

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

JAMES E. VAN SLYKE,

a Justice of the New Hartford Town Court
and New Hartford Village Court, Oneida
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 (Cathleen S. Cenci, Of Counsel) for the
Commission

George E. Curtis for the Respondent

The respondent, James E. Van Slyke, a justice of the New Hartford Town

Court and New Hartford Village Court, Oneida County, was served with a Formal Written Complaint September 14, 2006, containing one charge. Respondent filed a verified answer dated October 18, 2006.

On November 28, 2006, 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 December 7, 2006, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a justice of the New Hartford Town Court since 1985, and justice of the New Hartford Village Court since 1986. He is not an attorney.
2. On or about September 27, 2005, respondent held a bench trial in *People v. Sebastiano Pagano*, in which the defendant was charged with Harassment, 2nd Degree. The defendant was represented at the trial by attorney Carl Scalise, and the People were represented by Michael Coluzza, Esq.
3. As set forth in the transcript annexed as Exhibit A to the Agreed Statement of Facts, respondent summarily found Mr. Pagano in contempt of court and imposed a \$50 fine, without having warned Mr. Pagano concerning his allegedly contemptuous conduct or provided him with an opportunity to desist or to make a statement on his own behalf. Thereafter, respondent failed to issue an order stating the

facts which constitute the offense, as required by Section 755 of the Judiciary Law.

4. When Mr. Scalise attempted to make a record, respondent summarily found him in contempt of court and imposed a \$50 fine, without having warned Mr. Scalise concerning his allegedly contemptuous conduct or provided him with an opportunity to desist or to make a statement on his own behalf. Thereafter, respondent failed to issue an order stating the facts which constitute the offense, as required by Section 755 of the Judiciary Law.

5. Respondent appreciates that the power to hold a person in summary contempt should be invoked with restraint. Respondent commits himself to exercise such restraint and to observe scrupulously the applicable statutory and decisional mandates should he ever have occasion to exercise the summary contempt power in the future.

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)(1), 100.3(B)(3) and 100.3(B)(6) 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.

The exercise of the enormous power of summary contempt requires strict compliance with mandated safeguards, including giving the accused an appropriate warning and an opportunity to desist from the supposedly contumacious conduct (Jud Law §755; *Doyle v. Aison*, 216 AD2d 634 [3d Dept 1995], *lv den* 87 NY2d 807 [1996];

Loeber v. Teresi, 256 AD2d 747 [3d Dept 1998]). Respondent did not comply with these well-established procedural safeguards when, in *People v. Pagano*, he held both the defendant and his attorney in summary contempt.

It was respondent's obligation to warn the alleged contemnors that their conduct could result in a summary contempt holding and to give them an opportunity to desist from the conduct, and he has stipulated that he failed to do so. The transcript of the proceeding indicates that, without issuing an appropriate warning, respondent held the attorney in contempt for arguing that he had a right to make a response to the prosecutor's summation. An attorney has a right to attempt to assert his client's interests in an appropriate manner, and it would be improper for a judge to use the contempt power to punish him for doing so. *See, Matter of Hart*, 7 NY3d 1 (2006) (judge was censured for holding a litigant in contempt because his attorney attempted to make a record of an out-of-court encounter between the litigant and the judge). Moreover, respondent also owed the defendant a clear warning that his actions could result in a contempt citation, notwithstanding that respondent had earlier expressed annoyance at the defendant's comments and behavior.

The omission of such warnings is not simply an error of law. Had the appropriate warnings and opportunity to desist been provided, it might not have been necessary for respondent to exercise the awesome power of summary contempt in an effort to maintain order.

Additionally, in neither case did respondent issue an order "stating the facts

which constitute the offense and which bring the case within the provisions of this section,” as required by Section 755 of the Judiciary Law. Such an order makes possible an appeal of a summary contempt conviction.

Respondent’s failure to adhere to mandated contempt procedures constitutes misconduct warranting public discipline. *See Matter of Hart, supra; Matter of Lawrence, 2006 Annual Report 206 (Comm on Judicial Conduct); Matter of Mills, 2005 Annual Report 185 (Comm on Judicial Conduct); Matter of Teresi, 2002 Annual Report 163 (Comm on Judicial Conduct); Matter of Recant, 2002 Annual Report 139 (Comm on Judicial Conduct).*

In mitigation, we note that the defendant and his attorney did not suffer a loss of liberty as a result of respondent’s actions (*compare, Matter of Mills, Matter of Teresi and Matter of Recant, supra*). We also note that respondent commits himself to exercise restraint and to observe scrupulously the applicable statutory and decisional mandates should he ever have occasion to exercise the summary contempt power in the future.

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

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

CERTIFICATION

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

Dated: December 18, 2006

A handwritten signature in black ink, appearing to read "Raoul Lionel Felder", is written over a solid horizontal line.

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