

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

JOHN T. GREANEY,

a Justice of the Berlin Town Court,
Rensselaer 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

Brian E. Donohue for the Respondent

The respondent, John T. Greaney, a justice of the Berlin Town Court,
Rensselaer County, was served with a Formal Written Complaint dated April 19, 2006,

containing five charges.

By motion dated May 24, 2006, Commission counsel moved for summary determination, pursuant to Section 7000.6(c) of the Commission's operating procedures and rules (22 NYCRR §7000.6[c]), based on respondent's failure to answer the formal written complaint. Respondent did not file a response to the motion. By Decision and Order dated November 1, 2006, the Commission granted the motion for summary determination and determined that the charges were sustained and that respondent's misconduct was established.

The Commission scheduled oral argument on the issue of sanctions for December 7, 2006. On November 21, 2006, Counsel to the Commission filed a memorandum recommending that respondent be removed from office. Respondent filed no papers on the issue of sanctions. By letter dated December 6, 2006, respondent's attorney waived oral argument. By letter dated December 6, 2006, Commission counsel waived oral argument but advised the Commission that he would appear if requested to do so. The Commission requested Commission counsel to appear for argument, which was held on December 7, 2006.

The Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent has been a justice of the Berlin Town Court, Rensselaer County since January 2004. He is not a lawyer.

As to Charge I of the Formal Written Complaint:

2. In or about July 2004, as set forth below, respondent engaged in prohibited partisan political activity on behalf of other candidates for elective office, in that he participated in the collection of signatures on designating petitions for Independence Party and Conservative Party candidates for local political office, and, thereafter, in the filing of such petitions with the Rensselaer County Board of Elections.

3. In or about July 2004, respondent asked Leonardo DiNova, a resident of the Town of Berlin and a registered member of the Independence Party, to assist him in collecting signatures on Independence Party primary designating petitions. Respondent then drove Mr. DiNova in respondent's vehicle to various locations in the Town of Berlin to collect the signatures on designating petitions, copies of which are attached as Exhibits 1 and 2 to the Formal Written Complaint. Respondent requested that Mr. DiNova sign and that Steve Bell witness two designating petitions, copies of which are attached as Exhibits 3 and 4 to the Formal Written Complaint.

4. Respondent thereafter filed or caused such petitions to be filed with the Rensselaer County Board of Elections.

5. In or about July 2004, respondent solicited the signatures of Walter Allen Yerton, James Jones, Arthur Griswold and others on Conservative Designating Petitions, copies of which are annexed as Exhibits 5, 6 and 7 to the Formal Written Complaint. Respondent requested that Berlin town resident James W. Jones sign as a witness to the signatures on Exhibits 5 and 6, notwithstanding that respondent was aware

that Mr. Jones did not, in fact, witness the signatures on the petitions. Respondent then filed or caused to be filed the originals of Exhibit 5, 6 and 7 with the Rensselaer County Board of Elections. Mr. Jones was not aware that he was listed as a candidate for office.

6. In or about July 2004, respondent filed or caused to be filed with the Rensselaer County Board of Elections a Conservative Designating Petition, a copy of which is annexed as Exhibit 8 to the Formal Written Complaint, knowing that the signature of W. Allen Yerton thereon was not genuine.

As to Charge II of the Formal Written Complaint:

7. On or about February 13, 2006, during the Commission's investigation of the matters addressed in Charge I herein, respondent failed to cooperate with the Commission, in that he appeared at the Commission to give testimony and, notwithstanding that he had not been indicted or charged with a crime, he refused to answer questions regarding his conduct, asserting that to do so might incriminate him.

As to Charge III of the Formal Written Complaint:

8. From in or about August 2004 to in or about January 2005, as set forth below, while presiding over *People v. Christopher Unger*, in which the defendant was charged with Criminal Possession of Marijuana, 5th Degree, respondent failed to effectuate the defendant's right to counsel, attempted to elicit incriminating statements from the defendant, engaged in unauthorized *ex parte* communications and conveyed the impression that he was biased against the defendant.

9. On or about August 6, 2004, respondent conducted an arraignment of Christopher Unger on the charge of Criminal Possession of Marijuana, 5th Degree, and committed Mr. Unger to jail in lieu of bail, without effectuating the defendant's rights to counsel and assigned counsel as required by Section 170.10(4)(a) of the Criminal Procedure Law. The defendant pleaded not guilty.

10. On or about August 18, 2004, when Mr. Unger was produced in court, Assistant District Attorney Rebecca Bauscher argued for his release since he had no prior criminal record and had already been incarcerated in lieu of bail without counsel for twelve days. Respondent refused to release the defendant and questioned him as to where he had gotten the marijuana. After ADA Bauscher advised the defendant not to respond since he was unrepresented, respondent agreed to release him and adjourned the case to September 15, 2004.

11. On or about September 15, 2004, prior to the arrival in court of the assistant public defender now assigned to represent Mr. Unger, respondent advised ADA Bauscher that he wanted the maximum jail sentence for Mr. Unger, whom respondent characterized as a "liar" to Ms. Bauscher. Based on his out of court *ex parte* communication with the innkeeper of the boarding house in which Mr. Unger lived, respondent believed that Mr. Unger had lied to the innkeeper by saying he was a college student.

