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

CONRAD D. SINGER,

a Judge of the Family Court, Nassau
County.

# DETERMINATION

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THE COMMISSION:

Honorable Thomas A. Klonick, Chair
Stephen R. Coffey, Esq., Vice Chair
Joseph W. Belluck, Esq.
Richard D. Emery, Esq.
Paul B. Harding, Esq.
Elizabeth B. Hubbard
Marvin E. Jacob, Esq.
Honorable Jill Konviser
Nina M. Moore
Honorable Karen K. Peters
Honorable Terry Jane Ruderman

APPEARANCES:

Robert H. Tembeckjian (Roger J. Schwarz, Of Counsel) for the Commission

Michael S. Ross for the Respondent

The respondent, Conrad D. Singer, a Judge of the Family Court, Nassau County, was served with a Formal Written Complaint dated January 29, 2009, containing

two charges. The Formal Written Complaint alleged that respondent: (i) improperly exercised the contempt power in a case and (ii) after he had ordered a child hospitalized for a mental evaluation, visited the child in the hospital without the knowledge or consent of the parties.

On May 4, 2009, 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 May 14, 2009, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Judge of the Family Court, Nassau County, since January 2007. Prior to that he was a Justice of the Great Neck Plaza Village Court, Nassau County. Respondent was admitted to the practice of law in New York in 1990, and while engaged in private practice for approximately 14 years, he appeared in Family Court on a regular basis.

As to Charge I of the Formal Written Complaint:

2. On January 17, 2007, respondent presided over *Tracy Schmidlin v. Robert Schmidlin,* a Family Court custody matter that also involved allegations of domestic violence.

3. In the course of presiding over the *Schmidlin* matter, respondent ordered Tracy Schmidlin to disclose the address of the shelter where she was then residing. Counsel for Tracy Schmidlin, Nancy Mullen-Garcia, indicated that "My client cannot disclose the address of the shelter." Respondent replied that if Tracy Schmidlin failed to provide her address to the court, he would hold her in contempt.

4. When Ms. Mullen-Garcia once again declined to reveal her client's address, respondent directed her to bring her supervising attorney, Lois Schwaeber, to court by 11:00 AM that morning.

5. When the case was recalled later that morning, respondent threatened to hold Ms. Mullen-Garcia in contempt if she refused and persisted in refusing to disclose the location of the shelter where her client then resided. Ms. Mullen-Garcia's supervisor similarly declined to reveal such address, stating:

> ... we are by statutory law, New York State statutory law, the federal statutory law, several of them, prohibited from revealing the address of our shelter.[1]

6. Despite having been placed on notice that counsel's refusal was grounded in law, respondent persisted in demanding disclosure of Tracy Schmidlin's address and grew increasingly impatient, discourteous and otherwise intemperate toward Ms. Schmidlin and her attorney, Ms. Mullen-Garcia.

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[1] Family Court Act §154-b(2)(b) provides: "Notwithstanding any other provision of law, if a party and a child has resided or resides in a residential program for victims of domestic violence as defined in section 459-a of the Social Services Law, the present address of such party and of the child and the address of the residential program for victims of domestic violence shall not be revealed."

7. When Ms. Mullen-Garcia still refused to reveal her client's address, respondent held her in contempt and imposed a fine of $1,000 upon her.

8. In connection with holding Ms. Mullen-Garcia in contempt, respondent:

(A) did not warn or admonish Ms. Mullen-Garcia that her conduct was deemed contumacious, as was required by Section 701.4 of the Rules of the Appellate Division, Second Department ("Second Department Rules");

(B) did not give Ms. Mullen-Garcia a reasonable opportunity to make a statement in her defense or in extenuation of her conduct, as was required by Section 701.2(c) of the Second Department Rules; and

(C) did not issue a written order in support of his contempt ruling against Ms. Mullen-Garcia, as required by Section 755 of the Judiciary Law.

As to Charge II of the Formal Written Complaint:

9. On February 28, 2008, respondent presided over the case of *Larry McCloud, Sr. v. Mamie Small*, a custody matter. At the request of counsel for LaDaniel M., a 14 year old non-party who was the son of Larry McCloud, Sr. and Mamie Small, respondent ordered the hospitalization of LaDaniel for evaluation pursuant to Family Court Act Section 251. In open court, in the presence of the parties and counsel, respondent told LaDaniel that he would personally visit him at the hospital on Monday, March 3, 2008, and leave the hospital with him if he did not want to remain there or if the report of the ordered evaluation was not completed by then.

10. On March 3, 2008, in the early evening hours, without giving the interested parties notice of the meeting, without seeking or obtaining the consent or presence of counsel for LaDaniel, without the knowledge, approval or consent of the mental health staff at the court and at the facility where LaDaniel was being confined, and without any means of recording the meeting, respondent met with and had a conversation lasting several minutes with LaDaniel in a recreation room in which other children and staff were present.

11. Respondent took no action to effectuate the release or departure of LaDaniel from the facility. Although he was motivated by an interest in the well-being of the minor, respondent now recognizes the impropriety and the appearance of impropriety in conducting unauthorized, *ex parte* communications in general and the potential for suspicion and misunderstanding in particular associated with a judge visiting a minor in circumstances such as these.

