. Judicial candidates and judges are strictly prohibited from engaging in political activity other their own campaigns for judicial office (Rules Governing Judicial Conduct §100.5[A][1]). By participating as a panelist in a political party's screening interviews of political candidates, by appearing at the party's

"phone bank" for a candidate for the county legislature and by making phone calls on behalf of the candidate, respondent flouted this prohibition. While those precise activities are not specified in the ethical rules, respondent surely should have recognized that such conduct was improper in view of the significant body of law concerning the broad restrictions on the political activity of judges. *See, e.g., Matter of Maney*, 70 NY2d 27 (1987); *Matter of Gloss*, 1989 Ann Rep 81 (Commn on Jud Conduct, Dec 21, 1988); *Matter of Rath*, 1990 Ann Rep 150 (Commn on Jud Conduct, Feb 21, 1989); *Matter of Decker*, 1995 Ann Rep 111 (Commn on Jud Conduct, Jan 27, 1994); Adv Op 89-116, 88-100 and 94-37 of the Advisory Committee on Judicial Ethics.

Respondent's conduct is not excused by the motivation to enhance his own political prospects by generating good will in support of his own candidacy. *See Matter of Maney, supra*, where the Court of Appeals, in removing a judge for impermissible political activity, rejected the contention that his partisan political involvement "was necessitated by the political realities that face elected judges" and underscored that the governing rules "only allow involvement in a political organization under narrowly circumscribed conditions" (70 NY2d at 30, 31).

It was also improper for respondent to make a lump sum payment to a political party, in part to cover expenditures already made – before respondent had been officially nominated – for general promotional purposes, and in part as an advance payment for intended future expenditures on respondent's behalf. Such a payment, without appropriate receipts, itemization or other records to support the expenditure, was

not a mere technical violation of the ethical rules, but a prohibited political contribution. *See Matter of Salman,* 1995 Ann Rep 134 (Commn on Jud Conduct, Jan 26, 1994) (issued the year before respondent's conduct). A judge may not make a contribution to a political party or organization, but may reimburse the party for the judge's proportionate share of actual and reasonable expenses made on behalf of the judge's campaign (Rules Governing Judicial Conduct §100.5[A][1]; *see* Adv Op 92-97, 91-94). Moreover, an agreement by a candidate to make such a lump sum payment before actually being nominated inevitably conveys the appearance of a *quid pro quo* – which would, of course, be an egregious impropriety.

We reject respondent's contention that he should not be disciplined for his political transgressions because the cited restrictions on political activity are constitutionally infirm. The applicable rules are not within the ambit of *Republican Party of Minnesota v. White*, 536 US 765 (2002), in which 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."

In rejecting the sanction of removal recommended by Commission counsel, we do not minimize the seriousness of respondent's ethical transgressions. When a judge repeatedly flouts well-established ethical standards to advance his own political interests and threatens to retaliate against an attorney out of personal pique, the sanction of removal may well be necessary. In mitigation, we note that respondent seems sincerely remorseful for his offensive utterances towards the attorney and for his political

improprieties. Lacking the power to suspend a judge without pay, we choose to censure respondent, although we gave serious consideration to determining that he should be removed from the bench.

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

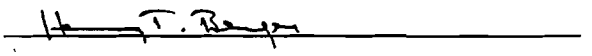
Mr. Berger, Judge Ciardullo, Mr. Coffey, Mr. Goldman, Judge Luciano, Ms. Moore, Judge Peters and Judge Ruderman concur.

Ms. Hernandez and Mr. Pope were not present.

CERTIFICATION

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

Dated: February 3, 2003



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