12. In or about late September 2004, while the *Unger* case was pending before him, respondent telephoned the Sand Lake barracks of the New York State Police

and requested to speak with Trooper John Craney, who had arrested the defendant. When informed by Trooper Tracy Prusky that Trooper Craney was on vacation until mid-October, respondent informed Trooper Prusky that Christopher Unger would be a good person to speak with regarding “activities” in the Berlin area, that after a trooper spoke with Mr. Unger, the trooper should contact the DA’s office and advise them of Mr. Unger’s assistance, and that unless the ADA advised respondent that Mr. Unger had provided such assistance, respondent intended to sentence him to three months in jail. Respondent informed Trooper Prusky that the interview of Mr. Unger would have to take place prior to Mr. Unger’s next court appearance scheduled on October 20, 2004.

13. Thereafter, on October 7, 2004, at respondent’s behest, Trooper Prusky interviewed Christopher Unger concerning his knowledge of underage drinking and marijuana usage in the area. After the trooper reported the matter to ADA Bauscher, Ms. Bauscher notified Mr. Unger’s attorney, Assistant Public Defender John Turi.

14. In or about January 2005, after Mr. Turi moved to disqualify respondent for having spoken to Trooper Prusky, respondent disqualified himself from the *Unger* case.

As to Charge IV of the Formal Written Complaint:

15. On or about November 17, 2004, as set forth below, respondent expressed bias and hostility toward the Rensselaer County District Attorney’s Office and attempted to intimidate ADA Rebecca Bauscher and District Attorney Patricia DeAngelis from making a complaint about him to the Commission.

16. On or about November 17, 2004, respondent asked to speak with ADA Rebecca Bauscher in chambers. Respondent closed the door and said to Ms.

Bauscher, *inter alia*:

- A. that respondent had been the Republican Town Chairman for 20 years and knew a lot of people and had heard from a good source that the DA's office was trying to "take [respondent] down";
- B. that he was never talking to Ms. DeAngelis again;
- C. that respondent had worked for Senator Guy Vellela;
- D. that respondent knew a lot of "powerful" people and mentioned his position on the Motor Vehicle Auto Theft and Insurance Fraud Prevention Board (which provides grants to the DA's office);
- E. that respondent was expecting a call from Attorney General Elliot Spitzer concerning an insurance issue; and
- F. that if a complaint were made to the Commission, respondent would not "go down lightly."

17. The District Attorney nevertheless made a complaint to the Commission about respondent's conduct.

As to Charge V of the Formal Written Complaint:

18. In and around 2004, as set forth below, while presiding over various criminal cases, respondent engaged in unauthorized *ex parte* communications and made statements or otherwise engaged in conduct indicating that his impartiality might reasonably be questioned.

19. In or about May or June 2004, while *People v. Corey Manchester* was pending before him, respondent spoke to a small group of students at the school attended by Mr. Manchester and said that they would not be seeing Corey for a long time because he intended to give Mr. Manchester the maximum sentence.

20. In or about May or June 2004, while Mr. Manchester's case was pending, respondent spoke *ex parte* to Ann Maxon, a local bank manager, about Mr. Manchester, told Ms. Maxon about the allegations of the charge against Mr. Manchester and stated that he felt that Mr. Manchester should be jailed for a long time.

21. In or about June 2004, in *People v. William Hammersmith*, respondent dismissed the charge without the required notice to the prosecution pursuant to Sections 170.45 and 210.45 of the Criminal Procedure Law.

22. In or about July or August 2004, shortly after issuing a warrant for the arrest of the defendant in *People v. Chad Rubin* for Robbery, respondent went to the bank the defendant had allegedly robbed, spoke to Ann Maxon, the bank manager, and offered to provide her with a copy of the court file.

23. In or about November 2004, in the absence of the defense attorney and ADA, respondent spoke with the sister and mother of the defendant in *People v. Darren Brust* at court and advised them not to pay for the damages allegedly caused by the defendant.

24. In or about November 2004, in *People v. Meagan Goodermote*, in which the defendant was charged with Harassment, respondent advised the defendant and

the complaining witness that he was acting as an “arbitrator” in the case and persuaded Danielle Thompson, the complaining witness, to withdraw the complaint, and respondent dismissed the charge without notice to the district attorney’s office, as required by Sections 170.45 and 210.45 of the Criminal Procedure Law.

25. On or about November 17, 2004, in court, in conversation with ADA Rebecca Bauscher, respondent referred to the mother of the defendant in *People v. Dustin Shamblen* as a “fat bitch.”

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), 100.3(B)(1), 100.3(B)(3), 100.3(B)(4), 100.3(B)(6) and 100.5(A)(1)(c), (d) and (e) of the Rules Governing Judicial Conduct 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. Charges I through V of the Formal Written Complaint are sustained, and respondent’s misconduct is established.

As noted above, respondent failed to answer the Formal Written Complaint, did not respond to the motion for summary determination, and, on the issue of sanctions, submitted no papers and waived oral argument.

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

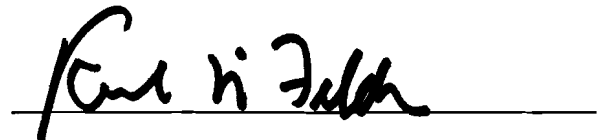
Mr. Felder, Judge Klonick, Mr. Coffey, Ms. DiPirro, Mr. Emery, Mr. Jacob,
Judge Konviser, Judge Peters and Judge Ruderman concur.

Mr. Harding did not participate.

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, reading "Raoul Lionel Felder", is written over a horizontal line.

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