

At a Special Term of the Supreme Court, held in and for the County of Onondaga, at the Onondaga County Court House, Syracuse, New York, on February 18, 2011.

PRESENT:

HONORABLE JOHN C. CHERUNDOLO
Justice of the Supreme Court, Presiding.

In the Matter of the Application of

JOHN DOE,

Petitioner,

ORDER

-against-

Index No. 2011-0421

NEW YORK STATE COMMISSION ON JUDICIAL
CONDUCT,

Cherundolo, J.

Respondent.

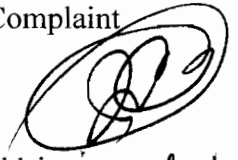
For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

Petitioner having petitioned the Court by Order to Show Cause on February 7, 2011, and by Verified Petition, verified January 20, 2011, for an Order vacating the Commission's Formal Complaint dated May 20, 2010, and permanently restraining respondent from taking any further action against petitioner with regard to the Formal Written Complaint,

NOW UPON reading the Verified Petition (with exhibits) and Affidavit in Support of Show Cause Order and Temporary Restraining Order, Respondent's Verified Answer and Return and Memorandum of Law in reply, and all of the supporting papers, and

UPON due deliberation, the Court finds that pursuant to Article VI of the NYS Constitution and Article 2-A of the Judiciary Law, the Commission on Judicial Conduct has the authority to proceed against Petitioner and, based upon this Court's decision dated April 26, 2011, a copy of which is annexed hereto and made a part of this judgment, it is hereby:

1. ORDERED, that Petitioner's request for an Order vacating the Formal Complaint is denied, and it is further



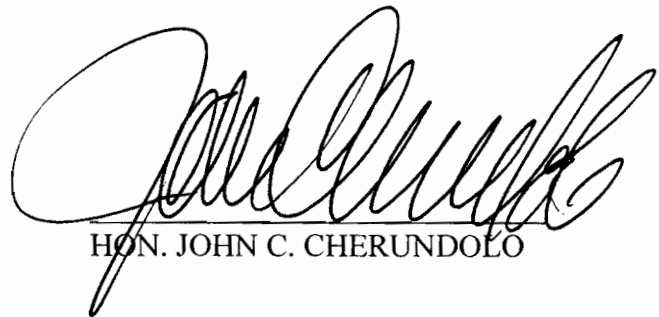
2. ORDERED, that the Temporary Restraining Order dated February 7, 2011 is *immediately*

VACATED and that Commission on Judicial Conduct may resume its proceedings against Petitioner; and it is further

3. ORDERED that the Temporary Restraining Order having been vacated, the Clerk of this Court shall immediately unseal all papers relating to this proceeding, and that the caption of this proceeding shall hereinafter be styled "Andrew N. Piraino v. New York State Commission on Judicial Conduct," and it is further

4. ORDERED AND DECREED that the petition is hereby dismissed, and the relief requested is denied in all respects.

Dated: Syracuse, New York
May 12, 2011



HON. JOHN C. CHERUNDOLO

ENTER:

STATE OF NEW YORK
COUNTY OF ONONDAGA SUPREME COURT

In the Matter of the Application of

JOHN DOE,

Petitioner,

Index No. 11-0421
RJI No. 33-11-0221

-against-

NEW YORK STATE COMMISSION ON JUDICIAL
CONDUCT,

DECISION

Respondent.

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

INTRODUCTION

This matter involves a Complaint initiated by the New York State Commission on Judicial Conduct (“Commission”) against the petitioner, Hon. Andrew N. Piraino, a Justice of the Salina Town Court in the County of Onondaga, for judicial misconduct. The petitioner is alleged to have engaged in misconduct in violating canons of judicial conduct and various sections of the NYCRR¹ by dispensing fines for traffic violations that have either been in excess of, or below, the appropriate statutory range.² Petitioner does not dispute the underlying factual allegations, but rather argues that any imposed fines that were outside of the statutory range were a result of “administrative mistake, unintentional oversight, simple negligence or other mental lapse.” *See* Affidavit of

¹ NYCRR §§ 100.1, 100.2(A), 100.3(B)(1), 100.3(C)(1)-(2).

² The Complaint alleges that approximately 900 traffic cases adjudicated in petitioner’s court between January, 2006 and May, 2008 which were either disposed of with fines that were too high, or too low in conjunction with the statutory range. In approximately 791 of those cases, fines were issued in excess of \$13,451 beyond the statutory range. In another approximately 150 cases, fines were dispensed in an amount of \$6,404 below the statutory minimum.

Petitioner at ¶ 2. Petitioner further argues that his actions do not rise to the level of unethical conduct, and thus the Commission is devoid of jurisdiction to investigate the Complaint. Currently at issue before the Court is the petitioner's motion to dismiss the Formal Complaint in its entirety.

BACKGROUND

The petitioner is a Judge in the Town of Salina and has been a practicing attorney for approximately twenty-eight (28) years. He was elected Judge of the Town of Salina in November, 1993, where he has continuously held this part-time position to date, a period of around sixteen (16) years. On or about May 14, 2009, the petitioner received a letter from the NYS Commission on Judicial Conduct indicating that the Commission was concerned about the fines and surcharges being imposed on traffic-related matters as well as the petitioner's allowance of traffic-related matters to be reduced to pleas to Vehicle and Traffic Law § 1101.³ In response to this letter, petitioner notes that he voluntarily produced copies of all the court records pertaining to the listed cases, which he submitted to the Commission on June 11, 2009. Moreover, based on this letter of inquiry from the Commission, petitioner issued and published a Local Rule, dated May 28, 2009, which noted that petitioner would no longer accept dispositions via a plea to VTL § 1101.

