

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 J. PISATURO,

a Justice of the Gates Town Court,
Monroe County.

THE COMMISSION:

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

APPEARANCES:

Robert H. Tembeckjian (John J. Postel, Of Counsel) for the Commission

Honorable John J. Pisaturo, *pro se*

The respondent, John J. Pisaturo, a justice of the Gates Town Court,
Monroe County, was served with a Formal Written Complaint dated November 1, 2004,

containing one charge. Respondent filed an answer dated December 3, 2004.

On October 28, 2005, the administrator of the Commission 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 censured and waiving further submissions and oral argument.

On November 10, 2005, the Commission approved the agreed statement and made the following determination.

1. Respondent has been a justice of the Gates Town Court, Monroe County since January 1984. Respondent is an attorney.

2. From in or around January 2001 to in or around August 2003, in 703 traffic cases adjudicated in his court, respondent imposed a total of \$93,527 in fines in excess of the maximum amounts authorized by the Vehicle and Traffic Law (“VTL”).

3. In 240 traffic cases between January 2001 and December 2001, respondent imposed \$39,492 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 \$2 to \$320.

4. In 317 traffic cases between January 2002 and December 2002, respondent imposed \$39,585 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 \$10 to \$315.

5. In 146 traffic cases between January 2003 and August 2003, respondent

imposed \$14,450 in fines not authorized by law, as set forth in Schedule 3 annexed to the Agreed Statement of Facts. The excess fines imposed by respondent in these cases ranged from \$15 to \$300.

6. The large majority of the 703 cases herein involved pleas of guilty to the “standard reduction” which was a violation of VTL 1110(a), *i.e.* failure to obey a traffic control device. In all of the 703 cases, the disposition involved a plea to a reduced charge. Respondent mistakenly imposed fines that were authorized as the maximum fine for the original charge, but were not authorized for the reduced charge. He now realizes that he was in error and that he had imposed fines in excess of the maximum allowed by law.

7. Since learning in August 2003 that the fines he had imposed in these 703 cases were not authorized by law, respondent has engaged in a complex and time consuming process in which he has placed into action a procedure for providing refunds to all 703 defendants as to those fine amounts that were in excess of the maximum allowed by law. All of the defendants have been either provided with refunds or sent notices about the process for obtaining refunds.

8. By letter dated June 29, 2005, the Commission requested additional information in connection with this matter, including (1) how long respondent had engaged in similar conduct; (2) the allocation of funds to the town and to the state for both the fines imposed and the maximum statutory fines; and (3) the extent to which respondent was aware of such allocation. Respondent and Commission Counsel have conducted extensive additional research of court and state records, the results of which

are reflected in the following paragraphs.

9. Respondent acknowledges that he also engaged in the improper conduct of imposing fines in excess of the statutory maximum from January 1999 until August 2003. Respondent acknowledges that in addition to the 703 traffic cases specified in the Formal Written Complaint, which covers the period from January 2001 to August 2003, a review of his court records would identify approximately 230 additional traffic cases disposed of between January 1999 and December 2000, in which he imposed fines in excess of the maximum authorized by the Vehicle and Traffic Law. Respondent agrees that a review of his court records would indicate that the excess fines for those two years would total approximately \$77,000. Respondent agrees that the Commission should refer to the Department of Audit and Control the issue involving excess fines collected between January 1999 and December 2000 and that he will cooperate with the Department of Audit and Control in taking action to provide refunds to these additional defendants.

10. 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 January 1999 and August 2003. 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 the total fines and fees he had reported. He did not advise the town of how the total funds

were distributed.

11. Respondent believed that it was his responsibility to impose a fine appropriate to the offense and circumstances of a 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.

12. For the period from January 2001 to December 2003, respondent received \$1,232,595.50 in fines and fees. Of that money, \$682,358 was paid to the state, \$160,932 was paid to the County of Monroe, and \$389,305.50 was paid to the Town of Gates.

13. The division of fines and fees is established by various State laws and varies according to the charge of which the defendant has been convicted. In 218 of the 703 cases involving respondent's imposition of an unauthorized maximum fine between January 2001 and August 2003, the excess fines were retained by the State. In the other 485 cases, the excess fines were returned to the Town of Gates.

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 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 (Sections 100.2[A] and 100.3[B][1] of the Rules Governing Judicial Conduct). Respondent violated these standards in hundreds of Vehicle and Traffic cases by routinely imposing fines based on the original charges, rather than the charges to which the defendants pled guilty. Such a practice is contrary to law and resulted in fines that exceeded the legal maximum by amounts ranging from \$2 to \$320. *See Matter of Christie*, 2002 Annual Report 83 (Comm. on Judicial Conduct).

Respondent’s wrongful practice resulted in significant financial benefit to his town. The excess amounts he collected apparently totaled over \$30,000 *per year* over a five-year period, with about one-third of those amounts going to respondent’s town. While there is no indication that respondent’s intent was to benefit the town, his conduct creates an appearance of impropriety. Although he did not know the exact percentages of the total fines that would go the town, he was obviously aware that the amounts involved were considerable.

It is axiomatic that the sentence in every case should be based on the offense a defendant is convicted of, not the original charge. As an attorney and as a judge since 1984, respondent should be familiar with basic principles of law.

In mitigation, upon learning that his practice was not authorized by law, respondent has made considerable efforts to obtain refunds for defendants as to the excess amounts that were paid. Respondent’s conduct since learning of his error suggests a

sincere effort to comply with the law and to mitigate the effects of his wrongful practice.

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

Mr. Goldman, Mr. Pope, Ms. DiPirro, Mr. Emery, Mr. Felder, Ms. Hernandez, Judge Klonick, Judge Peters and Judge Ruderman concur.

Mr. Coffey and Judge Luciano were not present.

CERTIFICATION

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

Dated: November 18, 2005



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