

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

MARION T. McNULTY,

a Justice of the Supreme Court,
Suffolk County.

THE COMMISSION:

Raoul Lionel Felder, Esq., Chair
Honorable Thomas A. Klonick, Vice Chair
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Jean Joyce, Of Counsel) for the Commission

Jones Garneau, LLP (by Deborah A. Scalise) for the Respondent

The respondent, Marion T. McNulty, a Justice of the Supreme Court,
Suffolk County, was served with a Formal Written Complaint dated December 5, 2006,
containing one charge.

On February 27, 2007, the administrator of the Commission, respondent's counsel and respondent entered into an Agreed Statement of Facts pursuant to Judiciary Law §44(5), stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be admonished and waiving further submissions and oral argument.

On March 8, 2007, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent was admitted to the practice of law in New York in 1976. In 1987, she was elected a Judge of the Family Court to a ten-year term commencing January 1988. In 1996, she was appointed an Acting Justice of the Supreme Court. In 1997, respondent was reelected as a Judge of the Family Court to a second ten-year term, commencing January 1998. In 2004, she was appointed Supervising Judge of the Matrimonial Parts in Suffolk County. In 2005, respondent was elected as a Justice of the Supreme Court, for a 14-year term commencing January 2006.

2. In or about 1987, respondent joined the private organization Decision Women in Commerce and Professions ("DWCP").

3. DWCP meets monthly for networking and fund-raising purposes. The organization raises and donates funds primarily to local not-for-profit organizations benefiting women and families. Organizations receiving donations from DWCP must submit documentation to DWCP's Donations Committee, of which

respondent has never been a member. DWCP's administrative costs are funded from members' dues and dinner costs.

4. In or about 2003, 2005 and 2006, respondent participated in fund-raising activities of DWCP.

5. In or about 2003, respondent created a flyer for a DWCP fundraiser and personally handed out copies of the flyer to court employees and attorneys who had expressed an interest in attending DWCP events.

6. In early 2005, respondent prepared and mailed a flyer to acquaintances, providing information about an April 2005 DWCP event, referring to her "many friends" who had attended past fund-raisers and stating in part that "[a]s always, there will be the stupendous basket auction of themed baskets, table prizes, huge raffle, good friends, great food and Judge McNulty will have a drawing of her own for a ticket from the checks forwarded to her by April 11th, a mere week before the party." A copy of the flyer is attached as Exhibit A to the Agreed Statement of Facts.

7. In early 2006, respondent prepared a flyer to accompany a DWCP invitation to an April 2006 fund-raiser, copies of which are attached as Exhibits B and C to the Agreed Statement of Facts. Respondent prepared the flyer, printed out 30 or more copies of it, placed copies of the flyer into envelopes along with copies of the DWCP invitation, and addressed, stamped and mailed the envelopes at her own expense to between 24 and 27 friends and attorneys. With respect to the April 2006 fund-raiser:

A. Respondent sent flyers to some attorneys who had previously appeared before her in court, and discussed the fund-raiser with some attorneys in the courthouse hallway;

B. Respondent distributed flyers to interested court personnel and posted a large, glossy version of DWCP's invitation on the door to her chambers in the private hallway of the courthouse. Respondent's secretary posted one of respondent's flyers in the Family Court employees' entranceway; and

C. Respondent's flyer stated that "Judge McNulty will have a drawing of her own for a free ticket from the checks forwarded to her by April 17th." The flyer indicated that interested persons should give respondent a check for the fund-raiser before April 17, and that respondent would randomly pick one check and pay for that person's ticket, returning the winner's check to him or her. Some individuals personally handed respondent checks, and some mailed them to respondent's house. Respondent's secretary compiled a list of names, given to her by respondent, of individuals who had given respondent checks for the fund-raiser.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A), 100.2(C) and 100.4(C)(3)(b)(i) and (iv) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article 6, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charge I of the Formal Written Complaint is sustained, and respondent's misconduct is established.

While judges may engage in civic and charitable activities, the prestige of judicial office may not be used in fund-raising. A judge may not “personally participate in the solicitation of funds or other fund-raising activities” or “use or permit the use of the prestige of judicial office for fund-raising” (Rules, §100.4[C][3][b][i] and [iv]). Over a four-year period, respondent violated these well-established ethical rules by personally participating in fund-raising activities on behalf of a civic organization.

Respondent’s activities included preparing flyers to fund-raising events, handing out copies of the flyer to court employees and attorneys, encouraging attendance at fund-raisers by referring in flyers to her “many friends” who had attended in the past, and conducting drawings from among the checks forwarded to her. The prize for respondent’s drawing was a free ticket, which respondent had paid for, to the fund-raising event.

Compounding respondent’s misconduct in this regard is that her activities included substantial activity in the courthouse and direct solicitations of attorneys who had appeared before her. She spoke to attorneys and court employees, collected checks in the courthouse, and posted flyers in the courthouse. Her secretary compiled a list of names for respondent of individuals who had given checks to respondent for the 2006 fund-raiser. Respondent should have recognized that her highly visible participation in the fund-raising activities as well as her direct approaches to court employees and attorneys who appeared before her could have a considerable coercive effect.

Although there is nothing in the record before us that discloses whether

respondent knew that such conduct is improper, we have to assume that all judges know that participating in fund-raising is strictly prohibited. The rules are clear; the Advisory Committee on Judicial Ethics has warned judges for decades not to engage in fund-raising activities; and the Commission has addressed the subject in its annual reports. If respondent had any doubt whether she could engage in such activities, she could have requested a confidential opinion from the Advisory Committee.

In Matter of Kaplan, 1984 Annual Report 112 (Comm. on Judicial Conduct), the Commission publicly admonished a judge for assisting his wife's fund-raising efforts. The judge's wife had asked attorneys to contribute by purchasing journal ads and the judge in his court chambers gave the attorneys the advertising contracts for their signatures. The Commission stated at that time:

A judge may not "solicit funds for any educational, religious, charitable, fraternal or civic organization or use or permit the use of the prestige of the office for that purpose...."

The Commission said further:

Although the funds were solicited by his wife, respondent, by distributing and collecting the advertising contracts, used the prestige of his office to assist her fund-raising activities. That he did so in his chambers to lawyers exacerbates his violation of the rule. Lawyers with matters pending before respondent or who regularly appeared in his court could not help feeling pressured to cooperate in his wife's efforts in order to maintain good relations with respondent.

Respondent's fund-raising and direct solicitations in the courthouse were considerably more open and extensive than Judge Kaplan's efforts to assist his wife in fund-raising. With two decades of experience as a judge, respondent should have known

that her conduct in 2003, 2005 and 2006 violated clear rules against fund-raising and soliciting contributions.

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

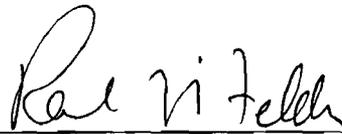
Mr. Felder, Judge Klonick, Mr. Coffey, Mr. Emery, Mr. Harding, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

Ms. DiPirro was not present.

CERTIFICATION

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

Dated: March 16, 2007



Raoul Lionel Felder, Esq., Chair
New York State
Commission on Judicial Conduct