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

DETERMINATION

MARTIN SCHNEIER,

a Justice of the Supreme Court,
Kings County.

- -

THE COMMISSION:

Henry T. Berger, Esq., Chair
Honorable Frances A. Ciardullo
Stephen R. Coffey, Esq.
Raoul Lionel Felder, Esq.[1]
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 (Vickie Ma, Of Counsel) for the Commission

Molod, Spitz, DeSantis & Stark, P.C. (by Martin J. Semel) for Respondent

[1] Mr. Felder was appointed to the Commission on August 25, 2003. The vote in this matter was taken on May 21, 2003.

The respondent, Martin Schneier, a Justice of the Supreme Court, Kings County, was served with a Formal Written Complaint dated November 27, 2002, containing four charges. Respondent filed an answer dated December 11, 2002.

On May 13, 2003, the Administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts, agreeing that the Commission make its determination based upon the agreed facts, jointly recommending that respondent be admonished and waiving further submissions and oral argument.

On May 21, 2003, the Commission approved the Agreed Statement of Facts and made the following determination.

1. Respondent was elected to the Supreme Court, Kings County, on November 2, 1999. His term commenced on January 1, 2000 and will expire on December 31, 2004, at which time he will have reached the age of 70 and would be eligible for three, two-year terms as a certificated Justice. Prior to January 2000, respondent served as a Civil Court Judge for 20 years.

As to Charge I of the Formal Written Complaint:

2. In 1999, respondent was campaigning for re-election to the Civil Court when he received a nomination to the Supreme Court. After his nomination, respondent withdrew his candidacy for re-election to the Civil Court.

3. Respondent's campaign treasurer sent a letter dated September 22, 1999, to each contributor to respondent's Civil Court campaign advising the contributor

of respondent's nomination to the Supreme Court and the formation of respondent's Supreme Court campaign committee. The letter further provided the contributors with the option of having their contributions returned to them or transferred to respondent's Supreme Court election committee. The letter stated, in part,

> If I do not hear from you within ten days, I will assume that you wish your prior contribution to be used to elect Judge Schneier to the Supreme Court and I will turn over your contribution to the "**Committee to Elect Judge Martin Schneier Justice of the Supreme Court.**"
>
> If however, you wish to have your prior contribution returned to you, please indicate this on the enclosed self addressed postal card and return the card to me within ten days. (Emphasis in original.)

4. The letter of September 22, 1999, sent to campaign contributors did not justify the transfer of funds from one campaign to the other. No contributor requested a refund.

5. Respondent authorized the transfer of funds from his Civil Court campaign committee to his Supreme Court campaign committee. His Civil Court campaign committee made two transfers totaling $19,415 to his Supreme Court election campaign.

6. The only authorized methods of disposing of unexpended campaign funds are to return the funds to the contributors on a *pro rata* basis or to use the funds to purchase office equipment or furniture for the court, provided that such items become the property of the court.

As to Charge II of the Formal Written Complaint:

7. Under Section 100.0 (Q) of the Rules Governing Judicial Conduct, the applicable window period during which respondent, as a judicial candidate, could participate in authorized political activity, ended six months after the November 1999 election, *i.e.*, on or about May 2, 2000.

8. Respondent retained surplus funds totaling $10,923 in his campaign committee account until December 22, 2000, which was more than seven months after the window period ended and more than a year after his election to the Supreme Court. Respondent failed to take steps to close his campaign committee account within a reasonable time after his election to the Supreme Court.

9. On December 22, 2000, respondent authorized his Supreme Court campaign committee to contribute $10,923 in unexpended campaign funds to the Respect for Law Alliance, a not-for-profit organization.

As to Charge III of the Formal Written Complaint:

10. Respondent authorized his Supreme Court campaign committee to spend $19,949 in unexpended campaign funds to finance an induction reception and dinner that was held at the Brooklyn Marriott Hotel on November 18, 1999, to celebrate his election to the Kings County Supreme Court. More than 500 persons were invited; and more than 250 guests, including family members, members of the judiciary, and employees of the Unified Court System, attended the reception. About 175 persons had contributed to respondent's campaign.

11. The amount expended for the dinner was an unreasonably large amount of campaign funds to be spent for a dinner to celebrate respondent's induction as a Supreme Court Justice. Pursuant to existing rules and policies, the surplus funds should have been returned to contributors on a *pro rata* basis or used to purchase office equipment or furniture for the court.

As to Charge IV of the Formal Written Complaint:

12. Between November 1999 and March 2000, as set forth below, respondent authorized his Supreme Court campaign committee to make payments totaling $710 from unexpended campaign funds for his attendance at various post-election, non-political functions, which was an unjustified use of unexpended campaign funds.

DATE	AMOUNT	EVENT
11/13/99	$75	Dinner of the Association of Justices of the Supreme Court of the State of New York, held on 12/8/99
11/13/99	$175	Dinner of the Brooklyn Bar Association, held on 12/6/99
11/13/99	$80	Brooklyn Law School alumni luncheon, held on 12/5/99
2/18/00	$200	Dinner of the Flatbush Development Corp., a not-for-profit organization
2/18/00	$60	Breakfast of the Council of Jewish Organizations of Flatbush, Inc., a not-for-profit organization
3/8/00	$120	Function of Queensborough Community College

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2 100.5(A)(1) and 100.5(A)(5) of the Rules Governing Judicial Conduct. Charges I through IV of the Formal Written Complaint are sustained, and respondent's misconduct is established.

By authorizing unexpended funds from his Civil Court campaign to be transferred to his campaign for Supreme Court in 1999 and by authorizing unexpended funds from his Supreme Court campaign to be used for his private benefit, respondent violated both the letter and spirit of the ethical standards pertaining to judicial campaign funds.

The Rules Governing Judicial Conduct explicitly prohibit the use of campaign funds for the candidate's private benefit (Section 100.5[A][5]), and, since 1987, numerous opinions of the Advisory Committee on Judicial Ethics have interpreted this provision to strictly limit the permissible use of any unexpended funds. The Advisory Opinions have held unequivocally that unexpended campaign funds may not be used in a subsequent campaign for office, or even contributed to charity, but must be returned to the donors on a *pro rata* basis or used to purchase such items as office equipment which become the property of the court system (Adv. Op. 87-02, 88-59, 88-89, 89-152, 90-6, 91-87, 92-68, 92-94, 92-104, 93-04).

The transfer of over $19,000 raised by respondent's Civil Court campaign to his campaign for Supreme Court was clearly improper, even with the consent of the

contributors (*see* Adv Op 91-12, 93-15). In this case, the "consent" of the donors was passive at best, since respondent's campaign placed the onus on the donors to specifically request a refund if they did not want the funds to be transferred. In any event, the consent of donors would not permit a candidate to use unexpended campaign funds in a manner prohibited by the ethical standards.

Under the applicable guidelines, it was also improper for respondent to use campaign funds totaling $710 to attend various post-election, non-political functions, $11,000 for a contribution to the Respect For Law Alliance, a not-for-profit organization, and nearly $20,000 for a post-election reception and dinner. There is no justification in the rules for using unexpended campaign funds to pay such expenses. Although surplus funds may be used to finance a "modest and reasonable" victory party (Adv Op 87-16), the amount expended for respondent's celebratory reception and dinner was, as he has acknowledged, "unreasonably large."

By permitting his campaign funds to be used in a manner inconsistent with well-established ethical standards, respondent was insensitive to the special ethical obligations of judges and judicial candidates.

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

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

Judge Luciano and Judge Peters were not present.

CERTIFICATION

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

Dated: September 22, 2003

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