

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

GEORGE J. PULVER, JR.,

a Judge of the Family, County and
Surrogate's Courts, Greene County.

THE COMMISSION:

Lawrence S. Goldman, Esq., Chair
Honorable Frances A. Ciardullo, Vice Chair
Henry T. Berger, Esq.¹
Stephen R. Coffey, Esq.
Colleen C. DiPirro
Richard D. Emery, Esq.
Raoul Lionel Felder, Esq.
Christina Hernandez, M.S.W.
Honorable Daniel F. Luciano
Honorable Karen K. Peters
Alan J. Pope, Esq.
Honorable Terry Jane Ruderman

APPEARANCES:

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

Roemer, Wallens & Mineaux, LLP (by James W. Roemer, Jr.)
for Respondent

¹ Mr. Berger's term ended on March 31, 2004. The terms of Ms. DiPirro and Mr. Emery commenced on April 1, 2004. The vote in this matter was taken on March 18, 2004.

The respondent, George J. Pulver, Jr., a judge of the Family, County and Surrogate's Courts, Greene County, was served with a Superseding Formal Written Complaint dated January 12, 2004, containing three charges. Respondent filed a verified answer dated January 30, 2004.

On March 17, 2004, 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 18, 2004, the Commission approved the agreed statement and made the following determination.

As to Superseding Charges I and II of the Formal Written Complaint:

1. Respondent has been a full-time judge of the Greene County, Family and Surrogate's Courts since January 1, 1996. Prior to that time, respondent was a practicing attorney, and partners with Edward Stiefel and John Winans in the law firm of Pulver and Stiefel. Respondent and Edward Stiefel owned, as tenants in common in a real property entity doing business as "Stiefel and Pulver," the building located at 331 Main Street in Catskill, New York (hereinafter "the building") which housed the law firm as well as other tenants.

2. Respondent withdrew from the law partnership of Pulver and Stiefel

in August of 1995, prior to his election as a judge of the aforementioned courts of Greene County. Effective this date, the partnership of Pulver and Stiefel was dissolved, and although there was not a written dissolution of partnership, the terms and conditions of such dissolution to which Edward Stiefel, John Winans and respondent all agreed were, *inter alia*, as follows:

(a) Effective immediately, respondent agreed to convey his interest in all personalty owned by the law firm of Pulver and Stiefel to the partnership of Stiefel and Winans.

(b) Effective immediately, respondent agreed to convey to the partnership of Stiefel and Winans his interest in Pulver and Stiefel's good will, files, client lists and accounts receivable (except for several designated cases from which respondent would receive future proceeds).

(c) Effective immediately, respondent agreed to convey his interest in the building to John Winans.

(d) Respondent would sign any necessary documents to effectuate this agreement, including the deed transferring his interest in the building to John Winans.

(e) Effective immediately, respondent would receive no income from, and pay no expenses associated with, the building.

(f) Part of the consideration for respondent's actions was that John Winans would assume respondent's liability on the building's outstanding mortgage.

(g) This agreement was motivated, in part, by respondent's promise and

desire to continue the tradition associated with this law firm, the oldest New York law firm in continuity, an interest in which respondent had himself been gratuitously given by former law firm partner H. Milton Chadderdon.

3. Immediately after the dissolution of the law firm of Pulver and Stiefel, the new law firm, known as Stiefel and Winans, created a separate real property business entity entitled Winans and Stiefel for the purpose of managing the building. The creation of this entity is evidence of the intent of all the parties that respondent's real property interests be immediately transferred to John Winans; however, the ministerial act effectuating the transfer of respondent's legal interest in the building did not occur until December 1999, by deed duly recorded in the Greene County Clerk's Office.

4. Respondent asserts, and John Winans confirms, that between November 1995 and December 1999, respondent repeatedly asked John Winans to draw up the deed in order to effectuate the agreement.

