



NEW YORK STATE
COMMISSION ON JUDICIAL CONDUCT

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NEWS RELEASE

August 5, 2014

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Onondaga County Town Justice Should Be Censured for Imposing Unlawful Excessive Fines

The New York State Commission on Judicial Conduct has determined that Andrew N. Piraino, a Justice of the Salina Town Court, Onondaga County, should be censured for routinely imposing fines and/or surcharges that did not comply with the law.

Between 2006 and 2008, Judge Piraino imposed fines and/or surcharges in 941 instances that either exceeded the maximum amounts authorized by law or were below the minimum amounts required by law. In 791 instances Judge Piraino imposed excess fines and surcharges totaling \$13,451, while in 150 instances he imposed fines and surcharges which were a total of \$6,404 less than the minimum amount required. In 362 of these instances, the improper sentences resulted from the judge's failure to supervise his court clerks.

In its determination the Commission wrote that although the errors "were not intentional or purposeful" and mostly involved small amounts, the "pattern of

repeated sentencing errors is inconsistent with a judge's ethical obligation to 'comply with the law' and to 'maintain professional competence' in the law, and therefore subject to discipline."

The Commission stated that, "It is inexcusable, for example, that a judge who each year handles hundreds of cases involving seat belt and unlicensed driver charges – violations that represent more than 70% of the improper dispositions in this record – would not make certain that he or she knew the authorized fine range for those kinds of cases." The Commission concluded: "Public confidence in the proper administration of justice and in the judiciary as a whole is diminished when a judge repeatedly makes sentencing errors even in simple, straightforward cases."

The Commission rejected Judge Piraino's defenses, including his arguments that these legal errors did not constitute misconduct, or that many were the fault of his staff. The Commission stated that, "as a judge he bears full responsibility for his clerks' conduct," but he did "little to nothing" to supervise his clerks.

Judge Piraino, who is an attorney, has served as a Justice of the Salina Town Court since 1994. His current term expires on December 31, 2017.

Prior Litigation

In January 2011 Judge Piraino commenced a legal action to challenge the Commission's authority to investigate or adjudicate claims that he imposed unlawful fines, arguing that the Commission had no jurisdiction over "non-venal misapplication or misinterpretation of the law."

After proceedings in Supreme Court, Onondaga County (Syracuse), the Appellate Division, Fourth Department, ruled against Judge Piraino and found that the Commission "has jurisdiction to investigate and discipline [Judge Piraino] for the alleged judicial misconduct," as courts had found in previous similar challenges.¹ The court noted that he had a right to review by the Court of Appeals as to any Commission determination against him.

In February 2013 the Court of Appeals denied Judge Piraino's motion for leave to appeal.

¹ Judge Piraino brought the action under a pseudonym, so the case is entitled *Matter of Doe v New York State Commission on Judicial Conduct*, 100 AD3d 1346 (4th Dept 2012).

The Commission Proceedings

Judge Piraino was served with a Formal Written Complaint dated May 20, 2010, containing four charges, and filed an answer dated June 24, 2010. On June 24, 2010, the judge also filed a motion to dismiss the Formal Written Complaint. Commission counsel opposed the motion. The Commission denied the judge's motion in all respects by order dated September 29, 2010.

The Commission designated Edward J. Nowak, Esq., as referee to hear and report proposed findings of fact and conclusions of law. The hearing was delayed until the Appellate Division decided the prior litigation. Thereafter, a hearing was held on May 8, 9, 22, 23, June 26 and July 31, 2013 in Syracuse, New York, and the referee filed a report dated February 20, 2014.

The parties submitted briefs with respect to the referee's report and the issue of sanctions. Counsel to the Commission recommended the sanction of censure, and the judge's counsel argued that the conduct did not constitute "unethical misconduct," but that if misconduct were found, he should be privately cautioned. On May 29, 2014, the Commission heard oral argument.

The Commission Determination

The Commission filed a determination dated July 30, 2014, in which all ten members concurred: Judge Thomas A. Klonick (the Commission Chair), Judge Terry Jane Ruderman (the Vice Chair), Judge Rolando T. Acosta, Joseph W. Belluck, Esq., Joel Cohen, Esq., Jodie Corngold, Richard D. Emery, Esq., Paul B. Harding, Esq., Richard A. Stoloff, Esq., and Judge David A. Weinstein.

