

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

ROBERT J. MULLER,

a Justice of the Supreme Court,  
Fourth Judicial District, Warren County.

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THE COMMISSION:

Joseph W. Belluck, Esq., Chair  
Taa Grays, Esq., Vice Chair  
Honorable Fernando M. Camacho  
Stefano Cambareri, Esq.  
Brian C. Doyle, Esq.  
Honorable John A. Falk  
Honorable Robert J. Miller  
Nina M. Moore, Ph.D.  
Marvin Ray Raskin, Esq.  
Honorable Anil C. Singh  
Akosua Garcia Yeboah

APPEARANCES:

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

Anderson, Moschetti and Taffany, PLLC (Peter J. Moschetti, Jr.) for  
respondent

Respondent, Robert J. Muller, a Justice of the Supreme Court, Fourth

Judicial District, Warren County, was served with a Formal Written Complaint (“Complaint”) dated September 30, 2024 containing three charges. Charge I of the Complaint alleged that from September 2022 to January 2024, when the Appellate Division remanded the matter to a different judge, respondent presided over and failed to disclose or disqualify himself from the personal injury case of *Minckler and Howell v Estate of Thomas Shelly, III, D’Ella, Inc., D’Ella Honda of Glens Falls, and D’Ella Automotive, Inc.* (hereinafter *Minckler*), notwithstanding that the law firm representing the D’Ella defendants – Bartlett, Pontiff, Stewart & Rhodes (“Bartlett Pontiff”) – held a fundraiser in support of respondent’s candidacy in 2022 for re-election, and one of the partners in that firm was a member of respondent’s re-election committee. In addition, respondent withheld Opinion SC2022-048 dated October 12, 2022 from the Judicial Campaign Ethics Subcommittee of the Advisory Committee on Judicial Ethics until after his re-election and he declined to recuse himself from the *Minckler* case. Charge II alleged that from May 2022 to November 8, 2022, respondent failed to disqualify himself, subject to remittal, from numerous cases involving attorneys from four law firms that were engaged in fundraising for respondent’s 2022 judicial campaign, contrary to a number of previously published Advisory Opinions and notwithstanding the October 12, 2022 Opinion issued to respondent. Charge III alleged that from December 2022 to January 2024, respondent failed to disqualify

himself, subject to remittal, from three cases in which his 2022 judicial campaign committee Finance Chair and Finance Co-Chair appeared as attorneys, notwithstanding that multiple previously published Advisory Opinions stated that during a judge's campaign and for a period of two years following the election, the judge was required to disqualify himself, subject to remittal, in any case involving attorneys who held leadership positions in the judge's campaign. Respondent filed a Verified Answer dated November 18, 2024.

On February 10, 2025, the Administrator, respondent's counsel and respondent entered into an Agreed Statement of Facts ("Agreed Statement") pursuant to Section 44, subdivision 5, of the Judiciary Law, stipulating that the Commission make its determination based upon the agreed facts, recommending that respondent be censured and waiving further submissions and oral argument.

On March 13, 2025, the Commission accepted the Agreed Statement and made the following determination:

1. Respondent was admitted to the practice of law in New York in 1979. He has been a Justice of the Supreme Court, Fourth Judicial District, Warren County, since January 1, 2009. Although respondent's current term expires on December 31, 2036, he turns 70 years of age in 2025 and therefore must retire on December 31, 2025, unless he seeks certification to serve an additional two years,

pursuant to Article VI, Section 25(b) of the Constitution of the State of New York, and Section 115 of the Judiciary Law.

As to Charge I of the Formal Written Complaint

2. In November 2020, *Minckler v D'Ella*, a personal injury case in Supreme Court, Warren County, was assigned to respondent, who kept the assignment until January 2024. Attorney Christopher P. Flint of the law firm Cooper Erving & Savage represented the plaintiffs. Attorney Kenneth L. Bobrow of the law firm Felt Evans represented the Estate of Thomas E. Shelly, III, and Attorney Malcolm B. O'Hara, a principal at the law firm Bartlett, Pontiff, Stewart & Rhodes, represented the *D'Ella* defendants.

3. In December 2021, respondent publicly announced his candidacy for re-election as Supreme Court Justice for the Fourth Judicial District, Warren County, in the 2022 election cycle.

4. In August 2022, respondent secured nominations from the Democratic and Conservative political parties and, among other things, formed the Committee to Re-Elect Robert J. Muller Supreme Court Justice and established a campaign website.