5. Since 1988, respondent has been one of the three principals of GEF Development, a "doing business as (D/B/A)" entity duly filed in the Greene County Clerk's Office. This filing put the general public on notice of the relationship. The other two principals of GEF Development are Frank Porto and Edward Stiefel.

6. The sole asset of GEF Development, purchased in 1988 for \$210,000 (one third of the cost borne by each principal), was a 106 acre parcel of real property located in the Town of Coxsackie, Greene County. This property was then subdivided into nine lots with the associated costs also equally borne by the principals.

Annual real property taxes were also equally shared.

7. Between 1988 and January 1, 1996, when respondent became a judge of Greene County, three parcels of land (constituting approximately 52.50 acres) were sold for a total sum of \$107,000. In the time since respondent became a judge to the present, one additional parcel of land (9.05 acres) has been sold for a sum of \$13,000. Thus, GEF Development's gross proceeds were \$120,000. To the present, the sales have accounted for approximately 61.55 acres, and there are approximately 44.45 unimproved acres still remaining as an asset of GEF Development.

8. Respondent had no personal involvement in any of the sales other than signing the requisite documents. GEF Development never did any advertising to attempt to sell any of the parcels. GEF Development had no place of business, and no business meetings were ever conducted. Edward Stiefel had *carte blanche* authority with regard to GEF Development.

9. Each year since becoming a judge, respondent consistently disclosed his one-third interest in GEF Development on the annual disclosure forms which he is required to file with the Office of Court Administration.

10. In accordance with controlling ethical opinions, no partner or associate attorney in the firm of Stiefel and Winans appeared in any court proceeding before respondent for the first two years of respondent's term of office, namely from January 1, 1996 through December 31, 1997.

11. From January 1, 1998 to the present, respondent presided over the

cases set forth in Schedules A, B, C and D of the Superseding Formal Written Complaint in which a party/interested person was represented by Edward Stiefel or a member of his law firm. The overwhelming majority of these appearances by Edward Stiefel or a member of his law firm were as law guardians for minors involved in Family Court proceedings.

12. Although Family Court staff selected the law guardian assigned to each case, respondent ratified these selections by affixing his signature to the Orders of Appointment.

13. The fees paid to the law guardians in such proceedings were \$25 for each hour expended out of court and \$40 for each hour expended in court.

14. In none of the cases in which members of Edward Stiefel's law firm appeared did respondent disclose his participation in GEF Development. Prior to December 1999, respondent did not disclose his status as an owner of record of the building housing the law firm and respondent's liability on the mortgage thereon.

As to Superseding Charge III of the Formal Written Complaint:

15. "A." is the biological daughter of teenage parents Joshua Apjohn and Summer Stafford. Sherry Stafford is "A.'s" maternal grandmother; Roseann Rock is "A.'s" maternal great-grandmother; and Marie and Patsy Porto are "A.'s" paternal great-grandparents.

16. On May 4, 2000, Albany Family Court granted temporary joint legal

and physical custody of four-day-old “A.” to her maternal great-grandmother (Roseann Rock) and mother (Summer Stafford) based on a neglect petition filed that same day by the Albany County Department of Social Services.

17. On February 13, 2001, paternal great-grandparents, Marie and Patsy Porto, filed a petition against Joshua Apjohn and Summer Stafford in Greene County Family Court seeking custody of “A.” This verified petition, which is annexed as Exhibit 1 to the Superseding Formal Written Complaint, included a request for immediate temporary relief. Therefore, Family Court staff assigned the case to respondent in accordance with the policy of alternating new cases between the two Family Court Judges.

18. On February 16, 2001, believing that the allegations in the custody petition constituted the requisite extraordinary circumstances which permitted an *ex parte* ruling transferring temporary custody, respondent signed an *ex parte* Temporary Order transferring custody to Marie and Patsy Porto, without notice to the child’s parents or joint custodian maternal great-grandmother Roseann Rock, and notwithstanding the following:

A. At the time of his February 16, 2001, ruling, respondent was unaware of the existence of the Albany order granting to maternal great-grandmother, Roseann Rock, temporary joint legal custody of “A.” with Summer Stafford.