There is currently one vacancy on the 11-member Commission.

Statement by Commission Administrator

Commission Administrator Robert H. Tembeckjian made the following statement.

"It is axiomatic that a judge must be faithful to and competent in the law. On a regular basis, without excuse, Judge Piraino was neither. As it has in similar cases where judges persistently imposed fines in amounts not authorized by law, the Commission has properly held Judge Piraino to account."

Court of Appeals Review

The Commission transmitted its determination to the Chief Judge of the Court of Appeals, pursuant to Judiciary Law Section 44, subdivision 7. Judge Piraino received it on August 4, 2014, and the Commission was notified by the Court of Appeals that service was complete. Consequently, the matter is now public.

A judge may either accept the Commission's determination or, within 30 days from receipt, make a written request to the Chief Judge for a review of the determination by the Court of Appeals.

Pursuant to Judiciary Law Section 44, subdivision 7, if Judge Piraino does not request review by the Court of Appeals, the Commission will censure him in accordance with the determination.

If a Commission determination is reviewed by the Court of Appeals, the Court may accept the determined sanction, impose a different sanction including admonition, censure or removal, or impose no sanction.

Statistics Relating to Prior Determinations

Since 1978, the Commission has issued 311 determinations of censure against judges in New York State. The Commission has issued 168 determinations of removal and 253 determinations of admonition.

The Court of Appeals has reviewed 95 Commission determinations. The Court accepted the Commission's sanctions in 79 cases (70 of which were removals, six were censures and three were admonitions). Of the remaining 16 cases, two sanctions were increased from censure to removal, and 13 were reduced: nine removal determinations were modified to censure, one removal was modified to admonition, two censures were modified to admonition, and one censure was rejected and the charges dismissed. The Court remitted one matter to the Commission for further proceedings.

Counsel

In the proceedings before the Commission, Judge Piraino was represented by attorney Aaron Mark Zimmerman, 117 South State Street, Syracuse, New York 13202, (315) 475-7777.

The Commission was represented by Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Senior Attorney David M. Duguay. Investigators Betsy Sampson and Vanessa Mangan assisted in the investigation.

Background Information on Judge Piraino

First took office:	1994
Current Term Expires:	12/31/2017
Year Admitted to the New York State Bar:	1983
Judicial Salary:	\$40,539 (Source: Town of Salina Public Hearing memo)
Prior Judicial Office:	None

Members of the Commission

The Commission members serve four-year terms. A list of members is appended.

The Public File

The determination is attached. The record of the proceedings upon which the determination is based is available for inspection by appointment during regular business hours at the Commission's three offices:

61 Broadway Suite 1200 New York, New York 10006	Corning Tower, Suite 2301 Empire State Plaza Albany, New York 12223	400 Andrews Street Suite 700 Rochester, New York 14604
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*August 5, 2014**Page 6***MEMBERS OF THE STATE COMMISSION ON JUDICIAL CONDUCT**

Member	Appointing Authority	Term End
Hon. Thomas A. Klonick, Chair	Chief Judge Jonathan Lippman	March 31, 2017
Hon. Terry Jane Ruderman, Vice Chair	Chief Judge Jonathan Lippman	March 31, 2016
Hon. Rolando T. Acosta	Chief Judge Jonathan Lippman	March 31, 2018
Joseph W. Belluck, Esq.	Governor Andrew M. Cuomo	March 31, 2016
Joel Cohen, Esq.	Assembly Speaker Sheldon Silver	March 31, 2018
Jodie Corngold	Governor Andrew M. Cuomo	March 31, 2015
Richard D. Emery, Esq.	Former Senate Minority Leader John L. Sampson	March 31, 2016
Paul B. Harding, Esq.	Assembly Minority Leader Brian M. Kolb	March 31, 2017
Richard A. Stoloff, Esq.	Senate President Pro Tem Dean Skelos	March 31, 2015
Hon. David A. Weinstein	Governor Andrew M. Cuomo	March 31, 2018
Vacant	Governor	March 31, 2017