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

CHARLES G. BANKS,

DETERMINATION

a Justice of the Bedford Town Court,
Westchester County.

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 (Kelvin S. Davis, Of Counsel) for the Commission

Scalise & Hamilton, LLP (by Deborah A. Scalise)

The respondent, Charles G. Banks, a Justice of the Bedford Town Court, Westchester County, was served with a Formal Written Complaint dated February 26,

2009, containing one charge. The Formal Written Complaint alleged that in numerous cases respondent imposed fines that exceeded the maximum authorized by law.

On May 13, 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 June 17, 2009, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Bedford Town Court since November 1995. His current term of office ends on December 31, 2009. Respondent was admitted to the practice of law in New York in 1966.

2. From in or about October 2006 through December 2006 and from in or about October 2007 through December 2007, in 209 traffic cases adjudicated in his court, respondent imposed $11,281 in fines in excess of the maximum amounts authorized by the Vehicle and Traffic Law, as set forth below.

3. In 99 traffic cases between October 25, 2006 and December 8, 2006, respondent imposed $5,855 in fines not authorized by law, as set forth in Schedule 1 annexed to the Agreed Statement of Facts. The excess fines imposed by respondent in these cases ranged from $5 to $150.

4. In 110 traffic cases between October 10, 2007 and December 27,

2007, respondent imposed $5,426 in fines not authorized by law, as set forth in Schedule 2 annexed to the Agreed Statement of Facts. The excess fines imposed by respondent in these cases ranged from $1 to $100.

5. Respondent concedes that if the Commission examined his court records for the first nine months of both 2006 and 2007, the Commission would find excessive fines in proportion to the amount of the excess fines it discovered in the last three months of 2006 and 2007.

6. Respondent was not aware of the formula for distribution of funds between the state and the town and was not provided with such information between September 1, 2006 and December 31, 2007. It was not his practice to obtain the breakdown of fund distribution figures for each of his monthly submissions to the Bureau of Justice Court Funds (hereinafter "JCF"), and it was the responsibility of JCF to calculate the distribution of funds. Each year, as provided by law, respondent gave the town a report of total fines and fees he had reported. He did not advise the town of how the total funds were distributed.

7. Respondent believed it was his responsibility to impose a fine appropriate to the offense and circumstances of the case, without regard to what percentage of that fine would ultimately accrue to the town, and that it was therefore not necessary for him to know the formula that would determine how such fines would be divided between the state and the town.

8. In the 209 cases at issue, respondent unintentionally imposed a

fine for Section1229 of the Vehicle and Traffic Law in excess of the statutory maximum. However, once respondent learned of the mistake as a result of the Commission's inquiry into the matter, he immediately undertook an audit of the court's records and took steps to ensure that his mistake would not be repeated, such as follows.

9. When respondent learned that he had imposed fines above the amount authorized by law, he promptly initiated refunds to those defendants who overpaid fines. Respondent has processed refunds for all defendants identified in the schedules attached to the Formal Written Complaint.

10. Respondent understands that the Commission will refer to the State Comptroller (Department of Audit and Control) the issue involving excess fines collected during 2006 and 2007. Respondent agrees that he will cooperate with the Comptroller's Office and take action to provide refunds to all the remaining defendants in cases in 2006 and 2007 where excess fines were imposed.

11. Respondent has served 14 years on the bench and has practiced law for 42 years, with no prior disciplinary history. He is an active participant in community activities for his church and the local volunteer ambulance corps, including the provision of *pro bono* services to both.

12. Respondent will be concluding his term on the Bedford Town Court in December 2009 and has stipulated that he will not run for reelection. Respondent's current term as a judge expires on December 31, 2009.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1, 100.2(A) and 100.3(B)(1) 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.

It is the responsibility of every judge to "respect and comply with the law," to be faithful to the law and to maintain professional competence in it (Rules, §§100.2[A], 100.3[B][1]). Respondent violated these standards in numerous cases in 2006 and 2007 by imposing fines that exceeded the maximum amount authorized by law. In 203 identified cases in which defendants were convicted of a seat belt violation, respondent imposed fines that ranged from $51 to $200, although the maximum fine permitted by law was $50 (*see* V&T §1229-c, subd. 5). In six cases in which defendants were convicted of speeding, where the maximum fine permitted was $150 (V&T 1180[d]), respondent imposed fines ranging from $200 to $300. In total, the fines imposed by respondent in these cases were $11,281 in excess of the maximum authorized by law. This constitutes misconduct warranting public discipline. *See Matter of Pisaturo*, 2005 Annual Report 228 (judge imposed fines based on the original charges for defendants who pled guilty to reduced charges); *see also*, *Matter of Christie*, 2002 Annual Report 83 (Comm on Judicial Conduct).