B. The paternal great-grandparents, Marie and Patsy Porto, had no standing to seek custody of “A.” under Article 6 of the Family Court Act. Respondent

would testify at a hearing that he believed that extraordinary circumstances existed and that the best interests of the child warranted the temporary relief granted.

C. Marie and Patsy Porto are the aunt and uncle of Frank Porto. Respondent would testify at a hearing that, at the time of his granting the *ex parte* Temporary Order, he did not associate Marie and Patsy Porto with GEF Development principal Frank Porto, since Porto is not an uncommon name in Greene County.

D. Insofar as respondent believed that extraordinary circumstances existed which dispensed with the requirement of conducting an evidentiary hearing before issuing a Temporary Order, Marie and Patsy Porto did not appear and testify before respondent in support of their petition, nor was any evidentiary hearing held. In sum, respondent issued the *ex parte* Temporary Order of custody based solely upon the allegations contained in the petition which is attached as Exhibit 1 to the Superseding Formal Written Complaint.

19. After reflecting upon the allegations in the petition, respondent believed that “A.” was in imminent danger to her physical and emotional well-being and, having found that the above constituted extraordinary circumstances, therefore granted an *ex parte* Temporary Order of custody.

20. On February 16, 2001, Dale Dorner was appointed Law Guardian for “A.” The Law Guardian was instructed to investigate and report as to the allegations contained in the petition and the adequacy of the Portos’ household.

21. While respondent did direct the Law Guardian to conduct an

immediate investigation of the situation, nonetheless, respondent failed to set a prompt hearing date after issuing the Temporary Order. In this regard, respondent notes that the March 19, 2001 return date for the Portos' petition was issued by Family Court staff and that Family Court sessions are conducted only once a week (each Monday) insofar as each judge sits in Family, County and Surrogate's Courts.

22. On March 19, 2001, the return date on the Portos' custody petition,² Marie and Patsy Porto appeared before respondent with their attorney, Assistant Public Defender Janet Schwarzenegger, who stated: "Your Honor, the Portos applied to our office for services. However, we realized after they were there, there was a conflict of interest. So they need to have an attorney assigned by the Court." Therefore, Janet Schwarzenegger's presence in Court on March 19, 2001 was the result of the Portos' having applied to, and been found eligible for services by, the Greene County Public Defender's Office. Respondent orally granted Janet Schwarzenegger's request that alternate counsel be assigned.

23. The March 19, 2001 court appearance was cut short, in part, by respondent's recusal, which was based on his having recognized Patsy Porto when seeing him in court for the first time, to be one of Frank Porto's relatives. However, during this brief court appearance, respondent failed to advise biological parents, Joshua Apjohn and

² March 19, 2001 was also the return date on a cross-petition for custody filed by maternal great-grandmother Roseann Rock and maternal grandmother Sherry Stafford.

Summer Stafford, of their rights to counsel in violation of Section 262(a) of the Family Court Act.

24. After recess to chambers, an off-the-record conference was conducted in the presence of Dale Dorner, Janet Schwarzenegger and Jeffrey Bagnoli, the attorney for Roseann Rock and Sherry Stafford, at which respondent disclosed that he was recusing himself and transferring the case to the Honorable Daniel K. Lalor because respondent was a friend of Frank Porto and in this apparently contentious case there might be an appearance of impropriety. Respondent acknowledges that at no time did he place this reasoning or his recusal on the record in open court.

25. On March 20, 2001, respondent issued an Order assigning counsel to Marie and Patsy Porto due to the Public Defender's Office conflict of interest referenced by Janet Schwarzenegger.