5. In September and October 2022, respondent's campaign website listed Malcolm B. O'Hara as a member of his campaign committee and as one of several dozen attorneys who had endorsed respondent's candidacy.

6. In September and October 2022, respondent's campaign website posted an invitation to a fundraiser for respondent's campaign hosted by Bartlett Pontiff at the Queensbury Hotel in Glens Falls on October 6, 2022.

7. In late September 2022, the *Minckler* plaintiffs learned of Mr. O'Hara's and Bartlett Pontiff's involvement in respondent's re-election campaign from a source other than respondent. Respondent had not disclosed to the parties in *Minckler* the involvement of either Mr. O'Hara or Bartlett Pontiff in his re-election campaign.

8. On October 3, 2022, during a phone conference in connection with the *Minckler* case, Mr. Flint requested on behalf of the plaintiffs that respondent recuse himself based on the involvement of Mr. O'Hara and Bartlett Pontiff in his re-election campaign. Respondent instructed Mr. Flint to make his request in writing, on notice to defense counsel.

9. On October 4, 2022, Mr. Flint emailed a letter requesting respondent's recusal to respondent, with a copy to defense counsel, based on "Attorney O'Hara and the Bartlett Pontiff firm's direct fundraising involvement" in respondent's re-election campaign.

10. By email dated October 4, 2022, Mr. O'Hara said he disagreed with Mr. Flint's request, but disclosed that he was a member of respondent's campaign

committee and that he planned to write a letter on respondent's behalf to a local newspaper.

11. On October 6, 2022, during a video conference with the attorneys in the *Minckler* case, respondent declined to recuse himself.

12. On October 6, 2022, at respondent's direction, his Principal Law Clerk, Jennifer Purcell Jeram, (A) advised the attorneys in *Minckler* via email that respondent had sought an Opinion from the Judicial Campaign Ethics Center<sup>1</sup> ("JCEC") "relative to the issue of his recusal in this matter," and (B) asked Mr. Flint to hold any motion practice in abeyance pending receipt of an Opinion from JCEC, which respondent would "promptly" share with all counsel.

13. On October 6, 2022, Bartlett Pontiff held the fundraiser for respondent's re-election campaign at the Queensbury Hotel. Respondent and Mr. O'Hara were in attendance.

14. On October 7, 2022, respondent sought advice from JCEC via telephone and email regarding Mr. Flint's recusal request.

15. On October 12, 2022, respondent received Opinion SC2022-048 from the Judicial Campaign Ethics Subcommittee, which advised respondent *inter alia* that he was "disqualified, subject to remittal, from presiding over matters involving

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<sup>1</sup> The Judicial Campaign Ethics Center and the Judicial Campaign Ethics Subcommittee are affiliated with the Unified Court System's Advisory Committee on Judicial Ethics.

defense counsel and his law firm, including partners and associates, *during the course of [his] judicial campaign*” (emphasis in original). Respondent did not share the Opinion with the parties or attorneys in the *Minckler* matter at that time.

16. In mid-October 2022, multiple local newspapers published a letter by Mr. O’Hara endorsing respondent’s re-election campaign.

17. On October 14, 2022, in connection with the *Minckler* case, Mr. O’Hara filed a motion to strike the plaintiffs’ Note of Issue, which had been filed on September 21, 2022, and, alternatively, requested an extension of time to conduct an independent medical examination of the plaintiff.

18. By email dated October 20, 2022, Mr. Flint asked respondent to hold Mr. O’Hara’s motion in abeyance pending the outcome of respondent’s decision regarding recusal. Respondent did not respond to Mr. Flint’s request.

19. On November 8, 2022, respondent was re-elected to judicial office.

20. By letter dated November 16, 2022, respondent provided the attorneys in the *Minckler* case with a copy of Opinion SC2022-048 and wrote, “I accept the subcommittee’s guidance and decline the request for recusal.”

21. On November 23, 2022, the plaintiffs filed a formal motion for respondent’s recusal from the *Minckler* case.

22. By Order dated January 4, 2023, respondent denied the plaintiffs’ recusal motion.

23. The plaintiffs appealed respondent's denial of the recusal motion to the Appellate Division, Third Department, which by Memorandum and Order dated January 4, 2024, found that respondent abused his discretion in denying the motion for recusal and *inter alia* criticized him for (A) not disclosing Mr. O'Hara's and Bartlett Pontiff's involvement in his re-election campaign, (B) disregarding the advice of Opinion SC2022-048 by not disqualifying himself after receiving it, and (C) failing to disclose the Opinion until a month later, after he had been re-elected to judicial office. The Appellate Division remanded the case to another judge.