Respondent's wrongful practice resulted in financial detriment to the

defendants and in significant financial benefit to his town since the fines collected would ultimately go to the town. Although he did not know how the fines he imposed were distributed between the State and the town, he was certainly aware that the amounts were substantial and that at least some of these amounts would go to his town. While it has been stipulated that respondent acted unintentionally in imposing fines in amounts that exceeded the legal maximum, his conduct was harmful to individual defendants and creates at least an appearance that he was imposing excessive amounts in order to increase the town's revenues.

In mitigation, we note that upon learning as a result of the Commission's inquiry that the fines he had imposed were contrary to law, respondent immediately undertook an audit of the court's records and has made considerable efforts to initiate and process refunds for defendants who paid fines in excessive amounts. Respondent has agreed to cooperate with the State Comptroller's office to ensure that refunds will be processed for all defendants who overpaid fines in 2006 and 2007 and has taken steps to ensure that his mistake will not be repeated. Respondent's conduct since learning of his error suggests a sincere effort to comply with the law, to mitigate the effects of his erroneous conduct and to avoid such conduct in the future.

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

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

Mr. Coffey dissents in an opinion and votes to reject the Agreed Statement of Facts on the basis that the proposed disposition is too lenient.

Mr. Belluck and Mr. Jacob were not present.

CERTIFICATION

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

Dated: July 16, 2009

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

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DISSENTING OPINION
BY MR. COFFEY

The majority concludes that respondent should only be admonished despite the fact that in hundreds of cases over two years, he imposed illegal, excessive fines. Apparently the majority feels that despite respondent's rampant disregard of the law, admonition – the most lenient public reprimand – is warranted in view of his previously unblemished record in 14 years as a judge, his after-the-fact remorse, his "unintentional" transgressions and his impending retirement. Because I believe his misconduct warrants a stiffer penalty, I disagree.

I believe that the analysis in this case should focus on the flagrant indifference by respondent to the law he was supposed to know and apply. In addition, I am concerned about both the precedential effect of the Commission's decision and the message it imparts to those magistrates who cannot help but shake their collective heads at the lenient disposition imposed in this case.

As shown by the stipulated facts, in 209 identified cases over four months in

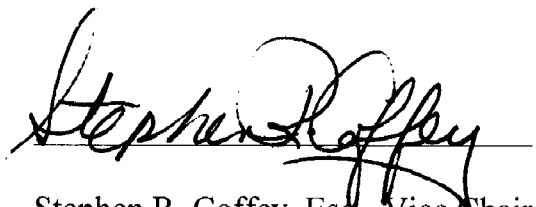
2006 and 2007 respondent improperly imposed over $11,000 in excessive fines. Since respondent has admitted that his court records for all of those two years would show excessive fines that were proportionate to those amounts, it appears that the actual numbers could total more than $60,000 in excessive fines in about 1,200 cases. Despite this staggering batting average, the majority concludes that respondent's conduct is mitigated by the fact that his improper sentences were "unintentional," as well as the fact that he has never previously been sanctioned and is now apologetic – as if he had a choice.

No one can dispute that the lawless and patently reckless conduct by respondent over this period was extensive and, on its face, simply punitive. Thus, even allowing for judicial discretion in continuously and mindlessly imposing the maximum sentences allowable under the Vehicle and Traffic Law, here the judge uniformly and cavalierly determined that he would impose even higher fines, sometimes as much as four times in excess of the authorized maximum.

Frankly, it is mystifying how the Commission can announce to the other judges in this state that this kind of conduct is only subject to the most lenient public reprimand. While respondent apparently has an otherwise unblemished record and is going to retire at the end of the year, that does not excuse conduct that on its face is inexcusable. He had a duty to understand the law, and his indifference or unwillingness to do so has not only, to put it mildly, caused great damage to a substantial number of motorists in this state, but brings the judiciary into disrepute. I would not be so forgiving to the respondent in this case since I do not believe that his misconduct has been

mitigated in any meaningful way, particularly considering his own callous behavior when he acted with unbridled discretion. The public should be reassured that this kind of abhorrent behavior not only will not be tolerated, but will be condemned. Accordingly, I vote to reject the stipulated disposition and would censure respondent.

Dated: July 16, 2009



Stephen R. Coffey, Esq., Vice Chair
New York State
Commission on Judicial Conduct