

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 R. TAUSCHER,

a Justice of the Alabama Town Court,
Genesee 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 (John J. Postel, Of Counsel) for the Commission

Michael M. Mohun for the Respondent

The respondent, John R. Tauscher, a Justice of the Alabama Town Court,
Genesee County, was served with a Formal Written Complaint dated September 19, 2006,
containing one charge. Respondent filed a Verified Answer dated October 19, 2006.

On January 11, 2007, 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 January 25, 2007, the Commission accepted the Agreed Statement and made the following determination.

1. Respondent has been a Justice of the Alabama Town Court since 1995. He is not an attorney.

2. In or around September 2005, respondent submitted a proposed court budget for 2006 to the Alabama Town Board, requesting a \$200 salary increase for himself and for his co-justice, and a \$1,000 salary increase for the court clerk. The Town Board approved a salary increase for the court clerk in the amount of \$200 but rejected respondent's request for a raise for himself and his co-justice.

3. On November 7, 2005, respondent appeared at a public hearing called by the Town Board on the 2006 budget. Respondent asked the Town Board to reconsider his request for increases in the salaries of both town justices and the court clerk. During his presentation, respondent made the following statement:

We're never to consider ourselves a revenue source but there is a revenue line on the, this side of the ledger and it is somewhat understated from what the state report that I have from this year through September. The revenue generated by our town court has been \$44,165.00. There are still three

months to report. The amount that the town was allowed to keep so far is \$16,505.00. I'm, I guess I'm confused as to why if there is a difference in the amount that a department asks for and what is put into the line item of the proposed budget that that department supervisor or in general would be not asked to explain what they want and why they want it. But, that's your decision as to whether you want to ask anybody in the court system why they want what they want. I would ask that you reconsider the salaries of the judges and the court clerk to be what we had asked them to be. I can also tell you that there is revenue available from the court that would more than offset that in one transfer of bail monies that are to be forfeited. Forfeited bail monies are deposited directly into the general fund of the town. At this moment, I am sitting on \$2,800.00 of bail monies that should be forfeited because the people have not done what they were supposed to do. That more than offsets what we're asking for by \$1,000.00 or better. The other thing that I can tell you there was a town justice in Bergen who didn't get a raise when he thought that he should and the town board never asked him to explain anything but they lost \$20,000.00 in revenue because they didn't cooperate or didn't even consider asking him why he wanted an increase. They just said, no, you're not getting one. As I said earlier at the opening that judges have a lot of leeway when they're sitting up there in terms of what they can do and what they won't. Whether or not that happens, I can't make a promise. I just tell you that that option is available to the judges.

4. On November 14, 2005, respondent again appeared before the Town Board at a public meeting in connection with its consideration of the 2006 budget. While explaining the court's policies as to imposing fines, respondent made the following statements:

[A]s I said before, the judge has the discretionary ability to adjust the fine structure. But that revenue line is directly related to that expense line.

* * *

There's another option too. The only thing that the court is required to do is to collect the surcharge. If the fine structure is \$0 to \$150.00 with a \$55.00 surcharge, all we are required to do is collect the surcharge. But the fine can be zero, it can be \$150.00, somewhere in between or none.

* * *

I will once again state my opinion. I need not say anymore other than the justices do have direct input on the distribution code lines A and B. I am looking at the September Report for this year. We brought in \$1,310.00 into the town. Lines A and B was \$1,185.00 and we have a direct impact on that line.

* * *

As I said to Brian, the fine structure runs from zero to something and no one can tell us what to fine.

5. Respondent then engaged in the following colloquy with a Town

Board member:

Town Board Member: Are you saying you're going to hold back fining so that the town doesn't make as much money. You have that liberty, option?

Respondent: I have that right. I have that liberty and as long as I treat everybody the same, I can't tell Larry¹ what to do, okay, because he runs his side of the court differently than mine. That's why his amount was \$550.00 and mine was \$2,400.

6. Respondent had no further contact with the Town Board after November 14, 2005, concerning his budget proposal or salary increase requests.

7. The Town Board adhered to its original decision and approved a

¹ Refers to respondent's co-judge, Lawrence L. Klotzbach.

\$200 salary increase for the court clerk but did not approve any salary increase for respondent or his co-judge.

8. A review of respondent's court records indicates a consistent pattern of imposing fines both before and after his budget request and public statements to the Town Board. Notwithstanding his statements to the Town Board, respondent continued to impose fines, consistent with his standard practice, based upon the merits of the individual cases before him.

9. A review of respondent's court records indicates that the \$2,800 in bail to which respondent referred in his statement to the Town Board was properly refunded to the appropriate recipients.

10. Respondent acknowledges that it was inappropriate for him to make statements that even appeared to suggest he would increase the amount of fines to finance pay raises the Town Board might approve for himself, his co-judge and court clerk, or decrease the amount of fines to punish the Town Board for refusing such raises.

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) and 100.3(C)(1) of the Rules Governing Judicial Conduct² ("Rules") and should be disciplined for cause,

² It was stipulated that respondent's conduct also violated Section 100.3(B)(9)(a) of the Rules, prohibiting a judge from "[making] pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office." This amendment to the Rules was effective Feb. 14, 2006. We find that respondent's misconduct, which occurred prior to that date, is covered by the other provisions cited.

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 insofar as it is consistent with the above findings and conclusions, and respondent's misconduct is established.

On two occasions respondent made public statements to the Town Board in which he explicitly linked his discretionary ability to set fines, and thereby increase or decrease town revenues, with a proposed salary increase for himself, his co-justice and court clerk. The clear import of respondent's statements was that he could exercise his discretion in setting fines and forfeiting bails to help fund the requested increase, and, conversely, that he could reduce fines in future cases if the Board refused to raise his salary. Although he was careful to describe such actions as simply his "options" as a judge, his words, on their face, were implicitly threatening.

Such statements undermine confidence in the judicial role, which is to exercise discretion, without bias or prejudice, based on the merits of each case. *See Matter of Tracy*, 2002 Annual Report 167 (Comm. on Judicial Conduct). Regardless of whether he intended to act on his warning, it was unseemly even to imply that a judge might reduce fines in future cases out of pique unless his salary was increased. Equally important, defendants and the public should never have to wonder if a high fine was imposed, even in part, to increase local revenues and fund the judge's salary. By making such statements, respondent seriously undermined public confidence not only in the integrity and impartiality of his court, but in the judiciary as a whole.

It has been stipulated that a review of respondent's court records reveals a consistent pattern of imposing fines before and after he made the comments cited herein. Accordingly, since there is no indication that respondent ever took any action on his implied threats, we conclude that his ability to serve as a judge has not been irretrievably damaged. We find that respondent's ill-considered statements justly deserve a strong public rebuke.

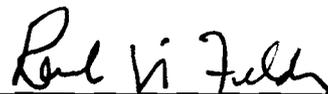
By reason of the foregoing, the Commission determines that the appropriate disposition is admonition.

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

CERTIFICATION

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

Dated: February 5, 2007



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