As to Charge II of the Formal Written Complaint

24. In December 2021, respondent publicly announced his candidacy for re-election as Supreme Court Justice for the Fourth Judicial District, Warren County, in the 2022 election cycle.

25. On May 12, 2022, the law firms of E. Stewart Jones Hacker Murphy and Maguire Cardona co-hosted a fundraiser for respondent's judicial campaign at the Fort Orange Club in Albany, New York.

26. On July 28, 2022, the law firm of McPhillips, Fitzgerald & Cullum hosted a fundraiser for respondent's judicial campaign at the Fort William Henry Conference Center, in Lake George, New York.

27. On October 6, 2022, Bartlett Pontiff hosted a fundraiser for respondent's campaign at the Queensbury Hotel, in Queensbury, New York.



28. On October 12, 2022, respondent received Opinion SC2022-048 from the Judicial Campaign Ethics Subcommittee of the Advisory Committee on Judicial Ethics, *inter alia* advising him that during his campaign, he was disqualified, subject to remittal, from presiding over matters involving counsel and a law firm that had hosted fundraisers for him.

29. On November 8, 2022, respondent was re-elected to judicial office.

30. From May 2022 to November 8, 2022, Respondent failed to disqualify himself, subject to remittal, from cases involving attorneys from the law firms of (A) E. Stewart Jones Hacker Murphy, (B) Maguire Cardona, (C) McPhillips, Fitzgerald & Cullum, and (D) Bartlett Pontiff, notwithstanding that each law firm was engaged in fundraising activity in support of respondent's re-election campaign.

As to Charge III of the Formal Written Complaint

31. In December 2021, respondent publicly announced his candidacy for re-election as Supreme Court Justice for the Fourth Judicial District, Warren County, in the 2022 election cycle.

32. John J. Carusone, Jr., Esq., and Dennis J. Tarantino, Esq., held the positions of Finance Chair and Finance Co-Chair, respectively, on respondent's campaign committee for re-election to judicial office.

33. On October 12, 2022, respondent received Opinion SC2022-048 from the Judicial Campaign Ethics Subcommittee of the Advisory Committee on Judicial Ethics, *inter alia* advising him that during his campaign, he was disqualified, subject to remittal, from presiding over matters involving appearances by counsel who are active in his campaign. Opinion SC2022-048 also cited Advisory Opinions 03-64, 09-245 and 12-164, which each held *inter alia* that a judge must recuse, subject to remittal, in any case involving attorneys who held leadership positions in the judge's campaign, such as "campaign manager, campaign coordinator, finance chair or treasurer," during the campaign and for two years beyond the date of the election.

34. On November 8, 2022, respondent was re-elected to judicial office.

35. From December 21, 2022, to August 24, 2023, respondent failed to disqualify himself, subject to remittal, from *Cerilli v Town of Easton*, in which Mr. Carusone represented the plaintiff.

36. From June 6, 2023, to August 21, 2023, respondent failed to disqualify himself, subject to remittal, from *City of Glens Falls v List of Delinquent Taxes 2021*, in which Mr. Tarantino represented the plaintiff.

37. From July 27, 2023, to January 4, 2024, respondent failed to disqualify himself, subject to remittal, from *101 Fiddlers Elbow Road, LLC v Town of Greenwich et al.*, in which Mr. Carusone represented the plaintiff.

### **Additional Factors**

38. Respondent has stipulated that he will retire from judicial office on December 31, 2025, and will not seek certification to continue judicial service.

39. Respondent has been cooperative with the Commission throughout this proceeding. For example, in response to a Commission inquiry on March 27, 2024, about his failure to recuse in *Minckler* and whether he had presided over any other matters involving Bartlett Pontiff during his candidacy, respondent identified such cases and volunteered information not previously known to the Commission about fundraisers held for him by the other law firms identified herein.

40. Respondent acknowledges and regrets that he did not promptly disclose Opinion SC2022-048 to the attorneys and parties in *Minckler*. He claims to have interpreted the Opinion in such a way as to allow him to avoid recusal if he took no judicial action in the case between his receipt of the Opinion and the date of the election on November 8, 2022. Respondent now concedes this interpretation was erroneous and self-serving, in that it avoided public disclosure of the facts herein while he was a candidate for reelection.