Petitioner asserts that at no point, between the time when he became a judge on January 1, 1994, to receiving the Letter of Inquiry from the Commission on May 14, 2009, did he receive any contact or question regarding the quality of his work

³ Section 1101 of the VTL essentially is a general charge for failure to obey traffic laws.

performed as a Salina Town Judge. In fact, the petitioner understood that his judicial work was considered excellent and exemplary based on conversations with representatives of the Office of Court Administration. *See* Affidavit of Petitioner at ¶ 11.

On February 7, 2011, this Court Ordered that under Judiciary Law § 4, all further proceedings with regard to this matter would be closed to the public. Moreover, consistent with Judiciary Law § 45 and 22 NYCRR § 7000.8, it was ordered that the caption for this matter shall refer to the petitioner as “John Doe” in order to protect petitioner’s identity. Finally, pursuant to CPLR Article 63, a Temporary Retraining Order was granted, restraining the Commission “from taking any acts in furtherance of prosecuting the Formal Complaint dated May 20, 2010, without further order from this Court.” The Commission was then ordered to show cause as to why a writ of prohibition, as well as an Order, Judgment and Decree should not be granted vacating the Formal Complaint of May 20, 2010.

ANALYSIS

Article VI, § 22(a) of the NYS Constitution states that the Commission on Judicial Conduct “shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice...[and] a judge may be admonished, censured or removed for cause, including but not limited to misconduct in office, persistent failure to perform his duties, habitual intemperance, and conduct on or off the bench, prejudicial to the administration of justice...” *See also* 22 NYCRR § 7000.9(a); § 44(1) of the Judiciary Law (Upon receipt of a complaint (a) the commission *shall* conduct an investigation of

the complaint; or (b) the commission may dismiss the complaint if it determines that the complaint lacks merit).

The Complaint charges that through his actions in handing out improper fines for traffic violations, the petitioner violated several “rules” of judicial conduct in failing to: “participate in establishing, maintaining and enforcing high standards of conduct” (22 NYCRR § 100.1); “respect and comply with the law” (22 NYCRR § 100.2(A)); “be faithful to the law and maintain professional competence in it” (22 NYCRR § 100.3(b)(1)); “maintain professional competence in judicial administration”(22 NYCRR § 100.3(C)(1)); and “require staff, court officials and others subject to the judge’s direction and control to observe the same standards of fidelity and diligence that apply to the judge.” (22 NYCRR § 100.3(C)(2)).

Generally speaking, misconduct in the form of dishonesty has been seen as grounds for discipline irrespective of whether the judge’s overall record is “above reproach.” See Matter of Greenfield, 76 N.Y.2d 293, 297 (citing Matter of Boulanger, 61 N.Y.2d 89 (1984); Matter of Sardino v. State Commission on Judicial Conduct, 58 N.Y.2d 286 (1983)). However, as the Court of Appeals noted in Gilpatric:

In Greenfield itself, we recognized that when a judge has defied administrative directives or has attempted to subvert the system...the Commission has the authority to sanction a judge. 13 N.Y.3d 586, 589-90.

While the Greenfield and Gilpatric decisions shed some light on the present matter, they are not determinative. Both of those cases involved judges who had failed to dispose of cases in a timely manner. Both cases recognize the possibility of formal repercussions from the Commission in cases of persistent egregious delays. Greenfield assessed such delays as administrative failings, and under the circumstances presented,

the Court of Appeals did not believe the delays warranted disciplinary procedures. 76 N.Y.2d at 299.

Gilpatric, expanded upon Greenfield to the extent that it held that there are circumstances where persistent delays in cases, while administrative matters, can rise to the level of judicial misconduct warranting discipline. See Matter of Gilpatric, 13 N.Y.3d 586, 589-90. Such circumstances may include persistent delays despite administrative directives to help assist or correct the problem. Id.

The current matter is not about delays in cases, but rather the imposition of improper and excessive fines for traffic violations; a matter which petitioner contends is best suited for administrative correction as opposed to disciplinary procedures. However, as respondents point out, the relevant inquiry is not whether petitioner has committed misconduct, but rather whether the Commission has the power to determine whether or not misconduct has occurred after a hearing.

Article VI of the NYS Constitution, as well as relevant portions of the Judiciary Law and the NYCRR, make clear that the Commission of Judicial Conduct has the authority to “receive, initiate, investigate and hear complaints” and determine whether or not a Judge should be disciplined for misconduct.

Contrary to petitioner’s arguments, this is not a “test case.” The Commission has disciplined judges in the past for handing out fines which exceeded the maximum allowed by law. See Matter of Banks, 2009 WL 2400327 (N.Y. Comm. on Jud. Conduct); See also Matter of Pisaturo, 2005 WL 5727956 (N.Y. Comm. on Jud. Conduct). In Banks, the Commission found that a judge violated the above provisions of the NYCRR when he imposed fines above the maximum amount allowable in over 209 cases. Id. The Commission stated that although it was stipulated that the judge acted

unintentionally, it was his responsibility to know the law, and his conduct was harmful to individuals and society in creating at least an appearance that the judge was imposing higher fines in order to increase the town's revenues. Id. at *3.

Here, it is unclear whether or not the petitioner ultimately committed misconduct or violated the canons of judicial ethics. What is clear is that this is a determination to be made by the NYS Commission on Judicial Conduct. Petitioner's imposition of improper fines in over 900 cases certainly warrants a hearing and a full record through which the Commission can reach a decision. For the foregoing reasons, petitioner's request for an Order vacating the Formal Complaint is hereby DENIED.

Further, the Court DIRECTS counsel for the respondent to submit a proposed Order in keeping with this Decision and attaching a copy of this Decision thereto, upon notice to counsel for the petitioner.

DATED: April 26, 2011.



Hon. John C. Cherundolo, A.J.S.C.