26. In accordance with Greene County custom and policy, following respondent's March 19, 2001 oral recusal, Law Guardian Dale Dorner drafted and submitted the order of transfer. For reasons unknown to respondent, this order was not submitted until April 10, 2001 and did not recite the reason for the transfer (presumably through inadvertence insofar as respondent had clearly stated the reason for his recusal in conference).

27. However, respondent's recusal was effective March 19, 2001. Illustrative of this point is the fact that the Family Court file was transmitted forthwith to Judge Lalor. Additionally, Judge Lalor issued an April 5, 2001 Temporary Order

granting Summer Stafford supervised visitation and an April 9, 2001 Order appointing counsel for Summer Stafford (both prior to respondent's signature of the Order of Transfer).

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), 100.3(F) and 100.4(D)(1)(c) of the Rules Governing Judicial Conduct and should be disciplined for cause, pursuant to Article 6, Section 22 of the New York State Constitution and Section 44(1) of the Judiciary Law. Charges I through III of the Superseding Formal Written Complaint are sustained insofar as they are consistent with the above findings and conclusions, and respondent's misconduct is established.

It was improper for respondent to engage in continuing business and financial dealings with an attorney appearing in respondent's court and, correspondingly, to permit the attorney and his law firm to appear before him at a time when respondent and the attorney were business partners. Well-established ethical standards require a judge's disqualification in a matter in which the judge's impartiality might reasonably be questioned, unless the parties consent to the judge's participation after full disclosure is made (Sections 100.3[E][1] and 100.3[F] of the Rules Governing Judicial Conduct). A judge is also barred from engaging in financial and business dealings that involve the judge in "continuing business relationships" with lawyers likely to come before the judge's court (Section 100.4[D][1][c] of the Rules; *Matter of Torraca*, 2001 Ann Rep 125

(Commn on Jud Conduct, Nov 7, 2000).

Notwithstanding respondent's efforts to terminate his business dealings with his former law partner Mr. Stiefel, respondent continued to have a financial relationship with the attorney for a significant period after becoming a full-time judge. Nonetheless, Mr. Stiefel and his firm appeared before respondent in scores of cases, and respondent never disclosed his participation with Mr. Stiefel in GEF Development and his status as the owner of the building housing Mr. Stiefel's firm. Although most of the appearances by Mr. Stiefel and his firm were as law guardians for minors in Family Court proceedings and there is no indication in the record that respondent's rulings in the matters were affected by his relationship with Mr. Stiefel, all the parties involved had a right to know of the judge's relationship with the Stiefel firm. Even if respondent believed that he could be impartial in the matters, he had an ethical duty to avoid any appearance of impropriety (Section 100.2[A] of the Rules).

Respondent's handling of a custody matter involving relatives of his business partner conveyed the appearance of partiality. Dispensing with the requirement of conducting an evidentiary hearing, respondent issued an *ex parte* order transferring temporary custody to his partner's relatives based solely on the allegations contained in the petition and failed to set a prompt hearing date in the matter. Thereafter, when the parties appeared in court, respondent assigned counsel for his partners' relatives while failing to advise the other parties of the right to counsel as required by law, and then recused himself after recognizing his business partner's relative, who was in the

courtroom. Under the circumstances, the series of rulings by respondent favoring the petitioners create an appearance of favoritism, notwithstanding respondent's claims that his rulings were appropriate on the merits and that he was unaware of the petitioners' relationship to his business partner. Respondent's conduct violated his ethical duty to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Section 100.2[A] of the Rules).

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

Mr. Berger, Judge Ciardullo, Mr. Felder, Mr. Goldman, Ms. Hernandez, Judge Luciano, Judge Peters, Mr. Pope and Judge Ruderman concur.

Mr. Coffey dissents and votes to reject the Agreed Statement of Facts on the basis that the disposition is too harsh.

CERTIFICATION

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

Dated: May 18, 2004



Lawrence S. Goldman, Esq., Chair
New York State
Commission on Judicial Conduct