41. Respondent acknowledges that, in addition to *Minckler*, Opinion SC2022-048 should have prompted him to disqualify himself immediately, subject to remittal, from all matters listed on Schedule 1 attached to the Agreed Statement of Facts.

42. Respondent acknowledges that it was improper for him to have presided over cases involving his campaign Finance Chair and Finance Co-Chair within two years of his campaign, and that the Opinions cited in Opinion SC2022-048 should have put him on notice that he was required to recuse himself from such cases, subject to remittal.

43. Following receipt of the Commission's inquiry dated March 27, 2024, respondent wrote to the attorneys involved in each matter identified in Charges I and II, disclosed the respective involvement of the law firm and/or attorneys during his 2022 judicial campaign, and offered to recuse himself at the request of a party. In one matter, respondent promptly recused himself at a party's request. No other parties requested respondent's recusal.

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(E)(1) and 100.3(F) of the Rules Governing Judicial Conduct ("Rules") and should be disciplined for cause, pursuant to Article VI, Section 22, subdivision a, of the New York State Constitution and Section 44, subdivision 1, of the Judiciary Law. Charges I, II and III of the Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions and respondent's misconduct is established.

Respondent acted in a manner that was inconsistent with his obligations to maintain high standards of conduct and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” (Rules, §§100.1, 100.2(A)) Section 100.3(E)(1) of the Rules provides: “[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . .” Respondent violated his ethical obligations when he failed to disqualify or disclose that the law firm representing defendants in the *Minckler* matter hosted a fundraiser for his re-election campaign and defense counsel was a member of respondent’s campaign committee. Moreover, respondent improperly withheld Opinion SC2022-048 from counsel in the *Minckler* matter and declined to recuse himself. Similarly, respondent failed to disqualify or disclose that, during his campaign, law firms that hosted a fundraiser for his campaign represented a party in several matters pending before him. In addition, within two years of the conclusion of his campaign, respondent failed to disqualify or disclose that the Finance Chair and Finance Co-Chair of his judicial re-election campaign appeared before him in three matters.

It is well-settled that disqualification is appropriate if a judge’s impartiality could reasonably be questioned. *See, Matter of Fabrizio*, 65 NY2d 275 (1985) (judge failed to disqualify or disclose in a small claims matter in which the defendant was his dentist); *Matter of Kraker*, 2023 Ann Rep of NY Commn on Jud

Conduct at 190 (judge failed to disqualify or disclose that a plaintiff in a pending matter was a customer of judge's business). In *Matter of Doyle*, 23 NY3d 656 (2014), the judge, *inter alia*, did not disqualify or disclose when an attorney appearing before her had a leadership role in the judge's election campaign. The Court held, ". . . a judge's obligation to disqualify herself based on the appearance of impropriety has long been in place . . ." *Id.* at 660. Respondent's multiple failures to disqualify or disclose created at least the appearance of impropriety and brought reproach upon the judiciary.

Compounding respondent's misconduct, he withheld the October 12, 2022 Opinion from counsel in the *Minckler* matter until after his re-election. Respondent did this despite directing his principal law clerk to advise the parties in *Minckler* that such opinion would be "promptly" shared with counsel. In reviewing respondent's failure to recuse, the Appellate Division, Third Department stated, "As judges need to avoid even the appearance of impropriety, Justice Muller should have disclosed the JCEC letter upon receipt and recused from the matter as soon as possible . . ." *Minckler v D'Ella, Inc.*, 223 AD3d 980, 982 (3<sup>rd</sup> Dept 2024) (citations omitted) Respondent has acknowledged that Opinion SC2022-048 should have prompted him to immediately disqualify himself, subject to remittal, from *Minckler* and the 39 pending matters in which a host or co-host of a fundraiser for his campaign represented a party. Respondent's inattention to his

ethical obligations undermined public confidence in the integrity and impartiality of the judiciary.

In accepting the jointly recommended sanction of censure, we have taken into consideration that respondent will retire from judicial office on December 31, 2025 and has acknowledged that his conduct was improper and warrants public discipline. We trust that respondent has learned from this experience and that during his remaining time on the bench he will act in strict accordance with his obligation to abide by all the Rules Governing Judicial Conduct.

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


Mr. Belluck, Ms. Grays, Judge Camacho, Mr. Cambareri, Mr. Doyle, Judge Falk, Professor Moore, Mr. Raskin, Judge Singh and Ms. Yeboah concur.

Judge Miller was not present.

#### CERTIFICATION

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

Dated: March 28, 2025

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