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), 100.3(B)(6) and 100.3(B)(9)(b) of the Rules Governing Judicial Conduct ("Rules"); Sections 700.5(a), 700.5(e), 701.2(a), 701.2(c) and 701.4 of the Second Department Rules; and Section 755 of the Judiciary Law, 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 and II of the Formal Written Complaint are sustained, and respondent's misconduct is established.

The exercise of the enormous power of summary contempt should be exercised "only in exceptional and necessitous circumstances" and requires strict compliance with procedural safeguards, including giving the accused a warning and an opportunity to desist from the supposedly contumacious conduct and to make a statement in his or her defense, and further requiring the court to prepare an order "stating the facts which constitute the offense," thus enabling appellate review (Jud Law §755; Appellate Division Rules, §§701.2[a], [c], 701.4; *Doyle v. Aison*, 216 AD2d 634 [3d Dept 1995], *lv den* 87 NY2d 807 [1996]; *Matter of Hart*, 7 NY3d 1 [2006]). Respondent did not comply with these standards in *Schmidlin v. Schmidlin*, a custody case that included allegations of domestic violence, when he threatened to hold a litigant and her attorney in contempt, and then did hold her attorney in contempt, for not disclosing the address of the shelter where the litigant was residing.

After directing the litigant to disclose that information under a threat of contempt and after the litigant's attorney declined to provide the information, respondent directed the litigant's attorney to summon her supervisor to court. Then, even after the attorney's supervisor had placed respondent on notice that the refusal to disclose the litigant's address was supported by statutory authority, respondent persisted in demanding that information, grew increasingly impatient and intemperate when the attorney would not provide the requested information, and ultimately held the attorney in contempt, imposing a $1,000 fine. Even if – or especially if – he was unfamiliar with the applicable law, respondent should have given the attorney an opportunity to provide the court with

the specific authority supporting her conduct, or he himself should have researched the law in the interval before the attorney's supervisor appeared. Having been placed on notice as to the issue, respondent should have determined whether the law provided such protection for a victim of domestic violence, as the attorney had suggested, before summarily punishing the attorney for her principled refusal to provide the information. Clearly there were no "necessitous" or urgent circumstances justifying respondent's peremptory imposition of contempt against an attorney who was simply attempting to protect her client's interests and who had a sound legal basis for her position.

It has also been stipulated that prior to the contempt citation, respondent did not issue an appropriate warning or provide the attorney with an opportunity to make a statement in her defense, as required by the Appellate Division Rules; nor did he prepare an appropriate mandate, which would enable appellate review. Respondent's abuse of the contempt power and his failure to adhere to mandated contempt procedures constitutes misconduct warranting public discipline. *See, e.g., Matter of Griffin,* 2009 Annual Report 90 (Comm on Judicial Conduct); *Matter of Van Slyke*, 2007 Annual Report 151 (Comm on Judicial Conduct); *Matter of Lawrence*, 2006 Annual Report 206 (Comm on Judicial Conduct).

It was also improper for respondent to make an *ex parte* hospital visit to a 14-year old youth, a non-party in a custody matter who was being held for a mental evaluation respondent had ordered, and to speak to the youth in the absence of counsel. Although respondent had announced in court that he would make such a visit on that date,

he did not give specific notice of the time of his visit; nor did the youth's attorney or the parties consent to his private meeting and unrecorded conversation with the youth. Notwithstanding that respondent was motivated by an interest in the youth's well-being, such an *ex parte* visit, however well-intentioned, was completely inappropriate and showed a serious misunderstanding of the role of a judge.

Even respondent's initial statement that he would visit the youth in the hospital and personally escort him from the premises if he did not wish to remain showed extremely poor judgment and overstepped the appropriate boundaries between a judge and a minor involved in a pending proceeding (Rules, §100.3[B][9][b]). Having served as a Family Court judge for more than a year and having practiced in the court for many years prior to that, respondent should have realized that a judge is not a social worker and that such an extra-judicial meeting with a litigant's child would seriously compromise his impartiality and create the potential for suspicion and misunderstanding. By actually engaging in such ill-conceived conduct several days later, despite having had the opportunity to consider the implications of his actions, respondent showed extraordinary insensitivity to his ethical obligations. At all times a judge's conduct must not only be, but appear to be, beyond reproach if respect for the court is to be maintained (Rules, §100.2[A]). *See, e.g., Matter of Friess*, 1982 Annual Report 109 (judge, who was "motivated by compassion," permitted a female defendant to spend the night at his home after an arraignment) (censure); *Matter of Clark*, 2007 Annual Report 93 (after a woman told the judge that she wanted to file a criminal complaint against her former boyfriend,

judge, *inter alia*, accompanied her to the boyfriend's home to retrieve her belongings, and to the sheriff's department when she filed a criminal complaint) (censure).

Respondent has acknowledged that his actions were inconsistent with the high ethical standards required of judges and warrant public rebuke. While we believe that these two incidents, which occurred during his first 14 months as a Family Court judge, show a serious lapse of judgment, we conclude that they have not irreparably damaged respondent's capacity to serve as a judge. Accordingly, we accept the stipulated sanction of admonition.

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

Judge Klonick, Mr. Belluck, Mr. Emery, Mr. Harding, Ms. Hubbard, Mr. Jacob, Judge Konviser, Judge Peters and Judge Ruderman concur.

Ms. Moore did not participate.

Mr. Coffey was not present.

CERTIFICATION

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

Dated: July 1, 2009

Jean M. Savanyu, Esq.
Clerk of the Commission
New York State
Commission on Judicial Conduct